

The Story David Milgaard Wanted Told

By Lisa Joy
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Book Review by Gary Botting¹
Chair, Miscarriage of Justice Canada
Coquitlam, BC
Canada

After serving 23 years in prison for a crime he did not commit, David Milgaard craved more than anything establishment of a board of review with the power to prevent other innocent accused from suffering a similar fate. “Canada needs an independent Board that is not part of the criminal justice system or the government that looks at all cases where anyone claims to have been wrongly convicted,” he wrote in the “Foreword” to *Wrongful Conviction in Canadian Law* (LexisNexis, 2010). “When this Board finds that the person is innocent, the government should quickly free them and give them compensation.”

On 17 December 2024, 55 years after his wrongful conviction for the murder of nursing assistant Gail Miller and more than 20 years after the Government of Saskatchewan first ordered an inquiry into the classic miscarriage of justice that kept David in jail for half his adult life, David’s primary wish was finally granted—posthumously—with the passage of the *David and Joyce Milgaard Law* creating the Criminal Case Review Commission.

“Was his wrongful conviction incompetence—or a coverup?” journalist Lisa Joy asks rhetorically on the cover of *The Story David Milgaard Wanted Told*. By the end of the book, she has demonstrated that it was *both*. From the outset, the investigation exemplified not only tunnel vision on the part of police and prosecutors, but also a decided lack of professional ethics, relying as it did on the bullying of impressionable, and therefore malleable, teenagers terrified of themselves being accused as accomplices in the brutal rape and murder of Gail Miller.

Her murder was a heinous crime they knew David, then 16, could not possibly have committed since—as they initially told the police—they were with him the whole time on 31 January 1969, except for a few minutes too brief to reconcile with any aspect of the crime.

They were his alibi.

¹ Legal analyst Dr. Gary Botting is the author of *Wrongful Conviction in Canadian Law* (NexisLexis 2010), for which David Milgaard wrote the Foreword. David was godfather to Botting’s grandson, Phoenix Gagnon. Dr. Botting’s more recent books include *Dangerous Offender Law* (2021); *Canadian Extradition Law* (2023); and *Halsbury’s Laws of Canada: Extradition and Mutual Legal Assistance* (2024). Formerly a journalist with *South China Morning Post* and the *Sunday Post-Herald*, he was a professor of English literature and creative writing for 20 years and a barrister for 30 years before retiring to write full time. Dr. Botting is now also the Chair, *Miscarriage of Justice Canada*.

The police would have none of it. They bullied and cajoled the teens until, hours later, they broke, and were prepared to say—even write out—whatever garbage the police dictated. This was not merely incompetence; it was a failure of ethical police interrogation.

Lisa Joy names names and provides photographs of the true villains of this story: not only Larry Fisher, the undoubted rapist/murderer, as was eventually proven by DNA evidence (he even bragged to fellow prisoners about raping a dying woman—in minus 40 degree weather, no less), but also the senior police officers and Crown counsel who, convinced there is no such thing as a coincidence, robbed a teenager of his youth and 23 years of freedom.

The most damning indictment in Joy's account is against the Saskatchewan director of public prosecutions, Serge Kujawa, who, as Joy documents, "handled Milgaard's appeals to the Saskatchewan Court of Appeal at the same time as he secured a direct indictment against Fisher, which allowed the case to avoid media attention, and he moved the [Fisher] case to Regina court even though the crimes were in Saskatoon."

Kujawa obviously knew Larry Fisher had sexually assaulted several women in Gail Miller's neighbourhood before and after her murder, when David Milgaard was demonstrably nowhere near Saskatoon. By shielding Fisher and allowing him to avoid a formal trial for the Saskatoon rapes, Kujawa effectively, whether intentionally or not, thwarted efforts to link Fisher to his victim. "Kujawa oversaw Fisher's and Milgaard's cases, at one point at the same time, but insisted he never connected Fisher's rapes to Milgaard's conviction," says Joy.

"But critics saw something darker at play. Had the justice system buried Fisher's crimes to protect Milgaard's conviction?"

That question had been asked very early on by Staff Sergeant Tom Vanin of the Saskatoon Police Major Crimes Unit—who was demoted to Patrol for his pains. "I strongly believed that David Milgaard was innocent," Vanin later testified to the Royal Commission of Inquiry conducted by Justice Edward P. MacCallum, explaining why, two decades later, he shared his views with David Asper, David Milgaard's lawyer. "As a police officer, I just felt it was my duty to do what I could.... It was my obligation to see an innocent man get set free."

Commissioner MacCallum appeared more interested in giving absolution to the police and prosecutors for their undoubted incompetence, chalking up their "mistakes" to tunnel vision rather than malice—thereby dodging the question as to whether there was a concerted cover-up. He suggested that the Milgaards' forthrightness in sharing information with the press had been, and continued to be, counterproductive, echoing the attempts by police and prosecutors to cast aspersions on David and his mother, Joyce Milgaard, for their indefatigable media campaign.

As Joy documents, in 1990, Sgt Vanin asked the permission of Saskatoon Police Chief Owen Maguire to interview Fisher, but was told that the Fisher case was closed, period! Nonetheless, Vanin searched for the Fisher files, only to find "no checkout logs. No traces. Just empty spaces where crucial evidence should have been." The *Globe and Mail* quoted their police source (Vanin?) as saying that for every detail of a multiple sexual assault file to vanish was "bizarre." "Somebody's tampered with the system," the source said.

The Fisher files weren't the only ones that were missing. In April 2005, former Saskatoon Police Chief Joe Penkala "handed over approximately 250 pages of documents related to the 1969 murder of Gail Miller," says Joy. "The documents, stored in two weathered binders, had been in Penkala's possession for 36 years. Their sudden appearance raised troubling questions about transparency, accountability, and the handling of evidence."

Under the subheading, "Missed Connections: Willful Blindness?" Joy notes, "The police had locked onto Milgaard early, and no amount of new evidence could shake their resolve." Penkala "admitted that before Milgaard's arrest, investigators believed the same man committed both the rapes and the murder. But once Milgaard became the prime suspect, the theory evaporated"—thus contradicting Kujawa's testimony.

Murray Brown, director of public prosecutions at the time of the Inquiry, testified that the police were reluctant to turn their attention to anyone other than Milgaard "because police, by that time, didn't have just an intellectual investment, they had an emotional one." The same can be said of the prosecutors, who, astonishingly, blamed the media for their own tunnel vision. At the Commission hearing, Brown singled out Dan Lett of *Winnipeg Free Press*, who (he said) was used by the Milgaard defence team "like a cheap whore in respect of disseminating the point of view of the Milgaard camp. Anything you guys said, Dan Lett was more than happy to publish."

To which Betty Ann Adam responded in the Saskatoon *Star-Phoenix* "Tell me, if an accurate reporter is a cheap whore, what does that make people who imprisoned and kept imprisoned an innocent man?"

"For every Don Lett shining a glaring light on injustice," writes Joy, "there was a Serge Kujawa, wary of the power of the press. But one thing is certain, without the media's relentless coverage, David Milgaard might have died in prison, a victim of a system unwilling to confront its mistakes." Besides Lett, Joy credits Cecil Rosner and Carl Karp of the CBC with the Milgaards' ultimate success, suggesting that when the police and prosecution sabotage justice by trying to hide and obfuscate their "mistakes," they become agents of injustice rather than justice. In such circumstances, turning to the fourth estate is the only remedy, she suggests.

Where there are villains, there are also heroes, not least of which were private investigators Paul Henderson and Jim McCloskey of Centurion Ministries Inc., an American non-profit group dedicated to investigating claims of wrongful conviction; and Hersh Wolsh, the barrister who represented David in his appeal to the Supreme Court of Canada. Together, they connected the dots between the 1969 murder and the rapes to which Larry Fisher had confessed.

Joy's many illustrations and reprinted newspaper clippings are well chosen to support her narrative, and she has added a helpful who's-who and timeline at the back of the book; but there is no index. An index would have been particularly useful, since the chapters resemble news stories presented in a series, resulting in unnecessary repetition of names and situations. The volume would benefit from the services of a professional editor and book designer. Nonetheless, *The Story David Milgaard Wanted Told* is riveting investigative journalism, with short, punchy chapters (51 of them, averaging five pages each) resembling a series of vignettes: great for reading on the run!