



## Corporate America's Scariest Opponent

Plaintiffs' attorney Cyrus Mehri has wrested megabuck settlements from companies including Texaco and Coca-Cola, and put a shiver in the spine of the NFL. Here's his advice on how to keep him out of your office.

**By Janet Wiscombe**

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Cyrus Mehri, the country's preeminent class-action attorney, is prepared to make your job a living hell.

Last fall it was the National Football League that became the object of his prodigious appetite for cleansing corporate America of racial discrimination. As he recalls it, he and co counsel Johnnie Cochran--*the* Johnnie Cochran--marched into a meeting with NFL officials, looked them straight in the eye, and declared, "We are here to change the way you do business. The NFL will either change or be changed."

And it was. Cochran and Mehri--whose extracurricular activities once centered on the game of chess--released a report in September titled "Black Coaches in the National Football League: Superior Performance, Inferior Opportunities" that has riveted the sports world. Acting on the report, which pushes for more minority hiring and stiffer penalties for teams that don't conform, NFL commissioner Paul Tagliabue implemented a highly controversial policy mandating that teams interview at least one minority candidate before hiring a head coach.

"We're fighting for the soul of the NFL," Mehri said at the time. "There's the good ol' boy way, then there's the fair way."

Without a trace of bravado, he now says flatly, "I'm not scared of anyone." He pauses. "My main social vice is that I love the NFL. That is their misfortune."

In the inner sanctums of many executive boardrooms, the name Cyrus Mehri inspires trepidation and even loathing. At 41, he's proud of topping the charts as one of the most feared lawyers in Washington, D.C., a distinction bestowed upon him for his victories in the largest class-action racial discrimination lawsuits in history. The case against Texaco was settled in 1996 for \$176.1 million. The Coca-Cola Company settled in 2000 for a record \$192.5 million. Both settlements required the companies to establish independent task forces to monitor their progress on diversity and to make legally binding recommendations on diversity-related human resources practices. His energies currently are focused on two epic discrimination lawsuits--both pending--one against Johnson & Johnson, the other against Atlanta-based BellSouth.

Allegations focus on human resources issues such as racial bias in hiring. In the BellSouth case, Mehri accused the phone giant of basing promotions on tests that don't reflect required job skills. ("BellSouth was obsessed with giving tests even though the tests had a disparate impact on minority employees," he says.) The Johnson & Johnson lawsuit is the first class-action racial discrimination case involving both Hispanics and African-Americans. The case also includes a new human resources wrinkle: entry-level bias, which relates to the kinds of jobs minorities are hired for when they begin working at a company. Johnson & Johnson has no comment.

Not surprisingly, Mehri is raking in the clients--and the cash. He's a sought-after speaker who might be found delivering a speech at an NAACP convention, or enjoying a grilled aged petit filet with béarnaise sauce at a National Iranian American Council power brunch, or expounding on theories of liability, coverage issues, and spoliation of evidence in employment cases--the subjects of a keynote address he presented in February at the Employment Practices Liability Insurance conference in New York.

Given his highly publicized class-action activities, it isn't surprising that Mehri has established himself in human resources circles as a dean of diversity, a superstar you had better get to know while he's still on your side of the table, a major voice on equity and fair play in the workplace--and how to keep employers out of courtrooms. Referring to what companies do to get themselves into trouble, and how they can get themselves out, he says that organizations have a tendency to pay more attention to their attorneys than to executives who manage people. "The first lesson is this: The business-side people have to be in control. They give too much control to their attorneys. Often, wounds are self-inflicted. Companies get irrational. Their lawyers get overconfident.

"HR doesn't have enough authority," he continues. "I think that's a big part of the problem. The biggest problems at Coke were with their HR practices. They had almost as many job titles as they did jobs, there was no consistent form of job posting, and promotion practices were not consistently applied. This gave undue discretion to managers and prevented employees from having a fair chance to compete for positions."

Coke had cultivated an image of being extraordinarily progressive and generous in the African-American community, Mehri says. "Unfortunately, Coke--like so many companies--got very arrogant and believed their own PR. They valued minorities as

consumers, but not as employees. They were focused on their external image, but not on fair employment practices. J&J is even worse."

In Coke's settlement agreement, the company committed itself to conducting a "top-to-bottom" review of its human resources systems and to taking "necessary action to ensure fairness and equal employment opportunity." The company "also has made significant changes in the operational structure and authority of its human resource department."

Mehri, a man steeped in the writing of Martin Luther King Jr. and of Harlem Renaissance poet Langston Hughes, offers this advice: "Do your homework. It takes years before a case is filed. A lot of [class-action racial discrimination] cases could have been easily avoided if the company had listened to an employee earlier and had paid attention. In every case, an employee went to the company first."

### **Is this guy for real?**

Much like his powerful colleague Johnnie Cochran, who has worked closely with him on various legal matters for the past three years, Mehri is a master at spinning and shaping press coverage. It is a gift that has helped him trounce image-conscious corporations. In November of 2001, he and Cochran launched the Johnson & Johnson lawsuit with a public "Journey for Justice" rally at a historic AME church in Newark. More than 100 activists participated in prayers and gospel singing before boarding a school bus for the 25-mile trip to the company's headquarters in New Brunswick, New Jersey. When the activists neared their destination, Mehri says, he placed a cell phone call to Johnson & Johnson's general counsel. "Hi, this is Cyrus Mehri. I'm here with Johnnie Cochran to give you a complaint."

"I understand the importance of ritual," he now says. When asked if he'd describe himself as a crusader, Mehri answers without hesitation. "Yes, it is a crusade. I care about these cases. Racial bias is significant in corporations. African-Americans have a very fragile hold in the middle class. They are being shortchanged. They are not promoted equally. They are not getting stock options. They are charged more for loans. It's time for corporations to get to the next level. That means to have more fairness, more equal opportunity."

Fighting for equal opportunity is, of course, big business. With legal fees in class-action racial discrimination suits soaring, it isn't hard to find people who are disgusted by the huge sums involved. Darrell Gay, a New York attorney whose minority-owned law firm specializes in labor and employment law on behalf of employers, says he doesn't like the tenor of what's going on. "The trend is: Let's make a [racial discrimination] problem worse than it is," Gay says. "A lot of lawyers are into making gold. And everyone wants a lottery ticket in the race-discrimination line."

Referring to the sharp rise in the number of class-action lawsuits filed since passage of the Civil Rights Act of 1991--and the colossal increases in numbers of plaintiffs and settlement awards--one of Gay's colleagues, former EEOC commissioner Reginald Jones, says that class-action attorneys have created a not-so-rosy new cottage industry.

"The ballgame has changed tremendously," Jones notes. "These class-action guys scour the land to find disgruntled employees. Employees are all gathered under some banner--something happened to them in their work life they don't like. They were drunk on the job and they got fired. 'My boss didn't promote me because (fill in the blank)': race, age, disability.'" Even if companies can win these cases, they can't afford the PR hit.

Coca-Cola had a vision of a line of black people miles long asking, 'Do I buy Coke or do I buy Pepsi?' They can't afford that."

Cyrus Mehri, Esq., is a man who elicits sharply divided opinions. To some, he's an employee's best friend, an idealist who promotes social justice, a civil rights hero. To others, he's a pragmatist motivated by cash, a menace to corporate America, a human resources nightmare. For all of his successes, Mehri, who also handles securities fraud and consumer fraud, knows firsthand what it's like to be at the receiving end when an attorney calls to inform you that you are the subject of a lawsuit. After the Coke settlement in 2000, his former partners, Arthur Malkin and Donald Ross, sued him, demanding their share of the \$10 million legal bounty. They alleged that Mehri deposited the money into an "unauthorized secret account" and opened Mehri & Skalet, his Washington, D.C., firm. When asked about the matter, Mehri answers, "All I can say is, we had a dispute about money in the Coke case, and we resolved it amicably." The plaintiffs didn't respond to several phone calls.

### **Ever a success story**

Born on July 14, 1961, Mehri is the son of Iranian émigrés who reared their three children in Danbury, Connecticut. His father is an eye surgeon, his mother an artist. "It was a household where we talked politics and had highly intellectual political discussions," he says. "Like a lot of immigrants, I grew up really appreciating what a great country this is--all of the freedom and opportunity." He credits the rich environment at prep school with encouraging his independence and confidence, qualities that have served him well. He graduated from Hartwick College, worked in the early 1980s as a political organizer for Ralph Nader, and earned a law degree in 1988 at Cornell University.

A self-described progressive, he got his start in law as an associate at Cohen, Milstein, Hausfeld & Toll (the firm currently representing more than 500,000 female Wal-Mart employees, a suit that could become the largest sex-discrimination case in U.S. history), where he played a key role in the Texaco victory in 1996. The company turned out to be his best weapon. After a collection of audiotapes was leaked to the *New York Times* implying that high-level executives had used racial slurs, the damage was done. The company quickly settled.

By his own account, what distinguishes him from the competition is investigative prowess, dogged research skills, and an open mind. "I am more prepared than my adversaries," he says. "I don't take a scattershot approach. My approach is more laser beam."

What's particularly interesting about the Coke case is that Mehri was able to identify discrimination issues early on in the investigation when his legal team received an anonymous package containing data from what appeared to be a printout of a human resources database. In reviewing the information, Mehri's team uncovered wide disparities in pay, promotions, and evaluations. These are the human resources areas that perk up judges and juries.

To illustrate his own style and the way his opponents--usually richly endowed armies of them--are wont to behave, he likes to tell a story about an incident during court proceedings in the Johnson & Johnson case. The presiding court official, known as the Special Master, at one point asked the company lawyers assembled to explain how the organization's database worked. None could.

"All I want to know is what will it [the data] show," a frustrated Special Master pleaded.

Mehri seized the Perry Mason moment. "I'll describe the database," he offered cheerfully, launching into a precise account of the company data available on key issues such as salary and performance profiles.

The deft showman relishes the memory. "I was the outsider explaining how their database works."

He's also an inveterate risk-taker who accepts cases on contingency and stands to lose tens of thousands of dollars if a case tanks. "These cases are very difficult to put together," says Pamela Coukos, one of eight attorneys in his firm. "It's exhausting, grueling work. With the Coke case, we had no idea whether we were taking a crazy risk or not. Cyrus is tremendously optimistic."

When Mehri and Coukos went up against the world's largest soft-drink company, they were seriously outnumbered and outspent. They sought help from several Atlanta firms, but were roundly rejected. One lawyer told Mehri, "Suing Coke in Atlanta is like suing the Pope in the Vatican."

Mehri, a husband and father of two, says he's consumed by work and family. He typically puts in 16-hour workdays, but emphasizes, "I'm nowhere near burnout." He describes himself as a happy, helpful person who keeps his "ego in check." He's the first to admit that he hasn't taken an easy career path, that starting his own law firm has been difficult, and that most people don't comprehend the financial risks involved in launching lengthy, expensive class-action cases. Until two years ago, when his wife insisted he get a new car, he drove a 1985 Toyota Tercel. He replaced it with an SUV. "You have to risk everything you have," he says. "Most people don't have the appetite for it. It isn't work for the faint of heart."

But in the past 10 years he's become a highly respected authority in the specialized, controversial branch of class-action law. He's an expert on what happens when

employees feel marginalized. That's how companies can get themselves into the worst trouble, he says. Coke's management, for example, was aware that blacks didn't like the way they were treated as far back as 1995, when one of the company's leading African-American executives went to Doug Ivestor, then the company's CEO, and presented a report detailing the problems with racial discrimination. The report was allegedly ignored by Ivestor, Mehri says. After the Coke settlement in November of 2000, an independent task force was launched to ensure compliance with the agreement and to provide independent oversight of the company's diversity efforts. Mehri says he believes Coke is now headed in a very positive direction. "This next year will be a pivotal one for the company."

Since first meeting with unhappy African-American employees at Texaco almost a decade ago, when he was 32, Mehri has become instrumental in moving racial discrimination class-action lawsuits to the top of corporate America's agenda. In her book, *Roberts vs. Texaco*, executive Bari-Ellen Roberts, one of the original plaintiffs in the case, recalls her first meeting with him. "My first look at him was disappointing. I had been expecting two members of the Washington, D.C., law firm of Cohen, Milstein, Hausfeld & Toll... not just this 30-something young guy who looked a bit like the actor Andy Garcia on a bad hair day and seemed almost as flippant." Mehri, however, quickly proved his mettle.

"I'd be happy not to do these cases," he says. "I work on them because they need to be done. I'm trying to make society more inclusive." Looking back, he attributes much of his success to his associations with the country's most dazzling attorneys. "Johnnie Cochran is one of the most gifted trial attorneys in American history," he says. "I don't put myself in that category. But I am good at scholarly briefs. I am strategic. I can see the big picture.

"What I am most proud of is being overall a good person, and that I can do good things and do them well. That's hard to pull off."

Even when you aren't scared of anybody.

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