



Calvin Duncan at graduation from Lewis & Clark School of Law. (Photo courtesy of Sophie Cull)

# From Jailhouse Lawyer to ‘Real’ Lawyer

## Calvin Duncan talks about his extraordinary journey

BY RANDY MANILOFF

DECEMBER 11, 2025, 9:05 AM CST

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In 2020, during Calvin Duncan's first semester at Lewis & Clark School of Law in Portland, Oregon, his civil procedure professor assigned the 5th U.S. Circuit Court of Appeals' 1990 decision in *Rocky v. King*.

The plaintiff, Robert Rocky, was an inmate at the Louisiana State Penitentiary in Angola. He sued on behalf of himself and other inmates who developed a variety of medical problems from working in the fields due to unsanitary conditions.

During class, Duncan raised his hand and shared a remarkable fact. He said he had been an inmate at the Angola prison and was one of the jailhouse lawyers who worked on the case that led to the federal appeals court decision. "We were trying to get porta potties," Duncan tells me in a recent interview. He described the class's reaction to his revelation as one of sheer astonishment.

To the state of Louisiana, Duncan should have never been in that Pacific Northwest classroom. He had been found guilty of first-degree murder and sentenced to life in prison.

But Duncan was wrongfully convicted. So the inmate with a ninth-grade education taught himself the law behind bars. In 2011, after being incarcerated for 28½ years, he secured his release. Duncan went on to earn an undergraduate degree at Tulane University in New Orleans. At age 60, he graduated from Lewis & Clark.

In addition to helping himself, Duncan was a highly successful inmate counsel substitute—Louisiana's formal term for a jailhouse lawyer—representing hundreds of prisoners while at Angola.

He tells his story in a recently-published memoir, *The Jailhouse Lawyer*, co-authored with criminal justice reform advocate Sophie Cull. But sharing his own experience was not his principal objective.

Duncan wanted to highlight what he, and his fellow inmate counsel substitutes, had accomplished. "A group of Black men, in the darkest place in America, rose above our situation to help each other," he says. "It's the people from whom we expect the least who, in the face of impossible odds, do extraordinary things."

## Wrongful arrest and conviction

In 1981, 23-year-old David Yeager was shot and killed at a New Orleans bus stop after two Black men tried to rob him and his girlfriend.

Early the following year, Duncan, who had been living in New Orleans at the time of the crime, left the city for Oregon to participate in a U.S. Department of Agriculture Job Corps program. He was studying for his GED, learning welding and had hoped to join the military. One year after the murder, officials from the local sheriff's department came to the Estacada campus where the 19-year-old Duncan was questioned about the Yeager murder and arrested. A caller to a crime tip line—offering a \$1,000 reward—had stated "Calvin Duncan shot David Yeager."



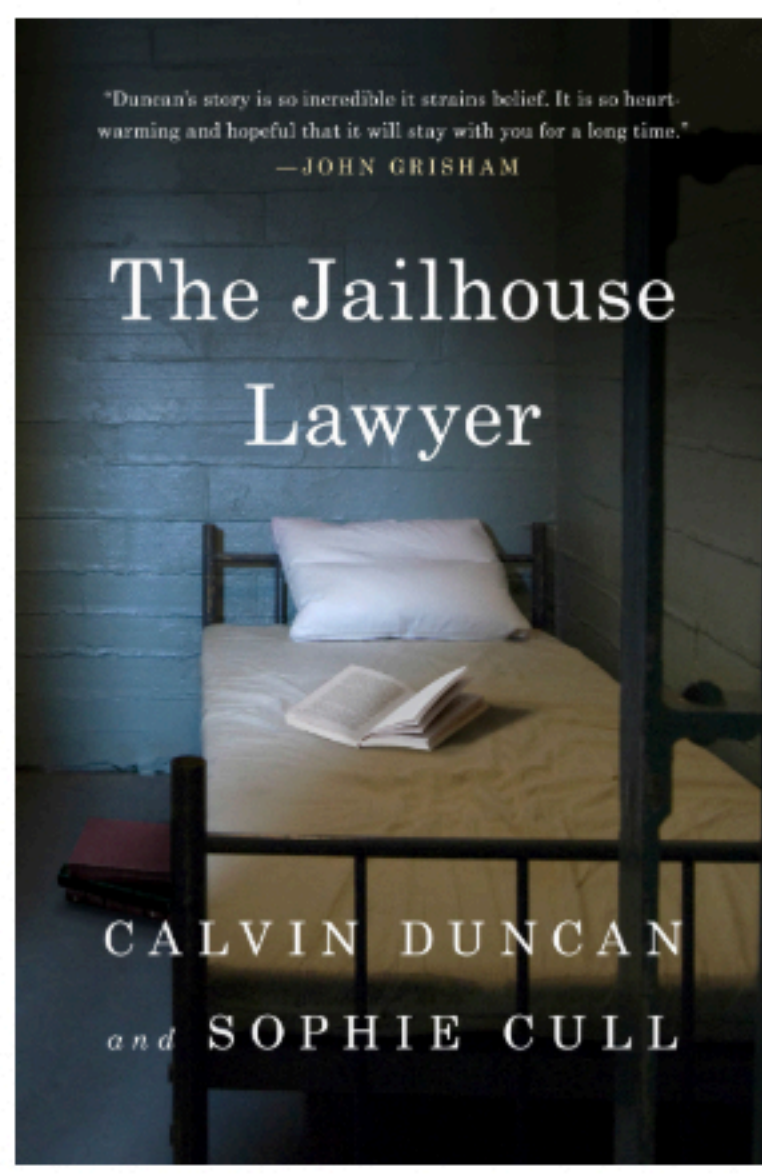
Duncan in the Angola prison library (Photo courtesy of Calvin Duncan)

The state's case rested solely on a lone witness—Yeager's girlfriend. Police showed her a photo lineup that included a four-year old picture of Duncan from a juvenile arrest. She identified Duncan as the shooter.

Duncan was extradited and held at the Orleans Parish Prison awaiting a trial that wouldn't come for over two years. He never had a chance. His initial court-appointed counsel was replaced shortly before trial. He met his court-appointed trial attorney for the first time the night before it was to begin. "He only came to make sure I had a suit," Duncan says.

He was convicted in a proceeding that lasted one day. After the jury couldn't agree whether to impose the death penalty, he was sentenced to life in prison.

During his pretrial detention, Duncan was provided advice by a prison elder statesman: "You wanna help yourself? You better get a real lawyer. And if you can't pay for one, then you become one."



Duncan wasted no time and began his education while still in the New Orleans jail by tearing articles about police investigations and court hearings from the newspaper and occasionally getting his hands on a court opinion. He called his collection of articles and papers his "law book."

Duncan's first filing from prison was in fact a "Motion for a Law Book." He sent the one-paragraph, handwritten document to the Louisiana Supreme Court, unaware that the state's top court did not have original jurisdiction. The motion was remanded to the trial court, and the judge awarded the nascent jailhouse lawyer a copy of the Louisiana Code of Criminal Procedure.

## The jailhouse lawyer

In 1977 the U.S. Supreme Court declared in *Bounds v. Smith* that states had an affirmative duty to provide incarcerated individuals with meaningful access to the courts. This meant affording them tools—including pens, paper, postage, notary services, photocopies and law libraries or legal assistance programs.

Angola worked hard to comply with this mandate. In addition to providing a large law library, Duncan was trained in a formal program to become an inmate counsel substitute. He is quick to give credit to the prison administration for the assistance it provided.

In the early 1990s, a trio of opinions favorable to Louisiana inmates was handed down. These decisions, addressing a faulty jury instruction, deficient representation and illegal sentencing, gave Duncan the means to secure the release of many prisoners, including those still facing substantial time.



Co-author Sophie Cull with Calvin Duncan (Photo by Jack Smith)

A memo written by the prosecutor called it a "troubling case." Among other flaws, he learned that the identification by Yeager's girlfriend, had been shaky at best. The police officer in Oregon who first interviewed Duncan was later indicted on federal wiretapping charges. To avoid this blow to his credibility, the other officer present for the interview testified that he was the interrogator.

Despite this, the prosecution went to trial and sought the death penalty.

For many inmates, securing transcripts and their police and DA files—on account of financial and access issues—can be a mountainous hurdle. Yet, Duncan says, "It's impossible to prepare claims that don't look frivolous if you can't provide the evidence that supports them."

Even with the information from the DA's file, the appellate process was glacial. Finally, with the help of the Innocence Project New Orleans, Duncan, desperate for his freedom, pleaded guilty to manslaughter and attempted armed robbery and was sentenced to time served.

Ten years later, in 2021, after the passage of a Louisiana law that allowed for non-DNA proof of factual innocence, Duncan returned to court, and his conviction was vacated. The judge pointing to, among other things, the state's suppression of the Oregon officer's possible criminal activity and inconsistencies in the eyewitness identification. Duncan is listed in the National Registry of Exonerations.

## After Angola

Duncan is now the director of the Light of Justice Program, an organization devoted to assisting incarcerated individuals gain access to the courts.

In May, he will begin serving as clerk of Orleans Parish Criminal Court, a position he won last month with 68% of the vote in a highly contested election. "My intent is to make sure that access to public records is much easier and to be sure that they don't get lost."

In a victory speech the night of his election, Duncan stated: "I hope that all those people who died in prison because we couldn't get their records are looking down now. I hope they're proud of me."

Law school is often taught through a sterile lens. Casebooks tell future lawyers how the law is supposed to work. Duncan, of course, had seen one aspect of the system far removed from that ideal.

I ask Duncan how he handled this disconnect at Lewis & Clark. "I would raise my hand and bring out the difference," he tells me.

"My professors were very grateful. They knew that I had experience," he says. "So they didn't just say 'you don't know what you're talking about.' They wanted the students to hear that difference. And they engaged me. I'm so grateful for that."

Duncan knows who my audience is and asks me to relay a message. "I need you to remind lawyers that half of the Bill of Rights is to protect people accused of crime," he says, rattling off the Fourth, Fifth, Sixth and Eighth amendments. And even the First, he adds, by safeguarding the right to petition the government for redress of grievances.

"The people who created this government knew who would need the most protection." While inmate counsel substitutes can have a lot of success, Duncan asks: "Where are the lawyers? Why aren't they coming to help us out?"

He contrasts this with another amendment. "You say anything about the Second Amendment, and you have the most powerful law firms coming and saying, 'You'd better not touch that amendment.'"

The day after my conversation with Duncan, he was scheduled to be back at Angola. He returns to the prison frequently to provide training to the inmate counsel substitutes.

What's it like returning there? "It's a good feeling that I'm able to do it," Duncan tells me. "I go right back to my days of being of use."



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