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Matthew Shepard Story

Oral History- Dion Custis, Defense Attorney

Transcribed by Sue Castaneda, April, 2014

Cheyenne, Wyoming

- **Subject: Dion Custis**
- **Occupation: Defense Attorney for Aaron McKinney**
- **Interviewer: Mark Junge**
- **Date of Interview – March 22, 2014**
- **Place of Interview: Office of Dion Custis- Cheyenne, Wyoming**

The following is an oral history presentation featuring Dion Custis, criminal defense attorney for Aaron McKinney. Aaron McKinney was found guilty of second-degree murder in the 1998 killing of Matthew Shepard, a gay University of Wyoming student. Custis and his team consulted with ^{the} Shepherd family and agreed to accept two consecutive life sentences rather than to push for the death penalty. In exchange, McKinney relinquished his right to appeal. This interview is produced for the Wyoming State Archives by sue Castaneda. The interviewer is Wyoming oral historian Mark Junge. The entire project is funded by the Wyoming Cultural Trust Fund. No part of this audio recording or transcript may be reproduced in full or in part without written permission from the Wyoming state archives. Here now is part one of Dion Custis.

MARK JUNGE: Today is March 22, 2011. My name is Mark Junge. I'm in the law office of **Dion Custis** et al...you'll have to tell me who all is involved in this.

DION CUSTIS: I was the lawyer for the defendant Aaron McKinney in the Matthew Shepard murder case.

MARK JUNGE: We're going to talk to Dion a little bit today about his opinions of the trial, and, I take it you have strong opinions?

DION CUSTIS: Yes. I'm Dion Custis. I was the lead counsel for Aaron McKinney. Jason Tangeman was the co-counsel. We had a number of other members on our team--investigator, paralegal and then support staff and stuff.

MARK JUNGE: Who were they? Can you say?

DION CUSTIS: Barb Parnell was our mitigation specialist. She was very active in the death penalty portion of the case. She is an attorney here in Wyoming but actually practices in Colorado. I forget our investigator's name right now. We had some support staff as well.

MARK JUNGE: A total team number was what?

DION CUSTIS: Probably five.

MARK JUNGE: I'm kind of curious how a guy like you and Jason Tangeman were selected. How does this happen?

DION CUSTIS: What happened was... I had been employed by the state (Wyoming) public defender's office for about five years at the time. This was one of the few death penalty cases that came about within those five years. I had represented another death penalty client--Keith Jespersen was a serial killer who'd killed up to 13 people in Washington and Oregon and then ended up killing somebody here in Wyoming. I represented him. It was a death penalty case here in Laramie County. I ended up getting him another life sentence added onto his multiple life sentences he was serving Oregon, I believe. Other than Wyatt Skaggs at the time--Wyatt Skaggs had done most of the death penalty work at the state public defender's office. There was not anyone else really qualified to do death penalty work. Once this case came around, because I had done previous death penalty work--I was one of the few people with some experience in death penalty cases.

MARK JUNGE: Was your office here in Cheyenne at the time?

DION CUSTIS: I was actually in the public defender's office at the time so I worked just inside the public defender's office.

MARK JUNGE: At the O'Mahoney Building?

DION CUSTIS: At the U.S. Bank building.

MARK JUNGE: Can you give me just a basic description of what this case was all about?

DION CUSTIS: Yes. I guess my description of it would be much different than what the media has reported. I never thought it was really a death penalty case in the first place, however it obviously became that. It was a robbery that ended up with Aaron McKinney hitting Matthew Shepard too many times on the head with the butt of his gun and then obviously ended up killing him. I would describe it as a robbery case that ended up in death.

MARK JUNGE: Did you think that the venue--Albany County in particular--was a good one?

DION CUSTIS: Yes, in fact Judge Voigt--in pretrial motions--told us that if we wanted it moved, it was moved. One of the toughest decisions that we made as a team was deciding whether to leave that case in Laramie or moving it out of Laramie. We struggled with that decision pretrial. Ultimately, we came up with the decision to leave it in Laramie because it was the most liberal place. Most people that lived there knew at least the important facts of the case and weren't too influenced, we didn't think, by outside sources --where we believed other jurisdictions would have just heard what the media was reporting, which was incorrect, for the most part. We thought Aaron would probably get the best trial in Laramie. They were the most knowledgeable people and they wouldn't be influenced by outside sources.

MARK JUNGE: Well, how would they get their information--the local people--except through the media?

DION CUSTIS: Through word-of-mouth. We think that most people knew that the media that was sensationalizing this whole case. A lot of people knew Matthew Shepard. A lot of people knew Aaron McKinney and Russell Henderson. We thought that a lot of the jurors might not really know them but they were well aware of the media sensation that it became and that was overblown as opposed to anywhere else in the state. And we thought that it (Laramie) was more liberal than any place else in Wyoming. We would have probably been forced to go to Douglas, I think, and trying it there. That was probably the option the Judge Voigt would've taken because he was from there.

MARK JUNGE: How much preparation goes into a case like this?

DION CUSTIS: Oh, from day one when you have a death penalty case... pretty much any death penalty case starts the first time you meet the client and then it goes back into gathering information from their childhood and even before they were born. So, we were gathering information from day one focused on saving his life.

MARK JUNGE: And this was your objective?

DION CUSTIS: Yes, to save his life.

MARK JUNGE: Were you assigned that--you and Jason Tangeman-- or was that just something that you decided...that was your particular reason for being involved?

DION CUSTIS: Each case is different but in most death penalty cases, usually the conviction itself is probably a foregone conclusion because it probably shouldn't be a death penalty case if the state can't prove that there was either a felony murder or premeditated murder. So yes, in most death penalty cases, the goal is mainly to save the person's life--to save them from death row and not so much about getting them found "not guilty" on the underlying charges.

MARK JUNGE: When you say that you go back--how do you do that? Do you question his parents or friends or...

DION CUSTIS: Yes, basically the mitigation specialist is assigned to gather all social, environmental and family background. So they go back to the parents and interview them--like, if there are any alcohol issues, any mental-health issues with the parents themselves, any siblings, all of that before the defendant was even born. They'll start from there and see if there are any of these issues that we need to look into concerning his mental health or whatever.

MARK JUNGE: So as you were gathering this information, were you starting to form an opinion about who this guy was that you were defending?

DION CUSTIS: Yes. We try to find out as much information about where we can go for the mitigation--for the death penalty portion of the case and try to figure out what is going to be most persuasive to individuals—jurors--to save his life. For instance, if he has mental health... if he was born with fetal alcohol syndrome, something like that since his birth, he has had these problems and that is going to be important to some people. If it's an environmental thing-- he was injured-- for instance, had a brain injury early on in his life we can present that and explain how it has affected him and how it affects his decision-making. It just depends upon the individual and what there is in his background and how we can present it to a jury to persuade them to save his life.

MARK JUNGE: So, Dion, what did you finally decide as to who this person was?

DION CUSTIS: Well, with Aaron McKinney, there were a number of issues, I think. He did come from a background where there were some mental health-type issues. I don't think he had ever been diagnosed as having a mental health disorder but there were environmental concerns. There were alcohol abuse issues concerning his family and him and obviously drug use and abuse.

MARK JUNGE: What was his environment; would you say, in an educational or social sort of way?

DION CUSTIS: Yes, I would say he was deprived of an education that others might have received in the community that he was brought up in.

MARK JUNGE: Where would you throw him into, as far as socio-economic class goes?

DION CUSTIS: Probably on the low end.

MARK JUNGE: Did you consult with Wyatt Skaggs who was the attorney for the other person involved in the case?

DION CUSTIS: We did. I wouldn't say "consult" but we would speak to him about where he was going with his case. Obviously, in any codefendant case, it's important to know whether the codefendant will be testifying against your client. We wanted to know that and we wanted to know his strategy--if it was going to be focused on blaming Aaron McKinney completely or some other avenue.

MARK JUNGE: What did you find out?

DION CUSTIS: Basically that. It certainly wasn't a surprise but I think that the facts are that Russell Henderson was with him. They initially decided they were going to rob this kid and that's all they were going to do. When they went out to the field, that's what they did. Then Aaron McKinney basically "lost it" and hit him with the revolver. He hit him too many times, but Russell Henderson was merely standing there at the time and just didn't stop him. So, it was a pretty sad situation for Russell Henderson, I thought. I don't think he should be serving the rest of his life in prison; he wasn't the one who killed him--he didn't aid in killing him--he just didn't do anything about it.

MARK JUNGE: I don't know the law but not doing something about a murder that you could do something about... Is that tantamount to murder?

DION CUSTIS: That in itself isn't. The problem was that he had already participated in the robbery by taking him there and taking out his wallet. Once you start participating in the robbery and then the other person goes in and kills them, you are just as culpable under the law. You can renunciate your involvement. He could have, for instance, gone to the hospital, or gone to the police once they knew they had injured him and that probably would've helped him out-- but he didn't.

MARK JUNGE: Why do you think he didn't?

DION CUSTIS: I think he was just with Aaron and they did this together; they were friends and he wasn't going to go rat him out, for instance. Big mistake on his part.

MARK JUNGE: Did you get to talk to Henderson?

DION CUSTIS: No. Once they represented by other counsel, no one is allowed to talk to them unless it's with their attorney (present).

MARK JUNGE: What about after he was sentenced? He didn't sign a gag order did he?

DION CUSTIS: No. I know that we wanted to speak to him but again, it would have been with the permission of his attorney Wyatt.

MARK JUNGE: He would have allowed that?

DION CUSTIS: Probably not, at least until he was sentenced. I think he was... the prosecution had some agreement with him that they might want to use him in McKinney's trial, but we wouldn't be able to gain access to him--at least until after the trial.

MARK JUNGE: Do you think it would've been kind of "messy" if you had introduced him into the McKinney trial in the courtroom?

DION CUSTIS: Well, yes. I don't think he had anything to offer that would've been helpful to McKinney because, like I said, I think the facts supported-- he was basically a "standby" to the murder case, which meant that Aaron McKinney did everything as far as hitting him and causing death.

MARK JUNGE: Now in jury selection--what was your philosophy as far as jury selection? Do you remember?

DION CUSTIS: Yes, our philosophy was to try to get jurors that would be receptive to Aaron McKinney's background; that would want to save his life basically; that would understand that there was a tragic murder committed but that he doesn't deserve the death penalty.

MARK JUNGE: I'm curious. This is just my personal curiosity in play here but what kind of questions do you ask a juror to find out where they're coming from-- or are you real straightforward about it?

DION CUSTIS: I'm real straightforward, but they're all kinds of questions that you ask in a death penalty case-- you ask about their issues on the death penalty; how they feel--what is a death penalty case to them because it is different for everybody; what they feel about mitigation and some of the issues that we were going to bring in such as lack of education, drug use, alcohol background, that kind of thing--what they think about that. Basically, just try to ask them as many questions as possible to try to figure out where they would be on a death penalty continuum. I was trained by Colorado lawyers--David Wymore -- specifically, on how to select a death penalty jury. His model is used throughout the nation; it's probably the best model in the nation on how to question jurors and pick a death penalty jury-- one that is not going to kill your client.¹

MARK JUNGE: What firm is he with?

DION CUSTIS: He was with the public defender's office for, I think, 20 to 25 years. He recently retired and now I think he practices privately in Colorado.

MARK JUNGE: So you kind of tutored under him?

DION CUSTIS: Yes. Once I got my first death penalty case in Wyoming, the only person who had really done any kind of death penalty work in Wyoming was Wyatt Skaggs. I thought we needed... I practice in Colorado as well so I thought we needed some education on death penalty work because I know what David Wymore had done; he's never lost a death penalty case in I think like 20 cases or more. They do incredible work there. I went down and asked them if they would train us-- that we need people in our state trained on these types of cases.

MARK JUNGE: Before you got this training, did you have an opinion on capital punishment?

DION CUSTIS: you know, I probably would've been generally against it but it's like when you question jurors about it you have a general opinion of what you think about it but until you are actually faced with being involved in it it's a little different story. That's what I find from jurors and even people who vote on it--for it or against it--until you are a person who actually "flips the switch", it's a little different.

MARK JUNGE: I might as well ask you now--what is your opinion?

DION CUSTIS: I'm against it because I've seen it applied unfairly. The government can't apply it fairly and if they can't they probably shouldn't condone killing people, so that's probably the main reason.

MARK JUNGE: did you feel there was any feeling on the part of the defense that the sexuality on the part of the juror should come into question or probably be asked— their view on sexuality?

DION CUSTIS: yes, I thought that was important to an extent. We never thought this was a case about homosexuality. We were kind of steering away from that but we knew it was a factor in the case; I mean the fact that Matthew Shepard was gay. It was a factor but it wasn't the motivation of these kids to do this because he was homosexual, at all. We knew it was an issue and we knew we had to talk to them about it; that it was going to come up in trial and that we were going to have to deal with it. We were going to deal with it in a completely different way than with the media thought it was and maybe how the prosecution was going to frame it.

MARK JUNGE: I don't understand the difference.

DION CUSTIS: They had basically framed it as though it were motivated by hate crime; that it was motivated by homosexuality because Matthew Shepard was gay. Our defense was not that at all. Our defense was... and in fact the whole "gay panic" thing--Judge Voigt used that term in our motions and we said, "That's not our term. We are not using the gay panic defense."

MARK JUNGE: Really?

DION CUSTIS: A gay panic defense is when... I mean things happened in this case and that issue came up. But we weren't saying that he was gay and that he came on to him, although that

was part of the case. Mainly our defense was that this was a robbery gone wrong and the drug use--that he was high on methamphetamine at the time. When he started hitting him... when he got upset at him--Aaron McKinney at Matthew Shepard--he hit him and lost control. If he would've hit him two or three times this would've been a robbery case but he hit him, I think, 13 times it was.

MARK Junge: They actually counted a number?

DION CUSTIS: Yes, they were able to count exactly how many times he had been hit and it was somewhere around that number. Because of that, that's what killed him. At the time, he didn't think he killed him--neither of them thought they had killed him. In fact, I believe it was Aaron McKinney's intent to knock him out. They took his shoes. The reason they took his shoes from the scene is because they thought he was alive; they thought they knocked him out and that he would get back to town right away with his shoes and tell the police. This is why I didn't think it was a death penalty case--they didn't even think they killed him. In order to be a death penalty case, the premeditation part should be there meaning that the person intended to kill this individual--thought about it, deliberated about it and then did it. They didn't even think that. They thought, "We are going to rob him, knock him out, we are going to tie him up." The reason they tied him up was because they didn't want him getting back to town. If they thought they had killed him there would have been no reason to tie him up. He wasn't tied up like a scarecrow. That's how the media got started on this was that the mountain biker found him and described it as "being tied up like a scarecrow"--arms spread out on a post, for instance. That's how people kind of thought about it because he was gay... That didn't happen--that didn't happen at all! What he found was that his hands were tied up behind his back against the post. He was crouched down, he was slumped down and that's how he was tied. When he said "scarecrow" he didn't mean that he was tied up like the crucifixion but just a scarecrow slumped down. But the media took it like there was this gay kid in Laramie that was tied up like a crucifix which didn't happen. It just didn't happen like that. Once the media got that report out, they went with it even though they found out later that's not what happened. They still promoted that way. I even talked to--obviously, I talked to a lot of media--we talked to some media who were told they were not to report the actual true events of what happened. They were instructed to go with what they had already reported, which was incorrect. Some people told me off the record that they were instructed to do this.

MARK JUNGE: Well now, was he tied up to the fence before they started beating him?

DION CUSTIS:no. No. They beat him and then they tied him up because they thought he was alive and they took his shoes because they thought he was alive.

MARK JUNGE: And then they beat him some more?

DION CUSTIS: No. They just tied him up and then they left. It was much different than what was reported of how that whole thing happened but the whole reason they tied him was to get

away and not have him to go to the police. It has nothing to do with anything else, other than that.

MARK JUNGE: So they just beat him out in the open where, theoretically, if he was a big guy he could defend himself?

DION CUSTIS: Right.

MARK JUNGE: But they had a gun, obviously. I'm curious... where does the point come in...at what point does the premeditation come in?

DION CUSTIS: It didn't, in this case. The jury didn't find premeditation which was--basically this case was a huge win for the defense. It was a death penalty case and he was charged with first-degree premeditated murder. The jury found him not guilty of premeditated murder. They found him guilty of felony murder which is killing in the course of a robbery. That was our defense; that's what we told the jury had happened. The decision to leave it in Laramie obviously was a good one because the jury agreed with us. That was our entire defense. We basically told him the truth. I mean, we told them what happened and the facts supported what happened. Again, what people heard about this case--if they weren't on the jury or sitting in the courtroom--was something completely different.

MARK JUNGE: In Judy Shepard's book--"Remembering Matthew"²--she says when Justice Voigt disallowed the gay panic excuse for the murder, that essentially cut you guys off at the knees. That's not true?

DION CUSTIS: No, not at all. Not at all. We told the judge, "Judge, we don't know where you get the term 'gay panic'. You've been listening and affected by the media as well. That's not our term and we're not saying that this is a gay panic defense." It didn't cut us off. We weren't trying to introduce any evidence against Matthew Shepard. The only portion of what can be considered gay panic that we talked about came in. We didn't get cut off from anything and the only portion of that was Aaron McKinney said while they were driving out to the scene was that Matthew Shepard had reached over and grabbed his crotch. That's why he pulled out the gun and actually hit him a couple of times in the car because he got mad about that. Then they took him out to the field, then he hits him more and then he ties him up and leaves him. So, that wasn't necessarily a gay panic defense. That's what our clients said had happened.

MARK JUNGE: it was part of the case?

DION CUSTIS: Yes, it was part of the case.

MARK JUNGE: So, it is all been misinterpreted that you guys had this "gay panic" thing and that was your last resort. There was nothing else to...

DION CUSTIS: It was completely misinterpreted. Someone in the media characterized some of our pretrial motions as us going for the gay panic defense. We said no, we are not going for the gay panic defense. The fact that Matthew Shepard was gay is a factor but it's not part of our defense. The fact that Aaron McKinney got mad happened because he was gay. If he wasn't gay that probably wouldn't have happened. We were trying to bring a whole lot of... We had found information that Matthew Shepard had been in situations like this before with other people; had been beaten up because he came on to people. We had that information there as well. I don't believe we were precluded from introducing that. In fact, I think we did.

MARK JUNGE: So when this issue came up--whether or not you introduced it--did you take a lot of static from the media, the national media, the state media were the local media?

DION CUSTIS: Oh yes, for sure. There were a lot of people watching us and criticizing pretty much every move we made. Someone from some faction looking in would criticize everything but we knew that was important as well. It wasn't used in a malicious way against Matthew Shepard; it was used as a fact to support Aaron McKinney's statement that this happened. We had to prove that the only two people who could say this happened were Russ Henderson and Aaron McKinney. Their credibility was shot completely, so if we had information that Matthew Shepard might have done this in the past or come on to somebody, we thought it was information a jury should hear so they can make the determination and Aaron McKinney was telling the truth about that or not.

MARK JUNGE: In somebody's book, I don't know whether was Beth Loffreda's book,³ somebody said they wanted to know why you asked jurors--perspective jurors--if those perspective jurors felt it was necessary to "unchain the community."

DION CUSTIS: We were more worried about the media coverage than we were about the facts of the case. Like I said, our case, we thought was a robbery gone wrong--that we could present reliable and credible evidence as a defense and that this jury would not want to kill Aaron McKinney because of that; that they would recognize this for what it was and that he should be punished -- I mean, he killed this kid-- but that he should be punished by life in prison and not be killed by the death penalty. So we were more worried about people buying into what the media was saying--that this was a hate crime--that this was done and motivated by the fact that Matthew Shepard was gay. We knew that didn't happen. That's where we were going with that. We didn't want people thinking that. That's why we left it in Laramie. We thought that most people knew this wasn't a gay bashing as it has been brought out and used as.

MARK JUNGE: I guess I kind of lead you in the wrong direction there... what I was going to say was, could you look at a potential juror and say, "Look, do you have any guilt feelings about the way the majority treats the minority and do you feel that Laramie needs to not bear this shame and that that is not going to be a factor in the decision?"

DION CUSTIS: Yes, we're definitely worried about that as well... that Laramie had been highlighted as this little poke cowboy town and people would be influenced by that as well. Yes, we wanted to question them and see if they would somehow tell us if they were worried about that and would render a death verdict just to justify everyone else in the nation.

MARK JUNGE: Protecting the reputation?

DION CUSTIS: Yes, protecting the reputation--that was a definite concern!

MARK JUNGE: In her book, Beth Loffreda says that Judge Voigt "got fed up with the defense lawyers" meaning you and Jason Tangeman. I want to know why she, on page 114 of her book wrote, "In his order, Judge Voigt wrote that the court's expectation of professional conduct, as Mark Twain would say 'has been flung down and danced upon.' "

DION CUSTIS: I would say this--Judge Voigt--it was his first death penalty case as well and when you get into a death penalty case, it is completely different than any other case. I think Wyatt Skaggs who had been the only other previous death penalty attorney in Wyoming who has taken cases to trial--he filed maybe 80 motions or so in a death penalty case. In this particular case, we filed 300 motions and it was the most that Wyoming had ever seen as far as pretrial motions going into a case. We were doing absolutely everything we could to save Aaron McKinney's life and he (Judge Voigt) got very contentious. The other problem was Cal Rerucha (the prosecuting attorney) --we did not get along; I did not get along with Cal. We had known each other before and we got along fine. He flies off the handle a lot. There were a lot of situations where we almost came to physical blows.

MARK JUNGE: Can you describe one of those to me?

DION CUSTIS: It was one of the pretrial motions, I'm sure. It was probably about us trying to get background information about Matthew Shepard, which is a highly emotional situation. I think we handled it always--very dignified--we did not want to drag Matthew Shepard but there were situations that we had to do, we had to bring up and we did so. We would get done with one of those and we would be out in the hallway and Cal would say something to us and we would say something back and get in each other's face. He would get beet red and in my face and close to physical altercation, for sure.

MARK JUNGE: What do you remember him being particularly unhappy with as far as emotions were concerned?

DION CUSTIS: Just pretty much everything. The other problem I think that led to that was Cal basically let the Shepards dictate how he was going to proceed with this case. We thought Cal knew that this should not be a death penalty case other than the media and the publicity... the way that the Shepards also wanted to use this case and did, and have, as an anti-gay platform. We didn't think it was that and it wasn't that. We were upset with Cal and he's the prosecutor.

He's in charge and he should never let the victim's family dictate what happens and he basically did that. What happened in the trial was that we basically won the case at trial because he was not convicted of premeditated murder. There was no way a jury was going to kill Aaron McKinney if they did not think he intended to kill Matthew Shepard and that's what they found. We took it upon ourselves to meet with the Shepards and talk to them about this saying that we do not need to go into this death penalty phase-- because that's the next phase after they convicted him of felony murder-- because we knew they were not going to kill him; we strongly felt that was not going to happen. Cal wouldn't even show up for this meeting with the Shepards and he is the prosecuting attorney. Jason and I met with the Shepards in a room with two deputies because Dennis Shepard, I think, wanted to kill me--which is very understandable. We sat across the table just like this and talked to them about what just happened with the verdict and how we were going to go into this death penalty phase and that is wide open as far as what we can bring in. The facts we had about this prior incident involving Matthew Shepard-- like I said, we told them we weren't interested in bashing Matthew Shepard in any way but there are some things that you probably won't like that we have to bring in. We talked to them about it and said we need to get this case resolved. We got it resolved by talking to them, which was absurd because we talked to them without the prosecutor present.

MARK JUNGE: So the normal procedure would've been to talk to the prosecutor?

DION CUSTIS: Right. The prosecutor would've been there and we would have negotiated this whole deal that we negotiated but we did it with the Shepards.

MARK JUNGE: Why do you figure that he didn't show up?

DION CUSTIS: He was so frustrated at the whole case that I don't think he could believe the jury didn't find him (Aaron McKinney) guilty of premeditated murder. And, he lost control, I think, of the case with the Shepards. Like I said, he let them dictate what was going to happen. He said, "Fine. If you guys want to go talk to the defense team you go talk to them but I am not going to take part in it."

MARK JUNGE: You think if he did allow the Shepards dictate the case, do you feel that was out of sympathy for them?

DION CUSTIS: Yes, for sure. He was very sympathetic to the case. It was very sad, obviously-- tragedies all over the place. But as a prosecutor, you have a much higher duty than that. Every murder case has that component to it; there is a victim and a victim's family and they want justice, they want revenge, they want whatever they want. As a prosecutor, you have to control that and you can't let them dictate what is going to happen.

MARK JUNGE: I find it interesting that people seem to confuse justice with revenge.

DION CUSTIS: Right. I certainly don't blame them. If that happened to my children, I would want the same thing but that is why you have a different party pursuing it.

MARK JUNGE: What did you think about Judge Voigt's gag order regarding the press?

DION CUSTIS: We actually didn't oppose it. We were fine with it. Like I said, we didn't want to battle this in the media-- we knew there was no way we were going to be able to and we didn't want the prosecutor to do it either.

MARK JUNGE: Did you know what you're getting yourself into when you first accepted this, or were assigned it rather?

DION CUSTIS: No. We thought it was a-- every murder is a tragic case but what it grew up into was something I wasn't envisioning for sure and it got way out of control fast.

MARK JUNGE: How does this case, in your mind, stand as far as all of the cases that you have handled so far?

DION CUSTIS: Well, it stands out as one of the most bizarre and crazy cases just in terms of media influence. The trial was a circus. There were media outlets from everywhere. I mean, I heard radio reports from China on this case and stuff like that. But, you had the anti-gay people; you had the pro-gay people picketing; you had anti-death penalty and pro-death penalty picketing and so all of these people gathered at the trial. You had the angels walking downtown and you have to crazy people from Kansas--the Phelps people. It turned into a circus is what it turned into. I had talked to Diane Sawyer personally on this case and a bunch of other high media types, which never happens. I didn't give an interview but I talked to them. I think Diane Sawyer called me personally wanting ^{an} interview or something like that and I just told her no.

MARK JUNGE: because of the gag order?

DION CUSTIS: Yes. I think before the gag order, I had talked to Channel 4 out of Denver because it had gotten to the point where we needed to say something so I spoke with them. Then other outlets wanted to speak with us as well and we said no. We decided to do this very tactically--that we were going to say something once and not get into this huge fight with the media but just explain our point of view.

MARK JUNGE: Did you ever get any threats?

DION CUSTIS: oh yes. In fact, I still get threats. There were three movies made on TV or cable. It seems like once a year and when that happens I'll get an email or a phone call with someone saying, "How could you defend this murderer?"

MARK JUNGE: People actually threatened you? Bodily harm?

DION CUSTIS: Yes. Yes. So, lots of threats, phone calls and emails--people that were very angry. My response to them is, "If you knew the case, you probably wouldn't be saying what you're saying. It's not what you have heard."

MARK JUNGE: Any death threats?

DION CUSTIS: I don't think I've gotten any death threats but just people angry, mad, pissed off-- still to this day it happens. Every now and then, it happens.

MARK JUNGE: How has that affected you personally?

DION CUSTIS: It hasn't really. It comes ^{with} of the territory. I understand why they would think ? would be so angry that someone would defend this person, but again, they just don't know what happened.

MARK JUNGE: You were assigned to this case. Do people understand that you were assigned to case?

DION CUSTIS: I don't think so but I would have gladly taken the case anyway because that is what I do. That is one of the reasons I got the case because I would always take the harder cases. I would always want the worst...you know if codefendants get charged, I was always there to take the worst one. That's what I do. I like the challenge of it. So when this came up they said, "Let's give Wyatt to Russell Henderson and give Dion, Aaron McKinney." I said, "Sure, I'll take his case."

MARK JUNGE: How did Jason Tangeman come into play then?

DION CUSTIS: well, Jason had worked, at the time-- I think he just stopped working a year before for the public defender's office--but I had known him. He was in Laramie working with his firm but still doing contract work with the public defender's office over there. I basically said I wanted Jason to be my co-counsel because he was in Laramie and also because I had worked with him before and knew he would be good to work with.

MARK JUNGE: Was he a local guy? A Wyoming kid?

DION CUSTIS: He traveled the world. He'd actually been to high school in Thailand. His parents travel around teaching and stuff like that, but he is from Wyoming.

MARK JUNGE: Where are you from?

DION CUSTIS: I am from Denver. Raised in Denver.

MARK JUNGE: Whereabouts?

DION CUSTIS: Englewood. Pretty much all over, but I went to high school in Englewood. I am Mexican-Spanish. My mom is an Aragon and my dad's side is Custis and Baca.

MARK JUNGE: Custis is not Latino is it?

DION CUSTIS: No, it is Irish. His dad was Irish and his mom was Baca (Mexican) and my mom's side was Spanish Aragon's. I basically grew up with the Aragon's in Denver. We grew up in North Denver until I was about five and then my mom moved us out to the suburbs after that.

MARK JUNGE: Did you live in the Highlands area of North Denver?

DION CUSTIS: Yes--31st and Grove.

MARK JUNGE: so you went to school at Englewood High?

DION CUSTIS: Yes.

MARK JUNGE: And after that?

DION CUSTIS: I went to Metro State in Denver and then to Wyoming (University of Wyoming) to law school.

MARK JUNGE: Did you go four years at Metro?

DION CUSTIS: Yes, four years at Metro.

MARK JUNGE: Your undergraduate degree was in what?

DION CUSTIS: Criminal justice.

MARK JUNGE: Okay, why did you go to Wyoming for a law degree?

DION CUSTIS: I was actually going to go to DU (Denver University) but I grew up in a very poor family. I am the first one to graduate from high school in my entire family--like cousins, everybody--so a very uneducated family. I was very poor. That's why I went to Metro and then played soccer ^{at} Metro. That's pretty much the reason I went--to play soccer. Then I decided in about my fourth year that I would try to go to law school. So I applied to DU and I got in I had about \$20,000 in loans taken out and Wyoming offered me a scholarship because I'm a minority. I went to this law program called "CLEO"--Council on Legal Education Opportunity. It is basically a program for minorities who are underprivileged students where you go for a summer. It's like a bridge program and to take law school courses and if you do well enough, you can get into some different schools. I did that and I did well enough that Wyoming--Wyoming didn't have any minorities in its law school--when I went there, there was me and somebody else.

MARK JUNGE: You're kidding?

DION CUSTIS: Yes, so they're very underrepresented in Wyoming as far as minorities go. They said, "Okay, you can come here for free." I came and checked it out. That verses \$20,000 a year for student loans.

DION CUSTIS: My immediate family was obviously my mom and dad and my sister. None of them have graduated from high school. On my mom's side, she has eight brothers and sisters who all grew up in North Denver; none of them had a high school degree. My dad's side--the Custis-Bacas--there are about seven or eight siblings of his and they all lived out in California. None of them have graduated from high school either.

MARK JUNGE: Wow! That's really interesting. So you only have the one sister?

DION CUSTIS: Yes.

MARK JUNGE: I wonder what it was in you that made you want to go on? Or do you think it was just the circumstances?

DION CUSTIS: It was mainly seeing my mom and dad--my mom was a factory worker basically. She made minimum-wage most all of her life. They got divorced when I was in the second grade. My dad was in and out of jobs from that time on and probably until now. He didn't make much money. When I was in college, I worked two jobs and went to school. I think I made more money than both of my parents put together. That's how they grew up making hardly anything.

MARK JUNGE: This is not pertinent to what we are talking about but it's interesting to me-- here we have a person like yourself from the low income family--a low socioeconomic background, right? You go on to law school and you get to be a lawyer. You're the first person who has any kind of a degree and to open a law office and handle one of the biggest cases that has occurred, in my estimation, in Wyoming. Aaron McKinney came from a low socioeconomic background. He went in an almost diametrically opposed direction. Why is that?

DION CUSTIS: Yes, you know it's weird because there is another case-- as I said, as far as this case goes, it was probably one of the most sensationalized cases in Wyoming or even in the United States but it wasn't the worst case. Like I said, for it to be a death penalty case it has to be bad. You have to have the murderer, but on top of that you have to have something aggravating about it to make it a death penalty case because not every murder is a death penalty case. Every murder is bad but you have to have all of these aggravating factors--at least one or two of them-- to make it worth killing somebody, more so than the average murder case if you can use that term, which is strange anyway. But I have defended--and I think it was another reason--before this case I have defended Aaron Dowdell (Richard Aaron Dowdell)⁴ who killed Cpl. Martinez⁴ in the prison. There were three guys who were "lifers" who concocted a plan to kill a guard because they felt they were being treated like animals so they wanted to make a statement. This kid (Aaron Dowdell) was my age and he planned the thing and was the stabber. He was the one who went in with the shank and killed Cpl. Martinez. It was a really sad case because they were targeting one guard whom they didn't like but 30 seconds before they were going into the guard shack Cpl. Martinez was dead. Cpl. Martinez had family--kids and stuff--but they were already in motion so they had to go through with it and they shanked him to death. Very sad, but if

there's ever a death penalty case, that's the case where you have people in prison who kill a guard to make a statement. We ~~saved~~ ^{saved} his life (Aaron Dowdell) by one vote. Anyway this kid was my age and he had come from Canada as an underprivileged kid and got involved in some robberies and stuff that's why he ended up in prison. He robbed a 7-11 but he shot the guy and then ends up going to prison for life but he wasn't a terrible kid as far as terrible kids go. He just got involved with the break-ins and stuff like that. His life was pretty along the same lines as mine as far as growing up--divorced family early--that kind of thing-- not hugely terrible compared to a lot of people. But not great on the other hand either. Then he ends up in prison for life and I am his attorney, which I always thought--we got along real well--he was a good guy. I would invite him over to my house for dinner, no problem. Even though he killed in cold blood, he didn't seem like an evil-type person.

MARK JUNGE: Dion, I guess were I'm headed with this--what is the difference between you and Aaron McKinney--I mean how does a person accomplish as much as you have accomplished but the other person go in an entirely different direction?

DION CUSTIS: That's the question. At some point there is a trigger in everybody's mind where you cross the line. When I was young, I got into drugs and stuff like that. It could have gotten to the point where I would've been abusing it to the point where you drop out of school and start committing crime^s, robberies and stuff like that. That's what I see a lot of kids do. There is a trigger at some point where you go, "Just stop! I'm not going to--okay, I'll do up to this point but I'm not going to go any further." Some people have that and some people don't. That is why I'm busy because--that's why I do criminal defense--because a lot of people don't have that recognition to stop. At a certain point, they go further and then they get busted and then they end up in the prison system.

MARK JUNGE: Okay, very good. I'm curious though as to whether that trigger is a result of an environmental upbringing or if it is genetic. I mean, maybe somebody doesn't have the...

DION CUSTIS: Yes, I think it's both. Even though I was brought up poor, my mom was a huge influence. I did not want to displease her. I did plenty of times but it wasn't ~~by~~ anything too bad compared to a lot of my friends. My high school was really bad so you could go a half a block and you could pretty much get any drug you wanted. There were 300 people in my class and only 150 people graduated. I had people going to school on acid. I had friends that I know who did it between 30 and 40 times in one semester. To class? they would go on acid. This is high school, so it was the 1980s. I graduated in 1986 and it was pretty nuts there. But my mom was always a good influence. She didn't have much control over me but it was one of those things where you didn't want to displease her. She had worked hard and I think you see that a lot in poor families. A lot of people that make an NBA and NFL are brought up by their moms or grandparents and their friends are gang bangers or whatever.

MARK JUNGE: Do you remember Bob Beck, Wyoming public radio's announcer?

DION CUSTIS: Yes.

MARK JUNGE: In this book that I read by Loffreda, he (Bob Beck) more or less says it was a robbery committed by stupid people and just writes the whole thing off as a stupid, unfortunate incident by stupid people. Just what is meant by stupid? Just by what you told me, a person's background-- it isn't just-- I mean, what is stupid?

DION CUSTIS: Well, it's just that--and I agree with him. I think it was stupid, completely stupid. Again, that's why I'm in business. I don't know people necessarily have to be stupid but they make stupid decisions at crucial times in their life. If Aaron McKinney hadn't just beaten him--if they had just robbed him and left him out there--this would've been a robbery case. He would've been a probably would've gotten charged with robbery. He would've gotten probation--maybe he would've screwed that up because he had kind of that young stupid mentality who just didn't get it. He was one of those types. It happens all the time but he made a real stupid decision by having the gun--well, that was for drugs--it wasn't loaded so they weren't doing anything with it. They were just carrying it around trying to get more drugs. He pulls it out and hits him (Matthew Shepard) and he responds to a situation--just really stupid. Russ Henderson--I mean his situation was so stupid because he is there. He actually said he got scared of Aaron McKinney and that's why he didn't do anything, which is understandable. He could have done a lot to avoid where he is at.

MARK JUNGE: You came from a tough neighborhood, right?

DION CUSTIS: Yes.

MARK JUNGE: Being raised in that type of environment, you must be able to see a person's value system is not like the values of a young middle-class kid whose parents both encourage him to go to law school and he becomes a doctor or lawyer or whatever. Don't you think?

DION CUSTIS: Yes.

MARK JUNGE: I mean, McKinney was part of that subculture or whatever you call it? I don't want to put words in your mouth but...

DION CUSTIS: I think so. My situation was I saw what my parents didn't have and didn't do and I wanted to do the opposite. But you see that in families. Aaron just didn't have someone in his family to look up to or anything to look forward to so he was just one of those kids who got around. He had a huge settlement--I don't know if you know about that. It was when his mom died and that had a huge effect on him. His mom died at the hands of a doctor in Laramie. She was having surgery and ended up dying unexpectedly during surgery very young. This was only, I think, a few years before this. That was a huge motivating factor for Aaron's demise--not only the fact that his mom died--but that was his whole support system. But, he got a huge settlement of like \$70-\$80,000 lump-sum money and this was when he was 20 or 21. He basically blew

it...went to Vegas and blew it kind of it, got into drugs, and it was all gone within a year or two, I think. That did not help him. All of this transpired to a point-- or culminated, I guess--two a point where he was using drugs and got to where he made the stupid decision which was basically...like I said, they were sitting at the bar--Russ Henderson and Aaron McKinney--with like bags full of pennies in change to pay for a pitcher of beer. So they were sitting there at the bar paying for a pitcher of beer at the Fireside and they look down at the other end of the bar and there is Matthew Shepard. Obviously he is dressed well, he is small and he is obviously gay. Like I said, I don't think that was the motivating factor. The motivating factor was that he was small and easy prey. They concocted this scheme: "Let's get him in the car and we'll rob him...maybe take him back to his dorm room and see what he's got there." That was their plan. It wasn't because he was gay--it was because he was small and frail and an easy target. That's why they did it. Eventually, they just took him out and dropped him off.

MARK JUNGE: What happens when you defend a person who some people would call "lowlife"; other people would say disadvantaged--whatever he is-- what happens to a lawyer who defends somebody like that? Do you get close to them where you get to the point where you begin to understand them? Does that turn into sympathy?

DION CUSTIS: Yes, you know, I've never represented anybody that you couldn't find some redeeming value in.

MARK JUNGE: Like Father Flanagan--there's no such thing as "bad boy."

DION CUSTIS: Yes, there is always something there you can latch onto and I have represented some bad, bad people--murderers, evil people that have killed people and they'll do it again but there is something you can always find to latch onto--to find some redeeming value in them. For Aaron, there was all kinds of it. It was just a sad case. People think he is just this cold-blooded, coldhearted murderer--I mean what he did was evil and what he did was terrible but he wasn't that bad of a kid before that. I mean, he was a little punk basically. He was a "punk kid" and he had lots of reasons to be a punk kid because he had all of these problems growing up. I can understand where he was in life but he wasn't that bad a kid before this happened--this was just a bad decision.

MARK JUNGE: how high are your "bullshit detectors"? I mean, could you tell when he was lying?

DION CUSTIS: Yes, I can tell when most people are lying and at that point I wasn't as good at it then as I am now. I had been, at that point, practicing for I think five years or so and had represented some really bad people. One thing I never do is rely on the client and what they tell me as truth-- ever. It's always based on the evidence but what they say is important. Whether Matthew Shepard grabbed Aaron in the truck or not, I don't know whether that happened or not. I kind of think it did just because of the reaction they came from it. I know Aaron had no reason to

do what he did and I think it would've taken something to make them trigger like he did--he just about lost it--and I know their whole plan was just to rob him. So, I believe that.

MARK JUNGE: The verdict was what, in his case?

DION CUSTIS: The verdict was felony murder and kidnapping. He got three life sentences basically.

MARK JUNGE: He got three? A person can only live one life so what's the purpose?

DION CUSTIS: Yes, Wyoming life is life so one sentence is going to do it. He would've never been paroled but there is a chance in Wyoming but if you have a life sentence You might be eligible for parole at some point. At some point they can reduce it to a term of years. In some states, life is like 40 years so it doesn't mean that. In Wyoming, though, life is life.

MARK JUNGE: So he's going to be in there for the rest of his life?

DION CUSTIS: Yes, he will die in prison.

MARK JUNGE: Isn't that worse than just executing him?

DION CUSTIS: You know, a lot of people say that. Like the Aaron Dowdell case, he had been in prison for life. I think he was about 30 at the time. He wanted to die--he wanted the death penalty and we still saved him from it. But, I think he is thankful because you adjust to the prison setting or prison life--people do. When you're in there for life, you've got friends and you got family--I mean, they become your family. It just becomes a different set of circumstances for these people. You know, even though Aaron Dowdell said he wanted to die, I doubt he would be saying that before walking up to the gurney before they stuck a needle in him.. It's one thing to say that when you're out and about and another when it's actually going to happen.

MARK JUNGE: What are your perspectives about this case in Wyoming history, national history, global history?

DION CUSTIS: Since I've been here in Wyoming, it's definitely the biggest case I've seen except maybe Hopkinson.⁶ That was going on, I think, when I was in law school--or they executed him somewhere around that time. He (Mark Hopkinson)³ was the only one who's been executed in Wyoming since...was it the last 100 years or something?

MARK JUNGE: It was quite a long time that they hadn't executed anyone but I don't know how long.

DION CUSTIS: The media coverage and what it's done had the biggest effect on... I remember, I think I was out in Atlanta during that case getting some more training or shortly after. It was at Ted Turner's place and they had a graph of high profile cases in the United States and OJ was up

there and then there was Matthew Shepard--or Aaron McKinney's case--above it. That was like "wow!" I didn't realize that.

MARK JUNGE: Why do you think it had such--let's put it this way--why do you think it had such notoriety?

DION CUSTIS: Because of what people thought it was--a gay bashing. I think most people to this day--I'll talk to people and tell them that I represented Aaron McKinney and they will say, "That's the gay bashing where they tied him up as a scarecrow." Everybody doesn't know what it is and that's what they think it was--a gay kid in Laramie Wyoming who got tied up like a scarecrow, like a crucifix, and got beaten to death. That's what people think it is.

MARK JUNGE: But why now? Let's say 100 years ago this wouldn't have been an issue, right? Or 50 years ago even, it wouldn't have been an issue. Why is it such an important issue now?

DION CUSTIS: I don't know. I think it became an issue because it was a small town in Wyoming and that happened. If it had happened in Detroit, you probably would've never heard about it. Along at the same time, I think it was a young girl-- a kid--who got raped and murdered and drugged in Texas.⁴ It's just part of the environment I guess of where you're at.

MARK JUNGE: What part do you think--do you think this fits into the whole gay liberation movement, if there is such a thing?

DION CUSTIS: It obviously does because it has had a huge effect on legislation around the states and with the federal government. The ^{Shep}shepherds have taken--I mean, I've got to congratulate them I guess--in what they've use^{ed} this for. They've done good things--I don't think it is what they say it is--but they've made a positive out of it if you can get one.

MARK JUNGE: So, you think it's positive that we treat a minority group, if that's what you want to call gays, lesbians, bisexuals and trans^genders; it's a good thing if are doing something for this group of people?

DION CUSTIS: Yes, I think it is good. I don't believe in hate crime legislation, necessarily. I think the law takes care of that, as it is written, in most states and in the federal government so I don't think we need that. What the Shepards have done--they have awakened people to start talking about it. ^{It}It took this case for people to recognize it so I think it's good in that way. It's kind of like the gay marriage thing--people just want to throw that under the rug and not recognize it until he gets into the media. Then you get certain people to at least start talking about it and the president taking action on it, that kind of thing.

MARK JUNGE: Where do you think we are in the progress of the story of gay liberation? Do you think we're at the beginning of it, towards the end of it?

DION CUSTIS:I think it is a progress that is rising, but I think it has a long way to go. It's definitely risen and will keep rising, I think.

MARK JUNGE: Okay. This is a comment made by Bill Dobbs in what they call "Queer Watch", and this is in Beth Loffreda's book -- there was some criticism about Elton John because he came and gave a concert but he didn't make any political statements. Bill Dobbs says, "If Mr. John lived in Wyoming, he could be fired from a job, evicted from housing and refuse medical care. Shocking, but true because there is no Wyoming law to stop discrimination on the basis of sexual orientation." Do you think that that is true? If you were to defend a gay person who is evicted from his apartment--there's no law that you can rely on?

DION CUSTIS: I don't think there is for sexual orientation so yes, of all your civil rights sexual orientation isn't protected. It could happen but I don't see it happening and I'm in the system so I think I would see it if it existed as much as people think even in Wyoming. I think gays get discriminated against in Wyoming for sure but I don't know if there been refused housing just because of their sexual orientation. I'm sure it happens.

MARK JUNGE: If a gay person has a partner who's been hurt or suffering some illness that is terminal, the partner doesn't have any legal right to interfere or make decisions. To me, it seems like discrimination.

DION CUSTIS: Yes, I think that's what's going on right now. The Wyoming legislature tried to pass this marriage law and thankfully that went down.

MARK JUNGE: Oh, you say thankfully?

DION CUSTIS: if I have a chance to vote for it, I would vote for a civil union or gay marriage, definitely. I think they should be allowed to be married, recognize that have the same rights as anybody else.

MARK JUNGE: Now that you on the other side of the fence of a lot of Wyoming people...

DION CUSTIS: Probably, yes. But I am much more liberal than a lot of Wyoming people. I'm from Denver, you know? (Laughs).

MARK JUNGE: Yeah, you greenies! Do you think that with this trial has made any progress on gay-rights?

DION CUSTIS: I do. There's one positive that came from is that people recognize homosexuality and treat people better whether they are homosexual or not. I think this case had an impact on that for sure.

MARK JUNGE: Are you proud to have been associated with this case?

DION CUSTIS: Yes. Yes I am. I thought we did a great job for our client. I think we did the best job that we could. There would be no better result that we could have gotten for Aaron McKinney than what we did. I also think we did it with dignity and class in dealing with the Shepards. I tell people that one of the hardest things I've ever done as an attorney was sitting down and talking to the Shepards across the table. That was, by far, one of the most important points in my career and probably one of the most crucial points in dealing with them. I tried to talk to them throughout the whole trial and explain what we're doing and where we were coming from. They didn't necessarily want to do that, which is fine but I do that in a lot of cases where there are victims and victims' families. I want to let them know, "Hey, I'm a person too. I have sympathy for your son." That's what we did. That was, like I said, one of the most important points in my life was talking to them and getting them to try to understand where we were at that point and say, "Hey, let's end this for everybody. It's in your best interest and it's definitely in Aaron's best interest and for everybody at this time, it's probably the best result."

MARK JUNGE: How did you go about it? Did you just call them up?

DION CUSTIS: We went to the prosecutor Cal Rarucha and said, "Hey Cal, word came back that they're not willing to kill him. I think you know that and we know that. Let's sit down and get this done. We've got another two weeks of evidence to come in to convince this jury not to kill our client and we're pretty confident that we can do that, but we don't need to. The whole reason that it went to trial is because Cal said to us that the parents want a trial but we offered them all kinds of ways out of it. We told Cal that it was not a death penalty case and you know it's not a death penalty case, as far as death penalty cases go so let's get this done. We offered life sentences. Wouldn't do it. The parents want a trial so they got their trial. But in the end, we are exactly where we would've been had we not gone to trial.

MARK JUNGE: You suggested there be a plea bargain? You suggested that?

DION CUSTIS: Yes.

MARK JUNGE: So didn't come from the Shepards and it didn't come from Cal?

DION CUSTIS: No, and that's the other thing--Cal basically left it up to them (the Shepards) whether this case was going to trial or not. That is just is wrong as a prosecutor

MARK JUNGE: You say you really feel that's one of your proudest moments--to convince the Shepards--or just the fact you were able to meet with them?

DION CUSTIS: I don't know if it was my proudest moment--it was one of the most difficult things I have ever done. I think the Shepards wanted to hear from us at that point and wanted to see if we could get it resolved. I mean, I don't know but they did. They sat down and talk to us--Judy, especially. She finally got to hear from us what our viewpoint was of this case and where it was going. She thought about it. We talked about it and ~~discussed~~ *discussed?* and they had control. It was

kind of weird--I've never had a case where the parents of the victim had so much control-- but they decided that they were going to end it.

MARK JUNGE: Did you empathize with Dennis and Judy?

DION CUSTIS: Oh yes! No doubt! I felt so bad for them--Matthew Shepard was a good kid with a promising future. He didn't do anything and should never have been in that situation. I can imagine what they went through. I didn't have children at the time, but still it didn't take having children to understand what the call must of been like. He was in the hospital a certain amount of time before he actually died but he was pretty much dead at the scene but he was still alive for a while.

MARK JUNGE: Are you in contact with the Shepards at all now?

DION CUSTIS: No. I think they've got me on their list because they send me emails on their foundation, and stuff. I email them back all the time and tell them I think it's great what they are doing. You (the Shepards) have made some influence upon a lot of people.

MARK JUNGE: Do you think that they think you are sincere?

DION CUSTIS: I don't know if they do. They should. I've never done anything other than represent the best interest of my client and I think they understand that. At the time, I'm sure it was very difficult for them to understand but I've spoken with a lot of people who are against what I do. Once they hear what I do and how I do it and why I do it they understand. It's just that those people who have a look in from the outside and have a judgmental view about it...but if they're willing to talk to you about it they'll understand. I represented so many people who have made disparaging remarks about me representing criminals-- bad people--and yet, when their sons and daughters get into trouble they come to me and say, "Help me out."

MARK JUNGE: That's how it was with Gerry Spence. Most people might not like the guy but they would certainly want him defending their kid if their kid got into trouble.

DION CUSTIS: Yes, I've had family members who say, "How can you do this? How can you do this?" Then they see someone close to them get into the system somehow--right or wrong--and then they see what happens and then they know at that point. So, most things that people don't know--they're making ignorant remarks, which is understandable.

MARK JUNGE: How do you let this roll off your back?

DION CUSTIS: I don't know. Always been able to do it. Ken Koski, who used to be the head public defender here would always say, "I don't know how you do it." I don't know. I've always been able to let things go. I just believe in it. I believe in defending people against the government for whatever reason--right or wrong--there is always something you can do for them.

A lot of people need help. A lot of times we're the only ones to come to these people's aid, side with them and say, "We are going to help you no matter what."

MARK JUNGE: Do you think you've been pretty successful?

DION CUSTIS: Yes. I have definitely helped people's lives and made an impact and that's the most important thing--whether it is keeping them out of prison or keeping them from death row. I've had no one on death row in four cases and that's a huge feat--in and of itself--just to save somebody from lethal injection is pretty huge.

MARK JUNGE: Do you think that is because of your training or do you think you're a down-to-earth guy who can talk to people and make them understand your point of view?

DION CUSTIS: Both. I have been trained how to do it but that's also part of who I am, I think. I've tried four cases in the last four months--I've been cases of the prosecutors say are "slamdunk" cases and gotten "not guilty" verdicts in all of them. It's because--you know, I think I talk about the issues that people want to talk about and recognize the issues that they need to concede. In Aaron McKinney's case, "Hey, this is a terrible thing and he needs to be punished." We didn't deny that but he shouldn't be killed. People, I think, understand that and appreciate that they can understand how people make mistakes--if that's what it is.

MARK JUNGE: Have you been in contact with him at all?

DION CUSTIS: I was for a while. I kept in touch with him and it seemed like he was doing well. Then he got shipped out of state for a while. At the time, they were shipping a lot of people out of state because there wasn't enough room at the prison."

MARK JUNGE: Is he back in the state now?

DION CUSTIS: I think he's back.

MARK JUNGE: Up in Torrington maybe?

DION CUSTIS: I doubt that because Torrington is a minimum security prison. He will be in maximum security for the rest of his life, which in Wyoming, there are different levels of maximum-security. He can be in segregation, which is basically no contact with other inmates. But when you are a "lifer," they can't do that. That's what happened with Aaron Dowdell and the others who killed the guard. A new warden came in and took away their education, stereos, their VCRs and their record collections in their cells. But these are people who were going to spend the rest of their lives there and they took it all away and that's what they did because of it. They said, "Well, if you going to leave us in a cell to do nothing...we're bored. We got to come up with something to do." And that's what they did. They just made a statement, which is...

MARK JUNGE: When we first started talking, it seemed to me that you were anxious to relieve some of your frustration about this case and this is for history...

DION CUSTIS: Yes, it's been...

MARK JUNGE: 13 years this December...

DION CUSTIS: I think you are the first person who wanted to hear our side of the story.

MARK JUNGE: Really?

DION CUSTIS: Which is amazing. It's amazing because there've been three movies and multiple books but none of these people have ever contacted me and said, "Hey, what's your side of the story?" It's strange to me because most people who are journalistic in nature want to hear both sides of what happened so that you can get a good idea of what it was. None of these people have done that. We agreed not to talk to the media, which is fine, but you would think they would at least contact me and say that they were going to write a book or do a movie-- "We need to know what the true facts are."

MARK JUNGE: So you're glad we talked about this?

DION CUSTIS: Yes, I am. Like I said, I have no qualms with what has happened with it. Even though it's done and gone and although I think it was very biased--media wise--it's been good overall. I don't think it's a bad thing. It's been dealt with pretty well throughout the country as far as the message that is been sent so you can't fault that.

MARK JUNGE: So it's not the message that you got Aaron McKinney off--it's the message that has to do with the larger movement, the gay liberation movement?

DION CUSTIS: Yes, I think so. I mean, people can whatever happened and what we did, whatever we did, they can think it was a total failure on our part--it doesn't really matter. Aaron is going to be--he is where he should be--and was going to be, no matter what. He just didn't die, which is good. We did what we had to do and I think it's been a good movement since then.

MARK JUNGE: How do you feel about it being a high-profile case? Are you proud of the fact that you are involved in this high-profile case?

DION CUSTIS: Yes, I'm glad we were able to do it. I think it could've ended up a lot worse so I'm glad to be a part of it and know that and made an influence on at least what we did as defense attorneys. People in the legal community know what we did and how we did it. Judge Voigt knows. I don't know what he thinks about it now. When you look back at it like that, he was new to it and we were all new to it. It's just one of those things where you are glad you got through it remotely unscathed. (They both laugh.)

MARK JUNGE: Are you on speaking terms with Cal Rarucha?

DION CUSTIS: Yes. In fact he is a prosecutor in Rawlins now so I deal with him every now and then on cases that I have over there so I speak to him. I think he realized what he did, too. He made mistakes and that's why he's not Laramie anymore.

MARK JUNGE: Is this your toughest case?

DION CUSTIS: No. No

MARK JUNGE: No?

DION CUSTIS: I think my toughest case was Aaron Dowdell. He was the guy who killed the guard. That was a tough case! We spared his life by one vote in Wyoming, one vote means life. If one person wants to vote for life, they can. That's what happened in that case. That meant 11 people wanted him dead. That was the toughest case.

MARK Junge: That was your toughest legal case but the hugeness of this thing as a national and even global issue-- that seems to me--one of things that work on you and be one of the toughest things you have ever had to face.

DION CUSTIS: Media wise that was definitely the toughest case. I don't know how you can get anything worse than that. I mean, OJ was the only thing you could have compared it to the time. It was like that--it was crazy.

MARK JUNGE: One last thing. I have a question because I'm curious about this: the Supreme Court recently ruled in this case about the Phelps bothering this vet's funeral. Remember that? They ruled that it was a matter of free speech. I'm not a lawyer. I don't know the law. But it seems to me as a citizen that in that particular case, the Phelps protesters were guilty of some kind of assault. I mean, it wasn't just a matter of free speech. It was like, "I want to have a funeral for my kid and you're coming here and attacking me." Is that true or am I off base?

DION CUSTIS: Well, if it's strictly speech that is why the Supreme Court ruled that way. If they take it one step further and do something that could be potentially assaultive behavior or something like that. I agree with the Supreme Court that if we are going to truly have free speech, you have to let all these crazy maniacs have their free speech as well. Otherwise, it's not true. It doesn't give truth to the meaning of free speech. If are going to do that, you have got to let people who we don't want to hear speak out and you just ignore it.

MARK JUNGE: What is your biggest problem with the law profession today?

DION CUSTIS: Probably that it is too politicized. Too many people get involved on too many issues simply for votes to make a platform to get reelected like the immigration thing or gay marriage. Here in Wyoming, the people who are opposing that I think just want to get their name out and have it behind some politically driven issue.

MARK JUNGE: I don't want to get into this but you must have feelings about the immigration issue because of your background, right?

DION CUSTIS: Yes, I strongly--like what Arizona has done--I think is wrong.

MARK JUNGE: That's another subject. Listen, Dion, thank you so much. I really appreciate it!

DION CUSTIS: Thank you!

¹David Wymore--1976-2004 Colorado State Public Defender; 1982-2004 Chief Deputy for the State of Colorado responsible for training and capital litigation across the state of Colorado; 2004-present Private Practice, Boulder, Colorado; Creator: the Colorado Method of Capital Voir Dire and Lecturer and Trainer in trial aspects of the defense of death penalty cases in most death penalty states and federal jurisdictions; Co-founder: National College of Capital Voir Dire , NACDL, based on the Colorado Method; Consultant to the defense on capital cases. – Information as per Wymore's website.

*² **The Meaning of Matthew: My Son's Murder in Laramie, and a World Transformed** is a 2009 biographical novel about the life of Matthew Shepard, written by his mother, Judy Shepard. The novel was published by Hudson Street Press on September 3, 2009 and was featured as a New York Times best-seller for the week of September 27, 2009*

*³**Losing Matt Shepard: Life and Politics in the Aftermath of Anti-Gay Murder** by Beth Loffreda-- The infamous murder in October 1998 of a twenty-one-year-old gay University of Wyoming student ignited a media frenzy. The crime resonated deeply with America's bitter history of violence against minorities, and something about Matt Shepard himself struck a chord with people across the nation. Although the details of the tragedy are familiar to most people, the complex and ever-shifting context of the killing is not. Losing Matt Shepard explores why the murder still haunts us—and why it should. Beth Loffreda is uniquely qualified to write this account. As a professor new to the state and a straight faculty advisor to the campus Lesbian Gay Bisexual Transgender Association, she is both an insider and outsider to the events. She draws upon her own penetrating observations as well as dozens of interviews with students, townspeople, police officers, journalists, state politicians, activists, and gay and lesbian residents to make visible the knot of forces tied together by the fate of this young man.*

*⁴Date: 6/1997-Cheyenne, Laramie, WY--Summary: **Richard Aaron Dowdell**, 27, a man suffering from psychosis and clinical depression, participated in an attempt to break out of the Wyoming State Penitentiary in Cheyenne, WY on June 26, 1997 that resulted in the death of Cpl. Wayne Martinez. Although Dowdell had been given antipsychotic medication, he had stopped taking it at the time of the murder due to its side effects (drowsiness and painful muscle cramps). A psychiatrist quoted in the article asserted that Dowdell would not have participated in the*

murder had he not been psychotic. Source Of Information--The Associated Press, September 9, 1998 Wyoming Tribune-Eagle (Cheyenne, WY), April 15, 2003

*⁵ **Mark A. Hopkinson** (October 8, 1949 – January 22, 1992) was a convicted murderer who was executed by the U.S. state of Wyoming in 1992 for the murders of Vincent Vehar, Beverly Vehar, John Vehar, and Jeffrey Green. He is the only person to have been subject to the death penalty in Wyoming since the 1960s.--Wikipedia*

*⁶ **The Matthew Shepard Foundation** is an LGBT nonprofit organization, headquartered in Casper, Wyoming, which was founded in December 1998 by Dennis and Judy Shepard in memory of their son, Matthew.[1][3] The Foundation works to “Replace hate with understanding, compassion, and acceptance” by continuing to tell Matthew’s story and through education, outreach, and advocacy program—Wikipedia.*