

March 6, 2021

Paul Feiner, Supervisor
Gina Jackson, Councilwoman
Ken Jones, Councilman
Diana Juettner, Councilwoman
Francis Sheehan, Councilman
The Town of Greenburgh
177 Hillside Avenue
White Plains, New York 10607

Re: GASR Law Enforcement Reform Report

Dear Supervisor Feiner and Honorable Members of the Greenburgh Town Board:

As most of you know I was a Greenburgh Police officer for 38 years and had the honor of serving as Chief of Department for the last 17-1/2 years of my tenure. As Supervisor Feiner and Councilwoman Juettner may recall when I interviewed for the position of Chief in 1992, I provided the Town Board with a written outline of how I intended to bring the department into the 21st century. Among those goals was a commitment to do everything possible to have the sworn composition of the Greenburgh Police Department (GPD) reflect the racial makeup of the constituency it served. No small task considering the obstacles that Civil Service Law presented. Additionally, I announced my intention to make Community Policing the underlying philosophy that guided the GPD in carrying out its mission and to treat every resident of and visitor to Greenburgh with respect and dignity while making the department the most professional, best equipped, and most technologically advanced law enforcement agency in the county. In the more than 17 years I shepherded the GPD we never wavered from those stated goals and since my retirement in November of 2009 all three of the men that succeeded me have been equally committed to these objectives, diligently working towards building competence and diversity while employing the newest technologies to assist the department in carrying out its mission more efficiently. These men not only created an agency that truly reflects the racial composition of the community but did so by filling those positions with highly qualified minority officers. Their efforts have earned the department the respect of their peers throughout New York who view it as “one of the most progressive, efficient and technologically advanced law enforcement agencies in the state.”

Recently I had the opportunity to review a copy of the Greenburgh Against Systemic Racism, Law Enforcement Reform Report (the Report) submitted to the Board for consideration by Councilwoman Jackson’s Task Force. Obviously, a great deal of work went into the production of the document and Councilwoman Jackson deserves to be commended for her efforts. This Task Force was formed, and the document prepared in response to Governor Cuomo’s June 12, 2020 Executive Order number 203 which directed each municipal government to organize stakeholders to examine relations with police in their community and to propose ways to improve those relations. Municipalities are required to submit their report to the State Budget Director on or before April 1, 2021 or risk the suspension of state aid. This directive was in response to the shooting of George Floyd and the deaths of several other black men during interactions with the police which sparked an outcry for reform across the nation and charges of

Systemic Police Racism. The comprehensive and lengthy document contains numerous recommendations some of which I would like to comment on for the record. To keep this as brief as possible, I will limit my remarks to those that I consider the most noteworthy although I would welcome the opportunity to provide further insight on others in a future meeting with the Board. I would also like to add that although I noticed that Greenburgh Police Chief Chris McNerney and Howard Tribble, a retired White Plains Police officer were members of the Task Force, I could not find a single statement attributable to either of them in the Report. I find it hard to believe that neither of these gentlemen took issue with a single finding or if they did why their objection was not noted.

Let me begin by saying that I do not believe that Systemic Police Racism exists. I trust that any person examining the data objectively would be compelled to arrive at the same conclusion. The data and facts simply do not support such a finding. That is not to say there are not racist officers. Despite in depth pre-employment background checks and interviews, psychological and polygraph testing as well as daily evaluation by a training officer throughout a lengthy probationary period, a small number of bigoted people manage to slip through the cracks and become tenured police officers. This unfortunately is inevitable. The main thrust of Police reforms should be centered around identifying and removing these individuals from the service. No Police Chief wants bigots in their department. But rather than address the real issue, there are those who seek to make an already difficult job even more challenging by stripping law enforcement of the tools they require to keep us safe, by making police officers and their families targets of malcontents who stoke the fires of racism by demonizing the tens of thousands of men and women who put their lives on the line every day to protect us which frankly is just plain wrong.

On page 6 of the Report, it infers that racism exists in Westchester policing and implicitly in Greenburgh because, according to the Westchester Legal Aid Society a higher percentage (18.4%) of charges filed against 234 black defendants in Greenburgh Court between 2016 and 2019 were dismissed compared to those dismissed (5.8%) against 103 white defendants over the same period. The report goes on to state that these statistics, "caused leading legal experts to question whether the client should have been arrested in the first place." Of course, it fails to name any of these leading legal experts who I suspect were all Legal Aid attorneys or how many charges were filed against each defendant group which leads me to believe that presenting that number as a percentage (18.4%) is intended to give the impression of a much larger figure than would including the actual number of dismissals. So, we really have no idea of how many dismissals 18.4% represents. Defendants are often offered plea deals in which they agree to plead guilty to a single charge in full satisfaction of all the charges lodged against them. The report also clearly states charges dismissed not cases dismissed which means that most, if not all, of the defendants who had charges dismissed were most likely convicted of some offense. This appears to be nothing more than a disingenuous use of statistics. However, buried in Footnote 8 is the qualifier, "These figures do not include cases handled by private counsel. These statistics include cases in which the Greenburgh Police Department had **NO** involvement; the arrests were made by other police departments (emphasis added)."

VI. Summary of Findings and Recommendations – This section begins with a statement that virtually every segment of the population is fearsome of interactions with the police yet this determination is

completely unsupported by the two surveys conducted by the Task Force. The first of these surveys, which contained 211 responses, found that **89.1%** of respondents were either Very Satisfied or Somewhat Satisfied with the performance of the department with a staggering **77.1%** Very Satisfied. Of the 175 respondents who provided their race and ethnicity, 107 (50.7%) were white, 29 (13.7%) were black and 20 (9.5%) were Hispanic. There were 19 others who were of differing races and the Report states that 50 preferred not to say. For some reason, these numbers add up to more than 211 but that discrepancy is insignificant. While I am admittedly no statistician this tells me that **overwhelmingly people in the Town of Greenburgh including minorities are satisfied with the operation of their police department.**

Even more telling were the responses to Questions 3, 5 and 7. Question 3 got to the very heart of the issue by asking the respondent to describe their feelings about the need for changes in the department. Of the 211 responses over half (51.2%) responded **No Changes** were needed. Another 25.1% answered **Minor Changes** were needed while the response of 19% was Don't know/No Answer. **Only 4.1% agreed that Major Changes were needed.**

Question 5 inquired if the respondent had ever experienced or witnessed an encounter with the Greenburgh Police. More than half 56.4% indicated that they had and in Question 7 those respondents were asked to describe the incident as either Very Positive, Somewhat Positive, Neither Negative or Positive, Somewhat Negative or Very Negative. **To this question, 73.9% of respondents answered Very Positive while 8.4% responded Somewhat Negative.** The pie chart while providing slivers for the other responses does not indicate percentages so it is not possible to accurately determine the number of negative responses, but that number can be construed from the pie chart as less than 10%.

The second survey included 165 responses with the first question again inquiring about the respondent's satisfaction with the Greenburgh Police Department. The responses were, Very Satisfied, Somewhat Satisfied, Not Very Satisfied, Not at all satisfied and Don't Know/No answer. **While not as high as in the first survey, at 83.1% respondents once again overwhelmingly expressed their satisfaction with the department with 66.1% responding Very Satisfied.** This pie chart also only contained slivers indicating the percentage of responses to the other categories, so it is not possible to accurately indicate the numbers for each, but it is evident that the numbers indicating dissatisfaction with the department were quite small.

Question 3 of Survey 2 again inquired about the need for changes in the department. **Only 13.9% (about 23 people) indicated a need for Major Changes while 69.7% (about 115 people) responded with No or only Minor Changes while 16.4% answered Don't Know/No Answer.**

In response to question 5, 63%, 104 people indicated they had experienced or witnessed an interaction with the Greenburgh Police sometime during the previous 5 years and in Question 7, **67.3% of these people described the interaction as Very Positive** while 25% indicated it was Somewhat or Very Negative. The remaining 6% responded either Somewhat Positive or Neither Negative nor Positive.

In addition to these surveys, forty-seven (47) people spoke via Zoom at the three public forums held on this matter.

With all the bad publicity law enforcement has received over the past year or so I am somewhat dumbfounded that so few people came forward to express their concerns. When those who conveyed positive views of law enforcement are subtracted from these already small numbers it appears that this entire remake of the department is being driven by a few dozen individuals. That is not to say that their concerns should not be taken seriously but rather to caution that the recommendations of the GASR Report, if fully implemented, could easily cost the Town hundreds of thousands of taxpayer dollars, and marginalize members of the force in such a way that would actually be detrimental to the public safety.

I am always skeptical of surveys such as these because when dealing with such small numbers they can easily be manipulated to further agendas, especially when they are done a second time, however, **the results of both these surveys are overwhelmingly supportive of the police and cannot be ignored.** I am certain they would have been placed at the beginning of the report had they supported the sweeping changes recommended in the GASR. However, they had exactly the opposite effect which is undoubtedly why they were relegated to the appendices.

Recruitment, Hiring and Training – The Report points out that, “The GPD in recent years, has made significant efforts to attract more non-white officers.” I would submit that statement should be corrected to state, **“Over nearly three decades the GPD has made significant efforts to attract more non-white officers.”** With the challenges Civil Service Law presents and the difficulties that exist in recruiting minority officers, achieving racial diversity does not happen in a few years. It goes on to concede that the racial diversity of the department matches the composition of the town, but then states, “there are too few women and people of color in the police department and in supervisory positions.” Perhaps it is the cynicism that nearly 40 years in law enforcement has ingrained in me, but I got the impression that rather than as a congratulations to the department for a job well done, this concession was grudgingly given. None-the-less this statement in a report that can only be described as negative towards the police, is most welcomed and should be considered testament to the GPD’s commitment to this goal. For the past thirty years the department’s position has been to achieve diversity not by simply adding various minorities to the department but by adding exceptionally qualified minority candidates. The people of Greenburgh deserve no less. Promotions, of course are a function of the Civil Service process, which will be discussed later in this response. Although at 15, the GPD employs more females now than ever in its history, I have no argument with the finding that there are too few women on the force. By law, several police functions can only be performed by female officers and qualified female officers are probably the most sought-after asset of every police agency, perhaps even more so than non-female minority candidates. They are also the most difficult to recruit and it is doubtful that anything will increase this candidate pool. The GPD’s reputation for professionalism along with its competitive salary and benefits package has been helpful in securing the females currently employed but qualified female candidates are extraordinarily scarce, and I fear will become even more so in this climate of demonizing the police. **What husband or parent would want their wife or child to experience what police officers are subjected to today?**

Promotions - Promotion to Sergeant, Lieutenant, Captain and Chief is accomplished through competitive examination. To qualify for the Sergeants exam police officers must have 48 months of continuous service with their municipality. This examination generates the largest pool of eligible candidates, but it is also the most competitive since as many as 50 or perhaps even more officers may be eligible and are vying for one of the historically few vacancies that will occur in the rank over the four-year life of the list. Sergeants who have the requisite amount of time in grade, which I believe continues to be one year, may sit for the Lieutenant's Exam. Since the department only has 18 sergeants, the competition is not as severe at this level. However, because there are only seven lieutenants there may only be one or perhaps two or three openings during the life of the list. Unless there were an unusual number of retirements, it would be rare for a candidate that did not score in the top four to be promoted during the four-years the list is in effect. Promotion to Captain is open to those lieutenants who have served at least twelve months in that rank. Here the candidate is competing against a maximum of seven other individuals but since the GPD has only three captains it is even more critical for the candidate to write a score that falls in the top three since only a single vacancy may occur during the tenure of the list and to be considered under Civil Service Law you must fall within the top three scorers. Qualification for the Chief's Exam is generally limited to those holding the rank of captain who have served one year in that capacity. The Westchester County Department of Human Services will not allow a municipality to sit for a promotional examination unless there are current vacancies in a particular rank or vacancies are expected. Promotional examinations test the knowledge required for the officer to successfully function in each specific rank. The appointing authority has the option to select one of the top three scorers for a single opening or two of the top four if two openings exist, etc. This provides the administration the flexibility to appoint the most overall qualified of the top three candidates.

Policy Directive reflecting goals on diversity recruitment – Since 1992 GPD's leadership has been committed to creating a department that is racially comparable to the composition of the Town. Thanks to the efforts of every Chief since then that goal has been realized. There is no reason to believe that trend will not continue. Competition for qualified minority candidates and women among police departments throughout the county is brutal making it difficult to add or even maintain current minority staffing levels. Departments routinely head hunt to fill positions sometimes creating tensions between administrators. In this climate it is impossible to guess what future candidate lists will look like or what the climate will be for filling positions through the Resignation/Reinstatement procedure. **Will the constant barrage of negative media coverage cause minorities who would make great police officers not to seek employment in the profession, probably?** Setting specific diversity goals will only serve to encourage future leaders to recommend less qualified candidates for appointment simply to satisfy those goals which is not in the best interests of Greenburgh. I would submit that a directive indicating that the department will do everything feasible to at least maintain a sworn force that reflects the racial diversity of the community to be more reasonable.

Greenburgh Police Explorer and Summer Youth Camp Programs – The GPD already sponsors an Explorer Program and, thanks to a grant from the Lanza Foundation, an annual Summer Youth Camp program which it began in 1998. The Camp Program was the first of its kind in Westchester and has been copied by several other law enforcement agencies. Since its inception hundreds of Greenburgh's youths have

completed the rather grueling seven-week curriculum. **Both these can be considered “feeder” programs that provide young people with insight into law enforcement and an opportunity to decide whether policing is a career path they would like to follow.** During my tenure with Greenburgh I am aware of one minority graduate of the camp program that became a police officer with the department. There may have been others since. As with any program there are staffing considerations. Were it not for the benevolence of the Lanza Foundation the camp program would have been discontinued because of cost which is mostly related to police overtime. There is no need for a Greenburgh PAL, and the funding required to support it makes it unfeasible.

State Civil Service Laws – The Report also seeks to change state Civil Service Law “to allow for more flexibility and efficiency in the hiring and promotion process,” going on to say that “scores do not gauge the interpersonal skills of that candidate.” While Civil Service Laws are cumbersome, and restrictive, they are objective and ensure that we will never return to the bad old days of the Spoils System when successful politicians appointed their friends to positions falling under the domain of the Civil Service. New York’s Civil Service law dates to 1894 when it was enshrined in the state’s Constitution by adding a provision to Article V, Section 6 that stated, “Appointments and promotions in the civil service of the State and all of the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive.....” Because New York’s Merit System exists directly in the wording of the Constitution, it is unlikely that any substantial change to it will be forthcoming since to do so would require another Constitutional Convention. In today’s world the successful police officer must know how to accurately interpret the written word and be able to coherently reduce the elements of a crime to writing in such a manner that it meets the minimum legal requirements of an Information or Criminal Complaint. Written tests can easily gauge this. Examination questions can also provide some measure of a candidate’s relational abilities but may not be comprehensive enough to determine a candidate’s full social potential or lack thereof. This is why Civil Service’s one in three rule is so important as it provides the hiring authority the right to appoint the one out of the top three candidates that they believe is best suited to the position based on the consideration of all factors. So there already exists a mechanism, although one might argue a somewhat limited one, to accomplish what the Report suggests. Adding a subjective measure to the Merit System would not ensure the best candidate was selected and would invite a return to cronyism.

Raising Appointment Age to 24 - The Report would also like to see the minimum age for appointment to a police department raised from 20 to 24. Let me begin by stating that in my 38 years with Greenburgh along with an additional year in Sleepy Hollow I do not recall any 20-year-old being appointed to either department. So why should the age be 20? The Report contends that at age 20, “most young adults have had minimal life experiences and have not developed the interpersonal interactive skills and mental maturity to bear the heavy responsibilities of police work.” While this may be true, none-the-less we allow people much younger to join the military and to perform the most important civic function of a citizen, vote, and they seem to have the mental maturity to bear those responsibilities. Law enforcement is a young person’s job. Twenty years of working the clock takes a toll on even the youngest and strongest officers. Making the appointment age 20 helps ensure that people who want to

be police officers will not become tired of waiting and seek other employment. **At 24 most people are out of college and well into a career and are less likely to change professions.** Additionally, if the age were changed to 24, candidates would still need to go through the cumbersome Civil Service process only at a later age making them that much older at the time of their appointment. Moreover, maturity is not totally a function of age.

Increase the frequency of Civil Service testing from every four years to two – **Implementation of this recommendation would ensure the best test takers got police jobs and would discount those that may have great interpersonal skills but were not quite as good exam takers by preventing candidates with lower scores to be considered. This could also inhibit the department's ability to hire minorities.**

Require a minimum of two years of college credits in order to be eligible for hire – As I recall, this recommendation was examined and rejected by the county probably 20 years ago because of backlash from police chiefs and organizations representing minorities because it was felt that it would reduce the number of minority candidates who would qualify to sit for an exam. **This requirement would also be counterproductive to hiring qualified minority candidates.**

Westchester Residency Requirement for the Duration of Employment – Presently a police officer candidate must be a resident of Westchester at the time of the examination and for at least one month prior thereto. In municipalities that grant preference to candidates residing in their jurisdiction, such as Greenburgh, candidates must reside in the appointing jurisdiction at the time the exam is given and for at least one month prior to appointment providing they actually reside in the jurisdiction at the time of appointment. For jurisdictions which utilize the General list a candidate need not reside in Westchester at the time of appointment but may reside in an adjoining county. According to the Westchester County Department of Human Resources for Greenburgh these would include residents of the Bronx, Dutchess, Nassau, New York, Orange, Putnam, Queens, Rockland, Suffolk, and Ulster counties. Greenburgh could adopt a local law requiring police officers to reside within the county or for that matter within Greenburgh for the duration of their employment with the Town. I believe this is both cruel and counterproductive since it deprives the candidate of the opportunity to live where they want. Westchester county home prices and taxes are extremely high which often forces employees to go out of county to find a residence that they can afford. Such a requirement could also result in qualified candidates declining employment in the Town.

Training – I don't know of any police chief that would be opposed to additional training for their people. The better trained a department is the better service they can provide. Unfortunately to ensure the public safety, minimum staffing levels throughout the department must be maintained. The Report stipulates on Page 11 the 2021 authorized strength of the GPD as being 115 sworn personnel. This apparently is incorrect as the Town's 2021 budget funds an authorized sworn strength of 107 officers which is the number currently employed. To provide some context to this number, when I joined Greenburgh in February of 1971 the authorized strength of the agency was 107, exactly what it is 50 years later. When I retired in the fall of 2009, the department's sworn strength was authorized at 116. Maintaining staffing levels is a daunting task made even worse I would venture during the height of the

pandemic when many officers fell ill. Because oftentimes it is difficult to support minimum levels, a significant amount of training must already be accomplished on an overtime basis. To make matters worse, a great deal of the training presently provided to Greenburgh officers is mandatory and cannot be eliminated meaning **much of any additional training, especially if it affected all sworn members, would likely need to be provided on an overtime basis. This would add tens of thousands if not hundreds of thousands of dollars to the police budget.** This is not an argument against the Town mandating this training but rather a warning as to the consequences of doing so.

On page 22 appear these statements, “The dominant focus in most police training is use of force and defensive tactics. While this training is imperative it must be recognized that more than ninety percent of police work involves non-combative functions, such as working with the community, effectively communicating, perceiving, and understanding the people who are interacting with the police, enforcing traffic laws, and quality of life offenses. Throughout all modalities of training there should be an increased emphasis on the use of interpersonal skills and a deemphasis on the use of force.” There needs to be a shift in mindset from what is described as a warrior mentality to a guardian mentality. While these statements are true, they seem to minimize, if not ignore what is happening in the country today. Police are being villainized because of their alleged improper use of force against people of color. **System Police Racism is fueled by the media underreporting police use of force against white defendants and sensationalizing and in some cases misreporting the facts in those against minorities to create the aura that the police are targeting minorities to brutalize them.** While the use of force comes into play in an infinitesimally small number of the tens of millions of police-civilian interactions annually, it is the one police action that gets the most attention and carries the greatest liability to the police image in the community. An objective evaluation of the facts in most of the cases that have gotten us here today is that the defendants against whom force was used resisted arrest. If one truly and objectively studies the facts of them, they must conclude that no amount of training in de-escalation provided to these officers would have prevented these suspects from resisting arrest leaving force as the only remaining option. Perhaps if more training in the use of force had been provided to these officers, things would be different today. It therefore stands to reason that the lion’s share of training must be provided in this critical area.

Accountability

Revamping the Police Community Advisory Commission into a Civilian Police Review Board – This recommendation would grant civilian members of this new Board the authority to “participate in matters pertaining to police operations, police equipment purchases and justifications therefor.” Additionally, Board members would have, “oversight of overall police management decisions and decisions related to resource utilization, oversight concerning the use of force by members of the department, and oversight concerning the proper implementation of discipline as a tool for misconduct.” Essentially this would mean that civilians, who are **not responsible or accountable** to anyone would be running the police department. Professional police leaders who know the strengths and weaknesses of their personnel and who track crime patterns, not unqualified civilians are best suited to make management decisions and to decide where best to allocate the department’s resources. This is not to say that civilian input is not necessary or should be ignored. More often than not, resource

allocation is based on input from members of the community, including those on the current Police/Community Advisory Board who routinely bring the concerns of the people in the areas they represent to the Chief of Police. It is also based on empirical data such as reported criminal activity, traffic accidents at specific locations and several other data variables that the department monitors daily. Moreover, the GPD Chief submits an annual budget to the Town Board. Open meetings are held on the budget at which the Chief answers questions and justifies requested expenditures.

These recommendations would decrease the efficiency of the department jeopardizing the safety of town residents. The Chief of Police is responsible for the actions of his personnel and is directly answerable to the Town Board. The infringement on the department's ability to address the dynamic and ever-changing hazards faced by law enforcement that implementation of this recommendation would bring will have disastrous effects on the public safety in the Town. It must be rejected!

Civilian Review Board (CRB) for Police Misconduct - Complaints against police officers can be either internal or external. Internal, usually coming from a supervisory officer in the department or externally, which is almost always from a citizen who feels they were aggrieved. Civilian complaints can be formal, where the civilian comes forth and signs the accusation or informal which is made anonymously. Currently the GPD investigates both formal and informal civilian complaints. When a complaint is received it is directed to the officer in command of the department's Special Investigations Unit (SIU) who does an initial evaluation of the complaint to determine how it should be handled. I would like to point out that no mention of the SIU is made in the GASR Report although it has been an integral part of department operations for at least four decades. Civilian complaints that are of a minor nature, such as discourtesy for example, are forwarded to the subject officer's division commander for investigation. Once their investigation is complete, the commander passes on his findings to the Chief of Police and if credible evidence exists that the officer violated department regulations the Chief decides what penalty to assess. This is undertaken after a review of the officer's disciplinary record and sometimes in consultation with staff. Civilian complaints that are serious in nature, such as an allegation of brutality, are investigated personally by the Special Investigations officer. Should the SIU commander find evidence that the officer's conduct may rise to the level of a criminal offense, notification is made to the Chief of Police who consults with the District Attorney's Office of Public Integrity. It is that office that determines whether the matter should be pursued criminally, or the department should handle it administratively. If the DA wishes to pursue the matter criminally, the Chief would suspend the officer and notify the Town Board of the situation requesting a Resolution to make the officer's suspension payless. At this time if sufficient evidence exists, criminal charges are filed, and the officer is arrested and processed as any criminal defendant would be. If probable cause for an arrest does not yet exist, the investigation is continued jointly with the District Attorney. Officers criminally charged are entitled to the same rights as any other criminal defendant. Unlike during investigations of rules violations, they cannot be compelled to provide answers to questions and can have an attorney present any time that questioning take place. Notwithstanding the fact that criminal charges may be filed against the officer, he or she is also entitled to be presented with departmental charges which must be served upon them within the period specified within the Westchester County Police Act. The Chief of Police drafts and signs the charges which are reviewed by the Town Attorney before being served on the defendant

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officer. Although in practice it does not happen, the officer may seek to have the departmental charges heard before the criminal charges are tried.

All disciplinary investigations are managed as if they were criminal investigations. Witnesses are questioned, statements taken, all types of evidence is gathered, including video that may have been captured on dash or body cams or from a private video surveillance system that may have captured the event.

Officers who have complaints that are substantiated and not criminal but for which the penalty of termination does not apply are offered command discipline. This statutorily could range from a Letter of Reprimand to the loss of up to twenty days pay. The penalty is based on the seriousness of the offense, whether it was a deliberate error or simply a mistake as well as the officer's disciplinary record. An officer refusing command discipline is served with disciplinary charges which, under law, must be heard before the Town Board who decides guilt or innocence. If a finding of guilty is made, a second hearing is held to determine what the penalty should be. Officers found guilty may seek Judicial Review of their conviction by filing an Article 78 Proceeding in the Supreme Court.

Discipline is an extremely complex issue. Some cases if handled incorrectly could jeopardize criminal prosecutions. The GPD has the tools to properly conduct disciplinary investigations and its leadership the morality to ensure that it is done fairly and objectively. The department investigates all complaints whether they be from internal or external sources, formal or informal and should be allowed to continue to do. The GASR Report provides no evidence that this is not the case and the small number of civilian complaints received do not justify any such change.

Complaints – What officers receive the most complaints and what are the potential motives behind a civilian filing a complaint? I would answer the first part of that question with another question. Assuming two officers have equal and excellent social skills, which would receive the most complaints, the one that issues 12 summonses a year or the officer that writes 125 tickets? I think the answer is obvious. **Officers that take their responsibilities seriously and diligently perform their duties are bound to get more complaints.** So, does this automatically make this officer some belligerent demon that is unfit to wear the uniform, of course not. Some civilian complaints are filed because the citizen truly believes they were wronged. I don't care what the officer says, I wasn't speeding, or I didn't run that Stop sign or go through that red light. I was stopped for driving while black. The cops are just filling their ticket quotas. Some of our investigations have revealed that people just want to get back at the officer for performing their duty or to mitigate the charges against them and of course others are absolutely legitimate.

If I may offer a lengthy but real example. While serving as Chief I received a call from an advocate for the Latino community giving me a courtesy "heads up" of his intention to hold a press conference on the steps of the Greenburgh Town Court to protest the violent and abusive conduct our officers perpetrated on one of his female constituents. He alleged that she was stopped for no reason while driving her vehicle on Central Avenue in Hartsdale in the middle of the day, was falsely arrested, and brutalized by

the arresting officers causing injuries to both knees. He went on to further allege that once taken to police headquarters she was denied medical attention for the injuries she sustained while being arrested and access to a telephone. He demanded the charges against his constituent be immediately dismissed. I thanked him for the "heads up", told him that I was unaware of the incident but would immediately look into it and get back to him. Fortunately, he provided me with the date and time of the occurrence, and I was able to quickly locate the reports. As it turned out the two officers involved were a senior officer and a recruit, he was training. The dash cam in their vehicle recorded the suspect's vehicle speeding up Central Avenue and running through two solid red signals. In fact, the vehicle would not pull over for the officers and only stopped when traffic waiting for a signal to turn prevented it from moving. The recruit officer approached the driver's side window and advised the operator why she was stopped requesting her Driver's license which the driver refused to provide. After requesting her license a second time and receiving the same response, the officer politely explained that if she did not produce her license, he would place her under arrest. Again, she refused, and the officer requested she step out of her vehicle. When she refused to exit her car, the recruit attempted to open the door but was standing in front of it when he did so. The operator quickly and deliberately opened the door striking the officer and knocking him to the ground. At this point the second officer became involved and once again directed the woman out of the car this time in a more forceful manner. She refused and it took both officers to forcibly remove her. She did fall to her knees when they did so, sustaining minor scrapes to both knees. She was placed under arrest and taken to police headquarters and placed in the booking room for processing. The booking room also has video surveillance which captured paramedics tending to her scrapes and inquiring if she wished to go to the hospital, which she declined to do, signing a form that indicated she was refusing medical attention. It also recorded the desk officer providing her with a portable phone, not once but on three separate occasions. Apparently, the line of the person she was trying to reach was busy. After viewing this evidence, I called the advocate back and explained what I had discovered inferring that his constituent obviously did not tell him the truth. I advised him that it was certainly his right to hold a presser on the Court steps but that if he did so to protect the department's image, I would be compelled to refute his claims with real evidence. While he did not appear at the court that day when his client's case was due to be heard, he did hold a mini press conference in front of county court making the same allegations. The next day I held my own press conference at police headquarters providing each member of the media with the facts and still photos of those parts of the video clips that refuted his charges.

Of course, this is not an example of a typical complaint. Most often the evidence is not so defining but hopefully it is illustrative of the lengths that some people will go to discredit the police.

While I believe it no longer exists, the New York City PD once had a policy that after a certain number of complaints, even if they were anonymous and unsubstantiated, an officer would be transferred to a different precinct. That prompted drug dealers and vice peddlers to file anonymous complaints against those officers who gave them the most problems.

Finally, although I realize there are valid arguments to the contrary, I personally find it difficult to believe that despite all good intentions, a lay person who has never experienced the stress that police officers

routinely function under could impartially sit in judgement of those that do. I truly believe that **the existing internal review and investigative procedures are adequate to ensure that every complaint against a police officer is thoroughly and objectively investigated.** Transferring that responsibility to a Civilian Review Board would jeopardize the process and could have a chilling effect on officer productivity.

Use of Force and Arrests – The Report suggests that “Low-level crimes such as trespassing, disorderly conduct and other low-level offenses should be deprioritized.” These offenses are not given priority. There is no direction for officers to go out and arrest people for trespassing and Disorderly Conduct. Disorderly conduct arrests are generally made when people will not stop disturbing the peace, when combatants refuse to stop fighting or for other similar offenses. **Usually, officers making these arrests are responding to complaints from citizens that are annoyed or fearful of the actions of others that adversely affect their quality of life, so much so they feel compelled to call the police.** Most often these matters are resolved by the responding officer’s directive to knock it off. According to the Greenburgh Police Department’s Annual Report for the year ending 2020, **arrests for Public Order Offenses have been declining steadily on their own since 2016** when 310 were reported. In 2017, 240 arrests for these offenses were made, followed by 2018 with 240, 2019 with 237 and 2020 with 163, but obviously, because of the pandemic 2020 cannot be considered a typical year. I have attended many community meetings in Fairview where residents have been critical of the police for not doing enough to put an end to this rowdiness. They often would say we call you respond and run the people off then when the police leave, they come back and start all over again. I find it difficult to believe that sentiment has now changed as people still want to feel safe in their homes and not have to tolerate raucous groups of people destroying their quality of life.

Elimination of low-level offense pursuit - Although I would still object to it, I would have felt somewhat better about this demand if it said” Curtail” rather than eliminate pursuits. As Chief I was never a big fan of high-speed pursuits for vehicle and traffic offenses. But let’s assume for a moment that this was codified in the Police Department’s Manual of Procedures which the GASR indicates should be put online. This would only serve to encourage people to run from the police. Why stop for those flashing red lights if all you need do is floor it. There is no doubt that pursuits are dangerous, and they should never be conducted in such a manner that they become reckless. Nowhere in police work is recklessness permissible. Police are taught this, and supervisors routinely call off pursuits when they believe they create a real danger to the public. There are even controls on felony chases, where the criminal suspects present a real danger to the public safety if they should escape. Although additional training in this area might be helpful in reducing incidents such as these or to further instill in officers the understanding that a fleeing suspect is not necessarily a criminal, **to pursue or not should remain a judgement call of the part of the police controlled by close supervision.**

No children arrest policy without parents present – Until recently the age of criminal responsibility in New York state was 16 for all criminal offenses (misdemeanor and felony). That was changed in stages finally raising the age to 18 on October 1, 2019. However, even under the new law 16 and 17 year-olds can still be tried in adult court, albeit a new section called the Youth Part, for certain violent

felony offenses as can 14 or 15 year-olds for one or more of a dozen specific felonies and even 13 year-olds can be tried as adults for homicide. **It has always been the policy of the GPD to immediately attempt to contact the parent or guardian of a child that has committed a crime, but sometimes circumstances preclude waiting for the parent to arrive at the scene of the offense.** The report mentions shoplifting. So, for example, the police are summoned to a retail store where store security has apprehended a 14 year-old shoplifter against which they wish to press charges. The store is about to close, and the parent cannot be reached. What are the police expected to do with that youngster? They are now responsible for their well-being. Under these circumstances that youth must be taken to police headquarters and held in the Youth office until they can safely be released to a parent or guardian. Or suppose at a high school a 15-year-old stabs a classmate which causes significant unrest at the school that could threaten the life of the defendant youth. Officers must take that individual out of harm's way. Another scenario might be that a parent is contacted but says I'm upstate and can't get there for another two hours. I cannot think of a single situation where the youngster would not be safer in custody where they can be kept warm, safe and fed. Police are precluded from questioning arrested juveniles about the offense without their parent or guardian being present so the child will simply be waiting for their parent while watching TV. There may be some situations where waiting for a parent might be feasible before the youth is physically taken into custody but that should be the subject of further discussion with Chief McNerney.

Use of Force – The Report also supports the “criminalization” of utilizing a knee on the neck or back to subdue a criminal suspect. They endorse the replacement of these techniques with other “non-lethal methods” but offer no suggestions as to what methods they would support. I would encourage them to share this information with the Chief. While the media may portray the police differently, I have never known an officer who would rather place their well-being in jeopardy by physically struggling to arrest a suspect than have him surrender peacefully. They would much rather just have them put their hands behind their backs and allow handcuffs to be placed on them. Often officers are physically outmatched by the suspect they are attempting to arrest and that becomes a real problem when the suspect resists arrest. This is why residents sometimes see multiple police cars at the scene of a car stop or other incident. **A suspect, or multiple suspects is much more likely to allow him or themselves to be taken peacefully into custody if they feel they must contend with multiple officers.** Unfortunately, sometimes it takes a great deal of physical force to subdue a resisting suspect and while I would not personally condone a knee on the neck, one on the back is sometimes necessary to subdue them until restraints can be applied. A police officer that is overpowered by a suspect risks additional injury or death and the loss of a sidearm during a struggle is an officer's worst nightmare that could lead to innocent people being injured.

Depending on the circumstances, police officers sometimes order suspects to lie on the ground prior to placing them in custody. Anyone that has watched a cop show has seen this. The reason is obvious. A suspect in this position is at a significant disadvantage, making it difficult for them to harm the arresting officer or flee. Under normal circumstances where there are only one or two suspects and an adequate number of police officers, I would agree that once restrained these individuals should not be

left on the ground. but rather raised to a kneeling position with their ankles crossed until they are placed in a police vehicle for transport. From this position the threat to officers is minimal with no chance of asphyxia. However, when multiple suspects are in custody, until the arrival of adequate personnel to secure them it would be safer to have suspects remain prone. Anyone complaining of breathing issues can be raised to the kneeling position previously mentioned or seated upright. And of course, there are circumstances including weather conditions and the age and sex of the suspect would justify more liberal action by the arresting officer.

Department Rules and Regulations – The Greenburgh Police Department is accredited by the New York State Division of Criminal Justice Services, a distinction they have held since 2003. This means its Rules, Regulations and Procedures meet or exceed the 110 standards set by New York State’s Division of Criminal Justice Services, standards which are based on best practices. Of these 110 standards, 51 affect the administration of the department, 12 training and 47 speak to operations. Every five years since 2003 the department has been reassessed to ensure that the 110 standards covered by accreditation continue to meet minimum state requirements. For your information I have attached a copy of the Table of Contents from the latest version of Standards and Compliance Verification Manual which lists the standards covered and indicates the 20 standards that are considered CRITICAL. Included in the 20 are Rules of Conduct (§14.1), Disciplinary System (§14.7), Use of Force (§20.1), Internal Affairs Function (§25.1), and Health of Persons in Custody (§43.8).

Generally, when a change in a regulation of procedure is required because of a change in law, the implementation of new technology or a policy change, the Chief will draft what is called an Interim Order in which the changes will be incorporated. This will be distributed to all members and have the same effect as if the change were made directly to the manual. Only the Town Board can approve changes to the department’s Manual of Rules, Regulations and Procedures which is accomplished through Resolution. Unless the CBA has changed, prior to any Board action, the PBA must be served with a copy of the proposed change thirty days before the Town Board intends to act and may provide the Board with comments on them. So, updates to the manual itself are usually not something done immediately after a minor change is made. More likely the department will be guided by Interim Orders until it is expeditious to formally update the manual. This also gives staff the ability to fine tune the change if necessary before it is permanently codified.

The FASR Report suggests certain edits be made to this document to support the changes the Report has suggested and that it be placed online for the sake of transparency. Of course, with such easy access to procedures it would also be a benefit to the criminal element. I am certain Chief McNerney will be providing the Board with his opinion on this proposal but would only suggest that **any change be consistent with the appropriate state accreditation standards before they are adopted.**

The only proposed change that I will comment on is found on Page 95 of the Report and involves Chain of Command. As with every police department, the GPD is a quasi-military organization that has a strict chain-of-command. To borrow a quote from the office of Community Oriented Policing Services (COPS),

“the chain of command is a key component in both the military and in law enforcement. Without it, the entire structure of both our armed services and law enforcement begin to break down.” What the GASR suggests would destabilize the efficacy of the police department undermining trust in one another and respect for supervisors. If something is deemed inappropriate by a police officer, it should be brought to the attention of their immediate supervisor unless the immediate supervisor is the subject of the complaint in which case the Tour Commander, who is a lieutenant should be notified, etc. In situations where a serious threat exists to the reputation of the department, the existing regulation would allow an employee to take their complaint directly to the Chief of Police. A problem cannot be addressed unless it is brought to the attention of those who have the authority to fix it. **Whistleblowers have protections under §741 of the Civil Service Law, which states that a public employee may not be retaliated against for disclosing government information regarding a violation of the law resulting in a threat to public health and safety or improper governmental action.** In some situations, such as with patient care issues, healthcare workers seeking protection under the law must first report the issue to a supervisor and provide time for the condition to be corrected before protection attaches.

When authority is undermined in a military or law enforcement agency the system will eventually breakdown. The problem that you sought to correct with this regulation will create much more serious issues. This proposal MUST be rejected.

On page 94 of the FASR Report was placed another disingenuous tidbit of information entitled REPORTED CIVIL RIGHTS DECISIONS INVOLVING THE TOWN OF GREENBURGH under which is listed six cases which one would assume, since the Report is about the police department, support the contention that the police routinely violate people’s civil rights. The Lynch case is an EMS malpractice suit, which was heard in the Westchester County Supreme Court and had nothing to do with Civil Rights violations. The Clark case involved a suit filed in federal court challenging the manner in which town officials were elected obviously having nothing to do with Civil Rights. The Grice case does involve a complaint of false arrest which was dismissed. Some Board members may recall the Gubitosi case which did allege Civil Rights violations but was also dismissed. Williams involved a laid off Greenburgh Community Center worker that filed suit after he was arrested for trespass by Greenburgh Police on a complaint by the Center’s director. This case resulted in a dismissal. The only surviving case in this list is Maldonado, which I am certain the Board is aware of. And the most serious charge in that case has been dismissed. I really don’t know why the Task Force felt the need to include these. Municipalities have deep pockets and are subject to litigation all the time. Fully a third of these cases have nothing to do with Civil Rights violations and all the others, save a part of Maldonado have been dismissed.

Conclusions

Every agency and department of government can improve on the way it delivers services to the people. The police are no different. But wholesale changes that amount to throwing the baby out with the bathwater must be resisted. We have already seen the adverse effects that radical changes can have on the public safety. Has stripping \$1 billion from the New York City Police budget or the abolition of the NYPD’s Street Crime Unit made city residents safer? With shootings at a 14-year high, murders up 40%,

subway crime out of control and arrests down 35%, I think not. Has bail reform made New Yorkers safer? Almost every day you read about arrestees released without bail reoffending some on the same day they were released. The state legislature has already had to revisit this issue once and will probably need to do so again when it becomes even more evident that this flawed law is making New Yorkers less safe. Was the reform of bail laws necessary, yes, but for those that flaunt the law and reoffend, judges and District Attorneys not legislators should decide if they should be released back into society.

The police are not the enemy. Despite how the media often portrays them, the vast majority of police officers are dedicated, hard working men and women who are committed to serving the public. The nature of their job however makes them easy targets for criticism. Unlike their colleagues in the fire department whose services are properly celebrated by the media, the police officer's duty to protect sometimes triggers antipathy among the people. Sometimes performing their duties can cause distrust, especially in minority communities and no one likes to receive a traffic summons or parking ticket.

The surveys taken by the GASR Task Force demonstrate that residents overwhelmingly support their police department. Town government should be extremely gratified at the results of these surveys. By comparison, the latest Gallup poll reports a Congressional approval rating of 35% and that's up 10% from the previous month. It would be a politician's dream to receive the approval ratings that the GPD garnered in these surveys.

Real change cannot be accomplished unilaterally. Trust is a two-way street. During my years as Chief I reached out to and collaborated with many leaders in the minority community. Some of those people remain in their roles today. All vowed to work with me when it came to improving the relationship between the police and their constituencies, but many abandoned that promise immediately when the first controversy occurred even if the facts overwhelmingly supported the actions of the police. They did so to avoid the criticism of the militant faction of their constituency, that segment that no amount of transparency would satisfy. This marginalizes the feelings of the people in those groups that truly want to have improved relations with their police who now remain silent for fear of being ostracized by their own neighbors. This must stop. When an incident occurs, police leadership must quickly share all the facts they can with these leaders who must then objectively relate this to their communities. If it has not already been done, a communications network to quickly transfer this information must be established followed with a procedure to hold face-to-face meetings between police officials and community leaders where additional facts may be shared and questions asked and answered. True leadership requires enormous amounts of intestinal fortitude. It is not easy and sometimes facts are hard to swallow. For example, the facts are clear that most of the police-minority interactions that are responsible for getting us to where we are today could have been prevented if individuals **DID NOT** resist arrest. But I don't recall hearing any black leader telling their people not to resist, in fact most did the opposite. If we truly want to turn the corner on this issue then minority leaders must be willing to objectively evaluate the facts and advise their communities accordingly and the police must be willing to take appropriate action against officers who behave in a manner inconsistent with department policy, something that the GPD has routinely done for decades.

Improving the relationship between the police and minority communities is a complex problem but overregulation of the force to the point where officers will reduce their policing effort to avoid criticism is not the way to accomplish this and without the support of minority leaders, no amount of transparency, accountability or training will further this goal.

I thank you for the opportunity to submit these comments. If I can be of any assistance in the furtherance of resolving this important issue, please feel free to contact me.

Respectfully submitted,

Chief John A. Kapica
Greenburgh Police Department (Ret)

Attachments

New York State Law Enforcement Accreditation Program
Standards and Compliance Verification Model
Cover and Table of Contents (6 pages)

“The Myth of Systemic Racism” by Heather MacDonald, June 2, 2020 (4 pages)

“Study findings challenge claims of systemic racism among police” by Red Jahncke, September 13, 2020 (3 pages)