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Senate Bill 1247
An Act Concerning International Jurisdiction
Judiciary Committee
February 26, 2007

Senator McDonald, Representative Lawlor and members of the Judiciary Committee, thank you for the opportunity to appear before the Committee to comment on Senate Bill 1247, An Act Concerning International Jurisdiction. My name is Houston Putnam Lowry, and I am the Chair of the Connecticut Bar Association's International Law and Practice Section. On behalf of the section, I respectfully request that the committee approve and favorably report the bill because it will correct a number of injustices.

This bill closely tracks the federal Alien Tort Claims Act,² which was enacted as part of the Judicature Act of 1789. This bill allows all people, not just aliens, a right of recovery. It is inappropriate to allow only aliens access to the courts under these circumstances.

The original Alien Tort Claims Act arose out of the inability of the Continental Congress to deal with violations of the Law of Nations. The Continental Congress passed a resolution calling upon the states to "provide expeditious, exemplary, and adequate punishment" for "the violation of safe conducts or passports, . . . of hostility against such as are in amity, . . . with the United States, . . . infractions of the immunities of ambassadors and other public ministers . . . [and] "infractions of treaties and conventions to which the United States are a party." 21 Journals of the Continental Congress 1136-1137 (G. Hunt ed. 1912).

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² 28 USC §1350. Alien's action for tort. The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States. The predecessor of the statute was originally enacted at 1 Stat. 79 (1789).

The problem was exacerbated by a subsequent assault upon the Secretary of the French Legion in Philadelphia.³ Of all of the original states, only Connecticut passed such a statute.⁴

The Alien Tort Claims Act has a significant connection with Connecticut because it was drafted by a Connecticut native, Oliver Ellsworth.⁵ The original draft of the federal bill is in his handwriting in the National Archives, Casto, Law of Nations 498. *See generally* W. Brown, The Life of Oliver Ellsworth (1905), cited in *Sosa v. Alvarez-Machain et al.*, 124 S. Ct. 2739; 159 L. Ed. 2d 718 (June 29, 2004).

Originally there were only three such torts addressed by the criminal law of England:

1. violation of safe conducts;
2. infringement of the rights of ambassadors; and
3. piracy.

See Blackstone's Commentaries 68.

While a violation of safe conducts and infringement of the rights of ambassadors probably involved only aliens, piracy can involve anyone. New cases interpreting the Federal Alien Tort Claims makes it clear torture would covered under this statute. Since anyone can be tortured, anyone should be allowed to recover for being tortured.

This act requires such actions to have some relationship to Connecticut before a Connecticut court may exercise its jurisdiction. The permissible connections are:

³ *See Respublica v. De Longchamps*, 1 Dall. 111, 1 U.S. 111, 1 L. Ed. 59 (O. T. Phila. 1784).

⁴ First Laws of the State of Connecticut 82, 83 (J. Cushing ed. 1982) (1784 compilation; exact date of Act unknown).

⁵ A Connecticut native who was a member of the 1787 Constitutional Convention. He was one of the original drafters of the constitution's first draft. He was one of Connecticut's first two senators to the United States, where he chaired the committee that organized the federal judiciary.

1. One or more plaintiff resides in the State of Connecticut; or
2. One or more defendant resides in the State of Connecticut; or
3. The harm was felt within the State of Connecticut; or
4. One or more defendant was personally served within the State of Connecticut; or
5. The act in question took place within the State of Connecticut; or
6. International law confers universal jurisdiction to adjudicate the act in question;
or
7. One or more defendant owns property located within the State of Connecticut.

Even if one or more of these connections exist, the court still may decline to hear the matter on *forum non-conveniens* grounds. This act is not intended to repeal or otherwise affect the doctrine of *forum non-conveniens*.

These requirements are intended to limit the jurisdiction of Connecticut courts to the constitutionally permissible standard of minimum contacts. Cases that have absolutely no connection with Connecticut should not be heard in Connecticut.

For these reasons, the Connecticut Bar Association International Law and practice Section requests that the Judiciary Committee **favorably report** Senate Bill 1247.

Thank you for the opportunity to comment on the bill. I would be happy to answer any questions.