

HOW SENATE JUDICIARY COMMITTEE DEMS FUCKED UP THE KASH PATEL NOMINATION HEARING

I have always said I think it likely Kash Patel will be confirmed. But that shouldn't have made yesterday's confirmation hearing pointless. Democrats did that on their own, though a combination of inadequate preparation and absence of leadership.

Dems tried to demonstrate Kash's manifest lack of fitness for the job in three ways:

- Pointing to all the attacks on law enforcement he made on random podcasts
- Probing his role in disseminating the January 6 choir
- Dancing around his invocation of the Fifth in the Jack Smith investigation

Pointing to all the attacks on law enforcement he made on random podcasts

Kash dealt with the first line of attack – his incendiary comments on social media – by claiming that his comments were taken out of context.

The only time such claims made any sense, when he tried to spin his complaints about the

January 6 response, should have led to detailed follow-up of all the ways his testimony conflicts with every other witness on January 6. Kash even, yesterday, doubled the number of National Guard he claims Trump authorized, a claim that is debunked by the testimony of multiple pro-Trump witnesses. And even if his claims were true (he blames and blamed Ryan McCarthy for the delay in Guard response on January 6) means that his own leadership was faulty. At the very least, committee Democrats should have asked whether he was implicated in Barry Loudermilk's insinuation that the failure to deploy the Guard was contemptuous.

Similarly, when Kash disclaimed remembering far right podcast host Stew Peters and Dick Durbin noted that Kash had appeared on the show eight times, Durbin should have followed up and asked what kind of compromise such promiscuity could cause an FBI Director.

Probing his role in disseminating the January 6 choir

There were many questions about Kash's role in promoting the January 6 choir – but in spite of a conflict with Adam Schiff over the meaning of “we,” no one ever got Kash explain who did do the rest (though Adam Schiff did state that Kash had done no due diligence before pushing the video).

This matters, because some of Kash's buddies (including conspiracy theorist Julie Kelly) routinely make false claims about rioters, and finding the source of Kash's false claims is important to his warped reality going forward.

But the entire thrust of these questions was hampered by the point I made here and here: they relied on a superficial understanding, based off press releases rather than court dockets, of who

these people were.

Schiff asked Kash if he promoted a video showing assailants attacking FBI agents, would it make him unfit to be Director. Why not, then, focus directly on the gun that Barton Shively grabbed when probation officers showed up, precisely the kind of thing that has gotten FBI agents killed in recent years.

And if you want to persuade – or at least, embarrass – your Republican colleagues, why not make it clear that the violent rioters under discussion didn't just attack cops, but they threatened to drag people like Chuck Grassley and Lindsey Graham through the streets? Kash didn't just promote people who attacked cops, he promoted people who wanted to attack members of the Committee.

Dancing around his invocation of the Fifth in the Jack Smith investigation

It's on Kash's invocation of the Fifth that I'm most upset, because Democrats may have forfeited the opportunity to make this a scandal going forward.

It started strongly enough. Cory Booker first raised it, and got Kash to claim he wanted his grand jury testimony released, after which Booker tried – but failed – to get Kash to elaborate on his testimony. Later, Schiff returned to the question and asked whether he supported getting both his grand jury transcripts *and* any mention of him in Volume Two, which led to what were probably Kash's angriest looks of the hearing.

But after that, in the second round, a number of senators returned to the issue, mangling the grand jury standard by falsely saying that if

Kash consents to the release of the transcript it can be released, and focusing primarily *on the transcript* and not the report (the latter of which made his eyes bug out when Schiff raised it).

This is the kind of thing you need to coordinate! This is the kind of thing where the actual grand jury rules matter! This is the kind of thing where the McGann precedent matters!

And this is the kind of thing that demanded a coordinated set of yes or no questions about Kash's testimony, because yesterday's hearing was the one opportunity Dems will ever have to force him to answer question about what he told the grand jury.

All the more so because, it appears, Dems haven't done what they should have to make an issue of the report (I first described the import of it to this confirmation on January 13).

On Wednesday – literally the day before the hearing – Dems wrote a letter to Acting Attorney General James McHenry asking for the report. While the letter referenced Dick Durbin asking Pam Bondi about it buried on page 41 of her Questions for the Record, that question did not tie the request to the need to advise and consent on confirmations. Tuesday's letter nevertheless pointed to that question to claim that Aileen Cannon should have known about it.

On January 23, 2025, the Committee issued a "Notice of Committee Nomination Hearing" for Mr. Patel, which is now scheduled for January 30, 2025. The Ranking Member of the Committee submitted on January 16, 2025, Questions for the Record (QFR) to Attorney General nominee Pamela Jo Bondi following her confirmation hearing, requesting that she commit to making Volume Two of the Special Counsel's report available immediately for review to the Senate Judiciary Committee Chair, Ranking

Member, or their designees.²

This formal request preceded an order issued several days later by a judge in the United States District Court for the Southern District of Florida that enjoined the Department from releasing or otherwise making available a redacted version of Volume Two of the Special Counsel's report to the House and Senate Judiciary Committees. In the order, the judge erroneously stated that "[t]here is no record of an official request by members of Congress for in camera review of Volume II as proposed by the Department in this case," despite the prior request which her order omits. The judge also concludes wrongly that the Department "identified no pending legislation on the subject or any legislative activity that could be aided, even indirectly, by dissemination of Volume II to the four specified members whom the Department believes should review Volume II now," notwithstanding the Committee's ongoing consideration of Mr. Patel and others' nominations.³

2 Senate Judiciary Committee, Questions for the Record the Honorable Pamela Jo Bondi Nominee to be Attorney General of the United States, (Jan. 16, 2025), https://www.judiciary.senate.gov/imo/media/doc/2025-01-15_-_qfr_responses_-_bondi.pdf

3 United States v. Trump, No. 9:23-cr-80101, (S.D. Fla. Jan. 21, 2025) ECF No. 714 at 7; In addition, on January 13, 2025, Senator Dick Durbin, Ranking Member of the Senate Judiciary Committee and the other Democratic members of the Committee submitted a letter to then-Attorney General Merrick Garland "recogniz[ing] the current injunction against the release of Special Counsel

Smith's report and related materials and reserv[ing] its right to request production of the report and relevant records at an appropriate future date." Senate Judiciary Committee Letter Requesting Preservation of DOJ documents (Jan. 13, 2025), <https://www.judiciary.senate.gov/imo/media/doc/Letter%20to%20DOJ%20on%20Records%20Preservation.pdf>

This falls short of informing Cannon, however, and submitting an urgent request for the report in conjunction with this confirmation the day before the hearing is rather late, particularly since Grassley might try to push through the confirmation before the stated due date for the report, February 10 (which is still before Cannon's injunction runs out).

Given Kash's glare, I'm pretty confident that the report will suggest Kash prevaricated before the grand jury. I even suspect we'll eventually get some semblance of the report (I also think DOJ's efforts to fire everyone who might have a copy, on Friday, before they moved to dismiss the case against Walt Nauta and Carlos De Oliveira, on Monday, while a transparent attempt to prevent its release, may be inadequate to that effort).

I think that *if* the report comes out, it will become clear that the delay in releasing it served primarily to preserve Kash's nomination chances. I think that it's likely not to happen before he is confirmed, but I think if that happens after Kash's confirmation, it can be made a key demonstration of the corruption inherent to Trump's DOJ.

But Democrats have not done the things they needed to do to make that a scandal.

Trump's DOJ is involved in a cover-up as we speak, a cover-up designed to hide how the aspiring FBI Director was complicit in Trump's efforts to retain classified documents in his

insecure basement. But Democrats have not done what they need to do to impose a cost for that cover-up.

Kash disclaims the purge in process

Cory Booker was perhaps the bright spot of the day. In addition to first raising Kash's role in the documents investigation, he got Kash to disclaim knowledge of a purge in process, in which at least six senior FBI agents were pushed out, during the hearing.

This is another thing that may be turned into a scandal going forward.

Compile this video

As this post makes clear, most of these Senators are quite proud of their testy confrontations with Kash. They've sent them out individually.

It's not too late to make use of them. Democrats can and should put together three videos focused on each of these topics. Intersperse Kash's claim to stand by cops with video of those he celebrated attacking them. Intersperse Kash's disavowal of the Neo-Nazis he has been sidling up to with what he said on their shows. And make a video of all the times Kash claimed to want to release his testimony with a focus on the effort to cover it up.

Kash Patel is almost certainly going to be confirmed. And he will almost certainly be a catastrophic appointee. So Dems need to do far more than they did yesterday to impose a cost going forward on his pick – one that, especially, will make it easier to demonstrate the corruption of his installation.