

COMMENTARY

JUSTICE FOR THE FALLEN

The murder trial of Andrew Cuomo

Exclusive: Scott Lively lays out evidence supporting charge against New York governor



By **Scott Lively**

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In the matter of The People v. Andrew Cuomo, on the charge of murder, I am attorney Scott Lively, representing The People. You have been empaneled as the jury in this matter, and it will be your job to determine the guilt or innocence of the defendant in this case, Mr. Andrew Cuomo, governor of the state of New York, on the charge of murder in the deaths of thousands of elderly Americans who lost their lives in nursing homes as a consequence of infection with COVID-19 disease caused by exposure to infected individuals intentionally discharged from hospitals and placed in these homes. These initial facts are uncontested, and news reports have informed the entire world of the great human tragedy suffered by these victims and their families. But the question before you today is the degree of responsibility for those deaths that should be borne by the defendant. This is a question of fact that only you, the jury, can decide.

What the evidence will show is that in the first five months of 2020, as the COVID-19 Pandemic raged through the state of New York, more than 5,000 of New York's citizens most vulnerable to the ravages of this terrible disease were killed by this virus in nursing homes. We will show that these nursing home deaths represented 25% – literally a quarter – of all COVID-19 deaths in the state of New York, **a vastly disproportionate number of victims compared to the size of the general population of infected persons.**

The People will call witnesses from the State Health Department to explain a March 25 policy directive requiring nursing homes to take coronavirus

patients. These witnesses will testify that this legally binding directive barred nursing homes from requiring incoming patients "to be tested for COVID-19 prior to admission or readmission." They will also affirm that this policy was not just holdover bureaucratic red tape that forced nursing homes to accept infected patients, but was a premeditated policy change, specifically implemented at the height of the pandemic, in response to it!

We will show that the March 25 order states, "Residents are deemed appropriate for return to a [nursing home] upon a determination by the hospital physician or designee that the resident is medically stable for return." And we will call witnesses to verify that while the notification gave no specific definition of "medically stable," health experts insist that those patients should have been assumed to be contagious.

We will further show that even when the disease began rampaging through these care facilities like a hurricane, the state would not reverse the policy. We will call the head of Brooklyn's Cobble Hill Health Center and introduce as evidence his frantic email exchange with state health officials on April 9 begging for permission to send suspected COVID cases to the Javitz Center or the medical ships in New York Harbor. He will testify that he was denied permission and that more than 50 residents at his home died. Other nursing home officials from around the state will tell similar stories.

The Defense will argue that Gov. Cuomo should not be held responsible for the actions of his state health officials, and that in the month of May he eventually did intervene to rescind the March 25 directive, but we will show that Cuomo's policy rescission occurred only after calls for an independent investigation had begun circulating in the media, and we will call a Cuomo aide who will state that the May policy change was not a reversal in recognition of error, but simply a new policy based on increased hospital capacity and testing. We will also show that Gov. Cuomo wielded de facto dictatorial power during this period.

The People will call witnesses who will testify that the Cuomo administration intentionally withheld the data on nursing home deaths from the public, and

it will be up to you, the jury, to decide whether this evidence proves knowledge of guilt, and whether precious lives could have been saved by an earlier public outcry.

In this trial, there will be a lot of back and forth about just how deadly COVID-19 really is and how many of the governor's actions and policies that now seem erroneous to critics can be justified by the exigent circumstances at the time. And surely the people would agree that no leader can bat a thousand in the best of circumstances, let alone under the pressure of a major public health emergency.

However, we will argue that this case is not about any one bad choice or policy, but a pattern of choices that reflect at the very least a gross and callous disregard for human life, and at worst, a deliberate intention to sacrifice the elderly and infirm as more expendable than others in the battle against COVID-19, or, even worse, considering them so disposable as to not be worthy of efforts to sequester them in less contagion-susceptible facilities.

That's an extremely serious charge, but we will show that it is not an unreasonable conclusion, and that other policies enacted under the governor's leadership bolster it. We will, for example, take a close look at an April 17 directive of New York state health officials ordering emergency service workers **not to revive anyone without a pulse**, stating in a memo, the change is "necessary during the COVID-19 response to protect the health and safety of EMS providers by limiting their exposure, conserve resources, and ensure optimal use of equipment to save the greatest number of lives." Like the nursing home directive, this policy was also eventually rescinded, but only after public outcry.

In the end, however, your determination of Gov. Cuomo's culpability may have less to do with the enormous volume of evidence The People will present than with the simple common-sense observation that while the governor was justifying the near total lockdown of the state of New York, sacrificing hundreds of thousands if not millions of jobs, suspending the peoples' most fundamental constitutional rights and forcing mandatory

masked-up social distancing on everyone in the name of protecting the most vulnerable – he was knowingly and intentionally sending hundreds of disease carriers into the very facilities where the most vulnerable were congregated in conditions most optimal for the spread of the disease.

If that's not murder, then words have lost their meaning.

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