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| Sunday, October 04, 1998  **Murder was the Case**  Frank LaPena has spent most of the past 24 years in prison for a 1974 murder he maintains he had nothing to do with. He has been out on bail for more than a year, awaiting what he hopes will be a third trial.    **By Caren Benjamin       Review-Journal**Frank LaPena is something of a legend around the Clark County Courthouse, a relic from the Las Vegas era between mobsters and make-believe, between Bugsy Siegel and Bugs Bunny; the real Va Va Va Vegas when the cocktail waitresses at Caesars Palace were the most beautiful women in the world and no one ever dreamed of bringing a child into a casino.        These days the courthouse is one of the few familiar buildings left in a city LaPena says he barely recognizes, a land of pyramids, pirate ships and tract houses flowing over the once-barren desert like a stucco sea.        Still, one would guess he'd avoid the place rather than haunt its halls, shocking young lawyers as if he magically made flesh from volumes of legal documents, the sole free and surviving cast member in a melodrama from the days when every murder was front-page news.        "That's Frank LaPena?" a young prosecutor asks, passing him in the hall. "That guy made a lotta law."        LaPena has spent about 17 years in prison since he was arrested in 1974 on a murder charge. He's been out on bail for more than a year, awaiting what he hopes will be his third trial. Tanned and groomed, he looks more like a casino slot host than a man twice convicted of a capital crime.        When he was first released in June 1997, he could barely contain his excitement about a chance to finally work -- as much as a jailhouse-trained barrister can -- in the actual courthouse. He got a job as a de facto law clerk for Carmine Colucci, a friend and one of about a dozen attorneys who has worked on some stage of his case. LaPena filed motions on his own case and cases for friends he made in prison.        He had other big plans when he bailed out. He was going to drive a limousine, then maybe buy a fleet of his own. He had friends with business ventures in the works.        But the world didn't want to work with a 60-year-old ex-con, even if his guilt was in doubt. For a while he wasn't sure how he'd pay the rent. Then a friend got him a gig hustling tips as a bartender at a topless dance club.        LaPena wasn't crazy about the job, but he wishes he could have kept it a little longer. Now he's unemployed again and tired of looking, tired of a lot of things. He's even staying away from his once favorite haunt -- the courthouse at 300 S. Third St.        "I've had it with the legal system. No more law work for me," he says.        As for work finding other work, "Number one, I got an age problem, I'm old," LaPena says. "Also, I make out a (job) application and they ask if I've ever been convicted of a crime. I say no truthfully, I'm not convicted of anything. But then they ask, `Where you been for 17 years, Frank?' And then what can I say? I say, `I was in prison for a homicide I didn't commit,' and they say, `Yeah, right.'        "I don't like to have to defend myself all the time. It is draining me out. Really draining me bad. I don't like to defend myself every damn day."       -- -- --        In the early morning of Jan. 14, 1974, 71-year-old Hilda Krause was asleep when a masked man surprised her 64-year-old husband, Marvin, in his garage, forcing him back into his Las Vegas Country Club home. The two were tied with electrical cord to chairs in separate bedrooms. Marvin was hit in the back of the head with a gun. He told police he was knocked nearly unconscious but eventually managed to untie himself.        When he saw his wife, she was dead. Her throat had been slit, a ligature wrapped around her neck and pulled. A kitchen knife was sticking out of her back. The room, splattered with her blood, had been ransacked.        From the beginning, the man in charge of the police homicide unit, Beecher Avants, remembers thinking: "This is one of those cases we are going to be living with a long time."        Police were quick to rule out a mob hit, though there was speculation at the time. They perfunctorily considered Marvin Krause a suspect.        "Any time a woman is murdered," said Avants, "there's always an open mind that perhaps the husband could be involved. But, quite frankly, there was never any, any indication that this in fact was the case here."        Eventually police decided it was a robbery. Whoever killed Hilda Krause took jewelry, a television set and a Cadillac Eldorado, license plate MARV.        And a big break came quickly.        Less than a week after the slaying, a confidential informant told police a man named Gerald Weakland had asked him six weeks earlier if he wanted in on a plan to beat and rob an elderly couple.        Weakland was arrested and charged with first-degree murder. But prosecutors knew from the beginning they were looking for someone else, according to Weakland's attorney at the time, Michael Cherry, who now is running for District Court judge. Exactly why, Cherry says he doesn't know.        Weakland was a scuffler, a semiprofessional boxer turned low-level thug, a big, tough-looking bull of a man who couldn't stand up to a homicide investigation. His confession came quickly. The man behind him, he said, was Frank LaPena.       -- -- --        LaPena was a bell captain at the Hacienda in 1974, back when even a bellhop could scratch up a few favors for a favorite guest. He had drifted to Las Vegas from Hollywood by way of New Jersey.        He has pictures of himself from those days, so movie-star handsome he could almost be telling the truth when he talks about the "hotshot producers" who once offered him a big break.        Rosalie Maxwell was his leading lady, a stunning, statuesque sometimes-blonde, a swing shift captain of the cocktail waitresses at Caesars back when they were called "goddesses." By the time she met LaPena she had a son nearly grown, a husband, and depending on who is to be believed, a guy on the side. But she was, LaPena says resolutely, "the love of my life."        Like Weakland, LaPena shouldered for tips, a waiter here, a pool boy there. And like Weakland, he dreamed of something bigger. Both were competing for a poolside concession renting towels to guests at Caesars.        The man in the middle -- the connection between Frank LaPena's world and Hilda Krause's world -- was Krause's husband, Marvin. The conduit was Maxwell, believed to have taken on both LaPena and Marvin Krause as lovers.        Marvin Krause met Maxwell at a blackjack game. He was close to 20 years her senior. He told her she reminded him of his daughter. A heavy gambler, he used to own a Boulder Highway bar and bought in a couple of percentage points at Caesars when it first opened. He became slot manager there, got her a job, bought her dinner, slipped her some cash from time to time. She called the relationship "a possessionship."        "He bought me gifts. He liked being seen with me," Maxwell remembered.        Hilda Krause was seven years older than her husband of nearly 30 years. By most accounts whatever real money they had -- not the petty stuff of salaries -- was hers. She had a son in Kentucky from a previous marriage who had become a judge. She had grandchildren. She had jewelry. Little else appears in the court documents about her life.        When police contacted Maxwell following the slaying, she described Marvin Krause as her "live one" and LaPena as her "true love."        These words would haunt Maxwell and LaPena through years of legal proceedings.       -- -- --        The journey through the courts began with the deal of a lifetime. Gerald Weakland, the man who took a kitchen knife to Hilda Krause's throat, was offered a sentence of life in prison with the possibility of parole after serving only five years.        Once he agreed, LaPena and Maxwell were arrested and charged with first-degree murder.        Two other men also were charged. One was a former professional football player who had gone to the Krause home to help Weakland with the robbery. He received probation. The man who recruited Weakland's assistant got the same deal. Neither of these men knew LaPena.        At the hard-fought preliminary hearing for Maxwell and LaPena, Weakland told prosecutors the plan was to get the missus out of the way so Maxwell could marry the would-be-wealthy widower Krause and funnel the money to LaPena. Weakland said the lovers paid him $1,000 and promised an additional $10,000 for the hit.        Krause couldn't identify his assailants. The rest of the prosecution's case relied on marginally believable jailhouse snitches and the interview Maxwell gave police.        The pair were ordered to stand trial. If they lost, they would face the gas chamber.        Defense attorney Oscar Goodman, whose clients have included Las Vegas' organized crime founding father Meyer Lansky and Chicago mob enforcer Anthony Spilotro, fought the decision to bring them to trial up to the Nevada Supreme Court and lost.        A majority of the court believed Maxwell's "live one-true love" comment corroborated Weakland's story.        She was the first to stand trial. Her attorney, Leonard Gang, remembers she remained surprisingly calm throughout.        Weakland took the stand, a powerful presence at more than 6 feet tall. Gang, a former District Court judge, was prepared to cross-examine, but he wasn't prepared for what actually happened. On the witness stand Weakland said he remembered nothing. He refused to testify.        "We were stunned," Gang said. "We weren't even sure at the time if this would help us or hurt us."        In August 1976 Maxwell was acquitted of all charges. By then, Marvin Krause was dead. He had suffered a stroke four months earlier.        That same year the U.S. Supreme Court struck down Nevada's death penalty statute.        LaPena's trial followed. His lead attorney was Nevada's current senior U.S. senator, Harry Reid. Reid, now running for re-election, said through a spokeswoman that he can't remember enough about the case to discuss it.        Again Weakland forgot the story that got him his deal. This time prosecutors were prepared. They showed jurors Weakland's prior testimony. It was enough. LaPena was convicted and sentenced to life in prison without the possibility of parole.        In 1982, thanks in part to legal briefs LaPena wrote himself, the Nevada Supreme Court threw out his murder conviction. There would be a second trial.        In 1989, before a new jury, Weakland flipped sides again. He was now talking. He said he lied about his amnesia in the first two trials because he feared for his family's safety.        LaPena was convicted again, and again he was sentenced to life in prison without parole.        Again the case went to the Nevada Supreme Court, which again sent it back to District Court for an evidentiary hearing on whether there should be a third trial.       -- -- --        LaPena's case was handed to defense attorney David Schieck who, despite having represented a number of Nevada's more notorious murderers, found the file a little daunting.        "It's like representing a piece of legal history," he said. "The further I got into the case, the more I realized that it's even more than that. Frank's case is really a part of the history of Las Vegas.        "I was in high school in 1974. When I look back at the names and people involved on both sides of the case, I was in awe for a period of time."        As Schieck read through testimony and documents, awe transformed into something closer to disgust. He believes police and prosecutors were at best not telling his client's former attorneys all they knew about the case and at worst hiding evidence.        He also found new witnesses who claim they have knowledge that could have acquitted LaPena years ago. In the evidentiary hearing, which was held in October 1995, Schieck presented one of them.        The man, Teodoro Martinez, worked as a busboy in the late 1960s at the El Cortez, where Weakland was a waiter. Martinez testified the Krauses had been regular customers of the once-posh gourmet room and had asked for Weakland, their favorite waiter, by name. Martinez's story, Schieck maintains, creates a crucial link between the Krauses and Weakland, who swore he never saw Marvin Krause until the day of the murder.        A prosecutor pointed out on cross-examination that Martinez and Maxwell were close friends, suggesting Martinez was lying.        Maxwell was waiting outside the courtroom for this hearing, ready to testify. Schieck decided not to call her after all. Her face badly scarred by an industrial accident, her body ravaged by the last stages of cancer, he figured she had virtually nothing to lose and could have been dangerous to either side.        But District Judge Gene Porter, clearly fascinated, called and questioned Maxwell himself. Porter, too, grew up in Las Vegas and was struck by the history before him.        He asked Maxwell if Marvin Krause was in the mob. They chatted lightly about other things. Later, after the hearing, Porter drew a chart of what he thinks really happened. The chart remains secret while the case is pending.        Maxwell told the judge Marvin Krause didn't talk about his wife much -- maybe once around November 1973 when Hilda broke her arm and "he said he wished it would have been her neck."        Maxwell acknowledged to Porter that at some long-ago court hearing she screamed at a prosecutor who repeatedly suggested she and Krause "had sex every day and twice a day on Sundays." She continued to deny, as she did until her death in February 1997, that she and Marvin Krause were ever lovers.        Weakland was portrayed as something of a choirboy at the 1995 hearing. Prosecutors asked him about things like his participation in a "scared straight" type program to keep youngsters from turning to crime.        In all Weakland served a total of 14 years for the murder -- not counting the three times he was bounced back behind bars for parole violations after being let go. He's at the Southern Desert Correctional Center in Indian Springs now for yet another parole violation. He did not respond to a request for an interview.        Weakland told Porter he didn't testify against Maxwell or LaPena at the first two trials because of fear of how other inmates treat snitches. "I didn't want to have to kill some fool in prison to survive," he said.        But by the second trial in 1989, he explained, he had found the "values" he lost and decided to do the right thing.        Then Schieck learned something LaPena's second trial jury never heard. Those values might have been brought out of hibernation by another deal Weakland cut. When his five years were up, police and prosecutors began writing the parole board, relating the heinousness of the murder and suggesting they seriously consider the "life" in life sentence. The letters stopped when Weakland agreed to reclaim his memory and testify against LaPena.        Had a jury known of this timing, Schieck argued, the credibility-challenged Weakland would have come across as completely unbelievable.        Another hole could have been shot in the state's case by the original statement of the confidential informant who turned police onto Weakland in the first place, Schieck told the judge.        The informant told police Weakland asked him if he wanted to participate in a robbery at the country club six weeks before the murder, Schieck said. Weakland claimed LaPena and Maxwell didn't contact him until the first Friday of the year. Hilda Krause was killed in mid-January.        While someone in that scenario simply could have been wrong about the dates, LaPena always considered the informant's story a key to his defense.        In 1983 the Nevada Supreme Court granted a motion from LaPena and ordered the release of the informant's name. Avants, former head of the state Democratic Party and the head of the homicide unit who by then had become an investigator for the district attorney's office, swore he never knew who the informant was during the original investigation or even after. He said the man's name, Joseph Costanza, came from Weakland, who had guessed Costanza was the person who tipped off police.        Avants described Costanza as the kind of guy who hung out in sports books, knew stuff and knew people who knew stuff.        But while the defense knew the man's name, his whereabouts were still unknown.        A judge agreed with LaPena's lawyer at the time that Costanza had to testify and issued a warrant for him to be held in jail, then extradited to Las Vegas. He was picked up in Florida.        Prosecutors claimed they tried desperately to get in touch with LaPena's lawyer when they learned where Costanza was being held.        When they couldn't, they sent Chuck Lee, a former police officer on the case who by then had gone to work for the district attorney as an investigator. Lee went to Florida ostensibly to try to persuade Costanza to come back to testify. Instead, after a brief hearing, a Florida judge decided to let Costanza go.        The defense investigator, Michael Wysocki, testified at the 1995 hearing that he passed Lee in the airport returning from Florida. Wysocki was on his way there -- too late.        Wysocki then tracked Costanza to New Jersey, where the informant told him in no uncertain terms he was not going to return to Nevada, did not want to discuss the matter and could make things "dangerous" should the investigator continue hounding him.        To make his point clearer Costanza had his wife call two men who drove up and jumped out of the car carrying a chain saw, Wysocki testified at the evidentiary hearing.        Prosecutors had substantially better luck schmoozing Costanza. Lee had a lengthy talk with him at a New Jersey motel. Lee, part-owner of a car dealership and a candidate for sheriff this year until he lost in the primary, said all he did for about five hours was warn Costanza his name was being released and try to persuade him to testify voluntarily. The talk produced a single-page memo that defense attorneys never saw.        Wysocki finally had to stop looking. The case was now before District Judge Thomas Foley. Costanza had hired the judge's brother, George Foley, as his lawyer. Thomas Foley denied further funding for the defense investigation into the whereabouts of the confidential informant.        Schieck wonders what really went on when Lee supposedly was trying to get Costanza to testify.        "What did they talk about in New Jersey for five hours? What did they tell that judge in Florida who let him out?" the attorney asks. "All we know is they had him, then Lee gets down there. There's no one there representing Frank. And then he's gone."        The switch in both Avants' and Lee's jobs, from police officers to the district attorney's staff, strikes Schieck as convenient. "Now they can just write memos that can be hidden under the protection of attorney work product," he said.        The attorney also questions the veracity of the police claims that only one person in the department knew Costanza's identity until the mid-1980s, when the court ordered his name released.        At the evidentiary hearing, Schieck produced a 1974 memo from the Metropolitan Police Department's intelligence files in which another officer claims Avants requested a favor for a relative of Costanza's because "it would assist him in a pending homicide."        Avants, in an interview, called the memo's contents "an absolute lie" and again swore he didn't know Costanza was the informant until the mid-1980s.        Had LaPena's attorneys put these facts before a jury, Porter ruled, the chances of a different outcome were high enough to warrant a third trial. That is where the case stands.        Since Porter's ruling, LaPena has found another witness, an old cocktail waitress friend of M's who gave a statement on tape that Marvin Krause asked her and several other women to help him stage a robbery for the insurance money. The woman says Maxwell was there for that conversation, too.        LaPena says he's not sure why his former lover -- later his "best friend" -- never told anyone a key piece of information that could have established his innocence.       -- -- --        The decision on whether LaPena gets a new trial or returns to prison to die is pending before the state Supreme Court. The last time he was in this position prosecutors offered him credit for time served and instant release if he would plead guilty.        He had been out of prison for six years then. He had a new girlfriend and a chance at a whole new life. He refused the deal. "I'm not going to admit to something I didn't do," he says.        As LaPena has stuck to his principles, most of the men who helped put him in prison or tried to keep him out have gone on to or are trying to carve significant places for themselves in Las Vegas lore: Reid, Goodman, Lee, Cherry, Avants. LaPena looks younger than most of them, as if he somehow has been frozen in time.        LaPena swears he is unconcerned about a third trial. Despite his confidence, it is hardly a lock for him.        A jury is likely to wonder, for example, why Weakland would lie. By LaPena's own admission the two were friendly.        The facts linking Weakland and LaPena and appearing to most to taint LaPena's claims of innocence involve another crime altogether. When Weakland was charged with the Krause murder, he already was in jail on charges he took the manager of the Hacienda into the desert and shot him in both knees. Weakland confessed to that crime and said LaPena paid him to do it.        At LaPena's trial on that charge, the victim, Willis Obenauer, testified he believed LaPena wanted him killed or at least warned. According to Obenauer, LaPena had been allowing prostitutes to use Hacienda rooms in exchange for a cut of the profit. Obenauer said he angered LaPena by halting that practice. LaPena was convicted of the shooting, but the conviction was overturned and he was never retried.        It's this kind of story that convinced Avants years ago that LaPena is guilty. Whatever new information that has surfaced since then or came out in the evidentiary hearing is the functional equivalent of "schoolyard talk, a fantasy, like kids yelling `liar, liar pants on fire,' " said Avants, who now heads security for the Barbary Coast.        Lee, too, remains convinced they had, and continue to have, the right man.        "We broke the case wide open," Lee insisted in a recent interview. He denied remembering much else in the way of specifics and abruptly cut a telephone interview short at the mention of Costanza.        The prosecutor who has been with the case since the beginning felt so strongly about LaPena's guilt that he came out of retirement in May to argue to the Supreme Court that the third trial should not go forward and LaPena should be sent back to prison based on his second conviction.        A legend himself, former Deputy District Attorney Mel Harmon has probably put more men on Nevada's death row than any other prosecutor with his sonorous voice and his way of circling back, and back, and back to the point, turning his final arguments into a gospel hymn for justice.        Harmon insisted Costanza had nothing new to add and that attempts to bring him in to testify were desperate efforts to resuscitate a dying case.        As for the theories on Marvin Krause, Harmon was having none of it.        "Marvin Krause had been married to Hilda for 29 years. It's true he had a girlfriend, but if that makes him a contract murderer, then half our society would be indicted today," Harmon said, just warming up.        "If Marvin were involved," he asked, "why didn't he set up a better alibi?        "If Marvin were involved, why did they wear masks?" he rumbled.        "If Marvin were involved, why did they take the Eldorado and rip it up?" And so on.        One of the justices interrupted him to ask whether it wasn't finally time to put this case to rest.        "I despise muuuurder," Harmon replied to what he appeared to deem an offensive question.        "I will pursue this if it takes 100 years," he promised.       -- -- --        In many ways Las Vegas is still a very small town.        Those who have been here awhile all know each other, just like back then. Judge Porter offered to recuse himself from the case when he discovered his wife's friend was the confidential informant's niece.        In the courthouse hallways now, LaPena will bump into Cherry, the lawyer who got Weakland the deal of a lifetime. Cherry chats amiably with the man whose life he indirectly helped stop in midstream.        While times are hard now, LaPena is far from losing hope. He's dreaming about the movie of his life. He says there's a writer in California and director Martin Scorsese is interested in the project. They want Robert De Niro as Frank LaPena. He says De Niro's too old.        As for the trial, LaPena says, "I got no reason to be scared. I proved I didn't commit that crime. There's no doubt about that."        Bring it on, says Avants: "We've convicted him twice. I see no reason why we couldn't convict him again."        Schieck takes the middle ground.        "I don't think in terms of guilt or innocence. Here's what we know for sure. We know he didn't actually kill anyone and he has done more time than most people who did.        "We also know he has never gotten a fair trial."  Give us your [FEEDBACK](http://www.lvrj.com/mb/) on this or any story.  Fill out our [Online Readers' Poll](http://www.lvrj.com/lvrj_home/help_about/rate.html) | (Top) Frank LaPena, shown in a 1982 photo,has twice fought murder convictions to the Nevada Supreme Court and won new trials. A third trial request is pending. (Bottom left) Clark County officials remove the body of Hilda Krause from her Las Vegas Country Club Home. She and her husband, Marvin, were attacked. Marvin survived the 1974 robbery, but died in 1976 from a stroke. (Bottom right) A crime scene photograph shows the bedroom where Hilda Krause was attacked and her throat slit. Review-Journal file photos  **RELATED STORY:** [TIMELINE: The State of Nevada vs. Frank La Pena](http://www.lvrj.com/lvrj_home/1998/Oct-04-Sun-1998/news/5422362.html) |
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