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Important disclosure from retired FBI Agent J. Richard Kiper

Rick Kiper <info@kipertekusa.com>

Mon, Jul 10, 2023 at 6:21 PM

To: cawray@fbi.gov

Dear Director Wray,

This is Dr. Rick Kiper, retired FBI agent and CART examiner. You may recall I was the agent who in March 2015 testified before the Senate Judiciary Committee about the FBI's retaliation against whistleblowers such as myself. As a result of the testimony of myself and others, Congress unanimously passed the FBI Whistleblower Protection Enhancement Act of 2016, which included giving FBI whistleblowers the ability to make protected disclosures directly to Congress.

The WPEA was an important step towards FBI accountability, but that's not the reason I'm writing to you today.

Today I would like to share with you startling information about the FBI that will soon make national news headlines. I trust this information will enable you to "get ahead of the problem" and take actions that demonstrate to the American people that the FBI is still worthy of their trust.

Today I am the lead digital forensic examiner on the Keith Raniere/NXIVM investigation (50A-NY-2233091). This is the investigation where the FBI claimed to have "discovered child pornography" on an external hard drive belonging to Raniere. The alleged "discovery" had the immediate result of causing all of Raniere's co-defendants to take guilty pleas, and ultimately Raniere was convicted and sentenced to 120 years in prison.

At the time of Raniere's trial I had no knowledge of the investigation, as I was leading FBI instructor teams in delivering several cybersecurity training courses overseas. After retiring in July 2019, however, I was asked to take a look at the digital evidence in this case and how the FBI handled it. What I found shocked me.

I have attached my full report of technical and process findings, which is pending a response from the DOJ (more on that later). What is important is that **six** other digital forensic experts – including **three other former FBI CART examiners** – agreed with my findings. We found overwhelming proof that digital evidence used in court, which the prosecution said was "at the heart" of their case, had been mishandled, misrepresented, and even altered while in FBI custody. Specifically, we found that DOJ/FBI employees willfully and unlawfully acted to deny Raniere due process by:

- Misrepresenting how the evidence was discovered,
- Mishandling the evidence and breaking chain of custody,
- Reviewing the evidence without being authorized to do so,
- Delaying transfer of the evidence to the FBI Computer Analysis Response Team (CART) for preservation and analysis,
- Providing the evidence to an unauthorized third party,
- Failing to document the transfer of evidence to an unauthorized third party,
- Accessing the evidence without a write blocker,
- Modifying the evidence,
- Violating the FBI's own policies and procedures,
- Violating well established critical forensic protocols,
- Making material misrepresentations, under oath, minimizing the violation of critical forensic protocols,
- Withholding evidence from defense counsel,
- Presenting demonstrably manipulated evidence in trial,
- Providing technical statements during sworn testimony which knowingly conflicted with testimony previously established by the FBI and DOJ in prior litigation, and
- Providing technical statements during sworn testimony which can be empirically demonstrated to have been false.

You should know that prosecutors on this case, AUSA Kevin Trowel, since retired, and AUSA Tanya Hajjar, have repeatedly called these claims “frivolous” and “entirely meritless,” while asking for two extensions (totaling more than seven weeks so far) to a court order requiring them to respond to a motion to compel discovery.

After my 20 years of faithful service to the FBI, including my service as a CART examiner, a CART instructor, a developer of CART curriculum, and trainer of CART instructors, I was extremely disappointed – actually, *outraged* – about how the FBI handled the digital evidence in the case. You should feel the same way.

The difference is that you can do something about it, before it becomes the biggest FBI evidence scandal since the FBI Laboratory trace evidence fiasco in the 1990s.

That said, nationally recognized, career attorneys and judges have already expressed dismay after learning the facts of this case.

“I’ve never [before] seen an instance where the system threw away its credibility purely for the purpose of convicting a defendant.” --*Former Arkansas State Supreme Court Justice Richard Mays*

“In the face of this alarming evidence, there is really no excuse for the court or for the prosecutor to hide behind procedural delays in waiting to get to the bottom of this. They should take immediate action. And if they can’t, or they won’t, the United States Attorney General should appoint an independent prosecutor. If an independent investigation determines this tampering occurred, there must be accountability. People have to be criminally prosecuted. This is very serious.” --*Bud Cummins, former United States Attorney in the Eastern District of Arkansas*

Just last month, renowned Harvard Professor Alan Dershowitz proposed a “9/11 type commission” headed by former Director Louis Freeh to look at systemic problems with the FBI, especially in the case of Keith Raniere. Professor Dershowitz has read my report and he said the Raniere case “has the potential of exposing real problems with the FBI... We need to have congressional hearings.”

If high profile figures such as Judge Mays, former USA Bud Cummins, and Professor Dershowitz are risking their professional reputations to call for investigating how the FBI handled this case, then you should also take it very seriously.

Director Wray, you once said, “In the end, actions speak louder than words. It sounds simple, but there’s real strength in remembering that.” That was a quote I included in my FBI e-mail signature line, because I believed you were sincere when you said it.

I hope you will take this opportunity to investigate, and hold accountable, those responsible for mishandling and altering evidence in the prosecution of Keith Raniere. I stand ready to help you and other FBI leaders understand exactly what happened and how such malfeasance may be prevented in the future.

Thank you,

Rick

J. Richard "Rick" Kiper, PhD, PMP

GSEC | GCIH | GCIA | GCFE | GCFA | GASF | GCPM | GCCC

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Affidavit_with_Reports_04-25-2022.pdf

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Rick Kiper <info@kipertekusa.com>

Request for Meeting with Retired FBI Agent J. Richard Kiper Prior to 11/10/2023

1 message

Rick Kiper <info@kipertekusa.com>

Mon, Oct 23, 2023 at 4:44 PM

To: cawray@fbi.gov

Dear Director Wray,

This is Dr. Rick Kiper again – retired FBI agent and CART examiner. I know you are busy defending the actions of the FBI in a variety of contexts, so I will get right to the point.

First, I want to update you on the case of Keith Raniere, which I brought to your attention on July 10, 2023, via email. At that time, the EDNY and the FBI were still struggling with how to respond to my technical findings report, which had been independently validated by 6 forensics experts — and which show the FBI's evidence to have been extensively doctored, with misconduct committed by at least 8 identified FBI/DOJ personnel. You may recall that only two pieces of digital evidence — a camera card and external hard drive, both mishandled — were used to convict Raniere, who currently serves a 120-year prison sentence.

In late July, the government finally submitted its response, which I have attached to this email for the sole purpose of demonstrating that I have not misquoted, misinterpreted, or taken any part of it out of context. In it, most of our findings were left uncontested and unaddressed. Notably, the opposition relied almost entirely on a sworn but undated statement by FBI computer scientist, **David Loveall** (see attached: Exhibit C). Apparently, the FBI could not find anyone to corroborate, validate, or even review Loveall's findings, as he made several factual mistakes and brazenly unscientific claims. I will summarize the government's response below.

My second purpose for contacting you is to **request a time-sensitive meeting prior to November 10, 2023 to discuss how to rectify DOJ/FBI corruption at this juncture.** The government's actions and communications in this case require important and timely decisions on your part, which I will discuss at the end of this message.

The Government's Response to Our Findings

For the sake of brevity, I will summarize a few primary points in the government's response:

1. Loveall and the government actually conceded TWO of our most important findings.

Finding #3: An unknown person accessed the CF card on 9/19/18, thereby altering file system dates, while it was in the custody of FBI Special Agent Michael Lever.

Loveall's response: "With respect to the third finding, the camera card was accessed on September 19, 2018. This is consistent with accessing the contents of the card without a write-blocker" (p. 5).

Finding #6: The folders containing the alleged contraband and others that supported the dating of the photos to 2005 appear automatically named after exact dates and times in 2005. However, at least some of these timestamped folder names were manually altered.

Loveall's response: "With respect to Kiper's sixth finding, it is of course possible to rename files and folders and any computer user may do so" (p. 6).

Why is this significant? First, the government and Loveall admit the government failed to preserve, and in fact *altered*, original evidence used in trial. Second, they now concede that *folder names* — one of the key pieces of evidence used to convince the jury that these photos were contraband — are *completely unreliable*.

2. Loveall resorted to unscientific conjecture to support his criticism of the 5 remaining technical findings.

In doing so, Loveall ignored the vast majority of the material presented in our report, instead resorting to half-hearted theories about how the observed anomalies "can result" (p. 3, 5) in a non-nefarious way, "under [certain] conditions" (p. 2), and so on. Despite having access to forensic copies of the camera card (which was never provided to the defendant) as well as all the forensic tools the FBI used to process the evidence, Loveall could not provide a single scientifically substantiated claim to disprove our findings.

Incongruously, Loveall attacked the reliability of the FBI's "automated digital forensic tool" (p. 4), Forensic Toolkit, which he claimed can be blamed for some of the anomalies. He does not mention that this same tool was used to

process all of the digital evidence in the Raniere case, as well as thousands of other cases FBI CART examiners have processed over the past 20 years.

One can hardly consider Loveall's sworn statement a serious response to the collective technical findings of 7 forensic experts, 4 of whom are former FBI CART examiners. We have submitted our CVs and sworn affidavits, and placed our reputations on the line to expose the truth about serious government malfeasance in this case. Unfortunately, Loveall's incomplete and inaccurate response will likely result in *Giglio* issues in future cases where he might be called to testify.

3. The government admitted to intentionally giving the original camera card to an unidentified, non-FBI CART third party who accessed and altered the evidence. After acknowledging the government's alteration of digital evidence through improper access, it made this astonishing admission in footnote #6:

This access was not the result of law enforcement "tampering," as Raniere's motion claims. Rather, having no reason to believe that the metadata of the contents of the Canon EOS 20D camera card had any evidentiary value, law enforcement agents directed that a photograph technician copy the photographs from the camera card in order to provide the photographs more expeditiously to defense counsel. Shortly thereafter, on September 25, 2018, the government provided Raniere with copies of the photographs from the camera. (p.11, emphasis added)

It is difficult to overstate the significance of this confession by the government, especially given the pivotal role of this camera card as the necessary link between Raniere and the alleged creation and possession of contraband charges, which the government said were "at the heart" of their case. When confronted with the need to defend their alteration of the camera card, the government made the following damning admissions:

- The government unilaterally deemed the card's metadata to lack "any evidentiary value" and decided to provide only selected photos from the card, instead of everything the defendant was entitled to see, as a matter of right and especially considering the high stakes of this trial.
- It casually denied the importance of metadata on the camera card, while *directly contradicting itself* in exclusively relying on metadata to obtain a conviction.
- It *knowingly circumvented NY CART* in violation of FBI digital evidence policy by allowing a non-CART-certified individual to examine this piece of evidence, contrary to their proper handling of all the other seized devices.
- It failed to disclose that it was the "photograph technician" who altered the evidence while it was still in the custody of case agent Michael Lever.
- It knew the "photograph technician" *did not use a write blocker* to preserve original digital evidence — and dismissed this as unimportant.
- It knew the "photograph technician" failed to sign the chain of custody for the camera card or *provide notes* about any forensic techniques or tools she used to extract the selected photographs, and let this stand.
- It *hid the identity* of the "photograph technician," so that she could not be called to testify at trial about her unauthorized access and alteration of pivotal evidence.
- It *intentionally withheld any details about this out-of-policy examination* in any information turned over during discovery.

These deliberate acts not only altered evidence, rendering it incompetent, but also denied multiple key discovery rights to the defense.

Summary.

I predict at least **3 headlines** will emerge from the government's response to our findings:

- "The FBI admits that folder names used to convict Keith Raniere were unreliable."
- "The FBI admits it altered the digital evidence used to convict Keith Raniere."
- "The FBI admits it gave original evidence to an unauthorized employee, who altered it, then hid from Raniere's defense team."

Unfortunately, I believe the longer this case languishes in the court system, the more "FBI admits" headlines will appear.

Director Wray, I take no pleasure in bringing these facts to your attention. Those of us who have invested decades of our lives serving in the FBI are heartbroken over the American public's distrust – and frankly, *disdain* – directed towards our former agency. We are still part of the FBI family, and our experience there will always be a cherished centerpiece of our careers.

Fortunately, you can act now to mitigate further damage to the FBI's reputation. Yes, the FBI will receive a black eye from its handling of this case, but I believe the organization can recover. Right now, you can make the following decisions that will not only ensure justice is served in this case but also help restore the public confidence in the FBI:

- Direct NY CART to turn over to the Raniere defense team the **original camera card** and **both forensic copies** of it. The camera card contains no contraband, the data unquestionably belongs to the defendant, and the FBI has no further use for it.
- Request that DOJ OIG **investigate how this case was prosecuted** by the EDNY, and propose specific remedies.
- Direct FBI OPR to **investigate the FBI employees** implicated in malfeasance in the case, including those who staged evidence at the search location, violated evidence handling procedures, altered the evidence, and falsely testified about the evidence.
- Make a **public statement** summarizing the above actions.

Prior to the **November 30 Court deadline**, when even more proof of evidence forgery will be revealed to the Court, there is a critical window when the FBI can join us in exposing government wrongdoing. To that end, I request a conversation or meeting to discuss what we can do to rectify this situation. Please let me know **by Monday, October 30**, if you are willing to speak.

Again, I stand ready to assist in any way you deem appropriate. For example, I have drafted an extensive list of proposed interview questions for DOJ and FBI employees, which I can make available to both DOJ OIG and FBI OPR upon your request.

I look forward to the day when retired FBI agents such as myself, and other private citizens, can once again be proud of the FBI and its critical role as the world's premiere law enforcement organization.

Thank you,

Rick

J. Richard "Rick" Kiper, PhD, PMP

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2 attachments



Government_Response_Exhibit_C.pdf

212K



Government_Response_to_Rule33_Technical_Findings.pdf

232K