

*Thought you,*

# 'System works,' says



Bulletin Special Photos

Writer Gene Lovitz said his wife died in struggle.

By PAUL GALLOWAY  
The Chicago Sun-Times

CHICAGO — It was early morning on that Friday of Aug. 17, 1973, and people who lived in the Sleepy Hollow apartment complex in suburban Glen Ellyn were eating breakfast and leaving for work. Inside Apartment 1-A, Donna Rae Lovitz was about to die.

Donna and her husband, Gene, had spent the previous night drinking at Trader Jim's in the suburban Glendale Heights shopping center. While she was there, Donna was cheerful and affectionate but, as the time wore on, increasingly boisterous.

Her dark side was beginning to appear. This was nothing new to Gene. He had seen it many times. Those who knew about how they lived had warned him, they had advised him to get out. Wayne Giampietro, the lawyer who would later defend Lovitz, cautioned, "If you keep up like this, one of you is going to end up dead." Giampietro was not the only person who told him that.

Lovitz was a talented, unconventional man who moved in two worlds, one of which was coming apart. After a poor childhood and a hitch in the Marine Corps, he had served time for a series of armed robberies in Chicago when he was 20.

Upon release, he had gone straight. His record was spotless, his life was consistent and productive. He held

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## author freed in slaying...

the same job with the Belt Railway Co. for 23 years, and he built another career as a free-lance writer and photographer and as a supporter of prison reform and an opponent of the death penalty.

He was ballistics and firearms writer for Guns magazine and was co-author with Joseph Haas, the late book editor of the Chicago Daily News, of a prize-winning pictorial biography about Carl Sandburg, published in 1967 by G.P. Putnam's. He had become a friend of Sandburg and his family and was acquainted with a number of prominent writers and lawyers in town.

One of the latter was Elmer Gertz, whom Lovitz had met while preparing the Sandburg book, and he would later turn to Gertz and his partner, Giampietro, during troubled times with Donna and, finally, at her death.

Roy Porter, his literary agent, finds Lovitz a remarkable man. "He has enormous energy, and he is highly intelligent with fine perceptions and a wide range of interests," Porter said last week. "He had quite a future. He came out of the Jewish ghetto on the West Side, and he accomplished a great deal. He is an excellent photographer and writer, and we were planning several more books."

But in 1970, his marriage of 20 years was ending, and at 43 he had met and fallen in love with Donna Elwing, an attractive but unstable 28-year-old woman who had been married three times. Lovitz became her fourth husband,

and theirs was a chaotic marriage, riven with conflict, separations and excessive drinking.

Donna, Porter said, was an imposing woman. "She was blonde, fair and well-groomed. Everywhere she went, she attracted attention."

But she also was alcoholic and psychotic, Porter said. "She didn't tell him about her past until they were married. It was a bad mixture. I cautioned him about this. She was very volatile."

Donna and Gene lived in nine apartments in their three years together. There was constant turmoil. Donna had stabbed Gene and threatened him with a gun on separate occasions, and police had been called, complaints lodged and then dismissed.

Donna's mother, Agnes Farley, tried to gain custody of their daughter, Kellie, and Donna's other daughter by a previous marriage. "It was because they (Donna and Gene) were drinking," Farley said in a recent interview. "I tried to get them away from each other, but it didn't work."

On her last night alive, Donna Lovitz was repeating a familiar, frightening pattern. By the time they got home, her emotional storm was full-blown.

She was resentful, bitter and threatening, accusing her husband of being unfaithful, of not loving her. She often

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became angry and violent when she was drunk, and her jealousy and suspicions were the customary elements of her rage.

Neither Gene nor Donna went to bed. The alcohol fueled her fury, and they quarreled, intermittently, through the night.

About 7 A.M., Donna went into their bedroom and returned to the living room with the pistol she had given Gene for Christmas the year before, a .38-caliber, Spanish-made Llama semi-automatic. She said she was going to kill him, 2-year-old Kellie and herself.

The child was awake, and Gene, concerned for her safety and seeing that the weapon was loaded and its hammer cocked, grabbed Kellie and went to the front door. He thought he could contain Donna's anger, but he decided the best thing to do was to leave and let her sober up.

In a recent interview, Gene Lovitz, 54, described what happened, an account similar to his testimony at the trial:

"I had Kellie, and Donna came at me with the gun. I tried to get it away from her. We struggled at the door and fell. It was more like sliding down the door and when we hit the floor, the gun fired and all the blood came out.

"I went into shock because I loved her, and I knew it

was all gone. Donna was dead."

There were no other witnesses capable of relating what took place in that apartment that summer morning.

A jury didn't believe Lovitz's story. Eight months later, he was convicted of murder and sentenced to 14 to 45 years in prison.

In recent weeks, however, the criminal justice system that convicted him has had second thoughts. The case has been reopened.

On Nov. 19 the Illinois Appellate Court ordered a hearing on new evidence that could win Lovitz another trial or overturn his conviction. One factor in that ruling was evidence of an inherent design defect in the Llama model that caused a state witness at the trial — a gun expert — to change his testimony.

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The trial began on April 1, 1974. Giampietro did not even look for the witness who saw Donna and Gene at Trader Jim's — Marie Charles, the woman bartender at the cocktail lounge. She eventually came forward when she returned to the Chicago area from California, but the trial had ended before she was able to testify. She finally appeared at a hearing before Judge Bruce R. Fawell on a motion for a new trial.

Donna had more than 30 drinks on that last night, and this was responsible for her actions, Lovitz said on the

witness stand. But the testimony of the state toxicologist contradicted him and the state contended that Donna was sober and in control.

The bartender supported Lovitz. Donna was, indeed, drunk, and Lovitz was sober when they left Trader Jim's, Marie Charles said, but she also said they were at Trader Jim's on Thursday and Friday night. Lovitz said Donna was dead Friday. Judge Fawell ruled that the conviction stood.

A statement by Robert J. Wilson, who was director of the county sheriff's crime laboratory, suggests that First Assistant State's Attorney James E. Ryan, who prosecuted the case, and county law enforcement officials were unwilling to consider evidence that favored Lovitz.

Wilson, in a recent interview, said he overheard two Glen Ellyn police officers who arrested Lovitz scoff at Lovitz's claim that Donna had fired the gun by accident.

"I collected the evidence at the apartment," Wilson said. "... I don't scoff at anything. I wanted to see if what he said would stand up."

Wilson remembered a tiny cut on Donna Lovitz' right thumb. When he test-fired the gun, a cut in the same place appeared at the base of his thumb. Each nick was an identical 2 by 4 millimeters. He also noticed two other markings on his thumb. When he enlarged photographs



Please see **MURDER** Page A11 Donna Rae Lovitz had a chaotic fourth marriage.

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of Donna's right hand, he found the same marks.

Wilson said he told Ryan what he had found and Ryan told him to disregard it because "it had no bearing on the case." Later, Wilson said, he showed slides of the thumb cuts to the sheriff and Glen Ellyn Police Chief James Hill but Hill said the mark was merely a fly. He also said Undersheriff Richard Doria, now sheriff, "stated I had better knock it off" — that "I was creating problems."

Wilson says he offered to testify before the grand jury but was not called as a witness, and his requests to exhume Donna Lovitz's body so he could match the marks were denied.

Wilson left the sheriff's office in 1979. He now works for a crime lab.

There also was speculation that Ryan was intent on trying the case to gain publicity for his race for state's attorney. Ryan ran and lost. Now in private practice, he declined to comment on the case.

If the prosecutors turned a deaf ear and were certain of Lovitz's guilt, it may have been because of his actions after Donna's death. "I was distraught and panicky," he said. "My first thought was to keep Kellie away from the body."

Lovitz dragged Donna's corpse into their bedroom and wiped up the blood. He covered her with a bedspread, some cushions, two aluminum lawn chairs and a bag of Christmas ornaments so that Kellie wouldn't discover her mother's body.

He put Kellie in her crib and tried to decide what to do. He thought about killing himself. He thought about calling the police, and when he thought about that 1948 conviction he considered fleeing.

"I was stupid," he said. "I ran." After agonizing for a day, he told his son, Bryant, then 22, about Donna's death. Lovitz made a few tentative, halfhearted moves to report Donna's death, but on Sunday he and Bryant started driving south and kept going.

On Aug. 19, the day they left, Donna's body was found. Four days later, on Aug. 23, 1973, Lovitz turned himself in to authorities at Biloxi, Miss.

At the trial, Wilson testified about the markings on Donna's thumb, but

he was not permitted to tell about his tests or give his opinion that Donna had fired the gun. Judge Fawell ruled that Wilson was not a firearms expert.

Giampietro brought George Nonte to the stand as a firearms expert. He, too, had found that the slide of the Llama, when the weapon was fired, nicked his thumb.

But the state presented Joseph Nicol, who had served as a consultant to the Warren Commission's investigation of the John F. Kennedy assassination. He testified that it was impossible for the gun to cut the thumb as the defense claimed and that the gun would not have fired accidentally because the grip safety had to be purposely depressed for the gun to discharge.

Later Nicol, a professor of criminal justice at the University of Illinois, changed his mind and signed an affidavit in 1979 that contributed to the Nov. 19 appellate decision.

Lovitz's first appeal was denied in 1976 while he was in Stateville. In prison he studied the law and drew up his own appeal, which was denied by the U.S. Supreme Court.

In 1978, he tried again, filing a post-conviction petition Judge Fawell, who forwarded it to county Public Defender Frank Wesolowski for action. Wesolowski assigned the case to Robert H. Heise, an assistant.

"We were struck with Nicol's testimony, Wesolowski said recently. "What impressed us was his certainty. To me, things just aren't that absolute."

Heise began assembling new information and got an unexpected break when Fawell refused his request to send the murder weapon to a gun expert in another state.

Heise and Wesolowski had found George E. Fassnacht's name in a trial lawyer's publication, and they told Fassnacht, a forensic firearms expert in Philadelphia, to buy an identical Llama model and test it there.

[Fassnacht, a former ballistics expert with the Philadelphia Police Department, and a former CIA agent, knew a lot about weapons. His home in the Fox Chase section of Philadelphia was raided by police on June 20, 1971, and a cache of ammunition and various weapons including machine guns, pistols, rifles, gunpowder and TNT were found.

Police confiscated the 200 guns and 370,000 rounds of ammunition

and hauled it all away in two trucks.

Fassnacht was charged with being an unlicensed weapons dealer, but the case was dropped after judges ruled that police entered Fassnacht's home illegally.]

After Heise and Wesolowski called Fassnacht he phoned them back with encouraging news. "He said because of consumer protection laws, the manufacturer of the weapon now includes a vaguely worded warning about a flaw in the .38-caliber Llama's design," Wesolowski said. "Fassnacht discovered that the flaw

was that you could fire the gun without having to press the grip safety. You could fire it by simply putting downward pressure on the hammer, which depresses the grip safety and fires the gun."

This strongly supported Lovitz's contention that the gun fired accidentally when it hit the floor during the struggle.

"We went to Nicol, and demonstrated this," Wesolowski said. "He's a fine gentleman. He said, 'My goodness. My testimony certainly would have been different if I had known.'" Nicol agreed to sign an affidavit confirming that the gun could fire accidentally and cause a thumb mark like Wilson had found.

A toxicologist, Dr. Milton Bastos,

professor of forensic medicine at New York University Medical School, found "misleading and erroneous" the methods used by the state's expert witness who had testified that Donna had not been drinking. Bastos was backed by Dr. Harold Wagner, former chief pathologist of Cook County.

After Heise filed an amended petition for a post-conviction hearing, the state's attorney's office countered with a motion to dismiss the petition, which Fawell upheld.

At this point, the public defender's appellate office took over, and attorney Josette Skelnik began preparing for an appearance before the Appellate Court to seek a new hearing.

Lovitz was released on parole last

May 23, two months before Skelnik appeared before the three-judge panel and accomplished the first breakthrough.

Lovitz is writing a trilogy about what he has been through. "The first book will be entitled "Rosebud: A Murder Trial," covering his relationship with Donna and the trial.

The other two will be called "Rosebud: The Prison Years" and "Rosebud: Freedom."

"I was often depressed in prison," Lovitz said recently. "It seemed as though the system didn't work. This is more than personal victory, since, for me, it shows that the system works.

"But what would have happened if I had been illiterate or weak and given up? For the system to work, you have to make it work."

He added: "I lost everything a man could lose, but in prison I learned how to use every minute of the life that is left to me. This is what I want to do now."