



Why are there civilian Board of Rights members?

Short answer? To keep Department politics out of Boards of Rights and to prevent LAPD management from fixing the Boards they had a special interest in.

Yes. They were doing that. But the story is longer than that, of course. Here is the short version of a long story.

Boards of Rights were established in 1935. At that time, the Board consisted of three LAPD command officers. According to the Los Angeles City Charter, officers were supposed to get a “full, fair, and impartial hearing.”

Many commanding officers chosen to sit on Boards of Rights, to their credit, took their duties seriously. They figuratively put on their black robes and powdered wigs, climbed the elevated platform in vogue at that time and rendered judge-like verdicts based on the evidence.

I became friends with a retired captain in his 90s and had many hours of conversation with him about the old days of LAPD (his old days were much older than mine). I still recall his rendering of a story in which an adjutant from the Chief’s office came to him about relating the Chief’s preference as to what should happen in a Board of Rights in progress at the time that he was sitting on. Decades later, when he told the story, you could tell that he was still upset at the *ex parte* contact meant to influence him. “You tell the Chief that if he wants to express an opinion, he can appear

at the Board and be sworn in and testify,” he said. Unfortunately, that level of integrity did not always exist across the whole Department.

Any representative who has done more than a few Boards of Rights will have likely experienced this feeling. Things have been going along swimmingly when, all of a sudden, after a break, the atmosphere has gone suddenly cold. The mood in the board room has radically changed for an unknown reason. The suspected reason is that the word from on high has come down with directions, but this could never be proven.

Back to the history. After 57 years, in 1992, the Charter was changed to reconstitute the Board of Rights composition, effective in 1995. The Christopher Commission had rendered its recommendations, one being more civilian control over discipline, and they were largely presented to the voters in Charter Amendment F. It passed. From that point on, instead of three command officers, there would be two command officers and one civilian member. The civilian member would come from a pool formed by the Police Commission. Curiously, the ACLU supported this as evidence of needed “civilian control” and the LAPPL fought against it. These roles would later be reversed. Proposition F also removed the Chief of Police’s civil service protection, restoring political control over the office of Chief.

Time marched on and there were other Charter changes. We lost on-duty

representation at Boards of Rights in 2000, and the League had to form the Legal Plan supplying member officers with attorneys for Boards of Rights.

In the meantime, officers became more and more dissatisfied with the Boards of Rights, feeling that the results were foregone conclusions because Board members were either influenced by or afraid of contradicting the Chief’s recommendation of termination. Then came the proof that had always been lacking. Four command officers, separately, filed lawsuits that had accusations of being retaliated against because they did not follow the Chief’s recommendation to terminate officers.

The ultimate resolution of the lawsuit does not matter. What matters is that command officers filed an official document with the court telling of experiences they had regarding their participation as board members in a Board of Rights. It is unlikely that command officers would lie about that experience in an official court document and gives us a solid reason to believe that the tale is true.

In 2014, an LAPD captain (Captain A) filed a lawsuit against the Chief and the city of Los Angeles. Captain A said in his lawsuit that at a meeting of captains and above, where the Chief of Police was present, a Deputy Chief, speaking on behalf of the Chief of Police, told the captains and above (your jury pool in Boards of Rights) that “when the Chief sends an officer to a BOR, he expects that officer to be terminated, and the commanding officers sitting on the Board of Rights do not have the authority to do anything different.” Captain A had reservations about this, he says, because he thought officers were required to have a fair and adequate hearing before being terminated.

Later, acting on this belief, Captain A was chosen to sit as a board member on a Board of Rights. After hearing evidence, Captain A found that an officer should be suspended instead of terminated. After so ruling, Captain A had a conversation with an Assistant Chief about his “career advancement.” He was told that one of the things the Chief looks at when considering promotion is a captain’s findings during a Board of Rights.

One maverick captain? No, there was a second who filed an independent lawsuit about a different Board of Rights in 2014.

Captain B related that while sitting as a member of a Board of Rights, he did not terminate two officers that the Chief sent to a Board with a recommendation of termination. A short time later, Captain B was ordered into a meeting with an Assistant Chief. Captain B was told by the Assistant Chief that both he and the Chief of Police were “disappointed” in his decision not to terminate the officer. Captain B was sent to special “training” by the Deputy Chief in charge of Internal Affairs, and the two officers were transferred to his command. At a later training day for command officers, Captain B stated that the Chief addressed the group. The Chief stated “his ‘expectation’ that captains sitting on Boards were to terminate employees that he (the Chief) ordered to a Board for termination, or that such captains would have to answer to him.” Captain B was ordered into a follow-up meeting with the Assistant Chief who wanted to know what he had learned from his

special training. Captain B’s next rating report showed “needs improvement” in Boards of Rights decisions.

Two maverick captains? No, there was a third who filed another lawsuit in 2014. Captain C said in the lawsuit that during a meeting with officers who held the rank of captain or above, where the Chief was present, an Assistant Chief, speaking on behalf of the Chief, told all command staff, “when we send someone to a Board of Rights, we expect termination.”

Three maverick captains? No, there was a fourth who filed another lawsuit. At some point the term “maverick” loses its meaning.

In this 2014, lawsuit, Captain D stated that while sitting as a board member on a Board of Rights, he determined, with City Attorney advice, that a charge against an officer was out of statute. The Chief overruled his decision and ordered the board to continue, even though the Chief was not a member of the panel. Subsequently, Captain D suspended the officer instead of terminating him as the Chief had recommended. Captain D was called in by the chief of staff and advised that one of the things the Chief looks at when trying to decide who to upgrade is the findings they deliver at a Board of Rights. Captain D was shortly thereafter passed over for an upgrade.

Since the three-person panel at a Board of Rights is, in effect, an officer’s jury, this was jury tampering at best. LAPD officers’ widespread opinion that they were not getting a fair hearing had been warranted. The League decided that officers needed an option to have a civilian panel. The civilians would not be subjected to career damage if they ruled against the Chief. They could make independent decisions.

Clearly LAPD management had demonstrated that they could not be trusted to allow the Board of Rights system to be fair. The Chief had to have his thumb on the scale. The League began pressing for a Charter change to allow officers a choice between the traditional board and an all-civilian board.

The Council and Police Commission liked the idea of more civilian control over police discipline. The ACLU and some activist groups, who had been for more civilian control of the police, suddenly switched views. Civilians will be too lenient, they complained. They opposed the amendment.

In 2018, Charter Amendment C was passed by the voters, and now officers could insulate themselves from Department politics and get a fair hearing by having a choice of all civilians on a Board of Rights.

And that is why and how civilians are on Boards of Rights. And that is a good thing.

Given the current political atmosphere that is critical of everything police officers do and stand for, due process is more important now than it has ever been. Margaret Thatcher’s decades-old statement still sounds relevant: “Left wing zealots have often been prepared to ride roughshod over due process and basic considerations of fairness when they think they can get away with it. For them, the ends always seem to justify the means. That is precisely how their predecessors came to create the gulag.”

Yes. Treasure due process.
Be legally careful out there. ❖