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“Kung Flu”: A History of Hostility and Violence Against Asian Americans

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“KUNG FLU”: A HISTORY OF HOSTILITY AND VIOLENCE AGAINST ASIAN AMERICANS

The Honorable Denny Chin & Kathy Hirata Chin***

INTRODUCTION.....	1890
I. BACKGROUND	1892
II. HISTORIC HOSTILITY AND VIOLENCE.....	1896
<i>A. Mob Violence.....</i>	1896
1. Los Angeles Massacre of 1871	1897
2. Rock Springs Massacre of 1885.....	1901
3. Hells Canyon Massacre of 1887	1904
4. Watsonville Riots of 1930	1905
<i>B. Expulsions.....</i>	1907
1. Eureka, California—1885	1908
2. Seattle, Washington Territory—1886.....	1910
3. Bellingham, Washington—1907.....	1912
<i>C. Governmental Discrimination.....</i>	1913
1. The Pigtail Ordinance Case.....	1914
2. The Bubonic Plague Cases.....	1917
III. MODERN-DAY DISCRIMINATION.....	1920
<i>A. The Murder of Vincent Chin.....</i>	1921
<i>B. The Vietnamese Fishermen v. The Ku Klux Klan.....</i>	1929
IV. CONCLUSION	1935
<i>A. Why Has This Happened?</i>	1936
<i>B. What Can Be Done?</i>	1939

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INTRODUCTION

The COVID-19 pandemic “first became real” for most Americans in March 2020.¹ Since then, a wave of anti-Asian hatred and violence has swept the country, as more than 10,000 “hate incidents” have been reported against Asian Americans and Pacific Islanders (AAPIs),² including the 2021 killing of six Asian American women in the Atlanta area.³ The videos of senseless attacks against AAPIs, many of whom were older and vulnerable, were horrific and disturbing.⁴

1. Reis Thebault et al., *Sorrow and Stamina, Defiance and Despair. It's Been a Year.*, WASH. POST (Mar. 11, 2021), <https://www.washingtonpost.com/nation/interactive/2021/coronavirus-timeline/> [<https://perma.cc/A2VU-R2FE>].

2. This was for the period March 19, 2020, through September 30, 2021, as reported to the organization Stop AAPI Hate. See AGGIE J. YELLOW HORSE ET AL., STOP AAPI HATE, STOP AAPI HATE NATIONAL REPORT (2021), <https://stopaapihate.org/wp-content/uploads/2021/11/21-SAH-NationalReport2-v2.pdf> [<https://perma.cc/L2F6-DNU4>]. Stop AAPI Hate is a coalition formed on March 19, 2020, in response to the wave of incidents of violence and hostility against AAPIs. See *About*, STOP AAPI HATE, <https://stopaapihate.org/about/> [<https://perma.cc/F5UE-L3E9>] (last visited Mar. 4, 2022). We use the terms “Asian American” and “AAPI” interchangeably, although there is some disagreement as to the appropriate term to refer to Americans of Asian descent. See, e.g., Li Zhou, *The Inadequacy of the Term “Asian American,”* VOX (May 5, 2021, 10:10 AM), <https://www.vox.com/identities/22380197/asian-american-pacific-islander-aapi-heritage-anti-asian-hate-attacks> [<https://perma.cc/8BP2-W23C>] (“While Asian American was a term established by activists in the 1960s as a means to build political power, it’s also been criticized for obscuring the immense diversity among those it purports to cover”); Naomi Ishisaka, *Why It’s Time to Retire the Term “Asian Pacific Islander,”* SEATTLE TIMES (Nov. 30, 2020, 4:11 PM), <https://www.seattletimes.com/seattle-news/why-its-time-to-retire-the-term-asian-pacific-islander/> [<https://perma.cc/QMW5-5M6T>].

3. Two others were also killed for a total of eight murders at three spas. See Annika Kim Constantino, *Atlanta Spa Shooter Who Targeted Asian Women Pleads Guilty to Four of Eight Murders*, CNBC (July 27, 2021, 12:37 PM), <https://www.cnbc.com/2021/07/27/atlanta-spa-shooter-who-targeted-asian-women-pleads-guilty-to-four-counts-of-murder.html> [<https://perma.cc/2YQ3-9WU2>]. While the killer—a twenty-one-year-old white man—claimed otherwise, the murders appeared to be racially motivated. See *infra* note 308 and accompanying text for a further discussion of the Atlanta shootings.

4. See, e.g., Dion Lim, *84-Year-Old Killed After Horrific Daytime Attack Caught on Video in San Francisco*, ABC News (Feb. 1, 2021), <https://abc7news.com/san-francisco-senior-attacked-sf-man-pushed-on-video-day-time-attack-caught-anza-vista-crime/10205928> [<https://perma.cc/YYM6-TC78>]; Miya Shay, *Video Captures Attack on Korean Store Owner in North Houston*, ABC News (Mar. 25, 2021), <https://abc13.com/asian-hate-crime-houston-korean-store-attack-jung-kim-racist/10448031/> [<https://perma.cc/M9J9-HTFD>]; *Video Shows Anti-Asian Attack Outside NYC Apartment Building*, CNN (Apr. 7, 2021), <https://www.cnn.com/videos/us/2021/04/07/nyc-doormen-asian-attack-video-orig-mss.cnn> [<https://perma.cc/9MHN-9NN4>]; Wilson Wong, *Video Shows Stranger Attacking Asian Woman with Hammer in NYC*, NBC News (May 4, 2021, 1:00 PM), <https://www.nbcnews.com/news/us-news/video-shows-stranger-attacking-asian-woman-hammer-nyc-n1266237> [<https://perma.cc/4VDF-77YM>]; Dion Lim, *Video Shows Teens Attack, Rob 80-Year-Old Asian Man in San Leandro*, ABC News (May 12, 2021),

But what is perhaps more disturbing is that this is nothing new, for there is a long history of hostility and violence against Asian Americans in this country, a history that is not well known. In this Essay, we examine that history, before offering some thoughts about how we might finally escape the cycle of discrimination and violence that has plagued persons of Asian descent in this country since the arrival of the first immigrants.

This Essay is based on a presentation we gave at the 2021 Convention of the National Asian Pacific American Bar Association (NAPABA) in Washington, D.C.,⁵ with a team from the Asian American Bar Association of New York (AABANY).⁶ AABANY has been presenting reenactments of historic cases involving AAPIs since 2007, and this presentation on anti-Asian violence was its thirteenth reenactment.⁷ Despite their small numbers and limited resources—early litigants included, for example, laborers,⁸ laundrymen,⁹ a grocery store owner,¹⁰ women accused of being prostitutes,¹¹ and a clerical worker¹²—Asian Americans have not been afraid to fight for their rights, and many of their cases reached the U.S. Supreme Court.¹³ Our reenactments have focused not just on the legal principles

<https://abc7news.com/san-leandro-crime-asian-man-attacked-robbed/10609952/>
[\[https://perma.cc/4GD9-CRCG\]](https://perma.cc/4GD9-CRCG).

5. NAPABA is the largest AAPI membership organization in the country, with some 60,000 members, including lawyers, judges, law professors, and law students. *See Who We Are*, NAPABA, https://www.napaba.org/page/who_we_are [https://perma.cc/G2MU-3VSC] (last visited Mar. 4, 2022). It holds a national convention annually.

6. AABANY is the largest AAPI bar association in New York with more than 1,500 members. *See About AABANY*, AABANY, <https://www.aabany.org/page/A1> [https://perma.cc/T7MS-29A7] (last visited Mar. 4, 2022). The team for this presentation included, in addition to the authors, Vincent Chang, Yang Chen, Francis Chin, Anna Mercado Clark, Andrew Hahn, Linda Lin, Clara Ohr, Yasuhiro Saito, and the Honorable Ona Wang. Four team members helped in the development of the presentation but were unable to attend: John Bajit, the Honorable Kiyo Matsumoto, Concepcion Montoya, and David Weinberg. This Essay reflects their work, and we are grateful.

7. *See AABANY Trial Reenactments*, AABANY, <https://reenactments.aabany.org/trial-reenactments-3/> [https://perma.cc/XB99-65VC] (last visited Mar. 4, 2022).

8. *See generally* Chae Chan Ping v. United States, 130 U.S. 581 (1889) (laborer challenged Chinese Exclusion laws); Gabriel J. Chin, *Chae Chan Ping and Fong Yue Ting: The Origins of Plenary Power, in IMMIGRATION LAW STORIES* 7, 9–11 (David A. Martin & Peter H. Schuck eds., 2005); Case of the Chinese Laborers on Shipboard, 13 F. 291, 292, 294–95 (C.C.D. Cal. 1882) (petitioners were members of the crew of an American steamship who departed from San Francisco to Australia and were denied admission to United States on ship’s return based on Chinese Exclusion Act).

9. *See generally* Yick Wo v. Hopkins, 118 U.S. 356 (1886) (the Chinese Laundry Case); CHARLES J. MCCLAIN, IN SEARCH OF EQUALITY: THE CHINESE STRUGGLE AGAINST DISCRIMINATION IN NINETEENTH-CENTURY AMERICA 99 (1994).

10. *See generally* Jew Ho v. Williamson, 103 F. 10, 12 (C.C.N.D. Cal. 1900) (Chinatown grocer challenged constitutionality of quarantine of Chinatown based on fears of bubonic plague).

11. *See generally* Chy Lung v. Freeman, 92 U.S. 275 (1875) (the case of the “22 Lewd Chinese Women,” brought by Chinese women accused of being prostitutes).

12. *See generally* *Ex parte Endo*, 323 U.S. 283 (1944) (habeas corpus challenge to internment); PETER IRONS, JUSTICE AT WAR: THE STORY OF THE JAPANESE AMERICAN INTERNMENT CASES 102 (1993).

13. In the early years, these individuals were often represented by lawyers who “were not working pro bono, nor were they what would now be called public interest lawyers; they

presented in these cases but also on the stories of these individuals, and our programs have proven to be effective and popular teaching tools.¹⁴

In Part I of this Essay, we review the historical background and dynamics that set the stage for the hostility against the early arrivals from Asia. In Part II, we highlight a number of the acts of violence and discrimination against Asian Americans in the nineteenth and early twentieth centuries. In Part III, we discuss two examples of more contemporary anti-Asian violence: the murder of Vincent Chin in 1982 and the case of the Vietnamese Fisherman against the Ku Klux Klan in 1981. Finally, in Part IV, drawing on our review of this history, we identify some of the causes of anti-Asian hate and consider some suggestions on how to end the hostility and violence once and for all.

I. BACKGROUND

The Gold Rush of 1849 brought tens of thousands of would-be miners to California from all around the world, including Europe, Mexico, South America, Australia, and, of course, China. Among the visitors, only the Chinese drew widespread resentment and hostility.¹⁵ The views of Mallie Stafford, a New England woman who accompanied her husband to California to mine for gold, were typical of public sentiment. In her memoir, published in 1884, she observed the following about the early days of the Gold Rush:

represented trusts and railroads more often than humble toilers like their Chinese clients.” Chin, *supra* note 8, at 10. They were able to hire “high quality legal counsel” because the Chinese associations pooled their resources. *Id.* at 9–10. Eventually, public interest lawyers did come onto the scene, including lawyers affiliated with the American Civil Liberties Union in the internment cases. See, e.g., *Endo*, 323 U.S. at 284.

14. The scripts and accompanying slides are made available to students, schools, law firms, bar associations, and other organizations for educational purposes. One of our scripts, *Building Our Legacy: The Murder of Vincent Chin*, which was developed with Frank H. Wu, now the President of Queens College, City University of New York, and other members of AABANY, has been presented approximately thirty times, all over the country and even in Europe with a cast including European lawyers. See *Building Our Legacy: The Murder of Vincent Chin*, AABANY, <https://reenactments.aabany.org/building-our-legacy-the-murder-of-vincent-chin/> [https://perma.cc/LFM4-38RM] (last visited Mar. 4, 2022). The United States Court of Appeals for the Second Circuit has a webpage devoted to reenactments on its civic education website, drawing from programs created by AABANY, the Federal Bar Council American Inn of Court, and the Second Circuit Staff Attorney’s Office. See *Reenactments—Historic Courtroom Theater*, JUST. FOR ALL: CTS. AND THE CMTY., https://justiceforall.ca2.uscourts.gov/reenactments_home.html [https://perma.cc/Q5DX-59RX] (last visited Mar. 4, 2022). For another example of a law review article adapted from one of our reenactments, originally presented at a Just the Beginning Foundation conference, see Denny Chin & Kathy Hirata Chin, *Constance Baker Motley, James Meredith, and the University of Mississippi*, 117 COLUM. L. REV. 1741 (2017).

15. See MAE NGAI, THE CHINESE QUESTION: THE GOLD RUSHES AND GLOBAL POLITICS 3–5, 22–23 (2021); BETH LEW-WILLIAMS, THE CHINESE MUST GO: VIOLENCE, EXCLUSION, AND THE MAKING OF THE ALIEN IN AMERICA 35 (2018) (noting that many Irish, German, and Italian migrants were finding work in different industries in the U.S. West, “but assumptions about racial difference made the Chinese foreign competitors instead of future compatriots”). While the gold seekers were not the first Chinese to migrate to the United States, the Gold Rush brought large numbers of Chinese to America for the first time. See NGAI, *supra*, at 35–36 (increasing from 325 arrivals from China in 1849 to 20,000 in 1852).

As we approached that part of the road which lay along the banks of the Yuba, mining camps became more numerous, some very attractive and pretty villages enlivening the scene. Here the innovations of the Chinamen were observed. Already in the early history of California they were beginning to crowd white men to the wall. At first they worked mines that white men had deserted, but gradually in their own unobtrusive way, possessed themselves of some of the most valuable surface or placer mines. But they worked their mines on a far different principle from that of others. Others paid their laborers high wages, boarding them on the best the country afforded. The Chinaman brought bands of ignorant Coolies from China, who were in reality mere slaves, subject to his commands and entirely obedient to his authority; he fed them on the cheapest diet, rice and other cheap articles of food, shipped from his own country; the clothing, too, was brought ready-made from China; they slept in tents or cabins deserted by other miners, on bunks made of boards and sacks for bedding, and a sort of stool or box for a pillow. In this way the Chinaman spent none of his golden gains in the country, but steadily and persistently robbed the country of its golden treasure. He sucked the life-blood from her veins, laid open her rich arteries of treasure, and in unremitting toil gathered it up and shipped it to his own land.¹⁶

The “specter of Chinese coolies” was quickly weaponized by politicians, including the first governor of California, John Bigler, elected in 1851. Bigler won that election by fewer than 500 votes, and he faced a tough battle for reelection. To rally support, he seized on racist tropes.¹⁷ In April 1852, he urged the state legislature to control Chinese immigration:

The subject which I deem it my duty to present for your consideration . . . is the present wholesale importation to this country, of immigrants from the Asiatic quarter of the globe. I am deeply impressed with the conviction that, in order to enhance the prosperity and to preserve the tranquility of the State, measures must be adopted to check this tide of Asiatic immigration, and prevent the exportation by them of the precious metals which they dig up from our soil without charge, and without assuming any of the obligations imposed upon citizens. I allude, particularly, to a class of Asiatics known as “Coolies,” who are sent here, as I am assured, and as is generally believed, under contract to work in our

16. “*California’s Bantam Cock*”: *The Journals of Charles E. De Long, 1854–1863*, 8 CAL. HIST. SOC’Y Q. 337, 356–57 (1929) (quoting MALLIE STAFFORD, THE MARCH OF EMPIRE THROUGH THREE DECADES 72–73 (1884)); see also Danielle Marie Myers, “Some Kind of Mettle”: Entrepreneurial Women of the California Gold Rush 62–63, 70 (May 2009) (B.A. thesis, University of Arizona), https://repository.arizona.edu/bitstream/handle/10150/192549/azu_etd_mr20090174_sip1_m.pdf?sequence=1&isAllowed=y [<https://perma.cc/68YJ-V5QS>].

17. NGAI, *supra* note 15, at 86 (“By tarring all Chinese miners as ‘coolies,’ Bigler found a racial trope that compared Chinese to black slaves, the antithesis of free labor, and thereby cast them as a threat to white miners’ independence. In fact, the specter of Chinese coolies was of a piece with racist policy toward African Americans.”); LEW-WILLIAMS, *supra* note 15, at 19 (“From the 1850s to the 1870s, anti-Chinese violence and anti-Chinese politics overlapped, fed off each other, and must have seemed indistinguishable to Chinese migrants.”).

mines for a term; and who, at the expiration of the term, return to their native country.

....

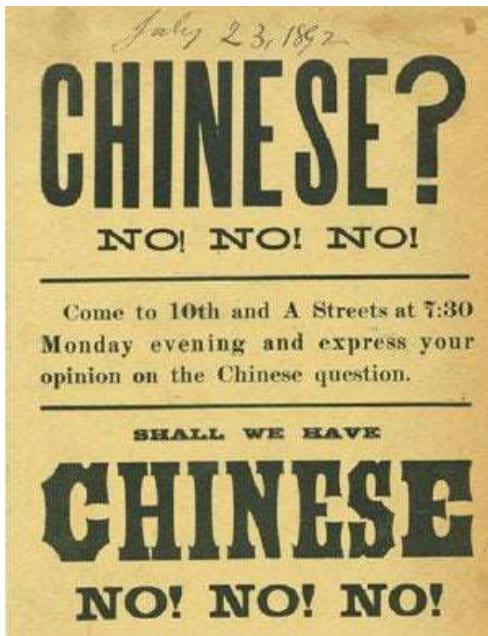
.... [V]ast numbers of [the Chinese] are immigrating hither, not, however, to avail themselves of the blessings of a free Government. They do not seek our la[n]d as “the asylum for the oppressed of all nations.” They have no desire (even if permitted by the constitution and laws) to absolve themselves from allegiance to other powers, and, under the laws of the United States, become American citizens. They come to acquire a certain amount of the precious metals, and then return to their native country.¹⁸

Bigler was reelected, and his “gambit to weaponize the Chinese Question¹⁹ . . . set down the enduring myth that Chinese labor . . . was unfree. That kind of ‘big lie’ would persist throughout the rest of the nineteenth century and well into the twentieth.”²⁰

18. John Bigler, *Address to the Senate and Assembly of the State of California, in JOURNAL OF THE THIRD SESSION OF THE LEGISLATURE OF THE STATE OF CALIFORNIA* 373, 373–74 (1852). In fact, the Chinese were not eligible to be naturalized as U.S. citizens, as the Naturalization Act of 1790 limited naturalization to “any alien, being a free white person.” Act of Mar. 26, 1790, ch. 3, § 1, 1 Stat. 103, 103–04 (repealed 1795). The statute was modified over the years, most notably following the Civil War by the extension of the right of naturalization to “aliens of African nativity and to persons of African descent.” Act of July 14, 1870, ch. 254, § 7, 16 Stat. 254, 256; *see Ozawa v. United States*, 260 U.S. 178, 189, 198 (1923) (holding that “person of the Japanese race born in Japan” was not eligible for naturalization because he “is clearly of a race which is not Caucasian”); *United States v. Thind*, 261 U.S. 204, 210, 214–15 (1923) (holding that person from India, who was according to some scientific authorities “Caucasian,” was ineligible for naturalization because the words “free white person” are “to be interpreted in accordance with the understanding of the common man,” and do not include “the body of people to whom [Thind] belongs”). The federal naturalization laws retained some form of race qualification until 1952. *See Immigration and Nationality Act of 1952*, Pub. L. No. 82-414, § 311, 66 Stat. 163, 239 (“The right of a person to become a naturalized citizen of the United States shall not be denied or abridged because of race or sex or because such person is married.”).

19. The “Chinese Question” referred to the problem of Chinese migration: “What did the arrival of Chinese migrants mean for America? And what should the federal government do about it? The Chinese Question proved difficult to answer, because it arose out of a fundamental conflict between distinct visions of America’s imperial future.” LEW-WILLIAMS, *supra* note 15, at 20.

20. NGAI, *supra* note 15, at 137; *see id.* at 87 (“Bigler’s success in tarring the Chinese as a ‘coolie race’ gave California politicians a convenient trope that could be trotted out whenever conditions called for a racial scapegoat.”). Labor organizations also seized on the anti-Chinese sentiment as “a recruiting opportunity” and “a ploy to strengthen local assemblies.” LEW-WILLIAMS, *supra* note 15, at 118.

Illustration 1: Washington State Propaganda Poster, 1892²¹

In fact, the Chinese were not indentured laborers, and they contributed significantly to their new country. They paid the foreign miners' taxes,²² helped build local economies in remote areas as well as in urban areas such as San Francisco, and contributed to the development of trade between China and America, trade that benefited both countries.²³ Among the Chinese arrivals were educated individuals who spoke English.²⁴ They pushed back

21. Washington State Propaganda Poster (July 23, 1892), https://web.archive.org/web/20201106232325/https://www.mocany.org/timeline/1869_popup.jpg.

22. In 1850, California passed the first foreign miners' tax, which applied not just to the Chinese, but to all foreign miners. *See* Act of Apr. 13, 1850, ch. 97, §§ 1, 5, 1850 Cal. Stat. 221, 221–22. It proved difficult to enforce, however, and was repealed within a year. *See* MCCLAIN, *supra* note 9, at 10 & n.9. Additional taxes were imposed that were “aimed primarily at the Chinese.” *Id.* at 12. In 1862, the California legislature passed a law explicitly targeting the Chinese, entitled “An Act to protect Free White Labor against competition with Chinese Coolie Labor, and to discourage the Immigration of the Chinese into the State of California.” Act of Apr. 26, 1862, ch. 339, 1862 Cal. Stat. 462, *invalidated by Lin Sing v. Washburn*, 20 Cal. 534 (1862). The California Supreme Court struck down the law, holding that it violated the U.S. Constitution because the power to regulate foreign commerce belonged to the federal government. *See Lin Sing*, 20 Cal. at 579–80.

23. NGAI, *supra* note 15, at 24–26, 37–41, 48–50, 96–97, 103 (“In fact Chinese poured millions into the California economy: in 1861, for example, in addition to paying the foreign miners tax, they contributed \$14 million, which included customs duties on imports; the purchase of American products; payment of steamboat and stage passenger fares and freight charges; and water charges and buying claims.”).

24. Indeed, the success of the Chinese contributed to the resentment. *See* LEW-WILLIAMS, *supra* note 15, at 35 (“Soon it was Chinese economic success, and not just their slavish reputation, that fed fears of the ‘yellow peril.’”).

against Governor Bigler and the stereotype of the Chinese coolie. Tong Achick, a leader of a family association, and Hab Wa, a merchant, wrote a letter to the Governor:

“The Chinamen have learned with sorrow that you have published a message against them. Although we are Asiatics, some of us have been educated in American schools and have learned your language, which has enabled us to read your message in the newspapers for ourselves and to explain it to the rest of our countrymen. . . . We have determined to write you as decent and respectful a letter as we could, pointing out to your Excellency some of the errors you have fallen into about us.” . . . [The] Chinese in California include[] laborers as well as tradesmen, mechanics, gentry, and teachers; “none are ‘Coolies’ if by that word you mean bound men or contract slaves.” . . . “The poor Chinaman does not come here as a slave. He comes because of his desire for independence.”²⁵

Achick and his colleagues made little headway. Because of a number of factors—economic competition; the politicization of racism to rally support; the pressures of national crisis, including war; differences in language, culture, and appearance; notions that Asians are forever foreigners; the use of AAPIs as scapegoats and as a wedge between minority groups; and pure racism—the violence and hostility continued and proliferated.²⁶

II. HISTORIC HOSTILITY AND VIOLENCE

We turn first to acts of hostility and violence against Asian Americans in the nineteenth and early twentieth centuries. There were scores of incidents. While there is much overlap, it is useful to sort the incidents into three broad categories: mob violence, expulsions, and governmental discrimination.

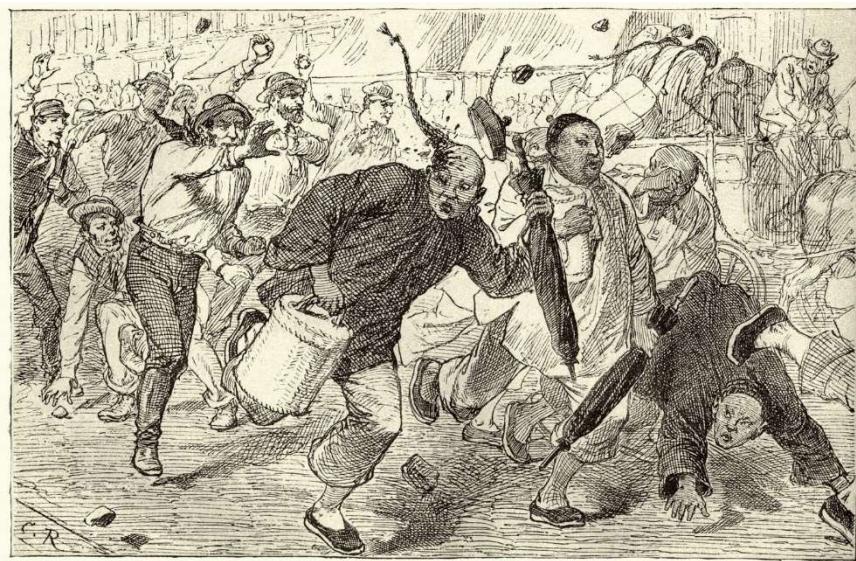
A. Mob Violence

There were many incidents of mob violence in the latter part of the nineteenth century and continuing into the twentieth century. These attacks reveal that anti-Asian American sentiment permeated many areas of civic life—from the populace to the legislatures to the court system. We highlight four of these incidents: Los Angeles, California, in 1871; Rock Springs, Wyoming, in 1885; Hells Canyon, Oregon, in 1887; and Watsonville, California, in 1930.

25. NGAI, *supra* note 15, at 89–90.

26. *See infra* Part IV.

Illustration 2: Chinese Emigrants Pelted During the Los Angeles Massacre of 1871²⁷



1. Los Angeles Massacre of 1871

On October 24, 1871, a gunfight broke out between two Chinese gangs in Los Angeles. A white man—a popular rancher—was killed in the cross fire. A police officer was also shot. As word of the shootings spread, a mob of several hundred men went on a rampage, seeking revenge. They rounded up every Chinese male they could find and hanged at least fifteen of them, including a fifteen-year-old who had arrived from China just a week earlier.²⁸ This was the largest mass lynching in American history.²⁹ Several others were fatally shot, bringing the total number of Chinese killed to at least eighteen—10 percent of the Chinese population at the time.³⁰ Only one of

27. The Chinese Massacre of 1871 (illustration), in *The History of Anti-Asian American Racism in the U.S.*, CHI. TRIB. (May 24, 2021), <https://www.chicagotribune.com/featured/sns-history-anti-asian-racism-discrimination-us-20210524-xdrwpkhp45hiriwfh5tvkhnj44-photogallery.html> [https://perma.cc/ZRN8-P2X9].

28. See SCOTT ZESCH, THE CHINATOWN WAR: CHINESE LOS ANGELES AND THE MASSACRE OF 1871, at 141–42 (2012).

29. See, e.g., Greg Lucas, *Chinese Residents Massacred in Los Angeles*, CAL. STATE LIBR., <https://cal170.library.ca.gov/los-angeles-massacre/> [https://perma.cc/C5EB-DGTN] (last visited Mar. 4, 2022) (“The ‘Los Angeles Massacre’ or ‘Chinatown War’ is the largest mass lynching in American history . . .”). An internet search of the phrase “largest mass lynching in American history” produces as the first result the March 14, 1891, lynching of eleven Italian Americans in New Orleans. See *March 14, 1891 New Orleans Lynchings*, WIKIPEDIA, https://en.wikipedia.org/wiki/March_14,_1891_New_Oreleans_lynnchings [https://perma.cc/N9YJ-JZMZ] (last visited Mar. 4, 2022).

30. The count of the number killed has varied. See, e.g., Lucas, *supra* note 29 (“Of the 18 deaths, 15 are Chinese residents hanged by a mob . . .”); Kevin Waite, *The Bloody History of Anti-Asian Violence in the West*, NAT’L GEOGRAPHIC (May 10, 2021),

the dead Chinese had played any role in the encounter that led to the outbreak of violence; the others were innocent bystanders.³¹

The next day, a leading newspaper of the time, the *Daily Alta California*, described the scene:

The most terrible night Los Angeles has ever known has just been passed. Twelve hours ago, fifteen stark, staring corpses hung ghastly in the moonlight, while six, seven or eight others, mutilated, torn and crushed, lay in our streets, all of them Chinamen. The sad results came, first, of their own bitter feuds between themselves; next of the infuriated passions of a few of their number, and lastly, of the demoniacal excitement of the lower classes of our community. Horrible beyond description has been the history of these last few hours. Chinamen, helpless, torn and mangled, more dead than alive, have been dragged by an infuriated, senseless and reckless crowd, through our peaceable streets, in the very face of the better portion of the community, to finish what little was left of their agonized existence at the end of a rope, midst the exultant shouts and jeers of the mob.³²

One of the victims was Dr. Gene Tong, a respected physician who treated both white and Asian patients.³³ A writer who studied the historical record described what happened:

As Tong was dragged along the street, he tried to strike a bargain with his captors. He could pay a ransom, he said. He had \$3,000 in gold in his shop. He had a diamond wedding ring. They could have it all.

Instead of negotiating, one of his captors shot him in the mouth to silence him. Then they hanged him, first cutting off his finger to steal the ring.³⁴

<https://www.nationalgeographic.com/history/article/the-bloody-history-of-anti-asian-violence-in-the-west> [<https://perma.cc/C694-9ANC>] (“By the end of the night, 19 mangled bodies lay in the streets of Los Angeles”); *Many Others Wounded and Killed—In All Twenty-One Dead*, DAILY ALTA CAL., Oct. 26, 1871, at 1 (describing fifteen corpses hanging and “six, seven or eight” other bodies lying in the streets); ZESCH, *supra* note 28, at 150 (noting that “fifteen Chinese had died by hanging, and three more had been shot to death at the Coronel adobe”); Kimmy Yam, *L.A. Groups Commemorate 1871 Massacre That Killed 10% of City’s Chinese Community*, NBC NEWS (Oct. 22, 2021, 11:25 PM), <https://www.nbcnews.com/news/asian-america/l-groups-commemorate-1871-massacre-killed-10-city-chinese-community-rcna3617> [<https://perma.cc/64VG-H2ZH>] (reporting “the murder of roughly 20 Chinese Americans”); C.P. Dorland, *Chinese Massacre at Los Angeles in 1871*, 3 ANN. PUB. HIST. SOC’Y S. CAL., L.A., no. 2, 1894, at 22, 25 (“[T]he coroner’s jury reported that nineteen persons had come to their death by the hands of a mob, on the night of October 24, 1871.”).

31. See Paul R. Spitzerri, “*Shall Law Stand for Naught?*”: *The Los Angeles Chinese Massacre of 1871 at Trial*, 3 CAL. LEGAL HIST. 185, 185 (2008).

32. *Many Others Wounded and Killed—In All Twenty-One Dead*, *supra* note 30. See generally ZESCH, *supra* note 28, at 136–44.

33. See John Johnson, Jr., *How Los Angeles Covered Up the Massacre of 17 Chinese*, LA WKLY. (Mar. 10, 2011), <http://www.laweekly.com/news/how-los-angeles-covered-up-the-massacre-of-17-chinese-2169478> [<https://perma.cc/QF5R-EZTZ>] (“Of all the Chinese in Los Angeles, Dr. Gene Tong was probably the most eminent and beloved among both his countrymen and Americans. He could have made much more money hanging his shingle in the American part of town. But Tong stayed in the Alley, dispensing both traditional and modern cures from a small shop in the decrepit Coronel Building.”).

34. *Id.*

Twenty-five men were indicted for the murder of the Chinese, but only ten men went to trial.³⁵ The prosecutors faced significant hurdles. Given the frenzied nature of the rioting, it was difficult to determine who did what to whom.³⁶ Moreover, as interpreted by the California Supreme Court in *People v. Hall*,³⁷ a California statute barred Chinese witnesses from testifying against any white person. In 1854, the court held that Chinese testimony was inadmissible against a “free white citizen” charged with murdering a Chinese victim.³⁸

In the face of these difficulties, the prosecutors focused on the murder of the well-regarded Dr. Tong.³⁹ The first defendant to go to trial was Curly Crenshaw, a twenty-two-year-old man of Irish descent, a drifter known to have a “reputation of the worst sort.”⁴⁰ The *Daily Alta California* summarized the testimony of Ben McLaughlin, a bystander who provided the prosecution’s “strongest testimony”:

It is in substance as follows: Know defendant; recognize him as Curly, or A.L. Crenshaw: saw him on the night of the riot at Rapp’s saloon; saw him go out with the pistol in his hand and get on the roof of the Coronel building; saw him go backward and forward on the roof; could not say whether he shot, there were so many shooting at the time; he was one of a crowd afterward shooting into a corral [sic] behind the building; it was after the cutting of holes in the roof and after taking the hose down from the roof; after most of the shooting was over I was standing in front of Rapp’s; Mike Madgin came around; he said that there was a crowd on Upper Negro alley threatening to break into a house; “Curley” or Crenshaw

35. See ZESCH, *supra* note 28, at 180, 188, 196.

36. *Id.* at 185–87.

37. 4 Cal. 399 (1854).

38. *Id.* at 399, 405. In fact, the statute made no reference to the Chinese, but provided that “[n]o Black, or Mulatto person, or Indian” was permitted to testify “against a White man.” *Id.* at 399 (quoting Act of Apr. 16, 1850, ch. 125, § 14). The court interpreted the words to bar testimony from Chinese witnesses as well. *See id.* at 403–04. Some years later, the statute was amended to include an explicit reference to the Chinese, and the California Supreme Court affirmed the dismissal of a robbery indictment against a defendant who was part white and part Black—a “mulatto” in the words of the majority and a “negro” in the words of the dissent—where the only witnesses were Chinese, on the ground that a statute that would permit “a class of persons deemed unworthy to testify against a white person” but would “yet allow them to testify against a black person in a similar case” would violate the right of the latter to equal protection. *People v. Washington*, 36 Cal. 658, 659, 666–67, 672–73 (1869). These rulings left Chinese victims of crimes by white and Black assailants with no recourse, where the only witnesses were Chinese. The ban on Chinese testimony remained in place until 1872, when the California legislature revised the state’s penal and civil codes. *See* McCCLAIN, *supra* note 9, at 42 & n.224 (first citing CAL. CIV. CODE §§ 1879, 1880; and then citing CAL. PENAL CODE § 1321).

39. See ZESCH, *supra* note 28, at 188 (“District Attorney Cameron Thom wisely chose to prosecute only Dr. Tong’s murder at this stage. He stood to win juror sympathy by focusing on the most renowned victim, a popular Chinese physician who treated non-Asian patients and helped them find Chinese workers.”).

40. *See id.* at 193–94; *Trial of One of the Los Angeles Rioters—Verdict of the Jury*, DAILY ALTA CAL., Feb. 19, 1872, at 1.

was there; he said that he killed three; he talked considerably about shooting Chinamen for some time.⁴¹

McLaughlin, however, could testify to nothing specific about Dr. Tong's death.⁴² Crenshaw took the stand in his own defense. He admitted having drinks and supper at Rapp's Saloon, but he said that he then headed home to bed. He denied telling Ben McLaughlin that he had killed three Chinese.⁴³ After Crenshaw's testimony, the parties rested and the lawyers gave their summations.⁴⁴ Despite the violence directed against the Chinese, no Chinese witnesses had testified, because of the bar on Chinese testimony against white persons.⁴⁵ After deliberating for just twenty minutes, at 9:45 p.m. on February 17, 1872, the jury returned its verdict, finding Crenshaw guilty of manslaughter.⁴⁶

In a second trial beginning on March 18, 1872, nine other rioters were tried together as accessories to the murder of Dr. Tong.⁴⁷ Over the course of seven days, an unusually long period of time for trials of that era, District Attorney Cameron Thom called more than thirty witnesses.⁴⁸ On March 27, 1872, the jury found two defendants not guilty, but convicted the remaining seven defendants of manslaughter.⁴⁹

Crenshaw and the seven defendants convicted in the second trial were sentenced just three days later, on March 30, 1872.⁵⁰ Crenshaw was sentenced to three years' imprisonment.⁵¹ The others received sentences ranging from two to six years.⁵² On appeal, however, the California Supreme Court reversed the convictions, concluding in a terse decision issued May 21, 1873, as follows:

The indictment in this case is fatally defective in that it fails to allege that Chee Long Tong [Dr. Tong] was murdered. The charge attempted against the defendants is that they were accessories before the fact to the crime of murder. It is alleged that the defendants did stand by, aid, abet, assist, advise, counsel, and encourage one John Doe and one Richard Roe to feloniously, unlawfully, willfully, deliberately, premeditatedly, and of their malice aforethought, one Chee Long Tong to kill and murder. Admitting that the defendants did all these things, still it does not follow by necessary legal conclusion that after all any person was actually murdered. It is the settled rule of criminal pleading that in an indictment against a person intended to be charged as an accessory before the fact in the crime

41. *Trial of One of the Los Angeles Rioters—Verdict of the Jury*, *supra* note 40; see ZESCH, *supra* note 28, at 193.

42. See ZESCH, *supra* note 28, at 193.

43. See *id.* at 193–94.

44. See *id.* at 194.

45. See People v. Hall, 4 Cal. 399, 405 (1854).

46. See *Trial of One of the Los Angeles Rioters—Verdict of the Jury*, *supra* note 40; ZESCH, *supra* note 28, at 195.

47. See ZESCH, *supra* note 28, at 196, 198.

48. See *id.* at 198.

49. See *id.* at 200.

50. See *id.* at 201.

51. See *id.*

52. See *id.* at 201–02.

of murder, every allegation is necessary which would be necessary had the indictment been against the principal felons themselves.

Unless, therefore, it can be maintained that an indictment against a principal for the crime of murder would be sufficient, even though it did not appear that the death of the party assaulted had ensued, it is difficult to see how the indictment here is to be sustained. The authorities are uniform that in either case it is indispensable that it appear by the indictment that death has resulted from the assault and wounding charged.

Judgment reversed and remittitur to issue forthwith.⁵³

As a result of the reversal, and as the prosecution did not seek new indictments or new trials, no one was held accountable for the murder of eighteen (or more) Chinese Americans in the Los Angeles massacre of 1871.⁵⁴

2. Rock Springs Massacre of 1885

On September 2, 1885, in Rock Springs in the Wyoming territory, some 150 white coal miners and others who worked for a coal company owned by the Union Pacific Railroad attacked their Chinese coworkers, killing twenty-eight, wounding fifteen others, and driving several hundred more out of town.⁵⁵ The white miners had periodically engaged in strikes to protest wage cuts and work conditions.⁵⁶ The railroad started bringing in Chinese men to work the mines, and by 1885, there were nearly 600 Chinese working at Rock Springs.⁵⁷ The Chinese miners were willing to work for lower wages, which meant lower wages for the white workers as well.⁵⁸ The white workers had asked the Chinese coworkers to support their efforts to obtain higher wages, but the Chinese miners were not willing to strike.⁵⁹ The Chinese miners became easy scapegoats for the resentful white workers.⁶⁰

53. People v. Crenshaw, 46 Cal. 65, 65–66 (1873); *see Zesch, supra* note 28, at 207–09.

54. *See Spitzerri, supra* note 31, at 222–24 (“What we do know, however, is that ‘law did stand for naught,’ in the matter of seeking justice for the eighteen dead Chinese, most certainly completely innocent of any complicity in the shootout that preceded the Massacre.”).

55. *See generally Chinese Miners Are Massacred in Wyoming Territory*, HIST. (Apr. 13, 2021), <https://www.history.com/this-day-in-history/whites-massacre-chinese-in-wyoming-territory> [<https://perma.cc/LD7X-Y5DU>]; Tom Rea, *The Rock Springs Massacre*, WYO. STATE HIST. SOC’Y (Nov. 8, 2014), <https://www.wyohistory.org/encyclopedia/rock-springs-massacre> [<https://perma.cc/L42Y-SHFS>]; *The Rock Springs Massacre*, LIBR. OF CONG., <https://www.loc.gov/item/today-in-history/september-02/> [<https://perma.cc/M9PK-SXBV>] (last visited Mar. 4, 2022).

56. *See Rea, supra* note 55.

57. *See id.*

58. *See id.*

59. “*To This We Dissented*”: *The Rock Springs Riot*, HIST. MATTERS, <http://historymatters.gmu.edu/d/5043/> [<https://perma.cc/2LXW-KN9B>] (last visited Mar. 4, 2022) (citing *Memorial of Chinese Laborers, Resident at Rock Springs, Wyoming Territory, to the Chinese Consul at New York* (1885), reprinted in CHINK! 152–64 (Cheng-Tsu Wu ed., 1972)).

60. *Chinese Miners Are Massacred in Wyoming Territory, supra* note 55 (“Searching for a scapegoat, the angry miners blamed the Chinese.”).

On the morning of September 2, a fight broke out between white and Chinese miners in the No. 6 mine.⁶¹ A Chinese miner was killed with a pick to his skull, and a second Chinese was badly beaten.⁶² At the No. 3 mine, white miners shot and killed several Chinese coworkers.⁶³ A mob of armed white miners and other railroad workers, joined by women and children, attacked Chinatown, looting many homes and shacks.⁶⁴ The mob set seventy-nine homes on fire.⁶⁵ Some Chinese were driven out of hiding by the flames and killed in the streets; others burned to death in their cellars. Hundreds more were chased out of town and into the surrounding hills.⁶⁶

*Illustration 3: Massacre of Chinese at Rock Springs, Wyoming in 1885*⁶⁷



The *New York Times* described the scene two days afterward as follows:

A glance over the battleground of Wednesday reveals the fact that many of the bullets fired at the fleeing Chinamen found their mark. Lying in the smoldering embers where Chinatown stood were found 10 charred and shapeless trunks, sending up a noisome stench, while another, which had evidently been dragged from the ashes by boys, was found in the sage brush nearby. The search resulted in the finding of the bodies of five more

61. See Rea, *supra* note 55.

62. See *id.*

63. See *id.*

64. See *id.*

65. See *Chinese Miners Are Massacred in Wyoming Territory*, *supra* note 55; Rea, *supra* note 55.

66. See *Chinese Miners Are Massacred in Wyoming Territory*, *supra* note 55; Rea, *supra* note 55; *The Rock Springs Massacre*, *supra* note 55.

67. Thure de Thulstrup, Illustration of 1885 Riot and Massacre of Chinese-American Coal Miners, by White Miners, https://en.wikipedia.org/wiki/Rock_Springs_massacre#/media/File:Massacre_of_the_Chinese_at_Rock_Springs_b.jpg [<https://perma.cc/TZE5-BWHV>].

Chinamen, killed by rifle shots while fleeing from their pursuers. All were placed in pine coffins and buried yesterday afternoon. Some six or eight others were found seriously wounded, and were cared for by the railroad officers. The Coroner's jury has rendered a verdict to the effect that the men came to their death at the hands of parties unknown. Reports from along the line of the railroad are to the effect that Chinamen have been arriving at small stations east and west of here, and they say that a large number of the fugitives were wounded by Wednesday's attack, and that many have perished in the hills. It is feared that it will be found that no less than 50 lost their lives when all the returns are in. This trouble has been brewing for months. The contractors who run the mines have been importing Chinamen in large numbers and discharging white men, until over 600 Celestials were in their employ. It is said that the mine bosses have favored the Chinamen to the detriment of white miners, and it needed only a spark to kindle the flames. This was furnished by a quarrel between a party of Celestials and whites in Mine No. 6 . . .⁶⁸

Federal troops were summoned, and the troops eventually escorted many of the Chinese who had fled back to Rock Springs.⁶⁹ Not all stayed, but some had little choice but to return to work.⁷⁰ Some 559 of the Chinese signed a "memorial" that they sent to the Chinese Consul in New York describing their perspective on the massacre and imploring the authorities "to endeavor to secure the punishment of the murderers."⁷¹

The railroad fired forty-five white miners for their role in the rioting.⁷² Sixteen of the rioters were arrested. The grand jury, however, refused to indict them.⁷³ The foreman of the grand jury explained:

We have diligently inquired into the occurrence at Rock Springs . . . and though we have examined a large number of witnesses, no one has been able to testify to a single criminal act committed by any known white person that day . . . We have also inquired into the causes . . . While we find no excuse for the crimes committed, there appears to be no doubt of abuses existing that should have been promptly adjusted by the railroad company and its officers. If this had been done, the fair name of our Territory would not have been stained by the terrible events of the 2d of September.⁷⁴

The sixteen men were released on October 7, 1885, after just a few weeks in prison, and they were "met . . . by several hundred men, women, and

68. *The Massacre of the Chinese*, N.Y. TIMES, Sept. 5, 1885, <http://www.ghostcowboy.com/node/118> [<https://perma.cc/MAV6-CHL5>].

69. See *Chinese Miners Are Massacred in Wyoming Territory*, *supra* note 55; Rea, *supra* note 55; *The Rock Springs Massacre*, *supra* note 53.

70. See Rea, *supra* note 55.

71. "To This We Dissented," *supra* note 59.

72. See *Chinese Miners Are Massacred in Wyoming Territory*, *supra* note 55.

73. See Rea, *supra* note 55.

74. ROGER DANIELS, *ASIAN AMERICA: CHINESE AND JAPANESE IN THE UNITED STATES SINCE 1850*, at 62 (1988).

children, and treated to a regular ovation.”⁷⁵ No one was ever charged for the murder of the twenty-eight Chinese miners and the wounding of many others.⁷⁶

3. Hells Canyon Massacre of 1887

On May 27 and 28, 1887, in Hells Canyon, Oregon, the hostility toward Chinese gold miners resulted in the deadliest attack against Chinese immigrants in U.S. history.⁷⁷ A group of Chinese gold miners had set up camp on the banks of Deep Creek on the Oregon side of the Snake River,⁷⁸ with the hope of finding “flour gold—tiny flakes and nuggets washed by river current into the gravel bars and riverbanks.”⁷⁹ A gang of seven horse thieves—including a fifteen-year-old—concocted a plan to murder miners and steal their gold.⁸⁰ The first day, several gang members took a position on a hillside above the miners’ camp and saw ten to thirteen Chinese working the river below. With high-powered rifles, they shot them, one by one. They killed all but one instantly, and when he tried to escape, they finished him off with rocks.⁸¹

The next day, the gang killed eight more Chinese miners who had arrived in the camp by boat, and then the horse thieves proceeded to a second camp nearby, where they killed thirteen more Chinese miners.⁸² In total, at least thirty-one and as many as thirty-four Chinese miners were murdered, their gold stolen and their camps burned, and their bodies thrown into the Snake River.⁸³ The murders were discovered after some of the bodies washed ashore at Lewiston in the Idaho territory, sixty-five miles from the massacre site.⁸⁴

75. *Rock Springs Massacre*, WIKIPEDIA, https://en.wikipedia.org/wiki/Rock_Springs_massacre [https://perma.cc/KY87-M27W] (last visited Mar. 4, 2022) (citing *Anti Chinese Sentiment*, N.Y. TIMES, Oct. 8, 1885, at 1).

76. See Rea, *supra* note 55; *Chinese Miners Are Massacred in Wyoming Territory*, *supra* note 55.

77. *Chinese Massacre Memorial Planned in Hells Canyon in June*, NW. ASIAN WKLY. (Nov. 29, 2011), <http://nwasianweekly.com/2011/11/chinese-massacre-memorial-planned-in-hells-canyon-in-june/> [https://perma.cc/F622-FC2P].

78. See Greg Nokes, *Chinese Massacre at Deep Creek, OR*. ENCYCLOPEDIA (June 1, 2018), https://www.oregonencyclopedia.org/articles/chinese_massacre_at_deep_creek/#.YcJ1QGjMKMo [https://perma.cc/5C27-V8QA]; *Hells Canyon Massacre*, HIST. (May 4, 2021), <https://www.history.com/topics/immigration/hells-canyon-massacre> [https://perma.cc/S76C-8KN4].

79. R. Gregory Nokes, “*A Most Daring Outrage*”: *Murders at Chinese Massacre Cove, 1887*, HIST. COOP., <https://historycooperative.org/journal/a-most-daring-outrage-murders-at-chinese-massacre-cove-1887/> [https://perma.cc/LJD4-2WFT] (last visited Mar. 4, 2022).

80. See *id.*; see also *Files Found in Oregon Detail Massacre of Chinese*, N.Y. TIMES, Aug. 20, 1995, at 30.

81. See *Files Found in Oregon Detail Massacre of Chinese*, *supra* note 80; Nokes, *supra* note 79; *Hells Canyon Massacre*, *supra* note 78.

82. *Files Found in Oregon Detail Massacre of Chinese*, *supra* note 80.

83. See Nokes, *supra* note 79; *Hells Canyon Massacre*, *supra* note 78.

84. See *Hells Canyon Massacre*, *supra* note 78; Nokes, *supra* note 79.

In March 1888, one of the horse thieves confessed and agreed to cooperate with the authorities.⁸⁵ The other six were indicted for murder, but three fled and were never caught. In a two-day trial that concluded on September 1, 1888, the other three were found not guilty.⁸⁶

George Craig was a rancher who attended the trial. He and his son had discovered some of the bodies in Hells Canyon.⁸⁷ Some years later he told an interviewer:

I guess if they had killed thirty-one white men something would have been done about it, but none of the jury knew the Chinamen or cared much about it, so they turned the men loose.⁸⁸

In 2005, the site was renamed Chinese Massacre Cove, and in 2012, a memorial was installed. The memorial is inscribed with the following, in three languages, English, Chinese, and Nez Perce:

Chinese Massacre Cove
Site of the 1887 massacre of as
many as 34 Chinese gold miners.
No one was held accountable.⁸⁹

4. Watsonville Riots of 1930

For five days, beginning on January 19, 1930, hundreds of white men armed with pistols and clubs rioted in Watsonville, California, attacking Filipino men.⁹⁰ The rioting was motivated in part by fears that Filipino

85. See Nokes, *supra* note 79. Several years after the trial, a second member of the gang, Robert McMillan, confessed to his father. *Id.* After McMillan died, his father gave the details of the confession to a newspaper. *Id.*

86. See Nokes, *supra* note 78; *Hells Canyon Massacre*, *supra* note 78.

87. See David H. Stratton, *The Snake River Massacre of Chinese Miners, 1887*, in *A TASTE OF THE WEST: ESSAYS IN HONOR OF ROBERT G. ATHEARN* 109, 118 (Duane A. Smith ed., 1983) (quoting Craig as telling an interviewer: “The coyotes or buzzards had cleaned most of the flesh off of [the bodies], so we did not know they were Chinamen. We couldn’t imagine how so many men had been killed without our hearing about it.”).

88. R. GREGORY NOOKES, MASSACRED FOR GOLD: THE CHINESE IN HELL'S CANYON 45, 127 (2009) (quoting Stratton, *supra* note 87, at 125); see also *Files Found in Oregon Detail Massacre of Chinese*, *supra* note 80; LEW-WILLIAMS, *supra* note 15, at 18 (“To white observers, the value of Chinese lives was so little, and the violence against them so abundant, that most forms of harassment seemed unremarkable.”). The point is illustrated by the entries in a journal kept by Charles E. De Long, a deputy sheriff who was studying law and lived near the North Uba River in northern California. Amidst entries such as “raining hard” (March 5), “waited upon Miss Robins” (March 16), “took dinner at Foster’s” (March 20), is the following entry for March 24, 1855:

Sat. 24, — Went down to the little Yuba thence up shot a Chinaman had a hell of a time returned home by way of Fosters.

“California’s Bantam Cock”: *The Journals of Charles E. De Long, 1854–1863*, *supra* note 16, at 338 (footnote omitted).

89. See *Community Members Install Memorial at Chinese Massacre Cove*, NW. ASIAN WKLY. (May 18, 2012), <http://nwasianweekly.com/2012/05/community-members-install-memorial-at-chinese-massacre-cove/> [<https://perma.cc/9986-Z9VT>].

90. See Leti Volpp, *American Mestizo: Filipinos and Antimiscegenation Laws in California*, 33 U.C. DAVIS L. REV. 795, 806–07 (2000); ESTELLA HABAL, RADICAL VIOLENCE

laborers were driving down wages, transmitting disease, and mixing with white women.⁹¹ A few days earlier, on January 10, 1930, D.W. Rohrbach, a justice of the peace and a leader of the Northern Monterey County Chamber of Commerce, had issued a resolution condemning the Filipinos:

For a wage that a white man cannot exist on, the Filipinos will take the job and, through the clannish, low standard mode of housing and feeding, practiced among them, will soon be well clothed, and strutting about like a peacock and endeavoring to attract the eyes of the young American and Mexican girls. Fifteen Filipinos will live in a room or two, sleeping on the floor and contenting themselves with squatting on the floors and eating fish and rice. The same group will form a club and buy a partnership in a classy automobile and attired like Solomon in all his glory, will roll along the highways. Marriages among white and Filipinos soon will be common, and if the present state of affairs continues there will be 40,000 half-breeds in the State of California before 10 years have passed. We do not advocate violence but we do feel that the United States should give the Filipinos their liberty and then send those unwelcome inhabitants from our shores that the whites who have inherited this country for themselves and their offspring, might live.⁹²

The next day, January 11, 1930, a Filipino club leased a dance hall in nearby Palm Beach and brought in nine white women to dance with its Filipino members.⁹³ The rioting began on January 19, when a mob of young white men attempted to “rescue” the women at the dance hall.⁹⁴ One local was quoted as saying:

Taxi dance halls where white girls dance with Orientals may be all right in San Francisco or Los Angeles but not in our community. We are a small

IN THE FIELDS: ANTI-FILIPINO RIOT IN WATSONVILLE (2020), https://carlosbulosanbookclub.org/wp-content/uploads/2020/11/Radical-Violence-in-the-Fields_-Anti-Filipino-Riot-in-Watsonville.pdf [https://perma.cc/EC5E-3DLZ].

91. See Volpp, *supra* note 90, at 805–06 (stating that anxiety was based primarily on “first, the idea that Filipinos were destroying the wage scale for white workers; second, the idea that they were disease carriers—specifically of meningitis, and; third, the idea that they were sexually exploiting ‘American and Mexican’ girls”) (footnote omitted). As a result of the laws excluding Chinese and other Asian immigrants, there was a labor shortage and Filipinos were able to fill the void as the United States had annexed the Philippines following the Filipino-American War. The overwhelming majority of the Filipino arrivals were men, and they found some comfort in the taxi dance halls. *See id.* at 803–07; *see also* Roldan v. Los Angeles County, 18 P.2d 706, 708–09 (Cal. Ct. App. 1933) (holding that Filipino man was not a “Mongolian” for purposes of California anti-miscegenation statute and holding that marriage between Filipino and white woman was not void).

92. See HABAL, *supra* note 90, at 2 (quoting Rohrbach’s statement as published in *Evening Pajaronian*, Jan. 11, 1930).

93. See E.S. BOGARDUS, UNIV. OF S. CAL., ANTI-FILIPINO RACE RIOTS: A REPORT MADE TO THE INGRAM INSTITUTE OF SOCIAL SCIENCE, OF SAN DIEGO 11 (1930), <https://ia600200.us.archive.org/3/items/antifilipinorace00boga/antifilipinorace00boga.pdf> [https://perma.cc/U99M-BRJW]; HABAL, *supra* note 90, at 3.

94. See Raymond Douglas Chong, *1930 Anti-Filipino Race Riots in California Remembered*, ASIAN AM. NEWS (Jan. 18, 2021), <https://asamnews.com/2021/01/18/putting-the-spotlight-on-a-forgotten-spotlight-in-asian-american-history/> [https://perma.cc/KFD9-J8NV]; BOGARDUS, *supra* note 93, at 12; HABAL, *supra* note 90, at 3.

city and have had nothing of the kind before. We won't stand for anything of the kind.⁹⁵

The rioting lasted five days, as groups of white men formed “Filipino hunting parties”⁹⁶ and “700 trouble-seekers, armed with clubs and some firearms, attacked Filipino dwellings, destroyed property, and jeopardized lives.”⁹⁷ Filipinos were pulled from their homes and beaten in the streets.⁹⁸ Some were thrown off the Pajaro Bridge.⁹⁹ On January 23, armed rioters injured fifty Filipino laborers at nearby farms. They shot up a bunkhouse at a ranch, killing twenty-two-year-old Fermin Tobera as he lay in his bunk.¹⁰⁰

Eight men, ranging from eighteen to twenty-eight years in age, were charged with rioting for the raids on the farms, but no one was charged with Tobera’s murder and the authorities did not pursue the matter with much vigor.¹⁰¹ The preliminary hearing for the men was presided over by the same Judge Rohrbach who had issued the anti-Filipino resolution a couple of weeks earlier. While he ruled that there was cause to hold the matter over for the Superior Court, he remarked that if they were found guilty, “the court should be very lenient” in sentencing them.¹⁰² The eight men pleaded guilty in Monterey Superior Court before a different judge on February 25, 1930; they were sentenced to thirty days in jail and two years’ probation and told to “refrain from agitation against the darker races.”¹⁰³

B. Expulsions

We turn to the next category of anti-Asian hostility and violence: expulsions, that is, efforts literally to drive Asians out of town. These occurred repeatedly—in 1885 and 1886, at least 168 communities in the West drove out their Chinese residents.¹⁰⁴ We highlight three episodes: Eureka,

95. See BOGARDUS, *supra* note 93, at 12.

96. *Id.* (quoting *Evening Pajaronian*, Jan. 21, 1930).

97. *Id.* at 13 (quoting *Watsonville Register*, Jan. 23, 1930).

98. Chong, *supra* note 94; BOGARDUS, *supra* note 93, at 13.

99. Alani Letang, *AAPI Heritage: Remembering the Watsonville Riots of 1930*, KSBW ACTION NEWS (May 21, 2021), <https://www.ksbw.com/article/aapi-heritage-remembering-the-watsonville-riots-of-1930/36482159#> [https://perma.cc/UL7T-VLQW].

100. *Id.*; HABAL, *supra* note 90, at 3; Michael P. Showalter, *The Watsonville Anti-Filipino Riot of 1930: A Reconsideration of Fermin Tobera’s Murder*, 71 S. CAL. Q. 341, 343 (1989).

101. See BOGARDUS, *supra* note 93, at 15–16; Showalter, *supra* note 100, at 343, 346.

102. Showalter, *supra* note 100, at 345 (citing Probation Reports at 69, People v. Edward Fry, No. 11826 (Cal. Super. Ct. Feb. 2, 1930)). While the Showalter article refers to a “trial,” this must have been a preliminary hearing to determine whether there was sufficient evidence for the matter to proceed to trial in the Superior Court. *See id.*

103. *Id.* (citing Probation Reports at 69, People v. Edward Fry, No. 11826 (Cal. Super. Ct. Feb. 25, 1930)); see also *White Mobs Attack Filipino Farmworkers in Watsonville, California*, EQUAL JUST. INITIATIVE, <https://calendar.eji.org/racial-injustice/jan/19> [https://perma.cc/4MF3-49F4] (last visited Mar. 4, 2022).

104. LEW-WILLIAMS, *supra* note 15, at 1. As Professor Lew-Williams described the expulsions:

At times, these purges involved racial violence in its most brazen and basic form: physical force motivated by racial prejudice and intended to cause bodily harm. The vigilantes targeted all Chinese people—young and old, male and female, rich and poor—planting bombs beneath businesses, shooting blindly through cloth tents, and

California, in 1885; Seattle, Washington, in 1886; and Bellingham, Washington, in 1907.

1. Eureka, California—1885

On February 6, 1885, in Eureka, California, a white man was crossing the street when he was caught in a cross fire between two Chinese men and was shot and killed.¹⁰⁵ Within minutes, an angry mob formed, shouting “burn Chinatown, burn Chinatown.”¹⁰⁶ Some six hundred men gathered at the town hall to consider the appropriate course of action; they determined that the Chinese had to be driven out of town.¹⁰⁷ The mob appointed a committee—including “pillars of the community”—to go into Chinatown to order all the Chinese residents to leave Eureka.¹⁰⁸ Makeshift gallows were constructed with signs posted threatening to hang any Chinese who remained.¹⁰⁹ Within forty-eight hours, the entire Chinese population of Eureka—estimates range from three hundred to as many as eight hundred Chinese men and women—was expelled from the City of Eureka.¹¹⁰ The Chinese were put on two steamships in Humboldt Bay and taken to San Francisco.¹¹¹

Some fifty-six Chinatown businesses and residents who had been forced to leave Eureka sued the city for damages.¹¹² The plaintiffs brought what

setting homes ablaze. Once physical violence had become a very real threat, the vigilantes also drove them out using subtler forces of coercion, harassment, and intimidation. They posted deadlines for the Chinese to vacate town, leaving unspoken the consequences of noncompliance. They locked up leaders of the Chinese community and watched as the rest fled. They called for boycotts of Chinese workers and waited for starvation to set in. This too was racial violence.

Id. (footnote omitted).

105. *Id.* at 113; see also Hector Alejandro Arzate, *Chinese Immigrants Were Forced Out of Eureka in 1885—Here’s How Locals Are Making That History Known*, KQED (Oct. 15, 2021), <https://www.kqed.org/news/11891987/chinese-immigrants-were-forced-out-of-eureka-in-1885-heres-how-locals-are-making-that-history-known> [https://perma.cc/W7FU-PMHJ].

106. Keith Easthouse, *The Chinese Expulsion: Looking Back on a Dark Episode*, N. COAST J., <https://www.northcoastjournal.com/022703/cover0227.html> [https://perma.cc/ZXJ5-JQE] (last visited Mar. 4, 2022); see also LEW-WILLIAMS, *supra* note 15, at 113 (describing chants of “Let’s go and burn the devils out!” and “Hang all the Chinamen!”).

107. See Easthouse, *supra* note 106; LEW-WILLIAMS, *supra* note 15, at 113.

108. See Arzate, *supra* note 105; Easthouse, *supra* note 106.

109. See Arzate, *supra* note 105; Easthouse, *supra* note 106; LEW-WILLIAMS, *supra* note 15, at 113 (stating that “leaders erected gallows and hanged a ‘Chinaman’ in effigy”).

110. See Easthouse, *supra* note 106 (reporting “about 300 men and 20 women”); LEW-WILLIAMS, *supra* note 15, at 113 (noting that “vigilantes had expelled the entire Chinese community (perhaps as many as eight hundred people) from Eureka”).

111. See Easthouse, *supra* note 106; Arzate, *supra* note 105.

112. See *Eureka Chinatown Project*, HUMBOLDT ASIANS & PACIFIC ISLANDERS IN SOLIDARITY, <https://hapihumboldt.org/Eureka-Chinatown-Project> [https://perma.cc/MT4B-ETVN] (last visited Mar. 4, 2022); Arzate, *supra* note 105. The record for *Wing Hing v. City of Eureka* in the United States Circuit Court for the Ninth Circuit contains a complaint filed by Wing Hing in the United States Circuit Court for the District of California on January 21, 1886. It is a single document, with one cover page and one signature page, but with individual pages setting forth claims on behalf of fifty-six claimants. See Complaint at 2, 3–58, 59, Wing

was essentially a forerunner of a class action, seeking to hold a municipality liable for the actions of a mob. According to the complaint, one claimant, Chung Sing & Co., transacted business and owned and operated a store in Eureka when “a mob of disorderly and riotous persons assembled together in said City of Eureka and created a riot,”¹¹³ and broke into its premises and “carried away therefrom and totally destroyed their goods, merchandise, furniture, fixtures, clothing, personal effects, money and provisions, and drove the members of said firm, and their clerks and agents, and servants, from their said store and from said city.”¹¹⁴ The complaint alleged that the City of Eureka was responsible because it “had due notice of the assembling of the mob and of the riot aforesaid,” but “failed and neglected to quell said riot or to disperse said mob, or to protect the property of said firm.”¹¹⁵

In March 1886, the court dismissed the claims seeking to hold the City of Eureka responsible for the damage caused by the mob action,¹¹⁶ apparently on the theory that because Chinese immigrants could not legally own land, they did not have standing to assert claims for damages for the loss of property.¹¹⁷ Although some limited claims survived, little progress was made in the case over the next three years, and the case was dismissed on March 2, 1889, for failure to prosecute.¹¹⁸ The court ruled that the “plaintiff take nothing by this action,” and assessed the Chinese fifteen dollars in court costs.¹¹⁹ Although the Chinese did not prevail, the case was still significant as a group of Chinese merchants and laborers banded together to take on the City of Eureka, asserting novel theories of liability and sending a message that the Chinese—who were being expelled in countless communities in the West—were willing to fight back.¹²⁰

Hing v. City of Eureka, No. 3948 (9th Cir. Jan. 20, 1886). The complaint sought a total of \$132,820 in damages. *Id.* at 60–61.

113. Complaint, *supra* note 112, at 3. For unknown reasons, the complaint and separate claims give the date of the rioting as February 27, 1885. *See id.*

114. *Id.*

115. *Id.* Similar claims were filed on behalf of individuals. *See, e.g., id.* at 24, 25.

116. *See JEAN PFAELZER, DRIVEN OUT: THE FORGOTTEN WAR AGAINST CHINESE AMERICANS* 209 (2007).

117. Easthouse, *supra* note 106; Arzate, *supra* note 105; *Eureka Chinatown Project, supra* note 112.

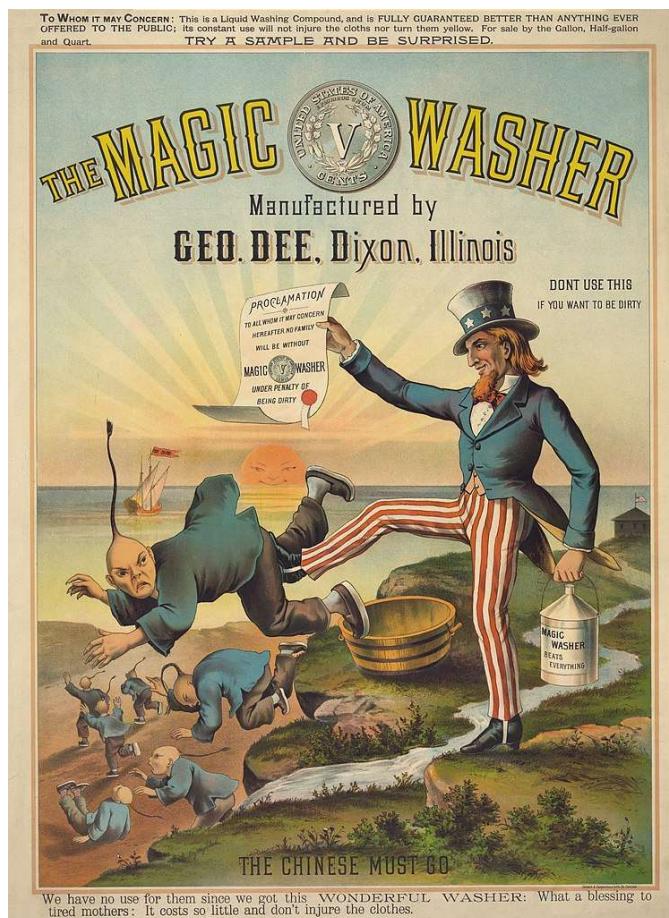
118. *See PFAELZER, supra* note 116, at 209.

119. *Id.*

120. *See id.* at 198–202, 209. As Professor Pfaelzer has observed:

The Chinese immigrants turned to American courts to fight roundups, assert their rights to nationhood and community, and demand reparations for being driven out of town. They brought criminal actions against elected officials—mayors, police chiefs, members of boards of supervisors. They forged unprecedented lawsuits for police harassment and intimidation. They created early forms of class actions. They demanded public education for their children. They fought the queue, the shoulder-pole, the laundry, and the cubic-air ordinances. Throughout the 1880s and 1890s, the Chinese in the West used the American judicial system as a site of contact and conflict with white Americans, seeking to establish their rights by putting them within established legal systems of contractual, property, tort, and civil rights. These cases challenge enduring stereotypes of the docile Chinese immigrant.

Id. at 246.

Illustration 4: Washing Machine Advertisement, Washington 1886¹²¹

2. Seattle, Washington Territory—1886

On February 7, 1886, “Seattle’s Chinese community awoke to a white mob marching through Chinatown Armed vigilantes knocked on each door, telling the Chinese that they had to vacate Seattle by 1 P.M. No one was exempted.”¹²² A movement to remove the Chinese, led by organized labor and others, had been building in Seattle for months, as the Chinese had accepted jobs on terms that white workers were unwilling to accept.¹²³ Such anti-Chinese sentiment was emboldened by the growing hostility against the Chinese nationally, as exemplified by the passage of the Chinese Exclusion

121. Washing Machine Advertisement (1886), <https://www.loc.gov/resource/pga.02758/> [<https://perma.cc/245Q-J3F5>].

122. LEW-WILLIAMS, *supra* note 15, at 106–07.

123. See Doug Chin, *Seattle’s Anti-Chinese Riot—February 7, 1886: The Day Seattle Imploded*, INT’L EXAM’R (Feb. 7, 2016), <https://iexaminer.org/seattles-anti-chinese-race-riot-february-7-1886-the-day-seattle-imploded/> [<https://perma.cc/Z4M3-5YVU>].

Act in 1882,¹²⁴ the Rock Springs massacre of 1885, and the recent expulsions of Chinese from Eureka and Tacoma, Washington.¹²⁵ The King County sheriff, John McGraw, described the scene:

On Sunday morning, February 7th, about 9 o'clock, a messenger came to me and informed me that the Chinese were being forced from their homes and driven to the steamship Queen of the Pacific, to be transported to San Francisco. I immediately went to the Chinese quarter of town, and there I saw groups of men in and about different Chinese houses assisting in packing up the goods and effects of the Chinese and loading them on to express wagons, and met squads of Chinamen going towards the wharf, each squad being under the escort of three or four white men, followed by a rabble. The mob, which I found in possession of the streets at this time[,] numbered 1,500, composed of the discontented element in Seattle, reinforced by delegations from Tacoma, Portland and other places.¹²⁶

Sheriff McGraw tried to intervene, but more than three hundred Chinese were rounded up and led to the port.¹²⁷ The plan was to put them on the steamer, the *Queen of the Pacific*, to ship them to San Francisco.¹²⁸ The captain of the *Queen* refused to allow them onboard until their fares were paid. But the rioters took up a collection and raised enough money to pay for almost one hundred fares. By the next day, enough funds were collected to pay for another one hundred or so fares. In the meantime, a court granted temporary relief, but most of the Chinese had decided they could not stay.¹²⁹ Filled to capacity, the *Queen* departed. A week later, a second steamship took away another 110 Chinese.¹³⁰ Federal troops were called in, but by the

124. Ch. 126, 22 Stat. 58 (1882) (repealed 1943).

125. See Daniel DeMay, *Resentment Toward Chinese Peaks with Riots in Seattle in 1886*, SEATTLEPI (Feb. 8, 2016, 9:48 AM), <https://www.seattlepi.com/local/seattle-history/article/Chinese-resentment-peaks-with-riots-in-Seattle-in-6811441.php> [https://perma.cc/FS8R-72HW]; Phil Dougherty, *Mobs Forcibly Expel Most of Seattle's Chinese Residents Beginning on February 7, 1886*, HIST. LINK (Nov. 17, 2013), <https://www.historylink.org/file/2745> [https://perma.cc/V8U3-RRH3]; Chin, *supra* note 123. On November 3, 1885, a mob of white citizens expelled the Chinese residents from Tacoma. To ensure that the Chinese did not return, the mob burned Chinatown to the ground. See Priscilla Long, *Tacoma Expels the Entire Chinese Community on November 3, 1885*, HIST. LINK (Jan. 17, 2003), <https://www.historylink.org/file/5063> [https://perma.cc/H3NK-KHYZ].

126. See Chin, *supra* note 123.

127. See *id.*; Dougherty, *supra* note 125; DeMay, *supra* note 125. Ida Remington Squire, the wife of Watson Squire, the Governor of Washington Territory at the time, recorded what she saw: “[T]hree hundred [Chinese] were crowded onto the wharf—trembling and crying.” Ida Remington Squire, Account of the Anti-Chinese Riots in Seattle (Feb. 7, 1886), in PAC. Nw. HIST. DOCUMENTS, <https://digitalcollections.lib.washington.edu/digital/collection/pioneerlife/id/8230> [https://perma.cc/2VBC-V5TV].

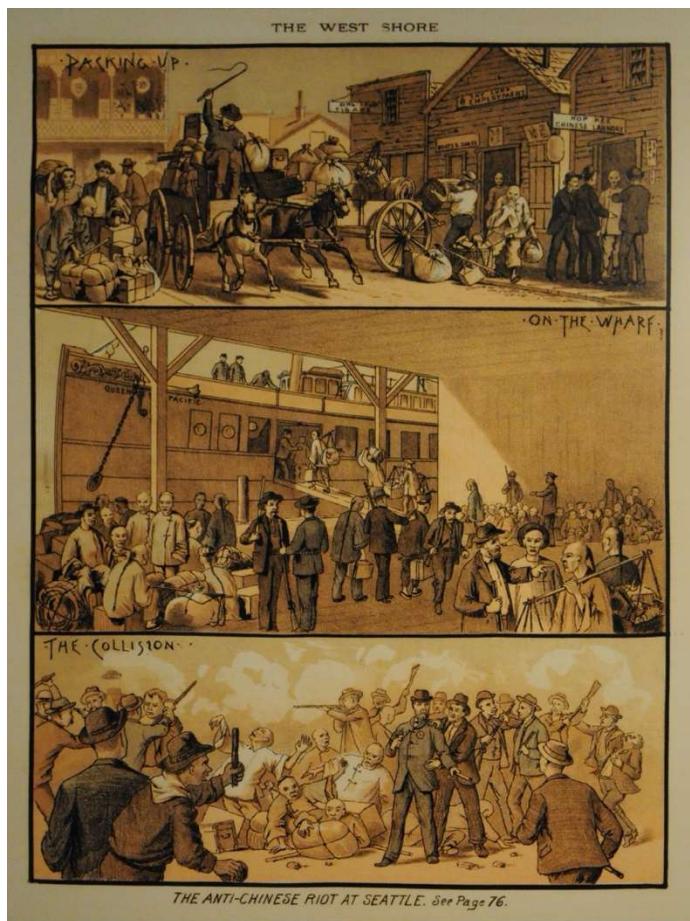
128. See Dougherty, *supra* note 125; DeMay, *supra* note 125.

129. A merchant named Wan Lee had filed a complaint with Chief Justice Roger Greene of the Supreme Court of the Washington Territory. See LEW-WILLIAMS, *supra* note 15, at 109; Dougherty, *supra* note 125. Justice Greene told the Chinese they had the right to remain in Seattle. See LEW-WILLIAMS, *supra* note 15, at 109. The judge, however, also warned them that the “general sentiment of the community is against the Chinese staying here.” LEW-WILLIAMS, *supra* note 15, at 109.

130. See Dougherty, *supra* note 125.

time order was restored, only a few dozen Chinese merchants and domestic servants remained in Seattle.¹³¹

*Illustration 5: Seattle Riots of 1886*¹³²



3. Bellingham, Washington—1907

On September 4, 1907, in Bellingham, Washington, a mob of five hundred white men launched a full-scale attack against South Asian migrant workers, many of whom worked at local lumber mills.¹³³ The mob “raided the mills

131. *See id.*; Chin, *supra* note 123.

132. Joe Mabel, *Artist's Conception of 1886 Anti-Chinese Riot in Seattle*, https://en.wikipedia.org/wiki/Seattle_riot_of_1886#/media/File:West_Shore_Magazine_on_the_Seattle_anti-Chinese_riot_02.jpg [https://perma.cc/W589-DRQE].

133. David Cahn, *The 1907 Bellingham Riots in Historical Context*, SEATTLE CIV. RTS. & LAB. HIST. PROJECT, https://depts.washington.edu/civilrbham_history.htm [https://perma.cc/SUG3-PLV8] (last visited Mar. 4, 2022); *Mob Drives Out Hindus.; Race War in a Washington Town Follows Alleged Insults.*, N.Y. TIMES, Sept. 6, 1907, at 1 [hereinafter *Mob Drives Out*

where the foreigners were working, battered down doors of lodging houses, and, dragging the Asiatics from their beds, escorted them to the city limits with orders to keep going.”¹³⁴ The cry “Drive out the Hindus” was heard throughout the city.¹³⁵ The mob included members of the Japanese-Korean Exclusion League, a predecessor to the Asiatic Exclusion League.¹³⁶ Within days, “the entire South Asian population departed town.”¹³⁷ Five men were arrested for rioting, but they were later released and no one was prosecuted.¹³⁸

The local newspapers weighed in on the riots. While they did not approve of the violence, they were pleased with the end result.¹³⁹ There were editorials in the *Bellingham Herald*, the *Reveille*, and the *Seattle Morning Times*:

BELLINGHAM HERALD: The Hindu is not a good citizen. . . . It would require centuries to assimilate him, and this country need not take the trouble. Our racial burdens are already heavy enough to bear.¹⁴⁰

REVEILLE: While any good citizen must be opposed to the means employed, the result of the crusade against the Hindus cannot but cause a general and intense satisfaction, and the departure of the Hindus will leave no regrets.¹⁴¹

MORNING TIMES: [T]he matter [is] “not a question of race, but of wages; not a question of men, but modes of life; not a matter of nations, but of habits of life. . . . When men who require meat to eat and real beds to sleep in are ousted from their employment to make room for vegetarians who can find the bliss of sleep in some filthy corner, it is rather difficult to say at what limit indignation ceases to be righteous.”¹⁴²

C. Governmental Discrimination

We turn to our third category: governmental discrimination. There are innumerable examples of state and federal laws targeting AAPIs, including discriminatory taxes;¹⁴³ laws restricting immigration, including the Chinese

Hindus]; The 1907 Bellingham Riots, SEATTLE CIV. RTS. & LAB. HIST. PROJECT, https://depts.washington.edu/civilr/bham_intro.htm [<https://perma.cc/DEX3-KK6U>] (last visited Mar. 4, 2022).

134. *Mob Drives Out Hindus*, *supra* note 133; see also Cahn, *supra* note 133.

135. *Mob Drives Out Hindus*, *supra* note 133. Although referred to as “Hindus” in the vernacular of the day, most of the immigrants were Sikhs from the Punjab region. See Paul Englesberg, *The Bellingham “Anti-Hindu Riot,”* 360 RIOT WALK, <https://360riotwalk.ca/bellingham-anti-hindu-riot/> [<https://perma.cc/X3BN-UFRH>] (last visited Mar. 4, 2022).

136. See Cahn, *supra* note 133.

137. *Id.*; see also Englesberg, *supra* note 135 (“[N]early all of the South Asian workers and job-seekers had either left by train or steamship”).

138. See Englesberg, *supra* note 135.

139. See Cahn, *supra* note 133.

140. *Id.*

141. *Id.*

142. *Id.* (third alteration in the original) (quoting Gerald N. Hallberg, *Bellingham, Washington’s Anti-Hindu Riot*, NW. MOSAICS 150–51 (1973)).

143. See, e.g., *Lin Sing v. Washburn*, 20 Cal. 534, 535, 579–80 (1862) (striking down California statute entitled “An Act to protect Free White Labor against competition with

Exclusion Acts;¹⁴⁴ city ordinances purporting to regulate laundries;¹⁴⁵ and anti-miscegenation laws.¹⁴⁶ We highlight the Pigtail Ordinance case and a pair of pandemic cases.

1. The Pigtail Ordinance Case

In 1876, the California State Legislature passed the “Cubic Air Law,” which required at least 500 cubic feet of space for each adult living in a residence.¹⁴⁷ The law targeted the Chinese, many of whom lived in cramped quarters in San Francisco’s Chinatown.¹⁴⁸ The law was enforced by police officers who raided lodging houses in the Chinese quarter “invariably . . . in the dead of night.”¹⁴⁹ In one raid, a “posse of officers made a descent . . . on a Chinese lodging house” and “[f]ifty six lodgers were captured.”¹⁵⁰

Violators were guilty of a misdemeanor and were subject to a fine or imprisonment or both.¹⁵¹ An unintended consequence of the Cubic Air Law was that the jails became overcrowded, as many Chinese were arrested and would not or could not pay the fine.¹⁵² As the jails filled, the San Francisco Board of Supervisors passed another law—the Pigtail Ordinance.¹⁵³ It

Chinese Coolie Labor, and to discourage the Immigration of the Chinese into the State of California”).

144. *See Fong Yue Ting v. United States*, 149 U.S. 698, 732 (1893) (upholding Geary Act, ch. 60, 27 Stat. 25, which extended Chinese exclusion and required Chinese laborers in United States to obtain and carry certificate of residence or face arrest and deportation); *Chae Chan Ping v. United States*, 130 U.S. 581, 610–11 (1889) (upholding Chinese Exclusion Act of 1882).

145. *See Yick Wo v. Hopkins*, 118 U.S. 356, 373–74 (1886) (vacating convictions of two Chinese laundrymen who violated San Francisco ordinance requiring laundries to be operated in brick or stone buildings (as opposed to wooden buildings) on grounds that, “[t]hough the law itself be fair on its face and impartial in appearance,” it violated the Fourteenth Amendment because it was applied only to Chinese, because of “hostility to the race and nationality”).

146. *See Roldan v. Los Angeles County*, 18 P.2d 706, 709 (Cal. Ct. App. 1933) (holding that Filipino man was not a “Mongolian” for purposes of California anti-miscegenation statute and holding that marriage between Filipino and white woman was not void).

147. *See Joshua S. Yang, The Anti-Chinese Cubic Air Ordinance*, 99 AM. J. PUB. HEALTH 440 (2009); *Ho Ah Kow v. Nunan*, 12 F. Cas. 252, 253 (C.C.D. Cal. 1879) (No. 6,546) (citing 1876 Cal. Stat. 759).

148. *See Yang, supra* note 147 (quoting health officer’s report to county board of supervisors that Chinese “live crowded together in rickety, filthy, and dilapidated tenement houses”). The ordinance was passed following a request for the measure made by the president and vice president of the Anti-Coolie Association. *Id.*

149. MCCLAIN, *supra* note 9, at 66.

150. *Id.* (quoting *Violators of the Cubic Air Law*, DAILY EVENING BULL. (S.F.), June 22, 1876, at 3).

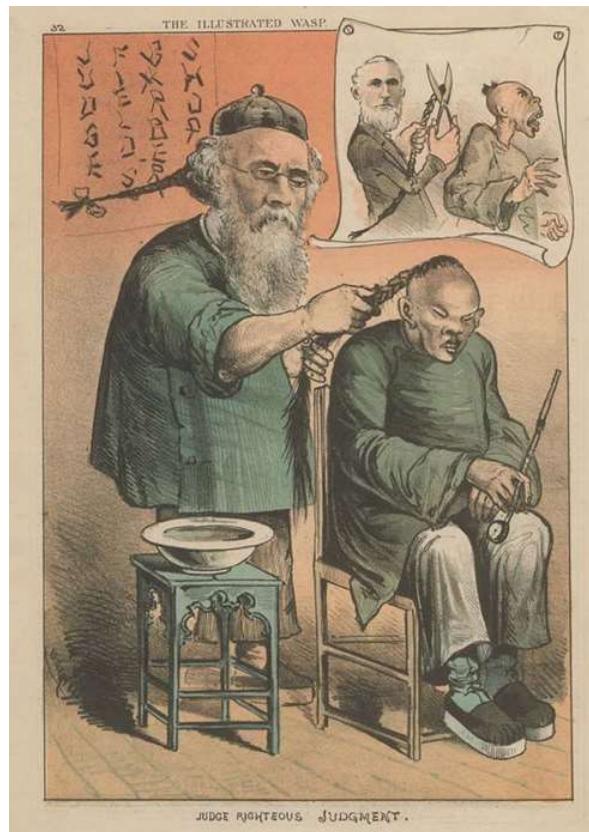
151. *See Yang, supra* note 147, at 440 (“Violating the order was considered a misdemeanor, punishable by a fine of between \$10 and \$500, 5 days to 3 months in prison, or both.”).

152. *See James Chionsini, Ho Ah Kow v. Nunan: He Fought the Law and Won!*, FOUND_SF, https://www.foundsf.org/index.php?title=Ho_Ah_Kow_v._Nunan [https://perma.cc/F9S9-U6KW] (last visited Mar. 4, 2022) (“When arrested for violating the [Cubic Air] law, Chinese people often chose to resist the law by refusing to pay the fine, thereby filling up the city jail.”).

153. A version of the Pigtail Ordinance was first passed by the San Francisco Board of Supervisors in 1870, but the mayor vetoed it. *See* MCCLAIN, *supra* note 9, at 65. After the

required all male prisoners in city jails to have “the hair of their head cut or clipped to a uniform length of one inch from the scalp thereof.”¹⁵⁴ Most of the Chinese men in San Francisco kept their hair in a queue, and its loss was a mark of disgrace and resulted in, many Chinese believed, misfortune and suffering after death.¹⁵⁵ The ordinance was enforced only against the Chinese.¹⁵⁶

*Illustration 6: Ho Ah Kow and the Pigtail Ordinance*¹⁵⁷



California state legislature passed the Cubic Air Law in 1876, the San Francisco Board of Supervisors again passed a queue ordinance. *Id.* This time the mayor approved it. *Id.*

154. *Id.* at 65 & n.102 (providing text of law and quoting from Joint Special Committee Report, app. D, at 1166).

155. *Ho Ah Kow v. Nunan*, 12 F. Cas. 252, 255 (C.C.D. Cal. 1879) (No. 6,546); Chionsini, *supra* note 152 (“The obvious intent of the law was to target and demean Chinese men as they wore their hair in a long braid or ‘queue’ at the time and cutting it was seen as an act of disgrace.”).

156. See *Ho Ah Kow*, 12 F. Cas. at 255; see also *The Tale of a Chinaman*, N.Y. TIMES, July 16, 1879, at 4 (“It is nowhere denied that the so-called ‘cubic air ordinance’ was enacted for the sole purpose of harrying and disconcerting the gregarious Chinese.”).

157. Illustration of Ho Ah Kow and the Pigtail Ordinance (1879), <https://erinaspeaks.medium.com/5-times-the-aapi-community-resisted-racism-in-court-d798c9b14bec> [<https://perma.cc/H5PD-EL35>].

Ho Ah Kow, a Chinese laborer in San Francisco,¹⁵⁸ was convicted in April 1878 of violating the Cubic Air Law and sentenced to a ten-dollar fine or five days in prison.¹⁵⁹ He failed to pay the fine and was imprisoned.¹⁶⁰ The sheriff in charge of the jail cut off his queue.¹⁶¹

Ho Ah Kow sued the sheriff for \$10,000 in damages—and won.¹⁶² U.S. Supreme Court Justice Stephen Field, sitting in his capacity as circuit justice,¹⁶³ wrote as follows:

[The ordinance] is special legislation on the part of the supervisors against a class of persons who, under the constitution and laws of the United States, are entitled to the equal protection of the laws. The ordinance was intended only for the Chinese in San Francisco. . . . The reason advanced for its adoption, and now urged for its continuance, is, that only the dread of the loss of his queue will induce a Chinaman to pay his fine. That is to say, in order to enforce the payment of a fine imposed upon him, it is necessary that torture should be superadded to imprisonment. Then, it is said, the Chinaman will not accept the alternative, which the law allows, of working out his fine by his imprisonment, and the state or county will be saved the expense of keeping him during the imprisonment. Probably the bastinado, or the knout, or the thumbscrew, or the rack, would accomplish the same end; and no doubt the Chinaman would prefer either of these modes of torture to that which entails upon him disgrace among his countrymen and carries with it the constant dread of misfortune and suffering after death. It is not creditable to the humanity and civilization of our people, much less to their Christianity, that an ordinance of this character was possible.¹⁶⁴

“*Ho Ah Kow*’s significance for the future struggles of the Chinese can hardly be exaggerated.”¹⁶⁵ Long before civil rights suits for damages became popular, a Chinese laborer had the audacity to sue a government official—the sheriff—for money damages. Moreover, his efforts led to a ruling, some seven years before the U.S. Supreme Court’s decision in *Yick Wo v. Hopkins*,¹⁶⁶ that the Equal Protection Clause applied not just to citizens but

158. See Chionsini, *supra* note 152.

159. See *Ho Ah Kow*, 12 F. Cas. at 253.

160. *Id.*

161. *Id.*

162. *Id.* at 253, 257.

163. MCCLAIN, *supra* note 9, at 74.

164. *Ho Ah Kow*, 12 F. Cas. at 255. A “bastinado” is a form of torture that involves beating the soles of a person’s feet with a stick. See *Bastinado*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/bastinado> [https://perma.cc/C68J-ATXV] (last visited Mar. 4, 2022). A “knout” is a whip with a lash of leather thongs twisted with wire used to flog someone; as a verb, it means to punish by whipping with a knout. See *Knout*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/knout> [https://perma.cc/DMX2-SMVE] (last visited Mar. 4, 2022).

165. MCCLAIN, *supra* note 9, at 76.

166. 118 U.S. 356 (1886).

also to noncitizens,¹⁶⁷ including the Chinese.¹⁶⁸ And, significantly, the Court held also that even a facially neutral ordinance, if unfairly applied, could violate the Constitution:

[W]e cannot shut our eyes to matters of public notoriety and general cognizance. When we take our seats on the bench we are not struck with blindness, and forbidden to know as judges what we see as men; and where an ordinance, though general in its terms, only operates upon a special race, sect or class, it being universally understood that it is to be enforced only against that race, sect or class, we may justly conclude that it was the intention of the body adopting it that it should only have such operation, and treat it accordingly.¹⁶⁹

2. The Bubonic Plague Cases

At the turn of the twentieth century, there was worldwide fear of a pandemic—the bubonic plague.¹⁷⁰ On March 6, 1900, San Francisco officials gathered at a Chinatown “coffin shop” to examine the body of a Chinese man.¹⁷¹ They suspected the plague.¹⁷²

Within hours, San Francisco’s Board of Health ordered a quarantine of Chinatown. Police officers spread out around twelve city blocks, stringing ropes across key intersections, and blocking pedestrians and wagons from entering or leaving.¹⁷³ Before doing so, they made sure that all white persons who could be found were escorted out of the area.¹⁷⁴ The quarantine was an

167. *Ho Ah Kow*, 12 F. Cas. at 256 (holding that the Fourteenth Amendment assures “equality of protection . . . to every one whilst within the United States, from whatever country he may have come, or of whatever race or color he may be”); *id.* (quoting *In re Fossat*, 69 U.S. 649, 703 (1864)) (“It is certainly something in which a citizen of the United States may feel a generous pride that the government of his country extends protection to all persons within its jurisdiction; and that every blow aimed at any of them, however humble, come from what quarter it may, is ‘caught upon the broad shield of our blessed constitution and our equal laws.’”).

168. The Court ruled as it did even though the “general feeling . . . prevailing in California against the Chinese” was “positive hostility.” *Id.*

169. *Id.* at 255.

170. See Becky Little, *The First Time the Plague Broke Out in the US, Officials Tried to Deny It*, HIST. (Mar. 23, 2020), <https://www.history.com/news/first-plague-outbreak-united-states-california> [https://perma.cc/P57J-U AUG]; Katie Dowd, *San Francisco’s Bubonic Plague Epidemic Has Eerie Parallels to Modern Day*, SFGATE (Apr. 10, 2020), <https://www.sfgate.com/sfhistory/article/San-Francisco-Chinatown-plague-1900s-15188267.php> [https://perma.cc/WD5M-BA16].

171. Julia Flynn Siler, *Inside San Francisco’s Plague-Ravaged Chinatown, c. 1900: A City on the Edge*, LITERARY HUB (May 15, 2019), <https://lithub.com/inside-san-franciscos-plague-ravaged-chinatown-c-1900/> [https://perma.cc/96DU-YNMZ].

172. See *id.* Eventually, the authorities confirmed that the man had indeed died from the bubonic plague. *Id.*; see also Little, *supra* note 170. Historians believe that the plague was transmitted from rats and fleas from ships arriving in San Francisco and “settling into the city’s most-crowded, least-maintained district: Chinatown.” Dowd, *supra* note 170; see also Siler, *supra* note 171 (“Bubonic plague had arrived in [San Francisco] on fleas feasting on the blood of rats The outbreak began—in a dreadful irony—in the Chinese Year of the Rat.”).

173. See Siler, *supra* note 171; Dowd, *supra* note 170.

174. See MCCLAIN, *supra* note 9, at 236; Dowd, *supra* note 170 (“[W]hite residents and visitors had been escorted out the night before.”).

extraordinary reaction to the discovery of a single suspected case of the plague; while the practice of quarantining had been applied to ships arriving in a port or individual homes, it was “highly unusual” to cordon off “a whole district of a great city.”¹⁷⁵ At the time, some 25,000 to 35,000 Chinese resided in the area.¹⁷⁶

The plague quickly became a political issue, as newspapers referred to “the plague fake” and teamed up with California politicians and business leaders to oppose the health officials, believing fears of the plague would impact “travel, tourism, free-flowing trade and their unfettered wealth.”¹⁷⁷ Others complained that the quarantine of Chinatown had an impact on the greater community. The *San Francisco Chronicle* observed that “[t]he Chinese were not the only people who had to suffer,” as “[t]he white employers of the Chinese awoke to find that there was nobody on hand to prepare breakfast.”¹⁷⁸ The quarantine was lifted within a few days,¹⁷⁹ but only temporarily, as at the end of May 1900, the Board of Health and the San Francisco Board of Supervisors passed a series of resolutions and ordinances reimposing a quarantine on Chinatown.¹⁸⁰

In the meantime, on May 18, 1900, the Board of Health passed a resolution requiring all Chinese or Asiatic residents, if they wished to travel out of the city, to be inoculated with a serum known as the “Haffkine Prophylactic,” an anti-plague vaccine made from the living bacteria of the bubonic plague that some feared caused severe side effects.¹⁸¹ The resolution applied only to the “Chinese and Asiatics.”¹⁸² Other residents of the city could depart from and return to the city without being inoculated.¹⁸³

The Chinese quickly took action. Wong Wai, a resident of San Francisco, challenged the inoculation resolution,¹⁸⁴ and Jew Ho, who operated a grocery store in Chinatown, challenged the quarantine.¹⁸⁵ Both argued that the resolutions unfairly targeted the Chinese, and both prevailed.

175. McClain, *supra* note 9, at 236.

176. See Dowd, *supra* note 170.

177. Dowd, *supra* note 170; see Philip A. Kalisch, *The Black Death in Chinatown: Plague and Politics in San Francisco 1900–1904*, 14 ARIZ. & W. 113, 116–21 (1972) (discussing political pressure resulting in lifting of quarantine).

178. Dowd, *supra* note 170 (quoting *Criminal Idiocy of the Phelan Health Board*, S.F. CHRON., Mar. 8, 1900, at 7).

179. See Kalisch, *supra* note 177, at 118.

180. See *Jew Ho v. Williamson*, 103 F. 10, 12 (C.C.N.D. Cal. 1900); McClain, *supra* note 9, at 259.

181. See *Wong Wai v. Williamson*, 103 F. 1, 3 (C.C.N.D. Cal. 1900); see also Siler, *supra* note 171 (noting that a *San Francisco Examiner* reporter “even went so far as to get himself injected with the plague vaccine to catalog its side effects”); McClain, *supra* note 9, at 245 (“The vaccine was highly toxic, and its administration was frequently accompanied by localized pain and swelling, headache, and high fever. Reactions were occasionally quite severe and could render an individual prostrate for many days. There were occasionally even reports of death.”).

182. See *Wong Wai*, 103 F. at 6.

183. *Id.*

184. See *id.* at 2.

185. See *Jew Ho*, 103 F. at 12.

Judge William Morrow wrote for the Circuit Court for the Northern District of California in both cases. In the inoculation case, he concluded:

[The regulations] are not based upon any established distinction in the conditions that are supposed to attend this plague, or the persons exposed to its contagion, but they are boldly directed against the Asiatic or Mongolian race as a class, without regard to the previous condition, habits, exposure to disease, or residence of the individual; and the only justification offered for this discrimination was a suggestion made by counsel for the defendants in the course of the argument, that this particular race is more liable to the plague than any other. No evidence has, however, been offered to support this claim, and it is not known to be a fact. This explanation must therefore be dismissed as unsatisfactory.¹⁸⁶

....

[The regulations] are directed against the Asiatic race exclusively, and by name. There is no pretense that previous residence, habits, exposure to disease, method of living, or physical condition has anything to do with their classification as subject to the regulations. They are denied the privilege of traveling from one place to another, except upon conditions not enforced against any other class of people; and this privilege is denied, it appears, to Chinese persons born in the United States as well as to those born elsewhere.¹⁸⁷

The court issued an injunction enjoining enforcement of the regulations.¹⁸⁸

And in the quarantine case, Judge Morrow wrote:

Attention is called to the fact that, while the board of supervisors has quarantined a district bounded by streets, the operation of the quarantine is such as to run along in the rear of certain houses, and that certain houses are excluded, while others are included; that, for instance, upon Stockton street, in the block numbered from 900 to 1,000, there are two places belonging to persons of another race, and these persons and places are excluded from this quarantine, although the Chinese similarly situated are included, and although the quarantine, in terms, is imposed upon all the persons within the blocks bounded by such streets. The evidence here is clear that this is made to operate against the Chinese population only, and the reason given for it is that the Chinese may communicate the disease from one to the other. That explanation, in the judgment of the court, is not sufficient. It is, in effect, a discrimination, and it is the discrimination that has been frequently called to the attention of the federal courts where matters of this character have arisen with respect to Chinese.¹⁸⁹

The court concluded that because the quarantine was “unreasonable, unjust, and oppressive” and “contrary to the provisions of the fourteenth

186. *Wong Wai*, 103 F. at 7.

187. *Id.* at 9.

188. *Id.* at 10. Significantly, the court relied on *Ho Ah Kow v. Nunan*, 12 F. Cas. 252 (C.C.D. Cal. 1879) (No. 6,546), the Pigtail Ordinance case. See *Wong Wai*, 103 F. at 9.

189. *Jew Ho*, 103 F. at 23.

amendment to the constitution of the United States," it could not be continued.¹⁹⁰

The 1900 San Francisco outbreak continued for several years. The final toll, as of February 1904, was "121 cases and 113 deaths, all but a handful Chinese."¹⁹¹ Although the most effective way to fight the plague was to trap and kill rats, the authorities did not begin doing so in Chinatown until November 1902, and they did not pursue the matter systematically or vigorously.¹⁹² In 1907, there was a second outbreak of the plague in the Bay Area, this time among white residents in Oakland and San Francisco.¹⁹³ For these communities, the authorities began trapping and exterminating rats quickly,¹⁹⁴ and without consideration, apparently, for quarantining the areas in question or requiring the residents to be vaccinated.¹⁹⁵

III. MODERN-DAY DISCRIMINATION

As the country moved deeper into the twentieth century, the hostility and violence directed against Asian Americans persisted. The internment of 120,000 Japanese Americans during World War II amounted to both expulsion and government-sanctioned discrimination.¹⁹⁶

The postwar era did see a change in perception, as fears of the "Yellow Peril" began to mix with the image of the "model minority,"¹⁹⁷ a concept that may have given some Asian Americans hope that their acceptance in this country had been achieved.¹⁹⁸ It was seen by others, however, as merely

190. *Id.* at 26.

191. MCCLAIN, *supra* note 9, at 276; *Bubonic Plague Hits San Francisco 1900–1909*, PBS (1998), <https://www.pbs.org/wgbh/asb/databank/entries/dm00bu.html> [https://perma.cc/PLW6-762A] (reporting 122 deaths); cf. Dowd, *supra* note 170 ("The epidemic's official death toll is 119, but it's impossible to know if more cases were hidden, covered up or never discovered.").

192. See MCCLAIN, *supra* note 9, at 275–76.

193. See Dowd, *supra* note 170; see also MCCLAIN, *supra* note 9, at 276.

194. See Dowd, *supra* note 170; MCCLAIN, *supra* note 9, at 276.

195. See MCCLAIN, *supra* note 9, at 276 ("No thought appears to have been given by anyone to quarantine or the use of the Haffkine prophylactic vaccine as anti-plague measures.").

196. See *Korematsu v. United States*, 323 U.S. 214, 215–16 (1944); *Ex parte Endo*, 323 U.S. 283, 285–90 (1944); *Hirabayashi v. United States*, 320 U.S. 81, 85–89 (1943).

197. See Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 CALIF. L. REV. 1241, 1258 (1993) ("This history of discrimination and violence, as well as the contemporary problems of Asian Americans, are obscured by the portrayal of Asian Americans as a 'model minority.' Asian Americans are portrayed as 'hardworking, intelligent, and successful.' This description represents a sharp break from past stereotypes of Asians as 'sneaky, obsequious, or inscrutable.'").

198. *The Model Minority Myth*, THE PRACTICE, Nov.–Dec. 2018, <https://thepractice.law.harvard.edu/article/the-model-minority-myth/> [https://perma.cc/6MJG-MSH6] ("Since its introduction in popular media more than half a century ago, the term 'model minority' has often been used to refer to a minority group perceived as particularly successful, especially in a manner that contrasts with other minority groups. The term could, by its definition and logic, be applied to any number of groups defined by any number of criteria, but it is perhaps most commonly used to frame discussions of race. In particular, the model minority designation is often applied to Asian Americans, who, as a group, are often

another in a long line of wedges designed to discourage collaboration with other minority groups, hyped at a time when African Americans were pushing back against their experience of discrimination and violence in the 1950s and 1960s.¹⁹⁹ And it obscures the challenges faced by many AAPIs.²⁰⁰

The “Yellow Peril” concept has never faded away completely, and it returns at times of stress. We take a closer look at two more recent cases arising from anti-Asian violence, the murder of Vincent Chin and the Vietnamese Fishermen versus the Ku Klux Klan in the 1980s.²⁰¹

A. The Murder of Vincent Chin

On June 19, 1982, in Highland Park, a suburb of Detroit, Vincent Chin—a twenty-seven-year-old immigrant from China who worked as a draftsman at an engineering firm and waited on tables at a Chinese restaurant on weekends—went out with three friends to celebrate, as he was to be married the following week.²⁰² At the Fancy Pants Lounge, they encountered two men, Ronald Ebens and his stepson, Michael Nitz.²⁰³

praised for apparent success across academic, economic, and cultural domains—successes typically offered in contrast to the perceived achievements of other racial groups.”). As Frank Wu has noted, “‘You Asians are all doing well anyway’ summarizes the model minority myth.” FRANK H. WU, *YELLOW: RACE IN AMERICA BEYOND BLACK AND WHITE* 40 (2002).

199. See, e.g., Sarah-Soonling Blackburn, *What Is the Model Minority Myth?*, LEARNING FOR JUST. (Mar. 21, 2019), <https://www.learningforjustice.org/magazine/what-is-the-model-minority-myth> [https://perma.cc/2NJF-2JXU] (“The myth of the model minority is based in stereotypes. . . . Buried under these stereotypes, the message is clear: Asian Americans are all the same—and all different from other Americans.”); Kat Chow, *“Model Minority” Myth Again Used As a Racial Wedge Between Asians and Blacks*, NPR (Apr. 19, 2017, 8:32 AM), <https://www.npr.org/sections/codeswitch/2017/04/19/524571669/model-minority-myth-again-used-as-a-racial-wedge-between-asians-and-blacks> [https://perma.cc/F99P-6AQ4].

200. See, e.g., Rakesh Kochhar & Anthony Cilluffo, *Income Inequality in the U.S. Is Rising Most Rapidly Among Asians*, PEW RSCH. CTR. (July 12, 2018), <https://www.pewresearch.org/social-trends/2018/07/12/income-inequality-in-the-u-s-is-rising-most-rapidly-among-asians/> [https://perma.cc/SAP8-ARRL]; Farah Z. Ahmad & Christian E. Weller, *Reading Between the Data: The Incomplete Story of Asian Americans, Native Hawaiians, and Pacific Islanders*, CTR. FOR AM. PROGRESS (Mar. 3, 2014), <https://www.americanprogress.org/article/reading-between-the-data/> [https://perma.cc/XTS7-WQV6].

201. AABANY presented reenactments for the first time of the Vincent Chin case in 2008 (with Frank Wu) and the Vietnamese Fishermen case in 2015. See *Trial Reenactments*, AABANY, <https://reenactments.aabany.org/> [https://perma.cc/J26V-PXYN] (last visited Mar. 4, 2022). In our presentation on anti-Asian violence, we included excerpts from the two earlier reenactments.

202. See *United States v. Ebens*, 800 F.2d 1422, 1427 (6th Cir. 1986); see also HELEN ZIA, *ASIAN AMERICAN DREAMS: THE EMERGENCE OF AN AMERICAN PEOPLE* 58–59 (2000); PAULA YOO, *FROM A WHISPER TO A RALLYING CRY: THE KILLING OF VINCENT CHIN AND THE TRIAL THAT GALVANIZED THE ASIAN AMERICAN MOVEMENT* 7–8 (2021).

203. See *Ebens*, 800 F.2d at 1427.

Illustration 7: Vincent Chin²⁰⁴



As they were sitting across from each other, Ebens began directing racial and obscene remarks toward Chin, calling him a “Chink” and a “Nip,” referring to foreign car imports, and saying “it’s because of you little motherfuckers that we’re out of work.”²⁰⁵ Chin confronted Ebens and blows were exchanged. The altercation moved outside. After Ebens took a baseball bat from Nitz’s car, Chin fled. Ebens and Nitz got into their car, drove off, and eventually found Chin near a McDonald’s a few blocks away. Nitz grabbed Chin and held him as Ebens swung the bat and hit Chin several times on his head and back. Chin lost consciousness as he was being taken to the hospital. He lapsed into a coma, his brain ceased functioning, and he died four days later.²⁰⁶

Ebens and Nitz were charged in Wayne County Circuit Court with second-degree murder, but the prosecutors offered a plea bargain to manslaughter.²⁰⁷ Both men accepted.²⁰⁸ At sentencing on March 16, 1983, both men were represented by counsel, but no prosecutor appeared and the victim’s family and friends were not notified.²⁰⁹ The judge sentenced each

204. Photograph of Vincent Chin, in *Vincent Chin: 30 Years Later*, STAR TRIB. (June 18, 2012, 8:39 AM), <https://www.startribune.com/vincent-chin-30-years-later/159414685/> [https://perma.cc/D72Y-5Y8R].

205. *Id.*; ZIA, *supra* note 202, at 59–60; YOO, *supra* note 202, at 9–14.

206. See Ebens, 800 F.2d at 1427–28.

207. See Yoo, *supra* note 202, at 57.

208. See *id.*

209. See *id.* at 58, 140; Harmeet Kaur, *Vincent Chin’s Family Never Got the Justice They Wanted. But His Case Changed Things for Those Who Came After Him*, CNN (Oct. 10, 2021,

defendant to three years' probation, a \$3,000 fine, and court costs.²¹⁰ The judge later explained his reasoning: "These aren't the kind of men you send to jail . . . You fit the punishment to the criminal, not the crime."²¹¹

In the early 1980s, the subject of race was largely black and white.²¹² The Asian American community, however, was galvanized by the notion that a Chinese American could be beaten to death, with his killers sentenced only to probation and a fine.²¹³ The two men were white autoworkers in Detroit—one was out of work—at a time when the U.S. auto industry was under tremendous pressure from Japanese imports. There was much resentment toward Japan, which spilled over to Asian Americans in general. There were staged scenes of politicians and union leaders demolishing Japanese imports with sledgehammers.²¹⁴

Because of the efforts of the AAPI community, the U.S. Department of Justice received thousands of letters and signatures on petitions urging prosecution.²¹⁵ The Reverend Jesse Jackson became the first national political leader of any race to speak out against violence against Asians, appearing with Lily Chin, Vincent's mother, in San Francisco's Chinatown.²¹⁶ In November 1983, a federal grand jury in Detroit indicted Ebens and Nitz for interfering with Chin's right to use and enjoy a place of public accommodation—the Fancy Pants Lounge—on account of his race, and conspiracy to do the same.²¹⁷

4:52 AM), <https://www.cnn.com/2021/10/10/us/vincent-chin-history-refocused-cec/index.html> [https://perma.cc/WF2M-JBHN]. It was not unusual in Wayne County at the time for prosecutors not to attend sentencing. See Yoo, *supra* note 202, at 58–59, 140.

210. Transcript of Proceedings at 7–8, *People v. Ebens*, No. 82-273374 (Wayne Co. Cir. Ct. Mar. 16, 1983); *accord Ebens*, 800 F.2d at 1425 (noting Wayne County Circuit Court sentenced Ebens, after pleading guilty to manslaughter, to probation and a fine of \$3,720).

211. ZIA, *supra* note 202, at 60.

212. See YOO, *supra* note 202, at 124 ("In 1982 the topic of race in the United States centered on white and Black. Asian Americans and others were often not even considered part of the conversation."). This may still be the case today. See Frank H. Wu, *Asian Americans Recognizing Ourselves at a Crossroads*, ASIAN AM./ASIAN RSCH. INST., <https://aaari.info/cuny-forum-8-wu/> [https://perma.cc/2YXA-TK7F] (last visited Mar. 4, 2022).

213. See ZIA, *supra* note 202, at 60–61, 64–77; YOO, *supra* note 202, at 129–39.

214. See *Ebens*, 800 F.2d at 1439 (noting record contained "videocasts showing purported auto workers or others in Detroit paying or making donations for the privileges of attacking Japanese-made automobiles with sledgehammers as showing some of the uncontrolled spleen directed at the competition from Japanese imports"); WU, *supra* note 198, at 70–71 ("Driving such an imported [Japanese] car meant taking a chance. Local car dealers held raffles for the honor of taking a baseball bat to a Toyota to bash it to pieces. Owners of Hondas reported to unsympathetic police departments that their vehicles had been 'keyed' in parking lots: Vandals would take a key and run it along the length of the fender, gouging the steel so that costly refinishing would be required. People who supported the 'Buy America' campaign wore T-shirts with an atomic bomb mushroom cloud over the slogan, 'Made with Pride in America—Tested in Japan.'").

215. See YOO, *supra* note 202, at 148–50.

216. See ZIA, *supra* note 202, at 76.

217. See Indictment at 1, 3, *United States v. Ebens*, No. 83-60629 (E.D. Mich. Nov. 2, 1983).

The case was assigned to Judge Anna Diggs Taylor, one of the first African American women to be appointed to any federal court in the country.²¹⁸ Trial commenced on June 5, 1984. It was undisputed that Ebens and Nitz killed Vincent Chin. But there was sharp dispute over the issue of motivation—the government had to prove that Ebens and Nitz acted because of Chin's race.²¹⁹

One of the most important witnesses at the trial was Jimmy Choi, who was with Vincent at the Fancy Pants Lounge on the night in question.²²⁰ On direct examination, Choi testified about the encounter with Ebens and Nitz that ended with the fatal beating outside the McDonald's.

Q. Then what happened?

A. Well, we were still sitting. Then all of a sudden, I heard Vince say, "Scram." I turned around and I saw the two men right behind us, three to five steps.

Q. And what did you do?

A. Well, I scrambled. I ran towards north of McDonald's right off the bat.

Q. And how far did you run?

A. Thirty yards, then I turned back.

Q. What did you see?

A. I saw Vincent running across, just about getting to the median of the cars; then, the younger man came up and tried to grab him from behind, pull him around. . . . Then they were scuffling and the older man came with the bat.

Q. And what did you see when he approached Vincent with the bat?

A. He approached. Vincent was still trying to get away from him; and then, the older man—he could not run too fast, he kind of hobbled—he took a swing at Vincent's knees.

Q. Then what happened.

A. At that point, on the knees, one swing; upper section on Vincent, and he blocked like this.

Q. And then what happened? What did you see Vincent doing?

A. Well, he was going down slowly like this; and the old man took a swing right at his head.

Q. What did you do?

A. I don't know. I was like I couldn't believe it. I was going, "I cannot believe it."

218. See Tresa Baldas, *Trailblazer Detroit Federal Judge Anna Diggs Taylor Dies*, DETROIT FREE PRESS (Nov. 6, 2017, 6:47 PM), <https://www.freep.com/story/news/2017/11/06/trailblazer-detroit-federal-judge-anna-diggs-taylor-dies/836141001/> [https://perma.cc/X5X4-DUWA].

219. Transcript of Proceedings at 17–19, United States v. Ebens, No. 83-60629 (E.D. Mich. June 26, 1984).

220. See United States v. Ebens, 800 F.2d 1422, 1427–28 (6th Cir. 1986).

Q. And what else did you see?

A. It seemed like slow motion. Vincent was going down; then I saw another blow; then, he was kind of in a crawling position, like this; and then it was in a frenzy like, while he was swinging, he was saying something which I could not hear. He kept mumbling.

Q. How many times did you see him swing the bat?

A. The first blow, I saw it very vividly.

Q. And where did that blow land?

A. Right here. [indicating the side of the head]

Q. And after that?

A. One more blow to the head while Vincent was going down. He kept swinging, and I don't know whether it was connecting or not, but I could not believe it.

Q. And what did you do?

A. Well, I ran back, I just ran toward the direction right to Vincent.

Q. And what did you see when you got there?

A. All of a sudden, I saw guns, service guns, and then, I stopped abruptly and I saw a black man holding the gun. . . . He pulled out a badge, like that, and told the older man to drop his bat.

Q. Now, when you went over to Vincent, was he conscious?

A. He was still conscious.

Q. Was he saying anything?

A. Yes, I cradled his head and I said, "Hey, Vincent, are you all right?" And he was saying, "Fight. Fight. It is not fair."

Q. Was he speaking Chinese?

A. In Chinese.²²¹

Defendants put on a brief defense case.²²² Ebens testified, and he denied making any comments about Chin's race or foreign cars or being out of work.²²³ He claimed that he blacked out and could not remember beating Chin to death.²²⁴ He denied that he did what he did because of Chin's race.²²⁵

221. See *Building Our Legacy: The Murder of Vincent Chin*, AABANY L. REV. 36, 47–48 (special ed. 2012) (derived from Transcript of Proceedings at 121–53, United States v. Ebens, No. 83-60629 (E.D. Mich. June 14, 1984)).

222. Transcript of Proceedings at 82, 102, 103, United States v. Ebens, No. 83-60629 (E.D. Mich. June 19, 1984).

223. See *id.* at 149, 164–65, 193, 196–97, 199.

224. See *id.* at 184, 206–08 ("When I seen him [Nitz] scuffling, it just flashed in my mind. He is going to get hurt again, and I started toward him, and it was almost audible to me, and something just snapped. I don't remember from there on what happened."). Ebens was shown the bat that had been used to kill Chin. When asked, "Is that the bat that you used to kill Vincent Chin?," he responded: "I can't tell that; I don't know." *Id.* at 206.

225. See *id.* at 189.

The lawyers summed up on June 26, 1984. The prosecutor focused on the issue of race as a motivating factor:

[T]here really is only one reasonable explanation for Vincent Chin's brutal killing.

In the minds of Ronald Ebens and Michael Nitz, Vincent Chin was a Chink who dared to stand up to them.

....

Now, . . . this evidence must show that at least one of the motives of the defendants['] actions of beating, hunting and killing Vincent Chin, was from racial animosity. And before you can convict these men for this brutal killing, you must be satisfied beyond a reasonable doubt that they acted in part because Vincent Chin was Chinese and because he was enjoying the Fancy Pants Lounge.

Now the defense has suggested all along that this was just a run-of-the-mill barroom fight between two individuals who happened to be of different races. Well ladies and gentlemen, let's take a look at the evidence that simply makes that defense improbable and unacceptable.

....

Vincent Chin and his friends were having a good time, spending a lot of money, and that bothered Ronald Ebens; that Ronald Ebens began a barrage of racial insults, obscenities directed at Chin's mother, that he was talking about foreign cars and, because of you mother fuckers, we in the auto industry are out of work.

But ladies and gentlemen, you don't have to decide that Ronald Ebens and Michael Nitz acted with any racial intent just on the basis of a few derogatory remarks. Rather examine what they did and you will be convinced why they did it.

When they walked into the Fancy Pants Lounge that night, they could only know two things about Vincent Chin, that he was an Oriental and that he was having a good time. They, of course, had never met him before. So all they could know was what they saw in front of them. They saw an Oriental acting flamboyant, spending a lot of money. How do you think Ronald Ebens reacted to that?

....

[T]he brutality and the ferocity of the attack on Vincent Chin himself tells you that this was no mere barroom brawl that got out of hand. After Michael Nitz got Mr. Chin in a bear hug, Ebens' savage and repeated use of that bat, even after Chin lay motionless on the pavement, cannot be reasonably explained by mere anger or revenge.

....

And this was more than some barroom fight. This was violent hatred turned loose. This was years of pent-up racial hostilities and rage

unleashed. This was a modern-day lynching, but there was a bat instead of a rope.²²⁶

On June 28, 1984, the jury returned its verdict. On the first count, conspiracy to violate civil rights on account of race and national origin in violation of 18 U.S.C. § 241,²²⁷ the jury found both Nitz and Ebens not guilty.²²⁸ On the second count, interference with civil rights on account of race and national origin in violation of 18 U.S.C. § 245,²²⁹ the jury found Nitz not guilty and Ebens guilty.²³⁰

On September 18, 1984, Judge Taylor sentenced Ebens, as follows:

THE COURT: Mr. Ebens, is there anything you would like to say?

... MR. EBENS: Only, your Honor, I have expressed my regret and remorse on several occasions, and I would just like to reiterate that one more time. I am sorry for what happened. I can't say anymore than that. At this point, I have no recourse but to depend on the American system of justice, and you, your Honor.

THE COURT: Is that all?

It is adjudged, Mr. Ebens, that you are committed to the custody of the Attorney General for a term of 25 years.²³¹

Ebens was permitted to remain free on bail pending appeal.²³²

The Sixth Circuit reversed.²³³ While the court rejected Ebens's argument that the federal civil rights laws did not protect "Orientals"²³⁴ as well as the argument that the district court erred in failing to grant his motion for a change of venue,²³⁵ it held that "Ebens was denied a fair trial."²³⁶ The court concluded that Judge Taylor had committed "reversible error" in allowing a witness to testify that Ebens had made a racist statement to a Black man in a bar some ten years earlier.²³⁷ The court also strongly disapproved of "inflammatory language" used by the prosecutor in his summation.²³⁸ The

226. Transcript of Proceedings, *supra* note 219, at 5, 19, 20–22, 23, 31.

227. Indictment, *supra* note 217, at 1.

228. Transcript of Proceedings at 2–3, United States v. Ebens, No. 83-60629 (E.D. Mich. June 28, 1984).

229. Indictment, *supra* note 217, at 3.

230. Transcript of Proceedings, *supra* note 228, at 2–3.

231. Transcript of Proceedings at 16–17, United States v. Ebens, No. 83-60629 (E.D. Mich. Sept. 18, 1984).

232. *See id.* at 17–18.

233. *See United States v. Ebens*, 800 F.2d 1422, 1442 (6th Cir. 1986).

234. *See id.* at 1429 ("Orientals come within the broad constitutional protections of the Fourteenth Amendment even though the original thrust of the amendments was primarily motivated by concern for the rights of black persons." (citing *Yick Wo v. Hopkins*, 118 U.S. 356 (1886))).

235. *See id.* at 1425–27.

236. *Id.* at 1425.

237. *See id.* at 1432–33.

238. *See id.* at 1437. The court did not reverse on this basis, as it was reversing on other grounds. But because a new trial was required, the court "deem[ed] it necessary to register most strongly [its] disapproval of the inflammatory language employed by government counsel." *Id.*

court was most troubled, however, by Judge Taylor's refusal to allow the defense to introduce tape recordings of meetings several key witnesses had had with an attorney before the trial, which the defense argued showed that "the witnesses' testimony concerning Ebens's racist statements was false and that it was the result of improper coaching of them by [the lawyer] in preparation for the trial."²³⁹

On remand, Ebens renewed his motion for a change of venue. This time, Judge Taylor granted the motion.²⁴⁰ Ironically, the Asian American community's success at publicizing the case²⁴¹ was a factor in causing its transfer from Detroit—a city "with [a] black majority and civil rights history"²⁴² and caught in the economic woes afflicting the automotive industry²⁴³—to Cincinnati, "known as a conservative city with Southern sensibilities."²⁴⁴

In addition to the different demographics of the jury pool, the prosecution team faced several new challenges. With memories fading, its witnesses would have to testify to five-year-old events. More impeachment material existed in the form of testimony from the first trial. Evidentiary rulings that had gone the government's way the first time were reversed. And Ebens—whose selective memory apparently had not impressed the jury when he testified in Detroit—did not take the stand in the second trial.

239. *Id.* at 1430. The meetings were recorded and then transcribed, and the court attached excerpts from one of the meetings as an appendix to its opinion. *See id.* at 1442–45. While the district court excluded recordings, with limited exceptions, as hearsay, the government conceded on appeal that these rulings were erroneous. *See id.* at 1430. As the Sixth Circuit held, because the tapes were not being offered to prove the truth of the matter asserted but to show that the witnesses had been coached into lying, they were not hearsay. *Id.*

240. *See United States v. Ebens*, 654 F. Supp. 144, 146 (E.D. Mich. 1987). The court held: Factors such as the comment and castigation of public figures, the intensity and long duration of the publicity (since 1982), its inflammatory tone and content, and the continually repeated factual recitations, all militate toward the conclusion that a change of venue from the State of Michigan and the northern Ohio area must be granted.

Id.

241. *See Ebens*, 800 F.2d at 1438 ("[T]he case itself arose in an atmosphere of extraordinary publicity. The video tapes contained as part of the special record made with respect to the motion for a change of venue, demonstrate the deep sense of public outrage especially after it was perceived that the Chin incident was motivated by racial bias. Nearly every news telecast showed the pathetic figure of Chin's weeping mother making pleas for justice. There are countless photographs of marches and demonstrations in front of both the county office buildings and the federal office buildings in Detroit, some, according to the accounts, attracting over 700 persons carrying large placards.").

242. ZIA, *supra* note 202, at 79.

243. *See id.* at 57 ("In the years leading up to the summer of 1982, Detroit was a city in crisis. Long lines of despair snaked around unemployment offices, union halls, welfare offices, soup kitchens. Men and women lost homes, cars, recreational vehicles, summer cottages, and possessions accumulated from a lifetime of hard work in a once-thriving industry."). The Sixth Circuit "recognize[d] fully that this was a public event and a matter of great and crucial importance to the Detroit metropolitan area." *Ebens*, 800 F.2d at 1439.

244. ZIA, *supra* note 202, at 79.

It was no surprise, then, when, on May 1, 1987, the jury returned a verdict finding Ebens not guilty.²⁴⁵ Ultimately, he never served a full day in jail.²⁴⁶ He entered into a \$1.5 million settlement with Chin's family but did not pay it.²⁴⁷ He currently owes the estate more than \$8 million.²⁴⁸

B. The Vietnamese Fishermen v. The Ku Klux Klan

We turn next to the Vietnamese Fishermen versus the Ku Klux Klan, where Vietnamese immigrants found an ally against white supremacy in the Southern Poverty Law Center.

Illustration 8: Knights of the Ku Klux Klan Torch the “USS Vietcong” on February 14, 1981²⁴⁹



245. See *id.* at 80. As Zia concluded, “This jury, composed of people with so little contact with Asian Americans and knowledge of our concerns, couldn’t see how ‘It’s because of you motherfuckers’ might contain a racial connotation.” *Id.*

246. See *id.*

247. See *id.* In an interview in 1987, Ebens told the reporter: “It is my fervent wish that I live long enough to pay off the entire amount [of the settlement]. . . . That’ll be when I’m 672 years old.” Michael Moore, *The Man Who Killed Vincent Chin*, DETROIT FREE PRESS (Aug. 30, 1987), <https://rumble.media/the-man-who-killed-vincent-chin-by-michael-moore/> [<https://perma.cc/8E4D-56Q7>].

248. See Emil Guillermo, *Judge Rules Against Man Responsible for Vincent Chin’s Death, Lien on Nevada Home Stays*, NBC NEWS (Jan. 12, 2016, 5:55 PM), <https://www.nbcnews.com/news/asian-america/judge-rules-against-man-responsible-vincent-chin-s-death-lien-n494986> [<https://perma.cc/63V6-7297>].

249. Ed Kolenovsky/AP/Shutterstock, Photograph of Rally Supporting White Texas Gulf Fisherman in Santa Fe, Texas (1981).

At dusk on February 14, 1981, several hundred people gathered in Santa Fe, Texas, a few miles from the town of Seabrook on Galveston Bay.²⁵⁰ The local fishermen there faced stiff competition from Vietnamese refugees who had resettled in the Gulf Coast in the late 1970s after the fall of Saigon,²⁵¹ and they had asked the Klan for assistance.²⁵² Louis Beam, the Grand Dragon of the Texas Knights of the Ku Klux Klan, addressed the crowd in his white Klan robe.²⁵³ He gave federal and state authorities what he called a "Grand Dragon's Dispensation"—ninety days to resolve the issues in Galveston Bay.²⁵⁴ Ninety days coincided with the start of the shrimping season on May 15, 1981.²⁵⁵ Beam explained:

If [the] authorities . . . do [nothing] . . . , "this entire Gulf Coast is going to be a difficult place to live. . . . It's going to be a hell of a lot more violent than it was in Korea or Vietnam If you want our country for the whites, you're going to have to get it the way our founding fathers got it—with blood, blood, blood. . . . [You'll have] to "fight, fight, fight."²⁵⁶

An old shrimp boat had been brought to the rally. On it were painted the words "USS Vietcong." Someone poured diesel fuel on the boat.²⁵⁷ With the crowd chanting "[f]ight, fight, fight," Beam set the boat on fire, shouting: "This is the right way to burn a shrimp boat This is in-service training."²⁵⁸

In the weeks that followed, there was more violence and threats of violence, directed not just against the Vietnamese but also against those who did business with them.²⁵⁹ And on March 15, 1981, a group of local

250. See MORRIS DEES, A SEASON FOR JUSTICE: THE LIFE AND TIMES OF CIVIL RIGHTS LAWYER MORRIS DEES 17 (1991) [hereinafter SEASON FOR JUSTICE]; see also Vietnamese Fishermen's Ass'n v. Knights of Ku Klux Klan (*Vietnamese Fishermen II*), 543 F. Supp. 198, 206 (S.D. Tex. 1982); Vietnamese Fishermen's Ass'n v. Knights of Ku Klux Klan (*Vietnamese Fishermen I*), 518 F. Supp. 993, 1001 (S.D. Tex. 1981).

251. See SEASON FOR JUSTICE, *supra* note 250, at 14–16.

252. See *id.* at 14, 16–18.

253. See *id.* at 18.

254. *Id.*; see also *Vietnamese Fishermen I*, 518 F. Supp. at 1001.

255. See SEASON FOR JUSTICE, *supra* note 250, at 18.

256. *Id.* at 18–19; see also *Vietnamese Fishermen II*, 543 F. Supp. 198, 207 (S.D. Tex. 1982).

257. See SEASON FOR JUSTICE, *supra* note 250, at 19.

258. *Id.*; see also *Vietnamese Fishermen I*, 518 F. Supp. at 1001.

259. See SEASON FOR JUSTICE, *supra* note 250, at 19 ("Over the next month life became more and more dangerous for the Vietnamese fishermen and the Americans who were their friends or business associates or rented them space to dock their boats: Two crosses were burned, one in the yard of a Vietnamese shrimper, one near a marina in the town of Kemah where several refugees docked their boats; Fisher [the leader of the 'American Fishermen's Association'] told Emery Waite, another dock owner, that the only way to deal with refugees was to 'drop a bomb in Saigon Harbor,' the nickname given American Jim Craig's Old Seafood Harbor; two men approached American fisherman Leon Bateman and offered to burn Vietnamese boats; the Anderwall family received phone threats, Klan cards in the mailbox, and two visits from American fishermen who threatened to burn their house and the Vietnamese boat docked at their wharf unless they forced the owner . . . to move his boat; David Collins brandished an AR-15 semiautomatic rifle for the press and announced he'd have armed members of the Klan on shrimping boats when the season began; a Vietnamese boat was burned.").

fishermen and Klansmen, some wearing robes and hoods, some carrying shotguns and assault weapons, steered a shrimp boat up to the dock of the leader of the Vietnamese fishermen, Colonel Nguyen Van Nam.²⁶⁰ They had on board a cannon and a human figure hanged in effigy on the rigging of the boat's stern.²⁶¹

*Illustration 9: Another Threat of Violence from Klansmen
on March 15, 1981²⁶²*



The story of the conflict was covered in *The New York Times*, and when the chief trial counsel and cofounder of the Southern Poverty Law Center, Morris Dees, learned that the Ku Klux Klan had been invited to help the American fishermen, he dialed information for Seabrook, and soon reached Colonel Nam.²⁶³ Just a few weeks later, on April 16, 1981, the Vietnamese Fishermen's Association filed suit in federal court in Houston, seeking a preliminary injunction to prevent Beam and the Klan from carrying out their

260. See *id.* at 19–20; see also *Vietnamese Fishermen I*, 518 F. Supp. at 1001. Colonel Nam had led a unit of ten thousand troops in Vietnam; he had fled to the United States when Saigon fell in 1975 and eventually took up shrimping on the Texas Gulf Coast. He quickly became a leader in the Vietnamese refugee community in Galveston Bay. See SEASON FOR JUSTICE, *supra* note 250, at 14–15.

261. SEASON FOR JUSTICE, *supra* note 250, at 19.

262. John Van Beekum/Southern Poverty Law Center.

263. See *id.* at 20–22.

threats of violence.²⁶⁴ The complaint alleged not only civil rights violations but antitrust, racketeering, and common law tort claims as well.²⁶⁵

Judge Gabrielle Kirk McDonald was the first African American appointed to the federal bench in Texas, and only the third African American female federal judge in the country.²⁶⁶ She had been a judge for less than two years when the suit brought by the Vietnamese fishermen was randomly assigned to her.²⁶⁷ She promptly granted plaintiffs' request for expedited discovery and scheduled a hearing on their motion for preliminary injunctive relief for May 11, four days before the start of the shrimp season.²⁶⁸

Louis Beam arrived for his deposition on April 30 wearing his white Klan robe and, as Colonel Nam noticed, concealing a gun beneath his robe.²⁶⁹ The following exchange occurred:

MR. DEES: . . . We'd like counsel [for Mr. Beam] to determine whether this witness came into the deposition armed.

Mr. Adamo, would you determine whether your witness is armed?

THE WITNESS [Mr. Beam]: You don't have permission to search my body unless you've got a permit.

MR. DEES: Let the record show that this witness has a weapon under his Klan robe. He's in here in full regalia Klan robe, and obviously he has a shoulder holster with a weapon sticking out under it. I want the record to show it, unless his counsel refutes it, and he says he refuses to admit it.

MR. COBB [co-counsel with Mr. Adamo for Mr. Beam]: It's not up to counsel to admit or deny what's under somebody's clothing. I'm not clairvoyant, nor do I have X-ray vision, and am certainly not in a position

264. See *Vietnamese Fishermen I*, 518 F. Supp. at 999–1000; SEASON FOR JUSTICE, *supra* note 250, at 25.

265. See *Vietnamese Fishermen I*, 518 F. Supp. at 999–1000 (alleging that “the defendants have violated their rights under . . . 42 U.S.C §§ 1981, 1982, 1985(c), 1986; the Thirteenth and Fourteenth Amendments to the United States Constitution; the Sherman Act, 15 U.S.C. §§ 1, 2, 15, and 26; the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1962 and 1964; and common law torts of assault, trespass to property, the intentional infliction of emotional distress, and intentional interference with contractual relations”).

266. See *The Honorable Gabrielle Kirk McDonald*, HIST. MAKERS (Aug. 27, 2014), <https://www.thehistorymakers.org/biography/honorable-gabrielle-kirk-mcdonald> [https://perma.cc/7J6M-89VV].

267. Judge McDonald received her commission on May 11, 1979. See *History of the Federal Judiciary: Gabrielle Anne Kirk McDonald*, FED. JUD. CTR., <https://www.fjc.gov/history/judges/mcdonald-gabrielle-anne-kirk> [https://perma.cc/K2RT-EAQZ] (last visited Mar. 4, 2022); see also SEASON FOR JUSTICE, *supra* note 250, at 26 (“A dozen judges sat in the district court where we filed the suit. When the court's lottery system assigned Judge Gabrielle McDonald to our case, we couldn't have been happier: Judge McDonald was a black woman in her late thirties who had tried civil rights cases as an attorney before her appointment to the bench by Jimmy Carter.”).

268. See SEASON FOR JUSTICE, *supra* note 250, at 8; see also Dist. Ct. Docket at no. 7, Vietnamese Fishermen's Ass'n v. Knights of Ku Klux Klan, 518 F. Supp. 993 (S.D. Tex. 1981) (No. H-81-895).

269. See SEASON FOR JUSTICE, *supra* note 250, at 8.

to grant anybody permission to search someone else's body. And I see no weapon.

MR. DEES: Okay. Let the record show it is obviously clear and goes without dispute in my mind, and that's the end of the deposition.²⁷⁰

Because Beam had also refused to answer any questions, plaintiffs applied to Judge McDonald for relief.²⁷¹ Judge McDonald ordered all further depositions to be taken at the office of the U.S. Attorney, with a U.S. Marshal in attendance, and further ruled that no witnesses could carry weapons into depositions.²⁷²

A few days later, plaintiffs presented another application to Judge McDonald, this time because of Beam's bizarre and threatening behavior.²⁷³ Their counsel described Beam's conduct:

On May 5, 1981, the defendants took the depositions of the four named plaintiffs in the Jury Room of Judge McDonald's court. Mr. Louis Beam, along with defendant Joseph Collins, attended portions of the depositions. While in the room, Mr. Beam sat in a chair against the wall opposite plaintiffs' counsel, Morris Dees, and held in front of him a book with the word "EXORCISM" printed in very large type on the front cover. Mr. Beam chanted something from the book or from memory while staring at Mr. Dees. He did this for a period of approximately one hour. Occasionally Mr. Beam pointed his finger at Mr. Dees. After nearly an hour of this activity, Mr. Beam's eyes became transfixed upon Mr. Dees and it appeared that he was in a semi-conscious state. He began to mouth in a clear and distinct manner but in an inaudible voice the following words in the direction of Mr. Dees:

You die, you die, you die, you die, you die,
You die, you die, you die, you die . . .²⁷⁴

Judge McDonald denied plaintiffs' requests for protection by U.S. Marshals, but she enjoined Beam and the other defendants from contacting plaintiffs and their counsel and from "making threatening and vile remarks, unsolicited hand gestures, and other distracting actions toward the plaintiff[s] counsel."²⁷⁵ She warned Beam that if he failed to comply, "I will find you in contempt."²⁷⁶

270. Transcript of Deposition of Louis Beam at 7–8, Vietnamese Fishermen's Ass'n v. Knights of Ku Klux Klan, 518 F. Supp. 993 (S.D. Tex. May 1, 1981) (No. H-81-895).

271. *Id.* at 3–4; Dist. Ct. Docket, *supra* note 268, at no. 14.

272. Dist. Ct. Docket, *supra* note 268, at nos. 22, 24; SEASON FOR JUSTICE, *supra* note 250, at 30.

273. Dist. Ct. Docket, *supra* note 268; at nos. 38, 53; SEASON FOR JUSTICE, *supra* note 250, at 35.

274. Plaintiffs' Motion Seeking Court's Protection for Plaintiffs' Counsel and for Other Relief para. 8, Vietnamese Fishermen's Ass'n v. Knights of Ku Klux Klan, 518 F. Supp. 993 (S.D. Tex. 1981) (No. H-81-895).

275. SEASON FOR JUSTICE, *supra* note 250, at 36; *see* Dist. Ct. Docket, *supra* note 268, at no. 53.

276. SEASON FOR JUSTICE, *supra* note 250, at 35; *see* Dist. Ct. Docket, *supra* note 268, at no. 53.

In the meantime, Beam had moved to disqualify Judge McDonald on the grounds of "personal bias or prejudice."²⁷⁷ At the hearing on the motion, Beam referred to the judge as a "negress,"²⁷⁸ and stated as follows:

I no more have the opportunity and confidence that I could get any fairer trial here in front of you than you would feel were you to go before a Ku Klux Klansman who was a judge as a defendant. [I know the prejudice of] your people against the Klansmen.²⁷⁹

Judge McDonald denied the motion, ruling from the bench.²⁸⁰ She told the Klan leaders:

You are not entitled to a judge of your choice But you are entitled to a judge who will give you a fair trial. I am deeply committed to equal justice under the law and you will get it. You are entitled to nothing more and nothing less.²⁸¹

The preliminary injunction hearing began on Monday, May 11.²⁸² Plaintiffs' witnesses included American dock owners who testified about the threats they had received for doing business with the Vietnamese²⁸³ and the Vietnamese fishermen, who testified to the acts of intimidation and their own fear.²⁸⁴ One Vietnamese fisherman's testimony was translated by his

277. Defendants' Motion for Disqualification of Judge, Vietnamese Fishermen's Ass'n v. Knights of Ku Klux Klan, 518 F. Supp. 993 (S.D. Tex. 1981) (No. H-81-895); Dist. Ct. Docket, *supra* note 268, at no. 33.

278. SEASON FOR JUSTICE, *supra* note 250, at 26.

279. Vietnamese Fishermen's Ass'n v. Knights of Ku Klux Klan, 518 F. Supp. 1017, 1019 (S.D. Tex. 1981). Beam apparently was concerned because "[t]he Court has evidenced at the very least sympathy and sensitivity toward the Plaintiffs' personal feelings about my mode of dress at Court proceedings," referring to Beam's wearing of his Klan robe during the proceedings. *See* Defendants' Motion for Disqualification of Judge, *supra* note 277, at 3.

280. *See* Barbara Canetti, *Vietnamese Fishermen Confronted the Ku Klux Klan and Texas*, UPI (May 11, 1981), <http://www.upi.com/Archives/1981/05/11/Vietnamese-fishermen-confronted-the-Ku-Klux-Klan-and-Texas/2090358401600/> [https://perma.cc/VE6E-JLRC]; Dist. Ct. Docket, *supra* note 268, at no. 52.

281. Canetti, *supra* note 280. Judge McDonald subsequently issued a written decision explaining her decision to deny recusal. *See* Vietnamese Fishermen's Ass'n v. Knights of Ku Klux Klan, 518 F. Supp. 1017, 1020–21 (S.D. Tex. 1981). She relied, in part, on the decision of Judge Constance Baker Motley denying a law firm's motion to disqualify her in a gender discrimination case because she was a woman and had previously represented plaintiffs in civil rights cases. *See* Blank v. Sullivan & Cromwell, 418 F. Supp. 1, 4 (S.D.N.Y. 1975). *See generally* MacDraw, Inc. v. CIT Grp. Equip. Fin., Inc., 994 F. Supp. 447 (S.D.N.Y. 1997) (Chin, J.) (sanctioning lawyers for questioning judge's impartiality on account of his being Asian American), *aff'd*, 138 F.3d 33, 38 (2d Cir. 1998) ("[A]ppointment by a particular administration and membership in a particular racial or ethnic group are in combination not grounds for questioning a judge's impartiality. Zero plus zero is zero.").

282. Dist. Ct. Docket, *supra* note 268, no. 59.

283. SEASON FOR JUSTICE, *supra* note 250, at 38, 39. For example, Margaret Anderwall, a dock owner who had rented a spot to a Vietnamese fisherman, asked him to move his boat because of threatening phone calls from individuals claiming to be in the Klan. *Id.* at 42–43. She testified: "We didn't want to make Khang move, but we had no choice. . . . His boat has been parked here for two years, and he'd never given us any trouble. But no one wants to have their house burned down or receive threats against their life." *Id.* at 43.

284. *Id.* at 39–40. Phuong Pham, a thirteen-year-old who was babysitting, testified at a deposition at the courthouse with Judge McDonald present; she described being threatened by the Klansmen on their March 15, 1981, boat ride. *See id.* at 39; Transcript of Deposition of

ten-year-old son, who wanted to be a lawyer and was allowed to sit in the empty jury box for the remainder of the proceedings.²⁸⁵

On May 14, the day before the fishing season was scheduled to begin, the court ruled from the bench, temporarily enjoining defendants from engaging in acts of violence against the Vietnamese.²⁸⁶ The court thereafter converted the preliminary injunction into a permanent injunction, and on June 3, 1982, enjoined the military operations of Beam's so-called Texas Emergency Reserve.²⁸⁷

The Klan did not appeal any of Judge McDonald's decisions.²⁸⁸ She later revealed that while she presided over the case, she and her family received death threats and one-way tickets to Africa.²⁸⁹

IV. CONCLUSION

We return to the present, as the country deals with a new plague and a nationwide wave of anti-Asian violence.²⁹⁰ AABANY, working with the law firm Paul, Weiss, Rifkind, Wharton & Garrison, issued a report in February 2021 entitled *A Rising Tide of Hate and Violence Against Asian Americans*

Phuong Pham at 2, 3, 7–10, *Vietnamese Fishermen's Ass'n v. Knights of Ku Klux Klan*, 518 F. Supp. 993 (S.D. Tex. 1981) (No. H-81-895).

^{285.} SEASON FOR JUSTICE, *supra* note 250, at 40. The ten-year-old boy, Truc Dang, was permitted to interpret for his father, with the official court interpreter monitoring, because the father felt more comfortable with his son interpreting. *Id.* Dees explained why he asked the judge to let the boy remain:

It seemed important that he stay and that he sit in that particular spot; the jury box was on a raised platform and looked down on the tables at which the plaintiffs and defendants and lawyers sat. Truc Dang was the symbol of the hopes and dreams of the generation of refugees that had come to America and taken jobs in car washes, in boat yards, and on shrimp boats so the next generation could be lawyers or whatever they wanted to be.

Id. at 40–41.

^{286.} *Id.* at 47; Dist. Ct. Docket, *supra* note 268, at no. 77; *see also Vietnamese Fishermen II*, 543 F. Supp. 198, 202 (S.D. Tex. 1982).

^{287.} *See Vietnamese Fishermen II*, 543 F. Supp. at 219; Dist. Ct. Docket, *supra* note 268, at no. 132.

^{288.} Dist. Ct. Docket, *supra* note 268, at nos. 132–40.

^{289.} *See* Kitty Felde, *Gabrielle Kirk McDonald*, L.A. TIMES (Feb. 7, 1999, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1999-feb-07-op-5720-story.html> [https://perma.cc/TU7W-RVS9].

^{290.} While beyond the scope of this Essay, we note that this is a worldwide phenomenon and other nations have also struggled with anti-Asian racism as a result of the pandemic. *See Covid-19 Fueling Anti-Asian Racism and Xenophobia Worldwide: National Action Plan Needed to Counter Intolerance*, HUM. RTS. WATCH (May 12, 2020, 3:19 PM), <https://www.hrw.org/news/2020/05/12/covid-19-fueling-anti-asian-racism-and-xenophobia-worldwide> [https://perma.cc/D4UW-G7XB]; Kim Yi Dionne et al., *There's a Long, Global History to Today's Anti-Asian Bias and Violence*, WASH. POST (Apr. 19, 2021, 7:00 AM), <https://www.washingtonpost.com/politics/2021/04/19/theres-long-global-history-todays-anti-asian-bias-violence/> [https://perma.cc/A2XJ-6X8B] ("After the coronavirus spread from Wuhan, China, to the rest of the world, Chinese people and others of Asian descent were targeted and blamed for the pandemic. Anti-Asian hate crimes surged—in the United States and globally.").

*in New York During COVID-19: Impact, Causes, Solutions.*²⁹¹ The report noted that, although Asian hate incidents and hate crimes are notoriously underreported, “[s]ince the onset of the pandemic, . . . anti-Asian hate incidents . . . have skyrocketed according to both official and unofficial reports.”²⁹² Two years into the pandemic, the attacks continue.²⁹³

We have seen that there is nothing new about these attacks, or about the politicians who weaponize words to encourage racism and xenophobia and the kind of tribalism that is comforting to some in times of stress. But the questions we must ask are, first, why has this happened? And, second, what can we do to end the hostility and violence once and for all?

A. Why Has This Happened?

Based on what we have seen across history, anti-Asian American violence has multiple causes.

Economic Competition. From the Chinese gold miners in California to the South Asian lumber mill workers in Bellingham to the Vietnamese fishermen in Galveston Bay, we saw resentment build and violence erupt because of fears that Asian Americans were bringing down wages and taking away jobs.

291. See Jessica Lin, *AABANY Releases Report on Anti-Asian Hate amid COVID-19*, WE BLOG @ AABANY (Feb. 16, 2021), <https://blog.aabany.org/2021/02/16/aabany-releases-report-on-anti-asian-hate-amid-covid-19/> [https://perma.cc/5L95-ERKY]; ASIAN AM. BAR ASS’N OF N.Y. & PAUL WEISS, A RISING TIDE OF HATE AND VIOLENCE AGAINST ASIAN AMERICANS IN NEW YORK DURING COVID-19: IMPACT, CAUSES, SOLUTIONS (2021) [hereinafter AABANY REPORT], https://www.aabany.org/resource/resmgr/press_releases/2021/A_Rising_Tide_of_Hate_and_Vi.pdf [https://perma.cc/8AWR-LHAH].

292. AABANY REPORT, *supra* note 291, at 1; see Yellow Horse et al., *supra* note 2. In December 2021, the New York City Police Department reported a 361 percent increase in anti-Asian hate crimes from the year before. See Kimmy Yam, *NYPD Reports 361 Percent Increase in Anti-Asian Hate Crimes Since Last Year*, NBC NEWS (Dec. 10, 2021, 4:45 PM), <https://www.nbcnews.com/news/asian-america/nypd-reports-361-percent-increase-anti-asian-hate-crimes-last-year-rcna8427> [https://perma.cc/JTG8-KSSW]; see also Sakshi Venkatraman, *Anti-Asian Hate Crimes Rose 73% Last Year, Updated FBI Data Says*, NBC NEWS (Oct. 25, 2021, 4:33 PM), <https://www.nbcnews.com/news/asian-america/anti-asian-hate-crimes-rose-73-last-year-updated-fbi-data-says-rcna3741> [https://perma.cc/D6KY-JP3P]. Hate incidents are defined as encompassing “all overt acts of racial prejudice, including harassment, racial slurs, spitting, as well as hate crimes defined by statute.” AABANY REPORT, *supra* note 291, at 2.

293. See Marina Fang, *Anti-Asian Hate Is Still on the Rise, Almost 2 Years into the Pandemic*, HUFFPOST (Nov. 18, 2021, 1:38 PM), https://www.huffpost.com/entry/anti-asian-racism-pandemic-covid-19-stop-aapi-hate_n_61968816e4b025be1ad8bd42 [https://perma.cc/PFD5-GHBB]; see also, e.g., Larry Celona et al., *Deranged Man Pushes Asian Woman to Death at Times Square Subway Station*, N.Y. POST (Jan. 15, 2022, 11:32 AM), <https://nypost.com/2022/01/15/woman-pushed-to-her-death-at-times-square-subway-station/> [https://perma.cc/J4AU-ZUMT]; Emma Seiwell & Larry McShane, *NYC Nurse Recounts Terrifying Anti-Asian Hate Crime in Manhattan Subway Station*, N.Y. DAILY NEWS (Dec. 7, 2021, 5:35 PM), <https://www.nydailynews.com/new-york/nyc-crime/ny-manhattan-asian-hate-crime-20211207-pw7wqh6drbevnpuvxrqlxfgtm-story.html> [https://perma.cc/7V4L-KDLZ]; Caroll Alvarado & Melissa Alonso, *4 Teens Were Charged for an Anti-Asian Attack on a Philadelphia Train*, CNN (Nov. 19, 2021, 4:27 PM), <https://www.cnn.com/2021/11/19/us/philadelphia-anti-asian-attack-charges/index.html> [https://perma.cc/3KJ2-CDGS].

The Weaponizing of Racism for Political Gain. Starting with Governor Bigler in 1852 and continuing to today, too often politicians seek to rally their base by playing on racist tropes. Former President Donald Trump first tweeted out the phrase “Chinese virus” on March 16, 2020. A study of 1.2 million tweets in the week before and the week after his tweet showed a sharp rise in coronavirus-related tweets with anti-Asian hashtags.²⁹⁴ In the following weeks and months, he used the phrases “Kung flu,” “Wuhan virus,” and “China plague.”²⁹⁵ When Asian Americans and allies spoke out against those phrases, the White House closed ranks and defended the former President’s statements.²⁹⁶ Numerous other politicians and public officials also publicly blamed the Chinese for the spread of coronavirus.²⁹⁷ Words matter.

The Pressures of National Crisis. Hostility intensifies at times of national crisis. The incarceration of Japanese Americans during World War II, the rash of violence against South Asians after 9/11, and the recent spike in anti-Asian attacks during the pandemic are prime examples.²⁹⁸ Today’s tensions with China and North Korea only increase the hostility.²⁹⁹

The Use of AAPIs as Scapegoats and a Wedge. From Yellow Peril to the model minority and now back to the Yellow Peril, AAPIs are too often blamed for society’s problems, from the bubonic plague in San Francisco in 1900 to the economic woes of the auto industry in Detroit in 1982 to the coronavirus in 2020. Vincent Chin was beaten to death by two autoworkers during a recession blamed in part on competition from Japanese auto

294. See Andrea Salcedo, *Racist Anti-Asian Hashtags Spiked After Trump First Tweeted ‘Chinese Virus,’ Study Finds*, WASH. POST (Mar. 19, 2021, 7:17 AM), <https://www.washingtonpost.com/nation/2021/03/19/trump-tweets-chinese-virus-racist/> [https://perma.cc/R7P6-G9MK].

295. Andrew Restuccia, *White House Defends Trump Comments on ‘Kung Flu,’ Coronavirus Testing*, WALL ST. J. (June 22, 2020, 8:04 PM), <https://www.wsj.com/articles/white-house-defends-trump-comments-on-kung-flu-coronavirus-testing-11592867688> [https://perma.cc/5LMB-HKG9].

296. *Id.*; see also Emma Tucker, *CBS Reporter: WH Official Called Coronavirus ‘Kung Flu’ to My Face Today*, DAILY BEAST (Mar. 17, 2020, 12:10 PM), <https://www.thedailybeast.com/cbs-reporter-weijia-jiang-says-wh-official-called-coronavirus-kung-flu-to-her-face> [https://perma.cc/Z63D-8SH5].

297. See AABANY REPORT, *supra* note 291, at 20–21 (listing examples). For example, Scottsdale City Councilmember Guy Phillips posted the following on Facebook: “Hate to break this to all of the morons who call themselves Journalists. COVID literally stands for ‘Chinese Originated Viral Infectious Disease’ and the number 19 is due to this being the 19th virus to come out of China.” Lorraine Longhi, *Scottsdale Councilman Shares False Info Claiming COVID-19 Means “Chinese Originating” Virus*, ARIZ. CENT. (Mar. 22, 2020, 11:42 AM), <https://www.azcentral.com/story/news/local/scottsdale/2020/03/22/scottsdale-councilman-shares-false-information-covid-19-meaning/2895909001/> [https://perma.cc/LTQ6-KN5V] (quoting Councilmember Phillips’s Facebook post).

298. See generally AABANY REPORT, *supra* note 291, at 8–10.

299. See *id.* at 11.

companies.³⁰⁰ And too often AAPIs have been used by the majority as a wedge against other minority groups, generating resentment.³⁰¹

Pure Racism. Finally, of course, there is the continuing prevalence of stereotypes and the notion that AAPIs must be forever foreigners in this country.³⁰² Asian Americans are seen as passive, docile, and weak—to some, vulnerable targets; to others, not worthy citizens.³⁰³ Just as racist notions drove the authorities in San Francisco in 1900 to quarantine and inoculate only the Chinese, “[t]he term ‘Chinese virus’ racializes the disease so that it’s not simply biological but Chinese in nature.”³⁰⁴

300. See Liz Mineo, *The Scapegoating of Asian Americans*, HARV. GAZETTE (Mar. 24, 2021), <https://news.harvard.edu/gazette/story/2021/03/a-long-history-of-bigotry-against-asian-americans/> [<https://perma.cc/TU34-C4YK>]; Nina Strochlic, *America’s Long History of Scapegoating Its Asian Citizens*, NAT’L GEOGRAPHIC (Sept. 2, 2020), <https://www.nationalgeographic.com/history/article/asian-american-racism-covid> [<https://perma.cc/HYW5-6LRZ>].

301. See Chang, *supra* note 197, at 1260, 1264; see also Erin Blakemore, *The Asian American “Model Minority” Myth Masks a History of Discrimination*, NAT’L GEOGRAPHIC (May 27, 2021), <https://www.nationalgeographic.com/culture/article/asian-american-model-minority-myth-masks-history-discrimination> [<https://perma.cc/3Y6C-6VCF>] (“Asians were lauded as a desirable, hardworking minority—and upheld as a contrast to other groups, such as Latino and Black Americans, who were characterized as a threat to white supremacy.”). Even the internment of Japanese Americans was “weaponized” by politicians, as their “success stories” after World War II were used to “weaken[] the civil rights movement.” Kimmy Yam, *Officer Who Stood by as George Floyd Died Highlights Complex Asian American, Black Relations*, NBC NEWS (June 4, 2020, 12:56 AM), <https://www.nbcnews.com/news/asian-america/officer-whostood-george-floyd-died-asian-american-we-need-n1221311> [<https://perma.cc/UPC5-BF57>]; see also *id.* (“In the 1960s, white liberals wielded the model minority stereotype to stifle black social movements, using Asian Americans as ‘proof’ of meritocracy and equal opportunity for people of color.”).

302. This was the feeling in 1879. See *Ho Ah Kow v. Nunan*, 12 F. Cas. 252, 256 (C.C.D. Cal. 1879) (No. 6,546) (“We are aware of the general feeling—amounting to positive hostility—prevailing in California against the Chinese, which would prevent their further immigration hither and expel from the state those already here. Their dissimilarity in physical characteristics, in language, manners and religion, would seem, from past experience, to prevent the possibility of their assimilation with our people.”). And unfortunately it is still too often the feeling today. See, e.g., Robin Kawakami, *I’m Asian American. When Will People Stop Seeing Me as a Forever Foreigner?*, TODAY (Mar. 24, 2021, 12:22 PM), <https://www.today.com/tmrw/i-m-asian-american-when-will-people-stop-seeing-me-t212664> [<https://perma.cc/J2Q3-JP6D>] (“Where are you really from? I looooove Chinese food. Go back to your country. They are derogatory remarks I thought I had left behind in adolescence, and yet I’m hearing them again—on the New York subway, walking through the city—in 2021.”); see also Frank H. Wu, *Foreword to ASIAN AM. BAR ASS’N OF N.Y. & PAUL WEISS, A RISING TIDE OF HATE AND VIOLENCE AGAINST ASIAN AMERICANS IN NEW YORK DURING COVID-19: IMPACT, CAUSES, SOLUTIONS 5* (2021), https://www.aabany.org/resource/resmgr/press_releases/2021/A_Rising_Tide_of_Hate_and_Vi.pdf [<https://perma.cc/FY4P-GTAC>] (“There are many reasons for the omission of Asian Americans from discussions of race and civil rights whether deliberate or negligent. We are regarded as perpetual foreigners who have no standing within the community to hint at an injustice over which others if it were them would be outraged.”).

303. See Wu, *supra* note 302, at 6 (“Thus Asian Americans become easy targets. We are reputed to be tourists carrying cash who won’t fight back or even report wrongdoing.”).

304. Salcedo, *supra* note 294 (quoting Professor Russell Jeung of San Francisco State University).

B. What Can Be Done?

As for what we can do, there is no easy answer, but some recommendations have been offered. We summarize a few.

Collect the Data. There must be clear and simple ways for victims to report incidents, and a consistent way to classify and report them.³⁰⁵ As AABANY has pointed out in its report, both incident reporting and distribution of information are being supported by nonprofit organizations—government and law enforcement need to play a bigger role.³⁰⁶

Prosecute Hate Crimes. Historically, the violence against Asians resulted in few if any convictions, and too often the authorities looked the other way. We saw that repeatedly in the examples discussed above, from Los Angeles to Hells Canyon, from Watsonville to Bellingham. More recently, we saw how difficult it is to prosecute a hate crime in the case of Vincent Chin.³⁰⁷ Although six of the eight victims in the Atlanta shootings in March 2021 were Asian American women and the shootings took place during an upsurge in anti-Asian violence, still the defendant—a twenty-one-year-old white male who blamed a sex addiction for his actions—was not initially charged with hate crimes.³⁰⁸ Despite the challenges, hate crimes must be prosecuted.

305. As the AABANY Report notes, “Hate crimes and incidents often go unreported because, for many victims, filing an official report can be time consuming, too personal, and burdensome. . . . There may be language barriers, as well as fear of backlash from the community or retaliation from the perpetrator.” AABANY REPORT, *supra* note 291, at 27.

306. *See id.* The U.S. Department of Justice has a website devoted to hate crimes. *See Learn About Hate Crimes*, U.S. DEP’T OF JUST., <https://www.justice.gov/hatecrimes/learn-about-hate-crimes> [<https://perma.cc/NGS5-THEG>] (last visited Mar. 4, 2022) (“It is critical to report hate crimes not only to show support and get help for victims, but also to send a clear message that the community will not tolerate these kinds of crimes. Reporting hate crimes allows communities and law enforcement to fully understand the scope of the problem in a community and put resources toward preventing and addressing attacks based on bias and hate.”).

307. *See, e.g.*, Kiara Alfonsca, *Hate Crimes Are Hard to Prosecute, But Why?*, ABC NEWS (Apr. 13, 2021, 6:02 AM), <https://abcnews.go.com/US/hate-crimes-hard-prosecute/story?id=76926458> [<https://perma.cc/PV4W-2UYQ>] (“Without solid evidence of hate speech to indicate a perpetrator’s motivation, seemingly random attacks against people from marginalized communities may instead be pursued as traditional criminal offenses, creating a problem with combating hate crimes.”); Eric Levenson, *Why Prosecuting Hate Crimes Can Be Difficult*, CNN (Oct. 31, 2018, 9:59 AM), <https://www.cnn.com/2018/10/31/us/hate-crimes-charges-motive/index.html> [<https://perma.cc/485B-X9FU>] (“[H]ate crimes are more difficult to charge and prosecute than other criminal charges, largely because they require law enforcement to prove a specific motivation of bias.”).

308. *See* Mineo, *supra* note 300. The defendant, Robert Aaron Long, pleaded guilty to four murders on July 27, 2021, in Cherokee County; these were not charged as hate crimes. *See* Rich McKay, *Georgia Man Pleads Guilty to Four Murders in Spa Shootings, Hate Crimes Not Pursued*, REUTERS (Aug. 17, 2021, 9:16 PM), <https://www.reuters.com/world/us/man-pleads-guilty-four-murders-atlanta-area-spa-shootings-2021-07-27/> [<https://perma.cc/SM7N-YBC9>]. Still, he was sentenced to four consecutive life sentences, plus thirty-five years, without the possibility of parole. *See* Christian Boone & Chelsea Prince, ‘Swift Justice’: *Spa Shooter Gets 4 Consecutive Life Sentences in Cherokee Plea Deal*, ATLANTA J.-CONST. (July 27, 2021), <https://www.ajc.com/news/crime/breaking-cherokee-prosecutor-announces-plea-deal-in-spa-shootings/R5JEDHK5KRFJRGQO4KP5D3WEFI/> [<https://perma.cc/GH2B-L898>]. Charges remain pending in Fulton County for the other four murders (all AAPI women), and the Fulton County district attorney has filed a notice that she intends to seek hate

As long as attacks against AAPIs carry no legal consequences, they will continue.

United Action from Within the AAPI Community. In the late 1960s, a group that called itself the Asian American Political Alliance broke with previous norms by promoting the term “Asian” rather than “oriental” and by advocating for Asian pride and unity.³⁰⁹ That movement was amplified by the prosecutions of Chol Soo Lee in the 1970s³¹⁰ and by the murder of Vincent Chin in 1982. The recent and continuing wave of anti-Asian violence must be met with similarly strong advocacy by a united AAPI community.

Stronger Collaboration Among Groups. There is a long history of tension as well as solidarity between Black and Asian American communities.³¹¹ In 1991, a Korean American convenience store owner shot and killed a fifteen-year-old African American girl suspected of shoplifting a container of orange juice,³¹² and over the years there have been other conflicts involving Asian-owned businesses in Black communities.³¹³ On the other

crime enhancements. See *Fulton County DA Will Seek Hate Crime Sentence Enhancements in Atlanta-Area Spa Shootings*, CBS NEWS (Aug. 30, 2021, 1:26 PM), <https://www.cbsnews.com/news/atlanta-area-spa-shootings-hate-crime-enhancements-fulton-county/> [https://perma.cc/K4XG-CQ8Z].

309. See *Asian American Political Alliance (AAPA)*, BERKELEY HIST. PLAQUE PROJECT (2018), <http://berkeleyplaques.org/e-plaque/asian-american-political-alliance-aapa/> [https://perma.cc/9KMN-KHH4].

310. See Julie Ha, *Chol Soo Lee, Who Sparked Early Pan-Asian American Movement, Dies at 62*, RAFU SHIMPO (Dec. 7, 2014), <https://rafu.com/2014/12/chol-soo-lee-who-sparked-early-pan-asian-american-movement-dies-at-62/> [https://perma.cc/8KCN-3V4Z]. AABANY has presented a reenactment of the Chol Soo Lee case. See *Chol Soo Lee and His Fight for Freedom*, HARV. L. TODAY (Feb. 28, 2020), <https://today.law.harvard.edu/chol-soo-lee-and-his-fight-for-freedom> [https://perma.cc/GH9D-ENJH].

311. See, e.g., Cady Lang, *The Asian American Response to Black Lives Matter Is Part of a Long, Complicated History*, TIME (June 26, 2020, 2:49 PM), <https://time.com/5851792/asian-americans-black-solidarity-history/> [https://perma.cc/9YFH-9MC5]; Chris Thomas, ‘We Can’t Do This Alone’: Black Leaders Stand Up for Asian Americans After Spike in Hate Crimes, ABC10 NEWS (Mar. 19, 2021, 11:24 PM), <https://www.abc10.com/article/news/local/sacramento/black-community-leaders-stand-up-for-asian-americans/103-b0c77e00-859f-4c78-b531-bf4c7aa5c5af> [https://perma.cc/33AA-7LDC]; Kat Moon, *How a Shared Goal to Dismantle White Supremacy Is Fueling Black-Asian Solidarity*, TIME (Mar. 25, 2021, 4:56 PM), <https://time.com/5949926/black-asian-solidarity-white-supremacy/> [https://perma.cc/DXC2-V95H] (“The history of Black and Asian relations in the U.S. is fraught. Anti-Black racism has existed in the Asian community, and anti-Asian racism has existed in the Black community.”). See generally SCOTT KURASHIGE, THE SHIFTING GROUNDS OF RACE: BLACK AND JAPANESE AMERICANS IN THE MAKING OF MULTIETHNIC LOS ANGELES 2 (2008) (discussing “the omnipotence of white racism, the specter of interethnic conflict, and the promise of interethnic coalitions”).

312. See Darsha Philips, *Before George Floyd and Breonna Taylor, There Was Latasha Harlins*, NBC L.A. (Feb. 28, 2021, 6:05 AM), <https://www.nbclosangeles.com/news/national-international/latasha-harlins-mural-los-angeles-riots/2537429/> [https://perma.cc/6Q4T-J9XN]. The store owner shot the girl in the back of the head. She was convicted of manslaughter and sentenced to five years’ probation. *Id.*

313. See generally Ann-Serrick Gaillot, *Black-Asian Animosity Is an American Tradition*, OUTLINE (Apr. 6, 2017, 11:54 AM), <https://theoutline.com/post/1351/black-asian-conflict-beauty-supply> [https://perma.cc/8X3K-CV22]. The riots in Los Angeles in 1992, triggered by the acquittal of four white police officers for the beating of Rodney King, caused half a billion

hand, there are many examples of the two communities working together. As early as 1948, for example, the NAACP submitted an amicus brief in *Takahashi v. Fish & Game Commission*³¹⁴ and helped Japanese Americans obtain a significant victory in their fight against discriminatory state laws.³¹⁵ In *Loving v. Virginia*,³¹⁶ the Japanese American Citizens League (JACL) submitted an amicus brief in support of the Lovings.³¹⁷ Many AAPIs marched in support of Black Lives Matter.³¹⁸ But it is also true that many of the assailants in anti-Asian incidents have been other people of color, and it escaped no one's notice that an Asian American police officer stood by as George Floyd died.³¹⁹ It is time to resist the wedges driven between minority groups and work together, and to have a broader conversation about race.³²⁰

dollars of damage to Korean-owned businesses. See Jerusalem Demas & Rachel Ramirez, *The History of Tensions—and Solidarity—Between Black and Asian American Communities, Explained*, VOX (Mar. 16, 2021, 11:00 AM), <https://www.vox.com/22321234/black-asian-american-tensions-solidarity-history> [https://perma.cc/56N8-MYZ2]. After the riots, many churches and community organizations worked to reduce the tension between the two groups. *Id.*

314. 334 U.S. 410 (1948).

315. *See id.* at 418–20 (striking down California law barring “Japanese aliens” from receiving state fishing licenses on ground that protections of Fourteenth Amendment extended to aliens as well as citizens); *see also* Greg Robinson, *Takahashi v. Fish & Game Commission*, DENSHO ENCYCLOPEDIA (May 9, 2014, 6:13 AM), https://encyclopedia.densho.org/Takahashi_v._Fish_and_Game_Commission/ [https://perma.cc/7PVA-DLTF].

316. 388 U.S. 1 (1967).

317. Although it was rare for the Supreme Court to allow amicus counsel to argue, the Court permitted the JACL’s lawyer, William Marutani, to argue. *See* David Muto, *An Unsung Hero in the Story of Interracial Marriage*, NEW YORKER (Nov. 17, 2018), <https://www.newyorker.com/culture/cultural-comment/an-unsung-hero-in-the-story-of-interracial-marriage> [https://perma.cc/72NW-R3HC]. Marutani had served six months in an internment camp during World War II, and in 1975 was appointed to the Court of Common Pleas in Philadelphia, becoming the first Asian American judge on the East Coast. *See About Judge Marutani*, PHILA. BAR FOUND., <https://www.philabarfoundation.org/about-judge-marutani> [https://perma.cc/Q2ET-B5SZ] (last visited Mar. 4, 2022).

318. *See* Lang, *supra* note 311; *see also* *Intersections of Black and Japanese American History: From Bronzeville to Black Lives Matter*, DENSHO (Feb. 17, 2016), <https://densho.org/catalyst/japanesearmericanandblackhistory/> [https://perma.cc/QZX8-NTEE]. During World War II, after the Japanese were forced to evacuate, many African Americans moved into vacated Japanese neighborhoods. What had been Little Tokyo became Bronzeville, and Black-owned businesses replaced what had been Japanese American establishments. *See generally* KURASHIGE, *supra* note 311, at 158–85 (discussing Bronzeville and Little Tokyo). Still, there were numerous examples of the two groups supporting each other. *See id.*

319. *See* Yam, *supra* note 301; Deanna Pan, *Asian-Americans, Long Used as a Racial Wedge, Are Confronting Anti-Black Racism in Their Own Communities*, BOS. GLOBE (July 21, 2020, 10:24 AM), <https://www.bostonglobe.com/2020/07/21/metro/asian-americans-long-used-racial-wedge-are-confronting-anti-black-racism-their-own-communities/> [https://perma.cc/B52C-7J4Z] (“In George Floyd’s final moments, captured on video, Tou Thao, a Hmong-American police officer in Minneapolis, argued with bystanders while his white colleague pressed his knee against Floyd’s neck. As Floyd gasped for air, the crowd pleaded for the dying man’s life. Thao responded, ‘He’s talking, so he can breathe.’”).

320. *See, e.g.*, Mineo, *supra* note 300.

Ultimately, the pandemic has exposed the cracks in America’s society, bringing forth the layers of systemic racism and legacies of injustice that many Americans have chosen not to pay attention to until now. And it’s not only up to Black and Asian American communities to do the work of building solidarity—it’s the

Strong Leadership and Action from Washington and State Capitals. Our leaders at the federal and state levels need to be encouraged not only to speak out in condemnation of anti-Asian rhetoric and violence, but to develop a game plan to stop the violence and then take action in accordance with that plan. It was helpful that the White House recognized that “during the pandemic, inflammatory and xenophobic rhetoric has put Asian American and Pacific Islander persons, families, communities, and businesses at risk.”³²¹ Likewise, in March 2021, two days after the Atlanta shootings, the U.S. House of Representatives held a “rare congressional hearing” to address the issue of anti-Asian discrimination and violence.³²² And credit must be given to Senator Mazie Hirono and Congresswoman Grace Meng for their leadership not only in securing the enactment of the COVID-19 Hate Crimes Act³²³ last year, but for pressing the Department of Justice to implement it.³²⁴

Public Education. Too many people know too little about the Asian American experience. As Helen Zia has said, we are not so much “missing in action” as “missing in history.”³²⁵ We can fix that by sharing stories like the ones discussed in this Essay. We need more AAPIs in politics, the media, sports, and popular culture, and we need them to spread the word.³²⁶ We

responsibility of all Americans to understand the role that white supremacy has played in creating these rifts that are exploited again and again.

Demsas & Ramirez, *supra* note 313.

321. Memorandum Condemning and Combating Racism, Xenophobia, and Intolerance Against Asian Americans and Pacific Islanders in the United States, 2021 DAILY COMP. PRES. DOC. 89 (Jan. 26, 2021), <https://www.govinfo.gov/content/pkg/DCPD-202100089/pdf/DCPD-202100089.pdf> [<https://perma.cc/7DAZ-PQHA>]. The White House has now established a twenty-five-member commission to address matters of concern to the AAPI community, including anti-Asian violence. *See President’s Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders*, U.S. DEP’T OF HEALTH & HUM. SERVS., <https://www.hhs.gov/about/whiaanhpi/commission/index.html> [<https://perma.cc/DC9C-5JND>] (last visited Mar. 4, 2022).

322. The timing was fortuitous, as the hearings had been scheduled weeks earlier. *See* Catie Edmonson, *House Democrats Hold a Rare Congressional Hearing on Anti-Asian Discrimination*, N.Y. TIMES (Mar. 18, 2021), <https://www.nytimes.com/2021/03/18/us/congress-hearing-asian-american-discrimination.html> [<https://perma.cc/VDL4-NZ74>]; Lisa Desjardins & Patty Gorena Morales, *Congress Holds First Hearing on Asian American Violence in Decades Amid “Crisis Point,”* PBS (Mar. 18, 2021, 6:55 PM), <https://www.pbs.org/newshour/show/congress-holds-first-hearing-on-asian-american-violence-in-decades-amid-crisis-point> [<https://perma.cc/9W8L-R6KB>] (providing transcript and audio recording).

323. Pub. L. No. 117-13, 135 Stat. 265 (codified at 18 U.S.C. § 249 and 34 U.S.C. §§ 10101 note, 30501 note, 30507).

324. *See* 18 U.S.C. § 249 (entitled “Hate crime acts”); *see also, e.g.*, Barbara Sprunt, *Here’s What the New Hate Crimes Law Aims to Do As Attacks on Asian Americans Rise*, NPR (May 20, 2021, 4:32 PM), <https://www.npr.org/2021/05/20/998599775/biden-to-sign-the-covid-19-hate-crimes-bill-as-anti-asian-american-attacks-rise> [<https://perma.cc/YQS5-5YFS>].

325. Demsas & Ramirez, *supra* note 313 (quoting *Transcript: Race in America: History Matters with Erika Lee & Helen Zia*, WASH. POST. (Mar. 8, 2021, 7:01 PM), <https://www.washingtonpost.com/washington-post-live/2021/03/08/transcript-race-america-history-matters-with-erika-lee-helen-zia/> [<https://perma.cc/Y2CR-PGPQ>]); *see also* LEW-WILLIAMS, *supra* note 15, at 3 (“Anti-Chinese violence . . . is routinely left out of the national narrative.”).

326. At the congressional hearing in March 2021, lawmakers, professors, public interest lawyers, and the actor Daniel Dae Kim testified. *See U.S. Congressional Hearing Takes on*

need more public art campaigns like the series that honored AAPI and Black New Yorkers, originally displayed in a subway station in Brooklyn in 2020. It included portraits of Black people as a sign of solidarity with the Black Lives Matter movement and as a call to end all institutional racism.³²⁷ As the artist, Amanda Phingbodhipakkiya, whose parents are Thai and Indonesian, stated, “you can’t help but see us and you can’t help but feel that we are reclaiming space.”³²⁸ Together, we can beat back not only COVID-19, but the discrimination and bias that Asian Americans and other people of color have faced for centuries.

*Illustration 10: “I Still Believe in Our City” Public Art Campaign*³²⁹



Anti-Asian Violence Two Days After Georgia Shootings, REUTERS (Mar. 18, 2021, 12:38 PM), <https://www.reuters.com/article/usa-house-hate-crimes/u-s-congressional-hearing-takes-on-anti-asian-violence-two-days-after-georgia-shootings-idINKBN2BA271> [https://perma.cc/57HD-ESFQ]; Jack Turman & Lauren Peller, “*We Are Americans*”: House Committee Hears Testimony on Rise in Anti-Asian American Crimes, CBS NEWS (Mar. 18, 2021, 8:40 PM), <https://www.cbsnews.com/news/asian-american-violence-discrimination-house-judiciary-hearing-watch-live-stream-today-2021-03-18/> [https://perma.cc/K27A-EEV5].

327. See Lauren Messman, ‘*I Still Believe in Our City*’: A Public Art Series Takes On Racism, N.Y. TIMES (Nov. 4, 2020), <https://www.nytimes.com/2020/11/02/arts/design/public-art-covid-race-subway.html> [https://perma.cc/C3UP-9E6B]; see also AMANDA IS A MULTIDISCIPLINARY ARTIST, <https://www.alonglastname.com/> [https://perma.cc/JT9W-A7SW] (last visited Mar. 4, 2022).

328. Messman, *supra* note 327.

329. Works from public art campaign “I Still Believe in Our City” (2020) created by multidisciplinary artist Amanda Phingbodhipakkiya while artist-in-residence with the NYC Commission on Human Rights. The series was first placed by the artist in over 200 locations around New York City where anti-Asian bias incidents have occurred. Since 2020, the works have reclaimed space for the AAPI community with defiance and pride around the world in subway stations and community centers, on billboards and buildings and the cover of *Time* magazine.

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We close with this excerpt from the conclusion of our Vietnamese Fishermen reenactment:

Once Judge McDonald issued the preliminary injunction, the Vietnamese were ready to launch their boats at the start of the shrimping season on May 15, 1981. But first, there was a custom of their country they wished to observe, the blessing of the fleet. They invited their lawyer to attend.³³⁰ In a speech Dees gave in 2013, he described the event:

I got there about 5:00 in the morning, and I was standing there in the fog. The sun hadn't come out. On the dock there were 50 or 100, or so, family members waiting for the boats to come out.

There was a priest there to bless the boats. After about half an hour, the sun still hadn't come out, the fog was hanging heavy on the bay. We heard a diesel engine, and a boat popped out through the fog and came by the reviewing stand. The priest blessed that boat and another and another, until 15 or 20 boats had gone out into the open waters.

As I stood there that morning and the sun began to burn through the fog, I could see the sun glistening off the badges of the United States Marshals sent there to protect these American immigrants. As I looked at those officers, I thought about the majesty of our justice system at work.

As I looked into the faces of these immigrants, I saw pride. Pride as they took a place at America's table. Not just finding a place at America's table, but building that table, so to speak, to make this nation great like other immigrants who've come into this country time and time again in the past and made this nation a great nation.

I not only felt proud to be a lawyer for these people, I felt proud to be an American. For the first time, I understood that our nation is great because of our diversity and not in spite of it.³³¹

330. See Morris S. Dees, Jr., *Sherman J. Bellwood Lecture Keynote Address: With Justice for All in a Changing America*, 50 IDAHO L. REV. 101, 109–10 (2013).

331. *Id.* at 110.