

Report

On the

Ventana Lakes POA

Murder Incident & Trial

April 19, 2000

"Residents in CIDs [HOAs] commonly fail to understand the difference between a regime based formally on rights, such as American civil governments, and the CID regime which is based on restrictions. This often leads to people becoming angry at board meetings and claiming that their 'rights' have been violated – rights they wrongly believe they have in a CID".

.... Prof. Evan Mckenzie

George K. Staropoli, Editor

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The Ventana Lakes POA Board Murders

A. Coverage of the Trial

1. The Shooting Incident

On January 10, 2003 Susan Glassel attended the sentencing session of her husband's murder trial. Richard Glassel, 64, received the death penalty by 12 average Arizona residents. He had killed two Ventana Lakes board members on April 19, 2000 during a board meeting. He was a former homeowner who was sued by the board over the right to trim shrubbery, and lost his home.

Two years after this tragic event, and 7 months before the trial, the April 19, 2002 ABC 20/20 program on homeowner association abuse contained a statement by a spokesperson from Ventana Lakes. He said, "He [Glassel] wanted to prune **HIS** shrubs to **HIS** liking".

This was the only time Mrs. Glassel attended the trial. It was the only time Richard Glassel, in a wheel chair due to a long term medical problem, attended his murder trial. The prosecutor had only showed a mug shot to the jury.

The trial actually took some 5 weeks with 3 weeks off during the holidays.

The POA was created in 1986 and has over 3,000 members.

2. The Murder Trial

a. The Beginning

Although the actual trial began on November 18, 2002, there was 2 ½ years of activity involving the judge, the Honorable Peter C. Reinstein, the prosecutor, Catherine Hughes, and the public defender's office. The third and last public defender, Dennis Jones, told the judge just a week earlier that he was not ready and did not intend to call any witnesses. He was assigned the case some 8 months earlier. The trial was ordered to begin by Judge Reinstein of the Maricopa County Superior Court.

In August 2001, the judge ruled that the defendant could stand trial after hearing medical reports on his mental capacity. When one of the three doctors changed his mind, the judge disregarded the change of opinion as "somewhat hastily contrived".

Eleven days before the trial began, **Duane Lynn, husband of slain Nyla Lynn and retired Department of Public Safety officer, asked the judge not to consider the death penalty**, to which the judge said he had no say in the sentencing. A week after my distribution of this statement to my email network and to the media, in regard to certain statements made in the press, a reporter emailed me that she was told that Mr. Lynn was in favor of capital punishment, and so was his family.

Concern for an unbiased jury resulted in a jury pool of 100 potential jurors assigned to this trial, from which the 12 jurors and 4 alternates were selected. A questionnaire was given and voir dire was conducted based on the response. The questionnaires were sealed after jury selection.

This was the first death penalty trial based on the new death penalty law, because the U.S. Supreme Court declared Arizona's old law unconstitutional. The new law required that the jury alone decide the guilt and the sentence of the defendant. Its decision is not a recommendation, but is final.

It was interesting to note the extent to which the court went to obtain jurors who would be unbiased. Several potential jurors were questioned on the basis of having prior knowledge of the shooting event from media stories of two years earlier. **The judge repeatedly asked, cajoled in my opinion, these persons to say that they could put aside their views of the defendant's guilt and base their decision just on the facts presented. After a while, most said yes.** One frank response was, "If you can tell me that someone else pulled the trigger, then I will change my opinion." Others insisted on knowing the "why" of the act before they could decide.

The judge would tell the jurors during the initial sessions that the defendant was absent due to medical reasons and of his choice. The **defense counsel** asked that the judge only inform the jurors that the defendant choose not to attend the trial, making no reference to any medical problem. Under the new law, mitigating circumstances would be considered as the last phase and, if the jury found any, the defendant would get a life sentence.

b. The actual trial

The actual trial began on Dec 4th with opening statements following the jury instructions. **The jury was instructed not to do research on the internet.** No cross examination nor witnesses were called by the defense counsel, as anticipated. **The public defender does not relate problems with HOA, as mentioned by the prosecutor, to issues of HOA abuses.**

On Dec 10th, Glassel was found guilty, which was no surprise to anyone. What was surprising was the lack of any defense or effort to bring up HOA problems, which the judge allowed to be introduced into trial by the prosecutor over defense's objections. What was the public defender thinking?

c. The public attendees

There were some 20 – 30 attendees from Ventana Lakes, including the widower and his 2 daughters, the 7 times that I had attended the trial. There were a few reporters and court lookers-on, and myself sitting alone and off to the side. It appeared that these attendees contained a large group of "regulars". Ventana Lakes is a retirement community.

No other homeowner rights advocates attended.

In general, they were reserved and polite, with all three of the Lynns asking who I was and what was my interest in the trial. A few others asked me the same questions. However, on two occasions that I attended after the guilty verdict was given on Dec 10th, the group comported themselves, when waiting for the trial to resume, in a festive, boisterous and partying manner that resulted in being reminded where they were and to quiet down by the court clerks.

Several of the media reporters were part of these festive activities. So were the Lynns. Some reporters and members of the Ventana Lakes group did not participate.

After the death penalty decision was made, Cathy Morgan, Duane and Nyla Lynn's daughter, made the following statement to the press, "There's really no victory either way. Justice doesn't really heal; grace does". Mr. Lynn was heard to tell a friend, "We finally did it".

d. The Mitigation Phase

The last phase of the trial is a "mini-trial" that places a burden on the defense to produce mitigating circumstances, if the jury had found aggravating circumstances that permitted the death penalty. The jury found that since 2 people died, aggravating circumstances were proven. Its decision is final.

The procedure is similar to a standard trial: opening statements, presentation of evidence and closing statements. Only opening and closing statements took place by both parties.

Questions of Law –

The defense objected several times during the prosecutor's closing statement, citing a misstatement of law. The judge told the jury that these arguments were not evidence and are argumentative. They had their instructions and they were to disregard anything said to the contrary.

When the prosecutor objected to statements by the defense, the judge simply said, "sustained", not giving any statements to the jury.

Emotional appeal –

It seems that these opening/closing statements were not to be emotional appeals. Yet, the prosecutor related this incident to the Columbine and Oklahoma City tragedies. The defense objected, but was overruled.

The defense, in rebuttal, brought up the Buddhist slayings here in the Valley, as a comparison, and the prosecutor objected. She was sustained. The defense attempted to tell the judge that the prosecutor was allowed to make this type of statement ("opened the door argument" and the other side had the right to respond), but he was told to move on.

Other statements included the defense asking for a mistrial 5 times, but were promptly denied every time. He invoked the 8th and 14th amendments. We know the

14th, but I presume he referred to the "nor cruel and unusual punishments inflicted" clause of the 8th Amendment.

Also, the defense brought up only "age" and "no prior history" of violent crimes as mitigating factors. "History" is one other category that is permitted to be used as a mitigating factor. **However, nothing was said about problems with the Ventana Lakes HOA by the public defender. The prosecutor had made references to a few other problems with the HOA as an indication that Glassel was a troublemaker.**

The defense counsel had been given a copy of *Villa Appalling!* (October 2002) by its co-author, Donie Vanitzian, at the start of the trial. It contains several pages on Richard Glassel in relation to understanding his behavior as the result of post traumatic stress disorder. Other parts of the book deal with the Prisoner's Dilemma which describes the "follow the rules or else" alternatives that prisoners, and homeowners living in HOAs, face.

A week before the final phase began on January 8th, the public defender was emailed a copy of my research on the harassment suit against Richard Glassel by Ventana Lakes that began in 1998. It caused the loss of his home in November 1999, 5 months before the tragic murders occurred.

e. The last day

The jury returned after some 12 hours and decided on the death penalty.

I overheard the prosecutor tell some Ventana Lakes people that a juror wrote the judge saying that other jurors were "picking" on him, saying that he wasn't deliberating. He wanted to be removed.

In Arizona, the jury decision is final -- not a recommendation -- and must be unanimous. For those who served on juries, you know what goes on. The prosecutor said she didn't know if he was allowed to leave or whether he said the hell with it and went along. This is the first test of the new law, entrusting 12 average, neutral people to decide the death penalty.

After the verdict was read, defense counsel moved to talk to the jury before being discharged, but was emphatically denied. Presumably about the problem that this juror wrote the judge about.

I showed *Villa Appalling!* to one reporter while waiting, asking her to read the section on Glassel. She read it; her faced showed complete shock and handed it back to me saying, "This doesn't defend him, he's a killer." I asked if she thought this might be extenuating circumstances, she said Yes, but that her bosses would not be interested.

3. The cultural bias of the jury

The Arizona media has not presented or covered any of the strong materials portraying the private government aspect of HOAs by established political scientists and researchers. These materials give a picture of homeowners associations that contrasts sharply with the happy, carefree living promoted by the real estate special interests, supported by a lack of action by the Arizona legislature and real estate department.

Generally the media only covered isolated problems with HOAs, but never finding fault with the HOA board or its procedures. **This leads to the mistaken impression by readers/viewers that indeed HOA problems are isolated and there are no fundamental issues with the HOA model.** Therefore, yes, these homeowners must be disgruntled, trouble makers as said in the media.

Under the new law, the jury must make the determination of mitigating circumstances. **With the biased and non-coverage of homeowner rights issues by the media, the jury could not be expected to make a fair and impartial decision.** This, coupled with no attempt by the public defender to present the events leading to the shooting, as contained from the public records and given in (D) below, only solidified the bias of the jury toward the death penalty.

B. Events leading to the Ventana Lakes Murders

In the March 7, 1999 episode of the X-Files, "The Falls of Arcadia", agents Mulder and Skully investigate the disappearance of homeowners from a top-rated homeowners association. Mulder quickly learns of the board's obsession with homeowner conformity to and compliance with the association's CC&Rs and rules and regulations.

In just over 1 year later, a tragic real-life incident occurred in Arizona when two Ventana Lakes POA board members are killed during a meeting by a former association homeowner. In Richard Glassel's murder trial, the prosecutor references problems with the association and that "he sought revenge against the HOA". In Arizona, the jury, 12 average people, must determine any mitigating circumstances in order for a defendant to get Life rather than Death. Their decision is final and is not a recommendation.

The events leading to the shooting in April 2000 began with an injunction in September 1998 against the harassment of the HOA landscapers by Mr. Glassel, who maintained that for over 3 years he had permission to take care of the landscaping on his home. This is not a case of ugly landscaping, but of a desire by the HOA, after 3 years, to force conformity on Mr. Glassel. In the ABC 20/20 segment on April 19, 2002, a Ventana lakes spokesman said, "He wanted to prune his shrubs to his liking". The HOA brought suit and won the \$1,000 judgment. His home was foreclosed on and he left town, only to return 5 months later and shoot 2 board members.

Answers to the following questions will shed light on the events leading to the tragic murders:

1. Would this tragic shooting have occurred if the Glassels didn't lose their home?

2. Why didn't they pay their mortgage?
3. Why would a person decide not to pay his mortgage and go into foreclosure over a \$1,000 debt to the HOA, especially when the court granted the Ventana Lakes POA a garnishment order?
4. And with sufficient equity in their home, they could have paid off a \$1,000 debt. Why didn't they?
5. Why not pay the mortgage anyway until you can sell the house in a few months?
6. Why would someone kill HOA board members over a mortgage foreclosure, a Trustee's Sale, not an HOA judgment Sheriff's sale?
7. Were there other factors that influenced their attitude and mental outlook? Something is amiss here!

Could it have something to do with perhaps the HOA wanting to remove Mr. Glassel, but couldn't unless he failed to pay his assessments. Foreclosure as a result of the nonpayment of fines is not permitted under the HOA's CC&Rs. Could the HOA board obtain an award of attorney fees from a judgment and then use that to remove him in the event of nonpayment? Why did the HOA attorney, Ekmark/Koepke, seek some \$7,400 dollars as fees and provide some 3 pages of supporting arguments to justify the award?

There is a legitimate question as to whether the Glassels were informed that the award was not some \$7,441, but just \$1,054? (See Timeline attached herein). Would this have made a difference? It appears that their attorney, Kathleen Coughenour, petitioned to be removed from the case after the conclusion of the trial, but before the award of attorney fees was made. Just three days after the award was granted for the \$1,054, her request for removal was accepted by the judge.

If they were not informed, then their actions could be viewed as "What the hell, we can't pay the judgment so let's not pay the mortgage". Apparently a decision was made as early as June not to make mortgage payments in view of a misguided belief that the HOA attorney was due some \$7,441.

If they were informed, then the subsequent actions and failures to act reflect an even more confusing and possible unstable mental attitude. They also seem to have not been aware of an August notice of the impending Trustee's Sale set for November 9th (These notices are usually taped to the front door or garage door, and are not hand delivered or mailed, an archaic system indeed).

Further perplexing, in October Mrs. Glassel received a judgment award in the amount of some \$11,000 as a result of another civil suit. Why didn't they make payments on the mortgage until they could sell their home at market prices and stop the foreclosure?

Which was it? Did they have knowledge of the actual attorney fee award or not?

As with the Marie Brown incident, who was there to help other than to call these people mentally disturbed? Not any state agency, that's for sure. Could this tragic act have been prevented if a disclosure notice had been provided homeowners that informed them of the true nature of living in a homeowners association? Or a bill of rights had been required to be included in the CC&Rs? Or HOAs had been required to be under the supervision of some state agency that would protect the very weak party in the contract, the homeowner?

What responsibility must the state of Arizona bear when for 2 years it refused any such reforms? When a state senator tells homeowners, just 5 months after the Ventana Lakes shooting, who wished to inform the HOA committee of their abuse by unregulated HOA boards, that “We don’t want to hear any more horror stories. We will proceed slowly so we do not cause problems to the 95% of the associations that are good”. It seems that Nyla Lynn and Esther LaPlante fell within that acceptable 5% tolerance level.

1. Additional Research

First, Ventana Lakes CC&Rs does not permit foreclosure relating to fines. In order to remove Glassel, they would need to get a judgment and attempt to get a Sheriff's sale for the judgment. The Court did not allow the \$7,441.41 attorney's fees claimed by Ekmark/Koepke. After the award for just \$1000, the HOA filed for a garnishment, not a move to take the house.

Second, the trial dragged out due to Glassel's filing to remove the default judgment in 1998, claiming that Susan Glassel was not properly served since she was in California at the time. At the hearing the HOA showed that Richard was properly served. It called a witness, who was the property manager, who claimed not to be aware of any agreement that Glassel could take care of his landscaping, which he had done for some 3 years. She stated that after he went away the HOA landscapers always took care of his grounds, Lot 47.

Third, Curtis Ekmark is currently the AZ Central CAI chapter president and was a member of the Arizona Legislature’s HOA Interim Committee that met in 2000-2001. This committee refused to hear further horror stories by homeowner attendees at the third and subsequent meetings, and produced no meaning proposals for reforms, nor produced proposals that addressed the substantive homeowner grievances. For the past two years, as CAI State Legislative Action Committee Chair, Ekmark continued to regard homeowners as disgruntled troublemakers and opposed reforms to bring justice and the equal protection of the laws to homeowners living in HOAs.

2. TimeLine –

Nov 1994 -- Glassels buy home in Ventana Lakes

1999 --

Apr 26th -- Judge declines to set aside default judgment of 1998

May 17th -- Motion to withdraw by Kathleen Coughenour, Glassel atty, stating that she had advised Glassels accordingly a few months ago, citing "no longer doing litigation work". Glassel's object.

May 18th -- Ekmark/Koepke seek \$7441.44 attorney fees (a request for some \$3,430.63 from Sept 1998 has not been awarded as is part of the above amount).

Jun 23rd -- Atty fees awarded in the amount of only \$1,000 (\$54 to HOA). County Clerk shows this date as Aug 20th.

Jun 27th -- Coughenour withdrawal approved. Glassels are pro per.

Jul 2nd -- Susan awarded some \$11,176 in trial CV1997-013287

Aug 4th -- Notice of Nov 9th auction sale

Aug 20th -- Jun 23rd award for attorney fees filed with county records

Oct 5th -- Garnishment order, after move to quash fails

Oct 13th -- Award to Susan showed as "satisfied"

Nov 19th -- House sold at auction

Apr 2000 -- shooting incident

C. HOA Media Bias and the Death Penalty

The Ventana Lakes murder trial ended with a death penalty verdict, yet no one has raised any mitigating circumstances in regard to the operation of HOAs; or the unconscionable view of CC&Rs as an adhesion, private contract; and cases in support of the view that HOAs are private governments operating outside the laws of the land and with the protection of state governments.

In the state of Arizona, under its new death penalty laws, the jury must decide not only the guilt, but any aggravating or mitigating circumstances that affect the sentence: Life or Death. It goes without saying that the public must be informed and understand relevant information in regard to sentencing in any particular instance. A jury is drawn from the public.

George K. Staropoli, founder of Citizens Against Private Government HOAs , said that he has heard from homeowners, reporters and state legislators who tell him that they have no idea about HOAs, and some even asked, "What are CC&Rs?" Yet, in order for a democracy to function properly, information must be available and openly disseminated to the public at large. This requirement is so important that it was made the First Amendment in the Bill of Rights.

A modest survey was conducted by Citizens Against Private Government HOAs for the National Coalition for Homeowner Rights and disseminated to the local media. It reveals information in sharp contrast to the public's general understanding of homeowners associations. Its findings include:

1. that 83% of buyers were not told that they had surrendered their civil liberties by virtue of entering into an adhesion contract with the HOA.
2. that 40% believe that, in spite of this legally binding private contract, their HOA functions as or is equivalent to a municipal government.
3. that 65% would not live in an HOA if they had been told about the loss of their rights.
4. that 49% who did buy a home in an HOA did so because there were no choices of comparable non-HOA housing, and another 24% did not expect to have any problems.
5. that 78% had had a problem with their HOA.

Responses, 61%, came from the Sunbelt states of CA, AZ, TX and FL that have high concentrations of HOAs.

The complete summary, including the methodology used, can be found at http://pvtgov.org/pvtgov/downloads/poll1_sum.pdf

Now, many, including the media, apparently have adopted a "we'll give him a fair trial before we hang him attitude". None of the info that homeowner rights advocates have submitted to the media over the past 2 years was brought up or discussed in the press (excluding a small paper dealing with goings on at the legislature and not read by the general public; the legislature had also received these materials). Mr. Staropoli believes that the public and a part of it called the jury panel are in the dark. He said, "The media must answer for this biased view of HOAs which has helped form the public attitude that the only problems with HOAs are those by disgruntled homeowners who don't follow the rules, that appear in the news every now and then".

According to Mr. Staropoli, "Nothing about constitutional issues; or laws that are heavily in favor of HOA boards against the rights of homeowners; or numerous state court cases, and Supreme Court cases on 'state actor' designations for organizations that have governmental powers, or where the state either encourages or coerces the public in regard to these private organizations. Take this November's Arizona appeals decision that says the legislature cannot delegate its powers to private organizations that it does not supervise or control, equally applicable, as with the state actor designation, to HOAs."

This other side of HOA living has been hidden from the public, Mr. Staropoli maintains. "Why don't we let the jury decide, as the law requires, whether these aspects of HOA living are material to the defense of Mr. Glassel?"

Imagine yourself part of this jury and you find out all this information about HOAs after your decision for the death penalty. How would you feel? Would you have wanted this input in order to determine whether or not it occurred with Glassel and this HOA, so you could rest easy that you made the right decision?

It's time for the whole truth about HOAs to be told to the public. A person's life is at stake. Let the rule of law decide his fate, not the media.