

THE CHALLENGE

As we look at the operation of public systems we find racial disparity in the rates at which youth of color face:

- * incarceration as juveniles;
- * warehousing in the juvenile delinquency system for children with educational disabilities;
- * removal from their families for placement in the foster care system.

THE BARRIER TO A REMEDY

For more than 30 years challengers of discriminatory effect faced the onerous burden of proving public officials' intent to discriminate. That requirement has posed a continuous barrier to progress in addressing structural racism.

THE STRATEGY

1. Prove intent by shifting the lens from past conduct to future choices.

"[L]iability under §1983 attaches where – and only where – a deliberate choice to follow a course of action is made from among various alternatives by city policymakers" City of Canton v. Harris 489 U.S. 378, 388 (1989) A Supreme Court Case

2. Offer a choice between present practice and alternatives that are more effective, less expensive and reduce disparate impact.

3. Use a Public Notice Hearing to present public officials with the alternatives and the evidence of injury, so that if they continue the status quo practices after the hearing, they will be making an explicit, public, and hence deliberate, choice.

TIMEBANKS USA CORE VALUES

- ASSETS** Recognizing that every human being has something to contribute
- REDEFINING WORK** Honoring the real work of building home, family and community
- RECIPROCITY** Empowering recipients to become contributors, as well
- COMMUNITY** Acknowledging our interdependence
- RESPECT** Giving voice to and demanding accountability for all

WHERE THINGS STAND

For decades, entrenched patterns of racial disparity have pervaded juvenile justice, special education, and child welfare.

THE LAW: NO PROOF OF INTENT = NO REMEDY

Racially disparate patterns have persisted Beyond challenge and insulated from judicial remedy

Mere claims that the racial impact is unintentional permit the practices to continue – Too little has changed.

THE STRATEGY IS STRAIGHTFORWARD

When a choice has been offered, continuing present practice then becomes intentional racism. Rejecting cheaper alternatives that work is intentional.

THE MANDATE: CHANGE – OR ELSE

Create an obligation for officials for officials to use:

- * Knowledge of alternatives that work
- * Knowledge of alternatives that are cheaper
- * Knowledge of alternatives that reduce racial disparity

IT'S TIME

- * To showcase what works
- * To expose needless, costly suffering
- * To demand use of knowledge
- * To say: **Enough is Enough!**

CONTACT US

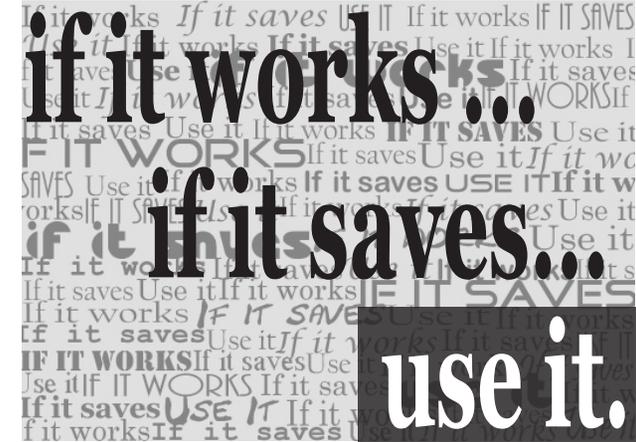
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Dismantling Structural Racism: A New Strategy



A New Day

We have a tool to compel officials to use strategies that work to eliminate discrimination.

It's Time - It's Long Past Time

to dismantle structural racism

A New Win-Win Strategy

could compel officials and community leaders to do the right thing

Will you join?
Will you join?

Racial Justice Initiative Progress To Date Year One

- Development and publication of a major law review article, “An Offer They Can’t Refuse: Racial Disparity in Juvenile Justice and Deliberate Indifference Meet Alternatives that Work,” presenting the strategy in the juvenile justice context;
- Colloquium: Dismantling Structural Racism in Juvenile Justice and Child Welfare: Summary video and follow up teleconference. Our roster of luminary presenters from across the country, included: James Bell, (Director, Burns Institute) Lindsey Draper, (DMC Coordinator, Wisconsin); JoAnn Wallace, (CEO, National Legal Aid and Defender Association); Vincent Schiraldi (then Director, DC Department of Youth and Rehabilitative Services); Perry Moriearty (Professor, University of Minnesota Law School), Bart Lubow (Juvenile Detention Alternatives Initiative-JDAI, Annie E. Casey Foundation), Shirley Marcus-Allen (Partner, Venture Philanthropy Partners) among others.
- Outcomes from dialogue on legal framework with Dane County officials: (1) grant to Dane County (Madison, WI) Time Bank to work on DMC issues and (2) report issued by Dane County Office of Equal Opportunity, “Dane County Task Force Report on Racial Disparity in Criminal Justice System.”
- Presentations of the “Deliberate Indifference” theory at four law school forums and at national conferences sponsored by the National Legal Aid and Defender Association and the National Bar Association (NBA)
- Invitational meeting convened by Bart Lubow (JDAI, Casey Foundation) to discuss the Initiative’s Strategy at the 2009 JDAI National Meeting;
- Teleconferences with the National Juvenile Justice Network and Coalition for Juvenile Justice;
- Invitation to the National Juvenile Defender Leadership Summit and plenary presentation of the RJI legal and organizing strategy to the assembled luminaries;
- Testified on application of the legal theory at Summit on Legal and Legislative Strategies convened by U.S. Congressman Robert “Bobby” Scott on closing the achievement gap in education;
- Developed initial video testimony by youth benefiting from alternatives to detention;
- Promoted community-based initiatives to provide voice for affected youth and families; and,
- Initiated development of informal grassroots networks to provide mutual support.



THE RACIAL JUSTICE INITIATIVE

✓ ARTICULATE THE STRATEGY

- * Present to advocates, policymakers, supporters, community leaders, researchers, youth, families, and government officials
- * Publish the law review article, “An Offer They Can’t Refuse: Racial Disparity in Juvenile Justice and Deliberate Indifference Meet Alternatives That Work.”

✓ PUBLICLY LAUNCH THE INITIATIVE

- * Host Colloquium: Dismantling Structural Racism in Juvenile Justice and Child Welfare
- * Present experts who offer alternatives that work
- * Formally launch a mobilizing strategy leading to Public Notice Hearings in targeted jurisdictions

The First Test of the Strategy: Reversing The De-funding of A Jurisdiction’s Sole Diversion Program

In 2009, the District of Columbia eliminated its sole diversion program. For ten years the Time Dollar Youth Court had diverted thousands of youth from the juvenile delinquency system with documentation confirming that it had sharply reduced recidivism. More than 99% of the youth so diverted from the system were youth of color. Without diversion, the system would incur major cost increases: in prosecutor time, court time, police overtime - not to mention the cost of detention, incarceration and recidivism. It took an advocacy campaign and legislative hearings to put government decision-makers on notice of the legal theory and potential resulting litigation. Together with a grassroots effort, the Racial Justice Initiative played a significant contributing role in securing a legislative mandate to restore the funding.

□ THE 2010 PLAN

- * Conduct A Prototypical Public Notice Hearing

The Initiative is now designing tools to aid with implementing the strategy in local communities. We will hold a Public Notice Hearing in a community where legislative, judicial and other officials ask responsible authorities why they are not using cheaper, better proven methods. Relevant officials receive formal notice of the availability of cheaper, more effective alternatives that reduce racial disparity.

The hearing will include testimony by experts on the superior effectiveness and lower cost of those alternatives as well as testimony by youth and families who have benefited from them. The transcript of that hearing and the consequences that flow from it will help to strategically inform the design of a litigation strategy.

- * Refine the Legal and Organizing Strategy

We intend to secure input from prominent litigators, academics, juvenile defense and policy experts to identify the strongest arguments, our biggest challenges to bring a test case.

Future actions will include:

□ REPLICATE RESULTS

- * In selected jurisdictions, use litigation as a last resort, based on a strategic selection process.

□ GENERATE AN OBLIGATORY NORM

- * Public officials will choose to dispense with discriminatory practices and use knowledge about effective strategies developed within the legal academic community, juvenile justice system administrators, juvenile court judges, concerned advocacy groups and community based organizations.