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# **Unconscious Bias in the Suppressive Policing of Black and Latino Men and Boys: Neuroscience, Borderlands Theory, and the Policymaking Quest for Just Policing**

by

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**Abstract:** In this article the author uses neuroscience and borderlands theory to analyze suppressive policing practices in America. Analysis reveals how unconscious bias among law enforcement personnel is currently stabilizing the suppressive policing of Black and Latino males despite recent efforts at reform. Cases involving youth in Oakland and Santa Barbara, California illustrate how specific unconscious biases—especially “validity illusions” and “framing effects” aided by self-protective identity investments—operate outside of the awareness and despite the best intentions of law enforcement personnel. In turn, unconscious biases create contradictions between the beliefs and actions of law enforcement employees that work to the detriment of Latino and Black boys. This analysis also extends to how unconscious biases and self-contradictions can influence local policymaking in favor of suppressive policing tactics such as civil gang injunctions. Unconsciously biased policymaking displaces proven evidence-based policies. The article concludes with a brief discussion of some of the ways in which unconscious biases can be disrupted in favor of more just and evidence-based approaches to criminal justice.

For over thirty years the dominant paradigm in the American criminal justice system has been one of suppressive policing.<sup>1</sup> This paradigm is based on the standard interpretation of the “broken windows” theory that crime prevention requires consistently punishing even minor infractions (Kelling and Wilson 1982). Under suppressive policing, the incarceration of Black and Latino men and boys has grown exponentially resulting in staggering financial costs and incalculable social ones (Alexander 2010). The financial and moral unsustainability of this path has now become an important political issue, especially as U.S. crime rates have fallen. The Federal government and some states are now seeking to roll back elements of suppressive policing. In August 2013, for example, U.S. Attorney General Eric Holder called for a wholesale review of the U.S. criminal justice system including alternatives to incarceration for first-time, nonviolent offenders (DOJ 2013). In testimony to the Senate Judiciary Committee, Senator Rand Paul recently likened mandatory minimum sentencing to Jim Crow in its effects on Black men (Paul 2013). Bill de Blasio, the new mayor of New York City, has endorsed reform of New York’s stop-and-frisk policy (Weiser and Goldstein 2014) and several states are closing prisons (Ashbrook 2014).

These recent actions by high-ranking governing officials signal that the American criminal justice system is – ostensibly at least – coming under governmental scrutiny for the failures of suppressive policing. To many observers, however, this official review is long overdue and cannot move fast enough. For decades, defense attorneys, civil rights organizations, scholars, and members of communities of color across the nation have challenged hyper-punitive practices in the criminal justice system. Scholarly literatures across various disciplines highlight the destructive effects of suppressive policing (Rios 2011; Lopez 2002; Vigil 2002). Lawyers and civil rights groups have named numerous injustices of suppressive policing tactics, including disparate racial impacts, diminished civil rights, racial profiling, and unjustified surveillance and criminalization

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<sup>1</sup>Thanks to Rosie Bermudez and Amy Foss for research assistance and helpful conversation on this research.

(Bass 2001; Huizinga and Thornberry et al. 2007; Tapia 2011; Caldwell 2010; Woods 2012).

Moreover, policy scholars have stressed that there exist more effective evidence-based policy alternatives that can build safer, more peaceful communities through the sustained use of community-based interventions (Sherman, et al. 2002; Welsh and Farrington 2012).

Until recently, however, the evidence and reasoning offered in these contributions has gone often unheard or rejected among law enforcement policymakers and personnel.<sup>2</sup> Now as high-level reconsiderations are unfolding, there is early evidence that longstanding blindness to what is ineffective and damaging in suppressive policing may prove highly resistant to change. For example, recent federal rulings banning life sentences for juveniles are already being circumvented by some states and localities where life sentence *equivalents* are now being issued to boys of color (Eckholme 2014). Moreover, despite shifting political winds, local efforts to sustain or increase the suppressive policing practices that heavily affect Black and Latino males continue unabated in many locations, especially with regard to alleged gang activity. In California, this includes the active pursuit of new civil gang injunctions (Donnelly 2013), and the relentless application of sentencing enhancements including STEP, RICO and other statutes that increase the likelihood and length of incarceration for relatively minor offences, especially among men and boys of color.

With regard to youth of color, visible resistance to reducing the hyper-punitive suppressive policing of youth of color is particularly paradoxical. Voluminous research evidence indicates that the sources of youth delinquency are societal – located in broken social bonds and material deprivation (Hirschi 1967; Kornhauser 1978). This fact makes the suppressive policing of youth ineffective in reducing violence, and at times *iatrogenic* – meaning it worsens the problems that it seeks to cure (Vigil 2002; Hagedorn 2008; Rios 2011). In juvenile justice – as in adult crime

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<sup>2</sup> There have been some exceptions branches of the federal government have acknowledged that the underlying causes of youth gangs lies in multiple marginalization (Esbensen 2000) and that suppressive policing alone will fail to reduce gang activity (Franco, 2008; 46).

prevention – there is extensive, evidence-based, policy research showing proven, comprehensive, family, community, and place-based interventions through which it is possible to construct genuinely safer, and more just and thriving communities (Sherman, et al. 2002; Boyle 2010; Kennedy 2011; Greenwood 2014). Disregard for the scholarly evidence regarding how to best foster more peaceful and flourishing communities is especially perverse. It makes little logical, fiscal, or moral sense to harshly punish Latino and Black boys at enormous cost, when the knowledge exists of alternatives that can effectively build just and healthy communities for all.

The rigid and irrational clinging to the suppressive policing of Black and Latino men and boys raises a two-part question: *What hidden factors, if any, may account for the resilient momentum of suppressive policing in America as it applies to Black and Latino men and boys? If hidden drivers do exist, what can disrupt these hidden catalysts of suppressive policing?* These are not merely academic questions, but rather significant questions for transforming public policy. For if hidden factors foster suppressive policing, then these unseen drivers could undermine now emerging efforts to review and revise the paradigm of suppressive policing in America and to remedy its harmful effects on Latino and Black men and boys.

One promising approach to this two-part question is to identify the potential role of unconscious bias in the resilient momentum of suppressive policing in America. In this effort it is helpful to adopt an interdisciplinary approach that combines neuroscience and experimental psychology with scholarly insights drawn from lived experience. The work of Chicana and Latina feminist theorists is an especially helpful addition in its focus on how conflict and hierarchy in social settings shape human identities and complex daily interactions under conditions of diversity and conflict. Bringing these two domains of research together provides a new compound vantage point from which to see how unconscious bias is playing out in everyday settings beyond the experimental context.

For several decades, new brain imaging technologies such as MRIs, and new techniques in experimental psychology have increasingly shown that there are a wide range of unconscious biases produced by the *structure* of the brain in its two distinct cognitive systems. In complex ways summarized below, these two systems allow *unfelt contradictions* to emerge between our beliefs and our actions. Such brain science emphasizes the unfelt quality of the contradictions between our walk and our talk. In contrast, for nearly thirty years Chicana and Latina feminists have described life across diverse borders in borderlands theory – work that establishes and theorizes the existence of *felt contradictions* (Barvosa 2008, 55-63; 81-83). These contradictions often arise from living in and identifying with different communities that are divided – but also interrelated – by conflicts, hierarchies, and partial segregation that take place in a complex field of power relations (Anzaldúa 1987, 2000, 2006; Alarcón 1984; Lugones 1990; Hurtado 2003; Alcoff 2005; Yarbo-Bejarano 2006; Beltrán 2010).<sup>3</sup> I have held that further theorizing of the *felt* contradictions of lived experience—beyond the strategically narrowed experimental context—can extend our knowledge of unintended contradictions between our beliefs and actions (2008, 119-139). Such analysis can highlight how identity contradiction can also generate blindspots and self-deceptions, which are triggered especially by fears that cherished identity claims will be rejected by others in the power relations of everyday life (Anzaldúa 1987; Lugones 1990; Barvosa 2008, 138-139; 208-221).

As a scholar working in this borderlands theory tradition, my previous research focused on both felt and unfelt identity contradictions and the multiplicity of identities within all of us. I have

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<sup>3</sup> Borderlands theory rooted in Chicana and Latina feminist thought and is grounded in social experiences of multiple marginalization that give rise to felt contradictions in those who cross the borders of divided social groups. As such, the diverse work of Chicana and Latina scholars provides important resources for theorizing how felt contradictions are produced in contexts of social and political conflict (see Barvosa, *Wealth of Selves* 2008). Yet such observations of felt contradictions do not begin with Chicanas/Latina writings or with Anzaldúa's concept of *mestiza consciousness*. One of the most famous accounts of felt contradiction comes from W.E.B. Du Bois in his 1903 description of double consciousness in *The Souls of Black Folk* where as a Black man he writes: "one ever feels his twoness—an American, a Negro; two souls, two thoughts; two unreconciled strivings...in one dark body, whose dogged strength alone keeps it from being torn asunder" 45.

theorized that identity-related contradictions can have beneficial effects for choice, critical/creative thought, and also drawbacks in the form of self-fragmentation and unconscious biases under conditions of social conflict (Barvosa 2008, 120-139; 166-229). This theorizing helps to address basic questions about socially constructed human consciousness and agency (83-108), as well as continuity and change in the socially constructed self (109-139).<sup>4</sup> This theory also provides insight into key applied research questions such as how racial disparities persist in part through self-contradictions and unconscious biases in purportedly “postracial” America (207-221).

In short, by drawing upon both borderlands theory and neuroscience, I have previously suggested that identity investments and self-protection against identity-related threats in everyday life can also produce unconscious biases in ways that are tied to—but not equivalent with—the structures of the brain (118-138). This is an important added nuance for policy change, for although *structural* unconscious biases cannot be witnessed or addressed except by seeing and responding to their erroneous effects, *identity scheme* and *power-relations* based unconscious biases are rooted in more malleable factors that can be changed (175-206). In this essay, I extend this previous theorizing to the specific case of the suppressive policing of Black and Latino men and boys. In the empirical examples analyzed here, I focus on the immediate question of whether or not – *and how* – unconscious bias may be a hidden driver of the persistent suppressive policing of Latino and Black *boys* in particular. If cognitive science can see unconscious bias in the laboratory, can theoretical social science see it in concrete moments of the social and political life of suppressive policing?

As a theoretician, I address this question in four parts. In part one, I describe the known mechanisms of unconscious bias as we understand them from both neuroscience and experimental

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<sup>4</sup> Since the mid-twentieth century, new questions about critical thought, autonomy, and selfhood have emerged in Western thought with “the linguistic turn” a Copernican magnitude shift in knowledge that introduced the idea that selfhood and all social life are not found as essences, but constructed through social processes.

psychology, and also my earlier theoretical work on the internal multiplicity of the self. In part two, I use this theoretical framework of unreflective thought and action to interpret ethnographic data published by Victor Rios on the suppressive policing of Latino and Black youth in Oakland, California (2011). In my theoretical analysis of his data, I find phenomena consistent with the unconscious biases known as *validity illusions* and *framing effects*. Applying theoretical tools focused on multiple identities and identity investments, I also find the potential influence of socially constructed identity formations and investments that can intensify these unconscious biases when professional identity claims would be jeopardized by non-suppressive action. In part three, I apply the same theoretical tools to a case of strong momentum to increase the suppressive policing tactics used toward Latinos, in Santa Barbara, California. Here again, I find the biases of validity illusions, framing effects, and the conditions for identity investments that further motivate unconscious bias related to cherished identities. Finally, I conclude with brief reflections on how unconscious bias may be addressed in future policymaking on suppressive policing.

### ***Architecture and Content: The Structures & Processes of Unconscious Bias***

Scholarly research in neurological and psychological science has grown enormously in the last 30 years. This is due in large part to new brain imaging technologies, as well as new theoretical and experimental advances. While past efforts to study the brain have notoriously veered into racial essentialism and its harms—many of the most striking discoveries of current cognitive science do not foster racism, but rather illustrate that cognitive bias is a hidden source of persistent racial inequity (Banaji and Greenwald 2013). As such, current neuroscience is offering knowledge that may help give rise to new remedies for ongoing racial hierarchies and other systemic inequities. Particularly relevant is Nobel Prize-winning research that confirms scientifically what people of color have long known experientially: namely, that human beings are



capable of exhibiting deep bias in their interactions with others *without their own awareness* and *despite their best intentions* to be fair and just.

Under unconscious bias, people are observed to engage in actions that directly contradict their deeply held beliefs, yet this occurs without their awareness. This phenomenon is known by various names, including implicit bias, unconscious bias, bounded ethics, bounded awareness, mindbugs, blindspots, among others (Banaji and Greenwald 2013; Bazerman and Tenbrunsel 2011; Kahneman 2011). The presence and effects of unconscious bias are now incontrovertible. It can be detected experimentally in relation to a full range of social hierarchies, including anti-Black racism, gender bias, ageism and other inequities. The most common diagnostic tool for detecting the potential for unconscious bias related to unknown encoding in the mind is publicly available online and can be self-administered at anytime ([www.projectimplicit.com](http://www.projectimplicit.com)).

As understanding of unconscious bias has grown, the mechanisms of unconscious bias are generally described as a function of two systems of the brain – unconscious System 1 and a fairly lazy conscious System 2 (Kahneman 2011). But because I wish to highlight both the structural dimensions of bias on one hand, and the role of identities, power, and socially constructed content dimension on the other, I will describe what we know from neuroscience about unconscious bias somewhat differently as follows. Unconscious bias can be described as derived from two elements: 1) the *two-tiered architecture* of the mind emphasized by cognitive science, and 2) the *socially constructed content of ideas encoded* in the mind through language-mediated processes *and practiced in complex fields of power relations* as emphasized in borderlands theory and constructivist theory more generally (Foucault 1978, 1988). As such, the two-tiered architecture of the mind houses a vast, varied—and often-contradictory array—of stored content that is socially generated in and absorbed socially from the diverse contexts in which we live our lives. As these social formations proceed, the material that we absorb from the social world—*either consciously*

*or often unconsciously*—become encoded in the brain as neurological traces or pathways. Overtime, the neurological traces accumulated in us form a vast field of intersecting ideas, concepts, beliefs, and other constructs in the brain (and some argue the body as well)<sup>5</sup> that constitute our memory in the form of what cognitive science researchers commonly call the “associative field” (Kahneman 2011, 50-58).

In the associative field of our memory, the links and associations among encoded concepts are also socially generated. For instance, encoded ideas about food are likely to be linked in our larger associative field because our social experiences of food—and thus food-related meanings, values, and practices—are also linked in the ways that different cultures produce the food-related aspects of their particular social lifeworlds. These socially produced associations between our encoded ideas are extremely important in our thinking. This is because, as psychologist Daniel Kahneman writes, “in the current view of how associative memory works an idea that has been activated does not merely evoke one other idea. *It activates many ideas, which in turn activate others*” (2011, 52 emphasis added). As described below, activation is the state in which an encoded idea serves as the basis of thought, feeling, and action in the moment.

While the diverse, intersecting, and socially generated content of the mind is important to thought, so too is the cognitive architecture of embodied thought as we currently understand it. Specifically, the human mind—or more precisely our brains in complex interconnection with our body—has a two-tiered system of thought.<sup>6</sup> Tier two is the system of conscious thought. This is

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<sup>5</sup> Some neurologists contend that some experiences – especially traumatizing experience – is also deposited somatically producing embodied traces in gait, muscle tension patterns, and other elements that can be activated by cognitive triggers. See Robert Scaer, *The Body Bears the Burden* (2012). For brain science regarding the physical transformations produced through neural encoding see also Doidge, *The Brain That Changes Itself*, (2007).

<sup>6</sup> Although both the content and the architecture of the mind work together to create unconscious bias, I emphasize a distinction here for theoretical reasons regarding the potential disruption of unconscious bias. For reasons apparent below, unconscious biases of perception and reasoning that are a function of the *architecture* of the mind will likely persist regardless of the content of the associative field. In contrast, cognitive biases for which harm or error is significantly also shaped by the specific *encoded content* (e.g. stereotypes) including constructed associations and

the mechanism of active, intentional, intellectual labor. This conscious labor is challenging work that consumes both energy and time. The first tier, in contrast, is the tier of automaticity—it is the system in and through which we think, speak, and act *with little or no expenditure of energy, thought, conscious awareness, or effort*.

Both tiers of thought draw upon the contents of the associative field as a reservoir of neurally encoded information, including patterns of belief, ideas, concepts, bits of knowledge – both abstract and specific – that are all stored in the cognitive reservoir of the associative field. Some of these also form identity schemes or partial identity schemes. Cognitive science shows, however, that only a small subset of the many materials encoded in the associative field are used in cognition, feeling, and action at any one time. In other words, only *some* of the contents of the associative field are in operation at any given moment. Aspects of a social settings will trigger or cue select encodings stored in the brain that are thus “activated”—i.e. literally energized through electrical pulse—as the frame(s) of reference for interpretation, judgment and action in a given moment. As each moment shifts to the next, *different encoded frames of reference become triggered and activated by different contexts*.

Although we seldom recognize it, via the tier-one architecture of our brains, *everyone* has a built-in system of automatic thought. For simplicity and insight into bias, I will refer to this part of the brain as our cognitive “autopilot.” Like a mechanical autopilot, tier-one preserves energy and time – resources that tier-two in conscious thought consumes heavily. Human autopilot works primarily through unconscious pattern recognition – matching current contexts to existing encodings. Thus in autopilot, moment-to-moment contextual cues are matched unconsciously to encoded frames of reference already stored in the brain. The likelihood of activation for a

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identity schemes are, I would argue, more malleable and thus more subject to transformation. As such, keeping in mind a clear sense of what is physical structure and what is contingently but also durably encoded content will, I contend, ultimately help us to better study, theorize, and construct interventions for unconscious bias.

particular frame is higher for those encodings that are either *most recently* activated or *most often* activated. In addition, *strong identification* with a frame of reference also increases its comparative availability for activation (Barvosa 2008, 66). This matching of outer cue/inner encoding occurs instantaneously and largely *without our awareness*. Nevertheless, when a match is automatically made—for instance matching to a stereotype—the unconsciously matched frame of reference is activated *and serves as the frame(s) of reference for thought, feeling, and action in that instant* until new a contextual cue initiates a shift in activation.

In contrast, tier-two conscious thought is a process that is labor and time intensive. Conscious thought, for example, may involve trying many different frames of reference upon the same problem. Variations in results may be reflected upon at length before a frame of reference or choice is settled upon as valid. Alternatively, a hybrid frame of reference may be produced for addressing a particular problem (Anzaldúa 1987, 79-80). Yet this is not to say that conscious thought is “our own” under all conditions. The encoded material in tier-two thought enters the brain from social life. That is, our own embodied consciousness (i.e. human subjectivity) uses as the basis for our thoughts and actions *only* those ideas, concepts, and associations that are inherited from the social domains. As such, “our” thought processes are in many ways *not* our own unless our own cognitive labor has been applied to our social inheritance to fully scrutinize, vet, and/or modify inherited social scripts. As I have argued elsewhere, agency and choice that are plausibly *our own* depend greatly on both conscious (tier-two) thought and on critical engagement with diverse—and *especially contradictory*—points of view, as part of our own cognitive labors (2008, 83-108).

Unaware of our autopilot system, most of us believe that we are engaged in thinking consciously and rationally at all times. But this is *not* the case. Cognitive science research clearly indicates that many, if not most, of our daily life activities are undertaken with a high degree of

automaticity, even in potentially high stakes situations. Driving, for example, is a highly complex task that for any experienced driver is largely automatized. A driver may (with some risk), eat lunch, plan a meeting, or carry on an animated conversation with a passenger, while continuing to drive effectively with little drain on their cognitive resources. With luck the driver will arrive safely at their destination, perhaps with some surprise at the “quickness” of the trip – a misperception that reveals their minimal awareness of their actions.

If, however, traffic conditions became complex or treacherous, a good driver will cease conversing and pay their attention to the road. But even within active attention, it is often impossible to tell if and when the autopilot system has operated. For example, if this driver needs to take evasive action, conscious thought is too slow to respond effectively. If another driver swerves into an attentive driver’s lane in most cases he or she will *not* have time to *consciously* consider whether to brake, accelerate, or swerve. Sudden fear will shape thought and typically activate tier-one cognition to perform a quick response (LeDoux 225-229). The autopilot system is designed to protect us in an emergency. Under mortal threat it will execute a needed maneuver before consciousness can catch up. Yet tier-one autopilot can only use encoding that is already in the brain. That is why defensive driving training is a vital precaution—it encodes the brain and embodied consciousness with the scripts of life-saving maneuvers.

In this everyday example, making a shift from autopilot to conscious processes of assessment and judgment (i.e. shifting from tier-one to tier-two thought) is vital to safely navigating potentially dangerous social situations. The engagement in effortful conscious thought *will not fully bypass automaticity under conditions of perceived threat, nor override the limits of our mind’s encoding*. Nevertheless, as the examples in the next sections illustrate, just as using a mechanical autopilot is often unwise in risky but manageable contexts, the failure to move from autopilot to tier-two conscious thought under social conditions of complexity, risk, and possible

danger, can *also* result in biased errors of judgment that can cause harm in social, political, or professional life.

The suppressive policing paradigm that disparately impacts Black and Latino men and boys is full of potentially dangerous moments of human discretion in which safety would require tier-two conscious thought. Yet, it is statistically likely that many law enforcement personnel are not navigating those discretionary moments in the comparatively slow, energy and time consuming mode of tier-two conscious thought. Most likely they are operating in the fast “efficient” autopilot of tier-one. If so, this fact opens the door to a large array of unconscious cognitive biases that will occur outside the awareness of those law enforcement personnel. Moreover, as cognitive scientists suggest these “blindspots” mean that most retrospective consideration will not reveal our own unconscious biases, but will instead excite an *ex post facto* self-rationalization (Bazerman and Tenbrunsel 2011). In addition, even when justice system personnel are thinking consciously, perceived threats in the field of power relations in which they are operating may still trigger self-protective automaticity. As I argue below, this threat-response can push the well-intentioned back into autopilot and self-protective identity investments even as they remain unaware of their motivated unconscious bias.

Consider these moments of unconscious bias, and multiply them by hundreds of thousands of justice system personnel, countless millions of encounters with Latino and Black men and boys, over 30 years of suppressive policing public policy in America. Even if an unconscious biased thought is momentary, I share with some neuroscientists the view that short moments of unconscious bias can compound, resulting in potentially escalating effects that sustain racial hierarchies *despite the best intentions of most people* (Banaji and Greenwald 2013, 198-209; Barvosa 2008, 213-216).

In this case, I would argue based on the analysis developed in the remainder of this article, that the compound effects of millions of moments of unconscious biases have contributed heavily to producing the intensely punitive, self-preserving system of suppression that has done – and continues to do – extreme harm to many men of color in America. This harm is one that political leaders are now beginning to recognize and address. But for many who labor in the criminal justice system, there is as yet no awareness of the presence – much less harm – of extensive unconscious bias. As I illustrate in the analysis below, unconscious bias *and* professional identification with the current system likely animate the views of these individuals. As such, their current strong belief in the justice of today’s criminal justice system can be both blind and nearly impervious to reason and evidence regarding the harm that is being done, and the societal need to implement the known remedies. Nor – as the driving example illustrates – will introducing intentional tier-two conscious thought alone solve the problem. Automaticity can always intrude unawares, especially under conditions of perceived personal threat or risk. Lasting solutions will thus also require that key encoding deficits are filled, that perceived threats are allayed, and protective identity investments supported as part of policy change.

***A Boy’s Life: Automaticity in the Suppressive Policing of Black and Latino Boys***

In his award winning book, *Punished: Policing the Lives of Black and Latino Boys* (2011), sociologist Victor Rios offers an urban ethnography of the experiences of boys of color who are subject to suppressive policing and criminalization in Oakland, California. Formerly a youth gang member and so called juvenile delinquent himself, Rios came to a life of scholarship in part through the personal intervention of a police officer who noted that Victor Rios was smart, and encouraged him to get off the street and into the classroom. Rios responded. His life and research are proof that alternatives to suppressive policing can produce great results (Rios 2011a).

Today Dr. Rios' research extends a long tradition of sociological studies of marginalized youth of color and how multiple and intersecting forms of marginalization produce their vulnerability to street life, criminalization, and incarceration. Rios, however, breaks new ground by revealing how the pervasive paradigm of suppressive policing has become so all encompassing in the lives of many boys of color that it tracks them – virtually inescapably – into the criminal justice system regardless of their pro-social activities, aspirations, and capabilities. As Rios puts it, his study explores how the state “system of punitive control held a grip in the minds and trajectories of the boys” in his study (2011, 21). As such, Rios' reveals, that the state has not abandoned poor boys of color in Oakland, “instead, the state has become deeply embedded in their everyday lives through the auspices of punitive social control” (21). In so doing, the state is producing the patterns of (often pseudo) criminality that the state ostensibly seeks to remedy. The results are thus iatrogenic: an intended cure that worsens an ailment.

In this analysis however, I will shift focus from the boys to the adults that surround them. I suggest that additional interpretation of Rios' ethnographic data can also provide insight by recognizing and theorizing how the same system of punitive social control that “held a grip in the minds and trajectories” of boys also holds a similar grip *on the mind of the adults*, who officially embody the action points of the state. As human points of contact, each adult may exercise the discretion to encourage and support or to blame, shame, label, or arrest. In these moments of human discretion, outcomes depend heavily on which of the two tiers of cognition an officer has engaged: tier-one of autopilot, or tier-two of conscious thought that is both time and energy consuming. In further analyzing Rios' the data with attention to the cognition of adults, I find evidence of two major forms of tier-one unconscious bias: *validity illusions* and *framing effects*. I also find that professional identity formations that incorporate long-standing social constructions equating Latino boys with gangs play a key role in activating these unconscious biases.



*Spider's Tale: a Trail and Trial of Validity Illusions.* Among the various boys in his study, Victor Rios relates the experiences of a teenage Latino boy that Rios identifies as Spider.<sup>7</sup> As Rios describes, at one point Spider was attacked and stabbed while sitting on his front porch with friends. The wound is nearly fatal and Spider is hospitalized for three weeks. When Spider awakes in hospital, gang specialist and investigating officer, Detective Molina, questions Spider. In Spider's words: "...they tried to see if it was Sureños that stabbed me and tried to label me as a Norteño [rival gang to Sureños]. No! But I'm not Norteño, I don't gang bang, but when I was there, they tried to make me say that I was Norteño..." (77). In addition, as Rios notes, the gang-expert detective "...asked [Spider's] mother for his personal information and asked her how long he had been in the gang. His mother insisted that he was not in the gang." To this the officer replied, "That's the reason your son got stabbed. You're ignoring his gang involvement" (78). Conversely, Spider recalls that a grown man attacked him. Nevertheless, a juvenile is charged with the crime, and those charges are dropped only when Spider refuses to testify against the youth.

In his field research, Rios reports: "During my time in the field I verified that Spider was not in the gang. It was not difficult to find out who was actively gang involved. There were many indicators....[yet] I found no signs that indicated that Spider was involved in the gang" (78). Nevertheless, as Rios notes, the gang detective reached an alternative conclusion and added Spider to the gang database of "known" gang members.

I highlight the word "known" with quotation marks above because the state's official designation of Spider as a gang member is made in opposition to the evidence immediately presented or otherwise easily available to the "investigating" detective. Both Spider and his mother deny Spider's involvement. Dr. Rios confirms their claim using at least four common indicators: a)

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<sup>7</sup> For the sake of discussion here, I presume that both Spider and Detective Molina are Latinos. Which may say something about my own unconscious biases.

close social connections, b) self-identification patterns, c) patterns of interaction, and d) community workers as proximate observers. On evidentiary grounds, Spider is not found to be a gang member. Yet, the gang specialist—on the basis of no evidence—concludes that Spider *is* a gang member. The gang detective is so sure in his belief that he goes so far as to confront Spider’s mother stating that it is *she* who is ignoring the facts. Assuming that the detective believes in the legal standards of proof and evidence in criminal investigation a question emerges. What accounts for the contradiction between the Detective’s belief and his actions?

Experimental studies of the architecture of the human brain and tier-one autopilot reveal two consistently found unconscious biases that have explanatory power in this instance. The first is the unconscious bias called a “validity illusion.” In the automaticity of tier-one, belief is separable from fact. That is, belief does not depend on verified facts or evidence. Instead, on autopilot, narrative *coherence* is the key to belief—irrespective of validity. As Nobel Prize winner Daniel Kahneman puts it:

The subjective confidence we have in our opinions reflects the coherence of the story that [we] have constructed. The amount of evidence and its quality do not count for much, *because poor evidence can make a very good story*. For some of our most important beliefs we have no evidence at all, except that people we love and trust hold those beliefs (209, emphasis added).

In the case of Spider, the story constructed by officer Molina is basically: a kid got stabbed; therefore he must be a gang member. The apparent coherence of the story leads to belief. No evidence is required. Moreover, if emerging evidence threatens the coherence of the story, on autopilot the bias toward congruence tends toward dismissal of disruptive input producing a

blindspot. Hence, Spider's mother must be wrong, because the *expert* gang detective *believes* that he knows the truth.<sup>8</sup>

Furthermore, from the perspectives of borderlands theory and the work of various Latina feminists, it is worthwhile to also analyze this validity illusion through a focus on actual lived experience beyond what we know from experimental research. In this case, Spider was labeled by a ranking police Detective and a gang expert. The labeling of Spider thus occurred through the valued identity scheme of “gang expert” – an identity constructed and negotiated in a complex field of intersecting power relations under conditions of conflict.<sup>9</sup> Focusing on this identity scheme and other identity formations in the complex cultural context of this case has at least four implications.

First, the socially constructed stereotype associating the concepts Mexican—boy—gang is an old and ubiquitous script. Scholars have found it circulating in California at least as early as 1942, when Carey McWilliams noted “Los Angeles had revised the old saying “boys will be boys” to read “boys, if Mexican, will be gangsters” (1968, 239). Because this stereotype circulates widely everyone is subject having this encoding in their brain. In turn it can become activated as a frame of reference for thought and action from the associative field, unconsciously and through no fault of our own.

Second, a gang expert is steeped in work contexts in which *some* Latino boys are related to gangs. Thus the story of a Latino boy as gang members—founded or unfounded in individual

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<sup>8</sup> It is beyond the scope of this article to fully consider administrative solutions to unconscious bias, but it is clear that current administrative checks may have difficulty checking momentary but pivotal influences of unconscious bias. Just as we cannot see our own eyeballs without a mirror, we cannot sense the operation of tier-one system of the brain; only its effects can be witnessed. Thus Detective Molina cannot be relied upon to self-report. Short of a detailed moment-to-moment audit by an observer or other detailed fact-check, if Spider's labeling was administratively reviewed, Detective Molina's authority as “gang expert,” would likely trump a mere mother's supposedly biased insight. The fact that there is no evidence for Detective Molina's confident belief about Spider will fade from view. Aware of the hazards of impression-based choice, fact-based law enforcement procedures are currently being implemented to correct errors in interrogations in the UK and elsewhere (Starr 2013).

<sup>9</sup> For helpful recent account of the intersectionality that stresses the importance of contextualize analysis of this kind, see Ange-Marie Hancock, *Solidarity Politics* (2011)

cases—circulates much more often in the work life of a gang expert than it does for others. The frequent circulation of this story increases the likelihood of simultaneous activation of the closely related stereotype associating Latinos boys with gangs. This is important because as empirical researchers indicate, in any context in which encodings “fire together” they also “wire together” creating a neural link between the elements. In this case, the *work* of a gang expert and the *stereotype* both fire, thus wiring a neural link between the work itself and the stereotype. The next time that work encoding is activated, so too is the stereotype because it is drawn up unconsciously as linked material whether the gang expert endorses the stereotype or not. This is pivotal because the newly linked work/stereotype script is continually activated for a busy gang expert. The more often and/or the more recently a script is used, the more likely it will be activated as the frame of interpretation in the next moment as well (Banaji and Greenwald 2013, 11-12).

The practical result of the neural link between gang expert *work* and the gang *stereotype* is the frequent or even chronic activation of the stereotype as a frame of reference as the *unique social circumstances* of gang experts literally shapes their minds. Most importantly, working in the world in part through the unconscious stereotype *produces* the realities that the stereotype suggests. Spider was not a gang member but his stereotypical labeling positioned him as one with all of its related risks and vulnerabilities. Moreover, the result of high or even chronic script activation among working adults is similar to what Victor Rios finds in his Oakland study. Namely, Rios sees law enforcement personnel and other supervisors as continually seeing youth through the stereotypical lens: young-brown-male-gang member (Rios 2011).

Third, any collective identity—including the professional identity of a “gang expert”—is embodied in the brain as an interrelated scheme of associated meanings, values, and practices encoded in that person’s associative field. In their daily work the professional identity scheme of a gang expert becomes centered on gang-related encodings, including the most ubiquitous

stereotypes. This encoding happens without awareness and without endorsement. But recall from Kahneman that association is key in cognition. If this stereotypic encoding becomes associated in the brain with other meanings, values, and practices of the professional identity of gang expert, *that stereotype will be swept up in any activation of that professional identity*—because the identity scheme is activated.<sup>10</sup> This identity formation makes the stereotype not just present and available in the brain, but integral to self-identity as a gang expert. Any valued identity scheme is subject to being defended against identity-related threats either consciously or unconsciously. Moreover, activation is key for as Kahneman puts it: “The associative machine...represents only activated ideas. *Information that is not retrieved (even unconsciously) may as well not exist* (2011, 85, emphasis added). Even if he “knows” not to stereotype from a workplace seminar, if the alternative do-not-stereotype scrip is not activated, it will have no effect, it may as well not exist.

Fourth, as I have theorized in previous work building on writings in Latina feminist thought, our identities are negotiated with other potentially conflicting identity schemes in a complex field of power relations (Barvosa 2008, 70-82;140-159). Assume for a moment that Detective Molina is Latino. Thus from what we can tell from Rios’ narrative, he likely has interrelated identities as a law officer, a detective, gang expert, a man, and a Latino. We have insufficient information to know how each of these identities is constructed for him. But we can say that he must negotiate these multiple identities in a hierarchically ordered workplace that is potentially still largely white dominated. Moreover, Molina’s ongoing claims to these professional identities depend on his observing the workplaces’ normative practices and paradigm—currently the suppressive policing of youth of color *who are also often his co-ethnics*.

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<sup>10</sup> Not all associations need to be positive in order to be linked in the associative field of the mind. Theoretically, other associations including additive, crosscutting and overlapping association may also exist. For a discussion relating these forms of intrapsychic intersectionality to the feminist concept of intersectionality, see Barvosa, *Wealth of Selves*, 78-82.

On this terrain, if Molina were to read Spider's case against the prevailing paradigm of suppressive policing this might create professional risk and cost. A tier-two attentive understanding from Molina as a detective-level *Latino* in particular, might draw informal questioning of his professional identities and commitments. Does Molina favor Spider as a Latino? Where do his allegiances lie, with the force or with gangsters? Whether he is strongly self-identified as Latino or not, others on the police force will read Molina as Latino, and project onto him whatever the concept "Latino" happens to mean to them depending on their own current encoding. How threatening such identity-related challenges might be to Molina depends on things we cannot know from the available information. But recall from the driving example, that under conditions of perceived threat, tier-one autopilot can take over calculating and executing a maneuver before conscious thought can catch up. Recall also that at high levels fear and threat are processed uniquely in the brain through the amygdala in ways that typically override conscious thought with heightened emotion (LeDoux 225-229). This fear reactivity is a brain-body function. But the power relations that trigger the fear and unconscious cognition are human constructs. As such they are transformable.

These four implications of Detective Molina's identity as a gang expert can add contextual and identity-related motivation to his validity illusion that Spider is a gang member. This can occur outside of his awareness through no fault of his own, and despite his best intentions. Or, as Latina feminists have often discussed, some identity-related contradictions that occur in contexts of conflict may be felt (Anzaldúa 1987; Lugones 1990). Either way, contextual factors, identity formations and investments, and power relations can play a significant role in unconscious bias.

In the case of Spider and Detective Molina, I contend that Detective Molina is most likely on autopilot encountering Spider through stereotypic scripts encoded in his brain *and* linked to his professional identity as gang expert. Even if he enters tier-two cognition, his thinking is limited to

the encoded material that he has in his mind. Does he have any encoding that would open him to the possibility that stab wounds happen to non-gang members? Hopefully. But just as in the driving example, attention is not enough to stave off the influence of automaticity if threats emerge. As Molina moves to encounter Spider is it safe or expected under the suppressive policing paradigm for him to pursue a non-suppressive thought? If not, there is threat to him in moving against the prevailing professional script? Is he already marginalized in any way as a Latino on the police force? If so, depending on how Molina is negotiating the racialized threats and vulnerabilities of his workplace, he perhaps cannot risk genuinely listening to Spider and his mother for the identity-related threat that it might personally entail for him to do so.

Taking these aspects of the surrounding field of power relations into account as cognitive context, even in tier-two conscious thought, unconscious perception of an identity-related threat could trigger in Molina an autopilot reaction as an unconscious stabilization of his professional identity scheme as a gang expert. To stay consciously present to negotiating that kind of complexity would require not just tier-two level attention, *but a sustained engagement with contradiction and ambivalences until the conundrum could be worked through* in some unscripted way (Barvosa 2008, 140-174). Such effort requires meaningful institutional support. Without it, in the absence of this kind of hard cognitive effort, Molina's identity investments simply draw together (a) socially constructed content (e.g. stereotypes and professional scripts) and (b) identity motivation (preserving self-identity) to reinforce the architecturally based unconscious coherence bias. Thus structural and identity-related mechanisms of bias converge here as hidden drivers of the disjuncture between Molina's professed values and his actions in codifying the validity illusion of "Spider as gangster."

*Labels, Categories, and the Unconscious Bias of Framing Effects:* But if the moment of Detective Molina's validity illusion fades away, the material legacy of that instant of unconscious

bias nevertheless can – and in this case does – become powerful and determining in Spider’s life. As Rios reports in his study, once Spider was named to the gang database he became categorized as a gang member. This categorization led to intensified surveillance, tracking, and eventually enhanced criminal charges for an otherwise minor offense. As Rios describes, after Spider’s recovery, he gets “into a fight with a guy who was making fun of him for getting stabbed” (78). Having been added to the gang database—albeit without evidence—gang member categorization now brought new and heavy sanction in the suppressive policing regime. Specifically, Spider “was charged with assault with a deadly weapon for benefit of the gang....This gang enhancement carried an added five-year sentence” (78). Unfounded as it originally was, the gang member categorization becomes the interpretive lens for reading, evaluating, and responding to Spider’s actions going forward.

Not only do the police now regard Spiders’s new gang categorization as relevant to interpreting him and his actions at all later times, this new categorization also spreads to others in the community and at school. Once classified as a gang member by police, as Victor Rios puts it, “school staff, community workers, and other adults in the community also adopted this categorization” of Spider (78). Importantly, regardless of the lack of evidence for the initial labeling of Spider, the codification of the label of gang member itself now sets the stage for a second type of unconscious bias known as a “framing effect.” As the diffusion of his labeling spreads, Spider notes that everyone begins to treat him differently, as if seeing him anew. In theoretical terms, Spider’s life has now been “reframed” as a gang member in the minds of many of those with whom he interacts on a daily basis. Framing effects mean that seeing him as a gang member changes the perception and treatment of him *even if he is otherwise the same as before*.

The experimental research in framing effects is voluminous and limitations of space bar me from providing a significant recapitulation here (see for instance Mendelberg 2001). Suffice it to



say that the unconscious bias of framing effects begins with the fact that any event, problem, idea, or fact can be stated—i.e. framed—in different ways. As Daniel Kahneman puts it, the bias of framing effects is that “different frames evoke different mental accounts” (370). In the case of a moral question or problem, “your reactions to the problem are influenced by the frame” such that tier-one “generates contradictory answers to the problem depending on the how that problem is framed” (370). In other words, if you are asked the same question in two different ways, your tier-one system will answer differently depending on what the different wording triggers from your associative field.

In the case of Spider’s fight, two framings are possible. In *framing one*: having suffered a near fatal assault, an adolescent is teased by another adolescent for having been assaulted. This adolescent took the bully’s bait and got in a fight. In *framing two*: a known gang member got in a fight with another adolescent and used force. Both narratives present a problem: What should you do? Voluminous experimental literature in framing effects indicates that we have no moral intuitions about this problem and other problems of similar importance. Instead, our “moral feelings are attached to frames, [that is] to *descriptions of reality* rather than to reality itself.” (371, emphasis added). Once Spider is labeled (unjustly) as a gang member, the continual framing of him as a “gang-member” will evoke in people their notion of “gang.” In most cases, activation of the concept “gang” will trigger a more punitive response than the problem would have elicited without the framing effect of the much-maligned label.

Under today’s suppressive policing paradigm many are recruited to the surveillance of Latino and Black youth. There is a plethora of opportunities for “gang” framing effects to distort the judgments of official observers. As one of Rios’ respondents colorfully puts it: “Man it’s like everyday, teachers gotta sweat me, police gotta pocket check me, mom’s gotta trip on me, and my PO’s gotta stress me....It’s like having a zookeeper watching us at all times. We walk home we see

them [probation officers and police]; we shoot hoops we see them; we take a shit at school, we see them” (82). Hence, as the gang label diffuses to all domains of Spider’s life, the framing effects *in those who observe him* compound his suppression by *evoking in those adults* unconsciously biased hyper-punitive responses to Spider that together eventually diminish his life chances. Instead of being sent home from the fight to heal, develop a thicker skin, and be wiser next time he encounters a bully, Spider is treated as a bully-criminal himself, and sentenced to an additional five years for “benefitting a gang” to which he does not belong. Here the immediate cognitive bias of framing effects—are both the legacy of a now-distant validity illusion, and directly responsible for a hyper-punitive response to an unfortunate, but nevertheless understandable and relatively minor offence by a juvenile who is below the age of reason.

Extensive sociological research indicate that Spider’s trajectory, and the pattern of criminalization that produced it is widespread in our criminal justice system under the suppressive policing regime. In my analysis, the unconscious biases of potentially well meaning law enforcement personnel are producing outcomes that lack valid evidence and are thus just. As a function of the architecture of our minds, *everyone*—including all members of law enforcement—is unavoidably prone to these and other unconscious biases. In the context of juvenile justice the effects of these biases are profound, pervasive, and long lasting on the lives of youth and our society as a whole. In any given case, only a full, retrospective, moment-by-moment, tier-two attention, audit could ascertain whether or not the men and boys of color in American jails and prisons have not been misjudged through unconscious biases similar to what Spider has endured.

***Unconscious Bias, Truthiness, and Identity Investments in the Quest for a Civil Gang Injunction in Santa Barbara, California.***

The analysis above draws together cognitive science and borderlands theory perspectives on power, conflict and multiple identities to emphasize that unconscious biases can be witnessed as

contradictions between what people believe and what they do. I have discussed this primarily at the individual level. But the compound influence of many moments of unconscious bias can also appear at collective levels as many moments of unconscious bias help to create or stabilize social and political systems that defy our own beliefs. In California, the suppressive policing of Latino and Black youth significantly displays collective self-contradiction – a tell tale sign of unconscious bias. This appears at both statewide levels and in many local contexts. At the statewide level, for example, law enforcement officials across California often declare themselves strongly committed to “evidence-based policy” (EBP). Despite this, crime prevention and juvenile justice practices statewide fail to *walk* the talk of evidence-based policy. The scholarly literature on scientifically proven crime prevention programming is largely ignored, and this failure is not due to a lack of resources.<sup>11</sup>

As EBP scholars note, although California’s Juvenile Justice and Crime Prevention Act (JJCPA) has provided *100 million dollars annually* for community-based, crime prevention programs, in practice (i.e. in the walk), low justification requirements allow counties across California to implement programs for which there is no evidence of effectiveness at all. A 2014 report finds that “not a single one of these [funded California] programs has been able to ‘prove’ its effectiveness with the kind of rigorous evaluation methods that would lead others to agree...*this is why California programs for juvenile offenders do not end up on any of the ‘what works’ or ‘best practices’ lists.*” (Greenwood 2014, 94, emphasis added). Instead, “California places tens of thousands of juveniles into the justice system every year and has the nation’s highest rate of juveniles in local custody” (94). This disjuncture between the talk of evidence-based juvenile

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<sup>11</sup> The evidence-based policy paradigm favors policymaking and implementation that relies on empirical knowledge generated through scientific research on policy effectiveness.

justice policy and the walk of *non*-evidence-based practice is consistent with experimental findings of unconscious bias.

Skeptics may rightly argue that a lack of evidence-based policymaking in crime prevention in California may not always be caused by unconscious bias. I would agree that numerous factors might contribute to why communities are not currently adopting evidence-based policies as a matter of tier-two *conscious* choice. These factors could include local fiscal limitations, limited capacity to coordinate across multiple groups and agencies, confusion between youth and adult crime prevention knowledge, lack of committed local leadership, lack of knowledge about the available research, and/or the influence of strong political endorsements that favor non-evidence based approaches (Greenwood 2014, 1-2).

Nevertheless, recent studies of organizational cultures indicate that one of the greatest obstacles to evidence-based policymaking in many areas is the culture-clash between most policymaking settings and most scholarly research settings. In this cultural contrast, policymakers generally privilege *doing* over knowing as a primary focus—while conversely scholars often privilege knowledge over application through a focus on detailed, scientifically derived knowledge. As one team of researchers recently described it:

....members of the policymaking community are more focused on doing than on understanding. They approach the products of quality research and analysis as only one input into their jobs. Their lives are hectic and crisis driven. They must balance numerous stakeholders and interest groups who may lay claim to their professional lives and fortunes. [Thus their] *Knowledge can come from many sources; often vignettes or interpretations of truth from salient stakeholders in their environment prove to be the most compelling.* In the end, knowledge for its own sake may prove a lot less important than *information that*

*supports their ideology or can advance their own political agenda.* (Bogenschneider and Corbett 2010, 112, emphasis added)

If this description of policymaking cultures is accurate, then the daily rush of policymaking cultures can make it commonplace to use ideas for policymaking that lack factual grounds, but which sound “true enough” (Manjoo 2008) or have what satirist Stephen Colbert has humorously labeled “truthiness.” Truthiness in beliefs is the definition of a validity illusion

Here workplace cultures can further open the door widely to unconscious bias. Inadvertent reliance on truthiness can produce humorous results, but serious experimental cognitive science finds that individual reliance on truthiness is fertile ground for unconscious bias. Recall from above Daniel Kahneman’s statement above about validity illusions: “For some of our most important beliefs we have no evidence at all, except that people *we love and trust* hold those beliefs.” (2011, 209 emphasis added). Everyone is subject to this type of unconscious bias. Validity illusions can thus strike individuals who are influential in any organizational culture. This is *especially* so if that organization culture is socially constructed to favor speed, which can cause a hurried dependency on claims to knowledge that lack a substantive empirical basis. In such climates facts easily give way to bias.

To consider a case of how unconscious bias can shape policymaking, displace evidence-based policies, and increase the suppressive policing of Latino boys and men, it is helpful to review the case of policing in Santa Barbara, California. At the time of this writing Santa Barbara is home to a three-year legal battle to institute a civil gang injunction. Santa Barbara is a beautiful, small coastal city roughly two hours north of Los Angeles. With its Mediterranean climate and striking terrain, Santa Barbara is a sought after location where many in the entertainment industry maintain homes. As such, the city is affluent, and housing is expensive.

Poverty in the city is concentrated mostly among low-income Latinos, many of whom feel racially and ethnically marginalized in the city. Very few Blacks live in Santa Barbara.

Santa Barbara's lawsuit to obtain a civil gang injunction in Santa Barbara has been locally controversial since it was first filed by the city in March 2011.<sup>12</sup> As even advocates note, civil gang injunctions (CGIs) are especially criticized as a particularly punitive measures that have been heavily criticized for constitutional and societal downsides (O'Deane 2011). Gang injunctions are considered by critics to facilitate aggressive (and often incorrect) labeling of juveniles as gang members, and to restrict and criminalize otherwise protected constitutional rights of free association, movement, and self-expression (Kim 1996; Myers 2009). CGIs capitalize on lower standards of proof and lack of guaranteed defense attorneys to indigents in civil courts, which make legal defenses hard to mount even as the civil court is being used to criminalize otherwise legal conduct. Scholars also contend that suppressive tactics such as CGIs fail to attend to the multiple marginalization of youth of color that produce gangs and can in fact deepen problems through perpetual labeling, and stigma (Vigil 2002). Intensive enforcement and incarceration hinder youth from the otherwise typical cycle of "aging out" of gang life (Crawford 2009; Maxson, et al. 2014, 253-268).

If granted by the Court, the Santa Barbara injunction will authorize the police to punish as unlawful acts of association, movement, speech, and designated self-expression in designated areas of the city, at designated times (including certain holidays), throughout a large designated "safety zone" that covers much of the city and many of its principle recreation areas. During this three-year effort, numerous publicly performed self-contradictions in the talk and the walk of the most visible official advocates of the injunction suggest that unconscious biases are in operation. Due to

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<sup>12</sup> The lawsuit is also filed jointly by the Santa Barbara District Attorney with the support of the City Council at the urging of the Chief of Police. The suit is filed in the name of the People of California.

limited space, I will use the theoretical framework of unconscious bias outlined above to analyze only four of these self-contradictions. These involve the Mayor, the Chief of Police, and the City Attorney and took place at a City Council meeting held on May 14, 2013. To date this is the one and only public hearing held by the city on the civil gang injunction suit.

The Mayor of Santa Barbara opened the injunction item of the City Council agenda before an overflow crowd. The assembled public was predominantly Latino of all ages, but also included allies of many diverse backgrounds. It became clear in the course of the night, that no member of the assembled public intended to speak in favor of the injunction.<sup>13</sup> The Mayor addressed the crowd indicating that everyone should stand clear of the chamber doors, consider moving to the overflow room, and keep silent during presentations. She stated that although public comment would be heard in 2-minute allotments, this agenda item was informational only. It was not designed to review the policy trajectory. Rather it was intended to dispel *misinformation* that was circulating among the public during the long delay in the hearing of the civil case.<sup>14</sup>

For the first hour, the City Attorney and Chief of Police gave their updates. Their official story about the injunction on May 14, 2013 was that the injunction was being sought in response to a *significant gang crime problem* in which *gang-related homicides* are the prime concern. The injunction would be an “*effective tool*” to interrupt the criminal behavior of “*only 30 named adult individuals.*” Framed in this way, this is a “good story” and may sound truthful and reasonable. But upon closer review, this story meets the criteria of a validity illusion for each of the items italicized above lack critical evidence. This story may sound good, but it failures of evidence are consistent with the operation of unconscious bias, including also self-contradictions in policymaking.

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<sup>13</sup> In full disclosure, I was among those who shared knowledge with Council in the public comment period.

<sup>14</sup> All description of this meeting is based on audio and video recording of the Santa Barbara City Council meeting, which can be accessed at <http://santabarbaraca.gov>, including the meeting agenda and power point slides.

The first validity illusion in the story is that Santa Barbara has a significant gang crime problem. Statistically at least, this claim is not well founded. Adjusted for its size, Santa Barbara crime rates per 1,000 rank as average or slightly below average for all categories of Part 1 violent crime (aggravated assault, forcible rape, murder, robbery, arson, burglary, larceny theft and motor vehicle theft) with only two exceptions: murder and rape. Santa Barbara's homicide rate is far *below* the national average with 21 homicides occurring in the 12 years between 2000 and 2012. In contrast, rape in Santa Barbara was equal to or above the national average for 11 of the same 12 years.<sup>15</sup>

Regarding specifically *gang-related* crime, however, Santa Barbara spokesperson Riley Harwood is on record stating that the Police Department does not keep records of total gang-related crimes (Kacik, 2014). However, Harwood states that in 2012 there were 52, Part 1 gang-related crimes. But overall Part 1 crimes numbered 3,342 in 2012, which means that the 52 gang-related crimes in 2012 are only *1.6 percent of overall* crime in Santa Barbara. Harwood indicates that crimes labeled as gang-related rose to 70 in 2013, but were also trending downward in late 2013 from 23 in November to 9 in December (Kacik, 2014). Assuming that the 2013 overall crime was constant, gang-related crime would still only be 2 percent. In statistical terms, this is not significant. Especially in nationwide comparison it is dramatically small, for federal reports find national averages of gang-related crime to range from “48 percent of violent crime in most jurisdictions and up to 90 percent in several others” (NGIC 2011, 9). If the policy concern is with high rates of gang crime, statistically there is no evidence that gang-related crime is high in Santa Barbara. In fact it is extremely low by national standards.

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<sup>15</sup> Unless otherwise noted, all crime statistics stated here can be accessed at <http://www.city-data.com/crime/crime-Santa-Barbara-California.html> and cross checked at FBI, Uniform Crime Reports, National Archive of Criminal Justice Data <http://www.ucrdatatool.gov>.



The second validity illusion is that *gang-related homicides* levels are high and thus a driving concern. The Chief of Police describes his motivation as centered on 16 gang-related murders in Santa Barbara between 1992 and 2010 including 4 non-gang victims. No murders were committed in 2011 or 2012, so the Chief's number of 16 gang-related homicides could be extended to those years for a total of 16 homicides in 20 years. On May 14, the Chief spent considerable time discussing each murder, and returned to the issue of homicide often. He did not mention any other category of gang related-crime. In his narrative based on his power point slides, however, only 9 victims are listed.<sup>16</sup> It was never indicated whether more victims could have been named or how the number 16 was determined. In any case, 16 victims were not named on the otherwise very detailed list. Proceeding with the 9 specified on the slides, only 7 of those 9 gang-attributed homicides occurred between 2000 and 2012. During those 12 years, the total number of murders was 21. Additionally, during four of those 12 years, no murders at all occurred in Santa Barbara (2004-05; 2011-12). Thus, working from the specific homicides named by the Chief of Police, the distribution of murders that he highlights as gang-related over the remaining 8 of the 12 years is exactly 1 murder per year, with one "peak" year of 2 murders in 2007.

While any homicide is tragic, one per year is not typically regarded as an epidemic. Moreover, despite newspaper stories suggesting it, the "peak year" of 2 murders in 2007 apparently did not trigger the injunction effort. The City Attorney noted on May 14, that the Police Chief is on record in a memo to the City Council in July 2008 stating that he did not believe that a gang injunction was needed in Santa Barbara. In any case, the evidence does not match the talk of high rates of gang homicide. The mismatch between facts and story renders puzzling the long expensive effort to obtain a civil gang injunction. This walk-talk contradiction is also consistent with experimental studies of unconscious bias.

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<sup>16</sup> These slides are available at the City Council's website.

The third validity illusion in the story is that gang injunctions are an “effective tool” to address four concerns: 1) significantly reduce gang-related violent crime, 2) protect the general public, 3) diminish the appeal of gangs to youth, and 4) reduce recruitment to gangs by adults. But evidence does not indicate that civil gang injunctions are effective toward these four goals. Civil gang injunctions are not regarded as evidence-based policy (Welsh and Farrington 2012).

Although civil gang injunctions have been in use in California since 1987, and are widely praised by gang experts and law enforcement personnel (e.g. Allen 2004; O’Deane 2011, Akiyama 2007), studies of efficacy are actually rare. Only five studies have been undertaken in the last 27 years (ACLU 1997; Grogger 2002, LA Grand Jury 2004; Maxson, et al, 2005; O’Deane 2011). The most favorable studies are by Grogger and the LA County Grand Jury who find a 5-10% and 6-9% decline in overall *reported* crime respectively, but *only during the first year* of an injunction. After the first year, effects diminish rapidly. However, due to the methodological limitations of using precinct crime reports, neither of these studies could determine for certain if crime rates fell in the injunction zone. Neither could determine if the modest reduction occurred in gang-related crime or in other crime. Neither study could determine whether the gang injunction—or some other factor—caused the reduction in reported crime. A similar 2011 study used calls for service, *including police initiated calls*, as its measure of crime. It finds a slightly greater 11.6% decline in calls for service. But like the others studies, it cannot determine if gang injunctions or other factors caused the decline or if the decline was in gang-related crime only (O’Deane 2011).

The remaining two studies are considerably more mixed. The 1997 ACLU study found that the famous Blythe Street Injunction displaced gang crime to nearby neighborhoods, and left the injunction area with higher crime rates as compared to other areas where no injunction existed (ACLU 1997). The Maxson, Hennigan and Sloan (2005), study of the Verdugo Flats injunctions found similarly modest declines in rates of crime in high gang activity areas. But they also found

that gang injunctions used in an area with less strong gang activity actually saw *an increase* in gang activity (Lower Verdugo Flats). Maxson and her colleagues attribute this worsening effect to official misjudgment stating “police over-reached by including this neighborhoods with less gang activity and less social disorder in the injunction” (597). They speculate that this over-reaching produced what they call “suppression backfire” (Maxson, et al, 2005).

None of these five studies indicate that gang injunctions reduce the appeal of gangs to youth, or diminish recruitment to gangs. Thus for two of the four policy goals stated by the Chief of Police there is *no evidence at all* that gang injunctions are effective remedies. Moreover, none of these studies address the specific circumstances of Santa Barbara where a Civil Grand Jury has found that gang members are overwhelming poor Latinas/os aged 13 to 19 (Santa Barbara Civil Grand Jury, 3). Speaking to this demographic factor, however, is the voluminous scholarly research showing that poor youth of color are drawn to gangs as a temporary escape from multiple marginalization (Vigil 2002; Hagedorn 2010; Esbensen 2000). Through gangs, youth attempt to meet their own unmet social and material needs for belonging, attachment, protection, respect, purpose and activity. Scholars report that suppression nothing to address the underlying causes of youth gangs – material lack and social alienation – and by deepening alienation police suppression can *worsen* the causes of youth gang activity (Klein 1995; Lopez 2007). This worsening is akin to what Maxson, *et al.* find in the “suppression backfire” of Lower Verdugo Flats.

Let us consider the evidence of these five gang injunction studies in the best possible light. Assume that the modest and temporary reductions in crime did occur in actual gang-related crimes and because of gang injunctions (which none of these studies can confirm). *If* Santa Barbara had obtained its injunction in 2012 with 52 gang-related crimes, we would project from the existing research that such a gang injunction would have *at best* produced a 5-11.6 % *one-year decline in gang-related crime*, totaling between 3 and 6 crimes. *At worst* it could have produced an increase

in gang activity as seen in the suppression backlash created by placing a gang injunction in a low gang activity area such as Lower Verdugo Flats. By no standard would these effects meet the rigorous measure of effective, evidence-based policy.

Evidence-based policy scholars recommend that communities not simply choose interventions. Rather they should choose interventions that match the specific needs of their areas (Eck and Guerette 2011, 368). In the case of the Santa Barbara gang injunction, a CGI neither meets the high standards of an evidence-based policy, nor is well suited to the local conditions according to the statistical profile of area crime. Thus the official “talk” of gaining an effective tool to reduce high gang related crime and gang growth city is not matched by the policy “walk.”

Finally, the fourth validity illusion relates to curbing the criminal behavior of “only 30 adults.” Arguably this is most peculiar, and perhaps most telling, walk-talk self-contradiction of the four. The Chief of Police and the City Attorney repeated this story line of “only 30 adults” often throughout the May 14th hearing. This was clearly meant to ease concerns regarding increased racial profiling. Yet when questioned, the Deputy District Attorney contradicted his colleagues in vague but recognizable terms acknowledging a larger scope. Beneath the good story, the injunction is actually written—as most gang injunctions are—by naming not only specific individuals (“the 30”) but also by naming gangs in their entirety as a defendants, thereby opening the door to anyone being served under the injunction who is regarded (i.e. profiled) by the police as a gang member. By October 2013, both the City Attorney and the Police Chief were on record acknowledging that although 30 are named (15 of whom have been under long-term incarceration since before the injunction suit was filed) many more than 30 could be affected (Donnelly 2013). By that time only the Mayor held to the “only 30” story. She expressed in a local newspaper being offended by the “irresponsible” and “deliberate misrepresentation of the facts” on the part of local community and civil rights organizations (Schneider 2013).

Taken together these walk-talk self-contradictions are consistent with laboratory experimental findings of unconscious bias. The contradiction of the “only 30 adults” segment of the story is a good illustration. For over 2 years, three experienced and intelligent policymaking adults—the Mayor, the Chief of Police, and the City Attorney—all advocated a civil lawsuit for a gang injunction. Yet on May 14, 2013 and for six months afterward, all three publicly told a story of the injunction that was in major contradiction with its complex facts. What explains this contradiction?

One possible explanation could be a conscious attempt to deceive the assembled public. They each told a good story to appease public concerns about racial profiling. A second possible explanation is a dereliction of duty in work performed in the public trust. In that dereliction they advanced a policymaking lawsuit without having actually read or fully understood the document.

However, a third and more likely explanation of this striking self-contradictory error is the effect of unconscious bias among three of the principle policy advocates—the Chief, the Mayor, and the City Attorney—in which they operated on tier-one autopilot potentially fostered by self-protective professional identity investments. In this scenario, for over two years, these city officials advanced a policy action largely on tier-one autopilot having not thoughtfully engaged with all sides of the matter. Unless they were acting to deceive (which would remake their error a rational intention), *sustained tier-two conscious thought should have precluded the self-contradiction of urgently, repeatedly, and erroneously narrating the gang injunction document in defiance of its full factual content*. If they had really thought it through, these three smart professionals would have known better. But in the absence of slow conscious, labor-intensive thought, autopilot cognition would easily let the error slip by. Operating outside of conscious awareness, autopilot opened each to unconscious biases of various kinds including, validity illusions and framing effects

involving the stereotypes of Latino men and boys as gang members that have circulated in California for at least half a century.

Moreover, there is also circumstantial evidence that identity investments may have favored these unconscious biases. As I have theorized elsewhere, unconscious stabilization of identities under threat often appear as self-contradictions combined with a) heightened emotional responses to challenges, and b) glaring omissions of obvious facts that, if acknowledged, would threaten claims to valued self-identities (Barvosa 2008, 138, 212-221). At the May 14 meeting, with only one momentary exception, the three key public officials advocating for the gang injunction never make reference to the fact that in Santa Barbara gang members are overwhelmingly financially poor Latinos and juveniles.<sup>17</sup> Yet the City Council Chamber was literally overflowing with Latinos and allies deeply concerned about the potential disparate racial impact on Latino youth of the potential gang injunction. Nearly every public comment reflected the obvious demographic facts. This made the official erasure of the demographics bizarrely striking. Very few Americans today are comfortable being seen as racists. Thus unconsciously avoiding the mere mention of race and ethnicity at the hearing makes perfect sense as a way to displace a topic that might call into question one's self-identity as racially fair. This strange omission is consistent with the theory that under threat, identity investments can serve to reinforce the unconscious biases and blindspots of well-intentioned people as they unconsciously stabilize their cherished senses of self.

On the whole, there is evidence to suggest that in the Santa Barbara case unconscious bias is shaping policymaking. Numerous contractions indicate that the autopilot systems of policymakers opened them to validity illusions, framing effects, and identity investments that led them to pursue a non-evidence based policy that increases the suppressive policing of Latino men and boys. These unconscious biases also diminished their capacity to listen to and genuinely

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<sup>17</sup> The Chief of Police stated briefly that most violence is Latino on Latino, but he did not elaborate.

engage with the needs, concerns, and objections of the Latino public and many others who rose on May 14, 2013 to oppose the civil gang injunction. At that hearing, numerous people pointed out problems and contradictions in the policy trajectory. Members of the public described the civil gang injunction suit as unwarranted by the facts, unlikely to produce positive change, and likely to increase racial profiling and the suppression of Latino boys. Some Latino boys themselves rose to describe their experiences of verbal abuse, surveillance, and harassment by gang task force officers. Their narratives are similar to those found by Victor Rios in his study of Oakland youth. Assembled members of the public resoundingly rejected the civil gang injunction calling instead for community-based programs that could meet the needs of poor youth of color and address the underlying causes of youth gang activity. Ironically, these public requests bore a striking resemblance to the kinds of programs that evidence-based policy scholars find to be the most effective in reducing juvenile crime and gang membership (Rosenbaum and Schuck 2011).

**Conclusion:**

This research combines neuroscience and previously developed theoretical work in borderlands theory to address the question of whether or not unconscious bias is fostering suppressive policing in America. As work in applied theory, this research supports the assessment that unconscious bias is today sustaining—and sometimes heightening—suppressive policing in the American criminal justice system. As unconscious biases and identity investments create blindspots in the thinking of well-intentioned law enforcement personnel, Black and Latino men and boys suffer disproportionately and unjustly. Moreover, the effects of unconscious bias cause us to fail as a society to adopt the better, evidence-based methods that already exist to address the complex problems of crime, violence, and persistent racial hierarchies.

As national political leaders currently seek to rollback aspects of suppressive policing in America, the obstacle of unconscious bias will most likely pose a hidden stumbling block.

Therefore, thoughtful, well-tailored policy responses that shed light on and seek to disrupt the unconscious biases of well-intentioned criminal justice system personnel will be important to the success of new policy objectives. While it is beyond the scope of this essay to specify all potential adjunct policies – and although much more research needs to be done – some potential remedies are at hand.

First, training does exist in which law enforcement personnel can learn about unconscious bias and hone their workplace thinking to recognize and minimize it. In such training, justice system personnel can learn to safely slow down their thinking in dangerous or administratively pivotal situations. They can learn to have a productive distrust of their own overly quick cognition, and cultivate the habit of considering all possible interpretations before acting with deadly force or with unjust and devastating influence on the life course of others (Gladwell 2005; 214-244, esp. 235-241). This skill set is compatible with continuing to benefit from high speed unconscious processing when truly necessary (DeBecker 2002). Some police departments are already turning to mindfulness training to help officers learn techniques with which to stay less often in autopilot, and more consciously present to the complexities of the passing moment (O’Hagan 2013). Internationally, some police forces are implementing exclusively fact-based procedures in criminal investigation, especially in interrogations (Starr 2013).

Second, unconscious bias at the policymaking level can be disrupted if major policy decisions are made collectively. Diverse minds, perspectives, and voices can help to safeguard against the unconscious biases of any given policymaker or small team of bureaucratic leaders. This is *not* to say that large groups cannot also experience unconscious bias. They can. But new collective deliberation techniques are now emerging that make it more possible than ever to stage a critically engaged, well-informed, even-handed, large-scale – even national-level – deliberation on difficult high-stakes choices. An example exists in the recent national public deliberation on



energy system change in the UK (Butler, Parkhill, Pidgeon 2013). If Santa Barbara had democratized its decision-making on whether or not to seek a civil gang injunction, a careful, well-orchestrated, public deliberation could have prevented the current state of affairs. Municipal self-contradiction could have been checked. Public fears and frustrations – especially in the Latino community – at being excluded could have been eased. Increased social fragmentation and distrust of law enforcement could have been prevented. Above all, the effective, evidence-based policy solutions that exist could have been reviewed, debated, and potentially adopted, securing community participation in meaningful change.

Third, policymakers can help to prevent the trigger of unconscious biases related to identity self-protection by officially describing, defining, and recognizing valued professional collective identities in ways that are flexible and inclusive (Barvosa 2011). Shaming and blaming approaches are unproductive. Instead, efforts that invite and reward self-identification with fair, *non-suppressive* policing could make a large difference toward systemic change. The bigger and more welcoming the transformational tent, the more room there is for professional scripts to change in value without exciting fears of identity threat among diverse personnel. Justice system personnel need to become aware of the facts of unconscious bias as an unavoidable part of human cognition. Leadership that helps justice system personnel to feel safe to face the facts of this common problem will help to foster effective change.

Ultimately, unconscious bias is an unavoidable part of the structure of human cognition. The bodily forms that produce it cannot be eradicated and human autopilot often serves us well. But unconscious biases can be destructive. Usefully they can be also anticipated and indirectly traced. More research is needed to determine how the occurrence of unconscious biases can be disrupted in a given moment. But the observable *effects* of unconscious bias can be witnessed and thus its influence can be minimized. If we recognize the influence of unconscious bias in

suppressive policing, the next logical step is to develop creative ways to disrupt or avoid the use of human autopilot in cases where it will not serve humanity or justice. Policymakers can lead the way in facing these facts, and in fostering collaborative work to create a more fair justice system. Following this lead, law enforcement personnel may themselves develop new ways to help each other disrupt and override the effects of unconscious bias. Such strategic steps can, in turn, help to catalyze personal transformation and innovation among law enforcement personnel that will further help longstanding procedures and mindsets to shift. Together these capacity building efforts can foster the broad engagement among justice system personnel that policymakers will need in order to render suppressive policing in America a paradigm of the past.

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