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“An Interview with David Milgaard”

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On the weekend of February 19-20, 1994, the newly created Canadian Association in the Defence of the Wrongly Convicted (AIDWYC) held a conference in Toronto. Headed by Rubin "Hurricane" Carter and supported by leading Canadian defence counsels and an international cast of the wrongly convicted, the conference served to introduce the mandate and purpose of AIDWYC. David Milgaard, who served 22 years in Canadian penitentiaries for a homicide he did not commit, participated in the conference. Though released in 1992, the Canadian Justice Department refused to exonerate David and the Saskatchewan government refused to give him the opportunity to clear his name by giving him a new trial. This latter decision was particularly galling in light of the new evidence that Milgaard's counsel presented to these bodies. This interview took place at the end of the conference. A year later, on February 2, 1995 a Supreme Court of Canada decision provided Milgaard with the right to pursue litigation against the police and prosecutors involved in his wrongful conviction. David Milgaard's case has been thoroughly examined in Carl Karp and Cecil Rosner's (1991) *When Justice Fails*.

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Question: *What did you think of the conference?*

David: My gut feeling is that everything that took place here, the introduction of the mandate of AIDWYC and the criteria for helping people who are inside our prisons on wrongful convictions, is very, very positive. There are many cases of wrongful conviction, many people shouting out for help, and many cases that have to be resolved. So it's a good feeling! We are establishing exactly what has to get done and how to do it. The turnout was great. I was really happy seeing so many people at the conference. The talent that's here, the minds that are involved in trying to put together what they think is the best possible route to assist people who are in a

position where they can't fight the red tape, who don't have the opportunity to get people to assist them in an unbiased way. Especially important is the opportunity for them to have the circumstances of their cases reinvestigated. I feel good, very good about the conference. I think it went very well.

Question: *Earlier we were discussing what you think: of the criminal justice system. What are your thoughts on prisoners and prisons generally?*

David: Well, the Justice Group [which David helped to establish], focused on social issues like poverty and aboriginal concerns. We had guest speakers, grassroots people who came into the institution and addressed the group on their perspectives on these type of issues. I felt it was a learning thing. For prisoners the Justice Group went beyond the normal way you spend an evening in prison. We had a chance to learn something important. That is still happening in Stony Mountain Penitentiary and I am glad it is. I think: that the Justice Group and Native Brotherhood are prison groups in which people have a chance to learn some important things. It helps when you get released. It's a good number.

I'll never forget being a prisoner. In my own way I still consider myself a prisoner. My situation is such that I am never going to forget it. I would like to do more to help prisoners, because I remember what it was like sitting inside a penitentiary. You die a little bit each day you spend in a penitentiary. Its so boring, the meaningless daily routine. Though its hard, you can be smart and instead of doing time you can use time. A lot of people don't do that. They just sit back and hope the time will go by and they will get out and then go from there. School and education, things like that, you have to do them for yourself. You don't do it for the establishment, you don't do it because someone says you have to do this or that. That's what usually confronts prisoners and they don't like authority, because they figure authority is what is messing them around. So they don't do anything. That's the problem, you have to do it for yourself.

There are many models of justice in the world. In North America it's a punitive or punishment model of "just-us". Basically just throwing people into cages when they often have problems that aren't resolved and they just sit

there. That is not the proper way to help people with a problem. If you have a problem and there is someone there with care and concern telling you that you should deal with that problem, to feel it, that maybe you should be a bit ashamed about that problem, or feel a lot of shame about the problem and are willing to work with you on it, you have a chance to solve it. Rather than simply putting you in a cage inside a prison. This way has much more authority and in a sense it controls your whole relationship with yourself and how you deal with your situation. Japan follows a justice model that's based on merciful leniency. Japan is an industrial democracy much like Canada or the United States and has a much lower crime rate. There, some people have committed armed robberies and never spent a single day in jail.

Our adversarial system of justice with its lawyers and prosecutors operates in the reverse. In Japan the prosecutors want to keep people out of prison. People aren't concerned about prisoners in North America; in fact the majority of people think prisoners are garbage. I mean, they are only concerned about their own property, their own person.

If you really think about it you have to ask, is the government acting responsibly towards the community? Is this punitive model the best way to help or assist the community? There are other models that could work a whole lot better than what is in place. Why promote the problem? I mean, now the governments of Canada and the United States are promoting the crime problem to the point that they build and encourage criminality. You don't become better in our prisons, you become worse.

Question: *How are you coping with your experiences; being out and having to deal with all that you have been through?*

David: Sometimes I have had trouble. I'm being honest with you. Coping with being free after 22 years is hard. When I first came out I was a bit lost. Everything seemed so much faster, everybody was bouncing around. People seemed so busy. People didn't seem to find time to just be kind of quiet, to take it easy. And I still find it like that, but I do take the time. Sometimes I just go camping and fishing or swimming and find my own time and pace. I hope that as time goes on I'll feel a bit more comfortable. I'm not dying. I'm alive and I'm well. I'm not hungry and I'm

not in prison so I consider myself and my situation one hundred per cent better than people who are in prison, whether they are wrongly convicted or not. I find it really hard sometimes to find anything possibly right in the fact that people end up in a cage for 25 years on murder charges resulting from two men fighting each other with knives. It doesn't make any sense to keep someone in a box who can be a resource in some way. Whatever the problem was, anger or whatever, it should be addressed. Don't simply lock people up in a box. What does that solve? It costs so much money. It's such a waste. A person comes away from a situation like that just angry and more messed up. Then you expect them to walk out into the community and cope. Keep people out of prisons. Keep them out of cages.

Question: *Where are you at now regarding your case? What do you want now?*

David: I want it all over with. I'd like to see this whole thing over with. Nobody in this country has ever come to David Milgaard or his family and apologized. Nobody has said, "we are sorry for what has happened to you or we are sorry for what has taken place". We have never received any money or any help from those responsible. We are still fighting for compensation, but they seem content to try and stall the process. I'm on welfare while I try and get my life back together. I do some painting. I like to walk by the ocean and just relax after all I have been through. It's not a hard life right now, but at the same time it is not a resolved situation. A speaker at the conference said that beyond compensation, there is the unresolved question concerning those who made the mistakes; those who did things wrong, who knowing that I was not guilty carried the ball in the wrong direction rather than trying to assist. They did everything but assist me. That first off, those who knowingly did something wrong, whatever their situations, should be charged and held accountable.

I am sorry to say but that would really make me feel good. Those are the two issues I would like to see dealt with. As far as money is concerned, certainly I would love to have a load of money. In that way I'm no different than anyone else. My family has been through financial hardship and they deserve something. I hope that happens soon. And I don't think it's good that there are people out there right now that were involved, who are still working in these positions. I am referring to politicians and

people at the justice department, and especially the prosecutors and detectives. They shouldn't be in positions today where they can screw some other kid around and get away with it. That makes me feel sick. And they are, they're out there right now.

Question: *This conference has also dealt with these problems. Where do we go from here? What can we collectively do to help?*

David: I think that people in a position to do something for others, and all of us collectively have to act responsibly and make sure we don't make the situation worse. The bottom line has to be sensitivity because there are an awful lot of different factors in these cases. I had a lot of support groups in different cities who got up and said "something has to be done" and that was great. Whether it's lobby groups or demonstrations and marches, it's important that we are very careful in our organizing and our ideas as to what needs to be done. I believe that demonstrations and civil disobedience are good things as long as the situation stays under control. It's a good thing to bring together a park full of people to help someone who is in a situation like mine; a situation where nobody is doing anything and you want to bring it to the attention of all of Canada, to point out that someone is being screwed around and there is no ifs and buts about it. You have to do something to show that no one is doing anything to open the door of the person's cage; you need to make a statement. But you must have control to make sure you make it better not worse. In my case they had candlelight vigils on parliament hill. Just a small group of people but it was a statement.

In my situation, if I don't get compensated in the near future, what can I do? Well I can get media attention easily, its not hard to get media exposure but it has gotta be the right kind. I could walk up to one of the detectives involved in my case and give him a punch in the head. I might enjoy that, but it would be the wrong thing to do. All of a sudden I would be in the spotlight. A lot of people would say "that's great Dave, I would do the same thing", but it wouldn't work to my advantage. It's better to get a group of people who are qualified and whom you trust and go to the Supreme Court and force them to face the situation. In most of these cases the problems are easy to see. In my case, what I think is most important isn't so much me

anymore but the principles and procedures. I'm out. I am going to eventually be compensated, my lawyer is still confident about that. The point is to overturn the wrongs and to stop it from happening again. If my case isn't resolved and I am not compensated, well, then certainly I'm going to try to again to confront the powers that be with the fact that they have done nothing but whitewash the situation. They don't want to hear about it. How police procedures played such a significant role; how they threw a "girl" in jail until she wrote a statement against me that wasn't true. Just the treatment of the people they involved is enough to justify change.

It gets me frustrated to think that someone can pass the buck the way Kim Campbell, the Minister of Justice at the time, did. Kim Campbell passed my case to her boss, the Prime Minister, who passed it to the Supreme Court and the Supreme Court passed it back to the Saskatchewan government and left me with nothing. It leaves the public with a picture that says, well, because they wouldn't look at the police procedures in the Supreme Court, obviously there was nothing wrong with the procedures followed in Saskatoon, with the way the detectives acted in Saskatchewan. They won't deal with the Mr. Fisher aspect; a known rapist and murderer, and I can't cite the case since it would be prejudicial against him in his own case. Yah, and if it comes up being that he is the guilty person, well then, obviously there is no such thing as not admitting that David Milgaard did not commit the crime. It has just been a whitewash and to me that is really dirty. I don't know who is responsible, where and why, and what's being done behind closed doors to this day, and it just goes on and on and nothing is being resolved. That shit has to change. It's depressing!

Question: *You don't sound very hopeful about your case.*

David: Well, if they don't compensate me and clear my name by the time the civil liberties suits come around... it's not a matter of hope but what sort of angles of attack I can take. I would rather do something on an individual basis than involve a whole bunch of people in a demonstration or something like that. It could be as simple as just parking myself in Saskatoon in a tent somewhere and staying there for a year or so. Eventually somebody is going to do something. I'd get a lot of support from people; people bringing me

sandwiches. I'd be happy...ha! Whatever. To me it comes down to what kind of person I am, where I'm at. That means I will have to make some kind of noise, do something loud about my situation. Otherwise I would be kissing their ass and I ain't doing that! A speaker at the AIDWYC conference was talking about how after you finally get a bit of justice they expect you to say thank you, thank you for helping me out. They have never helped me out. All they have done is bastardize what is suppose to be justice. That's all they have ever done, the government and the officials. For years and years and years they have played the "up the hill, down the hill" thing with me, with my mother and my family hoping something would be done, getting close and then the state pulled away. My mother went across the whole country, talked to witnesses, spent all of her money, all her savings, everything she had. Then after finally getting things moving, we presented a clear black and white picture that showed there was no possible way I would have committed the crime. The Justice Minister, Kim Campbell, laughed! We were all sitting there waiting for things to unfold. We were hopeful and thought "something is going to finally happen". David Asper [Dave's counsel] comes down to the hole in the disciplinary area that I was in and I could just tell by looking at his face that he was screwed up, messed up, right. I said, "what's up"? He replied, "Kim Campbell's decision isn't any good. Basically she said there's absolutely nothing, absolutely nothing that can be offered". That was it for me. Passing over all my dreams. I am sure everyone felt terrible. My mum did not give up. I felt pretty bad, but I didn't give up. I didn't feel too good about it but it wasn't long before something else was happening; organized protests, city support groups. Then strictly because of public opinion, they had to do something. That's how we got into the Supreme Court. That's why I will keep fighting back.

I'm babbling pretty good here. .ha! My leg has gone to sleep.

Question: *Anything you want to add?*

David: A closing statement? I would say that for everyone inside prison, whether they're guilty or not guilty of a crime, the bottom line is that prisons don't work. All they do is they take a person and put them in a position where they can't get what I consider to be honest and caring relationships that people need to grow, whether

they have a wife and children or even if they have no one. This country's punitive model of "just-us" doesn't allow a person to understand what their problem is when they have one. I think it's much more of a crime to throw a young man inside prison for two years for stealing tires than it is for the boy to steal those tires. How can people who believe that their government is there to protect them accept the realities of what takes place in Canadian and American prisons. These prisons only produce more problems and we are relying more and more on prisons. Out of all the available models of justice in the world, on a scale of one to ten, America's is one of the worst. Why follow the worst and not one of the better models available? The solution has to be based on the place, and in North America its the early traditional ways, the tribal way of dealing with problems, with mercy and understanding and caring. That provides solutions. All punishment creates is resentment of authority and it affords no dignity to anyone. No one is in a position to grow if all you have is someone telling you you're worthless, you're garbage, stay in your cage. You feel demeaned.

If you are a woman in prison...I loved Tightwire [Kingston Prison for Women penal press magazine] ...but it really hurts me to know of their degradation. What about their children? I wished there was something I could do about it. Stop them putting people in cages. Because I think there's a lack, no that's not strong enough, there is just a hole in peoples' understanding if they can't see the significance of growing people with love instead of treating them like shit.