



THE CENTER ON
LAW AND SECURITY

New York University School of Law

A Center of Expertise

*Promoting an informed understanding
of the legal and security issues
defining the post - 9/11 era.*

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Editor in Chief: Karen Greenberg

Editor: Jeff Grossman

Research Directors: Francesca Laguardia
Michael Price

Lead Research: Jason Porta

Research: Daniel Peter Burgess
Meredith J. Fortin
Alice Goldman
Adam Maltz
Moses Sternstein

Design: Wendy Bedenbaugh

Faculty Co-Directors of the Center on Law and Security: Noah Feldman, David M. Golove, Stephen Holmes, Richard Pildes, Samuel Rascoff

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September 11, 2001 – September 11, 2008

TERRORIST TRIAL REPORT CARD: September 11, 2008

FROM THE EDITOR IN CHIEF: Since its inception, the Center on Law and Security has provided the only comprehensive database on terrorism trials in the United States. Until 2007, the record remained largely consistent. Allegations outweighed charges and conviction rates remained high, though often on lesser charges than initially alleged.

The 2008 Terrorist Trial Report Card has yielded some significant new results.

- The numbers suggest that the Department of Justice's tactics are now resulting in a higher conviction rate for terrorism charges.
- In 2007, the DOJ began using 18 USC § 2339C, the statute designed to prosecute those who knowingly finance terrorism.
- The conviction rate in New York City is higher than the nation overall.
- Sentences in New York City are higher than the national average for both terrorism and terrorism-related crimes.
- The UK component, for which the results are only preliminary, suggests that conviction rates in the UK are lower than in the U.S.

Much however remains the same.

- The higher convictions rates in terrorism prosecutions suggests that the pattern of over-reaching that appeared in earlier years has diminished somewhat. However, the federal toolbox still includes the widespread use of non-terrorism statutes for defendants whom the DOJ claims are terrorists. The DOJ continues to point out that conviction on lesser charges is instrumental in preventing terrorism.
- Plea bargains are used less often in terrorism and terrorism-related cases than in federal criminal cases overall.
- The difficulty in obtaining the figures and facts remains a factor in putting together this report card. As there is no reliable DOJ database for these cases, there is no certainty that every case has been included. Our figures are drawn, by necessity, from the public record and thousands of hours of research in court documents.
- Al Qaeda remains the leading terrorist organization that alleged terrorists are associated with, although that percentage remains relatively low.

National Sentencing Analysis

| | |
|---|---|
| Total Defendants Convicted: | 418 |
| Total Defendants Convicted & Sentenced: | 370 |
| Average Sentence for Any Crime: | 4.87 years |
| Average Terrorism Sentence: | 12.67 years |
| Avg. Sentence for 18 USC 2332: | 26.00 years |
| Avg. Sentence for 18 USC 2339A: | 14.75 years |
| Avg. Sentence for 18 USC 2339B: | 11.92 years |
| Avg. Sentence for 18 USC 2339C: | 1 conviction, <i>not yet sentenced</i> |
| Avg. Sentence for 50 USC 1705: | 10.33 years |

Recommendations:

- The creation of a reliable government database or an expansion of the Bureau of Justice Statistics' research to include terrorism cases.
- The creation of an in-house think tank at the Department of Justice, much as the NYPD has already developed, to examine terrorist threats worldwide and provide regular briefings.

This year's report suggests that, although much needs to be explained and reformed, the criminal justice system's understanding of the terrorist threat has improved after seven years of prosecutions, and that the above reforms could help institutionalize and perpetuate these improvements.



NATIONAL TERRORIST TRIAL STATISTICS

| TOTAL PROSECUTIONS ¹ (693) | No. of persons | % of total |
|---------------------------------------|----------------|------------|
|---------------------------------------|----------------|------------|

- Publicly Associated With Terrorism by the DOJ: 693
- Actually Charged With a Terrorism Statute: 228 33%
- Charged Only With Other Crimes: 465 67%

TERRORISM PROSECUTIONS² (228 total prosecutions)

Resolved Terrorism Trials: 130

| Results of Resolved Trials | No. of persons | Proportion of Trials (excluding pending trials) | National Average for Any Felony ³ |
|---|----------------|--|---|
| • Convicted on Terrorism Charges: ⁴ 93 | 93 | 72% | 93% |
| • Acquitted on Terrorism Charges: ⁵ 12 | 12 | 9% | 0% |
| • Dismissed or Mistrial: 25 | 25 | 19% | 6% |

Pending Terrorism Trials: 98

PROSECUTIONS FOR OTHER CRIMES (465 total prosecutions)

Resolved Trials on Other Crimes: 355

| Results of Resolved Trials | No. of persons | Proportion of Trials (excluding pending trials) | National Average for Any Felony |
|---|----------------|--|------------------------------------|
| • Charged and Convicted Only on Other Charges: 310 | 310 | 87% | 93% |
| • Charged Only on Other Crimes & Fully Acquitted: 5 | 5 | 1% | 0% |
| • Dismissed or Mistrial: 40 | 40 | 11% | 6% |

Pending Trials on Other Crimes: 110

PROPORTION OF CONVICTIONS OBTAINED BY PLEA BARGAIN

| | Convicted by Plea | Convicted by Trial |
|--|-------------------|--------------------|
| All Convictions Associated with Terrorism | 79% | 21% |
| Convictions Under Terrorism Statutes | 63% | 37% |
| Convicted Under Non-Terrorism Statutes | 85% | 15% |
| Overall Federal Rate for Any Felony ⁶ | 96% | 4% |

¹ "Prosecutions" as used herein are counted per defendant. A proceeding with three co-defendants, for example, counts as three prosecutions. If the same person is prosecuted in two separate proceedings under two separate indictments, they are counted separately.

² "Terrorism" as used herein includes the core terrorism statutes: 18 U.S.C. § 2339A (Material Support to Terrorists), 18 U.S.C. § 2339B (Material Support to a Foreign Terrorist Organization), 18 U.S.C. § 2339C (Terrorism Financing), 50 U.S.C. § 1705 (Financial Support to a Foreign Terrorist Organization), and 18 U.S.C. § 2332 (Terrorism). "18 U.S.C. § 2332" as used herein encompasses 18 U.S.C. §§ 2332 and 2332a through 2332h, statutes criminalizing acts of terrorism using specific weapons. To date, there have been no prosecutions publicly announced as terrorism case under an additional statute, 18 U.S.C. § 2339D (Receiving Military-Type Training from a Foreign Terrorist Organization).

³ Federal averages for any felony, for 2007, are from the Bureau of Justice Statistics, Federal Justice Statistics Resource Center, http://fjsrc.urban.org/analysis/ez/displays/s_cross.cfm. Numbers add up to 99 due to rounding.

⁴ "Convicted on terrorism charges" includes people who have been convicted of both terrorism and other crimes.

⁵ Eight people were acquitted of all federal terrorism charges but convicted of other crimes.

⁶ Federal statistics for overall felonies, for 2007, are from the Bureau of Justice Statistics, Federal Justice Statistics Resource Center, http://fjsrc.urban.org/analysis/ez/displays/s_cross.cfm.

NEW YORK CITY TERRORIST TRIAL STATISTICS⁷

| TOTAL PROSECUTIONS (94) | No. of persons | % of total |
|-------------------------|----------------|------------|
|-------------------------|----------------|------------|

- Publicly Associated With Terrorism by the DOJ: 94
- Actually Charged With a Terrorism Statute: 45 48%
- Charged Only With Other Crimes: 49 53%

TERRORISM PROSECUTIONS (45 total prosecutions)

Resolved Terrorism Trials: 14

| Results of Resolved Trials | No. of persons | Proportion of Trials (excluding pending trials) |
|---|----------------|--|
| • Convicted on Terrorism Charges: ⁸ 13 | 13 | 93% |
| • Acquitted on Terrorism Charges: 0 | 0 | 0% |
| • Dismissed or Mistrial: 1 | 1 | 7% |

Pending Terrorism Trials: 31

PROSECUTIONS FOR OTHER CRIMES (49 total prosecutions)

Resolved Trials on Other Crimes: 44

| Results of Resolved Trials | No. of persons | Proportion of Trials (excluding pending trials) |
|---|----------------|--|
| • Charged and Convicted Only on Other Charges: 40 | 40 | 91% |
| • Charged Only on Other Crimes & Fully Acquitted: 1 | 1 | 2% |
| • Dismissed or Mistrial: 3 | 3 | 7% |

Pending Trials on Other Crimes: 5

| Sentencing Analysis | |
|--|---------------------------------|
| Percentage where data is unknown is included for completeness. | |
| Total Defendants Convicted: | 54 |
| Total Defendants Convicted & Sentenced: | 51 |
| Average Sentence for Any Crime: | 7.01 years |
| Average Terrorism Sentence: | 21.17 years |
| Avg. Sentence for 18 USC 2332: | 30 years |
| Avg. Sentence for 18 USC 2339A: | 28 years |
| Avg. Sentence for 18 USC 2339B: | 17 years |
| Avg. Sentence for 18 USC 2339C: | 1 case, <i>still pending</i> |
| Avg. Sentence for 50 USC 1705: | 30 years |

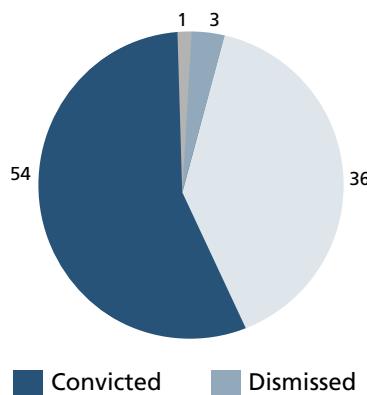
| Alleged Affiliation With Foreign Terrorist Organizations, by Defendant | |
|--|-----|
| Percentage where data is unknown is included for completeness. | |
| al Qaeda: 23 | 24% |
| Tamil Tigers: 14 | 15% |
| FARC: 4 | 4% |
| Hezbollah: 3 | 3% |
| Other: 4 | 4% |
| No Known Alleged Affiliation: 46 | 49% |

⁷ "New York City" as used herein means the Eastern and Southern Districts of New York.

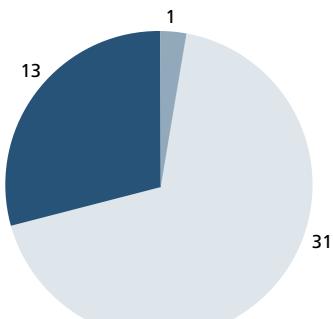
⁸"Convicted on terrorism charges" includes people who have been convicted of both terrorism and other crimes.



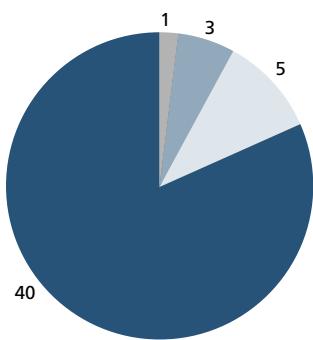
**Results of All NYC Prosecutions Associated with Terrorism
(94 total defendants)**



**Results of NYC Terror Statute Prosecutions
(45 total defendants)
(0 acquittals)**



**Results of NYC Non-Terror Statute Prosecutions
(49 total defendants)**



Convicted

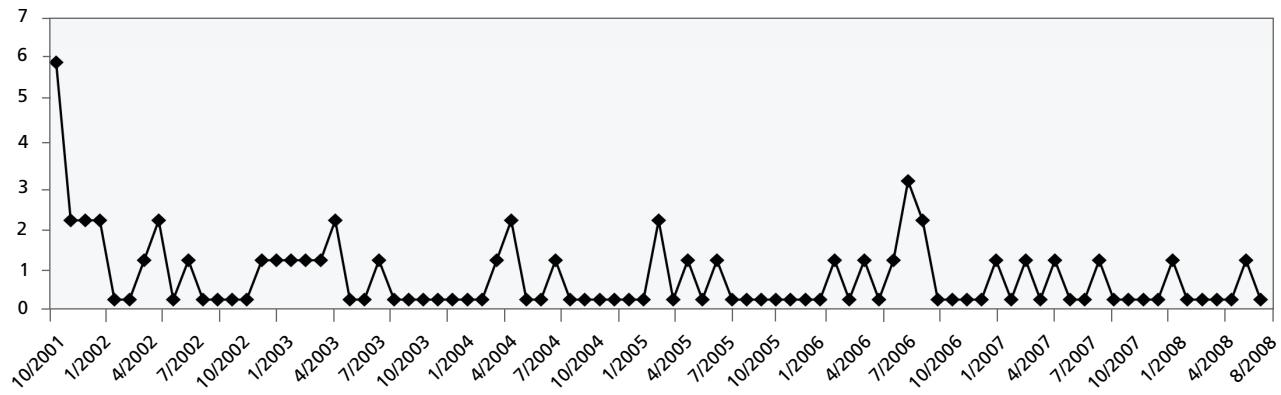
Dismissed

Pending

Acquitted

There have been no mistrials or hung juries.

New York City Timeline of Case Indictments⁹



UNITED KINGDOM TERROR TRIALS

The UK has several Acts which pertain specifically to terrorism. Statistics on prosecutions under this legislation from **September 11, 2001, through the end of 2007**, are as follows:

Individuals charged under the UK's terrorism legislation: 288

Individuals convicted: 72

Individuals awaiting trial: 93

Conviction rate: 37%

Much like our system, in the UK individuals may be charged in association with terrorism investigations but under non-terrorism criminal statutes. These are still considered terrorism prosecutions by the Home Office. Statistics regarding cases charged in association with terrorism investigations, from **September 11, 2001 through the end of 2007**, are as follows:

Individuals charged in association with terrorism (under terrorism or other statutes): 497

Individuals convicted: 283

Individuals awaiting trial: 110

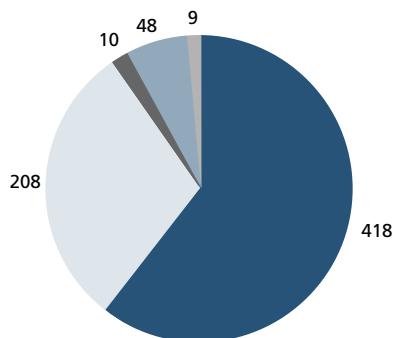
Conviction rate for terrorism-associated cases overall: 73%

Since **September 11, 2001, through the end of 2007**, the UK has averaged fewer than 46 terrorism convictions per year, (under any criminal statute). There have been 42 convictions so far in 2008. If the 2008 trend continues through the end of the year, it will result in a total of 56 convictions. This would represent a steep increase in prosecutorial successes, assuming the number of individuals charged and awaiting trial is consistent with prior years.

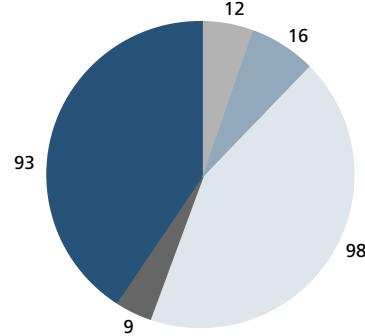
⁹A "case" as used herein refers to all charges and defendants under a single docket number. A single case therefore may involve multiple defendants and multiple charges. Because a single docket will generally combine all defendants and charges in a criminal case, we present the case count in order to represent the number of plots alleged.

DETAILED U.S. STATISTICS

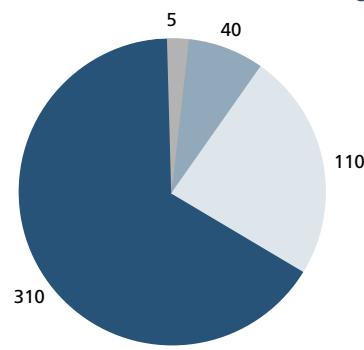
Results of All Prosecutions Associated with Terrorism (693 total defendants)



Results of Terror Statute Prosecutions (228 total defendants)



Results of Non-Terror Statute Prosecutions (465 total defendants) (0 mistrials/hung juries)

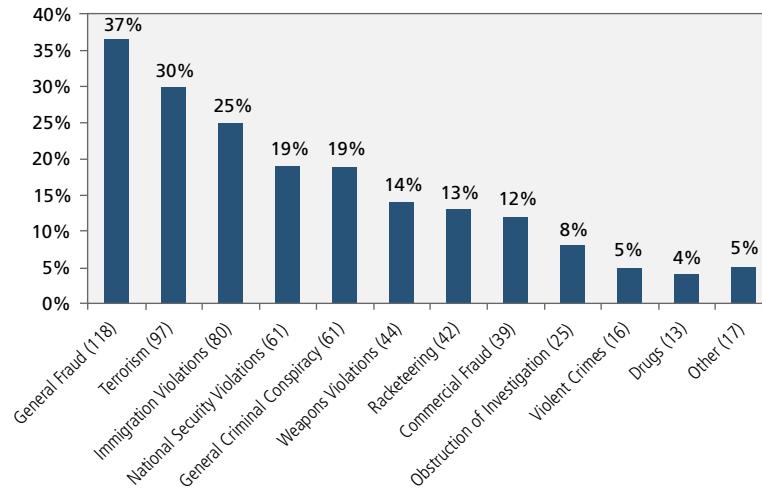


- Convicted
- Dismissed
- Pending
- Mistrial/Hung Jury
- Acquitted

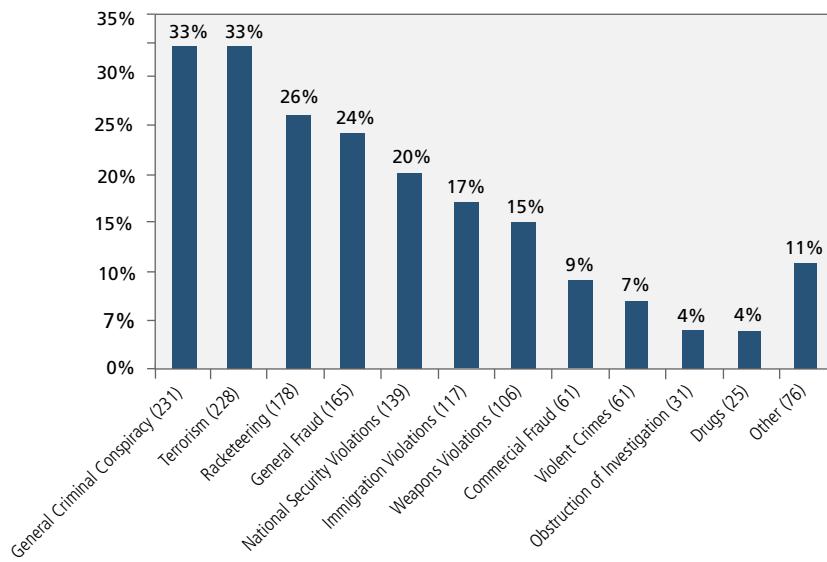
Most Common Categories of Crimes Charged in Cases Associated with Terrorism

Terrorism has been charged in 97 cases, or 30% of all cases brought, and charged against 228 defendants, 33% of the total. It is the second most commonly charged category of crimes in cases described as “terrorism cases” in the press, both by case count and by a count of defendants.

Most Common Crimes Charged, by Case Count¹⁰



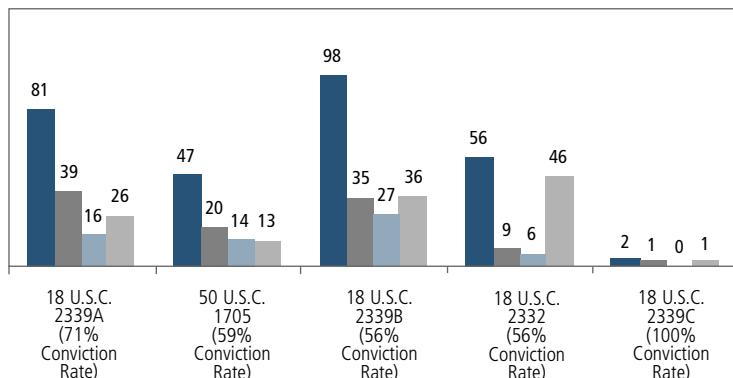
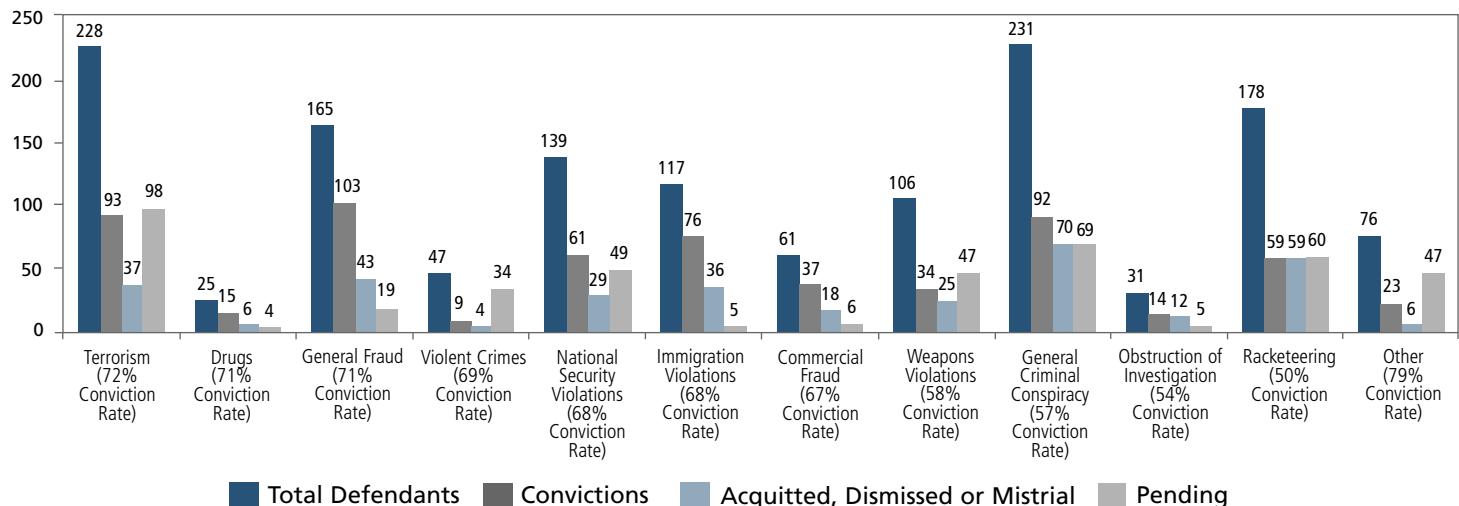
Most Common Crimes Charged, by Defendant Count¹¹



¹⁰This chart represents the percent of total cases in which each individual category of crime appears. Because many different categories of crime may be charged in a single case, the combined percentages add up to more than 100%.

¹¹This chart represents the percent of total defendants charged under each individual category of crime. Because many different categories of crimes may be charged against a single defendant, the combined percentages add up to more than 100%.

Which Cases Does the Government Win?



Prosecution Results, by Category of Crime

In the chart above, conviction rates are determined specific to each category of crime and excluding pending cases. For instance, terrorism was charged in 228 total prosecutions, of which 98 are still pending. Of the resolved 130 trials there have been 93 convictions, which is a 72% conviction rate.

Which Terrorism Statutes Bring the Most Convictions?

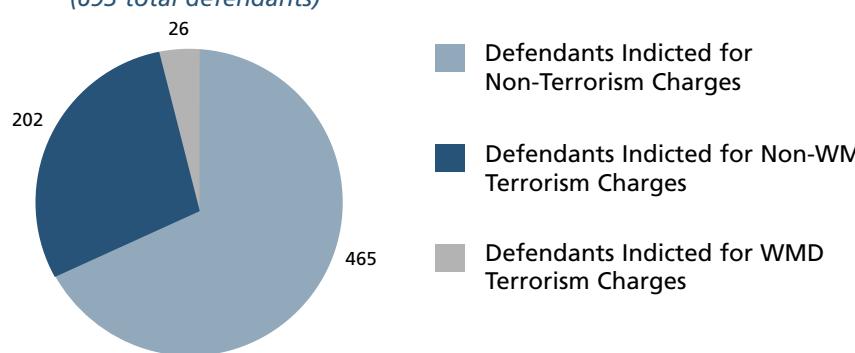
A single defendant may be charged under multiple terrorism statutes. In such a case, the success of each terrorism statute is counted individually in the chart on the left.

Overall, the two material support charges account for 71% of all convictions under the core terrorism statutes, while terrorist acts or conspiracy to commit terrorist acts (18 U.S.C. 2332) account for only 10% of those convictions

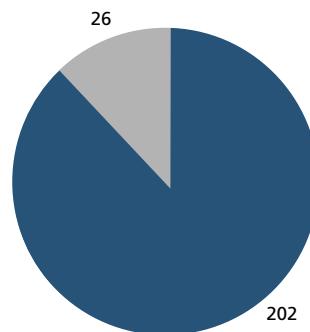
Weapons of Mass Destruction

Defendants accused of WMD crimes account for 4% of all defendants associated with terrorism and 11% of defendants actually charged under a terrorism statute. Under 18 U.S.C. 2332a, WMDs are defined as "destructive devices," including bombs, grenades, other explosives, and poison gasses.

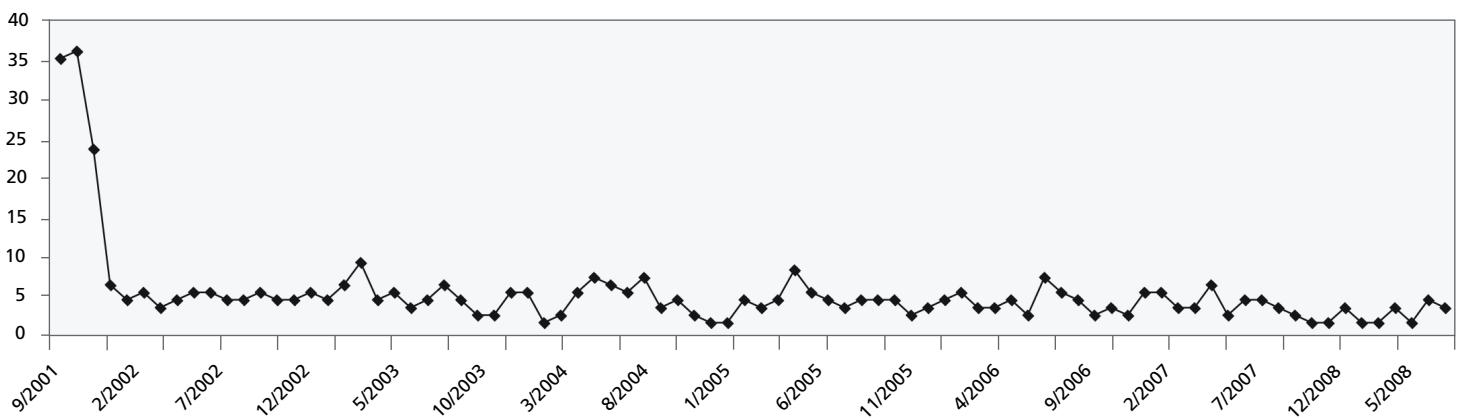
WMD Terrorism Defendants vs. Other Defendants (693 total defendants)



WMD Defendants vs. Terrorist Defendants (228 total defendants)



Timeline of Case Indictments¹²



Alleged Affiliation With Foreign Terrorist Organizations, by Defendant

(693 total defendants)

Percentage where data is unknown is included for completeness.

| | | |
|------------------------------|-----|-----|
| al Qaeda | 88 | 13% |
| Hezbollah | 42 | 6% |
| FARC | 34 | 5% |
| Hamas | 26 | 4% |
| Tamil Tigers | 21 | 3% |
| Lashkar-e-Taiba | 16 | 2% |
| Abu Sayyaf | 12 | 2% |
| AUC (Colombia) | 9 | 1% |
| Other | 40 | 6% |
| No Known Alleged Affiliation | 405 | 58% |

Citizenship, by Defendant

(693 total defendants)

Percentage where data is unknown is included for completeness.

| | | |
|-------------------------|-----|-----|
| United States | 235 | 34% |
| Pakistan | 60 | 9% |
| Colombia | 33 | 5% |
| Palestinian Territories | 21 | 3% |
| Jordan | 16 | 2% |
| Iraq | 14 | 2% |
| Egypt | 13 | 2% |
| Canada | 12 | 2% |
| Sri Lanka | 12 | 2% |
| United Kingdom | 12 | 2% |
| Philippines | 11 | 2% |
| Yemen | 10 | 1% |
| Saudi Arabia | 9 | 1% |
| Other | 77 | 11% |
| Unknown Citizenship | 158 | 23% |

¹² In order to better represent the number of plots alleged, this timeline combines all of the co-defendants named in a single indictment. Prior timelines in the TTRC updates counted each defendant in each indictment separately.



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For further reading . . .

Department of Justice, "Fact Sheet: Justice Department Counter-Terrorism Efforts Since 9/11" (September 11, 2008) (available at <http://www.usdoj.gov/opa/pr/2008/September/08-nsd-807.html>)

Department of Justice, Counterterrorism Section, "Counterterrorism White Paper" (June 22, 2006) (available at <http://trac.syr.edu/tracreports/terrorism/169/include/terrorism.whitepaper.pdf>)

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New York University School of Law
110 West Third Street, Suite 217
New York, NY 10012