

# After Atlanta: Revisiting the Legal System’s Deadly Stereotypes of Asian American Women

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#### INTRODUCTION

On March 16, 2021, a 21-year-old white man shot and killed eight individuals at a massage spa in Atlanta (the Atlanta Shooting).<sup>1</sup> Six of the eight victims were Asian American women.<sup>2</sup> Consequently, questions were raised as to whether this attack was motivated by race, gender, or both. The perpetrator asserted that the attacks were not racially motivated and claimed his motive stemmed from sex addiction.<sup>3</sup> He viewed the massage spa as a sexual “temptation” that he wanted to eliminate.<sup>4</sup> The Asian American women were simply collateral.

Others, however, including prominent politicians, vehemently rejected the perpetrator’s self-proclaimed motive.<sup>5</sup> These commenters concluded that the perpetrator intentionally chose several Asian-owned massage spas with predominantly Asian American women workers.<sup>6</sup> Their view was that the number of Asian American women among the victims showed animus against Asian American women and was a reflection of the alarming rise of anti-Asian violence. Since the start of the COVID-19 pandemic, there has been a reported number of 10,370 anti-Asian hate crimes.<sup>7</sup> Notably, most of these victims are Asian American women.<sup>8</sup>

Research suggests that the recent resurgence in anti-Asian hate crimes in the United States is due to the Trump Administration’s anti-Asian rhetoric.<sup>9</sup> For almost a year, former President Donald Trump wielded the

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1. *8 Dead in Atlanta Spa Shootings, With Fears of Anti-Asian Bias*, N.Y. TIMES (Mar. 17, 2021), <https://www.nytimes.com/live/2021/03/17/us/shooting-atlanta-acworth> [<https://perma.cc/8LK3-67S6>].

2. *Id.* The other two victims were white. See Elisha Fieldstadt, *Suspect in Deadly Atlanta-Area Spa Shootings Charged with 8 Counts of Murder*, NBC NEWS (Mar. 17, 2021), <https://www.nbcnews.com/news/us-news/suspect-deadly-atlanta-area-spa-shootings-says-he-was-motivated-n1261299> [<https://perma.cc/589Y-Z3PN>].

3. *8 Dead in Atlanta Spa Shootings, With Fears of Anti-Asian Bias*, *supra* note 1.

4. *See id.*

5. Jennifer Liu, *‘Stand up, Condemn This Violence:’ Politicians, Advocates, Celebrities Call for Support of Asians Following Atlanta Shootings*, CNBC (Mar. 17, 2021), <https://www.cnbc.com/2021/03/17/leaders-call-for-support-of-asian-americans-after-atlanta-shootings.html> [<https://perma.cc/P3S5-XV7W>].

6. *See id.*

7. *National Report (Through September 2021)*, STOP AAPI HATE, <https://stopaapihate.org/national-report-through-september-2021/> [<https://perma.cc/C64N-ZHEN>].

8. Kimmy Yam, *There Were 3,800 Anti-Asian Racist Incidents, Mostly Against Women, in the Past Year*, NBC NEWS, (Mar. 16, 2021), <https://www.nbcnews.com/news/asian-america/there-were-3-800-anti-asian-racist-incidents-mostly-against-n1261257> [<https://perma.cc/K4FV-XMTJ>].

9. Kimmy Yam, *Anti-Asian Hate Crimes Increased by Nearly 150% in 2020, Mostly in N.Y. and L.A., New Report Says*, NBC NEWS (Mar. 9, 2021), <https://www.nbcnews.com/news/asian-america/anti-asian-hate-crimes-increased-nearly-150-2020-mostly-n-n1260264> [<https://perma.cc/988P-PJV8>].

coronavirus's Chinese origins and repeatedly referred to the disease as the "Kung Flu" and "China Virus."<sup>10</sup> Many criticized President Trump's usage of these terms because it pushes the narrative that Asians are perpetually foreign, dirty, and prone to disease.<sup>11</sup> These critics argue that anti-Asian language often encourages violent attacks against Asians.<sup>12</sup> Even if this is true, President Trump's racial epithets are gender neutral and do not explain why Asian American women made up 68% of the reported attacks during the coronavirus pandemic compared to 29% of Asian American men.<sup>13</sup> Legal history, however, can help provide more understanding.

To better understand and prevent violence against Asian American women, we must first analyze the legal system's complicity in perpetuating harmful stereotypes—widely held ideas that all Asian American women are submissive, hyper-sexualized, and morally corrupt figures. While legal discourse involving Asian American women is scarce, discrimination against Asian American women is not new. Problematic images<sup>14</sup> of Asian American women have origins in and continue within the U.S. legal system in its courts, through the disparate treatment of Asian female litigants, and through anti-Asian laws. These images ultimately culminate in the degradation of and discrimination and violence against Asian American women. Stereotypes carry an incredible force in shaping societal attitudes, which inevitably impact the dehumanization of Asian American women.<sup>15</sup> They can also impact how courts decide cases involving Asian American women. By applying a critical intersectional lens, the legal system can better recognize racialized sexual violence and protect Asian American women. When laws, court systems, or public officers dehumanize Asian American women, they become particularly vulnerable to racialized and sexualized violence. The legal system should better understand its role in perpetuating deadly stereotypes of Asian American women and deconstruct these images. The legal system's understanding of these stereotypes can help protect Asian American women from racialized and sexualized violence.

This Essay examines the problematic and stereotypical manner in which the legal system has treated Asian American women. It argues that an intersectional framework can help the legal system better understand and protect Asian American women. This Essay also calls for a recognition that these stereotypes exist and an unequivocal rejection of them. Part I of this Essay discusses the prevailing stereotypes of Asian American women and

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10. *Id.*; see Caitlin Oprysko, *McEnany Defends Trump's 'Kung Flu' Comment at Rally*, POLITICO (June 22, 2020), <https://www.politico.com/news/2020/06/22/mcenany-defends-trump-kung-flu-comment-333814> [<https://perma.cc/K5QV-SWCQ>].

11. Yam, *supra* note 9.

12. *Id.*

13. See Yam, *supra* note 9.

14. Images refers to society's mental pictures of Asian American women.

15. Virginia W. Wei, *Asian Women and Employment Discrimination: Using Intersectionality Theory to Address Title VII Claims Based on Combined Factors of Race, Gender, and National Origin*, 37 B.C. L. REV. 797 (1996).

how they came to fruition. Part II explores the historical treatment of Asian American women. Part III discusses contemporary cases involving Asian American women. Part IV introduces an intersectional framework for deconstructing these dangerous stereotypes in the legal system. Given the impact of these stereotypes, this last section argues that an intersectional framework is crucial for addressing racialized and sexualized violence against Asian American women.

## I. STEREOTYPES OF ASIAN AMERICAN WOMEN

Asian American women are subject to a set of sexualized stereotypes on account of gender. Gender complicates Asian American women's racialized experiences by adding an additional layer of sexual discrimination.<sup>16</sup> The two prevailing Asian American women-specific stereotypes are the Lotus Blossom and Dragon Lady. These stereotypes contribute to the violence against Asian American women by making them targets of fetishization. The Lotus Blossom and Dragon Lady correspond to the two broad categories of stereotypes for all Asians: the Model Minority and Yellow Peril.

### A. General Stereotypes of All Asians: The Model Minority and Yellow Peril

The Model Minority stereotype casts Asians as high-achieving, affluent, obedient citizens.<sup>17</sup> The stereotype believes Model Asians come from stable families and communities with low rates of crime,<sup>18</sup> and that they blend neatly into white communities.<sup>19</sup> The media has continually perpetuated the idea that Asians are the Model Minority.<sup>20</sup> The *New Republic* featured a report entitled “The Triumph of Asians” as “America’s greatest success story.”<sup>21</sup>

The Model Minority image is harmful. While the Model Minority myth praises Asians for the group's economic success and academic accomplishments, it erases Asians' pain and diverse experiences. The Model Minority stereotype presents Asians as a monolith, ignoring the hardship felt among unemployed Hmong, Chinatown seamstresses, elderly Japanese internees, Vietnamese refugees, and Filipina migrant workers.<sup>22</sup> Asians' perceived wealth and docility also make them prime targets for violence.<sup>23</sup>

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16. See Rhoda J. Yen, *Racial Stereotyping of Asians and Asians and Its Effect in Criminal Justice: A Reflection on the Wayne Lo Case*, 7 *ASIAN L. J.* 1, 2 (2000).

17. *Id.*

18. *Id.*

19. *Id.*

20. Wei, *supra* note 15, at 798.

21. *Id.* at 797.

22. See Yen, *supra* note 16, at 4.

23. See Wei, *supra* note 15, at 799.

However, the stereotype suggests that Asians are too successful, and therefore, undeserving of protection from racial discrimination.<sup>24</sup> Consequently, the Model Minority stereotype both obscures and exacerbates anti-Asian racism.

While celebrated as the Model Minority, Asians are also negatively perceived as the “Yellow Peril.” The Yellow Peril stereotype suggests Asians are foreigners with inferior cultural practices and lower ethical standards.<sup>25</sup> Supreme Court Justice Stephen Field once wrote that the “manners, habits, mode of living, and everything connected with the Chinese prevent the possibility of their ever assimilating with our [white] people.”<sup>26</sup> The Yellow Peril stereotype depicts Asians as morally inferior to white Americans and a threat to American stability.<sup>27</sup> Both the Model Minority myth and Yellow Peril images can be harmful to Asians because they obscure the true reality of Asian experiences. They are also the foundation for the harmful stereotypes of Asian American women.

### B. Sexualized Stereotypes of Asian American Women

Asian American women experience an additional layer of unique discrimination due to their gender. These stereotypes stem from historical images of the Chinese prostitute and sexual servants to U.S. soldiers during wartime.<sup>28</sup> Stereotypes of Asian American women generally fall into two broad categories: the Lotus Blossom and the Dragon Lady.<sup>29</sup> These images are the progenies of the Model Minority and Yellow Peril stereotypes respectively. Asian American women are a dichotomy: they are “meek, shy, passive, childlike, innocent and naïve, yet surprising in [their] sexual prowess and desire to please their male master.”<sup>30</sup> Thus, Asian American women are both desired as sexual objects but scorned for their moral impurity.

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24. See *id.* In New York City, Asians are the poorest racial group. See CeFaan Kim, *Our America: Poverty's Disproportionate Impact on New York's Asian Community*, ABC7 NEWS (May 10, 2021), <https://abc7news.com/our-america-asian-voices-sang-ki-chun-assemblymember-ron-kim-american-poverty-new-york/10578934/> [<https://perma.cc/9M68-MH87>]. Additionally, while Asians are the fastest growing racial group, they are also the least likely group to be promoted in the United States because of racial discrimination. See Brian Chen, *The Cost of Being an Interchangeable Asian*, N.Y. TIMES (June 10, 2021), <https://www.nytimes.com/2021/06/06/business/the-cost-of-being-an-interchangeable-asian.html> [<https://perma.cc/ZEA8-5ZBX>].

25. See Yen, *supra* note 16, at 6–7.

26. *Id.*

27. *Id.*

28. See Wei, *supra* note 15, at 801.

29. See *id.* at 801–02.

30. Peggy Li, *Hitting the Ceiling. An Examination of Barriers to Success for Asian American Women*, 29 BERKELEY J. GENDER L. & JUST. 140 (2014).

### 1. *Lotus Blossom*

The “Lotus Blossom” stereotype, suggests Asian American women are hyper-sexualized, docile, and demure.<sup>31</sup> Lotus Blossoms are exotic commodities and ultra-compliant partners. They are viewed as mere sexual objects and thus treated disposably.

Some media outlets have also acknowledged the Lotus Blossom’s role in perpetuating white supremacy.<sup>32</sup> Recently, the *New York Times* published an article titled “The Alt-Right’s Asian Fetish,” which describes the Lotus Blossom as a passive agent in white supremacy.<sup>33</sup> The article describes prominent white supremacist figures’ fascination and fetishization of Asian American women.<sup>34</sup> On a neo-Nazi news website, a user asked whether white nationalists could sleep with East Asian women.<sup>35</sup> He received “spirited responses,” affirming that white nationalism could indeed be reconciled with Asian fetishization.<sup>36</sup> White supremacist Asian fetishes exist at the intersection of two popular myths: the Model Minority and the Lotus Blossom.<sup>37</sup> The first myth is Asians are the Model Minority. If Asians are the Model Minority, they are *almost* white (or white *enough*) and align with the white supremacist project.<sup>38</sup> Nevertheless, Asians are not considered white, and their differences as a racial group are erased.<sup>39</sup> The Model Minority myth also champions a hollow notion of diversity for the white liberal order that is categorically anti-Black.<sup>40</sup> The myth “legitimizes white America’s power to determine who is ‘good’ and to offer basic dignity and equal rights.”<sup>41</sup>

The second myth is Asian American women are subservient, hypersexual Lotus Blossoms who do not disturb the white supremacist agenda.<sup>42</sup> They are always in the service of their white romantic partners, which makes them acceptable romantic partners for white supremacists. The alt-right’s Asian fetish highlights a tension within its white supremacist objectives in an increasingly diverse society.<sup>43</sup> The preservation of white power requires “some compromises on white purity.”<sup>44</sup> Accordingly, there is

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31. *Id.* at 154.

32. *See, e.g.*, Audrea Lim, *The Alt-Right’s Asian Fetish*, N.Y. TIMES (Jan. 6, 2018), <https://www.nytimes.com/2018/01/06/opinion/sunday/alt-right-asian-fetish.html> [https://perma.cc/M7GS-LZG6].

33. *See id.*

34. *See id.*

35. *See id.*

36. *Id.*

37. *See id.*

38. *See id.*

39. *See id.*

40. *See id.*

41. *Id.*

42. *See id.*

43. *See id.*

44. *Id.*

no contradiction with a white supremacist's Asian fetish. Lotus Blossoms, and therefore, Asian American women, are used as passive tools for upholding white supremacy.

No measure of success can protect Asian American women from the deadly consequences of the Lotus Blossom stereotype. Although Lotus Blossoms are sometimes admired for seemingly overcoming racial barriers, they are still susceptible to fetishized violence. Weeks after the Atlanta Shooting, Asian American golfers at the Atlanta Ladies Professional Golfers' Association ("L.P.G.A.") Championship understood the weight of the Lotus Blossom characterization.<sup>45</sup> In one admission, Yani Tseng, a two-time L.P.G.A. champion and the first Taiwanese woman to be ranked the number one female golfer in the world, stated, "I'm scared every time I see the news that [fetishized violence] could happen to me." Korean American Michelle Wie West also admitted that even though she endured years of microaggressions, "[the Atlanta Shooting] was the first time I was truly afraid [because Asian American women are] a target."<sup>46</sup> Asian American women who play at the L.P.G.A. have risen to the highest ranks of golfing success. They are recognized to have overcome racial barriers and to achieve honorary white status. The Atlanta Shooting shows that even if Asian American women blend into white societies, they remain vulnerable to racialized and sexualized violence. Honorary white status cannot protect Asian American women from the dangerous Lotus Blossom stereotype.

## 2. *Dragon Lady*

Asian American women are also depicted as Dragon Ladies. No Asian woman can be a Lotus Blossom without also being a Dragon Lady. Dragon Ladies are devious, icy women, often depicted in the form of madams or prostitutes.<sup>47</sup>

### a. *Popular Cultural Depictions of Dragon Ladies*

As depicted in popular culture, Dragon Ladies disturb Western conservative values. For example, in the television series "Ally McBeal," the Asian character Ling is both a Lotus Blossom and Dragon Lady.<sup>48</sup> She is a litigious, cold woman who sporadically speaks in Mandarin before juries and orders a colleague a pet frog.<sup>49</sup> At the same time, Ling performs exotic sexual

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45. See Karen Crouse, *Players of Asian Descent on the L.P.G.A. Tour Lift Silence on Racism and Sexism*, N.Y. TIMES (June 22, 2021), <https://www.nytimes.com/2021/06/22/sports/golf/lpga-women-pga-championship-atlanta-anti-asian-bias.html> [<https://perma.cc/A2K4-KP8L>].

46. See *id.*

47. See Li, *supra* note 30, at 154. Asian prostitutes are viewed as both Dragon Ladies and Lotus Blossoms.

48. See Yen, *supra* note 16, at 8.

49. See *id.*

acts for her lover, a white superior.<sup>50</sup> Ling is exotic and brash, but also sexually submissive.<sup>51</sup>

Another example of a Dragon Lady depiction comes from the film *Mean Girls*.<sup>52</sup> In this movie, Asian American women are unmistakably promiscuous, catty, and anti-Black.<sup>53</sup> Trang Pak and Sun Jin Dinh are two high schoolers who engage in a sexual relationship with their older white gym teacher, Coach Carr.<sup>54</sup> As his students, they are Coach Carr's subordinates.<sup>55</sup> When the two women find out they are both sleeping with Coach Carr, they argue over who "guys like" more and their shared sexual partner.<sup>56</sup> The love triangle becomes a joke in the movie, which undermines the seriousness of Coach Carr's statutory rape of two underage Asian American women.<sup>57</sup> Additionally, the characters are "otherized." Pak and Dinh only speak in Vietnamese throughout the film, despite attending an English-speaking high school.<sup>58</sup> Trang Pak's name is also a mish mash of Korean and Vietnamese surnames, suggesting that all Asian American women are the same. Furthermore, as a retort to Dinh's claim that "guys like me better," Pak states, "[N-word], please."<sup>59</sup> Asian American women here use a racial derogatory and thus, are featured as deliberately anti-Black. Regardless of the number of generations they have been in this country, Asian American women are presumed to be foreigners with threatening cultural values.

Stereotypes of Asian American women constitute a paradox. Asian American women are only Model Minorities and Lotus Blossoms when they conform to traditional Western patriarchal values. Yet their gender and race continually place them in perpetual otherness, which is a perceived danger to these traditional values. Both the Lotus Blossom and Dragon Lady stereotypes define women solely by their appearance and operate in tandem with one another.<sup>60</sup>

*b. 22 Lewd Chinese Women/Chy Lung v. Freeman*

*Chy Lung v. Freeman*, otherwise known as the Case of the 22 Lewd Chinese Women, is likely the first case to introduce the harmful Dragon

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50. *See id.*

51. *See id.*

52. *See* MEAN GIRLS (Paramount Pictures 2004).

53. *See id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. *See id.*

58. *Id.*

59. *Id.*

60. *See* Wei, *supra* note 15, at 802.



Lady stereotype.<sup>61</sup> The case is responsive to the first wave of Chinese sex workers in the West.<sup>62</sup> The petitioners were Chinese immigrant women accused of prostitution because they traveled to the United States alone.<sup>63</sup> They tried to use the justice system to their advantage but were only partially successful.<sup>64</sup> The Asian American women testified that they were married or to be married, but none were believed.<sup>65</sup>

Without any factual basis, the San Francisco District Attorney claimed that Chinese women who traveled alone could only be prostitutes.<sup>66</sup> To support his claim, the San Francisco District Attorney relied largely on the testimony of white and Chinese men.<sup>67</sup> In particular, he called Reverend Gibson, a white Christian minister, an “expert” on Chinese prostitutes.<sup>68</sup> Gibson was a minister in China and ran a missionary society for prostitutes.<sup>69</sup> Gibson claimed that the Chinese women dressed similarly to prostitutes, who typically wore bright “flowered garments,” as opposed to wives who wore “plain colors.”<sup>70</sup> The immigration officer testified, “These are lewd . . . debauched women.”<sup>71</sup> The officers did not ground their testimonies based in fact, indicating that the Dragon Lady stereotype influenced his perception of the women. The government and trial court quickly labeled them as prostitutes. The testimony of the various witnesses was “strikingly incoherent and contradictory.”<sup>72</sup> The witnesses did not base their testimonies on fact; they were mostly white men who were not aboard the steamer, and they did not know the Chinese women or speak a Chinese language.<sup>73</sup> Without personal knowledge, the witnesses testified that only Chinese prostitutes wore gaudy colors, but in actuality, all typical Chinese wives did.<sup>74</sup> The trial court, like the broader legal system that categorized all Chinese women as prostitutes and nothing else.<sup>75</sup> It did not consider the women’s socio-economic status or possibility of human trafficking.<sup>76</sup> As the first documented case involving an Asian woman litigant, *22 Lewd Women*

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61. *Ex parte Ah Fook*, 49 Cal. 402 (1874). See Hon. Denny Chin & Kathy Hirata Chin, *Asian Americans and the Law*, 11 JUD. NOTICE 6, 9–13 (2016). See generally *Chy Lung v. Freeman*, 92 U.S. 275 (1875).

62. See Chin & Chin, *supra* note 61, at 9–10.

63. See *id.*

64. See *id.* at 9–13; see *Chy v. Freeman*, 92 U.S. 275, 280–81 (1875).

65. Chin & Chin, *supra* note 61, at 10.

66. *Id.* The term “prostitute” is being used to describe how these Asian American women were perceived.

67. *Id.*

68. *Id.*

69. *Id.*

70. ANNE ANLIN CHENG, ORNAMENTALISM 32 (2018).

71. See *Chy v. Freeman*, 92 U.S. 275, 278 (1875).

72. See CHENG, *supra* note 70, at 33.

73. *Id.* at 32.

74. *Id.* at 33.

75. See *id.*

76. See Kerry Abrams, *Polygamy, Prostitution, and the Federalization of Immigration Law*, 105 COLUM. L. REV. 641, 654 (Apr. 2005).

sets the stage for the fetishization of and subsequent violence against Asian American women.

*c. Tokyo Rose and United States v. Iva Ikuko Toguri D'Aquino*

*United States v. Iva Ikuko Toguri D'Aquino* shows how the Dragon Lady stereotype demonizes Asian American women in the criminal justice system.<sup>77</sup> It involves the prosecution and incarceration of Iva Ikuko Toguri D'Aquino, a Japanese American woman accused of treason after World War II.<sup>78</sup> Toguri notoriously became known as “Tokyo Rose” because of her job as a radio host in Japan, despite never using the moniker during any of her broadcasts.<sup>79</sup> Rather, Allied soldiers designated any English-speaking woman at the radio station as Tokyo Rose.<sup>80</sup> She simply did what her supervisors instructed: she read pre-written scripts that “allegedly [cajoled] and [wooed] Allied soldiers to quit fighting the Japanese,” Toguri represented the feminized yet “potentially lethal side of Japan.”<sup>81</sup> Over time, Toguri became Tokyo Rose and a U.S. military tool for anti-Japanese propaganda. The Department of Justice and media portrayed Toguri as a cunning, devious Dragon Lady, with the press referring to her as a “a vengeful Madame Butterfly or a ‘Mata Hari of the radio.’”<sup>82</sup> Tokyo Rose, however, was more of a Dragon Lady fiction and an invention of the U.S. military and media.<sup>83</sup>

The caricature of Tokyo Rose as a treacherous, sultry Dragon Lady overshadowed Toguri’s actual humanity during her trial. To the contrary, she appeared “highly anxious,” spoke with a nasally voice, and wore a conservative “outdated pre-war suit” to court every day.<sup>84</sup> Although Toguri teased Allied soldiers during her segments, the Department of Justice suggested that the show did not actually impact troop morale and perhaps even improved it.<sup>85</sup> The teasing was mild, and she played a passive role by merely read scripts written by Allied Powers prisoners of war.<sup>86</sup> For example, one of her scripted lines was a playful taunt: “Do you know where your wife is tonight?”<sup>87</sup> Compared to more impassioned Axis Powers broadcasters like Millard Gillars, Toguri appeared to be a reluctant participant in anti-

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77. See generally *United States v. Iva Ikuko Toguri D'Aquino*, 192 F.2d 338 (9th Cir. 1949).

78. See generally *id.*

79. Chin & Chin, *supra* note 61, at 12.

80. See *id.*

81. Naoko Shibusawa, *Femininity, Race and Treachery: How ‘Tokyo Rose’ Became a Traitor to the United States after the Second World War*, 22.1 GENDER & HIST. 169 (Apr. 2010).

82. *Id.*

83. See Chin & Chin, *supra* note 61, at 11.

84. Shibusawa, *supra* note 81, at 169, 182.

85. See REX GUNN, *THEY CALLED HER TOKYO ROSE* 168 (Brent Bateman, 2d ed. 2008) (“The scripts of her programs seem totally innocuous and might be said to have little, if any, entertainment value.”).

86. See Chin & Chin, *supra* note 61, at 12.

87. *Id.*

American propaganda.<sup>88</sup> Toguri refused to renounce her United States citizenship despite pressure from Japanese police forces,<sup>89</sup> saying “it wouldn’t do any good for me to sign a piece of paper if my heart had not changed.”<sup>90</sup> She also brought Allied prisoners of war food, medicine, and blankets.<sup>91</sup> In reality, Toguri was no femme fatale.

By refusing to consider Toguri’s extenuating circumstances, the prosecution did not view her case holistically and dismissed her as an irredeemable Dragon Lady. Toguri’s story showed she was far from a devoted Japanese nationalist during World War II. She was born and raised in the United States, and at her family’s behest, traveled to Japan to care for her gravely ill aunt.<sup>92</sup> Toguri intended to return home to the United States, but Japan’s attack on Pearl Harbor prevented her from doing so.<sup>93</sup> Diplomatic relations between the United States and Japan stopped, and because of the urgency of her trip, she did not have a passport to travel back to the United States.<sup>94</sup> Toguri was stranded in Japan for the remainder of World War II.<sup>95</sup> Toguri’s family was forced into internment camps, so they could not send her money.<sup>96</sup> Unable to speak Japanese and desperate for work, Toguri took a job as a typist at Radio Tokyo and agreed to host the “Zero Hour” show designed to demoralize Allied military forces.<sup>97</sup> The media and legal system’s fixation on categorizing Toguri as a Dragon Lady erased the complexity of her circumstances. By permitting Toguri’s conviction of treason to stand, the court ignored the implications of discrimination on account of race, gender, national origin, and class.

The Dragon Lady stereotype also likely helped secure Toguri’s conviction for treason, even though the government did not have a strong case against her. The Los Angeles District Attorney, the U.S. District Attorney in San Francisco, and the Department of Justice’s expert all recommended against the prosecution of Toguri for treason.<sup>98</sup> A Department of Justice memorandum concluded that the government had “insufficient

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88. See, e.g., Susan Heller Anderson, *Mildred Gillars, 87, of Nazi Radio, Axis Ally to an Allied Audience*, N.Y. TIMES (July 2, 1988), <https://www.nytimes.com/1988/07/02/obituaries/midred-gillars-87-of-nazi-radio-axis-sally-to-an-allied-audience.html> [<https://perma.cc/8NA4-428L>]; see also Jackie Mansky, ‘Axis Sally’ Brought Hot Jazz to the Nazi Propaganda Machine, SMITHSONIAN MAGAZINE (Sept. 25, 2018), <https://www.smithsonianmag.com/history/axis-sally-and-art-propaganda-180970327/> [<https://perma.cc/XES9-UPYJ>] (“[Mildred] Gillars took pride in her performances on Berlin state radio, so much so that she squirreled away her best broadcasts, even preserving them after Nazi Germany fell.”).

89. See *id.*; Shibusawa, *supra* note 81, at 173. Cf. Mansky, *supra* note 88. By contrast, Rita Luisa Zucca, another American-born broadcaster for Axis Powers propaganda in Italy, renounced her U.S. citizenship . . .).

90. Shibusawa, *supra* note 81, at 173.

91. See Chin & Chin, *supra* note 61, at 12.

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. Shibusawa, *supra* note 81, at 172–73.

97. See Chin & Chin, *supra* note 61, at 14; Shibusawa, *supra* note 81, at 169.

98. See GUNN, *supra* note 85, at 167.

evidence to make out a *prima facie* case” of treason against Toguri, highlighting Toguri’s financial hardship, patriotism, and innocuous broadcasts.<sup>99</sup> Yet the Tokyo Rose myth overshadowed Toguri as an individual, with her own history and nuances, when media scrutiny took over. Toguri gained media attention after she gave an interview as the infamous Tokyo Rose.<sup>100</sup> However, this media attention quickly devolved into a witch-hunt for Toguri.<sup>101</sup> Tokyo Rose now had a face, and the media scrutiny of Tokyo Rose created public pressure to prosecute Toguri.<sup>102</sup>

The government and media fed into the narrative that the treasonous Tokyo Rose was a Dragon Lady deserving of punishment. Although Toguri’s alleged co-conspirators played a more substantial role in the broadcasts, Toguri was the only one punished.<sup>103</sup> Neither Major Charles Cousens, Lieutenant Norman Reyes, and Captain Wallace Ince—who wrote the scripts she read—were prosecuted for treason, even though Toguri directly followed their orders.<sup>104</sup> In the Department of Justice memorandum, Tom DeWolfe admitted that these men “seem just as much, or more, culpable than” Toguri.<sup>105</sup> A grand juror also “flatly” stated that “the attempted indictment of American-born Mrs. d’Aquino was ‘unfair’ in view of federal failure to seek indictment against ‘others just as responsible’ for supposed treasonous wartime broadcasts.”<sup>106</sup> The other broadcasters were men, two of who were white and one who was Filipino, yet they escaped any punishment. All the blame was placed on Toguri. Her disparate treatment suggests discrimination on account of both race and gender. In this case, the Ninth Circuit upheld the Dragon Lady image by seeing Toguri as a one-dimensional villainous Asian woman.

## II. THE HISTORICAL TREATMENT OF ASIAN AMERICAN WOMEN

The origins of harmful stereotypes of Asian American women can be traced to anti-Asian laws and courts. These stereotypes make Asian

99. See *id.* at 165–71.

100. See Chin & Chin, *supra* note 61, at 12.

101. See *id.*

102. See *id.*

103. FREDERICK P. CLOSE, TOKYO ROSE/AN AMERICAN PATRIOT: A DUAL BIOGRAPHY 394 (Jan Goldman ed., 7th ed. 2011). Cousens “took full responsibility for what [Toguri] broadcast on Zero Hour.” *Id.* He testified:

I said to [Toguri], ‘Now, listen. This is a straight-out entertainment program. I have written it and I know what I am doing. All you have to do is look on yourself as a soldier under my orders. Do exactly as you are told. Don’t try to do anything for yourself and you will do nothing against your own people. I will guarantee that personally.’

*Id.*

104. See GUNN, *supra* note 85, at 167 (The three male prisoners of war who were in charge of producing Zero Hour “have been cleared by their respective governments of any charge of treasonous activity in connection with their alleged broadcasting work”); see also CLOSE, *supra* note 103, at 441 (“Charles Cousens could legitimately assert duress” for his participation in the Japanese broadcast).

105. See GUNN, *supra* note 85, at 168.

106. See *id.* at 175.

American women particularly vulnerable to racialized and sexualized violence when they enter the legal system. While exclusionary immigration laws impacted all Asians, Asian American women arguably experienced more discrimination because of their gender. From the onset of U.S. history, Asian American women were treated as literal sexual commodities. The need for cheap labor drew Asian men to the United States.<sup>107</sup> This influx of Chinese men also brought some Chinese women, many of whom were sex workers who immigrated to satisfy the sexual demand of both Asian and white men.<sup>108</sup> “[P]ious, God-fearing, white Christians” did not envision a multiracial America and therefore, perceived the increase of sex work as a moral threat.<sup>109</sup> Consequently, their fear of racial integration and prostitution helped create sexualized stereotypes of Asian American women.<sup>110</sup> While there are many historical examples of discriminatory laws against Asian women,<sup>111</sup> this Essay will highlight four: California’s early legal attacks against Asian American women, the Page Act, the War Brides Act, and laws regarding the mail-order bride industry.

#### A. California’s Campaign against Asian American Women

The Lotus Blossom and Dragon Lady stereotypes can be traced to California’s early attempts to curb prostitution.<sup>112</sup> California enacted several regulations and laws that adversely impacted the immigration of Asian women.<sup>113</sup> In 1854, a San Francisco municipal committee declared that most Chinese women in the city were prostitutes and consequently passed Ordinance No. 546 “To Suppress Houses of Ill-Fame within the City Limits.”<sup>114</sup> Even though the Ordinance was facially neutral and prostitution was legal, it impacted mostly Chinese and Mexican brothels.<sup>115</sup> The Ordinance, therefore, “proves that prostitution itself was not the problem, but there was a fear of non-white prostitutes, particularly working in houses of prostitution.”<sup>116</sup> In 1866, California enacted “An Act for the Suppression of Chinese Houses of Ill-Fame.”<sup>117</sup> The Act stated that “Chinese prostitution was a ‘public nuisance,’ invalidated leases of property to brothels, and made it a misdemeanor for landlords to let their properties

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107. *Id.*

108. *Id.*

109. *See* Li, *supra* note 19, at 150.

110. *Id.* at 151.

111. There are several historical examples interspersed throughout the article, but they are not exhaustive.

112. The terms “prostitution” and “prostitute” are being used to describe the perceptions of sex work and sex workers in the 1900s.

113. Noga Firstenberg, *Marriage and Morality: Examining the International Marriage Broker Regulation Act*, 18 ASIAN AM. L.J. 83, 91 (2011).

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

be used as brothels.”<sup>118</sup> In 1870, California passed “An Act to Prevent the Kidnapping and Importation of Mongolian, Chinese, and Japanese Females, for Criminal or Demoralizing Purposes,” which prohibited the immigration of an Asian woman to the United States “unless she could prove that she came voluntarily and was of ‘correct habits and good character.’”<sup>119</sup> California policymakers also influenced laws against Asian women. California Senator Aaron Sargent stated that “[i]n morals and in every other respect [Chinese people] are obnoxious to our people. The women are prostitutes, and the men are petty thieves.”<sup>120</sup> California laws and policymakers normalized the notion that Asian women are passive Lotus Blossoms and Dragon Ladies with corrupting morals and conditioned others to think within that framework. These early California laws set the backdrop for the Lotus Blossom and Dragon Lady stereotypes by categorizing all Asian American women as prostitutes.

### B. The Page Act

The Dragon Lady and Lotus Blossom stereotypes fed into the introduction of the Page Act of 1875, which the United States enacted as a response to concerns of involuntary servitude, declining wages, prostitution, and popular racist stereotypes about Asians.<sup>121</sup> The Page Act targeted Chinese and Japanese prostitutes, but it impacted the immigration of all Asian American women.<sup>122</sup> The Page Act characterized all Asian American women as prostitutes. While there were Asian female sex workers—70 percent of the 2,000 Chinese women living in San Francisco in 1870 were sex workers—many were unwillingly forced into it.<sup>123</sup> The Act solidified the public’s perception that all Asian American women were prostitutes, obscuring the complex lives of Chinese American immigrant women. Destitution brought many Chinese women to the United States and into the life of sex work.<sup>124</sup> Secret criminal gangs facilitated much of the Chinese sex work in the United States.<sup>125</sup> Some families sold their daughters to improve their financial conditions under the pretense they would be indentured servants, and others were lured into sex work by false promises of marriage or were kidnapped.<sup>126</sup> Some voluntarily immigrated to the United States but

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118. *Id.*

119. *Id.* at 96.

120. *Id.* at 92.

121. Ulysses S. Grant, *Chinese Immigration and the Page Act of 1875*, NAT’L PARK SERV., <https://www.nps.gov/articles/000/ulysses-s-grant-chinese-immigration-and-the-page-act-of-1875.htm> [<https://perma.cc/6KJP-ZK9W>].

122. *Id.*

123. Abrams, *supra* note 76, at 653–55.

124. *Id.* at 654.

125. *Id.*

126. *Id.* at 654–55.

went into sex work to financially support themselves.<sup>127</sup> Regardless, the women were pigeonholed into being seen as only prostitutes.

When the United States started to accept Asian women as immigrants, its amended immigration laws continued to project images of Asian American women as Lotus Blossoms, furthering the narrative that they do not have individual agency. Asian wives were categorically banned from entering the United States until the eighteenth century.<sup>128</sup> In 1924, Congress amended the Immigration Act to permit Chinese women who were already married to U.S. citizens to enter the country.<sup>129</sup> The newly amended law also required that American-born Chinese women show evidence of their U.S. citizenship and that daughters of Chinese American men prove their paternal relationship beyond a reasonable doubt.<sup>130</sup> Additionally, Chinese women could not enter the United States alone; they needed a male companion.<sup>131</sup> Under these laws, the status and admissibility of Asian American women hinged on men: the underlying assumption was that Asian American women needed men to care for them. They were delicate, docile Lotus Blossoms defined by their predominantly sexual relationship to men. Lotus Blossoms were wives, prostitutes, or offspring without agency, rather than individuals. These eighteenth-century perceptions that were further perpetuated by U.S. immigration laws continue to pigeonhole and cast an unshakable shadow on Asian American women today.

### C. The Asian War Brides Act

The Asian War Brides Act perpetuated the Dragon Lady stereotype. Congress passed the War Brides Act of 1945 to accommodate the growing number of American servicemen and their foreign partners.<sup>132</sup> The first group of war brides came from the United Kingdom, but the Act also allowed servicemen who married while stationed abroad to return to the United States with Asian wives on a non-quota basis despite racially exclusive laws.<sup>133</sup> In 1946, the addition of a provision included “Alien Fiancées and Fiancés” of servicemen with the stipulation that they marry within three months of entering the United States.”<sup>134</sup> For the first time, the War Brides Act allowed more Asian women to immigrate than Asian men.

Despite increasing the number of Asian immigrants, the enactment of the War Brides Act occurred against the backdrop of violence against Asian American women. Some Asian American women married U.S. soldiers to

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127. *Id.* at 655.

128. *Id.* at 653.

129. *See* Wei, *supra* note 15, at 793–94.

130. *See id.* at 794.

131. *Id.*

132. Cherstin Lyon, *War Brides Act*, DENSHO ENCYCLOPEDIA (July 17, 2015), <https://encyclopedia.densho.org/War%20Brides%20Act> [<https://perma.cc/SWC9-B8PT>].

133. *Coming to America: The War Brides Act of 1945*, NAT'L WWII MUSEUM (Dec. 28, 2020), <https://www.nationalww2museum.org/war/articles/war-brides-act-1945> [<https://perma.cc/T5ZF-E5ES>].

134. Lyon, *supra* note 132.

escape war and sex slavery.<sup>135</sup> The Korean government believed that if it provided a steady supply of sex to U.S. servicemen through a comfort women system, these same soldiers would be less likely to rape virtuous Korean women.<sup>136</sup> Thus, the War Brides Act allowed some Asian American women to escape poverty and the sex trade through marriage with U.S. servicemen.<sup>137</sup>

Asian war brides also faced criticism from both Western and Asian cultures—Korean military brides became known as “yanggongju,” which literally means “western princess” but translates colloquially to “the foreigner’s whore.”<sup>138</sup> Traditional Koreans criticized military war brides as “women of questionable character” who married American soldiers to escape poverty.<sup>139</sup> For some Americans, these women were Dragon Ladies who worked on the black market.<sup>140</sup> Negative attitudes about Asian military brides continue to cast a shadow on Asian American women.

#### D. Laws Involving the Mail-Order Bride Industry

The mail order bride industry continues to perpetuate the Lotus Blossom stereotype. The mail order bride industry grew in the 1970s when conservative white men became discontent with the feminist movement and “liberation” of white women.<sup>141</sup> Many white American men found American women as “too liberal” and “career-oriented,” so they sought mail order bride companies for “Filipina wives with ‘good old-fashioned values.’”<sup>142</sup> In other words, many American men desired Lotus Blossoms who were obedient, domesticated, and sexual servants.<sup>143</sup> Many have criticized the mail order bride industry for facilitating violence against unsuspecting mail order brides.<sup>144</sup> Notably, most of these mail order brides are impoverished women from the Philippines, which means that a significant portion of these battered spouses are Asian American women.<sup>145</sup>

The legal system has also arguably failed these Asian American women by treating them as Lotus Blossoms. In 1986, Congress enacted the Immigration Marriage Fraud Amendments (“IMFA”), which prohibits

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135. See Grace Cho, *Diaspora of Camptown: The Forgotten War’s Monstrous Family*, 34 WOMEN’S STUDIES QUARTERLY NO. ½, 309, FEMINIST PRESS AT THE CITY UNIVERSITY OF N.Y. Spring – Summer, 2006, at 318 (Spring – Summer, 2006).

136. *Id.* at 313.

137. See Lyon, *supra* note 132; see also Cho, *supra* note 135, at 313.

138. *Id.* at 310.

139. Jang-ae Yang & Kyoung-ho Shin, *Vulnerability, Resilience and Well-being of Inter-marriage: An Ethnographic Approach to Korean Women*, 10 J. INT’L WOMEN’S STUDS. 2, 47 (2008).

140. See *id.*

141. Beverly Encarguez Perez, *Woman Warrior Meets Mail-Order Bride: Finding an Asian Voice in the Women’s Movement*, 18 BERKELEY WOMEN’S L.J. 1, 211, 221 (2003).

142. See *id.*

143. See *id.*

144. See *id.* at 231–33.

145. See *id.* at 219–20.



marriages made solely for the purpose of obtaining legal immigration status.<sup>146</sup> Given that the IMFA targets marriage fraud, the IMFA has a disproportionate effect on mail order brides.<sup>147</sup> The IMFA creates a two-year conditional status on noncitizen spouses and their accompanying children.<sup>148</sup> To remove this conditional status, the noncitizen spouse must file a joint application with their citizen spouse after the two-year period, and both spouses must appear for a personal interview with an Immigration and Naturalization Service authority.<sup>149</sup> Failure to fulfill these requirements can result in the termination of the noncitizen spouse's permanent status and deportation of that spouse.<sup>150</sup> The IMFA's requirements place the noncitizen spouse in a vulnerable position for several reasons: (1) the noncitizen spouse must remain in the marriage for at least two years, (2) the noncitizen requires the cooperation of the citizen spouse to obtain permanent residency, and (3) the noncitizen spouse may struggle with child custody cases if she or he is deported before the two-year conditional period.<sup>151</sup> Thus, the IMFA gives American husbands unequal power over their foreign wives' permanent residency status.<sup>152</sup> Similarly, Lotus Blossoms are also powerless against men.

In a purported attempt to protect mail order brides, Congress made two amendments to the IMFA.<sup>153</sup> In 1990, Congress passed the Immigration Act of 1990, which provided a waiver under two conditions: (1) the marriage was "entered into in good faith by the alien spouse" and (2) the alien spouse or child was "battered by or was the subject of extreme cruelty perpetuated by his or her spouse or citizen or permanent resident parent."<sup>154</sup> In 1994, Congress amended the IMFA again to allow foreign spouses to self-petition for removal of their conditional status by proving that the spouse is "a person of good moral character," the marriage was entered "in good faith," the American spouse has either abused or been extremely cruel to the foreign spouse, and deportation would result in "extreme hardship to the alien or child of the alien."<sup>155</sup> Both amendments are still problematic because they place the responsibility on the abused spouse to prove the abuse.<sup>156</sup> Often, there are language barriers and the burden of requiring expert testimony to prove abuse as the primary reason for the divorce.<sup>157</sup> In 2001, Congress acknowledged the issues of the mail order bride industry, specifically the

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146. *See id.* at 229.

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.*

151. *See id.*

152. *See id.* at 229–30.

153. *Id.* at 230–31.

154. *Id.* at 230.

155. *Id.* at 231.

156. *See id.* at 230–31.

157. *See id.*

abuse mail order brides experience at the hands of their American husbands, and imposed several requirements to protect these women.<sup>158</sup> These requirements include requiring mail order bride businesses in the United States to provide information to recruits in the “recruit’s native language, including information regarding the conditional permanent resident status and the battered spouse waiver.”<sup>159</sup> Still, this law has been criticized as “ineffective” at protecting mail-order brides from domestic violence because it “legitimizes the current industry structure,” “does not address the serious problems mail order brides face under the current immigration system,” and does not remove the “conditional status of the mail-order bride or shift the power from the consumer-husbands to the brides.”<sup>160</sup> These women are viewed as Lotus Blossoms. Accordingly, the legal system has done little to protect mail order brides and, by extension, Asian American women.

## II. CONTEMPORARY CASES OF ASIAN AMERICAN WOMEN

Both the Lotus Blossom and Dragon Lady stereotypes obscure the trauma suffered by Asian American women. These stereotypes influence how the legal system devalues Asian American women, but their impact is often ignored. Even when sexual violence against Asian American women is recognized, the legal system typically treats the crime as a gender crime without racial considerations.<sup>161</sup> Consequently, crimes against Asian American women are not investigated as seriously.

### A. The Effects of the Lotus Blossom Stereotype

Similar to the Model Minority stereotype, the Lotus Blossom image renders Asian American women invisible, particularly in violent sex crimes. Lotus Blossoms are desirable for their ultra-femininity and hypersexuality—but they are also disposable and forgotten.

#### 1. *The Treatment of Asian American Women as Sexual Assault Victims*

The Lotus Blossom image can negatively impact the treatment of sexual assault victims in the legal system. An emblematic case is *People v. Turner*, which involved the sexual assault of Chanel Miller, a Chinese American woman.<sup>162</sup> Her rapist was Brock Turner, a young white man and freshman

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158. *See id.* at 231.

159. *Id.*

160. *Id.*

161. *See* discussion *supra* Part III.A.

162. *See generally* *People v. Turner*, No. B1577162, 2016 WL 3442307 (Cal. Super. Ct. May 30, 2016).

swimmer at Stanford University.<sup>163</sup> While Turner claimed that he had a “good time” and a consensual encounter with Miller, she did not consent.<sup>164</sup> Turner was eventually convicted of rape and “sentenced to six months in county jail and three years of probation along with the requisite sex offender registration.”<sup>165</sup> By her own account, Miller was not taken seriously as a victim of sexual assault and an Asian American woman in the legal system.<sup>166</sup> Until the release of her memoir in 2019—four years after her assault—Miller was known only as “Emily Doe,” the anonymous rape victim of a white, former Stanford University athlete.<sup>167</sup> Miller described the erasure of her Asian identity during court proceedings and the problematic stereotypes associated with her race and gender.<sup>168</sup> A court officer immediately labeled Miller as “white” without considering that she may also be a woman of color.<sup>169</sup> The name “Emily Doe” itself assumes that the victim is white. As a biracial woman, she admitted, “I felt like my lineage had been erased.”<sup>170</sup> Miller is white, but she is also Chinese American and goes by her Chinese name Zhang Xiao Xia, which translates to Little Summer.<sup>171</sup> The court ignored Miller’s lived reality as an Asian sexual assault survivor and in doing so, upheld harmful images of Asian American women. Miller’s experience of racial erasure matches that of other Asian American women viewed as Lotus Blossoms.

Although it is unclear whether Miller’s perpetrator chose Miller because she was an Asian woman, her race and gender likely played some role in the media and the court’s perceptions of her.<sup>172</sup> Like many Asian victims of sexual assault, she felt the weight of her identity.<sup>173</sup> Miller understood her Asian identity would be fetishized during her perpetrator’s trial.<sup>174</sup> During her case, she stated that a few people had discovered her identity and immediately sexualized her as an Asian woman.<sup>175</sup> These people

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163. *California Judge Recalled for Sentence in Sexual Assault Case*, 132 HARV. L.R. 1369 (Feb. 8, 2019), [https://harvardlawreview.org/wp-content/uploads/2019/02/1369-1376\\_Online.pdf](https://harvardlawreview.org/wp-content/uploads/2019/02/1369-1376_Online.pdf) [<https://perma.cc/S7HA-VQG7>].

164. *Id.*

165. *Id.* at 1370.

166. Lisa Ko, *Why It Matters That ‘Emily Doe’ in the Brock Turner Case Is Asian*, N.Y. TIMES (Sept. 24, 2019), <https://www.nytimes.com/2019/09/24/opinion/chanel-miller-know-my-name.html> [<https://perma.cc/8EJA-AUJP>].

167. *Id.*

168. Nylah Burton, *Sexual Assault Survivor Chanel Miller Opens up About Reclaiming Her Power and Defining Herself*, SHONDALAND (Sept. 27, 2019), <https://www.shondaland.com/inspire/books/a29255443/chanel-miller-new-book> [<https://perma.cc/E8XH-S9WR>].

169. *Id.*

170. *Id.*

171. Ko, *supra* note 166.

172. *See generally* § I.A. As mentioned above, Asian American women are often hypersexualized and viewed as insignificant victims in the justice system.

173. CHANEL MILLER, *KNOW MY NAME* 110, 251 (2019).

174. *Id.* at 251.

175. *Id.*

took screenshots of her old spoken word videos with the caption: “Brock Turner has yellow fever. Wouldn’t put my nuts in her chink chute. Crazy gook. Asian American women can’t handle their alcohol. Asian glow, red-faced, lightweight, slut.”<sup>176</sup>

For these internet sleuths, Asian American women were hypersexual by nature and therefore, unworthy of sympathy as sexual assault victims.<sup>177</sup> The term “yellow fever” suggests that men attracted to Asian American women are afflicted with a disease because the attraction is unhealthy.<sup>178</sup> The Lotus Blossom stereotype can immediately impact others’ perceptions of Miller and other Asian female victims of sexual assault. The stereotype makes Asian American women undeserving of victimhood and blameworthy for the sexualized violence inflicted against them. Lotus Blossoms are forgettable in the legal system. In the event that they are recognized, they become responsible for their own misfortunes.

The Lotus Blossom stereotype also casts Miller and other Asian victims of sexual assault as docile. Miller stated, “I felt underestimated throughout the [court] process; maybe they saw me as deferential or submissive. But maybe, ultimately, that worked to my advantage because they thought they could get away with more, thinking that I was more soft-spoken rather than outspoken.”<sup>179</sup> Miller shared a powerful victim impact statement that garnered national attention.<sup>180</sup> In contrast to the Lotus Blossom stereotype, Miller was candid, forthright, and firm in her convictions.<sup>181</sup> Yet the court privileged the well-being of her assailant, a white Stanford University athlete, over hers—the assailant received a shockingly light sentence of six months and only served three of those months.<sup>182</sup> The judge “noted his responsibility to ‘consider rehabilitation and probation for first-time offenders’ and his concern that prison would have a ‘severe impact’ on Turner.”<sup>183</sup> As she reflected on the case, Miller claimed Asian American women “are more likely to be dismissed” and have their experiences “easily overridden,” especially by the legal system.<sup>184</sup> She described feeling isolated by the overwhelming number of white attorneys and judges.<sup>185</sup> Because of the Lotus Blossom stereotype, Asian American women can feel underestimated and devalued in court proceedings.

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176. *Id.*

177. *See id.*

178. *See id.*

179. *Id.*

180. *Id.*

181. *See id.*

182. Liam Stack, *Light Sentence for Brock Turner in Stanford Rape Case Draws Outrage*, N.Y. TIMES (June 6, 2016), <https://www.nytimes.com/2016/06/07/us/outrage-in-stanford-rape-case-over-dueling-statements-of-victim-and-attackers-father.html> [<https://perma.cc/6T5W-VZY2>].

183. *California Judge Recalled for Sentence in Sexual Assault Case*, *supra* note 163, at 1371.

184. Burton, *supra* note 168.

185. *Id.*

## 2. *Murdered Asian American Women*

Because of the Lotus Blossom image, the legal system can overlook murdered Asian American women and ignore the reality that Asian American women are victims of racialized and sexualized violence. The case of Jean Har-Kew Fewel's murder reveals the negative impact of the Lotus Blossom image.<sup>186</sup> A white man raped and killed eight-year-old Fewel, an adopted Chinese girl. The details of her murder were eerily similar to a *Penthouse* magazine spread that featured Asian American women in various poses of bondage and torture, including hanging from trees.<sup>187</sup> The killer admitted that pornography played a role in Fewel's murder, but police did not investigate the crime as one of anti-Asian or fetishized violence.<sup>188</sup> In another instance, Ohio State University fraternity brothers gang-raped two Asian American women as part of a racially targeted game referred to as the "Ethnic Sex Challenge."<sup>189</sup> The fraternity men targeted Asian American women in this "game."<sup>190</sup> Yet, the University did not view these attacks as anti-Asian American women hate crimes.<sup>191</sup> The Atlanta Shooting sheriff also seriously questioned the racial motivations of the shooter, despite the rise in documented anti-Asian hate crimes.<sup>192</sup> The Lotus Blossom stereotype undermines racialized and sexualized violence against Asian American women, which exacerbates violence against them.

## 3. *Battered Asian Wives*

The Lotus Blossom stereotype allows courts to condone the violence against Asian spouses. In the domestic violence sphere, discrimination against Asian men and women begins to diverge. Some courts have assumed that Asian culture accepts domestic violence, and that Asian men can weaponize cultural defenses to justify violence against Asian American women.<sup>193</sup> A cultural defense is a proposed criminal defense used by immigrant or minority defendants to claim either that they were "unaware of the illegality of [their actions] in a particular jurisdiction or that the cultural environment in which [they were] raised mandated that [they] act in a particular manner."<sup>194</sup> While the intention behind cultural defenses is to

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186. See Helen Zia, *Where Are the Asian Women?*, MAKING MORE WAVES: NEW WRITING BY ASIAN AMERICAN WOMEN 208 (1997).

187. See Yen, *supra* note 16, at 12.

188. See Zia, *supra* note 186.

189. *Id.*

190. *Id.*

191. *Id.*

192. Emily DeCiccio, *Sheriff Investigating Atlanta Spa Shootings 'Not Ruling out' Race as a Motivation*, CNBC (Mar. 17, 2021), <https://www.cnn.com/2021/03/17/atlanta-spa-shootings-sheriff-not-ruling-out-a-racist-motivation.html> [<https://perma.cc/TET5-SD3K>] ("[Sheriff] Reynolds previously told reporters that it was too early to say if the killings were racially motivated — 'but the indicators right now are it may not be.'").

193. See discussion *infra* Part III.A.3.

194. Damian W. Sikora, *Differing Cultures, Differing Culpabilities?: A Sensible Alternative: Using Cultural Circumstances as a Mitigating Factor in Sentencing*, 62 OH. S. L.J. (2001).

humanize defendants, they can be deeply harmful, especially to Asian American women.

Cultural defenses can undermine Asian American women's experiences of domestic violence and reaffirm their images as Lotus Blossoms. In one case, Dong Lu Chen, a Chinese immigrant, bludgeoned his Asian wife, Gian Wan, to death with a hammer on suspicions of infidelity.<sup>195</sup> Chen's attorney claimed that in China, the expectation is that husbands threaten the lives of their adulterous wives.<sup>196</sup> In justifying a more lenient sentence, Chen's attorney described his client's unattractiveness and Wan's physical appearance and rejections of his sexual advances.<sup>197</sup> The judge sentenced Chen to five years' probation, the most lenient sentence possible because Chen was "driven to violence by traditional Chinese values about adultery and loss of manhood."<sup>198</sup> The court sympathized with Chen's manhood while devaluing his wife's life.

In another case, the cultural defense successfully exculpated a Hmong man accused of raping his fiancé, who was also Hmong.<sup>199</sup> The man claimed that forced marital sex is a customary pre-wedding Hmong ritual.<sup>200</sup> He presented evidence that supported the idea that forced marital sex and forced sex with fiancés are not generally considered rape within Hmong culture.<sup>201</sup> The court likely dismissed kidnapping and rape charges because Western societies had long excused marital rape from criminal prosecution.<sup>202</sup> Asian defendants, particularly Asian men, can successfully raise cultural defenses if jurors share similar Western values.<sup>203</sup> Cultural rape defenses sometimes exculpate Asian American men while glorifying violence against Asian American women. These defenses ignore the sexist and classist issues within Asian families, and subsequently, increase the invisibility of Asian American women. Critics claim these lenient sentences send a jarring message to Asian American women: battered and murdered Asian spouses do not deserve protection from domestic violence. Similar to the Model Minority, the Lotus Blossom's pain is unseen. Thus, Lotus Blossoms are desirable for their docility but easily expendable.

## B. The Impact of the Dragon Lady Image

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195. Marianne Yen, *Refusal to Jail immigrant Who Killed Wife Stirs Outrage*, WASH. POST (Apr. 10, 1989), <https://www.washingtonpost.com/archive/politics/1989/04/10/refusal-to-jail-immigrant-who-killed-wife-stirs-outrage/3f33ef6c-3ae7-492a-bb88-31aa89b845ec/> [https://perma.cc/3QZ2-LJAC].

196. *Id.*

197. *Id.*

198. *Id.*

199. *See Yen, supra* note 16, at 22.

200. *Id.*

201. *Id.*

202. *See id.*

203. *See Yen, supra* note 16, at 22.

The conceptualization of Asian American women as the “Dragon Lady” can accelerate justify violence against them. Dragon Ladies are depicted as duplicitous, hypersexualized women. Their physical and character traits make them vulnerable to fetishized violence unworthy of protection.

1. *The Justification of Murdered Dragon Ladies*

The Dragon Lady image was used to downplay the lives of murdered Asian American women in the Atlanta Shooting. Jay Baker, the Georgia Sheriff tasked with the initial investigation of the Atlanta Shooting, claimed the white man killed six Asian American women because he had a “bad day.”<sup>204</sup> According to the Sheriff’s office, the shooter had a “sex addiction” and saw the Asian parlors as a “temptation for him that he wanted to eliminate.”<sup>205</sup> Baker claimed that although it was too early to determine whether the Atlanta Shooting was racially motivated, “the indicators right now are it may not be.”<sup>206</sup> Baker’s statements imply a prioritization of white men’s feelings over the lives of Asian American women. Further, Baker’s statements suggest the murdered Asian American women are at least partially responsible for their own deaths. If not for the temptation these Dragon Ladies emanated, the shooter would not have murdered them.<sup>207</sup> By claiming that the shooter “understood the gravity of his crime” as a result of his uncontrollable sex addiction, Baker implicitly casts the Asian victims as Dragon Ladies.<sup>208</sup> Baker suggests that the crime was not one of racialized violence but rather that the Asian American women were responsible for inducing the shooter’s sexual addiction. Whether he realized this or not, Baker categorized the Atlanta Shooting’s Asian victims as Dragon Ladies.

In another case, Dragon Lady imagery drove a man to murder an Asian woman. A white assailant killed Ly Yung Cheung, a 19-year-old Chinese newlywed, because he fetishized Asian American women.<sup>209</sup> A 40-year-old former schoolteacher, who was also a white male, pushed Cheung onto an oncoming train, decapitating her.<sup>210</sup> The assailant was delusional; he claimed Asian demons wanted to take away his masculinity because he dated Asian American women.<sup>211</sup> He also worked as a Peace Corps volunteer in Thailand,

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204. Kate Brumback & Angie Wang, *Man Charged with Killing 8 People at Georgia Massage Parlors*, AP NEWS (Mar. 17, 2021), <https://apnews.com/article/georgia-massage-parlor-shootings-leave-8-dead-f3841a8e0215d3ab3d1f23d489b7af81> [<https://perma.cc/AZ8E-GG2U>].

205. *Id.*

206. *Id.*

207. There was an assumption that these women were prostitutes, but this was not true. Please see the discussion below.

208. ‘Really Bad Day’: Sheriff Spokesperson Criticized for Minimizing Alleged Georgia Gunman’s Deadly Rampage, ABC 7 CHI., (Mar. 18, 2021), <https://abc7chicago.com/atlanta-spa-shooting-jay-baker-bad-day-cherokee-county-sheriff/10426441/> [<https://perma.cc/PWQ7-FMGL>].

209. Zia, *supra* note 186.

210. Samuel Maul, *Ex-Peace Corps Worker Convicted of Murder in Subway Push*, AP NEWS (Oct. 3, 1985), <https://apnews.com/article/e852fe97227a77e67d989ebb71b43e7e> [<https://perma.cc/3V8U-AW7Q>].

211. *Id.*

which suggests that his deadly fetishization of Asian women began long before this murder.<sup>212</sup> The man further claimed he suffered from a “phobia of Asians” in acting on his urge to kill Cheung.<sup>213</sup> Even when he admitted to his fear of Asians, the transit police did not view the crime as racially or sexually motivated.<sup>214</sup> The transit police spokesman Ed Silberbarb said, “There was no apparent motive for this. It certainly was not a rational act.”<sup>215</sup> The assailant successfully pled insanity for killing Cheung, despite evidence of sexualized racial violence.<sup>216</sup> Seemingly, the assailant’s sexual obsession with Asian American women was seen as a justified defense of insanity. Regardless of whether assailants are mentally ill, systematic attacks against Asian American women indicate an element of fetishized violence, and these cases failed to recognize that racism, not mental illness, triggered these anti-Asian attacks. The court’s failure to treat these cases as racialized sexual violence illustrates how Dragon Lady imagery ignores Asian American women’s experiences of discrimination.

## 2. *Dragon Ladies in the Service Industry*

Dragon Lady imagery also haunts Asian American women in service industries, particularly massage workers, nail salon owners, and their employees. Not all massage workers perform sexual services, and not all massage workers who offer sexual services consider themselves sex workers. Nevertheless, as with the Atlanta Shooting, the media quickly assumed that Asian masseuses and their Asian customers were prostitutes.<sup>217</sup> The immediate and excessive sexualization of these women makes them more prone to racialized sexual violence. Massage workers are particularly vulnerable to violence because of their perceived Dragon Lady status. For example, when Asian female masseuses refuse sexual services, they are often assaulted.<sup>218</sup> Additionally, although New York has decriminalized sex work, the city has fiercely prosecuted masseuses offering sexual services, even

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212. *Id.*

213. Zia, *supra* note 186, at 208.

214. *A Teacher Shouting Obscenities about the Board of Education*, UPI (Mar. 1, 1984), <https://www.upi.com/Archives/1984/03/01/A-teacher-shouting-obscenities-about-the-Board-of-Education/9499446965200/> [<https://perma.cc/8DC3-8G6E>].

215. *Id.*

216. *See id.*

217. *See* Emma Bowman, *Atlanta Killings: Sex Worker Advocate Sees Deadly Consequences of Overlapping Hatreds*, NPR (Mar. 21, 2021), <https://www.npr.org/2021/03/21/979811779/atlanta-killings-sex-worker-advocate-sees-deadly-consequences-of-overlapping-hat> [<https://perma.cc/ZMJ9-8Z5J>]. Prostitutes is being used again to show how Asian American women are perceived.

218. Francis Robles, *The Killings Targeted an Industry with a History of Concerns about Sex Trafficking*, N.Y. TIMES (Mar. 18, 2021), <https://www.nytimes.com/2021/03/18/us/sex-trafficking-massage-parlors.html> [<https://perma.cc/T5JK-7DPN>].



when they are victims of rape, human trafficking, and/or abuse.<sup>219</sup> Documented or not, Asian immigrant women face the fear of deportation for prostitution, which is considered a deportable offense under the Immigration and Nationality Act's crimes of moral turpitude.<sup>220</sup> In the case of Yang Song, the Dragon Lady image painted Song as someone undeserving of sympathy. Song fell to her death during a New York Police Department raid, although it is unclear if the police pushed her or if she fell by accident.<sup>221</sup> As a masseuse and sex worker, Song was beaten by customers and raped by a police officer.<sup>222</sup> Yet, the Dragon Lady imagery erased the individual details of her life and reduced her to a prostitute. Dragon Ladies are seen as women who corrupt Western society.<sup>223</sup> Therefore, violence against them is seen as insignificant and sometimes even justified.

Nail salon owners, who are predominately Vietnamese or Korean, also experience the negative impact of the Dragon Lady stereotype. The *New York Times* published two stories about underpaid and abused workers in the nail salon industry.<sup>224</sup> The articles depict Asian nail salons as a community of Asian immigrant workers with alarming rates of physical abuse, exploitation, and health issues.<sup>225</sup> The sensational reporting was impactful—shortly after publication, then New York Governor Andrew Cuomo enacted emergency measures to address the concerns in the two articles<sup>226</sup> by enacting an investigative agency task force to inspect nail salons.<sup>227</sup> He later issued an emergency order mandating that salons purchase a new form of insurance called “wage bonds”<sup>228</sup> to provide recourse to underpaid workers. Nail salon owners and workers criticized both Governor Cuomo and the *New York Times* for unfair and discriminatory treatment.<sup>229</sup> They argued that the

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219. Jonah E. Bromwich, *Manhattan to Stop Prosecuting Prostitution, Part of Nationwide Shift* (Apr. 21, 2021), <https://www.nytimes.com/2021/04/21/nyregion/manhattan-to-stop-prosecuting-prostitution.html> [https://perma.cc/GW48-XXPN].

220. Alexandra Suh, *Military Prostitution in Asia and the United States*, in STATES OF CONFINEMENT: POLICING, DETENTION, AND PRISONS 156 (Joy James ed., 2000).

221. Dan Barry & Jeffrey Singer, *The Case of Jane Doe Ponytail*, N.Y. TIMES (Oct. 16, 2018), <https://www.nytimes.com/interactive/2018/10/11/nyregion/sex-workers-massage-parlor.html> [https://perma.cc/48A3-NYYE].

222. *Id.*

223. *See generally* § I.A.2.

224. *See* Sarah Maslin Nir, *The Price of Nice Nails*, N.Y. TIMES (May 7, 2015), <https://www.nytimes.com/2015/05/10/nyregion/at-nail-salons-in-nyc-manicurists-are-underpaid-and-unprotected.html> [https://perma.cc/JKR8-DR3B]; Sarah Maslin Nir, *Perfect Nails, Poisoned Workers*, N.Y. TIMES (May 8, 2015), <https://www.nytimes.com/2015/05/11/nyregion/nail-salon-workers-in-nyc-face-hazardous-chemicals.html> [https://perma.cc/A4LU-24EP].

225. *Id.*

226. Michel Gorman, *Public Editor: 'New York Times's Nail Salon Expose Went Too Far,'* NEWSWEEK (Nov. 5, 2015), <https://www.newsweek.com/new-york-times-nail-salon-too-far-391498> [https://perma.cc/5KUH-GW8Q].

227. *Id.*

228. *Id.*

229. Chris Fuchs, *New York Nail Salon Owners Plan Lawsuit over 'Wage Bond' Requirement*, NBC NEWS (Sept. 14, 2015), <https://www.nbcnews.com/news/asian-america/new-york-nail-salon-owners-plan-lawsuit-over-wage-bond-n426911> [https://perma.cc/E3KC-43KW].

wage bonds would result in massive nail salon closures.<sup>230</sup> The *New York Times* later admitted to generalizing the entire industry.<sup>231</sup> Other journalists also accused the author of the article, Sarah Maslin Nir, of unethical journalistic practices, including misquoting individuals and failing to provide translators for non-fluent English-speaking sources.<sup>232</sup> Whether intentional or not, Nir directs her criticisms disproportionately at Asian American women who run these salons. Nir's pieces, in sum, portray Asian salon owners as callous and devious Dragon Ladies who engage in human trafficking and the abuse other Asian American women.

### 3. *Asian American Women as Criminals*

The Dragon Lady stereotype negatively impacts Asian female criminal defendants. The consequences can be seen in the cases of Frances Choy, Kyung Richards, and Sentosa Filipina nurses.

#### a. *Frances Choy*

In the case of Frances Choy, the prosecutors depicted Choy as a cunning, cold-hearted Dragon Lady. Choy was convicted of murdering her parents, but the court later vacated her conviction due to the emergence of racialized and sexualized email exchanges between the prosecutors in her trial.<sup>233</sup> During the trial, prosecutors exchanged several emails depicting Choy as a Girl Scout who burned down a house when individuals refused to buy her cookies.<sup>234</sup> In another email, the prosecutors suggested that Choy committed incest with her brother.<sup>235</sup> Consistent with the Dragon Lady stereotype, the prosecution painted Choy as a psychopathic foreigner: she murders on impulse, wears a “cheongsam” (a traditional Chinese dress) and makes origami in the courtroom, and has perverse sexual preferences.<sup>236</sup> According to one of the attorneys who represented Choy, “Frances had never committed a crime and had no history of any mental health or behavioral issues. But the prosecution portrayed her as an emotionless, manipulative

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230. *Id.*

231. See Gorman, *supra* note 226; Chava Gourarie, *The Everyday Effects of the New York Times Expose*, COLUMB. J. REV., [https://www.cjr.org/investigation/new\\_york\\_times\\_nail\\_salon\\_investigation.php](https://www.cjr.org/investigation/new_york_times_nail_salon_investigation.php) [<https://perma.cc/2WHE-3P8C>].

232. See Gorman, *supra* note 226; see also Richard Bernstein, *What the ‘Times’ Got Wrong About Nail Salons*, THE N.Y. REV. (July 25, 2015), <https://www.nybooks.com/daily/2015/07/25/nail-salons-new-york-times-got-wrong/> [<https://perma.cc/PQ2K-PRXE>]; Gourarie, *supra* note 231.

233. Michael Levenson, *Judge Overturns Murder Conviction Citing ‘Racial Animus’ in Prosecutor’s Emails*, N.Y. TIMES (Oct. 4, 2020), <https://www.nytimes.com/2020/10/01/us/brockton-massachusetts-woman-freed-prison.html> [<https://perma.cc/WL99-86PM>].

234. Memorandum of Decision and Order on Defendant Frances Choy’s Motion for Postconviction Relief at 12–15, *Commonwealth v. Choy*, No. 0383-CR-00300 (Mass. Super. Ct. 2020).

235. *Id.* at 13.

236. *Id.* at 14.

schemer capable of murdering her parents by arson. They dehumanized her and sold their anti-Asian stereotype to the jury.”<sup>237</sup>

What Choy’s attorney describes is the Dragon Lady stereotype. As public officers, the prosecutors here projected stereotypical images onto Choy, which resulted in an unjust conviction. Choy’s case represents the devastating consequences of the Dragon Lady stereotype on Asian American women who are criminal defendants.

*b. Kyung Richards*

The image of the Dragon Lady also impacted the case of Kyung Richards.<sup>238</sup> Richards was a low-income single mom convicted of murder.<sup>239</sup> She immigrated from Korea and became romantically involved with two U.S. servicemen who subsequently became abusive.<sup>240</sup> She later found work at a local bar, but she could not afford child care.<sup>241</sup> One day, she left her children home alone, and a television fell and killed her two-year-old son.<sup>242</sup> Her socioeconomic, racial, and gender identity likely played a role in securing her murder conviction. She fit the mold of a Dragon Lady: she lived at a motel, left her children alone while she worked at a bar, and could not speak English fluently.<sup>243</sup> Although the child’s death was an accident, prosecutors charged her with second-degree murder for killing her son.<sup>244</sup> Prosecutors claimed that Richards’ grief-stricken cries amounted to a confession of murder.<sup>245</sup> In an interview, the prosecutor in Richards’ trial stated that her crying on the stand was “animal-like, and so foreign to me; it was frightening to me.”<sup>246</sup> The image of Richards as a heartless mother with animal-like tendencies comports with the characterizations of a devious Dragon Lady. Richards, however, was a complex individual. She was a woman with a lack of economic opportunities and limited English skills fleeing domestic violence. As seen here, Dragon Lady imagery erases the humanity of Asian American women on trial.

*c. Sentosa Filipina Nurses*

In yet another case, a New York District Attorney’s Office treated exploited nurses from the Philippines as heartless Dragon Ladies.<sup>247</sup> Ten

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237. Steve Fennessy, *Freedom Fighters*, B.C. MAG. (Winter 2021), <https://www.bc.edu/bc-web/sites/bc-magazine/winter-2021/features/freedom-fighters.html> [<https://perma.cc/WAX4-E3HF>].

238. See Suh, *supra* note 220, at 144–45.

239. *Id.*

240. *Id.*

241. *Id.*

242. *Id.*

243. See *id.*

244. *Id.*

245. *Id.*

246. *Id.*

247. See *Vinluan v. Doyle*, 60 A.D.3d 237, 240-41 (N.Y. App. Div. 2009).

nurses from the Philippines (“Filipina nurses”)<sup>248</sup> were criminally indicted after *they* alleged working rights abuses against Sentosa Care LLC (“Sentosa”), a nursing home company.<sup>249</sup> The case shows how easily the legal system demonizes Asian American women, even when they are victims of abuse. The nurses were initially promised competitive pay, benefits, and housing.<sup>250</sup> Instead, they earned low wages, worked in egregious conditions, and lived in “a single-family staff house with only one-bathroom, inadequate heat, and no telephone service.”<sup>251</sup> After formally complaining to Sentosa to no avail, the Filipina nurses sought counsel from the Philippines Consulate.<sup>252</sup> The Philippines Consulate recommended Filipino attorney Felix Vinluan, who advised them that Sentosa breached their promises, and that the nurses could lawfully resign but should so after the completion of their shifts.<sup>253</sup> Following the advice of their attorney, the nurses resigned, but they were quickly villainized for protesting their work conditions.<sup>254</sup>

Despite facts to the contrary, the prosecution described these Filipina nurses as callous workers who willingly placed the lives of disabled and extremely ill pediatric patients at risk.<sup>255</sup> The Suffolk County District Attorney Thomas Spota<sup>256</sup> brought criminal charges against the Filipina nurses for endangering the welfare of children and endangering the welfare of physically disabled persons without reliable evidence.<sup>257</sup> In effect, he painted a portrait of Dragon Ladies.<sup>258</sup> The nurses’ attorney, Vinluan, was also charged with conspiring with the nurses to endanger patients because he filed a federal discrimination suit on behalf of his clients.<sup>259</sup> A grand jury indicted the nurses and Vinluan, and the indictment used Dragon-Lady like phrases to describe these Filipina nurses.<sup>260</sup> The indictment alleged that the Filipina nurses “pursued their objective ‘without regard to the consequences

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248. The term “Filipina nurses” is being used here because while some of the nurses in this case were men, an overwhelming number of them were women. Most nurses from the Philippines are also women. See generally Jennifer Nazareno et al., *From Imperialism to Inpatient Care: Work Differences of Filipino and White Registered Nurses in the United States and Implications for COVID-19 through an Intersectional Lens*, 28 GENDER, WORK, & ORG. 4 (July 2021).

249. See Vinluan, 60 A.D.3d at 239–44.

250. *Id.* at 240.

251. *Id.* at 241.

252. *Id.*

253. *Id.*

254. See *id.*

255. See *id.*

256. In an unrelated criminal case, Spota was convicted of several charges and is now disbarred. See *Former Suffolk County District Attorney Thomas J. Spota and Government Corruption Bureau Chief Christopher McPartland Each Sentenced to Five Years in Prison*, U.S. DEP’T OF JUST. (Aug. 10, 2021), <https://www.justice.gov/usao-edny/pr/former-suffolk-county-district-attorney-thomas-j-spota-and-government-corruption-bure-0> [https://perma.cc/TCJ5-6RA6].

257. See Vinluan, 60 A.D.3d at 242–43.

258. See *id.*

259. *Id.*

260. See *id.* at 242.

that their pursuit would have on Avalon Gardens' pediatric patients."<sup>261</sup> and that the nurses resigned without notice despite 'knowing that their resignations and the prior resignations at other Sentosa Care facilities would render it difficult for Avalon Gardens to find, in a timely manner, skilled replacement nurses for Avalon Gardens' pediatric patients.'"<sup>262</sup> It also alleged that the nurses' resignation was evidence of a conspiracy to endanger patients.<sup>263</sup> These nurses conspired "to endanger patients" because they did not care if sick children died.<sup>264</sup> In other words, these merciless Filipina nurses were Dragon Ladies.<sup>265</sup>

The indictment, however, did not match reality. Instead, it created a Dragon Lady fiction. After Sentosa sent the New York State Education Department ("DOE") a complaint alleging that the nurses abandoned their patients and resigned without proper notice, an investigation ensued.<sup>266</sup> The DOE found no professional misconduct because none of the Filipina nurses resigned mid-shift or deprived their patients of care, and Sentosa obtained appropriate coverage.<sup>267</sup> Even though the DOE closed the Filipina nurses' cases, Spota vigorously pursued prosecution against the Filipina nurses and their attorney.<sup>268</sup> Even with exculpatory evidence, Spota imagined these Filipina nurses as Dragon Ladies and deprived them of dignity.

The *Vinluan* case also shows the interconnectedness of the Lotus Blossom and Dragon Lady stereotypes. Because this group of predominately Filipina women did not conform to the Lotus Blossom stereotype, the legal system immediately categorized them as Dragon Ladies. These nurses were not submissive Lotus Blossoms who agreed to unfair wages and insufferable working conditions. Instead, they were bold and forceful in fighting for their rights. The Filipina nurses argued that by bringing criminal sanctions and forcing them into exploitative working conditions, the government subjected them to involuntary servitude in violation of the Thirteenth Amendment.<sup>269</sup> The Appellate Division, Second Department eventually issued a writ of prohibition against the prosecution and held that their prosecution constituted an infringement of constitutional rights.<sup>270</sup> In a separate but related case with Filipina nurses, a New York federal court concluded that Sentosa violated human trafficking laws by forcing Filipina nurses to remain

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261. *See id.*

262. *See id.*

263. *Id.*

264. *See id.*

265. *See id.*

266. *Id.*

267. *Id.*

268. *Id.* ("Following an investigation, on September 28, 2006, the Education Department closed the nurses' cases, concluding that they had not committed professional misconduct because none of them had resigned in midshift, and no patients were deprived of nursing care since the facility was able to obtain appropriate coverage.")

269. *See id.*

270. *Id.*

in exploitative working conditions with threats of exorbitant fines.<sup>271</sup> While the charges were eventually dismissed, the indictment shows how easily Asian American women can be perceived as Dragon Ladies, as in the case of these Filipina nurses who challenged the Lotus Blossom stereotype.<sup>272</sup>

When the legal system does not provide adequate recourse for Asian American women accused of Dragon Lady-like characteristics, it emboldens bad-faith actors like Spota and further strengthens harmful stereotypes. After their indictment, the Filipina nurses brought a civil suit against the County of Suffolk, Spota, the Office of the District Attorney of Suffolk County, and other main actors at the time of the alleged misconduct.<sup>273</sup> While the Second Circuit majority sided with the defendants, Judge Denny Chin offered a fiery dissent in defense of the Filipina nurses:

The ten nurses and their lawyer were subject to an outrageous criminal prosecution, and I cannot help but think that race and national origin were a factor. Sentosa employs many Filipino nurses, not just the ten plaintiffs, and, in pursuing these criminal charges, it clearly was sending a message to its Filipino nurses and others in the Philippines thinking of coming to the United States that they dare not challenge their work conditions. It is hard to imagine that the ten nurses would have been prosecuted for resigning their jobs if they had been White and American citizens.<sup>274</sup>

Judge Chin alludes to the systematic racism and xenophobia the Filipina nurses experienced here. Further, Spota's aggressive prosecution suggests that the Dragon Lady stereotype played a role in the Filipina nurses' charges. Without sufficient evidence, Spota chose to prosecute nurses who were mostly Asian American women.<sup>275</sup> Spota may not have used explicitly discriminatory terms, but his irrational actions suggests that race, gender, and national origin played a role in his prosecution.<sup>276</sup> As Judge Chin notes, Sentosa and by extension, the Suffolk District Attorney's Office, "clearly was sending a message to its Filipin[a] nurses [ . . . ] that they dare not challenge their work conditions."<sup>277</sup> The legal system demonizes assertive Asian American women for failing to conform to the Lotus Blossom stereotype, and Dragon Ladies pay the ultimate price of fines that bind them into involuntary servitude, deportation, and imprisonment. Accordingly, the legal system should condemn the stereotypical characterizations that deny Asian American women of due process and their humanity.

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271. Dan Papsun, *Filipino Nurses Win \$1.56 Million in Trafficking Victims Case*, BLOOMBERG LAW (June 1, 2021), <https://news.bloomberglaw.com/daily-labor-report/filipino-nurses-win-1-56-million-in-trafficking-victims-case> [<https://perma.cc/J38J-WMB6>].

272. See Vinluan, 60 A.D.3d at 240–44.

273. Anilao v. Spota, No. 19-3949-cv, at \*4 (2d Cir. Mar. 9, 2022).

274. *Id.* at \*24–25.

275. See *id.*

276. See Vinluan, 60 A.D.3d at 242.

277. See Anilao, No. 19-3949-cv, at \*24.

#### IV. UTILIZING INTERSECTIONALITY TO REDEEM AND DECONSTRUCT IMAGES OF ASIAN AMERICAN WOMEN

There is no simple solution to eliminating fetishized violence against Asian American women. However, employing intersectionality as a framework may be a helpful starting point for analyzing the experiences of Asian American women in the legal system and deconstructing the Lotus Blossom and Dragon Lady stereotypes.<sup>278</sup> Intersectionality recognizes “the convergence of racial oppression and gender hierarchy that often creates unique experiences for women of color.”<sup>279</sup> Discrimination cannot be properly viewed in distinct categories. Discrimination can result from different motivating factors, such as sexism and racism. These factors are intertwined and build upon each other, compounding the animus against Asian American women. In this analysis, the Atlanta Shooting shows that Asian American women experience violence because of problematic stereotypes based on race, gender, and national origin. The combination of these categories comprises Asian American women’s identity and subsequent degradation. To capture the full experiences of Asian American women, none of these factors can be separated. Intersectionality, therefore, can provide a better understanding as to why Asian American women are disproportionately the victims of anti-Asian violence, and hopefully, give better insight on how to prevent tragic events like the Atlanta Shooting.

Employment law also provides insight on how to approach cases with Asian American women in the broader legal context because this area of law predominately recognizes intersectionality as a helpful tool. In employment law, plaintiffs, particularly women of color, have brought intersectional claims—that is, allegations of discrimination based on multiple protected categories. Courts initially separated race and gender claims of discrimination against employers. In *Degraffenreid v. General Motors Assembly Division*, the court rejected the notion that Black women experience discrimination separate from white women and Black men.<sup>280</sup> At the time, the court could not accept the idea that Black women experience discrimination because of a combination of gender and race. The *Degraffenreid* court parsed claims of gender and race and held General Motors did not discriminate against Black women because the company hired multiple women in prior years.<sup>281</sup> The court also stated that Black women did not constitute a protected class, only Black people.<sup>282</sup> Cases such

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278. Kimberle Crenshaw first coined the term intersectionality to show that individuals can experience discrimination on account of a combination of identities. The intersecting forces of racism and sexism often produce the diverse experiences of women of color. See Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color*, 43 STAN. L. REV. 1241, 1243 (1993).

279. *Id.* at 1246–47.

280. *DeGraffenreid v. Gen. Motors Assembly Div.*, 413 F. Supp. 142, 144–45 (E.D. Miss. 1976).

281. *Id.*

282. *Id.*

as *Degraffenreid* invalidated the idea that women of color, particularly Black women, experience discrimination because of both gender and race.

More courts, however, have started to accept that discrimination can occur on account of a combination of factors and recognize intersectional claims. Shortly after *Degraffenreid*, the Fifth Circuit held that Black women constitute a protected subclass under Title VII.<sup>283</sup> In *Jeffries v. Harris County Community Action*, plaintiff Dafro Jefferies, a Black woman, brought similar intersectional claims of discrimination to that of *Degraffenreid*.<sup>284</sup> In advancing her claim, Jefferies argued that the only relevant statistics to the claim of discrimination are the number of Black females hired or promoted, of which there were either none or very few.<sup>285</sup> The Fifth Circuit held that discrimination claims based on the combination of race and gender are valid: discrimination against Black women can exist even in the absence of discrimination against white women and Black men.<sup>286</sup> When dealing with Asian American women as litigants, courts can draw insight from these cases involving Black women because the intersectionality analysis has largely started with Black women's experiences. Nevertheless, there are limitations. While Asian American women share experiences of discrimination similar to Black women, their experiences are not identical to that of Black women. Asian American women must be viewed distinctly concerning their race, gender, and national origin.

Since Title VII's enactment, Asian American women have seen little success with intersectional claims because courts have slowly accepted theories of allegations of discrimination based on multiple factors. This is due to courts' reluctance to accept combined claims and because plaintiff's attorneys continue to bring single factor claims to court.<sup>287</sup> For example, in *Lim v. Citizens Savings and Loan Association*, a California district court refused to certify a class of female and Asian employees in lower-paying and lower-status jobs.<sup>288</sup> To petition for the certification of the class plaintiff, a member of the class plaintiff, an Asian woman named Marian Lim cited the company's statistics, which showed that the percentages of women and Asians in varied salaried and status jobs were on comparable labor pools.<sup>289</sup> The court, however, held that it "cannot allow a class action where there is no class, even in a Title VII case."<sup>290</sup>

Another example of a court rejecting an intersectional claim is *Fang-Hui Liao v. Dean*. In this case, an Alabama federal court held for an Asian

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283. *Jefferies v. Harris Cnty. Cmty. Action Ass.*, 615 F.2d 1025, 1032 (5th Cir. 1980).

284. *Id.*

285. *Id.*

286. *Id.*

287. *See Wei*, *supra* note 15, at 806-07.

288. *Lim v. Citizens Sav. & Loan Ass'n.*, 430 F. Supp 802, 810 (N.D. Cal. 1976).

289. *Id.* at 808-09.

290. *Id.* at 810.



female chemist, Fang-Hui Lao, in her Title VII suit based on sex and race, but it did not explicitly recognize Lao's intersectional claim.<sup>291</sup> The court found that the employer violated its own affirmative action program by firing Dr. Lao and hiring a white man instead.<sup>292</sup> In *Lee v. Walters*, a federal court in Pennsylvania also did not permit an intersectional claim brought by an Asian woman.<sup>293</sup> The plaintiff, Patricia Lee, was a Taiwanese American doctor who alleged discrimination based on sex, race, and national origin.<sup>294</sup> She alleged her employer failed to promote her and disproportionately reprimanded her because of her race, sex, and national origin.<sup>295</sup> Regarding the failure to promote allegation, the court held for Lee but only on the basis of national origin.<sup>296</sup> On the claim of unequal treatment, the court held for the employer, even though an Equal Employment Opportunity Commission investigator found that the company discriminated against Lee because of her sex and race and recommended that her reprimand be expunged.<sup>297</sup>

Additionally, in *Chaddah v. Harris Bank Glencoe-Northbrook*, an Illinois district court granted summary judgment to an employer accused of discriminating against an Asian American woman based on her race, age, and color.<sup>298</sup> Kooi Lin Chaddah testified that her coworkers mocked her English pronunciations, "told her foreigners should not work there because they cannot use proper English," and suggested that "she would 'fit right in' with the women in China who worked in the fields barefoot."<sup>299</sup> She resigned due to the harassment.<sup>300</sup> The court analyzed each factor individually and dismissed Chaddah's claim.<sup>301</sup> It determined that she could not prove that younger white female candidates were less qualified than she was or that there were few or no Asian bank officers.<sup>302</sup> The court also determined that the promotion of "pretty white women" did not support a claim of discrimination.<sup>303</sup> While Chaddah did not bring a claim of sex-based discrimination, the comments had sexist undertones.<sup>304</sup> For these courts, racism and sexism could not be combined. Thus, these courts ignored the full experiences of Asian women and the biases and stereotypes that impact them.

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291. Fang-Hui Liao v. Dean, 656 F. Supp. 1554, 1561 (N.D. Ala. 1987).

292. *Id.*

293. *Lee v. Walters*, No. 85-5383, 1988 WL 105887, at \*8 (E.D. Penn. Oct. 11, 1988).

294. *See id.* at \*1.

295. *See id.* at \*2-8.

296. *See id.* at \*6-7.

297. *See id.* at \*4, n.9.

298. *Chaddah v. Harris Bank Glencoe-Northbrook*, No. 93 C 0397, 1994 WL 75515, at \*6 (N.D. Ill. Mar. 8, 1994).

299. *Id.* at \*3.

300. *Id.* at \*3.

301. *Id.* at \*6.

302. *Id.*

303. *Id.*

304. *See id.*

While many courts have invalidated intersectional claims, a Ninth Circuit decision is instructive as an example of how Asian American women's experiences are appropriately handled in the legal system. In *Lam v. University of Hawaii*, the Ninth Circuit recognized that Asian American women experience intersectional discrimination.<sup>305</sup> The case involved Maivan Lam, a woman of Vietnamese and French origin, who sued the University of Hawaii on allegations of race, national origin, and sex discrimination after being passed over for a director position for white women. The Court of Appeals understood that the experiences of Asian American women are unique. The Ninth Circuit stated:

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. Like other subclasses under Title VII, Asian American women are subject to a set of stereotypes and assumptions shared neither by Asian men nor by white women. In consequence, they may be targeted for discrimination even in the absence of discrimination against [Asian] men or white women. Accordingly, we agree with the *Jefferies* court that, when a plaintiff 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.<sup>306</sup>

The Ninth Circuit explicitly acknowledges that Asian American women are subject to a unique "set of stereotypes and assumptions."<sup>307</sup> General claims of sexism and racism, therefore, are insufficient for addressing discrimination against Asian American women. Here, the Ninth Circuit affirms the use of intersectionality to dismantle the Lotus Blossom and Dragon Lady stereotypes.<sup>308</sup> The Second Circuit also joins the Ninth Circuit by permitting legal claims based on intersectionality.<sup>309</sup> Following the Second and Circuit's lead, more courts can begin to recognize Asian American women's unique experiences by permitting intersectional claims of discrimination based on race, gender, and national origin.

Furthermore, the legal system should recognize intersectional claims beyond employment law.<sup>310</sup> Discrimination of Asian American women is not limited to the workplace. The Lotus Blossom and Dragon Lady stereotypes manifest in criminal trials, where Asian American women are victims and criminal defendants. In civil cases, Asian American women—witnesses, attorneys, and litigants—are fetishized, degraded, and undervalued. Certain U.S. laws like the Page Act also helped cement harmful images of Asian

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305. See generally *Lam v. University of Hawaii*, 40 F.3d 1551 (9th Cir. 1994).

306. *Id.* at 1562.

307. See *id.*

308. See *id.*

309. See *Gorzynski v. JetBlue Airways Corp.*, 596 F.3d 93, 109 (2d Cir. 2010). The Second Circuit allowed a discrimination claim on account of gender and age.

310. See *Wei*, *supra* note 15, at 772.

American women. Hence, intersectionality belongs in all areas of the law and stages of the legal process where Asian American women are involved. Intersectionality can help ensure that Asian American women receive more equitable treatment in the legal system.

By using an intersectional framework, the legal system can also replace problematic stereotypes with realistic and empowering images of Asian American women. Chinese women of the twentieth century were not one-dimensional prostitutes. Many advocated for public change and shed social restrictions.<sup>311</sup> For example, Chinese women started to advocate unbound feet,<sup>312</sup> equal rights, education, and public participation.<sup>313</sup> Immigrant women became less tolerant of abuse.<sup>314</sup> Mission homes rescued abused women and offered classes to immigrant women.<sup>315</sup> Additionally, Chanel Miller refuses to be reduced to her sexual assault and is now a successful author and activist.<sup>316</sup> Problematic stereotypes obscure the range and reality of Asian American women's experiences. The legal system, therefore, must unequivocally reject racist images of Asian American women as one-dimensional Lotus Blossoms and Dragon Ladies. It must instead project images that capture the fully lived experiences of Asian American women. Still, existing intersectional frameworks are not enough to protect Asian American women. They are only the beginning step to understanding and hopefully, ending violence against Asian American women.

#### CONCLUSION

The Atlanta Shooting shocked the nation, but the tragedy also demands a racial reckoning within the legal system. Given the historical treatment and sexualized stereotypes of Asian American women, the Atlanta Shooting was indeed about racialized and sexualized violence against Asian American women. The continuing violence against Asian American women demands a closer look at the prevailing attitudes of them. The U.S. legal system must reject the problematic stereotypes of Asian American women that pervade its courts and laws. To do this, the U.S. legal system must address its historical role in perpetuating harmful stereotypes of Asian American women and unequivocally reject these images in its laws and courts. An intersectional analysis about race, gender, and national origin would allow

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311. See Wei, *supra* note 15, at 795.

312. Foot-binding was a Chinese custom that consisted of binding women's feet into certain shapes. The tradition was a mark of feminine beauty and elite status, but the practice was also extremely painful. See generally Amanda Foreman, *Why Foot-Binding Persisted in China for a Millennium*, SMITHSONIAN MAG. (Feb. 2015), <https://www.smithsonianmag.com/history/why-footbinding-persisted-china-millennium-180953971/> [<https://perma.cc/DCF5-8NPA>].

313. See Wei, *supra* note 15, at 795.

314. See *id.*

315. See *id.*

316. See Jennifer Weiner, 'Know My Name,' a Sexual Assault Survivor Tells the World, N.Y. TIMES (Sept. 24, 2019), <https://www.nytimes.com/2019/09/24/books/review/chanel-miller-know-my-name.html>. [<https://perma.cc/6S59-EQSF>].

courts to better understand racialized and sexualized violence against Asian American women. Courts, lawyers, and public officials must look to the past, remember the historical dehumanization of Asian American women, and vow to condemn the dangerous images of the Lotus Blossom and Dragon Lady. When the legal system upholds problematic stereotypes of marginalized groups, the consequences are dangerous and sometimes fatal, as seen in the Atlanta Shooting. The legal system must help protect Asian American women from violence and injustice through the rejection of these problematic stereotypes. The lives of Asian American women depend on it.