

TROUT CACHERIS & SOLOMON PLLC

ATTORNEYS AT LAW

1627 EYE STREET, N.W.
SUITE 1130
WASHINGTON, D.C. 20006
(202) 464-3300
FAX (202) 464-3319

ROBERT P. TROUT
(202) 464-3311
RTROUT@TROUTCACHERIS.COM

WWW.TROUTCACHERIS.COM

August 15, 2019

By Email

Honorable Jerrold Nadler, Chairman
House Committee on the Judiciary
Washington, DC 20515-6216

Re: Hope Hicks

Dear Chairman Nadler:

On behalf of our client, Hope Hicks, we are writing in response to your letter of July 18, 2019 requesting clarification regarding her testimony before the House Judiciary Committee on June 19, 2019. Ms. Hicks stands by her testimony. She had no knowledge of, and was not involved in any conversations about, “hush money” payments to Stormy Daniels during the campaign. The information she provided to the Committee was truthful to the best of her knowledge and recollection.

Before we address the specific points in your letter, some background is important. Your letter resulted from the release on July 18, 2019 of search warrant affidavits in the Michael Cohen matter. The search warrant affidavit quoted in your letter was dated April 8, 2018, and the search of Mr. Cohen’s residence and office, as well as his safe deposit box and his two cellphones, occurred the following day. The government had earlier obtained evidence from Mr. Cohen’s email accounts.

Over two months later, on June 27, 2018, Ms. Hicks appeared for an interview with the U.S. Attorney’s Office in the Southern District of New York. She did not request immunity, nor was it offered. In keeping with routine practice in such circumstances, the U.S. Attorney’s Office did offer Ms. Hicks a “proffer agreement,” which assured her that whatever she said during the interview would not be used against her in the future. While witnesses generally accept this protection provided in a “proffer agreement,” Ms. Hicks declined to enter into the proffer agreement with its additional protection for her, and instead she submitted to the interview without any agreement with the government other than to tell the truth to the best of her knowledge and recollection. At that time, the prosecutors obviously had all the information that they used to obtain the April 8, 2018 warrant, plus whatever else they had gathered prior to Ms. Hicks’s interview,

TROUT CACHERIS & SOLOMON PLLC

Honorable Jerrold Nadler
August 15, 2019
Page 2

including from the searches executed over two months before, which included searches of Mr. Cohen's iPhones.

Ms. Hicks was asked about phone calls with Mr. Cohen on October 8, 2016 and about when she first learned about a so-called "hush money" agreement with Stormy Daniels [Stephanie Clifford]. Nothing Ms. Hicks said during her June 27, 2018 interview with the U.S. Attorney's Office is at odds with what she later told the Judiciary Committee. Since June 27, 2018, the U.S. Attorney's Office has not raised any question with Ms. Hicks or her counsel about anything she said during that interview. As you know from the recent disclosure by the U.S. Attorney's office, the "Government has effectively concluded its investigations of (1) who, besides Michael Cohen, was involved in and may be criminally liable for the two campaign finance violations to which Cohen pled guilty ... ; and (2) whether certain individuals ... made false statements, gave false testimony or otherwise obstructed justice in connection with this investigation" (Government's July 15, 2019 letter to Court, filed July 18, 2019.)

Subject to the limitations placed on her as a current or former senior official in the White House, Ms. Hicks has cooperated fully with the Judiciary Committee and other Congressional committees as well as the Office of Special Counsel and the United States Attorney in the Southern District of New York. She has voluntarily submitted to interviews, and she has always answered questions truthfully to the best of her knowledge. She knows precisely when and how she first learned about Karen McDougal, Ms. McDougal's agreement with American Media, and "hush money" payments to Stormy Daniels [Stephanie Clifford]. It was all from press inquiries. Her testimony about those subjects before the Judiciary Committee, like the information she provided to the United States Attorney in the Southern District of New York and the Office of Special Counsel, was truthful and accurate.

In considering the questions raised in your letter, it is important to recognize the limitations of the information in the search warrant affidavit. Except for references to a few texts that were sent on November 4 and 5, 2016 (¶ 40(e)), the material in the affidavit relating to Ms. Hicks is simply a chronology of phone calls, without any information about their contents. The fact that various phone calls happen on the same date does not mean they were about the same topic. In the wake of the October 7, 2016 disclosure of the *Access Hollywood* videotape, there were numerous rumors and press inquiries having nothing to do with Karen McDougal or Stormy Daniels. The affidavit does not demonstrate that Ms. Hicks had any knowledge of any arrangement with Ms. McDougal before November 4, 2016, nor does it show that Ms. Hicks had any knowledge during the campaign period of any arrangement with or payments to Ms. Daniels. Moreover, with one exception (*see* ¶ 37(d)), all the calls identified in the affidavit involved Michael Cohen. None of Ms. Hicks' phone calls or conversations with other people on the relevant dates appear in the affidavit, yet any one of those other events could have been the impetus for a call to Mr. Cohen. The affidavit thus contains only an incomplete and misleading picture of Ms. Hicks' activities.

TROUT CACHERIS & SOLOMON PLLC

Honorable Jerrold Nadler
August 15, 2019
Page 3

Your July 18 letter sets out six exchanges from Ms. Hicks' testimony, and then, on pages 3-4, identifies six alleged inconsistencies between her testimony and the material in the search warrant affidavit. Each one is addressed below.

- The first bullet point on page 3 asserts that according to the affidavit, Ms. Hicks appears to have had “direct knowledge of potential payments to Ms. Daniels.” To the contrary, Ms. Hicks testified truthfully that she had no such knowledge. She was not involved in any discussions about any potential payments. The statement from the affidavit quoted in this bullet point does nothing more than list people with whom Cohen exchanged calls and messages, and contains no information about the contents of the calls or Ms. Hicks' actual knowledge.
- The second bullet point asserts that Ms. Hicks appears “to have communicated directly with Mr. Cohen and President Trump about these payments long before they were made.” To the contrary, Ms. Hicks testified truthfully that she was not involved in any communications about payments to Stormy Daniels during the campaign. Your letter cites the chronology of calls from the affidavit, but this is not proof of Ms. Hicks' knowledge or of the contents of the calls.

The affidavit identifies three calls involving Ms. Hicks and Mr. Cohen on the evening of October 8, 2016, including one, the first call, that Mr. Trump joined. Although she cannot recall the details of each call, she is quite certain that none of her calls that day with Mr. Cohen related to any agreement with or payments to Stormy Daniels [Stephanie Clifford]. One of the many press inquiries Ms. Hicks received following the release of the *Access Hollywood* videotape the day before related to a rumor of a videotape, now known to have originated with the Steele dossier, involving Mr. Trump in Moscow with Russian prostitutes. As Ms. Hicks testified before the Judiciary Committee (Transcript at 196-97), because the website TMZ was rumored to have access to the videotape, and because she knew that Mr. Cohen had a good relationship with Harvey Levin of TMZ, she contacted Mr. Cohen on October 8, 2016, about the rumored videotape. She believes that her calls with Mr. Cohen that day would have been about reaching out to Harvey Levin to see if there was more information about the rumored videotape. Whatever else Mr. Cohen was dealing with that day, his conversations with Ms. Hicks were not about Stormy Daniels or any agreement relating to “hush money.”

On February 27, 2019, Mr. Cohen testified before the House Committee on Oversight and Reform as part of his cooperation with the government. He was asked about the immediate aftermath to the disclosure on October 7, 2016 of the *Access Hollywood* videotape. Mr. Cohen testified that he was in London with his family and Ms. Hicks called him during dinner, stating “that she had just spoken to Mr. Trump and we need you to start making phone calls to the various different news outlets that [Mr. Cohen had] relationships with, and we need to spin this.” (Cohen Transcript at 33.) Although Mr. Cohen did not describe the October 8 conversations as Ms. Hicks has—he made no mention of the videotape in Moscow or of TMZ or Harvey Levin—significantly he did not describe his conversations with Ms. Hicks as being related to any “hush money” payments.

Honorable Jerrold Nadler
August 15, 2019
Page 4

As with the other calls in the chronology, the affidavit provides no information about the content of the October 28, 2016 call between Ms. Hicks and Mr. Cohen. Ms. Hicks does not remember the reason for that call. But as she has testified, and consistent with what she told prosecutors previously, she was not aware during the campaign of any alleged payments to Ms. Daniels.

- The third bullet point asserts that during her testimony, Ms. Hicks “suggested that any knowledge [she] may have had about the President’s arrangement with Ms. Daniels during the campaign was limited to information relayed to [her] from the press,” but that the record “now seems to suggest that [she] obtained additional information directly from Mr. Cohen prior to any public reporting on the matter.” The suggestion that Ms. Hicks obtained information from Mr. Cohen about any arrangement with Stormy Daniels during the campaign, or before it became known to the press, is not true.

This bullet point conflates the issues relating to Stormy Daniels and Karen McDougal. Ms. Hicks testified during her interview that in early November 2016, she received an inquiry from the *Wall Street Journal* about an arrangement with Karen McDougal, not Ms. Daniels. (See Transcript of June 19, 2019 Interview at 49-50, 151-52, 181, 183-84, 198-99, 266-68) The inquiry made reference to an alleged arrangement between Ms. McDougal and American Media that Ms. Hicks had no prior knowledge of. (Transcript at 181, 183) On November 4, 2016, while looking into the reporter’s inquiry, Ms. Hicks reached out to David Pecker of American Media. (*Id.*) Mr. Pecker explained that American Media had a contract with Ms. McDougal to provide content for their magazines (Transcript at 198-99), and provided Ms. Hicks with the statement that American Media was giving to the *Wall Street Journal*. (Transcript at 151-52, 181, 183-84) Ms. Hicks also communicated with Michael Cohen on November 4, 2016 about the inquiry about Karen McDougal. (See Transcript at 265, 267)

The *Wall Street Journal* reporter who made the inquiry also told Ms. Hicks that Stormy Daniels would be mentioned in the article. (Transcript at 266-67) In testifying about her communications with Mr. Cohen, Ms. Hicks stated that “I don’t recall speaking to him about Stormy other than to relay what the reporter said to me, that she would be mentioned in the story, but there was no additional context.” (Transcript at 266) Ms. Hicks did not testify or suggest that the reporter gave her any information about “the President’s arrangement with Ms. Daniels.” A review of the published article, which is enclosed, shows that it was focused on Ms. McDougal. While the article does briefly mention Ms. Daniels, it makes no mention of any agreement with her. In fact, it was over a year later, in January 2018, that the *Wall Street Journal* first wrote about an agreement with Ms. Daniels to keep her from disclosing a sexual encounter with Mr. Trump.

The third bullet point further insinuates that Cohen spoke frequently to Ms. Hicks about “these payments” before they were reported in the press. This is not true. Ms. Hicks was not part of any conversations about hush money payments to Ms. Daniels before they were reported. The

TROUT CACHERIS & SOLOMON PLLC

Honorable Jerrold Nadler
August 15, 2019
Page 5

sentence from the affidavit that is partially quoted in this bullet point refers to conversations about whether the *Wall Street Journal's* story would get “national traction,” and not to conversations about payments.

- The fourth bullet point asserts that “After the payments were made, [Ms. Hicks] appears to have communicated directly with Mr. Cohen about how to prevent disclosure of those payments from becoming public.” Again, this is not true.

Ms. Hicks told the Committee that after receiving the inquiry from a *Wall Street Journal* reporter, she spoke to Mr. Cohen and others on November 4, 2016 to determine how to respond. According to the affidavit, the article, which focused on Karen McDougal, was published online at about 9:50 p.m. on November 4. (¶ 40(e).) The next day, Mr. Cohen texted Ms. Hicks that the story was “Getting little to no traction.” (*Id.*) The reference to “traction,” made after the *Wall Street Journal* article had been published, plainly had to do with whether the story about Karen McDougal would be reported further (Transcript at 266), and not to an attempt to conceal payments to Ms. Daniels—which were not the topic of the article and which Ms. Hicks had no knowledge of in any event.

- Ms. Hicks testified truthfully that to her knowledge she never spoke to Keith Davidson during the campaign nor did she speak with Dylan Howard or anyone else at American Media about a negative story about Mr. Trump prior to its release. (Transcript at 184) The fifth and sixth bullet points suggest that this testimony is called into question by statements in the affidavit that on November 4, 2016, Mr. Cohen, who was using two different cellphones, appears to have been on a call with Ms. Hicks and Mr. Davidson at the same time (the affidavit does not state for how long), and later on a call with Ms. Hicks and with Mr. Howard at the same time (these calls had “about a minute of overlap”). But the affidavit relies on nothing more than the coincidence of the calls. Ms. Hicks can confirm that it was not unusual for Michael Cohen to have separate conversations on two different phones at the same time. Since Mr. Cohen did not join the parties in a single conference call, the more natural inference from these facts is that Mr. Cohen had separate unrelated conversations with each person. Ms. Hicks stands by her testimony that to her knowledge she never spoke to Keith Davidson during the campaign and did not speak with Dylan Howard or anyone else at American Media about a negative story about Mr. Trump prior to its release.


In sum, the information in the search warrant affidavit is not inconsistent with Ms. Hicks’ testimony, and does not establish any lack of candor on her part. Ms. Hicks took her obligations seriously when she was interviewed by the Committee. Her testimony was consistent with her previous statements on these issues and was truthful to the best of her knowledge and recollection.

TROUT CACHERIS & SOLOMON PLLC

Honorable Jerrold Nadler
August 15, 2019
Page 6

Please contact us if you have further questions.

Sincerely,



Robert P. Trout



Gloria B. Solomon

RPT/GBS/mt

Enclosure

cc: Honorable Doug Collins, Ranking Member, House Committee on the Judiciary