

STORMY, PEE TAPES, AND PUSSY-GRABBING: THE THREE EXPLANATIONS FOR THE COHEN-HICKS-TRUMP CALL ON OCTOBER 8, 2016

The warrant to search Michael Cohen's property released yesterday revealed what the FBI Agent who wrote the affidavit supporting the application believed was a conference call between Michael Cohen, Donald Trump, and Hope Hicks on October 8, 2016.

On October 8, 2016, at approximately 7:20 p.m., Cohen received a call from Hicks. Sixteen seconds into the call, Trump joined the call, and the call continued for over four minutes. 27 Based on the toll records that the USAO has obtained to date, I believe that this was the first call Cohen had received or made to Hicks in at least multiple weeks, and that Cohen and Trump spoke about once a month prior to this date – specifically, prior to this call on October 8, 2016, Cohen and Trump had spoken once in May, once in June, once in July, zero times in August, and twice in September.

27 I believe that Trump joined the call between Cohen and Hicks based on my review of toll records. Specifically, I know that a call was initiated between Cohen's telephone number and Trump's telephone number at the same time the records indicate that Cohen was talking to Hicks. After the Cohen-Trump call was initiated, it lasted the same period of

time as the Cohen-Hicks call. Additionally, the toll records indicate a "-1" and then Trump's telephone number, which, based on my training and experience, means that the call was either transferred to Trump, or that Trump was added to the call as a conference or three-way call participant. In addition, based on my conversations with an FBI agent who has interviewed Hicks, I have learned that Hicks stated, in substance, that to the best of her recollection, she did not learn about the allegations made by Clifford until early November 2016. Hicks was not specifically asked about this three-way call.

The agent's description (which was based entirely off toll records and assumed every call pertained to this scandal and not the many other scandals Trump's campaign was juggling at the time) has led many to question Hicks' testimony to HJC, including (in a letter to her lawyer) from Jerry Nadler. Her lawyer Robert Trout (who should be taking a victory lap from his likely imminent win in the Bijan Kian trial) says she stands by her testimony, in which she said that that call involved rumors that TMZ had found the pee tape.

Q Okay. When did you first become aware of the "Access Hollywood" tape?

A About an hour before it was made public.

Q And what was your reaction to it?

A Honestly, my reaction was, it was a Friday afternoon, and I was hoping to get home to see my family for the first time in a few months, and that wasn't happening.

Q Did you have any other reactions?

A Look, I obviously knew that it was

going to be a challenge from a communications standpoint.

Q Did you discuss it with Mr. Trump?

A I did, yes.

Q Tell me about those discussions, please. A I made him aware of the email I received from The Washington Post which described the tape. And I don't know if the initial email did this, but certainly one of the subsequent emails and exchange provided a transcript of the tape. So, described those different components to Mr. Trump and tried to evaluate the situation.

Q And how did he react to that?

A You know, he wanted to be certain, before we engaged, that it was legitimate. And I think we all felt it was important that we request to see the actual tape or listen to the audio before responding.

Q Was he upset?

A Yes. I think everybody was in, like, a little bit of shock.

Q And did he ask you how – did he seek your advice on how to respond?

A Yes. There were quite a few of us, so it was very much a group discussion, given that this unfolded at a debate-prep session. Q And do you remember who else you discussed the tape with?

A Who else was present there?

Q Yeah, at that time. A Sure. Reince Priebus, Chris Christie, Jeff Sessions, Stephen Miller, Jason Miller, Steve Bannon, David Bossie, Kellyanne Conway. Later, Jared Kushner. I think that's it.

Q Do you recall reaching out to Michael Cohen about the tape?

A My recollection of reaching out to Michael took place the following day. And it wasn't about the tape; it was about – this is going to get confusing, but the day after the tape, there were rumors going around – I'm not sure exactly where – I heard it from our campaign spokesperson, Katrina Pierson, who was sort of like a – she had a lot of contacts, grassroots. And she had called to tell me that – or maybe sent me a message about rumors of a tape involving Mr. Trump in Moscow with, you know – can I say this?

[Discussion off the record.]

Ms. Hicks. – with Russian hookers, participating in some lewd activities. And so, obviously, I didn't – I felt this was exactly how it had been described to me, which was a rumor. Nonetheless, I wanted to make sure that I stayed on top of it before it developed any further, to try to contain it from spiraling out of control. And the person that made me aware of the rumor said that TMZ might be the person that has access to this tape. I knew Michael Cohen had a good relationship with Harvey Levin, who works at TMZ. So I reached out to Michael to ask if he had heard of anything like this; if Harvey contacted him, if he could be in touch with me.

But that testimony is not entirely consistent with something in the Mueller Report, which suggested (based off FBI interviews with both Cohen and Giorgi Rtskhiladze) that the one time Trump would have heard about a pee tape was later in October, after Cohen and Rtskhiladze discussed the tapes via text.

Comey 1/7/17 Memorandum, at 1-2; Comey I 1/15/17 302, at 3. Comey's briefing included the Steele reporting's

unverified allegation that the Russians had compromising tapes of the President involving conduct when he was a private citizen during a 2013 trip to Moscow for the Miss Universe Pageant. During the 2016 presidential campaign, a similar claim may have reached candidate Trump. On October 30, 2016, Michael Cohen received a text from Russian businessman Giorgi Rtskhiladze that said, "Stopped flow of tapes from Russia but not sure if there's anything else. Just so you know" 10/30/16 Text Message, Rtskhiladze to Cohen. Rtskhiladze said "tapes" referred to compromising tapes of Trump rumored to be held by persons associated with the Russian real estate conglomerate Crocus Group, which had helped host the 2013 Miss Universe Pageant in Russia. Rtskhiladze 4/4/18 302, at 12. Cohen said he spoke to Trump about the issue after receiving the texts from Rtskhiladze. Cohen 9/12/18 302, at 13. Rtskhiladze said he was told the tapes were fake, but he did not communicate that to Cohen. Rtskhiladze 5/10/18 302, at 7.

It's certainly possible that this late October exchange was the fruit of earlier concerns about the pee tape, and that as part of chasing down the TMZ rumor, Cohen would have asked Rtskhiladze to help. But you'd think Mueller would have said that, *especially* if he knew that Trump had been on a call where it was all discussed.

Cohen offered a slightly different story, claiming that the call was about responding to the Access Hollywood video. But his answer to Eleanor Norton in which he raised the call moves directly onto the hush payments, as if they're connected.

Ms. NORTON. Mr. Cohen, at the center of the reasons you are going to prison is convictions for campaign finance

violations, and they center around some salacious revelations. The Washington Post reported or aired an Access Hollywood video. It set a record for the number of people who watched, crashed the newspaper's server. But this happened in early October on the cusp of the election. What was Mr. Trump's reaction to the video becoming public at that time and was he concerned about the impact of that video on the election?

Mr. COHEN. The answer is yes. As I stated before, I was in London at the time visiting my daughter, who is studying there for a Washington semester abroad, and I received a phone call during the dinner from Hope Hicks 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 you have relationships with, and we need to spin this. What we want to do is just to claim that this was men locker room talk.

Ms. NORTON. Was the concern about the election in particular?

Mr. COHEN. The answer is yes. Then, couple that with Karen McDougal, which then came out around the same time. And then on top of that the Stormy Daniels matter.

Ms. NORTON. Yeah, and these things happened in the month before the election and almost one after the other. The Stormy Daniels revelation where prosecutors and officials—the prosecutors learned of that—of that matter and prosecutors stated that the officials at the magazine contacted you about the story. And the magazine, of course, is the National Enquirer. Is that correct, that they did come to you?

Mr. COHEN. Yes, ma'am.

Ms. NORTON. Were you concerned about this news story becoming public right after the Access Hollywood study in terms of impact on the election?

Mr. COHEN. I was concerned about it, but more importantly, Mr. Trump was concerned about it.

Ms. NORTON. That was my next question. What was the President's concern about these matters becoming public in October as we were about to go into an election?

Mr. COHEN. I don't think anybody would dispute this belief that after the wildfire that encompassed the Billy Bush tape, that a second followup to it would have been pleasant. And he was concerned with the effect that it had had on the campaign, on how women were seeing him, and ultimately whether or not he would have a shot in the general election.

Frankly, it may well be that everyone is mixing up the many sex-related scandals Trump was fighting in October 2016. Or it may be that Hicks, Cohen, and Trump responded to the Access Hollywood video by deciding that they had to try to chase down all of the potential sex scandals – the long-simmering pee tape allegations, the several hush payment demands, among others – and preemptively quash them. That would be consistent with Steve Bannon's claim that Marc Kasowitz was chasing down hundreds of scandals. If such a discussion took place (which might explain why all three would get on the phone together), then Hicks might otherwise have forgotten knowing about the hush payments earlier, or she locked in testimony denying that knowledge in December 2017 when she testified, and continues to tell a partial truth to avoid further legal jeopardy.

I mean, maybe Hicks is outright lying to protect earlier lies she told in 2017, before the whole hush payment story broke wide open. But it is

certainly possible that if you work for Donald Trump all the sex scandals merge into one, either in fact, or in years old memories.

Update: Because people are asking, this is something that Mueller could have chased down. Hicks' testimony was December 7, 2017 and March 13, 2018; as noted above, Rtskhiladze testified on April 4 and May 10, 2018. The interviews in which Cohen is believed to have told the truth all took place on September 12, 2018 or later. But since this was referred out (for reasons that are unclear, since it was part of the Mueller investigation for 7 months), he may not have had jurisdiction anymore. But SDNY certainly may have chased it down.