

Former BP executive acquitted of charges from 2010 oil spill

By Tom Hall
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On Friday, June 5, former BP executive David Rainey was found not guilty of one count of lying to federal investigators about the true extent of the 2010 oil spill in the Gulf of Mexico. The acquittal of Rainey, the only executive charged with a crime over the spill, means not a single BP executive will be held to account for the worst environmental disaster in American history, which left 11 oil rig workers dead and devastated the Gulf's ecosystem.

From the beginning, BP executives systematically underreported the true extent of the spill and were aided and abetted by the Obama administration. The company initially claimed, without any evidence, that only 1,000 barrels per day were flowing from the sunken Deepwater Horizon rig.

When this figure came under sustained criticism, BP and the Obama administration later settled on the somewhat higher figure of 5,000 barrels per day, based on a faulty government study. The actual estimated figure turned out to be an order of magnitude higher, at approximately 62,000 barrels per day, for a total of 4.9 million barrels. The resulting oil slick spanned 2,500 square miles and could be seen from space.

Through the entire duration of the spill, which lasted three months, the government routinely blocked attempts by journalists and independent investigators to determine and document the real extent of the spill. The administration supported BP's refusal to allow independent estimates of the size of the spill or even to release footage of the leak, and backed the deployment of local law enforcement and the Coast Guard along the Gulf Coast to harass the media.

The case against David Rainey, then BP's vice president for exploration in the Gulf and a top member of the company's disaster response team, stemmed from his lying to the House Subcommittee on Energy

and Environment in May of 2010, which was investigating the spill at the time. It also arose from false statements he made during a subcommittee briefing and in a written letter to Ed Markey (Democrat-Massachusetts), the chair of the committee. He was later charged with two counts of making false statements to Congress and one count of making a false statement to a federal agent.

Given the fact that Rainey was accused of telling the government the same lie, that only 5,000 barrels of oil were flowing from the well, that the administration itself was pushing at the time, federal prosecutors' case against Rainey was always shaky. "Not a strong showing for the government," Rainey's attorney Brian Heberlig told NPR following the verdict. "But that's because they had nothing to work with."

The trial proceedings were obviously politically motivated. The obstruction of Congress charges were dropped in 2013 by federal judge Kurt Engelhardt using an absurd technicality. The judge ruled that the investigation was carried out not by a "committee" but a "subcommittee" and therefore the law was not applicable. Congressman Markey responded in a statement that Engelhardt's "narrow and off-the-wall" reasoning was "deeply troubling."

The charges were later reinstated by the 5th Circuit Court of Appeals, but Engelhardt threw them out again on June 1 at the beginning of the trial phase, less than an hour after seating the jurors for the trial. This time, Engelhardt justified his ruling by quashing the defense's subpoena for three former congressmen and six congressional staffers, and then declaring that because of this Rainey would be unable to receive a fair trial. When the jury read their verdict acquitting Rainey of the remaining, secondary charge, Engelhardt declared his agreement with the ruling in open court, a

step that the *Times-Picayune* called “unorthodox.”

Such open bias is nothing new in Engelhardt’s courtroom. In 2013, Engelhardt threw out the convictions of five New Orleans police officers stemming from the murder and subsequent cover-up of two people in the infamous Danziger Bridge incident shortly after Hurricane Katrina, on the basis of anonymous comments posted to the *Times-Picayune*’s web site by a federal prosecutor who was not involved in the case. The year prior, in the sentencing phase of the trial, Engelhardt delivered a rambling two hour rant praising the police department and attacking the federal prosecutors in the case, accusing them of inserting an “air of mendacity at this trial.”

The whitewash of BP, however, is not the result simply of a particularly reactionary judge. The verdict continues a lengthy run of favorable treatment for the multibillion-dollar energy conglomerate in court cases stemming from the 2010 oil spill. In January, BP’s fines under the Clean Water Act were potentially cut by billions of dollars when a federal judge in the same district as Engelhardt ruled that only 3.17 million barrels were released during the 2010 spill, far lower than the 4.19 million sought by prosecutors. If BP was fined the maximum amount for this figure, it would only be liable for \$13.7 billion, a drop in the bucket for one of the world’s largest corporations. Even this sum could fall even lower, to \$9.5 billion. In 2012, BP reached a settlement in the criminal case for \$4.5 billion in fines, less than its profits for a single quarter.

From the beginning, a concerted effort was made to bring forward only a handful of scapegoats to face criminal charges in order to shield the company as a whole from any responsibility. However, even the cases against these few individuals are unraveling. Last year, the obstruction conviction of low-ranking BP engineer Kurt Mix was thrown out over juror misconduct. In March the 5th Circuit Court of Appeals threw out 11 counts of Seaman’s Manslaughter in the case of “well site leaders” Robert Kaluza and Donald Vidrine on the technicality that they were not “ship” officers.

Meanwhile, the federal government has been eager to run interference for the company. BP’s ban on bidding for new leases in federal waters was lifted last year just in time for it to participate in a new round of bidding to the fanfare of government and business officials.

Meanwhile, the federal Bureau of Safety and Environmental Enforcement decided last month to allow drilling in the reservoir from the Deepwater Horizon spill for the first time. LLOG Exploration, a relatively small oil firm based in the New Orleans area, will drill a new well a mere three miles from the former site of the Deepwater Horizon rig.

The Gulf ecosystem continues to feel the effects of the spill. On May 20 the federal National Oceanic and Atmospheric Administration (NOAA) released a study linking the 2010 spill to the longest-running dolphin die-off ever recorded. The researchers claim that severe respiratory ailments in the dolphins were likely caused by ingesting the oil as they surfaced to breathe. “These dolphins had some of the most severe lung lesions I’ve ever seen in wild dolphins,” lead veterinary pathologist Kathleen Colegrove told the media. As usual, BP disputed the findings, without providing any contrary evidence.

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