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WADE IN THE WATER

BY OMAR GHANI

In March 31, 2016, a lawsuit was filed against an exorbitant list of defendants, but the most notable on that list were Governor Rick Snyder, the Michigan Department of Environmental Quality, and the State of Michigan.^[i]

[\(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Ghani%20Blog.docx#_edn1\)](#) A handful of plaintiffs brought this action alleging a violation of the Safe Drinking Water Act.^[ii]

[\(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Ghani%20Blog.docx#_edn2\)](#)

This lawsuit is apropos of the Flint Water Crisis.^[iii]

[\(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Ghani%20Blog.docx#_edn3\)](#)

With a financial downturn looming in Michigan, a decision was made by emergency managers appointed by Governor Snyder to change the source of water for Flint, Michigan from Lake Huron to the Flint River.^[iv]

[\(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Ghani%20Blog.docx#_edn4\)](#)

The decision was unabated as local decision-makers were replaced by these emergency managers.^[v]

[\(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Ghani%20Blog.docx#_edn5\)](#)

However, switching the water source for Flint was not the sole cause of the water crisis.^[vi]

[\(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Ghani%20Blog.docx#_edn6\)](#)

When the source of water was switched, the pipes were not treated with an anti-corrosion chemical, which would prevent lead from being released into the water.^[vii]

[\(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Ghani%20Blog.docx#_edn7\)](#)

Furthermore, when the water was found to be corrosive, the pipes were still egregiously untreated despite EPA regulations requiring for the treatment of a corrosive water supply.^[viii]

[\(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Ghani%20Blog.docx#_edn8\)](#)

While the facts are highly critical to the Flint Water Crisis, the lingering question of causality pours into the consciousness. bell hooks wrote, in *Representing Whiteness in the Black Imagination*, “[o]ne mark of oppression was that black folks were compelled to assume the mantle of invisibility, to erase all traces of subjectivity during slavery and the long years of racial apartheid, so that they could be better – less threatening – servants.”^[ix]

[\(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Ghani%20Blog.docx#_edn9\)](#)

In some spheres, black people have been able to gaze at their white counterparts.^[x]

[\(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Ghani%20Blog.docx#_edn10\)](#)

This gaze does not mark a new era for the empowerment of black people, but rather it is a transition into a new form of racism in America.^[xi]

(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Ghani%20Blog.docx#_edn11)
However, there are spaces in America where black people are still invisible, as their gazes remain subverted by white blindness.

In addition to the class action lawsuit previously mentioned, another relevant class action, also arising from a water-related crisis, that alleged housing discrimination was settled in 2011.[xii]
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Ghani%20Blog.docx#_edn12)
The Greater New Orleans Fair Housing Action Center, along with other plaintiffs, brought a claim against the U.S. Department of Housing and Urban Development for a discriminatory calculation method that awarded grants for a home rebuilding program implemented after the devastation of Hurricane Katrina.[xiii]
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Ghani%20Blog.docx#_edn13)



While one may consider a \$62 million settlement to be a triumph, a seminal question regarding these class actions pivots around quantity. How many black people have to suffer before they are visible to the visually impaired? Simultaneously, these class actions expose the travail and agony of black people in America, but they also reflect the systematic cloak that has been thrown on black people.

The Flint Water Crisis is not an isolated occurrence. Thirty public schools in Newark, New Jersey had unacceptable levels of lead in the water according to EPA standards, and children there tested with higher levels of lead in their blood in comparison with lead levels in Flint, Michigan.[xiv]
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Ghani%20Blog.docx#_edn14)
The water crisis in New Jersey has existed for three years but public officials neglected to report the crisis because neglecting to report such is not a violation of the law.[xv]
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Ghani%20Blog.docx#_edn15)
The primary victims of this water crisis are black.[xvi]
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Ghani%20Blog.docx#_edn16)

A similar crisis exists in Jackson, Mississippi as well.[xvii]
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Ghani%20Blog.docx#_edn17) Therefore, if racism pervades water, it unquestionably, invisibly pervades other spaces of society. bell hooks writes, "[i]n contemporary society, white and black people alike believe that racism no longer exists. This erasure, however mythic, diffuses the representation of whiteness as terror in the black imagination. It allows for assimilation and forgetfulness." [xviii]
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Ghani%20Blog.docx#_edn18) Until black people are no longer made invisible, they will be forced to wade in the water that is killing them.

- [i]
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Ghani%20Blog.docx#_ednref1)
Class Action Complaint, at 4, Gilcreast, et al v. Lockwood, No. 2:16-cv-11173-MAG-APP (E.D. Mich. Mar. 31, 2016) [hereinafter Class Action Complaint].
- [ii]
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Ghani%20Blog.docx#_ednref2)
Id.
- [iii]
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Ghani%20Blog.docx#_ednref3)
See Class Action Complaint, *supra* note i, at 9.
- [iv]
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Ghani%20Blog.docx#_ednref4)
Gregory Shafer, *Confronting WHITENESS and the FLINT WATER CRISIS*, 76 *The Humanist* 22, 23 (2016).
- [v]
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Ghani%20Blog.docx#_ednref5)
Carla Campbell et al, *A Case Study of Environmental Injustice: The Failure in Flint*, 13 *Int'l Journal of Env't Research and Pub. Health* 1, 4 (2016).
- [vi]
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Ghani%20Blog.docx#_ednref6)
Id., at 2.
- [vii]
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Ghani%20Blog.docx#_ednref7)
Id.
- [viii]
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Ghani%20Blog.docx#_ednref8)
Id.
- [ix]
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Ghani%20Blog.docx#_ednref9)
bell hooks, *Representing Whiteness in the Black Imagination*, in *Displacing Whiteness* 165, 168 (Ruth Frankenberg, ed., 1997).
- [x]
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Ghani%20Blog.docx#_ednref10)
See generally *id.*, at 168 (discussing the white supremacist assertion of the right to control the black gaze).
- [xi]
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Ghani%20Blog.docx#_ednref11)
See generally Eduardo Bonilla-Silva, *Racism Without Racists* 3 (Roman & Littlefield Publishers, Inc. ed. 2003).
- [xii]
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Ghani%20Blog.docx#_ednref12)
Erin Fuchs, *HUD Settles Bias Suit Over Katrina Housing for \$62M*, *Law 360* (Jul. 6, 2011, 7:30 PM), <http://www.law360.com/articles/256187/hud-settles-bias-suit-over-katrina-housing-for-62m>.
- [xiii]
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Ghani%20Blog.docx#_ednref13)
Id.
- [xiv]
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Ghani%20Blog.docx#_ednref14)
Ivory Phillips, *Newark's Water Problem, Like Flint's and Jackson's, Reflects Deeper Problems in America*, *Jackson Advocate*, Mar. 24, 2016, at 4A.

[xv]
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Ghani%20Blog.docx#_ednref15)
Id.

[xvi]
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Ghani%20Blog.docx#_ednref16)
Id.

[xvii]
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Ghani%20Blog.docx#_ednref17)
Id.

[xviii]
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Ghani%20Blog.docx#_ednref18)
bell hooks, *supra* note ix, at 176.

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