

The Charlotte Observer

CMPD review panel rules against citizens — every time

By: Gary L. Wright and Fred Clasen- Kelly – February 16, 2013

Since it was established 15 years ago to look into allegations of police misconduct, Charlotte's Citizens Review Board has always sided with police.

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It's not surprising citizens have never won: The board has no independent power to investigate, and citizens must meet an unusually high standard of evidence for the board to even hold a formal hearing.

Instead, the 11-member, volunteer board has met behind closed doors – first with citizens, then with police – and voted to dismiss almost every case.

Family members of five men shot to death by police were denied full hearings to present what they viewed as evidence of misconduct. Their cases were tossed out, too.

The board has held only four hearings for citizens who complained about police behavior. After the hearings, the board members ruled in favor of the officers accused of misconduct.

Two prominent former Citizens Review Board members – civil rights lawyer George Daly and former Mecklenburg County Commissioners Chairman Harold Cogdell – don't think citizens had much of a chance.

A Charlotte School of Law professor who is researching the board's practices also believes that citizens are overmatched by police. The board's own attorney says citizens are at a disadvantage.

The board's limitations and record of never siding with citizens in 78 cases suggest it is among the weakest in the nation, review board experts and civil liberties advocates told the Observer.

Established in 1997, the board was designed to restore public confidence in police after three unarmed African-Americans had been killed by white officers.

“The review board gave the appearance of giving citizens a right to complain about police,” said Daly, the board's first chairman. “But that right was an illusion.”

City officials defend the board's record. They said the panel has bolstered police accountability and helped ensure fairness for citizens.

Julian Wright, the Citizens Review Board's attorney, believes the board's record shows that the Charlotte-Mecklenburg Police Department conducts thorough investigations and appropriately disciplines officers.

“As a citizen, I personally take comfort in that,” Wright said. “Those citizens on the board have concluded that Charlotte’s police do a pretty good job of policing themselves – not that the officers never make mistakes.”

But national experts, local attorneys and past board members say Charlotte’s review board lacks the power necessary to provide effective oversight of CMPD.

In some other cities, boards can launch independent investigations. Charlotte’s board stands out because it only looks into appeals after a police Internal Affairs investigation.

Fewer than 20 percent of review boards nationwide hear only appeals from internal affairs rulings, said Pierce Murphy, past president of the National Association for Civilian Oversight of Law Enforcement.

In cities such as San Jose, Calif., Denver and Portland, Ore., officials take complaints directly from residents and also audit internal affairs cases, Murphy said.

Charlotte’s review board has examined 78 cases in its 15-year history, which Murphy called “remarkably low.”

Civilian oversight agencies with the ability to launch independent investigations and audit police departments have looked into hundreds, even thousands, of complaints since the late 1990s.

Some cities have gone so far as to grant civilian review boards the authority to subpoena evidence and require officers to attend mediations with residents. Charlotte’s board has none of those powers.

The Charlotte City Council has the ability to strengthen the Citizens Review Board, but some members said they were unaware of the panel’s track record and did not pay close attention to how it operates.

Some wonder if the review board has failed in its mission.

“It looks like the Citizens Review Board is a rubber stamp for the police department,” said Terry Sherrill, a Charlotte lawyer and former judge. “I wouldn’t have expected the board to have ruled 100 percent in favor of police, even if it were essentially a rubber stamp.”

Effective oversight?

Review boards date back more than 60 years but gained popularity nationwide after the 1991 videotaped beating of Los Angeles motorist Rodney King by police. Today, they operate in more than 100 cities.

The panels range from “very weak to somewhat effective,” said Mark Silverstein, executive director of the American Civil Liberties Union of Colorado. In many cities, he said, the boards are “underfunded and understaffed.”

Civilian review boards in cities such as St. Paul, Minn., Denver and New York City have full-time investigators who look into accusations of police misconduct.

Tim Lynch, director of the Cato Institute's Project on Criminal Justice, said the Charlotte review board's rulings show it is "not serious about looking into complaints or doesn't have the power to look into misconduct. Their default is to favor police."

When citizen boards repeatedly rule for police, the public loses confidence in their findings, Lynch said.

"In this situation, all the red flags just point to the word is out that the board always sides with police," Lynch said. "What happens is people stop filing complaints because of the perception. Then the police use that decline as a sign they are doing a good job."

Defense of board

Citizens Review Board Chairman Gregory West said accusations that the board favors police are "completely false."

"If I felt that the board was a rubber stamp for the police department, I would not serve on it," he said. "We listen to both sides. We're not going to automatically give the police a pass."

Board member Robbie Harrison also denied the panel has a bias toward police. "When I find that to be the situation, I'll resign," said Harrison, who has served on the board for nine years.

"We will hear the citizens' side," Harrison said. "We are charged to listen to the citizens and look carefully at their complaints. We aren't charged to look in favor of the police. I don't have a problem going against the chief of police."

Citizens who have filed appeals, West and Harrison said, simply have not persuaded the board they were victims of police misconduct.

Other board members declined comment or did not respond to phone calls and emails.

Police Chief Rodney Monroe said he supports the Citizens Review Board. The panel, he said, has helped CMPD keep public confidence in its internal investigations.

"The employees of the Charlotte-Mecklenburg Police Department have important responsibilities and duties as public servants and must always strive to preserve the public's trust," Monroe said in a prepared statement. "This group of independent members of the CRB is a tremendous asset to our community and serves a critical role in maintaining that trust."

Criticism

A study by the Charlotte School of Law questions whether the Citizens Review Board is following its mandate to serve as a public watchdog.

Professor Jason Huber's civil rights class began looking into the review board after the law school was contacted about police misconduct. The law students then researched how the city and CMPD dealt with citizen complaints.

Huber said that he and his students have concluded that the board's structure needs to be changed so that residents have a better chance to get hearings. He expects the law school to present its findings to the City Council after the research is completed later this year.

People who filed appeals felt board members did not take their complaints seriously, according to a preliminary report researchers issued in 2011. The report also assailed the review board for a lack of transparency. Civilian boards in other cities often make their findings and recommendations public by posting them online.

Charlotte's review panel has no website. The board meeting minutes contained "boilerplate" language and did not include key information, researchers said.

"This is woefully inadequate and needs to be corrected to increase accountability," Huber said.

Huber believes the Citizens Review Board has failed in its mission.

He doesn't blame review board members for never siding with citizens. The problem, he said, is that the board's rules make it virtually impossible for citizens to win their appeals.

Huber said the burden of proof to gain a formal hearing should be lowered from the preponderance of evidence to probable cause that an officer engaged in misconduct. Police use probable cause as the standard when determining whether a crime might have occurred and whether they should make an arrest.

"The people who serve on the board are volunteer, well-intentioned public servants," Huber said. "The flaws exist not with them but in the structure of the board itself.

"The failure over the board's 15-year existence to ever rule in favor of a citizen raises serious questions about whether the current structure of the board provides effective, independent oversight of police behavior."

Is system fair?

Citizens Review Board attorney Julian Wright acknowledged that people who appear before the board are at a disadvantage.

Most of the citizens don't have lawyers. The police officers accused of misconduct are represented by CMPD attorneys and Internal Affairs investigators.

Police typically show up with PowerPoint presentations, Wright said, while citizens may have only snapshots.

Still, Wright said the board strives to achieve fairness. "The police department brings more resources to bear than the citizens," he said. "But the board works hard to keep a balance. They try to make sure citizens' voices are heard."

City Council member Patrick Cannon, who pushed for the creation of the board in the 1990s, said he isn't bothered that the board has never ruled against CMPD. Cannon said he believes the panel looks at cases objectively.

"I would like to believe we have officers who conduct themselves in a better fashion" than police in other cities, Cannon said.

Council member Andy Dulin expressed surprise when told the review board has never sided with a citizen.

“It’s either running very quietly and smoothly or not running at all,” said Dulin, a member of the council’s Community Safety Committee.

He said he did not know enough about the Citizens Review Board to offer an opinion on its effectiveness but added that the relatively low number of complaints the board has received “might speak to us having a professional police force.”

Dulin said he is confident that Chief Monroe handles discipline appropriately.

Mayor Anthony Foxx did not respond to multiple requests for an interview.

City Council member Claire Fallon said she is troubled by the review board’s record. She said the board’s “hands are tied” because it has no investigators to conduct independent probes.

To fully empower Charlotte’s board, the City Council could give it the authority to independently investigate complaints and lower the threshold for a hearing from preponderance of the evidence to probable cause. The council also could direct the board to post information online about cases and its findings.

“If you don’t have investigative power or money, you don’t make a good decision,” said Fallon, a member of council’s Community Safety Committee. “How could you?”

‘A paper tiger’

Daly had been calling for some type of citizen review of police misconduct allegations since the late 1960s, when Charlotte was troubled by anti-war sentiment and racial tensions. In 1997, when the Citizens Review Board was finally established, Daly was selected as its first chairman.

Within a year, though, the prominent civil rights lawyer was disillusioned. In an opinion piece published in the Observer in October 1998, Daly expressed his frustrations with the way the panel was set up.

“What was the point of creating the board if it is powerless to represent the public interest?” Daly wrote.

To Daly, the problem was the ordinance that created the board.

“It ties the board’s hands with legal procedures, makes the board a paper tiger, looking as if it can review the police but in reality unable to do so,” he wrote.

Daly points out that he and his colleagues on the review board weren’t allowed to question the police officers accused of misconduct when deciding whether to hold formal hearings on citizens’ complaints. Instead, Internal Affairs investigators and CMPD attorneys appeared before the board on behalf of the officers.

“We didn’t have much of a chance to get at the facts,” Daly recalled. “It’s totally useless to cross-examine someone from Internal Affairs rather than the cop who’s accused of misconduct. It’s like cross-examining the defense lawyer instead of the defendant.”

Former Mecklenburg County Commissioners Chairman Harold Cogdell served on the Citizens Review Board for two years. Cogdell, an attorney, said residents had almost no chance to prove their allegations because they didn't have access to Internal Affairs reports that form the basis of CMPD's disciplinary decisions.

"It was difficult for the citizens to get the evidence they needed to establish police wrongdoing," Cogdell said.

Don Luna, coordinator for the Police Civilian Review Commission in St. Paul, Minn., expressed amazement that no appeals before Charlotte's review board have been successful.

"How can you get complaints and have none substantiated?" he asked. "I just don't know how that's possible. Everybody makes mistakes." Observer researcher Maria David contributed to this report

Read more here: <http://www.charlotteobserver.com/2013/02/16/3860400/cmpd-review-panel-rules-against.html#storylink=cpy>