

## Report to the Workers Inquiry

# The Political Conspiracy Behind the Bankruptcy of Detroit: Anatomy of a Crime

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*The Workers Inquiry into the Bankruptcy of Detroit and the Attack on the DIA & Pensions was held Saturday February 15 at Wayne State University. The WSWS published an initial report on the meeting on February 17. Today we publish an edited version of the report to the Inquiry delivered by Larry Porter, assistant national secretary of the Socialist Equality Party and chairman of the Workers Inquiry.*

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## Why was Detroit taken into bankruptcy?

In my report, I have the responsibility of uncovering the evidence of a crime.

In Detroit, throughout the country and internationally there has been an immense growth of social inequality, as described in the first report. This is not the product simply of abstract economic processes, but reflect definite class policies implemented by political parties and individuals, from the Obama administration on down.

This is extremely important to understand. This wasn't something that just happened. It wasn't because of so-called "market forces" that stand above society.

No, people made decisions. Detroit is an object lesson in the nature of the capitalist state. The Democrats and Republicans, the governing bodies, the courts are not neutral arbiters, but institutions that uphold class interests. Behind them stand the giant banks and corporations that control economic life and dictate policy.

Kevyn Orr's decision to throw the city into bankruptcy on July 18, 2013 was the outcome of a political conspiracy that was years in the making. It involved powerful banks, investment houses, law firms like Jones Day, Governor Snyder and his operatives, the former Mayor David Bing, officials from the Obama administration and the trade unions. This operation, which involved deliberate deception, blatant conflicts of interest, and flagrant violations of the law and the state Constitution, was sanctioned by US bankruptcy judge Steven Rhodes on December 3, 2013.

The news media has done everything in its power to conceal from the public the nature of this conspiracy and the implications it has for the working class in Detroit and the rest of the country.

As with any crime, it is critical to examine the crime scene. It is necessary to review the evidence in order to establish a timeline of events, compile a profile of the major conspirators, and expose their motives.

**The motive: The 2008 economic crisis was an opportunity for the ruling class to destroy long-held rights and benefits**

Detroit had already been devastated by decades of factory closings and mass layoffs in the auto industry, as Jerry White just described. By the way, I worked in the auto industry at Chrysler between 1976 and 1980. I witnessed the enormous anger and militancy of the workers, who would walk out of the plants at the drop of a hat over the difficult conditions. It wasn't unusual. That's what changed after 1980 with the Chrysler bailout.

The bursting of the subprime mortgage bubble and the financial crash of 2008 hit Detroit, like many cities and states across the country, very hard.

Between 2000 and 2012, the number of employed residents in Detroit fell by half, according to a report by the think tank DEMOS. The bulk of jobs were lost in 2008 alone. This sharply reduced tax revenues to the city and worsened the fiscal crisis.

Between 2005 and 2011, 67,000 foreclosures took place in Detroit. They affected 158,000 people in the city, a number equivalent to the entire population of Dayton, Ohio.

Due to budget cuts by the Snyder administration, Detroit lost \$67 million between 2010 and 2013, according to Demos. This alone accounted for nearly a third of the city's revenue losses.

The city's financial situation was worsened by the ballooning cost of debt servicing for bonds and financial swindles, such as the interest rate swaps the banks foisted on the city, which will be reviewed in another report today.

In response to the economic crisis, the Obama administration, following the lead of his predecessor, provided unlimited funds to the banks and financial houses. By one estimate, the total in cash, loans and loan guarantees provided by the government to the banks during the period October 2008 to December 2011 was over \$29 trillion.

However, in response to the crisis developing in the cities and states, the president made it clear there would be no bailouts. Instead, the crisis would be used to implement far-ranging demands of corporate America: sweeping wage cuts in the auto industry, the dismantling of public education, shifting health care costs onto the backs of workers and gutting social programs.

Six months into his presidency, Obama met with top corporate CEOs, and according to an interview in *Businessweek*, he discussed the need for a fundamental change in health care, public education and government operations. The government, Obama said, had to be "mean and lean" for the "21st century economy."

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The impact of the job cuts in the public sector under Obama has been

devastating. In the first three years of his presidency, public-sector jobs declined by 718,000, largely due to cuts by distressed states and local governments. This is a record number, one about which Obama has boasted, and only the second time in US history that the total number of public-sector jobs has fallen under an administration. The first was under Reagan.

Education under Obama has been especially hard hit, with more than 330,000 teachers and other public school employees losing their jobs. School districts have shut 4,000 public schools and the number of students enrolled in charter schools has more than doubled.

### **The State Budget Crisis Task Force investigation**

Very early on, the president's top economic advisors, including former Federal Reserve Chairman Paul Volcker, began to home in on public employee pensions as the next target. Volcker had overseen the devastating assault on industrial workers in the 1980s. Towards the end of the Carter administration, Volcker raised interest rates to 20 percent in order to precipitate a wave of layoffs and use mass unemployment to crush the resistance of workers to the destruction of their wages, benefits and other social rights.

He became co-chair of the State Budget Crisis Task Force, which issued a report in July 2012 noting that while company-paid pensions for private-sector workers had virtually disappeared—among private-sector workers, only 18 percent have defined benefit pensions—while the vast majority of public employees, 78 percent, were still covered by pension benefits.

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The panel was co-chaired by Richard Ravitch, another leading Democrat and former lieutenant governor of New York, who played a significant role in the New York City “bailout” of 1975-76, which slashed jobs and social services. Ravitch and Volcker were joined by a host of highly connected political operatives who served under the Reagan, Bush and Clinton administrations.

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The 2012 report complained that, “In 43 states, pension statutes are deemed by constitution, explicit statutory language, or implication to have created a binding legally enforceable contract between employer and employee.” By being defined as a contract, the report continued, pensions enjoy “protection under Article One, Section Ten of the US Constitution, which provides that no state may pass any law that diminishes or impairs a contract.”

In other words, the Obama-backed task force was complaining that public employee pensions enjoyed federal and state constitutional protections.

### **A solution: Bankruptcy as a means of slashing pensions**

Enter Jones Day, an international law firm that specializes in bankruptcy and counts among its clients Bank of America, UBS and other powerful financial interests. Having cut its teeth in a series of corporate bankruptcies that stripped workers of their pensions, the firm's partners began writing a number of papers and articles outlining how the Chapter 9 municipal bankruptcy law could be used to override constitutional protections for public employee pensions.

In one, titled, “An Overview of Chapter 9 of the Bankruptcy Code: Municipal Debt Adjustments,” from August 23, 2010, the authors

claimed, “current and future pension liability constitutes one of the largest problems facing municipalities. Considered to be virtually untouchable in states that treat pension benefits as ‘vested rights’ (and therefore not subject to unilateral amendment or termination based upon various Constitutional concerns), most efforts to reduce or modify these obligations *outside of chapter 9* end in failure or, at best, with minute changes. *The question remains, however, whether chapter 9 provides an opportunity to expand the circumstances under which the pension liability problems can be addressed.*” (Emphasis added).

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In March 2011, in another article by Jones Day attorneys, titled “Pensions and Chapter 9: Can Municipalities Use Bankruptcy to Solve Their Pension Woes?” and published in the *Emory Bankruptcy Journal*, the authors were more explicit. Two attorneys from the Atlanta office of Jones Day wrote: “The purpose of this Article is to identify certain tools and strategies offered by chapter 9 and to consider whether, individually or in unison, they may offer a real, workable solution to the overwhelming and seemingly unassailable pension obligations of many municipal debtors.”

This article addressed the estimated \$1-4 trillion in unfunded pension obligations owed to municipal workers throughout the US, which the ruling class wanted channeled into their own bank accounts.

Thus, Jones Day outlined its strategy to use the bankruptcy courts to gut pensions three years before Detroit was thrown into bankruptcy. From the time of his inauguration as governor of Michigan in January 2011, Republican Rick Snyder, a multimillionaire and former venture capitalist, would follow the Jones Day blueprint almost to a T.

### **The appointment of a financial manager**

Thus, we have a clear motive for the bankruptcy: to use the courts to tear up pension obligations that are otherwise protected by the state constitution. There were, of course, other aims. The attack on health care, cuts in city jobs, the privatization of city services, the “revitalization” of downtown Detroit, according to plans drawn up by billionaires like Dan Gilbert and Mike Ilitch. However, pension cuts were a very important target of this plan.

Another critical tool in the arsenal of the government was the state's antidemocratic emergency manager law. This will be reviewed in greater detail in a report to be given by Tom Carter, our legal expert. Suffice it to say that Michigan has been at the forefront of passing laws that allow for the appointment of unelected “managers,” who are given virtually unlimited powers to tear up contracts and impose the demands of the banks. Armed with this law, which was initiated by his Democratic predecessors, Snyder would work closely with Jones Day to appoint one of its own law partners—bankruptcy specialist Kevyn Orr—as the emergency manager of Detroit to shepherd the city into bankruptcy.

### **The timeline of the crime**

Here, I have to ask you to bear with me to review a timeline that has a lot of detail. There is so much material that has come to light as a result of the bankruptcy trial. The media has refused to highlight the most important information or to “connect the dots” and indict those responsible. In order to do so, we have had to wade through an enormous amount of information and put together what we believe to be the most

essential facts and a general timeline of how this conspiracy unfolded.

[Click for slide 7] The Democratic Party, the unions and their supporters claim the new emergency manager law used by Snyder was solely a Republican plot. In fact, Andy Dillon, the former Democratic speaker of the state House of Representatives, whom Snyder appointed as state treasurer, helped formulate Public Act 4—which replaced PA 72—from its inception. In his deposition in the bankruptcy trial, Dillon revealed that he had a hand in drafting the new law during discussions in the transition period between **November 2010 and January 2011**, when Snyder took office.

“We understood that PA 72 had some limitations, so there was a few folks during the transition looking at what you could do to Public Act 72 to improve it make it a better tool for the state... So my involvement was on the front end at high level thematic direction.”

In **January 2011**, Snyder was inaugurated as governor. As you will see, Snyder and Dillon, both former venture capitalists, would use the new law to throw Detroit into bankruptcy.

In **March 2011**, as stated earlier, Jones Day writes an article showing that Chapter 9 can be used to attack pensions benefits.

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On **March 16, 2011**, Snyder signed Public Act 4, which gives an emergency manager the power to tear up contracts and run a city as a financial dictator. While Michigan already had nine emergency managers overseeing four cities and five school districts, the old law was seen to be inadequate. Almost immediately, threats began to be issued that an emergency manager would be appointed for the state’s largest city, Detroit, unless city workers accepted massive concessions.

There are reports that during this time, then-Detroit Mayor David Bing, another millionaire and former CEO of Bing Steel, began holding secret meetings with Snyder and offered himself as a candidate for emergency manager.

In **December 2011**, Snyder and Dillon ordered a review of Detroit’s finances, warning that the city was running out of cash and had to make drastic cuts.

## 2012

In the beginning of **January 2012**, opponents of the emergency manager law began a campaign to collect signatures to overturn PA 4 in a statewide referendum.

In **March 2012**, investment banker Kenneth Buckfire—the founder of the investment and restructuring firm Miller Buckfire—was hired by the state to review Detroit’s finances. Buckfire invited Jones Day to join the team.

Jones Day attorneys later admitted that they positioned themselves to play a major role in the state’s restructuring and bankruptcy hearings involving Detroit. During the Detroit bankruptcy eligibility trial last fall, a letter was submitted showing that Corrine Ball, a leading figure at Jones Day, told fellow Jones Day attorney Jeffrey Ellman that the firm had provided 1,000 hours of free service to position itself for bankruptcy.

According to testimony by Kenneth Buckfire at the trial, in **March 2012** state officials and Jones Day attorneys began discussing filing for Detroit bankruptcy before a possible referendum on the emergency manager law. (See: “Buckfire: State, Jones Day firm discussed likely Detroit bankruptcy as early as March 2012.”)

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On **April 4, 2012**, following threats to impose an emergency manager, the Detroit City Council accepted a “consent agreement,” written by Jones Day attorneys, which imposed deep cuts and reduced the city workforce by 25 percent in 2012 alone. As then-City Council President Charles Pugh

told me at a hearing in March 2013, “The cuts were draconian. We put on the hat of the emergency manager ourselves.”

However, this was not enough. Snyder and Dillon were determined to throw the city into bankruptcy and did not want an agreement, even if it stole tens of millions of dollars from city workers.

In **August 2012**, the Michigan Supreme Court put the referendum on PA 4 on the November ballot. Opponents of the law submitted 226,000 signatures, well above the requirement of 161,000. The ruling took place after Republican opponents attempted to keep the measure off the ballot by using various technicalities, including the charge that the wording on the petition was printed in the wrong font size.

Concerned that the law would be overturned, officials from the state Treasury Department began drafting a replacement months before the referendum, according to a court motion filed by the Retired Detroit Police Members Association. The new legislation had two spending provisions attached to it, which Jones Day attorneys concluded would “immunize” it in the future from the state Constitution’s referendum provision.

In **October or November 2012**, Snyder’s shadowy chief advisor, Richard Baird, secretly began the search for an emergency manager for Detroit.

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On **November 6, 2012**, the emergency manager law was decisively defeated, with over 2.3 million people in the state voting to repeal the law. The opposition was widespread throughout the state, with 73 out of 82 counties, or 89 percent of the counties in Michigan, voting to overturn the law.

The vote exploded the lie, heavily promoted by the black political elite in Detroit and their pseudo-left supporters, that the issue was “black Detroit vs. the white suburbs.” In reality, opposition was deeply felt by workers of all races, who sensed the danger to their democratic rights from this dictatorial measure.

On **December 26, 2012**, seven weeks after the old law was defeated, Governor Snyder signed the redrafted bill, Public Act 436, into law. It was virtually identical to the old one, but was now referendum-proof.

## 2013: The fix is in!

With the new law set to take effect in March, there was no question that the fix was in to take Detroit into bankruptcy. Things began to heat up very quickly in the year 2013.

In **January 2013**, Jones Day offered its “pitch book” to Detroit and to state representatives to win the job of “restructuring counsel” for the city. The document outlined the “advantages” to be gained from the imposition of an emergency manager and the filing of Chapter 9 bankruptcy, citing a reduction in accrued pension benefits as one of the main goals.

[Click for slides 11 and 12] **January 2013** emails show that Snyder’s office and Bing discussed hiring Orr. An African American and a Democrat with close connections to Obama, the Jones Day lawyer had proven his ruthlessness as a lawyer representing Chrysler during the 2009 bankruptcy, when the Detroit auto maker wiped out tens of thousands of jobs and slashed wages and benefits.

In a **January 31** email, Dan Moss of Jones Day wrote to Orr: “It seems that the ideal scenario *would be that Snyder and Bing both agree that the best option is simply to go through an orderly Chapter 9.*” [Emphasis added].

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Also on **January 31**, Orr wrote an email to Jones Day law partner Corrine Ball saying, “Michigan’s new EM law is a clear end-around the

prior initiative that was rejected by the voters in November.” He added in another email that the new emergency manager law was “essentially a redo of the prior rejected law and appears to merely adopt the conditions necessary for a Chapter 9 filing.”

Jones Day lawyers were writing at this time as if the selection of Orr for emergency manager was a done deal. This was taking place as Snyder was making public statements that he had not chosen an emergency manager and was considering a number of options to avoid bankruptcy for Detroit, which he presented as a “last resort.” **February 20** emails between Baird and Orr were exchanged concerning the drawing up of an agreement with Mayor Bing called a “Summary Partnership,” to back the takeover of the city by an emergency manager. The selection of Orr was also discussed.

In exchange for his political support, Bing wanted Orr to retain the mayor’s executive team and their salaries and continue the corporate-backed plan to “downsize” the city and shut off services to impoverished areas. Bing, who had been a corporate director of DTE Energy before becoming mayor, also wanted Orr to complete the handover of the city’s public lighting system to the giant utility company.

A **February 22** email sent to Orr from Richard Baird, Snyder’s advisor, acknowledged that Orr was “already behaving as an agent of the state.”

On **February 25**, based on a request from Baird, who would not have done this without Snyder’s approval, Bing flew to Washington, DC for a secret meeting with Orr.

On **March 1**, Snyder announced that Detroit was in a state of emergency, paving the way for the appointment of an emergency manager.

On **March 8**, Bing’s office selected Jones Day as restructuring counsel. This was a blatant conflict of interest. Jones Day had written the book on taking cities into bankruptcy; it had worked closely with the state and one of its top lawyers was being primed to become Detroit’s emergency manager. Despite this, Bing insisted that the city hire the law firm and award it a multimillion-dollar contract to “represent” the people of Detroit.

On **March 14**, Snyder announced that he had chosen Orr as emergency manager for Detroit.

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With Snyder and Bing at his side, Orr made it clear he was good in bankruptcy court, declaring: “I have restructured anything as varied as horse farms to airlines to multi-billion-dollar financial conglomerates. These things are very painful. One thing everybody needs to know, chapter 9 bankruptcy is weighted toward municipalities. I don’t want to pull that plug unless I have to.”

He also suggested that he could do things that were not allowed in the Detroit City Charter. Adopted by the city’s voters, it placed restrictions on the privatization of essential services and the sell-off of public lighting and other assets. “I have looked at the City Charter,” he said. “I do recognize some of the impediments.”

In **April**, using inflated estimates, Orr announced that the crisis in Detroit was due to “legacy costs” related to retiree pension and health care benefits. The majority of Detroit’s 23,500 pensioners earn a poverty income of \$19,000 a year. Firefighters, who do not receive Social Security, receive \$30,000 a year.

On **June 10**, Orr spoke at a public meeting at Wayne State University in Detroit. When asked if pensions would be cut, he lied, saying they were “sacrosanct.” When he was later asked by the judge to explain this statement, Orr said he “wasn’t attempting to mislead anyone.” Even the judge protested, saying “What would you say to the woman now?” Orr responded, “I would say your rights are in bankruptcy now.”

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In a **July 10** email concerning an earlier draft of Orr’s planned bankruptcy filing, Dillon told Orr it “looks premeditated,” and argued that the state needed a better cover before Orr filed. “I don’t think we are

making the case why we are giving up so soon to reach an out-of-court settlement,” Dillon wrote. He advised Orr to “say facts got worse as we dug into the numbers... We don’t even say they rejected the city’s proposal. I think we may want a take it or leave it demand before we pull this trigger. I agree with the recommendation but I don’t think we made the case.”

In other words, a more convincing pseudo-legal fig leaf had to be created to conceal the conspiracy to throw Detroit into bankruptcy.

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On **July 18**, Orr, with the approval of Snyder, filed for bankruptcy. Our legal expert will review the controversial timing and circumstances of the filing. Suffice it to say that it was carried out in the illicit manner of the whole operation. A lawyer from Snyder’s office called a lawyer for a union, which was filing a motion in state court against the emergency manager law, and asked him to delay the filing. In the meantime, Orr’s legal team rushed to file the bankruptcy papers in federal court, thus putting on hold the state case.

Later in the summer, Orr hired Christie’s Auction House to begin the appraisal of the priceless collection at the city-owned Detroit Institute of Arts.

On **October 23**, the bankruptcy trial began. The Obama administration’s Justice Department filed a motion supporting the bankruptcy and opposing the constitutional challenges by retirees.

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On **December 3**, US Federal Court Judge Steven Rhodes ruled that Detroit was eligible for bankruptcy. He explicitly upheld the emergency manager law and, in a ruling that set a national precedent, he declared that state constitutions do not protect pensions from “impairment” by a federal bankruptcy court.

This timeline has exposed the long-planned operation to drive the city into bankruptcy and carry out a preconceived agenda, supported by both big business parties.

In his court ruling, Judge Rhodes was forced to acknowledge the compelling evidence of a political conspiracy. Rhodes referred to the “narrative” of those who opposed the bankruptcy. According to this narrative, which Rhodes made clear he did not ascribe to:

“The bankruptcy was the intended consequence of a years-long, strategic plan.

“Its genesis was hatched in a law review article that two Jones Day attorneys wrote.

“The plan was executed by the top officials of the State of Michigan, including Governor Snyder and others in his administration, assisted by the state’s legal and financial consultants—the Jones Day law firm and the Miller Buckfire investment banking firm.

“The goals of the plan also included lining the professionals’ pockets while extending the power of state government at the expense of the people of Detroit.

“The plan also saw the value in enticing a bankruptcy attorney to become the emergency manager, even though he did not have the qualifications required by PA 436.

“Another important part of the plan was for the state government to starve the City of cash by reducing its revenue sharing, by refusing to pay the City millions of promised dollars, and by imposing on the City the heavy financial burden of expensive professionals.

“The penultimate moment that represented the successful culmination of the plan was the bankruptcy filing. It was accomplished in secrecy and a day before the planned date, in order to thwart the creditors who were, at that very moment, in a state court pursuing their available state law remedies to protect their constitutional pension rights.”

This is exactly what happened.

Of course, this did not alter Rhodes’s decision that the city had filed in “good faith.” In making this decision, Rhodes merely affirmed that he was

on the side of the conspirators.

## The role of the trade unions

One other very important component must be included, and that is the role of the unions.

According to the official narrative in the media, the unions and the affiliated retiree organizations waged a determined campaign in the courts to halt the bankruptcy proceedings in order to save pensions and prevent other cuts. This, in fact, is a lie.

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The truth is, the unions from the beginning accepted the basic premise shared by Orr, Rhodes, Snyder and Obama that the working class had to pay for the economic crisis, and that the financial situation in Detroit justified major cuts to pensions and other benefits.

The American Federation of State, County and Municipal Employees union, which is closely allied with the Democratic Party, collaborated in the destruction of thousands of city workers' jobs over the past decade. In February 2012, AFSCME Council 25 President Al Garrett attempted to persuade Snyder to postpone plans to appoint an emergency manager by insisting that the unions were willing to impose \$180 million in concessions on their own members.

The central preoccupation of the unions has been to maintain their own position in the exploitation of the working class, to keep their role as labor contractors. They have accepted the premises of the bankruptcy from the beginning, complaining only that Dillon and Snyder did not engage in “good faith” negotiations with the unions to impose cuts in ways other than bankruptcy.

In November of 2013, the unions filed a motion jointly with the major creditors and financial institutions demanding the sell-off of the artwork at the Detroit Institute of Arts and other city assets. The motion began by insisting that all creditors, including the unions, “understand and support the City’s goals—assuming the City files an appropriate plan of adjustment.” The motion expressed the concern that the proposal being worked on by Orr could “engender lengthy and contentious litigation due to a failure to provide for monetization of [Detroit’s] non-essential assets, including the Art, potentially one of the City’s most valuable assets.”

In other words, the unions were threatening to file lawsuits against Orr’s plan not on the basis of cuts that it was implementing, but because it did not go far enough in selling off the art at the DIA. Expressing his contempt for the working class and its right to culture, Garrett declared to me, “You can’t eat art.”

As a sop to the unions, Orr, Snyder and the federal mediators are working on a “grand bargain” that would include handing over a half-billion-dollar health care investment fund to the unions, with the union executives tasked with imposing benefit cuts on workers. It is modeled on the UAW VEBA and was campaigned for by the UAW, even though the UAW has only a couple of hundred members among city workers.

All of this demonstrates that throughout the entire proceedings, the one voice that was not represented was the voice of the working class, the vast majority of Detroit’s population. It is for this reason that this information is so important.



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