American political time is often rhetorically divided into before and after the attacks of September 11, 2001. In this model, “before” signals liberty and respect for individual rights while “after” brought increasing restrictions and surveillance as a result of terrorism. But this distinction both romanticizes the past and obscures some of the institutional architecture underlying the War on Terror. In fact, there’s a direct line between the pervasive infiltration of Muslim communities seen since 2001 and the militarized street-surveillance and home invasion experienced by African American communities, which has steadily escalated from the early 1980s until the present.

The national emergence of the Black Lives Matter movement speaks to the level of rage (and community organizing) that exists beneath the surface of marginalized communities, but also to the impact of systematic law enforcement-driven repression. The steady expansion of both the power and use of law enforcement in multiple areas of life reflects (and institutionalizes) right-wing worldviews regardless of the political party or identity claims of the speaker.

Informants and undercover agents have been central to a significant proportion of federal prosecutions of “home-grown” Islamic terrorism cases. Those informants typically do much of the actual work to transform loose talk into concrete action. The procedural elements of these prosecutions, however, originated long before today’s War on Terror; the methods employed by the FBI against Muslims have been developed and refined for decades in the War on Drugs, as can be seen in brief descriptions below of a current homegrown terrorism case and a 1990s drug trafficking case.

On April 10, 2015, a 20-year-old Kansas man named John Booker was charged with three counts of attempted terrorism: attempt to use a weapon of mass destruction at Fort Riley, in northern Kansas; attempt to damage and destroy U.S. government property (again at Fort Riley); and attempt to provide material support to a foreign terrorist organization (specifically the Islamic State, or ISIS/ISIL). The FBI complaint details the involvement of two confidential informants who had actively participated in every stage of planning the “plot” underlying the charges: they provided Booker with a list of the materials needed to make a bomb, they volunteered to build the bomb for him, delivered the supposed bomb to him in a van, and provided him with a map of the Fort Riley area.

A year earlier, in March 2014, Booker had come to the attention of the FBI after posting messages on Facebook indicating that he was planning to engage in violent jihad. Booker was interviewed by FBI agents and described his plans in considerable detail, but was allowed to go free with no other action taken, suggesting that the FBI agents involved did not consider him a credible threat. It seems clear that John Booker ideologically supported ISIS/ISIL and had some aspiration to engage in violence, but these encounters with the FBI suggest that, on his own, he had little capacity to turn his provocative statements into action. The key event leading to the terrorism charges occurred in October 2014, approximately seven months after his first meeting with the FBI, when he met the first of the two informants who set in motion the events that led to his
arrest in April 2015. (The information currently available on this case comes from the FBI, and does not describe the motivations of the informants or whether they received compensation of some kind for their participation.)

Compare Booker’s arrest and prosecution with that of a man identified only as Miguel in an article written by a former Drug Enforcement Agency (DEA) agent. In 1996, Miguel, an immigrant from Bolivia who worked as a parking lot attendant in Washington, D.C., was charged as a drug kingpin based solely on the testimony of a paid informant with an extensive criminal record.4 The informant had fled to the United States to avoid prosecution for a variety of criminal charges in Argentina and Bolivia, and over the preceding four years had been paid by the DEA for information in several other cases. Miguel had spent three of those years working 60 hours a week for a large parking lot company.

The informant was a distant family friend of Miguel and, based on his past experience, saw an opportunity to make money by fabricating a story to sell to the DEA. He proceeded to invent a fake “cocaine deal,” wherein Miguel was the “kingpin,” even though Miguel had no prior involvement in drugs or drug dealing. While the informant developed his story with the DEA, he simultaneously lured Miguel into playing along with a supposed one-time deal that would net them both considerable cash, if Miguel pretended to be a major Bolivian cocaine dealer. It ended with a staged transaction in which Miguel accepted a bag of cash in exchange for a promise to deliver cocaine a few weeks later; he was arrested as he left the room. The informant was paid $30,000 for arranging the encounter, and after several years in and out of court Miguel ended up taking a plea bargain than gave him a four-year sentence.5

Cases based on newspaper accounts and any other sources they could acquire, and provided (largely false) testimony for the prosecutor’s office in exchange for reduced jail time, privileges, and other incentives.6 Between 2004 and 2006, a similar network of informants was found to be operating in Texas prisons, investigating cases based on publically accessible material and providing testimony for the prosecutor’s office, resulting in some cases being thrown out.6 Informants in homegrown terrorism cases, similarly, often receive some form of compensation, including money or assistance with immigration or other legal issues.7

THE RIGHT AND THE WAR ON DRUGS

U.S. drug policy has deeply racist roots. The Harrison Act of 1914, the first law to significantly control access to opiates and cocaine, was passed in part by exacerbating prejudices against Chinese immigrants and impoverished southern African Americans.8 In the early 1930s, Harry Anslinger, head of the newly created Federal Bureau of Narcotics, claimed that use of marijuana caused half of the violent crime committed in Black, Mexican and other Latin American immigrant neighborhoods.9 The War on Drugs both continued and dramatically amplified this historical pattern. Nixon’s 1971 declaration that drugs were a threat to the nation occurred within the context of significant social conflict and change, during which conservative resistance to the Civil Rights movement included defining social unrest as criminal activity.10 Ronald Reagan, in turn, built upon two of Nixon’s more toxic legacies: the “Southern Strategy” of using mildly-coded racism to align southern Whites with the Republican party, and the War on Drugs, with its attendant images of Black urban crime and drug dealing. (It’s worth noting that Whites and Blacks use and sell drugs at very similar rates.11)

Much of what we now talk about as “privacy” used to be called liberty.
probable cause. Urine tests for evidence of recent drug use have become a commonplace experience for health care workers, transit workers, and numerous other public service occupations, and are a standard element of participation in high school team sports. However taken-for-granted this has become, prior to 1989 routine drug tests without individual suspicion only took place in the military. In 1986, the Reagan Administration recommended testing employees for drug use as part of the War on Drugs, and the 1988 Drug Free Workplace Act required that companies with federal contracts provide a workplace free of illicit substances. In response, there were multiple cases in which courts ruled against mass-testing of firefighters, school bus drivers, and public school students, on the grounds that testing without individual suspicion would violate due process, privacy and protections against unreasonable search and seizure. In 1989, however, the Supreme Court discovered a “legitimate [state] interest” in protecting the public from drug use that justified an exception to the due process and individual suspicion requirements in the Fourth Amendment. Widespread testing in aviation, trucking, railroads and mass transit quickly followed. By 1995, the court’s understanding of legitimate state interest had moved so far that it approved random mandatory testing of student athletes.

At the same time, Fourth Amendment protections were being eroded in other ways as well. The most egregious and destructive violations of privacy and person in the War on Drugs may be the development of the no-knock warrant. In 1970, an anti-crime bill authorized judges to issue search warrants that permitted agents to break down a door without first knocking and identifying themselves. The warrants were initially permitted for use only in a small number of federal anti-drug investigations, but they are now more common and associated with SWAT team raids, which increased from 3,000 in 1981 to 50,000 in 2005. An ACLU review of SWAT raids found that almost 80 percent were used to serve a search warrant (62 percent for a drug search) but only 35 percent of cases clearly resulted in finding contraband of any kind. No-knock warrants and SWAT raids have resulted in an uncountable number of unnecessary injuries and deaths that are in some ways intrinsic to the process of militarized forced entry into a home. In Massachusetts in 2011, a 68-year-old African American man was watching TV in his pajamas when a SWAT team broke down his door with a no-knock warrant to search for his daughter’s boyfriend, who did not live at the house. The man was shot while lying facedown on the floor, and it was later revealed that the suspect they were looking for had been arrested outside the home before the door was broken down. In Georgia in 2014, officers executed a no-knock warrant at 3 A.M. at a home with children’s toys in the yard. They threw a flashbang or “stun” grenade into the home as they entered, and the grenade landed in the crib of a 19-month-old toddler. Given the number of no-knock warrants issued annually, it is literally impossible to know the exact number that have resulted in injury or death to innocent parties, but the process puts the people inside the home at significant risk.

CASES AND TRIALS: PROSECUTORS AND COURTS
The expansion of law enforcement powers over the past 40 years has not been limited to invasions of privacy, but

The ideological valuing of order, discipline, and traditional social hierarchies are definitional characteristics of right-wing movements, from fascism to the KKK, and the Moral Majority to the Tea Party.
has moved into the operation of criminal law in the courts as well. Progressives have historically viewed the federal courts as upholders of basic rights and protections, largely based on the work of the Civil Rights division of the Department of Justice. But the criminal branch of the federal system has become fully complicit in law enforcement assaults on vulnerable communities in both the War on Drugs and the War on Terror.

Drug laws have had a significant effect on criminal charging, trials and convictions in the federal courts in ways that enabled the subsequent, and higher profile, prosecutorial abuses of the War on Terror. The road from arrest to prison, from police practices to mass incarceration, passes through the courts. Theoretically, judges hold significant power, both direct and indirect, to modify law enforcement practices through questions about the admissibility of evidence, the constitutionality of particular actions, and the ultimate sentence imposed on a guilty party. An obscure but crucial element of the War on Drugs has been to shift power from judges to prosecutors, with multiple consequences for criminal defendants. These changes have both grown out of and accelerated the politicization of crime and punishment.

**Mandatory Minimums**

In 1984, the Comprehensive Crime Control Act replaced the federal Parole Commission with the Sentencing Commission, a bureaucratic declaration that punishment now trumps rehabilitation in the federal prison system. From 1984-88, the Sentencing Commission and subsequent anti-drug bills eliminated parole in the federal prison system and instituted escalating mandatory minimum sentences for drug offenses, including dramatically higher sentences for crack cocaine over powder cocaine. The sentencing disparity between crack and powder cocaine was the most overtly racialized element of the anti-drug bills, since crack was known to be a form of cocaine largely used by Blacks while cocaine in powder form was more common among Whites. The elimination of parole for all federal convictions after 1987, when the rule was passed, has been less visible since state prison systems still have parole and the vast majority of incarcerated people are in state prisons. The recent attention to the early release of 6,000 people convicted of federal drug offenses might not have happened if they could have been quietly released on parole without the need for formal action.

In combination, the sentencing guidelines and elimination of parole shifted the balance of power in the federal courts. Mandatory minimum sentences mean that the parameters of prison time are primarily determined by the charge itself, and negotiations then focus on the charge as a way to manage the sentencing outcome. In practical terms, this gives prosecutors enormous power to determine the fate of an arrestee through the minimums associated with different charges, and facilitates a pervasive system of plea bargains in which a defendant’s fate is determined outside the courtroom and with little judicial oversight. This dynamic was exacerbated by cutbacks to public defenders and other indigent defense resources.

**Plea Bargains**

Approximately 90 percent of cases settle through the plea bargain process, and defendants who insist on going to trial usually receive harsher sentences, although this may reflect the power of sentencing guidelines. Plea bargains involve manipulation of the charges and sentencing recommendations made by the prosecutor, without meaningful judicial review or meaningful documentation of the negotiation process. The sentencing guidelines for drug offences exacerbate this situation dramatically, with punitive threats of charges that carry high mandatory minimums used to coerce bargains. A particularly toxic element of the process comes from a clause in the drug-related sentencing guidelines that recommends reduced sentences for defendants who “cooperate” with police and prosecutors. This clause has generated a quasi-underground economy of “snitching” in which information buys sentence reductions, generally at the expense of those too powerless to exact revenge.

**Use of Informants**

Informants have become a pervasive aspect of drug cases at both federal and local levels, but with little or no oversight by the Department of Justice. The system of mandatory minimums paired with leniency in exchange for information offers significant incentives for defendants to provide information to police and prosecutors and creates a legal context that invites corruption from all players. Over time, this constant supply of informants has generated some dependence among prosecutors, exemplified by Miguel’s story, as informant testimony provides a less expensive and time consuming alternative to building cases based on material evidence. The resulting system invites slanted or outright false testimony from informants while providing significant incentives for prosecutors to overlook indications of problems with informant sources and lack of supporting evidence. It also uses the weak to punish the weak: turning in an impoverished neighbor safely reduces prison time, while providing informa-
tion about higher-level drug dealers could cause more problems than it solves.

This system of threats, harsh prison sentences, informants, and plea bargains should sound very familiar to anyone paying close attention to terrorism cases. Federal prosecutions of “homegrown Islamist” terrorism build on elements of the War on Drugs: defendants face extreme prison sentences, power lies primarily with prosecutors and investigators, and cases are built through dependence on informants and plea bargains coupled with extended pre-trial detention.

PROSECUTING “TERRORISTS”
U.S.-based Islamist terrorism cases, commonly called “homegrown,” have the same core procedural elements as drug prosecutions although they are anchored in a different set of criminal laws. People charged with committing certain offenses (e.g. weapons possession) for political reasons face “terrorism enhancements” rather than mandatory minimums, but with similar consequences. Terrorism enhancements add a multiplier to the standard sentencing recommendations for a charge, again shifting significant power to the prosecutor in the choice of what charges to file. The resulting threat of extreme sentences creates pressure for negotiated guilty pleas and sentencing bargains. Informants again play a central role in the building of cases, and typically receive significant legal or financial incentives for their cooperation with authorities. Threats of deportation or prosecution as well as plea bargains on existing charges have proven as effective in generating informants in terrorism cases as they have in drug cases. The process again creates cases that get resolved largely behind the scenes, with vulnerable defendants pressured into guilty pleas in exchange for reduced sentences. The resulting spectacle reinforces the perception of Muslim communities as centers of terrorist activity, although a closer look at prosecutorial activity raises questions about the definition of certain legal terms.

THEORIES OF PREVENTION
Legally, the defense of entrapment requires prosecutors to demonstrate that the defendant would have committed a crime of this type regardless of the informant or undercover agent. Homegrown terrorism cases have been built around a theory of radicalization to support prosecution arguments that Muslim defendants would have engaged in terrorism without the instigation of the informant or law enforcement officials, a claim to “pre-emptive” prosecution as a form of national defense. While focused on religion and national security, the core logic of the argument builds upon and extends the presumptions of danger and guilt embedded in the criminalization of low-income Black and Latino communities through frisking young Black men walking down the street or calling the police to handle misbehaving students in inner city public schools. In all these cases, the justification rests on a presumption that membership in certain racial/ethnic groups constitutes a predisposition to commit particular kinds of acts, and that militarized police practices are necessary to protect society.

POLITICS BY OTHER MEANS
Among progressives, the War on Drugs and mass incarceration are increasingly understood in relation to the larger history of legal repression of Black people in the U.S. The focus on post-1970s racially disproportionate incarceration and its consequences, however, overlooks both the deeply racialized history of U.S. drug law and the multiple contexts for the expansion of law enforcement over the past 40 years. U.S. drug law has been a tool of racial control throughout its 100-year history, but the War on Drugs shifted the legal environment in qualitative, and not just quantitative, ways. As described throughout this article, the past four decades have seen changes in constitutionally-derived legal protections regarding searches and the right to privacy of home and person which affect all of us to some degree, but have specifi-
The War on Drugs and the War on Terror invite us to think about ways law enforcement engages in political repression outside contexts of heightened mobilization.

The War on Drugs and the War on Terror engage in political repression outside contexts of heightened mobilization. In the 1960s, COINTELPRO (a portmanteau for the FBI’s Counter Intelligence Program) targeted activists, organizations, and Black communities during a period of widespread collective action. In contrast, the War on Drugs and War on Terror focus on communities primarily defined by vulnerability, not active resistance. The systematic targeting of Muslim communities has generated more fear than mobilization, and the targets of FBI anti-terrorism activities are often poor and socially or emotionally troubled. While African American communities have historically experienced recurrent waves of political mobilization and unrest, that had not been their primary condition for many years until the emergence of the Black Lives Matter movement.

While the legal changes described in this article can be traced directly to the War on Drugs, the past 30-40 years have seen an overall pattern of criminalization of the poor justified by the need for order and discipline. The increased use of paramilitary police units like SWAT teams to execute search warrants and other routine procedures has expanded in small towns and rural areas as well as major cities. In a process sometimes described as the school-to-prison pipeline, police officers have become part of the normal disciplinary apparatus in public schools, and now arrest students, primarily low-income students of color, for behavior that used to be handled within the school. Homelessness has effectively become a crime in many cities, with local laws prohibiting sleeping, lying down, or even sitting for long periods of time in public spaces. Criminalization has extended into sexuality and public health, as laws to protect living children are used to prosecute pregnant women for child abuse for, say, delivering children born with drugs in their system or refusing a doctor’s orders, and young gay men and trans women of color are charged as sex workers for carrying more than three condoms. Simultaneously, the consequences of having a criminal record have expanded in ways that further marginalize the poor, such as limiting access to public housing and a range of social welfare programs, including some forms of student financial aid. One lesson of the War on Drugs may well be that the distinction between crime control and political repression has eroded, with criminalization used as a method to contain populations that might otherwise be politically problematic. The War on Drugs and the school-to-prison pipeline have resulted in high levels of incarceration and other forms of legal supervision (such as probation) among young African Americans, which in turn creates other forms of vulnerability such as lack of education, employment, and housing. The stigma of being labeled a criminal compounds the technical disenfranchisement of loss of voting rights, access to social welfare programs, and a wide range of employment opportunities. In addition, mainstream Civil Rights organizations have historically been slow to engage with criminal law, and the growing critique of drug law and mass incarceration are a relatively recent phenomenon.

From a political perspective, one advantage of the tactic lies in the stigma and fear associated with criminalization. People accused of stigmatized crimes are difficult to defend, even for Civil Rights advocates, and civil liberties protections can be rolled back under the mantle of crime control and community safety. As a result, a highly developed and refined contemporary system of legal coercion, repression, surveillance, and associated institutional infrastructure remained largely outside of the progressive political vision, even as it was adapted for targeting Muslim communities.

Beyond the officially declared wars on drugs and terror, the expanding circles of criminalization described above have steadily encroached on social justice discourse in multiple arenas, eroding social movement gains through legal assaults on the young, poor, and otherwise vulnerable. The unwillingness of many progressives to challenge the criminal justice system and defend those caught in its net enabled mass incarceration to grow largely unchecked for over 30 years, as low-income Black communities experienced growing devastation. In order to truly roll back the power of right-wing movements in the U.S., progressives will have to challenge the politics of fear and criminalization, and stand in alliance with those pushed outside of society through the legal system. Black Lives Matter activists model this every day by refusing attempts to implicitly justify police violence through criminalizing Michael Brown, Eric Garner, Freddie Gray, and others. Will other movements follow that path?

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3. All information on the Booker case comes from the formal complaint filed on April 10, 2015: USA v John T. Booker, J.r.a.k. “Mohammed Abdullah Hassan”, Case Number: 15-mj-5039-KGS, D.C. KS (Topeka Docket).


