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Keeping the lid on a hospital tragedy

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James Gill

If the public really has no right to know how and why 34 people died at Memorial Hospital after Katrina, then we are left to place all our trust in politicians and corporate executives.

The prospect must give any American the willies.

The issue before the state Supreme Court is whether the fruits of an investigation by then-Attorney General Charlie Foti should be available to the public. The appeal court, overturning a district judge, said no.

Arguing for openness before the justices Monday was Lori Mince, representing The Times-Picayune and CNN.

Her views are naturally not shared by Tenet, which owned the hospital, and Lifecare, which ran and leased part of it. Hospital employees join the hush-up cause with the curious assertion that they expected confidentiality when volunteering information to sleuths laying the groundwork for a trial.

Dr. Anna Pou wants to keep the lid on too, although the harm in her case may mostly have been done already. Foti had her arrested and booked with murder along with two nurses, who were granted immunity in exchange for their testimony after then-Orleans Parish DA Eddie Jordan took over the case. An Orleans Parish grand jury returned a no-true bill, but Pou still faces three civil suits.

After the grand jury refused to indict, Foti gave the media abstracts from medical reports concluding that patients at Memorial had been deliberately dispatched with a drug cocktail.

But he failed to mention that he had brought in Dr. Steve Karsh, a forensic pathologist and toxicologist of international renown, who concluded otherwise. Foti instructed Karsh not to file a report.

Stung by the grand jury decision, Foti wants to release his investigative reports which, he suggested, would vindicate his pursuit of Pou. The trial court gave the go-ahead, but ordered a delay pending appeal.

Meanwhile, Foti's handling of the investigation became a major issue in his re-election campaign. Voters seemed inclined to the view that medics who rode out the storm to look after the sick and elderly denizens of Memorial were more or less saints.

Buddy Caldwell duly ousted Foti, and now emerges as a staunch supporter of keeping the public in

the dark. The investigation he lambasted in the campaign may yet produce criminal charges, he told the Supreme Court justices Monday, and the cause of justice must trump public curiosity.

So it is not for us to know what happened at Memorial so long as the attorney general says the case is active. That could be a very long time, since, while there is a deadline for filing charges on any lesser crimes that might emerge, there is no prescription on murder.

State law says that "prosecutive, investigative or law enforcement agencies" are not required to release "records pertaining to criminal litigation or any criminal litigation which can be reasonably anticipated."

Yet there is no sign that any charges are currently contemplated. Caldwell seems to assume the public may be denied access to information just because he figures something might turn up sometime.

Certainly a murder charge seems out of the question. It would have to come from an Orleans Parish grand jury, and even Caldwell concedes that whether Ralph Capitelli or Leon Cannizzaro turns out to be our next district attorney, Pou is in the clear. If there was no evidence against Foti's principal quarry, chances of a murder rap on some other medic who worked at Memorial after the storm must be very slight.

The biggest concern among advocates of secrecy may be potential civil suits.

If the justices do overrule the Court of Appeal, Pou's attorney, Rick Simmons, wants a more thorough review by the district court of what documents are subject to the public records law.

Simmons argues that the district court conducted its review "in a vacuum" because of "abdication by the former Attorney General of his responsibilities." Foti made no attempt to differentiate between grand jury documents, which may be off limits, and those that he thought belonged in the public domain, according to Simmons.

Mince has a more positive take on Foti's work, saying every document in the file has been indexed and only eight are covered by Grand Jury secrecy.

Sorting out the records may yet turn out to be a tedious job, but we should still be entitled to see as much as the law allows. Maybe there are is some incentiary stuff in there. You know what they say about blind pigs.

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James Gill is a staff writer. He can be reached at 504.826.3318 or at jgill@timespicayune.com.