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Simmons helped turned around the Anna Pou case.



THE FINE LINE BETWEEN Mercy and Murder

Rick Simmons defends a doctor accused of post-Katrina 'mercy killings'

by KEVIN FEATHERLY
photography by GEORGE LONG

Rick Simmons has done it all. Simmons, 63, is a former Army JAG Corps lawyer who assisted in the appellate defense of My Lai Massacre commanding officer Lt. William Calley. He has represented politicians and government contractors in high-profile racketeering and corruption cases. He has represented manufacturers, and insurance and financial services firms.

But the case that may define his career is not yet mentioned on his firm's official biography—because he's still working on it.

Simmons, senior managing partner at Hailey, McNamara, Hall, Larmann & Papale in New Orleans, has spent the past three years defending Dr. Anna Pou in the infamous hospital "mercy killing" case that happened in the wake of Hurricane Katrina.

The surgeon, alongside two nurses, is accused of intentionally administering a lethal cocktail of drugs to several patients languishing in the near-apocalyptic conditions at New Orleans Memorial Medical Center after Katrina swept through the city in 2005.

The Pou case was brought by then-Louisiana Attorney General Charles Foti, who says Pou and the nurses were "playing God" with nine patients' lives by giving them lethal doses of morphine and the sedative Versed after determining they were too ill to be evacuated from the hospital, which in the days after the storm resembled an abandoned battlefield medical-triage outpost.

Shortly after rumors of hospital "mercy killings" began to swirl, the LSU Healthcare Network, which Simmons had represented in the past, referred Pou to Simmons. "At that point in time, she was being terrorized by the media," he says. "CNN was pressing her: 'You'd better come tell your side of the story; we're going with it.' And then she became a person of interest."

The person most interested was Foti, who found little to sympathize with, despite the lack of power and water service to the hospital, the 100-degree heat, the gunmen who reportedly fired shots toward the hospital, and the fact that Pou rode out the storm to assist patients while the city—though not the hospital—was under a mandatory evacuation order.

"This is not euthanasia; this is plain and simple homicide," Foti said during an internationally televised July 2006 press conference.

It was neither, according to Pou, who later told *Newsweek* that she only administered the drugs to the ill, elderly patients to make them more comfortable in the hospital's intolerable conditions.

Nonetheless, at Foti's request, New Orleans District Attorney Eddie Jordan took the Pou case to a grand jury. In July 2007, a year after her arrest, Pou was cleared of charges when jurors refused to indict her.

Simmons says he knew the government's case was a loser because determining drug-dosage levels from decomposing corpses was impossible. "I was interfacing with the district attorney saying, 'You don't have the forensics,'" he says. "The bodies were there for 10 or 11 days before they even retrieved them. And so they made a big forensic jump in terms of what evidence they thought they had there."

He says he still doesn't know why Foti opted to pursue the case. "We scratched our heads for a year and a half," Simmons says.

One thing that Foti and Simmons agree on, however, is the effect that the *60 Minutes* piece had on turning the tide of public sympathy toward Pou.

Simmons says he worked with CBS correspondent Morley Safer's staff to coordinate the appearance. Both sides remembered how accused Olympic Park bomber Richard Jewell used the program to reform his reputation. Jewell was ultimately vindicated. Simmons hoped the publicity would work the same way for Pou. "I think the world needed to know that this girl is not a murderer," he says.

Pou appeared on camera mostly alone, though the accused nurses were also there ("The nurses were provided 'forced immunity' in which they were required to give truthful testimony to the grand jury," he says). And Simmons stayed close. "I was the potted plant in the background," he says.

The interview was a risky move, he acknowledges, but he says it was justified by the way the doctor presented herself on camera—she appeared anxious, but confident in her innocence. She also talked about the devastating effect of having her reputation dismembered after a career of providing care to patients.

"It just came through," Simmons says. "Anybody that listened to it would have said that this woman couldn't have killed these people. So that was the turning point."

Soon after, the American Medical Association and the Louisiana State Medical Society issued statements of support for Pou and called for a fair investigation into the matter.

"The case was never going to be a conviction in my mind," Simmons says. "The issue is whether we're going to send this city and this woman through an O.J. Simpson circus trial, which would have been detrimental to her and the whole city."

Pou has been cleared of criminal charges, but the matter is far from over. She continues to defend herself against three wrongful-death civil suits filed by victims' families. "They've got causes of action from intentional acts to negligence," Simmons says of the remaining suits. "I think we've got all kinds of defenses. On the merits, I just don't think they'll go anywhere."

In addition to fighting off civil suits, Simmons and Pou have campaigned to get laws changed in state legislatures across the country, aiming to protect clinicians from criminal and civil charges after assisting patients in disaster zones.

New statutes have already been passed in Louisiana, where "Good Samaritan" protections have been expanded to cover medical personnel, and where new laws give medical workers more confidence in making life-and-death decisions under pressure in battlefield-style triage conditions by making it tougher to second-guess medical judgment in those situations after the fact. The state has also agreed to form a disaster medicine review panel to ensure that people familiar with disaster medicine give recommendations to prosecutors on whether medical judgment during a disaster is proper or constitutes criminal conduct.

Ultimately, Simmons says, similar laws need to be passed in other states and not just for hurricanes or other national disasters.

"I think the most likely use of these statutes in the future," Simmons says, "will be some pandemic episode, where doctors are going to be facing the choice of saying, 'OK, we're going to make decisions about who we segregate and treat medically versus those who we can save.'"

As things stand now, he says, "If [medical personnel] are making those decisions, there is a good chance you're going to be sued." ◀