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The Verdict on Roberts v. Texaco

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BOOK REVIEW

THE VERDICT ON *ROBERTS VS. TEXACO*

Angela Onwuachi-Willig*

Roberts vs. Texaco: A True Story of Race and Corporate America by Bari-Ellen Roberts with Jack E. White. New York: Avon Books, 1998. Pp. 285. \$25.00.

When I first heard that Bari-Ellen Roberts had written a book about the race discrimination lawsuit against Texaco, I was ecstatic. I was eager to read about the legal strategies that had resulted in the highest settlement award ever given in a class action race discrimination lawsuit. After reading the first few pages of the book, however, I became somewhat disappointed. The first few chapters made it clear that Roberts's book was not about the actual details of the class action lawsuit against Texaco but about Roberts's personal experiences at home, in school, and in the corporate world.

As I read further though, I began to realize that the strength of Roberts's book was not in the legal details of the class action lawsuit but in the stories of Roberts and her co-workers. Their stories in and of themselves invoked important questions and arguments concerning a number of pressing legal and social issues.¹

This Book Review will proceed in two parts. First, it will provide a brief summary of Roberts's life experiences as told by her. Second, it will discuss how these experiences serve as a standpoint for evaluating the importance of affirmative action in hiring and the role that whites should play in helping to eradicate race discrimination in employment.

I. THE LIFE OF BARI-ELLEN ROBERTS

Bari-Ellen Roberts grew up in Cincinnati, Ohio, the daughter of a man who had overcome a rough childhood to attain black middle-class status and a woman whose teenage pregnancies nearly cost her the middle-class

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1. Cf. Jewel Amoah, *Narrative: The Road To Black Feminist Theory*, 12 BERKELEY WOMEN'S L.J. 84 (1997) (describing how the use of narrative by black women can be used to humanize the law and its application).

lifestyle to which she had become accustomed.² From as early as Roberts could remember, racism had filtered into her life. Whether it was a white mother telling her child not to play with "that . . . nigger" or a light-skinned black teacher treating Roberts badly because of her "dark [skin] and . . . nappy" hair, Roberts felt the tiring effects of racism.³ Instead of allowing racism to destroy her, Roberts took each racist incident in her life as a lesson from which she could learn.

Some of her earliest lessons occurred in school, where Roberts was often one of a few blacks in a white classroom. In these predominantly white settings, Roberts quickly learned that lowered expectations and exclusion from certain privileges were a part of being black in the United States. At each step of the way, however, Roberts resisted this reality.⁴ One of Roberts's early childhood teachers, Mr. Gaston, a black man, helped her to develop her strategies for succeeding in the face of racism. Mr. Gaston introduced Roberts to black history, teaching her about the lives of black heroes,⁵ such as Harriet Tubman⁶ and Sojourner Truth.⁷ He even provided Roberts with a direct example of how blacks could resist racism with subtlety and dignity. For example, after Roberts's predominantly black elementary school was burned down, she and her classmates were forced to attend class in an all-white school across town. When Roberts's school bus first arrived at the white school, a mob of white people screamed out racial slurs and epithets, such as, "The more I see niggers, the more I like flies," and "Let's lynch them like down South."⁸ Mr. Gaston encouraged the children to keep walking, taught them to "[h]old their heads up high . . . [b]e proud," and persuaded them that high achievement and the "simple act of coming to school" were a part of the Civil Rights Movement.⁹ Under Mr. Gaston's tutelage, Roberts made straight A's, and she, along with two other students of Mr. Gaston, earned a spot at the prestigious Walnut Hills High School.¹⁰ Roberts used Mr. Gaston's lessons at almost every point in her life, including during her first experiences at college.

Upon graduating from high school, Roberts received a scholarship to attend "Muskingum College, a small Presbyterian school in Ohio."¹¹ When Roberts arrived at Muskingum, she discovered that there were only

2. See BARI-ELLEN ROBERTS & JACK E. WHITE, *ROBERTS VS. TEXACO: A TRUE STORY OF RACE AND CORPORATE AMERICA* 3-4 (1998).

3. *Id.* at 7-9.

4. *See id.* at 10-11.

5. *See ROBERTS & WHITE, supra* note 2, at 15.

6. Harriet Tubman was a former slave who freed herself and then returned 19 times to slave territory to lead over 300 others to freedom. This became known as the "Underground Railroad." *See HOWARD ZINN, DECLARATIONS OF INDEPENDENCE, CROSS-EXAMINING AMERICAN IDEOLOGY* 123 (1990).

7. Sojourner Truth was one of a handful of important black female figures in the abolitionist movement. She is most famous for her "Ain't I a Woman?" speech in 1851, which helped to break the racist barriers within the abolitionist movement. *See HOWARD ZINN, A PEOPLE'S HISTORY OF THE UNITED STATES* 237 (1980).

8. *Id.* at 17.

9. *Id.*

10. *See id.* at 25.

11. *Id.* at 39.

12 other black students in the school's 1300 student population.¹² In college, Roberts encountered a different, subtler form of racism. As Roberts explains:

I don't know what it was about me, but I kept running into white people who had no idea of how to talk to black people without offending them I [do not] believe that what happened to me was rare or unusual. It's more likely that white institutions, even Christian ones like Muskingum, hadn't really thought about what it meant to let a few blacks in after excluding them for a century. Their assumptions seemed to be that black students like me should do all the work of fitting in since they had done us the favor of admitting us. They weren't bigots, just unprepared. It never seemed to occur to them that they, too, had to make adjustments; their good intentions, they thought, should suffice.¹³

Nevertheless, Roberts adjusted to her new environment fairly well. Things soon changed, however, when Roberts became pregnant by her high school boyfriend, Vence, who was at Dartmouth studying architecture. With the birth of a new baby, Roberts found it difficult to focus on her studies. Roberts was forced to leave Muskingum and eventually set out for Dartmouth with her new husband, baby, and no college education.¹⁴

When Vence graduated from Dartmouth, he accepted an offer to work for First National Bank of Chicago. As a result, Roberts and her family moved to Chicago. That move to Chicago changed Roberts's life forever. In Chicago, Roberts entered into the corporate world. Her first corporate job was with Prudential Insurance as an underwriter. After a year at Prudential, Roberts qualified for the company's tuition reimbursement program and enrolled at Mundelein College, the women's branch of Loyola University, to study business administration. In June of 1978, Roberts graduated with honors in business management.¹⁵

After graduation, Roberts accepted a position in a management training program at Chicago's Harris Bank.¹⁶ At Harris Bank, Roberts was introduced to "master trust" work, the work that would eventually become her practice area.¹⁷ She also met her first business mentor, Dave Sturdy, a white male who performed master trust work. As Roberts's mentor, David Sturdy "shared everything he learned" with Roberts.¹⁸ He also demonstrated tremendous faith in her work by providing Roberts with numerous opportunities for direct client contact.¹⁹

12. *See id.* at 41.

13. *Id.* at 41–42. Roberts's experiences at Muskingum are similar to those of black students attending predominantly white universities today. *See generally* Darryl Brown, Note, *Racism and Race Relations in the University*, 76 VA. L. REV. 295 (1990) (describing the racial dynamics on college campuses in the United States).

14. *See* ROBERTS & WHITE, *supra* note 2, at 50–51.

15. *See id.* at 57–58, 61.

16. *See id.* at 62.

17. *Id.* at 63.

18. *Id.* at 64.

19. *See id.*

However, just as Roberts had done in school, she also encountered racism at Harris Bank. For example, on one occasion, a senior executive refused to give Roberts a master trust assignment because of a client's prejudices.

After leaving Harris Bank, Roberts began to work at Continental Bank in Chicago. At Continental Bank, Roberts met two of her most important mentors, Henry Tucker and Jill Gardener. Henry Tucker was a black vice-president who exposed Roberts to the "ins and outs" of the business. Roberts explained in her book,

[Henry] was the first black professional supervisor I'd ever had He took me along with him to meetings with senior management where an employee of my relatively low level normally would not have been welcome For the first time in my career, I was exposed to the machinery of corporate decision making, to the ways in which ranking executives set goals and determined strategies²⁰

Jill Gardener was a white female executive who taught Roberts how to use her creativity to succeed and helped Roberts to gain more confidence in her own work.²¹

Although Roberts enjoyed her work and her co-workers at Continental, she moved to Stamford, Connecticut, when problems at work forced her husband Vence to accept a new position at IBM. In Stamford, Roberts worked at Chase Manhattan Bank in the master trust department.²² At Chase Manhattan Bank, Roberts also encountered racial problems in the workplace. According to Roberts, when she first arrived at Chase, her white supervisor, Jack, attempted to set her up for failure. With the help of the backroom staff (who were almost all black and Caribbean), Roberts succeeded in spite of Jack's attempts and eventually gained his respect.²³ This time, when a client had problems with having a black work on her account, Jack supported Roberts by keeping her on the account.²⁴ Not all of Roberts's supervisors supported her against racist clients. When another client expressed concerns about working with a black banker, Roberts's next boss, Art, took her off the account.²⁵ Nevertheless, after two years of completing outstanding work and serving as a mentor to young white, male workers, Roberts was given a promotion to the position of vice-president at Chase.²⁶

While Roberts was enjoying the successes of a career at Chase, her marriage was failing miserably. In 1989, she filed for divorce.²⁷ Soon thereafter, Roberts became very ill and had to undergo four surgeries.²⁸ As Roberts was recovering, an old friend called her to tell "that Texaco was

20. *Id.* at 70–72.

21. *See id.*

22. *See id.* at 75.

23. *See id.* at 79–81.

24. *See id.* at 86.

25. *See id.* at 88.

26. *See id.* at 88–89.

27. *See id.* at 90.

28. *See id.* at 90–91.

in the market for people like [her]."²⁹ Her friend claimed that Texaco was changing, and after undergoing several secretive, "backroom" interviews and being low-balled on job offers, Roberts accepted an offer at Texaco.³⁰ Before she went to Texaco, Roberts received a warning from a former co-worker at Chase. He told her, "Watch your back, Bari . . . I know those Texaco guys and I don't trust them. They're a bunch of jerks."³¹

Her friend's warning could not have been closer to the truth. While black co-workers, Silvanus ("Sil") Chambers, the other representative in the class action, and Florence Prawk, an employee in Texaco's human resources department, warmly welcomed Roberts, her reception by white workers at Texaco was cold. One white employee poked his head into Roberts's office and stated, "Well, Jesus Christ, I never thought I'd live to see the day when a black woman had an office at Texaco."³² Another white employee told her the following:

You know, you have my job . . . I'm the one who's supposed to have this job, not you . . . I've worked here for years. I've got the qualifications. I've got an MBA from Saint Johns. I was in line to be promoted and to have this job. But, oh no, they couldn't give the job to a white male because of *affirmative action*. They had to go out and find a *black* and a *woman*! That's the only reason they hired you. See what I mean, you have my job. I deserve it. It's not fair.³³

Roberts soon learned that Texaco was looking to diversify its workforce. Allen Krowe, Texaco's third in command and former IBM employee, had seen the results of a survey on diversity and demanded that Texaco quickly diversify its workforce.³⁴

Over time, Roberts became more involved with the company. For example, she along with Sil, took on the task of working to diversify Texaco's staff. Roberts was beginning to feel hopeful about a "changing" Texaco until she and Sil presented their ideas for recruiting more minorities to John Ambler, the director of Texaco's human resources department. These ideas included basing managers' bonuses in part on how well they implemented diversity, starting a black employees' association, and recruiting from black colleges. In response to these suggestions, Ambler called Roberts and Sil black militants and Black Panthers and told them that Texaco would never enact any of their suggestions.³⁵ This was the beginning of Roberts's desire to take action against Texaco. The last straw came when Texaco lowered Roberts's job performance rating because she challenged the ideas of a superior during a business meeting. It was then that Roberts realized she was up against a brick wall.³⁶

After many setbacks, the tug of war between the attorneys for Roberts's class and the attorneys for Texaco began. At one point the lawsuit

29. *Id.* at 91.

30. *See id.* at 96–105.

31. *Id.* at 106.

32. *Id.* at 113.

33. *Id.* at 114.

34. *See id.* at 116.

35. *See id.* at 147–48.

36. *See id.* at 160–64.

became so heated that one of Texaco's attorneys shouted, "Texaco will never, ever throw a bunch of money at a bunch of blacks! You all can forget that."³⁷ This statement, however, proved to be untrue. Roberts's attorneys had been able to collect enough damaging evidence to cause Texaco to surrender. More specifically, Roberts's attorneys had managed to collect a barrage of damaging statistical information about Texaco's tremendous lag behind other corporations in minority hiring. For instance, at Texaco, only 5.9% of its black employees were earning between \$51,000 and \$59,000 compared with 7.2% in the industry, only 1.8% compared with 3.2% in the industry were earning between \$77,600 and \$86,099, and only 0.4% as compared with 1.8% earned \$128,000 or more.³⁸ Her attorneys also gathered a number of stories from workers concerning racist incidents at Texaco, and, most importantly, the tapes of racially derogatory comments brought forth by Richard Lundwall, a white former Texaco employee who was angry because Texaco was forcing him to retire at age fifty-five.

With all of this against it, Texaco eventually settled the case by agreeing to pay its black workers \$115 million in compensation and \$26.1 million in pay increases. Additionally, Texaco agreed to implement a \$35 million plan to create an independent task force that would monitor the company's treatment of minorities for a five-year period, with unrestricted access to company records.³⁹ Texaco also agreed to set up a company-wide program of diversity training, step-up its recruitment of minorities, and revise its system for giving performance evaluations.⁴⁰ From this settlement, Roberts received \$70,000 as a class member and an additional incentive award of \$85,000 for being a class representative.⁴¹ The average award to each member of the class was \$67,000.⁴²

II. THE LESSONS OF ROBERTS VS. TEXACO

A. The Importance of Diversity in Education and Employment

Roberts's book signifies the importance of affirmative action in hiring, both in the academic and the corporate worlds. As I read about Roberts's experiences in school and at work, I thought of the Third Circuit's decision in *Taxman v. Bd. of Educ. of the Township of Piscataway*.⁴³ *Taxman* explored the question of whether diversity in education is a goal that would justify the use of race as a factor under Title VII of the Civil Rights Act of 1964. In *Taxman*, the school board of Piscataway, New Jersey, eliminated a teaching position from the business department. In deciding whom to layoff, the school board had to choose between a black teacher and a white teacher of equal qualifications. The school board chose to retain the black teacher to provide racial diversity on a business teaching staff of

37. *Id.* at 237.

38. *See id.* at 189.

39. *See id.* at 272-74.

40. *See id.* at 276.

41. *See id.* at 280.

42. *See id.*

43. 91 F.3d 1547 (3d Cir. 1996), *cert. granted*, 117 S. Ct. 2506 (1997), and *cert. dismissed*, 118 S. Ct. 595 (1997).

nine white teachers and one black teacher. The white teacher, Taxman, sued the board, alleging that the Board violated Title VII by discriminating against her on the basis of race.⁴⁴

The majority in *Taxman* framed the issue before it as whether Title VII permitted an employer with a racially unbalanced workforce to grant a nonremedial racial preference in order to promote diversity. In making its decision, the court used a two-prong test for evaluating affirmative action programs under Title VII. The majority extracted the test from two Supreme Court decisions, *United Steelworkers of Amer. v. Weber*⁴⁵ and *Johnson v. Santa Clara County Transportation Agency*.⁴⁶ Under this test, an affirmative action program is valid if (1) it has purposes that mirror those of the statute and (2) it does not unnecessarily trammel the interests of nonremedial employees.⁴⁷

Using the *Weber/Johnson* test, the majority first considered whether the racial diversity goal of the school board's policy mirrored the purposes of Title VII. The majority determined that the purposes of Title VII were ending discrimination, ensuring equal opportunity in employment, and remedying the effects of that discrimination and held that an affirmative action program must have a remedial purpose in order to mirror the purposes of Title VII.⁴⁸ The majority then found that the school board's affirmative action plan failed to meet the first prong of the *Weber/Johnson* test because it was not intended to remedy the results of prior discrimination but instead had the forward-looking purpose of obtaining the educational benefit that the Board believed would result from a racially diverse faculty.⁴⁹ The majority then considered the affirmative action plan

44. *See id.* at 1552.

45. 443 U.S. 193 (1979). In *Weber*, a group of white plaintiffs challenged a voluntary affirmative action program that called for the reservation of 50% of the openings in in-plant craft training programs for blacks until the percentage of black craftworkers was commensurate with the percentage of blacks in the local labor force. *See id.* at 198. The plaintiffs claimed that the program wrongfully discriminated against them in violation of Title VII because it placed an unfair burden on whites. *See id.* at 199–200. The Court rejected the plaintiffs' claims, stating that it would be ironic indeed if a law triggered by a nation's concern over centuries of racial injustice and intended to improve the lot of those who have "been excluded from the American dream for so long" constituted the first prohibition of all voluntary, private, race-conscious efforts to abolish traditional patterns of racial segregation and hierarchy. *Id.* at 204. The Court found that the plan was valid because the purposes of the plan mirrored Title VII's purpose of breaking down patterns of racial discrimination and hierarchy and because the plan did not unnecessarily trammel the interests of white employees. *See id.* at 208.

46. 480 U.S. 616 (1987). In *Johnson*, the Santa Clara Transportation Agency promoted a female employee to dispatcher pursuant to a voluntary affirmative action plan. *See id.* at 619. Paul Johnson, a male with marginally better qualifications than the female employee, filed an action against the Agency, claiming discrimination on the basis of sex in violation of Title VII. Following the standards set forth in *Weber*, the Court upheld the Agency's affirmative action program. The Court found that the plan was valid because the purposes of the plan mirrored Title VII's purpose of eliminating imbalances in the work force and did not unnecessarily trammel the interests of white employees. *See id.* at 639–40.

47. *See Taxman*, 91 F.3d at 1551.

48. *See id.* at 1557.

49. *See id.* at 1563.

under the second prong of the *Weber/Johnson* test. In doing so, the court found that the plan failed to satisfy this prong because it would allow the granting of preferences that did not conform to the stated purpose of the plan and was of unlimited duration.⁵⁰ The court further found the layoffs were not an appropriate method to implement even valid Title VII goals.⁵¹

Four judges filed dissenting opinions in *Taxman*. These judges framed the issue before the court differently than did the majority. Chief Judge Sloviter framed the issue as "whether Title VII permits the school board to factor into [its] decision its bona fide belief, based on its experience with secondary schools, that students derive educational benefit by having a Black faculty member in an otherwise all-White department."⁵² Chief Judge Sloviter did not read Title VII as requiring a remedial purpose for an affirmative action plan. He agreed with the majority that "Title VII was written to eradicate not only discrimination per se but the consequences of prior discrimination" but asserted that the effort to remedy these consequences "cannot be isolated from the statute's broader aim to eliminate those patterns that were potential causes of continuing or future discrimination."⁵³ All four dissenters asserted that they would hold that the Board's use of race as a factor in its decision in order to obtain the educational benefits of a racially diverse faculty was permissible under Title VII.⁵⁴

While not directly addressing all of the issues raised in *Taxman*, Roberts's book provides support for the dissent's contention that racial diversity is an "important means of combatting [*sic*] the attitudes that can lead to future patterns of discrimination."⁵⁵ First, her book demonstrates how racial diversity in the workplace can help to break down barriers by defeating white supremacist attitudes concerning stereotypes of black incompetence and inadequacy.⁵⁶ For example, at Chase, Roberts mentored a young Italian American male administrator, Joe Marcello, who at first was not pleased about working for a black woman.⁵⁷ Just as David Sturdy and Henry Tucker had done for her, Roberts taught Marcello everything she knew. She took Marcello on client calls to teach him about marketing and involved him in meetings that were usually closed to administrators. Within time, not only had Roberts helped Marcello to gain a promotion at Chase, but she had earned his respect such that he began calling her

50. See *id.* at 1564.

51. See *id.* at 1564-65.

52. *Taxman*, 91 F.3d at 1567 (Sloviter, C.J., dissenting).

53. *Id.* at 1571. He noted that it is "'ironic indeed' that the promotion of racial diversity in the classroom, which has formed so central a role in this country's struggle to eliminate the causes and consequences of racial discrimination, is today held to be at odds with the very Act that was triggered by our Nation's concerns over centuries of racial injustice." *Id.* at 1572.

54. See *id.* at 1576 (Sloviter, C.J., dissenting); 91 F.3d at 1577 (Scirica, J., dissenting); 91 F.3d at 1578 (Lewis, J., dissenting); 91 F.3d at 1579 (McKee, J., dissenting).

55. See *Taxman*, 91 F.3d at 1572 (Sloviter, C.J., dissenting).

56. Cf. *Wygant v. Jackson Bd. Of Educ.*, 476 U.S. 267, 315 (1988) (Stevens, J., dissenting) (stating that "[i]t is one thing for a white child to be taught by a white teacher that color, like beauty, is only 'skin deep'; it is far more convincing to experience that truth on a day-to-day basis . . .").

57. See ROBERTS & WHITE, *supra* note 2, at 82-83.

goombah, a slang term reserved for his closest Italian friends.⁵⁸ Additionally, Roberts's presence helped to dispel negative attitudes about blacks among her superiors. For example, after successfully managing seventy small accounts by herself for a year (with the help of the predominantly black and Caribbean backroom staff), Roberts's once hostile supervisor Jack began to treat her with respect.⁵⁹ He escorted her to the offices of some of his longtime clients and personally introduced her to their treasurers and chief executive officers.⁶⁰

Second, Roberts's book shows how racial diversity can help to defeat internalized attitudes of racial inferiority held by some African Americans. As Roberts attested throughout her book, one of her black teachers, Mr. Gaston, had a tremendous impact not only on her academic success in elementary school, but on her success in business as well. As a child, Roberts remembered wanting to "to be like Mr. Gaston . . . He was brave. He was brilliant. He was a fighter."⁶¹ Additionally, while Roberts had many white mentors throughout her career, she notes the importance of her first and only black mentor in banking, Henry Tucker. Roberts also notes the importance of her first female mentor, Jill Gardener. Roberts explained:

If they could make it, I knew I could. Though my previous job had been sheer torture, their success demonstrated that not all workplaces were the same when it came to women and minorities. Just as blacks didn't have to settle for second-rate citizenship, I didn't have to settle for a second-rate career just because I was a black woman.⁶²

The impact that Roberts's relationships with her mentors—Mr. Gaston, Henry Tucker, and Jill Gardener—had on her life demonstrates the importance of having minority role models for minority children and workers. This is not to say that minorities cannot learn from majority teachers or supervisors or even that they learn better from minority teachers or supervisors. It is only to recognize that, in this country where minorities have long been the victims of discrimination, same-raced role models serve as strong proof to minorities of what they can achieve and the roles that they may occupy in the working world.⁶³

Apart from demonstrating the importance of racial diversity in the workplace and in school, Roberts's and other blacks' experiences at Texaco directly contradict current views that racism and discrimination are

58. *See id.* at 83.

59. *See id.* at 79–81.

60. *See id.* at 83.

61. *Id.* at 18.

62. *Id.* at 72.

63. *See Adeno Addis, Role Models and the Politics of Recognition*, 144 U. PA. L. REV. 1377, 1436 (1996) (stating that "[h]istorically, the dominant narrative in this country has asserted, often implicitly, but at times explicitly, that minorities—especially African Americans—are intellectually inadequate and thus different from white Americans . . . Thus, the presence of a minority teacher will provide a more credible signal to the black child of that child's intellectual potential.")

no longer a problem, particularly not for the black middle class.⁶⁴ For example, despite winning many prestigious awards for her performance, one black female marketing consultant at Texaco discovered that "she was being paid \$850 a month less than whites who held the same position."⁶⁵ One white employee stated that, when he brought a black employee's charge of discrimination to the attention of his supervisor, he was told to "fire her black ass."⁶⁶ One black senior account manager in the marketing department at Texaco's Houston facility described how a division vice-president at Texaco told him that "if an African American and a white person were competing for the same job, it was 'only human nature to give the job to the white person.'"⁶⁷ Another black employee who had an MBA was told by his superior, "we can go golfing and you can be my caddie."⁶⁸ One white boss at Texaco gave his pregnant black secretary a birthday cake which had a picture of a black woman with an Afro and said "It must have been those watermelon seeds."⁶⁹

B. The Need for White Resistance to Race Discrimination

Even more important than what Roberts's book says about affirmative action is what it says about the need for white participation in the struggle to end discrimination. In the 1950s and 1960s, whites had a tremendous impact on the success of the Civil Rights Movement.⁷⁰ During the 1950s and 1960s, almost a third of the attorneys for the NAACP Legal Defense Fund were white, "many of [whom] were graduates of prestigious law schools and could have entered private practice at a much higher income."⁷¹ Hundreds of white students joined the Civil Rights Movement in dangerous areas of the South, some even at the cost of their lives, like Michael Schwerner and Andrew Goodman.⁷² White participation was not only helpful to the Movement because of the additional people but also because of the additional attention and financing that it brought to the struggle.⁷³

64. See generally ELLIS COSE, *THE RAGE OF A PRIVILEGED CLASS* (1993) (detailing how racism affects members of the black and professional middle class).

65. ROBERTS & WHITE, *supra* note 2, at 211.

66. *Id.* at 243.

67. *Id.* at 242.

68. *Id.* at 243.

69. *Id.* at 273.

70. See, e.g., Harold A. McDougall, *Social Movements, Law, and Implementation: A Clinical Dimension for the New Legal Process*, 75 CORNELL L. REV. 83, 107 (1989) (stating that "[t]he presence of white and female students [during 'Freedom Summer' in Mississippi] broadened the base of the Civil Rights Movement tremendously").

71. Leroy D. Clark, *A Critique of Professor Derrick A. Bell's Theory of the Permanence of Racism and His Strategy of Confrontation*, 73 DENV. U. L. REV. 23, 28-29 n.38 (1995).

72. *Id.* at 301-02. Michael Schwerner and Andrew Goodman were killed in Mississippi while working in the Civil Rights Movement. Their murders served as the basis for the movie "Mississippi Burning." See Ronald J. Rychlak, *Essay, Civil Rights, Confederate Flags, and Political Correctness: Free Speech and Race Relations on Campus*, 66 TUL. L. REV. 1411, 1411-12 (1992).

73. See Jonathan Feldman, *Review Essay, Race Consciousness Versus Colorblindness in the Selection of Civil Rights Leaders: Reflections Upon Jack Greenberg's Crusaders in the Court*, 84 CAL. L. REV. 151, 163 (1996) (noting the advantages of white participation in the Movement).

Although there are whites who are active in the struggle against racism and discrimination today, that number has significantly dwindled since the 1960s. Today, many whites believe that the "really bad discrimination" is gone or now has little effect on the lives of blacks and other minorities.⁷⁴ Such thoughts have resulted in a backlash against programs, such as affirmative action, which are designed to remedy the effects of discrimination.⁷⁵

Roberts's book demonstrates the importance of having whites involved in combating discrimination today and, in particular, the role that whites may play now that discrimination has gone "underground" or "behind-the-scenes." First, Roberts's book indicates the need for white participation in combating discrimination based on the prejudices of company clients. Throughout her corporate career, Roberts was confronted with the racism of corporate clients. For example, once she was not given a master trust assignment because a senior executive thought that her bank's "customers [would] not accept a black woman as a trust administrator."⁷⁶ Another time, a black client retorted, "Why you in here talkin' to me . . . Ain't my money good enough to get me a white banker?"⁷⁷ Roberts gives an account of a time when her supervisor supported her by keeping her on an account despite a client's problems with having a black person supervise the account.⁷⁸ Such acts of support are not only the proper and legal thing for whites to do in the work environment, but they are also important because they help to defeat negative stereotypes about black incompetence by allowing racist clients to experience a minority employee's good work firsthand. Second, Roberts's book indicates the importance of whites' direct resistance to race discrimination at work. For example, Roberts tells the story of Michael Moccio, a white supervisor at Texaco, who was ordered by his superior to fire a black junior accountant who had filed a charge of discrimination with the EEOC.⁷⁹ Despite his superior's request, Michael Moccio refused to discharge Mary Devorce, a black employee, and Texaco eventually settled her claim for \$60,000.⁸⁰ Had Michael Moccio followed his boss' order, Mary Devorce certainly would have lost her job and, given the difficulty of proving race discrimination and retaliation for the same, she may not have been compensated for such loss in court.

In addition to revealing methods that whites may use to combat discrimination at work, Roberts's book also demonstrates the importance of

74. See Carlos J. Nan, *Adding Salt to the Wound: Affirmative Action and Critical Race Theory*, 12 *LAW & INEQ.* 553, 556–57 (1994) ("[T]he prevailing attitude of the majority of the American public was that equality had been achieved, and more importantly, that the previously disadvantaged were now gaining on the once privileged."). These views are also held by some black citizens, such as Shelby Steele. See generally STEELE, *THE CONTENT OF OUR CHARACTER* 112–16 (1990).

75. See generally Luke Charles Harris & Uma Narayan, *Affirmative Action and the Myth of Preferential Treatment: A Transformative Critique of the Terms of the Affirmative Action Debate*, 11 *HARV. BLACKLETTER L.J.* 1 (1994).

76. ROBERTS & WHITE, *supra* note 2, at 65.

77. *Id.* at 68.

78. *Id.* at 86.

79. See *id.* at 242–43.

80. See *id.* at 243.

white participation in race discrimination suits. The class action against Texaco might not have been settled without the release of the tapes by Lundwall (whose motives were not beneficent). Without the tapes, the public would not have been exposed to comments such as the following, which were leaked to the press: "I'm still having trouble with Hanukkah, and now I have Kwanza . . . It's these niggers, they're shitting all over us with this . . ."⁸¹

Ulrich: This diversity thing. You know how all the jelly beans agree.

Lundwall: That's funny. All the black jelly beans seemed to be glued to the bottom of the bag.

Ulrich: You can't have just we and them. You can't just have black jelly beans and other jelly beans. It doesn't work.⁸²

As Roberts tells us, the effect of these tapes was tremendous. For instance, following the release of the tapes, H. Carl McCall, the comptroller of New York state and one of the nation's highest paid elected officials, sent a letter to Texaco demanding a full accounting of the issues raised by the tapes.⁸³ According to Roberts, the implication behind this request was that he "would sell off millions of shares of state-owned Texaco stock at fire sale prices" if he was not satisfied with the answers.⁸⁴ The price of Texaco's stock had already fallen by more than three dollars a share, knocking more than a billion dollars off the overall value of the company.⁸⁵ Additionally, Ted Koppel pressed Peter Bijur, the chairman and CEO of Texaco, on the issue of settlement on national primetime television.⁸⁶ Jesse Jackson threatened to launch a nationwide boycott of Texaco if Texaco did not settle the lawsuit and agree to a plan for expanding Texaco's purchases from black businesses.⁸⁷ In sum, without the tapes, Texaco might not have received as much bad publicity as it did, its stock may not have fallen so drastically, and Jesse Jackson may not have threatened Texaco with a boycott—all factors that eventually forced Texaco to settle Roberts's class action suit. In addition to the Lundwall tapes, a number of whites, such as Michael Moccio, came forward with stories about how they were asked to participate in blatant discrimination against blacks. These stories strengthened the class action lawsuit against Texaco by lending credibility to the stories told by black workers. They further illustrate the importance of whites coming forward when they witness racism within the workplace.

Lastly, Roberts's book raises a question as to the viability of racial harassment claims brought by white employees for witnessing "underground discrimination" against blacks. Could one of Roberts's former superiors, Nancy Nakovick, have brought a hostile environment claim after

81. *Id.* at 1.

82. *Id.* at 259.

83. *See id.* at 268.

84. *Id.*

85. *See id.*

86. *See id.* at 269-70.

87. *See id.* at 275.

being forced to hear racial jokes about blacks and to go along with what she admitted was a racist downgrade in Roberts's rating?⁸⁸ Are whites not also injured by having to silently participate in discriminatory acts?

Roberts's book not only exposes the racist environment that black employees at Texaco (and at other corporations) endured for many years but also serves as a fulcrum for considering a number of legal and social issues such as affirmative action and white participation in the struggle against racism and discrimination. Some readers may be turned off by Roberts's somewhat strong personality and may question whether Roberts was treated badly because of her personality or because of her race. However, the numerous other stories given by black workers establish that race played a huge role in the treatment of all black employees at Texaco.

Roberts's story does have its flaws. At times, I wondered if Roberts understood the connection between all types of -isms and discrimination or the complexities of discrimination. For example, I cringed when she used the term "alien," which is arguably offensive, to describe the African students at her college⁸⁹ and when she referred to a homeless man as a derelict and "shabby urchin," even after hearing his story of how he had been sexually abused as a child and had worked as a male prostitute to survive.⁹⁰ Also, several times during the book, Roberts expresses doubt as to her former husband's stated reason for having problems at work: racism. Instead of race, she believes his problems at work were simply due to poor performance. At no point does she acknowledge that race could have played a role in how her husband was treated, even given his poor performance. She does not even consider the possibility that whites with the same performance may have been treated better than her husband or that her husband's work was being more carefully scrutinized than that of white workers because of stereotypes of black incompetence. This, in effect, could have caused him to be held to a higher standard than his white co-workers.

Despite these flaws, Roberts's book is worth reading. If nothing else, it will serve as a wake-up call to any individuals who think that racism and discrimination are no longer a problem and as a reminder to those of us who do not that our action is still needed.

88. *See id.* at 163–64. Only a few courts have addressed this issue. In *Bermudez v. TRC Holdings, Inc.*, 138 F3d 1176 (7th Cir. 1998), one of the plaintiffs, Linda Schlichting, a white woman, argued that she was subjected to a racially hostile environment when she was asked to accommodate a client's prejudices by placing only white workers with the client and when she was forced to listen to her boss' derogatory comments on blacks and gay people. The Seventh Circuit held that Schlichting had no standing to challenge the alleged harassment because it was targeted at minorities, not white women. *See id.* at 1180–81. In *Childress v. City of Richmond*, 120 F3d 476 (4th Cir. 1997), *aff'd en banc*, 134 F3d 1205 (1998), and *cert. denied*, 118 S. Ct. 2322 (1998), seven white police officers maintained that they were victims of a racially hostile environment because their immediate supervisor, a white male, made a number of disparaging remarks to and about black and female police officers over a two-month period. *See id.* at 481. The Fourth Circuit held that such plaintiffs had standing to challenge the harassment, but it did not reach the merits. *See id.*

89. ROBERTS & WHITE, *supra* note 2, at 42.

90. *Id.* at 133–34.

