IMPLEMENTING NEW JERSEY'S ANTI-TERRORISM LAWS TO PREVENT TERRORIST FINANCING: A STATUTORY ANALYSIS OF THE "MATERIAL SUPPORT OR RESOURCES" PROVISIONS OF THE SEPTEMBER 11, 2001 ANTI-TERRORISM ACT AND THE "FREEZING FUNDS AND ASSETS RELATED TO TERRORISM" LEGISLATION IN THE NEW JERSEY CRIMINAL CODE

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I. Introduction

Since the attacks on September 11, 2001 ("9/11"), terrorist financing investigations quickly became an integral part of America's counterterrorism strategy.[1] The 9/11 hijackers received over $400,000 from al-Qaeda through American banks and financial institutions.[2] The money was then used for airline pilot training, airline tickets, and other expenses associated with their terrorist plot.[3] Prior to 9/11, al-Qaeda operatives, including the hijackers, obtained money from their co-conspirators by conducting financial transactions in various parts of the United States, including New Jersey branches of the Dime Savings

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[1] THE 9/11 COMMISSION REPORT: FINAL REPORT OF THE NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES 381 (W.W. Norton & Company 2004). "After 9/11, the United States took aggressive actions to designate terrorist financiers and freeze their money. . . ." *Id.* [hereinafter 9/11 COMMISSION REPORT].

[2] *Id.* at 169. "The 9/11 plotters eventually spent somewhere between $400,000 and $500,000 to plan and conduct their attack. Consistent with the importance of the project, al-Qaeda funded the plotters." *Id.*

[3] *Id.*

Bank, First Union Bank, and Hudson United Bank.[4]

Subsequent to 9/11, the New Jersey legislature signed off on powerful terrorist financing legislation with the "Material Support or Resources" provisions of the September 11, 2001 Anti-Terrorism Act ("9/11 Act")[5] and the asset seizure provisions of the Freezing Funds and Assets Related to Terrorism Act ("Freezing Funds Act").[6] Both laws provide state and local law enforcement with powerful statutory tools to both detect and apprehend terrorist operatives and deprive them of their financial support.[7]

Potent laws, like the 9/11 Act and the Freezing Funds Act, are worthless, however, if they are not enforced fairly, effectively and within constitutional mandates. This article will analyze both sets of statutes and through a case study will provide an illustration of a sound implementation of the "Material Support or Resources" provisions of the 9/11 Act and the asset seizure provisions of the Freezing Funds Act.[8]

This article will also examine law enforcement's balancing act in apprehending terrorist financiers, while simultaneously protecting the public's civil liberties. This is a mandate for all law enforcers, especially the counterterrorism community. An in-depth analysis of the general terrorist financing dynamic is helpful to comprehend the evil consequences of financing terror.[9]

II. Terrorist Financing

A. *The Fundamentals*

The terrorist attacks of 9/11 were facilitated through long term financial schemes[10] designed and implemented by Osama Bin Laden

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[4] Nat'l Comm'n on Terrorist Attacks Upon the United States: Monograph on Terrorist Financing 140-141, *available at* http://www.9-11commission.gov (last visited Sept. 25, 2004). The hijackers also used banks in New York, Florida, California and other states. *Id.*

[5] *See infra* note 32 and accompanying text. Congress also passed anti-terrorist financing laws in the USA PATRIOT Act. *See infra* notes 28-30 and accompanying text.

[6] *See infra* note 33 and accompanying text.

[7] *See* discussion *infra* Part II.B.

[8] *See* discussion *infra* Part V.

[9] 9/11 COMMISSION REPORT, *supra* note 1, at 382. "Vigorous efforts to track terrorist financing must remain front and center in U.S. counterterrorism efforts. The government has recognized that information about terrorist money helps us to understand their networks, search them out, and disrupt their operations." *Id.*

[10] *The Network of Terrorism: The International Coalition, available at*

("Bin Laden") and the al-Qaeda terrorist network.[11] Prior to the 9/11 attacks, the nineteen al-Qaeda hijackers received money directly from other al-Qaeda operatives.[12] The hijackers made withdrawals from American bank accounts and used al-Qaeda funds to cover living expenses and other costs.[13] These hijackers were sufficiently funded due to their co-conspirators' extensive knowledge of the world's financial institutions.[14]

The fundraising capabilities of al-Qaeda are formidable. Al-Qaeda currently receives a significant portion of its financial support from numerous Islamic charities and relief organizations that are ultimately

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http://usinfo.state.gov/products/pubs/terrornet/09.htm (last visited Sept. 28, 2004) (stating that "[k]illing and hate take money. Drying up the financial sources of terror is vital to end the terrorist threat.").

[11] *See* Exec. Order No. 13,224, 66 Fed. Reg. 49,079 (Sept. 23, 2001) (discussing links between terrorist financing and the attacks of 9/11, including sanctions against those who conduct transactions with individuals and organizations affiliated with terrorism); *see also* Symposium, *Selected Symposium Remarks "Financial Aspects of the War on Terror,"* 34 LAW & POL'Y INT'L BUS. 1, 3 (2002) (discussing the amount of money the hijackers spent to complete their conspiracy); *see also* RACHEL EHRENFELD, FUNDING EVIL: HOW TERRORISM IS FINANCED AND HOW TO STOP IT 1 (Bonus Books) (2003). Al-Qaeda was founded in 1982 by Bin Laden and Sheikh Abdallah Yussuf Azzam in response to the Soviet invasion of Afghanistan. EHRENFELD, *supra*, at 33-34. Their operatives are located in over ninety countries with approximately 70,000 fighters from around the world. *Id.* at 34. In a religious order ("fatwa"), Bin Laden stated that to please God, a Muslim should "kill the Americans and plunder their money wherever and whenever they find it." *Id.* at 7. With regards to the murder of civilians, including women and children, Abu Aiman al-Hilali, a high-level al-Qaeda officer wrote:

> The citizens of the democratic western countries take full part in the decisions taken by their government. The residents of those countries are not classified as [civilians] as they were classified during previous wars in history. In light of their influence on the decisions taken by their governments, they do not comply with the definition of "elderly, women and children" [who are immune from being targeted in terror attacks].

Id. Al-Qaeda has been and continues to be responsible for attacking American targets. *See* JANE CORBIN, AL-QAEDA, IN SEARCH OF THE TERROR NETWORK THAT THREATENS THE WORLD 45, 95 (Thunders Mouth Press, Nation Books) (2002). For example, in addition to the 9/11 attacks, al-Qaeda's operatives orchestrated the first World Trade Center attack in 1993 and the bombing of the U.S.S. Cole at Yemen in 2000. *See id.* The term "al-Qaeda" literally means "The Base" in Arabic. *Id.* at xvii.

[12] *See* Matthew Levitt, *Iraq, U.S., and the War on Terror: Stemming the Flow of Terrorist Financing: Practical and Conceptual Challenge*, 27 FLETCHER F. WORLD AFF. 59, 60 (2003). This money came from Europe, the Middle East and operative bank accounts in the United States. *Id.* One transaction which occurred a few months before the 9/11 attacks involved $148,895.00 that was wired into the hijackers' United States bank account by one of Bin Laden's financial officers from the Sudan. *See* EHRENFELD, *supra* note 11, at 19-20.

[13] *See* CORBIN, *supra* note 11, at 167-68.

[14] *See* Levitt, *supra* note 12, at 60.

funded by wealthy supporters of Bin Laden.[15] Also, numerous front companies and charities purportedly launder terrorist money.[16]

Moreover, terrorist groups, such as al-Qaeda, generate revenues from illegal drug sales.[17] In addition to funding various terrorist organizations, these proceeds allow drug dealers, arms dealers and other criminals to operate and expand their own illegal enterprises and spawn enormous profits.[18]

The funds raised through these front groups and drug trafficking rings enable al-Qaeda to purchase weapons, pay members, feed recruits, and obtain medical care for operatives and their families.[19] Without this

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[15] Deputy U.S. Treasury Secretary Kenneth W. Dam, Address at the Woodrow Wilson International Center for Scholars, "Money That Kills: The Financial Front of the War on Terrorism." (October 22, 2001), *available at* http://www.treas.gov/press/releases/po709.htm.

[16] *See* Exec. Order No. 13,224, *supra* note 11, at 49,083; *see also* Press Release, United Nations, Security Council Committee Established Pursuant to Resolution 1267 (1999) Concerning Afghanistan Issues a New Consolidated List (Nov. 26, 2001), *available at* http://www.un.org/News/Press/docs/2001/afg169.doc.htm (providing the addresses of charities and organizations whose funds and other financial assets were ordered frozen due to alleged links to terrorists). Samples of alleged front companies and charities who are purported to launder terrorist money are the Mamoun Darkazanli Import-Export Company of Germany, the Al Rashid Trust of Pakistan and the Wafa Humanitarian Organization of Pakistan. *Id. See* United States v. Arnaout, 282 F. Supp. 2d 838, 840 (N.D. Ill. 2003). Locally, an Illinois-based charity, Benevolence International Foundation Inc., ("BIF") was alleged to have diverted money that was supposed to have been intended for humanitarian purposes to underground guerilla groups overseas. *Id.* BIF's Executive Director, Enaam Arnaout, pleaded guilty to federal racketeering fraud charges for providing aid to militia in Bosnia and Chechnya. *Id. See also* Plea Agreement, United States v. Arnaout, 282 F. Supp. 2d 838 (N.D. Ill. July 17, 2003), *available at* http://news.findlaw.com/hdocs/docs/bif/usarnaout203plea.pdf [hereinafter Plea Agreement]; *see also* Indictment, United States v. Arnaout, 282 F. Supp. 2d 838 (N.D. Ill. 2003), *available at* http://news.findlaw.com/hdocs/docs/terrorism/usarnaout10902ind.pdf [hereinafter Indictment]. One of BIF's offices was maintained on Branford Place in Newark, New Jersey. *See* U.S. Department of the Treasury Web Site, *available at* http://www.ustreas.gov/offices/eotffc/ofac/actions/20011214a.html (last visited Oct. 28, 2004); *see also* discussion *infra* Part V.

[17] *See* Fletcher N. Baldwin, *Organized Crime, Terrorism, and Money Laundering in the Americas*, 15 FLA. J. INT'L. L. 3, 4 (2002). It has been estimated that 40% of al-Qaeda's revenues were generated from narcotics trafficking. *Id.* The author wishes to acknowledge that there are some who are skeptical about claims that al-Qaeda generates revenues through illegal drug sales. *See* 9/11 COMMISSION REPORT, *supra* note 1, at 171.

[18] *See generally,* FINANCIAL CRIMES ENFORCEMENT NETWORK, FINCEN FOLLOWS THE MONEY: A LOCAL APPROACH FOR IDENTIFYING AND TRACING CRIMINAL PROCEEDS 1 (Financial Crimes Enforcement Network, 2d ed. 1998).

[19] *See* R. Colgate Selden, *The Executive Protection: Freezing the Financial Assets of Alleged Terrorists, The Constitution, and Foreign Participation in U.S. Financial Markets,*

money, it is unlikely that al-Qaeda could have found refuge in Afghanistan, which was given in exchange for financing the former Taliban regime.[20]

Also, terrorist groups simply will not be able to purchase weapons of mass destruction without effective financing schemes.[21] These financing operations are essential to the success and longevity of terrorist organizations, such as al-Qaeda, around the world.[22]

Sophisticated financing schemes dependent on illegal activity or wealthy donors are not the only explanation behind the 9/11 terrorist attacks. Another contributing factor was the failure of American banks and financial institutions to detect terrorist-related financial transactions.[23] Professor Fletcher N. Baldwin, Jr., for the Center for

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8 FORDHAM J. CORP. & FIN. L. 491, 502 (2003).

20 *See id.* at 492.

21 *See id.* at 533. "[T]he U.S. recently found evidence that the government believes links al-Qaeda to the possible acquisition of atomic weapons." *Id. See also* STEVE BOWMAN, WEAPONS OF MASS DESTRUCTION: THE TERRORIST THREAT, CRS REPORT FOR CONGRESS (Mar. 7, 2002) (copy on file with author). "Worldwide the likelihood of terrorists being capable of producing or obtaining WMD may be growing due to looser controls of stockpiles and technology in the former Soviet states. . . ." *Id.* While it has not yet been confirmed that al-Qaeda has purchased weapons of mass destruction, it has been reported by American intelligence sources that "al-Qaeda is attempting to acquire this type of weapons capability." *Id.* at CRS-3. Bin Laden has in the past claimed to possess weapons of mass destruction. *See* World Conflict Quarterly, *available at* http://www.globalterrorism101.com/AlQaedaWMD~ns4.html (last visited Oct. 28, 2004). *See* 9/11 COMMISSION REPORT, *supra* note 1, at 381 (reporting on efforts by al-Qaeda to purchase weapons of mass destruction).

22 *See* 9/11 COMMISSION REPORT, *supra* note 1, at 381-83.

23 *See* Baldwin, *supra* note 17, at 4. "The U.S. banking system, prior to September 11, 2001, was sound asleep under the Bank Secrecy Act, and there is no doubt about it." *Id.* Under the Bank Secrecy Act of 1970, American financial institutions are required to monitor and report suspicious financial transactions. *See* 31 U.S.C.A. § 5318(g) (West 2004). "The Secretary [of the Treasury] may require any financial institution, and any director, officer, employee, or agent of any financial institution, to report any suspicious transaction relevant to a possible violation of law or regulation." *Id. See also* 31 U.S.C.A. § 5318(h) (West 2004). "In order to guard against money laundering through financial institutions, each financial institution shall establish anti-money laundering programs." *Id. See also* 31 U.S.C.A. § 5318(i) (West 2004):

> Each financial institution that establishes, maintains, administers, or manages a private banking account or a correspondent account in the United States for a non-United States person, including a foreign individual visiting the United States, or a representative of a non-United States person shall establish appropriate, specific, and, where necessary, enhanced, due diligence policies, procedures, and controls *that are reasonably designed to detect and report instances of money laundering through these accounts.*

Id. (emphasis added). *See, e.g.*, EHRENFELD, *supra* note 11, at 20. Some terrorist related

International Financial Crimes Studies at the University of Florida School of Law,[24] accused American banks of allowing al-Qaeda to funnel its money through the nation's complex financial networks despite safeguards in place to prevent this activity.[25] Because the attacks of 9/11 aroused politicians and the public alike, terrorist financing investigations have become a top priority of the law enforcement community.[26]

B. *The Legislative Response*

With the advent of America's war on terror, Congress passed the USA PATRIOT Act.[27] These statutes provide law enforcement with powerful laws designed to bolster America's war on terrorism[28] and terrorist financing.[29] Shortly after the enactment of the federal statutes,

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financial transactions were not reported by the respective banks. For example, federal authorities identified one of the banks that wired money to the hijackers as a financial institution who has laundered money for Bin Laden in the past. *Id.* The SunTrust Bank of Florida, who maintained an account with one of the hijackers, accepted money from that bank and deposited it into a hijacker account without reporting the transaction to authorities. *Id. But see,* CORBIN, *supra* note 11, at 167. One suspicious transaction with links to the hijackers was indeed reported to the U.S. Treasury Department. CORBIN, *supra* note 11, at 167. Because of the volume of such reports, the transactions received no attention until after 9/11. *Id.*

[24] The Center For International Financial Crime Studies at the University of Florida, School of Law is one of the few academic research organizations that concentrate solely on international financial crimes such as money laundering, terrorist financing and offshore banking. By working with academics, lawyers and government officials, the Center for International Financial Crime Studies provides policy analysis and consulting services in the area of international financial crimes. *See* Center For International Financial Crime Studies, *at* http://www.law.ufl.edu/cifcs (last visited Sept. 28, 2004).

[25] Baldwin, *supra* note 17, at 4.

[26] *See supra* note 10 and accompanying text.

[27] Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001), [hereinafter USA PATRIOT Act], *available at* http://www.lifeandliberty.gov.

[28] *See Congress Explains the USA PATRIOT Act, available at* http://www.lifeandliberty.gov/subs/q_support.htm. (last visited Oct. 28, 2004). According to Senator Rick Santorum (R-Pa.), the USA PATRIOT Act "will better enable our federal law enforcement communities in detaining and apprehending the criminals and groups associated with terrorism and its many forms of destruction." *Id.* Although the USA PATRIOT Act consists of a group of statutes, it is sometimes referred to as one statute collectively. *Id.*

[29] *See Congress Explains the USA PATRIOT Act available at* http://www.lifeandliberty.gov/subs/support/senkerry102501.pdf (last visited Sept. 28, 2004). According to Senator John Kerry (D-Ma.), because of the USA PATRIOT Act:

several states, including New Jersey, passed anti-terrorism legislation.[30] On June 18, 2002, New Jersey Governor James E. McGreevey signed into law the 9/11 Act.[31] The "Material Support or Resources" provisions

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> [T]errorist organizations will not be able to move funds as eaily and they will not be able to have their people move within our country with bank accounts that we cannot penetrate, with major sources of funding transferred to and from the Middle East or elsewhere to empower them to be able to do the kind of things they did on September 11.

Id. *See* USA PATRIOT Act 376. *See also* 18 U.S.C. § 1956 (West 2004). That provision states:

> Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which . . .involves the proceeds of specified unlawful activity with the intent to promote the carrying on of specified unlawful activity; [or] with intent in conduct constituting a violation of section 7201 of the Internal Revenue Code of 1986 . . . [or] knowing that the transaction is designed in whole or in part—to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity or to avoid a transaction reporting requirement under State or Federal law, shall be sentenced to a fine of not more than $500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years or both.

18 U.S.C. § 1956 (a); *see also* 18 U.S.C. § 1956 (c)(7). *See* USA PATRIOT Act 805. *See also* 18 U.S.C. § 2339A (West 2004), stating:

> Whoever provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, a violation of section 32, 37, 81, 175, 229, 351, 831, 842(m), or (n), 844 (f) or (i), 930(c), 956, 1114, 1116, 1203, 1361, 1362, 1363, 1751, 1992, 1993, 2155, 2156, 2280, 2332, 2332a, 2332b, 2332f, or 2334 of this title, section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284, or section 46502 or 60123(b) of Title 49 or in preparation for, or in carrying out, the concealment of an escape from the commission of any such violation, or attempts or conspires to do such an act, shall be fined under this title, imprisoned not more than 15 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life.

Id. The Federal Bureau of Investigation is the lead law enforcement agency in the investigation of terrorism. *See* Federal Bureau of Investigation War on Terrorism, Counter Terrorism *available at* http://www.fbi.gov/terrorinfo/counterrorism/partnership.htm. (last visited Sept. 26, 2004). Since 9/11, the FBI has worked with law enforcement agencies at all levels to investigate terrorists and terrorist related activity. *Id.*

[30] *See infra* notes 32-37 and accompanying text. For an example of another state anti-terrorism statute, *see, e.g.*, 9 N.Y.C.R.R. § 5.132 (West 2004).

[31] N.J. STAT. ANN. §§ 2C:38-1 to -5 (West 2004). *See also* Press Release, Governor James E. McGreevey (D-N.J.), McGreevey Signs September 11, 2001 Anti-Terrorism Act Into Law (June 18, 2002) *available at* http://www.state.nj.us/cgi-bin/governor/njnewsline/view_article.pl?id=749. New Jersey State Assembly sponsors of the bill included Assemblyman Neil Cohen (D-Union), Assemblyman John Burzichelli (D-Cumberland, Gloucester/Salem), Assemblyman Paul Sarlo (D-Bergen/Essex/Passaic) and

of the 9/11 Act specifically address terrorist financing.[32] In February 2003, Governor McGreevey also signed into law the Freezing Funds Act.[33] The asset seizure provisions of the Freezing Funds Act provide specific procedures whereby the state attorney general or a designee can secure a court order to freeze terrorist related financial accounts.[34] It is intended to deprive al-Qaeda and other terrorist groups from obtaining operating capital.[35]

Assemblywoman Joan Quigley (D-Bergen/Hudson). *Id.* New Jersey State Senate sponsors of the bill included Senator Robert Martin (R-Morris, Passaic), Senator Gerald Cardinale (R-Bergen), and Senator Gary Furnari (D-Bergen/Essex/Passaic). *Id.* The Assembly version of the bill (Bill A-911) was introduced on February 28, 2002 and subsequently passed by the Assembly on March 14, 2002 with some amendments. *See* September 11, 2001 Anti-Terrorism Act, N.J. STAT. ANN. 2C-38-1, State of N.J., 210th Legis., *available at* http://www.njleg.state.nj.us/2002/bills/a1000/911_I1.htm (last visited Sept. 28, 2004). Assembly bill 911 was then referred to the Senate on March 14, 2002 and passed by the Senate (Bill S-775) with amendments on March 25, 2002. *Id.* Both houses approved the bill on June 13, 2002 and referred it to the Governor for his signature. *Id.* The goal of the legislators who sponsored the bill is as follows: "[i]t is the sponsor's intent to provide a comprehensive response to these acts of terror by providing law enforcement with the essential tools to dismantle the networks of terror and prevent further acts of terrorism." *Id.*

[32] N.J. STAT. ANN. § 2C:38-5 (West 2004).

[33] N.J. STAT. ANN. §§ 2C:66-1 to -11 (West 2004). *See also* Press Release, Governor James E. McGreevey (D-N.J.), McGreevey Takes Action to Fight Terrorism, Support Reservists (Feb. 27, 2003) *available at* http://www.nj.gov/cgi-bin/governor/njnewsline/view_article.pl?id=1072.

[34] N.J. STAT. ANN. § 2C:66-1(b):

> Upon application by the Attorney General, a court may issue an attachment order directing a financial institution to freeze some or all of the funds or assets deposited with or held by the financial institution by or on behalf of an account holder when there exists reasonable suspicion that the account holder has committed or is about to commit the crime of terrorism in violation of section 2 of P.L. 2002, . . . or soliciting or providing material support or resources for terrorism in violation of section 5 of P.L. 2002.

Id. N.J. STAT. ANN. § 2C:66-2 states:

> The application of the Attorney General required by this act shall contain: a statement of the approximate financial loss caused by the account holder in the commission of the crime of terrorism in violation of section 2 of P.L. 2002, . . . or soliciting or providing material support or resources for terrorism in violation of section 5 of P.L. 2002, a statement of facts relied upon by the Attorney General, including the details of the particular offense that is about to be committed or has been committed; and identification of the account holder's name and financial institution account number.

Id. N.J. STAT. ANN. § 2C:66-3 states:

> If the court finds that: there exists a reasonable suspicion that the account holder has committed or is about to commit the crime of terrorism in violation of section 2 of P.L. 2002, . . .or the crime of soliciting or providing material support or resources for terrorism in violation of section 5 of P.L. 2002, . . . the accounts of the account holder are specifically identified; and it is necessary to

The "Material Support or Resources" provisions of both the 9/11 Act and the Freezing Funds Act are designed to provide state law enforcement with the legal means to prevent further terrorist attacks, deprive terrorists of their financing, and bring terrorist cells to justice.[36] Proper implementation of these laws may effectuate the overall strategy of ensuring homeland security.[37]

C. *Money Laundering and Terrorist Financing*

Cooperation between federal and state authorities is especially

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> freeze the account holder's funds or assets to ensure eventual restitution to victims of the alleged offense, the court may order the financial institution to freeze all or part of the account holder's deposited funds or assets so that the funds or assets may not be withdrawn or disposed of until further order of the court. As part of the consideration of an application in which there is no corroborative evidence offered, the judge shall inquire in camera as to the identity of any informants or any other additional information concerning the basis upon which the Attorney General has applied for the attachment order which the judge finds relevant in order to determine if there exists a reasonable suspicion pursuant to this act.

Id.

[35] *See* Press Release, Governor James E. McGreevey, *supra* note 31. This bill was introduced to the Assembly on January 31, 2002. *See* New Jersey Legislature, *available at* http://www.njleg.state.nj.us/2002/Bills/A2000/1651_I1.HTM (last visited Sept. 26, 2004). It passed the Assembly with amendments on March 14, 2002. *Id.* The Senate received the bill on March 18, 2002 and referred it to the Judiciary Committee. *Id.* After amendments were made, it passed the Senate on December 16, 2002. *Id.* The goal of the legislators who sponsored the bill is as follows:

> In the days following the September 11, 2001 attacks on the World Trade Center and the Pentagon, it became clear that funds and assets which these terrorists used to plan these atrocious acts were deposited or held in financial institutions in this country. It is the sponsor's intent to establish a mechanism by which law enforcement can request an order freezing the funds or assets of individuals they suspect are carrying out acts of terrorism.

Id.

[36] *See* Press Release, Governor James E. McGreevey, *supra* note 31. After signing the 9/11 Act into law, Governor McGreevey said, "Whether harboring terrorists or providing them with financial support, New Jersey will not tolerate such cowardly action and the laws of this State appropriately reflect our commitment to combating terror." *Id.* New Jersey Attorney General David Samson then said, "This new law will provide us with the essential legal tools to deal with terrorists and bring them to justice." *Id.* After signing the Freezing Funds Act into law, Governor McGreevey said, "It is critical that we give our law enforcement community the tools it needs to enhance our security. By empowering the Attorney General with the ability to freeze the assets of suspected terrorists we are taking an important step forward." *See id.*

[37] *See* discussion *supra* note 31 and accompanying text. *See also supra* note 33 and accompanying text.

important in New Jersey for one simple reason.[38] The New York metropolitan area, especially northern New Jersey, is susceptible to individuals in organized crime gangs, drug trafficking groups, and fraud rings, who launder their revenues through New Jersey financial institutions.[39] Narcotics traffickers and organized crime members launder crime-related revenues in a similar manner to terrorists.[40] Money launderers, irrespective of their criminal venture, use a variety of mechanisms, such as the use of casinos, check cashers, shell corporations, and bank accounts located in off-shore tax havens, to further their criminal activity.[41]

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[38] *See* discussion *supra* note 28 and accompanying text.

[39] *See The National Money Laundering Strategy for 2000* (Mar. 2000), *available at* http://www.ustreas.gov/press/releases/docs/ml2000.pdf. In 2000, the U.S. Department of the Treasury designated the New York/Northern New Jersey area as a "High Intensity Financial Crimes Area" (HIFCA). *Id.* at 11.

> The New York/Northern New Jersey region is the most populous urbanized area in the country. It is also the world's leading financial center, serving as headquarters for the New York Stock Exchange and 44 of the fifty major banks. The region is the home of three major airports, including JFK Airport, which is ranked fifth in the country for cargo and sixteenth for passenger traffic. Also located in the region is the Port of New York/New Jersey, the largest port complex on the East Coast of North America.

Id. at 11. "All law enforcement agencies are investigating major cases in this area; undercover investigations, in particular, indicate a great deal of money laundering activity." *Id.* The author wishes to note that the other two major airports noted in the report are LaGuardia Airport in New York City and Newark Liberty International Airport in Newark. Receiving a designation as a "HIFCA" means that efforts at curtailing money laundering activities in the New York/New Jersey area have been intensified at the federal and local levels. *Id.* at 9. *See About IRS, Criminal Investigation's Role on Terrorism Task Forces*, (May 2003), *available at* http://www.irs.ustreas.gov/irs/article/0,,id=107510,00.html. Other areas who are designated as a "HIFCA" include Chicago, San Francisco, San Juan, Puerto Rico, Los Angeles, Miami and Texas/Arizona. *Id.*

[40] *See* World Bank Group, *Money Laundering and Terrorist Financing: Definitions and Explanations* at I-5, (Mar. 2003), *available at* http://www1.worldbank.org/finance/html/amlcft/docs/01-chap01-f.qxd.pdf.

> The techniques used to launder money are essentially the same as those used to conceal the sources of and uses of, and uses for, terrorist financing. Funds used to support terrorism may originate from legitimate sources, criminal activities, or both. Nonetheless, disguising the source of terrorist financing, regardless of whether the source is of legitimate or illicit origin, is important. If the source can be concealed, it remains available for future terrorist financing activities.

Id.

[41] Kathleen A. Lacey & Barbara Crutchfield George, *Crackdown on Money Laundering: A Comparative Analysis of the Feasibility and the Effectiveness of Domestic and Multilateral Policy Reforms*, 23 NW. J. INT'L L. & BUS. 263, 277-82 (2003). Professor Lacy and Professor George present an impressive argument regarding the terrorist financing

The Office of the New Jersey Attorney General reports that money laundering in New Jersey poses a significant threat to our way of life.[42] Approximately $2 billion in revenues generated by crime groups are laundered through New Jersey financial institutions and businesses annually.[43] Due to the clandestine nature of terrorist operations, it is not yet clear exactly how much terrorist related currency flows through American banks.[44] Recently, however, there have been two documented cases of individuals who made business and financial transactions allegedly linked to terrorism in New Jersey.[45]

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relationship to money laundering. They argue that unlike most money launderers who obtain their money after their crime is committed, terrorists receive much of their money before a terrorist act occurs. *Id.* at 267. "In reverse order, 'clean money' is laundered in order to hide the sources of the money ultimately used to accomplish an illegal or destructive purpose. The series of deceptive laundering techniques prevent law enforcement officers from tracing the funds and determining the perpetrators and masterminds behind the vicious acts." *Id.*

[42] New Jersey Department of Law and Public Safety, Division of Criminal Justice, *Money Laundering in New Jersey: A Preliminary Assessment* 1 (Aug. 2001), *available at* http://www.state.nj.us/lps/dcj/njmoneylaundering/publications.htm.

> The degree of societal harm which is realized through criminal activity may reflect the nature of the system which has been compromised. If the banking system, for example is compromised, then society as a whole maybe affected. *Thus, it is seen that the New Jersey systems described have a significant potential to be used by those who wish to launder money. The threat that this poses to the State is significant.*

Id. at 29 (emphasis added). The author wishes to acknowledge that the Attorney General's report focuses primarily on money laundering as an adjunct to drug trafficking, organized crime, and white collar crime. *Id.* at ii. I argue since terrorist groups are heavily involved in all three activities, the report's conclusions are viable for terrorist financing investigations. *See infra* note 44 and accompanying text. *See also* Lacey & George, *supra* note 41 and accompanying text.

[43] Julie Fields, *Dirty Money: Why We're Losing the War on Drugs. State Launches Hunt for Drug Money*, THE BERGEN RECORD, Sept. 24, 1998, at A17.

[44] *See* World Bank Group, *supra* note 40, at I-6.

> By their very nature, money laundering and terrorist financing are geared towards secrecy and do not lend themselves to statistical analysis. Launderers do not document the extent of their operations or publicize the amount of their profits, nor do those who finance terrorism. Moreover, because these activities take place on a global basis, estimates are even more difficult to produce.

Id.

[45] *See* discussion *infra* Part V. *See also* Press Release, U.S. Attorney's Office, District of New Jersey, British Arms Dealer LaKhani Indicted For Attempting to Aid Terrorists Offered to Sell More Missiles to Take Down a Dozen U.S. Aircraft (Dec. 18, 2003), *available at* http://www.usdoj.gov/usao/nj/publicaffairs/NJ_Press/files/2003linkspage.htm. On August 12, 2003, a British arms dealer, Hemant Lakhani, was arrested by FBI Agents in Newark, New Jersey for attempting to arrange the sale of surface to air anti-aircraft guns, tanks, and a weapon of mass destruction to aid terrorists. *Id.* Some of the negotiations

Since 9/11, some general progress has been made in combating terrorist financing.[46] Assets valued in the millions of dollars have been seized both domestically and abroad.[47] Al-Qaeda, however, remains economically and logistically vigorous.[48] More needs to be done to stem the flow of terrorist related money and assets and to proactively take individuals out of the terrorism business.[49]

Due to the perplexing nature of the money laundering/terrorist financing dynamic,[50] participation of law enforcement professionals of both federal and state governments is necessary for success in preventing terrorist financing.[51] Because of New Jersey's documented problems with money laundering,[52] coordination between federal and state law enforcement personnel is needed to prevent terrorists from using New Jersey as a place to launder terrorist funds similar to the way narcotics traffickers launder drug money.[53] Thus, an analysis of the "Material Support or Resources" provisions of the 9/11 Act and the Freezing Funds and Assets Related to Terrorism statute, coupled with a review of their applicability in homeland security initiatives, is valuable and relevant to provide counterterrorism personnel and other government officials with a step-by-step blueprint of the law's balanced and effective use in safeguarding our way of life.

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occurred in New Jersey. *Id.* During one such meeting, Lakhani met with a cooperating witness, verified that the missile had arrived safely in the United States, and began negotiating the sale of an additional 50 shoulder fired surface to air missiles. Criminal Complaint, United States of America v. Hemant Lakhani, (Aug. 12, 2003), *available at* http://www.usdoj.gov/usao/nj/publicaffairs/NJ_Press/files/2003linkspage.htm.

46 *See* Selden, *supra* note 19, at 501-502.

47 *See id.*

48 *National Commission on Terrorist Attacks Upon The United States: First Public Hearing of the National Commission on Terrorist Attacks Upon the United States*, (Apr. 1, 2003) (statement of Lee S. Wolosky, past Director for Transnational Threats on the National Security Council) *at* http://www.9-11commission.gov/hearings/hearing1/witness_wolosky.htm. Mr. Wolosky described al-Qaeda as being "financially robust." *Id.*

49 *See* EHRENFELD, *supra* note 11, at 17. "[A]lthough 166 countries had blocking orders [for terrorist assets] by April 2003 only $124 million in assets had been frozen – $88 million overseas and $36 million in the U.S." *Id.*

50 *See supra* notes 40-41 and accompanying text.

51 *See supra* notes 28-29 and accompanying text.

52 *See supra* note 39 and accompanying text.

53 *See supra* note 42 and accompanying text.

III. THE SEPTEMBER 11, 2001 ANTI-TERRORISM ACT

A. *General Provisions*

The 9/11 Act is codified in the New Jersey Code of Criminal Justice at New Jersey Statute section 2C:38-1 to 5.[54] It states that an individual can be convicted in criminal court for terrorism if he commits, tries to commit, or plans to commit any of the crimes listed in section 2C:38-2(c), which include crimes such as murder, kidnapping, or vehicular homicide.[55] Additionally, the defendant must possess the intent "to promote an act of terror,"[56] or "to terrorize five or more persons."[57] Furthermore, an indictment under section 2C:38-2 may be sustained if the defendant exhibits a purpose either to manipulate government actions through the use of terror,[58] or to harm

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[54] N.J. STAT. ANN. §§ 2C:38-1 to -5 (West 2004).

[55] N.J. STAT. ANN. § 2C:38-2(a) (West 2004). *See also* N.J. STAT. ANN. § 2C:38-2(c) stating:

> The crimes encompassed by this section are: murder pursuant to *N.J.S. 2C:11-3*; aggravated manslaughter or manslaughter pursuant to *N.J.S. 2C:11-4*; vehicular homicide pursuant to *N.J.S. 2C:11-5*; aggravated assault pursuant to subsection b of *N.J.S. 2C:12-1*; disarming a law enforcement officer pursuant to section 1 of P.L. 1996, c. 14 (C. 2C:12-11); kidnapping pursuant to *N.J.S. 2C:13-1*; criminal restraint pursuant to *N.J.S. 2C:13-2*; robbery pursuant to *N.J.S. 2C:15-1*; carjacking pursuant to section 1 of P.L.1993, c.221 (C. 2C:15-2); aggravated arson or arson pursuant to *N.J.S. 2C:17-1*; causing or risking widespread injury or damage pursuant to *N.J.S. 2C:17-2*; damage to nuclear plant with the purpose to cause or threat to cause release of radiation pursuant to section 1 of P.L. 1983, c. 480 (C. 2C:17-7); damage to nuclear plant resulting in death by radiation pursuant to section 2 of P.L. 1983, c. 480 (C. 2C:17); producing or possessing chemical weapons, biological agents or nuclear or radiological devices pursuant to section 3 of P.L. 2002, c. 26 (C. 2C:38-3); burglary pursuant to *N.J.S. 2C:18-2*; possession of prohibited weapons and devices pursuant to *N.J.S. 2C:39-3*; possession of weapons for unlawful purposes pursuant to *N.J.S. 2C:39-4*; unlawful possession of weapons pursuant to *N.J.S. 2C:39-5*; weapons training for illegal activities pursuant to section 1 of P.L. 1983, c. 229 (C. 2C:39-14); racketeering pursuant to *N.J.S. 2C:41-1* et seq.; and any other crime involving a risk of death or serious bodily injury to any person.

Id.

[56] N.J. STAT. ANN. § 2C:38-2(a)(1). *See also* N.J. STAT. ANN. § 2C:38-2(d) ("Terror means the menace or fear of death or serious bodily injury.").

[57] N.J. STAT. ANN. § 2C:38-2(a)(2). *See also* N.J. STAT. ANN. § 2C:38-2(d) ("Terrorize means to convey the menace or fear of death or seriously bodily injury by words or actions.").

[58] N.J. STAT. ANN. § 2C:38-2(a)(3).

communication systems, transportation, buildings, utilities and other necessary services.[59]

Section 2C:38-2 has a broad reach.[60] There are over twenty underlying crimes encompassed by the 9/11 Act.[61] For example, if a terrorist commits murder in New Jersey, and in doing so communicates words to put the victim in fear of death, section 2C:38-2(a)(1) can be implemented.[62] Interestingly, at first glance the section contains no elements requiring that the defendant be a member of an acknowledged terrorist group.[63] This does not mean that individuals who are not terrorists or involved in terrorism should be included in an indictment under this provision.[64] Clearly, the sponsors of the 9/11 Act intended it to be used in our nation's war against terrorists and terrorism, not against typical street criminals.[65] While a person who kills someone can be charged pursuant to the regular provisions of the New Jersey Code of Criminal Justice,[66] implementing the 9/11 Act would be inappropriate absent a showing of bona fide terrorist activity and/or terrorist affiliation.[67]

Section 2C:38-2(a)(2) is equally broad. This provision provides that a terrorist can be convicted of terrorism if he communicates, by

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[59] N.J. STAT. ANN. § 2C:38-2(a)(4).

> A person is guilty of the crime of terrorism if he commits or attempts, conspires or threatens to commit any crime enumerated in subsection c. . . . with the purpose: to cause by an act of terror the impairment or interruption of public communications, public transportation, public or private buildings, common carriers, public utilities or other public services.

Id.

[60] *See* N.J. STAT. ANN. § 2C:38-2(c). "A person is guilty of the crime of terrorism if he commits or attempts, conspires or threatens to commit any crime enumerated in subsection c. of this section with the purpose: to promote an act of terror." N.J. STAT. ANN. §2C:38(a)(1). The crime of murder pursuant to N.J. STAT. ANN. § 2C:11-3 (West 2004) is included in subsection c. N.J. STAT. ANN. § 2C:38-2(c).

[61] N.J. STAT. ANN. § 2C:38-2(c).

[62] N.J. STAT. ANN. § 2C:38-2(a)(1); *see also* N.J. STAT. ANN. § 2C:38-2(d) ("Terror means the menace or fear of death or serious bodily injury. Terrorize means to convey the menace or fear of death or serious bodily injury *by words or actions.*") (quotations omitted) (emphasis added).

[63] N.J. STAT. ANN. § 2C:38-2(c).

[64] Upon the law's passage, both Governor McGreevey and former Attorney General David Samson announced that the main focus of the 9/11 Act is to provide law enforcement with the statutory tools needed to stop terrorism. *See supra* note 30 and accompanying text.

[65] *See supra* note 31 and accompanying text.

[66] *See, e.g.*, N.J. STAT. ANN. § 2C:11-4 (West 2004).

[67] *See supra* note 32 and accompanying text.

words or actions, an intent to kill or injure five or more persons.[68] For example, if a terrorist hijacks a bus or train containing at least five persons and conveys an intent to murder them, section 2C:38-2(a)(2) can be implemented.[69] As in section 2C:38-2(a)(1), there is no statutory requirement that a defendant charged under the 9/11 Act be affiliated with an acknowledged terrorist group. Since the 9/11 Act is explicitly intended to prohibit acts of terrorism,[70] prosecutors would be well advised to seek an indictment pursuant to the 9/11 Act only if there is a terrorist relationship.[71]

New Jersey Statute Section 2C:38-2(a)(3) provides for criminal sanctions against terrorists who attempt to manipulate governmental political strategies through terrorism.[72] For example, subsection 2(a)(3) can be implemented if a terrorist tries to murder someone in New Jersey with the desire to affect American governmental policy.[73] Section 2C:38-2(d) defines "government" inclusively.[74] The definition encompasses every level of government, and contains a catch-all provision to avoid any doubt or confusion.[75] Thus, the 9/11 Act can be implemented pursuant to section 2C:38-2(a)(3) for any action taken against any organization that pursues a governmental-type role.[76] Furthermore, section 2C:38-2(d) provides that corporations, public and private, that carry out a government function are considered government

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[68] N.J. STAT. ANN. § 2C:38-2(a)(2) ("A person is guilty of the crime of terrorism if he commits or attempts, conspires or threatens to commit any crime enumerated in subsection c. of this section with the purpose: to terrorize five or more persons."). *See also* N.J. STAT. ANN. § 2C:38-2(d).

[69] *See supra* note 57 and accompanying text.

[70] *See supra* note 31 and accompanying text.

[71] *See supra* note 31 and accompanying text.

[72] N.J. STAT. ANN. § 2C:38-2(a)(3) ("A person is guilty of the crime of terrorism if he commits or attempts, conspires or threatens to commit any crime enumerated in subsection c. of this section with the purpose: to influence the policy or affect the conduct of government by terror.").

[73] *See, e.g.*, EHRENFELD, *supra* note 11, at 7 (discussing the statement of al-Qaeda officer Abu Aiman al-Hilal, that killing American civilians is permitted because of American citizens' participation in American government policy).

[74] N.J. STAT. ANN. § 2C:38-2(d) ("Government means the United States, any State, county, municipality, or other political unit, or any department, agency or subdivision of any of the foregoing, or any corporation or other association carrying out functions of government.").

[75] *Id.*

[76] *See id.*

entities under the 9/11 Act.[77] While the remaining provisions of the statute fail to provide specific examples of such government functions, corporations that partake in fields that government agencies have traditionally controlled would presumably fall within the purview of the statute.[78] Furthermore, a business does not need to be incorporated to fall within section 2C:38-2(d).[79] Any association[80] comes within the purview of the statute if it carries out government-type obligations.[81]

Clearly, the authors of section 2C:38-2(d) intended the definition of "government," and thus the reach of the statute, to be extremely broad.[82] This is necessary in order to provide the public with the greatest amount of statutory protections.[83] If a person affiliated with a terrorist group merely voices his objections to American governmental policies, section 2C:38-2(a)(3), however, is not automatically triggered.[84] The prosecutor must show a defendant committed or tried to commit at least one of the crimes in section 2C:38-2(c) in order to implement section 2(a)(3).[85]

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[77] *See* N.J. STAT. ANN. § 2C:38-2(d).

[78] *See id.*

[79] *See id.*

[80] *See id.* While the 9/11 Act contains no specific definition of "association," according to Black's Law Dictionary an "association" is defined as:

> (1) The process of mentally collecting ideas, memories, or sensations. (2) A gathering of people for a common purpose; the persons so joined. (3) An unincorporated organization that is not a legal entity separate from the persons who compromise it.

BLACK'S LAW DICTIONARY 81 (8th ed. 1991). The definition of association is not exactly definite. Pursuant to the 9/11 Act, organizations who carry out quasi-governmental functions like a Parent Teachers Association or a police union can potentially be regarded as an association for purposes of the 9/11 Act.

[81] N.J. STAT. ANN. § 2C:38-2(d).

[82] *Id.*

[83] *See supra* note 31 and accompanying text.

[84] Absent a "clear and present danger" of harm, even terrorists have First Amendment rights. *See* Brandenburg v. Ohio, 395 U.S. 444, 447 (1969) (Douglas, J., and Black, J., concurring).

> The constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or likely to produce such action.

Id.

[85] N.J. STAT. ANN. § 2C:38-2(a)(3) ("A person is guilty of the crime of terrorism if he commits or attempts, conspires or threatens to commit any crime enumerated in subsection c. of this section with the purpose: to influence the policy or affect the conduct of government by terror").

New Jersey Statute Section 2C:38-2(a)(4) is specifically designed to prevent terrorist acts like the World Trade Center bombings.[86] Section 2(a)(4) differs from other parts of the 9/11 Act in that it expressly prohibits acts of terrorism that affect buildings, transportation and other corollary consequences of a terrorist act.[87] Here, the statute reveals an attempt on the part of the legislature to protect just about every aspect of America's commerce, communication and transportation systems.[88] The reach, again, is broad.

Section 2(a)(4) also prohibits acts of terror that interfere with communication systems. This would include destructive Internet viruses sent by terrorists to compromise public communications. However, the terrorist's underlying crime must be one that is included in section 2C:38-2(c).[89] While the collection of crimes in subsection (c) is profound, the 9/11 Act cannot be implemented pursuant to section 2C:38-2(a)(4)[90] if the intent of the terrorist is merely to be a nuisance and there is no evidence of his committing any of the crimes in subsection (c). In such a case, the prosecutor would need to evaluate other statutes in the New Jersey Criminal Code that address the issue of computer related crimes.[91]

Additionally, only the New Jersey State attorney general or a county prosecutor may file criminal charges pursuant to the 9/11 Act.[92]

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[86] N.J. STAT. ANN. § 2C:38-2(a)(4).

> A person is guilty of the crime of terrorism if he commits or attempts to commit, conspires or threatens to commit any crime enumerated in subsection c. of this section *with the purpose: to cause by an act of terror the impairment or interruption of public communications, public transportation, public or private buildings, common carriers, public utilities or other public services.*

Id. (emphasis added).

[87] *Id.*

[88] *Id.*

[89] *See supra* note 61 and accompanying text.

[90] *See supra* note 61 and accompanying text.

[91] *See, e.g.*, N.J. STAT. ANN. § 2C:20-25(b) (West 2004).

> A person is guilty of computer criminal activity if the person purposely or knowingly and without authorization, or in excess of authorization alters, damages or destroys any data, data base, computer, computer software medium, computer program, computer software, computer system or computer network or denies, disrupts or impairs computer services including access to any part of the internet that are available to any other use of the computer services.

Id.

[92] N.J. STAT. ANN. § 2C:38-2(e) ("A prosecution pursuant to this section may be brought by the Attorney General, his assistants and deputies within the Division of Criminal Justice, or by a county prosecutor or a designated assistant prosecutor if the county

Thus, a local police department cannot file charges against an alleged terrorist under the 9/11 Act without express authorization from the New Jersey attorney general.[93] As in all criminal cases adjudicated in New Jersey state courts, every element in each charge of an indictment must be proved by the prosecution beyond a reasonable doubt.[94]

Terrorism is a crime of the first degree.[95] An individual who is convicted under section 2C:38-2(a) must be sentenced to thirty years in prison, without eligibility for parole.[96] Additionally, a person convicted under the 9/11 Act for terrorism can be sentenced for a longer period, but must still serve at least thirty years without parole eligibility.[97] This statute does not prohibit terrorist defendants from being charged and potentially convicted of other crimes related to terrorism, such as terrorist financing schemes.[98] Thus, while section 2C:38-2(a) provides for limited sentences, it is possible for an individual to face higher

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prosecutor is expressly authorized in writing by the Attorney General to prosecute a violation of this section.").

[93] *Id.* Thus, such charges would be administered by the New Jersey Office of Counter-Terrorism, which is a unit within the Office of the New Jersey Attorney General. *See* McGreevey Exec. Order No. 33, N.J. Regcite (Oct. 3, 2002) *available at* http://www.state.nj.us/lps/oct/executiveorder.html (ordering and directing the Office of Counter-Terrorism to administer, coordinate and lead New Jersey's counter-terrorism efforts).

[94] State v. Thomas, 132 N.J. 247, 253 (1993) (holding "that a defendant may not be convicted of an offense except on proof beyond a reasonable doubt of each element of that offense is a fundamental principle of our criminal jurisprudence."). *See also* N.J. STAT. ANN. § 2C:1-13(a) (West 2004) ("No person may be convicted of an offense unless each element of such offense is proved beyond a reasonable doubt. In the absence of such proof, the innocence of the defendant is assumed.").

[95] N.J. STAT. ANN. § 2C:38-2(b).

[96] N.J. STAT. ANN. § 2C:38-2(b)(1):

> Notwithstanding any other provision of law to the contrary, any person convicted under this section *shall* be sentenced to a term of 30 years, during which the person *shall* not be eligible for parole, or to a specific term of years which *shall* be between 30 years and life imprisonment, of which the person *shall* not serve less than 30 years before being eligible for parole.

Id. (emphasis added). The sentencing guidelines in section 2b(1) are mandatory. They provide little flexibility for the sentencing judge with regard to the number of years a defendant convicted of violating the 9/11 Act will be incarcerated. *See id.* If an act of terrorism results in death there is even less flexibility to the sentencing judge. *See* N.J. STAT. ANN. § 2C:38-2(b)(2) ("If a violation of this section results in death, the person shall be sentenced to a term of life imprisonment, during which time the person *shall* not be eligible for parole.") (emphasis added).

[97] N.J. STAT. ANN. § 2C:38-2(b)(1).

[98] *See id.*

prison terms if convicted of other crimes under separate statutes.[99] Prosecutors who wish to maximize the power of these laws are advised to implement them such that they provide for *both* the imposition of justice and the protection of the public's civil liberties.[100]

In addition to the crimes outlined in section 2C:38-2(c), the 9/11 Act lists other crimes that are directly related to terrorism.[101] Under section 2C:38-3(a), an individual can be convicted of a crime in the first degree if he or she illegally contributes to the construction of any weapon of mass destruction or chemical weapon.[102]

Additionally, criminal liability for a second degree crime may be imposed if a proponent of these weapons recklessly allows an unauthorized individual to get hold of them.[103] This means that criminal sanctions pursuant to the 9/11 Act can be imposed even if there was no intent on the part of the operative to cause an act of terror.[104]

Criminal liability exists under the 9/11 Act if an individual purposefully interferes with an investigation of terrorist activity.[105] A

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[99] *See* discussion *infra* Part III.B (discussing the use of consecutive sentencing provisions in New Jersey's Money Laundering statutes).

[100] *See* 9/11 COMMISSION REPORT, *supra* note 1, at 394. "Therefore, while protecting our homeland, Americans should be mindful of threats to vital personal and civil liberties. This balancing is no easy task, but we must constantly strive to keep it right." *Id.*

[101] N.J. STAT. ANN. § 2C:38-3 (West 2004).

[102] N.J. STAT. ANN. § 2C:38-3(a) ("A person who, purposely or knowingly, unlawfully develops, produces, otherwise acquires, transfers, receives, stockpiles, retains, owns, possesses or uses, or threatens to use, any chemical weapon . . . for use as a weapon, or nuclear or radiological device, commits a crime of the first degree.").

[103] N.J. STAT. ANN. § 2C:38-3(b):

> Any manufacturer, distributor, transferor, possessor or user of any toxic chemical biological agent . . . that is related to a lawful industrial, agricultural, research, medical . . . or other activity, who recklessly allows an unauthorized individual to obtain access to the toxic chemical or biological agent, or toxin . . . commits a crime of the second degree and, notwithstanding the provisions of subsection a. of N.J.S. 2C:43-3, shall be subject to a fine of up to $250,000 for each violation.

Id.

[104] *Id.*

[105] N.J. STAT. ANN. § 2C:38-4(a) (West 2004).

> A person commits a crime if, with the purpose to hinder the detention, apprehension, investigation, prosecution, conviction or punishment of another for the crime of terrorism, he: (1) [H]arbors or conceals the other; (2)[P]rovides or aids in providing a weapon, money, transportation, disguise or other means of avoiding discovery or apprehension or effecting escape; (3) [S]uppresses, by way of concealment or destruction, any evidence of the crime, or tampers with a witness, informant, document or other source of information, regardless of its

person who is convicted of interfering with a terror-related investigation can be convicted of a second degree crime.[106] If death results due to the act of terror, it is a first degree crime.[107]

The potential reach of New Jersey Statutes Section 2C:38-2 to 4 of the 9/11 Act is extraordinary. The New Jersey Legislature has provided New Jersey law enforcement with extremely powerful legal tools in an effort to protect the public from terrorist activities.[108] The broad protections of the 9/11 Act encompass all areas of life, including businesses, civic organizations, and government entities.[109] Significantly, all of the terrorist activities prohibited in the 9/11 Act have one common denominator: each focuses upon the financial means of the terrorists to carry out their plans of destruction.[110]

B. *The "Material Support or Resources" Provisions*

1. Definition of "Material Support or Resources"

The "Material Support and Resources" provisions of the 9/11 Act specifically address terrorist financing.[111] The 9/11 Act defines "material support or resources" as knowing or purposeful assistance that aids an act of terrorism.[112] This means that any person who provides

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admissibility in evidence, which might aid in the discovery or apprehension of such person or in the lodging of a charge against him; (4) [W]arns the other of impending discovery or apprehension, except that this paragraph does not apply to a warning given in connection with an effort to bring another into compliance with law; (5) [P]revents or obstructs, by means of force, intimidation or deception, anyone from performing an act which might aid in the discovery or apprehension of such person or in the lodging of a charge against him; (6) [A]ids such person to protect or expeditiously profit from an advantage derived from such crime; or (7) [G]ives false information to a law enforcement officer.

Id.

106 N.J. STAT. ANN. § 2C:38-4(b).

107 *Id.*

108 *See supra* note 31 and accompanying text.

109 N.J. STAT. ANN. § 2C:38-2(d) (defining the term "government" to mean "the United States, any state, county, municipality, or other political unit, or any department, agency or subdivision of any of the foregoing, *or any corporation or other association carrying out the functions of government*") (emphasis added).

110 *See* discussion *supra* Part I.

111 N.J. STAT. ANN. § 2C:38-5(a)-(c) (West 2004).

112 N.J. STAT. ANN. § 2C:38-5(a)(2) ("Material support or resources means: (1) services or assistance with knowledge or purpose that the services or assistance will be used in

some type of aid, monetary or non-monetary, to a terrorist can be deemed to have provided material support or resources.[113] Additionally, the definition covers other support materials that can be utilized by terrorists to accomplish their goals.[114]

The definition of "material support or resources" contained within the 9/11 Act, however, is not limited to financial instruments and fraudulent documents.[115] The definition also includes providing chemical or biological weapons agents for terrorist purposes.[116] Notably, the language found in New Jersey Statute section 2C:38-5(a)(3) is similar to that of section 2C:38-3(a), the "producing or possessing chemical weapons" provision of the 9/11 Act.[117] Thus, one who violates the provisions of section 2C:38-3 by producing or possessing chemical weapons or other like devices can potentially be charged with violating *both* the "material support or resources" provision in section 2C:38-5 and the "producing or possessing chemical weapons" provision in section 2C:38-3 of the 9/11 Act.[118] This is a powerful tool for prosecutors who wish to maximize the power of the 9/11 Act.[119]

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preparing for or carrying out an act of terrorism in violation of section 2 of P.L. 2002, c. 26 (2C:38-2)").

[113] N.J. STAT.ANN. § 2C:38-5(a).

[114] *Id.*

> "Material support or resources" means currency, financial securities or other monetary instruments, financial services, lodging, training, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, including but not limited to persons recruited to participate directly or indirectly in a terrorist organization, transportation and other physical assets or anything of value; or any chemical weapon, or biological agent, toxin, vector or delivery system for use as a weapon, or any nuclear or radiological device, as defined in subsection c of section 3 of P.L. 2002, c.26 (c.2C:38-3).

N.J. STAT. ANN. § 2C:38-5.

[115] N.J. STAT. ANN. § 2C:38-5(a)(3).

[116] N.J. STAT. ANN. § 2C:38-3(a).

[117] *Id.*

[118] *See supra* notes 103 - 104 and accompanying text; *see also infra* note 121 and accompanying text.

[119] *See supra* note 97 and accompanying text (discussing the 9/11 Act's sentencing provisions). With power comes responsibility. As powerful as the 9/11 Act is, it is necessary to make sure its laws are enforced properly. *See supra* note 101 and accompanying text.

2. New Jersey Statute Section 2C:38-5(b)(1)

New Jersey Statute section 2C:38-5(b)(1) makes it illegal for any person or organization to knowingly provide resources to support an act of terrorism.[120] A prosecutor can satisfy the intent element of section 2C:38-5(b)(1) by showing that a defendant charged under the 9/11 Act knew the support provided for terrorism-related purposes was furnished to an individual or group that has participated in terrorism in the past or intends to do so in the future.[121]

New Jersey Statute section 2C:38-5(b)(1) can also be implemented if the evidence reveals that the supplier of material support or resources knew the receiver would use the material support or resources to facilitate a terrorist act.[122] Thus, if a person gives a terrorist operative money to carry out a terrorist act in violation of the 9/11 Act, section 2C:38-5(b)(1) can be implemented by state law enforcement authorities.[123] In addition, section 2C:38-5(a)(1) creates a window of opportunity for prosecution under the "Material Support or Resources" provisions. If the evidence merely reveals the defendant did not know what the terrorist operative who received the "material support or resources" intended to do with the support, all that is required is a showing the defendant knew the recipient of the "material support or resources" had participated in terrorist activity in the past or has threatened to do so in the future.[124] Thus, whether the supplier of "material support or resources" knew the recipient was going to commit a terrorist act or merely knew the recipient had done so in the past,

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[120] N.J. STAT. ANN. § 2C:38-5(b)(1).

> It shall be unlawful for any person, charitable organization or professional fund raiser to solicit, transport or otherwise provide material support or resources with the purpose or knowledge that such material support or resources will be used, in whole or in part, to aid, plan, prepare or carry out an act of terrorism in violation of section 2 of P.L. 2002, . . . or with the purpose or knowledge that such material support or resources are to be given, in whole or in part, to a person or an organization that has committed or has the purpose to commit or has threatened to commit an act of terrorism in violation of section 2 of P.L. 2002.

Id.

[121] *Id.*

[122] *Id.*

[123] *See* N.J. STAT. ANN. § 2C:38-5(a)(2). Currency is included in the definition of "material support or resources." *Id.*

[124] *See supra* note 121 and accompanying text.

section 2C:38-5(b)(1) would apply.[125]

Clearly, one of the priorities of section 2C:38-5(b)(1) is to prevent charitable front groups from financing the operations of terrorist camps and underground guerilla groups.[126] The 9/11 Act defines "charitable organization" broadly to include any person the Internal Revenue Service determines to be a tax exempt organization.[127] It includes individuals who hold themselves out to be a representative of a charitable or civic group.[128] In fact, section 2C:38-5(a)(2) covers almost any person or association who uses a charitable or civic appeal to obtain donations.[129] Thus, the alleged charity does not necessarily need to be registered as a tax exempt organization or charity to fall within the

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[125] *Id.*

[126] *See supra* Part II.A. (discussing al-Qaeda's use of front companies and charities to raise money).

[127] N.J. STAT. ANN. § 2C:38-5(a)(1). "'Charitable organization' means: (1) any person determined by the Federal Internal Revenue Service to be a tax exempt organization pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 . . ." *Id.* The definition of, "charitable purpose" is also broad. It includes, "any purpose described in section 501(c)(3) of the Internal Revenue Code of 1986; [26 U.S.C. § 501(c)(3)] . . . or any benevolent, philanthropic, humane, social welfare, public health, or other eleemosynary objective, or an objective that benefits law enforcement personnel, firefighters, or other persons who protect the public safety." *See* N.J. STAT. ANN. § 2C:38-5(a). The last portion of this provision is geared toward organizations who fraudulently hold themselves out to be fundraisers on behalf of public safety officers, thus exploiting the heroism of law enforcement and fire personnel. *See* N.J. STAT. ANN. § 2C:38-5(a)(2). The definition of "professional fund raiser" includes, "any person who for compensation performs for a charitable organization any service in connection with which contributions are or will be solicited in this State by that compensated person or by any compensated person he employs, procures, or engages, directly or indirectly to solicit contributions." *See* N.J. STAT. ANN. § 2C:38-5(a). This definition excludes legal and financial professionals who advise individuals on making charitable contributions. *Id.*

[128] N.J. STAT. ANN. § 2C:38-5(a)(2).

> Charitable organization means: *any* person who is or holds himself out to be, established for *any* benevolent, philanthropic, humane, social welfare, public health . . . or for the benefit of law enforcement personnel, firefighters or other persons who protect the public safety or *any* person who in any manner employs a charitable appeal as the basis of *any* solicitation, or appeal which has a tendency to suggest there is a charitable purpose to *any* such solicitation.

Id. (emphasis added).

[129] *See, e.g.*, FBI Links Head of Charity to Bin Laden, May 1, 2002, CNN.com *available at* http://www.cnn.com/2002/LAW/04/30/al.qaeda.arrest (describing a statement by Attorney General John Ashcroft that Enaam Arnaout, Director of BIF, defrauded "charitable contributors by falsely claiming that [BIF] used donated funds solely for humanitarian relief"). According to Attorney General Ashcroft, BIF monies "were being used to support al-Qaeda and other groups engaged in violence overseas." *Id. See also* discussion *infra* part IV.

purview of the statute.[130] A "charitable organization" can, under section 2C:38-5(a)(2), consist of a single person holding himself or herself out as one who is raising money for a variety of civic causes.[131]

New Jersey Statute section 2C:38-5(b)(1) can also be enforced against those who smuggle financial instruments into the country on behalf of terrorist organizations.[132] If a person transports money, domestically or internationally, on behalf of a terrorist organization, this section will apply.[133] This provision is especially important considering New Jersey's accessibility to airports and seaports.[134]

In addition, this section can be applied to those who launder terrorist related money via banks or front organizations to terrorist operatives.[135] If an individual makes bank transactions on behalf of a terrorist operative, knowing the money would be used to carry out an act of terror, he or she could be charged with violating section 2C:38-5(b)(1).[136]

Those who smuggle terrorist-related money and make transactions in terrorist related money can also be deemed to have violated New Jersey's money laundering statutes in addition to section 2C:38-5(b)(1).[137] For example, if a terrorist operative transports money which

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130 *See supra* note 129 and accompanying text.

131 *Id.*

132 *See supra* note 121 and accompanying text.

133 N.J. STAT. ANN. § 2C:38-5(b)(1).

134 *See* Press Release, U.S. Customs & Border Protection, Operation Green Quest Seizes More Than $22 Million in Ongoing Efforts to Dismantle Terror Finance Networks (July 17, 2002), *available at* http://www.cbp.gov/xp/cgov/newsroom/press_releases/72002/07172002_3.xml. Terrorists have smuggled currency into the United States in bulk. *Id.* Law enforcement initiatives at the American borders "targeting bulk cash smuggling by terrorist organizations resulted in the seizure of $16 million worth of smuggled currency and monetary instruments. Under this program, U.S. Customs inspectors at the nation's 301 international airports, land ports, and seaports have made 369 seizures of smuggled currency and monetary instruments." *Id.*

135 N.J. STAT. ANN. § 2C:38-5(b)(1). "[W]ith the purpose or knowledge that such material support or resources *are to be given, in whole or in part, to a person or an organization that has committed or has the purpose to commit or has threatened to commit an act of terrorism.*" *Id.* (emphasis added).

136 *Id.*

137 *See* N.J. STAT. ANN. § 2C:21-25(a) (West 2004). "A person is guilty of a crime if the person: transports or possesses property known or which a reasonable person would believe to be derived from criminal activity." *Id.* For those who make transactions in crime-related money, *see* N.J. STAT. ANN. § 2C:21-25(b), which states:

> A person is guilty of a crime if the person engages in a transaction involving property known or which a reasonable person would believe to be derived from

he knew or should reasonably have known was derived from terrorist activity, New Jersey Statute section 2C:21-25(a) can be applied.[138] If an individual conducts a wire transfer of money he knew had been derived from an act of terrorism from a New Jersey financial institution, section 2C:21-25(b) can be used.[139] In regard to terrorist operatives who supervise their organization's financial transactions, section 2C:21-25(c) can apply.[140]

One way to maximize the power of the State's criminal laws in the fight against terrorist financing is to seek indictments against those who launder terrorist related money under both the "Material Support or Resources" provisions of the 9/11 Act and New Jersey's money laundering statutes.[141] When a defendant is convicted of multiple

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> criminal activity with the intent to facilitate . . . the criminal activity or knowing that the transaction is designed . . . to conceal or disguise the nature, location, source, ownership or control of the property derived from criminal activity; or to avoid a transaction reporting requirement under the laws of the State or any other state or of the United States.

Id. For an overview of New Jersey's money laundering statutes *see generally* State v. Harris, 373 N.J. Super. 253, 263-271 (App. Div. 2004).

138 *See* N.J. STAT. ANN. § 2C:21-25(a).

139 *See* N.J. STAT. ANN. § 2C:21-25(b).

140 *See* N.J. STAT. ANN. § 2C:21-25(c). A person is guilty of a crime if the person: "directs, organizes, finances, plans, manages, supervises, or controls the transportation of or transactions in property known or which a reasonable person would believe to be derived from criminal activity." *Id.* To evaluate the knowledge element in subsections a, b and c of N.J. STAT. ANN. § 2C:21-25, please refer to N.J. STAT. ANN. § 2C:21-25(d):

> For the purposes of this act, property is known to be derived from criminal activity if the person knows that the property involved represents proceeds from some form, though not necessarily which form, of criminal activity. Among the factors that the finder of fact may consider in determining that a transaction has been designed to avoid a transaction reporting requirement shall be whether the person, . . . conducted one or more financial transactions in currency, in any amount, at one or more institutions, on one or more days, in any manner. The phrase "in any manner" includes the breaking down of a single sum of currency exceeding the transaction reporting requirement into smaller sums, including sums at or below the transaction reporting requirement, or the conduct of a transaction, or series of currency transactions including transactions at or below the transaction reporting requirement. The transaction . . . need not exceed the transaction reporting threshold at any single financial institution on any single day in order to demonstrate a violation of subparagraph (b) of paragraph (2) of subsection b of this section.

Id. Under the Bank Secrecy Act, banks are required to file Currency Transaction Reports with the U.S. Department of the Treasury for each cash transaction that exceeds $10,000.00. *See* 31 U.S.C. § 5313 (West 2004).

141 *See supra* notes 138, 141 and accompanying text; *see also* N.J. STAT. ANN. § 2C:38-5(b).

offenses, the judge can sentence the defendant to custodial sentences that can be served simultaneously.[142] This is known as concurrent sentencing.[143] Alternatively, the defendant can be sentenced to serve a separate prison term for each separate conviction of which he was convicted.[144] This is known as consecutive sentencing.[145]

A conviction of money laundering carries mandatory consecutive sentencing, thereby creating one of the most potent financial crime statutes in the entire New Jersey Criminal Code.[146] Thus, if a defendant is convicted of violating sections 38-5(b)(1) *and* 2C:21-25(a), pursuant to the money laundering statutes the defendant would be sentenced to consecutive terms.[147] Due to mandatory consecutive sentencing, a terrorist financier convicted of second degree money laundering and in

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142 *See* ROBERT J. KIPNEES, CRIMINAL TRIAL PREPARATION, PRACTICAL SKILLS SERIES 172-174 (New Jersey Institute for Continuing Legal Education) (2000).

143 *Id.*

144 *Id.*

145 *Id.* Thus, if a defendant is convicted of two counts in an indictment and both counts carry a potential incarceration of five years each, the judge can sentence the defendant to serve five years total in prison running the sentences concurrently. *Id.* Conversely, if the judge decides to sentence the defendant to consecutive sentences, the defendant would serve 10 years in prison; five years for each count. *Id.*

146 N.J. STAT. ANN. § 2C:21-27(c) (West 2004).

> Notwithstanding N.J.S. 2C:1-8 or any other provision of law, a conviction of an offense defined in this section shall not merge with the conviction of any other offense constituting the criminal activity involved or from which the property was derived, and a conviction of any offense constituting the criminal activity involved or from which the property was derived shall not merge with a conviction of an offense defined in section 3 of P.L. 1994 . . . and the sentence imposed upon a conviction of any offense defined in section 3 of P.L. 1994 . . . shall be ordered to be served consecutively to that imposed for a conviction of any offense constituting the criminal activity involved or from which the property was derived. Nothing in P.L. 1994 . . . shall be construed in any way to preclude or limit a prosecution or conviction for any other offense defined in this Title or any other criminal law of this State.

Id. (emphasis added).

147 For example, a violation of N.J. STAT. ANN. § 2C:38-5(b)(1) is generally a crime of the second degree. *See* N.J. STAT. ANN. § 2C:38-5(c). A violation of N.J. STAT. ANN. § 2C:21-25(a) is a crime of the second degree if the laundered amount of money exceeds $75,000.00 but is less than $500,000.00. *See* N.J. STAT. ANN. § 2C:21-27(a). If a defendant is convicted of violating N.J. STAT. ANN. § 2C:38-5(a) in the second degree, he faces a term of imprisonment between 5 and 10 years. *See* N.J. STAT. ANN. § 2C:43-6(2) (West 2004). However, if the defendant is convicted of *both* N.J. STAT. ANN. § 2C:38-5(b)(1) *and* N.J. STAT. ANN. § 2C:21-25(a) in the second degree, he faces between 10 and 20 years imprisonment due to the money laundering statute's mandatory consecutive sentencing provisions. *See* N.J. STAT. ANN. § 2C:21-27(a).

violation of the "Material Support or Resources" provision of the 9/11 Act could face up to an additional 20 years in prison.[148] These sentencing provisions, serve as both increased punishment for the wrongdoer and increased deterrence for those who would contemplate participating in a terrorist financing scheme.[149]

3. N.J. STAT. ANN. § 2C:38-5(b)(2)

The "material support or resources" provisions of the 9/11 Act prohibits individuals and certain organizations from soliciting or providing "material support or resources" to selected foreign terrorist organizations.[150] Terrorist groups who are prohibited from receiving such assistance are designated by the United States Department of State pursuant to federal regulations.[151] Thus, if a person wires money from a New Jersey bank to a select terrorist group such as al-Qaeda,[152] New Jersey Statute section 2C:38-5(b)(2) can be implemented.

Absent from section 2C:38-5(b)(2) is any requirement that the defendant know that the organization receiving the assistance is

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[148] *See supra* note 146 and accompanying text. In New Jersey, crimes are categorized as either first, second, third or fourth degree crimes. *See* KIPNEES, *supra* note 142, at 162. If one is convicted of a first or second degree crime, there is a rebuttable presumption in favor of incarceration. *See id. See also* N.J. STAT. ANN. § 2C:44-1(d) (West 2004). If one is convicted of a third or fourth degree crime, there is a presumption of non-incarceration. *See id. See also* N.J. STAT. ANN. § 2C:44-1(e). Generally, one convicted of a first degree crime faces a custodial sentence of ten to twenty years. *See* N.J. STAT. ANN. § 2C:43-6(1). Second degree convictions carry prisons terms upon conviction of between five to ten years. *See* N.J. STAT. ANN. § 2C:43-6(2). Third degree convictions carry potential prison time of three to five years. *See* N.J. STAT. ANN. § 2C:43-6(3). A fourth degree conviction carries a maximum prison sentence of eighteen months. *See* N.J. STAT. ANN. § 2C:43-6(4).

[149] *See supra* notes 142 to 148 and accompanying text.

[150] N.J. STAT. ANN. § 2C:38-5(b)(2).

> It shall be unlawful for any person, charitable organization or professional fund raiser to solicit, transport or otherwise provide material support or sources to or on behalf of a person or an organization that is designated as a foreign terrorist organization by the United States Secretary of State . . . . It shall not be a defense to a prosecution for a violation of this section that the actor did not know that the person or organization is designated as a foreign terrorist organization.

Id.

[151] *Id.*

[152] For a list of other terrorist groups who have been designated Foreign Terrorist Organizations by the Secretary of State, *see Fact Sheet: Secretary of State Designates Foreign Terrorist Organizations (FTO's)* (Oct. 5, 2001) *at* http://www.state.gov/r/pa/prs/ps/2001/5265.htm.

designated as a Foreign Terrorist Organization.[153] This differs from section 2C:38-5(b)(1).[154] Under paragraph (b)(1), the prosecutor must show the actor had the purpose or knowledge that the "material support or resources" were used in pursuit of an act of terror.[155] Nor is there an element under section 2C:38-5(b)(2) requiring the prosecutor to show the actor knew the "material support or resources" were to be used to pursue terrorism.[156] Merely providing "material support or resources" to a designated foreign terrorist group,[157] no matter what the terrorist group intends to do with it, is enough to trigger implementation of this provision.[158] Consequently, the crime of providing "material support or resources" to designated terrorist groups pursuant to paragraph (b)(2) is a strict liability crime.[159] Thus, if an individual wishes to donate money to a charity, they would be well served to confirm the organization's legitimacy before sending them a check. Should a person unwittingly give money to a charity affiliated with a recognized terrorist group, there is a potential for criminal sanctions pursuant to the 9/11 Act.[160]

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153 N.J. STAT. ANN. § 2C:38-5(b)(2). "It shall not be a defense to a prosecution for a violation of this section that the actor did not know that the person or organization is designated as a foreign terrorist organization." *Id.*

154 *See supra* note 121 and accompanying text.

155 *Id.*

156 *See supra* note 154 and accompanying text.

157 *See, e.g.*, Exec. Order No. 13,224, *supra* note 11, at 49,083 (designating various organizations as linked to terrorism.). *See also supra* note 154 and accompanying text.

158 Subsection b(2) differs from the first prong of N.J. STAT. ANN. § 2C:38-5(b)(1) which contains a knowledge element. However, subsection b(2) is similar to the catch all provision of N.J. STAT. ANN. § 2C:38-5(b)(1) in that the prosecutor need not show the defendant had any knowledge of what the terrorist group intended to do with the money if the person knowingly rendered assistance "to a person or an organization that has committed or has the purpose to commit or has threatened to commit an act of terrorism. . . ." *See* N.J. STAT. ANN. § 2C:38-5(b)(1).

159 Under both N.J. STAT. ANN. § 2C:38-5(b)(1) and N.J. STAT. ANN. § 2C:38-5(b)(2), one who provides material support or resources to a terrorist, a terrorist front, or terrorist cell will be charged with a first degree crime in the event of death. If no death occurs or a violation of the "material support or resources" provision results only in serious bodily injury, the terrorist financier is only exposed to criminal liability for a second degree crime. *See* N.J. STAT. ANN. § 2C:38-5(c). "A person who violates the provisions of subsection b. of this section shall be guilty of a crime of the first degree if the act of terrorism in violation of section 2 of P.L. 2002, c. 26 (C. 2C:38-2) results in death. Otherwise it is a crime of the second degree." *Id.* Thus, if the act of terrorism results in serious injury as opposed to death, the defendant would be exposed to a second degree crime. *See id.* For an explanation of the distinction between first and second degree crimes, see *supra* notes 148 – 149 and accompanying text.

160 *See supra* note 154 and accompanying text.

IV. FREEZING FUNDS AND ASSETS RELATED TO TERRORISM

A. *Attachment of Terrorist Related Funds*

In addition to the 9/11 Act, the Freezing Funds Act is another statutory tool provided by the New Jersey Legislature to give state law enforcement authorities substantial powers in the detection of terrorist financial activity.[161] It is codified in Chapter 66 of the New Jersey Criminal Code.[162] New Jersey Statute sections 2C:66-1 to 3 specifically address the procedures in place to freeze financial accounts being used by or in the aid of terrorists.[163] It allows the New Jersey attorney general to apply for a court order to freeze funds held within a financial institution where reasonable suspicion exists that the account holder has committed or will commit a terrorist act.[164] Moreover, the purview of the statute is broad, as section 2C:66-1(a) defines the term "financial institution" inclusively.[165] Thus, whether a terrorist operative uses a New Jersey bank to conduct his financial transactions or a New Jersey supermarket that provides wire transfer services to its customers, the Freezing Funds Act would apply.[166]

For a New Jersey court to issue a freeze order pursuant to section 2C:66-1b, a judge must, after reviewing the attorney general's application,[167] find a reasonable suspicion that a terrorist activity has

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161 *See supra* note 35 and accompanying text.

162 N.J. STAT. ANN. §§ 2C:66-1 to -11 (West 2004).

163 N.J. STAT. ANN. §§ 2C:66-1 to -3.

164 N.J. STAT. ANN. § 2C:66-1(b).

> Upon application by the Attorney General, a court may issue an attachment order directing a financial institution to freeze some or all of the funds or assets deposited with or held by the financial institution by or on behalf of an account holder when there exists a reasonable suspicion that the account holder has committed or is about to commit the crime of terrorism in violation of section 2 of P.L. 2002, . . . or soliciting or providing material support or resources for terrorism in violation of section 5 of P.L. 2002, ...

Id.

165 N.J. STAT. ANN. § 2C:66-1(a). "Financial institution means a state or federally chartered bank, savings bank or savings and loan association or any other financial services company or provider, including but not limited to, broker-dealers, investment companies, money market and mutual funds, credit unions and insurers." *Id.*

166 *Id.* Because the definition of "financial institution" is so broad, other examples of entities that can fall within the scope of the Freezing Funds and Assets Related to Terrorism Act include check cashers, stores that sell money orders and brokerage firms. *Id.*

167 N.J. STAT. ANN. § 2C:66-2 (West 2004).

been supported in some way.[168] The attorney general's application must specifically identify the accounts of the account holder.[169] In addition, the application must demonstrate that freezing the accounts will guarantee compensation to victims of the terrorist act.[170] Thus, in addition to preventing terrorists from using New Jersey institutions to launder their money and assets, another goal of the Freezing Funds Act is to use the proceeds of the frozen accounts and assets to compensate victims for the damages they suffered due to the terrorist act.[171]

Tellingly, the standard for issuing a freeze order under this chapter is reasonable suspicion and not probable cause.[172] The New Jersey Legislature has given law enforcement another legal device to track terrorist financiers and obtain title to terrorist money.[173] Generally, probable cause has been the standard for obtaining a freeze order on financial accounts linked to narcotics trafficking, organized crime, and other crimes.[174] Probable cause is the standard required to make an arrest[175] or to obtain a search warrant.[176] The lesser standard utilized by

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> The application of the Attorney General required by this act *shall* contain a statement of the approximate financial loss caused by the account holder in the commission of the crime of terrorism in violation of section 2 of P.L. 2002 . . . or soliciting or providing material support or resources for terrorism in violation of section 5 of P.L. 2002 . . . a statement of facts relied upon by the Attorney General, including the details of the particular offense that is about to be committed or that has been committed; and identification of the account holder's name and financial institution account number.

Id. (emphasis added).

168 N.J. STAT. ANN. § 2C:66-3(a) (West 2004).

> If the court finds that there exists a reasonable suspicion that the account holder has committed or is about to commit the crime of terrorism in violation of section 2 of P.L. 2002 . . . or the crime of soliciting or providing material support or resources for terrorism in violation of section 5 of P.L. 2002. . . .

Id.

169 N.J. STAT. ANN. § 2C:66-3(b).

170 N.J. STAT. ANN. § 2C:66-3(c).

171 *Id.*

172 N.J. STAT. ANN. § 2C:66-3(a).

173 *See supra* note 35 and accompanying text.

174 With few exceptions, when a crime is alleged, the applicable financial accounts can be seized when it is "evidence pending a criminal prosecution . . ." *See infra* note 236 and accompanying text. Since there must be probable cause for a criminal prosecution to proceed, the standard to obtain the initial seizure order for the account is probable cause. *See* N.J. STAT. ANN. § 2C:64-1(a)(4) (West 2004).

175 State v. Davis, 50 N.J. 16, 23-24 (1967) (holding that probable cause to make an arrest, "defies precise definition. It is something less than proof needed to convict and something more than a raw, unsupported suspicion. It is a suspicion . . . of guilt that is 'well

New Jersey is important because if the state uses a probable cause standard, a terrorist under investigation can enjoy the fruits of his or her money while authorities are conducting an investigation to charge the individual.[177] Once a reasonable suspicion of terrorist activity is established, a terrorist is deprived of money pursuant to a freeze order and this can disrupt the cell's financial and logistical operations.[178] Since New Jersey courts have held the reasonable suspicion standard is a lesser standard compared to the probable cause requirement for arrests,[179] it is therefore possible to freeze terrorist assets under the Freezing Funds Act before collecting sufficient evidence to obtain an indictment or to make an arrest.[180] This provides law enforcement with increased opportunities to continue its investigation and establish probable cause to make an arrest.[181]

The attorney general's application must communicate specific facts which give rise to a reasonable suspicion of criminal activity.[182] Once

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grounded'").

[176] State v. Macri, 39 N.J. 250, 260 (1963). The New Jersey Supreme Court noted that:

> Our recent Rules Governing Search Warrants do not embody the federal rules and decisions in every respect. They . . . expressly recognize, as they must, the constitutional need for a verified showing of probable cause before the issuing magistrate; and they implicitly acknowledge the basic requirement, which the federal cases have repeatedly asserted, that the showing be not merely of belief or suspicion, but of underlying facts or circumstances which would warrant a prudent man in believing that the law was being violated.

Id.

[177] *See Davis,* 50 N.J. at 23-24.

[178] *See* N.J. STAT. ANN. § 2C:66-3(a).

[179] State v. Sovall. 170 N.J. 346, 356 (2002) (holding that, the "reasonable suspicion necessary to justify an investigatory stop is a lower standard than the probable cause necessary to sustain an arrest").

[180] *See* N.J. STAT. ANN. § 2C:66-3(a).

[181] *Id.* The problem with implementing the reasonable suspicion standard, however, is that throughout an investigation, and even after an arrest or indictment has been rendered the accused enjoys a presumption of innocence until each element of a crime is proven beyond a reasonable doubt. *See supra* note 87 and accompanying text; s*ee also infra* note 240 and accompanying text. Once an investigation is complete, if there is insufficient probable cause to effect an arrest or indictment, the owner of the money loses use of the confiscated funds until it is returned by court order or until the freeze order expires. *See infra* note 188 and accompanying text. Thus, the investigating agency could be liable for civil damages for, *inter alia,* violating a person's civil liberties if that person suffers financial harm from the state seizing his funds. This is an especially important concern if the owner of the funds is totally innocent of any terrorist activity. It is important, therefore, that the financial investigation be balanced with an eye toward evaluating the civil liberties of the public and bringing terrorists to justice.

[182] State v. Rodriguez, 172 N.J. 117, 126 (2002) (holding that reasonable suspicion

the court order is issued, it must be served on the applicable financial institution.[183] After the financial institution receives the court's attachment order, it must freeze all monetary and non-monetary assets that are listed in the order, until further order of the court.[184] New Jersey Statute Section 2C:66-10, part of the Freezing Funds Act, provides financial institutions protection from civil liability in the event the account holder or other party decides to seek civil remedies from the bank for complying with their statutory obligations after receiving the attachment order.[185]

One concern an investigator may have when applying for a freeze order pursuant to the Freezing Funds Act is that the financial institution receiving the order may provide notice to potential targets of the investigation. Interestingly, section 2C:66-10 does not require a financial institution to give notice to an account holder against whom action has been taken under the Act.[186] So, even if a customer requests such notice from his or her bank, the bank is under no obligation to provide it.[187] However, while there are no notice requirements on the part of the financial institution, the attorney general is required to notify the account holder or his legal counsel within ten days after the attachment order is issued.[188] Absent an extension of time granted by

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exists when there are "specific and articulable facts which taken together with rational inferences from those facts give rise to a reasonable suspicion of criminal activity") (quoting Terry v. Ohio, 392 U.S. 1, 21 (1968)).

183 *See* N.J. STAT. ANN. § 2C:66-4 (West 2004). "Upon receipt of the order authorized by this act, a financial institution shall not permit any funds or assets that were frozen by the order to be withdrawn or disposed of until further order of the court." *Id.*

184 *Id.*

185 N.J. STAT. ANN. § 2C:66-10 (West 2004):

> Notwithstanding any other law to the contrary, a financial institution shall not be liable to any person for blocking, freezing, encumbering or refusing to release any funds . . . held by the financial institution in response to an order issued by the court, or for any other action taken by the financial institution in good faith to comply with the requirements of this act. A financial institution shall not be required to give notice to an account holder . . . that the financial institution has taken any action pursuant to this act and shall not be liable for failure to provide notice.

Id.

186 *Id.*

187 *Id.* There are no provisions in the Freezing Funds Act that require financial institutions to provide notice to their customers of the existence of this legislation.

188 N.J. STAT. ANN. § 2C:66-8 (West 2004). "Within ten days after a court issues an attachment order under this Act, the Attorney General shall send a copy of the order to the account holders last known address or to the account holder's attorney, if known." *Id.*

the court, the attachment order expires twenty-four months after the date the order is initially issued.[189] Thus, the Freezing Funds Act provides a limited amount of time for the financial investigation to be completed, benefiting the account holder who wants his money returned.[190] At the same time, if a financial investigation becomes time consuming, the prosecutor has sufficient flexibility to ask for an extension.[191]

B. *Rights of the Account Holder*

The Freezing Funds Act provides the account holder with rights to challenge the freezing of their assets.[192] The account holder can request a hearing seeking release of the frozen funds.[193] During such a hearing, the account holder has the burden of showing why the funds should be released.[194] There are four ways of doing this.[195]

First, the account holder can demonstrate that he has posted a guarantee. This means that if he is convicted, there is enough money or assets to provide total compensation for damages to the victims of the terrorist's work.[196] An account holder attempting to implement this subsection faces significant difficulties. To succeed under this subsection, the account holder must show guarantees for "complete restitution" to his or her victims.[197] There are no provisions for partial restitution to the victims of terror.[198] Calculating "complete restitution"

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189 N.J. STAT. ANN. § 2C:66-7 (West 2004). "The freeze permitted by this act expires 24 months after the date of the court's initial attachment order unless the time limit is extended by the court in writing upon a showing of good cause by the Attorney General." *Id.*

190 *Id.*

191 *Id.*

192 N.J. STAT. ANN. § 2C:66-5(a) (West 2004). "The account holder may, upon notice and motion, have a hearing to contest the freezing of funds or assets and to seek the release of all or part of them." *Id.*

193 *Id.*

194 *See* N.J. STAT. ANN. § 2C:66-5(b). Under paragraph b, the account holder must show why the funds or assets must be released. *Id.*

195 N.J. STAT. ANN. § 2C:66-5(b)(1) to (4).

196 N.J. STAT. ANN. § 2C:66-5(b)(1).

> The account holder is entitled to an order releasing all or part of the funds or assets by showing: that the account holder has posted a bond or other adequate surety, guaranteeing that, upon conviction, adequate funds or assets will be available to pay complete restitution to victims of the alleged offense.

Id.

197 *Id.*

198 *Id.*

when the account holder has already committed an act of terrorism[199] would be difficult, therefore, obtaining release of the funds could become time consuming.[200]

Conversely, what if the accounts were frozen because the account holder was in the process of committing terrorist activities?[201] How can the attorney general accurately calculate complete restitution if the act of terror was not completed?[202] Under such a circumstance, the attorney general can still obtain a freeze order pursuant to the general forfeiture provisions in the New Jersey Criminal Code in order to maintain control of the account in question.[203] If the attorney general or his designee, however, cannot identify individuals who have been victimized by the account holder's terrorist acts, implementing the Freezing Funds statutes could become problematic due to the statute's requirement of victim identification.[204]

Second, an account holder can succeed in obtaining the release of funds in his or her account by showing that there is no reasonable suspicion justifying the court's issuance of the attachment order.[205] This subsection poses a challenging obstacle for the account holder because he must show a lack of reasonable suspicion, a lesser standard than probable cause.[206]

Third, an account holder can obtain release of funds in his or her account by showing the amount of money or assets that are in the frozen accounts exceed the amount that is needed to compensate victims for their injuries.[207] Here, the problems faced by an account holder mirror

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199 N.J. STAT. ANN. § 2C:66-1(b).

200 This problem is especially important if the case is adjudicated in a court with a heavy volume of cases like Essex County. *See* Kate Coscarelli, *Judge Steps Up to Lead Courts in Essex County,* THE JERSEY JOURNAL, Aug. 7, 2004, at 1 (reporting that Essex County has the "largest and busiest courthouse" in New Jersey).

201 N.J. STAT. ANN. § 2C:66-1(b) allows for an attachment order when the account holder "is *about to commit the crime of terrorism.*" *Id.* (emphasis added).

202 N.J. STAT. ANN. § 2C:66-5(b)(1).

203 *See* discussion *infra* Part IV.C.

204 *See* N.J. STAT. ANN. § 2C:66-5(b)(1).

205 N.J. STAT. ANN. § 2C:66-5(b)(2). "The account holder is entitled to an order releasing all or part of the funds or assets by showing: that there does not exist a reasonable suspicion that the account holder has committed or is about to commit the alleged offense." *Id.*

206 State v. Rodriguez, 172 N.J. 117, 127 (2002) (holding that the reasonable suspicion standard is a lesser standard of proof as opposed to the probable cause standard required to make an arrest).

207 N.J. STAT. ANN. § 2C:66-5(b)(3). "The account holder is entitled to an order

those in subsection (b)(1).[208] The account holder must show that there are sufficient funds to provide the victims total reimbursement.[209] Such calculations may be time consuming and may take years to gauge accurately.[210] Moreover, the account holder must show he has sufficient funds to pay all victims of the terrorist act.[211] If the terrorist operation lead to a catastrophic event like the bombings of 9/11, ascertaining the identities of each and every victim would be difficult, if not impossible, to accomplish.[212] Thus, it would be improper to implement the Freezing Funds Act if there is no evidence to show all three elements of the statute located in paragraphs, (b)(1), (b)(2) and (b)(3) of New Jersey Statute section 2C:66-5(b) are present.[213]

The Freezing Funds Act provides a catch-all provision if the first three elements are not satisfied.[214] The account holder can release the funds in his or her account by showing the money ought to be returned in order to assure that justice is served.[215] This subsection can be valuable if the terrorist suspect conducted the transaction with a financial account that actually belonged to another individual such as a relative or friend.[216] Generally, it is difficult to comprehend an instance

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releasing all or part of the funds or assets by showing: that the amount of funds or assets frozen is more than is necessary to pay complete restitution to all victims of the alleged offense." *Id.*

208 N.J. STAT. ANN. § 2C:66-5(b)(1).

209 N.J. STAT. ANN. § 2C:66-5(b)(3).

210 *See* 9/11 COMMISSION REPORT, *supra* note 1, at 382 (discussing the tedious, time consuming nature of terrorist financing investigations).

211 *Id.*

212 While the 9/11 attacks occurred in 2001, 24 of the 2996 people who were killed are still listed as reported missing without having been confirmed dead. *See* September 11, 2001 Victims List *available at* http://www.september11victims.com/september11Victims/victims_list.htm (last visited Sept. 28, 2004). Thus, while it is safe to assume their eternal reward, the confirmation process for these victims and their families continues. *Id.*

213 *See supra* notes 196, 205, 207, and accompanying text.

214 N.J. STAT. ANN. § 2C:66-5(b)(4).

215 *Id.* "The account holder is entitled to an order releasing all or part of the funds or assets by showing: that the funds or assets should be returned in the interests of justice." *Id.* Section (b)(4) does not provide specific examples of the types of "interests of justice" it seeks to serve. *Id.* Presumably, if there were instances where *e.g.* the attachment order was issued pursuant to a mistake as to the identification of the account holder section b(4) would apply.

216 *See, e.g.*, 9/11 COMMISSION REPORT, *supra* note 1, at 220 (reporting that when American Airlines flight 77 hijacker Nawaf al Hazmi needed money, he used a bank account that belonged to an acquaintance in order to obtain the proceeds of a $5,000.00 wire transfer from the United Arab Emirates).

where an individual who is confirmed to have been involved in terrorist activities would be able to get their money released in order to assure that justice is served, particularly if the terrorists caused injury or death.[217] Furthermore, pursuant to New Jersey Section 2C:66-5(c), the account holder cannot reasonably expect to succeed in obtaining release of his or her money by merely alleging that particular frozen accounts do not contain funds or assets that were proceeds of terrorist activity.[218] Thus, the procedures provided in New Jersey section 2C:66-5(b) must be followed. [219]

New Jersey Statute section 2C:66-6 addresses the disposition of the frozen funds or assets.[220] Generally, a judge can order a bank or other financial institution to pass on the proceeds from the accounts or assets to the court.[221] The court is required to order a release of the frozen funds or assets if the account holder has been acquitted of the charges filed against him or if the charges are dismissed with prejudice.[222]

For the state to obtain title to the applicable funds or assets, there is no requirement that the account holder be convicted of the crime of terrorism.[223] For title to transfer to the state under New Jersey Statute section 2C:66-6(c), all that is needed is that the charges not be dismissed or that the account holder is not acquitted.[224] Once title is

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217 *See* N.J. STAT. ANN. § 2C:66-5(b)(4), *supra* note 215 and accompanying text.

218 N.J. STAT. ANN. § 2C:66-5(c).

> It is not grounds for the release of funds . . . that the particular accounts frozen do not contain funds or assets that were proceeds from or used in the commission of the crime of terrorism in violation of section 2 of P.L. 2002, . . . or soliciting or providing material support or resources for terrorism in violation of section 5 of P.L. 2002, . . .

Id.

219 N.J. STAT. ANN. §§ 2C:66-5 (b)(1) to (4).

220 N.J. STAT. ANN. §§ 2C:66-6(a) to (c) (West 2004).

221 N.J. STAT. ANN. § 2C:66-6(a). "The court may order the financial institution to remit all or part of the frozen funds or assets to the court." *Id.*

222 N.J. STAT. ANN. § 2C:66-6(b). "If the account holder is acquitted or the charges are dismissed with prejudice, the court shall issue an order releasing the freeze on the funds or assets." *Id.*

223 N.J. STAT. ANN. § 2C:66-6(c).

> If the account holder is not acquitted or the charges are not dismissed, the frozen funds or assets shall become the property of the State and shall be used to provide restitution to victims of terrorism, to fund State law enforcement anti-terrorism programs and activities for other law enforcement purposes.

Id.

224 *Id.* For example, if a trial results in a hung jury, the defendant is neither convicted

transferred to the state, the proceeds are to be used to provide restitution to victims of terrorism and law enforcement programs.[225]

While attachment orders issued pursuant to the Freezing Funds Act are geared toward terrorist-related activity,[226] no provisions prohibit the state's use of the general forfeiture statutes in the New Jersey Criminal Code.[227] To date, New Jersey's forfeiture statutes have been used to seize cars, bank accounts, and other instrumentalities of criminal activity.[228]

Because the Freezing Funds and Assets Related to Terrorism laws are new, there are no published New Jersey cases that provide guidance for prosecutors and defense counsel. Thus, a review of New Jersey's forfeiture statutes and applicable case law can supply direction as to the proper implementation of the Freezing Funds and Assets Related to Terrorism statutes.

C. *Forfeiture in New Jersey*

While forfeiture of money and assets generated by criminal activities has been, and remains, unpopular in the courts,[229] it is a rightful use of the government's sovereign authority to deprive criminals of their financial gains.[230] The forfeiture laws impact criminals where it hurts most — their wallets.[231] In New Jersey, state courts require that forfeiture legislation be interpreted strictly, thus giving favorable inferences to the owner of the seized property as is consistent with a notion of justice.[232]

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nor acquitted. Thus, potentially the state could claim title to the frozen assets without a conviction. *See id.*

225 *Id.*

226 *See supra* note 169 and accompanying text.

227 N.J. STAT. ANN. § 2C:66-11 (West 2004).

228 *See* discussion *infra* Part IV.C.

229 State v. One 1979 Pontiac Sunbird, 191 N.J. Super. 578, 584 (App. Div. 1983) (holding that "[g]enerally, forfeitures are disfavored in the law").

230 State v. One 1990 Honda Accord, 302 N.J. Super. 225, 229 (1997) (quoting State v. One 1986 Subaru, 230 N.J. Super. 451 (App. Div. 1989) (holding that "[c]urrently, our forfeiture statute represents a legitimate exercise of the State's police power of preventing further unlawful use of property because of the statute's punitive and deterrent effect")).

231 *Id.*

232 *See One 1979 Pontiac Sunbird*, 191 N. J. Super. at 584, (quoting State v. One Ford Van Econoline, 154 N.J. Super, 332, 381 (App. Div. 1977) (holding that, "we have said that forfeiture statutes should be strictly construed and in a manner as favorable to the person whose property is to be seized as is consistent with the fair principles of interpretation")).

Generally, forfeiture refers to the transfer of title, without payment, to the state, of property used to advance criminal pursuits.[233] Thus, items that have been or were anticipated to develop into an important ingredient of criminal actions are subject to forfeiture by the prosecuting agency.[234] Pending the outcome of forfeiture litigation, the seized item may be taken into evidence until the criminal case has been adjudicated.[235]

Procedures in forfeiture litigation are also codified in the New Jersey Criminal Code.[236] While the burden of proof in criminal litigation

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233 *See One 1979 Pontiac Trans Am*, 98 N.J. at 479 (holding that, "forfeiture refers to the divestiture without compensation of title to property used to further criminal activity").

234 N.J. STAT. ANN. § 2C:64-1(a)(3) (West 2004). *See also* N.J. STAT. ANN. § 2C:64-1(a)(2). "All property which has been, or is intended to be, utilized in furtherance of an unlawful activity, including, but not limited to conveyances intended to facilitate the perpetration of illegal acts, or buildings or premises maintained for the purpose of committing offenses against the State." *Id. See also* N.J. STAT. ANN. § 2C:64-1(a)(4) "Proceeds of illegal activities, including, but not limited to, property or money obtained as a result of the sale of prima facie contraband as defined by subsection a(1), proceeds of illegal gambling, prostitution and extortion." *Id.*

235 N.J. STAT. ANN. § 2C:64-1(b).

> Any article subject to forfeiture under this chapter may be seized by . . . any law enforcement officer as evidence pending a criminal prosecution pursuant to section 2C:64-4 or, when no criminal proceeding is instituted, upon process issued by any court of competent jurisdiction over the property, except that seizure without such process may be made when not inconsistent with the Constitution of this State or the United States and when (1) the article is prima facie contraband; or (2) the property subject to seizure poses an immediate threat to the public health, safety or welfare.

Id.

236 N.J. STAT. ANN. § 2C:64-3(a) to (j) (West 2004).

> (a) Whenever any property other than prima facie contraband is subject to forfeiture . . . such forfeiture may be enforced by a civil action, instituted within 90 days of the seizure and commenced by the State and against the property sought to be forfeited. (b) The complaint shall be verified on oath or affirmation. It shall describe with a reasonable particularity the property that is the subject matter of the action and shall contain allegations setting forth the reason or reasons the article sought to be or which has been seized is contraband. (c) Notice of the action shall be given to any person known to have a property interest in the article. In addition, the notice requirements of the Rules of Court for an in rem action shall be followed. (d) The claimant of the property that is the subject of an action . . . shall file and serve his claim in the form of an answer in accordance with the Rules of Court. The answer shall be verified on oath or affirmation, and shall state the interest in the property by virtue of which the claimant demands its restitution and the right to defend the action. If the claim is made in behalf of the person entitled to possession by an agent, bailee or attorney, it shall state that he is duly authorized to make the claim. (e) If no answer is filed and served within the applicable time, the

is to prove each element of a crime beyond a reasonable doubt,[237] the burden of proof for forfeiture in a civil action[238] is by a preponderance of the evidence.[239] Forfeiture proceedings are *in rem* in that litigation is directed against the property, not the defendant.[240] As a result, the property is treated as the defendant.[241]

> property seized shall be disposed of pursuant to N.J.S. 2C:64-6. (f) If an answer is filed, the superior . . . court shall set the matter down for a summary hearing as soon as practicable. Upon application by the State or claimant, if he be a defendant in a criminal proceeding arising out of the seizure, the Superior . . . [C]ourt may stay proceedings in the forfeiture action until the criminal proceedings have been concluded by an entry of final judgment. (h) The prosecuting agency with approval of the entity funding such agency, or any other entity, with the approval of the prosecuting agency, where the other entity's law enforcement agency participated in the surveillance, investigation or arrest which is the subject of the forfeiture action, may apply to the Superior Court for an order permitting use of seized property, pending the disposition of the forfeiture action provided, however, that such property shall be used solely for law enforcement purposes. Approval shall be liberally granted but shall be conditioned upon the filing of a bond in an amount equal to the market value of the item seized or a written guarantee of payment for property which may be subject to return, replacement or compensation as to reasonable value in the event that the forfeiture is refused or only partial extinguishment of property rights is ordered by the court. (i) If the property is of such a nature that substantial difficulty may result in preserving its value during the pendency of the forfeiture action, the Superior Court . . . may appoint a trustee to protect the interests of all parties involved in the action. Evidence of a conviction of a criminal offense in which seized property was either used or provided an integral part of the State's proofs in the prosecution shall be considered in the forfeiture proceeding as creating a rebuttable presumption that the property was utilized in furtherance of an unlawful activity.

Id.

[237] State v. Anderson, 127 N.J. 191, 200 (1990) (holding that, "an accused is constitutionally entitled to have a jury find each factual element beyond a reasonable doubt before he or she is convicted").

[238] N.J. STAT. ANN. § 2C:64-3(a). *See* Dragutsky v. Tate, 262 N.J. Super. 257, 261 (App. Div. 1993).

[239] State v. Seven Thousand Dollars, 136 N.J. 223, 239 (1993) (O'Hern, J., dissenting) (the court held that that "[a]lthough courts recognize civil forfeitures as punishment, the burden of proof at the proceedings remains a preponderance of the evidence.").

[240] N.J. STAT. ANN. § 2C:64-3(c). *See* State v. One 1979 Pontiac Sunbird, 191 N.J. Super. 578, 583 (App. Div. 1983) (stating that "the *in rem* nature of the proceeding which is considered as directed against the thing itself, not merely the possessor's interest in it.").

[241] State v. One 1990 Honda Accord, 302 N.J. Super. 225, 229 (1997) (stating that "statutory forfeiture is limited to the property itself which is proceeded against, and, by resort to a legal fiction, held guilty and condemned as though it were conscious instead of inanimate and insentient.") (internal citations omitted). For example, in standard criminal litigation the case caption in New Jersey is "State v. John Defendant." If John Defendant is arrested for selling illegal drugs and $1,000.00 in drug money, was seized the caption for

When evaluating the propriety of asset forfeiture, courts in New Jersey employ a three-part analysis.[242] First, in regard to the use of instrumentalities, courts look at the degree to which the item was used to accomplish the criminal act.[243] Second, the court will review the degree of significance in which the item was used to accomplish the criminal act.[244] Third, the essence and gravity of the crime needs to be evaluated by the court.[245] In determining whether the forfeiture remedy should be employed to its full limit, a court must evaluate all three parts.[246]

The court must find a relationship between the property to be forfeited and the unlawful activity.[247] The relationship between the property and the criminal activity must be significant;[248] the prosecution must show a considerable nexus.[249] In regard to currency, once the prosecution has proved that a causal connection between money and crime exists, it is up to the owner of the seized property to exhibit what part of the monies were used legitimately.[250] The court then determines the sum of money linked to the criminal activity and forfeits that amount.[251]

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the forfeiture proceeding would be "State v. $1,000.00 cash." *See id.*

242 State v. One 1985 Ford Bronco, 261 N.J. Super. 643, 648 (App. Div. 1993).

243 *Id.* at 648 (stating that "[i]n the case of instrumentalities, the degree to which the instrumentality is employed in any criminal transaction or enterprise").

244 *Id.* (stating that part two of the analysis involves an evaluation of "the importance of the instrumentality to accomplishing the illegal end").

245 *Id.* (stating that part three of the analysis involves an evaluation of "the nature and seriousness of the illegal activities").

246 *Id.*

247 *See* State v. One 1979 Chevrolet Camaro, 202 N.J. Super. 222, 228-232 (App. Div. 1985) (Fritz, P.J.A.D., concurring).

248 State v. One 1998 Honda Prelude, 252 N.J. Super. 312, 316 (App. Div. 1991) (holding that the forfeiture statute "requires a direct causal relationship between the use of the property and the unlawful activity").

249 *Seven Thousand Dollars*, 136 N.J. at 234-235 (holding that "[t]he connection connotes a sense of dependency; a merely casual relationship will not suffice. The State's burden requires that it prove that the connection is proximate and substantial").

250 *Id.* at 238 (holding that "[O]nce the State demonstrates that the seized money has a direct causal connection to unlawful activity, the burden shifts to the person challenging the forfeiture, the 'owner,' to show what portion of the money, if any, the court should ascribe to legitimate uses").

251 *Id.* (holding that "[i]f the owner presents sufficient credible evidence to allocate the funds between illegal and legal purposes, the court must limit forfeiture to only those funds connected with the illegal activity"). While implementing a civil standard in the prosecution's burden of proof benefits the state, there has been legitimate commentary that doing so raises significant civil liberties issues. *See, e.g.*, Joseph Calella, Note, *Front Seat*

V. *CASE ANALYSIS:* UNITED STATES V. ARNAOUT[252]

A. *Case Summary*

One of the main goals of this article is to demonstrate a proper implementation of the "material support or resources" provisions of the 9/11 Act[253] and the Freezing Funds Act.[254] Both statutes are relatively new. Consequently, the best way to illustrate how to facilitate the statutes is to conduct a case study of an actual federal case. In this case, Enaam Arnaout, former director of Benevolence International Foundation ("BIF"), allegedly made wire transfers of money from New Jersey banks to underground guerilla operatives overseas.[255]

An analysis of *Arnaout* is helpful not only because the defendant allegedly provided money to terrorist operatives, but also because banks in New Jersey provided the source for the money.[256] In addition, the government's handling of *Arnaout* has raised important civil liberties issues.[257] After he pleaded guilty to federal racketeering charges, Arnout agreed to cooperate with authorities.[258] Before applying the elements of

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Adventures: Forfeiting Fundamental Fairness and a 1977 Pontiac, 28 SETON HALL L. REV. 1262 (1998).

252 United States v. Arnaout, 282 F. Supp. 2d 838 (N.D. Ill. 2003). The 9/11 Commission conducted a significant review of the F.B.I.'s handling of this case. *See National Commission on Terrorist Attacks Upon the United States: Monograph on Terrorist Financing available at* http://www.9-11commission.gov (last visited Sept. 26, 2004). *See also* discussion *supra* note 16 and accompanying text. The purpose of this case analysis is to provide an illustration of a sound application of the elements of the "Material Support or Resources" provisions of the 9/11 Act and the Freezing Funds Act. *Id.* This case analysis is not a commentary on the factual or evidentiary arguments made by the prosecution or defense teams who litigated this case. *Id.* In analyzing *Arnaout*, the author will assume all relevant financial transactions that are discussed occurred when the 9/11 Act and the Freezing Funds Act were in effect. *Id.*

253 N.J. STAT. ANN. § 2C:38-5 (West 2004).

254 N.J. STAT. ANN. §§ 2C:66-1 to -11 (West 2004).

255 *See* Indictment, *supra* note 16, at 10.

256 *Id. See also* U.S. Department of the Treasury Web Site, *supra* note 16. B.I.F. maintained an office in Newark, New Jersey. *See* Indictment, *supra* note 16, at 10. Arnaout conducted financial transactions from banks located in New Jersey. *See infra* note 258 and accompanying text. Proceeds from the transactions were destined for foreign military guerilla groups. *See infra* note 258 and accompanying text.

257 *See infra* note 380 and accompanying text.

258 *See* Feds Raid Islamic Charity Groups, *available at* http://www.cnn.com/2001/US/12/14/inv.raid.charity/index.html (last visited Sept. 28, 2004). On December 14, 2001, the Newark office of B.I.F. was raided by federal authorities pursuant to the USA PATRIOT Act. *Id.* BIF's financial records were seized

and its financial assets blocked. *Id.* On April 30, 2002, BIF's director Enaam Arnaout was arrested and charged with perjury for allegedly lying about his affiliations with al-Qaeda. *See* FBI Links Head of Charity to Bin Laden, May 1, 2002, CNN.com, *available at* http://www.cnn.com/2002/LAW/04/30/al.qaeda.arrest. He was subsequently indicted and charged with racketeering, money laundering, wire fraud, conspiracy, and providing material support to organizations involved in violent activities and obstruction of justice. *See* Indictment, *supra* note 16, at 6-7. The indictment alleges that Arnaout "participated in a scheme to defraud and to obtain money and property from donors to the BIF enterprise, by means of materially false and fraudulent pretenses, representations, and promises, and material omissions." *Id.* at 7. Arnaout allegedly told prospective donors that their gifts would be used, "solely for humanitarian purposes, with a small amount being used for administrative expenses, while concealing the material fact that a portion of the money raised by the BIF enterprise was being used to support groups engaged in armed confrontations and violence overseas." *Id.* at 7-8. Arnaout and others allegedly concentrated their fundraising efforts within the Muslim community to exploit, "the Islamic principal of zakat to give a percentage of their income for charitable purposes." *Id.* at 8. Arnaout allegedly kept secret his "relationship with organizations engaging in violence, including al-Qaeda and Hezb e Islami, and their leaders, including Usama Bin Laden and Gulbuddin Hekmatyer." *Id.* at 9-10.

The indictment alleges that Arnaout sent money to help al-Qaeda and other groups, "from BIF's checking account in Illinois to bank accounts in various locations, including New Jersey and accounts outside the United States, knowing that the property involved in the transactions represented the proceeds of specified unlawful activities." *Id.* at 10. Arnaout allegedly wired "approximately $4,000.00 from BIF's checking account at Citibank FSB to Fleet Bank in Newark, New Jersey, knowing that the property involved in the transaction represented the proceeds of a specified unlawful activity, namely mail fraud." Indictment, *supra* note 16, at 23. Arnaout's indictment further alleges that he, "conspired with others to provide material support and resources to persons, groups and organizations engaged in violent activities, including al-Qaeda, Hezb e Islami and persons engaged in violent confrontations in Bosnia-Herzegovina, Chechnya and their neighboring regions, and to conceal and disguise the nature, location, source and ownership of material support and resources." *Id.* at 20. Arnaout allegedly, "caused the shipment of anti-mine boots" that were used for the, "Chechen mujahideen." *Id.*

In exchange for his plea, the prosecutors agreed to request a dismissal of the charges against Arnaout for assisting al-Qaeda. *Arnaout*, 282 F. Supp. 2d at 840; *see also* Press Release, U.S. Attorney's Office, Northern District of Illinois, Benevolence Director Pleads Guilty to Racketeering Conspiracy and Agrees to Cooperate With Government (Feb. 10, 2003), *available at* http://www.usdoj.gov/usao/iln/pr/2003/pr021003_01.pdf. He has been sentenced to serve eleven years in prison. *See Charity Leader Tied to Terrorism Gets Prison Term*, N.Y. TIMES, Aug. 19, 2003 at A19. A review of Arnaout's plea agreement reveal the following admissions: (1) Since 1993, "BIF solicited donations from the public by purporting that BIF and its related overseas offices was a charitable organization involved solely in humanitarian work for the benefit of civilian populations, including refugees and orphans, with a small amount being used for administrative expenses." *See* Plea Agreement, *supra* note 16, at 3. Arnaout admitted to having, "agreed to conceal from donors, potential donors, and federal and state governments in the United States that a material portion of the donations received by BIF based on BIF's misleading representations was being used to support fighters overseas." *Id.* at 3-4. (3) He further admitted, "that the support he and others agreed to provide included: boots intended for ultimate use by fighters in Chechnya: and boots, tents, uniforms and an ambulance intended

the "Material Support or Resources" provisions of the 9/11 Act and the Freezing Funds Act to the terrorist-related wire transfers Arnaout allegedly made via banks located in New Jersey, a review of New Jersey's jurisdiction statutes is warranted because of the multi-jurisdictional nature in the allegations against Arnaout,[259] and terrorism in general.[260]

B. *New Jersey's Jurisdiction Laws*

Prosecutors have the burden of establishing New Jersey's jurisdiction in every element of every crime alleged in an indictment.[261] Under the common law, a necessary component in a criminal indictment requires that the unlawful act occur in the sovereign where the case is to be adjudicated.[262] Unlike the common law, however, the jurisdiction statutes in the New Jersey Criminal Code provide expansive territorial authority to New Jersey State courts.[263]

The jurisdiction statutes in the New Jersey Criminal Code provide a myriad of ways in which a court can establish New Jersey sovereignty over a crime that has occurred both inside and outside New Jersey borders.[264] The easiest way to establish jurisdiction is to show that the

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for ultimate use by soldiers in Boznia-Herzegovina." *Id.* at 4. (4) Arnaout "used donor funds to purchase uniforms for a department of a provisional but unrecognized government in Chechnya despite representations otherwise to donors." *Id.* (5) Arnaout admitted to having used the mail "to distribute from Palos Hills, Illinois the multiple misleading solicitations . . . and to cause the use of the United States Mails to receive donations from misled donors." *Id.* Arnaout's lawyers have conceded that "during a 10-year period, between $300,000.00 and $400,000.00 went to Chechen rebels and Bosnian soldiers." *See* Jeff Flock, *Sentencing Postponed for Islamic Charity Director*, June 16, 2003, CNN. Com., *available at* http://www.cnn.com/2003/LAW/06/16/islamic.charity.sentence/index.html. Arnaout concedes "knowing bin Laden" but alleges "he does not support terrorism." *Id.*

259 *See* Indictment, *supra* note 16, at 10. Arnaout allegedly conducted terrorist related financial transactions by using banks accounts located overseas and in New Jersey. *Id.*

260 *See, e.g.*, EHRENFELD, *supra* note 11, at 20 (noting that prior to 9/11, financial transactions linked to al-Qaeda were conducted using bank accounts located overseas and in Florida). *See also supra* note 5 and accompanying text.

261 State v. Casilla, 362 N.J. Super. 554, 561 (App. Div. 2003) (holding that "territorial jurisdiction is an element of every criminal offense").

262 State v. Bragg, 295 N.J. Super. 459, 464 (App. Div. 1996) (holding that, "an essential element necessary to the invocation of jurisdiction in criminal cases is that the crime be committed in the State in which the case is tried").

263 *Casilla*, 362 N.J. Super. at 562 (holding that the jurisdiction statutes in the New Jersey Criminal Code, "confers broad territorial jurisdiction" on New Jersey courts).

264 N.J. STAT. ANN. §§ 2C:1-3(a) to (g) (West 2004).

crime occurred in New Jersey.[265] This is similar to the common law rule.[266] Therefore, jurisdiction is established if the illegal act occurred within New Jersey.[267]

There are, however, numerous exceptions to this rule.[268] If a crime occurs solely on property owned by the federal government, only the United States District Court can claim jurisdiction,[269] even if the federal property is located in New Jersey.[270] Furthermore, if the unlawful act occurred on property owned by both New Jersey and the United States,[271] both courts can claim jurisdiction subsequent to the restrictions in section 2C:1-11 of the New Jersey Criminal Code.[272] Where there is concurrent jurisdiction[273] between New Jersey and federal authorities, a prosecution in the federal courts would prevent ensuing prosecution[274] in New Jersey courts if the federal case resulted in either an acquittal or a conviction and the prosecution in New Jersey courts is based on the same act.[275]

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265 *See* N.J. STAT. ANN. § 2C:1-3(e).
> Except as otherwise provided in this section, a person may be convicted under the law of this State of an offense committed by his own conduct or the conduct of another for which he is legally accountable if: either the conduct which is an element of the offense or the result which is such an element occurs within this State.

Id. See also N.J. STAT. ANN. § 2C:1-3(e).
> This State includes the land and water, including the waters . . . and the air space above such land and water with respect to which the State has legislative jurisdiction. It also includes any territory made subject to the criminal jurisdiction of this State by compacts between it and another state or between it and the Federal Government.

Id.

266 *Bragg*, 295 N.J. Super. at 464.

267 *See supra* note 266 and accompanying text.

268 *See, e.g.*, N.J. STAT. ANN. §§ 2C:1-3(b) to (c).

269 State v. Jackson, 289 N.J. Super. 43, 49-50 (App. Div. 1996).

270 *See id.*

271 *Jackson*, 289 N.J. Super. at 50.

272 N.J. STAT. ANN. § 2C:1-11(a) to (b) (West 2004).

273 *Jackson*, 289 N.J. Super. at 50. *See also* N.J. STAT. ANN. § 2C:1-11 (West 2004). For purposes of this article, concurrent jurisdiction refers to when both New Jersey and the federal courts legitimately claim jurisdiction over a criminal case.

274 N.J. STAT. ANN. § 2C:1-11.

275 N.J. STAT. ANN. § 2C:1-11(a).
> When conduct constitutes an offense within the concurrent jurisdiction of this State and of the United States, a prosecution in the District Court of the United States is a bar to a subsequent prosecution in this State under the following circumstances: the first prosecution resulted in an acquittal or in a conviction,

A prosecution in state courts is possible, however, if the elements of the crime in the federal case differ from the elements of the crime in the state case.[276] Thus, if the elements that establish a crime between the federal criminal code and the New Jersey Criminal Code require different sets of facts and are designed to prevent largely dissimilar outcomes, prosecution in state courts remain viable.[277]

Concurrent jurisdiction can also occur where the crime alleged in state court is designed to avert a considerably more severe harm than is designed in the federal offense.[278] If the federal case ended after an indictment is filed and based on similar facts as alleged in a state indictment, prosecution in New Jersey state courts would be barred.[279]

New Jersey jurisdiction is also recognized when a criminal act that occurs outside state borders is sufficient to comprise an attempt to commit a criminal act under New Jersey law.[280] Regarding the planning

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or in an improper termination . . . and the subsequent prosecution is based on the same conduct, unless (1) the offense of which the defendant was formerly convicted or acquitted and the offense for which he is subsequently prosecuted which requires proof of a fact not required by the other and the law defining each of such offenses is intended to prevent a substantially different harm or evil or (2) the offense for which the defendant is subsequently prosecuted is intended to prevent a substantially more serious harm or evil than the offense of which he was formerly convicted or acquitted or (3) the second offense was not consummated when the former trial began.

Id.

276 *Id.*

277 *See id.*

278 *Id.*

279 N.J. STAT. ANN. § 2C:1-11(b).

When conduct constitutes an offense within the concurrent jurisdiction of this State and of the United States, a prosecution in the District Court of the United States is a bar to a subsequent prosecution in this State under the following circumstances: the former prosecution was terminated after the information was filed or the indictment found, by an acquittal or by a final order or judgment for the defendant which has not been set aside . . . and which acquittal, final order or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the offense of which the defendant is subsequently prosecuted.

Id.

280 N.J. STAT. ANN. § 2C:1-3(a)(2) (West 2004).

Except as otherwise provided in this section, a person may be convicted under the law of this State of an offense committed by his own conduct or the conduct of another for which he is legally accountable if: conduct occurring outside the State is sufficient under the law of this State to constitute an attempt to commit a crime within the State.

Id. See also N.J. STAT. ANN. § 2C:5-1 (West 2004) (defining the crime of Criminal Attempt

of a crime, actions taken in another state are adequate under New Jersey law to be deemed a conspiracy to commit a criminal act in New Jersey as long as steps were taken to promote the conspiracy inside state borders.[281]

Furthermore, jurisdiction can be established where the unlawful act is deemed an omission to carry out a lawful obligation, like the parent-child relationship, under New Jersey law.[282] If the unlawful act is prohibited pursuant to New Jersey law, and the crime compromises a valid state interest, jurisdiction can be established if the act is reasonably and knowingly linked to that interest.[283]

Interestingly, New Jersey's jurisdiction statutes allow for jurisdiction in state courts when the alleged victim is a New Jersey resident and the crime occurred in another state.[284] If a criminal act that

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pursuant to the New Jersey Criminal Code).

281 N.J. STAT. ANN. § 2C:1-3(a)(3) (West 2004).
Except as otherwise provided in this section, a person may be convicted under the law of this State of an offense committed by his own conduct or the conduct of another for which he is legally accountable if: conduct occurring outside the State is sufficient under the law of this State to constitute a conspiracy to commit an offense within the State and an overt act in furtherance of such conspiracy occurs within the State.

Id.

282 N.J. STAT. ANN. § 2C:1-3(a)(5) (West 2004).
Except as otherwise provided in this section, a person may be convicted under the law of this State of an offense committed by his own conduct or the conduct of another for which he is legally accountable if: the offense consists of the omission to perform a legal duty imposed by the law of this State with respect to domicile, residence or a relationship to a person, thing or transaction in the State.

Id.

283 N.J. STAT. ANN. § 2C:1-3(a)(6).
Except as otherwise provided in this section, a person may be convicted under the law of this State of an offense committed by his own conduct or the conduct of another for which he is legally accountable if: the offense is based on a statute of this State which expressly prohibits conduct outside the State, when the conduct bears a reasonable relation to a legitimate interest of this State and the actor knows or should know that his conduct is likely to affect that interest.

Id.

284 N.J. STAT. ANN. § 2C:1-3(g).
When the result which is an element of an offense consists of inflicting a harm upon a resident of this State or depriving a resident of this State of a benefit, the result occurs within this State, even if the conduct occurs wholly outside this State and any property that was affected by the offense was located outside this State.

Id.

occurs outside the state harms a New Jersey resident, jurisdiction in New Jersey state courts can be established.[285] For example, a New Jersey resident who becomes a crime victim in New York can potentially obtain a criminal indictment in New Jersey charging the alleged perpetrator under New Jersey law.[286] If, however, a court rules that both justice and the state's interest will be adequately served in another state, New Jersey prosecution may be barred.[287]

Arnaout pleaded guilty to helping provide material support for fighters in Chechnya and Bosnia.[288] There has been no finding of guilt or innocence regarding the allegation in the indictment that he provided money via wire transfers to al-Qaeda.[289] Arnaout's conduct in providing resources to the fighters in Chechnya and Bosnia differs from his alleged act of wiring money to al-Qaeda.[290] Consequently, nothing in New Jersey's jurisdiction statutes prohibits an indictment charging Arnaout under the "material support or resources" provision of the 9/11 Act.[291] At least one of the banks Arnaout allegedly used to make wire transfers to al-Qaeda was physically located in New Jersey.[292] These financial transactions show conduct that a New Jersey law was violated.[293] Therefore, jurisdiction making the 9/11 Act and Freezing Funds Act applicable can be established.

C. *Applying the Elements of N.J. STAT. ANN. § 2C:38-5(b)(1)*

The best place to start with an application of the elements of a

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285 *Id.*

286 *See id.*

287 N.J. STAT. ANN. § 2C:1-3(f).

> Notwithstanding that territorial jurisdiction may be found . . . the court may dismiss, hold in abeyance for up to six months, or, with the permission of the defendant, place on the inactive list a criminal prosecution under the law of this State where it appears that such action is in the interests of justice because the defendant is being prosecuted for an offense based on the same conduct in another jurisdiction and this State's interest will be adequately served by a prosecution in the other jurisdiction.

Id.

288 United States v. Arnaout, 282 F. Supp. 2d 838, 840 (N.D. Ill. 2003). *See also* Flock, *supra* note 258.

289 *Arnaout*, 282 F. Supp. at 840.

290 *See* Indictment, *supra* note 16, at 10.

291 N.J. STAT. ANN. § 2C:1-11(a).

292 *See* Indictment, *supra* note 16, at 10.

293 *See supra* note 265 and accompanying text.

particular statute to the facts of a case scenario is with the statute itself.[294] New Jersey Statute section 2C:38-5(b)(1) provides the elements necessary for analysis.

> It shall be unlawful for any person, charitable organization or professional fundraiser to solicit, transport or otherwise provide material support or resources with the purpose or knowledge that such material support or resources will be used, in whole or in part, to aid, plan, prepare or carry out an act of terrorism . . . or with the purpose or knowledge that such material support or resources are to be given, in whole or in part, to a person or an organization that has committed or has the purpose to commit or has threatened to commit an act of terrorism.[295]

1. The First Element

The first element of section 2C:38-5(b)(1) provides, "*It shall be unlawful for any person, charitable organization or professional fundraiser. . . .*"[296]

Recognizing that Arnaout is a "person" under section 2C:38-5(b)(1) is the simplest way to satisfy the first element of the statute.[297] However, because "charitable organizations and professional fundraisers"[298] are also noted in this section of the statute, these terms must also be reviewed. Under the 9/11 Act, one can be considered a charitable organization if he or she tries to obtain donations by employing a benevolent appeal to the solicitation.[299]

As the executive director of BIF,[300] Arnaout[301] admitted in his plea agreement that BIF solicited money from the general public by claiming that BIF and its affiliates served as a humanitarian charity who assisted

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294 Cornblat v. Barrow, 153 N.J. 218, 231 (1998) (holding that, "in the scheme of statutory construction, the first step is the examination of the provisions of the legislative enactment").

295 N.J. STAT. ANN. § 2C:38-5(b)(1).

296 *Id.* (emphasis added).

297 *Id.*

298 *Id.*

299 *See* N.J. STAT. ANN. § 2C:38-5(a)(2). Included in the definition of "charitable organization" is "any person who in any manner employs a charitable appeal as the basis of any solicitation, or an appeal which has a tendency to suggest there is a charitable purpose to any such solicitation." *Id.*

300 Benevolence International Foundation (BIF) was a charity that allegedly raised money for charitable causes in the Arab community. *See supra* note 258 and accompanying text.

301 *See* Plea Agreement, *supra* note 16, at 3.

victims of war.[302] Additionally, he admitted to having distributed solicitations and having obtained money from individuals who were led to believe their donations would be used for charitable purposes.[303] The benevolent appeal in Arnaout's fraudulent solicitations centered around his assertion that donated money would be used to help war victims and assist charitable causes.[304] Thus, while Arnaout is a "person," he is also a "charitable organization" for the purpose of implementing the provisions of section 2C:38-5(b)(1).[305]

An officer of the charity cannot be deemed a "professional fundraiser" for purposes of implementing section 2C:38-5(a)(3).[306] Arnaout was employed by BIF as its director.[307] Consequentially, he is not a "professional fund raiser."[308] Although the "professional fundraiser" element is not met, Arnaout can still be considered a "person" and potentially a "charitable organization."[309] Therefore, the first element of section 2C:38-5(b)(1) is satisfied.[310]

2. The Second Element

The second element of section 2C:38-5(b)(1) requires Arnaout "*to solicit, transport or otherwise provide material support or resource. . . .*"[311]

Under section 2C:38-5(a)(2), money includes "material support or resources."[312] In Arnaout's case, he allegedly arranged wire transfers of illegally obtained funds through BIF's New Jersey bank accounts.[313]

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302 *Id.* "BIF solicited donations from the public by purporting that BIF and its related overseas offices was a charitable organization involved solely in humanitarian work for the benefit of civilian populations, including refugees and orphans." *Id.*

303 *Id.* at 4.

304 *Id.*

305 N.J. STAT. ANN. § 2C:38-5(a)(1) to (2). *See also* N.J. STAT. ANN. § 2C:38-5(b)(1).

306 N.J. STAT. ANN. § 2C:38-5(a)(3). "A bona fide salaried officer, employee, or volunteer of a charitable organization shall not be deemed to be a professional fundraiser." *Id.*

307 *See supra* note 258 and accompanying text.

308 N.J. STAT. ANN. § 2C:38-5(a)(3).

309 N.J. STAT. ANN. § 2C:38-5(a)(1) to (2).

310 N.J. STAT. ANN. § 2C:38-5(b)(1) ("It shall be unlawful for any person, charitable organization or professional fund raiser").

311 *Id.*

312 N.J. STAT. ANN. § 2C:38-5(a)(2). The definition of "material support or resources" includes "currency, financial securities or other monetary instruments." *Id.*

313 *See* Indictment, *supra* note 16, at 10, 21, 23.

This was done to allegedly, "provide material support" to "organizations engaged in violent activities."[314] A listing of such organizations include: "al-Qaeda, Hezb e Islami and persons engaged in violent confrontations in Bosnia-Herzegovina, Chechnya"[315] and other areas.[316] As noted previously, Arnaout pled guilty to providing support to Chechnyan and Bosnian fighters.[317] By using New Jersey banks to allegedly channel illegally obtained money to al-Qaeda and others, two things are established. First is jurisdiction.[318] By using banks that are located in New Jersey, a part of the crime was allegedly committed in New Jersey.[319] This is the simplest way to establish jurisdiction.[320] As a result, New Jersey law can be applied.[321] Second, by allegedly channeling money to these groups, the element of "material support or resources"[322] is satisfied, because the definition of material support or resources includes "currency."[323] Hence, the second element of section 2C:38-5b(1) is satisfied.[324]

3. The Third Element

The third element of the section requires that Arnaout's "material support or resources" must have been given to terrorist organizations:

> [W]ith the purpose or knowledge that such material support or resources will be used . . . to aid, plan, prepare or carry out an act of terrorism . . . or with the purpose or knowledge that such material support or resources are to be given . . . to a person or an organization that has committed or has the purpose to commit or has threatened to commit an act of terrorism.[325]

It is alleged that Arnaout generated the wire transfer of monies as a

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314 *Id.* at 10.

315 *Id.* at 11.

316 *Id.*

317 *See supra* note 258 and accompanying text.

318 *See* discussion *supra* Part V.B.

319 *See supra* note 266 and accompanying text.

320 *See* discussion *supra* Part V.B. While jurisdiction is not an element in the 9/11 Act, a prosecutor must establish New Jersey jurisdiction in all criminal prosecutions that are litigated in New Jersey State courts.

321 *See* discussion *supra* Part V.B.

322 N.J. STAT. ANN. § 2C:38-5(b)(1).

323 N.J. STAT. ANN. § 2C:38-5(a).

324 N.J. STAT. ANN. § 2C:38-5(b)(1).

325 N.J. STAT. ANN. § 2C:38-5(b)(1) (emphasis added).

source of funding for al-Qaeda and other underground guerilla groups.[326] His subjective knowledge that al-Qaeda has committed an act of terrorism in the past is important. [327] In the early 1990's, Arnaout allegedly worked with al-Qaeda operatives to purchase weapons. [328] He allegedly distributed these weapons to "various mujahideen camps, including camps operated by al-Qaeda."[329] Al-Qaeda already considered itself at war with the United States prior to their 9/11 homicides.[330] Since 9/11, bin Laden has issued several other threats against the United States and its interests.[331] There is *prima facie* evidence, therefore, that Arnaout had the requisite "purpose or knowledge"[332] that the funds from these wire transfers were to be given to al-Qaeda, a terrorist group who has attacked America in the past,[333] and has threatened to do so in the future.[334] Thus, the third element of the statute is satisfied.[335]

The accusations against Arnaout meet the three elements of section 2C:38-5(b)(1). Therefore, section 2C:38-5(b)(1) is applicable for those relevant financial transactions that Arnaout allegedly made after the 9/11 Act became law.[336]

D. *Applying the Elements of N.J. Stat. Ann. § 2C:38-5(b)(2).*

> It shall be unlawful for any person . . . to solicit, transport or otherwise provide material support or resources to . . . an organization that is designated as a foreign terrorist organization by the United States Secretary of State . . . . It shall not be a defense to a prosecution for a violation of this section that the actor did not know that the person or organizations is designated

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326 *See* Indictment, *supra* note 16, at 10.

327 *See* N.J. STAT. ANN. § 2C:38-5(b)(1).

328 *See* Indictment, *supra* note 16, at 5.

329 *Id.* ("Arnaout served as director of communications in the 'al-Masada' mujahideen camp in Jaji, Afghanistan, under the direction of Usama Bin Laden. Defendant Arnaout distributed resources, including weapons, at the direction of Usama Bin Laden and others at that time.").

330 *See* CORBIN, *supra* note 11, at 41.

331 *See, e.g.*, CORBIN *supra* note 11, at 252.

332 N.J. STAT. ANN. § 2C:38-5(b)(1).

333 *See* discussion *supra* Part II.A.

334 *See* discussion *supra* Part II.A.

335 N.J. STAT. ANN. § 2C:38-5(b)(1).

336 *See* discussion *supra* Part II.B.

as a foreign terrorist organization.[337]

The first two elements of New Jersey Statute section 2C:38-5(b)(2) are identical to the first two elements in section 2C:38-5(b)(1).[338] Since these elements have already been shown to apply,[339] the statutory analysis below will focus solely on the third element of section 2C:38-5(b)(2).[340]

The third element of section 2C:38-5(b)(2) prohibits providing "material support or resources" to a group designated as a "foreign terrorist organization" by the United States Department of State.[341] Al-Qaeda was first designated a "foreign terrorist organization"[342] by former Secretary of State Madeline Albright in 1999.[343] Secretary of State Colin Powell renewed that designation in 2001.[344] Federal designation of an organization as a "foreign terrorist organization" is enough to satisfy the New Jersey Statute, section 2C:38-5(b)(2).[345] Thus, the requirement that Arnaout's wire transfers of money, which is "material support or provisions,"[346] were allegedly made to al-Qaeda, a "foreign terrorist organization," is satisfied.[347]

The government can establish all three elements of section 2C:38-5(b)(2) against Arnaout.[348] Therefore, with regard to Arnaout's alleged wire transfers of "material support or provisions"[349] to al-Qaeda, this section of the "Material Support or Resources" provisions is also applicable.[350]

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337 N.J. STAT. ANN. § 2C:38-5(b)(2) (emphasis added).

338 *See supra* notes 121 and 151 and accompanying texts.

339 *See* discussion *supra* Part V.C.

340 *See* discussion *supra* Part V.C. The term "material support or resources" will be treated in the same manner as previously discussed.

341 *See* N.J. STAT. ANN. § 2C:38-5(b)(2).

342 *Id.*

343 The United States Department of State, *Fact Sheet: Secretary of State Designates Foreign Terrorist Organizations (FTO's)* (Oct. 5, 2001), *at* http://www.state.gov/r/pa/prs/ps/2001/5265.htm.

344 *Id.*

345 N.J. STAT. ANN. § 2C:38-5(b)(2). "It shall be unlawful for any person . . . to solicit, transport or otherwise provide material support to . . . an organization that is designated as a foreign terrorist organization by the United States Secretary of State. . . ." *Id.* (emphasis added).

346 *See* discussion *supra* Part V.C.

347 N.J. STAT. ANN. § 2C:38-5(b)(2).

348 *Id.*

349 *Id.*

350 *See id.*

E. *Applying the Elements of the Freezing Funds Act: N.J. STAT. ANN. Section 2C:66-3*

The three elements of section 2C:66-3 are:

> If the court finds that: [1] there exists a reasonable suspicion that the account holder has committed or is about to commit the crime of terrorism . . . or the crime of soliciting or providing material support or resources for terrorism . . . [2] the accounts of the account holder are specifically identified; and [3] it is necessary to freeze the account holder's funds or assets to ensure eventual restitution to victims of the alleged offense, the court may order the financial institution to freeze all or part of the account holder's deposited funds or assets so that the funds or assets may not be withdrawn or disposed of until further order of the court.[351]

1. The First Element

The section first requires: "*If the court finds that there exists a reasonable suspicion* that the *account holder* has committed or is about to commit the crime of *soliciting or providing material support or resources for terrorism. . . .*"[352]

To satisfy the section's "reasonable suspicion" portion of this section, one must show detailed facts that reasonably lead one to suspect the account holder.[353] Here, Arnaout is accused of participating in terrorism.[354] He allegedly used a bank located in New Jersey to send wire transfers to underground guerilla groups.[355] He admitted to obtaining money for the wire transfers by lying to donors that their donations would be used for humanitarian causes.[356] Instead, the monies were allegedly sent to al-Qaeda and other guerilla groups.[357] The first element of section 2C:66-3[358] is satisfied by the detailed allegations[359] as

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351 N.J. STAT. ANN. § 2C:66-3.

352 N.J. STAT. ANN. § 2C:66-3(a) (emphasis added).

353 *See* State v. Rodriguez, 172 N.J. 117, 126 (2002) ("specific and articulable facts which taken together with rational inferences from these facts give rise to a reasonable suspicion of criminal activity") (quoting Terry v. Ohio, 392 U.S. 1, 21 (1968)).

354 *See supra* note 258 and accompanying text.

355 *See* Indictment, *supra* note 16, at 10.

356 *See* Plea Agreement, *supra* note 16, at 4.

357 *See* Indictment, *supra* note 16, at 10, 11. In his plea, Arnaout admitted that some of the donated funds were sent to fighters in Chechnya. *See* discussion *supra* note 258.

358 N.J. STAT. ANN. § 2C:66-3(a).

359 *Rodriguez*, 172 N.J. at 126. In *Rodriguez*, a New Jersey Transit police officer

to the manner Arnaout initially solicited the donations and then provided material support to al-Qaeda by allegedly wiring the donations for their use.[360]

2. The Second Element

The second element of section 2C:66-3 provides that *"the accounts of the account holder are specifically identified. . . ."*[361]

The indictment alleges Arnaout conducted the wire transfers by using BIF's bank account, "at Citibank FSB to Fleet Bank in Newark, New Jersey."[362] While the indictment names the two banks that maintained the accounts in question, it would be necessary to obtain the account numbers to specifically identify the relevant accounts.[363] The indictment does not contain the account numbers.[364] Obtaining this information is relatively simple because BIF's financial records were seized by federal authorities in December 2001.[365] The account numbers may be obtained by auditing those records.[366] If the account numbers cannot be located in BIF's financial records, they may also be obtained by issuing a Grand Jury subpoena *duces tecum* to Citibank and Fleet

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received an anonymous tip that an individual matching a description of the defendant was transporting illegal drugs to Atlantic City by bus. *Id.* at 121. The defendant and an associate were questioned by two New Jersey Transit officers, after departing a bus from Philadelphia. *Id.* at 122. The defendant signed a consent to search form. *Id.* at 124. The officers found heroin in the defendant's left sock. *Id.* At trial, the judge denied defendant's motion to suppress the drugs. *Id.* The defendant pled guilty and was sentenced to six years in prison. *Id.* at 124-125. The Appellate Division affirmed the trial court's decision to deny defendant's motion to suppress. *Id.* at 125. The New Jersey Supreme Court reversed the Appellate Division, "because the field inquiry of defendant escalated into an investigative detention." *Id.* at 132. Consequentially, the Court ruled the police must show "reasonable articulable suspicion of criminal activity to justify the stop." *Id.* Since the detention of the defendant was based solely on the anonymous tip, the Court ruled there was insufficient reasonable suspicion to justify the officer's questioning of the defendant. *Id.* at 133.

360 *See* Indictment, *supra* note 16, at 10, 11.

361 N.J. STAT. ANN. § 2C:66-3(b).

362 *See* Indictment, *supra* note 16, at 23. The term "FSB" stands for "Full Service Bank." *Id.*

363 The author has been conducting financial investigations of criminals for the past eleven years. It has been my professional experience that the simplest and most effective way to specifically identify a bank account is through the bank account number.

364 *See* Indictment, *supra* note 16, at 23.

365 *See Feds Raid Islamic Charity Groups*, *supra* note 258.

366 BIF's financial records were seized by FBI Agents on December 14, 2001. *See Feds Raid Islamic Charity Groups*, *supra* note 258. An investigator would need to obtain the records from that agency.

Bank requesting the information.[367]

3. The Third Element

The third element of section 2C:66-3 provides the prosecutor must show that "*it is necessary to freeze the account holders' funds or assets to ensure eventual restitution to victims of the alleged offense.*"[368]

The donors in this case were misled into donating money to BIF for what they thought were humanitarian causes.[369] Instead, BIF money was allegedly used to help al-Qaeda and other guerilla groups.[370] Consequently, the donors were victimized by BIF.[371] In order to return their respective donations, a court order to freeze account activity is necessary.[372] The remaining funds in BIF's accounts can then be returned to the donors.[373] Therefore, the third element is satisfied.

VI. Conclusion

The 9/11 Act, specifically the "Material Support or Resources" provisions, and the Freezing Funds Act, enable state and local law enforcement in New Jersey to conduct efficient, well-planned financial investigations. As such, they provide powerful tools that can prevent terrorists from funneling money through the state's financial institutions. These laws confront the connection between money and terrorism. If implemented properly, these statutes can provide law enforcement officials with the legal resources to assist in not just arresting terrorist financiers and their co-conspirators, but also in seizing their illegally obtained assets. These same assets would otherwise provide foreign terrorist organizations with the opportunity to finance future attacks through New Jersey financial institutions. Thus, arresting and convicting those who profit from terror represents just one

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367 *In re* Addonizio, 53 N.J. 107, 132-135 (1968) (describing the police power of a prosecutor's office to serve a grand jury subpoena on a bank in order to obtain bank records in furtherance of a criminal investigation). This can also be done if the FBI declines to share the records. *See supra* note 366 and accompanying text.

368 N.J. STAT. ANN. § 2C:66-3(c).

369 *See* Plea Agreement, *supra* note 16, at 4.

370 *See* Indictment, *supra* note 16, at 23. The author would like to acknowledge that Arnaout's indictment does not specify the exact amount of material resources that he allegedly sent to al-Qaeda. *Id.* at 10,11.

371 *See* Indictment, *supra* note 16, at 10, 23.

372 N.J. STAT. ANN. § 2C:66-3.

373 *See* N.J. STAT. ANN. § 2C:66-6(c).

part of the anti-terrorism equation. The second part of the equation involves freezing terrorist related monies and assets and returning them to donors where appropriate.

An understandable concern in bringing terrorist operatives to justice is that civil liberties could suffer.[374] The war on terror has generated debate over balancing America's need to assure homeland security with the need to safeguard the constitutional rights of its citizenry.[375] History reveals that when governments implement anti-terrorism laws unfairly, civil liberties may be compromised.[376] Allowing this to happen in the United States would be counterproductive and offensive.[377] Protecting a defendant's right to due process and other constitutional privileges is not an option; it is a mandate.[378] Indeed, the

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374 *See, e.g.*, Scott Alexander, *Inalienable Rights? Muslims in the U.S. Since September 11th*, 7 J. ISLAMIC L. & CULTURE 103 (2002); Carrie True, Comment, *United States v. Bin Laden and the Foreign Intelligence Exception to the Warrant Requirement for Searches of "United States Persons" Abroad*, 82 B.U. L. REV. 555 (2002); Barbara Hines, *So Near Yet So Far Away: The Effect of September 11th on the Mexican Immigrants in the United States*, 8 TEX. HISP. J.L. & POL'Y 37 (2002); John W. Whitehead & Steven H. Aden, *Forfeiting "Enduring Freedom" for "Homeland Security": A Constitutional Analysis of the USA PATRIOT Act and the Justice Department's Anti-Terrorism Initiatives*, 51 AM. U. L. REV. 1081 (2002); Susan M. Akram & Kevin R. Johnson, *Migration Regulation Goes Local: The Role of States in the U.S. Immigration Policy: Race, Civil Rights, and Immigration Law After September 11, 2001: The Targeting of Arabs and Muslims*, 58 N.Y.U. ANN. SURV. AM. L. 295 (2002).

375 *See, e.g., Symposium, First Monday – Civil Liberties in a Post – 9/11 World*, 27 SETON HALL LEGIS. J. 1 (2002); *Symposium, USA PATRIOT Act and The American Response to Terror: Can We Protect Civil Liberties After September 11?*, 39 AM. CRIM. L. REV. 1501 (2002); *Symposium, Civil Liberties After September 11: A Closer Look at Detention Powers*, 34 CONN. L. REV. 1143 (2002).

376 Michael P. O'Connor & Celia Rumann, *Into the Fire: How to Avoid Getting Burned by the Same Mistakes Made Fighting Terrorism in Northern Ireland*, 24 CARDOZO L. REV. 1657, 1677-1699 (2003) (discussing Great Britain's response to terrorism in Northern Ireland).

377 *Id.* at 1658-59. As Professors O'Connor and Rumann eloquently noted:

> [W]hat if the measures taken will not make us more secure? If we have traded precious freedom for an empty promise, we dishonor those who have fought and died for our freedom during the past two hundred and twenty-seven years. We owe it to them, to ourselves, and to future generations to ask whether the measures adopted and assumed by our government are necessary, and whether they will be effective. We must ask ourselves these questions now, in large part, because they were not properly asked before. In the immediate aftermath of the World Trade Center and Pentagon attacks, a great outcry arose, demanding our political leaders "do something."

Id.

378 *See id.* at 1751 (arguing that "[d]ialogue, cooperation and attention to civil liberties" represent important policies in America's war on terror).

case study of BIF provided in this article[379] presents a classic example of effective ways to implement anti-terrorism laws like the 9/11 Act and Freezing Funds Act; and the difficulty of investigating terrorist financing without being accused of compromising civil liberties.[380]

Never in our nation's history has so much been expected of law enforcement to protect America from terrorism.[381] Certainly, "we would be foolhardy, even immoral, if we did not respond to the terrorist attack on our soil. We have a right and an obligation to defend innocent lives."[382] Currently, there is no greater concern for law enforcement professionals than homeland security.[383] Maximizing the power of the anti-terrorist financing provisions in the 9/11 Act, and enacting the Freezing Funds Act are necessary steps. By following terrorists' money, law enforcement can eventually track those in charge of terrorist related financing systems. The enactment is important for those charged with the obligation of tracking both financial and non-financial terrorist operations.[384]

Cooperation between federal, state and local authorities is key.[385]

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379 *See* discussion *supra* Part V.

380 *See* Nat'l Comm'n on Terrorist Attacks Upon the United States: Monograph on Terrorist Financing, 111, *available at* http://www.9-11commission.gov/staff-statements/index.htm. (last visited Sept. 23, 2004) (reporting that while authorities were able to close down BIF's operations, "that victory came at a considerable cost of negative public opinion in the Muslim and Arab communities, who contend that the government's destruction of these charities reflects bias and injustice with no measurable gain to national security").

381 *See* Exec. Order No. 13,224, *supra* note 11, at 49, 079-49,080.

382 O'Connor & Rumann, *supra* note 376 at 1658.

383 *See* Exec. Order No. 13,224, *supra* note 11, *at* 49, 079-49,080.

> [A]cts of terrorism and threats of terrorism committed by foreign terrorists, including the terrorist attacks in New York, Pennsylvania, and the Pentagon committed on September 11, 2001 . . . *and the continuing and immediate threat of further attacks on United States nationals or the United States constitute an unusual and extraordinary threat to the national security, foreign policy, and the economy of the United States*, . . . [b]ecause of the pervasiveness and expansiveness of the financial foundation of foreign terrorists, financial sanctions may be appropriate for those foreign persons that support or otherwise associate with these foreign terrorists.

Id. (emphasis added).

384 *See infra* note 395 and accompanying text.

385 *Sixth Public Hearing of the National Commission on Terrorist Attacks Upon the United States: Before the National Commission on Terrorist Attacks Upon the United States*, (Dec. 8, 2003), (testimony of Larry D. Thompson, Senior Fellow at the Brookings Institute and former Deputy Attorney General of the United States) (describing how a lack of coordination between government agencies, "hampered the Department of Justice's

While federal agencies have been the lead trackers of terrorist financiers, I argue the war on terror will be ineffective should we adopt a strategy where national agencies, like the F.B.I., act on their own, without input from state and local law enforcement entities.[386] Consequently, winning the war on terror requires a decisive plan of attack utilizing a comprehensive assemblage of law enforcement agencies, both federal and state, whose goal is to neutralize all terrorist activity.[387]

Engaging in an economic battle, the 9/11 Act and the Freezing Funds Act can be utilized to decrease the chance of future terrorist attacks. Interrupting long and short term financing operations of underground guerilla groups operating domestically and abroad is essential if terrorists are to be deactivated.[388] Failing to stop terrorist financing operations will make the war on terror difficult to win. Neutralizing Bin Laden alone will not stop al-Qaeda; terrorist cells will replace him and continue his mission against the United States and its allies.[389] Thus, the benefits of supporting terrorist financing investigations designed to deprive terrorists of their assets are relevant and significant. A terrorist's commitment to his or her cause notwithstanding,[390] groups like al-Qaeda must be deprived of the financial means to operate on a day-to-day basis. By tracing financial transactions, the opportunities to find high-level terrorist operatives increase dramatically.[391] For example, bin Laden has a history of

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ability to take action to defend the nation against terrorist attacks.") at http://www.9-11commission.gov/hearings/hearings6/witness_thompson.htm.

386 *See* John Solomon, *Two Senators Criticize Asset-Freezing Agency*, STAR LEDGER (N.J.), Jan. 2, 2004, at 10 (describing criticism by Senators Charles Grassley (R-Iowa) and Max Baucus (D-Montana) of the federal agency (The Office of Foreign Asset's Control) charged with the obligation of tracking terrorist financiers and freezing their bank accounts and assets. Specifically, the Senators question that agency's effectiveness in the war on terrorist financing). *See also* discussion *infra* note 388.

387 *See* 9/11 COMMISSION REPORT, *supra* note 1, at 427. "[T]he work of the FBI through local Joint Terrorism Task Forces, should build a reciprocal relationship, *in which state and local agents understand what information they are looking for and, in return, receive some of the information being developed about what is happening, or may happen, in their communities.*" *Id.* (emphasis added).

388 *See* Baldwin, *supra* note 17, at 4. ("We are now well aware of the fact that the largest construction company in the mid-east is owned by al-Qaeda. Tanzanite mines, blessed fruit peanut farms, fishing villages.... So basically, what you are talking about is Terrorism, Inc., which is Organized Crime, Inc., as well.").

389 CORBIN, *supra* note 11, at 312.

390 *Id.*

391 *See infra* note 394 and accompanying text.

authorizing only those he trusts with running al-Qaeda's financing operations.[392] Prioritizing terrorist financing investigations by implementing the "Material Support or Resources" provisions of the 9/11 Act and the Freezing Funds Act will allow law enforcement agencies to obtain access to bin Laden's inner circle and their subordinates.[393] Once those who are in charge of the money are apprehended and questioned, it could be a matter of time before those directing terrorist activities will be brought to justice. Following the money leads investigators to those in charge of crime groups, including terrorist crime groups.[394]

Terrorists are resourceful.[395] As law enforcement implements new strategies against terrorist financiers, their co-conspirators make their own adjustments to avoid detection.[396] *All* law enforcement agencies, at the federal and state levels, must, in the spirit of cooperation and coordination, deprive terrorists of their finances by implementing anti-terrorism laws. This is especially important for New Jersey, due to the State's thriving money laundering industry that has exploited New Jersey financial institutions for years.[397]

The tragedy of 9/11 showed that carrying out terrorist attacks can be relatively inexpensive.[398] It is important therefore, that terrorists be deprived of the funds they generate through their financial schemes.[399] The 9/11 Act and Freezing Funds Act are good first steps in blocking

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392 *See* CORBIN, *supra* note 11, at 167 (identifying Mustafa Ahmed, a close affiliate of Bin-Laden, as his primary financial operative). The author wishes to note that while al-Qaeda has been a focus of this article, terrorist financing investigations should be implemented to target all underground guerilla groups.

393 *See* CORBIN, *supra* note 11, at 167; *see also* discussion *infra* note 395.

394 Baldwin, *supra* note 17, at 10 (statement of Alan Ambert, a former detective in the United Kingdom. "As a former detective, with many years experience investigating the finances of and tracing the assets of drug traffickers and other major criminals, it comes as no surprise to me that if you follow the money trail, you are never far from those who exercise control over the operational activities *and that includes terrorist activities*") (emphasis added); *see also* discussion *supra* note 393.

395 Eric Gouvin, *Bringing Out the Big Guns: The USA PATRIOT Act, Money Laundering and the War on Terrorism*, 55 BAYLOR L. REV. 955, 964 (2003). ("Again, criminals with large amounts of cash to move are not, generally stupid. In time, cash transfer services like MoneyGram and Western Union became favorite tools of terrorists").

396 *See* Lacey & George, *supra* note 41 and accompanying text.

397 *See* discussion *supra* Part II.C. *See also* Richard Newman, *Dirty Laundry; Banks Say They Are Vigilant in Tracking Drug Money in New Jersey*, BERGEN RECORD, Apr. 1, 2001, at B-1 (describing New Jersey as a "money laundering hot spot").

398 *See supra* note 3 and accompanying text.

399 *See supra* note 10 and accompanying text.

the flood of money to terrorist organizations. Once terrorists are prevented from using such money, their evil acts will eventually be brought to an end.[400] An end whereby peace is the rule of the day, and the terrorists' message of murder and bigotry[401] is silenced. The ultimate goal, I argue, is the pursuit of uncompromising justice, where civil liberties are protected, and the American way of life is secured.[402]

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[400] Rudolph W. Giuliani, *09.11.01: Combatting Terrorism*, 16 NOTRE DAME J. L. ETHICS & PUB. POL'Y 57, 60 (2002) ("The terrorists are wrong, and in fact evil, in their mass destruction of human life in the name of addressing alleged injustices").

[401] *See* The Network of Terrorism: The International Coalition, *supra* note 10 and accompanying text.

[402] *See* Giuliani, *supra* note 400 and accompanying text.