

**A PORTRAIT  
OF  
A CANADIAN INJUSTICE**

**The Conviction and Incarceration of  
Canada's Longest Serving Prisoner:  
*David Edgar Milgaard***

Compiled by:

**VOICE: Victims of Injustice Cry Enough**

**August 1991**

**054461**

"Take [me] out of the picture, right,  
it's not justice for David Milgaard anymore,  
it's justice for all. If [the Justice Minister]  
can have all those facts come up for her  
[and reject them] ... where is there going to be justice  
in the different things other than people  
are bringing up to her, for the people that are living  
on the streets, that are caught up in the systems?"

- David Milgaard quoted in  
an article by Cameron Barr  
The Christian Science Monitor  
May 15, 1991

Put  
another  
picture here  
if you  
wish

"... I want to get out;  
do what I can to just enjoy  
my life, and ...  
to maybe in some way  
help others ... and  
that's my game plan for  
the future."

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DAVID MILGAARD, 39

- David Milgaard speaking on  
NBC's A CURRENT AFFAIR

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**Born July 7, 1952**

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**I. INTRODUCTION:**

**FACT:** Gail Miller was found murdered in the City of Saskatoon, in the Canadian Province of Saskatchewan, on January 31, 1969.

**FACT:** David Milgaard was sixteen(16) years of age at that time.

**FACT:** David Milgaard heard that the police were looking for him so he voluntarily went to the RCMP in Prince George, B.C. in May 1969 and asked why they wanted to see him. He was charged with the murder of Gail Miller.

**FACT:** David Milgaard was convicted of this crime on January 31, 1970.

**FACT:** David Milgaard was sentenced to life in prison and he has now been in prison for 22 years.

**FACT:** David Milgaard's appeal to the Saskatchewan Court of Appeal was dismissed in January 1971. Subsequently leave to appeal to the Supreme Court of Canada was denied.

**FACT:** David Milgaard has consistently maintained his innocence.

**FACT:** David Milgaard is Canada's longest serving prisoner.

**FACT:** Another Canadian, Donald "Junior" Marshall served eleven(11) years for a crime he did not commit.

**FACT:** The real murderer in the Marshall case was known at least two(2) years before Donald Marshall was released and a new trial and review of his conviction was ordered by the Ministry of Justice.

**FACT:** The recommendations from the Marshall Inquiry, re: an independent review mechanism, have not been implemented by the Ministry of Justice, as yet.

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### II. UNRESOLVED QUESTIONS:

QUESTIONS remain that seriously undermine the credibility of the evidence used to convict David; raise doubts about police procedures and investigation practices in Saskatoon; and, point out how additional victims can be created by the ineffectiveness of the system to bring the real criminal(s) to justice.

1. Two(2) knives were found at the scene of the crime; one(1) disappeared and was never brought into Court. **WHY?**
2. The contents of the victim's vagina were discarded and never tested. **WHY?**
3. All three(3) of David's friends gave original statements that said they knew nothing about the crime. All of these statements subsequently changed. **WHY?**
4. There was no evidence of fiber, hair or any other physical evidence to connect David with the crime. **WHY was he charged and convicted on only circumstantial evidence?**
5. The original notes of Staff Sgt. Paynter are no longer available. The Officer does not remember (some twenty[20] years after the event) whether or not he performed specific tests to determine the human origin of "seminal specimens" found at the scene, *four(4) days after the assault* (yellowish stains in a snowbank). **WHY?**
6. There were no signs of a violent struggle during the rape-murder which took place, outside, in -40 degrees F. **WHY?**
7. According to the Prosecutor's assertion, David and his companions were stuck in the snow near the murder scene; yet testimony submitted at the trial indicates that there was no evidence of a car having been stuck where the crime took place. **WHY?**
8. Credible witnesses saw David both after (Walter and Olesia Danchuk), and at the time of (Henry Rasmussen, Motel Operator), the murder (approximately 6:45 am to 7:15 am) and they observed no blood on David or bizzar, irresponsible behaviour. They were not believed. **WHY?**
9. The witness, who washed the clothes worn by David on the day that the murder was committed, was never called to testify. **WHY?**
10. Two woman (Deborah Hall and Ute Frank) who could refute the motel testimony of George Lapchuk and Craig Melnyk were never brought into Court to testify under oath; however, David's accusers were given the opportunity to testify. **WHY?**

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11. There is evidence that the slash wounds inflicted on the neck of the deceased would most likely have been caused by a right-handed person. David is left-handed. **WHY was this fact not explored by the Principal police investigator (Joe Penkala, now Chief of Police in Saskatoon), and the Crown Prosecutor (T.R. Caldwell)?**
12. Ron Wilson informed the police that David had in his possession a compact and cosmetic bag which he discarded. It was implied that this was the property of Gail Miller. Yet, there was a cosmetic bag in her purse; and definitely no room for another. This fact was not explored. **WHY?**
13. Henry Diewald, the caretaker at St. Mary's Church went from the rectory to the church to open its doors at approximately 7:10 am. When he walked past the entrance to the alley where the victim was found, he saw the headlights of a car parked right where the victim's purse was later located. On his return he saw a short individual walk in front of the headlights. David and his companions were known to be at the Motel on the outskirts of Saskatoon at that time. **WHY was this not followed up?**
14. Human semen does not freeze into a yellowish stain at -40 F. It is white and hard to see. Dr. Emson, the Coroner; an author of many articles and texts on Forensic Pathology, Forensic Medicine and Medical Jurisprudence, and Chairman of the Department of Pathology at the University of Saskatoon, stated that he was sure it was semen, secreting A-antigens; but, he could not say from what species it originated. **WHY?**  
  
Dr. Peter H. Markesteyn, Chief Medical Examiner for the Province of Manitoba and Professor of Forensic Medicine at the University of Manitoba suggests that this sample was actually dog urine. (June 4, 1990)
15. In 1980, (ten years after the conviction) the Milgaard family posted a \$10,000.00 reward for information which could prove David's innocence. The Saskatoon Police actually went to potential informants in Regina (a distance of 120 miles) and advised them that they did not have to speak with anyone about the murder. **WHY?**
16. When in 1986, Hersh Wolch, Q.C. and David Asper were first retained by the Milgaard family, within a few weeks, Mr. Wolch received a phone call from the original Prosecutor (T.R. "Babs" Caldwell, now a Senior Official with the Federal Ministry of Justice) pointing out that *it was a complete waste of his time to get involved in this matter.*

How would he know that Mr. Wolch was involved; and, why so many years later (16 years) would he take the time to discourage him from defending David and his family?

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17. The Crown Prosecutor called approximately forty-five (45) witnesses. David's defense Counsel, C.F. Tallis, Q.C. who is now Chief Justice for the Province of Saskatchewan, called no witnesses. There is no record of Mr. Tallis' address to the jury. **WHY?**
18. The former Crown Prosecutor, T.R. Caldwell, was known to have sent photographs of the victim's nude body to community members of the Parole Board every time David came before the Board for release on parole. **WHY?**
19. Defense Counsel, C.F. Tallis, was not permitted to cross-examine a hostile witness, Nichol John, who contradicted, while before the jury, an allegedly signed statement (May 24, 1969), given by her to a Sgt. Mackie. **WHY?**
20. A tenant, Linda Fisher, living in the basement apartment of the Cadrain home informed the Saskatoon Police of her suspicions that her husband may have been involved with the murder. They did not follow up. **WHY?**
21. Federal Justice Minister, Kim Campbell, refused on February 27, 1991 to refer David's case to a Court for review. In taking her decision, she received the advice and counsel of Ministry of Justice Officials (T.R. Caldwell, et alia) and does not share the information upon which her decision was taken. She states that none of the new evidence would have made any difference at the trial. **WHY?**
22. David Milgaard has been consistently denied parole. He is Canada's longest serving prisoner. He is required to admit that he committed this brutal crime; in David's own words - "To lie in order to experience freedom". **WHY?**
23. David was convicted on circumstantial evidence; that is, he was in the wrong place at the wrong time. Some of the victim's personal belongings were later found near the house (Cadrain) visited by David and his companions on that morning of January 31, 1969. **Did his cooperation with the Police lead to the subsequent charges and conviction?**
24. Given the above information, are there other possible suspects and scenarios to explain the circumstances leading up to the brutal death of Gail Miller? **Do we have all the facts? Can we be assured that justice prevails in Canada?**
25. **Does this additional incidence, of a serious miscarriage of justice, cause Canada to fall well below accepted international standards of justice?**

We have  
it

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**III. ANOTHER EXPLANATION:**

It is not the intent of anyone seeking the release and exoneration of David Milgaard and his family to accuse another innocent person. With respect to the family of Gail Miller, there is great remorse that her murder is recalled, so frequently, in an effort to clear David. Our thoughts and our prayers cherish her memory very dearly.

Yet, it is strongly felt that justice is not served unless the real murderer is brought to justice. The community cannot be safe for all women if the real rapist and murderer is not apprehended and prevented from continuing to assault innocent victims.

In this case, there are a number of victims. There are: Gail Miller and her family; additional victims of sexual assault; and, of course David Milgaard and his family - the wrongly accused.

**3.1. NEW SUSPECT:**

Larry Fisher was identified in a June 21, 1990, CBC documentary THE FIFTH ESTATE as a possible suspect.

**FACT:** Larry Fisher, on January 31, 1969, lived in the basement apartment of the Cadrain home which David and his companions visited on that day; 1.5 blocks from where the body of Gail Miller was found.

**FACT:** Larry Fisher did not go to work that day, yet he told the police that he went to work on that day.

**FACT:** Larry Fisher's wallet was found in close proximity to Gail Miller's wallet.

**FACT:** Larry Fisher used to take the same bus to work with the victim.

**FACT:** Larry Fisher was out all night and did not return home until about 9:00 or 10:00 am on the day of the murder.

**FACT:** Larry Fisher's wife at the time, Linda Fisher, has signed an affidavit noting that her paring knife was missing from her kitchen on that day and that she confronted her husband with possibly murdering Gail Miller. His response is suspect.

**FACT:** Linda Fisher's uncle, Clifford Pambron worked with Larry Fisher in construction and socialized with him. He often loaned his dark red, with black vinyl top, 1958 Chevrolet to Larry. It was possible that Larry had the car on the morning of January 31, 1969.

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**3.2. NEW SUSPECT'S RECORD:**

Larry Fisher has a record of violent rapes, using a paring knife similar to the one used in the Gail Miller murder.

**FACT:** Larry Fisher was apprehended, in Winnipeg, for a brutal rape and possession of a weapon dangerous to the public peace (forced sex under threat of being stabbed with a paring knife), September 19, 1970.

**FACT:** Larry Fisher subsequently admitted and pleaded guilty to another sexual assault in Winnipeg on August 2, 1970.

**FACT:** Larry Fisher also admitted to:

- o a rape on October 21, 1968;
- o a rape on November 13, 1968;
- o an indecent assault on November 29, 1968; and
- o a rape February 21, 1970. \*

All of these offenses were committed in Saskatoon, Saskatchewan.

\* Three(3) weeks after David Milgaard was sentenced to life in prison for the rape and murder of Gail Miller, one(1) year previously.

**FACT:** Larry Fisher was released from prison on January 26, 1980.

**FACT:** Larry Fisher raped and attempted to murder a victim in North Battleford, Saskatchewan on March 31, 1980.

**FACT:** He was recommitted as a parole violator on April 16, 1980.

**FACT:** Larry Fisher was sentenced on June 11, 1981 for:

- o attempted murder, ten(10) years consecutive to sentence serving; and for
- o rape, ten(10) years concurrent.

**FACT:** Larry Fisher is scheduled for release from prison in 1994. He is eligible for parole now.

**FACT:** In response to a question on the CBC's THE FIFTH ESTATE; "Do you agree, the facts add up to a damning picture, you are a logical suspect?", Larry Fisher chose to answer in this way: "I fully agree with you ... the cops have had my name for 21 years ... now, if they had some concrete evidence, why didn't they charge me 21 years ago?"

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**IV. THE CROWN'S CASE AND NEW EVIDENCE:**

<b>CROWN'S CASE</b>	<b>NEW EVIDENCE</b>
<p><b><u>11th Hour Witness</u></b></p> <p><b>FACT:</b> Two witnesses testified that David re-enacted the murder in a motel room.</p>	<p><b>FACT:</b> Police had a statement from a woman in that motel room that said nothing about a re-enactment; he simply "smiled oddly".</p> <p><b>FACT:</b> Another woman in the room has signed a statement that says no re-enactment took place. (given to the Justice Dept. in Dec., 1988).</p>
<p><b><u>Forensic Science</u></b></p> <p><b>FACT:</b> Two drops of "semen" were found four(4) days after the crime was said to be committed by David.</p>	<p><b>FACT:</b> Dr. James Ferris, a world renowned scientist says this sample could not be reasonably linked to David (report of Dec.,1988).</p> <p><b>FACT:</b> An eminent Forensic Pathologist, Dr. Peter Markesteyn, agrees. He goes on to say that it could be dog urine (sent to Justice Department in June 1990).</p>
<p><b><u>David's Friends</u></b></p> <p><b>FACT:</b> Nicole John recanted an eyewitness' statement that was factually impossible on the witness stand.</p>	<p><b>FACT:</b> Ron Wilson has recanted incriminating testimony against David. He now says he was coerced and manipulated by Saskatoon Police (sent to Justice Department June, 1990).</p> <p><b>FACT:</b> Evidence before the Minister of Justice totally discredits the testimony of Albert (Shorty) Cadrain. It also shows the use of improper Police procedures (sent to Justice Dept. June, 1990).</p>

The federal Minister of Justice, and Attorney General of Canada, **Kim Campbell** indicated on February 27, 1991 that she feels that the "new evidence" would not have made any difference at the trial. Therefore, she denies a re-trial and refuses to re-open the case. In short, she supports the law enforcement and judicial systems blindly; not the victim(s) or the wrongfully accused and convicted.

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**V. SUMMARY:**

David Milgaard might be out of prison and reporting to a Parole Officer now, if he had said he was guilty.

His point is simple: "I did not kill Gail Miller!"

Twenty-two(22) years of a young life, from 17 years to 39 years of age, is a lot of sacrifice and an injustice that no nation can ever repay.

In addition to the tragedy of the wrongful conviction of David Milgaard, there are four(4) additional, innocent victims of another man. This man, Larry Fisher, was not even considered by the Saskatoon Police to be a suspect at the time of Gail Miller's murder. Larry Fisher confessed to three(3) known sexual assault incidents which occurred in Saskatoon, prior to the rape and murder of Gail Miller and to another three(3) weeks after David was sentenced. Larry Fisher was tried and sentenced in Regina, Saskatchewan for these offenses which occurred in Saskatoon; three(3) in 1968 and one(1) in 1970.

In fact, the victim of the February 21, 1970 assault vividly remembers a Police Officer observing that the circumstances surrounding this incident, occurring just three(3) weeks after David was convicted and sentenced to life in prison, were exactly the same as in the Gail Miller case.

Serious doubts remain about the conviction of David Milgaard. The investigative practices of **some** of the Saskatoon Police are also suspect. Any serious doubts need to be explored and examined in a court of law; with due respect for the rights of the victims, the accused as well as those submitting their testimony.

When the judicial system makes a mistake in the carriage of justice, it can recover its esteem and credibility by admitting a failure and taking the necessary precautions so that reoccurrences are prevented. Confidence in the system grows and is maintained through fairness, openness and responsiveness to the needs of individual victims; not the reputation of the system, for its own sake.

If you feel that there is reasonable doubt as to the appropriateness of the conviction of David Milgaard for the rape and murder of Gail Miller; you, and all Canadians, have a right as well as an obligation to demand justice - **justice for all!**

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**VI. RECOMMENDATIONS FOR ACTION:**

You can help by:

- o Writing the Minister of Justice, Kim Campbell, and asking her to re-open the case - ordering a new trial
- o Writing Your Member of Parliament (M.P.)
- o Writing to the Editor of Your Local Newspaper, or simply sending a copy of your letter to the above
- o Sending a Donation to:

***The David Milgaard Support Fund  
The John Howard Society  
165 Garry Street  
Winnipeg, Manitoba  
R3C 1G7***

*(A tax-deductible receipt will be given for donations of \$10.00 or more)*

- o If you have information to share; contact David's legal counsel, *in confidence:*

Call **David A. Asper, B.A., J.D.** at: (204) 949-1700  
FAX him at: (204) 947-2593, or  
Write him at: **Wolch, Pinx, Tapper, Scurfield**  
ICG Building  
904 - 444 St. Mary Avenue  
Winnipeg, Manitoba, R3C 3T1

- o If you wish to offer your moral and financial support to the Milgaard Family:

Call David's Mother, **Joyce Milgaard** at: (204) 831-0762  
or  
Write her at: **#2 - 2841 Ness Avenue**  
Winnipeg, Manitoba, R3J 1A9

- o Wearing a Button and/or Using a Bumper Sticker:

***"Justice for David Milgaard Now!"***.

- o Arranging for a speaker to address: a Service Club; University; Community/Social/Rights Organization by calling: **John MacNeil, (416) 820-9753**; or writing him at: **P.O. Box 38, Station A, Mississauga, Ontario, L5A 2Z2**
- o Volunteering Your Time to Ensure that Justice Prevails for All in Your Community !

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*If you have come to help me;  
You are wasting your time.  
But if you have come because your liberation  
is bound up with mine;  
Then let us work together.*

- Lilla Watson  
An Australian Aboriginal Woman  
Quoted in the Winter, 1990 Edition  
*The Justice Group* \*

**A WISE POLICY**

**CHOOSES ITS ALLIES**

**ON THE BASIS OF WHAT THEY ARE FOR,**

**NOT WHAT THEY ARE AGAINST !**

*A field of disdain was the cast of one's vision  
as those around are left unfelt and uncared for.*

*True colours are the fortunes*

*given in heart-felt love.*

*This beauty is shared in the giving.*

- David Milgaard  
*The Justice Group*, Winter 1990

\* A group founded and organized by David Milgaard and his friends, at Stoney Mountain Penitentiary, as;  
"A Voice for the Voiceless".

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