

Daniel Schuman, policy director, Demand Progress
Responses to Questions for the Record
Committee on House Administration
Regarding Oversight of the January 6th Capitol Attack Hearing
Held on February 17, 2022

Dear Chair Lofgren, Ranking Member Davis, and Members of the Committee:

Thank you again for the opportunity to testify before the Committee on House Administration concerning oversight of the January 6th Capitol Attack. I appreciate the thoughtful questions for the record concerning the operations of the Capitol Police Board and have endeavored to provide satisfactory answers. As always, I look forward to continuing to engage on these issues with the Committee and welcome the opportunity to discuss this matter with you further.

1. Is the Capitol Police Board an effective oversight body for the Department?

There is significant evidence that the Capitol Police Board is not an effective oversight body for the Department and insufficient evidence to support the contrary conclusion. A conclusive determination would require a more thorough investigation, such as one conducted by the Government Accountability Office, the Capitol Police Inspector General should that office be provided both independence from and jurisdiction over the Capitol Police, a civilian oversight body with sufficient staff and investigatory authority, by a committee of Congress, or by a special commission.

However, the obvious failures of the Capitol Police to prepare for and respond to the January 6th attack, as outlined in numerous USCP IG reports, GAO investigations, and committee findings are undeniably a failure of oversight and direction from the Board that oversees the Capitol Police. Public reporting on prior incidents suggests systemic problems within the Capitol Police, however, the agency's secretive culture – including the non-publication of its Inspector General reports – makes it impossible to speak authoritatively on many aspects of its activities. A smart leadership culture would create internal and external mechanisms for transparency and accountability, something which does not exist within the Capitol Police or its Board.

I note in particular that the Capitol Police Board does not hold public meetings or release summaries of those meetings. Until recently, the Board did not track decisions made by the Board and memorialize them in writing. The acting Capitol Police Chief, who serves on the Board, did not know she must report to congressional committees, and a GAO report found that the Capitol Police Board was generally viewed as not responsive to its congressional overseers. The Capitol Police Board makes decisions unanimously, which has been described in testimony as a mechanism to avoid individual accountability among Board members for their choices. The

Board also routinely up-classifies matters as a mechanism to keep its determinations out of the hands of the public and congressional overseers, according to the Architect of Congress, who serves on the Board.

These are all illustrative of a culture that does not value oversight, whether of subordinates or to superiors. In the absence of transparency and accountability, and in the face of overwhelming evidence, I am impelled to conclude that the Capitol Police Board is not an effective oversight body.

2. Does the Capitol Police Board ensure accountability and transparency of the Department?

The weight of the evidence suggests that the Capitol Police Board does not ensure accountability and transparency of the Capitol Police. Four examples illustrate this point.

First, the Capitol Police do not have a process by which the public can request its records. The creation of a FOIA-like process has been directed by Appropriators for the last few fiscal years, but the Capitol Police still have not brought that program to fruition or consulted with members of civil society who are expert on FOIA and crafted model regulations. Accountability to the public and responsiveness to Congress are best practices that encourage the Department to stay on the right path and enable correction when it goes wrong. The Board, which includes the Capitol Police chief, should be aware of these requirements but have not brought the agency into compliance.

Second, the Capitol Police Board has determined that reports of the Capitol Police Inspector General should not be made publicly available, which is contrary to the widespread practices of Inspectors General, which routinely make their reports publicly available. In addition, the Capitol Police Inspector General is appointed by the Board, which undermines that office's independence, and the Board itself is not subject to oversight by the IG. A properly functioning Capitol Police Board would understand the salutary role that IGs play and would be pushing for independence of the IG and public release of its reports.

Third, the Capitol Police should publish all information about arrests related to protecting Congress. The Capitol Police had to be pushed by your Committee to publish some of this information, and what they are currently publishing is incomplete and in inadequate formats. There should be a public-facing database of all arrests. This is an area where the Capitol Police Board should have directed publication of this information. And as Appropriators have requested these practices be improved, the Capitol Police Board should have made sure they were implemented.

Finally, the Capitol Police routinely assert that threats to members of Congress are increasing and release statistics on that point. But the numbers they release seem more geared towards making rhetorical points during budget season rather than informing policymakers. Of the threats they are tracking, how many were investigated? How many investigations led to arrests? How many arrests led to prosecutions? How many prosecutions resulted in convictions? To what extent does the increasing number of identified threats arise from increasing tracking of threats made against Members of Congress as opposed to an increase in the baseline in threats? A properly functioning Capitol Police Board would provide solid metrics along the lines discussed above to help evaluate and prepare for threats against Members, staff, and the capitol complex.

3. Do you have any proposals for reform of the Capitol Police Board? If so, please go into detail regarding any such proposal.

Thank you for the question. Multiple proposals are outlined below.

Independent USCP Oversight Board. Many large police departments nationwide have independent “civilian” oversight boards. A similar independent identity should be established for the USCP.

The Independent Board should be fully independent of the USCP and the Capitol Police Board. The Independent Board should be afforded the opportunity to testify before Congress, to meet regularly with Capitol Police Leadership, to hold public meetings, to inquire into matters of interest to the Independent Board, and obtain information from the USCP, and to make information publicly available as it deems appropriate.

The independent oversight board should be established to represent the interests of Members of Congress, congressional staff, Capitol Hill essential workers, support office and agency staff, journalists, lobbyists, the general public, and neighborhood/DC residents. Its members should include representatives from those segments of the population and it should hold meetings where the public is invited to attend.

The Independent Board members should be compensated for their time and provided appropriate staff to support their work.

Congressional oversight. The Committee on House Administration retained a staffer in 2019 who is an expert on policing and is responsible for overseeing the USCP. We suggest that four positions be created in the oversight committees — two majority, two minority — that are funded out of the USCP budget to support congressional oversight. This will help ensure that

deep expertise in overseeing the USCP is developed and maintained within the committees over the long haul.

Budget requests. Congressional Budget Justifications are plain language explanations of how an agency intends to spend the funding it is requesting from Congress. Executive branch agencies are required to publish their CBJs on their websites per OMB Circular A-11, and some Legislative branch agencies voluntarily do so as well. The House of Representatives occasionally publishes volume 1 of its Legislative branch hearings, which contains all the CBJs that it receives; the Senate has historically published such a compilation, but the last version we could find on GPO's website is from 2007. The USCP should publish its CBJ online two weeks after submission to Congress. This will facilitate oversight by oversight committees, civil society, and journalists. Understanding the requests made by the Capitol Police Board would facilitate improved oversight of its activities.

Expenditure tracking. The USCP is required to submit a semi-annual statement of disbursements per 2 U.S. Code § 1868a, which are to be published as House documents, but the most recent statement we can find is from 2018 and there are large gaps in what's available from the Government Publishing Office (GPO). The USCP should be required to publish all the statements on their website, submit them to the Government Publishing Office, and to additionally publish them as a CSV file along the lines of what the House of Representatives does for their statements of disbursements. This would bring them into compliance with law and allow for Congress, civil society, and journalists to be able to monitor their spending. It would also provide oversight into where the funds requested by the Capitol Police Board are invested.

Whistleblowers. The House and Senate, the USCP IG, and other appropriate entities should provide appropriate whistleblower protections to Capitol Police officers who wish to report wrongdoing or otherwise raise concerns. In addition, an anonymous complaint system that is independent of the USCP leadership should be established and publicized.

Final Inspectors General reports should be made publicly available no later than two weeks after their transmission to the relevant committees of jurisdiction. They should be published on the USCP IG website — which should be managed separately from the USCP website — and on oversight.gov, the federal Inspectors General web portal maintained by the Council of Inspectors General on Integrity and Efficiency. In circumstances where the full report cannot be released on the basis of a specific articulable reason that would undermine an ongoing criminal matter or would provide specific details concerning congressional security the disclosure of which would cause a specifically articulable threat to the safety of Congress, a summary of the report findings should be made publicly available. In the unusual circumstance where a report contains classified material, the IG should follow the best practices demonstrated by the GAO on its website with

respect to classified matters. Reports must not be kept as “draft” to avoid public disclosure. In addition, already issued IG reports should be published online immediately.

Inspector General Independence. The USCP IG should be fully independent of USCP leadership and the Capitol Police Board. The IG should be chosen by and report to Congress; the IG should submit a separate congressional budget justification that is not subject to prior review by the USCP or its board; the IG should be funded through a separate budgetary line item; the IG should be encouraged to participate in CIGIE; the restriction imposed on the IG preventing them from speaking with the public by the Capitol Police Board should be rescinded, and the IG specifically authorized to speak to the public. Funding for the IG should be increased.

Public records requests. Congress should apply FOIA or a FOIA-like process to the USCP in a similar fashion as it is applied to the Copyright Office. In other words, FOIA should be extended to the USCP and its Board.

Proactive disclosure. The USCP Board should hold its meetings in public, except in limited circumstances. Agendas should be published in advance and minutes of the meetings should be kept and released to stakeholders. The Capitol Police Board routinely asserts that its materials are classified or law-enforcement sensitive. The Board lacks the authority to classify materials, and when everything is deemed “law enforcement sensitive,” it is clear that the term is inappropriate and being misapplied. Instead, materials so deemed should be reviewed by an outside body with expertise with respect to public records, such as a FOIA professional, and released on an expedited basis.

Staffing. Previous GAO reports suggest that the Capitol Police Board has only one staffer. If so, this is inappropriate to the mission. The Board should have sufficient staff to be able to support its oversight and policymaking functions that are fully independent of the Capitol Police Department.

Composition of the Board. The composition of the Capitol Police Board is not successful. Congress cannot conduct meaningful oversight over the Board because at least one member will decline to testify. (The Senate Sergeant at Arms will refuse to testify in the House, and vice versa.) Moreover, the political and institutional prerogatives make members of the Board highly susceptible to political pressure and groupthink. We have seen testimony that the House and Senate Sergeants at Arms treat the Architect of the Capitol as vestigial. And allowing the Capitol Police Chief to serve as an ex officio member Board, which is responsible for oversight of the Chief, creates an inherent conflict of interest.

The Board should no longer have the House and Senate Sergeants at Arms as members. They perform a subordinate function to the Capitol Police and should report to the Board as

appropriate. The same is true for the Architect of Capitol on security-related matters. Instead, an independent Board of security experts that are sensitive to the unique needs of Congress, as well as individuals who represent the various stakeholder communities, would be better placed to oversee the operations of the Capitol Police.

4. Why is transparency of the Capitol security apparatus uniquely important?

Congress is where the aspirations of American democracy are turned into concrete action. The public, advocates, staff, journalists, visitors, neighbors, and Members of Congress must feel and be safe on Capitol Hill.

Other security agencies throughout the government are subject to an array of transparency and accountability laws. Currently, those laws do not reach the Capitol Police. These laws serve as a feedback system and an accountability mechanism that, when working properly, keep the agencies on track. There is no such correcting mechanism for the Capitol Police and its Board.

5. How can we better ensure transparency by Capitol Police leadership?

Please see the answers to questions 2 and 3.

6. How can we better balance civil liberties and security needs on Capitol Hill?

This is an excellent question — and one that is difficult to answer fully. Congress is where civil liberties protections must be at their greatest. Security should wrap around the guarantee of the right to communicate with your elected representatives free from fear and intimidation.

The opacity of the Capitol Police and the Capitol Police Board is a threat to the ability of individuals and organizations to be confident that they can freely express their views. Similarly, the Executive branch's (routine and warrantless) monitoring of the activities and communications concerning Congress – especially electronic surveillance – is dangerous both to citizens and the operations of Congress itself.

Congress needs to reconsider how it provides oversight of security on the Capitol Hill campus. It needs to construct robust, effective, and incentivized oversight structures with deep expertise that monitor every facet of security activities. It needs to ensure political accountability of the Capitol Police and its Board. It needs to shake off the institutional deference to the police and bring in its own experts.

Beyond the scope of this hearing, Congress needs to extend its counter surveillance and cybersecurity measures for Members of Congress, political staff, and support staff in the offices and agencies. That umbrella should extend beyond official devices to the personal devices that

provide insight into and an opportunity to compromise congressional staff and computer systems. The routine use of CI and cybersecurity tools, from universal two-factor authentication and password managers to mandatory CI training and routine sweeps of offices, is essential. The personal accounts, such as gmail, should be hardened by using advanced protection, members' official and unofficial phones should be routinely replaced, and they should be trained and encouraged to use encrypted forms of communication, such as Signal. It is a given that Members of Congress and their staff are under surveillance and their physical and electronic security is dependent upon ensuring that modern technologies and approaches are used to reduce the attack surface. Secure communications and systems for everyone who works for Congress — whether those communications occur in their professional or personal capacities — is essential to keeping Members safe and capable of exercising their constitutional duties.

Nothing less than a Legislative-branch wide coordinated approach to these concerns will allow us to have a government that is safe and open. There must be a virtuous cycle that identifies and responds to threats, and that continuous cycle of improvement is only possible with greater transparency. It is transparency that makes accountability possible. Accountability makes improvement possible. Improvement is how we can finally get to a Capitol Police Department – and Capitol Police Board – that we can rely upon to keep Congress safe and open.

Thank you again for the opportunity to submit these responses to the questions for the record.