

Review of Disparity Studies
August 2009

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What are disparity studies?

“The application of the *Crosen* guidelines to analyze government procurement is referred to as a disparity study. These guidelines require a state or local government agency implementing a race/gender procurement assistance program to first conduct a disparity study to document evidence of discrimination before the program is implemented.” (Celec et al., 2000, 135)

“A disparity study provides an agency with the evidence, in accordance with current case law, to determine whether or not, and to what extent, remedial programs for racial or gender discrimination are appropriate.” (MGT of America website, 2009)

Disparity studies are conducted for public agencies and typically focus on measuring/assessing the level of public contracts with minority/women or disadvantaged-owned businesses (referred to here simply as MBEs) compared to their availability. Most common are studies of the volume of funds contracted for construction, but also include analyses of contracting for architectural and engineering services, and other professional and non-professional services. Most often these are done by large for-profit consulting firms that specialize in performing these studies.¹ While I found only a half dozen of these through a web search, there have been well over 100 disparity studies conducted since the 1989 *Crosen* ruling. According to George LaNoue, an often-cited critic of disparity studies², “[T]hese rulings have created a disparity study industry which has resulted in about 200 such studies at a cost of more than \$100 million” (2009, 81).

Disparity studies typically include a legal summary (description of case law as it relates to the evidence necessary to show why an agency has compelling reason for remedial programs), qualitative data (interviews and open-ended responses to mailed surveys) and the calculation of disparity indices – often broken down by race/ethnicity, gender, geographic location, and in the case of the employment study by occupation. A disparity index is the ratio of MBEs (or minority/female employees) utilized by public agencies to those MBEs (or minority/female employees) available. “Available” is defined by the court to be “ready, willing and able.” If that ratio is less than .8, a disparity is assumed to exist.

The only disparity study conducted on the degree of minority and/or female employment (as opposed to MBE) contracting through public agency funds that was passed onto me or I could

¹ These include MGT of America, Mason Tillman Associates and NERA. There also seem to be some university-related groups that perform these (including two done by progressive black male economists), but I did not find any studies performed by these authors.

² Apparently except for the one he performed in St. Petersburg, FL (US Commission on Civil Rights summary)

find in a web and academic database search is the 2004 *A Report for the A Report for the State of Massachusetts' State of Massachusetts' Assessment of Women and Assessment of Women and Minorities in Construction* conducted by MGT of America.

The problem with disparity studies

Nobody seems to like disparity studies except perhaps the private contractors who are paid handsomely to do them. Academics roundly criticize them for their shoddy data and methodology while organizations that want to increase as well as those who want to decrease women's and minority representation dislike them because the findings from the studies are used to conclude what these organizations do not want them to conclude.³

Because disparity studies are used to provide evidence for the legal requirements of establishing the basis for or continuation of race-remedial programs, they are derived from the desire to survive the legal demand for a "strict scrutiny standard" that there is a compelling government interest. While the courts have set the bar, they have defined the ways to measure reaching this bar. It is on the onus of the agencies that want to set minority preferences to prove there is a compelling government interest to do so (i.e. the need to remedy past and current discrimination by using non-race based solutions). The role of disparity studies is provide a means for evaluating evidence of prior and current discrimination of specific groups in specific industries. The methodology used and that has evolved over time is based on what various courts have accepted or not accepted as evidence. As one disparity study states, "Case law sets the standard for the methodology employed in a disparity study" (Mason Tillman Associates, 2009, p. 1-4). This means of establishing measurement standards does not conform to most social science research.

There seem to be two different levels of criticisms directed toward disparity studies. The first concerns whether the data collected and used are appropriate to task of measuring discrimination and calculating the disparity index that has been used to conform to court rulings. The second and somewhat related criticism concerns the methodology itself and its ability to ferret out discrimination.

- a. Data concerns: Various authors point to several problems with data used in disparity studies. These include: lack of timeliness of data used; geographical representation of data does not map onto areas of relevance; needed data are not collected by public agencies to assess utilization (e.g. information on subcontractors is more limited than information on prime contractors); shoddy or inconsistent use of data (i.e. make inappropriate comparisons or use of data available); lack of rigor in qualitative data collection (i.e. is "anecdotal").

One particularly important critique in terms of its relevance to women in construction has to do with the data used to demonstrate availability (the denominator of the ratio used for the disparity index). Many argue that most data used (often from the Census) does not

³ For example, Adversity.net – the "Civil Rights Organization for Color Blind Justice – proudly provides a link the US Commission on Civil Rights' report critiquing disparity studies.

appropriately discern if MBEs (or employees) are “ready, willing and able” to perform work. Many of the critics argue the number used is too large (making the index too small – i.e. showing more disparity than actually exists). *However, from the perspective of looking at employment of minorities/women, this number may be too small. I.e. it is not capturing the available pool of non-white males.*

- b. Methodology concerns: These mostly centers on a critique of the whether the disparity index (even with perfect data) actually measures discrimination. These concerns include:
- Fundamental concerns over the lack of discussion or evidence about why utilization may be substantially less than availability. The implication is that there may be disparate use of MBEs (or minority/women employees) for reasons other than discrimination (i.e. choice). Economists’ studies of discrimination adjust for a range of “human capital” and other non-individual aspects to ferret out discrimination.
 - Discrimination may exist, but not at the points being measured (I.e there may be “pre-discrimination” that accounts for the lack of those available. The most commonly cited example of this is lack of access to financing for MBEs).
 - The threshold of .8 for the disparity index in order to conclude underrepresentation is completely arbitrary.
 - The use of a single measure is too narrow.
 - Lack of standard data collection by public agencies, especially on subcontracting, hampers the ability to perform and compare disparity studies.
 - Lack of standard methods that provide information on the variability in data quality. The quality of data collected varies yet, there are no standard ways in which these studies check for the reliability of their data (e.g. extent of outliers; errors caused by systematic non-responses to surveys).
 - Definitions of “ready, willing and able.” There is considerable disagreement over the notion of available. For MBEs this has centered on their capacity. It is much less clearly defined for employees.

Possible ways to rethink disparity studies

There seems to be much less case law on employee preferences than for MBEs, so there is probably considerably more room to develop better methodology. Some of the measurement issues might be easier with employees than with MBEs (e.g. size of firm and capacity). Mostly this is because it involves head counts rather than counting establishments as well as dollar amounts – the issue is which heads to count. It also seems the legal standards are different.

There may be some more room to either rethink or reinvent disparity studies. The most obvious directions to me are to use and/or establish different social science and legal definitions of discrimination that will lead to more or different disparity measurements that better measure under-representation. Key for looking at representation of women employed in construction will include measures that assess “pre-discrimination” that are embodied in industry norms and practices and measures that assess promotion/movement up trade ladders.

As to how to develop these will require substantially more thought and research. Here is a preliminary list of avenues I think would be promising.

- a. Joan Williams work on family responsibility discrimination might be useful in this regard (<http://www.worklifelaw.org/>). She argues that workplace “norms” shape individual preferences/choices in discriminatory ways. These norms are developed on the basis of ideal workers being male workers without care-giving responsibilities and they discriminate against women and in particular mothers.
- b. The National Research Council’s evaluation in their 2005 report *Analyzing Information on Women-Owned Small Businesses in Federal Contracting* might provide some useful ways (and some heft) to promoting different and better data collection and methodology.
- c. An interesting working paper out of the Federal Reserve of Atlanta (Graham and Hotchkiss, 2008) makes some interesting arguments about industrial-wide norms that leads to different relative measures of disparities. They argue for comparing industries on five different disparity measures.
- d. Use of auditing studies (i.e. use “testers” – those with equal qualifications, one male the other female, to see who is hired).

References Reviewed

Celec, Stephen E., Dan Voich Jr, E. J. Nosari, and Melvin T. Stith Sr. 2000. "Measuring Disparity in Government Procurement: Problems with using Census Data in Estimating Availability." *Public administration review* 60 (2): 134-42.

Enchautegui, María E., Michael Fix, Pamela Loprest, Sarah C. von der Lippe, and Douglas Wissoker. 1997. "Do Minority-Owned Businesses Get a Fair Share of Government Contracts?". Urban Institute: Washington, DC.

Graham Mary E. and Julie L. Hotchkiss. 2008. *Elimination of Gender-Related Employment Disparities through Statistical Process Control* Working Paper 2008-24, Federal Reserve Bank of Atlanta.

Langan, Patrick A. 2001. "Effect of Choice of Measure on the Size of a Racial Disparity." *Journal of Quantitative Criminology* 17 (3): 273
<http://search.ebscohost.com/login.aspx?direct=true&db=sih&AN=11303515&site=ehost-live>.

La Noue, George R. 1995. “Selective Perception: The Role of History in the Disparity Study Industry” *The Public Historian*, 17(2): pp. 13-20.

La Noue, George R. 2009. "Policies to Ensure Group Equality in Public Contracting in Four Countries." *International Journal of Diversity in Organisations, Communities & Nations* 8 (6): 81-95.

Martin, Heather, Maureen Berner, and Frayda Bluestein. 2007. "Documenting Disparity in Minority Contracting: Legal Requirements and Recommendations for Policy Makers." *Public administration review* 67 (3): 511-20.

National Research Council, Steering Committee for the Workshop on Women-Owned Small Businesses in Federal Contracting. 2005. *Analyzing Information on Women-Owned Small Businesses in Federal Contracting (Executive Summary)*. National Academy of Sciences: Washington DC.

Rice, Mitchell F. 1992. "Justifying State and Local Government Set-Aside Programs through Disparity Studies in the Post-Crosby Era." *Public administration review*: 482-90.

U.S. Commission on Civil Rights. 2006. *Disparity Studies as Evidence of Discrimination in Federal Contracting*.

Disparity Reports Reviewed

Mason Tillman Associates. 2003. *City of Boston Disparity Study, Executive Summary*.

Mason Tillman Associates. 2009. *City of Davenport Disparity Study Regarding Minority and Women Participation In Contracting*.

MGT of America. 2004. *Report for the State of Massachusetts' Assessment of Women and Assessment of Women and Minorities in Construction*.

MGT of America. 2008. *A Disparity Study for the City of Saint Paul and the Saint Paul Housing and Redevelopment Authority Saint Paul, Minnesota*

NERA Economic Consulting. 2004. *Race, Sex, and Business Enterprise: Evidence from Denver, Colorado*.