

The Flint Water Crisis, KWA and Strategic-Structural Racism

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The Flint Water Crisis, KWA and Strategic-Structural Racism

By

Peter J. Hammer¹

Flint is a complicated story where race plays out on multiple dimensions. It is a difficult story to tell because many facts suggesting the State's real complicity in the tragedy are still being revealed. That said, three truths about Flint, race and water are beginning to resonate strongly. The first truth is how the entire Emergency Management regime and governor Snyder's approach to municipal distress and fiscal austerity serves as a morality play about the dangers of structural racism and how conservative notions of knowledge-&-power can drive decisions leading to the poisoning of an entire City. The second truth is the role strategic racism played in motivating actors at the Karegnondi Water Authority (KWA), Treasury, DEQ and various Emergency Managers to disregard the lives of the citizens of Flint in seeking initial approval of the KWA pipeline and how these same players manipulated rules governing bond financing in a way that cemented use of the Flint River as an interim drinking water source as a predicate for financing the distressed City's participation in KWA. The third truth is how the structural racism embedded in the first serves to enable and reinforce the strategic racism embedded in the second.

The hearings of the Michigan Civil Rights Commission are an effort to seek answers about what really happened in Flint and why. The water crisis in Flint needs to be understood from a perspective of strategic and structural racism. These perspectives substantially change how one thinks about the underlying problem of municipal distress, the tool of Emergency Management, initial decisions relating to Flint's participation in KWA, bond financing for the KWA project, the financially driven decision to use the Flint River as an interim source of drinking water, and the political environment that failed to recognize and respond to the mounting crisis.

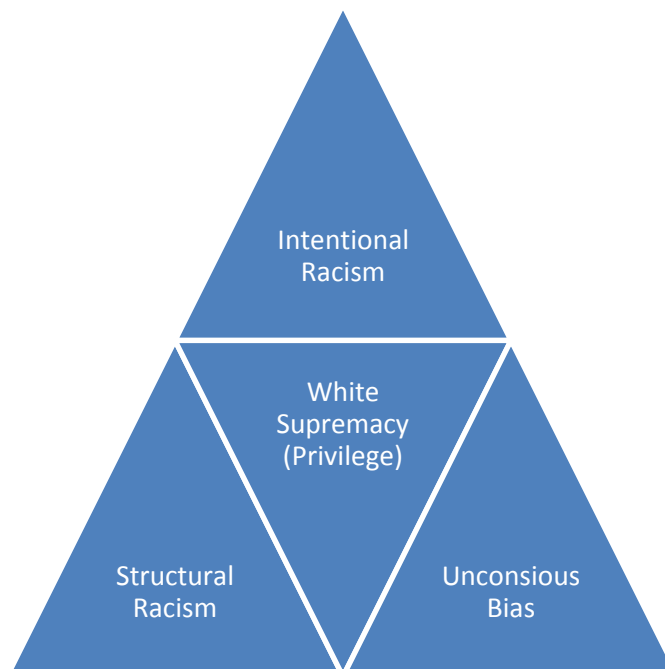
I. Flint, Municipal Distress, Emergency Management and Strategic-Structural Racism

A. What is structural and strategic racism?

We need to develop more meaningful understandings of how race and racism function in modern America if we want to achieve greater racial equity. The only types of racism most Americans imagine are intentional forms of discrimination. Sadly, intentional discrimination is also about the only type of racism our laws address.

¹ Peter J. Hammer, Professor of Law and Director of the Damon J. Keith Center for Civil Rights at Wayne State University Law School. I view this as a work in progress that should be modified and adapted as additional facts and information becomes available. I would like to thank the students in my seminar: Detroit Equity Action Lab: A Collaborative Study of Structural Racism. Flint was an important focus of our discussion and they will see some of their ideas and contributions reflected here.

While intentional racism does exist and must be fought, it is not the only type of racism we need to be concerned about. Research in cognitive psychology documents how implicit bias can impact thought and action at an unconscious level. These unconscious biases are created and reinforced by media messages and dominant social narratives about history, politics, power and the economy. Relatedly, there are significant forms of structural racism. Structural racism consists of the inter-institutional dynamics that produce and reproduce racially disparate outcomes over time.² These racially disparate outcomes occur in areas of health, education, income, transportation, housing and the environment. Historically, these forces served to perpetuate notions of White Supremacy most evident in institutions of slavery and Jim Crow segregation. Today, these same forces continue in different institutional forms to protect and reinforce notions of White Privilege. The oppressive and hierarchical nature of these forces, however, remain the same.



Geography plays an important role in understanding structural racism. In this context, we need to be more aware of the spatialization of race and the racialization of space throughout Michigan.³ A frame of structural racism helps do this. Theories of structural racism are also useful because they employ systems-based forms of reasoning that can help identify root causes of problems that change over time and better inform future policy actions.

² John A. Powell, *RACING TO JUSTICE: TRANSFORMING OUR CONCEPTIONS OF SELF AND OTHER TO BUILD AN INCLUSIVE SOCIETY* (2012).

³ George Lipsitz, *HOW RACISM TAKES PLACE* (2011).

There is another form of racism not depicted in the above diagram – Strategic Racism.⁴ The forces of intentional racism, structural racism and unconscious biases are strong in American society and can be manipulated for political and economic purposes. Strategic racism is the manipulation of these forces regardless of whether the actor has express racist intent, although the very act of engaging in strategic racism is itself a form of racist behavior.

This testimony will be framed to explore the answers to a number of important questions. 1) How is the Emergency Manager Law, particularly as imposed after repeal by popular referendum, an illustration of structuralized racialization? 2) How is the phenomenon of municipal distress in Michigan itself a manifestation of a history of structural racism? 3) How did strategic racism enable decisions regarding Flint's initial participation in KWA? 4) How were rules concerning bond financing manipulated in a manner that committed the use of the Flint River as the interim drinking water source to enable Flint's financing its contribution to KWA? 5) How did the features of Emergency Management, government conflicts of interest and the embedded nature of structural racism influence the delayed institutional and political response to the emerging crisis?

B. Knowledge, power, emergency management and race

At the heart of Emergency Management in Michigan are questions of knowledge-&-power and how knowledge-&-power relates to policy and race. Different groups of people have different sets of information and beliefs (knowledge) and are differentially situated to influence policy (power).⁵ As it relates to Emergency Management, Flint is a story about whose knowledge matters; how the information and beliefs of particular groups can pre-determine policy; and how resistant established knowledge-&-power matrices are to change, especially when challenged from below by groups historically marginalized in terms of race, ethnicity and national origin.

Governor Snyder, based a conservative set of beliefs about the sources of municipal distress and the types of austerity policies needed to address them (knowledge-&-power) passed an enhanced Emergency Manager Law (PA 4) through a majority republican legislature. The new law displaced local democratic rule and provided an extraordinary set of powers for Emergency Managers to enact unilateral change, with the primary objective of balancing local municipal budgets. This triggered a popular movement to repeal the Emergency Manager Law through the referendum process, by different groups of people, based on a different set of information and beliefs about the role of local government and the proper policy response to municipal distress (knowledge-&-power). Within weeks after repeal, however, the same legislature that adopted the initial Emergency Manager Law, sitting in lame duck session, passed

⁴ Ian Haney López, *DOG WHISTLE POLITICS: HOW CODED RACIAL APPEALS HAVE REINVENTED RACISM AND WRECKED THE MIDDLE CLASS* (2014).

⁵ Michel Foucault, *DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON* (1977).

a slightly revised Emergency Manager Law (PA 436) with an appropriations provision, making the new law impossible to repeal by popular referendum.

In essence, the Governor and the Republican legislature privileged its conservative set of Emergency Manager policies, with its embedded knowledge-&-power assumptions, over competing visions and ensured that its policy regime would govern events in Flint and elsewhere in Michigan. This unleashed a series of events, now well-known, relating to Emergency Management, democracy, municipal finance, lead and water.

Matrices of knowledge-&-power relations are real, exerting their own social-political force fields that can determine the outcomes of political disputes, as well as people's lives. Competing matrices of knowledge-&-power can be evidenced in official documents, campaigns, emails and newspaper accounts. Two reports are particularly helpful in deconstructing the Flint water crisis from a perspective of structural racism. The Flint Water Advisory Task Force Final Report essentially vindicates (ex post) the beliefs and information held by opponents of the Emergency Manager law, who spearheaded the repeal effort.⁶ Democracy, checks and balances and citizen participation all matter in governance. In Flint, that which was feared most was permitted to come into being, while the same blindness that prevented the Governor and Republican legislature from questioning their own information and beliefs in the wake of the successful referendum effort, prevented them and other government officials from recognizing the emerging crisis and taking appropriate remedial actions. What causes this blindness to *external* truths and how is it related to issues of knowledge, power and structural racism?

The second revealing document is the September 2011 report, Long-Term Crisis and Systemic Failure: Taking the Fiscal Stress of American Cities Seriously: Case Study: City of Flint, by Eric Scorsone and Nicolette Bateson.⁷ The Scorsone & Bateson Report was published in the midst of the state's assessment of Flint's alleged financial emergency and only weeks before the appointment of Flint's first Emergency Manager – Michael Brown. Contemporary actors in the Governor's office, at Treasury and the various Emergency Managers can be charged with an awareness of its contents. The Report calls into serious question the basic assumptions of the Emergency Management policy as applied to Flint, even if one accepts the conservative economic precepts embedded in Emergency Management's internal set of information and beliefs.

⁶ Flint Water Advisory Task Force, FINAL REPORT (March 2016) (Commissioned by the Office of Governor Rick Snyder State of Michigan) (hereinafter "Task Force Report"), available at https://www.michigan.gov/documents/snyder/FWATF_FINAL_REPORT_21March2016_517805_7.pdf.

⁷ Eric Scorsone and Nicolette Bateson, LONG-TERM CRISIS AND SYSTEMIC FAILURE: TAKING THE FISCAL STRESS OF AMERICAN CITIES SERIOUSLY: CASE STUDY: CITY OF FLINT (September 2011) (hereinafter "Scorsone & Bateson") available at https://www.cityofflint.com/wp-content/uploads/Reports/MSUE_FlintStudy2011.pdf.

It should have been clear to the Governor, the Treasury Department and the appointed Emergency Managers that there were deep structural problems in the city. As a matter of basic economics, it would not be possible to cut the Flint budget or generate sufficient additional revenue to remedy Flint's fiscal distress. Nevertheless, Emergency Managers in Flint continued on course with "business as usual," without adjustment. What causes this *internal* blindness and how is it related to issues of knowledge, power and structural racism?

Underlying the interpretation of these documents are streams of recently released emails illustrating how strategic racism can and did manipulate racialized forces in Flint for private gain at critical junctures of the Flint water crisis – the decision to opt for the KWA pipeline and the financially driven decision to use the Flint River as an interim drinking water source in order to circumvent debt limits governing bond financing of the KWA project. Strategic racism manipulates the forces of express and structural racism, while structural racism provides cover for strategic racism. This was sadly illustrated in the delayed institutional and political response to the water crisis and the efforts by DEQ to obfuscate, deny and cover up the poisoning of an entire city.

C. Flint from a perspective of structural inequality

Flint is a shrinking, post-industrial city. Flint's population reached a peak of nearly 200,000 in 1960, only to shrink by more than half today. While Flint is now a majority African-American city with roughly 57% of the population Black and 38% White,⁸ the story of when and why people started leaving the city is quite different.⁹ Flint's White population has been fleeing the city for more than half a century – declining from 162,128 in 1960 to 38,328 in 2010.¹⁰ In contrast, Flint's Black population continued to grow from 1960 (34,521) to 1990 (67,488) and did not start meaningfully to decline until 2010 (57,939).¹¹ Significantly, when white people left the City, they did not leave the region. The population of Genesee County has remained relatively stable from 1970 to the present. The percentage of the population represented by the City of Flint, however, has fallen dramatically from just over half to less than a quarter in the past 50 years.

As in most cases of the spatialization of race and the racialization of space, the City of Flint and Genesee County have taken on increasingly different socioeconomic characteristics over time, with increased segregation of race, wealth and opportunity. The population of Genesee County is not just whiter than the city of Flint, it is also wealthier. In 2010, median household income in Flint (\$28,384) was 31.7% lower than that of Genesee County (\$41,586)¹².

⁸ Task Force Report at 15.

⁹ Peter J. Hammer, *The Flint Water Crisis: History, Housing and Spatial-Structural Racism*, Testimony before Michigan Civil Rights Commission Hearing on Flint Water Crisis (July 14, 2016) (Appendix).

¹⁰ Scorsone & Bateson at 4.

¹¹ *Id.*

¹² *Id.* at 6.

Other characteristics of Genesee County facilitate greater spatial segregation and make tighter regional integration – economic and racial – more difficult. Genesee County is another illustration of unplanned urban sprawl. “Genesee County consists of eleven cities and seventeen townships. . . . [O]ver half of the county’s population is dispersed in townships that cover 87% of the land area. The remaining cities are relatively small.”¹³ This stimulates substantial inter-governmental competition in terms of taxes, investment and development, mostly to the disadvantage of Flint.

Flint is also an economic story of job losses associated with deindustrialization and changes in the auto industry, particularly as mediated through General Motors. In this process, there has been substantial spatial relocation of workers holding many of the remaining good paying jobs, while there has been an increased concentration and economic isolation of the poor and jobless of all races, increasingly trapped inside of Flint. The numbers are staggering. “In 1978, over 80,000 Flint-area residents were employed by GM. By 1990, the number of employees decreased to 23,000. It was reported to be as low as 8,000 in 2006.”¹⁴ While unemployment statistics notoriously understate the existence of joblessness in urban areas because they fail to capture those who have stopped looking for work, Flint’s unemployment rate in 2010 was 23.2%, the highest in the State.¹⁵

Distressed economic systems can be tipped into downward spirals. In 1990, 30.6% of Flint residents lived below the poverty line.¹⁶ By 2009, it was 34.9%. By 2016, it was over 40%,¹⁷ constituting the second highest rate in the country. With concentrated poverty comes increased social and economic isolation. In an insightful article, Stephen Henderson and Kristi Tanner examine “How job loss and isolation help keep Flint poor.”¹⁸ With increased regional job sprawl, nearly “half of the working population [in Flint] travels 25 miles or more to work each day.”¹⁹ This is in a city where nearly one in five residents do not have access to a car and the City’s public transportation systems serves the urban core with little access to suburban spaces. Isolation brings mounting physical, mental and emotional stress, where access to basic services, even groceries, can become daily challenges.

¹³ Id. at 26.

¹⁴ Id. at 1.

¹⁵ Id. at 6.

¹⁶ Id.

¹⁷ Julia Lurie, *While Lead Flowed Through the Pipes, Flint Residents Paid America's Most Expensive Water Bills: Flint's water bills were more than twice as high as the average community served by a public utility*, MOTHER JONES (Feb. 17, 2016), available at <http://www.motherjones.com/environment/2016/02/while-lead-flowed-through-taps-flint-had-most-expensive-water-nation>.

¹⁸ Stephen Henderson and Kristi Tanner, *How job loss and isolation help keep Flint poor*, DETROIT FREE PRESS (February 21, 2016), available at <http://www.freep.com/story/opinion/columnists/stephen-henderson/2016/02/20/how-job-loss-and-isolation-help-keep-flint-poor/80199226/>.

¹⁹ Id.

In the end, these are structural problems that need structural solutions. Henderson and Tanner conclude: “In Flint, lead poisoning in the water supply has generated a wealth of attention. But when we talk about what to do in that city, the conversation needs to focus on the complex web of policy dynamics that create dramatic job loss and economic isolation. It needs to address decisions that, for more than a generation, have driven urban areas into economic chasms that almost seem designed to nurture and trap poverty, and to destroy opportunity and hope.”²⁰ The only element expressly missing from this analysis is the role of race in these processes, but Flint is and must be understood as a dramatic illustration of structural racism.

D. Municipal distress as evidence of a history of structural racism

What are the causes of financial health and municipal distress? Distress at the household level is deeply interconnected with distress at the municipal level. The three primary sources of municipal revenue in Flint are property taxes, income taxes and state revenue sharing. Between fiscal year 2006 and the planned fiscal year 2012, there were dramatic reductions in each revenue category. Property tax revenue fell 33% from \$12.5 million to \$8.3 million, a sign of a collapsing real estate market.²¹ Income tax revenue fell 39% from \$19.7 million to \$12 million, a sign of a collapsing jobs market.²² State revenue sharing fell a dramatic 61% from \$20 million to \$7.9 million, a sign of the state’s abandonment of its older urban areas.²³ This reflects a deep structural crisis.

Property tax revenues are inherently unstable in a city that has lost half its population and the majority of its manufacturing base. Problems in the real estate market translate into problems in municipal tax revenue. In Flint, many houses are simply being abandoned and increasing amounts of land lay vacant. “The rate of housing abandonment in the City of Flint presents numerous long-term structural budget issues. Housing vacancy has increased from 8.2% in 1990 to 21.1% in 2010.”²⁴ Abandoned houses not only translate into falling property tax revenue, but into increased costs for the city, including “increased municipal maintenance, police patrol, fire protection, and other costs to preserve health and human safety concerns.”²⁵ The city is in a double bind.

One response to falling property values and falling property tax revenues might be to increase taxes to increase revenues. The first problem with this is that it has already been done. Flint has the fifth highest property taxes in the state.²⁶ The second problem is that increasing taxes further could actually make things worse. Sadly, competitive regional dynamics punish

²⁰ Id.

²¹ Scorsone & Bateson at 50.

²² Id.

²³ Id.

²⁴ Id. at 4.

²⁵ Id. at 5.

²⁶ Id. at 12.

distressed cities that raise taxes. “When competing for residents within Genesee County, the City of Flint is further disadvantaged by a high homestead tax rate . . . The City of Flint homeowner will pay, on average, 28% more than County residents in the nine other largest communities.”²⁷ It is not possible to tax oneself out of a structural deficit. Similar observations could be made about trying to increase income tax revenue.

Scorsone & Bateson conducted an analysis to see what it would take for the City of Flint to return to levels of property and income tax revenue comparable to fiscal year 2006 levels, the last time that the city ran a budget surplus. What would it take to generate an additional \$4.2 million in property tax revenue? “[N]ew investments in taxable property of \$525 million with an assessed value of \$262.5 million would be needed in order to generate \$4.2 million in revenue. In other words, the additional taxable value needed equates to almost eleven times the current assessed value of the City’s single largest taxpayer, General Motors. Similarly, new projects equal to almost four times the assessed value for all of the ten largest taxpayers would be needed to return revenues to the fiscal year 2006 level.”²⁸ These estimates suggest the tremendous depth of the structural challenges facing Flint in 2011.

Similar disturbing results flow from the analysis of the investments in job growth needed to reverse the \$7.6 reduction in income tax revenue. The authors conclude that “40,000 new taxpayers would be needed to return income tax revenue to the FY 2006 level.”²⁹ Relative to the anemic employment picture in Flint, this is a staggering number. “To put the estimate of 40,000 into perspective, that amount exceeds the total number of employees at the City’s ten largest employers combined.”³⁰

What was the State’s response to Flint’s structural financial problems? Between 2006, the last year Flint ran a budget surplus and planned FY 2012, on the eve of it being placed under an Emergency Manager under PL 4, state revenue sharing fell 61% from \$20 million to \$7.9 million.³¹ *The inference is clear. The primary, non-structural reason Flint was in financial distress was the direct result of state revenue sharing policy. This fact does not get the public attention it deserves. The State of Michigan created the very financial distress in Flint and other cities that it then used to supposedly justified the need for Emergency Managers.*

One lesson is important. You cannot simply cut your way out of this type of financial hole. Between 2000 and 2010, the City of Flint implemented many cost cutting measures, including a workforce reduction of over 50%.³² But the dynamics driving personnel and other

²⁷ Id.

²⁸ Id. at 53-54.

²⁹ Id. at 54.

³⁰ Id. at 55.

³¹ Id. at 50.

³² Id. at 14.

costs are complicated. “Despite reduced staffing levels, the City of Flint’s expenditures have continued to increase. This is symptomatic of a structural budget deficit.”³³

An Emergency Financial Manager (Ed Kurtz) was appointed in Flint in May 2002 and stayed in place till January 2004, leaving the city with a budget surplus. By June 2008, however, the city was in deficit again. The conclusion that the dominant conservative political narrative draws from this (knowledge-&-power) is that poor, predominately African-American cities cannot govern themselves. Scorsone and Bateson draw a different conclusion. “Ultimately, however, if cities with chronic fiscal stress are suffering from structural challenges beyond their control, improved management will only be able to cure a limited number of problems.”³⁴ The authors state in their Executive Summary: “While the city can do some things to manage its financial stress, the revenue structure does not provide a means to solve the fiscal stress. Long-term problems will require long-term solutions at both the state and local level.”³⁵ In this environment, imposing cuts on top of cuts actually threatens the economic viability of the entire system. “City services and infrastructure maintenance have suffered. Attracting and retaining taxpayers is dependent on providing reliable service and high value for the high rate of taxes paid.”³⁶

One cannot destroy a village in order to save it. Just a few weeks after the Report was published, Michael Brown was appointed Flint’s first Emergency Manager. It is fair to charge him and the other Emergency Managers with knowledge of the contents of this Report and to judge them in terms of whether and how they addressed Flint’s underlying structural challenges.

E. Emergency management and structural racism

One might think that a characteristic of good management, emergency or otherwise, is consistent, coherent leadership. Emergency Management in Flint has had none of these attributes. The State ushered in a revolving door of Emergency Managers.³⁷ It is difficult to keep them all straight. Ed Kurtz served as Flint’s Emergency *Financial* Manager under PA 72 of 1990 from May 2002 to 2004. On November 20, 2011, Michael Brown was appointed Flint’s first Emergency Manager under PA 4. In August 2012, Ed Kurtz again became Emergency Financial Manager when PA 4 was suspended in light of the certification of the ballot initiative and Michael Brown was not eligible to serve under PA 72. Kurtz was subsequently named Emergency Manager under the newly enacted PA 436. When Kurtz stepped down in June 2013, Michael Brown was reappointed as Emergency Manager under PA 436. Barely four months later, Darnell Earley replaced Brown as Emergency Manager in October 2013. Finally, Jerry Ambrose replaced Earley in January 2015. Ambrose left the position in April 2015, when

³³ Id. at 18.

³⁴ Id. at 9-10.

³⁵ Id. at i.

³⁶ Id.

³⁷ Task Force Report at 39.

control over the city's finances was assigned to a city administrator under the supervision of a Receivership Transition Advisory Board. All totaled, Flint was served by four different Emergency Managers, serving at five different times.

The sets of knowledge-&-power relations in which Emergency Management is situated are not well suited to address the multilayered causes of municipal distress. Many of these structural considerations lie outside the Emergency Managers mandate and set of constrained tools. Instead, Emergency Managers operate within a narrow accounting frame with the specific charge of balancing the budget, regardless of social cost, believing that policies of fiscal austerity alone will breathe life into historically distressed communities. Moreover, these actions are undertaken in an environment that completely displaces democracy and civil society.

The actions of Flint's Emergency Managers are consistent with this template. In December 2011, shortly after assuming authority, Michael Brown laid off "several high-ranking City Hall appointees and eliminated pay for the mayor and city council (which he later partially restored)."³⁸ The following week, he eliminated the position of Ombudsman and the Civil Service Commission. Contrary to the lessons that you cannot cut your way out of a structural deficit, as part of the FY 2013 budget, he sent 100 additional layoff notices to city employees, this in a city that had already reduced its workforce by more than half between 2000-2010.³⁹

The following year, Emergency Manager Ed Kurtz submitted a "balanced" budget for FY 2014. This was not necessarily an event to celebrate. As reported in Bloomberg News: "After firing 20 percent of its workers, doubling water rates and outsourcing trash collection, Flint, Michigan, has a balanced budget. It's also approaching the point at which it can't function as a city."⁴⁰ Even the Emergency Manager noted that this was not a sustainable process. "Without reliable revenue to replace dwindling property and income taxes and state funding, the birthplace of General Motors Co. won't be able to support its citizens, even if its books are square, Kurtz said."⁴¹

Kurtz deserves some credit for understanding the limits of his tools, the social costs of his austerity policies and the profound dilemma he faced. Deeper cuts could quicken the city's downward spiral, potentially making it unviable as a social, political and economic entity. "We can't just keep putting it on the backs of the people who live in the city. Pretty soon, we won't have anybody left to tax."⁴² Kurtz warned of mounting structural deficits in coming years if

³⁸ Kristin Longley, *Flint emergency: Timeline of state takeover*, MLIVE (December 01, 2012), available at http://www.mlive.com/news/flint/index.ssf/2012/12/flint_emergency_timeline_of_st_1.html.

³⁹ Scorsone & Bateson at 14.

⁴⁰ Mark Niquette, *Flint Balances Books at Cost of Services Citizens Need*, BLOOMBERG NEWS (March 26, 2013), available at <http://www.bloomberg.com/news/articles/2013-03-27/flint-balances-books-at-cost-of-services-citizens-need>.

⁴¹ Id.

⁴² Id.

things continue as is. He also cautioned that further personnel cuts could not be made without them coming out of public safety.⁴³ Police and fire were next on the chopping block.

Without similar nuance, but with a clear budget cutting mandate, Emergency Manager Darnell Earley was committed to submitting a “balanced” FY 2015 budget in the face of increasing structural pressures by making deeper and deeper cuts. Earley did exactly what Kurtz warned against, cutting into the core of public safety. Police and fire represent half of all city employees and, according to Earley, constituted the “single biggest stress” on the budget.⁴⁴ “The city’s police and fire departments would lose 36 police officer positions and 19 firefighter jobs under a new \$55-million budget.” In addition, water and sewer rates would increase an additional 6.5 percent in Earley’s budget. Increasing water and sewer rates, along with other fees for basic services such as garbage, had become a staple of Emergency Management revenue seeking. During Flint’s time under Emergency Management, water rates in the City more than doubled.

Emergency Management can be a cruel and misguided tool. Flint was in municipal distress as a consequence of decades of structural racism, deindustrialization, white flight, economic deprivation and isolation. Rather than addressing these root issues, Emergency Management displaced democratic institutions and further marginalized citizen participation and the role of civil society. In addition, Emergency Managers imposed progressive budget cuts, weakening core city services and turning Flint into one of the latest “minimal cities.”⁴⁵ A city made vulnerable as a result of structural racism was made even more vulnerable through Emergency Management and fiscal austerity.

II. KWA, DEQ, Treasury, Emergency Managers and Strategic Racism

Strategic racism is the conscious manipulation of the forces of intentional racism, structural racism and unconscious bias for personal or political gain. In examining the Flint water tragedy, some simple questions can help identify the existence of strategic racism. Were decisions made in the best interests of Flint residents? Were the people of Flint treated as ends in themselves or simply as instrumental means to further the objectives of others? Were decisions consistent with or deviations from the standard cost benefit analysis that is supposed to characterize Emergency Management under the direct supervision of the Department of Treasury? Would the same events be possible in a wealthy, predominately white community?

⁴³ Steve Carmody, *Flint's budget balanced, but multimillion-dollar deficits loom*, MLIVE (May 20, 2013), available at <http://michiganradio.org/post/flints-budget-balanced-multimillion-dollar-deficits-loom#stream/0>.

⁴⁴ Ron Fonger, *Flint emergency manager's budget proposal would cut 36 cops, 19 firefighters*, MLIVE (April 30, 2014), available at http://www.mlive.com/news/flint/index.ssf/2014/04/new_flint_budget_proposal_woul.html.

⁴⁵ Michelle Wilde Anderson, *The New Minimal Cities*, YALE LAW JOURNAL (2014), available at <http://www.yalelawjournal.org/article/the-new-minimal-cities>.

As more documents come to light, what emerges in Flint is a troubling story of strategic racism as it relates to 1) the initial decision for Flint to participate in KWA and 2) the financially driven decision to use the Flint River as an interim drinking water source, in part, because the KWA commitment obligated the City to a multi-million dollar upgrade of its Water Treatment Plant (WTP) it could not afford and, in part, to manipulate bond finance rules to secure financing for Flint's share of KWA construction costs. Nowhere in this story are the interests of Flint residents afforded pride of place. Instead, the City and its residents are manipulated as means to the predetermined ends of others.

The reaction of most thoughtful observers is that things just do not seem right when they study KWA's role in Flint, particularly at a time of financial distress. This was the assessment of the Flint Water Advisory Task Force Final Report. The Task Force called for a further investigation of KWA by an independent outside authority, specifically noted the following:

- State and local officials repeatedly characterized Genesee County and Flint leadership, including Flint's emergency managers, as *adamant in their promotion of KWA* and desire for independence from DWSD.
- Several firms, each with ties to the respective and effectively competing parties, issued conflicting studies as to the merit of KWA. Independent review was requested of MDEQ, an agency ill-equipped to render judgments regarding economic feasibility.
- Contracting related to Flint's water purchase commitments and to use of the Flint WTP on an interim basis were effected through action of Flint's emergency managers.⁴⁶

Sometimes, where there is smoke, there is fire. Strategic Racism in the approval of KWA, the decision to use the Flint River as an interim source of drinking water and the delayed enforcement response in light of the mounting crisis are all deeply interconnected. Shortly after the Release of the Flint Water Advisory Task Force Final Report, the State Attorney General announced a series of criminal indictments relating to the Flint Water Crisis. The names of the first three individuals facing criminal charges will play key roles in the KWA saga explored here – Stephen Busch (DEQ), Michael Prysby (DEQ) and Michael Glasgow (WTP). “Messrs. Busch and Prysby were each charged with three felony counts, including for allegedly misleading federal environmental officials and tampering with evidence related to lead testing of Flint's

⁴⁶ Task Force Report at 59 (emphasis added). The influence that KWA and Genesee County Drain Commissioner Jeff Wright exercised was undeniable. They got exactly what they wanted from Flint City Officials, Emergency Managers and State Officials at DEQ and Treasury. The more difficult question to answer is the source of that influence. \$300 million in KWA contracts is a substantial amount of money to control and hand out. Contractors are known to establish and maintain relationships with politicians through campaign contributions. Politicians, in turn, can help channel contributions to others public officials to expand their own sphere of influence. Whether KWA's influence is just an extreme and tragic illustration of politics as usual or whether there is something more at work is still unanswered.

water. *Mr. Prysby faces an additional felony count for authorizing the operation of the Flint water-treatment plant when he allegedly knew it couldn't provide safe drinking water.*"⁴⁷ The story begins, however, with the decision to approve Flint's participation in the KWA pipeline.

A. The decision to approve Flint's participation in KWA

There is another name in the email trails central to the KWA story – John C. O'Malia. John O'Malia is a professional engineer coordinating much of the engineering and political work for KWA. From the beginning, one senses an inappropriately close relationship between those associated with KWA, officials in the City of Flint and employees of DEQ. On November 11, 2011, John O'Malia sent an email to Liane Shekter Smith (DEQ) concerning "Revised Memo Regarding KWA." The message read: "See attached. John O'Brien [of DEQ] made a few changes. Any question[s] let me know." It then added, "[t]he incumbent Flint Mayor was reelected so good news. Thanks for your help." Signed, "John O'."⁴⁸ Liane Shekter Smith forwarded the message to Mike Prysby (DEQ), Jon Bloemker (DEQ), Kelly Green (DEQ), and Laura Verona (DEQ), with copies to Mark Joseph (DEQ), Lonnie Lee (DEQ) and Pat Cook (DEQ).

On January 5, 2012, John O'Malia sent New Year's greetings and a recapitulation of end of the year KWA discussions with DEQ to Liane Shekter Smith (DEQ) and Karen Teeples, concerning "Updated Status on GCDC/ KWA:" "See attached. More later as development happens. Any question[s] let me know. Happy New year to you and staff. John O'."⁴⁹ The following is a reproduction of the entire attached memorandum.

MEMORANDUM

TO: Liane Shekter Smith, John O'Brien, and David Jansen

FROM: John C. O'Malia, P.E.

DATE: January 3, 2012

RE: KWA Status

⁴⁷ Kris Maher, *Three Officials Criminally Charged Over Flint Water Crisis*, WALL STREET JOURNAL (April 20, 2016) (emphasis add), available at <http://www.wsj.com/articles/three-officials-to-face-criminal-charges-over-flint-water-crisis-1461166410>.

⁴⁸ Governor Snyder has released batches of emails and related documents. In citing to these documents, I will provide sufficient detail in the text for the reader to understand the context and provide a citation to the file name and page number in the file where the document can be found. For example, the email from John C. O'Malia can be found in the file "DEQ11" on page 1362 of the 2147 page document – (DEQ11 1362/2147) (brackets in original). The website containing the file can be found on one of the Governor's Press Releases, *Gov. Rick Snyder releases departmental emails produced regarding Flint water crisis* (Feb. 12, 2016), available at http://www.michigan.gov/snyder/0,4668,7-277-57577_57657-376716--00.html.

⁴⁹ (DEQ12 578/2200) (GCDC is the Genesee County Drain Commission headed by Jeff Wright).

It was good to talk to you regarding the status of KWA at the end of the year.

I am confirming our conversations as follows.

1. Mayor Walling, the incumbent, was re-elected. He is very much in favor of the KWA project and sits as Chairman of the KWA Board.
2. The Emergency Manager [EM], Mike Brown, was appointed by Governor Snyder. EM Brown formerly served as interim mayor of the City of Flint. He has expressed support for the KWA project.
3. EM has given powers back to Mayor and Council to make the decision on KWA as a precaution if the EM court challenge holds up. This will enable the Mayor and Council to approve the KWA agreement and not be challenged in court!
4. Expect Flint to approve KWA agreement January or February of 2012.
5. Would expect a meeting with MDEQ end of January or in February.

Will keep you posted on events as they develop. Look forward to working with you and staff Happy New Year.

Smith forwarded the message and attachment to Mike Prysby (DEQ), Jon Bloemker (DEQ), Kelly Hoffman (DEQ) and Kristina Donaldson (DEQ), with copies to Jeanette Noechel (DEQ), Bethel Skinker (DEQ), Lonnie Lee (DEQ) and Pat Cook (DEQ).⁵⁰

⁵⁰ Id. (exclamation mark in original). At every turn of the Flint story when there is an intersection between engineering and politics involving DEQ, the City of Flint and KWA, John C. O'Malia is there. He is convening meetings, setting agendas and making phone calls. On Wednesday, March 14, 2012, he sent another email to Liane Shekter Smith (DEQ) concerning "Meeting with MDEQ March 20,21,22 or 26." The message reads:

Liane-Flint wishes to meet with you et al on any day listed above. GCDC will also be in attendance. We wish to discuss the option for Flint City to Blend with DWSD water? Also, if they are allowed to blend what improvements, in the interim, until the KWA project is fully online [say 3 years]. Also, blending for 3 years and improving the Flint water plant, as a 365 day facility, using Flint River water, and they not join KWA? Other items for sure but in substance these are the main topics. We suggest at 1ish meeting. Mike Brown [EM] and his staff to present, GCDC in attendance and myself. Suggest Mike be in attendance, Brock, Benzie and maybe Brent as water quality and withdrawal maybe issues in play. If the Flint WTP is to be a 365 facility, using Flint river water, is there going to be a NPDES [withdrawal/dilution] issue at the downstream WWTP due to WTP withdrawal? Flint withdrawal rate to be 20MGD max. day. Your thoughts. I called today and left a message with your assistant regarding this meeting. Also called Mike as it appeared your number had changed. Have not heard from Mike. Let me know what is best for you and staff. It appears, if Flint does not go with KWA, that GCDC and customers will go alone. John

(DEQ1 3821/4581) (brackets in original). Later that year, on December 13, 2012, Jon Bloemker (DEQ) sent a message to Stephen Ashford (DEQ), Mike Prysby (DEQ), Stephen Busch (DEQ) and Liane Shekter

While the timing did not go as predicted, within weeks of the appointment of Mike Brown as Flint's Emergency Manager, the O'Malia memo outlined the specific decision points and sequence of events that would ultimately lead to Flint's participation in KWA and the poisoning of an entire City, with the involvement and complicity of a wide range of DEQ employees supposedly charged with protecting Flint's public safety. The O'Malia memo is not an outsider trying to lobby or influence decisions of government, but the recapitulation and summary of outcomes and planned decisions between KWA and those at DEQ.⁵¹

The Flint story is complicated. Flint had been buying finished water from DWSD as a wholesale customer since 1967. This water was ready for residential use and required no additional treatment. Flint also has a Water Treatment Plant (WTP) that was constructed in 1954 and is now used as an emergency backup system that could process water directly from the Flint River. The WTP was started only four times a year for testing. The plant was in need of substantial repairs and updates even as an emergency backup system. It would need much more work if it were to process water on a fulltime basis.⁵²

Smith (DEQ) concerning "Genesee County Drain Commission – KWA." The message summarized yet another call from O'Malia covering topics from engineering, to the political intent of Flint to proceed with KWA to the role of Treasury, to the latest news on interest rates for bond financing. (DEQ11 1527/2147). O'Malia is back at it again on January 22, 2013, sending a message to Mike Prysby (DEQ) with copies to David Jansen and Elgar Brown concerning "KWA meeting."

Thanks Mike and you are correct Wed meeting at 1:30PM your office. John and Dave plus Elgar. The agenda is to meet Steve, generally go over the project i.e. KWA report dated 2009, discuss who is in and who maybe out, current status in terms of the intake bidding, preparation of preliminary design by Wade Trim, projected timeline for letting more engineering design contracts, projected start up of the project and financing (bonding) update. Important to discuss the current status of Flint City and DWSD as well. Probably take several hours. John O' (DEQ1 3813/4581). This meeting took place months before Flint's approval of the KWA project.

⁵¹ Nor is this an isolated incidence. There are other examples where DEQ employees seem to revel in having inside political information. (Email from Mike Prysby (DEQ) to Richard Benzie (DEQ), RE: Genesee County & Flint (June 13, 2012) ("Genesee County has mentioned to me verbally several times that they will proceed with KWA with or without Flint. They also indicated that the project could be scaled down. As far as I am aware the county has not gone public with this ... since this could be one of their trump cards they're not wanting to play prematurely (if they need to) depending on the long-term alternative Flint commits to.")(DEQ12 857/2299) (ellipses in original). We will learn later that Flint's involvement in KWA and the quantity of water that Flint would commit to purchase would be critical to issues such as the diameter of pipes and the total capacity (and profitability) of the entire KWA system.

⁵² Officials in Flint demonstrated a strong attachment to the WTP. This fact was noted and exploited by others. In a June 13, 2012, message from Richard Benzie (DEQ) to Michelle Lee with copies to Linda Hills and Mike Prysby (DEQ) concerning "Flint Needs," Benzie muses over what would ultimately tempt Flint to join KWA. He settles on Flint's WTP. "Like me, the county believes the city will not be able to resist the opportunity to operate their water treatment plant on more than a standby basis that this project [KWA] will offer." (DEQ1 4042/4581) (brackets added). In behavioral economics, there is a phenomenon known as the "endowment effect," where people can irrationally value more highly something already in their possession. This factor can be and apparently was being manipulated to make the KWA raw water deal more attractive than it really was.

Updating the WTP would cost a substantial amount of money, money the distressed City of Flint did not have. A July 2011 study commissioned by the City from Rowe Engineering estimated total cost of upgrades at over \$61 million.⁵³ The December 2013 price tag for more limited work to make the plant operational was somehow placed by Rowe at \$25 million.⁵⁴ It was also clear that the pre-existing debt burden and strapped financial condition of the City rendered certain past WTP repairs impossible. The January 2013 MDEQ Flint Water System - Water Distribution report indicates that DEQ had identified necessary upgrades and repairs to pumping stations and that construction permits were issued, but “these projects did not proceed due to the city's current bond debt.”⁵⁵ The City was not in a position to borrow money to improve its existing water system.

This was most dramatically illustrated in May 2012, when the city turned down projects to improve its water infrastructure, even though half of the loans would be forgiven. A May, 24, 2012, message from Rick Freeman of the City of Flint to Valorie White (DEQ) explains: “This email is to inform you that the City of Flint has decided not pursue DWRF funding for Project No. 7310-01 for Fiscal Year 2012. Due to the current financial situation that exists in Flint, it is believed that it would not be feasible to pursue the bonding necessary to complete these projects.”⁵⁶ Mike Prysby’s reply was not very sympathetic: “All this work . . . down the drain . . . again.”⁵⁷ Richard Benzie (DEQ) explains some of the reasoning behind Flint’s decision. “[T]he city has declined a DWRF loan next year for distribution system improvements even though it was being proffered with 50% loan forgiveness due to the city’s disadvantaged status. The acting city manager said he just couldn’t ask residents to go further in debt even if it is only for half the cost of the project. He said that when your pockets are empty, further debt is irresponsible.”⁵⁸

Somehow, however, Flint officials believed that resources could be found for KWA. In a May 7, 2012, letter from Howard Croft, Director of Flint’s Infrastructure and Development, to Michael Prysby (DEQ), Croft wrote: “The City of Flint is pleased to be a partner in the [KWA] process and we pledge to offer our assets to support the development. We appreciate your technical support as we develop our components of the project.”⁵⁹ For some reason, debt for the costly KWA project was not “irresponsible.”

⁵³ Rowe Engineering, ANALYSIS OF THE FLINT RIVER AS A PERMANENT WATER SUPPLY FOR THE CITY OF FLINT (July 2011) (prepared for the City of Flint) (DEQ2 746/3795).

⁵⁴ Rowe Professional Service Company, CITY OF FLINT WATER RELIABILITY STUDY: DISTRIBUTION SYSTEM (December 2013) at 10, available at http://www.michigan.gov/documents/snyder/Rowe_2013_Reliability_Study_compressed_515343_7.pdf.

⁵⁵ (DEQ2 504/3795).

⁵⁶ (DEQ1 3659/4581).

⁵⁷ Id. (ellipses in original).

⁵⁸ (DEQ1 4042/4581).

⁵⁹ (DEQ12 856/2299) (brackets in original).

In 2012, Flint was considering three options for its future supply of drinking water. First, continue to source treated water from DWSD, as it had done since 1967. Second, reduce purchases from DWSD and supplement the difference by blending DWSD treated water with water drawn from the Flint River and treated at an upgraded Flint WTP. Third, switch from treated DWSD water and purchase raw (untreated) water from the recently formed KWA and treat the raw KWA water at an upgraded Flint WTP. The KWA pipeline that would transport the raw water to Flint did not exist in 2012 and was nothing more than a stack of blueprints at the time of these discussions.

In 2009, KWA received a permit to pump an incredible 85 MGD from Lake Huron and transmit it through a yet to be constructed pipeline that would run parallel to that of DWSD. The initial granting of the KWA permit was not uncontroversial. Wayne State University Law School Professor Nick Schroeck wrote: “The economic assumptions behind and the potential environmental impacts of the proposed Genesee withdrawal render the proposal flawed, at best, and a cynical ploy, at worst. We don’t need to drive another wedge between Detroit and the rest of the region. We should seek to improve upon the efficiency and conservation measures of the water delivery system that we already have rather than spending vast sums of public dollars on projects that are completely unnecessary.”⁶⁰ A broad alliance of environmental groups opposed granting the KWA permit.⁶¹

The primary beneficiaries of raw water are agricultural and some manufacturing processes. The largest political entity in KWA’s service area with the least to gain from raw water was arguably the City of Flint. Yet, Flint was said to be essential to the viability of the KWA vision and Flint was supposed to pay 30% of the expected costs. No one asked what should have been obvious questions. How would the financially distressed city under Emergency Management pay for its \$85 million share of the conservatively estimated \$285 million project? Given all of Flint’s immediate needs, was this the most important issue for the Emergency Manager to address? Whose agenda was the KWA project really serving?

Regardless of the answer to these questions, the January 3, 2012, O’Malia Memo reported that the KWA project was essentially a done deal in Flint. Mr. O’Malia’s name comes up again in a December 13, 2012, email revealing additional behind the scenes conversations between KWA and DEQ Staff. Jon Bloemker (DEQ) reports the contents of phone conversation he had earlier that day with O’Malia in correspondence to his colleagues Stephen Ashford (DEQ), Mik Prysby (DEQ) and Stephen Busch (DEQ), with a copy to Liane Shekter Smith

⁶⁰ Nick Schroeck, *Genesee County’s proposed Lake Huron water withdrawal would drain public resources and undermine regional cooperation*, GREAT LAKES LAW (July 16, 2009), available at <http://www.greatlakeslaw.org/blog/2009/07/genesee-countys-proposed-lake-huron-water-withdrawal-would-drain-public-resources-and-undermine-regi.html>.

⁶¹ Letter from Alliance for the Great Lakes – National Wildlife Federation – Michigan Environmental Council – Tip of the Mitt Watershed Council – The Ohio Environmental Council – Great Lakes Environmental Law Center – Indiana Wildlife Federation to Mr. Brant O. Fisher, Water Withdrawal and Contamination Investigation Unit, Drinking Water and Environmental Health Section, Water Bureau, MDEQ (July 15, 2009), available at <http://www.greatlakeslaw.org/files/genessee-final-comments.pdf>.

(DEQ) concerning “Genesee County Drain Commission – KWA.” “The city of Flint has provisionally accepted the offer to join the KWA. The city's approval is subject to the subsequent approval by the Department of Treasury. The state's approval (or possible hearings leading to the approval) is expected in January. There may be some opposition by DWSD about Flint participating in the project.”⁶²

In theory, for the Emergency Manager and for Treasury, decision making is supposed to be about the economics, not politics. Treasury commissioned the engineering firm of Tucker, Young, Jackson Tull (TYJT) to assess Flint’s three options for drinking water.⁶³ TYJT gave a preliminary assessment of its findings in a presentation on December 21, 2012. The February 2013 final report was critical of many of the cost assumptions underlying the KWA proposal and warned of potential cost overruns as high as \$85 million, with Flint holding the bag for 30% of any additional expenses, potentially as much as \$25 million.⁶⁴ After weighting all options, TYJT concluded that the option of staying with DWSD and blending DWSD water with water drawn from Flint River was the cheapest alternative. The Report suggested that a “new” fourth Imlay City option of building a parallel DWSD pipeline that could function as a backup supply, making the Flint WTP unnecessary, while spreading the capital costs through the entire DWSD rate base, might be the cheapest option of all.

Apparently, this was not the answer that the Emergency Manager and other KWA backers in Flint wanted to hear. It is worth recalling the how the Task Force Report described KWA backers, including the Emergency Manager, as “adamant” in their KWA support.⁶⁵ Soon after TYJT’s December 21, 2012, negative assessment, Ed Kurtz commissioned a counter-study to undermine the TYJT analysis, not by a new independent entity, but by Rowe Engineering.⁶⁶ The Task Force also noted the potential conflicts of interest of the engineering firms called upon to assess the feasibility of KWA.⁶⁷ Not surprisingly, the Rowe analysis was favorable to the KWA proposal. The resulting duel of alleged experts resulted in a substantial muddying of the technical waters.

At this point, Emergency Manager Kurtz started to strategically remove options from the table. A February 15, 2013, memo “Updated Flint Water System Status Assessment” prepared by Eric Cline (Treasury) reports the results of a January 10, 2013, meeting with Emergency

⁶² (DEQ11 1527/2147).

⁶³ Tucker, Young, Jackson Tull, CITY OF FLINT WATER SUPPLY ASSESSMENT (February 2013) (Submittal to State of Michigan, Department of Treasury) (hereinafter “TYJT Report”).

⁶⁴ Id. at 15.

⁶⁵ Task Force Report at 59.

⁶⁶ Cover letter from James E. Redding, Vice President Engineering of Rowe Professional Service Company to Emergency Manager Edward Kurtz (January 7, 2013) (attaching copy of *Review of TYJT December 21, 2012 Presentation City of Flint Water Supply Assessment*, Prepared by Rowe Professional Services Company) (DEQ2 873/3795).

⁶⁷ Task Force Report at 59.

Manager Kurtz.⁶⁸ TYJT has costed out a number of alternatives, many of them demonstrably cheaper than KWA. At the meeting, Kurtz eliminated all of the cheaper options from consideration – WTP employing the Flint River (which was the cheapest), all of the options blending DWSD water with treated Flint River water, and the DWSD Imlay City option – many of which had previously been proposed and advocated by himself or his predecessor. After removing all the cheaper options, KWA was determined to be the cheapest.

At this juncture, a page from the original O’Malia playbook comes back into play. Points 1 and 2 of the January memo stressed the pre-existing support of the Mayor and Emergency Manager for the KWA pipeline. Point 3 envisioned a strategic role for the Flint City Council: “EM has given powers back to Mayor and Council to make the decision on KWA as a precaution if the EM court challenge holds up. This will enable the Mayor and Council to approve the KWA agreement and not be challenged in court!”⁶⁹ On March 25, 2013, the City Council was indeed asked to approve the KWA option.

From viewing the video tape of the City Council vote on the KWA, it is clear that council members were not provided with all the information needed to make an informed decision.⁷⁰ For example, Council was not formally provided with copies of the TYJT Report that was critical of KWA. One Council member learned about the Report from the media and tracked it down on his own. The public expressed substantial anger over high water bills, without a clear differentiation between DWSD’s role in providing Flint treated water at a wholesale price and the City of Flint’s role in setting retail rates. Under Emergency Management, Flint water rates doubled, but public anger was often being misdirected at DWSD and not the Emergency Managers and used in support of the KWA proposal.

Tellingly, there was no discussion by Council of how the distressed city would finance the multi-million dollar project, nor an appreciation on how existing city debt limits had prevented basic repairs and updates to the WTP in the past. In the end, the Council voted to join KWA on a 7-1 vote, but amended the proposal to contract for only 16 MGD and not the 18 MGD originally proposed by the Emergency Manager. Council anticipated that any future shortfalls could come be made up for by blending water from the Flint River or purchasing, at cost, additional excess water from KWA.

Council made the decision to contract for only 16 MGD to save the distressed City money. The volume reduction could save the City some \$2 million a year in charges.

⁶⁸ (Treasury 705/7871). Emails and documents from the Treasury file are contained in a different release of documents. Press Release: *Gov. Rick Snyder releases additional batches of departmental emails and documents regarding Flint water crisis* (June 21, 2016), available at http://www.michigan.gov/snyder/0,4668,7-277-57577_57657-387125--,00.html.

⁶⁹ (DEQ12 578/2200) (exclamation point in original).

⁷⁰ Flint City Council Meeting (March 25, 2013), available at https://www.youtube.com/watch?v=U3gbZ8hZ_KI&index=8&list=PLom4-mJ5N8tY10N8aYUc8j-LtaslW-4vR.

Significantly, however, if Flint reduced its purchases from 18 MGD to 16 MGD, it would trigger a reengineering of the entire KWA pipeline to use a smaller diameter pipe. This, in turn, would reduce the overall capacity of the pipeline to the detriment of KWA supporters. The smaller diameter pipe, however, would also reduce total construction costs, with 30% of these saving redounding the benefit of Flint.

The video of the Council deliberation also demonstrated some confusion, suspicion and consternation on the part of Council as to why on this one issues, amongst all issues, the democratically disempowered Council was being asked to make a decision. If one believes the O'Malia Memo, the City Council vote on KWA was a strategic ploy with no legal effect unless the Emergency Manager law was held invalid. As such, the Council vote was not an exercise of democracy, but an insurance policy for KWA.

To illustrate the meaninglessness of the Council vote, Emergency Manager Kurtz proceeded to contract with KWA not at the Council approved quantity of 16 MGD, but with Kurt's own original proposal of 18 MGD.⁷¹ Looking after the best interests of KWA, the diameter of the pipe would not be reduced, but Kurtz's decision would ensure higher costs to the City of Flint in the short and the long run.

In truth, the final decision was not the Emergency Manager's to make. The final decision belonged to Treasury and Treasury alone. After Kurtz recommended the KWA option, Treasurer Andy Dillon instructed DWSD to submit a final counter offer. On April 15, 2013, DWSD sent a detailed proposal with several options. Kurtz rejected the offer, almost upon receipt. At this point, Treasury exhibited very little leadership and made few efforts to conduct further authoritative or independent assessments of the competing proposals. Instead, Treasury turned to DEQ for advice, but as the Task Force Report notes, DEQ was "an agency ill-equipped to render judgments regarding economic feasibility."⁷² Tellingly, these are the same DEQ officials that according to the O'Malia Memo, were treating the KWA project as a done deal as early as 2012. The decision was supposed to be about economics and not politics, but it was much more about politics than economics.

This fact was not lost on the participants. In an April 14, 2013 email from William Creal (DEQ) to Director Dan Wyant (DEQ), Creal reported that "Sue McCormick discussed this with me Friday before our wastewater meeting. She is not happy but intends to make an offer that should keep Flint and Genessee county in the DWSD system, but she recognizes that politics will probably not make this happen."⁷³ Abdicating his responsibility as the ultimate decision maker, Treasurer Dillion was not looking for the most defensible economic proposal for Flint residents.

⁷¹ Edward L. Kurtz, Resolution to Purchase Capacity from Karegnondi Water Authority, City of Flint Office of the Emergency Manager (March, 29, 2013) (page 135 of 274), available at <http://somcsprod2govm001.usgovcloudapp.net/files/snyder%20emails.pdf>.

⁷² Flint Water Advisory Task Force at 59.

⁷³ (DEQ11 2124/2147).

In an April 15, 2013, email to Dan Wyant, Dillion stated that his concern now was only making sure that Flint Emergency Manager's "expected rejection is made in good faith."⁷⁴

DWSD made a fairly dramatic counter offer. In an April 16, 2013 email to Andy Dillon and others, Jim Fausone summarizes the DWSD offer: "Folks - This proposal saves Flint./Genessee essentially 50% TODAY and 20% when compared to KWA over 30 years. If the decision is about economics or engineering, I don't see how F/G proceeds with KWA."⁷⁵ Following this email thread within Treasury and the Governor's office is revealing. Kurtz did indeed reject the DWSD offer, almost out of hand. An April 17, 2013, email from the Governor's Chief of Staff Dennis Muchmore (GOV) to Dillon states: "So, if the last DWSD proposal saves so much money, why are we moving ahead with KWA? I take it that Flint doesn't trust them and is just fed up? Does Kurtz have his head on straight here?" Dillon responded the same day: "That is the \$64,000 question. DEQ is firm that KWA is better. Are they an honest broker?"⁷⁶

On April 24, Mr. Dillon received an email from TYJT President George Karmo assessing DSWD's subsequent final, final revised proposal. "We have reviewed DWSD's final offer to Flint/Genessee County of April 24, 2013 and find it responsive to Flint's concerns and their water demand requirements."⁷⁷ Among other considerations, the DWSD option was attractive because it provided Flint a workable alternative to obtain financing that the distressed City would find difficult to obtain elsewhere. "Since Flint is unable to cost-effectively bond capital, the cost of financing could be easily obtained by DWSD."⁷⁸ Twice rejecting the TYJY analysis he had contracted for, Dillon ultimately accepted the recommendation of Emergency Manager Kurtz. No one explained how Flint would finance the KWA option.

It is difficult to excuse Treasury's failure to exercise separate, independent judgment in this matter. About the only redeeming feature of the Emergency Management is the potential for the State to step in and mitigate the negative effects of intra-regional and inter-regional conflicts. This factor was noted in the February 2013 TYJT Report: "KWA supply option appears to run counter to the Treasury's Competitive Grant Assistance Program (Formerly EVIP Grant). This program has been put in place to allow for communities to consolidate their services and save money. Two existing customers of DWSD (Flint and Genessee County) . . . separating to from another water system is in contradiction to the program."⁷⁹

Much of the public blame for the Flint Water Crisis has rested on DEQ, but Treasury is equally blameworthy. The Emergency Management law established a draconian regime,

⁷⁴ (DEQ11 2126/2147).

⁷⁵ (Treasury 421/7971).

⁷⁶ (Treasury 420/7971).

⁷⁷ (DEQ12 8/2299).

⁷⁸ Id.

⁷⁹ TYJT Report at 20.

eliminating the normal checks and balances of democratic processes. The only system of accountability over the Emergency Management system rested with the Governor and the Department of Treasury. At the time the KWA approval was made, Treasury was overseeing Emergency Managers in both Flint and Detroit, yet Treasury failed to actively reconcile the conflict and acquiesced in a decision by the Flint Emergency Manager that inflicted substantial economic damage to Detroit and set Flint up for a public health, economic and environmental disaster. Treasury was the ultimate decision maker and Treasury cannot escape ultimate responsibility for the crisis.

The decision of Flint to participate in KWA was publicly announced on May 1, 2013. Construction on the KWA pipeline began on June 1, 2013.

B. Flint's financing of KWA and the use of the Flint River for drinking water

In all the assessments of the alleged cost effectiveness of KWA, one important issue went almost entirely unaddressed. How was the financially distressed city of Flint going to pay for this major \$85 million project? We know that debt limits prevented past repairs and upgrades to the WTP. We also know that in a June 25, 2012, email from Mike Prysby (DEQ) to Ben Hall (DEQ) providing a briefing in preparation for Director Wyant's visit to the Flint WTP, Prysby writes: "The city is very aware of the need to commit to a new source of drinking water; however, given their current financial situation, it does not appear that the city can move forward towards establishing any binding commitments."⁸⁰ We know that the comparatively greater ability of DWSD to obtain financing for projects was a factor making some of the DWSD alternatives more attractive. We also know that in addition to paying \$85 million for the KWA pipeline, Flint independently had to pay to upgrade its WTP and to maintain and repair an aging water infrastructure; itself a multi-million dollar obligation. It seems incredible that the project pushed by two EMs and approved by the Department of Treasury did not require these issues to be resolved before KWA approval was given.

1. The decision to use the Flint River

Surprisingly, there is yet no clear answer to the questions of *who* made the decision to use the Flint River as the interim source of drinking water or *when* the decision was made. In reconstructing events, the first thing to make clear is that the DWSD April 17, 2013, one-year termination notice plays no legitimate role in the story. The letter had no implications for Flint's ability to access DWSD water on April 18, 2014, and everybody knew it. Claims to the contrary are completely pretextual. In a June 26, 2012, letter to Roger Fraser (Treasury), Howard D Croft, Director of Flint's Infrastructure and Development, wrote: "In recent years our 40 year contract to purchase treated drinking water from the Detroit Water and Sewer Department [DWSD] has expired but Flint continues to purchase water from DWSD without a signed

⁸⁰ (DEQ12 518/ 2299).

contract or agreement.”⁸¹ Similarly, Genesee County continued to receive water from DWSD in May 2014, even though they failed to negotiate a contract. The decision to use the Flint River for drinking water bares no direct relationship to the conduct of DWSD.

Instead, the decision to use the Flint River and the question of how to finance necessary improvements to the WTP were driven by financial concerns, implicating the frames of structural racism and fiscal austerity. Long before the KWA proposal was at center stage, Emergency Managers were looking at the Flint River for drinking water simply to save money. The preliminary draft of the very first “Flint Deficit Elimination Action Plan” prepared by Michael Brown and dated February 13, 2012, states: “Consideration is being given to utilizing the Flint River and Flint’s water treatment plant as a short term alternative to water purchase from Detroit. Preliminary indications are that this alternative may cost significantly less than the net \$11 million spent annually by the City on water purchase. If so, this would allow for funds to upgrade the plant, provide funds to enable a concentrated effort on reducing water leakage, and make debt service payments on the Financial Stabilization Bonds.”⁸² This is the cruel economic reasoning of fiscal austerity. This analysis became the predicate for considering the 100% Flint River option and the various “blending” water alternatives discussed earlier. In 2012, however, use of the Flint River for drinking water was rejected because of safety concerns.⁸³

June 2013 was a pivotal month. Significantly, after Kurtz strategically took the 100% Flint River option and the various blending alternatives off the table for consideration at the January 10, 2013, meeting to tilt the scales in favor of KWA, he was writing Detroit Emergency Manager Kevin Orr on June 7, 2013, proposing new “blending” options for DWSD for the interim construction period for the KWA pipeline.⁸⁴ On June 19, 2013, Kurtz sent a letter to Edward Koryzno at the State Office of Fiscal Responsibility providing Treasury an update on his plans for the Flint River. “Due to contractual relations with the DWSD, Flint is investigating the possibility of placing the Flint Water Plant (FWP) into operation using the Flint River as a

⁸¹ (Treasury 82/7971). Efforts to suggest that Flint officials (in reality Treasury officials such as the various Emergency Managers) did not understand this only speaks to the condescension those actors hold for the residents of Flint. An example can be found in Brad Wurfel’s (DEQ) January 28, 2015, email to Terry A. Stanton (Treasury), Sara Wurfel (GOV), David Murray (GOV), Ken Silfven (GOV), Dan Wyant (DEQ) and Maggie Datema (DEQ) establishing “DEQ Flint Backgrounder/talking points:” “Following the formal approval of Flint into the KWA, DWSD sent Flint a letter saying their contract was thereby terminated (early 2013). According to our folks, Genesee County has been using DWSD water without a contract since May 2014. But Flint took the letter to imply a water cutoff, and promptly turned to DEQ with a proposal to use the Flint River (their historic backup system).” (Treasury 4509/7971).

⁸² (Treasury 1 43/7971).

⁸³ Curt Guyette, *Exclusive: Gov. Rick Snyder’s Men Originally Rejected Using Flint’s Toxic River: An emergency manager said no to using the river in 2012 after speaking to environmental regulators. An ex-Flint official said the governor’s office reversed that decision*, THE DAILY BEAST (January 24, 2016), available at <http://www.thedailybeast.com/articles/2016/01/24/exclusive-gov-rick-snyder-s-men-originally-rejected-using-flint-s-toxic-river.html>.

⁸⁴ (Treasury 1058/7071).

primary drinking water source for approximately two years and then converting to KWA delivered lake water when available.”⁸⁵ On June 26, Kurtz entered into a sole source contract with Lockwood, Andrews and Newman (LAN) “for assistance in placing the Flint Water Plant into operation using the Flint River as a primary drinking water source for approximately two years and then convening to KWA delivered lake water.”⁸⁶

The June 30, 2013, “City of Flint Financial and Operating Plan - FY 2013 - Third Update,” suggests, that despite substantial consideration being given to the river, other options were still being explored. “The City is currently exploring its options for water service between May 2014 and the full operation of the KWA pipeline. High consideration is being given to utilizing the Flint River, and/or blending River and DWSD water. The City of Flint is also considering contracting with DWSD to be the back-up water source for the City.”⁸⁷

A January 13, 2015, document prepared by the Flint Department of Public Works and addressed to City of Flint Residents concerning “Water Questions” reports the contents of a critical meeting on the issue. “On June 29th, 2013, following many preliminary discussions on how the City would fill the interim gap, a formal, all day meeting was held at the Flint Water Plant with all interested parties including City of Flint Officials (COF), representatives from the Genesee County Drain Commissioners Office (GCDC), the Michigan Department of Environmental Quality (DEQ), and the design engineers from the previous plant upgrade Lockwood, Andrews, and Newman (LAN).”⁸⁸

It is worth reproducing at length what was discussed at that meeting:

The purpose and agenda of the meeting was to determine the feasibility of the following items:

1. Using the Flint River as a Water Source
2. The ability to perform the necessary upgrades to the Treatment Plant
3. The ability to perform quality control
4. The ability for Flint to provide water to Genesee County
5. The ability to meet an April/May 2014 timeline
6. Development of a cost analysis

⁸⁵ (Treasury 1064/7071).

⁸⁶ (Treasury 5556/7071).

⁸⁷ (Treasury 7024/7971).

⁸⁸ (Treasury 4404/7971).

The conversation was guided with focus on the engineering, regulatory, and quality aspects of each item listed. The resulting determinations were made.

1. Yes, the Flint River would be more difficult to treat but is viable as a source.
2. Yes, it was possible to engineer and construct the upgrades needed for the treatment process.
3. Yes, with support from LAN engineering which works with several water systems around the state, quality control could be addressed.
4. No, the Flint treatment plant would not have the capacity needed to treat and distribute sufficient water to meet the documented needs of Flint and Genesee County.
5. Possible, it was determined that many obstacles needed to be overcome but completion by the April/May 2014 target was reachable.
6. Next steps from the meeting were for LAN to present the City with a proposal that would include engineering, procurement, and construction needs for the project along with cost estimates.

As a result of extensive evaluation, discussions with the professional engineers, and consulting the state regulators, *the Department of Public Works along with the Finance Department recommended utilizing the Flint River as a temporary water source while waiting for the KWA to come online.* The plan to accomplish this was accompanied with a construction timeline, a needs analysis for resources, and an FY 14 spending plan to complete the project.⁸⁹

In the end, these decisions were being made in the shadow of the legacy of structural racism and the dictates of fiscal austerity. In truth, the financially distressed city had few alternatives, given the need to make a multi-million dollar investment in the WTP, as part of its KWA commitment.

At this very critical point, the game of Emergency Manager musical chairs continues. Kurtz resigned and ended his term in June 2013. Michael Brown was back as Emergency Manager in July 2013. Brown was gone in October 2013, and Darnell Earley was Emergency Manager in November 2013.

On November 14, 2013, Flint Financial Director Jerry Ambrose sent new Emergency Manager Darnell Earley a memorandum outlining the justification for a “change order” to the LAN contract. The earlier LAN work was now described as a feasibility study that had found use of the Flint River feasible, but on a “temporary basis only.”⁹⁰ No explanation is provided as to why the river was safe at all, or, if safe, not safe on a permanent basis or only safe now on a

⁸⁹ (T1 4404/7971) (emphasis added).

⁹⁰ (Treasury 1303/7971).

temporary basis. The change order would authorize LAN to develop “a proposal for conducting final design work, construction engineering, and necessary regulatory submittals associated with the expansion of the Water Treatment Plant.” No permits had yet been sought, but the memo reports: “We have been working with MDEQ to be assured that the course of action being pursued is consistent with their expectations. Most recently (this morning), we met with MDEQ representatives and reviewed the proposed course of action. While formal approval cannot be given until detailed working drawings are presented, the representatives indicated their conceptual approval.”⁹¹ In November, however, the clock was ticking fast. A separate memo supporting a separate contract for “Electrical Distribution Upgrade for the Water Treatment Plant” notes that “accomplishing that within the April 17, 2014 deadline will require expediting the upgrades necessary for the WTP to receive raw water.”⁹² Each of these contracts that exceeded \$50,000 independently had to be approved by Treasury.

Even as investments were being made in upgrading the WTP, there was still public ambiguity about the Emergency Manager’s true intentions for using the River as the source of interim drinking water. Similar upgrades at the WTP would be needed to treat raw water whether that water would come from the Flint River or the KWA. In July 2013, at the same time internal documents were suggesting a final commitment to the Flint River, officials were making conflicting public statements.

“The engineering work they're looking at involves potentially using the river on a continuing basis,” said Steve Busch, a district supervisor with the Michigan Department of Environmental Quality. “I think it's yet to be determined if they would use (the Flint River) as a primary source.”

City Spokesman Jason Lorenz said Flint would like to work out an agreement with Detroit to provide water for Flint until KWA's pipeline is built “We still believe that going with Detroit for the next two years (while the KWA pipeline is built) is the best option,” said Flint Spokesman Jason Lorenz “We already had to make these upgrades ahead of KWA.”⁹³

As late as January 2014, City Council President Scott Kincaid was saying publicly that no definitive decision had been made. “In July, city officials said they still were trying to figure out whether they would renegotiate a temporary deal with Detroit while the KWA pipeline was built. Kincaid said a decision about where the city will get its water during the KWA construction

⁹¹ Id.

⁹² (Treasury 1306/7971).

⁹³ Dominic Adams, *Flint to spend \$171,000 for engineering to treat Flint River water while KWA pipeline is built*, MLIVE (July 08, 2013), available at http://www.mlive.com/news/flint/index.ssf/2013/07/flint_to_spend_171000_for_engi.html.

hasn't been finalized.”⁹⁴ We also know that negotiations with DWSD over continued use of treated water continued until March 2014.⁹⁵

Some conclusions can be drawn. The documents reveal that consideration of the use of the Flint River for drinking water had nothing to do with public safety, but had everything to do with saving money. Treasury and the Emergency Managers had committed the City to the KWA project, which required multi-million dollar improvements in the WTP, without providing the means to finance that investment. The City had been unable to raise capital in the past for necessary expenditures. How would it get the money to pay the millions needed to prepare the WTP for the KWA project? About the only available source of financing was the \$12 million being paid to DWSD for treated water. This stack of money was a substantial temptation, but a temptation based in desperation and rooted in the structural racism embedded in Flint's municipal distress, the fiscal austerity politics wrought by Emergency Management and the strategic decision foisted upon it to participate in KWA.

2. Flint's financing the \$85 million for KWA pipeline construction

If Flint could not raise the necessary fund to make basic improvements in the WTP, how was it going to finance the \$85 million needed to pay for its share of the KWA pipeline construction? With the State approval of Flint's participation in KWA, attention belatedly turned to how the City of Flint would finance its obligation. Ironically, many of these overtures were made to DEQ and not Treasury. On July 19, 2013, Bradley Comment, Vice President of Government Affairs for Kindsvatter, Dalling & Associates, Inc., a firm that promotes itself as Michigan's Premier Association Management and Lobbying Professionals, emailed DEQ to try and set up an appointment with Director Wyant: “I am hoping that we can meet with Director and the person that oversees the DWRF regarding the KWA waterline project. Any chance we can get a meeting in the near future?”⁹⁶

On September 4, 2013, attorney and lobbyist Manny Lentine sent an email with a “schedule request” to see DEQ Director Wyant. “Rick Johnson and I would like to visit with Director Dan to talk about Karegnondi Water Authority and some recent meetings we have been in with Genesee County Drain Commissioner Jeff Wright concerning funding options since the County pulled back on its intended bond offering. Need 30 minutes or whatever you can offer. It will only be Rick and I and we simply want to update Dan and sound out a thought.”⁹⁷ There is no indication as to what the “thought” was.

⁹⁴ Dominic Adams, *Flint spends \$4 million on water plant in last eight months*, MLIVE (January 4, 2014), available at http://www.mlive.com/news/flint/index.ssf/2014/01/flint_spends_4_million_on_wate.html.

⁹⁵ Letter from Darnell Earley, Flint EM, to Sue McCormick, DWSD (March 7, 2014), available at http://mediad.publicbroadcasting.net/p/michigan/files/201512/earley_letter.pdf?_ga=1.224901786.1036207224.1446746452.

⁹⁶ (DEQ12 718/2299).

⁹⁷ (DEQ11 1651/2147).

As the message circulated within DEQ, it engendered some commentary. On September 18, 2013, Stephen Busch (DEQ) sent a message to a number of DEQ colleagues explaining that “The Director asked me about this about a week and a half ago during our drive to Monroe, and I briefly discussed it with Dave Jansen at the AWWA Section Meeting last week. . . . Dave indicated that he previously had discussions about DWRP funding with Jeff Wright, indicating to him that it is not a viable option, particularly given the time constraints for construction.”⁹⁸ Kelly Hoffman (DEQ) replied to Stephen Busch (DEQ), “I did have a meeting about a year or so ago with the Director and Jeff Wright, and I believe Liane regarding KWA and funding. Jeff Wright does understand that DWRP is not an option for the intake and pipeline construction.”⁹⁹

There would be no simple or easy resolution to the question of how Flint would pay for its participation in KWA. The challenge was obvious. Flint was in financial distress and was constrained by law in terms of the amount of debt it could hold. The clearest extant explanation of the problem can be found in a March 18, 2014, email from then Miller Canfield attorney Dan Massaron to Gerald Ambrose with copies to Emergency Manager Darnell Earley and others. Massaron explains: “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.”¹⁰⁰ However, there is a loophole in the form of an Administrative Consent Order (ACO). “[I]f the KWA project is done to comply with an ACO, the debt associated with the project would not ‘count’ toward the City’s debt limit.”¹⁰¹

The problem, as of March 18, and the reason for the email, was that the desired ACO had not been finalized and the administrative delay was jeopardizing KWA’s ability to go to the bond market. Calling the ACO a “condition precedent,” Massaron stated that “we cannot continue with the transaction without the ACO.”¹⁰² This would put a stop to the KWA construction. “If there is much more of a delay, the KWA will have expended its initial resources and be forced to stop construction and the project will be delayed for at least one construction cycle. Assuming the ratings come in as planned, the City needs the ACO in place by the end of the week.”¹⁰³

That same day, Ambrose forwarded Massaron’s email to Wayne Workman (Treasury) and Edward Koryzno (Treasury), with copies to Darnell Earley and Richard Cline (Treasury). “We greatly appreciate the call made after our last meeting to DEQ by Eric Cline regarding the pending ACO. It has moved along, but still in process. Any additional assistance you can give would be greatly appreciated. As you can see from Dave Massaron’s email, formal approval of the ACO is required in order for the bond sale to proceed.”¹⁰⁴ On March 19, 2014, Workman

⁹⁸ (DEQ12 538/2299).

⁹⁹ (DEQ11 1934/2147).

¹⁰⁰ (Treasury 2613/7971).

¹⁰¹ Id.

¹⁰² Id.

¹⁰³ Id.

¹⁰⁴ (Treasury 2612/7971).

instructed a colleague to “get a call into the Director to push this through.”¹⁰⁵ The ACO was signed and finalized the next day on March 20, 2014.

This was not a typical ACO. While it seems like Treasury was playing a key role in helping obtain KWA financing, Treasury had no jurisdiction to initiate an ACO for the Flint WTP. That was the job of the DEQ. Flint-KWA started fishing for an ACO at DEQ as early as December 2013. Nicole Zacharda (DEQ) sent an email to William Creal (DEQ) on December 19, 2013, reporting the contents of a call the previous day from Michael Robinson, a Warner Norcross attorney who handled environmental issues for the City of Flint. “Yesterday I received a call from Mike Robinson . . . seeking what I’d characterize as a ‘sweetheart’ ACO intended to ease the City’s ability to access bond finding for their possible new water intake from Lake Huron.”¹⁰⁶ This was not the first time DEQ had been approached on this issue. “Mr. Robinson and Dept. of Treasury officials have already been communicating with Steve [Busch] about an Order of some sort in light of Flint’s financial situation.”¹⁰⁷

Rather than using an ACO as a tool to fix an existing regulatory violation, Flint-KWA-Treasury-DEQ started searching for a regulatory violation to justify an ACO, in order to bootstrap financing for the KWA, which was completely unrelated to the underlying regulatory violation justifying the ACO. After ping-ponging around different DEQ departments, the “violation” ultimately settled upon was a relatively minor and inexpensive problem with a lagoon at the Flint WTP’s lime sludge facility. The key for determining the scope of potential bond financing that Flint could seek pursuant to the ACO, while circumventing its state-imposed debt limit, was the language defining the “Statement of Purpose.”

Flint environmental attorney Mike Robinson reemerges in the story. On February 10, 2014, he sends an email to Steve Busch (DEQ) concerning “ACO:” “Steve, I checked with the City’s bond counsel, here is the Language that we MUST include in the consent order so that the City can move forward on this.”¹⁰⁸ The language the bond lawyers wanted was as follows: “The Respondent plans to use the Flint River as a temporary source of untreated water supply until KWA water is available. The Respondent must undertake the KWA public improvement project or other public improvement projects to continue to use the Flint River, such as additional water treatment plant public improvements, source water protection public improvements and public improvements to obtain back-up water supply, in order to comply with Act 399.”¹⁰⁹ This last critical sentence was included almost verbatim in the final ACO.

If there was a point of no return in the tangled process leading to the use of the Flint River as the interim source of drinking water, this was it. The use of an ACO predicated on

¹⁰⁵ Id.

¹⁰⁶ (DEQ1 3666/4591).

¹⁰⁷ Id.

¹⁰⁸ (DEQ3 4057/4719) (emphasis in original).

¹⁰⁹ Id.

problems with the WTP in order to finance the KWA pipeline effectively obligated the City to use the Flint River as the interim source of drinking water during KWA construction. This legal commitment was strategically driven by the need to manipulate rules governing the bond market, not considerations of public safety. The Emergency Managers, KWA, DEQ and Treasury were all intimately involved. There would be no turning back. Earlier that month, while the ACO and bond details were being worked out, Emergency Manager Darnell Earley sent a letter to DWSD head Sue McCormick rejecting a number of DWSD offers to continue to sell Flint water after the April 17, 2014, termination of the pre-existing arrangement.¹¹⁰ The die was cast.

The final ACO includes a truly Orwellian re-write of Flint's water history. According to the ACO, rather than Flint Emergency Managers and Treasury opting for KWA and rejecting numerous long-term DWSD proposals (leading to the one year contractual DWSD notice of termination), the ACO blames DWSD's notice of termination as the reason Flint was forced to opt for KWA (and ultimately rely on the Flint River as a source of drinking water). "The Respondent has chosen to use the WTP to supply water to its customers and discontinue using the Detroit Water and Sewerage Department (DWSD) after receiving a notice of termination of services from DWSD. In order for the Respondent to continue to use of the WTP, Respondent must undertake the KWA public improvement project."¹¹¹

The language and logic of the ACO was ultimately embedded in the documents underwriting Flint's bond financing for KWA construction. The Official Statement of the Karegnondi Water Authority Counties of Genesee, Lapeer and Sanilac State of Michigan \$220,500,000, Water Supply Bonds (Karegnondi Water Pipeline) Series 2014A incorporates the same false narrative as the ACO.

On April 17, 2013, DWSD notified Flint that it was terminating its contract with Flint for the supply of water in one (1) year as required by the contract. As a result, no later than April 17, 2014, Flint intends to begin withdrawing water from the Flint River, treat the water in its water treatment plant and then make such treated water available to the customers of the Flint System until the [KWA] System is completed and operational. After the notification from DWSD, Flint sought another source of water and determined to use its water treatment plant to provide water to its customers. In order to do so it negotiated an administrative consent order with MDEQ that permitted the temporary use of the Flint River (the "ACO"). The ACO requires Flint to either undertake a public improvement project to connect to the System or undertake other public improvements to

¹¹⁰ Letter from Darnell Earley, Flint EM, to Sue McCormick, DWSD (March 7, 2014). http://mediad.publicbroadcasting.net/p/michigan/files/201512/earlely_letter.pdf?_ga=1.224901786.1036207224.1446746452.

¹¹¹ Michigan Department of Environmental Quality, Office of Waste Management and Radiological Protection, In the Matter of the Administrative Proceeding against City of Flint, doing business at 5200 Bray Road, Genesee Township, Genesee County, Michigan (March 20, 2014) (OWMRP Order No. 115-01-14) (hereinafter "ACO").

continue to use the Flint River. In order to comply with the ACO, Flint has determined that connecting to the [KWA] System is the most cost effective means to obtain untreated water and to comply with the ACO.¹¹²

Ironically, the very same document reports facts relating to Genesee County that contradict the claim that the lack of a contract with DWSD somehow forced Flint to use the River.

In January, 2014, the County Agency entered into contract negotiations with DWSD to secure a water supply directly from DWSD for the customers of the Genesee System without using Flint as a pass through, until the [KWA] System has been completed and is operational. DWSD representatives have indicated that in the event that an agreement cannot be reached with the County Agency during these negotiations, DWSD will continue to supply water to the County Agency via Flint without a contract in place.¹¹³

The only real difference between Flint and Genesee Country is money. Genesee County could afford safe water from DWSD, Flint could not.

Equally troubling, there are serious inconsistencies in the stance of DEQ-KWA-Emergency Managers when it comes to the safety of using water from the Flint River as a source of drinking water over time. In 2012, DEQ rejected early proposals for the continuous use of the Flint River as a permanent alternative.¹¹⁴ In 2013, in order to prevail in their advocacy of the KWA option, Flint Emergency Managers, DEQ and KWA had to be critical of the Flint River being used in any capacity. They were critical of any of the proposed “blending” options with DWSD (found to be the lowest cost option in the TYJT study). Finally, they were critical of the Flint River as a supplemental alternative when the City Council approved a 16 MGD contract with KWA rather than the Emergency Manager’s proposed 18 MGD option (a decision that would have reduced the diameter of the KWA pipe and its ultimate aggregate carrying capacity).

In January 2013, when Treasury was reviewing Emergency Manager Kurtz’s recommendation of the KWA option, Mike Prysby (DEQ) raised concerns about the quality and safety of the Flint River in conversations with Randy Byrne at Treasury.¹¹⁵ Similarly, on March 26, 2013, Stephen Busch sent an email to Director Wyant highly critical of the TYJT Report and raising the specter of serious health concerns associated with the Flint River, including “an increased microbial risk to public health;” “increased risk of disinfection by-product

¹¹² (Treasury 2655/7971) (brackets added).

¹¹³ Id. (brackets added).

¹¹⁴ Curt Guyette, *Exclusive: Gov. Rick Snyder’s Men Originally Rejected Using Flint’s Toxic River: An emergency manager said no to using the river in 2012 after speaking to environmental regulators. An ex-Flint official said the governor’s office reversed that decision*, THE DAILY BEAST (January 24, 2016), available at <http://www.thedailybeast.com/articles/2016/01/24/exclusive-gov-rick-snyder-s-men-originally-rejected-using-flint-s-toxic-river.html>.

¹¹⁵ (DEQ2 732/3795).

(carcinogen) exposure to public health;” “additional regulatory requirements under the Michigan Safe Drinking Water Act;” and “significant enhancements to treatment at the Flint WTP.”¹¹⁶

This all changed in 2014 after the KWA pipeline was approved and use of the Flint River was necessary to secure Flint’s bond financing. Now that KWA had been approved, fulltime use of the Flint River was fine with DEQ, the Emergency Managers, KWA, Treasury and others.

Still, one senses some apprehension, even by bond counsel, over the use of the Flint River as the interim source of drinking water. One draft of the ACO would have required Flint to switch to an alternative drinking water source within 5 years. “After five years [the City of Flint] COF must undertake a public improvement project to receive water from KWA or some source other than the Flint River in order to continue to use it’s water treatment plant.”¹¹⁷ This proposal was rejected by Steve Busch (DEQ): “Long term we all know it would be best for the City to use a better source than the river, but I don’t want it to be forced by an order.”¹¹⁸ After health problems started to become clear in January 2015, Richard Benzie who earlier spoke about how Flint’s attachment to its WTP would lead it ultimately to join KWA stated, “I can’t say the city wouldn’t be better off to not have switched to the River.”¹¹⁹

Despite all of the efforts of KWA-DEQ-Treasury to ensure that Flint would be able to finance its part of KWA pipeline construction, no comparable effort was made to secure additional finances to help Flint get the WTP up and running at a level where it would be safe. Flint was left to fend for itself within the legacy of structural racism and the constraints of Emergency Management. In a March 3, 2015, Memo to Wayne Workman (Treasury), Emergency Manager Ambrose explains that the work at the WTP was largely self-financed out of savings from the funds not paid to DWSD. Flint did not have the money to afford both safe water and to make the upgrades to the WTP required by its commitment to KWA. The decision to use the Flint River “offered an immediate cost savings opportunity which translated into the ability to upgrade the Water Treatment Plant without having to seek financing.”¹²⁰

It is still unclear what scope of work actually took place at WTP before switching to the Flint River as a full time drinking water source. Part of the opacity is due to the failure of the firm Lockwood, Andrews and Newman (LAN) to cooperate with the Flint Water Advisory Task Force in its investigation.¹²¹ This is a critical line of inquiry that deserves more attention. There is substantial reason for concern. Recently, LAN was charged in a civil law suit by the Michigan Attorney General for “negligence” and creating a “public nuisance” in relationship to its work at

¹¹⁶ (DEQ3 3647/4719).

¹¹⁷ (DEQ1 3688/4581) (brackets added).

¹¹⁸ Id.

¹¹⁹ (DEQ1 4343/4581).

¹²⁰ (Treasury 4720/7971).

¹²¹ Task Force Report at 3.

the WTP.¹²² In addition to what structural work was or was not done, there is the critical issue of the failure to implement basic corrosion control measures. “The obvious question that MDEQ, along with the City and its consultants, should have asked was: ‘What will happen without corrosion control treatment?’ Similarly, they could have asked why a less corrosive source of water (Lake Huron water) would be required to have corrosion control treatment, but not the more corrosive Flint River source. In Flint, the more corrosive water source ultimately destroyed the protective scaling on pipes and plumbing that orthophosphate addition had provided through the water supplied by DWSD.”¹²³ This is a critical element in the State’s suit against LAN and Viola.¹²⁴

Some indication of how little was done at the WTP is reflected in how little was spent. Recall that in the 2009 Rowe Engineering estimated it would take \$61 million before the Flint River could become the fulltime drinking water source.¹²⁵ In 2011, LAN did an analysis suggesting that work on the WTP would cost \$69 million in capital improvements.¹²⁶ Even when scaled down by Rowe in December 2013 when work on the plant was being done, the estimate was \$25 million for the job.¹²⁷ According to LAN’s 2013 proposal, “the estimated construction cost to prepare the water plant for continuous operation using Flint River water for the interim period is on the order of \$33 to \$34 million.”¹²⁸ By November 14, 2014, however, LAN had scaled down the estimate to \$7-10 million.¹²⁹ In the end, apparently \$8 million was spent on the WTP before it started distributing water from the Flint River.¹³⁰ It is likely that this amount was spent, not because that was the amount required for safe use of the WTP, but that was the highest amount Flint could self-finance from diverted DSDW dollars.

Furthermore, it is not clear how much candor and objectivity can be expected of Flint Emergency Managers, DEQ staff and Treasury staff concerning the capacity of the WTP or the

¹²² “*They Made It Worse*”: *Michigan Sues 2 Companies Over Flint Crisis*, National Public Radio (June 22, 2016), available at <http://www.npr.org/sections/thetwo-way/2016/06/22/483083095/they-made-it-worse-michigan-files-suit-against-2-companies-over-flint-crisis>.

¹²³ Task Force at 28.

¹²⁴ *Michigan v. Viola* (Complaint for Damages and Request for a Jury Trial) (Case No. 16-16107175-NM) (June 22, 2016) (hereinafter “*Viola Complaint*”).

¹²⁵ Rowe Engineering, ANALYSIS OF THE FLINT RIVER AS A PERMANENT WATER SUPPLY FOR THE CITY OF FLINT (July 2011) (prepared for the City of Flint) (DEQ2 746/3795).

¹²⁶ *Viola Complaint*, Paragraph 25.

¹²⁷ Rowe Professional Service Company, CITY OF FLINT WATER RELIABILITY STUDY: DISTRIBUTION SYSTEM (December 2013) at 10, available at http://www.michigan.gov/documents/snyder/Rowe_2013_Reliability_Study_compressed_515343_7.pdf.

¹²⁸ *Viola Complaint*, Paragraph 30.

¹²⁹ (Treasury 1303/7971).

¹³⁰ Memo from Tom Saxton (Treasury) to Wayne Workman (Treasury), concerning “City of Flint Water Rates (February 11, 2015) (“The \$8M capital costs to upgrade the Water Treatment Plant was made to be able to treat both river water and KWA water. This upgrade has been funded with the cost reduction in operating costs achieved by not buying water from DWSD during the interim period.”) (Treasury 4267/7971).

safety of the Flint River after negotiating the ACO committing them to use the river as an interim drinking water source for financial reasons. They are clearly responsible for the decision and it was made for financial reasons, regardless of public health concerns.

What we do know is that WTP employees did not think that they were ready for full time use of the Flint River on the eve of termination of the DWSD contract. On April 16, 2014, Michael Glasgow, a laboratory and water quality supervisor for the Flint WTP, reached out to Adam Rosenthal of the MDEQ's ODWMA because he had concerns about starting up the WTP for full-time use. He wrote that he expected "changes to our Water Quality Monitoring parameters, and possibly our DBP and lead & copper monitoring plan."¹³¹ He went on to say that "[a]ny information would be greatly appreciated, because it looks as if we will be starting the plant up tomorrow and are *being pushed to start distributing water as soon as possible*."¹³²

The next morning, Glasgow sent Rosenthal, along with Mike Prysby and Stephen Busch, another email after receiving the revised MDEQ monitoring schedule, which had "dramatic changes."¹³³ Glasgow explained that he was "reluctant before," and after reviewing the new monitoring schedule, did "not anticipate giving the OK to begin sending water out anytime soon."¹³⁴ The email continued, "If water is distributed from this plant in the next couple weeks, it will be against my direction. I need time to adequately train additional staff and to update our monitoring plans before I will feel we are ready."¹³⁵ Unfortunately, it is clear that the final decision was not in Glasgow's hands. In closing, Glasgow stated, "I will reiterate [my opinion] to management above, but they seem to have their own agenda ... *I have people above me making plans to distribute water ASAP*."¹³⁶

It should be remembered that one of the felony counts in the indictment against Michael Prysby was "for authorizing the operation of the Flint water-treatment plant when he allegedly knew it couldn't provide safe drinking water."¹³⁷ On April 25, 2014, Flint officially began using the Flint River as its primary water source. Almost immediately, Flint residents began complaining about the quality of the new drinking water source.

Flint is the only DWSD customer in Genesee County that did not negotiate contracts with DWSD for the interim supply of treated drinking water pending the construction of the KWA pipeline. On June 12, 2014, Emergency Manager Earley finalized the sale of a 9-mile section of water pipeline, which was previously used to connect Flint to the DWSD system, to

¹³¹ (DEQ4 7105/7579).

¹³² Id. (emphasis added).

¹³³ (DEQ4 7103/7579).

¹³⁴ Id.

¹³⁵ Id.

¹³⁶ Id. (emphasis added).

¹³⁷ Kris Maher, *Three Officials Criminally Charged Over Flint Water Crisis*, WALL STREET JOURNAL (April 20, 2016), available at <http://www.wsj.com/articles/three-officials-to-face-criminal-charges-over-flint-water-crisis-1461166410>.

Genesee County for \$3.9 million.¹³⁸ Ironically, Genesee County would begin utilizing the pipeline as it implemented its new service with DWSD.¹³⁹

When one recalls our criteria for strategic racism, it is easy to see how they apply in Flint. The decisions made by KWA, the Emergency Managers, DEQ, Treasury and others were not made in the best interest of the residents of Flint. There was a clear agenda on the parts of these actors to pursue the KWA pipeline, regardless of the needs and priorities of Flint. The residents of Flint were instrumentally used as means to be manipulated and not as ends in themselves. Decision making in DEQ and Treasury was not consistent and objective. DEQ flip-flopped on the question of the safety of the Flint River, depending on the strategic need to advocate for the KWA pipeline. To the extent that Emergency Management is supposed to be about the rigorous application of economic rules, the various Emergency Managers and Treasury failed in this role. Ultimate decisions regarding approval of the KWA pipeline were made for political, not economic reasons. All of this took place against the backdrop of the structural racism that defines the Flint economic crisis, the displacement of democracy and the express disempowerment of Flint residents. It is difficult to imagine the same sequence of events unfolding in Ann Arbor or Bloomfield Hills.

By its very nature, structural racism, intentional discrimination and unconscious bias create vulnerability on the part of effected populations. This vulnerability was consciously exploited to the detriment of the residents of Flint.

III. The Perfect Storm of Strategic and Structural Racism: Conflicts, Complicity, Indifference and the Lack of an Appropriate Political Response

The lack of response to the mounting crisis in Flint reveals disturbing truths about Structural and Strategic Racism in America. The Flint Water Advisory Task Force Final Report highlights the dangers of Emergency Management and Structural Racism. To this foundation, needs to be added the troubling consequences of Strategic Racism.

A. Flint, Emergency Management and Structural Racism

Flint residents had knowledge of the water crisis almost immediately upon the switch to the Flint River, but they lacked the power to influence the decision making of the Emergency Managers, Treasury, DEQ or the Governor. This knowledge was real and visceral, flowing from the color, smell, taste and detrimental effects of the water on exposed skin. In a prosperous, predominately white community, complaints of residents based on this knowledge alone would have forced change, because this knowledge would have been combined with the power necessary to demand action (Knowledge-&-Power).

¹³⁸ Ron Fonger, Emergency manager accepts \$3.9 million Genesee County offer to buy Flint-owned pipeline, MLIVE (June 12, 2014), available at http://www.mlive.com/news/flint/index.ssf/2014/06/emergency_manager_accepts_39_m.html.

¹³⁹ Id.

Residents of Flint lacked this power. Power lay first in the hands of the Emergency Manager, who had just made the decision to support the KWA pipeline and to use the Flint River as an interim source of drinking water. Emergency Managers do not have to listen to residents, because they are not popularly (re)elected. They report to Treasury and to the Governor. Treasury officials are unlikely to be predisposed to grant the complaints of people in cities like Flint much credibility. The whole premise of Emergency Management is that people like the residents of Flint cannot govern themselves. Of course, Treasury would believe, Flint residents are going to complain about many aspects of the strong medicine required to put their cities back in order. These residents do not have to be taken seriously.

The Task Force Report mounts a persuasive critique of the Emergency Management regime that resonates strongly with the teachings of Structural Racism, as well as with the Knowledge-&Power claims of opponents of Emergency Management who led the successful referendum process to repeal PA 4. The Task Force identifies three structural failings. First, Emergency Management removes the necessary checks and balances inherent in a functioning democracy.¹⁴⁰ Second, Emergency Management creates a balanced-budget-accounting framework that biases decision making in favor of fiscal austerity over competing social needs. This frame inevitably leads to financial decisions that can threaten public safety.¹⁴¹ Finally, Emergency Management fails to build in the necessary non-financial sources of expertise needed to govern a city across its full range of human and social concerns.¹⁴²

¹⁴⁰ “The Flint water crisis occurred when state-appointed emergency managers replaced local representative decision-making in Flint, removing the checks and balances and public accountability that come with public decision-making.” Task Force Report at 1; “The emergency manager structure made it extremely difficult for Flint citizens to alter or check decision-making on preparations for use of Flint River water, or to receive responses to concerns about subsequent water quality issues.” Task Force Report at 8.

¹⁴¹ “[T]his failure must force us to review the EM law and the general approach to financial problems. Government approaches to cities in fiscal distress must balance fiscal responsibility with the equally important need to address quality of life, economic development, and infrastructure maintenance and provision.” Task Force Report at 40; “EMs are asked to ensure the protection of the public health and safety and yet are not provided adequate tools and resources to achieve this objective. EMs are empowered to effect cost-cutting measures such as the ability to terminate contracts and restructure budgets. However, they are given little or no priority access to state or federal resources or assistance in undertaking the complex activities of running a municipality. Other states take different approaches that may do a better job of balancing the need for fiscal discipline with the need to provide basic public services, especially when scientific, health, and/or engineering expertise is involved. Task Force Report at 42; “Michigan’s Emergency Manager Law and related practices can be improved to better ensure that protection of public health and safety is not compromised in the name of financial urgency.” Task Force Report at 41.

¹⁴² “Emergency managers charged with financial reform often do not have, nor are they supported by, the necessary expertise to manage non-financial aspects of municipal government.” Task Force Report at 8; Recommendation: “Ensure proper support and expertise for emergency managers to effectively manage the many governmental functions of a city. Decisions on matters potentially affecting public health and

In sum, Emergency Management creates a dynamic where bad decisions that threaten public safety are almost guaranteed to occur, and when they take place, there is no ready mechanism to identify and correct them. The Task Force proceeds to frame these structural problems in terms of environmental (in)justice.¹⁴³ Environmental justice has both a procedural and a substantive component. Procedurally, environmental justice requires the ability of all people to participate in decision making regardless of race, color, national origin or income. Second, decisions must be substantively fair and non-discriminatory. By definition, Emergency Management violates the process criteria. In substance, it violated the second criterion. The Flint water crisis created a public health catastrophe that disproportionately affected people of color and other historically marginalized communities. The Task Force concludes: “The Flint water crisis is a clear case of environmental injustice.”¹⁴⁴

Language matters. The notion of environmental justice is a good first step, but it is important to move from environmental justice to environmental racism to structural racism to fully understand what happened in Flint. Structural racism connects the dots of the racialized history that constitutes the root cause of municipal distress, the financial misdiagnosis behind the Emergency Management regime and the manner in which the entire apparatus of Emergency Management and the policies of fiscal austerity will disproportionately target disadvantaged communities of color. “Emergency Management is a racially blind and fiscally flawed response.”¹⁴⁵ It is at this already highly racialized point that the structural failings inherent in Emergency Management (the absence of checks and balances, a financial accounting bias that threatens public safety and the lack of social decision making expertise) take hold and create the environment where tragedies like the Flint water crisis unfold.

In reality, human tragedies, great and small, are inseparable from the machinery of Emergency Management. Flint is just the most extreme example. Flint now serves as a morality play illustrating all that is wrong with Emergency Management. It would be inexcusable if substantial reform or wholesale repeal of the Emergency Manager law does not take place in the wake of the Flint crisis.¹⁴⁶

safety, for example, should be informed by subject matter experts identified and/or provided by the state.” Task Force Report at 12.

¹⁴³ Task Force Report at 54.

¹⁴⁴ Id. at 55.

¹⁴⁵ Peter J. Hammer, *The Flint Water Crisis: History, Housing and Spatial-Structural Racism*, Testimony before Michigan Civil Rights Commission Hearing on Flint Water Crisis, slide 36 (July 14, 2016).

¹⁴⁶ “Review Michigan’s Emergency Manager Law (PA 436) and its implementation, and identify measures to compensate for the loss of the checks and balances that are provided by representative government.” Task Force Report at 11; “Consider alternatives to the current EM approach – for example, a structured way to engage locally elected officials on key decisions; an Ombudsman function in state government to ensure that local concerns are a factor in decisions made by the EM; and/or a means of appealing EM decisions to another body.” Task Force Report at 42.

B. Strategic racism and the failure to respond to the Flint water crisis

Sadly, the frame of structural racism does not go far enough to fully explaining the tragedy in Flint. The reality of strategic racism adds an additional layer of intent and complicity to the story. These dynamics change substantially how the inexcusably slow response to the emerging crisis needs to be understood and explained.

The Task Force tells the story of the events in Flint without the full benefit of knowledge of the role DEQ played in manufacturing an ACO to facilitate the City's bond financing for the KWA pipeline and how these actions legally committed the City to use of the Flint River as its interim drinking water source. In this manner, the Task Force knew the "what" without completely understanding the "why" of DEQ's misconduct. The Task Force states: "With the City of Flint under emergency management, the Flint Water Department rushed unprepared into full-time operation of the Flint Water Treatment Plant, drawing water from a highly corrosive source without the use of corrosion control."¹⁴⁷ The Task Force did not know the role that arranging KWA financing and the timing of the bond offering played in this decision and how financial concerns trumped any consideration of public safety. The decision to use the Flint River was financially driven and began on a time table to meet the needs of the bond market, not the public safety needs of the residents of Flint.

The Task Force tries to explain decisions at DEQ largely in terms of gross incompetence and cultural shortcomings. The Report's findings are reproduced here at length.

F-1. MDEQ bears primary responsibility for the water contamination in Flint.

F-2. MDEQ, specifically its ODWMA, suffers from cultural shortcomings that prevent it from adequately serving and protecting the public health of Michigan residents.

F-3. MDEQ misinterpreted the LCR and misapplied its requirements. As a result, lead-in-water levels were under-reported and many residents' exposure to high lead levels was prolonged for months. Specifically:

- MDEQ's misinterpretation of the LCR and lack of due caution resulted in the decision not to require corrosion control upon the switch to the Flint River but, rather, to begin two consecutive 6-month water quality monitoring periods.
- MDEQ failed to promptly require corrosion control even after the initial 6-month monitoring period results were received and 90th percentile lead sampling results were at 6 ppb, which would have disqualified Flint from being exempted from having to have corrosion control treatment – even under MDEQ's flawed interpretation.
- MDEQ's guidance to Flint on LCR compliance sampling techniques (calling for pre-flushing, use of small mouthed bottles, etc.), while possibly technically permissible, was

¹⁴⁷ Task Force Report at 1.

not designed to detect risks to public health. MDEQ failed to take adequate steps to correct Flint water operations staff's inaccurate LCR sampling.

- MDEQ ODWMA advised Flint Utilities Department personnel to make sure the rest of the water samples in the second 6-month monitoring period were clean, since the samples they had already submitted exceeded EPA's action level for lead.
- MDEQ conveniently, and without adequate investigation, excluded Lee Anne Walters's water quality test results for purposes of determining whether Flint sampling results exceeded EPA's action level.

F-4. MDEQ waited months before accepting EPA's offer to engage its lead (Pb) experts to help address the Flint water situation and, at times, MDEQ staff were dismissive and unresponsive.

F-5. MDEQ failed to move swiftly to investigate, either on its own or in tandem with MDHHS, the possibility that the Flint water system was contributing to an unusually high number of Legionellosis cases in Flint.

MDEQ caused this crisis to happen. Moreover, when confronted with evidence of its failures, MDEQ responded publicly through formal communications with a degree of intransigence and belligerence that has no place in government. These failures are not diminished, nor should focus on them be deflected, by the fact that other parties contributed to the disastrous decisions or the prolonging of their consequences.¹⁴⁸

While this list of failings may be the product of incompetence or indifference as suggested by the Task Force, within the frame of Strategic Racism, the actions of DEQ take on even more troubling connotations. When the Task Force findings are juxtaposed to the facts pertaining to the O'Malia memo, DEQ's role in promoting the KWA pipeline in the first place, its enabling Flint's bond financing for the KWA by bootstrapping a "sweetheart" ACO that committed the City to using the Flint River and its subsequent regulatory approval of the use of the Flint River as an interim drinking water source, DEQ's conduct takes on much more sinister overtones.

DEQ appears to have adopted a strategy to "run out the clock" in terms of environmental oversight, believing that all would be forgotten once the KWA pipeline was constructed and the River was no longer in play. For example, DEQ's flawed interpretation of the Lead Coper Rule (LCR) ensured that its regulatory oversight would be defined by inaction not action. DEQ started a process in July 2014 that would require no further steps until July 2015, at the earliest.

But, DEQ could not control facts on the ground. By August 2014, there were boil water advisories because of E-Coli bacteria in the water. In September, there was another boil water advisory do to Coliform bacteria. On October 13, 2014, General Motors announced that it would

¹⁴⁸ Id. at 28-29.

stop using Flint River water at its Flint Engine Operations facility due to corrosion concerns. Even members of the Governor's executive staff called for a switch back to DWSD. In an October 14, 2014, email to Valerie Brader (GOV), Dennis Muchmore (GOV), Jarrod Agen (GOV), and Elizabeth Clement (GOV) concerning "Flint water," Michael Gadola in the Governor's office writes: "[T]o anyone who grew up in Flint as I did, the notion that I would be getting my drinking water from the Flint River is downright scary. Too bad the EM didn't ask me what I thought, though I'm sure he heard it from plenty of others. My Mom is a City resident. Nice to know she's drinking water with elevated chlorine levels and fecal coliform. I agree with Valerie. They should try to get back on the Detroit system as a stopgap ASAP before this thing gets too far out of control."¹⁴⁹

Incredibly, it took just one day for DEQ to beat back the panic. An October 15, 2014, memo from Emergency Manager Darnell Earley to Wayne Workman (Treasury) provides a summary of a conference call held that day. The governmental consensus was clear. There were no serious health problems in Flint. "The DEQ has been supportive of the decision for Flint to move to use of the Flint River as a water source. The DEQ receives regular reports from the City's continuous water quality monitoring. They have agreed that the water being produced for distribution is safe. Flint needs the DEQ to make an unequivocal statement that the Flint River water is safe for drinking and all other uses."¹⁵⁰ This is just one of many examples of DEQ engaging in block and tackle strategies to deny, obscure and cover up aspects of the emerging public health crisis.

On January 1, 2015, DEQ started the second of its six-month monitoring period under its inactive interpretation of the Lead Coper Rules.¹⁵¹ To address concerns of elevated bacteria, officials at the WTP increased levels of chlorine and other disinfectants. As a byproduct of excessive levels of disinfectants, trihalomethanes (THM), a potential carcinogen, was now present in the water. On January 2, 2015, the City mailed a notice to all residents that the City was in violation of the Safe Water Drinking Act.¹⁵² It would not be publicly known till much later, but the WTP had failed to implement any corrosion control measures when it switched to the Flint River. The immediate consequence was substantial discoloration of the water and attendant issues of odor and taste (the more deadly and not publically known consequences would be lead poisoning).

The combination of these failings – bacteria, boil advisories, THM, discoloration, rashes and odor – was producing stronger and stronger public outcries. This was not lost on State officials. On January 23, 2015, "Snyder Administration Special Projects Manager Ari Adler raised concerns about Flint with Communications Director Jarrod Agen: "This is a public relations

¹⁴⁹ (Treasury 3428/7971).

¹⁵⁰ (Treasury 3459/7971).

¹⁵¹ *Flint crisis timeline Part 2: January 2015-June 2015*, BRIDGE (March 1, 2016) (hereinafter "Flint Crisis Timeline Part 2"), available at <http://bridgemi.com/2016/03/flint-crisis-timeline-part-2/>.

¹⁵² *Id.*

crisis – because of a real or perceived problem is irrelevant – waiting to explode nationally. If Flint had been hit with a natural disaster that affected its water system, the state would be stepping in to provide bottled water or other assistance. What can we do given the current circumstances?”¹⁵³

The state action that came was not aimed at the obvious public safety concerns. In February 2015, the Governor announced grants to cities, including Flint, to improve water, public safety and appraisal issues. Flint would receive \$2 million support for its aging water infrastructure to addresses “waste management, leak detection and pipe assessment.”¹⁵⁴ A briefing memo for the Governor’s grant announcement stated that a “key thing to remember is that once the city connects to the new KWA system in 2016, this issue [of THM in the water] will fade in the rearview.”¹⁵⁵ The State’s strategy was still about holding tight and letting the storm pass.

Other evidence of the State’s running out the clock strategy came in its response to the THM issue. On February 27, 2015, LAN released its “Operational Evaluation Report City of Flint Trihalomethane Formation Concern.” In addressing the problem there was a stated bias in favor of not making any changes that would be structural in nature. “Considering that the Flint River is being used as the water source only until the KWA supply is available (expected late 2016), options to address high THM formation that require new construction or extensive time to implement are not preferred.”¹⁵⁶ The State believed that problems would go away on their own, once there was a new water supply. These health issues did not have to be taken that seriously, especially in a city like Flint.

Behind the scenes, the looming threats to public safety were growing even more ominous. Country and State official were aware of a serious outbreak of Legionaries’ disease in Flint, information that would be withheld from the public for over 9 months.¹⁵⁷ On February 26, 2015, DEQ was aware of testing of lead levels at Lee Ann Walter’s home that were off the charts dangerous.¹⁵⁸ She had two children under the age of three living in the house at the time.

In early February 2015, senior officials inside the Governor’s Office were one again calling for a return to DWSD. Snyder Chief of Staff Dennis Muchmore wrote on February 5th: “Since we’re in charge, we can hardly ignore the people of Flint. After all, if GM refuses to use the water in their plant and our own agencies are warning people not to drink it . . . we look pretty stupid hiding behind some financial statement.”¹⁵⁹ Muchmore’s protestations continued into March. An email entitled “Contaminated Drink Water in Flint” and exploring potential civil

¹⁵³ Id.

¹⁵⁴ Id.

¹⁵⁵ (DEQ2 3310/3795).

¹⁵⁶ (Treasury 4374/7971).

¹⁵⁷ Flint Crisis Timeline Part 2.

¹⁵⁸ Id.

¹⁵⁹ (Treasury 4212/7971) (ellipses added).

rights action based on theories of environmental racism was sent to Mayor Dan Walling, who forwarded it to Emergency Manager Gerald Ambrose, who forwarded it to Kelly Rossman-McKinney at the firm of Truscott Rossman, who forwarded it to Dennis Muchmore, with the statement “I’m concerned about the implications that this may have racial overtones. Ugh.”¹⁶⁰

Muchmore forwarded the email to Elizabeth Clement (GOV), Thomas Saxton (Treasury), Wayne Workman (TREASURY), Jarrod Agen (GOV) and Harvey Hollins (GOV) with the following:

Might want to get Jarrod and Terry Stanton on this as well as Harvey. Otherwise it will get out of hand. It’s in the city’s long term interest to make the KWA work and we can make the river water safe, but we need to work with the ministers this week to help them out. It’s tough for everyday people to listen to financial issues and water mumbo jumbo when all they see is problems. You can’t expect the ministers to hold the tide on this problem.

How about cutting a deal with Ice Mountain or Bill Young and buying some water for the people for a time? \$250K buys a lot of drinking water and we could distribute it through the churches while we continue to make the water even safer.

If we procrastinate much longer in doing something direct we’ll have real trouble.¹⁶¹

Wayne Workman responded: “If this does happen, we need to figure who would hand out the water. It should not be the City. It would undercut every point they are making. It probably should also be reserved for people who can’t afford to buy water.”¹⁶²

While the October 2014 panic was beaten back by DEQ assurances that the water was safe, the panic of early 2015 would be beaten back almost strictly out of financial concerns. On March 3, 2015, Emergency Manager Ambrose strongly opposed any move away from the Flint River strictly on cost grounds. “The oft-repeated suggestion that the City should return to DWSD, even for a short period of time, would, in my judgment, have extremely negative financial consequences to the water system, and consequently to the rate payers. By the most conservative estimates, such a move would increase costs by at least \$12 million annually, with that amount achieved only by eliminating virtually all budgeted improvements in the system. . . . the only recourse within the City’s control would be to increase revenues significantly. And in my judgment, that would come from raising rates for water by 30% or more.”¹⁶³

¹⁶⁰ (Treasury 4733/7971).

¹⁶¹ Id.

¹⁶² Id.

¹⁶³ (Treasury 4720/7971).

On March 23, 2015, the Flint City Council voted 7-1 “to do all thing necessary” to return Flint back to the safe water of DWSD.¹⁶⁴ Citing cost concerns, Emergency Manager Jerry Ambrose called such a demand “incomprehensible.” The City Council’s vote carried no legal weight. Recalling the O’Malia play book, the City Council would be permitted to vote on the decision to approve the KWA pipeline as a legal insurance policy in case of a successful court challenge to the Emergency Manager law, but they would not be given the authority to decide to move back to DWSD, even on a temporary basis, because of safety concerns.

It is important to recall the first sentence of Denise Muchmore’s February 5, 2015, email: “*Since we’re in charge we can hardly ignore the people of Flint.*” On Feb 18, 2015, he wrote in another email that “[t]his train is leaving and we’ll be holding the bag if we don’t work out a deal on DWSD for Flint.”¹⁶⁵ One way to solve this dilemma, if one lacked the political will to actually help the people of Flint, would be to make arrangements so the State would no longer be “in charge.” In the face of a mounting public health and environmental crisis, Treasury did not want to be left “holding the bag.” In April 2015, Treasury somehow decided that Flint was no longer facing a financial emergency, even though it still had more than a nearly \$8 million accumulated general fund deficit. In an act that would be the envy of David Copperfield, Treasury simply made the Emergency Manager in Flint disappear.

It is important to note the fiscal hypocrisy. The State’s panic over the growing water crisis was beaten back upon the realization that Flint lacked the financial ability to pay for clean DWSD water – a cost that would be approximately \$12 million a year. It was only by cannibalizing the money formerly paid for clean water that Flint was able to afford upgrades to the WTP in preparation for its commitment to KWA. If the cost of clean water was put back on the books, Flint would have a deficit of over \$20 million, an amount higher than when the “financial emergency” was originally declared. Furthermore, Treasury made no effort to project and include the costs that would be needed to remedy the human toll of the water crisis or to repair the damage to the water infrastructure in its economic analysis. Some estimates put the cost of repairing damaged infrastructure alone at \$1.5 billion.¹⁶⁶ Flint was facing far greater fiscal challenges when the so called emergency was declared over, than when the stated emergency was originally declared.

But Flint was not out of the woods yet. Flint had to enter into an Emergency Loan Agreement with the Michigan’s Local Emergency Financial Assistance Loan Board to formally bring an end to Emergency Management. The fine print of the loan shows how tightly bound Flint-Treasury-KWA-DEQ had legally become to the continued use of the Flint River. The state Emergency Loan “effectively precluded a return to DWSD water, as Flint citizens and local

¹⁶⁴ Ron Fonger, MLive, “Emergency manager calls City Council’s Flint River vote ‘incomprehensible’” (March 24, 2015)

(http://www.mlive.com/news/flint/index.ssf/2015/03/flint_emergency_manager_calls.html).

¹⁶⁵ (Treasury 4324/7971).

¹⁶⁶ (Treasury 6237/7971).

officials were demanding without prior state approval.”¹⁶⁷ The Agreement also prevented Flint from terminating its participation in KWA before the system became operational and from reducing its already high water rates without state approval.¹⁶⁸ Remarkably, the Resolution submitted to City Council to approve the agreement “contained no information regarding the DWSD and water rates conditions contained in the emergency loan.”¹⁶⁹

This is another area requiring more detailed investigation. The investigation will likely find that the logic of the ACO tying the regulatory violation at the WTP to the financing of the KWA pipeline to the use of the Flint River as an interim source of drinking water are all deeply embedded in the terms of the bond finance agreements as well. When Treasury drafted the terms of the Emergency Loan Agreement, it would have transposed the legal commitments of the ACO and the bond financing into the Emergency Loan Agreement. As such, Flint found itself in a position where it could not legally stop using the Flint River, or return to the safe water of DWSD, or decrease its water rates, or terminate its involvement in KWA, all because the City was bound to finance its participation in a pipeline that better served the interests of others.

The Emergency Loan Agreement was signed on April 29, 2015. Two days before, Miguel Del Toral of the EPA sent an email to EPA colleagues “stating that Pat Cook/MDEQ has confirmed the Flint WTP has no corrosion control treatment (CCT), which is ‘very concerning given the likelihood of lead service lines in the city.’”¹⁷⁰ That same day, Del Toral visited the home of Lee Anne Walters to inspect plumbing and deliver sampling bottles. Meanwhile, “Pat Cook and Stephen Busch/MDEQ exchange e-mails complaining about Del Toral/EPA’s questions on corrosion control treatment.”¹⁷¹ On June 24, 2015, Miguel Del Toral submitted his Interim Report: High Lead Levels in Flint, Michigan.¹⁷² On August 27, 2015, Virginia Tech professor Marc Edwards released his first set of findings showing elevated lead levels in Flint.¹⁷³ On September 24, 2015, Dr. Hanna-Attisha presented the findings of her analysis “reporting that the proportion of children with elevated blood lead levels has increased since the switch to the Flint River water source in April 2014.”¹⁷⁴ On October, 16, 2015, Flint stopped using the Flint River for drinking water and switched back to DWSD.

The cost of the transition back to DWSD was \$12 million – \$6 million from the State, \$4 million from the Mott Foundation and \$2 million from the City. This is approximately the same amount of money Flint paid for water before the approval of the KWA pipeline.

¹⁶⁷ Task Force at 7.

¹⁶⁸ Emergency Loan Agreement at 5 (April 29, 2015), available at <http://www.eclectablog.com/wp-content/uploads/2016/03/Emergency-Loan-Agreement-Flint-4292015.pdf>.

¹⁶⁹ Task Force at 41 n.55.

¹⁷⁰ Task Force at 19,

¹⁷¹ Id.

¹⁷² Id. at 20.

¹⁷³ Id.

¹⁷⁴ Id. at 21.

VI Conclusion

Nothing about what happened in Flint was accidental. Flint needs to be understood as a morality play illustrating the dangers of Emergency Management and fiscal austerity. Flint needs to stand as a profound multi-generational testimony to the dangers of strategic-structural racism in the same manner as the Tuskegee tragedy forever shames medical science.

The list of individuals and agencies contributing to the Flint water crisis is long. *But for* our county's failure to understand the root cause of municipal distress in the context of structural racism, the Flint tragedy would never have occurred. *But for* the Governor's insistence on Emergency Management and the policies of fiscal austerity, the Flint tragedy would never have occurred. *But for* the displacement of democracy and the marginalization of the voices of its residents, the Flint Tragedy would never have occurred. *But for* the many acts of strategic racism by KWA, DEQ, Treasury and the various Emergency Managers exploiting the vulnerability of an entire city, the Flint tragedy would never have occurred.

We need a deeper awareness of the reality of multiple forms of racism at work in this country and how they interact to make better policy decisions moving forward. The problem is not a lack of knowledge. The people of the State of Michigan viscerally understood the dangers of Emergency Management and collectively opposed it. The people in Flint understood the insanity of using the Flint River as a source of drinking water and had immediate, firsthand knowledge of how dangerous and inappropriate the water was for human consumption when it began flowing in April 2014. Engineers understand the basic chemistry of corrosion control and the relatively simple measures that can be taken to mitigate its ruinous effects. Physicians understand the permanent debilitating effects of lead on the human brain, especially for children.

The problem is not a lack of knowledge. The problem is the often willful blindness of people in positions of privilege and authority (Knowledge-&-Power) to the needs, perspectives and interests of others, particularly when the "other" is from a community that differs from their own in terms of race or class or ethnicity. The problem is that the information and beliefs held by people in authority often reinforce that blindness and permit the unquestioned projection of policies and programs on others, even when it is clear that those policies are inappropriate or have harmful consequences. The problem is that vulnerable populations are often subject to exploitation that strategically manipulates the very vulnerability created by express racism, structural racism and unconscious bias, and yet this exploitation finds ready shelter in the very forces it exploits.

The Michigan Civil Rights Commission is undertaking important work. This is the only forum constitutionally charged with examining this tragedy from a perspective of civil right and racial justice. This is Flint's last best chance to have the real truth be told.

Appendix:

Peter J. Hammer, *The Flint Water Crisis:
History, Housing and Spatial-Structural Racism*,
Testimony before Michigan Civil Rights Commission
Hearing on Flint Water Crisis
(July 14, 2016)

The Flint Water Crisis: History, Housing and Spatial-Structural Racism

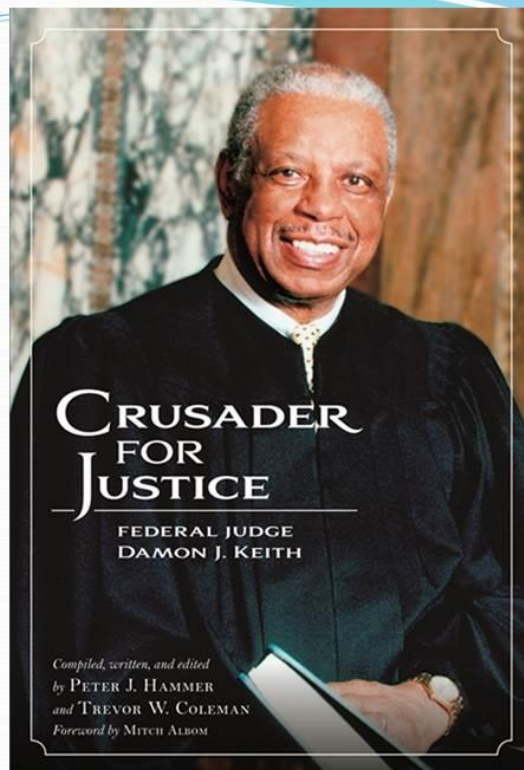
Testimony before Michigan Civil Rights Commission Hearing on Flint Water Crisis

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Central question of our time

- How do systems of racial oppression produce and reproduce themselves over time?
- Claim: This process involves dynamic interaction between “beliefs” and “institutions”
- This transformation has moved from
 - slavery to
 - Jim Crow segregation to
 - the “spatial racism” that defines Flint and Genesee County today

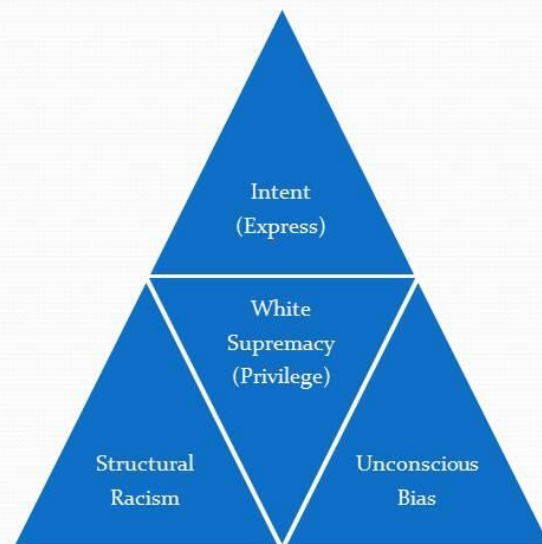
Overview: Spatial Racism in Flint and Genesee County

- 1920's-1950's
 - Racial containment in Floral Park and St. John Street
 - Near-complete segregation of race, wealth and opportunity
- 1960's-1970's
 - Containment breached at the edges
 - Racialized panic and “blockbusting”
 - Escalating white flight
- 1980's-present
 - Reproduction of spatial racism at the county level
 - All of Flint is now Floral Park and St. John Street

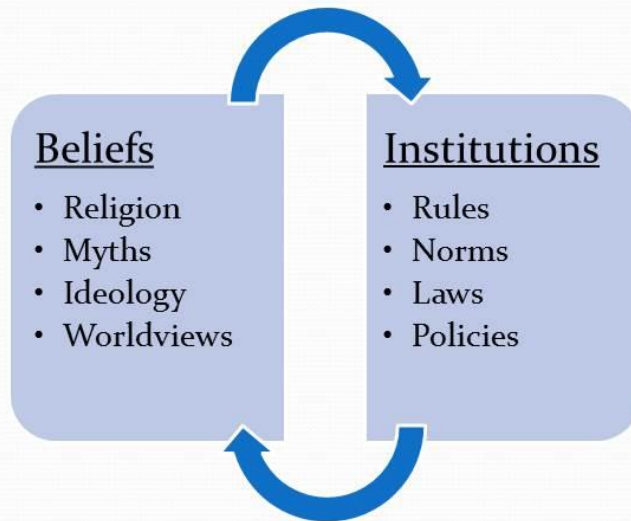
Implications for Flint Water Crisis

- Spatial-Structural Racism is the root cause of Flint's municipal distress mediated by
 - Collapse of property market and property tax revenue
 - Regional division, deindustrialization and the collapse of income tax revenue
- Emergency Management was a fatally misguided response to spatial-structural racism
- Emergency Management and fiscal austerity created the preconditions for the Flint Water Crisis

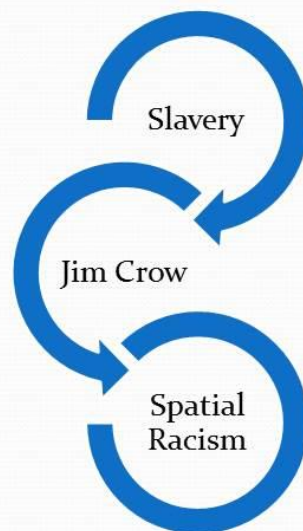
Structuralized Racialization (Verb)



Co-Evolution: Beliefs & Institutions



Historic lineage of “spatial racism”



What is a “Belief System”?

- Belief Systems: Provide (1) order and (2) meaning
- Functions of Belief Systems
 - Existential (explain the mystery of life to itself)
 - Cosmological (explain how the world works)
 - Sociological (provide rules of social conduct)
 - Psychological (guide individuals through life cycle)(Joseph Campbell)
- Belief systems are “internal” manifestations of Institutional Matrix

Belief Systems shape action

- Two common frames (myths?)
 - Time is linear
 - Race is marginal
- What are implications for thought and action?
 - Past injustices can be ignored
 - Problems of racial justice are not important and will take care of themselves
- How does thought and action change when
 - Time is cyclical?
 - Race is central?
- Social reproduction of systems of oppression

The myth of white supremacy

- Existential (defines meaning through racial exclusion)
- Cosmology (necessitates a false science)
- Sociological (repressive social orders of domination and hierarchy – slavery and Jim Crow segregation)
- Psychological (what does it do to a person to be raised in this environment? Implications for oppressed and oppressor?)

Where is white supremacy today?

- Claim: The myth of “white supremacy” has been divided into two parts
 - External: The myth of colorblindness
 - Internal: The denial of “white privilege”
- These beliefs underlie Emergency Management
- *Time is linear & race is marginal*

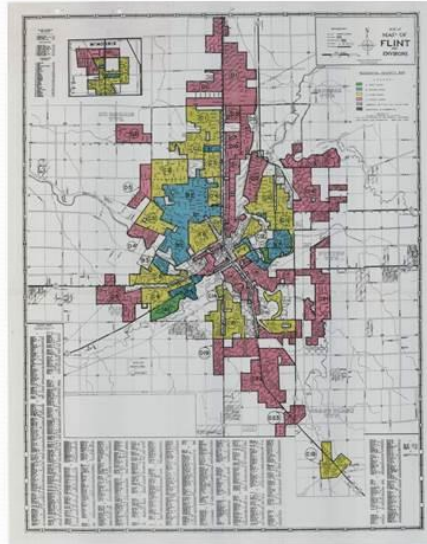
What is an “Institutional Matrix”?

- Formal and informal rules, norms, laws and regulations that control social behavior
 - Rules of the game
 - Players of the game
 - Interaction between the Players and the Rules
- Institutional Matrix is the “external” manifestation of Belief Systems

Institutional Matrix facilitating spatial racism in Flint

- Racially restrictive covenants (1920's-1940's)
- Federal Home Owners Loan Corporation (HOLC) and Federal Housing Authority (FHA) racialized lending practices (redlining, denial of loans to African Americans and African American neighborhoods) (1930's-1960's)
- Racism in Flint Realty Board (racial steering and other practices)
- Physical violence from white homeowners
- Police harassment outside St. John and Floral Park

1930's FHA Redlining map



Andrew R. Highsmith

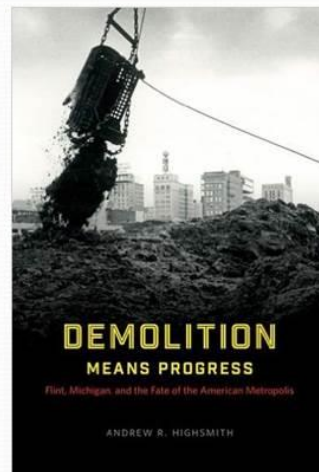
Demolition Means Progress:
Race, Class, and the
Deconstruction of the
American Dream in Flint,
Michigan

by

Andrew R. Highsmith

A dissertation submitted in
partial fulfillment of the
requirements for the degree of
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2009



Spatial Racism: Floral Park and St. John Street neighborhoods

- Floral Park
 - Original home of free persons of color and former slaves
 - Located south of downtown
- St. John Street
 - Near-north side
 - Surrounded on three sides by the Buick factories, the Flint River and a maze of rail lines
 - Largest concentration of poverty and highest proportion of African Americans
 - “St. John is virtually an island in a city . . . there are few ways to get in and out” (Highsmith 54-55)

St. Johns Street



Segregation by the numbers

- 1940 census study: Flint is third most segregated city in the country (Highsmith 37)
- 1940 and 1947: black population doubles, but builders build only 25 privately financed new homes, all in St. John and Floral Park (Highsmith 140)
- 1940 and 1955: African-American population triple to 18,000
- End of 1960's: Black population grows to 35,000, but boundaries of segregated neighborhoods remain essentially fixed – “St. John, Floral Park, and other increasingly overcrowded, segregated, and polluted neighborhoods along Saginaw Street.” (Highsmith 326)

Effects of spatial racism

- Rosa Kimp (Flint Urban League Director) (1955): “We are living . . . in compressed segregated neighborhoods whose boundaries are well defined . . . this segregated living pattern is forced!” (Highsmith 322)
- MCRC Commissioner Burton Levy (1966): “I do not know of even one white community or white section of a city, where an [African American] citizen visiting a realtor chosen at random or a home advertised for sale would get the fair and equitable treatment that is theoretically required by law and this Commission.” (Highsmith 337)

1966 Flint MCRC hearings

- “Flint Urban League’s executive director John W. Mack testified that the city of Flint, with a segregation index of over 94 percent, was the most segregated non-southern city in the United States . . . Mack informed the commission that Flint’s African-American population, despite comprising over 20 percent of the city’s total, remained confined to just twelve adjacent census tracts along the north-south and east-west axes of Saginaw Street and Lapeer Road.” (Highsmith 339)
- The commission called for a municipal open occupancy law, a comprehensive ordinance prohibiting discrimination in housing (Highsmith 349)

1967-68 Open Housing struggle

- July 1967 Rebellions in Detroit and Flint forced Flint’s civic leaders to reevaluate the merits of a fair housing ordinance
- August 1967: Flint City Commission reject the fair housing ordinance (5-4) and triggering the resignation of the City’s first African American Mayor
- October 1967: Flint City Commission approved open occupancy legislation (5-4) (after many compromises)
- February 1968: Ballot referendum to repeal Fair Hosing Ordinance defeated by razor thin margin of thirty votes
- “Rather than uniting the city around a shared commitment to fair housing and civil rights, the open housing referendum highlighted the depth of the city’s racial fissures.” (Highsmith 361)

Flint's solution to Spatial Racism? Demolition!

- 1960 Master Plan: recommended clearance of St. John and Floral Park neighborhoods (Highsmith 329)
 - Floral Park => present day 475 freeway interchange
 - St. John Street => now largely vacant industrial park
- Flint's first segregated public housing program adopted in 1964 to facilitate freeway construction projects to provide subsidized housing for displaced persons
- "By funneling St. John and Floral Park residents to recently integrated areas, the city's relocation program triggered waves of panic selling in formerly all-white neighborhoods." (Highsmith 475)

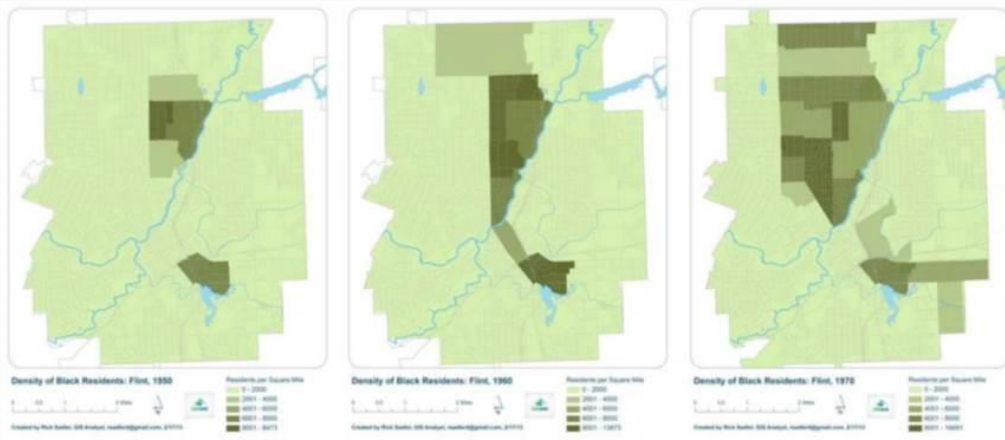
From racialized containment to white flight

- "Emanating from St. John in the North End and Floral Park on the south side, the geographic expansion of the city's two primary black enclaves tended to occur in a rather linear, block-by-block, neighborhood-by-neighborhood progression.
 - On the south side of the city, migrants from Floral Park tended to move along an easterly axis towards Lapeer Park, Evergreen Valley, and points eastward.
 - In the North End, where racial transitions were more rapid and widespread, black population expansion during the 1960s and 1970s followed a northwesterly route towards Flint Park, Civic Park, Manley Village, Forest Park." (Highsmith 488)

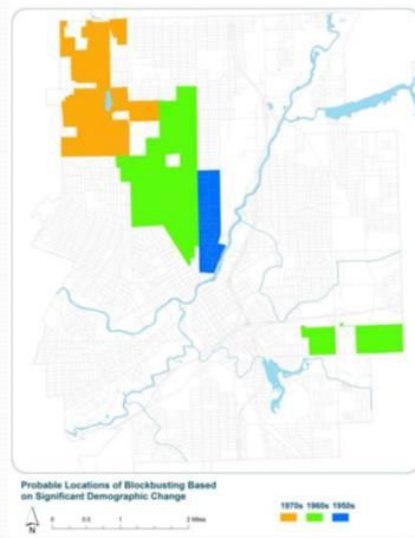
From racialized containment to white flight (cont.)

- “Between 1970 and 1980, Flint’s white population declined sharply, (from 138,065 to 89,470), while the city’s black population increased from (54,237 to 66,164). By the close of the decade, white flight and black population increases had combined to produce a city that was over 40 percent African American” (Highsmith 497)
- “Desperate to escape their changing neighborhoods, many white homeowners moved away before they could sell their houses, leaving behind thousands of empty structures. By 1979, nearly 10 percent of Flint homes were unoccupied.” (Highsmith 498)

Population density by race, 1950-1970 (Rick Sadler)



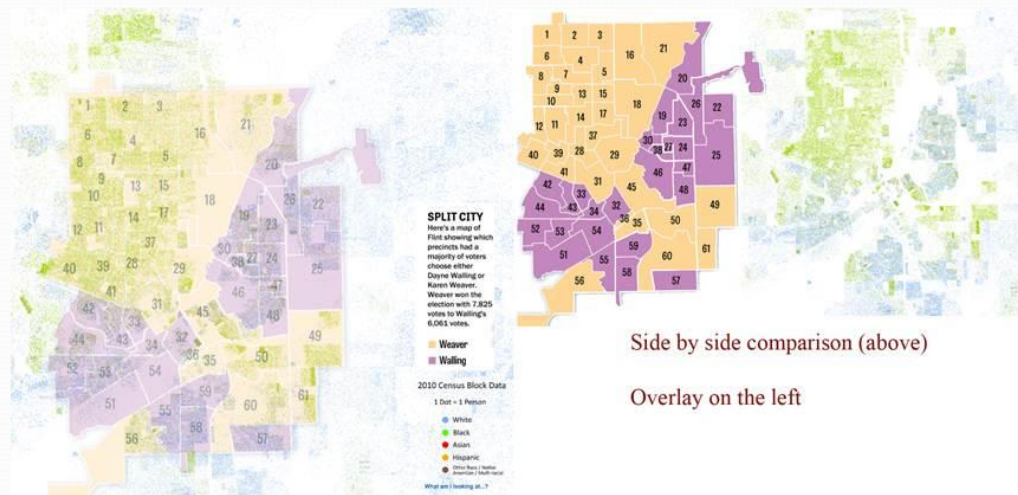
Blockbusting 1950 (blue), 1960 (green) and 1970 (orange) (Sadler)



Percent of vacant properties, 1950-1990 (Rick Sadler)



Race (2010) and Voting (2015) (Gridwood 2015)



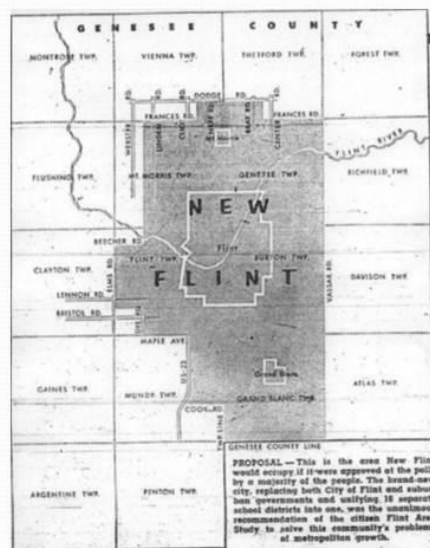
Institutional Matrix facilitating spatial racism in Genesee County

- Strong Michigan Home Rule Laws – “Inelastic boundaries” (David Rusk)
 - Difficulties in city annexation
 - Defensive “incorporation” and Charter Township status
- Milliken v Bradley: Prohibition against inter-district school desegregation remedies
- Exclusive zoning codes and building regulations preventing African Americans and poor whites from moving to the suburbs
- (Institutional mechanisms for the social reproduction of spatial racism)

Divided regionalism

- Every new GM complex opened in Genesee County between 1940 and 1960 was located outside Flint (Highsmith 222)
- 1958: “New Flint” plan sought to unite 26 governmental units within the urbanized area of Genesee County into a single city with a unified school district and a regional planning agency – plan had no suburban support (Highsmith 304-05)
- 1960’s-70’s: “Following the defeat of the New Flint plan, [Flint] . . . moved to annex suburban factories and shopping centers. In response, voters in the out-county launched several successful incorporation drives . . . The incorporation of Flint’s inner-ring suburbs left the city landlocked, surrounded by hostile suburban governments, and far removed from the county’s remaining industrial and commercial establishments.” (Highsmith 530-31)

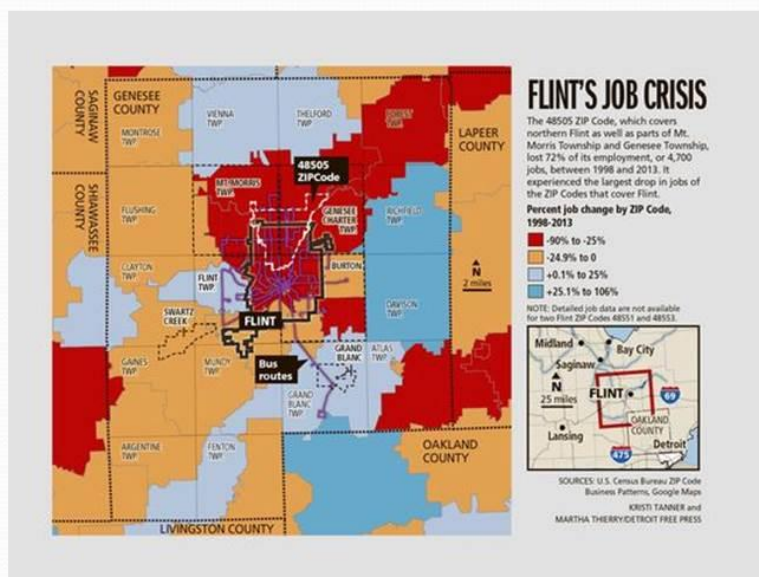
1958 “New Flint Plan”



Segregation by the numbers

- 1930: a quarter of Genesee County's residents live outside Flint
- 1960: 60 percent of the county's residents live outside Flint
- 1980-1992: "proportion of white pupils in the Flint Public Schools dropped sharply from 52.5 to 29.6 percent . . . Flint's public schools experienced a rapid transition from segregation to resegregation." (Highsmith 395)
- 1997: MSU study demonstrated how African Americans were "severely underrepresented in every area of the county except Beecher, Mt. Morris Township, and the city of Flint. At century's end, this study argued, white racism, restrictive zoning and building codes, and real estate discrimination continued to play a major role in limiting the housing options of all African Americans, regardless of their class status." (Highsmith 552)

Job loss 1998-2013 (Henderson and Tanner 2016)



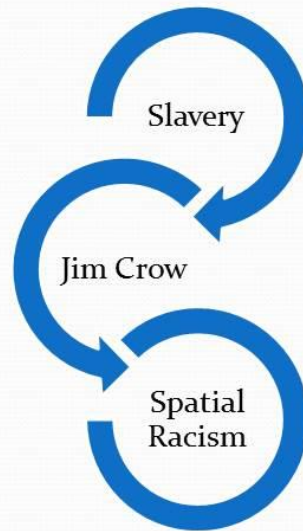
Spatial racism causes municipal distress

- Between FY 2006 and FY 2012, there were dramatic reductions in each of Flint's primary revenue sources
 - Property tax revenue fell 33% (from \$12.5 million to \$8.3 million), a sign of a collapsing real estate market
 - Income tax revenue fell 39% (from \$19.7 million to \$12 million), a sign of a collapsing jobs market.
 - State revenue sharing fell a dramatic 61% (from \$20 million to \$7.9 million), a sign of the state's abandonment of its older urban areas.
- Scorsone & Bateson (2011)

Emergency Management is a racially blind and fiscally flawed response

- Rather than addressing root causes of spatial-structural racism and root causes of municipal distress, the State imposed Emergency Management
 - Emergency Management disproportionately targets African American communities
 - Emergency Management imposes strict policies of fiscal austerity
 - Emergency Management established the preconditions of the Flint Water Crisis
- Peter J. Hammer, The Flint Water Crisis, KWA and Strategic-Structural Racism (work in progress)

Social reproduction of systems of oppression (beliefs & institutions)



Questions?

