

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

**Seventy-Sixth Session
April 7, 2011**

The Committee on Judiciary was called to order by Chairman William C. Horne at 7:48 a.m. on Thursday, April 7, 2011, 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/76th2011/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 William C. Horne, Chairman
Assemblyman James Ohenschall, Vice Chairman
Assemblyman Steven Brooks
Assemblyman Richard Carrillo
Assemblyman Richard (Skip) Daly
Assemblywoman Olivia Diaz
Assemblywoman Marilyn Dondero Loop
Assemblyman Jason Frierson
Assemblyman Scott Hammond
Assemblyman Ira Hansen
Assemblyman Kelly Kite
Assemblyman Richard McArthur
Assemblyman Tick Segerblom
Assemblyman Mark Sherwood

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman John Ocegüera, Clark County Assembly District No. 16
Assemblyman John Hambrick, Clark County Assembly District No. 2
Senator Elizabeth Halseth, Clark County Senatorial District No. 9

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Nick Anthony, Committee Counsel
Karyn Werner, Committee Secretary
Michael Smith, Committee Assistant

OTHERS PRESENT:

John Wagner, State Chairman, Independent American Party
Janine Hansen, President, Nevada Eagle Forum
Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association
John Cahill, Private Citizen, Las Vegas, Nevada
Michelle Jotz, Director of Governmental Affairs, Las Vegas Police Protective Association Metro, Inc.; and representing Southern Nevada Conference of Police and Sheriffs
Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada
Douglas Edwards, Private Citizen, Las Vegas, Nevada
Beverlee McGrath, representing Best Friends Animal Society; American Society for the Prevention of Cruelty to Animals; Action for Animals; Paw PAC; and Nevada Political Action for Animals
Diane Blankenburg, Community Programs Director, Nevada Humane Society
Holly Michael Haley, Nevada State Director, The Humane Society of the United States
Chris Schwamberger, Private Citizen, Carson City, Nevada
Tony Yarbrough, Director, Nevada's People for Animal Welfare
Terrance Shea, Deputy District Attorney, Civil Division, Washoe County District Attorney's Office
Chuck Callaway, Police Director of Intergovernmental Services, Las Vegas Metropolitan Police Department
Bill Anton, Private Citizen, North Las Vegas, Nevada
Kristin Erickson, representing Nevada District Attorneys Association
Caleb Cage, Executive Director, Office of Veterans Services

W. Wayne Willson, Private Citizen, Carson City, Nevada
Frank Reynolds, Private Citizen, Carson City, Nevada

Chairman Horne:

[Roll was called. There was a quorum.] We have four bills today. We will begin with Assembly Bill 321. All of the bills and exhibits are posted on the Nevada Electronic Legislative Information System (NELIS). We will open the hearing on Assembly Bill 321, Speaker Ocegüera's bill.

Assembly Bill 321: Revises provisions relating to the use of force.
(BDR 15-963)

Assemblyman John Ocegüera, Clark County Assembly District No. 16:

I am here to present Assembly Bill 321, the right to self-defense. I am a bit nervous because these 1-page bills are generally not easy, but 125-page bills are no trouble. I have one page of testimony for you ([Exhibit C](#)).

[Spoke from prepared text ([Exhibit C](#))].

Chairman Horne:

Thank you for bringing this bill. Everyone would agree that if you are fearful for your life or the lives of others in your home, you have the right to self-defense. It is in case law, and it is good that we are codifying it. Are there any questions for the Speaker? There are none. Do you have anyone you wish to speak on your one-page bill?

Assemblyman Ocegüera:

No. It is at your pleasure.

Chairman Horne:

Thank you for narrowing that down. Those who are in favor of A.B. 321, please come to the table. Please keep your statements and comments directly to the bill.

John Wagner, State Chairman, Independent American Party:

We support this bill as far as it goes. The only thing missing to make it a perfect bill is that if you do shoot someone in your house, that person cannot sue you. You are in almost as much trouble after the shooting as you would have been if you ran out the back door. That is my only comment.

Chairman Horne:

I have gotten a lot of emails about that. I polled countless personal injury attorneys all over the state, and not a single one could tell me of an incident

with that scenario where someone got sued. It is not happening in Nevada, but I understand your concerns.

Janine Hansen, President, Nevada Eagle Forum:

Self-defense is a natural right, and we support this bill.

[Chairman Horne left the room, and Vice Chairman Ohrenschall assumed the Chair.]

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

I signed in as being in favor of the bill, but I think I was one box off. The Nevada Sheriffs' and Chiefs' Association is neutral on the bill because it already works under this court decision. It is my understanding that, when a case like this goes to court, the judge admonishes the jury with this instruction. We are already there, and we do a lot of our work under case law. We will take a neutral position on this.

Vice Chairman Ohrenschall:

Are there any questions for Mr. Adams? I do not see any. Is there anyone else who would like to speak in favor of the measure? I see none. Is there anyone in Las Vegas?

John Cahill, Private Citizen, Las Vegas, Nevada:

In 2000, the Nevada Supreme Court, in a case called *Runion v. State*, in issuing instructions to the jury regarding self-defense, said, "However, where a person without voluntarily seeking, provoking, inviting, or willingly engaging in a difficulty of his own free will is attacked by an assailant, he has a right to stand his ground and need not retreat when faced with the threat of deadly force."

What I read to you is the wisdom of our Supreme Court in issuing jury instructions. As has been testified, this puts case law into statute.

I support the bill. It will be nice to get it into statute, since having it in statute is important.

Michelle Jotz, Director of Governmental Affairs, Las Vegas Police Protective Association Metro, Inc.; and representing Southern Nevada Conference of Police and Sheriffs:

We appreciate the Speaker bringing A.B. 321 forward. We appreciate that he is attempting to codify the Castle Doctrine, so we are in favor of this bill, and ask for your support.

Vice Chairman Ohrenschall:

Are there any questions for Ms. Jotz? Is there anyone else who wishes to speak in favor of the bill? Is there anyone who wishes to speak neutral on the measure?

Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada:

I signed in originally in opposition because of the way the bill was drafted. We would have had to take that position.

[The Chairman returned and reassumed the chair.]

I just spoke with the Speaker. The Nevada Attorneys for Criminal Justice (NACJ) submitted testimony a week ago, and it is on NELIS ([Exhibit D](#)). They have a minor clarification in section 1, subsection 2, paragraph (c) that we agree with. This adds language to make it clear that the person is not actively engaged in conduct in furtherance of criminal activity. It clarifies that if a person had a "joint" in his pocket, this bill would not affect him in the same way as the person in the middle of, for example, committing a robbery. We think those additional five words, "furtherance of a criminal activity," would make that distinction. We are in support of the amendment, and the Speaker sounds like he is amenable to this language. If that is the case, and the Committee wishes to move forward with it and the amendment, we would be neutral. The larger issue with the Castle Doctrine is a different question entirely, and for the record, that is not the way we read this bill.

Chairman Horne:

Are there any questions? I see none. Is there anyone else to testify? I see none.

Mr. Speaker, does the proposed amendment suit you?

Assemblyman Oceguera:

Although it is not protocol to surprise the Speaker with an amendment as he walks into the room, upon quick reading of the amendment, it seems reasonable.

Chairman Horne:

You never saw this letter from the NACJ?

Assemblyman Oceguera:

No.

Chairman Horne:

I will state on the record again that the NACJ is attempting to be more active this session in its participation in the legislative process, but sending a letter is not the most effective way of doing that. It does not give us an opportunity to question their rationale on some of the proposed amendments.

Assemblyman Frierson:

I do not know that Ms. Gasca's example was the best example of why we would deviate from the presented language. My presumption is that this would include someone who happened to have a pocketknife in his pocket and did not realize that it was one-half inch longer than allowed. That would have no bearing on his right to protect himself. I think that was the intention, but I do not know that the example was the best one. I would support the sponsors' direction either way.

Chairman Horne:

I think the sponsors are getting at the "furtherance of a criminal activity." If Mr. Frierson is picking a fight with me and punching me in the face, but I start whooping his butt, so he draws a gun, he still cannot do that. He was committing the crime of battery.

Assemblyman Ocegueda:

I would like to discuss this with legal counsel and ensure it makes sense. It seems like it does from a quick review.

Chairman Horne:

I will hold onto it until you are comfortable. Let us close the hearing on Assembly Bill 321.

We are going to open the hearing on Assembly Bill 348, Mr. Ohrenschall's bill.

Assembly Bill 348: Repeals provisions governing the apportionment of federal transfer taxes upon the death of a person. (BDR 12-569)

Assemblyman James Ohrenschall, Clark County Assembly District No. 12:

I appreciate the Committee taking the time to hear Assembly Bill 348. It deals with liability for estate taxes. I worked closely with Professor Doug Edwards, who is a professor at the William S. Boyd School of Law, and Michael DeLee, an attorney in Las Vegas. I will turn it over to Doug Edwards.

Douglas Edwards, Private Citizen, Las Vegas, Nevada:

It came to my attention that the bill passed in the last legislative session, that became *Nevada Revised Statutes* (NRS) 150.400, had some unforeseeable

consequences to Nevadans due to the federal gift tax, specifically for those people who receive the gifts. [PowerPoint presentation of testimony was shown ([Exhibit E](#)).]

I believe the author of the original bill was Layne Rushforth, who is a very good attorney and smarter than I, but I also think he was overly broad in handling a decedent, at the time of death, who could not or had not paid taxes on the gifts that he made during his lifetime. The bill achieves this under state law by raising the donee, the person who received the gift, to the same level as the donor, the person who made the gift, for purposes of responsibility for that tax.

Under federal law, we already have that. The federal law goes further in protecting the donee, the person who receives the gift, from liability in certain situations. For example, under federal law, there is a statute of limitations regarding collecting taxes from the donee that does not cover the donor. Specifically, when a donor makes a gift, but does not pay the tax, that tax stays on the books and is collectible by the Internal Revenue Service (IRS) forever, and from his estate after the donor dies. On the other hand, if the IRS wants to collect from the donee, the person who receives the gift, it must do so within ten years after the gift is made.

Currently, with language like "without limitation," NRS 150.400 says if the IRS cannot collect from the donor, the courts in Nevada may order the donee to pay without regard to the limitation under Internal Revenue Code section 6324(b). That was the first error made in passing NRS 150.400 as it is.

The second area further protects a donee under the Internal Revenue Code from being responsible for any unpaid gift taxes to the extent they exceed the gift. It is possible, under the Internal Revenue Code system, for a generation-skipping tax to actually generate a greater gift tax than the value of the gift. This will occur whenever the maximum bracket for a generation-skipping tax on gifts exceeds 42 percent. For instance, using the 50 percent maximum bracket that was in effect in the early 1990s, since it is the easiest to compute, when granddad made a \$1 million gift to his grandson, he made a generation-skipping gift. That means it went beyond his children's generation. Congress, in its wisdom, decided to put an extra tax on that. Congress did not want wealth transmitted beyond generations, so it applied the maximum bracket. On the \$1 million gift, a \$500,000 generation-skipping tax was owed. The Code goes on further to say that, when a donor pays that \$500,000, he is making an additional gift. For purposes of computing the gift tax on granddad's gift, \$1.5 million is subject to gift tax. If the gift tax is at the 50 percent bracket, that is \$750,000 due in gift tax. Granddad, in making that gift, has generated

a tax of \$1.25 million: the \$500,000 generation-skipping tax and the \$750,000 gift tax.

In that situation, Internal Revenue Code section 6324(b) says the donee (grandson) would not owe tax in excess of the gift that was made. If we charge more taxes than the gift value, it would be burdensome, so the tax was limited to the amount of the gift. *Nevada Revised Statutes* 150.400 does not limit the amount that can be collected from the grandchild in that situation. We felt that NRS 150.400 should be repealed, but after speaking to the person who drafted it and the Vice Chair of the State Bar of Nevada, it was decided to just get rid of the bad parts. Mr. Rushforth came up with incorporating Code section 6324(b) into NRS 150.400 to give protection to donees.

There was another element that bothered us about NRS 150.400. This statute is triggered whenever the estate of the decedent is bankrupt. Unfortunately, the definition of an estate under NRS 150.400 goes back to the definitions of "probate estate" under the probate code. Quite often, the "probate estate" is not what the federal government calls the "taxable estate." The taxable estate is much greater. Any time someone has life insurance, living trust assets, or joint tenancy property in his estate, the amount of his taxable estate will exceed his probate estate. Currently, NRS 150.400 says this is anytime you have a bankrupt estate. There are many situations where there is no probate, let alone small estates. We felt the definition of "estate" contained in subsection 1 of NRS 150.300 is the federal "taxable estate," and should be extended to include NRS 150.400. Then other assets of the decedent could be used by the federal government to pay for the gift tax that was still due at the decedent's death without the donees having to pay the taxes on the gifts.

Mr. DeLee and I had a telephone conversation with Mr. Rushforth and Ms. Julia Gold, who is the Vice Chair of the State Bar of Nevada Committee on Legislation, and they asked us "not to throw out the baby with the bath water." That is why we came up with the idea of amending NRS 150.400 instead of repealing it.

Chairman Horne:

Are there any questions?

Assemblyman Ohrenschall:

The amendment is on NELIS ([Exhibit F](#)).

Chairman Horne:

Are you going to speak to the amendment?

Assemblyman Ohrenschall:

No. I will defer to Professor Edwards.

Douglas Edwards:

The original bill, A.B. 348, called for repeal of NRS 150.400. As a result of that conversation, it was decided to amend NRS 150.400 to change the part where donees could be unfairly treated under state law ([Exhibit F](#)). It is ironic when you have better protection from taxes under federal law than you do under state law. There are two sections that extended the ten-year statute of limitations in NRS 150.400 that also limit the maximum tax that can be paid by the donee on the amount of the gift. In addition, part of the amendment is to extend the definition under subsection 2 of NRS 150.300 to include the term "estate" under NRS 150.400. That was the reason for the amendment as opposed to the repeal, so we could leave in place the perceived benefits of the statute that Mr. Rushforth presented.

Chairman Horne:

Are there any questions about the bill or the proposed amendment? Do you have anyone else you wish to have testify? I see none. Is there anyone who wishes to testify for Assembly Bill 348? I see no one.

Is there anyone in opposition to the bill? In the neutral? Seeing none, we will close the hearing on Assembly Bill 348 and bring it back to Committee. It is a simple amendment, and we can move this now if you want to.

ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 348.

ASSEMBLYMAN SHERWOOD SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN DIAZ AND MCARTHUR
WERE ABSENT FOR THE VOTE.)

Mr. Ohrenschall will handle this on the floor.

For our next bill, we will go with Assembly Bill 324.

[Assembly Bill 324](#): Revises provisions governing dangerous or vicious dogs.
(BDR 15-223)

Assemblyman John Hambrick, Clark County Assembly District No. 2:

You have before you Assembly Bill 324. I would like to speak to the amendment ([Exhibit G](#)). As the Speaker has warned us, we need to beware of

one-page bills, and the amendment brings this bill down to one page. The bill will cover and codify how a vicious dog is defined and treated in statute. There is nothing in statute at the present time. I am not going to read the amendment to you. It lists what will happen when an authorized animal control officer comes upon an animal and must judge if the animal acted appropriately under the circumstances, whether its actions were in defense of its owner, or whether it was part of a criminal activity, and upon review and investigation, what should happen to the animal later. The bill includes time frames if a bite occurs and how soon a second bite may be considered as a factor in that determination. It also defines "provoked," and states a dog in defense of its owner or property should not be judged as vicious. It also precludes the classifying of vicious animals solely by breed. We all have anecdotal information regarding how a particular breed is vicious, and you will hear how the same breed was raised with small children and played with them. We are trying to avoid the conflict of breed-specific litigation.

[Chairman Horne left the room. Vice Chairman Ohrenschaal assumed the Chair.]

I have with me Beverlee McGrath, who was the primary author of the amendment. Frank Adams will testify, and so will Diane Blankenburg from the Nevada Humane Society. These three persons are reviewing the bill and amendment to ensure they meet current standards and are convenient for animal control officers around the state. We are trying to avoid any hardship or undue financial burden on governmental agencies. Beverlee McGrath will also speak to the amendment.

Vice Chairman Ohrenschaal:

Are there any questions now for Assemblyman Hambrick? I do not see any.

Beverlee McGrath, representing Best Friends Animal Society; American Society for the Prevention of Cruelty to Animals; Action for Animals; PawPAC; and Nevada Political Action for Animals:

All this bill does is allow for due process of law. Under current Nevada law, a dog can be deemed dangerous or vicious, and be taken from its owner without any notification, or without a hearing. This bill will change that so a dog can be classified after an investigation by an animal control officer ([Exhibit G](#)).

Under current law, animals are considered property. It is constitutionally problematic. What happens in shelters across the nation is that when a pit bull comes in, it is immediately euthanized because it is classified as a dangerous or vicious dog. This bill will prevent that from happening in Nevada.

Vice Chairman Ohrenschall:

You said there is no hearing now if a dog is determined to be dangerous. Is that true in the rural counties, as well as Clark and Washoe Counties?

Beverlee McGrath:

Clark County does have a dangerous dog provision. Washoe County has an ordinance pending that will better define dangerous and vicious dogs.

Vice Chairman Ohrenschall:

Are there any questions from the Committee? I do not see any. Is there anyone else who wishes to speak in favor of the bill?

Diane Blankenburg, Community Programs Director, Nevada Humane Society:

We are in support of this bill. The most meaningful section to us is the addition to section 2 of the amendment to the bill, which says that "A dog may not be found dangerous or vicious solely based on breed" ([Exhibit G.](#)) We believe dogs should be judged as individuals, as we do at the Nevada Humane Society. We assess every dog that comes into our shelter. Last year we adopted out 9,668 animals, of which about half were dogs. We deal with a lot of animals. We have one of the highest intakes of animals, twice the national average. We believe not every dog of a particular breed is the same. Any dog in any breed could be dangerous, and we see this every day at our shelter. We have had "bully-breed" dogs that have been wonderful pets and have been adopted out. We have lots of testimony about that. We have also seen some stereotypical non bully-breed dogs, like very small Chihuahuas or Jack Russell Terriers, that have had issues. It is appropriate and right to judge dogs as individuals. We urge you to support this bill.

Vice Chairman Ohrenschall:

I have a question about "found dangerous or vicious solely based on breed." Is that happening now? Is that really happening in Nevada?

Diane Blankenburg:

It does not happen at our shelter, but it does happen in the country. We believe this bill will help prevent this from ever happening. I cannot speak to other shelters and how they handle their decisions, but we are a no-kill shelter. We do not euthanize, except for physical or medical conditions that we believe do not provide a good prognosis or quality of life, or for an animal we feel is a risk to society if adopted back out into the community. We make that decision by assessing the dog as an individual, not the breed.

Vice Chairman Ohrenschall:

Do you have any statistics for Washoe County, or the whole state, as to how many dogs have been euthanized because they were found to be dangerous?

Diane Blankenburg:

I do not. The dangerous label is a legal thing and goes through the Washoe County Animal Services for our area. If you want to know our shelter's statistics, I can give you that. I cannot tell you positively how many were euthanized based on being dangerous versus having health problems, but in 2010 we had a 95 percent "save" rate, which means 5 percent of the animals were euthanized. A percentage of the 5 percent of euthanized animals would have been based on being dangerous. Those saved is extremely high; it is one of the best in the country. We work hard to ensure that we are not putting down any animals that are savable and adoptable, but we also have a strong commitment to the community that we will not release unsafe dogs.

Vice Chairman Ohrenschall:

Right now, if someone believes that I have a dangerous dog, is it animal control that would make that determination? If so, is there an appeal process for the owner of the dog?

Diane Blankenburg:

We have no legal jurisdiction. That would be under animal services in each community. I do not have any specific information on that. We take all owner-surrendered animals from Washoe County, which is about half of the animals that come into our shelter. The other half comes from animal services, but it is based on determination by animal services that the animal is not dangerous from a legal perspective. We also do another assessment to determine if the animal is adoptable. Sometimes an animal comes to us, and then bad behavior shows up later that would not be safe in the community.

Assemblyman Sherwood:

You said the shelter vouches for the dogs as being nonthreatening, and that is your commitment to the community. What liability do you assume if there is a bully-breed dog that you have deemed to be adoptable, but something happens and someone is mauled? Is the Humane Society liable for anything that happens?

Diane Blankenburg:

My understanding is that we are not. We do not swear that the dog will never act out. We use our best judgment. We have a formal, documented methodology to make that determination. The methodology comes from Cornell University. You can never be sure what a dog will do. We also have

a legal contract that the adopters sign saying they are assuming that responsibility. We just had a case where we were sued, and it was not for a bully breed. It was a small dog that injured another dog, not a person, and we won.

Assemblyman Sherwood:

As part of the methodology, do you take into account the breed? If so, what percentage of it is based on proclivity that "X" breed will be aggressive?

Diane Blankenburg:

The methodology we use does not have any score for breed specifically. Breeds themselves have different characteristics, as you know. It is more about size, and if a dog is large and strong. A large dog's potential for danger is greater than a small dog's. A biting Chihuahua is probably not going to kill you, although it could kill other dogs. We feel it is also our responsibility to protect the other animals in the community. The characteristics from that perspective would be considered, not because it is a particular breed, but the capability of the animal.

Assemblyman Hansen:

In the original bill, all of the provisions for enforcement seem to fall on law enforcement agencies. The amendment says "a designated animal control agency." Would you be considered an animal control agency under the amendment?

Diane Blankenburg:

No, we are not. We do not have any legal capacity.

Assemblyman Hansen:

Why the distinction? Why were law enforcement agencies eliminated and these responsibilities changed to animal control agencies? What is the difference?

Diane Blankenburg:

I do not feel that I am qualified to speak to that.

Vice Chairman Ohrenschall:

Legal told me that it is in an amendment submitted by Frank Adams, and we are not there yet. We will be discussing it later.

Assemblyman Hansen:

I believe it was actually the amendment submitted by the proponent. We will get to it then.

Assemblyman Brooks:

I want to understand the exact intent. The intent is not to solely characterize a dog as vicious based on the breed. Is that correct?

Diane Blankenburg:

That is the intent of one piece of the bill.

Assemblyman Brooks:

Can you give me the rest of the bill? I am reading it, and I see an investigation is performed. What I am getting out of it is there must be an investigation before a dog can be deemed vicious. Is that the intent of the bill? Can someone answer that, please?

Beverlee McGrath:

Yes. That is the intent of the bill. You can still take a dog from an owner. You can still classify it as dangerous or vicious. You can still euthanize it. All we are saying in this bill is that the owner should be provided due process of law, and there should be some type of investigation. Currently, the investigators will be the animal control officers under my amendment, and that is at the request of law enforcement.

Yes, Mr. Sherwood, it is occurring in rural counties. They are euthanizing pit bulls as they come in without any classification or investigation. The owner will come to retrieve the dog because it got out of the backyard, and the dog has already been euthanized.

Assemblyman Brooks:

Since the dog is considered personal property, if it is killed or hurt by law enforcement officers while they are looking into a crime, does that make it expendable? Right now, what happens?

I have an issue in my district. An individual had a pit bull—he has several that he raises. A crime was committed in the neighborhood and a law enforcement officer had to jump through his backyard to get to the criminal. The officer saw the dog, shot and killed the dog, and continued on to apprehend the criminal. At no point did law enforcement ever give the owner a reason why the officer did it. The owner had no recourse. His only recourse was to have a vigil in front of his home and a sign on the corner that said, "They killed my dog." I was canvassing in that area when I saw that. I sat down and talked with him briefly. He said since the dog is considered personal property, there is no recourse for the officer coming in and killing his dog. He took this very personally, as he should. I want to know how this bill would affect a situation like that.

Beverlee McGrath:

I am not an attorney, but my understanding is, because due process will be put into place by this bill, there will be recordkeeping information available, and the owner will have recourse under the law. Under current law, you can do anything. You can go to anyone's property and shoot his dog. This puts law in place.

Vice Chairman Ohrenschall:

I believe there would be penalties, although perhaps not the penalties that you are seeking. That is my impression.

Assemblyman Frierson:

In that regard, it seems to me to be similar to a situation where someone damages your car, and you have access to damages. This property would be similar. I do not see this bill as changing the status of liability. I did want to point that out, since you mentioned this bill is about due process. It is also about not identifying one particular breed as dangerous, and making the breed identification the sole basis. I think that is an important factor. There are other dogs that fall into this category, like Akitas and other breeds that some people may deem as dangerous. This would prevent the breed from being the only reason for deeming a pet to be dangerous. I think that is an important aspect of the bill as well. Am I correct?

Beverlee McGrath:

You are correct. That is very important, and that is the second part of the bill. Thank you for bringing that to our attention.

Vice Chairman Ohrenschall:

Are there any other questions from the Committee? I see none.

Holly Michael Haley, Nevada State Director, The Humane Society of the United States:

On behalf of The Humane Society of the United States, and me as an owner of a loving pit bull, we do support this bill.

Vice Chairman Ohrenschall:

Have you ever had problems with people saying your pit bull is dangerous because of the breed?

Holly Michael Haley:

Absolutely. I run into that all of the time when I am out walking him. People often get scared just because he is a pit bull, but he is the sweetest dog I have ever had.

Vice Chairman Ohrenschall:

Has he ever attacked anyone or another dog?

Holly Michael Haley:

No. Never.

Vice Chairman Ohrenschall:

Are there any other questions from the Committee?

Assemblyman Brooks:

I have a pit bull, too. When I take him to the dog park, he is the only dog on the right side. Even the big dogs go to the left side. I feel bad because the only thing he would do is lick you to death. You are 100 percent right. It is not the breed; it is the way you raise the dog. My dog has been in the park with smaller dogs that have beat up on him. He is just a big, loving pit bull.

Holly Michael Haley:

I agree. My dog is very sweet, and his best friend is a little kitten.

Vice Chairman Ohrenschall:

Are there any other questions from the Committee or does anyone else want to tell us about his dog?

Assemblyman Frierson:

I have an Akita that I also think is the sweetest dog in the world. I agree with my colleagues. I am glad to see the amendments that simplify what we are trying to do here.

Chris Schwamberger, Private Citizen, Carson City:

I am an attorney who does pro bono lobbying on behalf of animal-related bills. I am here to support the bill and the hearing process in the determination of dangerous or vicious dogs, because these are very factually dependent determinations worthy of a hearing process. I also support the elimination of breed as a consideration in determining the viciousness of a dog, as has already been discussed. It is more the propensity of certain groups towards a particular breed, for example, drug dealers or people with ulterior motives, that go for pit bulls because of their power and strength. It is more the propensity of people toward a certain breed, and the way they treat the dog, than the breed itself.

Vice Chairman Ohrenschall:

Have you ever had a client whose dog was found to be dangerous, and was there anything you could do? Was there an appeals process to keep the dog from being euthanized?

Chris Schwamberger:

No. I primarily have handled land use issues in the past.

Vice Chairman Ohrenschall:

Are there any other questions from the Committee? I see none. Is there anyone else wishing to testify in support of the bill?

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

You had a question earlier. I wanted to put on the record that we have been working with Mr. Hambrick and Ms. McGrath regarding this bill. The reason for the verbiage designating animal control for determinations is that, in Nevada, we are all over the place when it comes to who is responsible for animal control and where. In some jurisdictions, it falls under the sheriff. In some, there are separate stand-alone animal control agencies. In Mesquite, where I live, the Chief of Police is responsible for animal control, but police officers are noncommissioned officers. We felt the language that designates animal control agencies is the best to cover that issue on a statewide basis. We want to support that.

Vice Chairman Ohrenschall:

I have an amendment from you in front of me. Is this a different amendment from the one Assemblyman Hambrick presented?

Frank Adams:

I had originally submitted that as a response to the original bill. I was asked by the Chairman to sit down and work this out and, as a result, the amendment that Ms. McGrath submitted ([Exhibit G](#)) was a compromise with us, and we are comfortable with the second amendment. It was my understanding that ours would be withdrawn.

Vice Chairman Ohrenschall:

Thank you. That clarifies the confusion. Are there any other questions from the Committee? I see none.

Tony Yarbrough, Director, Nevada's People for Animal Welfare:

I am responsible for planning and organizing. I was very specific in requesting the last amendment ([Exhibit G](#)). Moreover, I represent local kennel clubs, as well as the Bonanza Kennel Club and the Reno Kennel Club. I am the

American Kennel Club (AKC) liaison to those clubs for legislative purposes. I can tell you that I have received an email from the AKC directly supporting this bill with that language. I am in favor of passing this bill with the amendment.

Vice Chairman Ohrenschall:

Are there any other questions from the Committee?

Assemblyman Daly:

We added language to the original bill, and now we are taking it back out, but apparently with everyone's blessing. We are talking about the part that is in the bill, and I want to be clear. I know Ms. McGrath mentioned due process, but is what happens after the dog is declared dangerous or vicious elsewhere in *Nevada Revised Statutes* (NRS) Chapter 202?

Tony Yarbrough:

As I understand the way this is drafted, this provides us with due process that is not available to us otherwise. Also, it prohibits breed-specific language from any community or county, including the state. I believe there was a question raised about what kind of an issue this is, and how often this occurs. It is, unfortunately, true that we have knee-jerk reactions in various communities when we have a mauling or an issue that happens because of an irresponsible owner, or a person who does not care about a certain breed. We want to ensure that the person is held responsible and not specifically the breed.

Assemblyman Daly:

I understand that, and that is what this bill says. Once the animal is declared dangerous or vicious, it does not say in the bill what happens next. That is what I am looking for. Is that already somewhere else in statute? It is not in the bill. I am not seeing any process once it is declared vicious.

Tony Yarbrough:

My apologies. I think there are two amendments to what was written. Is that correct?

Vice Chairman Ohrenschall:

No. That was the confusion. There is actually only the amendment submitted by Assemblyman Hambrick ([Exhibit G](#)), which is a compromise between Mr. Hambrick, Ms. McGrath, Chief Woods, and Mr. Adams.

Tony Yarbrough:

I have to defer the response to the question since I am not sure of the appeal process that is put in place.

Vice Chairman Ohrenschall:

Perhaps one of the other witnesses will be able to answer that. Is there anyone else in support of the bill? Is there anyone neutral who would like to testify?

Terrance Shea, Deputy District Attorney, Civil Division, Washoe County District Attorney's Office:

As the bill was originally introduced, we were opposed to it for a couple of reasons. First, it would have added to the sheriff's workload. It seemed to be the only law enforcement agency that the bill was referring to. In Washoe County, we provide animal services on a regional basis throughout the county. The cities have repealed their ordinances. It seemed to me that the investigation would fall to the shoulders of the sheriff's office. It required that once a case was submitted by the law enforcement agency to the district attorney's office, we had to submit a complaint to the appropriate court. The reason we opposed that is it would undo part of the manpower and cost savings we were attempting to effect by creating a civil process to decriminalize the animal violations in Washoe County. Under NRS Chapter 244, the Legislature gave the Board of County Commissioners the authority to create a civil process for animal ordinances with just a couple of exceptions, dangerous and vicious dogs. But those exceptions do not include the original determination of a dangerous dog. We feel that is a civil matter, and that is how we handle it now.

At the present time, these cases all go to justice court. These cases arise from citations issued by animal control officers. I do not know where people's dogs are being taken without due process. We do not have a problem with the bill as amended. It seems that the main thrust of the case is to have specific language, which we do not object to.

Vice Chairman Ohrenschall:

I do not know if you have had a chance to see Assemblyman Hambrick's amendment, but it talks about "dangerous if after a hearing is conducted it is determined" What kind of hearing would that be, or how do you envision that proceeding?

Terrance Shea:

I can tell you how it proceeds now.

Vice Chairman Ohrenschall:

That would be great.

Terrance Shea:

We are in the transition period changing from criminal hearings to civil hearings. When it was a crime and went to justice court, it was handled like any other misdemeanor violation. There was no sentence involved. However, there was a court hearing, the district attorney prosecuted the case, and the owner of the animal showed up and brought witnesses. Some of these cases were the most vigorously defended misdemeanor cases on the docket. Surprisingly, they take quite a bit of time. There is also an appeals process just like any other misdemeanor conviction.

It is going to be the same, except with a civil hearings officer instead of a judge. There is a board of hearing officers who have volunteered, are trained, and are prepared to start hearing code enforcement violation cases going forward. There is also an appeals process for that determination.

I believe we are meeting our due process requirements, especially considering we are going to a civil forum instead of a criminal one.

Vice Chairman Ohrenschall:

You said it is a civil forum, so is it rare that people are charged with misdemeanors in this section, or does that ever happen?

Terrance Shea:

In which section?

Vice Chairman Ohrenschall:

The way NRS 202.500 is currently written.

Terrance Shea:

For the initial determination, the person will not be charged with a misdemeanor. Once the determination has been made, any violation of the requirements on the owner of a dangerous dog remains a crime. That is contained in NRS 244.359.

Assemblyman Hansen:

Are you aware of any prosecutions of dogs that are based solely on their breed?

Terrance Shea:

No.

Assemblyman Hansen:

So existing law handles that?

Terrance Shea:

The way the process runs in Washoe County, it does no good to make dangerous-dog determinations based solely on breed. There is a burden of proof that must be met in front of a hearing officer, and that does not include, "Your honor, this is a pit bull. I rest my case." That does not happen. I do not think you will hear anyone from Washoe County Regional Animal Services saying that is their policy.

Assemblyman Hansen:

I am confused because the only amendment I have seen is from Beverlee McGrath ([Exhibit G](#)). That is the only one that comes up in NELIS. I am not sure if we have reviewed all of the amendments. Ms. McGrath's amendment crosses out a line, "A dog may be declared dangerous by a law enforcement agency if it is used in the commission of a crime by its owner or keeper." Are you all right with getting rid of that authority? Apparently, you are the one who would make that determination.

Terrance Shea:

I have never seen a case like that. I think I would let the law enforcement agency speak to that. I have never heard of a case declaring a dog dangerous. I think law enforcement would ask an animal control officer to come and continue with that part of the case. We just repealed "riding a horse intoxicated," which was part of our ordinance. I have never heard of a case where someone was prosecuted for that. That was the only time in the existing language where there could be a *sua sponte* declaration of a dog being dangerous. As I read it, not much had to be displayed in the way of being dangerous. It just had to be part of committing a crime. The wording, as introduced, seemed to say a peace officer could declare a dog dangerous all on his own without a court hearing. I did not think that was a good idea. As it is amended, the language is better.

Assemblyman Sherwood:

For the record on adorable dogs, I have a St. Charles Spaniel.

The amendment that I am looking at right now says that a dog is dangerous or vicious when, without provocation, on two separate occasions within 18 months, it behaves menacingly to a degree that would lead a reasonable person to defend himself or herself against substantial bodily harm when the dog is off the premises of the owner. We had a cat, when I was growing up, that was attacked by two bully-breed dogs, not pit bulls, on our property. It turned out that the people actually had the dogs there because they were drug dealers. The dogs came onto our property, almost killed our cat, and under the law, as we just stated, we would have had to wait for 18 months to see if

it happened again. Are you comfortable with saying that dogs have rights above the cat they are about to kill? At some point, you have to give discretion back to law enforcement.

Terrance Shea:

I always think that is a good idea, but I am comfortable with the amendments because they took away the language I was opposed to. As far as the rest of the language in this bill, I would leave that to your discretion. The standard that has been used by justices of the peace in determining a dangerous dog has included the 18-month language. I think that is original statute language as it exists right now. If you want to take that out, that is not why I am here.

Assemblyman Sherwood:

I do not want dogs to have more rights than people.

Assemblyman Brooks:

In the case that I mentioned where the animal was killed on the owner's premises, in existing law, it is perfectly all right that a law enforcement officer deems the dog dangerous and shoots it if he feels there is a threat. Is that correct?

Terrance Shea:

I do not know the answer to that.

Assemblyman Brooks:

Based on what you just said, without this law in place, law enforcement can consider a dog vicious. I thought that was what you just stated.

Terrance Shea:

As the law exists right now, the very narrow exception to a hearing for a determination of a dangerous dog is if a peace officer believes a dog is being used in the commission of a crime.

Assemblyman Brooks:

Will this law still allow that, or would it force a hearing? Is there anyone who can help me with these questions?

Chuck Callaway, Police Director of Intergovernmental Services, Las Vegas Metropolitan Police Department:

If I understand your question, I think we are talking about two separate issues. One issue is if an officer is at a residence, and he is serving a warrant or trying to locate a suspect, and he is attacked by an animal at that residence, the officer has a right to defend himself. Defending himself may involve using

deadly force on an animal. That is separate from a situation where an animal is used by a perpetrator in the commission of a crime. In that case, in Clark County, we would detain the human and charge him with whatever he committed, and also call animal control to secure the animal. A hearing would be held under this amendment to determine if the animal was vicious, was used in the commission of a crime, and what action should be taken from there. I am not sure if that answers your question, but they are two different issues.

Assemblyman Brooks:

What about the issue where an officer is apprehending an individual alleged of a crime, jumps into the property of someone who has nothing to do with the issue, the dog happens to be in the backyard, and the officer shoots the dog in apprehension? What happens in that case?

Chuck Callaway:

Again, an officer has a right to protect himself. In the course of performing his lawful duties, and part of those duties involve him chasing a suspect through someone's yard, if he is attacked by a dog in that backyard, the officer has to be able to protect himself, even though the dog is only protecting his property. If the officer chose to use deadly force to stop that animal from attacking him, our own internal process for investigating the incident is to call out our Internal Affairs Division to do a full investigation. Recently, within the last year, we implemented what we call a "FIT," which is a Force Investigation Team. Anytime a police officer fires his weapon, the FIT responds and does an investigation, including the action the officer took against the animal. That is a self-defense situation where the officer is protecting himself from being attacked by the animal, which is separate from the animal being deemed vicious because it was used in a crime or it attacked the neighbor's cat.

Assemblyman Brooks:

Would this law also apply in determining if that particular animal that the law enforcement officer killed was vicious? The owner is saying that his dog is not vicious, he was in the backyard, and it got shot just because it was a pit bull. Is there any type of investigation that can occur involving that dog to determine if that is the truth?

Chuck Callaway:

Yes. That situation is different from the intent of this bill and amendment. However, the Las Vegas Metropolitan Police Department would do an internal investigation. We would look at all of the facts and circumstances to determine if the officer acted appropriately in his use of force against that animal. Based on the outcome of that investigation, we would determine if his actions were proper. In the case where our investigation deemed that the

actions were appropriate, but the homeowner still felt that they were not, the homeowner has other avenues to pursue, such as a civil remedy.

Assemblyman Frierson:

I appreciate the healthy discussion, but this has nothing to do with this bill. Am I off base?

Chuck Callaway:

You are absolutely correct. It is my belief that the issue raised by Assemblyman Brooks is separate from what this bill is trying to accomplish. This is more of an animal control issue in determining if an animal is vicious, whether it was used in the commission of a crime, or attacked the neighbor's dog or cat, as opposed to a use of force situation where an officer is protecting himself.

Assemblyman Frierson:

There has already been testimony that the language proposed to be stricken, "A dog may be declared dangerous by a law enforcement agency if it is used in the commission of a crime by its owner or keeper," is not a typical charge. If someone did commit a crime by using a dog, for example to attack, would that be more like battery with a deadly weapon or something like that, a separate charge?

Chuck Callaway:

Yes. First, let me say that those cases are very rare. In the time that I spent on patrol, maybe once or twice do I remember a call where someone sicced his dog on someone. To that effect, we would charge that person with assault with a deadly weapon, or battery with a deadly weapon. The deadly weapon in this case would be the animal that the person sicced upon the other person, or told to attack the other person. We would have to show that there was intent, that this person knew the animal would attack the other person, and intentionally sicced the animal on him. We would charge the person accordingly, and then animal control would be called to secure the animal. Then animal control's realm of expertise would determine if the animal is, in fact, vicious and what happens to the animal after that.

Assemblyman Frierson:

Does the city attorney, in addition to district attorneys, deal a lot with pet violations and determinations of dangerousness?

Terrance Shea:

In Washoe County, we have regionalized animal services, and in that process, Washoe County passed a unifying set of ordinances that operates throughout

the county to the territorial limits. The Cities of Reno and Sparks have each repealed its ordinance, which then opens the jurisdiction of the justice courts. In Washoe County, the answer to your question is, "No." It may be different in Clark County.

Vice Chairman Ohrenschall:

If someone's dog has been declared dangerous, do the police know it before they make a call at that house?

Chuck Callaway:

We do have a system in place where we put a "hazard" on residences through our dispatch. Typically, that is used when someone makes a threat that, if the cops ever go to his house again he is going to shoot them, or if we have a call where someone barricades himself. Potentially, if there were a case where an officer was attacked by someone's dog, and that homeowner sicced the dog on the officer, that could be put into the system that notifies us of hazards when we respond. I think that is the exception, rather than the rule. We do not usually know if an animal has been deemed vicious at a residence. In most cases, if an animal has been deemed vicious, animal control removes it from the residence so it would not be there when we respond. We would be on the front-end before an animal is deemed vicious.

Vice Chairman Ohrenschall:

When officers enter a situation where someone's dog attacks them, is their first response always to shoot the dog, or to spray the dog? What is the first line of defense?

Chuck Callaway:

The officers are going to react to try to stop the threat. We have had cases where officers have sprayed the dog with pepper spray, used their batons to try to ward the animal off, and some where the officer had to, unfortunately, shoot the animal. It varies case-by-case with the situation, and every situation is different. It also varies with the officer, and what level of force the officer feels is necessary.

Vice Chairman Ohrenschall:

Are there any other questions from the Committee? I see none.

Chris Schwamberger:

This might help. I do not have the statutes with me, but the determination that a dog is vicious or dangerous imposes upon the owner new requirements on keeping the dog. If a dog is determined to be vicious or dangerous, the owners are required to restrain the dog within enclosures. There is a list in the statute.

Basically, the dog gets "one free bite." If it is determined after that bite or attack that the dog is vicious or dangerous, it is incumbent upon the animal owner to keep the dog restrained in a way that it poses no more threats to the community. The dog is required to be kept in a kennel or in the house. That is the relevance of this determination. Other things have come up, torts, such as the police officer shooting the dog in the backyard. Police officers, along with any other person, can be liable for torts, or wrongs. They have certain defenses they can raise like anyone else. That is separate from these torts or criminal violations. The viciousness determination that we are talking about under this amendment depends on how the animal is restrained by the animal owner. If the owner does not restrain his animal, he can be charged with a misdemeanor. That is where the determination comes from, and these other assaults, wrongs, and torts are dealt with separately.

Vice Chairman Ohrenschall:

I want to make sure I understand. First, the dog is declared dangerous. Then the owner has heightened security requirements that he has to follow. If he fails, he would be subject to a misdemeanor.

Chris Schwamberger:

Yes. If that dog got out or was not restrained appropriately, there would probably be several charges against the owner, including the misdemeanor for failing to contain the animal properly under the requirements of the statute.

Vice Chairman Ohrenschall:

If the dog goes out and takes his second bite or attack, does the dog get euthanized?

Chris Schwamberger:

I am not sure. I know there is a court process, but I am not familiar with it. There is a court hearing and charges are brought.

Vice Chairman Ohrenschall:

Would you mind, Mr. Shea, going through what happens?

Terrance Shea:

The process following the dangerous-dog determination requires, among other things, the owner of the animal to obtain an insurance rider on the location where the animal is to be kept. The dog must be kept completely enclosed, either within the residence or in an approved enclosure in the backyard, such as a kennel that is periodically inspected by animal control. Then, the owner has to be in the immediate presence of the dog if it is outside of the enclosure or residence. It can be on a leash no more than 3 feet long. It is that type of

condition that the owner has to accept to maintain the ownership of that animal. If the owner is not willing to do that, the animal is taken by animal services and humanely euthanized. After the determination, if the owner violates those conditions, it would be the same outcome. We would go to court, ask for a seizure order, seize the animal, and euthanize it.

Vice Chairman Ohrenschall:

Thank you. Even though it was the owner's fault the second time for not keeping the dog locked up, the dog still gets euthanized.

Terrance Shea:

Yes, even if the dog dug out under the fence, and the owner did not know it. Then it is a neighborhood safety issue.

Vice Chairman Ohrenschall:

Are there any other questions from the Committee?

Assemblyman Daly:

All of those things that you just said, put the dog in a kennel and do this and that, are somewhere else in statute already. It was in this original bill, and is now being taken out by the amendment. That is why I asked. Is it in statute somewhere else?

Terrance Shea:

I cannot tell you what statute it is in. I know it is in a Washoe County ordinance. That is the process we follow. I believe it is in a statute, but I do not know what the number is.

Chris Schwamberger:

Yes. It is in statute. I do not have it with me, but it is in statute.

Vice Chairman Ohrenschall:

Is there anyone else wishing to speak in favor of the bill? I see none. Is there anyone neutral on the bill who wishes to speak? I see no one. Is there anyone opposed to the bill? I see none.

I will close the hearing on A.B. 324 and bring this bill back to Committee. I applaud everyone for their efforts to make sure our dogs get a fair shake. We have heard from many of the members about how close we are to our pets and do not want to see them destroyed unless they are truly dangerous.

I think there is work that needs to be done on this bill, so I would encourage everyone to get together, perhaps with our legal counsel, and work to ensure

the bill and the amendment get to where you want them to be. I am not sure you are meeting your goals the way the language is now.

We will take a recess [at 9:14 a.m.].

[Meeting reconvened at 9:32 a.m. and Chairman Horne reassumed the Chair.]

Chairman Horne:

We will open the hearing on our last bill of the day, Assembly Bill 379. This is Mr. Hammond's bill.

Assembly Bill 379: Establishes the crime of stolen valor. (BDR 15-1005)

Assemblyman Scott Hammond, Clark County Assembly District No. 13:

It is my pleasure this morning to present Assembly Bill 379, a bill that will establish the crime of stolen valor in this state.

In 2006, Congress passed, and the President signed, the Stolen Valor Act of 2005, which made it a federal crime to lie about receiving medals or decorations from the United States military.

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

Chairman Horne:

Thank you, Mr. Hammond. Are there any questions?

Assemblyman Segerblom:

You and I have talked about the Ninth Circuit Court opinion, and we have tried to differentiate this bill from it. Could you be more specific on how this is different from that decision?

Assemblyman Hammond:

In the Ninth Circuit case, the court determined the Stolen Valor Act of 2005 was too broad. The court said that it was not narrow enough. When talking about First Amendment rights, especially freedom of speech, it has to be very narrow. There is a specific litmus test. You have to prove that the speech is going to be malicious or cause damage or harm. It is like yelling, "Fire!" in a movie theater. People can get hurt because of that action. You have to say that you cannot use that type of language. The original Stolen Valor Act of 2005 was too broad. If a man goes into a bar and is trying to find company, he might tell a lady that he received a Distinguished Medal of Honor or something, but under the Stolen Valor Act, he could be prosecuted. But what did he gain? There are several examples, but it was just too broad. The Ninth Circuit Court

said the judges are not legislators, but if legislators revisited this, they might want to look at it again and make it more like a fraud case rather than something of value being given in exchange for that person's service, or supposed service.

Assemblyman Segerblom:

What is an example of getting something of value? Is it getting a discount at a store?

Assemblyman Hammond:

Absolutely. Every year on Veterans Day, Denny's gives free meals to veterans. If I go in and present my identification and claim that I am a veteran, they will give me a meal. That is something of value. You have claimed that you are a veteran, and you get a free meal.

Assemblyman Segerblom:

In that case, who would prosecute? Would Denny's prosecute, and would that be a misdemeanor?

Assemblyman Hammond:

I would have to defer to the Legal Division. What would that be under the law?

Nick Anthony, Committee Counsel:

It would be a misdemeanor the way the bill is written.

Assemblyman Segerblom:

Would Denny's have to complain, or who would be the complaining party?

Nick Anthony:

I assume there would be a complaint filed with the local law enforcement agency, and the complaint would be forwarded to the district attorney for prosecution.

Chairman Horne:

I have concerns on its constitutionality, even as the bill is written. We are taking it to another level. One example is that we have crimes against impersonating a law enforcement officer. One could say that it is free speech, and I am entitled to do that if I wish. The reason it is against the law is the inherent powers that a police officer has to take someone's liberty. The courts have seen that limitations on speech are warranted. When you get to that, what warrants the limitations of this speech? I agree with you that anyone who would impersonate someone who has served in the armed forces or alleges receiving medals that he has not is definitely despicable. We have people who

were in the military who claim they received awards that they did not really get. I believe there are also cases where active members are wearing ribbons that they did not receive. The military has its own rules for dealing with those people. The civilian world is different. We cherish the First Amendment right.

I see things in the first paragraph that talk about making representations with the intent to obtain employment, or an elected or appointed office. How is it different for persons who say they attended Harvard University? While Harvard has a certain distinction to it, one might ask why we cannot make that a crime since certain privileges come from graduating from Harvard or Yale University.

Assemblyman Hammond:

I understand your concern and I would be happy to ask the gentleman on my right to answer that question. I am presenting this bill on behalf of the veterans who have approached me. I do not know if I can speak to the constitutionality.

My father is a Vietnam veteran and we have spoken occasionally about this. To me, from the summation of those talks with my father, and the attitude of those who are here, we put our military veterans on a pedestal. We have in the past and, hopefully, will continue to do so in the future. There is something different about veterans. I have asked my father if he has seen a particular movie that represents military service in Vietnam, or World War II, and he says, "No. It is too real, and I prefer you do not either. I went through all of that so you would not have to." That is what I want to protect, the memory of having gone through what the veterans have gone through. We want to protect that more than other things.

I realize that does not speak to the constitutionality, and I would rather have the Lieutenant Colonel next to me address that issue.

Chairman Horne:

I hear you, Mr. Hammond. My father did two tours in Vietnam, came back with leukemia, and died before my 12th birthday. I get it. It has been difficult for me the last two sessions to oppose the military funeral protesting bill. While I find the activities that take place at those ceremonies abhorrent, I hold dear and have sworn an oath of office that this is one of the protections that we are here to protect. If it is not strong enough to stand on its own against despicable acts like that, it is not worth what we claim it is. I always question stifling speech because we find it despicable.

I would love to hear from the Lieutenant Colonel.

Bill Anton, Private Citizen, North Las Vegas, Nevada:

I would defer to Senator Halseth because she has to get back to committee.

Senator Elizabeth Halseth, Clark County Senatorial District No. 9:

I am here today to echo Assemblyman Scott Hammond's testimony and to put on the record that all 21 Nevada State Senators support the stolen valor bill.

Assemblyman Hammond:

I will introduce to my right Lieutenant Colonel Bill Anton, the first Nevadan inducted into the United States Army Ranger Hall of Fame. I have one more witness to bring up later.

Bill Anton:

Thank you for allowing me to testify. I also want to thank Assemblyman Hammond and Senator Halseth for presenting these bills before the Legislature. I also want to thank Brad Wilkinson from the Legal Division. We worked very closely to avoid any freedom of speech issues. This is based on fraud only, not freedom of speech.

You do not have a right to commit fraud. Freedom of speech will be addressed when it goes to the United States Supreme Court because that was appealed in the Ninth Circuit Court of Appeals with a 2-to-1 vote. The dissenting vote was by Judge Bybee, a former law professor at the University of Nevada, Las Vegas. He said the federal law was not against freedom of speech.

I digress. I want to thank the veterans who are here. They are here to echo this. Stolen valor is of epidemic proportion across the United States. We have Mr. Alvarez—that was the test case—who was convicted in state court because California also has a stolen valor statute. The Ninth Circuit said it was all right for Mr. Alvarez to say he was a Medal of Honor recipient, and it was all right for him to say that he was a retired Marine Corps Major General. In the decision, one judge wrote that it was all right to lie, cheat, and steal. We have laws against perjury, but if he advocates lying, what does that teach our children? What kind of value is that? I would say that it will have ramifications, even in the court. If a person impersonates a judge or a law enforcement official, he is put in jail. I understand that members of the Assembly and the Senate have badges to wear. You have a badge that says you are a member of the Legislature. How would you like someone else wearing your badge? The person does not have to say he is a member of the Legislature, but wearing the badge is like wearing a military award or decoration. That is fraud.

My question to you is: Should not the military and the veterans be accorded the same respect as judges and law enforcement officials? How many here on the

Assembly Committee on Judiciary have had military service? You will understand.

To address Chairman Horne's question, individuals on active duty who wear false decorations are punished under the Uniform Code of Military Justice. It is normally a reduction of rank, or the person is stripped of rank and dismissed from the service. Like your father, I had two tours in Vietnam. I was exposed to Agent Orange, so I understand what your father went through.

This bill is precise in its language and does not need to be expanded, reduced, or changed in any way. Some may say there are statutes for fraud, but there are none in the *Nevada Revised Statutes* (NRS) that address fraud for the military or veterans, and we are trying to rectify that here in this bill. This bill does not even touch on freedom of speech. It deals only with fraud.

I am the current president of my United States Army Special Forces Association, Chapter 51, in Las Vegas. You may not know that Special Forces is also known as the Green Berets. I had a call from a friend at the Red Rock Casino, and he said there was a guy in the bar wearing a green beret. Under this statute, that would be an emblem of Special Operations that we cherish. We earned that. It is like wearing a judge's robe while sitting in a bar. As ludicrous as that may sound, we feel offended. We feel violated when this happens.

We had a case in Las Vegas where a man was convicted in federal court for claiming the Purple Heart. He confessed in the pretrial agreement that he wrote the citation himself, sent it to the United States Air Force, the Air Force reluctantly gave him the Purple Heart, and that allowed him to get veterans benefits. He then defrauded the government of \$180,000. What was not in the newspaper was that people came forward stating that, while he lived in California, he claimed to be a Medal of Honor recipient in the Air Force. We provided the citation that he wrote when he was brought to court, but the prosecutor failed to file on time, so he could not be brought up on charges again.

There are compulsive people, whether it is insecurity or a need to feel important, who are claiming to be veterans. Mr. Alvarez, the individual who claimed to be a retired Marine Corps Major General and a Medal of Honor recipient, never had one day of service, active duty, reserve, or guard.

You asked a question about politics. We had an attorney general in the State of Connecticut who claimed to have been in Vietnam. He was in the Marine Corps reserve and should have been proud of that, but he claimed to have been

in combat with the Marines in Vietnam. Now he is the governor of Connecticut. We feel that is wrong; we feel it is fraud.

Did I answer your questions?

Chairman Horne:

I would like to talk about fraud. Fraud, in the legal sense, is when you misrepresent something and receive a benefit for it. The benefit is usually something substantial. It is not a breakfast at Denny's.

Bill Anton:

According to the attorneys that I have spoken with, it does not have to be substantial, although the federal prosecutor in this case, and in Las Vegas, claims that his minimum to prosecute is \$70,000. We feel that is selective prosecution. Is selective prosecution right, or is everyone equal before the law? What about the veterans? Do we not have rights? That is the question. If someone fraudulently gets something of benefit, it is a misdemeanor. Once we have some test cases and people are prosecuted for this, fraud will decrease because people will see we are serious. We have more than seven states that have their own laws, and there are five more, besides Nevada, that have bills before the Legislature as well. The federal law is not adequate to cover it and, as Assemblyman Hammond said, it is too broad. We are trying to narrow it down. You also have the United States Code (USC) that specifies what the consequences are for falsely wearing medals and misrepresentation. We do have federal legal precedence on our side. It is necessary that states have their own laws as well.

Chairman Horne:

I would like to hear testimony on how these crimes can be prosecuted. When I think of someone claiming to be a veteran, or that he received some type of service award, or has defrauded a group by receiving contributions for some shell charity, or something like that, I know that cannot be prosecuted under fraud.

I see Kristin Erickson from the Washoe County District Attorney's Office. Maybe she can answer the question for us.

Kristin Erickson, representing Nevada District Attorneys Association:

I do not know what the question is, but I will give it my best shot.

Chairman Horne:

Under existing Nevada law, if someone were to fraudulently misrepresent himself as a veteran to obtain a benefit, for instance, if I claim to be retired

Major General William Horne and I am raising money for a charity, and it is false, are there current laws that would aid you in prosecuting that alleged crime?

Kristin Erickson:

In my 19 years as a prosecutor, I cannot recall a case of this nature having arisen. There may be a law on the books, but I am not aware of one off the top of my head.

Chairman Horne:

Do you have further testimony, Mr. Anton?

Bill Anton:

I do. I would like to add that I urge the Assembly to adopt Assembly Bill 379 just as the Senate has 21 of the 21 Senators as cosponsors of Senate Bill 356. We need to close this loophole. You will see that the end of the bill shows a brief, small paragraph on improper use of insignia. It is not as specific, and this bill was drafted working with your legislative attorneys to ensure it was narrow and fit the fraud statute. There may be other fraud statutes, but there are currently none that address the military or veterans. This bill will correct that.

Assemblyman Frierson:

Thank you for your testimony. My father served in the United States Army before he passed away. I want to make sure I do not mischaracterize your testimony. My question is this: Is it your understanding and intent that, if someone falsely claims that he received the Medal of Honor, it is fraudulent and should be prohibited?

Bill Anton:

Yes, with the caveat that the person receives something of value. That is how it ties into fraud. For example, a man claims that he is a U.S. Army Ranger. The other man says, "I am a Ranger, too. Let me buy you lunch." He has received something of value. That is a misdemeanor if you can prove that he is not a Ranger. This bill also addresses documentation. There are people out there making fraudulent Form DD-214s. You know what that is. You can buy one on the Internet. When I say that it is of epidemic proportion, it is.

We had another individual in Las Vegas that I helped "bust." He came to the U.S. Army Ranger Association National Convention that we had in 2004 at the Riviera. He came to our banquet, and he was so brazen he wore his dress blues as a full colonel with Medical Service Corps piping. In the Army, we have different colors for what our duties are. I looked at it and he had a Combat Infantry Badge, which I earned, a Combat Medics Badge, a Flight Crew Badge, an Army Distinguished Service Cross, a Silver Star, a Soldier's Medal,

a Bronze Star, and a Purple Heart, among other decorations. I looked and thought, "Is that possible?" Maybe he was enlisted when he got some of the medals, and later got a commission, but I had never heard this gentleman's name. I went up to him and asked him who he served with in Vietnam. He stated it was the 25th Division and the 1st Cavalry Division. I served with the 101st Division and the 1st Cavalry Division myself. I asked him to talk about the 1st Cavalry, but he did not want to talk about it. Your antenna goes up when that happens. Then I asked him about the 25th Infantry Division, where he launched from, and he said, "Da Nang." Any of us who were in Vietnam know the 25th Infantry Division was never in Da Nang; that Division was only in Cu Chi. Right away I knew he was a phony, but we were going to get documentation. This was the most popular man at our convention, and everyone had photos with him because of his awards.

Assemblyman Frierson:

Excuse me, sir. I do not want to forget my point. It appears to be more the wearing of the badges. Is it your position that wearing the badges is committing fraud?

Bill Anton:

It is. By current statutes and the USC, it is fraudulent.

He did receive something of value, because he got a free meal. I went to one of my friends who is a Distinguished Service Cross recipient and was president of the Legion of Valor. We have the Medal of Honor Society and the Legion of Valor which consists of those who have the Medal of Honor, the Army Distinguished Service Cross, the Navy Cross, and the Air Force Cross. My friend checked him out. These documents are published by the Department of Defense, and the imposter's name was not in there. We knew we had him. Most of the phonies, we call them "wannabes," do not understand that we can check on them. That is a big problem. Does that answer your question?

Assemblyman Frierson:

I believe you did.

Bill Anton:

Please give the veterans the honor and respect that they deserve, and I ask the Assembly to give 100 percent support to the bill as the Senate has done regarding its bill.

Chairman Horne:

Do you have clarification, Ms. Erickson? You asked to come back to the table.

Kristin Erickson:

I do. As we know, criminal law is very fact-specific. After giving this a bit of thought, I think I can better answer the question now. There is a crime of obtaining money or property by false pretenses that we could potentially charge, given the actual scenario. Whether that is a misdemeanor or felony depends on the value. Currently, if it is under \$250, it would be a misdemeanor; \$250 or more would be a felony.

Assemblyman Sherwood:

Thank you for your service, Mr. Anton. I am looking at your polar bear photo, and it is very commendable. For the record, to mention part-time legislators getting the respect that you get is not accurate. You have our respect, and we cannot legislate respect. Please do not feel that, because there is no law, you do not have respect. You earned that a long time ago. I know that so few of us are in military service. Only 1 percent of the country actually serves in the military. As we get more advanced, we have fewer people who have that experience.

My question is: If it is the difference between getting the bill passed or not, would you be all right with amending it? The hang-up might be section 1, subsection 1, paragraph (a). The part that bothers you the most is that some man puts on a medal that he does not deserve and you want a remedy. The remedy is that you sniff him out and call him on it and he shrinks back into the shadows. To criminalize someone because he gets a free breakfast at Denny's is ludicrous. We work as hard as we can to not put folks who are stealing in jail. When you are getting a check or employment or defrauding the government solely based on your military service seems to be totally in line with what we do now. To criminalize someone for showing up at a convention with medals is unprecedented. If it were not military, it would not be a big issue. It is a sensitive issue, and I get that. The challenge is that we cannot legislate respect that was earned, and you earned it, and you have our respect. If it is the difference between getting something passed or not, we have to make an allowance for the guy who shows up to get a free drink.

Chairman Horne:

Is there a question or a proposed amendment, Mr. Sherwood?

Assemblyman Sherwood:

Yes. Would you give a little "wiggle room" on section 1, subsection 1, paragraph (a), with the threshold wherever it is now? I think it is \$250 and going up. If someone can scam his way into a \$20 night at the pub, good for him. But if it is above the dollar threshold, we should prosecute him to the full extent of the law.

Bill Anton:

That is a very interesting proposition. I would say that we have members of the Nevada National Guard and the U.S. Army Reserves and on active duty from the great Silver State of Nevada that would probably tar-and-feather me if I agreed to that. One of the reasons is that we have seen, since the Gulf War, and particularly since Operation Iraqi Freedom and Operation Enduring Freedom, greater participation by our Guard and Reserves than ever before. I laud these citizen soldiers for doing this. You say we have respect, and it is greater now than I have seen in my lifetime. I am a Vietnam veteran. We did not have that respect. When we came back from Vietnam no one wanted to be us. Now, everyone claims to be us. We take umbrage to that. I would tell you that I do not know how we could make it different but still not lose its effect.

Chairman Horne:

Let us go to Mr. Ohrenschall and then Mr. Hansen.

Assemblyman Ohrenschall:

Thank you, Lieutenant Colonel and Assemblyman Hammond for bringing this bill forward. I have a couple of questions. The first one has to do with the Nevada Office of Veterans Services. Since I was elected, I have worked with them quite a bit and have seen them help homeless veterans. I have seen them help veterans who are not getting the benefits they need, such as being able to qualify for surgery. Does the Office of Veterans Services have any role in this now if you notice someone wearing something he is not supposed to be wearing?

Assemblyman Hammond:

I have Caleb Cage here from Veterans Services. I would like to have him come up and answer that question for you.

Caleb Cage, Executive Director, Office of Veterans Services:

If I understand your question correctly, you are asking if there is any verification process or any sort of awareness or approval process that comes through the Office of Veterans Services regarding stolen valor.

Assemblyman Ohrenschall:

I was wondering if you have any role regarding stolen valor. If someone notifies your office that there was a gentleman at the Red Rock Bar wearing a green beret, and he did not know anything about this or that, do you have a role in contacting district attorneys? Do you take those types of reports?

Caleb Cage:

If I understand correctly, not formally. Our statute is clear regarding our organization and what we are supposed to do. We have three primary functions: the veterans' home, state-run federal cemeteries, and the veterans services offices. However, we are a coordinating resource. We are the state advocate. We are the resource between all of the different veterans associations throughout the state. We would probably hear the information and be a communication source to others, but we have no legal statutory role in that.

Assemblyman Ohrenschall:

I had a constituent that I helped who was a World War II veteran and had never gotten any of his medals. We worked with your office and the office in Washington, D.C., to try to get him the medals he had earned. Do you think if this passes it would dissuade anyone from trying to get the medals that he is entitled to?

Caleb Cage:

No.

Assemblyman Hansen:

I think we are overlooking the real value in this bill. This bill is symbolic. We are talking about property, money, and meals at Denny's, but what is being stolen is the honor that has been earned. That is the real reason I cosponsored this bill. Frankly, if they steal something at Denny's, who cares? What you have earned—honor-wise, valor-wise—is what this bill is about. While we talk about fraud and all of those things, the real purpose of the bill is to let everyone know that we, in this Legislature, honor you, and support you in defending your honor. I do not care if someone wears a ribbon improperly. What he is really doing is disgracing your honor above any money or property that can be earned. That is something that we cannot place a dollar value on, so we cannot statutorily punish people for it. That is why this bill is so symbolically important, to ensure that you understand that we want to protect your honor more than meals at Denny's or anything.

Bill Anton:

We all concur with that. We also are very intent on the fraud issue, as well. We could not come up with the wording for the honor that you so eloquently stated. We feel that our honor has been besmirched.

Assemblyman Hansen:

Exactly, and that is what the purpose of this bill is.

Assemblyman Hammond:

Those words are very nice, and I understand that people get passionate about it, but bring it back to what is germane here. We wanted to ensure we are in compliance with the directions of the Ninth Circuit Court, and that is to make sure we are talking about fraud. Someone must have gotten something for it. That was and is the intent of the bill.

Assemblyman Daly:

I have a technical observation, assuming we get past the rest of the hurdles. I did not see anywhere in the language that whatever penalties you might have in here would be in addition to the underlying fraud. You do not want to end up having only one penalty that you can give and the person gets off scot-free for the fraud that was committed. You need to include that. The other side of it is that I am not against veterans, but I could only support it as an aggravating factor or something in the underlying fraud prosecution. That is as far as I could go with it.

Chairman Horne:

Are there any other questions for the panel at the table on A.B. 379? I see none. Is there anyone else who would like to testify in favor of the bill?

Assemblyman Hammond:

Yes, I have one more witness. Sergeant Major Wayne Willson wants to give a "me too" for the record.

W. Wayne Willson, Private Citizen, Carson City, Nevada:

I spent 43 years 4 months in the U.S. Army National Guard. I joined very young, and got out when I was 60. It was continuous service. I am very involved with the veterans groups.

I would like to take a different track on this. You said your father was in the service and your mother is a widow?

Chairman Horne:

They divorced before his death.

Wayne Willson:

We have a lot of widows that I work with in the veterans groups. When we talk about fraud, the widows are very vulnerable. Many of these widows whose husbands served in the military become very compassionate when someone says he is a veteran. They want to help the veteran. My job is to watch the widows. If the person actually is a veteran, the widow can do whatever she wants. I get a lot of "wannabes" that want to defraud these

women and take advantage of their resources. That is what I would like to stop. The real veteran understands that we are a family, so he does not do that, but the "wannabes" and "leeches" want to get money or cars, et cetera, from them. It is not the Denny's meals; it is the higher value items. I see that happening, and we need to stop the fraud that is happening. It breaks my heart when I see a widow get "milked out" of some of her money. Most widows are on pensions, but they try to help other people.

Chairman Horne:

Are there any other questions from the Committee? I see none. Is there anyone else wishing to testify in favor of A.B. 379?

Frank Reynolds, Private Citizen, Carson City, Nevada:

I am a retired Marine with 20 years of service. I was a Gunnery Sergeant. I am also the current Commandant of the Marine Corps League in Carson City. I was part of the stolen valor movement back in 1991 in Texas. When the governor appointed a man who claimed to be a Vietnam veteran and a Silver Star winner, as director of the Veterans Administration for the State of Texas, it did not take long for many of us to figure out that he had never been to Vietnam. First, he was three years younger than me, and I was one of the last guys to leave Vietnam at 18 years old. I knew that if he was younger than me, he was not in Vietnam. It took us three months to find out everything. Governor Ann Richards was embarrassed and called for his resignation. He took off that day and has not been seen since. Is he trying to pull the same scam somewhere else? I do not know.

This law is going to make those people responsible for their actions: their actions, not mine. Since you brought up Harvard, if I went to a Harvard club to have dinner and someone discovered that I was not part of Harvard, I would probably be arrested and have to pay a fine or something. I do not know where Harvard is, but I am sure it would have me arrested before I got out. We had laws drafted in the 1930s that said you cannot be a lawyer unless you go to law school and pass the bar. If you pull this fraud, this is the law that you are breaking. In the 1920s, it was the same for doctors. Fraud laws were drawn up by each state that said a person could not claim to be a doctor or it is fraud. I have supported and defended the United States and its *Constitution* and I still will. If they say it is their right to lie, then it is their right to lie. I will defend that as I would the person's right to step on the American flag because it is still not a law to disgrace it.

When you take the extra step and show us that our honor is not going to be stolen by closing the loophole that these fools play with all of the time, you honor me and all of my brothers and sisters who served with me. You honor us

all by closing this loophole. Yes, there is the question about it being against constitutional freedom of speech. I do not think so. The impostor has taken a step farther by trying to grab something of value with it. Law enforcement is not going to go after everyone who goes to Denny's for lunch. I know that and you know that. But we are going to go after those people who continue to do this for other monetary values. If we get rid of section 1, subsection 1, paragraph (a), and not go after him when he is wearing a uniform, and if he gets a job over another veteran because of his lies, it is still fraud. You have a lot of real veterans trying to get jobs right now. You have "wannabes" looking also. Please close the loophole so the "wannabe" cannot take the job, and give our veterans a chance.

When I put in my 20 years in the Marine Corps, I did not have anything to look forward to when I got out. I could guard someone; I had been taught how to kill. What does that transfer over to in civilian life? They passed laws to help me get a job, and to help me get training. Now, gentlemen, it is your turn to help. Other states are going to take up this banner, and they have, but Nevada is going to be the first one to say this is fraud, and we are going to stop it. I am proud of you for doing this.

Chuck Callaway, Police Director of Intergovernmental Services, Las Vegas Metropolitan Police Department:

Our agency supports A.B. 379. I have the upmost respect for, and thanks to, our veterans who defend our country. Many of our agency's employees are veterans. We give preference points when hiring. We have had cases where people have claimed that they served in the military or received awards to try to get employment, and we believe this bill will help with that. We support this bill.

Chairman Horne:

Are there any other questions from the Committee? I see none. Is there anyone else who wants to testify in favor of the bill? I see no one. We will move to the opposition. Is there anyone here opposed to A.B. 379?

Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada:

Before I begin my testimony, I want to say that I agree with the sponsor of the bill and its intent to directly relate to the honor of our veterans. I could not have said it more eloquently than Assemblyman Hansen.

We, unfortunately, cannot statutorily protect honor. Insofar as that is what this bill seeks to do, I am afraid that it is not possible. We think that freedom means that we should have to put up with distasteful things. I think that these

veterans would agree. They have gone through things that I cannot even imagine, nor dare to try, in an effort to protect that freedom. Even if someone is lying and bragging about something he did not receive, the First Amendment does say that it is okay unless there is demonstrable harm. We believe, like the Ninth Circuit Court believes, that Congress could come up with a remedy to that Stolen Valor Act that was challenged. It is our belief that this proposal does not do that. The main reason is that the penalty is not based on what is gotten by someone, but rather on the medal that someone says he has gotten, or the type of service that he purports to have participated in.

While honoring veterans and the sacrifices and contributions they have made to our freedom is very important, and should never be diminished, we think this legislation is not the best method of going about that. As the Committee is aware, the Ninth Circuit Court declared the Stolen Valor Act unconstitutional in its recent ruling in *United States v. Alvarez*, 617 F.3d. 1198 (2010) ([Exhibit I](#)). That case directly dealt with *United States Code, Title 18, Section 704(b)*, of the Stolen Valor Act. In that decision, the Ninth Circuit relied heavily on the recent United States Supreme Court decision, *United States v. Stevens*, 130 S.Ct. 1577, 1584 (2010), which noted that there are a few limited categories of expression that are left unprotected by the First Amendment. False speech, standing alone, is not among them. In order for false statements of fact to fall outside constitutional protection, there must be some palpable harm. Defamation and fraud are examples of that type of unprotected speech.

Assembly Bill 379 attempts to create a Nevada version of the Stolen Valor Act by creating what the proponents of the bill have explained as an attempt to create an antifraud statute. As drafted, we believe it is problematic and does not actually accomplish that because the bill criminalizes falsely representing the receipt of a military medal or decoration through either written or verbal expression, or by wearing such items to obtain something of value. Unfortunately, the phrase "something of value" is not defined. There is no monetary amount set forth in the bill, nor does something of value have to be monetary value. In Judge Kozinski's concurrence to the Order Denying Rehearing, because the Ninth Circuit denied rehearing in *Alvarez*, he enumerated many types of false assertions of fact that are constitutionally protected. Virtually all of these involved something of value to the speaker, whether monetary or not. Adding that phrase "something of value" to the Stolen Valor Act does not save it from being unconstitutional from our perspective.

Clearly, this is an issue of fraud. From our perspective, existing law already covers such crimes, and I think the representative from the district attorney's office spoke to that. Punishments for fraud convictions tend to be based on the

amount that was fraudulently obtained. This bill turns that premise on its head because the amount of value is actually irrelevant to the severity of punishment. Instead, punishment is based on which military honor the individual is falsely claiming. Thus, someone who is able to obtain \$10,000 by claiming he is a veteran is guilty of a misdemeanor under section 1 of this bill. In contrast, someone claiming to have been awarded the Medal of Honor is guilty of a Category E felony regardless of whether the benefit was receipt of a pack of gum or some other type of award that was something of value. Therefore, this runs counter to Nevada laws concerning obtaining money under false pretenses. This is the same issue that the district attorney's office brought up.

This is more of a question which was not addressed by the Ninth Circuit. It is not clear whether the State of Nevada has the jurisdiction to address this issue due to federal preclusion. Outside of general fraud laws, regulations concerning military medals and honors are generally considered the province of the federal government. The federal government certainly has the authority to pass amendments to the Stolen Valor Act in order to address those issues decided by the Ninth Circuit. From our perspective, 50 different states coming up with different versions of portions of a federal act that have been deemed unconstitutional is probably not the wisest course.

Before the hearing, I did speak with the sponsor of the bill and let him know that the Ninth Circuit decision specifically declared 18 U.S.C. 704(b), of the Stolen Valor Act, unconstitutional, although the decision was a bit nebulous about the unconstitutionality of the entire thing. I think it is important that the Committee know that the Ninth Circuit will again be addressing a portion of the Stolen Valor Act in a few months and that is section (a). With that decision, the Legislature next session may have a better idea of the Act in its entirety. I will also note for the record that a district court in Colorado has found both sections unconstitutional.

We appreciate the respect and attention paid to this issue. I certainly hope that none of the honorable veterans sitting in this Committee take this testimony to mean that the American Civil Liberties Union (ACLU) does not respect the honor that you do deserve for your service, but as many of you have put on the record, that honor is something that cannot be codified. Given that, we need to make sure what is put into statute is constitutional.

Assemblyman Sherwood:

I have the same question that I asked Mr. Anton. If we narrow down the demonstrable fraud and say at "X" dollars this is the penalty, I believe that was your point. Forgetting about 50 states having 50 laws, if that language is not there, and we can define it, does that address your primary concern?

Rebecca Gasca:

I need to make clear that the 50 different states reference is directly in relationship to this and how the federal government deals specifically with federal honors. That is why I was saying it may not be the prerogative of individual states to make laws regarding federally bestowed honors. It is a different context, another kind of ability for the state to make its own laws. This type of federal preemption thing is certainly questionable in many different aspects, not just in general what the state's prerogative is to do within its borders, but how it addresses federal issues. I do not think that can be left alone in its entirety, but I appreciate your stance on that.

As for addressing section 1, subsection a in the Stolen Valor Act, that is something I would like to see in writing. Because of the constitutional import of this issue, it is something I would pass on to our legal department since I am not an attorney. I think your concerns coincide with ours insofar as there needs to be some thresholds and it should be upon what is obtained rather than the differentiation of how it was obtained. That is where the problem lies.

Assemblyman Hansen:

On this particular issue, does the ACLU really take the position that someone who wears the Medal of Honor should not be more severely punished in committing an act of fraud than someone who just pretends to have been in the military? Do you have any idea what it takes to earn the Medal of Honor? We, the Committee, talk about different levels of penalties based on severity. In this bill, we break it out because the value of someone who has earned the Medal of Honor is so high, I have no problem at all having it be a category C felony. I have a problem with the idea that we do not have the right to break this out, but that we have to lump everything together. I would be honored if the State of Nevada would take this to the Supreme Court. I wish we could sign on and say, "Let us do it." We need to have our Attorney General sign on and take it to the Supreme Court. Let them define this.

Rebecca Gasca:

I think this is a good opportunity to let the Committee and those honorable veterans sitting in this room know that the ACLU's position about the constitutionality of speech often has nothing to do with our sentiments as individuals. I think that is not honored or respected enough. That is one of the most difficult parts of my job. We are often vilified for the positions we take because of the inherent emotion attached to them, and for some reason people equate that with our position itself regarding law. I want to make it clear that our position is related to the constitutionality of speech, and we certainly agree with the sponsors that the honor of the veterans is something that we cannot legislate.

To address your concerns about the type of medal versus service, frankly, I think there are many honorable ways to reflect upon service of different individuals. I am not here to say one is better than the other. The Nobel Peace Prize, for example, if someone purports to have won that and gets something of value, the same constitutional issues would arise. If we were to replace the veterans' medals with honor awards, the constitutional issues at the core would still be problematic. I do agree that we look at different types of effects of different crimes, but here at its core is the palpable harm. That is what the Ninth Circuit said and it based that on the U.S. Supreme Court's decision on the First Amendment. When you look at fraud, it has to be palpable harm. That harm is not necessarily how a person allows for that harm to happen, but rather the harm itself.

I am not sure if I am answering your question. Again, I am not an attorney, and this is why I will be passing on the sentiments of the Committee, and the suggestion of Assemblyman Sherwood, to our legal department. I will summarize by saying that the challenge that will be heard in a few months at the Ninth Circuit Court regarding section (a) of the Stolen Valor Act actually is originating from the State of Nevada. I would encourage the Committee to watch that as it is heard and a decision is made.

Chairman Horne:

Thank you. While I do not always agree with the ACLU and its positions, I can say it is always consistent in its positions and what it does. I give the appropriate respect for that, and I always know where they are coming from. It does not change.

Assemblyman Ohrenschall:

You mentioned the potential for a hodgepodge of different state laws if all 50 states and territories passed their own laws on valor. They would not be the same. Do you think it is possible, if that happened, that someone who lived in Arizona, and received certain medals and decorations that were not considered illegal under Arizona law, but then travels to Nevada and Nevada law, because it is different, would make him a criminal here?

Rebecca Gasca:

I understand the line of logic and, yes, I think that is at the core of why this could be problematic. If one person does something in the State of Arizona and purports to be a veteran having achieved "X" medal, maybe it would not be deemed a felony or another type of crime, but he could certainly go to another state where it would be. That is the problem, especially when you are dealing with issues that originate from federal purview.

Chairman Horne:

We do have laws in Nevada that may not be legal in our neighboring jurisdictions. For clarification, there are certain service ribbons that you receive in the military, whether active or reserve, and no matter what state you are in, the ribbons are the same. The order of rank and seniority is going to be the same in all states, and will not be a violation of some state's statutes.

Rebecca Gasca:

To clarify the point, that is certainly true. What we are saying is that it is probably not the best course of action to have Nevada create its own definition of which of those are all right to impersonate by law, while Arizona does something else on which of those are okay to impersonate. That is why the core issue should be the fraud itself, the palpable harm of having committed that fraud and what was received, rather than which of those are all right to impersonate and under what circumstances. It should be left up to Congress to decide to amend the Stolen Valor Act.

Chairman Horne:

Are there any more questions for Ms. Gasca? I see none.

Is there anyone else who wishes to testify in opposition to A.B. 379? I see no one. Is there anyone who is neutral on the bill?

Wayne Willson:

As clarification on the Congressional Medal of Honor, I do not know if you are aware that all airlines give free passage to Medal of Honor recipients. Most of the hotels will also give them free rooms if they can prove they are Congressional Medal of Honor recipients. There are many other benefits, too. I just wanted to add that since you were asking about value. I would guess that some of the other awards also get benefits.

Assemblyman Hammond:

I wanted to say thank you for listening to the testimony and I could not have said it any better than the men and women who have testified on behalf of the bill.

For the record, this is not the Stolen Valor Act of 2005 that Congress passed. The Ninth Circuit Court said it was unconstitutional. The Court gave some advice to future legislative action and said to make this narrow in scope and direct it toward fraud, which we have done and are trying to get back to. The intent is fraud, where you have gained or received something of value. I understand that we may need to tighten up that language. This bill deals with fraud, it is narrow in scope, and we worked closely with the Legal Division of

the Legislative Counsel Bureau to ensure it was nothing like what was overturned by the Ninth Circuit Court. When you heard the testimony from the ACLU, many times you heard the word "perspective," from their "perspective." Ms. Erickson also said that her language interpretation was that it "might" be. Each Committee member might want to speak to the district attorney and, again, when you talk about "might be" or "those kinds of cases," as you know, it does not mean that it will be prosecuted.

This will tighten the loophole. We have heard that over and over again. It will ensure those who perpetrate fraud by acting as if they were in the military, demonstrably or any other way, are stopped. We are going to be able to prosecute them if they obtain something of value, like a free flight. Now that I think about it, a free flight does not sound so bad. Maybe we need to think about this bill a little bit longer.

Regarding the "hodgepodge" of bills, you are absolutely right. For example, you can go from here, where you can talk on your cell phone while driving, and drive over to California and get pulled over and not realize what is happening. In California, you have to have a Bluetooth or something that makes your phone hands-free. In Texas, although your service rewards are gained through a branch of the military, there is a law that, if you have been wounded, you get a percentage off a home loan. Military service gives you so much of a percentage, being wounded gives you so much more, and there is a hodgepodge of laws that give accolades and rewards to our veterans, as well.

Chairman Horne:

I appreciate your bringing this bill, Mr. Hammond. I do have some concerns. I would like to have this bill focus on the fraud area. I have an issue with legislating because people are offended. Honor has been earned and no one can take it. It will be with the person to the grave. But, I would like that narrowed down, as it is a slippery slope.

I imagine someone saying that he was a first responder at Ground Zero on 9/11, and he did this and that. Then the next thing we know, we would have all first responders saying it should be illegal to say you are a first responder, if you are not. Do you see what I am saying? Everyone has events or duties in our lives where others show us high regard. I do agree that if you are using a title that you have not earned, or a service that you have never performed to obtain something or defraud, if it is not in law, we need to fix it.

Assemblyman Hammond:

I agree. I would love to work more with you on that. I think it is an important part. I would like to see this pass out of Committee, and our body, and be

signed as a message to Washington, D.C., that we are still very much interested in this. We want to protect valor.

Chairman Horne:

I see no more questions. We will close the hearing on A.B. 379. There is no other business to be brought to the Committee today.

Assemblyman Ohrenschaal:

Your Subcommittee on homeowners associations is meeting late this afternoon.

Chairman Horne:

You get to have all of the fun.

All exhibits on NELIS that were not discussed will be included in the record [([Exhibit J](#)), ([Exhibit K](#)), ([Exhibit L](#)), ([Exhibit M](#)), ([Exhibit N](#)), and ([Exhibit O](#))].

Meeting is adjourned [at 10:55 a.m.].

RESPECTFULLY SUBMITTED:

Karyn Werner
Committee Secretary

APPROVED BY:

Assemblyman William C. Horne, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 7, 2011

Time of Meeting: 7:48 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 321	C	Assemblyman John Ocegüera	Written Testimony on the Right to Self-Defense
A.B. 321	D	Rebecca Gasca	Proposed Amendment Letter Dated March 31, 2011, from the Nevada Attorneys for Criminal Justice
A.B. 348	E	Doug Edwards	Written Testimony in the Form of a PowerPoint Presentation
A.B. 348	F	Doug Edwards	Proposed Amendment
A.B. 324	G	Assemblyman John Hambrick	Proposed Amendment
A.B. 379	H	Assemblyman Scott Hammond	Written Testimony
A.B. 379	I	Rebecca Gasca	Copy of Court Case
A.B. 321	J	J.L. Rhodes, Stillwater Firearms Association	Letter Dated April 6, 2011, from Stillwater Firearms Association
A.B. 321	K	Carolyn Herbertson, National Rifle Association of America	Letter Dated April 5, 2011, from the National Rifle Association of America
A.B. 324	L	Sarah Sprouse, American Kennel Club	Letter Dated April 5, 2011, from the American Kennel Club
A.B. 324	M	Best Friends Animal Society	Information in Support of A.B. 324 on Dangerous Dogs
A.B. 324	N	Beverlee McGrath	State Statutes Regarding Dogs
A.B. 379	O	Lisa Rasmussen, Nevada Attorneys for Criminal Justice	Letter Dated March 31, 2011, from the Nevada Attorneys for Criminal Justice