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**Employment Discrimination:**

***Lam v. Univ. of Hawaii* (9th Cir. 1994)**

Female law professor of Vietnamese descent sued law school for its failure to hire her as a director of Pacific Asian Studies Program.

- Ninth Cir. criticized trial court’s decision stating “the court seemed to view racism and sexism as separate and distinct elements amenable to almost mathematical treatment, so that evaluating discrimination against an Asian woman became a simple matter of performing two separate tasks: looking for racism ‘alone’ and looking for sexism ‘alone,’ with Asian men and white women as the corresponding model victim.”
- Ninth Circuit reasoned that “where two bases for discrimination exist, they cannot be reduced to distinct components.... Rather than aiding the decisional process, the attempt to bisect a person’s identity at the intersection of race and gender often distorts or ignores the particular nature of their experiences.... [W]hen an employee is claiming race and sex bias, it is necessary to determine whether the employer discriminates on the basis of that combination of factors, not just whether it discriminates against people of the same race or of the same sex.”

**EEOC’s Position on Intersectional Discrimination & What Lawyers Should Remember**

Title VII prohibits discrimination not just because of one protected trait (e.g., race), but also because of the intersection of two or more protected bases (e.g., race and sex). For example, Title VII prohibits discrimination against African American women even if the employer does not discriminate against White women or African American men. Likewise, Title VII protects Asian American women from discrimination based on stereotypes and assumptions about them even in the absence of discrimination against Asian American men or White women. The law also prohibits individuals from being subjected to discrimination because of the intersection of their race and a trait covered by another EEO statute – e.g., race and disability, or race and age.

**-- EEOC Compliance Manual § 15 Race & Color Discrimination**

- Lawyers must critically analyze all relevant facts and recognize the potential for intersectional discrimination claims in their client’s cases. In some circumstances, this may provide their client with additional avenues of redress under the law.

**Cultural / Cross-Racial Solidarity**

[www.sikhcoalition.org](http://www.sikhcoalition.org)

- On June 19, 1982, 27-year-old Vincent Chin, a Chinese-American man, was celebrating with friends at his bachelor party in Detroit, Michigan, when he was attacked by two white men, Ronald Ebens and Michael Nitz.



- The men never denied the acts, but they insisted that the matter was simply a bar brawl that had ended badly for one of the parties. In an agreement with prosecutors, they pleaded to manslaughter (down from second-degree murder) and were sentenced to three years of probation and fined \$3,000.
- In one of the first mass showings of solidarity, Chin's death brought Asian Americans together across ethnic lines to form multiethnic and multiracial alliances, to organize for civil rights, and to advocate for change.

### **The Impact of COVID-19 on Minorities: The Social, Emotional, Moral and Economic Factors We Can't Ignore**

- Black community disparately impacted by lack of access to healthcare and pre-existing conditions.
- Politicization of the COVID-19 virus response at state and federal levels, including reference to the virus as “Kung Flu” led to a significant rise in racially motivated violence and other hate incidents against Asian Americans - i.e, more than 1,800 racist incidents against Asian-Americans in the U.S. were reported over an 8-week period from March to May 2020.
- Sikhs disparately impacted by federal regulations implemented in workplace policies that mandated that they shave their religiously-mandated facial hair in order to wear N95s/PPE.
- Lawyers should be aware that these factors must be considered when assessing the impact on minority groups in schools, workplaces, in public accommodations, and as crime victims.

### **What have been the historic challenges to solidarity between the Black, AAPI, and other minority communities?**

- Model Minority Myth
- BLM movement
- Socio-economic differences
- Criminal Justice Inequities
- Religious differences
- Immigration patterns (slavery to economic migrants)

### **AAPI, Sikh and Black Community Solidarity - the Recent Racial Reckoning**

- **Post 9/11** - AAPI community groups insisted that the DOJ connect with and include Sikhs in federal anti-backlash / hate crime efforts. Blacks, Jews, Muslims and Sikhs are consistently the most targeted groups per FBI hate crime stats.
- **2020** - Deaths of Ahmaud Arbery, Breonna Taylor, George Floyd and other Black community members instigated protests against the mistreatment of Black people in America. Simultaneously, racist rhetoric referred to the COVID-19 pandemic as the “Kung Flu” and instigated anti-Asian hate and violence.



- **2020-2021** - Many AAPI, Sikh and other minority groups recognized the need to speak out against systemic discrimination faced by other groups. Groups underwent Bystander trainings and shared resources in drafting and supporting legislation for the benefit of all minority groups, but which combated discrimination historically aimed at the Black community (i.e. For the People Act, the Jabara-Heyer No Hate Act, and the George Floyd Justice in Policing Act).
- **2021** - Shootings at Atlanta spas left 8 people mostly of Asian descent dead during time of heightened Anti-Asian violence, and a shooting at a FedEx facility in Indianapolis with a predominately Sikh workforce left 8 dead including 4 Sikhs. After the Indianapolis shooting, AAAJ shared mental health / victims resources with the Sikh Coalition that it had compiled the month prior in the wake of the Georgia spa shootings to help provide immediate rapid response to community members.
- **2021** - NAPABA created the Alliance for Asian American Justice (“The Alliance”) and included the Sikh Coalition as part of a coalition of leading AAPI advocacy organizations, Fortune 1000 General Counsel, and over 40 law firms in a national initiative designed to ensure that victims of anti-Asian crime, hatred, and bigotry are able to access pro bono legal services. SC has obtained critical pro bono services this year through the Alliance.

### Combatting the Model Minority Myth

- Asian Americans are often stereotyped as studious, successful, smart — a model minority who excel in education and work.
- Despite its positive overtones this stereotype is damaging for Asian Americans and other students of color. The model minority myth pits students of color against each other and ignores the reality of systemic racism that Asian Americans continue to encounter.
- Moreover, the model minority myth minimizes the role racism plays in the persistent struggles of other racial/ethnic minority groups — especially black Americans.
- Many scholars have argued that some Asians only started to "make it" when the discrimination against them lessened — and only when it was politically convenient.
- For example, amid worries that the Chinese exclusion laws from the late 1800s would hurt an allyship with China in the war against imperial Japan, the Magnuson Act was signed in 1943, allowing 105 Chinese immigrants into the U.S. each year. In 1965, the National Immigration Act replaced the national-origin quota system with one that gave preference to immigrants with U.S. family relationships and certain skills.

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