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In Memoriam.

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IN MEMORIAM

JUDGE M. P. "RUSTY" DUNCAN, III

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Judge M. P. "Rusty" Duncan, III, was a judge on the Texas Court of Criminal Appeals from January 1987, until his life was taken in a tragic automobile accident on February 28, 1990, in Smithville, Texas. Although, by most standards, Judge Duncan's tenure on the court was all too short, his contribution to the criminal jurisprudence may never be surpassed. Not only did his opinions reflect his knowledge of the law, but they were written in such a distinctive style that one could only notice that the scrivener was a master of the English language.

Judge Duncan was truly "a man for all seasons." He was born in 1945, in Decatur, Texas, where his early years were spent on his grandparents' dairy farm. However, most of his boyhood and teenage years were spent in Houston, Texas, where he received his primary and secondary education. He received his B.S. in English in 1967 from Stephen F. Austin State University in Nacogdoches, where he

* Presiding Judge, Texas Court of Criminal Appeals.

** Research Assistant to Judge Duncan, 1987-1990.

also excelled as a member of the Lumberjack football team. In 1971 he was awarded his J.D. from South Texas College of Law in Houston, followed in 1980 with an M.A. in English from the University of North Texas in Denton.

Following Judge Duncan's licensure in 1971, the majority of his legal career was spent engaged in the private practice of law as a criminal defense attorney in Decatur and Denton, Texas. Not being satisfied with a career dedicated solely to the law, he added an additional dimension when he became an Adjunct Professor of English at the University of North Texas from 1978-1982. Although his teaching career underwent something of a hiatus, he again commenced his professorial career in 1989, teaching English composition and legal writing at St. Edward's University in Austin, Texas.

Not only was Judge Duncan a "true" outdoorsman, spending a substantial portion of his leisure time fishing and hunting with his close friends, but he also was an avid reader of almost anything in print, from fiction novels to histories and biographies. His favorite readings, though, came from the poet William Blake, who many close associates of the judge believed was his soulmate.

Among the many scholarly opinions written by Judge Duncan were *Adams v. State*, 768 S.W.2d 281 (Tex. Crim. App. 1989), which received national attention and had previously been the subject of Errol Morris' 1988 documentary, *The Thin Blue Line*, and *Long v. State*, 742 S.W.2d 302 (Tex. Crim. App. 1987), which declared the child videotape statute unconstitutional.

Judge Duncan was a devoted servant of the bar and bench and freely contributed his time and energy by writing articles and lecturing at numerous legal seminars throughout each year of his judicial tenure. Added to his many legal pursuits were the numerous legal publications that he wrote. These include:

Challenging the Prosecutions Forensic Evidence in a Rape Case, in 10 *Criminal Defense* 10 (1983).

Obtaining Probation from a Jury; A Practical Approach, 42 *Tex. Bar J.* 31 (1979).

Circumstantial Evidence: Its Nature and the Law, 11 *Voice for the Defense* 7 (Apr. 1982).

Insanity and Incompetency/Aftermath of Hinkley, in *State Bar of Texas, Advanced Criminal Law Coursebook* (1983).

Forensic Evidence in Capital Murder Cases, in *State Bar of Texas and Criminal Defense Lawyers Project, Capital Murder Course* (1983).

Terminating the Guardianship: A New Role for State Courts, 19 St. Mary's L.J. 809 (1988).

Confronting the Burden of Proof Under the Federal Insanity Defense, in *V Critical Issues in Psychiatry and the Law: Mental Health Services to the Criminal Justice System* (R. Rosner, ed. 1988).

Through his professional legal research and writing, Judge Duncan had become known as an expert in the area of forensic evidence and was a member of the American Academy of Forensic Sciences. He also chaired the State Bar of Texas Committee on the study of the Insanity Defense in Texas (1982-83); co-chaired the State Bar of Texas Penal Code and Criminal Procedure Committee (1982-84); was a member of the Senate Committee on the Development of a Criminal Code of Evidence (1983-84); was a faculty member of the New York University Forensic Symposium, New York University Medical School (1982); and also served as editor for the *Voice for the Defense*, Texas Criminal Defense Lawyers Association (1984-87).

Judge Duncan had two great loves in his life—his family (in particular his daughter, Christi, and his brother, “Skip,”) and the Court of Criminal Appeals, where on many occasions he was known to have said, “God, I love this job.”



JAMES N. CASTLEBERRY, JR.