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## Keynote Speaker

Patricia A. Shiu

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## KEYNOTE SPEAKER: PATRICIA A. SHIU

### BEGIN TRANSCRIPT\*

**BOB DINERSTEIN:** Now that we've fed you, we're now going to have our luncheon presentation. This is the kindergarten teacher trick, which is instead of raising your voice, it's actually lowered. I'm Bob Dinerstein. I'm Director of the clinical program here at American also Director of Disability Rights Law. And I'm happy to introduce our luncheon speaker. And I also want to announce that since I have to run to catch a plane, my leaving very shortly after I introduce her is no commentary on what she's about to say.

(Laughter)

Before doing that, I just also want to acknowledge my colleague, David Jaffe, who is really the heart and soul if not—and brains—behind these conferences. This is now the fourth one. I think it would be great to . . .

(Applause)

Those of us who work in the area of disability law, disability rights, know that it's something that to do well you have to have a passion for it. David certainly has that passion. Really, a lot of the people involved in these conferences do, as does indeed our luncheon speaker, Pat Shiu. Pat is the Director of the Office of Federal Contract Compliance Programs or OFCCP. As you know being at a conference in Washington, you cannot say anything in Washington without using an acronym of some kind.

Before that, she was at the Legal Aid Society Employment Law Center in San Francisco for many years and most recently served as their Vice President for Programs. She's had a long distinguished career as an employment rights litigator litigating in many Civil Rights areas including disability law among those areas.

She's won many awards. And all this is covered in your material so I

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won't go over all of them. But I must announce that it's great to be able to say that she received the Pacific Asian-American Bay Area Coalition's Women Warrior Award. There aren't so many people I get to introduce . . .

(Laughter)

She also was the Abby J. Leibman Pursuit of Justice Award winner. So she is a very accomplished person. And we are thrilled to have her here and thrilled, in particular, I think that she and others in the Obama Administration are so committed to enforcing the Civil Rights and particularly those for people with disabilities. So without further ado.

**PAT SHIU:** Thank you. Thank you.

(Applause)

Thank you. Thank you very much. I appreciate that. Kind of rainy outside, isn't it? Okay. Thank you for that introduction Professor Dinerstein. And I thank you all for coming out today. It's been rainy and icky.

On a personal note, let me say really how grateful I am to Professor Dinerstein for the work that you've done over your career as a litigator and academic, a law school professor and advocate—particularly for people with mental disabilities which is a really important area within disability law. About a month ago, I spoke at an event in Petaluma, California, before a consortium of leaders for mental health advocacy groups and representatives from federal, state, and local government agencies to talk about our efforts at the Department of Labor to promote this Administration's vision of good jobs for everyone.

I really wanted to emphasize that **everyone** really does mean **all** workers—that's what Secretary Hilda Solis and the President mean when they say all workers—those who have been discouraged from the workforce because of physical or mental disability. So Professor, please know that we share your commitment to this work.

I also want to thank Associate Dean David Jaffe for inviting me to speak here today. Thank you very much. This is an incredible forum and it's fitting that it should take place here at the Washington College of Law, an institution that leads the way in promoting public interest law. I was a public interest student and a public interest lawyer before public interest became kind of the signature name.

When I was going to law school, unfortunately we didn't have a lot of clinics. So I kind of had to learn by doing and I did by working at the Employment Law Center. And so I'm very happy to be here today because

I am a huge believer in public interest law and its role in law schools.

I also want to point out that this law school was founded more than a century ago by two women, Ellen Spencer-Mussey and Emma Gillett, at a time when women were still being excluded from the legal profession. Together they began a tradition of opening doors of opportunity to students from outside the mainstream to participate in our profession. So Dean Jaffe, Myra Wilder, faculty, staff, and students who organized this conference, I thank you very much for letting me be part of that storied tradition.

And I would be remiss if I did not recognize my Special Assistant, Claudia Gordon, who is an alum of this school. Claudia joined me over a year ago when I first started at OFCCP and she is just a wonderful person, a wonderful advocate and . . . .

(Laughter)

She sits with me on the White House's National Equal Pay Enforcement Task Force. She works with me on the White House Initiative on Asian Americans and Pacific Islanders. And Claudia's been there with me every step of the way. So Claudia, thank you for everything.

On behalf of President Obama and Secretary Solis, I really want to salute you all for being here today. And even for making it here today. One of the things I'm required to say because I work at the Department of Labor is that I want to celebrate the fact that the unemployment rate just went under nine percent for the first time in two years!

(Laughter)

That is small comfort to the 8.9 percent of people who are still out of work or the 15.4 percent of people with disabilities who are unemployed. It certainly doesn't do much for the 21.5 million disabled Americans who are outside the workforce altogether. And it's probably least comforting to law students, saddled with debt, who are about to enter one of the toughest job markets in decades.

But there is hope and a lot of it.

As we speak, the President and the First Lady are hosting a national summit on how to stop bullying in our schools. Many of you might be aware of a campaign that took off last fall with the message "It gets better." Well my message today is that it doesn't just **get** better; people have to act to **make** it better. And for me, that's what the past two years have been all about.

When we came into office, we found a complete mess waiting for us.

An economy in shambles, two wars, a planet melting before our eyes, broken alliances, and a nation bitterly divided. Much of that is still true today. But if you look below the surface, you'll see that a shift has begun. Under the leadership of our President, we've already made important strides in making life better for people with disabilities.

Two months after taking office, President Obama signed into law the *Christopher and Dana Reeve Paralysis Act*, the first piece of comprehensive legislation aimed at improving the quality of life for all those who live with paralysis no matter the cause.

In July of 2009, the United States became a proud signatory of the *U.N. Convention on the Rights of Persons with Disabilities*, the first human rights treaty of the 21st Century. This treaty urges equal protection and equal benefit of the law for all persons with disabilities and it reaffirms inherent dignity, worth and independence of more than 650 million individuals with disabilities worldwide.

Last summer President Obama signed Executive Order 13548, committing the full resources of our government to hiring 100,000 individuals with disabilities into the federal service over the next five years. We lead in many ways and by example is among the best of them.

This past October, Congress passed and the President signed the *Twenty-First Century Communications and Video Accessibility Act*. This law is considered the most significant piece of accessibility legislation since the passage of the *Americans with Disability Act* in 1990. The CVAA will ensure that people with disabilities are able to share fully in the economic, social, and civic benefits of broadband and other communication technologies.

And building upon the 2008 amendments to the ADA, the Equal Employment Opportunity Commission recently issued a set of proposed regulations. They reflect our belief that the expanded definition of disability should be interpreted in favor of broad coverage and to the maximum extent permitted by law. And I'd just like to give a little shout out to my dear friends and colleagues, EEOC Chair Jackie Berrien and Commissioner Chai Feldblum.

All of these actions are moving our country forward and making it better. And we're just getting started.

For the past year-and-a-half, I've had the responsibility of leading the Office of Federal Contract Compliance Programs, or OFCCP. I don't know if many of you know what OFCCP is. I certainly did not when I first accepted the job.

(Laughter)

But it is one of three civil rights agencies that protect people from discrimination in employment. Along with the Civil Rights Division at the Department of Justice and the EEOC, we are on the front lines of defense for those who **seek** work and who are **at** work.

OFCCP was actually born out of historic legislation during the civil rights era and is housed in the Department of Labor. It was President Lyndon Johnson who signed Executive Order 11246, creating a federal requirement of affirmative action for those who seek to profit from taxpayer dollars.

Over the years, our authority and jurisdiction has broadened. And we also enforce section 503 of the Rehabilitation Act and the Vietnam Era Veterans Readjustment Assistance Act, or VEVRAA. Basically, we hold those who do business with the federal government, that's contractors and subcontractors to the fair and very reasonable standard that they not discriminate on the basis of gender, race, color, religion, national origin, disability, or status as a protected veteran. I believe taxpayer dollars must never be used to discriminate by those who earn lucrative contracts to provide goods and services to our government.

As I've said—and it's kind of my mantra—it is a privilege, and not a right, to be a federal contractor, and with that privilege comes the responsibility to not discriminate and to take affirmative action.

As it turns out, OFCCP has jurisdiction over more than one in four Americans because approximately twenty-five percent of the American workforce is employed by federal contractors. And that's not counting all of the people who are misclassified as independent contractors.

(Laughter)

So that's nearly 200,000 businesses with contractors totaling almost \$700 billion. Our laws protect all employees of those businesses and all those who seek employment with them. So given our very broad purview, OFCCP's enforcement actions have a ripple effect across the entire workforce.

President Obama believes that we in the federal government have a legal and a moral responsibility to model good behavior in our employment practices. It's part of the public trust we hold. We also believe that our vendors should be held accountable to similar standards of equal employment opportunity and fair play.

To put it simply, the job of OFCCP is to protect workers, promote diversity, and enforce the law.

Currently we are engaged in one of the most significant periods of regulatory reform in OFCCP's history. We are taking a hard look at the

laws we enforce and updating them to reflect the challenges of the modern workplace.

Among the regulatory changes we are advancing is one that deals with section 503 of the Rehab Act. As amended, this law requires that federal contractors and subcontractors make a good faith effort to recruit, hire, promote, treat, and fairly compensate people with disabilities.

In spite of the fact that this law has been on the books for nearly 38 years, the percentage of people with disabilities who are unemployed or not in the labor force remains significantly higher than those without disabilities.

And that just won't do. According to last month's data from the Bureau of Labor Statistics, 20.6 percent of people with disabilities were in the labor force in February compared with 69.5 of people without disabilities.

Good faith just isn't going to cut it anymore.

I like to say that OFCCP is one of the last bastions of affirmative action in the federal government. So we're going to take a little affirmative action of our own. We are proposing a set of significant updates to the regulations implementing Section 503 in order to strengthen the affirmative action requirements under the law.

Last year we asked for and received public comments on how to do this. We heard from hundreds of stakeholders with many terrific ideas. And this year we will publish a notice of proposed rulemaking outlining the new rules we shaped based on what we heard from the disability community and other stakeholders.

My goal is to provide strong, clear, and current regulations to ensure that more people with disabilities can find and keep jobs. Because we are still in the process of formulating the rule, I am ethically bound not to talk with you about what the substance of it may be. But you should know that I think holding people accountable is going to be a very important part of all our regulations at OFCCP.

The poet Maya Angelou says, "When you know better, you do better."

(Laughter)

Four decades after the Rehab Act, we ought to know better and now we're going to do better. For me, knowing better when it comes to disability rights has been a life affirming and lifelong process.

Before I joined the Obama Administration, I did work as a Civil Rights attorney fighting discrimination cases on behalf of immigrants and people with limited English proficiency, Asian American garment workers in sweatshops, and African American factory workers in the Deep South.

I worked with a lot of students too—students who were deaf, students

who had hearing impairments. We brought class action suits against UC Berkeley and UC Davis. We brought a huge class action against the San Francisco Unified School District, which had not one single accessible classroom in the entirety of San Francisco. And so I feel a certain affinity and a certain commitment to the civil rights of people with disabilities.

As an attorney, my clients ran the gamut from veterans and taxi cab drivers to pregnant women, and gay and lesbian Americans who feared being outted at work. And what I learned is that work is not simply about a paycheck. It's about respect. It's about dignity and an individual's sense of integrity and self worth. It's about financial stability and long term security. And again and again, what I observed is that workers just want to be treated with fairness. They want to be valued in their work places. Above all, they want to work.

And this is why I became a lawyer. I didn't think I could become a corporate lawyer or an anti-trust lawyer but I had this deep and abiding philosophical belief in the importance of work and the importance of including all people within the fabric of society. And that's why I do the work that I do.

I was fortunate to grow up in an incredibly diverse and progressive community in Hyde Park—where the President lives—on the south side of Chicago. As a biracial kid with a Chinese American dad and an Irish American mother, I learned a great deal about celebrating differences. However, as a child, I really don't remember knowing people who identified affirmatively and positively as persons with disabilities. I lived near the University of Chicago where there were lots of different kinds of people. And the fact that I didn't know this, I think, put me at a real disadvantage.

I moved to Berkeley in the 1970s to attend law school. And it was there in my first job—my first law job after my first year of law school—that I clerked for Arlene Mayerson of the Disability Law Resource Center who is, as you know, a prominent disability rights advocate. And with Arlene, I gained a tremendous amount of knowledge about disability law and learned about the struggles faced by people with disabilities in all facets of their lives.

The passage of the ADA gave me a sense of hope that perhaps this was the time in history when people with disabilities would finally be treated with fairness, with dignity and with respect. I actually had hoped that reasonable accommodation at that point was going to set the floor and not be the ceiling for pregnancy-based and other forms of discrimination.

It didn't really happen that way. I have to say, though, even before the ADA, I had the privilege of living and working and studying in a state that already had a disability-based discrimination law. It was under our Fair



Employment and Housing Act, which preceded the ADA by many years, that we were able to bring disability cases.

It was that kind of hope that drove my law career. I came to know workers and students with disabilities and their families. And I saw the challenges they faced in grappling with societal inequities. I really have been inspired by their courage and their insights and their relentless drive for justice and inclusion.

It's my hope that the laws we are passing now, the regulations we are revising and the landmark executive orders coming out of the White House will inspire and bring hope to the next generation of attorneys, your generation. I know there are some law students here. We may write these laws but it will be the lawyers and advocates among you who get to enforce them. You get to argue them in court and give them a life beyond the pages on which they are written.

If you can take hope from anything, take it from the promise that we are putting in place the tools that will help you build a fairer and more just society. And I, for one, can't wait to see what you're going to do with them.

I know the job market is tough for young attorneys and I'm sorry for that. And it's tough really for everybody. We're going to do our part to get the economy on track again and to fulfill our promise of good jobs for everyone. But each of you has a part to play as well. Whatever experiences brought you here, whatever struggles you've had and challenges you've had to overcome; allow them to be a part of your career as much as the law will be. Don't be a lawyer **in spite** of who you are. Be one **because** of it. Not everyone has to work in the public interest law. I'm not here to counsel all of you to become civil rights lawyers or disability law practitioners.

What I do ask is that you find ways in your career to give back. The men and women who shaped our civil rights laws were giants. And all of us benefit from what they did.

As you think about what kind of career you want to have or the careers you already have:

I hope that you will not only seek mentors but become mentors yourself;

I hope you will seek out work places and employers who see your inherent value and will nurture your talents;

I hope you won't be dissuaded by those who don't;

I hope you will contribute your time and your energy to support clients and pursue cases that help heal an inequity and make that which was broken whole once again.

In closing, I hope that whenever the opportunity presents itself, you will hold open a door for someone else. Because whether you saw it or not,

somebody held it open for you.

Thank you very much.

(Applause)

Oh, sure.

**MALE SPEAKER:** I asked Pat if she was willing to entertain one or two questions that we might have from the audience beyond those areas that she's not presently disclosed to speak. Although we do invite you with the opportunity now to do something more formally, (Laughter), there's always a platform for you here. Well let me thank you again.

**PAT SHIU:** Of course.

**MALE SPEAKER:** On behalf of the Washington College of Law, you've helped to again reaffirm and set a tone of optimism I think not only in the marketplace but for the students who are looking to support, as you said, for the students who are among us and those who are going to be working with as we return to the various parts of the county following today and going forward. So thank you. And our door is always open for you here at the law school.

**PAT SHIU:** Thank you so much.

**END TRANSCRIPT**