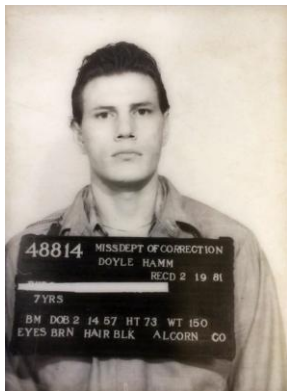


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The Long Defense of the Alabama Death-Row Prisoner Doyle Lee Hamm

By [Jennifer Gonnerman](#), , September 13, 2016



After decades of appeals, the Supreme Court will decide this month whether to hear Doyle Lee Hamm’s case. It will be his last chance to avoid execution. Photograph by Mississippi State Penitentiary via Bernard E. Harcourt

On death row at the Donaldson Correctional Facility, in Bessemer, Alabama, Doyle Lee Hamm is known as Pops. He is fifty-nine years old and has been at Donaldson since 1987, when a jury found him guilty of fatally shooting a motel clerk during a robbery. The fact that Hamm has managed to elude execution for nearly three decades can be explained, in large part, by the tenacity of a single person: his attorney, **Bernard E. Harcourt** [**‘81**]. The two met in 1990, soon after Harcourt began working for the lawyer [Bryan Stevenson](#), who at the time had just started an organization in Alabama to defend condemned prisoners. Hamm was one of Harcourt’s first clients.

The two men came from opposite worlds. Harcourt was raised on Park Avenue, went to Princeton, and had recently graduated from Harvard Law School; his father was a partner in a law firm. Hamm grew up in northwest Alabama, the tenth of twelve children; his father worked as a carpenter and cotton picker, made his own moonshine, drank every day, beat his children with a switch, and was a frequent resident of the county jail (on charges of public drunkenness). Hamm’s sister later described their childhood home as “constant hell all the time.” She also recalled their father telling the children, “If you don’t go out and steal, then you’re not a Hamm.”

Growing up, Hamm flunked first grade, drank beer and whiskey mixed together, graduated to sniffing glue several times a day, quit school in the ninth grade, ingested Valium and Percocet and quaaludes, watched his six older brothers all go to jail, and eventually acquired his own extensive rap sheet, including arrests for burglary, assault, and grand larceny. He married and had

one daughter. (The marriage lasted six months; his wife cited “habitual drunkenness” as one of the grounds for divorce.) In January of 1987, Hamm went on a crime spree that included a shooting in Mississippi and ended when he and two accomplices were arrested following the murder of a motel clerk in Alabama. About three hundred and fifty dollars were missing from the register and the clerk was found on the floor, shot once in the temple. Hamm confessed to the murder, and, at thirty years old, was condemned to death by way of Alabama’s electric chair, which was painted yellow and known by the nickname Yellow Mama.

Ever since meeting Hamm, Harcourt has been trying to save him from this fate. In the early nineteen-nineties, he hired an investigator named Gaye Nease to research Hamm’s past and search for “mitigating evidence” that might persuade a judge to spare his life. With Nease’s help, Harcourt collected hundreds of pages of documents, including Hamm’s parents’ original marriage certificate, from 1938; his father’s honorable-discharge papers from the Army, from 1946; and medical records from Doyle’s birth, in 1957. Harcourt also obtained elementary-school report cards, test scores showing Hamm reading at a first-grade level in fifth grade, his mother’s food-stamp paperwork, his brothers’ rap sheets, divorce papers filed by his brothers’ wives, Hamm’s own divorce papers, and photos of his parents and siblings and ancestors.

Through the decades, wherever Harcourt went—to Harvard to get a doctorate in political science, to the University of Arizona to teach, to the University of Chicago for a tenured job—Hamm’s case went with him. This did not mean simply dropping one more box into the back of a U-Haul; Harcourt had accumulated some twenty thousand pages, between legal documents and mitigating evidence—enough to fill eleven bankers boxes. Over the years, he kept in touch with Hamm by phone and travelled back to Alabama to work on the case.



*A school photo of Hamm.
Courtesy the family of Doyle Lee Hamm via Bernard E.
Harcourt*

Harcourt’s hope was not to prove Hamm’s innocence but to persuade a judge to throw out his death sentence and instead give him life in prison without parole. He fought on Hamm’s behalf in state court until 1998, when Harcourt asked for a hearing to be postponed and a judge assigned Hamm another attorney. The new lawyer lost the hearing. Harcourt still considered himself Hamm’s attorney, however, and immediately filed an appeal on his behalf. This request was denied in 2002. Harcourt appealed the decision to the Alabama Supreme Court but lost again. He continued his battle in federal district court, filing a habeas petition in 2006 to try to get Hamm a new trial. That court denied Hamm’s request in 2013.

None of these outcomes surprised Harcourt, but he kept at it, appealing the case to the U.S. Court of Appeals for the Eleventh Circuit, where he was turned down once again. About six months ago, Harcourt exercised his last option: filing a petition to the U.S. Supreme Court. On September 26th, the Court is set to consider whether to hear Hamm's case. The stakes could not be higher: if the Supreme Court declines to accept Hamm's case, Harcourt believes that the state of Alabama will finally set Hamm's execution date.

Today, the archive of Doyle Lee Hamm's life resides in Harcourt's sixth-floor office at Columbia Law School, where he is now a professor. Stacks of manila folders fill an entire file drawer, spread across a desk, and occupy the tops of two lateral file cabinets. News articles about Hamm's crime fill one folder, and relay a horrific story, but there is another story, too, hidden inside other folders—it comes out through interviews with a sibling and a neighbor and tells how Hamm's father came home from the Second World War so traumatized that he began drinking all the time. There is a report by a psychologist describing Doyle as a "severe polydrug abuser for much of his life," who had a "history of seizures" and "a significant history of head injuries," and who shows "neuropsychological impairment" and probable "brain damage." There is also a stack of documents, rising more than a foot, about an earlier arrest, in Tennessee. In 1977, at age twenty, Doyle, drunk and high, got into a fight in a bar parking lot. Afterward, the police arrested him for allegedly robbing the other man. Though he insisted that he had not robbed anyone, his court-appointed attorney coached him on how to enter a guilty plea, and he was given a prison sentence of five years.

Fourteen years later, when Harcourt reinvestigated this conviction, the "victim" admitted that there had been no robbery, and Hamm's attorney at the time, a man named William Travis Gobble, admitted that he had never investigated the allegations. "I was just too busy and overworked to give this case the time and attention it needed," he said in an affidavit. "My practice at the time was not to educate my appointed clients about the judicial system. I assumed that they knew what a criminal trial was and what happened at trial. My concern was to make sure that my client gave the right answers at the plea hearing to get the deal agreed upon." Years later, at the penalty-phase hearing following Hamm's trial for capital murder, prosecutors brought up this earlier conviction to try to persuade jurors that they should send Hamm to the electric chair.

Another disturbing aspect of Hamm's death-penalty case recently received [some media attention](#). In 1999, when a state judge ruled against Hamm, he issued an eighty-nine-page opinion on the case. The trouble was that the opinion appeared to have been written by the office of the Alabama Attorney General. (The judge's opinion was identical to a document submitted to the court one business day earlier by the Attorney General's office. They even shared a title: "Proposed Memorandum Opinion"—apparently, the judge had not even removed the word "Proposed" before signing it.) "It bothers the heck out of me," a judge on the Eleventh Circuit of the U.S. Court of Appeals said in court when he and his colleagues considered the case. "I don't believe for a second that that judge went through eighty-nine pages in a day and then filed that as his own, as if he had gone through everything—went through his notes, the transcript, the exhibit[s], and the like," he said. "It just can't be done!"

The "proposed memorandum opinion"—and the legality of a federal court later deciding to defer to it—is at the center of Harcourt's petition to the Supreme Court. "Deferring to the proposed

order is basically deferring to the state's interpretation of the evidence," Harcourt says. In this case, the state's attorney general "was serving as prosecutor and judge." (In its response to Hamm's petition, the office of the Alabama Attorney General admitted that the "judge did not take the word 'Proposed' out of the order," but argued that Hamm had failed to prove that the "findings of fact or conclusions of law" in the proposed opinion were "erroneous.")

Harcourt has represented Hamm pro bono since leaving Alabama in 1994. "There have been times I've just felt overwhelmed by my other responsibilities," he says. "I write books—I don't litigate death-penalty cases for a living." Harcourt occasionally considered handing Hamm's case to another lawyer, but he never did. "I gave him my word early on, when we first met," he said. "I told him I'd stick with him." For twenty-six years, they've kept in regular contact, on the phone and by mail, and now that they are preparing to find out if the Supreme Court might hear his case, they speak more often.

Two or three times a week, Harcourt gets a call from Hamm, from death row in Donaldson prison. "Hey, how you doing?" Harcourt greeted him one afternoon this past June. "You doing O.K.?"

"Yeah, doing good," Hamm said.

When they speak on the phone, Hamm always sounds the same—low-key, uncomplaining. Harcourt mentioned a riot that had taken place at another prison in Alabama and asked Hamm if he had heard about it. "I saw it on TV," Hamm said, but insisted that all was calm where he was confined. "Everything is pretty good." The two men talked about what had been on the menu lately, whether Hamm went outside that morning, which man on death row was most recently executed.

These days, Hamm has more contact with Harcourt than with any of his relatives; the last time he saw a family member, he recalls, was when his younger sister came to see him in 1997. Seven of his nine siblings are now dead. (One brother hanged himself, two brothers had heart attacks, another died in a car wreck.) Aside from his attorney, the person Hamm talks to most often is the father of his friend Keith Johnson, who was on death row with him for fifteen years. Whenever Johnson's father is feeling well enough, he comes back to the prison to visit Hamm. Johnson was executed, in 2002, for his role in the fatal shooting of a jewelry dealer, even though he did not fire the shot that killed the victim.

Hamm estimates that he has lost about twenty-six friends in his nearly three decades on death row. Some died of natural causes, but many were executed; fifty-four people have been put to death in Alabama in those years. Yellow Mama, Alabama's electric chair, is now in storage. (Johnson was the first Alabama inmate to die by lethal injection.) Hamm now has two granddaughters, ages fourteen and four, and gray in his hair. The other inmates refer to him and three others as the O.M.G., which stands for the Old-Man Gang. He continues to pass his days in much the same way he has for years—playing dominoes, reading the Bible, and walking laps inside the prison.

"He did a good job, regardless of what happens," Hamm said of Harcourt. "If I hadn't had Bernard, I believe I would have been executed. Yep, I do believe that." He pauses. "I believe," he

said, “I would’ve been executed ten years ago.” The question of what will happen next—whether Hamm will be allowed to die of natural causes in prison, or will be tied down to a table one day and injected with deadly doses of drugs—lingers on the edge of every conversation he has with his attorney. One afternoon in late August, their phone call ended with Harcourt saying, “Take care, Doyle. Talk to you soon.” The hope of both men is that their calls will always end this way, that there will be never be a need to say goodbye.



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