

**CPR Institute for Dispute Resolution**  
&  
**Fordham University School of Law**

NEGOTIATING ENDURING CORPORATE CHANGE

A Case Study on the  
Task Force on Equality and Fairness

In

*Roberts v. Texaco Inc.*

94 Civ. 2015 (CLB)  
U. S. D. Ct., S.D.N.Y.

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## Foreword

In recent years, there has been a spate of class action employment discrimination suits. American institutions such as Coca-Cola, Denny's, Home Depot, Merrill Lynch and Mitsubishi have joined the pantheon of corporate citizens charged with impermissible discriminatory workplace hiring and promotional practices. Each of these civil law suits resulted in a multi-million dollar monetary settlement. Indeed, the current federal litigation against the nation's largest employer, Wal-Mart, promises to set the new bar for plaintiff recovery.

*Roberts v. Texaco Inc.* is the progenitor of the modern employment discrimination class action settlement. In 1996, a surreptitiously recorded, inaudible sound bite alleged to be a racial slur set in motion a media firestorm which impugned the character of Texaco Inc., one of the nation's most respected corporate citizens. The remark prompted settlement of a civil suit filed two years earlier. While the magnitude of the settlement is in and of itself remarkable, the most salient aspect of the *Roberts* legacy is its innovative approach to settlement administration and oversight: the creation of a body known as the Task Force on Equality and Fairness ("Task Force").

This Case Study represents a retrospective examination of the Texaco Task Force on Equality and Fairness. The instant work reflects the Task Force's understanding of its mandate and the procedural approach employed in oversight of reforms pursuant to the Settlement Agreement. The Case Study Project Team ("the Project Team") interviewed the Court, former Task Force members and counsel for the disputants to supplement the public record.

The Project Team has concluded that the Texaco Task Force model offers a valuable approach to the administration of complex employment discrimination settlements, as many of the practices identified herein may be imported in whole or in part to subsequent litigations. The Case Study, while not a "how to" manual for the

development of a prospective task force, is nonetheless instructive and may prompt further consideration by future litigants.

This effort would not have been possible without the visionary initiative of the Honorable Charles L. Briant, Jr., U.S.D.J., of the Southern District of New York. The Court jointly commissioned the CPR Institute for Dispute Resolution and the Fordham University School of Law to produce an analysis that could inform readers without the need to cull through voluminous public records. The Project Team assembled case-specific documents, including legal memoranda, annual corporate reports and extrajudicial commentary by one of the lead plaintiffs. Most significantly, primary source interviews provided a more fulsome understanding of Task Force operations and decision-making. In the aggregate, these sources constitute the requisite backdrop against which to assess the Task Force operations and utility.

The Project Team wishes to express its gratitude to the following individuals who were instrumental in developing and participating in the Task Force for sharing their insights:

Hon. John J. Gibbons (Task Force Member);  
Allen J. Krowe (Task Force Member);  
Luis G. Nogales (Task Force Member);  
Deval L. Patrick (Original Task Force Chair);  
Dr. James M. Rosser (Task Force Member);  
Thomas S. Williamson, Jr. (Succeeding Task Force Chair);  
Daniel Berger, Esq. (Plaintiffs' Counsel);  
Cyrus Mehri, Esq. (Plaintiffs' Counsel);  
Joseph P. Moan, Esq. (Former Texaco Inc. Legal Department Counsel);  
Andrea Christensen, Esq. (Defendant Texaco's Counsel).

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## **I. BACKGROUND**

### **A. Litigation Chronology**

On March 23, 1994, Bari-Ellen Roberts and Sil Chambers (“plaintiffs”), both African-American management employees of Texaco Inc. (“Texaco”), commenced a class action in the United States District Court for the Southern District of New York. (*Roberts v. Texaco*, 94-Civ-2015 (CLB)). They asserted that Texaco had engaged in a pattern and practice of workplace discrimination in violation of 42 U.S.C. §1981 and Section 296 of the New York State Human Rights Law. Additionally, plaintiffs alleged that the Company had discriminated against salaried African-Americans in terms of hiring and promotion opportunities. With the filing of an Amended Complaint on June 30, 1994, Marsha Harris, Beatrice Hester, Veronica Shinault and Janet Leigh Williams joined as representatives of the putative plaintiff class. The Amended Complaint alleged violations of Title VII of the Civil Rights Act of 1964, as amended in 1991 (“Title VII”), based upon employment policies and practices starting in March 1991 that had a disparate impact on, and abridged the rights of, salaried African Americans. The practices related to promotions, compensation, and certain terms and conditions of employment, including training and job assignments. In essence, plaintiffs were asserting a “glass ceiling” claim on behalf of salaried African-American employees of Texaco, many of whom held mid-level management positions.

On July 15, 1994, Texaco denied all claims of wrongdoing and liability. In October 1994, the Court directed the parties to mediation under the auspices of the Community Relations Service of the United States Department of Justice. After over twenty sessions, the parties were so far apart that the mediation concluded. Traditional litigation resumed in February 1995.

When plaintiffs sought class certification on May 15, 1995, Texaco opposed the motion, *inter alia*, on grounds of insufficient commonality. Discovery was underway. In August 1996, plaintiffs moved to add Title VII claims to the pending motion for class certification. The United States Equal Employment Opportunity Commission (“EEOC”) issued a right-to-sue letter and plaintiffs sought to expand the scope of the class beyond that authorized by the EEOC. Texaco opposed the motion and sought a stay of litigation

on the grounds that it was seeking a motion for reconsideration before the EEOC. The Court heard oral argument on September 27, 1996 and a hearing on the class certification motion was scheduled for December 6, 1996.

The need for the hearing was obviated, however, by the public release of the so-called “Lundwall Tapes” on November 4, 1996. The disclosure precipitated a Settlement Agreement in principle between the parties on November 15, 1996. The parties submitted the formal Settlement Agreement to the Court on January 21, 1997. The Honorable Charles L. Brieant, U.S. D. J. approved the proposed settlement. Judgment was entered on March 21, 1997.

## **B. The Lundwall Tapes: Settlement Catalyst <sup>1</sup>**

In 1996, Richard Lundwall was a 55-year old Caucasian Finance Department senior staffer at Texaco’s corporate headquarters in Harrison, NY. He became embittered at the prospect of a forced early retirement which he saw as “agism.” Using a micro-cassette recorder hidden in his shirt pocket, Lundwall surreptitiously recorded meetings of senior Texaco managers, including then-Treasurer Robert Ulrich. Although the content of the tapes was hotly contested, they were reported to have contained remarks reflecting a racially-biased corporate culture at Texaco and a desire to conceal, withhold and destroy evidence that might be germane to the pending *Roberts* class action discovery phase.

On August 1, 1996 Lundwall approached Finance Department co-worker, Bari- Ellen Roberts, named-plaintiff in the class action. He indicated that he had information which he believed could be helpful to her case. Ms. Roberts directed Lundwall to her attorney, Cyrus Mehri, of Cohen, Milstein, Hausfield & Toll. Mehri declined to represent Mr. Lundwall on his age discrimination matter citing perceived conflicts. He also declined to accept the tapes and directed Lundwall to seek counsel about such tapes. <sup>2</sup> Eventually, the tapes were made available to plaintiffs’ counsel and were enhanced and transcribed.

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<sup>1</sup> For a historical account of the Lundwall incident, see Alison Frankel, *Tale of the Tapes*, *The American Lawyer* 65 (March 1997).

<sup>2</sup> The criminal prosecution against Lundwall related to his taping appears at *U.S. v. Lundwall*, 1 F. Supp.2d 249 (S.D.N.Y. 1998).

On November 4, 1996 Kurt Eichenwald of *The New York Times* exposed the alleged racist culture at Texaco through a front page story regarding the tapes.<sup>3</sup> In response, Texaco retained New York attorney Michael Armstrong to investigate the matter. Texaco's audio expert produced a competing enhanced version of the tapes. According to Armstrong, the plaintiffs' transcription was erroneous.<sup>4</sup> Counsel for the parties continue to disagree about the content of the conversations memorialized on those tapes.

Regardless of their actual content, the public release of the tapes caused a firestorm of national protest against Texaco and its alleged corporate culture of racism. A potential national boycott of Texaco's products was rumored. On November 12, 1996 Texaco CEO Peter Bijur held a meeting with national civil rights leaders including the Reverend Jesse Jackson. Three days later, counsel for the parties announced the *Roberts Agreement in Principle*. In retrospect, all parties agree that the tapes played a catalytic role in bringing about the settlement. At the time, Bijur stated:

Once the taped conversations were revealed, there was no question in my mind that settlement was the right step to take. It was the reasonable and honorable course of action. It takes the issue we face from the realm of confrontation in the courts into the arena of active cooperation and joint action. It allows the healing process to proceed.<sup>5</sup>

Daniel Berger, one of the lead plaintiffs' counsel, placed the publication of the tapes into historical perspective. "If we didn't have the tapes, we would never have settled the case. If we didn't have the tapes, we confidently would have won the case because we had a good argument on the merits, but we wouldn't have achieved this outcome. The tapes ... [were] a lever that enabled us to pry this [settlement] out of Texaco." (*Berger Interview*). Cyrus Mehri echoed his former co-counsel's sentiment. "We were gaining momentum to get the class certified, and I believe we would have won

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<sup>3</sup> Eichenwald, *Texaco Executives on Tape Discussed an Impending Bias Suit*, THE NEW YORK TIMES, Nov. 4, 1996.

<sup>4</sup> Eichenwald, *Investigation Finds No Evidence of Slur on Texaco Tapes*, THE NEW YORK TIMES, Nov. 11, 1996.

<sup>5</sup> Special Master's Report of Charles G. Moerdler, July 22, 1997 at 6 (citing Transcript of November 19, 1996 Statement of Peter Bijur before the Westchester County Association, Exhibit E to Class Counsel's Submission to The Special Master in Further Support of an Application for an Award of Attorneys' Fees).

the case without the tapes. But ...a crisis emerged and in that crisis it gave [us] an opportunity to get something significant.” (*Mehri Interview*).

Texaco’s outside counsel, Andrea Christensen, also acknowledged the tapes’ critical role. Prior to publication, Texaco was convinced it would prevail in the litigation, primarily because it believed it had adequate anti-discrimination policies in place and that the Court would not certify the class. Moreover, statistics played a significant part in the defense. Promotions were based on performance evaluations. As such, Texaco believed that plaintiffs could not make out a case for discriminatory promotional practices. “The only reason the settlement came about was the tapes,” Christiansen opined. (*Christiansen Interview*).

## **C. Settlement Agreement**

### **i. Terms**

The parties formally executed the Settlement Agreement on January 21, 1997. It contained a record-setting compensatory award of \$115 million, 11% salary increases for the class, and establishment of an oversight body which became known as the Task Force on Equality and Fairness (“Task Force”). While Texaco denied all wrongdoing and liability, the parties agreed to certification of a settlement class consisting of “all African-Americans employed in a salaried position subject to the Merit Salary Program in the United States by Texaco or its subsidiaries, at any time from March 23, 1991 through and including November 15, 1996.” (*Settlement Agreement* at 3). Employees in the Settlement Class, who did not opt-out, released Texaco from further litigation resulting from employment discrimination or disparate treatment alleged in the suit. *Id.* In consideration thereof, each class member would receive:

An 11.34% increase over such employee’s November 15, 1996 base annual salary retroactive to January 1, 1997. This increase is in addition to and not in lieu or replacement of any other pay increase any member of the class would receive in 1997 in the ordinary, customary or usual course of employment. Within 30 days after the settlement becomes final, the portion of the salary increase accrued from January 1, 1997 to the date of payment will be paid to each such employee.

*Id.* at 8.

The Settlement Fund of \$115 million was to be used for: (1) monetary claims settlement; (2) the cost of class notice; (3) the cost of suit, including reasonable attorneys' fees and plaintiffs' expenses for consultant and expert fees; (4) the cost of administration of the Plan of Allocation; (5) any obligation Texaco might otherwise have in connection with payments or distributions from the Settlement Fund; and (6) any other purpose the Court might order.

In addition to the monetary components, the Settlement Agreement contained a section captioned, "Programmatic Relief," in which Texaco expressly affirmed the following statement:

Texaco Inc. is affirmatively committed to the fullest extent to an environment of inclusion; to eradicate all forms of prejudice within the Company; to promote and foster complete equality of job opportunities within the Company to all applicants and employees regardless of race, gender, religion, age, national origin and disability; and to ensure tolerance, respect and dignity for all people. *Id.* at 8.

Under the Agreement, the Task Force was to operate for a five-year term to "determine revisions to and additions to Texaco's current Human Resource programs and to oversee, in conjunction with the President of Texaco's Human Resources Division, the implementation" of the Settlement Agreement terms. *Id.* at 9. The group would have reasonable access to all data compilations and each Task Force member was required to execute a confidentiality agreement. *Id.*

**ii. Task Force Powers**

The precise means by which Task Force members would interact with Texaco is equivocal in the Settlement Agreement. At times, the group was invested with the power "to determine" policies, while in other instances the authority seems to have been limited to a collaboration with Texaco management. Paragraph 12 of the Agreement imbues the Task Force with authority to "*determine policies* to be developed, restructured or implemented." In contrast, Paragraph 13 provides that "Texaco is responsible for *implementation* of programmatic relief except as otherwise provided" in the Agreement.

At Paragraph 15, the Task Force “will *evaluate* existing employment policies and programs *and develop and design, in conjunction with the President of the Human Resources* Division, procedures, practices and methodologies to achieve...the objectives of the Settlement Agreement.” Pursuant to Paragraph 16, Texaco was mandated to adopt five listed programs which the “Task Force will *review* for effectiveness.” *Id.* at 12. Then again, at Paragraph 17, the Task Force “will *evaluate, revise and replace*” (and in some instances “*establish*”) a listed number of programs regarding Performance Management, Job Competencies, Affirmative Action, High-Potential Promotion Lists, Performance Management Oversight on Employee Selection, Job Posting, and Fairness in Employee Compensation to avoid disparate impact. However, in that same paragraph, the President of Human Resources “*may* also begin to...” perform this same list of functions, again inviting collaboration between the Task Force and Texaco. (Emphasis added.)

After examining the foregoing provisions, the reader is left with an unclear impression about the precise role the Task Force was to assume: would the Task Force formulate specific changes and require implementation, formulate and propose changes rather than require them, or collaborate with Texaco and evaluate its efforts in fashioning remedial action?

It is likely that the equivocation about the Task Force powers was intended by the drafters and reflected the differing underlying interests and concerns that the parties brought to the drafting effort. According to Thomas Williamson, succeeding Chair of the Task Force, the corporate community viewed Texaco’s decision to cede control over its Human Resources functions to an outside group, who would have access to confidential corporate data while writing public reports about a Company to whom the group was not accountable, as border-line irresponsible. (*Williamson Interview*). Texaco’s counsel expressed similar views on corporate hesitancy to turn over control to anyone other than shareholders or the Board of Directors. (*Christiansen Interview*). Texaco’s initial trepidation likely guided defense counsel in attempting to retain some control over corporate policies during the settlement agreement negotiations. Plaintiffs’ counsel, on the other hand, was also concerned about control. He thought that the Task Force would

only be effective if it addressed specific practices, had sufficient funding, had good people on it and had “authority.” (*Berger Interview*).

And the Task Force got that authority. Even if the authority for generating the program specifics was unclear, the authority to approve the final program contours was manifestly provided to the Task Force in the Settlement Agreement at Paragraphs 22 and 23. If a dispute arose between Texaco and the Task Force, Texaco was required to implement any *final* determinations of the Task Force or file an objection with the Court on grounds of unsound business judgment or technically unfeasible requirements. Plaintiffs’ counsel would be required to participate in such court proceedings while Texaco would be required to pay the plaintiffs’ attorneys’ fees for those efforts. The ultimate leverage given to the Task Force in the Settlement Agreement on implementation of program changes effectively gave the Task Force veto power and superceded the question of whether Texaco or the Task Force was responsible for initiating programmatic changes.

Moreover, this same authority provided an incentive to Texaco to abide by Task Force concerns over its five-year duration. Cooperation would avoid further attorneys’ fees and any new court battles with attendant negative publicity. Thus, the Settlement Agreement created a collaborative framework giving Texaco some control over its policies in exchange for giving the Task Force ultimate authority in case of significant disputes which satisfied key concerns of each party to the lawsuit.

#### **D. Texaco Press Releases and their Relation to the Settlement**

Press releases issued by Texaco during the settlement formulation period demonstrate Texaco’s proactive intent in formulating changed policies and shed light on Texaco’s perceptions of its interests in resolving the lawsuit. On November 15, 1996, two months before the Settlement Agreement was formally executed by the parties, Texaco’s CEO Peter I. Bijur issued a press release announcing the Company’s settlement of the *Roberts* action and referencing the \$115 million fund, salary increases, and Task Force creation. Interestingly, it also addressed adoption of Company-wide diversity and sensitivity training, mentoring and ombuds programs, nationwide job posting of more

senior positions, and monitoring of its performance, all of which were changes to Human Resource policies.

According to Bijur, the Company's mission was to make it a "model of workplace opportunity for all men and women." He recognized the settlement as a "renewed opportunity to join in a common purpose and unified action to achieve shared goals of greater inclusion and opportunity at Texaco--and in America."

Again on December 18, 1996, before the final Settlement Agreement was signed, Bijur issued a very detailed five-page press release setting forth Texaco's comprehensive plan "to ensure fairness and economic opportunity for its employees and business partners" reached after a "a rigorous review by Texaco of its Human Resources and business partnering programs." The detailed plan would cover "all employees including minorities and women." Moreover, it reached beyond the terms ultimately agreed to by the parties in *Roberts* and committed Texaco to expanding contractual relationships with women-owned and minority-owned businesses. Bijur's plan continually linked its inclusiveness goals to successful competition in a global environment. In fact, the scope of this release covered many of the initiatives that the Task Force would eventually address, including specific plans on "Recruitment and Hiring," "Retention and Career Development," "Workplace Initiatives," and "Accountability and Oversight."

Was Texaco merely seizing a public relations opportunity to help rehabilitate Texaco's tarnished reputation caused by the Lundwall tapes? Or did the press releases serve another purpose? The statements publicly indicated that Texaco would direct its diversity efforts beyond the African-American community to expand opportunities for all employees including women (who were not specifically addressed in the law suit). The releases emphasized long-term economic and relationship business interests to create an inclusive environment where all felt fairly treated.

In shaping this vision, which went beyond the *Roberts* Settlement Agreement terms, Texaco's past diversity efforts and investigations undertaken by the Company in 1996-1997 are relevant.

From 1991 to 1996, Texaco increased its minority employees from 16% to 23%. Of these, 9.6 % were African-American in 1996. (*Bijur Press Release*, Dec.18, 1996). A year before settlement, Texaco put 80% of its managers and top executives through

diversity training. According to Company statistics, the U.S. salaried employee class in 1993 had 12,681 employees; by the end of 1997, it had 8,837 members due to shifting of many employees to new alliances and cyclical oil price decreases that resulted in lay-offs. In fact, at the time of the October 8, 2001 merger with Chevron, Texaco had only 6,357 total U.S. salaried employees. (*Krowe Interview*). While the December 1997 Task Force Report cited total U.S. salaried and unsalaried workers based on figures supplied by Texaco, by the second annual report, in June 1998, the Task Force shifted to reporting numbers on the relevant class: U.S. salaried workers only.

Moreover, after the lawsuit was filed but before settlement, Texaco commissioned Harbridge House to perform a survey of Texaco employees regarding promotion opportunities. (*Christiansen Interview*). The firm found that all categories of employees, including Caucasian, African-American, male, female, younger and older, thought the promotion system was unfair and subjective, according to Christiansen. This led to the conclusion that the defect needed to be remedied for all classes of employees, not just the plaintiff class.

In the aftermath of the Lundwall tape release in November 1996, Texaco conducted an extraordinary independent internal investigation of its corporate culture by disbursing six or seven executive team members to Texaco worksites. They were to get an accurate perception of how employees actually viewed the Company. Texaco's Vice Chairman, Allen Krowe (who would later become a Task Force member following his retirement from Texaco in June 1997), canvassed the nation and spoke with approximately 8,000-10,000 employees in a period spanning three weeks. He found the sessions both "dreadful and uplifting" and "cathartic." Krowe met with both large groups of 400-500 employees and much smaller groups of African-American and women representatives to get the "real" picture. He heard not only about "people mistreating African-Americans but people being disrespectful of each other and of women. It was clear to him that the time was right for us to declare total war on intolerance." (*Krowe Interview*).

Texaco senior management also engaged Hon. A. Leon Higginbotham, a retired African-American Chief Judge of the United States Court of Appeals for the Third Circuit. Judge Higginbotham was a former member of the U.S. Commission on Civil

Rights and a former adjunct professor at several prominent law schools including Harvard. His role was to provide “counsel and guidance” in Texaco’s review of its corporate culture during the first half of 1997. On November 26, 1996, CEO Bijur issued a press release in which he described Judge Higginbotham’s anticipated role as follows:

I want to ensure that Texaco’s policies prohibiting discrimination in the workplace are not mere rhetoric. As we move forward, Judge Higginbotham will evaluate our practices and make recommendations as to what our programs should be in the future. Our common goal is to transform our Company to be a model of fairness, without discrimination in the workplace.

Krowe commented that Higginbotham counseled the executive team that their efforts should be a work on equality and fairness and not just a diversity work. To accomplish that goal, Texaco would need to tilt the playing field to accord greater opportunities to racial minorities and women to get the playing field leveled. But, Higginbotham added, the eventual goal was to create a culture fair and equal to all and sustainable in that everyone would feel fairly treated. (*Krowe Interview*). In fact, it was Judge Higginbotham who suggested that the originally-selected name for the Task Force, “the Task Force on Tolerance and Equality” might be better named “The Task Force on Equality and Fairness” to place the emphasize on fairness in treating all employees rather than merely tolerating a particular race or gender. (*Krowe Interview*).

As a result of these internal efforts, Texaco believed that it could not benefit just one group but needed to implement change initiatives which would promote universal fairness and respect. (*Krowe Interview*). According to Krowe, the Task Force also adopted this broadened view of inclusiveness. While Texaco had been criticized for not doing enough for African- Americans,<sup>6</sup> its broadened conception of change, reflected in the early press releases and confirmed by its own investigations, was eventually expressly incorporated into the formal Settlement Agreement “Programmatic Relief” prologue. (*See Section C i, supra.*)

Texaco’s public pronouncements may also explain why the Task Force eventually played more of a monitoring role rather than initiating programmatic change.

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<sup>6</sup> Michael Selmi, *The Price of Discrimination: The Nature of Class Action Employment Discrimination and its Effects*, 81 Tex. L. Rev. 1249 (2003). Professor’s Selmi’s research was limited to an examination of the publicly available records and annual reports. (*Selmi Interview*, Sept. 29, 2004).

While the Settlement Agreement identified areas to be addressed, it did not enumerate implementation specifics. According to Daniel Berger, the lawyers felt that rather than “trying to micro-negotiate and manage this, ... the Task Force was going to do it for us, and they’re smarter and more qualified than lawyers to do this.” (*Berger Interview*). But prior to the Task Force formation, specific program changes had already been announced which effectively relegated the Task Force to a reactive and evaluative role rather than an initiating role. Texaco was publicly committed to specific programs and had begun certain efforts before the Task Force formation.<sup>7</sup> Task Force Member Luis Nogales stated: “By the time we got organized, the Texaco Human Resources staff had spent a lot of time thinking about what areas they needed to work on to effectuate the consent degree.”

Texaco’s proactive posture offers a new perspective on criticism that the Task Force was merely a “rubber stamp” of Texaco’s revision efforts.<sup>8</sup> Because Texaco was proactive and had publicly declared its commitment before the Task Force was formed, the Task Force chose to collaborate with Texaco by evaluating and modifying corporate suggestions. Moreover, the Task Force had its own reasons for using a collaborative, rather than a directive, approach with Texaco. (See “Mission” below, at Section F.)

## **II. Operation of the Task Force on Equality and Fairness**

According to settlement negotiation participants, the plaintiff team advanced the Task Force concept. Why did Texaco agree to this novel mechanism? Candid responses from the interviewees about the motivations that propelled creation of the Task Force demonstrate the significance of both sides’ underlying interests that were advanced by this unique mechanism.

### **A. Task Force Met the Parties’ Non-Competing Interests**

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<sup>7</sup> Cyrus Mehri, “Agreeing to Cultural Change,” *Legal Times* (May 12, 1997) (in which plaintiffs’ counsel stated: “The settlement requires Texaco to base management goals and compensation substantially on equal employment opportunity (EEO) and diversity performance. Even before the settlement [became final], Texaco began to implement this provision. As a result, 25% of each manager’s compensation is now tied to his EEOC performance.”) (N.B.: This article appeared before the Task Force was constituted in June 1997.)

<sup>8</sup> Michael Selmi, *The Price of Discrimination: The Nature of Class Action Employment Discrimination and its Effects*, 81 *Tex. L. Rev.* 1249, at 1324. (2003).

The Task Force served the underlying interests of both sides better than traditional adjudicative routes commonly used in monitoring class action implementation such as special masters or periodic resort by parties to the court. When negotiating parties have underlying interests that are similar and do not compete (called “non-competitive similarities”), even when those interests spring from different rationales, an agreement can be struck that satisfies both sets of interests without either party sacrificing its respective interests to its adversary. One party’s gain does not mean loss to the other party, since the solution option can satisfy both sides’ underlying concerns.<sup>9</sup> In this matter, both the plaintiffs and Texaco sought to increase diversity in Texaco’s culture for very different reasons based on differing perceptions of the Company’s prior commitment to diversity. Both parties also had an interest in creating an improved atmosphere of trust for differing reasons.

The parties also had some opposing interests. As the Task Force went about its work, it undoubtedly kept the multiple interests of the parties in mind in an attempt to satisfy them within the guidelines of the broad mandates of the Settlement Agreement.

The interests apparent in this matter are multiple.

**i. Cultural Change**

Beyond monetary compensation and salary adjustments for past wrongs, the plaintiffs were particularly concerned about future changes of what they perceived as a “racist” culture at Texaco that limited promotion and advancement opportunities for African-Americans. Berger viewed his clients as “courageous” in their efforts to induce change and focus on more than monetary compensation. They wanted to change what they saw as an “old boy network” where advancement was based on whom you knew and with whom you socialized after work. In fact, Judge Brieant asserted that the named plaintiff, Bari Ellen Roberts, elected to forego some of her damages for the right to publish a book about the events leading up to the lawsuit.<sup>10</sup> Cyrus Mehri saw the plaintiffs as wanting cultural change, a new approach to doing business that transcended

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<sup>9</sup> Robert Mnookin, et al. *Beyond Winning: Negotiating to Create Value in Deals and Disputes* at 16 (Belknap Press, 2002).

<sup>10</sup> Bari Ellen Roberts with Jack White, *Roberts vs. Texaco: A True Story of Race and Corporate America* (Avon Books, 1998).

mere technical modifications to policies. In so doing, Texaco would be better, stronger and actually fairer going forward. To get that systemic change, plaintiffs insisted on an independent monitor to assure implementation and credibility in light of their built-up distrust of the Company and its culture.

**ii. Global Citizenship and the Bottom Line**

Like the plaintiffs, the Company also sought development of a diverse workforce in the future but for different business-based reasons. First, Texaco had anti-discrimination policies in place for a number of years before the lawsuit and perceived that they were in compliance with the law. (*Krowe, Gibbons, and Patrick Interviews*). Nonetheless, Texaco sought to amplify its efforts for its long-term economic interests in competing in a global environment. According to Krowe, a diverse workforce affects the bottom line, particularly in a consumer Company: “Our customers are totally diverse. If you don’t understand your customer, you don’t understand how to market and distribute your product, and you cannot understand your customer unless you see through the particular eyes of, or particular lens of a particular group.” (*Krowe Interview*). Texaco agreed to an outside monitor with final leverage over corporate policies, despite its concerns regarding control. In turn, they received expertise in establishing the best practices to put its diversity effort in high gear. Appropriate corporate interests in the bottom line, along with a genuine desire to fully resolve these issues, motivated Texaco’s agreement.

**iii. Restoring Trust**

While the plaintiffs were interested in establishing a trustworthy forum to prompt change, Texaco was also interested in trust: it wanted the plaintiffs and employees to trust the Company. It is axiomatic that disgruntled employees are not productive employees. Texaco sought to prove its sincerity in instituting changes because it acknowledged the plaintiffs’ existing distrust. “Plaintiffs may not have settled at all because they did not trust the Company.” (*Christiansen Interview*). In fact, most employees had expressed concern in the Harbridge House survey regarding the manner in which promotions were granted at Texaco. A cross-racial, universal concern over unfair promotion and

advancement could be addressed effectively with an independent outside monitor such as the Task Force.

That monitor, with the cumulative expertise of seven seasoned and experienced professionals, would lend credence to changes, and provide an independent assessment of efforts and progress to employees and consumers and thus restore trust.

**iv. Reputation Interest**

On its side, Texaco, a consumer Company, had a priority long-term interest in restoring its corporate reputation which trumped its short-term interests in defeating the lawsuit and exercising exclusive dominion over corporate affairs. The public outcry from the Lundwall tapes had tarnished Texaco's reputation. An independent outside monitor could help Texaco to publicly prove its good faith in instituting change. And it would help avoid discrimination battles in the future by fostering adoption of state-of-the-art human resource practices.

The importance of corporate reputation cannot be overemphasized in this matter. It spurred settlement, Task Force formation, and continuing cooperation with the Task Force. The net effect was to foreclose a public battle over implementation details. (*Christiansen Interview*). The Task Force provided the requisite internal impetus to enhance diversity efforts. This matter demonstrates the critical role of reputation interests as leverage in a negotiation. When a Company deals with consumers, its reputation has a direct link to the corporate bottom line in a competitive environment allowing the opposing negotiators to secure concessions on what is important to them, while offering the means for enhancing the Company's reputation.

**v. Avoiding Backlash**

Texaco also had an interest in avoiding backlash at the Company. According to Andrea Christiansen, there was concern about resentment developing at the Company over salary increases accorded to the class members. Some employees felt that African-Americans had enjoyed preferential treatment all along. Texaco wanted to put this entire episode behind them, and the Company believed that the Task Force would facilitate that effort by creating policies that would protect all employees. The Court also thought that

the Task Force had to make progress without “blowing the Company up.” (*Brieant Interview*). The added downsizing atmosphere between 1996 and 2001 demanded careful balancing of change and employee education to allow workers to buy-in to the new top-down policies without generating either too much resistance or resentment over affirmative action. While the plaintiff class may have had more interest in advancing diversity for African-Americans and less concern about overreaction among the other workers, the need for a productive and accepting workforce likely took precedence for the Company.

**vi. Executive Mission of Global Excellence**

A final factor in acceptance of the Task Force concept was the instrumental role of then-newly appointed CEO Peter Bijur. The executive put his political capital behind the diversity effort and said, “Fix it; just get it done.” (*Berger Interview*). According to Berger, plaintiffs’ team would encounter resistance from the defendant’s lawyers as they hammered out settlement terms. But Bijur would tell his executives to acquiesce based on his belief that “to the extent there is any discrimination or discriminatory animus here, we want to rout it out.” (*Berger Interview*). Christiansen agreed that Bijur did a tremendous job of “leaping forward with diversity.” In her experience as outside corporate counsel, companies don’t change diversity practices unless compelled by the “top of the house.” In recognizing that increased diversity could meet the needs of a diverse customer base, and what most Task Force members perceived as his own genuine humanitarian commitment to anti-discrimination policies, Bijur made equality and fairness a top management priority. Upon reflection, Task Force members believe that the Texaco higher-ups clearly wanted these changes for moral, organizational, reputation and business reasons. The need was obvious to senior executives, but was not apparent among the lower management ranks. “The issue had not been high enough on managers’ radar screens.” (*Nogales Interview*). Gibbons agreed. “Companies need to focus on it [diversity] because there are bad actors out there in the ranks.” He assessed that the Company thought it was “doing well and its policies were at least neutral. Management didn’t know it had a problem till the tapes broke; then they said, ‘Let’s fix it.’ ” (*Gibbons Interview*).

## **B. Task Force Influence**

In its relationship with Texaco over its five-year commission, the Task Force exerted influence over Texaco's decision making. (See "Mission" below at Section F). While it possessed the ultimate power to force Texaco to do its will under the Settlement Agreement, the Task Force never used such power. There was simply no need to do so, according to Task Force interviewees. Texaco "had a unity of purpose with the Task Force" according to Judge Briant, and "had a strong incentive to avoid a formal dispute in court," according to Williamson. (*Briant and Williamson Interviews, respectively.*) But the Task Force had other significant sources of influence including the power of skill and expertise and a strong working relationship with Texaco<sup>11</sup> which allowed the Task Force to exercise its influence effectively.

### **i. Competence & Expertise**

The Task Force members possessed impressive professional credentials. Each had significant experience in government, academia, law, business, diversity or affirmative action arenas. Each had been exposed to employment discrimination issues and remedial programs for many years and brought expertise and seasoned judgment to the task. The Task Force members were announced by Texaco on June 23, 1997 (*Texaco Press Release, June 27, 1997*). The appointees included: 1) Deval L. Patrick, Chair; 2) Hon. John J. Gibbons; 3) Dr. Jeffalyn Johnson; 4) Allen J. Krowe; 5) Professor Mari J. Matsuda; 6) Luis G. Nogales; and 7) Thomas S. Williamson, Jr. (who would eventually succeed Patrick as Chair). Dr. James M. Rosser was appointed to the Task Force in 1999, after Deval Patrick took the position of General Counsel at Texaco and left the Task Force. The attached biographical profiles provide a sense of the depth and breadth of the members' credentials. Texaco had sought respected candidates possessing business expertise to assure workable solutions. (*Christiansen Interview.*) Plaintiffs thought the Task Force would assure program change management better than the

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<sup>11</sup> See Roger Fisher, *Negotiating Power: Getting and Using Influence*, 27 *American Behavioral Scientist* 149-158 (November/December 1983) (identifying six sources of negotiating power other than traditional notions of leverage or force).

lawyers who engaged in negotiating. (*Berger Interview*). Similarly, the Court “thought from the beginning it would be successful” and was so “pleasantly surprised by the qualifications of the people” that there was no need to anticipate what would happen in case of failure. (*Brieant Interview*).

**ii. Relationship**

The stronger a relationship, the more ability one has to influence the other side. Such relationships demand credibility and unambiguous communication to ensure the clear communication of intentions and needs. When difficult issues arise, a good relationship supports the respectful exchange of differing views so essential to viable outcomes. A solid relationship is particularly critical in long-term interactions where parties must continually engage in the give-and-take of negotiation. Williamson described Task Force interaction with Texaco as “forthright dialogue.” He assessed Texaco’s presumptive position as follows: “If the Task Force wants it, let’s figure out a way to do it ... or, let’s try to anticipate what the Task Force wants, ... do it more aggressively or more creatively, ... and that will minimize the extent to which we have conflict.” (*Williamson Interview*). Allen Krowe concurred. “They (Texaco) stated what they believed to be the case ... as crisply, intellectually and honestly as they could, and we debated these things with them. And in the final analysis we came to a consensus view.” (*Krowe Interview*.) These descriptions of good-faith, forthright dialogue and consensus building undoubtedly fostered a positive working relationship that alleviated the need for the Task Force to compel behavior or impose mandates.

**iii. Continual Presence and Incentives**

Another source of influence was the continual focus on the issues created by the Task Force’s very existence. Typically, diversity is not accorded a high corporate priority because mid-level and senior managers simply have what they perceive to be superseding priorities. (*Nogales Interview*). Since Texaco had to provide information to the Task Force every six months, that fact kept the Company busy and focused on diversity. (*Christiansen Interview*). Deval Patrick agreed stating, “Diversity was number five on the public list and was number ten on the practice list and turned into number

three in word and deed due to the Task Force being present. Being able to take Human Resources into receivership, without exercising it, is a wonderful way to focus the attention of a Company.” (*Patrick Interview*).

### **C. Court Mechanisms Fostering Neutrality and Independence**

The Task Force would consist of seven individuals: three Texaco nominees, three plaintiff nominees, and a Chair agreed to by both sides. Appointees would be subject to the Court’s approval. (*Settlement Agreement*, ¶14).

Beyond the Settlement Agreement, the Court took a number of steps to assure the independence and impartiality of the Task Force. First, Judge Briant insisted that appointments be made by the Court and not just by the parties as originally contemplated. He recalled that “we had a formal investiture of these people ... I gave them instructions on how they were to proceed and it worked very well.” (*Briant Interview*). By making the members agents of the Court, Judge Briant underscored their neutrality and assured their allegiance to the Court rather than to the respective nominating parties.

The members also cited the Court’s perspicacious tool of proscribing disclosure of appointee sponsorship. While each member knew who nominated him or her, individuals remained unaware of who nominated their fellow members. (*Mehri and Gibbons Interviews*). The impact of this device was to promote a cohesive, unified group by minimizing allegiances, or perceptions of allegiances. Debates proceeded on the merits without filtering by listeners that the views they heard were shaped by any particular allegiance to any party to the lawsuit.<sup>12</sup> While everyone knew that Texaco had nominated its former Vice Chair, Allen J. Krowe, Task Force Member Luis Nogales described his colleague as a person who “didn’t mind breaking some furniture to get things done” while he had been at Texaco. (*Nogales Interview*.) Krowe was also known to have a “zero tolerance ...for racism.” *Id.*

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<sup>12</sup> Hammond , Keeney & Raiffa, *The Hidden Traps in Decision-Making*, Harvard Business Review 47, (September-October 1998) (describing the unconscious traps used in decision making including the “confirming evidence trap” which leads one to seek out information that leads one to support an existing viewpoint and avoid information that contradicts it.) In the Task Force, known allegiances could cause greater dismissal of other members’ views, while not knowing the nominating party would mitigate bias that might otherwise be attached to those views by listeners and thus allow for more unfettered discussion of views.

Finally, Judge Briant would periodically attend Task Force meetings when the group assembled at Texaco's White Plains, NY corporate headquarters to ensure that the Task Force was on the right track. (*Briant Interview*).

#### **D. Adequate Task Force Funding**

The Settlement Agreement funded the Task Force with \$35 million; this amount was provided separately and was not included in the \$115 million Settlement Fund. (*Report of Special Master Charles G. Moerdler, July 22, 1997, note 6.*) The figure satisfied the plaintiffs' concern regarding the provision of adequate funding. While this sum may initially seem excessive, it was not inappropriate. The figure was calculated to cover the total cost of the Task Force's expenses over the course of its five-year charter, including the cost of compensating the Task Force members for their time. Members rendered service well below their prevailing professional rates to assist in what they deemed to be a worthwhile endeavor. Staff expenses, the retention and compensation of experts and consultants, and travel expenses were all paid from the same pool of fixed financial resources. The \$35 million allocation also included Texaco's projected cost of implementing the programmatic changes, including all staff and consultant time and expenses in efforts such as formulating a comprehensive performance evaluation process. All of the relevant constituencies believe that \$35 million was more than adequate to fund both the Task Force's and Texaco's efforts to effectuate systemic corporate change.

#### **E. Operations of the Task Force**

Although the operations of the Task Force varied slightly, it followed a set model which included: consulting with the Company in a design phase to assess and review programs; conducting focus groups in the field to assess implementation; and issuing annual public reports on progress.

##### **i. Assessing Information and Design**

The Task Force held monthly one- and two-day meetings to review Human Resource policies, review requested data, digest information, interview employees involved with change development, and meet senior executives, including CEO Peter

Bijur. (*Second Annual Report* at 1). According to Task Force Member Luis Nogales, by the time the Task Force organized, Texaco had invested considerable time identifying areas to be addressed in implementing the Settlement Agreement. Consequently, Texaco and the Task Force “jointly agreed on areas to work on and the Task Force would suggest modifications and so forth.” (*Nogales Interview*). Apparently, the Task Force was quite active in reviewing Texaco’s initiatives. According to Chair Patrick, it took a year-and-a-half of design work before significant implementation got underway. During that design effort, the Task Force was heavily data-driven and continually sought items such as benchmarking studies, representation data, and historical information regarding the Company’s past practices. (*Patrick Interview*). Patrick maintained that their role transcended mere review of Texaco’s ideas. Instead, the Task Force actively engaged in assessing Company proposals. For instance, the Task Force did not simply say to Texaco, “You’re supposed to come up with an appraisal program: what appraisal program are you considering?” Rather, the Task Force sought specifics by asking, “What are you appraising people for? How are they informed of expectations? How do your methods compare to competitors’ best practices in your own and other industries? Whom did you consult? What do the business folks say about ease of implementation?” (*Patrick Interview*). Dr. James Rosser also cited the Task Force’s approach of looking at choices being made, questioning Texaco and seeking demographic characteristics as opposed to simply reviewing Company suggestions. (*Rosser Interview*).

**ii. Conducting Focus Groups**

After the design phase, rather than merely review and refine programs proposed by Texaco, the Task Force undertook a series of on-site visits to Texaco locations to assess and encourage implementation at installations such as Houston, Texas; Midland, Texas; Bakersfield, California; and New Orleans, Louisiana. (*Second Annual Report* at 1-2). During these visits, Task Force members would interview various groups of employees about their perspectives on revised Human Resources practices and discuss implementation needs with local management. (*Fourth Annual Report* at 1). While the Company initially selected members of these focus groups to represent a cross section of local employees, the Task Force requested affinity groups divided by race, gender and

ethnicity in addition to functional workload groupings. They asked that attendees not be designated by the Company. Texaco complied, and Task Force members believed that they received more forthright input. Williamson observed that employees were less inhibited in voicing their opinions in groups based on race and gender than in the cross-section groups of line employees, first-line managers, and mid-level managers. (*Williamson Interview*). Post-meeting dinner gatherings with employees also allowed for very informal information gathering and forthright conversations. (*Id.*).

These focus groups also served an educational function. Hon. John J. Gibbons recalled that employees were not all of one mind. Some thought African-Americans and females were being unduly favored, while some African-Americans believed they had no chance to get ahead. (*Gibbons Interview*). Other employees were shocked to learn that Texaco was engaging in allegedly discriminatory conduct. Task Force members received and deflected local criticism of the new initiatives and helped educate employees about the new policies. Presentations highlighted statistics which showed increases in minority representation. Furthermore, session leaders stressed that the new position qualification criteria would enhance promotion for all employees and not just African-Americans. Williamson noted that during the Chevron/Texaco merger period, offers of generous severance packages in 2001 induced many employees to embrace early retirement. Furthermore, many of those affected individuals tended to be Caucasian males. Those packages, in addition to normal retirements by Caucasian males, and Company-wide diversity efforts, contributed to increased minority and female workforce representation during the Task Force era. At the same time, those factors may have contributed to distorted rank and file employee perceptions of excessive minority hiring and promotion. Luis Nogales thought the focus groups helped local managers to appreciate the corporate imperative by reinforcing the need to effectively implement change and by offering them quite specific advice on how to do it locally. Participation in the focus group meetings also empowered those who believed in the validity of the broader corporate effort in that they received support. (*Nogales Interview*).

### **iii. Issuing Annual Reports**

At the end of each year, the Task Force submitted a detailed report to the Court and counsel which reviewed and evaluated Texaco's employment policies and practices. An interim report was also issued for the first six months of the Task Force's existence.

Each Annual Report included: an introduction; brief explanation of the data assembly methodology; an overview and sub-parts specific to each of the eleven programmatic elements described in the Settlement Agreement. Each report also contained statistical tables comparing progress in minority workforce representation. In general, the tenor of the reports is congratulatory and complementary to Texaco, a fact which may convey an erroneous impression to the casual reader. However gently framed, the reports do cite areas needing improvement and demonstrate skepticism regarding the effectiveness of certain existing programs. For example, the report issued in December 1997, credited Texaco's increased minority hiring but provided formative critique of the following areas:

- \*Employees failure to understand the link between diversity and business productivity and profits (at 15);
- \*Skepticism and backlash on diversity (at 15);
- \*Lack of credibility on job posting (at 19);
- \*Absence of diversity at entry level and upper management (at 22);
- \*Presence of self-limiting attitudes on recruitment (at 23);
- \*Need to distinguish between formal and informal mentoring since the informal networks encouraged more promotions (at 26);
- \*Need for articulation of business objectives to support the proposed Performance Management Program (at 30);
- \*Need to substitute objective criteria for the vague performance criteria that cloaked bias (at 31); and
- \*Need to hold supervisors and managers accountable for fair administration of performance evaluations by linking a portion of their bonuses to successful performance so that evaluations become fair and objectively valid (at 31).

Throughout these annual reports, the Task Force repeatedly cites particular areas of deficiency that they would monitor sending clear signals about sought-after improvements. Significantly, the Task Force called attention to the more subtle areas of discrimination that arise from hidden bias including attitudes, informal mentoring and ambiguous performance evaluative criteria.

Cyrus Mehri found the reports to be concrete, transparent and candid. He thought they stressed what went well and what did not. Mehri also saw the reports as providing meaningful incentive to Texaco to move forward and reach higher ground. According to Joseph Moan, in-house counsel at Texaco during the Task Force operation, success was dependent upon a “collaborative effort between in-house counsel, Human Resources and the Task Force. The Task Force provided advice, as well as reported the Company’s progress to the Court.” He found that “the external visibility motivated the Company.” (*Moan Interview*).

## **F. Task Force Perceived Mission: Negotiating Corporate Change**

The Task Force began its unusual operations in mid-1997 with a broad vision of fairness and equality as espoused by Texaco. The Task Force had to chart a path never trod before amidst the significant shifting of many employees to new business alliances. Additional challenges included cyclical oil price decreases starting in 1998; the 2001 merger with Chevron announced in late 2000; and a reduction in force of U. S. salaried employees. In 1992, Texaco employed 13,260 U. S. salaried individuals. In 1996, that figure was reduced to 9,165, and yet again to 8,837 at the end of 1997. (*Krowe Interview*). By the end of 2000, Texaco had 6,535 U. S. salaried employees as a result of adverse market conditions, successful implementation of the early retirement initiative and significant asset sales. (*Krowe Interview* and June 2001 Task Force Report). The Chevron/Texaco merger occurred in October 2001. With this challenging, evolving backdrop, the Task Force had to maintain focus on increasing diversity and effectuating broad policy changes.

### **i. Adopting Collaboration**

Plaintiffs' counsel Daniel Berger distinguished this case from a less complex discrimination case where blatantly prohibited criteria are challenged. He found the Texaco litigation to be more amorphous because of the need to change promotion, job, training, and advancement opportunities that are imbedded in a whole system that needs correction. (*Berger Interview*). Consequently, the Task Force faced the formidable challenge of assuring adoption of new policies at multiple points in the hiring, promotion, training, selection and evaluation path in an integrated manner. A second, more daunting task, was to focus Texaco management on ways to change the attitudes of individuals who live in separate communities and choose to socialize with individuals who do not necessarily share Texaco's commitment to diversity. (*Nogales Interview*). Such attitudes can insidiously and indirectly derail the beneficial aspects of any policy changes. Judge Brieant affirmed the difficulty of changing attitudes in stating that, in general, human resources offices are "dead set against favoritism and discrimination" but "when you get out in the field, it becomes a question of networking: buddies look out for each other ... it's on the lower levels where the problem exists." (*Brieant Interview*).

The Task Force perceived that they had to effectuate true systemic change and not just policy change. As Patrick put it, "We appreciated how complex it is to move a battleship like a big corporation, and it would take time and ... concentration and emphasis and sustained attention, and it wasn't going to happen overnight, and we would all have to continue to adjust as we went along." (*Patrick Interview*). He also expressed appreciation for the Texaco's desire to manage its own affairs and the wisdom of such approach. "The Company and the Task Force were concerned that the Task Force not be too involved initially in trying to run Human Resources for the Company. We also wanted the Company to be responsible for the solution. [If] Company officials weren't invested in the success of an idea, then the chances of it surviving after the Task Force left were diminished." (*Patrick Interview*). Joseph Moan reinforced the Company's caution and stated it "went into the relationship in good faith but cautiously." (*Moan Interview*). Dr. Rosser also saw the Task Force as an opportunity to change Company culture to take advantage of the skills and talents of the entire workforce and not a mere exercise in addressing specific acts. While the Task Force worked to convince the Company that theirs was not a group of "flame throwers" and appreciated the

complexities of changing a complex organization, it did insist that Texaco make realistic and expeditious progress. Patrick added that it was important to confirm that the change design was sound before implementation; to assure “the right words and the right practices.” (*Patrick Interview*). In his view, Texaco’s pre-settlement anti-discriminatory policies flowed from “the right words but the wrong practices.” (*Id.*).

One Task Force member after another expressed determination to accord Texaco wide latitude in the creation of programmatic change consistent with the business operation and objectives of the Company. Plaintiff counsel, Cyrus Mehri, commented on the method used by the Chairs of the Task Force, Deval Patrick and Tom Williamson, who informed him about the approach they would take. “To the extent possible, they tried to get the Company to have ownership in the new policies. In other words, they did not dictate as much as they encouraged, commented, critiqued, and raised the bar higher. And so by doing it in a buy-in kind of style, the Company owns it and it makes the changes a lot more lasting.” (*Mehri Interview*). He described the approach as “very artful.” (*Id.*).

This orientation reflects a fundamental tenet of corporate cultural change, sometimes referred to as “systems design.” Parties to be affected by new policies should be involved in generating the changes and having input.<sup>13</sup> Such involvement provides incentives to embrace proposed changes. While Mehri thought the Task Force must not be limited in making recommendations, he also believed that the Task Force had to be interactive, flexible and tailor the programs to the Company. He cited an example of the difficulty of articulating performance evaluation criteria that must be objective but not produce a negative impact. By trying programs and reexamining them, viable programs reflecting Texaco’s unique corporate needs would emerge.

This view of the challenges of changing corporate culture, of the limitations facing Texaco, and the necessity of continual adjustments can be seen as the Task Force’s implicit acknowledgement that they would be engaged in a long-term process of essentially negotiating with Texaco over enduring corporate systems redesign. They would seek compliance with the Settlement Agreement consistent with the parties’

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<sup>13</sup> See Costantino and Sickles Merchant, *Designing Conflict Management Systems: A Guide to Creating Healthy and Productive Organizations* (Jossey-Bass Publishers, 1996).

underlying interests. They had a number of choices in this negotiation. They could be directive and issue mandates. This would be akin to positional bargaining, where one makes demands without exploring interests or value-creating options and uses one's leverage to get the demands met. And the Task Force undeniably had significant leverage. Alternatively, the Task Force could employ a collaborative approach and acknowledge the legitimacy of Texaco's concerns while formulating options that simultaneously advance the Task Force's own legitimate interests. The Task Force's decision to adopt Texaco's initiation of change is a classic example of recognizing the other party's concerns so as to advance one's own interests. Given possible resentment regarding the leverage that the Task Force had and the foot dragging that can result when one feels that they have been forced to comply, the choice of a collaborative negotiation style was arguably the most effective route when instituting organizational change of this magnitude. Judge Briant speculated that the collaborative tenor of the interaction reflected the "give and take of negotiations," where one advances ideas to provoke movement ... intending perhaps to go forward three feet and come back two and you've got an agreement to get one foot of progress." (*Briant Interview*). In observing some of their meetings, the Court concluded that the Task Force operated by consensus (*Briant Interview*) reflecting their chosen method of adopting a negotiating stance with Texaco.

**ii. Criticism of Collaborative Approach**

The Task Force has been criticized for its decision to follow Texaco's determination to address diversity broadly, rather than focusing more singularly on African-American advancement given the backdrop of the lawsuit whose class was "salaried African Americans."<sup>14</sup>

Texaco had publicly adopted a broader agenda on fairness and equality intended to benefit more than just the African-American plaintiff class. The Company made this intention explicit in the Settlement Agreement and in various press releases. Texaco believed the more encompassing vision would ultimately benefit all of their employees. Other parties shared this sentiment. As plaintiffs counsel Daniel Berger stated:

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<sup>14</sup> Selmi, *The Price of Discrimination*, 81 Tex. L. Rev. 1249 (April 2003).

It's sort of like a rising tide lifts all boats. If you are going to redo your performance management and evaluative processes, okay, trust me, if it sucks for African-Americans, it sucks for Hispanics and women too. It just does. If there's a glass ceiling, in most circumstances, it is going to be a glass ceiling for all historically disadvantaged groups. If you fix it, it is going to help them all—maybe not as directly, but it will. (*Berger Interview*).

Chair Williamson saw the core responsibility of the Task Force as “monitoring the program for African-American salaried employees” but reports that the Task Force “agreed with the Company to expand the scope of its efforts to look at how the initiatives were working across the board.” (*Williamson Interview*). He added that his oversight group focused on the mandates of the Settlement Agreement and paid less attention to other issues such as minority and female-owned business opportunities, that were outside the Agreement. Nevertheless, the Task Force approved the expanded initiatives. (*Williamson Interview*).

The Task Force itself grappled with the scope of diversity emphasis and adopted Texaco's broader vision for all minority groups and not just African-Americans. The atmosphere at the Company propelled this approach. Allen Krowe recalled: “The most challenging issue for the Task Force and for all employees had to do with this concept of equality and fairness for everyone and not just favoritism to African-Americans.” (*Krowe Interview*). He indicated that many employees thought the playing field was already tilted in favor of African-Americans and women, such that no further remedial measures were necessary. When meeting in the field, Krowe and his colleagues repeatedly used statistics to demonstrate that all sectors in the ranks were being fairly treated to correct “perceptions that were coloring judgment” about the Human Resource changes. (*Id.*). Not only did the six-month Report recite Texaco's broad diversity goal, it also focused on overall progress and specified the particular figures for African-American hires and promotions. One can view this approach as a policy choice of the Task Force based on their hope to satisfy the non-competing similarities of the parties: Texaco wanted broader diversity and the plaintiffs wanted advancement for African-Americans: the pursuit a broad policy satisfied both.

Could a different Task Force orientation, focused strictly on African-American advancement, have proven to be more effective for that racial group in light of potential

backlash at that Company and the downsizing atmosphere in those years? Would such focus have been practical? Given the prevailing conditions, the choice to focus on broad diversity may have been the best available option. Joseph Moan reached a similar conclusion based on concerns percolating in the employee ranks: “[T]he most difficult area was representation of minorities and women in the workforce. The Task Force and the Company were sensitive to not appearing to have a system that generated reverse discrimination. The group did a good job of avoiding white male backlash.” (*Moan Interview*).

### **iii. Statistics**

In CEO Bijur’s December 1996 press release, he projected estimated minority employment would increase from 23% to 29% with African-American employees increasing from 9% to 13% by 2000. Women, he predicted, would constitute 35% of the workforce. These numbers never materialized. Total minority employment was 23% by the end of 2000, with African-American employment at 10% and females at 27%.

Such numbers cannot be viewed in isolation; rather, they but must be evaluated against the backdrop of a major reduction in total U.S. salaried employees between 1997 and the end of 2000. While the total U. S.salaried workforce numbered 8,837 at the end of 1997, by the end 2000, Texaco’s total U .S. salaried workforce numbered 6535. (*Krowe Interview*). The plaintiffs were among the salaried class.

The significant decline in employees reflected a broader decline in the oil industry in the 1990s. Between 1991 and 1994 alone, the industry lost approximately 225,000 workers. (*Krowe Interview*). Texaco’s decrease was due to a combination of alliances and asset sales that took employees with them, reductions in force and oil price fluctuations. (*Id.*). The downstream refining and marketing alliances particularly impacted minority and women employees because the downstream operations were richer in minority and women employees than the remainder of the U. S. operations. (*Krowe Interview*). Industry-specific business conditions during 1998-2002 were also adversely affected by the unexpected, dramatic drop in the price of crude oil during this period. (*Second Annual Report* at 1). Task Force Chair Tom Williamson recalled, “There were a couple of years when things weren’t going well - the price of oil, if you can believe, was

down to \$13/barrel.” (*Williamson Interview*). Despite the decline in the workforce and adverse business conditions, the overall percentage of minorities at Texaco increased from 20.3% to 21.1% in 1998, and that figure increased from 21.1% to 22.4% in 1999. (*Second Annual Report* at 4; *Third Annual Report* at 4). In addition, while the percentage of women decreased slightly from 26.7% to 26.0% in 1998, that figure was restored to 26.6% in 1999. (*Third Annual Report* at 4). By the end of 2000, women represented 27.2% of the Texaco workforce, and African-Americans represented 10.1% of the population. (*Fourth Annual Report* at Exhibit 3).

While perceptions might differ, these figures can be considered a success, particularly in light of the impact of various severance packages offered to employees as a result of the Change of Control Provisions of the Texaco Separation Pay Plan. When the proposed merger with Chevron was announced in 2000, many talented African-American employees and others opted to accept the generous severance package offered by ChevronTexaco rather than transfer to new locations. Allen Krowe recalls one incident where a group of African-American employees was upset by the departure of some African-American supervisors. Management interviewed the supervisors and encouraged them to remain with the Company. The attempt was unsuccessful because, in the supervisors’ estimation, the proposed severance package was simply too good to reject. (*Krowe Interview*).

While business conditions, attrition of employees and voluntary retirement served to frustrate management’s efforts to reach the original diversity goals, hiring and promotion statistics reveal notable progress. In 1999, the Task Force reported that Texaco’s hiring goals had been reduced due to the volatile energy market. (*Second Annual Report*, August 1999, p. 68). Nonetheless, of 161 hires by mid-1999, 23% were African-Americans and 49% were women. By the Fourth Annual Report dated July 2001, reporting on the year 2000 hiring figures, African-Americans constituted 12.4% of 404 new hires and women constituted 40.6% of the new hires during 2000. *Id.* at 84 and Exhibit 1. Of 74 new hires in the first six months of 2001, women constituted 47% and African-Americans constituted 18.9%. *Id.*, at 85. These increases in hiring indicate a clear effort to increase minority representation and demonstrate success in the efforts to enhance the character and diversity of the job talent pool. Promotions by mid-1999

included 56.5% of women and 13% of African Americans. (*Second Annual Report*, Exhibit 8.) In 2000, women received 39.4% of 1159 promotions and African-Americans received 10.7%, while executive rank percentages remained somewhat static. (*Fourth Annual Report*, July 2001, at 84 and Exhibit 1). Clearly, hiring was an easier path to increase desired percentages than promotion or executive rank changes.

Upon reflection, the former Task Force members share a favorable view of their impact on efforts to increase and promote diversity at Texaco. Chair Williamson opined,

I think the Task Force did succeed in ensuring that the Company made a good faith, very substantial effort to carry out the terms of the Settlement Agreement and to implement the broader or the additional initiatives that the Company decided to pursue not only for the African-American class members but for other minorities and women at the Company. The reach of change at Texaco was felt throughout the Company, for institutional changes expanded opportunities for people to be able to advance because of their competence and performance, rather than their identity as a member of a racial or ethnic group. Job posting eliminated mystery about new opportunities, competency-based job descriptions and use of panels with minority representation for promotion decisions reduced individual discretion that might be tainted by bias.

## **G. Challenges Confronted by the Task Force**

In addition to the major challenges of creating equality and fairness for all employees within a framework of a declining workforce, particularly difficult issues confronted the Task Force.

### **i. Merger of Chevron and Texaco**

The Chevron/Texaco merger announced in 2000 and effectuated in October 2001 presented a challenge to the unfinished work of the Task Force. The Court informed the members that Chevron was not bound by the Settlement Agreement. (*Brieant Interview*). Hon. John J. Gibbons noted that when the Chevron merger occurred, the Task Force members were concerned about preserving the progress that had been made in promoting diversity at Texaco. (*Gibbons Interview*). Allen J. Krowe and Luis Nogales described Chevron's attitude as "cautious" at first about seeing if the Texaco programs were really

needed at the new Company. (*Krowe and Nogales Interviews*). But caution turned to support, and the Task Force programs were ultimately embraced by Chevron. Dr. James M. Rosser and Luis Nogales recalled an incident where Chevron wanted to maintain its definition of diversity which was so inclusive as to be meaningless in their view. The Task Force convinced Chevron that the social context of discrimination demanded a refined definition closer to the one espoused by Texaco. Chevron agreed. Rosser thought Chevron's leadership had a world-class view of commitment to employees and that the Task Force ultimately conferred benefit to the merged entity. (*Rosser Interview*). Gibbons also found Chevron's policies to be similar to Texaco's initiatives. He observed that Chevron's Chairman and Chief Executive Officer, Dave O'Reilly, was committed to ensuring diversity. (*Gibbons Interview*). In the final analysis, the Task Force's efforts were directed at ensuring that post-merger reductions in force complied with Task Force standards. (*Rosser Interview*).

**ii. Deval Patrick's Ascent to Texaco General Counsel**

Potential difficulties were averted when Deval Patrick was asked to take the position of Texaco General Counsel in 1999. Tom Williamson believes that his rapport with Patrick helped Williamson's transition to Chair. The pair shared significant professional experience which included past service in federal government posts and tenure as attorneys in large law firms. (*Williamson Interview*). From plaintiffs' perspective, Daniel Berger thought Patrick's ascent to the Texaco General Counsel Office was a positive development because Patrick would bring Task Force concerns even more directly to the Company. (*Berger Interview*). Similarly, Luis Nogales thought Patrick's selection was a victory for the Task Force because systemic diversity change cannot be realized unless the practices are implemented at the very top of the organization. (*Nogales Interview*). Nogales recalled that the Task Force believed that Texaco's diversity effort would not be credible unless CEO Bijur made a minority appointment to his direct staff: Bijur could not ask managers to do what he would not do himself. (*Id.*). Patrick's appointment brought that effort to fruition, and in Nogales' view, spurred minority appointments at levels previously not seen within Texaco. (*Id.*).

### **iii. Performance Management Program**

Plaintiff counsel Cyrus Mehri felt that the performance evaluation policy was the most challenging work facing the Task Force. (*Mehri Interview*). Determining how to link managers' bonuses to equal opportunity performance was difficult because of the complexities inherent in developing a sound, fair, objective evaluation system. Andrea Christiansen also highlighted the difficulties of eradicating subjective judgments and personal beliefs from performance evaluation criterion. (*Christiansen Interview*). In fact, resolution of this issue between Texaco and the Task Force took some time.

By June 1999, the Task Force had acknowledged the difficulty of implementing the new performance management processes in stating it "requires four to five assessment cycles to transform the organizational culture." (*Second Annual Report*, at 44). Employee fear, belief that the process was being used punitively in selecting those to terminate in restructuring, the need to communicate more openly, and supervisors' varying proficiency in establishing employee objectives and standards made the revision difficult. *Id.* at 44. As it developed, Texaco decided upon a number of initiatives to improve the process including enhanced supervisor training, supplying human resources support to business units, assessing employees' and supervisors' concerns, and linking employee competency plans to performance management learning objectives. The issue challenged the Task Force and Company in the cultural change it demanded in both attitudes and practices.

### **iv. Diversity Measurement and Bonuses**

The First Annual Report evinced Texaco's determination to link management compensation to improved diversity performance for women and minority hiring. (*First Annual Report*, June 1998 at 21-22.). The Company sought to measure success, and thus bonuses, by benchmarking progress against industry peers, by assessing a manager's "respect for individuals" score given to the manager by employees, and by measuring safety performance. The "respect for individuals" scoring was criticized by the Task Force. They found this measure a less direct means of measuring diversity efforts than measuring actual employment demographic changes at Texaco, *i.e.*, changes in workforce numbers. But the Task Force indicated its willingness to consider this index in light of

progress being made relative to other oil companies. By the Second Annual Report, however, Texaco had modified its bonus measures to include a “more demanding objective measure” of women and minority diversity based on Texaco-specific targets, rather than just comparative industry standing. (*Second Annual Report*, June 1999, at 25-28). While Texaco also retained the “respect for individuals” scoring criterion, it can be concluded that the Task Force was instrumental in encouraging use of a more objective measure of diversity.

**v. Supervisor Diversity Training**

An issue on which the Task Force never quite succeeded was its request to have supervisory ranks subject to diversity training. As of the final Annual Report, the Task Force repeated its past concern that incumbent supervisors be required to undergo the same diversity training as their newly-promoted peers. (*Fifth Annual Report*, June 2001 at 29). Supervisors had dilemmas about appropriate behavior that they had communicated to the Task Force, and all supervisors needed to understand how to combat bias according to the Task Force. But Texaco resisted this recommended change. Allen Krowe speculated that the Company refused since it had put 80% of its existing supervisors through diversity training the year before the Task Force was even constituted. (*Krowe Interview*). Ultimately, the Task Force did not want to go to war on the issue. Thus, the Task Force did not achieve this goal.

**vi. Succession Planning**

Nogales cited a major disagreement between Texaco and the Task Force on the issue of succession management. The Settlement Agreement concerned “exempt employees” up to a certain level, but the Task Force wanted purview all the way up to the CEO position. (*Nogales Interview*). The pervasiveness of diversity initiatives was important to the Task Force. When the Task Force directly confronted the issue of succession planning, Texaco acquiesced and extended the scope of planning throughout all levels of the corporation. (*Nogales Interview*).

**vii. Employee Attitudes**

A pervasive problem throughout the process was employees' negative attitudes toward the Task Force. Dr. James M. Rosser recalls hostility encountered by Task Force members during on-site visits. (*Rosser Interview*). Employees viewed the Task Force members as Company partisan representatives who were perceived to be solely concerned with African-American advancement. (*Id.*). Eventually, employees appreciated the Task Force's role in creating a rewarding work environment for all. (*Id.*). The Task Force expressed concern that employees misunderstood diversity learning as "manners" rather than the linkage of historical societal inequality to present inequality, stereotyping, and inter-group conflict. The Task Force noted early employee skepticism and failure to truly appreciate the link between diversity, business interests and corporate excellence. (*Annual Report*, December 1997 at 15). The oversight group recommended use of concrete demonstrations to show how diversity advanced corporate goals. They further advocated for the use of follow-up diversity learning sessions to measure employee behavior and attitudinal changes. As of 1998, the Task Force emphasized the need for more demonstration that employees "get it," especially at the lower levels of management. (*First Annual Report*, June 1998 at 17).

Such attitudes are not surprising. According to Moan, initially the Company believed the lawsuit didn't have much merit but they entered into the relationship in good faith but cautiously. Human Resources seemed more supportive at first. But eventually, he thought the rank and file employees of Texaco respected the work of the Task Force and thought that the Company and the Task Force did the right thing. (*Moan Interview*).

Nogales commented on very concrete Task Force efforts to address negative attitudes. They recommended a definition of harassment that included an episode when a co-employee tells someone that he or she got his or her job solely due to being a minority or Hispanic or woman. (*Nogales Interview*). That change ended such "branding" of minorities at Texaco which became unacceptable and fostered Texaco's zero tolerance for discrimination, harassment or retaliation. (*First Annual Report*, June 1998 at 12). Nogales also cited Task Force efforts which encouraged Texaco to bring individuals together for service projects and community efforts designed to break down racial barriers. Nogales commented that while it is often easy to legislate change, efforts to

support joint experiences among employees make change happen. The Task Force also voiced support for employee affinity groups and recognition of ethnic holidays which helped afford recognition to the various traditions of each group. (*Nogales Interview*).

## **H. Identifiable Best Practices**

Task Force members provided a variety of opinions regarding demonstrated best practices instituted at the Company. The Annual Reports provide greater detail on each factor. However, ultimate progress on these policies and practices could not be assessed due to the merger of Chevron and Texaco. In descending order of frequency cited, the best practices included:

- Elevating the efforts to change Texaco's culture to a top priority at the highest reaches of the Company. The will of Peter Bijur, his appointment of Deval Patrick as a direct report on his staff, the implementation of massive diversity training for employees to sensitize them to the real issues affecting their minority counterparts and to stress the connection between diversity and corporate excellence, the will to buck opposition and employee backlash and to revisit policies to determine how they fostered backlash, and the interest and cooperation of the Company throughout the implementation efforts showed that the executives walked the walk rather than just talked the talk. While bad publicity may have fostered the will in this case, the top level commitment that quickly manifested itself to address and adopt change was essential to success.
- Linking of manager's bonuses to actual implementation of greater diversity and the monitoring of that effort with standards. Managers hold the key to much improvement. Such policy links diversity efforts palpably to manager's success in the Company.
- Having the Company take the lead or ownership of the change initiatives allowed a buy-in to change by executives, managers and employees that would endure and continue after the Task Force disbanded. Such buy-in approach fostered by cooperation of the Task Force essentially recognizes

that the process of change is not an end-game but is rather evolutionary and needs to continue in the future.

- Employing a global concept of equality and fairness allowed all employees to begin to see cultural changes to an atmosphere where each employee would be valued and rewarded for his or her efforts.
- Utilizing a series of efforts to increase the flow of minority candidates into the Company such as: expanding the lists of colleges from which the Company recruited to include traditional minority schools, increasing outreach to minority professional organizations, using head-hunters who were able to produce a slate of candidates with diversity representation, establishing hiring committees with minority representatives on them to consider promotion and hiring rather than investing such decisions solely to an individual. In addition, the resort outside the Company regarding succession planning helped increase minority representation at the more senior levels.

Beyond these key practices, other best practices were stressed by the members.

They ranged across a broad spectrum including:

- Having effective Chairs leading the Task Force who were good process managers and who fostered respectful airing of views and listening among the members to create team work. Having a group of talented experienced people who were independent, jointly selected, were willing to listen, who brought informed skepticism to information, who tested assumptions, and who were pragmatic complemented the Chairs.
- Conducting on-site meetings by Task Force members with randomly selected groups of employees at various Company sites to assess perceptions, determine actual implementation, assess difficulties and inform local managers of needed steps and advice on what to do. These focus groups, followed by report-back sessions with multiple levels of Company management, were a powerful medium in which to gauge progress.

- Having meetings with Company executives and managers to learn the business, its capabilities, the sources of profit, its marketing, and what needed to be done. This pragmatic business-oriented approach allowed for feasibility in bringing about changes.
- Creating job-based competencies by objectifying the types of behavior, personality and experience that is required for a job and combining these objective criteria with job posting fostered a better performance management program which was cited by a number of interviewees as one of the most challenging policy issues at any Company.
- Developing a mentoring program at new levels in the Company in terms of expanding the classes of employees and the forms of mentoring. One member speculated that Chevron Texaco is now the likely corporate leader in this realm.
- Establishing diversity committees at each Company site in order to facilitate talking about these issues that had previously been perceived as taboo at the Company.
- Creating alternative dispute resolution mechanisms to minimize fear of retaliation when voicing employment discrimination complaints, such as the Ombuds Program. Incorporation of an Ombuds was determined to be an effective monitoring device, as well. The use of arbitration that served only to bind the Company assisted in refining potential claims while affording employees an appellate forum for resolving disputes.

## **I. Recommendations**

The participants involved in these interviews found the Task Force model to be an extremely effective case management tool. Lawyers are ill-suited to change systems or to monitor the change efforts contained in settlement agreements. However, the Task Force presence and monitoring efforts can assist and enhance company commitments to programmatic obligations over a sustained period of time.

A few recommendations for changing the Task Force model were offered in light of the costs of the Texaco process. It was suggested that the model of seven members

could be scaled back to three or five people in smaller settings in order to conserve expenditures. The use of an uneven number of members, however, is important to allow for tie-breaking votes among them. Possibly three independent members of the Board of Directors in a smaller Company might be able to take on the responsibilities. The addition of an Industrial Psychologist to the ranks might alleviate the need to hire such consultant since these skills prove very useful. In fact, based on the success of the Texaco model, Coca Cola used the Task Force concept but added two Industrial Psychologists to the mix which proved helpful.

Regardless of the number of Task Force members, all agreed that each member must be independent and extremely credible in that they have the expertise and skills to address the issues in dispute. They should be jointly selected by the parties. Further, the device of not having each know who appointed the others was cited as a very useful strategy in their appointment by any court.

## **J. Measures of Success**

Ordinarily, one might only look to statistics to measure the success of a law suit alleging racial discrimination. (*See Section F iii*). However, measuring success in an effort to change corporate culture may need a broader perspective. Participants in this effort cited the following measures of success.

Judge Briant observed that, in the absence of the Task Force, it would have been difficult for plaintiffs to evaluate any material changes that took place at Texaco after the suit was settled. (*Briant Interview*). In the Court's estimation, the Task Force created tangible value for the Company, in terms of both measuring progress and providing resources. (*Id.*). Judge Briant noted that his intervention was neither sought nor required by the Task Force. (*Id.*). The Court summed up its view on the utility of this model:

There is nothing worse for a Company than having discouraged or discontented or cynical people who think they are in a blind alley, ... think management isn't honest with them and think they have no chance or ... they're being discriminated against for something they can't control. ...[W]hat was done here has tremendous value to the Company ... because you get a motivated, satisfied, enthusiastic workforce who think they like the Company,

think the Company is fair and honest, think the Company gives them a fair shake in getting promoted, and won't fire them because they're a minority and that feeling pervades the whole organization and it even goes outside. (*Id.*).

Judge Brieant also believes that this model is a superior vehicle for inducing change, rather than relying on overtaxed government agencies for oversight. (*Brieant Interview*).

Plaintiffs' counsel, Cyrus Mehri, shares the Court's sentiment:

The fact that the Company did all this without going to court [over disputes with the Task Force] is a success of the Task Force ... [T]hey not only leveled the playing field for African-Americans, but by having more fair and transparent processes, it was better for everybody ... [I]t's very hard for defendants to agree to a task force because ... they feel like they're shifting power away and losing control. But the companies that do agree wind up being a better, stronger Company for doing that. It's a good resource for the Company and helps inoculate the Company from further suits from other protected groups. It provides a better platform for better treatment of all classes of employees. (*Mehri Interview*).

Joe Moan from Texaco found the Task Force extremely effective for three reasons:

The Task Force provided advice to the Company and reported Company progress to the court. Such external visibility motivated the Company. Its oversight also prevented numerous other class action lawsuits. It accurately reported Company progress. That helped the Company improve its image and reputation around diversity.

Dr. Rosser thought that the success was best illustrated when the employees saw palpable changes being made in the Company: they saw the Company developing, they saw salary equity adjustments being made, they witnessed diversity training, they saw retirements of those who could not accept change, and denial of bonuses for managers who were not fostering diversity. What occurred was a more open atmosphere where internal communication increased, taboo issues could be aired, and better ways of dealing with complaints were available. He asserted that EEOC complaints almost disappeared as proof of change. He believes employees felt that they were working in a more open opportunity-based Company.

Lastly, Nogales witnessed success of their efforts when he heard in the field visits that people were beginning to make the connection and believe that diversity enhancement was better for the Company and better for business.

### **III. Conclusion**

Traditional methods of enforcing settlement agreements suffer from many limitations. In contrast, the benefits of an outside independent monitor, composed of persons with a variety of applicable experience in diversity who are devoted to moving a Company to a new platform of fairness for all employees, cannot be underestimated. Task Forces can bring expertise, help tailor change initiatives to a Company's business needs and set high aspirations to foster enduring cultural shifts. Such shifts improve productivity, enhance corporate citizenship and enhance business growth. The use of a collaborative problem-solving framework to bring about these changes, even when a Task Force has actual power to enforce its wishes, can be viewed as not only pragmatic but the only approach that will bring about an enduring legacy of fairness and equality based upon Company ownership of the new processes. Where a Company has the motivation and will to be truly diverse, as a result of litigation or not, the Task Force model can only assist in achieving such goals.

March 2005

**Appendices**  
**Task Force Biographies**

## Deval L. Patrick



Mr. Patrick is a native of Chicago's South Side, graduated *cum laude* from Harvard College, and earned a law degree from Harvard Law School.

Following law school, Mr. Patrick served as law clerk to the Honorable Judge Steven Reinhardt of the United States Court of Appeals for the Ninth Circuit. He then started law practice with the NAACP Legal Defense and Education Fund in 1983 as a staff attorney in New York City. In 1986, he joined the law firm of Hill & Barlow in Boston, becoming a full partner in 1990. In 1994, Mr. Patrick was appointed by President Clinton to the post of Assistant Attorney General in charge of the Civil Rights Division of the United States Department of Justice, in Washington, D.C., where he was responsible for enforcing federal laws prohibiting discrimination.

In 1997, Mr. Patrick returned to private practice with the Boston law firm of Day, Berry & Howard. That same year, he was appointed by a Federal District Court to serve as the first chairperson of Texaco's Equality and Fairness Task Force. In February 1999, Mr. Patrick joined Texaco as Vice President and General Counsel and also served on Texaco's Executive Council.

In 2001, Mr. Patrick joined The Coca-Cola Company as Executive Vice President and General Counsel. He was elected to the additional position of Corporate Secretary in 2002. He was responsible for the Company's worldwide legal affairs, the Office of the Corporate Secretary, the Ethics and Compliance Office, and Security and Aviation. For a time he also oversaw Corporate Human Resources. He also served on the Company's Executive Committee – its senior leadership team.

Mr. Patrick is a director of ACC Capital Holdings Corporation (Ameriquest) and Reebok International Ltd., and a member of the President's Council of the Massachusetts General Hospital. He is also a trustee of the Ford Foundation. He is the recipient of seven honorary doctorate of law degrees.

Mr. Patrick is happily married to a prominent Boston attorney and is the proud father of two daughters.

## **Dr. James M. Rosser**



Dr. James M. Rosser holds three degrees from Southern Illinois University. He has served as President of California State University, Los Angeles since 1979 and holds an academic appointment as Professor of Health Care Management at the University.

He has served on the National Board of Governors of the American Red Cross, on the National Advisory Council on Aging of the NIH, the American Council on Education, the Achievement Council, and the American Association of State Colleges and Universities.

He is actively involved in the community, working with the Los Angeles Urban League, Southern California Edison, Sanwa Bank, the Los Angeles Philharmonic Association, LA's Best, the Los Angeles "Coalition of 100" and the Los Angeles Annenberg Metropolitan Project (LAAMP).

Dr. Rosser has written and edited a wide variety of works in the field of higher education administration as well as works on health, health values, and the health profession.

His honors include the Brotherhood Crusade's Pioneer of Black Historical Achievement Award and a City of Los Angeles Human Relations Commission Certificate of Merit.

\* sources: [http://www.calfund.org/3/governors\\_3.4\\_rosser.php](http://www.calfund.org/3/governors_3.4_rosser.php)  
<http://www.kcet.org/kced/bios.html>

## **Thomas S. Williamson Jr.**



Thomas S. Williamson Jr. is a partner at the law firm of Covington & Burling in Washington, D.C.; His litigation practice includes employment law, complex litigation, and health and welfare law matters for state governments. He received a B.A. degree in 1968 from Harvard College. As a Harvard undergraduate, Williamson graduated *magna cum laude* and Phi Beta Kappa with a concentration in social studies. He played varsity football, participated in social work projects through Phillips Brooks House, served as vice president of the Undergraduate Council, and was chair of the Ad Hoc Committee on Black Students in spring 1968. He went on to study at Oxford as a Rhodes Scholar, then earned his law degree from the University of California, Berkeley in 1974.

From 1993 through 1996, he served as Solicitor of Labor for the U.S. Department of Labor. From 1978 to 1981, he was Deputy Inspector General of the U.S. Department of Energy. From 1998 to 2002 he served as the Chair of the Texaco Task Force on Equality and Fairness. He recently completed his term as the president of Harvard University's Board of Overseers (As an Overseer, Williamson has served as chair of the Board's Committee on Institutional Policy, and as a member of its Executive Committee and its Committee on Natural and Applied Sciences. He also serves on the Committee to Visit Human Resources, and was a member of the committee for the Corporation search that concluded in April 2002); and he is a member of the Board of Directors of the Lawyers' Committee for Civil Rights Under Law. He is co-author, with his partners Anthony Herman and Michael S. Horne, of "The Contingent Workforce, Business and Legal Strategies" (Law Journal Press 2000).

Since October 2002 he has been retained by the NFL as special advisor to the owners' Workplace Diversity Committee and the general managers' Working Group established to facilitate increased diversity in the head coaching and front office ranks of NFL clubs.

\* sources:        <http://www.cov.com/lawyers/twilliamson/biography.html>  
                      <http://www.news.harvard.edu/gazette/2002/06.06/01-overseers.html>

## **John J. Gibbons**



John Gibbons is a Director of Gibbons, Del Deo, Dolan, Griffinger & Vecchione, P.C., in Newark, NJ, a member of the Litigation Department and founder of the firm's Fellowship in Public Interest and Constitutional Law. He received his B.S. from College of the Holy Cross in 1947, and L.L.B. from Harvard University in 1950, cum laude, where he was a member of the Harvard Law Review. Mr. Gibbons is a member of the Intellectual Property Department and the Appellate and ADR & Mediation Practice Groups. Formerly the Chief Judge of the United States Court of Appeals, Third Circuit, he served on that Court from 1970-1990. Mr. Gibbons is a Past President of the New Jersey State Bar Association, a Life Member of the American Law Institute and a Fellow of the American Bar Foundation. He is a former member of the House of Delegates of the American Bar Association and a former Chair of its Committee on Fair Trial and Free Press. He is a Director of the American Arbitration Association, a Trustee Emeritus of the Practicing Law Institute, a Trustee Emeritus of Holy Cross College and a Trustee of The Fund for New Jersey.

While serving on the Court of Appeals, Judge Gibbons authored over 800 published opinions. He formerly taught Constitutional Law and other subjects at Seton Hall University Law School, where he held the Richard J. Hughes Chair in Constitutional Law until June of 1997.

Since returning to practice, Mr. Gibbons has headed the firm's Alternative Dispute Resolution Group. He is a member of the National Panel of Distinguished Neutrals of the CPR Institute for Dispute Resolution and has served as an arbitrator and a mediator in a number of large commercial disputes among major corporations. He has also engaged in litigation involving antitrust, intellectual property law and securities regulation.

\* source: [http://www.gibbonslaw.com/attys/dsp\\_viewattorney.cfm?bioid=78](http://www.gibbonslaw.com/attys/dsp_viewattorney.cfm?bioid=78)

## Mari J. Matsuda



Professor Matsuda received her BA at Arizona State University, her JD at the University of Hawaii, and her LL.M. at Harvard University. She is a professor of law at Georgetown University Law Center and was a professor of law at the University of California at Los Angeles School of Law before joining the Law Center. Before joining the faculty at UCLA, she was professor of law for eight years at the University of Hawaii School of Law, teaching American Legal History, Torts, Constitutional Law, Civil Rights, and Sex Discrimination. Professor Matsuda has also taught at Stanford Law School and the University of Hiroshima and served as a judicial training consultant in Micronesia and South Africa. She was an associate at the labor law firm of King & Nakamura in Honolulu and was law clerk to the Honorable Herbert Y.C. Choy of the Ninth Circuit Court of Appeals.

Professor Matsuda has written well-known articles on constitutional law and jurisprudential issues, including hate speech, affirmative action, and feminist theory. Her books include *Called From Within* (University of Hawaii Press); *Words that Wound* (Westview Press); and *We Won't Go Back, Making a Case for Affirmative Action* (co-authored, Houghton Mifflin). Professor Matsuda serves on the national advisory boards of Ms. Magazine; the American Civil Liberties Union; and the National Asian Pacific Legal Consortium. In 1999, she was recognized by A Magazine as one of the 100 most influential Asian-Americans.

\* sources: [http://www.law.georgetown.edu/curriculum/tab\\_faculty.cfm](http://www.law.georgetown.edu/curriculum/tab_faculty.cfm)  
[http://www.nais.org/docs/docload2.cfm?file\\_id=2111](http://www.nais.org/docs/docload2.cfm?file_id=2111)

## **Luis G. Nogales**



Luis G. Nogales is a graduate of San Diego State University and Stanford Law School. He is founder and managing partner of Nogales Investors, a private equity investment firm. He is active in politics, social mobility reform, and corporate governance. Mr. Nogales has served as President of Univision and as Chairman and CEO of United Press International.

While a student, Mr. Nogales co-founded MEChA both at Stanford and in the nation. One day after graduating from the Stanford Law School, Mr. Nogales became Stanford's first Assistant to the President for Mexican American Affairs. In 1972, Mr. Nogales was selected a White House Fellow. In 1988, he became the first Latino member of the Stanford University Board of Trustees. Mr. Nogales has served on numerous corporate boards such as Levi Strauss & Co.; The Bank of California; Arbitron, Inc.; Kaufman & Broad, France; and is also a Trustee of the Mayo Trust, the J. Paul Getty Trust and other non-profit directorates.

In 2001, Mr. Nogales and his wife, Rosita, donated \$1 million to The Mexican and American Legal Defense Fund, (MALDEF) to defend the rights of immigrants. Mr. Nogales, who grew up in Calexico, California working as a farm worker, is one of the nation's most prominent Latino business leaders.

\* sources: [http://www.stanfordalumni.org/erc/reunions/chicano\\_alumni\\_hall.html#lnogales](http://www.stanfordalumni.org/erc/reunions/chicano_alumni_hall.html#lnogales)  
<http://www.pacificcouncil.org/public/about/board.asp#Nogales>

## Allen J. Crowe



Allen J. Krowe, 71, is a retired director and vice chairman of Texaco, an international petroleum Company. In 1988, Mr. Krowe joined Texaco Inc., as senior vice president and chief financial officer, and in 1993 was named vice chairman along with chief financial officer responsibilities and additional important operational responsibilities within Texaco. Prior thereto, he was executive vice president, chief financial officer of IBM and a member of IBM's Board of Directors. He joined IBM from Touche Ross in 1960, and was elected vice president of IBM in 1975.

He also serves as an Advisory Board member of the New York Stock Exchange and is a member of the boards of several major companies and other organizations, including Texaco Inc., PPG Industries, Inc., IBJ Schroder Bank and Trust Company, the Business Council of New York State, and the Business Committee for the Arts.

Mr Krowe graduated from the University of Maryland and he has served for more than two decades on the board of the University of Maryland Foundation.

\* sources: <http://www.prnewswire.co.uk/cgi/news/release?id=31256>  
<http://corporate.ppg.com/PPG/Corporate/AboutUs/Newsroom/BoardofDirectors.htm#AllenJ.Krowe>

## **Dr. Jeffalyn Johnson**

Dr. Johnson was a founding member of Black Women's Agenda, Inc., and a member of its Board of Directors. That organization, in Washington, D.C., is devoted to promoting and supporting black women and their families. We were unable to reach Dr. Johnson.

\* source: <http://www.blackwomensagenda.org/directors.htm>