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Mr. Chairman, Ranking Member Sessions and Distinguished Members of the Committee:

Thank you for affording me the opportunity to testify before you today on an issue of significant importance to our country – deterring financial and other material support for international terrorist organizations. I have had the opportunity to consider these issues both as a National Security Council official at the White House under Presidents Clinton and George W. Bush, and as a lawyer in private practice. I will focus my testimony on how civil litigation by private parties can help curtail financial support to terrorist organizations, and how the Justice Against Sponsors of Terrorism Act (S. 2930) closes gaps in the legal framework available to such private parties.

Along with the threat of governmental fines and sanctions, the prospect of substantial civil damages can deter deep-pocketed corporations or individuals from doing business with terrorist organizations.

The Justice Against Sponsors of Terrorism Act expands exceptions available to private plaintiffs under the Foreign Sovereign Immunities Act to bring suit against foreign sovereigns and their agents or instrumentalities who have provided support for acts of terrorism regardless of whether the sovereign in question has been designated a state sponsor of terrorism by the State Department. Although I generally believe that the protection of U.S. interests requires a narrow reading of the Foreign Sovereign Immunities Act (and of a very limited number of statutory exceptions to sovereign immunity), in this case the clarification of the law provided by S. 2930 is warranted in my judgment by a recent Second Circuit decision[1] holding that the tort exception to foreign sovereign immunity does not apply to acts of terrorism. By expanding the tort exception to include acts of terrorism, the proposed legislation provides those harmed by acts of terrorism redress in American courts against foreign states and their agents who can be proven to have aided terrorists.

The Justice Against Sponsors of Terrorism Act also amends the Anti-Terrorism Act of 1991 by, among other things, imposing liability on those who aid and abet acts of international terrorism impacting Americans, and by making defendants in such suits subject to the personal jurisdiction of federal district courts to the maximum extent permitted by the Constitution.

[1] *In re Terrorist Attacks on September 11, 2001*, 538 F.3d 71 (2d Cir. 2008).

To illustrate why and how civil litigation can supplement the tools available to U.S. officials in deterring the financing of terrorism, I will focus my remarks, at the Staff's request, on two cases concerning which I should disclose my personal involvement as a lawyer in private practice.

Arab Bank, PLC

Arab Bank is a large, international financial institution based in Amman, Jordan.

In 2004, six families of Americans injured or killed in Palestinian terrorist attacks filed a lawsuit against Arab Bank in federal court in New York seeking $875 million in damages. The suit alleged that Arab Bank had served as paymaster for a dedicated program providing financial support to the families of Palestinian suicide bombers and other terrorists who committed or attempted to commit terrorist acts that killed American citizens (and others). Other lawsuits making similar allegations followed.

According to the lawsuits, these funds were disbursed to Arab Bank accounts opened in the name of beneficiaries and available at local Arab Bank branches in the Palestinian territories. Such payments were alleged to serve as incentives to would-be bombers and other would-be terrorists who could take comfort in knowing that their families would receive financial support if they attempted to commit a terrorist act.

Here's how the program administered by Arab Bank appears to have worked: Families of terrorists, including suicide bombers, would sit down with representatives of Hamas's social infrastructure in Gaza and the West Bank and provide information sufficient to prove they were qualified to receive funding. This information would be collected and sent to Saudi Arabia in the form of lists of beneficiaries. Beneficiary families received over US$5000 each.

Much of the funding for this program is alleged to have come from the Saudi Committee in Support of the Intifada Al Quds. This Committee, founded in 2000, allegedly provided tens of millions of dollars in support for the beneficiaries of suicide bombers and other terrorists through the Arab Bank. According to the Saudi Committee, its purpose was to support the "Intifada Al Quds" and "all suffering families – the families of the martyrs and the injured Palestinians and the disabled." In April 2002 alone, the Committee reportedly raised $109 million in a three-day telethon.

Significantly, some of the evidence underlying the allegations against Arab Bank is neither classified nor difficult to find. It is available – and has been available for several years – to anyone who wishes to surf the internet, watch regional television, or reference the appropriate Arabic-language newspapers in the region.

Television advertisements and media reports indicated that private donations to the Saudi Committee should be deposited in a dedicated bank account maintained by Saudi banks known as "Account 98." The Saudi Committee's website made clear that donations would be channeled to Arab Bank. According to published reports, the Chief Banking Officer of Arab Bank acknowledged that, from December 2000 through May 2003, the

Saudi Committee made approximately 200,000 payments into Palestine through Arab Bank branches totaling about $90 million.[2]

The Committee often labeled the dead whose beneficiaries received funds as the victims of "assassination." Yet in 2005 the Congressional Research Service confirmed that many of these names were the same as the names of those involved in perpetrating terrorist attacks against innocent civilians.

In denying Arab Bank's motion to dismiss the litigation, Federal District Court Judge Nina Gershon wrote: "In light of the allegations that the Saudi Committee widely and publicly solicited funds that were deposited directly into accounts at Arab Bank and that Arab Bank consulted with the Saudi Committee and local representatives of HAMAS to finalize the lists of beneficiaries, the inference is unmistakable that Arab Bank knew it was administering a financial benefit to designated families of Palestinian 'martyrs' and those wounded or imprisoned in perpetrating terrorist attacks, i.e., those who perpetrated the primary violations of the law of nations." Indeed, Judge Gershon wrote in a recent sanctioning decision, Arab Bank "admits that it maintained accounts for eleven people or organizations that had already been designated as Terrorists."

The ongoing civil litigation against Arab Bank supplements U.S. regulatory and enforcement actions. In 2005, the Office of the Comptroller of the Currency (OCC) and the Treasury Department's Financial Crimes Enforcement Network levied a $24 million fine against Arab Bank. Although Arab Bank protested that the U.S. Government fine was "unreasonably high," this amount pales in comparison to the $32 billion in assets that Arab Bank possessed at the time.

Just this week, a federal judge sanctioned Arab Bank for refusing to turn over relevant bank records.[3] And, significantly, Arab Bank continues to do lucrative business in New York through correspondent banking relationships with U.S. financial institutions, while refusing to provide compensation to those harmed by its conduct and while continuing to defy U.S. courts.

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[2] See http://www.bloomberg.com/apps/news?pid=newsarchive&sid=a_0CRqtqmut0&refer=europe-redirectoldpage.

[3] For the past several years, Arab Bank has defied court orders pertaining to the production of relevant bank records. A federal district court judge sanctioned Arab Bank just two days ago for such conduct. According to Judge Gershon, since 2005 Arab Bank has "refused to produce certain documents" and "to reveal bank account information." In her sanctions ruling, Judge Gershon rejected the Bank's arguments against disclosure, stating that Arab Bank's "false or exaggerated assertions hardly support a finding of good faith." Further, the Judge said she believed that "the withheld records would include documentation (including photographic identification) for the approximately 3,000 beneficiaries of 'martyr' payments who did not hold accounts at the Bank and received their payments (which together totaled $20 million) over the counter" as well as "records of the recipients of Saudi Committee payments who *did* maintain accounts at the Bank" (emphasis in the original). As a result, the Judge ordered that the jury "may infer that [Arab Bank] processed and distributed payments on behalf of the Saudi Committee to terrorists, . . . their relatives, or representatives."

In connection with the consent order it entered into with the OCC, Arab Bank was required to convert its New York branch into an "agency." This means, among other things, that it is no longer permitted to conduct its own dollar clearing transactions and funds transfer through its U.S. agency, and must instead rely on correspondent banking relationships to conduct such business.

According to the 2010 Banker's Almanac, Arab Bank retains an extensive network of correspondent banking relationships, including with institutions such as Wells Fargo Bank, HSBC Bank USA, and JP Morgan Chase. These correspondent banking relationships are the lifeblood of Arab Bank's connection to the international financial system.

The United States Congress and Executive Branch should carefully consider whether to allow such relationships while Arab Bank continues to defy U.S. courts and otherwise fails to come to terms with those impacted by its conduct.

The $24 million U.S. government fine against Arab Bank proved to be inadequate. A trial date in the civil cases against Arab Bank will likely be set for 2011. The bank faces the prospect of civil damages that could be a multiple of the amount of U.S. government fines.

In this case, a federal court sitting in New York was able to exercise personal jurisdiction over Arab Bank because the bank had an office there. The Justice Against Sponsors of Terrorism Act will help ensure that U.S. courts have personal jurisdiction over entities supporting terrorism even if they do not have an office in the United States, subject to any limits imposed by the U.S. Constitution. In this way and others, it will promote the interests of U.S. citizens impacted by acts of international terrorism and help deter wrongful conduct by those tempted to aid and abet terrorist organizations.

Chiquita Brands International

The Chiquita case provides another example of how civil litigation may complement U.S. government enforcement actions in deterring financial transactions involving foreign terrorist organizations.

Chiquita has admitted to providing the United Self-Defense Forces of Colombia (AUC) – which the State Department designated a foreign terrorist organization in 2001 – with a total of $1.7 million from 1997 to 2004. Chiquita is also alleged to have facilitated arms shipments to AUC, including the shipment of thousands of assault rifles and millions of rounds of ammunition.

The AUC has been responsible for some of the worst atrocities in Colombia's ongoing civil conflict and participates heavily in the cocaine trafficking industry. According to the State Department, during the period of Chiquita's support payments "the AUC engaged in terrorist activity through a variety of activities including political killings and kidnappings of human rights workers, journalists, teachers, and trade unionists, among others."

Chiquita also admitted to providing money to the Revolutionary Armed Forces of Colombia (FARC), which, like AUC, is on the State Department's list of foreign terrorist organizations.

In 2007, Chiquita pleaded guilty to engaging in transactions with a specially-designated global terrorist and agreed to pay $25 million in fines. That year, Chiquita had annual revenues of $4.5 billion.

Soon after the guilty plea, families of over two hundred Colombian victims killed by the AUC filed a purported class-action lawsuit against Chiquita in federal court.

Five other suits have been filed against Chiquita on behalf of U.S. citizens and Colombian plaintiffs. These suits (which rely principally on the Anti-Terrorism Act and the Alien Torts Statute) demonstrate the deterrent role that civil litigation can play against support for terrorism: Chiquita faces potentially significant civil damages as a result of the litigation – far in excess of the $25 million it agreed to pay as the result of U.S. government enforcement actions.

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Corporations, self-avowed charitable organizations, and other large entities will continue to provide material support for terrorist organizations until it is financially unpalatable for them to do so. Although government sanctions are clearly an integral part of the effort to stem the flow of funds to terrorist groups, civil litigation can substantially enhance the financial consequences that such entities face. This proposed bill will make it easier for litigants to sue those who provide support to terrorists who kill or injure Americans. It will thereby deter future such support.

Thank you very much. I would be honored to take any questions you may have.