

The rush to clear police in shootings

■ Nearly every shooting in last decade 'justified'

■ Investigations ignore witnesses, forensics

■ Shot-in-back findings raise questions

By Sam Roe, David Heinzmann and Steve Mills

Tribune staff reporters

On a summer night in 2003, two patrol cars pulled over a driver in front of his South Side home for running a stop sign. Thinking police had chased the car earlier that night, four officers drew their guns and ordered the driver out.

The man's mother screamed from the sidewalk: "He can't walk! He's paralyzed! He can't get out of the car!"

When one officer thought the driver raised a gun, he opened fire, shooting the driver five

FIRST OF TWO PARTS times before reloading and shooting him once more.

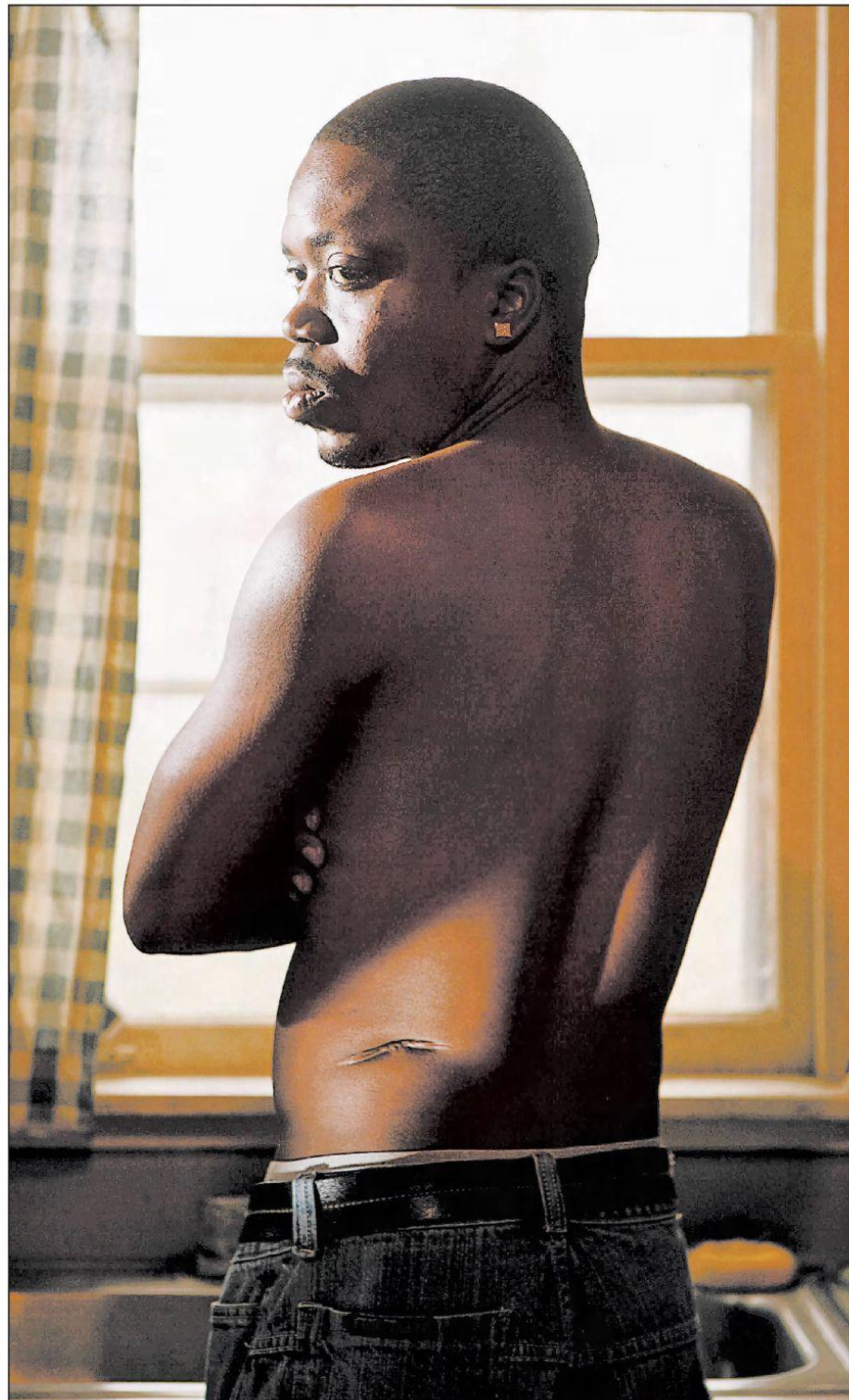
Eight hours later, as Cornelius Ware, a 20-year-old paraplegic who drove by pushing the pedals with a wooden cane, lay gravely wounded in the hospital, police supervisors cleared the officer of any wrongdoing.

They didn't check the direction of the bullets. They didn't interview all the witnesses, two of whom said they saw Ware's hands raised in surrender. And they didn't wait for the autopsy report, which showed two of the bullets struck him in the back of his hands.

Authorities never challenged that preliminary conclusion, even when contradictory information emerged in the days and months that followed.

Far from an egregious exception, the Chicago Police Department's handling of the Ware case fits a pattern of officials rushing to clear officers who shoot civilians, an eight-month Tribune investigation found.

The inquiry, which reviewed available records for more than 200 police shooting cases over the last decade, found that these cursory police investigations



Tribune photo by Chris Walker

Herbert McCarter reveals a bullet wound inflicted by Chicago Police Officer David Rodriguez in December 1999. Investigators at the Police Department's civilian oversight agency recommended Rodriguez be fired, but the department has stood by the officer's account.

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POLICE: Hasty meetings after shootings often aid officers

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create a separate standard of justice and fuel the fear among some citizens that officers can shoot people with impunity.

In at least a dozen cases, police shot civilians in the back or from behind. But in the Ware case, as in many other police shootings, it took a civil suit for the troubling details of the case to emerge publicly.

Shootings are rarely easy calls. Officers face potentially life-or-death situations that require an instantaneous decision to shoot or not to shoot. In many instances the use of deadly force is justified, and that decision saves lives. But other times, police have shot innocent, unarmed people.

These shootings have helped fuel public outcry over excessive force and misconduct. In announcing his selection of FBI official Jody Weis as the city's new top cop, Mayor Richard Daley last week acknowledged the need to repair the department's credibility.

The mayor's recent attempts at reform have focused almost exclusively on the Office of Professional Standards, the civilian oversight agency that until recently was part of the Police Department. But the Tribune's investigation found that while the agency's lack of resources and expertise has made it ineffective, the problem goes deeper than one officer.

Law enforcement officials at all levels, from the detectives who investigate cases to the superintendent, as well as the state's attorney's office, have failed to properly police the police.

Promises to improve the system also haven't touched another fundamental flaw: the hasty meetings, known as roundtables, led by police commanders in the charged hours after a Chicago officer shoots a civilian. Witnesses are not sworn. The discussions are not recorded. When the sessions conclude, officials nearly always decide the officer was justified in pulling the trigger.

And if evidence eventually contradicts the officers' versions of events, the Tribune found that cases aren't reopened and the officers escape serious punishment.

Chicago police shoot a civilian on average once every 10 days. More than 100 people have been killed in the last decade; 250 others have been injured. But only a tiny fraction of shootings are ruled unjustified—less than 1 percent, police records and court testimony indicate.

Despite these rulings, police shootings have led to \$59 million in settlements and civil judgments against the city in the last decade, including nearly \$8 million from just two jury verdicts in recent months.

The newspaper reviewed thousands of pages of documents from authorities' internal investigative files, Cook County medical examiner autopsies and depositions from lawsuits filed after police shootings. The paper sought complete case files, but the Police Department denied a Freedom of Information Act request for its records on such cases.

The combination of this secrecy and the perfunctory investigation of police shootings means that it is virtually impossible to determine how many were in fact legitimate.

The Tribune this summer filed a motion in federal court, still pending, that seeks to unseal more than 50 police shooting files turned over in a lawsuit filed by the estate of a man who was shot and killed by a Chicago police officer in 2002.

Wrongful death lawsuits often prompt the only full accounting of hit shootings and the internal investigations that follow.

In a recent suit filed by Ware's family, a veteran detective who has been the lead investigator in numerous police shootings testified that she handles too many cases to go back and re-interview officers and reconsider roundtable rulings when autopsies and other test results shed new light.

"Once a case is closed, it's closed," said Sylvia VanWitzenburg. "Your testimony is, once you close out a [police shooting] case, no matter what new information comes in, you're not going to go back and review it?" asked the attorney representing Ware's family.

"Correct," she replied.

Shot in the back
All police shootings of civilians prompt an array of questions, but none do so more than when an officer fires at someone from behind.

In the 12 cases the Tribune found where Chicago police shot a civilian in the back, sometimes at close range, the department returned the officers to duty, according to records from police and the Office of Professional Standards, or OPS.

In five of those cases, forensic evidence cast doubt on the officer's account.

"Forensic officers don't wrongly pull the trigger, police departments set restrictions on when lethal force can be used. Chicago police may use such force only as a last resort 'to prevent death or great bodily harm to the [officer] or to another person,' according to the department's general orders. In



Police pulled over Cornelius Ware by this tree in front of his home on the South Side in 2003. Ware, who had run a stop sign, was fatally shot by an officer who said he thought Ware had raised a gun. Ware's family said they later cut down part of the tree because it reminded them of the incident.

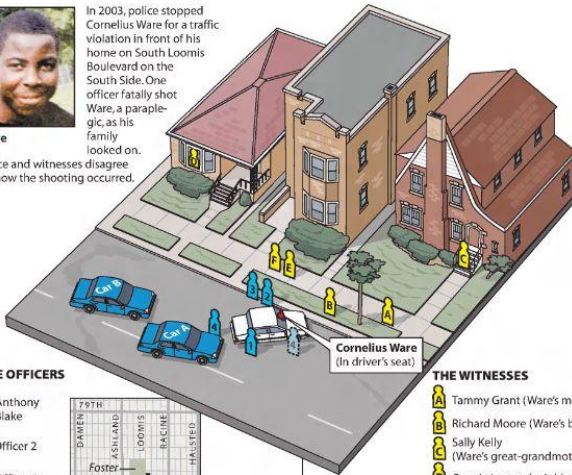
The Cornelius Ware shooting: Different accounts of one event



Ware

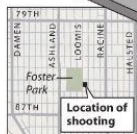
In 2003, police stopped Cornelius Ware for a traffic violation in front of his home on South Loomis Boulevard on the South Side. One officer fatally shot Ware, a paraplegic, as his family looked on.

Police and witnesses disagree on how the shooting occurred.



THE OFFICERS

- 1 Anthony Blake
- 2 Officer 2
- 3 Officer 3
- 4 Officer 4



ACCOUNTS

Officer Blake (1) and Officer (2) in Car A pulled Ware over for running a stop sign. Thinking Ware was wanted in an earlier chase, officers (3) and (4) in Car B pulled up. All officers surrounded the car and ordered Ware out. Blake said he did not hear anyone yell that Ware was paralyzed.

Ware is surrounded

Five of Ware's relatives were eyewitnesses. When police ordered Ware out of the car, his mother, Grant (A); brother Richard Moore (B); and great-grandmother, Kelly (C), who was on the family porch, all said they yelled to police that he was paralyzed and couldn't get out of the car.

THE WITNESSES

- A Tammy Grant (Ware's mother)
- B Richard Moore (Ware's brother)
- C Sally Kelly (Ware's great-grandmother)
- D Connie Lymon (neighbor)
- E Darius Moore (Ware's brother)
- F Darren Moore (Ware's brother)

ACCOUNTS

Five witnesses said they saw Ware's hands up in surrender: Grant (A), Richard Moore (B), brother Darius Moore (E), brother Darren Moore (F), and neighbor Lymon (D). Darius and Darren ran into the house and didn't witness the actual shooting. None of the witnesses said they saw a gun.

Eight hours after the shooting, a police "roundtable" meeting cleared Blake of misconduct—before all witnesses were interviewed and forensic evidence was available. A subsequent Office of Professional Standards inquiry interviewed no one and reshaped roundtable findings.

The aftermath

Grant sued for wrongful death. Key evidence included the autopsy, which showed Ware was shot in the back of both hands. A jury sided with the Wares, and the city settled the case for \$5.3 million before jurors were asked to set damages.

Source: Federal Court Records, Tribune Reporting

certain instances, officers also may shoot if a suspect is trying to escape while using a deadly weapon or endangering the life of another person.

In preparing new recruits to make such shoot-don't shoot decisions, they go through exercises such as traffic stops played out in the academy parking lot or simulated gunnery holding hostages.

But this training for recruits was put in place within the last five years. The majority of the department's 13,000 officers only have to qualify each year with their gun on the firing range.

On the street, when a shooting is inappropriate, autopsies can help reveal the contradictions in a police officer's version of how it occurred. But it's up to police and OPS investigators to make that connection and follow up.

Edmund Donoghue, former chief medical examiner in Cook County, said he was not surprised to see cursory investigations. "When you see this stuff going on for 30 years, you don't expect much," said Donoghue, who retired last year. "Come on. This is Chicago."

came a key part of his family's lawsuit against the city.

He was shot on South Loomis Boulevard at 7:35 p.m. on Aug. 18, 2003. The lead police investigator, VanWitzenburg, later testified that she arrived about a half hour later to find the four officers involved—part of a plain-clothes unit that had worked closely together for two years—huddled with a sergeant and union representative.

VanWitzenburg said she did not interview the officers separately or ask them detailed questions, but simply listened to the group explain what happened.

The proper investigative technique, according to Interim Chicago Police Supt. Dana Starks "is to separate witnesses no matter who they are."

But that's not always done, the Tribune found. In fact, allowing officers to talk to each other after a shooting has been permitted by department rules since they were rewritten in 1999. A police spokeswoman could not explain this week why the change occurred.

In the Ware case, when VanWitzenburg did speak with officers individu-

ally hours later at the police station, she said she did not question them as much as take statements.

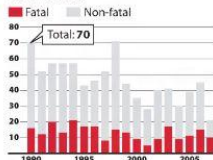
She also took no notes, said, committing each witness statement to memory and sometime later recording those words in what would become the main report on the shooting. VanWitzenburg could not be reached for comment.

Three of Ware's brothers who witnessed the shooting—a 15-year-old and 13-year-old twins—all told detectives at the scene that their brother had his hands up.

But in their final report completed weeks later, police recorded these witness statements much differently. A statement by one of the twins that he saw his brother "raise his hands" and a statement by the other twin that Ware had his "hands up" were changed to the twins saying their brother "put his hands together" before being shot.

VanWitzenburg later testified that she did no further investigation after the roundtable.

Chicago police shootings of civilians



Note: 2007 data as of June 30
Source: Chicago Police Department Office of Professional Standards
Chicago Tribune

lice Review Authority, was even less thorough. The case's lead investigator, James Lukas, acknowledged in a sworn deposition that he did not conduct a single interview.

He said he simply reviewed the roundtable proceedings and other police reports—common practice, he testified, because the oversight agency frequently relies on the police to do a good job investigating officers. Lukas said each shooting is unique, however, and that his office might conduct more interviews in some cases than others.

Eighteen days after Ware was shot, he died of his injuries. The autopsy showed he had been hit, among other locations, in the back of each hand, lending support to the argument that he had his hands in the air in surrender.

But police did not re-interview the officers to find out how that could have happened. Officer Anthony Blake, who fired the shots, could not be reached for comment for this article.

Blake told investigators that he fired his gun because Ware pointed a weapon at his partner. Blake also said he never heard Ware's relatives shouting that he was paralyzed.

When the Ware family sued in 2004, Blake testified and contradicted himself about why he had his gun drawn and when he fired his weapon.

All four officers at the scene said they thought they saw a gun in Ware's hand, and police said they recovered a loaded revolver in his car.

But no blood was found on the weapon, even though Ware was purportedly holding it when he was shot in both hands. Ware family attorneys argued that police planted the gun to cover up a bad shooting.

At the end of a trial early this year, the jury sided with the Wares. Before jurors were asked to decide how much money the family should receive in damages, the city agreed to pay \$5.3 million—one of the largest settlements in a Chicago police shooting.

In a deposition prior to trial, VanWitzenburg was asked if she reviewed the autopsy records determining if Blake's bullet wounds determined if Blake was telling the truth.

"To this day," she said, "I don't know what were entry [wounds] and what were exit."

'A way to quickly justify cases'
The roundtable, held inside a detective-area headquarters in the immediate aftermath of a police shooting, is supposed to provide a timely and preliminary review.

"There's no way in the world that an investigation can be immediately closed right then and there," Starks said, "when we know there's still forensic out and still witnesses who need to be interviewed."

But the Tribune found that instead of being a launching point for a thorough investigation, the roundtable can set the tone for the frequently superficial inquiry that follows.

POLICE

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"To me, the roundtable is just a way to quickly justify cases," said Thomas Smith, chief investigator for OPS from 1998 to 2002, when he left the agency.

Roundtable proceedings are generally secret. Minutes aren't kept. Many participants throw away their handwritten notes.

And city attorneys, often with the consent of plaintiffs' lawyers, successfully have sought to place protective orders on court files in dozens of cases to keep certain records, including roundtable reports from public view. But the Tribune obtained official roundtable reports in dozens of cases prepared by commanders as well as detective summaries of the proceedings. Both provide a rare inside look at the meetings.

Roundtables usually begin with the lead detective giving an overview of the shooting, referring to a hand-drawn diagram on the blackboard or grease board. Basic physical evidence often is not available or is sometimes neglected. Witnesses are brought in one at a time to give brief statements, but these are not under oath or recorded. Sometimes, key witnesses aren't even there.

The Cook County state's attorney's office sends prosecutors to the roundtable, but they often are passive observers.

Michael Oppenheimer, a prosecutor in the state's attorney's office from 1990 to 2003, said he attended numerous roundtables and that he was told by his superiors not to ask questions. He said he and other prosecutors were there as "window dressing" to lend an air of credibility to the process.

"The brevity of the investigation is unbelievable. It's just faulty," said Oppenheimer, now a private attorney representing plaintiffs in civil rights suits, including a man shot by police.

Even those still in the ranks of law enforcement express misgivings about the roundtable.

In an interview, State's Atty Richard Devine rejected the notion that prosecutors stood by as bad shootings were ruled justified. But he acknowledged that assistant state's attorneys may have been unsure about their role in

How a police shooting investigation works

Local law enforcement officials conduct an inquiry into every police shooting.

AT THE SCENE

Numerous Chicago police officers rush to the scene, each with an assigned duty, from controlling the crowd to interviewing witnesses. They make sure the name of the officer who fired is not broadcast over the police radio.

AT THE ROUNDTABLE

A short time later, the officers and others head to a police area headquarters for a roundtable meeting. Panel members include police commanders, one or two prosecutors from the Cook County state's attorney's office, one or two investigators from the Office of Professional Standards. A union representative also attends.

AFTER THE ROUNDTABLE

The roundtable completes its work often within an hour. Detectives finish their investigation in days or weeks while the Office of Professional Standards, recently renamed the Independent Police Review Authority, can take months until its investigation is complete. Until recently, the office had reported to the police superintendent. It is now independent, but its recommendations are not binding.

Chicago Tribune

the process. "I do think a lot of assistants were up in the air," he said.

Devine said he had considered pulling his office out of the process altogether and now says he hopes to improve it by staying in. But he declined to say how.

Under the current roundtable system, the assistant deputy police superintendent in attendance must complete a report on the evidence before the end of the work shift. At that point, the police inquiry virtually ends, though detectives still can continue to follow leads.

OPS investigators look into every police shooting, but these inquiries sometimes consist of little more than rehashing the brief roundtable proceedings.

An officer's fatal shooting of Lajuanzo Brooks outside a South Side tavern in 2001 ultimately led to a \$650,000 payout from the city. The suit also shed light on how internal investigations can skim over key evidence during and after the roundtable.

Brooks, 21, allegedly approached Officer Robert Haile, who was off duty, and a friend just before closing time at

Reese's Lounge, pulled a gun and demanded money. The officer said he drew his gun and yelled "Police!"

Haile told police detectives that Brooks continued to point his gun at him, so Haile opened fire. According to Haile, Brooks was facing him at this point, only 2 to 3 feet away. The officer said that as he was shooting, Brooks lunged toward and past him, with the officer shifting his feet to keep Brooks in front of him.

Six hours later, after the roundtable, Haile was cleared of wrongdoing.

But this decision was made before all of the physical evidence was in hand. The autopsy on Brooks wouldn't be complete until later that morning. The fingerprints wouldn't come back for two months.

The morning of the roundtable, Eupil Choi, Cook County's deputy chief medical examiner, began the autopsy. He saw that Brooks had several bullet wounds on his body. By studying the tiny skin abrasions around each hole, he could determine which one was a bullet entry point and which one was an exit wound. He concluded Brooks was shot three times: twice in the back

and once in the back of the neck.

In his deposition for a lawsuit filed by Brooks' family, Choi said he could not say how Brooks and Haile were positioned when the shots were fired. But he said the wounds were consistent with Brooks being shot from behind.

Yet investigators for the Office of Professional Standards never sought to explain the seeming discrepancy between the autopsy and Haile's statements.

Other evidence was coming in that raised questions about the shooting. Police recovered two prints off the gun that Brooks allegedly used in an attempt to rob Haile. They did not match up to Brooks.

The OPS investigators never interviewed the officer. Haile could not be reached to comment for this article.

Smith, the chief investigator at OPS at the time, signed off on the shooting as justified. Smith acknowledged in an interview that the office neglected to fully follow through on the case. He said that was partly due to the office's limited resources.

Today, it is budgeted for 85 positions. Despite the mayor's pledges to improve the system, 24 of those positions remain vacant, 15 of them for investigators. That means the investigators who remain carry average loads of 30 shooting and other cases, three times what officials there recommend.

Ignoring evidence

Even in instances where investigators aggressively did their job, police officials have ignored recommendations for serious punishment of officers.

Officer David Rodriguez asserted that he shot Herbert McCarter in the abdomen in a struggle over the officer's gun in December 1999. But Smith concluded Rodriguez lied and recommended his firing, according to Smith and a lawsuit filed by McCarter.

Key to that recommendation: medical records showing that McCarter actually had been shot in the back, and gunshot residue tests on his clothes indicating he had not been shot at close range.

Rodriguez, who declined to comment, remains a police officer. According to McCarter's lawsuit, no disciplinary action was taken despite the OPS chief investigator's conclusion.

McCarter, however, was charged with aggravated battery of a police officer. He was found guilty and sentenced to 5 years in prison.

In his 2006 lawsuit, McCarter alleged that city officials hid the OPS conclusions and recommendation from his lawyer in his criminal trial. The city settled McCarter's lawsuit for \$90,000 this year.

Rodriguez also was sued for an incident after the 1998 Chicago Bulls triumph in the NBA Finals.

With streets all over the city filled with revelers, Rodriguez was one of several officers outside a liquor store on the West Side. When a car jumped the curb, officers opened fire, spraying the car with dozens of bullets.

Six people were shot, including a 15-year-old boy who lost an eye. An investigation found the officers, including Rodriguez, justified in the shooting. This spring, the city settled the two lawsuits that stemmed from that shooting.

The price tag: a total of \$4 million.
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COMING THURSDAY:

Tribune prompts prosecutors to reopen the case of a questionable off-duty shooting.

IN THE WEB EDITION



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only story on the city destroying key evidence
■ Watch the video report "Nights of the roundtable"
■ Hear from family members of Cornelius Ware
■ See a panoramic image of a shooting scene