



When Edna Mae Witt entered a nursing home in Texas City, Tex., in August of 1978, her family thought she would be home soon. Instead, the 78-year-old grandmother died after bedsores that developed while she was a patient became infected.

She was one of 56 elderly patients who died between 1977 and 1979 : 35 of them over a 90-day period in 1978 at the Autumn Hills Convalescent Center in Texas City, a 120-bed facility, one of 17 nursing homes in the Autumn Hills chain.

Witt became a pathetic footnote in a frustrating battle against a government system of regulators who find they cannot regulate and prosecutors who find they cannot prosecute, even when a nursing home and eight of its employees are charged with murder.

That it happened in Texas makes it all the more alarming because Texas, the federal government says, has one of the best nursing home inspection programs in the nation.

IF IT HAPPENED HERE, say advocates for nursing home residents, it could happen anywhere. Only 20 percent of the nation's nursing homes meet minimum federal standards all of the time, says the National Citizens Coalition for Nursing Home Reform.

Senate investigators have been following the Autumn Hills case for months and now the Senate Special Committee on Aging is planning hearings to assess its "national implications."

"With every fraud investigation the committee has conducted, we have found a constant connection between financial manipulation and poor care," said Sen. John Heinz [R., Pa.], the committee chairman. " While this connection is constant, it is rarely as specific and verifiable as it is in this case."

The murder charges were dropped a few weeks ago after a controversial plea-bargaining agreement allowed the nursing home operators to pay a \$100,000 fine, submit to 10 years of court supervision and plead no contest to one count of involuntary manslaughter.

AN AGGRESSIVE young prosecutor had argued that the nursing home received federal and state funds to provide quality care for its patients, but it failed to live up to its side of the contract. Because of that, the state said, the patients died.

Agnes Buxton, Mrs. Witt's daughter, sees it another way.

"My mother would have been better off if she had stood out there in the street and let a car hit her. She would have been instantly dead. She wouldn't have suffered for so long," she said.

That the Autumn Hills case surfaced at all was a coincidence, a quirk that put a dusty file folder and a spanking new assistant district attorney in the same place at the same time, the misdemeanor section of the Galveston County District Attorney's office.

DAVID MARKS was a year out of law school when he joined the prosecutor's office. He began pushing an investigation of Autumn Hills after he found the file behind some books in his new office one day in 1979.

"A year and six months prior to that," said Marks, who is 30, "families had come to James Hury [then the Galveston County District Attorney.] He had received photos of a lady who had been just beaten up. The file was about an inch thick and when I read it, my first reaction was, 'What in the world is this doing in the misdemeanor division?'"

Marks thought he had a murder case on his hands, but he realized that his premise would not be easy to prove.

Murder is a charge usually based on an action. But in Marks' view, the deaths in the Autumn Hills nursing home had been caused by a lack of action. The patients were not getting the care they deserved, the care the government was paying for. The sin was one of omission.

MANY OF THE details that formed the basis for Marks's investigation came from Betty Korndorffer, 52, a nursing home inspector who has been a registered nurse since 1951. A specialist in long-term care, she began badgering her superiors to take action against Autumn Hills in 1978.

In her reports, Korndorffer carefully noted the number of patients with bedsores, the smell of urine throughout the facility, the poor grooming of patients, problems with patients receiving their medication in proper doses at proper times and other evidence of lack of patient care.

"I kept thinking, 'How can these people who own the nursing home not see and smell?' All you had to do was walk through the door and you smelled death. It was so bad," she said.

Spurred by Korndorffer's reports, Marks assembled a team of experts in geriatric medicine, long-term nursing care, pharmacology and records analysis.

THEY Poured over patient charts and nursing home documents, including records of all drug and food purchases. Were the patients getting the medicine their doctors had ordered? Were their infirmities being treated? Were their diets being properly maintained?

Marks put it all into a computer, with the help of the specialists. Then he looked for a connection that would link the deaths.

"The deaths occurred from various manner and means but there was a common thread," Marks said.

"They eventually boiled down to a lack of nursing care. We had the staffing records and determined that on 65 percent of the days, they were not minimally staffed. They falsified staffing reports on 45 percent of the days."

What the investigation amounted to was a comparison of the reality with what had been written down on paper.

FOR EXAMPLE, the medical records showed that patients were assisted to toilets and bathed on a daily basis, but staffing reports and testimony of nursing home employees showed that the records had been falsified.

Marks and his investigators also checked the quantity of drugs purchased by Autumn Hills and when they were delivered to the nursing home. But when they compared that information to medical records indicating which patients had received which drugs, they were able to show that some patients could not have received the medication ordered by their doctors.

Pharmacology specialist Dr. John F. Thompson, an assistant professor at the University of Southern California, reported that drugs were not given as ordered, or not given at all, at Autumn Hills 35 percent of the time.

"A MAJORITY OF the errors noted are due to drugs not being given as ordered or drugs not being available," Thompson said in his report.

"On numerous occasions the drug administration records were falsified to show that drugs were given when in fact they weren't. Falsified drug records and improper medication handling is a policy with Autumn Hills Convalescent Hospital. Without a doubt the actions and patterns are related to numerous patient deaths."

But when Marks took his case to the grand jury, there were problems. Investigations like the one at Autumn Hills are expensive and Marks wasn't getting the financial and clerical support he needed from the district attorney, according to the grand jury's own report.

On March 31, 1981, the grand jury issued its indictments, charging the corporation and eight individuals with murder. The indictments stemmed from the deaths in 1978 of Betty Cappony, March 7.; Alberta Welcome, April 5; Laura Bell Johnson, April 23; Fannie Burns on May 9; Freddie Mae Larsen, July 14; Edna Mae Witt, Oct. 16; Elnora Frances Breed, Nov. 20; and Francisco Edmund Coss, Nov. 16.

THE JURORS ALLEGED murder by omission, arguing that the nursing home was not providing the services for which it was being paid. But the grand jury's term was about to expire and the indictments were hastily and sloppily drawn. Some were written in long-hand by members of the grand jury themselves.

"The evidence examined revealed a shocking and extensive pattern of horrid and inhumane care for the elderly patients which existed for approximately two years," said Pat Tate, the foreman of the first grand jury, in a later affidavit.

"It should be noted that although the grand jury returned indictments relating to the deaths of eight victims, evidence revealed these eight victims constituted only the tip of the iceberg," said Tate. "The number of victims were shocking."

But the indictments were so flawed - in some cases the grand jurors had confused the victims with those allegedly responsible for the deaths - that the prosecutor's office agreed they could not be carried into court.

HOWEVER, the grand jury succeeded in criticizing Marks's superior, Hury, for obstructing the investigation by not providing the needed financial resources.

"Mr. Hury should have been more cooperative with our investigation, freeing up his assistants from other duties instead of throwing up obstacles along the way," the grand jury said.

Hury, now a member of the state legislature, responded to the criticism by empanelling a new grand jury.

In July, 1981, the new jury returned a new set of 38 indictments containing 256 counts, again charging the corporation as well as eight present or past employees with murder.

As before, the indictments charged that the patients died during the course of two felonies — theft of government funds and tampering with medical records.

Also, as before, there were money troubles.

MARKS SPENT \$400 of his own money to have the indictments typed. There were legal problems, too, that would lead to the dismissal of some of the indictments issued by the new grand jury.

That occurred a year later, when visiting Judge Larry Gist ruled that the law on which three of the 38 indictments were based was too vaguely worded.

Without informing Marks, Hury began holding meetings with attorneys for the nursing home corporation, meetings that would ultimately lead to the plea-bargaining agreement.

Some of the details of those negotiations came out after Marks, in an attempt to block the plea-bargaining settlement, filed a suit last Dec. 16, the day on which he was fired by Hury.

Marks said Hury told him he was being fired for insubordination. The court issued a 10-day restraining order barring a settlement while it decided whether it had jurisdiction in the case.

ON DEC. 17, Marks got an affidavit from Charles B. Wiley, the former undersheriff of Galveston County, who told about a coincidental meeting he had had at the Bob Smith Yacht Club in Galveston on June 16 with Roy Minton, an Austin attorney who identified himself to Wiley as one of the attorneys defending Autumn Hills.

"Mr. Minton appeared to have had a few drinks," Wiley said in the affidavit. They talked for a short time about an FBI "sting" operation, then the focus shifted to the Autumn Hills case.

"Mr. Minton stated that James Hury [the district attorney] had made commitments regarding the Autumn Hills case and that he [Minton] would see to it that Hury lived up to those commitments. Specifically, he said, 'When I make a deal with somebody, I intend for them to live up to their end of the bargain and he will,'" Wiley said in his affidavit.

"Minton said, 'If he turns me around on this deal, I'll pull the rug out from under him. I have already told him to fire Marks. I can render Hury ineffective in Austin.'"

"IT WAS CLEAR to me," Wiley's affidavit said, "that a backroom deal had been reached with respect to the disposition of the Autumn Hills cases and that the fix was on. From the conversation I had no doubt that this deal involved more than an ordinary plea bargain."

The Texas Court of Appeals ultimately decided it did not have jurisdiction in the case.

On Dec. 27, four days before Hury left office to take up his new job in the Texas legislature, the court injunction that blocked the plea bargain expired. Within four hours the plea bargain had been approved and the Autumn Hills case was closed.

"The thing that speaks loudest is the hastiness in which the plea was accepted," Marks said later.

"Only four hours after the ruling of the Court of Appeals. For three of those hours, my staff tried to call the district attorney, the judge, the district court, the district clerk. We were reduced to calling hotels to see if the judge was coming to town. We could not find out if, when or where the plea was going to take place."

HURY LATER defended his decision on the plea-bargaining agreement, calling it "a victory for the state of Texas." David Marks, Hury said, was "never objective enough to look at the pitfalls in this case."

"Autumn Hills did recklessly do certain things they should not have done but it would be impossible to prove that people went to work every day saying they were going to murder patients," Hury said.

"We have alleged omissions and the court rules you cannot allege omissions. In order to prove somebody committed an act, you have to allege acts."

As a Texas legislator, he said, he will work for nursing home law reform. But David Marks thinks that calls for legislative reform are missing the point.

"The thing that most people want to do is come in and make a new law. I just said, 'the hell with that,'" said Marks. "Somebody is going to hold their feet to the fire and take the laws that are already in existence and enforce them."

ROBERT GAY, president of Autumn Hills, said all along that the murder charges were "ridiculous," and that Hury had made a mistake in allowing Marks to lead the grand jury probe. "Marks," said Gay, "Was out to make a national name for himself."

The Autumn Hills nursing home has since been leased to another nursing home chain. But Marks, who is still out of work, refuses to give up on the case. He has assembled a staff of volunteers to pursue the charges.

Among the most puzzling aspects of the case is that throughout the investigation, the nursing home never suffered any loss of income and never lost its certification under Medicare and Medicaid regulations, which are designed to assure quality of care.

Jerry Bryant, the director for quality standards in the Texas Department of Health in Austin, the agency to which Korndorffer reported, declined to talk about the state's role in the case.

Last Thursday, James Hury was appointed by the Speaker of the Texas Legislature to the Committee on Nursing Home Care.