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Arguments presented on Memorial records

Judge to consider releasing documents

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BATON ROUGE -- Attorneys representing disparate interests began closing arguments this morning before the state judge who will determine whether any more records will be disclosed from the investigation of patient deaths at Memorial Medical Center after Hurricane Katrina.

The dispute is the latest chapter in one of the most widely debated events of post-flood New Orleans.

The Times-Picayune and CNN are seeking release of Attorney General Charles Foti's file that he assembled before turning the matter over to Orleans Parish District Attorney Eddie Jordan. Attorneys for Memorial personnel want the records kept under seal.

Dr. Anna Pou and the two nurses Foti accused of killing Memorial patients with lethal doses of morphine and Versed -- charges were dropped for all three during the grand jury process -- want the records to remain sealed. So do the corporate interests tied to the hospital in 2005, though Tenet Health Corp. attorneys have tailored their arguments more specifically to the medical records that were turned over under subpoenas.

The family of at least one of the deceased patients wants the entire file released, as it pursues litigation in civil court. Deputies for Foti say they are trying to comply with public records laws.

Myriad interests involved

As a legal matter, the row pits myriad interests arguing perhaps without a parallel precedent, leaving 19th Judicial District Judge Donald Johnson to decide how to apply potentially conflicting statutes and constitutional rights concerning public documents, grand jury secrecy and individual privacy.

The dispute also carries the obvious political subtext of Foti's re-election attempt.

Foti continues to defend his pursuit of criminal charges against Pou and the nurses. And he has angrily accused Jordan's office of mangling the case by granting the nurses immunity to force their grand jury testimony and then failing to secure an indictment of Pou. When the grand jury refused to indict Pou, the attorney general took the unusual step of releasing reports from medical experts that he said supported his contention that homicides occurred at the hospital.

Attorney general candidates James "Buddy" Caldwell, a Democratic district attorney from Tallulah, and Royal Alexander, a Republican lawyer from Shreveport, have blasted Foti and characterized

as heroes Pou and other medical professionals who remained at Memorial until its evacuation.

The records at issue could broadly be divided into three categories: interviews and investigative materials gathered before the grand jury was impaneled in February 2006; materials compiled after that date, including transcripts of actual grand jury testimony; and medical records from Memorial. Louisiana law states that "persons present at a grand jury meeting and all persons having confidential access to information concerning grand jury proceedings, shall keep secret the testimony of witnesses and all other matters occurring at, or directly connected with, a meeting of the grand jury."

Lori Mince, who represents the media in the case, argued that the secrecy laws should not apply to otherwise public documents and records, particularly those generated before a grand jury was impaneled.

Arguing a more philosophical point, Mince told Johnson that the most important right at issue is public access to the operations of government. "A government whose actions are secret benefits no one," Mince said. "It injures the very citizens intended to be served. It breeds mistrust."

That, she said, trumps any privacy right that medical professionals might claim. And she cited testimony that none of the Memorial employees interviewed by investigators asked for or were promised confidentiality.

As for medical privacy laws, Mince said the patients who could assert such a privilege about their records "are no longer here."

'Paparazzi' mocked

Eddie Castain, who represents Memorial employees, mocked Mince's legal interpretations, and he repeatedly referred to the media as "paparazzi." He told Johnson that the right to individual privacy is every bit the linchpin of civil society as is open government. "CNN, The Times-Picayune, they don't care about the names in that file -- except to publish them," Castain said. "All CNN and The Times-Picayune care about is selling newspapers and their commercials."

Castain also repeated his side's contention that the date the grand jury was impaneled does not matter. Because Louisiana law requires that murder cases go before grand juries and that the task be carried out by a district attorney -- not the attorney general -- he contends Foti knew the investigation was a grand jury matter from the start, meaning the entire file is "directly connected with" the sealed proceedings.

Rick Simmons, Pou's attorney, added the argument that regardless of Foti's and Jordan's pledges that the case is over, Louisiana law imposes no statute of limitations on murder charges, meaning a homicide inquiry is not over without a trial jury verdict.

Johnson said he plans to rule "as soon as possible." He has acknowledged that his decision likely will be appealed to the 1st Circuit Court of Appeal and, as such, told attorneys that an order to release documents will be delayed. The expected appeals would almost certainly leave the dispute unresolved on Oct. 20, when Alexander, Caldwell and Foti meet in a statewide primary.

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