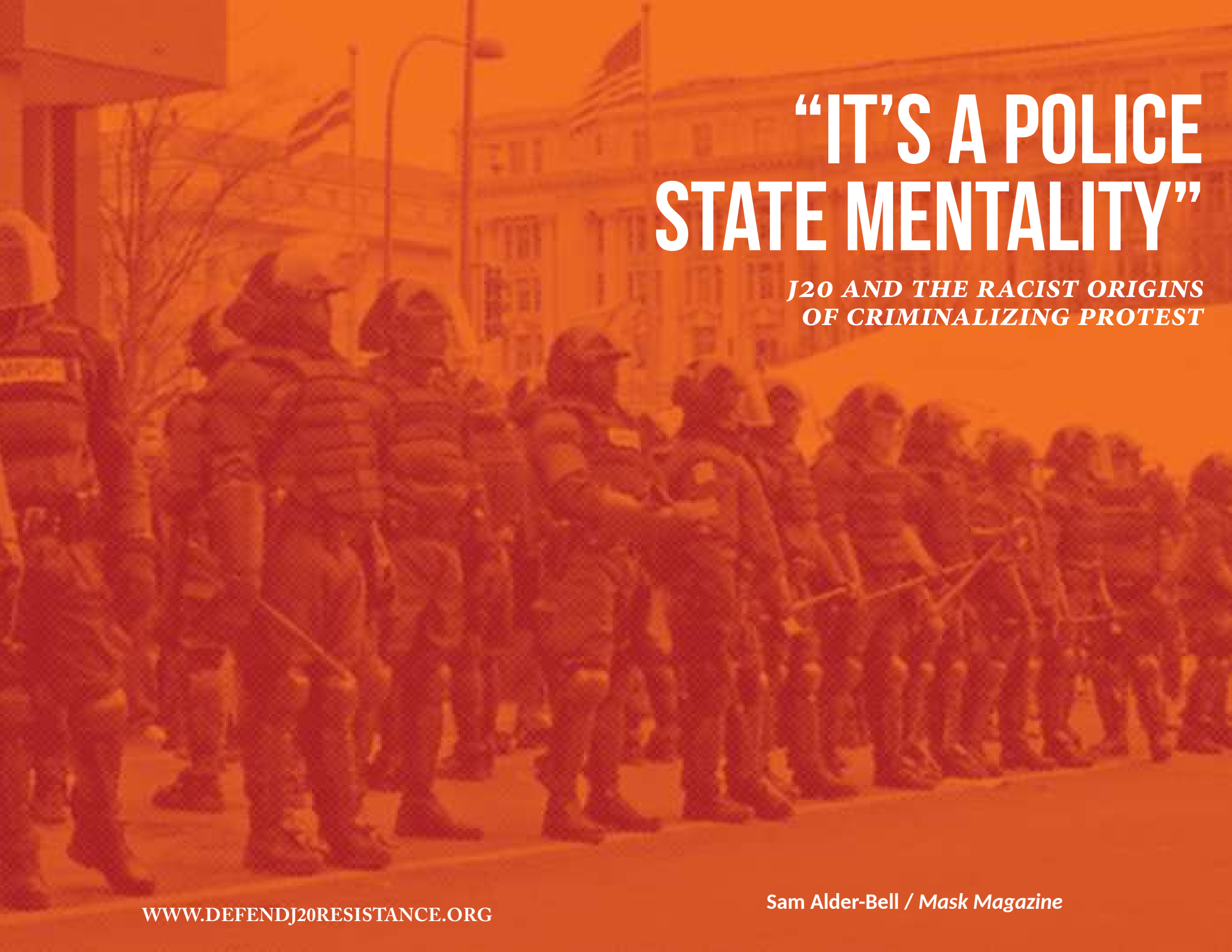

"IT'S A POLICE STATE MENTALITY"

J20 AND THE RACIST ORIGINS OF CRIMINALIZING PROTEST

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Sam Alder-Bell / *Mask Magazine*

It's not hyperbole to say the future of the left depends on developing reliable strategies for resisting state repression. "If we can't do jail and court solidarity well," says Guillén-Givens, "we can't do the rest of the work. If charging people with serious criminal violations is an effective way to put people out of commission, then that's the end of the story."

Two hundred thirty-four people were arrested during protests at Donald Trump's inauguration in Washington, DC on January 20. Trials for those still charged – almost 200 – begin on November 15. For many observers, the mass arrests and subsequent prosecution confirmed a fear that had festered since the election: that by inaugurating Donald Trump, America would also usher in an unprecedented era of authoritarian politics – a harsh and wholly illiberal regime prepared to use any available means to quash dissent. It's a tidy narrative: Trump took power and the hammer fell. But there's more to the story.

In fact, the prosecution of those arrested at the inauguration (commonly referred to as the "J20" defendants) could be placed on a historical continuum of repression in our nation's capital and across the country. That history did not begin with Donald Trump and will not end when he vacates the West Wing to resume his media-saturated dotage in Trump Tower. It's a history that has long been instrumental in maintaining economic and racial hierarchies. The laws which delineate the boundaries of legitimate protest – including those under which the J20 defendants are charged – were shaped by mid-century fears about black revolutionary politics. And the law has often created distinctions between "protest" and "riot" that obscure the role of the state in perpetuating violence.

With the exception of a few journalists, legal observers, and minors (whose charges were dismissed) all those arrested on January 20 were initially charged with a single count of felony rioting. However, on April 27, a grand jury returned a superseding indictment charging 212 defendants with *eight felonies* – including inciting a riot, engaging in a riot, conspiracy to riot, and five counts of property destruction. On November 1, Judge Lynn Leibovitz, reduced the "engaging in a riot" and "conspiracy to riot" charges to misdemeanors. The remaining six felonies carry a maximum sentence of 60 years behind bars.

In the indictment, all 212 defendants are held responsible for smashing the windows of a BP gas station, a Starbucks, a McDonald's, and a Bank of America; pulling newspaper stands and trash cans into the street; and defacing public and private property with spray paint. A smaller group was also charged with misdemeanor assault on a police officer. (Those charges were dropped in September when the court determined the prosecution had applied an outdated version of the law.) One defendant, Dane Powell, was charged with an additional three counts of felony assault on a police officer. The MPD alleges six officers suffered minor injuries during the protests. After pleading guilty to one of his felony assault charges and felony rioting, Powell was sentenced to four months in prison and two years probation in July. Twenty other defendants have pled to lesser misdemeanor charges, according to a representative of activist and legal support collective Dead City Legal Posse. The remaining 192 are scheduled to stand trial in groups of about eight over the course of the next year.

The legal underpinnings of the J20 prosecution are novel. Deploying the legal doctrine of "conspiracy liability," prosecutors will seek to hold nearly 200 people responsible for the alleged criminal acts of a few. But the state's effort to criminalize disruptive protest – and the impunity afforded to police and prosecutors in doing so – are not new. Mass arrests at demonstrations have been a key tactic of militarized protest policing for decades. And overcharging defendants to coerce plea deals is routine practice for criminal prosecutors. Like the Trump presidency, the case of the J20 defendants is only aberrant if one ignores the tradition of repression, intimidation, and racism that fuels American punishment.

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On February 23, DC's Democratic Mayor Muriel Bowser held a press conference at the John Wilson Building on Pennsylvania Avenue. Flanked by the US and District flags, the mayor nominated Peter Newsham to lead the MPD. Bowser, an elegant 45-year-old black woman known for her political caution and reserve, described Newsham as a safe bet for the District, a "reliable and consistent" workhorse who had put in his time on the force and proven his mettle as interim chief since his predecessor, Cathy Lanier, resigned in September 2016. Most of all, Bowser said, Newsham shared her belief that "policing is not something the MPD *does to* the community; but it is something we all *do with* the community" (emphasis hers).

A month earlier, Newsham had overseen the police response to the J20 protests. Mayor Bowser was bursting with praise for Newsham's handling of the inauguration. "With the eyes of the world on us," she said, "our officers stepped up to the plate and performed." And what a performance it was.

A report issued by the DC Office of Police Complaints (OPC) on February 27 details a litany of violent acts committed by MPD officers throughout the day. According to the report, police manhandled protesters engaged in nonviolent civil disobedience. They pepper sprayed crowds of journalists, legal observers, protesters, and bystanders without warning. They "indiscriminately" deployed stinger grenades – explosive devices that emit smoke, painful rubber pellets, and a chemical irritant – tossing them into crowds of protesters. (According to an OPC investigator who contributed to the report, officers are trained to deploy stingers by rolling them on the ground to avoid facial injury.) One OPC monitor – "dressed in distinctive clothing identifying him as an OPC monitor" – was pepper sprayed on the side of his face; another was hit with stinger pellets on both legs.

In response to the OPC's report, the DC City Council appropriated $150,000 on May 31 for an independent investigation of police conduct on January 20. That's $50,000 more than the total cost of the damage caused by protesters as alleged in police charging documents.

Guillén-Givens knows what it takes to fight repression and win. In 2008, she was one of eight anarchist organizers of the "RNC Welcoming Committee," who were arrested for organizing protests at the Republican National Convention in Saint Paul. She spent the week of the convention in a jail cell. She and her codefendants were charged with Conspiracy to Riot in Furtherance of Terrorism under the Minnesota Patriot Act. "We really benefited from a large network of support," Guillén-Givens says of the RNC 8, "Not just anarchists, not even necessarily people who particularly radical. We tried hard to still maintain our radical politics in an uncompromising way, but also to do that in away that was inviting instead of exclusive."

The deep and diverse relationships the RNC 8 had built in the Twin Cities in the lead up to the RNC meant an infrastructure was already in place to mobilize their support once the charges came down. The group insisted on a collective defense strategy, joining their cases and making decisions together in the best interest of the whole. After a two-year public campaign, the charges were dropped against three of the defendants and the other five pled to gross misdemeanors.

When the state bears down, the instinct to turn inwards and huddle only with one's closest allies can be strong. But in America, where it's pitifully easy for prosecutors to vilify a masked protester, winning the sympathy of the public – and, by extension, a judge or jury – means building a broad-based, inclusive movement against repression. Camilo Viveiros, a Providence-based community organizer who says he was beaten by a cop at RNC 2000, and was subsequently charged with first and second degree assault on a police officer, told *Mask* that the people who rallied to his defense were not only activists but also low-income seniors and disabled tenants he had met as a housing organizer in Boston. "They knew me through my organizing work around their issues," Viveiros said, "so they showed up for me. We had built those bonds." Viveiros and his co-defendants were acquitted at a very well-attended trial in April 2004. Outward looking anti-repression organizing of this kind can amplify, rather than distract, movements. "It's important to stress for people that [fighting repression] is not just defensive and reactionary work," says Guillén-Givens, "It can be a site of capacity building in its own way."

In the Trump moment, liberals ought to be uniquely sympathetic to radical arguments about the state's authoritarian tendencies. Where once Democrats saw a largely beneficent government trying its best to serve the people, they now see an executive hell-bent on punishing the poor and brown. Activists facing repression also benefit from the tireless work of movements like Black Lives Matter, who have succeeded in contesting the idea of a politically dispassionate criminal legal system in recent years. By joining forces with existing anti-carceral movements, the J20 defendants and their supporters can fight repression while simultaneously challenging broader assumptions about policing and punishment.

the bonds of allyship which enable successful protest. Undeterred, the defendants are using solidarity – in the form of a cooperative defense strategy – to resist their prosecution. Over 130 J20 defendants have signed on to "points of unity," insisting on the political nature of the charges and refusing to accept cooperating pleas which harm other codefendants. "Over 95 percent of criminal cases wind up in pleas," Menefee-Libey, of the Dead City Legal Posse, told *Mask*. "In this case, where you have 90 percent of the people indicted demanding a jury trial, you're flipping that on its head."

Collective defense strategies of this sort have worked in response to mass arrests in the past. Courts often don't have the time, resources, or wherewithal to try hundreds of cases in the wake of a big protest. Prosecutors who are reliant on cooperating defendants to convict others, or unwilling to go through the effort of orchestrating trials will often drop charges en masse or negotiate down to better pleas. As Kris Hermes writes in *Crashing the Party: Legacies and Lessons from the RNC 2000,* during the prosecution of 391 defendants facing charges for allegedly protesting the 2000 Republican National Convention in Philadelphia, over 200 of those facing misdemeanor charges refused to accept pleas in solidarity with those facing more serious felony charges. Ultimately, almost all the charges were dropped, and only 13 people were convicted at trial – all for misdemeanor offenses.

Last July, dozens of demonstrators arrested for civil disobedience in the wake of Philando Castile's murder by police officer Jeronimo Yanez in Falcon Heights, Minnesota, refused to resolve their cases until the felony riot charges against Castile's cousin, Louis Hunter, were dropped. It took a year, but prosecutors eventually let Hunter off, citing "insufficient evidence." Luce Guillén-Givens, a local radical activist who helped organize arrestee solidarity for Hunter's case, emphasized to *Mask* that collective defense isn't about reaching some magic number of non-cooperating defendants, at which moment the prosecution automatically folds. "It's not just the act of refusing to plea," she said, "It's the public campaign that you build around that." First, says Guillén-Givens, "you have to convince people that criminal charges are even something you can organize politically around." And that takes some doing.

"One of the great political fictions of the world is that courts are impartial and are not subject to popular opinion or political activity," says Menefee-Libey. "We all know it isn't true. But it's so deeply engrained in our institutions, we doubt ourselves." The question J20 defendants and their supporters, are asking themselves, Menefee-Libey says, is "How do we figure out ways to exercise some agency, and not allow ourselves to be passively subjected to this process?"

Guillén-Givens says the crucial thing in fighting repression is organizing beyond our friends and fellow activists with whom we already share a political analysis. "Too often we start from the position of, 'let's look for the reason this person or this group is fucked up so that we can write them off.' That's not a great place to organize support from." Almost no one, after all, was born an anarchist.

The mass arrests took place a little before 11 AM. Police clad in riot gear formed a line and encircled a large group at the intersection of 12th and L streets. No warning or order to disperse was issued before the police began kettling the crowd. A few demonstrators broke the line and evaded the cops. The rest were trapped. With the exception of a few journalists, no one was allowed to leave.

According to witnesses inside and nearby the kettle, the mood inside the cordon was tense. Detainees were pressed against each other for hours. Pepper spray hung visibly in the air. Water and food was scarce. Demonstrators rummaged in trash bins for empty bottles to piss in. Officers taunted them, throwing away edible food as hungry protesters watched and waited. According to a lawsuit filed against the MPD in June, one officer quipped, "If you wanted to go to the bathroom, you shouldn't have gotten arrested." The lawsuit, filed by the ACLU on behalf of three arrestees and one legal observer, alleges an array of unconstitutional behavior and brutality by police on January 20.

Over the course of the next nine hours, the marchers were arrested. One of the plaintiffs in the ACLU suit, independent photojournalist Shay Horse, alleges MPD aggressively examined his rectum and gripped his testicles after his arrest. Horse claims that his wrists were scarred from police zip ties digging into his skin. He says the alleged rectal search felt like rape, and that other officers stood around laughing while it was conducted. "They used those tactics to inflict pain and misery on people who are supposed to be innocent until proven guilty," Horse said during a press conference in June.

Evan Engel, then a reporter at Vocativ, now freelance, wrote about his arrest for the Freedom of the Press Foundation website. After nine hours in a holding cell at District 1 Police Station, officers locked Engel and other arrestees in a hot van before driving them to central booking. As their breath and sweat reactivated the pepper spray covering their coats and hair, several protesters started to hyperventilate and gasp for air, according to Engel's account. The arrestees banged on the doors, asking to be let out. Officers ignored them. Engel and other witnesses observed one detainee whose contact lens had interacted badly with the pepper spray, causing his eye to bulge with blood.

The MPD apparently stands by all this behavior. "All the police officers were outstanding in the judgment that we used," Newsham said during a press conference convened the day after Inauguration, "I couldn't be more proud of the way this department responded."

Since the arrests, prosecutors have broken into at least eight of over 100 phones confiscated from demonstrators, subpoenaed defendants' Facebook feeds, sought to identify every IP address that visited the Disrupt J20 website, and compiled 600 hours of video footage, including some of planning meetings recorded by undercover far-right infiltrators.

In effect, investigators are conducting an indiscriminate digital dragnet to retroactively justify their indiscriminate physical one. That, says Mara Verheyden-Hilliard, a lawyer and co-founder of the Partnership for Civil Justice Fund (PCJF), is a fundamental perversion of due process. "It suggests the police could just arrest you at any time, prosecute you, and spend months trying to figure out if you've ever done anything wrong." She added, succinctly, "It's a police state mentality."

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In moments like these, the state maintains its monopoly on the legitimate use of force by policing the definition of violence. That which threatens the smooth functioning of state power is "*violence*"; the force necessary to maintain it, no matter how severe, is not. The media, including leftist media, are susceptible to the state's frame. News reports in the wake of the inauguration referred to "violent" protests overtaking parts of Washington, DC. Almost none of these reports refer to the conduct of the police as "violent." Breaking storefront windows: violence. Dousing civilians in pepper spray: crowd control. Overturning trash bins: violence. Hurling stinger grenades at the heads of protesters: maintaining order.

The J20 arrests play out in the context of a longstanding conflict over protest policing in the nation's capital, where direct action of some kind is a near daily occurrence. At the tail end of the 20th century – amid increasingly militant demonstrations against the IMF, World Bank, and other global capitalist institutions – police departments in the US and Europe adopted a militarized approach to policing mass mobilization, regularly deploying riot control units, less-lethal weapons, mass arrests, pre-emptive intelligence gathering, and barricades. In the first few years of the century, however, the MPD overplayed its hand. In two separate instances (one in 2000 and another in 2002), DC police illegally mass-arrested hundreds of protesters. In 2002, police encircled, trapped, and arrested 386 people in Pershing Park during a World Bank protest. Those arrested included dozens of tourists, nurses in town for a convention, and passersby on their way to work. Many detainees were bound wrist-to-ankle on a police gym floor for 24 hours. Both cases, led to high-profile class action lawsuits (*Becker v DC* and *Barham v. Ramsey*). The suits, both of which ended in multi-million dollar settlements, were an expensive embarrassment for the city. In response, the DC City Council passed the First Amendment Rights and Police Standards Act (FARPSA) in 2004, which effectively outlawed mass indiscriminate arrests.

For many years, FARPSA was an effective deterrent. Repression hadn't ceased, but kettles were rare. After the MPD settled *Becker v DC* (the suit stemming from the 2000 mass arrest)in July 2010, awarding $13.7 million to those falsely detained, Judge Paul Friedman of the DC Circuit said the ruling, in conjunction with the statutory remedies of FARSPA, had "effectively changed the landscape, both practically on the streets and legally… as pertains to police conduct during mass demonstrations

The individual acts; the law punishes. The individual has a will, a mind, the capacity for forethought, for self-knowledge. But what about the group? Does the group have a mind? A will? Can the group *intend*? The law isn't sure. When confronted with many acting in concert, the law experiences a crisis of confidence. The purpose of a retributivist system is to assign blame, to punish the blameworthy. But who is to blame for the actions of a group, especially one without a leader, without a plan?

Awareness of this conundrum has long been a useful defense against the state. This is the thinking behind the black bloc – but also the labor union, the tenants association, mass civil disobedience. Oppressive systems consolidate and maintain power by disrupting the bonds between friends, family, neighbors, and igniting the self-preservational instinct of the individual. As J20 defendant Carlo Piantini wrote in *Al Jazeera*in July, "[The prosecution's goal] is not to convict people to 75 years in prison. The severity of the threat is intended to extract as many guilty pleas as possible, while sending a clear message to potential protesters that the consequences of opposition will be grave." In coercing defendants to cooperate with law enforcement, the law breaks down resilient blocs into vulnerable, disconnected bodies. When the law fails to dissolve the group, it turns the group against itself. It calls the group by new names – "gang," "syndicate," "conspiracy," "riot" – which criminalize its very groupness. There's no need to isolate the individual, when belonging to the collective is itself a crime. Conspiracy is the law's perverse revenge against the group – against those who choose the rule of social ties over the rule of law.

In September, Judge Leibovitz denied the defense's motion to dismiss the conspiracy and riot charges. In so doing, she agreed with the *Matthews* court that the riot statute is not overbroad. So long as a defendant "willfully associates" with an "assemblage" causing or threatening tumult and violence, they can be charged with rioting. "Each charged defendant who can be shown to be an aider and abettor of those engaging in or inciting the riot," Leibovitz wrote, "is liable as if he were a principal." The judge ruled that sufficiently particularized probable cause existed to arrest the defendants for rioting in part because police observed them operating as a "cohesive unit."

The prosecution's case rests, then, on demonstrating that each defendant willfully aligned themselves with the group. It is precisely their cohesion – aesthetic, political, and tactical – that the prosecution deems criminal. At trial, the prosecution will present evidence that depicts the protesters as a unified, purposeful movement, intent on mayhem.

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In this light, the J20 case plays out as a struggle over the meaning of the group. The state intends to make solidarity itself the basis for punishing dissent, to criminalize

Applying the riot statute in a racially equitable manner would not, alone, resolve its Constitutional problems. In his dissent in *Matthews*, Judge J. Skellywright wrote, "It would blink reality not to realize that what begins as a political or social demonstration may end violently… Indeed, the demonstrations which followed the death of Dr. King began peacefully." Skellywright warned that "an expansive reading of the riot statute here would place in jeopardy the liberty of any demonstrator on the street who happened to witness the violence." By failing to "limit its sanction to those directly engaged in violence or intentionally encouraging it, the statute may easily deter people from attending an assemblage at which violence *might* occur." The only way to protect First Amendment activity, Skellywright reasoned, "is to insure that our laws focus precisely and exclusively on violent conduct and on its perpetrators and not beyond."

In March of this year, the UN Special Rapporteur on freedom of peaceful assembly and of association issued a report on US anti-protest legislation which made much the same point. "There can be no such thing in law as a violent protest," UN experts wrote. "There are violent *protesters*, who should be dealt with individually and appropriately by law enforcement. One person's decision to resort to violence does not strip other protesters of their right to freedom of peaceful assembly. This right is not a collective right; it is held by each of us individually."

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Conspiracy law works by fudging that clean distinction between individuals and collectives. The J20 indictment links the defendants as co-conspirators on evidence that they wore black clothing, concealed their faces, moved together as a group, and chanted anti-capitalist slogans like "Fuck it up," "Fuck Capitalism," and "Whose streets? Our streets." The indictment refers repeatedly to the "Black Bloc" (capitalized throughout the indictment). It treats the black bloc as a coherent political identity, marked by aesthetic conformity and unity of purpose. Simultaneously, it treats black bloc as synonymous with the riot. Thus, anyone who appears to be a participant in the black bloc – anyone masked-up, wearing black, or carrying a black flag – is a participant in the riot. In reality, the black bloc is a political tactic premised on the idea that individual participants (or constituent affinity groups or cliques) act autonomously, neither sanctioning nor disavowing the actions of any other participant. But for the prosecution, the appearance of coordination and cohesion may be enough. At a hearing in July, assistant US attorney Jennifer Kerkhoff, explained the reasoning behind the blanket charges: "A person can be convicted of rioting when they themselves have not personally broken a window or personally thrown a rock." Kerkhoff said, "It's the group that's the danger. The group that's criminal."

Collective action often confounds the criminal legal system. In liberal jurisprudence, the imagined subject of law is a rational, self-interested individual.

[in DC]." Judge Friedman referred to the settlement as "historic," one which would provide substantial relief not only for the plaintiffs but for "future generations of protests."

In this light, the J20 arrests mark a significant step back for protest policing in the District. The evidence suggests that the MPD ignored its obligations under FARPSA in dealing with the inauguration protests. FARPSA lays out, in detail, the rules the MPD is supposed to follow when unlawful conduct occurs in proximity to First Amendment gatherings. Instead of blanket arrests, "the MPD shall, to the extent reasonably possible, respond by dispersing, controlling, or arresting the persons engaging in [unlawful] conduct." According to the state's own charging documents, officers followed and observed the march for 28 minutes – witnessing acts of property destruction – before encircling the entire group. When the MPD determines that a "First Amendment assembly, or part thereof, should be dispersed," officers must issue "at least one clearly audible and understandable order to disperse using an amplification system, and shall provide the participants a reasonable and adequate time to disperse and a clear and safe route for dispersal." Yet there were no dispersal order issued before the mass arrests on January 20. When asked why not by the *Washington Post*, the Chairman of the DC police union Sgt. Matthew Mahl offered only the misleading response that once violence occurs, "we don't need to issue dispersal orders."

FARPSA also forbids "using a police line to encircle" demonstrators unless police have "probable cause" to believe that a "significant number or percentage" of those cordoned have committed unlawful acts "and the police have the ability to identify those individuals." As Verheyden-Hilliard pointed out to *Mask*, the kettle police formed on January 20 was sufficiently indiscriminate to include a significant number of legal observers, journalists, and medics (many of whom have since had their charges dropped), suggesting the particularized probable cause required for arresting the whole group was not in evidence.

The Pershing Park arrests haunt the J20 prosecution in another respect. The man who ordered the false arrest of almost 400 people in 2002 was none other than Peter Newsham, then MPD's assistant police chief. Verheyden-Hilliard, who litigated the *Barham* and *Becker* cases on behalf of the wrongfully arrested demonstrators, doesn't think that's a coincidence. "It's not lost on us that Peter Newsham's first mass demonstration in his role as interim chief has plainly rolled back civil rights in the District of Columbia when it comes to First Amendment activity," she told *Mask*.

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Conflicts over the boundaries of legitimate protest did not begin with the anti-globalization movement. Rather, the statute being used to prosecute the J20 defendants was passed in response to the Black Freedom Struggle in the 1960s. As always, the politics of law and order are intimately connected to the defense of white supremacy.

The first three counts against the J20 defendants are violations of DC's Riot Act. The statute defines a riot as "a public disturbance involving an assemblage of 5 or more persons which by tumultuous and violent conduct or the threat thereof creates grave danger of damage or injury to property or persons." It establishes penalties for (1) willfully engaging in and (2) inciting or urging others to engage in a riot. An additional maximum 10-year penalty is imposed if "in the course and as a result of a riot a person suffers serious bodily harm or there is property damage in excess of $5,000."

The Riot Act was passed by Congress in December 1967 as part of a wave of tougher criminal sanctions levied in response to anti-racist uprisings in Detroit and Newark earlier that year. A few months later, DC police had an opportunity to put their new statute to use. On April 4, 1968, Martin Luther King was murdered at the Lorraine Hotel in Memphis. DC's black community convulsed in rage and mourning. Civil Rights leader Stokely Carmichael led demonstrators along U Street, demanding that businesses close and workers strike. By eleven that evening, storefront windows were being smashed.

Like most other incidents remembered by white America as a "riot," the 1968 rebellion was profoundly political, expressing the discontent of DC's black underclass with a racist, white police force, segregated and unequal housing and schools, and permanent economic subordination in their majority black city. Looting and arson continued for four days. Black-owned businesses painted "Soul Brother" on their storefronts to direct looters elsewhere. The Deputy Secretary of Defense at the time, Cyrus Vance – father of the very probably corrupt current Manhattan DA – coordinated the federal response. Over 13,000 federal troops descended on the District. Marines mounted .50 caliber machine guns on the Capitol steps. Tear gas filled the air. There were 6,100 arrests.

One of those arrested was Charles Matthews. On the second night of the rebellion, Matthews was walking alone on I Street in Southeast DC. Fire engine and police sirens blared. A building near the intersection of I and 8th was ablaze. Matthews testified that he was looking for his wife in the area when he came across a paper bag containing a few bottles of liquor outside Eddie's Liquor Store. He picked them up and continued walking. Police say they arrested Matthews emerging from Eddie's – but only two of four officers on the scene could confirm that fact. A jury found Matthews guilty of petty larceny and engaging in a riot. On appeal, Matthews challenged the riot charge on First and Fifth Amendment grounds. The statute, his lawyers argued, was unconstitutionally vague, posing a potentially chilling effect on his First Amendment freedom to assemble.

The majority rejected Matthews's appeal and upheld the constitutionality of the riot statute. Matthews's First Amendment rights were never endangered, the majority reasoned, because the sort of disturbances Congress had sought to outlaw by passing the Riot Act involved no valid First Amendment activity. The statute, Judge McGowan wrote for the majority, was "directed to disorders unrelated to political demonstrations." Rather, the statute was concerned with "*mindless, insensate violence* and destruction unredeemed by any social value and serving no legitimate need for political expression" [emphasis added]. It wasn't protests they were after; it was riots, which have nothing to do with politics. By passing the Riot Act, Congress had hoped to "enable the law enforcement authorities to handle future riotous situations in the District of Columbia similar to those which had afflicted cities such as Newark and Detroit the summer before."

The majority's meaning here cannot be missed: militant black resistance of the sort that overtook city after city in the late '60s had no legible political meaning. In the eyes of the judges on the DC Circuit, a riot was not the language of the unheard, as Dr. King put it; a riot was a riot – insensate and mindless. The original intent of the law under which 200 people today face six decades in prison was to criminalize black protest.

In a telling footnote, the majority rejects the defense's argument that the overbroad statute might also apply to attendees of the October 21, 1967 anti-Vietnam War march in DC, during which a segment of marchers forced their way inside the Pentagon and assaulted police with vegetables, rocks, and bottles. Marching against the war was political, McGowan implied, in a way that assembling to mourn the death of Dr. King was not. The difference between a riot and a legitimate protest involving violence, the majority ruled, was obvious, "even to the least sophisticated" observer. "There are few citizens indeed who do not know a public riot when they see one," McGowan wrote. In the eyes of the *Matthews* court, it would seem, the identifying feature of a riot is that its participants are black.

It's a bit difficult to know what to do with this information. *Matthews* was wrongly decided by a racist court. But *Matthews* is also binding precedent in the J20 case. A motion to dismiss the inauguration charges filed by defense lawyers in May argued – citing *Matthews* – that the Riot Act does not apply to "disorders" arising from political protests. Thus, attendees of the J20 protests cannot be charged under the Riot Act. But of course, that's only true if we accept the obtuse racial double standard in *Matthews*. Judge Leibovitz herself pointed this out during a hearing on the motion to dismiss in July. She asked the defense counsel, "So, you're saying that in the aftermath of the assassination of Martin Luther King, the people who came out into the streets and engaged in conduct did not feel political feelings? Were not expressing personal frustration, anger and distress at the path that our country was taking?"