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Glassel HOA Murders Redux — 21 years after

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The recent spat of outrageous and hateful conduct and killings by individuals and groups can be traced way back to the 1995 Murrah Federal Building bombing in Oklahoma and the 1999 Columbine HS killings. And during this period we saw many police shootings and controversy over justice and the fairness of the police trials.

In Arizona as a consequence of a lawsuit brought by the HOA, Richard Glassel, the perpetrator, lost his home and moved to California in November 1999. He returned in April next and murdered Nila Lynn (69) and Esther LaPlante (57), 2 board members, at a Ventana Lakes Arizona board meeting. The court found him guilty and sentenced him to death. The automatic appeal and review to the Arizona Supreme Court in the same year affirmed the death penalty. He died 9 years later of natural causes, still on death-row, on January 15, 2013 at age 74.

A. Two versions of the incident

There are two versions of what took place prior to and during the trial. Both cover the question, did Glassel get a fair trial when Glassel was declared competent to stand trial. From my on-the-scene perspective, what occurred was*, we'll give hm fair trial before we hang him*. One is my account of the trial and research into the proximate cause as a result of certain HOA actions and events omitted from the trial (*Report On the Ventana Lakes POA Murder Incident & Trial, 2003*).

The other is the mandated review of the death penalty decision by the Arizona Supreme Court (referred to as the Review) (*State of Arizona v. Glassel*, 116 P.3d 1193 (2005), review of Arizona No. CR-03-0022-AP, 2003), which touched on the alleged proximate cause scenario and rejected it during mitigating sentencing guidelines.. Each tells a different story.

B. The alleged and neglected proximate HOA conduct and events

Now, without question, Glassel intentionally murdered the two directors and injured several others. The critical question became, was he competent to stand trial. As he was indeed found guilty, the introduction of my alleged proximate events would have had an effect on his death penalty decision. Although they were given little play at the hearings, some of these events were addressed and dismissed in the *Review* in 2005. This case was an opportunity to demonstrate the power of an HOA to inflict emotional and financial injury upon a member.

(1) HOA attorney litigation fees

The event leading to the lawsuit against Glassel and his loss of his home involved Glassel wanting to do his own landscaping and was being fined $50/day for non-compliance. Being a difficult and trouble some person it is understandable why the HOA wanted him out. The *Review* documents these events fairly well. From my research, I discovered events surrounding the HOA lawsuit regarding the landscaping violation that could attribute liability to the HOA and its CAI member attorney.

In other words, addressing the legal doctrine of proximate cause, if it were not for the lawsuit and hefty punitive fine of $50/day, and the claim by the CAI member HOA attorney for a $7,000 fee, in a 3 day default – no show — case, there would not have been any murders.

In an appeal the judge reduced the fee to just $1,000, but somehow the Glassels denied receiving any notice of the reduction; see my *Report* for details. Glassel's attorney filed for removal as his attorney at the same time the judge reduced the attorney fee. I was unavailable to discus the murky chain of events as she had passed away. Unexplained is the civil award to Susan Glassel of some $11,000 on another matter at that time, and they could have paid the $1,000 fee but it was not paid.

(2) Prior events

The *Review* opinion contains a history of trouble with Glassel involving parking violations that resulted in his car being towed, the landscaping incident, and picketing the sales office over a February 1999 dispute, stating that they "*had not heard the last of him and that he would get even.*" (*Review*, paragraphs 2 – 5).

The unintentional consequence was the death of two people. As I discovered after the trial, the chair of the landscaping committee whom I believe forced the issue was the widower of Lila Lynn, Duane Lynn. The news reports indicated that Duane Lynn was a former Department of Public Safety officer. He also made a plea to the judge not to sentence Glassel to death, which as I observed, infuriated his attending children. I got the impression Lynn's plea was caused by feelings of guilt — *if I had only not* . . .

"Duane Lynn opposed the death penalty in this case not because he opposed it in principle, but because he did not believe that it was warranted under the circumstances of this case (*Review*, paragraph 86)..

C. Was Glassel competent to stand trial? The $64 question

"The legal basis of competency to stand trial in Arizona and elsewhere was set out by the US Supreme Court as long ago as 1960 in Dusky v. United States. The justices ruled in order for a defendant to be found competent the test must be whether the accused has 'sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings against him.'" (Emphasis added).

In 2005 I had a fortuitus meeting with Dr. Potts and discussed the competency decision, which was based on Glassel's ability to effectively consult with his attorney. He seemed angry about the decision and the events related to the opinion.

The judge ordered a competency hearing and chose three doctors: Jack Potts and Martin Kassel, both psychiatrists, and Michael Brad Bayless, a psychologist. Dr. Potts found Gassel not competent to stand trial. Dr. Bayless was then consulted and he found Glassel competent. With one for and one against, Dr. Kassel was selected and found Glassel competent with some uncertainty. Dr. Kassel then changed his findings to a definite non-competent to stand trial.

The judge held that,

"*Dr. Kassell now believes the Defendant to be incompetent*. The Court found "*Dr. Kassell's testimony at the hearing unpersuasive at best. The basis for his 180-degree change of opinion seemed somewhat hastily contrived. The Court cannot exclude in its final analysis of the Defendant's competency, the Court's own observations of the Defendant during his frequent court appearances."* (*Arizona v. Glassel*, CR2000-0006872 (Aug. 29, 2001)).

It seems that Glassel was in court but not at the trial hearings that I had attended.

Yet, from the *Review*, emphasis added,

¶25 After the competency hearing, the trial judge found Dr. Bayless' opinion to be persuasive and ruled Glassel competent to stand trial. The trial judge based his findings also in part on his own observations of Glassel in the courtroom. He stated that "[t]he Court cannot exclude in its final analysis of the Defendant's competency, the Court's own observations of the Defendant during his frequent court appearances."

¶26 In November 2002, Glassel requested a new competency hearing, arguing that his condition had worsened and that there was new evidence and that there was new

evidence of incompetence not available during the first hearing. . . . The trial court denied that motion.

Was there an abuse of discretion?

The dialogue in the *Review* record, paragraph 29, contains a shocking attitude by the psychologist, Dr. Bayless, who found Glassel had declared Glassel competent,

Q. Do you remember telling me that . . . spending time on competency is a waste of time because they'll just make him competent anyway?

A. He will be found competent. He will be made competent, more than likely, unless there is something I missed or all the other doctors missed either. If he is at the State Hospital, they'll treat him and send him back. That's usually what happens, okay? Very rarely does that not happen.

This was an incredible statement to be made by an expert witness. In essence the good doctor was saying, in my view, what's the point? Send him for observation now as being non-competent and when he is found competent he will return to stand trial. Why waste all that time?

The question of abuse of discretion by the trial judge stands out. Apparently the judge relied on his own views, legally permissible, to break the tie. *""The trial judge may rely on some testimony from one expert and other testimony from another expert and draw his own conclusions."* Other acts and opinions in he records by the judge lend themselves to a presumption of guilty and competency.

. . . .

What do you think? Was Glassel competent to stand trial? Was the judge guilty of the abuse of his discretion? Was it a fair trial or was the game rigged?
