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BLACK LIVES OVER BROKEN WINDOWS

Challenging the Policing Paradigm Rooted in Right-Wing "Folk Wisdom"

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Trump and Right-Wing Populism: A Long Time Coming

Racial Double Standards in a Mass Shooting Threat Case: David Lenio & White Nationalism

Tracking Blackness: A Q&A with *Dark Matters* Author Simone Browne

What does broken windows policing—the theory that law enforcement should aggressively pursue arrests of minor offenses in order to avoid a slippery slope of criminality—have to do with the Right? That is the question that attorney and author Andrea Ritchie explores in this issue's cover story, **"Black Lives Over Broken Windows" (pg. 4)**. The paradigm that emerged from neoconservative approaches to law enforcement in the 1980s has played a major role in many of the recent deaths and assaults of Black citizens at the hands of police, from Michael Brown, shot for jaywalking; to Eric Garner, killed by an illegal chokehold for allegedly selling loose cigarettes; to Rosan Miller, also choked by police for grilling on the sidewalk. What Ritchie finds is that the seeds of this theory emerged from unproven "folk wisdom" that, with the help of right-wing think tanks and leaders, was sharpened into the deadly force it is today. Accompanying Ritchie's piece is our cover artist, Molly Crabapple, a widely-renowned multi-media artist and writer, whose own work has drawn significant attention to the problems with broken windows policing.

Our commentary in this issue (pg. 3) comes from award-winning journalist David Neiwert, who examines the ties between the rise of presumptive Republican presidential nominee Donald Trump and the White Nationalist Far Right. With Trump's ascension has come the reemergence of White supremacists, xenophobes, and conspiracists, who for years had been relegated to the outskirts of right-wing politics but now have been emboldened by Trump's brash and offensive campaign. Following the rise of the Tea Party and mimicking the producerist narrative demonizing both liberals and the poor, Trump has tapped into this large, but largely unseen, voting bloc and is helping mainstream its dangerous positions.

Human rights activist and writer Jonathan Hutson offers a uniquely first-hand look at how racial and religious double standards play out in the investigation and prosecution of threats of mass violence in his article, **"Racial Double Standards in a Mass Shooting Threat Case" (pg. 10)**. In 2015, Hutson encountered David Lenio, a young White supremacist from an influential right-wing family who was using his social media accounts to make numerous and explicit threats to shoot both Jewish leaders and elementary school children. Although law enforcement found Lenio—a self-proclaimed "potential terrorist"—armed with multiple guns and in possession of materials that could have constituted an even greater threat, the treatment of his case would prove far different from what one might expect.

Continuing the theme of tracing the deep roots of racist policing policies, journalist Lindsay Beyerstein interviews author and professor Simone Browne on her new book, **Dark Matters: On the Surveillance of Blackness (pg. 16)**. Browne, who straddles the fields of African Studies and Surveillance Studies, takes the very long view in exploring how Black bodies have been tracked for centuries. She uncovers the origins of mass surveillance in the United States in the early days of slavery, and traces that lineage through to today's high-tech methods of monitoring the public.

Taken together, these articles explore a range of ways in which racism is woven into right-wing (as well as moderate and liberal) politics as well as broader state and institutional practices. At a time when the country faces high stakes in the coming presidential election, and when the movement for Black lives is resisting continued violence and discrimination, it's an important moment for these discussions. We hope this issue of *The Public Eye* can further inform those discussions and action.

Thank you,

Kathryn Joyce
Editor

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BY DAVID NEIWERT

Trump and Right-Wing Populism

A Long Time Coming

Most Americans surveying the wreckage of the national political landscape amid the 2016 presidential election are startled, most of all, by the ugliness and violence that has suddenly returned to our electoral politics thanks to the prominence of racist Far Right ideology in the Republican contest. And they shudder at the prospect of what that might mean for the nation's politics long after *de facto* Republican nominee Donald Trump departs the scene—whenever that may be.

Almost as suddenly as Trump himself emerged as a major player in the race, so too did an array of White Nationalists and supremacists, conspiracists and xenophobes, and even Klansmen and skinheads. For decades these figures had been relegated to the outskirts of right-wing politics, and many mainstream observers seemed to think they'd gone extinct.¹

The brashly offensive statements made by Trump about any number of minority groups or other individuals have likewise confounded observers.

"He is defying the laws of political gravity right now," exclaimed mainstream political consultant Michael Bronstein in January. "Inside the presidential race, any one of these lines, if they were associated [with] another candidate, it would've ended the candidacy."²

But the normal rules simply do not apply with Trump. Although he presents himself as a truth-talking business conservative—having emerged largely from these ranks—Trump has transformed himself into a creature of the populist Hard Right, the movement to which he owes his electoral success. The ideology that is identifiable through the candidate's braggadocious and at times



The crowd goes wild at a Donald Trump rally in Dallas, Texas in September 2015. Credit: Jamelle Bouie via Flickr.

incoherent speaking style is the "producerist" narrative,³ which pits ordinary White working people against both liberals—who are cast as an oppressive class of elites—and the poor and immigrants, who are denigrated as parasites.

Producerism has historically been tied to far-right movements, whether the Ku Klux Klan of the 1920s or the Patriot/militia movement of the 1990s and today. The rhetoric of the militia movement, which arose during the Bill Clinton administration, served to help mainstream the Radical Right. Most of these militias initially presented themselves as ordinary civic organizations devoted to protecting people's rights and property, even as they gathered a large number of violent militants within their ranks. But any positive spin on the movement was derailed by acts of terrorism associated with the movement, like the Oklahoma City bombing. Marginalized, the Patri-

ots largely went into hiatus in the early part of the new century, during the conservative Republican administration of George W. Bush, but the motivations that fueled their movement remained very much alive.

During the same years that militias were first organizing, right-wing media simultaneously arose as a separate propaganda organ that demonized liberals and presented conservatives as the only true American patriots. The following decade, during the Iraq War, conventional right-wing rhetoric on outlets like Fox News became vociferous and eliminationist: liberals were derided as "soft on terror," and any criticism of Bush and his administration was denounced as "treasonous." Meanwhile, conspiracist elements of the Far Right found fuel in the aftermath of September 11th, which produced an entire cottage industry devoted to proving the terror attacks part

Commentary, continued on page 19

BY ANDREA J. RITCHIE

Black Lives Over Broken Windows

Challenging the Policing Paradigm Rooted in Right-Wing “Folk Wisdom”

When protesters developed a platform to end police violence in the wake of the 2014 police shooting of 18-year-old Michael Brown in Ferguson, Missouri, the first of their 10 demands was to end “broken windows” policing, the law enforcement paradigm marked by aggressive policing of minor offenses and heavy police presence in low-income Black communities.¹

Broken windows policing is what led Ferguson police officer Darren Wilson to approach Michael Brown simply for walking in the middle of the street. It is what motivated police to repeatedly harass Eric Garner, a 43-year-old Staten Island resident who was killed earlier that summer by NYPD officer Daniel Pantaleo, using a banned police chokehold during an encounter initiated over Garner’s alleged sale of loose cigarettes. And in 2015 it was what brought Baltimore police into contact with Freddie Gray, a 25-year-old Baltimore man who was initially stopped while allegedly fleeing from police officers in his low-income Black community—and who died after his spinal cord was severed while he was in police custody.

The role of broken windows policing in each death quickly became the focus of protesters from the Black Lives Matter movement and other civil rights advocates. Just days after Brown’s death, national president of the NAACP Cornell William Brooks said, “The death of Michael Brown strikes me as the latest, sad chapter in an ongoing national narrative about a form of policing, broken windows policing, that is simply not right for the country.”² In New York City, This Stops Today—an ad hoc coalition taking its name from Eric Garner’s words on the day he died to the officers who had repeatedly harassed him—made



Rally against broken windows policy outside of the Manhattan Institute in New York City, December 10, 2014. Source: Hollow Sidewalks via Flickr. License: <https://creativecommons.org/licenses/by/2.0/>.

ending broken windows one of their 11 demands. (The 11 demands were issued in honor of the 11 times that Garner was seen on video telling the officers who killed him, “I can’t breathe.”³)

Broken windows policing is not only all too often lethal, it also contributes to the use of excessive and illegal force in the context of the most mundane police encounters. It led a New York City officer to put Rosan Miller, a seven-months pregnant Black woman initially approached for grilling outside her home, into the same banned chokehold that had led to Garner’s death just a few weeks before.⁴ It was the excuse for another officer to slam Stephanie Maldonado to the ground in New York City’s West Village for “jaywalking” like Mike Brown.⁵ It was what led police to arrest Duanna

Johnson, a Black transgender woman, for prostitution—one focus of broken windows policing—while walking down a street in Memphis, Tennessee, in 2008, only to beat her bloody with metal handcuffs at the police station in an incident captured on video because she refused to answer to “faggot.”⁶ Broken windows policing also created opportunities for recently convicted Oklahoma City police officer Daniel Holzclaw to stop women as they walked down the street to inquire as to what they were doing and where they were going, thus facilitating his sexual harassment, assault, and rape of 13 Black women and girls.⁷

THE ‘FOLK’ ORIGINS OF BROKEN WINDOWS

What does broken windows policing have to do with the Right? In part, the

answer lies in where it came from: an outgrowth of the conservative “law and order” agendas of the early 1980s. Neo-conservatives George Kelling and James Q. Wilson outlined the theory underlying broken windows policing in a 1982 *Atlantic Quarterly* article.⁸ Kelling is a senior fellow at the Manhattan Institute, and Wilson, before his death in 2012, was a board member at the American Enterprise Institute, both right-wing think tanks.⁹ According to Wilson and his colleagues, liberal concessions to civil rights movements and protest cultures of the 1960s and ‘70s were significant contributing factors to the urban chaos broken windows policing purports to address.¹⁰ In 1985, Wilson co-wrote a book, *Crime and Human Nature*, with Richard J. Herrnstein, a co-author of *The Bell Curve*, which notoriously advanced a theory of racial differences in intelligence. Wilson’s own 1975 book, *Thinking About Crime*, argued that crime is the product of individual and social “predispositions,” rather than socioeconomic conditions.¹¹ His theories echoed those of his mentor, Edward Banfield, who theorized about a “culture of poverty,” which Wilson believed required a punitive response,¹² and those of *The Bell Curve*’s other co-author, Charles Murray, whose arguments suggest that crime is the result of individual mental and moral deficiencies.¹³ Wilson decried single parenthood, claiming “illegitimacy was eroding the nation’s values,”¹⁴ and, as Pam Chamberlain wrote in PRA’s *Defending Justice: An Activist Resource Kit*, argued for “returning to a path where religion is influential and where families remain intact.”¹⁵

New York City became the first municipality to aggressively implement broken windows policing theories rooted in these right-wing intellectual traditions in the early 1990s. Under the leadership of former Republican Mayor Rudolph Giuliani, and bolstered by right-wing media like the *New York Post* and right-wing think tanks like the Manhattan Institute, the city put Kelling and Wilson’s theories into practice with an internal

police memorandum, “Reclaiming the Public Spaces of New York,” citing both the pair’s *Atlantic* article and the infamous 1965 Moynihan Report, which blamed social dysfunction on Black families, and particularly, Black mothers.¹⁶

The broken windows theory, brilliantly summarized in a recent video created by Molly Crabapple,¹⁷ goes something like this: if signs of disorder—like broken windows—and minor offenses—like loitering, panhandling, and graffiti—are left unchecked, then it’s only a matter of time before a community descends into chaos and violence. According to Kelling and Wilson, the only way to prevent this from happening is through aggressive enforcement and prosecution of minor offenses. At its core, broken windows relies on fear-mongering, stoked by familiar right-wing themes about the need for increased “security” and a compulsion to root out certain groups of people as embodied threats to a particular way of life.

But even Kelling and Wilson acknowledged back in 1982 that it is “not inevitable that serious crime will flourish or violent attacks on strangers will occur” if signs of disorder are left unchecked.

Broken windows relies on fear-mongering, stoked by familiar right-wing themes about the need for increased ‘security’ and a compulsion to root out certain groups of people as embodied threats to a particular way of life.

Indeed, the two wrote that their entire premise is admittedly drawn from what they themselves call “folk wisdom” rather than objective data, based on the belief that perceived disorder somehow renders an area more “vulnerable to criminal invasion” such that “drugs will change hands, prostitutes will solicit, and cars will be stripped.”¹⁸ It’s a theory, they implicitly admitted, based more on people’s fears and beliefs than on hard evidence.

The theory later evolved to advance the premise that individuals who commit minor offenses—like fare evasion in public transit—will, if not caught and

punished, eventually commit more serious offenses: a sort of slippery slope of criminality. The new logic of broken windows, according to Tanya Erzen, a scholar of American conservatism, writing in *Zero Tolerance: Quality of Life and the New Police Brutality in New York City*, is that “graffiti taggers, turnstile jumpers and kids in a public park are either already criminals, or simply criminals in the making.”¹⁹

Even the theory’s biggest proponent, New York City Police Commissioner Bill Bratton—who spearheaded its implementation in New York City under Mayor Giuliani, actively promoted its spread around the country both as a consultant and as Los Angeles Police Commissioner, and pursued it with renewed vigor in his second tenure in New York City under current Mayor Bill de Blasio—concedes that neither premise has ever been conclusively proven.²⁰ In fact, several studies undermine the theory’s claims.²¹ In a comprehensive review of the literature and a summary of his own research, Columbia law professor Bernard Harcourt concludes that, “Taken together, the wealth of research provides no support

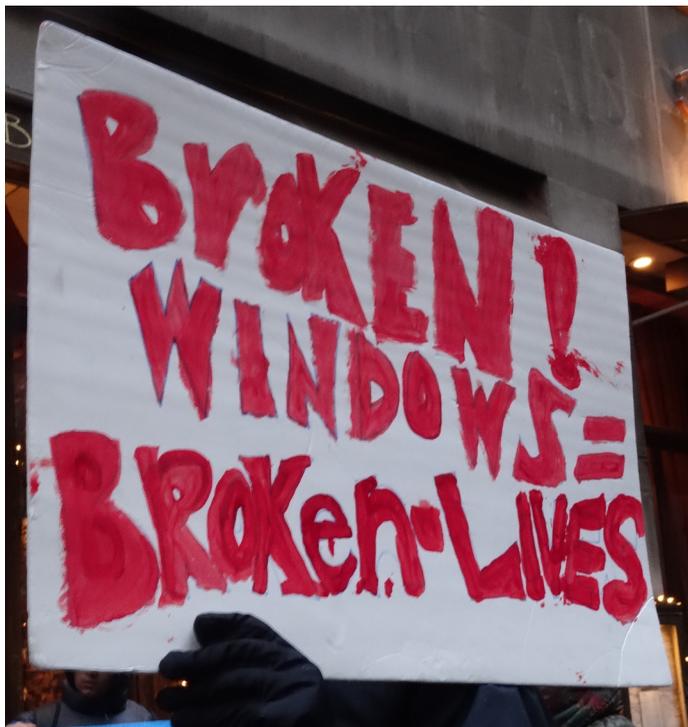
for a simple disorder-crime relationship as hypothesized by Wilson and Kelling in their broken-windows theory...What I have come to believe is that the broken windows theory is really window dressing, and it masks or hides more profound processes of real estate development and wealth redistribution.”²²

Like so many policies of the Right, broken windows policing is rooted in fear: fear of poverty, fear of youth, fear of unregulated sexuality and gender nonconformity, and deeply, at its core, a fear of Blackness. According to George Kelling’s recent defense of the theory in *Politico*, published a year after Michael Brown’s death, “The goal is to reduce the

level of disorder in public spaces so that citizens feel safe, are able to use them, and businesses thrive.”²³ Kelling concedes that it is, in essence, an approach based on public perception—that is, on feelings—rather than proof. In the end, fear—of crime, yes, but also, as the original article explains, of “being bothered by disorderly people,” like panhandlers, “addicts,” or people living with mental

others that followed are Black, it is clear that the “disorderly people,” the people driving “boombox cars,” and the graffiti taggers are also imagined as Black. As gentrification of New York City proceeded through the 1990s, “disorderly people” came to mean those displaced into public spaces in the context of neoliberal devolution and cuts to social programs.²⁶ In other words, broken windows policing

Broken windows policing isn't about reducing crime, it's about assuaging white fear of poor people, Black people, and people of color—no matter how irrational or racialized.



Rally against broken windows policy outside of the Manhattan Institute in New York City, December 10, 2014. Source: Hollow Sidewalks via Flickr. License: <https://creativecommons.org/licenses/by/2.0/>.

illness—is the moving force behind the theory.²⁴ As Bratton once put it, “Aggressive panhandling, squeegee cleaners, street prostitution, ‘boombox cars,’ public drunkenness, reckless bicyclists, and graffiti have added to the sense that the entire public environment is a threatening place.”²⁵

Although not explicitly stated, given that the communities described in Kelling and Wilson’s original article and

others that followed are Black, it is clear that the “disorderly people,” the people driving “boombox cars,” and the graffiti taggers are also imagined as Black. As gentrification of New York City proceeded through the 1990s, “disorderly people” came to mean those displaced into public spaces in the context of neoliberal devolution and cuts to social programs.²⁶ In other words, broken windows policing isn’t about reducing crime, it’s about assuaging white fear of poor people, Black people, and people of color—no matter how irrational or racialized.*

FROM BLACK CODES TO BROKEN WINDOWS

Scratching the surface of broken windows policing reveals that, in the end, the paradigm is simply a repackaged and sanitized version of the ways age-old “vagrancy” laws were enforced. These laws were explicitly created to criminalize and control the movements of people deemed undesirable throughout U.S. history:

I n d i g e n o u s peoples, formerly enslaved people of African descent, immigrants, women, and homeless and poor people. In his recent defense of broken windows, Kelling himself directly acknowledged the lineage, stating in reference to his 1982 essay, “Given the subject of our article, the Black Codes—vague loitering and vagrancy laws passed in the South immediately after the Civil War—were of special concern for us. Under these laws

police arrested African Americans for minor offenses and, when they could not pay the fines, courts committed them to involuntary labor on farms—in a sense, extending slavery for many into the 20th century.”²⁷ Without offering a means of distinguishing present-day broken windows policing from these practices, Kelling simply submits that he and Wilson were just arguing for “doing a better job at maintaining order.”²⁸

The question though, is whose order? In their 1982 article, Kelling and Wilson acknowledge that there are “no universal standards...to settle arguments over disorder...” and that charges of being a “suspicious person” or of vagrancy have “scarcely any legal meaning.”²⁹ Ultimately, they wrote, “These charges exist...because [society] wants an officer to have the legal tools to remove undesirable persons from a neighborhood when informal efforts to preserve order in the streets have failed.”³⁰

This is to say that, since its inception, broken windows policing has self-consciously been about promoting a particular type of community, maintaining particular structural relations of power, and policing the borders of “desirability.” Delving deeper into its theoretical premise, a desirable community, as described by Wilson and Kelling, is one of “families who care for their homes, mind each other’s children, and confidently frown on intruders.”³¹ Broken windows policing is posited as the last bulwark against a “frightening jungle”—a term fraught with racial meaning—in which “unattached adults”—that is, single people—replace traditional families, where teenagers gather in front of the corner store, litter abounds, and panhandlers stalk pedestrians.³² In this framework, conservative values with deep racial overtones ultimately drive how an individual’s presence will be perceived and valued,³³ and promote disregard for youth, adults living outside of hetero-patriarchal families, and low-income and homeless people who live in this idealized community.³⁴

WHOSE QUALITY OF LIFE?

Key to implementing broken windows policing is the proliferation of “quality of life” regulations, which criminalize an ever-expanding range of activities

in public spaces, including standing or walking (recast as “loitering”), sitting, lying down, sleeping, eating, drinking, urinating, making noise, and approaching strangers, as well as a number of vaguer offenses, such as engaging in “disorderly” or “lewd” conduct. This broad range of potential offenses gives police almost unlimited license to stop, ticket, and arrest. According to one researcher, enforcement of such low-level offenses has become the “most common point of contact between the public and the criminal justice system.”³⁵

Of course, what conduct is deemed “disorderly” or “lewd” is more often than not in the eye of the beholder, informed by deeply racialized and gendered perceptions. Where offenses are more specific, they criminalize activities so common they can’t be enforced at all times against all people. When I speak publicly about broken windows policing, I often ask how many members of the audience have ever fallen asleep on a train or ridden a bicycle on a sidewalk at some point in their lives. Dozens of hands shoot up. When I ask how many have ever been ticketed or arrested for it, almost all hands come down—that is, unless I am at a drop-in center for homeless youth or adults, or in a low-income Black neighborhood. There, many hands remain in the air.

As former Yale law professor Charles Reich notes, “Laws that are widely violated...especially lend themselves to selective and arbitrary enforcement.”³⁶ As a result, both vague and specific “quality of life” offenses are selectively enforced in particular neighborhoods and communities, or against particular people, by officers wielding an extraordinary amount of discretion, largely unrestrained by constitutional protections. As legal scholar Dorothy Roberts notes in “Race, Vagueness, and the Social Meaning of Order-Maintenance Polic-

ing,” over the last several decades, conservative commentators have called for a relaxation of legal doctrines disfavoring vague offenses and reining in police discretion in the name of “law and order” agendas.³⁷

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COMMUNITIES IN THE CROSSHAIRS

Given all of this, it’s easy to predict who gets targeted by broken windows policing. Despite proponents’ contention that the approach targets specific behaviors, not specific people, the article on which the theory is premised explicitly names particular types of people—youth, homeless people, people perceived to be engaged in prostitution—as embodied signs of disorder.³⁸ According to Pete White of Los Angeles Community Action Network (LA CAN), a community organization that has been fighting the effects of broken windows policing on Los Angeles’ homeless population for decades, the inspirations for Kelling and Wilson’s 1982 article were much more explicit about the racial and gender make up of signs of neighborhood disorder: “young Black men, young women in short shorts hanging out on corners, interracial couples, and gay folks.”³⁹ The result: dramatically increased frequency and intensity of police interactions with Black and Brown youth, low-income and homeless people, public housing residents, people who are—or who are perceived to be—engaged in street-based prostitution, street vendors (many of whom are immigrants), and anyone else who is hyper-visible in public spaces, including lesbian, gay, bisexual, trans and gender nonconforming people.

The results are striking. Broken win-

dark. Between 2001 and 2013, 81 percent of the 7.3 million people charged in the city with a violation were Black or Brown.⁴⁰ In 2015 the greatest number of arrests—29,198—were for not paying the \$2.75 fare on city subways; 92 percent of those arrests were of people of color.⁴¹ In Park Slope, a Brooklyn neighborhood heavily populated by white families, police issue an average of eight tickets a year for riding bicycles on the sidewalk. In Bedford-Stuyvesant, a gentrifying but still predominantly Black community, police issue more than 2,000 a year.⁴² Eighty-five percent of summonses issued for “open container” violations in Brooklyn are issued to Black and Brown people, even as countless white revelers spill onto the sidewalks of the city on any given evening to smoke a cigarette outside a bar or art gallery while sipping on an alcoholic beverage, or pop open a bottle of bubbly to accompany a symphony in the park, without any consequence whatsoever. One judge presiding over summons court in New York City said he had no memory of having ever adjudicated an open container ticket given to a white person.⁴³

Contrary to Kelling’s recent defense of his broken windows theory, the results of this approach are not an error of application, but rather deeply embedded in the theory itself. In fact, the authors asked themselves in 1982, “how do we

ensure that age or skin color or national origin or harmless mannerisms will not also become the basis for distinguishing the undesirable from the desirable?"⁴⁴ Their answer was that they were not confident that there was one—except that police must understand the outer limits of their discretion to be that their role is “not to maintain racial or ethnic purity of a neighborhood,” only to regulate behavior.⁴⁵ The statistics above suggest that officers are, in fact, exercising their discretion—just in racially discriminatory ways.

CONSEQUENCES

The consequences for those targeted are far from minimal. Broken windows policing not only places Black lives at risk of lethal and excessive force, as well as sexual harassment, assault, and extortion in exchange for avoiding a ticket or arrest, it also subjects Black people to

arraignment. Even if they simply receive a summons, they are still required to spend at least one day in court defending themselves against minor charges, to pay exorbitant fines and criminal court fees, and to comply with community service and other mandates imposed on people convicted of offenses as minor as spitting or littering.

Black people of all genders and sexualities come within the crosshairs of broken windows policing. In fact, one of the less frequently discussed realities is that it facilitates racialized policing of gender and sexuality.⁴⁶ According to Tanya Erzen, broken windows policing “enables officers to act upon racial and gender biases they may have when they enter the police department—under the guise of enforcement of ‘unified guidelines.’”⁴⁷ All too often, officers read actual or perceived gender disjuncture as inherently out of order, resulting in stops, harass-

der nonconforming young women to be profiled and targeted in the context of “gang policing.”⁴⁹

Broken windows policing is also a driving force behind aggressive policing of street-based prostitution, which has been documented to have racially disparate impacts. These are rooted both in profiling of Black women and women of color—trans and not trans—as being engaged in prostitution based on age-old stereotypes, and also in the makeup of sex work which, like every other industry, concentrates Black women and transgender people in its most visible and risky sectors (such as street-based prostitution, which more Black women are pushed into, versus legal strip clubs, which frequently discriminate against women of color).⁵⁰ Gay and gender nonconforming men, for their part, are profiled and discriminatorily targeted for enforcement of lewd conduct

laws in public bathrooms and public parks. The broad discretion allowed in enforcement is fueled by perceptions of Black and Brown men—and particularly those who are gender nonconforming or perceived to be queer—as hypersexual uncontrolled manifestations of sexual deviance, with predictably racially disparate impacts.⁵¹

BLACK LIVES OVER BROKEN WINDOWS

Even as the broken windows theory trades in fear of Black people, it claims the mantle of protecting Black communities seeking more safety, and thereby, protecting Black lives.⁵² Heather MacDonald of the right-wing Manhattan Institute twists the logic of Black Lives Matter to argue that broken windows policing “has saved thousands of black lives, brought lawful commerce and jobs to once drug-infested neighborhoods and allowed millions to go about their daily lives without fear.”⁵³

Right-wing commentators claiming to be concerned with the welfare of Black communities are not alone. Progressives like David Thacher of the Gerald Ford School of Public Policy in Michigan,



Rally against broken windows policy outside of the Manhattan Institute in New York City, December 10, 2014. Source: Hollow Sidewalks via Flickr. License: <https://creativecommons.org/licenses/by/2.0/>.

the daily indignity of being stopped and questioned in their own communities, being ordered to put their hands on the wall and spread their legs to be frisked in front of their neighbors, and sometimes spending 24 hours wending their way through police vans, precincts, and central booking pens between arrest and

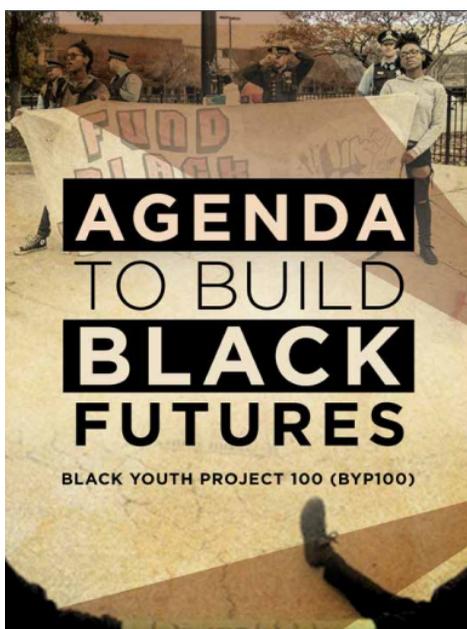
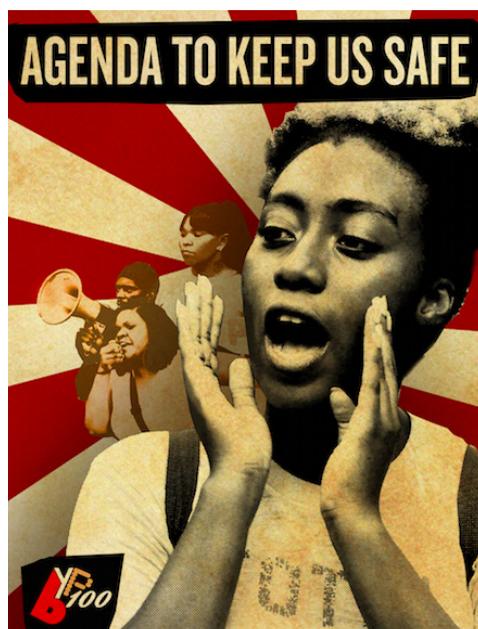
ments, and arrests of transgender, gender nonconforming, and queer people of color—along with anyone perceived to deviate from racialized “rules” of gender or sexuality—for “disorderly” or “lewd” conduct offenses.⁴⁸ Stereotypes framing gender nonconforming people as inherently violent and deviant also lead gen-

writing in a blog for The Marshall Project, have critiqued Campaign Zero's call for an end to broken windows policing, pointing to Black communities' right to safety and safe public spaces.⁵⁴ Thatcher, like Kelling, acknowledges the pitfalls of enforcing vague offenses like "disorderly conduct," as well as more specific ones like bans on skateboarding or public drinking, which are not enforced in white suburbs as they are in Black communities. He acknowledges that, "As long as modern police forces have been around, they have used disorderly conduct statutes and many other public order rules to investigate suspicious and unpopular people in circumstances when doing so overtly would be forbidden," noting that "the Ferguson Police Department's intensive use of a city code provision regulating a pedestrian's 'manner of walking in the roadway' to run warrant checks and question suspicious people is only one of many examples."⁵⁵ Although he argues for a kinder, gentler form of broken windows in the interests of Black community safety, Thatcher's arguments in fact support the notion that it is bound to produce the same results.⁵⁶ Unfortunately, that hasn't stopped some community leaders, legislators, and policymakers from continuing to promote and invest in this flawed approach in the name of safety for Black and Brown communities.

Increasingly though, Black communities across the country are speaking for themselves, loudly and clearly, demanding safety from all forms of violence—including the violence of profiling, dis-

criminatory enforcement, and police violence intrinsic to broken windows policing. They are resisting the false choices presented by broken windows proponents, demanding both authentic safety and an end to police violence, harassment, and surveillance, along with

communities, leaving no one behind. Together, they issue a clarion call to combat and dismantle systems of structural discrimination that foster violence while limiting opportunities and life chances of Black people—including "broken windows" policing. ☞



The Black Youth Project 100's Agenda to Keep us Safe (2014) and Agenda to Build Black Futures (2016) articulate visions of safety for Black communities. Source: BYP100.

The best strategy to promote safety in Black communities is to divest from policing and punishment and instead invest in and support Black communities, leaving no one behind.

respect for rights and dignity. As the Malcolm X Grassroots Movement of New York City stated in the wake of Eric Garner's killing, the "broken windows" philosophy of policing, which purports that focusing resources on the most minor violations will somehow prevent larger ones, has consistently resulted in our rights being violated."⁵⁷ They emphatically state that safety cannot come at the price of daily harassment, violation, and the taking of Black lives.

Black voices and communities are articulating their own visions of safety through Black Youth Project 100's *Agenda to Keep us Safe*⁵⁸ and *Agenda to Build Black Futures*, Campaign Zero, and demands articulated by Black Lives Matter⁵⁹ and Ferguson Action.⁶⁰ What ties many of these agendas together is the notion that the best strategy to promote safety in Black communities is to divest from policing and punishment and instead invest in and support Black

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Racial Double Standards in a Mass Shooting Threat Case

David Lenio & White Nationalism

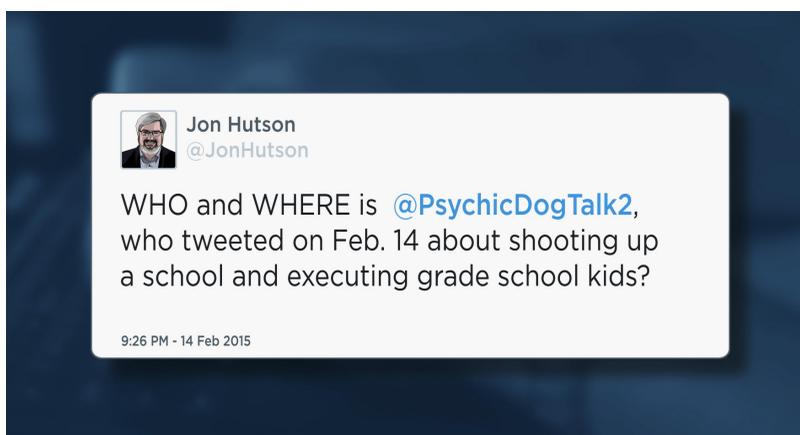
When I worked for a gun violence prevention organization in 2015, I often spent time on Twitter as part of my job.¹ And that's what I was doing on Valentine's Day 2015: tweeting worldwide news² about two deadly shootings in Copenhagen, Denmark. One of the shootings was at a free speech event in a café and the other was at a local synagogue, both following the publication of controversial cartoons depicting the Prophet Muhammed.³ My tweets drew the attention of a Holocaust denier who, I subsequently learned, was also a White nationalist who owned three guns and lived on the outskirts of a White separatist community in Montana. His online interactions with me over the next few hours led me to discover that one day before, and episodically over the previous seven weeks, he had tweeted threats to shoot grade school children and Jewish leaders.⁴ During our encounter, he repeated some of these threats, specifying that he wanted to "put two in the head of a rabbi." I reported him to the FBI and to local law enforcement as a potential mass shooting threat who also appeared to be planning a suicide-by-cop scenario.⁵ (Apparently referring to how some mass shooters have been killed by police, the man tweeted his desire to massacre school children "until cops take me out."⁶) "Thank God Monday is a holiday," one officer in Montana later told me, "because we have another 24 hours to catch him before the schools open." And catch

him they did. Two days after our Twitter encounter, police arrested David Joseph Lenio, a 28-year-old who had recently moved to Kalispell, Montana, from his parents' home in Grand Rapids, Michigan.⁷

This essay explores two journeys. One is that of a wealthy and privileged young man who sought a White supremacist "homeland," but ended up taking a detour through the criminal justice system, before being released this spring without bail and without facing prosecution. The other journey is my own: the story of what happened after our paths crossed and what I learned from

tural disparities in the U.S. criminal justice system. While people of color and Muslims encounter many "on-ramps" into the system, a White mass shooting threat suspect instead found numerous easy exits and "Get Out of Jail Free" cards.⁹ The case would come to illustrate the kind of disparate prosecution of far-right terrorism cases which Naomi Braine has detailed in these pages, writing in the Spring 2015 issue of *The Public Eye* that:

The differential treatment of Islamic and far-right terrorism cases only becomes explicable through the lens of political calculation. The Right Wing is an entrenched element of the U.S. cultural and political power structure, raising the costs of high profile law enforcement action. The primary targets of federal anti-terrorism investigations have been Muslim men defined by their vulnerability rather than their power.¹⁰



Jonathan Hutson's tweet trying to identify the author of multiple tweets threatening mass violence in February 2015. Photo courtesy of Investigation Discovery.

our respective involvements in the judicial system and what those experiences say about the state of race and justice in the United States.

I didn't know it then, but getting involved in Lenio's case would change my life and inform the national conversation about how to detect and deter online threats of mass violence.⁸ From this relatively front row seat to the legal process, I would come to witness what many communities of color already have intimate knowledge of—the struc-

Perhaps law enforcement obtains more convictions of Muslims because the FBI focuses on Muslim communities, and constructs scenarios to entrap their members, while simultaneously failing to act promptly on information about possible terror threats from the Right until their militant actions become all but impossible to ignore.

Much of this story plays out on Twitter, where David Lenio's tweets serve as road markers for an ideological tour of the outer reaches of the Far Right, its culture of conspiracism, and the xeno-

phobic anger of White men who feel dispossessed of their economic birthright in the kind of fury that drives the supporters of Donald Trump.

THE MAKING OF “A POTENTIAL TERRORIST”

At the time of his Twitter spree of horrific threats, Lenio was a line cook in a restaurant who falsely claimed he was homeless and blamed his economic struggles on Jews. He would go on to find a calling as part of a populist, nativist movement which advocates the rise of a new strongman in the U.S., scapegoats minority groups, and seeks to establish a White homeland in the Pacific Northwest under authoritarian rule—an ideal most adherents call the Northwest Territorial Imperative¹¹ and which Lenio sometimes calls Cascadia.¹² In the bio of one of his several Twitter feeds, Lenio indicated his support for 9/11 conspiracism and bombastically described himself as “a potential terrorist.”¹³ This picture is far different than the one we could paint of Lenio, as the snowboarding son of an influential investment banker in one of Michigan’s most affluent cities.

Lenio’s father, Remos Joseph Lenio, co-founded a private investment bank in Grand Rapids, Michigan, in September 2015.¹⁴ For decades, he has specialized in serving closely held, family-owned businesses. A conservative Christian who shows support on Facebook for libertarian conservative congressman Justin Amish (R-MI)¹⁵ and the libertarian classic *Atlas Shrugged*, Remos Lenio also shares close business, social, and philanthropic ties¹⁶ with the billionaire Dick and Betsy DeVos family of Grand Rapids.¹⁷ The elder Lenio also seems to share the DeVos’s vision of turning Grand Rapids into a “Christian Wall Street.” He initiated the \$28 billion church financing industry’s first-ever loan syndication deal when he was a partner in Hartwick Capital of Grand Rapids in 2004. Lendees included mega-churches such as Mars Hill Bible Church,¹⁸ where Betsy DeVos serves on the board in nearby Grandville, Michigan.¹⁹

The multi-billion dollar fortune of the DeVoses, who are Christian Right leaders and one of the conservative movement’s guiding families, flows from

their founding of the Amway Corporation. As *Mother Jones* reports, “DeVos family members have invested at least \$200 million in a host of right-wing causes—think tanks, media outlets, political committees, evangelical outfits, and a string of advocacy groups. They have helped fund nearly every prominent Republican running for national office and underwritten a laundry list of conservative campaigns on issues ranging from charter schools and vouchers to anti-gay marriage and anti-tax ballot measures.”²⁰

David Lenio’s own political evolution may have begun with his father’s politics, but it appears to have spanned a wide range of conservative ideologies, from Ron Paul Libertarianism²¹ to the Far Right.²² Though his religious identity is unclear from his public statements, Lenio has described himself in a Twitter bio as a supporter of the Second Amendment “and Jesus, too.”²³

But his politics diverged from conventional libertarianism and Christian Right positions at some point, taking a turn towards the conspiratorial and the overtly White supremacist. Rather than publicly identify with any particular ideological camp, Lenio seemed to exemplify the free-floating anxieties and rage of some White men who feel dispossessed. His tweets often focused on mass shootings and terrorist attacks, which he invariably labels as “false flag” attacks—covert operations perpetrated by Israel or the CIA. He claimed on one occasion that Israel was behind the massacre at Sandy Hook Elementary School in Newtown, Connecticut (which he called “Sandy Hoax”),²⁴ and on many other occasions, charged that Israel was responsible for 9/11. He also wrote in support of White separatist movements, tweeting in November 2014, “White people need to organize racially, because the other races & democrats are organizing on some anti-white bullshit that needs countering.”²⁵

A month after that tweet, he moved to the town of Kalispell in Montana’s Flathead Valley, which is well-known on the Right, as well as in human rights and law enforcement circles,²⁶ as a locus of one of several White supremacist enclaves known collectively as Pioneer

Little Europe (PLE).²⁷

The PLE movement was founded over a decade ago to be, in the words of its organizational prospectus,²⁸ “a conscious white community” that “comes to dominate a geographical area.” Investigative reporter Judy L. Thomas writes:

The manual describes a plan to “swamp” a target area by taking over its local political and economic systems, forcing out those who don’t share their beliefs. White nationalists would live in close proximity to businesses that offer cultural facilities and services, some of which would openly support their political revival.

The movement has gained some traction in Montana.

In the past few years, dozens of white supremacists have relocated to the Flathead Valley, where civil rights activists say they are forging alliances with anti-government Patriots because of their shared hostility toward the government.²⁹

A CITIZEN REPORT

On the day that he arrived in Kalispell in late December 2014, Lenio tweeted his desire to shoot up a grade school in the town, linking his threat to his economic situation. “I David Lenio,” he wrote, “am literally so indebted & #underpaid that I want to go on a sandy hoax style spree in a kalispell, MT elementary #school 2014.”³⁰

Over the next several hours, he fired off four similar tweets.³¹ He wrote that he wondered how long it would take before he generated national media coverage and other forms of attention for beating the “shooting spree high score” of the 20 kids and six adults who were massacred at Sandy Hook Elementary School—one of the deadliest school shootings in U.S. history.³²

From that day until his arrest about six weeks later, his tweets focused obsessively on mass shootings. At times, it appeared that he was grappling with his mental health, as with this February statement: “If I can’t even afford habitat to live on, why the fuck shouldn’t I shoot up a #school and #teach the world some-

thing about ‘mental health?’”³³ In a prior YouTube video posted in August 2012,³⁴ Lenio voiced a desire for the kind of infamy that comes to mass shooters. He also expressed a distrust of psychiatry and prescribed medications, as well as a fear that his guns might be taken away if he were found to be seriously mentally ill in a way that could make him a danger to himself or others.³⁵

Lenio’s tweets suggest that, consciously or not, he was setting himself up to be viewed as mentally ill—a factor which, if he could prove it, might mitigate his guilt. That he would introduce this concept is not surprising. When a White male suspect threatens or carries out a mass shooting, the public conversation often rejects the label of terrorist while highlighting the suspect’s perceived mental state in an attempt to explain his acts primarily as a result of mental illness, which could result in an acquittal or a lighter sentence. “It’s as if one cannot, according to the conservative playbook, be both white and a terrorist,” writes Black Lives Matter activist and *Daily News* columnist Shaun King.³⁶

In contrast, when a person of color or a Muslim engages in similar behavior, the public conversation tends to disregard questions of possible mental illness while emphasizing the suspect’s ethnicity or religion. This dynamic, and the racial double standard it represents, stymies discussion of how White male privilege or even White supremacist ideology—a potentially aggravating factor that could result in a harsher sentence—motivates violence.

It’s also ironic, since White males commit a majority of mass shootings in the U.S. According to data compiled by *Mother Jones* on 80 U.S. mass shootings between 1982 and 2016, White suspects, almost exclusively males, were responsible for around 60 percent of the attacks.³⁷ That survey notes that most of the shooters had displayed signs of possible mental illness, such as paranoia and depression. The report’s lead author concludes, “Maybe what we need is a

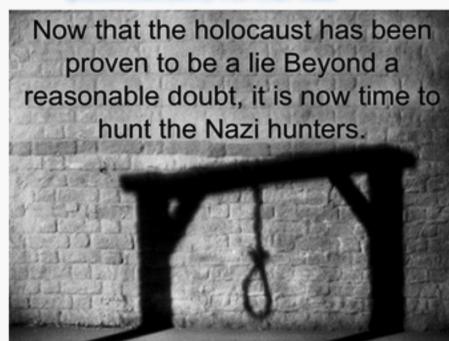
better mental health policy.”³⁸

But the fact that most of these shooters displayed signs of possible mental illness does not amount to proof of mental illness, nor does it demonstrate causality. In 2014, Eric Madfis, an Assistant Professor of Criminal Justice at the University of Washington, used an intersectional approach to examine the disproportionate rate of mass killings by White men in the United States. He



PsychicDogTalk Radio
@PyschicDogTalk2

@jonhutson



9:45 PM - 14 Feb 2015 - Details

Screenshot captured by author of one of David Lenio’s many threatening tweets on February 14, 2015.

reached a different conclusion:

Among many mass killers, the triple privileges of white heterosexual masculinity which make subsequent life course losses more unexpected and thus more painfully shameful ultimately buckle under the failures of downward mobility and result in a final cumulative act of violence to stave off subordinated masculinity.³⁹

But whatever his motivations and mental health status, by February 12, 2015, Lenio was calling for the rise of a new strongman—“a Hitler”—to lead a White supremacist movement in fixing the U.S. economy, and stating that he was prepared to go down in a hail of bullets while killing Jews. He continued the same day with the “bet” that he could easily kill a dozen schoolchildren, which, he claimed, “Sounds better than being a wage slave.”⁴⁰ Minutes later, he imagined more than 30 dead grade school students and called atten-

tion to his motives by tweeting, “I bet I’d take out at least a whole #classroom & score 30+ if I put my mind to it.” He then wrote. “#Poverty is making me want to kill folks #mental health.”

FBI studies show that terrorists, including school shooters, often signal their intentions in advance—sometimes to peers or authority figures, and other times to complete strangers.⁴¹ While I would normally ignore such hateful rhetoric, David Lenio seemed to fit the profile with the dozens of threatening tweets he’d posted since arriving in Kallispell. When Lenio began to confront me on Twitter, after my own tweets related to the shootings in Copenhagen, I read through his feed and became concerned. I saw his repeated threats to shoot schools and synagogues, and tried to crowd-source the problem of identifying and locating him, tweeting, “WHO and WHERE is @PsychicDogTalk2, who tweeted on Feb. 14 about shooting up a school and executing grade school kids?”

Lenio responded by asking where my kids go to school.

I decided to make a citizen report to law enforcement, sending a timeline of Lenio’s threatening tweets, contextual information about Lenio’s apparent White nationalist sympathies, and a profile overview of his threats and his seeming desire for a suicide-by-cop scenario.

When police investigated the next day, on February 15, they discovered that Lenio had taken steps to put his ideas into action: he’d retrieved a cache of rifles and ammunition from a storage locker near his apartment.⁴² He also had a loaded semi-automatic handgun with him in his van at the time of his arrest and two extra ammunition clips, as well as several jugs of urine—materials that could potentially be used to create a primary charge for a bomb.⁴³ (See sidebar: What’s in a Jug of Urine?) Two local law enforcement agencies deployed extra officers to guard area schools and notified every parent in the school system about the security threat.⁴⁴ And on February

16, the FBI, along with law enforcement officers from four other agencies,⁴⁵ arrested Lenio. He confessed on video to issuing the tweets, stating that he was glad that law enforcement had increased school security in response. However, Judge Heidi Ulbricht would later rule this confession inadmissible because the FBI failed to Mirandize Lenio until after he made these statements.⁴⁶

TOO WHITE TO JAIL?

After the arrest, however, the investigation of Lenio for his myriad threats softened. To begin with, police said they could find no connections between Lenio and Kalispell's local White supremacist networks, despite publicly available posts on social media and blogs documenting Lenio's ties to White nationalist leaders in the Flathead Valley, particularly members of the White supremacist community Pioneer Little Europe.

Pioneer Little Europe (PLE) is not so much a location or an organization as an organizing method for bringing White nationalists together. In the late 1990s and early 2000s, two White supremacists named Hamilton Michael Barrett and Mark Cotterill developed the PLE concept and promoted it on the neonazi website Stormfront⁴⁷ as a way for White nationalists to develop affinity communities within existing towns in order to gain political influence and provide each other social and economic support.⁴⁸ The mostly conservative, libertarian, and gun-friendly population in Montana's Flathead Valley takes a live-and-let-live attitude toward White nationalists who espouse rugged individualism and back-to-the-land lifestyles. Two-hundred-and-fifty people in Kalispell earn their living making guns or gun parts,⁴⁹ which provides economic security from skilled labor as well as a steady supply of potentially untraceable weapons.

Unsurprisingly, the result of PLE's presence in an area can be polarizing. In Kalispell, it led to episodes of violence, as documented in the recent film "Hate in America: A Town on Fire," co-produced by NBC's Peacock Productions and the Southern Poverty Law Center.⁵⁰

While the police would say they struggled to link this group and Lenio,

What's in a Jug of Urine?

That fact that Lenio stored jugs of urine in his van invariably catches observers' attention. But neither federal nor state or local police ever asked Lenio about this bizarre find.

We don't know why Lenio was storing jugs of urine, because law enforcement failed to explore this potential lead. But if they had they might have made a shocking discovery.

Urine has been used to make urea to serve as the main charge in homemade urea nitrate bombs⁶⁹ in the U.S., as well as in Afghanistan, Israel, Iraq, and Pakistan. In the U.S., the best-known case of a urea nitrate bomb is the February 1993 bombing of the World Trade Center.⁷⁰ In fact, it is a serious enough problem that the Department of Homeland Security offers a training curriculum that includes teaching firefighters and other first responders to be on the lookout for jugs of urine⁷¹ as a possible sign of what scientists have called "exceptionally easy-to-make" improvised explosive devices (IEDs).⁷² *The Associated Press* reports, "One instructor noted that the discovery of jugs of urine led to the arrest of potential bombers in New Jersey."⁷³

One bomb-making manual, published by a self-described militia member a few weeks after White supremacist Timothy McVeigh bombed the Murrah Federal Building in Oklahoma City in April 1995, calls urea nitrate IEDs "piss bombs."

Although urea nitrate bombs are well known to much of law enforcement, experts in counterterrorism, and the violent, revolutionary precincts of the Far Right, most of the rest of us have been left in the dark about it. Unfortunately, some of "the rest of us" include law enforcement officers responsible for an area that is infested with growing numbers of White supremacist revolutionaries.

Urea nitrate looks like sugar and can be made with accessible and non-traceable materials, such as urine, ordinary coffee filters and pans. Such items are at the fingertips of most people, and particularly available to someone like Lenio, who was working as a restaurant cook.⁷⁴ Later, a Kalispell police officer to whom I spoke⁷⁵ said he could not recall whether they had found coffee filters, pots, aluminum foil, and something that looked like sugar crystals near the jugs of urine. He didn't know whether the jugs actually contained urine, or whether the urine had been boiled down to urea, or whether the evidence still exists.

That the investigators did not appear to be interested in the possible domestic terrorism implications of the jugs of urine stored by this suspect—who had already threatened the mass murder of children and Jewish leaders, and who appeared interested in joining a local clan of White supremacists—is troubling.

Homeland Security to this day teaches first responders nationwide to be on the lookout for jugs of urine as a possible sign of bomb-making activity. When alert first responders who had undergone counterterrorism training encountered jugs of urine in a New Jersey apartment in 2004, they knew they were seeing potential bomb making materials. An investigation turned up evidence of a plot to make urea nitrate bombs to target tunnels linking New Jersey with New York City.⁷⁶ But in that case, an instructor for the Homeland Security training course stated,⁷⁷ the apartment was occupied by people from the Middle East, who were subsequently deported.

Maybe there's an innocent explanation for Lenio storing jugs of urine or urea in his van—which, of course, by itself is not a crime. What is perplexing and significant is law enforcement's lack of curiosity, from the federal level on down, and the implications of such a blind spot toward a White suspect and the double standard of dealing with potential domestic terrorists for our national security.

This dangerous double standard persists despite that fact that, as Naomi Braine has written for *The Public Eye*, "In the nearly 14 years since 9/11, more people have died in the U.S. from politically-motivated violence perpetrated by right-wing militants than by Muslim militants."⁷⁸

it appeared that not only had Lenio been drawn to the region by members of the PLE, but his expressed opinions and threats mirrored those of PLE activists. Recruiter and spokesperson for PLE April Gaede had tweeted to Lenio from her account @AprilintheNorth at least four months before he moved to Kalispell. Gaede, who makes bolt-action hunting rifles⁵¹ in Kalispell and is an outspoken Donald Trump supporter, encourages White supremacists to move to Kalispell for its job security, low crime rate, and the opportunity to build community with White nationalists.

Gaede also has close ties with right-wing terrorists. For example, the Southern Poverty Law Center (SPLC) reports that in 2007, Gaede was accorded the “honor” of disposing of the ashes of David Lane, the leader of a neonazi group called The Order who died while serving a 190-year federal sentence in connection with the murder of Jewish talk show host Alan Berg in 1984.⁵² On New Year’s Day 2016, Gaede tweeted: “When Trump is elected, we will have a new national holiday. #Day-oftheRope.”⁵³

Both Gaede’s association with The Order and her “Day of the Rope” tweet are related to William Pierce’s noxious 1978 novel *The Turner Diaries*, a fantasy of race war and genocide that the SPLC dubbed “the bible of the racist right.” The Order was inspired by a fictional group in Pierce’s book that aimed to overthrow the U.S. government, which they believed was controlled by a cabal of Jews; in real life, The Order’s terrorist attacks included robberies of banks and armored cars to fund White nationalist groups,⁵⁴ as well as the bombings of a theater and a synagogue. *The Turner Diaries* also describes a day of lynching during which neonazis string up “race traitors” from lamp posts: an event which comes to be known, in the book, as “The Day of the Rope.”

Over the years, the book’s description of race war has been used as an inspiration and blueprint for other White nationalist terrorists, including Timo-

thy McVeigh—the man responsible for bombing the Oklahoma federal building in 1995—who had several pages of the novel in his possession at the time of his arrest.⁵⁵ (It’s also worth noting that McVeigh used what was called a “fertilizer bomb,” a truck loaded with ammonium nitrate, in his attack in Oklahoma City. A “piss bomb” of the sort that David Lenio may have intended to make is another kind of fertilizer bomb, composed of urea nitrate.)



Excerpts from the letter written by former Aryan Nations leader Karl Gharst calling for support for David Lenio. Photo courtesy of Investigation Discovery.

Lenio’s association with Kalispell White nationalists didn’t end with Gaede. While Lenio spent five months in the Flathead County Detention Center following his arrest, another PLE adherent and former Aryan Nations “staff leader,” Karl Gharst, supported him and possibly visited him. Gharst turned to the internet to rally White supremacist support for Lenio,⁵⁶ falsely claiming that I had baited Lenio into making his threats—this despite the fact that Lenio had been tweeting his threats for six weeks before he initiated contact with me. (Gharst was himself arrested in 2004 for threatening to kill a Native American woman who worked for Child Protective Services.⁵⁷ He was taken into custody on the Idaho compound of Aryan Nations founder Richard Butler and spent five months in the same jail where Lenio would later be held.)

A WHITE SUPREMACIST IN THE CRIMINAL JUSTICE SYSTEM

The deficiencies in the handling of Lenio’s case continued with its prosecution. In July 2015, Judge Heidi Ulbricht released Lenio into the custody of his father, without bail.⁵⁸ The prosecution

did not object. As conditions of Lenio’s release, the judge ordered him to stay off social media, to get a mental health evaluation, not have access to guns, and refrain from contacting witnesses. However, the justice system failed to ensure that Lenio comply with the terms of his release. He refused to obtain the mental health evaluation until finally Judge Ulbricht granted his defense attorney permission to obtain a mental health evaluation from Lenio’s own physician and to file it under seal.⁵⁹ So the public does not know whether Lenio has received a diagnosis and, if so, whether he is receiving any treatment. The deferral of the evaluation and the secrecy as to its findings is of a piece with the preferential treatment which Lenio has received.

Additionally, though law enforcement wasn’t aware of this fact, Lenio’s Facebook page had been updated several times⁶⁰—including with antisemitic statements and quotes from former Ku Klux Klan leader David Duke—while he was in jail, although inmates are not supposed to have access to cell phones or the internet.⁶¹ Further, although PLE member Karl Gharst posted messages online suggesting he might have visited Lenio in jail—messages that described Lenio’s conditions of confinement and describing their conversations—the justice system had no record of whether or not a visit had occurred, because the jail kept no logs of Lenio’s visitors.

The trial was originally slated for August,⁶² and then rescheduled until November 9. On November 9, it was delayed again, as Deputy County Attorney Stacy Boman stated that her office and the defense were trying to resolve the case in the judge’s chambers, out of public view.⁶³ One outcome of this would be that if Lenio were not adjudicated as mentally ill, or convicted of a felony, then the state of Montana would return his three guns and ammunition, and he would be able to pass a Brady background check that would let him purchase an arsenal.

I had initially been called to be a witness in the trial, but when it wasn’t held

I traveled to Kalispell anyway to hold a press conference, along with local rabbis, parents of local school children, and leaders from the human rights group, Love Lives Here in the Flathead Valley.⁶⁴ I felt the public had a right to hear the evidence, to know what the justice system would do to protect school children and religious leaders, and to be warned that Lenio could be rearmed by virtue of the state's lax prosecution.⁶⁵

But for the fact that Lenio is White and the son of a politically-connected banker, he might have faced more serious charges; he might have been tried more swiftly; his security in jail would have been tighter and records would have been kept of neonazi leaders visiting him there. If the court had deemed him to be eligible for pretrial release, then he might have been required to wear an ankle monitor and his bail would likely not have been waived. Further, he would have been held accountable for violating the conditional terms of his release: his failure to obtain a psychological evaluation and his continued presence on social media, where he posted at least 348 times since his release in July. Lenio's flouting of the judge's orders made news in Montana and nationwide, but local Flathead Valley law enforcement offered no explanation for why he was not rearrested.⁶⁶ At the same time, 37 other inmates in the same jail were rearrested for violating their release conditions.⁶⁷

This March, three weeks before Lenio's trial was finally set to be held—he was ultimately charged with a felony count of intimidation—the defense attorney announced that the prosecutor and judge had agreed to a deferred prosecution. This means that Lenio, who had already broken the conditions of his release, is expected to be a law-abiding citizen and keep his attorney informed of his location for two years. Meanwhile, the charges have been dropped, and the state of Montana has returned Lenio's guns without any further conditions or public explanation. If he is found to break the law over the next two years, then the prosecutor could decide to pursue the case. Otherwise, Lenio's record will be wiped clean.

DID INCURIOSITY KILL THE CASE?

Although the prosecution of Lenio

may be over, we can say this much about the significance of the case: that it draws sharp attention to the problem of differential prosecution in the U.S. criminal justice system. The case began as one of threats of mass murder on social media by a possibly mentally ill individual. One of the more pressing questions was whether he would be able to get his guns back when it was all over. But over time, serious issues of the disparate treatment of criminal suspects in terms of race and class have come to loom large. What's more, my further investigation suggests that if law enforcement had been even a little bit curious about the seemingly inexplicable jugs of urine Lenio had in his van at the time of his arrest, they could have understood them as possible bomb ingredients, with clear implications for potential domestic terrorism. Law enforcement turning a blind eye to a potentially larger threat, which might have involved others, and may have put the rest of us at risk of violence from right-wing terrorists.

As Naomi Braine writes in her exploration of differential prosecution of Muslim and far-right terrorism cases, the Right's entrenchment within U.S. cultural and political power structures raises the costs of high-profile law enforcement action against right-wing suspects. What happened in Kalispell exemplified this. White nationalist leaders, such as Gaede and Gharst, make their presence felt there. They have many supporters, and they attract unstable figures such as Lenio to participate in their PLE affinity group. When police claimed not to see any connections between Lenio and the local White nationalist groups, and when they failed to meaningfully investigate evidence of a potential terrorist threat, it seems a case of willful blindness: not seeing what is inconvenient to see.

Beyond the possibility that Lenio could make good on his threats in the

future, a second casualty of the case is the public's confidence in the justice system. In the wake of the prosecutor's decision not to prosecute Lenio, local resident Jerry Weissman wrote a letter to the editor protesting, "Letting Lenio go is not justice."⁶⁸ He continued, "Who will hang their heads in ultimate shame if this powder keg of a person explodes and takes children's lives? Who will mourn if lives are taken, especially when proper care could have been taken to remove threats to the citizens of our country?"

On March 24, when the "Hate in America" documentary premiered, David Lenio returned to Twitter. In what seemed like a taunt, he pinned to the top of his profile a series of exchanges from our February 2015 encounter in which I tried to identify and locate the man who had tweeted threats to shoot grade school kids. Several weeks later, on April 12, he indicated that he remained

The Right's entrenchment within U.S. cultural and political power structures raises the costs of high-profile law enforcement action against right-wing suspects.

fixated on the idea of shooting school children when he tweeted: "What do you think costs more in most US cities? A gun with enough ammunition to kill 99 school kids or the security deposit on an apartment?"

Whatever Lenio does or does not do, it will take far more vigilance to see that the criminal justice system works without the filters of racial, religious and class bias that fast track the prosecution of some suspects but let others off the hook. That the likes of David Lenio manage to avoid accountability for crimes that would have derailed the lives of most of the rest of us should shock us out of our complacency. 🗳️

Jonathan Hutson is a human rights activist and strategic communications consultant at Global Media Max in Metropolitan Washington, D.C.

Tracking Blackness

A Q&A with *Dark Matters* Author Simone Browne

We tend to think of mass surveillance as a relatively new phenomenon, a byproduct of the digital revolution. Examples of high-tech surveillance spring readily to mind, including the NSA scooping up our emails, Samsung televisions picking up living room chitchat along with your voice commands, and Oral Roberts University collecting data on its entire student body via Fitbit activity trackers. But, as it turns out, our high-tech surveillance society had lower-tech precursors.

Simone Browne, an associate professor of African and African Diaspora Studies at the University of Texas at Austin, describes her new book, *Dark Matters: On The Surveillance of Blackness*, as a conversation between Black Studies and Surveillance Studies—the latter a young discipline devoted to investigating the technological and social dimensions of surveillance. Browne’s research shows that surveillance was an essential part of transatlantic slavery, a system that held millions of people against their will and tracked them as property. And she argues that slavery created an ongoing demand for technologies to monitor Black bodies. The day-to-day enforcement of slavery raised familiar-sounding questions: Is this person who they say they are? Are they allowed to be here? How do we know? Dramas of surveillance and counter-surveillance played out constantly.

If surveillance is the state watching the individual, sousveillance is the individual looking back at the state. The history of slavery is full of examples of both kinds of watching. Slave catchers hunted down runaway slaves for money. The catchers were themselves carefully watched, and the news of a slave catcher’s whereabouts could also spread rapidly through the Black community. Abolitionists also circulated handbills warning free Blacks and their allies to be on guard against slave catchers.

Surveillance still goes both ways today, as activists counter police oversight by recording interactions on their own cameras and protesters at rallies for Republican presidential candidate Donald Trump film their own attacks, not trusting event security cameras to hold anyone accountable.¹

The long history of mass surveillance in the United States began with slavery. Slaves sought to free themselves by escaping to free territories or impersonating free people, and the system had well-developed mechanisms to thwart them. Slave traders branded the flesh of their captives to mark them as slaves. Further, slavery in the United States was so thoroughly racialized that being Black was tantamount to proof of being enslaved—skin color becoming evidence of legal status. Slaves who gained their freedom by “passing” as White had, in effect, eluded the biometric profiling of their day.

To this day, communities of color are subject to intensive surveillance, both public and private. Police helicopters are a familiar presence in some neighborhoods. Young men of color are overwhelmingly more likely to be selected for stop-and-frisk police encounters. Browne argues that awareness of being under constant surveillance is an enduring condition of Black life.

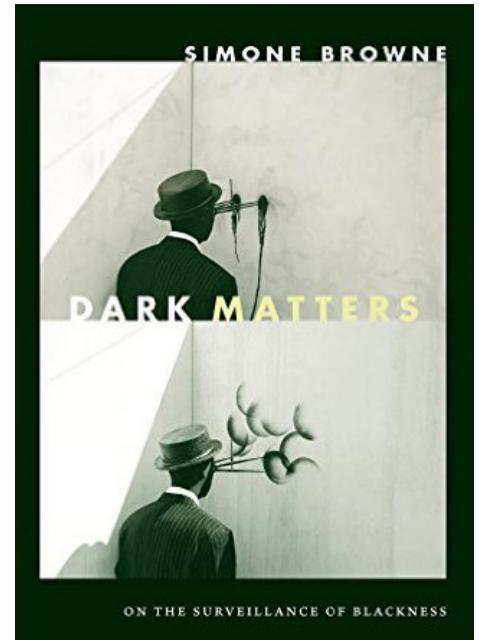
This March, Lindsay Beyerstein interviewed Simone Browne about *Dark Matters* and what it says about surveillance in our current political climate.

How did you come to write this book?

I was working on my dissertation on Canadian/U.S. border security and I got into reading the Surveillance Studies literature. One thing that I found that was missing was a discussion of the archive of slavery because it seemed so important to situate surveillance as a key practice that underwrote transatlantic slavery. So, when it came time to write my own book, I wanted to put Surveillance Studies in conversation with Black Studies.

An enslaving society does a lot of work to keep track of people as property. How does that technology and expertise carry forward into our modern surveillance society?

I didn’t want to make the link that they are one and the same, but that some of the practices that we see happening now have earlier articulations or iterations. There were a few instances that I looked at: Mainly biometric technology, but also tracking people with passports, which we still use now. Also, the ways in which bodies and people become disciplined by way of light. That is, how



Dark Matters: On The Surveillance of Blackness was published by Duke University Press in October 2015.
Photo: Duke University Press.

illumination can make bodies visible, trackable, countable, and controllable. I looked at branding and biometric technology. I also looked at the *Book of Negroes*, a record of Black Loyalists, former slaves who were eligible to leave the U.S. to settle in Canada after serving in the Revolutionary War, as an early passport to cross the Canada-U.S. border.

There were also lantern laws. These were 18th century laws in New York City and other places that said that Black and Indigenous people had to carry a lit candle after dark if they weren't in the company of White person. Lantern laws existed in other times and places but there was something specific about the regulation of Black people on the move that I saw as a way to think about how certain technologies become supervisory devices.

So, the lantern was a piece of technology that was mandated because Black people were deemed more suspect than everybody else?

That's one way of putting it. It was a form of identification. Other people would have been walking with lanterns, too. But the idea was that that any White person would be deputized to seize that Black/enslaved person who was walking without a lantern. You can think about the ways in which White people become deputized through White supremacy today around Black bodies in and out of place. I'm thinking of a Trump rally. Even with people who go to a rally as protest or as observation might be marked as out of place there and subjected to violence. Being Black, wearing a hijab, other markers of being out of place at a Trump rally, and then being subjected to violence from police or Trump supporters.

You talk about slave branding as a precursor to modern biometric ID. How did that work?

There was branding for identification, but also as a form of punishment.

I looked at the ways that the body becomes a mark or a measure of enslavement. If you think of biometrics simply as marking or measurement. How we use it today as identification, verification, or automation, thinking of iris scans, face scans, finger scans...All of those ways in which the body is reduced to parts, pieces, and performances for identification and verification purposes. I wanted to see if there were moments when those get racialized. Branding became a racialization process during transatlantic slavery.

You write about the hearings at the Fraunces Tavern in New York City and the creation of the Book of Negroes, a document that listed 3,000 Black Loyalists who served with British during the American Revolution and who sought to be evacuated to freedom after the war. What happened?

This was something that happened around the British evacuation of New York City [after the American Revolution]. Many people who had answered the call to fight with the British had entered into a bargain with them. These were people who had escaped slavery. They'd worked with the British as soldiers but also as support staff: cooks, spies, laundresses, and so on. Also at this time you had slave catchers coming to New York to seize former slaves who were set up on ships ready to leave the country mainly bound for Canada or Europe. People would be seized on those ships and taken to New York's Fraunces Tavern every Wednesday from May to November to argue for their freedom by demonstrating that they were behind British lines at time of occupation and therefore entitled to go free.

What was the process of arguing for one's freedom?

The tribunal was tasked with adjudicating claims under Article Seven of the Provisional Treaty of Paris, which said that the British could not leave with Patriot property, namely "Ne-

groes," and that that "no person is permitted to embark as a Refugee, who has not resided Twelve Months within the British Lines, without a special Passport from the Commandant."

The British created the *Book of Negroes*, which was basically a record of the loss of human property. It was a record of who left [the country]. They would record their names, where they were born, who had enslaved them, how they ran away, information about their bodies, how they were branded, racial descriptors, and so on.

[The people pleading their cases at the Fraunces Tavern] had claimed their freedom. At that moment, you had slave catchers or others deputized to "take them back." We're using the term "property" but these were human beings.

You talk about the difference between surveillance and sousveillance. Would it be fair to say that surveillance is the powerful watching the powerless (like the NSA opening our emails) and sousveillance is the powerless watching the powerful (like citizens filming police brutality)?

There's a graphic in the book designed by surveillance scholar Steve Mann. For Mann, sousveillance is the b-side of surveillance. Surveillance is mainly oversight, governing, policing, and the protection of private property. Mann sees it as almost always repressive. The b-side would be about undersight, about looking back—often through wearable computing, like body cameras and cellphone cameras.

There are other forms of surveillance and sousveillance. Uberveillance is surveillance through bodily data, like a chip. Dataveillance is the use of surveillance through aggregate data algorithms. In the book, I also coined the term "redditveillance" [to talk about crowdsourced review of surveillance] using pub-



Our high-tech surveillance society had lower-tech precursors. Photo: Jonathan McIntosh via Flickr. License: <https://creativecommons.org/licenses/by/2.0/>.

licly accessible CCTV, Flickr, and 4chan. You saw redditveillance, for example, during the Boston bombing, but there it misidentified [innocent] people.

So for me it wasn't particularly useful to think of surveillance as always repressive or always liberatory. It's not necessarily good or bad.

There was a low-tech equivalent of “redditveillance” during slavery where people would be “open-sourcing” which slaves had escaped lately, right?

Yes. Collective eyes and watching. Of who's really Black? Or who's passing? Or who's meant to be enslaved? You can also think of that in terms of women fighting online harassment. Women are being doxxed and being “swatted” (law enforcement teams maliciously sent to a person's house through collective sousveillance online).

When Black Lives Matter protesters bring their own cameras to Donald Trump rallies to document abuses, is that sousveillance?

I think it would be. The other question is: To what end?

You sent me a story about Adedayo Adeniyi,² who wasn't even a protester. **(Author's note: Adeniyi is a Black Nigerian student who attended a Donald Trump rally in Fayetteville, North Carolina, in March 2016. He was unfairly ejected by security after two strangers started arguing next to him, but not before 70-year-old Trump supporter Jason Wilton Wetzel hit him in the face. Adeniyi recorded the assault on his cellphone.)** I watched the video. I could hear him saying, “That's not me, I'm not with them. I don't even know those people.” And he still got punched by a Trump supporter.

It's clear from the video [that Wetzel] must have known the camera was on him. The camera might have become an invitation. So the idea of having a recording is important, but it gets tricky for a couple of reasons, even with those videos, since there's still an anti-Black lens that those videos are watched through. Rodney King raising his arms to protect himself gets interpreted as a form of violence, as a hand about to hit. Ramsey Orta, who had recorded the killing of Eric Garner, there are reports of him being harassed by NYPD after Garner was killed and the video went viral. Last fall in Sacramento, a man recorded a SWAT team raiding a house across the street. Police shot him on his own property. They said the camera could have been a gun.³ A camera can make a person the target of more harassment from police, or literally target practice for police.

You write about the ways in which surveillance changes our subjectivity. We start acting as if we're being watched. Do you think Wetzel felt like he had to perform White aggression because the camera was on him?

It's possible. We'd have to ask him what he felt. He later said he didn't know what came over him, that he's not a racist. So,

there was a performance of an excuse for it after the fact.

In the book I was talking about how Black hyper visibility shapes Black people's ways of being—shopping while Black, walking while Black, driving while Black—and what that might do to the psyche.

You write about modern biometrics and Black bodies, how these devices are calibrated, and what they see and don't see. Some devices read stereotypically White features with ease, reliably picking up on the subtle nuances that distinguish one blue eye from another, but failing to register stereotypically Black features.

Being “legible” to a security system can make the difference between entering effortlessly and being shut out.

Think of biometrics doing a few things. Identification: Who are you? Are you enrolled in this database? Verification: Are you who you say you are? Are you the person whose biometric is encoded in this passport or Green Card? Automation: Is anybody there? Like a sensor on a faucet in a washroom.

In some cases you have certain bodies that, in biometric parlance, “fail to enroll” or “become illegible.” Earlier technology would read light irises

quite successfully but darker irises might not be read.

So the question becomes who is the prototype? I called it prototypical Whiteness. There's a famous video⁴ of a sink in a convention center. You have a seemingly Black hand, and soap dispenser is not working. With a White hand, soap appears. How are these technologies designed to serve particular bodies?

It's interesting that racialized surveillance has made Black people more visible in some ways, but then you've got all these technologies that are decreasing Black visibility because they're calibrated to capture the nuances of White bodies.

That's the conundrum. It might be quite liberatory to be unseen by these technologies.

I close the book looking at a YouTube video⁵ with about three million views. It was of two workers in Texas testing the face-tracking camera of an HP computer. One worker, he calls himself Black Desi, asks us to watch what happens “when [his] Blackness enters the frame.” The camera doesn't pan or zoom or tilt or follow him. But when his White colleague enters the frame, it seemingly works just fine. I use the question “what happens when my Blackness enters the frame?” What happens when Blackness enters discussions of the discussions of surveillance, what does it do to those very discussions? ©

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Dark Matters author Simone Browne discusses modern biometrics and Black bodies, how these devices are calibrated, and what they see and don't see. Photo via YouTube.

Commentary, continued from page 3

of a conspiratorial plot, giving fresh life to the already-hoary “New World Order” theories of the 1990s.

During the Bush years, the Far Right largely declined from their 1990s levels of organization but remained active and bubbling along on these conspiracist fringes. The candidacy and election of President Barack Obama in 2008, however, changed all that, sparking a virulent opposition. The mainstream Right, after years of right-wing media conditioning during both the Clinton and Bush years, seemed no longer able to abide the idea of sharing power with a liberal president and set out to delegitimize Obama by any means possible. And it was through that shared hatred that the mainstream Right and the Far Right finally cemented their growing alliance in the loose assemblage of conservative activists known as the Tea Party. Ostensibly a movement for low taxes and small government, in reality the Tea Party represented the mobilization of right-wing groups to oppose any and every aspect of Obama’s presidency.

In the rural and suburban red-voting districts where the Tea Party organized itself, the movement became the living embodiment of right-wing populism, evoking and popularizing producerism’s twin demonization of both liberals and the poor and immigrants. As with most varieties of right-wing populism, many elements of the Tea Party embraced conspiracism, the supposed “tyranny” of the president and ideas that bubbled up from the Far Right, including “constitutionalism,” “nullification,” and even secession. The Tea Party became the main conduit for passing ideas that originated with the Patriot movement, and its far-right cousins, into the mainstream of American conservatism: the beliefs, for example, that the Constitution prohibits any form of gun regulation, federal land ownership, or federal law enforcement.⁴ It’s from these corners of the Right that the idea of the county sheriff as the highest legitimate law-enforcement entity in the land emerged.

Hand-in-hand with these beliefs about the Constitution came a panoply of conspiracy theories: that a nefarious New World Order is plotting to enslave all of mankind; that President Obama was born overseas and plans to institute

Sharia law; that climate change is a scam dreamed up by land-planning environmentalists and leftists seeking to control every facet of our lives.

This is a universe in which facts, logic, reason, and the laws of political gravity do not apply. And early on, Donald Trump identified its politics with his own.

“I think the people of the Tea Party like me,” he told a Fox News interviewer in 2011, “because I represent a lot of the ingredients of the Tea Party. What I represent very much, I think, represents the Tea Party.”⁵

Trump in action has certainly delivered on that. The opening salvo of his campaign, in which he castigated Mexican immigrants as criminals and rapists

Make America Great Again, I’m telling you folks.”⁶

Trump has cannily tapped a large voting bloc that was already created by conservative movement activists, and made large by the very rhetoric and ideology that nearly all of the movement’s media organs embraced to some degree before his arrival on the scene.

Before the Trump campaign, these true believers of the Hard Right were thought to comprise the margins of the Republican Party, a tiny subset that had no voice and even less power. What the Trump campaign reveals, unquestionably, is that they are no longer so tiny, nor so powerless.

Even if Trump were to fade away after 2016—something that is becoming an

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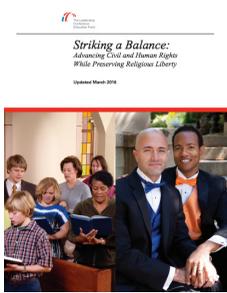
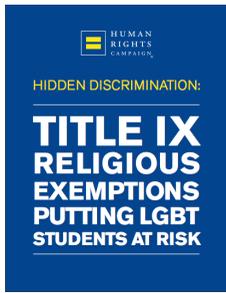
and promised to erect a border wall, was straight out of the Tea Party’s hardcore nativist playbook. And his subsequent positions and rhetoric—attacking “the Establishment,” Black Lives Matter and “political correctness,” vowing to outsmart China on trade, promising to protect the Second Amendment, promising to overturn *Roe v. Wade* and suggesting that women who get abortions could be jailed—were similarly straight out of the far-right populist milieu.

Most of all, his claim that his personal wealth would make him, as president, immune to the demands of the wealthy and other special interests, formed the foundation for his populist appeal, as someone who would look out for the interests of “ordinary Americans.” That appeal was bolstered by his promises to get the nation’s economic engine into high gear, voiced in common terms: “We’re going to get greedy for the United States,” he told a crowd in Las Vegas. “We’re gonna grab and grab and grab. We’re gonna bring in so much money and so much everything. We’re going to

ever more unlikely event—those who support him will not, nor will their alternative universe shatter and fall. What they will become after the election will depend on how radicalized they are becoming during the election process, and on how the rest of society responds to the violence that emanates from their ranks. It will be a serious and significant challenge.

After all, the reality is that they have been around for a very long time—buried deep in the American psyche—and are now springing forth with renewed vigor, thanks to the encouragement that Trump is giving them. ☞

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Striking A Balance: Advancing Civil and Human Rights While Preserving Religious Liberty

The Leadership Conference Education Fund, February 2016

Hidden Discrimination: Title IX Religious Exemptions Putting LGBT Students at Risk

Human Rights Campaign, December 2015

For the Christian Right, the concept of religious freedom has become not just a justification for discrimination, but the central framing of a large swath of contemporary public life. That’s why PRA has published two major reports about the ways in which the Right has advanced this framing, as well as outlining the funding, ideology, and organizations behind their efforts. These reports are *Redefining Religious Liberty: the Covert Campaign Against Civil Rights*, by Jay Michaelson in 2013, and *When Exemption is the Rule: the Religious Freedom Strategy of the Christian Right*, by Frederick Clarkson in January 2016. Other organizations have also recognized the need for in-depth, well-documented discussions of the issues being raised.

Religious freedom exemptions from civil rights and labor laws are deeply rooted in areas of law and public policy that are unfamiliar to most observers. They also have complex histories and rapidly evolving implications. Two recent reports are helpful complements to PRA’s existing work on the subject:

Striking A Balance: Advancing Civil and Human Rights While Preserving Religious Liberty, principally authored by *Public Eye* contributor Peter Montgomery, was published in February 2016 by The Leadership Conference Education Fund. The report focuses on the broad legal and political landscape of the struggle for LGBTQ rights. It also documents how the religious arguments commonly used today against LGBTQ equality have been used across history to oppose many advances in civil and human rights, including the abolition of slavery, women’s suffrage and equality, racial integration, inter-racial marriage, immigration, the Americans with Disabilities Act, and the right to collectively bargain.

Hidden Discrimination: Title IX Religious Exemptions Putting LGBT Students at Risk was published in 2015 by the Human Rights Campaign, authored by Sara Warbelow and Remington Gregg, the organization’s legal and legislative directors, respectively. This report focuses on a narrow area of religious exemption from a civil rights law. As it happens, the 1972 Education Extensions of Title IX of the Civil Rights Act includes a provision that allows educational institutions controlled by a religious organization to request an exemption from full compliance with the law if “application of the law would conflict with specific tenets of the religion.” At the time of the report, 56 schools, primarily Catholic and Southern Baptist, had requested exemptions that would free them from compliance with antidiscrimination provisions regarding gender identity and sexual orientation in areas such as housing, access to facilities, and athletics. While it appears that the Department of Education must routinely grant such exemptions, HRC has asked that the government and the schools be fully transparent about the process and the resultant policies.

Both reports make a number of recommendations regarding public education, legal and public policy, and communications approaches at the state, local, and federal levels of government.

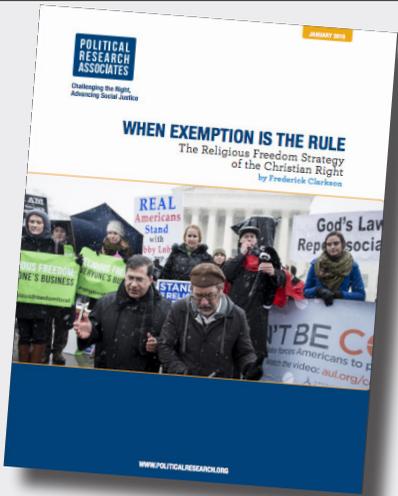
-Frederick Clarkson

PRA is very proud to announce the publication of a groundbreaking new report by senior fellow Frederick Clarkson:

***When Exemption is the Rule:
The Religious Freedom Strategy of the Christian Right***

By creating zones of legal exemption, the Christian Right seeks to shrink the public sphere and the arenas within which the government has legitimacy to defend people’s rights, including reproductive, labor, and LGBTQ rights. The ability of government to ensure equal protection under the law is under assault.

<http://www.politicalresearch.org/resources/reports/>



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* Editor's note: PRA's convention is to capitalize both Black and White, to emphasize that both are constructed categories. At the request of the author, this article departs from that convention.

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36. Charles Reich, qtd. in: Phillip Beatty, Amanda Petteeruti, and Jason Ziedenberg, *The Vortex: The Concentrated Racial Impact of Drug Imprisonment and the Characteristics of Punitive Counties* (Washington, D.C.: Justice Policy Institute, 2007), 14.
37. Dorothy E. Roberts, "Foreword: Race, Vagueness, and the Social Meaning of Order-Maintenance Policing," *Journal of Criminal Law & Criminology* 89, no. 3 (1999), 775, 777-78.
38. George L. Kelling and James Q. Wilson, *supra* note 8.
39. Pete White, Los Angeles Community Action Network, presentation at preconference convening held in conjunction with U.C.L.A. Critical Race Studies Symposium, Los Angeles, CA, October 17, 2015.
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43. *Ibid.*
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45. *Ibid.*
46. Mogul et al., *supra* n. 6.
47. Mogul, et al., *supra* n. 6; Tanya Erzen, *supra* note 19.
48. Mogul, et al., *supra* n. 6.
49. Amnesty International, *Stonewalled: Police Abuse and Misconduct Against LGBT People in the United States*, AMR 51/122/2005 (2005).
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1. I served at the time as Chief Communications Officer for the Brady Campaign to Prevent Gun Violence. More than 63,000 people and organizations follow me (@JonHutson) on Twitter, because of my influence in human rights, social justice, LGBTQ issues, transgender equality, reproductive freedom, conservation, and global health. The Montreal Institute on Genocide Prevention has recognized me among its list of 74 Global Humanitarian Twitterati.
2. Here is my tweet at 9:23 p.m. on February 14, 2015: "#Freespeech will notbesilenced, even as gunfire erupts at a café and a synagogue in Copenhagen [#terrorisim](http://nyti.ms/1JekieA)". <https://twitter.com/JonHutson/status/566784933407248384>.

3. Andrew Higgins and Melissa Eddy, "Terror Attacks by a Native Son Rock Denmark." *The New York Times*, February 15, 2015, <http://www.nytimes.com/2015/02/16/world/europe/copenhagen-attacks-suspect-is-killed-police-say.html?r=0>.

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5. Vince Devlin, "Kalispell School Threat Suspect 'Tangled' with Wrong Twitter User," *The Missoulian*, February 19, 2015, http://missoulian.com/news/local/kalispell-school-threat-suspect-tangled-with-wrong-twitter-user/article_9c3a4af7-eb20-526a-8598-17304d9e9f24.html. I provided federal and local law enforcement agencies with several things based on my research: a timeline of tweets that appeared to cross the line between free speech and criminal threat; a profile of him, based on his social media presence; and a strategy to identify and locate him.

6. *Supra* note, 4.

7. Bill Morlin, "Court Papers Detail Alleged Threats from Holocaust Denier," *Hatewatch*, March 19, 2015, <https://www.splcenter.org/hatewatch/2015/03/19/court-papers-detail-alleged-threats-holocaust-denier>. See also Vince Devlin, "Suspect Threatened to Shoot 100 Kalispell Schoolkids," *The Missoulian*, March 17, 2015, http://missoulian.com/news/local/suspect-threatened-to-shoot-kalispell-schoolkids/article_075b6e83-1997-5c20-91c3-7ec6db2e2a3d.html.

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9. Jonathan Hutson, "White Banker's Son Threatens to Shoot School Kids and Jews, Gets 'Get Outta Jail Free' Card." *Huffington Post*, November 16, 2015, http://www.huffingtonpost.com/jonathan-hutson/white-bankers-son-threat-b_8579146.html.

10. Naomi Braine, "Disparate Legal Treatment of Muslims and the Radical Right." *The Public Eye*, June 19, 2015, <http://www.politicalresearch.org/2015/06/19/terror-network-or-lone-wolf/#sthash.bDPRht1N.MHVeujb.dpbs>.

11. Aryan Nations founder Richard Butler popularized this term for enclaves of White nationalists in the Pacific Northwest after he set up a neonazi compound in northern Idaho in the 1970s. But overt White nationalists are not the only militants to seek haven in Montana. For example, the Rev. Chuck Baldwin, a Patriot leader who ran for president on the Constitution Party ticket in 2008, moved to the Flathead Valley in 2010. He leads the Liberty Fellowship church in Kalispell, whose members include Randy Weaver, a white supremacist who engaged in a notorious standoff with federal authorities in 1992. Ryan Lenz, "A Gathering of Eagles: Extremists Look to Montana." *Southern Poverty Law Center*, November 15, 2011, <https://www.splcenter.org/fighting-hate/intelligence-report/2011/gathering-eagles-extremists-look-montana>.

12. David Joseph Lenio has held at

least four Twitter accounts: @leniodj, @PsychicDogTalk, @PsychicDogTalk2 [sic], and @PsychicDogTalk3. The first of these accounts featured an avatar that read, "I am a potential terrorist. I know the truth about 9/11." Twitter has shut down @PsychicDogTalk and @PsychicDogTalk2 for violating their Terms of Service by threatening violence. However, the Twitter bio for @PsychicDogTalk can still be viewed online through a third-party app. It describes his location as "Cascadia, at the apex of time." The Cascadia Independence Party (CIP) is a secessionist movement that advocates the independence of "Washington, most of Oregon and Idaho, parts of Montana and Alaska, and most of the Canadian province British Columbia." CIP website, "What We Do," <http://cascadiaindependenceparty.strikingly.com/#what-we-do>.

13. Bill Morlin, "Court Papers Detail Alleged Threats from Holocaust Denier," *Hatewatch*, March 19, 2015, <https://www.splcenter.org/hatewatch/2015/03/19/court-papers-detail-alleged-threats-holocaust-denier>. See also Vince Devlin, "Suspect Threatened to Shoot 100 Kalispell Schoolkids," *The Missoulian*, March 17, 2015, http://missoulian.com/news/local/suspect-threatened-to-shoot-kalispell-schoolkids/article_075b6e83-1997-5c20-91c3-7ec6db2e2a3d.html.

14. Remos Lenio and Phillip Blanchard launched Tillerman & Co. of Grand Rapids in September 2015. They had previously been partners in turnaround firm DWH, LLC of Grand Rapids. Demetri Diakantonis, "People Moves of the Week," *Mergers & Acquisitions*, November 3, 2015, <http://www.themiddlemarket.com/news/people-moves/people-moves-of-the-week-tillerman-arsenal-goodwin-258750-1.html>.

15. Politico has called Justin Amish, who founded and chairs the House Liberty Caucus, "the House's new Ron Paul." James Hohmann, "The House's New Ron Paul." *Politico*, April 1, 2013, <http://www.politico.com/story/2013/04/the-houses-new-ron-paul-justin-amish-089485>.

16. For example, Betsy DeVos serves as Honorary Chair, and Remos Lenio serves on the executive leadership team for the American Heart Association's 20th Anniversary of the Grand Rapids Heart Ball slated for December 2016. <https://ahagrandrapids.ejoimne.org/MyEvents/20162017GrandRapidsMIHeartBall/Leadership/tabid/766588/Default.aspx>. In addition, Remos Lenio's CV states that he holds a seat on the MiQuest board of directors. <http://tillermanco.com/images/RemosLenioCV2015.pdf>. MiQuest is among the groups sponsored by the Richard M. and Helen DeVos Center for Entrepreneurship & Innovation. <https://www.gvsu.edu/cei/competitions-funding-160.htm>. Remos Lenio's LinkedIn profile states that he is also a founding board member and past president of the Association for Corporate Growth - Western Michigan, which has featured Dick DeVos as a speaker. Retrieved from <http://grsouth.wzzm13.com/content/dick-devos-key-bringing-southwest-airlines-grand-rapids-supporting-airtran>.

17. The son of Amway co-founder Richard DeVos, Dick DeVos served as Amway's President and ran an unsuccessful campaign for Governor of Michigan in 2006. His wife Betsy Prince DeVos, former chair of the

Michigan State Republican Party, and Board President of Mars Hill Bible Church, is the sister of Blackwater founder Erik Prince. See Andy Kroll, "Meet the New Kochs: The DeVos Clan's Plan to Defund the Left," *Mother Jones*, January/February 2014, <http://www.motherjones.com/politics/2014/01/devos-michigan-labor-politics-gop>. See also Benjy Hansen-Bundy and Andy Kroll, "The Family That Gives Together," *Mother Jones*, January/February 2014, <http://www.motherjones.com/politics/2014/01/devos-family-foundations-heritage-americans-prosperity-blackwater>.

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19. Betsy DeVos also holds the title of President of the Council of Elders. Kelefa Sanneh, "The Hell-Raiser," *The New Yorker*, November 26, 2012, <http://www.newyorker.com/magazine/2012/11/26/the-hell-raiser-3>. In 2011, the Dick and Betsy DeVos Foundation gave \$525,000 to Mars Hill Bible Church, according to the Foundation's annual report. <http://www.guidestar.org/FinDocuments/2011/382/902/2011-382902412-08bfa3ae-f.pdf>.

20. Andy Kroll, "Meet the New Kochs: The DeVos Clan's Plan to Defund the Left." *Mother Jones*, January/February 2014, <http://www.motherjones.com/politics/2014/01/devos-michigan-labor-politics-gop>.

21. In an April 2013 YouTube video on the Boston Marathon bombing and the Sandy Hook Elementary School mass shooting, originally posted under his pseudonym David Dave, Lenio endorsed Ron Paul for President. In his video, he also blames the Boston Marathon bombing on the CIA or the Mossad, and characterizes the Sandy Hook mass shooting as a hoax. His YouTube account, in which he currently uses the pseudonym gc hg, links to, and promotes, his writings under his Twitter handles @PsychicDogTalk and @PsychicDogTalk3. <https://www.youtube.com/watch?v=aOu7CAFGAyl>.

22. Ron Paul is a self-described paleo-conservative who has stated his support for neo-Confederates and secessionists. Rachel Tabachnick and Frank L. Coccozzelli, "Nullification, Neo-Confederates, and the Revenge of the Old Right." *The Public Eye*, November 22, 2013, <http://www.politicalresearch.org/2013/11/22/nullification-neo-confederates-and-the-revenge-of-the-old-right/#sthash.RKqSGLS.dpbs>.

23. Scoopnest has archived the Twitter bio of Lenio's @PsychicDogTalk account, which Twitter shut down in January 2015 for violating its Terms of Service, <http://www.scoopnest.com/user/PsychicDogTalk/>.

24. He also characterizes well-documented mass shootings including those in Copenhagen, in Tucson, Arizona, and Aurora, Colorado, as well as the bombings at the Boston Marathon, among others, as "false flag" attacks for which he blames Israel.

25. This tweet from @PsychicDogTalk is archived at <http://vnnforum.com/showthread.php?t=207710&page=14>.

26. David Holthouse, "How White Supremacists Are Trying to Make an

American Town a Model for Right-Wing Extremism: A recent influx of white supremacists and Patriot group members to the town of Kalispell, Montana, is causing alarm. *AlterNet*, November 22, 2011, <http://www.alternet.org/story/153162/how-white-supremacists-are-trying-to-make-an-american-town-a-model-for-right-wing-extremism>.

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28. H. Michael Barrett, "Pioneer Little Europe (PLE) Prospectus a.k.a. 'Stormfronts of the Street'." <http://s3.mediamatters.org.s3.amazonaws.com/static/pdfs/pleprospectus.pdf>.

29. Judy L. Thomas, "Neo-Nazi Is Shopping for Land in Kansas." *Kansas City Star*, October 2, 2015, <http://www.kansas.com/news/local/article37425801.html>.

30. Jonathan Hutson, "White Banker's Son Threatens to Shoot School Kids and Jews, Gets 'Get Outta Jail Free' Card." *Huffington Post*, November 16, 2015, http://www.huffingtonpost.com/jonathan-hutson/white-bankers-son-threat-b_8579146.html.

31. Jonathan Hutson, "White Banker's Son Threatens to Shoot School Kids and Jews, Gets 'Get Outta Jail Free' Card." *Huffington Post*, November 16, 2015, http://www.huffingtonpost.com/jonathan-hutson/white-bankers-son-threat-b_8579146.html.

32. "Newtown Shooting Victims," *Newsday*, December 14, 2012, <http://www.newsday.com/news/nation/newtown-shooting-victims-photos-1.4336461>.

33. Bill Morlin, "Man Arrested in Montana After Alleged Threats to Kill School Children and Jews," *Hatewatch*, February 17, 2015, <https://www.splcenter.org/hatewatch/2015/02/17/man-arrested-montana-after-alleged-threats-kill-school-children-and-jews#disqus-thread>.

34. David Lenio, "Release the Security Camera Footage of the 2011 Tucson AZ Shooting!" YouTube video uploaded August 8, 2012, <https://www.youtube.com/watch?v=yPcxszkj61A>. Lenio originally uploaded the video under the pseudonym David Dave, and subsequently changed his pseudonym to "gc hg."

35. The first quote is at 4:30; the second is at 9:39.

36. Shaun King, "Muslim Shooters Like Syed Farook Are Easily Called Terrorists While White Mass Killers Never Get That Label." *New York Daily News*, December 3, 2015, <http://www.nydailynews.com/news/crime/king-white-mass-shooters-called-terrorists-article-1.2454528>.

37. Mark Follman, Gavin Aronsens, and Deanna Pan, "U.S. Mass Shootings: 1982-2016." *Mother Jones*, originally published on December 28, 2012, and updated to include data through 2016, <http://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data>.

38. Mark Follman, "Maybe What We Need Is a Better Mental Health Policy." *Mother Jones*, November 9, 2012, <http://www.motherjones.com/politics/2012/11/jared-loughner-mass-shootings-mental-illness>.

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43. Brendan James, "How a Gun Control Advocate Helped Stop a Man Threatening to Shoot Up a School," *Talking Points Memo*, February 20, 2015, <http://talkingpointsmemo.com/livewire/david-lenio-montana-threats-jews-children>.
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48. Mark Potok, "Closed Circuit." Southern Poverty Law Center, November 20, 2013, <https://www.splcenter.org/fighting-hate/intelligence-report/2013/closed-circuit>.
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51. April Gaede, who tweets as @AprilintheNorth, has posted photos of her work in Kalispell assembling bolt action hunting rifles. She tweeted one such photo on December 8, 2015: <https://twitter.com/aprilinthenorth/status/674264327268921344>
52. Profile of April Gaede (Southern Poverty Law Center), <https://www.splcenter.org/fighting-hate/extremist-files/individual/april-gaede>.
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56. Karl Gharst, a/k/a morserkarl, took to a right-wing conspiracist site, *LibertyFight*, to post a statement in support of Lenio, in which he falsely claimed that I had provoked threats that Lenio had tweeted between December 30, 2014 and February 14, 2015, when I learned of Lenio's existence because Lenio initiated contact with me. Gharst's statement is available online at <https://disqus.com/by/morserkarl/>.
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63. S. Boman, email to author, October 30, 2015. S. Boman, telephone interview with author, November 5, 2015.
64. Vince Devlin, "Flathead Valley Group Wants Nothing Less Than a Felony Conviction for Lenio," *The Missoulian*, November 10, 2015, http://missoulian.com/news/local/flathead-valley-group-wants-nothing-less-than-a-felony-conviction/article_4a720fa1-d82c-562c-8ef4-cb8e3dcccfd8.html.
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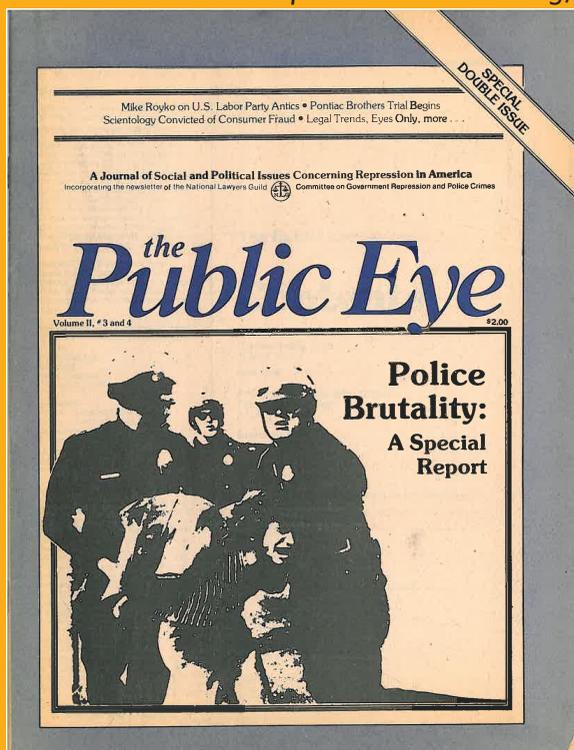
1. Trump's campaign manager appears to have been caught assaulting a reporter on his own campaign's security system. "I'm rich," Trump told his supporters. "So, I have tapes." Trump claims his footage vindicates the campaign's version of events. Meanwhile footage was being posted, reposted, and critiqued all over social media. The police reviewed the tapes and charged the campaign manager with misdemeanor battery, but prosecutors ultimately dropped the charge. See: Eli Stokols, Hadas Gold, and Nick Gass, "Trump Turns Blame on Reporter in Battery Case," *Politico*, March 29, 2016, <http://www.politico.com/story/2016/03/trump-campaign-manager-charged-with-misdemeanor-battery-221336>. Also, Dylan Byers, Tal Kopan, and Tom LoBianco, "State will not prosecute Donald Trump's campaign manager," *CNN*, April 14, 2016, <http://www.cnn.com/2016/04/13/politics/corey-lewandowski-donald-trump-charges-dropped/>.
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3. "Police Shoot Man For Recording Them With Phone, Claim They Feared For Their Lives," *Counter Current News*, September 12, 2015, <http://countercurrentnews.com/2015/09/police-shoot-recording-man/>.
4. Teej Meister, "Whites Only?," YouTube video, uploaded September 2, 2015, <https://www.youtube.com/watch?v=WHYnGQ9Vg30>.
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