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Justice Talking Radio Transcript

Excessive Force: When Does Use of Force Turn Into Abuse?—Air Date: 3/19/07

In February, the U.S. Supreme Court considered whether the Constitution permits police to use deadly force to stop a fleeing motorist for speeding and reckless driving. Although the case centers on high speed chases, the case raises larger issues about when police can and should use deadly force and whether racial discrimination taints police judgments. Join us for this edition of Justice Talking as we look at police policies and practice.

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MARGOT ADLER: This is Justice Talking, the public radio show about law and American life. I'm Margot Adler. On today's show we're going to look at when and why police use force, including deadly force, when apprehending a suspect. A case before the Supreme Court addresses some of the questions about when deadly force is appropriate and whether a police officer can be held liable for his or her actions. We'll discuss that case a little later on. We'll also talk about the use of Tasers by police in Houston and get an update on the Los Angeles Police Department's attempts to move beyond a scandal-ridden past.

David Klinger knows all too well what it's like to shoot someone in the line of duty. He wrote about his experience in his book "Into the Kill Zone." David was a Los Angeles police officer in the early 1980s. Just four months after graduating from the police academy when he was 23 years old, he shot and killed a suspect who was attacking his partner. I asked him to describe what happened.

DAVID KLINGER: My partner Dennis Assovado and I were on the north side of a street, there was an individual inside a house that we were trying to apprehend, and he was what we called a barricaded suspect. And there was a crowd of people on the south side of the street and we were able to get all of them to leave but one. My partner Dennis ran across the street after a minute or two to try to get that last person to leave, because we felt that he was in danger standing right in front of a house that had an armed person who had already fired one round inside. And

unfortunately it turned out that this individual, his name was Edward Randolph, he didn't like the police and he had told people that he was going to kill the next police officer that bothered him. Of course we didn't know this and so he attacked Dennis, stabbed him in the chest with a butcher's knife. Dennis fell on the ground. The suspect, Edward Randolph, jumped on top of him and tried to drive the knife through his throat. And as all this was happening I was in the process of running across the street. So by the time that I got to Dennis' side he was flat on his back, Edward Randolph was straddling Dennis' chest with one knee on one side, the other knee on the other side, and Dennis had a hold of the suspect's wrist and they were literally fighting for control of the knife inches above Dennis' throat. I tried to take the knife away; it didn't work. Dennis said shoot him, and so from less than a couple of feet away I picked out a spot on the suspect's chest and pulled the trigger. When the bullet impacted, immediately Dennis was able to push the knife away from the area immediately above his throat and we were able to get the suspect under control. Some other officers who were nearby ran down the sidewalk and together the six of us were actually able to get the knife out of his hand and get him handcuffed.

MARGOT ADLER: And what was going on inside your head?

DAVID KLINGER: I was scared. I had a sense of disbelief. I couldn't understand what was happening and I didn't want to kill him, I didn't want to shoot him. But I knew that given the distances involved and the fact that I was a pretty good shot, and where I was trying to place this shot, that I was about to kill somebody, and that was a really rough feeling. But I knew that if I didn't, that something very, very bad was about to happen and I had to stop that.

MARGOT ADLER: You write that officers who have shot at people can suffer from post traumatic stress, anything from trouble sleeping to numbness. Did you experience any of those things?

DAVID KLINGER: Well, sure. I didn't experience numbness or trouble sleeping, but I had a great deal of anger, a great deal of sadness about what had happened, that I had thought that I would be able to make it through law enforcement like the vast majority of police officers and not have to kill. I also felt guilty. I blamed myself for not being able to grab the wrist firmly enough to prevent him from continuing his attack. And I also blamed myself for not shooting him right away, which is what I train officers now to do. If you're in a situation like I faced, don't try to disarm the suspect. It's too dangerous. You need to shoot immediately. So I managed to beat myself up for a number of years: a good deal of sadness, a good deal of guilt, a good deal of anger.

MARGOT ADLER: David Klinger said he decided to leave the police force for a number of reasons, but that the shooting was certainly part of that decision. He has since become an associate professor at the Department of Criminology and Criminal Justice at the University of Missouri. He's written extensively about the use of force by police. Police shootings often make headline news. I asked him why these shootings create such controversy.

DAVID KLINGER: I think the big thing is that we live in a society that has worked very hard over the years, over the decades, over the centuries, to find a balance between order and liberty. And we understand that as citizens we have rights that should be jealously protected. The state

on the other hand--and police officers are agents of the state--their obligation is to try to create social order. And these two desires oftentimes find themselves clashing. And so when a police officer shoots, let us say, an armed robber who just shot grandma, there's not going to be too much concern about that. But oftentimes police officers get involved in shootings and situations that aren't so clear-cut. And so those are the times when the polity wonders are the police doing the right thing, do they have too much power, so on and so forth.

MARGOT ADLER: What do you think the public should keep in mind when they hear about cases of police misconduct or excessive use of force?

DAVID KLINGER: The first thing is: Was in fact this police misconduct? Was this in fact an excessive use of force? Then the second thing is to understand that if it was an excessive use of force or if there was misconduct, that could come from one of two domains, shall we say. One domain is the domain of the brutal police officer who actually takes some sort of pleasure in brutalizing people. Unfortunately, with 800,000 or so police officers around the country, we're going to have some people in law enforcement who are bad actors. And law enforcement needs to work diligently to get rid of them. But what we also know is that the other 790,000 or whatever good cops are sometimes going to make mistakes. They're human beings, and so they might make a mistake, might misperceive something, might misjudge something. And so I think the public needs to understand that an unfortunate or a bad police outcome could be due to a human being who simply made a mistake as opposed to some brutal individual who enjoys the power of the badge.

MARGOT ADLER: Your book "Into the Kill Zone" focuses on deadly force. But there's a whole spectrum of force that an officer can use. Tell us about some of the lower-level uses of force a police officer might use.

DAVID KLINGER: Sure. There's something out there called the force continuum, and that's a term that basically describes the fact, as you point out, that police officers can choose from a range of options. And the force continuum notes that some types of force are greater levels of force in terms of their ability to harm a citizen than are others. So if at the top we have deadly force--that is force that is likely to create serious bodily injury or death--then at the bottom, the first level of force that officers can exercise really is their verbal commands, by demanding that someone do something, the officer is applying some force. Then we move up from there to what we might call a firm grip: grabbing someone to make them move. Then it would go on to pain-compliance holds, then maybe some sort of strikes against an individual. And the police officer is only allowed to use a higher level of force when a citizen's level of resistance increases. So, for example, police officers aren't allowed to use deadly force unless their life or the life of a third party is in imminent jeopardy, the officer has a reasonable belief that that is the case or if an officer is trying to apprehend a violent felon and they believe that they must use deadly force to stop that person's flight.

MARGOT ADLER: What are some of the local state and federal guidelines governing when an officer can use force against a suspect?

DAVID KLINGER: At the broadest level are the federal guidelines that have been laid down by the United States Supreme Court. And that comes from a landmark case in 1980, *Graham v. Connor*, that says that the way that we must judge a police officer's conduct when he or she uses force is by the standard of "objective reasonableness." That is, not with the benefit of 20/20 hindsight but by placing oneself in the shoes of the officer on the scene, what would a reasonable officer have done? State laws basically around the country say the same thing, that police officers are allowed to use that amount of force that is reasonably necessary to overcome resistance, once again predicated upon the notion of a reasonable officer. And then the most particular guidance that comes for officers comes from their agencies where they have a use-of-force policy that says how much force officers are allowed to use under certain circumstances, and then the training that officers receive in the academy, and then once they've graduated what we call in-service training about how much force is appropriate at a given time.

MARGOT ADLER: And I gather that the Supreme Court has also weighed in on the issue of using deadly force.

DAVID KLINGER: Absolutely. In 1985 they had a landmark ruling, *Tennessee v. Garner*, where they laid out the message that police officers are only allowed to use deadly force to apprehend fleeing suspects when they have probable cause to believe that that suspect has committed a crime of violence.

MARGOT ADLER: You say in your book that the legal and administrative rules regarding deadly force are so broad that officers end up developing their own personal shooting policy. Hearing that sounds a little bit scary. What do you mean by that?

DAVID KLINGER: I laid out a moment ago that police officers are permitted to shoot when they perceive that their life or the life of a third party is in imminent jeopardy or to apprehend a fleeing felon when they have probable cause to believe that the felon committed a violent crime. Some police officers will look at that and say you know what, taking a human life is too great an action for me to take to stop somebody who is merely running away. Unless and until I know that this individual is presenting an imminent threat to me, I'm not going to shoot. Similarly, another officer might say: You know what, if someone's running away and I believe, have probable cause to believe, that they've committed a violent crime, I'm going to go ahead and stop them, because I need to protect the community. And in all of those situations an officer could use deadly force.

MARGOT ADLER: David Klinger is a former police officer and an associate professor at the Department of Criminology and Criminal Justice at the University of Missouri. He's the author of "Into the Kill Zone." Thank you so much for coming on Justice Talking.

DAVID KLINGER: Thank you very much for having me. I truly appreciate it.

MARGOT ADLER: Coming up on Justice Talking, a case before the U.S. Supreme Court that asks: Can the police use deadly force when pursuing a fleeing motorist?

UNIDENTIFIED MALE: What is the crime that the person is suspected of who's fleeing? So of course if you're chasing somebody who's just committed a murder or an armed robbery or any other violent sort of felony, then the risk to the public is greater. On the other hand, if you're chasing a kid whose original offense was driving 73 in a 55-mile-an-hour zone, then the risk is lower.

MARGOT ADLER: We'll also talk about how often race is a factor when police use force.

UNIDENTIFIED MALE: I think it's important that law enforcement develop ways to determine if, for example, they would be quicker to pull the trigger when faced with a person of color or a person who's dressed in a certain way. And I think law enforcement owes it to itself to make that determination.

MARGOT ADLER: Don't go away.

MARGOT ADLER: This is Justice Talking. I'm Margot Adler. On today's show we're looking at when and why police use physical force and what happens when it goes too far. The Supreme Court recently heard arguments in a case involving a high-speed police chase in Georgia. In 2001, 19-year-old Victor Harris was driving home and was speeding. When police tried to pull him over, Harris fled, which led to a high-speed chase. The chase ended when the pursuing officer, Timothy Scott, rammed Harris' car, which caused an accident leaving Harris a quadriplegic. The chase was videotaped by the camera in the police car. The case centers on two questions: Was the action by Officer Scott to use the ramming technique warranted and appropriate given the circumstances? And can Officer Scott be held liable for the injuries to Victor Harris? To hear more about the case and how the Supreme Court justices responded to the arguments, you can listen to our Supreme Court reporter Lyle Denniston on our website, justicetalking.org.

Jack Ryan and Michael Avery join me now to talk about this case and the larger questions it raises about the police and the use of force. Jack Ryan is an instructor at the Public Agency Training Council, the largest privately held law enforcement training company in the nation. He also has 20 years police experience as an officer with the Providence Police Department in Rhode Island. Michael Avery is a law professor at Suffolk University Law School. He's also on the board of the National Police Accountability Project. He is co-author of "Police Misconduct: Law and Litigation." Welcome both of you to Justice Talking.

MICHAEL AVERY: Good afternoon.

JACK RYAN: Good afternoon.

MARGOT ADLER: First let's look at the Victor Harris case. I'd like to ask both of you what do you ultimately see at stake here? Let's have you go first, Jack.

JACK RYAN: Well, I think, you know, the case is about what kinds of tactics the police can use to stop someone who's a danger to the public. That's where the case is as I see it having sat in on the oral argument. And it seems to me that the real question is: Can police use what amounts to deadly force to stop a motorist who presents an extreme threat to the public through their flight?

MARGOT ADLER: And Michael what do you see at stake?

MICHAEL AVERY: Well, I think there are a couple of things at stake: First would be for the court to establish that when a police officer rams another vehicle with his vehicle at 90 miles an hour, that is deadly force, just as though he shot him with his gun; and two, whether an officer in this day and age should be aware that that's a use of deadly force and should abstain from it unless the good that he's doing exceeds the harm that he's doing.

MARGOT ADLER: Michael, when you look at the argument that Timothy Scott, the officer in the case, is making to justify his actions, what do you see as its biggest flaw?

MICHAEL AVERY: I think its biggest flaw is the notion that police officers themselves are not charged with knowledge of the law. Ignorance of the law is no defense for the rest of us, but in recent years the courts have really expanded immunity for officers, that even if they violate your rights they can come to court and say oh, I didn't realize that's what I was doing.

MARGOT ADLER: And Jack, how would you respond to that argument?

JACK RYAN: Well, I think it depends on whether the law is clearly established. That's the real question. And if the law has not been clearly established then officers who are acting in a manner that they believe is reasonable at the time shouldn't be held to a new rule that comes into effect after they've acted. In this case I agree with Mike that certainly when you ram a vehicle at 90 miles an hour that is a use of deadly force. But in some circumstances that use of deadly force may be reasonable.

MARGOT ADLER: Jack, what do you see as the biggest flaw in Victor Harris' argument that Scott was acting unreasonably and violated his constitutional rights when he rammed his car?

JACK RYAN: Well, I think there are a couple of things you have to look at. First you have to look at whether or not he was a dangerous motorist by his actions. Remember that Victor Harris could have complied at any point in time. It was Victor Harris who decided to disregard the legal authority of law enforcement when they tried to pull him over. One of the flaws in the argument--unfortunately it was that Victor Harris was not dangerous to other motorist. Anybody who watches that tape, including the Supreme Court justices who cited it over and over again during oral argument, would have to conclude one thing: Victor Harris was a tremendous danger to other motorists on the roadway that night. It was a narrow roadway. His actions at 90 miles an hour--passing other cars, moving from lane to lane--presented a threat of serious bodily harm and death to other motorists. And I think the biggest flaw is that particular aspect of it.

MARGOT ADLER: And Michael, how would you respond to Jack's argument?

MICHAEL AVERY: Well, I would agree that anybody who's driving his motor vehicle at 90 miles an hour on a roadway like this does pose a risk to other motorists. I think the question that we should really force the police to address--and most police departments have this as part of their own regulations if they're going to conduct a chase at high speeds--is are they increasing the risk or decreasing the risk. Is the risk of the chase something that is in fact greater than the risk that the speeder poses if you just let him go and eventually he'll slow down?

MARGOT ADLER: Let's focus on the issue of qualified immunity. Michael first of all give me a definition of what it is and what its role in the case is.

MICHAEL AVERY: The doctrine of qualified immunity says that if a police officer violates your constitutional rights, he still might not be liable in a civil lawsuit if the law wasn't clearly established or if an officer in his position might not have known that his conduct was violating the law.

MARGOT ADLER: So in the case of Timothy Scott, should he be given qualified immunity? Is that the question?

MICHAEL AVERY: That's one of the questions in this case. And I don't think he should be given immunity. Certainly not on the theory that he didn't know he was using deadly force when he rammed this vehicle. This doctrine of qualified immunity has grown and grown and grown over the last 15 years until now it's the most important factor in any civil case involving the police.

MARGOT ADLER: Jack?

JACK RYAN: Well, I think if you narrow the question to whether or not he knew it was deadly force or not I would tend to agree. But the fact of the matter is that there are not a lot of decisions relating to whether or not you can use deadly force to stop a motorist who by their actions presents a threat of serious bodily harm or death to other motorists.

MICHAEL AVERY: Margot one of the things that you have to take into account here is what is the crime that the person is suspect of who's fleeing. So of course if you're chasing somebody who's just committed a murder or an armed robbery or any other violent sort of felony then the risk to the public is greater. On the other hand, if you're chasing a kid whose original offense was driving 73 in a 55-mile-an-hour zone then the risk is lower. And the law should take this into account, and, in fact, most police departments in their own training and regulations do take that into account.

MARGOT ADLER: Do you see this case as one that's only about high speed pursuits? Or will the decision by the Supreme Court have an impact beyond that?

JACK RYAN: Well, I think it certainly will say something about use-of-force. And again it does have an impact on qualified immunity. But remember that officers are out there on the street; they're making split-second decisions. And for courts who don't have to make those decisions,

who get to look at these things with 20/20 hindsight--in the sense that they have the time, not that they add new facts into it--that buffer zone is necessary so that officers will continue to act without fear of liability exposure.

MARGOT ADLER: Well, I wanted to actually go right to a broader look at excessive force and I'd like you to describe some of the range of excessive force that you've seen in your work, Michael.

MICHAEL AVERY: Well, I guess in the cases that I've personally handled I've seen everything from calculated murder by the police, which was a celebrated case in Puerto Rico, to cases where an officer was chasing somebody through the woods and, you know, he had his finger on the trigger and tripped and fired and the fellow he was chasing became a paraplegic. To look at it another way, there's a range from racially motivated incidents, where, you know, all the prejudices of our society find their way into, you know, a hot situation that the police are involved in and you have a racial impact to incidences that have nothing to do with race. But it's a serious problem. The police have a difficult job. We give them very dangerous tools. But if they're not properly monitored and supervised then there's a great risk to the public.

MARGOT ADLER: Jack, do you see excessive force as a systemic problem, as mostly media hype, as just the occasional bad apples?

JACK RYAN: I'll tell you that over the years I think that law enforcement has become much more professional in its use of force, and if anything, use-of-force incidents have gone down. Remember that today we have all methods of communication. We have YouTube, we have the Internet, we have cameras everywhere, and unfortunately what happens is they capture some of these high-profile events. The fact of the matter is the numbers are fairly static around the country that officers use force in one half of one percent to three percent of all their contacts. And the use of force that we do see is at the lowest end of the spectrum--things like pepper spray and at the low end of the spectrum maybe some hard hand control. They're not at the high end of the spectrum with deadly force.

MARGOT ADLER: When excessive force is used why do you think, Jack, that occurs?

JACK RYAN: Well, it occurs for a variety of reasons. We find that for some officers it's out of fear. And it's not, we don't have as many brutal officers, and I'm not saying we don't have any, we do get some, but the excessive force is generally officers who come in contact with a situation that actually frightens them and they take action. And sometimes it's action above and beyond what they need to take. There's no question that there are some of those cases. But the fact of the matter is the vast majority of officers out there go to work every day and use only that force that is necessary. It's not a lot of force that officers use. And if you look at the individual officers you find that they use very little force in the course of their careers.

MARGOT ADLER: Michael, why do you think the use of excessive force sometimes occurs?

MICHAEL AVERY: Actually I agree very much with what Jack just said. I would add this to that: That because fear is often a motivating force that escalates a situation, fear can be

accentuated by social distance, the social distance between the officer and the people that he's policing. So that's why race is often a factor, that's why an age differential is often a factor, that's why the dress of the people that the officer is dealing with might be a factor. Homosexuality might be a factor. Whenever there's a greater social distance between the officers and the people they're policing, it tends to ratchet up the fear on the part of the officer that he's dealing with something unknown, something that he can't anticipate. And at the same time it sort of impels him to work a little harder to try to take control of the situation in a very assertive way, which can then escalate the entire situation.

MARGOT ADLER: Michael Avery is a professor of law at Suffolk University Law School. Also with us is Jack Ryan, an instructor at the Public Agency Training Council. You're listening to Justice Talking, and we're talking about the police and the occasional use of excessive force.

Let's talk about a police shooting in New York that just got a lot of attention late last year. Shawn Bell, a man from Queens, was shot 50 times by five officers. Jack I know you don't feel comfortable offering a verdict in this case without all the facts, but according to the New York City police commissioners, officers are trained to shoot no more than three bullets before pausing to reassess the situation. Here we had five cops, 50 bullets. Jack, you train police officers; how does something like this happen?

JACK RYAN: Well, I think there's a variety of factors that you have to look at. Again, I don't know all the facts yet in that case. I know what's been reported in the media and I know what's been said by the police commissioner. A great many agencies around the country have trained something called a "double tap," which means two shots and then a clearance of tunnel vision and reassessment. But there's an awful lot of physiological things that go on with an officer during a shooting that we have to train around. In addition to that, we know that over the last two decades law enforcement has moved away from the six-shot revolvers because they were outgunned by the bad guys out there, the drug dealers and all of that that were carrying high capacity weapons. So agencies have switched to high-capacity, semi-automatic weapons that certainly are capable of shooting more quickly, but also have a high capacity so that they're shooting more rounds.

The other thing that--there's been a lot of studies now on "reactionary gap." And reactionary gap causes an officer to see a threat, react to that threat, but there's a little bit of a time gap in between those two things. There's also a time gap at the other end of the spectrum: when the threat stops, the officer by the time that message gets from his brain to his trigger finger, there may be a time gap there that may cause extra rounds to be fired.

Add in one more factor, there is something that law enforcement now recognizes--calls the "range mentality," where officers on a shooting range, what happens is they line up for qualification and there's some stimulus, whether it be a whistle or whether it be a turn of a target, and every officer fires at the same time. What that does is it leads officers who do fire to fire as long as other officers are firing. There's this range mentality, so everybody is not necessarily making their independent assessment of the threat, but everybody's firing as the stimulus of the other bullets being fired. And that's creates a problem that a number of agencies are training around now.

MARGOT ADLER: Michael, when you hear these explanations, what's your reaction? It does sound reasonable that in the fog of a heated moment mistakes can be made.

MICHAEL AVERY: Well, there's no question that mistakes can be made and there's no question that adrenalin and confusion both play a factor. If the officers are hearing a lot of shots being fired they may confuse the shots fired by their comrades with shots fired by the people that they're involved with, the so-called bad guys. And those are all real factors. So one of the questions is to what extent can we anticipate those kind of problems and then train officers to avoid them insofar as they can by taking the proper steps as they approach a situation so that they don't suddenly find themselves in one of these split-second sort of situations where it looks like they have no choice.

MARGOT ADLER: Michael mentioned race before: I'm wondering, Jack, what your own view is about the idea of race as a major factor in some of these incidents that we've been talking about. Certainly attitudes toward police differ markedly depending where you are and depending on the race of the community. Do you think that race is a big factor when excessive force is used by police?

JACK RYAN: I don't think it's a matter of excessive force. I think there's a variety of things that we've talked about that cause excessive force. But I don't think race in and of itself is one of those things. I do believe that law enforcement needs to study whether or not they are quicker to use force when race is involved. And my concern there is with stereotypes; you know, when you look at the statistics out there it's certainly a concern that we should be dealing with.

MARGOT ADLER: Jack Ryan is an instructor at the Public Agency Training Council, the largest privately held law enforcement training company in the nation. He also has 20 years experience as an officer with the Providence Police Department in Rhode Island. Michael Avery is a professor of law at Suffolk University Law School and is on the board of the National Police Accountability Project. He is co-author of "Police Misconduct: Law and Litigation." Thank you so much, both of you, for talking with me on Justice Talking today.

JACK RYAN: Thank you, Margot.

MICHAEL AVERY: Thank you, Margot.

MARGOT ADLER: Coming up on Justice Talking: an update on the L.A.P.D. 16 years after the infamous Rodney King beating by police. And with cell phone cameras and video cameras in police cars capturing practically everything we do, one former cop worries it might have a chilling affect on police, making them more likely to stay out of the spotlight and less likely to fight crime.

UNIDENTIFIED MALE: It's probably going go be less visible, it's not going to make it onto CNN when police officers decide not to do their job or not to be aggressive, but it may very well

end up being reflected, as I think it is reflected in some parts of the country now, with an astronomical level of violent crime.

MARGOT ADLER: Stay with us.

MARGOT ADLER: This is Justice Talking, where we make the connection between law and American life. I'm Margot Adler. There is no more infamous example of the use of force than the 1991 Rodney King beating by officers of the Los Angeles Police Department. Ever since the incident the L.A.P.D. has been under scrutiny for use of force problems and now operates under a federal consent decree that requires various reforms. Heidi Pickman reports on the L.A.P.D.'s progress in complying with those reforms.

HEIDI PICKMAN: A year after the Rodney King incident the four cops charged with excessive force were found not guilty. Joe Dominick is author of "To Protect and to Serve," which is a critical history of the Los Angeles Police Department. He remembers the riot touched off by the verdict.

JOE DOMINICK: It wasn't against the poor housing; it wasn't against bad schools; it wasn't about all of the problems that existed among poor African-American people. It was specifically against the Los Angeles Police Department.

UNIDENTIFIED MALE: The L.A.P.D. is a gang itself, you know, and they're just the biggest, best and most organized gang in the city. We feel that we're being totally just used and abused. And we're not going to stand for it no more.

HEIDI PICKMAN: The feelings of this man are expressed to an NPR reporter at the 1992 riots, stemmed from a decade's long history of tension between the community and the L.A.P.D. Again, Joe Dominick:

JOE DOMINICK: The L.A.P.D. had a particular problem with police abuse and excessive use of force because it was largely unaccountable to civilian control. There were police choke hold scandals where the L.A.P.D. was choking to death scores of people at a far, far higher rate than any other police department was. And there was harassment and real abuse of the African-American community by the L.A.P.D. That was their style of policing: to humiliate and intimidate.

HEIDI PICKMAN: The Rodney King beating prompted an inquiry into the L.A.P.D. Within four months a commission led by former Secretary of State Warner Christopher recommended that the L.A.P.D. be accountable to civilian authority. But it took another police scandal, known as the Rampart Scandal, and two new police chiefs for real reform to begin. In the late 1990s police officers were found to be planting evidence, framing suspects and arresting people for crimes they didn't commit. So the Justice Department put the L.A.P.D. under a federal consent decree in 2001 that required several reforms. One of the most important mandates was a computer tracking system for problem officers to make them accountable. Almost six years later

the system is supposed to roll out at the end of this month. Gerald Chaleff is the commanding officer of the consent decree bureau for the L.A.P.D. He says that the system will track officer's locations, partners, supervisors and--

GERALD CHALEFF: There's a use-of-force system that tracks all the reportable uses of force. And there's a complaint management system which tracks all the complaints made against all officers, whether they're internal or external, by people outside the department.

HEIDI PICKMAN: The system sets standards for officers in certain assignments, should flag problem officers and ensure their behavior is corrected, which wasn't always the case.

GERALD CHALEFF: So, for example, I'm in an administrative function: if I had one use of force--and I'm a civilian--if I had one use of force, trust me, there would be an action item created. If you're working patrol, one use of force wouldn't do anything, but a larger number in a particular time period would create an action item.

HEIDI PICKMAN: If not for the delay in implementation of this system, the consent decree might have been lifted last year. Over the last four years, under the leadership of Chief William Bratton, the police modeling has changed from one of humiliation and intimidation to a more community-oriented model. And as Gerald Chaleff says, Chief Bratton holds his officers to the highest ethical standards.

GERALD CHALEFF: Chief Bratton is real clear that you can't break the law to enforce the law. And he's also said if you make a mistake we will train you. If you commit a deliberate violation of the rules or the law we will punish you.

HEIDI PICKMAN: This is a new line in the sand for the L.A.P.D. Joe Dominick agrees that Bratton holds his officers more accountable than previous chiefs and says his leadership has transformed the relationship between the police and the community.

JOE DOMINICK: Bratton's a very smart guy. He's an adult. He's sophisticated. He's been willing to work with the African-American leadership, so that he hasn't polarized the entire African-American community against the LADP the way it was before. He's co-opted the middle-class African-Americans and he's policing with their approval.

HEIDI PICKMAN: While Dominick thinks the L.A.P.D. is better than it has been in the past 15 to 20 years, he says it still has a way to go. For example, in February an independent report found that more than a quarter of the officers involved in use-of-force incidents were sent back to the streets before they were officially declared fit for duty. For real reform Dominick says it comes down to mission.

JOE DOMINICK: And as long as it sees that it's its mission solely arresting people that break the law, and doesn't see itself as part of a larger social system trying to solve the interconnected problems of poverty and crime, schools and health care, then it will be an effective repressive force, but it won't be a force for social change.

HEIDI PICKMAN: Dominick wants to see a grander transformation, but that will take generations. In the here and now other critics agree that the L.A.P.D. has improved in recent years and that if it continues to take the high road it will avoid another scandal while protecting and serving the public.

For Justice Talking, I'm Heidi Pickman.

MARGOT ADLER: Whether video cameras are installed in police cars or witnesses are capturing events on cell phones, videos of interactions with police are becoming almost commonplace. In fact, the local chapter of the American Civil Liberties Union in St. Louis is planning to give camcorders to some residents so they can document contact with the police because there are so many reports of excessive force.

Eugene O'Donnell joins me to talk about how video documentation may change policing. He teaches at the John Jay College of Criminal Justice. He was a New York City police officer and a prosecutor in the Kings and Queens County, New York District Attorney's Office. Welcome to Justice Talking.

EUGENE O'DONNELL: Nice to be with you.

MARGOT ADLER: I'd like to begin by talking about video cameras in police cars. The technology has been around for a while. Why are more police departments installing these cameras in their squad cars?

EUGENE O'DONNELL: Well, the core thing about policing is that police officers are empowered to use force on citizens. And the most likely use for these cameras is in situations in which the police have used force and there's some question about that. What the police departments are finding out, and police officers individually are finding out, is that the cameras are often their best friend, because they're initially reticent sometimes, and when they finally install the cameras and use them, more often than not, far more often than not, they vindicate police officers when there's an allegation that they've used improper force.

MARGOT ADLER: Do video cameras in cars deter excessive force or brutality by officers?

EUGENE O'DONNELL: Well, there have been documented cases that have been controversial where the video's been rolling. I have a separate concern that you may have a problem in which police officers feeling that they're going to be second guessed start to get a little gun-shy, or start to get a little concerned about that and sort of ease off in terms of not being proactive anymore. And you know, we have police departments in the country where police officers do their job; they're pretty aggressive, they're pretty proactive. There are, however, police departments in the country where the crime rate is skyrocketing; people are being murdered, guns are everywhere. And in some parts of the country the police are not particularly aggressive and not particularly willing to go out and take risks. So there has to be a balance. You certainly don't want to have

brutality. At the same time, something that's less talked about is police officers deciding to roll the windows up and look the other way when crime is taking place.

MARGOT ADLER: But you're saying that in a sense these cameras deter false accusations of brutality more than the other way around.

EUGENE O'DONNELL: Well, what I'm also saying is that it may deter lawful policing, which is sort of a voluntary enterprise. In many places a relatively small number of police officers do a lot of the work and are responsible for a lot of the arrests and do all the aggressive--or a lot of the aggressive policing. And should they decide that it's just not worth it any more, then we're going to see a cost that's paid. It's probably going to be less visible. It's not going to make it onto CNN when police officers decide not to do their job or not to be aggressive. But it may very well end up being reflected, as I think it is reflected in some parts of the country now, with an astronomical level of violent crime.

MARGOT ADLER: When you go to the popular website YouTube, where anyone can post videos and type in "police brutality," there are more than a thousand postings. A lot of those videos are taken by eyewitnesses, including one that got the L.A.P.D. into some hot water in November of last year. It showed a police officer punch a man multiple times after they had him down on the ground. Part of what upset people was that the incident only came to light after being on YouTube. Do you think situations like these erode confidence in the police?

EUGENE O'DONNELL: It seems to me that people are getting more sophisticated in watching these videos and they're coming to understand that whether we like it or not the job of the police is to use force on people. That doesn't mean that they're going out every day hoping to do it, but that's what makes them different than the rest of society. Police officers take an oath to use force and to use force where necessary, possibly deadly force where necessary. Fortunately the emotional aspect of what the police do when it's caught on camera captures our attention. We should have a policy debate. We should look at some of these videos critically and say: Who are the people on the receiving end of the police force? And more often than not these are not bad people, these are not desperados, these are sad people. These are people with dysfunctional lives who have mental health or alcohol or drug addictions. And we are saying to the police, you solve that. Police simply cannot solve it. And we're doing them a great disservice by doing that. And I would invite people the next time they look at a video or look at a police show to look at it critically and say: What's going on here? What are the police doing to these people and what have they been accused of doing? It's often trivial to the nth degree if you see what the people are being accosted over by the police. It's extremely trivial.

MARGOT ADLER: There's one form of use of video that we haven't talked about. Some police departments have posted crime scene footage on the web in the hope of identifying a perpetrator. Tell me about that.

EUGENE O'DONNELL: Police departments are pretty conservative organizations--their culture is pretty conservative. And sometimes they don't move quickly enough. But to their credit they usually think before they leap. And no police department probably at this point is going to be shredding its investigative protocol to run off and try to put things up on the web. There may at

some point be a use for that, but I think we have to wonder whether going forward when there's sort of a gridlock of these videos from all over the country, whether there's going to continue to be an interest by people viewing these things and whether they're going to call them viable, useful information. One of the things police officers and investigators have to worry about is diversion of resources and diversion of time on leads that aren't really helpful. So possibly we'll have a benefit going forward, but I don't think most police departments are expecting this to be a major investigative tool, you know, starting tomorrow morning.

MARGOT ADLER: Eugene O'Donnell teaches at John Jay College of Criminal Justice. He's a former police officer and prosecutor. Thank you so much for talking with me today.

EUGENE O'DONNELL: Thank you.

MARGOT ADLER: The Houston Police Department has found another use for cameras: they have put video cameras on several dozen Tasers. You can watch several of these videos on the Houston Chronicle website. Here's the audio from one of them.

[AUDIO FROM VIDEO CLIP]

What you just heard was a police officer using a Taser on a man who attacked an officer and then fled. Roma Khanna is a reporter at the Houston Chronicle who's written a series of articles on the use of Tasers by the Houston police. Welcome to Justice Talking.

ROMA KHANNA: Hi Margot.

MARGOT ADLER: How long have Tasers been used in Houston and how many times and in what situations?

ROMA KHANNA: Tasers have been used by the Houston Police Department since December 2004. And since then they've been used in more than one thousand instances. Ninety-five percent of those were not instances where officers would have been justified in using deadly force.

MARGOT ADLER: What has the public reaction been to the use of Tasers?

ROMA KHANNA: The public reaction has been mixed. There's been a vocal group of people who feel that Tasers have not been used consistently with the way that public officials promised they would be used. And I think specifically a lot of people came away with the impression that Tasers would be almost a substitute for a gun. And a lot of people in law enforcement circles and people within the police department understand very clearly that officers treat Tasers as an intermediate weapon, a weapon that is interchangeable with a baton or pepper spray, that they can use it anytime when they would lay their hands on a suspect.

MARGOT ADLER: The initial idea for bringing Tasers to the force was to reduce the number of times that police shot suspects, but I gather that that number has not been reduced.

ROMA KHANNA: That number has not been reduced. And you know, I will say that some within the police department would argue that Tasers were not introduced solely to reduce the number of shootings. But certainly the promise that controversial shootings would be diminished was brought up as public officials voted on funding for these Tasers and the public debate took its course before the purchase of Tasers. But in the two years since officers have had Tasers, officers have continued to shoot people at pretty much the same numbers that they shot, wounded and killed people before they had Tasers. They also have continued to shoot the same number of unarmed people as before they had Tasers.

MARGOT ADLER: Several bills have been filed to limit Taser use in your city. Tell me about them and their status at the moment.

ROMA KHANNA: There are bills out there to do everything from impose a one year moratorium on the purchase and use of Tasers to allow further study on the effects of being shocked by a Taser to a bill that would limit the use of Tasers to incidents where officers would otherwise be justified in using a gun, which would in effect eliminate 95 percent of the incidents in which officers have used Tasers here in Houston and significantly cut back on the incidents in which they would be justified. There are also bills out there to limit, you know, personal use of Tasers for private citizens who want to carry Tasers to require them to get, to register their Tasers in a way that you would register to carry a concealed firearm here in Texas.

MARGOT ADLER: After having spent so much time reporting on this issue, do you think Tasers have value and when should they be deployed?

ROMA KHANNA: You know, I don't think I can address that in terms of my personal opinion. I think that here in Houston the debate continues. The police department is going to have a medical study, the results of which they expect to be out sometime in the next few months. There's an ongoing internal audit being done by the City Controller's office taking a look at some of the other issues about policy restrictions. I think all of those things will continue to shape the debate. And I think the public and public officials will determine whether they have value.

MARGOT ADLER: Roma Khanna is a reporter at the Houston Chronicle who has written a series of articles on the use of Tasers by the Houston police. Thank you for coming on Justice Talking.

ROMA KHANNA: Thank you very much for having me.

MARGOT ADLER: We have a link to the Houston Chronicle series on Tasers on our website, justicetalking.org. Also on our website you'll find information about all of the guests on today's show. And check out our new blog, where many of the nation's leading commentators give their views on law and American life. You can sign up for our free podcast too. Thanks for joining me. I hope you'll tune in next week. I'm Margot Adler.