

BerkeleyLaw

UNIVERSITY OF CALIFORNIA

Thelton E. Henderson
Center for Social Justice

The Testimony of
Michael Sumner, PhD
at the Roundtable entitled:

“Minority Entrepreneurship: Evaluating Small Business
Resources and Programs”

before the U.S. Senate Committee on Small Business and
Entrepreneurship

September 24, 2009



Thank you, Madam Chairwoman and members of the Senate Small Business and Entrepreneurship Committee, for the opportunity to discuss minority entrepreneurship. My name is Michael Sumner, and I am the Research Manager at the Thelton E. Henderson Center for Social Justice at the University of California, Berkeley, School of Law. My colleagues and I have researched the effects of equal opportunity programs on small businesses owned and operated by people of color and women of all racial and ethnic groups.

With regard to equal opportunity programs, our research found evidence that:

- Discrimination and disparity, both present day and resulting from the legacy of past discrimination, are still prevalent for entrepreneurs of color and female entrepreneurs of all races and ethnicities.
- Equal opportunity programs can aid in leveling the playing field.
- Removing or weakening programs intended to combat discrimination reduces equal opportunity.
- Program participants had clear ideas on ways in which equal opportunity programs could help them more freely compete.

Our research focused on the California transportation construction industry, where a Disadvantaged Business Enterprise (DBE) program has been operated by the State Department of Transportation, or Caltrans. DBEs are small businesses majority owned and operated by people of color and women of all races and ethnicities.

The Caltrans DBE program is very similar to the Federal 8(a) program run by the Small Business Administration. In fact, the DBE program and the 8(a) program share a Memorandum of Understanding (MOU) for mutual certification of small businesses owned and operated by people of color and women of all racial and ethnic groups.

Our research focused on the effectiveness of the DBE program before and after the mid-1990s, when then-Governor Pete Wilson, Ward Connerly, and allies successfully curtailed equal opportunity programs. Beginning with an Executive Order in 1995 and culminating in the passage of Proposition 209 in 1996, traditional affirmative action programs were ended in the state. With respect to public contracting, a federal exception required Caltrans continue its DBE program for federal awards, but the program was ended for state awards.

In overview, our research found that equal opportunity programming enabled small businesses owned and operated by people of color and women of all races and ethnicities to more equally compete, and that the elimination of traditional affirmative action programs had a doubly negative

effect. Minority entrepreneurs lost a program designed to remedy past and current discrimination and disparity, and an apparent “chilling effect” may have created a climate in which discrimination and disparity became more widespread.

We began our research by examining over twenty years of data regarding awards from Caltrans to DBEs and to non-DBEs. We found that on average awards to DBEs rose between the mid-1980s and the mid-1990s, highlighting the success of the equal opportunity program.

However, when equal opportunity programs were threatened and removed, federal awards to DBEs plunged. In 1996, the portion of awards to DBEs dropped by nearly 50 percent and there has been a sustained reduction of greater than 50 percent since the mid-1990s.¹ In fact, a program that disbursed 28 percent of awards to DBEs in 1994 now disburses only about 2 percent of awards to DBEs, in a state in which the population is over 50 percent people of color and almost 25 percent white women.²

We found that the DBE program was seen as less helpful after most traditional equal opportunity efforts were eliminated or weakened, according to contractors we surveyed – DBE owners and operators who were certified in 1996 and stayed in business for at least 10 years. We also found that businesses owned by African Americans and those owned by women, particularly women of color, struggled the most.

In focus groups, interviews, and in-depth profiles, DBE contractors mentioned a number of barriers to their success. They mentioned an industry culture in which they perceived a “good old boy” network, one which systematically excludes people of color and women. These methods include keeping DBEs from gaining access to information about requests for bids and proposals and ignoring quality bids by DBEs.

DBE owners said the race- and gender-conscious DBE program opened doors by helping DBEs build relationships with prime contractors. In their words, it encouraged prime contractors to “pick up the phone.” However, after the end to traditional affirmative action programs, DBE firms reported that the “phone stopped ringing.”

¹ A 2007 Insight Center for Community and Economic Development study “State Policies and Programs for Minority- and Women-Business Development” documented similar trends in Washington state, with increasing awards to DBEs when equal opportunity programs were utilized and a sharp decrease after the anti-affirmative action Initiative 200 was passed in 1998.

² An Availability and Disparity study commissioned by Caltrans completed in 2007 found that in California between 2002 and 2006, there was significant disparity for most small businesses owned by people of color and women for federal awards. It also found roughly twice as much disparity for state awards, for which no equal opportunity program operated.

As large amounts of capital are needed for loans, bonding, and insurance, both present day and the vestiges of historic discrimination tend to leave people of color and women undercapitalized. For instance, one contractor shared a story of being asked to provide collateral for a \$200,000 loan he was attempting to secure. His attorney said that similarly situated White male clients were able to secure loans of that size without collateral.

When the anti-affirmative action Proposition 209 passed, it was perceived by DBE contractors as reinforcing a system of exclusion. Although billed as a way a way to create equal opportunity, they felt it never addressed what many consider the root causes of the imbalance, such as the “good old boy” network. It also led to a “chilling effect” on the climate of diversity in the state. For example, one woman-owned firm that participated in our study reported that:

“When Proposition 209 passed, I was working on \$200,000 worth of projects. The day after Proposition 209 passed, the senior project manager walked up to me and said, ‘Hey, Prop 209 passed, and we don’t have to use you anymore.’ I didn’t say anything to him at first, but the next day, I told him that I wanted to talk to him about what he had said to me. I said, ‘Did it occur to you that I’ve been working here for a number of years and that I have always finished on time or early...and how many letters do you have from clients praising my cleanliness and professionalism?’ Well, he didn’t care. He just looked at me and said, ‘Well, it’s true. Prop 209 passed, and we don’t have to use you anymore.’ The next year, my projects plummeted to \$30,000. To this day, I have to call and remind clients that I’m in still in business”

Unfortunately, our research indicates that the discrimination faced by this woman was not an isolated experience. Many women in the male dominated field of transportation construction confront a hostile working environment, facing both physical and emotional intimidation on the job, such as being randomly quizzed to prove their knowledge of the industry. Women also reported receiving the “run around” when trying to file a grievance or discrimination complaint.

Although most were very concerned by the loss of a robust DBE program, contractors saw areas in which even the earlier, more vigorous DBE program could be improved. Contractors stressed the importance that whatever components are put into place, that they be effective and utilize best practices.

For example, they observed that the DBE program only encouraged their participation at a subcontracting level, offering no help for reaching the more lucrative and stable prime contracting market. This finding from our research points out the tremendous importance of the 8(a) program which, as I understand it, focuses on prime contracting opportunities.

They also reiterated difficulties in areas such as securing bonding, financing, and insurance – which are core elements and key for capacity building in the transportation construction industry, and are areas in which racial and gender discrimination are widespread.

In summary, our research points to the need for robust equal opportunity programs which utilize best practices.

- The programs should be championed by leaders in key positions and should work in partnership with ethnic Chambers of Commerce, professional networks, and advocacy organizations to counter discriminatory and isolated social networks, including “good old boy” networks. The programs should include elements that help entrepreneurs gain access to key information, expand their networks, and identify mentors.
- The programs should include help with securing bonding, financing, and insurance, access to which these entrepreneurs are likely to be denied because of historic and present day discrimination.
- The programs should minimize the burdens on entrepreneurs applying for certification. While certification for programs such as 8(a) or DBE need to weed out false front organizations, minimizing paperwork and creating MOUs with other contracting agencies can avoid certification from becoming unduly burdensome.
- The programs should promote prompt payment, unbundled contracts, and increased lead-time, elements that are race- and gender-neutral.
- The programs should include a data collection and analysis mandate. Trends should be studied over time rather than focusing on year-to-year trends to ensure the utilization of best practices.

The research I have mentioned today is available in more detail in our reports, “Free to Compete? Measuring the Impact of Proposition 209 on Minority Business Enterprises” and “A Vision Fulfilled? The Impact of Proposition 209 on Equal Opportunity for Women,” which are freely available on our website, www.law.berkeley.edu/HendersonCenter.htm. I am also submitting copies of the reports with my testimony today and ask that it be made a part of the record.

Thank you very much for your consideration.