

## **Jarvis Masters: A Concise Summary of His Evidentiary Hearings, January 2011**

*Note: Although the legal issues and testimony of these hearings are matters of public record, which can legally be disclosed, in this summary we have omitted almost all names of prisoners, police officers, and investigators, along with particulars of gang affiliations and other related crimes. We do this with respect for all those who testified, and out of concern for their safety.*

In June of 1985 Sgt. Howell Burchfield, a corrections officer, was murdered on the second tier of C-block in San Quentin by members of a powerful gang inside the prison. Three inmates were convicted of this murder in 1990: one for ordering the killing, a second doing the act itself, the third, Jarvis Jay Masters, for participating in the conspiracy. The first two defendants received life sentences. Jarvis was given a death sentence for purportedly sharpening a weapon that was never found. The weapon itself was procured on the second tier and used there. At the time Jarvis was being housed on the fourth tier of C-block. His capital conviction rested on the doubtful testimony of two prison informants.

Since 1990 Jarvis Masters has lived on San Quentin's death row. For twenty-one years, including pre-trial custody, he was housed in the Adjustment Center, the "hole" — solitary confinement with no access to telephone, no contact visits, and very limited exercise. In 2007 his status was "upgraded, and he was moved to East Block, one of three housing units for condemned men. On East Block, roughly five hundred men are individually held in 4½ by 10 foot cells.

Joseph Baxter and Rick Targow, leading Jarvis Masters' appeals team, filed a *habeas corpus* petition to the California Supreme Court in January of 2005. Their petition carefully documented procedural and evidentiary violations in the original 1989-90 trial, asserting Jarvis's factual innocence. After hearing counter-arguments from the Attorney General's office, the Supreme Court responded with unusually strong language to the claims in the petition, raising detailed questions about evidentiary problems in the trial. In April of 2008 the California Supreme Court ordered an evidentiary hearing, giving Masters' team and the Attorney General's office open time in address their critical questions.

It was then that Jarvis added the very experienced trial attorney Chris Andrian and his investigative partner Chris Reynolds to the defense team. All of these were positive steps. Attorney Joe Baxter said the court's order "allows us to prove his innocence on many different fronts and allows us to prove he didn't have a fair trial."

Here are some of the California Supreme Court's questions.

- Was false evidence presented at the 1989 trial of Jarvis Masters?
- Is there new evidence indicating that Jarvis was not involved in the attack?
- Were promises or threats made to informants compelling testimony against Jarvis at his 1989 trial?
- Did the District Attorney's office knowingly present false testimony in the 1989 trial?

Marin County Superior Court judge, Lynn Duryee, was appointed as referee for the hearing. Her job was to listen to the evidence and arguments, and in time to present a finding of facts to the California Supreme Court. Her finding, which has not yet been written, will come in the next several months. Then the Supreme Court can either call for a new trial or let the conviction stand. In the latter case, the stage is set for further appeals on other bases. But, having been to all the hearings, we are encouraged to believe this appeal will be successful, a very long step toward exoneration for Jarvis Masters.

Judge Duryee presided over these ten days of hearings in January of 2011, which took testimony from the lead prosecutor in the '89 trial; prison gang members still in custody all these years later (including the inmate convicted of masterminding the Burchfield attack); police officers and investigators from Oakland, San Francisco, Marin and San Quentin; licensed private instigators working for Jarvis's legal team; and attorneys on both sides of the bench who had been involved in preparing these hearings. Judge Duryee created an atmosphere of calm, patient attention, even when she asked her own probing questions, clarifying confusing points.

While the course of the hearings was often determined by the timing and availability of witnesses, Masters' expanded legal team — trial attorney Chris Andrian and his investigator Chris Reynolds, long-time advocates Joe Baxter and Rick Targow, along with Scott Kauffman from the California Appellate Project — constructed a strong narrative, responding to the Supreme Court's questions, about how a case had been

selectively and deceptively constructed against Jarvis. From the hearings' start the Attorney General's team — attorneys Alice Lustre and Glen Pruden— depended on the fact that a conviction and sentence had already been rendered in 1990. Since the burden of proof in an appeal falls on the petitioner — in this case Jarvis Masters — his team's presentation needed to raise compelling questions about the evidentiary basis of the original trial.

In his summation (and throughout the hearings) attorney Chris Andrian attended to the California Supreme Court's guiding questions. Early in the hearing (Day 2), calling the lead attorney for the 1989 prosecution team, it was established that the Marin prosecutor's office did not knowingly present false evidence at trial. Dispensing with this issue, the team then produced a consistent record affirming that evidence was hidden and putative witnesses manipulated by police and San Quentin investigators in preparation for the 1989 trial.

Andrian pointed out that, according to significant case law, actions by investigators, police and prison agencies should and could have been available to the district attorney preparing the Burchfield trial. This case law states that the district attorney's office is responsible for deals, promises, and threats made to witnesses by investigators even if the district attorney did not know about such deals.

In terms of false evidence, Chris Andrian argued that two key prison gang witnesses, Informant 1 and Informant 2, lied in trial to support a conviction against Jarvis Masters, in exchange for protection, favors, and lesser sentences. Investigators held out these favors against threats of returning these informants to jail or prison, where their lives would be in danger.

New evidence was offered by gang leaders that 1. Jarvis was under gang discipline for insubordination at the time of the Burchfield attack, and 2. that his physical location on the fourth tier of C-block in San Quentin made it both impossible and a violation of gang protocol for him to have handled a weapon that was procured and used for an attack on the second tier. The testimony of these gang leader was particularly compelling in that this was the first time in all these years that each acknowledged his gang affiliation and leadership in open court.

Turning to Informant 1, Chris Andrian cited testimony by one investigator describing him as “a highly-motivated police agent.” Evidence was presented — and confirmed by the Attorney General’s representatives — that every time Informant 1 testified or offered to testify against Jarvis he asked for a significant *quid-pro-quo*. This happened as recently as this evidentiary hearing. After pleading the 5th Amendment on day 6, the next day he made an offer to the attorney general’s lawyers: he would testify against Jarvis in exchange for release from prison in another state.

On the other hand private investigators working for Jarvis interviewed Informant 1 three times, twice in 2001, and again in 2010. At each of these interviews he spoke freely, making no requests for favors of any kind, signing documents that spelled out in detail his own role as the “planner” of the attack and the source of incriminating notes central to Jarvis’s conviction. In those interviews, he spoke directly and sorrowfully to Jarvis Masters’ innocence, and even handwrote a letter of apology to Jarvis, which was entered into the hearing record.

Informant 2, though a gang member in and out of prison, was not in San Quentin at the time of the attack. His knowledge of details and personalities came significantly after the crime, when he shared a cell with a gang defendant in another prison. Chris Andrian argued that Informant 2 only came forward with information on the Burchfield case in 1989, when he was himself the central suspect in a still-unsolved 1988 murder in San Francisco. Informant 2 was a regular snitch for a key investigator in the Burchfield case and other gang-related crimes inside and outside of San Quentin. This investigator referred to Informant 2 as “a professional liar” and “a bullshitter.” Nonetheless he offered the informant a free pass from prison and entry in the Federal Witness Protection Program after his testimony against Jarvis.

Listening to many hours of testimony in court, and reading hundreds of documents, Judge Lynn Duryee offered some words at the end. She said it was an honor to preside over a matter of such gravity, one that was conducted with care and seriousness on both sides. She thanked the officers who provided security on a daily basis. And she acknowledged the polite and respectful observers — 15 to 25 of us each day — as we bore witness to these proceedings.

We thank all those involved: Judge Duryee; Jarvis’s legal team — Chris Andrian, Joe

Baxter, Rick Targow, Chris Reynolds, and Scott Kauffman; all the loyal friends who came to court; to the corrections officers present for security, and to all the witnesses — particularly those who chose to remember critical events — for their honesty, and for the real risks some took to testify.

More than twenty-five years have passed since the terrible murder of Howell Burchfield. There is no justification for this crime and no way to ignore the suffering imposed on his family and friends. Neither is there justification for the incarceration of Jarvis Masters, an innocent man living all these years in the shadow of a death sentence. Those of us who were able to follow the hearings day after day have, more than ever before, a sense of the terrible injustice that was inflicted on a young man, Jarvis, entangled in the prison system, but not involved in the Burchfield attack...in fact, opposed to it. And, more than ever, we can see the very real possibility of exoneration. When that day comes Jarvis, his family, friends, and all who love what is right in the world will rejoice together.

*Note: Judge Duryee is allowing an expert witness for the Masters team scheduled to appear in late February 2011. This witness is a linguistic expert, who will confirm the Masters team's argument that two incriminating "kites" or notes in Jarvis's handwriting were, by thorough analysis, not in his own words. Testimony had already been presented that Jarvis wrote these kites following the murder under direction and pressure from gang leaders in San Quentin out of fear for his life and for that of his family.*

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Jarvis Masters is the author of two excellent books: *That Bird Has My Wings —The Autobiography of an Innocent Man on Death Row* (Harper One, 2010) and *Finding Freedom — Writings from Death Row* (Padma, 1997).