

## RACIAL VIOLENCE AGAINST ASIAN AMERICANS

*Violence is always an outgrowth of milder states of mind.*

— GORDON ALLPORT, *THE NATURE OF PREJUDICE*<sup>1</sup>

Although comprehensive national statistics are unavailable, government commissions<sup>2</sup> and Asian American communities<sup>3</sup> agree that Asian Americans are frequently victimized by violent crime. In analyzing these crimes, this Note examines the catalytic role that stereotypes play in the evolution of such violence. Part I describes the magnitude of the violence and the virulence of its harm. For clarity, this Note divides racial violence against Asian Americans into two categories: rational targeting and racist violence. Part II addresses *rational targeting*, in which criminals use race as a proxy for information — for instance, the likely benefits and costs of mugging a particular victim. In such cases, Asian Americans are targeted not because of racial hatred but because of a crude economic calculus. By contrast, *racist violence*, the subject of Part III, encompasses crimes motivated by racial prejudice and hostility.<sup>4</sup> Finally, Part IV outlines various sociocultural and law-enforcement reforms that will help stem the rising tide of violence against Asian Americans.

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<sup>1</sup> GORDON W. ALLPORT, *THE NATURE OF PREJUDICE* 57 (1954).

<sup>2</sup> See U.S. COMM'N ON CIVIL RIGHTS, *CIVIL RIGHTS ISSUES FACING ASIAN AMERICANS IN THE 1990S* 45–48 (1992) [hereinafter *CIVIL RIGHTS ISSUES*]. See generally U.S. COMM'N ON CIVIL RIGHTS, *RECENT ACTIVITIES AGAINST CITIZENS AND RESIDENTS OF ASIAN DESCENT* 40–57 (1986) [hereinafter *RECENT ACTIVITIES*] (describing incidents of racial violence); *Anti-Asian Violence: Oversight Hearing Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary*, 100th Cong., 1st Sess. 10 (1987) (statement of Rep. Robert T. Matsui) [hereinafter *Hearings on Anti-Asian Violence*] (same).

<sup>3</sup> See, e.g., ORGANIZATION FOR CHINESE AMERICANS, *IN PURSUIT OF JUSTICE* 2 (1992) (“Today, Asians rank fourth on the list of victims of hate crimes, behind African Americans, people of the Jewish faith, and homosexual men.”); Brief of the National Asian Pacific American Legal Consortium, *Amici Curiae* at 3, *Wisconsin v. Mitchell*, (U.S. 1993) (No. 92-515) (“Incidents of violence against Asians have risen at a rate faster than for any other ethnic group.”) [hereinafter *NAPALC Brief*].

<sup>4</sup> This Note distinguishes rational targeting from racist violence for two reasons. First, racist violence deserves greater moral censure and societal response than rational targeting. Second, because rational targeting is not a product of racial prejudice, it can be more easily addressed by conventional law-enforcement means than racist violence. See also *infra* note 30 (discussing various meanings of “racial prejudice”). As such, the appellation “hate crimes” applies better to racist violence than mere rational targeting. But this analytical distinction should not exaggerate the differences between these two categories of violence: both can wreak serious physical and psychological harm; the stereotypes involved in rational targeting can easily transmogrify into those motivating racist violence; a criminal can act from mixed motives; and, as an evidentiary matter, discerning the conscious and subconscious motives of any act is difficult. This Note uses the term “racial violence” to encompass both rational targeting and racist violence.

## I. THE MAGNITUDE OF VIOLENCE

Accurately measuring the number of rationally targeted and racially animated crimes committed against Asian Americans is extremely difficult, because institutional tools required to collect such statistics are lacking. Most local police forces do not gather records on hate-crimes,<sup>5</sup> and few state governments have implemented programs to measure the number of crimes against specific minority groups.<sup>6</sup> In response to this paucity of data, Congress passed in 1990 the Hate Crime Statistics Act,<sup>7</sup> which to date has produced only preliminary findings.<sup>8</sup> Even with such programs, the information gathered should be interpreted in light of two facts: first, law enforcement officials often fail to recognize incidents of racial violence,<sup>9</sup> and second, Asian Americans in particular tend to underreport crimes.<sup>10</sup>

Despite the anecdotal nature of the evidence, the information that does exist tells a fearsome story. Examples of violence against Asian Americans abound,<sup>11</sup> and in cities such as Philadelphia and Boston, Asian Americans suffer a higher per capita rate of hate crimes than

<sup>5</sup> See *Hearings on Anti-Asian Violence*, *supra* note 2, at 13 (statement of Rep. Matsui).

<sup>6</sup> See 135 CONG. REC. E464, E465 (daily ed. Feb. 22, 1989) (statement of Rep. John Conyers). Fourteen states have passed laws requiring data collection on hate crimes. See NAPALC Brief, *supra* note 3, at C-1.

<sup>7</sup> Pub. L. No. 101-275, 104 Stat. 140 (1990) (codified at 28 U.S.C. § 534 (Supp. II 1990)).

<sup>8</sup> With less than 20% of the nation's law-enforcement agencies participating, an FBI report tallied 4,558 reported incidents of hate crimes in 1991. See *Hatred Turns Out Not To Be Color-Blind*, TIME, Jan. 18, 1993, at 22. Although Asian Americans constitute approximately 3% of the national population, 6% of these crimes were directed against people of Asian descent. California, where a substantial percentage of Asian Americans reside, did not participate in this study. See NAPALC Brief, *supra* note 3, at 8 n.3.

<sup>9</sup> See *infra* p. 1942.

<sup>10</sup> See *Hearings on Anti-Asian Violence*, *supra* note 2, at 13 (statement of Rep. Matsui); *infra* p. 1930.

<sup>11</sup> Here follows a macabre collage of the violence: a police detective brutalized Long Guang Huang while falsely arresting him in May 1985; youths fractured the skull and legs of Sing Vang, a Vietnamese refugee, in September 1985; a gang called the "Dotbusters" beat to death Navroze Mody, an Asian Indian American, in September 1987. See *Hearings on Anti-Asian Violence*, *supra* note 2, at 34-37. In 1989, Jim Loo, a Chinese American, was murdered in a pool room fight in which he was called "gook," "chink," and blamed for the death of American soldiers in Vietnam. The same year, a gunman motivated by racial hatred strafed a schoolyard with an automatic weapon, killing five children of Southeast Asian descent. In 1990, Hung Truong, a fifteen year-old Vietnamese youth, was killed by two men, said to be skinheads, shouting "white power." See CIVIL RIGHTS ISSUES, *supra* note 2, at 26-31. While screaming "Karate! Karatel," skinheads in Denver forced six Japanese students to stand in a line and beat them with baseball bats. See Johnny Ng, *Skinheads Accused of Attacking Japanese in Denver*, ASIAN WK., Nov. 30, 1990, at 18. In the summer of 1992, some of the rioters in Los Angeles deliberately targeted Asian American businesses. See *infra* note 80. A nineteen-year-old Vietnamese American, Luyen Phan Nguyen, was beaten to death at a party while onlookers yelled "Viet Cong." See Mike Clary, *Rising Toll of Hate Crimes Cited in Student's Slaying*, L.A. TIMES, Oct. 10, 1992, at A1, A1.

any other racial minority.<sup>12</sup> To try to list every episode of violence against Asian Americans would be infeasible; however, recounting one paradigmatic incident of brutality will help to elucidate the special harms that arise from racial violence.

In 1982, Vincent Chin, a Chinese American, was murdered by two white men, a father-and-son team of laid-off auto workers, in Detroit, Michigan. Ronald Ebens, the father, provoked a barroom scuffle by yelling at Chin, "It's because of you little mother fuckers, that we're out of work."<sup>13</sup> Afterward, Ebens and his stepson, Michael Nitz, chased down Vincent Chin at a nearby McDonald's and bludgeoned him comatose with a baseball bat. A few days later, Chin was disconnected from life support.<sup>14</sup> This attack stands out as a perverse symbol of racist violence. Even if one presumes that their unemployment was caused by unjust trade practices of the Japanese government, when Ebens and Nitz brained Vincent Chin, they transferred blame not only from the Japanese government to the Japanese people, not only from the Japanese people to United States citizens of Japanese descent, but finally from Japanese Americans to anyone unlucky enough to bear Asian features.

Nothing is especially noteworthy about a crime whose victim by chance is of Asian descent. But unique, pernicious harms arise from being consciously targeted as a victim either by rational calculus or by racial animus because of race. Physically, hate crimes are usually more brutal than other crimes.<sup>15</sup> Psychologically, they invoke a feeling of helplessness, because race — the only characteristic that could be changed to avoid future attacks — is immutable.<sup>16</sup>

Because rationally targeted and racially animated violence endangers everyone with Asian features, these acts not only terrorize individuals, but also ripple fear throughout the entire Asian American community.<sup>17</sup> Consider, for example, the trepidation in the Asian Indian community in Jersey City, wrought by a public letter from a

<sup>12</sup> See CIVIL RIGHTS ISSUES, *supra* note 2, at 46–47.

<sup>13</sup> United States v. Ebens, 800 F.2d 1422, 1427 (6th Cir. 1986).

<sup>14</sup> See *id.* at 1427–28. For a gripping film about this murder, see WHO KILLED VINCENT CHIN? (Third World Newsreel 1988).

<sup>15</sup> See Daniel Goleman, *As Bias Crime Seems to Rise, Scientists Study Roots of Racism*, N.Y. TIMES, May 29, 1990, at C1 ("[Hate crimes] . . . result[] in the hospitalization of their victims four times more often than . . . other assaults.")

<sup>16</sup> See *Hate Crime Statistics Act of 1988: Hearings on S.702, S.797, S.2000 Before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary*, 100th Cong., 2d Sess. 240 (1988) (statement of Leonard D. Goodstein, Ph.D., Chief Executive Officer, American Psychological Association) (describing how hate crime victims suffer from feelings of "numbness, shock, . . . loneliness, depression, [and] vulnerability") [hereinafter *Hearings on Hate Crime Statistics Act*].

<sup>17</sup> See *State v. Plowman*, 838 P.2d 558, 564 (1992) (observing that race-based violence raises the insecurity of the entire targeted group); Bruce Pitts, *Eliminating Hate: A Proposal for a Comprehensive Bias Crime Law*, 14 LAW & PSYCHOL. REV. 139, 141 (1990).

gang called the "Dotbusters"<sup>18</sup> that stated: "We will go to any extreme to get Indians to move out . . . . If I'm walking down the street and I see a Hindu and the setting is right, I will just hit him or her. We plan some of our more extreme attacks . . . . We use the phone book and look up the name Patel."<sup>19</sup> By discouraging an entire community from participating in social<sup>20</sup> and political<sup>21</sup> life, such ethnic intimidation denies Asian Americans an equal opportunity to exercise the rights and privileges that constitute and signify membership in the greater community. These two interconnected impacts particular to racial violence — individual psychological debilitation and community subordination — make such violence warrant special concern.<sup>22</sup>

## II. RATIONAL TARGETING

Economics drive many physically violent crimes. The average robber or mugger merely extorts money through coercive force. Although such criminals will not formally articulate any cost-benefit analysis, they will use common sense to select victims who offer the highest benefit and lowest cost: a mugger prefers accosting a frail elder carrying a bulging wallet than challenging a young, muscular jogger with nothing but pocket change. In making these assessments, criminals use race as a proxy for relevant information.

Unfortunately, common generalizations about Asian Americans have prompted criminals to target them as choice victims of street crime.<sup>23</sup> Asian Americans appear to promise a larger than average benefit because they are seen as members of a merchant-entrepreneurial class or as rich tourists, who tend to carry and use cash instead

<sup>18</sup> The "dot" refers to the *bindi* worn on the forehead of Asian Indian women.

<sup>19</sup> RONALD TAKAKI, *STRANGERS FROM A DIFFERENT SHORE* 481 (1989).

<sup>20</sup> See *Hearings on Hate Crime Statistics Act*, *supra* note 16, at 240-41 (statement of Leonard D. Goodstein, Ph.D.) ("[G]roups which are the focus of violence become distrustful, hostile, and withdrawn from the larger community. The effect of racial, ethnic, religious and homophobic violence is one of limiting community participation and decreasing personal interaction.")

<sup>21</sup> For example, crimes sometimes generate pressures from within the Asian American community to keep silent and avoid publicity. See Mary B.W. Tabor, *Unfulfilled Promises*, N.Y. TIMES, Oct. 26, 1992, at B1 ("To be quiet is better." (quoting a Korean American grocer regarding interracial tensions)). In such cases, the traditional avenue of petitioning the government for aid and redress, already narrow for groups lacking political influence, is further obstructed by fear of violent backlash.

<sup>22</sup> This Note is not oblivious to the fact that violence against Asian Americans sometimes originates from Asian Americans themselves. Particularly despicable is the battering of Asian American women. See JoAnn Lum, *Battered Asian Women*, RICE, Mar. 1988, at 50, 51-52 (criticizing Asian cultures' tolerance of domestic violence and describing the unique cultural and economic plight of battered Asian women). Nor does this Note deny that people of Asian descent commit racial violence on others.

<sup>23</sup> See Calvin Sims, *Seeking Cash and Silent Victims, New York Thieves Prey on Asians*, N.Y. TIMES, Oct. 7, 1990, at A1 (citing hundreds of subway attacks on Asian Americans).

of less convertible forms of money.<sup>24</sup> At the same time, criminals view Asian Americans as less costly targets. Regarded as physically weak and culturally averse to defending themselves, Asian Americans are considered low direct risks in any physical confrontation.<sup>25</sup> Asian Americans also pose lower indirect risks because they report crimes to the police less often. This reluctance to complain, particularly among recent immigrants, may stem from language barriers, cultural norms, ignorance of the American legal system,<sup>26</sup> mistrust of the police from adverse experiences in the United States<sup>27</sup> or in their country of origin,<sup>28</sup> or general skepticism about the efficacy of legal recourse. Whatever the causes, the proclivity not to report crimes makes Asian Americans even more attractive victims.

### III. RACIST VIOLENCE

Whereas rational targeting involves race merely as a proxy for information, racist violence implicates race in a more essential and invidious manner. Acts of racist violence evince racial prejudice — interpersonal hostility<sup>29</sup> toward people of Asian descent — based on the view that they do not merit treatment as equals or that they deserve blame for various societal ills.<sup>30</sup> Understanding the causal evolution of this second type of violence requires examining the social terrain on which this phenomenon unfolds.

#### A. Current Stereotypes of Asian Americans

Despite the conventional wisdom that Asian Americans no longer face discrimination,<sup>31</sup> many racial stereotypes<sup>32</sup> continue to inform

<sup>24</sup> See *id.*

<sup>25</sup> See *id.*; *infra* p. 1931.

<sup>26</sup> See *Hearings on Anti-Asian Violence*, *supra* note 2, at 106.

<sup>27</sup> See *infra* note 96.

<sup>28</sup> See *Hearings on Anti-Asian Violence*, *supra* note 2, at 102 (statement of Kim Oanh Cook, Director, Mutual Assistance Associations Consortium) (explaining that many refugees from Communist governments fear that “the minute you spoke up you could be dead or your whole family could be dead”).

<sup>29</sup> See JACK LEVIN & WILLIAM LEVIN, *THE FUNCTIONS OF DISCRIMINATION AND PREJUDICE* 65 (2d ed. 1982).

<sup>30</sup> “Racial prejudice” could have other meanings as well. For example, prejudice need not always entail naked hostility: it could manifest itself more subtly, via misperception in which race is used as an *irrational* proxy for behavior or quality. In this form of prejudice, race-based generalizations are assumed without sufficient statistical evidence and are resistant to change by the normal presentation of data. See Richard A. Posner, *The DeFunis Case and the Constitutionality of Preferential Treatment of Racial Minorities*, 1974 SUP. CT. REV. 1, 10. Rational targeting crimes are probably prejudiced in this weaker sense because race is often a poor proxy for the type of information that the criminal seeks.

<sup>31</sup> See Michel McQueen, *Voters' Responses to Poll Disclose Huge Chasm Between Social Attitudes of Blacks and Whites*, WALL ST. J., May 17, 1991, at A16.

<sup>32</sup> Racial stereotypes are race-based generalizations about a person's behavior or character that are typically not substantiated with statistical rigor or that are couched as unfalsifiable propositions impervious to reality testing.

societal views of Asian Americans. First, Asian Americans are seen as *submissive*: culturally prone to be physically unaggressive, politically docile, and accommodating. In part, this stereotype arises from average physiological differences in weight and height between Asian Americans and members of other racial groups. In part, it stems from Western interpretations of certain Asian cultural and aesthetic values. In addition, Asian immigrants' desires to avoid calling attention to themselves, to survive silently, and to remain invisible further encourage the perception of submissiveness.<sup>33</sup>

Second, Asian Americans are regarded as the *model minority*, succeeding by virtue of a pious work ethic.<sup>34</sup> As a *minority*, Asian Americans rest beneath whites in the social hierarchy, but as the *model minority*, they stand above other racial minorities. Concocted from an amalgam of plausible yet fallacious data and inferences,<sup>35</sup> this characterization is sustained by government spokespersons, the media, and Asian Americans who don this portrayal as a badge of honor. The model minority myth invites the belief that Asian Americans no longer face any racial discrimination, much less the kind that spawns physical violence. Moreover, it fosters resentment from non-Asian minorities who are impliedly faulted as less than model.<sup>36</sup>

Third, Asian Americans are seen as *unfair competitors* who pose an unwelcome economic threat.<sup>37</sup> At times, politicians and business executives characterize Asians as unfair competitors and blame the East Asian countries, such as Japan, for American economic woes. Workers who face unemployment also resent Asian immigrants for supposedly stealing jobs from "real" Americans or for receiving preferential governmental treatment.<sup>38</sup>

Fourth, Asian Americans are seen as *foreigners*. Regardless of how many generations an Asian American's family has been in the

<sup>33</sup> See *Hearings on Anti-Asian Violence*, *supra* note 2, at 68. The potency of this stereotype, particularly of Asian American women, might stem from the fact that Asian war brides constituted a significant percentage of immigration after the Korean and Vietnam wars. See SETSUKO MATSUNAGA NISHI, *Perceptions and Deceptions: Contemporary Views of Asian Americans, in A LOOK BEYOND THE MODEL MINORITY IMAGE: CRITICAL ISSUES IN ASIAN AMERICA* 3, 6 (Grace Yun ed., 1989).

<sup>34</sup> See U.S. COMM'N ON CIVIL RIGHTS, *SUCCESS OF ASIAN AMERICANS: FACT OR FICTION?* 1-2 (1980) [hereinafter *FACT OR FICTION*].

<sup>35</sup> For critical analyses of the model minority claim, see SUCHENG CHAN, *ASIAN AMERICANS: AN INTERPRETIVE HISTORY 168-71* (1991); *FACT OR FICTION*, *supra* note 34, at 17-18; TAKAKI, *supra* note 19, at 474-78.

<sup>36</sup> See Howard G. Chua-Eoan, *Strangers in Paradise*, *TIME*, Apr. 9, 1990, at 32, 35 ("[The model minority stereotype is] a way of manipulating other minorities. It tends to isolate Asians and brings resentment." (quoting Reed Ueda, Professor of History, Tufts University)).

<sup>37</sup> See *Hearings on Anti-Asian Violence*, *supra* note 2, at 60 (statement of Floyd Shimomura, Deputy Attorney General of California) (arguing that the media portrays Asian Americans as competitors for both economic and educational opportunities).

<sup>38</sup> See *RECENT ACTIVITIES*, *supra* note 2, at 35; see also *infra* pp. 1935-36 (describing resentment against Asian refugees).

United States, a person of Asian descent is often presumed to be an immigrant, visitor, foreigner.<sup>39</sup> Not surprisingly, this reaction is especially strong toward those who retain the language, culture, and customs of their ethnic heritage. Yet even Asian Americans who exhibit no obvious cultural<sup>40</sup> or linguistic signs<sup>41</sup> of recent immigration are presumed to be foreign, incongruous newcomers.

Finally, Asian Americans are seen not as individual but as *fungible*. To treat a person as an individual requires recognition of those characteristics that distinguish that person from others. However, because many Asian Americans share similar gross physical characteristics, visually distinguishing one Asian American from another may be difficult, especially for non-Asian Americans. This difficulty, caused by perceived physiological similarity, invites people to presume a reductionist similarity among all people of Asian descent, within any given Asian ethnicity and also across ethnicities.<sup>42</sup> This tendency obscures not only the differences among Asian American individuals qua individuals but also the historic disputes that have separated Asian peoples. Moreover, it helps conceive individuals as components of monolithic blocs defined primarily by common physical traits.

Of course, how modern American culture perceives Asian Americans does not neatly resolve into these five constituent elements. In truth, these classifications blur and interrelate in inexact, involute, and indeed conflicting ways.<sup>43</sup> Nonetheless, by identifying these ste-

<sup>39</sup> See RECENT ACTIVITIES, *supra* note 2, at 31. The assumption of foreignness is not entirely unfounded because, as of 1980, over 60% of all Asian Americans were foreign-born. See CIVIL RIGHTS ISSUES, *supra* note 2, at 14-15. But then again, nearly 40% are not. Moreover, the 60% statistic fails to capture the possibility and self-constitutive meaning of naturalized citizenship.

<sup>40</sup> Even girls garbed in quintessential American apparel, Girl Scout uniforms, are rejected as foreign. When members of a predominantly Japanese American Girl Scout troop asked a man if he would like to buy cookies, he responded, "I only buy from American girls." See Seth Mydans, *New Unease for Japanese-Americans*, N.Y. TIMES, Mar. 4, 1992, at A12.

<sup>41</sup> See, e.g., *Hearings on Anti-Asian Violence*, *supra* note 2, at 4 (statement of Rep. Mineta) ("[A]lthough my family has been in this country for more than 85 years, people still tell me with genuine surprise that I speak English remarkably well and without a trace of accent.")

<sup>42</sup> See Harry H.L. Kitano, *Asian-Americans: The Chinese, Japanese, Koreans, Filipinos, and Southeast Asians* 454 ANNALS AM. ACAD. POL. & SOC. SCI. 125, 126 (1981) ("[O]ne common assumption is that of the presumed homogeneity among Asian groups, not only on the physiological level, as typified by the phrase, 'They all look alike,' but on a cultural level.")

<sup>43</sup> For instance, being quiet and *submissive* is part of being *model*, see DANIEL I. OKIMOTO, *AMERICAN IN DISGUISE* 152 (1971), but being *submissive* lies in tension with being *competitive*. In addition, insisting that Asian Americans are somehow *model* promotes their image as *unfair competitors* in the eyes of other racial minorities. Indeed, history reveals that if Asian Americans become too "model," they become unwelcome threats even to the majority. Consider, for example, the warning of the 1920 president of Seattle's Anti-Japanese League:

[The Japanese] are not inferior to us. In fact, they constantly demonstrate their ability to best the white man at his own game. . . . They will work harder, deprive themselves

reotypes, this Note hopes to establish a vocabulary with which to attack the problem of violence against Asian Americans.

### *B. Stereotypes as Catalysts to Violence*

Although acts of racist violence against Asian Americans do not all fit into any single theory, a simple psychological model of racist violence may provide a useful heuristic to probe how stereotypes spark and sustain the causal chain of violence.<sup>44</sup> This model posits three structural elements in the chain of violence, which need not occur as distinct moments in a linear mode of rational deliberation: first, the actor becomes hostile toward Asian Americans as a group; second, he decides to commit violence; third, he chooses a particular victim.

1. *Becoming Hostile.* — (a) *Turf Wars: Battle Against the Foreigners.* — Violently attacking another human being, although normally condemnable to all, can become justified in the eyes of the attacker if its immoral quality is muted or transfigured.<sup>45</sup> Protecting the racial purity of one's territory or neighborhood provides one such justification for hostility towards Asian Americans who "invade" the "turf" of another racial community.<sup>46</sup> Turf invasion can occur when an Asian American travels into an unwelcoming neighborhood, or more seriously, when an Asian American family moves into an intolerant community. The pattern of move-in violence is unexceptional: Asian American families moving into all-white neighborhoods have

of every comfort and luxury, make beasts of burden of their women, and stick together, making a combination that America cannot defeat.

Elizabeth Becker, *Private Idaho*, NEW REPUBLIC, May 4, 1992, at 9; see also *infra* pp. 1936–37 (discussing the same phenomenon in the educational context).

<sup>44</sup> This model must also be placed in its demographic context. Only after 1965 did the United States begin accepting significant numbers of Asian immigrants. See CHAN, *supra* note 35, at 145–46. During the 1960s, over 400,000 Asian immigrants entered the United States, see CIVIL RIGHTS ISSUES, *supra* note 2, at 5, and from the mid-1970s to the early 1980s, a large influx of Southeast Asian refugees — over 710,000 — has added to the Asian American population. See RECENT ACTIVITIES, *supra* note 2, at 16–18, 33–34. The number of Asian Americans, which measured 7.3 million in 1990, may increase to 20.2 million by 2020. See Paul Ong & Suzanne J. Hee, *The Growth of the Asian Pacific American Population*, in THE STATE OF ASIAN PACIFIC AMERICA: POLICY ISSUES TO THE YEAR 2020 at 11, 16 (1993) [hereinafter POLICY ISSUES]. As Chinatowns, Koreatowns, little Tokyos, and little Saigons have expanded rapidly into previously non-Asian areas, cultural, economic, racial, and linguistic frictions have increased along community boundaries. See RECENT ACTIVITIES, *supra* note 2, at 33.

<sup>45</sup> See Albert Bandura, *Disengagement of Internal Control*, in EXPLAINING THE HOLOCAUST AND THE PHENOMENON OF GENOCIDE 1, 1 (Eric Goldhagen ed., 1993) (on file at the Harvard Law School Library).

<sup>46</sup> For example, 57% of bias crimes committed in Boston from 1983 to 1987 involved issues of turf. See Daniel Goleman, *As Bias Crime Seems to Rise, Scientists Study Roots of Racism*, N.Y. TIMES, May 29, 1990, at C1, C5.



been greeted with burning crosses,<sup>47</sup> rocks,<sup>48</sup> and mob attacks.<sup>49</sup> On a larger social scale, when entire Asian American neighborhoods encroach on previously non-Asian areas, hostility may erupt along the intercommunal interface, sometimes abating only when Asian Americans abandon the area.<sup>50</sup>

The stereotype of foreignness animates this territorial response. Because Asian Americans are different, and because this difference is conceived as foreign — not in a cosmopolitan sense,<sup>51</sup> but in the aberrant, un-American sense<sup>52</sup> — they are denied the respect granted to fellow members of our national community.

(b) *Scapegoating: Blaming the Unfair Competitors and the Model Minority.* — Besides turf invasion, another principal reason for hostility towards Asian Americans is the sentiment that they are responsible for various social problems. Although Asian Americans are not likely to be the true causes of the multifarious economic and social problems plaguing America, they have nevertheless become convenient targets of displaced frustration.<sup>53</sup> This scapegoating response is mediated by stereotypes of Asian Americans as unfair competitors and model minorities.

Asian Americans are seen as unfair competitors by people on every rung of the socio-economic ladder. Because scapegoating others allows us to skirt self-criticism, politicians, business managers, and workers alike blame the present national economic doldrums on unfair trade practices of Japan and other Asian countries. The scapegoating rationale asserts that if Asian nations would not exploit the rules of

<sup>47</sup> See Grace Wai-Tse Siao, *L.A. Cross Burning Frightens Chinese*, ASIAN WK., Nov. 3, 1989, at 1.

<sup>48</sup> See RECENT ACTIVITIES, *supra* note 2, at 46 ("Rock throwing at the Southeast Asian refugees is an everyday occurrence." (quoting Diana Tanaka, a Massachusetts assistant attorney general)).

<sup>49</sup> See Goleman, *supra* note 15, at C5.

<sup>50</sup> See, e.g., *Vietnamese Fishermen's Ass'n v. Knights of the Ku Klux Klan*, 518 F. Supp. 993, 1002 (S.D. Tex. 1981) (relating the testimony of a police chief who stated that some whites, regardless of the competition over fishing, feel that there are just too many Vietnamese people in the region); *supra* pp. 1928-29.

<sup>51</sup> Cf. Mari J. Matsuda, *Voices of America: Accent, Antidiscrimination Law, and a Jurisprudence for the Last Reconstruction*, 100 YALE L.J. 1329, 1353 n.85 (1991) (reporting a study suggesting favorable reactions to German or French accents but negative reactions to Asian accents).

<sup>52</sup> Consider the 1943 testimony by General J.L. DeWitt, military commander of the West Coast, to the House Naval Affairs Subcommittee against freeing Japanese Americans from internment camps: "A Jap's a Jap. . . . It makes no difference whether he is an American; theoretically he is still a Japanese and you can't change him. . . . You can't change him by giving him a piece of paper." CAREY MCWILLIAMS, *PREJUDICE: JAPANESE-AMERICANS: SYMBOL OF RACIAL INTOLERANCE* 251 (1944).

<sup>53</sup> See NISHI, *supra* note 33, at 5.

global capitalism, then America would be in fine economic shape.<sup>54</sup> This backlash, felt by all Americans of Asian descent, can sometimes kill, as it did Vincent Chin.

On the domestic front, Asian Americans are viewed as unfair competitors for jobs. Although much evidence suggests that recent immigrants do not significantly affect the employment rates of other groups,<sup>55</sup> the misperception that Asian Americans steal valuable employment opportunities remains. This response typifies the general pattern of increased racial hostility in periods of economic frustration.<sup>56</sup> Just as in the nineteenth century Chinese immigrant laborers were terrorized and killed for taking white jobs in the economically depressed Western states,<sup>57</sup> Asian Americans are again being victimized for economic reasons.<sup>58</sup>

In addition, Asian Americans are deemed unfair competitors because they consume resources that would otherwise go to "real" Americans. Despite the popular belief that Asian Americans are economically prosperous, certain Asian American groups, such as recently resettled refugees from Southeast Asia, occupy the lowest rungs of our nation's economic ladder.<sup>59</sup> It is, again, widely but erroneously supposed that these refugees receive substantial special treatment from the government in the form of low-interest loans, cash grants, and more generous welfare benefits.<sup>60</sup> Many balk at even meager grants of aid, because Asian immigrants are seen as incorrigibly foreign.

Finally, Asian Americans are stereotyped as unfair competitors by other racial minorities. Recent Asian immigrants, unable to find employment elsewhere, often start small businesses such as groceries or liquor stores in urban, economically depressed, and predominantly non-Asian minority areas. In addition to the sundry burdens common to all small business owners, these Asian Americans experience a unique difficulty because they are accused of exploiting the local com-

<sup>54</sup> A Detroit bumper sticker says it all: "Unemployment — Made in Japan." See ROGER DANIELS, *ASIAN AMERICA* 342 (1988).

<sup>55</sup> See Bill Ong Hing, *Legal Immigration Reform: Issues of Concern to Asian Americans*, reprinted in 135 CONG. REC. S1136, S1137-38 (daily ed. Feb. 2, 1989) (statement of Sen. Simon).

<sup>56</sup> See LEVIN & LEVIN, *supra* note 29, at 160; see also *id.* at 136 (citing a study showing an inverse correlation between lynchings of Blacks and the value of southern cotton, and noting how the Depression increased nativist activity against immigrants).

<sup>57</sup> See DANIELS, *supra* note 55, at 29-66 (describing the anti-Chinese movement); Su Sun Bai, Comment, *Affirmative Pursuit of Political Equality for Asian Pacific Americans: Reclaiming the Voting Rights Act*, 139 U. PA. L. REV. 731, 749 n.84 (1991).

<sup>58</sup> Economic competition between Vietnamese and white fishermen helped fuel the conflict in *Vietnamese Fishermen's Assoc. v. Knights of the Ku Klux Klan*, 518 F. Supp. 993 (1981).

<sup>59</sup> See RECENT ACTIVITIES, *supra* note 2, at 36.

<sup>60</sup> See *id.* at 35-36.

munity.<sup>61</sup> Worse, it is often assumed that federal and state governments and private banks grant Asian Americans preferential treatment to initiate entrepreneurial ventures, privileges denied to other racial groups.<sup>62</sup> In such situations, the turf protection and scapegoating responses combine to create an especially volatile environment, prone to sharp intercommunal tensions and racist violence.<sup>63</sup>

Complementing the unfair competitor image, the stereotype of Asian Americans as the model minority stokes other, separate scapegoating mechanisms. By waving the supposed successes of Asian Americans in the faces of other minority groups, the majority obliquely implies that, but for their incompetence or indolence, they too would be succeeding in America. This tactic, at once obfuscating and provocative, amounts to interracial baiting that heightens resentment against Asian Americans.

The model minority myth, in conjunction with the unfair competitor stereotype, also creates resentment of Asian Americans among whites. Particularly in educational settings, the performance of Asian Americans has come to challenge and threaten the status of white students.<sup>64</sup> Graffiti strewn on campus walls captures the situation poignantly: "Chink, chink, cheating chink!" "Stop the Yellow Hordes." "Stop the Chinese before they flunk you out."<sup>65</sup>

2. *Deciding to Commit Violence.* — Neither territorial encroachment by nor scapegoating of Asian Americans will in itself cause physical violence without the aid of other stereotypes that tip the decision-making process towards committing violence. As discussed above, the stereotype of submissiveness encourages crimes against Asian Americans by making violence appear less risky.<sup>66</sup> Physical violence is also easier to perform on a dehumanized victim, because

<sup>61</sup> See Chua-Eoan, *supra* note 36, at 34 (explaining how some members of the Black community resent "foreign" businesses that take wealth out of the community).

<sup>62</sup> See CIVIL RIGHTS ISSUES, *supra* note 2, at 23-24.

<sup>63</sup> See, e.g., Jonathan Rieder, *Trouble in Store: Behind the Brooklyn Boycott*, NEW REPUBLIC, July 2, 1990, at 16 (describing conflicts between African Americans and Korean American grocers).

<sup>64</sup> See *Hearings on Anti-Asian Violence*, *supra* note 2, at 13 (statement of Rep. Matsui); Keith Osajima, *Asian Americans as the Model Minority*, in REFLECTIONS ON SHATTERED WINDOWS: PROMISES AND PROSPECTS FOR ASIAN AMERICAN STUDIES 171 (Gary Y. Okihiro, Shirley Hune, Arthur A. Hansen & John M. Liu eds., 1988).

<sup>65</sup> TAKAKI, *supra* note 19, at 479; see also David Arase, *Education is Failing Asian-Americans*, L.A. TIMES, Mar. 16, 1992, at B5 (describing the altering of a banner at Pomona College from "Asian American Studies Now!" to "Asian Americans die Now!").

<sup>66</sup> See Judith A. Lyons, *Wave of Attacks on Chinese Students at University in Detroit*, ASIAN WK., Dec. 15, 1989, at 4 (suggesting that Chinese exchange students may have been singled out during a "wave" of attacks because of a perception that they would not fight back). See generally Gordon Allport, *The ABCs of Scapegoating*, in EXPLAINING THE HOLOCAUST AND THE PHENOMENON OF GENOCIDE, *supra* note 45, at 38-39 (explaining that scapegoaters prefer victims who pose little threat of retaliation).

the social and psychological inhibitions against committing violence on a fellow human being become disengaged.<sup>67</sup> For Asian American victims, the psychological process of dehumanization is achieved via the stereotype of foreignness, which denies them "in-group" status,<sup>68</sup> and that of fungibility, which strips them of individual dignity.

History lends insight into this process of dehumanization. One need only recount the nineteenth century rhetoric of the California Supreme Court, which disparaged the Chinese in America as "a distinct people . . . whose mendacity is proverbial . . . whom nature has marked as inferior . . . and who are incapable of progress or intellectual development beyond a certain point," to observe how foreignness once mediated a dehumanizing conception of Asian Americans.<sup>69</sup> More recently, the United States has fought its past three major military conflicts against Asian countries: Japan, North Korea and China, and Vietnam. Much of the demonization of the enemy that occurs in every war was in these instances concocted along racial lines,<sup>70</sup> and perhaps, American society has not entirely purged the psychological lessons from wars past. The eagerness with which economic competition with Japan is analogized to World War II suggests that vestiges of such a war mentality persist.<sup>71</sup> Flippant suggestions of using the Enola Gay or the atomic bomb as the final solution to trade frictions provide further evidence of this point.<sup>72</sup>

Consistent with this history, the supposedly intrinsic foreignness of Asian Americans bolsters the "nativist" response, which situates anyone "different" outside the boundaries of community, and as such, undeserving of respect and solicitude. Working in synergy, the idea

<sup>67</sup> See Bandura, *supra* note 45, at 8 ("Self-sanctions against mistreatment of people can be similarly disengaged or blunted [as with the treatment of animals] by divesting them of human qualities. Once dehumanized, they are no longer viewed as persons with feelings, hopes, and concerns but as subhuman objects demeaningly stereotyped as 'gooks,' 'fags' or 'niggers.'").

<sup>68</sup> See *id.* at 9 ("In addition, social practices that divide people into in-group and out-group members produce human estrangement that fosters dehumanization.").

<sup>69</sup> *People v. Hall*, 4 Cal. 399, 404-05 (Cal. 1854); *cf.* *Plessy v. Ferguson*, 163 U.S. 537, 561 (1896) (Harlan, J., dissenting) ("There is a race so different from our own that we do not permit those belonging to it to become citizens of the United States. . . . I allude to the Chinese race.").

<sup>70</sup> See JOHN W. DOWER, *WAR WITHOUT MERCY: RACE & POWER IN THE PACIFIC WAR* 77-93 (1986). For example, World War II was labeled by commentators "the War of Oriental Races against Occidental Races for the Domination of the World." MCWILLIAMS, *supra* note 53, at 234 (quoting a headline from the *Los Angeles Examiner*). In the Vietnam conflict, the use of the phrase "gooks" evinced a dehumanizing hostility that played a significant role in civilian massacres. See LEO KUPER, *GENOCIDE* 91-92 (1981).

<sup>71</sup> See, e.g., David Ibata, *For Local Japanese, Words Can, Do Hurt*, CHI. TRIB., Feb. 9, 1992, § 2, at C1, C3 (describing posters stating "The Spirit of Tojo Lives . . . The Economic Conquest of the U.S.A. Let's Remember Pearl Harbor . . .").

<sup>72</sup> See *infra* note 90. Bennett E. Bidwell, a Chrysler executive vice-president, suggested the use of the Enola Gay, the plane which bombed Hiroshima, to decrease Japanese automobile imports. See *Hearings on Anti-Asian Violence*, *supra* note 2, at 69 (statement of the Japanese American Citizens League).

of fungibility transmogrifies Asian Americans into a faceless, deindividualized horde. With the psychological comfort afforded by these two stereotypes, the hate criminal can sufficiently dehumanize the victim class in order to dampen the empathetic impulse and to remove, or repress, those social constraints that ordinarily inhibit violence.<sup>73</sup> Perversely, the very act of violence reaffirms the victim's subhuman nature, because after committing the brutality, the criminal avoids self-censure by rationalizing his action. The simplest way to do so is to blame the victim in a manner consonant with the original prejudice and to make the victim deserving of violence.<sup>74</sup>

3. *Choosing a Victim: Broadening the Victim Class.* — Stereotypes enlarge the scope of the Asian American victim class in two ways. First, the foreigner stereotype bridges national boundaries and holds Asian Americans culpable for the deeds of Asian governments.<sup>75</sup> As foreigners, Japanese Americans, born and raised in the United States, were exiled to internment camps for the carnage of Pearl Harbor.<sup>76</sup> Second, as the 1992 riots in Los Angeles made clear, the stereotype of Asian Americans as fungible licenses the targeting of all Asian Americans instead of one particular individual of Asian descent or one particular Asian ethnicity.<sup>77</sup> This phenomenon, repeated throughout history,<sup>78</sup> ensures that individuals are attacked because they are assumed to be members of an ethnicity to which they do not belong.<sup>79</sup>

<sup>73</sup> Cf. KUPER, *supra* note 72, at 85 (explaining the role of dehumanization in the context of genocide by nothing that "[s]ince the victims are not human, the inhibitions against their slaughter cease to be operative").

<sup>74</sup> See Bandura, *supra* note 45, at 10-11.

<sup>75</sup> Lisa L. Ryckman, *Wave of Violence Against Asians Plagues the Nation*, L.A. TIMES, Feb. 1, 1987, § 1, at 3 ("It doesn't matter whether they are American-born or foreign-born — the tendency is to look at all Asians as the same." (quoting Sam Cacas, chair of the Violence Against Asians task force)). Even the well-intentioned fall prey to these stereotypes. For example, when Reverend Cecil Murray, of the First A.M.E. church in Los Angeles, was asked about Black-Korean tensions on ABC's "Nightline," he replied that Japanese prime ministers should stop making racist comments about African Americans. See Susan Moffat, *Splintered Society: U.S. Asians*, L.A. TIMES, July 13, 1992, at A1, A20. Both the "foreigner" and "fungible" stereotypes explain what the ignorant proclamations of Japanese bureaucrats have to do with *Americans of Korean descent*.

<sup>76</sup> During World War II, people corrupted with even one-sixteenth Japanese blood were removed from the Western states. See Becker, *supra* note 43, at 9-10. This fact lies in shameful juxtaposition to the service of the 442d Regimental Combat Team, an all-Japanese American team whose members were recruited from internment camps, which was "the most decorated unit of its size during World War II." CHAN, *supra* note 35, at 134-35.

<sup>77</sup> See Moffat, *supra* note 78, at A1 ("Many Chinese-, Japanese-, and Vietnamese-Americans say their shops were damaged because rioters thought they were Korean."); *id.* at A20 (reporting the near murder of Takao Hirata, a Japanese American, by a mob that yelled anti-Korean epithets during the riots).

<sup>78</sup> See Bai, *supra* note 58, at 748 n.79.

<sup>79</sup> See Stewart Kwoh, *Perspective on Asian-Americans: Reject Scapegoating to Stop the 'Bashing'*, L.A. TIMES, Feb. 21, 1992, at B7 (reporting that a Thai woman, mistaken for a Korean, was removed from her car and beaten).

or, more fundamentally, because they simply happen to be of Asian descent. Fungibility explains what happened to two Cambodian residents assaulted by Vietnam veterans "who were angry that Vietnamese were coming to this country and buying new cars."<sup>80</sup> When told that their victims were Cambodians, not Vietnamese, the assailants retorted, "it's the same thing."<sup>81</sup>

#### IV. POSSIBLE SOLUTIONS

Decreasing violence against Asian Americans can be pursued along two mutually reinforcing paths. The standard approach employs traditional law enforcement techniques to make such crimes less attractive to the actor.<sup>82</sup> By contrast, the sociocultural approach attacks the problem at a broader, cultural level by disenabling the stereotypes that catalyze the causal chain of racist violence. Because bias crimes signal a more general malady in our culture,<sup>83</sup> a systemic cultural reconstitution of how Asian Americans are regarded is necessary to decrease substantially the problem of racist violence. This sociocultural approach demands a broad coalition of media, government, community organizations, and schools to work together to terminate those deleterious stereotypes, subtly perpetuated, that impel violence.

##### *A. Rational Targeting*

Conventional law enforcement and community awareness programs can decrease crimes of rational targeting by altering the calculation involved. To lower the expected benefit, local community organizations should educate Asian Americans not to carry cash and instead to use credit cards and other forms of money that impart less direct benefit to street criminals. To raise the expected cost, these organizations should instruct Asian Americans on their legal rights and encourage them to report crimes to the authorities. For this education program to work, Asian Americans must view the police and the legal system as fair institutions that will listen to their concerns. In addition, police forces should implement innovative crime-

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<sup>80</sup> RECENT ACTIVITIES, *supra* note 2, at 47 (quoting from a complaint filed in Commonwealth v. Coderre, No. 63506 (Super. Ct. Mass. 1983)).

<sup>81</sup> *Id.*

<sup>82</sup> Such efforts might focus on young males who are most prone to commit racist violence. See Peter Finn, *Bias Crime: Difficult to Define, Difficult to Prosecute*, 3 CRIM. JUST. 19, 19 (1988) (stating that 70% of bias crimes in New York City in the past seven years were committed by people under 20 years old).

<sup>83</sup> See Goleman, *supra* note 15, at C1 (reporting that bias crimes "are not crimes of youthful rebellion: those who carry them out are venting feelings shared by their families, friends and community . . .").

fighting techniques such as employing Asian American decoy officers to ferret out those who specifically target Asian Americans.<sup>84</sup>

But the standard approach is not enough. The sociocultural approach is also necessary in order to correct the stereotype of submissiveness. Even if Asian Americans henceforth learn to utilize fully the criminal justice system, if the current *perception* remains, criminals will continue to target Asian Americans, albeit based on inaccurate information. To deter the "rational" criminal, the perception of Asian Americans' meek acceptance of victimization must be corrected to reflect the new reality.

### B. Racist Violence

Taking up the sociocultural approach first, the stereotypes that foster the eruption of racist violence must be vitiated. To mitigate the "turf-protection" response, Asian Americans must be cast not as foreign but as American. Even if they exhibit different cultural norms, and even if they are not fluent in English, they should be accepted as new settlers continuing the long-standing immigrant tradition that founded this nation and that constitutes its political history. To the extent that racial tribalism can be transmuted to a species of national pride that reflects with integrity those tolerant traditions of our political culture, one reason for violence will lose its potency.

To arrest the scapegoating tendency, the stereotypes of Asian American as unfair competitor and model minority must be eradicated. Two major sources of the rhetoric on the unfair competitor stereotype are the American business community and the American government. Self-interested businesses fuel the unfair competitor stereotype to deflect blame away from their own poor performance. And when they impute the reasons for unemployment on an easily identifiable class, such as people of Asian descent, "they are acting like an agitator of a lynch mob."<sup>85</sup> The government is the other major proponent of these generalizations.<sup>86</sup> For example, just last year, Senator Ernest Hollings of South Carolina suggested that a factory's employees "draw a mushroom cloud and put underneath it: Made in America by

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<sup>84</sup> See Sims, *supra* note 23, at 42.

<sup>85</sup> TAKAKI, *supra* note 19, at 483 (quoting George Wong, Asian American Federation of Union Membership).

<sup>86</sup> Virginia Senator Paul Triple stated that "Asians have no value for life"; State Senator Ray Powers opposed giving business to a Japanese American firm because "the Japanese bombed Pearl Harbor"; Agriculture Secretary Robert Lounsberry referred to the Japanese as "slant eyes." See *Hearings on Anti-Asian Violence*, *supra* note 2, at 76-78 (statement of the Japanese American Citizens League). Criticizing his Republican opponent for accepting support from "Japs," New Hampshire Senator John Durkin warned of a Pearl Harbor-like sneak attack on the voters of New Hampshire. See Michael Omi, *Out of the Melting Pot and Into the Fire: Race Relations Policy*, in POLICY ISSUES, *supra* note 44, at 199, 208-09.

lazy and illiterate workers and tested in Japan.<sup>87</sup> By making such remarks, government officials veneer prejudice with a sort of state-sanctioned credence and thus make their belief respectable. Moreover, because federal and state governments have historically violated the right of Asian Americans to treatment as equals,<sup>88</sup> they should now take special care not to fuel stereotypes that play an insidious role in the chain of violence. This moral intuition cries out not for compensation for past wrongs but for a promise by government officials not to aggravate the stereotypes that already exist, in part, due to past governmental acquiescence and approval.<sup>89</sup>

Moreover, social commentators and government officials should be aware that continually characterizing Asian Americans as model minorities bestows upon them not only a badge of honor but also a crown of thorns. The unsubtle implication of praise given to Asian Americans alone is not lost on other minorities and even members of the majority race, who are marked as inferior by omission.<sup>90</sup>

To inhibit the decision to commit violence, the stereotypes of submissiveness, foreignness, and fungibility also must be neutralized. Most critically, society must address the phenomenon of dehumanization, because psychological studies suggest that it is difficult to mete out unprovoked cruelty on *humanized* victims.<sup>91</sup> We should resist the warped notion that Asian Americans are inherently foreign, and not fully American. Also, the bias that all people of Asian descent are fungible not only fails to take seriously the cultural and historical diversity among Asian ethnicities, but also more dangerously helps people to envision Asian Americans as a faceless subhuman caste.

These two stereotypes can be defeated by voluntarily checking government speech that inflames such views, by educating communities about Asian American history and culture, and by encouraging the media to portray Asian American individuals as human and American. With the weakening of the stereotypes that facilitate dehumanization, there is a collateral benefit of restricting the victim class. Ideally, hatred against one Asian American will no longer translate into hatred against all Asian Americans. Hatred against the Japanese government will no longer be displaced onto a Chinese American, because the potential victim will be acknowledged first as American not foreign, and second as of Chinese descent not Japanese.

<sup>87</sup> Colin Nickerson, *Senator's Comment Ignites Fury in Japan*, BOSTON GLOBE, Mar. 5, 1992, at 2. Senator Hollings called his comment a "joke." *Id.*

<sup>88</sup> See, e.g., Grace W. Tsuang, Note, *Assuring Equal Access of Asian Americans to Highly Selective Universities*, 98 YALE L.J. 659, 666 n.51 (1989).

<sup>89</sup> See McWILLIAMS, *supra* note 72, at 245 (describing how, in the debates of the 1943 California legislature, the federally mandated internment was cited as "*proof* of the undesirable traits of the Japanese as a race and as *proof* of their disloyalty as a group").

<sup>90</sup> See *supra* note 65.

<sup>91</sup> See Bandura, *supra* note 45, at 8.



Next, the tools of the standard approach should lead the criminal justice system to confront racist violence directly by increasing the likelihood and severity of punishment.<sup>92</sup> The first step is to encourage Asian Americans to go to the police. In part, this will require educating Asian Americans, especially recent immigrants, about their legal rights and the nature of the police in this country as opposed to the police of their country of origin. Police attitudes must be reformed as well. Police must be sensitized to the concerns of Asian American communities<sup>93</sup> and be trained to recognize and react to racist violence.<sup>94</sup> More interpreters should be available for Asian American victims who cannot speak English. Similarly, having more Asian American police officers, who can better respond to the needs of the Asian American community, would foster trust in law enforcement.

The next step in prosecuting more hate criminals is to alter prosecutorial behavior. As with the police, prosecutors need training so that they do not see racist violence as a mere prank, unworthy of zealous prosecution. Also, prosecutors should consider the possibility of unconscious prejudice or indifference toward Asian American communities.<sup>95</sup> In their exercise of sentencing discretion, judges also should forsake leniency for those who commit hate crimes.<sup>96</sup> Judges should not forget the broader message received by, even if not intentionally sent to, the outside community when they lightly punish those who wreak racist violence. The message is that the law tolerates the

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<sup>92</sup> See Richard Delgado, *Campus Antiracism Rules: Constitutional Narratives in Collision*, 85 NW. U. L. REV. 343, 374 (1991) ("The main inhibitor of prejudice is the certainty that it will be remarked and punished."). Of course, the standard approach does not stand entirely independent of the sociocultural approach. Indeed, legal norms can "create a public conscience and a standard for expected behavior that check overt signs of prejudice." ALLPORT, *supra* note 1, at 470.

<sup>93</sup> See Finn, *supra* note 85, at 20 ("Police officers, prosecutors, and judges tend to regard most incidents as juvenile pranks, harmless vandalism, private matters between the involved parties, or acceptable behavior against disliked groups."). Police brutality against Asian Americans must also be addressed if Asian Americans are to trust the police enough to ask for protection and help. See generally *Police Misconduct: Hearings Before the Subcomm. on Criminal Justice of the House Comm. on the Judiciary*, 98th Cong., 1st Sess. 801-07 (1983) (describing the statement of Bill Chong, Asian-Americans for Equality).

<sup>94</sup> See *Hearings on Hate Crime Statistics Act*, *supra* note 16, at 191 (suggesting that elements of a model law enforcement response to hate crimes include data collection, training to recognize bias crimes, increased resources for hate crime investigations, programs to encourage victim reporting, liaison to affected community, and collaboration with the target community) (statement of Abt Associates).

<sup>95</sup> See Tanya Kateri Hernández, Note, *Bias Crimes: Unconscious Racism in the Prosecution of "Racially Motivated Violence"*, 99 YALE L.J. 845, 854 (1990); cf. *Hearings on Anti-Asian Violence*, *supra* note 2, at 26 (observing a tendency for "less than vigorous prosecution," by prosecutors who sympathized with the assailants and excused their behavior) (statement of Rep. Mineta).

<sup>96</sup> See Finn, *supra* note 85, at 47 (describing frustration of prosecutors by light sentences given particularly to juveniles).

victimization of Asian Americans — that killing a Chinese American will exact a penalty no greater than the price of a used car.<sup>97</sup>

Finally, victims and their counsel should creatively employ extant common law theories and federal civil rights statutes against those who have committed racist violence.<sup>98</sup> Moreover, if deemed constitutional, state and federal legislatures should adopt specially tailored criminal laws to deter racist violence.<sup>99</sup>

## V. CONCLUSION

As our nation, and indeed the entire world, continues to struggle against violence inspired by all forms of group-hatred and prejudice, this Note focuses attention on the problem of racial violence against Asian Americans. In the face of uncertainty due to incomplete statistics and speculative psychology, in the face of the widespread belief that prejudice no longer harms people of Asian descent, in the face of the political silence that has historically blanketed Asian American needs, this Note asserts that racial violence is not only brutalizing Asian American individuals, but also casting terroristic fear over their communities. And to those who believe that Asian American stereotypes are innocuous or even complimentary, this Note gives cause for re-examination. Some Asian Americans fear a return to the days of paranoia of the "Yellow Peril," a return to a time of intolerance and intimidation. Perhaps a deeper understanding of the context and causes of such violence will help avert such a repeat of history.

<sup>97</sup> In the state court trial, Ronald Ebens, who murdered Vincent Chin, was fined \$3,780 and given three years probation. See RECENT ACTIVITIES, *supra* note 2, at 43.

<sup>98</sup> See Laurie Pantell, *A Pathfinder on Bias Crimes and the Fight Against Hate Groups*, LEGAL REFERENCE SERVICES Q., Mar. 1992, at 39, 54-57 (listing common law and statutory civil rights causes of actions). But see Hernández, *supra* note 98, at 847-48 (criticizing the effectiveness of federal statutes to handle hate crimes).

<sup>99</sup> Finding support from last term's *R.A.V. v. City of St. Paul*, 112 S. Ct. 2538 (1992), various state supreme courts have invalidated hate crime statutes on First Amendment grounds. See, e.g., *State v. Wyant*, 597 N.E.2d 450, 458-59 (Ohio 1992). The constitutionality of penalty enhancement for hate crimes will be decided by the Supreme Court this Term. See *Wisconsin v. Mitchell*, 485 N.W.2d 807 (Wis.), *cert. granted*, 113 S. Ct. 810 (1992). For arguments defending their constitutionality, see Note, *Hate is Not Speech: A Constitutional Defense of Penalty Enhancement for Hate Crimes*, 106 HARV. L. REV. 1314 (1993); Recent Case, 106 HARV. L. REV. 957 (1993). But see Susan Gellman, *Sticks and Stones Can Put You in Jail, but Can Words Increase Your Sentence? Constitutional and Policy Dilemmas of Ethnic Intimidation Laws*, 39 UCLA L. REV. 333, 354-80 (1992).