



# JUSTICE LAB MANUAL





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# Introduction

**On May 25, 2020, a Minneapolis police officer murdered George Floyd. His death was preceded by at least 107 deaths of Black people at the hands of police in 2020<sup>1</sup>. These deaths, including that of Breonna Taylor, who was shot by police while she was sleeping on March 13, 2020, sparked outrage, grief, and protests across the world. These events, compounded by intensified systemic economic racism caused by the COVID-19 pandemic and the amplification of these issues through social media activism, have led to a worldwide movement for racial justice in the U.S. that we have never seen before.<sup>2</sup> Estimates show that millions of people took to the streets, many of whom had never engaged in protest or political activism before.**

Over the last 100 years, this country has seen similar mass protests, riots, and arrests in cities like Chicago, New York City<sup>3</sup>, Detroit, and Los Angeles<sup>4</sup> following instances of police brutality and misconduct in communities of color.<sup>5</sup> Historically, there have been numerous commissions created to study the causes of these riots and civil upheaval. In 1922, the Chicago Commission on Race Relations published a report titled “The Negro in Chicago: A Study of Race Relations and a Race Riot” to examine the root causes of violence during the Red Summer in Chicago.

They found racial inequality to be the root cause, taking the form of disproportionate rates of arrest, conviction, and sentencing lengths between Black and white people for the same offenses, and widespread discrimination in housing, education, and employment.<sup>6</sup> In 1968, President Johnson created the National Advisory Commission on Civil Disorders to again examine the root cause of violence that occurred in over 100 cities across America in 1967. The Commission issued the Kerner Report and concluded, similar to the 1922 report, that the root cause of violence was institutional and systemic racism, combined with “...segregated housing, subpar public schools and aggressive policing of black and brown communities ...”<sup>7</sup> It also found that white racism and attitudes of white power were pervasive in the police department and one of the predominant causes of the riots.<sup>8</sup>

Following the Rodney King verdict in 1992, a commission convened by the mayor of Los Angeles found severe problems of excessive force, racism, and bias across the entire Los Angeles Police Department, but the city responded to the commission’s findings with significant increases in police funding.<sup>9</sup> While these periods of civil upheaval have helped shed light on systemic discrimination and racism in law enforcement, the subsequent government response has shown staunch unwillingness to divest resources from law enforcement and address the root causes of racial inequality.

In 2020, the outrage and protests were markedly more prolonged and widespread than prior responses to high profile police killings, including the deaths of Eric Garner, Tamir Rice, Akai Gurley, and Alton Sterling.<sup>10</sup> While the public response may be different, these senseless killings are not new.<sup>11</sup> Since 2013, over 8,000 people have been killed in interactions with law enforcement, and presumably there are thousands who survived their encounter with serious injuries and trauma.<sup>12</sup>

Studies show that Black men are about 2.5 times more likely to be killed by police in their lifetime than are white men.<sup>13</sup> Police are five times more likely to shoot unarmed Black men over the age of 54 than they are white men of the same age, and this trend is exacerbated when Black men show signs of mental illness.<sup>14</sup> Between 2015-2020, the rate of fatal police shootings of unarmed Black and Native American people in the U.S. was more than three times as high as it was among white people during the same period.<sup>15</sup>

When it comes to race and gender, police violence against cisgender and trans women of color is often underreported and undocumented. While fewer women than men are killed by law enforcement overall, over one-fifth of all women killed by police since 2015 have been Black.<sup>17</sup> At the same time, substantive consequences and accountability are absent for perpetrators of this violence: officers, law enforcement agencies, and municipalities rarely face appropriate criminal charges, civil liability, or administrative sanctions. Victims who survive an incident with police also have little recourse in civil suits, particularly if they are facing criminal charges after their traumatic encounter with law enforcement.

While Black Lives Matter and other grassroots organizations have been persistent advocates in the fight for racial justice and police accountability, it took an extreme confluence of events to spark widespread public outrage and calls for systemic change. Everyone from corporations and businesses, to activists and legislators, to community organizers and families of those impacted by police brutality, have come together to demand divestment from policing and reform in the criminal legal system.

Among those answering the call for racial justice and systemic reforms were law firms and companies across the country seeking to actively engage in holding police accountable.<sup>18</sup>

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3. Pauline Toole, *The Mayor's Commission on Conditions in Harlem – 1935*, NYC Department of Records & Information Services (Mar. 1, 2019), <https://www.archives.nyc/blog/2019/3/1/the-mayors-commission-on-conditions-in-harlem-1935>.  
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# The Origins of Justice Lab: Putting Racist Policing on Trial

The protests of 2020 effectively demonstrated that police accountability efforts need to be reimagined, and that there was a potential to use the private bar's resources more strategically. The ACLU-LA) recognized that the legal community has both a responsibility and an opportunity to fundamentally transform civil rights litigation and the relationship between private law firms, civil rights litigators, public defenders, and communities most impacted by police misconduct.



Building on decades of powerful organizing, movement building, and advocacy led by the NAACP, Black Lives Matter, and community organizations fighting for racial justice, ACLU-LA launched Justice Lab: [Putting Racist Policing on Trial](#).<sup>19</sup> Justice Lab is an intensive, statewide litigation, storytelling, and advocacy effort designed to challenge racist policing practices and combat police violence against communities of color.<sup>20</sup>

The litigation initiative enlists for-profit law firms and law school legal clinics to challenge racially-motivated stops and seizures under the Fourth and Fourteenth Amendments and applicable state laws, as well as wrongful arrests, use of excessive force, and other instances of misconduct. By focusing critical law firm and law school resources on a single state, ACLU-LA — alongside local organizations and activists — aims to help establish a litigation blueprint geared toward altering police conduct that can be replicated across the country.

## Our Mission

Through direct legal representation and community advocacy, Justice Lab aims to create a partnership among directly-impacted people, communities, private law firms, and legal clinics to challenge racially discriminatory policing practices in Louisiana. The initiative seeks to empower directly-impacted families and communities in taking on this fight.

## Our Vision

As one of a host of solutions for ending police violence against people of color and reimagining the role of policing in our communities, Justice Lab aims to hold law enforcement accountable for racist policing practices and establish a litigation blueprint for combatting police abuses across the country. We envision a world where police are no longer immune from accountability and where no child grows up in fear of being targeted by the police.

19. [Justice Lab Fact Sheet](#), American Civil Liberties Union of Louisiana (June 2020), [https://www.aclu.org/sites/default/files/field\\_documents/justicelabfactsheet.pdf](https://www.aclu.org/sites/default/files/field_documents/justicelabfactsheet.pdf).

20. [Justice Lab: Putting Racist Policing on Trial](#), American Civil Liberties Union of Louisiana <https://www.aclu.org/en/campaigns/justice-lab-putting-racist-policing-trial>.

## Litigating Civil Rights Claims: The History of 42 U.S.C. §1983

“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...”<sup>21</sup>

During Reconstruction after the Civil War, Congress passed the Civil Rights Act of 1871 (also known as the Third Enforcement Act or the Second Ku Klux Klan Act). The legislation sought to enforce the Fourteenth Amendment and respond to widespread private, and state-sanctioned, violence targeting formerly enslaved Black people across the southern states. The Civil Rights Act, which came to include modern day 42 U.S.C. §1983, allows a plaintiff to litigate violations of their civil rights in federal court. This was particularly important for vindicating the rights of Black people in the south, where law enforcement were actively persecuting and brutalizing Black people while also refusing to enforce existing laws or protect Black communities from white mobs.<sup>22</sup> Supreme Court decisions in the 1960-70s, including *Monroe v. Pape* and *Monell v. Department of Social Services of the City of New York*, helped define the parameters of §1983 claims, which are limited to violations perpetrated by state actors operating “under color of law,” including law enforcement officers.<sup>23</sup> A §1983 claim means that a plaintiff may be eligible for monetary damages in a suit against a state actor in their individual capacity, or declaratory or injunctive relief against municipalities.

Litigation is not the only means for remedying civil rights violations and empowering communities to fight police misconduct. To uplift the experiences of those who do not have viable legal claims and support directly impacted people holistically, ACLU-LA launched the Justice Lab Storytelling Initiative, through which people can record their stories for our website and choose to receive training for speaking to the media and to lawmakers. In addition, we provide mental health and social services resources to address the other harms caused by police misconduct and subsequent involvement in the criminal legal system. Through storytelling, Justice Lab honors and amplifies the experiences of people of color and those that have been directly impacted by systemic racism and white supremacy ingrained in law enforcement agencies and practices. Storytelling is also a way to bring attention to the harmful impacts of a one-year statute of limitations<sup>24</sup> and lack of access to legal counsel for civil proceedings. This is itself a criminal justice issue if hundreds of community members are deprived of the ability to litigate their civil rights claims.

21. 42 U.S.C. §1983.

22. David H. Gans, “We Do Not Want to Be Hunted:” *The Right To Be Secure and Our Constitutional Story of Race and Policing*, Constitutional Accountability Center, Forthcoming, 11 Colum. J. Race & Law (2021), [https://www.theconstitution.org/wp-content/uploads/2020/07/We\\_Do\\_Not\\_Want\\_To\\_Be\\_Hunted.pdf](https://www.theconstitution.org/wp-content/uploads/2020/07/We_Do_Not_Want_To_Be_Hunted.pdf).

23. *Monroe v. Pape*, 365 U.S. 167 (1961).

24. *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658 (1978). In Louisiana.



# Piloting Justice Lab in Louisiana: A Fitting Start

The state of Louisiana is a particularly fitting place for Justice Lab, the first program of its kind in the country, as it has the highest incarceration rates per capita in the world.<sup>25</sup> Similar to trends in other states, Louisiana’s criminal legal system disproportionately impacts people of color, and Black people are incarcerated at a 4:1 ratio compared to white people.<sup>26</sup> Black boys and men between the ages of 15-24 are five times more likely to be jailed following arrest than white boys and men of the same age; in Orleans Parish, they are 19.5 times more likely to be jailed following arrest.<sup>27</sup>

The state also has the highest ratio of police officers to residents in the nation, and more than a third of the state’s law enforcement agencies do not have any policies on racial profiling.<sup>28</sup> According to a study conducted by the Southern Poverty Law Center, people of color are disproportionately stopped, ticketed, and arrested because of racial profiling.<sup>29</sup> As a result, Black adults represent 67.5% of all adults in prison (as of 2016), while they only represent 30.6% of the state population.<sup>30</sup> Louisiana state law also does not mandate that local departments collect data on arrests, which means there is often an incomplete picture of racial disparities and the full impact of patterns of police misconduct.<sup>31</sup>

State laws have also created significant loopholes for officers to avoid accountability. In cases that are only subject to internal investigations, the Police Bill of Rights grants substantial privileges to officers, including a grace period of up to 30 days before they are required to speak to an investigator after an incident.<sup>32</sup> These laws also allow for record expungement

to hide patterns of domestic violence and prior criminal charges, making it difficult to track officers with a history of violent conduct.<sup>33</sup> Due to the state’s law enforcement decertification process and local reporting system, it is also difficult to prevent officers with past criminal convictions and patterns of misconduct from being employed by different agencies. Louisiana parishes are responsible for self-reporting when an officer has been convicted of a crime or fired for civil rights violations, both of which should lead to a decertification proceeding. However, this often leads to massive underreporting and does not prevent different law enforcement agencies from rehiring officers with misconduct or convictions in their records.<sup>34</sup>

Many officers who have been convicted of felonies, including some who are currently serving time in prison, have not been decertified; many others are now employed by different agencies across the state because it is not required to disclose disciplinary records or request an officer’s records prior to hiring.<sup>35</sup> As a result of these systems, Louisiana was the least likely state in



2015 (out of 43 using the [Peace Officer Standards and Training Commission](#) system) to decertify an officer for misconduct.<sup>36</sup> Between 2017-2019, only 26 officers were decertified due to criminal convictions; none were decertified due to a civil rights violation.<sup>37</sup>

In addition to a lack of police accountability through the certification process, victims of police misconduct who attempt to bring a civil suit against an officer face a number of additional challenges. First, in Louisiana, §1983 claims must be filed within one-year of the incident.<sup>38</sup> Due to the amount of time prosecutors have to formally charge under state law, a person stopped by police may not be charged for 30 – 120 days (depending on the crime) after their first court appearance.<sup>39</sup> Following the charges, the person may wait up to 30 days for an arraignment and access to court appointed counsel. This timeline disproportionately impacts low income people: an ACLU-LA study showed that the average person unable to pay bail was detained pretrial for 5 and a half months without any charges filed.<sup>40</sup> Thus, it may be upwards of six months from the time of arrest until they can access court appointed counsel.

Even with timely and effective representation from dedicated public defenders, many miss the opportunity to challenge civil rights violations. Public defenders are not responsible for victims’ civil suits and may not be aware of potential civil remedies available to their clients after law enforcement altercations. Thus, many victims are unable to hold individual officers accountable for misconduct or be compensated for their injuries and trauma. Victims of racialized police misconduct are often overwhelmed by their criminal trials or too traumatized to consider civil

claims until after the one-year statute of limitations has lapsed. There are also circumstances in which public defenders and their clients may fear retaliation or negative backlash in criminal proceedings if the client files a simultaneous civil claim against the officers involved.<sup>41</sup> Certain defenses can also preclude future civil actions under §1983. For example, a defendant cannot bring a false arrest action if they plead guilty to the crime (although it is possible to bring other claims that would not invalidate the criminal conviction).<sup>42</sup> Recognizing the struggles that many survivors of racialized police violence face, Justice Lab saw the need for the private bar and public defenders to work together in order to preserve potential civil claims of those bound up by the criminal legal system.

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37. Andrew Fan, Ellen Glover and Dana Brozost-Kelleher, *Louisiana Tried to Crack Down on Police Misconduct. It Hasn’t Worked*, Invisible Institute (Nov. 21, 2019), <https://www.theadvocate.com/story/news/2019/11/20/police-shooting-alton-sterling-new-louisiana-law-hasnthelped/4231440002/>.  
38. Elzy v. Roberson, 868 F.2d 793 (5th Cir. 1989).  
39. Misdemeanors (30 days), felonies (60 days), capital or life sentence (120 days). *Justice Can’t Wait: An Indictment of Louisiana’s Pretrial System*, American Civil Liberties Union of Louisiana (Apr. 2020) [https://www.aclu.org/sites/default/files/field\\_documents/aclu\\_la\\_justicecantwaitreport\\_02102020\\_online.pdf](https://www.aclu.org/sites/default/files/field_documents/aclu_la_justicecantwaitreport_02102020_online.pdf).  
40. *Justice Can’t Wait: An Indictment of Louisiana’s Pretrial System*, American Civil Liberties Union of Louisiana (Apr. 2020), [https://www.aclu.org/sites/default/files/field\\_documents/aclu\\_la\\_justicecantwaitreport\\_02102020\\_online.pdf](https://www.aclu.org/sites/default/files/field_documents/aclu_la_justicecantwaitreport_02102020_online.pdf).  
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# Justice Lab: A Blueprint

To launch Justice Lab, ACLU-LA set out to coordinate up to 100 for-profit law firms, located inside and outside of Louisiana, and 25 law school legal clinics in marshaling their resources to bring legal actions intended to stop racially discriminatory policing practices. By focusing critical law firm and law school resources on a single state, the ACLU-LA—alongside community-based organizations, activists, and groups—can help establish a litigation blueprint geared toward altering police conduct that every state in the nation can follow. As a litigation and organizing blueprint, Justice Lab is tailored to provide direct representation in the police accountability context but can be replicated to serve any community identified legal needs, from police accountability to immigration detention, to housing and homelessness. Essentially, we envision the Justice Lab model evolving to meet your community’s specific needs.

## WHY JUSTICE LAB

**Justice Lab is not an experiment, but a serious pursuit of what justice means, who it is for, and who has been historically excluded from obtaining it. The name “Justice Lab” acknowledges that ending racist policing will require learning and listening, dialogue and collaboration. Most of all, it will require centering the voices, leadership, and lived experiences of the people most impacted by this epidemic of police violence. We don’t have all the answers and we won’t win every case – but that cannot be an excuse for inaction.**

## Justice Lab State: Snapshot from June - August 2021

- » 54 firms
- » 27 corporations (including Amazon, Facebook, PayPal, and Visa)
- » Over 170 total intake volunteers
- » Over 100 research memos completed
- » More than 300 incidents reported
- » 100 intake memos
- » 47 cases assigned to investigation
- » 17 stories published
- » 18 cases filed

# Justice Lab’s Core Tenets

## 1. Operationalizing a Civil Gideon Model

The litigation aspect of Justice Lab takes a community-based, direct services approach to addressing police accountability, a legal paradigm shift that calls for synergy between civil and criminal proceedings. The strategy is rooted in the context of Gideon v. Wainwright, which guarantees a right to counsel in criminal proceedings and birthed the public defender system we have today. ACLU-LA has taken the guarantees of Gideon a step further, recognizing that after an arrest, victims of law enforcement misconduct are often funneled directly into the criminal legal system without an avenue to challenge civil rights violations. While nonprofits and community-based organizations are not in a position to guarantee a “right” to counsel through legislation, organizations like ACLU-LA can help increase access to representation by connecting indigent plaintiffs with pro bono counsel. In doing so, the model seeks to increase equity in the legal system, and challenge systemic, unlawful policing practices and barriers to holding law enforcement accountable.

In 1963, the Supreme Court decided Gideon v. Wainwright, a landmark case that guaranteed a fundamental right to counsel in criminal proceedings through the Sixth Amendment. Subsequently, Strickland v. Washington clarified that criminal defendants have the right to adequate representation when they receive counsel.<sup>43</sup> Since then, however, this right has only extended to certain types of civil proceedings at the state level, including those related to termination of parental rights, restraining orders in domestic violence cases, and civil commitment.<sup>44</sup> For all other civil proceedings, access to counsel is usually available only to those with the resources to pay a private attorney or in limited circumstances where a victim finds pro bono representation.

In the context of racialized police misconduct, there are federal protections in place for victims to challenge civil rights violations perpetrated by public officials. 42 USC §1983 was intentionally designed to provide individuals with a private right of action in federal court.<sup>45</sup> However, this right of action has

## What is civil Gideon

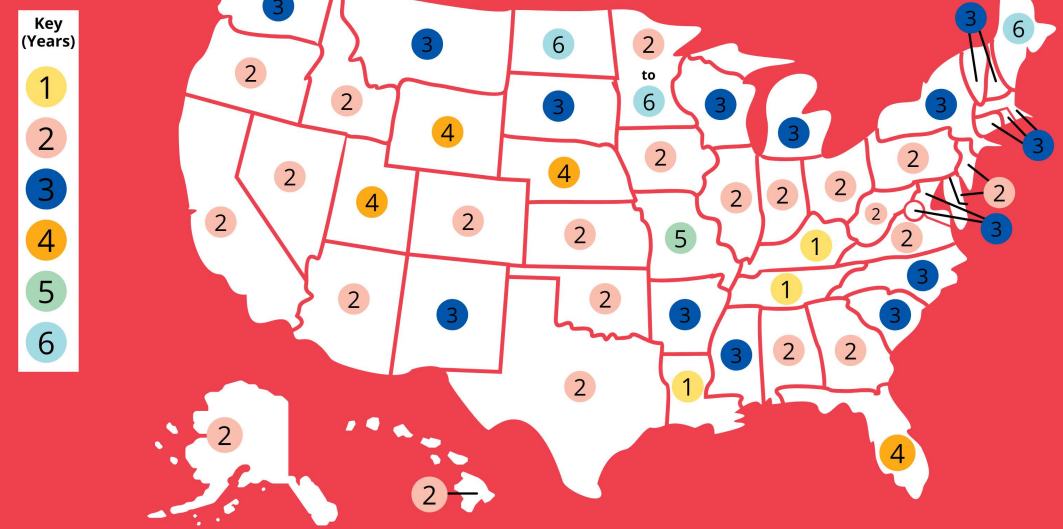
A victim of racialized policing who is subjected to criminal proceedings may not be aware that their rights were violated during the incident leading to their arrest. For those that hope to challenge their civil rights violations, many cases involving unconstitutional stops, searches, seizures, arrests, excessive force, and racial profiling are not financially viable for contingency fee attorneys to take on, or for low-income people to take on the out-of-pocket cost of hiring representation. Justice Lab steps in to bring cases to light that are traditionally overlooked due to financial reasons, and thus typically prevented from reaching the justice system, in an effort to increase access to Gideon representation for civil rights claims. In addition to bringing individual civil rights claims, an organized and strategic approach to civil Gideon litigation also has the potential to challenge unlawful institutional practices in law enforcement agencies across the country by:

- Raising awareness of systemic and unconstitutional civil rights violations perpetrated by law enforcement officers;
- Shifting precedent and challenging barriers to police accountability through statewide, sustained litigation efforts;
- Empowering the community to share their stories and shape the narrative of their experiences with law enforcement.

<sup>43</sup> Gideon v. Wainwright, 372 U.S. 335, 344 (1963); Strickland v. Washington, 466 U.S. 668 (1984).  
<sup>44</sup> John Pollock, The Case Against Case-by-Case Courts Identifying Categorical Rights to Counsel in Basic Human Needs Civil Cases, 61 Drake Law Review 763 (2013), [http://civilrightstocounsel.org/uploaded\\_files/4/The\\_Case\\_Against\\_Case-by-Case\\_Pollock.pdf](http://civilrightstocounsel.org/uploaded_files/4/The_Case_Against_Case-by-Case_Pollock.pdf).  
<sup>45</sup> Brad Reid, A Legal Overview Of Section 1983 Civil Rights Litigation, HuffPost (Apr. 14, 2017), [https://www.huffpost.com/entry/a-legal-overview-of-section-1983-civil-rights-litigation\\_b\\_5810e17ee4b048372700d793](https://www.huffpost.com/entry/a-legal-overview-of-section-1983-civil-rights-litigation_b_5810e17ee4b048372700d793).



STATUTE OF LIMITATIONS APPLICABLE  
TO SEC. 1983 CLAIMS



been curtailed by state law governing statutes of limitations; in three states, including Louisiana, the right to civil remedy is generally waived if victims do not sue within one year of the date of the incident.<sup>46</sup> Albeit counterintuitive, this means that—if criminal charges stemming from an unconstitutional stop, search, seizure, or arrest are pending, and the defendant does not file a timely complaint to preserve potential civil remedies related to those actions—those remedies are unlikely to be available by the time that the criminal case is resolved. Insert Visual: Color coded map or graphic of state statutes of limitations

In the event that a Louisianan does not have the means or opportunity to file a §1983 claim before the one-year mark of the incident, the only other means of redress is to appeal a criminal conviction. While this may serve to vindicate the individual defendant, it does little to challenge systemic, unlawful police practices that continue to disproportionately impact communities of color.<sup>47</sup> The Justice Lab model seeks to change this and empower communities and legal professionals to address the root source of these civil rights violations, while also providing survivors an avenue to redress their injuries through monetary damages or equitable relief.

2. Building Community Power

Working with community partners, ACLU-LA is developing a set of non-litigation support tools to help empower directly impacted families and communi-

ties with information and opportunities to pursue other avenues for change. The avenues include storytelling and writing workshops, know-your-rights seminars, advocacy trainings, and wellness sessions. Justice Lab recognizes that we will not be able to litigate all requests for assistance, but litigation is not the only way to change systems. As such, Justice Lab’s programs seek to uplift and support the voices of those directly impacted by systemic racism and build grassroots power to advance racial justice and bring resources to the community.

3. Holistic Representation

A community-centered Justice Lab model recognizes that not all cases will be litigable, and litigation may not always be appropriate. When a member of the community reaches out to Justice Lab, we want to offer resources and programs that respond holistically to the struggles and trauma that occur as a result of police misconduct, both for individuals and families. ACLU-LA developed a storytelling initiative, created partnerships to provide mental health resources, and increased our social work capacity, all of which help us look beyond a legal remedy to address what prospective plaintiffs may need as they progress towards litigation or storytelling opportunities. ACLU-LA believes that through alternatives-to-litigation strategies, we can affirm and respect the lived experiences of impacted people and make their stories central to everything that we do.

46. *Wilson v. Garcia*, 471 U.S. 261 (1985); *Owens v. Okure*, 488 US 235, 240 (1989).  
47. Marshall Miller, *Police Brutality*, 17 Yale Law & Policy Review 152 (1999), <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1348&context=yjpr>.

How to Use this Manual:  
Building Your Own Justice Lab

This manual should be seen as a blueprint for communities and organizations seeking to launch their own Justice Lab – a community-based, direct-services-oriented, civil Gideon model for police accountability, or other community-identified needs. A statewide initiative may not be feasible for every organization, and the scale of Justice Lab in Louisiana should not deter you from launching a civil Gideon program that fits within your organization’s budget and capacity. These strategies can be successful at any scale: if you work in one city and have strong relationships with communities in a centralized locality, start there and build a solid foundation.

For ACLU-LA’s Justice Lab, due to the public focus on police misconduct in the summer of 2020, we were able to secure funding to launch a statewide initiative. Depending on your capacity and broader organizational objectives, it is also possible to adopt certain aspects of the Justice Lab model to implement. For example, you can offer a storytelling initiative and mental health services without the litigation component of the initiative and still support communities of color and shed light on police misconduct.

The manual follows a three-part, ten-step process for building institutional capacity and partnerships to develop a Justice Lab model. Please note that this manual is intended to share ACLU-LA’s experiences and lessons learned as we rolled out a first-of-its kind initiative. Your initiative should be tailored to the concerns and priorities of local communities of color, and you should remain open to adapting these ideas into an effective and strategic litigation campaign in your state.

PART I

(Steps 1 – 5) provides a roadmap for harnessing the resources and expertise of your organization to: center the community, recruit partners and volunteers, and develop critical infrastructure to ensure that your initiative is efficient, proactive, sustainable, and adaptable.

PART II

(Steps 6 – 8) highlights key steps for the official launch of your initiative and day-to-day operations as litigation begins.

PART III

(Steps 9 – 10) looks to the future for you to consider documentation and data collection, and how to use data analysis to strengthen discovery and litigation strategies.

In addition to timelines and visual cues in each step, there are practice points throughout the manual to help guide your planning and learning process. These are structured around the civil Gideon philosophy and provide practical recommendations for implementation. These include information on

- » PLANNING: Long-term planning and strategy recommendations
- » LEGAL PRACTICE POINTS: Considerations for strong legal strategies integrated into all planning phases and suggestions for operationalizing these before litigation begins
- » DISMANTLING INSTITUTIONAL RACISM: Tips for how to integrate anti-racism principles into your work to ensure that the initiative does not replicate traditional inequities and harmful power dynamics often found in the legal field
- » IN PRACTICE WITH ACLU-LA: Example scenarios, sample documents and templates created by ACLU-LA’s Justice Lab to give you a head start on developing your systems early-on in your initiative

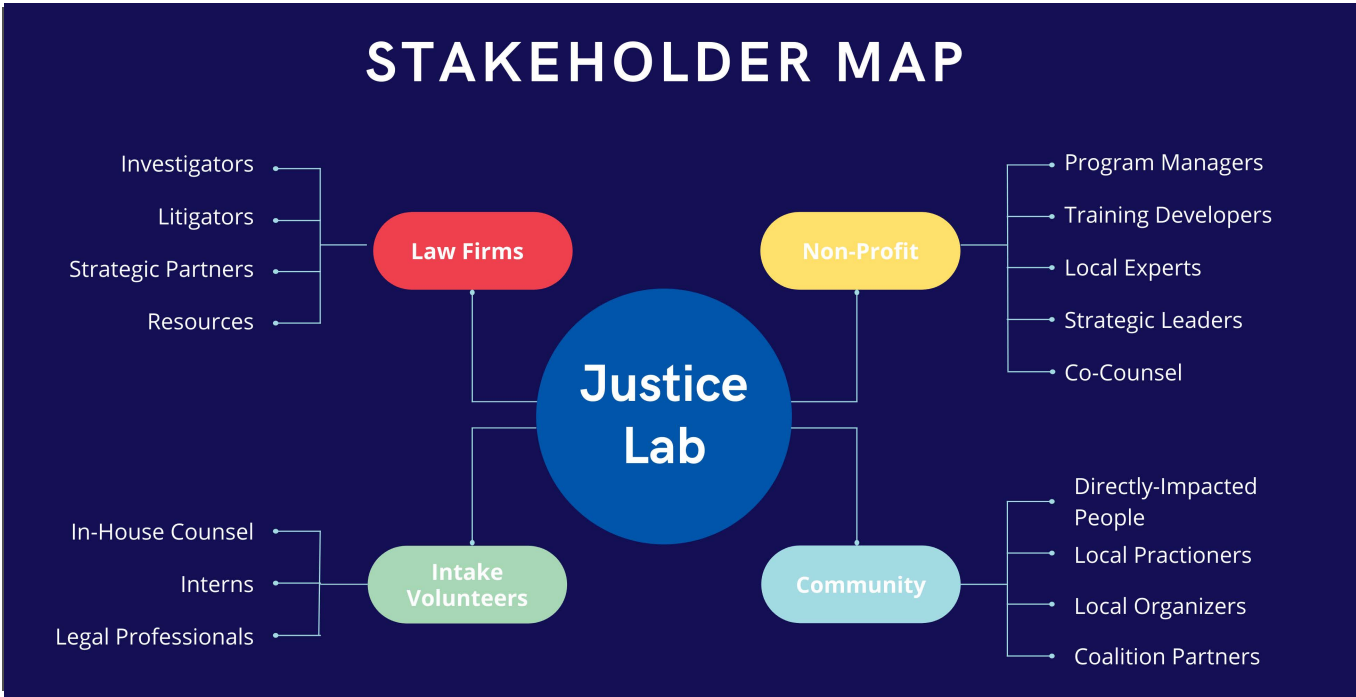


PART I

# Step One: Engage Key Partners

## Civil Gideon Relies on Partnerships

A civil Gideon model requires a host organization to establish a strong network of partners to help with outreach, intake, storytelling, investigations, and litigation. Working at the intersection of the criminal and civil legal systems, the host must bring together wide-ranging and diverse parties who may not normally interact. These partnerships begin with community organizations, public defenders, and local civil rights litigators, but ultimately extend nationwide to include private law firms, law school legal clinics, and corporate in-house counsel. Before diving into planning an initiative, you should first create a partnership strategy and stakeholder map to assess opportunities for building a strong foundation for a civil Gideon model.



» DIRECTLY-IMPACTED COMMUNITY

- **Community partners:** Community partners include people or organizations in Louisiana who consist of members who have been directly impacted by racialized police misconduct, or organizations and individuals committed to supporting directly impacted people and their families. Community partners ensure that Justice Lab’s actions serve to advance goals and meet community needs. They may also help raise awareness of the initiative. misconduct, and.
- **Prospective plaintiff:** A prospective plaintiff is a community member who has experienced racial-

ized police violence and reaches out to participate in the Justice Lab intake process. After assessing if there is a potential actionable claim that falls within Justice Lab’s framework, the potential plaintiff is either recommended for a comprehensive intake interview or invited to participate in our storytelling program.

- **Client:** A prospective plaintiff becomes a client once they sign the client retainer for the investigative phase. When the law firm completes the preliminary investigation and determines if the prospective plaintiff has a viable case that warrants litigation, the client then enters into a new agreement for the litigation phase.

- **Storyteller:** A prospective plaintiff becomes a storyteller after agreeing to participate in Justice Lab’s storytelling program. The storytelling program is open to all prospective plaintiffs who do not become clients. Typically, our storytellers include potential plaintiffs that reach out to us about an incident that occurred outside of Louisiana’s one-year statute of limitations, that would fail to meet the burden of proof, or involve inaction.

» LEGAL PARTNERS

- **Law firms:** A law firm partner include any law firm, legal clinic, or organization that agrees to investigate and potentially litigate one or more. Our law firm partners spearhead challenges to racially-motivated stops and seizures by bringing individual §1983 actions under the Fourth and Fourteenth Amendments and any other applicable laws.
- **Law school legal clinics:** Law school legal clinic partners support the Justice Lab’s amicus and appeals work, appealing unfavorable constitutional and qualified immunity decisions that result from the trial court actions brought by the law firms in the network, and contribute a substantial amount of legal research for the Justice Lab Research Repository.
- **Intake volunteers:** Any legal professional with the interest and time to provide intake services can join Justice Lab as an intake volunteer. Typical volunteers include local practitioners, in-house counsel for various corporations, law students, and pro bono legal professionals who are dedicated to supporting those most impacted by racialized policing and institutional racism in the justice system.
- **Local civil rights attorneys:** Local civil rights attorneys provide a critical resource for informing the legal strategies of a geographically specific Justice Lab. These attorneys can provide litigation training for out-of-state counsel, share legal research on state and circuit court precedent, and knowledge of key players in local law enforcement and the judiciary. At the litigation phase, they may also serve as local counsel for out-of-state firm partners, which can be helpful for host organizations with a limited number of staff attorneys. Community consulting experts: Community consulting experts partner with law firms during investigation and litigation, providing boots-on-the-ground knowledge based on their lived experiences with law enforcement, the criminal legal

- system, and awareness of local issues.
- **Public defenders:** Public defenders can refer their clients to Justice Lab services and consult with staff to ensure strategies for civil and criminal proceedings are in alignment. Public defenders are essential partners for identifying patterns of unlawful behavior and abuse and reaching prospective plaintiffs as soon as possible which is especially important in states like Louisiana with a one-year statute of limitations on §1983 actions.
- **Criminal defense attorneys:** Criminal defense attorneys can refer their clients to Justice Lab services and consult with staff to ensure strategies for civil and criminal proceedings are in alignment. Like public defenders, criminal defense attorneys are essential partners for identifying patterns of unlawful behavior and abuse and reaching prospective plaintiffs as soon as possible which is especially important in states like Louisiana with a one-year statute of limitations on §1983 actions.

NAVIGATION

- For more information about community partners and consulting experts, see **STEP TWO**.
- For more information about recruiting and onboarding law firm partners, see **STEP THREE**.
- For more information about intake volunteers, see **STEP FIVE**.





## PART I

# Step Two: Community

While this manual provides a general framework for a civil Gideon model, your initiative should begin with the perspectives and expertise of communities of color who have experienced injustice and violence at the hands of law enforcement. These communities can help shape the specific objectives and strategies of the local initiative, contribute insights into patterns of misconduct and abuse, and provide their expertise and localized knowledge to other partners. Without the perspective of these individuals and families, legal strategies have the potential to endanger community members, undermine local organizing, or take resources away from proven solutions. Step Two provides insights into how to shape community engagement in a meaningful way, considering traditional power dynamics between legal professionals and communities of color, and ensuring that the community is recognized and compensated for their expertise.

### » ENGAGING COMMUNITY

The history of policing in the United States is informative for understanding the institutional racism and white supremacy embedded in the culture and practices of law enforcement today. It is necessary to confront this history and acknowledge its continuing role in perpetuating state-sanctioned violence against communities of color. A civil Gideon model recognizes that Black and Brown people experience police interactions within this historical context of violence, oppression, and white supremacy. A community-based, direct representation model requires lifting up those voices in particular to ensure that individual officers are held liable for their actions and law enforcement agencies are pressured into adopting accountability mechanisms to prevent racialized misconduct.



## What is Community-Based Lawyering?<sup>48</sup>

Community-based lawyering begins with the acknowledgement that addressing problems faced by communities requires more than legal knowledge. It requires engagement with community members who have the lived experience necessary to inform litigation and trial strategy concerning systemic issues that impact their community. This model of lawyering seeks to improve legal outcomes by creating space for directly-impacted people who, informed by their lived experience and expertise, have the knowledge necessary to guide legal responses to injustice.

In addition to the white supremacy embedded within law enforcement and the criminal legal system, it is also important to address the historic failings of the legal community to protect the rights of communities of color, and in many cases, the legal system's role in perpetuating inequality. To this day, legal remedies are often out of reach, and there can be profound mistrust of attorneys and outsiders promising to help.

As you build partnerships between law firms and communities, integrate these difficult conversations into your trainings and allow this history to inform your strategies for building positive working relationships. A Justice Lab model should explicitly seek to avoid replicating racial inequities and harmful power dynamics that are traditionally found in attorney-client relations. For example, an attorney may be overly focused on a

successful legal outcome at the expense of the client's personal goals and approach the interaction through problem solving rather than active listening. Bias, often implicit, also plays a huge role in shaping this relationship. When race, gender, and class become a part of the dynamic, the client may feel pressured to agree with their attorney even if they are uncomfortable or refuse to divulge all the facts of a situation due to shame or lack of trust. Stereotypes about particular groups, for example, people who have been convicted of crimes or who have struggled with substance abuse, may also implicitly cloud the attorney's assumptions about the client. While these dynamics can arise unintentionally in any organization, it is important to address them head-on and actively check-in with staff and clients about how to cultivate safe and productive dynamics.

*“Since the birth of our nation, police have had the state-sanctioned authority to imprison and murder Black people without consequences. Two hundred and fifty years of chattel slavery was followed by thousands of public killings by way of lynching. The racial terror of Jim Crow gave way to systemic discrimination and mass incarceration. Today, modern-day lynchings occur daily and are sprawled across our televisions and social media feeds. Six years since police killings in Ferguson and elsewhere sparked a nationwide movement for Black lives, the annual number of people killed by police has barely budged.”*

- Alanah Odoms, Executive Director of ACLU-LA

48. Karen Tokarz, Nancy L. Cook, Susan Brooks, and Brenda Bratton Blom, *Conversations on “Community Lawyering”: The Newest (Oldest) Wave in Clinical Legal Education*, 28 Wash. U. J. L. & Pol’y 359 (2008), [https://openscholarship.wustl.edu/law\\_journal\\_law\\_policy/vol28/iss1/11](https://openscholarship.wustl.edu/law_journal_law_policy/vol28/iss1/11). Kelly McAnany and Aditi Kothekar Shah, *With Their Own Hands: A Community Lawyering Approach to Improving Law Enforcement Practices in the Deaf Community*, 45 Val. U. L. Rev. 875 (2011). Available at: <https://scholar.valpo.edu/vulr/vol45/iss3/250>.



Out-of-state legal professionals must recognize that the voices and priorities of the community come first and form the basis of any civil Gideon model. However, there is a balance between reaching out first to community organizations and those most impacted by police misconduct, while also making sure that expectations are realistic. Without solid commitments from law firms and legal clinics, it can be difficult to make guarantees that your initiative will get off the ground. Conversely, without the leadership and buy-in from the community, a host organization risks alienating the very leaders and prospective plaintiffs that they hope to partner with. The principles and philosophy of community-based lawyering can help ground your litigation efforts and ensure that communities remain at the center of your work.

### » BUILDING PARTNERSHIPS WITH COMMUNITY

The first step in building relationships with community or strengthening existing partnerships is to create meaningful spaces for dialogue and exchange. Building relationships with the community will depend on a number of locally specific considerations. If you are a grassroots organization led by community members and actively involved in police accountability efforts, you may already have established relationships and processes in place for meaningful engagement. If you are a statewide organization, think strategically about what it means to enter communities as outsiders who have not established trust, and the likelihood that your initiative may be seen as encroaching on or undermining the historical work of local organizers. You may also come to the table with certain assumptions about community experiences with law enforcement based on your work in particular localities; while these may be a helpful starting point for a broader strategy, you should not automatically impose these ideas on new community partners or assume that they will have the same reaction to your advocacy efforts.

If you are new to an area, you should not rush to formally announce your initiative without first canvassing the community and getting their buy-in. Take advantage of any relationships you have at the beginning-whether it is one public defender, a business owner, a community organizer, or families who have worked with your organization – word of mouth is a powerful tool for opening the door and starting the conversation. The host organization should first and foremost prioritize listening and discover how racialized policing has impacted the

community and what efforts are underway to hold police accountable. Coming to a community with a fully formed idea or strategy can be met with a negative reaction from organizers who have been working tirelessly to address these issues.

Although the use of informational emails or mass email campaigns can be effective in some situations, you should also conduct specific and tailored outreach to show that you have done your homework and are committed to building an initiative that reflects the reality on the ground. Take the time to meet with individuals and organizational representatives and get to know their movement goals and current struggles. You should also carefully navigate the best way to initiate contact with an organization or individual, and whether it is appropriate for an intern or volunteer to reach out first. If you do not already have an established relationship, it can be more respectful for a senior staff member or the director of the initiative to send the initial communication and demonstrate that your organization takes community leadership and engagement seriously. One way we suggest initiating this relationship is to invite community stakeholders to a series of listening sessions that will allow you to fully understand what the needs of the community are and update them on how their feedback has shaped certain components of your program.

After securing partnerships or support from individual organizers or organizations, you should begin to think about raising awareness of the initiative in the broader community. Some communities may suggest using a town hall format or listening circle to allow people of color who have been the victims of racialized policing, or family members of community members who have been harmed by police, to tell their stories. For some people, this opportunity can serve as a healing space to share their story with others, others see it as an opportunity to advocate for change.

Through our early conversations with local partners, ACLU-LA developed two structured programs to lift up the voices of people most impacted by police misconduct and ground our litigation and storytelling efforts in the expertise and knowledge of our local partners: Community Consulting Experts and Community Partners. While ACLU-LA staff did develop initial proposals for these programs, we relied on community feedback and recommendations to finalize them. We continue to meet regularly with our local partners and ask for feedback.

# Adapting Priorities to Reflect Community Concerns

One of the outcomes of community listening sessions held with the ACLU-LA was the development of a mental health services component of the initiative and the impetus to formalize a story-telling program. Connecting out-of-state law firms to community members also ensures that attorneys know what is happening from an organizing and advocacy perspective, particularly if there are emerging community threats or priorities. For example, in the fall of 2020, legislators and activists in Baton Rouge were engaged in pressuring the state police to release body cam footage from the 2019 death of Ronald Greene. Firms should be aware of organizing efforts occurring in parallel to investigations and trials, especially as they may impact the availability or security of partners, plaintiffs, and their families. You will also need to be flexible and adapt to shifting community priorities and responses to your initiative, as communities identify new or emerging issues or make suggestions about the intended versus actual impact of your work and partnerships.

### NAVIGATION

- For more information about putting community first, see **LESSONS LEARNED**.

### » COMMUNITY CONSULTING EXPERTS

A civil Gideon model must be grounded in the local community's priorities and concerns. In addition to beginning your initiative with community conversations, it is also important to institutionalize the participation and leadership of community members most impacted by the issue area your Justice Lab is aiming to address.

For example, ACLU-LA's Justice Lab which addresses racist policing specifically sought out the participation of organizations largely made up of formerly incarcerated individuals. ACLU-LA structured this participation through two different roles: Community Consulting Experts and Community Partners. These programs provide various opportunities for leadership and involvement in the initiative.

To ensure that the cases litigated stay rooted in community and the larger goals of the movement for racial justice, the host organization should aim to pair each law firm partner with a local consulting expert who has experienced injustice at the hands of law enforcement. These Community Consulting Experts (CCEs) provide localized boots-on-the-ground expertise that can inform investigations and trial strategy. Justice Lab recruits CCEs who: hold deep ties to Louisiana and the local community; have experienced and been directly impacted by law enforcement practices in Louisiana; and exhibit strong interest in and commitment to civil engagement and community organizing. CCEs commit to 20 hours of paid work with their law firm partner over a five-month period, during which time they provide their expert opinion about regional and local issues related to racialized policing.

### The Role of Community Consulting Experts

- Partnering with out-of-state law firms to provide knowledge and expertise on local and regional issues related to racialized policing.
- Ensuring that Justice Lab conducts its litigation efforts through a community-centered lawyering model.



## Onboarding Community Consulting Experts

- Collect name, information, background, history, and reason for expressing interest in CCE program.
- Share an overview of the CCE program and provide examples of the ways that CCEs partner with law firms.
- Request that they share their experience with any of the following (with specifications as to which localities/institutions they are most familiar with):
  1. Law Enforcement Agencies/Persons
  2. Jails
  3. Prisons
  4. Other Detention Facilities (e.g., juvenile detention or immigration detention)
  5. Localities within the State (by municipality)
- Collect prospective CCE availability for the next 4-5 weeks and inform them of upcoming onboarding meetings.

## » COMMUNITY PARTNERS

Community partners include people or organizations in Louisiana who consist of members who have been directly impacted by racialized police misconduct, or organizations and individuals committed to supporting directly impacted people and their families. In addition to directly-impacted people working to spread the word and ensure that programming is grounded in community priorities, other community partners currently include local organizations, activists, legal professionals, photographers, and writers.

## The Role of Community Partners

- Providing knowledge, experience, and personal insight to assist an out-of-state legal partner in establishing the context surrounding a pending Justice Lab case.
- Speaking at community events hosted by the initiative, including storytelling, and writing workshops, storytelling circles, know your rights seminars, and wellness sessions.
- Committing to being a resource referral for those whose cases cannot be litigated and could benefit from additional support and resources.

## » PROVIDING CRITICAL ACCESS TO MENTAL HEALTH CARE AND SOCIAL SERVICES

While developing the various components of Justice Lab, ACLU-LA recognized that the harm inflicted by racist policing and misconduct goes beyond physical injuries and it does not end once those physical injuries are healed. Survivors of police misconduct may suffer from the psychological effects of such a traumatic event for years, and seeking justice often requires reliving that trauma.<sup>49</sup> Although we knew that mental health services would be crucial to the success of Justice Lab, we did not have the in-house capacity or expertise to provide comprehensive mental health services or social services to all prospective plaintiffs, storytellers, and their families. Instead of looking internally, we conducted outreach to potential partners who would be able to serve as a mental health resource for any community member directly impacted by police misconduct.

As a result, ACLU-LA partnered with the Louisiana Victims Outreach Program (LAVO), an organization that seeks to address the needs of victims of violent crime as they navigate the criminal legal system. LAVO provides an array of free services that aim to inform victims about the criminal legal system, facilitate healing on an individual level, and build a supportive community of victims, advocates, and service providers. For qualified individuals, LAVO provides services that include individual and group counseling, healing activities like meditation and expressive art, education resources, and referrals to additional services. For folks who may not meet LAVO's qualifications for free services, a referral to another mental health resource is provided.

ACLU-LA still aims to hire a mental health professional/social worker to continue to assist clients with meeting their basic needs while on their healing journey from their encounter. It is important to use trauma-informed practices and meet people where they are at, understanding that if they have issues around food insecurity or homelessness, that those will act as additional barriers in pursuing justice through litigation or storytelling.

## Implementation Tips:

- **In addition to formalizing a partnership with local mental health practitioners**, you should also integrate mental health safeguards into other aspects of your initiative. For example, consider having a social worker on staff or on-call during community meetings, and use trauma-informed practices in your storytelling initiative and any other spaces where community members may be asked to relive trauma while sharing their experiences. You should integrate mental health safeguards into community meetings and ensure that storytelling formats are designed and led by community members, as storytelling can be triggering and harmful to both the teller and the listener if not done through trauma-informed practices.
- **Balance how you lift up the voices and experiences of community members** without taking advantage of their time and experiences.
- **Develop a “Community Consulting Expert Program” to strengthen relationships between firms and local experts.** A Community Consulting Expert Program can include a series of facilitated calls or meetings to build strong communication and trust and share critical information throughout all both the investigative and litigation phases. Topics may include:
  - Identifying strategy issues related to racism, policing, criminal law reform, and poverty;
  - Identifying locality-specific strategy issues related to racism, policing, criminal justice, and poverty that may impact the prospective case;
  - Providing updates on regional and locality-specific issues concerning media, legislation, policy and/or recent protests or events as they relate to the prospective case.
- **Develop a compensation plan for any community partner** in exchange for their work and communicate the time commitment and financial support provided for their participation. Ideally, this is a paid position, as directly-impacted people are often asked to provide their perspective and expertise related to traumatic events at no cost which is unfair.

- **Outline expectations and recommendations for maximizing the relationship between law firms and CCEs**, with emphasis on creating mutually beneficial partnerships.
- **Host office hours** for CCEs to discuss their cases, receive advice from staff, and ensure smooth collaboration between CCEs and law firm representatives.
- **Maintaining privilege for Community Consulting Experts.** Federal Rules of Civil Procedure 26(b)(4)(D) protects the identity and information disclosed by an expert who has been retained for trial preparation but who will not be called as a witness at trial. Rule 26 also privileges communications between attorneys and expert witnesses in preparation for trial. We recommend drafting community consulting agreements in light of Rule 26 to ensure that community members will not be subjected to discovery or expected to testify at trial.

## Louisiana statistics provided at an early Justice Lab community meeting

- The majority of people killed by police in Louisiana over the last 6.5 years were Black men shot by officers who were never held criminally liable.
- From January 2013 to June 2020, there were 160 documented police killings in Louisiana across 39 parishes. 84 (or ~53%) of deaths were of Black people, as compared to 54 (or ~34%) of white individuals.
- To date, only 4 of 160 responsible law-enforcement officers have been criminally charged. Only 2 of those 4 were sentenced and convicted - this is only 1%.
- In addition, the parishes with the highest numbers of police killings also have highly disproportionate Black death rates relative to Black population.
- 19 killings, the most of any parish, occurred in East Baton Rouge Parish, which is the state's largest. 16 of these 19 killings, or ~84%, were of Black individuals. Yet, less than half (~47%) of East Baton Rouge's sizable population is Black.

49. Lena J. Jaggi, et al., *The Relationship between Trauma, Arrest, and Incarceration History among Black Americans: Findings from the National Survey of American Life*, 6(3) Society and Mental Health 187 (Nov. 2016).



## Dismantling Institutional Racism

A civil Gideon model must be rooted in the knowledge, needs, and expertise of the local community. When designing partnerships with individuals and organizations, it is important to recognize the value of the time and energy of those working with you. In the legal field, it is common for attorneys to be seen as the “expert” on the law, relying on traditional ideas of “expertise” to determine who should be compensated for their time. This is often marked by social indicators of higher education and degrees, institutional affiliation, but also has class and race dimensions. Whether you are an organization that partners with communities or are a community-led organization, we encourage you to prioritize compensating community experts as you would any other professional with tailored knowledge. This not only sends resources back into the communities most impacted by the criminal legal system and racist policing, but also begins to shift the paradigm of how we define “expert” in the fight for racial justice.

# The Louisiana Public Defender System

The public defender system in Louisiana, as in many other states, has a long history of underfunding and inadequate staffing, which places significant burdens on public defenders who are forced to manage unwieldy caseloads.<sup>50</sup> Over 90% of all criminal defendants in Louisiana require a public defender, with people of color constituting a disproportionate number of those defendants.<sup>51</sup> The Commission on Justice System Funding, convened in 2019, issued a report that found Louisiana’s public defense fines-and-fees funding model and reliance on contract defense attorneys was an unjust and inadequate solution to the public defense crisis.<sup>52</sup> Not only does it have a disparate impact on sentencing and incarceration rates, it also disproportionately burdens people of color who are forced to pay for their interactions with the criminal legal system. For example, in New Orleans, a recent study found that 88% of all money bail and 69% of conviction fees are paid by Black families, and this revenue goes directly into funding public defenders, the District Attorney’s Office, and the Sheriff’s Office.<sup>53</sup>

There have been a number of legal challenges to the current public defense system and its consequences for ineffective counsel at sentencing. Two 2019 cases decided by the Fifth Circuit found that the current funding model is a violation of due process.<sup>54</sup> In July 2020, the Louisiana Supreme Court decided *State v. Harris*, holding that ineffective assistance of counsel at sentencing was a valid claim for

post-conviction review.<sup>55</sup> Despite this, the court later refused to uniformly reduce public defender caseloads on the grounds that they are unable to provide effective counsel with current burdens, holding that “terminating, or refusing to order, public defender representation, on the basis of the deprivation of a ...right to ‘reasonably effective’ assistance of counsel... can only be decided on a case-by case basis.”<sup>56</sup>

50. Derwyn Bunton, *Rising from Katrina’s Ashes but Still in Crisis: Public Defense in New Orleans*, 32 New England Journal of Public Policy (Mar. 21, 2020), <https://scholarworks.umb.edu/nejpp/vol32/iss1/13>.  
51. American Bar Association Standing Committee on Legal Aid and Indigent Defendants, *Gideon’s Broken Promise: America’s Continuing Quest for Equal Justice. A Report on the American Bar Association’s Hearing on the Right to Counsel in Criminal Proceedings*, American Bar Association (2004), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_def\\_bp\\_right\\_to\\_counsel\\_in\\_criminal\\_proceedings\\_authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_bp_right_to_counsel_in_criminal_proceedings_authcheckdam.pdf).  
52. Debra Cassens Weiss, *Louisiana’s Public Defender System Is Understaffed By About 1,400 Lawyers, ABA Study Finds*, American Bar Association Journal (Feb. 17, 2019), [https://www.abajournal.com/news/article/louisianas\\_public\\_defender\\_system\\_is\\_understaffed\\_by\\_about\\_1400\\_lawyers\\_aba](https://www.abajournal.com/news/article/louisianas_public_defender_system_is_understaffed_by_about_1400_lawyers_aba).

53. LA Rev Stat § 15:141.  
54. *Recommendations of the Louisiana Commission on Justice System Funding to the Louisiana State Legislature in Response to House Concurrent Resolution No. 87 of the 2019 Regular Legislative Session* (Feb. 1, 2020), <https://assets.documentcloud.org/documents/6955253/HCR-87-of-2019-Report-FINAL.pdf>.  
55. Roopal Patel, *Louisiana’s Public Defender Fees are Poor Fiscal and Legal Policies*, Brennan Center for Justice (Apr. 12, 2012), [shorturl.at/biHXy](https://www.brennancenter.org/our-work/reports-research/louisiana-s-public-defender-fees-are-poor-fiscal-and-legal-policies).  
56. Jon Wool, Alison Shih, and Melody Chang, *Paid in Full: A Plan to End Money Injustice in New Orleans*, Vera Institute of Justice (June 2019), <https://www.vera.org/downloads/publications/paid-in-full-report.pdf>.  
57. *Caliste v. Cantrell*, 937 F.3d 525, 532 (5th Cir. 2019); *Cain v. White*, 937 F.3d 446, 449 (5th Cir. 2019).  
58. *State v. Harris*, No. 2018-KH-1012 (La. Jul. 9, 2020).  
59. *State v. Covington*, No. 2020-KV-0919 (La. Dec. 21, 2020).  
60. Matt Sledge, *Louisiana Public Defenders Ask Skeptical Supreme Court To Let Them Drop, Refuse Cases*, The Advocate (Oct. 20, 2020), [https://www.nola.com/news/courts/article\\_035a0a10-130b-11eb-a5c7-172380fe5229.html](https://www.nola.com/news/courts/article_035a0a10-130b-11eb-a5c7-172380fe5229.html).

## LINKS TO EXISTING RESOURCES:

- Consulting Experts Factsheet (link to Appendix 5)
- Community Partners Factsheet (link to Appendix 3)
- Community Mental Health Partnership (link to Appendix 8)

## Partners are critical for:

### Filling In the Gaps

If you have the need to launch your own Justice Lab, more than likely, the needs of the community are not being met by the resources currently available to them in their current form. This is where Justice Lab steps in – by creating partnerships and connecting stakeholders together for one unified purpose, your initiative will start to gain traction. For a Justice Lab to be successful, the perspectives, experience, and knowledge of all stakeholders should be continually sought out as your program evolves.

### In Practice with ACLU-LA:

When a person is maimed or killed as a result of law enforcement officers acting unconstitutionally, there are both state and federal statutes that allow a victim’s family to recuperate attorney’s fees.<sup>57</sup> If the victim of racialized police misconduct is lucky enough to survive the encounter, the local private bar may be financially constrained and unable to take cases that only result in minimal damages without a guarantee of attorney fees.<sup>58</sup> This has resulted in an extremely narrow class of \$1983 claims brought by the private bar, while victims who have been injured, traumatized, or subjected to ongoing patterns of law enforcement misconduct are less likely to have any means to remedy their civil rights violations. By taking action, either by investigating, litigating, or providing a platform for storytelling, the civil Gideon model hopes to intervene in patterns of misconduct that may later lead to serious injury or death. For example, there were over 17 misconduct complaints filed against the Minneapolis police officer who killed George Floyd; an officer who failed to intervene had six complaints on record and had recently settled a lawsuit for wrongful arrest and excessive force; neither officer faced disciplinary consequences.<sup>59</sup> Had there been accountability mechanisms in place, or if the survivors of those encounters had an opportunity to share their experiences in real time, the death of George Floyd and hundreds of others could have

57. 42 U.S.C. § 1988.  
58. Paula Hannaford-Agor, JD, Scott Graves, and Shelley Spacek Miller, *The Landscape of Civil Litigation in State Courts*, National Center for State Courts (2015), [https://www.ncsc.org/\\_data/assets/pdf\\_file/0020/13376/civiljusticereport-2015.pdf](https://www.ncsc.org/_data/assets/pdf_file/0020/13376/civiljusticereport-2015.pdf).  
59. Shaila Dewan and Serge F. Kovalski, *Thousands of Complaints Do Little to Change Police Ways*, The New York Times (May 30, 2020), <https://www.nytimes.com/2020/05/30/us/derek-chauvin-george-floyd.html>.

been prevented.<sup>60</sup> By filing cases that would normally not be heard by the court, the model increases over-all access to civil representation and can document pervasive patterns of abuse that might otherwise be lost during criminal proceedings.

### In their own words

*“Reform needs to start at the level of impact and with the lives affected rather than in academic abstraction. The ability to consolidate resources and focus them all on a single jurisdiction provides the benefit of direct advocacy at the ground level, including at the local institutional level, and also presents an opportunity to build precedent that will impact cases in other jurisdictions.”*

- Justice Lab partner

### Creating Safety in Numbers

In addition to the financial viability of many cases, local litigators face significant risks when bringing lawsuits against law enforcement officers in the same community. Some attorneys have faced threats or damage to their reputation and livelihoods after suing local law enforcement agencies. These risks preclude many local legal professionals from publicly supporting or representing victims of racialized police misconduct. Thus, statewide and national partnerships are critical for the success of Justice Lab, as well as for the safety of local community members and legal professionals. This cross-state pro bono model is particularly important in states with conservative judges and local law enforcement.

### In their own words

*“An out-of-state practitioner may have more freedom to make the best arguments, even those that the judiciary, state, and local officials dislike. When a person is a repeat player in the system, it may help to get a quick, amicable resolution, but also may constrain practitioners who need to take a long view of their legal careers and reputations in the community.”*

- Law firm representative

60. Cheryl W. Thompson, *Fatal Police Shootings Of Unarmed Black People Reveal Troubling Patterns*, National Public Radio (Jan. 25, 2021), <https://www.npr.org/2021/01/25/956177021/fatal-police-shootings-of-unarmed-black-people-reveal-troubling-patterns>



Preparing For an Intensive Litigation Campaign

Strategic litigation of the scope and scale that Justice Lab represents is costly and time consuming, and unexpected legal issues may arise that go beyond the expertise or capacity of the local organization. Private law firms and other volunteers play a central role in this model, not only in terms of financing litigation but also for staffing, investigation and discovery resources, and legal expertise in trial practice. Law school legal clinics are also helpful resources for their appellate practice expertise and availability of professors and students to help with pressing legal research and amicus support.

In their own words

“Civil Gideon stands for the right to counsel in non-criminal contexts where low-income individuals have suffered injustices but lack the resources (monetary or legal) to enforce their rights. Whereas some extreme violations of civil rights may attract lawyers willing to work for a percentage of a likely payout/award, other injustices with dramatic impacts on peoples’ lives go unredressed because they don’t offer the same promise of financial gain. Consolidating resources through a project like Justice Lab ensures that more injustices will come to light by providing legal representation for a much wider range of cases, helping promote systemic change through both legal judgments and increased awareness at a community level of the problems that exist.”

- Justice Lab partner

Shaping Legal Strategy

In the early planning stages of your initiative, it can be helpful to recruit law school legal clinics. Even if you have not secured law firm agreements or started to recruit prospective plaintiffs, legal clinic directors may be willing to integrate a research project into future semesters or work with students on a short-term basis to start building a research repository. In many cases, clinic directors will also have a particular area of legal expertise relevant to

challenging racialized policing, and you can begin to design your case assignment strategy accordingly. You should also think about grouping your cases by locality to allow a legal clinic to focus their efforts and build their expertise on one particular parish, county or district. Once litigation begins, if a case results in an unfavorable outcome at the trial court level, legal clinics have the opportunity to coordinate with the volunteer law firm and plaintiff to determine whether an appeal is appropriate. Cases that continue to the appellate level can then be independently managed by the law school clinic. Unlike the trial phase of litigation, which can involve lengthy and expensive investigation and discovery, an appeal can serve as a time bound and manageable project for legal clinics. ACLU-LA filed its first Justice Lab brief with the UC Irvine Law School Civil Rights Litigation Clinic on November 16, 2020. We asked the Fifth Circuit Court of Appeals to overturn a district court’s ruling in favor of East Baton Rouge Parish sheriff’s deputies, who were granted qualified immunity for killing an unarmed man experiencing a mental health crisis in 2016. Deputies fired 21 shots into Travis Stevenson’s vehicle, killing him, despite the fact that Stevenson posed no immediate threat to the officers.

Partner Highlight: University of Texas at Austin Law School’s Supreme Court Clinic

University of Texas at Austin Law School’s Supreme Court Clinic supports Justice Lab by providing training on qualified immunity doctrine and pleading successful §1983 claims against law enforcement. The clinic’s students focus on identifying circuit splits and contributing amicus briefs for cases at the merit-stage and cert-stage of appeals, including the recent Supreme Court case on First Amendment retaliatory arrests in Nieves v. Bartlett, which is a growing area of §1983 litigation. The clinic will play a critical role in advancing qualified immunity cases through the U.S. Court of Appeals for the Fifth Circuit to the U.S. Supreme Court, where the justices recently declined to hear several cases that could have overturned the doctrine.

In their own words

“Justice Lab provides my clinic with an opportunity for students to build on past students' efforts and watch a concentrated civil-rights initiative unfold in real time throughout different stages of litigation, allowing them to see the pie vs pieces of the pie. It also presents opportunities to broaden students' awareness and understanding of legal obstacles and systemic realities that otherwise would be relegated to academic abstraction.”

- Professor Lisa Eskow, Clinical Professor and Co-Director of the Supreme Court Clinic at UT Austin

NAVIGATION

- For more information about building a research repository, see STEP THREE.

Planning Tips

- Create databases of potential partners with contact information, geographical location, and area of expertise, including a means to track communications with each partner.
- Make a “Priorities List” of the top 10 legal clinics and law firms you hope to work with, and start your outreach with this short list before expanding. This can help keep initial onboarding and case assignment manageable as you begin recruiting prospective plaintiffs.
- Develop Legal Clinic and Law Firm “Pitch Decks” to train staff and volunteers to conduct outreach and document responses.
- Identify “influencer” allies at the local level who can help spread the word within the public defender community and among local civil rights litigators.

Legal Practice Points: Appellate Process Objectives

Justice Lab advocacy at the appellate level seeks to (1) give clients reassurance that their appeal will be taken up and (2) give aspiring attorneys the chance to be creative about bringing racial profiling cases. While law school legal clinics should have a high degree of autonomy over their appeals strategy, it can be helpful to narrow the scope and objectives of appeals led by your initiative. Through appellate efforts, this model can:

- Limit and curtail the scope of qualified immunity to ensure that government officials no longer flout the U.S. Constitution with impunity;
- Initiate test cases for the Supreme Court, which has indicated a willingness<sup>61</sup> to revisit qualified immunity;
- Reinforce trial court efforts that shed light on racially motivated police misconduct and call for stronger accountability mechanisms for law enforcement officers.

Amicus Support Process

One of the first steps in establishing an amicus strategy to challenge qualified immunity is to map out institutions that have filed relevant amicus briefs in circuit court and the Supreme Court. Due to the fact-specific nature of challenging a qualified immunity defense, documenting position summaries on both the doctrine itself and factually specific scenarios can be a powerful way to successfully plead future claims. For example, Justice Lab has identified trends in amicus briefs related to the interpretation of law enforcement’s use of “excessive force” in car chases. Developing an amicus strategy is a great research project to delegate to a law firm or legal clinic that joins the initiative in its early stages.

LINKS TO EXISTING RESOURCES:

- Sample Justice Lab Information Sheet (link to Appendix 1)
- Info Sheet: Putting Civil Gideon Into Practice (link to Appendix 2)
- Sample Fact Sheet: Community Partners (link to Appendix 3)
- Sample Fact Sheet: Intake Volunteers (link to Appendix 4)
- Public intake form

61. See Ziglar v. Abassi, 137 S. Ct. 1843 (2017) (Thomas, J., concurring).

PART I

# Step Three:

## Recruit Law Firm Partners

This section concerns the role of private law firms in the investigation and litigation phases of Justice Lab cases. Big law has become increasingly committed to advancing racial justice in the legal profession and beyond. Many firms demonstrated visible and pronounced support for the Black Lives Matter movement and sought opportunities to challenge racialized police violence after the murder of George Floyd. Any firm, regardless of size, location, or sector, can become a law firm partner in a civil Gideon model. Law firms commit to more than donating money: Justice Lab relies on dedicated firms and their representatives to conduct expert investigations and discovery processes, and work on cases through all stages of trial.

In their own words

*“As a law firm, we are participants in the system of justice in this country. All too often, for Black and Brown communities, that system is one of injustice. Condemning racism is the easy part. It is also not enough. We must act. The murders of Breonna Taylor, George Floyd, Rayshard Brooks, and too many others did not occur in a vacuum. They grew from, and were fed by, countless unconstitutional stops, seizures, and uses of excessive force. We must attack this epidemic at its root. We stand with the Justice Lab’s mission to enforce police accountability through coordinated litigation and we are thrilled to partner with the ACLU of Louisiana in this effort.”*

- Daralyn Durie, Co-founder and Partner,  
Durie Tangri LLP

» Working With Law Firm Partners

Law firms are responsible for filing and litigating viable plaintiffs’ claims. While law firms will have a high degree of autonomy over litigation, the host organization is available for support, like putting the law firms in contact with local representatives as appropriate (e.g., local counsel, investigators, experts).

Developing Firm Trainings

Partner law firms and their representatives should participate in training sessions on the focus area of your Justice Lab. For ACLU-LA’s Justice Lab, our training sessions covered:

- The basics of §1983 claims
- Qualified immunity, and other applicable laws and precedents
- Locality specific practice tips
- Anti-bias training
- Diversity, equity, and inclusion (DEI) training
- Community Based Movement Lawyering

Of these offering, the DEI and anti-bias trainings are particularly important for law firm partners, as it provides a space for them to self-reflect and begin to change their perspective on how they evaluate a case and prospective plaintiff. When firms first join Justice Lab, many of them may approach a case with the question “Can we win?” Shifting their perspective to ask, “Is there an opportunity to make change?” will ensure that everyone who comes to Justice Lab has a fair chance at having their claims brought to trial, even if they are not a traditionally “perfect” plaintiff or have a difficult case.

Additionally, Community Based & Movement Lawyering training is critical to introduce law firm representatives to civil rights litigation in the context of movement lawyering. This is an opportunity to highlight the work and experiences of local organizations focusing on racial equity, reentry services, prisoners’ rights, criminal justice reform, and other advocacy issues that impact communities of color.



Maintaining Communications with Firms

The host organization should remain in regular contact with law firms. ACLU-LA’s Justice Lab achieves this by two means:

1. By sending weekly updates to all Justice Lab partners that include information about current or pending litigation, current events that may impact investigations or trial, resources that have become available, and any other pertinent announcements.
2. By Justice Lab law firm partners handling one or more cases sending monthly updates to keep ACLU-LA abreast of the status of the pending case.

Once a case has been assigned to a law firm partner for investigation, it is critical for firm partners to submit monthly updates that allow the host organization to track where every prospective plaintiff is in the process and create a timeline of when cases may be going to trial. Regular updates also serve as an opportunity to address issues head on if the firm has questions or needs additional support from the host organization staff. As your Justice Lab evolves, these regular check-ins may become more or less frequent depending on you and your partners’ needs.

ACLU-LA Example Monthly Firm Update

1. Over the past [month], have there been any key developments?  
If so, please describe in 1-3 bullets.
2. What next steps do you have planned?  
Please describe in 1-3 bullets.
3. Do you have any follow-up that you would like ACLU-LA to run down or to discuss with ACLU-LA?  
If so, please describe in 1-3 bullets.
4. By what point do you think your investigation will be complete?
5. Has your firm decided if litigation is warranted? (Yes; No; Further investigation is needed)

Technology Must-Haves & Information Sharing

Given the volume of agreements that a host organization will be juggling, developing an efficient system and adopting the appropriate technology to facilitate information sharing and document storage is critical. ACLU-LA’s Justice Lab partnered with Ironclad, a legal contract management platform, to make a statewide litigation initiative possible. This type of contract management software was particularly useful as ACLU-LA continually enters into agreements with its law firm partners as new investigations and litigation arises. Often, entering into an agreement requires multiple rounds of edits. Ironclad’s document editing feature, automated workflows, reminders, and repository system halved the amount of time spend on handling the same manually.

In additon to Ironclad, ACLU-LA also relied heavily on Dropbox to organize materials, including a legal research repository, organizational templates and policies, and communications materials and Google Drive for collaborative intradepartmental work as the program was developed.

ACLU-LA Example Onboarding a law firm

1. Complete 12-15 hours of Justice Lab training sessions.
2. Review information sharing and confidentiality agreements.
3. Receive compendium of research materials and trial court documents (e.g., primers on relevant claims/defenses, memos explaining relevant precedents in the 5th Circuit, model pleadings and discovery requests).
4. Receive weekly updates from Justice Lab and sign up for case distribution listserv.
5. Receive memo on prospective plaintiffs with potentially actionable claims. These memos outline why a particular case may be viable and contain preliminary factual findings collected by intake volunteers.
6. Review and determine if your firm is willing to take on the prospective case within five business days of receiving the memo.



7. Sign agreement with prospective plaintiff and ACLU-LA to limited to the pretrial investigation stage.
8. Conduct an investigation with support from local investigators and community consulting experts.
9. Discuss litigation prospects with prospective plaintiff and the host organization (at least 30 days from reaching the statute of limitations on the claim).
10. If the plaintiff agrees to move forward with litigation, sign retainer and co-counsel agreements.
11. Submit draft complaint to ACLU-LA for review and edits at least one month prior to anticipated filing date.

## NAVIGATION

- For more information about assigning cases to law firms, see **STEP SEVEN**.

## In their own words

*"I consider it an obligation to get involved because police reform is a necessary predicate to a more equal society. Police misconduct often goes unchecked and I believe now is a great opportunity to affect meaningful change to a system that consistently produces minimal consequences for egregious police misconduct."*

- Louisiana-based law firm representative



## Implementation Tips:

- **Narrow down which firms to target:**
  - Midsize law firms (e.g., Vault's Top 150 under 150)
  - Firms with offices in your city/state
  - Firms with public commitments to racial justice and police reform (e.g., "Law Firms Voice Support for Change")
  - Firms with 42 U.S.C. §1983 experience listed on their pro bono pages
- **Create a shared outreach tracker:** recruitment gets complicated quickly, and you may have firms that express interest in joining in the future.
- **Break down your initiative** into tangible steps and incentives for a firm and create back-up options for firms that may not be able to commit to litigation.
- **Mention existing partnerships** and resources available to firms joining the initiative (i.e., we offer trainings on state law and a research compendium).
- **Start with a phone call**, follow-up via email. This can help you achieve recruitment results quickly, identify common concerns that firms express about joining the initiative, and share tailored talking points depending on the firm and their interest.
- **Timing is everything.** Be strategic about when to pitch your initiative to big law firms. February-April is often an ideal time to contact law firms about their interest in Justice Lab. Reaching out earlier in the year allows firms to plan ahead and commit to accepting cases once their summer associates have arrived, or in conjunction with the start of a new cohort of first year associates.
- **Reaching critical mass.** Limiting yourself to partnerships with 5-10 firms at the beginning of the initiative is ideal. Once you have a smooth process, consider the following when deciding to bring additional partners on:
  1. Are committed firms are satisfied with their case load?
  2. Are your current firm partners able or unable to regularly commit to cases? Why or why not?
  3. Are there any unexpected legal issues arising that could benefit from additional firm commitments?
  4. Are you receiving a number of viable cases that require additional firm commitments to meet the demand?

## How to pitch your initiative to law firms

### Establish the context for partnering with law firms to challenge racist policing.

"This project was born out of witnessing Fortune 500 companies and AmLaw 100 firms release statements in support of Black Lives Matter and against racist policing.... What would it mean to bear the resources of big law to this problem? What paradigm could we develop that would allow us to address it?"

### Explain why this state, why this litigation focus, and why now.

"Louisiana has the highest ratio of police officers to residents of any state and the highest incarceration rate in the US. In Louisiana, investigators have to wait 30 days to question an officer accused of misconduct or 14 days to question an officer who killed, seriously injured, or used a weapon on someone. There is also the issue of qualified immunity in the background. Many Louisiana law firms are hesitant to take these cases, which is understandable because it is a red state and oftentimes these cases are not profitable."

### Highlight the critical role and potential impact that firms will have in the initiative.

"We will organize the intake and dissemination of cases across network participants. As these cases are tried by the partner law firms, clinics will then join forces with the law firms to either take over or assist in the appeals. Whether the legal actions result in wins, settlements, or losses, the sheer magnitude of cases will function to incentivize police districts and individual officers to alter their conduct (be it through hiring, training, action, or discipline)— because if they don't, the lawsuits will necessarily continue in full force."

### Simplify the first step of the commitment to get firms on board.

"All we need now is a verbal commitment that when we make the call for plaintiffs, your firm would be willing to take 1+ plaintiffs."



## » Building a Knowledge Base

Particularly in the early stages of the initiative, state-and-circuit-specific legal research is critical for shaping your strategies. A §1983 claim by its nature is intensely fact and state specific and identifying viable plaintiffs and recruiting law firms to accept cases will require a solid grasp of local precedent. A research repository can include significant state court precedent, state civil rights laws, state court procedures, law enforcement policies, and precedent related to Monell claims and qualified immunity. As you begin to roll out your initiative, you will have a few months between finalizing a list of partner law firms and legal clinics, and your call for prospective plaintiffs. Partners that are eager to get involved prior to orientation training can begin working on research to create a compendium of materials that assist firms in future litigation. This is also an option for firms that are not yet ready to commit to investigations but are willing to contribute time towards legal research. These research assignments, typically lasting about one month and resulting in a shareable memorandum, can take place as you finalize your training plans to onboard volunteers. While there is a general list of recommended research projects below tailored to §1983 litigation, it is helpful to ask your new partners if they have particular concerns or legal questions that should be added to your research agenda.

### Recommended Research Agenda for the Repository

- » Legal research on key precedent
- » The state of key precedent in the relevant circuit court i.e., *Graham v Connor*, 490 U.S. 386 (1989) (defining the “threat” factor in whether a search or seizure was unreasonable); *Washington v Davis* (regarding claims of disparate impact under the 14th Amendment arising out of an arrest); or *Heck v. Humphrey*, 512 U.S. 47 (1994).
- » State court policies and procedures
- » Local filing practices for §1983 claims and typical procedural motions deployed by defendants.
- » Police training manuals, use of force policies, internal review and investigation mechanisms, and indemnification policies
- » Where to access police training manuals and disciplinary procedures and how to file public record requests.
- » Legal issues related to developing internal procedures

- » How can we protect attorney-client communication privilege within the Justice Lab model that requires sharing information with third party firms and others in the network? How does our circuit court define exceptions to waiver of privilege?
- » Possible defenses to §1983 claims
- » Has the state codified iterations of discretionary immunity for public officials acting under color of law as defenses in tort claims?
- » Municipal liability and Monell claims
- » Develop a model brief for a Monell claim
- » Alternatives to 1983 claims for prospective plaintiffs
- » Title VI of the Civil Rights Act of 1964 (“Title VI”) to police departments
- » Tort Liability under state law
- » Other issues, including state statute of limitations and equitable tolling
- » Would the circuit court allow expungement of a criminal record to vindicate constitutional rights?
- » Are there exceptions to the state tort injury statute of limitation as applied to §1983?

### Legal Practice Point:

Legal issues related to privilege and the common interest doctrine: Due to the unique structure of Justice Lab’s relationships with multiple law firms and clients, some courts may find that attorney-client privilege has been waived if the host organization shares attorney-client communications with other “third party” firms in the network. You may also face difficulties showing that there is a valid common interest exception in a situation in which your organization and the firm representing the client share communications with a third firm. It is less likely that courts will find that sharing documents among the host organization, volunteer firm, client, and other firms in the network constitutes a waiver of work product protection, due to the nature of the work product doctrine.<sup>62</sup>

Strategies to protect attorney-client communications and confidential information: Attorney-client privilege is waived by sharing attorney-client communications between and among firms participating in the Justice Lab other than co-counsel representing a common client.

- Assign a law firm or volunteer to research circuit specific precedent on exceptions to waiver.

- Develop confidentiality agreements: it may be helpful to draft a general confidentiality agreement and allow the initial firms to review and provide comments before finalizing the document and seeking signatures.
- Develop common interest agreements: the ACLU-LA experimented with different models of common interest agreements, considering the ramifications of agreements between prospective plaintiffs or agreements between volunteer law firms. Discuss with your legal team and law firm partners what solution may provide the best protections in your state.

### Dismantling Institutional Racism:

Justice Lab integrated strategies for challenging institutional racism into its programming, both in terms of partner requirements as well as reflecting the need to reinvest resources into historically marginalized communities. In litigation agreements with law firms, the ACLU-LA recommended that the firms donate fees won to community organizations that are led by and for communities of color. Particularly in cases seeking declaratory rather than equitable relief, fee donation creates a structural means to ensure that some reparations are returned to communities most impacted by police violence, even if the individual plaintiff is not awarded damages. Justice Lab’s model also requires that law firms create teams that reflect diversity as part of its efforts to address institutional inequities and bias and inspire partners to reflect internally about the ways that race and racism impact their institutions. ACLU-LA recommends that firms aim to staff their teams with, and award speaking roles in court to, a substantial number of people of color, women, and LGBTQ+ attorneys. In particular, where possible, teams should be at least 50% people of color, 50% women, and 30% people who identify as LGBTQ+.

### LINKS TO EXISTING RESOURCES:

- Sample Law Firm Factsheet (link to Appendix 7)
- A Guide to Law Firm Pitches [On file with ACLU-LA, contact [intern@laaclu.org](mailto:intern@laaclu.org)]
- Law Firm Anti-Racism Alliance Police Working Group [pairs nonprofits with law firms, contact [gina.delchiaro@akerman.com](mailto:gina.delchiaro@akerman.com) and [stacie.yee@pillsburylaw.com](mailto:stacie.yee@pillsburylaw.com)]
- Rallying Around Racial Justice





## PART I

# Step Four: Develop Intake Process & Trainings

Being victimized by racist policing is a profoundly traumatic and dehumanizing experience. That is why Justice Lab is committed to making sure all legal partners not only have a firm grasp of the legal and constitutional issues at stake, but are also acutely aware of the collective trauma these abuses have caused and the history of enslavement and oppression from which they evolved. All intake volunteers and participating law firms receive comprehensive training on anti-oppression and anti-racism principles, the history of policing, and the Fourth and Fourteenth Amendments. Many of the original trainings designed by Justice Lab require presenters with in-depth knowledge of state and circuit court precedent, as many of the intake volunteers will be from out-of-state and may have limited experience with civil rights litigation.

### In their own words

*“For organizations thinking about launching an initiative like Justice Lab, I would advise them to seek and leverage the insights of those knowledgeable about the subject locale. I would recommend learning more about the history of policing for that particular area, including learning about the main issues the community is having with the police.”*

- Louisiana-based law firm representative

### » Objectives of Trainings

- Provide volunteers with an overview of the white supremacist origins of law enforcement in the United States, and the particularized local nature of law enforcement relationships with communities of color.
- Address aspects of bias and privilege that are prevalent in the legal profession and prepare volunteers to conduct trauma-informed interviews during intake and storytelling.
- Provide background information on the most common types of legal claims that you expect to file and prepare volunteers to document the most relevant information during interviews. For example, ACLU-LA incorporated a short primer into our intake volunteer interview guide and intake memo template to ensure that volunteers would be able to capture the most legally relevant aspects of a prospective plaintiff’s story.

### » Types of Trainings

#### 1 Institutional racism and implicit bias in the criminal legal system

- Examples:
  - **Implicit bias training:** focus on bias and racist policing and encourage participants to think about how bias impacts their profession on a daily basis, from working with clients, to jury selection, to hiring practices. Participants should have the opportunity to share their own experiences of bias and reflect on how implicit bias will appear when they begin to work with prospective plaintiffs. This is particularly important because the interviewer’s conscious and unconscious biases have the potential to leak into the intake process, which may preclude the prospective plaintiff from feeling like the volunteer believes their story and takes them seriously.
  - **Diversity, equity, and inclusion training:** look at institutional practices in the legal profession that replicate social and economic inequities and consider pathways to racial justice beyond representation.
  - **History of policing:** trace the origins of the police to the first slave patrols in the 1700s, and the culture of white supremacy that is pervasive in law enforcement objectives and practices.
  - **History of state public defense system:** unpack the evolution of public defense in the state and highlight challenges facing public defenders and their clients.

- How is implicit bias different than racism?
- How does implicit bias lead to racism?
- What’s an example of implicit bias that you have experienced, witnessed or heard about?

#### 2 Legal Practice Points

- Examples:
  - **State and circuit specific practice points on §1983:** relevant to both local and out-of-state law firm representatives, these practice points should cover court procedures and policies, as well as the nuts and bolts of civil rights litigation and binding precedent. Prepare law firm representatives to begin civil rights litigation, and share common challenges that litigators face when filing claims in state and federal court.
  - **Qualified immunity:** detail circuit-specific factual pleading standards required to overcome motions to dismiss, and provides legal research strategies for finding factually analogous case law.
  - **First Amendment retaliatory arrest and disparate impact claims under the Equal Protection Doctrine:** analyze recent precedent as to whether probable cause can override a potential First Amendment violation if an officer retaliates against a suspect for unrelated conduct (i.e. jay walking or loitering)
  - **Alternatives to bringing discrimination claims under the Fourteenth Amendment:** analyzing statutory causes of action that may provide greater chances of relief than a §1983 claim in circumstances involving racial profiling.

#### 3 Intake Training & Plaintiff Engagement

- Examples:
  - **Intake workshop:** walk through the entire intake process and answer volunteer questions about their roles. As your initiative progresses, you will most likely be able to document frequently asked questions and challenges that intake volunteers face and address them proactively during the training.
  - **Storytelling and interviewing:** help participants understand the critical role of storytelling to social justice movements and Justice Lab and provide a clear picture of the story collector role. It is also critical to include tips for decentering oneself and using trauma informed interviewing practices.





» Designing an Intake Process



After staff have reviewed the memo, the prospective plaintiff will either be referred to the storytelling project or offered the opportunity to work with a law firm to investigate their case. Once they have

agreed to move forward with either process, Justice Lab staff pairs them with either a storytelling volunteer or law firm.

**NAVIGATION**

- For more information about the case assignment process, see **STEP SEVEN**.
- For more information about the storytelling process, see **STEP EIGHT**.

**Implementation Tips:**

- **Leverage the expertise of local civil rights attorneys, legal clinic supervisors, and public defenders.** Oftentimes they will be happy to share their knowledge with intake volunteers and working together to design trainings can be helpful to strengthen your collaboration with them. Examples of ways they can be involved include being a guest speaker, advising on the content of the training, or being the lead presenter on an issue.
- **Elicit as much information as possible from a prospective plaintiff in the first interview.** With a statute of limitations in some states of only one year, you will have limited capacity to take on every prospective plaintiff. With detailed information at the first point of contact, you will be able to quickly filter out cases that are not litigable and send them to a storytelling volunteer, allowing you to focus on potentially viable cases.
- **Structure an intake memo around factually specific details of the prospective plaintiff's encounter** with law enforcement, asking questions such as "The facts giving rise to a claim of excessive force are..."
- **For continuity and trust-building, pair a prospective plaintiff with the same intake volunteer** for their preliminary interview as well as any follow-up conversations if the volunteer is available, including their participation in the storytelling initiative.
- **Respond to prospective plaintiffs within 24 hours** and schedule their intake interview within 48 hours of their first contact. A victim of racialized police misconduct may be fearful and distrusting of legal professionals or sharing their information with strangers, and it is important to respect their time and the courage it took to reach out.

**Making litigation recommendations after intake interviews**

Under 42 U.S.C. §1983, one may sue state or local officials for the "deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws]." The ACLU of Louisiana foresees litigating five classes of claims under this statute: (1) unreasonable search; (2) unreasonable seizure; (3) false arrest; (4) excessive force/police brutality; and/or (5) racial profiling.

Based on my initial interview, I recommend bringing the following claim(s):

- ☐ Unreasonable search
- ☐ Unreasonable seizure
- ☐ False arrest
- ☐ Excessive force/police brutality
- ☐ Racial profiling

**Dismantling Institutional Racism:**

**Providing implicit bias and institutional racism training is a critical first step for onboarding volunteers.** If your organization faces financial constraints in providing training, there are a number of free, online videos and workshops that can be a good starting point. There are also resources included in the Bibliography for further reading on anti-racism and institutional racism.

**Embed concepts of positionality and privilege into volunteers' understanding of their role in the intake process.** Additional resources on privilege, implicit bias, and the history of policing in the United States are available in the Bibliography.

**Root your strategies and training content in a community-based lawyering perspective by asking:**

- How does the strategy build the power of community and is it informed by the people directly impacted by the litigation?
- Does the litigation strategy advance the overall direction of the movement, and who is making decisions about those strategies?
- Are you asking communities to endorse something that wasn't built by or for them in order to get "credibility and cover" for your work, rather than engaging in meaningful dialogue and connection?

**LINKS TO EXISTING RESOURCES:**

- Recommended Readings and Trainings on Anti-Racism

**PART I**  
**Step Five:**  
**Recruit & Onboard**  
**Volunteers**

Intake volunteers are critical members of the Justice Lab team, as they are responsible for gaining the trust of potential plaintiffs in order to accurately capture their claims or story. Intake volunteers are teams of corporate in-house counsel departments, law firm associates who are interested in the intake process. In-house counsel teams are responsible for responding to inquiries from prospective plaintiffs and documenting their narrative. Following guidance documents and scripts provided by the host organization, volunteers provide an initial assessment of whether a case is better suited for litigation or for other restorative justice outcomes.

» **Volunteers in the Intake Process and Storytelling Initiative**

Intake volunteers receive tailored trainings on trauma-informed storytelling, implicit bias, the history of policing, and an overview of §1983 claims to inform the details and fact patterns that might be important during an interview. Upon receiving an assignment, they have 3 days to schedule a meeting with the prospective plaintiff, ideally to occur within a week of the assignment. The interview may not take place for a week or more depending on the prospective plaintiff's schedule. During the interview, the volunteer uses a Q&A script provided by the ACLU that guides the conversation towards essential information for each of the potential claims.<sup>63</sup> If applicable, the volunteer will interview witnesses to the incident and review any documentation provided by the potential plaintiff, such as photos or videos. The intake volunteer has one week from the date of the interview to draft and submit a finalized memo to ACLU staff. Intake volunteers will occasionally request an extension, depending on the complexity of the issue.



### Implementation Tips:

- **Gather data and talking points to pitch your initiative to the private sector:** Make a list of companies to prioritize. This might be based on their track record on racial justice issues, their involvement with similar organizations, or connections you may have to initiate the conversation. Research similar companies that have committed to police accountability and racial justice initiatives and provide data that shows the mutual benefits of partnerships. Consider the pros and cons of reaching out to local or statewide companies that may have an interest in supporting the community, versus nationwide corporations that may have large in-house counsel departments with extensive resources.
- **Do not be intimidated by the traditional excuse that being politically active or outspoken about racial justice issues will hurt business:** Provide concrete examples of companies that are thriving because they have integrated diversity and inclusion into their organizational culture and mission, and publicly taken action to combat racial inequities.
- **Create a training schedule that works for your staff and incoming volunteers:** We recommend conducting two training sessions per week over the course of three to four weeks to allow cohorts to complete onboarding within one month. Once you have conducted the first round of onboarding, it might be possible to record some of the sessions and re-use certain training sessions that don't require active participation (i.e., if there is video on the history of policing, volunteers can watch this on their own time before the next live session).
- **Encourage participants to attend the anti-bias and DEI training live:** Although some trainings are effective as pre-recorded sessions, these trainings are much more impactful if you are able to offer them live. It is helpful for people to vocalize their experiences, hear different perspectives, and be. A live training allows the facilitator to challenge the participants to think critically about their own biases and positionality, and how it will practically impact their work with Justice Lab.
- **Develop cohorts of 15- 25 volunteers to participate in onboarding together:** Small groups are more manageable to train, particularly when you want volunteers to have the opportunity to share their experiences and ask questions of local experts. Using a cohort model allows you to launch your onboarding process with a small group of intake volunteers while you continue to recruit new firms and corporations. You will also be able to begin scheduling intake interviews without waiting for a full team of volunteers to complete training.
- **Create a feedback form to improve your training content after the first cohort:** Volunteers who participate in the first cohort may be willing to give you feedback on the structure and content of the trainings, and whether there is anything else that might help a volunteer who does not have experience in civil rights litigation or is not familiar with local issues.

### In their own words

*“We have a national and global problem on our hands, and we need everyone, together, to work to lift up the voices of those who have for too long been ignored or forgotten. A problem this big cannot be solved by one industry, organization, or sector of society. All of us need to pitch in to do our part. From the very beginning, when someone says they want to help, I find a way for them to help. We’re going with a coalition of the willing and getting as much done as we can -- this model can help bridge the divide between the private and public interest sectors of the legal profession. All too often there are barriers to seeing eye-to-eye on pro bono strategy and meaningful social change. But if we want to really change the face of laws in society, we need to invite everyone to the table.”*

- Nora Ahmed, ACLU-LA Legal Director and Director of Justice Lab

### Making the case for racial equity in the business world

Ironclad is the #1 contract lifecycle management platform for innovative companies. L’Oréal, Staples, Mastercard, and other leading innovators use Ironclad to collaborate and negotiate on contracts, accelerate contracting while maintaining compliance, and turn contracts into critical carriers of operational business intelligence. It’s the only platform flexible enough to handle every type of contract workflow, whether a sales agreement, an HR agreement or a complex NDA. The company was named one of the 20 Rising Stars on the Forbes 2019 Cloud 100 list, and is backed by leading investors like Accel, Y Combinator, Sequoia, and BOND.

*“We’ve always believed that lawyers have been on the fore-front of change, and just because we’re in-house lawyers, doesn’t mean that it shouldn’t be part of our mission too.”*

- Chris Young, General Counsel, Ironclad

Ironclad joined Justice Lab early-on in the initiative and dedicated their pro bono efforts to challenging racist policing practices, recognizing that any company, whether a fast-growing start-up or a Fortune 500 company.

With many lawyers working on different teams at the company, Ironclad offered employees the opportunity to join cross-functional teams of volunteers, ensuring that each group had both attorneys and non-attorneys. Within six months, 41 employees (10 attorneys and 31 non-attorneys) signed up, and most have completed at least one intake interview. All the team members, with or without a legal background have found the volunteer program to be rewarding, sharing that the experience has helped them “build empathy and understanding...[and] learn from people’s experiences, take action where necessary, and highlight experiences of community members impacted by this violence.” Ironclad also developed an internal review system to collect feedback from volunteers on how likely they are to recommend the program to other colleagues and identify employees who are likely to be champions of the initiative.

*“The death of George Floyd made clear that we can’t sit back and wait for justice to happen. I heard it from coworkers a hundred times in a matter of days — What can we do? How can we help? At Ironclad, we have over a hundred engaged, passionate people who want to contribute time and expertise to make an impact.”*

When reaching out to potential corporate partners, Chris recommends tackling sensitive issues head on: “We have to be comfortable in our discomfort in confronting these things; otherwise we cannot make the progress we need as a society. Find someone in the organization that understands that some sense of discomfort is often required to have tough conversations and combat racial injustice. Your champion should be someone who understands the issues well and is able to build consensus in a room that may be uncomfortable addressing the issues.”

### Legal Practice Points:

- **A team of trained intake volunteers who are dedicated to specific prospective plaintiffs throughout their engagement with the organization has crucial trial-related benefits:** First, having a network of volunteers each dedicated to a single case at a time ensures that every inquiry receives the care and attention it deserves. Second, the intake memo, which constitutes the first fact-finding effort, will enable law firms to begin pursuing investigations without delay. And third, it provides a legal perspective on each potential case from its inception, which helps to guarantee that these lawsuits are brought with ample creativity and force.

### LINKS TO EXISTING RESOURCES:

- Sample fact sheet: Intake Volunteers (link to Appendix 4)
- Outreach two-pager (link to Appendix 2)

PART II

# Step Six: Launch Awareness Campaign

Now that you have partners on board and systems in place, it’s time to recruit prospective plaintiffs. Launching an awareness campaign is an all-hands-on-deck endeavor that requires many different strategies, each of which should be tailored to your relationships with local public defenders and community partners. Justice Lab experimented with dozens of different strategies for recruiting plaintiffs: some of these strategies required significant amounts of staff time and minimal resources, while other strategies required an initial investment but garnered higher levels of prospective plaintiff engagement. The ACLU-LA’s plaintiff call relied on leveraging strong partnerships, creating systems for ongoing recruitment, and adapting engagement methods. Creating a coalition style campaign launch with public defender offices and community partners is an efficient and cost-effective means to launch a plaintiff call and kick-off fruitful partnerships.

» Sustainability Depends on Public Defender Offices

Depending on your budget and capacity, there is a wide range of strategies to use to launch your awareness raising campaign, none of them more important than a strong partnership with public defender offices. Public defender offices have direct and immediate contact with hundreds of prospective plaintiffs who have been charged with a crime after experiencing law enforcement misconduct. Public defenders can refer their clients to your services for filing civil claims, which can reduce the risk of prospective plaintiffs missing an opportunity to file within the statute of limitations. Conducting intake as soon as possible after the actual incident also ensures that specific details and evidence of the event are fresher in their minds.



» Effective Awareness Raising



» PSA

**PSA #1 — shorter version**  
If you’ve experienced racist policing in Louisiana, the ACLU of Louisiana’s Justice Lab wants to hear from you. Call (504) 522-0628 or visit [laaclu.org/justicelab](http://laaclu.org/justicelab) to tell your story and help put racist policing on trial.

**PSA #2 — longer version**  
Have you experienced racist policing since May 1, 2020? The ACLU of Louisiana wants to hear from you. Call (504) 522-0628 or visit [laaclu.org](http://laaclu.org) to tell your story and put racist policing on trial.

**Sample Tweets/  
Social Media posts**  
*“Dismantling racist policing will take all of us. [law firm] is proud to be among the leading law firms and legal clinics joining the @ACLUofLouisiana in an unprecedented effort to hold police accountable and stop racially discriminatory policing.”*  
— #BlackLivesMatter

Implementation Tips:

- **Start with recruitment through partnerships:** Prioritize developing tailored campaign content for public defender offices, local plaintiffs’ attorneys, and community organizations that work with reentering of formerly incarcerated individuals. These partners have an indispensable and permanent connection to members of the community that may have had their civil rights violated by law enforcement, and will be the most efficient means to recruit prospective plaintiffs. Supplementing this strategy with traditional media broadcasts and social media campaigns is helpful, but these are short-term initiatives that often require ongoing financial resources.
- **Think strategically about where and how to advertise:** Reach prospective plaintiffs through strategic outreach using media and physical advertising that are popular and accessible to communities most impacted by police violence. A multi-pronged approach using traditional media, social media, in-person contacts, and announcements at community or educational events will hopefully reach a broad range of individuals and families who may want to contact you about litigation. Sometimes staff and interns may be aware of community spaces or know business owners who are willing to post information about the initiative (for example, the ACLU-LA staff canvassed Black-owned businesses across the state).
- **Reach out to prospective plaintiffs who have shared their stories publicly:** Research community members who have publicized their experiences with racialized police violence. After altercations with police during a stop or protest, many people will post descriptions or videos of the event, but may not have the means to take legal action. Take a proactive approach and reach out directly to people who have courageously shared their stories to discuss litigation or storytelling. They may already have taken legal action or acquired representation, but following pending cases can be helpful for your own data collection purposes. They may also have an appealable case that your organization is positioned to take on after a dismissal at trial court.
- **Develop tailored social media toolkits:** Develop tailored social media messaging for law firms and legal clinics for the plaintiff call and provide sample content for them to use if they would like to publicize their involvement in the initiative. Although it is unlikely that prospective plaintiffs will find out about the initiative through a private law firm’s social media, in-state and law firms may be able to reach other potential partners.
- **Know your audience:** Provide definitions in your press releases and outreach materials. Most prospective plaintiffs may not know that their interactions with law enforcement may have been conducted unconstitutionally. Prospective plaintiffs are unlikely to be familiar with legal jargon like “statute of limitations” or “equitable relief.” It is also important to ensure that prospective plaintiffs understand the distinct roles of a criminal defense attorney and the role of your organization in a potential civil proceeding.





#### Legal Practice Points:

- **Set reasonable expectations when you begin working with a prospective plaintiff:** Not all complaints will be litigable, for reasons including the exhaustion of the statute of limitations, pleading guilty to a crime that renders the unconstitutional conduct claim moot, or lacking sufficient grounds to show that officers acted unlawfully. Clearly communicate these constraints throughout the awareness raising and intake process, both in writing and verbally.
- **Research pro se §1983 claims brought within the past 1-2 years:** Although these claims may not be appealable or eligible to refile, those plaintiffs may be interested in sharing their stories. There may also be important factual information or law enforcement officers identified in the pleadings that you should document in your hot spot mapping of police violence.
- **Determine which form of relief will be most viable for your client:** The remedies potentially available in §1983 actions include (1) prospective relief (i.e., injunctive relief and declaratory judgments); (2) compensatory damages; (3) nominal damages; (4) punitive damages; and (5) attorneys' fees. With the exception of compensatory and nominal damages, which are mutually exclusive, each type of relief may be independently sought and awarded in a §1983 action.

#### LINKS TO EXISTING RESOURCES:

- Provide intake forms and campaign materials for non-English speakers
- Sample press release

## Setting Clear Expectations

### How will a lawsuit help you?

- In your lawsuit, you can request for equitable or monetary relief. While you are probably most familiar with monetary relief, or damages, equitable relief also provides powerful legal support.
- Equitable relief exists in a few forms: **injunctive relief** might have the power to force the police to do something (such as wearing body cameras or attending trainings), prohibit the police from doing something (such as not discriminating against Black people), or the court may issue relief in the form of a declaration. A **declaration (declaratory judgement)** is an official determination of an individual's rights or obligations in a particular situation. For example, you might request a formal apology or a declaration that an officer violated the statutory bounds of their authority.

### Will there be any barriers to getting relief?

- An increasing barrier to success in police misconduct suits is the principle of qualified immunity. If you seek monetary damages, officers are able to assert a **qualified immunity** defense which is incredibly difficult to overcome based on Supreme Court precedent expanding the doctrine in favor of defendants.
- Qualified immunity is a defense that grants police officers, and other government officials, immunity from suits if the officer has not violated a **clearly established right**.<sup>64</sup>
- **Clearly established** has evolved to mean that you need a nearly identical factual case to prove the police officer's actions were unlawful. Qualified immunity can only be asserted in a claim for monetary damages, so you can prevent a law enforcement officer from using this defense if you sue for a different kind of relief, like the declarations of rights mentioned above. These declarations can be helpful to future litigation because it forces the court to declare when a person's rights have been violated in a variety of factual circumstances, making it more likely that a future plaintiff will be able to point to a fact pattern and argue that a clearly established right was violated.
- The **burden of proof** placed on a plaintiff in a civil lawsuit is also an obstacle to relief, especially for police inaction cases, cases involving law enforcement agencies that do not use body cameras, and incidents that do not result in formal arrest.



PART II

# Step Seven:

## Assign Cases

After establishing an intake process and launching an awareness raising campaign, you will need to develop a case assignment strategy. This needs to include an internal process for quickly assessing the viability of incoming cases and an organizational strategy that works for your staff as well as partner law firms. The case assignment process can be straightforward in some situations, but more complicated cases may require multiple strategy meetings, outside research, or conversations to encourage a firm to take on a particular case. It is likely to take at least five to six months before your organization is prepared to assign cases and begin investigations. Once you are ready, there are a number of different case assignment strategies, and this should be tailored to the size of your initiative as well as firm preferences.

» Developing a Case Assignment Strategy

As your organization begins to receive inquiries, intake volunteers will generate memos recommending the next steps for prospective plaintiffs. If a memo recommends investigation, host organization paralegals or attorneys should assess its findings and determine whether the case is actionable. The case can then be assigned to a law firm for investigation in order to determine whether to move forward with litigation. Setting clear expectations before the investigation phase is important for clarifying that a case assignment does not necessarily lead to trial: an outreach paralegal or volunteer should explain the scope of investigation when they contact a prospective plaintiff about a firm’s interest in their case.

Common Categories of Cases

**Prospective case assignment process:** When an incident is actionable based on information shared during the initial conversation with the prospective plaintiff, and there is an impending statute

of limitations. In this circumstance, you should develop a process to immediately assign the case out to an “on-call” firm. When you onboard firms, it can be helpful to ask them how much notice they need before agreeing to take on a case, and whether they would be open to taking on this kind of urgent assignment.

**Regular case assignment process:** These cases follow the normal intake and assessment process conducted by an intake volunteer. The prospective plaintiff’s memo and any other documentation (including any evidence from prior investigations, video surveillance, public records, interview transcripts, etc.) is then provided to a firm to review and decide if they want to lead the investigation. Firms have approximately five business days to accept or decline the case; if they decline, staff should reach out and inquire about their hesitations. Once a firm has agreed to take a case, the length of investigation may vary, but will often take approximately 30 days to determine if there is a viable claim. However, firms should be required to inform the host organization and client within a month of the statute of limitations if they will move forward to litigation, as staff will need a month to review a draft complaint and account for filing time.

Navigating Law Firm Preferences and Capacity

Every law firm will be different in terms of timing, capacity, resources, and area of expertise; some of these characteristics may be apparent from your initial conversations, while others you may learn overtime and adapt your assignment process accordingly. For example, some firms may be more agile and willing to take on urgent cases where a statute of limitations is about to lapse. Others may have a larger number of pro bono volunteers who have time to take on more complex cases that require additional research before agreeing to investigations. Some law firms may request a particular type of case (i.e., use of excessive force or cases involving juveniles), while others may specify the number of cases they are willing to investigate. There may be circumstances where your partner firm declines a case due to an “imperfect plaintiff” or something in the record that gives them pause about investigating the case. For example, we often consider the question, “If George Floyd survived, how likely is it that he could find a civil rights attorney to take his case? What fact pattern would have been viable?” Unfortunately, George Floyd,

and many other prospective plaintiffs, would not be viewed as a “compelling” plaintiff because of the alleged counterfeit bill and his unwillingness to happily acquiesce to arrest. And if he had lived and been charged with resisting arrest, absent an initiative like Justice Lab, he would have been told his case was not strong, worthwhile, compelling, or economical. Although a law firm may choose not to move forward, you should still have a conversation about their concerns, as the Justice Lab model is built on the idea that everyone is worthy of having their civil claims considered thoroughly by prioritizing the impacted person’s narrative over the dominant narrative offered by law enforcement officers.

For firms that are willing to take on two or more cases, it can be useful to assign multiple cases from the same locality or involving the same law enforcement officers. This helps to build expertise on specific law enforcement agencies, and may facilitate more efficient investigations; similarly, a firm may be able to work with the same Community Consulting Experts on these cases. For example, ACLU-LA began to assign all cases involving the St. Tammany Parish Sheriff’s Office to a particular firm because it would allow them to potentially file a Monell claim through evidence of a pattern or practice of misconduct and allow them to use information from one case to build up the other.

» Prioritizing the Development of a Discovery Strategy

A Comprehensive Discovery Strategy

Discovery is particularly helpful for developing fact patterns for Monell claims and establishing municipal liability: without the ability to proceed with discovery, one is unlikely to find evidence of negligent hiring and training, or policing practices condoned by municipal decision-makers. However, due to qualified immunity defenses in suits for monetary damages, many §1983 claims against law enforcement officers do not survive dispositive motions-be it a motion to dismiss or motion for summary judgment. Where the plaintiff seeks monetary damages, officers are able to assert a qualified immunity defense which is incredibly difficult to overcome based on Supreme Court precedent expanding the doctrine in favor of defendants.

In determining whether a qualified immunity defense should stand, the court applies a two-prong inquiry: whether the facts alleged by the plaintiffs show a violation of a constitutional right, and whether the defendant’s alleged misconduct violated law that was clearly established at the time the defendant acted.<sup>65</sup> However, in *Pearson v. Callahan*, the Supreme Court held that courts are not required to answer the questions in a particular order, which has resulted in many courts proceeding to the “clearly established law” question without addressing whether there was a violation of a constitutional right.<sup>66</sup> Avoiding the constitutional question makes it less likely that courts reach a discussion of whether the “contours” of the constitutional right were “sufficiently clear” to the point that every reasonable official would have understood that their conduct would violate it.<sup>67</sup> This leaves plaintiffs with very little guidance on what courts consider to be a sufficiently clear constitutional right and prevents establishing new precedent that would put law enforcement officers on notice that their conduct would violate a constitutional right.

Although it is extremely difficult to satisfy the “clearly established law” element of the inquiry, if the defendant files a motion for summary judgment, plaintiffs are entitled to seek discovery in order to rebut a qualified immunity defense. Courts may bar full discovery prior to resolving the qualified immunity issue, however, plaintiffs may still request discovery related to the specific incident in order to show a genuine dispute of material facts.

In discussing possible relief available to your client, you should also consider whether seeking non-monetary damages may be a more promising avenue to side-step the two-prong qualified immunity inquiry. If a plaintiff only requests declaratory or injunctive relief, opposing counsel may not argue a qualified immunity defense and will either file a motion to dismiss or a motion for summary judgment. Again, limited discovery is allowed pertaining to the facts of the incident and makes it more likely that the case proceeds to trial and results in an opinion containing a sufficient level of particularity to allow courts in the future to find a clear violation of constitutional rights. Even if the plaintiff is not able to overcome a qualified immunity defense or survive a dispositive motion, discovery compiled over time across the state can uncover pattern and practice evidence that will help plaintiffs in future cases.

65. Harlow v. Fitzgerald, 457 U.S. 800 (1982).  
66. Pearson v. Callahan, 555 U.S. 223 (2009).  
67. Ashcroft v. al-Kidd, 563 U.S. 731, 741 (2011).



## » Building Strong Information Sharing Practices

Focusing on the benefits of discovery in its sweeping litigation efforts, ACLU-LA wanted to ensure that all firms in the network were able to access data from one another’s cases and begin to unearth patterns of misconduct. For this purpose, Justice Lab partnered with Everlaw for Good, which is a cloud-based platform built for legal professionals that enables teams to collaboratively discover information, reveal its underlying structure, and act on those insights. This model has been particularly useful for Justice Lab due to the scope of the nationwide network of firms and the importance of real time collaboration on one platform. As the host organization, ACLU-LA serves as the Organizational Administrator and has the ability to create templates for categories of cases and search across the entire database for information. Firms also have autonomy to manage their own projects and discovery material and share information with other firms to help build cohesive factual narratives across discovery documents.

As law firms begin to investigate, it can be helpful to make this information available and searchable to your staff and other law firms who may be working on cases from a similar municipality or stemming from the same incident. The findings of multiple investigations can help build strong factual pleadings to allow a claim to survive a motion to dismiss or motion for summary judgment and proceed to discovery. Information sharing at the discovery stage is equally important, particularly if you are hoping to uncover patterns and practices of law enforcement misconduct that will strengthen future claims against municipalities. Whether your organization has access to a discovery management platform or relies on shared document technologies like DropBox or Google Drive, you should integrate information sharing and attorney-client privilege considerations into early discussions with your law firm partners.

### Implementation Tips:

- **Create a general outline of best practices and procedures related to media relations and outreach associated with litigation:** Protect community consulting experts and prospective plaintiffs by ensuring that law firms and other partners do not expose sensitive information or the plaintiff’s identity without express permission.
- **Require firms to send monthly updates on ongoing investigations and litigation:** Law firms should send brief updates on a monthly basis to highlight key developments, next steps, and any follow-up they may need from the host organization.
- **Work with the law firm to determine what local investigative support they need:** In addition to the Community Consulting Experts assigned to their case, firms may also request a recommendation for local investigators. Some prospective plaintiffs may already have worked with investigators on their case, as they can be much cheaper than hiring an attorney. Foreseeing this need, it can be helpful to make a preliminary list of investigators who may be willing to work at a discounted or pro bono rate that are familiar with local law enforcement procedures, police misconduct, §1983 claims, and Monell claims. If you have volunteers or law firm associates willing to pitch in during their onboarding or prior to the first round of cases being assigned, this can be a useful task to delegate. The host organization may also be asked to send public records requests on behalf of the firm partner as to not raise the alarm of the law enforcement agency being investigated.
- **Initiate “test cases” or innovative legal challenges with prospective plaintiffs:** There may be prospective plaintiffs that are barred from bringing their particular claim due to statute of limitations issues, but sometimes the investigating law firm or intake volunteer may identify an innovative legal challenge that might be viable to pursue. For “test cases” that arise that could be beneficial to your statewide litigation strategy, make sure to have an open and honest conversation with the prospective plaintiff and their families about the pros and cons of bringing a lawsuit that is likely to fail or take years to be decided.

### Legal Practice Points:

**Develop retainer agreements:** Once the law firm has completed the investigation stage and decided to pursue litigation, develop a retainer agreement. Depending on what you think is best for your organizing, you might consider using either a joint retainer agreement with the plaintiff, or two separate agreements if your organization has an existing retainer with the plaintiff.

**Encourage donation of legal fees:** Firms may be willing to donate some or all of any attorney fees that are awarded as a result of litigation, either directly to local organizations or for distribution to community partners through the host organization. You can suggest this as an option at the beginning stages of your partnership; for firms willing to consider this, it can be helpful to allow them to choose the percentage that they are comfortable donating, rather than requesting a specific percentage for every case. Providing a sample formula for a lump sum donation is a good starting point, but flexibility is key, particularly because law firms are already covering extensive investigation and litigation costs.



*“ACLU of Louisiana has entered into a retainer agreement with the Client. [FIRM] will enter into an agreement to provide pro bono representation to the Client, either by signing on as a party to the existing ACLU of Louisiana retainer agreement or by its own retainer agreement with the Client that does not conflict with the terms of the ACLU of Louisiana’s retainer agreement with the Client.”*

- Sample retainer agreement language

## Dismantling Institutional Racism:

Focus intake and litigation recommendations on the client’s goals: What would this individual like to see as a result of their engagement with your initiative? What resources would be most impactful for healing and vindication of their civil rights? Did the individual express any interest in restorative justice options outside of litigation (Legislative hearing? Writing an op-ed? Sharing their story at a community meeting?).

Encourage law firm partners to reinvest attorney fees back into local communities: In Louisiana, the ACLU-LA identified three areas in particular that could be strengthened through the financial support of litigation profits: bail relief funds, post-incarceration reentry services, and related advocacy and organizing efforts. These areas of investment support the broad goals of reducing and eliminating recidivism and challenging injustice and inequality in the criminal legal system.

### LINKS TO EXISTING RESOURCES:

- Sample public case directory



PART II

# Step Eight: Develop Storytelling Process

Justice Lab recognizes that not all cases brought to its doors will be litigable and that litigation may not always be appropriate. Storytelling provides individuals with the opportunity to tell their story and have their experience amplified through publication, which will be accessible to the broader community. Through storytelling, we aim to honor and amplify the narratives and perspectives of people of color and those that have been directly impacted by misconduct. Storytelling is also a way to bring attention to large scale issues. For instance, the ACLU-LA plans to use storytelling to illustrate the harmful impacts of a one-year statute of limitations and lack of access to legal counsel for civil proceedings. This is itself a criminal justice issue if dozens of community members are deprived of the ability to pursue their civil rights claims.

In their own words

*“We will not win every one of our Justice Lab cases – but we will send a clear message that the legal community, and our society as a whole will no longer turn a blind eye to these abuses. Beyond litigation, we are asking victims who we cannot represent to consider sharing their stories for public education and advocacy, and we aim to keep this initiative rooted in the larger movement for racial justice.”*

- Alanah Odoms, ACLU-LA Executive Director, speaking at a Community Town Hall.

» Storytelling Objectives

- **Internal impact:** Storytelling is a powerful tool for processing trauma, healing, and building connection and empathy. In addition to catalyzing social change, storytelling aids healing—as recovery often begins with reconstructing the impact of trauma. Finding a personal narrative can help bring self-awareness, closure, and a sense of connection with the community.
- **External impact:** Storytelling serves to humanize the data and statistics behind police brutality, and allow the storytelling and the listener to build trust and form an emotional connection. It also cultivates important skills in self-reflection and learning to center the experience of people who have been affected by police violence.
- **Broader community impact:** Storytelling is not only about individualized narratives but also provides a holistic picture of the impacts of racialized police violence and the scope of the problem across communities of color. Hearing personalized accounts of police brutality can spark empathy and outrage and mobilize greater numbers of people in the community to advocate for police accountability. Sharing these stories also puts law enforcement officers on notice that people are watching and documenting their misconduct.



## Helping Storytellers Find Their Narrative

- If this is your first interaction, take some time to introduce yourself and get a general sense of what happened before jumping into specifics.
- Before you start the interview, ask the individual to what extent the response may be edited. Are formatting changes okay (e.g., adding paragraph breaks), would the individual like it to be proofread, or should it be left as is?
- Do not immediately fill silences with more questions. Allow the individual to think for a moment and continue.
- These stories may be emotional or traumatic. Be sure to check in and ask if the individual would like to take a break. This is not for legal purposes, so there is no need to push for more information.
- Remember that this is a conversation. These questions are a guide, but allow the conversation to flow naturally.

Navigating Law Firm  
Preferences and Capacity

1. **Voice Recording.** Sharing their story with an intake volunteer who will record the conversation via Zoom, which will generate an audio file and transcript.
2. **Transcription.** Sharing their story with an intake volunteer who will record the conversation via Zoom, which will generate an audio file and transcript.
3. **Video.** Sharing their story with an intake volunteer who will record the conversation via Zoom, which will generate a video and transcript.
4. **Written Document.** Sharing a handwritten or word-processed narrative with an intake volunteer, who will offer feedback to assist in the development of their story.

Timeline of a Storyteller  
in Justice Lab

- Determine whether a prospective plaintiff’s case is suited for litigation. This determination will usually be made after receiving an intake volunteer attorney’s memo analyzing the plaintiff’s potential claims. When appropriate, you may determine that a case is non-litigable upon initial review of the prospective plaintiff’s complaint (e.g., if it is clear the statute of limitations has expired).
- Notify individuals whose cases are deemed non-litigable and explain why litigation is not a viable path forward. ACLU-LA will then ask these individuals whether they would be interested in sharing their story online instead.
- Refer individuals who are amenable to the storytelling option to an intake volunteer to prepare their story for online publication.
- Intake volunteers initiate a preliminary, 30-minute interview to discuss the storyteller’s preferences for telling their story and walk through next steps.
- The storytelling interview lasts approximately 1-2 hours and focuses on the storyteller’s memories, thoughts, and feelings about their experience. The intake volunteer should then schedule an interview check-in to review edits and changes that the storyteller would like to make to the draft.
- Once the story is recorded and approved by the storyteller, the intake volunteer will send it to staff or communications volunteers to prepare the stories for publication. To most accurately preserve the voices of the people who come forward, stories will not be editorialized or condensed (to the extent they follow the guidelines provided). Individuals can opt to share their story anonymously.





# Guiding questions to support storytellers

## 1. What motivated you to reach out to Justice Lab?

- What initiated/led to the situation?
- Where were you when this happened?
- When did it happen?
- Were you with anyone else? Did that person have a similar experience?
- Who else was involved? Were they government officials?
- Did anyone say or do anything that made you feel intimidated or unsafe?
- Over what period of time did this occur?
- What was the outcome of the situation?

## 2. How has the experience impacted you since?

- Were you hurt?
- Did you file a complaint? If so, what was the response?
- How has your view of the criminal justice system changed?
- How did this experience impact you immediately afterwards? Does it still impact you today?
- Have you spoken with anyone else about this?

## 3. General

- Did you have any interactions with the criminal justice system before this occurred?
- Is there anything else you would like to add?

## Implementation Tips:

- **Create a webpage or other centralized location to share the stories you collect:** A public repository can emphasize the injustices faced by people of color at the hands of law enforcement officers, while also demonstrating that legal recourse remains unavailable to so many. This restorative justice measure can empower individuals with a sense of agency and assurance that their stories matter. Making these stories accessible to the public may also inspire others to come forward and share their experiences.
- **Share notes with the storyteller:** Assure the storyteller that they will be able to review all of the notes taken during their storytelling interview and make changes. This can help establish trust between the listener and the storyteller and ensure that the storyteller has full agency over how their experiences are represented.
- **Prepare volunteers to recognize different responses to trauma:** Trauma is a normal human response to an abnormal event or series of events that cause physical and emotional harm and/or are life threatening. People react in very different ways after experiencing trauma or suffering from PTSD. When the storyteller is asked to recall details of a traumatic event, they may shut down or seem vacant and distracted. They also may not be able to share their story in a linear fashion or experience memory loss as to specific details of the event. They may be distraught and cry or become hyper and alert--there is no way of knowing how an individual will react. Through training and practice, volunteers should develop skills to recognize various trauma responses and strategies to help bring the storyteller back into the room and make them feel safe and in control of the situation.
- **Provide meaningful mental health services:** Sharing experiences of racialized police violence can bring up past traumas and associated responses, but it also can have an impact on the listener. This is particularly true if an intake volunteer or staff member is regularly exposed to distressing, violent accounts of police brutality. As a host organization, you should take responsibility for ensuring that both volunteers and prospective plaintiffs have resources about secondary or vicarious trauma and have direct access to mental health services. If you aren't able to provide these services in-house, it can be helpful to partner with local mental health providers or social workers so that you can offer referral services. The ACLU-LA has referred prospective plaintiffs and directly impacted community members who have attended town hall events, legislative hearings, or political rallies, to a local mental health service organization. Volunteers receive one-pagers on coping mechanisms for vicarious trauma or overwhelming interactions with clients. In the future, Justice Lab hopes to have mental health providers/social workers on-call and integrated into the regular intake process.

## NAVIGATION

- For more information about providing mental health services, see **STEP TWO**.

## » Storytelling Process From Intake to Publication

1. **Upon receiving the story, the Justice Lab intake team will send one of the three form emails to the intake volunteer.** These emails intend to confirm that every step of the storytelling process was completed.
  - a. If the story is good to go, the intake volunteer will confirm within 24 hours.
  - b. If a volunteer did not complete the process, they have five days to complete.
2. **The Justice Lab intake team will draft a summary of the story.**
  - a. Summary should be 3-5 sentences.
    - i. Sentence 1: Introduce the storyteller.





- ii. Sentence 2: Introduce the interaction with law enforcement.
  - iii. Sentence 3-5: Explain interaction with law enforcement.
- b. Draft within 24 hours of receiving confirmation from the intake volunteer.
- 3. **Submit story and summary to the communications team.**
- 4. **The communications team will review and make any final edits.**
  - a. They have two days to review and send the revised version to the intake team.
- 5. **Justice Lab intake team will ask the client for final sign-off on story and summary.**
  - a. Initially, we'll provide the client with three days. Then, we'll check in with the client every two days until sign-off is received.
  - b. After three additional attempts (i.e., nine days after the initial email), we will deem the client MIA and not publish the story until they contact us again.
- 6. **Upload story and summary to the website.**
  - a. The communications team has 24 hours after receiving the final sign-off to upload.

Dismantling Institutional Racism:

**Confronting the media bias in reporting about police misconduct:** When mainstream journalists report about alleged police misconduct, oftentimes they rely on “official” or “authorized” accounts of an incident that justify the actions of the officer and perpetuate the “bad apple” narrative.<sup>68</sup> Reporting on trials often focuses on the failure to convict or officers not being found liable for their unlawful conduct. A broader context about the racialized nature of the incident, qualified immunity doctrine, or department-sanctioned “policy” that allows racist policing to persist is often missing. The use of passive or neutral language also perpetuates ideas about police responsibility to protect and serve, or the justification of their actions if they fear for their lives.<sup>69</sup> Additionally, there is also a tendency for the media to focus on rioting, looting, or the criminal record of the victim, rather than law enforcement brutality.<sup>70</sup>

68. Monika Bauerlein, *When It Comes to Policing, Journalism Is Part of the Problem*, Mother Jones (June 10, 2020) <https://www.motherjones.com/media/2020/06/journalism-and-police-violence/>.  
69. Ben Moore, *Media Bias in the Coverage of George Floyd*, Signal AI (2020), <https://www.signal-ai.com/blog/media-bias-in-the-coverage-of-george-floyd>.  
70. Sarah J. Jackson, *The Headlines That Are Covering Up Police Violence*, The Atlantic (June 3, 2020), <https://www.theatlantic.com/culture/archive/2020/06/george-floyd-protests-what-news-reports-dont-say/612571/>.



PART III

Step Nine:

Initiate Data Collection & Analysis

Data collection is critical for providing a yearly retrospective to supporters and the community and ensuring transparency. Establishing consistent data collection habits from the outset of your initiative will help make quarterly or annual analysis efficient and easily accessible. If you launched your initiative with specific quantitative goals in mind (i.e., 50 plaintiffs and 10 law firms), communicating your successes in meeting those goals can help keep up positive momentum and potentially attract additional partners and funders.

» Effective Awarenes

Current	Historical
# PEOPLE PENDING INITIAL OUTREACH	# OF PEOPLE WHO BECAME UNRESPONSIVE AFTER SUBMITTING THEIR INITIAL INQUIRY
# OF PEOPLE W/ OUTREACH IN PROGRESS	# OF PEOPLE WHO BECAME UNRESPONSIVE AT INTAKE INTERVIEW/MEMO STAGE
# OF PEOPLE AT INTAKE INTERVIEW/MEMO STAGE	# OF PEOPLE WHO BECAME UNRESPONSIVE AFTER COMPLETING INTAKE STAGE
# OF PEOPLE AT CASE ASSIGNMENT STAGE	# OF PEOPLE WHO BECAME UNRESPONSIVE AT INVESTIGATIVE STAGE
# OF PEOPLE AT STORYTELLING STAGE	# OF PEOPLE WHO BECAME UNRESPONSIVE AT STORYTELLING STAGE
# OF PEOPLE AT INVESTIGATIVE STAGE	# OF PEOPLE WHO DECLINED STORYTELLING
# OF PEOPLE AT LITIGATION STAGE	# OF PEOPLE WHO COMPLETED STORYTELLING
# OF CASES ON APPEAL	# OF COMPLETED INTAKE INTERVIEWS/MEMOS
	# OF CASES INVESTIGATED TO DATE

» Collecting Real-time Data as an Organizational Practice

As your initiative grows, you will most likely have many staff members and volunteers involved in tracking outreach, engagement with prospective plaintiffs, and litigation timelines. A centralized database of these efforts with standardized metrics can help you identify staffing needs (i.e., there is a backlog of storytelling assignments), hone your outreach strategy (i.e., radio ads have produced the largest volume of prospective plaintiff inquiries), and project when you may have multiple law firms initiating their lawsuits (i.e., tracking monthly updates from firms on the status of their investigations).

For example, internal data may suggest that a high percentage of cases have been proscribed by the statute of limitations; this may help you focus your research efforts on other viable claims for prospective plaintiffs or state law exceptions to the §1983 statute of limitations. Other unforeseen trends may arise, and consistent documentation can help hone your research and litigation strategy according to the specific community experiences.



» **Strengthening Litigation Strategies Through Data Analysis**

Comprehensive data collection is important on two fronts: the first is to establish transparency with partners and the community and to provide benchmarks for the year ahead. It can also help address bottlenecks and improve your internal processes if you identify outcomes shifting overtime (i.e., if plaintiff inquiries drastically increase after a particular social media push or following a protest).

The second rationale behind data collection is to build collective knowledge for a litigation strategy. Through a network of law firms, legal clinics, volunteers, and students with the capacity to conduct research, you have an opportunity to align internal data with publicly available information like Mapping Police Violence, the US Census, and police records. For example, during Justice Lab’s first summer, associates from partner law firms compiled data to identify “hot spots” of police violence across the state. Their research identified how many police killings occurred over a seven-year period and overlaid these statistics with census data in order to show that police kill Black people at a disproportionate rate compared to white people. Depending on criminal justice issues identified in your community, it is possible to look at other trends that may correlate with hot spots of police violence, such as pretrial incarceration rates or disproportionately high numbers of excessive force complaints.

Analyzing these different data sources can help identify specific patterns of conduct, individual officers, and departments that have a history of unlawful conduct, including racial profiling (see Legal Practice Point below). You may also begin to see trends in specific parishes or counties, or patterns of behavior that are specific to state police versus local police. Within the first six months of prospective plaintiff inquiries, you should be able to identify the most frequent types of claims arising in particular localities (i.e., unconstitutional stop and search versus use of excessive force).

» **Developing Annual Report Metrics**

With regular and reliable data collection, your organization will have an efficient means of generating annual metrics to share with partners and funders. In addition to tracking initial intake and storytelling outcomes, over time you will also be able to document the outcome of litigation and track indicators such as:

- # cases settled at the trial court stage
- # cases favorably resolved before trial court (we win on one or more claims)
- # cases unfavorably resolved before trial court (we lose on all claims)
- # cases on appeal
- # cases where ACLU-LA appellant
- # cases where ACLU-LA appellee
- Total relief granted to plaintiffs
- Total legal fees reinvested into communities of color
- # of institutional changes in law enforcement agencies resulting from legal challenges

**Recommended Annual Benchmarks**

- Of the total X people who have contacted us:
- X were non-responsive to outreach (i.e., never returned multiple phone calls or texts) (X%)
- X have not been assigned to intake because they are not interested (X%)
- X have been assigned an intake interview (X%)
- X cases of those assigned to intake are viable and were thus (or will be) assigned to firms (X%)
- X of those cases deemed viable where a person went MIA
- X of those deemed viable where a person was not interested in proceeding with litigation or storytelling
- X cases of those assigned to intake that we deemed not viable for reasons such as SOL (X%)
- X of those cases that are not viable that have been assigned to storytelling (X%)
- X of those cases that are not viable that will be assigned to storytelling (X%)
- X of those cases that are not viable that will not assigned to storytelling because individual not interested (X%)

**Implementation Tips:**

- **Create one centralized spreadsheet to track all data:** Although you may have multiple channels for prospective plaintiffs’ inquiries, and eventually they will be sorted into the investigations or storytelling, centralizing information about every contact ensures that every case is tracked and moved efficiently through each step of the process.
- **Plan data collection and reporting processes from the beginning:** Aligning your intake processes with the type of data you want to collect is critical to ensure that things don’t fall through the cracks. You should also be open to the possibility that unexpected trends will arise that become important to document, at which point you should adjust your intake templates and spreadsheets to account for new data/facts that staff and volunteers should be tracking.
- **Schedule regular check-ins with all staff that enter data:** Color coding and formatting can be extremely helpful to visually identify where each prospective plaintiff or storyteller is in the process, and also allows staff to input data according to the guidelines.

**Legal Practice Points:**

**Using Data to Show Discriminatory Impact:** Data analysis can be a powerful strategy to uncover patterns and practices of law enforcement that might constitute a showing of disparate impact for the purposes of an equal protection claim or a statutory discriminatory impact claim. To successfully plead an equal protection violation when a law is facially neutral, a plaintiff must demonstrate discriminatory impact AND discriminatory intent. *Washington v. Davis* (1976). To prove discriminatory intent under the Equal Protection Clause, it is not sufficient to show that defendants acted with knowledge of the consequences of the law or policy; instead, it is required to show that the action was taken because of those consequences, not in spite of them (a definition of intent similar to that found in criminal law). *Personnel Administrator of Massachusetts v. Feeney*, 442 U.S. 256 (1979).



Evidence that will satisfy a showing of discriminatory intent can include “a statistical pattern so stark as to leave no other explanation” for the discriminatory intent. *Village of Arlington Heights v. Metropolitan Development Corporation*, 429 U.S. 252 (1977). Other evidence to prove discriminatory intent pursuant to *Arlington Heights v. Metropolitan Development Corporation* includes historical evidence (e.g., *Meredith v. Fair*, 298 F.2d 696 (5th Cir. 1962), or legislative and administrative history that shows racial animus. (e.g., *Masterpiece Cake Shop Ltd. v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018)). In a situation where there is clear discriminatory intent but lack of evidence to establish discriminatory intent, an alternative to bringing an Equal Protection claim is to apply a federal or state statute that provides a cause of action for discriminatory impact, like Title VII (e.g., *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971)).

Compiling quantitative and qualitative data that is geographically specific and tailored to factually specific patterns of police misconduct can significantly strengthen an individual plaintiff’s discriminatory impact claim by showing a history of discriminatory conduct and intent, as well as demonstrating that similarly situated individuals of a different race were not subjected to the same treatment. *United States v. Armstrong*, 517 U.S. 456, 458 (1996). The data can also help establish a basis to challenge racial profiling under the Fourteenth Amendment by showing modus operandi of individual officers or law enforcement agencies.

# Building Resources & Capacity

The Justice Lab model is intended to be flexible and scalable. It can be replicated in small municipalities, throughout a whole state, or regionally. An organization also has the option to replicate the model in its entirety, or it can replicate the litigation effort, or storytelling and advocacy effort on their own. Depending on your organization’s capacity and area of expertise, you can also think bigger and consider implementing broader policy and advocacy efforts for engaging further in community development or empowerment programs. As a result of this scalability, a Justice Lab budget is also scalable. Due to its partnership-based model, Justice Lab relies on the pro bono support of firm and in-house counsel, and the generosity of other partners that can help sustain and grow the program without it monopolizing an organization’s budget in the first 6-12 months of the initiative.

Launching a civil Gideon initiative is a significant investment of staff time and financial resources. Learning from the first year of launching the Justice Lab can help get an initiative off the ground without requiring substantial resources up-front. Once you have created local traction and brought in national partners for litigation efforts, fundraising and in-kind donations of time and resources may be easier to access. We have provided some budget estimates below based on the ACLU-LA’s experiences during the first 12 months of our initiative. Keep in mind that the ACLU-LA’s Justice Lab model should be considered a “mid-sized” version of the endeavor, so you can expect your costs to shift if you are thinking of only replicating certain programs.

## » Staffing a Civil Gideon Initiative

The largest expense of the Justice Lab model is staff time. The ACLU-LA relied on dedicated staff who were already team members with existing responsibilities. Since the launch of the initiative, we have added an additional paralegal to support the effort and have aspirations of hiring several new attorneys and a social worker. The host organization of a Justice Lab model that includes litigation efforts will require both internal and external legal staffing. You can expect to serve as co-counsel on

every case, and although the model relies heavily on the support of partner firms and volunteers, increasing staff capacity will allow you to file more cases, manage more law firms, and dedicate more staff hours to storytelling efforts. When you review the roles highlighted below, be sure to consider whether you already have attorneys or paralegals on staff who can take on these responsibilities, as there may be some positions that are most appropriate for legal professionals.

### Critical Staff Roles: The First 6 Months

**Director:** It is critical to have a staff person serving as a director of all the moving pieces of partnership building and outreach. If your initiative includes a litigation component, the role should probably be filled by a Legal Director or Senior Staff Attorney. You will also want an internal staff person to ensure that messaging and communications stay true to your mission and vision of the initiative within the broader context of your organization. Depending on your organization’s structure and capacity, this may be a good role for a Communications or Marketing Director to play if you already have someone on the team.

**Paralegals:** If you have paralegals on staff, create a six-month timeline of goals you would like to achieve and inquire as to whether they would be willing to contribute a reasonable number of hours per week to the initiative launch. In certain cases, it may be possible for non-legal program administrators or coordinators to take on these responsibilities, particularly if the Director can provide hands-on guidance and training in the early stages of the program. Justice Lab has also created a number of templates and outreach materials that are helpful for recruiting volunteers and interns (administrative, legal, communications, etc.) and legal externs.

**Interns and Volunteers:** Interns and volunteers are crucial for allowing staff to focus on big picture strategy and overall coordination. Depending on their area of expertise, interns can be involved in background research, data analysis, outreach and coordination, communications, and training. Legal externs or graduate students in other disciplines may have a full summer or semester to spend full-time with your organization, and you can delegate longer-term projects to them based on their interests. For example, a law student might want to conduct research on qualified immunity doctrine in

your state, while a masters student may be interested in data analysis and looking at patterns of police misconduct based on public records and census data.

**Mental health staff:** A Justice Lab model requires a strong mental health component, as participants may suffer from homelessness, hunger, and post-traumatic stress, and family members of people in the midst of the criminal legal system need support as they heal. ACLU-LA is currently working to meet these needs by referring community members to a trusted local partner, however we have aspirations of hiring a social worker. Organizations may consider a combination of multiple strategies to ensure that people most impacted by racialized police violence have the mental health support they deserve.

## » Leveraging Resources Creatively

Although there are some components of the initiative that will require a budget, think about ways to leverage the resources and expertise of your partners before making financial investments. For example, are there community organizations that hold regular meetings where you could initiate outreach? Do you have existing social media platforms or agreements with graphic designers and journalists who could help develop a marketing strategy? Are there local law firms or law school legal clinics that are willing to donate space for town hall forums or cover costs of administrative overhead like printing or case management software? As you reach the intake and case assignment stage, it can be helpful to develop a model budget for discovery and investigations to share with law firms, which can help set realistic expectations of the time and resources one prospective plaintiff may require.

### Plaintiff Call Advertisement Channels

- Awareness Raising Campaign: advertising and messaging
- Radio advertising (4 weeks) = ~\$10,000
- Facebook and Instagram paid ads = ~\$5,000
- Busses and physical advertising = ~10,000
- Billboards = ~\$7,000

Plaintiff call advertisements: After staffing costs, the initial plaintiff call was the second largest expense during the first six months of the initiative. ACLU-LA experimented with many different channels to promote the initiative including radio ads, paid social media, billboards, and bus ads (up to \$30,000 per quarter). Some of these efforts were more successful than others, and as a result of tracking intake that occurred through each outreach channel, we were able to hone in on our most effective strategies and make spending more efficient over time. Your connection with the community and other partners may be able to offset some of these costs. For example, ACLU-LA recruited Black-owned businesses who could post the plaintiff call in their stores across the state, and other Black-led organizations graciously assisted with canvassing efforts and spreading the initiative via word-of-mouth.

### Fundraising and Budgeting for a Civil Gideon Initiative

Just like law firms across the world are committing themselves to helping end systemic racism, so is the philanthropic community. Just 30 days after the nation watched George Floyd be tortured to death, individual donors, foundations, and corporations pledged \$2 billion to support racial equity in the United States. By contrast, donations in the same category totaled just \$166.4 million in all of 2019. Some of these newly pledged funds are specifically supporting Black-led organizations.

The ACLU-LA has applied to many grantmaking organizations for support of Justice Lab, we have solicited individuals for program funding, and we have seen a major uptick in our unrestricted funding, likely because of the success of Justice Lab. The program resonates with funders who want to be part of the solution to police misconduct. ACLU-LA would be happy to be a resource to any organization who is developing a solicitation strategy or proposal for your Justice Lab initiative.



» Snapshot: The First 6 Months

Our initiative is a statewide, “mid-sized” model.

Note that these costs do not include salaries.

Expenditures	Amount	Quarter	Notes
Plaintiff Call Advertisement	\$5,000	July-Sept.	Social Media Ads
Plaintiff Call Advertisement	\$27,000	Oct.-Dec.	Includes social media ads, radio ads, bus ads, billboards and canvassing costs
Speaker Fees for Directly Impacted Participants	\$5,000	Oct.-Dec.	Payments ranging from \$150 - \$250 to directly impacted speakers participating in events
Microsite Development	\$15,000	Oct.-Dec.	This may include a one-time to design a website and other materials, or ongoing costs of communications and design
Estimated Total	\$52,000		

» Snapshot: One Year of Justice Lab

This is an aspirational budget as we grow our mid-sized model.

Note that these costs do not include salaries.

Projected 2021 Expenditures	Estimated Amount	Quarter
Plaintiff Call Advertisement	\$30,000	January - March 2021
Speaker Fees for Directly Impacted Participants	\$5,000	January - March 2021
Original study on police brutality in Louisiana	\$30,000	January - March 2021
Plaintiff Call Advertisement	\$30,000	April - June 2021
Speaker Fees for Directly Impacted Participants	\$5,000	April - June 2021
Plaintiff Call Advertisement	\$30,000	July - September 2021
Speaker Fees for Directly Impacted Participants	\$5,000	April - June 2021
Justice Lab Legal Fellow (salary and benefits for 3 months)	\$20,000	July - September 2021
Plaintiff Call Advertisement	\$30,000	October - December 2021
Speaker Fees for Directly Impacted Participants	\$5,000	October - December 2021
Justice Lab Legal Fellow (salary and benefits for 3 months)	\$20,000	October - December 2021
Flexible spending where needed most	\$25,000	Annually
Estimated Total	\$235,000	



# Definitions

Definitions adapted from relevant case law and the Center for Constitutional Rights’ Jailhouse Lawyers Handbook, the Louisiana State Bar Association’s Legal Terms and Procedures Guide, and the United States Courts Glossary of Legal Terms.

**Amicus brief:** Individuals or organizations that have an interest in a case or legal issue may formally request to submit an amicus curiae, or “amicus brief,” which is a persuasive legal document that provides an opinion or perspective on a particular matter before the court. Sometimes parties will reach out to organizations or experts and request that they file an amicus brief that would support their argument or add a new perspective that the parties themselves can’t raise. For example, the ACLU might submit an amicus brief on an important trial about First Amendment violations and retaliatory arrests, even if they are not representing one of the parties.

**Burden of proof:** The necessity or duty to prove a fact in dispute. This burden falls on either the plaintiff or defendant depending on the type of claim. The burden of proof in a §1983 claim depends on both the type of claim and relevant precedent in the state and Circuit Court. For example, in a false arrest case, the Fifth Circuit places the burden of proof on the plaintiff to show that the officer lacked probable cause, while the Eighth Circuit looks to the relevant state law to determine which party holds the burden of proof to show probable cause.

**Clearly established:** This is a concept used to determine whether an official’s conduct violated a constitutional right that they reasonably should have known about at the time that they acted. Finding a clearly established right is a necessary requirement for overcoming qualified immunity and allowing a suit against a law enforcement officer to proceed. Defining “clearly established” is a very fact specific process that varies depending on the Circuit and whether the court finds a substantially similar factual circumstance in previous cases. See *Mullenix v. Luna*, 136 S. Ct. 305, 308 (2015).

**Declaratory judgment:** A court order that sets out the rights of the parties or expresses the opinion of the court about a certain legal standard. It does not create an actual remedy in the form of monetary damages or force a law enforcement agency to take a specific action, but it allows the court to issue a declaration of legal rights or obligations before a trial occurs. For example, the court might declare that the defendant failed to comply with a contractual obligation or grant that the plaintiff is owed a formal apology from the defendant.

**Discovery:** This is a period of time after the defendant has answered the plaintiff’s complaint but before trial where both parties may seek information from each other to obtain facts related to trial preparation. Discovery strategies include document requests, depositions of parties and potential witnesses, written interrogatories (questions and answers written under oath), written requests for admissions of fact, and examination of the scene. The theory of broad rights of discovery is that all parties will go to trial with as much knowledge as possible and that neither party should be able to keep secrets from the other (except for constitutional protection against self-incrimination). There may be situations where a judge allows for limited discovery when there are disputed facts or a question of qualified immunity.

**Dispositive motions:** A motion is a request made by a party to a judge asking them to issue an order or take some other action. A dispositive motion is one that will effectively end the case in favor of one party. This includes a “motion to dismiss” which a defendant files after receiving the plaintiff’s complaint to challenge the validity of the plaintiff’s claim and request that the judge dismiss the case based on the pleadings. See also Motion for Summary Judgment.

**Fourteenth Amendment:** There are two relevant clauses for §1983 claims. The Due Process Clause of the Fourteenth Amendment prohibits a state from depriving “any person of life, liberty or property without due process of law.” This clause can be relevant for rights violations arising from police pursuits and violations that occur after a plaintiff has been taken into custody. The Equal Protection Clause says that “nor shall any State . . . deny to any person within its jurisdiction the equal protection of the laws.”

**Fourth Amendment:** Prohibits unreasonable searches and seizures and requires that warrants be supported by probable cause. Violations of the Fourth Amendment allow a plaintiff to bring §1983 claims of unlawful search and seizure, false arrest, and use of excessive force.

**Injunctive relief:** A court order preventing one or more named parties from taking some action. When a court orders a person to perform a certain act or to stop performing a specific act, the court is said to “enjoin” the action or enforcement of a policy/law. It is unlikely that a court will find that injunctive relief is warranted in a police misconduct case if the plaintiff was injured by a single incident with law enforcement, as it would be difficult to show that the same plaintiff would be likely to suffer the same injury in the future.

**Monell claim:** The Supreme Court case *Monell v. Dep’t of Soc. Servs. of City of New York*, decided in 1978, allows plaintiffs to bring a §1983 claim directly against a municipality that employs an individual officer. See *Monell v. Dep’t of Soc. Servs. of City of New York*, 436 U.S. 658 (1978). These are referred to as Monell claims, and require that the plaintiff prove a violation of a constitutional right and show that “(1) an official policy (2) promulgated by the municipal policymaker (3) was the moving force behind the violation of the constitutional right.” *Robles v. Ciarletta*, 797 F. App’x 821, 833 (5th Cir. 2019).

**Motion for Summary Judgment:** A judgment given on the basis of pleadings, affidavits, or declarations, and exhibits presented for the record. A party files this type of motion before trial and if the judge grants summary judgment, the case does not proceed any further unless the opposing party appeals. A court will grant a motion for summary judgement if it finds that there is no genuine dispute as to material facts.

**Qualified Immunity:** When an individual or government agency cannot be sued, they are “immune” from suit. Public officials, including law enforcement officers, have qualified immunity, meaning that they may only have immunity if their conduct “does not violate clearly established constitutional rights of which a reasonable person would know.” *Harlow v. Fitzgerald*, 457 U.S. 800 (1982). In determining whether qualified immunity is applicable in a §1983 claim, a court will rely on a number of

different Supreme Court cases to analyze whether a constitutional right was violated and whether that right was clearly established at the time of incident.<sup>71</sup> **Relief:** The remedy or damages that a plaintiff requests from a court to compensate for their injuries. Damages may be compensatory (for loss or injury), punitive (to punish and deter future misconduct), or nominal (a small, symbolic sum of money awarded to a plaintiff whose rights were violated, but they did not suffer a specific loss or harm). In addition to monetary damages, a plaintiff might request “equitable relief” in the form of a declaratory judgment or injunction. See Declaratory judgment.

**Retainer agreement:** This is a legal agreement between an attorney and client that specifies the parties’ responsibilities, the attorney’s services, and any associated costs and fees. While prospective plaintiffs in Justice Lab are not responsible for any legal costs or fees that would normally be included in an agreement, the document formalizes the relationship and indicates that the law firm agrees to represent the plaintiff at trial. There may also be provisions of this document that indicate what happens if either party decides to terminate the agreement.

**Statute of limitations:** This is the time period during which a plaintiff can bring a lawsuit after their rights have been violated. Some statutes include a statute of limitations for particular claims, while others do not specify a length of time. §1983 is one statute where Congress did not include a statute of limitations, and thus these claims are dependent on state law. Due to the Supreme Court decision in *Owens v. Okure*, courts apply a state’s general or residual personal injury statute of limitations to §1983 claims. *Owens v. Okure*, 488 U.S. 235 (1989).

**Under color of law:** §1983 allows a plaintiff to bring a claim against a state official only if they acted “under color of state law.” This means that the state official (including individuals that work for state, city, county, or other local government) must have been acting pursuant to the authority they were granted as part of their job. “Under color of law” includes situations where the official was acting in violation of a state law.

71. Sarah Hughes Newman, *Proving Probable Cause: Allocating the Burden of Proof in False Arrest Claims under §1983*, 73 University of Chicago Law Review 347.



# Implementation Check-List

## Processes

- ☐ Referral system
- ☐ Intake process
- ☐ Research repository
- ☐ Case assignments
- ☐ Discovery strategy
- ☐ Amicus strategy
- ☐ Storytelling initiative
- ☐ Data collection and analysis

## Templates

- ☐ Law firm and corporate counsel pitch
- ☐ Law school legal clinic pitch
- ☐ Community outreach pitch
- ☐ Public defender outreach pitch
- ☐ Prospective plaintiff emails
- ☐ Litigation Agreements
- ☐ Confidentiality Agreements
- ☐ Storytelling guidelines
- ☐ Intake memo

## Trackers

- ☐ Partner outreach and contact information
- ☐ Volunteer contacts
- ☐ Research repository index
- ☐ Intake memos
- ☐ Case assignments
- ☐ Investigation updates
- ☐ Litigation updates
- ☐ Organizational metrics
- ☐ Annual report metrics

## Communications

- ☐ Dedicated website and intake form
- ☐ Prospective plaintiff phone hotline
- ☐ Mission statement and objectives
- ☐ Human-centered language style guide
- ☐ Informational one-pagers
- ☐ Social media tags and blurbs
- ☐ Website and contact page
- ☐ Press and Communications Policy

## Administrative Tools

- ☐ GoogleDrive
- ☐ DropBox (internal and external)
- ☐ Email listservs
- ☐ Case/contract management system
- ☐ Legal Drive (server)
- ☐ Zoom

# Lessons Learned

**Community first:** The community is the root of your civil Gideon initiative from day one. Even if you are hesitant to pitch the idea before having resources or buy-in from big law, it is absolutely critical to organize and communicate with the community first. The Justice Lab manual is a blueprint for bringing different stakeholders together in integrated advocacy and litigation efforts, but the specifics of your work should be guided by community needs and priorities. These are likely to shift overtime and will require you to adapt your strategy and goals, so you should draft your mission statement and long-term objectives accordingly. If you are initiating new relationships for this endeavor, it is particularly important to begin by listening and focusing on working within the parameters of what the community identifies as most meaningful. The ACLU-LA struggled with our initial approach to community engagement and learned that we should not have issued a press release without first consulting with local stakeholders. Communities were upset that outsiders had announced an initiative without local endorsement or input, and many local §1983 practitioners felt that the program encroached on their area of expertise and the work they had been doing for decades. Looking back, we should have started everything with these community conversations, rather than reacting to the urgency of the moment and getting law firms onboard.

Entering a community space with a full-fledged proposal can be disrespectful and harmful to your long-term relationship with communities and organizers. There is a balance between consulting the community from the outset and coming to the table with specific ideas for the initiative: depending on the community, it can be helpful to prepare concrete proposals and the role you foresee for different stakeholders. It may be more convenient for the community to comment on specific programs and strategies instead of participating in vague or theoretical conversations about civil Gideon and local engagement. For example, ACLU-LA developed the CCE program and brought a draft proposal to the table instead of having a general conversation about the potential role of community in the litigation strategy. We provided our initial ideas and baseline materials for

their comments, and we received critical feedback about the time commitment, compensation rate, and structured relationship with law firms.

You should also be transparent about the likelihood of raising enough support and resources. It is important to set expectations and not make promises before you can deliver. Sharing information about the ACLU-LA Justice Lab can help jump start a conversation about how community-centered advocacy and litigation can help tackle racialized policing locally and whether there are particular resources or strategies that they would prioritize.

**Think with an integrated advocacy strategy in mind:** At the end of the day, the Justice Lab blueprint is about sweeping advocacy and litigation efforts to challenge racialized policing and hold law enforcement officers accountable. When you develop your intake and case assignment processes, think beyond your initial organizational and administrative needs and align your programs with broader advocacy goals and the conditions on the ground. The templates and processes you create should all be geared towards efficient and effective investigation, litigation, and storytelling. These should help intake volunteers document facts that can shape a viable legal claim, and your agreements with prospective plaintiffs and law firms should help facilitate discovery strategies that uncover patterns and practices of misconduct.

When you develop a process for assigning prospective plaintiffs to either investigations or storytelling, your criteria should include the procedural and merit-based hurdles you expect to face and those that you intend to challenge through litigation. The storytelling training should reflect the trauma-informed nature of this work, and the medium for publishing stories should contribute to a long-term advocacy strategy: what is the impact you hope to have by sharing these stories and who is your intended audience?

**Expect the unexpected:** Although you may have some projections about the most common type of complaints you expect to receive, you should also expect the unexpected. In the early stages of legal research, ACLU-LA focused much of its efforts exploring the state’s qualified immunity precedent, yet once the plaintiff call began, it was clear we needed to be able to respond rapidly to prospective plaintiffs with unique cases. For example, Justice Lab discovered that the state’s one-year statute of limitations for §1983 claims was a more common barrier to suit



than qualified immunity. After setting up an intake form and hotline, you will also receive complaints that are much broader than racialized police violence. ACLU-LA received inquiries related to homelessness and police altercations, law enforcement whistleblowers, and potential liability of private security officers. Even though we knew that prospective plaintiffs had suffered severe trauma, we did not expect that this trauma and fear would result in many of them disappearing after their initial inquiry or discussion with an intake volunteer. We should have anticipated the urgent mental health support and social services that community members would need from the first point of contact with us, rather than waiting until later in the process to offer these parallel programs.

**Be willing to experiment and adapt:** When Justice Lab began its plaintiff call, we initiated outreach through Facebook and Instagram advertising. We learned that individual pushes through social media and mass advertising resulted in a high click rate but very little in terms of engagement. We tried a number of different outreach strategies, including advertising on buses and billboards, before we found that a campaign on a local radio station was the most effective means of reaching the community. As we experimented with different mediums, we also found that our response rate increased when our radio announcements were more specific about the type of stories and claims we were looking for: instead of “racist policing,” we zeroed in on unconstitutional stops, searches, seizures, and excessive force.

It can be difficult to predict how different stakeholders and communities will react as your initiative rolls out and you request input. There may be times where your outreach strategy doesn’t achieve what you were expecting. For example, when Justice Lab first launched, ACLU-LA sent dozens of emails to criminal defense attorneys and public defenders across the state that explained the concept of civil Gideon and the potential role they could play. Unfortunately, this resulted in very few responses and we had to rely on word of mouth after one public defender’s office came onboard. Six months into the initiative, we tried again: we sent 230 physical letters to each of these attorneys, which has resulted in a much greater response rate. Although we never expected that snail mail would be a more effective outreach strategy, there was no harm in experimenting with a new tactic and including more concrete examples of what we were able to accomplish in the

first few months of Justice Lab. In the early stages of your initiative, allow yourself time to experiment with different tactics, ask for feedback from community partners, and adjust!

**Set realistic expectations:** Justice Lab was able to partner with over 50 private law firms in the early months of its launch. In the summer of 2020, the nationwide racial reckoning and media focus on racial justice and police reform garnered heightened levels of interest in this work. When you begin outreach, you will most likely not have this specific momentum that inspired law firms to want to get involved so quickly in a new initiative. Instead of trying to recruit as many partners as possible, think strategically and realistically about how many cases you hope to litigate in your first 12-18 months, and the minimum number of firms and legal clinics you would need to accomplish this. You will also want to ensure that prospective plaintiffs have realistic expectations about their participation in Justice Lab, particularly because many cases will not be viable for litigation. Avoid potential misunderstandings by thoroughly explaining that as the host organization, you aren’t able to guarantee any outcomes or specific forms of relief.

**Quality over quantity:** ACLU-LA has been thrilled by the outpouring of interest in and commitment to volunteering with Justice Lab and we were able to roll out a full fledged litigation effort in less than a year thanks to their contributions. However, just as you should be realistic about the number of law firms and legal clinics you should partner with at the beginning, you should also think about the number of volunteers you have the capacity to train and manage. If you do have a sudden influx of law firm associates or corporate volunteers, it can be helpful to create rolling cohorts for onboarding and assign clear mandates and deliverables to small teams with a designated point-person. You should expect hiccups in this process, but take advantage of these learning opportunities by asking for feedback, conduct exit interviews with volunteers and interns, and being realistic about your staffing needs on a short and long-term basis. Likewise, you should ensure that brand awareness raising does not exceed your internal capacity: for example, we only had 2 intake and investigations paralegals at the beginning of our initiative, and we had to scale our outreach accordingly.

# Frequently Asked Questions

## How does a civil Gideon model contribute to divestment and prison abolition?

Abolition does not happen overnight and depends on a multitude of organizing efforts and reform initiatives to tackle harmful conceptions about the role of police in our society, and dismantle structural and institutional racism in the criminal legal system. In addition to divesting resources from law enforcement agencies and ending punitive policing and the for-profit prison industrial complex, attention must also be paid to the ways in which the legal community can perpetuate white supremacy and racial inequities in these systems. A civil Gideon model contributes to the broader divestment and abolition movement by ending impunity for individual officers and departments, and uncovering systemic, racialized, and unconstitutional policing practices. Through its statewide efforts, it increases access to counsel for those who have experienced racialized police violence, which is proven to increase the likelihood that litigants prevail in court and may also allow for resources to be reinvested back into the community. The Justice Lab model also challenges mainstream media’s portrayal of law enforcement by highlighting the stories and voices of those most impacted by police misconduct and the criminal legal system. And finally, it redirects financial resources from the private bar that would not normally be accessible to communities of color and reimagines how relationships between communities, the private bar, and public defenders can tackle pervasive police misconduct and lead to institutional change.

*“Du Bois wrote that...[a]bolition...required the creation of new democratic forms in which the institutions and ideas previously implicated in slavery would be remade to incorporate those persons formerly enslaved and to enable a different future for all members of the polity. To be meaningful, the abolition of slavery required fundamentally reconstructing social, economic and political arrangements.”<sup>72</sup>*

## Why doesn’t the Justice Lab model focus on class action initiatives?

Justice Lab is focused on bringing individual claims as a complement to class action lawsuits, recognizing that they both serve important purposes. Historically, nonprofit organizations, including the ACLU-LA, have brought a significant number of class actions, many of which have led to greater transparency and improved institutional practices (i.e. more comprehensive training, funding for body cams). However, changes to policies and procedures are often not enough to achieve true justice and accountability. When George Floyd was murdered, the City of Minneapolis Police Department had 7 out of 8 “best practices” for police procedures in place, yet an officer still acted unlawful and was not held accountable for his actions.<sup>73</sup> Class actions are helpful in obtaining injunctive relief and changing institutional policies, but this litigation strategy to-date has not sufficiently stemmed police misconduct. Additionally, the nature of class certification requires sufficient similarity of all plaintiffs in order to survive, which makes it less likely that you will be able to highlight all the nuances of a particular person’s experiences. Thus, Justice Lab’s litigation strategy intends to help enforce the laws that are already in place and hold individual officers accountable for violating civil rights.<sup>74</sup> Bringing stand-alone lawsuits also helps to amplify the voices of communities of color who have been silenced or treated as a homogenous group.

72. Allegra M. McLeod, *Prison Abolition and Grounded Justice*, 62 UCLA L. Rev. 1156-1239, 1163 (2015) <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2502&context=facpub>.  
73. Ricardo Lopez, *Minnesota’s Decades-Long Failure to Confront Police Abuse*, The New Yorker (June 10, 2020), <https://www.newyorker.com/news/news-desk/minnesotas-decades-long-failure-to-confront-police-abuse>.  
74. Alex S. Vitale, *The Answer to Police Violence is Not ‘Reform’*, It’s Defunding. Here’s Why, The Guardian (May 31, 2020), <https://www.theguardian.com/commentisfree/2020/may/31/the-answer-to-police-violence-is-not-reform-its-defunding-heres-why>.  
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**How do I keep so many different stakeholders satisfied and in the loop about the initiative?**

Regular communication and transparency are key to maintaining strong relationships and trust in your initiative. You can create listservs of the various stakeholder groups and send weekly updates on cases, current events, and new resources, or spotlight a firm or community organization. We also recommend that law firms send monthly investigation and litigation updates to ensure that you are aware of any pending issues and ensure that you are on the same page with the firm and the plaintiff. Additionally, consider the different ways that stakeholders may prefer to communicate--some might respond well to a weekly newsletter, while others might want to have a more personalized phone call or “office hours” opportunity to discuss ongoing work or concerns.

**Before I launch an awareness raising campaign, how do I successfully recruit law firm partners without prospective plaintiffs?**

Most firms agree to represent pro bono clients after receiving memorandums on prospective cases. However, due to the nature of Justice Lab, it can be helpful to have at least a few firms onboard before you have prospective plaintiffs. If a victim of racialized police violence reaches out for a consultation, and you are not yet in a position to offer investigative services, a delay may compromise their trust or reduce the chances of filing their claim within the statute of limitations. Thus, it can be helpful to develop a strategy to pitch the concept of civil Gideon and police accountability to a few firms that are willing to take initial cases. Once your outreach and case distribution list is active, it will be much easier to provide examples of typical cases to prospective law firms.

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# Appendix

[Attach all sample PDF one-pagers]

