

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Fourth Session
March 15, 2007**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:10 a.m., on Thursday, March 15, 2007, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Bernie Anderson, Chairman
Assemblyman William Horne, Vice Chairman
Assemblywoman Francis Allen
Assemblyman John C. Carpenter
Assemblyman Ty Cobb
Assemblyman Marcus Conklin
Assemblywoman Susan Gerhardt
Assemblyman Ed Goedhart
Assemblyman Garn Mabey
Assemblyman Mark Manendo
Assemblyman Harry Mortenson
Assemblyman John Ocegüera
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom

GUEST LEGISLATORS PRESENT:

Assemblyman Lynn Stewart, Assembly District No. 22



STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Risa Lang, Committee Counsel
Kaci Kerfeld, Committee Secretary
Matt Mowbray, Committee Assistant

OTHERS PRESENT:

Robert F. Joiner, Government Affairs Manager, City of Sparks
Rick Blower, Lieutenant Colonel, Staff Judge Advocate, Nevada Military
Department
John Hefner, Representing the Enlisted Association for the Nevada
National Guard, Reno
Tim Tetz, Executive Director, Office of Veterans Services, Reno
Allen Lichtenstein, General Counsel, American Civil Liberties Union,
Nevada
Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs'
Association
Ray Flynn, representing Las Vegas Metropolitan Police
Harvey Barnes, Private Citizen, Jiggs, Nevada
Mike Riordan, Ranching Representative, Jiggs, Nevada Board of Wildlife
Commissioners
Doug Busselman, Executive Vice President, Nevada Farm Bureau
Federation
Chris MacKenzie, Chairman, Nevada Wildlife Commission

Chairman Anderson:

[Meeting called to order and roll called.]

We are going to take the bills out of order today to facilitate one small thing:
First we are going to hear A.B. 180, A.B. 159, and then A.B. 227.

Let us open the hearing on A.B. 180.

**Assembly Bill 180: Increases the amount of community service required for
placing graffiti on or otherwise defacing property. (BDR 15-467)**

Robert F. Joiner, Government Affairs Manager, City of Sparks:

In consideration of the collaborative efforts that are being made on A.B. 14, the
City of Sparks respectfully requests that you put A.B. 180 on the board at this
time.

Chairman Anderson:

Assembly Bill 14 seems to take care of most of the concerns of the City of Sparks. Did you participate in the final drafting and the issues that were agreed on?

Robert F. Joiner:

Yes, sir.

Chairman Anderson:

Are there questions from any members of the Committee? [There were none.] We are going to bring it back and put it on the board.

The Hearing is closed on A.B. 180.

Let us turn our attention to A.B. 159.

Assembly Bill 159: Prohibits certain demonstrations at a funeral, memorial service or ceremony. (BDR 15-832)

Assemblyman Lynn Stewart, Assembly District No. 22:

Assembly Bill 159 is a very simple bill. It deals with making funerals a sacred, private, and dignified occasion. It forbids demonstrations like picketing, oration, displays, or distribution of handbills within 60 minutes before or 60 minutes after a funeral, within 300 feet.

The main opposition comes from people who think this is a violation of the First Amendment right to speak out. I respect that, and I know some of you have sincere feelings considering that; however, I feel the right to speak out has not been violated. There is still the opportunity to protest in the proper place. In regard to the First Amendment, we have restrictions on time, place, and manner, and I think this bill addresses that. When it comes time to bury those who have given their lives for our country, it should be a time of quiet reflection of honor and a place to say goodbye. We have some of our veterans here today who have served in time of war and have honored and protected their country. I thank them for being here in support of this bill. I have with me today a man who outranks me. I was a lieutenant in the military. On my left I have Lieutenant Colonel Blower who is representing General Kirkland of the Nevada National Guard, and on my right I have Command Sergeant Major John Hefner. I would like to call upon them to address this briefly. When they finish, along with Mr. Tetz, we will be happy to answer any questions.

Rick Blower, Lieutenant Colonel, Staff Judge Advocate, Nevada Military

Department:

I am here on behalf of Major General Cynthia Kirkland, who is the Adjutant General for the Office of the Military. She asked me to express to this Committee her support for this bill and to echo the comments of Assemblyman Stewart. It is the position of the military that, in the event a service member who gives his or her life in support of their country, the service member's family and fellow service individuals should be able to honor that sacrifice with the appropriate respect and dignity which that individual deserves.

We would suggest that a funeral service is not the forum that should be the place for people to address any person or political agendas. We believe that First Amendment rights are satisfactorily protected because people have the opportunity to express their opinions in a number of areas. A funeral service should be a private event that allows appropriate time for the honor, respect, and dignity that should be given to the deceased individual. To the extent that this bill would allow that to occur, in the event a military member does give their life, the Adjutant General would like the Committee to know that she is in support of this bill.

John Hefner, Representing the Enlisted Association for the Nevada National Guard, Reno:

There are at least 14 other states that are enacting legislation this year, and 17 others have already enacted such a law. As you know, Congress has passed it as a federal law as it is right now. The bill protects the rights of families to grieve. The families need that grief and not to worry about the security of their other family members as they are burying their loved one. In addition, the 60 minutes prior to and the 60 minutes after the funeral was asked for because as we honor our military fallen, we need that time for the honor guard to prepare and rehearse. Many times there are ceremonies at the gravesite including preparation and salutes. The ceremony needs to be conducted, and the family allowed to grieve, without distraction. This bill would help them in doing that. On behalf of the Enlisted Association of the Nevada National Guard, I would appreciate your support.

Chairman Anderson:

Is the intent of the bill directed toward the memorial service?

Assemblyman Stewart:

Yes, Mr. Chairman.

Chairman Anderson:

What about the distance between the memorial service and the place of interment? Is that to be considered part of this?

Assemblyman Stewart:

We had not considered this as part of this.

Chairman Anderson:

Sergeant Hefner indicated that group may be practicing in preparation for the honor guard at the gravesite. So the gravesite would be considered part of that distance?

Assemblyman Stewart:

Yes, that was our intent.

Chairman Anderson:

What happens if there is another service going on with another group which is not yours?

Assemblyman Stewart:

We would hope that they would be farther than 300 feet away from the gravesite. If they were not, this could be enforced to move them back 300 feet.

Chairman Anderson:

Then their rights would be lost?

Assemblyman Stewart:

Yes, for that period of time, within 300 feet of the ceremony.

Chairman Anderson:

It is known when some memorial services are going to take place and it is not known when others are going to take place. I recently saw a television presentation where there was a level of surprise. Apparently motorcycle groups throughout the nation have been showing up to make sure that our fallen are honored properly and they stand at attention and show a great deal of respect. The appearance of the motorcycle gang was anticipated to be quite the contrary, because we often think of motorcycle gangs in a different scenario. How would you know whether a group is showing respect? Who makes the determination as to whether it is a respectful right for the dead and showing honor to them merely by their physical presence? How do you make that determination of whether this is a free speech issue or a right of respect, and the way that they wish to show respect?

Assemblyman Stewart:

We would just leave that up to the family if they immediately saw that they were there out of a show of respect. They could probably tell by their demeanor whether they were there for support and respect, or whether it was a protest. If they had signs and so forth, then they could determine that it was not out of respect.

Chairman Anderson:

Sixty minutes before the funeral the family would have to make the determination as to whether this was a respectful group or not?

Assemblyman Stewart:

Yes, they or those who were in charge of the funeral.

Chairman Anderson:

Sergeant, did you have a different point of view?

John Hefner:

I believe that determination, just as any criminal evaluation, would be left up to the peace officer that was called out. They would be the ones who would either dismiss it or actually bring them into custody and book them with a misdemeanor. I would think that evaluation would have to be up to that peace officer.

Rick Blower:

With regard to the point you made about people showing up to participate in a respectful fashion, I would suggest that the bill, as written, uses the term "demonstration" as being the prohibited activity. It is defined in the bill as picketing or similar conduct. The bill itself has specific safeguards that would not confuse the issue of whether or not someone is there in a respectful fashion versus someone who is there to disrupt the event and pursue his own agenda.

Chairman Anderson:

The wording of Subsection (c) seems to be a bit open in determining the misdemeanor citation.

Rick Blower:

I can understand the concern with the subsection you identified. It perhaps is a little broad or vague, which may be a problem with every piece of legislation that gets passed, in terms of trying to tighten it enough to identify exactly what the intent is. If this Committee is concerned about it being worded too broadly, perhaps that could be defined or modified to say, for example, "if it is displayed

in a disrespectful fashion," or something akin that could clarify that the purpose of this legislation is to ensure the dignity versus the disruption of the event.

Chairman Anderson:

Subsection (c) says that the distribution of any handbill, pamphlet, leaflet, or other written or printed material other than a program distributed as part of a funeral, memorial service or ceremony, is prohibited. So, if you were within 300 feet of the funeral location, you would be prohibited from distributing other kind of pamphlets that you might consider of importance?

Rick Blower:

Yes, that would be prohibited. Again, given the limitations of time and distance, we feel that is a reasonable restriction. It is only 300 feet and it is only for 60 minutes before and 60 minutes subsequent to the service so that the restriction would be reasonable.

Chairman Anderson:

During that two-and-a-half- to three-hour time period, that would be prohibited?

Assemblyman Horne:

From what I heard in the testimony, you are saying that some instances, such as a demonstration in support, would not be in violation of this.

Assemblyman Stewart:

Yes, that would be correct.

Assemblyman Horne:

There lies a problem here. While I can appreciate what you are trying to do in the bill—and I understand time, place, and manner—it is a constitutional issue that calls for strict scrutiny analysis, and you will be applying this to some and not others. That is why we have the provision for the freedom of speech. It would be unconstitutional to say that certain people can speak and demonstrate because we like what they are saying, but others cannot because we do not like what they are saying. That is where the problem lies. That is why these veterans are wearing that uniform, in my opinion. In our country, you can say things that I disagree with. You have that right and I will defend it with my life. This bill says that you cannot speak or demonstrate because I do not like what you are saying. You cannot get around it because we hold that particular freedom in our country in the highest regard. In my opinion, the courts would overturn it.

Assemblyman Stewart:

I agree to a point, but we are not stopping people from protesting or expressing their opinions. We are just saying not say it for that two and a half-hour period. Give the friends and families the right to have a peaceful, honorable, and quiet ceremony during that period. Time and time again, the courts have ruled that restrictions can be put on speech; you cannot shout "fire" in a crowded theatre. It depends on where things are done and the time and manner in which they are done. I think this complies with time, place, and manner restrictions because we are not saying not to protest, we are just saying not to protest during this brief period. There are other times and places to state your views. Just give these people the quiet, honorable, and dignified place to say goodbye to those who have given their lives.

If you would take a minute and turn to page 44 ([Exhibit C](#)) of the pamphlet I passed out, these are three of the men who have given their lives. You can say that these men did not serve in an honorable manner and criticize them and what they did, but just do not do it for the two and a half hour period. I do not think that is unreasonable and I do not think the courts would say it is unreasonable.

Chairman Anderson:

Was it your intent to have this entire document placed in the record or is it only for the edification of the Committee?

Assemblyman Stewart:

It is for the edification of the Committee. The whole pamphlet is on the Nevada National Guard, showing what they have done as far as service in the past.

Assemblyman Segerblom:

The bill does not provide for distinction between who is allowed to speak. It is a blanket prohibition which I think would be more constitutional than what has been indicated. In that sense, I do not see a problem. My concern is over the use of the word "ceremony." I am sure that word has a connotation within the military, but without being further defined, it could be broader than just a military funeral.

[Chairman Anderson left the room.]

Assemblyman Stewart:

Yes, it would apply to all funerals. Our intent was to protect those who have died in the service of their country, but it does and should apply to all people. Everyone deserves a quiet, protest-free time to say goodbye to their loved ones,

whether it is the military or not. Our intent, though, was especially for those who have served and died in the service of their country.

John Hefner:

Oftentimes, we have military funeral honors that occur after the military service maybe a posthumous award for the spouse or something of that nature. I believe the phrase "ceremony is held" would cover those types of events that may happen after the internment, and could be six months or a year later when the family receives the Purple Heart or something of that nature. That phrase would cover that event.

Assemblywoman Gerhardt:

I would like to thank the sponsor for this bill. I have six members of my immediate family who served. I am extremely proud of them and would be distraught if I was ever in the position of having to say goodbye amidst people who are protesting. I do not see the same constitutional issues so long as we are not saying that our intent is to pick and choose who would be all right to make a display and who would not. The only thing that I am concerned about is another funeral that might be going at the same time within that proximity. Those people may be passing out memorial cards that are typical with graveside services. Do you have any thoughts on how we would address that?

Assemblyman Stewart:

I think we need to leave this up to the discretion of those in charge there. In some cases it would be a police officer, although I have never been to a funeral that had a police officer at it. If he was there, it would be up to his discretion, and he would be reasonable and use good judgment. If it was up to the funeral director, likewise, he or she would use good judgment. Ultimately, if it was up to the family member, I am sure they would not infringe upon the right of a funeral that was close by. I do not think that would be an issue, but I can see where you would have concern over it.

Rick Blower:

There would not be a violation of this statute under the circumstances that you have described, Ms. Gerhardt. That would not be considered a demonstration. The passing out of placards, etc. are examples of a demonstration. The bill as worded adequately protects against the concern you have raised.

Assemblyman Carpenter:

I understand that this is a federal law and also many states have passed this law. Is this one molded after the other statutes where the constitutional question has been raised and found not apply in these situations?

Assemblyman Stewart:

It is very similar, yes. A definitive decision has not been made yet.

[Chairman Anderson returned.]

Assemblyman Mabey:

I have seen these demonstrations on television and they are very offensive to me, but I do appreciate Mr. Horne's comments. Perhaps we could look at the other states and the federal guidelines and pattern our bill after that.

Assemblyman Ohrenschall:

I also want to thank you for bringing this bill. We can never tell whether a statute is tailored enough to withstand a court's review, but I think you have done a good job at trying to make this narrowly tailored.

Assemblyman Cobb:

We can look at some of the other states to make sure this is constitutionally valid, narrow it, and tailor it to make it that way, if necessary. In my opinion, this is pretty narrow and would meet constitutional muster. I do agree that this is a very necessary bill and hope that we can work on language that is going to be satisfactory for everyone.

Chairman Anderson:

I believe that Mr. Stewart's response to that question was that the statutes are relatively new. Therefore, the true constitutional test has yet to take place, and the court has not made a definitive statement one way or the other. If that is going to be the criteria to move on, we may still be on shaky ground. I think we need to move cautiously regardless of what we do here.

The gates to cemeteries and other resting places are often where these groups congregate because the cemetery itself is private property and they can be excluded and moved off that ground. I was asking earlier about the transport because I often see protestors in news footage standing at corners where the funeral procession is going to pass. Families are clearly upset by the lack of respect. They have lost the most valuable thing in their lives, and anyone using that headstone to get the attention of the public is improper, but I am still a little concerned on how we are going to address some of those issues with this bill. If I am to understand, the procession is not part of this?

Assemblyman Lynn Stewart:

That is correct. It would be difficult if not impossible to stop the protest along the way. We at least want the funeral to be a sacred and quiet place.

Tim Tetz, Executive Director, Office of Veterans Services, Reno:

It is our belief that this does not protect an individual. It is not saying one is right or one is wrong; it is saying that within 300 feet of a ceremony, funeral, or memorial service, no matter what you are saying, whether you are a patriot rider there to support the veteran or you are there to protest the war or anything else, you cannot protest. My testimony is focused around the veterans' funerals, but it is important to also think about Governor O'Callahan's funeral at the Southern Nevada Veterans Memorial Cemetery last year. It would have been horrible for him, a veteran, to have that ceremony interrupted because someone wanted to protest against a decision that he made years ago. If you are an American citizen and one of your family members dies, you should have at least 120 minutes to make that memorial service proper. Finally, there is a time and place for the freedom of speech. The funeral of a veteran, soldier, or any other American is neither the time nor place for that protest. Everyone seems to declare the First Amendment, uttering the freedom of speech and the free exercise thereof. I will tell you that the First Amendment is something that each and every veteran and military member is protecting. The freedom of speech protects our newspapers, the Internet, and the very protestors that some of those veterans and military members abhor. It protects the burning of the flag and pornography. But it does not allow for one to go into a theatre and yell fire. It does not allow for people to go on the Floor of the Nevada Legislative Assembly, Senate, or even the Congressional Halls and say whatever they want. It does not allow protesting on the steps of the White House, Supreme Court, or Congress. Those are all protected sites; why should a funeral be any different?

Let me relay to you a story that struck me in the last year. Private First Class Brandon Williams was 21 when killed by an IED in Iraq last October. He was a graduate of Douglas High School who was serving in the military, trying to figure out what he wanted to do with life. He was a very important member of his church and of Douglas County. When the newspaper announced that he had been killed, our hearts went out to his family. The very next day, receiving a bigger headline, was an announcement from Reverend Fred Phelps of Westboro Baptist Church that they would be sending ten people to protest PFC Williams' funeral. The members of the Westboro Baptist Church and Reverend Phelps travel throughout the country—and fortunately have not been to Nevada yet—displaying placards saying, "Thank God for dead soldiers," "God hates fags," and "God almighty killed PFC Williams." For the ensuing five days, the media frenzy focused on Westboro Baptist Church, rather than the life and sacrifice of PFC Williams.

For one week, we spent a tremendous amount of time preparing for this memorial service. The Nevada National Guard, the Governor's office, and fire

departments throughout northern Nevada were involved. Police from various jurisdictions including the FBI, the sheriff's department, and South Lake Tahoe Police Department came to help. The Patriot Guard Riders sounded the alert and began to rally to get their support there. The Saturday morning of the memorial service, which had to be moved to Douglas High School because of the frenzy and anticipated crowds, was an unusual day. Governor Guinn, Secretary of State Heller, and Senator Ensign were all there. They are all very busy people, but because of what happened and what had been said about the protesting, they showed up at this funeral, although they might not have had time to show up at the funeral of the other 35 Nevadans killed. That memorial service was surrounded by Patriot Guard Riders from Oregon, California, and Nevada. It was surrounded by law enforcement and firefighters hoping to beat back this protest that was going to happen. Within the halls and the gym of Douglas High School, there was an absolutely phenomenal amount of support from the entire community remembering PFC Williams. But prior to that day and outside that gym, we lost focus on PFC Williams. We lost focus of this exceptional young man and what he sacrificed for his country, and the funeral became not about him but about the protesters.

The First Amendment says Congress shall not abridge the freedom of speech. PFC Williams gave his life for that Amendment, and I and all of the veterans here today served our country to protect the First Amendment and every other word within the *U. S. Constitution*. No matter how much I disagree or agree, no matter how despicable or what the message is, there is a time and place for the freedom of speech. The funeral of an American hero should have that same sanctity. Please protect their honor and sanctity and pass A.B. 159. Is 300 feet and 60 minutes too much to ask for after a lifetime of sacrifice?

Chairman Anderson:

That was very elegant, but the right of public petition is an Amendment right that we all cherish, and the very issue of why these gentlemen are here today demonstrates that right. Which of the Amendments of the Constitution would you set aside for even one moment?

Tim Tetz:

You are an educator of 30 years and I am not going to get into a scholarly debate of the *Constitution* with you, but I would say that I hold dear every single word of the *Constitution*. But we have to realize, as the framing founders and Thomas Jefferson once said, that we cannot hold it to the exact, specific words and be so strong in that meaning without having a little bit of flexibility.

Chairman Anderson:

I can quote others of the founders, particularly Franklin, who had a strong opinion on whether we could preserve a democracy. In reality, the *Bill of Rights* was not part of what the founders originally thought, but rather what those individuals needed to be reassured of as the rights of individual citizens in a society and for the future. They were all veterans who were concerned with that particular issue. I am always very mindful of those rights. Those of us who have served do so because it was not just a responsibility, but to ensure a free society. Veterans do serve to protect this country. Those deaths are not what any of us want to happen, but are a reality of conflict. There is nothing that I personally would not do to honor our dead. At the same time, however, I have a very difficult time taking other people's rights away. If we do something, it is going to have to be so carefully crafted that it will not be a pick-and-choose option.

Assemblyman Horne:

I heard you make the clarification that this bill would apply to everyone within 300 feet, and that concerns me. Earlier testimony said that it would be discretion of the law enforcement officer or family on what type of demonstration was occurring. This would be a better bill if this were to apply to everyone within 300 feet for the 120 minutes. But in its application is where it would falter. Say we had Lieutenant Jane Doe coming home to be buried after being killed in conflict and there were a line of people at the memorial service with banners and placards saying thank you, we love you, God bless, God speed et cetera. Are you telling me that a law enforcement officer is going to cite all of these people with misdemeanors? I do not think that is going to happen. But if on the other side of the street, you had those saying end the war now, those people would be cited. While the law may say they all were supposed to be cited, in the application we may see a different result. I agree with all that you are saying on the level of honor we need to give our veterans that come home in caskets. My father did two tours and came back from Vietnam with leukemia, and we buried him with honors before my 12th birthday. I also disagree with the protests, but I agree with the right to protest. I think this bill would end up with a constitutional challenge because the application is going to be meted out unfairly. I cannot see law enforcement officers giving misdemeanor citations to the ones who are there in favor giving honor, but I do see them citing those who are protesting against the war.

Assemblyman Cobb:

I think we are getting ahead of ourselves about declaring this as being too broad or potentially unconstitutional. The Chairman made a very good point that the constitutionality will be up to the courts later if someone were to challenge this. When you talk about a limited amount of time and space where speech is

abridged, keep in mind that we do not allow people to go into our public buildings and disrupt what people are doing. I do not even think you can collect signatures on petitions inside; you have to do it outside. We do not allow people to campaign inside voting locations; they have to be 100 feet outside. I do not think 300 feet is any large distance people cannot stand behind if they are really committed to trying to protest. What they would not be able to do is disrupt the funeral of a veteran. I strongly support this bill.

Chairman Anderson:

Mr. Stewart, do you want to make your statement now?

Assemblyman Stewart:

We thank you for your consideration today and appreciate your questions and your courtesy to us, and we hope you will strongly consider supporting this bill.

Chairman Anderson:

Is there anyone from southern Nevada in support of the bill wishing to speak? [There were none.] Let me then turn to those in opposition.

Allen Lichtenstein, General Counsel, American Civil Liberties Union, Nevada:

We are not in opposition to the idea, but the way this is written raises issues in terms of its breadth and scope. One of the biggest concerns is the wording "funeral, memorial service, or ceremony;" that particular phrasing is pretty unlimited. It does not specify what kind of memorial service or ceremony, so virtually any kind of memorial service or ceremony. The conversation so far has been about military funerals, but a memorial service such as a Memorial Day speech by a politician could be covered by this as well. You end up having a situation where all sorts of people there to protest would be prohibited because it has something to do with a memorial, which is clearly not the intent of this. The intent of this is to prevent disruptions of funerals and that is something that can be done with a more carefully written piece of legislation. As soon as you have a situation where a police officer has to determine one person's viewpoint versus another person's viewpoint and allow one but not the other, you are out of the realm of content-neutral time, place, and manner restrictions, and you are involved with the strictest scrutiny by the courts.

I suggest having the bill focus on exactly what the intent is. If you are at a cemetery, does that mean you have to stay 300 yards from the perimeter of the cemetery even though the service may be acres away? Three hundred feet is still a considerable distance if you are talking about a church. The purpose of this bill is to make sure funerals are not disrupted. In terms of the First Amendment issues, or in terms of the police officer or family who will decide, it needs to be clarified which messages we want and which messages we do not

want. Those are the kinds of things that have been discussed before that would put this piece of legislation in jeopardy. Again, talking about any kind of memorial service at any time would clearly run afoul of any kind of constitutional analysis. While I am speaking against this particular piece of legislation, I think that something more focused on this specific problem that does not limit more speech than is necessary is quite doable, and I would urge the Committee to look at those possibilities.

Chairman Anderson:

Currently, these particular kinds of events have generated disrespect that no one would enjoy. Any individual with a certain level of notoriety could also generate protest of some sort. The part I like about the bill is that it makes very clear what kind of actions would constitute a citation, such as picketing. The others are very specific so that it would be speech. I would presume while we are talking only about the 60 minutes before and the 60 minutes after, we would also include the time period in which the service is actually going on. Are there questions for Mr. Lichtenstein?

Assemblyman Cobb:

If I understand you correctly, your main concern is that it provides some type of discretion of police officer in terms of viewpoint discrimination on speech?

Allen Lichtenstein:

That is one of the problems. Let us take it out of the realm of the military for a moment and say there is a funeral of someone who was a serial killer. Across the street there may be someone who says "victim rights," someone who says "anti-death penalty", and someone who says "God loves everybody." They are three people with three signs who are not disrupting anything. Does the police officer or funeral director really have the ability to say this sign is proper and this one is not? That gets someone involved with decisions they should not have to make. Once it reaches the court level and those decisions are being made, it is no longer a time, place, and manner restriction. It reaches a level of constitutional scrutiny by the courts which becomes the strictest level. Then we are talking about something that is even less likely to be upheld. Another concern is the definition of memorial service or ceremony. Ceremony is not limited in any way.

Chairman Anderson:

Please just answer Mr. Cobb's question. I know there is other information you want to get on the record but just try to limit it to the question that was asked.

Allen Lichtenstein:

That is one considerable concern that we do have.

Assemblyman Cobb:

Where in this bill does it say there is discretion in terms of viewpoint expressed? I see time, place, and manner, but I do not see the viewpoint discretion as you are describing. It does not say if it is pro or con or anything; it just says time, manner, and place. Where is there a viewpoint as you just claimed?

Allen Lichtenstein:

When the sponsor of the bill was asked that question that was his response.

Assemblyman Cobb:

So where in the bill does it say that?

Allen Lichtenstein:

"The display of any placard, banner, flag, or any similar device, unless the display is part of the memorial service or ceremony." Anything handed out which is not part of the ceremony is prohibited. How do you determine what is part of the service? Someone had mentioned that at the funeral of the former governor, people would get up and make speeches. It was an open public funeral where various kinds of statements could be made by various people. Not all funerals are limited in that scope. If you have a service where anyone can get up and say something, is it going to be determined that certain statements are acceptable and certain statements are not because they are considered as a protest? I think you are going to have a problem and the courts would see that also.

Assemblyman Cobb:

I think it is clear there is no viewpoint discrimination in here.

Assemblyman Ohrenschall:

If you felt the 300-foot distance was overbroad, can you or the American Civil Liberties Union (ACLU) suggest a distance limit and/or an amendment that would potentially solve the overbroad problems?

Allen Lichtenstein:

I think it certainly could be worked on. When talking about the particular limit, one of the questions that is going to come up is the location we are talking about. If we are saying they have to be 300 feet outside of the cemetery that is very broad because it is not going to be disruptive. If you are talking about a funeral home, certainly activity that would prevent the mourners from going in and out or, confrontation of them would not be acceptable. The bill would not, however, be able to keep them across the street or something like that. If the idea is that people are in grief and therefore should not need to see messages that they do not like, that is something that the courts just have not accepted. I

think it has to be a bit more narrowly defined as to what kinds of places we are talking about. The courts have set a distance of 100 feet with the abortion protesting, and even it has been a floating bubble of about 8 feet. There are some precedents for the restrictions, but proponents have to be more specific than what seems to be in this bill.

Assemblyman Ohrenschall:

So there is a version of this bill somewhere that the ACLU of Nevada could live with?

Allen Lichtenstein:

Yes, I think so. Preventing disruption is clearly something that the *Constitution* does not protect; but when limitations bleed over into offensive messages that people do not want to see, and therefore are trying to be prevented from seeing them, the issue becomes more problematic. So yes, I think there are grounds here where the main focus can be accomplished with minimal First Amendment problems.

Chairman Anderson:

Mr. Lichtenstein, was there another statement you wanted to make relative to the bill?

Allen Lichtenstein:

Just to reiterate, the easiest thing for the court to look at and say is overbroad is the definition of what is being covered when it talks about funerals, memorial services, and ceremonies. We are not talking again about people who were in a particular circumstance of going to a funeral of a loved one, we are now talking about something that could be much more general and can take place years later. In terms of memorial services still being held for the Civil War or something like that, becomes even more problematic. That particular section needs to be focused so we are talking about not having a disruption of the funeral.

Chairman Anderson:

Are there any final questions for Mr. Lichtenstein? If you have information that you think would improve the bill, please share it with Mr. Stewart and Ms. Chisel in a timely fashion so that we can get it to a work session document.

Allen Lichtenstein:

I will be happy to provide that information and see what we can do.

Chairman Anderson:

Is there anybody else wishing to speak on A.B. 159?

Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association:

Discretion is a tough one for us, and the clearer the law the easier it is for us to enforce it. If we know exactly how to apply this, it makes our job much easier. Any clarification would be gratefully appreciated.

Raymond J. Flynn, Assistant Sheriff, Las Vegas Metropolitan Police Department:

The discretion pertaining to disruption sounded better to us. I am aware of the *Nevada Revised Statutes* (NRS) pertaining to disruption of religious services. Those laws have been on the books for years. We have applied them in some situations in the Las Vegas area.

Chairman Anderson:

I see no questions from members of the Committee. Hearing is closed on A.B. 159.

[Hearing opened on A. B. 227.]

Assembly Bill 227: Revises the provisions governing the posting of warnings against trespassing. (BDR 15-702)

Assemblyman John Carpenter, Assembly District 33:

I am here to discuss A.B. 227. This is a very simple bill that has suddenly become very complicated. People from the Livestock Industry and the Wildlife Commission have asked me to sponsor this bill. We had some problems with the first mock-up and the amendment also seems to have some problems. I will speak specifically to the amendment first ([Exhibit D](#)).

The biggest problem we have with the amendment is in subsection 5 where it speaks of barbwire. The feeling of the ranching and wildlife communities is that where there is a barbwire fence, it should be marked as provided in subsection 2(a)(1) of the bill. The florescent paint on the fence posts will let people know that it is private land. I have some people here who would like to speak to the bill and offer more suggestions for amendments. I think it is going to take some more conversation to get the bill in its proper form.

Chairman Anderson:

Let us make sure that we all understand what is about to happen. Occasionally I drive down a back road and I am always happy that there is a clear marker so that I know if there is a ditch running right in front of it. When there is snow on

the ground, they are often hard to identify. We are going to be moving the interval of markers from 200 feet to one quarter mile.

Assemblyman Carpenter:

I believe the one quarter mile was a suggestion of some of the people who will be testifying later and hopefully they can explain the reasoning for moving it. One quarter of a mile is between three and four football fields.

Chairman Anderson:

One quarter mile equals 1,320 feet.

Assemblywoman Allen:

Is there a specific example that explains why the change in interval is needed? It is all a vague number to me.

Assemblyman Carpenter:

The people who will testify after me can hopefully explain that. I believe this would make it easier for the land owner to mark the fence if he could just mark it every one quarter mile instead of 200 feet.

Assemblyman Goedhart:

It might sound like one quarter mile is a long distance in the city, but if you have a section of land that is roughly four miles, which is over 20,000 feet, and you are required to put a sign every 200 feet, that is over 100 signs. That also has some implications for the vista that a lot of us enjoy in the rural parts of Nevada. I have personal knowledge on this subject because I had a piece of property that I posted, and we had some trespassing, illegal hunting, and vandalism activities. When we asked the local law enforcement to enforce the trespassing signs, they almost went out with a wheel measure and said that you do not have signs every 200 feet. This interval change has some applicability to try to protect your own property rights.

Chairman Anderson:

Mr. Carpenter, would you like to let the other people explain what they are looking for in the mock-up rather than the original bill? Or are we going to be looking at additional amendments?

Assemblyman Carpenter:

I think we will be looking at additional amendments beyond the mock-up.

Harvey Barnes, Private Citizen, Jiggs, Nevada:

[Read from prepared testimony ([Exhibit E](#)).]

Chairman Anderson:

Did you have an opportunity to participate in the creation of this mock-up? It looks like it is taking out the full florescent painting of the individual gates.

Harvey Barnes:

I hope I did not mislead you, but when I said I supported the bill, I meant that I support the amendments that include the painting, which is an absolute necessity.

Chairman Anderson:

I like the original bill better than the mock-up because you were going to paint the full gate where access was going to be, and now you are only going to paint the top 12 inches of the post. Does that mean you are not going to be painting the full gate anymore?

Harvey Barnes:

It would be all corners, cattle guards, gates, entrances, et cetera.

Chairman Anderson:

Will you only be painting the top, though, rather than the full gate?

Harvey Barnes:

Yes, only the top 12 inches.

Chairman Anderson:

What is the advantage of that?

Harvey Barnes:

In northeast Nevada we have snow, so painting the bottom two feet would be a waste of time. You would not be able to see the paint because of the snow. Painting the entire post at 200-foot intervals would take much paint and time. In a brush area, many of the posts have been there for some time, so you would have to remove the brush and grass too. This just makes it more practical. The general public should be able to identify an area by the corners and one quarter mile posts when they are florescent orange.

Chairman Anderson:

There are many gates that you would prefer someone not to be using to gain access to your private property. I understand there is help for you as the land owner, but I am trying to understand how it is going to be of service to those people who are looking for access.

Harvey Barnes:

If you have property where the access is, then I am sure an agency, or even the land owner, could post it as such.

Assemblyman Horne:

I heard you say this would make it easier for those to know they were trespassing, but the bill increases the distance from 200 feet to one quarter mile. I understand the concerns that Mr. Goedhart expressed, but it is even difficult to read a billboard at one quarter mile. The important part of preventing trespassing is providing notice to persons not to do it. I do not know how you are providing notice if you only have signs every one quarter mile. Is there a way we can shorten that distance? I understand that every 200 feet might be cumbersome if you have a four-mile piece of property, but at one quarter mile, the signs may not be seen.

Harvey Barnes:

In the bill it says gates, roads, or so forth, would be automatically painted even if they are within one mile. If you start at a corner and go one mile and mark another post, you also paint any gate in between those posts.

Assemblyman Horne:

I see that, but maybe I am assuming that not all properties have that stretch of fencing broken up by a gate. There will be sections where you do not have that gate, and you need to also provide notice, so you will actually have stretches of property where there is one quarter mile before you see any posting. I understand your concern about wanting to increase that distance, I just feel it may increase a bit too much.

Assemblyman Conklin:

I share the concerns of Mr. Horne, but I need some clarification from you on the nature of trespassing on your land. I am concerned because I know for certain I cannot see for one quarter mile, and I doubt that I could see color at half of a one quarter mile. If I walked in between two posts, I would have no idea that I was trespassing. It may just be that most of the people trespassing on your land are hunters driving through a gate. Are you suggesting that it is not the post in between the gates that matter but that 99 percent of the time when people access your land they drive through the gate?

Harvey Barnes:

Yes.

Assemblyman Conklin:

So when they get caught on your property in a vehicle, it is tough to say they drove over the fence. Is that what you are suggesting?

Harvey Barnes:

Yes. We have had instances where they cut the fences, but that is not normal.

Assemblyman Conklin:

The reason I ask this is because there are two sides to this coin. There is the cost side that Mr. Goedhart pointed out, but there is also the criminal side. If you do not have to place notice that it is your property, then the wider we make the postings the easier it will be for somebody to trespass and get away with it because they can say they did not know it was somebody else's property.

Harvey Barnes:

I realize it is not going to be absolute, especially if it is intentional.

Chairman Anderson:

When you are painting a cattle guard in the middle of winter, you are going to have to clean the snow away in order to get to the cattle guard.

Harvey Barnes:

As I understand it, it is only the top 12 inches on either side of the cattle guard.

Chairman Anderson:

You are right, thank you.

Mike Riordan, Ranching Representative, Jiggs, Nevada Board of Wildlife Commissioners:

This issue has been brought to my attention repeatedly by several people and it boils down to the inability of a sportsman to be able to differentiate between a public fence and a private fence. Those of us who grew up in a rural area can probably recognize private land, but as our hunter base changes, people are unable to determine if it is a private fence or if it is a public fence. I had some visits with Assemblyman Carpenter and the leadership of the Cattleman's Association, and we are looking for language that would simplify the process by which we could mark a fence to show that it was private land. At those meetings, we came up with the distance of one quarter mile. My personal ranch has approximately 12 miles of perimeter fence. That is a small ranch by Nevada standards. Marking every 200 feet is very difficult to do and also difficult to maintain. I would like to defend the one quarter mile distance by saying that we do not intend to take the responsibility away from the sportsman or other individuals who are going to be out there crossing that

fence. It is still their responsibility to determine if they are about to travel upon private land. Most of the sportsmen are either on ATVs or in pickups, so I also want the responsibility on the sportsman to take that vehicle to a gate.

The language of this bill would allow the property owner to put markings on either side of that gate or cattle guard to designate that you are about to enter private land. It is the responsibility of that person to make the determination if he is welcome. We cannot possibly write enough laws to ensure good behavior, so we have to make the leap that good behavior will be presented to us. From the wildlife standpoint, the Board has tried to educate and bring along some of the people who think this will take something away from them. I do not believe the language in this bill takes anything away from the sportsman or the land owner. It is up to the land owner to put those markings in the most visible place. It would not do him any good if they are in the bottom of a canyon or hidden in the trees.

Chairman Anderson:

Unfortunately, many hunters do not understand that their obligation is not just to pull a tag number and to try to have access the easiest way across the range, but that they need to be respectful of the privately-owned property en route to the public areas. I have noticed that ranchers will lock roads that have been historically open because they would prefer that you come a different way. How is this going to help the public? We recognize that the property owner has rights, but at the same time, the people coming out may remember this as the way they came before. There are also people who want to go to historic sites that are off the beaten path and enjoy the backcountry. How is that going to help them?

Mike Riordan:

This bill is not designed to address access; that is a totally different issue. The language here is only designed to help the land owner post his fence as it being private property. Hopefully it will help the sportsman or other person out there identify that it is a private fence. We have to hope that the land owner will make notice of his individual wishes, whether that would be absolutely not, or yes with permission. I do not think we can legislate all of those possibilities.

Chairman Anderson:

There was once a time period where the county commissioners could have identified those historic roads if they had chosen, but since they did not, we have been left with this problem. The conflict is really about who is accessing your land.

Assemblywoman Gerhardt:

If I understand, it is not mandatory that you do this. Is that correct?

Mike Riordan:

Yes, we consider it voluntary and have no intention of it being mandatory.

Assemblywoman Gerhardt:

I have concern that this might make it even more confusing. If you are hunting and you see a fence but you do not see the florescent orange, are the hunters going to assume that it is okay to cross that fence? I also share the concerns of my colleague Mr. Goedhart about spoiling vistas and so forth. We might have a lot of people opting out of this, and I am afraid it is going to be more confusing rather than making the situation better.

Mike Riordan:

Your first concern is the exact situation we have right now. When you are in the field and you encounter a fence—unless you have done your homework or really know the area—you really do not know if it is private or public land fence and if you are welcome on the other side. Again, I have to go back to putting the responsibility on people to do a little investigation. My intent was that the land owners who are having problems can mark their fence and reduce the trespass problem.

Chairman Anderson:

If a land owner has not marked his property corners and every one quarter mile, he would not be able to have someone cited for trespassing. He could ask them to leave and would have to prove it was his land. So they are only going to be able to have people cited for trespassing if their property is properly posted?

Mike Riordan:

If the land is not posted and is not marked under the current law, the person on the private property has the argument of having no way of knowing. We are trying to give land owners who wish to mark their property a very simple and effective means of posting.

Chairman Anderson:

So if it is not marked, then the hunter can assume it is accessible?

Mike Riordan:

I do not want to say that he should assume that. I still believe it is up to the individual to try and make the determination; however, I could see where he could not be found totally at fault if he makes an honest mistake.

Assemblyman Ohrenschall:

How long has the 200-foot interval been in the statute, and do you have any guesses on how many ranchers actually mark every 200 feet?

Mike Riordan:

I could not tell you how long it has been there, but I personally have never observed that marking on any property of any great size. I have seen smaller parcels marked up to 40 acres, but so far I have not seen a larger ranch go to that effort.

Assemblyman Ohrenschall:

I also have a question for Legal. If this statute passed and the quarter-mile interval was enacted and a hiker or hunter did not see the sign and was arrested for trespassing, line 28 says "it is prima facie evidence of trespass for any person to be found on private or public property which is posted or fenced as provided in subsection 2." So if the person tried to defend himself by saying he did not see the sign one quarter mile away, would that counteract the statement about the prima facie evidence of trespass on line 28?

Risa Lang, Committee Counsel:

That would be a question of fact and the court would have to look and consider the circumstances. In subsection 1, it says they have to be warned, and subsection 3 provides the prima facie evidence so that it at least provides a starting point, but it does not mean it cannot be overcome.

Mike Riordan:

I would like to get on the record that my comments are my opinions and do not necessarily reflect those of the Nevada Wildlife Commission.

Chairman Anderson:

You clearly signed in as a rancher and your experiences as the Wildlife Commissioner are not being held against you.

Doug Busselman, Executive Vice President, Nevada Farm Bureau Federation:

We are here in support of making it easier for land owners to make the notification of where their private property boundaries are. Our policy states that we believe changes need to be made to Chapter 207 of NRS to make it simpler and more easily understood for notification of trespass. In the context of line 12 of the mock-up, the real purpose of this exercise is to provide sufficient warning against trespassing, and that is what we are attempting to do with the florescent orange posts. We look forward to working with the Committee if changes need to be made. We support the concept, but we

believe there needs to be improvements made to make it easier for the property owner to make that appropriate notification.

Chairman Anderson:

Are there questions for Mr. Busselman? [There were none.]

Chris MacKenzie, Chairman, Nevada Wildlife Commission:

Our Commission is comprised of five sportsmen, one rancher, one farmer, and one conservationist and general public member. At our legislative subcommittee meeting, several concerns were brought forth on this statute even the initial reading of the statute as it exists, let alone with the proposed changes. We are all for supporting the landowners in their endeavor to keep unlawful trespassers off of their land. As we know, not all sportsmen are right in their activities and they take advantages that we are not proud of. I am an attorney, and when I read the statute, I see the notice provision provides for either the painting or fencing the area. Look at subsection 5: "As used in this section, 'fence' means a barrier sufficient to indicate an intent to restrict the area to human ingress, including, but not limited to, a wall, hedge, chain link, or wire mesh fence." Most of the fence we come in contact with in Nevada is barbwire. People have been prosecuted for crossing barbwire fence even without the posting. There are people who have not been prosecuted because the posting has not been adequate. This is a very gray area and I would look at this as an opportunity to clean that up. My personal feeling, and the general feeling of other members of the Commission who have spoke to this Committee, is that we should have the barbwire fence be subject to these painting requirements to help clarify for both the assistance of the landowners, who do not want people unlawfully trespassing, and for those sportsmen who are not always on ATVs. When walking you sometimes come across a barbwire fence and do not know if it is Bureau of Land Management (BLM), Department of Forestry, or somebody's private land. I would like to work with them to try and clean this up.

Chairman Anderson:

The distances stated in the bill were determined some time ago. We are going to be looking at the question of one quarter mile, which clearly makes it easier and more palatable to the rancher who has a huge area to mark. Trespassing does not just happen in the rural areas. For example, if I want to ensure public safety in a railroad yard, 200 feet is a sizeable distance. I am a little concerned about aspects other than the applicability of the law in other areas. I do agree with you about barbwire. If we are going to do it, it should be done for every kind of barrier that is up.

Assemblyman Goedhart:

If the signs are posted one quarter mile apart, the farthest sign would only be one eighth of a mile away.

Chris MacKenzie:

Yes, that is correct. This was not just for signs, but for the painting too.

Assemblyman Goedhart:

Right, it is for the painting too. That florescent paint is easy to see and that is why they call it hunter florescent orange.

Chairman Anderson:

It does increase the visibility. Are there any other questions for Mr. MacKenzie? [There were none.] Mr. Carpenter, would you like to make a closing statement?

Assemblyman Carpenter:

I think with the testimony and questions, we know we need to do some work on this legislation. I am willing to work with the parties involved to make sure it is compatible with the Committee.

Assemblyman Segerblom:

It occurred to me that a fence could easily distinguish between private property and public property, so when you come upon one of these fences with the florescent paint, how would you know if you are entering private property or leaving private property?

Assemblyman Carpenter:

I believe that if it was BLM on one side and private on the other, you would have to paint it on the side opposite the private land so that when you came upon that you would know it was private land on the other side.

Chairman Anderson:

I have seen such a post painted all the way around. The top 12 inches of the post is not very clear.

Assemblyman Carpenter:

That poses another problem we need to think about and hopefully come up with a solution.

Chairman Anderson:

If we can bring clarity to this issue, I think it would be helpful to everyone's concerns, but there are issues here that need to be addressed. We would ask that if you are going to be working on this, you work with the concerned individuals.

Meeting adjourned [at 10:31 a.m.]

RESPECTFULLY SUBMITTED:

Kaci Kerfeld
Committee Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 15, 2007

Time of Meeting: 8:00 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 159	C	Assemblyman Lynn Stewart	In Memorium, Nevada National Guard
A.B. 227	D	Assemblyman John Carpenter	Proposed Amendments
A.B. 227	E	Harvey Barnes	Prepared Testimony