

## SIDEBAR

## *A Relentless Jailhouse Lawyer Propels a Case to the Supreme Court*

By Adam Liptak

Aug. 5, 2019

WASHINGTON — “For 23 years, I was a jailhouse lawyer,” said Calvin Duncan, a former inmate at the Louisiana State Penitentiary in Angola. “That was my assigned job.”

He had a 10th-grade education, and he was serving a life sentence for murder. The prison paid him 20 cents an hour to help his fellow prisoners with their cases.

He got good at it, and he used his increasingly formidable legal skills to help free several inmates. He knew how to spot a promising legal issue, and he was relentless. Seasoned lawyers sought his advice.

One issue in particular consumed Mr. Duncan. He could not understand how a Louisiana law that allowed non-unanimous juries in criminal cases could be constitutional. He would not let it go, working on about two dozen failed attempts to persuade the Supreme Court to address the issue.

The justices finally agreed in March to decide the question. They will hear arguments in the case, *Ramos v. Louisiana*, No. 18-5924, on the first day of their new term, on Oct. 7.

G. Ben Cohen, the lawyer who filed the petition in the latest case and many others, said Mr. Duncan had played a crucial role in identifying, shepherding and presenting the cases.

“From well before I was involved,” Mr. Cohen said, “Calvin understood that this was a winning legal issue — how to frame it, raise it and challenge the non-unanimous law.”

“The lessons that Calvin taught me were not just about the law,” Mr. Cohen said. “They were about not giving up.”

Emilv Maw, a lawyer with Innocence Project New Orleans, said Mr. Duncan was

persistence personified.

“He’s been on it for decades, when no one was on it and no press was reporting it,” she said. “Calvin pushed constantly. He has pushed when it was unpopular. He has pushed when no one thought it was going anywhere. He has pushed and pushed and pushed.”

If the Supreme Court agrees with Mr. Duncan’s position, Ms. Maw said, “it could save hundreds of men from life in prison.”

Over time, many people came to question the Louisiana law, which allowed convictions by a 10-to-2 vote. Oregon is the only other state that allows non-unanimous verdicts in criminal cases.

Last year, Louisiana’s voters amended the State Constitution to require unanimity, though only for crimes committed after 2018. In April, The Advocate newspaper in Baton Rouge won a Pulitzer Prize for a series of articles on the subject.

Mr. Duncan himself has nothing to gain from his efforts, having been convicted by a unanimous jury. Innocence Project New Orleans secured his release in 2011 as part of a deal in which he agreed to plead guilty to lesser charges in exchange for a sentence of time served. He has always maintained his innocence.



Mr. Duncan, left, at a news conference in 2014. He had worked on about two dozen attempts to persuade the Supreme Court to address the issue of non-unanimous jury verdicts before the justices agreed in March to decide the question. Gerald Herbert/Associated Press

In prison, Mr. Duncan enjoyed the respect and affection of his fellow prisoners

in prison, Mr. Duncan enjoyed the respect and affection of his fellow prisoners. One of them, the acclaimed journalist Wilbert Rideau, wrote in his memoir that Mr. Duncan had “the most brilliant legal mind in Angola,” the nation’s largest maximum-security prison.

On the phone the other day, Mr. Rideau elaborated. “You’re talking,” he said, “to somebody who is the direct beneficiary of his legal work.” Mr. Rideau was released in 2005 after Mr. Duncan helped him get a new trial.

“He did the legal research,” Mr. Rideau said. “He put together the case. I would not be here but for Calvin. But I’m not the only guy. He got other guys out of prison, too.”



Adam Liptak  
Supreme Court reporter

**“I try to make the Supreme Court accessible to readers.** I strive to distill and translate complex legal materials into accessible prose, while presenting fairly the arguments of both sides and remaining alert to the political context and practical consequences of the court’s work.”

[Learn about how Adam Liptak approaches covering the court.](#)

---

Mr. Duncan was also a resource for real lawyers. “I had a legal question I couldn’t figure out,” said Katherine Mattes, now a law professor at Tulane University, recalling her early days representing prisoners challenging their convictions. “I started asking capital defense lawyers around town. They said: ‘I don’t know the answer to that. Go ask Calvin Duncan.’”

She went to see him at the prison. “I ask him the question,” she said. “He immediately, off the top of his head, gives me the case name and the citation that answers the question.”

While he was in Angola, Mr. Duncan was once allowed to visit Tulane’s law library. “Before prison I had never set foot on that campus,” he said. “I said back then, and that was a long time ago, that I wanted to go to that university.”

He was released on a Friday. “That Tuesday, I was on the Tulane campus, trying to figure out how to go to school there,” he said. “I was too late for the spring, but I enrolled for the fall.”

He graduated last year. “I was told I needed my bachelor’s degree to go to law school,” he said. “That’s what I’ve been working on.”

On the outside, Mr. Duncan continued to question the Louisiana law allowing non-unanimous verdicts. “I went to the law library,” he said. “I discovered that the law had been introduced for the purpose of making sure that white supremacy stayed alive.”

In 1898, after the Supreme Court ruled that states could not exclude black people from juries, Louisiana held a constitutional convention whose purpose, as the chairman of its judiciary committee put it, was “to establish the supremacy of the white race in this state to the extent to which it could be legally and constitutionally done.”

The new State Constitution replaced a unanimity requirement with one that said the votes of nine jurors out of 12 were enough to convict defendants of noncapital felonies. In 1973, the Constitution was amended to require 10 jurors to agree.

“They came up with a system to make sure that black jurors’ votes would not count,” Mr. Duncan said. “If a black did get on a jury, whatever they said would not count anyway. It’s like the last of the Jim Crow-era laws.”

Mr. Duncan visited Professor Mattes’s law school clinic not long after he was released. The students were in their third year, tired of studying and perhaps a little jaded.

Mr. Duncan asked to see the law library, and he marveled at the vast and pristine collections of cases, codes and treatises.

“All of a sudden, he stops and he turns to the students,” Professor Mattes said. “He gets very serious and he says: ‘You guys need to know how incredibly lucky you are. Because what you have here is power.’”

*Follow Adam Liptak on Twitter: [@adamliptak](https://twitter.com/adamliptak).*

---

A version of this article appears in print on , Section A, Page 9 of the New York edition with the headline: Jailhouse Lawyer Propels a Case to the Supreme Court