

(2) Since this heinous tragedy, the citizens of Jasper, from all segments of the community, have come together to condemn the killing and honor the memory of Mr. Byrd.

(3) The Sheriff of Jasper County, Billy Rowles, spoke for the community when he appealed that the nation not "label us because of this random, brutal act."

(4) Mr. and Mrs. James Byrd, Sr., called for "justice and peace," asking that "we . . . get this over and put this behind us."

(5) The community's response reflects the spirit that other communities across the nation have shown in the face of recent incidents of random and senseless violence.

SEC. 2. CONDEMNING THE KILLING OF JAMES BYRD, JR., AND COMMENDING THE COMMUNITY OF JASPER.

The Senate—

(1) condemns the actions which occurred in Jasper, Texas as horrific and intolerable, to be rejected by all Americans;

(2) expresses its deepest condolences to the Byrd family for their loss and the pain it caused;

(3) notes the strong religious faith of the Byrd family, under the inspired leadership of James Sr., and Stella Byrd, and the Reverend Kenneth Lyons, Pastor of the Greater New Bethel Baptist Church, that has helped the family through this most trying time;

(4) sees in the Byrd family reaction to this tragedy the inspiration for hope, peace, and justice in Jasper and throughout the United States;

(5) commends the leadership shown by Jasper County Sheriff Billy Rowles, City of Jasper Mayor R.C. Horn, and other community leaders in responding to this tragedy;

(6) urges that law enforcement officials at all appropriate levels continue with the full and fair investigation into all of the facts of the case;

(7) urges prosecutors to proceed with a fair and speedy trial to bring the perpetrators of this outrageous crime to justice.

AMENDMENTS SUBMITTED

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

GORTON AMENDMENT NO. 2705

Mr. GORTON proposed an amendment to amendment No. 2437 proposed by Mr. DURBIN to the bill (S. 1415) to reform and restructure the processes by which tobacco products are manufactured, marketed, and distributed, to prevent the use of tobacco products by minors, to redress the adverse health effects of tobacco use, and for other purposes; as follows:

At the end of the pending amendment, add the following:

SEC. . LIMIT ON ATTORNEYS' FEES.

(a) FEES COVERED BY THIS SECTION.—Notwithstanding any other provision of law, or any arrangement, agreement, or contract regarding attorneys' fees, attorneys' fees for—

(1) representation of a State, political subdivision of a state, or any other entity listed in subsection (a) of Section 1407 of this Act;

(2) representation of a plaintiff or plaintiff class in the Castano Civil Actions described in subsection (9) of Section 701 of this Act;

(3) representation of a plaintiff or plaintiff class in any "tobacco claim," as that term is defined in subsection (7) of Section 701 of this Act, that is settled or otherwise finally resolved after June 15, 1998;

(4) efforts expended that in whole or in part resulted in or created a model for programs in this Act,

shall be determined by this Section.

(b) ATTORNEYS' FEES.—

(1) JURISDICTION.—Upon petition by the attorney whose fees are covered by subsection (a), the attorneys' fees shall be determined by the last court in which the action was pending.

(2) CRITERIA.—In determining an attorney fee awarded for fees subject to this section, the court shall consider—

(A) The likelihood at the commencement of the representation that the claimant attorney would secure a favorable judgment or substantial settlement;

(B) The amount of time and labor that the claimant attorney reasonably believed at the commencement of the representation that he was likely to expend on the claim;

(C) The amount of productive time and labor that the claimant attorney actually invested in the representation as determined through an examination of contemporaneous or reconstructed time records;

(D) The obligations undertaken by the claimant attorney at the commencement of the representation including—

(i) whether the claimant attorney was obligated to proceed with the representation through its conclusion or was permitted to withdraw from the representation; and

(ii) whether the claimant attorney assumed an unconditional commitment for expenses incurred pursuant to the representation;

(E) The expenses actually incurred by the claimant attorney pursuant to the representation, including—

(i) whether those expenses were reimbursable; and

(ii) the likelihood on each occasion that expenses were advanced that the claimant attorney would secure a favorable judgment or settlement;

(F) The novelty of the legal issues before the claimant attorney and whether the legal work was innovative or modeled after the work of others or prior work of the claimant attorney;

(G) The skill required for the proper performance of the legal services rendered;

(H) The results obtained and whether those results were or are appreciably better than the results obtained by other lawyers representing comparable clients or similar claims;

(I) The reduced degree of risk borne by the claimant attorney in the representation and the increased likelihood that the claimant attorney would secure a favorable judgment or substantial settlement based on the progression of relevant developments from the 1995 Williams document disclosures through the settlement negotiations and the eventual federal legislative process;

(J) Whether this Act or related changes in State laws increase the likelihood of the attorney's success;

(K) The fees paid to claimant attorneys that would be subject to this section for the provisions of subsection (3);

(L) Such other factors as justice may require.

(3) EFFECTIVE DATE.—Notwithstanding any other provision of law, this section shall not apply to attorneys' fees actually remitted and received by an attorney before June 15, 1998.

(4) LIMITATION.—Notwithstanding any other provision of law, separate from the reimbursement of actual out-of-pocket expenses as approved by the court in such action, any attorneys' fees shall not exceed a per hour rate of—

(A) \$4000 for actions filed before December 31, 1994;

(B) \$2000 for actions filed on or after December 31, 1994, but before April 1, 1997, or for efforts expended as described in subsection

(a)(4) of this section which efforts are not covered by any other category in subsection (a);

(C) \$1000 for actions filed on or after April 1, 1997, but before June 15, 1998;

(D) \$500 for actions filed after June 15, 1998.

(c) SEVERABILITY.—If any provision of this section or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this section and the application of the provisions of such to any person or circumstance shall not be affected thereby.

AUTHORITY FOR COMMITTEE TO MEET

SUBCOMMITTEE ON ADMINISTRATIVE OVERSIGHT AND THE COURTS

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the Subcommittee on Administrative Oversight and the Courts, of the Senate Judiciary Committee, be authorized to meet during the session of the Senate on Monday, June 15, 1998, at 2 p.m. to hold a hearing in Room 226, Senate Dirksen Building, on: "S. 1166, the Federal Agency Compliance Act," and "A Review of the Judgeship Needs of the 10th Circuit."

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

TRIBUTE TO DR. ERNEST TOMASI

• Mr. LEAHY. Mr. President, the real treasure of our state of Vermont is the people who make up our special state. One whom I have known all my life is Dr. Ernest Tomasi of Montpelier. It seems from the time I was a youngster, we knew the Tomas, and partly because like Dr. Tomasi, my mother was an Italian American who knew almost every Italian American family in the area.

Dr. Tomasi was a true hero of WWII, but like so many, rarely ever spoke about what he did. In one rare instance, he was interviewed for The Times Argus, and I ask that the article be printed in the RECORD.

I also want to applaud his dedication to the people of Montpelier. Many, many of those from my hometown received medical help and, when many could not pay for it, they received it as a gift from Dr. Tomasi. He was a hero abroad, but he has also always been a hero at home.

The article follows:

[From the Times Argus, May 30, 1998]

MONTPELIER VET RECALLS HIS SERVICE

(By David W. Smith)

MONTPELIER.— Dr. Ernest Tomasi likes to tell the story of the bravest act he witnessed on the European fields of battle during World War II.

It was shortly after the invasion of the French coastline at Normandy by American troops in June of 1944, and Tomasi had been temporarily assigned to a medical unit with the 3rd Battalion, 116th Regiment of the 29th Infantry Division.

Hunkered down amongst inland hedge-rows—enormous earthen barriers topped

with brush and trees—Tomasi watched a young sergeant named Black gather together several soldiers who spoke German and French, and climb up on a hedgerow waving Red Cross flags.

The men were shouting in three languages that they were a medical team and were trying to bring aid to both American and German soldiers.

Apparently they were successful, and managed to bring wounded from both sides back for medical attention.

"Sgt. Black, after the war, married Shirley Temple," Tomasi laughed.

Tomasi has a lot of stories from the years he served as a surgeon with the 2nd Battalion of the 116th, his regular unit. From the time they sat foot on the deadly beaches of Normandy, all the way to Berlin, Tomasi traveled with the soldiers, offering what medical attention he could.

Tomasi recalled helping a cow give birth, and the time he delivered a human baby girl along the shores of the Elbe river while nearby the crippled city of Berlin finally caved in from the relentless attack of the Russian army.

Six years later, while working in his clinic on Barre Street in Montpelier, Tomasi received a letter from the German woman he helped, and a picture of that young girl.

"Our unit liberated the first town in Germany," Tomasi said with pride, although he couldn't recall the name of the town. "We were all sort of optimistic then."

Tomasi, who was born and raised in Montpelier, attended medical school at the University of Vermont, graduating in 1942.

After a year of internship in Waterbury, Conn., he flew through a quick four weeks of field officer's training, and was soon shipped off to England to prepare for the massive American D-Day invasion.

While in England, Lt. Tomasi trained for the assault along a beach called Slapton Sands, where many Americans got their first taste of war.

"They warned us that German torpedo boats . . . were there. We practiced there anyway," said Tomasi. "Two weeks later, the 4th Battalion practiced there and lost 200 men."

Not long afterward, Tomasi and his company crossed the English channel aboard the ocean liner Thomas Jefferson, and were soon deposited from a landing craft into the cold sea water to half-walk, half-swim into shore. The 29th was one of the first divisions of soldiers to attack the coast.

The captain of Tomasi's company was immediately wounded, and had to be sent back to the ship.

"I was the only officer there," Tomasi recalled. "We landed where we shouldn't have landed. There was a burning building so the Germans couldn't see us, so we all got in fine."

Only when he tried to describe what happened on the beach, did Tomasi run out of words, saying it was impossible to describe it to anyone who had not seen it for themselves.

"There were so many people there that were killed," he said, "It was terrible. We had to stay on the beach and take care of the people."

Tomasi remembers unique events from the war, preferring not to dwell on the horror: He slipped easily into a story of the time he was out at night riding in a jeep driven by a corporal, searching for a missing sergeant.

An American tank lurched up behind them, and a gruff voice boomed out.

"What the hell are you doing out here, don't you know this is no-man's land?"

It was the corporal who told Tomasi the man shouting was General George S. Patton, who told them to return to their unit and promised to find the sergeant himself.

Tomasi remained near Berlin until the end of the war, then returned home to Montpelier, where he set up a practice, raised a family and remained until the present. Tomasi's son, Tim, currently serves on the Montpelier City Council.

He will probably walk, Tomasi said, with members of the American Legion in the annual downtown Barre Memorial Day Parade at 11 a.m., although Memorial Day activities don't stir up any particular emotions for him.

"I just think that it's nice that people take a few minutes to remember," he said.●

SCHOOL SAFETY AND DELINQUENCY PREVENTION

● Mr. SMITH of Oregon. Mr. President, immediately following the tragedy that occurred at Thurston High School in Springfield, Oregon, Senator WYDEN and I went to the floor of the Senate to express our great sadness and outrage that a community in our state would be subject to such an act of violence. Perhaps what is equally disturbing, is the fact that Oregon is not alone. From Jonesboro to Springfield, the virus of school violence has been indiscriminate.

While we will never forget these tragic events, it is time for us to turn our grief and our anger into action. I believe it is our responsibility as legislators, governors, school officials, law enforcement, parents and students to work together to determine the sources and solutions to this complex problem.

To address this issue, Senator WYDEN and I have introduced legislation, S. 2169, to encourage states to require a holding period for any student who brings a gun to school. If states pass a law requiring the 72-hour detainment of a student who is in possession, or has been in possession, of a firearm at school, they will receive a 25 percent increase in funding for juvenile violence prevention and intervention programs.

As we have learned from recent events, students who bring guns to school are suspended temporarily because communities often lack the personnel and resources to detain them in juvenile justice settings. By providing states that pass laws requiring detainment an increase in funding for prevention programs, schools will have additional resources to address the growing severity of violence and juvenile delinquency. States may use such additional funds for prevention and intervention programs that include professional counseling and detention in local juvenile justice centers.

Mr. President, it has been said that "the foundation of every state is the education of its youth." If we do not fulfill our promise of providing a strong and safe foundation for our students, education will not be possible. I believe this legislation is an important step in building a strong foundation, and I encourage my colleagues to join Senator WYDEN and me in cosponsoring S. 2169.●

MEDICARE HOME HEALTH EQUITY ACT

● Mr. KOHL. Mr. President, I rise today to join 16 of my colleagues in cosponsoring S. 1993, the Medicare Home Health Equity Act. I want to commend my colleague from Maine, Senator COLLINS, for taking the lead on this extremely important issue. This legislation will go a long way toward ensuring that seniors in Wisconsin continue to have access to the quality home health services they need, and that home health providers in low-cost States like Wisconsin receive fair and equitable reimbursement for the valuable services they provide.

Mr. President, I have long supported efforts to expand access to home health care. This important long-term care option allows people to stay in their homes longer, where they are often most comfortable, while they receive the skilled medical care they need. Home care empowers people to continue to live independently among their families and friends. It is of added value that in many cases, home care is also more cost-effective than institutional-based care. For those seniors whose medical needs can be met with home-based care in a cost-effective way, we should do everything we can to make sure that they have the choice to continue to stay in their homes and received care through the Medicare home health benefit.

I realize that the Medicare changes Congress made last year in the Balanced Budget Act were necessary in order to help prevent Medicare from going bankrupt. Home health is the fastest growing component of Medicare and it was imperative that we bring costs under control. However, I am deeply concerned that the Interim Payment System created in the BBA will inadvertently penalize those States, like Wisconsin, that have historically done a good job in keeping costs low.

The IPS established in the BBA is based on a technical formula which pays home health agencies the lowest of three measures: (1) actual costs; (2) a per visit limit of 105% of the national median; or (3) a per beneficiary annual limit, derived from a blend of 75% of an agency's costs and 25% regional costs. Without going into the details of this complicated formula, this in effect means that agencies that have done a good job keeping costs and utilization low will be penalized under the IPS. At the same time, those agencies that provided the most visits and spent the most per patient will be rewarded by continuing to receive higher reimbursement levels that the agencies that were more efficient. Although the IPS would reduce reimbursement for everyone, Wisconsin agencies have already been successful in keeping costs low, and there is no fat to trim from their reimbursement.

The proposed IPS would be devastating for home care in Wisconsin and would likely drive many good providers from the Medicare program. Already, I