

UNITED STATES v. B&H Construction et. al

Chart of Statements for James Hearing

Kenneth L. Rains

FBI Interview, 10/11/2006

DOJ Interview, 05/04/2006

Number	APPROXIMATE DATE	PARTICIPANTS
1	Late June or Early July 2005	Kenneth L. Rains, Jon Paul (J.P.) Smith
<p>C, A, AG, E¹ Telephone conversation between Rains and Smith. Rains told Smith that BP America Production Company ("BP America") wanted Flint to submit a bid on the Bayfield project even though Flint did not want to do the project because it required large pipe. Rains proposed that B&H and Flint "work something out." Smith agreed. Smith told Rains that B&H wanted do bigger pipe jobs.</p>		
2	July 2005	Kenneth L. Rains, Jon Paul (J.P.) Smith
<p>C, A, AG, E Rains and Smith had several telephone conversations and then arranged to meet for breakfast at a restaurant in Bloomfield, NM. Rains gave Smith the price Flint was intending to bid on the Bayfield project, a project that Flint did not want, with the expectation that B&H would allow Flint to win the Salvador project, a project Flint wanted. Rains told Smith that Flint would submit a bid to BP America for more than \$1 million on the Bayfield project. Smith told Rains that B&H's bid would be "right at a million." Smith let Rains know that B&H was not interested in the Salvador bid.</p>		
3	July 2005	
<p>E B&H submitted a bid in the amount of \$999,200 for the Bayfield project. Flint submitted a \$1,199,283 bid for the Bayfield project. B&H was awarded the Bayfield project. Flint submitted a \$496,085 bid for the Salvador project. B&H submitted a \$540,912 bid for the Salvador project. Flint was awarded the Salvador project.</p>		

¹ C = Coconspirator hearsay, **also highlighted in bold** - Rule 801(d)(2)(E)

A = Party Admission - Rule 801(d)(2)(A)

AG = Agency Admission - Rule 801(d)(2)(D)

E = Evidence of Conspiracy

Number	APPROXIMATE DATE	PARTICIPANTS
4	August and September 2005	Kenneth L. Rains and Jon Paul (J.P.) Smith
<p>C, A, AG, E Rains and Smith ran into each other more than once at a restaurant in Bloomfield, NM. They told each other that they wanted to increase the profit margins that they were earning. They agreed to talk again when BP America solicited bids on additional projects.</p>		
5	Early in the conspiracy	
<p>E At this time in the conspiracy the expectation between Rains and Smith was that Flint would win the BP America projects that called for smaller pipes and B&H would win the BP America projects that called for larger pipes.</p>		
6	September 2005	Kenneth L. Rains and Jon Paul (J.P.) Smith
<p>C, A, AG, E In September 2005, BP America let five jobs for bid: Lash Ute; Southern Ute; Martinez; Buford Wyatt; and Schofield. Rains and Smith had a telephone conversation during which Smith told Rains that B&H did not expect to get of these projects because they all called for small pipe. Rains told Smith that Flint did not have the personnel to do all five projects. Smith said B&H would do the projects that Flint did not want.</p>		
7	September 23, 2005	
<p>E Rains talked to Richard Putman, a Flint employee who was the field manager. Putman was assisting Jerry Freeman, a Flint employee whose job was to estimate the bids. Rains asked Putman which of the five BP America projects that were being let in September 2005 would Putman like to win. Putman told Rains he wanted the Lash Ute, Southern Ute, and Martinez projects because those projects had a dirt work component that Flint was also bidding on.</p>		

Number	APPROXIMATE DATE	PARTICIPANTS
8	September 23, 2005	Kenneth L. Rains and Jon Paul (J.P.) Smith
<p>C, A, AG, E Telephone conversation between Smith and Rains. Smith told Rains he did not have B&H's bid numbers for the project and to call Landon Martin to get the prices that B&H intended to submit to BP America for those five projects. Smith told Rains Martin's cell phone number. Rains wrote the number of the summary sheet for the Martinez project.</p>		
9	September 23, 2005	Kenneth L. Rains and Landon Martin
<p>C, A, AG, E Per Smith's instruction, Rains called Martin and told Martin that Smith had told Rains to call Martin to get B&H's bid prices for the five projects. Martin immediately told Rains B&H's bid prices for the five BP America projects.</p>		
10	September 23, 2005	
<p>E Rains wrote the B&H bid prices that Martin gave him on the worksheets for the bids.</p>		
11	September 23, 2005	
<p>E Rains adjusted the prices that Flint would submit to BP America so that Flint would win the Lash Ute, Southern Ute, and Martinez projects and B&H would win the Buford Wyatt and Schofield projects.</p>		
12	September 23, 2005	Kenneth L. Rains and Jerry Freeman
<p>C, E Rains told Freeman to submit the adjusted bids to BP America. Freeman submitted Flint's bids electronically to BP America's office in Houston, TX.</p>		
13	September 2005	
<p>E BP America awarded the five projects to the low bidder for each project. Flint was awarded Lash Ute, Southern Ute, and Martinez. B&H was awarded Buford Wyatt and Schofield.</p>		

Number	APPROXIMATE DATE	PARTICIPANTS
14	September 2005	Kenneth L. Rains and Jerry Freeman
<p>C, E Freeman questioned various Flint employees about why Rains changed Freeman's estimated bid prices before submitting them to BP America. Rains told Freeman that it was Rains' decision what price to bid and that every once and a while Rains tested the market by increasing the bid prices.</p>		
15	October 2005	Kenneth L. Rains and Jon Paul (J.P.) Smith
<p>C, A, AG, E Rains and Smith talked about two upcoming BP America projects - Mayfield and Sauls Creek. After discussing which projects each company preferred to do, Smith and Rains decided that B&H would win Mayfield and Flint would win Sauls Creek. Smith told Rains what prices B&H would bid on these projects.</p>		
16	October 11 & 12, 2005	
<p>E Flint and B&H submitted bids as agreed to BP America for the Sauls Creek and Mayfield projects. However, due to pricing on contingency items, BP America awarded both projects to B&H.</p>		
17	October 2005	Kenneth L. Rains and Jon Paul (J.P.) Smith
<p>C, A, AG, E Smith called Rains and told him that B&H was awarded both the Sauls Creek and Mayfield projects and he did not understand why. Smith told Rains that B&H did not "screw over" Flint. Smith volunteered to meet with Rains to go over bid documents to prove that he did not "screw over" Flint. Smith told Rains he was driving by Flint's office but did not want to stop at the Flint office.</p>		

Number	APPROXIMATE DATE	PARTICIPANTS
18	October 2005	Kenneth L. Rains and Jon Paul (J.P.) Smith
<p>C, A, AG, E Rains and Smith met in the parking lot of the Sun Ray Casino across the street from the Flint office to discuss the Sauls Creek and Mayfield projects. Smith brought the B&H bid sheet to the meeting. Smith told Rains that B&H had submitted its bids to BP America according to their agreement and showed B&H's bid to Rains as proof. By looking at the bid sheet, Rains and Smith discovered that they bid the "contingency" section differently. That resulted in B&H being awarded both projects.</p>		
19	November 2005	Kenneth L. Rains and Jon Paul (J.P.) Smith
<p>C, A, AG, E Rains and Smith discussed the upcoming BP America Webb-Reader project. It was the only project being let by BP America at this time. Rains and Smith did not agree on which company would win this project. However, Smith told Rains that B&H was bidding the project with wet weather mats. Rains told Smith that Flint was bidding the project without wet weather mats. Both Flint and B&H submitted bids. BP America awarded the Webb-Reader project to Flint.</p>		
20	December 15, 2005	
<p>E Lloyd Stewart, Flint vice president, flew into Farmington, NM and met with Rains. Stewart confronted Rains with bid rigging allegations. Rains admitted he exchanged bid prices with Smith. While in Rains' truck, Rains received a call from Smith. Stewart instructed Rains not to answer the call.</p>		
21	January 11, 2006	
<p>A, AG, E The Department of Justice and FBI interviewed Smith concerning allegations of bid rigging. Smith denied the allegations. After the interview, Smith tried to contact Rains at his home. Rains' wife informed Smith that Rains was not home and told Smith that Rains' was staying at the Doubletree Hotel in Tulsa, OK. Smith called Rains at the Doubletree Hotel. During a 22 minute conversation, Smith related his FBI interview and denial of bid rigging allegations. Rains knew this was not true and understood that Smith had related this story in an effort to persuade Rains to tell the same story.</p>		

Richard Putman
DOJ Interview, 05/09/2006

Number	APPROXIMATE DATE	PARTICIPANTS
22	September 23, 2005	
<p>E Rains talked to Richard Putman, a Flint employee who was the field manager. Putman was assisting Jerry Freeman, a Flint employee whose job was to estimate the bids. Rains asked Putman which of the five BP America projects that were being let in September 2005 would Putman like to win. Putman told Rains he wanted to do all of the jobs, but the best three were the Lash Ute, Southern Ute, and Martinez projects.</p>		

Jerry Freeman
DOJ Interviews
05/09/06 and 02/01/07

Number	APPROXIMATE DATE	PARTICIPANTS
23	September 23, 2005	Kenneth L. Rains and Jerry Freeman
<p>C, E Rains called Freeman into his office and told him to bring the bids files for the five BP America pipeline projects for which bids were due. Rains was on the phone and writing in the files. Rains gave the files back to Freeman and told Freeman to bid specific numbers. Freeman noted the numbers that Kenny told him to bid by writing "per Kenny" on them or otherwise noting the number Kenny wanted him to bid.</p>		
24	September 2005	Kenneth L. Rains and Jerry Freeman
<p>C, E Freeman questioned various Flint employees about why Rains changed Freeman's estimated bid prices before submitting them to BP America. Rains told Freeman that Rains was testing the market when he changed the bid prices.</p>		

Gary Langford
DOJ Interview
12/20/05

Number	APPROXIMATE DATE	PARTICIPANTS
25	October 2005	Kenneth L. Rains and Gary Langford
<p>C, E Rains told Langford, a manager for BP America, that Flint was not happy because it was not awarded a project. Rains implied that he knew Flint had been the low bidder on the project. Langford asked Rains how Rains knew that Flint was the low bidder. Rains said he had seen copies of the bids on a desk. Langford did not find Rains' explanation credible. [Rains has since admitted that he got the numbers from Smith.]</p>		

Jeff Kramme
FBI Interviews - 01/11/06, 08/24/06
DOJ Interview - 01/30/06

Number	APPROXIMATE DATE	PARTICIPANTS
26	September 23, 2005	Kenneth L. Rains and Jon Paul (J.P.) Smith
<p>C, E Kramme was in Rains' office going over the bids that were due to BP America, including Lash Ute, Southern Ute, Martinez, Schofield and Buford. Rains picked up the phone and said "J.P. this is Kenny." During the conversation Rains told J.P. "you take Schofield and Buford" and Flint would take the other projects. While on the phone Rains wrote numbers on Flint's bid paperwork.</p>		

Number	APPROXIMATE DATE	PARTICIPANTS
27	September to December	
<p>E While Rains was on the phone on September 23, 2005, Kramme saw him write numbers on the bid worksheets. Kramme later reviewed the Lash Ute bid paperwork and saw the number \$148,562 written in Rains' handwriting on the bid paperwork. Kramme suspected that was the number that B&H had bid. To confirm his suspicions, Kramme showed the Lash Ute paperwork to John Mummery, a BP America employee. Mummery later confirmed that to Kramme that the numbers matched.</p>		
28	Late September 2005	Kenneth L. Rains and Jeff Kramme
<p>C, E Kramme told Rains that he suspected Rains is rigging bids. Rains told Kramme that he could bid whatever he wanted to bid.</p>		

John Mummery

DOJ Interviews - 12/21/05, 04/04/06

Number	APPROXIMATE DATE	PARTICIPANTS
29	December 2005	
<p>E Kramme told Mummery, a BP America employee, that he believed Rains was rigging bids submitted to BP America with J.P. of B&H. Kramme showed Mummery a Flint bid worksheet with the number \$148,562 written on it and told Mummery that he believed that it was bid number that B&H submitted for the Lash Ute/Southern Ute projects. Mummery confirmed with the BP America office in Houston that was the amount that B&H bid for the Lash Ute and Southern Ute projects.</p>		

Documents

Number	APPROXIMATE DATE	PARTICIPANTS
30	Throughout Conspiracy	Kenneth L. Rains and Jon Paul (J.P.) Smith and Landon Martin
<p>C, E All bid documents submitted by B&H and Flint to BP America for the nine projects that were rigged (Bayfield, Salvador, Lash Ute, Southern Ute, Martinez, Buford Wyatt, Schofield, Mayfield and Sauls Creek) contain coconspirator statements. The bid numbers submitted were written statements of the coconspirators that were vital to the success of and thus furthered the conspiracy.</p>		
31	September 23, 2005	Kenneth L. Rains and Jon Paul (J.P.) Smith
<p>C, E On September 23, 2005, during Rains' telephone conversation with Smith, Smith told Rains Martin's cell phone number. Rains wrote the cell phone number on the Martinez bid worksheet.</p>		
32	September 23, 2005	Kenneth L. Rains and Landon Martin
<p>C, E During the telephone call between Rains and Martin on September 23, 2005, during which Martin told Rains the bid numbers that B&H intended to submit to BP America, Rains wrote those numbers on the bid worksheets for the Lash Ute, Southern Ute, Martinez, Buford Wyatt, and Schofield projects.</p>		
33	September 26, 2005	Landon Martin
<p>C, A, AG, E Martin submitted B&H's bids to BP America for the five projects: Lash Ute; Southern Ute; Martinez; Buford Wyatt; and Schofield. He submitted almost identical bid prices which he had provided to Rains.</p>		

34	September 2005	
<p>E Printout of bid numbers submitted to BP America by B&H and Flint on the Lash Ute, Southern Ute, Martinez, Buford Wyatt and Schofield projects. The bid numbers on this document match almost exactly the numbers that Martin gave to Rains on September 23, 2005, and which Rains wrote on Flint's bid worksheets.</p>		
35	December 9, 2005	
<p>E On instructions of his boss, Chad Tidwell, John Mummery wrote a memorandum detailing his conversation with Jeff Kramme concerning Kramme's allegation that Rains was rigging bids with Smith.</p>		