The Senate urges that law enforcement officials at all appropriate levels continue with the full and fair investigation into all of the facts of this case.

The Senate urges prosecutors to proceed with a fair and speedy trial to bring the perpetrators of this outrageous crime to justice.

Mr. President, I had an experience that I will never forget this weekend when I attended the funeral service for Mr. Byrd. I saw a community coming together in confronting a tragedy that was unspeakable and yet they handled it in a way in which I think all of us could learn. They said unanimously in that little community, ''There is no hate here; there is only love.''

I want to say that the Byrd family reminds me of something that Senator GRAMM has said before, and that is the greatness of our country is that ordinary people do extraordinary things. I have seen the spirit of America in Mr. and Mrs. James Byrd, Sr., in James Byrd, Jr.'s sisters, and in his children. They endure the pain of knowing how their loved one died and yet can say to all the world, ''There is no hate here, there is no hate in our home, there is no hate in our church; there is love.''

I walked through that church and I saw a woman who goes to that church every Sunday. She had on four yellow ribbons. The yellow ribbons were displayed all over the community of Jasper, showing that the community was coming together in memory of James Byrd, Jr. This woman had on four ribbons, and she knew James Byrd, Jr. She said, ''I have four ribbons. I have one ribbon for James Byrd, Jr., and I have three ribbons for the three who are accused of killing him.'' That said everything about the way this community is handling this terrible tragedy.

I think the leadership that is given to us by the Byrd family, by Mayor Horn, by Sheriff Rowles, and by Rev. Kenneth Lyons is something that all of us will be able to say has enriched us. I was enriched this weekend by seeing that community. I was enriched when Sheriff Rowles told me that he was trying to make sure that everyone stayed together, that everyone had their say, and he was even giving the same courtesy and respect even to the Black Panthers who came and did not talk about unity at all. Nevertheless, Sheriff Rowles recognized their freedom of speech. I saw a community that said we are proud that we have been able to grow up in loving homes with Christian backgrounds.

So I think that Abraham Lincoln's call to the ''better angels of our nature'' was personified by the Byrd family during this past week. All of us are better because we have seen the Byrd family endure a tragedy that we pray none of us will ever have to endure, and we saw them rise above it and counsel justice and prayer, not hate and despair.

It is their leadership that will make me a follower, and I hope all Americans will follow their message—that love is what is important for our country, not hate.

So I commend them, and that is why I introduced this resolution with Senator GRAMM tonight and why the Senate is, I hope, going to unanimously pass this resolution in just a few minutes, because I want to follow the Byrd family's example and talk about love, not hate; prayer, not despair. That is how we can come together as a country and learn from the worst of tragedies, and, by the very nature of its horror, resolve that we are going to fight harder for equality and justice in this country for our children and grandchildren.

That will be the memory of James Byrd, Jr., that we will all come out of this stronger because of the horror that he endured.

I also want to say that the Reverend Jesse Jackson was a healer this week, that Kweisi Mfume was a healer this week, that Rodney Slater, representing the President of the United States, was a healer this week, that Congresswoman MAXINE WATERS was a healer this week. All of them came together with the same message that the Byrd family gave to us. And I was touched by what I saw in Jasper, TX, this week. I think we will all be better because of the leadership of the Byrd family of Jasper, TX.

Mr. President, I ask unanimous consent that S. Res. 248 be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 248) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 248

Whereas, Mr. James Byrd, Jr., of Jasper, Texas, was brutally murdered on June 6, 1998;

Whereas, 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.

Whereas, 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.''

Whereas, Mr. and Mrs. James Byrd, Sr., called for ''justice and peace,'' asking that ''we . . . get this over and put this behind us.''; and

Whereas, 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. Now, therefore, be it

Resolved, That 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; and

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

Mrs. HUTCHISON. Mr. President, I yield the floor.

Mr. GORTON addressed the Chair.

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The PRESIDING OFFICER. Under the previous order of the Senate, we will now continue with the consideration of S. 1415.

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, parliamentary inquiry: May I send an amendment to the desk without asking unanimous consent some pending amendment be set aside?

The PRESIDING OFFICER. The Senator may send up the amendment without consent.

AMENDMENT NO. 2705 TO AMENDMENT NO. 2437

(Purpose: To limit attorneys' fees)

Mr. GORTON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Washington [Mr. GORTON] proposes an amendment numbered 2705 to amendment No. 2437.

Mr. GORTON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is 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 presentation 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 a substantial settlement based on the progression of relevant developments from the 1994 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 but 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.

Mr. GORTON. Mr. President, there is at least an informal understanding that there will be a debate on this amendment tomorrow for approximately 1 hour. With the kind indulgence of my friend and colleague from Minnesota, I am going to simply give a brief explanation of this amendment now so Members who are watching, or staffs who are watching, will understand its general subject matter.

Twice during the course of this debate we have debated the subject of limitations on attorneys' fees. On both occasions I have voted to table those amendments, not because I felt that limitations on attorneys' fees in connection with tobacco litigation and legislation were not appropriate, but because I felt that the amendments themselves were unfair. This amendment is a third attempt to provide some limitations in a manner that I, at least, believe to be considerably more sensitive and more fair to the attorneys who have been involved in that litigation. I hope under those circumstances it will be given reasonably careful consideration by my colleagues.

We are dealing with litigation that is literally unprecedented, I think, in the history of the United States, with the potential of immense recoveries on the part of various States interfered with and amended by the legislation that we are considering here on the floor. Under those circumstances, the possibility that attorneys' fees would be awarded in the billions of dollars—perhaps even in the billions of dollars to some individual firms, but certainly in the order of nine digits to many individuals and individual firms—is a matter that I think greatly disturbs the majority of the American people and many, if not most, members of the bar. Those attorneys' fees have been subject to much criticism from the outside, and there should be a way to see to it that they are dealt with fairly.

The difficulty with the two earlier amendments, in my view at least, was that they treated all lawyers, all attorneys who were involved in tobacco litigation—past, present, and future—in exactly the same fashion. Yet it is obvious that, if we look at the history of this controversy, the initial litigation and the ideas for that initial litigation that were brought forth some time ago, in the early 1990s, were developed by a group of tremendously gifted and imaginative attorneys at a time at which the odds on their success, looking at it from the beginning, would have been judged to have been very small.

They have shown great skill, great persistence; they have spent, in many cases, a great deal of their own and their law firms' money; and I think the reward they have earned is considerably larger than awards that will be earned by those who got into this litigation very late in the game when it was obvious that the litigation was going to be settled for large amounts of money or litigated successfully; not to mention those who will bring tobacco-related litigation in the future when, under the terms of this bill, and many State legislative acts, it will be almost impossible for an attorney to lose a tobacco case.

As a consequence, the fundamental approach of this amendment is to say that for those who were in this litigation early—that is, before the end of the year 1994—attorneys' fees can be up to $4,000 an hour—a huge amount of money beyond any question, a mind-boggling amount of money, but nevertheless considerably less than many of these attorneys will get in the absence of such legislation, on the basis of percentage contingent fees.

Moreover, like other amendments in this connection, that is a ceiling, not a floor. The courts, in this case, will make a determination considering all of the same items that have been outlined in previous decisions of the U.S. Supreme Court and in previous amendments on this subject. So when a judge determines that amount is too much, the judge may reduce the amount below that hourly fee but under no circumstances may go above it.

The second category of attorneys will be those who were involved in this litigation after 1994 but before early last year. Their ceiling will be half the amount of the pioneers, or $2,000 an hour. And certain other attorneys who worked on developing the ideas that went into this case will fall into that category as well.

The next clear date is when the Liggett Tobacco Company agreed, in effect, to turn state's evidence to settle the matter and to admit its liabilities and admit, generally speaking, the liabilities of the other tobacco companies. Those who got into the litigation after that were almost certain winners—almost certain winners. They did not run the risks that earlier attorneys did, and their maximum fee under this amendment will be $1,000 an hour. That will, in fact, be somewhat less than the maximum recovery under the last Faircloth amendment, because while it stated the sum of $1,000 an hour, it allowed for recovery of costs over—considerably over and above the actual costs incurred in the litigation.

Finally, after the beginning of this debate here, assuming that this debate, of course, ends up in actual legislation, tobacco litigation will be almost like Workmen's Compensation litigation in all of our State courts, and the limit there is $500 an hour under this amendment, half that in the last Faircloth proposal. Again, these are limits, these are maximums, but they are maximums set in a different way than they were in the other two amendments, reflecting the actual risks, the actual

imagination, the actual work that went into the litigation and, for that matter, into the legislation itself.

I am not certain this is a totally perfect proposal of this nature, but I think it is highly reasonable. I think it is highly generous. I think it meets the views of people in the United States as a whole who do not think the lawyers in this case should become billionaires out of it. And it will husband the actual recoveries, whatever those recoveries may be and however they are derived, far more for the purposes of the litigation and the legislation itself than relatively unlimited contingent fees would do.

That is a brief explanation and a justification of something that I hope meets with the support of those who have felt that there ought to be limits on those attorneys' fees, but that they should be somewhat lower and those on the other side, who, like I, have voted against these previous limitations on the grounds that they weren't sensitive enough and for at least some people were not high enough. I would like to bring people together on this so that at least this particular element of this debate can be brought to a successful conclusion.

TRIBUTE TO LIEUTENANT COMMANDER GARY MAYES

Mr. LOTT. Mr. President, I wish to take this opportunity to recognize and say farewell to an outstanding Naval Officer, Lieutenant Commander Gary Mayes, who has served with distinction for the past two years in the Navy's Senate Liaison Office. It is a privilege for me to recognize his many outstanding achievements and to commend him for the superb service he has provided this legislative body, the Navy and our great Nation.

Lieutenant Commander Mayes is a graduate of Purdue University and was commissioned an Ensign upon graduation from Aviation Officer Candidate School in Pensacola, Florida, in May 1988. He proceeded to flight training where he received his ''Wings of Gold'' and was designated a Naval Aviator in October 1989.

Lieutenant Commander Mayes' first assignment in the Navy was as a pilot flying the UH–1N and C–12B at Naval Air Station Guantanamo Bay, Cuba, from July 1990 to May 1991. Following training in the SH–60B Seahawk helicopter, he reported to Helicopter Anti-Submarine Squadron, Light Four Eight (HSL–48) as the Detachment Five Assistant Maintenance Officer. He qualified as an Aircraft Commander and deployed aboard USS Boone (FFG–28) to the Mediterranean. He was next assigned to Detachment One as the Maintenance Officer during Operation Support Democracy to Haiti while embarked on USS Spruance (DD–963). He also was deployed on USS Comte de Grasse in 1995, flying missions in support of exercise UNITAS around South America.

Lieutenant Commander Mayes joined the Navy's Senate Liaison team in January 1996. During his service as a Navy Liaison Officer, he provided members of the Senate Armed Services Committee, personal staffs, as well as Senators from both sides of the aisle, with timely support regarding Navy plans, programs and constituent casework. His valuable contributions have enabled Congress and the Department of the Navy to work close together to preserve the well-trained and well-equipped naval forces upon which our country has come to depend.

Mr. President, Gary Mayes, his wife Stephanie and their daughter Gabrielle have made many sacrifices during his 10-year Navy career. He has served proudly with a dedication and enthusiasm that only comes from our Nation's best and brightest. Lieutenant Commander Mayes is a great credit to both our Navy and our country. As he now departs to attend the Marine Corps Command and Staff War College, I call upon my colleagues from both sides of the aisle to wish him fair winds and following seas.

NATIONAL SMALL BUSINESS WEEK

Mr. DASCHLE. Mr. President, I would like to express my support and admiration of small business owners and entrepreneurs as we reflect on another successful National Small Business Week. It is appropriate that we recognize the contributions and achievements entrepreneurs have made to strengthen our communities and our national economy.

Small businesses account for 99.7% all the employers in the country and employ 53.7 percent of the private work force. Senate Democrats have demonstrated their support of small business by advocating increased funding for the reauthorization of the Small Business Administration, supporting targeted tax relief, ensuring responsible regulatory relief, and increasing procurement opportunities for small businesses.

Small businesses are changing the face of the economy by creating jobs and bringing prosperity to small towns and cities across the country. One such small business is the Roundup Building Center, owned by Doug and Julie Kapsch in Belle Fourche, South Dakota. As part of National Small Business week, Doug and Julie have been awarded special recognition from the Small Business Administration as the South Dakota Small Business Owners of the Year.

Doug and Julie became business owners under a rather unique set of circumstances. In 1990, a fire destroyed much of the Belle Fourche Building Center, which Doug managed at the time. Faced with adversity, Doug and Julie saw an opportunity. After the fire, Doug contacted the former owner of the Belle Fourche Building Center, and the Kapschs began building their business. Today, Doug and Julie's business, the Roundup Building Center, serves the tri-state area of South Dakota, Wyoming and Montana by providing local contractors and do-it-yourself builders with a variety of building supplies. The business has grown by approximately 10 percent a year under Doug and Julie's management.

As successful small business owners, Doug and Julie have shown that hard work, initiative, and a bit of risk-taking can produce big dividends. I congratulate them on their success and wish them many more profitable years of business.

I would also like to commend another woman who has made significant contributions to South Dakota's small business community. Sandra Christenson, President of Heartland Paper Council, has been appointed by the Small Business Administrator to serve on the National Women's Business Council. The Council advises the President and the Administrator on small business issues especially important to women.

After serving as President of Triangle School Service in Sioux Falls, Sandra was named President of Heartland Paper Company in 1989. In this capacity, she oversees 170 employees and the company's seven thousand customers. Heartland Paper has been a vibrant member of the Sioux Falls business community under Sandra's leadership, and I am confident that with her leadership and experience, Sandra is uniquely qualified to represent the views of women business leaders and rural America before the Council.

Small businesses are vitally important to South Dakota's economy, and I truly appreciate the contributions that Sandra, Doug and Julie have made to our state's small business community. They join countless other small business owners across the country who have helped make America's vibrant economy the envy of the world.

RETIREMENT OF CARL STOKES

Mr. THURMOND. Mr. President, I rise today to pay tribute to a man who has rendered a great service to the State of South Carolina through his efforts as a professional law enforcement officer, Carl B. Stokes.

Just like his father, who was the Sheriff of Darlington County, Carl Stokes has literally dedicated his life to crime fighting. As a matter of fact, I am told that he is supposed to be the longest serving lawman in the Palmetto State, and his distinguished career began in the 1950's while he was still attending the University of South Carolina and joined the South Carolina State Law Enforcement Division (SLED). In just a few weeks, he will bring that career to a close when he retires from his position as System Vice President for Law Enforcement and Safety for the University of South Carolina.

For more than 25-years, Carl Stokes held a number of positions within