



REPORT REGARDING THE
PROSECUTION OF
**THE FLINT
WATER CRISIS**

Michigan Department of Attorney General
w/ Foreword by Attorney General Dana Nessel

August 25, 2026

Foreword

The Flint Water Crisis was a man-made tragedy of epic proportion. Routines were disrupted, trust waived, lives were lost, many now struggle with significant developmental challenges and health effects, and everyone lives with the stigma attached to the Crisis. My heart breaks for this loss and suffering.

My heart also breaks because I recognize that, to a large extent, justice has evaded the people of Flint. They deserved answers, and I had hoped these answers would come to the people through a jury trial—ultimately, with all the facts laid bare in a public court of law, that the men and women of a jury would make the final decisions on accountability and criminal culpability. That will never be possible, because of a single Michigan Supreme Court ruling that upended a century of legal precedent involving one-person grand juries.

Regrettably, today, more than ten years since the Flint Water Crisis began, the only offering I can make to the people of Flint is to give them this report, which documents what happened in their city as uncovered in the course of my office's yearslong investigation. It is not the justice they deserve, but I hope it will offer some clarity about the decisions made by those in government who allowed the Flint Water Crisis to happen.

The crisis was in full swing by the time I was running for Attorney General, so naturally it was a matter of great importance to me and the people of our State. On the campaign trail I made countless remarks to crowds in every corner of Michigan, promising that, if elected Attorney General, I would prioritize justice and accountability for the Flint Water Crisis. When I took office in January of 2019, nearly five years after the dawn of the crisis, I was faced with an immediate, difficult, and consequential choice—whether to helm the criminal investigation and prosecutions or to lead the state's defense in the people's historic civil lawsuit for monetary compensation for the harms they had suffered. I decided to lead the civil litigation defense in order to be a part of reaching a settlement agreement with the people of Flint. A settlement was reached, providing a partial measure of justice to those who were harmed.

Having chosen to lead the civil litigation, I could not also lead the State's criminal prosecutions. My office had to erect a conflict wall that separated the civil settlement team and me from the criminal prosecutions. So although I had appointed impressive and experienced attorneys to manage the prosecution, I was not allowed to contribute to the prosecutorial efforts underway in my own office. Nor was I privy to the fruits of their investigation or the decisions that would define and shape the ongoing cases. My knowledge of the cases, as was true for the people of Flint, came only from media

reporting and public court filings. This was the heavy price of my choice to be involved in the settlement on behalf of the people. It is a burden I have carried throughout my administration and will surely carry beyond.

Upon the closure of our criminal cases, I—along with the people of Flint and leaders across the globe—needed answers: information about what had happened, what decisions had been made, and what the investigation had uncovered. And so the idea for this report was born.

At this juncture I wish to express my appreciation to the many public servants—investigators, prosecutors, attorneys, assistants, and support staff—who, for years, worked tirelessly in search of answers and accountability. I am additionally thankful to those who prepared this last labor. This report is not the justice the victims of the Flint Water Crisis deserve. Nor does it provide answers to every question. But it is the fullest measure of accountability I can offer to the people of Flint and those who cherish justice everywhere.

A handwritten signature in blue ink that reads "Dana Nessel". The signature is fluid and cursive, with the first name "Dana" and last name "Nessel" clearly distinguishable.

Dana Nessel
Michigan Attorney General

The Flint Water Crisis

Table of Contents

Table of Contents	1
Introduction	3
The Flint Water Crisis.....	5
The Flint Water Crisis Teams.....	6
The Office of Special Counsel (OSC).....	6
The Flint Water Team.....	7
The Flint Water Team Investigation	12
Scope of Investigation	12
Incident Reports	13
Digital Forensic Examinations	13
Investigative Metrics.....	14
Medical Panel Review of Deaths During the Flint Water Crisis	14
Leaving No Stone Unturned	19
The Discovery Process, N1Discovery, and the Issue of the Taint Team	21
N1Discovery	21
The Review Process	22
The Taint Team	26
Issuance of Criminal Charges	28
OSC-Issued Criminal Charges.....	28
The Flint Water Team Takes Control/ Terminating the OSC Investigation.....	29
The One-Person Grand Jury	33
Choosing to Use the One-Person Grand Jury Process.....	35

The Rules of the One-Person Grand Jury	38
The One-Person Grand Jury Process	38
One-Person Grand Jury-Issued Criminal Charges.....	39
Jarrold Agen	41
Gerald Ambrose	43
Richard Baird	49
Howard Croft	55
Darnell Earley	59
Nick Lyon.....	63
Nancy Peeler.....	69
Former Governor Richard Snyder	74
Eden Wells	82
<i>People v Peeler</i> and its Aftermath	90
The Felony Cases.....	92
The Misdemeanor Cases	93
Declining to Pursue Charges After the Final Dismissal.	94
Statute of Limitations	94
Order Requiring Use of a Taint Team.....	95
Additional Costs of Prosecution.....	96
Conclusion	100

Introduction

The impact of the Flint Water Crisis cannot be overstated. Victims of this tragedy have died or suffered and continue to endure the impact of illnesses related to exposure to lead, potentially lethal bacteria, and chemicals that form when disinfectants react with natural chemicals in water. The full scope of the damage to the most vulnerable victims—children who unknowingly drank this lead-laced water from their homes—may not be known for decades. The City of Flint, and its residents, have been forever changed by what can only be described as one of the worst man-made environmental catastrophes of our time.

Equally unprecedented was the massive investigation and attempted prosecution of those whose actions the Michigan Department of Attorney General concluded caused or exacerbated this catastrophe. The information contained within this report represents the facts and circumstances surrounding the investigation and the attempted prosecution of those responsible for the Flint Water Crisis. Unfortunately, the goal of obtaining justice for the City of Flint and its residents was not achieved. It is the hope of the Department that the victims of this crisis will take some solace in the publication of this report detailing the inner workings of the investigation and the Department's efforts at obtaining justice.

While the results of this investigation led to information warranting a good-faith basis for prosecution, it is important to note that the allegations contained within this report are just that—allegations. The defendants who were charged as a result of this investigation were never convicted and are presumed innocent.

The report contains a significant amount of information that has been redacted (i.e. blacked out). Redactions were done in accordance with MCL 767.4, which prohibits the release of information presented before the one-person grand jury, and MCL 767A.8, which prohibits the release of information obtained through the use of investigative subpoenas. Testimony presented to the one-person grand jury and documents obtained as a result of one-person grand jury subpoenas are prohibited from being released, as is information obtained through an investigative subpoena. Only an act of the Legislature can change this.

Statements, documents, and other information obtained without the assistance of the one-person grand jury or investigative subpoenas, however, may be released. This is true even if those documents were later presented before the one-person grand jury, which is why they have largely not been redacted.¹

¹ Contained within these documents are a number of autopsy reports from individuals whose deaths were not related to the Flint Water Crisis. Because these autopsy reports do not shed light on the investigations or prosecutions arising out of the Flint Water Crisis, we have redacted these reports out of respect for the privacy of the deceased individuals.

This document has been created, for historical purposes, to explain the decisions that were made and the reasoning behind them. At the time of the creation of this report, however, many of the key members of the Flint Water Team, both investigative and prosecutorial, were no longer with the Michigan Department of Attorney General. Thus, the information within this document represents the best-understood rationalizations for decisions that were made, given the available information.

The Flint Water Crisis

In 2011, Governor Richard Snyder declared the City of Flint to be in financial emergency and appointed an Emergency Manager to oversee the City's finances. One of the matters to be reviewed by the Emergency Manager was the source and cost of Flint's water. For decades, the City of Flint purchased its water from the City of Detroit and the Detroit Water and Sewerage Department. In 2013, Ed Kurtz, the Emergency Manager at the time, determined that it would be most cost-effective for the City of Flint to end its relationship with the City of Detroit and find a new source for its water. Subsequent Emergency Manager Darnell Earley later agreed to the decision to use the Flint River as the new source, even though the City of Flint's water treatment plant had not been used for decades. Thus began a chain of events that would result in the residents of the City of Flint being forced to drink, bathe themselves and their children in, prepare food with, and otherwise consume water containing lead, potentially lethal bacteria, and total trihalomethanes² – raising questions about a tie to Legionnaires' disease outbreaks in Genesee County.

Soon after news of the crisis broke, then-Attorney General Bill Schuette established two teams to handle legal proceedings related to the crisis. The Department of Attorney General would be responsible for the civil defense of the Governor and various state departments, who might become involved in civil litigation. AG Schuette appointed Todd Flood to head the Office of Special Counsel (OSC), which would handle the criminal investigation and prosecution of those accused of wrongdoing as it relates to the crisis.³ According to AG Schuette, the OSC was used to prevent conflicts between the investigation team and the civil defense teams. The OSC investigated and ultimately brought charges against multiple defendants related to their involvement in the crisis. In November 2018, Dana Nessel was elected to serve as Michigan's 54th Attorney General, leading to wholesale changes in how the Flint Water Crisis criminal cases were handled.

Shortly after AG Nessel took office in January 2019, the Flint Water Team was formed. The Attorney General selected then-Solicitor General Fadwa Hammoud and Wayne County Prosecutor Kym Worthy to lead the criminal investigation and prosecution team. The Attorney General, on the other hand, led the Department's civil litigation team, responding to lawsuits filed against the State as it relates to the crisis as well as pursuing civil litigation against Veolia North America and others. Given the conflict wall established at the Department—with

² Total trihalomethanes are a group of chemicals that form when disinfectants like chlorine or ozone react with natural chemicals in water. They are a type of disinfection byproduct and are present in most chlorinated water supplies at low levels. Testing after the water for the City of Flint was switched from the Detroit Water and Sewerage Department to the Flint River showed much higher levels of total trihalomethanes than expected in normal chlorinated water supplies.

³ Prior to serving as head of the OSC, from 1998-2002, Flood was an Assistant Wayne County Prosecutor. In 2002, Flood left the prosecutor's office and formed his own firm, where he has remained.

the Flint Water Team led by Hammoud and Worthy on one side and the civil litigation team led by AG Nessel on the other—the Attorney General did not oversee or become involved with the Flint Water investigations and prosecutions.

After Worthy and Hammoud were charged with leading the Flint Water Team, they met with Flood to discuss the Flint Water Crisis criminal cases. At some point, Flood tendered a lengthy transition memorandum, and the parties were briefed on the status of the cases. Appendix A – Flood Transition Memo.

The Flint Water Team was comprised of investigators from multiple jurisdictions as well as Assistant Attorneys General and Special Assistant Attorneys General. As previously noted, AG Nessel was not a member of the Flint Water Team; instead, she led the Department of Attorney General’s civil litigation team.

On April 14, 2019, because of concerns regarding the OSC’s handling of the Flint Water Crisis’ criminal cases, the Flint Water Team took complete control of the investigation. Flood was dismissed, the OSC was dissolved, the pending criminal cases were dismissed, and a new and more encompassing investigation into the Flint Water Crisis was launched.

The new investigation led to the discovery of tens of millions of documents that were the source of thousands of additional pages of evidence, the empaneling of a one-person grand jury, and charges brought against nine defendants. While the decisions that led to these events were made in accordance with the law as it then stood, the Michigan Supreme Court ultimately upended decades of precedent upholding the use of one-person grand juries, requiring the dismissal of the cases.

The Flint Water Crisis Teams

The Office of Special Counsel (OSC)

In January 2016, AG Schuette announced he was opening an investigation into the events leading to the Flint Water Crisis. “The purpose of the investigation is to determine what, if any, Michigan laws were violated in the process that resulted in the contamination crisis[;]” “[w]ithout fear or favor, I will carry out my responsibility to enforce the laws meant to protect Michigan families, and represent the citizens of Flint,” AG Schuette said in a press release. See Egan, *AG Schuette opens investigation into Flint water crisis*, Detroit Free Press (Jan. 15, 2016). Shortly thereafter, AG Schuette appointed Flood to investigate the crisis and serve as the OSC. The OSC investigative team was led by Andy Arena, a retired FBI agent who was appointed by AG Schuette.

Due to conflicts between the criminal and civil matters resulting from the Flint Water Crisis, it was clear that a conflict wall needed to be erected within the Department of Attorney General to separate attorneys handling civil matters

related to the crisis from those involved in the criminal investigations and prosecutions. But in a very unusual move, AG Schuette excluded all attorneys in the Department from participating in the criminal cases, instead appointing Flood, thus preventing any assistance or oversight by the numerous experienced career prosecutors at the Department.

The Flint Water Team

Once the Flint Water Team took over the investigation from the OSC, a new investigative team was put into place. For the first three years of its existence, the Team was led by Supervisory Special Agent (SSA) Jeffrey Seipenko, the only certified law enforcement officer for the OSC, and he served as the Officer in Charge (OIC) in all OSC-charged cases. SSA Seipenko had more than 32 years of law enforcement experience, including 29 years with the Dearborn Heights Police Department, where he retired at the rank of Captain and was the leader of their Investigative Services Division. SSA Seipenko had decades of specialized investigative experience where he managed and directed complex criminal investigations including narcotic and surveillance teams, detective units, special operations, and internal affairs investigations.

SSA Seipenko's institutional knowledge allowed him to manage and direct all future investigative assets, which made him an invaluable member of the team.

When the Flint Water Team took control of the investigation, SSA Seipenko was tasked with strengthening the team with certified law enforcement officers employed by the Department of Attorney General. In pursuing this objective, he selected several highly skilled professionals, including Special Agents (SA) Aubrey Sargent, Robert Menard, and Sam Miller.

SA Sargent came to the Department after 30 years with the Detroit Police Department, having worked in a variety of capacities, including the FBI Violent Gang Task Force; multiple homicide, narcotics, and arson investigation units; the Commercial Auto Theft Section with the Wayne County Prosecutor's Office; and executive protection details.

SA Robert Menard had a combined 35 years of law enforcement and Marine Corps experience. He was a former Marine Sergeant, holding positions as a weapons platoon leader and combat skills instructor and serving in Operation Desert Storm. During his 19 years at the Livonia Police Department, Menard was assigned to numerous roles as both an officer and a supervisor, including Field Training Officer/Supervisor, SWAT operator and team leader, Patrol Division OIC, lead investigator in the Department of Attorney General's Investigative Division, OIC of Special Operations Unit, and member of Federal Bureau of Investigations (FBI) Task Forces.

SA Sam Miller came to the Department having previously served as a member of the Michigan State University Police Department in the role of Field Training Officer, Special Victims Unit Road Patrol member, background investigator, crime scene technician, detective, and lead detective. SA Miller also had extensive training in trauma-informed investigations, Forensic Experiential Trauma Interview, the neurobiology of trauma, sexually motivated crimes, crimes against children, hate crimes, and forensic interviewing. When SSA Seipenko left the Department in February 2021, SA Miller took over the role of OIC for the Team.

The investigation was also fortunate to receive assistance from task force officers from other local law enforcement partners, including, Detective Demetrius Brown (Detroit Police Department), Detective Lieutenant Donald Farris (Wayne County Sheriff's Department), and Detective Stanley Kulikowski (Dearborn Police Department).

The Flint Water Team was made up of Assistant Attorneys General, Special Assistant Attorneys General, investigators, and support staff.⁴ Over time, the size of the Team changed based on the needs and the tasks to be performed. Throughout the investigation, as many as 20 attorneys worked on the Flint Water Team, but as litigation progressed, the Team began to shrink in size, down to a core group of attorneys tasked with determining strategy, drafting briefs, and presenting arguments to the various courts.

Solicitor General Fadwa Hammoud joined the Department in 2019. In addition to leading the Flint Water Team, Hammoud oversaw all of the Department's appellate cases, which included creating strategy and crafting briefs in all matters. Hammoud successfully argued before the U.S. Supreme Court in *Brown v Davenport*, 96 US 118 (2002). And in 2022, she was named Deputy Attorney General, a position of oversight for all divisions within the Department.

Prior to joining the Department, Hammoud spent nine years as an Assistant Prosecuting Attorney in the Wayne County Prosecutor's Office. While there, she helped establish and supervise the Business Protection Unit and prosecuted cases involving organized retail crime, homicide, and other capital charges.

Wayne County Prosecutor Kym Worthy is a nationally recognized figure, known for pursuing justice and fighting for victims' rights. Initially appointed by the judges of the Wayne County Circuit Court, Worthy is now the longest serving elected prosecutor of color in the United States. Prior to her appointment, Worthy served as a judge for the Detroit Recorder's Court (now the Wayne County Circuit Court) from 1994 to 2003. Before her time on the bench, Worthy was an Assistant

⁴ Not all members of the Flint Water Team have been added. Concerted effort was made to identify all persons who worked on the Team, but we recognize that we may have inadvertently left members off.

Prosecuting Attorney with the Wayne County Prosecutor's Office for 11 years. It is no exaggeration to say there is almost no area of criminal law that Worthy has not touched upon during her extensive career.

Assistant Prosecuting Attorney Molly Kettler came to the Flint Water Team with over 20 years of experience at the Wayne County Prosecutor's Office. Kettler was made a Special Assistant Attorney General. During her time in Wayne County, Kettler was promoted to Principal Attorney and, ultimately, Deputy Chief of the Special Operations Division. Kettler handled only the most serious and complex criminal prosecutions.

Alexandria Casperson joined the Department in 2019 as an Assistant Attorney General in the Criminal Trials and Appeals Division. In addition to working as part of the Flint Water Team, she handled public integrity, criminal sexual conduct, wrongful imprisonment, expungement, and Job Court cases.

Prior to joining the Department, Casperson worked as an Assistant Prosecuting Attorney in the Wayne County Prosecutor's Office from February 2015 to August 2019. While there, she focused on public integrity, criminal sexual conduct, and community prosecution cases. From 2016 to 2019, Casperson was the Executive Director of the Wayne County Mortgage and Deed Fraud Task Force.

Sunita Doddamani joined the Department in 2019 as an Assistant Attorney General in the Criminal Trials and Appeals Division. In addition to working on the Flint Water Team, Doddamani distinguished herself with her prosecution of other cases, including those charged with plotting to kidnap Governor Gretchen Whitmer. She was subsequently appointed to head the Department's Hate Crimes & Domestic Terrorism Unit.

Prior to joining the Department, Doddamani spent 15 years as an Assistant Prosecuting Attorney in both the Wayne and Macomb County Prosecutor's Offices, where she prosecuted dozens of capital cases from investigation all the way to conviction. Doddamani has also taught courtroom technical skills since 2007.

Gallant Fish joined the Department in 2019 as an Assistant Attorney General, primarily handling wrongful imprisonment cases. Prior to joining the Department, Fish clerked for the Michigan Supreme Court from 2017 to 2019, analyzing briefs and drafting opinions on matters before the Court.

Robert Ianni joined the Department as an Assistant Attorney General in 1974. He not only brought a wealth of experience as a prosecuting attorney but also had extensive experience with the one-person grand jury process. Ianni spent 19 years as the Chief of the Criminal Division and later headed the Consumer Protection Bureau. After his retirement from the Department as a full-time

assistant attorney general in January 2015, Ianni continued as a contract employee, managing the Department's contracts with Special Assistant Attorneys General.

Eric Jenkins joined the Department in 2021 as an Assistant Attorney General in the Criminal Trials and Appeals Division. He worked primarily on the Flint Water cases while also handling other criminal matters. Prior to joining the Department, Jenkins was an Assistant Prosecuting Attorney in the Van Buren County Prosecutor's Office from 2013 to 2021, where he prosecuted a wide variety of offenses – from misdemeanors to capital cases.

Christopher Kessel joined the Department in 2021 as a Special Assistant Attorney General, working solely on the Flint Water cases. In 2022, he joined the office full-time as an Assistant Attorney General in the Solicitor General Division. In 2023, Kessel joined the Criminal Trials and Appeals Division.

Prior to joining the Department, Kessel owned and operated Chris Kessel Law from 2017 to 2021, where he specialized in criminal defense and family law. Kessel often represented clients charged with the most serious offenses, including murder and other violent and sexually assaultive crimes, drug trafficking and possession, and fraud and embezzlement. From 2012 to 2017, Kessel was partners with Dana Nessel at Nessel and Kessel Law, defending clients charged with all manner of criminal offenses (state and federal). From 2008 to 2011, Kessel worked at the Legal Aid and Defender Association, representing the indigent population charged with felony offenses in Wayne County. Kessel was also in the unique position of being the only member of the Flint Water Team who had defended clients in one-person grand jury cases.

Ortal Lieberman joined the Department in 2019 with the formation of the Flint Water Team, staying on to continue the work she had previously performed with Flood and the OSC. She worked in the Criminal Trials and Appeals Division as a Data Analyst, helping to collect, organize, decipher, and then disseminate all of the discovery relating to the Flint Water Crisis. Lieberman has worked both in the United States and internationally and has been recognized by her peers for her work in the field of data analysis.

Bryant Osikowicz joined the Department in 2019 as an Assistant Attorney General in the Criminal Trials and Appeals Division. Prior to joining the Department, Osikowicz was an Assistant Prosecuting Attorney in the Oakland County Prosecutor's Office from 2011 to 2019, working in the Narcotics Division handling high-level drug cases. He was also responsible for training newly hired assistant prosecuting attorneys. In 2023, he was appointed to serve as acting Criminal Justice Bureau Chief.

Melissa Palepu joined the Department in 2019 as an Assistant Attorney General in the Criminal Trials and Appeals Division. She soon became an Attorney

Specialist, handling human trafficking and child abuse cases. At the time of this report, she is the Chair of the Michigan Human Tracking Commission. Prior to joining the Department, Palepu was an Assistant Prosecuting Attorney in the Wayne County Prosecutor's Office from 2011 to 2018, working in the General Trials Division and the Child Abuse Unit. From 2018 to 2019, Palepu was the Legal Director for the Wayne County Land Bank.

Alexandra Peterson joined the Department in 2019 as a Special Assistant Attorney General, working solely as a member of the Flint Water Team. In December 2019, she joined the Department as an Assistant Attorney General, working in the Solicitor General Division. In 2021, Peterson joined the Criminal Trials and Appeals Division. Prior to joining the Department, Peterson was employed at Flood Law from 2016 to 2019, specializing in criminal law. While at Flood Law, Peterson was also the City Prosecutor for the City of Woodhaven.

Dan Ping joined the Department in 2018 as an Assistant Attorney General in the Criminal Trials and Appeals Division. In 2020, he moved to the Corporate Oversight Division. Prior to joining the Department, Ping served as a law clerk to Judge Ralph Guy, U.S. Court of Appeals for the Sixth Circuit, from 2017 to 2018. From 2015 to 2017, Ping served as a law clerk to Judge Mark Goldsmith, U.S. District Court for the Eastern District of Michigan. From 2013 to 2015, Ping served as a law clerk to Chief Justice Robert Young, Michigan Supreme Court. Ping was admitted to the New York Bar in 2012, after which he worked at Gersowitz Libo & Korek in New York as a plaintiff's attorney, handling cases touching on a variety of areas of law. From 2012 to 2013, Ping worked at Entwistle & Cappucci, a firm specializing in complex corporate, securities, and governmental affairs cases.

Gage Wakula joined the Department in 2019, immediately after graduating from the Wayne State University School of Law, as an Assistant Attorney General in the Criminal Trials and Appeals Division.

Joyce Wilson joined the Department in 2019 to serve as a victim advocate to the Flint Water Team and to respond to concerns of the Flint Water Crisis.

Machhadie Assi joined the Department in 2019 to serve as a victim advocate to the Flint Water Team and to respond to concerns of the Flint Water Crisis.

The Flint Water Team Investigation

The investigation into the Flint Water Crisis was one of the most complex and comprehensive investigations in Michigan's history. Recognizing the task before them, the Flint Water Team, led by Hammoud and Worthy, identified investigatory needs, developed systems, and oversaw the implementation of evidence handling and investigative protocols to ensure the highest caliber investigation. Utilizing investigative techniques and leveraging their collective expertise, the Team identified and analyzed evidentiary leads, which dictated the course of the investigation. Throughout the investigation, the Team memorialized investigative steps in incident reports, cataloging and preserving them in accordance with industry standards in criminal investigations.

Scope of Investigation

The Flint Water Team pursued a considerable amount of evidence not previously examined by the OSC. The Team expanded the scope of the investigation by executing a series of new search warrants and taking possession of millions of documents and hundreds of new electronic devices. The Team's efforts produced a truly comprehensive body of evidence related to the Flint Water Crisis, which was absent from the initial investigation.

Because of the volume of material discovered by the Flint Water Team, a meticulous approach was necessarily adopted to collect, document, and analyze a vast array of data. More than 220 incident reports were generated, each detailing various aspects of the inquiry and actions taken by investigators.⁵ Search warrants were secured facilitating access to critical documents, premises, and electronic records essential for a thorough examination of pertinent evidence.

Among the many search warrants the Team executed, the Team took the extraordinary step of executing search warrants on civil divisions of the Department of Attorney General.⁶ This historic step demonstrates the Flint Water Team's commitment to take all necessary steps to discover relevant evidence.

Diverse types of evidence were gathered and scrutinized, encompassing correspondence between officials and stakeholders, financial records, regulatory documents, electronic devices, and other records. These pieces of evidence were instrumental in compiling the timeline of events, identifying systemic failures, and uncovering responsible parties.

The Team conducted and participated in more than 200 interviews with key individuals, including government officials, community members, health experts,

⁵ These reports have been attached to this report. See Appendix B – Investigator Reports.

⁶ Due to the conflict walls that were erected within the Department, the Flint Water Team could not simply access records that were in the Department's custody, and so a warrant was necessary.

and environmental advocates. These interviews provided invaluable firsthand accounts, perspectives, and testimonies, which helped shed light on the decision-making processes, communication breakdowns, and the impact of the crisis on the City of Flint and its residents.

By systematically collecting, documenting, and analyzing this wealth of data, the investigation was able to uncover crucial details, reveal systemic failures, and contribute to the pursuit of accountability and justice in addressing the Flint Water Crisis.

Incident Reports

Throughout the investigation, the Team's actions were documented in incident reports, which served as a chronological record of the investigation's progress and findings. Each report detailed the methodologies used, including data-collection techniques, protocols, interview summaries, forensic analyses, and reviews. Additionally, these reports provided a comprehensive overview of the evidence gathered and highlighted key findings, discrepancies, and areas of concern.

By maintaining detailed documentation, investigators were able to ensure transparency, facilitate collaboration among Team members, and provide a clear roadmap for further actions and decision-making throughout the investigative process.

Digital Forensic Examinations

The purpose of digital forensic examination is to gather, analyze, and present digital evidence in a manner that is legally sound, scientifically rigorous, and ethically responsible, with the aim of supporting investigations and legal proceedings. During the investigation, the assistance of SA Brian Laity was utilized, as he was specifically trained as a Digital Forensic Examiner. SA Laity was enlisted to ensure the proper data collection from mobile devices and computers and to report the contents in their entirety for the Team to review.

Investigative Metrics

<i>Number of Reports by Type</i>	
Arrest	9
Follow-Up Grand Jury Interview	2
Follow-Up Interview	40
Grand Jury Interview	49
Interview	113
Investigative Subpoena	5
Search Warrant	29
Subpoena Duces Tecum	22
Incident Reports	220

<i>Pieces of Physical Evidence by Type</i>	
.pst file	1
Cell Phone	177
Desktop	61
Documents	192
DVD	6
External HD	7
Flash Drive	18
External Hard Drives	17
iPad	103
Laptop	186
Server	1
Surface	14
Other Evidence	23
CD ROM	1
Recorded Interview	102
Extraction	81
Computer Hard Drive	18
Safe Keeping	52
E-Mail Account	4
Scene Photos	3

As discussed, the investigation yielded many different types of physical evidence, with the most frequent being physical documents (192), followed closely by laptops (186), cell phones (177), and iPads (103). A significant number of recorded interviews (102) were also collected. The total count amounted to 1,067 pieces of physical evidence on top of the millions of documents obtained digitally.

Medical Panel Review of Deaths During the Flint Water Crisis

In addition to the millions of documents reviewed, the Flint Water Team also executed a search warrant on Michigan Department of Health and Human Services (MDHHS) in 2019 to obtain the names of every person in the City of Flint who contracted Legionnaires' disease after the switch in water source. Legionnaires' disease is a respiratory disease, often encountered in pneumonia, that is caused by waterborne legionella bacteria. It is spread through the aspiration of aerosolized

water particles. Legionella bacteria occur naturally in freshwater but can impact water systems due to various factors including the free chlorine levels decrease, when there is slow or no water movement such as large buildings, and in certain high temperatures. MDHHS is legally obligated to track certain diseases and outbreaks, Legionnaires' disease being one of them.⁷

Search warrants were also executed for the medical records of all persons identified as contracting Legionnaire's Disease, as well as death certificates for those who were deceased at the time of the search warrant. It was determined by the Flint Water Team that of the approximately 87 total people who were identified by MDHHS as having contracted Legionnaires' disease, 40 had since died.⁸ Then, in the fall of 2019, the Team assembled a panel of three academic physicians to review the deaths of the 40 individuals who were diagnosed with Legionnaires' disease in Flint between April 25, 2014 and October 16, 2015. The panel was comprised of two nationally recognized experts in infectious disease – Dr. Julio Ramirez and Dr. Jose Vazquez – and one nationally recognized pulmonary and critical care physician – Dr. Andrew Shorr.

Dr. Ramirez graduated from the National University of La Plata School of Medicine in Buenos Aires, Argentina in 1976. He served as a resident at the Lincoln Medical and Mental Health Center from 1984 to 1987 and completed a Fellowship in Infectious Diseases at the University of Louisville in 1989. Dr. Ramirez was certified by the American Board of Internal Medicine in Internal Medicine and in Infectious Disease and is currently affiliated with several hospitals in Louisville, Kentucky.

Dr. Vazquez graduated from the Mother and Teacher Pontifical Catholic University in Santiago, Dominican Republic in 1985. He completed his internship and residency at Finch University of Health Sciences/Chicago Medical School in 1986, previously taught at Wayne State School of Medicine, and served as a senior physician at Henry Ford Hospital. Dr. Vasquez was certified by the American Board of Internal Medicine in Internal Medicine and in Infectious Disease and is currently the Chief of Infectious Diseases at Augusta University.

Dr. Shorr graduated from the University of Virginia School of Medicine in 1994. He completed his internship (1995), residency (1996), and fellowship (2000), all at the Walter Reed National Military Medical Center in Bethesda, Maryland. Dr. Shorr was certified by the American Board of Internal Medicine in Critical Care and in Pulmonary Disease and is currently the Section Director of Pulmonary

⁷ MCL 333.5111 and Reportable Diseases in Michigan (https://www.michigan.gov/-/media/Project/Websites/mdhhs/Folder2/Folder97/Folder1/Folder197/Reportable_Diseases_Michigan_by_Condition.pdf?rev=2675c95cf938417ebad8a6398b681a8a).

⁸ See Appendix C – FACHEP Assessment of the Legionnaires' disease outbreak in Flint, Michigan

and Critical Care Medicine and Director of the Medical ICU at MedStar Washington Hospital Center in Washington, D.C.

The Team made the decision to not seek any criminal charges for those who died in the first wave of the Legionnaires' disease outbreak. It was determined that there was not enough evidence to prove beyond a reasonable doubt that any of the defendants had early enough notice of the first outbreak that they could have prevented the deaths that occurred in the first wave.⁹ But the Team determined that all defendants were aware of the disease by the beginning of wave two.¹⁰

Each doctor independently reviewed the medical records for all the potential victims who died from Legionnaires' disease, collectively compared their individual conclusions, and then came to a consensus regarding the cause of death using a scientific adjudication method. The panel's methodology and results were discussed in a report provided to the Flint Water Team in June 2020. See Doc 86 - Report to the Solicitor General Regarding Deaths Related to Legionnaires' during Flint Water Outbreak. [REDACTED]

The panel categorized the Legionnaires' death cases into 3 groups:

Group 1: Legionnaires' disease was the direct cause of death.

Group 2: Legionnaires' disease contributed to or accelerated death.

Group 3: Legionnaires' disease either did not cause death or the cause of death was unknown.¹¹

Group 1 Cases

With respect to Group 1, each doctor had their own conceptual definition of direct cause, but there was a consensus that the immediate cause of death was Legionnaires' disease because the patient died during hospitalization for Legionnaires' disease, there was a proximate or temporal association, or the patient did not have other confounding underlying conditions. Below is a list of individuals determined by the panel to be part of Group 1 because the cause of death was Legionnaires' disease.

Peter Derscha – Mr. Derscha, an 81-year-old male, was first hospitalized at McLaren Hospital – Flint from July 29 to August 5, 2015, and was then discharged to a senior center. On August 13, 2015, however, he

⁹ This is not to say that no one in the City of Flint or State of Michigan received notice of legionella in the water, and in fact, some remedial actions were taken as early as October 2014.

¹⁰ The Team reviewed all deaths related to Legionella Disease but decided not to present evidence to the one-man grand jury on wave 1 because liability by suspects could not be established.

¹¹ Those individuals grouped into Group 3 are not listed in this report.

was readmitted to McLaren Hospital – Flint with respiratory failure. Mr. Derscha was diagnosed with bilateral pneumonia and intubated. Ultimately, his condition worsened, and, per his family’s wishes, he was extubated and made comfortable. Mr. Derscha died of respiratory failure on August 17, 2015.

Nelda Hunt– Ms. Hunt, an 80-year-old female, was admitted to McLaren Hospital – Flint on July 11, 2015. Her respiratory function began to deteriorate rapidly, and she spiked a fever. Medical records indicate Ms. Hunt did not get appropriate antibiotics until after she started to deteriorate. Ms. Hunt developed sepsis and acute respiratory failure and died on July 22, 2015.

Debra Kidd – Ms. Kidd, a 56-year-old female, was admitted to McLaren Hospital – Flint ER on July 26, 2015, after 4 to 5 days of feeling unwell due to fever, chills, nausea, and body aches. She was released that same day, but no test for legionella bacteria was performed. The next day, July 27, 2015, she was admitted to Genesys Hospital in Grand Blanc, in severe, profound respiratory distress and with rapidly decreasing blood pressure. To stabilize her oxygen levels, Ms. Kidd was intubated. Testing concluded that Ms. Kidd was suffering from Legionnaires’ disease, which resulted in septic shock. Ms. Kidd died on August 2, 2015.

Brian McHugh – Mr. McHugh, a 53-year-old male, was admitted to McLaren Hospital – Flint on June 17, 2015. Prior to his admission, Mr. McHugh had several conditions that could have accounted for his death, including chronic kidney problems and severely diminished heart function. While his mother reported that he had not been feeling well for months, she also reported that about a week prior to his admission he began to feel much worse, with shortness of breath, fever, and chills. Due to desaturation,¹² Mr. McHugh was intubated, but when his condition did not improve, he was given a tracheostomy. Mr. McHugh was not initially treated aggressively for Legionnaire’s disease because of a delay in diagnosis. While in the hospital, he developed acute kidney problems from the legionella bacterial infection and died of multi-organ failure and septic shock on July 5, 2015.

DuWayne Nelson – Mr. Nelson, a 63-year-old male, was admitted to McLaren Hospital – Flint on August 1, 2015. Prior to his admission, he was diagnosed with lung cancer but was still very functional and was reported to have been feeling fine. He was found to have

¹² A drop in the patient’s blood oxygen levels.

Legionnaires' disease, but, despite aggressive treatment upon admission, his condition continued to decline. Mr. Nelson was put on a ventilator due to respiratory failure and died on August 7, 2015.

John Snyder – Mr. Snyder, an 83-year-old male, was initially admitted to McLaren Hospital – Flint on June 16, 2015, for a non-Legionnaires' disease-related reason. He was stabilized and discharged approximately one week later. On June 30, 2015, he was transported to the McLaren Hospital - Flint ER for desaturation. He was intubated, but his condition continued to worsen. The desaturation continued, and he was placed on a ventilator. Towards the end of the day, he continued to have hypoxia,¹³ and it was determined that his condition was terminal. Mr. Snyder died on June 30, 2015.

Group 2 Cases

Group 2 cases were those individuals whose deaths were not directly caused by legionella bacteria, but the subsequent contraction of Legionnaires' disease contributed to or accelerated their death. Individuals within group two included:

Thomas Mulcahy – Mr. Mulcahy, an 81-year-old male, was admitted to McLaren Hospital on August 13, 2015, and was diagnosed with bilateral pneumonia. He was aggressively treated with antibiotics and intubated. Despite the respiratory assistance, Mr. Mulcahy continued to deteriorate and died on August 17, 2015.

The panel found that Mulcahy's death was accelerated by contracting Legionnaires' disease. While he did have cancer, he was not pursuing advanced therapy. However, once he contracted Legionnaires' disease, his death was accelerated, and he died of Legionnaires' disease instead of cancer.

Arthur Percy – Mr. Percy, a 74-year-old male, was admitted to Genesys Hospital on July 8, 2015, for pneumonia. But it was later determined to be legionella pneumonia. After several days, he was discharged with orders to continue his antibiotics for treatment. Unfortunately, Mr. Percy did not respond to the treatment and was soon transferred to hospice, where he died on August 31, 2015.

The panel determined that Mr. Percy's death was accelerated by Legionnaires' disease. Though he did get the appropriate treatment, he did not respond to it, leaving his family with the decision to transfer

¹³ Low levels of oxygen in the body's tissues.

him to hospice care. His condition and subsequent death were caused by the Legionnaires' disease.

Patricia Schaffer. Ms. Schaffer, an 81-year-old female, was initially admitted to McLaren Hospital – Flint on May 4, 2015. She had been treated for possible pneumonia several weeks prior, and upon readmission she presented with symptoms consistent with that diagnosis. She was released and given a treatment regimen to follow. Ms. Schaffer was readmitted on July 15, 2015. She presented with severe fatigue and could not swallow. She died on July 23, 2015.

The panel was unable to unanimously determine whether Legionnaires' disease caused, accelerated, or contributed to Ms. Schaffer's death, but at least one physician on the panel believed it accelerated her death. A determination that Legionnaires' disease at the very least accelerated a person's death is sufficient for legal causation purposes.

Leaving No Stone Unturned

The Flint Water Team wanted to ensure that its investigation was centered on the victims of the water crisis, it included all reasonable effects from the water switch, and it reviewed all potential criminal charges.

Research into Lead Poisoning

The Flint Water Team took statements from parents of those children in the City of Flint who had been affected by lead poisoning. The Team also spoke to pregnant women who miscarried or gave birth to stillborn babies since 2014 when the water was switched to the Flint River. The Team reviewed research about the effect of lead on fetuses and spoke to experts about the correlation between lead in the Flint water and an increase in stillbirths and miscarriages.¹⁴ The Team conducted extensive interviews with families that had suffered miscarriages or fetal death, but the law in Michigan did not allow for criminal charges. Ultimately, these aspects of the investigation did not result in any additional charges.

Research into Racketeering/Criminal Enterprise

The OSC reported that it had been on the verge of bringing, or was in some way prepared to bring, racketeering charges against certain parties. But upon review, while there were concerns about the managing of Flint's finances as it related to the water switch, the evidence did not support the filing of any charges.

¹⁴ See Appendix D - *The Effect of an Increase in Lead in the Water System on Fertility and Birth Outcomes: The Case of Flint, Michigan*.

After AG Nessel was sworn in, a member of the OSC sent a memo entitled “Prosecution Memo: Racketeering Enterprise” to the Flint Water Team. Appendix E – Racketeering Enterprise Memo. The Racketeering Enterprise memo, while helpful in getting the Team up to speed, did little to assist in determining who, if anyone, should be charged with any crimes.

To support a charge of criminal enterprise, three elements must be established: (1) that an enterprise existed, (2) that the defendant was employed by, or associated with, the enterprise, and (3) that the defendant knowingly conducted or participated in the affairs of the enterprise through a pattern of racketeering activity. See MCL 750.159(i). “Racketeering activity” is defined as “committing, attempting to commit, conspiring to commit, or aiding or abetting, soliciting, coercing, or intimidating a person to commit an offense for financial gain by obtaining money, property, or any other thing of value” involving any of the listed offenses. See MCL 750.159(g). The list of enumerated offenses is extensive, including subsections (a) through (ss).

While the OSC had been working on the Flint cases for almost three years, and brought cases against several defendants, the investigation into these potential charges seemed only partially completed. Included in the memo was a list of 24 steps for future investigative work. Some of these steps, including the interviewing of several witnesses, were taken by the Flint Water Team independent of the Racketeering Enterprise memo. The memo also recommended that search warrants be executed on certain parties.

As has been discussed, the Flint Water Team issued multiple search warrants to gather evidence, but none of the interviews or search warrants resulted in the collection of evidence supporting the charging of any racketeering or criminal enterprise offenses. The memo also listed by name only one person who could potentially be charged with criminal enterprise. The rest of the list was merely city, state, and federal governmental agencies and entities, and groups of businesses – a catalog of anyone who had any involvement in the Flint Water Crisis.

When the Flint Water Team began examining the evidence collected by the OSC and executing its own search warrants, it did so with an awareness of the possibility that criminal enterprise charges could be pursued. After the Flint Water Team examined the evidence, however (a significant amount of which the OSC never examined), it concluded that there was insufficient evidence to pursue any such charges. The Team discussed the topic at length, but the conclusion stood firm: no such charges were warranted. Additionally, the one-person grand jury did not issue any criminal enterprise charges.

The Discovery Process, N1Discovery, and the Issue of the Taint Team

As the Flint Water Team carried out its investigation, it became clear that there was a considerable amount of evidence to be reviewed. The body of evidence initially included documents inherited from the OSC, including documents collected from publicly available sources, documents collected pursuant to investigative subpoenas, voluntary productions from various persons and agencies, and documents obtained from other investigative methods. The Team then added a substantial amount of additional evidence from its own investigation, which involved the execution of search warrants, the issuance of subpoenas, and other means of investigation. Altogether, the Team collected dozens of terabytes of data from several hundred sources. Additionally, their e-discovery vendor, N1Discovery, had processed and hosted over 20 million documents that were potentially relevant to the Flint Water Crisis investigation in Relativity, a software product that facilitates discovery and document review. These documents needed to be reviewed for investigation and possible discovery.

N1Discovery

With the number of documents requiring review being so large, it was necessary to employ an outside firm to assist in housing the documents and organizing them for ease of access. The Department of Attorney General simply did not have the resources to fully complete either task. N1Discovery is a digital forensic and eDiscovery firm that specializes in securely collecting, managing, and storing large quantities of data and does so while allowing for the ease of access to that data. Thus, N1Discovery was brought on to assist.

The many documents collected by the Flint Water Team originated from hundreds of custodians. As materials were provided to the Team, they were prioritized and uploaded into one of three Relativity workspaces created by N1Discovery. The “Internal” workspace was created for loading data received from various agencies, the “Review” workspace was created for document review and was used by the assistant attorneys general assigned to the Team, and an “Investigators” workspace was created for the special agents assigned to the Team to view and organize electronic data from collected evidence. This workspace included data from over 351 evidentiary items, including mobile and device extractions/backups, computers/hard drives, and multimedia files (i.e. photos, videos, voicemail files, etc.).

In the spring of 2019, special agents from the Flint Water Team executed a search warrant on KLDDiscovery, the AG’s civil discovery vendor, who maintained a separate workspace of Flint-related data. Pursuant to this search warrant, the Team ultimately received Relativity data containing 12,094,730 documents, which N1Discovery loaded onto the “Internal” workspace. This dataset comprised more than half of the 19,274,833 documents that were ultimately loaded onto the

“Internal” workspace. The remaining data was all obtained pursuant to search warrants and was comprised of numerous devices and hard drives that contained a variety of data, including PST files, user profile data, and loose documents from a variety of prioritized sources. This data was processed for potential relevancy using search terms, keywords, and technology-assisted review, after which responsive information was promoted to the “Review” workspace. Ultimately, the “Review” workspace contained almost four million documents.

The Review Process

Not only was there a massive number of documents to review, but the documents themselves ranged from several pages to thousands of pages, and many were provided in non-standard formats. Additionally, there were devices and extractions which the Flint Water Team and N1Discovery had not been able to access due to unknown passwords or passcodes.

The data provided in non-standardized formats to the Flint Water Team significantly complicated the review process. There were many documents provided to the Flint Water Team that were scanned physical documents with scanning qualities so low as to preclude electronic text recognition. For these approximately one million documents, search terms or technology-assisted review was impossible or unreliable because both methods rely on recognizable extracted text.¹⁵ Other documents consisted of numerous emails consolidated into a single document. As a result of these poor collection methods, the metadata identifying an email’s sender and recipient were obscured, misleading, or entirely missing. In many instances, these problems were compounded, such as when documents consisting of thousands of emails were printed, mixed with other documents, and then scanned together into massive files. In situations like these, when searching for emails between two individuals, standard metadata fields would not identify all of the communications.

In addition to these circumstances, two court-ordered discovery suspensions made an already monumental task even more complicated due to unexpected pauses and restarts. The first hold was put in place on November 19, 2021, by Hon. Elizabeth A. Kelly, Genesee County’s Seventh Circuit Court judge, and a second was implemented on January 7, 2022.

Although the discovery suspension orders paused discovery for several weeks, the Team was able to produce a significant volume of rolling productions of over 400GB to the defendants within 10 months (February 25, 2021–December 20, 2021). Discovery productions to defendants consisted of industry standard e-discovery load files (DAT files, OPT file, images, natives, and text, if available) or exports. The defendants received the data that the Flint Water Team obtained and reviewed.

¹⁵ Technology-assisted review is a process by which a human teaches software to find documents meeting certain criteria.

For example, if an agency provided both natives and images in their production to the Team, the Team produced the same to the defense.

The monthly cost for discovery services was \$34,889.27, which included Relativity user accounts for the Flint Water Team to access hosted data, technical support, consultation, hosting and discovery processing, production, and delivery services. In October 2023, after the Michigan Supreme Court refused to hear an appeal on the Team's motion to remand all the felony cases for exam, this contract was amended to reduce the monthly cost to \$10,107.14 for ongoing Nearline Data Storage of Relativity data.¹⁶

To proficiently address the vast amount of information that needed to be reviewed, the Team created an efficient and accountable multi-level review process with N1Discovery that utilized a multi-faceted approach of device/custodian prioritization, search terms, technology-assisted review, and linear review. Data was processed, indexed, de-duplicated, clustered, batched, and underwent up to 3 phases of discovery review.¹⁷

First-level review consisted of members of the Team and non-attorney contract reviewers, who first reviewed and coded documents to determine relevancy. Due to the sheer volume of documents requiring review and the limited time available to complete the task, additional contract reviewers and Department attorneys not assigned to the civil defense team were brought on to conduct document review. Department staff conducted all second- and third-level reviews of documents.

During this review, technology-assisted review was engaged to categorize additional items in the queue by their likely "Relevance Rank." Contract reviewers were engaged for a total of 62 review days, until October 31, 2021, and on average were able to code 13,003 documents per day. As of October 31, 2021, 825,034 documents out of the 4,104,259 documents in the queue had been coded. The Team continued to code documents after the contract reviewers' final review day and then utilized technology-assisted review to categorize the remainder of the documents.

Once documents were promoted to the "Review" workspace, the Team performed second-level review and coded documents into categories for additional analysis. Throughout the process, steps were also taken to remove duplicative documents and non-responsive documents from additional stages of unnecessary review. Per the Team's request, N1Discovery ran analytics and prepared clustering visualizations and organization for this dataset. The clustering visualizations

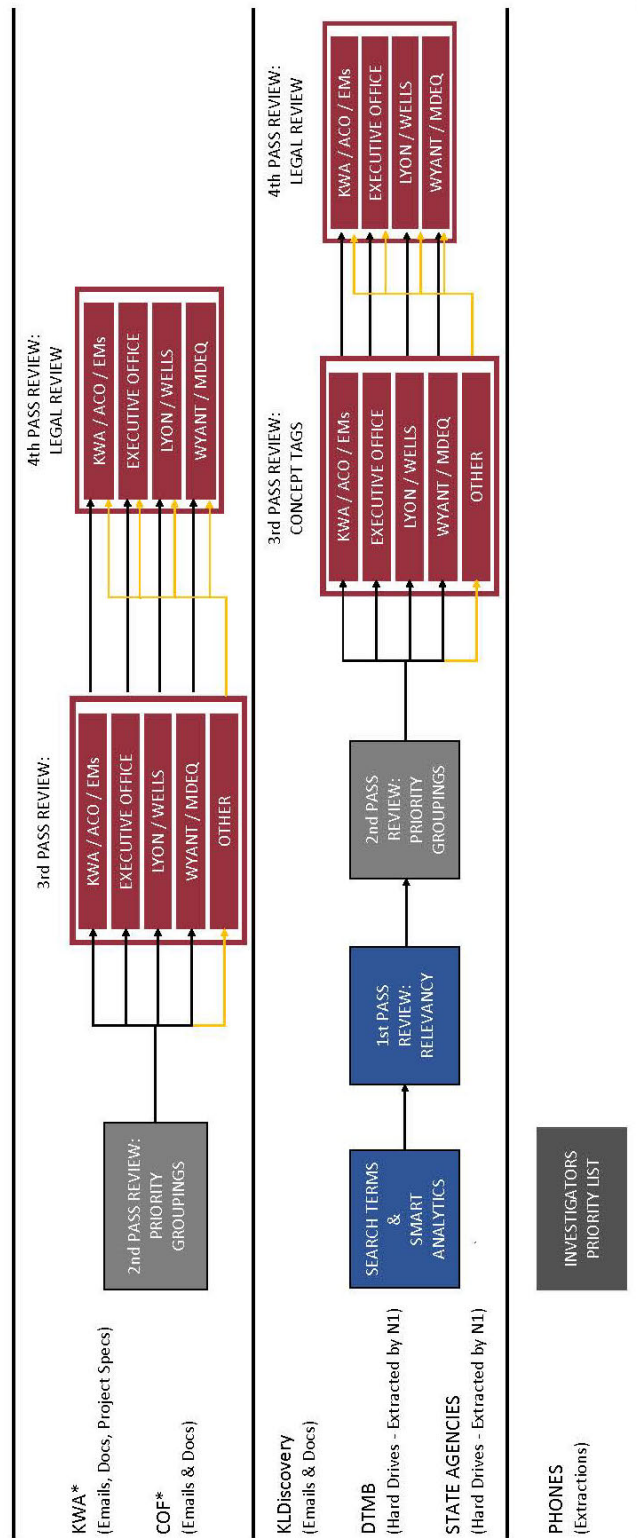
¹⁶ Nearlined data storage means that the data will no longer be active and there will be no access or user licenses available. While access can be restored, it would take some time to return the data to its accessible form.

¹⁷ This document review was performed by the Flint Water Team in addition to their other investigative and litigation responsibilities.

identified documents with similar terms and themes into groups, each of which had multiple sub-clusters of more closely related items. For example, documents that hit on legionella patient-related information were batched together.

For third-level review, the Team reviewed documents coded during the second level and applied clearly defined concept coding based on legal theories to identify specific information to be used for prosecution.

On the next page is a demonstrative flowchart of the Team's discovery process and a table illustrating the number of the documents coded per week during the first five months of second-level review (August 2019 - December 2019). (See Appendix F – Final Discovery Memo.)



Week	Docs Reviewed	Week	Docs Reviewed
8/12/2019 - 8/18/2019	1,486	10/21/2019 - 10/27/2019	10,760
8/19/2019 - 8/25/2019	6,337	10/28/2019 - 11/3/2019	12,577
8/26/2019 - 9/1/2019	10,264	11/4/2019 - 11/10/2019	8,613
9/2/2019 - 9/8/2019	7,634	11/11/2019 - 11/17/2019	2,100
9/9/2019 - 9/15/2019	9,904	11/18/2019 - 11/24/2019	484
9/16/2019 - 9/22/2019	13,311	11/25/2019 - 12/1/2019	1,955
9/23/2019 - 9/29/2019	7,102	12/2/2019 - 12/8/2019	970
9/30/2019 - 10/6/2019	8,939	12/9/2019 - 12/15/2019	1,239
10/7/2019 - 10/13/2019	15,753	12/16/2019 - 12/22/2019	1,036
10/14/2019 - 10/20/2019	13,965		

The Taint Team

Considering the number of documents and their sensitive nature, the issue of whether to use a taint team was discussed early on during the investigation. A taint team consists of a group of attorneys who are not directly involved in a case, whose job is to review a set of materials to determine if there is any information that the prosecution should not possess. A taint team's job is to ensure that a prosecution team not receive any of the protected materials.

There are multiple reasons why a prosecution team should not have certain information. The main reason a taint team was considered in this case was the attorney-client privilege.¹⁸ The defendants claimed that the documents seized by investigators via search warrants contained materials protected under the privilege and should therefore be reviewed by a taint team before being released to the prosecution.

While it is not uncommon for taint teams to be used in criminal litigation, there is no requirement under Michigan statutory law or caselaw that a taint team must be used. Thus, the decision was entirely at the discretion of the Team. Two

¹⁸ Attorney-client privilege generally protects communications between an attorney and their client from other parties (e.g., the prosecution).

key considerations regarding the use of a taint team were the cost and time it would take to implement such a process. Both weighed heavily against using a taint team. The following is an example of the potential complexities, significant costs, and time-delay of implementing a taint team.

Estimated costs with **10 reviewing attorneys** for the following number of documents:

1 million docs / 10 attorneys = \$2,239,981 (1.30 years)

8 million docs / 10 attorneys = \$17,916,609 (10.44 years)

17 million docs / 10 attorneys = \$38,071,579 (22.18 years)

Estimated costs with **100 reviewing attorneys** for the following number of documents:

1 million docs / 100 attorneys = \$2,205,087 (2.27 months)

8 million docs / 100 attorneys = \$17,557.672 (1.04 years)

17 million docs / 100 attorneys = \$37,287,221 (2.22 years)

Considering the cost and time required to implement the taint team, and the fact that there was no legal requirement to implement a taint team in the State of Michigan, the Flint Water Team chose not to use a taint team during the investigation. Although the defendants were beating the drum to signal impropriety on the part of the Department of Attorney General, at no point during the litigation of this case did any of the defendants point to any exhibits submitted to the one-person grand jury that were privileged and would have therefore been culled by a taint team.

Issuance of Criminal Charges

OSC-Issued Criminal Charges

On April 20, 2016, AG Schuette announced charges against Stephen Busch, Lansing district coordinator for the Michigan Department of Environmental Quality's (MDEQ) Office of Drinking Water and Municipal Assistance; Michael Prysby, MDEQ District 8 Water Engineer; and Michael Glasgow, Utilities Administrator for the City of Flint. The three men faced felony charges that included Misconduct in Office, Neglect of Duty, and Conspiracy to Tamper with Evidence, as well as violating Michigan's Safe Drinking Water Act. During an April 20, 2016, press conference, AG Schuette said, "We allege and we will prove that Mr. Busch and Mr. Prysby altered test results, which endangered the health of citizens and families of Flint."¹⁹ By June 2017, Busch was charged with an additional count of Involuntary Manslaughter.

On July 29, 2016, AG Schuette announced charges for six more people related to the Flint Water Crisis – all either then-current or former state employees in the MDEQ or MDHHS. Nancy Peeler, the Director of the MDHHS Early Childhood Health Section; Robert Scott, a data manager in the MDHHS Healthy Homes and Lead Poisoning Prevention Program; and Corinne Miller, an epidemiologist with MDHHS, were charged with Misconduct in Office, Conspiracy to Commit Misconduct in Office, and Willful Neglect of Duty for allegedly failing to release a report that showed unsafe lead levels in the blood of Flint children.

The remaining defendants were Liane Shekter-Smith, head of the MDEQ Drinking Water Section and Municipal Assistance, and two subordinates: Adam Rosenthal, MDEQ water quality analyst, and Patrick Cook, MDEQ specialist for the Community Drinking Water Unit. It was alleged that Shekter-Smith misled city and county health officials by falsely stating that Flint's water treatment plant was in compliance with lead and copper rules for drinking water. She was initially charged with Misconduct in Office and Willful Neglect of Duty. Cook allegedly knowingly interpreted the Michigan Safe Drinking Water Drinking Act contrary to the requirements of the Lead and Copper Rule. Additionally, Cook, along with Rosenthal, allegedly failed to ensure proper water testing. It was also alleged that Rosenthal instructed those conducting water tests that he needed test results that did not show high levels of lead. Cook was charged with Misconduct in Office, Conspiracy to Commit Misconduct in Office, and Willful Neglect of Duty. Rosenthal was charged with Misconduct in Office, Conspiracy –

¹⁹ See Domonoske, McCallister, *3 Face Criminal Charges Over Flint Water Crisis*, <<https://www.npr.org/sections/thetwo-way/2016/04/20/474931189/criminal-charges-to-be-filed-in-flint-water-crisis-reports-say>> (April 20, 2016).

Tampering with Evidence of Misconduct in Office, and Tampering with Evidence. By June 2017, Shekter-Smith was also potentially facing an added count of Involuntary Manslaughter.²⁰

In December 2016, AG Schuette announced charges against Darnell Earley, Emergency Manager for the City of Flint from September 2013 to January 2015, for False Pretenses, Conspiracy to Commit False Pretenses, Misconduct in Office, and Willful Neglect of Duty. By June 2017, Earley was also charged with Involuntary Manslaughter. Gerald Ambrose, Emergency Manager for the City of Flint from January 2015 to April 2015, was charged in December 2016 with False Pretenses, Conspiracy to Commit False Pretenses, Misconduct in Office, and Willful Neglect of Duty. Howard Croft, former Public Works Director for the City of Flint, was charged with Conspiracy to Commit False Pretenses and False Pretenses. By June 2017, Croft was also charged with Involuntary Manslaughter. Daugherty Johnson, Utilities Director for the City of Flint, was charged with Conspiracy to Commit False Pretenses and False Pretenses.

On June 14, 2017, AG Schuette announced that Nick Lyon, Director of MDHHS, would be charged with Involuntary Manslaughter and Misconduct in Office, and that Dr. Eden Wells, Chief Medical Executive at MDHHS, would be charged with Obstruction of Justice and Lying to a Police Officer.²¹

Over the next several months, these cases worked their way through the criminal justice system. As noted below, a few of the people charged eventually entered into plea agreements that were contingent upon their cooperation. As part of their agreements with the OSC, every single defendant who entered into a plea agreement had their cases dismissed. Thus, while there will be a historical record of their actions and convictions, their criminal record is free from any blemishes—despite evidence of their culpability in the Flint Water Crisis. Most of the cases, however, proceeded to preliminary examination in the 67th District Court of Genesee County. By the time AG Nessel took office, the remaining active cases were still at various stages of litigation.

The Flint Water Team Takes Control/ Terminating the OSC Investigation

On January 1, 2019, Dana Nessel was sworn in as Michigan Attorney General. It was immediately evident that, if the Department of Attorney General was going to handle the criminal cases against those responsible for the Flint Water Crisis while also defending those individuals in civil suits, a potential conflict of interest existed. In situations like this, the Department employs precautions to ensure no conflict occurs and that all parties represented by the Department receive

²⁰ A plea was reached before the count would be officially added.

²¹ Lyon's charges were later amended to include additional counts of Involuntary Manslaughter and Neglect of Duty. Wells' charges were later amended to include additional counts of Involuntary Manslaughter and Misconduct in Office.

zealous and ethical representation. Thus, a “conflict wall” was created, which prevented attorneys working on the criminal cases and the civil cases from communicating with each other about their work. The wall also prevents either side from sharing confidential information that the other side should not possess. It is a mechanism to ensure that a lawyer does not inadvertently disclose information that could violate a privilege or create a conflict of interest. This same conflict wall required AG Nessel to make a choice between working on the civil cases or working on the criminal cases. AG Nessel chose to be placed on the civil side of the conflict wall. This precluded her participation in and oversight of the Flint Water Team.

Three days after being sworn in, AG Nessel requested that the cases brought by the OSC be reviewed by Worthy. As a part of this transition, AG Nessel requested that Worthy assist the office as a Special Assistant Attorney General and assist with the prosecution. On January 15, 2019, Hammoud was assigned to join Worthy in overseeing the prosecution of the Flint Water Crisis criminal cases, with Flood remaining on at that time to continue his work on the cases. At that point, some of the cases brought by the OSC had already reached their conclusions, while others were in various stages as they worked their way through the criminal justice system:

- On May 4, 2016, Mike Glasgow pled no contest to a misdemeanor charge of Willful Neglect of Duty with the understanding that if he cooperated with the investigation, his remaining charges would be dropped.
- On September 14, 2016, Corinne Miller pled no contest to a misdemeanor charge of Willful Neglect of Duty with the understanding that if she cooperated with the investigation, her remaining charges would be dropped.
- On November 28, 2017, Daugherty Johnson pled no contest to a single misdemeanor charge of failing to furnish public records upon request as part of a cooperation deal. His remaining charges were dismissed, and in November 2018, the misdemeanor he pled to was also dismissed.
- On December 20, 2017, as part of a cooperation agreement, Adam Rosenthal pled no contest to failing to make facilities available to investigators. By September 2018, his remaining misdemeanor count was dismissed.
- On January 25, 2018, Gerald Ambrose waived his preliminary examination and was bound over to the 7th Circuit Court of Genesee County for one count of False Pretenses, one count of Conspiracy to commit False Pretenses, one count of Misconduct in Office, and one count of Neglect of Duty.
- On August 20, 2018, at the conclusion of the preliminary exam, probable cause was found to bind over Nick Lyon to the 7th Circuit Court for Genesee County on two counts of Involuntary Manslaughter, one count of Misconduct

in Office, and one count of Neglect of Duty.²² In November 2018, Lyon filed a motion to quash the information, which was still pending in January 2019.

- On December 7, 2018, at the conclusion of the preliminary exam, probable cause was found to bind over Dr. Eden Wells to the 7th Circuit Court for Genesee County for one count of Involuntary Manslaughter, one count of Obstruction of Justice, one count of Misconduct in Office, and one count of Lying to a Peace Officer. As with Lyon, a motion to quash was filed on February 25, 2019.
- By January 2019, Stephen Busch, Patrick Cook, Nancy Peeler, Michael Prysby, Robert Scott, and Liane Shekter-Smith were nearing the end of their respective preliminary examination hearings in the 67th District Court.²³
- At the same time, in January 2019, Howard Croft and Darnell Earley had just begun their respective preliminary examination hearings.

During the Flint Water Crisis investigation, not only were over a dozen suspects investigated for potential charges that varied from misdemeanor neglect of duty up to and including homicide, but entire agencies were put under a microscope.

Adding to the issues surrounding discovery, 23 boxes of records that were being stored in the basement of the Joint Operations Center, a state building – which were never examined by the OSC – were discovered in March 2019. On April 16, 2019, the discovery of those 23 boxes prompted the termination of Flood's contract as OSC.

The Flint Water Team determined that there were significant holes in the OSC investigation, requiring a thorough examination before continuing with any of the existing prosecutions. Thus, on June 13, 2019, to reflect the ongoing commitment to execute the highest standards in the prosecution of the Flint Water Crisis, the Flint Water Team filed a motion to dismiss all pending criminal cases and restart the investigation anew.

²² Lyon was initially charged with one count of Involuntary Manslaughter, and a second count was added in the course of the preliminary examination.

²³ Busch was charged with one count of Misconduct in Office, Conspiracy – Tampering with Evidence, Tampering with Evidence, Treatment Violation – Michigan Safe Drinking Water Act, and Monitoring Violation – Michigan Safe Drinking Water Act. A charge of Involuntary Manslaughter was later added. Cook, Peeler, and Scott were all charged with one count of Misconduct in Office, Conspiracy – Misconduct in Office, and Willful Neglect of Duty. Prysby was charged with two counts of Misconduct in Office, and one count of Conspiracy – Tampering with Evidence, Tampering with Evidence, Treatment Violation – Michigan Safe Drinking Water Act, and Monitoring Violation – Michigan Safe Drinking Water Act. Shekter-Smith was charged with one count of Misconduct in Office and Willful Neglect of Duty.

The decision to dismiss the remaining cases was simple: there were concerns that the OSC had not performed a thorough investigation and, as a result, had brought charges that were not well-developed. Prosecutors have an ethical duty to bring charges based on a complete investigation, and the OSC's investigation was not complete.

After discovering that many, if not most, of the deaths from Legionnaires' disease had not been thoroughly investigated, the Flint Water Team recognized the need for a more comprehensive approach. Their goal was twofold: to ensure the accuracy of the information being gathered and to instill confidence in the public that this investigation was being handled in the most comprehensive manner possible. As discussed earlier in this document, the Flint Water Team obtained from MDHHS a list of people MDHHS had on record as having contracted Legionnaires' disease, as well as a list of who from that group had since died. Once the list was assembled, a team of infectious disease, pulmonary, and critical care experts were enlisted to investigate the Legionnaires' deaths that had been identified. This team of physicians worked together to review each death until a consensus was reached regarding the cause of each death. Deaths that had never been examined before were then investigated, and deaths that had been examined received additional review by the team of doctors. The Flint Water Team believed that the additional charges of Involuntary Manslaughter were a direct reflection of the depth and breadth of the new investigation.

For these reasons and others discussed more fully hereafter, the Flint Water Team decided that it would be best, and most ethical, to dismiss the charges brought by the OSC and to initiate a new investigation. Dismissing the cases without prejudice allowed Worthy and Hammoud to further assemble their own team of prosecutors and investigators, made up of career prosecutors who joined the Department after AG Nessel took office,²⁴ and move forward with the non-negotiable requirements of a thorough, methodical, and ethical investigation. In addition to attorneys from the Department, Worthy and members of her office were sworn in as Special Assistant Attorneys General, forming the Flint Water Team.

The decision to transition the case back to the Department allowed for the aggressive pursuit of all evidence that could shed light on the enormous injury inflicted upon the people of the City of Flint. Because of the ethical duty to thoroughly investigate, the case needed to be handled differently, regardless of results. The dismissal was not a determination of any particular defendant's criminal responsibility and did not preclude the Team from refileing or adding new charges against the previously charged defendants or charging additional

²⁴ As noted above, due to the existing conflict wall, those working for the Department during AG Schuette's administration were prohibited from working on the Flint Water Team cases.

defendants. Put another way, the Team simply did not believe it had enough information to determine who should properly be charged and with what crimes.

In addition to responding to the ethical demands that a criminal investigation calls for, bringing the investigation in-house was also the fiscally responsible decision for the residents of the City of Flint and the State of Michigan. At the time his contract was terminated, Flood had billed approximately \$8.2 million to the State.²⁵ Further expense of this type would be avoided by bringing the investigation in-house and using Assistant Attorneys General, Special Assistant Attorneys General, and Special Agents to conduct the investigation and handle the cases. Hammoud and her team were mindful, however, of the massive expenditure of public resources prior to Hammoud's team taking over and made every effort to salvage work done by the OSC.

Over the next two years, the Flint Water Team completed a thorough and comprehensive investigation through the execution of a series of search warrants and the aggressive examination of an extraordinary amount of evidence not previously reviewed by the OSC. The Team took possession of millions of documents and hundreds of electronic devices. There was also a new and significantly more detailed investigation of all potential Legionnaires' disease-related deaths. These steps resulted in the identification of additional individuals of interest and significantly expanded the scope of the investigation. While the OSC had relied on many of the subjects of their investigation to voluntarily turn over documents in "good faith," the Flint Water Team required all potential sources of relevant evidence to be turned over. This more thorough investigation ultimately resulted in the production of the most comprehensive body of evidence to date related to the Flint Water Crisis.

The One-Person Grand Jury

In a "complaint and warrant" case, where a one-person grand jury is not used, a prosecutor drafts a complaint and a warrant after an investigation finds sufficient evidence to support criminal charges. Both documents are then submitted to a magistrate. If the magistrate is satisfied that there is probable cause to believe the suspect committed the alleged crimes, they sign and authorize both documents. After the warrant is executed, the defendant is taken into custody and arraigned on both the complaint and warrant before a district court judge. Depending on the charges in the case – felony or misdemeanor – the case proceeds from there.²⁶ The one-person grand jury process, however, is more onerous and

²⁵ [As Flood's bill tops \\$8 million, AG keeps pushing to renegotiate Flint contract - mlive.com](#)

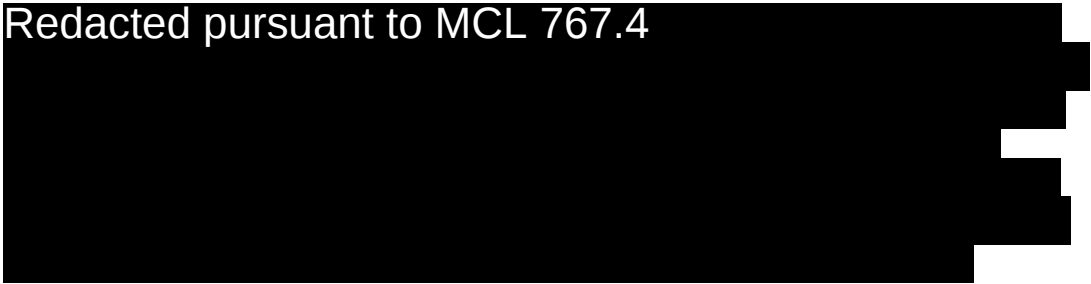
²⁶ If the charges include only misdemeanors, the case is put on track for trial in the district court. If the charges include any felonies, the case is set for a probable cause conference and, potentially, a preliminary examination, which is intended to cement the conclusion that sufficient probable cause exists to bind a defendant over to circuit court to proceed to trial.

contains more checks and balances than a prosecutor unilaterally issuing a complaint and warrant.

Prior to the Michigan Supreme Court's opinion in *People v Peeler*, 509 Mich 381 (2022), in a one-person grand jury case, a circuit court judge – either on their own or on the application of a prosecuting attorney – could sign an order establishing a one-person grand jury after a finding of probable cause that a crime was committed in his or her jurisdiction. See MCL 767.3. The circuit court judge ordering the one-man grand jury must also designate another circuit court judge to conduct the inquiry. *Id.*; see also MCL 767.4. The one-person grand jury, i.e., the designated circuit court judge, then conducts an inquiry in a sealed (*i.e.*, confidential) environment. At that inquiry, the one-person grand jury hears from witnesses and receives exhibits. The one-person grand jury may conduct the questioning themselves, or they may request the assistance of a prosecutor. After the inquiry is complete and if the one-person grand jury is satisfied that probable cause exists to believe the suspect has committed a crime, the one-person grand jury issues a warrant and an indictment. After the warrant is executed, the defendant is arraigned on both the warrant and indictment, and the case proceeds from there.²⁷

In late 2019, the Team applied for the appointment of a one-person grand jury in Genesee County. Appendix G – Application for Appointment of One-Person Grand Jury. The purpose of the inquiry was to investigate the events surrounding, and leading up to, the Flint Water Crisis. The application alleged, among other things:

■ Redacted pursuant to MCL 767.4



■



²⁷ If charged with only misdemeanors, the case is set for pre-trial and is put on track for trial in the district court. If charged with a felony, the defendant is bound over and arraigned in circuit court, and the matter is put on track for trial in the circuit court, without the possibility of a preliminary exam.

Redacted pursuant to MCL 767.4

Chief Judge Duncan Beagle granted the application for appointment on January 9, 2020, and he assigned Judge David Newblatt to serve as the one-person grand jury. Appendix H, Order of Appointment for One Person Grand Jury.

Choosing to Use the One-Person Grand Jury Process

As with all decisions made by the Flint Water Team, the choice to use the one-person grand jury process was a collaborative one. To imply or assume that this decision was that of one member of the Team would be categorically false. In fact, the more weight a particular decision carried, the more input the Team would consider before reaching a conclusion. Members of the Team were invited to present their own thoughts, ideas, and potential concerns about the path of the prosecution. The selection of the one-person grand jury as a charging body was no exception.

Some members of the Team, such as Bob Ianni and Kym Worthy, had extensive experience with the process and thus were able to share personal insight into the one-person grand jury process. Others, without similar experience, were still encouraged to share their input and concerns. As such, there were multiple meetings and discussions about potential charging procedures, taking place over several weeks, that ultimately resulted in the collective decision to use the one-person grand jury.

The decision considered multiple factors. One factor was the statute of limitations, which loomed over the early weeks and months of the Flint Water Team's existence like a ticking clock. MCL 767.24 states that (with certain exceptions) most crimes must be charged within either 6 or 10 years after their commission or discovery. What made the statute of limitations particularly worrisome was that it was unknown what offenses would be discovered during the investigation, so there was no way of knowing which timeframe (6-year or 10-year) would apply. It was therefore understood that any charges should be brought to comply with the 6-year time limit.

This uncertainty presented another way in which the investigation into the Flint Water Crisis differed from a typical investigation and prosecution, thereby

introducing another factor to be considered. Typically, an investigation is almost complete when charging decisions are made. In this instance, however, a considerable portion of the investigation would have to continue even throughout the presentation of evidence to the one-man grand jury. For instance, there were millions of documents being processed and categorized, which meant the review process would have to continue during the presentation of evidence. Additional review would be completed by members of the Flint Water Team, but it was unknown exactly how long the review process would take. What *was* certain was that a prolonged investigation followed by a lengthy production of evidence and charging process could lead to the prohibition, via the statute of limitations, of charging some discovered offenses.

What the Team needed was a process that granted as much flexibility as possible. The amount of information to be presented to the charging body was monumental. The time it would take to present this material was equally substantial. These two interrelated considerations made the one-person grand jury best suited to address the Team's concerns.

Another consideration was the appearance of impartiality. The media had made much of the politically charged nature of the investigation and charges brought by the OSC. The same was true, if not more so, of the decision to dismiss the remaining OSC cases. And when AG Nessel was a candidate, she was committed to fixing what she believed was the investigation's mishandling. The Flint Water Team agreed that it was critical to have an impartial decision-maker who could not be reasonably accused of making investigation and charging decisions based on politics. In the one-person grand jury process, it is the impartial presiding judge who decides whether to approve charges, not the prosecutor, as in a "complaint and warrant" case.

The Team also carefully considered the hesitant nature of some of the potential witnesses who would be involved in the investigation.²⁸ At the outset of the investigation it was not clear exactly who the culpable parties would be. What was clear, however, was that those responsible were powerful, high-ranking, members of state, county, and local government. Many of the witnesses who could provide information were employed by the City of Flint or the State of Michigan. These witnesses would be providing evidence that could relate to their bosses, or their bosses' bosses, and so on. Due to concerns that some witnesses would be reluctant to provide statements and give testimony—fearing retaliation from their supervisors, especially before charges were filed—the Team decided that a charging process that protected witnesses from retaliation, even if not specifically from a future defendant, would be valuable.

²⁸Redacted pursuant to MCL 767.4

This specific concern has been noted and recognized by the Michigan Supreme Court in *In re Colacasides*, 379 Mich 69, 89–90 (1967), in which the Court wrote:

Experience has demonstrated, however, that regularly constituted law enforcement agencies sometimes are unable effectively and lawfully to enforce the laws, *particularly with respect to corrupt conduct by officers of government* and conspiratorial criminal activity on an organized and continuing basis. *Our experience also has demonstrated that the common law 23-man grand jury is unwieldy and ineffective for the investigation of such crimes* in a modern, industrialized and mobile society. *It has demonstrated also that corruption in government and organized crime are susceptible to discovery and prosecution if the investigative body has the power to compel some participants therein to testify by enforcing attendance of witnesses by subpoena and granting immunity from prosecution, but police agencies in this country do not possess such extraordinary power.* The ineffectiveness of the common law grand jury considered, and absent the power lawfully to compel testimony, police agencies are thwarted too frequently, for society's safety, in their efforts to investigate such criminal activity. (Citations omitted) (emphasis added).

There was no denying that the descriptions contained in *Colacasides* directly applied to, and described, the concerns present in the investigation into the Flint Water Crisis.

Ultimately, these factors contributed to the collective decision to proceed with the one-person grand jury. At the time, the one-person grand jury process had been repeatedly upheld, as recently as 2018, by the Michigan Supreme Court and the Michigan Court of Appeals. See *Colacasides*, 379 Mich at 69, *People v Slattery*, 310 Mich 458 (1945), and *People v Green*, 322 Mich App 676 (2018).²⁹ There was no reason to believe that anything about this decision or the one-person grand jury process as it was proposed to be used was illegitimate, illegal, sneaky, a violation of the separation of powers, or any of the other words and phrases used to describe the process by those unhappy with the decision. It was a decision that was proper and prudent towards the aims of justice in Flint and conformed with the law as it then existed.

²⁹ Green filed an application for leave to appeal the Court of Appeals' decision in his case. The application was denied by the Michigan Supreme Court. See *People v Green*, 504 Mich 963 (2019). When Green's appeal was denied, Chief Justice McCormack and Justices Bernstein, Cavanagh, Viviano, and Zahra were all on the Court. These same justices would later rule against the Department in *Peeler*.

The Rules of the One-Person Grand Jury

The one-person grand jury procedure is governed by a series of Michigan statutes. The judge assigned to be the grand juror shall conduct the inquiry. MCL 767.3. The inquiring judge “shall require such persons to attend before him as witnesses and answer such questions as the judge may require concerning any violation of law about which they may be questioned within the scope of the order.” *Id.* Although the one-person grand jury directs the inquiry, that person may request the prosecuting attorney to assist in examining witnesses and advise the one-person grand jury on legal matters. See MCL 767.20. [REDACTED]

The inquiry into the alleged criminal activity is limited to six months and can be extended by the inquiring judge for an additional six months. MCL 767.4. Redacted pursuant to MCL 767.4 [REDACTED]

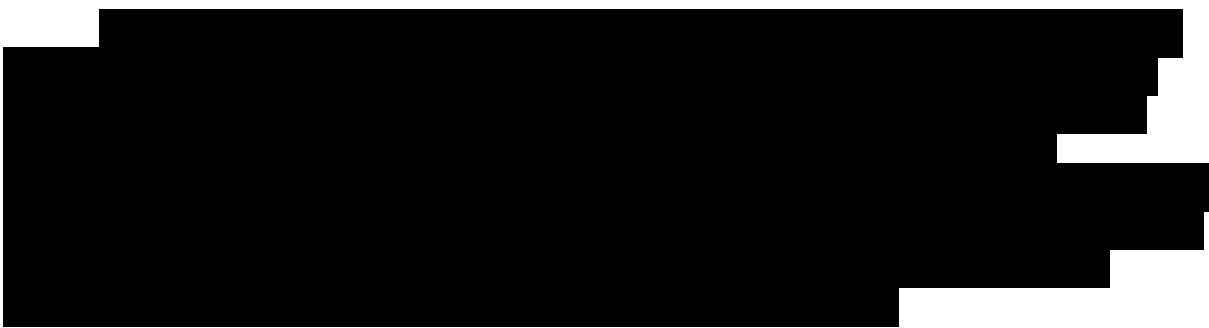
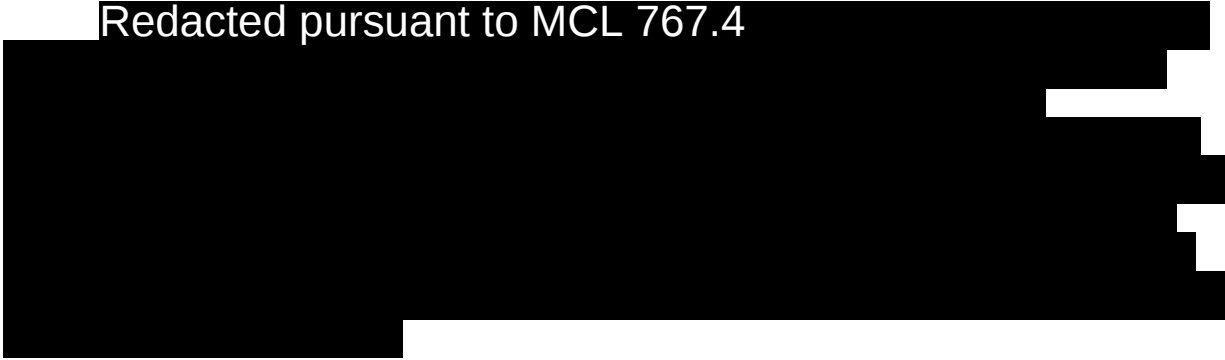
Finally, the proceedings before the one-person grand jury must be kept undisclosed. Specifically, MCL 767.4 states, in part, that no judge, prosecuting attorney, or other persons who may, at the judge’s discretion, be admitted to the grand jury inquiry shall (1) utter or publish any statement about information or evidence involved in the inquiry, (2) disclose the fact that a felony indictment has been found against a person, (3) disclose or publish any proceedings of the inquiry, or (4) publish any comment, opinion, or conclusion relating to the proceedings. Therefore, on January 23, 2020, Judge Newblatt’s court staff and other Genesee County Circuit Court staff, a total of 13 people, were sworn to secrecy. Additionally, on February 4, 2020, 29 members of the Flint Water Team were also sworn to secrecy. Following this process, the one-person grand jury began hearing testimony and evidence related to the initial petition.

The One-Person Grand Jury Process

Members of the Flint Water Team were originally split into groups with specific focus on the various agencies involved in the investigation: the MDEQ, the MDHHS, Executive Office of the Governor, and the City of Flint/Emergency Managers. During the proceedings, and mostly due to the COVID-19 pandemic, the Team reduced its size, and members worked more fluidly among groups. Although 29 members were sworn in from the outset, a core group of a dozen or so attorneys and investigators handled the main tasks and priority assignments. The group silos were eventually exchanged for a more collaborative approach as it became clear that all the evidence was interconnected. More times than not, the same five

to seven attorneys and staff were present in courtroom proceedings, and they were chiefly responsible for grand jury prep.

Redacted pursuant to MCL 767.4



Ultimately, after evaluating the evidence presented, Judge Newblatt issued indictments against nine defendants for a total of 42 felony and misdemeanor criminal charges. Most of these indictments were accompanied by an opinion drafted by Judge Newblatt, which outlined his findings. These opinions can be found attached to this document. See Appendix L – One Person Grand Jury Opinions. The charges were based solely on evidence and supporting law with no consideration given to status, position, or political affiliation of the defendant.

One-Person Grand Jury-Issued Criminal Charges

After the conclusion of 12 months of grand jury proceedings, on January 14, 2021, the Flint Water Team announced that the grand jury had indicted nine individuals on a total of 42 counts related to a series of alleged actions and inactions that created the Flint Water Crisis:

- Jarrod Agen: Former Director of Communications and Former Chief of Staff, Executive Office of Governor Rick Snyder, one count of Perjury – a 15-year felony
- Gerald Ambrose: Former City of Flint Emergency Manager, four counts of Misconduct in Office – each a five-year felony and/or \$10,000 fine
- Richard Baird: Former Transformation Manager and Senior Adviser, Executive Office of Governor Snyder, one count of perjury – a 15-year felony, one count of Misconduct in Office – a five-year felony and/or \$10,000 fine, one count of Obstruction of Justice – a five-year felony and/or \$10,000 fine, and one count of Extortion – a 20-year felony and/or \$10,000 fine
- Howard Croft: Former Director of the City of Flint Department of Public Works, two counts of Willful Neglect of Duty – each a one-year misdemeanor and/or \$1,000 fine
- Darnell Earley: Former City of Flint Emergency Manager, three counts of Misconduct in Office – each a five-year felony and/or \$10,000 fine
- Nick Lyon: Former Director, Michigan Department of Health and Human Services, nine counts of Involuntary Manslaughter – each a 15-year felony and/or \$7,500 fine, and one count of Willful Neglect of Duty – a one-year misdemeanor and/or \$1,000 fine
- Nancy Peeler: Early Childhood Health Section Manager, Michigan Department of Health and Human Services, two counts of Misconduct in Office – each a five-year felony and/or \$10,000 fine, and one count of Willful Neglect of Duty – a one-year misdemeanor and/or \$1,000 fine
- Richard Snyder: Former Governor of Michigan, two counts of Willful Neglect of Duty – each a one-year misdemeanor and/or \$1,000 fine
- Eden Wells: Former Chief Medical Executive, Michigan Department of Health and Human Services, nine counts of Involuntary Manslaughter – each a 15-year felony and/or \$7,500 fine, two counts of Misconduct in Office – each a five-year felony and/or \$10,000 fine, and one count of Willful Neglect of Duty – a one-year misdemeanor and/or \$1,000 fine

Special Agents assigned to the Flint Water Team worked with the Office of the Genesee County Sheriff to plan a safe and equitable process for the nine indicted individuals to surrender to the custody of Special Agents at the Genesee County Jail. The defendants turned themselves in and were arraigned on January 14, 2021, before Circuit Judge Elizabeth Kelly, as well as Chief Judge Christopher Odette for the 67th District Court.

The following section presents a summary of the evidence and arguments that were presented to the one-person grand jury, which supported the charges authorized by the one-person grand jury, including summaries of testimony given by witnesses and physical exhibits that were admitted as evidence. The exhibits will be attached to this memo, collectively, as Appendix J – Documents Collected During Investigation, though each exhibit will have its own document number.

The following descriptions are allegations only, based on the evidence gathered by the Flint Water Team. All individuals are presumed innocent until proven guilty beyond a reasonable doubt in a court of law.

Jarrold Agen

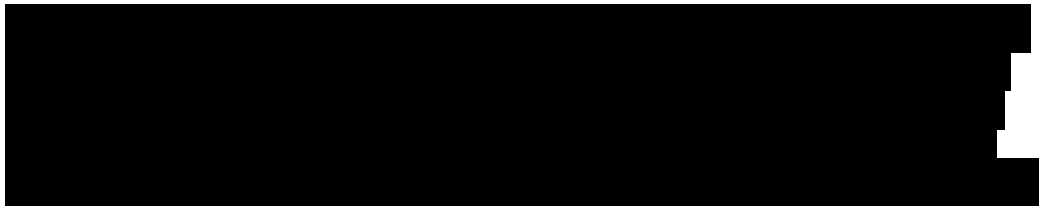
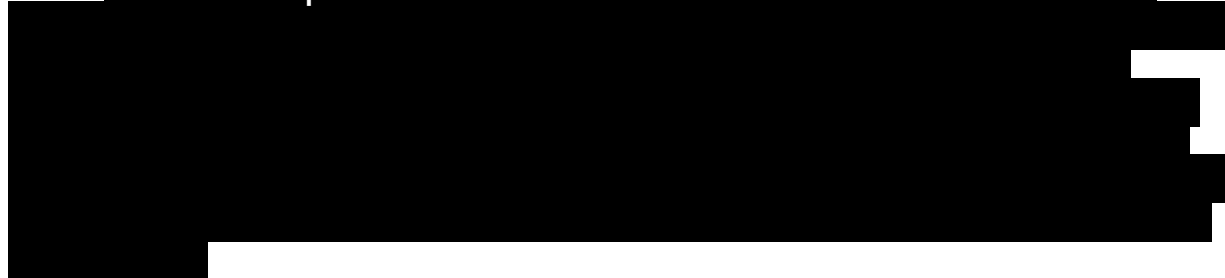
Jarrold Agen was the former chief of staff for Governor Snyder. Agen was alleged to have committed one count of Perjury, Prosecutors Investigative Subpoena contrary to MCL 767A.9, when he allegedly lied about when he became aware of the legionella bacteria outbreak during testimony given pursuant to an OSC investigative subpoena on February 11, 2017.

Perjury – Prosecutors Investigative Subpoena

To support a charge of Perjury under MCL 767A.9, the Team would have to show that:

- 1) the defendant was under oath;
- 2) the testimony took place because of a subpoena issued under the investigative subpoena statute; and
- 3) the defendant knowingly made a false statement.

Redacted pursuant to MCL 767A.8



[REDACTED]

[REDACTED]

[REDACTED]

Brad Wurfel began sharing emails with his colleagues on the matter. For example, on January 30, 2015, he sent an email to David Murray, referencing the “42 cases” in Genesee County. See Doc 3 - Emails between Brad Wurfel and David Murray dated Jan. 30, 2015.

Regarding in-person discussions with Agen on the outbreak, there were “comms” (communications) meetings with the communications team on January 27, 2015, and February 3, 2015, at which Agen was present, where “Flint Water” was on the agenda. See Doc 4 - Email from Jarrod Agen to Sara Wurfel dated Jan. 27, 2015; Doc 5 - Email from Tori Rexford to Jarrod Agen dated Feb. 3, 2015. Sara Wurfel testified that she was concerned about the outbreak and believed the matter needed to be elevated to the Governor, the process of which would begin at these meetings.

[REDACTED]

In March 2015, Brad Wurfel and others became increasingly concerned about the outbreak. On March 13, 2015, Brad Wurfel sent an email regarding the outbreak and how to handle the matter prior to another “comms” meeting. See Doc 6 - Email from Brad Wurfel to Harvey Hollins dated Mar. 13, 2015; Doc 7 - Email from Brad Wurfel to Harvey Hollins (Part II) dated Mar. 13, 2015; Doc 8 - Email from Brad Wurfel to Sara Wurfel dated Mar. 13, 2015. Sara Wurfel also believed that the situation merited further discussion. See Doc 9 - Emails between Jarrod Agen, Sara Wurfel and Laura Biehl dated Mar. 16, 2015 (“Flint water continues to be a relatively big deal with Harvey working on several things that could be big deals. Might be good to bring up with him too.”).

Redacted pursuant to MCL 767A.8

[REDACTED]

[REDACTED]

On March 16, 2015, Brad Wurfel forwarded an email to Agen explaining in detail the information surrounding the outbreak. See Doc 10 - Email from Brad Wurfel to Jarrod Agen dated Mar. 16, 2015. The email was four pages long and included specifics about the outbreak: “More than 40 cases reported since last April. That’s a significant uptick - more than all the cases in the last five years or more combined.” *Id.* Yet when news of the March 16, 2015, email broke, Agen claimed that he never opened the email, then blamed others for not raising the issue to him in another manner. He stated, “I’m mad that I didn’t open that email,” and “I’m mad that no one came forth with it.” See Doc 11 - Elisha Anderson, Paul Egan, and Matthew Dolan, *Snyder’s staff told last March about Legionnaires’ Uptick*, Detroit Free Press, Feb. 26, 2016. In an email responding to Agen’s claims in the story, Sara Wurfel reiterated her claims that the topic was discussed at the prior comms meetings. See Doc 12 - Email from Sara Wurfel to Kelly Rossman-McKinney dated Feb. 27, 2016 (“This is the crazy thing - of course this was a topic and concerns raised and shared - for a long time. I think the EO main argument has been that depts kept saying everything was fine based on rules/standards and all data/testing they had.”).³⁰

[REDACTED]

Further, Brad Wurfel’s email dated Mar. 16, 2015, demonstrates that information on the outbreak was sent to Agen. Although Agen claims he did not open the email, a jury would not be required to accept this, especially in light of Agen’s motive to lie. Based on this evidence, the Flint Water Team brought a charge of perjury because it believed Agen lied under oath about when he learned of the outbreak.

Gerald Ambrose

Ambrose was the financial director under emergency management from 2012 until his appointment as Emergency Manager in January of 2015. He remained Emergency Manager until April of 2015. Ambrose was alleged to have committed two counts of the common law offense of misconduct in office contrary to MCL 750.505. The evidence showed that he was aware of the dangers of continuing to use Flint River water, but he refused to reconnect to the Detroit Water and Sewerage Department. And it also showed that he knowingly violated the Home Rule City Act by purportedly pushing for the issuance of bonds to pay for the

³⁰ Rossman-McKinney became the Communications Director at the Department in 2019. Due to her work on behalf of clients in the private sector, the Flint Water Team subcontracted communications support to avoid any conflict.

Karegnondi Water Authority (KWA) pipeline in excess of what was allowable by the Home Rule City Act.

Misconduct in Office

To support a charge of Misconduct in Office, the Team would have to show:

- 1) That the defendant was a public officer;
- 2) The defendant committed an act of malfeasance or misfeasance;
- 3) That such behavior was corrupt; and
- 4) That it occurred in the exercise of the duties of his office or under the color of his office.

People v Carlin (On Remand), 239 Mich App 49, 64 (1999).

Ambrose's positions (financial director under emergency management and Emergency Manager) fulfill the requirements for Ambrose to be a public officer under *People v Coutu*, 459 Mich 348, 354–355 (1999). See Doc 23 - Ambrose Oath of Office, Letter of Appointment, and EM Contract. The actions he took regarding the Flint Water Crisis were taken under the color of his position. Thus, these two elements have been met. The only remaining questions about his conduct are related to whether his actions constituted misconduct and whether his actions were corrupt.

The act of committing misconduct can be established under two theories: misfeasance and malfeasance. See *People v Perkins*, 468 Mich 448, 456 (2003). The element of committing misconduct is established by reference to the preceding theory, i.e., (1) a duty must be *breached*, or (2) an action taken under the color of office must be done with a *corrupt motive*. *Coutu*, 459 Mich at 355. “‘Corruption’ in this context means a sense of depravity, perversion or taint.” *People v Coutu*, 235 Mich App 695, 706 (1999). If the theory is breach of legal duty, then this element presents a very low hurdle. If the theory is acting under the color of office, this element becomes more significant because, unlike a willful breach of duty, acting under the color of one's office is not inherently suggestive of wrongdoing. But the element should nevertheless be satisfied insofar as the defendant's conduct plainly represents “a perversion of the trust placed in [defendants] by the people of this state.” *Id.* at 707.

The Home Rule City Act governs certain actions that may be taken by a municipality. MCL 117.1 *et seq.* Pursuant to statute, a city may take on only a certain amount of debt. MCL 117.4a(2). “Bonds issued or contract or assessment obligations incurred to comply with an order of the water resources commission,” however, would not count against the debt ratio expressed in MCL 117.4a(2). MCL

117.4a(4)(f). Thus, if the water resource commission issued an order requiring a certain bond be issued, for example, bonds relating to the KWA contract, then the monies associated with that bond would not be considered in the indebtedness of the city and the restrictions in MCL 117.4a(2) could be avoided.

In 2013, when the City of Flint entered into an agreement with the KWA, it called for the cost of the project to be divided into two parts: Genesee County 65.8% and City of Flint 34.2%. See Doc 13 – KWA Financing Agreement. Considering Flint’s financial situation at the time, those involved believed that the cost of the project would violate the debt limit found in the Home Rule City Act. Thus, a plan was hatched to use MCL 117.4a(4)(f) to circumvent the debt limit. The plan, according to Daugherty Johnson’s November 19, 2017 testimony given pursuant to a proffer³¹ with the OSC, was to use the Bray Road site, an unlicensed dumping site that had previously been used for water and construction waste, as a “calamity,” which would require the issuance of an administrative consent order. See Doc 14 - Daugherty Johnson *Kastigar* Transcript. According to Johnson, Ambrose came looking for a “calamity” to support the issuance of an Administrative Consent Order, and Johnson gave him the Bray Road site. *Id.*, pp 110–121.

On November 27, 2013, Johnson sent staff at MDEQ an email stating, “Hello Steve and Mike. The City would like to entertain a Consent Order as part of our Water Plant upgrades as it relates to the use of Bray Road. There are Bond implications that this may assist with.” See Doc 15 - Email from Daugherty Johnson to Mike Prysby dated Nov. 27, 2013. John Craig, from MDEQ, was tasked with handling the matter. [REDACTED]

[REDACTED] He also exchanged emails with colleagues wherein he expressed his confusion with the process. See Doc 17 - Email from John Craig to Lawrence Bean dated Dec. 20, 2013; Doc 18 - Emails between John Craig and Stephen Busch dated Feb. 6, 2014. Ultimately, the MDEQ issued an order allowing the City to take action on (i.e. clean up) the Bray Road site. This requirement allowed the City of Flint to skirt the Home Rule City Act debt limit because the KWA debt would now be required “to comply with an order of the Water Resources Commission.” See MCL 117.4a(4)(f) and Doc 19 - MDEQ ACO dated Mar. 20, 2014.

[REDACTED] Redacted pursuant to MCL 767.4 [REDACTED]

[REDACTED] First, the agenda of March 5, 2014, which was sent to

³¹ A proffer agreement, sometimes referred to as a “*Kastigar* agreement,” after *Kastigar v United States*, 406 US 441 (1972), allows a person to give a statement to the government, but they cannot be criminally charged based on their statement. If, however, information is gathered independent of their statement/testimony, the person may then be charged.

Ambrose, included “Need some assistance in getting the Administrative Consent Order through the DEQ so Karegnondi Water Authority can get their bonds issued.” See Doc 20 - Email from Maxine Murray dated Mar. 4, 2015, p 3. Another example of Ambrose’s knowledge of the plan is found in a March 18, 2014, email from David Masseron, the attorney hired by the City of Flint who was tasked with looking into the bond issue, where he states:

The DEQ order is necessary for two reasons; 1) There is extensive disclosure on the water treatment plant, ACO [administrative consent order] and Flint’s ability to use that plant in the POS and 2) More importantly, if the KWA project is done to comply with an ACO, the debt associated with the project would not “count” towards the City’s debt limit. As you know, the City of Flint has lived through a dramatic decline in property values and state revenue sharing. These declines have dramatically reduced its debt capacity under the Home Rule City Act. In order to ensure that the entire project can be financed (1 and 2n1 series of bonds) and that the City will have some debt capacity in the future, the ACO is a condition precedent to proceeding with transaction.

Doc 21 - Email from David P. Massaron dated Mar. 18, 2014.

Ambrose forwarded this email to staff at the Michigan Department of Treasury, acknowledging that the bond sale required to absorb the KWA debt is predicated on the administrative consent order’s passage. See Doc 22 - Email from Gerald Ambrose to Wayne Workman and Edward Koryzno dated Mar. 18, 2014.

It is the Flint Water Team’s contention that Ambrose was fully aware that the issuance of the administrative consent order was not out of an emergency, or “calamity,” but rather was done specifically so that the debt incurred by the KWA bonds could surpass what was allowable under the Home Rule City Act. These actions satisfied one count of misconduct in office. More specifically, Ambrose committed misfeasance by encouraging Earley to enter into an administrative consent order for an unlawful and improper reason: to get around the Home Rule City Act debt limitations.

The second count of misconduct in office for Ambrose related to his knowledge that the water treatment plant was neither ready nor capable of distributing safe water to the City of Flint when the switch was made. On March 12, 2020, John O’Brien and Jeff Wright met with members of the Flint Water Team. Wright was the Genesee County Drain Commissioner during the Flint Water Crisis, and O’Brien was a division director at the commission. See Doc 24 - John O’Brien Interview Transcript, Mar. 12, 2020; Doc 25 - Jeff Wright Interview Transcript, Mar. 12, 2020. Both O’Brien and Wright described a meeting on March 14, 2014, where they and other staff at the Flint Water Treatment Plant explained that the

plant would not be ready for operation on April 14, 2014. Also in attendance were Ambrose, Earley, Croft, Mayor Dayne Walling, Johnson and Brent Wright. At the meeting, O'Brien gave the officials a list explaining all the concerns that he and the other plant workers had with the status and inabilities of the plant to distribute safe water. See Doc 26 - John O'Brien, Genesee County Drain Commission Document, Mar. 14, 2014. Despite the concerns, Ambrose, Earley, and Croft all plowed ahead with the plan to put the plant into operation the following month.

Redacted pursuant to MCL 767.4

While this evidence does not establish criminal liability per se, it does establish that Ambrose was aware of the preexisting issues with the water treatment plant as it related to distributing safe water.

Before he was appointed Emergency Manager, Ambrose received emails establishing that he would have been aware of the continuing issues with Flint water, i.e. emails regarding the boil water advisories and General Motors removing itself from Flint water. See Doc 28 - Email from Daugherty Johnson to Gerald Ambrose dated Aug. 15, 2014; Doc 29 - Email from Darnell Earley to Gerald Ambrose dated Oct. 14, 2014. Put plainly, when Ambrose became the Emergency Manager, he was aware of all the issues regarding the Flint water, yet, despite his knowledge, he refused to inform the public regarding the water's safety. And despite having the authority to do so, Ambrose refused to reconnect the City of Flint to the Detroit Water and Sewerage Department.

On February 10, 2016, Sue McCormick, the Director of the Detroit Water and Sewerage Department, gave a statement to the United States Postal Inspector and the United States Attorney's Office. See Doc 30 - McCormick USPI Statement. In that statement, she described events leading up to January 26, 2015, when she appeared before the Flint City Council and gave a statement where she indicated that the Detroit Water and Sewerage Department would be willing to restart service to Flint because of the crisis. In her statement, McCormick described how she was contacted by Flint City Council member Eric Mays, who asked McCormick if the Detroit Water and Sewerage Department would be willing to restore service to Flint, if there was a reconnection fee, and if the offer was contingent upon coming to some kind of further contractual agreement. The only issue was a piece of pipeline sold to Genesee County that would cause a gap in the service which Flint would have to work through. Mays asked McCormick to put the information in writing (which she did) and make a public statement at the next Flint City Council meeting. McCormick agreed to the meeting and was on her way when she received a call from Ambrose, who attempted to "discourage" her from attending the meeting. Ambrose told McCormick he was in control of the agenda and would not allow her to be put on it. McCormick turned around and was on her way home when she received a call from Mays asking her to give her statement during the public session. McCormick agreed and attended the meeting. During the meeting, McCormick provided a short statement during the public session where she made

clear that the offer to provide water to Flint was not contingent on any long-term contact. See Doc 31 - Sue McCormick Public Comments, Jan. 26, 2015.

Shortly after this meeting, Ambrose became aware of a situation at the home of LeeAnne Walters.³² See Doc 32 - Email from Howard Croft to Gerald Ambrose dated Feb. 11, 2015; Doc 33 - Emails between Elizabeth Murphy and Gerald Ambrose dated Mar. 2, 2015. [REDACTED]

[REDACTED] gain, this is not criminal behavior by itself, but it does demonstrate Ambrose's refusal to switch back to the Detroit Water and Sewerage Department, no matter the circumstances regarding the health of the residents of Flint or the safety of their water system.

On March 10, 2015, Ambrose, in his role as the Emergency Manager, received written notice of the spike in legionella-related illnesses and the problems the Genesee County Health Department was having getting information from the City of Flint via FOIA requests. See Doc 34, Email from James Henry to Gerald Ambrose dated Mar. 10, 2015. On March 24, 2015, the Flint City Council voted to reconnect Flint water to the Detroit Water and Sewerage Department service, but Ambrose did nothing. And because the city was under emergency management and the City Council lacked any authority, Ambrose's inaction made the vote purely ceremonial.

The refusal to switch to the Detroit Water and Sewerage Department, in light of his knowledge of continuing health concerns, supported a charge of misfeasance with corrupt intent by Ambrose.

Following the presentation of evidence, the one-person grand jury indicted Ambrose with four counts of Misconduct in Office, relating to the following courses of action, [REDACTED]

[REDACTED]³³

³² Walters was a resident of the City of Flint who began noticing that her children were suffering from rashes, blurred vision, hair loss, and later kidney issues. She believed, rightly, that these issues were linked to the water switch. Her story gained local, then national, attention on her way to becoming an environmental activist.

³³ For further discussion of these charges, see Appendix L – One-Person Grand Jury Opinions.

Redacted pursuant to MCL 767.4

[REDACTED]

[REDACTED]

[REDACTED]

. 34

Richard Baird

Richard Baird was a transformation manager and senior adviser to Governor Snyder. Baird was alleged to have committed perjury when he purportedly lied about when he first learned about the legionella bacteria outbreak during his testimony given pursuant to an investigative subpoena. He also was alleged to have committed the common law offenses of obstruction of justice and misconduct in office when he purportedly made payments to Adam Murphy, a Flint resident who suffered from the effects of lead poisoning – for medical treatment in exchange for Murphy’s silence about the quality and the impact of the water in Murphy’s home and possible related testimony against Governor Snyder and other officials. Finally, because Baird also purportedly threatened Dr. Shawn McElmurry with the loss of future funding, and potentially his employment at Wayne State University, to prevent him from releasing information to the public about the continuing nature of the Flint Water Crisis, Baird was also alleged to have committed extortion.

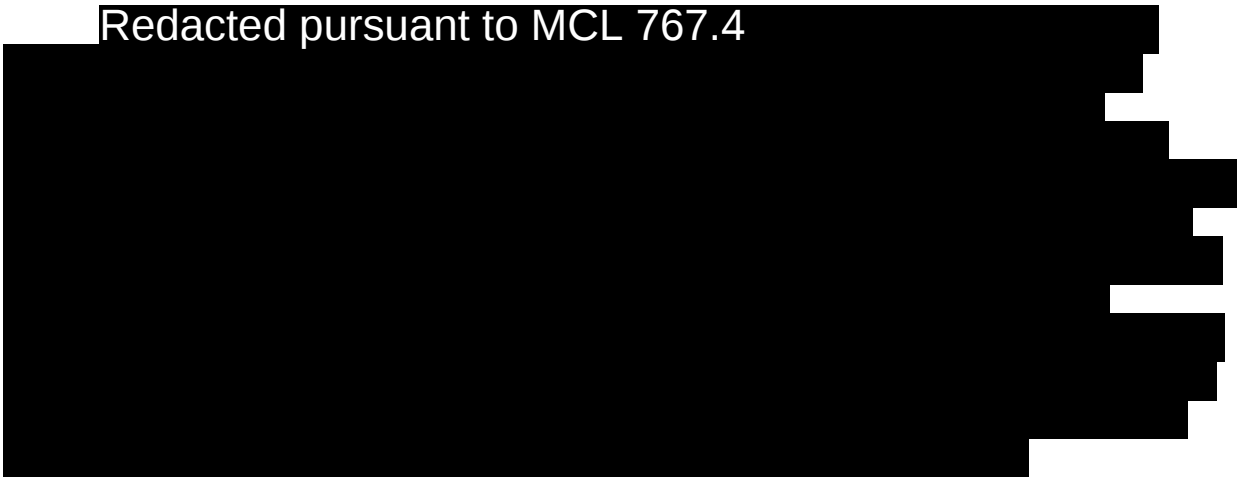
Perjury During an Investigative Subpoena Examination

To support a charge of Perjury under MCL 767.9, the Team would have to show that:

³⁴ For further discussion of these charges, see Appendix I – One-Person Grand Jury Opinions.

- 1) the defendant was under oath;
- 2) the testimony took place because of a subpoena issued under the investigative subpoena statute; and
- 3) the defendant knowingly made a false statement.

Redacted pursuant to MCL 767.4



Hollins' statements to members of the Flint Water Team directly contradicted Baird. On August 27, 2019, Hollins met with members of the Flint Water Team and stated that both he and Baird were at a Flint Water Advisory Task Force meeting on December 23, 2015. See Doc 38 - Hollins Interview Transcript, Aug. 27, 2019, pp 80–85. At that meeting, Dr. Lawrence Reynolds, president of Mott Children's Health Center and a member of the task force, explained that Legionnaires' disease cases went up from eight in 2013 to over 40 cases in both 2014 and 2015. Hollins stated that, after the meeting, he and Baird discussed the outbreak, and that Baird was so concerned that he attempted to meet with Governor Snyder immediately – something Hollins had never seen from Baird. Hollins and Baird then called Agen to inform him of the information shared at the meeting.

Dr. Reynolds, in a statement to the Flint Water Team, independently confirmed Hollins' description of the December 23, 2015, meeting. See Doc 39 – Dr. Reynolds Interview (IR 19-00101). Dr. Reynolds stated that he clearly advised both Baird and Hollins of the spike in Legionnaires' disease cases in the Flint area and the number of cases involved. Dr. Reynolds used the term "significant spike" when explaining the increase. He also made it clear that Legionnaire's disease would be included in the Flint Water Advisory Task Force final report.

During his August 27, 2019, interview, Hollins also described a December 24, 2015, conference call where he, Baird, Governor Snyder, Meegan Holland, and possibly Agen, discussed the Flint Water Crisis. See Doc 40 – M. Holland Call Log; Doc 41 - Meegan Holland Text Messages; Doc 42 - Emails among Meegan Holland, Richard Baird, and Jarrod Agen dated Dec. 23, 2015. According to Hollins, Baird

ran the call and explained everything that happened at the Flint Water Advisory Task Force meeting. However, when he finished briefing Governor Snyder, Baird left out the Legionnaires' disease information. When Hollins was asked if he had anything to add, he brought up the Legionnaires' disease news, at which point Baird briefed Governor Snyder on what Dr. Reynolds had reported.

The information provided by Hollins and Dr. Reynolds supported the Flint Water Team's determination that Baird's investigative testimony regarding when he learned about the legionella bacteria outbreak was a lie, supporting a charge of perjury.

Obstruction of Justice

Obstruction of Justice is a common law offense. It is commonly understood as an interference with the orderly administration of justice. See *People v Meissner*, 294 Mich App 438 (2011). Obstruction of Justice is considered a category of offenses; a common example is witness coercion. *Id.* Coercion involves an attempt to dissuade a witness from testifying, and "[w]ords alone may be sufficient to constitute the crime." *Id.*

Adam Murphy was a Flint resident who suffered from the effects of lead poisoning. He met with members of the Flint Water Team on September 12, 2019, and gave a statement where he described a series of events that culminated with a meeting with Baird. See Doc 45 - Adam Murphy Statement (IR 19-00072). Murphy was a vocal opponent of the continued claims made by civic leaders that the crisis was under control. At a January 11, 2017, public meeting, Murphy was almost removed because of his outburst regarding the situation. Michigan State Police Detective Billie J. Roach approached Murphy and asked what she could do to help him. Murphy requested a meeting with Governor Snyder to talk about a treatment called chelation therapy, which removes heavy metals from the blood.

Although not with Governor Snyder, Det. Roach did set up a meeting with Baird that took place on February 28, 2017, at Murphy's residence in Flint. Murphy, along with his wife, son, and parents, met with Det. Roach and representatives from Governor Snyder's office, including Baird, Scott Hiipakka, and Sheryl Thompson. In his statement to the Flint Water Team, Murphy explained how he presented the documentation regarding the contaminated water in their home. Baird told Murphy that he (Baird) and the Governor go way back, and that he was "speaking for the Governor." Baird said that he could create a "pilot" study to get funding for Murphy's chelation treatment. Murphy stated that Baird told him to find a doctor who would administer the treatment, which he did. Murphy stated that Baird told him that if he told the media or anyone about this "pilot" program, Baird would pull the plug on paying for the treatments.

When Murphy asked how the process for paying for the treatments would be facilitated, he was told that Thompson would be his contact person for payments. Murphy would reach out to Thompson and inform her of his appointments, he would go to the appointment, and then after the treatment, the doctor's receptionist would contact Thompson to arrange for payment. Murphy stated that he was never issued an insurance card and made no payments himself for any of the treatments. As part of the treatment, Murphy was told to take vitamin supplements, which were also paid for through Thompson. While he did not know where the funding came from, he knew that payments were handled by a credit card.

In a statement made to the OSC on August 6, 2017, Thompson also recalled the meeting that took place at Murphy's home. See Doc 46 - Sheryl Thompson Statement, Aug. 6, 2017 (IR 19-00046). She explained that after the meeting, she used Baird's personal credit card when making the payments for Murphy's treatment. The payments totaled over \$12,000, the last of which was December 31, 2018. In addition to his admission in an August 30, 2017, email to paying for the treatment, Baird also admitted in the Flint civil cases that his credit card was used. See Doc 47 - Portion of Baird Civil Deposition Transcript, July 21, 2020, pp 180–191; See Doc 48 - Email from Richard Baird to Sheryl Thompson dated Aug. 30, 2017.

It is the Flint Water Team's contention that Baird's threat that he would pull the plug on the funding is indicative of his intent to silence Murphy and prevent further complications for Governor Snyder – not just media embarrassment, but possible legal ramifications and liability as well. Murphy stated that Baird told Murphy that if Murphy reported his secret treatment and the payment for that treatment to anyone at all, then the payments and treatment would stop. This statement does not lend itself to the beginning of some kind of "pilot" program but instead shows that Baird paid Murphy for his silence. This type of behavior falls under the scope of obstructing justice.

Misconduct in Office

To support a charge of Misconduct in Office, the Team would have to show:

- 1) That the defendant was a public officer;
- 2) The defendant committed an act of malfeasance or misfeasance;
- 3) That such behavior was corrupt; and
- 4) That the behavior occurred in the exercise of the duties of his office or under the color of his office.

Carlin, 239 Mich App at 64.

As previously indicated, Baird was appointed by Governor Snyder to the role of transformation manager. He signed an oath of office in October 2013. See Doc – 43 Baird Letter of Appointment, Oct. 16, 2013; Doc 44 – Baird Oath of Office, Oct. 15, 2013; Unclassified Position Description, Oct. 15, 2013. Though the role’s title is not found anywhere in the Michigan Constitution, that he was appointed makes this one of several unclassified appointments that the Governor is granted according to the Michigan Constitution.³⁵ MCL 15.341 states that a public officer is a person appointed by the Governor and that an employee of the State includes both classified (by civil service rules) and unclassified positions. Thus, Baird was a public officer.

It is the Flint Water Team’s contention that Baird’s actions relating to his attempt to silence Murphy not only amounted to obstruction of justice but also constituted malfeasance as it related to misconduct in office. Baird attended the meeting at Murphy’s home as a representative of Governor Snyder’s office and in fact declared that he was speaking for Governor Snyder. His actions appeared to be an attempt not only to silence a vocal critic of Governor Snyder’s handling of the Flint Water Crisis but also to limit the release of information that would show that the effects of the Flint Water Crisis were much more severe than Governor Snyder and other officials were willing to publicly share. Baird apparently did not pay for Murphy’s treatment as a concerned citizen, but as an aide to Governor Snyder with the intent to secure silence. The Flint Water Team contends that Baird’s threat to discontinue payments if Murphy spoke out proves his actions and motives were corrupt. Thus, there was sufficient evidence to charge Baird with misconduct in office.

Extortion

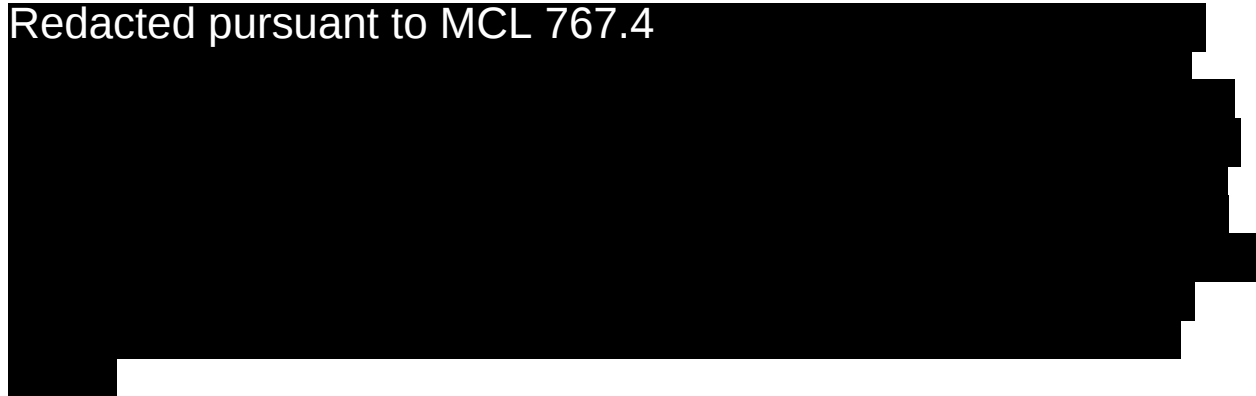
To support a charge of Extortion under MCL 750.213, the Team would have to show:

- 1) That the defendant threatened to injure someone;
- 2) That the threat was made in writing or verbally; and
- 3) That the threat was made, without just cause, to make the recipient of the threat do something against their will.

Dr. Shawn McElmurry was a member of the Flint Area Community Health and Environmental Partnership, a team led by Wayne State researchers specializing in environmental engineering and public health that was conducting an independent study to evaluate the possible association between changes in Flint’s water system and public health, specifically the Legionnaires’ disease outbreak.

³⁵ Article XI, §5 of the Michigan Constitution allows for eight exempt or unclassified positions within the Office of the Governor.

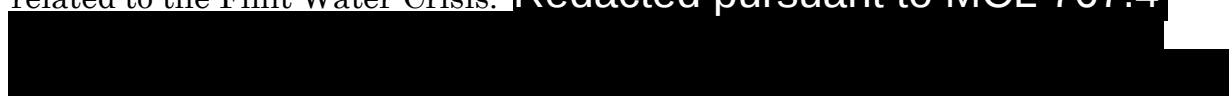
Redacted pursuant to MCL 767.4



These actions supported the charge of extortion.

Additional Information known to the Flint Water Team unrelated to the Flint Water Crisis.

The Flint Water Team's purpose was to investigate and prosecute events related to the Flint Water Crisis. Redacted pursuant to MCL 767.4



Redacted pursuant to MCL 767.4

Redacted pursuant to MCL 767.4

Howard Croft

As the Director of Public Works, Croft was alleged to have committed two counts of willful neglect of duty when he purportedly neglected to communicate information to the public regarding the ongoing health and safety risks associated with Flint water and neglected to pursue corrosion issues in the Flint water system, thereby failing to ensure the safety of the water supply.

Willful Neglect of Duty

To support a charge of Willful Neglect of Duty under MCL 750.478, the Team would have to show that:

- 1) the defendant was a public officer or any person holding any public trust or employment;
- 2) the defendant had a duty that is enjoined by law; and
- 3) the defendant willfully neglected to perform such duty.

At the time of the switch from the Detroit Water and Sewerage Department to the Flint River, Croft was the Director of Public Works for the City of Flint. Because Croft's position as Director of Public Works necessarily included statutory and contractual duties to protect and ensure public health and safety for the residents of Flint, Croft was a public officer. See *Coutu*, 459 Mich at 354–355; MCL 141.1549. Additionally, on January 16, 2015, Croft signed and directed the release of an official City of Flint document to the general public, which indicated that the Director of Public Works was responsible for resolving water safety and quality problems by working with the Utilities Administrator, professional engineers, consultants, and the MDEQ, in order to manage increased public communications and address any issues that arise going forward. Thus, the element that Croft be a public officer is satisfied.

Croft was initially part of an internal City of Flint email chain on October 3, 2014, where city officials discussed a response to an uptick in legionella bacteria-

Redacted pursuant to MCL 767.4

GCHD has attempted to obtain specific information regarding the Flint water distribution system from your office since November 2014. Your office has not provided a return phone call or response to emails. A FOIA request was sent electronically and mailed to your office on January 27, 2017, in attempt to obtain information. The response from your office on February 4, 2015, did not include any of the information that was requested. I am still hopeful that we can work collaboratively to protect the health of the community and resolve any issues with the Flint water supply.

Redacted pursuant to MCL 767.4

On March 10, 2015, Henry sent the City of Flint, including Croft, a follow-up email to his previous FOIA request indicating that the information he previously requested “still has not been received and the city’s lack of cooperation continues to prevent my office from performing our responsibilities.” See Doc 34 - Email from James Henry to Gerald Ambrose dated Mar. 10, 2015. The email also noted the following:

The Genesee County Health Department has the responsibility to conduct illness investigations and consider all potential sources, this is not optional. In 2014, Genesee County experienced a significant increase of confirmed Legionella illnesses relative to previous years. Legionella can be a deadly, waterborne disease that typically affects the respiratory system. The increase of the illnesses closely corresponds with the timeframe of the switch to Flint River water.

The majority of the cases reside or have an association with the city. Also, McLaren Hospital identified and mitigated Legionella in their water system. This is rather glaring information and it needs to be looked into now, prior to the warmer summer months when Legionella is at its peak and we are potentially faced with a crisis. This situation has been explicitly explained to MDEQ and many of the city’s officials. I want to make sure, in writing that there are no misunderstandings regarding this significant and urgent public health issue. The Trihalomethane issues ‘pale in comparison’ to the potential public health risks of Legionella...

Id.

On March 16, 2015, Croft emailed other Flint officials indicating he was continuing to work on handouts for the upcoming March 19, 2015, Water Advisory Committee meeting, which included a document that has a “formatted response to all of the questions that were asked at the first meeting.” See Doc 55 - Email from Howard Croft dated Mar. 16, 2015.

At the Water Advisory Committee meeting, city officials handed out a “Water Advisory Committee Q&A” sheet that was drafted by Croft in his role as the Director of Public Works. See Doc 56 - Water Advisory Committee Questions & Answers, Mar. 19, 2015. The document correlates with the same document Croft

told other city officials he was continuing to work on a few days before. In the document, a question is posed that says there is much discussion regarding total trihalomethanes, “but what about pseudomas and *legionella* . . .” *Id.* The answer states as follows: “Each step of our water treatment process contributes to removing water borne pathogens. We use ozone, primary settling, chemical softening, and finally chlorine to remove these pathogens. The combination of treatment can provide 99.99% removal.” *Id.*

The evidence supported that, by March 10, 2015, Croft had been aware – for over six months – of legionella bacteria-related cases stemming from the Flint water supply system. He had been informed by MDEQ officials and Genesee County Health Department officials that legionella bacteria-related cases were occurring in Flint, outside of just McLaren Hospital – Flint, and their occurrence was significantly higher relative to previous years. Croft had been warned by Bowcock that legionella bacteria-related occurrences could occur in the coming summer, yet he repeatedly failed to respond adequately and fully to a FOIA request regarding distribution sampling and lab testing for heterotrophic bacteria, the exact bacteria that is found in families of legionella bacteria strains. When specifically asked by residents of Flint about the threat of legionella bacteria, Croft failed to inform the public of any update or warning regarding legionella bacteria-related issues presented to him by the MDEQ, the Genesee County Health Department, or Bowcock.

Croft’s inadequate drafting of a response to questions about legionella bacteria showed an extreme disregard for the health and safety of residents of Flint, and any inclination of being transparent or communicative as to the safety of the water supply system is completely negated. Croft dismissed Bowcock’s warnings, failed to offer timely cooperation with the Genesee County Health Department, and refused to keep the public fully, or even remotely, informed of the potential health threats of legionella bacteria. Croft was legally required to protect the public health and safety of Flint residents by properly directing and managing all aspects of public works, including communications. It is the Flint Water Team’s contention that he willfully neglected his duties to the detriment of Flint’s residents, which ultimately contributed to a legionella bacteria-related public health disaster.

Additionally, the OSC interviewed Croft on December 15, 2016. See Doc 57 - Howard Croft OSC Interview, Dec. 15, 2016. During the interview, Croft said that in October 2014 he was presented with a piece of corroded water service pipeline without the “white, chalky” lining from orthophosphates by individuals from the Water Service Center.³⁶ He said that employees told him there may be a problem – that the lack of lining could cause lead to leach into the lines. Croft said that although he looked at the pipe shown to him, he neither conducted any further

³⁶ Orthophosphates are a type of phosphate often added to municipal water supplies to control corrosion in lead and copper pipes,

follow-up nor notified any other City of Flint official. Croft admitted that he “missed stuff,” and there were things he “didn’t understand.” *Id.*

On January 13, 2015, Croft, Flint Mayor Dayne Walling, and Ambrose signed a memo answering questions from residents about Flint’s water system. See Doc 58 - Department of Public Works Questions & Answers, Jan. 13, 2015. This memo mentions that the City of Flint would begin replacing pipes, including pipe lining, in the spring of 2015 to account for overdue maintenance concerns. The memo addressed reporting requirements for bacterial violations, but did not mention lead, which Croft was aware could be a consequence of a corroded pipe, like the one he was shown in October 2014.

By Croft’s own admission, he neglected to do any follow-up about the corrosive nature of the pipe he was shown, which did in fact cause lead to leach into Flint’s water supply. Even when Henry, from the Genesee County Health Department, attempted to utilize the FOIA process in an effort to obtain information from Croft regarding water testing, the evidence demonstrates that Croft failed to respond in a timely and adequate manner or take steps to ensure the safety of Flint residents. It is the Flint Water Team’s contention that Croft’s failure to further inquire into the potential corrosion of the pipes that supplied water to the residents of Flint supported a charge of willful neglect of his duty to ensure the safety of the people of Flint through their water supply.

Darnell Earley

Earley was the Emergency Manager for the City of Flint from September 2013 to January 2015. It was alleged that Earley committed misconduct in office when he knowingly violated the Home Rule City Act by pushing for the issuance of bonds to pay for the KWA pipeline in excess of what was allowable by the Home Rule City Act. It was also alleged that Earley committed misconduct in office when he insisted on issuing press releases touting the safety of water being consumed by the public, while knowing the water was not of the quality represented in the public statements and possibly could cause a danger to residents.

Misconduct in Office

To support a charge of Misconduct in Office, the Team would have to show:

- 1) That the defendant was a public officer;
- 2) The defendant committed an act of malfeasance or misfeasance;
- 3) That such behavior was corrupt; and
- 4) That the behavior occurred in the exercise of the duties of his office or under the color of his office.

Carlin, 239 Mich App at 64.

Earley was appointed as the Emergency Manager for the City of Flint and took the oath of office on October 1, 2013, thereby making him a public officer. Ex. 62 and 63. See *Coutu*, 459 Mich at 354–355; MCL 141.1549. The actions he took relative to the Flint Water Crisis were taken under the color of his position. Thus, these two elements have been met. The only remaining questions about his conduct related to whether his actions constituted misconduct, and whether his actions were corrupt. Like Ambrose, Earley’s actions related to the KWA and his attempt to circumvent the Home Rule City Act supported a charge of misconduct in office.

Redacted pursuant to MCL 767.4

Earley’s knowledge and acquiescence to the plan can be found in multiple documents. First, the agenda of a March 5, 2014, meeting, which was sent to Earley, included, “Need some assistance in getting the Administrative Consent Order through the DEQ so Karegnondi Water Authority can get their bonds issued.” See Doc 20 - Email from Maxine Murray dated Mar. 4, 2015. Another more glaring example of Earley’s knowledge of the plan is found in a March 18, 2014, email from David Massaron, the attorney tasked with looking into the bond issue, which Earley also received, where he states:

The DEQ order is necessary for two reasons; 1) There is extensive disclosure on the water treatment plant, ACO and Flint’s ability to use that plant in the POS and 2) More importantly, if the KWA project is done to comply with an ACO, the debt associated with the project would not “count” towards the City’s debt limit. As you know, the City of Flint has lived through a dramatic decline in property values and state revenue sharing. These declines have dramatically reduced its debt capacity under the Home Rule City Act. In order to ensure that the entire project can be financed (1 and 2n1 series of bonds) and that the City will have some debt capacity in the future, the ACO is a condition precedent to proceeding with transaction.

Doc 21 - Email from David P. Massaron dated Mar. 18, 2014.

In the end, the administrative consent order was approved, and the Bond Purchase Agreement was executed. Attached to the Agreement is a letter from Earley, where he states:

Flint’s obligations incurred under the Contract to pay Contractual Payments to the Issuer with respect to the Bonds are necessary for Flint to comply with an administrative consent order dated Mar. 20, 2014, between Flint and the Michigan Department of Environmental Quality, the successor to the Michigan Water Resource Commission,

and as such, are excluded when computing Flint's statutory debt limitation set forth in Section 4a of the Home Rule Cities Act (Act 279, Public Acts of Michigan, 1909, as amended), being MCL 117.4a.

Doc 59 - KWA Bond Purchase Agreement – Exhibit B, *Letter of Representation – City of Flint* dated Apr. 1, 2014.

It is the Flint Water Team's contention that Earley was fully aware that the issuance of the Administrative Consent Order was not out of an emergency or "calamity" but was rather done specifically so that the debt incurred by the KWA bonds could surpass what was allowable under the Home Rule City Act. These actions satisfy the second and third elements of misconduct in office. Specifically, he committed misfeasance by fraudulently acquiring an Administrative Consent Order for unlawful and improper reasons – to circumvent the Home Rule City Act debt limitations – and he did so with corrupt intent.

Additionally, Earley insisted on issuing press releases touting the safety of water being consumed by the public, while knowing the water was not of the quality represented in the public statements and possibly could cause a danger to residents, which also supported a charge of misconduct in office. As previously explained with respect to Ambrose and Croft, O'Brien and Wright both described a meeting on March 14, 2014, where they and other staff at the Flint Water Treatment Plant explained to Ambrose, Earley, Croft, Mayor Walling, Johnson and Brent Wright that the plant would not be ready for operation on April 14, 2014. Despite their concerns, Ambrose, Earley, and Croft all plowed ahead with the plan to put the plant into operation the following month. These events were also corroborated by Johnson in a statement to the Flint Water Team made during one-person grand jury preparation. See Doc 27 - Daugherty Johnson Interview Transcript, Feb. 10, 2020. While this evidence does not establish criminal liability per se, it does establish that Earley was aware of the preexisting issues with the water treatment plant as it related to distributing safe water.

As soon as the water switch took place, residents began complaining about the color, smell, taste, and effect of the water. On August 15, 2014, Earley was informed that a "boil water" notice would be issued. See Doc 60 - Email from Daugherty Johnson dated Aug. 15, 2014. Several weeks later, another notice was issued. See Doc 61 - Email from Michael Glasgow dated Sept. 9, 2014. Despite these concerns, Earley and others continued to express confidence that the water was safe even though the information he was receiving was to the contrary.

It was clear that his public assurances were not satisfying the public, so Earley began to attempt to enlist MDEQ to the cause.

Redacted pursuant to MCL 767.4

Redacted pursuant to MCL 767.4

On October 15, 2014, Earley sent a memo summarizing a discussion between the Michigan Department of Treasury and the City of Flint, where it was discussed that MDEQ should issue a statement regarding the safety of the water. See Doc 63 - City of Flint Water Issues Conference Call Summary, Darnell Earley, Oct. 15, 2014. On October 31, 2014, Earley reached out directly to Wyant, pleading for MDEQ to issue a statement. See Doc 64 - Email from Darnell Earley to Dan Wyant dated Oct. 31, 2014. But MDEQ would not issue such a statement.

On December 1, 2014, Earley received a report from Lockwood, Andrews, and Newman, an engineering firm hired by the City of Flint to assist in the water switch, indicating that a total trihalomethanes violation would likely be issued. See Doc 65 - Email from Croft to Earley dated Dec. 1, 2014. On December 16, 2014, Earley received a notice of a total trihalomethanes violation. See Doc 66 – MDEQ Violation Notice – Maximum Contaminant Level for Total Trihalomethanes, Dec. 16, 2014.

Earley then issued two press releases, on January 2, 2015, and January 9, 2015, claiming the water was safe. Redacted pursuant to MCL 767.4

The January 2, 2015, press release states, “The City of Flint wants to assure the public that according to the MDEQ the water is safe for drinking and all other purposes.” See Doc 67 - Office of Emergency Manager Statement, Jan 2, 2015. Earley knew, however, that this was not MDEQ’s position, and in fact the MDEQ specifically refused to take this position.

On January 5, 2015, Earley sent Croft an email asking him to investigate the potential Detroit Water and Sewerage Department total trihalomethanes issues, in what could be perceived as an attempt to find cover for the ongoing total trihalomethanes issues in Flint. See Doc 68 - Email from Earley to Croft dated Jan. 5, 2015.

The January 9, 2015, release states, “For many reasons, financial and otherwise, the City of Flint can ill-afford to switch courses at this time.” See Doc 69 - Office of Emergency Manager Statement, Jan. 9, 2015. The release also stated that Detroit Water and Sewerage Department water and Flint River water met the same MDEQ standards, which Earley knew was patently false.

Earley’s actions of refusing to switch back to Detroit Water and Sewerage Department despite being fully aware of the health risks, continuing to attempt to solicit MDEQ backing, denying the public information regarding the true nature of the water they were consuming, and disseminating misleading information all

support the Flint Water Team's conclusion that Earley committed malfeasance and did so with corrupt intent. Therefore, these actions support the charge of misconduct in office.

Nick Lyon

As director of MDHHS, it was alleged that Lyon had a duty to warn residents of the potentially dangerous nature of their drinking water, and because he refused to perform that duty and/or was grossly negligent in his failure to perform that duty, nine people died, thus supporting nine counts of Involuntary Manslaughter.

Involuntary Manslaughter

Involuntary Manslaughter can be committed in three ways:

- 1) The failure to perform a legal duty – This charge requires proof that a legal duty existed, that the defendant had the ability to perform that duty, that the defendant either refused or willfully neglected to perform the duty, and that the victim died as a result of the defendant's failure to perform that duty. *People v Giddings*, 169 Mich App 631 (1988).
- 2) Gross negligence – Gross negligence in the context of involuntary manslaughter involves (1) knowledge of a situation requiring the use of ordinary care and diligence to avoid injury to others, (2) an ability to avoid harm by using ordinary care and diligence, and (3) the "failure to use care and diligence to avert the threatened danger when to the ordinary mind it must be apparent that the result is likely to prove disastrous to another." *People v Albers*, 258 Mich App 578, 582 (2003). In other words, a defendant is grossly negligent when "the actor realizes the risk of his behavior and consciously decides to create that risk . . . the actor does not seek to cause harm but is simply 'reckless or wantonly indifferent to the results.'" *People v McCoy*, 223 Mich App 500, 502 (1997) (citations omitted).
- 3) Misdemeanor manslaughter – This charge requires proof that the defendant unintentionally killed another, without malice, during the commission of an unlawful act not amounting to a felony and not naturally tending to cause great bodily harm. *People v Mendoza*, 468 Mich 685 (2003).

Based on the evidence, the Flint Water Team believed that Lyon had committed Involuntary Manslaughter either through his failure to perform a legal duty and/or through gross negligence.

Failure to Perform a Legal Duty Theory

The Michigan Public Health Code is an extensive set of statutes intended to protect public health. It expressly creates clear, explicit, broad-ranging *mandatory*

legal duties and the powers to perform them in the MDHHS. MCL 333.2221 states that:

(1) Pursuant to section 51 of article 4 of the state constitution of 1963, the department shall continually and diligently endeavor to prevent disease, prolong life, and promote the public health through organized programs, including prevention and control of environmental health hazards; prevention and control of diseases; prevention and control of health problems of particularly vulnerable population groups; development of health care facilities and agencies and health services delivery systems, to the extent provided by law.

(2) The Department shall: (a) have general supervision of the interests of the health and life of the people of this state. (b) Implement and enforce laws for which responsibility is vested in the department. (c) collect and utilize vital and health statistics and provide for epidemiological and other research studies for the purpose of protecting the public health. (d) make investigations and inquires as to: (i) The causes of disease and especially of epidemics. (ii) The causes of morbidity and mortality. (iii) The causes, prevention, and control of environmental health hazards, nuisances, and sources of illness.

MCL 333.2226 further specifies that MDHHS has the duty, “to prevent the spread of diseases and the existence of the sources of contamination.” Again, by use of the word “shall,” the statutes establish that the duties are *mandatory*, and not discretionary.

The public health code further sets out the MDHHS’ powers to deal with situations such as the massive Legionnaire’s disease outbreak in Flint in 2014-2015. For example, MCL 333.2234 gives the MDHHS the power to be primarily responsible for local health department duties if the local health department “does not have and is unable or unwilling to obtain qualified personnel and does not have and is unable or unwilling to obtain the administrative capacity or programmatic mechanism to perform a specific function.” MCL 333.2455 gives the MDHHS the power to issue an order to correct conditions at a particular location if health laws are being violated or which the “director reasonably believes to be a nuisance, unsanitary condition, or cause of illness.” And finally, MCL 333.2251 gives the MDHHS director the power to issue an imminent danger order “upon the determination that an imminent danger to health or lives of individuals exists in this state.” These duties are vested in the Director through MCL 333.2205(1).

In early 2015, through executive order, Governor Snyder merged the Department of Community Health and Department of Human Services into the MDHHS and appointed Lyon as the Director of this new agency. Lyon was

previously the Director of the Department of Community Health, and the duties he had as such carried over to his new position as the Director of MDHHS.

On January 28, 2015, at 9:00 am, then-MDHHS Chief Deputy Director Tim Becker met with Lyon and Governor Snyder regarding a proposed Medicaid expansion for adult dental care. See Doc 74 - Gov. Snyder Daily Briefing, Jan. 28, 2015; Doc 75 - Becker Running Log, Jan 26–Feb 1, 2015. According to Becker's testimony, following that meeting he immediately reached out to staff by email regarding legionella. *People v Lyon*, 9/21/17 Preliminary Exam Tr, p 19. The staff began exchanging emails on legionella, which lent credence to the idea that the Governor's office was the origin of the legionella notice. See Doc 76 - Email from Tim Becker to Matthew Davis dated Jan. 28, 2015; See Doc 77 - Email chain including Tim Becker dated Jan. 28, 2015.

The January 28, 2015, meeting is also corroborated by Governor Snyder's Deputy Press Secretary, David Murray, who sent an email to MDHHS Communications Director Angela Minicuci regarding a meeting Lyon had that morning regarding Flint. Specifically, in his email, Murray stated that he could fill Minicuci in "about an event involving the boss regarding Flint water. He was part of a meeting this morning." See Doc 78 - Emails between David Murray and Angela Minicuci dated Jan. 28, 2015.

[REDACTED] This provides clear evidence that Lyon discussed Flint water with Governor Snyder on the morning of January 28, 2015.

Redacted pursuant to MCL 767.4

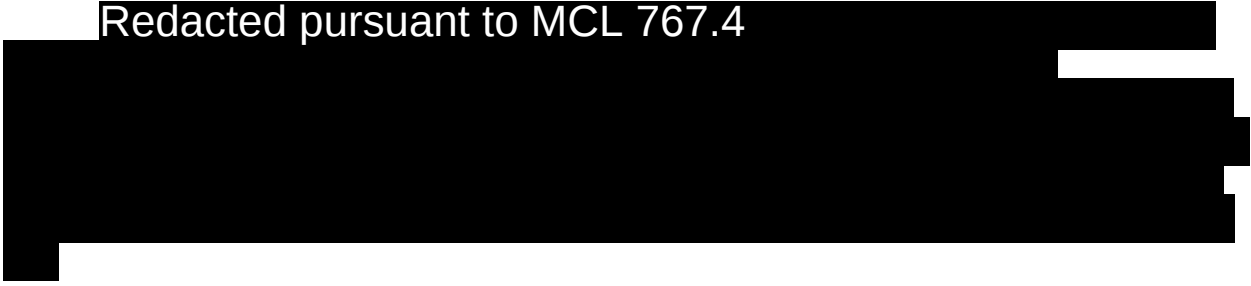
[REDACTED] this briefing was expressly requested by Lyon. See Doc 71 - Email from Mark Miller dated Jan. 28, 2015.

At the direction of Lyon, via his assistant Nancy Grijalva, information had been collected to present to Lyon at the meeting. See Doc 72 - Email from Shannon Johnson dated Jan. 28, 2015. That information included trend line charts for Genesee County and surrounding counties, and preliminary numbers of cases, as well as an epi curve³⁷ and a summary of a telephone call between state epidemiology staff and the Genesee County Health Department. According to an

³⁷ An epi curve is a graph that shows the number of illnesses in an outbreak over time.

email following the meeting, Lyon asked to be kept informed. See Doc 73 - Email from Corinne Miller dated Jan. 28, 2015.

Redacted pursuant to MCL 767.4



Two days later, on January 30, 2015, Lyon forwarded to himself an email from Sue Moran, then Senior Deputy Director of Population Health, providing Lyon another update. The email describes a phone call with members of MDHHS, MDEQ, Genesee County Health Department, and hospital staff discussing the Legionnaires' disease outbreak. Lyon's act of forwarding the email to himself demonstrates his knowledge of the seriousness of the situation. See Doc 80 - Email from Nick Lyon to Nick Lyon dated Jan. 20, 2015.

Numerous additional emails show that there was ongoing, continuous notice regarding the outbreak to Lyon in March and April 2015. Lyon was updated about the outbreak *at least* two more times in July and September 2015. See Doc 82 - Email from Corinne Miller to Nancy Grijalva dated Sept. 16, 2015; See Doc 84 - Eric Brown Personal Notes, Sept 14–Oct 2, 2015; See Doc 83 - Email Re: Flint Water Conference Call Notice, to Nick Lyon dated Sept. 18, 2015; See Doc 85 - *People v Nicolas Lyon*, Preliminary Exam Vol. XXII, May 7, 2018 testimony of Eric Brown.

Furthermore, in a September 28, 2015, email, Lyon wrote, "I would like to make a strong statement with a demonstration of proof that the lead blood levels seen are not out of the ordinary and are attributable to seasonal fluctuations." See Doc 79 - Email from Nick Lyon dated Sept. 28, 2015. This email shows that Lyon intended to downplay any issues regarding the safety of the water, despite having received numerous updates about potential issues in the nearly ten months prior, and that he looked for a way to claim to the public that the water levels were normal despite his knowledge to the contrary.

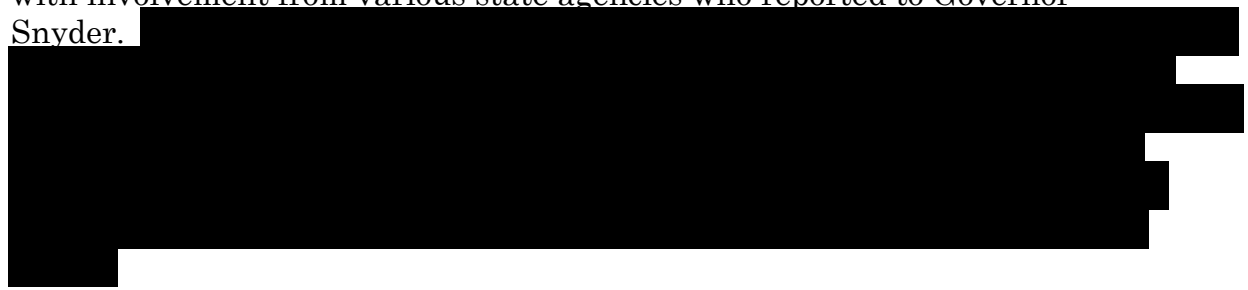
Finally, in an interview in 2016 with Tim Skubick of WLNS 6 News, Lyon admitted that he was first informed of the outbreak on January 28, 2015. Lyon stated that, "I was aware that Genesee County was doing an outbreak in January 15." He also admitted that he waited a year to notify the Governor. See Doc 81 - Tim Skubick, *DHHS director admits his department "could have done better" on Flint water*, WLNS.com dated Apr. 25, 2016.

Lyon did not take adequate action to protect Flint residents and prevent them from being exposed to legionella bacteria or increased levels of lead until a

press conference on January 13, 2016. Throughout 2015, Lyon had the ability, by using means readily available to him, to mitigate the harm of a second wave of the Legionnaires' disease outbreak and the deaths that resulted from it. By simply using ordinary care and diligence, Lyon could have and should have warned the residents of Flint regarding their water, yet he failed and refused to do so when it was readily apparent to an ordinary mind that the results of his failure would likely prove disastrous to others. It is the Flint Water Team's contention that this year-long lapse in activity amounted to a complete failure and refusal to perform his mandatory legal duty to protect public health—specifically, to prevent disease, and prevent and control environmental health hazards.

It is the Flint Water Team's contention that, because Lyon asked for epi curves on January 28, 2015, he was aware it was a reportable condition – this inherently means that it is a condition serious enough to mandate reporting to the MDHHS. Lyon should have immediately directed issuance of an official statewide Health Advisory Network notice, as well as a public notice on January 28, 2015. He should have taken aggressive action on January 28, 2015, to advance the investigation and, if warranted, issued an imminent danger order to correct conditions at McLaren Hospital if MDHHS truly believed that was the source of the outbreak. As it was, throughout 2015 Lyon was involved in multi-agency communications about the outbreak, in which he was continuously updated regarding the danger of this outbreak, yet he ignored the serious risk of harm to the residents of Flint.

There was also evidence for the Flint Water Team to believe that Lyon's choices were politically based rather than out of concern for the public as they should have been. The legionella bacteria outbreak was tied to the switch in the water source, which was done on the watch of state-appointed Emergency Managers with involvement from various state agencies who reported to Governor Snyder.



It is the Flint Water Team's contention that Lyon's criminally negligent failure to issue, through MDHHS, an official statewide Health Advisory Network notice to medical providers and an official notice to the public through all of 2015 and early January 2016, proximately caused the deaths of the nine victims presented by the medical panel in Groups 1 and 2. See *Medical Panel Review of Deaths* section above. The notice should have been provided based on the information that was available and could have been updated if and when a source or multiple sources were identified. Because of Lyon's criminal negligence, residents

of the City of Flint did not have the ability to avoid potential sources of infection. Moreover, they did not know that they should promptly seek medical treatment if sick instead of potentially assuming they just had a cold or flu. This resulted in many people forgoing medical intervention and caused hospitals to be uninformed about the need to test for legionella bacteria.

The evidence, including emails and interviews, supports the determination that Lyon knew full well that there were safety concerns with the water. And with another Legionnaires' disease season just around the corner, Lyon was required to act to protect the public health and to prevent a second wave of the outbreak in 2015. Lyon had a legal duty to protect the public from the outbreak of the Legionnaires' disease, and he failed to perform that duty, proximately causing the deaths of nine victims. Thus, the nine charges of involuntary manslaughter were supported by the failure to perform a legal duty theory.

Gross Negligence Theory

It is reasonable to conclude that, had Lyon properly investigated the outbreak and provided notice to the public and to the healthcare community of the fourfold increase in Legionnaires' disease cases, people could have taken steps to avoid potential exposure to legionella bacteria, and those with symptoms would have known to seek immediate medical treatment. Again, Lyon, as Director of MDHHS, had a legal duty to members of the public, as expressed by statute. By refusing to notify the public about the potential upcoming second wave of Legionnaire's disease, he did not perform this legal duty. The evidence suggests that this failure caused the death of nine victims identified by the medical panel in Groups 1 and 2. Through his position, Lyon had knowledge of the outbreak, which with the use of ordinary care and diligence, could have avoided injury to others. He had the ability to avoid harm by using ordinary care and diligence, such as merely warning the residents of Flint as well as local healthcare facilities that an outbreak was occurring, but he failed to use care and diligence to avert the danger.

To the ordinary mind, one could easily conceive that Lyon's failure to warn the public and take actions to prevent an outbreak were likely to prove disastrous to another, and in this case at least nine individuals. Had there been a public notice, these individuals would have known to seek medical attention immediately upon feeling sick, rather than assuming they just had a cold or flu and choosing to wait a few days. These individuals also would have been able to avoid exposure to the known possible sources of the outbreak, Flint water, and/or medical facilities on the Flint water system. Had Lyon provided a Health Advisory Network notice to the medical community, medical professionals would have been on notice to immediately test, and quickly and aggressively treat with antibiotics appropriate to Legionnaires' disease, rather than simply guess at what could have caused the victims' symptoms and their rapid deterioration following treatment. Consequently, the Flint Water Team determined that, if not for the criminally

negligent failure of Lyon to conduct a comprehensive outbreak investigation or further advance the investigation of the Genesee County Health Department, the source or sources of the outbreak would have been identified and mitigated, thereby preventing its second wave.

Willful Neglect of Duty

In addition to the charges requested by the Flint Water Team for nine counts of involuntary manslaughter, the one-person grand jury decided to include an additional charge of Willful Neglect of Duty against Lyon for his conduct relating to the Flint Water Crisis. Lyon, through his position as Director of MDHHS, held public trust or employment and had a duty enjoined by law to protect the public and prevent the outbreak of diseases. The one-person grand jury decided Lyon willfully neglected to perform that duty. [REDACTED]

Nancy Peeler

Peeler was the Director of the MDHHS Early Childhood Health Section. The Flint Water Team alleged that Peeler concealed epidemiological evidence of elevated lead blood levels in children, thereby preventing her superiors and the public from knowing that Flint's children were being exposed to lead in their drinking water. It was also alleged that, even after Dr. Mona Hanna-Attisha³⁸ released her findings about the elevated blood lead levels in Flint's children, Peeler again misrepresented and concealed evidence of elevated lead blood levels in Flint's children. Thus, Peeler committed misconduct in office. Because she failed and refused to inform the public about the elevated blood lead levels, Peeler was also alleged to have committed willful neglect of duty.

Misconduct in Office

To support a charge of Misconduct in Office, the Team would have to show:

- 1) That the defendant was a public officer;
- 2) The defendant committed an act of malfeasance or misfeasance;

³⁸ Dr. Hanna-Attisha is the Associate Dean for Public Health and C. S. Mott Endowed Professor of Public Health at Michigan State University College of Human Medicine. She is the founding director of the [Pediatric Public Health Initiative](#), an innovative partnership of MSU and Hurley Children's Hospital in Flint, Michigan. She conducted research that found that the percentage of children in Flint with over 5 micrograms per deciliter of lead in their blood increased from 2.1 percent to 4 percent after the city's water source changed from Detroit Water Sewerage Department (DWS) to the KWA. She publicly revealed her findings in September 2015, resulting in the City of Flint issuing a health advisory.

- 3) That such behavior was corrupt; and
- 4) That the corrupt behavior occurred in the exercise of the duties of her office or under the color of her office.

Carlin, 239 Mich App at 64.

Peeler had worked for the MDHHS since 1998 and took an oath of office on January 6, 2003. See Doc 87 - Nancy Peeler Oath of Office, Jan. 6, 2003. As previously indicated with Lyon, the Michigan Public Health Code vests duties in the department's employees who are assigned accordingly. MCL 333.2205. Several duties in the public health code are relevant to Peeler, including "collect[ing] and utiliz[ing] vital health statistics and provid[ing] for epidemiological and other research studies" and "mak[ing] investigations and inquiries as to the causes, prevention, and control of environmental health hazards, nuisances, and sources of illness." MCL 333.2221(2)(c) and (d)(iii). The department "shall coordinate the health services, research, evaluation, and demonstration and health statistical activities undertaken or supported by the department." MCL 333.2611.

MDHHS is also required to "establish a comprehensive health information system providing for the collection, compilation, coordination, and analysis . . . of both purposefully collected and extant health-related data and statistics, including the training of producers and users of the data and statistics" MCL 333.2626. The system shall include statistics regarding "the cause, effects, extent, and nature of illness and disability of the people of this state, or a grouping of its people, which may include the incidence and prevalence of various acute and chronic illnesses and infant morbidity and mortality" and "environmental, social, and other health hazards and health knowledge and practices of the people of this state." MCL 333.2617.

To fulfill its duty to maintain a list of reportable diseases, infections, and disabilities, MDHHS may promulgate rules to "establish procedures for investigat[ing] cases, epidemics, and unusual occurrences of diseases, infections, and situations with potential for causing disease. . . and reporting known or suspected cases of lead poisoning or undue lead body burden." MCL 333.5111(2)(b), (f).

Redacted pursuant to MCL 767.4

In her application for the position of manager of the Early Childhood Health Section, Peeler acknowledged that the position "requires trust, shared vision, shared resources, and greatly enhanced communications and transparency." See Doc 89 - NEOGOV Insight – Application Detail – SAM 15 – Early Childhood Health Section for Nancy Peeler, Oct. 17, 2014. The duties of her position included supervising

staff, setting policy, interagency coordination, leadership, and overseeing advanced or specialized professional work, particularly as it relates to early childhood health and development. Redacted pursuant to MCL 767.4



In late July 2015, the Governor’s Office requested information about concerns of lead in Flint’s water from MDHHS. This request went to Peeler. See Doc 90 - Email from Nancy Grijalva to Nancy Peeler dated July 22, 2015. On July 24, 2015, Peeler asked Cristin Larder, an epidemiologist, to run a quick “significance test” on the Childhood Lead Poisoning Prevention Program’s Blood Lead Level (BLL) data. See Doc 91 - *People v Peeler*, PE transcript, Vol. I, pp 54–55. After Larder agreed, on July 27, 2015, Peeler sent her the data that the Program had acquired from before and after Flint’s water switch. See Doc 92 - Email from Nancy Peeler to Cristin Larder dated July 27, 2015. The data Peeler sent contained monthly aggregate-level counts of children with elevated blood lead levels out of the total number of children tested in Flint. See Doc 91 - *Peeler* PE transcript, Vol I, pp 66–67. Larder was able to use the data set Peeler sent to create a Schewart chart,³⁹ although she would have preferred to have individual level data for the analysis. *Id.*, pp 67–68, 73–74.

At 10:00 p.m. on July 27, 2015, Larder emailed her supervisors – Patricia McKane and Sarah Lyon-Callo – with her results showing that in July, August, and September of 2014, there was an increase in children’s elevated blood lead levels in Flint. See Doc 93 - Email from Cristin Larder to Patricia McKane dated July 27, 2015. At 9:25 a.m., July 28, 2015, Larder sent her results to Peeler, McKane, and Robert Scott. See Doc 94 – Emails between Cristin Larder, Robert Scott, and Peeler dated July 28, 2015. Larder explained that the only three points in the data set that fell outside of the upper control limits were in the months of July, August, and September 2014 – after the water had been switched to the Flint River. She stated that, based upon the results, further investigation was warranted and that there were several next steps they could employ if the “folks upstairs” would like her to look deeper into the data. *Id.*

Scott replied that he did not understand Larder’s work without additional explanation and, based off a conversation with Peeler, asked if Larder could add two additional years of data into the analysis. See Email from Robert Scott dated July 28, 2015. *Id.* At approximately 5:00 p.m. on July 28, 2015, Larder sent Peeler and Scott her results with the additional years of data, informing them that the extra

³⁹ A Schewart chart, with data plotted over time, is used to determine whether variations in that data fall outside a specific set of limits.

(prior) years did not change the results; there was still a higher portion of first-time elevated blood lead levels in the summer of 2014. *Id.*

In the meantime, after Scott received Larder's initial report in the early afternoon of July 28, 2015, Scott emailed Peeler with his own version of an analysis of the same data, comparing total elevated blood lead levels by zip code from 2010. See Doc 95 - Email from Robert Scott to Nancy Peeler dated July 28, 2015. According to Scott, who had no training in epidemiology, the 2014 elevated blood lead levels were similar to years prior and therefore were evidence that the water was not a factor in the 2014 elevated blood lead levels. *Id.* That same day, before Peeler received a final report from Larder, Peeler sent her own explanation and analysis about elevated blood lead levels in Flint up to Director Lyon's staff, indicating that there was not an increase and any increase in 2014 was a seasonal fluctuation. See Doc 96 - Email from Nancy Peeler dated July 28, 2015. Larder's analysis did not make it up the chain of command beyond Peeler on this day.

Key points in Peeler's email include:

- "Lead testing rates remained about the same from year to year."
- "There was a spike in elevated blood lead tests from July-September 2014."
- "However, that pattern was not terribly different from what we saw in the previous three years, especially in 2011-2012 (we are working with our Epidemiologist to statistically verify any significant differences)."
- "We commonly see a 'seasonal effect' with lead, related to people opening and closing windows more often in the summer, which disturbs old deteriorating paint on the windows, sill and sashes. Window fans frequently blow and spread the lead dust from the deteriorating paint to other parts of the room/house. We suspect that the summer data spike may be related to this effect."
- "If the home water supply lines and/or river water were contributing to elevated blood lead tests, we expected that the increased rates would extend beyond the summer, but they drop quite a bit from September to October, stayed low over the winter, and are just starting to tail up again in the spring of 2015."

It is the Flint Water Team's contention that by sending her email before Larder completed her analysis, Peeler was intentionally concealing Larder's conclusions regarding the increase in blood lead levels from her superiors, thereby preventing the proper remedial actions from being taken. This action needlessly exposed Flint residents to dangerous chemicals in their water, causing a myriad of health issues and potentially permanent damage. These actions establish and satisfy the remaining elements of misconduct in office. More specifically, Peeler

was alleged to have committed malfeasance by intentionally concealing Larder's findings regarding the elevated blood lead levels. That Peeler never corrected her July 28, 2015, email even after Larder sent her analysis confirming the spike in elevated blood lead levels shows that Peeler acted with corrupt intent.⁴⁰

Additionally, on September 24, 2015, Dr. Hanna-Attisha released her results, which showed a spike in blood lead levels that took place after the water switch. The results were also sent to the public relations division of MDHHS. This was also referred to Peeler for a response. Even though she had Larder's initial assessment as well as the updated assessment including a longer date range, Peeler responded with the same analysis that she sent to the Director's office in July, concluding that it was a seasonal increase of lead poisoning, and there was not a different pattern of results after the water switch. See Doc 97 - Email from Nancy Peeler dated Sept. 23, 2015.

Kristi Tanner of the Detroit Free Press was provided with Peeler's data and analyzed it herself. On September 25, 2015, Tanner emailed an MDHHS spokesperson indicating that her analysis showed an increase between 2013/2014 and 2014/2015 that was significant and asking the MDHHS epidemiologist to confirm. See Doc 98 – Emails between Kristi Tanner, Angela Minicuci, and Peeler dated Sept. 24–25, 2015. The request for confirmation was forwarded to Peeler, who stated that Scott, who was not an epidemiologist, would be the best person to work with and that “her secret hope was to work in the fact that this pattern was similar to the recent past.” *Id.* Scott responded generally that there are small bumps in lead poisoning from year to year while trending overall downward. See Doc 99 - Email from Robert Scott to Angela Minicuci dated Sept. 25, 2015.

In the meantime, the MDHHS spokesperson sent Tanner's request directly to Larder. [REDACTED]

[REDACTED] McKane summarized the situation best by stating that she wondered where the spokesperson got her information from and had thought it was the fact sheet Larder had prepared earlier. She also expressed frustration that Peeler and Scott had been doing their own analysis: “No idea that Nancy tried to analyze it herself, but have been Bob too [sic]?” See Doc 100 – Emails between Sarah Lyon-Callo and Patricia McKane dated Sept. 26, 2015. Lyon-Callo responded that “now it makes sense that Nancy and Bob

⁴⁰ [REDACTED] Redacted pursuant to MCL 767.4 [REDACTED]

analyzed the data and made such a strong conclusion” and that “Bob and Nancy are basically doing what they did last time.” *Id.*⁴¹

Peeler doubled down on the knowingly false assertion that there was no correlation between the water switch and the increase in blood lead levels when she responded to Dr. Hanna-Attisha’s analysis on September 23, 2015, and again on September 24, 2015, by reiterating that any spike was similar to past instances. The Flint Water Team therefore determined that these actions established and satisfied the remaining elements of misconduct in office. More specifically, that Peeler committed malfeasance by intentionally misrepresenting information regarding the elevation in blood lead levels in Flint’s children with corrupt intent.

Willful Neglect of Duty

To support a charge of Willful Neglect of Duty pursuant to MCL 750.478, the Team would have to show:

- 1) The defendant was a public officer or any person holding any public trust or employment;
- 2) The defendant had a duty that is enjoined by law; and
- 3) The defendant willfully neglected to perform such duty.

As previously shown, Peeler was a public officer and had a duty that was enjoined by law. By concealing the evidence of the elevated blood lead levels discovered by Larder in July 2015, and then doubling down on her actions by continuing to attempt to conceal the elevated blood lead levels in September 2015, Peeler willfully neglected to perform her duty to faithfully and, to the best of her ability, protect the children of Flint from the dangers of lead exposure and poisoning as an employee of MDHHS.

Former Governor Richard Snyder

Governor Snyder was alleged to have willfully neglected his duty as governor when he failed to inquire into the performance, condition, and administration of the public offices and officers that he appointed and was required to supervise. The Flint Water Team also alleged that Governor Snyder willfully neglected his duty when he failed to declare a state of emergency and/or disaster when he was first aware of conditions that would support such a declaration.

⁴¹ The phrase “last time” referred to a prior incident unrelated to the Flint Water Crisis when Peeler and Scott had improperly influenced data to reach a desired conclusion. *Id.*

Willful Neglect of Duty

To support for a charge of Willful Neglect of Duty under MCL 750.478, the Flint Water Team would have to show that:

- 1) the defendant was a public officer or “any person holding any public trust or employment;”
- 2) the defendant had a duty that is “enjoined by law;” and
- 3) the defendant willfully neglected to perform that duty.

It is undisputed that, as Governor during the Flint Water Crisis, Governor Snyder was a public officer, as defined by *Coutu*, 459 Mich at 348. As a public officer, Governor Snyder had a general duty to discharge the duties of his office to the best of his abilities which, as Governor, included a duty under the Michigan Constitution to supervise his principal departments. Mich Const 1963, art. V, § 8 (“Each principal department shall be under the supervision of the governor unless otherwise provided by this constitution.”). See also *id.*, § 10 (“The governor shall have power and it shall be his duty to inquire into the condition and administration of any public office and the acts of any public officer, elective or appointive.”). Under the Executive Organization Act of 1965, MCL 16.101 *et seq.*, the heads of the principal departments may “establish the internal organization of his department and allocate and reallocate duties,” but only “with the approval of the governor.” MCL 16.107.

Additionally, under the Emergency Manager Act, Governor Snyder was “responsible for coping with dangers to this state or the people of this state presented by a disaster or emergency.” MCL 30.403(1). The Act further provides that “[t]he governor *shall*, by executive order or proclamation, declare a state of disaster if he or she finds a disaster has occurred or the threat of a disaster exists,” MCL 30.403(3) (emphasis added), and “*shall*, by executive order or proclamation, declare a state of emergency if he or she finds that an emergency has occurred or that the threat of an emergency exists, *id.* (emphasis added).

It is the Flint Water Team’s contention that the evidence it collected throughout its investigation established that Governor Snyder willfully neglected both his duty to supervise his executive agencies and his duty to declare a state of disaster and a state of emergency when such was required.

Governor Snyder, in his congressional testimony, admitted he knew of problems with Flint water as early as the fall of 2014. See Doc 103 - Snyder Congressional Testimony, pp 30–32 dated Mar. 17, 2016. It is the Flint Water Team’s contention that additional evidence confirms that Governor Snyder was aware of concerns regarding Flint water in 2014 and 2015 – long before a state of emergency was declared.

The original decision in April 2013 to switch Flint water from the Detroit Water and Sewerage Department to the KWA was made principally by the Emergency Manager put in place by Governor Snyder – Ed Kurtz. As Emergency Manager, Kurtz had complete authority and final decision-making power over the mayor and city council. See Doc 101 - Emergency Manager Order dated Apr. 18, 2013. Kurtz was also principally responsible for the decision to switch the source of Flint water to the Flint River as an interim measure after the contract with the Detroit Water and Sewerage Department expired. See Doc 101a - Emergency Manager Resolution dated June 26, 2013.

The switch to the Flint River took place in April 2014, and concerns about smell and taste arose shortly after the switch. See Doc 102 – Ron Fonger, *City Adding More Lime to Flint River Water as Resident Complaints Pour in*, MLive, June 12, 2014. In August 2014, and again in September 2014, the City of Flint was required to issue public boil water notices because of fecal coliforms and E. coli found in the water. See Doc 28 - Email from Daugherty Johnson to Gerald Ambrose dated Aug. 15, 2014; See Doc 61 - Email from Michael Glasgow dated Sept. 9, 2014. Then in September 2014, concerns arose regarding an increase of cases related to legionella bacteria in Genesee County. See Doc 102a - Emails from Shannon Johnson dated Sept. 15, 2014. From the outset, state health officials theorized that the increase was likely due to the switch to the Flint River. *Id.* In December 2014, the MDEQ issued a letter to the City of Flint requiring the city to issue a notice regarding the high levels of total trihalomethanes in the water. See Doc 66 - MDEQ Violation Notice – Maximum Contaminant Level for Total Trihalomethanes, Dec. 16, 2014.

An electronic calendar entry shows a call between State Senator Jim Ananich and Valerie Brader, Deputy Legal Counsel and a Senior Policy Advisor specializing in environmental issues in the Governor’s Office, on September 25, 2014, to discuss Flint water issues. See Doc 104 - Calendar Entry Re: Call w/ Senator Ananich dated Sept. 25, 2014. In October 2014, Busch of the MDEQ, prepared a briefing paper for the Governor’s Office on the Flint water situation, explaining the factors that led to the boil water advisories. See Doc 105 – MDEQ, *Governor’s Office Briefing Paper City of Flint Drinking Water* dated Oct. 1, 2014. This briefing paper was forwarded directly to Governor Snyder. *Id.* Several days later, Brader met with officials from MDEQ to further discuss Flint water issues. See Doc 106 – Calendar Entry re: City of Flint Drinking Water Issues dated Oct. 6, 2014. According to Brader’s notes from that meeting, rising total trihalomethane levels were discussed. See Doc 107 - Brader Notes. That same day, Busch sent Brader a copy of a letter from MDEQ, signed by Brent Wright, regarding trihalomethane levels in the City of Flint. See Doc 108 - Email from Stephen Busch to Madhu Anderson and Valerie Brader dated Oct. 6, 2014.

On October 14, 2014, General Motors announced that it would no longer be using Flint water, and Brader forwarded a copy of a news article covering the story

to officials at MDEQ. See Doc 109 - Email from Valerie Brader dated Oct. 14, 2014. Brader also sent an email to other officials in Governor Snyder's office, including then-Chief Legal Counsel Michael Gadola and Chief of Staff Dennis Muchmore, specifying concerns with bacterial contamination and high levels of chlorine-related chemicals in the water. See Doc 110 - Email from Valerie Brader to Dennis Muchmore, Michael Gadola, Jarrod Agen, and Elizabeth Clement dated Oct. 14, 2014. Gadola responded, agreeing with Brader that Flint should return to Detroit Water and Sewerage Department immediately. *Id.*

On January 18, 2015, Mayor Walling sent a letter to Governor Snyder asking for help, including financial assistance in resolving the water issues in Flint. See Doc 111 - Letter from Mayor Walling re: Flint Water Improvement Plan dated Jan. 18, 2015. The letter implored Governor Snyder that "[t]here is nothing more important in Flint right now than fixing the water problems." *Id.*

On January 21, 2015, a meeting occurred between Flint Emergency Manager Ambrose, Croft, Johnson, MDEQ staff, and residents of Flint, among others, at the City Hall Dome, commonly known as the "Dome meeting." See Doc 112 - Email from Howard Croft re: Public Forum dated Jan. 16, 2015. At the meeting, residents complained of dirty and smelly water as well as health concerns related to rashes, itchy skin, and hair loss. This meeting was covered extensively in the local and state media. See Doc 113 - Ryan Garza, *Flint Residents Fight for Clean Water*, Detroit Free Press dated Jan. 22, 2015. On January 27, 2015, Governor Snyder's communications staff noted that one of their topics to discuss with Governor Snyder was "Flint water." See Doc 4 - Email from Jarrod Agen to Sarah Wurfel dated Jan. 27, 2015. According to a subsequent email exchange, Governor Snyder requested additional information related to Flint water following the communications meeting. See Doc 114 - Email from Michael Brownfield to John Walsh dated Jan. 27, 2015.

Evidence also indicated that Governor Snyder had notice by January 28, 2015, of the Legionnaires' disease outbreak in Genesee County. A meeting regarding "Adult Dental" took place on January 28, 2015, between Governor Snyder, MDHHS Director Lyon, MDHHS Chief Deputy Director Becker, and Chief of Staff Muchmore from 9:30 a.m. – 10:00 a.m. See Doc 74 – Gov. Snyder Daily Briefing, Jan. 28, 2015. Shortly after the meeting, at 10:12 a.m., Becker sent an email to MDHHS staff asking, "What do we know about . . . rumors of Legionnaires' disease in Flint?" Doc 76 - Email from Tim Becker to Matthew Davis dated Jan. 28, 2015.

On January 30, 2015, MDEQ Director of Communications Brad Wurfel emailed Governor Snyder's Deputy Press Secretary, David Murray, and informed him that there had been forty-two cases of Legionnaires' disease reported in Genesee County since the previous May. See Doc 3 – Emails between Brad Wurfel and David Murray dated Jan. 30, 2015. On February 3, 2015, Governor Snyder

attended a communications meeting where Flint water was at the top of the agenda. See Doc 115 – Email from Sara Wurfel re: Communications Update dated Feb. 3, 2015. According to an email exchange, Muchmore and Murray also attended a meeting with Flint pastors who, around this time, were calling for Governor Snyder to declare a state of emergency. See Doc 116 - Email from Dennis Muchmore to Stacie Clayton dated Feb. 3, 2015.

On March 4, 2015, the agenda for a communications update meeting with Governor Snyder notes “Flint Water” with multiple bullet points discussing strategy for public relations. See Doc 117 - Communications Update Meeting dated Mar. 4, 2015. Two days later, Governor Snyder received his weekend briefing, which included multiple pages of Flint water talking points in preparation for a possible interview with Michigan Public Radio. See Doc 118 – Gov. Rick Snyder Weekend Briefing dated Mar. 6, 2015.

On March 13, 2015, Brad Wurfel sent Murray and Sara Wurfel of the Governor’s communications team two emails detailing the Legionnaires’ disease outbreak. In the first email, Brad Wurfel stated there was “political flank cover out of City of Flint today regarding the spike in Legionnaires cases” and suggested that they bring the Treasury, the Governor’s Office, the Department of Community Health, the MDEQ, and the Flint Emergency Manager to a meeting to discuss an “update on what the City is doing, update on what the County Health department is working on, what we might all do next, and coordination of communication/messages.” See Doc 6 - Email from Brad Wurfel to Harvey Hollins dated Mar. 13, 2015. Brad Wurfel also specifically referenced in this email the call from Flint pastors for Governor Snyder to declare a state of emergency. *Id.*

In a second email, Brad Wurfel stated that there had been “more than 40 cases since last April,” that “it proliferates in warmer months,” that “it can be deadly,” and that the Genesee County Health Department had not done the epi traceback work to determine the source. See Doc 7 - Email from Brad Wurfel re: Part II dated Feb. 13, 2015.

Three days later, on March 16, 2015, there was a communications meeting on Governor Snyder’s daily briefing from 2:00 p.m. to 2:30 p.m. See Doc 119 – Gov. Rick Snyder Daily Briefing dated Mar. 16, 2015. Prior to the communications update meeting, Agen sent an email to the communications staff asking for any additional information for the communications meeting update. See Doc 9 - Emails between Jarrod Agen, Sara Wurfel and Laura Biehl dated Mar. 16, 2015. Sara Wurfel responded by saying that Harvey Hollins, an advisor to Governor Snyder, was working on a few relatively big things related to Flint Water, and it might be good to bring up with him (Governor Snyder). *Id.* Governor Snyder also had a meeting on this day with MDHHS Director Lyon “to discuss wellness in Michigan”. See Doc 119 - Gov. Rick Snyder Daily Briefing dated Mar. 16, 2015. A year later, in February 2016, Sara Wurfel sent emails to her then-employers confirming that she

had informed Governor Snyder of legionella-related information back in February and March 2015. See Doc 12 - Email from Sara Wurfel to Kelly Rossman-McKinney dated Feb. 27, 2016; Doc 120 - Email from Sara Wurfel to John Truscott dated Feb. 29, 2016.

On July 10, 2015, Brad Wurfel forwarded a copy of an interim report authored by Miguel Del Toral, an Environmental Protection Agency (EPA) health official, to numerous officials in the MDEQ office as well as Murray in the Governor's Office. See Doc 121 - Email from Brad Wurfel re Here's the Interim Report dated July 9, 2015; Doc 122 - Del Toral Report. The interim report detailed findings related to lead contamination in Flint water. *Id.*

On July 22, 2015, Muchmore and Hollins met with the Flint pastors to discuss Flint water issues. See Doc 123 - Calendar Entry re: HH/DM/Pastors Overton & Harris re: Flint Water dated July 22, 2015. According to Hollins' and Muchmore's notes, the pastors were concerned about lead in Flint's drinking water, and Muchmore was to follow up with MDHHS and MDEQ on lead in the water. See Doc 124 - Email from Harvey Hollins to Dennis Muchmore dated July 22, 2015; Doc 125 - Handwritten Notes of Dennis Muchmore, July 22, 2015. After the meeting with the pastors, Muchmore did follow up with Lyon, and they met in Muchmore's office that same day. See Doc 126 - Email from Nick Lyon re: I'm in DM Office dated July 22, 2015. As reflected in Lyon's notes, they discussed not only lead but also Legionnaires' disease. See Doc 127 - Lyon Typed Notes dated July 22, 2015.

On August 17, 2015, Wurfel provided an update to Governor Snyder's office on Flint's corrosion control system. See Doc 128 - Email from Brad Wurfel dated Aug. 17, 2015. A week later, Wurfel provided an additional update to Governor Snyder's office staff regarding the elevated lead levels at LeeAnne Walters' home. See Doc 129 - Email from Brad Wurfel dated Aug. 25, 2015.

Shortly thereafter, Walters contacted Dr. Marc Edwards from Virginia Tech University about her concerns. Dr. Edwards and his team of researchers began publicly releasing documents related to the lead level testing in the Flint water supply system. Articles and information related to his testing was circulated throughout Governor Snyder's office during the last week of August 2015 and the first week of September 2015. See Doc 130 - Email from Stephen Busch re: Urgent: Independent Flint Water Study dated Aug. 31, 2015; Doc 131 - Email from Brad Wurfel to David Murray dated Sept. 2, 2015; Doc 132 - Email from Brad Wurfel dated Sept. 3, 2015. Governor Snyder's office subsequently had a communications update meeting on September 8, 2015, where Flint Water was one of the agenda topics. See Doc 133 - Communications Update Meeting dated Sept. 8, 2015.

On September 5, 2015, Hollins informed Governor Snyder via email that the people of Flint were demanding more water filters. See Doc 134 - Email from Hollins to Snyder dated Sept. 5, 2015.

According to an email exchange on September 17, 2015, Lyon and MDEQ Director Wyant were scheduled to meet with Governor Snyder's office on September 18, 2015, to update them on lead and possible legionella bacteria. See Doc 135 - Email from Corinne Miller dated Sept. 17, 2015. Notes taken at this meeting by Eric Brown, Deputy Federal Liaison to Governor Snyder, also indicate that legionella bacteria was discussed. See Doc 84 - Eric Brown Personal Notes Sept. 14–Oct. 2, 2015.

Email exchanges among Governor Snyder's staff indicate that by late September 2015, blood lead levels and the safety of Flint River water were a regular topic of discussion. See Doc 136 - Email from David Murray dated Sept. 24, 2015; Doc 137 - Email from Dennis Muchmore to Rick Snyder re: Flint Water dated Sept. 25, 2015; Doc 138 - Email from Allison Scott re: Flint Water dated Sept. 25, 2015; Doc 139 - Email from Dennis Muchmore to Rick Snyder re: Flint Updates dated Sept. 26, 2015. A Detroit Free Press article issued on September 30, 2015, quotes Governor Snyder acknowledging that lead levels in Flint may have increased. See Doc 140 - Nancy Kaffer, *Snyder Finally Says Lead in Flint Water May Be a Problem*, Detroit Free Press dated Sept. 30, 2015.

On October 1, 2015, Genesee County issued a Public Health Emergency Declaration. The emergency declaration specifically noted that the County was recommending that people not drink the water coming from the City of Flint. See Doc 168 – Steve Carmody, *Genesee County declares public health emergency*, Michigan Public Radio/NPR dated Oct. 1, 2015.

On October 2, 2015, Governor Snyder held a press conference where he outlined his comprehensive action plan to help Flint residents address water concerns. See Doc 141 – Gov. Snyder Daily Briefing dated Oct. 2, 2015. Governor Snyder's daily briefing included information relative to his ten-point action plan as well as Flint Drinking Water talking points. *Id.* The talking points reiterated that the water leaving Flint's drinking water system is "safe to drink" but that "some residents experience higher levels of lead in the water that comes out of their faucets because of lead plumbing" *Id.* The talking points further address the action plan, including: "(1) testing schools; (2) expand health exposure testing; (3) offer free water testing; (4) address replacement of lead service lines; (5) provide water filters" among numerous other initiatives. *Id.*

On October 8, 2015, Governor Snyder held another press conference "announcing the decision to reconnect Flint to the Detroit Water and Sewerage Department." See Doc 142 – Gov. Snyder Daily Briefing dated Oct. 8, 2015. Governor Snyder suggested this move back to the Detroit Water and Sewerage Department would provide the best protection for public health in Flint. *Id.* He noted in high-level talking points that this came on the heels of consulting with health and water experts in state agencies. *Id.* The talking points also noted that

this was not the last step in the plan for Flint and that “Flint has an aging water infrastructure with challenges that we – together – will continue to address.” *Id.*

The announcement also noted that lead testing was continuing in Flint schools and advised that schools on the Flint water system should continue to use filtered or bottled water. *Id.* The briefing also included blood lead level talking points for Lyon and Wells, making known that three out of thirteen school buildings tested showed lead levels above 15 ppb, i.e. the federal action level limit, and that water filters were available for Flint residents. *Id.* Lastly, the talking points affirmed that after completing a “comprehensive and detailed review,” the “state analysis is consistent with that presented by Hurley [Hospital].” *Id.*

Despite the concerns regarding legionella and other bacteria, total trihalomethanes levels and lead levels, Governor Snyder failed to declare a state of emergency in 2014 or 2015, despite the power and resources such a declaration would make available to the residents, and particularly, the children of Flint. Instead, Governor Snyder waited another three months before finally declaring a state of emergency.

On November 13, 2015, Governor Snyder’s then-Chief Legal Counsel, Elizabeth Clement, forwarded an email to Baird from Paul Smith that summarized questions and discussion points relative to Governor Snyder potentially declaring a state of emergency in Flint. See Doc 143 - Email from Elizabeth Clement to Richard Baird dated Nov. 16, 2015. The email suggested that Governor Snyder “can declare at any time for any reason” a state of emergency and that the “state will formally own the event if we put a Governor’s Declaration in place.” *Id.* The email further noted that if the state declares a state of emergency, this could be “viewed as the state having owned up to how the water issue was caused (e.g. ‘the triggering event was caused by the state; that is why the state is now declaring.’)” *Id.*

Less than two weeks later, Governor Snyder met with the Flint Water Advisory Task Force, established in October 2015, to discuss the Task Force’s investigation into the Flint Water Crisis. See Doc 144 - Email from Ken Sikkema dated Nov. 24, 2015. Before the meeting, Baird forwarded an email to Allison Scott, Governor Snyder’s executive assistant, asking that she provide Governor Snyder with information relative to an emergency declaration. See Doc 145 - Email from Richard Baird to Allison Scott dated Nov. 24, 2015.

On November 26, 2015, however, in an email exchange with MSP Colonel Kriste Etue, Baird stated, “*Boss wants to work through this without a disaster declaration if possible*]. Dan and Nick and I are working on it.” See Doc 146 - Email from Richard Baird to Kriste Etue dated Nov. 26, 2015 (emphasis added).

On December 8, 2015, Lyon forwarded Baird, Clement, and Wyant a Situation Report that discussed the lead levels in the City of Flint and called for a

follow up with MDHHS regarding Legionellosis. See Doc 147 – Email from Lyon dated Dec. 8, 2015.

Governor Snyder finally declared a state of emergency on January 5, 2016. See Doc 148 – Declaration of Emergency dated Jan. 5, 2016. The declaration of emergency noted that the switch from the Detroit Water and Sewerage Department to the Flint River as a water source “caused damage to the water system and potential negative health impact to the citizens.” *Id.* Further, the damage “has either caused or threatened to cause elevated blood lead levels, especially in the population of children and pregnant women, and causing a potential immediate threat to public health and safety and disrupting vital community services.” *Id.* Lastly, “local resources have been insufficient to address the situation.” *Id.* Notably, the declaration provided no new information relative to the effects of the Flint Water Crisis since information went public in October 2015, no reference to the legionella bacteria uptick, and no explanation for delaying the declaration until January 2016.

It is the Flint Water Team’s contention that despite his knowledge about the growing concerns surrounding the Flint water in 2014 and 2015, Governor Snyder failed to question the information he was receiving from his department heads and failed to declare a state of emergency or disaster until January of 2016. These failures sufficiently supported two counts of willful neglect of duty.

Eden Wells

The Flint Water Team alleged that Wells, as Chief Medical Executive at MDHHS, had a duty to warn residents of the potentially dangerous nature of their drinking water, and because she refused to perform that duty and/or was grossly negligent in her failure to perform that duty, nine people died, thus supporting nine counts of Involuntary Manslaughter.

The Team also alleged that Wells committed two counts of Misconduct in Office when she intentionally hampered the Genesee County Health Department’s efforts to notify the public regarding the spike in Legionnaire’s disease, and by way of threats made to Dr. Marcus Zervos, prevented state officials’ distribution of information regarding Legionnaires’ disease to the public.

Involuntary Manslaughter

Just as with Lyon, the Flint Water Team believed that the evidence collected showed that Wells had committed involuntary manslaughter either through her failure to perform a legal duty and/or through gross negligence.

To show that Wells failed to perform a legal duty requires proof that a legal duty existed, the defendant had the ability to perform that duty, the defendant either refused or willfully neglected to perform the duty, and the victim died as a

result of the defendant's failure to perform that duty. *Giddings*, 169 Mich App at 631. Gross negligence in the context of Involuntary Manslaughter involves (1) knowledge of a situation requiring the use of ordinary care and diligence to avoid injury to others, (2) an ability to avoid harm by using ordinary care and diligence, and (3) the "failure to use care and diligence to avert the threatened danger when to the ordinary mind it must be apparent that the result is likely to prove disastrous to another." *Albers*, 258 Mich App at 582. In other words, a defendant is grossly negligent when she "realizes the risk of h[er] behavior and consciously decides to create that risk [T]he actor does not seek to cause harm but is simply 'reckless or wantonly indifferent to the results.'" *McCoy*, 223 Mich App at 502. (citations omitted).

Failure to Perform a Legal Duty Theory

The Michigan Public Health Code is an extensive set of statutes intended to protect public health. As noted above, it expressly creates clear, explicit, broad-ranging *mandatory legal duties* and the powers to perform them in the MDHHS. MCL 333.2221 states that:

(1) Pursuant to section 51 of article 4 of the state constitution of 1963, the department shall continually and diligently endeavor to prevent disease, prolong life, and promote the public health through organized programs, including prevention and control of environmental health hazards; prevention and control of diseases; prevention and control of health problems of particularly vulnerable population groups; development of health care facilities and agencies and health services delivery systems, to the extent provided by law.

(2) The Department shall: (a) have general supervision of the interests of the health and life of the people of this state. (b) Implement and enforce laws for which responsibility is vested in the department. (c) collect and utilize vital and health statistics and provide for epidemiological and other research studies for the purpose of protecting the public health. (d) make investigations and inquires as to: (i) The causes of disease and especially of epidemics. (ii) The causes of morbidity and mortality. (iii) The causes, prevention, and control of environmental health hazards, nuisances, and sources of illness.

MCL 333.2226 further specifies that MDHHS has the duty "to prevent the spread of diseases and the existence of the sources of contamination. Again, by use of the word "shall," the statutes establish that the duties are *mandatory*, and not discretionary.

Wells was the Director of the Preventive Medicine Residency at the University of Michigan School of Public Health and a Clinical Associate Professor of Epidemiology from 2011 through 2016. [Redacted pursuant to MCL 767.4]

[REDACTED]

MCL 333.2202(2) states that “if the director [of the MDHHS] is not a physician, the director shall designate a physician as chief medical executive of the department. The chief executive shall be a full-time employee and *shall be responsible to the director for the medical content of policies and programs.*” (Emphasis added). Also, MCL 333.2205(1) indicates that duties in MDHHS vest as designated by the director. Wells was specifically designated by Lyon as the Flint Drinking Water Public Health Advisor. Note that while MCL 333.2455 and MCL 333.2251 ostensibly vest the order to correct conditions and imminent danger order powers in the director, MCL 333.2202 and Wells’ Chief Medical Executive’s position description make clear that as Chief Medical Executive she, too, had legal duties as to those orders.

In March 2015, epidemiologist Shannon Johnson attended an annual epidemiology conference at the University of Michigan. While there, Wells asked Johnson what she was working on, and Johnson told Wells about her work with the Genesee County Health Department investigating a Legionnaires’ disease outbreak. According to Johnson, Wells did not seem “surprised” when she brought up the massive uptick in cases. A handwritten note on an email from Corinne Miller’s secretary Janese Bouters to Miller corroborated this conversation, stating, “Shannon may have briefed Dr. Wells on legionella either at communicable disease conference or in April when Dr. Wells came on board.” See Doc 150 - Email from Janese Bouters to Corinne Miller, p 7 dated Apr. 12, 2016; Doc 167 - Shannon Johnson Statement to OSC, Nov 27, 2018.

Further, when Wells came on as Chief Medical Executive, she had meetings with Sue Moran and Dr. Matthew Davis (the former Chief Medical Executive), on March 19, 2015, to get her up to speed on things, where it was circumstantially expected that Legionnaires’ disease outbreak was a topic of discussion. See Doc 151 - Email from Eden Wells to Cheryl Rockefeller dated Mar. 16, 2015. Jay Fiedler, who worked with Wells at MDHHS, had regular contact with Wells, and the pair spoke often about what Fiedler was working on, including Legionnaires’ disease. See Doc 152 - *People v Wells*, PE Transcript, Vol. II, pp 147–149.

During the Flint Water Crisis, legionella bacteria was the most important thing that James Collins was working on, and it was a topic regularly being discussed by Jay Fiedler, Johnson, and Wells. Doc 153 - James Collins Statement Tr., June 3, 2020, p 40. While Collins did not later recall having a specific conversation with Wells, he did indicate his work regarding the legionella bacteria was something he would have discussed with her during her early days at MDHHS.

In fact, there is documentation that shows that discussions regarding Flint and legionella had been taking place for several months prior to Wells' arrival at the Department. See Doc 156 - Calendar Notice re: Genesee Legionellosis Internal Discussion dated Jan. 23, 2015; Doc 157 - Emails between MDHHS (DHC) Staff dated Jan. 27–Feb. 4, 2015.

As the summer progressed and the number of Legionnaires' cases increased, Wells began to worry about the news being made public. On August 4, 2015, Wells was scheduled to give an interview with a local ABC affiliate regarding immunizations. However, during the lead-up to the interview, Wells was notified that the station "picked up on a patient with Legionnaire's [sic] disease" who recently died. See Doc 154 - Emails between Eden Wells and MDHHS (DCH) Staff dated Aug. 4, 2015. Wells' response to the news was to ask if she could either say "no comment" or simply refuse to confirm the news. *Id.*

Not only was no notice given to the public, but no preventative actions were taken on the part of Wells, in her capacity as Chief Medical Executive. It is clear, regardless of the exact date, that in Spring 2015 Wells had been made aware of the Legionnaires' outbreak. Thus, she would have had this information before the summer, when Legionnaires' disease would increase due to seasonality, but also before any of the victims from the second wave had contracted the disease.

It is the Flint Water Team's contention that Wells refused (i.e. failed) to perform her legal duties, as prescribed in MCL 333.2202, resulting in the deaths of nine individuals.

Gross Negligence Theory

The evidence demonstrated that, had Wells properly investigated the outbreak and provided notice to the public and to the healthcare community of the increase in Legionnaires' disease cases, people could have taken steps to avoid potential exposure to legionella bacteria, and those with symptoms would have known to seek immediate medical treatment. Again, Wells, as the Chief Medical Executive Director of MDHHS, had a legal duty to members of the public, as expressed by statute. It is the Flint Water Team's contention that by refusing to notify the public about the potential upcoming second wave of Legionnaires' disease, she did not perform her legal duties. This failure caused the death of the nine victims identified by the medical panel in Groups 1 and 2. Through her position, Wells had knowledge of the outbreak, which, with the use of ordinary care and diligence, could have avoided injury to others. She had the ability to avoid harm by using ordinary care and diligence, such as merely warning the residents of Flint, as well as local healthcare facilities that an outbreak was occurring. But she failed to use care and diligence to avert the threatened danger.

It would have been readily apparent to an ordinary person that if a potentially deadly, disease-causing bacteria was present in the water, the public should be notified of the danger. But Wells was not just an ordinary person, nor was she just a physician. Wells had an education and expertise in public health and infectious disease. She, more than most, would have known what actions should be taken and would have known that the result of inaction would likely prove fatal.

More specifically, upon learning the details about the outbreak, she should have immediately given an official, statewide Health Alert Notice. The Michigan Health Alert Network notification system alerts key state personnel, hospitals, clinics, EMS agencies, and long-term care facilities of conditions that could adversely impact the health and safety of Michigan's residents. At a more basic level, Wells should have provided public notice of the outbreak and underlying concerns.

Further, with a review of the status of the outbreak investigation and a look at the calendar (summer approaching, when Legionnaires' cases rise), she would have clearly understood that prompt action was needed to prevent more people from getting sick and dying. Wells should have taken action to have the MDHHS assume responsibility for the outbreak investigation, conducted a complete investigation, and reached out to the Centers for Disease Control for assistance.

The Flint Water Team maintains that Wells should have taken the remedial steps discussed above, and her failure to do so constituted gross negligence. But it is worth noting that the fact that Lyon and Wells ultimately took these actions is further evidence that these actions were required of them all along. On January 13, 2016 – almost 9 months after she knew about the outbreak, public notice and notice to health care providers was given during a press conference. See Doc 155 – Video of January 13, 2016, Press Conference.

This notice should have been provided months earlier based on the information that was available and could have been updated if and when a source or multiple sources was identified. As a result of the lack of notice, people did not have the ability to avoid potential sources of infection. Moreover, they did not know that they should promptly seek medical treatment if sick, instead of potentially assuming they just had a cold or flu and forgoing medical intervention. Ultimately, it is the Flint Water Team's contention that Wells' negligence in failing and refusing to provide public notice of the outbreak caused the deaths of the victims presented by the panel.

Misconduct in Office

To support a charge of Misconduct in Office, the Team would have to show:

- 1) that the defendant was a public officer;

- 2) that the defendant committed misconduct by malfeasance, misfeasance, or nonfeasance;
- 3) that such behavior was corrupt; and
- 4) that it occurred in the exercise of the duties of his office or under the color of her office.

Carlin, 239 Mich App at 64.

Wells, through her position as Chief Medical Executive at the MDHHS, was a public official. *Coutu*, 459 Mich at 354–355. The actions she took relative to the Flint Water Crisis were ones she took during the exercise of the duties of her office or under the color of her office. Thus, these two elements have been met. The only remaining questions about her conduct are related to whether her actions constituted misconduct and whether her actions were corrupt.

In December 2015, Mark Valacak, Health Officer and Director of the Genesee County Health Department, directed Suzanne Cupal, a supervisor within the health department, to draft a press release on legionella bacteria because the data was becoming worrisome, and Genesee County Health Department wanted to inform the public. See Doc 158 - *People v Wells*, PE transcript, Vol. VII, p 42, Dec. 18, 2017. Word of the release eventually made it to MDHHS and Wells. See Doc 159 – Email from Sue Moran dated Dec. 1, 2015. When Wells became aware of the release, she and her staff began to scramble, and she demanded a same day meeting with Valacak. See Doc 160 - Email from Eden Wells dated Dec. 1, 2015, Ex. 567.

On this call, Wells was upset that Genesee County Health Department had drafted a press release without MDHHS’ knowledge, and she implied that Valacak was “not being a team player.” See Doc 158 - *Wells*, PE transcript, Vol. VII, pp 46–47. But it was Wells who put the EPA in touch with Valacak on November 10, 2015, to connect them on the issue of legionella.

Additionally, Wells demanded a joint press release between the Genesee County Health Department and MDHHS. She told Valacak “don’t release this – we will work on something together.” Yet, no time frame was given, and no joint press release was prepared. Valacak later testified that he felt intimidated and as if the Genesee County Health Department could not release its own press release. *Id.* at 47-48. Over four weeks later, Valacak watched the January 13, 2016, press conference from Governor Snyder, Lyon, and Wells about the outbreak – he had not been informed about it beforehand. *Id.* at 49–50.

Wells’ actions surrounding the proposed press release unduly hampered Genesee County Health Department’s efforts to notify the public about the Legionnaires’ disease outbreak – despite knowing that there was a factual basis for it and having a duty under the public health code and in her role as Chief Medical

Executive. As such, the Flint Water Teams contends that her actions constitute malfeasance and were performed with corrupt intent.

After the outbreak was finally announced on January 13, 2016, the evidence shows that Wells continued to violate her duties to protect public health through her interactions with the Flint Area Community Health and Environmental Partnership group. On January 13, 2016, Wayne State University Professor of Environmental Engineering Shawn McElmurry received a call from Hollins of the Governor's Office. Hollins told McElmurry that Governor Snyder would soon conduct a press conference announcing a Legionnaires' disease outbreak in Flint, and Hollins relayed Snyder's request that McElmurry conduct research into whether the change in water supply was responsible for the outbreak. McElmurry agreed and assembled the group of experts that would later become the Flint Area Community Health and Environmental Partnership. That group contracted with the MDHHS to conduct the research requested by Governor Snyder's office.

McElmurry explained that there was considerable conflict between Wells and members of the Flint Area Community Health and Environmental Partnership regarding methodology, protocol, and funding. For example, he alleged that Wells withheld data and required that legionella bacteria studies be removed from the Flint Area Community Health and Environmental Partnership's contract. See Doc 161 - Email from Eden Wells to Shawn McElmurry dated Feb. 11, 2017; Doc 162 - Email from Eden Wells to Shawn McElmurry dated Feb. 22, 2017. Wells also pushed back against the collection of filters for water samples in homes within the City of Flint. See Doc 163 - Email from Shawn McElmurry dated Aug. 16, 2016. The conflict reached a boiling point when McElmurry and others wanted to go public with their findings, but there was resistance from Wells (and Baird) because the Flint Area Community Health and Environmental Partnership conclusions ran contrary to what was being said publicly, i.e. that the outbreak was not localized from a hospital but was broader in nature. See Doc 164 - Emails between Marcus Zervos and Eden Wells dated Mar. 3-5, 2017.

On March 3, 2017, the Flint Area Community Health and Environmental Partnership was going to hold a press conference regarding some preliminary analysis, which showed that the change in water supply was associated with the Legionnaires' disease outbreak. When Wells discovered the plan, she and Lyon moved to shut it down, issuing a damning press release about the Flint Area Community Health and Environmental Partnership team. See Doc 165 - Nick Lyon Statement, Mar. 3, 2017. Just before the press release was issued, Wells was so angry that the Flint Area Community Health and Environmental Partnership might inform the public of the situation that she hung up the phone mid-meeting. See Doc 166 - Zervos Statement Tr., pp 74-76.

In response, and referring to the previously mentioned "boiling point," Dr. Zervos, another member of Flint Area Community Health and Environmental

Partnership, sent a lengthy email to Wells stating, in relevant part, “[t]his is the first time, however, that I have experienced such failure of process leading to inhibition and attempts to control independent, scientifically driven work; and limitations and restrictions on my ability to interact and partner with critical individuals and organizations. Specifically, the prohibition on access to and presentation of needed data, your disparaging, unfounded remarks such as those of your press release today; and your limitations in scope of work is in stark contrast to what is required and reasonably expected in a successful collaboration.” See Doc 164 - Emails between Marcus Zervos and Eden Wells dated Mar. 3–5, 2017.

Instead of responding to Dr. Zervos’s concerns about her actions, Wells responded with a threat that she had “a copy of a text message . . . from a source, that will remain confidential and anonymous . . . that relates to how you discussed with your PATIENT contractual issues of FACHEP’s⁴² state funding.” *Id.* She further stated that she would be happy to discuss that with leadership at Dr. Zervos’s hospital and Wayne State University. *Id.* In response, Dr. Zervos stated that this was “another example of your continuing attempts to intimidate me and that I am not going to stand for.” *Id.* At that point, Dr. Zervos and Wells discontinued email communications with each other.

Though Wells went out of her way to hamper the efforts of the Flint Area Community Health and Environmental Partnership, the final straw was her threats to Dr. Zervos regarding his potential continued efforts to notify the public regarding the legionella issues in the water. Consequently, the Flint Water Team believed that her actions, and the other evidence, support a conclusion that Wells’ actions constitute malfeasance and were performed with corrupt intent.

⁴² Flint Area Community Health and Environment Partnership is a team led by Wayne State researchers specializing in environmental engineering and public health conducting an independent study to evaluate the possible association between changes in Flint’s water system and public health, specifically the recent Legionnaires’ disease outbreak. <https://flint.wayne.edu/>

People v Peeler and its Aftermath

Prior to *People v Peeler*, 509 Mich 381 (2022),⁴³ the process of using a one-person grand jury was a tried-and-true charging procedure that permitted a judge to hear evidence confidentially to make a probable-cause determination permitting criminal charges to be filed. See *Slattery*, 310 Mich at 458; *Colacasides*, 379 Mich at 69.

Some of these cases include *People v Kennedy*, unpublished per curiam opinion of the Court of Appeals, issued December 14, 2023 (Docket No. 363575) (where defendant was convicted of first-degree premeditated murder, felon in possession, and felony firearm); *People v McGowan*, unpublished per curiam opinion of the Court of Appeals, issued December 15, 2009 (Docket Nos. 274829, 257197, 276385) (where defendant was convicted of first-degree felony murder, felony firearm, and receiving and concealing stolen property); *People v Moore*, unpublished per curiam opinion of the Court of Appeals, issued December 8, 2022 (Docket No. 350957) (where defendant was convicted of assault with intent to murder, felon in possession, felon in possession of ammunition, carrying a concealed weapon, witness intimidation, and felony firearm); *People v Robinson*, unpublished per curiam opinion of the Court of Appeals, issued June 13, 2024 (Docket No. 365226) (where defendant was convicted of first-degree premeditated murder and felony firearm); and *People v Washington*, unpublished per curiam opinion of the Court of Appeals, issued November 2023 (Docket No. 362794) (where defendant was convicted of assault with intent to murder, felon in possession of firearm and ammunition, and felony firearm).

The chief benefits of using a one-person grand jury were threefold: 1) it permitted the identification of crimes and potential defendants that were unknown to investigators or prosecutors at the outset of the proceedings, 2) it protected the identity of witnesses pending the finalization of charges, and 3) it allowed charging decisions to be made by an impartial judge, thereby removing any perceived charging bias. In *Peeler*, however, the Michigan Supreme Court handed down two rulings that were expressly contrary to prior Court of Appeals precedent on which the Team had relied.

In 2018, the Michigan Court of Appeals, in *People v Green*, 322 Mich App 676 (2018), had previously held that a person charged by way of a one-person grand jury indictment is not entitled to a preliminary examination. The Michigan Supreme Court in *Peeler*, however, overturned *Green* when it held that any defendant

⁴³ Though captioned *People v Peeler*, there were three cases before the MSC: *People v Peeler*, *People v Baird*, and *People v Lyon*. All three decisions were 6-0. On November 17, 2017, during the OSC investigation, Governor Snyder appointed Justice Elizabeth Clement to the Michigan Supreme Court. She became Chief Justice on November 22, 2022. Prior to her appointment, Justice Clement served as chief legal counsel to Governor Snyder, which likely would have resulted in her inclusion as a witness.

charged following a one-person grand jury investigation is entitled to a preliminary examination. See *Peeler*, 509 Mich at 394 (“[T]he Court of Appeals was wrong . . . when it held that the one-person grand-jury procedure ‘serve[s] the same function’ as a preliminary examination. We overrule *Green*.”). Based on this ruling, the Michigan Supreme Court ruled that the trial court should have granted *Peeler*’s and *Baird*’s demands for preliminary examinations. *Id.* at 395.

The Michigan Supreme Court next held that the one-person grand jury did not have the statutory authority to issue indictments, which contradicted prior Michigan Supreme Court rulings authorizing that authority. See *id.* at 399 (“To be sure judges serving as one-person grand jurors have issued indictments following investigations.”), citing *Colacasides*, 379 Mich at 77–78, *Green*, 322 Mich App at 681, *People v Bellanca*, 386 Mich 708, 71 (1972) *People v Dungey*, 356 Mich 686, 687, 688 (1959), and *People v Birch* 329 Mich 38, 41 (1950). Accordingly, the Michigan Supreme Court ruled that the trial court should have granted *Lyon*’s motion to dismiss.

While some questions regarding one-person grand jury procedure were answered by *Peeler*, other questions, some of which directly bore on the Flint Water Crisis cases, remained unanswered. One such question concerned the validity of the warrants issued by the one-person grand jury in the Flint Water Crisis cases. The Supreme Court in *Peeler* held that the one-person grand jury lacked statutory authority to issue indictments, but the Supreme Court also recognized the one-person grand jury’s statutory authority to issue arrest warrants at the conclusion of its inquiry. *Peeler*, 509 Mich at 397. Later, when the Supreme Court held that *Lyon*’s motion to dismiss his indictment should have been granted, it was silent regarding the significance of the warrants that were contemporaneously issued.

In 2026, the Michigan Supreme Court addressed the issue of whether *Peeler*’s holding applies retroactively on collateral review. *People v Robinson*, __ Mich __, 2026 WL 303034 (No. 167595). The defendant in that case had been indicted by a one-person grand jury under the same process that the *Peeler* Court had compared to a Star Chamber and held invalid. He moved to set aside his conviction on the grounds that he was never properly indicted, making his entire trial void from the start. The Supreme Court held that *Peeler* created a new rule of law that did not apply to already-final cases. Among other things, the Court pointed out the logistical difficulty of “[c]alling into question numerous cases in which defendants were convicted following a fair trial under the most stringent beyond-a-reasonable-doubt standard.” *Id.* at *5. (Of course, if *Peeler* and *Baird* had gone to trial, they would also have received a fair trial under the same standard.) *Robinson*’s conviction would stand.

And so, the relief afforded *Peeler* and *Baird* was not available to those defendants who raised the same challenges *before* *Peeler* was decided, like Robert *Green*, *People v Green*, 504 Mich 963 (2019); nor to those who raised the same

challenges *after Peeler* was decided, like Todd Robinson. This ticket was apparently good for one ride only.

To be clear, the one-person grand jury did issue warrants against the Flint Water defendants, and it did so based on a finding of probable cause, in accordance with MCL 767.4. Yet *Peeler* never held, or even alluded to the idea, that because an invalid indictment is returned, an otherwise-valid warrant must also be dismissed. To the contrary, *Peeler* held that a one-person grand jury may issue warrants, and that after a warrant is issued, the case shall proceed “as upon formal complaint.” *Peeler*, 509 Mich at 393, 397; see also MCL 767.4.

When *Peeler* was issued, members of the Flint Water Team met immediately. After carefully reviewing the Supreme Court’s opinion, the Team concluded that, although *Peeler* required the dismissal of the indictments, it did not require the cases to be dismissed in their entirety. Thus, the Team prepared to schedule the cases for preliminary examinations on the warrants. Subsequently, the Team drafted two motions setting forth this position. One of these motions was filed in the felony cases in circuit court, and the other was filed in the misdemeanor cases in district court. Again, the Team’s intent was to move the cases forward “as upon formal complaint” in accordance with *Peeler*.

Put another way, the Team understood *Peeler* as returning defendants’ cases to the posture they would have been in had they been arraigned on the warrant without an indictment. For the misdemeanor defendants, this changed nothing, as misdemeanor defendants are not afforded a right to a preliminary exam. The felony defendants, however, would proceed to preliminary examinations. These remedies would not put the defendants in any worse position than if they had initially been charged by a complaint and warrant rather than the one-person grand jury process.

The Felony Cases

In accordance with the conclusions presented above, the Team filed a motion to remand all the felony cases to district court to conduct preliminary examinations. The defendants, however, argued that *Peeler* required that not only the indictments, but the cases in their entirety (including the warrants), be dismissed. The Genesee Circuit Court scheduled oral argument on that dispute for September 13, 2022. However, five days before the hearing was to be held, Judge Kelly canceled the hearing. On October 4, 2022, she issued an opinion and order dismissing the felony cases in their entirety. 10/4/22 Genesee Cir Ct Order.

Despite recognizing the incompatibility of the Supreme Court’s dual holdings, the circuit court stated that the warrants issued by the one-person grand jury were irreparably invalid (“void *ab initio*”) because the invalidity of the indictment rendered the warrants invalid as well. 10/4/22 Genesee Cir Ct Order, p 4. The basis for this conclusion was not explained.

Even prior to the circuit court’s decision, the Team recognized that the final resolution of the matter would require a decision from the Michigan Supreme Court. With that in mind, the Team appealed the circuit court’s ruling, as well the Michigan Court of Appeals rulings that upheld the circuit court’s decision. On appeal, the Team argued that the circuit court’s conclusion ignored the statutory language in MCL 767.4 (“If upon such inquiry the judge shall be satisfied that any offense has been committed and *that there is probable cause* to suspect any person to be guilty thereof, *he may cause the apprehension of such person by proper process . . .*” (emphasis added)). The Team further argued that the lower courts’ decisions were contrary to *Peeler*’s language expressly recognizing and upholding the one-person grand jury’s authority to issue warrants.

Rather than take up the question left unanswered by *Peeler*, the Michigan Supreme Court unfortunately chose not to hear the Team’s appeal, instead leaving the lower courts’ decisions intact. See *People v Lyon*, 512 Mich 958 (2023).⁴⁴ This meant that all of the felony cases were now dismissed in their entirety.

The Misdemeanor Cases

The cases against former Governor Snyder and Croft took a different procedural path from the felony defendants, though they ultimately ended up at the same destination. When *Peeler* was issued, both cases were pending appeal in the circuit court, albeit on different issues. Governor Snyder’s appeal involved a jurisdictional issue, and Croft’s case concerned his motion to disqualify District Judge William H. Crawford.

Following *Peeler*, the Team filed motions in both misdemeanor cases setting forth the Team’s understanding of *Peeler*’s impact, or lack thereof, on the misdemeanor defendants. In these motions, the Team asked the court to recognize that the misdemeanor charging documents in these cases were different in kind from the felony charging documents at issue in *Peeler*. The Team filed these motions in district court, as the questions raised by *Peeler* did not relate to the issues on appeal in the circuit court in either case. Judge Crawford refused to hear the motions or make any rulings on the matter. Considering one appeal was to dismiss the case, and another was to have him removed from the case, all sides understood his position. Thus, both sides would need to look elsewhere for a ruling on the issue.

Governor Snyder’s attorneys, over the Team’s objection, moved to allow argument on how *Peeler* impacted his case as part of his pending appeal before the circuit court. Genesee County Circuit Court Judge Hon. F. Kay Behm agreed, and both sides filed additional briefs. After hearing oral argument, the circuit court issued a ruling dismissing the indictment, and the case, against Governor Snyder.

⁴⁴ Again, for reasons previously discussed, Justice Clement recused herself from these cases.

12/7/22 Genesee Cir Ct Order. Though the opinion touched on several topics presented at oral argument, as it related to the argument that the case could proceed on the warrant, the circuit court held that “this case cannot proceed on the warrant alone.” *Id.* at 11.

As was the case with the felony defendants, the Flint Water Team knew that this matter would eventually be decided by the Michigan Supreme Court. Thus, following the circuit court’s decision, the Team sought leave to appeal to the Michigan Court of Appeals. After the Court of Appeals denied the Team’s appeal, the Team filed an application for leave to appeal in the Michigan Supreme Court. However, as with the felony cases, the Michigan Supreme Court denied leave, thereby declining to opine on the significance of the one-person grand jury’s finding of probable cause and issuance of a warrant against former Governor Snyder. See *People v Snyder*, 513 Mich 888 (2023).

Meanwhile, the circuit court denied Croft’s motion to disqualify Judge Crawford in October 2022, and Croft’s case subsequently sat dormant for several months. In April 2023, Croft filed a motion to dismiss his indictment. Oral argument on the motion was heard before the district court on May 22, 2023. At that hearing, relying both on *Peeler* and the circuit court’s decision in Governor Snyder’s case, the district court ordered the dismissal of Croft’s indictment. See Doc 169 - Order of Dismissal (Croft). Because Governor Snyder’s case was still pending on appeal, the Team appealed the district court’s decision. However, before oral argument could be heard, the Michigan Supreme Court denied leave to appeal in Governor Snyder’s case, leaving intact the circuit court’s ruling. Because the issues presented by Croft and Governor Snyder were identical, this signaled the end to the Flint Water Crisis prosecutions.

Declining to Pursue Charges After the Final Dismissal.

After the Michigan Supreme Court refused to hear the Team’s appeal of Judge Kelly’s or Judge Behm’s dismissals, there was no realistic path forward for the prosecution. This conclusion was reached for several reasons.

Statute of Limitations

Most significantly, the statute of limitations had likely run on nearly all charges previously brought against the defendants. In Michigan, any misdemeanor charges must be brought within six years of the offense. See MCL 767.24(10). Thus, the charges against Governor Snyder and Croft, both of whom were charged only with misdemeanors, could not be brought again as a complaint-and-warrant case. The same six-year statute of limitations found in MCL 767.24(10) applied to all felony charges brought against Agen, Ambrose, Earley, and Peeler.

The only charges on which the statute of limitations had not yet run were the charges of involuntary manslaughter and extortion—each of which carrying a ten-year limitations period—brought against Baird, Lyon, and Wells. See MCL 767.24(6). Although the Team could have potentially reissued these charges and presented evidence at trial, legal and practical concerns made doing so virtually impossible.

Order Requiring Use of a Taint Team

Earlier in the proceedings, as it related to the felony defendants, Judge Kelly ordered that the Team institute a taint team before reviewing or providing any additional discovery. Despite there being no statute or case law requiring such a process, when asked by the People to review Judge Kelly’s decision, the Michigan Court of Appeals and the Michigan Supreme Court both declined.⁴⁵

The circuit court’s ruling was particularly burdensome because of the amount of material the taint team would potentially need to review. Investigators seized over 20 million documents—ranging from emails to reports to handwritten notes—most of which were covered by the circuit court’s order. Approximately four million documents had already been provided to the defendants, meaning there were approximately 17 million documents that still needed review. But a taint team could not simply be assembled and begin reviewing these documents; there first needed to be an agreement between the attorneys (or an order from the court) regarding what privilege(s) would apply, who held the privilege(s), and what documents would be covered by the privilege(s).

As soon as the circuit court issued the order requiring the use of a taint team, the Team began a series of meetings with Lyon’s counsel to seek agreement on the taint team process. But after several months of negotiating, very little was agreed upon. Ultimately, the parties concluded that resolution would require the circuit court’s intervention.

In accordance with the circuit court’s order, both the Flint Water Team and Lyon’s defense team attempted to contact the circuit court regarding the scheduling of a hearing to address these issues. The circuit court, however, never scheduled a hearing in response to the parties’ requests. As such, the taint team issue remained in judicial limbo for over a year.

Ultimately, the decision regarding how many documents required review would have to be made by the courts. But without guidance from the district court and without knowing how many documents would require review, the Team once again faced the wide array of possible time and cost estimates. (See Taint Team section on pages 27–28.) No matter the scenario, the time necessary to complete the

⁴⁵ An application for leave to appeal Judge Kelly’s decision was filed with the Michigan Court of Appeals on January 28, 2022, and with the Michigan Supreme Court on May 18, 2022.

review, and the costs, were significant. Taken together, it is possible the taint team process could have cost upwards of \$38,071,579, and taken up to 22.18 years. For reference, the entire budget of the AG's office in 2022–2023 was \$118,273,000.00.⁴⁶

Before this process could begin, however, the courts would have had to determine what documents would be covered by privilege. The matter would have to be litigated, potentially beginning in the district court, which would likely take *at least* another 15 months to work its way up to the Michigan Supreme Court. Only after the Supreme Court ruled could the taint team begin its review. There also would almost certainly be additional litigation surrounding some decisions made by the taint team regarding privileged documents as it is likely that there would be disputes regarding specific documents that one side or the other, would argue should, or should not, be protected by a potential privilege.

Bottom line: there was simply no way to know how long the process would take. The only certainty was that the time would be measured in years.

Additional Costs of Prosecution

The taint team was not the only factor relating to the cost of the prosecution. Because of actions taken by Governor Snyder while he was still in office, which were continued by Governor Whitmer after Snyder's term expired, the attorneys for the defendants (other than Baird) were being paid for by the State of Michigan.⁴⁷ This was true not just as it related to the Flint Water Team's cases, but also going as far back as the OSC cases. Limiting the discussion to the Flint Water Team cases, the State of Michigan and the City of Flint were paying tremendous sums of money for the defendants' attorneys. Publicly available records indicate that counsel for the defendants were paid the following:⁴⁸

Counsel for Jarrod Agen (Seth Waxman/Dickinson Wright, PLLC):

FY23- \$158,823.19

FY22- \$585,623.99

⁴⁶ See House Fiscal Agency, Budget Briefing: Attorney General. Budget Briefing: Attorney General - December 2022 (mi.gov).

⁴⁷ Initially, millions of taxpayer dollars were set aside for attorney fees during Governor Snyder's second term, but caps on limits of what could be billed were put in place. The caps were incrementally increased, but ultimately dissolved by Governor Whitmer. See Fonger, *No Flint water crisis attorney has agreed to cap on fees for defending state employees*, MLive, May 6, 2021; and Fonger, *Whitmer drops cap on legal fees for Snyder, others charged with Flint water crimes*, MLive, August 3, 2021.

⁴⁸ To the extent these attorneys may have been involved in the civil cases, these numbers do not include those fees. See Appendix M - Legal Fee Public Documents

FY21- \$59,427.00

Total: \$803,874.18

Contract Cap: \$1,515,000.00

Counsel for Gerald Ambrose (William Swor):

FY23- \$51,048.40

FY22- \$386,736.08

FY21- \$195,995.37

Total: \$633,779.85

Counsel for Richard Baird (Levine & Levine):

FY23- \$14,321.80

Total: \$14,321.80

Contract Cap: \$340,000.00

Counsel for Howard Croft (Alex Rusek/White Law, PLLC/Foster, Swift, Collins & Swift):

FY23- \$93,744.82

FY22- \$154,517.03

FY21- \$272,890.12

Total: \$521,151.97

Counsel for Darnell Earley (Juan Mateo/Perkins Law Group, PLLC):

FY23- \$221,983.68

FY22- \$361,065.90

FY21- \$251,970.50

Total: \$835,020.08

Counsel for Nick Lyon (Chip Chamberlain/Willey & Chamberlain, LLP):

FY23- \$516,866.22

FY22- \$1,135,310.26

FY21- \$275,220.85

Total: \$1,927,397.33

Contract Cap: \$3,370,000.00

Counsel for Nancy Peeler (Harold Gurewitz/Gurewitz & Raben):

FY23- \$53,703.86

FY22- \$198,692.77

Total: \$252,396.63

Contract Cap: \$552,000.00

Counsel for Governor Snyder (Brian Lennon/Warner, Norcross & Judd):

FY23- \$611,935.31

FY22- \$1,899,415.22

FY21- \$53,919.50

Total: \$2,565,270.03

Contract Cap: \$3,750,000.00

Counsel for Eden Wells (Jerold Lax/Pear, Sperling, Eggan, & Daniels):

FY23- \$89,497.53

FY22- \$181,269.51

FY21- \$109,150.95

Total: \$379,917.99

Contract Cap: \$475,000.00

The best estimate is that the cost to the taxpayers of defending those charged in the Flint Water Team cases was approximately \$7.6 million. Naturally, this number speaks only to the cost of the defense attorneys, not the cost of the various Assistant Attorneys General working on the case. Based on the amount of time spent litigating the taint team alone, the additional cost of litigating the cases could have easily reached another \$10 million.

To put these numbers in perspective, the Michigan Indigent Defense Counsel is responsible for appointing attorneys to defendants who are unable to hire their own. In 2023, the Michigan Indigent Defense Counsel, representing thousands of cases, spent just over \$3.5 million on attorneys for the entire City of Detroit in 2023, and just over \$10 million on attorneys for the entirety of Macomb County. While not indigent defendants, the Flint defendants were granted state funding of amounts received by no other defendants in the State of Michigan.

The taint team was not the only issue that would have required litigation. Another dispositive issue – which was argued before the circuit court but never

ruled upon – was whether Lyon and Wells owed a legal duty to those who died because of the switch in Flint’s water source. To be convicted of involuntary manslaughter from a failure to perform legal duty theory, the defendant must have owed a legal duty of care to the victim. *Giddings*, 169 Mich App at 631. In the circuit court, Lyon and Wells argued that despite their positions as the Director and Chief Medical Executive of MDHHS, respectively, they had no legal duty of care owed to the individual victims. Because the circuit court never issued a ruling on the issue, this too would need to be litigated, starting at the district court level. Then, after litigation in the lower courts, it was unlikely that the Michigan Supreme Court would issue a decision on this dispute within a year, assuming it even chose to hear the matter.

There were multiple factors to consider in deciding the fate of the cases against the Flint defendants, but at no point was the Team unwilling to put in the work required to continue the prosecution. In the end, there was no way to know exactly when these cases would make it to trial, if ever. There was no way to know how many tens of millions of dollars it would cost or where the money would come from. What *was* known, however, was that the process would be extremely lengthy and costly. It was always the Flint Water Team’s objective to pursue justice for the victims of the City of Flint, and it did so in good faith, working to the best of its ability given the state of the law when these investigations began. At the same time, however, starting these prosecutions anew meant that the victims of the Flint Water Crisis would be subjected to a perpetually lengthy process, punctuated by unfavorable, confusing, and contradictory court rulings. Accordingly, the Team concluded that further efforts at prosecution were unlikely to advance the goal of justice, and it made the difficult decision to close the cases.

Conclusion

It would be a considerable understatement to say that the members of the Flint Water Team were disappointed with the outcome of these cases. The Team put in years of work – nights, weekends, considerable time away from their families – all for the purpose of trying to bring justice to the people of Flint. That these cases did not end with even the ability to present a case to a jury was crushing to the Team. But that pales in comparison to the frustration and disappointment felt by the people of the City of Flint, who watched as those responsible for harming them, their families, and their friends went unpunished.

The Flint Water Team is proud of the work it did, and while it may bring little solace, we hope that the people of Flint know that a small group of dedicated public servants fought for them.

The events creating, surrounding, and following the Flint Water Crisis were in many ways unique. The Flint Water Crisis was news around the globe. A city that was once one of the major hubs of the automotive industry had become ground-zero for a man-made environmental disaster. Complaints about mysterious illnesses, pictures of residents holding jars and bottles of dirty water, and allegations of corruption were in the news on a daily basis. An entire city had been poisoned by their water, and the world was watching.

For all its uniqueness, however, the story of the Flint Water Crisis was also one that has been told many times before. A populace comprised largely of minority and underprivileged people was forced to suffer because of the actions of a wealthy and powerful few. The people of the City of Flint were lied to by their elected officials about the danger lurking in their drinking water in the hopes that, at best, the officials could fix any problems before it was too late, or at worst, those responsible could avoid answering for their actions.

The actions of those responsible for the Flint Water Crisis irrevocably stained the fabric of trust in the City of Flint. To this day, a decade later, people in and around the City of Flint still make comments about the safety of the water. Yet, the impact of the Flint Water Crisis extended far beyond the city limits. Michigan's system of criminal justice was altered in a way that allowed those alleged to be responsible, men and women of considerable power, to escape punishment.

Perhaps it is just a coincidence that after a century of existence, withstanding repeated challenges (most recently in 2018), the one-person grand jury process was altered in the case of a defendant who had appointed three members of the deciding court, allowing him and his co-defendants to escape prosecution. Perhaps it is just a coincidence that the Flint defendants were handed blank checks for their defense, allowing them to spend millions and millions of taxpayer dollars on attorneys. Meanwhile, “regular” people must either pay for their own attorneys or be

represented by appointed counsel who do not have a veritable treasure chest at their disposal.

Or perhaps not.