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Death of 91-year-old spotlights line between care and killing

Maria 'Concha' Lopez, living with her great-niece, dies weighing 35 pounds and covered with sores. Was the 91-year-old's death murder or natural causes?

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Stephanie Hernandez, 26, cared for her 91-year-old great-aunt, Maria "Concha" Lopez, who watched her sisters die in medical facilities and refused to spend her final days the same way. When Lopez died, she weighed 35 pounds and was covered with bed sores. Hernandez faced murder charges. (Tomas Ovalle / For the Los Angeles Times / May 15, 2011)

By Maria L. La Ganga, Los Angeles Times
June 2, 2011

Reporting from Madera, Calif. -- "Don't leave me," Stephanie Hernandez implored, as she fumbled with her cellphone to dial 911. "I need you. I need you."

Hernandez had just changed her great-aunt's diaper and was coaxing her to take a sip of water when Maria "Concha" Lopez, 91, stopped breathing.

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Photo: Alyanna Requenez with Maria 'Concha' Lopez

CPR was out of the question, Hernandez told the emergency dispatcher: "She's too fragile. We could break her, her bones." The dispatcher talked the distraught 26-year-old through the basics of mouth-to-mouth resuscitation.

But when firefighters and paramedics opened the door to the little house on South A Street that December morning, they were immediately overwhelmed. By the stench — urine, feces, rotting flesh. By the mess — soiled diapers, used bandages, a

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stained mattress.

Most of all, though, by Lopez's body. The bed-bound woman who'd suffered from dementia and shied away from doctors weighed just over 35 pounds and was covered in bedsores, some so deep they bared bone. A metal rod from hip surgery was visible.

Hernandez was arrested and then charged with murdering the woman she had bathed, fed and changed for three years. She would be put on trial, accused not of any overt violence against the woman who had raised her but of failure as a caregiver.

During five weeks of emotional testimony this spring, defense attorneys portrayed Hernandez as a loving niece whose meticulous efforts kept an old woman alive even as she lost 65% of her body weight. Projecting gruesome autopsy photos on a big white screen, the prosecutor described neglect so severe it amounted to criminal negligence.

In the end, the trial showcased the difficult questions facing doctors, courts and families today, when the "old old," 85 and up, are the fastest-growing segment of the population, when more than 43 million Americans care for aging relatives or friends and when neither science nor the law has kept pace.

What is elder abuse? When does inadequate care become criminal? Can the elderly be forced to seek help? And what exactly does a "normal" death look like?

"I would say that first responders and medical examiners haven't seen a lot of cases like this — yet," said Dr. Brad Stuart, chief medical officer for Sutter Care at Home and a researcher in the management of advanced illness. "But this is not going to be an unusual case in a few years."

It is April, mid-trial, and Hernandez reminisces from behind a thick plastic barrier in the visiting area of Madera County jail. She has been held here for more than a year and in the process lost custody of her 4-year-old daughter, Alyanna.

Hernandez had lived on South A Street in this hard-knocks farm town since she was 4 months old. Her mother, an agricultural worker, needed to go back to the fields and left the infant in the care of her four great-aunts — Guadalupe, Ramona, Frances and Concha Lopez.

Guadalupe retired from the fields to care for Hernandez but died when the girl was 12. Neither Guadalupe nor her sisters ever married.

"I was basically her daughter," says a tearful Hernandez. "Her last words were, 'I love you, Stephanie' in the hospital."

Madera Community Hospital is less than a mile from the jail. Hernandez knows the squat, tan facility well; she spent long days and nights there as her great-aunts fell to the scourges of age.

"Ramona declined in my senior year in high school, '01," says Hernandez. "She had a massive heart attack and a mild stroke at home. I was there. She had fallen.... I picked her up and called 911."

Frances died in 2003. Ramona went three years later. Concha Lopez had watched her sisters die in medical facilities and made her family promise to spare her such an end.

Then she broke her hip.

Hernandez had been working her way through Fresno City College by selling cellphones. She left school when she became pregnant with Alyanna in 2006, and her family pressed her into caring for Lopez.

At first, the work was housekeeping, grocery shopping, helping Lopez in and out of bed. Then the older woman became incontinent, stopped walking, couldn't feed herself, developed sores that would not heal. She waved off visiting nurses, refused to go to the doctor.

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Hernandez says she tried to find a doctor who would make house calls, but Lopez was adamant: no outsiders.

"I wanted to go back to school, but I felt like everybody in my family, my mom, made me obligated to stay with my aunt," Hernandez would tell authorities. "It was just me, my aunt and my daughter, always alone in the house."

Prosecutor Angela Hill snaps on the overhead projector in Department 1 of Madera County Superior Court and turns to face her expert witness, Dr. Kathryn Locatell. People's Exhibit 19 flashes on the screen, an autopsy photograph of a 2-inch bed sore enlarged to the size of a manhole cover.

Locatell, a geriatrician, explains the physiology of pressure ulcers, gesturing with a red laser pointer at the ghastly wound. Jurors flinch. Hernandez, seated with her lawyers at the defense table, puts her left hand over her mouth.

Then comes People's Exhibit 25, Lopez's back, emaciated and pocked with six deep wounds. The sores, Locatell tells jurors, were at least a month old.

"I have never seen someone with this skin condition, the numerous wounds, the inflammation, the rashiness," Locatell says. "There's no treatment. It's evidence of neglect. It's not part of normal dying. It's not part of dying at all."

Even in hospice care, where everyone is at the end of their lives, she says, only 3% of patients get bedsores.

Lopez would not have died when she did if she had received adequate care, Locatell says. And she died hurting.

"These wounds," Locatell says, "are extremely painful.... The skin is loaded with nerve endings. This is —" Her voice trails off. She pauses. "This is appalling."

But where Locatell sees evidence of "utter neglect," Dr. John Fullerton sees a condition called "terminal skin failure."

Fullerton, a geriatrician and the defense's expert witness, explains to the jury what happens when someone like Lopez loses more than half her body weight.

Private, independent and stubborn, the 4-foot, 10-inch woman weighed a scant 100 pounds in 2001. Five years later, when she fractured her hip, her weight had dropped to 88 pounds. By the time she was hospitalized in 2008 with an ulcer on her left shin, she was down to 64 pounds.

"She blew past 60 pounds and went all the way to 35. How did she live?" Fullerton exclaims. "It's remarkable. This isn't someone whose life is cut short. This is someone whose life is extended by living at home."

The sores? They were unavoidable, he tells the jury. When a dying person whose weight plummets is confined to bed, the skin can fail like any other organ.

Defense attorney Martin Jones: "Is it common for someone doing coroner's work to see someone who died of terminal skin failure?"

Fullerton: "It's not their bread and butter."

Jones: "Did my client do anything wrong?"

Fullerton: "I can't come up with something she did wrong. It makes me as a hospice medical director really kind of want to sit down with families when they're caregiving and make them realize what they're getting into."

"Even when they try to do everything right, the system is just not set up to view them fairly or favorably."

In the windowless Madera courtroom, the jurors deciding Stephanie Hernandez's fate have front-row seats to the controversies swirling around America's elderly and the people who care for them.

There are disputes about what elder abuse is and just how much of it occurs. According to the National Center on Elder Abuse, between 1 million and 2 million Americans 65 or older have been "injured, exploited or otherwise mistreated by someone on whom they depended for care or

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protection." But for every report, it is believed that five more incidents never come to the attention of authorities.

Dr. Laura Mosqueda, director of the Center of Excellence on Elder Abuse and Neglect at UC Irvine, has begun studying elder deaths in California to figure out what coroners view as normal and what they consider "older adults being neglected to death."

Mosqueda believes that medical examiners under-report elder abuse deaths because of a sense that the victims are old and will die anyway.

But others fear caregivers could be overzealously prosecuted by authorities who confuse symptoms of terminal dementia with abuse.

Last year, the National Pressure Ulcer Advisory Panel convened a group of experts to address uncertainties in wound care. The group agreed that some bedsores are unavoidable and that "the condition of skin failure exists."

Stuart, the chief medical officer for Sutter Care at Home, who advocates for improved end-of-life care nationally, believes cases like Lopez's are a warning.

"We live in a society that's in a place where no culture has ever been," he says, with the baby boom generation hitting 65 and the ranks of the "oldest old" swelling. "We'll have to come to a better way of dealing with this than arresting a young caregiver."

But that's what happened here.

On April 12, Hill beseeches the seven women and five men of the jury to find Hernandez guilty of murder and elder abuse: "All she had to do was pick up the phone and call for medical help. It would have kept Concha from dying. She had a duty to act."

Craig Collins, Hernandez's other defense attorney, counters: "There's absolutely not one shred of evidence that Stephanie knew that if Concha died and the pictures looked bad she'd be accused of murder.... The evidence is clear. Stephanie didn't cause Miss Lopez to die."

Two days later, jurors send a question to Superior Court Judge Joseph A. Soldani: "Is involuntary manslaughter murder?"

"I about hit rock bottom," Collins said.

"They're going to convict her."

By the end of the day, there is a verdict. The attorneys arrive at the courtroom. Hernandez, tearful, is at the defense table. Her mother and sister are absent from their usual seats behind her. Collins, fearing the outcome, did not tell them that a verdict was about to be announced. Cousins who blamed Hernandez for Lopez's death wait behind Hill.

The verdict is read: Not guilty of murder. Not guilty of involuntary manslaughter. Not guilty of felony elder abuse.

The jury deadlocked on the lesser charge of misdemeanor elder abuse.

Afterward, jurors say there wasn't enough evidence that Hernandez had intended to harm the elderly woman.

Hernandez clutches attorney Jones' hand and sobs: "Thank you! Thank you!"

For the first time in 14 months, she is free.

Hernandez will not be retried on the misdemeanor charge. She is fighting to regain custody of Alyanna while she looks for a job in a city with more than 20% unemployment.

She sleeps in the room where Concha Lopez died. And she helps care for another elderly relative, her grandfather.

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