



## Title VII of the Civil Rights Act: Fulfilling the Promise of Equal Opportunity – Transcript

Hosted by the Aspen Institute Economic Opportunities Program

Wednesday, April 27, 2022

### Description

People of color, women, LGBTQ people, immigrants, people with disabilities, and people from various faith traditions have been at the forefront of the long march toward civil rights and equality in the U.S. A significant part of this struggle has been the fight to be free from discrimination in employment and harassment in the workplace. That battle has been fought in factories and farms, mines and construction sites, hotels and restaurants, warehouses and offices, hospitals and every other workplace imaginable. The marches and protests have inspired generations and delivered landmark victories such as Title VII of the Civil Rights Act of 1964.

Title VII of the Civil Rights Act made it illegal to discriminate in employment decisions on the basis of race, color, national origin, sex (including pregnancy, sexual orientation, and gender identity), or religion, and it created the Equal Opportunity Commission. The law reshaped economic opportunity horizons for millions of people, and its impact on the American workplace remains profound. But the work of creating equitable and inclusive workplaces is far from done. Racial and gender wage gaps persist, discrimination still limits opportunity for many, and harassment continues to make many workplaces unproductive and unsafe. Today the American workforce is far more diverse than it was 60 years ago, making progress toward the realizing equal opportunity at work even more urgent. As we look to address the issues of today, and build toward a better future, what can we learn from the history and legacy of Title VII?

This is the third conversation in our five-part series, "[The History and Future of U.S. Labor Law: Conversations to Shape the Future of Work](#)." Learn more about this event at [as.in/titlevii](https://as.in/titlevii)

### Speakers



#### Robert Barea

Vice President, Culture, Diversity & Engagement, Prudential Financial, Inc.  
[@Prudential](#)

Rob Barea is vice president of culture, diversity, and engagement at Prudential Financial, Inc. In this role, he is responsible for the firm's enterprise-

side inclusion and diversity strategy, including culture programming, oversight of the company's eight business resource groups, and driving change through inclusion councils that support Prudential's purpose and values.

Rob has more than 20 years of expertise in strategic human capital management, learning management, inclusion and diversity, and organizational development. Prior to Prudential, Rob led the design and implementation of enterprise-wide inclusion and diversity initiatives at KPMG. Prior to that, Rob served in other senior diversity and inclusion roles in Fortune 500 companies and within the US Army, where he retired as an active-duty chief warrant officer after 24 years of service.

Supporting his passion to promote inclusive leadership behaviors and equitable workplaces, Rob serves on two nonprofit boards. He is a board member of the APEX Solutions Group, a small DBE professional service firm, and a corporate advisory board member for the Association of Latino Professionals for America, which focuses on empowering and developing Latinos in every sector of the global economy. Building on his military experience of servant leadership, Rob also volunteers his time with young people in his community as a motivational speaker at local high schools and is an active coach and mentor with the Travis Manion Foundation, which works to improve the lives of underserved youth in Black and brown communities.

Rob earned his MBA from Liberty University and his bachelor's degree in general business from Nichols College. Rob is a certified project manager and earned his project management certification from the Project Management Institute and his Lean Six Sigma Black Belt from the US Army's Office of Business Transformation during his military service.

A Harlem native, Rob married his high school sweetheart. Together, they have three sons who all model his leadership in community service.



**Olatunde Johnson**

Professor, Columbia Law School

Known for her distinguished scholarship in civil procedure, legislation, and anti-discrimination law, Olatunde Johnson is equally committed to cultivating the next generation of civic-minded lawyers. In the classroom, Johnson draws on her background in legal practice and government service to illustrate how social change can be effected through litigation as well as problem-solving

outside the courtroom.

Johnson's research has helped shape the national conversation on modern civil rights legislation, anti-discrimination, fair housing, congressional power, and innovations to address discrimination and inequality. Her recent work examines state and local governments' efforts to enhance opportunities for historically excluded groups, as well as the conflicts that arise when states preempt local efforts to address discrimination and promote wage increases and affordable housing.

In 2016, Johnson was awarded the Law School's Willis L.M. Reese Prize for Excellence in Teaching and Columbia University's Presidential Award for Outstanding Teaching. In 2009, Columbia Law School students selected Johnson as the Public Interest Professor of the Year, praising her as a "role model for aspiring public interest lawyers." In February 2020, she was appointed by the US Department of Justice to the Resolutions Committee honoring Justice John Paul Stevens, for whom she clerked.

Nearly a decade after she joined the Columbia Law School faculty, in 2006, Johnson was appointed vice dean for Intellectual Life for the 2016-2018 term. In that role, she organized a wide range of events

designed to engage the Law School community, from a [Lawyers, Community, and Impact](#) panel on recent developments in US law and politics to a roundtable discussion on integration in America, faculty film series, and a book talk.

Johnson brings extensive public service experience to her work at Columbia Law School, including clerking for Judge David Tatel on the US Circuit Court of Appeals for the District of Columbia and Justice John Paul Stevens on the US Supreme Court. From 1997 to 2001, Johnson worked at the NAACP Legal Defense Fund, where she conducted trial- and appellate-level litigation to promote racial and ethnic equity in employment, health, and higher education. From 2001 to 2003, she served as constitutional and civil rights counsel to Sen. Edward M. Kennedy on the Senate Judiciary Committee, then as a senior consultant on racial justice in the ACLU's National Legal Department from 2003 to 2004.

In 2017, Johnson was elected a member of the American Law Institute.



**Thomas Saenz**

President and General Counsel, MALDEF

Thomas Saenz is the president and general counsel of MALDEF. He leads the organization in pursuing litigation, policy advocacy, and community education to promote the civil rights of all Latinos living in the United States in the areas of education, employment, immigrants' rights, voting rights, and freedom from open bias. Saenz rejoined MALDEF as its president in August 2009, after four years on Los Angeles Mayor Antonio Villaraigosa's executive team. He previously spent 12 years at MALDEF practicing civil rights law, including four years as litigation director. He has served as lead counsel for MALDEF in numerous cases, including challenges to California's Proposition 187, California's Proposition 227, local restrictions on day laborers' free-speech rights, and California's 2001 congressional redistricting. In 2016, Saenz argued before the US Supreme Court in *United States v. Texas*, representing intervenors defending the Obama Administration's deferred action initiatives. Saenz graduated summa cum laude from Yale College in 1987 and received his law degree from Yale Law School in 1991. He served as a law clerk for two federal judges before initially joining MALDEF in 1993.



**Tanya Wallace-Gobern**

Executive Director, National Black Worker Center

Tanya Wallace-Gobern brings over 20 years of experience in labor and community organizing. She became the executive director of the National Black Worker Center in June 2016. As executive director, Tanya lives out her lifelong passion while executing the mission of empowering Black workers to advance their rights and improve the quality of jobs in key employment sectors. Tanya convenes a network of membership-based, member-driven local Black worker centers that utilize a combination of leadership development, organizing, policy advocacy, and strategic communications to build power to address the black job crisis. Aggravated by the low number of African Americans among staff and union leadership, Tanya also created the AFL-CIO's Historical Black College Recruitment program to increase the number of Black union leaders and staff members. Her professional experience includes organizing with UNITE HERE (formerly the Union of Needletrades, Textiles and Industrial Employees), the AFL-CIO, and the Association of Flight Attendants.

Tanya has an advanced knowledge of community and political structures. She is a graduate of the Harvard Business School Executive Leadership program, and her opinions and contributions have been

featured in Fast Company, Ebony, the Los Angeles Times, Blavity.com, Inequity.org, and ABC Nightly News.

## Moderator



### Mekaelia Davis

Program Director, Inclusive Economies, Surdna Foundation

Mekaelia Davis is the director of the Inclusive Economies program at the Surdna Foundation, overseeing a \$9.2 million grantmaking portfolio funding interventions in entrepreneurship and economic development policy and leading the creation of a new program-related investment fund. Before joining Surdna, Mekaelia was a director of corporate giving at Prudential Financial, where she managed over \$10 million in national and place-based grants in economic and community development and corporate engagement. She has spent nearly twenty years at the intersection of public and private systems to drive social and economic opportunities for communities across the United States. Mekaelia has managed several high-impact portfolios with roles at the Aspen Institute and the Annie E. Casey Foundation, and she was selected for competitive fellowships including National Urban Fellows, PLACES with the Funders Network for Smart Growth, and the Leadership Institute at the Center for American Progress. Mekaelia received a Bachelor of Arts and Master of Public Administration from the City University of New York. She grew up in and continues to call Brooklyn home, where she cycles and roller skates across New York City.

## About

### Opportunity in America

The Economic Opportunities Program's [Opportunity in America](#) discussion series has moved to an all-virtual format as we all do what we can to slow the spread of COVID-19. But the conversations about the changing landscape of economic opportunity in the US and implications for individuals, families, and communities across the country remain vitally important. We hope you will participate as we bring our discussions to you in virtual formats, and we look forward to your feedback.

We are grateful to Prudential Financial, Walmart, the Surdna Foundation, the W. K. Kellogg Foundation, Bloomberg, and the Mastercard Center for Inclusive Growth for their support of this series.

### Economic Opportunities Program

The Aspen Institute [Economic Opportunities Program](#) advances strategies, policies, and ideas to help low- and moderate-income people thrive in a changing economy. [Follow us on social media](#) and [join our mailing list](#) to stay up-to-date on publications, blog posts, events, and other announcements.

## Transcript

### Maureen Conway (00:00:22)

Good afternoon and welcome everyone. I'm Maureen Conway, a vice president at the Aspen Institute and executive director of our Economic Opportunities Program. And it is my pleasure to welcome you to today's conversation, "Title VII of the Civil Rights Act: Fulfilling the Promise of Equal Opportunity." This conversation is part of the Economic Opportunities Program's ongoing Opportunity in America discussion series in which we explore issues affecting economic opportunity in the US, implications for workers, businesses and communities across the country, and ideas for change. We're grateful to Prudential Financial, Walmart, the Surdna Foundation, the W.K. Kellogg Foundation, Bloomberg, and the Mastercard Center for Inclusive Growth for their support of this discussion series.

Today's discussion is the third event in a set of conversations we're calling the "History and Future of U.S. Labor Law: Conversations to Shape the Future of Work." In this series, we've been exploring the role labor laws have played in shaping the quality of jobs across different industries, how these laws align with our values about work and opportunity, and what changes in laws or in their implementation might improve job quality and working conditions for all working people.

In this third conversation, we'll be discussing Title VII of the Civil Rights Act, which prohibits employment discrimination based on race, color, religion, sex, and national origin and which created the Equal Opportunity Commission. This conversation really gets at the whole part of some of our ideals as a nation and really, ideals expressed in our founding documents, that all are created equal, ideals of the American dream, ideals that everybody should have a fair chance to work and a fair chance to earn their shot at their own American dream.

And as we all know, we've made progress towards these ideals, but we really do have quite a ways to go. We've heard throughout this series, and we'll hear more today, about how our policy choices have both been instrumental in our failings to live up to these ideals as well as have been instrumental in helping us make progress towards them. And that is really cause for hope for all of us, because that means we can make different choices. And we have a really fantastic panel here with us today to talk about how we can go about doing that.

So before we begin, let me make two quick notes. First, I just want to mention that we have two more discussions in this series. On May 4, we'll be talking about "The Occupational Safety and Health Act: The Past and Future of Workers' Well-Being." And on May 26, we'll have our final conversation that will be both in-person and livestreamed on "A Workers' Bill of Rights: What We Want and How To Get There." So please mark those on your calendar.

Also, before we begin, let me do a quick review of our technology. All of the attendees are muted. We very much welcome your questions. Please use the Slido box on the right side of your screen for questions. Questions can be submitted and up uploaded through the Q&A tab. We also know we have an incredibly knowledgeable and expert audience. If you have ideas, examples, resources, experience related to today's conversation, please share your comments and resources in the Ideas tab that is also in the Slido box. And finally, we very much value your feedback. Before you leave, please do take a quick moment to let us know what you think of today's event. You'll find in the Polls tab a short survey to get your feedback.

We're thrilled with participation in today's event. Thank you to those of you who submitted questions in advance. We'll try to get to as many questions today as we can. So please do keep those coming. We also encourage you to participate by tweeting about this conversation. Our hashtag is #talkopportunity. If you have any technical issues during the webinar, please message us in the chat or

email us at [eop.program@aspeninstitute.org](mailto:eop.program@aspeninstitute.org). This webinar is being recorded and will be shared via email and posted on our website following this event. Close captions are available for this discussion. If you want to use those, please click the CC button at the bottom of your screen.

And now let me introduce our fabulous panel that we have joining us today. We have their information, their bios on our website. So I'm not going to read all of that, but I encourage you to take a look. They're really terrific. So with us today, we have Rob Barea, vice president of inclusion and diversity at Prudential Financial. Olati Johnson, Jerome B. Sherman Professor of Law at Columbia University. Olati also recently served on President Biden's commission on the Supreme Court. Tanya Wallace-Gobern, executive director of the National Black Worker Center Project and also an Aspen Institute Job Quality Fellow. And Tom Saenz, president and general counsel of MALDEF. And we're so excited and grateful to have Mekaelia Davis, director of the Inclusive Economies Program at the Surdna Foundation moderating today's conversation. Mekaelia oversees a grant making portfolio seeking to advance the foundation's social justice mission. She's previously held positions at Prudential Financial, and she's also a longtime friend of the Aspen Institute, having worked with us with our colleagues in the Ascend program. So welcome back Mekaelia. And let me turn it over to you.

### **Mekaelia Davis (00:06:00)**

Thank you, Maureen. And hello everyone. First and foremost, thank you to the Aspen Institute and Maureen and the Economic Opportunities Program for having this series of conversations. We think it's really important at Surdna, as we think of about what it means to build an inclusive economy. I serve as the director of the Inclusive Economies Program, as Maureen mentioned. And what we think about oftentimes are how do we build an economy in which BIPOC communities, Black, Indigenous people of color, low wealth communities actually have economic power and where race does not dictate the outcomes of their experience in the economy. However, we know that that continues to persist. Just in February, we saw the Bureau of Labor statistics released reports that showed that for Black women in particular, we saw unemployment actually rise for them back in January and continued to do so. For women across the board, we see that fewer women are returning to the workforce post the COVID-19 pandemic onset in March of 2020.

And so we're continuing to see how different identities, race, gender, class actually show up in our experiences in the workplace. And as Maureen spoke to, this session is going to talk about Title VII and its role to actually influence and shape our experiences in the workplace to be more equitable across the board, regardless of our individual identities. And many, I would say, have seen some of this play out at the highest level. We are very fortunate to have Olatunde with us, but the confirmation experiences of Ketanji Brown Jackson, really in many ways, shined the spotlight on some of the experiences that Black women and other people of color and other disadvantaged communities experience in the workplace on a regular basis. And so this is a really pertinent and timely conversation, and I'm really excited and honored to have the privilege of moderating it with such an expert panel.

So let's go ahead and jump into it. So why don't we actually start with Olati, if I may refer to you by your shortened name. Tell us a little bit about yourself and what drew you to working on unemployment discrimination and harassment. And I think for the audience's sake, just a little bit of background or primer on Title VII itself, and some of the conditions it's actually trying to address. And if you can give us any examples of what it looks like in the workplace, that would be really helpful.

### **Olatunde Johnson (00:08:41)**

Yeah. Well, thank you very much for moderating this panel and for introducing this issue. And for having me on the panel. I had to reflect on how I came to work on employment discrimination issues. So I'm a law professor at Columbia, but before that, I worked on the Senate Judiciary Committee where I

worked on employment laws among others. I also worked at the NAACP Legal Defense Fund where I worked on employment discrimination. And I think if I would say a little bit about myself, it was shaped by some of the experiences I had, trying to find my job early on, whether I was in high school or right after college. And I really profoundly saw how I was steered to particular jobs in ways that some of my non-Black counterparts were not. The influence of networks and social capital, how important credentialing was and how, in some ways you have to be over credentialed as a woman of color in order to have access to those places.

But I also worked on issues involving housing and healthcare access, and I saw how much it mattered for the communities that I was collaborating with and worked for to have dignified work and how profoundly, not just in an income sense, but just in a dignity sense work could shape life outcomes and sense of efficacy. My first job after clerking was working at the NAACP Legal Defense Fund, where I worked on entry level and hiring discrimination issues.

So I'll just say briefly about Title VII. I think most people here know that it's a federal law. It was enacted in '64. It prohibits discrimination on a whole range of dimensions, including race, color, ethnicity, gender, gender identity, pregnancy, sexual orientation and religion. And it applies to all aspects of the workplace or many aspects of them, hiring, promotion, firing, but also on the job conditions and treatment. And we'll talk about the ways in which it's limited, I'm sure, as we go on in this conversation. But I'd say broadly speaking, I mean, it provides the ability to have a range of remedies that can make an impact to individual workers, to groups of workers and can change workplaces. And it allows a broad range of remedies, injunctive relief, which is ordering a change in practices, but also money in various ways, including sometimes punitive damages.

And so that is the key structure of Title VII, and people credit it with transforming workplaces. It's the fruits of the March on Washington and the civil rights movement more broadly. And it has an ecology. It lives in all of our workplaces, in very concrete ways. When people see postings in their workplace on compliance or this workplace should be in compliance with EO laws, or this is how you complain, that's a manifestation of that. It's very embedded in human resources practices and in diversity equity and inclusion practices, which go beyond Title VII, of course.

### **Mekaelia Davis (00:11:51)**

Very helpful. Thank you. And I think it's helpful to help folks really understand how it shows up, but your journey there speaks to the need for this legislation in terms of being directed in certain ways and seeing that show up in the work. So thank you. Tom, let's turn to you a little bit as the head of MALDEF. And can you to us a little bit about MALDEF's history, working on these issues and really your journey to this work. And you might be muted. No. Is it on my end? Can other folks hear him? No. Okay.

All right, Tom. We're going to have... Hopefully our tech team can help troubleshoot that in the meantime. And I'm going to just, while that's being troubleshooted, I'm going to shift to Tanya really quickly and hope that we can get your audio on in a moment. But Tanya, at the National Black Worker Center, there's a lot of this work that's directly connected to your institution as well. And so if you can tell us a little bit about your background, what does work mean to you and are there... When you think about some of the narrative or jargon that comes around, like discrimination in a workplace, are there myths that you want to dispel or real facts that you want people to know now that we're starting this conversation out the gate, to get us started.

### **Tanya Wallace-Gobern (00:13:38)**

Well, first of all, good afternoon. And thank you to The Aspen Institute for inviting me to be part of this discussion. And I would like to start off by saying that my career, prior to coming to the National Black

Worker Center, I had only worked with unions. I specifically moved from Chicago where I'm from, to the south to organize Black women. And it was in those roles with organized labor that I found myself frequently being in the same position of being the only one being the first, being defensive in defending my Blackness and Black people, explaining what was happening with Black people and just trying to make our realities visible.

And I remember distinctly when Black Lives Matter was just picking up steam. I found myself in a familiar argument with the union leader about not missing that opportunity to acknowledge the experiences of our Black union members. And in particular, that we should at a minimum, make a statement as a union of support, especially because so many of our members were Black and people of color. And the response was basically that Black lives didn't matter. And it didn't, or not that it didn't matter. Black Lives Matter didn't really apply to our union member because they had the best contract in healthcare. And while it was true that we had the best contract, what was also true was that at least in my opinion, once again, that these Black workers were not being seen. That the opinion of their circumstances was stronger than the reality of their situation and people were being dismissive of their issues. I think that that's been the history of people of color in this country, and that is still true today.

And so what I want people to know is that when voices are not heard, when all experiences are not welcomed, when all people are not seen, the blinders that we wear, that's the key that opens up this floodgate of rolling back the rights that we think we have, and these blinders stop the actualization of equity in its track. This work, the work that we do at the National Black Worker Center for me, means freedom and ending this notion that some people are less than because they are different or because they're not wealthy.

**Mekaelia Davis (00:16:34)**

That is so powerful. The idea of freedom, of ending that notion that people are less valuable because of a particular identity is incredibly powerful. Thank you for that, Tanya. Tom, I think your audio, it sounds like may have come back. And so I'm hoping you can jump in and give us a little bit of perspective on MALDEF's work and your personal journey here.

**Thomas Saenz (00:17:02)**

Thank you, Mekaelia. Can you hear me now? Great. So I am the president and general council of MALDEF, the Mexican American Legal Defense and Educational Fund. So for those not familiar with MALDEF, we are now a 54 year old national civil rights legal organization, whose mission is to promote the civil rights of all Latinos living in the United States. Since we were founded in 1968, it was almost immediately after Title VII was enacted through the Civil Rights Act of 1964. And indeed before the Supreme Court had weighed in on how to interpret Title VII. So perhaps unsurprisingly, employment discrimination work has been one of the core functions of MALDEF throughout its 54 year journey, including challenging all sorts of employment discrimination in public and private settings.

My very first case that I was assigned to, I've now spent 24 years at MALDEF, most of my career, but the very first case that I was assigned to as a young staff attorney after two clerkships, after leaving law school was a Title VII case. It was to enforce a consent decree with the Los Angeles Police Department on behalf of Black, Latino, and Asian American officers, the consent decree involved some goals for promotions for those groups aligned with their representation in the department because of a pattern in the past, that those officers were not being promoted despite the length of time and the experience and the expertise that they had acquired in comparison to White officers who were getting the promotions up through the rank of lieutenants.

So I have been involved throughout my civil rights career in employment issues. And I came to this work, I went to law school, wanting to be a civil rights lawyer and certainly experiences in employment, like one of my colleagues, Professor Johnson, shaped some of my thinking. So my first employment in the legal field was the summer after my freshman year of college when I was hired by a large law firm in Los Angeles to be one of many, to go through documents in an antitrust matter. And the first day that I was working, I was in a car with my supervisor, driving a lengthy distance to the warehouse where those files that we would be going through were kept. And he tried to guess who I was, because he didn't know much about me. And he couldn't tell that I was Latino. I don't fit most stereotypes of what a Latino looks like.

So he was guessing wildly about who I am. But ultimately when I informed him who I was and he remembered my resume given the activities I was involved in quite clearly identifying me as Latino, he announced to me that he would hence forth refer me as Paco throughout my employment. And in fact he did that. Now, fortunately for me, he was fired for unrelated reasons, about three or four weeks later. So I was only subjected to being called Paco by my first supervisor in the legal arena for about three or four weeks. But I knew enough then about Title VII to realize that his deciding to call me Paco was unlawful. And that if I had any problems with that employment, I had that in my back pocket, ready to go after my employer for allowing that kind of an atmosphere to exist.

So I have a personal and professional background in Title VII, going back many decades. It's a critically important of civil rights law as you've already heard and as you know, and one that has to be maintained as a vital force for continuing to target ongoing discrimination in the form of failures to hire, failures to promote, firings as well as a harassing work environment.

#### **Mekaelia Davis (00:20:53)**

Well, thank you for that, Tom. And I know it was many years ago, I'm sorry that you had to experience that, but I know that there may be someone in the audience listening right now who has experienced something very similar. I'm sure our panelists here may have similar stories. And so wholeheartedly agree with you on the importance of this legislation in shaping our workplaces. And speaking of workplaces, Rob, would love to bring you into this conversation. Prudential is a large employer and really curious about both the company's history, working on these issues, but also similarly your personal background coming into this work focused on equity and opportunity today.

#### **Rob Barea (00:21:42)**

So thank you Mekaelia and thank you to The Aspen Institute for hosting this very important discussion, I really do appreciate the opportunity to participate. So my background is a little bit different than my counterparts. As a man of color and served 24 and a half years, and a retired military veteran and now working in corporate America, my day-to-day activities are truly about continuing to focusing on identifying and moving these barriers to equity and opportunity.

I'm from New York city originally, specifically Harlem. And I grew up in Harlem during the '70s and '80s, and I was actually bused downtown as a result of the desegregation. It took about 10 years for the legislation and for desegregation to actually be enacted. And I was the beneficiary of that by again, being taken out of my neighborhood every day and going downtown and being around people that didn't look like the ones that were on the bus, so to speak and then returning back every day to my neighborhood. So those common and lived experiences for me and my family and those like me, really inequity was pretty much a part of life. It was everywhere and it was very much fun and center.

Now, fast forward to my military career where I was able to travel, not only just in the United States, but also in Europe and Africa, just seeing and experiencing inequity and a lack of opportunity for women

and people of color from a global perspective where, inequity is not unique to the United States. This also informs my practice today. And these experiences, I bring to work every day and I take these lived experiences. I always refer to myself as either outlaw or outcast or outlier. And I'm sure some of you on the panel have felt the same way in the course of your lives. But like Tanya said, we want to make sure people are seen, and I want to make sure that everyone that has a voice can be heard, can be respected, valued, and more importantly empowered to thrive in. And we forget about that empowerment piece. Because we want to make sure people can grow and achieve their particular goals and have a organization and a culture that supports that.

So again, even though through the years, I've conditioned myself to find that power and comfort, again, being that outlaw, outcast or outlier, I know many of us who are from underrepresented populations may not have that comfortability or courage to do so. So I want to make sure I lead my team in the organization where equity and opportunity is always available to all.

Now, as it pertains to Prudential, and I've been with Prudential a little bit under a year at the moment, but what drew me to Prudential was many the things they're doing from a DEI space, and more importantly how they're taking their communities. And the purpose of Prudential is really to make lives better by solving the financial challenges, our changing world. And we do that by committing to building fully inclusive workplaces where all, again, have that sense of belonging, able to thrive.

But we also accelerate economic mobility of the communities we serve through the thoughtful and more importantly human centric approach in the building of our financial products, as well as our services that we provide, as well as building and supporting our thriving neighborhoods through our many philanthropic efforts, where we have committed over \$1 billion through our impact investing efforts, to ensure we support leveling the playing field for our people and businesses in Newark. We have a very strong partnership with Newark, and much of this great work we can see in the city of Newark where Prudential was a key player, even in the aftermath of the decades of disinvestment and civil unrest in the '60s. Around the time again, when Title VII was actually launched.

So since then, and even before then Prudential continues to establish these programs over the years with a responsive, philanthropic approach, as well as social investment approach. And again, I'm just happy to be part of an organization that not only gets it, but they also put their money where their mouth is. And more importantly, are trying to elevate all the communities, not just particular communities that may or may not use their products.

### **Mekaelia Davis (00:25:27)**

Thank you. And I think the diverse, bringing your whole self to your work is one of the things I heard you describe there. And I think in a lot of ways, Title VII actually allows that to happen in terms of us being able to be ourselves in the workplace. So I want to turn back to Tom now to talk a little bit, as we shift from some of our introductory remarks to really digging into the challenges and the experiences of workers in the workplace, but the way that this law is really supposed to work to address those challenges.

So Tom, tell US, MALDEF, as you've described has really been at the forefront. Really on the battleground, if you will, for a number of legal battles, a number of cases around employment discrimination, immigration rights and shared previous to, in our prep work for all kinds of workers, day laborers, car wash operators, aircraft cleaners. And I understand that this has also been captured in a recent documentary with Netflix, is that right? White Hot. And so that's homework for all of us watching to watch that at some point. So can you give us an example, Tom, of a case that exemplifies the kinds of discrimination and harassment that Latino workers face and the remedies that they have and don't have and how Title VII is effective towards that end?

**Thomas Saenz (00:27:05)**

Sure. So let me start with a little bit about that Abercrombie & Fitch case, which was 20 years ago and is now the subject, at least in part of this Netflix documentary called White Hot. So Abercrombie & Fitch was, in the late '90s and early 2000s a very popular brand, but they seemed to have practices that did not employ people of color, and ultimately we found women as well. So it was a case that involved both race and national origin discrimination, as well as gender discrimination, all under Title VII. Now the White Hot documentary doesn't mention the gender issues, though it does talk bit about the case in the context of folks of color that we represented, who were not being hired by Abercrombie & Fitch.

But interestingly, also not covered in White Hot, and an issue, I think that's still relevant today is the reason that case got so much attention 20 years ago, even got me my first and only appearance on 60 Minutes was because it was responded to on the conservative side, by an argument that Abercrombie & Fitch had a First Amendment right to hire who it wanted, even if that resulted in racial discrimination. And that's because Abercrombie & Fitch was pursuing at the time, a quote unquote, all American image that they seemed to define as White and White only. And the argument was that that was a legitimate reason to be allowed to engage in employment discrimination. So this clash between Title VII and the First Amendment was played out among pundits though, obviously not in court because there actually is no First Amendment defense to refusing to hire retail clerks of color or women.

But fast forward to today, and one issue that we're grappling with at MALDEF is again where the First Amendment is viewed by some as somehow limiting the protections of Title VII. And this is in the context of racial harassment. We're coming out of an era of an administration that was very open anti-Latino and a candidate who was elected president, who was very openly anti-Latino and would constantly invoke phrases like build the wall. Well, what we found and anticipated would occur and actually found in one of our cases is that these phrases were used to racially harass workers, Latino workers. So Latino workers would be greeted by build the wall, build the wall, build the wall on a daily basis. And it created a hostile work environment. And we used Title VII, as well as state law to challenge that behavior.

Now, the issue is that some would assert, obviously, that build the wall is about a political issue. It arises in presidential campaigns. So certainly everyone has a First Amendment right to engage in talking about policy issues like that, and repeating build the wall, therefore was somehow protected by the First Amendment. Well, that may well be true, outside in public, but it certainly does not empower any employee to harass their coworker or harass someone that they supervises by using political phrases, political dog whistles in the workplace, particularly where they were resorted to so constantly they create a hostile work environment. So that's one issue and a very real case that we have recently dealt with.

The other highlights and other concern with Title VII, and that is, it is often not well equipped, at least as it's developed so far to address issues of multiple bias discrimination. So we had a case where our client had been terminated, we believed unlawfully for discriminatory reasons, but if we were forced to identify a single reason, we probably couldn't because we believe he was fired because he was Latino and he was an immigrant and he was gay and he had HIV. So all of those different bases together, we believe resulted in the discrimination. So if a White worker at that same employer had all of the other attributes, we don't believe that worker would've been fired. Okay. Similarly, if anyone else had one of those attributes, but not all of them together, we don't believe that particular employer would've fired the individual as well. In this case, we believe that all of those factors worked together.

Now, some of those factors are protected under Title VII, some not so much, but it's really difficult when they all work together as the cause for a discriminatory step, whether that's denying a promotion, denying a hire or in this case, terminating someone. So we continue to grapple with this issue of multiple bias discrimination, and it closely relates to one final issue I would identify, which is discrimination by

proxy. It's often hard and has been difficult for the Latino community to prove national origin, race discrimination. Because so often actions that are targeting the Latino community are actually couched in other terms, "Oh, well, I'm not discriminating against you because you are Latino. I'm discriminating because you don't speak English well." Or, "I'm discriminated against you because you have an accent and it offends my customers." Or, "I'm discriminating against you because you are an immigrant and I have an anti-immigrant clientele."

It's difficult when the discrimination, which happens for all groups. But I would have to say is particularly a characteristic of the Latino community's long time experience under Title VII. But this issue of discrimination by proxy is also one we continue to struggle with at MALDEF on behalf of our client community.

**Mekaelia Davis (00:32:36)**

Thank you, Tom. It sounds like you just highlighted some important gaps in the legislation in terms of what it can cover and cannot cover and real experiences that people have on the ground. And I want to bring some more of those into this conversation. So Tanya, I'm going to turn to you, if you can, what are some of the, similar to what Tom has shared with us, what are some of those for the workers that you work with? And can you speak to us a little bit about, we have this labor market and workplace climate that is very different than when this law was written. And how has discrimination and harassment against people of color changed or not, since the was enacted and through the March on Washington?

**Tanya Wallace-Gobern (00:33:24)**

That's a really interesting question about how it's changed or not changed that we grapple with and hear frequently. And I don't think that the question we should ask is have things changed or not. I think the question is, is our work done? And to that, I would say, no, we still have much work to do. The March on Washington for jobs and freedom was a protest of racial discrimination and to show support for major civil rights legislation that was pending in Congress. And when you think about anti-civil rights imagery, I would ask what comes to mind? For many Black people it's a noose. The hangman's noose has come to be one of the most powerful visual symbols directed against African Americans. It's origins are connected to the history of lynching in America when violence or the threat of violence, replaced slavery as one of the main forms of social control that Whites use on Blacks. The noose is among one of the most repugnant of all racist symbols.

So here's where I'm going and why I'm talking about the noose. If you found a noose in your workplace today, and remember the March on Washington that was in 1963, today is 2022. With that constitute harassment. Under federal and state laws to provide a racially hostile environment, an employee needs to show that a rational jury would conclude that the workplace is saturated with discriminatory intimidation, ridicule and insult that is severe or pervasive enough to change the conditions of employment and create an abusive work environment. And frequently, because of that, our workers are told, no. One noose in the workplace is not enough to make that conclusion. And so you might say, Tanya, well, that type of blatant racism is a thing of the past. And today we are more progressive or at least more tolerant and or educated to do better.

But I would submit to you that that's not the case. In March of 2021, Stevie Stuckes in Matthews, North Carolina filed a lawsuit against his former employer, Pike Enterprises, which is an electric company in North Carolina after he experienced multiple incidences of racial discrimination, racist interactions with his coworkers, slurs, a knife pulled on him and a noose hung on the back of his truck. After he complained, he was demoted, his wages were cut. And then he was fired.

Just this past February California's Department of Fair Employment and Housing, which is the state's civil rights regulator filed a suit against Tesla alleging that Black workers in the company's Fremont facility were paid less than White workers, denied advancements and faced daily racist abuse, including a noose drawn in the bathroom next to a reference of lynching and a racial slur.

Last May again, focusing on Tesla, an arbitrator ordered Tesla to pay \$1 million to Melvin Berry, who was a Black worker at Tesla, who was called racial slurs daily by his supervisor. Last October, a San Francisco federal court jury awarded a Black Tesla worker, Owen Diaz \$14 million after experiencing daily racial or racist epitaphs in his workplace where colleagues drew swastikas and left racist graffiti, including nooses around the facility.

Let's keep going around the country. Last November in Utah at Facebook's parent country, Meta a worker wrote on a portable toilet that, today was kill a racial slur day, and hung a noose at the work site. In 2022 at Facebook data centers in Iowa and Ohio, similar activity occurred. Last year, at a construction warehouse project for Amazon in Connecticut, eight nooses were found on the site within one month. And the expansion of the Las Vegas Convention Center in 2020 someone wrote is graffiti on the office of an African American foreman. And these are just a few experiences that demonstrate that there is so much more work that needs to be done.

And while I'm not sure if there is an increase of racial or racist workplace activity, or just an increase in reporting, what I do know is harassment and discrimination and employment based on race, color, national origin, sex and religion is not a thing of the past. Personally, I struggle to see the differences between these workplace offenses and hate crimes. If somebody came to my house and hung a noose from a tree and painted on my garage door, today is kill a N word day, that crime would come with a penalty enhancement. And the same should be true of the workplace. The FBI has elevated hate crimes to its highest level national threat priority, and doing so has increased resources aimed at preventing and investigating hate crimes. And so I would say that similarly, a renewed commitment and prioritization of Title VII offenses are needed as well as a greater emphasis on prevention rather than enforcement to create safe workplace environments.

**Mekaelia Davis (00:40:01)**

So powerful. Thank you, Tanya. Those examples were very, very real to help us see it and almost imagine what those folks are experiencing. And it's hard to hear, but these are very real, as you've just laid for us. This is a real time experience for so many folks. And I want to actually just, Olati, I want to come to you actually, because what Tanya and Thomas have just laid out for us are a set of experiences that really need legal remedy. And Tanya laid out some legal outcomes, excuse me, that came as a result of pursuing these cases. Tom also talked about some of the legal approaches. And so Olati, I'm hoping you can, let's use this moment to maybe dig a little deeper into Title VII and really talk a little bit about the enforcement around it and its initial intentions, what is it equipped to do or not to do and how has that changed over time, given what you heard from Tom and Tanya? And then I'd love to come back to you, Rob, after this set of remarks.

**Olatunde Johnson (00:41:26)**

Yeah. I think it's those stories really remind us that in many ways, the formal protections of Title VII are not themselves enough to assure equity in the workplace. I mean, that's the central theme, I mean. And I think this was really visible to people around me too. Why is it that people have to leverage social media in order to alter the conditions of their workplaces, in some sense, much of what people are describing, certainly what Tanya and Tom just described violates Title VII. And so the question is, why are the structures to prevent this, why are they not doing their jobs adequately? And so when I think about this from a little bit more removed in the sense of, I'm not litigating these cases now, but just surveying

the literature and also talking to a lot of people in the field, a general story emerges about both the powers and the limits of Title VII.

So one story that we often tell, and it has really shaped me and why I went into this work in the first place was that you can have a formal set of laws, but they're really hard to enforce in on particular dimensions or in particular workplaces. So it can be for example, that it's very hard to enforce hiring discrimination or protections against hiring discrimination, because it's often invisible to people when they're experiencing it. So you need some other mechanism, maybe testing or some audit mechanism to really vet that out. It can also be that certain sectors are essentially unregulated. So I work a lot with people who work with domestic workers in domestic settings. A lot of times they're not even covered by Title VII. They might be covered by other kinds of labor and employment laws, but there's the formal non-coverage and then there's the fact that a lot of what goes on in that sphere is hidden. There's not a formal human resource officers. Even a lot of service sectors like restaurants operate effectively that way. They're highly informal workplaces in ways that can subvert enforcement of Title VII.

And then a second set of problem has to do with the enforcement mechanisms. And there's a lot more to say about this. I mean the EOC is a very powerful agency on some dimensions, but not on others. And I can go more into that, I'm an admin law person, but I won't say much more about that. The most obvious way it could have more capacity is to be better funded, but there are many ways in which by design that wouldn't even really solve the problem because it's powers that are given to it are not really strong enough.

But then there's also courts. And I think that that was implicit in what has been said, that sometimes the judicial standards really emphasize a very narrow view of what is discrimination that doesn't get at a set of practices. We used to say these are practices that were subtle, but sometimes they don't even seem that subtle and they're segmented in ways that defeat liability. And then just, there's a lot more I can mention and it will end at some point, I hope on a note of optimism about some possibilities, but one of the challenges that has really emerged in recent years or if there's been a lot focus in recent years has been on arbitration and the ways in which mandatory arbitration, not arbitration that employers select employees freely bargain to, the ways in which that takes things out of the dimension dispute resolution, out of courts entirely. So those are some of the challenges of the enforcement regime.

### **Mekaelia Davis (00:45:36)**

Super helpful. And I've read somewhere that mandatory arbitration has actually increased in employer contracts over the last few years. So great points. And I think the idea that what capacity do these institutions, do these agencies have to enforce legislation in their capacity to do that and what sectors are or not capturing this, I think is really important. And you said something else that is really helpful as we turn to Rob, the ways that some of this is about what can be seen or not seen in the actual practice. You used hiring as an example. And when I think about a company and employers as being leaders in a lot of ways and actually dictating how those practices show up, I think that's a real big part of this equation.

So Rob, I know you have probably experienced a lot of change in your time in Prudential watching since the murder of George Floyd and the increase in focus and diversity inclusion among many corporations, but Prudential having a very longstanding stake in the ground around these issues, is coming at this a little bit differently. So would love for you to talk a little bit about what the company has learned through that journey of doing this work internally around advancing opportunity and creating a workplace that doesn't have these issues around discrimination and harassment and what have you learned from your experience in Newark that could help us understand how we address these systems of racism and discrimination in the workplace.

**Rob Barea (00:47:31)**

So thank you for that, Mekaelia. So like you said, many organizations, post George Floyd's murder made some bold statements, declared what they will do from a support mechanism, helping communities of color out. I would say that what we learned in Prudential is, instead of being a top down exercise, we really started with our base employees before we actually created these commitments against racial inequity. So in probably about 125 different forums where we engage about 7,000 or so, which is about half of our US population, we engaged with our employees just to understand what they were feeling and more importantly, what they were experiencing with the firm. Because when we talk about diversity, equity and inclusion, it's really about understanding the employee experience that leads to, again, that empowerment to thrive. So we started there first and as a result, we actually announced nine commitments to advanced racial equity as a result again, of these conversations, both with leaders, as well as our broad employee base.

Now, these commitments are span many different facets of the business, our talent practices, how we design and deliver products. I'm sure we recall many of those very unfortunate mis-cues with organizations that did not include diversity, inclusion in the design and delivering of their products. Also, where we invest our money in the public policy work that we do. And lastly, how do we support the community institutions, working to remove those persistent obstacles primarily to our Black economic empowerment, but also for other communities of color. So again, this is what we did as a company and these commitments build upon our... And to your point, all of the great long standing work that we've done as a partner within Newark, as well as within our product and service delivery, to make sure that we drive diversity and inclusion within the company to, again, eliminate those structural barriers.

Now, how do we continue to do that, because making the statement is one thing, but actually doing the work and making sure it's impactful is another, which is great to talk but we know and we already see Kingston army, and many organizations where they're not really walking the walk and maybe going even diverse direction. So what we are doing is we are consistently evaluating and improving our talent practices from hiring, promotion, performance management, development and compensation. To ensure again, opportunity for all employees. And then we actually establish representation goals, which many organizations find trouble in doing. And we want to make sure we only do that at the junior levels, but more importantly, the senior most levels, because you can't be what you can't see. And part of that as well as we are tying our executive compensation to those goals, which is again, is a leading practice within industry.

And also too, how we, again inform our employee bases. We're one of the few companies that actually mandate anti-racism and other inclusion training for our US employees. Many times we [inaudible 00:50:25] there this offering, but we have mandated that these courses be taken so they can have that foundational understanding of what it means to be an anti-racist, to be an ally and understand what micro inequities are so that you can understand, again, how death by a thousand cuts with many of people of color and women actually deal with on a day-to-day basis.

Now, in addition to that, what I do truly appreciate our racial equity commitments is that we also take action in society. So we attempt to attack large scale societal challenge in making sure again, that we are a purpose led company. So we accelerate our social justice policy agenda. We focus on criminal justice reform as well as police reforms, addressing racism and voting rights, and also closing the racial wealth gap.

So what we have learned during this process is that it's great that we have leadership involved and more importantly, [inaudible 00:51:14] it's an all employee activity. Regardless of your role in the organization, whether you're customer facing or not, everyone has a responsibility on this inclusion journey for the organization. And it takes time to get everyone on this path. But we have to embed and not bolt on. And a lot of times organizations bolt on DEI efforts, but you have to embed it and be part of

the planning discussions to ensure that both the people and the business strategy coupled with again, accountability and transparency is really the only true way to achieve the desired impact within the organization. So we've learned a lot over the past two years as a company and my own development as a DEI practitioner has only been strengthened by being able to have now these many different ambassadors and champions who really want to make a difference in the company and honing them in, into our overall strategy for the organization so we can win as a team.

**Mekaelia Davis (00:52:08)**

I think that holistic approach speaks to a lot of the different ways that I know that companies see themselves in the world. It's their employees. It's how they show up in community. It's how they work with their vendors. It's their entire culture from top to bottom. So it's really helpful to understand how you've both committed to that, but also what are the actual levers, that are really pushing you to make sure that the action is being taken. So it's great to hear that. I want to bring in at least one question from the audience on this segment before we move on. And there was one question around the challenges around Title VII and its enforcement that came through the audience, and someone asked, what challenges do the gig economy and the use of independent contractors present to enforcing Title VII? And so I'm wondering if any of our speakers want to just quickly address that question before we move on to the next. Tom, I see you've raised your hand, please.

**Thomas Saenz (00:53:09)**

It's a great question, because it is a serious challenge for Title VII because it doesn't apply to someone who's truly an independent contractor. There are other protections. We have some experience here at MALDEF with Section 1981 recent litigation under it, which is a post civil war amendment that protects the right to contract without discrimination. But there are limitations to Section 1981. You don't have access to the EEOC or any of its powers and authority. So the problem is, when gig economy workers are wrongly characterized as independent contractors and can become an issue when there is racial or gender discrimination or other prohibited forms of discrimination in the gig economy going on. So certainly, that issue, that ongoing issue of who's an employee, who is a contractor appropriately under the law, has an nexus to these important questions of the evolution of Title VII.

**Mekaelia Davis (00:54:09)**

That's really helpful, because I think many of us have seen how the workplace has shifted drastically to actually lean into more contracted forms of employment. And I think that that presents another set of challenges that we should start to think about. And I want to keep us moving in this conversation. I mean, Olati, can you... We know that the workplace, bringing ourselves to the work, we are all intersectional beings. And I know Tom gave an example earlier where there was a client who had a number of identities that some were and were not covered under Title VII. And I think we recognize that the intersecting identities that we bring to work are not just covered under Title VII, although we're talking about that today. So I'm wondering, are there other labor laws and other types of worker rights that we should be thinking about in this conversation, and how those rights do or do not align with the intent of Title VII and prevent workplace harassment or discrimination or not. Because we're really just thinking holistically about what should this law be doing for us?

**Olatunde Johnson (00:55:23)**

Yeah. I think, I mean, given the other programs that have been heard for part of this series, I think this is a really nice question that fits into that. There is a profound connection between Title VII and what

happens on the employment discrimination front and other conditions facing employees. And I think that we sometimes segment the issues of discrimination from the issues involving wages and other kinds of labor practices. But we shouldn't, I mean, practices that have a lot of labor violations as I'm sure Tanya can attest to and others, make themselves very vulnerable to discrimination claims. They're the same kinds of workplaces. And workplaces that have forms of collective bargaining can still be discriminatory workplaces, for sure. There's a long history of discrimination sometimes by labor unions and sometimes in labor controlled workplaces, but it does provide another avenue for advocacy. And worker empowerment.

One of the things I wanted to highlight that I think is interesting is that a lot of the social movement work at the state and local level around improving the conditions of workplaces can have a tremendous impact on race, gender and other forms of equity. So an example is some of the reforms that have to do with tipping in restaurants. There's a profound connection between tipping and sexual harassment in the workplace. Anything that allows workers control of their schedules or sick leave policies, wage increases, all of those can influence how workers are treated more broadly in their capacity to advocate for themselves in the workplace. They also increase the representation of groups in the workplace, which itself has an impact on discrimination. So workplaces that have more women, women in powerful positions, there's less sexual harassment. I don't know the data if it holds us to race, but I can imagine it extending in that way also.

So I think it's really important to think about the conditions of workplaces. This is shifting a little bit, but I just want to mention it before just because it was in response to Rob and the work that Prudential is doing, was thinking about how a lot of the ways the legislative moves that have been most important in recent years have been around trying to increase reporting and transparency and training.

So in response to some of the developments around sexual harassment, as well as racial harassment, legislatures have mandated more of this. And I won't ask Rob to weigh in on whether or not this should be mandated or not, but what I'm really struck by is that what he articulated is far more robust than what those regimes are doing. I think they're important to have reporting requirements, mandatory forms of training and those kinds of things. They're very important, but you are talking about a collaborative endeavor where you did an audit, a self audit and then had a set of practices. And I think those are models that would be good for a lot of workplaces to adopt. And I think state and local legislatures and maybe even the federal legislature for some category of workers should consider adopting those kinds of robust mechanisms.

**Mekaelia Davis (00:59:01)**

Could not agree more. And Rob, I don't know if you'd want to chime in, she said she was not going to ask you to respond, but I'll take moderators privilege and see if you wanted to make a comment.

**Rob Barea (00:59:11)**

No, I appreciate that. And again, what we have again, learned over the past few years from a DEI perspective is how do we engage the entire organization to understand how best to solve the challenges that we have within the organization? So what she mentioned there, let's say, it's that holistic, we have to do this as one. It can't be because we're trying to check a box. We can't do this because we're worried about how our stockholders or our [inaudible 00:59:41]. We have to do this because one, it's the right thing to do. But at the same time we're actually helping change society. So if you think about the work that we do in our four walls within our organization, I'm looking at this work as being a change agent, not a DEI agent, but a change agent because we all know that this is a societal problem and challenge. So if we can, again, change behaviors within our walls, guess what we can do inside our society?

So I'm going to have my altruistic purpose in this is how do I help change the world by changing our organization? And in doing so, being inclusive to the point where we are embracing each other, as opposed to hopefully not doing the opposite.

**Mekaelia Davis (01:00:20)**

I think that should be everyone's motto, what can we do within our own walls? And then to have an impact on the rest of the world. And similarly, I want to transition us to ending on a hopeful note. And so I'm sure, and we already have some questions in the Q&A that speak to this, but I'm sure that folks are thinking, "What is it that I can do? What can I do within my own walls?" I'd love to, Tanya as a person who works with a lot of workers and organizing, what do you want to say to people who want to be more supportive in addressing discrimination in the workplace or what advice do you have for organizations who may be listening that are involved in helping people get jobs and supporting them as they navigate these challenges? What advice would you have for those folks today?

**Tanya Wallace-Gobern (01:01:12)**

I love what Rob said about changing the world by changing our organizations. I wrote that down. I'm going to keep track of that and use that frequently. At the National Black Worker Center in our fight to end racism and discrimination in the workplace, we know that what Olati said is correct. That the law is hard to enforce. And so we can't wait for the law to catch up and bring justice. We have to create it for ourselves. And that fight for justice includes an acknowledgement that Black worker issues impact all workers and any change in the law that seeks to invalidate Title VII for Blacks would also impact all of the protected groups, such as the Age Discrimination Act and the Americans with Disability Act. If we're not all our brothers and sisters keepers, then we all lose because all of us are connected. So what can people do?

The first thing that I would say is be explicit and don't wait for something to happen or be brought to your attention before you speak up. We can all pay attention and speak up on a regular basis. And what does that look like? Looking at our organizations. Does your organization or workplace have a position on Title VII? How do you proactively signal to the workforce what will not be tolerated? What's your investigation process? Do you have a zero tolerance policy in regards to race and racism and discrimination? Creating a code of conduct that states your values. And that is explicit in stating who to contact when those values are not being adhered to.

And then I would add, for workforce development organizations, in addition to placing people in jobs, it's also taking a closer look at the industry and the workplace. Don't shy away from asking the hard questions and having that difficult conversation. For example, asking what internal supports are there for people of color? Having a conversation with employers about safe workplaces and expanding the definition of safety beyond trip slips and falls to include race and racism. Asking, what's the process for addressing racism and discrimination? And then checking with the workers that are placed to ask them about their experiences as people of color. Training workers and employees on how to raise concerns with their employer and document what they're seeing and hearing. The best thing that we can do is something that we can all do, and it doesn't require some special training or a law or act to be passed. What we can all do is not stand on the sidelines, not be afraid to have the conversation and not be afraid to make change within our organizations.

**Mekaelia Davis (01:04:35)**

I love that, that empowerment. That knowing that you have a voice, it actually speaks to one of my favorite Alice Walker quotes, which is that, "The most common way people give up their power is by

thinking that they don't have any." And everyone has a voice and a role to play. So thank you so much for that. This law that we're talking about is approaching 60 years old. And Tom, I want to turn to you, because at that time they were probably not thinking about immigrants when they were writing this law. And so we've made some updates to some of them and they've changed, but in the past you've talked about civil rights 2.0, given the world we're in now. What does that look like? And as it relates to labor law and Title VII, how could a revisioning of our civil rights really help foster a more equal society?

**Thomas Saenz (01:05:35)**

Well, I think it evolves a recognizing that all irrational discrimination has to be eliminated in the workplace. Title VII is an aspirational law. It envisions and incorporates the vision of a workplace free of discrimination on the basis that are mentioned in the law. But I think we aspire to a workplace that goes beyond that. And that's what civil rights 2.0 would get us to. It would root out all irrational discrimination. It would eliminate discrimination by proxy that I mentioned before, where folks have the very real and probably accurate feeling that they're basing discrimination on the basis of race or national origin, but it's being couched in different terms.

I should note, that I think there's a very powerful conversation going on over the last several years about hair. And natural Black hair and how that relates to race discrimination. That's a form of discrimination by proxy and that we're having that conversation in the country, I think is powerful toward moving to eliminate all forms of discrimination by proxy. And we can aspire to a civil rights 2.0, even without getting a legislative change. We can do it through the courts. I think we should mention that Bostock, the recent Supreme Court case was an extraordinarily important and progressive move in the interpretation of Title VII to cover more than what many believed it covered in the workplace.

But even without court action or legislation, we have the power that Tanya very eloquently described. And the only thing I would add to that is we haven't talked about the fact that Title VII protects employees against retaliation. So if an employee takes the steps that Tanya's described and others to enforce what Title VII prescribes to reach the workplace that we aspire to, they are protected themselves by Title VII, whether or not they are people of color or women or among the groups that ordinarily use Title VII to protect themselves against discrimination. The retaliation protection's for everyone.

And also just to add, as Tanya implicitly mentioned, we all have power, even if we're just consumers or clients to try to get to that aspiration of a workplace that's free, not just of the discrimination, specifically prescribing Title VII, but aspiring to a workplace that's free of all irrational discrimination whatsoever on whatever basis, especially where it's a proxy for discrimination on grounds that we have known and believed in this country for decades and even over a century. If you go back to post Civil War statutes, like Section 1981 that I mentioned before, where it's closely tied to things that we have in our laws recognized as illegitimate.

**Mekaelia Davis (01:08:19)**

That is so powerful because I think what you're speaking to is the reality that yes, the law in its current form has flaws, but it is aspirational. We should continue to move towards that aspiration beyond the itty bitty nuts and bolts that's included to really just eliminating how discrimination shows up in all of its forms. And I think that discrimination by proxy is something I know I'm willing to bet that others on this on this panel have experienced. I know I have experience personally in my own career and the Crown Act, I think is right in many ways, an outcome not a complete outcome, but some of that aspiration that you're speaking to, but we shouldn't need a specific act, we should rather have laws that protect us more wholly, that's just my opinion, moderate's privilege there.

Rob, I'm going to turn to you a little bit. We're getting close to the end of our conversation here. And there are companies who may be watching this or some businesses. We actually got one question from the audience about what small businesses can do to actually address some of these issues in their workplace. But we want to make sure that as companies are embracing this conversation, it is more than just a check box that you said earlier or a PR stunt. So can you talk as we head into looking ahead, what are some of the ways that Prudential has learned about incentivizing better behavior from employers around workplace discrimination. What are ways that regulations or policies could actually do so with other employers beyond Prudential's and the work you've done to date?

**Rob Barea (01:10:16)**

So I may I just give some advice again, to those business leaders and more importantly, how to build more equitable and inclusive workplaces. Because if you build equitable and inclusive workplace, by default, you should remove those behaviors that lead to discriminatory practices. So that's the connection that we are hoping that by building strong, again, culture of being inclusive and having equity as part of your end state goal, that again, that would remove again, the opportunity to discriminate, even though yes, we understand that it's more from a personal perspective, you can't manage everyone's personal behaviors, but again, making the culture right, and more importantly, enforcing the culture. So there are three things that I would say to advice, again, to business leaders about that.

One is, not just review your talent and business practice, but interrogate them. And I stole that from the mentor in my head, Mary Francis Winters, when she talked about being an ally. You have to interrogate your processes, ensuring that there's no bias in the system, because bias will always be present because it's a human characteristic. But if you establish a culture within your business where bias can be called out and addressed in real time, as well as being swift in removing, again, you are building again, the trust within your organization as a result of being an inclusive workplace.

Your leadership should not just be saying the right thing, but actually doing the right thing and holding them accountable to that. So just like culture resides in the shadow of leadership, so does inclusive behavior modeling. That must occur at all levels with senior leaders being those examples to follow and emulate. But more importantly making sure it permeates all the way down to your lowest levels, because again, it's happening at the senior level and it's buy-in or talking to the external stakeholders as why it's important. But again, it has to permeate all the way down. And we always talk about the frozen middle, the middle manager, making sure that those individuals have just as much skin in the game, so to speak when it comes to inclusion and equity.

And lastly, which many businesses have trouble with and being in an insurance company, being risk averse, we have to deal with it ourselves is, how do you be transparent and accountable and make accountability for, again, all of the strategic initiatives and outcomes that you want to do for the actual organization. So don't be fearful of transparency with your data surrounding DEI. You're building trust by being more transparent and building that trust within the organization, which leads again, to that accountability piece, which again does do while checkers check. And what gets measured gets done. So without the accountability piece, that's sticking point to have that impact that you're looking for, for your DEI strategy and initiative.

And I just want to reiterate that everyone has a role in an organization's inclusion journey. So build into your talent and in your business operations, key actions and activities, and provide the tools so that all can execute. And as well as have that accountability for the overall organization's efforts.

Now these are the three foundation elements of a DEI strategy, but I also have to emphasize that it has to be, you got to be optimistic, but also realistic in your organizational goals. While again, remaining

patient and persistent. So again, you have to be optimistic but realistic, but you have to be patient and persistence because these systemic barriers to equity have been in existence for centuries. And it cannot be undone in a few months or in a few years, we have to be on this path. That's why we refer to it as a journey, as opposed to an end state goal, because this will have to continue on until we have that human nature within our organization, as well as in society as well.

**Mekaelia Davis (01:13:55)**

I hope everyone capture those three points, because those were very poignant. I think the reality of data, the ability... I love interrogating your processes. Because we just acknowledged that humans have bias. We all do. And how do you actually set those up in the structure to address them? I see Maureen has returned to join our discussion. Of course I wanted to... I could keep asking questions. This panel is just so excellent, but I guess have we have reached our time. So I want to just very quickly thank Tom, Tanya, Olati and Rob for allowing me to pepper you with questions and engage in this conversation. And Maureen, I'll turn it back to you.

**Maureen Conway (01:14:46)**

Thank you so much, Mekaelia. And thank you also to Tom, Olati, Tanya, and Rob. I have pages of notes that I took while you all were talking. That was really an amazing conversation. So I really appreciate you sharing all your experience with us today. It was really fantastic. I also want to thank my amazing behind the scenes colleagues, Matt Helmer, Tony Mastria, Victoria Prince, Yoorie Chang, and Adrienne Lee. Producing these events are really a team effort and I really appreciate all the hard work you all do.

Many thanks to everybody who joined us today. Thanks to the folks who are tweeting about this on social media. It's great to hear what resonates with you. A reminder, please do fill out the feedback survey in the Polls tab on the Slido box. We really appreciate hearing from you and love to hear how things landed and how we can do better. So please let us know what you think and please join us again. Another reminder that May 4 we'll be talking — which is just next week; who knew May was coming so fast? — we'll be talking about "The Occupational Safety and Health Act: The Past and Future of Workers' Well-Being" and May 26 for "A Workers' Bill of Rights: What We Want and How To Get There." So we will hopefully see you then. And thank you again.