

Cases closed on Flint water crisis criminal prosecutions without any convictions

James Brewer
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“The families of Flint will not be forgotten. We will provide the justice they deserve. And in Michigan, the system is not rigged ... There is one system of justice. It applies to everybody. Equally. No matter who you are. Period.” —Attorney General Bill Schuette, June 2016

“... justice delayed is not always justice denied.” —Attorney General Dana Nessel, June 2019

The fact that the people of Flint were poisoned by the water that came out of their taps beginning almost a decade ago is widely known by millions around the world. What has been harder to come by is the truth behind the decisions, lies and coverup of the events and holding those responsible to account.

The Michigan Attorney General’s office announced on Tuesday that its efforts to prosecute officials it charged with criminal offenses pursuant to the lead poisoning of the population of Flint have ended. Earlier that day, the State Supreme Court denied Attorney General Dana Nessel’s appeal to pursue charges against former Governor Rick Snyder.

This is the ignominious conclusion of seven and a half years of overblown promises of justice that began under Republican Attorney General Bill Schuette and continued through the Democratic administration of Governor Gretchen Whitmer, elected in 2018.

Just under a decade ago, to great fanfare, Flint Mayor Dayne Walling pushed the button that disconnected the city from its 50-year source of treated drinking water and began to fill the old municipal pipe system with improperly treated water from the polluted Flint River. It was pumped through the city’s antiquated water plant, which had not functioned for half a century. The facility was unable to provide the corrosion control necessary to prevent the caustic water from eating into the protective layer inside the pipes and leaching high levels of lead into Flint’s drinking water.

Protests over the foul-smelling water began almost

immediately. Every official responsible for the safety of the drinking water in what was called the Michigan Department of Environmental Quality (MDEQ) lied publicly that Flint’s water was perfectly safe to drink. Most of the residents of the city of 100,000 drank it. As a result, miscarriage and infertility rates went up—one of the first effects of widespread ingestion of lead. The longer term effects are not yet fully understood, but children are particularly susceptible to its deleterious effects. One of the largest outbreaks of Legionnaires disease in US history infected more than 100 and killed at least 12.

Through the efforts of residents themselves, outside scientists were contacted who conducted research on the drinking water and exposed the official lies of the MDEQ and the governor’s office, eventually forcing Snyder to mandate the return to the original water source, but not before toxic water was piped into Flint homes for 18 months.

Six months later, in April 2016, Schuette charged three lower-level officials with offenses related to the water crisis. By mid-2017, a total of 15 public officials were charged. Schuette hired attorney Todd Flood as special prosecutor to conduct the investigation and pursue the charges.

As in the majority of US states, the attorney general in Michigan is an elected office rather than an appointed one, so while Schuette served in the hated administration of Snyder, he was grooming his image as an opponent of the governor in preparation for his own unsuccessful candidacy in 2018.

After Schuette’s defeat in the gubernatorial election in November 2018, the lame duck attorney general’s office conducted a legally inexplicable wrecking operation on the prosecution of its case against the accused officials. Seven key defendants were offered plea deals, acquiescing to minor charges, supposedly to obtain their cooperation in the prosecution of other officials. This

makes them “untouchable” for further prosecution of Flint water-related crimes under the double jeopardy clause of the Fifth Amendment to the US Constitution.

With the transition to a Democratic administration, the new attorney general, Nessel, hired Fadwa Hammoud as solicitor general in charge of prosecuting criminal charges and fired special prosecutor Flood.

At a widely attended public meeting in June 2019 at a Flint UAW union hall, with a massive police presence, Hammoud declared that the cases were “flawed” and “all available evidence was not pursued.” Hammoud then dropped the criminal cases against the remaining eight defendants, promising to recharge some of them after their team’s investigation. The meeting was in effect a stonewalling of Flint residents, citing legal prohibitions on discussing details and asking them to “trust us.”

Dr. Marc Edwards, who heads the Civil Engineering Department of Virginia Tech University, conducted the 2015 independent water sampling project in Flint that was instrumental in exposing the lies of officials up to and including Governor Snyder. Edwards acquired and made public hundreds of documents showing criminal wrongdoing by officials charged with safeguarding the safety of the state’s drinking water.

In response to the official ending of the prosecutions, he told the *Detroit News*, “First, they let the true criminals off the hook, then they charged innocent people with horrible crimes, and after wasting tens of millions of dollars, everyone is now justifiably frustrated. Perhaps it is a fitting ending to this tragic tale of government failure and incompetence.”

In an editorial posted on his Flint Water Study blog at the time the Democratic prosecution team dropped the charges, Edwards said:

We were not surprised when the Michigan Attorney General’s office dropped all Flint criminal prosecutions last week due to weak evidence. Thirty months ago, we realized Special Prosecutor Todd Flood was so myopically focused on allegations of professors associated with the Flint Area Community Health and Environmental Partnership (FACHEP), that he was failing to gather appropriate evidence on actual Flint Water Crisis crimes...

Worst of all, the Michigan Department of Environmental Quality (MDEQ) employees, who arguably have the most criminal culpability for the

Flint Water Crisis (including doctored reports, wrongly invalidated samples and lying to the EPA in writing), were given plea bargains in exchange for their promise to testify against others. While we wonder if everyone charged at MDEQ was guilty of crimes, we believe that some were, and these employees are now returning back to work.

Edwards has charged that unethical behavior of FACHEP, and particularly its head, Shawn McElmurry, in acquiring millions in funding from the state, played a decisive role in diverting prosecutor Flood from pursuing those who directed and lied about the change in Flint’s water source to former state health director Nick Lyon and former chief medical executive Eden Wells, who, if they had any responsibility for lack of disclosure, it was because they listened to the lies of MDEQ officials.

“Starting fresh” with new prosecutions, Nessel and Hammoud assembled a list of nine defendants they pursued for indictments, including former Governor Snyder, who was charged with two misdemeanor counts of willful neglect of duty—each with a potential year sentence and/or \$1,000 fine. They chose to employ a one-man grand jury to procure the indictments. This is a special allowance unique to the state of Michigan, which is generally used for the prosecution of heinous crimes to prevent leaks of dangerous information.

It is the use of the one-man grand jury that the Michigan Supreme Court overruled and thus rejected the appeal from Hammoud.

The failure of the Democrats to obtain any indictments isn’t earth-shaking to Flint residents, who long ago have become disgusted with the judicial system’s inability to get justice. Real justice requires making victims whole. While city water tests have improved since 2015, many still refuse to drink it. The population of the city is economically trapped, especially since home values have never recovered from their collapse after the lead-in-water crisis became public. Once the model of working class prosperity, Flint has suffered from the most blatant crime of capitalism and capitalist justice.



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