

Statement by Tim Newcomb
26 Sept 2013

It is well known that I served *pro bono* as appellate counsel for Russell Henderson following his 1999 plea-bargain conviction for his involvement in the murder of Matthew Shepard. I filed a petition for post-conviction relief with the state district court in Laramie, Wyoming and then a petition for *habeas corpus* with the federal district court in Cheyenne.

I have been told that Stephen Jimenez recently released a book that asserts Matthew Shepard was not targeted because he was gay, that he intimately knew Aaron McKinney (the man who beat him to death), that the law enforcement investigation was deficient and I was named as a source for the book. I was not contacted before the book was published and have not yet read the book so this response is based on what I have been told, by people I consider credible who have read it.

Years ago, Stephen Jimenez contacted me from New York and informed me that he was writing a screen play about Matthew's murder; after that, he said he had information that destroyed the idea that Matthew had been targeted because he was gay.

I reviewed all known documents relevant to Matthew's murder in the prosecution of Aaron McKinney and Russell Henderson, beginning with law-enforcement investigations, in part, to detect the presence of investigatory anomalies and signs of undisclosed exculpatory or mitigation evidence. Because my review of the criminal investigation had convinced me that every possibility in Matthew's murder had been run-to-ground exhaustively by law enforcement, I asked Jimenez to see his evidence. I have yet to see it.

After the federal court denied Russell's habeas petition, nearing the end of the time in which an appeal could be taken, Jimenez telephoned me, insisting the denial be appealed. I explained that decision was not his but, because he was so insistent, I asked for the logic of an appeal. He explained he planned to submit a book proposal about Matthew's murder to a publisher and if Russell's case was not active he would not be able to get onto Larry King. We have not spoken since that time, Russell did not file the appeal and his sentence still stands, as issued by the trial court in 1999.

Because I am told the book also challenges the integrity of Sheriff Dave O'Malley and Under Sheriff Rob DeBree, instrumental in the investigation, I add this final note on their behalf.

Wyoming, as many people know, has few people and our reputations foreshadow us. After 25 years in criminal defense and appellate law, I have reviewed countless criminal investigations, some conducted under their supervision. Based on my experience, I regard them as consummate law enforcement professionals with deep-rooted integrity. Their reputations among the people I know, for good reason, are as men of honor.

I have long believed that Aaron McKinney targeted Matthew and justified his horrific savagery because he saw Matthew as being gay. I continue to agree with law enforcement and the prosecutors' similar conclusions.

Not that it matters to anyone but me, but I agreed to represent Russell because I do not believe that Russell Henderson and Aaron McKinney deserve the same sentence and because I have for far too long seen two standards for everything in this world, including justice -- one for "us" and one for "them." We can be better and those who come after us deserve the best from us.

"Every system is perfectly designed to get the results it achieves." Edward Deming.

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Tim Newcomb, a Laramie, Wyoming attorney has practiced criminal defense and appellate law for 25 years; he now assists trial attorneys nationally with appellate strategies and briefing; Newcomb received his LLM from New York University; has taught advanced appellate advocacy at the University of Wyoming College of Law and co-authored the Wyoming Constitution: A Reference Guide, published by Oxford University.