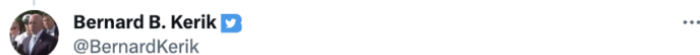


# RUBY FREEMAN'S REVENGE: RUDY'S BLOBS AND BERNIE'S GLITCHES

The other day I had the privilege of receiving an angry response from pardoned felon Bernie Kerik to a Twitter (Xitter?) thread I wrote in response to this article, which puzzled through why Bernie had an interview scheduled next month if Jack Smith already sent Trump a target letter.



Bernie's Tweet was an attempt to explain how he was responding to a subpoena with a delay. It was not a denial of my larger thread, which I'll return to.

The pardoned felon has posted a similar Tweet in

response to this article, which describes that, “Bernie Kerik has been engaged in a legal battle over turning over documents” but claims, “He’s finally cooperating,” pointing in part to a filing in the Ruby Freeman case over the weekend as evidence of cooperation.

For those of you responding to this article believing there’s some nefarious stuff going on, I hate to break it to you, but it’s exactly what the article says.

To clarify, I was subpoenaed several months ago and cooperated with that subpoena, giving the Special Counsel the documents that I could.

Any document covered under attorney-client privilege, or executive privilege, was held until my attorney @timparlatore/@ParlatoreLaw, recently received the appropriate waivers from President Trump to allow us to relinquish those documents to the Special Counsel.

No one has flipped, no one is selling out Trump or Giuliani.

This is about giving the Special Counsel the evidence that the legal team collected under the supervision of @RudyGiuliani, and was reviewing in the aftermath of the 2020 election relating to voter/election fraud, and improprieties in that election.

Those conspiracy theorists and haters with #TDS, please go find a hobby, instead of promoting lies and disinformation.

Bernie seems determined to explain that compliance with a subpoena – which he claims was delayed due to Trump’s privilege claims – does not equate to flipping.

I’m sure it doesn’t. Too many diehard Trump

dead-enders have participated in what are being called proffers – Boris Epshteyn, then Rudy, Mike Roman, and now Bernie – for them to be preludes to a flip. I think the press is simply misunderstanding how Smith is using those proffers.

But he also seems intent on spinning how this “cooperation” came about.

As far as we know, Jack Smith’s visibility into what Rudy and Bernie were up to came via a process that looked something like this:

- April 2021 to unknown: Seizure of Rudy’s phones on April 28, 2021 and at some unknown point thereafter sharing of fully privilege reviewed documents with January 6 investigators
- Early 2022: Covert collection of metadata and cloud content
- May, June, September, and November 2022: A series of subpoenas naming both Rudy and Bernie served on fake electors and other electoral shenanigans
- September 2022: Seizure of Boris Ephsteyn and Mike Roman’s phones
- November 2022: Rudy subpoena *limited to Trump’s fundraising and spending*
- “Several months ago”: Bernie subpoena
- April 20-21: Proffer session with Boris Ephsteyn

- Week of June 19: Two day proffer session for Rudy with Jack Smith's prosecutors
- Mid-August: Anticipated proffer session for Bernie

At least three of Bernie's closest associates have had their phones exploited, albeit via privilege reviews conducted using at least two different methods (the Special Master in Rudy's case, and unknown means with Epshteyn and Roman). Based on how much got destroyed, Smith should have pretty good idea of what Bernie was up to.

But he subpoenaed him several months ago anyway.

For much of that period, Ruby Freeman has been suing Rudy for the false claims he made about her actions in the Fulton County vote count process. In October 2022, Beryl Howell rejected Rudy's motion to dismiss and discovery has been going on more than a year.

In recent months, Freeman's lawyers have filed a series of motions revealing the various methods by which Rudy and Bernie have been blowing off the lawsuit, which generally have consisted of relying on productions they made (or did not) for the January 6 Committee and other lawsuits, while (in Rudy's case) claiming to have no access to the devices that got seized:

- April 10: A status report describing how Rudy still claimed to have nothing
- April 17: A motion to compel describing that Rudy was still relying on his earlier production and had not searched the archive of his seized devices, held by Trust Point, which Rudy

would claim included all relevant communications from the time; the motion revealed Rudy had provided some documents on Hunter Biden

- June 9: A motion to compel Bernie describing extensive efforts to refuse service and recent claims that a “technical glitch” prevented him from sharing documents with Rudy for a more detailed privilege review; it included the privilege log Bernie used with the January 6 Committee, which he had “reactivated” in August 2022
- July 5: A response to Bernie’s bid to avoid compulsion that pointed to several ways his compliance was still insufficient; it included this privilege log which he turned over June 28
- July 11: A motion for sanctions against Rudy that points to several communications from *others* that Rudy had not included on this privilege log, which dates to October 2022

A few highlights matter from this. First, Rudy and Bernie have two different sets of almost exclusive documents; there should be a great deal of overlap between these submissions, but

there is virtually none. I'll show in a follow-up, but Rudy claims to have almost no emails (including the several gmail accounts the government could have obtained without his knowledge). Bernie claims to have almost no texts.

The men adopted inconsistent approaches in the depositions, with Rudy answering more than Bernie, including on basic details about how Rudy's team operated.

Freeman's team claims that Rudy's lawyer Joe Sibley conceded on May 19 that meetings in anticipation of lobbying aren't privileged.

THE COURT: Okay. Well, I just want to be sure that you understand the law in this Circuit. The Circuit has made it clear in *In re Lindsey* – all the way back to 1998 – that it's only legal advice that's subject to the privilege, not a lawyer's advice on political, strategic, or policy issues; that would not be shielded from disclosure by the attorney-client privilege.

[snip]

JOE SIBLEY: We actually did not claim privilege on some of the meetings that Mr. Giuliani had with staff members and things like that before these Georgia hearings because, after looking at it, this was not in anticipation of litigation but in anticipation of presenting at a hearing which would not be privileged. So we withdrew privilege assertions on that basis.

In the motion for sanctions, Freeman's team disclosed that the things Rudy turned over from Trust Point, most were unusable for technical or content reasons, including the prevalence of "blobs" Rudy blames on DOJ corruption of the files.

Of those txt files, 2,350 are completely

non-readable, non-usable computer files known as “blobs.” Id. In his position statement, Defendant Giuliani opined that, in his nonexpert view, the large volume of blank and/or non-responsive documents in his June 16 production of materials from TrustPoint “appears to be a result of file corruption resulting from the DOJ seizure.” ECF No. 77 at 20. The non-txt files are overwhelmingly non-responsive junk including: non-readable computer code; emails advertising a year-long spiritual apprenticeship course; informational packets regarding Microsoft auto-updates (in five different languages); articles and memes about George Floyd; and death notices from The Washington Post.

From the start it seems that Rudy and Bernie attempted to blow off Freeman’s team altogether, perhaps to minimize their criminal exposure, perhaps out of sheer contempt for the women whose lives they allegedly ruined.

But Beryl Howell (who I can’t help but remember, has seen what DOJ did with January 6 grand juries prior to April) chipped away at those efforts. She has excluded lobbying from privilege claims (which may represent a narrowing over what was adopted in SDNY). She has imposed sanctions on Rudy for blowing this off, is close to doing the same for Bernie. She has threatened to impose still more sanctions, potentially including contempt or default, on Rudy. At some point, even in this civil case, Rudy’s risks go beyond financial.

And all the while, Rudy and Bernie’s efforts to blow this off without expanding their potential exposure to obstruction in the January 6 investigation may have backfired. At the very least, they seem to have narrowed the scope of Bernie’s potential privilege claim and expanded his disclosure requirements.

On June 7, Bernie’s lawyer Tim Parlatore told

Freeman's lawyers, "there are other more pressing matters that have taken priority."

Perhaps. Or perhaps Bernie made those other matters more pressing in an attempt to blow Freeman off. And that's before you get into the conflicts *between* their discovery.