

Natural Disaster: Unnatural Deaths: the Killings on the Life Care Floors at Tenet's Memorial Medical Center after Hurricane Katrina

Dr. Charles I. Lugosi*

On July 18, 2006, Louisiana Attorney General Charles Foti announced the arrests of three white females, Dr. Anna Pou and Nurses Lori Budo and Cheri Landry, who are accused of murdering four black patients on the Life Care ward on the seventh floor of Tenet's Memorial Medical Center in New Orleans (herein called "Memorial"), by injecting them with lethal doses of morphine and midazolam (the generic form of Versed).¹ The victims were Emmett Everett Sr. (age 61); Hollis Alford (age 66); Ireatha

* Dr. Charles I. Lugosi, LL.B. (Western Ontario); LL.M., M.B.E., S.J.D. (Pennsylvania); Visiting Associate Professor of Law, Michigan State University College of Law. I gratefully acknowledge the provision of a summer research grant paid by Michigan State University and authorized by Dean Terence Blackburn that made possible the production of this article, which was first presented at the South East Association of Law Schools Conference at The Breakers, West Palm Beach Florida on July 20, 2006, where I participated on a panel discussing law, race and poverty. This article is dedicated to my 80 year old father Imre who lives in Brantford, Ontario, Canada. I acknowledge with thanks the help of my students Sandesh Viswanath and Candace Carey, who freed up valuable time for me to complete this article for publication.

¹ On Tuesday July 18, 2006, Attorney General Foti released a detailed affidavit that was filed in support of the arrests of Pou, Budo and Landry. See *Affidavit*, State of Louisiana v. Pou, Budo and Landry, available at <http://news.findlaw.com/hdocs/docs/katrina/lapoui706wrnt.html>. (last visited December 4, 2006). See also Press Releases, Attorney General Charles C. Foti, Jr. Announces Arrests in Memorial Hospital Death Investigation, available at <http://www.ag.state.la.us/ViewPressRel.aspx?RelID=473>. (last visited July 19, 2006). Photographs of the three defendants published by USA Today on Wed. July 19, 2006 depict Pou, Budo and Landry as three middle-aged white women. *Id.* See also Anne Rochell Konigsmark and Kevin Johnson, 3 *Named in Storm Deaths: Charges: La doctor, nurses killed patients*, USA TODAY, July 19, 2006, at 1. The four victims described in the Affidavit were all African-American. *Id.* This was confirmed in a conversation by the author on Oct. 10, 2006 with forensic pathologist Dr. Cyril H. Wecht, attorney and medical legal consultant, who personally reviewed the results of the autopsies of E.E., H.A., I.W. and R.S. originally performed by coroner Dr. Frank Minyard. Interview by Charles Lugosi with Dr. Cyril H. Wecht, Esquire, (Oct. 10, 2006) [hereinafter *Wecht*

Watson (age 89); and Rose Savoie (age 91).²

All of these victims were expected to live, as none were in danger of imminent death from natural causes.³ Rose was ill from bronchitis, but otherwise in good health.⁴ Her daughter, Jennie Crabtree said, “She didn’t act like a 90 year-old; she was all there. She knew where she was. She knew who she was.”⁵ Emmett “could have lived for years. All he wanted was to live to be with his grandkids.”⁶ Ireatha was ill from gangrene in both legs and dementia, but she was in stable condition when last visited by her daughter, two days before Katrina hit.⁷ She was scheduled to have her legs amputated on August 29, the day the hurricane arrived.⁸

None of the victims were in pain, and thus did not require any medication like morphine or Versed.⁹ There were no orders on the victims’ medical charts for the prescription of either morphine or Versed.¹⁰ These drugs had not been given previously to these patients as part of their routine care.¹¹ None of the victims knew their lives were about to end.

No consent was sought or given for these lethal drugs.¹² It seems as though the victims were lied to. Pou told Everett she was going to give him something for his dizziness, even though he was conscious and alert.¹³ Rose complained, “That burns,”

Interview]. Notes of the conversation are on file with the author. *Id.*

² The patients were identified by their initials in the Affidavit, but were identified in news reports by their names. See Gwen Filosa, Accused Doctor’s Calls Get Scrutiny: She Sought Legal help From Tenet Officials, *available at* <http://www.nola.com/printer/printer.ssf?/base/news-6/-115346151975740.xml>. (last visited July 21, 2006).

³ Wecht Interview, *supra*, note 1.

⁴ See Michelle Roberts, Doctor in Katrina Case Reassigned, *available at* <http://www.signon-sandiego.com/news/nation/katrina/20060720-1330-katrina-hospitaldeaths.html>. (last visited July 20, 2006).

⁵ *Id.*

⁶ Interview by Charles Lugosi with Charles C. Foti, Jr., Attorney General, State of Louisiana (Jul. 20, 2006).

⁷ Roberts, *supra* note 4.

⁸ See Michelle Roberts, La. Kin Suspicious About Hospital Deaths, Start-Telegram.com, *available at* <http://www.dfw.com/mld/dfw/news/nation/15068035.htm>. (last visited July 19, 2006) [hereinafter *Kin Suspicious About Hospital Deaths*].

⁹ Wecht Interview, *supra*, note 1.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* No documentation appeared on the patients’ charts to indicate consent. *Id.*

¹³ Affidavit, *supra* note 1, at 2.

when injected with the deadly drugs.¹⁴ None of these victims were under the care of Pou or nurses Budo and Landry.¹⁵ One witness observed that Pou did not appear familiar with the condition of the Life Care patients.¹⁶ Pou was heard to say “a decision was made to administer lethal doses” to patients on the seventh floor of the hospital.¹⁷ She did not identify the decision maker, but did say the Life Care staff was not involved at all.¹⁸ Dr. Pou further stated “there is no telling how far this would go,” and “I want y’all to know I take full responsibility and ya’ll did a great job taking care of the patients.”¹⁹

The killings occurred on September 1, 2005, two days after hurricane Katrina left the hospital with no electricity and water from broken levees flooded the surrounding streets.²⁰ There was no air conditioning and windows were broken by nurses to seek relief from temperatures that peaked at 110 degrees.²¹ With the heat came the stench of human waste. There was no water. The telephones did not work. Food was limited. At night it was pitch black. Nurses fanned patients. Ventilators did not work. Patients were at risk of dying from dehydration and there was confusion over evacuation plans for those who were difficult to move, like Everett who was paralyzed and weighed 380 lbs.²² A rumor spread that no organized rescue was coming, and the medical team became demoralized.²³

Similarly, very difficult conditions were faced by all the hospitals in New Orleans, yet at one, the Memorial Hospital, the bodies of 45 patients were discovered in its morgue on September 11, 2005 by the Disaster Mortuary Operations Team.²⁴ Twenty five of the deaths appeared to be suspicious, not caused by natural causes. No other hospital in the New Orleans area had apparently authorized the unnatural killings of its patients as a response to a natural disaster.²⁵

¹⁴ *Id.*

¹⁵ See Adam Nossiter, *Patient Deaths In New Orleans Bring Arrests*, N.Y. TIMES, July 19, 2006, at B1.

¹⁶ Affidavit, *supra* note 1, at 4.

¹⁷ *Id.* at 3.

¹⁸ *Id.*

¹⁹ Affidavit, *supra* note 1, at 4.

²⁰ See David Rohde, *Vulnerable, and Doomed in the Storm*, N.Y. TIMES, Sept. 19, 2005, at A1.

²¹ *Id.*

²² Affidavit, *supra* note 1 at 4.

²³ *60 Minutes: Katrina Doc Denies Mercy Killings* (CBS television broadcast Sept. 24, 2006), available at <http://www.cbsnews.com/stories/2006/09/21/60minutes/printable2030603.shtml>. (last visited December 4, 2006).

²⁴ Sewell C. Rohde, *Hurricane and Floods Overwhelmed Hospitals*, N.Y. TIMES, Sept. 14, 2005, at E2.

²⁵ See Anne R. Konigsmark, *La. Affidavit describes alleged ‘mercy killings’*, USA TODAY, July 19, 2006, at A.3.

The victims did have one thing in common: they had all chosen to be designated as Do Not Resuscitate (DNR) patients.²⁶ This meant that in case of catastrophic change in health, such as a heart attack or stroke, there was a standing order to medical staff to abstain from heroic measures, like a Code Blue, which is a special team response that is designed to save life in exigent circumstances.²⁷ No one had warned these victims that in case of a natural disaster, hospital administrators would interpret DNR to mean “Do Not Rescue.”²⁸ Angela McManus, a black woman, worried that her mother Wilda would not be evacuated.²⁹ Wilda was critically ill on the seventh floor.³⁰ Angela overheard nurses openly discussing who would be evacuated and who would not.³¹ Apparently a decision was made not to evacuate the DNR patients.³²

Rather than participate in this plan, Dr. Bryant King, a contract physician employed by Memorial, chose to abandon his patients rather than to do them harm.³³ Just before the killings, an unnamed physician told King that that a hospital administrator had decided that some patients would be “put out of their misery.”³⁴ The physician then told King that another physician volunteered that “she’d be willing to do it.” After this conversation, King noticed a marked change: “there were no more fanners, there were no more nurses checking blood sugars or blood pressures . . . It didn’t make sense that we were stopping what we had been doing.”³⁵ King observed Pou with a handful of syringes talking with patients, saying, “I’m going to give you something to make you feel better.”³⁶ This was a strange departure from protocol because physicians didn’t give medications unless there was a critical need for the

²⁶ Carrie Kahn, *New Orleans Hospital Staff Discussed Mercy Killings*, NPR, February 16, 2006, available at <http://www.npr.org/templates/story/story.php?storyId=5219917>. (last visited December 4, 2006).

²⁷ See Melissa Stöppler, MD, “Code Blue,” “Code Black”: What Does “Code” Mean? available at <http://www.webmd.com/content/article/118/112997.htm>. (last visited December 4, 2006). (stating that Code Blue is among several codes in hospitals designed to begin immediate resuscitative efforts in response to cardiopulmonary arrest)

²⁸ *Id.* See also, Kahn, *supra* note 26

²⁹ Kahn, *supra* note 26.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *CNN Newsnight: Accusations of Mercy Killing in New Orleans* (CNN television broadcast Oct. 12, 2005) (transcript, available at <http://transcripts.cnn.com/TRANSCRIPTS/0510/12/asb.02.html>).

³⁴ See Drew Griffin & Kathleen Johnson, *Katrina investigation focuses on more than one person* (Dec. 22, 2005), available at <http://www.cnn.com/2005/US/12/21/katrina.hospital/index.html>. (last visited December 4, 2006).

³⁵ *Id.*

³⁶ *Id.*

physician to give the medication.³⁷ King left the hospital and passed on this information to the media and to law enforcement officials.³⁸ Pou herself evacuated the hospital and gave a statement to a Baton Rouge television station: “There were some patients there who were critically ill who, regardless of the storm, had the orders of “do not resuscitate. . . We all did everything in our power to give the best treatment that we could to the patients in the hospital to make them comfortable.”³⁹

The autopsy results showed that none of these four victims were terminally ill.⁴⁰ The forensic pathologist concluded that all four had lethal doses of morphine in their bodies that far exceeded any dose consistent with “comfort care” for the dying.⁴¹ While all four victims also had midazolam in their bodies, two of them had a concentration of this drug that exceeded normal therapeutic doses.⁴²

The same day the bodies were recovered, the British newspaper, the Daily Mail ran a sensational story about its interview with an unidentified New Orleans doctor who admitted to killing patients.⁴³ The doctor (presumably Pou) reportedly stated:

I didn't know if I was doing the right thing. But I did not have time. I had to make snap decisions, under the most appalling circumstances, and I did what I thought was right. . . I injected morphine into those patients who were dying and in agony. If the first dose was not enough, I gave a double dose. And at night I prayed to God to have mercy on my soul. . . This was not murder, this was compassion. They would have been dead within hours, if not days. We did not put people down. What we did was give comfort to the end.⁴⁴

When interviewed by Morley Safer on 60 Minutes on September 24, 2006, Dr. Pou denied that she was guilty of murder: “No, I did not murder those patients. . . I do not believe in euthanasia. I don't think it's anyone's decision to make when a patient dies. However, what I do believe is comfort care. And that means that we ensure that they do not suffer pain.”⁴⁵

³⁷ *Id.*

³⁸ Griffin & Johnson, *supra* note 34.

³⁹ *Id.* See also, CNN NEWSNIGHT, *supra* note 33.

⁴⁰ Griffin, *supra* note 34.

⁴¹ *Affidavit*, *supra* note 1, at 7.

⁴² *Id.*

⁴³ See Caroline Graham, *We Had to Kill Our Patients*, DAILY MAIL (London), Nov. 9, 2005, at 13.

⁴⁴ *Id.*

⁴⁵ 60 Minutes, *supra* note 23.

The granddaughter of one of the victims, Rose Savoie writes: “We were told she [Rose] would be taken care of and safer with the care she was under. She was still very much alive and had her mind. She was probably weak, so were all who were fighting for their lives, but MURDER was not the answer.”⁴⁶

Is Dr. Pou “a hero,” as viewed by Dr. Daniel Nuss, who hired Dr. Pou at the Louisiana State University School of Medicine and is raising money to pay for her legal defense? Dr. Floyd Burras, President of the Louisiana Medical Society defended Dr. Pou, claiming she worked under battlefield conditions, that she put her patients first, and kept with the highest principles of the medical society.⁴⁷ The American Medical Association called Dr. Pou’s actions heroic and opposed any attempt to characterize her medical judgments as criminal.⁴⁸

Or is she a murderer, “who took the law into her own hands,” as portrayed by Attorney General Charles Foti, who authorized the arrests of Pou, Budo and Landry?⁴⁹ Foti stated: “This is not euthanasia. This is homicide. We’re talking about people that pretended that maybe they were God.”⁵⁰ Lou Ann Savoie Jacob, Rose’s daughter, agreed: “I consider the nurses murderers.”⁵¹

The events at Memorial are disturbing, in that they expose strong support from the local medical establishment in favor of what a criminal law would call murder and what a physician might call involuntary euthanasia. In Louisiana, voluntary euthanasia is illegal, which means that even when a patient asks for death and consents to a lethal injection it is a crime for a physician or a nurse to carry out that request.⁵² This kind of mercy killing is generally tolerated, for there is an unspoken conspiracy of silence among medical professionals who turn a blind eye to this practice.⁵³ However, a remarkable

⁴⁶ Web Commentary on Possible Euthanasia in Katrina Aftermath, *available at* <http://www.pursuingholiness.com/category/personal/hurricane-katrina/euthanasia/>. (last visited August 3, 2006).

⁴⁷ See Kevin O’Reilly, *Doctor, Nurses Arrested in Katrina Deaths*, AM. MED. NEWS, Aug. 7, 2006, at 7.

⁴⁸ Meg Farris, *Top Medical Leaders Come to Accused Doctor’s Defense*, *available at* <http://www.wvlv.com/local/stories/wvl092706jbdactor.21fc128f.html>. (last visited September 28, 2006); Kevin O’Reilly, *Doctor, Nurses Arrested in Katrina Deaths*, AM. MED. NEWS, Aug. 7, 2006, at 7.

⁴⁹ Konigsmark, *supra* note 1.

⁵⁰ *Id.*

⁵¹ Patient’s daughter: “They were murderers”, CNN.com, July 19, 2006

⁵² See Bruce Nolan, *Was An Ethical Line Crossed in the Katrina Case?*, SEATTLE TIMES, Jul. 22, 2006, at A2.

⁵³ *Id.*

shift in patient management was exposed at Memorial, for the actions of Pou and her team in engaging in involuntary euthanasia modeled a new way to manage patients when natural disaster strikes – the non-consensual deceptive killing of patients that are too difficult to move because of logistics or lack of resources. In these circumstances, the term DNR (Do Not Resuscitate) took on a new meaning – Do Not Rescue.

This shift in patient management mirrored a shift in philosophy. Previously euthanasia was a co-operative decision with the patient and often a desired outcome when a life was felt to be not worth living. A life not worth living is in turn the outcome of an assessment of one's quality of life. If a patient is suffering, in pain, and has no hope of recovering from an illness or injury, why prolong such a life? What matters more than life as existence is the ability to enjoy life, for a life of merely existing was no life worth living.

Others reject the quality of life as the primary value.⁵⁴ For them, the prevailing value is the sanctity of life.⁵⁵ In these cases, suffering is tolerated with comfort care to prolong life and ease pain, for the fact of being alive until natural death is preferred over an unnatural death that cuts short a life that clings on to hope for a miracle.⁵⁶

A third approach is illustrated by the events at Memorial, that of sliding down a slippery slope from euthanasia to involuntary euthanasia. This marks a major shift in American medical practice by expanding the frontier from killing consenting dying patients whose lives are deemed to be not worth living to killing non-consenting patients whose unhealthy lives are deemed to be not worth saving. This development exceeds even what Hitler authorized, for he signed an order permitting mercy killings of patients only when these patients were designated as incurably ill.⁵⁷

In this new Memorial model, patient autonomy to control and choose one's medical treatment plan, yields to the physician's unilateral power to arbitrarily decide who lives and who dies, without regard to patient wishes or desires. This is a dangerous path from which intersects deeply with criminal law, for the intentional killing of a non-consenting human being fits most, if not all definitions of murder. This is a crime of

⁵⁴ See WESLEY J. SMITH, *CULTURE OF DEATH: THE ASSAULT ON MEDICAL ETHICS IN AMERICA*, 17 (Encounter Books, Austl., 2000).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ See Leo Alexander, *Medical Science Under Dictatorship*, N. ENG. J. MED., 1949, 241:39-47. (1949). This article has also been reprinted at *DEATH, DYING AND EUTHANASIA*, 571-592 (D. Horan and D. Mall, eds., Univ. Publications of Am., 1980).

homicide, unless the victim, although biologically still a human being, is stripped by operation of law of legal personhood by virtue of one's physical and/or mental condition or by the sheer circumstance of being unlucky to be dependent upon others in a battlefield condition.⁵⁸ Once deprived of legal personhood, a human being's constitutional right to life and security of the person is gone, thereby exposing the patient to death squads of physicians and nurses that may kill with legal immunity in the name of humanity and compassionate care.⁵⁹ "Involuntary euthanasia" in these circumstances is simply dressed up language that serves as a polite code to justify and make palatable the murder of the vulnerable and trusting patient.⁶⁰

At Memorial, one wonders if it is mere coincidence that the victims were all blacks and that those accused of murder are of the white race. Without evidence, it is wrong to speculate that there was any element of racism factoring into the decision to kill Emmett, Hollis, Ireatha, and Rose. One also wonders if the economic status of these patients factored into the killing decision. Could money have saved these people by facilitating a rescue or by restoring necessities to the hospital? Legal scholars often study the vulnerability of people who, by their race and poverty, often become the "canary in the coal mine," whose lives are sacrificed as an advance warning system of things to come.⁶¹ If there is any good to come out for the deaths of these patients, it may come in the form of a prediction that unless involuntary euthanasia is permanently exorcised, it will become embedded in crisis management that may lead to murders of epidemic proportions.

To illustrate this concept, think of the numerous dire predictions of the coming avian bird flu that is said to have the potential to kill millions of people worldwide. In 1918, when the Spanish flu epidemic killed millions of Americans, the sanctity of life ethic was dominant in medical management of the sick and dying. Quarantines were used as an acceptable means to isolate the ill from the healthy. No thought was given to

⁵⁸ This idea has been proposed and supported by Princeton University professor Peter Singer, British academic John Harris, and Georgetown University professor Tom Beauchamp. See PETER SINGER, *RETHINKING LIFE AND DEATH: THE COLLAPSE OF OUR TRADITIONAL ETHICS* 220 (St. Martin's 1994).

⁵⁹ *Id.*

⁶⁰ See Mason L. Allen, *Crossing the Rubicon: The Netherlands' Steady March Towards Involuntary Euthanasia*, 31 *BROOK. J. INT'L L.* 535, 537 (2006) (discussing the concept of involuntary euthanasia).

⁶¹ See Henrie M. Treadwell, Ph.D. and Marguerite Ro, Dr., Ph.D., *Poverty, Race, and the Invisible Men*, 93 *AM. J. PUB. HEALTH* 705-07 (2003) (considering the effects of discriminatory medical practices from legal and medical scholars' viewpoints), available at <http://www.pubmed-central.nih.gov/-articlerender.fcgi?artid=1447820>. (last visited December 4, 2006).

extermination of the sick; instead, every means at one's disposal was utilized to try to save the sick and the dying, even if critics scorned at the futility of the efforts. Quality of life philosophies were non-existent, as were absent any ideas that lives were not worth saving. Christian piety and charity governed the care of the sick, for every caregiver knows, "There but for the grace of God, go I."

Today in America, the sanctity of life ethic no longer dominates medical philosophy, nor does Christian morality.⁶² Quality of life is the modern approach to managing human life that is at the margin of utility.⁶³ Secular humanism dominates bioethical principles.⁶⁴ If and when there is an avian flu pandemic that sweeps across America, it is conceivable that euthanasia will be practiced to dispose of those people who face death, because it seems that efficiency and economics dictate triaging patients according to condition and prognosis. It may be that what happened at Memorial is not a precedent but is the proverbial tip of the iceberg of the "dirty little secret" of current medical practice. Involuntary euthanasia may be here to stay, and employed to cull from the human population all of those who are infected with avian flu as part of a rational plan to stop the spread of the disease. Is it not better for a few million to die, than for tens of millions to die?

More ominous is the prospect of killing all human beings within a quarantine zone, both the healthy and the sick, for even those who appear to be healthy may be infected with the avian flu that is still in its early incubation stage. Rather than send in teams of health care workers whose goal is to heal, is it not more expedient to send in teams of death squads who can humanely kill everyone? This leaves unanswered the question of what to do with the members of these death squads, who despite their protective gear, may become contaminated and inadvertently release a dreaded virus in the safe zone. Perhaps the answer may lie in science fiction movies like *Outbreak*, where the military prepared a final solution to exterminate both the sick and the healthy to rid the rest of the world from the deadly threat of an unstoppable Ebola virus.⁶⁵

It is easy to dismiss this speculation as fantasy and doomsday nonsense, but first consider what has happened in the past year to millions of chickens and other domestic birds in various places around the world.⁶⁶ A single discovery of one case of avian flu in

⁶² Smith, *supra* note 54, at 26.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *OUTBREAK* (Warner Bros. 1995).

⁶⁶ Jill Serjeant, *Amid bird flu, activists plead for humane US culling*, United Poultry Concerns, June 5, 2006, available at http://www.upc-online.org/poultry_diseases/60606flu.html. (last visited

a bird results in a legal order to exterminate that one unhealthy animal along with millions of healthy birds in the vicinity.⁶⁷ This is done out of an abundance of caution to ensure the public health of human beings.⁶⁸ Other than cries of concern from farmers and animal rights groups, there is a general consensus that chickens do not have constitutional rights and no right to life.⁶⁹ As an animal species, chickens are inferior to human beings who exercise dominion over their lives. This lack of legal personhood and inequality with human beings permit the involuntary euthanasia of all chickens for the greater good of human society. If healthy chickens are not safe from the prospect of involuntary euthanasia, why should healthy human beings feel safe in this age of utilitarianism?

Animals with infectious diseases, terminal illnesses, and just plain old age are also subjected to involuntary euthanasia.⁷⁰ This practice is justified as compassionate and loving to spare the animal suffering.⁷¹ It is assumed the ultimate form of “comfort care.” Drugs are used to deprive the animal of sensory feeling and consciousness, and then to inject another drug to stop its heart from functioning.⁷² This is standard veterinary medical practice.⁷³

Bioethics has replaced Christian religion and serves as the moral compass for those who practice veterinarian medicine upon human beings.⁷⁴ Like animals that are old and sick that are “put to sleep,” human beings in Holland are killed by lethal injections without their consent.⁷⁵ This is involuntary euthanasia if you think it is acceptable and murder if you do not agree.⁷⁶

When sanctity of life ethics are replaced by quality of life ethics, there inevitably

December 4, 2006).

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*, see also Biopeer: Mass extermination of birds amidst rising human death toll, Jan. 27, 2006, available at http://www.biopeer.com/biopeer/2006/01/mass_exterminat.html. (last visited December 4, 2006).

⁷⁰ See Michael D. Kreger, Special Reference Briefs Series no. SRB 98-01, (United States Department of Agriculture, National Agricultural Library 1997), available at <http://www.nal.usda.gov/awic/-pubs/oldbib/srb9801.htm>. (last visited December 4, 2006).

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Smith, *supra* note 54, at 26.

⁷⁵ Allen, *supra* note 60 (discussing the killing of non-consenting patients, or “involuntary euthanasia”).

⁷⁶ *Id.*

comes a point in time when death becomes the favored treatment over medical care that simply delays the inevitable result.⁷⁷ Humans, as autonomous beings with legal rights, in American society normally have a say in their medical care.⁷⁸ Hence, there exists a dividing line in bioethics between euthanasia, suicide and assisted suicide, where the patient has a choice in his or her future and involuntary euthanasia, where the patient has no say at all, and is dependent upon the benevolent arbitrary will of another.⁷⁹

The same dividing line is bright and not as blurred as a matter of American law. This is because euthanasia, suicide, assisted suicide, and involuntary euthanasia (murder) all fall on the criminal side of the line in the vast majority of jurisdictions.⁸⁰ The sanctity of life ethic still prevails in criminal and constitutional law, in contrast to the general abandonment of this ethic by medical professionals who have bought into the idea of applying veterinary medicine to human beings.

Physicians in the United States have an unenviable track record of doing bad things to people without their consent. Until the U.S. Supreme Court stepped in to stop the procedure, doctors sterilized idiots.⁸¹ Inmates sentenced to death for capital crimes are involuntarily medicated to prepare them for execution, to comport to laws that forbid the execution of the insane.⁸² Millions of unborn children are involuntarily aborted by physicians who never obtain consent from these human beings who are incapable of giving consent.⁸³ The state of Oregon has legalized euthanasia, paving the way for future involuntary euthanasia.⁸⁴

⁷⁷ See GEORGE P. SMITH, II & GEORGE P. SMITH, *HUMAN RIGHTS AND BIOMEDICINE* 195-209 (Kluwer International 2000). Also, in the Netherlands, the quality of hospice care, and of other long term care facilities has deteriorated since the legalization of euthanasia. See Herbert Hendin, *The Dutch Experience*, 17 *ISSUES L. & MED.* 223, 242-247 (2002).

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Richard S. Kay, *Causing Death for Compassionate Reasons in American Law*, 54 *AM. J. COMP. L.* 693 (2006).

⁸¹ See *Buck v. Bell*, 274 U.S. 200, 207 (1927) (authorizing the involuntary sterilization of an "idiot"). This opinion has long been abandoned with the right to reproductive autonomy recognized as a substantive due process claim. See, e.g., *Griswold v. Connecticut*, 381 U.S. 479 (1965) (holding that a law forbidding the use of contraceptives violates the constitutional right to marital privacy).

⁸² See *Washington v. Harper*, 494 U.S. 210 (1990), (holding that involuntarily medicating prisoners in order to comport with execution laws, violated the Constitution).

⁸³ See *Roe v. Wade*, 410 U.S. 113 (1973) (holding that an abortion is a right to reproductive autonomy).

⁸⁴ See Oregon Death with Dignity Act, OR. REV. STAT., §§ 127.800-995 (1996).

All this flows from the elimination of the sanctity of life ethic in medical practice, and the co-operation of physicians and nurses with political doctrines that abandons the belief that all human beings are equal despite differences in condition in favor of discrimination against the sick, the weak, and the powerless who become de facto or legal non-persons who may be then legally killed with moral justification and without incurring criminal liability.

This development is not an isolated phenomenon in the world. During World War II, Germany euthanized the disabled, gypsies, and Jews.⁸⁵ Genocide was the culmination of this mass organized, efficient killing regime.⁸⁶ Eastern European women were forced to abort their babies, in the same way today's one child laws in China force women to have abortions against their will. These killings went beyond the crime of murder; indeed, international condemnation viewed these acts as war crimes, and justice was done at Nuremberg.⁸⁷ Yet in spite of all this recent history, the quality of life philosophy that seduced the Nazi government of Germany into depersonalizing human beings that were designated as "not worth living" so they could be legally killed, has seen resurgence in Europe.⁸⁸ In the Netherlands, where euthanasia has been legal for a number of years, the involuntary euthanasia of the elderly has been extended to the killing of disabled or terminally ill children.⁸⁹ The slippery slope prophets have been proven right again.

At the root of racism is the unwillingness to view another human being as one's moral and legal equal. Human beings are classed as superior or inferior, depending upon their class characteristics. In the United States, African Americans are still viewed by white supremacists as inferior beings, who are not worthy of equality.⁹⁰ This attitude has survived over 100 years after the Civil War, constitutional change, and the civil rights movement. Racist bigots are all too willing to embrace the idea that blacks are disposable and not worth rescuing in a natural disaster. Unlike the fictional character, Forrest Gump of Alabama, who risked his life over and over again to save his African American GI buddy Bubba in the napalmed jungles of Vietnam, a racist bigot might

⁸⁵ Alexander, *supra* note 57.

⁸⁶ *Id.*

⁸⁷ An international committee of countries created a vehicle to bring justice to war criminals. *See* Charter of the International Military Tribunal, art. 1, *available at* <http://www.yale.edu/lawweb/-avalon/imt/proc/imtconst.htm>. (last visited December 4, 2006).

⁸⁸ Allen, *supra* note 60.

⁸⁹ *Id.* Also, a Netherlands medical study indicates that 60% of elderly people are afraid their lives could be ended against their will. *See* J.H. Segers, M.D., Elderly Persons on the Subject of Euthanasia, reprinted in 3 ISSUES IN LAW & MED. 407, 422 (Walter Lagerway trans.) (1988).

⁹⁰ M. Gregg Bloche, *Race, Money, and Medicines*, 34 J. L. MED. & ETHICS 555 (2006).

consider it a humanitarian gesture to shoot his dying buddy as he was situated, rather than to carry him to a place of safety where Bubba could die in peace in his best friend's loving arms.⁹¹ It must never be forgotten that the U.S. Supreme Court willingly dismissed Dred Scott's claim of personhood, for as a black man, he was not the equal of his white master.⁹²

When racist beliefs are combined with new age medical "ethics" that discard sanctity of life ethics in favor of utilitarian measures that value efficiency and economics over human life, the result is a deadly cocktail as lethal as the combination of morphine and Versed given to the victims at Memorial. This is because stress in times of natural disasters brings to the surface attitudes that are otherwise suppressed or disguised. When tempers are short, desperate measure get justified, and self-preservation becomes the number one priority for those who ascribe to the doctrine of survival of the fittest.⁹³

In law, there is an old adage that justice must not only be done, but be seen to be done.⁹⁴ While there is absolutely no evidence that racism was a factor in what happened at Memorial, there is the appearance of injustice by the stark contrast in the races of those arrested for murder, and those who were the victims.

Did evidence of racism surface in New Orleans during the time of the killings at Memorial? Absolutely.⁹⁵ The most glaring example occurred during the attempt by hundreds of poor black refugees to flee from devastated areas of New Orleans and cross the Crescent City Connection bridge from the City of New Orleans to the City of Gretna, a predominantly white suburban town of 18,000 inhabitants that had escaped serious damage from the hurricane.⁹⁶

A Police Chief ordered his officers to block the bridge, who fired their guns to

⁹¹ FORREST GUMP (Paramount Pictures 1994).

⁹² Dred Scott v. Sandford, 60 U.S. 393, 408-12 (1856).

⁹³ See William Wilson, *The Filtering Role of Crisis in the Constitution of Criminal Excuses*, 17 CAN. J.L. & JURIS. 387, 410-14 (2004).

⁹⁴ The adage is legal doctrine in international human rights law as well as in many European judicial systems. Ex parte McCarthy, 1 K.B. 256, 259 (1924); see also Ardi Imseis, *Critical Reflections on the International Humanitarian Law Aspects of the ICJ Wall Advisory Opinion*, 99 AM. J. INT'L 102 (2005).

⁹⁵ See Cynthia McKinney, *The Worst Overt Act of Racism in the 21st Century?*, Counterpunch.org, Nov. 3, 2005, available at <http://www.counterpunch.org/mckinney11032005.html>. (last visited December 4, 2006).

⁹⁶ See Andrew Buncombe, 'Racist' Police Blocked Bridge And Forced Evacuees Back At Gunpoint, The Independent on Sunday, Sept. 11, 2005, FOREIGN NEWS, at 18.

scare away the refugees, who had been lied to by a New Orleans police officer that buses were waiting across the bridge to take the refugees to shelters.⁹⁷ By this time, the Superdome and the Convention Center were disaster zones, rife with crime, with no running water, no sanitation, and no electricity.⁹⁸ Hotels forced guests to leave, including some in the French Quarter at the Hotel Monte Leone, who pooled \$25,000 together to rent 10 buses to evacuate convention attendees to safety.⁹⁹ These buses never arrived, for the military commandeered them when they arrived.¹⁰⁰

And so it was that paramedics Larry Bradshaw of San Francisco, and his wife Lorrie Slonsky, ended up on the bridge to Gretna with the poor black refugees and witnessed babies in strollers, people using crutches, elderly grasping walkers, and people in wheelchairs in pouring rain approaching the bridge.¹⁰¹ Armed Gretna Sheriffs lined up across the foot of the bridge and fired over the heads of the very young and the disabled. Gretna was to be guarded from this threat of humanity.¹⁰² Police Chief Arthur Lawson explained, “If we had opened the bridge, our city would have looked like New Orleans does now – looted, burned and pillaged.¹⁰³ Bradshaw was appalled by the incident: “I believe it was racism. It was callousness, it was cruelty.”¹⁰⁴ The message was clear: if you were poor and black, you were not going to cross the Mississippi River. State Representative Cynthia McKinney called this event the worst episode of American racism in the 21st Century.¹⁰⁵

Bradshaw’s group retreated, for the only way across the bridge was by stealing a vehicle.¹⁰⁶ Working together, the refugees built a makeshift camp in the middle to of the Ponchartrain Expressway, hoping the media would discover their plight and publicize their need for rescue.¹⁰⁷ But as Bradshaw explained, things got worse: “Just as dusk set in, a Gretna Sheriff showed up, jumped out of his patrol vehicle, aimed his gun in our faces, screaming, ‘Get off the fucking freeway.’ A helicopter arrived and used the

⁹⁷ See Larry Bradshaw and Lorrie Beth Slonsky, *Hurricane Katrina- Our Experiences*, ZNet, Sept. 6, 2005, available at <http://www.zmag.org/content/showarticle.cfm?ItemID=8799>. (last visited December 4, 2006).

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ Bradshaw & Slonsky, *supra* note 97.

¹⁰² *Id.*

¹⁰³ Buncombe, *supra* note 96.

¹⁰⁴ *Id.*

¹⁰⁵ McKinney, *supra* note 95.

¹⁰⁶ Bradshaw & Slonsky, *supra* note 97.

¹⁰⁷ *Id.*

wind from its blades to blow away our flimsy structures. As we retreated, the sheriff loaded up his truck with our food and water.”¹⁰⁸

Eventually Bradshaw made it to Houston, where he praised the warm heartfelt Texan reception.¹⁰⁹ In sharp contrast, the experience in New Orleans was “callous, inept and racist. . . Lives were lost that did not need to be lost.”¹¹⁰

Accusations of racism were made of the media in their coverage of Hurricane Katrina for portraying black people in New Orleans as thieves and white people as just finding food.¹¹¹ A national controversy was stirred when a black man wading in floodwater carrying a case of soda was photographed and depicted as a “looter” in the caption by the Associated Press.¹¹² The photographer, Dave Martin, had witnessed this man wade into a grocery store and emerge with a bag and the sodas, thereby apparently justifying this description.¹¹³ In another photo, a white man and woman, also wading in the floodwater and holding groceries, were described as “finding food.”¹¹⁴ The photographer Chris Graythen, had seen the couple near a corner store with an open door, and things had floated out the door.¹¹⁵ Agence France-Presse ran the caption, “after finding bread and soda from a local grocery store.”¹¹⁶ Once these photos and captions were published on the Internet by Yahoo News and published side by side by Flickr on a single page, the racist implications avalanched.¹¹⁷ “It’s not looting if you’re white,” declared the blog Daily Kos.¹¹⁸ Rapper Kanye West used his live appearance on NBC’s special, “A Concert for hurricane Relief,” to lambaste the implied racial bias: “You see a black family, it says their looting. You see a white family; it says they’re looking for food.”¹¹⁹ In the final analysis, the careful observations of the photographers could not quell the firestorm of controversy.¹²⁰ The appearance of racism was what mattered, and it ignited passions across America.

¹⁰⁸ *Id.*

¹⁰⁹ Buncombe, *supra* note 96.

¹¹⁰ *Id.*

¹¹¹ Tania Ralli, *Who’s a Looter? In Storm’s Aftermath, Pictures Kick Up a Different Kind of Tempest*, N.Y. TIMES, Sept. 5, 2005 at B5.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ Ralli, *supra* note 111.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ Ralli, *supra* note 111.

¹²⁰ *Id.*

In the same way, it is the appearance of racism at Memorial, whether real or perceived, that troubles medical ethicists. The race of a patient must be totally irrelevant as to whether that patient is selected for rescue or designated for death. Indeed, the focus of the inquiry must be why some patients at all were chosen for death, for this is not medical care, but murder. Did these victims die, then, not because of racism, but because of poverty?

Privacy laws prohibit knowing whether Emmett, Hollis, Irethea and Rose were recipients of Medicare.¹²¹ Outside of the government and hospital authorities, only their families might know. We can assume these patients had limited means, for in the end, it was the poor who remained behind in New Orleans, for they did not have the wealth to pay for private rescues, and were thus left to the mercy (or lack thereof) of their caregivers.

Hurricane Katrina will not be the last natural disaster to befall American citizens. But the prospect of unnatural deaths in the face of natural disaster looms large to anyone planning emergency measures to cope with a future health care crisis. Legislation needs to be passed now to criminalize involuntary euthanasia as an aggravated offense punishable by the loss of medical licenses in addition to heavy jail time. Where the victims are all of one race and the perpetrators are all of another race, an aggravating condition arises that may be categorized as a hate crime. Public funds must be freed to rescue the poor, the sick, the weak and the vulnerable when natural disaster threatens or has arrived. It is simply unacceptable that victims of the tsunami in December of 2004 thousands of miles away were given help in ways that were denied to the impoverished black residents of New Orleans. Finally, the legislation must remain in force even when martial law is declared, in response to a major natural disaster such as a flu pandemic. Failure to do so will allow the ugly resurgence of racism and discrimination when the thin veneer of civilization disappears when natural disaster strikes.

When trusting patients are poisoned by medically trained professionals, the Fourteenth Amendment is implicated.¹²² A patient's constitutional right to autonomy, privacy, bodily integrity, and security of the person trumps any general consent form for treatment at a medical facility. Patients are entitled to assume that their health and their life will be guarded by medical ethics, the first being to do no harm to the patient, and by the twin principles of due process and equal protection that are rooted in the

¹²¹ 5 U.S.C.A. § 552a, (2004).

¹²² The Fourth Amendment of the United States Constitution guarantees persons the right to be secure in their body not to be violated without a warrant. U.S. CONST. amend. IV.

Fourteenth Amendment.¹²³ When federal funds are used to pay for patient care, and when health care facilities benefit from taxpayer dollars and are supervised by government regulations, administrators, physicians and nurses may not assume the power to play God and decide who lives and dies even when conditions become intolerable.

The rule of law must prevail in times of natural disaster. Otherwise, there is anarchy, and the lawlessness of the streets invades the inner sanctum of hospitals where only the strong and selfish will win in a contest for survival of the fittest. Violating the constitutional rights of patients by substituting involuntary euthanasia for sacrificial bedside care deserves the harshest penalties possible under state criminal laws and federal civil rights laws.

¹²³ U.S. CONST. amend. XIV.