

**Testimony of Amelia Strauss**  
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**Before the House Legislative Branch Appropriations Subcommittee**  
**May 8, 2021**

Chairman Ryan, Ranking Member Herrera Beutler, and Members of the Committee, thank you for the opportunity to testify. My name is Amelia Strauss and I am a policy advisor at Demand Progress. My testimony concerns ensuring the U.S. Capitol Police are transparent and accountable and thereby preventing failures like that which occurred on January 6.

We applaud the Committee for its efforts to build a stronger, safer, and more democratic Legislative branch. We acknowledge your ongoing efforts to reform the Capitol Police. For example, in last year's Legislative branch appropriations bill, you encouraged the Capitol Police to create a community notification system, to post arrest information as data, to develop a process for the public to request access to Department documents, and for the Inspector General to identify reports for public release.<sup>1</sup> You also moved to address concerns of discrimination and policing overreach by requesting the Capitol Police disclose arrest data and information about Capitol Police staff that is disaggregated by race, ethnicity, and gender; requesting a study of Capitol Police activity outside its primary jurisdiction; and recommending the Capitol Police increase staff training and reporting around de-escalation, use of force, unconscious bias, and racial profiling. We also favorably note this panel's recent hearings.

An effective Congress is secure and accessible; the Capitol Police are an integral part of maintaining this delicate balance. The Department has extensive resources to execute its mission of protecting the Congress and the Capitol, as evidenced by the \$515.5 million in funding it received for FY 2021,<sup>2</sup> and the \$103.7 million increase — not including the supplemental — requested for FY 2022.<sup>3</sup> As this Committee knows very well, Legislative branch funds are extraordinarily constrained.<sup>4</sup> Yet, the portion of those dollars going to the Capitol Police has grown from 3% of Legislative branch funds in FY 1995 to nearly 10% in FY 2020, and beyond.<sup>5</sup>

With an abundance of resources at its disposal and a vital mission — the stakes of which are unfortunately more evident than ever — we must make certain the Department meets its responsibilities. The best way to do that is to ensure that the Department is transparent, accountable, and responsive to Congress, the press, and the public. To that end, we respectfully submit five recommendations that build on your previous efforts to improve the transparency practices of the U.S. Capitol Police. While they do not address all the issues before the Capitol Police — we note the dysfunction of the Capitol Police Board, for example — they begin to make it possible to hold the Capitol Police accountable.

They are: (1) Create An Independent Stakeholders Committee; (2) Establish An Information Request Process; (3) Publish Capitol Police Inspector General Reports; (4) Improve Quality of Arrest Summary Data; and (5) Expand Reporting On Employee Misconduct.

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<sup>1</sup> <https://www.congress.gov/bill/116th-congress/house-bill/133>; <https://www.congress.gov/116/crpt/hrpt447/CRPT-116hrpt447.pdf>

<sup>2</sup> <https://www.congress.gov/bill/116th-congress/house-bill/133>

<sup>3</sup> <https://docs.house.gov/meetings/AP/AP24/20210303/111263/HHRG-117-AP24-Wstate-PittmanY-20210303.pdf>

<sup>4</sup> <https://firstbranchforecast.com/2020/02/17/the-undermining-of-congress/>

<sup>5</sup> <https://firstbranchforecast.com/2021/02/05/25-years-of-legislative-branch-appropriations-data-spanning-from-1994-2021-all-in-one-place/>

## **1. Create An Independent Stakeholders Committee**

The Department currently reports to the U.S. Capitol Police Board. The structure and function of the Board hinders congressional committees' efforts to assess and improve the Department and oversee its operations. The Board is composed of the Sergeants at Arms, the Architect of the Capitol, and the Capitol Police Chief as an ex-officio Member. These officials are appointed by the Speaker and the Senate Majority Leader, the President, and the Board respectively. The Board is insular, risk-averse, reactive, and unaccountable. The primary incentive for Board members is to defer to the Chair and to operate by consensus, which means many important issues are left unaddressed or unresolved.

A 2017 GAO report found "most congressional stakeholders expressed concern regarding the Board's accountability, transparency, and communication approaches."<sup>6</sup> As of June 2020, the Board did not comply with GAO's 2017 recommendations and ignored GAO inquiries. Testimony before this Committee, the Senate Committee on Homeland Security and Governmental Affairs, and the Senate Committee on Rules and Administration<sup>7</sup> underscores transparency and efficacy concerns. Just recently, the Acting Capitol Police Chief failed to acknowledge that the Board is overseen by the authorizing or appropriations committees.<sup>8</sup>

Reform is more likely to occur when information is out in the open. Transparency is an essential component of accountability. We therefore propose establishing a separate and independent stakeholders' committee to oversee Capitol Police, comparable to the independent "civilian" oversight boards for many large police departments nationwide.

This stakeholders' committee could represent the interests of Members of Congress, congressional staff, Capitol Hill essential workers, support office and agency staff, journalists, lobbyists, the general public, and Capitol Hill neighbors. Few are represented in the current power structure. Membership of the committee could include representatives from those categories, and the committee could hold public meetings, publish public minutes summarizing meetings' content, and solicit public comments.

The independent stakeholders' committee must be fully independent of the Department and the Board to be successful. To that end, members should be compensated for their time and provided staff when appropriate for their work. We recommend GAO study the feasibility, structure, and associated costs of creating an independent stakeholders' committee.

## **2. Establish An Information Request Process**

In the House report accompanying the FY 2021 Legislative branch appropriations bill,<sup>9</sup> Appropriators encouraged the Capitol Police to "develop a policy and procedure for the sharing of information that follows the spirit of the Freedom of Information Act." The Freedom of Information Act fosters accountability by allowing the public to access government information. We support the Committee's 2021 request because the Department has heretofore not undertaken a process by which it responds to reasonable public requests for information and, as a Legislative

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<sup>6</sup> <https://www.gao.gov/products/gao-17-112>

<sup>7</sup> <https://www.rules.senate.gov/hearings/examining-the-january-6th-attack-on-the-us-capitol>

<sup>8</sup> <https://www.appropriations.senate.gov/hearings/fiscal-year-2022-budget-requests->

<sup>9</sup> <https://www.congress.gov/116/crpt/hrpt447/CRPT-116hrpt447.pdf#page=22>

branch agency, the Department is not subject to FOIA or records laws — unlike most of its security agency and law enforcement peers. The Department has indicated it is unwilling to respond to the press or communicate with the public. For example, when asked by this panel on February 25th whether she will “commit to having public press briefings in the future, from this point going forward,” Acting Chief Pittman answered in the negative.<sup>10</sup>

Have the Capitol Police begun to implement this request? Are they consulting with experts from civil society or government on FOIA regulations? There is no reason to believe the answer is in the affirmative. Our experiences with the Department suggest that additional requirements are needed from this Committee to ensure the request is implemented — and implemented correctly. We request the following:

- The development of a policy and procedure for the sharing of information that follows the spirit and adheres closely to the language of the Freedom of Information Act. The request should include a clear deadline for creation and implementation of the policy and procedure. It should apply to the Board and the Department. The procedure should include provisions for review external to the Capitol Police. This will allow requesters to appeal to a disinterested third party.
- Encourage the Department to consult with relevant stakeholders (including civil society, governmental FOIA experts, and its congressional peers) as an essential element of developing and promulgating regulations.

### **3. Publish Capitol Police Inspector General Reports**

Last year, this Committee requested the Capitol Police Inspector General conduct a review of all of its reports issued within the previous three years to determine which could be publicly released, and to report back on its findings earlier this year on March 27, 2021.<sup>11</sup> The IG recently indicated it suspended its previously articulated plans and now will focus solely on investigating the insurrection; we do not know what that means for fulfilling this request for IG reports.

The Inspector General’s work to investigate Department waste, fraud, and abuse is shrouded in secrecy. Capitol Police IG reports are not available to the public pursuant, apparently, to a directive by the Board. The IG is appointed by and does not oversee the Board. Additionally, only a handful of peer review audit reports are publicly available.<sup>12</sup> By contrast, the vast majority of the 74 Executive branch IGs publish their final reports online. In circumstances where an Executive branch IG report cannot be released, usually due to its classified nature, the best practice is for IGs to provide notification of the report online — a practice adhered to by many agencies, including the DOD IG and the GAO.

We urge you to request that the Capitol Police IG publish final reports in a central, externally-facing location, which would help both Congress and the public better understand Capitol Police operations. Furthermore, a default to transparency ensures a greater opportunity for accountability and reform of Department operations. You should consider making the IG independent and have jurisdiction over the Board.

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<sup>10</sup> <https://www.youtube.com/watch?v=qhSwMrkpXd0&t=8117s>

<sup>11</sup> <https://www.congress.gov/116/crpt/hrpt447/CRPT-116hrpt447.pdf#page=22>

<sup>12</sup> <https://www.uscp.gov/the-Department/office-inspector-general/audits-investigations>

In addition, we urge the Committee to request the Inspector General publish already-issued reports online over the course of the fiscal year, and request that future reports be made publicly available on the OIG's website within two weeks of transmission to Congress. This change would align with best practices followed by other inspectors general. The Inspector General should, of course, be provided an alternative practice for security-sensitive materials, while keeping in mind that overclassification of materials and designation of sensitivity should not be allowed as a means to hide embarrassing or inappropriate conduct or protect the Capitol Police from scrutiny. As the Architect has indicated, the Board and Department have a tendency to overclassify information. Accordingly, we recommend an external review for withheld information.

#### **4. Improve Quality of Arrest Summary Data**

The Department publishes arrest summaries weekly; they in theory offer a window into Department activity. The data, however, have serious shortcomings. For example, summaries are published as prose and in PDF format — which does not lend itself to technical analysis — and links to those PDFs disappear from the Department website after one year. The summaries do not indicate what happens to individuals after they have interacted with Capitol Police officers and do not include demographic information of the individuals arrested, making it impossible to identify patterns of behavior. Furthermore, there is no public guidance clarifying which activities are and are not included in the arrest summaries. We suspect information is being withheld.

This Committee moved to address a number of these concerns in FY 2021: the Department was asked to explore developing a system to make arrest data available on a cumulative basis in a user-friendly, searchable, sortable, downloadable format, and to report on the costs by June 25, 2021. It was also encouraged to produce arrest data disaggregated by race, ethnicity, and gender.

Our analysis of the first two years of arrest summaries spanning December 2018 to December 2020 required over 80 hours of manual data entry and cleaning due to current data constraints.<sup>13</sup> Our findings are surprising: about half of incidents were traffic related, and a third occurred in or directly adjacent to congressional office buildings or the Capitol; we cannot be confident in these results, however, due to unaddressed redaction questions. The following items would address these concerns and dramatically improve the utility of the arrest summaries:

- Publish all guidance or regulations governing the disclosure (or non-disclosure) of arrest information. This will clarify what portion of Capitol Police activity is reported, and ensure that only security-sensitive activity is being omitted. We have reason to believe that the Capitol Police's definition of "law enforcement sensitive" information is so broad as to encompass virtually all information. It should be pared back.
- Include all arrests made by Capitol Police, those which occur in partnership with the Capitol Police, or arrests by others related to Capitol security in the arrest summaries.
- Track and publicly report on whether an arrest resulted in prosecution and conviction.

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<sup>13</sup> <https://firstbranchforecast.com/2021/01/06/a-primer-on-the-capitol-police-what-we-know-from-two-years-of-research/>

- Break down arrest information by individual and incident; publish this information as a structured, downloadable, machine-readable dataset on a website. Details should include the location, date, and time of the arrest; the alleged criminal violation(s); the demographic information of the person arrested; and other relevant information.
- Cease removal of links to arrest information and re-post missing summary links.

## **5. Expand Reporting On Employee Misconduct**

Following the attacks of January 6th, the Department suspended at least 6 employees, and opened investigations into no fewer than 35 employees.<sup>14</sup> The details of these investigations are difficult for the public to ascertain, as the Department shares little information publicly about employee misconduct, which is damaging to public confidence in the force and police morale.

The only document of this kind shared by the Department is the *Annual Statistical Summary Report on Office of Professional Responsibility Investigations*.<sup>15</sup> It is available by request, and indicates how many misconduct investigations occurred in a given year, and the total number of misconduct charges or allegations filed. Each report is less than a page long, and the only details included are the status of the individual filing the complaint — Citizen, Outside Law Enforcement, Internal, Anonymous, or, newly added for 2020, Department Investigation.

The data provided lacks precision, and it is not surprising readers cannot determine the percentage of substantiated allegations, the severity of the alleged misconduct, or whether subjects of the complaints are repeat offenders. Systemic issues can be brought to light with the following changes in reporting practices:

- Proactively publish misconduct data on a cumulative basis in a user-friendly, searchable, sortable, downloadable format.
- Define terminology and provide justifications for changes to reporting standards.
- Provide data on the category or type of misconduct infractions being reported.
- Create an anonymous unique identifier for employees and include this ID in reporting; this allows for tracking the behavior of and repercussions for repeat offenders.
- Include demographic information of both the complainants and offenders; the Department has an alleged history of race-based and gender-based discrimination in disciplinary action against employees and data is needed to redress the issue.<sup>16</sup>

We thank you for your thoughtful attention to this issue and appreciate the opportunity to testify.

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<https://www.npr.org/sections/insurrection-at-the-capitol/2021/02/19/969441904/capitol-police-suspends-6-officers-investigates-dozens-more-after-capitol-riots>

<sup>15</sup> [https://s3.amazonaws.com/demandprogress/documents/Annual\\_Statistical\\_Report\\_Summaries.pdf](https://s3.amazonaws.com/demandprogress/documents/Annual_Statistical_Report_Summaries.pdf)

<sup>16</sup> <https://www.propublica.org/article/no-one-took-us-seriously-black-cops-warned-about-racist-capitol-police-officers-for-years>