

# **THE PATRIOT ACT**

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# THE PATRIOT ACT

## Issues and Controversies

*By*

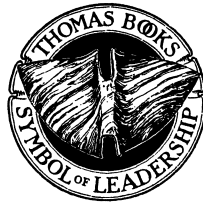
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*This book is dedicated in loving memory of Elmer Smith.  
I miss you, Daddy.*



## PREFACE

Few legislative acts in American history have caused polarization, as did the United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism, more commonly known as The Patriot Act. Depending upon which side of the aisle one leans toward, an American might have thought that the Patriot Act was the opening salvo of a plan to drive the country in the direction of a fascist dictatorship where civil liberties were withheld at gunpoint. On the other hand, if a person leaned in the opposite political direction, he/she might have seen The Patriot Act as a godsend in the fight against international terrorism, especially since al-Qaeda and other such groups did not fight by recognized rules; thus, the only way to win was to combat terrorists in a manner far removed from “acceptable” practices. Practices such as right to legal counsel and freedom from torture were only valid for American citizens, not aliens.

When writing this book, we strove to maintain a moderate tone, free from political bias, and the reader can judge for himself/herself to see if we succeeded. In the Introduction, we speak about the events that transpired on 9/11 and how we, as Americans, responded. Chapter 1 deals with the state of America before 9/11; Chapter 2 centers on how the U.S. changed due to 9/11, along with detail about the Foreign Intelligence Service Act of 1978; and Chapter 3 focuses how we, as Americans, view terrorism, and how similar legislative acts in American history were also full of controversy. Chapter 4 is the longest chapter in the book, and it is where we discuss the Patriot Act itself, with more detail for Titles 1 and 2 than the remaining Titles primarily because the first two Titles were the most contentious. Chapter 5 looks at how various groups and individuals viewed the Patriot Act and their means of changing it so America’s civil liberties remain a hallmark of the United States, while Chapter 6 looks at Constitutional law to gauge whether the Patriot Act is legal or not. As the Patriot Act changed many existing laws, we have included a Glossary of Statutes that should help the reader if he/she sees something like 8 CFR Part 287.3(d) and is unfamiliar with Federal Law.

The Patriot Act has lost much of its “teeth” due to judicial intervention. It

would be a mistake, however, to assume that it will not rise again. If America suffers from no more terrorist attacks, the Act will stay on the books, but will remain below the radar screen. If we are attacked again and Americans are killed, a recrudescence will occur and many of the arguments presented herein will likely occur again.

C.S.S.  
L.C.H.



## INTRODUCTION

On September 11, 2001, during the wee hours of the morning, nineteen individuals, each connected intimately with al-Qaeda,<sup>1</sup> hijacked four commercial jet airliners with the intent of killing Americans. Each individual team of terrorists included an individual who had received pilot training within the U.S. After boarding, the individuals smashed two of the airliners (American Airlines Flight 11 and United Airlines Flight 175) into the World Trade Center in New York City, both structures symbolic of American strength. Each tower (1 WTC and 2 WTC) had a jet careen into it, thus causing the complete disintegration of both buildings soon thereafter, with widespread destruction to nearby buildings.<sup>2</sup>

The captors smashed the third plane (American Airlines Flight 77) into the Pentagon (another edifice symbolic of American power), located in Arlington County, Virginia. On the fourth aircraft, both passengers and flight crew (United Airlines Flight 93) tried to regain control of their plane from the terrorists,<sup>3</sup> resulting in the craft's crashing in a barren field in rural Somerset County, Pennsylvania.<sup>4</sup>

In addition to the 19 terrorists, 2,974 Americans perished as a consequence of the attacks, with one individual dying as a direct result of inhaling dust from the WTC collapse.<sup>5</sup> As their bodies were never found, an additional 24 people were presumed dead, bringing the overall tally to 2,998, with the vast majority being nonmilitary personnel. The deceased were not only Americans; included in the dead were individuals from over 80 countries scattered around the globe.<sup>6</sup>

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1. See "Bin Laden claims responsibility for 9/11," *CBC News* (2004-10-29). Retrieved on 2008-01-08.

2. See Neilan, Terence (2001-09-11). "2 Planes Crash Into World Trade Center," *The New York Times*.

3. See "The Attack Looms," *9/11 Commission Report*. National Commission on Terrorist Attacks Upon the United States (2004).

4. Ibid.

5. See Flight 93 Hijacker: 'We Have a Bomb on Board.'" *Fox News* (2006-04-13). Retrieved on 2008-02-23.

6. See Hijacked Planes Used in Coordinated Attacks Upon New York, Washington." *Fox News* (2001-09-11). Retrieved on 2008-2-24.

The National Institute of Standards and Technology (NIST) stated that roughly 17,400 civilians were in the Twin Towers when the terrorists attacked; however, turnstile counts issues by the Port Authority suggested that 14,154 people were usually in the WTC by 8:45 a.m.<sup>7</sup> Most of the individuals beneath the area of contact escaped before the buildings collapsed, along with 18 people that were directly stationed in the impact zone in the south tower.<sup>8</sup> One thousand three hundred and sixty-six people perished that were located either on the floors, or directly above in the North Tower.<sup>9</sup> The 9/11 Commission Report indicated that hundreds were killed at the moment of impact, whereas others were trapped, dying after the structures collapsed.<sup>10</sup> In the South Towers, roughly 600 people were killed instantly, or were trapped at or above the floors of collision in the South Tower.<sup>11</sup>

In addition to the 19 terrorists, 2,974 Americans perished as a consequence of the attacks, with one individual dying as a direct result of inhaling dust from the WTC collapse. As their bodies were never found, an additional 24 people were presumed dead, bringing the overall tally to 2,998, with the vast majority being nonmilitary personnel.

Approximately 200 people ended their lives by leaping from the towers as they burned, crashing onto the asphalt streets below and the rooftops of nearby buildings, hundreds of feet below.<sup>12</sup> Within each tower, some individuals above the point of impact struggled upwards, hoping to make it the roof, as they thought a helicopter might save them; sadly, once they made it, they found the doors solidly locked. Before 9/11, no plans existed for helicopter rescues for one reason: no one had ever crashed a commercial airliner into a building before. In addition, even if such plans had existed, smoke and ash prevented helicopters from rescuing anyone.<sup>13</sup>

The men and women in the Twin Towers were not the only ones killed; hundreds of fire and rescue workers died as well. The New York City Fire

7. See Jason D Averill et al. (2005). "Occupant Behavior, Egress, and Emergency Communications," *Final Reports of the Federal Building and Fire Investigation of the World Trade Center Disaster* (PDF), National Institute of Standards and Technology (NIST). Retrieved on 2008-05-20.

8. See Jim Dwyer et al. (2002-05-26). "Last Words at the Trade Center; Fighting to Live as the Towers Die." *The New York Times*.

9. See Eric Lipton, (2004-07-22). "Study Maps the Location of Deaths in the Twin Towers," *The New York Times*. Retrieved on 2008-2-11.

10. See Heroism and Honor." *National Commission on Terrorist Attacks upon the United States*. U.S. Congress. (2004-08-21). Retrieved on 2008-05-20.

11. See "9/11 Death Toll," CNN (2006, April 26). Retrieved on 2008-02-07.

12. See Dennis Cauchon & Martha Moore (September 2, 2002). "Desperation forced a horrific decision," *USA Today*.

13. See "Poor Info Hindered 9/11 Rescue," CBS News (May 18, 2004). Retrieved on 2008-2-22.

Department lost 341 firefighters, as well as two paramedics.<sup>14</sup> The New York City Police Department was also hurt: they lost 23 officers.<sup>15</sup> The Port Authority Police Department lost 37 officers,<sup>16</sup> whereas EMS companies lost additional EMTs and paramedics as well.<sup>17</sup>

The rules of engagement that existed on 9/11 were woefully inadequate in practically every aspect, but then, the idea that someone would fly a passenger airliner sounded more like a Hollywood epic of the Arnold Schwarzenegger type.

On September 11, the safety of American air space hinged on the cooperation of two vastly different agencies: the Federal Aviation Administration (FAA) and North American Aerospace Defense Command (NORAD)—the former being civilian and the latter being military. The rules of engagement that existed on 9/11 were woefully inadequate in practically every aspect, but then, the idea that someone would fly a passenger airliner sounded more like a Hollywood epic of the Arnold Schwarzenegger type. In reality, what occurred after the attacks illustrated the fact that the FAA had never handled hijackers that wanted to destroy themselves, while NORAD had little idea how to handle commercial airliners that had been turned into weapons capable of killing thousands.<sup>18</sup>

NORAD did not receive confirmation to shoot down any other possible attackers until exactly 28 minutes after United 93 had crashed in Pennsylvania. Fighter jets raced into the air, but the operation, for the most part, was completely ineffective. The pilots had no idea regarding where to go or who their targets were, and though the shoot-down order had been received, the pilots were not informed. In any other circumstances, the situation would seem comical. Our elected leaders in Washington thought that F16s were circling the nation's capital, with specific instruction to obliterate any "hostile" fighters that might approach. The pilots were instructed to "take down" only the "ID type and tail" of any aircraft.<sup>19</sup>

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14. See Denise Grady & Andrew C. Revkin, "Threats and Responses: Rescuer's Health; Lung Ailments May Force 500 Firefighters Off Job," *The New York Times*, 2002-09-10.

15. See Post-9/11 report recommends police, fire response changes. Associated Press. (2002-08-19). *USA Today*.

16. See Police back on day-to-day beat after 9/11 nightmare, (2002-07-21). *CNN*. Retrieved on 2008-03-03.

17. See Joshi Pradnya (2005-09-08). Port Authority workers to be honored. *Newsday*. Retrieved on 2008-02-20.

18. See op cit, Averill No. 7.

19. Op cit Dwyer, No. 8.

NORAD did not receive confirmation to shoot down any other possible attackers until exactly 28 minutes after United 93 had crashed in Pennsylvania. Fighter jets raced into the air, but the operation, for the most part, was completely ineffective.

The emergency response delivered on September 11 was strikingly similar to the one given by the national defense—it was a hodgepodge of improvisation. In New York City, various civil agencies attempted to keep some semblance of order. The New York City Fire Department, the New York City Police Department, the Port Authority of New York and New Jersey, the employees and occupants of the buildings did their utmost to handle the results of something completely unimaginable occurring over a grand total of 102 minutes. Near the impact zones, the casualty rates approached 100 percent. Many individuals quick to arrive at the scene lost their lives trying to save others. Although no plans or preparations for such an event had been formulated, and while a unified command structure was not achieved, in many ways, the response to September 11 was a success. Communications among the agencies responding to the crisis was practically nil, but even so, approximately 100 of the thousands of individuals working below the impact zone made it out, though aided by emergency personnel.<sup>20</sup>

The Pentagon experienced problems as well, especially in terms of command and control, but in general, the response there was effectual. In the nation's capital, an emergency response system entitled "The Incident Command System" prevailed over the intrinsic difficulties of a response across local, state, and federal jurisdictions.<sup>21</sup>

The United States responded by initiating the War on Terrorism, attacking and deposing the ruling junta in Afghanistan, the Taliban, due to their harboring al-Qaeda terrorists. More importantly, and the subject of this book, the U.S. enacted the Uniting and Strengthening America by Proving Appropriate Tools Required to Intercept and Obstruct Terrorism Act—the Patriot Act. Other countries commiserated with America and they, too, initiated increased antiterrorism legislation and increasing law enforcement powers. Major financial centers, like the various stock exchanges shut down for almost a week, posting gigantic losses upon reopening, no more so than in the airlines and insurance industries. The city of New York's economy, espe-

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20. See Eric Lipton (2004-07-22). "Study Maps the Location of Deaths in the Twin Towers," *The New York Times*. Retrieved on 2008-1-15.

21. See Heroism and Honor." *National Commission on Terrorist Attacks upon the United States*. U.S. Congress (2004-08-21). Retrieved on 2008-01-30.

cially that of Lower Manhattan, ceased to function, as untold billions of dollars in office space was annihilated or damaged beyond repair.<sup>22</sup>

The attacks not only affected the U.S.; the effects were felt worldwide. All across the globe, 9/11 was condemned, even from countries usually not on America's side. For instance, in France, America's most vitriolic ally in NATO, the nation's top newspapers and news organization wrote: "We Are All Americans" (*Nous sommes tous Américains*).<sup>23</sup> This good feeling of sympathy and understanding was not shared by everyone, however. In the Middle East, Palestinians danced in the streets upon word that America had suffered great losses due to the attacks.<sup>24</sup> Reports indicated that in China, communal displays of fervor for the attacks erupted spontaneously by Chinese students in Beijing, though it should be mentioned that the journalist writing the report was not in Beijing the day the demonstrations occurred; rather, he based his report on information gathered from his sources; moreover, the report was not filed until 2006.<sup>25</sup> Interestingly, most political leaders throughout the Middle East, including Afghanistan, denounced the attacks. Iraq was a prominent exception, stating publicly that "the American cowboys are reaping the fruit of their crimes against humanity."<sup>26</sup>

In the Middle East, Palestinians danced in the streets upon word that America had suffered great losses due to the attacks.

The 9/11 Commission Report concluded that the hostility towards America, as exhibited by Khalid Sheikh Mohammed, the "principal architect" of the 9/11 attacks, originated "not from his experiences there as a student, but rather from his violent disagreement with U.S. foreign policy favoring Israel."<sup>27</sup> Similar rationale was shared by the two terrorists that rammed their respective planes into the World Trade Center: Mohamed Atta was portrayed as an individual who was "most imbued actually about . . . U.S. protection of these Israeli politics in the region." When someone asked Marwan al-Shehhi, the suicide pilot that flew into the second Tower, why he and Atta never laughed, he replied, ". . . How can you laugh when people are dying

22. See Michael L. Dolfman & Solidelle F. Wasser (2004), "9/11 and the New York City Economy," *Monthly Labor Review*, 127.

23. International Reaction. September11News.com. Retrieved on 2008-02-08.

24. See Mixed Response from Arab World (2001-9-11). BBC. Retrieved from <http://news.bbc.co.uk/2/hi/americas/1538861.stm> on 2008-01-03.

25. See S. P. Jehangir, R. Ciesinger, & M. Young (2006-9-10). 9/11: Five years later. World views of attacks varied. *San Francisco Chronicle*. Retrieved 02-02-08.

26. See Hendrik Hertzberg, (2006-09-11). "Lost love." *The New Yorker*. Retrieved on 2008-02-02.

27. See National Commission on Terrorist Attacks Upon the United States (2004). "Chapter 5," 9/11 Commission Report, Government Printing Office. Retrieved on 2008-03-08.

in Palestine?”<sup>28</sup> In one account, Atta became a martyr as a response to the Israeli Defense Force striking at the beginning of Operation Grapes of Wrath.<sup>29</sup>

Abdulaziz al-Omari, one of the terrorists aboard Flight 11 with Atta, stated in a video, “My work is a message to those who heard me and to all those who saw me, at the same time it is a message to the infidels that you should leave the Arabian peninsula defeated and stop giving a hand of help to the coward Jews in Palestine.”<sup>30</sup>

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Law enforcement and intelligence organizations located throughout the world, in an effort of getting “tough” on terrorism, immediately arrested people branded as terrorists or possible terrorists with the express intention of destroying radical cells around the world.<sup>31</sup> In America, this aroused controversy, as civil rights activists argued that customary constraints on federal surveillance, primarily dealing with the Counter Intelligence Program’s (CO-INTELPRO) monitoring of public meetings were destroyed by the USA PATRIOT Act. The American Civil Liberties Union, the preeminent civil libertarian group in the U.S., wrote that specific civil rights guarantees were being abridged and nullified.

Located at Guantanamo Bay, Cuba, the U.S. opened a compound with the express purpose to hold individuals deemed illegal combatants. Various organizations in America and the world (the European Parliament,<sup>32</sup> Amnesty International,<sup>33</sup> etc.) have difficulties regarding the legality of these detentions. After the attacks, more than 80,000 people, primarily Arab and Muslim immigrants, had biometric data taken and were registered due to the Alien Registration Act of 1940. More than 8,000 Islamic men were questioned closely, with 5,000 foreign nationals being held under Joint Congressional Resolution 107–40, which authorized military force “to deter and

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28. Ibid.

29. Ibid.

30. See “Al-Qaeda tape finally claims responsibility for attacks.” *The Guardian* (2002–09–10). Retrieved on 2008–01–18.

31. See “SE Asia unites to smash militant cells.” CNN (May 8, 2002). Retrieved on 2008–03–10.

32. See “Euro MPs urge Guantanamo closure” (2006–06–13). *BBC News*. Retrieved on 2008–01–18.

33. See “USA: Release or fair trials for all remaining Guantánamo detainees” (2008–05–02). Amnesty International. Retrieved on 2008–7–09.

prevent acts of international terrorism against the United States.”<sup>34</sup>

All action taken by the government in the days following 9/11 were eventually allowed under the USA Patriot Act, which is the subject of the present book.

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34. See “Authorization for Use of Military Force: Authorization for Use of Military Force (Enrolled Bill) *S.J.Res.23 One Hundred Seventh Congress of the United States of America*” (2001–09–21). Retrieved on 2008–04–03.





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# **THE PATRIOT ACT**





## Chapter 1

### THE U.S. BEFORE 9/11

In order to understand the reasons for the Patriot Act, information concerning the months, weeks, and days leading up to 9/11 is required. One primary reason for the Act was the belief that the traditional way of conducting business had failed; thus, the need for the Patriot Act.

While what transpired on September 11 was a shock to most, it could not have been a surprise to everyone. Islamist extremists had stated many times their intent to kill as many Americans as humanly possible.<sup>35</sup> While the leader of al-Qaeda, Osama bin Laden, would not become the FBI's most wanted individual until the late 1990s, ample warnings from Islamists concerning what they would do had become commonplace.<sup>36</sup>

While what transpired on September 11 was a shock to most, it could not have been a surprise to everyone. Islamist extremists had stated many times their intent to kill as many Americans as humanly possible.

As early as February, 1993, the World Trade Center was attacked by a group of individuals led by Ramzi Yousef, who tried to bring the WTC down by a truck loaded with explosives. Instead of the mass murder they planned, only six people were killed, though a thousand were wounded. Other plans included those devised by Omar Abdel Rahman, who planned to destroy both the Holland and Lincoln tunnels, as well as other famous landmarks; however, these plans never materialized due to the terrorists' being caught.<sup>37</sup>

One famous incident, made into a famous Hollywood movie, occurred in October, 1993, when Somali tribesmen brought down several U.S. helicop-

35. See Text of Fatwah Urging Jihad Against Americans. Retrieved on 2007-11-02.

36. See Understanding Islamism, International Crisis Group, retrieved on 2008-04-08.

37. See Simon Reeve (2002-06-27). *The New Jackals: Ramzi Yousef, Osama bin Laden and the future of terrorism*. Northeastern University Press.

ters, killing 18 soldiers and wounding 73, which is now known as “Black Hawk Down.”<sup>38</sup> It later became known that the tribesman received substantial help and guidance from a very well-funded al-Qaeda.<sup>39</sup>

In 1995, legal authorities in Manila found out that Ramzi Yousef planned on destroying approximately one dozen U.S. airliners as they flew over the Pacific.<sup>40</sup> In November, 1995, a car bomb detonated outside the building housing U.S. program director for the Saudi National Guard in Riyadh—five Americans were killed.<sup>41</sup> In June, 1996, a truck bomb flattened Khobar Towers, an apartment complex home to many U.S. soldiers stationed in Dhahran, Saudi Arabia. Nineteen Americans were killed, but hundreds were wounded. Saudi Hezbollah, a terrorist organization that regularly received funds from Iran, were the culprits.<sup>42</sup>

For many years, up until 1997, American intelligence saw bin Laden as a financier of terrorist acts, not a leader.<sup>43</sup> In February, 1998, bin Laden, along with four other individuals, issued a fatwa to the Islamic masses, stating that it was Allah’s will for every Muslim to kill all Americans, because of their “occupation” of Muslim holy sites and their untoward aggression against Islam. Six months later, al-Qaeda carried out an operation of brilliance (and a precursor to 9/11). Two simultaneous (or almost so) truck bomb attacks on the U.S. embassies in Nairobi, Kenya, and Dar es Salaam, Tanzania. Twelve Americans were killed, but thousands more were wounded.<sup>44</sup>

In December 1999, Jordanian police thwarted a scheme to bomb popular locales frequented by American tourists.<sup>45</sup> Moreover, at the border separating the U.S. and Canada, a U.S. Customs agent arrested Ahmed Ressam, as he attempted to smuggle into the U.S. explosives earmarked for an assault on Los Angeles International Airport.<sup>46</sup> In October 2000, an al-Qaeda team in Aden, Yemen, rammed a small boat, fitted with an outboard motor and

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38. See Mark Bowden (1997–11–16). “Black Hawk Down,” *The Philadelphia Inquirer*. Retrieved on 2008–01–11.

39. See Peter Berger (2001). *Holy War, Inc. Inside the Secret World of Bin Laden*. New York: Free Press.

40. See Matthew Brezinski (2002–01–02). “Operation Bojinka’s bombshell.” *Toronto Star*. Retrieved on 2007–12–20.

41. See Special Report of the Select Committee on Intelligence, United States Senate, January 4, 1995 to October 3, 1996. (1997–02–28). Retrieved on 2007–12–20.

42. See Press Release: Federal Bureau of Investigation, 2001–06–21. Retrieved on 2007–12–26.

43. See Martin Sieff, “Experts See Saudi as Broker, Not Author, of Terrorist Acts,” *The Washington Times*, 14 August 1998, p. A7.

44. See Associated Press (2007–05–19). “List of Attacks on U.S. Embassies” *USA Today*. Retrieved on 2008–01–06.

45. See Jordan Attacks are likely to Backfire (2005–05–21). *Intelligence Briefing*. Retrieved on 2008–01–06.

46. See Canadian Security Intelligence Service (CSIS), Security Intelligence Report concerning Mohamed Harkat, 2008–2–22.

explosive, blew a hole in the *USS Cole*, almost causing the destroyer to sink, while killing 17 American sailors.<sup>47</sup>

These acts were all precursors to the far more elaborate, and deadly, 9/11 attacks on the World Trade Center and the Pentagon. Even so, by September 11, 2001, President George W. Bush, along with the Legislative Branch, the various news organizations, and the American general public, knew that American was targeted by Islamist extremists that vowed to kill thousands of Americans.

### COUNTERTERRORISM BEFORE 9/11

Before proceeding, a short history of counterterrorism before 9/11 is warranted, as one aspect of the imbroglio surrounding the Patriot Act are the titles dealing with this issue. Prior to the Patriot Act, a “legal wall” surrounded intelligence agents and criminal investigators working on a terrorist target, and both had to proceed without knowing what the other may have been doing about the same target.<sup>48</sup> Many federal agencies felt hampered because agents working on intelligence matters could not communicate with agents involved in criminal justice; thus, information that could have been crucial in stopping 9/11 was never properly distributed.<sup>49</sup>

As mentioned earlier, the WTC attack in 1993 was a precursor for 9/11; however, it was also an example of how ineffective America was in dealing with terrorism. On February 26, 1993, a 1200-pound bomb detonated in the parking garage beneath the two towers of the World Trade Center. The resulting explosion was powerful enough to create a hole seven stories up, and in the aftermath, six people died and many more wounded.<sup>50</sup>

President Bill Clinton commanded his National Security Council to organize the rejoinder. Governmental organizations quickly sprang into action to locate the wrongdoers. The Counterterrorist Center, established in 1986 and located in Langley, Virginia at the CIA, scoured its data and sources across the globe. The National Security Agency (NSA), the largest intelligence gathering organization in the United States, searched its communications files and databases for hints.<sup>51</sup> The New York Field Office of the FBI seized power

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47. See Lawrence Wright, *Looming Tower*, Knopf, (2006), p. 322–331.

48. See John. S. Pistole (2004–4–14). Federal Bureau of Investigation: *Congressional Testimony*. Retrieved on 2007–12–20.

49. Ibid.

50. See Charles E. Schumer (2002–05–23). Press Release: Schumer announces agreement to include families of 1993 of WTC bombing in Victim’s Compensation Fund. Retrieved 2007–11–5.

51. See Chapter 3: Counterterrorism Evolves. *The 9/11 Commission Report*, Retrieved on 2007–12–20.