The Taraval Hate Crime

Eugene Lee and Max Mizono†

INTRODUCTION

On December 3, 2010, Matthew M., the perpetrator in one of San Francisco’s most publicized hate crimes, the Taraval Hate Crime, appeared in San Francisco County Superior Court to expunge his criminal record stemming from his role in the incident. Though this unprovoked attack by white teenagers against Asian American teenagers in San Francisco’s Sunset district occurred almost ten years ago, Matthew M.’s hearing demonstrated that he failed to learn his lesson from his hate crime conviction. His effort to expunge his criminal record served as an affront not only to his victims, but to the Asian American attorneys, public interest organizations, and greater community that helped bring publicity and justice to this case. Significant backlash from the victims and their attorneys pressured Matthew M. to withdraw his expungement motion. As a result, his hate crime conviction remains on his permanent record to this day.

Nonetheless, Matthew M.’s motion forced his victims to recall painful memories from the Taraval Hate Crime. Their experience as hate crime victims, however, is not unique. Anti-Asian American violence has occurred for years in the United States and traces its origin to the mistreatment of nineteenth-century Chinese immigrants in California. At the time, Chinese immigrant laborers were viewed as dangerously foreign

† J.D. Candidates, 2012, Santa Clara University School of Law. Special thanks to Edwin Prather and Malcolm Yeung for their tireless work on behalf of the Taraval Hate Crime victims, and inspiring us to write this article. We also would like to thank Professors Stephanie Wildman and Kyle Graham for their invaluable advice and suggestions in improving our article. Perhaps most importantly, thank you to the AALJ Editors, most notably, Kate Blanco, and her excellent team, Katrina Romero, Gabe Law, Victoria Wong, Joanne Lue, and Dolgora Dorzhieva for their hard work. Their edits and suggestions helped shape our article into its current form. Lastly, we would like to thank our parents and family for all of their love and support.


3. Id.

and unable to assimilate.\textsuperscript{5} As a result, they fell victim to racially motivated violence, later codified in state laws as “hate crimes.” This racial animus aimed towards the Chinese later carried over to other Asian ethnic groups such as the Japanese, Koreans, Filipinos, and South Asians.\textsuperscript{6}

Although the United States has come a long way with regards to race relations since the mistreatment of Chinese immigrants in the nineteenth century, and the internment of the Japanese in the 1940s, hate crimes against Asian Americans continue to occur. As such, the Taraval Hate Crime is only a recent example of this type of vitriol. One commentator has pointed out that this type of animus may endure indefinitely: as long as Asians continue to immigrate to the United States, they will likely become victims of racially motivated hate crimes based on their outward foreignness.\textsuperscript{7}

Statistics from recent years support this assertion, and reveal an increase in racially motivated hate crimes against Asian Americans.\textsuperscript{8} Over a five-year period in the 2000s, racially motivated incidents reported at Asian American businesses or places of employment across the United States increased 117\%, and increased 100\% on college campuses.\textsuperscript{9} This data from earlier in the decade, however, is at odds with recent California statistics that suggest hate crimes are declining. The 2010 California Attorney General’s office annual report on hate crimes and attached press release proclaimed that hate crimes in California dropped by more than 20\% in the past year.\textsuperscript{10} Former Attorney General and current Governor Jerry Brown described the results as “encouraging,” but cautioned that, “The sheer total of incidents motivated by hate is a reminder of how much harder we need to work to overcome prejudice, bigotry, and ignorance.”\textsuperscript{11} While these statistics are positive, the data is not entirely correct. First, the data considers \textit{all} hate crimes, not only those committed against Asian Americans. Second, the data is somewhat inaccurate because it only accounts for \textit{reported} incidents that lead to hate crime prosecution.

In reality, hate crimes are amongst a litany of crimes that are underreported each year.\textsuperscript{12} One reason for this is that victims often remain silent about the incident rather than report it to law enforcement.\textsuperscript{13} Asian

\textsuperscript{5} Id.
\textsuperscript{6} Id.
\textsuperscript{9} Id.
\textsuperscript{11} Id.
\textsuperscript{13} Id.
Americans in particular are guilty of this underreporting. While there is no singular reason to explain this, other authors have offered explanations. Specifically, Asian Americans may report crimes at a lower rate due to language barriers, different cultural norms, ignorance of the American legal system, or mistrust of the police based on previous adverse experiences in their home countries.\footnote{Note, Racial Violence Against Asian Americans, 106 Harv. L. Rev. 1926, 1930 (1993).}

Another reason why incidents that qualify as hate crimes remain unpunished is due to the reluctance of law enforcement. Police departments are often hesitant to categorize incidents as “hate crimes” because they require additional investigation.\footnote{Hwang, supra note 7, at 29.} Police departments would also rather not taint their jurisdictions with insinuations of racism that can be brought about by the investigation of incidents characterized as hate crimes.\footnote{Id.} Furthermore, even if police departments fully investigate these incidents, and the district attorney’s office files charges relating to the incident with a hate crime enhancement, there is no guarantee of a hate crime conviction. Specifically, depending on the facts of the case, a district attorney may be inclined to negotiate with the defendant and drop any hate crime enhancement to obtain a guilty plea on the underlying criminal offense.

For these reasons, obtaining a hate crime enhancement conviction is difficult. As this Article discusses, obtaining this result in the Taraval Hate Crime was not an easy task. But to this very same point, the Taraval Hate Crime is worth examining precisely because the perpetrator was successfully convicted with an accompanying hate crime enhancement. The Taraval Hate Crime, therefore, is an archetypal example of not only the means by which victims respond to a hate crime, but an example of how to obtain justice in the form of a conviction.

With this background in mind, this Article will proceed as follows: In Part II, we describe the setting of the attack, the attack itself, the investigation of the attack, the Asian American community involvement and response to the crime, and the criminal trial. This information is necessary for two reasons. First, it tells the story of the Taraval Hate Crime. Second, it demonstrates the elements necessary for a victorious resolution of a hate crime prosecution. These elements include (1) a comprehensive hate crime statute to charge the perpetrator; (2) ongoing community and legal support for the victims; (3) significant media attention to publicize and condemn the incident; and (4) interested and engaged law enforcement entities that are willing to investigate and prosecute the incident as a hate crime.

In Part III, we discuss the highly publicized deaths of Asian
Americans Vincent Chin and Kuanchang Kao and explain why those incidents resulted in unsuccessful prosecutions for their perpetrators. We then compare and contrast those incidents with the Taraval Hate Crime. Using similarities and differences as guidance for potential improvements in hate crime prosecutions, in Part IV we propose three solutions. The first solution is a mandatory notification requirement under California law to community and legal organizations that work on behalf of hate crime victims once an incident or investigation into a hate crime begins. The second solution is to require district attorney offices across the state to share more data and information with regards to hate crime prosecution. Lastly, the third solution imposes a legislative mandate requiring uniformity of policies and procedures amongst district attorney offices in prosecuting hate crimes. Though the elimination of hate crimes is not likely to happen anytime soon, these three solutions help ensure that perpetrators of hate crimes are convicted so that victims and their families can achieve justice.

I. BACKGROUND OF THE TARAVAL HATE CRIME

A. The Setting: The Sunset District’s Race Relations Problem

Examining the location of the Taraval Hate Crime is important to understanding the dynamics of race relations in this area of San Francisco. The Sunset District is the largest neighborhood within city limits, and occupies the west-central part of the city close to the Pacific Ocean. Prior to its residential and commercial development, sand dunes covered most of this territory, and San Franciscans originally referred to the area as “The Outside Lands.” As the neighborhood expanded, it attracted working-class residents, particularly Irish and Italian immigrants.

Following the post-World War II baby boom, the demographics of Sunset District changed significantly, due to a large influx of Asian immigrants. “Chinese, Korean, Vietnamese, Japanese, and Pacific Islander families bought homes, raised their families and opened businesses in the Inner Sunset, giving it more of a ‘global village’ feel.” The area is now referred to as the “New Chinatown,” and a recent Census by the San Francisco Planning Department revealed that 57 percent of the district’s

19. Id.
20. Id.
population is Asian American.\(^{22}\)

Unsurprisingly, this change in demographics contributed to growing racial tensions amongst long time white residents and the new Asian American residents. One such incident occurred in 1997 when a gang known as the Sunset White Boys spray-painted swastikas onto Asian-owned businesses.\(^{23}\) This group targeted and defaced these properties as a way to voice their frustration with their changing neighborhood, and caused significant property damage.\(^{24}\)

In one of its yearly reports, the Asian Law Caucus\(^{25}\) confirmed the existence of this racial tension in the Sunset District, and noted that neighborhoods with recent influxes of immigrants represent prime locations for hate crimes.\(^{26}\) The report also noted citywide anti-Asian American sentiment, and cited a continued growth of hate crimes against Asian Americans in both schools and San Francisco public housing projects.\(^{27}\) In particular, Vietnamese and other Asian American families living in housing projects became subject to repeated beatings, threats, racial epithets, and assaults with deadly weapons by non-Asian neighbors.\(^{28}\)

Given the Sunset District’s changing demographics, its history of racism, and the growing resentment of Asian American immigrants citywide, the occurrence of the Taraval Hate Crime is not surprising.

B. The Incident

On the night of June 6, 2003, five Asian American teenagers, Jeff Woo, Tim Wen, Sung Noh, Ken Zeng, and Paul Wong, Jr., attended a dance at Lowell High School, a top public school in San Francisco’s Sunset District.\(^{29}\) Described as a tight-knit group from different schools and neighborhoods,\(^{30}\) the boys went to a nearby diner after the dance to have

\(^{22}\) San Francisco Planning Department, American Community Survey 2005-2009, 1, 52 (2009).


\(^{24}\) See Hwang, supra note 21 at 167.

\(^{25}\) See About Us, ASIAN LAW CAUCUS, www.asianlawcaucus.org/alc/about/ ("Founded in 1972, The Asian Law Caucus is the nation’s first legal and civil rights organization serving the low-income Asian Pacific American communities. . . . [The Asian Law Caucus seeks] to promote, advance, and represent the legal and civil rights of Asian and Pacific Islander (API) communities.").


\(^{27}\) Id.

\(^{28}\) Id.


dessert. The boys then waited in front of the diner on the corner of 19th Avenue and Taraval Street for the rest of their friends.

In a nearby park, approximately forty white teenagers from Sacred Heart Preparatory High School, another high school in San Francisco, were having a keg party. Once the party grew too large, San Francisco Police Department Officers disbanded the group. Most of the teenagers at the party then went to a pizza shop also located at 19th and Taraval, next to the diner. Almost immediately, a group of these white teenagers crossed paths with the Asian boys and began mocking and taunting them, using racial epithets. Jeff Woo said, “They were calling us Chinaman and this guy was imitating the old Chinese music saying, ‘ding, dong, ping, pong’ kind of stuff.” Ken Zeng recalled: “They were laughing, calling us names . . . calling us gooks, imitating our language, saying ‘ching, chong,’ things like that.” When one of the Asian boys angrily questioned the white teens’ overt racism, one of them responded, “Because you’re gooks. Why? You want to start something?”

In response to this, and without warning, the white teenagers poured beer on Jeff Woo, and then started attacking all five Asian boys in a “wolfpack” fashion. Several more white teenagers ran from inside the pizza shop to join the attack. At one point, approximately fifteen teenagers encircled Jeff Woo, screamed racist statements at him, and then kicked and punched him while he lay defenseless on the ground. Some of the Asian boys attempted to escape across the street, but the white teenagers chased them and continued attacking them.

Meanwhile, an elderly Asian American man observed the violence from a bank ATM vestibule from across the street. He attempted to intervene but the attackers quickly scared him away. One individual reportedly said to him, “you’re only helping them, because you’re one of
them.\textsuperscript{45} The fight then continued on for several more minutes before Paul Wong bravely pulled Jeff Woo away from the attackers during a quick lapse in the fight.\textsuperscript{46} By this point, however, the white teenagers already inflicted significant damage: Jeff was lying unconscious on the street, and the other boys suffered swollen jaws, welts, bruises, and facial lacerations.\textsuperscript{47} Once San Francisco Police Officers finally arrived, they detained only three white teenagers, and only one assailant, Matthew M., was positively identified.\textsuperscript{48}

**C. Investigation Leading to Trial**

Following the night of the attack, the incident was not properly handled nor thoroughly investigated, and foreshadowed the uphill battle the boys faced. First, Matthew M. received special treatment by law enforcement. After police officers arrested him at the scene of the crime, they transported him to Juvenile Hall where he remained incarcerated for only ten hours.\textsuperscript{49} Typically, a youth booked on a Friday night, the night of the attack, is not released from Juvenile Hall until the following Monday morning.\textsuperscript{50} But rumored to have a special connection to a senior probation officer, Matthew M. received a special visit from this officer who released him much earlier than usual.\textsuperscript{51}

Second, the San Francisco Police Department failed to adequately investigate the case for several months. Because of this delay, critical evidence was lost. The lost evidence, namely, the video from the bank’s ATM vestibule, would have likely captured images of more assailants. Unfortunately, since the banks’ digital server only stored video footage for a limited time, this potential evidence was lost.\textsuperscript{52}

Third, the stalled investigation and lost evidence contributed to the decision of the District Attorney’s (DA) office to charge only Matthew M. Though the DA’s office and the San Francisco Police Department promised to investigate all of the other potential suspects, neither entity did so.\textsuperscript{53} The five victims learned of the charges brought against Matthew M., and reluctantly “accepted the fact that all the perpetrators [we]ren’t going to be prosecuted and brought to justice in this case.”\textsuperscript{54} Disillusioned with city
bureaucracy and growing angrier by the day, the boys wondered if anyone cared about their plight.\textsuperscript{55} They feared that the police and the city government were ignoring the seriousness of their situation, and were treating it simply as an innocuous fight amongst high school boys undeserving of serious inquiry.\textsuperscript{56}

D. Asian American Community Involvement

Though it seemed likely that the boys’ assailants would escape punishment, the boys finally received good news in August 2003. At this time, San Francisco Mayor Willie Brown learned about the attack from leaders of the Asian American community who expressed their concern about the lack of media attention and stalled investigation.\textsuperscript{57} In response, Mayor Brown held a rally outside of City Hall with other elected representatives and promised to “aggressively pursue”\textsuperscript{58} a full investigation of the attack.\textsuperscript{59} He boldly proclaimed at the event that, “any evidence of hate will be turned over to prosecutors,” and that, “San Francisco is a hate-free city.”\textsuperscript{60} Thanks to this rally, the attack finally gained the attention and the scrutiny it deserved.

Following the rally, Asian American public interest organizations in San Francisco, most notably, the Asian Law Caucus and the Chinatown Community Development Center (CCDC),\textsuperscript{61} helped with the case. Furthermore, two local Asian American attorneys associated with these organizations, Edwin Prather and Malcolm Yeung, assumed the most prominent roles advocating on behalf of the boys. Prather, then an associate at Rogers, Joseph & O’Donnell, devoted hundreds of pro bono hours to provide legal advice, counsel and support to the victims and their families.\textsuperscript{62}

\textit{Case, SAN FRANCISCO EXAMINER, June 29, 2004.}

\textsuperscript{55} Interview with Malcolm Yeung, Senior Advisor, Mayor’s Office at City and Cnty. of S.F., in S.F., CA (Oct. 14, 2010) (discussing the Taraval hate crime trial and his role as one of the victims’ attorneys).

\textsuperscript{56} Id.


\textsuperscript{58} Id.

\textsuperscript{59} Id.

\textsuperscript{60} Id.

\textsuperscript{61} The Chinatown Community Development Center’s mission and vision state:

\textit{The mission of the Chinatown Community Development Center is to build community and enhance the quality of life for San Francisco residents. . . . We believe in a comprehensive vision of community that includes a quality environment, healthy neighborhood economies, and active volunteer associations. We are committed to empowering low-income residents, building coalitions, embracing diversity and advocating for social and economic justice.}


\textsuperscript{62} \textit{See} Victor Hwang, \textit{President’s Column (2004), ASIAN AM. BAR ASS’N OF THE GREATER BAY
Prather fit this role of advocate perfectly based on his prior work experience. As a young attorney at the Asian Law Caucus, Prather worked on high profile Asian American discrimination cases like Dr. Wen Ho Lee’s civil suit against the United States government and *Truong v. San Francisco Housing Authority*. Furthermore, as a former San Francisco public defender and current white-collar criminal defense attorney, Prather’s familiarity with criminal cases allowed him to provide insight and expertise on the boys’ case. Prather was able to coordinate with the prosecution before and during trial based on his experience in criminal law.

To aid Prather’s role as the boys’ main advocate, Malcolm Yeung, then a new staff attorney at the Asian Law Caucus, also played a prominent role assisting and counseling the boys and their families. Together, Prather and Yeung used the media to pressure the police department and District Attorney’s office to fully investigate the incident and prosecute the perpetrators to the fullest extent of the law. By increasing media exposure, Prather and Yeung believed that public outcry in response to the attack would thereby increase. Increased public condemnation of the attack would then serve as a way to pressure the District Attorney’s office to fully prosecute the attack as a hate crime.

To accomplish this task, Prather and Yeung organized a free luncheon at the Asian Law Caucus to draw in community members. Yeung recalled that the luncheon “helped bring significant attention to the overlooked incident.” Before the luncheon and the community response, only local Chinese newspapers wrote about the attack. After the luncheon, prominent members of the mainstream media began reporting about the hate crime, specifically reporters Vic Lee from KRON-4 and Vanessa Hua from the San Francisco Chronicle.


---

64. *Truong v. SF Housing Authority*, No. 98-16048, 1998 U.S. App. LEXIS 24018, at *1 (9th Cir. Sept. 23, 1998) (affirming the district court’s ruling in granting a preliminary injunction based on the fact that the San Francisco Housing Authority failed to protect Southeast Asians from racial violence); *About Edwin Prather*, supra note 63.
65. Interview with Edwin Prather, supra note 52; *About Edwin Prather*, supra note 63.
66. Interview with Edwin Prather, supra note 52.
67. Interview with Malcolm Yeung, supra note 55.
68. Prather, supra note 29.
69. See Interview with Edwin Prather, supra note 52; Interview with Malcolm Yeung, supra note 55.
70. See Interview with Malcolm Yeung, supra note 55.
71. Prather, supra note 29.
72. Interview with Malcolm Yeung, supra note 55.
73. *Id.*
74. Prather, supra note 29.
about the case. Yeung “emailed news and information with updates . . . to individuals on the Asian Law Caucus’ listserv,” which worked well because “the more emails [he] sent, the more people wanted to volunteer and get involved.”

Jane Kim, the current Supervisor for the Sixth District in San Francisco, found out about the case through the Asian Law Caucus listserv and immediately took an interest in the boys’ case. At the time of the incident, Kim coordinated the youth program at the CCDC in San Francisco. After the request of Prather and Yeung, Kim agreed to participate and help the victims.

E. The Trial

After months of buildup and media coverage, the Taraval Hate Crime trial commenced on June 28, 2004. The District Attorney’s office had charged Matthew M. with felonious and misdemeanor assault, including an accompanying hate crime enhancement, and began its case-in-chief. However, arriving at the date of the trial took much longer than expected for three reasons. First, the defense argued for reduced charges prior to trial and urged San Francisco Superior Court Judge Kevin McCarthy to

75. Interview with Malcolm Yeung, supra note 55
78. Id.
80. Hate crimes in California are governed under Penal Code §§ 422.55, 422.56, and 422.6.
Penal Code § 422.55 states in pertinent part:
For purposes of this title, and for purposes of all other state law unless an explicit provision of law or the context clearly requires a different meaning, the following shall apply: (a) “Hate crime” means a criminal act committed, in whole or in part, because of one or more of the following actual or perceived characteristics of the victim: . . . (3) Nationality; (4) Race or ethnicity . . . . (b) “Hate crime” includes, but is not limited to, a violation of Section 422.6.
CAL. PENAL CODE § 422.55. Penal Code Section 422.56 provides more specific definitions for section 422.55, and states in subsections (d), (e), (f):
(d) “In whole or because of” means that the bias motivation must be a cause in fact of the offense, whether or not other causes also exist. When multiple concurrent motives exist, the prohibited bias must be a substantial factor in bringing about the particular result. There is no requirement that bias be a main factor, or that the crime would not have been committed but for the actual or perceived characteristic . . . (e) “Nationality” includes citizenship, country of origin and national origin. (f) “Race or ethnicity” includes ancestry, color, and ethnic background.80
CAL. PENAL CODE SECTION § 422.55. Finally, Penal Code Section 422.6(a), provides in pertinent part:
No person, whether or not acting under color of law, shall by force or threat of force, willfully injure, intimidate, interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him or her by the Constitution or law of this state or by the Constitution or laws of the United States in whole or in part because of one or more of the actual or perceived characteristics of the victim listed in subdivision (a) of Section 422.55.
CAL. PENAL CODE SECTION § 422.6(a).
dismiss the hate crime enhancement.\textsuperscript{81} Second, the defense proposed an out-of-court settlement for the victims in lieu of a trial.\textsuperscript{82} The victims were never interested in money. Instead they sought only two things: (1) prosecution of the perpetrator for the crimes he committed, and (2) prosecution with the attached hate crime enhancement.\textsuperscript{83}

Third, prior to trial, the defense argued to close the proceedings from the public because of Matthew M.’s status as a minor. The prosecution contested this, so Judge McCarthy held a hearing to decide the issue.\textsuperscript{84} Though Judge McCarthy considered Matthew M.’s status as a minor, he ruled that the seriousness of the charges warranted a public proceeding\textsuperscript{85} under relevant California law.\textsuperscript{86} Judge McCarthy’s ruling thus permitted members of the Asian-American community to attend all courtroom proceedings.

Jane Kim, who helped spread the word to the Asian American community, brought people to the courtroom during the trial.\textsuperscript{87} This decision to “pack the court” was imagined by Prather and Yeung as part of their strategy to increase the media exposure of the event and demonstrate the importance of this case to Judge McCarthy. To help Prather and Yeung “pack the court,” Jane Kim organized the attendance of close to fifty children she supervised at the CCDC to attend the courtroom proceedings.\textsuperscript{88} During the entire trial, Kim and the children rode the bus from Chinatown to the courtroom to demonstrate to the five boys that the community supported them.

During opening arguments at the trial, the prosecution emphasized the racist intent underlying Matthew M.’s attacks on the five victims, as required by the hate crime enhancement. Although the defense rebutted this claim in its own opening argument, this racist intent behind his attacks came out during the trial. For example, during cross-examination, a defense witness broke down and admitted to seeing and hearing Matthew M. yell “Chinaman” at one of the victims immediately prior to and during

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{81} Interview with Edwin Prather, supra note 52.
\item \textsuperscript{82} Id.
\item \textsuperscript{83} Id.
\item \textsuperscript{85} Hua, supra note 30.
\item \textsuperscript{86} The California Welfare and Institutions Code provides:

unless requested by the minor concerning whom the petition has been filed and any parent or guardian present, the public shall not be admitted to a juvenile court hearing. . . . However, except as provided in subdivision (b), members of the public shall be admitted, on the same basis as they may be admitted to trials in a court of criminal jurisdiction, to hearings . . . by reason of the violation of . . . (13) Assault by any means of force likely to produce great bodily injury.

\textsc{cal. welf. & inst. code} § 676(a) (2012).
\item \textsuperscript{87} Prather, supra note 29.
\item \textsuperscript{88} Id.
\end{itemize}
\end{footnotesize}
the attack.\(^{89}\)

While this witness’ testimony strengthened the prosecution’s argument in proving the requisite specific intent necessary to convict with the hate crime enhancement, the breakthrough came when Matthew M. testified.\(^{90}\) After direct examination, the prosecutor asked Matthew M. about his alleged use of racial slurs. Matthew M. testified: “I do not know one person who hasn’t said ‘Chinaman.’ I’ve said ‘Chinaman,’ but not in a racist form. If you call someone a ‘Frenchman,’ or ‘Italianman,’ it’s not offensive.”\(^{91}\) Not only did his testimony shock those in the courtroom, it also helped the prosecution prove Matthew M.’s racist intent beyond a reasonable doubt required to obtain the hate crime enhancement.

After several weeks of trial, on July 14, 2004, Judge McCarthy determined that Matthew M. had indeed committed an anti-Asian American hate crime. He remarked that the five boys were “victims of the most despicable kind of behavior that can be imagined.”\(^{92}\) When the victims heard the verdict, it provided them with a sense of relief that the justice system worked in their favor.\(^{93}\) Along with their families, they also felt vindicated by Judge McCarthy’s decision that hate crimes against members of the Asian American community are not tolerated and do not go without punishment in San Francisco.\(^{94}\) The verdict, however, was bittersweet. As Prather aptly stated at the end of the trial, “there is no winner in a hate crime prosecution . . . it dredges up all the feelings of being a victim.”\(^{95}\) Nonetheless, the boys were happy to close this chapter of their lives.

For Matthew M.’s punishment, the prosecution followed the victims’ desire and declined to seek jail time. Instead, the prosecution recommended community service. Since Matthew M. was “just a kid,”\(^{96}\) Judge McCarthy sentenced him to 100 hours of community service and one year of juvenile probation.\(^{97}\) In accordance with Judge McCarthy’s sentence, Yeung helped select Sunset Youth Services, a local Asian-


\(^{90}\) Interview with Edwin Prather, supra note 52.

\(^{91}\) Hua, supra note 30.

\(^{92}\) Prather, supra note 29.

\(^{93}\) Interview with Edwin Prather, supra note 52.


\(^{97}\) Id.
American organization, for Matthew M. to perform his community service.\(^98\)

II. TARAVAL PLACED IN THE BROADER CONTEXT OF ANTI-ASIAN AMERICAN HATE VIOLENCE

A. Introduction

Hate crimes are among some of the most brutal crimes because they invoke a feeling of helplessness for victims based on an immutable characteristic such as race.\(^99\) This notion proved true in the Taraval Hate Crime, as the effects of the attack still creep into the boys’ lives to this day.\(^100\) For Asian Americans in general, hate crimes have become more prevalent in recent years, and in fact, are increasing at a much faster rate compared to other ethnic groups.\(^101\) Although Asian Americans comprise only about four percent of the United States population, they are the fourth most likely group to be attacked.\(^102\)

Several authors have offered theories explaining this trend. One reason why Asian Americans are likely to fall victim to hate crimes is that discrimination against them targets their “foreignness,”\(^103\) whereas European immigrants are not perceived as “foreign” due to an easier ability to assimilate into American life and culture based on purely physical characteristics. Another reason explaining this trend is that Asian Americans are often unfairly stereotyped as submissive and docile.\(^104\) Another explanation posits that Asian Americans are viewed as unfair competitors who pose an economic threat to American jobs.\(^105\) One additional reason holds that Asian Americans are viewed as fungible\(^106\) and thereby treated as marginal and replaceable. When viewed in this way, it is easier for assailants to dehumanize Asian American victims since the social and psychological inhibitions against committing violence on a fellow human being become disengaged.\(^107\)

---

98. Interview with Malcolm Yeung, supra note 55.
100. Interview with Edwin Prather, supra note 52.
104. Note, supra note 14, at 1931.
105. Id.
106. Id. at 1931. Since Asian Americans share similar physical characteristics, it may be difficult for non-Asian Americans to distinguish between them, thus inviting people to presume a reductionist similarity amongst all people of Asian descent. Id. at 1932.
107. Id. at 1932.
These reasons explaining why Asian Americans become victims to hate crimes help contextualize the following Section, which discusses the deaths of Asian Americans Vincent Chin and Kuanchang Kao. In our examination of these two hate crimes, we reveal the circumstances of their deaths, the response from the Asian American community, and the remedy for the victims and their families. By discussing these two events, we can better contextualize the Taraval Hate Crime and compare the similarities and contrast the differences amongst the three. We hope to illustrate how hate crime prosecution for Asian Americans evolved over time to work in the favor of Asian American victims.

B. The Hate Crime Against Vincent Chin

The hate crime against Vincent Chin symbolizes the larger problem of racism and its violent expression, and continues to inform the consciousness of Asian Americans in classrooms and in the community today. It is perhaps the most prominent example of an anti-Asian American hate crime. On June 19, 1982, two white individuals beat Asian American Vincent Chin to death. Chin’s death occurred at a time when anti-Japanese resentment was high in the United States, which was based on the Japanese automobile industry taking jobs away from workers in the American automobile industry. While celebrating his bachelor party at a bar in Detroit, two white individuals, who recently lost their jobs as automobile workers, taunted Chin with racial slurs believing he was Japanese. After the verbal altercation, Chin left the bar and the two individuals followed him to the parking lot where they savagely beat him with a baseball bat. Four days later, and five days before his wedding day, Chin died.

The two defendants, Ronald Ebens and Michael Nitz, never served a day in jail. Their trial judge did not even consider Chin’s murder, where the accused “swung a baseball bat at his head as if he were hitting a home run,” to be a brutal murder. Both defendants were ultimately acquitted, and received only two years of probation.

110. Id. at 174.
111. United States v. Ebens, 800 F.2d 1422, 1427–28 (6th Cir. 1986).
112. Id. at 1428.
113. Id.
115. Bedi, supra note 8, at 198.
117. Id.
2012]

Looking back at the circumstances of Chin’s death, it is difficult to fathom how his senseless murder went essentially unpunished by the criminal justice system. His assailants escaped criminal prosecution with only two years of probation, and the prosecution did not charge their actions as a hate crime. Other aspects of his case, however, are quite shocking as well. For example, Chin’s family was unaware of important stages of the legal proceedings. Specifically, none of his family members were present at or knew about the court date of the criminal sentencing, and ultimately learned through a friend about the lenient sentence of probation and a $1,500 fine for each defendant.\textsuperscript{118}

Other aspects of the criminal trial against Chin’s assailants contributed to their modest punishment and further diminished the Asian American community’s faith in the legal system. At trial, the prosecution presented a weak case by failing to call key witnesses that would have helped prove the charges against Chin’s assailants.\textsuperscript{119} Moreover, the prosecutor seemed genuinely disinterested in the case as well: the prosecutor neglected to attend the sentencing hearing of the assailants.\textsuperscript{120}

Aside from Chin’s family knowing little about the criminal case, and the weaknesses in the prosecution, one of the most glaring barriers to justice was the lack of an Asian American public interest and legal presence to support Chin’s family, and raise awareness during the criminal prosecution. After the trial judge handed down the lenient sentence for Chin’s assailants, the verdict served as a wake-up call to the Asian American legal community.\textsuperscript{121} Specifically, the criminal justice system’s failure on Chin’s behalf forced Asian American attorneys and advocates to re-examine their efforts, and ultimately caused them to coalesce and fight for Chin’s civil rights.\textsuperscript{122}

In order to fight more effectively on behalf of Chin and his family, Asian American advocates formed the American Citizens for Justice (ACJ), a group that sought a retrial against his two assailants.\textsuperscript{123} This group’s creation marked the first time Asian Americans united as one ethnic group, rather than separate entities, to fight against Asian American hate crimes.\textsuperscript{124} To raise awareness of and to seek justice for Chin’s death, the ACJ staged demonstrations, held rallies, and organized a massive letter-writing campaign to politicians, the press, and the Department of Justice.\textsuperscript{125} The ACJ also organized events where prominent civil rights speakers

\begin{itemize}
\item \textsuperscript{118} See Lai & Leong, supra note 114, at 85.
\item \textsuperscript{119} Yip, supra note 108.
\item \textsuperscript{120} Id.
\item \textsuperscript{121} See id.
\item \textsuperscript{122} Id.
\item \textsuperscript{123} Id.
\item \textsuperscript{124} Id.
\item \textsuperscript{125} Id.
\end{itemize}
helped bring awareness to the issue.\textsuperscript{126} With the ACJ’s help, and to raise money for a civil suit, Vincent Chin’s mother Lily, traveled the country and spoke to seniors and immigrants about her experience.\textsuperscript{127} Traveling the country and speaking to other Asian Americans further unified the greater Asian American community. Individuals who otherwise would have been linguistically or culturally removed from the movement were now able to relate to Lily’s experience as a non-English speaker and recent immigrant.\textsuperscript{128} In addition to Lily’s efforts to raise awareness for her son, the ACJ’s efforts finally prompted a Department of Justice investigation. This investigation led to a successful civil suit against Chin’s two assailants.\textsuperscript{129}

With the creation of the ACJ, and the successful pursuit of justice in the civil case, Chin’s death and the Asian American response became a watershed moment for all Asian Americans for several reasons. First, the unsuccessful criminal prosecution of Chin’s assailants revealed the importance of community involvement in raising media attention about the case and pressuring the prosecution to obtain a criminal conviction.\textsuperscript{130} Furthermore, the lack of community involvement demonstrated the adverse effects that result when this element is lacking.\textsuperscript{131} Second, the formation of the ACJ marked the first time that Asian Americans considered themselves not just a scattered minority, but rather, a self-defined American racial group that faced common discrimination.\textsuperscript{132} Third, Asian American attorneys and legal organizations realized that their efforts are necessary to defend not only their rights, but more importantly, the rights of those unable to defend themselves.

While nothing could replace the lack of a criminal conviction for Chin’s assailants, the lessons learned, the successful civil suit, and the creation of the ACJ showed how Asian Americans can effectively organize to fight against hate crimes.

\textbf{C. The Death of Kuanchang Kao}

Like Vincent Chin’s murder, the death of Kuanchang Kao is another prominent example of anti-Asian American hate violence. The event received considerable scrutiny and elicited significant scholarly attention.\textsuperscript{133} As such, it stands as another example of how the Asian American legal community organized to help Kao’s family achieve justice.

\textsuperscript{126} Id.
\textsuperscript{127} Id.
\textsuperscript{128} Id.
\textsuperscript{129} Id.
\textsuperscript{130} See Lai & Leong, supra note 114, at 86.
\textsuperscript{131} Yip, supra note 108.
\textsuperscript{132} Id.
\textsuperscript{133} Chang, supra note 116, at 141.
On April 29, 1997, Kao was peacefully celebrating a new job at a bar in Sonoma County, California, until other bar patrons began taunting him for being Asian American. These racial epithets angered Kao, which led to a physical altercation. After police officers showed up at the bar and calmed down all of the individuals involved, Kao left the bar in a taxicab, angry and drunk. When he arrived home, Kao began yelling about the racist altercation at the bar to anyone within earshot, in a desperate plea for help. At this time, Kao was also waiving a broomstick in the middle of his driveway to gain attention. In response to his yelling and broomstick waiving, his neighbors called 911.

Shortly thereafter, Rohnert Park police officers arrived at the driveway of Mr. Kao’s house without lights or sirens, and shone a spotlight directly in his face to disorient him. A police officer also drove his car fast toward Kao in an attempt to get him to drop the broomstick, and when that failed, the officer retreated to wait for backup. When the backup officer arrived, he claimed he felt threatened by Kao’s waiving of the broomstick because Kao posed a “martial artist” threat to his safety. That police officer then shot Kao three times, killing him within thirty-four seconds after his arrival.

Following Kao’s death, the Rohnert Park Sheriff’s Department issued a press release that justified the officers’ brutal force on the grounds that Kao was “brandishing a stick in a threatening martial arts fashion.” This nine-page press release also contained many references to martial arts, including a neighbor’s claim that Kao had been spinning the stick “in a manner consistent with a ‘Ninja Fighter,’ and had been standing in a ‘Samurai warrior-type stance.’” This report perpetuated the untrue stereotype levied against Asians as dangerous “kung fu fighters,” and apparently justified the police officers’ use of brutal force.

Despite the troubling press release, which justified the actions of the police officer, the Asian Law Caucus used lessons learned from the Chin case and played a pivotal role in organizing community involvement to seek legal remedy for Kao’s death. It formed the Justice for the Kao Family Coalition. This coalition included, among others, the American Civil Liberties Union, the Chinese Center for Community Development

---

134. Id.
135. Id. at 150.
136. Id.
137. Id.
139. Id.
140. Chang, supra note 116, at 142.
141. Saari, supra note 138.
142. See Lai & Leong, supra note 114, at 108.
143. See Chang, supra note 116, at 139.
144. Id.
The Asian Law Caucus communicated with these groups and other community organizers who worked on the Vincent Chin case, and believed that presenting the true nature of the circumstances surrounding Kao’s death were critical to achieve justice. In order to accomplish this task, the Asian Law Caucus and the Kao Family Coalition set out to be as “media savvy” as the pro-police public relations organization in Sonoma County.

With this in mind, the Kao Coalition began working on Mr. Kao’s behalf, and each member of the coalition contributed in its own way. Some individuals from the Coalition prepared legal documents and analyses in the hopes of bringing a criminal prosecution against Kao’s killer. Others counseled the Kao family, while others lobbied for the legislative reform of hate crime statutes. In addition, the coalition raised awareness about the case through an aggressive media campaign, public events, and rallies in San Francisco’s Union Square and Chinatown.

Despite the Kao coalition’s best efforts, the police officer that killed Kao was not prosecuted. The Asian Law Caucus’ efforts, however, still proved fruitful. Without the Caucus’ efforts in drawing attention from the media, local law-enforcement agencies, and the prosecutor’s office, Kao’s family would have been far less likely to pursue or obtain, any sort of remedy for his death. Through the efforts of the Asian Law Caucus, the Kao coalition not only persuaded the FBI to conduct an investigation into his death, but also helped Kao’s family win a civil suit against the city of Rohnert Park for over one million dollars for Kao’s wrongful death.

D. Comparisons

It is useful to compare the Taraval Hate Crime to the Chin and Kao deaths to reveal similarities and highlight key differences, and also demonstrate how much progress the Asian American community has made in response to hate crimes. Beginning with the similarities, all three incidents began as innocuous situations for the victims. Before their deaths, both Chin and Kao were celebrating important moments in their lives: marriage and a new job, respectively. Similarly, the five boys in the Taraval Hate Crime were also celebrating: they just attended a senior high school graduation party.

145. Id. at 157.
146. Id.
147. Id.
148. Id. at 155.
149. Id. at 157.
150. Id. at 151.
school dance and wanted to eat dessert before finishing their night. In all three scenarios, none of the victims were looking for trouble.

These three incidents are also comparable in regards to the unprovoked racist slurs and actions of their assailants that ultimately led to violence. Whether it was the anti-Asian resentment resulting from the perceived economic threat in Chin’s case, or the stereotyping of Kao as a dangerous “kung fu fighter,” or simply the treatment of the five boys in the Taraval Hate Crime by their assailants as “foreigners” and “fungible,” all victims were targeted based solely on their race.

To fight on behalf of these victims, public interest and community organizations within the Asian American community played pivotal roles in all three cases. These organizations helped expose the racist intent behind each incident and came up with strategies to engage the proper authorities to pursue and obtain justice for the victims. In the Kao death and the Taraval Hate Crime specifically, the Asian Law Caucus helped generate considerable media attention to expose the facts of each incident. Otherwise, the incidents would have probably been largely ignored to the detriment of the victims.

The three incidents are not without differences, however. The most glaring difference is that unlike Chin and Kao, the five boys in the Taraval Hate Crime achieved legal victory: a criminal conviction and an accompanying hate crime enhancement for their assailant. In contrast, the defendants in the Chin and Kao cases never received proper punishment. The two men who beat Vincent Chin to death were acquitted of murder, and the police officer who shot Kao was never charged with a crime. While both families obtained monetary settlements from civil suits, this remedy did not adequately punish the assailants for the murders of Chin and Kao. Due to the lack of criminal convictions, families of the victims and Asian Americans in general lost faith in the legal system.

The Taraval Hate Crime, on the other hand, demonstrated to the Asian American community in San Francisco that the legal system, although imperfect, still works. Nonetheless, in order to obtain a hate crime conviction, Asian American attorneys and legal organizations in the community still needed to assert additional pressures on the police department and district attorney’s office to investigate and prosecute the case.

Despite these main differences, however, the Taraval Hate Crime owes its success in large part to the experiences of Vincent Chin and Kuanchang Kao. Because of organizations like the Asian Law Caucus and individuals who helped bring the victims’ situations to light, “anytime an Asian American is killed under suspicious circumstances that possibly involve race, Asian American groups are there to investigate the case, alert

152. Id.
the police departments to be sensitive to race, and inform district attorneys and politicians.\textsuperscript{153} There are some possible solutions, however, that can ensure even more successful outcomes for victims of hate crimes.

IV. PROPOSED SOLUTIONS FOR FUTURE PROSECUTIONS OF HATE CRIMES

As this trilogy of incidents demonstrates, there is a direct correlation between proactive efforts by the greater Asian American community, public interest and legal aid organizations, and the achievement of justice for the victims and their families. The Chin and Kao deaths demonstrate how the Asian American community and legal organizations respond to tragic incidents, and the Taraval Hate Crime utilized the lessons from those experiences.

The Chin and Kao cases also illustrate, however, that community support and legal aid do not guarantee a successful criminal prosecution. In the Chin case, for example, both defendants avoided criminal convictions and an accompanying hate crime enhancement because the prosecutor was unable to demonstrate the racist intent underlying their violent actions, a requirement of hate crime statutes.\textsuperscript{154} There was not even a comprehensive hate crime statute to begin with.\textsuperscript{155} Though the perpetrators used racial slurs during their attacks and their actions most likely constituted a hate crime, they were never convicted.\textsuperscript{156}

Furthermore, in the Kao case, the Rohnert Park Police Department did not disclose the true nature of Kao’s death. Based on this cover-up which was only later exposed by the Asian Law Caucus, the police officer who killed Kao avoided criminal prosecution altogether. Moreover, Kao’s death could not adequately be characterized as a hate crime since the police officer used self-defense as a justification for his use of brutal force.\textsuperscript{157}

Those incidents contrast significantly with the successful outcome of the Taraval Hate Crime, in which several factors existed to secure a criminal conviction. Those elements are (1) a comprehensive hate crime statute; (2) ongoing community and legal support for the victims; (3) significant media attention to publicize and condemn the incident; and (4) law enforcement entities willing to investigate and prosecute the incident as a hate crime.

While the presence of these factors enabled the victims to achieve justice in the Taraval Hate Crime, their presence alone might not guarantee success in other hate crime prosecutions. Therefore, to improve the prosecution of hate crimes in the future, we propose three solutions. First,

\textsuperscript{153} Yip, supra note 108.
\textsuperscript{154} Chang, supra note 116, at 151.
\textsuperscript{155} Id. at 147 (noting that the prosecution hinged upon 18 U.S.C. § 245, which required motivation based on race for a proper conviction).
\textsuperscript{156} Id.
\textsuperscript{157} Id. at 154.
and perhaps most importantly, the police department and/or district attorney’s office must notify legal and public interest organizations who advocate on behalf of hate crime victims whenever an incident that may qualify as a hate crime occurs. Second, district attorney offices across the state must have broader access to information between offices and share all information regarding the successful and unsuccessful resolution of hate crime cases. Third, although some district attorney offices across the State already utilize “hate crime teams” or “units,” our proposal calls for uniformity in policy, training, and practice across the state and between offices. These solutions assume that victims will report incidents to the police and that the incidents will be adequately investigated and reach the criminal prosecution stage.\textsuperscript{158}

\textbf{A. Notify Community and Legal Organizations Automatically}

On November 4, 2008, California voters approved Proposition 9, otherwise known as the Victim’s Bill of Rights Act 2009: Marsy’s Law, which amended portions of the California Constitution and Penal Code.\textsuperscript{159} Under Marsy’s Law, certain rights are granted to victims of a crime, which include substantial notification rights regarding the arrest of a defendant, the status of a criminal case’s proceedings, and the ability to be informed about a conviction or sentence, among other things.\textsuperscript{160} For the purposes of this proposal, which is to extend the provisions of Marsy’s Law to community organizations that advocate on behalf of hate crime victims, the most relevant sections are California Constitution, article I, sections 28(b)(6), (7), (8), and (12):

(b) In order to preserve and protect a victim’s rights to justice and due process, a victim shall be entitled to the following rights: . . .

(6) To reasonable notice of and to reasonably confer with the prosecuting agency, upon request, regarding, the arrest of the defendant if known by the prosecutor, the charges filed, the determination whether to extradite the defendant, and, upon request, to be notified of and informed before any pretrial disposition of the case.

(7) To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other post-conviction release proceedings, and to be present at all such proceedings.

(8) To be heard, upon request, at any proceeding, including any delinquency proceeding, involving a post-arrest release decision.

\begin{thebibliography}{99}
\bibitem{158} Note, supra note 14, at 1942.
\end{thebibliography}
plea, sentencing, post-conviction release decision, or any proceeding in which a right of the victim is at issue . . . .

(12) To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant, and the release of or the escape by the defendant from custody.\(^\text{161}\)

Since community and legal aid organizations are necessary to provide aid, support, and counsel to hate crime victims, the solution expands on the relevant notice provisions of Marsy’s law provided to victims of a crime, and makes notification provisions applicable to any and all public interest organizations likely to advocate for and counsel victims of hate crimes. For example, by applying section 6 of Marsy’s Law to organizations like the Asian Law Caucus and attorneys associated with it, district attorney offices would have to provide reasonable notice regarding aspects of a criminal hate crime prosecution and increase coordination and cooperation with these entities. As the facts of the Taraval Hate Crime demonstrate, Asian American attorneys Edwin Prather and Malcolm Yeung performed this task to a certain extent: they both coordinated and cooperated with the district attorney’s office to ensure that the hate crime prosecution went forward.

This same reasoning can be applied to the other three sections. For example, using the facts from the Taraval Hate Crime, Malcolm Yeung helped select the organization where Matthew M. was to perform his community service. Under section 8 of Marsy’s Law, as applied to this solution, organizations like the Asian Law Caucus and attorneys who work with hate crime victims will be required to be involved in decisions like a post-arrest release decision, plea, or sentencing. Since hate crime victims might not be able to fully understand the thought process behind some of these legal decisions, their needs are better served if provisions of Marsy’s Law are applied to legal organizations that advocate on their behalf.

Furthermore, this solution eliminates the now-necessary but arduous task public interest and legal aid organizations must perform to discover relevant information about a hate crime. In the Taraval Hate Crime, for example, the efforts of Asian American attorneys and legal organizations faced an uphill battle on behalf of their victims from the day of the incident. If this solution had been implemented in the Taraval Hate Crime, as well as the Chin and Kao incidents, Asian American attorneys and organizations would have learned about the arrests of the assailants. Additionally, for example, in the Chin case, entities like the ACJ would have been alerted of all public proceedings, including sentencing, and would have been able to inform Chin’s family about all aspects of the case. Had these notification provisions been mandatory in the three hate crimes

\(^{161}\) CAL. CONST. art. I, §§ 28(b)(6), (7), (8), (12).
discussed in this Article, the victims would have most likely been able to fully achieve justice, or at the very least prosecute their assailants more expeditiously. Applying the notification provisions of Marsy’s Law, therefore, will allow entities like the ACJ, Asian Law Caucus, and CCDC, to more quickly commence legal proceedings and to be better prepared to concentrate and perform work on behalf of hate crime victims.

B. Increased Information Sharing Amongst District Attorney Offices

The second proposed solution is to require all district attorney offices across the state to share information whenever a hate crime prosecution takes place or has concluded. This, of course, assumes that the victims’ confidentiality rights are respected. Given the size of California, and the multitude of offices across the state, this solution might not be easy to implement. Nonetheless, information sharing has several benefits. First, it will greatly enhance data regarding hate crimes. It will more readily identify those who commit hate crimes and their potential victims, and it will help provide a better understanding for why these crimes are committed. With this information, lawmakers and legislators can take aim at how to deal more effectively with hate crimes, and perhaps even try to prevent or at least slow down the commission of hate crimes.

Second, information sharing amongst prosecutors will help them in future hate crime prosecutions. Specifically, if prosecutors share information such as how to effectively deal with victims and their families, what techniques help prove specific intent required by hate crime statutes, and what community organizations work well with victims, this will only benefit victims in the long run.

C. Hate Crime “Units” or “Teams” in District Attorney Offices

The third solution builds upon the second one, but takes it one step further. Specifically, this solution proposes a legislative mandate that requires uniform policies and procedures for district attorney offices across the state. One author has already hinted at this solution and stated that the next step in prosecuting more hate crimes is to alter prosecutorial behavior, so that prosecutors do not see racist violence as a mere prank, unworthy of zealous prosecution. 162

Currently, district attorney offices across the state employ different strategies and policies in prosecuting hate crimes. A sampling of five district attorney offices, in San Francisco, Los Angeles, Santa Clara, Orange County, and Fresno reveals either different “units,” “initiatives” or “teams” that prosecute hate crimes, or have nonexistent polices altogether. The San Francisco District Attorney’s office, for example, utilizes a program called the “Hate Crimes Reduction Initiative,” that aims to “ensure

162. Note, supra note 14, at 1942.
that hate crimes against minorities are not tolerated.” 163 This initiative directs the District Attorney’s office to coordinate hate crimes enforcement with the police department to ensure effective prosecution. 164 Furthermore, “to combat the notorious underreporting of hate crimes, the District Attorney also launched a public education campaign designed to educate at risk communities about the steps they can take to report hate crimes.” 165 Given this description, the district attorney’s office in San Francisco has an expansive policy, which is a good thing for hate crime victims and their communities.

The District Attorney’s office in Los Angeles also has a policy in place for hate crime prosecutions. Through this policy, the office utilizes the Victim Impact Program, 166 a specialized unit that prosecutes hate crimes amongst a litany of other victim crimes. Prosecutors in this unit receive special training and vertically prosecute each case, which means only one deputy district attorney handles the case from beginning to end. 167 Through vertical prosecution, prosecutors and victims are able to work together, and in doing so, the prosecutor is able to develop better rapport with the victims.

By utilizing vertical prosecution, the Los Angeles District Attorney’s office claims that hate crime prosecution is more effective, and victims feel more satisfied and at ease with the person who is representing their interests. 168 Furthermore, the implementation of the Victim Impact Program has also doubled the number of specially trained prosecutors to ensure that victims, and their assailants, receive proper attention and scrutiny. 169

Like San Francisco and Los Angeles, the Santa Clara County District Attorney’s office has its own hate crime policy. Its website provides information about hate crimes, offers a brochure for victims of hate crimes, and mentions that certain prosecutors comprise a “Hate Crimes Team” that handles the prosecution of these cases. 170 Information about this “team”

164. Id.
165. Id.
166. The Los Angeles County District Attorney’s Office provides a description of their program: Law enforcement has a special obligation to the most vulnerable crime victims. In addition to seeking justice for them, law enforcement must treat them with the utmost dignity and compassion. To that end, the District Attorney’s Office has established the Victim Impact Program (VIP) to handle cases involving elder abuse, child abuse, hate crimes, sex crimes, stalking, and family violence. Victim Impact Program, LOS ANGELES COUNTY DISTRICT ATTORNEY’S OFFICE, http://da.lacounty.gov/vip.htm (last updated June 2, 2011).
167. Id.
168. Id.
169. Id.
gleaned from the Santa Clara County’s DA’s website does not seem as comprehensive or structured as the policies and programs of San Francisco or Los Angeles.

Similar to Santa Clara, the Orange County District Attorney’s office has a policy that states “all potential cases are referred to a designated deputy district attorney in the Special Prosecutions Unit,” and that the “prosecutor is an expert in the field . . . who handles the case during all stages of prosecution.” The Fresno County District Attorney’s office, on the other hand, does not have information related to hate crime prosecution on its website.

While the goal of these offices is to earn guilty convictions on hate crimes, their policies are different. Although some offices have “units” or “teams,” it is unclear whether they operate similarly, have adequate resources committed to prosecuting hate crimes, or whether the prosecutors in these offices are trained to deal with this special class of victims. While it is idealistic to think that all prosecutors empathize with each victim equally, it is more likely the case that Asian prosecutors, for example, or African American prosecutors, relate better to victims of their own race.

A uniform policy or standard, therefore, could help resolve any discrepancies amongst offices to ensure that all hate crimes are prosecuted and dealt with uniformly. This reform would require focus primarily on educating district attorneys about the different cultural norms and differences for ethnic groups. Training of this kind would also emphasize how to effectively prove the racist intent required by hate crime statutes, and discourage prosecutors to plea bargain or negotiate with assailants charged with hate crime enhancements. After all, one of, if not the main goal in hate crime prosecutions is to obtain the hate crime enhancement.

This proposal is not without limitations, however. A mandate of this scale obviously raises budgetary concerns. It is unclear where the money to fund this proposal will come from. Furthermore, although larger counties with diverse metropolitan areas might be better suited economically to incorporate these changes, smaller counties might despise such proposed changes. For example, district attorney offices in smaller counties might not prosecute as many hate crimes in comparison to San Francisco and Los Angeles (which might explain those offices’ detailed hate crime units). This being the case, these smaller offices might resent implementing a hate crime program that hardly benefits the office, or any victims.

To guard against these limitations, the state legislature could provide an incentive for all counties to participate, and have an “opt out” clause for...
all offices. Stated otherwise, all district attorney offices from all counties across California will be presumed to consent to participation. An office that “opts out” of the program, therefore, would not receive any state funding. To guard against offices “opting out” offices may be permitted to use those funds, as necessary, in other areas of the office. This might be the case where offices do not prosecute hate crimes, and therefore, do not require special “units” and training. Alternatively, if these offices refuse to accept these funds, these funds can be reallocated to other offices across the state that require them. Offices with a greater need, and thus with a greater amount of hate crime victims, will be in a better position to move forward with hate crime prosecutions.

While there are certainly other solutions to help victims in future hate crime prosecution, these three proposed solutions are rational given some of the limitations and circumstances in the three incidents described in this Article. Furthermore, these solutions would strengthen what is already necessary in a hate crime prosecution: notification to community organizations, and uniformity of prosecutorial conduct across the state. If implemented, these solutions would likely increase the chances of a successful hate crime prosecution.

CONCLUSION

The attack that became known as the Taraval Hate Crime evolved into a successful prosecution due to the presence of four factors: (1) a comprehensive hate crime statute; (2) ongoing community and legal support for the victims; (3) significant media attention to publicize and condemn the incident; and (4) law enforcement entities willing to investigate, and prosecute the incident as a hate crime. While the convergence of these four factors ensured that the victims of the Taraval Hate Crime would receive justice in the form of a criminal and hate crime conviction for their assailant, both the Chin and Kao cases demonstrate that there are inherent limitations in the prosecution of anti-Asian American violence.

Limitations in those cases, namely, the lack of community support in the Chin case, and law enforcement reluctance in both, demonstrate the logic behind the solutions proposed in this article. Yet these solutions might not be enough. As this Article has suggested, Asian Americans are often hesitant to report hate crimes to law enforcement authorities. This must change so that Asian Americans can feel comfortable with reporting these incidents to the police. Only then can organizations like the Asian Law Caucus effectively work on victims’ behalf and coordinate with police departments and district attorneys offices to pursue justice for these individuals. While the elimination of such incidents like the Taraval Hate Crime in our society is unlikely in the foreseeable future, the proposals in this paper and the continued aid from Asian American attorneys and
organizations on behalf of victims will ensure that they are dealt with effectively.

Using the lessons learned from Chin, Kao, and, more recently, the Taraval Hate Crime cases, attorneys should strive to advocate on behalf of victims who are unable to do so for themselves. Whenever the civil rights of Asian Americans are compromised, Asian American attorneys and legal organizations must coalesce to help these victims. Their efforts, while not always successful in obtaining conviction in hate crime prosecutions, certainly help victims achieve a remedy otherwise unobtainable.