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The Honorable Stephen Cohen
Chairman
Subcommittee on Commercial and Administrative Law
Committee on the Judiciary
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

During the March 24, 2009 hearings before your subcommittee on H.R. 1478, Professor Fidell said that he understands that punitive damages are not provided for under the Federal Tort Claims Act (FTCA). I said I was not certain if that is true. Since the hearings were held, I have had the opportunity to double-check this and Professor Fidell is correct that the FTCA specifically excludes punitive damages. As I said during the hearing, state law generally applies to the cases brought under the FTCA. This is the case since 28 U.S.C. § 1346(b) (1) of the FTCA provides that the federal government would be liable if a private person would be "liable to the claimant in accordance with the law of the place where the act or omission occurred." However, there are exceptions to that rule. One of the exceptions is the bar on punitive damages appearing in 28 U.S.C. § 2674. Section 2674 provides in the relevant part that "[t]he United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages."

I request that this letter be included in the record of the hearings. Thank you for giving me the opportunity to testify on behalf of the ABA in support of H.R. 1478.

Sincerely,

Stephen Saltzburg

cc: Thomas M. Susman
Lillian B. Gaskin