

4-14-2021

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Attacks on the Asian Community: When Can Prosecutors Seek Hate Crime Enhancements?

At the start of 2021, [images of violent attacks on Asian individuals all across the nation](#) began flooding social media timelines. Large protests shortly followed these attacks in support of the Asian Community to “[Stop Asian Hate](#).” Since then, reports and images of such attacks have only become more and more common, with the [Atlanta Spa Shootings](#) at the forefront of the conversation. As a result, [much of the public and the media have been referring to these attacks as “hate crimes.”](#) Yet, prosecutors are not seeking hate-crime enhancements in many of these cases. Several high-profile cases demonstrate the evidentiary and ethical hurdles that prosecutors must consider when deciding whether to bring forward a hate crime charge. These considerations raise a critical question: When can prosecutors seek hate crime enhancements for attacks on the Asian Community?



Photo by [Jason Leung](#) on [Unsplash](#).

Attacks Spanning from Coast to Coast

Many of these high-profile cases come from California's Bay Area. For example, on **January 28, 2021**, in San Francisco, an 84-year-old immigrant from Thailand, Vichar Ratanapakdee, was **violently shoved** to the ground and **died two days later**. The suspect, Antoine Watson, was arrested and charged with murder and elder abuse, **but not with a hate crime**. San Francisco's District Attorney Chesa Boudin stated that there was **"no evidence** to suggest that the crime was motivated by racial animus." Merely two days later, a different suspect attacked three people in **Oakland's Chinatown**. Yet, **no hate crime charges** have been filed against that suspect at this point either.



Photo by [Jason Leung](#) on [Unsplash](#).

New York has also experienced an increasing number of attacks on Asian individuals. On February 3, 2021, a Filipino American man, **Noel Quintana**, was **slashed** from ear to ear with a box cutter while riding a train in Brooklyn. Several weeks later, in New York's Chinatown, suspect Salman Muflihi **allegedly approached an Asian man from behind and stabbed** him in the torso. In **neither of these cases have hate crime charges** been filed against the suspects. In reference to the latter case, the Manhattan District Attorney's office stated that there was **"no evidence** to date that [the suspect] ever saw the victim's face or that he made race-related statements."

Notably, these several cases are only a sample of the many horrible attacks against Asian individuals occurring throughout the nation. Yet, a central theme links many instances in which hate crime charges were not brought forward: lack of evidence. As the District Attorneys in San Francisco and Manhattan said in their respective cases, there was **"no evidence"** that the attacks were racially motivated. When reflecting upon the statistics showing a significant rise in anti-Asian violence, it is hard to imagine insufficient evidence to bring such charges forward.

The Broader Context: Compelling Correlation

Many who have classified these incidents as hate crimes look at them within the broader context of the COVID-19 pandemic. For example, **Ratanapakdee's family believes** that the merits of the case against Antoine Watson call for classification as a hate crime, especially in light of the recent pattern of violence against Asian Americans in San Francisco and the United States. This pattern that they are referring to has been extensively documented by the activist group **Stop AAPI Hate**. The organization **launched in March of 2020** in response to rising bigotry since the beginning of the pandemic. Stop AAPI Hate **tracks and responds to** incidents of violence and harassment against Asian Americans and Pacific Islanders in the United States. The organization reported **2,800 firsthand reports** of **"Asian-hate"** across 47 states and Washington D.C. since March of 2020, demonstrating a **"clear pattern of targeted hate"** emerging from the pandemic. Advocates, such as Stop AAPI Hate, **blame former president Donald Trump** for this rise in anti-Asian sentiment. These advocates point to his constant use of the terms **"Chinese Flu"** and **"Kung Flu"** to blame COVID-19 on China. This broader context surrounding these attacks demonstrates a compelling correlation suggesting enough evidence to charge hate crimes in these cases. However, when looking at each individual incident in isolation of the broader context, the lack of evidence begins to reveal itself.

A Narrow Look: Isolating the Facts from the COVID Context

NYPD Deputy Inspector Stewart Loo is the head of the Asian Hate Crime Task Force. Inspector Loo states that “generally, for a violent act to be considered a COVID-related hate crime, there **has to be something said or a statement by the assailant.**” This essential piece of evidence seems to be missing from the attacks on Quintana and Muflihi. For example, in the Bay Area cases discussed above, the **video footage** shows the suspects shove each victim to the floor in a seemingly random manner. No words are spoken by the suspects before or after either attack. Noel Quintana’s offender had **very little interaction** with him before he was attacked. Further, Salman Muflihi allegedly **stated that he didn’t like how the victim looked at him**; but this was not a statement with the degree of specificity that would be enough to demonstrate racial animus.

Although each state’s hate crime statutes contain its own specific requirements, it is likely that a prosecutor’s decision to charge a hate crime enhancement will depend on whether they can point to some statement by the suspect which demonstrates racial animus. For example, the Santa Clara District Attorney’s office **recently charged a woman in Mountain View, California, with a hate crime** for allegedly spitting on an Asian man and shouting racial slurs at him. Unlike the above cases, Santa Clara could point to the suspect’s alleged statement, **“go back to where you came from,”** as evidence that this conduct was racially motivated.

Ethical Limitations on Prosecutors’ Power to Charge Hate Crimes

One interesting opinion on these events comes from a former federal prosecutor, **Shan Wu**, who is calling on prosecutors to classify these crimes as hate crimes. Wu believes that prosecutors are generally reluctant to charge hate crimes because they are afraid of losing their cases. However, as Wu states: “in the Ratanapakdee case, even if prosecutors cannot prove at trial that the defendant, who ran full-speed into an 84-year-old, was motivated by racist animus, it will likely have little impact on whether the defendant is convicted of murder and elder abuse.” Wu argues that although hate crimes are hard to prove, the failure to use them undermines the criminal justice system by sending the message that hate crimes do not matter. “Win or lose, **some cases just need to be tried.**”

Many prosecutors are likely to disagree with Wu’s approach to this issue, citing a prosecutor’s duty to only bring charges yielding a high likelihood of conviction. In their opinion, it is acquittals that truly undermine the criminal justice system. Specifically, such prosecutors could point to **ABA Rule 3.8(a)**, detailing the special responsibilities of a prosecutor. “A prosecutor in a criminal case shall refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause.” The ABA makes clear that **prosecutors have a duty not only to fight for victims but also to ensure that defendants’ rights are respected.** These ethical considerations consequently limit prosecutors’ abilities to seek hate crime enhancements where the evidence is lacking.

Hate Crime Enhancements: Turning on Words Spoken

In sum, the answer to when prosecutors can use hate crimes enhancements in these circumstances likely turns on suspects’ expressions or words.



Photo by **Tingey Injury Law Firm** on

Although the COVID-19 pandemic has yielded compelling statistics that [Unsplash](#). suggest a close correlation between these cases and COVID-19 anti-Asian sentiment, this alone is not enough. As every law student learns while studying for the dreaded LSAT, “correlation does not necessarily equal causation.” Although these statistics demonstrate a strong possibility that these attacks actually are motivated by Asian hate, the ethical limitations imposed upon prosecutors prevent them from seeking hate crime charges without further evidence.

With these considerations in mind, a discussion of the Atlanta Spa Shootings case is helpful. The motive given by the shooter, Robert Long, could potentially allow Georgia prosecutors to seek a hate crime enhancement against him. Authorities have reported that the shooter, [Long, said](#) his act of killing eight women was not motivated by race, but rather “sexual addiction.” [Georgia’s hate crime statute follows a “but for” standard](#). The State would have to prove that Long would not have committed these shootings if it were not for the victims’ identity. This statute [includes gender](#) as a basis for hate crimes. Therefore, even if Long’s words are not enough to prove his actions were based on race, they [may be enough to prove his actions were based on gender](#). The decision to ethically pursue a hate crime charge in that case likely turns on the weight of those words.



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