Police/Civilian Encounters:

UNDERSTANDING HOW AND WHY THEY CAN TURN DEADLY

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Abstract

Concerns about police use of deadly force reached an international crescendo after the police killing of George Floyd in May 2020. Floyd's death climaxed years of concern in Black and brown communities about the rates at which encounters with police turn deadly – particularly for Black men. This report presents the Police/Civilian Encounters Framework – an algorithm that examines how and why these deadly encounters occur. It examines police interactions with civilians – displaying ensuing events in a tree diagram containing 14 "nodes" arranged among seven stages of an encounter. It traces pathways linking police and civilian behaviors to events that can occur during the encounter – noting "benign" pathways that conform to acceptable policing standards, and "malign" pathways that do not. It highlights pathways that can lead to excessive use of force and civilian deaths and identifies patterns of police behavior that may deserve intense scrutiny – even those that may warrant criminal investigation.

Introduction

The issue of police use of excessive force (both lethal and non-lethal) has been a central concern for researchers, community advocates, and law enforcement for many decades (Lhamon et al., 2018). In the African American community, this concern dates at least as far back as the severe beating of the late Congressman, John Lewis, then a civil rights leader, on Bloody Sunday in March 1965 – almost six decades ago. Among other later incidents, the concern was once again highlighted by the nationally broadcast footage of the March 3, 1991, beating of Rodney King during his arrest by 14 LAPD officers after a police chase for drunk driving. Today, concern about police use of force is reaching a new peak and the best available evidence suggests both high rates of use of force nationally, and an increased likelihood of police use of force against people of color, people with disabilities, LGBTQ+ people, people with mental health concerns, people with low incomes, and those at the intersections of these groups (Lhamon et al., 2018).

Of even greater concern, over the past decade or so, has been the incidents of fatal encounters of African Americans with police, particularly those involving Black men. Research has shown that about 1,000 civilians are killed each year by law enforcement officers in the United States (Tate et al., 2020). By one estimate, Black men are 2.5 times more likely than White men to be killed by police during their lifetime (Edwards et al., 2019). And in another study, Black people who were fatally shot by police were twice as likely as White people to have been unarmed at the time (Nix et al., 2017).

The Black Lives Matter (BLM) movement was founded in July 2013 for the sole purpose of drawing the nation's attention to these data and to the issue of fatal police encounters as urgent matters of public health and social justice. And, as a sign of the times, the movement has seen a surge in national support since the police killing of George Floyd in Minneapolis, MN on May 25, 2020. Indeed, George Floyd's death has sparked protests around the world. Domestically, subsequent polls by the Kaiser Family Foundation, Quinnipiac University, and Pew Research Center all suggest that two-thirds of Americans supported the recent BLM protests against police violence (Sparks, 2020). These findings are bi-partisan, and they cross racial lines – so much so, that, in Texas, a survey by the *Dallas Morning News* on July 12, 2020, showed that Black Lives Matter now has more support (43%) than the National Rifle Association (34%) (Slisco, 2020).

This growing national awareness and concern beg questions of transparency and accountability. How and why do fatal police encounters occur? And, when they do occur, what is the mechanism for assuring that authorities will review such incidents impartially and objectively to determine culpability for the civilian deaths? This report presents an algorithm that can help us answer the how and why question while offering a first step towards creating a mechanism for addressing culpability.

The Police/Civilian Encounters Framework

In criminal justice literature, there are four major models of policing: police professionalism, community policing, problem-oriented policing, and the security orientation (Jiao, 1997). Drawing on that literature, Jiao (1997) describes these models as follows:

"The **professional model** is based on the assumption that the focus on improvement of internal police management is conducive to accomplishing the goal of crime control and law enforcement. The model carries the themes of uniformity, superior-subordinate relationship, military style discipline, and efficient use of police personnel" (Jiao, 1997, p. 455).

"The **community policing model** is based on the assumption that the community in fact exists and is the true source of power for crime prevention and crime control. The police, therefore, must mobilize and involve the community in their operations" (Jiao, 1997, p. 456).

"The **problem-oriented model** assumes that the police would be more effective if they stressed the substantive outcome of police work by analyzing and addressing the problems the public expects them to handle" (Jiao, 1997, p. 456).

"[In] the **security model** ... The basic security organizational principles involve deployment of police officers as security guards to reduce criminal opportunities and training police officers to use security techniques" (Jiao, 1997, p. 456).

Each of these models focuses on the relationship between policing tactics and their efficacy in addressing or preventing crime in the aggregate. None of them address the more micro issue of what happens during actual encounters between police officers and civilians or how and why they can turn deadly. To better address these questions, our justice system needs a mechanism for systematically reviewing interactions between police and civilians – one that will: (1) increase the transparency of these transactions; (2) provide a portable template for investigating allegations of police misconduct; (3) contribute to the redesign of policing practices and training; and (4) encourage new research to inform our understanding of police/civilian engagement. To fulfill these aspirations, we must be able to take a closer look at how encounters between police and civilians actually unfold. We need a map that can trace the behaviors and events during an encounter from start to finish.

The Police/Civilian Encounters Framework provides such a map. It is an algorithm that logically traces civilian and police behaviors through, what the framework posits as, the seven stages of the encounter – showing benign pathways that conform to acceptable policing standards as opposed to malign pathways that do not. In doing so, the framework sheds light on how and why encounters between police and civilians proceed in the manners that they do and how and why they, on occasion, result in negative, and even fatal, outcomes.

But beyond its value in elucidating police/civilian interactions, the algorithm has implications for policing policy. Because it traces the conceivable patterns of behaviors and events, the algorithm can also identify clusters of those behaviors and events that may warrant critical examination by police and justice authorities.

In the following pages, I will present the framework in detail. In so doing, I acknowledge this framework is in the early stages of its development. While the nodes, stages, pathways, and zones we construct are posited with great confidence, further research is required to identify the various behavioral factors and variables underlying each node and the relationships between and among them. As such, this framework is being offered as a plausible and hopeful algorithm for reviewing and evaluating interactions between civilians and police.

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OVERVIEW

The Police/Civilian Encounters Framework is displayed as a tree diagram consisting of 14 nodes, capturing behaviors of both parties, as it progresses through seven stages posited for the police/civilian encounter. The stages are as follows:

- **Stage 1, "The Policing Matter,"** acknowledges that something has occurred that has given rise to an encounter between a police officer and a civilian.

- **Stage 2, "The Police Approach,"** examines the conduct of the officer in their initial approach to the civilian.

- **Stage 3, "Civilian Behavior,"** focuses on how the civilian behaves in response to the officer's approach.

- The **"Threat Level Assessment"** suggests that, following this initial exchange, each party makes an evaluation of the situation's volatility.

- **Stage 4, "Situation Status,"** examines the status of the encounter in the wake of the Threat Level Assessment.

- **Stage 5, "Police Action,"** focuses on the reaction of the police officer in response to the Situation Status.

- **Stage 6, "Outcome,"** registers the results of the Police Action.

- **Stage 7, "End of the Encounter"** marks the end of the interaction.

> **There is a need to deepen our understanding of police and civilian perceptions and expectations of each other… An officer's view of the civilian, and his/her perceptions of the civilian's behavior, play critical roles in his/her perceptions of threat levels and subsequent actions. Likewise, a civilian's previous experiences with, and attitudes toward, the police are likely to filter his/her interpretations of events during the encounter.**

The Framework's algorithm uses these stages to construct a comprehensive map of how police/civilian encounters unfold. 14 nodes are distributed across these stages to illustrate the behaviors that can occur as the encounter progresses. These behaviors, in turn, open pathways to other behaviors and events that further determine how the encounter develops. Some of those pathways, color-coded in green, represent benign behaviors that conform to acceptable policing standards. Other pathways, color-coded in red, represent malign behaviors that lead to negative transactions. Neutral pathways are depicted as yellow lines. So, how the encounter unfolds is a result of this "branching" of behaviors and pathways at, and through, each stage. The following discussion describes how the algorithm functions in reconstructing encounters between police officers and civilians.

WORKING THROUGH THE ALGORITHM

Stage 1: The Policing Matter.

As shown in Figure 1 below, Stage 1, Node 1 of the algorithm, marks the beginning of the encounter. It suggests that a policing matter has occurred that has caused an officer and a civilian to have contact. Data indicates that, of the 254 million people over the age of 16 in the United States in 2015, 21.6%, or 53.5 million of them, had encounters with police officers (Davis et al., 2018). 10.8% of such persons over 16 or slightly over half of them, had encounters that were involuntary – initiated by the police (Davis et al., 2018). Slightly less than half (10.7%) of those encounters were initiated by civilians themselves (Davis et al., 2018). The vast majority of the police-initiated encounters, 8.6% or roughly 80%, were the result of traffic stops (Davis et al., 2018). By extrapolation then, traffic stops accounted for roughly 41% of all police/civilian encounters – making it the most common reason for civilian contacts with police that year. And while the algorithm is envisioned as applicable to any and all police/civilian encounters, traffic stops provide a useful context for this report.

One reason is that traffic stops are ubiquitous in that they can happen to anyone regardless of gender, race, socioeconomic status, or any other demographic. Another reason is that, on occasion, they have involved behaviors that have cost lives. For instance, in 2015, more than 100 people were shot and killed by a police officer after a traffic stop (Lowery, 2015). And, despite Black people making up only 13.4% of the U.S. population, one in three of those killed were Black – making roadside interactions one of the most common precursors to a fatal police shooting of a Black person that year (Lowery, 2015). So again, it is useful for readers to consider traffic stops as a referent context for this discussion.

Figure 1: The Policing Matter
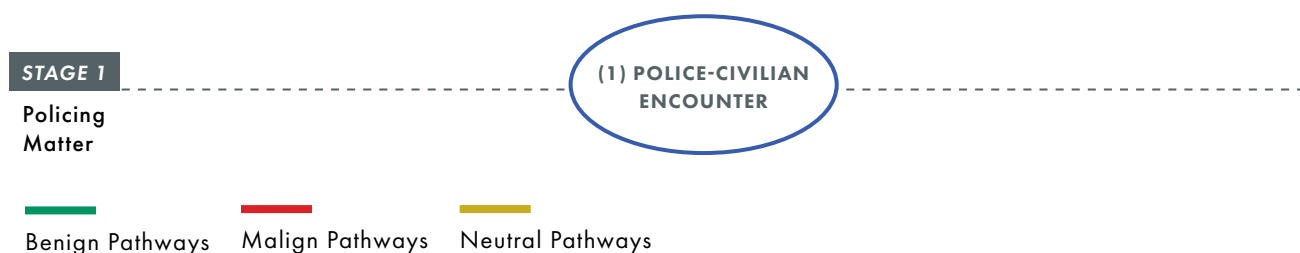
Stage 2: The Police Approach.

Given police-initiated contact (i.e., during traffic stops) as a context, the algorithm examines the manner in which the officer approaches the civilian as shown in Figure 2 below. The officer's approach is important because it sets the stage for the subsequent exchanges between the parties. Here, the algorithm suggests two possibilities – either the officer approaches the civilian in a professional manner (at Node 2A) that adheres to a Police Code of Conduct, or they do not (at Node 2B).

Figure 2: Introducing the Police Approach
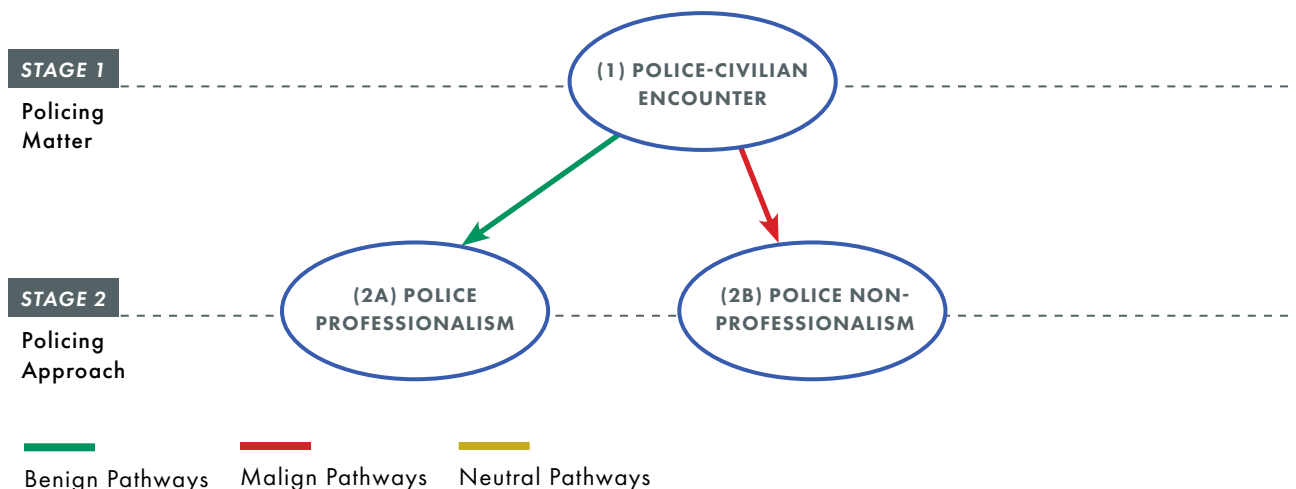
In considering the officer's approach, the algorithm adopts standards outlined by the International Association of Chiefs of Police in their model policy for Voluntary Contact Protocols (IACP, 2019). Those protocols suggest that police officers should introduce themselves and explain the reason for making the contact with the civilian. They are expected to behave in a professional, respectful, and restrained manner at all times and to work to establish rapport with the civilian. They should avoid making requests that sound like commands. They are to ensure that their contact with the civilian remains reasonable and voluntary, and finally, officers are advised not to create a physical or other barrier to the individual's ability to leave. This includes keeping the identification of an individual, such as a driver's license, or by creating a barrier by a physically imposing and intimidating presence.

Figure 3. Introducing Civilian Behavior
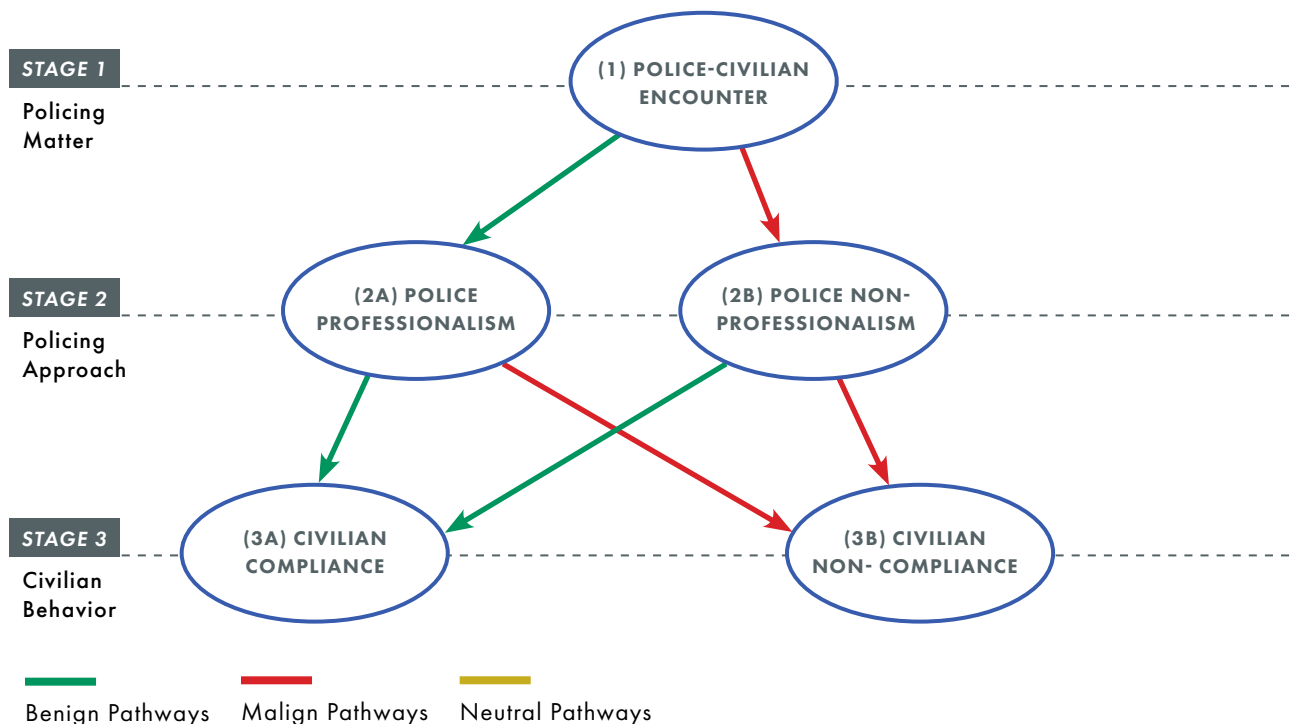
As shown in Figure 3 above, the algorithm suggests that adherence to such standards can create a benign, non-threatening pathway (e.g., from Nodes 1, to 2A, to 3A) early in the encounter. By contrast, failure to do so can create a malign pathway (e.g., from Nodes 1, to 2B, to 3B) suggesting that the encounter has gotten off to a negative start.

Stage 3: Civilian Behavior.

Stage 3 of the algorithm considers how the civilian responds to the officer's approach. The civilian's behavior, particularly the officer's perception of that behavior, plays a principal role in determining how the encounter progresses. Node 3A, for example, captures the case where the civilian responds in a calm, respectful manner and complies with instructions that are given. Here, the algorithm, and common sense, both suggest that such behavior creates a benign pathway where there is no threat to either party. At Node 3B, however, the situation is more complex.

Node 3B represents civilian non-compliance, or more accurately, the officer's perception of non-compliance. This perception issue creates a gray area. For example, an objective assessment of what constitutes non-compliance might include behaviors such as non-cooperation, resisting, assaulting the officer, or fleeing. But research has shown, that more subtle and less aggressive behaviors can also have powerful impacts on the officer's interpretation of the civilian's behavior (Nix et al., 2019). For instance, in a 2019 study, Nix, Pickett, and Mitchell administered a series of three randomized vignettes, involving routine police/civilian encounters, to 546 officers in a large southwestern city. The vignettes randomized civilian behaviors in three categories – compliant, bad attitude (compliant but disrespectful), or non-compliant. The results showed that civilian demeanor exerts a large causal effect on what officers think and feel in these encounters. In each experiment, civilian hostility and disrespect increased officers' self-reported suspicion, perceived danger, and antagonistic emotions (anger, frustration, and annoyance). In some cases, it also increased fear (Nix et al., 2019). Regardless of its basis, the algorithm suggests that an officer's perception of non-compliance can potentially create a malign pathway that can foreshadow negative consequences as later shown in Figure 4.

Stage 2/Stage 3 Interactions.

The initial exchanges between the parties at Stages 2 and 3 are extremely important to how the encounter proceeds. There are several possibilities. For example, an officer, who is behaving professionally (at Node 2A), ideally should encounter a compliant civilian (Node 3A) such that the encounter can proceed without incident. But there is also a possibility that such an officer, though behaving professionally, may nevertheless perceive non-compliance (at Node 3B). There are a number of reasons why this might occur. Preconceived notions about police may influence a civilian's behaviors regardless of how they are approached. Research has shown, for example, that while 68% of White Americans have a favorable view of police, only 40% of African Americans and 59% of Hispanic Americans share positive feelings (Ekins, 2016). Issues of substance abuse or mental health may also be contributors to perceived non-compliance unrelated to the officer's behavior. Alternatively, the civilian might just be having a bad day.

Conversely, even where an officer fails to approach the civilian in a professional manner (at Node 2B), a civilian may nevertheless remain calm and offer compliance (at Node 3A) instead of reacting negatively as at Node 3B. Whatever the case, the algorithm shows that an officer's behavior, at Stage 2, does not necessarily predict the civilian response at Stage 3.
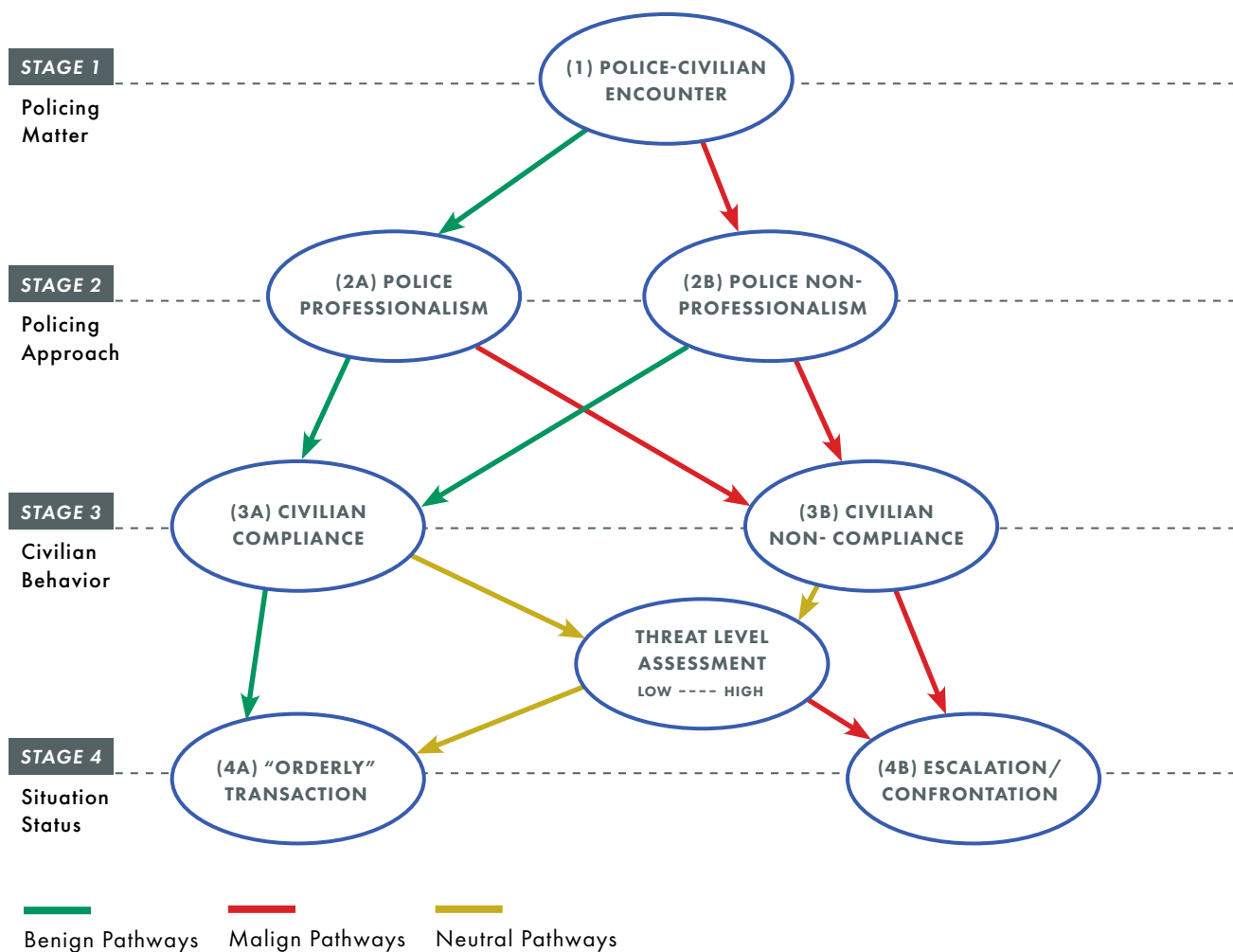
The Threat Level Assessment.

The degree to which either party feels endangered during their exchanges is an extremely important variable in the police/civilian encounter. To capture this dynamic, the algorithm inserts a Threat Level Assessment after Stages 2 and 3 (See Figure 4 on the next page). In truth, either or both parties is likely to experience a degree of anxiety and apprehension at the mere fact of the encounter. We should expect, then, that the parties may be assessing the threat levels throughout the experience. But the algorithm inserts the threat assessment here because this is the point at which the parties have experienced their initial face-to-face exchanges and have either succeeded or failed in establishing a rapport.

Underlying the algorithm's Threat Level Assessment node are two factors: situational awareness and antecedent contributors. Situational awareness is comprised of three levels – recognizing readily available cues (Level 1: perception), understanding the significance of those cues (Level 2: comprehension), and anticipating future events/states based on that understanding (Level 3: projection) (Horne, 2020). By improving their situational awareness, officers can make decisions that better protect themselves, their colleagues, and the citizens they serve. By contrast, antecedent contributors are conditions that exist prior to the encounter of which neither party may be aware. Antecedent civilian contributors might include things like outstanding warrants, or impairment from drugs and/or alcohol, or mental illness, for example. For the officer, antecedent contributors might include racial and ethnic bias, adrenaline-induced rage, malice, or an aggressive temperament, etc. The point is that this assessment involves a potentially volatile mix of real-time observations and unknowns that influence the behaviors at Stage 4, and beyond. And, by its placement in Figure 4, the algorithm positions the Threat Level Assessment as a pivotal point in the development of the encounter.

Figure 4. The Threat Level Assessment and Situation Status

STAGE 1
Policing Matter

(1) POLICE-CIVILIAN ENCOUNTER

STAGE 2
Policing Approach

(2A) POLICE PROFESSIONALISM

(2B) POLICE NON-PROFESSIONALISM

STAGE 3
Civilian Behavior

(3A) CIVILIAN COMPLIANCE

(3B) CIVILIAN NON- COMPLIANCE

THREAT LEVEL ASSESSMENT
LOW ---- HIGH

STAGE 4
Situation Status

(4A) "ORDERLY" TRANSACTION

(4B) ESCALATION/ CONFRONTATION

Benign Pathways   Malign Pathways   Neutral Pathways

Stage 4: Situation Status.

Stage 4 takes stock of the encounter. By this stage, the algorithm has recognized the initial exchanges between the parties and the subsequent threat level assessment as precursors. With that as the backdrop, Stage 4 of the algorithm posits the Situation Status and arrays two possibilities for how the encounter further develops – (1) that the behaviors and threat assessment leading to this stage have led to an orderly transaction (Node 4A) posing no danger to either party; or (2) that the encounter has led to an escalation and confrontation (at Node 4B).

Orderly transactions can involve a variety of outcomes for the civilian. For instance, among drivers involved in traffic stops in 2015, 13% received no enforcement action, 36% received a warning, 49% received a ticket, and 4% were searched or arrested (Davis et al., 2018). Node 4A recognizes that, in most cases, these outcomes can, and in fact do, occur in a safe and orderly manner. By contrast, Node 4B recognizes that, in other instances, they do not. In 2011, for instance, 6% of drivers pulled over in traffic stops experienced some type of force used against them, from shouting and cursing, to verbal threats of force or other action, to physical force, including hitting, handcuffing, and pointing a gun (Langton & Durose, 2016). Still, the implication here is that up to 94% of traffic stops proceeded without incident as at Node 4A.

The Stage 3/Stage 4 Interactions.

The transition from Stage 3 to Stage 4 in the algorithm is mediated by the volatility perceived in the threat assessment. Ideally, the algorithm envisions a routine and benign transition from civilian compliance (at Node 3A) to an orderly transaction (at Node 4A). Presumably, in this instance, both the officer and civilian have assessed that the threat level is low, and an orderly transaction ensues. On the other hand, with a perceived non-compliant civilian, at Node 3B, the situation is more complicated. Recall that perceived non-compliance may occur regardless of whether the police officer is behaving professionally (e.g., at Nodes 2A or Node 2B). Here too, if the officer feels the threat level is low, the encounter can proceed on a benign pathway to an orderly transaction (Node 4A). But if they assess the threat level as high, the algorithm shows that the situation can devolve into an escalation/confrontation with the civilian (at Node 4B).

But the algorithm also recognizes that an officer who is behaving unprofessionally (at Node 2B) and who is perceiving a non-compliant civilian (Node 3B) may also escalate to a confrontation (Node 4B) without the need of a perceived threat. This is a troubling scenario in that, here, the escalation is not in response to situational awareness but rather is a result of other, unknown motivations or antecedent contributors. This kind of unprovoked confrontation represents the worst example of unprofessional behavior and can become the basis for charges of police misconduct.

> **Peaceful, orderly transactions are, by far, the dominant result in civilian contacts with police. The Bureau of Justice Statistics...estimates that, between 2002 and 2011, an annual average of 44 million people in the U.S. had face-to-face contacts with police. Of those, only 1.6%, or about 715,500, experienced the threat or actual use of force and only 1.2% of those with contacts, roughly 535,300, reported excessive use of force (Hyland et al., 2015).**
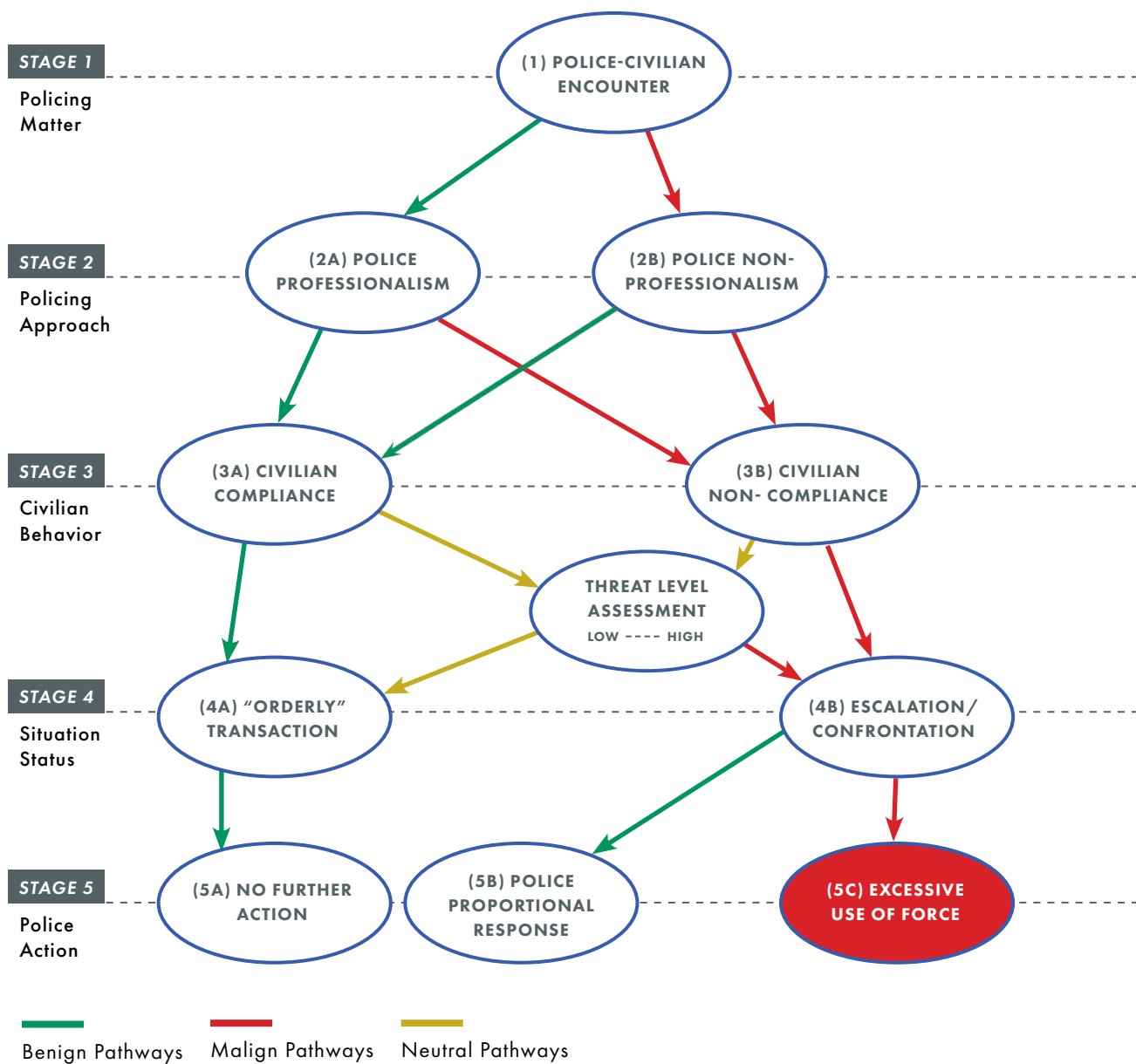
Stage 5: The Police Action.

Stage 5 illustrates alternative officer responses to the situation status at Stage 4. Three possibilities are arrayed in Figure 5 on the next page. At Node 5A, the officer has disposed of the policing matter (i.e., the traffic stop) in an orderly manner, through one of the modes discussed at Node 4A (i.e., no enforcement, warning, ticket, search, or arrest) such that the situation requires no further action. Peaceful, orderly transactions are, by far, the dominant result in civilian contacts with police. The Bureau of Justice Statistics, for instance, estimates that, between 2002 and 2011, an annual average of 44 million people in the U.S. had face-to-face contact with police. Of those, only 1.6%, or about 715,500, experienced the threat or actual use of force and only 1.2% of those with contacts, roughly 535,300, reported excessive use of force (Hyland et al., 2015). As such, Node 5A of the algorithm represents the 98.4% of encounters, in which force was not involved.

Node 5B represents situations where the officer has applied a proportional use of force in response to the escalation at Node 4B. For the purposes of Node 5B, proportional use of force is defined by a formulation called "The Use of Force Continuum" which prescribes an escalating application of force in reaction to the behavior of the subject (National Institute of Justice, 2009). The Continuum provides law enforcement officers with a set of guidelines, prescribing graduated levels of force to use in response to various levels of civilian resistance. It is important to note that force should only be used to assure compliance and it should never be initiated without provocation or employed beyond the point of submission. Table 1 draws on Faircloth's depiction of the continuum to indicate officer responses that are appropriate for each stage of civilian resistance (Faircloth, 2017).

Table 1. Use of Force Continuum (Derived from Faircloth, 2017)

CONTINUUM STAGE	CIVILIAN BEHAVIOR (OFFICER PERCEPTION)	OFFICER RESPONSE	INSTRUMENTS OF CONTROL (NIJ, 2009)
5	Assaultive (Serious Bodily Harm)	Deadly Force	Lethal Weapons such as firearms
4	Assaultive (Bodily Harm)	Defensive Tactics	Less Lethal Methods/Weapons: baton, chemical sprays, Tasers, or police dogs
3	Resistance (Active)	Compliance Techniques	Empty-Hand Control: physical for capitalization consistency
2	Resistance (Passive)	Contact Controls	Verbalization: ranging from non-threatening requests to direct orders
1	Compliance	Cooperative controls	Physical Presence: no force is necessary

Figure 5. Introducing the Police Action

STAGE 1
Policing Matter

STAGE 2
Policing Approach

STAGE 3
Civilian Behavior

STAGE 4
Situation Status

STAGE 5
Police Action

(1) POLICE-CIVILIAN ENCOUNTER

(2A) POLICE PROFESSIONALISM

(2B) POLICE NON-PROFESSIONALISM

(3A) CIVILIAN COMPLIANCE

(3B) CIVILIAN NON- COMPLIANCE

THREAT LEVEL ASSESSMENT
LOW ---- HIGH

(4A) "ORDERLY" TRANSACTION

(4B) ESCALATION/ CONFRONTATION

(5A) NO FURTHER ACTION

(5B) POLICE PROPORTIONAL RESPONSE

(5C) EXCESSIVE USE OF FORCE

Benign Pathways   Malign Pathways   Neutral Pathways

It should be noted that police use of force is relatively rare and usually without serious consequence. Using data, on arrests for violent offenses and the number of sworn officers, to impute missing data on uses of force, researchers estimated a total of 337,590 use of physical force incidents among state and local law enforcement agencies during 2012 (Garner et al., 2018). Other estimates have indicated that about 1% of people who had face-to-face contact with police reported that officers used or threatened force (Adams et al., 1999). Still, other data show that police use of force typically occurs at the lower end of the force spectrum, involving grabbing, pushing, or shoving (Adams et al., 1999). And, in a study focusing on 7,512 adult custody arrests in six moderate-to-large jurisdictions, it was found that, in almost 80% of all incidents involving physical force or threats of force, the most severe form of force used was a weaponless tactic, most commonly grabbing (Garner & Maxwell, 2002). So, the use of force is both relatively infrequent in terms of its occurrence, and relatively moderate in terms of its severity.

> **...force should only be used to assure compliance and it should never be initiated without provocation or employed beyond the point of submission.**

Node 5C represents an instance where an officer has employed an excessive use of force. Data show that, between 2002 and 2011, a greater percentage of non-Hispanic Black individuals (2.8%) than non-Hispanic White individuals (1%) and Hispanics (1.4%) experienced excessive nonfatal force by police during their contact (Hyland et al., 2015). Table 1 outlines the control tactics that are appropriate at each level of force – reserving the use of lethal tactics for only the most threatening circumstances. In the context of the table, excessive force occurs when the officer applies tactics that exceed what is prescribed for the level of non-compliance. It is useful to note that charges of excessive force do not only apply to cases involving civilian deaths. They can be applied where injuries are relatively minor but resulted from an unreasonable use of force. The reasonableness standard was established by the 1989 Supreme Court decision in *Graham v. Conner* (Rehnquist & Supreme Court, 1988).

Conditions for applying deadly force have also been adjudicated in the courts. In the 1985 Supreme Court case *Tennessee v. Garner*, the Court ruled that deadly force can only be used during an arrest if: (a) deemed necessary to prevent an escape; and (b) the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others (White & Supreme Court, 1985). So, the algorithm is guided by these considerations in calibrating the excessive use of force response cited at Node 5C.

Stage 6: Outcome.

As shown in Figure 6, the algorithm recognizes only two possibilities for outcomes – either a Nonfatal Resolution to the policing matter or a Civilian Fatality. Node 6A represents cases that do not result in civilian death. As shown, the algorithm can arrive at Node 6A through several pathways – through the pathway from Node 5A where an orderly transaction has resulted in no further action; through the pathway from Node 5B that follows a confrontation involving a proportional use of force; or through the pathway from Node 5C where excessive force was used.

Node 6B, by contrast, represents an incidence of excessive use of force that resulted in a civilian death either during, or as a direct result of, the encounter. Estimates of these civilian deaths have been historically unreliable. The Bureau of Justice Statistics estimated that 1,900 arrest-related deaths occurred in 2015 with 425 of them occurring from June to August. Nearly two-thirds (64%) of the June through August deaths were homicides, about a fifth (18%) were suicides, and a tenth (11%) were accidents (Banks et al., 2016). More recently, in a December 10, 2020 article, *The Washington Post* estimated that 1,009 people were shot and killed by on-duty police officers in 2019 and that the FBI had undercounted such incidents by more than half (Tate et al., 2020). *The Washington Post* also found that Black individuals (at 34 deaths per million) were more than twice as likely as White individuals (at 14 per million) to be shot and killed by police (Tate et al, 2020).

Stage 7: End of the Encounter.

Stage 7 marks the End of the Encounter. This is the point where the officer disengages. What comes next depends, in large part, on the sequence of events that led to the Stage 6 outcome. For example, while all policing matters that lead to an enforcement action result in the filing of a police report, those that involve the use of force, leading to serious injury or death, or to the discharge of a firearm, are reported to the FBI as a Use of Force Incident. Such incidents are usually additionally reviewed by the department of jurisdiction. Because the vast majority of Node 6A outcomes do not involve the use of force, the police report will mark the encounter's end. But where severe injury has occurred at Node 6A, or where a civilian fatality has occurred at Node 6B, an investigation may ensue. And it is here where the Police/Civilian Encounters Framework has its primary value.

> **...in 2015, more than 100 people were shot and killed by police after a traffic stop (Lowery, 2015). Despite Black people making up only 13.4% of the U.S. population, one in three of those killed were Black – making roadside interactions one of the most common precursors to a fatal police shooting of a Black person that year (Lowery, 2015).**

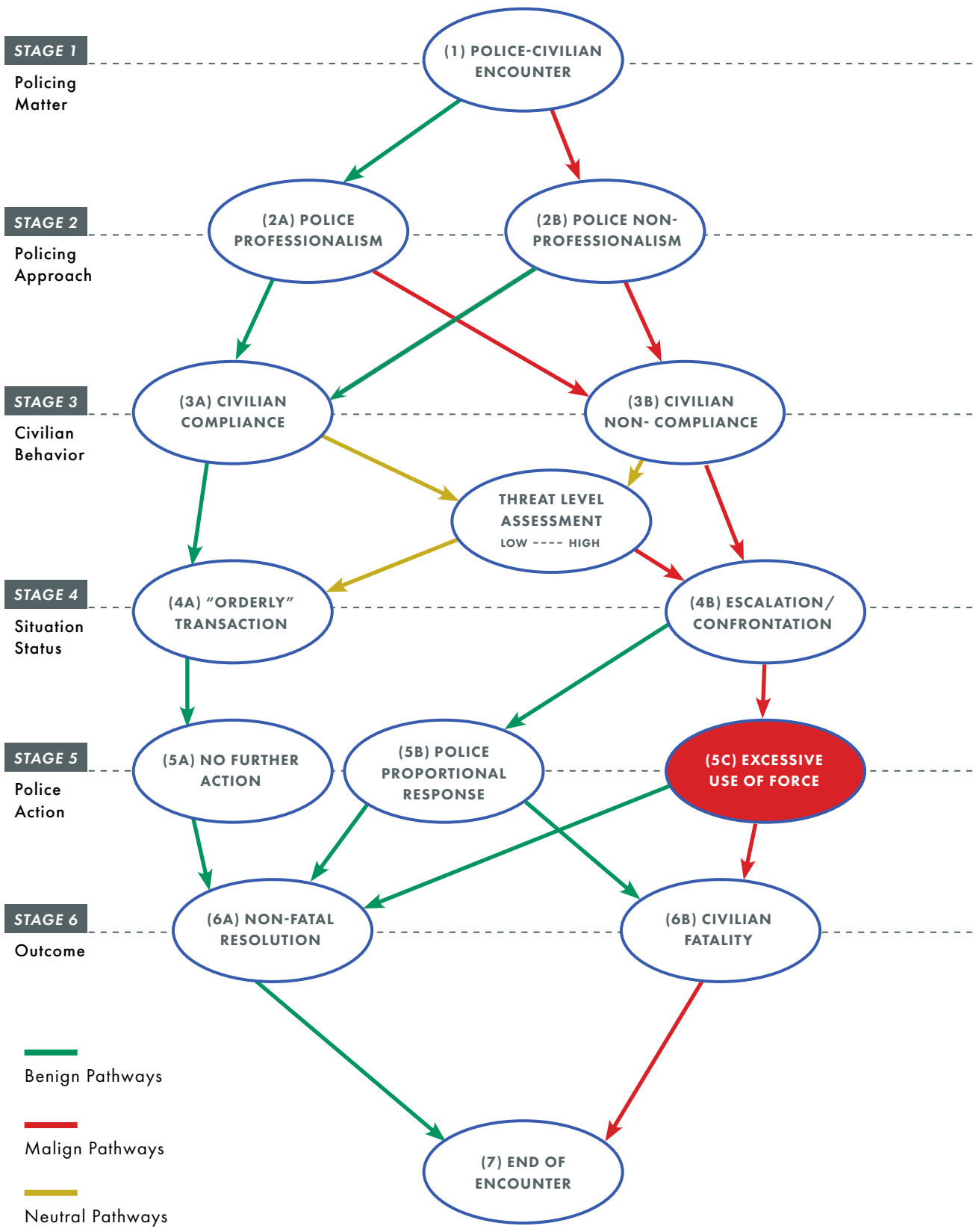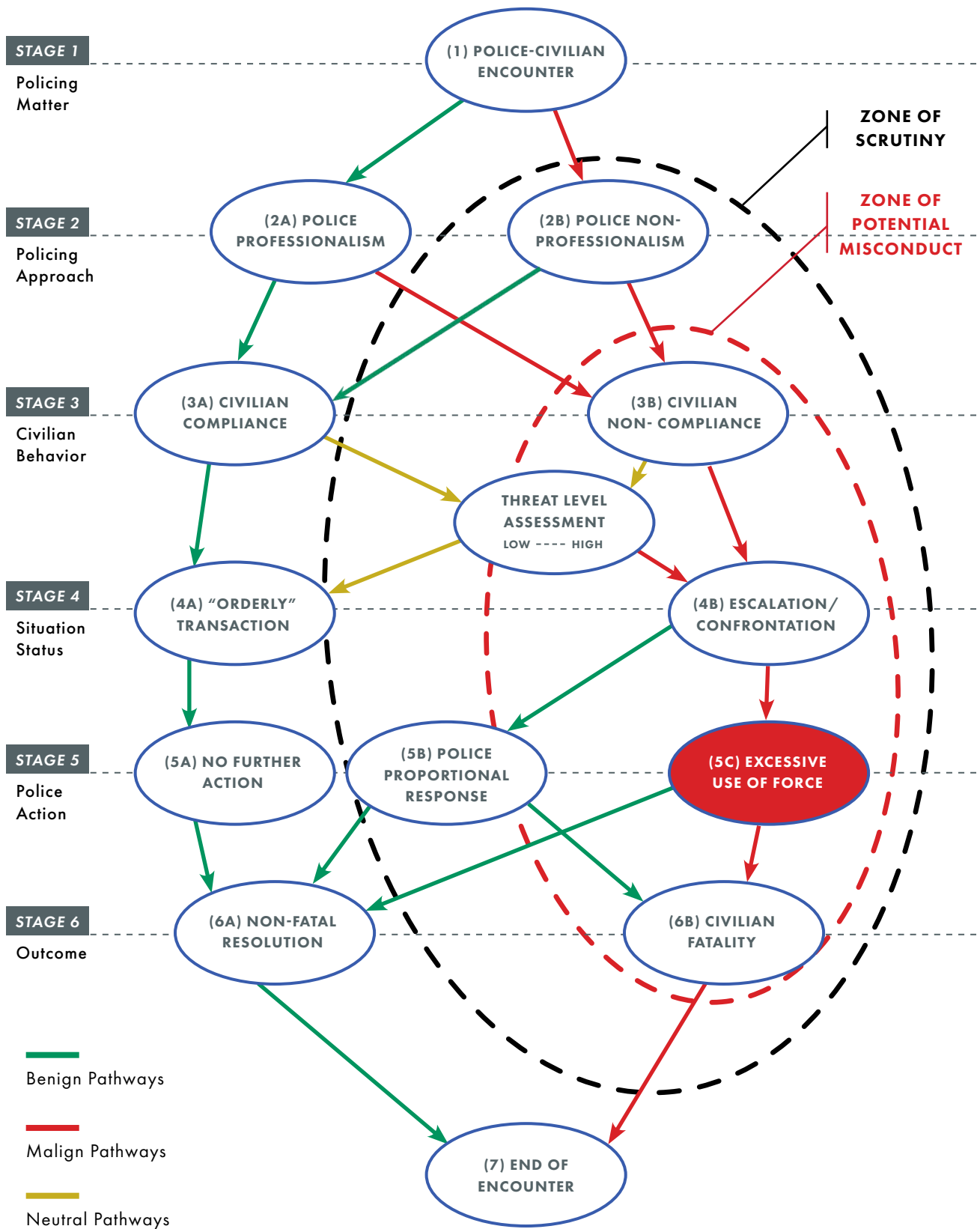## Figure 6. Introducing the Outcome and End of the Encounter

STAGE 1
Policing Matter

STAGE 2
Policing Approach

STAGE 3
Civilian Behavior

STAGE 4
Situation Status

STAGE 5
Police Action

STAGE 6
Outcome

(1) POLICE-CIVILIAN ENCOUNTER

(2A) POLICE PROFESSIONALISM

(2B) POLICE NON-PROFESSIONALISM

(3A) CIVILIAN COMPLIANCE

(3B) CIVILIAN NON-COMPLIANCE

THREAT LEVEL ASSESSMENT
LOW ---- HIGH

(4A) "ORDERLY" TRANSACTION

(4B) ESCALATION/ CONFRONTATION

(5A) NO FURTHER ACTION

(5B) POLICE PROPORTIONAL RESPONSE

(5C) EXCESSIVE USE OF FORCE

(6A) NON-FATAL RESOLUTION

(6B) CIVILIAN FATALITY

(7) END OF ENCOUNTER

Benign Pathways

Malign Pathways

Neutral Pathways

Figure 7. The Zones of Scrutiny and Misconduct

The Algorithm as an Instrument of Policy

As stated, the Police/Civilian Encounters Framework is designed to provide a micro look into encounters between police and civilians. A major benefit of this increased transparency is the framework's potential to assist in clarifying and enforcing policing policy as it relates to police contact with civilians and the appropriateness of the use of force when applied.

POLICY IMPLICATIONS: POLICE REVIEW AND INVESTIGATIVE PROCEDURES

Of particular importance is the algorithm's potential to assist with investigations where charges of police misconduct are alleged. Figure 6 identifies two regions of behaviors and events that should be investigated in such cases – a zone of scrutiny and a zone of potential misconduct. In defining these zones, the benign nodes and green pathways, on the left side of Figure 6, are exempted because they map ideal scenarios for police/civilian interactions and, therefore, need no further review.

Zone of Scrutiny.

Figure 7 identifies all police and civilian behaviors and events, subsequent to a determination that an officer has behaved in an unprofessional manner (at Node 2B), as within the zone of scrutiny. The rationale for doing so reflects the importance the algorithm places on first contact as the potential tone-setter for the encounter. Note, also in Figure 7, that unprofessional conduct by the officer does not automatically lead to a malign subsequent pathway (as at Node 3B). Calm and compliant behavior by the civilian can still mitigate the unprofessional police behavior and ensure the return to a benign pathway (at Node 3A). Even so, the algorithm suggests that unprofessional conduct, by itself, regardless of subsequent events, deserves intense scrutiny and corrective action by the appropriate authorities.

Zone of Potential Misconduct.

Within the zone of scrutiny, the algorithm also identifies a set of police behaviors that may constitute police misconduct. Such behaviors might include provoking non-compliance; overestimating/exaggerating the threat level; needlessly escalating to a confrontation; applying excessive force; and/or inflicting needless injury and/or death. What distinguishes this zone from the zone of scrutiny is its exclusion of proportional use of force (at Node 5B). This distinction, in the algorithm, suggests that an officer, who applies appropriate, proportional responses, should not be subject to prosecution even though the officer's unprofessional conduct may, nevertheless, warrant review and correction. At the same time, it should be noted that the absence of a fatality does not absolve the officer of criminal culpability. An officer's conduct in this zone may be subject to prosecution with or without a civilian death.

POLICY IMPLICATIONS: PATHWAYS, POLICE TRAINING, AND CITIZEN EDUCATION

Beyond its potential value as an investigative tool, the algorithm has implications for additional learning by bringing the dynamics of these encounters into a sharper focus. For example, it helps identify pathways that might be explored to develop new and promising strategies for police training and citizen education. And, in so doing, it may help define a research agenda that can identify additional data needs. The algorithm's pathways can also provide useful lessons. For example, they suggest that the optimal evolution of any police/civilian encounter would follow the green pathways on the left-side periphery of the Figure 7 diagram. Here, the encounter proceeds (at Stage 2) with an officer behaving professionally (at Node 2A) and encountering a compliant civilian (at Node 3A). The threat level is low and the encounter proceeds in an orderly fashion (at Node 4A) requiring no further action by the officer (at Node 5A) and thus leading to a nonfatal resolution (at Node 6A). By contrast, a negative evolution of the encounter would suggest that it has proceeded along the red pathways on the right-side periphery of Figure 7 – where it begins with nonprofessional behavior by the officer (at Node 2B) and progresses through a series of additional negative behaviors and events to result in an eventual civilian death (at Node 6B).

These two scenarios highlight the preferred and the nonpreferred manners in which encounters between police and civilians might unfold. Much of today's police training and training materials are focused on these peripheral pathways (e.g., how to maintain a rapport throughout the encounter as on the figure's left side or how to mitigate the negative progression shown on the right). But importantly, as the algorithm also shows, there are several opportunities within this framework for events to transition from one side of Figure 7 to the other. Behaviors by either of the parties, at several points, can either mitigate the danger of the red, malign, right-side pathways, or deteriorate the situation away from the green, benign, left-side pathways. As such, explorations of these "interior" pathways can inform additional strategies for, and approaches to, police training and citizen education.

For instance, the pathway from Police Professionalism (at Node 2A) to Civilian Non-compliance (at Node 3B) clearly suggests a need to better understand police perceptions of non-compliant behavior – both what constitutes it and how it manifests. Conversely, explorations of the pathway from Police Non-Professionalism (at Node 2B) to Civilian Compliance (at Node 3A) may offer insights into civilian coping mechanisms. Similar learning opportunities are possible in exploring the transitions from Node 3A (civilian compliance) to Node 4B (escalation) and Nodes 3B (civilian non-compliance) to 4A (orderly transaction). Each of these interior pathways highlights opportunities for research that may offer learning opportunities for the police and the public.

"Fueling" the Algorithm

The Police/Civilian Encounters Framework is a data-driven algorithm. And the challenge for the algorithm is that the data needed for each of its nodes is derived from complex dynamics involving highly subjective behavioral indicators. For instance, the perceptions of either party about the other, particularly at Stages 2 and 3, are what actually determine how the encounter progresses. As an example, Police Professionalism (at Node 2A) might involve behaviors such as being calm, respectful, and authoritative. But what is important here is whether the civilian, at Stage 3, perceives them as such. Likewise, as earlier noted, non-compliance by the civilian (at Node 3B) is subject to the officer's interpretation.

The fact that subjective judgments play such a major role in how police/civilian encounters progress poses a challenge for data collection. The algorithm has no capacity to identify underlying police/civilian interpretations during the encounter. So, we must infer them. But doing so requires qualitative data about the various perspectives that civilians have of police and, likewise, that police have of civilians. As such, qualitative research would be instrumental in constructing typologies of behaviors for police and civilians that can be used as indicators in the algorithm.

This raises a second challenge for data collection – identifying reliable data sources from which to objectively observe the typologies of indicators. Several sources of such observational data may be available including real-time footage from police dashcams, body cams, civilian cell phones, as well as area surveillance and security cameras. To the extent that video data can be gathered from a variety of such sources, observations can be made from varying vantage points thus increasing the accuracy of those observations. There is also a critical need for real-time, quality, audio as well as video evidence that can help capture the full content of the exchange. Still other, perhaps less objective, sources of data would include witness testimony, police reports, incident reports, and citizen complaints.

Data Needs and the Research Component

Constructing typologies of indicators requires additional research. There is a need to deepen our understanding of police and civilian perceptions and expectations of each other. What are the cues either party is using to judge the behaviors of the other? An officer's view of the civilian, and their perceptions of the civilian's behavior, play critical roles in their perceptions of threat levels and subsequent actions. Likewise, a civilian's previous experiences with, and attitudes toward, the police are likely to filter their interpretations of events during the encounter. Research is also needed here to identify the civilian characteristics and behaviors to which police perceptions are most responsive. For instance, the civilian's appearance, apparel, attitude, and a host of other characteristics and traits may come into play here. And if, as research has indicated, civilian demeanor affects police perceptions, it may be useful to explore various aspects of demeanor to test their relative contributions to those perceptions. Exploring such issues may produce insights that help officers employ a more nuanced view of what constitutes civilian non-compliance – thus making them better able to distinguish it from a bad attitude or other non-threatening behaviors.

Similar data-related concerns might be raised with regard to civilian perceptions of the police officer although such perceptions are likely to be less consequential to the evolution of the encounter. In either case, further research is needed to elucidate these issues. Focus group studies of police officers and civilians could be one means of helping clarify these issues and build the typologies of indicators. Data for Stages 2 and 3 could then be derived by observing the real-time behaviors of the parties and mapping them to these indicators.

The Threat Level Assessment is another node that begs a deeper understanding. It is the most consequential dynamic in the entire framework because, more than any other, it is catalytic to the encounter's ultimate resolution. Here, research is needed to more clearly elucidate the variables that contribute to this assessment – the situational and antecedent factors. The goal of this research should be to help us better understand: (a) what levels of perceived civilian non-compliance will trigger the kind of threat assessment that leads to an escalation; and (b) what kinds of behaviors the officer is keying on as indicators of that non-compliance.

These and other data issues highlight the need for qualitative research about the attitudes and behaviors of police officers and civilians. Such information can be gathered through surveys, interviews, focus groups, police ride-alongs, and other data gathering techniques.

Application of the Framework to Civilian-Initiated Policing Matters

The foregoing discussion has been focused on police-initiated contacts, and specifically on traffic stops, as the context for the algorithm's application. But the algorithm is also applicable to encounters that are initiated by civilians – instances where police are summoned by persons who witness, suspect, or are victims of, wrongdoing. There is a difference, however. In this latter instance, our notions of how police and civilian behaviors evolve at Stages 2 and 3 of the algorithm are more nuanced.

Citizen-initiated calls span a wide variety of policing matters including car thefts, burglaries, domestic violence cases, and many others. In these circumstances, officers must begin with the assumption that the encounter carries a higher level of risk than is assumed during the traffic stops. Consequently, they must be prepared to be more assertive in the exercise of their duties. Figure 8 is constructed to take this into account. As shown there, the pathways highlighted at Stages 2 and 3 – related to the officer's approach and civilian's response – are subordinated to a new pathway that links the Policing Matter directly to a threat assessment.

By improving their situational awareness, officers can make decisions that better protect themselves, their colleagues, and the citizens they serve.

This new pathway does not invalidate the nodes at Stages 2 and 3. Rather, it recognizes that they may be subordinated given the circumstances that provoked the encounter. For instance, an in-progress robbery presents a much more intense context for the first contact between an officer and a suspect than does a stop for a broken taillight. But, here too, as in Figure 6, it is still possible that the threat may be contained (e.g., through the subject's surrender, etc.) such that the encounter may proceed in an orderly fashion. Or alternatively, given the heightened intensity, it is reasonable to suspect that the encounter may lead to a confrontation with a suspect. But from this point on, in the encounter, the algorithm proceeds as in Figure 7.

Another issue to consider, in this context, is how to interpret the zones in Figure 8. For example, the Zone of Scrutiny, in Figure 7, is triggered by an observation that an officer has behaved in an unprofessional manner. But, in the context of an in-progress police response, as in Figure 8, where police officers may have to behave more aggressively, the threshold considerations for unprofessional behavior, in Figure 8, will likely differ from those that would apply in Figure 7. In fact, they may even be difficult to define, which may, in some ways, diminish the Zone of Scrutiny.

By contrast, the Zone of Potential Misconduct is not diminished in its application to civilian-initiated matters because it is defined by the use of excessive force – suggesting that neither the level of non-compliance/resistance by the civilian, nor the threat levels, were sufficiently high to warrant the level of force applied. It reasonable to expect, however, that the threshold for what is considered excessive, in Figure 8, will cluster at higher levels on the Use of Force Continuum shown in Table 1.

Figure 8. Police Civilian Encounters Framework
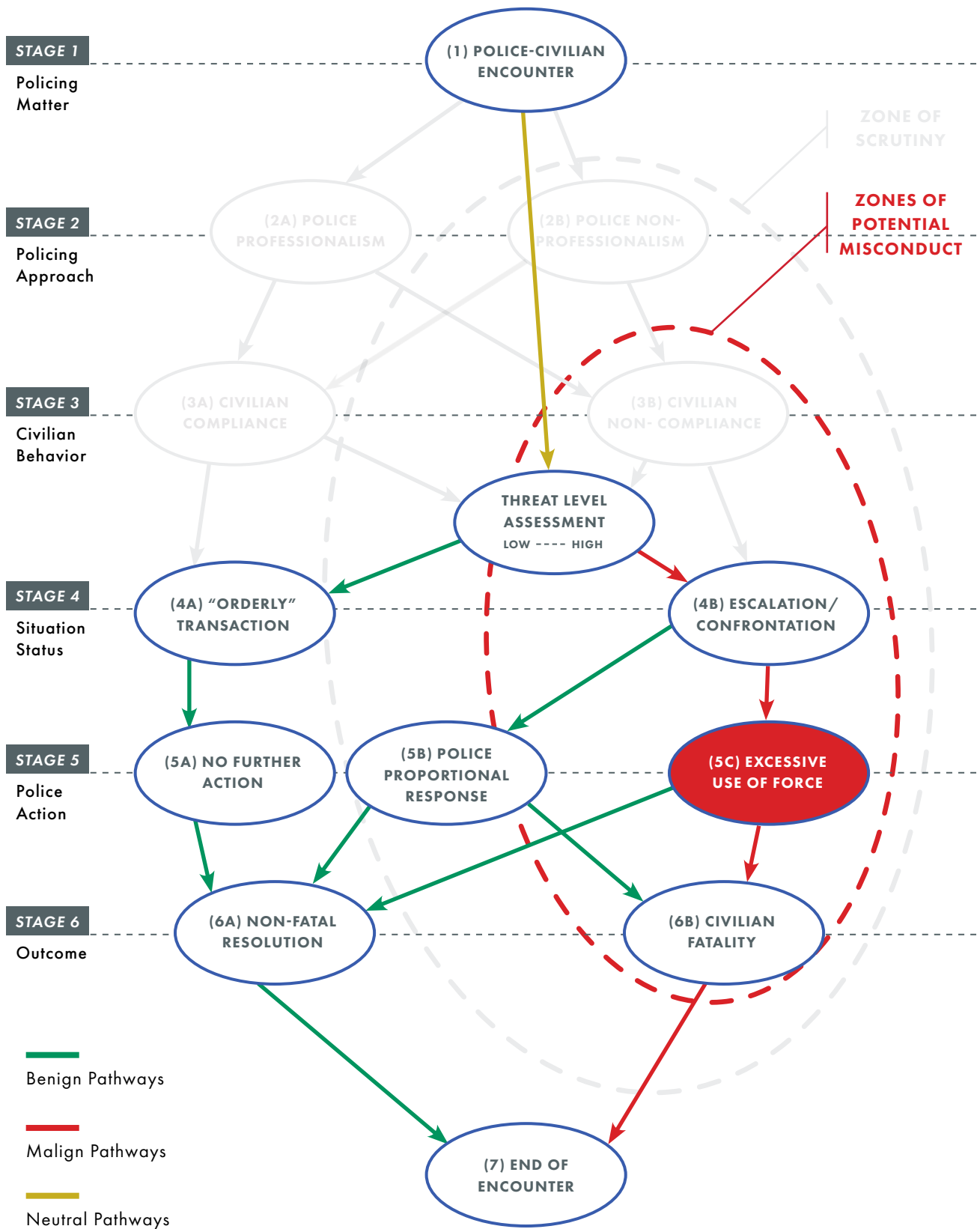
Potential Use

A question that remains is how this algorithm might be used. Given the nearly 54 million encounters between police and civilians in 2015, it is neither practical, nor feasible to apply the algorithm across all police/civilian contacts. It is also not necessary. The algorithm's zone of scrutiny excludes encounters that follow the pathways on the left-side periphery – representing the 98.2% of encounters where force was not employed (Davis et al., 2018). As such, a more appropriate and manageable application would require its use only in cases where excessive force was alleged in citizen complaints. For example, during 2002, large State and local law enforcement agencies, representing 5% of agencies and 59% of officers, received a total of 26,556 citizen complaints about police use of force. This corresponds to an overall rate of 6.6 force complaints per 100 full-time sworn officers (Hickman, 2002). When applied to the two largest municipal police departments in the United States, New York – with about 36,000 officers and Chicago with 11,965 officers (Kershner, 2020) – the algorithm would be deployable at a maximum rate of 360 and 120 times respectively per year. But, because the primary concern here is increasing transparency into fatal police encounters, municipal authorities could triage encounters to focus only on cases involving civilian fatalities which occur at an average rate of 1,000 deaths per year spread nationally. At this level of deployment, the Police/Civilian Encounters Framework is more likely to offer benefits that exceed its burden.
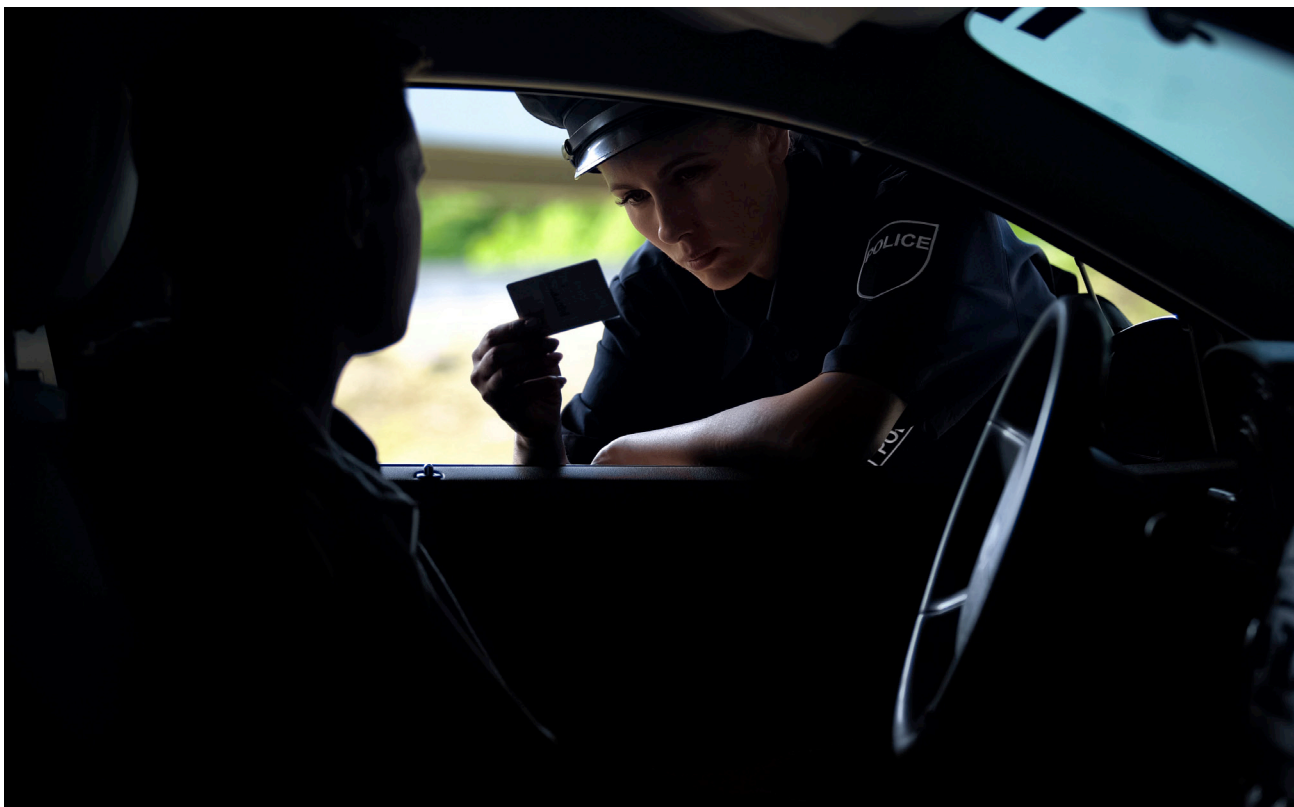
Conclusion

The Police/Civilian Encounters Framework is being put forward as an aid to policing officials, criminal justice authorities, and civilian advocates. It differs from the current policing models in that it offers a more micro-level, systematic, look at how encounters between police and individual civilians unfold. In so doing, it increases the transparency of these transactions – allowing us to more closely examine how and why some of those encounters may go wrong in ways that lead to needless injury and death. As such, it could be helpful in several ways.

- It offers a portable template for systematically examining interactions between police and civilians thus increasing the transparency of these encounters.

- It can aid in the forensic investigation of instances of alleged police misconduct.

- It raises questions for research that can help us better understand relevant police and civilian behaviors and, in so doing, offers insights that can benefit police training and citizen education programs.

But the framework is just a first step. Before it can be deployed as a practicable algorithm, more must be known about the dynamics that underlie each of its nodes. We need a clearer formulation of what constitutes professionalism versus non-professionalism among police. We need to more clearly delineate where civilian compliance ends, and non-compliance begins – particularly from the perspective of the police officer. The Threat Level Assessment must be better delineated to specify discrete aspects of the situational awareness and the antecedent contributors that most powerfully influence the officer's perceptions and actions. And, while the Use of Force Continuum is a useful tool for determining what constitutes an appropriate use of force, more research into police perceptions would help us better calibrate the continuum to reflect a more nuanced view of civilian behaviors. Doing so would, in turn, allow us to better gauge the levels of threat being presented and the appropriateness of an officer's response.

All of the above suggests that additional qualitative research is needed to further explore these nodes and generate appropriate indicators to calibrate their underlying behaviors. So, while there is considerably more work to do to make the framework operational, it is the author's hope that the discussion above may offer a promising start to creating a systematic, portable template for examining, and increasing our understanding, of civilian encounters with police. After all, the stakes are quite high.

Police/community relations in the U.S., and particularly in communities of color, appear to be at a critical juncture. The deterioration of police/community relations, in the face of repeated reports of Black fatalities during police interactions, appears to be having deleterious effects for communities of color, but also for police themselves. For example, a recent study by Mourtgos, Adams, and Nix (2021) suggests that the decade-long increase in voluntary attrition, from police departments nationwide, has been exacerbated by the increased public scrutiny and the swift downturn in public opinion post-George Floyd. Using 60 months of data on a single, large, western police department, they estimate that voluntary attrition increased 279% over what it would have been when compared to a "synthetic" control group.

The confluence of these two developments – declining public trust and potentially shrinking police forces – weakens both communities to their mutual detriment. Communities of color need effective policing to ensure public safety and to encourage private investment and community development. The policing community, on the other hand, needs public and community support to be maximally effective in providing that public safety. As such, the two communities are mutually dependent. And it is the author's hope and belief that the Police/Civilian Encounters Framework can contribute to reconciling these issues by bringing increased transparency to these encounters and by providing a more uniform, standardized approach to their investigation and resolution.

AUTHOR NOTE

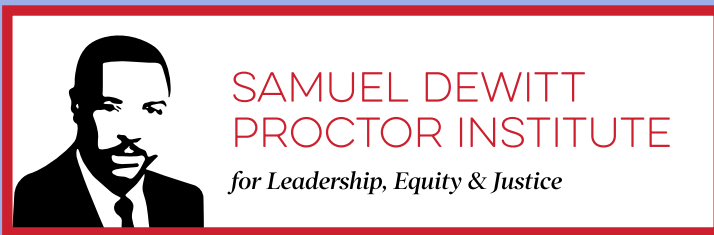James B. Hyman iD https://orcid.org/0000-0003-4367-9511

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References

Adams, K., Alpert, G., Dunham, R., Garner, J., Greenfeld, L., Henriquez, M., Langan, P., Maxwell, C., & Smith, S. (1999). (rep.). *Use of Force by Police: Overview of National and Local Data* (pp. 1–37). Washington, DC: Bureau of Justice Statistics.

Banks, D., P Ruddle, E Kennedy, & Planty, M. (2016). (rep.). *Arrest-Related Deaths Program Redesign Study, 2015-2016: Preliminary Findings* (pp. 1–10). Washington, D.C.: Bureau of Justice Statistics.

Davis, E., Whyde, A., & Langton, L. (2018). (rep.). *Contacts Between Police and the Public, 2015* (pp. 1–33). Washington, DC: Bureau of Justice Statistics.

Edwards, F., Lee, H., & Esposito, M. (2019). Risk of being killed by police use of force in the United States by age, race–ethnicity, and sex. *Proceedings of the National Academy of Sciences, 116*(34), 16793–16798. https://doi.org/10.1073/pnas.1821204116.

Ekins, E. (2016, December 7). *Policing in America: Understanding Public Attitudes Toward the Police. Results from a National Survey.* cato.org. https://www.cato.org/survey-reports/policing-america-understanding-public-attitudes-toward-police-results-national.

Faircloth, U. (2017, January 6). *Civilian Use of Force Continuum.* Stun & Run Self Defense LLC. https://www.srselfdefense.com/blog/civilian-use-of-force-continuum/.

Garner, J. H., Hickman, M. J., Malega, R. W., & Maxwell, C. D. (2018). Progress toward national estimates of police use of force. *PLOS ONE, 13*(2). https://doi.org/10.1371/journal.pone.0192932.

Garner, J., & Maxwell, C. (2002). (rep.). *Understanding the use of force by and against the police in six jurisdictions* (pp. 1–218). Rockville, MD: National Criminal Justice Reference Service.

Hickman, M. J. (2002). (rep.). *Citizen Complaints About Police Use of Force* (pp. 1–8). Washington, DC: Bureau of Justice Statistics.

Horne, L. (2020, March 11). *Situation awareness: is it time to expand use-of-force training?* Blue Line. https://www.blueline.ca/situation-awareness-is-it-time-to-expand-use-of-force-training/.

Hyland, S., Langton, L., & Davis, E. (2015). (rep.). *Police Use of Nonfatal Force, 2002–11* (pp. 1–17). Washington, DC: Bureau of Justice Statistics.

IACP Law Enforcement Policy Center. (2019). (publication). *Arrests and Investigatory Stops* (pp. 1–31). Alexandria, VA.

Jiao, A. Y. (1997). Factoring policing models. *Policing: An International Journal of Police Strategies & Management, 20*(3), 454–472. https://doi.org/10.1108/13639519710180015.

Kershner, E. (2020, August 3). *The Largest Police Departments in the U.S.* WorldAtlas. https://www.worldatlas.com/articles/the-largest-police-departments-in-the-us.html.

Langton, L., & Durose, M. (2016). (rep.). *Police Behavior during Traffic and Street Stops, 2011* (pp. 1–22). Washington, DC: Bureau of Justice Statistics.

Lhamon, C., Timmons-Goodson, P., Heriot, G., Kirsanow, P., Kladney, D., Narasaki, K., & Yaki, M. (2018). (issue brief). *Police Use of force: An examination of modern policing practices.* Washington, D.C.: USCCR.

Lowery, W. (2015). A Disproportionate Number of Black Victims in Fatal Traffic Stops. *The Washington Post.*

Mourtgos, S.M., Adams, I.T., & Nix, J. (2021). Elevated Police Turnover Following The Summer Of George Floyd Protests: A Synthetic Control Study. *Criminology & Public Policy,*

National Institute of Justice (2009). *The Use-of-Force Continuum.* https://nij.ojp.gov/topics/articles/use-force-continuum.

Nix, J., Campbell, B. A., Byers, E. H., & Alpert, G. P. (2017). A Bird's Eye View of Civilians Killed by Police in 2015. *Criminology & Public Policy, 16*(1), 309–340. https://doi.org/10.1111/1745-9133.12269.

Nix, J., Pickett, J. T., & Mitchell, R. J. (2019). Compliance, non-compliance, and the in-between: causal effects of civilian demeanor on police officers' cognitions and emotions. *Journal of Experimental Criminology, 15*(4), 611–639. https://doi.org/10.1007/s11292-019-09363-4.

Rehnquist, W.H, & Supreme Court of the United States (1988). *U.S. Reports: Graham v. Conner et al., 490 U.S. 386.* Periodical. https://www.loc.gov/item/usrep490386.

Slisco, A. (2020). Black Lives Matter Is More Popular than the NRA in Texas: Poll. *Newsweek.*

Sparks, G. (2020, June 18). *Polls show widespread support of Black Lives Matters protests and varied views on how to reform police.* CNN. https://www.cnn.com/2020/06/18/politics/protests-polling-support-movement-policies-kaiser-quinnipiac/index.html.

Tate, J., Jenkins, J., & Rich, S. (2020, January 22). Fatal Force: Police shootings database. *The Washington Post.* https://www.washingtonpost.com/graphics/investigations/police-shootings-database/.

White, B.R., & Supreme Court of the United States (1984). *U.S. Reports: Tennessee v. Garner, 471 U.S. 1.* Periodical. https://www.loc.gov/item/usrep471001/.

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