



MURDER WILL OUT

ATTORNEYS BILL DEVEREAUX '75 AND KEVIN BRISTOW '79 PLAYED KEY ROLES IN UNRAVELING A HORRENDOUS MISCARRIAGE OF JUSTICE.

BY CYNTHIA ROCKWELL



Bill Devereaux '75 stands in front of the Rhode Island prison that houses his most extraordinary client.

The 7 a.m. Monday morning phone call didn't surprise attorney Bill Devereaux '75. He often gave his home number to clients as a trial approached.

But it wasn't one of his clients on the other end of the line. It was Todd Barry, a man he had met some seven years earlier when a mutual friend of theirs had experienced devastating illness in his family. Devereaux had seen Barry as another pair of helping hands, a good neighbor to his friend, someone who had been there through tough times.

Now he was sounding desperate. "I'm in a real bad situation and I need some legal help," Devereaux recalls him saying, though these words set off no alarm bells. In his experience, such calls usually meant a client had been picked up for DUI over the weekend, or perhaps had been involved in a domestic dispute—pretty tame for Devereaux, whose caseload as a partner at Holland & Knight, LLP, in Providence, R.I., is largely criminal defense.

"Sure, Todd, what is it?"

What he heard next caught him completely off guard. "I've got to come forward and confess to a homicide I committed 14 years ago." Barry was asking Devereaux to represent him when he turned himself in.

"Todd, what are you talking about?"

"You know the Vickie Cushman case? The one where the Warwick cop is serving time?"

"Yeah, that rings a bell."

"Well, the cop didn't do it. I did."

At that point, Devereaux sat down on his bed and uttered an oath of amazement, even as he continued evaluating the situation.

"I asked him where he was. He was in a motel and was distraught. So I said, why don't we meet at my office as soon as possible?"

In his 23 years of practice, Devereaux had never seen a criminal defense case like this. Most of his clients have committed a crime—sometimes not exactly the one they were accused of, he notes wryly—and they either deny it or confess it. No matter what, though, they want their lawyer to figure out a way to get them off.

"Yet, here was a case of a guy who had, literally, gotten away with murder. And he's telling me, 'I committed this homicide and I have to come forward.'"

The ethical dilemma this presented wasn't in Devereaux's daily repertoire. "You know in your heart that he's doing the right thing, but on the other hand, you have to counsel him that he has no legal obligation

to come forward. You have to tell him, 'If you do come forward, you will spend time in prison, you may lose your young family. Do you understand all that?'"

Barry understood and replied, "I either do this or I go jump off the Narragansett Bridge. I can't live with myself any longer."

The weekend had been an emotional breaking point for Barry, the long-suppressed memories of a horrible event bubbling up like "an internal volcano," as Devereaux put it. Barry was from a large, close-knit family and called two of his brothers over and told them. He also told his wife, who was stunned. His brothers assured him they supported his decision to come forward.

"So, we're in my office, and we had to determine how to proceed," says Devereaux. "How do I go over to the attorney general's office and tell them that a police officer from the city of Warwick has been doing six-plus years in prison for a crime he didn't commit?"

"I'VE GOT TO COME FORWARD AND CONFESS TO A HOMICIDE I COMMITTED 14 YEARS AGO." BARRY WAS ASKING DEVEREAUX TO REPRESENT HIM WHEN HE TURNED HIMSELF IN.

The chain of events leading to Devereaux's extraordinary morning began in 1989 with the murder of Victoria Cushman, 29, on August 11, in Warwick, R.I.

On that morning coworkers found the body of Cushman on the floor of the living room in her apartment when she failed to report to work. The scene was bloody; she was wearing only a bathrobe, and a fire extinguisher lay nearby. She appeared to have been bludgeoned. Warwick police arrived promptly and discovered an unopened letter in her apartment, addressed to their own Detective Scott Hornoff. The letter made it clear that the two had been intimate and that Hornoff, who had a wife and child, wanted to break off the relationship while Cushman did not.

Police considered Hornoff as a suspect. They viewed this letter as a possible motive for murder. Hornoff also had opportunity: a time frame of about an hour, between when his brother drove him home from a fellow policeman's party on the night of August 10, and when he reappeared at that same party. Those

at the party, when questioned much later, said that Hornoff's demeanor was significantly changed. He had left in a gregarious mood but returned subdued, almost shaken. His wife, who had also been at the party, left before him and had slept through his comings and goings. She could provide no alibi.

Todd Barry also was out that night. A young carpenter, he had been involved in a physical relationship with Victoria Cushman prior to her meeting Hornoff. Barry had broken it off. He said that she seemed obsessive and started showing up at his jobs around the city. He had recently met the woman he would marry, but on the night of August 10, with his sweet-heart away on vacation, he was making the rounds of Warwick bars with his buddies.

This is what Barry told Devereaux about that night: He drank a lot and someone passed him a joint, which affected him strangely. He remembers only flashes—driving down I-95, oddly determined to see Cushman, though he hadn't been to see her for months. He went up to her roof and got into her apartment through a window, although he could not recall if he tried the door. She was calm when he woke her. Their relationship was such that he often had shown up late at night. Barry talked with her in the living room. She told him about Hornoff, and he discouraged her from pursuing a married man. Then everything got stranger: she realized her cat had gotten out the open window. She threatened to sue him, and he became enraged. He strangled her and hit her over the head with the fire extinguisher. To this day, when he is asked why he did it, he is baffled. He just doesn't know what came over him, Devereaux reports. He just doesn't know.

Todd Barry's name and number were in Cushman's Rolodex, which the police confiscated at the crime scene. He kept waiting for the police to knock on his door. They never did.

"The system started failing at the get-go, when the Warwick police did not properly investigate the scene," says Attorney Joel Chase, lawyer for Hornoff.

Attorney Kevin Bristow '79 concurs. A former state prosecutor now in private practice, he knows the Cushman case well because several years after the murder, in 1995, he was appointed by Warwick's newly elected mayor to evaluate how the city's police department had handled this case. Intimations of a police cover-up had dogged it, seemingly from the moment the officers found the sealed letter at the crime scene.

Hornoff was not indicted until 1994, three years after the State Police had taken over the investigation at the Attorney General's insistence. Cushman's parents had lobbied the A.G. for state police involvement. They wanted results. For the first two years, the Warwick Police Department had maintained jurisdiction over the investigation, producing no clear suspect, nor, seemingly, any progress.

In a 27-page report Bristow details lapses, inconsistencies, and flagrant violations of procedure at nearly each step of the investigation, beginning with the handling of the crime scene. Police failed to detect drops of dried blood on a window screen, they failed to retain Cushman's bathrobe for testing, and they failed to compare fingerprints found at the scene with Cushman's own, an omission Bristow deems "inexplicable."

Captain Ronald Carter had conducted an interview with Hornoff when he reported to work for second shift, several hours after the discovery of the body and the unopened letter. No one has been able to locate either notes or audiotape from this.

Hornoff took and passed a polygraph test, although the degree to which it violated standard procedures is staggering, Bristow reported.

"The worst thing anyone could have done—and this is in retrospect—is for his senior officers to afford him the protection that they did," says Bristow. "All it did was make him look guilty. It led seasoned intelligent investigators to believe that there was a cover-up and Scott was involved with the crime.

"Officers of superior rank were not allowing individual detectives to interview Scott Hornoff or his brother David. Instead, they sent the investigators to talk to a psychic... this was pretty bizarre.

"Honestly, preparing the report—and this isn't Monday morning quarterbacking; I said it at the time—I didn't think there was a ton of evidence against Scott Hornoff."

The case went to trial in 1997.

"I remember reading the accounts of the trial and wondering, how are they ever going to convict this guy?" says Devereaux. "I mean, where's the beef? Okay, you have a half-hearted motive, but even that's not fleshed out very well. He never read the letter, but okay, she's obsessive and she wants to continue to carry on the affair. But all of a sudden he makes the decision that he's going to kill her? It just doesn't seem to add up. I don't think the jury liked Scott

Hornoff. But you don't convict people of crimes because you don't like them."

The jury knew Hornoff had lied initially about his involvement with Cushman. They also had transcripts from his grand jury testimony in which he revealed that he had had other extramarital affairs and this one wasn't really important to him. Cast those words next to the picture of the young woman's body at the crime scene, and Bristow can understand how a jury could find Hornoff guilty.

"WHAT WAS INTERESTING ABOUT THE CONFESSION," SAYS DEVEREAUX, "IS THAT WHEN HE FINALLY GOT DONE, IT WAS THE MOST PEACEFUL I'D SEEN HIM."



Todd Barry confesses to a murder for which a Rhode Island police officer was serving time.

Scott Hornoff was convicted of murder, first degree, by a 12-member jury. He was sentenced to life in prison.

His attorney, Joel Chase, recalls the horror of that moment: "When I heard the verdict, it was a terrible feeling: All the blood drained out of me. I knew from day one that Scott was innocent; they had convicted an innocent man."

Over the next six years, Chase spent well over 1,000 hours working on freeing Hornoff. He filed motions and appeals, only to have each denied. Chase began working with the National Police Defense Foundation, as well as The Innocence Project, a non-profit legal clinic devoted to post-conviction DNA testing to establish innocence. In November of 2002, he and Hornoff were awaiting DNA results on various items at the murder scene that, for some unknown reason, had never received scrutiny before.

Then Todd Barry stepped forward.

"His only arrest, prior to this, was at a demonstration in Washington, D.C., against homelessness," says Devereaux, incredulous still. "No drunk driving, no breach of peace. Nothing. At the time he came forward, he was a husband with two young children—a contributing member of society."

Devereaux guided his new client in the tightrope act of admitting to the homicide while seeking the best disposition. He had to get Barry checked by a mental health professional to rule out psychosis. The first 48 hours were intense. "We were running around, reaching out to professionals in different fields with whom I'd worked before, saying, 'Look, drop what you are doing; we've got to get this person in to see you.'"

Next, Devereaux lined up an appointment with the Attorney General. His assistant seemed reluctant to squeeze this into the A.G.'s busy schedule, asked what it was about, and suggested that perhaps an assistant attorney general could help instead.

"I can't tell you what it's about, I'm sorry," said Devereaux. "But I'll tell you this: make sure the A.G. is there—or you'll be running out to find him."

The next morning at the Attorney General's office Devereaux handed him Barry's handwritten confession and observed the A.G.'s expression change: "I just sat across the table from him and watched him read. His jaw kept falling. Finally he said, 'Mother of God!' and then, 'How do we know this isn't some nut?'

"I said, 'If you can prove to me that Todd Barry is a nut, no one would like to hear it more than his wife. I regret to tell you, I don't think he's a nut. When all the pieces are put together, you have a major league problem here.'

"At that point, they wanted to talk to him at State Police Headquarters. I said 'Bill [Ferland, chief of the A.G.'s criminal division], we've got to work something out. I have to protect this guy in spite of himself.'"



Kevin Bristow '79 says that Warwick police bungled the murder investigation from the start.

Devereaux presented the mitigating factors. But for Barry coming forward, the wrong man would remain in jail—and how many people would have come forward, maybe one in ten?—maybe not even that? Finally they settled: Todd Barry would plead to second-degree murder and receive 30 years, eligible for parole after 10.

With that agreement assured, Devereaux took Barry to the State Police Headquarters on a Saturday night, not yet a week since he'd come forward. A videotape of Barry's confession, shown on an episode of A&E's *American Justice* program, reveals Devereaux at his side, in a room fraught with tension.

"What was interesting about this confession," says Devereaux, "is that as traumatic as it was, when he finally got done, it was the most peaceful I'd seen him the whole week we worked this thing."

Barry has now served more than a year of his sentence. He grants no interviews, out of consideration for both his family and the family of Victoria Cushman. Devereaux visits him frequently. Barry is a model prisoner who spends a lot of time in the prison library, tries to talk sense into other inmates who, he tells Devereaux, "will do life on the installment plan if they don't wise up," and has earned the respect—and bewildered awe—of a population who try to get away with their crimes.

Hornoff is a free man, now in a court battle, however, with the city of Warwick to collect the back pay and benefits that he would have earned had he not been wrongfully convicted. The case points to an unnerving fact about the U.S. criminal justice system: If a wrongful conviction could happen to a middle-class, white police officer, it could happen to anyone.

"What we have is a failure of the legal system from A to Y for Scott Hornoff," Devereaux explains from the cool polished conference room in the 18th-floor offices of Holland & Knight in Providence. "Almost every step of the way, someone's making crucial mistakes and it winds up with an innocent man being convicted.

"The 'Z' is the unlikely surfacing, 14 years later, of someone whose conscience had just gnawed right through to the bone and made him come forward."

"When I was first told that Todd Barry had come forward," Bristow recalls, "my first inclination was—they better do a thorough investigation: Was he paid to do this? Is he terminally ill? It had been a foregone conclusion in everyone's mind that Hornoff had done it, he was in prison, and that was

that. It's every prosecutor's nightmare: using your talent and skills to have someone who is factually innocent be found guilty."

The case clearly troubled Devereaux as well. "I have a tough exterior in the legal world; it's business," he says. "But I could feel it in my gut when Todd showed me the picture of his two kids. They weren't even born when this happened, and now their father is just ripped out of their lives. Hopefully, someday, they'll be able to say, although my father did a horrible thing, in the end, he did the right thing."

For Devereaux, the case also brings up the question of the purpose of imprisonment—is it for punishment or rehabilitation? "Here you have somebody who lived productively in society for 14 years after he committed the murder. Yet, what is owed the victim's family? They were robbed of a daughter. How could you not imprison the man who took her life?" Still, one thing is clear to him: "I am opposed to the death penalty. There's a time when I wasn't."

Bristow, too, acknowledges that the system fails at times. "Our whole system is designed so that some factually guilty people will go free to ensure—or to limit—the possibility that innocent people won't be convicted of crimes they did not commit. Does it happen? Sure it happens. I think one of the main reasons it can happen—and I'm speaking generally, not in Scott Hornoff's case, because I know and respect his attorney—is ineffective counsel and insufficient preparation. The trial should be the end result of a lot of work and a lot of effort."

Devereaux underscores the responsibility for defense attorneys to mount the best defense for one's client. "You aren't defending just the person, you are defending the system. You have to have a system that works for everybody. It is not a perfect system. It might not be the best, but it's one of the best.

"I defended some guys I didn't particularly like. One was up for child abuse, and yeah, I knew he did it. Personally, I wanted to go across the desk and wring his neck, but that's not my function in the system. I have to separate the personal from the professional and do the best I can for that client, because that's our obligation.

"So that's what I hope comes out of this: a feeling throughout the system, among police officers, and prosecutors, and defense attorneys, and judges, that wow, let this be our wake-up call. We really do have to make sure the system works." 