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WELDON H. LATHAM
(202) 663-9228

July 26, 1995

JUL 27 1995

Via Facsimile and Messenger

Honorable Alexis M. Herman
Assistant to the President and
Director, Public Liaison
The White House
725 17th Street, N.W., Room G1
Washington, D.C. 20500

Re: Meetings with Minority Business Leaders

Dear Alexis:

Congratulations to the President, you and the entire White House staff on the President's exceptional July 19th speech.

This is to follow up on our telephone conversation yesterday afternoon. Enclosed is a copy of the letter Mel Clark, Bob Johson, *et al.*, and I sent to a number of minority business leaders, inviting them to a series of meetings on Capital Hill. We anticipate at least fifty (50) people will attend the two scheduled sessions with House Minority Leader Gephardt and Senator Tom Harkin. Both Messrs. Gephardt and Harkin have stated that they plan to bring other members of the House and Senate Democratic Leadership to meet with the minority business people to discuss strategies to protect their interests against serious threats in the Congress.

Per our discussion, we recommend that you invite this group to meet with you and other Administration officials at the White House for a briefing on the President's plans resulting from his superb policy speech in support of Affirmative Action and Federal minority business programs.

Also enclosed is an "advance copy" of an article I authored in the July/August issue of *Minority Business Entrepreneur ("MBE") Magazine*, to be published in the next few days. The article addresses the impact of the Supreme Court's *Adarand* decision and praises President Clinton for his courageous and forceful moral leadership of the Nation on the Affirmative Action issue.

In response to Ben Johnson's recent request for ways to support the President in getting his message to the minority and female communities, I would like to follow up on our discussion as relates to scheduling an interview with the President by me, for the September/Octoner issue of *MBE Magazine*. That issue has the largest circulation (approximately 100,000), including distribution to all participants in the Minority Enterprise Development ("MED") Week conference, which as you know is a major initiative of the Small Business Administration ("SBA") and the Commerce Department's Minority Business Development Agency during the third week of September. Enclosed are copies of my interviews with senior Clinton Administration officials: Secretary O'Leary; then SBA Administrator Erskine Bowles; and the three top appointed officials at the General Services Administration.

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Best regards,

Weldon

Weldon H. Latham

Enclosures

cc: Honorable Donald L. Fowler
Honorable George R. Stephanopoulos
Honorable Benjamin Johnson

URGENT MESSAGE

AUGUST 2, 1995

MINORITY BUSINESS CONGRESSIONAL MEETINGS

July 18, 1995

Re: Congressional Action on Minority Business Issues

Dear Minority Business Leader:

Make no mistake, minority business is under unprecedented attack!

As you are aware, there has been great turmoil in the minority business community as a result of the ongoing attacks on Affirmative Action and Minority Business Set-aside Programs in both Houses of Congress (particularly by Republican Senators who are also Presidential candidates, as well as from a few overly aggressive House members). This situation has been exacerbated since the Supreme Court decision to hear *Adarand v. Peña,* which was finally decided on June 12th.

As we all know, minority business enterprises (MBEs) have a very positive story to tell -- MBEs create jobs, generate taxes, hire minorities and women, provide business innovations, combat crime and urban unrest, and aid America in achieving international competitiveness through the diversity of their workforce!

It is crucial that minority business CEOs, such as you, establish strong ties and regular communication with supportive Members of Congress to advise them of your concerns and assist them in formulating responses to the opponents of minority business -- based on the record of minority accomplishment.

Congressman Richard A. Gephardt (D-Missouri), Minority Leader of the U.S. House of Representatives is such a staunch supporter (see enclosed copy of a March 14, 1995 Washington Post article). In recent discussions, Mr. Gephardt expressed his strong desire to meet with minority business CEO's and begin to discuss a strategy to defend programs crucial to the success of minority business. Minority Leader Gephardt suggested a meeting with prominent minority business leaders to commence a dialogue on the issues and develop action plans to counter the constant attacks on the minority community -- which Mr. Gephardt recognizes as a growing positive economic force in our Nation.

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Additionally, **Senator Thomas Harkin (D-Iowa)**, upon hearing of the Gephardt initiative, volunteered to participate and recruit other key members of the Senate to meet with the group and brief us on efforts to protect our interests and to solicit our input. The effort in the Senate is vitally important in light of the announcement, reported in the July 13th, Bureau of National Affairs, *Daily Report for Executives,* that Senator Philip Gramm (R-Texas) and Congressman Gary Franks (R-Conn) plan to place amendments in every appropriations bill prohibiting the use of Federal funds for Affirmative Action and Minority Business programs by any Federal Department, Agency or instrumentality.

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Marianne C. Spraggins
Investment Banker
and Counselor

Weldon H. Latham
Senior Partner
Shaw, Pittman, Potts & Trowbridge

Line in the Sand

The *Adarand* decision is a serious disappointment—to the foes of minority business development programs.

By **Weldon H. Latham**

Jon Conrad

The Supreme Court's *Adarand v. Peña* decision on June 12 brings both good and bad news.

First the good news: opponents of affirmative action contracting programs who were confident that *Adarand* would sound the death knell for all race- and gender-conscious programs did not get their wish. Even in this conservative Court, seven of the nine justices rejected the notion that 30 years has been enough time for government to redress the exclusion of minorities and women from the nation's economic mainstream. In writing for the majority, Justice Sandra Day O'Connor made this clear when she stated that "the unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country is an unfortunate reality, and government is not disqualified from acting in response to it."

Only Justices Antonin Scalia and Clarence Thomas, who wrote separate opinions concurring with the majority decision, stated that they would never permit race-conscious rem-

Adarand v. Peña: a Summary

On June 12, 1995, the U.S. Supreme Court handed down its much-awaited decision in the case of *Adarand v. Peña*. *Adarand* involved a white-male owned guardrail subcontractor that in 1990 sued Colorado's Department of Transportation (DoT) for "reverse discrimination" after losing out as the low bidder on a subcontract to a slightly higher-bidding minority contractor.

Two lower courts had upheld the Colorado DoT's 10 percent DBE goal and a special incentive that paid a bonus to prime contractors meeting or exceeding the goal. (In this case, the prime received a $10,000 bonus.)

The following represents the crux of the decision:

•The Supreme Court did not find any federal program purporting to assist minority contractors unconstitutional. It merely extended to federal programs the strict scrutiny standard already applied to state and local government minority business utilization programs since the *Richmond v. Croson* decision in 1989.

•The only issue in the *Adarand* case was the awarding of bonus dollars to prime contractors that exceeded DBE subcontracting goals. However, the Court did not find that practice unconstitutional. Rather, it sent back the case to the lower court to determine whether the subcontract compensation clause was constitutional utilizing the strict scrutiny standard rather than that of intermediate scrutiny.

•The Court did not suggest that the strict scrutiny standard could not be met for federal government minority business utilization programs. To the contrary, the majority opinion states that: "we wish to dispel the notion that strict scrutiny is 'strict in theory, but fatal in fact.'...

When race-based action is necessary to further a compelling interest, such action is within constitutional constraints if it satisfies the 'narrow tailoring' test this Court has set out in previous cases."

•There is a real issue of whether the programs discussed are race-based at all. This will have to be reviewed at length and decided in the first instance by the lower courts.

The *Adarand* decision is a far cry from ruling that any federal program assisting minority and women owned businesses is unconstitutional. It merely makes the justification more difficult—assuming the particular program is race-based in the first place.

Until further direction on this issue comes from Congress, the President or the courts, federal agencies will presumably proceed with their respective SDB programs as they presently stand, since none of them have been deemed unconstitutional by any court utilizing any standard of review.

By Ralph C. Thomas III

edies to be used to wipe out discrimination in the marketplace. (Ironic, isn't it, that but for affirmative action Thomas would not be writing opinions opposing it.)

What, then, is the bad news? Affirmative action programs are undergoing a period of unprecedented attack from their traditional allies: the federal courts and the Congress. During the 12 years of the Reagan/Bush administrations, affirmative action and minority business programs were regarded with open hostility. Yet Reagan's failure to eliminate affirmative action was due, in no small part, to opposition from a number of major U.S. corporations, which were beginning to understand the value of workplace diversity and accepted affirmative action as a reasonable means of correcting past and continuing discrimination. Also during that period, the Congress enacted several minority and women business programs (beginning with Public Law 95-507 in 1978), which codified the Small Business Administration's 8(a) program and implemented contracting goals for disadvantaged business enterprises at the Departments of Defense, Energy and Transportation, as well as the National Aeronautics and Space Administration, Environmental Protection Agency and the Agency for International Development.

Between 1980 and 1990, the Supreme Court handed down three decisions that upheld Congress' authority to establish race-conscious contracting goals in federally funded public works projects. In *Fullilove v. Klutznick* (1980), the high Court affirmed the constitutionality of the Department of Transportation's 10 percent DBE goal on federal highway and transit contracts. In the 1989 *Richmond v. Croson* decision, the Court deferred to Congress' wider latitude than states and municipalities in establishing race-based remedial programs. And in *Metro Broadcasting v. FCC* (1990), the Court upheld a Federal Communications Commission policy that granted certain race and gender preferences in bidding for broadcast licenses as a way to increase the diversity of ownership of the nation's airwaves.

The *Adarand* decision has changed all that. With this decision, the Court has drawn a line in the sand. On one side, it supports the continued use of federal race-conscious programs to redress past and continuing discrimination as long as those programs meet the same strict scrutiny standard the Court required of local governments in *Croson*. The *Adarand* decision effectively guts *Klutznick* which held that federal racial classifications be subject to less rigorous standards. On the other side, the Court has clearly articulated that the goal of diversity is *not* a compelling governmental interest and cannot be used to justify race-conscious programs—a notion it had previously supported in *Metro*.

The *Adarand* decision, however, belies the irrational arguments of the few Republican members of Congress who have mounted a vicious attack against 30 years of progress toward economic equality for minorities and women. Two GOP presidential hopefuls—Senators Robert Dole of Kansas and Phil Gramm of Texas—have severely undermined their credibility in their campaign to end affirmative action by claiming their goal is a "colorblind" society. Joining their ranks is Republican Senator Jesse Helms of North Carolina, who has introduced two bills (S.318 and S.497) that would prohibit the use of race and gender as remedial criteria in employment and government contracting. In the House, Congressman Charles Canady (R-Florida) has announced his intentions to introduce similar legislation. House Small Business Committee Chair Jan Meyers (R-Kansas) has proposed eliminating the SBA's 8(a) program without any investigation into the numerous economic benefits for the nation which the program has accrued in terms of job creation and tax generation.

> "Strict scrutiny is the proper standard for analysis of all racial classifications, whether imposed by a federal, state or local actor."
>
> —*Sandra Day O'Connor, writing for the majority in* Adarand

Affirmative action does not have to become a "wedge issue" dividing Republicans and Democrats. Thankfully, not all Republicans support the anti-affirmative action rhetoric of their colleagues. During a recent Senate debate, for instance, Senator William Cohen (R-Maine) spoke out in favor of an FCC policy that granted tax breaks to broadcast owners who sold their licenses to minorities and women. Suggesting that America's laws are colorblind, said Cohen, "is a preposterous notion....any short-term political success gained from eliminating affirmative action is going to prove to be a long-term policy disaster." (Congress ultimately passed a bill eliminating the FCC tax break which President Clinton signed into law in March).

Given the extensive documentation that already exists of past and on-going discrimination in this country, the strict scrutiny standard the Supreme Court is now requiring of congressionally mandated race-conscious programs should not be difficult to meet. President Clinton first made this point in his statement shortly after the *Adarand* decision was announced. "Despite great progress," he said, "discrimination and exclusion on the basis of race and gender are still facts of life in America...The Supreme Court has raised the hurdle, but it is not insurmountable...We know that from the experience of state and local governments which have operated under the tougher standard for some years now." [see accompanying sidebar]

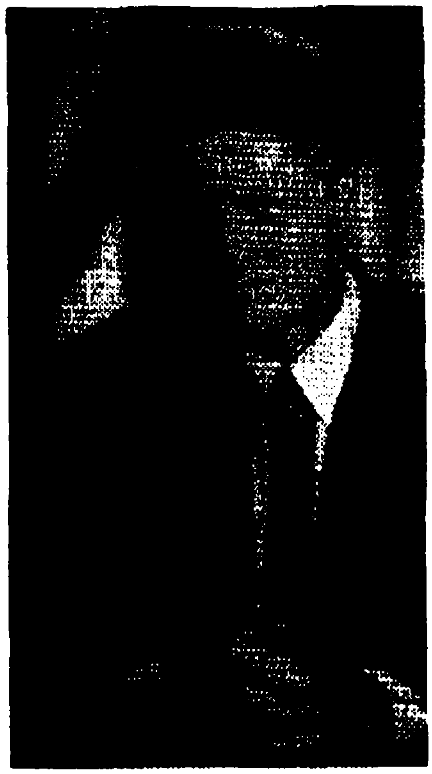
The President has begun to take control of a debate that should not be tolerated in America in 1995. On July 19, against the backdrop of the Declaration of Independence, the Constitution and the Bill of Rights in the National Archives Rotunda, the President delivered an extremely powerful speech to all Americans about why affirmative action programs are still needed. In moving and compelling language, he explained that affirmative action has not been the cause of economic problems in any segment of our society, and its elimination would benefit no one.

"We should reaffirm the principle of affirmative action and fix the practices," he stated. "We have a simple slogan: Mend it, but don't end it." The President took the high moral road—opting for fairness over divisiveness, and principle over political expediency.

The Supreme Court decision in *Adarand* has ironically vindicated the President's decision to study affirmative action programs before asserting his policy, since *Adarand* ultimately requires the very process the President has directed.

Even affirmative action foes in Congress may, in fact, be starting to realize the political costs of their callous assault. A recent *Washington Times* article, headlined "GOP Brakes on Affirma-

President Bill Clinton responded to the Adarand decision in a written statement issued on June 13, the day after the Supreme Court handed down its ruling. Here is the full text of his statement:



The Supreme Court's decision sets a new legal standard for judging affirmative action, but it must not set us back in our fight to end discrimination and create equal opportunity for all.

Despite great progress, discrimination and exclusion on the basis of race and gender are still facts of life in America. I have always believed that affirmative action is needed to remedy discrimination and to create a more inclusive society that truly provides equal opportunity. But I have also said that affirmative action must be carefully justified and must be done the right way. The Court's opinion in *Adarand* is not inconsistent with that view.

It is regrettable that already, with the ink barely dry, many are using the Court's opinion as a reason to abandon that fight. Exaggerated claims about the end of affirmative action—whether in celebration or dismay—do not serve the interest all of us have in a responsible national conversation about how to move forward together and create equal opportunity.

The Supreme Court has raised the hurdle, but it is not insurmountable. Make no mistake: the Court has approved affirmative action that is narrowly tailored to achieve a compelling interest. The constitutional test is now tougher than it was, but I am confident that the test can be met in many cases. We know that from the experience of state and local governments, which have operated under the tougher standard for some years now.

Some weeks ago, I directed my staff conducting the review of federal affirmative action programs to ask agencies a number of probing questions about programs that make race or sex a condition of eligibility for any kind of benefit. What, concretely, is the justification for this particular program? Have race and gender-neutral alternatives been considered? Is the program flexible? Does it avoid quotas, in theory and in practice? Is it transitional and temporary? Is it narrowly drawn? Is it balanced, so that it avoids concentrating its benefits and its costs? These are tough questions, but they are the right policy questions and they need answers.

I have instructed the team conducting the Administration's affirmative action review to include an analysis of the *Adarand* decision and its implications in their report.

Adarand and Gender

LIKE THE SUPREME COURT'S 1989 *CROSON* DECISION, *ADARAND* barely mentions gender. Women are mentioned only twice—and only briefly—in the majority opinion: in O'Connor's review of the Small Business Act's definition of a "socially and economically disadvantaged individual" the DoT uses and to which non-minority women were added in 1987; and in regard to a 1973 sex discrimination suit concerning equal protection standards put forth in previous court decisions. Women aren't mentioned again until Justice John Paul Steven's dissent, in which he points out the Court's inconsistency in approaching race and gender discrimination.

Adarand, Stevens noted, will permit the federal government to "more easily enact affirmative-action programs to remedy discrimination against women than it can...[for] African Americans—even though the primary purpose of the Equal Protection Clause was to end discrimination against the former slaves." Stevens noted another case in which strict scrutiny was applied to strike down the city of San Francisco's minority contracting goal but not its goal for women, which remained intact.

tive Action Reform," reported that some House Republicans would like to put the issue on the "back burner" in order not to "alienate black voters they want to woo during the 1996 campaign"—especially those "who feel disenfranchised from the Democratic party and who, as the black middle class grows, share the conservative values that Republicans espoused."

Thus, it appears that some Republicans recognize that divisive race and gender-based politics will surely backfire. They are hearing from black Republicans who, it is rumored, are mounting a massive campaign to remind their elected officials that most African Americans in the party disagree with the Dole/Gramm/Canady/Franks platform. President Clinton also has been inundated with reminders from a host of civil rights and minority and women's business organizations that their long-standing support rests on how he addresses affirmative action. Reaction to his speech from these groups has been universally favorable.

For the minority and women business community, this is an important lesson. When we make our voices heard, both political parties will be forced to reassess their positions. It is time that we, too, stand tall for what we believe in as the President did—by writing to our leaders that Americans will overwhelming choose to defeat the foes of affirmative action. ◆

The Anti-Affirmative Action Crusade Continues

CONGRESS IS READYING SEVERAL BILLS THAT WOULD CURTAIL EXISTING federal affirmative action programs.

Congressman **Charles Canady** (R-Florida) has drafted the Civil Rights Act of 1995 which would prevent the federal government from using race and gender as criteria in awarding federal jobs and contracts, or determining eligibility for federal programs. Canady's bill would repeal 160 federal programs and regulations identified by a recent Congressional Research Service report and nullify Executive Order 11246, authored by President Richard Nixon, which established the Office of Federal Contract Compliance.

The bill would permit consideration of an individual's socio-economic status in affirmative action efforts, and allow those who have suffered discrimination to seek damages and injunctive relief. The bill would also allow aid to Historically Black Colleges and Universities and grant certain exemptions for Native Americans.

Canady, who chairs the House Judiciary Subcommittee on the Constitution, says he plans to hold hearings on the impact of race- and gender-conscious programs.

Senate Majority Leader **Bob Dole** (R-Kansas) is expected to introduce the Senate counterpart to Canady's bill. Dole's bill is expected to oppose any use of quotas, set asides, timetables and goals based on race or gender, and bar the government from requiring companies to use race or gender-based hiring and promotion goals.

Congressman **Gary Franks** (R-Connecticut), one of two African American Republicans in Congress, will draft an amendment to bar set asides for minorities and women on each appropriations bill coming before the House starting with the next fiscal year.

SENT BY: 7-26-95 ; 12:16PM ; →3193#3193#99995#0631;# 1/ 7

Bernice a cc

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JUL 26 1995

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Getting in Step

A dynamic trio revamps the General Services Administration's commitment to small disadvantaged businesses.

By **Weldon H. Latham**

Recent months have seen more positive signals of a pro-minority business Clinton Administration.

Last September, President Clinton signed Executive Order 12928, "Promoting Procurement with Small Businesses Owned and Controlled by Socially and Economically Disadvantaged Individuals." At the urging of the National Coalition of Minority Business and several other advocacy groups, the President signed the long-awaited Order to reaffirm his Administration's commitment to so-called "disadvantaged" businesses.

His action sends a strong message to the federal bureaucracy that this Administration supports and endorses the objectives of minority business development programs. It also pledges strong enforcement of existing laws that were often neglected by previous Administrations. With this Order in place, and Section 7102 of the Federal Acquisition Streamlining Act of 1994 [see article on page 22], federal agencies must reorganize and focus on realistic ways to increase federal contract awards to minority owned businesses.

MBE *contributor Weldon H. Latham (second from right) with (left to right) GSA Associate Administrator Joan Parrot-Fonseca, Deputy Administrator Julia Stasch and Administrator Roger W. Johnson.*

One agency that is taking the President's lead is the General Services Administration (GSA), headed by Roger W. Johnson. The 60-year-old Johnson, formerly CEO of Western Digital, is a Republican who crossed party lines to join the Clinton Administration because of its strong advocacy of high technology. Johnson's extensive background in the private sector also includes senior executive stints with Measurex, Memorex, the Singer Company and General Electric. As GSA Administrator, Johnson is attempting to apply the lessons of corporate America to government: mainly, that providing customers with better products at lower costs requires "downsizing" and "streamlining."

GSA is a huge bureaucracy: it has more than 17,000 employees, an annual budget of $11.5 billion, and oversight for $61 billion of procurements for other federal agencies. GSA purchases everything from office supplies, light fixtures, travel arrangements and architectural services to computers, modems, facsimile equipment, software, pest control, trash removal and vehicles of all descriptions.

Considering the breadth and volume of its procurements, it would not be unreasonable to expect the GSA to meet or well exceed its minority business goals. In fact, the opposite is true.

In the past, GSA had a reputation ranging from extreme recalcitrance to outright belligerence toward goals for minority owned businesses. In fact, in fiscal year 1994 GSA failed to meet its minority business goal of 5.7 percent, and was one of only a few agencies that did not achieve its 8(a) goal. (Four others also fell short: Housing and Urban Development, Justice, Labor and the Environmental Protection Agency.) A lack of commitment to its small business programs was evident: GSA managers were not held accountable for supporting the program or ensuring its success, and its minority business customers received unfocused and ineffectual assistance at best.

GSA Administrator Johnson has taken decisive action to revamp the agency's functions that are responsible for SDB procurement goals. This reorganization was highlighted at a recent day-long forum which brought together GSA officials and more than 150 minority business owners from across the country. Participants learned that over the past six months, the GSA convened an agency-wide task force to "reinvent" the agency's SDB program, and recently adopted guidelines similar to NASA's and the Department of Energy's SDB programs. It also amended its General Services Acquisition Regulation (GSAR) to strengthen its subcontracting programs and regulations, and has initiated special outreach efforts on various GSA construction and renovation projects.

Crucial to the agency's reorganization is the renaming and elevation of GSA's Office of Small and Disadvantaged Business Utilization (OSDBU) Director Joan Parrott-Fonseca to the rank of associate administrator. A seasoned former state and local official, Fonseca was previously director of the New York State Governor's Office of Minority and Women's Business Development, and also served as director of equal opportunity and development for the state's Department of Transportation.

Fonseca now heads the newly created Office of Enterprise Development, an amalgam of the Office of Business, Industry and Governmental Affairs and GSA's OSDBU. Its mission is "to promote and facilitate programs and activities that support an environment that provides access to opportunity to small, minority and women business owners in GSA contracting."

Fonseca says her office is planning to create an advisory committee comprised of representatives from trade organizations, business councils and advocacy groups that will help develop policy and guidelines for GSA's SDB program.

"We recognize this agency's past failings," says Fonseca, "and have forcefully communicated our commitment to meeting or exceeding all of our goals."

Another crucial player in GSA's restructuring is Deputy Administrator Julia Stasch. Stasch was formerly president and chief operating officer of Stein & Company, a successful Chicago-based real estate developer which, under her leadership, broke records and set new standards for achieving minority business goals on numerous construction projects [see article on page 32]. Stasch strongly believes public-private partnerships are key to increasing minority business participation in GSA procurements.

GSA's leadership understands that increasing the diversity of suppliers to the federal government will improve the quality and lower the cost of products and services it procures. It will also help establish a broader and more sound economic base for the entire nation.

GSA's strengthened commitment to minority and women business owners reflects the Clinton Administration's realization that minority owned firms are not just a "special interest group," but play a crucial part in keeping the United States a first-rate, international economic power.

Given the current atmosphere against minority business development programs, created in part by the Supreme Court's *Adarand* case and House Small Business Committee Chair Jan Meyers' stated desire to eliminate the SBA's 8(a) program, it is vital that *all* Americans be reminded that just 30 years ago denial of public contracts to minority businesses was the law of the land.

The Clinton Administration now recognizes the tremendous importance of remedial procurement programs to overcome the effects of past discrimination that are still felt today. No one piece of legislation, one agency or single Administration can alone remove these effects, however, GSA and the Clinton Administration are beginning to do so more effectively. This is the lesson the Supreme Court must remember as it decides the *Adarand* case. ◆

Weldon H. Latham is a senior partner of the national law firm Shaw, Pittman, Potts & Trowbridge in Washington, D.C. He maintains an extensive legal practice in government, procurement, corporate law, and legislative and regulatory matters.

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The Energizer

The U.S. Department of Energy is changing course under Secretary Hazel O'Leary's leadership. Weldon H. Latham spoke with O'Leary about what those changes mean for minority business development.

Weldon H. Latham is a senior partner of the national law firm Shaw, Pittman, Potts & Trowbridge in Washington, D.C. He maintains an extensive legal practice in government procurement, corporate law, and legislative and regulatory matters.

*From her first day in office, U.S. Energy Secretary **Hazel Rollins O'Leary** has undertaken the arduous task of rebuilding the credibility and structure of the Department of Energy (DoE).*

O'Leary, a former utility executive with Northern States Power Company in Minneapolis who worked on energy policy during both the Carter and Ford Administrations, is the first African American to head the agency. She also became only the second black woman to hold a U.S. Cabinet position when the Senate confirmed her nomination in January 1993.

O'Leary is breathing new life into an agency that, like the Small Business Administration, was slated for extinction during the Reagan years. Over the past 18 months, O'Leary has shifted DoE's priorities and changed the way it does business.

O'Leary brings a new candor to government in the post-Cold War '90s. This past June, for instance, DoE, under O'Leary's direction, declassified 11,000 documents on 48 radiation experiments the federal government conducted on American citizens in years past. The agency also disclosed storage locations and quantities of highly enriched uranium, admitted inventory discrepancies in plutonium stockpiles, and confirmed other unusual nuclear tests the government conducted. These and other disclosures, O'Leary explained during a press conference the day the announcements were made, are part of a much broader effort to "come clean" on nuclear secrets now that the Cold War is over.

O'Leary is equally frank about her open support of racial and gender diversity in staffing and in contracting as an integral part of her restructuring plan for DoE.

She has combined three separate DoE divisions—the Office of Minority Economic Impact, the Office of Small and Disadvantaged Business Utilization and the Office of Civil Rights—under a single Office of Economic Impact and Diversity. The new office is headed by Corlis Moody, to whom the directors of the three divisions report. Moody has established a diversity strategy that *includes full employee participation in creating functioning partnerships with "underutilized" businesses. Moody also advises O'Leary on how DoE's energy policies and regulations affect minority owned businesses, and how to increase minority participation in DoE projects. The office also handles the implementation and monitoring of DoE's 10 percent goal with small disadvantaged businesses (SDBs), a category which includes non-minority women. The goal was mandated by Congress in 1992.*

From fiscal year 1991 to 1993, DoE increased its contract awards to minority owned businesses by 25 percent, from $656 million in FY 1991 to $827 million in 1993. This year, DoE has committed to awarding $1.8 billion to SDBs. It has also aggressively increased its goals for 8(a) contract awards, to four percent; SDB prime contract awards, six percent, and subcontracts, 8.6 percent; and contracts to women owned firms, to 3.5 percent. DoE currently reviews all procurement requests in excess of $3 million to assure maximum opportunities for minority business participation. It has also sought SBA approval to receive credit toward its 8(a) goals with DoE's management and operating contractors. This new program allows DoE prime contractors to subcontract to 8(a) companies on a sole source basis.

I recently met with Secretary O'Leary at her office on Capitol Hill to learn more about her and her commitment to minority business development.

Ken Shipp

Latham (left) with DoE Secretary O'Leary: "We have clearly relayed to our bidders that how they deal with diversity...[and deliver] on this commitment is one of the values we will use to judge whether they should be awarded a contract. They know we are very serious."

LATHAM: What has been the most critical challenge you have faced so far in your tenure as Secretary?

O'LEARY: I think the biggest challenge has been to help the Department see the need for changed missions in terms of our global confrontations. The Berlin Wall fell in 1989, the Soviet Union as we knew it crumbled in 1991, and with this came a series of very dramatic pronouncements from our government that forced a change in how the Department of Energy does its work. When I got here it was evident that the Department was not clear about what those changes meant, so we worked very hard to have the entire DoE community fully understand our new strategy. We are not a weapons production entity anymore, and I am not the "armaments queen" for the government. I am responsible for dismantlement, arms control and anti-proliferation, while at the same time maintaining a secure and safe nuclear stockpile.

LATHAM: What management initiatives have you established for DoE?

O'LEARY: We have identified our environmental, health and safety strategy as critical to our success. If we do not keep our employees and those who live near our facilities free from harm, then none of what we are trying to do will be successful. We want to be environmental leaders.

Improving our management practices is another area of focus. The public expects a fair dollar value return for the work that we do. We are implementing business practices and measuring our managers on how well they manage their budgets and their time, their processes to get work done in a more "customer friendly" manner, and their methods to provide services more cheaply. Within the first six months here, we eliminated $1.5 billion from the budget by reviewing and reducing our salaried contract employees' compensation level. In most instances they were being paid above the competitive markets in their respective locations. That wouldn't happen in the private sector. We are now paying 30 percent more for similar work compared to private sector companies and, in some instances, 12 to 15 percent more than other government agencies. That was a no-brainer. We decided to clean this up and set a goal to reduce this variance by 10 percent each year.

LATHAM: What are some of the advantages you found when you arrived at DoE?

O'LEARY: If there is a heart and soul at DoE, I would call it knowledge. Our people call it science and technology. The President is committed to economic competitiveness, so I have had my folks concentrate on job creation. If we are not creating jobs, then we ought not be here. Not until the Clinton Administration was there even a thought that the science and technology developed in our laboratories could be used to drive jobs. *R&D* magazine presents 100 awards each year to people and companies that develop the most innovative new technology that is ready to spin into the private sector. This year, 28 were won by DoE's national laboratories. The labs would like to count them one by one, but taken as a whole, DoE has more awards than AT&T, Bell Labs or General Motors. That sends a powerful message.

LATHAM: How do you see diversity in relation to DoE's mission?
O'LEARY: I see this issue in terms of the need to gain broader information and explore different attitudes during all decision making. I want decisions made by not just the admirals and captains, not just by the people from the far left or the far right, and not just by the community of citizens who live near our sites. I want decisions made by just as many minds as we can bring in to solve some of the awesome problems we face.

LATHAM: You are one of the few Clinton Administration officials with a reputation for taking forceful action in favor of minority business development and effective diversity programs. Your internal reorganization, which combines economic impact, minority business utilization and diversity, is unique. Can your approach be a model for all government agencies?
O'LEARY: What it requires is obvious—that the leadership embrace it. The Energy Department's old structure was so bifurcated, powerless, non-strategic. First of all, there is no way the Secretary can manage all of these separate issues, there is just too much there. We decided to approach these issues as a whole. It really does not matter what committee reports to whom, but rather the leadership you give it and the time you give it. I could give it the leadership but not the time. I needed someone with expertise, who is highly regarded, who is a no-nonsense, tough person with a track record. That's why I called Corlis Moody.

LATHAM: How do you see DoE's role in minority business development?
O'LEARY: We try to reinforce diversity around economic competitiveness and to find economic opportunities for people who have not had a big bite of the apple. We have clearly relayed to our bidders that how they deal with diversity and their strategy for delivering on this commitment is one of the values that we will use to judge whether they should be awarded a contract. They know we are very serious.

The struggle has been to have our staff not be threatened by the change to enhance our utilization of minority businesses, but to embrace this change because it is positive. We also focused on our human resources strategy, because if you don't have a strategy to reward this totally new behavior, your employees will not embrace change.

When I came to the Department, the first public meeting I had with employees was on diversity. I asked them, "What do you think about exactly, when you think about diversity?" Most people said sex and race. But as we began to talk, we recognized that it is much more than that...it is attitude, it is ethnicity, it is where you are from, it is what degree you have, whether you are thin or fat, tall or short, whether you're union or nonunion. When I first went to Minnesota, I thought the burdens I would have to overcome were that I am not an engineer, I am a woman and I am black. When I got there I found out that my biggest burden was that I was not from Minnesota!

LATHAM: What are some of the opportunities DoE has for minority contractors?
O'LEARY: One, we have responsibility for the cleanup of the landmass. Some say it will take well over the $200 billion we all envisioned when I first took this job. Others would say it's closer to a trillion dollars. At the same time, we have the responsibility to engineer our solutions before we start so that we don't squander taxpayers' money. All of this presents a tremendous opportunity for small and minority contractors.

Last year, we let $18.3 billion in contracts. That is a huge amount of money. A recent study we did to assess the value we received from the contractors doing our work showed that the Department of Energy, which could be considered the largest environmental management firm in the world by any measure, has approximately 20 percent of the market. That clearly represents a major opportunity for small and minority businesses, as long as we do our job and both contract directly with these businesses, and ensure that our prime contractors do an equally good job in subcontracting to [them], as the law requires. ◆

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Where Experience Finally Counts

SBA Administrator Erskine Bowles is the first in over a decade to bring hands-on business experience to the agency's top spot.

By **Weldon H. Latham**

President Clinton's appointment this past May of Erskine B. Bowles to head the besieged Small Business Administration (SBA) represents a positive first step to reinvigorating the agency.

Bowles is the first businessperson in over a decade to head the SBA. Unlike recent administrators, he has the hands-on experience as a successful executive and entrepreneur, who launched his own investment banking firm in Charlotte, North Carolina 18 years ago. Today, Bowles' mission is "to make Bill Clinton's new SBA into a real powerhouse."

Small business leaders say Bowles' business savvy and enthusiasm for the job set him apart from the last three administrators, all politicians who were offered the SBA post after losing Senate elections.

Bowles' resume reads like that of an SBA entrepreneur of the year awardee. A graduate of the University of North Carolina, with an MBA from Columbia University, Bowles began his career in international banking with Morgan Stanley. In 1975 he left to start his own company, Bowles Hollowell Conner & Co. From first-year revenues of $5,000, the firm, which focuses on financing small and medium sized companies often ignored by Wall Street, has since grown into one of the largest independent investment banking firms in the country.

Bowles was an active fundraiser in Clinton's presidential campaign and, after the election, helped organize the President's Economic Summit held in Little Rock, Arkansas last December.

Bowles was sworn in as SBA administrator a few weeks after the agency's most widely utilized program, the 7(a) loan program, exhausted its FY1993 loan authority of $3.6 billion just seven months into the fiscal year, forcing temporary program suspension.

Many small firms depend on the 7(a) program, which guarantees up to 90 percent of loans to small business by private lenders, because banks are often unwilling to lend to start-ups and even to established small businesses.

Under Bowles' direction, the SBA continued to accept and process new applications during the suspension, allowing the agency to achieve a quick turnaround when President Clinton and the Congress approved a supplemental appropriation of $175 million in August. Bowles says the significant increase in available loan funds will finance the creation of more than 300,000 jobs and generate up to $600 million in new tax revenues.

I recently spoke with Bowles at SBA headquarters in Washington, D.C. about Bowles' goals for the agency and for minority business development. We were joined by Dayton Watkins, formerly SBA acting administrator, who is now deputy of procurement.

LATHAM: What have been the most critical challenges you've faced so far in your brief tenure as SBA administrator?

BOWLES: Earning the employees' trust. I said from my first day here that I didn't expect anybody to give me their trust. Trust is something you have to earn over a period of time. I've had to work hard to earn the confidence of the people here so that we can make this agency a more efficient, more effective organization that is truly focused on meeting the needs of small business [who are] our customers.

LATHAM: What priorities have you established for the agency?

BOWLES: The President has set four goals for us, and our life here revolves around those four goals. They are, first, to attack the credit crunch head on. Small businesses are starved for capital, and nobody knows that better than the minority small business. Small businesses cannot grow and cannot create jobs without capital. It's as simple as that.

Our second goal is addressing government regulations that have a disproportionate adverse effect on small business. At these Town Hall meetings, you may think people would rather focus on taxes, or lack of capital, or the nation's economic plan or health care. But government regulations that really inhibit the growth and productivity of small businesses are what small business owners talk about over and over again. We have two acts already on the books, the Paper Work Reduction Act and the Regulatory Flexibility Act. What we have to do is enforce them, and we plan to use the Office of Advocacy to do just that.

The third goal is to make the SBA a more efficient, more effective organization that's focused on meeting the needs of small business. If you look at the SBA from a management viewpoint and compare it to the private sector, the way we're structured is like something out of the 1950s. With the electronic age and the way we now communicate, you don't need nearly the number of people in Washington, or nearly the number of people in the regions that we have. But we do need far more in the field, in the districts where the customer is.

The fourth goal the President's given me is to serve as his eyes and ears in the small business community. I never had on my dream sheet to come to Washington. But the President was determined to bring to the SBA an administrator who was a businessperson. Someone who had started a small business...who understood the credit markets...the importance of exporting small business...and somebody who was his friend, who people would perceive had his ear. The small business person, historically, has not had access to a President. This President wants to change that.

We also want to look at new programs that might serve niche needs in the marketplace. One of the biggest needs, as you well know, is for microlending. Our microloan program now makes loans of up to $25,000, with the average being $7,500. That's a big market. People ask, "What can you do with a $25,000 loan?" Let me note that two-thirds of the businesses in America are started with less than $10,000. Half are started with less than $5,000. And there is a huge niche for loans between $25,000 and $100,000. That's where the banks really have been reluctant to lend. We've also talked with lenders about how we can develop a more active secondary market for small business loans.

LATHAM: In my research I was unable to find any policy statements you or President Clinton have made, thus far, on the subject of minority business. Have I missed those statements? Where do minority business development programs fit in with these agency priorities?

BOWLES: They are absolutely critical. I have clearly stated in a number of addresses how important it is to both the President and to me to do all that we can to enhance the economic empowerment of all Americans. This President is committed to minority economic empowerment and so is his SBA Administrator.

LATHAM: Congress has enacted several laws favorable to minority business even though the previous two Administrations were openly hostile to affirmative action, set asides and minority business programs. The failure to achieve these goals, however, appears to be a lack of enforcement by the Executive Branch. Many believe a Clinton Executive Order requiring the bureaucracy to aggressively enforce these laws would help. Do you favor such an Executive Order?

BOWLES: I have not discussed an Executive Order with the President. I can assure you that this President wants to see minority owned businesses have every opportunity to grow, expand and prosper in the future.

LATHAM: One of the recurring criticisms of the Clinton Administration is the slowness in filling key appointive positions. Of those that have been filled, what is your record in diversity?

BOWLES: Excellent. We have nominated Cassandra Pulley Robinson, who is African American, as the second in command, deputy administrator. She is hands-down the most qualified person. She's a graduate of [Northwestern University's] Kellogg School [of Business] and was an executive at Mellon Bank. The SBA counsel to the administrator, Richard Hernandez, is Hispanic. The head of procurement, Dayton Watkins, is an African American. The head of intergovernmental affairs, Craig Kirby, is African American. The head of public affairs, Janis Kearney, is African American. The head of business development, Mary Leslie, and my chief of staff, Katie Broeren, are both white females...I want to stress I went after the most qualified, best people I could get—period.

LATHAM: Since much of the work done by SBA is carried out in the field, one of the key appointments is that of the regional administrators. What is the status of those appointments?

BOWLES: I've appointed none and let me tell you why. We're going to change the organizational structure here dramatically. The regions are going to be downsized significantly. The regions do not facilitate the flow of information, they inhibit the flow. I envision materially smaller regions as we move more people out of the regions and into the district offices. That's why I haven't appointed any regional administrators and won't until September 25, when we plan to announce the reorganization plans.

LATHAM: Judith Watts' position as associate administrator of the SBA's 8(a) program became a career position by statute. What other position is, aside from yours, the most important to the minority business community? And have you filled the position?

BOWLES: I think there are several. The responsibilities of the deputy for procurement, for the first time, include the 8(a) program. Procurement opportunities under the 8(a) program and SBA procurement opportunities generally are extraordinary. But also important are the people who provide capital and business advice. They are extraordinarily important. We are a team. In all the businesses I've been involved in, in my life, I have been successful because I built them on two principles. One is quality. You do quality work, you cannot fail. I insist on it here. And two, mutual respect. I believe that if you surround yourself with really good people, you have an obligation to listen to them. How can we make the 8(a) program a better program? How can we make the 7(a) program a better program? How can we redesign the 504 program so it serves a wider niche? Listening to your employees is how you make the place a better one in which to work.

LATHAM: SBA has been criticized for many years for its failure to promptly process 8(a) certifications. I have read of your efforts to streamline bureaucratic operations. Will this include elimination of the multiple levels of review in the certification process? Will it include reducing the role SBA's Business Opportunity Specialists play in contract functions that many agencies feel they can perform more quickly and efficiently themselves?

Erskine B. Bowles

BOWLES: Let me tell you what Dayton and I envision for the 8(a) program. We hope to come away with a program that is much more accessible, with a significant increase in the opportunities for minority small businesses to participate. We want to make it easier for people to get into. We also want to make it easier to monitor. Right now if you call up and want to know where your application stands, we can't tell you. And we want to provide far better business development assistance, to increase the ability of people, once they leave the program, not just to survive but to flourish. When we have a program that's more user friendly, then we will be able to increase, I believe, the number of opportunities for 8(a) firms with the procuring agencies. We're aiming for the end of this fiscal year to have a program that we can take to the Congress. I've already met with Congressman Kweisi Mfume [chair of the Congressional Black Caucus] and with others in the House and the Senate.

LATHAM: Another criticism of SBA's implementation of the 8(a) program is that 8(a) participants are the predominant source of contracts placed in the program by virtue of their self-marketing efforts. It's common, however to hear about SBA representatives who seek to deprive program participants of self-marketed contracts due to minor administrative discrepancies.

BOWLES: I will look into this matter. Thank you for bringing it to my attention.

LATHAM: More than a few minority business owners have complained that when they applied to the 8(a) program, SBA staff were less than helpful or supportive. Some suggest that the SBA has been placed in the untenable position of being both a "regulator" of minority businesses and an "advocate" for those same businesses. How do you reconcile this situation?

BOWLES: I think it fair to say that SBA staff have been, in the past, not as helpful and supportive as we can be. We are making every effort to make the program much more user friendly. At the same time, we have to make sure that those not eligible to enter the program are not provided access. I believe that our job, once a business does gain access to the program, is to provide the best business development advice that we can reasonably afford to offer.

LATHAM: Are you in favor of separate goals for minorities and non-minority women in federal contracting programs? What is your view on including women in the 8(a) program as a presumptively disadvantaged group and therefore eligible to participate (which they are currently not)?

BOWLES: I would not be in favor of including women in the 8(a) program as a separate, disadvantaged group. I think this would simply create more competition for what is currently an inadequate source of contracts. What I do plan to do is work hard to increase opportunities for women in the federal procurement process. Currently, women owned businesses account for 32 percent of all sole proprietorships. This percentage is expected to grow to as much as 50 percent by the end of this decade. At the same time, these businesses procure less than 1.5 percent of all federal contracts. This is clearly inadequate. Mary Leslie is heading up a special task force at the SBA to see what steps we can make to significantly increase procurement opportunities for women owned businesses.

Latham (left) and SBA Administrator Bowles: "We are making every effort to make our programs more user friendly."

LATHAM: Have you met with minority trade associations or other minority business groups? What have you learned from those meetings?

BOWLES: I have met with a large number of minority trade organizations since taking this job and I plan to hold more meetings with minority business groups. What I have learned from these meetings is that every problem a small business has is simply magnified exponentially for the minority small business owner. For example, when we talk about the lack of capital, no one understands this better than the owner of a small minority business.

LATHAM: What are your views on the final report by the President's Commission on Minority Business Development that was published last year? [See *MBE* September/October 1992]

BOWLES: I met with Joshua [Smith, chair of the Commission]. I think we have mutual respect. And there are a number of aspects of the report that I agree with. However, I would like to reserve comment on the report until I have a chance to submit our plan to the Congress in late September.

LATHAM: What support can the minority business community lend to your efforts?

BOWLES: The greatest support that I could receive from the minority small business community is to provide me with the kind of advice they feel I need to make our programs more accessible to them.

LATHAM: What have you learned from the Town Hall meetings you have conducted?

BOWLES: I have learned a great deal from the Town Hall meetings. I have had a chance to listen to the concerns and ideas of small business owners and then report those concerns to the President. I have heard their thoughts about bureaucratic regulations that inhibit the growth and productivity of small business. I have heard about their problems with inadequate supplies of capital and their needs for additional business advisory services. I have heard a number of 8(a) firms talk about the problems they have with the program. Each of these customers of ours has given me the kind of input I need to make the SBA a more efficient and more effective organization. ◆

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Name	Date	
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