



TimeBanks USA
Racial Justice Initiative

Legal and Systems Change Strategy
Teleconference

Wednesday, July 22, 2009

2pm Eastern Time

Please note that a chime sounds as each new caller joins
so we are asking folks to call in promptly and no new callers may join after 2:10 pm

Dial-in Access Number:
1-712-432-3100
Conference Code: 579114

Call Agenda Highlights

- Give background on the Racial Justice Initiative
- Articulate the legal and systems change strategy
- Address questions/concerns submitted during the pre-teleconference comment period
- Field new questions from participants
- Discuss next steps for follow-up

Format of the Teleconference

- Guest speakers include Professor & Co-Author Edgar Cahn, Co-Author Cynthia Robbins, Professor Joe Tulman
- All other participants will remain muted throughout the call unless they request to speak
- Participants may request to have their phones unmuted to question/comment by pressing 5* on their phone keypad
- Due to the number of callers, only one participant at a time may have his/her phone unmuted
- Questions will be addressed in the order they are received and as time permits

TimeBanks USA Background

- Time Banking, developed in 1980 by Edgar Cahn, is a network for people to exchange time with their neighbors in order to serve their respective needs, build social capital, and achieve systems change. Time Banking is in 40 states and 32 countries.
- TimeBanks USA (TBUSA), formed in 1995, is a “Think- and Do -Tank” for reweaving community. TBUSA created novel innovations such as Time Dollar Youth Court, a large-scale diversion program for arrested youth in Washington, DC and other cities which greatly reduces juvenile recidivism.
- TBUSA has hosted 5 international Time Banking conferences. The most recent one, in June 2009, included a Colloquium called *Dismantling Structural Racism in Juvenile Justice and Child Welfare*. The Colloquium publicly launched TUBSA’s Racial Justice Initiative.



Racial Justice Initiative Colloquium
“Dismantling Structural Racism in Juvenile Justice and Child Welfare”
June 26, 2009
8:30 a.m.–12:30 p.m.

Welcome Message

Edgar Cahn *Founder, TimeBanks USA and Co-Leader of the Initiative*

Voices from the Real World of Juvenile Justice and Child Welfare

Yakua Banks *Youth Advocate Program, Newark, NJ*
Frank D’Agostino *Program Coordinator, Youth Advocate Program, Newark, NJ*
Gregory Rossetti *Police Officer, City of Madison, WI*
Leah Gjertson *Advocate Judge, Dane County TimeBank Youth Court*
Shane Salter *Executive Director, CASA DC, Author, Foster Parent, Foster Care Survivor*

A New Theory to Enforce Civil Rights

Cynthia Robbins *Co-Leader of the Racial Justice Initiative*

Prototype Hearing on Effective Remedies

Hearing Officers: Jo-Ann Wallace, *Executive Director, National Legal Aid & Defender Association*
Lindsey Draper, *DMC Coordinator, Office of Justice Assistance, Wisconsin*
Shirley Marcus Allen, *Partner, Venture Philanthropy Partners*

Panel #1: Data on Injury

Chris Baird, *Executive Vice President, National Council on Crime and Delinquency*; **Perry Moriearty**, *Clinical Professor, University of Minnesota Law School*; and **Jametta Alston**, *Rhode Island Child Advocate, Office of the Child Advocate*

Panel #2: Systems Change Agents

Bart Lubow, *Director of Programs, Annie E. Casey Foundation*; **James Bell**, *Founder and Executive Director, W. Haywood Burns Institute*; and **Vincent Schiraldi**, *Director, DC Department of Youth Rehabilitative Services*

Panel#3: Alternatives that Work

Dana Newman, *Youth Advocate Programs Inc.*; **Cathy Ciano**, *Parent Support Network, Rhode Island*; and **Matt Fraidin**, *Professor, UDC David A. Clarke School of Law*

Panel #4: Alternatives that Work

Ron Lospennato, *Director, Southern Poverty Law Center*; **Toussaint Tingling-Clemmons**, *Jury Training Coordinator, Time Dollar Youth Court*; and **Joseph Tulman**, *UDC David A. Clarke School of Law*

Action Planning Groups (all attendees should choose one group)

Policy/Advocacy
Community & Youth Engagement
Litigation
Government Officials & Hearing Officers

Theory into Practice Plenary

This event is funded in part by a generous grant from the W.K. Kellogg Foundation

Overview of TBUSA's Racial Justice Initiative

- In 2008, Edgar (Cahn) secured a planning grant from the WK Kellogg Foundation and began a landmark effort to address structural racism, and recruited Cynthia (Robbins) to co-lead the effort.
- TBUSA's Racial Justice Initiative combines a targeted legal theory with Time Banking's core principles to address disproportionality in juvenile justice, child welfare and special education.
- This teleconference, like the law review article, *An Offer They Can't Refuse*, focuses on juvenile justice.

Background of the Legal and Systems Change Strategy

- On June 30, 2009, University of the District of Columbia (UDC) Law Review released a pre-publication version of *An Offer They Can't Refuse: Racial Disparity in Juvenile Justice and Deliberate Indifference Meet Alternatives That Work*, by Edgar Cahn and Cynthia Robbins (“An Offer” or the Article).
- The Intent Doctrine set forth in *Washington v Davis* (1976) created a significant burden for plaintiffs seeking relief from government discrimination because it requires them to prove that the government intended to discriminate.
- This Intent Doctrine has hindered efforts to dismantle structural racism and address well documented Disproportionate Minority Contact and Confinement (DMC) within the Juvenile Delinquency System.
- “An Offer” presents a Legal and Systems Change Strategy that offers a new way to overcome the 30-year old challenge of proving the discriminatory intent of government officials in civil rights cases, while enfranchising youth, families and community advocates to hold officials accountable.

Legal Theory Overview

- The basis of the Article's new theory is a unique application in the juvenile justice and Equal Protection context of the "Deliberate Indifference" standard from *City of Canton v Harris* (1989)
- Under *City of Canton v Harris*, a municipality can be liable under 42 USC § 1983 only where its policies cause the Constitutional violation
 - Only if a municipality's practices evidence deliberate indifference to the rights of its inhabitants can such a shortcoming be properly thought of as a city policy or custom actionable under 42 USC § 1983 (in this case, it was a failure to train its employees)
 - Municipal liability under 42 USC § 1983 attaches if, and only if, city policymakers deliberately choose a practice or policy from among various alternatives

Text of 42 USC § 1983 (Codification of the Civil Rights Act)

- Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable
- For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia

Proving Deliberate Indifference

- A failure by policymakers to use knowledge about effective alternatives to incarceration that reduce DMC gives rise to liability under 42 USC § 1983
- To prove deliberate indifference for purposes of a claim under 42 USC § 1983, a plaintiff must demonstrate:
 - Injury to a right protected by the Constitution or federal law
 - That the injury was relatively certain to occur
 - That the government's course of action was one selected from among various alternatives

A Path to Proving Deliberate Indifference

- Once officials receive formal notice of the racially-disparate injury caused by their present practice and notice, as well, of the availability of effective alternatives, the government's continuation of the status quo constitutes "deliberate indifference" and proves intent for 42 USC § 1983 cases.
- In the juvenile justice context, continuing to incarcerate youth of color at disproportionate rates instead of using more effective, less expensive alternatives constitutes "deliberate indifference."

A Path to Proving Deliberate Indifference

- To establish deliberate indifference in the juvenile justice context, “An Offer They Can’t Refuse” proposes a Public Hearing process to put officials on formal notice that:
 - The present system results in documented DMC that violates the Constitution;
 - The racial disparity remains even when accounting for all race- neutral factors;
 - Injuries flow from this disparity, specifically from the disproportionately high detention and incarceration rates for youth of color, but, in fact, at every point in the system youth of color are subjected to harsher treatment;
 - Highly effective, evidence-based, replicable, and less-costly alternatives would substantially reduce DMC.

Achieving Systems Change

- After receiving notice, if officials opt not to use more effective and less expensive alternatives to incarceration and continue the status quo of disproportionate incarceration, then they would be liable under 42 USC § 1983
- Officials who maintain the status quo will be politically vulnerable
- Litigation is costly and time consuming; it is a last resort
- We are hopeful that, officials facing the threat of provable liability will feel compelled to adopt alternatives
- The Racial Justice Initiative strategy will give officials the “political cover” to establish community-based alternatives to incarceration for youth; the Initiative will insulate officials against “tough-on-crime” opponents

Next Steps

Comments

- We invite statements of support for the Initiative's legal and systems change strategy. Please send an e-mail with any support statement or indicating a willingness to be called to develop a brief statement to comments@racialjusticeinitiative.org
- We also invite comments on the law review article, "An Offer They Can't Refuse" until July 30, 2009 via comments@racialjusticeinitiative.org

Actions

- Would you or your organization be interested in helping to organize a public hearing to address disproportionality? Do you know legislators, judges and/or administrators who might be willing to convene a hearing to put officials on notice?