

Litigators of the Week: Brian Heberlig and Reid Weingarten of Steptoe & Johnson; Michael Magner of Jones Walker

Posted by **Scott Flaherty**
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Five years out from 2010's Deepwater Horizon oil spill in the Gulf of Mexico, residents there haven't forgotten that disaster. "There are very strong feelings in the Gulf region about BP," says Brian Heberlig of Steptoe & Johnson LLP.

Heberlig, along with Steptoe's Reid Weingarten and Jones Walker's Michael Magner, overcame public opinion late last week, winning an acquittal for former BP executive David Rainey on June 5 of charges he lied to federal investigators. The former head of BP exploration in the Gulf, Rainey was indicted in 2012 by the U.S. Department of Justice on charges that he lied to a congressional subcommittee and to the Federal Bureau of Investigation about the rate of oil spilling from the Deepwater well. Around the same time as Rainey's indictment, BP pleaded guilty to a number of charges and agreed to pay \$4 billion in criminal fines and penalties.

As the trial approached, the defense team convinced New Orleans U.S. District Judge Kurt Engelhardt to narrow the case, throwing out the prosecution's obstruction-of-Congress charge on June 1. The late-stage dismissal left only the false statements charge, and prompted some scrambling among the three lead defense lawyers. "When the case got narrowed down after that dismissal ... a lot of the witnesses we had divided up became moot," said Heberlig. "I literally had to prepare two opening statements." Ultimately, Heberlig handled opening arguments and examined Rainey, while Steptoe's Weingarten cross-examined three key government witnesses and delivered closing arguments. Magner examined four character witnesses for Rainey, and cross-examined a government computer forensic expert.

Juror selection was also key. "We were really able to ferret out the people who had unfair bias," says Heberlig. "We strove hard to find professionals, people who were educated, people who seemed open-minded or sophisticated."



Heberlig was intimately familiar with Rainey's statements to the FBI, which were the basis for the surviving false statements charge. He was one of two Steptoe lawyers who attended Rainey's FBI interview. Prosecutors alleged that during the interview, Rainey purposely understated the oil flow each day from the damaged rig: As much as seven times the flow he stated actually occurred, they claimed. Heberlig admits that Rainey's statements were arguably inaccurate, but maintains that the government couldn't prove that his client was intentionally lying. "A mistake is not a lie, even if it was a mistake," said Heberlig. "The government has to prove criminal intent and a reason why someone would lie. And they just didn't have it here."

As the trial moved forward, the defense team was feeling confident enough that they wondered if Rainey should testify. The lawyers had intended to put the former BP executive on the witness stand, but they worried that his statements might give the prosecution an opening. "In the end, we decided we would all have regrets if we didn't put him on," Heberlig explained, adding that, in his view, the decision paid off. "I think he came across very credibly as an honest, highly skilled scientist ... not an operator, not a spin doctor who was looking to shade the truth."