

# **BARRY LOUDERMILK PROVIDES PROOF OF KASH PATEL'S INCOMPETENCE WRAPPED UP INSIDE HIS LIZ CHENEY REFERRAL**

As you've no doubt heard, Congressman Barry Loudermilk released a report that, beneath what seems to be an appendix, refers Liz Cheney for investigation because she made sure that Cassidy Hutchinson had a lawyer who represented the former Mark Meadows aide's interests when testifying before the Committee.

Loudermilk claims obtaining witness testimony for a proceeding amounts to obstructing it and also claims Cheney – and not those who provided testimony inconsistent with other sworn documents – suborned perjury.

Based on the evidence obtained by this Subcommittee, numerous federal laws were likely broken by Liz Cheney, the former Vice Chair of the January 6 Select Committee, and these violations should be investigated by the Federal Bureau of Investigation. Evidence uncovered by the Subcommittee revealed that former Congresswoman Liz Cheney tampered with at least one witness, Cassidy Hutchinson, by secretly communicating with Hutchinson without Hutchinson's attorney's knowledge. This secret communication with a witness is improper and likely violates 18 U.S.C. 1512. Such action is outside the due functioning of the legislative process and therefore not protected by the Speech and Debate clause.

The Federal Bureau of Investigation must also investigate Representative Cheney

for violating 18 U.S.C. 1622, which prohibits any person from procuring another person to commit perjury. Based on the evidence obtained by this Subcommittee, Hutchinson committed perjury when she lied under oath to the Select Committee. Additionally, Hutchinson was interviewed by the FBI as part of its investigation into President Trump. This Subcommittee sought a copy of the FBI report 302, documenting this interview and Hutchinson's statements, but the FBI has refused to produce this vital document. The FBI must immediately review the testimony given by Hutchinson in this interview to determine if she also lied in her FBI interview, and, if so, the role former Representative Cheney played in instigating Hutchinson to radically change her testimony.

## **Loudermilk's tribute to Kash Patel's leadership**

Before Loudermilk delivers his welcome wagon for aspiring FBI Director Kash Patel, however, he provides solid evidence that Kash Patel is not fit to be FBI Director.

It turns out that the longest section of his report – 39 pages as compared to 36 for the Cassidy and Liz section – lays out how top DOD officials misrepresented their decisions regarding the National Guard leading up to and on January 6.

Just five pages of that pertain to Christopher Miller's inaction on what Loudermilk treats as a legitimate request from Trump to have 10,000 National Guard in DC (Loudermilk doesn't lay out the testimony from top Trump aides nixing that idea, based in part on a fear that Trump wanted an armed guard to accompany him to the Capitol).

But the rest has to do with delays created in deploying the Guard after the riot started. It

has long been clear that DOD was blowing smoke about their claimed actions that day. On its face, this part of Loudermilk's report is fair pushback to DOD's past unpersuasive claims. He even sneaks some quasi-referrals – whether to aspiring FBI Director Kash Patel or aspiring Secretary of Defense Pete Hegseth, it's not clear – for Miller and Ryan McCarthy into his report.

To date, no investigation or disciplinary action has taken place against Acting Secretary of Defense Miller for his failure to follow directives from the sitting Commander-in-Chief on January 3, 2021.

[snip]

To date, no investigation or disciplinary action has taken place against Secretary of the Army Ryan McCarthy for his failure to relay the Acting Secretary of Defense's lawful deployment order at 3:04 PM on January 6, 2021.

[snip]

To date, no investigation or disciplinary action has taken place against Secretary of the Army Ryan McCarthy for deceiving congressional leadership with false statements regarding the delay in deployment of the D.C. National Guard to the U.S. Capitol on January 6, 2021.

The referrals are kind of interesting because McCarthy, at least, is on Kash's dated and disorderly enemies list.

Mind you, if McCarthy was at fault for his January 6 response, it suggests there was something real to be at fault for. Maybe that's why these referrals are snuck into the longest section of the report?

What's most interesting, however, is Loudermilk's picture of the DOD leadership that failed.



Someone – DOD's then Acting Chief of Staff at the time – is missing.

Indeed, Kash's name doesn't show up anywhere in the 128-page report. Kash is a no-show even though, in the immediate wake of the insurrection, he had a *great deal* to say to Vanity Fair about his personal involvement in the two issues for which Loudermilk faults DOD.

On the evening of January 5—the night before a white supremacist mob stormed Capitol Hill in a siege that would leave five dead—the acting secretary of defense, Christopher Miller, was at the White House with his chief of staff, Kash Patel. They were meeting with President Trump on “an Iran issue,” Miller told me. But then the conversation switched gears. The president, Miller recalled, asked how

many troops the Pentagon planned to turn out the following day. “We’re like, ‘We’re going to provide any National Guard support that the District requests,’” Miller responded. “And [Trump] goes, ‘You’re going to need 10,000 people.’ No, I’m not talking bullshit. He said that. And we’re like, ‘Maybe. But you know, someone’s going to have to ask for it.’” At that point Miller remembered the president telling him, “‘You do what you need to do. You do what you need to do.’ He said, ‘You’re going to need 10,000.’ That’s what he said. Swear to God.”

[snip]

On the morning of January 6, as Miller recounted, he was hopeful that the day would prove uneventful. But decades in special operations and intelligence had honed his senses. “It was the first day I brought an overnight bag to work. My wife was like, ‘What are you doing there?’ I’m like, ‘I don’t know when I’m going to be home.’” To hear Patel tell it, they were on autopilot for most of the day: “We had talked to [the president] in person the day before, on the phone the day before, and two days before that. We were given clear instructions. We had all our authorizations. We didn’t need to talk to the president. I was talking to [Trump’s chief of staff, Mark] Meadows, nonstop that day.”

[snip]

Miller and Patel both insisted, in separate conversations, that they neither tried nor needed to contact the president on January 6; they had already gotten approval to deploy forces. However, another senior defense official remembered things quite differently, “They couldn’t get through. They tried

to call him”—meaning the president. The implication: Either Trump was shell-shocked, effectively abdicating his role as commander in chief, or he was deliberately stiff-arming some of his top officials because he was, in effect, siding with the insurrectionists and their cause of denying Biden’s victory.

As for Mike Pence, Miller disputed reports that the vice president was calling the shots or was the one who sent in the Guard. The SECDEF stated that he did speak with Pence—then in a secure location on the Hill—and provided a situation report. Referring to the Electoral College certification that had been paused when the mob stormed the building, Miller recalled Pence telling him, “We got to get this thing going again,” to which the defense secretary replied, “Roger. We’re moving.” Patel, for his part, said that those assembled in Miller’s office also spoke with congressional leaders Nancy Pelosi, Chuck Schumer, and Mitch McConnell. “We were called upon to do our job, and we executed because we had the reps and sets built into our process to get the troops where they were requested, to put up a fence, to secure a perimeter, and to help clear the Capitol compound. I mean, that’s just what we do.”

Some of what Kash said to Vanity Fair somewhat resembles Kash’s testimony to the January 6 Committee.

Although look forward to discussing these events in detail, I would like to make three things clear at the outset – excuse me – at the outset:

One, the actions the DOD took before January 6, 2021, to prepare for the planned protest in Washington, D.C., on January 5th and 6th, 2021, were

appropriate, supported by requirements, consistent with the DOD's roles and responsibilities, and compliant with laws, regulations, and other applicable guidance; two, the DOD's actions to respond to the United States Capitol Police request for assistance on January 6th, 2021, were appropriate, supported by requirements, consistent with the DOD's roles and responsibilities, and compliant with the laws, regulations, and other applicable guidance; and, three, DOD officials did not delay or obstruct the DOD's response to the United States Capitol Police request for assistance on January 6th, 2021.

These are not just my words but, in fact, the findings of the DOD's independent inspector general under President Biden's administration. The IG's November 16, 2021, report has marked has been marked as exhibit 3, I think.

But when January 6 Committee staffers asked the now-aspiring FBI Director about the Vanity Fair article itself he got ... squirmy. His testimony to J6C was inconsistent with both what he told Vanity Fair and what Loudermilk lays out in his report.

A Oh, so you remember stuff like that. So, going off just the memory, and we can go back to the article when you bring it up, there was a meeting with the President of the United States, Acting Secretary Miller, and some others – I can't recall off the top of my head where we were discussing, as the article states, something related to Iran.

And, in that same meeting, I believe it was on or around January 4th, 3rd, 4th, or 5th, the -as I stated earlier, in order for the Department of Defense's National Guard to ll be activated in any

way we needed Presidential authorization. And President Trump at that

[Discussion off the record.]

Q sure. Go ahead.

A Okay. And so this question appears to implicate core executive privilege concerns. I'm prepared to answer it, but I want the record to reflect my serious concerns about congressional overreaching of this matter.

So what I remember is that we knew, in order to get the National Guard even mobilized, we needed the President to at least say yes first. So what – my recollection of that meeting is the President preemptively authorized 10 to 20 National Guardsmen and-women around the country sorry? 10- to 20,000.

[snip]

Q Do you remember if the President mentioned anything that he may need these 19 troops to protect the Trump people?

A don't recall him ever saying that.

Whichever Kash story you believe, however, *both stories* put Kash in the center of everything. *Both stories* claim he had the ability to directly affect all of the failures Loudermilk lays out (which might also explain why DOD's story about January 6 is so unpersuasive).

If Kash was right there at the center of the story of DOD's failures leading up to and on January 6, as told by Barry Loudermilk, then Loudermilk would have to include *him*, the aspiring FBI Director, among the referrals for investigation.

Perhaps that's why Loudermilk instead just disappears the aspiring FBI Director: to avoid



referring him to the aspiring FBI Director for accountability for his failures on that day?

## How Barry Loudermilk covers up his own coverup

Which brings us to Loudermilk's own coverup.

Loudermilk has been fluffing Trump's non-response for some time as in this report, when he shows no interest in the Commander in Chief's inaction that day.

Rather than dwelling on Trump's demonstrable inaction, including in accelerating the Guard deployment, Loudermilk claims there was a witness present that day who would have heard if (as Hutchinson testified) Trump had cheered the taunts of "Hang Mike Pence," rather than (as Jack Smith described) Nick Luna testifying that Trump simply said, "So what" when told Pence was evacuated.

Loudermilk puts great stock in this witness being better situated than Hutchinson to hear what Trump was saying.

This individual was within earshot of President Trump the entire time the President was in the President's Dining Room. Additionally, in its investigation, the Subcommittee spoke with numerous individuals who worked closely with Meadows in the White House, and they confirmed that Meadows would not react apathetically to calls for violence, nor repeat an incident like the one alleged by Hutchinson so carelessly in a public space.

Only, this appears to be the area where Loudermilk was dealing with incomplete information. As Kyle Cheney first pointed out, Loudermilk released a redacted copy of what appears to be this person's transcript.

[REDACTED]

[REDACTED]

30

[REDACTED]

Q Okay.

A Correct.

Q Is that where the President set up for the afternoon? And set up may not be the best term, but is that where he's kind of stationed himself?

A Typically that's -- a lot of times he's in that back dining room a lot.

Q [REDACTED]

But Jack Smith released an unredacted fragment of that transcript.

And then we walked back to the back. I'm taking off his outer coat that he's wearing right now, and I get the TV, like, ready for him, and hand him over the remote, and he starts watching it. And I stepped out to get him a Diet Coke, come back in, and that's pretty much it for me as he's watching it and, like, seeing it for himself.

Q Okay. When you said you walked to the back, did you know mean walked to the Oval Dining Room?

A Correct.

Q Is that where the President set up for the afternoon? And set up may not be the best term, but is that where he's kind of stationed himself?

A Typically that's -- a lot of times he's in that back dining room a lot.

Q So you set up the TV. Did you set it up for him to watch his speech or watch live coverage of what was happening at the Capitol?

The transcript suggests Trump was far more entranced with the mob than Loudermilk wants to admit.

Loudermilk excuses his own gaps in knowledge by accusing Jack Smith of ... collusion.

Chairman Loudermilk and the Subcommittee have uncovered evidence of collusion between the Special Counsel Jack Smith—the prosecutor appointed by Attorney General Merick Garland to conduct two separate criminal investigations into President Trump<sup>207</sup>—and either the White House or the Select Committee. On October 18, 2024, Special Counsel Smith released some of the documents used in his filing against President Trump.<sup>208</sup>

Among the released documents was an unredacted version of the transcript of a Select Committee interview with a certain White House employee. <sup>209</sup> Given that the Select Committee did not archive, or otherwise destroyed this transcript, and that the White House refused to provide an unredacted version to the Subcommittee, the only remaining explanation is that Special Counsel Smith received the unredacted version from one of the two institutions which did not cooperate fully with the Subcommittee.

<sup>207</sup> Press Release, U.S. DEP'T OF JUST., Appointment of a Special Counsel (Nov. 18, 2022).

<sup>208</sup> April Ruben, More docs unsealed in Jack Smith's Jan. 6 case against Trump, AXIOS (Oct. 18, 2024).

<sup>209</sup> Kyle Cheney (@kyledcheney), X (Oct. 18, 2024, 11:45 AM).

We may find out soon enough how Jack Smith got an unredacted transcript that Loudermilk did not get. But he's wrong that they're the same transcript. They're paginated differently (what is page 38 on Loudermilk's copy is page 30 on Smith's). Which ought to be a hint to Loudermilk's crack team: the transcript is sourced differently, which may prove that

January 6 committee didn't destroy evidence he accuses them of destroying.

Plus, the point remains: Loudermilk's own excuses for Trump's inaction look different in light of more fulsome evidence, which shows Trump was entranced by the riot as soon as he returned to his office.

## **Loudermilk's sketchy evidence**

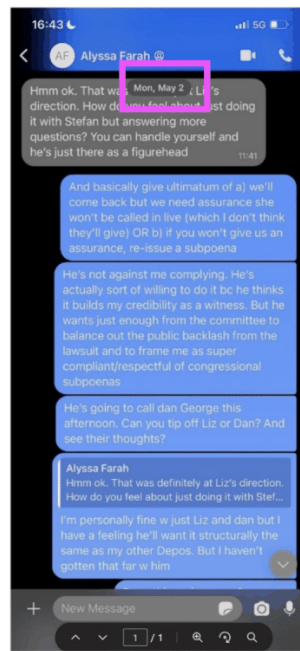
As to Loudermilk's referral of Liz Cheney to an aspiring FBI Director whom Loudermilk would have to refer as well if not for his utter silence about the aspiring FBI Director's centrality to what Loudermilk describes as insubordination and misconduct?

I hope, for Loudermilk's sake, that it is intentionally half-hearted, an effort to do what he knows Trump is demanding, to simply give the aspiring FBI Director an excuse to predicate an investigation into Liz Cheney (if not himself).

Because key parts of his argument don't say what he claims they do.

For example, a footnote in Loudermilk's report appears to claim that texts between Cassidy Hutchinson and Alyssa Farrah apparently dated May 2 (by context, this would be 2022) are instead from June 6 (2021, the footnote says; my annotations, but Loudermilk appears to have mixed up two sets of texts he has).

testimony.<sup>171</sup> Contrary to the Select Committee's and Hutchinson's narrative, however, the Subcommittee obtained messages between Alyssa Farah Griffin and Hutchinson where Hutchinson admits that Passantino was acting in her best interest and that she agreed with his counsel.<sup>172</sup>



<sup>171</sup> STAFF OF H. SELECT COMM. TO INVESTIGATE THE JAN. 6TH ATTACK ON THE U.S. CAPITOL, 117TH CONG., FINAL REP. (Comm. Print 2022).

<sup>172</sup> Cassidy Hutchinson, private Signal text conversation with Alyssa Farah Griffin (June 6, 2021) (in file with the Subcommittee).

Even assuming the footnote meant June 6, 2022, not 2021, the difference matters, because as Loudermilk notes, Hutchinson appeared a third time before the committee represented by Stefan Passantino on May 17, 2022, so her continued satisfaction with Passantino on May 2, 2022 is inconsistent with Loudermilk's story and consistent with Cheney's.

Loudermilk makes much of the fact that Passantino was not disciplined after a complaint in which Hutchinson refused to cooperate. Except the source he relies on for that claim, this NYT story, describes (in addition to the fact that Hutchinson refused to cooperate) that Passantino was ordered to do training about written conflict disclosure to his clients.

In a Feb. 2 letter, the office said that while Ms. Hutchinson had consented to having Mr. Passantino's fees paid by the political action committee aligned with Mr. Trump, putting the arrangement in writing is mandatory under Rule 1.5(b) of the District of Columbia Rules of

Professional Conduct. It required him to take legal ethics training classes during a probation period.

But, citing Ms. Hutchinson's unwillingness to talk to investigators, the office said there was insufficient evidence on the larger matter.

"Ms. Hutchinson made some allegations about your conduct to the committee, but she refused to cooperate in our investigation," it said. "Accordingly, except for the Rule 1.5(b) allegation, which you admit, we are not proceeding on her other allegations at this time. We are unable to prove those allegations by clear and convincing evidence, as we must."

Elsewhere, Loudermilk claims that Hutchinson's own House testimony supports his claim that Hutchinson selected Alston & Bird "at the recommendation of Representative Cheney" (he doesn't provide a page number). But that section of Hutchinson's testimony doesn't support his contention about Cheney's role in it.

On June 9, 2022, Hutchinson formally ended her attorney-client relationship with her first attorney, Stefan Passantino.<sup>93</sup> That same day, she retained attorneys Bill Jordan and Jody Hunt of Alston & Bird, at the recommendation of Representative Cheney.<sup>94</sup>

In a twist of irony, Representative Cheney spoke out forcefully against individuals who endeavored to influence witness testimony in the Select Committee. At the end of the Select Committee hearing in which Hutchinson testified, Representative Cheney stated, "[l]et me say one more time, we will take any effort to influence witness testimony very seriously."<sup>95</sup> In an interview with ABC News the following day, Representative Cheney reportedly stated that the Select Committee "may make a criminal referral to the Justice Department, recommending that anybody attempting to influence witness testimony before the [Select] Committee be prosecuted for witness tampering."<sup>96</sup> Whether lacking in self-awareness or to obfuscate her own furtive behavior, it is consistent with the Select Committee's practice of lodging accusations against President Trump and those associated with him as if those accusations are fact, when the Select Committee itself was engaged in the very behavior it had accused of President Trump.

#### **Cassidy Hutchinson's Four Subsequent Interviews and Live Testimony**

On June 20, 2022—less than two weeks after Hutchinson fired Passantino and hired the attorneys Representative Cheney suggested—Hutchinson sat for her fourth transcribed interview with the Select Committee under unusual circumstances. Prior to this interview, nearly every interview the Select Committee conducted included approximately a dozen people—including committee staff members, committee counsel, often a Member of the Select Committee, the interviewee, and the interviewee's legal representation. Most of the interviews were done in large conference rooms or over zoom, allowing space for all participants. Hutchinson's fourth transcribed interview, however, was vastly different. It consisted of only four people: Representative Cheney, one attorney from the Select Committee, Hutchinson, and Hutchinson's new counsel. Additionally, instead of the Select Committee conducting the interview in a conference room or virtually, Representative Cheney used her private hideaway inside of the United States Capitol Building.<sup>97</sup>

In light of the extravagant nature of the claims Hutchinson made during her third and fourth interviews, it would be prudent for the Select Committee to invest a portion of its substantial

<sup>93</sup> Select Comm. to Investigate the Jan. 6th Attack on the U.S. Capitol, Transcribed Interview of Cassidy Hutchinson, (Sept. 14, 2022).

<sup>94</sup> *Id.*

Which brings us to the biggest problem with all this. Loudermilk's conspiracy theory that Liz Cheney went out and got Hutchinson a lawyer who would support a propaganda line that Committee was seeking gets very close to claiming that Hutchinson's new legal team, including former top DOJ official Jody Hunt, was himself engaged in unethical conduct.

I would bet a good deal of money that if Hunt were ever asked if he acted ethically when he represented Hutchinson's later appearances before the committee, he would say he did.

And even if everything Loudermilk claimed were true, even if Cheney were acting as a lawyer and not a Committee member, she'd still be guilty of no more than unethical – not illegal – conduct.

Especially when by focusing on Cheney but ignoring aspiring FBI Director Kash Patel, Loudermilk gives up the game.

This report does more to cover up what *Loudermilk himself* suggests is potential misconduct from aspiring FBI Director than it exposes real crimes by Liz Cheney.

And he provides this evidence of either incompetence or (Loudermilk claims) misconduct in the black hole where Kash Patel should be just in time for Kash's confirmation hearings before the Senate.