

U.S. COMMISSION ON CIVIL RIGHTS

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COMMISSION BRIEFING

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FRIDAY, MARCH 24, 2023

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The Commission convened at the National Press Club, 529 14th Street, Northwest, 13th Floor, Washington, D.C., at 1:00 p.m. EDT, Peter Kirsanow, Commissioner and Moderator, presiding.

PRESENT:

PETER N. KIRSANOW, Commissioner, Moderator

STEPHEN GILCHRIST, Commissioner

JOHN CHRISTIAN ADAMS, Commissioner

GAIL HERIOT, Commissioner

GLENN MAGPANTAY, Commissioner

VICTORIA NOURSE, Commissioner

ROCHELLE GARZA, Commissioner

MONDAIRE JONES, Commissioner

MAURO MORALES, Staff Director

DAVID GANZ, General Counsel

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STAFF PRESENT:

CODY BOWLER

SHERYL COZART

PAMELA DUNSTON, Chief, ACSD

PATRICIA FLETCHER

JULIE GRIECO

NICOLE HEWITT

JOE KIM

TINALOUISE MARTIN

PILAR MCLAUGHLIN

PRINCE OLUBAKINDE

ESSENCE PERRY

SWASTI SHAH

MARK SPENCER

MICHELE YORKMAN-RAMEY

MARIK XAVIER-BRIER

COMMISSIONER ASSISTANTS PRESENT:

ALEXIS FRAGOSA

JOHN MASHBURN

CARISSA MULDER

THOMAS SIMUEL

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P-R-O-C-E-E-D-I-N-G-S

(1:00 p.m.)

COMMISSIONER KIRSANOW: Good afternoon and welcome to the U.S Commission on Civil Rights briefing on anti-Asian racism in the United States. Thank you to the witnesses, staff, and guests who are joining us today -- whether in-person or virtually.

The briefing comes to order at 1:00 p.m. Eastern Standard Time; we're holding the briefing in the National Press Club.

I'm Commissioner Peter Kirsanow, I'll be moderating the briefing today. I'll be joined by Commissioner Adams, Commissioner Garza -- try to do this in alphabetical order -- Commissioner Gilchrist, Commissioner Heriot, Commissioner Magpantay -- tay, I'm sorry, Magpantay -- and Commissioner Nourse.

A quorum of the Commissioners is present.

Staff Director is present right to my right here -- is it Morales -- is the Court Reporter present?

COURT REPORTER: Present.

COMMISSIONER KIRSANOW: Thank you very much.

Before we begin, I'd like to welcome our newly appointed Commissioners who are with us today.

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1 Commissioners Garza, Magpantay -- I keep screwing that
2 up, Magpantay -- and Nourse. Commissioner Mondaire
3 Jones is unable to join us today, but we look forward
4 to welcoming him in the future.

5 Since we're a little pressed for time
6 today, I'll briefly introduce each of our new
7 Commissioners, and they may wish to say a few words.

8 Commissioner Rochelle Garza was appointed
9 by President Biden and sworn in on March 17 of this
10 year, she's an attorney from the Rio Grande Valley,
11 currently serving as president of the Texas Civil
12 Rights Project. She has expertise in immigration,
13 family, criminal, and constitutional law.

14 Commissioner Glenn Magpantay was appointed
15 to the commission by Senate Majority Leader Chuck
16 Schumer and sworn in on February 15 of 2023. He's a
17 longtime civil rights attorney, professor of law in
18 Asian-American studies, and LGBTQ rights activist. He
19 is a principal at Magpantay and Associates, and a
20 Soros Equality Fellow.

21 And last, Commissioner Victoria Nourse was
22 appointed to the commission by President Biden and
23 sworn in on March 16 of 2023. She's the Ralph
24 Whitworth Professor of Law at Georgetown University
25 Law School. She's also taught at a number of other

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1 institutions such as Yale, NYU, and Northwestern.
2 She's authored textbooks and dozens of legal articles.

3 Welcome to our new Commissioners. Would
4 each of you, starting with Glenn, like to say a few
5 words?

6 COMMISSIONER MAGPANTAY: Sure. It's an
7 incredible honor to be here to have this opportunity
8 to serve our country, and to raise these issues that
9 so importantly affect our community.

10 As Asian-Americans are growing in this
11 country, the distinct honor of being an Asian-American
12 member of this commission, but really looking at the
13 rights and issues that affect all Americans across
14 this country.

15 It was 30 years ago that this commission
16 unveiled a report called Civil Rights Issues in the
17 90s, and I remember when I was a young law student
18 researching my law review article, there was nothing
19 out there about the Asian-American community. And yet
20 this commission, well before I even became an admitted
21 attorney, provided the insights and information that
22 we needed to look at the growing community in our
23 country.

24 I'm so excited for all the panelists to be
25 on this commission, to serve our country, and for the

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1 important issues that we have here today, and for the
2 work of the commission for the next couple of years.
3 Thank you.

4 COMMISSIONER KIRSANOW: Commissioner
5 Nourse?

6 COMMISSIONER NOURSE: Well, thank you so
7 much. I've been delighted and honored to be nominated
8 by President Biden, who I've known since I was a 30-
9 year-old lawyer working on the Senate Judiciary
10 Committee. And I'm delighted to be nominated with a
11 phenom from Texas, Rochelle Garza, who's going to
12 speak in a minute.

13 But I just know that the president, if he
14 were here today, he would say this is exactly the
15 example of what I used to do in the Senate. We work
16 better together than apart, and that the United States
17 needs right now so much, in particular in the Asian
18 sphere, to be a leader in human rights.

19 So, I'm delighted that this is our first
20 hearing and I look forward to hearing from your
21 testimony.

22 COMMISSIONER GARZA: Good afternoon,
23 everyone. It is truly an honor for me to have been
24 appointed by President Biden to this very important
25 position, I deeply deeply care about civil rights.

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1 You know, I'm a civil rights attorney from South
2 Texas, my father was a farmer -- he was one of 13
3 children.

4 I've been thinking a lot about my
5 grandmother, a lot about the future of my daughter --
6 she turns one today, and --

7 (Applause.)

8 COMMISSIONER GARZA: So, I want to make
9 sure that we make this country -- or, continue to go
10 on the path where there is equal protection for
11 everyone in this country, because I deeply believe
12 that. I am very excited that this is the first panel
13 that we will be hearing from about this incredibly
14 important topic about anti-Asian bias that is
15 impacting people across this country.

16 So, thank you so much for being here and I
17 look forward to hearing from all of you.

18 COMMISSIONER KIRSANOW: Thank you very
19 much and welcome to the new Commissioners, or
20 condolences.

21 (Laughter.)

22 COMMISSIONER KIRSANOW: The subject of
23 today's hearing, the federal response to anti-Asian
24 racism in the United States. This is a topic that
25 former Commissioner Yaki, from whom we will be hearing

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1 a little bit later today, and who, by the way, speaks
2 fluent Klingon, had the pleasure -- he proposed this
3 topic last year.

4 And all of us have been alarmed by news
5 reports of attacks against Asian-Americans, this has
6 been going on for some time, I had been involved in
7 this and tried to get a briefing on this issue myself,
8 and here we are.

9 I'm happy that we're going to be
10 addressing this at this time, and I thank the
11 commission staff, and our special assistants, and
12 everyone for putting this thing together -- all the
13 hard work that it entailed and getting knowledgeable
14 witnesses to testify in front of us.

15 The commission will hear from three panels
16 of expert witnesses. The first panel consists of
17 policy and research experts, the second panel will
18 consist of community stakeholders and advocates, and
19 the third and final panel consists of law enforcement
20 and federal officials.

21 Now, the logistics of it are each panelist
22 gets seven minutes in which to speak. Now, there's a
23 system of warning lights there set up so you know how
24 long you have left, if it turns from green to yellow
25 that's your signal that you now have two minutes left

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1 to speak. And, of course, when the light turns red
2 you are to stop, otherwise SEAL Team Six comes in the
3 door and escorts you out.

4 After each presentation, commissioners
5 will have an opportunity to ask some questions of the
6 witnesses, and then there will be a 10-minute break
7 between panels. So, with that, we'll begin the
8 briefing.

9 PANEL 1: RESEARCH AND POLICY EXPERTS

10 COMMISSIONER KIRSANOW: This first
11 witness, our first witness panel, consists of Dr.
12 Russell Jeung, who's professor of Asian-American
13 studies at San Francisco State University, and a co-
14 founder of Stop AAPI hate.

15 Second panelist is Charles Lehman who is a
16 fellow at the Manhattan Institute. Jo-Ann Yoo is next
17 to him, Executive Director of Asian-American
18 Federation. Diane Yap, founding member of Friends of
19 Lowell Foundation and board member of the Lowell
20 Alumni Association. And John Yang, who is President
21 and Executive Director of Asian-Americans Advancing
22 Justice.

23 And I see we've got Brian Levin here, and
24 I don't have a bio for you -- sorry about that.

25 MR. LEVIN: My father wanted me to be a

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1 doctor.

2 (Laughter.)

3 COMMISSIONER KIRSANOW: His father wanted
4 him to be a doctor, and that's why he's been consigned
5 to being here today. And you are a professor at
6 California -- I've seen your name before -- California
7 State University, San Bernardino, Director of the
8 Center for the Study of Hate and Extremism.

9 Thank you very much all for appearing and
10 for testifying today. Dr. Jeung, you may proceed.

11 PANEL 1: RESEARCH AND POLICY EXPERTS

12 Dr. JEUNG: Good afternoon, commissioners.

13 I'd like to thank the Commission on Civil Rights for
14 hosting this hearing, it's a really important topic.
15 I'd also like to thank the staff who so professionally
16 and -- organized this event. Next slide, please.

17 I'd like to start with an incident that we
18 received at Stop AAPI Hate that, sadly, is all too
19 common. As you can see and read, it's not necessarily
20 an issue of a hate crime but one of racial harassment
21 where a woman -- customer -- was denied access at her
22 pharmacy.

23 The perpetrator, using yellow peril
24 rhetoric, not only saw her as being a disease-
25 carrying, threatening person of color, but instead

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1 stated that she was the infection, that our racialized
2 bodies themselves were the defiling elements to the
3 United States. And so, he told her to go home, we
4 don't want you here.

5 And you could see the traumatizing result,
6 this person was in shock, and cried and left, saying
7 no one came to help. She left isolated, marginalized.

8 And I think that's the experience of the Asian-
9 American community at this moment, one of collective
10 racial trauma. Thanks. Next slide.

11 So, according to surveys, national surveys
12 random samples in translated in different languages,
13 eight to 45 percent of Asian-Americans have faced this
14 type of racism, this type of harassment, across the
15 nation.

16 Since we make up the fastest growing
17 minority in the United States, these numbers translate
18 to 2,000,000 to 10,000,000 cases of hate during the
19 pandemic. So, it clearly is an epidemic of hate, it
20 clearly is a time of collective racial trauma. Next
21 slide.

22 But the racism we're seeing now have
23 particular sources, Asian-Americans face a sort of a
24 unique set of factors that lead to racism against us.

25 Clearly, people were afraid of COVID-19 because of

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1 the disease, but the political rhetoric and social
2 media today really did exacerbate the issue.

3 When politicians used the term Chinese
4 virus, it really did two things -- it racialized the
5 virus, so it made it Chinese, and it stigmatized the
6 people, so Chinese people were the ones carrying the
7 disease. That association that the Chinese -- that
8 the virus was Chinese and Chinese had the virus really
9 did go viral on social media, and that's been
10 correlated with anti-Asian hate.

11 The other key factor really fomenting
12 anti-Asian hate, that maybe other groups don't
13 experience as much, is that U.S./Asian foreign
14 relations translates to American race relations for
15 Asian-Americans. And those who see China as the
16 country's main threat, then tend to see Asians in the
17 U.S negatively and that leads to greater anti-Asian
18 sentiment.

19 So, we have to get at these factors, we
20 have to get at these sources if we really want to
21 uproot the racism.

22 The impacts have been devastating. Racism
23 has incurred severe costs in our community. Asian
24 businesses have lost 60 percent of their income since
25 the start of the pandemic, compared to 12 percent of

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1 the national average -- five times more. And, because
2 of this business loss, large swaths of our community
3 have been unemployed during the pandemic.

4 Because of the fear of COVID, because
5 we're seen as the yellow peril, or the dusky peril,
6 policies have been institutionalized that, actually,
7 again see us as dangerous outsiders to be banned, to
8 be excluded.

9 Individually, these policies may be
10 unintentionally benign but, taken as a whole, these
11 policies have really had a chilling effect on our
12 community, have deprived us of the rights to migrate,
13 deprived us of the rights to reunite our families,
14 deprived of the rights to free speech, deprived us
15 even of freedom of religion on social media.

16 So, again, this institutionalized policy
17 have sanctioned greater anti-Asian hate. Next slide.

18 And finally, over 50 studies have
19 concluded that this trauma -- or, this period has been
20 really traumatizing. And those of us who experience
21 direct racism are even more traumatized, leading to de
22 facto segregation. People are not going out, being
23 sequestered in certain neighborhoods for fear of
24 danger. Next slide.

25 So, to wrap up, I make these suggestions.

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1 I think we do need to get at the particular sources
2 of anti-Asian hate, we need to really pay attention to
3 how U.S foreign relations impacts Asian-Americans.
4 Next slide.

5 We have to see this period as not one of
6 just hate crimes, but really a civil rights issue.
7 And so, we need to make sure that Asian-Americans and
8 other groups receive public accommodations, that they
9 have safe access to goods. We have to really ensure
10 that the COVID-19 Hate Crimes Act is fully
11 implemented, and that would then promote anti-
12 harassment campaigns to promote empathy. Next slide.

13 And finally, I think we really need non-
14 punitive efforts to build racial unity, to educate our
15 community to create empathy. Education really is key
16 across the board, Asian-Americans polled --Americans
17 polled realized that education is the best way to
18 remedy racism.

19 But I'm really alarmed at this moment by
20 the backward movement that is calling on bans of books
21 that are curbing discussions of race and racism, it's
22 really impacting teachers and students from having
23 frank discussions of race. And so, we have to
24 actually guard the civil rights of our teachers, of
25 our students, so that they have that freedom of speech

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1 to address racism.

2 Now, I'm actually, you know, alarmed --
3 I'm a alumnus of Lowell High, and some alumnus at
4 Lowell High are seeking to file a lawsuit that may
5 impact other students of color. And I just hope that,
6 in our efforts, that we would improve the educational
7 opportunity for everybody, not just a select few. We
8 can't just gain Asian-American civil rights at the
9 expense of others.

10 So, thank you. Again, this period of the
11 yellow peril is frightening. It's not an Asian-
12 American issue we're dealing with, it's an American
13 issue, right? It's Americans who are afraid of COVID,
14 it's Americans who are afraid for their national
15 security, it's Americans who are afraid of their
16 economic standing.

17 And to the extent that we can address
18 those fears and create an Asian-American civil rights
19 agenda, then I think we could expand equal
20 opportunity, we can expand education for all. Thank
21 you.

22 COMMISSIONER KIRSANOW: Thank you, Dr.
23 Jeung. Mr. Lehman, you have seven minutes.

24 MR. LEHMAN: Thank you to the Commission
25 for the opportunity to address you, I am speaking to

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1 you today in my capacity as an analyst of crime.

2 With my time I want to make three points.

3 First, anti-Asian hate crime has risen substantially
4 thanks to both, the COVID-19 pandemic and to an
5 increasing criminal offending generally.

6 This latter is because, second, hate crime
7 offenders are quite similar to other criminals and
8 often commit other crimes.

9 Therefore, third, the best way to combat
10 hate crime is not by targeting hate, e.g. through
11 education or content moderation, but to target crime
12 through aggressive law enforcement.

13 After decades of decline, anti-Asian hate
14 crime began rising in 2017 then spiked dramatically in
15 2020. That year's official count, 279, is a 73
16 percent increase over 2019. Reported incidents rose
17 yet again in 2021 a cumulative 89 percent increase
18 over 2019.

19 This last finding is particularly
20 remarkable, given the reported counts of many other
21 categories of hate crimes fell in 2021 when thousands
22 of agencies did not report hate crimes because of the
23 FBI's transition to a new reporting system. The
24 measured increase in anti-Asian offending is therefore
25 biased downwards, the true number is probably much

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1 higher.

2 Further support for this trend comes in
3 data from New York, Los Angeles, and Chicago,
4 collectively home to roughly 10 percent of the U.S.
5 Asian population -- Anti-Asian hate crimes have
6 increased in all three cities.

7 At least in these cities, though, there
8 have been two waves of crime, but Los Angeles and New
9 York incidents spiked in the second quarter of 2020,
10 around the time the coronavirus began spreading in the
11 United States. Then fell before spiking again in
12 early 2021 when they also began rising in Chicago, a
13 similar pattern appears in data from San Francisco.

14 This suggests that the increase in anti-
15 Asian hate crime is not as simple as the coronavirus
16 crisis starting a new wave of anti-Asian racism. If
17 it were, one would expect incidents to have risen
18 continuously from Q2 2020 onwards.

19 Most importantly, 2021 -- so not only an
20 increase in anti-Asian racism but also increased crime
21 among individuals most likely to convert that racism
22 into criminal behavior. Homicides rose nearly 30
23 percent in 2020, another five percent in 2021, a
24 similar trend obtains for shootings.

25 And, in many jurisdictions, including the

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1 ones previously mentioned, other kinds of crime have
2 risen as well. As social control has ebbed, in other
3 words, criminal offenders of all types have been more
4 prone to acting out.

5 This implies, though, that hate crime
6 offenders are like other criminals as opposed to being
7 specialists in hate crime. The data bear this out,
8 one survey of convicted hate crime offenders found
9 that 87 percent had a prior conviction, including 60
10 percent with violent conviction.

11 Another survey of UK offenders found that
12 97.7 percent of hate offenders had prior arrests,
13 including 87 percent who had committed crime of
14 violence. Data on arrest records from New York also
15 suggests a similarity between hate criminals and non-
16 hate criminals.

17 While hate crime offenders vary
18 demographically from others, they look essentially
19 indistinguishable on measures of criminality,
20 including whether they have previously been convicted,
21 whether they have an open case, whether they were
22 rearrested following release on bail.

23 What about those who commit anti-Asian
24 hate crimes, high profile incidents suggest that prior
25 criminality is not uncommon. Antoine Watson, who

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1 murdered 84-year-old Vicha Ratanapakdee, one of the
2 earliest anti-Asian offenses in 2020, was in the
3 process of vandalizing another car when he assaulted
4 Ratanapakdee -- he'd been cited for reckless driving
5 earlier that day.

6 Haskell Allen, who allegedly assaulted an
7 83-year-old Asian man in 2021, was on probation when
8 he committed his offense.

9 The reason for this phenomenon is
10 intuitive, while many people hold bigoted views most
11 will not convert them into criminal acts. To do so
12 requires some other disinhibition, that sort of
13 disinhibition also leads to committing other crimes.

14 To put it graphically, a hate crime
15 offender who is someone who thinks it's both, a good
16 idea to brutalize someone on the street and to scream
17 racial slurs while doing so. That some other
18 criminals do not yell racial slurs while they
19 brutalize people does not mean that they do not share
20 key characteristics with hate crime offenders.

21 The consequence of this insight is simple,
22 to combat hate crime focuses on crime. The wrong
23 policy is to focus on reducing bias through education
24 or social media content moderation. Such approaches
25 are not only ineffective on their own terms, a large

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1 research literature casts doubt on educational
2 interventions efficacy, but inefficient because they
3 poorly target the small subset of the biased
4 population that will actually criminally offend.

5 The marginal student or social media
6 commenter is not likely to become a hate criminal,
7 spending resources on him is a bad bet on crime
8 control dollar-for-dollar. Rather, the Criminal
9 Justice System, including the Federal Criminal Justice
10 System, is well equipped to combat hate crime as
11 crime. Multiple statutes, especially the 2009 Hate
12 Crime Preventions Act -- Hate Crimes Prevention Act --
13 permit the federalization of many bias-related
14 offenses.

15 Yet, recent data suggests DOJ has been
16 slow to use these powers. It investigated only about
17 120 hate crimes per year from 2015 to 2019, declining
18 to prosecute in 77 percent of cases -- just 82
19 defendants faced charges.

20 Rates have increased in recent years as
21 Justice charged more than 40 people, and obtained 35
22 convictions, between January 2021 and May 2022.
23 Still, the relatively low numbers suggest the
24 Department could be doing more, including coordinating
25 more closely with state and federal task forces.

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1 In addition to directly prosecuting hate
2 crimes, Department of Justice every year issues tens
3 of millions of dollars to anti-hate crime grants.
4 While these are substantial amounts, they don't go
5 that far. Fiscal year 2022 -- covered just 22 awards,
6 compared to roughly 2,300 state prosecutors offices.
7 Many offices do not have specialists to focus on hate
8 crime prosecutions.

9 The challenge inherent in prosecuting bias
10 motivated crime means the federal government could
11 allocate more funding to, at least, coordinating
12 between offices and articulating best practices, to
13 increase the often shockingly low rate of convictions.

14 Another approach is to increase police
15 hiring, a proven tool for reducing crimes of all
16 sorts. Across a variety of measures, police to
17 population ratios have declined steadily since the
18 Great Recession. DOJ's main hiring grant office is
19 authorized to spend \$386,000,000 in fiscal 2021,
20 including \$156,000,000 for its primary program. It's
21 a dramatic decline from the \$1.4 billion dollars a
22 year it was given the five years after its
23 authorization.

24 Lastly, many particularly heinous hate
25 crimes are, under federal law, eligible for capital

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1 punishment, including high-profile hate crimes like
2 the Emanuel AME church shooting and the Buffalo Tops
3 Market shooting. Light of this, the Biden
4 Administration's ongoing death penalty moratorium
5 poses a serious challenge to the orderly proceeding of
6 justice.

7 When discussing crime we too often insist
8 on reducing it -- that to reduce it we must first end
9 poverty, addiction, despair, other root causes. The
10 same is often true for hate crime, to reduce it many
11 insists that we need to weed out hatred in hearts and
12 minds.

13 Reality, hate crime offenders are like
14 other criminals, which means that hate crime offending
15 should be responsive to the traditional tools of crime
16 control. Smart policing and prosecution should be the
17 front line defense in blunting the spike in anti-Asian
18 hate crime, the federal government is well positioned
19 to enact this agenda, to do so.

20 Thank you, and I look forward to your
21 questions.

22 COMMISSIONER KIRSANOW: Thank you, Mr.
23 Lehman. Ms. Yoo?

24 MS. YOO: Commissioners, I apologize in
25 advance as this has been a very triggering and

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1 emotional three years for me.

2 My name is Jo-Ann Yoo, and I serve as the
3 Executive Director of the Asian American Federation in
4 New York. We're the strongest leadership organization
5 serving Asian Americans working in collaboration with
6 70 member and partner agencies who are deeply embedded
7 in our communities and operate under the larger
8 umbrella of human services. We are best positioned to
9 address community issues across different Asian
10 ethnicities to quickly and efficiently tackle emerging
11 challenges like the anti-Asian hate.

12 Today I am here to represent the victims
13 of anti-Asian violence in New York because they
14 deserve to be named, to be recognized, and honored. My
15 organization raised and sub granted more than \$3
16 million to 33 Asian-serving members and partner
17 agencies to implement our Hope Against Hate campaign.

18 In our first year of the campaign, we distributed
19 over 50,000 safety resources and supported nearly
20 10,000 individuals with safety trainings, helped with
21 reporting incidents, and connecting connections
22 through victim services.

23 In January 2020, the first warning signs
24 of the brewing storm came from the Asian small
25 businesses which reported a significant drop off in

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1 customer traffic due to news of the COVID outbreak in
2 China. In response, we immediately began working with
3 elected officials to develop response strategies aimed
4 at keeping Asian Americans -- Asian New Yorkers safe.

5 By February, we started to receive reports
6 of anti-Asian violence through our members, partners,
7 and personal contacts. The stories I heard from
8 strangers who called or emailed me at all hours of the
9 day and night are beyond heartbreaking, and I want you
10 to hear some of their stories.

11 I'm going to tell you about the frontline
12 healthcare workers who kept us alive during the height
13 of COVID, who talked about having to consider early
14 retirement because they were afraid of being
15 physically attacked going to and from work.

16 Or how about the 90-year-old grandmother
17 who was out for an evening walk in a Brooklyn
18 neighborhood, and she was set on fire by two
19 teenagers. She was too scared to tell anybody
20 including her own family. And the hundreds of small
21 business owners who were afraid for themselves, their
22 families, their employees, and their customers, and
23 consulted with us to implement safety protocols.

24 Let me tell you about Noel, one of the
25 most gentle people I have ever met who was slashed

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1 from ear to ear as he was going to work in the morning
2 and required over 100 stitches to close the gaping
3 wound, scars that are still healing two years later,
4 not to mention his mental and emotional trauma. He
5 has chosen to forgo plastic surgery as a reminder that
6 hate violence continues to plague our community.

7 Velma was on her way to mass on Palm
8 Sunday when she was knocked to the ground and kicked
9 in the face and pelvis by an assailant who yelled,
10 "you don't belong here," in a country where she has
11 lived for decades.

12 And on March 3rd, just a few weeks ago,
13 Cecile and her son, Kyle, were returning from family
14 lunch when they were repeatedly called racial slurs
15 and beaten in their own neighborhood. Cecile was
16 punched repeatedly until she lost consciousness. Her
17 son, who has served our country as a Marine, sustained
18 skull fractures trying to protect his mother and will
19 deal with long-term impacts from his injuries.

20 And then there's my story. I was walking
21 to visit my local small businesses when a man decided
22 to block my path and refused to let me pass. I'm a
23 person with tremendous privilege. I work closely with
24 the Attorney General's office, the mayor, the
25 governor, and other elected leaders, but my privilege

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1 did not protect me from potential harm in my own
2 neighborhood.

3 These are the real-life -- real-life
4 stories of Americans living through this horror right
5 now. This is our daily reality -- our daily reality.

6 The pain and trauma of Asian New Yorkers
7 has motivated the Asian American Federation to launch
8 the Hope Against Hate Campaign in 2021, which is an
9 expansive response network of Asian nonprofits working
10 together to provide safety programming and services.
11 Together, we connect victims to legal, financial, and
12 mental health support as well as equip vulnerable
13 women, children, and young people with safety measures
14 to prevent attacks from happening in the first place.

15 If you think you are strong, I invite you
16 to come and watch 80-year-old grandmothers, some with
17 canes, learn self-defense techniques to keep
18 themselves safe from attacks because it will break you
19 as it has broken me many times.

20 In April 2020, we launched a reporting
21 platform in eight Asian languages to make it easier
22 for victims to report incidents and seek help in their
23 native languages. In the first six months of the
24 COVID lockdown, the Federation worked with our members
25 and partners to track victim reports, some of which

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1 totaled over 400 in the largest Asian neighborhoods in
2 New York City.

3 At the Federation, we have taken on the
4 responsibility on behalf of our communities to
5 publicly honor victims of anti-Asian hate with the
6 singular purpose of sharing their stories because if
7 we don't, who will speak for the victims?

8 I am grateful for this opportunity to
9 speak and give voice to the urgent needs of Asian
10 Americans who continue to experience anti-Asian
11 assault on a daily basis more than three years since
12 the first COVID-related attack.

13 Concrete actions must begin today if we
14 aim to prevent more attacks from occurring again. We
15 urge the following: one, investing in the
16 strengthening and expansion of local networks so
17 victims have ready access to community-based places
18 where they can report attacks, receive support
19 services, and take safety trainings and workshops in
20 their own languages. We need system changes to
21 correctly label and track violence for every category
22 including religious identification.

23 For instance, the highest rate of anti-
24 Sikh attacks are in New York State, but there doesn't
25 exist a category to track an attack as anti-Sikh, so

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1 those numbers are ignored. Our partner organization,
2 the Sikh Coalition, reports that there has been a rise
3 in attacks against Sikhs because the men wear turbans
4 making them a visible target for hate violence.

5 Over 50 percent of Asian New Yorkers have
6 limited English proficiency. I have heard from
7 seniors tell me that they try to report a hate attack
8 only to be turned away because there was no police
9 officer could take a report in the language the victim
10 spoke. We must invest in language services and
11 resources.

12 Disturbingly, the media gaze has moved on
13 from anti-Asian hate and the investments have also
14 waned. Despite these realities, incidents of violence
15 have not stopped. We cannot let this racist, violent
16 pattern of behavior become the norm. We need a new
17 normal that recognizes the Asian American community as
18 being integral to this country's identity.

19 Our community has yet to see any solutions
20 that we in the front lines have proposed. Statements
21 of solidarity matter only if they are backed up with
22 concrete action. Our leaders can and must do more.

23 In the meantime, we continue with our
24 work, which remains necessary as one of the only few
25 resources for the victims. As I have sat with the

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1 victims, held their hands, and cried with them, I have
2 asked all of them what does justice look like for you?

3 And today I want to ask this Commission this same
4 question. What does justice look like for us Asian
5 Americans? Thank you.

6 COMMISSIONER KIRSANOW: Thank you, Ms.
7 Yoo. Ms. Yap, you have seven minutes.

8 MS. YAP: Good afternoon. My name is
9 Diane Yap, and I was born and raised in San Francisco.
10 Unfortunately, my city has changed over the years
11 into one where Asian seniors are afraid to leave their
12 own homes. There's been a surge of violent and often
13 fatal attacks against Asians.

14 Just a few examples: 70-year-old Mrs. Ren
15 was shoved to the floor, beaten, kicked in the head by
16 three teens and an 11-year-old; two elderly women were
17 stabbed with a machete while waiting for a bus; a 15-
18 year-old boy was stabbed in the neck on the bus by a
19 12-year-old boy. However, none of these brutal
20 attacks have been classified as hate crimes.

21 Hate crimes, while certainly on the rise,
22 are a small fraction of the violence faced by Asians
23 in this country. According to the Department of
24 Justice's 2021 Criminal Victimization Report, Asians
25 were the victims in nearly 170,000 violent incidents,

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1 while the number of anti-Asian hate crimes in 2021 was
2 just 305.

3 This is not to minimize the impact of hate
4 crimes victimization but to put the scope of the
5 problem into proper context. The danger in
6 restricting our analysis to just hate crimes is that
7 we misdiagnose the cause.

8 Who is responsible for these attacks
9 against Asians? It appears the attacks against Asians
10 only stirred interest on Capitol Hill once there was a
11 way to blame conservatives or white supremacy like
12 that oft-repeated statistic that 75 percent of anti-
13 Asian hate crimes are perpetrated by White people.

14 Diving into the source material reveals
15 it's based on incidents from 4,337 news articles about
16 coronavirus-related anti-Asian racism in the United
17 States. Of these, there were just 16 incidents with
18 physical contact where the race of the perpetrator was
19 known. Of those 16, 12 had White perpetrators, hence
20 75 percent. By comparison, the same study included 55
21 tweets from Donald Trump alone. Yet, a tweet never
22 put Grandma in the hospital.

23 The urgent issue of violence against
24 Asians predates COVID. The 2018 Criminal
25 Victimization Report by the Bureau of Justice

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1 Statistics shows violent incidents by race of victim
2 and offender. The largest share, 27.5 percent, are
3 perpetrated by Black offenders, while Asians commit
4 just 0.1 percent of such attacks against Black
5 victims. If all those living nearby were equally
6 likely to attack Asians, Blacks are attacking Asians
7 at more than three times the expected rate as the
8 average Asian lives in a neighborhood that's just 8
9 percent Black.

10 On the other hand, White and Hispanic
11 people are attacking Asians at about half the expected
12 rate. This is not new. A 2008 analysis on physical
13 assault crimes in San Francisco showed that in 85
14 percent of cases, the victim was Asian, and the
15 perpetrators were African American.

16 Sadly, government policymakers and media
17 outlets do not want to acknowledge that Black-on-Asian
18 violence is a problem. And racial resentment is at
19 the root of the problem.

20 This resentment is well explained by the
21 middleman minority concept. Immigrants who occupy a
22 lower-barrier niche in the economy, like retail, and
23 via punishing work schedules and self-sacrifice ascend
24 from poverty to prosperity often within one
25 generation. Middleman minorities have faced violence

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1 throughout history because native populations of lower
2 status feel entitled to the same outcomes.

3 Today's expectation of equal outcomes can
4 be summarized by one word, equity. The repetition of
5 this term in policy discussions implies that all
6 outcomes should be doled out proportionately amongst
7 different racial groups regardless of relevant factors
8 such as behavior. But we should expect proportionate
9 outcomes only if these are assigned at random. But
10 police don't arrest people at random. Courts don't
11 imprison people at random. The government does not
12 randomly force anyone to drop out of high school, nor
13 does it randomly assign anyone to a life of poverty.

14 All of these outcomes depend largely on
15 behavior and individual choices. When you are
16 repeatedly told that outcomes are unfair because they
17 are racially disproportionate, it is natural to resent
18 the beneficiaries of this imagined unfairness.
19 Unfortunately, such a mindset breeds racial
20 resentment, and thus, anti-Asian hate.

21 While the focus of this hearing is anti-
22 Asian hate crimes, any given Asian individual in the
23 U.S., out of a total population of about 18 million,
24 is statistically unlikely to be the victim of a hate
25 crime. On the other hand, anti-Asian discrimination

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1 in education figures prominently in the life of every
2 Asian American.

3 When I was 12, I saw my friend sobbing at
4 school after acceptance letters to Lowell High
5 arrived. She missed the cutoff score for Chinese
6 students by just one point. If she had been any other
7 race, she would have gotten in.

8 Selective high schools like Lowell High in
9 San Francisco, the screened schools of New York City,
10 and number one ranked Thomas Jefferson in Virginia are
11 all fighting misguided attempts to make their student
12 bodies match area demographics, equity. All of these
13 attempts involve degrading or eliminating the
14 consideration of academic proficiency in admissions.
15 Asians bear the brunt of these unconstitutional
16 attempts at racial balancing.

17 Even at Harvard, an Asian applicant with a
18 25 percent chance of getting in would have a 95
19 percent chance if he were only able to check the
20 African American box instead. Nothing else about him
21 would have to change.

22 The role of the government is not and
23 should not be to put the thumb on the scale in order
24 to produce racially proportionate outcomes. The goal
25 should not be equal outcomes or equity but rather

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1 equal opportunity. The government's role is to ensure
2 that no one faces discrimination on the basis of race.

3 On the matter of hate crimes, that means
4 better crime prevention generally in the form of
5 increased police presence, surveillance of hotspots,
6 predictive policing, and especially imprisonment of
7 repeat offenders.

8 On the issue of affirmative action, that
9 means recognizing that such policies discriminate
10 against Asians in favor of objectively less qualified
11 applicants. If you believe that underrepresented
12 groups deserve special help, then you also believe
13 that there are overrepresented groups that deserve to
14 be discriminated against. These are inextricably
15 linked, and the latter is clearly unconstitutional.

16 If the Supreme Court bans race-based
17 affirmative action, it is the duty of the government
18 to enforce the ban as vigorously as it once enforced
19 *Brown v. Board of Education*.

20 Thank you. I yield my time.

21 COMMISSIONER KIRSANOW: Thank you, Ms.
22 Yap. Mr. Yang.

23 MR. YANG: Thank you. Thank you to the
24 Commission for holding this important hearing.

25 My name is John Yang. I'm the President

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1 and Executive Director of Asian Americans Advancing
2 Justice, AAJC.

3 Professor Jeung has laid out some of the
4 root causes of anti-Asian hate and its impact, and Jo-
5 Ann has contextualized this with the life experiences
6 that we all feel every single day.

7 I want to talk about how the government
8 could move forward by focusing on solutions, on
9 language, on education, and on community.

10 First, on language. Professor Jeung
11 illustrated whenever the United States has an economic
12 or national security concern, Americans of Asian
13 descent have faced a backlash. To be clear, I am not
14 saying that these threats are not real. We do have
15 real geopolitical tension with the Chinese Communist
16 Party and authoritarian government, whether it's a
17 Xinjiang Muslim minority in Xinjiang, whether it's
18 democracy in Hong Kong, whether it is free speech with
19 respect to Chinese citizens. But even as we talk
20 about these issues, we must be careful to use a proper
21 nuance and exercise responsibility in our language.

22 We must affirmatively emphasize that Asian
23 Americans are Americans and contribute to our economy,
24 our well-being, our liberty, and our prosperity. We
25 must be careful to distinguish between the Chinese

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1 governmental action on the one hand and Chinese and
2 Asian Americans and the society on the other.

3 When federal officials suggest that this
4 is an all of society problem or that all Chinese
5 students or scholars or scientists are suspected of
6 being spies for the Chinese government, this creates a
7 suspect class where Chinese Americans and Asian
8 Americans are deemed to be spies in the minds of all
9 Americans. References to Asian Americans as being
10 sneaky, cunning, untrustworthy feed on stereotypes
11 that lead to this hate that we are talking about. We
12 would encourage all relevant federal agencies to work
13 with all stakeholders, develop best practices for
14 language.

15 In talking about language, I would also
16 emphasize the need for language access. One-third of
17 the Asian American community is limited English
18 proficient. And that means that if material is
19 presented only in English, we will not be able to
20 access it and use it.

21 Toward that end, this Commission in May of
22 2020 said that Asian Americans must always -- for this
23 Commission, the federal government must always take
24 into account the critical requirement to provide
25 language access for limited English populations. I

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1 would note that the media advisory agenda for this
2 hearing was done in Chinese and Vietnamese.

3 Under Executive Order 13166, federal
4 agencies and entities receiving federal funding are
5 required to provide meaningful access to Asian social
6 services in limited English proficient individuals.
7 In practice, we have found that significant gaps in
8 these resources and for our LEP populations that are
9 underserved. I would urge federal agencies to review
10 their compliance with Title VI in Executive Order
11 13166.

12 Second, let me talk about education. To
13 dispel the myth of the perpetual foreigner or the
14 model minority, we need to ensure that education is
15 inclusive of all marginalized communities including
16 the Asian American community. This is a root cause
17 that we must address.

18 This includes ensuring expeditious funding
19 and work on the creation of a national museum for
20 Asian-Pacific American history and culture. This
21 includes Asian-Pacific American history in K through
22 12 education. This is part of a larger effort that
23 all of us share, that all of us need to address
24 together to tell a full account of American history
25 that is inclusive of Asian-Pacific Americans, African

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1 Americans, Native Americans, Hispanic Americans, and
2 LGBTQ Americans. All of these communities have too
3 often been ignored in history books, left out of
4 social studies, and these communities' authors have
5 been silenced, ignored, or banned.

6 Also, on the subject of education, I
7 respect my colleagues including friends like Lee
8 Cheng, who will testify later, on whom I differ on
9 subjects such as magnet schools and affirmative
10 action. But in our assessment, these are not examples
11 of anti-Asian racism, which is the subject of today's
12 hearing. These policies are designed to create
13 greater opportunities for bright and meritorious
14 students who do not have equitable resources and who
15 are often overlooked. It is recognition that the
16 merits of a student exclude so much more and extend
17 beyond test scores and grades. Indeed, many Asian
18 Americans and Asian-Pacific Americans have benefitted
19 from these policies.

20 On affirmative action, there's one
21 important thing to recognize. It is that Asian
22 Americans support affirmative action. Polling has
23 demonstrated this time and again. But more
24 importantly, affirmative action is not about quotas.
25 It is not about lowering the bars to admissions.

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1 Rather, it is simple recognition that race still
2 matters in our country, and a student must be able to
3 express their full story including their story about
4 their own race.

5 Again, any discussion about college
6 admissions must be holistic. 20 to 30 percent of
7 college admissions for prestigious universities are
8 based on relatives to alumni; relatives to staff; are
9 based on sports scholarships; and the so-called
10 President's List, which consists of donors and what
11 are considered notable figures. We are contorting the
12 discussion if we only focus on affirmative action.

13 Lastly, I would want to touch on community
14 and how the federal government can make itself more
15 accessible to our community.

16 Legislation such as the COVID-19 Hate
17 Crimes Act, the Jabara-Heyer NO HATE Act, has been
18 helpful to many in our community. It's provided
19 grants to our community groups fighting hate. It
20 includes innovative models like restorative justice
21 that many communities embrace. It recognizes that
22 reporting hate should happen not only through law
23 enforcement but health services. Those are examples
24 of where the federal government is making a difference
25 and responding.

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1 I know that Manjusha Kulkarni will dive
2 into more deeply the subject of data and the work of
3 Stop AAPI Hate that has been wonderful for
4 contributing to our community.

5 One thing I do want to emphasize -- and
6 respectfully referring to the prior speaker -- one
7 thing I want to make clear is the narrative cannot be
8 about African American on Asian hate. That is why
9 these statistics are important. And I understand we
10 have disagreements about them, but the statistics
11 consistently show that African Americans are not
12 overrepresented in hate incidents against the Asian
13 American community. And this is important because
14 this is creating a division, a divisiveness, that is
15 unnecessary within all of our communities.

16 While the COVID-19 Hate Crimes Act does
17 provide examples of where the federal government can
18 help, federal government can do more.

19 With respect to grants, the grantmaking
20 process is often opaque and cumbersome, especially for
21 communities that really struggle and would benefit
22 most from the money. Without focused outreach and
23 local touchpoints, federal government will not be
24 trusted and will not be used by our community.
25 Sustained commitment to engagement in culturally and

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1 linguistically sensitive manners is critical.

2 Look, there is much work to be done, and I
3 am hopeful that a report by this Commission
4 highlighting these issues will spur not only federal
5 agencies to take greater action but for all
6 policymakers to do so as well.

7 Thank you very much, and I look forward to
8 your questions.

9 COMMISSIONER KIRSANOW: Thank you, Mr.
10 Yang. Mr. Levin.

11 MR. LEVIN: Commissioners, thank you so
12 much for having me today.

13 There was a great American who said the
14 following, "If you have the feeling that something is
15 wrong, don't be afraid to speak up." He further said,
16 "Every day in school we said the pledge to the flag,
17 'with liberty and justice for all,' and I believed all
18 that." That's Fred Korematsu. Okay?

19 It's time that we set the record straight
20 for our Asian American brothers and sisters and also
21 set the record straight on incorrect information that
22 has just come up today before this panel. But let me
23 just introduce myself to you.

24 I'm the son of a felon. My father lied
25 about his age as a teenager to go to Europe to fight

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1 the Nazis and was captured as a teenager 78 years ago
2 and was one step away from death. The rest of my
3 resume doesn't matter, but you can look it up if you
4 like. And I'm in the New York Times today.

5 Thank you so much for your long-standing
6 work. The year that they barred nine Black students
7 from Little Rock High was when you got your marching
8 orders to make America what it aspires to be. And
9 what an honor to be here with all of you and thank you
10 all.

11 I've been doing this for over 36 years,
12 and my research has been used in the promulgation of
13 every major federal hate crime law, including the Hate
14 Crime Statistics Act. So let me just -- I'm throwing
15 this out because I've got to set the record straight
16 here.

17 First of all, your data's wrong. The FBI
18 just updated its data. It's not 305, it's 746, and
19 that doesn't include Pacific Islanders.

20 If we could go to some slides. I'm just
21 going to get straight to it.

22 This is the increase in reported hate
23 crime. Okay? By the way, if you look at Bureau of
24 Justice Statistics, no, it's not the same as violent
25 crime overall. In fact, violent hate crimes have

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1 risen more over the last decade than overall
2 crime in their research.

3 If we could go to the next slide real
4 quick because I don't have a lot of time.

5 If you look at the bottom, look at that
6 explosion in 2020. Those months, from June forward,
7 were worse than any month in the previous decade.

8 Let's go forward again. We don't have a
9 lot of time.

10 This is the latest data. By the way, I'm
11 sure someone's going to twist it. Okay? This is '20
12 to '21 where we saw a record. We saw a record in
13 anti-Asian violence. And this is FBI.

14 By the way, FBI's also wrong. Okay, they
15 said there was 11.6 percent increase. It was a 31
16 percent increase in '21. Just use their top-line
17 numbers because what they did is they kind of compared
18 like the DOW Industrials to the Russell 5000. And you
19 can't do that. So let's move forward.

20 This is anti-Asian hate crime in the
21 United States. We have had an invisible record
22 because we have had instances where the FBI has had to
23 supplement its data for the last two years.

24 By the way, the people who are in charge
25 of that program -- very nice people -- and I asked

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1 them to supplement it. So I'm not trying to sound
2 angry. But they have to deal -- like a professor has
3 to deal with students -- they have to deal with 18,000
4 police agencies that don't turn in their homework on
5 time.

6 And let me just tell you about the data.
7 Let's look at this because we found, in our latest
8 multi-city study, which is very accurate, we showed an
9 overall 29 percent increase in 2021. FBI showed 31.
10 73 percent rise in anti-Asian hate crime in 2020, and
11 167 percent in 2021.

12 In the cities, it was even more. FBI,
13 2022 data we don't know yet , but we had a 35 percent
14 decline in the major cities in anti-Asian hate crime.
15 Guess what? That would still be a record if it
16 wasn't for 2021.

17 So we're talking about like oh, wow, well,
18 we had a slightly better Category 5 tornado or
19 hurricane. And what I'm afraid is people are going to
20 use that number and say oh, whoa, problem solved.

21 If we could move forward with the slides,
22 please. Again, we saw records in 2020 -- I'm sorry -
23 --we saw record months in 2020. And by the way, yes,
24 you see how it went down? Guess what? If you were to
25 look at the first quarter of 2021, after the

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1 insurrection -- and yes, it was an insurrection --
2 when we had a shift to debates about vaccines, and we
3 saw an increase in hospitalizations, we saw more anti-
4 Asian hate crimes just in New York City alone than --
5 there was about a quarter, I think, of the increase in
6 the whole country. So we saw quite a bit.

7 By the way, is all data limited? Yes. I
8 don't have the time to go into all the limitations.
9 Now, with respect to hate crime being just like all
10 crime, you can't cherry-pick homicides. That's like
11 less -- it's a fraction of 1 percent. Okay?

12 All the major research, whether it's Nolan
13 and Bennett in 2006 or McDevitt, there are different
14 types of offenders, and you can't treat them all the
15 same. Okay?

16 In New York City, in the first half of
17 2021, just 49 percent of hate offenders were listed as
18 emotionally disturbed persons. And as was the only
19 person on the panel who actually arrested people in
20 New York, let me tell you, that's something where
21 there's a mental health issue that is apparent when
22 you label someone an EDP.

23 If we could just go forward again.

24 No, we do need education. Look at this.
25 In 2020 -- by the way, do you see how that went down?

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1 Guess what? That shot up more in 2021. And why
2 don't I have it? Because the FBI hasn't given us data
3 that we can disaggregate this year. They've given us
4 a little bit of data but not that we can disaggregate.
5 That chart line would pop through the ceiling.

6 So there's a seasonality with respect to
7 hate crime and anti-Asian hate crime. And what I'm
8 concerned about is if you look at correlations with
9 victimization surveys, if you look to increases with
10 respect to online hate, let me tell you something, the
11 best professor in the Cal State system is here with
12 you today, and he sits at the other end of the table.

13 His data is correct. And his conclusions are
14 correct.

15 The toxic social media landscape -- and
16 when we saw a Congress person, secretary of state use
17 stigmatizing language against Asians, and then a week
18 later we saw the President, guess what? Within days
19 anti-Asian hate crime on a day-to-day tick peaked. We
20 do this -- I've been doing this for decades.

21 Hate crimes are not like all types of
22 criminality. There's a printed circuit of stereotypes
23 that Dr. Robin Williams of Cornell said label certain
24 individuals as legitimate targets of aggression, and
25 there are certain circumstances where people who would

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1 otherwise not be criminals and not offend do offend,
2 like probably that person who sprayed Lysol all over
3 that poor woman.

4 And I don't understand how we can sit here
5 today and make this a debate about affirmative action
6 when we heard the testimony of Jo-Ann Yoo. And I'll
7 tell you something. Every time I go -- and I'm going
8 to shut up right now. Just give me one second here.
9 I came from California. Just give me one second.

10 Every time I go to panels and this and
11 that, there are people from the Asian American
12 community that come up to me and say oh, my
13 octogenarian parents were attacked twice in six
14 months. Or someone else who's an attorney says my car
15 was attacked.

16 We have to stop this, and we have to focus
17 on education. And yeah, for people who murder Asian
18 Americans, let them spend the rest of their lives in
19 jail, but that's less than 1 percent of all offenders.

20 I want to thank you so much for this
21 privilege today and thank you for what you're doing to
22 make this country better for all our brothers and
23 sisters and especially our Asian American brothers and
24 sisters who I care about so very much.

25 Thank you so much.

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1 COMMISSIONER KIRSANOW: Thank you, Mr.
2 Levin. And thanks to all the panelists.

3 I'm going to open it up for questions, and
4 I'll exercise the privilege of the Chair and just ask
5 if any panelist wants to respond to any other
6 panelist.

7 MR. LEVIN: Yeah. The majority of the
8 anti-Asian hate crime offenders in the United States,
9 according to the FBI, are White.

10 One other quick thing. The top 50 cities
11 -- and we get most of the hard data, the high
12 reporting is from cities. Okay? They have different
13 demographics.

14 So I heard the same thing with regard to,
15 like, a tweet that went viral about anti-Semitic
16 attacks. Guess what? It's about 1 percent more,
17 about 14 percent -- something like that -- Black
18 offenders on Jews nationally.

19 But when you have people living right next
20 door to each other -- right -- you're going to have a
21 different type of offender mix, and of course, someone
22 will exaggerate that and not use the overall data that
23 is available. Thank you so much.

24 COMMISSIONER KIRSANOW: Yes, Ms. Yap.

25 MS. YAP: I would like to respond to Mr.

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1 Levin.

2 Because you've brought up proximity, that
3 is why I did include statistics about both directions
4 of offending because when you live close to somebody,
5 they also live close to you. So if it's a matter of
6 proximity, then the rate of violence should be pretty
7 similar.

8 I also did analysis on the neighborhood
9 that the average Asian person lives in and like what
10 percent of each race they live in -- their neighbors
11 are, so I do believe that's been addressed.

12 MR. LEVIN: That's still wrong.

13 COMMISSIONER KIRSANOW: Mr. Jeung.

14 MR. JEUNG: I'd like to really distinguish
15 between hate incidents, which make up the great
16 majority of our cases, and hate crimes, which make up
17 a small fraction. We really need to address what the
18 majority of Asian Americans are experiencing, what
19 we're experiencing trauma from are just regular
20 microaggressions of verbal harassment. But they're
21 not micro in their impact. Right?

22 We're getting shunned. We're getting spat
23 upon. We're facing 8 percent of Stop AAPI Hate cases
24 are civil rights violations. So you have to address
25 the breadth of racism that Asian Americans are

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1 experiencing if we want to, again, serve our
2 communities.

3 So to focus solely on hate crimes, I
4 think, does a disservice, doesn't get to the roots of
5 the issue. And again, the hate incidents that can,
6 then, rise to the level of assault, and so that's why
7 we need to get at the breadth of incidence.

8 I think the other danger is conflating the
9 crime that Asian Americans experience and then
10 conflating that as any experience of crime is a hate
11 crime.

12 So I think Ms. Yap is correct that those
13 of us living in low-income maybe high-crime areas are
14 victims of crime at high rates, but everybody in the
15 community are victims of crime in those communities.
16 So it's not necessarily Black on Asian crimes. The
17 Black and African American community, they're also
18 victims of crime in those neighborhoods.

19 So you have to be careful on focusing on
20 race crimes but instead -- like Ms. Yap just said --
21 look at the communities where there are high crime
22 rates and distinguish them from the hate crimes that
23 other people are experiencing.

24 MR. LEVIN: Could I just respond to him
25 for a second?

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1 COMMISSIONER KIRSANOW: Sure. Go ahead.

2 MR. LEVIN: He's totally right. And one
3 of things that we like to do is take that crime data -
4 - and this happens all the time. I'm so glad that you
5 brought you this up.

6 We just don't use it singularly. We
7 combine it where we can measure epithets online. And
8 we look at the wonderful -- God bless you. You're a
9 hero of the Cal State system.

10 This focus on victimizations beyond
11 crimes. When we look at more data -- like, for
12 instance, if a weather person just looked at
13 barometric pressure but didn't look at radar and
14 didn't look at temperature change -- right -- so we
15 have to combine them. And we've been seeing what
16 appears to be a shift in types of offenders.

17 And that is it looks like, at least
18 according to Professor James Nolan -- we have a piece
19 coming out in Northwestern's Criminal Law and
20 Criminology Review this month -- it looks like we're
21 seeing an older set of offenders coming around now.
22 But we have different types of hate offenders.

23 And one thing with regard to African
24 Americans because this comes up a lot, and it gets
25 twisted, and it's wrong. It's not only statistically

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1 wrong. It's a moral evil. And I'm not going to be a
2 part of it.

3 If we look at New York City, for instance,
4 we certainly did have attacks by African Americans
5 against Asians. But when we went across the country
6 where the demographics were different, we had a
7 change.

8 The other thing, too, is just look at this
9 week about maternal deaths per African Americans with
10 regard to births. Right? So African Americans are
11 more likely to be in poverty and have all kinds of --
12 I come from a medical family, so this is -- you can't
13 imagine how funny the rest of my relatives are going
14 to be looking at this.

15 But access to healthcare, including mental
16 healthcare, is far more limited with respect to the
17 African American community. So some of that -- if we
18 just went colorblind and said mentally ill offenders -
19 - we see a lot of offenders with respect to hate crime
20 who have some type of mental illness. And the more we
21 ignore that -- not looking at it as a race thing, but
22 looking at a poverty thing and a mental illness issue
23 -- I think that's more productive. We have to have
24 education be a part of this.

25 To say that hate crimes are just the same

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1 as all criminality, no. And I'm going to quote the
2 dean, Jack McDevitt, who's the first one to come up
3 with the typology back in 1989 with the American Study
4 of Criminology. I added the mentally ill offender,
5 but he looks at the thrill offender; the defensive-
6 reactive offender, who's reacting to a threat or a
7 change in their neighborhood; and the mission
8 offender, like the neo-Nazi skinheads. There are
9 different types of offenders, and they require, and
10 America requires a different response.

11 MR. LEHMAN: What's the composition -- the
12 percentage-wise composition?

13 MR. LEVIN: I'm sorry. Percentage-wide
14 composition?

15 MR. LEHMAN: So McDevitt and Levin look --
16 they look at -- they derive their typology from their
17 analysis of BPD data. Right?

18 MR. LEVIN: Correct.

19 MR. LEHMAN: And they say -- what's the
20 distribution of those three types in those offenders?

21 MR. LEVIN: Well, when they first came out
22 with it, it was the thrill offenders.

23 MR. LEHMAN: That's the fourth one but
24 later. But sure, yeah.

25 MR. LEVIN: But what was the fourth one?

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1 MR. LEHMAN: They add the --

2 MR. LEVIN: No. They just divide the --

3 MR. LEHMAN: This is the Bennett thing.
4 Sorry. I'd just like an answer to the question, even
5 the original one, even 89 or 93.

6 MR. LEVIN: I'm sorry. What is your
7 question?

8 MR. LEHMAN: What's the distribution?

9 MR. LEVIN: They had much more thrill
10 offenders. I think it was around 60 percent.

11 MR. LEHMAN: It's 66. It's about 32
12 percent roughly --

13 MR. LEVIN: Right. From 1989.

14 MR. LEHMAN: -- percent for defensive.
15 Yeah. But it's roughly the same in the 2003 --

16 MR. LEVIN: Right. Which proves my point
17 that education --

18 MR. LEHMAN: -- same in 2010. One percent
19 are mission offenders.

20 MR. LEVIN: I mean, who commits the most
21 homicides?

22 COMMISSIONER KIRSANOW: Okay. Let's try -
23 -

24 MR. LEHMAN: Yeah. And that's very --

25 COMMISSIONER KIRSANOW: I'm going to have

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1 to stop the crosstalk because the listeners are not
2 going to be able to discern what's going on here. So
3 one person at a time.

4 I'm going to have to call on Mr. Yang.

5 MR. YANG: Yeah. Thank you. I would like
6 to jump in here just to kind of refocus the discussion
7 a little bit because I think the discussion here the
8 purpose of this hearing is to talk about federal
9 response to anti-Asian racism. And so I think the
10 panelists have all done a good job of talking about
11 different viewpoints.

12 You know, I still go back to sort of I
13 think where we all agreed to varying extents is on
14 education, is on investment to the community. We do
15 have sometimes differing opinions about what that
16 means, but we have -- I think we need to think about
17 what data means because I think there's an agreement
18 that there's data that matters. Having relevant data
19 matters, and the government plays a large role in
20 that. Language matters, and the government -- all of
21 our policymakers -- has a huge difference in how we
22 talk about these issues and talk about these
23 responsibilities. So I would like to refocus there.

24 I do want to speak to one thing that I
25 want us to be very clear about with respect to sort of

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1 what I am hearing about the divisions between the
2 African American and Asian American community.

3 Let me be clear about this. Is there
4 anti-Blackness in the Asian American community? Yes,
5 there is. Is there anti-Asian-ness in the Black
6 community? Yes, there is. And this is where, again,
7 education is important. Right? Facts are important
8 because there are those that are trying to use these
9 divisions to create wedges within all of our
10 communities in a manner that is going to prevent
11 progress.

12 And so, what I would urge all of us to do
13 is think about sort of how we get to better facts, how
14 we get the better data, how we are careful with our
15 language and responsible with our language in how we
16 move forward.

17 COMMISSIONER KIRSANOW: Mr. Lehman, did
18 you want to respond?

19 Ms. Yoo?

20 MS. YOO: I wanted to address the mental
21 health question. You know, we have to think about the
22 lack of mental health support for victims, for the
23 community in general.

24 You know, we scramble to find
25 professionals who can speak the language that the

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1 victims need support in, not just the victims, but the
2 families and the entire community.

3 After last year, the entire Asian American
4 community in New York City, we were afraid to leave
5 our homes, and we were reeling every time we had to
6 step outside. We all had tremendous anxiety.

7 And young professional women working in
8 corporations making more in one year than I will ever
9 make in my lifetime, they were calling me, saying, how
10 do I go to work? I'm afraid to get on the subway.
11 What do I do? Do I -- how do I navigate this? This
12 has been very scary. We have tremendous, tremendous
13 anguish right now.

14 And I appreciate these number
15 conversations because that's where we need to start
16 that. We are a census information center, so for us,
17 at the Federation, everything works starting with data
18 and numbers. But the reality is there are real people
19 behind those numbers, and we need to think about what
20 is happening in my community.

21 And I will tell you right now, my
22 community, we are having a meltdown. This entire
23 country's having a meltdown, and I appreciate these
24 numbers conversations because that's what needs to
25 happen, but I need to have solutions.

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1 I need to have funding to hire and train
2 mental health professionals in language to be able to
3 offer culturally competent programming so that that
4 way nobody's afraid to leave their homes and nobody's
5 afraid to look at their neighbors and think that
6 they're going to be attacked.

7 COMMISSIONER KIRSANOW: Any other
8 Commissioners? Questions? Ms. Garza?

9 COMMISSIONER GARZA: Yes. I do have a
10 question. Professor Jeung? Did I pronounce that
11 correctly?

12 MR. JEUNG: Jeung.

13 COMMISSIONER GARZA: Jeung. Okay. So I
14 wanted to ask you about -- you mentioned in your
15 testimony how political rhetoric and what we've seen
16 happen around anti-Asian rhetoric has sort of fed into
17 policies that are being put forth.

18 I'm from Texas, and very recently our
19 state legislature was considering a ban -- or still,
20 to an extent, considering a ban on Chinese Americans
21 owning property. Now it's been reshaped, and now it's
22 businesses in particular. And so, I was hoping I
23 could hear from you or from any of the other panelists
24 that have been looking at these issues.

25 You know, what are we seeing happen at the

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1 state level in these policies that are implementing
2 these anti-Asian sentiments and continuing to stoke
3 anti-Asian sentiments across the country?

4 MR. JEUNG: Yeah. I think that's a great
5 question that the policies implemented at the state
6 level, at the local level, at school boards that,
7 again, prohibit, for example, non-Americans from
8 buying property that then sanctions further violence
9 because citizens recognize well if government thinks
10 it's okay to exclude noncitizens from owning property,
11 it's okay for us to then yell at, exclude, mistreat
12 individuals. And then policymakers are emboldened to
13 then pass further xenophobic policies.

14 And I think that's what we see occurring.
15 It's hearkening back to the 19th century, the early
16 20th century when we had several anti-Asian alien land
17 laws, the Chinese Exclusion Act.

18 And at the same time of the Chinese
19 Exclusion Act and these alien land laws, we saw
20 massive mass displacement of Asian communities. And
21 people don't hear about that in history. Over 168
22 Chinese communities were actually forcibly driven out
23 right after the Chinese Exclusion Act.

24 So there is that sort of cause and effect,
25 the correlation that if the government sanctions

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1 xenophobic policies, if it perceives certain
2 communities as outsiders undeserving of rights, then
3 mob violence then occurs.

4 And so, I think we have to be really
5 careful at the state and local level and be on guard.

6 And what the federal government's response should be
7 is to really safeguard the communities.

8 When you see sites that are banning books
9 or instituting laws, land laws, those will then become
10 hotbeds for interpersonal violence against Asians.

11 COMMISSIONER GARZA: Thank you.

12 MR. YANG: And if I might add onto that,
13 as you heard me testify, I recognize the real national
14 security challenges we have.

15 So my framework on some of these laws are
16 how does ACTAS actually benefit national security?
17 And what expertise does the legislative body, or
18 whatever body's involved, have in making that
19 determination? And this is where I have serious
20 concerns.

21 Then, the second question I have is what
22 is the impact, the secondary impact, that such
23 legislation or policy will have on the community? One
24 aspect of things such as alien land laws the way that
25 these are being discussed is would it be the right of

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1 the prior owner to look at citizenship papers, to look
2 at business interests? How will this be enforced?
3 Does the Attorney General get to sue?

4 So those are the real policy implications
5 that I think, whether it is the federal government or
6 state and local government, should be thinking about
7 in determining these things.

8 You know, even setting aside, obviously,
9 what we perceive to be some of the racist quality of
10 these, again, I want to give some deference to
11 national security, but let's talk about this in a
12 smart way.

13 MR. LEVIN: Could I just interject real
14 quick? Gallup, I think it was 2018, 11 percent --it
15 was either 2017, 2018 -- 11 percent China greatest
16 enemy; 49 percent today.

17 And again, using the same disclaimer that
18 my friend John uses, yeah, there are legitimate issues
19 that we have to address across a variety of things,
20 but what ends up happening when politics gets thrown
21 into that stew, you know, once you put some dirt in
22 the stew, there's dirt in the stew.

23 And let me just give you an example about
24 how legislation and other things can seem to
25 correlate. We saw in 23 states legislation relating to

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1 transgender Americans and gender-nonconforming
2 Americans. And we saw our friends at Princeton ACLED
3 showed a massive increase in protests, including
4 violent protests, sometimes with folks like the Proud
5 Boys showing up. Guess what we found is the second
6 most attacked group in 2022 -- you're getting the
7 latest data here -- gender-nonconforming. Top five:
8 other races, gender-nonconforming, LGBTQ mixed, anti-
9 Semitic, anti-transgender.

10 So even sometimes when we see like, for
11 instance, anti-gay male and anti-lesbian either go
12 down a little bit or stay flat, we see this mutation
13 of othering. And it correlates to the kind of
14 discourse that we're seeing in politics and also on
15 social media, which is a whole other ball of wax that
16 I'd love to see this Commission handle at another
17 time.

18 COMMISSIONER GARZA: Thank you for that. I
19 do have one more question for Ms. Yoo if I can.

20 COMMISSIONER KIRSANOW: I think we're
21 over. I'm sorry, but this will have to be the last
22 question because we're up on time now.

23 COMMISSIONER GARZA: Okay. I do want to
24 take it back to the very human aspect and what our
25 Asian brothers and sisters are experiencing.

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1 What kind of support has your organization
2 received? Where are the gaps? You know, I'd like to
3 hear more about the gaps in terms of making sure that
4 the federal response is adequate.

5 MS. YOO: Thank you for that question.

6 I agree with John when he talked about
7 funding coming through. There is a lot of money. You
8 know, when all the violence is happening, people are
9 throwing money at you. And for us, we were throwing
10 money back at the community to be able to build
11 infrastructure.

12 Literally, I've been telling my staff we
13 are building the airplane. We're paving the runway as
14 we're flying this plane. And I honor my staff who
15 never got to sleep in the first year because this is
16 what we were doing. And it was great to have money.
17 It was great to be able to pay for stuff to be able to
18 get things going, but the media gaze has slowed, and
19 so now the money has slowed. And so, we are trying --
20 and the violence hasn't stopped.

21 We need to be able to -- and some of those
22 federal applications, it is so cumbersome. Many of
23 the nonprofit organizations in our community are
24 small. They don't have the capacity to write
25 sophisticated proposals. Some of these nonprofits

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1 function with two, three staff people. There isn't
2 that capacity. There isn't the language capacity.
3 There isn't the professional quality proposals that
4 they can turn out. They've got to get the money
5 deployed quickly on the ground. And it takes forever.
6 It takes forever.

7 And we are struggling because we are
8 paying for, not just victim services, but also
9 figuring out how do we have program money so that that
10 way we can get food programs going for seniors? How
11 do we make sure that we pay for therapists? How do we
12 make sure that there's overall mental health
13 programming in our community?

14 And so, I think if the government responds
15 -- if I can change one thing -- if I had a magic wand
16 that I can change tomorrow, it would be that the funds
17 deployed to our community comes faster without a lot
18 of reporting knowing that we are best equipped to know
19 how to spend this money because this is the work that
20 we're doing.

21 COMMISSIONER MAGPANTAY: And your staff is
22 multilingual?

23 MS. YOO: Yes. Thank you. Many, many
24 languages.

25 (Simultaneous speaking.)

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1 COMMISSIONER MAGPANTAY: I just wanted to
2 make sure.

3 MS. YOO: Many, many languages. Many,
4 many languages our staff. But we also have member
5 agencies, so that when we do anything, it gets
6 translated into seven to ten languages. And our
7 membership agencies have a lot of language capacity.

8 So if we do a press conference, for
9 instance, when we had a press conference on public
10 charge, it was done in 10 languages. Yes, it took a
11 little while, but every community needed to know what
12 their rights were, deserved to know what the facts
13 were. So it does take a while. It costs money. But
14 this is how we communicate because this is what we
15 need to do.

16 COMMISSIONER GARZA: Thank you.

17 MS. YOO: Thank you.

18 COMMISSIONER KIRSANOW: I do have one
19 question. I just need a clarification.

20 Was I hearing you correctly that Texas is
21 proposing some legislation to prohibit Chinese
22 Americans from owning land or Chinese from owning land
23 because I heard Chinese Americans?

24 MR. YANG: Right. It has been a moving
25 target to have an amendment offered. Right now, it is

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1 foreign nationals, and now it is more focused on
2 business rather than on individual personal land
3 ownership from my understanding. But it is still a
4 moving target.

5 COMMISSIONER KIRSANOW: And if such
6 legislation is passed, my sense is it's because of a
7 concern for national security. And there has been
8 considerable purchase of land by the People's Republic
9 of China in strategically sensitive spots in the
10 United States of America. How do we address that?

11 MR. YANG: And you bring up a very good
12 point. There can be cases made -- and I want to be
13 careful here because I am not an expert on national
14 security, and I am not an expert on sort of how --
15 sort of when we talk about military installations
16 where there have been discussions -- but there can be
17 appropriate things.

18 And if you think about CFIUS as being one
19 of the places where we talk about these types of
20 issues, there are appropriate forums to talk about
21 these issues and how to address foreign investment and
22 what that might do. That certainly -- the federal
23 government in many ways is well-equipped to do.

24 But when we have state and local
25 governments implementing these -- certainly the

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1 political debate in those climates have not focused on
2 these nuances. That is where there is concern.

3 And then the repercussions. Again, I
4 focus also on the impact on all of our communities
5 being very, very drastic.

6 COMMISSIONER KIRSANOW: I want to thank
7 the panelists. This has been very informative. We're
8 going to be taking a short break. We'll reconvene at
9 2:25 with Panel 2.

10 (Whereupon, the above-entitled matter went
11 off the record at 2:13 p.m. and resumed at 2:24 p.m.)

12 PANEL 2: COMMUNITY STAKEHOLDERS AND
13 ADVOCATES COMMISSIONER KIRSANOW:

14 Okay, we're going to begin with panel number two. And
15 the witnesses for this panel are Cynthia Choi, who is
16 Co-Executive Director of the Chinese for Affirmative
17 Action; Dr. Wenyuan Wu, Executive Director for
18 Californians for Equal Rights Foundation; Jennifer Wu,
19 partner with Groombridge, Wu, Baughman & Stone LLP;
20 Lee Cheng, who is co-founder of the Asian American
21 Legal Foundation; and Manjusha Kulkarni, Executive
22 Director of the AAPI Equity Alliance.

23 Because we have five panelists, instead of
24 the seven minutes that we accorded everyone in the
25 previous panel, you all have eight minutes now if you

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1 choose to use that.

2 PARTICIPANT: Lucky eight.

3 COMMISSIONER KIRSANOW: I know, it's like
4 the Gettysburg Address or something. So we may as
5 well begin. Let's go with Ms. Choi.

6 MS. CHOI: Thank you. Well, good
7 afternoon, my name is Cynthia Choi, and I am the Co-
8 Executive Director of Chinese for Affirmative Action.
9 And I'm also one of the co-founders of Stop AAPI
10 Hate. And I serve on the California Commission for --
11 on the State of Hate.

12 I'd like to thank the Commission for
13 inviting all of us here today on the perspective of
14 federal response to anti-Asian racism, as it's been
15 from my understanding over 30 years since there's been
16 a real focus on the experiences of our communities.

17 At Stop AAPI Hate and CAA, we believe that
18 data and informed analysis should drive our policy
19 recommendations. Today we have over 11,000 incidents
20 from all across the country. And for us, these are
21 not just data points, these are real people who shared
22 their stories and that of their loved ones.

23 I do want to state very clearly that a
24 vast majority of the incidents are not hate crimes,
25 but rather non-criminal hate incidents like verbal

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1 harassment, racist comments, and offensive gestures
2 that those who report to us describe as traumatic and
3 harmful.

4 In addition to our data, we also receive
5 requests from support, like the mother of a student
6 enrolled at Montana State University, who contacted us
7 because her daughter was allegedly subjected to anti-
8 Asian, anti-LGBTQ slurs. And who found a noose in her
9 closet with a note telling her to kill herself.

10 At the same time, we don't want to
11 minimize racially -- racially motivated acts of
12 violence, like the incident in Bloomington, IL, where
13 a woman repeatedly -- reportedly confessed to stabbing
14 18-year-old student because it would mean, quote, one
15 less person to blow up our country.

16 I'm here for them. At Stop AAPI Hate, we
17 remain deeply concerned with the rise in anti-Asian
18 hate and discrimination that is largely being fueled
19 by racial scapegoating of Asians and Asian Americans,
20 and specifically anti-Chinese political rhetoric.

21 In our latest report on the impact of
22 anti-Asian political rhetoric, we cite multiple
23 examples of political leaders and candidates unfairly
24 blaming Asian people for current events, such as the
25 economic downturn, the COVID-19 pandemic, and the

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1 threats to national security.

2 Our research demonstrates that this
3 harmful rhetoric poses a significant danger to
4 millions of Asian Americans in the United States. For
5 example, we know that political rhetoric associating
6 Chinese people with COVID-19 contributed to incidents
7 of hate against our community.

8 In the week after President Trump first
9 tweet using the language Chinese virus in March of
10 2020, Twitter hashtags expressing anti-Asian sentiment
11 increased 174 times.

12 Since then, Stop AAPI Hate has documented
13 more than 2,000 hate incidents that include language
14 blaming Asian people for COVID-19, some including
15 threats of violence. And this number is only the tip
16 of the iceberg.

17 We've also received hundreds of incidence
18 reports that include baseless accusations of spying
19 for the Chinese Government and multiple reports of
20 incidents where Asian Americans were threatened with
21 violence and accused of stealing jobs or harassed to
22 go back to China.

23 It should be noted that the link between
24 anti-Asian political rhetoric and anti-Asian hate is
25 nothing new. And in fact, in 1992, this very body

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1 commissioned a landmark civil rights report, which
2 found politicians were in part responsible for hate
3 and animus directed at Asian Americans.

4 It stated, quote, "Political leaders
5 contribute to the problem when they unthinking lash
6 out at Japan as a cause of United States' economic
7 difficulties." The report urged politicians to engage
8 in responsible rhetoric, cautioning against race-
9 baiting tactics and remarks that play on -- play upon
10 racial and ethnic bias.

11 Three decades later, we find ourselves in
12 the same situation. We are concerned that increasing
13 levels of anti-Chinese political rhetoric we're seeing
14 today will not only embolden others to commit racist
15 acts, but also enshrine policies and embody
16 institutional racism.

17 As been mentioned before, there is a
18 troubling wave of policy proposals rooted in anti-
19 Chinese discrimination, with lawmakers in Texas and
20 other states pushing bans on Chinese land ownership,
21 having a devastating impact on Chinese immigrants and
22 others who are being targeted, preventing them from
23 buying homes, settling their families, and developing
24 roots in their community.

25 These proposals are reminiscent of the

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1 past policies that systematically harmed Asian
2 Americans, as was mentioned in the prior panel, the
3 Exclusion Act of 1882, alien land laws in the early
4 1900s, and Japanese incarceration -- force
5 incarceration of Japanese Americans. And of course
6 more recently, the racial profiling and surveillance
7 of Muslim Americans.

8 The intense anti-Asian rhetoric of this
9 area has not only created a hostile environment for
10 people like Vincent Chin, who was targeted in a brutal
11 racist attack. It also led to institutionalize racism
12 in the hands of our government.

13 Unless we act, the reckless anti-Chinese
14 rhetoric and the policies of today will lead our
15 nation down the same slippery slope in which -- in
16 which racist fearmongering overtakes our shared values
17 of equity and unity.

18 The federal government has a duty and an
19 obligation to step in to enforce civil rights and to
20 ensure all American are afforded equal opportunities
21 and are treated with dignity and respect regardless of
22 race, ethnicity, and immigration status.

23 We applaud the current administration for
24 enacting a whole-of-government approach to equity. We
25 strongly support efforts that entail auditing

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1 coordination across agencies to ensure our communities
2 can benefit fully from these programs and policies, in
3 particular that enforce our civil rights. Which also
4 includes prioritizing language access.

5 And finally we want to stress that it's
6 important that we have sustained and resource
7 collaborations with community partners so that our
8 government engages meaningfully with our -- and
9 understands the community's diverse experiences with
10 bias and discrimination so that they're fully
11 understood and meaningfully addressed.

12 I want to thank you for your time, and I
13 look forward to your questions later. Thank you.

14 COMMISSIONER KIRSANOW: Thank you, Ms.
15 Choi. Ms. Wu.

16 DR. WU: I want to thank the Commission
17 for this opportunity to testify on this hugely
18 important topic of anti-Asian discrimination. My name
19 is Wenyuan Wu. I represent Californians for Equal
20 Rights Foundation.

21 I want to first make the following three
22 points. Number one, criminal incidents targeting
23 Asian Americans are egregious and must be addressed in
24 the context of rising threats to public safety in
25 general.

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1 Number two, framing anti-Asian hate crimes
2 in a narrative of systemic racism or systemic inequity
3 misleads the public on methodological and moral
4 grounds.

5 Number three, persistent discrimination
6 against Asian American students in education,
7 justified under the names of diversity, equity, and
8 race-based affirmative action is much more salient and
9 consequential form of anti-Asian discrimination.

10 First, data from the FBI Crime Data
11 Explorer shows a 90 percent increase from 2018 to 2021
12 in crimes involving Asian American victims. An
13 initial reading of such an increase could validate the
14 Asian hate thesis, but further analysis reveals
15 interlocking nuances.

16 On violent incidents by victim race and
17 ethnicity, the percentage change from 2018 to 2021 was
18 75 percent for White victims, 118 percent for Black
19 victims, and 138 percent for Hispanic victims. These
20 numbers also mirror trends in rates of violent crime
21 offenders desegregated by race and ethnicity during
22 the same period.

23 The rates of violent incident victims of -
24 - and offenders per 100,000 people by race and
25 ethnicity are even more telling. Severe imbalances at

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1 a group level between Asian Americans with lowest
2 crime rates and certain minority groups that
3 disproportionately commit violent crimes and fall
4 victim to criminal violence deserves attention here.

5 Taking into account their percentages in
6 the general population, Asian Americans can be said to
7 be under-committing crimes by over five percentage
8 points. And over, they are over-victimized by about
9 4.5 percentage points. That is only if we were to go
10 along with a crime to population proportionality
11 rationale.

12 Official data between 1985 and 2020 shows
13 a slight reversal of a historical trend of lowering
14 crimes in recent years, especially since 2014. In
15 other words, violent crimes committed by all racial
16 and ethnic groups and victimizing all groups have been
17 on the rise lately.

18 More alarmingly, given the current
19 political climate in which activists and politicians
20 have called for structural reforms to abolish
21 proactive policing, the rates of crimes cleared by the
22 police have decreased in major U.S. cities where such
23 crime -- such reforms have been adopted to various
24 degrees.

25 The crusade against law enforcement has

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1 done a huge disservice by degrading the dignity of the
2 profession and the compromise in public safety. In a
3 vicious cycle, many law enforcement agencies have
4 responded to staffing shortages by lowering recruiting
5 and training standards.

6 In short, when we situate crimes targeting
7 Asian Americans in the broad context of increases in
8 violent crimes and decreases in the capacity of law
9 enforcement to adequately address crimes, the wave of
10 Asian hate is part and parcel of general crime
11 patterns.

12 Secondly, pegging anti-Asian crimes to
13 racism lacks rigor. FBI reported 7,264 hate crime
14 incidents in 2021, of which 4,470, or 65 percent, were
15 motivated by race, ethnicity, or ancestry.

16 There was a 12 percent decrease compared
17 with the total number of hate crimes in 2020, and a
18 14.5 drop compared with the number of hate crimes
19 motivated by race, ethnicity, or ancestry.

20 But the reports by Stop AAPI Hate, which
21 are frequently cited in media as evidence of Asian
22 hate endorses a much more expansive conceptualization.

23 Not only do hate crimes involving physical assaults
24 are counted. Hate incidents such as verbal
25 harassment, avoidance or shunning, denial of service,

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1 and online trolling are also calculated.

2 Of the 10,905 anti-Asian hate incidents
3 documents in its 2020 national report, about 67
4 percent were incidents of verbal harassment, and only
5 16 percent were physical assaults. The former does
6 not always result in an actual hate crime.

7 Therefore, the claim of unprecedented
8 anti-Asian hate is inflated by events without
9 traceable criminal element. These pitfalls are
10 consequential.

11 Upholding anti-Asian racism as a
12 structural issue warranting transformative changes can
13 divert precious public policy focuses on public forums
14 away from community building to ideological exercises
15 that ultimately do not improve public safety.

16 The Stop Asian Hate movement has garnered
17 tens of millions of funding from various entities.
18 For instance, in March 2022, the California state
19 government distributed \$40 million in grant funds to
20 80 regional and local organizations to combat bias-
21 motivated attacks.

22 For ideological reasons and also for
23 profit, proponents of the Stop Asian Hate movement
24 skew historical data and incorrectly paint a picture
25 of systemic racism and the most underlying variable of

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1 hate incidents targeting Asian Americans.

2 Trumped-up charges of hate incidents can
3 have a fearmongering psychological effect on members
4 of the Asian American community, especially those who
5 are first generation immigrants or low income.
6 Imagine what bearing the burden of feeling like a
7 perpetual victim and being pressured to support virtue
8 signaling practices of condemning racism would do to
9 an Asian American who has not analyzed the data.

10 He or she would feel powerless and
11 threatened by imaginary enemy. He or she may even
12 partake in unproven reforms of anti-racism and
13 restorative justice, only to see an escalation in
14 crimes harming the community because the underlying
15 issues related to public safety would remain unsolved.

16 Last but not least, if policymakers and
17 observers are serious about identifying and tackling
18 discrimination against Asian Americans, they must
19 confront the elephant in the room: systemic and
20 ongoing anti-Asian discrimination in education through
21 the practice of race-conscious admissions.

22 Whether it is in admissions to selective
23 U.S. colleges and universities or in recruitment of
24 gifted and talented students at the K to 12 level,
25 evidence regarding high standards, de facto quotas,

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1 racial balancing, and negative stereotypes to limit
2 the access of Asian American applicants abound.

3 In higher education admission barriers
4 hampering the changes of Asian American applicants
5 have been well documented by statistical evidence and
6 eyewitness accounts. Racial preferences for the so-
7 called under-represented minority students at elite
8 colleges come almost entirely at the expense of Asian
9 Americans.

10 The trend of racial preferences also
11 continue at the graduate school level. Beyond elite
12 schools, the penalty against Asian American students
13 is endemic throughout the education ecosystem. A
14 survey by Inside Higher Education revealed 42 percent
15 of admission officers from private colleges and 39
16 percent of admission officers from public colleges
17 admitted that they hold Asian American applicants to a
18 higher standard.

19 COMMISSIONER KIRSANOW: Dr. Wu, if you
20 could begin to wrap it up.

21 DR. WU: In summary, I -- to reduce
22 violence targeting Asian Americans, policymakers
23 should devise solutions to improve public safety and
24 support law enforcement.

25 On the other hand, if public policy

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1 decisionmakers are committed to combating
2 discrimination and bias against Americans of Asian
3 descent, they should not ignore the prevalence of
4 race-conscious education policies, which
5 disproportionately harm Asian American students.

6 Thank you again for hearing my testimony.

7 COMMISSIONER KIRSANOW: Thank you. Ms.
8 Wu.

9 MS. WU: Thank you for having me. My name
10 is Jennifer Wu, and I'm a patent lawyer in New York
11 City. I am here because I became a civil rights
12 lawyer, because there has been no federal response to
13 anti-Asian racism.

14 Since 2020, I have represented nearly
15 every victim in New York City who has died of anti-
16 Asian violence. Michelle Go, the Deloitte consultant
17 and vibrant woman who was pushed in the Times Square
18 subway; GuiYing Ma, who is the grandmother sweeping
19 the street when she was viciously hit with a rock and
20 later died.

21 And also Zhiwen Yan, among others, the
22 small business owner who was on his scooter when he
23 was ruthlessly gunned down while making a food
24 delivery order.

25 I am here because there is no data that is

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1 accurate and comprehensive and on the federal level.
2 We have organizations like Stop AAPI Hate who are
3 collecting data. We have data from the FBI.

4 But not a single one of my clients, who
5 are all pro-bono clients, has ever reported a crime to
6 the federal agencies, and ever heard from the U.S.
7 Government, beyond Congresswoman Grace Meng of New
8 York City, who is not even the congresswoman for most
9 of my victims.

10 There has been no federal response, which
11 is why private practitioners like myself have stepped
12 in to help the victims and develop a response. I am
13 the editor the Asian American Bar Association's -- or
14 one of the editors of the Asian American Bar
15 Association's reports on anti-Asian violence, the
16 first of which came out in 2021, and the second that
17 came out in 2022.

18 I urge you to read them, because this is
19 the response of the local community to people in our
20 community dying. This is not about affirmative
21 action. This is not about lack of education at some
22 level. This is about people dying in the streets of
23 New York City, much as they died of COVID-19.

24 I was drawn and called to action because I
25 am the daughter of immigrants. My parents are from

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1 different places. My father is native Taiwanese, and
2 my mother is from China. They met in North Dakota at
3 North Dakota State University, where they were both
4 graduate students and my dad thought that my mother
5 was Taiwanese. By the time he realized that she was
6 not, it was too late.

7 It is no surprise that my parents, who
8 have disagreed politically on nearly everything,
9 raised two daughters, both of whom became lawyers and
10 both went to Harvard University. We grew up in the
11 suburbs of New Jersey in the 1980s, when anti-Japanese
12 sentiment was high because there was a belief that the
13 Japanese were taking away the jobs of American auto
14 workers in Detroit.

15 Unbeknownst to me, I was Asian. There
16 were not that many mirrors in my parents' small home
17 in New Jersey, so I hadn't realized that I looked
18 different than everyone else. One day when my parents
19 were driving their station wagon, they had a little
20 Christmas tree car freshener on it. My dad took it
21 down and he put an American flag underneath it.

22 And when I asked him why he was doing
23 that, he said to me, "Jennifer, you're Asian." And I
24 said, "What, what are you talking about? I'm
25 American. This is the only home that I have ever

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1 known." And he said, "Well, you look Asian, so people
2 will think that you are loyal to Asia and not to
3 America, and you need to understand that."

4 His words resonated with me then because
5 it was my first consciousness at the age of five that
6 I was different than everybody else. But it also made
7 me realize that sometimes what we feel is what we see
8 reflected in other people. That the fear that we feel
9 as Asian Americans in New York City comes because when
10 we're walking down the street, people cross the street
11 because they do not want to be near us.

12 And I had the good fortune of being
13 partners with the great Ted Wells of Paul, Weiss for
14 many years, and he would say as Black man, when he
15 walked down the street in a suit, people would cross
16 the street in New York City so they did not have to be
17 in the same side as him.

18 That fear that you feel is not necessarily
19 one that you see in yourself, but is reflected in you
20 in the community. And what I saw in New York City and
21 continue to see in New York City is that fear.

22 New York City is home to the largest Asian
23 population in the country. Nearly a quarter of the
24 people who are Asian American are in poverty, so it is
25 also the poorest ethnic group in New York City.

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1 This is also one of the reasons why
2 despite the model minority myth, that anti-Asian
3 violence skyrocketed in New York City. And compared
4 to 2020, anti-Asian hate crimes reported to NYPD rose
5 361 percent in 2021, even leaving aside the under-
6 reporting issue.

7 This brings me to my point, which is the
8 call to action. The reason that I have provided pro
9 bono services completely free to all these victims is
10 because they need them and because they are human.
11 They are our family. They are our daughters, they are
12 our mothers, they are our sisters, they are aunts,
13 they are uncles.

14 We provide to them what we would provide
15 our own family. The first of which is to provide --
16 to advocate -- advocacy for victims before the
17 District Attorney and to interact with police. Much
18 of the DAs do not have access to interpreter services
19 that are good.

20 I often find myself in meetings where I am
21 using Mandarin Chinese to translate because someone
22 has brought a translator in a different dialect. I
23 have never encountered an ADA who is Asian, but for
24 Hannah Yu, who is Chief of the Hate Crimes Unit at the
25 Manhattan DA's office.

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1 The Asian community cannot have trust in
2 the local law enforcement if they are not represented
3 and people do not speak their language. There are
4 also mixed messages. When the ADA tells someone that
5 they are going to do something, the local police will
6 sometimes say the opposite and say I don't have faith
7 in the ADA. There are problems there and distrust in
8 the institutions.

9 We need training and education. We have
10 given training and educations to the DA's office in
11 Manhattan, but we need more of that. For example, the
12 New York City Council dedicated \$1.7 million for heat
13 crimes work, which expanded the Hate Crimes Unit in
14 Manhattan from three people to 13 dedicated people and
15 20 dedicated ADAs.

16 The other thing that victims need is
17 wraparound services, people to help them with Go Fund
18 Me. In order to withdraw funds, you need Social
19 Security number from the United States as well as bank
20 account from the United States. They also need
21 ability to apply for U visas if they are undocumented.

22 They need help with healthcare. They need help with
23 the media.

24 There is no easy answer to any of these
25 problems, but the fact that there is a large

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1 population of people who are pro bono lawyers
2 dedicating services here indicates that the community
3 organizations are overwhelmed and that we as a
4 community has failed the community that's supposed to
5 trust us.

6 I want to tell one story that is
7 noteworthy because it surprised me. The husband of
8 GuiYing Ma, who's the grandmother sweeping her street,
9 when her -- when she died in the hospital three months
10 after she was crushed with a rock, instead of blaming
11 the perpetrator who had bashed in her head and taken
12 away her life, he blamed the hospital because he did
13 not trust the hospital institution to have protected
14 her.

15 That is an illustration of the loss of
16 trust that our community has had in institutions that
17 are supposed to protect us. Whether it's the
18 hospital, the police, the DA, even this commission, or
19 myself. What I have tried to do is create bonds with
20 the community so that they have someone to go to that
21 they can trust.

22 And to be honest with you, I am the mother
23 of three children who are quite young, six, seven, and
24 nine years old. And having seen anti-Asian hate when
25 I was growing up in the suburbs, I yearn for a better

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1 future.

2 Thank you to the Commission, all the work
3 that you are doing. I'm very hopeful that there will
4 be a federal response to anti-Asian racism.

5 COMMISSIONER KIRSANOW: Thank you, Ms. Wu.
6 Mr. Cheng.

7 MR. CHENG: So Ms. Wu, thank you very much
8 for your advocacy on behalf of Asian American crime
9 victims. I feel very humbled. And after this panel
10 is done, I'd like to find out how I could do more.

11 Good afternoon, Commissioners, staff
12 members, distinguished panelists, and guests. I'm
13 grateful for this opportunity to speak to this
14 commission on a topic of great personal importance,
15 racism and its impact on Americans of Asian descent.

16 By way of background, I am the first
17 generation in my family to be born in the United
18 States to immigrant parents. I grew up in the 1970s
19 in a racially diverse middle class suburb of San
20 Francisco. I remember being frequently mocked and
21 even being beaten up for being different.

22 When I was in eighth grade, I started the
23 chess club so I could eat lunch indoors to avoid being
24 beaten up. I have very visceral reasons to hate
25 racism.

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1 In 1984, I applied to Lowell High School,
2 an academic merit-based program in San Francisco. As
3 part of a desegregation initiative, Lowell's
4 admissions process featured an academic index that
5 took into account grades and test scores.

6 However, based on false claims that racial
7 mixing in schools and classrooms would help improve
8 the academic performance of Black students, the San
9 Francisco Unified School District imposed racial caps
10 on admissions that forced Chinese kids to score higher
11 than any other ethnic group.

12 The racial caps harmed most poor Chinese
13 American kids. I was shocked and dismayed even as a
14 child to see such blatant discrimination being proudly
15 promoted by public officials.

16 After graduating from college in 1994, I
17 and a group of activists from a Chinese-American
18 democratic club formed the Asian American legal
19 foundation in order to organize a law suit that
20 challenged the racial quotas.

21 After six years of litigation, the SFUSD
22 agreed to all of our terms in quotas, and the quotas
23 were removed.

24 Since then, the Asian American Legal
25 Foundation has championed the rights of Asian

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1 Americans by adopting in judicial and public advocacy
2 a position that has -- that was surprisingly unique
3 for many years in Asian American civil rights groups,
4 that discrimination based on race, ethnicity, or
5 national origin is never justified and should never be
6 permitted unless subjected to strict scrutiny.

7 We believed that then and now more than
8 ever we believe that discrimination and violence
9 against Asian Americans and all Americans can best and
10 only be eliminated ultimately by returning to the
11 foundational principles that every American must be
12 treated equally under law.

13 The history of discrimination and ethnic
14 violence against Asian Americans is as extensive as
15 the history of Asians in America. One of the largest
16 lynchings in American history occurred in Los Angeles
17 in 1871 when a mob murdered ten percent of the already
18 ghettoized Chinese population.

19 Racial violence in the West, excuse me,
20 including by the KKK, targeted Asian Americans as the
21 -- as did segregation efforts and policies in schools,
22 employments, and other arenas. The Chinese Exclusion
23 Act of 1882, the internment of Japanese Americans in
24 World War II, the list just goes on and on.

25 While there has been tremendous progress,

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1 discrimination and violence against Asian Americans
2 remains pervasive. Asian Americans face growing
3 levels of discrimination in education, employment,
4 business, and both anecdotally and statistically are
5 increasingly victims of violence.

6 The traditional racism based on racial
7 animus has been joined by an ugly cousin, racist
8 discrimination and violence that is supposedly benign.

9 Most notably in recent years, reportedly benign
10 discrimination helped advance redistributionist equity
11 efforts seems to have supplanted ignorance-based
12 animus as the source of institutionalized
13 discrimination against Asian Americans.

14 As previously mentioned, I first
15 encountered this type of discrimination applying to a
16 public high school, but programs seeking to limit
17 Asian American enrollment for the sake of diversity
18 are now ubiquitous in any selective admissions
19 setting.

20 The same attitudes exclude Asian Americans
21 de facto, if not officially, from being recruited
22 under DEI programs in employment or other business
23 contexts as well as for a growing number of
24 governmental programs.

25 But the horrifying surge of violence that

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1 Asian Americans face in the present appears only to be
2 driven partly by racism by both Whites and non-Whites.

3 The Commission does not need additional recitations
4 of horrifying acts of violence that are occurring on a
5 daily basis.

6 The answer lies in deterring and stopping
7 crime in bad acts and bad actors and not to focus only
8 on things called hate crimes. Focusing on hate misses
9 the forest for the trees. It is true that crimes
10 against Asian Americans have increased in the wake of
11 the COVID-19 pandemic.

12 It is commonly explained by the narrative
13 that White supremacists or nationalists are
14 responsible for the surge in violence, often
15 reportedly because of stupid remarks about the origin
16 of COVID-19.

17 Another panelist in a previous -- in an
18 earlier panel, Diane Yap, has shown that claims that
19 White people are responsible for the upswing in crimes
20 against Asian Americans are foundationally based on
21 two biased and misleading studies that conflate often
22 non-violent hate crimes with violent crime.

23 Logically the increase in violent crimes
24 against Asian Americans is predominantly due to a
25 surge in violent crime overall, particularly in large

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1 American cities. While the number of reported hate
2 crimes has increased, many acts of violence against
3 Asian Americans are not reported or categorized as
4 hate crimes.

5 Preventing hate crimes will not and has
6 not prevented an increase in crimes against Asian
7 Americans. Three years after the pandemic started,
8 there's no evidence that posters or rallies have
9 anything to -- have done anything to actually counter
10 the early release, for instance, of tens of thousands
11 of felons in the state of California.

12 The emphasis on identity politics also
13 almost certainly plays a role in anti-Asian hate and
14 violence. Logically, a focus on racial identity
15 encourages people to regard people from different
16 ethnic groups as others, less important and
17 potentially less or even inhuman.

18 As previously mentioned, the majority of
19 crimes against Asian Americans and shocking and
20 dismaying images of brutality that we see daily are
21 not apparently caused by racial animus but are largely
22 due to changes in criminal justice.

23 We've heard from Dr. Wu earlier that
24 restorative justice initiatives in states like
25 California have resulted in -- in the release of tens

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1 of thousands of convicted felons and the
2 decriminalization or downgrading of many crimes
3 previously considered and prosecuted as felonies.

4 The racial focus of criminal justice
5 reform has also contributed to the surge in crime.
6 The death of George Floyd in May 2020 added to the
7 wave of initiatives to eliminate the carceral state.

8 The focus of criminal justice reform
9 appears to be on those who commit crimes and the race
10 of those who commit crimes at the expense of the
11 rights of victims and the families of all communities.

12 The pendulum has swung too far. The
13 victims of crime do not only include Asian Americans,
14 but are actually and tragically disproportionately
15 Black.

16 The federal government has historically
17 had a mixed role in protecting civil rights. On the
18 one hand, the federal government has been the
19 perpetrator and participant in almost all of the most
20 egregious civil rights violations. Conversely, the
21 federal government has often also protected the rights
22 of minorities.

23 Historically, when various states and
24 localities refuse to provide equal access and
25 protection, the federal government stepped in. The

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1 civil rights advances of the nation post-Brown could
2 not have been achieved without -- without active
3 federal intervention.

4 In my opinion, the proper role of the
5 federal government is to uphold the dearly won
6 constitutional protections for individuals to avoid
7 discrimination based on immutable characteristics. Of
8 late, the government has not only abdicated that duty
9 but facilitated injustice.

10 A high profile example of the educational
11 context involves the decision by the current
12 administration to have the Solicitor General's Office
13 support Harvard's bogus claim that its admissions
14 policies do not discriminate against Asian Americans.

15 In the criminal justice arena, the
16 gathering and reporting of crime statistics have been
17 overhauled to focus on hate crimes, masking the
18 increase in violent crimes that actually drives the
19 increased violence against Asian Americans and
20 everyone.

21 I believe that the federal government
22 should not and cannot treat any American differently
23 based on race, ethnicity, or national origin, except
24 under circumstances that can survive strict scrutiny.

25 That means the federal government should vigorously

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1 enforce anti-discrimination laws, regardless of
2 rationale or claim beneficiary.

3 If an action or program would be illegal
4 or prohibited in committed against someone Black, it
5 should be equally illegal if committed against an
6 Asian American.

7 In criminal justice, the federal
8 government should focus its data-gathering efforts to
9 focus on actually objectively defined crimes,
10 especially violent crimes. The federal government
11 needs to step in to aggressively pursue justice for
12 crime victims when local officials refuse to prosecute
13 criminals.

14 Accountability for criminals who lack --
15 who attack law-abiding citizens and residents will
16 deter and decrease anti-Asian violence far more than
17 national demands not called COVID-19, the China or
18 Wuhan virus.

19 COMMISSIONER KIRSANOW: Mr. Cheng, if you
20 can wrap it up.

21 MR. CHENG: Almost done. Finally, all
22 forms of racial injustice including violence against
23 Asian Americans can only be truly controlled and
24 eliminated with the concerted -- a concerted effort to
25 get racial neutrality under law a real chance.

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1 Nothing good can be achieved by trying to fight past
2 discrimination with racial discrimination.

3 The federal government must focus its
4 efforts, policies, and resources to reducing the
5 number of victims of racism instead of actively making
6 new ones.

7 Thank you for your time and consideration.

8 COMMISSIONER KIRSANOW: Thank you, sir.
9 Ms. Kulkarni.

10 MS. KULKARNI: Thank you. Good afternoon,
11 my name is Manjusha Kulkarni, and I serve as Executive
12 Director of AAPI Equity Alliance and co-founder of
13 Stop AAPI Hate, along with Cynthia Choi and Russell
14 Jeung, who spoke earlier today. Thank you for the
15 opportunity to speak at today's very important
16 briefing.

17 In the 2019 report Are Rights a Reality:
18 Evaluating Federal Civil Rights Enforcement, this
19 Commission stated the nation still has not reached a
20 time of recognition of and protection for core civil
21 rights promises as the norm for all Americans. This
22 is especially true for Asian Americans and Pacific
23 Islanders since the pandemic.

24 In the past three years, our communities
25 have experienced verbal harassment, civil rights

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1 violations, and in some limited cases, physical
2 attacks. As Cynthia Choi outlined, we at Stop AAPI
3 Hate have received over 11,000 incident reports from
4 all 50 states and the District of Columbia.

5 Sadly, these hate incidents have impacted
6 not only East Asians, but also Southeast Asians and
7 South Asians. According to a 2021 survey Stop AAPI
8 Hate did with the Edelman firm, 20 percent of South
9 Asians have experienced hate incidents. This includes
10 individuals whose families originate from India,
11 Pakistan, Sri Lanka, Bangladesh, and Nepal, and who
12 identify most commonly as Hindu, Muslim, and Sikh.

13 Some of the most devastating examples of
14 hate directed at South Asians include not only the
15 Indianapolis shooting that resulted in the deaths of
16 four Sikh Americans in 2021, but also the murder of
17 seven Sikh Americans in 2012 in Oak Creek, Wisconsin,
18 and the homicides of three South Asians immediately
19 after 9/11, one Sikh, one Hindu, and one Muslim.

20 Given the horrific nature of the
21 Indianapolis and Atlanta shootings in 2021, it is --
22 it is not surprising that Congress passed the COVID-19
23 hate crimes bill and President Biden signed it into
24 law in May of the same year.

25 And yet, immediately after the Atlanta

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1 attack, FBI Director Christopher Wray stated that race
2 was not a factor in the Atlanta shooting. Such
3 comments and the failure to prosecute hate crimes
4 against Asian Americans stems from the very high
5 federal standard required.

6 The "because of" standard has been
7 interpreted by the courts to mean that individuals can
8 only be found guilty if the protected characteristic
9 of the victim or target is the sole factor in
10 willfully causing bodily injury. Similar standards
11 exist at the state level and inhibit the appropriate
12 prosecution of hate crimes by White supremacists,
13 including in Atlanta.

14 Much attention has been paid to violent
15 attacks and reports of anti-Asian hate. Analysis of
16 our Stop AAPI Hate data indicates that the vast
17 majority do not involve a crime, let alone a hate
18 crime. Only a minority of the 11,000 involve crimes
19 such as physical attacks and destruction of property.

20 Seventeen percent involve cases of assault
21 and battery and four percent vandalism. Of the cases
22 involving personal injury, very few result in serious
23 bodily injury that necessitate hate crimes
24 prosecution.

25 Beyond the fact that only a small minority

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1 involve crimes, an even more compelling reason not to
2 rely solely on hate crimes enforcement is the lack of
3 evidence of its efficacy. Little research has shown
4 that prosecution of hate crimes for sentencing
5 enhancements they provide serve as a deterrent to
6 prevent recidivism among perpetrators or future crimes
7 by other actors.

8 Rather, they often lead to more mass
9 incarceration, especially of African Americans and
10 Latinx individuals, who commit fewer hate crimes than
11 Whites, as evidenced by the latest FBI data.
12 Moreover, such prosecutions do nothing to promote
13 healing of victims and community members.

14 Of the 11,000 hate incidents reported to
15 Stop AAPI Hate, 12 percent involve civil rights
16 violations. They include workplace discrimination,
17 discrimination in housing refusal of service in retail
18 and public accommodations, and bullying in schools.

19 Given these numbers, it is critical to
20 look beyond criminal law enforcement towards civil
21 rights enforcement and civil mechanisms that offer the
22 possibility of redress.

23 Key to civil and civil rights approach is
24 the fact that it holds institutions and not simply
25 individuals accountable, both public as well as

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1 private, for discriminatory acts committed against
2 employees, tenants, students, and customers. A
3 central remedy of such actions is injunctive relief
4 ending the racial discrimination itself.

5 With it can come financial penalties which
6 offer some level of accountability from the
7 perpetrating institution along with restitution to
8 victims or survivors.

9 Given these facts, we offer the following
10 recommendations. Number one, improve civil rights
11 reporting nationwide.

12 Federal, state, and territory agencies
13 responsible for enforcing civil rights laws receive
14 hundreds of thousands of complaints every year, yet
15 few agencies engage in the type of public data
16 collection, research, and reporting needed to inform
17 effective civil rights enforcement, as noted by this
18 very commission in the 2019 report.

19 By contrast, federal law requires the
20 collection of hate crimes data and the data informs
21 law enforcement administration operations managements
22 and reveals ongoing and emerging trends. We for this
23 reason strongly recommend requiring federal civil
24 rights agencies to collect and report key data related
25 to civil rights enforcement and the Attorney General

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1 to annually publish this data.

2 Number two, update Title II to include
3 retail stores and other businesses where
4 discrimination occurs. Title II bans thea
5 discrimination on the basis of race, color, religion,
6 and national origin in places of public accommodation.

7 These heretofore have been limited to restaurants,
8 hotels, and places of exhibition or entertainment.

9 Excluded are retail stores such as grocery
10 stores, markets, banks, beauty salons, and other
11 businesses. We recommend that legislation amending
12 the definition expressly include retail stores and
13 other places where professional services are provided.

14 Number three, codify the language access
15 coordinator at the U.S. Department of Justice. As
16 many earlier speakers, have indicated, many in our
17 community are unable to access the laws and benefits
18 that come from our federal and state governments
19 because of lack of language access.

20 Enshrining a coordinator in federal law
21 eliminates -- or sorry, elevates its importance and
22 protects it from changes within administration. For
23 millions of Asian Americans and Pacific Islanders,
24 access to justice and the important federal programs
25 and benefits should not depend on a ability to speak

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1 English.

2 Number four, fund state and local
3 government efforts in partnership with community
4 groups to address discrimination and other hate
5 incidents. Federal funding when it is not a hate
6 crime is uneven.

7 For example, the Department of Justice
8 provides a number of federal grants to support state,
9 local, and tribal enforcement of -- four victims of
10 crimes. But there's no such program to address hate
11 incidents that are not crimes or specifically
12 supporting state and local civil rights enforcement.

13 Additional resources are needed if we want
14 to truly address hate and prevent anti-Asian hate
15 incidents. These and other recommendations are
16 included in Stop AAPI Hate Civil Rights Report and a
17 law journal article to be published in the Asian
18 Pacific American Legal Journal, both to be released in
19 May.

20 As a former civil rights attorney whose
21 career began at the Southern Poverty Law Center and
22 the Mexican American Legal Defense and Education Fund,
23 I can tell you that truly combating anti-Asian hate
24 requires a comprehensive approach and not simply one
25 that primarily relies upon criminal law enforcement.

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1 Rather, it must include civil rights
2 enforcement, community safety measures, and education
3 equity. Only then will the American promise of civil
4 rights become a reality for Asian Americans.

5 Thank you very much.

6 COMMISSIONER KIRSANOW: Thanks to all the
7 panelists. I just want to state for the record that
8 Commissioner Mondaire Jones is trying to call in by
9 phone so that it's noted for the record.

10 Thank you all for your testimony, I'm
11 going to leave it open for questions from our
12 commissioners.

13 COMMISSIONER ADAMS: Mr. Chairman, thank
14 you so much for allowing me to speak. Let me thank
15 all of you for being here today. The information has
16 been extraordinarily helpful to our case.

17 I want to just ask a quick question to the
18 entire panel. President Biden recently issued an
19 executive order furthering the advancement of racial
20 and equity support through the federal government.

21 Do you think that those efforts would help
22 some of the issues that you're sharing with us here
23 today? Any of you can give me a response on that.

24 MS. KULKARNI: I can start. I think those
25 measures are integral to having true equity in our

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1 federal government and I think will only enhance some
2 of the recommendations that I have made, which is to
3 include a language access coordinator, to ensure that
4 civil rights violations are included and that data is
5 collected on a regular basis. And the federal grant
6 program to look at ways in which we can provide
7 support to communities.

8 Jo-Ann described very succinctly how
9 communities need that support, how community-based
10 organizations like hers can benefit from it, even when
11 there are not crimes.

12 So we absolutely applaud those measure and
13 appreciate the fact that Asian Americans are being
14 brought into the context of what it means to have true
15 equity in the -- in the United States.

16 MS. WU: So from the perspective of the
17 victims, I think that it's a good start. But I think
18 it needs to address a holistic community that is
19 better.

20 So the father of Michelle Go, Justin Go,
21 who lost his daughter to the Times Square subway, he
22 didn't speak out for a year. But on the one year
23 anniversary of his death -- her death, he wrote a New
24 York Times op ed.

25 And while the op ed focused in part on the

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1 life that Michelle lived, the solution that he had for
2 how to stop this was not focused on necessarily the
3 Asian community.

4 This is what he wrote: We cannot abandon
5 people like Michelle's attacker, Martial Simon, to our
6 subway systems. We cannot assume that emergency
7 medical workers will be able to handle these neglected
8 souls or that ordinary individuals will be able to
9 deal with the threats posed.

10 Real change comes with meaningful
11 preventative measures. This requires, among other
12 things, adequate and continued funding for housing,
13 treatment, and other programs. We have to take care
14 of all of our community. It is not simple as saying
15 that if we direct resources to the Asian community,
16 that that is enough.

17 MS. CHOI: I'd like to follow up, if I
18 may. The fact, the piece that I want to lift up is
19 that this executive order mandates that key agencies
20 establish some kind of sustained dialog with impacted
21 communities. And that's key.

22 As you can see from this panel, we have a
23 diverse set of opinions in terms of interpreting the
24 data, understanding the diverse experiences of our
25 communities. But it's very important to talk with

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1 those community-based organizations that are actually
2 serving those who are impacted.

3 So for example, we have a visit coming to
4 San Francisco to learn about the types of investments
5 that need to be made around victim services. We know
6 that healing and recovery takes intensive resources
7 and coordination.

8 And we have to get to a point where we're
9 actually preventing incidents of violence. And we can
10 only do that by working with other communities who are
11 also affected by crime and by violence as well. And
12 that's absolutely key.

13 In California, we made a historic \$166
14 million dollar investment going largely to community-
15 based organizations doing just that work. And that's
16 what it's going to take in the long term.

17 COMMISSIONER KIRSANOW: Commissioner
18 Magpantay.

19 COMMISSIONER MAGPANTAY: Thank you all for
20 your comments. I've heard a lot about -- and I think
21 on affirmative action we're going to hear from the
22 Supreme Court very shortly around those issues. So
23 that might just sort of lay out what the law is for
24 all of us.

25 But on the question on language access,

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1 and I think Mr. Yang had talked about this earlier, is
2 that President Bush signed this executive order,
3 13166, and a number of you had talked about the need
4 to have DAs, police, services that are available in
5 the myriad languages that Asian Americans speak.

6 There is a federal standard in -- either
7 you don't have to do everything in every language
8 every place, right? There is a standard to do that
9 that the government has -- could you just talk a
10 little bit about that?

11 Because I want to make sure that our
12 services that our agencies provide under federal law,
13 under Bush's executive order and subsequently signed,
14 comport with the language minority groups in those
15 populations when they need those services.

16 MS. WU: So I mean my -- from my
17 perspective, there's been no -- it doesn't conform,
18 right. Language accesses are not provided. But let
19 me just explain how these cases come in. I'm a patent
20 lawyer, people don't normally call me about, you know,
21 when someone dies.

22 But what happens is the first person on
23 the scene of a crime is almost always a reporter. The
24 reporter is often the Asian reporter, but they may not
25 speak the specific dialect.

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1 The reason I got roped into this is I work
2 in the community and they would call me and say do you
3 know someone who speaks this dialect, do you know
4 someone that'll speak this dialect. I have broad,
5 diverse friends of Asian, you know, different
6 dialects, and they would ask me to hook them up with
7 interpreters.

8 One of the most important things in
9 criminal prosecution is the interpreter, because the
10 interpreter is the voice of the victim. If the voice
11 of the victim is not being heard in front of the grand
12 jury, this is really devastating to just the charges
13 that are being brought.

14 What you often find with the DA is that
15 they drop the hate crime charge because it's not
16 necessary. You have a murder charge, you might as
17 well just go for the 20 years to life.

18 What does adding two to three years mean
19 to you, and what's that additional burden of proof,
20 particularly if you have a language access issue where
21 the victim isn't speaking clearly about what was being
22 said when the attack was happening?

23 One of the cases that stands out to me was
24 the witness was speaking Spanish, the victim was
25 speaking Chinese, and we had two interpreters both

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1 translating for the grand jury. As some of you may
2 know, in Asian languages the words "he" and "she" are
3 the same. Maybe that's progressive in some way,
4 right.

5 So if you say, "I think he did it," that
6 could sound like "I think she did it." And this is
7 important if the interpreter is not a good
8 interpreter, because they have to know from context
9 whether that word is he or she.

10 In that case it was going before a grand
11 jury for a hate crime charge. The interpreter, we had
12 worked with the interpreter so they could understand
13 the context of this. But nevertheless, they got the
14 word wrong. They said, "I think he did it" when it
15 should have been "I think she did it," or "I saw her
16 coming around the corner" instead of "I saw him."

17 And I think that the interpreter was very
18 upset because they thought that they may jeopardize
19 the hate crime charge. We were able to talk to the
20 ADA and get that sort of sorted out and the hate crime
21 charge did go in.

22 But one of the most stressful things to do
23 is to be interpreter in one of these cases, because
24 you think that the case turns on the language you use
25 and the emotion that you put into it. So if you have

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1 a man translating for a woman, it's not quite as
2 effective to be honest with you.

3 And I, as a native Chinese speaker who
4 didn't speak English till I was six, I don't always
5 agree with the interpretation that's happening.

6 So I think there's nuance to the
7 interpretation. It's not simply just finding any
8 interpreter who can sit there. But it's an
9 interpreter who can sit with the witness through all
10 of this.

11 And one of the reasons I think this is so
12 important is when I started this work, I knew nothing
13 about civil rights really. And I went to the great
14 Loretta Lynch, who was a partner of mine at the time,
15 and she had handled many cases in the Black community.

16 And I said, "Loretta, what do I need to do
17 to do civil rights work?" And her answer was, "you
18 need a good interpreter." And she actually gave me
19 her personal interpreter from the Eastern District of
20 New York when she was the U.S. Attorney there. And
21 that's how I started along this path.

22 And so for those who want to really do
23 this work, finding good interpreters who are court-
24 certified who can actually work with the witnesses and
25 will often do it at their own dime, because we're

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1 charging sort of a lower rate to do court certified
2 work, it's super important.

3 And then the second thing I just want to
4 mention is that a lot of community organizations, when
5 I've asked them to have people become court-certified,
6 they don't want to. They don't want to do this kind
7 of work, it's traumatic. You're working with victims,
8 right.

9 And so among the people I could lean on
10 for one Chinese dialect when I was looking, I only had
11 three people. And I paid them double, you know, with
12 the good fortune of my law firm paying them double to
13 have them on call. So that any time the DA wanted
14 this person to come appear and testified or even just
15 have a witness interviewed, this interpreter was
16 available.

17 And that's why private people have stepped
18 in to provide these services, I think. Because the
19 criminal justice system either doesn't have enough
20 funding or doesn't have enough training in order to
21 really prosecute these crimes to the degree that they
22 need to be prosecuted.

23 And let's put yourself in the shoes of the
24 ADA. Why put in a hate crime penalty enhancement if
25 you don't have to? Why prove something if you don't

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1 need to? It's only a penalty enhancement, it doesn't
2 get you the original crime. And to be honest with
3 you, you know, sometimes it's not worth it.

4 And I'll just tell one more anecdote just
5 so you can get a sense of this. In the case in Queens
6 where there was a delivery worker who was killed on
7 his scooter, this was famously called the duck sauce
8 killer case. One of -- the Great Wall restaurant
9 owner to court to the grand jury to testify that he'd
10 been threatened, and that's why this delivery worker
11 had been shot.

12 And he brought with him what he said was
13 his interpreter, a family member. It turned out that
14 this family member, this woman that he said was a
15 family member, was a member of the Chinese media
16 newspaper. And she then revealed portions of the
17 secret grand jury to the Chinese press thereafter.

18 These kinds of incidents jeopardize the
19 criminal prosecution. As you could imagine, the
20 District Attorney was not so happy with that.

21 And so part of the things that we're doing
22 in providing a wrap-around services and acting as an
23 advocate is also safeguarding our criminal justice
24 system so that the victims can obtain the kind of the
25 justice that I think that we as Americans have come to

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1 really expect and really rely on and I honestly think
2 is one of the great things about our country.

3 COMMISSIONER KIRSANOW: Thank you.

4 MS. KULKARNI: May I go next?

5 COMMISSIONER KIRSANOW: Would you like to
6 finish up?

7 MS. KULKARNI: Yes. So I wanted -- I'm
8 reading from the Federal Register, Title VI of the
9 Civil Rights Act of 1964 provides that no person shall
10 be subjected to discrimination on the basis of race,
11 color, or national origin under any program or
12 activity that receives federal financial assistance.

13 The purpose of this policy guidance is to
14 clarify the responsibilities of providers of health
15 and social services from the U.S. Department of Health
16 and Human Services fulfill their responsibilities to
17 limited English-proficient persons by providing
18 language access.

19 And it goes on to say that individuals
20 providing those services must ensure that limited
21 English-proficient persons have meaningful access to
22 programs and services, and the guidance provides
23 examples and further clarification of these policies
24 and practices.

25 So I think it's very important that for

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1 what we're talking about today, the federal government
2 has already weighed in and said that it is mandatory
3 that limited English-proficient individuals get
4 language access for any services that come from
5 funding from the federal government. And that applies
6 to so many different services at state and local
7 levels.

8 COMMISSIONER NOURSE: Could I ask --

9 COMMISSIONER KIRSANOW: Mr. Cheng?

10 MR. CHENG: Yeah, so I would strongly
11 support all the efforts, initiatives to make sure that
12 there are adequate and even enhanced services
13 available for victims, including language services.

14 That said, I keep coming back to I think
15 the forest and the trees. You know, we're talking
16 about a lot of trees, different services available for
17 victims. My hope is that we can focus on trying to
18 make sure that there are fewer victims.

19 You know, my hope is that we can take --
20 the federal government can take a hard look at a lot
21 of the efforts right now that decriminalize activities
22 and actions, that downgrade criminal acts, the -- that
23 discourage criminals from being arrested. That
24 discourage criminals from being prosecuted. That
25 result in early release of felons. That result in

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1 repeated release of felons.

2 Those are all contributors to the making
3 of victims. And my hope is that we have fewer
4 victims.

5 COMMISSIONER KIRSANOW: Commissioner
6 Nourse.

7 COMMISSIONER NOURSE: Yeah, Ms. Jennifer
8 Wu, thank you very much for your work. I started out
9 my legal career at Paul, Weiss, so welcome.

10 I just want to make clear you've been
11 dealing with the Manhattan, or the New York DAs.
12 Because there's a difficulty in criminal law, which I
13 taught for 15 years, which is that the federal
14 government has a supervisory responsibility over
15 certain kinds of crime, right.

16 And the Supreme Court actually seeks to
17 enforce increasingly limits on the ability of the
18 federal government to address crime.

19 Now, there is a Hate Crimes Act. There
20 are very few prosecutions, right. But the principle
21 of responsibility is the state and locality, right?

22 And so the question would be whether under
23 current federal law there is some responsibility on
24 behalf of the money that comes out of the Department
25 of Justice to be spent on these kinds of things. I

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1 think that's why Ms. Kulkarni suggested that there
2 already are federal laws, whether they're implemented
3 or not is another question.

4 Do you have any knowledge, that was a long
5 lead up to do you have any knowledge about needs
6 inside the DOJ about their hate crimes prosecution?
7 Because I'd like to hear that from you.

8 MS. WU: You know, our contact with DOJ is
9 relatively limited. My understanding is that I don't
10 think that the resources are devoted to anti-Asian
11 hate crimes.

12 That there are kind of, there's a big hate
13 crime kind of, you know, sort of department, but
14 similar to the Manhattan DA's office to this kind of
15 pandemic of anti-Asian hate, you didn't have people
16 who specialized in anti-Asian hate crimes, and none of
17 them were Asian.

18 And that's an important cultural fact.
19 Asians tend to under-report. One of the things that I
20 did in my Manhattan DA training was probably I would
21 do it for DOJ if they wanted to, was when you ask an
22 anti-Asian hate victim or a witness what do you do for
23 a living, the answer is almost always a lie.

24 If they are working, they may not be being
25 paid above the books, they think, right. So they say

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1 oh, I don't do anything, I just help friends out, so
2 that's a lie.

3 If they aren't working, they're
4 embarrassed, and so they say I have a job. But they
5 can't articulate what the job is. They're sort of
6 unique facets to anti-Asian hate where I think that
7 the tension you have is the Asian community would like
8 to have reporting so you can get funding, you can
9 address these issues.

10 Individuals on the other hand are
11 embarrassed. The biggest complaint I hear from my
12 victim is my face is in the newspaper. That means all
13 the friends and family of the perpetrator are going to
14 come get me.

15 They're afraid for their own safety and
16 they don't want to report. So they want to do it
17 anonymously. So all these news cameras, the
18 Commission, everyone who's coming in their face, the
19 DA, they're scared. They lock the door, they don't
20 want to.

21 And one of the kind of roles that I play
22 is getting them to open the door, to say I will talk
23 to the DA, I will talk to the police, and I will talk
24 to everyone else. And the reason they won't open the
25 door is the same reason that my own parents didn't let

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1 me open the door when I was growing up in the 1980s.

2 My parents, in a very safe household,
3 every time the doorbell rang, they would have me and
4 my sister go hide in the closet. Every single time.
5 Whether it was the post person, the FedEx person, a
6 car accident person, a neighbor. Girl Scout cookies,
7 I was a Girl Scout, I would never open the door.

8 And only when I was a teenager when I went
9 to a friend's house, they opened the door when the
10 doorbell rang, I realized that my parents had a fear
11 of institutions. Of not being perceived as American,
12 even though they were law-abiding Americans.

13 They were so American that I'm named
14 Jennifer after Jennifer Jones, the Western actress.
15 And my sister was named Mindy after Mork and Mindy.
16 That's how American they are, right. And even then,
17 they didn't open the door.

18 So I think the federal response, whether
19 it's from the DOJ or from a different agency, needs to
20 focus on, you know, I appreciate kind of everything
21 everyone said, but focus on getting victims to open
22 the door.

23 Because these are people who've lost trust
24 in American society. Whether it's because of the
25 pandemic or because of something else or because

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1 they're immigrants, or over time, and these are the
2 bonds that bring us together as a community.

3 And if they're broken, you know, that sort
4 of is -- they will be no impact to the federal
5 response if they won't open the door when they --
6 people come offering help.

7 And then this last thing I just want to
8 say is that I agree with the Commissioner on
9 affirmative action. I don't think a single one of my
10 victims would have been saved if affirmative action
11 was not in effect, right.

12 And so the issue here is that people are
13 dying. They aren't taking the resources. It's hard
14 to help them, and that's why you have private
15 practitioners like me stepping in to offer not money,
16 but just help and emotional support. And what they
17 see in me is the thing that I didn't see in myself.
18 They see that I'm Asian.

19 MS. KULKARNI: May I also answer that
20 question regarding DOJ? I have some statistics. As I
21 included in my law journal article, of the 66,000 hate
22 crimes reported to law enforcement between 2010 and
23 2019, only 1,200 were investigated by U.S. attorneys
24 in matters involving the violation of federal hate
25 crime statutes.

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1 Of that figure, the U.S. Justice
2 Department only referred 208 for prosecution. So just
3 to give you an idea of what actually gets prosecuted,
4 and let me add that the state auditor's report in
5 California listed three significant reasons for gaps,
6 and of course those are based on state laws.

7 But one thing that's applicable across all
8 50 states is that in up to 50 percent of cases, local
9 law enforcement officials failed to include the factor
10 of race in the police report.

11 So police themselves are unable or
12 refusing to see race as a factor. And so for that
13 reason, much of the hate crimes prosecution doesn't
14 happen.

15 COMMISSIONER MAGPANTAY: Could you say the
16 citation?

17 MS. KULKARNI: That's the state auditor's
18 report of -- oh, yes, please. It's from 2018.

19 MS. CHOI: Could I also add one point,
20 because we often critique the federal government. I
21 do want to applaud that DOJ hired its first dedicated
22 language access coordinator.

23 And that is after decades of advocating
24 for the need to have some dedicated staff looking at
25 the issue, what the barriers are for individuals

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1 reporting, for ensuring that we offer culturally
2 competent and language-accessible services.

3 And so I do want to note that for the
4 record, that that has been an important and
5 affirmative I would say step that's really important
6 to our community.

7 MR. CHENG: I actually would like to ask
8 both the commissioners and my fellow panelists this
9 question, because I'm struggling a little bit with
10 some basic logic, right.

11 So I've been -- I have mentioned the fact
12 that I believe that a systemic decrease in crime would
13 actually decrease hate crimes. I'm completely
14 supportive of prosecuting hate crimes, making it
15 easier to prosecute hate crimes.

16 In effect, basically throwing not just the
17 book but a heavier book at people who attack and
18 commit violence against other people based upon race
19 and ethnicity.

20 But again, I keep coming back for myself
21 to, gosh, you know, if crimes were systemically
22 prosecuted in a competent way, and ideology didn't
23 enter into decisions to not prosecute criminals and
24 let criminals out early, wouldn't that actually help
25 victims of hate crimes as well?

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1 MS. WU: I think for my victims the answer
2 is no, because the crime is so overwhelming, they're
3 in shock, right. They're not thinking systemically.

4 And while I don't doubt the data and that
5 there might be some logic in there, I think the real
6 issue is what is our federal response right now. You
7 know, what are we going to do now when people are
8 dying and they have died. And how can we prevent the
9 loss of another life.

10 Questions about what justice means are
11 going to vary. The answers will vary to each of you
12 as they will to me. But the reality is that we're all
13 human and the loss of a human life in America is a
14 tragedy.

15 And that we should take that very
16 seriously, not just in terms of the numbers, not just
17 in terms of the data, but because we care about each
18 other. And that we are community regardless of the
19 race or the, you know, our gender, our skin.

20 And having worked with so many of these
21 victims who've died in New York City, I can tell you
22 that there is a tidal wave of anti-Asian violence.

23 I am a patent lawyer. I didn't become a
24 civil rights lawyer till 2020. This is not an
25 accident, right, I didn't come out to want to testify

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1 before this commission.

2 I wish I did not have any more clients who
3 were dead. I was not in probate court, that I wasn't
4 dealing with these issues, I wasn't going to NYPD to
5 pick up the belongings of people who are deceased.

6 This is not just about looking at the
7 data. We see it on the ground here, and we're just
8 begging the federal government for a response.

9 COMMISSIONER HERIOT: This is a question
10 for Jennifer Wu. Have to use your first name in this
11 panel. I'm struck by your testimony. The previous
12 panel also had similar testimony about waves, tidal
13 waves, the violence, the cruelty.

14 And you talk about a lack of federal
15 response. And I know we've heard evidence or
16 statistics about how rare things are to be prosecuted.

17 But my question is have you talked with the Civil
18 Rights Division about these cases? Because they have
19 people who are better trained to open those doors,
20 right.

21 Have you talked to the Civil Rights
22 Division about getting some of these particular
23 clients or the next victim protected or having federal
24 -- because they sound like federal civil rights
25 violations, right.

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1 MS. WU: Yeah, so we've talked to them,
2 but the solutions haven't been immediate enough,
3 right. So for many of our clients, there -- it's the
4 initial stage of grief, right. They've lost a family
5 member. And the solutions that the federal government
6 is giving are years away.

7 And we, as we all know from our criminal
8 justice system, particularly at the federal level, the
9 first part of a criminal case is about protection of
10 the defendant's rights. It's about discovery because
11 you're presumed innocent, right.

12 And so what they want is discovery to
13 show, you know, kind of why that person could be
14 innocent. It's not victim-centered. So if you're the
15 victim, particularly if you're from a country that's
16 not the United States, this is a very foreign concept,
17 right. Where you might presume guilty versus
18 innocence.

19 And so I'm not sure that it's necessarily
20 about the actual conviction for a lot of the victims.

21 But it's about does the federal government care, do
22 they recognize that there's a tidal wave. Do they
23 know that this is an important issue, and have they
24 committed funding and resources.

25 We are constantly encountering lack of

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1 resources at every level of the criminal prosecution,
2 including at the federal level.

3 COMMISSIONER HERIOT: Are you encountering
4 this at the U.S. Attorney's Office, or are you
5 encountering this at the Civil Rights Division?

6 MS. WU: It's the U.S. Attorney's Office I
7 would say. Yeah.

8 COMMISSIONER HERIOT: There's a fellow I'd
9 recommend you talk to, his name is Jim Felte. He's
10 the head of the Criminal Section in the Civil Rights
11 Division. Maybe instead of the SDNY or the EDNY, it
12 might be a good idea to actually talk to the Civil
13 Rights Division and see if they'll change your
14 experience.

15 MS. WU: Right, thank you very much.

16 COMMISSIONER KIRSANOW: I want to thank
17 all of the panelists. We're a little bit beyond our
18 time right now, so thanks very much. And we'll take a
19 short break for ten minutes at 2:00 -- I'm sorry, 3:45
20 we'll have our next panel.

21 (Whereupon, the above-entitled matter went
22 off the record at 3:32 p.m. and resumed at 3:42 p.m.)

23 PANEL 3: LAW ENFORCEMENT & FORMER FEDERAL OFFICIALS

24 COMMISSIONER KIRSANOW: All right, welcome
25 to the final panel of today's briefing on the federal

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1 response to anti-Asian racism, and our panels are
2 members of law enforcement and current and former
3 federal officials.

4 And I'll repeat what I said before and
5 that is each panelist gets, well, this time, more time
6 actually because there's only three of you, so take as
7 much time as you want. Oh, four of you, okay, but
8 still. We have two by Zoom, all right.

9 You'll each have seven minutes in which to
10 testify, and when the warning lights come on, please,
11 you know, pay attention to these lights up here as
12 they give you some guidance as to how much time you've
13 got left, and then after you've all testified, we'll
14 ask the Commissioners to ask the panelists any
15 questions they may have.

16 The panelists in this panel are Eric
17 Dreiband, Former Assistant Attorney General for Civil
18 Rights at the U.S. Department of Justice, and current
19 partner at a small firm called Jones Day; Devon
20 Westhill, Former Assistant Secretary of Civil Rights
21 at the U.S. Department of Agriculture, and current
22 President and General Counsel of the Center for Equal
23 Opportunity, say hello to Roger for me; Detective
24 Orlando Martinez, there we go, Hate Crimes Coordinator
25 for the LAPD; and we have by Zoom, William Scott,

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1 Police Chief with San Francisco, and the lovely and
2 talented Michael Yaki, Former Member of the U.S.
3 Commission on Civil Rights. Welcome. Mr. Dreiband?

4 MR. DREIBAND: Thank you. Good afternoon,
5 Members of the Commission, and thank you for inviting
6 me to today's briefing. My name is Eric Dreiband and
7 I'm a partner at the law firm of Jones Day in
8 Washington, D.C.

9 I served as the Assistant Attorney General
10 for the Civil Rights Division at the United States
11 Department of Justice from 2018 to 2021, and I'm here
12 today at your invitation to speak about the federal
13 response to anti-Asian discrimination in the United
14 States.

15 While my discussion today will focus in
16 part on hate crimes, during my tenure at the Justice
17 Department, we prosecuted other crimes and sought
18 justice for Asians and Asian American victims.

19 And for example, in the area of human
20 trafficking, the Department convicted several
21 defendants for operating an international sex
22 trafficking organization that coerced hundreds of Thai
23 women into engaging in commercial sex acts across the
24 United States, and I want to focus though today on our
25 response to the issues that occurred during the

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1 pandemic.

2 And in the very early stages of the
3 pandemic in March of 2020, Attorney General William
4 Barr and I instructed Justice Department prosecutors
5 across the United States that the Department would not
6 tolerate hate-motivated acts of violence, including
7 any such acts against Asians and Asian Americans.

8 On April 9, 2020, I announced publicly
9 that the Department would not tolerate civil rights
10 violations during the pandemic, and I explained that
11 the Justice Department's pandemic-related work
12 includes enforcing disability rights laws, protecting
13 religious liberty, and prosecuting hate crimes.

14 I also explained that because the
15 coronavirus originated in China, some people have
16 targeted Asian Americans and Asians simply because of
17 their ethnicity and that this conduct has no place in
18 America, and I added the Justice Department will
19 prosecute hate crimes and violations of anti-
20 discrimination laws against Asian Americans, Asians,
21 and others to the fullest extent of the law.

22 Next, on April 27, 2020, Attorney General
23 Barr directed me and Matthew Schneider, who was then
24 the United States Attorney for the Eastern District of
25 Michigan, to oversee and coordinate our efforts to

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1 monitor state and local policies, and if necessary,
2 take action to correct them.

3 Attorney General Barr stated, quote, "the
4 Constitution is not suspended in times of crisis. We
5 must therefore be vigilant to ensure its protections
6 are preserved at the same time that the public is
7 protected."

8 During my remaining time at the Justice
9 Department, the Civil Rights Division and the United
10 States Attorney partners across the country led the
11 Department's efforts to investigate and address civil
12 rights issues related to the pandemic and other
13 issues, including issues about anti-Asian
14 discrimination.

15 In 2020, my last full year at the
16 Department, the Department charged the highest number
17 of hate crimes cases in two decades.

18 We encountered another form of anti-Asian
19 discrimination during my tenure at the Justice
20 Department, namely discrimination against Asian
21 American applicants to Harvard and Yale Colleges.

22 In the Harvard case, the Department
23 launched an investigation after Asian American
24 applicants complained about alleged discrimination by
25 Harvard. The Department also supported the plaintiffs

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1 in a private lawsuit brought against Harvard.

2 When the District Court rules in favor of
3 Harvard, the plaintiffs appealed. We filed a brief in
4 support of the plaintiffs in the Court of Appeals.

5 Our brief asserted that Harvard's race
6 discrimination and its expansive use of race in
7 admissions was unlawful, that Harvard actively engaged
8 in unlawful racial balancing, that Harvard's
9 admissions office consistently and inexplicably scored
10 Asian American applicants lower than other applicants
11 on an entirely subjective personal rating, and Asian
12 American applicants, it was clear in the record, to
13 Harvard ranked the highest in academic and
14 extracurricular qualifications.

15 And given the results of the personal
16 ratings, Harvard expected us to believe that these
17 same applicants lacked courage, integrity, confidence,
18 perseverance, and leadership qualities compared to
19 other applicants, yet Harvard had no explanation for
20 the disparities in the personal ratings.

21 I appeared personally at oral argument on
22 behalf of the United States before the Court of
23 Appeals and explained that Harvard illegally monitored
24 the evolving racial composition of the class at every
25 stage of the process illegally to produce a racially

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1 balanced class. I emphasized that Harvard pervasively
2 and illegally used race at every step of its process.

3 The court affirmed the District Court's
4 decision and the case is pending before the Supreme
5 Court of the United States with a decision expected
6 probably at the end of June of this year.

7 In the Yale case, the Department
8 investigated allegations that Yale University violated
9 the Civil Rights Act of 1964 by the widespread acts of
10 unlawful race and national origin discrimination in
11 college admissions.

12 On August 13, 2020, the Department
13 determined that Yale violated the Civil Rights Act's
14 prohibitions against race and national origin
15 discrimination.

16 The Department also determined that Yale's
17 multi-decade use of race continues unabated without
18 any serious effort by Yale to consider an admissions
19 process that is free of race discrimination.

20 When we announced the Department's
21 determination in the Yale case, I said publicly,
22 quote, "There is no such thing as a nice form of race
23 discrimination. Unlawfully dividing Americans into
24 racial and ethnic blocks fosters stereotypes,
25 bitterness, and division."

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1 We were unable to reach a resolution with
2 Yale, and so on October 8, 2020, the Department sued
3 Yale. The complaint alleged that Yale illegally
4 discriminated against applicants to Yale College on
5 the grounds of race and national origin, and that
6 Yale's discrimination injured racially disfavored
7 applicants, including in particular, most Asian
8 American and White applicants. The complaint also
9 alleged that Yale injured African American and Asian
10 American applicants by the use of racial stereotypes
11 and racial balancing.

12 When we filed suit against Yale, I
13 observed that for centuries, people from all over the
14 world have left their ancestral homes and come to the
15 United States hoping that they and their families
16 could enjoy equal opportunity in pursuit of the
17 American dream.

18 Countless Americans have pursued their
19 dreams through higher education and they continue to
20 do so, and all persons who apply for admission to
21 colleges and universities should expect and know that
22 they will be judged by their character, talents, and
23 achievements, and not the color of their skin. To do
24 otherwise is to permit our institutions to foster
25 stereotypes, bitterness, and division.

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1 After I left the Department of Justice,
2 the Department moved to dismiss the case against Yale,
3 and with that, I look forward to your questions.
4 Thank you.

5 COMMISSIONER KIRSANOW: Thank you, Mr.
6 Dreiband. Mr. Westhill?

7 MR. WESTHILL: Thank you very much. I
8 really appreciate the opportunity to talk about this
9 important subject. I'm honored to be here. It's very
10 important to me.

11 I am Devon Westhill. I run the Center for
12 Equal Opportunity, which is an organization that, for
13 almost 30 years, has advocated for color blind non-
14 discrimination in America.

15 My primary concern today is how the
16 federal government regards the civil rights of Asian
17 Americans and that of other Americans who, as a result
18 of their racial or ethnic identity, are treated
19 differently, contrary to the American guarantee of
20 equal protection under the law.

21 In particular, I'm worried about efforts
22 to promote the concept of equity in many spheres of
23 American life, but I'll focus my remarks primarily on
24 the federal government's activities.

25 First, I will describe and comment on a

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1 few examples of the Biden Administration equity
2 agenda, some of which I've already heard about today.

3 You can find more in my written statement, of course.

4 Then, I'll describe what the concept of
5 equity entails, and then I'll explain why I think it's
6 problematic for the protection of civil rights,
7 especially for Asian Americans. I'll close by briefly
8 suggesting a better way forward and what this
9 distinguished body can do to address the issues I
10 identify.

11 So, on January 20, 2021, just hours into
12 office, President Biden signed an executive order to
13 establish an ambitious whole-of-government equity
14 agenda, signaling that in his administration, there
15 would be a major effort to coordinate efforts to embed
16 equity principles, policies, and approaches across the
17 federal government.

18 Within the same week, the President issued
19 a memo essentially condemning anti-Asian racism and
20 admitting that the federal government deserved some
21 blame for it. However, almost all of the
22 Administration's actions to further the government's
23 interests in equity have been at odds with that memo.

24 For example, February 3, 2021, the
25 Department of Justice dropped its lawsuit filed by the

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1 Justice Department in the previous administration
2 against Yale University alleging anti-Asian
3 discrimination in its admissions.

4 This was only a few months after the
5 Justice Department claimed based on, quote, voluminous
6 admissions data they reviewed, that Yale University
7 violated and is continuing to violate Title VI by
8 discriminating on the basis of race and national
9 origin in its undergraduate admissions, that Yale's
10 discrimination is longstanding, ongoing, and
11 significantly disfavors Asian Americans.

12 On June 25, 2021, President Biden signed
13 another EO to advance diversity, equity, inclusion,
14 and accessibility to, quote, determine whether and to
15 what extent agency practices result in inequitable
16 employment outcomes rather than unequal employment
17 opportunities.

18 On December 8, 2021, the Biden Justice
19 Department urged unsuccessfully the Supreme Court to
20 decline taking two cases alleging discrimination in
21 admissions against Asian applicants to Harvard
22 University and the University of North Carolina, one
23 of my alma maters.

24 Later, the Biden Administration urged the
25 court to rule against the group of Asian American

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1 petitioners challenging race discrimination in Harvard
2 University admissions in both briefing materials and
3 oral argument.

4 Just last month, and we heard earlier
5 today in this briefing, President Biden signed yet
6 another EO on advancing government-wide equity. Vice
7 President Kamala Harris expressed on her official
8 Twitter account her thoughts behind the motivation for
9 the directive, quote, "America is the promise of
10 equity and justice for all. Today, President Biden
11 signed an executive order that puts our nation one
12 step closer to achieving that promise," end quote.

13 It was a telling admission that the
14 current administration has perhaps less commitment to
15 our pledge of allegiance's promise of liberty and
16 justice for all.

17 Indeed, Vice President Harris' change in
18 terminology comports with the Biden Administration
19 equity fixation. In fact, in the most recent EO, for
20 example, equity is mentioned 63 times, but liberty
21 gets no mention at all.

22 It's not just executive actions,
23 memoranda, and court cases that make up the Biden
24 equity agenda. The administration has pushed equity
25 legislative priorities such as granting only farmers

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1 of color debt relief, federal programs, corporate
2 board representation, and more aggressive reporting on
3 and gathering of, quote, equitable data.

4 The federal government's equity agenda
5 appears to consist of identifying disparities in
6 outcomes and attempted to close them by preferential
7 treatment based on race or other immutable
8 characteristics such as ancestral lineage. That's
9 immoral, it's illegal, and it's undeniable that the
10 federal government has put forward massive efforts to
11 deliver on it. Equity is not equality.

12 The currently fashionable term equity is
13 not contained in our civil rights laws and one might
14 question to seek to investigate given that equity
15 initiatives target federally protected classes whether
16 equity initiatives might frustrate or impede civil
17 rights protection and enforcement.

18 Indeed, equity is not synonymous with
19 equality. We need look no further than top government
20 officials own pronouncements to learn this. For
21 example, on November 1, 2020, once again Vice
22 President tweeted a video from her official government
23 Twitter page where she acknowledged, quote, "there's a
24 big difference between equality and equity." Equality
25 suggests, quote, "oh, everyone should get the same

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1 amount. Equitable treatment means we all end up in
2 the same place.”

3 I say believe them when they say the quiet
4 part out loud. Contrary to the focus on equity-
5 engineered outcomes, equality of opportunity seeks to
6 remove barriers that otherwise close doors to
7 opportunity.

8 I have firsthand experience as the leader
9 of the civil rights program at USDA. There, for
10 example, we have redesigned and implemented a better
11 department-wide reasonable accommodation policy for
12 Americans with disabilities, thereby opening the door
13 of opportunity to people, putting their talents to
14 work for the public interest. I have more examples.

15 The insistence that we must produce equal
16 outcomes among groups defined by skin color, national
17 origin, or gender perverts the American understanding
18 of justice based on individual rights as achievable
19 only by substituting authoritarian methods that
20 trample those rights, and there is no good reason to
21 believe that people or groups of people should even
22 all end up in the same place as Vice President Kamala
23 Harris has said.

24 This brings me to my main point. Asian
25 Americans are a disfavored group under the equity

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1 regime because of their success. Equity initiatives,
2 as discussed, seek to reach proportional outcomes for
3 groups.

4 That is especially problematic for Asian
5 Americans in certain areas of American life within
6 which they exceed in disproportionate numbers. Many
7 Asian Americans are culturally dedicated to academic
8 achievement and family cohesion.

9 That devotion has led to representation in
10 fields that outstrip their proportion to the general
11 population. So, in a system where outcomes must
12 reflect proportionality, Asian Americans can occupy
13 only their proportional share, approximately seven
14 percent.

15 Achieving equitable outcomes means both
16 providing preferences to artificially inflate the
17 proportion of and lowering standards for certain
18 groups, and also bringing down other over-represented
19 races like Asian Americans to their proportion of the
20 population.

21 These are the two sides of the same equity
22 coin. Neither side can be satisfied without violating
23 federal civil rights laws or the constitutional
24 principle of equal protection under the law since both
25 require divvying us up by race.

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1 My invitation to participate in this
2 briefing requested I address the federal response to
3 anti-Asian racism in the United States. Sadly, as I
4 lay out, the federal government is one of the great
5 purveyors of discrimination against Asian Americans
6 and other accomplished ethnic groups in this country
7 via its equity agenda. The question is what this body
8 will do about it.

9 In conclusion to this statement, I list a
10 number of actions, I won't list them right now,
11 they're in my written statement, the Commission can
12 and should take to address this discriminatory equity
13 agenda.

14 However, I'd be remiss if I didn't first
15 comment on another major problem. The problem is that
16 these efforts, equity efforts, mask fundamental
17 reasons and stifle efforts to address why there are a
18 disproportionate number of certain groups under
19 performing in certain ways.

20 An undue focus on an outcome driven
21 approach can paper over structural issues within
22 certain demographic populations that contribute to a
23 failure to meet standards such as in hiring,
24 contracting, college acceptance, promotions, et
25 cetera.

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1 Such obfuscation can in turn lead to these
2 issues being neglected with minorities perhaps the
3 most acutely affected. We have seen this problem
4 exacerbated in the decades of unsuccessful racial
5 preference experiments in higher education. And with
6 that, I will report back to Roger Clay. Thank you.

7 COMMISSIONER KIRSANOW: Thank you, Mr.
8 Westhill. Detective Martinez?

9 DET. MARTINEZ: Thank you for having me.
10 I want to take my time to kind of explain the
11 perspective from a line officer, a line investigator,
12 of how these cases get, these anti-Asian cases get
13 classified or not as hate crimes or bias-motivated
14 crimes.

15 Bias-motivated crime is a criminal offense
16 motivated in whole or in part, this is state, by the
17 actual or perceived legally protected characteristic
18 of the victim. These can be race, nationality,
19 ethnicity, religion, disability, immigration status,
20 sexual orientation, gender, and gender identity.

21 In my state, age is not protected.
22 Political ideology is not protected. Being a police
23 officer is not a protected characteristic.

24 A hate crime includes any willful act that
25 by force or threat of force injures, intimidates,

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1 interferes with another person's civil right. So,
2 what does that mean? Most people do not know what our
3 civil rights are, including line officers.

4 So, the easiest way to think of it is a
5 biased-motivated crime occurs when someone commits a
6 crime with part of the reason being because of their
7 protected characteristic, a bias against the protected
8 characteristic.

9 Federally, if the crime would have
10 occurred anyways when you remove the bias, it does not
11 count as a federal hate crime. It does not count
12 under that statute, but a lot of states have a
13 difference whether in whole or in part.

14 Like I said, the average person, patrol
15 officer, or person who calls 9-1-1, they don't know
16 what their civil rights are. All they're calling is
17 the police because they're scared, they're being
18 attacked, they're worried about their safety. They
19 don't report being the victims of hate crimes.

20 When the officers arrive, they have to
21 meet the elements of whatever statute. So, you may
22 have the criminal offense against them and additional
23 either direct or circumstantial evidence to show that
24 the criminal offense is also bias-motivated.

25 99.9 percent of our determinations are

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1 made by the officers in the field, the supervisors in
2 the field, or the investigators after they get the
3 case. Folks are not just, in the second-largest
4 police department in the second-largest city, people
5 are not calling 9-1-1 saying I am the victim of a hate
6 crime.

7 Is it a violation of our civil rights if
8 someone vandalizes our property, if someone spits on
9 us, if someone screams on us? Like I said, most
10 people don't know these things.

11 Bias motivation is a thought crime. It is
12 the suspect's intent. We have to prove that through
13 direct evidence or circumstantial evidence beyond a
14 reasonable doubt that the suspect committed the crime
15 because of the bias against the protected
16 characteristic.

17 This is extremely difficult when the
18 underlying crime is a misdemeanor. We have the two
19 types of crime, a misdemeanor and a felony. Search
20 warrants do not apply to misdemeanor offenses except
21 for certain exceptions.

22 So, when us, as officers, are trying to
23 get that proof to prove the bias, whether it's social
24 media posts or to look through someone's phone to see
25 if they had been texting someone to plan it, we cannot

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1 use that tool on misdemeanors if the hate crime falls
2 under the misdemeanor rules of evidence.

3 It is also a specific intent crime. So,
4 unlike general intent crimes such as if you fire a
5 weapon into the air, everybody should know that the
6 bullet's going to come down and hurt somebody, so you
7 don't need to prove that the person who shot the gun
8 up into the air wanted to hurt someone.

9 When it comes to bias-motivated crimes,
10 you have to prove that that is the intent, and that is
11 part of the reason why investigating, classifying, and
12 prosecuting these cases is so difficult.

13 Without direct or circumstantial evidence,
14 we must get the suspects to waive their Fifth
15 Amendment rights and admit to the bias motivation. It
16 does not matter the victim's perception. We need the
17 suspect's perception.

18 We have many cases where a victim was
19 mistaken for having a protected characteristic when
20 they don't or belonging to a different protected
21 characteristic, but it doesn't matter what the victim
22 thinks. It matters what the suspect thought.

23 While we do have standalone hate crime
24 statutes, in California and in a lot of them, they are
25 low-level misdemeanors, so we cannot charge the low-

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1 level misdemeanor if there's a higher crime because
2 double jeopardy applies. They can plead out to the
3 lower one and then we cannot charge the higher one, so
4 this is also some issues that come up.

5 The term hate can be misleading. When
6 used in hate crime law, the word hate does not
7 necessarily mean rage, anger, or general dislike. It
8 can mean bias against people or groups with specific
9 characteristics.

10 This can be a preexisting negative
11 attitude such as animosity, resentment, revulsion,
12 contempt, fear, paranoia, thrill seeking, other
13 things. It doesn't have to be disgust or hate to meet
14 the bias motivation.

15 Now, there have been several folks up here
16 who have talked about hate incidents. Legally, there
17 is no such thing as a hate incident. We know about it
18 because this is what we do. Most people don't know
19 that. Legally, there is no such thing as a hate
20 incident and the vast majority of police departments
21 across the country, over 99 percent, will not complete
22 a hate incident report.

23 They show up, tell the victim who has just
24 been, had one of the worst days of their lives, free
25 speech, First Amendment, and they drive away. My

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1 department and others are some of the few that do take
2 it, but it is not a common thing. The federal
3 agencies do not take hate incident reports.

4 My time is up. Just the last thing I'll
5 talk about is the reason that we take hate incident
6 reports is because we're trying to focus on the
7 victim-centered approach. The victim-centered
8 approach is a way of dealing with victims of crimes.

9 Instead of the old just the facts, ma'am,
10 and I'm going to chase after the bad guy, it's slowing
11 things down and trying to get the victim the
12 assistance, the help, connection to the advocacy
13 groups that can assist them best before we run off and
14 chase the bad guy.

15 So, I tried to keep it short, so if you
16 guys have any questions, but I did run out of time,
17 so.

18 COMMISSIONER KIRSANOW: Thank you,
19 Detective Martinez. Next, Chief Scott? Chief, can
20 you hear me?

21 CHIEF SCOTT: Thank you. Yes, I can.
22 Thank you. Can you all hear me okay?

23 COMMISSIONER KIRSANOW: By the way, before
24 you begin, I just want to note for the record that
25 Commissioner Jones has joined by Zoom. Go ahead,

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1 Chief.

2 CHIEF SCOTT: Thank you, and good
3 afternoon, everybody. I'm going to use my time to
4 talk more of a high level about hate crimes in general
5 and some of the ways that we believe we can all work
6 together as a community to address hate crimes and
7 what comes along with it.

8 Yeah, the first part of my comments, I'm
9 going to paraphrase, not quote directly, from our
10 Attorney General Rob Bonta on what hate crimes
11 actually are. You know, crimes motivated by hate are
12 not just attacks on individual people. They are
13 attacks on our community, our entire community.

14 On May 11, 2021, our California Attorney
15 General Bonta declared a state of crisis as heightened
16 hate crime violence in the Asian American and Pacific
17 Islander communities reverberated and continue to do
18 so in some respects across the state.

19 Meanwhile, in 2020, late 2020, California
20 reported the highest number of hate crimes of any
21 state with 1,017 bias-motivated crimes against the
22 victims' race, ethnicity, ancestry, gender, gender
23 identity, religion, disability, or sexual orientation.

24 As has been stated by many of the
25 speakers, hate crimes are criminal acts where victims

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1 are targeted because of their group identity or
2 perceived identity such as race, national origin,
3 religion, or another group of characteristics.

4 Hate crimes convey a message to both the
5 victims and their group or perceived group that they
6 are not welcome and not safe, and as such, these
7 crimes are an attack on the fundamental rights of our
8 communities at large.

9 So, it's vital that law enforcement
10 agencies, prosecutors, and the community that tries to
11 combat these types of crimes recognize what hate
12 crimes are and respond appropriately.

13 Here in San Francisco, we believe that an
14 effective response to hate crimes has a multi-faceted,
15 multi-component response mechanism and I'm going to
16 start with community engagement.

17 No effort to address hate crimes and
18 incidents would be complete without community
19 engagement and collaboration between both community-
20 based organizations, government organizations, and, of
21 course, our prosecutorial agencies, both at the local,
22 state, and federal level where applicable.

23 Media plays a big role in communications
24 on how we address hate crimes and really relaying the
25 message through the communities at large that these

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1 crimes are given the utmost seriousness in terms of
2 the response, in terms of how we see them as a
3 society, and how we try to combat and prevent them.

4 When this is done effectively, community
5 members see the visible signs that our communities and
6 our governments are working together in order to do
7 everything necessary to both prevent and combat hate
8 crimes, intervene on those that perpetrate these types
9 of acts, and hold those that do perpetrate these types
10 of acts accountable.

11 Victims' advocacy and victims' rights are
12 part of our response here in San Francisco, and as far
13 as, you know, the San Francisco Police Department,
14 when we saw a tremendous increase in hate crimes in
15 2021, which our hate crimes, our reported hate crimes
16 doubled, one of our responses was to enhance victims'
17 advocacy and victims' rights by standing up a
18 community liaison unit specifically for the purpose of
19 connecting victims and their families to services, to
20 provide a support network, and to send a clear message
21 to members of our communities that we are there for
22 them when these crimes occur.

23 Because on the back side of that and the
24 flip side of that, we do know, and I don't think this
25 is germane to the city of San Francisco or the state

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1 of California, that many of these crimes go unreported
2 for a variety of reasons, and without that advocacy,
3 without that support, we think that situation would be
4 worse.

5 There is a component of hate crime
6 response that really deals with immigration and the
7 fear of people reporting crimes because of their
8 immigration status, and in most communities, at least
9 this community, we make sure that people understand
10 that immigration status has no value of whether or not
11 a person can report a crime.

12 We welcome and encourage every member of
13 our community, despite immigration status, to engage
14 with law enforcement, to engage with government to
15 report what is happening, because without that
16 accurate reporting, we cannot address this issue
17 appropriately.

18 I know our last speaker, Detective
19 Martinez, spoke a little bit about hate incidents, and
20 I want to speak a little bit about hate incidents and
21 how that plays a role in this matter.

22 You know, as was stated earlier, hate
23 incidents, if it doesn't amount to a violation of the
24 California Penal Code, it's not a crime, but we do
25 encourage the reporting of hate incidents here in San

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1 Francisco because we believe that that is a precursor
2 oftentimes to serious, more serious crimes that may
3 occur by the people that perpetrate hate incidents.

4 We have stepped up our efforts to
5 encourage our community members to report hate
6 incidents, and one of the ways we do that is to make
7 sure we can communicate with the very diverse
8 community here in our city.

9 We have multiple languages that are
10 accessible by members of our community, and despite
11 the ability of some people with limited English
12 proficiency, we encourage them to report hate
13 incidents as well as hate crimes, and that information
14 can prove to be valuable down the line in the event
15 that arrests are made and prosecutions are at play.
16 Those hate incidents sometimes prove motives.

17 So, that is something I think that is
18 really an emerging issue in many jurisdictions of how
19 we report and how we capture those hate incidents. I
20 do believe there is work to be done on that front in
21 terms of having systematic ways to do that, and we can
22 all learn from each other on how we do that best.

23 The last thing I want to talk about is our
24 reporting of hate crimes in general and where we are
25 on that, and what I believe we can do to improve in

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1 that area.

2 As we have tracked our hate crimes here in
3 our city over the last six years, we've seen pretty
4 much post-2020, post the global pandemic, a sharp rise
5 in hate crimes in 2021, and then we saw a sharp
6 decrease in 2022.

7 What we do know is that the reporting of
8 hate crimes, as we nationwide change our reporting
9 system to the National Incident-Based Reporting
10 System, that we hope to have better data on reporting.

11 I do have the opinion that without the
12 data to be able to really track the patterns of hate
13 crime, to really be able to track what is fueling hate
14 crimes and hate-fueled violence, that we're behind the
15 curve if we don't have basic consistent, robust
16 reporting systems.

17 And I am hopeful that with the
18 implementation of NIBRS across the United States, that
19 our reporting will be more consistent, our reporting
20 will be more accurate where we really understand the
21 data and what's fueling and what the patterns are in
22 hate crime.

23 And that's one thing that I believe, at
24 least in our city, we are building that infrastructure
25 to do just that, to be NIBRS compliant we hope within

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1 the next year and a half or so, and we hope that our
2 data and the data that we share with others is more
3 robust so we have a way to not only track the data,
4 but track the indicators and the things that we know
5 that will help us really try to crack the code, if you
6 will, on addressing hate crime in a holistic way.

7 COMMISSIONER KIRSANOW: Thank you, Chief.

8 CHIEF SCOTT: I believe -- thank you.

9 COMMISSIONER KIRSANOW: Our next witness
10 is Former Commissioner Michael Yaki, who is the
11 principal reason why we're having this hearing.
12 Commissioner, can you hear us?

13 MR. YAKI: I can indeed, Mr. Chair.

14 COMMISSIONER KIRSANOW: Proceed.

15 MR. YAKI: Thank you very much, Mr. Chair
16 and Members of the Commission. My name is Michael
17 Yaki and I am the reason that you're sitting there
18 right now, so you can blame it all on me.

19 After 17 years, it's very different sort
20 of being on this side of the panel, but I'll do my
21 best to just take a few moments and let you have more
22 questions for the esteemed panelists who are here
23 today.

24 I'm not going to try and inundate you with
25 facts and figures, and everything that you've heard

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1 today, and I think you've heard a lot, but I will say
2 this. The reason I wanted to put this forward is not
3 just because of what we saw during the COVID epidemic,
4 not just because we saw the President of the United
5 States referring to this as the Chinese Flu and giving
6 license essentially to characterize a terrible
7 affliction spreading across this country that was
8 killing, you know, hundreds of thousands of people, by
9 blaming it all on China, but because it goes to
10 something deeper and very fundamental and personal to
11 who I am.

12 My father is a Japanese American. His
13 family was incarcerated during World War II. His
14 family possessions were taken from him. His family
15 farm was sold. This is something that was a defining
16 moment for who my father is, a father who nevertheless
17 rose up from that to become the highest ranking career
18 diplomat at that time for an Asian American in the
19 United States Foreign Service.

20 But he grew up experiencing racism
21 firsthand, and this is racism that came from before.
22 I mean, this is something that started essentially in
23 the 1800s with exclusion acts, with the
24 discrimination, the segregation of the Chinese in San
25 Francisco, with the fact that my mother, who came to

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1 this country not as an immigrant, but as the daughter
2 of a Chinese diplomat, marooned essentially in Los
3 Angeles because of the war in the Pacific occurring
4 that just started, Pearl Harbor, and they couldn't get
5 back to where he was being recalled back to China.

6 And because she was Chinese, and because
7 her family was Chinese, they tried to deport her
8 because of the Chinese exclusion act at the time.
9 Luckily, that didn't occur. Otherwise, I wouldn't be
10 here today.

11 But the animus against Asians has been a
12 part, an unfortunate part of the history of this
13 country for quite some time, and I have always
14 believed that it's always just there scratching the
15 surface.

16 And it comes up again even today when you
17 have a member of Congress challenging the loyalty of
18 Congresswoman Judy Chu to serve and view classified
19 documents because, quote-unquote, "She has loyalties
20 to China."

21 There is something that has been unique
22 about our American experience, about the experience of
23 Asian Americans in this country in which somehow we
24 are always seen as the other.

25 We are always seen as having our loyalty

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1 questioned, where we are sent en masse into the desert
2 and other hellholes during World War II because, out
3 of all of the nationalities, out of all of the
4 ethnicities in this country, many of whom had
5 relatives, or cousins, or whatever fighting against us
6 on the other side in the axis, only the ones who
7 looked or had my kind of surname were put into camps
8 in this country. Somehow or another, it's our loyalty
9 that's always been questioned. It's our commitment to
10 this country that's always been put at doubt.

11 And what I hope will come out of this,
12 what I hope all of you will be doing as you work
13 through this is probably working with and taking
14 something like the COVID-19 Hate Crimes Act and seeing
15 that it really does what it's supposed to do, working
16 with state and local governments to get out public
17 education campaigns, and really start getting to the
18 core of this.

19 Because a lot of people have touched upon
20 it in different ways, and I agree with some of what
21 even people who I would vehemently disagree with who
22 have spoken today, is that it's somehow easier to pick
23 us out for the purposes of discrimination, and this
24 Commission, its mission is to combat exactly that.
25 We've done it before. We can do it again.

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1 I thank all of you for the work that
2 you're doing. I commend all of you for it, and for
3 the people who I served with for 17 or so years who
4 are still on the Commission, it's a pleasure seeing
5 all of you again. To the new ones, congratulations.
6 This is a great body to work with and I wish you all
7 the best.

8 But keep in mind that there is, at its
9 core, a mission about this particular investigation
10 and that is how do we combat, how do we deal with the
11 fact that when the critical times come, somehow or
12 another our loyalty as Americans is always questioned,
13 and somehow or another it gives license to people to
14 commit heinous acts of violence against us at a time
15 when, as all Americans, we should be working together
16 toward that brighter future, toward that great
17 unification to the bitter angels of our nature every
18 single day? So, thank you very much for the time to
19 appear before you today and good luck in your
20 continuing mission.

21 COMMISSIONER KIRSANOW: Thank you,
22 Commissioner Yaki, and thank you for your long service
23 and for instituting this very hearing.

24 Now we'll open it up to questions. I
25 think I'll take the first one as a privilege of the

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1 Chair. To Mr. Dreiband, when you were at the Civil
2 Rights Division, were there colleges other than
3 Harvard and Yale that were engaged in the kind of
4 conduct that you just described with respect to
5 Harvard and Yale?

6 MR. DREIBAND: Yes.

7 COMMISSIONER KIRSANOW: And approximately
8 how many were there, if you know?

9 MR. DREIBAND: I don't know the number,
10 but I think the Department of Education was
11 investigating several other colleges and universities,
12 as well as the Department of Justice. The practices
13 that I described that were occurring at Harvard and
14 Yale were not atypical.

15 They were -- you know, there was a view, I
16 think, in higher education today that when it comes to
17 race discrimination, that the colleges and
18 universities can do whatever they want. That's the
19 attitude that we saw and I'll give one example just
20 from the Yale case.

21 When we notified Yale of our determination
22 that Yale violated the Civil Rights Act, we made a
23 proposal to Yale to settle without litigation and we
24 suggested that for one year, due to what we regarded
25 and I think correctly as Yale's unlawful and pervasive

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1 use of race in higher education admissions to Yale
2 College, that they stop using race for one year, and
3 if they wanted to use race thereafter, that they make
4 a narrowly tailored proposal to use race that was
5 limited in time.

6 Yale responded to us in writing by saying
7 one, they don't discriminate on the basis of race,
8 which is blatantly untrue, and two, they were going to
9 continue using race, and they insisted they would
10 continue using it eternally.

11 There was no indication in anything that I
12 saw that any of the colleges or universities that we
13 investigated ever intended to stop using race and
14 engaging in race discrimination.

15 COMMISSIONER KIRSANOW: You indicated that
16 the two cases were dropped by the Biden
17 Administration. What about the investigations that
18 you said were pending? Do you know what the status of
19 those are?

20 MR. DREIBAND: I don't have access to
21 either the Justice Department's investigative, you
22 know, inner workings, or the Education Department's,
23 which -- so I don't know the answer to that.

24 COMMISSIONER KIRSANOW: Thank you.
25 Commissioner Adams?

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1 COMMISSIONER ADAMS: Chief Scott, I hope
2 you can hear me. Good. Does the San Francisco Police
3 Department collect any other precursor event
4 information or pre-crime data in San Francisco like
5 police confronting citizens, people confronting
6 citizens on the street, maybe mental health events
7 that occur in public, disturbances of the peace or the
8 public, or anything at all like that? Does the San
9 Francisco Police Department collect other precursor
10 data?

11 CHIEF SCOTT: Well, we do collect, you
12 know, hate incident data. I mentioned that a bit in
13 my opening remarks, but those other types of events,
14 let's say a person in mental crisis and things like
15 that, is captured in and of itself, but if there's an
16 element of it, of hate that may not amount to a hate
17 crime, we do document that information and push that
18 information forward, and it could be captured in a
19 number of ways.

20 So, we capture it all, everything that you
21 mentioned, but as far as hate itself, we do have
22 prejudice-based incident reporting that don't amount
23 to crimes, and then those hate crimes that meet the
24 statutory elements of a hate crime that are in their
25 own reporting category.

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1 COMMISSIONER ADAMS: Right, but I'm asking
2 for the opposite, the things that are not hate crimes.

3 Does the San Francisco Police Department collect data
4 on other public disturbances in a systematic way,
5 maybe, you know, incidents of vagrancy or other
6 disturbances of the peace at all?

7 CHIEF SCOTT: Yes, yes, disturbances of
8 the peace, that is, those are collected and reported,
9 and if they don't amount to crimes, we have to rely on
10 our computer-aided dispatch or our dispatch
11 information, but if they amount to crimes, then we
12 will take an incident report, our officers will
13 complete an incident report. For instance, for
14 disturbances of the peace, those types of things are
15 collected and reported in both ways.

16 COMMISSIONER KIRSANOW: Commissioner Garza
17 or was it Commissioner Nourse?

18 COMMISSIONER NOURSE: Nourse.

19 COMMISSIONER KIRSANOW: Okay.

20 COMMISSIONER NOURSE: It's nice to see you
21 all here, gentlemen. I'd like to focus on what
22 Detective Martinez said about the difficulty of
23 completing the hate crimes forms, and he indicated
24 that a large percentage were not completed. Does that
25 suggest to you --

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1 What kind of reform would be needed to get
2 police to actually fill them out? Is it a backward
3 flow? If the prosecutor won't take the case, then the
4 police don't want to write the report or how can one
5 solve that problem, training?

6 DET. MARTINEZ: I believe that a more
7 across the board philosophy from the top down will
8 change the way that the departments and therefore the
9 officers view these things. Let me give you an
10 example.

11 If I am driving and someone cuts me off,
12 and I block them in and start yelling at them, and
13 then I spit on them, I've committed a battery. Now,
14 the same exact set of facts, it is an LGBTQ person. I
15 do exactly the same thing, but before I spit on them,
16 I start throwing out anti-LGBTQ slurs, or anti-Asian
17 slurs, or whatever.

18 Most officers won't even take into
19 consideration the slurs, the bias that there is
20 evidence of because it is due to the road rage, but to
21 have that training and the buy-in from the top down of
22 this is what we want to do, not in that exact
23 circumstance, but these type of circumstances, it will
24 be pushed down, and as line officers, we do what we're
25 told. We do what our policy is, but if there's not a

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1 buy-in at the top --

2 COMMISSIONER NOURSE: Right, I mean, it is
3 very difficult to prosecute these cases, but it is
4 important because it's not simply a crime. It's a
5 crime that someone feels entitled to commit because of
6 the lesser humanity of the victim.

7 And so, it is important to get more
8 training, it seems to me, in these circumstances, both
9 at the prosecutorial level, we heard about that from
10 the last panel, as well as for officers. You
11 obviously know this quite well.

12 In truth, there are no thought crimes.
13 That would be unconstitutional. I'll take that case,
14 but there are elements such as the context. I mean,
15 you've used speech, but in fact, it's often the
16 context.

17 So, if you're in front of a gay bar, let's
18 say, you know, that that would matter, but you have to
19 train officers to look for those kinds of things as I
20 understand it.

21 DET. MARTINEZ: Yes.

22 COMMISSIONER NOURSE: Okay.

23 DET. MARTINEZ: And, you know --

24 COMMISSIONER NOURSE: And finally for the
25 other panelists, I'll just say I was just over at

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1 Jones Day debating someone, Professor Hamburger from
2 Columbia. The Supreme Court's going to rule. The
3 Supreme Court's going to rule.

4 And I just want the record to reflect that
5 there is no Biden Administration person here. You
6 served the Trump Administration and we will, I'm sure,
7 abide by the rule of law here at the Commission.

8 MR. WESTHILL: So, that was - a question?

9 COMMISSIONER GARZA: I do have a question,
10 if I may interject, for Detective Martinez. If you
11 could give us a little bit more background on how your
12 officers are trained in terms of identifying those
13 issues of what constitutes a hate crime?

14 You know, because you mentioned in your
15 comments about how these statutes are difficult,
16 right? So, if there a process for training your
17 officers on how to identify them? You know, are you
18 tracking that training and the results of that
19 training? You know, could you give us a little bit
20 more?

21 DET. MARTINEZ: Yes, since our department
22 has fully committed, I conduct all of the trainings
23 myself, and multiple, from the academy, to the
24 supervisors, to the detectives, to the training
25 officers, all of them are trained beyond what the

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1 peace officer standards for California does. We train
2 our own in these things.

3 And recognizing that they're very
4 difficult to prosecute, that doesn't matter to us.
5 What matters to us is getting the victim the help that
6 they can get at that time that the police cannot
7 provide. We, as police, we don't do therapy. We
8 don't do -- you know, we barely do proactive policing
9 very well.

10 So, getting them in touch with those
11 agencies or those advocacy groups, some that are here,
12 that can assist them with the non-criminal things that
13 we can't, whether it's work related, or visa,
14 immigration related, getting them in touch with those
15 people that can help them that we cannot do.

16 COMMISSIONER GARZA: And we've talked a
17 lot about language and translation services. Is that
18 something that you all also employ in your sort of
19 victim-centered approach?

20 DET. MARTINEZ: We try. So, the way that
21 we do it is we have 42 different languages spoken in
22 our 10,000 officers, so we, wherever in the city, we
23 try to get a language speaker there no matter where
24 they're assigned, and if that doesn't work, we have a
25 contract with AT&T Language Bank.

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1 We try not to use family members because
2 of certain cultures and stuff, so we try to use our
3 contract services, and we'll do either video or over
4 the phone to speak in the preferred language when we
5 can. It doesn't always work, but that's our goal.

6 COMMISSIONER GARZA: Okay, thank you.

7 COMMISSIONER HERIOT: Detective Martinez,
8 I was interested in your answer to one of the earlier
9 questions, and I'm interested in sort of uniformity
10 of, you know, what gets classified as a hate crime and
11 what doesn't, and you said that on the road rage
12 hypothetical, which I thought was a very good one,
13 that most officers would not consider that a hate
14 crime. Would some?

15 DET. MARTINEZ: My department will. My
16 department counts that as a hate crime, but, you know,
17 maybe if it was the Sheriffs of San Francisco,
18 depending on how they are trained, they may not.

19 For us, all we need -- the way that I
20 train my folks is if there's evidence, whether direct
21 or circumstantial, of the bias, we are making it a
22 hate crime.

23 COMMISSIONER HERIOT: A hate crime, so
24 you're erring on that side. See, the interesting
25 thing about the hypothetical is that often people

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1 don't know the race or sexual orientation of the
2 person that cuts them off until they get a better look
3 at them, and therefore, it might be one of those, you
4 know, it's more likely to be one of those cases where
5 once people know it, you know, then they act on it
6 because they want to throw whatever epithet.

7 Whereas, there are going to be other
8 crimes where they know right from the beginning, you
9 know, who the person is. And I'm interested then in,
10 like you say you conduct the training. Do you have
11 like written materials?

12 DET. MARTINEZ: Yes, yes, we have --

13 COMMISSIONER HERIOT: Can we get a copy of
14 those?

15 DET. MARTINEZ: Oh, yeah, I have our
16 policy and I can send you my syllabus and all of that
17 kind of stuff.

18 COMMISSIONER HERIOT: Great, I would love
19 to see that.

20 DET. MARTINEZ: I try to tell my folks it
21 is not your, it is not the patrol officer's or the
22 detective's job to determine whether it's enough to
23 convict. If you have evidence, we're going to make it
24 a hate crime. We're going to get the victim in touch
25 with those services. We're going to present it to the

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1 correct deputy district attorney or city attorney that
2 has that experience and we're going to let them
3 decide.

4 But in the meantime, someone who has had
5 one of the worst days of their life because of who
6 they love, or the color of their skin, or where
7 they're from, they have -- the victim-centered
8 approach, I'm sure you guys have dealt with that
9 before. They have been taken care of in a more
10 thorough way than a regular victim.

11 COMMISSIONER HERIOT: Yeah, the training
12 materials would be great. In fact, can I ask, Chief
13 Scott, do you have training materials of that sort?
14 Yeah?

15 CHIEF SCOTT: Yes, yes, ma'am, we do, we
16 do.

17 COMMISSIONER HERIOT: Could you send them
18 to us?

19 CHIEF SCOTT: Yes.

20 COMMISSIONER HERIOT: Great.

21 CHIEF SCOTT: Yes, I can certainly do
22 that.

23 COMMISSIONER HERIOT: Great, thank you
24 very much.

25 COMMISSIONER KIRSANOW: Mr. Gilchrist?

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1 COMMISSIONER GILCHRIST: Thank you, Mr.
2 Chairman. Mr. Dreiband, I wanted to thank you for
3 your work that you did at the Department of Justice.
4 I'm a South Carolinian and the situation that occurred
5 at Mother Emanuel where the nine souls were killed, I
6 want to thank you for, and the Department of Justice,
7 for your work there in dealing with the murderer who
8 killed those people.

9 My question to you, the House Energy and
10 Commerce Committee met yesterday with the CEO of
11 TikTok, and all of the rising tensions that are going
12 on with China, do you in any way believe that some of
13 those tensions can, at some point, end up being just
14 what we were experiencing during COVID as it relates
15 to Asian hate crimes?

16 MR. DREIBAND: Well, first of all, thank
17 you for your kind remarks about my service at the
18 Department. We did convict Dylann Roof of murdering
19 people at Mother Emanuel Church and we successfully
20 defended the conviction on appeal, we being there were
21 many people involved. I was the head of the Civil
22 Rights Division during the appeal, but many, many
23 people worked on that, including people in the Obama
24 Administration and later in the Trump Administration.

25 With respect to hostilities with China and

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1 the pandemic, I think it's a very complicated
2 question. You know, the pandemic did, by all
3 accounts, start in China, and there were concerns that
4 we had when I was at the Department of Justice that
5 because of the origins of it, that we wanted to alert
6 all of our prosecutors, and the FBI, and law
7 enforcement to be aware of this concern that there
8 would be hate crimes committed against Asians and
9 Asian Americans.

10 And Attorney General William Barr and I
11 instructed all federal prosecutors throughout the
12 United States that we would not tolerate that kind of
13 conduct, and so we increased significantly the
14 Criminal Section staffing at the Civil Rights
15 Division.

16 That's the section of the Civil Rights
17 Division that prosecutes hate crimes among other civil
18 rights crimes, and we expanded in addition, you know,
19 training and things like that to other law
20 enforcement.

21 There are obviously geopolitical tensions
22 between the United States and China that I think both
23 predate the pandemic and I think are unrelated to
24 them. I've not -- so it's a complicated question, but
25 I'm not sure if it's --

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1 All of these are kind of somewhat
2 interrelated in terms of anti-Asian, or particularly
3 anti-Chinese, or oftentimes anti-Asian hate crimes
4 where people are perceived to be Chinese even though
5 they might be Vietnamese or some other national
6 origin.

7 COMMISSIONER GILCHRIST: Thank you for
8 that.

9 COMMISSIONER MAGPANTAY: Thank you all for
10 your service and for your testimony today.
11 Commissioner Yaki, could you just -- or Former
12 Commissioner Yaki, I mean, I'm new to the Commission
13 and I have a lot to do and learn.

14 You know, we look at concept papers and
15 identify current issues to look at and examine, and
16 since you had written the concept paper, could you
17 just help me and the Commission, just help me think
18 about the original understanding in developing this
19 concept paper, which I think was really important and
20 serves us today?

21 MR. YAKI: Well, thank you very much, Mr.
22 Commissioner and thank you to the Chair. I think this
23 paper really came out of the rise in hate crime
24 incidents against Asian Americans from after the
25 COVID-19 outbreak.

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1 This Commission had acted previously and
2 sent letters and notices to the White House regarding
3 our concern about the then President's remarks
4 concerning the virus. And yes, while it originated in
5 China, that does not make it a Chinese issue. It does
6 not --

7 And again, because of the fact that
8 historically, our communities have been seen as sort
9 of all the same, like let's not forget about the
10 murder of Vincent Chin, who was killed, a Chinese
11 American who was killed because some people thought
12 that he was Japanese. It comes down to as simple as
13 that.

14 I mean, it's interesting hearing some of
15 the stuff, testimony that we heard today regarding
16 affirmative action, which has been pointed out by
17 others, is going to be decided by the United States
18 Supreme Court, and as someone --

19 If I may speak out of school, you know, I
20 sort of knew this was going to happen. I had an
21 inkling that it would because it has been something
22 that some members of the Commission have been wanting
23 to do for quite some time. I think it's interesting
24 because, again, there is a court case going on. It's
25 going to be resolved one way or the other.

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1 And I'm just going to say, you know, quite
2 frankly, I am someone who, throughout my 17 years on
3 the Commission, supported diversity, did not vote for
4 similar projects that would have advanced the topic
5 that some other people on this panel and others have
6 advanced today regarding alleged discrimination at
7 schools.

8 And I would just point out just, you know,
9 really off the cuff that, you know, we're not talking
10 about anyone being denied an education. This is not
11 segregation of the education system, but, and it is a
12 far different cry from someone whose life, and
13 property, and family have been severely injured by a
14 hate crime, and that is the animus and the idea that
15 it's still there.

16 And I do worry about the TikTok issue. I
17 do worry about how that at this time in our nation's
18 history, we have put forward the fact that now China
19 is the new number one concern. And certainly in Asia,
20 but also around the world, we see what's going on with
21 Russia and their interaction with the Ukraine War, and
22 how, again, people don't distinguish between someone
23 who looks like this and someone over there in Beijing
24 as a cause of some death, or injury, or inconvenience
25 to people.

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1 That is still there and that's what I
2 think -- that's what this report was in my view.
3 You're different. You can do whatever it is you want
4 to do with it, but the animus was to go and address
5 that underlying core, which is the continuing presence
6 of anti-Asian discrimination and how quickly it lights
7 up at times like this.

8 COMMISSIONER KIRSANOW: Mr. Westhill, you
9 mentioned that in the Biden executive order, there
10 were 63 mentions of the word equity or thereabouts,
11 correct?

12 MR. WESTHILL: Correct.

13 COMMISSIONER KIRSANOW: Did it have a
14 definition of equity in the executive order, and if
15 so, what was it?

16 MR. WESTHILL: I think there is a
17 definition in the executive order. I can't quote it
18 here for you now.

19 But what I think I've endeavored to do
20 with my spoken testimony here and certainly in my
21 written testimony, which I hope the Commission will
22 review, is to explain what I think is obvious about
23 what equity is.

24 Equity is the goal of pushing some people
25 artificially forward and bringing some others back. I

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1 suggested that's the two sides of the equity coin.
2 It's immoral, it's illegal, and I do think it's
3 something that this Commission could speak out about.

4 I don't remember, again, what exactly the
5 definition was that was used by the executive order,
6 but I think the actions of the Biden Administration's
7 equity agenda and also how it's crept into other areas
8 of American life as well makes it clear what it
9 actually is.

10 It's preferences for some based on their
11 race, or ethnicity, or other immutable
12 characteristics, and to hold back others because they
13 do not fit the criteria for what the outcome needs to
14 be for proportional representation.

15 And if I could, just one additional
16 statement regarding the Supreme Court cases on
17 affirmative action, I find it peculiar indeed that
18 anyone would think that just because the Supreme Court
19 is going to rule on the affirmative cases, that this
20 is all done.

21 I don't think, based on actually some
22 comments of my co-panelist, Mr. Dreiband here, that
23 schools care very much at all about what the Supreme
24 Court's going to say. I think, and we've seen some
25 signs of it already, that they're going to try and

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1 skirt the law and do as they please to make their
2 campuses more skin deep diverse, which has been their
3 goal from, you know, from the beginning.

4 Moreover, this Commission is worried about
5 civil rights. If the Supreme Court, as a lot of
6 commentators have predicted, prohibits the use of race
7 in making admissions decisions, it's all the more
8 important for this Commission to be reviewing and
9 making sure that they're being held to the standard
10 that Title VI holds them to, that they cannot, that it
11 prohibits the consideration of race in federally
12 funded programs.

13 So, this Commission's job becomes even
14 more onerous if the Supreme Court does what many
15 commentators think they're going to do, which is
16 prohibit race in college admissions.

17 COMMISSIONER KIRSANOW: Mr. Dreiband, of
18 the statutes that the Civil Rights Division is charged
19 with enforcing, say Title VII, 42 U.S.C. 1981, Title
20 IX, all of the titles with respect to civil rights, is
21 there a definition of equity to your knowledge in any
22 of those?

23 MR. DREIBAND: No.

24 COMMISSIONER NOURSE: I'd like to make
25 just an interjection here. If you open up your

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1 iPhone, you can find the definition of equity, the
2 quality of being fair and impartial. I understand you
3 believe it means outcome. There's a difference here,
4 but that's what my dictionary says and the Supreme
5 Court likes dictionaries these days.

6 MR. DREIBAND: But there's no -- the word
7 equity does not appear in a single statute passed by
8 the United States Congress about civil rights issues,
9 at least certainly that is enforced by the Civil
10 Rights Division at the Justice Department. It's not
11 part of the United States Code at all and that's why
12 it's not defined anywhere in the U.S. Code, that I
13 know of anyway.

14 COMMISSIONER KIRSANOW: Commissioner
15 Heriot?

16 COMMISSIONER HERIOT: I'm going to direct
17 this to Mr. Westhill because he mentioned it in his
18 testimony. The Vice President has indeed said what
19 she believes equity means, hasn't she? What did she
20 say again?

21 MR. WESTHILL: She has on a couple of
22 different occasions. The most recent having to do with
23 the executive order that was signed just, I believe,
24 last month, that "America has a promise of equity and
25 justice for all. Today, the President signed an

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1 executive order that puts our nation one step closer
2 to that," which I think is a change on the pledge of
3 allegiance's liberty and justice for all.

4 But the Vice President has commented on
5 this before as well on her official Twitter account.
6 She said that "There's a big difference between
7 equality and equity. Equality suggests oh, everyone
8 should get the same amount. Equitable treatment means
9 we all end up in the same place."

10 COMMISSIONER KIRSANOW: Commissioner
11 Magpantay?

12 COMMISSIONER MAGPANTAY: Mr. Dreiband,
13 just a quick question, and thank you for your service
14 to the Trump Administration. And in the case
15 involving what you worked on, can you define what is
16 an Asian?

17 MR. DREIBAND: I'm sorry, in what case?

18 COMMISSIONER MAGPANTAY: What is an Asian?

19 MR. DREIBAND: What is an Asian? Asians
20 typically refer to people whose ancestry or national
21 origin is from the continent of Asia.

22 COMMISSIONER MAGPANTAY: The reason why is
23 that it is a very large and diverse community, which
24 some segments encounter poverty, limitations on
25 proficiency, and I'm just curious in the court papers

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1 if it is recognized the nuance and diversity that we
2 seek in America, like our schools should be -- you
3 know, skin color, whatever, but there is a diversity
4 of experience and insights, isn't there, within the
5 Asian community?

6 MR. DREIBAND: Well, of course there is,
7 and that's why this whole notion of grouping
8 populations of people together the way many colleges,
9 and universities, and other institutions today are
10 doing as, quote, Asians, I think is shameful,
11 disgraceful, and illegal.

12 So, yes, there is a huge range of
13 diversity among people whose ancestry is from Asia,
14 among people who are from East Asia, or South Asia, or
15 various part of Asia, and I think it's horrible that
16 our institutions in this country today treat these
17 individuals as if they are part of some monolithic
18 group and then subject them to pervasive
19 discrimination.

20 And it's even worse because we're talking
21 typically about 18-year-old children who are applying
22 to further their education at colleges and
23 universities throughout this country, many of whom
24 come from very poor families, many of whom are first
25 generation arrivals to this country, and they are

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1 lumped together and disadvantaged by Ivy League
2 institutions, by all kinds of institutions in this
3 country, and it is a total disgrace in my opinion, and
4 it's illegal, and immoral, and wrong, and should stop.

5 COMMISSIONER MAGPANTAY: And that's in
6 your papers?

7 MR. DREIBAND: What?

8 COMMISSIONER MAGPANTAY: And that's in
9 your papers, your litigation papers, yes?

10 MR. DREIBAND: Well, yeah, in the cases
11 that I mentioned, yes, we made those allegations, yes.

12 COMMISSIONER MAGPANTAY: Thank you.

13 MR. MORALES: I'm going to assert my
14 authority under 45 CFR 701.11 and I want to remind all
15 Commissioners that they voted for the concept paper on
16 hate crimes against Asian Americans on September 16,
17 transcript page 40, research timeline voted on October
18 21, transcript page 32.

19 An amendment to add admissions of Asian
20 Americans' status to colleges and universities failed
21 by a vote on September 16. Our conversation and the
22 point of testimony today is limited to the four
23 corners contained in the concept paper, so I'm going
24 to submit the concept paper and the timeline for the
25 record, so thank you.

NEAL R. GROSS

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1 COMMISSIONER MAGPANTAY: I apologize for
2 my question if it was not germane to the topic.

3 COMMISSIONER HERIOT: Yes, it was.

4 COMMISSIONER KIRSANOW: Any other
5 questions from Commissioners?

6 CLOSING REMARKS

7 COMMISSIONER KIRSANOW: Panelists, I
8 want to thank you. That will conclude this
9 briefing and we appreciate the testimony of
10 everyone who has participated in this briefing
11 today. The record will be open for 30 days in
12 which you can submit further comments.

13 Members of the public are invited to do
14 so also and they may be emailed to, if you want to
15 take this down, antiasianhatecrimes@usccr.gov.
16 That is antiasianhatecrimes@usccr.gov. And please
17 submit your comments by April 24.

18 ADJOURN MEETING

19 COMMISSIONER KIRSANOW: And with that,
20 the briefing is concluded.

21 (Whereupon, the above-entitled matter
22 went off the record at 4:51 p.m.)
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