

# **RUDY'S SEIZED DEVICES WERE MORE USEFUL FOR INVESTIGATING JANUARY 6 THAN MARIE YOVANOVITCH'S FIRING**

On April 28, 2021, the FBI seized up to 18 devices from Rudy Giuliani. On Tuesday, DOJ unsealed the affidavit behind that seizure.

The affidavit, read in conjunction with Barbara Jones' Special Master reports, Rudy's privilege log from the Ruby Freeman lawsuit, and a filing he submitted in that suit provide abundant evidence that the devices FBI seized on April 28, 2021 were more useful for investigating January 6 than any suspected FARA violations involved in the firing of Marie Yovanovitch.

And this goes well beyond Robert Costello's claim that a number of the devices seized from Rudy were corrupted.

The affidavit, as written, was narrow: it only covered FARA violations tied to the role of Yuriy Lutsenko and other Ukrainians in the firing of Ambassador Yovanovitch in spring 2019. While there is evidence cited in the affidavit from a broad period of time (for example, describing Rudy's public admissions that he did certain things in early 2019 later that year), the last overt act described in the affidavit is of someone – probably Victoria Toensing – texting Rudy on May 9, 2019, complaining that people were asking about whether she had registered under FARA and denying that she had a client.

Remarkably, then, the affidavit asked for – and Judge Paul Oetken authorized – the authority to seize “any and all” devices at Rudy's office and home almost two years after that last overt act.

Judge Oetken authorized that search and seizure even though one of the phones described in the

affidavit – an Apple iPhone X that Rudy first started using on January 20, 2021 – could not possibly have been used in the suspected crime described in the affidavit. And three more of the devices described in it, including another iPhone, were only put in use later in 2019.

I’ve long argued that by September 2021, DOJ at least contemplated obtaining other warrants to access that content (because SDNY successfully argued to do the privilege review on all content that post-dated January 1, 2018). But given the scope of those devices, it looks likely that there was at least one other affidavit presented to Oetken in April 2021, one that would justify seizing those later devices.

This table shows (on the vertical axis) the devices that Rudy says were seized and (on the horizontal axis) the devices that FBI thought they’d find.

	Jan 6	Giuliani-1			Giuliani-2					
		iPhone X	iPhone X	iPhone X	iPhone XS Max	iPhone 11	ASCS	iPad Pro 10.5	iPad Pro 11	MacBook Pro 13.3
Start		1/8/18	1/20/21	4/5/18	8/27/19	10/3/19	12/13/18	5/24/18	8/27/19	2/16/19
End		8/13/19	2/11/21	8/27/19	10/3/19	2/19/21				
Office	Mac									
	MacBook									
	iPad A1459									
	ThinkPad									
	iPhone 11 ProMax					?				
	iPhone 11 ProMax					?				
	Blackberry									
	Judith's iPhone									
	MacBook A22251									
	Old MacBook Pro A1502									
	Old MacBook A1466									
Home	iPad Pro A1709									
	iPad Pro A2013									
	iPad 2 A1395									
	Zoom Recording Device									
	Amazon Kindle									
	Amazon Device									
	Judith's iMac									
Not Seized	iPhone 14									
	Pad MHA3LLIA									

Devices used in plotting to fire Marie Yovanovitch  
 Devices used in planning January 6

While Rudy’s own description of these devices (including the model number of the MacBook used in planning January 6, here listed as A22251) is as unreliable as everything else about him, the FBI didn’t find the two iPhone Xes – one used between January 8, 2018 and August 13, 2019, the other used between April 5 2018 and August 27, 2019, both marked in yellow above – that would have been Rudy’s primary phones during the events described in the affidavit.

Just three devices – two iPads and one iPhone 11 – clearly match the description of what the FBI expected to find.

All of them were, according to Rudy’s

description (marked in the vertical “January 6 column”), among those used in planning January 6.

Whichever iPhone 11 they did find is almost certainly device that Special Master Jones labeled as device 1B05, the privilege review of which she described this way:

I next assigned for review the chats and messages that post-dated January 1, 2018 on Device 1B05, which is a cell phone. There were originally 25,481 such items, which later increased to 25,629 after a technical issue involving document attachments was identified. An initial release of non-designated items was made to the Government’s investigative team on November 11, 2021.<sup>1</sup>

Of the total documents assigned for review, Mr. Giuliani designated 96 items as privileged and/or highly personal. Of those 96 designated items, I agreed that 40 were privileged, Mr. Giuliani’s counsel withdrew the privilege designation over 19, and I found that 37 were not privileged. I shared these determinations with Mr. Giuliani’s counsel, and they indicated that they would not challenge my determination that the 37 items are not privileged. The 40 privileged documents have been withheld from the Government’s investigative team and the remaining 56 were released on January 19, 2022.

<sup>1</sup> Additional non-designated items were released on January 19, 2022.

Those 25,000 chats were easily the most voluminous content turned over from any one device to the FBI. Of all the chats that Rudy attempted to withhold from that phone, he ultimately only succeeded in withholding 40 items. 40 chats or texts out of 25,000 total.

262 items in Rudy’s privilege log come from that

phone. Another 127 come from a device, 1B09, also used to text about January 6 (including with Mark Meadows), which – given the date scope – must have been among the first devices Jones reviewed. That’s one possible source of a Ken Chesebro document included in the indictment but not identified in the January 6 Report.

And while Rudy withheld those documents from Ruby Freeman, since Jones only permitted Rudy to withhold 43 items total *from DOJ*, those must have been deemed non-privileged in the Special Master review. (I’ve noted before that there are easily 40 items that clearly relate to Rudy’s own lawyers.)

They were all turned over to DOJ, for use with whatever investigative teams had obtained warrants to access them, no later than January 21, 2022.

This is one thing Rudy accomplished by defaulting on discovery: Withholding from Ruby Freeman, and therefore from a public trial that would precede Republican primaries, documents that were turned over to DOJ in January 2022.

By April 2021 when – using warrants approved on Lisa Monaco’s first day on the job, but nevertheless a year after Bill Barr started obstructing this investigation – the FBI came looking for devices involved in Rudy’s suspected FARA violations tied to getting Marie Yovanovitch, they didn’t find the devices he would have been using at the time.

They did, however, find three devices on which Rudy planned January 6. And because of the way DOJ did the privilege review on those devices, those records would have been made available to any investigators with a lawful warrant no later than January 21, 2022.