

(B) To provide incentives to better assure patient satisfaction.

(C) To impose penalties (including termination of contract) for clinics that provide substandard care.

(2) Mechanisms to collect and evaluate data on the outcomes of the services generally provided by CBOCs in order to provide for an assessment of the quality of health care provided by such clinics.

(3) Mechanisms to eliminate abuses in the provision of health care services by CBOCs under contracts that continue to utilize capitated-basis compensation mechanisms for compensating contractors.

(c) IMPLEMENTATION.—The Secretary shall commence the implementation of the plan required by subsection (a) unless Congress enacts an Act, not later than 60 days after the date of the submittal of the plan, prohibiting or modifying implementation of the plan. In implementing the plan, the Secretary may initially carry out one or more pilot programs to assess the feasibility and advisability of mechanisms under the plan.

(d) REPORTS.—Not later than 180 days after the date of the enactment of this Act and every 180 days thereafter, the Secretary shall submit to Congress a report setting forth the recommendations of the Secretary as to the feasibility and advisability of utilizing pay-for-performance compensation mechanisms in the provision of health care services by the Department by means in addition to CBOCs.

By Mr. SPECTER (for himself, Mr. BIDEN, Mr. GRAHAM, Mr. KERRY, Mr. CORNYN, Mr. PRYOR, Mrs. DOLE, Ms. LANDRIEU, Mr. COCHRAN, Mr. CARPER, Mrs. MCCASKILL, and Mrs. FEINSTEIN):

S. 3217. A bill to provide appropriate protection to attorney-client privileged communications and attorney work product; to the Committee on the Judiciary.

Mr. SPECTER. Mr. President, I seek recognition today to introduce the Attorney-Client Privilege Protection Act of 2008, which is a modified version of my earlier legislation by the same name. This legislation, which adds original cosponsors, continues to address the Department of Justice's corporate prosecution guidelines. Those guidelines, last revised by former Deputy Attorney General Paul McNulty in December 2006, erode the attorney-client relationship by allowing prosecutors to request privileged information backed by the hammer of prosecution if the request is denied.

Like my previous bill, S. 186, this bill will protect the sanctity of the attorney-client relationship by prohibiting federal prosecutors and investigators from requesting waiver of attorney-client privilege and attorney work product protections in corporate investigations. The bill would similarly prohibit the government from conditioning charging decisions or any adverse treatment on an organization's payment of employee legal fees, invocation of the attorney-client privilege, or agreement to a joint defense agreement.

The new version of the bill makes many subtle improvements, including defining "organization" to make clear that continuing criminal enterprises and terrorist organizations will not benefit from the bill's protections. The bill also clarifies language that the Department of Justice had previously criticized as ambiguous. The bill also makes clear in its findings that its prohibition on informal privilege waiver demands is far from unprecedented. The bill states: "Congress recognized that law enforcement can effectively investigate without attorney-client privileged information when it banned Attorney General demands for privileged materials in the Racketeer Influenced and Corrupt Organizations Act. See 18 U.S.C. §1968(c)(2)."

There is no need to wait to see how the McNulty memorandum will operate in practice. There is similarly no need to wait for another internal Department of Justice reform that will likely fall short and be the fifth policy in the last 10 years. Any such internal reform will not address the privilege waiver policies of other government agencies that refer matters to the Department of Justice and allow in through the window what isn't allowed through the door.

As I said when I introduced S. 186, the right to counsel is too important to be passed over for prosecutorial convenience. It has been engrained in American jurisprudence since the 18th century when the Bill of Rights was adopted. The 6th Amendment is a fundamental right afforded to individuals charged with a crime and guarantees proper representation by counsel throughout a prosecution. However, the right to counsel is largely ineffective unless the confidential communications made by a client to his or her lawyer are protected by law. As the Supreme Court observed in *Upjohn Co. v. United States*, "the attorney-client privilege is the oldest of the privileges for confidential communications known to the common law." When the *Upjohn* Court affirmed that attorney-client privilege protections apply to corporate internal legal dialogue, the Court manifested in the law the importance of the attorney-client privilege in encouraging full and frank communication between attorneys and their clients, as well as the broader public interests the privilege serves in fostering the observance of law and the administration of justice. The *Upjohn* Court also made clear that the value of legal advice and advocacy depends on the lawyer having been fully informed by the client.

In addition to the importance of the right to counsel, it is also fundamental that the Government has the burden of investigating and proving its own case. Privilege waiver tends to transfer this burden to the organization under investigation. As a former prosecutor, I am

well aware of the enormous power and tools a prosecutor has at his or her disposal. The prosecutor has enough power without the coercive tools of the privilege waiver, whether that waiver policy is embodied in the Holder, Thompson, McCallum, McNulty—or a future Filip—memorandum.

As in S. 186, this bill amends title 18 of the United States Code by adding a new section, §3014, that would prohibit any agent or attorney of the U.S. Government in any criminal or civil case to demand or request the disclosure of any communication protected by the attorney-client privilege or attorney work product. The bill would also prohibit government lawyers and agents from basing any charge or adverse treatment on whether an organization pays attorneys' fees for its employees or signs a joint defense agreement.

This legislation is needed to ensure that basic protections of the attorney-client relationship are preserved in Federal prosecutions and investigations.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 603—EXPRESSING THE SENSE OF THE SENATE ON THE RESTITUTION OF OR COMPENSATION FOR PROPERTY SEIZED DURING THE NAZI AND COMMUNIST ERAS

Mr. NELSON of Florida (for himself, Mr. SMITH, Mr. CARDIN, Mr. COLEMAN, and Mr. MENENDEZ) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 603

Whereas many East European countries were dominated for parts of the last century by Nazi or communist regimes, without the consent of their people;

Whereas victims of Nazi persecution included individuals persecuted or targeted for persecution by the Nazi or Nazi-allied governments based on their religious, ethnic, or cultural identity, political beliefs, sexual orientation, or disability;

Whereas the Nazi regime and the authoritarian and totalitarian regimes that emerged in Eastern Europe after World War II perpetuated the wrongful and unjust confiscation of property belonging to the victims of Nazi persecution, including real property, personal property, and financial assets;

Whereas communal and religious property was an early target of the Nazi regime and, by expropriating churches, synagogues and other community-controlled property, the Nazis denied religious communities the temporal facilities that held those communities together;

Whereas, after World War II, communist regimes expanded the systematic expropriation of communal and religious property in an effort to eliminate the influence of religion;

Whereas many insurance companies that issued policies in pre-World War II Eastern Europe were nationalized or had their subsidiary assets nationalized by communist regimes;

Whereas such nationalized companies and those with nationalized subsidiaries have generally not paid the proceeds or compensation due on pre-war policies, because control of those companies or their East European subsidiaries had passed to the government;

Whereas East European countries involved in these nationalizations have not participated in a compensation process for Holocaust-era insurance policies for victims of Nazi persecution;

Whereas the protection of and respect for private property rights is a basic principle for all democratic governments that operate according to the rule of law;

Whereas the rule of law and democratic norms require that the activity of governments and their administrative agencies be exercised in accordance with the laws passed by their parliaments or legislatures and such laws themselves must be consistent with international human rights standards;

Whereas the Paris Declaration of the Organization for Security and Cooperation in Europe (OSCE) Parliamentary Assembly in July 2001 noted that the process of restitution, compensation, and material reparation of victims of Nazi persecution has not been pursued with the same degree of comprehensiveness by all of the OSCE participating States;

Whereas the OSCE participating States have agreed to achieve or maintain full recognition and protection of all types of property, including private property and the right to prompt, just, and effective compensation for the private property that is taken for public use;

Whereas the OSCE Parliamentary Assembly has called on the OSCE participating States to ensure that they implement appropriate legislation to secure the restitution of or compensation for property losses of victims of Nazi persecution and property losses of communal organizations and institutions during the Nazi era, irrespective of the current citizenship or place of residence of victims or their heirs or the relevant successor to communal property;

Whereas Congress passed resolutions in the 104th and 105th Congresses that emphasized the longstanding support of the United States for the restitution of or compensation for property wrongly confiscated during the Nazi or communist eras;

Whereas certain post-communist countries in Europe have taken steps toward compensating victims of Nazi persecution whose property was confiscated by the Nazis or their allies or collaborators during World War II or subsequently seized by communist governments after World War II;

Whereas, at the 1998 Washington Conference on Holocaust-Era Assets, 44 countries adopted Principles on Nazi-Confiscated Art to guide the restitution of looted artwork and cultural property;

Whereas the Government of Lithuania has promised to adopt an effective legal framework to provide for the restitution of or compensation for wrongly confiscated communal property, but so far has not done so;

Whereas successive governments in Poland have promised to adopt an effective general property compensation law, but so far the current Government of Poland has not adopted one;

Whereas the legislation providing for the restitution of or compensation for wrongly confiscated property in Europe has, in various instances, not always been implemented in an effective, transparent, and timely manner;

Whereas such legislation is of the utmost importance in returning or compensating

property wrongfully seized by totalitarian or authoritarian governments to its rightful owners;

Whereas compensation and restitution programs can never bring back to Holocaust survivors what was taken from them, or in any way make up for their suffering; and

Whereas there are Holocaust survivors, now in the twilight of their lives, who are impoverished and in urgent need of assistance, lacking the resources to support basic needs, including adequate shelter, food, or medical care: Now, therefore, be it

Resolved, That the Senate—

(1) appreciates the efforts of those countries in Europe that have enacted legislation for the restitution of or compensation for private, communal, and religious property wrongly confiscated during the Nazi or communist eras, and urges each of those countries to ensure that the legislation is effectively and justly implemented;

(2) welcomes the efforts of many post-communist countries to address the complex and difficult question of the status of confiscated properties, and urges those countries to ensure that their restitution or compensation programs are implemented in a timely, non-discriminatory manner;

(3) urges the Government of Poland and the governments of other countries in Europe that have not already done so to immediately enact fair, comprehensive, and just legislation so that victims of Nazi persecution (or the heirs of such persons) who had their private property looted and wrongly confiscated by the Nazis during World War II and in turn seized by a communist government are able to obtain either restitution of their property or, where restitution is not possible, fair compensation;

(4) urges the Government of Lithuania and the governments of other countries in Europe that have not already done so to immediately enact fair, comprehensive, and just legislation so that communities that had communal and religious property looted and wrongly confiscated by the Nazis during World War II and in turn seized by a communist government (or the relevant successors to the communal and religious property or the relevant foundations) are able to obtain either restitution of their property or, where restitution is not possible, fair compensation;

(5) urges the countries of Europe which have not already done so to ensure that all such restitution and compensation legislation is established in accordance with principles of justice and provides a simple, transparent, and prompt process, so that it results in a tangible benefit to those surviving victims of Nazi persecution who suffered from the unjust confiscation of their property, many of whom are well into their senior years;

(6) calls on the President and the Secretary of State to engage in an open dialogue with leaders of those countries which have not already enacted such legislation to support the adoption of legislation requiring the fair, comprehensive, and nondiscriminatory restitution of or compensation for private, communal, and religious property that was seized and confiscated during the Nazi and communist eras; and

(7) welcomes a country in Europe to host in 2009 a follow-up international conference a decade after the Washington Conference on Holocaust-Era Assets, for governments and non-governmental organizations, which would—

(A) address the issues of restitution of or compensation for real property, personal

property (including art and cultural property), and financial assets wrongly confiscated by the Nazis and their allies or collaborators and the subsequent wrongful confiscations by communist regimes; and

(B) review issues related to the opening of archives and the work of historical commissions, review progress made, and focus on the next steps required on these issues.

Mr. NELSON of Florida. Mr. President, last month I chaired a hearing in the Senate Foreign Relations Committee to consider a difficult but extremely important issue—compensating Holocaust survivors and their heirs for the value of Holocaust-era insurance policies they held before the war but lost or had stolen from them by the Nazi regime.

Although this hearing was the first time a Senate committee had met specifically to consider Holocaust-era insurance compensation issues, I have been involved in the issue for more than a decade. As Florida's insurance commissioner in the late 1990's, I helped lead an international effort by regulators and Jewish groups that ultimately forced many European insurers to come to the table and for the first time begin paying restitution to survivors. Florida is a State with a large population of Holocaust survivors—one of the largest concentrations of Holocaust survivors in the world. Most are in their 80s or 90s. The very youngest are in their 70s. They are valued constituents, and while I recognize that no amount of financial compensation or property restitution can ever make up for the indescribable wrong of the Holocaust, I have been and remain committed to doing what I can to assist survivors to obtain without delay meaningful compensation for assets that they lost during the war.

The primary purpose of the hearing was to examine what remains to be done to compensate Holocaust survivors and their heirs for the insurance policies, now that the decade-long compensation process undertaken by the International Commission on Holocaust Era Insurance Claims, ICHEC, has ceased operations and paid out some \$306 million to 48,000 Holocaust victims and their heirs for Holocaust-era insurance policies that belonged to them and never were paid.

While Western European countries and insurance companies participated in and contributed to ICHEC, there was undisputed testimony at the hearing that Eastern European countries and companies did not, and should be called upon to compensate Holocaust survivors for the unpaid value of their insurance policies.

Millions of Jews lived in Eastern European countries before the war. While many of them lived in rural areas and were too poor to afford insurance, there were certainly Jews who purchased insurance policies from subsidiaries of Western European companies whose assets were taken by the communist governments that came into

power, or by Eastern European companies that were nationalized. Unfortunately, the Eastern European countries neither participated in ICHEIC nor contributed to any of the insurance compensation efforts that have taken place. ICHEIC nonetheless paid claims on those Eastern European policies from out of the humanitarian funds that were contributed by the ICHEIC companies, ultimately distributing \$31 million on more than 2,800 such claims.

Unfortunately, Eastern European countries have not taken nearly enough action on restitution for insurance and other private and communal property taken from Jews and other victims of Nazi persecution, and then seized by the communist governments that ruled Eastern Europe after the war. Poland, for example, is the sole member of the Organization for Security and Cooperation in Europe not to have enacted property restitution legislation. And Lithuania has yet to enact promised legislation to compensate communities that had communal and religious property seized. This is unacceptable.

Today, Senator SMITH and I, joined by our colleagues Senators CARDIN, COLEMAN, and MENEDEZ, are introducing a bi-partisan resolution urging countries in Eastern Europe to enact fair and comprehensive private and communal property restitution legislation addressing the unjust taking of property by Nazi, communist, and socialist regimes, and to do so as quickly as possible. Given that the youngest Holocaust survivors are in their 70s, time is of the essence.

Our resolution calls for the Secretary of State to engage in dialogue to achieve the aims of the resolution as well as for the convening of an international intergovernmental conference to focus on the remaining steps necessary to secure restitution and compensation of Holocaust-era assets.

The resolution has received overwhelming support from the survivor community. Following the hearing, Holocaust survivors were notified of our intent to file this resolution and asked to provide input via e-mail. Over the space of six weeks, we received more than 200 messages from Holocaust survivors and their children and relatives now living in nations around the world, supporting restitution. Many e-mails addressed specific claims to property in Eastern European countries including Croatia, Czech Republic, Hungary, Latvia, Lithuania, Poland, Romania, Serbia, Slovakia, and Ukraine.

The following message of support from a Holocaust survivor from England exemplifies the many heart-rending and compelling e-mails I received, recounting what was lost by survivors who had lived in Eastern Europe and their inability thus far to obtain restitution or compensation:

I support your efforts to secure property restitution in Eastern Europe for Holocaust Survivors.

With my family, I was expelled from our apartment in Lodz, Poland on December 11, 1939. We were allowed to take with us only 3 rucksacks and all our material belongings had to be left behind. These included a newly built apartment block with 10 luxury flats, a textile factory employing over 100 people and magazines full of finished fabrics.

My mother and I survived the Warsaw ghetto, my father was killed by the Germans in December 1944 and we returned to Lodz after liberation by the Russians in early 1945. Our factory and our apartment belonged now to the Polish authorities. We left Poland soon afterwards.

After the collapse of the Iron Curtain and the communist regime, I tried [to] get our possessions back without success, my appeal having been dismissed by the Polish High Court. No compensation was offered.

We hope our resolution we are introducing today will spur our own government and governments in Eastern Europe into action and call attention to this important unfinished business. Justice and memory demand nothing less.

I ask unanimous consent that this statement be placed in the appropriate place in the RECORD and ask that the text of the resolution be printed in the RECORD.

Mr. SMITH. Mr. President, I rise today to submit a resolution with my friend and colleague, the senior Senator from Florida, urging the restitution of property looted from victims of the Holocaust.

Though it was inflicted over 60 years ago, the persecution of Europe's Jews still defies belief. Never before in history had a nation committed the scope and breadth of the Holocaust's crimes against its own citizens, some of whom were even decorated German veterans of WWI. Never before had a state policy of atrocity encompassed such a horrifying thoroughness as it did during those terrible years of Nazi rule. Crimes against the Jews took all forms—from genocide to theft—and for those who survived, the scars remain today.

There are many of us now who look back, and wonder how the civilized world could have stood by, and let this thing happen; but we are not wholly without responsibility ourselves. Many of the victims of the Holocaust still seek property which was stolen from them during the years of Nazi and Nazi-allied rule in Germany and Eastern Europe. For these survivors and their kin, the persecution of the Jews is not a 60-year-old horror story in a history textbook, but a constant struggle to extract justice from those who would prefer to forget. While some countries have taken active steps to recompense victims of the wholesale Nazi confiscation, others have not.

I am proud to have been engaged in this issue throughout my tenure in the Senate, serving in 1999 as a Commis-

sioner on the Presidential Advisory Commission on Holocaust Assets in the United States. I also introduced with Senator CLINTON the Holocaust Victims Assets, Restitution Policy, and Remembrance Act in 2001 and again in 2003. This legislation aimed to establish a Foundation to research Holocaust-era property restitution, and promote innovative solutions restitution issues. I am confident that my resolution introduced today will help establish a follow-up conference to the previous Holocaust restitution conference in 1998. I would further like to thank the Claims Conference for all the great work they've done with us on this issue, and in furthering the cause of justice for Holocaust victims.

I recognize that this issue is complex. It is a matter of enacting legislation for restitution in countries that do not yet have it, and using the existing legislation in those that do. Our resolution calls for such action. It also calls for a second conference on Holocaust restitution to be held in Europe next year, more than a decade after the first. These steps would represent meaningful action on an issue which has gone unaddressed for far too long.

I also recognize that most of the countries in question have different governments than they did during the Nazi and Communist eras. As a result, I believe that the restitution process can be achieved in a positive spirit of cooperation with our European allies.

I thus sincerely hope that these European friends will work with us to resolve some of the last loose ends of the Nazis' crimes; and so do our own small part to make redress for the inaction of those who came before.

SENATE RESOLUTION 604—CONGRATULATING THE CALIFORNIA STATE UNIVERSITY, FRESNO BULLDOGS BASEBALL TEAM FOR WINNING THE 2008 NATIONAL COLLEGIATE ATHLETICS ASSOCIATION DIVISION I COLLEGE WORLD SERIES

Mrs. BOXER (for herself and Mrs. FEINSTEIN) submitted the following resolution; which was considered and agreed to:

S. RES. 604

Whereas on June 25, 2008, the student athletes of the California State University, Fresno Bulldogs baseball team, in the sixth elimination game faced by the Fresno State Bulldogs, finished a true Cinderella story season, winning the 2008 National Collegiate Athletics Association Division I College World Series Championship (referred to in this preamble as the "2008 NCAA College World Series") by defeating the University of Georgia Bulldogs, 2 games to 1, in a best-of-3 championship;

Whereas the 2008 NCAA College World Series is the second championship for the California State University;

Whereas the Fresno State Bulldogs are the lowest-seeded team in college sports history to win a championship;