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How a New York State prisoner became a jailhouse lawyer, and changed the system.

By **Jennifer Gonnerman** *The New Yorker*, June 20, 2016



• Derrick Hamilton was wrongfully convicted of murder, and spent more than two decades trying to prove his innocence. Credit Photograph by Dana Lixenberg for The New Yorker

Derrick Hamilton's legal education began in 1983, when he was seventeen and in the jail for teen-age boys on Rikers Island. He'd been an enthusiastic student as a child—his family called him Suity, because he liked to wear a

suit to school. But in high school he'd begun skipping classes and getting into trouble. At fifteen, he was charged with robbery and sentenced to sixty days in jail. The arrests continued, for petty larceny, assault, criminal use of a firearm. Then, in March of 1983, a bread deliveryman was fatally shot near Lafayette Gardens, the public-housing project in Bedford-Stuyvesant, Brooklyn, where Hamilton lived, and he was charged with the murder. He insisted that he had not done it, and entered a plea of not guilty.

His father, a livery-cab driver, hired a lawyer named Candace Kurtz to represent him, and she urged him to start studying in the jail's law library, so that he could better understand his predicament. Hamilton is now fifty, tall and heavyset, with a shaved head and a thin scar running down the right side of his scalp. "I took it seriously," he recalled recently, "because here's some stranger saying, 'Hey, listen. Get out of wherever you're at. Wake up, kid, this is real.' " He started spending time in the library, and eventually taught himself enough criminal law to become one of the most skilled jailhouse lawyers in the country.

But, in the fall of 1983, two months after Hamilton turned eighteen, a jury found him guilty. He was given thirty-two years to life for the murder and for an earlier, unrelated gun charge, and was sent to Elmira Correctional Facility, a maximum-security prison near the Pennsylvania border. There he earned a high-school-equivalency diploma and took a class on how to conduct legal research. In 1985, he was sent to Siberia, as inmates call Clinton Correctional Facility, which is twenty miles from the Canadian border. In the law library there, he met a group of veteran jailhouse lawyers, one of whom gave weekly tutorials on criminal procedure.

There is no job description for a jailhouse lawyer. It's an occupation born of desperation: most prisoners cannot afford lawyers, and are eligible for a free attorney only for their first appeal. After that, they have to either learn the law themselves or find a jailhouse lawyer to help them. In state prisons, jailhouse lawyers typically lack law degrees—some never finish high school—but New York does guarantee access to a law library, which is run by inmate clerks.

The older prisoners in the Clinton law library gave Hamilton a job as a "counterman." At the time, Clinton housed about twenty-five hundred

prisoners, and there was almost always a line at the library counter. Often, inmates asked for materials that might help them fight their convictions. “I would show the guy how to go to the point that relates to his case, so he didn’t have to read the whole thing,” Hamilton told me. “This way, he could get his answer and keep it moving.” Prisoners also needed general legal advice, about divorce, power of attorney, paternity, child support. “You would learn so much at the counter,” Hamilton said.

Like many of the men he helped, Hamilton was a father; by the time he was eighteen, he had three children by three women. He married the mother of his son, Davone, in 1987. By then, his father had hired another lawyer, George Sheinberg, to handle his appeal, and Sheinberg managed to get the murder conviction reversed. Hamilton went on trial again for the same crime, but soon after it began he pleaded guilty to manslaughter, and was released in 1989, after serving six years. He still maintained his innocence—he had entered an Alford plea, in which a defendant does not have to admit any guilt—but he considered his punishment justified, given his earlier gun charge. “The six years was rightfully done,” he said.

After his release, he returned to Brooklyn, to his wife and Davone, who was then five. He barely recognized his old neighborhood. The crack epidemic had taken hold: empty glass vials littered the sidewalks; friends’ mothers were prostituting themselves to pay for their addiction; childhood friends had become dealers. He had six siblings, and one of his brothers had joined the trade. The most disturbing change was that his father was gone. A year earlier, he had been murdered near Lafayette Gardens.

To escape the chaos, Hamilton spent time in New Haven with an older half brother, who ran a talent agency there. But, six months after his release, Hamilton crossed the state line without his parole officer’s permission, and was sent back to prison for a year. When he got out again, he was twenty-four, and he had the scar on his head—the result of a fight in the prison yard. The best way to stay out of trouble, he decided, was to leave town. He and his half brother came up with the idea of opening a hair salon in New Haven, with the help of a beautician they knew.

Two weeks before the opening, in March of 1991, police officers arrived at the salon, handcuffed Hamilton, and drove him to a local station house. There

an N.Y.P.D. detective interrogated him about a murder that had occurred in Bedford-Stuyvesant on January 4th. Hamilton knew the victim, Nathaniel Cash, who was twenty-six and had recently left prison. He had been shot nine times, and someone at the scene named Hamilton as the killer. The detective, Louis Scarcella, then thirty-nine, reminded Hamilton of the actor Joe Pesci, as he swaggered about the room, brandishing a cigar. But what Hamilton remembered most clearly, he says, is that Scarcella told him that “he didn’t care whether I did it or not, because I didn’t serve enough time for my previous case, and I would be going back to jail.”

The murder trial took place in Brooklyn State Supreme Court, in July of 1992. It should have been easy to establish Hamilton’s innocence. He said that at the time of the shooting he had been in New Haven, meeting with two women who worked at his half brother’s talent agency—he was trying to help arrange auditions for their acts at the Apollo Theatre. The District Attorney’s office had only one supposed eyewitness: Cash’s girlfriend, Jewel Smith, a twenty-two-year-old mother of two, who had a number of arrests for shoplifting and was on parole. She had given conflicting versions of what happened, and then, a few days after Hamilton’s arrest, she had gone to the office of George Sheinberg, who was again representing him, and signed a statement saying that Hamilton “was not there when Mr. Cash was shot.”

When the trial began, however, Smith testified that she *had* seen Hamilton kill Cash. Detective Scarcella claimed that Smith was afraid of Hamilton, and the prosecutor argued that that was why she had earlier changed her story. The women from the talent agency had not been contacted in time to appear in court, and two other alibi witnesses who were scheduled to testify for Hamilton didn’t show up. Sheinberg asked for more time to bring the witnesses in, but the judge, Edward M. Rappaport, denied his request. The jury voted to convict.

Soon after, on Rikers Island, Hamilton wrote a motion asking Judge Rappaport to set aside the verdict, based on new evidence. Jewel Smith had told a private investigator, hired by a friend of Hamilton’s, that she had lied in court because Scarcella and other officials warned her that, if she didn’t, they “would put me in jail” and “take my kids.” (She had violated her parole by spending time with Cash.)

Judge Rappaport ordered a hearing, at which Scarcella and the prosecutor denied threatening Smith. Michael Vecchione, who represented the D.A.'s office, admitted that Smith was "a person you cannot rely on," but he maintained that she had told the truth at the trial. After the hearing, Rappaport turned to the defendant. "I must say this, Mr. Hamilton. You're a hard advocate. You fight hard," he said. But, he added, "I call it the way I think it should be." He sentenced him to twenty-five years to life.

Several months later, Hamilton found himself in Attica, in western New York. Inmates considered it the most brutal prison in the state; nobody had forgotten what happened in 1971, when prisoners rioting against the horrific conditions seized control of the prison for five days. There he ran into Alvena Jennette, whom he had known in Brooklyn. Jennette said that he, too, was serving a sentence for a murder he did not commit. He asked Hamilton who had investigated his case, and, when he said Scarcella, Jennette shouted, "That's the cop who set me up!" He said that Scarcella had framed him and his two half brothers on murder charges, and all three were serving eighteen years to life. Hamilton recalled, "From that moment on, we knew something was terribly wrong."

The full scale of the problem of wrongful convictions began reaching the public only in the nineteen-nineties, when DNA evidence was introduced in criminal cases. In 1992, two former Legal Aid attorneys, Barry Scheck and Peter Neufeld, founded the Innocence Project, using DNA evidence to exonerate innocent prisoners. At the time, Scheck recalls, "the notion of hundreds, if not thousands, of people being wrongly convicted was considered unlikely if not impossible by both the public and many in law enforcement." Since then, DNA evidence has helped secure exonerations for more than three hundred people. But it exists in only a small percentage of cases, and without it there is almost no way for a prisoner to unequivocally prove his innocence. There was no DNA evidence in Hamilton's case, so, even as news of the exonerations spread through the prison system, the hope of clearing his name remained slim.

Nevertheless, he went to the law library every day, and in his cell he kept a copy of the thousand-page "Prisoners' Self-Help Litigation Manual." He collected affidavits from Kelly Turner and da'Vette Mahan, the women he said he had been meeting with at the time of Cash's death, and also one from

a witness a friend had tracked down, who said that he had seen two other men shoot Cash. In 1995, Judge Rappaport granted Hamilton another hearing, but he didn't find the eyewitness credible. He also refused to allow the women to testify, even though one of them, Turner, was now an officer with the New Haven Police Department. His rationale was procedural: their names had not been on the original list of witnesses at the trial.

Each setback strained Hamilton's relations with his family. His wife had given birth to their second child after he was arrested, but they split up before the trial started. Three of his children visited him, but as they got older they blamed him for being in prison. "For years, I told my kids I was coming home," Hamilton said. "You become a liar in their eyes. They don't understand the legal process." His mother had kidney disease, and went to see him just twice. (She died in 2004.) Hamilton had got married a second time, in 1993, to another woman he had known in Brooklyn. That marriage also ended, but not before his wife had hired Scott Brettschneider, an attorney based in Queens, to file his appeal.

Brettschneider handled a dozen trials a year, mostly homicide and drug cases. In 1997, he and a colleague flew upstate to meet Hamilton, who brought piles of documents to their first meeting. "I had never seen a guy with so much paperwork in my life," Brettschneider recalls. "He had everything." They lost the appeal, but Hamilton stayed in touch, sending him copies of his pro-se legal work—papers he'd prepared himself—and asking his advice. In reply to one letter, Brettschneider wrote, "Keep fighting because it was apparent to me that something very wrong had occurred in your case."

From the moment Hamilton entered the prison system, he began hearing about Jerry Rosenberg, known as Jerry the Jew, who was for many years the most renowned jailhouse lawyer in the country. In 1997, Hamilton was transferred to Wende prison, in Erie County, and finally met him. In 1963, when Rosenberg was twenty-five, he was convicted for his role in the murder of two police officers, during the robbery of a tobacco store in Brooklyn. He was given a death sentence, which was later commuted to life. Rosenberg was an eighth-grade dropout, but he became a fixture in the law library at Attica, where he spent many years. During the negotiations in the 1971 riots, he served as the inmates' legal adviser. The attorney William Kunstler, who

was called in as part of a team of civilian observers, said, “I’m up against the best. I’m up against Jerry the Jew.”

Three years later, Rosenberg became the first prisoner in New York permitted to represent a client in court. Over time, he claimed to have assisted inmates in more than three hundred cases, and to have won most of them. In the law library at Wende, he and Hamilton discussed legal doctrine, but, Hamilton said, “Jerry at that time was burnt out on law. He was done with it.” Rosenberg never managed to win his own release; he died in prison at the age of seventy-two, after being confined for forty-seven years.

Hamilton, too, had more luck with other prisoners’ cases than he did with his own, since he could pick which ones to take on. He read trial transcripts, wrote motions, and sometimes persuaded a judge to grant an inmate a hearing. Although jailhouse lawyers are prohibited from charging prisoners for their services, many do. Payment can take the form of cigarettes, or even several hundred dollars deposited by an inmate’s family into a jailhouse lawyer’s prison account. Hamilton usually worked for no charge and preferred not to call himself a jailhouse lawyer, because so many had a reputation for exploiting fellow-inmates. “It’s very disgraceful that guys are hustling other people out of commissary or their family’s money and don’t have the knowledge or expertise to do a good job,” he said.

His first big victory as a jailhouse lawyer came on behalf of Julio Acevedo, in 1997. Acevedo was serving time for the murder of Kelvin Martin, known as 50 Cent, the notorious criminal after whom the rapper 50 Cent reportedly named himself. When Acevedo was eighteen, he and a cousin worked as bodyguards for Martin. To explain his crime, Acevedo related an improbable-sounding story: members of a drug gang kidnapped him and his cousin, then told him that they would kill his cousin unless he killed Martin. So Acevedo shot Martin, in a housing project in Fort Greene. The jury had voted to convict Acevedo, and he was serving twenty years to life.

But Hamilton found trial testimony in an unrelated case, from a drug-gang enforcer turned government informant, in which he admitted on the stand to the kidnapping and to forcing Acevedo to shoot Martin. Hamilton wrote a motion, and Acevedo was released, after serving eight years.

By 2000, there were some four thousand inmates in New York State prisons held in solitary confinement. The early-nineteenth-century idea of solitary confinement as a means of rehabilitation had long been abandoned; now it was simply viewed as an effective way to maintain control over unruly inmates. Hamilton spent about ten years in solitary, confined to a cell for twenty-three hours a day. Sometimes officials said that he was a safety risk; other times, he was charged with breaking a prison rule. In the fall of 2000, after he had been transferred back to Attica, he was accused of smoking marijuana, which he denied, and was placed in the Special Housing Unit, or SHU, as solitary-confinement units are called in New York. He spent most of the next four years there.

In the Attica SHU, there were a hundred and sixteen cells. Among the other inmates were Mark David Chapman, who murdered John Lennon, and Colin Ferguson, who killed six passengers on a Long Island Rail Road train. Each cell measured eight feet by six feet, and the bars on the front of some cells were covered with Plexiglas. There was a desk in each cell, welded to the wall, but it wasn't large enough for Hamilton to spread out his legal papers, so he took his mattress off the metal bed frame, rolled it up, and sat on it, hunching over his bed, as he worked. When a guard slid a food tray into his cell, he ate beside his bed, like a lawyer eating at his desk.

Hamilton was not permitted to visit the law library, but he could have two law books delivered to his cell every day. Whenever he was denied something that he felt he was entitled to—the right to spend an hour outside each day, to be served a hot breakfast, to see a doctor—he filed a grievance with the prison. If that didn't work, he filed a claim in federal court. “The law saved my life,” he says. “That was the one thing I could become fixated upon every day when I woke up and when I went to sleep.” Typewriters were not allowed, so he wrote his claims in longhand, and his right middle finger was often swollen and painful from gripping a pen. There was also constant noise in the SHU, which made it difficult to concentrate.

In 2003, he wrote a twenty-two-page complaint, *Hamilton v. Conway, et al.*, which he filed in federal court. “Plaintiff is being tortured on a daily basis in Attica Correctional Facility Special Housing Unit,” he wrote. “Plaintiff is subjected to having to listen to loud banging all day and night” and to “screaming and yelling” and to “feces being thrown in plaintiff's cell” by

“mentally disturbed prisoners” who were housed near him. He argued that the noise violated the Eighth Amendment, which prohibits cruel and unusual punishment. He included affidavits from five other inmates. One wrote, “Attica Special Housing Unit sounded like a third world country being bombed.”



Hamilton after his exoneration, in 2015, with his wife, daughter, and brother. Photograph by Anthony Lanzilote / The New York Times / Redux

James Conway, Attica’s superintendent from 2002 to 2010, was the first defendant named in the complaint. Now retired, he remembers Hamilton well. “He was very respectful, very intelligent, very litigious,” Conway says. Whenever he passed Hamilton’s cell, he “would be doing legal work. He’d put his pen down, stand up, and we’d have a chat.” Conway started at Attica in 1972, when there was a single, ten-cell area for mentally ill prisoners, known as the “bug gallery.” By 2002, there were some four hundred men on the prison’s mental-health caseload, and about forty severely mentally ill inmates in the SHU. Sometimes they would lie “on their beds and bang their

feet against the Plexiglas,” Conway said. “Just imagine that going on for hours and hours overnight.” He admits that Hamilton “had a legitimate complaint,” but adds, “I didn’t have a lot of solutions for the problem.”

By 2003, Hamilton was thirty-seven and had been confined for twelve years. At times, he became too depressed to work. His only reprieve was weekly visits with a woman named Nicole Esters. She had met him in 1990, when she was twenty, and he was starting work on the salon. “For him, being a young black male coming from the projects, to even want to venture out of the five boroughs to try to start your own business, I thought it was just a remarkable thing to do,” she says. She believed that he was innocent, and she stayed in touch with him over the years, as other friends fell away. After his second marriage ended, they grew closer. Although she had two children and a full-time job as an accountant, she often drove six hours from New York City to Attica to see him.

They weren’t allowed to meet in a regular visiting room. Instead, Hamilton sat in a cage in the SHU visiting area, and they spoke through a grate and held hands through a slot at the bottom of it. Esters could tell that his time in solitary was changing him. He had been taking pills for cholesterol and high blood pressure, but she worried more about his psychological well-being. For one thing, he said the same thing over and over. When she asked him about this, he explained that, to be heard in the SHU, inmates had to repeat themselves, and it had become a habit. In a claim, he had demanded mental-health treatment, and Esters wrote in an affidavit, “He advises me the torture and noise level in segregation drives him more and more crazy every day.”

In January of 2005, Hamilton and Esters were married by a clerk in a visiting room at Attica. Two months later, he was transferred to Shawangunk prison, in Ulster County, eighty miles north of New York City. There he met Nelson Cruz, who was then twenty-four, and had been incarcerated since five days after his seventeenth birthday. He, too, had been convicted of fatally shooting a man in Brooklyn, and said that he was innocent. He was particularly eager to meet Hamilton. “Every time Derrick gets into a facility, everybody knows him,” Cruz said. “First thing that crosses everybody’s mind is: Freedom! Freedom! Freedom!” Hamilton says that he considered Cruz “a very respectful young kid who you could tell from the outset didn’t belong there.” He read the police reports from Cruz’s case, and was amazed to learn that

Louis Scarcella had worked on it. Hamilton believed Cruz and promised him, “I’m going to get you out of here.”

Every few years, Hamilton filed another motion in his own case, and when it languished in court he did something almost unprecedented: he called the judge’s chambers to try to expedite it, sometimes posing as a reporter for the *Daily News*, “to make the judge think someone important cared about my case.” As DNA evidence helped to secure the release of more innocent people, there were frequent news stories about wrongful convictions. Jewel Smith saw a television show on the topic, and in 2007 she wrote a letter to Governor Eliot Spitzer saying that “an innocent man is convicted in your state.” She explained that Scarcella had warned her during questioning that if she “wanted to leave the precinct and go home I had to identify Derrick as the person that committed the crime.” (The Governor’s office forwarded the letter to a state agency to investigate, but, in the end, nothing came of it.)

In May of 2009, after four years in Shawangunk, Hamilton was told that a group of inmates had threatened to kill him, and he was put in “involuntary protective custody,” known as I.P.C. “I’ve been in prison all these years,” he said, recalling how he laughed when he first heard the news. “Nobody ever protected me before.” I.P.C. is similar to other forms of solitary confinement, except that most prisoners sent to solitary are given a release date; a sentence to I.P.C. typically is indefinite.

Hamilton suspected that his new housing status had to do with the dozens of grievances he had filed. In one, he had alleged negligence in the death of Larry Davis, who had been Shawangunk’s most famous prisoner. (In 1986, Davis shot six N.Y.P.D. officers, but a jury acquitted him of attempted murder. He was later convicted in the fatal shooting of a drug dealer.) In February of 2008, a prisoner stabbed Davis in the yard. Hamilton said that he saw Davis shortly afterward, slumped in a hallway, and that officers left him there “for fifteen minutes to bleed out.” (An investigation by the State Commission of Correction mentions no wrongdoing by employees.)

Hamilton fought the decision to place him in I.P.C. At an administrative hearing, he sat at a table, his wrists cuffed behind his back. He called inmates to vouch that he had no enemies. They testified that he was a “caring type of dude,” who was “cool with everybody, young, old, all nationalities,” and that

he had a “very good reputation for helping people out with their cases.” Nevertheless, he lost the hearing.

One day, in August of 2009, during the hour that he was let out of his cell, Hamilton happened to see a CNN report on Troy Davis, a prisoner on Georgia’s death row, who had been convicted of killing an off-duty police officer. Davis maintained his innocence, and many of the prosecution’s witnesses had recanted. The case had gone to the Supreme Court, which had just ordered the district court to hold a hearing to determine “whether evidence that could not have been obtained at the time of trial clearly establishes petitioner’s innocence.” It was precisely the kind of hearing that Hamilton had been trying to get for more than fifteen years. He realized, “This is the case that’s going to change a judge’s ability to procedurally bar innocent people.” He had a motion pending, and to buttress it he started work on a brief citing the Davis decision.

But Hamilton was growing increasingly despondent about his indefinite confinement in I.P.C. On November 2nd, he wrote a letter to the prison’s superintendent. “The only way out of the torture you have subjected me to is suicide,” he said. “Death will be a welcomed companion compared to what you’ve subjected me to the last seven and a half months.”

That morning, while a prison counsellor stood nearby, Hamilton shouted from his cell, “I want out of here. You are either going to carry me out or I am walking out!” He swallowed a handful of pills from his medicine supply, and was taken to a local emergency room, then transferred to a psychiatric unit at another prison. A supervisor wrote in his medical record that Hamilton “is adamant” that if he were sent back to Shawangunk “he will kill himself.”

Two weeks later, he was moved to Auburn Correctional Facility, in central New York, and was sent straight to solitary. Officials at Shawangunk had filed misbehavior reports, claiming that he had staged the suicide attempt in order to get out of I.P.C. Despite statements from the Shawangunk counsellor—who said that Hamilton was “pacing back and forth” and “in a suicidal state” before swallowing the pills—he was sentenced to a year in the SHU.

Shabaka Shakur and Daniel (Fat Danny) Rincon were jailhouse lawyers who worked in the Auburn law library. They, too, claimed to have been wrongly convicted, and each had met Hamilton years earlier in other prisons. When they heard that he was in the SHU, Shakur recalls, “Danny went to the superintendent and told him, ‘You have a guy there who’s really good at the law. We need him in the law library.’ ” After several months, Hamilton was given a “time cut,” and moved to a regular cellblock.

Nelson Cruz had also transferred to Auburn, and was housed two cells away. He told Hamilton that he, Shakur, and Rincon often met in the library to work on their cases. They called themselves the Actual Innocence—or A.I.—Team. (“Actual innocence” is a term used in post-conviction claims.) Rincon had been imprisoned for a 1991 quadruple murder in Manhattan, and Shakur was serving time for a 1988 double murder in Bushwick. As it turned out, Louis Scarcella had also been the detective on Shakur’s case. He testified at Shakur’s trial that he had confessed to him—a claim that Shakur had been denying for more than two decades.

To join the A.I. Team, a prisoner had to show his court documents to the others, who decided if he had a plausible case. Richard Rosario, then thirty-seven, was serving twenty-five years to life for a 1996 street murder in the Bronx. He claimed that he had been in Florida at the time, and he had a dozen alibi witnesses. The A.I. Team decided to admit him, and eventually there were ten members.

The camaraderie helped lift Hamilton out of his depression. Many mornings, Cruz woke to hear Hamilton calling, “Put that coffee on! Let’s go! Let’s go! It’s time to work!” Cruz made “prison coffee,” using a hot pot to heat the water and a sock to filter the brew, which he poured into a thermos and sent to Hamilton on a “line,” made from a sheet. “All day long, you’d hear the typewriter,” Cruz told me. “He’d shut it down about twelve o’clock, twelve-thirty. At seven in the morning, you’d hear it again.”

In the spring of 2010, Hamilton wrote a letter to Jonathan I. Edelstein, a lawyer in Manhattan who focusses on post-conviction cases. He followed it with copies of his latest motion and brief, and the affidavits that he had obtained fifteen years earlier from his alibi witnesses in New Haven. Edelstein replied:

Dear Mr. Hamilton:

Thank you for your letter of May 27, 2010. I reviewed the materials you presented to me and, frankly, they made me sick. I've been in this business a long time and I'm used to seeing people screwed by the system, but I couldn't believe the way the court used a procedural dodge to avoid even looking at the Turner and Mahan affidavits. I really think you should go to the media with this, because people should be outraged that clear evidence of innocence was just thrown in the garbage.

Edelstein, then thirty-eight, had worked his way through John Jay College and Fordham Law School. His office was on Madison Avenue, but it consisted of one cramped room, which he shared with a partner, Robert Grossman. They had no receptionist, and stored their files in the hallway. Edelstein gets letters from prisoners nearly every day, but Hamilton's pro-se work stood out. "He was able to write a coherent and persuasive argument," Edelstein says. "By pro-se standards, that's Shakespeare. Or, to use a more professionally correct analogy, that's Clarence Darrow." In his letter, Edelstein commended Hamilton for citing the Troy Davis ruling in his brief, and he offered to write an amicus brief that Hamilton could submit to the court.

Hamilton had previously considered going to the media, and now he asked Nicole to organize a protest outside the Brooklyn State Supreme Court. On the morning she chose, a snowstorm hit, and only six friends and relatives turned up. But their signs, reading "Free Derrick Hamilton!," caught the attention of Oren Yaniv, who was a court reporter for the *Daily News*. Two months later, he wrote a story that appeared under the headline "INMATE, LOCKED UP FOR 20 YEARS FOR BROOKLYN MURDER, SAYS HE'LL BE SET FREE IF WITNESSES TESTIFY."

By then, Hamilton was eligible for parole. Prisoners seeking parole are typically expected to show remorse, but Hamilton filed another lawsuit, arguing that the parole board should consider his evidence of innocence before making its decision. Edelstein wrote to the board on his behalf, declaring, "I am totally convinced that he is innocent of the shooting of Nathaniel Cash, and would stake my name and reputation that this is so."

Hamilton submitted a package of documents, including the *Daily News* story and another letter from Jewel Smith.

On October 18, 2011, Hamilton appeared before two parole commissioners. “Mr. Hamilton, you’ve given us a lot to think about,” one of them, Christina Hernandez, told him. “If, in fact, you’re incarcerated for something that you did not commit, I hope that you’re successful in your appeal.” Seven weeks later, Hamilton was released, after nearly twenty-one years. Nicole drove to Auburn to pick him up, and on the way to Brooklyn they stopped in Albany, so that he could see his son, Davone, who was now twenty-eight.

Brooklyn had gone through another transformation. The crack houses were gone; the number of homicides had dropped by three-quarters since 1991; and Hamilton’s childhood neighborhood was gentrifying. Across the street from Lafayette Gardens, on the corner of Franklin and Lafayette Avenues, there had been a bodega called Mary’s, where Hamilton used to buy Bon Ton potato chips and Mountain Dew. Now in its place was Dough, a bakery serving hibiscus and tropical-chili doughnuts, with mocha-java coffee.

Hamilton moved in with Nicole, who was working for a cosmetics company. He was about fifty pounds heavier than when he entered prison, with sore knees, weaker eyes, and two missing teeth. (“There’s no such thing as a root canal in prison,” he says.) It wasn’t easy to readjust to normal life. He rose every morning at five, and paced the rooms. He ate his meals in five minutes, as he had in the mess hall, in case an officer decided to take his food away. It felt strange to share a bed with his wife. “At times, you jump up wanting to fight because nobody is supposed to be in your bed,” he said. One night, while they were sleeping, he punched Nicole in the head. “He said, ‘I’m sorry. I had a dream I was fighting in the rec yard,’ ” she told me.

It helped to spend time with his children—now all in their twenties, with jobs and homes of their own—and to get to know his five grandchildren. In October of 2012, Hamilton and Nicole had a daughter, whom they named Maia. When Nelson Cruz called from prison, Hamilton told him, “It’s beautiful out here.”

Unlike many people who leave prison, Hamilton had skills that made him employable. Scott Brettschneider, who had represented him in the late

nineties, hired him as a paralegal, and he was often at the courthouses, filing papers and meeting with clients, with Maia strapped to his chest in a baby carrier. “He could pass the bar exam,” Brettschneider says. “This is somebody who educated himself in jail to the point where his knowledge is so much more extensive than that of most of the lawyers I deal with on a daily basis.”

In early March of 2013, Hamilton got a panicked call from Julio Acevedo, whom he had helped get out of prison sixteen years earlier. The night before, Acevedo had been driving a friend’s car in Williamsburg, and smashed into a livery cab. A young Orthodox Jewish couple in the back seat were killed. Hamilton persuaded Acevedo to turn himself in, then went to meet him with two police officers. Acevedo was charged with manslaughter, and hired Brettschneider to represent him.

The case generated a lot of outrage, and Frances Robles, a reporter for the *Times*, was assigned to write about it. She met with Brettschneider and Hamilton to discuss the case. Afterward, Hamilton told her his own story. When Robles called him back a few days later with more questions, he mentioned Louis Scarcella, and gave her the names of some other men whose cases the detective had handled.

Scarcella had retired in 1999, after twenty-six years on the force, as a highly decorated detective. But in 2011 the Brooklyn D.A., Charles J. Hynes, had started a Conviction Integrity Unit, which decided to reinvestigate the case of David Ranta, who had been convicted of a fatal shooting in Williamsburg in 1990. Scarcella had testified that Ranta had confessed to him; Ranta claimed that the statement was fabricated. The reinvestigation concluded that he had been wrongly convicted, and he was released on March 21, 2013, after twenty-three years in prison.

Robles hadn’t heard of Ranta, but, after talking to Hamilton, she had begun looking into other cases that Scarcella had handled, including that of Alvena Jennette, who had been the first to alert Hamilton to the detective’s tactics. Jennette had been released in 2007, after serving twenty-one years, and Hamilton and Robles went to see him at his mother’s house, in Crown Heights. By that time, Hamilton says, “he didn’t want anything to do with the criminal-justice system. I had to tell him, ‘Look, man, this is somebody who

is going to investigate this. Let us see your evidence.’ ” Jennette went into his basement and returned with a plastic garbage bag full of legal documents.

On May 12, 2013, the *Times* published a front-page story about Scarcella, co-written by Robles, which mentioned Jennette and Hamilton, and detailed a long history of alleged misconduct, including falsifying confessions and coercing witnesses. In at least six murder cases, including Jennette’s, the article said, Scarcella had relied on the same alleged eyewitness, a prostitute with a crack addiction. The D.A.’s office had announced plans to review every homicide case that Scarcella had worked on, focussing on those which had gone to trial and ended with a conviction. The review eventually expanded to seventy-one cases. When the *Times* asked Scarcella about Hamilton’s allegations, he said, “He can drop dead. The man is an out-and-out liar.”

That fall, in the election for Brooklyn District Attorney, Kenneth P. Thompson, a former federal prosecutor, defeated Hynes, who had held the office for twenty-four years. Thompson overhauled the Conviction Integrity Unit, renaming it the Conviction Review Unit and increasing its staff from two prosecutors to nine. It was allotted an annual budget of \$1.1 million, which made it the largest such unit in the nation. In his first year, Thompson exonerated ten men, including Jennette and his two half brothers. One of them, Robert Hill, was still incarcerated, and was released. The other, Darryl Austin, had died in prison in 2000.

In January, 2014, Hamilton won his most significant legal victory: a landmark case, known as *People v. Hamilton*. It had begun with the brief that Hamilton wrote after learning of the Supreme Court’s ruling in the Troy Davis case. Davis lost his evidentiary hearing, and was executed by lethal injection on September 21, 2011. That day happened to be Hamilton’s forty-sixth birthday, and he took it as a sign that he should keep fighting. Edelstein and his partner, Grossman, refined Hamilton’s argument, and Edelstein argued the case in court. They won: for the first time in New York history, the Appellate Division of the State Supreme Court had decided that a defendant convicted of a crime who has a plausible claim of innocence is entitled to a hearing to present his evidence.

People v. Hamilton went even further than the Davis decision, by stipulating what should happen after an evidentiary hearing: if a defendant can show “clear and convincing” evidence of his innocence, his conviction will be overturned. Barry Scheck says, “If there’s strong evidence you didn’t commit the crime, there must be a constitutional right to vacate your conviction.” He added, “And that’s what’s been established in the Hamilton case in New York State.”

Before Hamilton got his evidentiary hearing, the D.A. asked him to appear in Brooklyn State Supreme Court. On January 9, 2015, Mark Hale, the prosecutor in charge of the Conviction Review Unit, stood up and told the judge that the “sole eyewitness against Mr. Hamilton at trial”—Jewel Smith—had been “unreliable, untruthful, and incredible in her testimony.” Hale added, “The District Attorney has determined the conviction against Mr. Hamilton cannot stand.”

After twenty-four years, Hamilton had cleared his name. He walked out of the courtroom, with Maia in his arms and Nicole at his side. The *Times* ran a photograph, under the headline “WRONGLY CONVICTED MAN WAS HIS OWN BEST ADVOCATE.” When a reporter from the *Post* asked Hamilton about Detective Scarcella, he said, “I think prison is a nice way of dealing with men like that.”

Scarcella has never been prosecuted for his alleged malfeasance; the statute of limitations for perjury is five years. Not long after Hamilton was exonerated, he filed two lawsuits—one against New York State, in the Court of Claims, the other against the city, the N.Y.P.D., Scarcella, and others, in federal court. The litigation is ongoing and the defendants have denied all allegations. “I never did anything wrong in my life,” Scarcella told the *Staten Island Advance*. Now sixty-four, he lives on Staten Island, and collects a pension from the city.

Hamilton currently lives in New Jersey, with Nicole and Maia, and works in a small office that he shares with another paralegal. Since his victory in People v. Hamilton, he has received many more requests for help. Letters from prisoners cover his desk, and his cell phone rings constantly. The calls that trouble him most are those from inmates whom he knows personally and believes to be wrongly imprisoned. “When you know a guy is innocent, if

you have any decency or human elements in your being, it's almost impossible for a good person to just forget," he said. "And that is my dilemma."

He and Brettschneider knew that they couldn't handle all the work on their own. "We needed attorneys with money and attorneys with time," Hamilton told me. They needed to pay investigators to visit old crime scenes, track down witnesses, and collect affidavits. Soon after leaving prison, Hamilton had met Ilya Novofastovsky, a civil attorney with an interest in wrongful convictions. Novofastovsky runs the Novo Law Firm, in Manhattan, and Hamilton urged him to start the Novo Innocence Project. Hamilton helps manage the project, and Brettschneider agreed to join the team.

Every week, Hamilton, Brettschneider, Novofastovsky, and another lawyer or two from the firm sit around a conference table in Novo's offices. On a recent Tuesday afternoon, everybody wore a suit and tie except Hamilton, who had on a sweater, jeans, and sneakers. Shortly after 5 P.M., he asked, "You ready? Let's get into the cases." The lawyers glanced at the Case List Summary Report, a five-page document listing thirty-seven clients or potential clients. Most were still in prison; almost all had been convicted of homicide. Hamilton knew twenty-one of them.

It quickly became clear that he has his own way of evaluating a case's merits. He vouched for one of the inmates: "I've known the guy for a very, very long time, and he's always maintained his innocence." He recognized a key witness in another case as a longtime crack addict: "He might say anything anytime anywhere." He remembered another man from Shawangunk: "One of my criteria is: If a guy is innocent, he would spend more time in the law library. This guy never went to the law library. Not once." His conclusion: "We shouldn't have this case." The meeting ended at eight o'clock. Hamilton was slumped in his chair, rubbing his head. "At times," he said, "it gets very fatiguing."

One of the best days that Hamilton has had since leaving prison was June 4th of last year, when a judge dismissed the charges against Shabaka Shakur, from the A.I. Team, making him the eighth person investigated by Scarcella to have his murder conviction vacated. The judge had cited a "reasonable probability" that Scarcella had fabricated Shakur's confession to the killing

of two men in Bushwick, and ordered a new trial; the D.A.'s office declined to prosecute Shakur again. Two attorneys, Leah Busby and Ron Kuby, had helped Shakur with his case, and Shakur is now a paralegal in Kuby's office. "Derrick and I broke the mold," Shakur told me. "There's a saying that real good jailhouse lawyers get everybody else out but themselves, but we were able to get other people out, and we were able to get ourselves out."

Still, the other members of the A.I. Team remained in prison. Daniel Rincon is in Five Points, near Auburn. Nelson Cruz is now in Green Haven, in Dutchess County. He and Hamilton have spoken every week or two since Hamilton was released, and Brettschneider has taken Cruz on as a client. Cruz recently became ill with Bell's palsy, which paralyzed the left side of his face, but he is recovering and waiting for the Conviction Review Unit to finish investigating his case. Then, one morning in March, Hamilton spotted a headline in the *Daily News*: "BRONX DA MOVES TO TOSS 1996 MURDER CONVICTION OF MAN WHO SERVED ALMOST TWO DECADES BEHIND BARS." The prisoner was Richard Rosario, from the A.I. Team.

Hamilton immediately drove to the Bronx. In the County Hall of Justice, he paced the terrazzo floors, greeting people he knew: Rosario's attorneys, a TV reporter, a man from New Jersey who had been exonerated. Hamilton hadn't worked on Rosario's case since he left Auburn, but Rosario had called him many times, and he knew that Rosario's attorneys had cited *People v. Hamilton* in their brief. "Richie is getting out!" Hamilton said, to no one in particular. "This is a good, good, good day."

Finally, Rosario was led into a third-floor courtroom. Reporters filled the jury box, and, for a few minutes, the only sound was the clicking of photographers' cameras. Hamilton sat in the back row, watching as an officer removed Rosario's handcuffs. One of his lawyers spoke for a few minutes, then the judge declared, "You are hereby released." Everyone clapped, and the crowd filed out into the hallway. Soon, Rosario appeared, in a new suit and tie, clasping his wife's hand, looking slightly dazed. Hamilton called out, "Richie Rich, baby!" Rosario spun around. "Derrick Hamilton!" he shouted. The two men slapped hands and embraced. ♦



Jennifer Gonnerman joined The New Yorker as a staff writer in 2015.

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