

## BART DURHAM--NASHVILLE'S MAVERICK ATTORNEY

by Camille M. Rucker

When you hear the name Bart Durham, your mind can easily conjure up a western wrangler. But the Bart Durham of Nashville is a maverick attorney, who finds challenges in fighting cases other attorneys don't seem to want. Durham has a long list of cases which would make the average attorney wince and then maybe shy away.

"A long time ago, I discovered that I could make a living by handling the run of the mill legal cases. I decided that I would handle cases which are a challenge and fit my interests," says the lean and angular Durham.

Three cases that easily fit this description are that of William (Bill) Glenn, accused of the rape and murder of three-year old Heather Johnston in fashionable Belle Meade. That story made front pages of the Nashville Tennessean and Banner when it occurred last October, as likely it will again when the trial begins. Another case is that of David Burks, who robbed a Commerce Union Bank on Nolensville Road. "What adds interest to this case is that Burks is a so-called All-American Boy. His father is vice-president of Howard Johnson's, he was class president at his high school and a football hero as well," comments the swarthy 42-year old attorney. Durham, along with his partner Thomas Moon lost the case in federal court. But when it went to the Sixth Circuit Court of Appeals, Durham found success. And then there is the Maggie Kennedy case. Mrs. Kennedy was charged by the Juvenile Court with abusing two little girls who were in her foster care. The story of Rhonda Jean and Ruby Jean Hyde made headlines in both Nashville daily newspapers as one of the worst cases of child abuse recorded in the city.

Durham enjoys talking about his cases. He tells the flashy, human interest parts first, then he gets down to the legal points

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involved. Both parts, he is extremely competent of telling in a thought-provoking manner.

The Glenn case made immediate headlines in October of 1976. Glenn says he did not kill or molest three-year old Heather Johnston nor assault her uncle, Jamie Pace. All were at the home of Heather's grandfather, retired physician Dr. Homer Pace, in the posh Westview section of Belle Meade. Glenn had been good friends with another son Homer (Mac) Pace, III. The two had attended Castle Heights Military Academy together. Glenn's father had been a teacher at the school at the time.

According to Glen, he had been up in an attic bedroom which he was sharing with Mac when he heard noises on the second floor. It was on the second floor that tiny Heather and her uncle, Jamie, had their bedrooms. According to Glenn, he came downstairs to see what the noise was about when he saw Jamie, 26, a dental student, with stab wounds. According to newspaper accounts, Glen is quoted as saying, "I picked him up as best I could and tried to help him, but he kept hollering 'Why did you stab me?'" Glenn contends that he did not stab Jamie with a butcher knife. It was only after the stabbing of Jamie Pace that the body of little Heather was found. According to Nashville Medical Examiner Dr. T. E. Simpkins at the time of the occurrence, it was the worst case of stabbings he had ever seen in his 20 years as Metro medical examiner. According to Dr. Simpkins the child had about two dozen stab wounds all over her body from a butcher knife.

"Our plea on the Glenn case is not guilty," contends Durham, as was the plea entered during arraignment of Glenn a short time ago. "First, off, we say he didn't commit the crime. If we are unable to convince the jury of that then we will plead by reason of insanity." The tall attorney sees Glenn as a great challenge. "If Glenn did commit the crime, which we are not saying that he did, what does society do with him?" Durham describes how the young

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man has never fit in with his peers. Glen is self-conscious about his appearance. He comes from a broken home; first his mother left home and then his father left the family. And he has had great conflicts with his mother. "Of course, everybody has these kinds of problems, to a degree. But not to the degree that Glenn seems to have suffered. Attorney-client confidentiality prevents me from going into greater details about the things I have mentioned," says Durham in quiet tones.

Durham attended law school at Southern Law University in Memphis. He served as an assistant U. S. Attorney in Memphis for three years. After that he came to Nashville as an Assistant State Attorney General. In 1975 he started private practice with Thomas Moon as his partner.

"At the age of 40, I decided that I wanted to quit the routine of the State Attorney General's office. I wanted to do something interesting with my career," says Durham with a half-guarded smile.

And interesting it is. The David Burks case is of a 24-year old man, whose father is a vice-president for Howard Johnson's. While in high school Burks was senior class president and a football hero in Hollywood, Florida. "As a matter of fact, Burks was president of all the high school class presidents in the state of Florida that year," interjects Durham. "He was decorated while serving in Vietnam, and that's when he became dissatisfied. Burks was selected to attend the United States Military Academy Preparatory School, which is a feeder school for West Point." Durham explains that while there he became dissatisfied, went AWOL and robbed a bank in Ohio. "Keep in mind that we finally won this case in the Sixth Circuit Court of Appeals," reminds the slow-tempoed attorney.

"Of course, the military didn't want him at this point," says Durham. "He was able to get an honorable discharge from the Army

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but he spent two years in jail for the armed robbery. He was out on parole when the bank robbery here in Nashville occurred."

Durham has a way of presenting courtroom jargon and maneuvers into everyday language. "We tried to prove in court that our client was not responsible for his actions at the time of the bank robbery," explains Durham. "We lost in the federal courtroom, but we convinced the Court of Appeals."

But it's a little more complicated than that. The Sixth Circuit Court of Appeals agreed with Durham that the government did not show that his client, Burks, was not insane at the time of the Commerce Union Bank armed holdup. As Durham explains it, the government prosecutor failed to prove that Burks was sane. While at the same time, Durham was able to bring forth expert testimony that Burks would not have committed such a crime, if he were in "his right mind."

"The government used two local mental health authorities and did not follow up on its side that Burks was competent at the time of the robbery," the defense counsel further clarifies.

And right now, Burks is in U. S. prison in Butner, North Carolina. Durham plans to further appeal the case to the U. S. Supreme Court, because of what the Appellate Court decided on what to do next. "The Appeals Court returned the case back to federal court for retrial or dismissal," continues Bart Durham. "We're taking <sup>it</sup> to the Supreme Court because we feel this would place our client in double jeopardy. Look, the government had its chance to try Burks and they erred. Why should they be given another crack at it," says the attorney emphatically.

And why did Durham take the case? "You have to understand that all criminal cases are interesting. It's the dynamics of people and anti-social behavior," elucidates the ~~slightly~~ graying attorney. "Of course, it goes without saying that the money in legal fees in this case made it a great attraction," says Durham candidly.

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And then Durham can turn right around and tell you of another case, where there is little money involved for the attorney. In one of the worst child abuse cases reported here in Nashville, Durham is the defense attorney for Mrs. Maggie Kennedy. Two young girls, Rhonda Jean, 4, and Ruby Jean Hyde, 12, were found in a vacant lot in North Nashville. Both girls were taken to Hubbard Hospital, where they were treated for numerous cuts and bruises in various stages of healing. Rhonda Jean is paralyzed from the waist down for life. Ruby Jean is missing part of an ear and has a broken arm which has mended improperly. The girls were in Mrs. Kennedy's foster care at the time they were brought to the public's attention.

"I have always been very much against child abuse," says Durham emotionally. "I once pleaded a case on the other side while in the State Attorney General's office. I wondered how I would react in such a case. It was something I didn't understand and it was on the front pages of the newspapers." Durham continues in a high-pitched voice, "I knew nothing about the dynamics of people who do that sort of thing or allow it to happen. I wanted to see it from the inside." Durham further explains that he anticipated that it would be a case that he could get involved and interested in.

The Kennedy case occurred in April of last year. Another recent case. Another unpopular client for Durham. Mrs. Kennedy, 58, is an amputee confined to a wheel chair with heart trouble and diabetes. She claims the injuries were inflicted by her husband, James Berry Kennedy, 64. Both have been convicted of child abuse in Juvenile Court. Both have been given six month sentences. Mrs. Kennedy is appealing her sentence because of her physical condition. "Mrs. Kennedy would have to serve her term in a hospital. This would be a great expense for Metro government," says the defense attorney.

In none of these cases had Durham said that the accused did not technically commit the crime. "What I'm saying is that there are extenuating circumstances which must be considered in each case," says Durham matter-of-factly. Durham contends that there is a Maggie

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Kennedy, a Bill Glenn and a David Burks in each of us. He says that society must stop labeling people as "good guys" and "bad guys." He says we have to look at each case individually.

"What makes these people 'bad guys' is that they have been accused of doing something which is so anti-social that people want to label them as outcasts. What really makes the difference is that they have on occasion been so overwhelmed by their problems that they may have acted them out in a way that is unacceptable to society. There are no outcasts in society. Everyone is a member," elucidates the defense attorney. "Irrational criminal behavior can touch any of our lives. For example, Bill Glenn has an uncle who is a policeman," says Durham.

Durham concludes, "I'm not a bleeding heart. I'm not saying that society makes criminals. What I am saying is that we have to look at people who are labeled as criminals as individuals and try to get to the heart of the individual case before we can start doing constructive things with these individuals, their lives and our own lives."