

# FAST COMPANY

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## A Reformer Who Means Business

With legal tenacity, business diplomacy, and media savvy, **CYRUS MEHRI** has tackled racial discrimination at some of America's best-known organizations, from Texaco to the NFL. He has won huge awards and made real change. He's even winning some fans in the executive suite.  
By Chuck Salter

**It's almost midnight, which means it's the perfect time to call Cyrus Mehri.** Don't worry, it's not too late. He's a notorious night owl. Ever since his days working with Ralph Nader, corporate America's original gate-crasher, late-night plotting has been part of Mehri's playbook. The only way he knows how to survive a battle in which he's outnumbered and outspent—which is almost always the case—is to outwork and outmaneuver the other side. So why not call late? It's Mehri time. ~ Tonight he doesn't sound at all like someone who has just shuttled back and forth between Washington, DC and New York by train for an afternoon hearing only to arrive home at around 10 PM. He doesn't

sound like someone who has spent much of the day on his cell phone. Mehri, whose name is pronounced “merry” (and whose demeanor matches the description), sounds as if he’s on his first call of the day. He has a lot on his plate: a lawsuit against BellSouth. Another against Johnson & Johnson. And then there’s the ongoing imbroglio with the National Football League. He and Johnnie Cochran—yes, *that* Johnnie Cochran—have threatened to sue the league over the paucity of African-American head coaches. “There’s a lot happening,” he says.

Indeed, Mehri is a long way from winding down. American business is facing a loud, messy new era of accountability and reform. New York attorney general Eliot Spitzer is upsetting the applecart on Wall Street. Congress has been holding hearings, debating legislation, and expressing popular outrage over accounting fraud, corporate governance, and CEO pay. And then there’s Mehri. He is something of a one-man army in the battle against business as usual. Unlike government regulators, he lacks subpoena power and taxpayer funds, but his impact—both in terms of penalties and remedies—is undeniable.

And his focus is laser sharp: the issue of race in the American workplace. As a key member of the legal team that filed a racial-discrimination class-action suit against Texaco, he helped wrangle a then-record \$176.1 million settlement in 1996. In 2000, he won a \$192.5 million settlement in a suit against Coca-Cola. In the high-stakes, high-risk field of discrimination litigation, “he’s one of the superstars,” says Byron Perkins, an attorney with Gordon, Silberman, Wiggins & Childs in Birmingham, Alabama and Mehri’s co-lead counsel on the Coke and BellSouth cases.

To some observers, including his old mentor, Nader, Mehri is a legal pioneer. “Until he came along, these settlements were relatively small,” says Nader. “He has broadened their significance beyond the amount of compensation by expanding them into an arm of the civil-rights movement.” In addition to seeking damages and back pay for victims of discrimination, Mehri is determined to reshape the companies that he sues. His settlements often include substantial changes that go beyond the “programmatic relief” that a judge would impose in a trial.

Following months of contentious negotiations, Texaco and Coke both agreed to the formation of diversity task forces from outside the company. Each seven-member body has authority to investigate, rework, and monitor the company’s HR practices for several years in order to ensure that minority employees are treated fairly. Senior management’s compensation is based partly on how the company performs on diversity issues. To Mehri, those sorts of suits aren’t simply about what a company has done in the past but also about how it treats employees in the future. “If you’re going to create corporate or cultural change, you need to put the right tools in place,” he says.

Last September, the Equality and Fairness Task Force at ChevronTexaco, formerly Texaco, issued its fifth and final report. It described all of the ways that the merged company has changed as a result of the 1996 settlement. But the report also included reminders that diversity, like all of business, isn’t static. ChevronTexaco, the task force noted, was still struggling to replace a number of minority managers who took a “separation package” that the company offered at the time of the merger. “Did every problem get solved?” asks Mehri. “No. But the Texaco culture changed. Some executives there felt that the

task force was the best thing that could have happened.”

Andrea Giampetro-Meyer, a professor of law and social responsibility at the Sellinger School of Business and Management at Loyola College in Maryland, has been following Mehri’s work since the Texaco settlement. She suspects that if the subject matter weren’t so thorny, one of his cases would have been chronicled in a Hollywood movie by now, along the lines of *A Civil Action* or *Erin Brockovich*. But discrimination in the workplace is explosive, complicated, and subtle. Companies that deny wrongdoing may not realize that they have been systematically discriminating, because they haven’t monitored the treatment of minorities once those people were hired. Likewise, some employees don’t realize that they are being discriminated against until they see a statistical breakdown and recognize a pattern of favoritism. Mehri often focuses on glass ceilings that limit minority advancement and glass walls that keep people confined to certain areas, such as human resources and public relations, that are removed from the profit-making departments.

Giampetro-Meyer believes that Mehri is forcing corporate America to recognize unfair attitudes that have been woven into policy. “Many white Americans have stopped thinking that workplace discrimination is a problem,” she says. “It’s not malicious. They think that the process works, that people are judged on their own merits. They’re ignorant of their own privilege. Cyrus Mehri is raising discrimination claims in this kind of climate. He’s opening a lot of eyes.”

#### **A LABRADOR WITH A PIT-BULL MENTALITY**

For most executives, trial lawyers are the business equivalent of locusts: They arrive in swarms, and they leave a trail of destruction. The most notorious legal locust is litigator Bill Lerach, who has made a lucrative career of filing class-action suits against companies whose stock price dips in the wake of bad news or disclosures. His targets have included Intel, Martha Stewart’s media empire, and, of course, Enron. He is the lawyer whom CEOs love to hate.

Mehri is no Bill Lerach. For one thing, he is a hard guy to dislike. A bit on the short side, with wire-frame glasses, suit and suspenders, and a slight paunch, he’s unfailingly polite and down-to-earth, like a scholarly uncle whom you would consult on homework. “Cyrus has the demeanor of a Labrador puppy that hides the mentality of a pit bull,” says Craig McDonald, Mehri’s former boss at Public Citizen, Nader’s group.

Which is not to suggest that Mehri doesn’t ruffle feathers. Because his cases revolve around the charged topic of race, they tend to be divisive. Civil-rights activists, legal scholars, even judges have described the settlements as historic, groundbreaking, and creative. But Mehri’s critics, many of them corporate defense attorneys, question the wisdom of giving a panel of outsiders so much control over a company. They question the backlash among white employees in the aftermath of litigation. They question the fear of hiring minorities (who could one day sue) that these cases generate. They question Mehri’s tactics, accusing him of trying his cases in the media rather than in the courtroom. And they question his motives.

The plaintiffs’ attorney’s fees, which are determined by the court, are usually between 20% and 30% of the cash portion of



## CYRUS MEHRI'S HURRY-UP OFFENSE

Cyrus Mehri looks for cases with “a public dimension.” Sometimes that means going after giant companies. He also goes after small but high-profile institutions—such as the National Football League. “We reached tens of millions of people with our NFL project,” he says.

A longtime football fan, Mehri had watched the league wrestle with the issue of minority head coaches for years. Last year, he and Johnnie Cochran, his cocounsel on the BellSouth case, commissioned a report by economist Janice Madden from the University of Pennsylvania. Her findings: About 70% of the league’s players are black, compared with 28% of the coordinators and 6% of the head coaches. Despite having records that were as good as or better than their white counterparts, black head coaches were usually the first to be fired and the last to be hired. It was a glass ceiling, moved to the gridiron.

The report became instant news, and the NFL got a taste of what companies such as Texaco and Coca-Cola had experienced when Mehri showed up on their doorstep. “He’s probably the best lawyer in the country at dealing with the media,” says Byron Perkins, a Birmingham lawyer and occasional Mehri cocounsel.

By November, the NFL had formed the Committee on Workplace Diversity. A few weeks later, the Baltimore Ravens announced that Ozzie Newsome, already the NFL’s highest ranking African-American, had been given the title of general manager, a league first. In late December, the diversity committee announced that the owners had agreed to interview at least one minority candidate for every head-coach opening. While monitoring the annual off-season coaching shuffle, during which defensive whiz Marvin Lewis became the Cincinnati Bengals’ first African-American head coach, Mehri continues with his usual legwork, talking with former players, coaches, and executives.

“We didn’t know what to expect when we initiated our report,” says Mehri. “But we have established ourselves as a presence in the league. We’re on the playing field, and we will be for some time to come.”

the settlement. In the Coke case, the court awarded the lawyers 20%, or \$20.1 million divided among four firms.

A common complaint among corporate defense attorneys is that employment-discrimination class actions rarely make it to trial. Regardless of whether a claim has any factual basis, companies settle to curtail the public-relations nightmare. In that view, some cases amount to extortion by litigation.

To hear Mehri tell it, he’s forever the underdog. Class-action litigation may be an effective tool for reform, but Mehri, who also handles securities fraud and consumer fraud, says that discrimination class actions are the least desirable cases. They are an expensive gamble, from both a business and a legal standpoint. Since class actions can take years to resolve, an unsuccessful suit can bankrupt a small law firm. The expenses quickly add up: dozens of depositions, statistical analysts, labor economists, and other expert witnesses. Not to mention the lost revenue for the thousands of billable hours that may or may not get reimbursed. Naturally, Mehri is rather choosy. Out of 100 calls from prospective clients, he’ll narrow the list to 20, then 5, then one.

When Mehri takes on a multibillion-dollar company, he’s easily outnumbered by the corporate defense attorneys, even with the additional attorneys whom he recruits to work on the case. The larger the defendant, the greater the resources required. The litigation is beyond combative. “It’s scorched earth,” says Mehri, who is the founding partner of Mehri & Skalet PLLC, which has eight lawyers in its offices in Washington, DC’s hip Dupont Circle neighborhood. When he went after Coke, he approached a half-dozen firms in Atlanta about joining the suit, but they all declined. “One of them told me, ‘Suing Coke is like suing the Pope in the Vatican,’ ” Mehri says. It’s an oft-repeated line.

Coke was the first case for his new firm, which he financed with the fees that he received from the Texaco case. For months, it was just Mehri, newly hired associate Pamela Coukos, and a paralegal who was researching the case. Three people up against the world’s largest soft-drink company. It wasn’t until the last minute that Mehri found cocounsel. Says Coukos: “I didn’t realize how risky the case was until Cyrus shopped it around to other firms. It was a huge frustration for us, but he never said, ‘We shouldn’t do this.’ He would say, ‘I know this is doable.’ ”

Employment-discrimination lawsuits are an inherently uphill battle. In 2001, Mehri and Cochran commissioned an in-depth report by two professors at Cornell Law School, Mehri’s alma mater, designed to examine how plaintiffs and defendants in employment-discrimination cases fare when the cases go to appeal. According to the findings in the report, when a defendant appeals, the trial decision is overturned 45% of the time. However, when a plaintiff appeals, the reversal rate is just 5%.

Class action suits only steepen the incline. The idea is to be efficient: Instead of conducting more or less the same trial repeatedly, the court allows a group of individuals to consolidate their claims as a single class (Texaco had 1,400 class members; Coke had 2,200). But most race-related employment-discrimination cases fail to win class certification because of the difficulty in proving that complaints from various employees—in

different locations, from different departments, and with different supervisors—represent a systemic problem rather than a series of individual problems.

Some observers say that Mehri has overcome the odds with a little luck and an abundance of media savvy. Take the infamous Texaco tapes, in which managers at the company were heard disparaging black employees and agreeing to destroy potential evidence. It wasn't until a former Texaco employee contacted Mehri about the existence of the tapes and stories about them appeared on the front page of the *New York Times* that Texaco agreed to settle. Bari-Ellen Roberts, one of the plaintiffs in the case, says that her attorneys tipped off the newspaper (a transcript of the tapes had been filed with the court), and Mehri, while not acknowledging this, doesn't deny it either.

He insists that he succeeds through diligence. A recent discovery hearing is a good case in point. He was, as is his custom, asking for the moon: the company's HR database. Discrimination suits often boil down to math. Does a statistical analysis of pay scales, raises, and promotions reveal a significant disparity for certain groups? Of course, you can't do the math without the numbers. So there was Mehri, on the opposition's home turf, as he puts it, in the state where this corporation was based and in many respects beloved, and in the courtroom where the opposing counsel had once clerked.

When the judge asked about the status of the database, neither the defense counsel nor the two-dozen lawyers who were accompanying him said that they were familiar with it. So Mehri described the database in detail. The week leading up to the hearing, Mehri had been up late into the night interviewing class members about it. Once again, the legwork paid off: The judge ruled that the defendant had to produce the database.

### **A NATURAL ACTIVIST**

Mehri was born to be an advocate. He grew up hearing the story of his parents fleeing their native Iran. His mother had been sent home from college for criticizing the government. It was during a conversation with her roommate, but it was enough to cause trouble. Denied her education, she accompanied Mehri's father to New York, where he became an ophthalmologist, and she became an artist.

Politics and protest were important issues in the Mehri household. When Mehri was 8, he and his father went to Washington, DC to attend the biggest peace march of the Vietnam era. His parents would have neighbors, colleagues, and friends over to the house to debate world events. That's where he faced a judge (a friend of his parents) for the first time. Even then, Mehri wasn't shy about speaking his mind or about sharing his interest in politics. The first hearings he witnessed, in the summer of 1974, were unforgettable. "I remember my friends saying, 'Let's go out and play,' and I'd say, 'No, I want to watch Watergate.'"

He was a natural activist, passionate and informed. At Hartwick College in upstate New York, he organized student bus rides to attend protests over U.S. policy in Central America. After graduating magna cum laude, he moved to Washington to work for Public Citizen. As a "Nader Raider," Mehri would barnstorm

on an issue that was before Congress, swooping into towns in Tennessee, Texas, and Washington State. He would mobilize local organizers, plead his case to the newspaper editorial board, and offer up a concise, compelling argument for the TV cameras—an early blueprint for his class-action work. He was the group's youngest field organizer at the time, recalls Craig McDonald, and also one of the best.

But there's more to Mehri than indignation. One of the main reasons that he reaches such extraordinary settlements, says Adele Kimmel of Trial Lawyers for Public Justice, is his sense of diplomacy. (Kimmel's group supports civil-rights litigation and monitors class-action settlements.) Mehri is an advocate with whom business can do business. "Some attorneys are so tenacious that they can't praise a company in any way," Kimmel says. "They will beat a company into the ground. Cyrus is smart. He understands that it's important to allow a company to save face."

Mehri acknowledges the transformation. He goes from being a company's worst nightmare prior to the settlement to being a supporter afterward. The change is genuine. He wants any and all reforms to be effective so that class-action members at the company will benefit and so that the company serves as a role model for others. "Up until then, I've been talking about everything they do wrong," he says. "I want to laud them for what they're doing right."

When he and James Poppell sat down at the negotiating table last year, the two attorneys couldn't have disagreed more. Mehri was part of a class-action suit against Visteon Corp. alleging discrimination involving African-American employees at its Nashville auto-glass plant. But Poppell, Visteon's outside counsel, argued that his statistical expert had invalidated the claim. The two sides finally agreed to work something out to avoid a trial. Negotiations were contentious but constructive. The plant was losing money, and both parties wanted business to improve.

"You meet a lot of lawyers who want to win whether their case is right or wrong, but I didn't perceive that to be true of Cyrus," says Poppell. "We were able to open a discussion that resulted in a settlement that was good for everybody. After hotly debating the issue, I'd say we ended up friends. That's unusual."

So was the settlement. The federal judge in the case called it "fascinating." Visteon agreed to a semiannual report card detailing salaries, raises, and rates of promotion for African-Americans and other minorities at the plant. "Every time I settle a case, I try to do something new," Mehri says.

A diversity report card is the sort of corporate disclosure that Mehri believes could ultimately reduce discrimination litigation. If public companies were required to produce a detailed breakdown of compensation by race and gender as part of their annual report, discrepancies would be apparent to everyone. Shareholders, Mehri says, understand that glass ceilings and glass walls are bad for business, because they prevent a company from getting the most out of its employees.

"Transparency acts like a Pentium chip to bring about change," he says. "It's better than litigation. It would revolutionize corporate America. Once you go from secrecy to disclosure, you can change a company overnight." ★

**Chuck Salter is a FAST COMPANY senior writer based in Baltimore. Contact Cyrus Mehri by email ([info@findjustice.com](mailto:info@findjustice.com)).**