

# JUSTICE LAB: PUTTING RACIST POLICING ON TRIAL

## The Call: Enforcing the Constitution

- » We can, and must, do more to stop the police misconduct, harassment, and violence that far too often leads to the deaths of innocent people of color, especially Black and Brown people.
- » We can, and must, do more to uphold the founding principles of our nation—that all persons are entitled (i) to equal protection under the law, and (ii) to live free from unreasonable, unwarranted, and unlawful police conduct.

## The Problem: Racial Injustice in Policing

- » For centuries, people of color—and in particular Black communities—have been suffering and dying at the hands, knees, and firearms of law enforcement officials.
- » There is no question that such incidents violate the Fourth and Fourteenth Amendments to the U.S. Constitution.

## One of Many Causes: Dearth of Legal Challenges to Routine Racial Discrimination By Police

- » Laws and constitutional principles are only as powerful as our ability and determination to enforce them.
- » All too often, justice comes too late, if at all—and usually only after a public outcry that accompanies gut-wrenching images of helpless people of color being subjected to unconstitutional brutality.
- » Victims of unconstitutional police misconduct may not understand how to vindicate their rights, or may not have the resources to retain counsel.

## The Initiative: Establishing a Nationwide Litigation Blueprint by Focusing Intensive Efforts in a Single State—Specifically, Louisiana

- » Louisiana has the largest ratio of police officers to residents of any state and has the highest incarceration rate in the country. Moreover, state law allows police to expunge any alleged violation of criminal battery and assault involving domestic violence from their personnel files if the formal complaint at issue was made anonymously or was not substantiated within twelve months.
- » In other words, in Louisiana, police misconduct goes largely unchecked. The State is a microcosm of the structural flaws that plague this nation's criminal “injustice” system.
- » As one of a host of solutions that seek to end endemic and systemic racial injustices that permeate unconstitutional policing practices in this country, the ACLU of Louisiana will: *Encourage participation of—and lead—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 of Louisiana—alongside community-based organizations, activists, and groups—can help establish a litigation blueprint geared toward altering police conduct that every other state in the nation can follow.

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Louisiana

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# **The Strategy: Lawyers, Law Students, and Local Communities on the Front Lines Telling People of Color That They Are Seen, Heard, and Have Value**

## **Rollout**

### **The ACLU of Louisiana**

The ACLU of Louisiana will roll out a four-part plan. *First*, we will enlist law firms, law school clinics, and local community organizations, activists, and groups to join this effort. *Second*, we will initiate a social media call for up to 1,000 plaintiffs in Louisiana to come forward and challenge alleged unconstitutional stops and seizures that occurred within the State in the past nine months. *Third*, we will spearhead a police misconduct deterrence campaign that will, among other things, encourage the public to record any police encounter they see involving a police stop. *Finally*, we will organize the intake and dissemination of cases across network participants.

### **Law Firms from Around the Country Will Spearhead Trial Court Actions**

#### **Law firms**

In partnership with the ACLU of Louisiana, law firms will spearhead challenges to racially-motivated stops and seizures by bringing individual 42 U.S.C. § 1983 actions under the Fourth and Fourteenth Amendments and any other applicable laws.

#### **Coordination and Logistics**

If each law firm agrees to take up to 10 legal actions, we can accommodate up to 1,000 cases. Each law firm will be partnered with a local community organization, activist, or group and will focus on a distinct locality and/or police district in Louisiana. The lawyers will live and breathe their localities and police districts in order to bring airtight legal actions. Participating firms will aim to provide hands-on experiences to associates. And the legal teams will strive to reflect the diversity of the very communities they seek to protect. The firms will accordingly 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+.

#### **Net Benefits**

The trial effort intends to dismantle the institutional racism that has permeated law enforcement agencies in the U.S. for centuries. The more individual civil actions we bring, the more we reinforce that Black and Brown lives matter—and that there is an accountability mechanism in place to stop racially-motivated police misconduct. Even unsuccessful actions demonstrate to the nation that the legal system is a powerful tool that can be harnessed by the community to demand justice. 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. Unconstitutional infractions raised to the attention of law firms in the network, no matter how small will be investigated and, where appropriate, challenged in court.

### **Law School Legal Clinics Will Spearhead Appeals**

#### **Law school legal clinics**

In partnership with the ACLU of Louisiana, law school legal clinics will, where appropriate, appeal unfavorable constitutional and qualified immunity decisions that result from the trial court actions spearheaded by the law firms in the network.

#### **Coordination and Logistics**

Assuming one-third or more of all the trial court actions result in settlements or victories, each legal clinic will be asked to take on anywhere between 10 and 30 appeals over time. The legal clinics will be organized to focus on distinct localities and/or police districts in Louisiana, and will be put in touch with the law firm(s) that brought related trial court actions.

#### **Net Benefits**

The appellate effort has three key goals. *First*, it aims to limit and curtail the scope of qualified immunity—to ensure that government officials no longer flout the U.S. Constitution with impunity. *Second*, it serves to set up test cases for the Supreme Court, which has indicated a willingness to revisit qualified immunity. See *Ziglar v. Abassi*, 137 S. Ct. 1843, 1872 (2017) (Thomas, J., concurring). *Third*, it reinforces the trial-related benefits identified above.

*If you are a law firm, law school, or community organization, group, or activist that is potentially interested in participating in Justice Lab, please email [nahmed@laaclu.org](mailto:nahmed@laaclu.org) with the subject line: “Justice Lab Inquiry.”*

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