

**Joint Expert Declaration Regarding FBI/DOJ Misconduct  
in *US v. Raniere***  
**18-CR-204 & 24-CV-2925**

**I. Introduction**

We, the undersigned 4 former FBI forensic examiners retained post-conviction on Mr. Raniere's behalf, declare under penalty of perjury, pursuant to 28 U.S.C. §1746, that the following is true and correct.

Based on our combined 55 years of firsthand experience and knowledge of FBI procedures, **we have determined that at least 9 FBI/DOJ personnel engaged in systematic misconduct in *US v. Raniere*.** This misconduct related to the evidence of alleged child pornography – a camera (1B15), its memory card (1B15a), and a hard drive (1B16). Notably, **the card and hard drive were extensively falsified.** (Doc. 1253-1).

**II. Summary of FBI/DOJ Misconduct**

**The camera and card were accessed multiple times prior to forensic preservation, in direct violation of FBI protocol.**<sup>1</sup> These unauthorized accesses were made by SA Maegan Rees, lead investigator SA Michael Lever, and an unidentified FBI “photo technician.”<sup>2</sup> These were knowing violations of FBI protocol.<sup>3</sup>

**The prosecution (AUSAs Moira Kim Penza and Tanya Hajjar) concealed the existence of the FBI “photo technician” until 4+ years after trial.**<sup>4</sup>

**The card was irretrievably altered in FBI custody prior to forensic preservation**<sup>5</sup> and – according to the prosecution – by the FBI “photo technician.”

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<sup>1</sup> See Section 3.3.4.5 of the FBI Digital Evidence Policy Guide (“DEPG”): “Content review is authorized only after DE [digital evidence] is processed by authorized personnel... Content review of original DE is prohibited by those not trained and authorized by OTD [Operational Technology Division].”

<sup>2</sup> See Defense Exhibit 945: FBI Chain of Custody Log for Camera and Card, Pg. 1 showing entries for SAs Rees and Lever before the items were sent to CART, as indicated on Pg. 2; see also Government Opposition, Doc. 1213 at 11, n.6. Notably SA Rees improperly held the camera, with its unpreserved memory card, **for 17 days**; there is no legitimate explanation for her action, and the camera was inoperable due to a dead, unchargeable battery. See Trial T. (6/13/19) at 4918:7-17.

<sup>3</sup> See Doc. 1235-1 at ¶¶ 4-11.

<sup>4</sup> See Government Opposition, Doc. 1213 at 11, n.6; see also Doc. 1231 at 1, in which the prosecution disclosed that the “photo technician” was an FBI employee.

<sup>5</sup> In CART, using a “write-blocker” to prevent altering evidence is a “critical procedure.” (FBI CART SOP 4.3) This was not done here.

**The camera and card's chain of custody was broken through known violations of FBI protocol.<sup>6</sup>** SA Lever, who supposedly had sole custody, gave the card to this previously undisclosed FBI “photo technician,” who did not sign the chain of custody. As maintaining chain of custody is a basic protocol that all FBI employees are trained to follow, SA Lever and the FBI “photo tech” knowingly circumvented the chain of custody, while knowingly violating FBI protocol.<sup>7</sup>

**This FBI “photo technician” conducted an unauthorized, undisclosed forensic exam of the unpreserved card,** without following basic forensic protocols and failed to protect the card from alteration.<sup>8</sup> This contradicts the prosecution’s claim that what was done was merely “copying” photos.

**The prosecution’s justification for their “off-the-books” mishandling, in their post-trial footnote disclosure<sup>9</sup>, is not credible:**

- They claimed they thought the evidence was not important, to excuse their prohibited circumvention of the Computer Analysis Response Team (CART). This shows bad faith, particularly in a trial that relied primarily on photos to establish guilt. It also fails to explain either the break in the chain of custody or the concealment from the defense.
- The prosecution claimed their mishandling was intended to expedite electronic discovery. Credibility aside, it would have been far faster for the forensics lab, CART, to copy the card. Also, the card accounted for a minuscule percentage of the total electronic evidence (less than 0.02%, to be precise)<sup>10</sup>, with CART processing the rest. There is no legitimate reason for them to single out the card for mishandling and special treatment.
- Our collective experience indicates there is no “photo technician” role in the FBI and any FBI employees would be well-trained in proper protocol, including signing the chain of custody.
- The most plausible explanation for the totality of the breaking of the chain of custody, concealing information from the defense, and arranging for an unauthorized person to conduct a forensic exam without standard forensic tools to prevent alteration – all of which took more effort than having CART process the card and risked disciplinary action and inadmissibility of the evidence – is that **government actors intended to alter the original evidence.**

**Prior to trial, the prosecution withheld the card from the defense, providing only a PDF report** created by their Paralegal Specialist, Teri Carby. Further implicating the government in

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<sup>6</sup> See Section 2.2.1 of the FBI Digital Evidence Policy Guide: “all FBI personnel who handle, content review, or process digital evidence, hereafter ‘DE,’ are responsible for maintaining the chain of custody of all DE.”

<sup>7</sup> See Doc. 1235-1 at ¶¶ 4-11.

<sup>8</sup> One of the two PDF reports contained deleted photos, indicating a forensic tool was used.

<sup>9</sup> See Doc. 1213 at 11, n.6.

<sup>10</sup> See Government Letter, Doc. 129, which stated that the electronic discovery in the case amounted to 10-12 TB.

this mishandling, one week after the technician's access, on September 27, 2018, AUSA Hajjar informed the Court that for "an 8 Hale camera... [w]e just pulled out the pictures out [sic] and gave them everything."<sup>11</sup>

**CART violated protocol in handling the card:**

- The testifying examiner, SFE Brian Booth, created an unauthorized second copy of the original card – in direct violation of FBI policy and procedures<sup>12</sup> – which he received from SA Mills in an unsealed bag.<sup>13</sup>
- SSA Trenton Schmatz approved SFE Booth's prohibited creation of the second forensic copy.
- As all CART examiners are trained that creating additional forensic copies of original digital evidence is strictly prohibited, this was a knowing violation of protocol by SFE Booth. Similarly, as SSA Trenton Schmatz is a CART examiner,<sup>14</sup> his approval of Booth's action was also a knowing violation of FBI protocol.
- Note that SFE Booth based his analysis and testimony regarding the camera's memory card on this unauthorized second copy. The prosecution continues to withhold this second forensic copy.

**SA Mills falsely testified that the FBI followed protocol in handling the camera<sup>15</sup>. It is likely that SA Mills knew his testimony was false, given that he had signed the chain of custody prior to giving testimony.**

**AUSA Hajjar elicited SA Mills' false testimony**, and we conclude she was aware or should have been aware of the mishandling of the camera and card.<sup>16</sup>

**SFE Brian Booth gave misleading testimony that receiving unsealed evidence is not extraordinary<sup>17</sup> and that photo timestamps, set by the camera, are reliable and hard to**

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<sup>11</sup> See 9/27/18 Pre-Trial T. at 35:3-9.

<sup>12</sup> See Section 3.3.11.2 of DEPG, stating: "Unless approved by the AD, OTD as outlined below, examinations are not conducted on any evidence that has been previously subjected to the same type of technical examination (hereafter referred to as a "re-examination.")" However, no approval from OTD is documented; here the only approval was from SSA Trenton Schmatz, via SA Lever. See Defense Exhibit 961: CART Notes, Pg. 29, entry on 6/7/19, which reads:

"Request was made by SA Lever of Item 1B15 to be processed in lieu of ITS/SFE Steven Flatleys [sic] availability as he would be overseas during trial. This exam would be utilized in trial. SSA Trenton Schmatz concurred and authorized to process the item."

<sup>13</sup> See Trial T. (6/13/19) at 4889:14-18.

<sup>14</sup> See *United States v. Kurniawan*, Southern District of New York, 1:12-cr-00376-RMB, Doc. 101, Transcript Pg. 490:3-491:5; 492:10-22.

<sup>15</sup> See Trial T. (6/10/19) at 4307:8-18.

<sup>16</sup> In the government's Consolidated Opposition to the Rule 33 and Motion to Compel (Doc. 1213), AUSA Hajjar disclosed that a photo technician had accessed these items before they were sent to CART, for discovery purposes, which is under the purview of the prosecution. This is contrary to SA Mills' testimony of proper CART handling.

<sup>17</sup> See Trial T. (6/13/19) at 4887:16-4888:1.

**change.**<sup>18</sup> However, such timestamps are unreliable and easy to change.<sup>19</sup> The jury was misled regarding critical facts because those timestamps were the government's key evidence to allege that the subject in the photos was 15.

### III. Conclusion

We have identified at least 9 FBI/DOJ personnel – from FBI Special Agents to CART personnel to USAO personnel – involved in coordinated misconduct relating to evidentiary fraud centered around the alleged child pornography evidence. The key FBI personnel include SA Christopher Mills, SA Maegan Rees, SA Michael Lever, the FBI “photo tech”, SSA Trenton Schmatz, and SFE Brian Booth.

This misconduct detailed above began almost a year before trial, and it has continued through trial and 4 years after. These actions cannot be explained away by omissions or carelessness. It appears to have taken premeditation, substantial effort, and collusion to commit. Further, in our expert opinions, this has undermined not only the integrity of the alleged child pornography evidence but also the government's handling of the entire case.

**In our experience, this represents an unprecedented case of systematic government malfeasance.**

Signed by:

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Signature: \_\_\_\_\_

Executed on: 11/27/2024

Name: **Dr. James Richard Kiper, Ph.D.**

Background: Former FBI Special Agent, Computer Forensic Examiner, and Unit Chief at the FBI Academy, 20 years' service to the FBI

Signed by:

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Signature: \_\_\_\_\_

Executed on: 11/27/2024

Name: **Stacy Eldridge**

Background: Former FBI Senior Forensic Examiner, 10 years' service to the FBI

<sup>18</sup> See Trial T. (6/12/19) at 4820:12-20, 4830:3-8.

<sup>19</sup> See the testimony of SFE Flatley (the other CART examiner who analyzed the card) from a prior case in which he testified that timestamps are easy to change. *US v. Hirst*, Trial Transcript at 940:24-941:8

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Name: **Mark Daniel Bowling**

Background: Retired FBI and OIG Special Agent and Forensic Examiner and Former FBI Assistant Special Agent in Charge, FBI Inspector in Place, and Cyber Program Manager, 20 years' service to the FBI

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Name: **William Odom**

Background: Former FBI Special Agent and Forensic Examiner, Manager of the FBI Forensics Lab in Houston; 5 years' service to the FBI.