



## Lynn DeJac

In the early morning hours of February 14, 1993, police were summoned to the Buffalo, New York home of Lynn DeJac and found the woman's 13-year-old daughter, Crystallyn Girard, dead in her bed.

DeJac, 30, told police that she had spent the night at a wedding reception with a boyfriend, Dennis Donohue, they had returned home and quarreled and both left. DeJac said she went to a tavern where she spent several hours drinking and using cocaine. She found the girl dead in bed when she got home.

An autopsy performed by the Erie County Medical Examiner's office determined the girl was strangled. A small amount of cocaine was detected in the body, but the narcotic was said to have played no role in her death.

Donohue became a suspect after DeJac said that she believed he had come back to the apartment after their quarrel while she was still gone. He was arrested several days later, but after passing a polygraph examination, he was released. He later was granted full immunity in return for his testimony against DeJac.

In May, 1993, Wayne Hudson, a childhood friend of DeJac told police she had confessed to killing her daughter. At the time, Hudson was facing forgery charges and a possible life sentence in prison as a repeat offender.

DeJac was arrested on December 10, 1993 and charged with second-degree murder, manslaughter and criminally negligent homicide.

DeJac went on trial in Erie County court in April 1994 and presented no witnesses. Hudson testified that she confessed to him. Donohue testified to their quarrel and night of drinking and drugs.

On April 20, 1994, DeJac was convicted of second-degree murder and on June 7, 1994, she was sentenced to 25 years in prison.

In 2007, DNA tests revealed the presence of a man's DNA in skin cells found in a smear of blood on a wall in Crystallyn's bedroom, on bedding and in the vaginal cavity of the girl, who was menstruating at the time. Donohue could not be ruled out as the source of the DNA. A petition for a new trial was filed.

On November 28, 2007, Erie County Senior Judge Michael L. D'Amico vacated the conviction and DeJac was released pending a new trial.

On February 13, 2008, prosecutors disclosed that new autopsy findings showed that Crystallyn died of a cocaine overdose, not strangulation.

The charges against DeJac were dismissed on February 28, 2008.

In May 2008, Donohue was convicted of the strangulation murder of Joan Giambra, a former girlfriend, in September 1993. He was sentenced to 25 years in prison.

**State:** New York

**County:** Erie

**Most Serious Crime:** Murder

**Additional Convictions:**

**Reported Crime Date:** 1993

**Convicted:** 1994

**Exonerated:** 2008

**Sentence:** 25 years

**Race:** Caucasian

**Sex:** Female

**Age:** 30

**Contributing Factors:** Perjury or False Accusation

**Did DNA evidence contribute to the exoneration?** Yes\*

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In November 2012, DeJac, who later changed her name to Lynn Peters, settled a federal civil rights lawsuit against the state for \$2.7 million. Her lawsuit against Erie County and the City of Buffalo was still pending.

– *Maurice Possley*

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A tragic event on February 14, 1993 resulted in the death of a 13-year-old girl and shattered the life of her mother: thirty-year-old Lynn DeJac discovered her daughter Crystallynn's dead body in their Buffalo, New York home

Crystallynn's autopsy revealed injuries to her face, eyes, neck and hands. Dr. Sungook Baik, the associate chief Erie County medical examiner, determined that Crystallynn had been manually strangled and ruled her death a homicide.

Ten months after the murder twice-convicted felon Wayne Hudson, was indicted for a felony. Facing a third felony conviction and a mandatory sentence of 25 years to life in prison, he told police that many months before DeJac had confessed murdering her daughter to him.

In December 1993 DeJac was charged in her daughter's murder.

### **DeJac's trial**

The prosecution's case was based on the supposition that after a night of drinking DeJac strangled her daughter while in a drunken rage. During DeJac's trial Baik testified that Crystallynn was strangled, but he made no mention that a toxicology test detected a trace amount of cocaine in her body. The testimony of Hudson, Keith Cramer, an ex-boyfriend of DeJac, and Dennis Donohue, another ex-boyfriend, were keys to the prosecution's contention that when drinking DeJac had an unpredictable temper. In exchange for his grand jury testimony, Donohue was given transactional immunity from prosecution and a reduced sentence for an unrelated crime. Neighbors provided testimony that DeJac left her son in the care of Crystallynn when she went out drinking and that they didn't like her.

DeJac said in her police statement that she had dated Donohue, but she broke up with him the night before Crystallynn's death. She also said he stalked her when she went out later that night and he got into a physical confrontation with her and the man she was with at a bar. After a night of bar hopping she went home about 5 a.m. and Crystallynn was sleeping when she looked in her room. She then left to go to the home of a man she had met that night. When she returned home about 2 p.m. she found an outside door open and Crystallynn's naked body in her bedroom.

On April 20, 1994 the jury found DeJac guilty of one count of second-degree murder. She was later sentenced to 25 years to life in prison.

## **Forensics Exonerates Lynn DeJac In Her Daughter's Death After 13 Years Imprisonment**

By Larry Schlee and Hans Sherrer

Erie County District Attorney Frank Clark denied he made a deal with Hudson in exchange for his key grand jury and trial testimony against DeJac. However, it is somewhat suspicious that after Hudson testified at her trial DA Clark dismissed the felony indictment and substituted a misdemeanor to which Hudson was sentenced to probation – instead of the 25-year minimum prison sentence he was facing after a third felony conviction.

### **New evidence leads to overturning DeJac's conviction**

Buffalo cold case detective Dennis Delano wasn't convinced of DeJac's guilt, and years after her conviction he began investigating her case on his own time. By the fall of 2007 Cramer had recanted his testimony, saying he had been angry at DeJac for breaking up with him and that the detectives who interviewed him led him to believe that she had murdered Crystallynn. Additionally, DNA testing unavailable at the time of DeJac's trial revealed in September 2007 that Donohue's DNA was found on the bedding Crystallynn's body was laying on, it was mixed in with her blood on the wall, and it was found inside her (that DNA was believed to be from Donohue's skin cells). The DNA evidence incontestably placed Donohue, but not DeJac, in Crystallynn's bedroom at the time of her death.

Based on the new DNA evidence DeJac filed a motion in state court to vacate her conviction and for a new trial.

Interviewed by Buffalo television station WGRZ in mid-November, detective Delano said he was absolutely convinced of DeJac's innocence: "There's no doubt in my mind. Based on the facts I see, she's a hundred percent innocent." Delano also provided WGRZ-TV with police video footage of Crystallynn's bloody and upended bedroom and some case documents that had never been publicly released. The video suggests there was a violent struggle between Crystallynn and someone immediately before her death, which is consistent with the defensive injuries documented in her autopsy report. Armed with the video and documents, the Buffalo media's coverage of DeJac's case was favorable to her bid for a new trial, which influenced public opinion to support her.

DeJac's motion to vacate her conviction was vigorously opposed by Erie County District Attorney Frank Clark, but it was granted on November 28, 2007. After 13-1/2 years of imprisonment, she was released later that day on bail pending her retrial. DeJac, 43, became the first woman in the United States to have a murder conviction overturned based on new DNA evidence.

### **Erie County DA has forensic evidence reevaluated**

DA Clark announced he would retry DeJac based on Hudson's unrecanted testimony, and in January 2008 she was charged with depraved indifference murder, which carries a sentence of 25 years to life in prison. However, with the Buffalo media and a firestorm of callers to talk radio programs openly questioning why a new trial was being pursued, Clark quietly hired nationally renowned forensic pathologist Dr. Michael Baden to review the autopsy and toxicological reports, crime scene photos and physical evidence. After conducting his review Baden determined that Crystallynn died from "acute cocaine intoxication" rather than strangulation. Baden's finding was completely contrary to the opinion of the ME in 1993 who disregarded the cocaine because he thought it was too small of an amount to be a relevant factor in her death. Baden also estimated that Crystallynn died at 5:30 a.m., which was 30 minutes after DeJac said she checked on her that morning and left the house.

Two weeks after Baden reported his finding to the DA, the current Erie County ME, Dr. James Woytash, reported to the DA that after a review of the evidence he determined Crystallynn died from a cocaine overdose and a head injury of unknown origin. Woytash subsequently issued a new death certificate reflecting Crystallynn's revised cause of death.

### **Charges dismissed against DeJac based on new cause of death**

On February 13, 2008 Clark held a press conference and announced the findings of Baden and Woytash. He said that the bruises on Crystallynn's head could have resulted from a fall after an overdose, which would explain the overturned table in her bedroom. Clark said that because he no longer believed that Crystallynn was murdered, the charges would be dropped against DeJac. Clark told reporters, "this woman has spent a lot of time in jail which she shouldn't have served. Is the system perfect? No, it isn't perfect. But the important thing is that the justice system discovered the error and cor-

**DeJac cont. on p. 13**

## DeJac cont. from p. 12

rected it. It's unfortunate it took 14 years to do it."

After Clark's press conference, Baden, who is the co-director of the New York State Police Medicolegal Investigation Unit, told *The New York Times*, "There was sufficient cocaine in her blood to cause death and there was no other competing cause of death." Baden also said that the ME's original ruling of death by strangulation was arrived at even though there were no typical signs like bruising of the neck or damage to the windpipe. He continued, "Medical examiners also make mistakes. It should be a wake-up call for defense attorneys to have their own experts examine the evidence."

On February 28, 2008 the charges were formally dismissed against DeJac. When she appeared on NBC's *Today* program, she said that she felt suicidal at times while imprisoned, "but I felt that if I did that it would go down that I was the killer of my daughter. So, that would bring me out of it."

### Donohue charged with 1993 strangulation

DeJac has always considered Donohue to be her daughter's killer, and the evidence supports that what likely happened is what she has always alleged. A dejected Donohue stalked her and a male friend that night. He followed them back to DeJac's home at 5 a.m., and angered when DeJac left with her friend, victimized Crystallynn and somehow introduced a trace amount of cocaine into during the attack. However, regardless of the evidence against Donohue, he cannot be prosecuted because he was given transactional immunity from prosecution in exchange for his testimony in DeJac's case.

The magnitude of the DA's error in giving Donohue immunity is not only suggested by the DNA evidence that supports he had a direct role in Crystallynn's death. In September 2007 he was charged with the strangulation murder of Joan Giambra only seven months after Crystallynn's death, based on DNA testing of evidence in the case. Donohue is also being investigated for his possible role in the 1975 strangulation murder of his then girlfriend Carol Reed.

### Detective Dennis Delano suspended for leaking DeJac case info to media

The same week the charges were dismissed against DeJac, the Buffalo Police Department filed six charges against detective Delano for insubordination. He was accused of repeatedly ignoring direct orders from superiors

to cease investigating the DeJac case, and of releasing the crime scene video and other case material to the media, including the results of Donohue's lie detector test. If found guilty of the charges, Delano could be dismissed from the police force. Suspended until resolution of the charges, Delano has requested a formal hearing that could be held sometime in 2008. After preliminary hearing in March, Delano told reporters, "I did what I thought I had to do at the time. I don't think I did anything wrong."



Detective Dennis Delano

When she appeared on the *Today* program, DeJac defended Delano. "Detective Dennis Delano, God bless him. If it weren't for him, I wouldn't be sitting here and I'd still be sitting in prison."

Supporters of Delano in Buffalo organized a campaign for him to be honored with Fox TV's "America's Most Wanted" All-Star First Responders award. He didn't win the award, but he was one of eight finalists for the annual award that is selected from police officers throughout the United States.

Delano's problems with his superiors isn't just due to the embarrassment DeJac's exoneration caused the Buffalo PD for its botched investigation of Crystallynn's death. He also played a key role in the exoneration of Anthony Capozzi of two Buffalo rapes, and his release in April 2007 after almost 22 years of wrongful imprisonment. (In March 2008 Capozzi filed a \$41 million claim against New York State for his wrongful imprisonment.)

### DeJac files \$14.5 mil. compensation claim

On March 28, 2008, DeJac filed a claim with New York's State Court of Claims for \$14,479,043. New York's wrongful imprisonment compensation statute doesn't place a cap on claims, and an economist hired by DeJac's lawyer calculated her economic damages at \$1 million per year for her 13 years, 7 months and 8 days of wrongful imprisonment, plus \$873,792 for loss of earning and benefits over that same period of time. DeJac gave birth to twin boys only months before her conviction, and she also had an 8-year-old son. She said after the

"Medical examiners also make mistakes. It should be a wake-up call for defense attorneys to have their own experts examine the evidence."

Forensic pathologist Dr. Michael Baden

claim was filed, "I didn't get to tuck my children into bed at night. I didn't get to tell them a bedtime story. I didn't get to kiss their boo-boos. I didn't get to do any of that." Her lawyer, Steven Cohen told *The Buffalo News*, "The system failed Lynn DeJac miserably," and "the only way the system can" repay her for her ordeal of being wrongly convicted and imprisoned for allegedly strangling her daughter is by financially compensating her."

### DeJac's prosecutor upset at criticism over her 1994 prosecution

Although some people might have a hard time sympathizing with him, the man who put DeJac in prison for almost fourteen years, former Erie County prosecutor Joseph Marusak, was so stung by the overwhelming public opinion in Buffalo favorable to dropping the charges against DeJac that he set-up a website to defend his prosecution of her in 1994.

### Aftermath

For more than 13 years the legal system branded DeJac as a child-killer. Now free to pick up the pieces of her life, she has vowed to clear her daughter's name, asserting her honors student daughter was not a drug user.



Lynn DeJac after her release

Likewise, Delano doesn't believe Crystallynn died from a drug overdose. After Clark announced the charges would be dropped and before his suspension, in late February 2008 Delano flew to Washington D.C. to attend the annual meeting of the American Academy of Forensic Sciences. He wanted to get opinions about Crystallynn's cause of death from some of the forensic experts attending the conference. Dr. Lawrence Kobilinsky, chairman of the Forensic Sciences Department at the John Jay College of Criminal Justice, was one of the experts who reviewed the autopsy report, photos, videos, and other documentary evidence. He expressed the opinion that there is no way at this point in time that anyone can come to a definitive conclusion as to how Crystallynn died. Kobilinsky thinks the only way to determine Crystallynn's cause of death is to do a thorough investigation that includes a reconstruction of events from the evening before she died until her body was discovered, and who may have had contact with her.

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## DeJac cont. from p. 13

So the four experts who have taken the closest examination of the evidence – the two Erie County MEs, Dr. Baden, and Dr. Kobilinsky – have all expressed a different opinion about Crystallynn's death.

Scott Greenfield, a New York criminal lawyer, wrote on his *Simple Justice* Internet blog that DeJac's case is a classic example of the fallacy of the non-fact based inductive reasoning prevalent in law enforcement decision making. Investigators first decide who committed a crime, and then proceed to collect and place undue importance on evidence that supports their supposition, while at the same time rejecting as insignificant all evidence that undercuts it.

Until Delano began looking at the importance of the evidence disregarded simply because it didn't support DeJac's guilt, she was destined to die in prison because of the Buffalo police investigator's inductive assumption that she was guilty. Delano's open-mind enabled him to pursue leads and forensic testing that wasn't deemed important at the time of DeJac's prosecution because the investigators were blinded by their assumption that she was her daughter's killer. It was Delano's fact based view of the case that led to DeJac's exoneration.

DeJac feels abused by the legal system, and rightly so. Her door to freedom has been opened into yet another room in a vast cave of horrors. Justice was denied her in 1994. It is again being denied her 14 years later by closing the case of her daughter's death by branding her as a drug user who accidentally killed herself, when the known evidence raises troubling questions about how she actually died.

Lynn DeJac is the first woman to have a murder conviction overturned by DNA evidence, although the charge wasn't dropped until the medical examiner ruled her daughter's death was not a homicide.

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## Jerry Frank Townsend Awarded \$2.2 Million For False Murder Convictions

Jerry Frank Townsend was branded as a serial murderer after being convicted in 1980 and 1982 of six murders and one rape in south Florida.

Townsend was 27 when arrested by Miami police in September 1979 as a suspect in the rape of a pregnant woman. After that arrest Townsend was questioned about several Dade County murders. Townsend has an IQ of around 50 and the mental capacity of an 8-year-old, so police interrogators had little difficulty pressuring him to confess to two 1973 murders. In 1980 a jury convicted him of committing the murders and rape. He was sentenced to three terms of life in prison.

While imprisoned Townsend was interrogated about four Broward County murders that he subsequently confessed to committing. He was sentenced to four more life terms after pleading guilty to those murders in 1982.

Townsend's convictions were all based on his confessions, since there was no physical or forensic evidence, or eyewitness identification linking him to any of the crimes.

Townsend's claims of innocence fell on deaf ears until 1998, when the mother of 13-year-old Sonja Marion, one of the murder victims, convinced a Fort Lauderdale police detective to review Townsend's case file. His investigation led to DNA testing in 2000 of a semen sample on Marion's shorts that excluded Townsend, and implicated another man. Testing of evidence in another case also excluded Townsend and implicated the same man — Eddie Lee Mosely,

Mosely was dubbed "Rape Man" by the media because he was linked to more than a dozen rapes and murders. Mosely was indefinitely confined in a mental facility after being charged in two cases.

Since the MO of all the crimes was similar and Townsend's confessions to two of the murders were known to be false, prosecutors conceded substantial doubt about the truthfulness of all of Townsend's confessions to the Broward County murders. Without the confessions there was no evidence Townsend committed the crimes, and the perpetrator of two of the murders was known to be Mosely — a career violent criminal. In April 2001 additional DNA testing confirmed the previous results, and Townsend's four convictions were dismissed on June 8, 2001. Afterwards, Broward



Jerry Frank Townsend in June 2001 after being cleared of four Broward County murders.

County Sheriff Ken Jenne personally apologized to Townsend. Jenne later told reporters, "I told Mr. Townsend that I regretted, was sorry he spent the past 22 years incarcerated."

A week later Dade County prosecutors moved to dismiss Townsend's murder and rape charges. Dade County Circuit Court Judge Scott Silverman dismissed those charges on June 15, 2001, saying: "Given the preferred deficiency in the state's evidence, a lack of trust in its evidence including the obtained confessions, and in some cases what may very well be Mr. Townsend's outright innocence, it is abundantly clear that he is the victim of an enormous tragedy." The 49-year-old Townsend was immediately released after 22 years of wrongful imprisonment.

A lawyer hired by Townsend's guardian filed a federal civil rights lawsuit against the City of Miami, the Broward County Sheriff's Office, and several police officers. Among the lawsuit's claims were malicious prosecution, and that Townsend's rights were violated by his coerced confessions, the altering of interview tapes, and the withholding of exculpatory evidence.

In December 2006 the federal Eleventh Circuit Court of Appeals upheld the District Court's denial of summary judgment to the defendants, which paved the way for the case to go to trial. In May 2008 the City of Miami agreed to settle its portion of the suit for \$2.2 million.

Facing significant liability because of the four false murder convictions in its jurisdiction, Broward County did not settle its portion of the lawsuit at the same time. As of early July 2008 the case is unresolved.

Townsend was not the only man wrongly convicted of Mosely's crimes. Frank Lee Smith, was cleared of murder by DNA evidence eleven months after he died of pancreatic cancer while awaiting execution on Florida's death row. That DNA matched Mosely, who was in the victim's neighborhood and he fit the assailant's description.

Previous *JD* Story: "Innocent Man Imprisoned for 22 Years as a Serial Killer," *Justice:Denied*, Vol. 2, Issue 7.

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Mother exonerated by DNA still fighting

Daughter's death still haunts woman freed of murder rap

BY CAROLYN THOMPSON The Associated Press

BUFFALO — Jurors didn't look kindly on Lynn DeJac. She was a tavern manager in blue-collar south Buffalo, a single woman with long hair and long nails who'd been pregnant by 15 and had a couple of children and her share of boyfriends.

When prosecutors told those sitting in judgment at her 1994 murder trial that after a night of bar hopping, DeJac used her bare hands to choke the life out of her 13-year-old daughter, they'd obliged with a guilty verdict.

The night Crystallynn Girard died, "She's running around drinking her brains out with three different guys," her own lawyer had said in his closing remarks.

DeJac spent 13 1/2 years in prison for Crystallynn's murder before being exonerated last month by an implausible chain of events.

Now 44 and back home in Buffalo, she is settling into a new life with teenage twin sons who were just 4 months old when she went to prison. She married their father, Chuck Peters, while behind bars, but the couple has had little cause to celebrate, even now.

DeJac may be free, but she is fighting mad — and not just over lost time.

Because as bad as it was for her — prison, separation from her infant twins and another son, the public scorn all those years ago — hearing her dead daughter's name sullied now is worse.

"She was an innocent little girl," DeJac says, tears of frustration rising with her voice. "She doesn't deserve this."

When DeJac was released from prison in November, she became the first woman among more than 200 men since 1989 who have been freed nationally by newly analyzed DNA evidence.

But ultimately, it was not the DNA that cleared her of charges. While that was enough for a judge to set aside DeJac's conviction, it was not enough for District Attorney Frank

Clark to drop the charges.

He finally relented only after forensics experts preparing for the retrial stumbled upon a finding that would remove all doubt about DeJac's innocence. It is the very finding DeJac will not accept: Crystallynn overdosed on cocaine.

"It's not going to stay like this," DeJac said on a day she called "bittersweet."

"My daughter was not a drug user ... My daughter was murdered," she said. "There's no question my daughter was murdered."

The killer, she said, must have transferred the tiny bit of cocaine found in Crystallynn's blood from his finger.

DeJac has believed from the start that killer is the man whose DNA was found in Crystallynn's bed and body, a former boyfriend named Dennis Donohue, a man who can never be charged.

#### YOUTH CUT SHORT

Crystallynn Girard was an honor roll student with her mother's hair and a sunny smile. At 13, she was 5 feet 6 inches, already two inches taller than her mother and a few pounds heavier.

She was a "godsend" the way she helped get her younger brother to bed at night and off to school in the morning, her mother said.

Her mischievous side showed when it came time to do the dishes, a job Crystallynn despised. More than once did DeJac find the sink not so mysteriously clogged with a dishtowel.

One night, after DeJac scolded her daughter for not helping more with the housework, she came home to a spotless house and a rose on her pillow with a note of apology from Crystallynn.

"To me, she was an angel. She was my best friend," DeJac said, her long hair graying now, a reminder of the years spent away.

The night before she was found dead on Valentine's Day 1993, Crystallynn and a girlfriend enjoyed a double-date dinner with two young boys.

But there had been dark times, too. Her stepfather was sentenced to five to 15 years in prison for molesting Crystallynn before she'd turned 10. DeJac admits she made mistakes as a parent but bristles at the description of her as the hard-drinking, absentee mother painted at trial.

"Was I a perfect mother? By no means," she said. "I'm not even claiming to be. But was I the worst mother? No, I'm not claiming that either."

#### SHOCKING FINDINGS

Dr. Michael Baden stood at a podium in the district attorney's office to explain how, in 2008, he reached such a startlingly different conclusion about how Crystallynn died than the "manual strangulation" finding a county medical examiner reached in 1993.

"Forensic science can be misinterpreted," said the respected pathologist after listing an "accidental cocaine overdose" as the cause of death.

Baden examined the crime scene photographs and autopsy report at the request of the district attorney's office.

The first medical examiner, Baden explained, may have misinterpreted a mark on Crystallynn's neck made by her chin as a thumbprint. The frothing from her mouth and nose seen in photos — a strong indicator of a drug overdose — may have been wiped away by the time the autopsy was done.

Crystallynn had bruises on her head and a table in her bedroom was overturned, adding to the appearance of a struggle, but Baden suggested Crystallynn could have fallen into the table and hit her head while high on cocaine.

The hyoid bone in Crystallynn's neck was not fractured, a telltale sign of strangulation, and there was fluid in her lungs typically seen in drug overdoses, he said.

At the news conference, the county's current medical examiner, Dr. James Woytash, concurred with Baden's finding. Within days, Woytash would change Crystallynn's death certificate to reflect his belief that a "combination of cocaine and head injury" killed the girl.

What mattered, Clark said, was that both experts agreed Crystallynn was not strangled.  
COLD CASE OFFICER

Detective Dennis Delano is a modest man, a bear of a cop who gained hero status in Buffalo last spring after helping get an innocent man named Anthony Capozzi out of prison after 22 years. Delano fought relentlessly for Capozzi, even before DNA eventually proved the rapes he was serving time for had been committed by someone else.

When one day last year, the sister of a 1993 murder victim named Joan Giambra approached Delano at church and asked the cold case officer to look into that unsolved crime, he pulled the file.

Immediately, his mind jumped to two other cases whose files he'd kept near his desk at Buffalo police headquarters for the past several months: Crystallynn Girard and a woman named Carol Reed, whose 1975 murder had gone unsolved.

A bartender named Dennis Donohue had come up during both of those investigations, but he had never been charged. Even though Crystallynn's mother had been convicted in that death, both cases felt unfinished to Delano on those occasions when he would flip through the files.

The Giambra case had a familiar feel.

"All three were female. All three were found face up. All three were found nude. All three were strangled," the veteran officer said.

The way Crystallynn was found bothered him. For one thing, she was naked except for a pair of red socks.

"I'm not saying a mother would not kill her daughter... but this way that it happened, something was wrong. If on a long shot a mother was going to undress her daughter to make it look like something else, she would have taken the socks off."

A note in Joan Giambra's file said she had gone out with a bartender named Dennis, but no last name was known.

Cold case officers soon focused on Donohue and were able to match his DNA to evidence preserved from the Giambra crime scene. Donohue was charged in September with Giambra's murder.

Later that month, DeJac's attorney, Andrew LoTempio, said new analysis of evidence from the Girard case placed Donohue at the crime scene. Not only was Donohue's DNA found in a blood spatter on Crystallynn's wall, authorities found, it was inside Crystallynn's body.

"He confronted her, strangled her, stripped her and mutilated her body," LoTempio charged at a hearing to have DeJac's conviction overturned.

"Give me another logical explanation as to why a 40-year-old man's DNA is in a dead,

naked little girl's blood on her bed and on the wall and in her private parts," he said later.

Soon came another revelation: Donohue had been given immunity in Crystallynn's case after passing a lie detector test and testifying before the grand jury that indicted DeJac. He could never be charged.

#### DELVING DEEPER

Donohue was angry with DeJac that Valentine's Day eve. They had gone to a wedding together but DeJac didn't want to spend any more time with him. She had him drop her off at the corner of her street about 11 p.m. and began walking home.

The two fought in front of Crystallynn when Donohue followed DeJac into her house. He knocked the telephone out of her hand and stormed out when she called 911 to report "an unwelcome guest."

After about a half hour, DeJac left for the Babcock Grill, the bar her mother owned on the corner, while Crystallynn stayed home. Donohue soon arrived at the bar and DeJac asked the bartender to have him leave. Then she left with a man she said she'd known for 16 years, with Donohue following her to the car.

She and Michael Nichter went to a bar named LaBoom and then to Nichter's house, where they found Donohue waiting. He grabbed Nichter from behind and put a Swiss army knife to his throat. Then he left.

DeJac stayed the night at Nichter's house. When he brought her home the next afternoon, Crystallynn was dead.

"I opened up her door and I noticed her table was knocked over and she was laying on her bed and I called her name," DeJac said in a statement to police.

"I could not see very well from coming in and the sun and it was dark in her room. I finally adjusted my eyes and seen she was naked. I called her name. I was screaming. She did not respond."

#### A NIGHTMARE RECALLED

For eight months, the murder went unsolved.

Then, in the fall of 1993, an old family acquaintance offered police the break that would lead them to arrest DeJac — a confession from DeJac herself.

Wayne Hudson, a felon with convictions for DWI and shooting a man in the groin, was facing forgery charges and a potentially lengthy jail sentence when he relayed a conversation he said he'd had with DeJac months earlier.

"I can't take it anymore. I did it," Hudson said DeJac told him as the two sat in her mother's bar on a Friday or Saturday evening in May. "I hurt my daughter. ... I choked my daughter," he said DeJac confessed.

At trial, Hudson testified he told police about the confession five months later, only after his most recent arrest. Eventually, he pleaded guilty to a misdemeanor on the forgery charge and was placed on probation, but he denies he was seeking favorable treatment when he told police about his conversation with DeJac.

Hudson stands by his account today.

DeJac believes he made the whole thing up.

"He couldn't tell you what I was wearing, what time of day it was, what day it was, where it took place," she said.

But it was DeJac's shortcomings that prosecutors focused on, calling many witnesses who spoke of an irresponsible, alcohol-fueled lifestyle.

"All of us felt that I was convicted on my lifestyle, not the actual crime itself," DeJac

said.

“We know you were convicted on that,” her husband adds as he listens to DeJac in the dining room of their modest Buffalo home, about a mile from where Crystallynn died. He calls the prosecution’s tactic “character assassination.”

#### MOTHER JAILED

On June 7, 1994, then 30-year-old DeJac stood before Erie County Judge Michael D’Amico’s bench, looking small and scared as he sentenced her to the maximum 25 years to life in prison for what prosecutor Joseph Marusak called the “callous, brutal, heinous” murder of her daughter.

“But I didn’t do this,” she pleaded again and again. “I didn’t do this.”

DeJac was taken away in handcuffs to the maximum security Bedford Hills Correctional Facility north of New York City, 400 miles from her newborn twins and her 9-year-old son, Eddie.

Not only had DeJac lost Crystallynn, she was now losing the rest of her family and her freedom. At times it would feel like she was losing her mind, too. In prison, she spent time under suicide watch, and in a hospital for the criminally insane.

Killing herself offered a chance to reunite with Crystallynn, she thought, but her Catholic faith made her worry she’d be stuck in purgatory. Plus, suicide would make her look guilty, she thought, though that hardly mattered.

“I couldn’t stand it, I couldn’t bear it. I don’t know how to explain the pain,” she said. “I just wanted to die and go be with her because I literally lost my best friend.”

She and Peters recounted one particularly painful Mother’s Day visit when the twins, still in a stroller, burst into tears at the sight of her.

“They didn’t know her and they started crying right away and that was it for her,” said Peters, who had brought the children by bus. “She went right over the edge.”

“That devastated me,” DeJac said, “and I ran into a bathroom crying.”

#### SEEKING JUSTICE

DeJac plans to sue for her wrongful imprisonment but says what matters even more is finding justice for Crystallynn.

Both she and the cold case detective, Delano, remain convinced Crystallynn was murdered, despite the district attorney’s assertion that no crime was committed.

DeJac wants the cause of death on Crystallynn’s death certificate changed back to strangulation, even if no one is ever charged.

“This is about a little girl wronged,” DeJac said. “We already fixed mine, now it’s time to fix this, because it’s wrong. It’s absolutely, 100 percent wrong.”

For his part, Donohue has pleaded not guilty to Giambra’s murder and is being held without bail while awaiting trial. He is considered a person of interest in the Carol Reed murder.

[http://today.msnbc.msn.com/id/23405780/ns/today-today\\_people/t/exonerated-mother-says-daughters-killer-still-free/](http://today.msnbc.msn.com/id/23405780/ns/today-today_people/t/exonerated-mother-says-daughters-killer-still-free/)

# Exonerated mother says daughter's killer still free

The first woman ever freed by DNA rejects new finding that teen overdosed

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By Mike Celizic

TODAY.com contributor

updated 2/29/2008

On her first full day of freedom since being cleared by DNA evidence of the 1993 murder of her daughter, Lynn DeJac said that she can't be at peace until the real killer is brought to justice and a new autopsy finding that the girl died of an overdose is reversed.

"It's very hard to accept the fact they're now putting this on the death certificate," DeJac told TODAY's Meredith Vieira. "My daughter did not use drugs. My daughter was not a drug user. My daughter was an honor-roll student. It's horrible that [the death certificate] now reads cocaine."

It is yet another strange twist to a tawdry tragedy. DeJac had been convicted of the strangulation death of her 13-year-old daughter, Crystallynn Girard, in 1994. The primary witness against her was her former boyfriend, Dennis Donahue, who was granted immunity from prosecution in return for his testimony.

Two years ago, a Buffalo, N.Y., police detective, Dennis Delano, was working on another case involving Donahue for the department's cold-case unit when he uncovered DNA evidence that linked Donahue to Crystallynn's death. Based on his findings, Donahue was charged with a different strangulation murder, and DeJac was released from prison last November after 13 years.

DeJac was free but not clear of all charges. As long as Crystallynn's death remained a homicide, Buffalo prosecutors wanted to bring her to trial again for contributing to the death. It was only on Thursday, one day after Dr. Michael Baden, the prominent former New York City medical examiner, determined Crystallynn had died of an accidental drug overdose, that prosecutors dismissed all charges.

The 44-year-old DeJac said she was willing to be tried again to get the truth out about her daughter's death. "There was a possibility I could have went back to prison for 12 more years," she said. "I was willing to go if it meant going to a trial so the truth could come out."

DeJac was 16 years old when she gave birth to Crystallynn. Five years later, she had a son by another man. When Crystallynn was 10, she was sexually abused by the man with whom DeJac was then living, and he spent time in jail.

At the time of the murder, DeJac was portrayed in the local newspapers as a woman who drank heavily and often left her two children home alone while she either worked at her mother's tavern, located six doors down from her home, or was out drinking.

"I'm not saying I was a saint," DeJac said. "I wasn't a saint by no means." Still, she told Vieira, she was not a bad mother.

"I know what happened," she said. "No one else knows what happened as far as what our lives were like. I lived in a house that was six doors from where I lived. I could literally see my home outside the window from where I worked."

Night of drinking

DeJac went to a wedding on the day that Crystallynn died and then continued the party with a longtime boyfriend. She returned home in the evening, only to find Donahue there. Fearing a conflict between Donahue

and her boyfriend, she left again to drink some more. When she returned many hours later, Crystallynn was dead in a room that was spattered with blood.

With Donahue the prime witness against her and her history of drinking provoking outrage in the community, DeJac was convicted of the murder.

It wasn't until 2006 that Delano and others in the Buffalo Police Department's cold-case squad became interested in her case. He would become so convinced of her innocence that he went to Washington, D.C., to pursue the investigation on his own time and money.

When he came forward with his findings, old police tapes of the murder scene and of a lie detector test administered to Donahue were leaked to a local TV station. Delano, who remains convinced that Donahue and not cocaine killed Crystallynn, was blamed for the leaks and suspended with pay from the department on Wednesday.

Chuck Peters, who married DeJac after she was imprisoned, called the detective "a true American hero, a very hard-working man ... Right now, we're kind of outraged that Dennis Delano is under suspension for doing his job. He's a very dedicated, hard-working man."

It's one more thing DeJac has to deal with in her new life of freedom.

The first thing she had to do when she came home in November was get to know the twin sons she gave birth to in February 1994, just before she went to prison. The boys had been raised by their father, Chuck Peters.

For 13 years, Peters told Vieira, he told his twin sons that someday their mother would come home.

"She never spent an evening with them, she never put them to bed, never was able to read them a story," said Peters. They saw her infrequently when they were young and hadn't seen her at all for years because she was incarcerated more than eight hours from Buffalo. But Peters told them about her.

"I just wanted them to know who their mother was and that someday maybe we'd be a family again," Peters said.

DeJac said being falsely imprisoned for killing her own daughter was "horrible." When Vieira asked her how she coped, she said, "I was suicidal all the time."

But when she thought of killing herself, she also thought of what that would mean. "I felt if I did that then it would go down that I was the killer of my daughter. So that would bring me out of it; friends would bring me out of it."

Vieira asked how she's coping with everything that's happened since she's been released.

"One moment at a time is how you pick 'em up," she said. "Things come up, things happen, you deal with them."

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## Inductive Reasoning Means Murderer Walks

The exoneration of Lynn DeJac, reported in the [New York Times](#), brings good news and bad news. First the good: For the first time, DNA evidence has exonerated Lynn for the murder of her 13 year old daughter, Crystallynn. She was convicted in 1994, but her attorney, Andrew C. LoTempio, never gave up. This raised the number of exonerations to 209, according to the Innocence Project.

Some murder accusations are worse than others. While Lyn DeJac was not, according to the story, a model mother by any stretch, being accused (not to mention convicted) of murdering her own daughter is about as bad as it gets. The trial consisted largely of evidence by Lynn's neighbors about what a lousy human being she was and how much they didn't like her. I'm sure the judge allowed it as "background" or some less than cogent [Molineux](#) (other crimes) theory. (Aside: Yet another opportunity to opine about how Molineux, which was held to serve as a shield to protect defendants from evidence to show propensity to commit crimes, is used routinely as a roadmap to circumvent its fundamental purposes by judges who just refuse to comprehend the basic rule).

So bad girl Lynn DeJac became the cops' immediate target. The closest family member is always the person who committed the murder. Just ask any cop, they'll tell you. This is where [inductive reasoning](#) comes in.

Normal people assume that the police first gather the evidence, sift through it, investigate it and then, upon the completion of these tasks, identify the person they believe committed the crime. First they have evidence. Then they have a target. But that's merely what normal people think. Not cops.

Cops decide who the perp is. They then collect evidence to prove themselves right. Evidence that disproves their theory is rejected, explained away or just deep-sixed. After all, it's bad evidence since they already know who did the deed. They ignore leads that take them in a direction away from the perp, because that's just a waste of their precious time. They embrace witnesses who support their theory, and convert witnesses who don't to the truth.

Why do cops know who the perp is before the evidence is gathered? They just do. They're cops. They have a "sixth-sense," street-wise experience, whatever phrase newspaper writers like to attribute to the flea-bitten detective who can smell a criminal half-way down the block. It's a very romantic notion.

Other times, cops just go with the odds, as courts invariably do. If a wife is murdered, 90% of the time it's the husband. Therefore, arrest the husband and you're right 90% of the time. What about the other 10%? Well, it's not a perfect system, you know.

It's no different for the judge, except the odds aren't as clear. Let's say 97% of all defendants are guilty, at least of something. So if a judge finds the police testimony credible by default, then he's right 97% of the time. That's a pretty good statistic, and will keep him off the front page of the New York Post as the *Worst Judge in New York*. But don't bother asking any judges about this. Most are in denial.

So a case as built against Lynn DeJac, heavy drinker and really bad neighbor. No doubt it was based on "compelling evidence," as prosecutors love to say. Sure, it's meaningless, but that phrase always ends up in the papers and inexplicably makes reporters and readers alike think it

must be true. The only problem is that she didn't do it.

Now for the bad news. Lynn DeJac's boyfriend, Dennis P. Donahue, was the murderer. DNA is a two-way street, you see. So why is this bad news? Ah, there's the rub.

In their zeal to convict the heinous Ms. DeJac (who cops *just knew* was the culprit), Donahue (who doesn't get a "Mr." in front of his name because he's undeserving of such gratuitous formality) was called to testify against her in the grand jury. Now, for those of you unfamiliar, while the feds give stinky little *testimonial* immunity for grand jury testimony, New York gives broad *transactional* immunity. Since Donahue was called by the prosecution before the grand jury to testify, and was questioned about the murder, he gets to walk. The prosecution gave Donahue a free ride on murder.

Before anyone comes up with the brainstorm that the problem is transactional immunity, bear in mind why Donahue gets a pass while DeJac gets hosed. This, not immunity, is the lesson of this case: The rush by police to decide who dunnit, and then the effort to collect evidence to support their induction. It would strike any thinking person, even a jaded criminal defense lawyer, that the cops really ought to take a look at the potential killers, and consider the full significance of the potential evidence, before picking one and framing them. But no, that's just not effective law enforcement work. We're the police. We know what we're doing. Trust us.

And as long as we're on the subject, consider the importance of what the neighbors thought of Lynn DeJac. After all, being some drunken party-girl is almost the same thing as being a murderer, right? The taint of allowing evidence to come before a jury with no real purpose other than to besmirch a defendant's character is strong stuff. People love to hate people who others love to hate. Show us some bad character and we'll happily attribute all sorts of evil to them. A little two dimensional, perhaps, but we're too busy to think hard about things, so a rush to judgment (like we do in our everyday lives, as the jury instruction goes) makes for swift justice.

Not quite the way you want the system to work, you say? Then judges, give it some thought before you bend over backwards to find a *Molineux* exception to let irrelevant bad acts evidence in through the back door to smear a defendant. It wouldn't kill you to make the prosecution actually prove it's case directly, now would it?

Welcome back the world, number 209.

<http://www.nytimes.com/2007/11/29/nyregion/29mother.html>

November 29, 2007

DNA Evidence Frees a Woman Convicted of Killing Her Daughter

By DAVID STABA

Correction Appended

BUFFALO, Nov. 28 — In 1994, Lynn DeJac was found guilty of strangling her 13-year-old daughter during a night of drinking and bar hopping. On Wednesday, Ms. DeJac walked out of the Erie County courthouse free, and the first woman in the United States to have her conviction for killing someone overturned based on DNA evidence.

The 44-year-old Ms. DeJac — whose husband and twin sons were seated behind her in the courtroom — began weeping after Judge John L. Michalski ordered her released on her own recognizance.

After her release, Ms. DeJac left the courthouse with her husband, Chuck Peters, whom she married while in prison, and their sons, who were born during her first year in prison. She did not speak to reporters.

“The first thing she wanted to do was go to my sister’s grave, then reunite with everybody — it’s been so long,” said Ms. DeJac’s 22-year-old son, Edward Girard, an Army sergeant stationed in Fort Bragg, N.C. “She hasn’t met my wife yet; she hasn’t met her grandkids.”

Yet despite Ms. DeJac’s legal victory, she faces another legal hurdle. Frank Clark, the Erie County district attorney, said he planned to retry her on a charge of second-degree manslaughter because, since her conviction, the legal definition of murder due to depraved indifference had changed.

As a result, Mr. Clark said, even if Ms. DeJac was found guilty at a second trial, she would probably not return to prison because she had already served nearly the maximum sentence possible for the lesser charge. Explaining why he planned to proceed with the case, Mr. Clark said: “The question of guilt or innocence still has not been determined. That’s why we have every trial.”

Earlier in the day, Judge Michael L. D’Amico, who presided over her trial and sentenced her to 25 years to life, set aside Ms. DeJac’s murder conviction. He ruled that new tests showing that bloodstains in the room where the body of her 13-year-old daughter, Crystallynn Girard, was found on the afternoon of Feb. 14, 1993, contained DNA belonging to a former boyfriend of Ms. DeJac’s, Dennis P. Donahue.

But Mr. Donahue will never be tried for Crystallynn’s murder, even though members of the Buffalo Police Department’s cold case squad suspect him of committing the crime. Mr. Donahue, a 55-year-old former bartender, who was charged in September with the 1993 murder of another Buffalo woman he had dated, cannot be charged in Crystallynn’s death because prosecutors granted him immunity in exchange for his testimony before a grand jury and at Ms. DeJac’s trial.

Ms. DeJac’s lawyer, Andrew C. LoTempio, urged the police to re-examine evidence found at the crime scene after Mr. Donahue’s arrest. Later, tests not available at the time of the trial indicated that a man’s DNA was present in skin cells found in a smear of blood on a wall, on bedding and in the vaginal cavity of Crystallynn, who was menstruating at the time.

Eric Ferrero, a spokesman for the Innocence Project, a legal clinic based at the Benjamin N. Cardozo School of Law in New York, said Ms. DeJac was the first woman to be exonerated of murdering someone among the 209 people cleared through DNA evidence since 1989.

An Illinois woman, Paula Gray, was exonerated along with four men in 2002 after DNA testing cleared them in a 1978 double murder, but she had been charged as an accomplice, rather than someone who played a direct role in the crime.

“More often than not, DNA cases involve sexual assaults, so the defendants are most often men,” Mr. Ferrero said.

At Ms. DeJac’s trial, prosecutors said she had strangled her daughter during an all-night drinking binge that took her and Mr. Donahue to a wedding, back to her home, and to several local taverns. At the trial, Mr. Donahue admitted having confronted Ms. DeJac and another man that night, and that at one point he put a knife to the man’s throat.

Although prosecutors said there was no physical evidence connecting Ms. DeJac to her daughter's murder, they relied on the testimony of a man convicted of forging checks, who said she confessed to the killing in a bar several months later.

The circumstantial case also hinged on Ms. DeJac's behavior on the night of her daughter's death: she made a 911 call shortly before midnight, then did not answer the door when the police responded about 15 minutes later.

Several witnesses from the working-class neighborhood of Buffalo where Ms. DeJac lived and her mother owned a tavern described her as a troubled woman, a heavy drinker and erratic mother. They said she frequently left the girl and her 8-year-old brother alone while she stayed out all night. Crystallynn's stepfather was convicted of sexually abusing her before she was 10 years old.

"I think about 80 percent of the jury's verdict was based on innuendo created by neighbors who didn't like her," said Mr. LoTempio, a former Buffalo city court judge.

Mr. LoTempio said the new DNA tests provided more evidence implicating Mr. Donahue than prosecutors had presented in the case against Ms. DeJac.

"Throughout the night, he had the opportunity to be in the house, and throughout the night, he had the motive," Mr. LoTempio said at a hearing last week on the motion to dismiss the verdict, suggesting that Mr. Donahue killed Crystallynn because he was angry at her mother. "He's not only in her room, he's in her blood."

For now, he said he hoped that the attention did not hamper her in rebuilding her life.

"She's got no money, she's got no clothes, she's never seen the house where her husband and children live," Mr. LoTempio said. "Think about being taken away from the world for 13 years and then being dropped back in. Hopefully, she won't slip back into that neighborhood and the things that caused the problems in the first place."

Correction: December 6, 2007

An article last Thursday about Lynn DeJac, a Buffalo woman who is the first in the nation to have her conviction for committing a murder overturned based on DNA evidence, misspelled the surname of a spokesman for the Innocence Project, a legal clinic that works on such exonerations. He is Eric Ferrero, not Ferraro.