

DOJ SITS ON ITS THUMBS A YEAR AFTER MACONDO'S MOUTH OF HELL ROARED

It has now been, as noted at FDLNews by David Dayen, one year from the date the British Petroleum wellhead at Macondo blew out, thus killing 11 workers on the TransOcean platform known as "Deepwater Horizon" in the Gulf of Mexico.



Jason Anderson, Aaron Dale Burkeen,
Donald Clark, Stephen Curtis, Roy Wyatt
Kemp, Karl Kleppinger, Gordon Jones,
Blair Manuel, Dewey Revette, Shane
Roshto, Adam Weise

These are names you should know. These are the first, and most blatant, victims of the Deepwater Horizon explosion at Macondo. Their actual names do not quickly come to the tongue, nor are they so easy to find. In fact, you know what I had to do to find them? Go through the same process this guy did. And, still, the first link I found them at was his post. Here is a taste of his disgust, and I join it wholeheartedly:

I had to search for those 11 names; most of you may not know them. We didn't start a war over them, they're not under any suspicion of anything, not a board of directors of some evil corporate cabal; on the contrary, many would say they are victims of it.

...

But I found them in a story about how frustrated the families are a year later, how frustrated the region is and how all this pep talk about how things

are recovering just aren't true. And there's plenty of stories about how BP claims to have had its best year ever in terms of safety, yet it caused the worst oil spill in history?? Lots of stories about how the CEO got a million dollar retirement package and bonuses given here and there and it's enough to make one puke crude, much like a lot of the Gulf remains doing.

First of all, to the families, these people are not "presumed" dead Wikipedia. I know it may be a legal thing, bodies never found, no conclusive evidence, blah blah. They were killed, soldiers in the energy wars killed by friendly fire.

...

...victims of our wanton unbridled lust for oil and the greed of those that produce it. They are dead, gone forever, never to be seen or see their loved ones or live to any more potential; they are gone.

And their deaths appear to have meant little to the world. Nor did the subsequent deaths of everything from thousands of dolphins to countless species of marine life; from the deaths of the livelihoods of so many in the region to the loss of countless ecosystems.

Truer words have likely never been spoken. And that is where I want to pick up.

What could have been done to address these heinous human and ecological wrongs that has not?

Everything.

Because nothing, not diddly squat, has been done. And if the corporate powers that be in this country, and the political puppets who

serve them, including Barack Obama, Eric Holder and the currently politicized Department of Justice, have anything to say about it (and they have *everything* to say about it) nothing significant is going to be done about BP, TransOcean, Halliburton and the Gulf tragedy, or anything related, in the future.

Like the craven and dishonest shell game that has been played by the current administration with regard to torture and destruction of evidence, the US government appears to simply be determined to shine this on with the bare minimum of faux accountability and disingenuous rhetoric to soothe the perturbed masses and maintain status quo with their partners in corporate/political domination of the American populous. That is clearly who they are, and quite apparently who we have become.

So, what could have been the process? Well, that is pretty easily delineated. In fact, I set it out definitively on May 28th of last year. Please refer to the link to the post for a complete list of the factors, nee elements of the crimes, that were already present a year ago. It is startling to realize what was already known then; especially when compounded with what is known now. The only difference today is that we can definitively add the United States government, and the administration of Barack Obama, to the queue of "Criminals in the Gulf".

Last May I wrote:

As a direct and proximate result of the above described reckless, wanton, willful, and grossly negligent conduct, eleven men are dead and the biggest environmental disaster in history has been unleashed on the fragile and critical Gulf of Mexico, threatening the lives and livelihoods of untold numbers of American families. Some of the toxic death foisted upon the environment cannot even be seen because it lurks in deep giant underwater plumes miles wide by miles long.

The applicable criminal provisions of the Clean Water Act are set out in 33 USC 1319....The Federal criminal provisions for negligent and reckless homicide (statutorily known as manslaughter) are contained in 18 USC 1112....

....

It is hard, if not impossible, to find any way that the conduct of both BP and its key decision making officials responsible for the Deepwater Horizon catastrophe, and corresponding mass loss of life, do not fit within the ambit of the above crimes. Why has the Obama Administration and its DOJ not acted? Why is there not a dedicated criminal investigation open and securing critical evidence?

As best as can be ascertained, the only real DOJ Main assets sent to the Gulf scene are Tony West and Ignacia Moreno, the talking heads for the Civil Division and Environmental Divisions respectively, a tasking that screams of a total coddle the petroleum industry and manage the fallout move, not a get tough criminal consideration.

The DOJ could also be using the Texas Refinery Fire probation case that BP is still under the court's jurisdiction for from their 2007 felony conviction as an easy investigatory and prosecutorial tool; but the DOJ will not even address the thought, much less act on it.

Why?

The Obama Administration and its DOJ owes the citizens a better effort than they have mustered to date. It is funny they are out trying to prosecute Guantanamo defense attorneys for doing their jobs and are still hell bent to persecute inconsequential marijuana

crimes, but have no burning desire to go hard after BP, the biggest environmental criminal in history. How can that be?

In addition to the above manslaughter and general CWA crimes clearly present, 33 USC 1319 contains the criminal provision of the Clean Water Act. Specifically, 33 USC 1319(c)(1)(A) and 1319(c)(2)(A), through their reference to multiple other provisions, but most notably 33 USC 1312, make the toxic contamination of navigable waterways and wetlands a crime.

So, what has transpired in the way of criminal prosecution now that we have reached the one year anniversary of Macondo, the Mouth of Hell, rearing its head and opening its maw?

Not a thing. The US government and the Administration/DOJ of Barack Obama is just stringing it out and propping up the status quo and corporate interests such as BP. Seriously, I have been in the criminal law business for two and a half decades, and you literally almost have to fight to not be prosecuting BP for the criminally negligent, if not recklessly indifferent, deaths of the eleven lost souls on Deepwater Horizon.

Like with torture and the financial meltdown, the criminal activity is so obvious you have to consciously want to "look forward" and want to *not* prosecute in order to not do so. And that is, apparently, just exactly the case with the Obama Administration and the Holder Department of Justice to date. For the better part of a year, DOJ pitched the bogus meme there was a team working diligently on the BP Oil Spill. But that "task force" was led by Tony West and Ignacia Moreno, a couple of talking head tailored suits out of DOJ Main. Knowledgeable former EPA criminal investigators pointed out early on, it seemed just for show and, sure enough, very little appears to have resulted from all those months of the DOJ Deepwater Horizon investigation. In fact, the only notable thing which appears to be resulting from the so

called "criminal investigation" is that it is being used to shield and hide the real ecological destruction to the Gulf occasioned by the oil spill, such as the inexplicable and tragic dolphin deaths.

Now, to be fair, the Obama Administration, at the end of March, made another one of its patented government by press release moves by announcing they are "considering" filing manslaughter charges against BP managers. Included in the new PR push was the first official mention of using the somewhat archaic "Seaman's Manslaughter" law, which is embodied in 18 USC 1115. In a nutshell, the Seamen's Manslaughter statute allows the government to hold seafarers, owners of vessels, and the corporate management that controls vessels, criminally accountable for maritime accidents that result in the death of a person (Here is a pretty good paper on the statute).

Is there any reason to give the claimed new "push" by DOJ any credibility? The answer depends. Also in late March, the DOJ made a mostly ignored change in leadership on their supposed Gulf Oil Spill investigation. The investigation, the only known active part of which was done by the EPA Environmental Crimes Unit and the US Attorney's Office in Eastern District of Louisiana, was suddenly yanked and a new "task force" formed to be specially supervised by a chap by the name of John Buretta, who is touted as a veteran criminal prosecutor. That sounds all well and good until you take a good look at what Buretta's experience really is.

The first thing a closer inspection yields is that Buretta, while indeed having some solid prosecutorial experience, has it almost exclusively in racketeering cases in the Eastern District of New York; he made his bones on mob racketeering investigations. It is hard to see how that lends the experience, knowledge base or skill set for complex environmental crimes. People experienced with complex environmental

crimes will tell you (and have told me)
environmental crimes is a specialized area, and
that a rackets prosecutor from Brooklyn is a
severe fish out of water for the Gulf Oil Spill
case.

Understandably, the decision to move Buretta in
and remove Howard Stewart, the Senior
Environmental Crimes Attorney, has generated a
high level of frustration in the Environmental
section. Behind the scenes, the EPA Criminal
Investigative Division (CID) staff believe it is
a huge blow because it signals the environmental
crimes won't be dealt with seriously.
Furthermore, the EPA criminal investigators have
claimed from the start they were being
micromanaged by senior political appointees in
Washington and not allowed to conduct thorough
investigations, just as feared would be the case
by the former EPA Criminal Division agents when
the investigation started. The significance of
this marginalization of the environmental unit
to the environmental crimes will become clear
below.

The other thing that jumps out is the way the
Obama Administration has turned their PR play on
the matter – it smacks of the same patently
dishonest and craven play they ran to slough off
any meaningful prosecution of torture and
destruction of the critical torture tapes by
high level CIA officers, almost certainly
working in concert with senior Bush
Administration officials. The Buretta
announcement appears to have been rolled out by
Carrie Johnson, formerly of the Washington Post
and now at NPR, and historically a trusted
useful tool for the DOJ when they want to want
to launder bullshit to the press.

You might remember Johnson from the almost
identical type of reporting she did for the DOJ
when they were pulling the wool over the
public's eyes regarding the whitewash of the
torture tape investigation. When this blog and a
few others were making big noise on how the DOJ
was cravenly running out the clock on the

torture tape destruction prosecutions, the DOJ again turned to Johnson to soft sell the fact they, and their "special prosecutor", John Durham (who had no torture nor national security experience, but was, yes, another DOJ mob specialist), had intentionally run out the clock on the prosecutions.

Johnson, of course, came through for DOJ with the requisite con job that it was all necessary and there still might be accountability, which was a total joke. And now here is Johnson again carrying the water for the DOJ attempt to shoehorn Buretta, yet another loyal AUSA with nothing but mob experience, but no usable experience in the field to which he is being specially assigned.

So, what does all this mean for the concept of meaningful and appropriate accountability for BP and the other criminal malefactors in the Gulf Oil Spill? The smart money is on the "nothing good" square. While the DOJ now, all of a sudden, is interested in "streamlining" the case, in actuality it likely is the path being set up for a package deal to resolve everything nice and neat so both BP and the Obama Administration can "look forward". There are subtle tells as to where the Administration is going. The first tell is the newfound emphasis on "Seamen's manslaughter", in that, although it is a felony homicide provision, it only requires a showing of regular negligence, as opposed to gross negligence or recklessness under the traditional criminal homicide provisions.

And this is where the sidelining of the environmental crimes team comes into play. By only dealing in terms of regular negligence, as opposed to gross negligence, on the environmental crimes, the administration can minimize the financial penalties assessed to BP. Under the Clean Water Act, the two factors which determine the size of the financial penalty are the total amount of barrels spilled and whether the spill was the result of ordinary negligence, in which case the strict liability damages are

assessed at \$1,100 per barrel spilled; or "gross negligence" in which case the fine is as high as \$4,300 per barrel spilled.

On the largest oil spill in history, having to pay the severely higher damages under gross negligence would be a serious blow to BP. But BP's own disclosures reveal they are quite certain that will not occur, and there is every indication the Obama Administration intends to see it does not impose such a "hardship" on its favorite partner for military fuel purposes. Not to mention that Barack Obama is again in full campaign fundraising mode and BP is one of his biggest corporate sponsors.

The bottom line is it is a safe bet John Buretta, the rackets specialist, has been assigned to wrap up a nice tidy little package involving simple negligence across the board. It minimizes the spill penalties to BP and will allow criminal charges, if there are any individuals charged at all, to be restricted to a couple of sacrificial lambs who were calling the shots on the Deepwater Horizon rig. If I were Robert Kaluza and Donald Vidrine, the BP company men in charge of Deepwater Horizon when it blew, I would be more than a little worried about the direction this is going, because they are the obvious lambs being prepared for slaughter.

But BP itself, on the other hand, looks set up to be escorted through the process by the Administration and DOJ mostly unscathed. That is what the government does for its valued corporate partners. In fact, far from being penalized and/or debarred from federal contracting as it should be, as Jason Leopold reported Wednesday, BP is being given sweetheart no-bid contracts by the Administration.

Maybe a rackets prosecutor is the right guy after all, because this is quite a racket being run between the US government and BP. A year after Macondo the Mouth of Hell roared, and it is business as usual. Who could have predicted?

[Graphic – BP: Broken Promises. Logo design by Foye 2010 submitted as part of the Art For Change BP Logo Redesign Contest and used with permission]