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Revealed: the Flint water poisoning charges that never came to light; The former criminal prosecution team investigating the Flint water crisis was building a racketeering case against state officials. Then the team was dismantled.

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A team of prosecutors and investigators leading the investigation into the Flint water crisis from 2016 through 2018 were assembling a racketeering case against the architects of a bond deal that residents and experts say sparked the health disaster, sources familiar with the criminal investigation have told the Guardian.

The case -- which would have come under the Rico (racketeer-influenced and corrupt organizations) laws often used to charge organized crime groups -- was widespread and set to implicate additional state officials who played a role in the poisoning of Flint, according to these sources.

But when the team was suddenly broken up and the investigation restarted with a new set of investigators, the Rico case never materialized.

What happened? Critics point to the Michigan attorney general, Dana Nessel.

Running to replace the term-limited Republican attorney general Bill Schuette in 2018, Nessel, a Democrat, criticized the Flint criminal investigation under Schuette as "politically charged show trials" and campaigned on revamping the investigation. Shortly after Nessel won the attorney general race and took office, her administration fired the top prosecutors and investigators working on the Schuette-launched investigation and restarted the prosecution with a new team.

At that point, the prosecution team assembled by Schuette had been working for nearly three years -- and filed criminal charges against 15 Michigan state and Flint city officials, including four officials charged with financial fraud that prosecutors said triggered the water crisis.

But when Nessel relaunched the investigation, her office dropped charges against top state and city officials, citing flaws in the Schuette-era investigation. In 2021, Nessel's office recharged several of those defendants -- with a new round of indictments that included involuntary manslaughter, misconduct in office, obstruction of justice, extortion and perjury. But gone were the financial fraud charges.

"Nessel let it go," said Eric Mays, chairman of the Flint city council, who closely followed the criminal prosecution both before and after Nessel. "Was it a lack of political or legal will? I cannot say. But it bothers me to this day her team hasn't addressed it."

When reached for comment, a spokesperson for Nessel's office said: "The prosecution team reviewed all the evidence and pursued all viable charges."

When she was an attorney-general hopeful, Nessel's criticism of the Flint investigation worried local activists. Days before the 2018 general election, Melissa Mays -- a Flint water activist and the lead plaintiff in a major civil lawsuit against former Michigan governor Rick Snyder, among others -- reached out to Gretchen Whitmer, the Democratic candidate then running for governor. In an email

obtained by the Guardian, Mays expressed concern over growing speculation that Nessel planned to overhaul the Flint investigation.

Mays, a mother of three whose children were sickened by drinking Flint's contaminated water as was she, was especially worried that, if elected, Nessel would fire Todd Flood, the special prosecutor appointed by Schuette. It was Flood who brought financial fraud charges against the two emergency managers appointed by Snyder to run Flint in place of its elected mayor and city council -- Darnell Earley and Gerald Ambrose -- as well as two Flint city officials.

Whitmer wrote back: "While Schuette is an opportunist he is also a skilled politician whose [sic] begun something that the people of Flint can appreciate some value in," she said. Whitmer also offered Mays her assurances: "I see it though and will talk to [Nessel]."

It is unclear if Whitmer ever did speak with Nessel. (Whitmer did not respond to the Guardian's request for comment before publication.) Shortly after Nessel took office, Fadwa Hammoud, appointed by Nessel as the state's solicitor general, fired Flood.

The disappearance of the financial fraud charges is significant because the bond deal that allowed the city of Flint to switch its water supply had been heavily investigated by the Schuette-era prosecution.

In 2014, Flint needed to borrow nearly \$100m to join the proposed Karegnondi Water Authority (KWA), a new regional system that Flint would join as both a customer and part owner. But at the time, the city was broke and at its borrowing limit.

A state-issued environmental order allowed the city to get around its debt limit and access \$85m in funding, money earmarked for an "environmental calamity" -- in this case, the cleanup of a local lime sludge pit. But the prosecution under Schuette alleged that the money supplied by this order for the cleanup was redirected for other purposes instead allowing Flint to issue tens of millions of dollars in bonds to join the KWA.

The allegedly fraudulent environmental order also mandated that the city of Flint use the Flint River as its water source while the KWA pipeline was under construction. It outlined tens of millions of dollars in upgrades needed for the city's water plant so that the plant could safely treat Flint River water for residents to drink. The problem: updates were nowhere near completed when the city switched its water supply to the Flint River in April 2014. In addition, a failure to add proper corrosion control chemicals into the Flint River water supply resulted in lead leaching off Flint's older pipes and poisoning residents' drinking water.

Speaking before a state government committee in 2018, Andy Arena, former director of the FBI's office in Detroit, said: "We believe there was significant financial fraud that drove this." Arena was the chief Flint water investigator under the Schuette-era investigation but was dismissed after Nessel took office. After his firing, Arena revealed that his team was within six months of filing significant financial charges, which he described as "dropping a heavy rock".

Sources familiar with the Flint criminal investigation told the Guardian that those impending indictments were to be filed as Rico charges. In modern history, Rico charges have been most commonly -- but not always -- used against members of the mafia and organized crime syndicates.

Documents obtained by the Guardian further confirm Flood's investigation was looking into potential bribery and racketeering, crucial cogs of Rico cases. In one petition to subpoena an outside contractor who worked as a KWA project manager, obtained by the Guardian, prosecutors said they had "reasonable cause to believe that corrupt transactions involving certain contractors, the Genesee county drain commissioner's office, other entities and persons of interest" had occurred. The header of the petition specified that prosecutors were investigating bribery, racketeering and false pretenses.

Despite the original investigation's momentum, the racketeering investigation vanished after Nessel cleaned house and relaunched the inquiry.

"My position is that Flood was heading in the right direction," said Mays, who in addition to cooperating with the former prosecution team became a member of the KWA board after the original 2014 bond deal was struck. "I followed the proceedings on the fraudulent bond sale. I know there were Rico charges in the works."

Multiple sources familiar with the investigation noted that if the financial fraud or Rico charges had been filed, the state of Michigan might have faced hundreds of millions in liability over the KWA bond deal - since the attorney general's office under Schuette ultimately signed off on the allegedly fraudulent administrative order that greenlit Flint to borrow tens of millions to join the KWA. (The order was signed by an assistant attorney general in Schuette's office.)

"All too prevalent in this Flint water investigation was a priority on balance sheets and finances rather than health and safety of the citizens of Flint," Schuette said in a statement in 2016. At that time, his office had charged four officials with false pretenses and conspiracy to commit false pretenses for their role in the Flint water crisis.

Asked for comment for this piece, Schuette told the Guardian: "We had a strong team," going on to refer to Arena and Flood. Schuette added: "We had a very aggressive approach in terms of the charges you're talking about. I hope there is still a commitment to the people of Flint, and getting them the full justice they deserve."

After publication of this story, a spokesperson for the current criminal investigation told the Guardian, "When our team assumed responsibility over the Flint water prosecutions, we pursued all viable charges based on an exhaustive review of the entire body of evidence, including the evidence that had not been obtained by the Schuette administration." The spokesperson went on to say that the evidence reviewed led to the indictments of nine individuals, who are currently in court. "Let me be clear," the spokesperson added. "There was no charge that was not evaluated. There was no lead that was not pursued."

Solicitor Hammoud -- in a response received after publication of this story -- denied that Rico charges were "impending" at the time Nessel took office: "There were not."

JPMorgan Chase and Wells Fargo, who along with a third financial firm underwrote the KWA bond deal, could have also faced similar financial penalties for failing to do their due diligence, as outlined in the administrative order that preceded the bond deal, to ensure that necessary upgrades to Flint's water plant were completed, such that the plant could safely treat Flint River water. In 2020, the banks were sued on behalf of 2,600 Flint children for their "conscience shocking behavior" in financing the deal that led to "dire health consequences to the children of Flint".

JPMorgan Chase and Wells Fargo declined to comment.

Why Nessel, who stressed justice for Flint as an attorney general hopeful, and the prosecution team she selected, dropped already-filed financial fraud charges against state and city officials is an open question. For many who have extensively followed and studied the Flint water crisis, Nessel's moves don't make sense.

"I never understood why the attorney general disrupted the initial investigation, dropped the initial charges, or set a different direction in her new charges that chart a course away from the issues of financing the KWA pipeline," Peter Hammer, a Wayne State law professor who wrote an extensive civil rights report on the Flint water crisis, said.

This adds a new tragedy for the people of Flint, who deserve to know the root causes of their suffering

Peter Hammer, Wayne State law professor

"Her decisions mean that some of the most important questions relating to the crisis -- the political and economic forces driving the KWA pipeline -- are not being addressed. This adds a new tragedy for the people of Flint, who deserve to know the root causes of their suffering and to hold any financial wrongdoing accountable," added Hammer.

The Flint water crisis now enters year eight. Both Nessel and Whitmer are standing for re-election. Meanwhile, the population of Flint has fallen to fewer than 95,000 residents, the lowest in more than a century. Not all of the city's lead service lines have been replaced and residents' deteriorating home plumbing, also damaged from the toxic Flint River water, have not been addressed.

Residents still complain of rashes, hair loss and other ailments from the city's drinking water.

The Flint criminal investigation under Nessel did not respond to the Guardian's request for comment before publication.

Jordan Chariton is an investigative reporter and the CEO of Status Coup News, an independent news outlet that covers political corruption, protest movements, working-class exploitation and overlooked communities. Charlie LeDuff is a Pulitzer prize-winning reporter based in Michigan

CAPTION(S):

Credit: Photograph: Carlos Osorio/AP

A Flint water plant tower is seen in Flint, Michigan.

Credit: Photograph: Paul Sancya/AP

Dana Nessel in March 2019.

Credit: Photograph: Rebecca Cook/Reuters

The Flint River.

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