

STATEMENT OF SOLIDARITY WITH THE STUDENTS AT THE UNIVERSITY OF SAN DIEGO SCHOOL OF LAW

University of San Diego School of Law (“USD”) Professor Tom Smith publicly stated in his legal blog that: “[i]f you believe that the coronavirus did not escape from the lab in Wuhan, you have to at least consider that you are an idiot who is swallowing whole a lot of Chinese cock swaddle.” This theory is not new or unknown.ⁱ But there is “exactly zero evidence or data of [COVID-19] having any connection to a lab.”ⁱⁱ It is also contradicted by the majority of scientists, and the United States’ own Intelligence Community.ⁱⁱⁱ

Because of the statement’s relation to the same speculation that has fueled the rise of anti-Asian hate incidents, and Professor Smith’s history of controversial statements, USD’s Asian Pacific American Law Student Association and other organizations have expressed concerns that Professor Smith is creating a hostile learning environment. We – the undersigned legal associations – support the USD law students that have expressed concerns about Professor Smith.

Rise in Anti-Asian Hate Related to COVID-19

Professor Smith’s post echoes the widespread speculation into the virus’ origin. These theories persist because people are seeking a culprit for the hardships we have endured as a nation. The search for a cause has led many to blame the Asian community, which has historically been targeted as scapegoats for this nation’s woes.^{iv} “Stop AAPI Hate” reports there have been over 3,795 hate incidents against Asians between March 2020 and February 2021.^v These numbers are likely severely underreported.^{vi} But even a short list of recent incidents demonstrates the terrible costs to the Asian community.

- January 28, 2021: 84-year-old Thai man was violently pushed to the ground, resulting in his death.
- February 8, 2021: Elderly Filipino woman attacked without provocation on a San Diego trolley.
- February 16, 2021: 74-year-old Asian grandfather was murdered in Phoenix, Arizona. On the same day, two elderly Asian women were assaulted in separate attacks in New York.
- February 24, 2021: 27-year-old Korean Air Force veteran was assaulted while the assailants yelled racial slurs “chink,” “gook,” “ching chong,” “Chinese virus.”
- February 25, 2021: 36-year-old Asian American man was stabbed in the back by an eight-inch knife; the attacker turned himself in and claimed he did it because he didn’t appreciate the way the victim looked.
- March 9, 2021: 75-year-old Asian American was assaulted and left brain dead in Oakland, California.
- March 16, 2021: Robert Aaron Long killed six Asian American women and two others.

Concerns and Call for Action

Professor Smith has a history of controversial statements.^{vii} USD student organizations have submitted formal complaints concerning Professor Smith over several years. Considered in this light, Professor Smith’s recent statement is not an isolated incident. Indeed, his blog makes it clear that he is eager to court controversy despite his role as a teacher to many of the same individuals he disparages.^{viii}

Professor Smith’s blog posts ridicules those who do not believe in speculative theories that have inflamed racial tensions, suggested that gender plays a role in legal ability, and opposes the idea that individuals can identify outside of the “normal” binary sexes. These public opinions directly affect USD students and their learning environment. Specifically, the statements negatively amplify the “us versus them” mentality that has divided our nation. These concerns are not alarmist, but a practical realization that **“in these times, the role of language in shaping our perception of reality, humanity, and human rights is exigent.”**^{ix}

Finally, we understand that the freedom of speech needs room to breathe and that academic debate is an important form of this freedom. While we seriously question the academic value of any of Professor Smith’s disturbing statements, we realize the line is difficult to draw. But USD law students also have a right to express their concerns regarding a pattern and practice of disturbing statements made by a teacher in their school.

USD School of Law must provide their students with a safe learning environment. We urge the law school to conduct an open and transparent investigation, identifying those that are conducting it, what they are reviewing, and their conclusions and recommendations. We urge the law school to accommodate students who find Professor Smith’s views hostile by offering those currently enrolled in his classes alternative instructors or credits without penalty. Absent an apology for all of his statements and corrective action, we believe Professor Smith should not teach compulsory classes and his statements should be disclosed to prospective students of the classes he does teach.

Protecting freedom and civil liberties is important, but it does not absolve individuals from the consequences of their actions. As many recent events have shown, exercising a right without good judgment or discretion often leads to disaster. Professor Smith’s statements shows he lacks both and he needs to be held accountable for how those statements harm the students he contacts.

ⁱ <https://www.cnn.com/2021/03/26/health/covid-war-doctors-sanjay-gupta/index.html>

ⁱⁱ <https://www.cidrap.umn.edu/news-perspective/2020/05/scientists-exactly-zero-evidence-covid-19-came-lab>.

ⁱⁱⁱ <https://www.voanews.com/covid-19-pandemic/fauci-idea-covid-19-originated-lab-just-another-theory>; <https://www.scientificamerican.com/article/eight-persistent-covid-19-myths-and-why-people-believe-them/>; <https://www.nature.com/articles/s41591-020-0820-9>; <https://www.nature.com/articles/d41586-021-00375-7>; <https://www.bloomberg.com/news/articles/2021-03-04/where-are-we-in-hunting-for-the-coronavirus-s-origin-quicktake>; <https://www.theguardian.com/world/2020/may/01/could-covid-19-be-manmade-what-we-know-about-origins-trump-chinese-lab-coronavirus>; <https://www.forbes.com/sites/coronavirusfrontlines/2020/06/19/did-covid-19-come-from-a-lab-was-it-deliberate-bioterrorism-a-biodefense-expert-explores-the-clues/>; <https://www.dni.gov/index.php/newsroom/press-releases/item/2112-intelligence-community-statement-on-origins-of-covid-19>

^{iv} As Professor Lok Siu explained in a recent interview, “[t]his current uptick in anti-Asian violence. . . is not exceptional. It is another iteration of racism against Asians in the United States.” <https://news.berkeley.edu/2021/03/17/berkeley-expert-in-times-of-crisis-anti-asian-violence-is-an-american-tradition/>; *see also*:

<https://docs.house.gov/meetings/JU/JU10/20210318/111343/HHRG-117-JU10-Wstate-YangJ-20210318-U21.pdf>; <https://docs.house.gov/meetings/JU/JU10/20210318/111343/HHRG-117-JU10-Wstate-SinnarS-20210318-U27.pdf>;
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7364747/>;
<https://www.smithsonianmag.com/smithsonian-institution/long-history-blaming-immigrants-times-sickness-180976053/>; <https://www.nationalgeographic.com/history/article/asian-american-racism-covid>; <https://www.bbc.com/news/world-us-canada-56218684>;
<https://www.washingtonpost.com/history/2021/03/18/history-anti-asian-violence-racism/>;
<https://www.bbc.com/news/world-us-canada-56218684>;
<https://www.pbs.org/newshour/nation/we-have-been-through-this-before-why-anti-asian-hate-crimes-are-rising-amid-coronavirus>

^v <https://securservercdn.net/104.238.69.231/a1w.90d.myftpupload.com/wp-content/uploads/2021/03/210312-Stop-AAPI-Hate-National-Report-.pdf>

^{vi} <https://abcnews.go.com/US/anti-asian-hate-incidents-unreported/story?id=76509072>

^{vii} See blog posts attached as Exhibit 1.

^{viii} See blog post attached as Exhibit 2. For context, “Larry” appear to be USD Law Professor Larry Alexander; see also <https://abovethelaw.com/2020/10/law-school-prof-rants-about-women-and-minorities-and-their-pesky-insistence-on-rights-and-equality/>;
<https://abovethelaw.com/2017/09/faced-with-careful-criticism-law-professor-just-calls-his-critics-stupid/>

^{ix} https://www.sandiego.edu/news/detail.php?_focus=80705 (emphasis added)