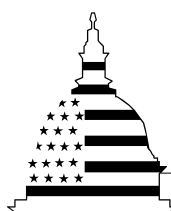


January 2003

JUSTICE  
DEPARTMENT

Better Management  
Oversight and Internal  
Controls Needed to  
Ensure Accuracy of  
Terrorism-Related  
Statistics



G A O

Accountability \* Integrity \* Reliability



Highlights of [GAO-03-266](#), a report to the Honorable Dan Burton, House Committee on Government Reform

## Why GAO Did This Study

In accordance with the Government Performance and Results Act of 1993, the Department of Justice (DOJ) provides the Congress and the public with an annual performance report. These reports serve as an important measure of DOJ's progress related to its strategic goals and objectives, including statistics on its efforts to investigate and prosecute terrorist acts. A December 2001 news article alleged that DOJ had inflated terrorism statistics in its *Fiscal Year 2000 Performance Report*. We were asked to review the accuracy of DOJ's terrorism-related conviction statistics. Among other objectives, in this report we (1) identify how DOJ develops its terrorism-related conviction statistics and (2) assess whether DOJ has sufficient management oversight and internal controls in place to ensure the accuracy of terrorism-related statistics included in its annual performance reports.

## What GAO Recommends

To improve the accuracy and reliability of terrorism-related conviction statistics in DOJ's annual performance reports, we recommend that the Attorney General, in accordance with federal internal control standards, implement a formal system to oversee and validate the accuracy of case classification and conviction data entered in EOUSA's case tracking system. DOJ agreed to implement this recommendation.

[www.gao.gov/cgi-bin/getrpt?GAO-03-266](http://www.gao.gov/cgi-bin/getrpt?GAO-03-266).

To view the full report, including the scope and methodology, click on the link above. For more information, contact Laurie Ekstrand, (202) 512-8777, or [ekstrandl@gao.gov](mailto:ekstrandl@gao.gov).

## JUSTICE DEPARTMENT

# Better Management Oversight and Internal Controls Needed to Ensure Accuracy of Terrorism-Related Conviction Statistics

## What GAO Found

Beginning in fiscal year 2001, DOJ switched from using the FBI's terrorism-related conviction statistics to using those of the Executive Office of U.S. Attorneys (EOUSA) for its annual performance report. This change was in response to concerns raised by a newspaper article's allegation that DOJ had inflated terrorism statistics in its *Fiscal Year 2000 Performance Report*. It was also part of an effort to report conviction statistics that would be less likely to be misinterpreted, according to DOJ officials. The FBI historically classified more convictions than EOUSA as terrorism-related because it used a different classification system and included convictions obtained in international, federal, and state courts. EOUSA only included federal convictions. Our review of a sample of cases investigated and classified by the FBI as terrorism-related, including U.S. Attorney Office (USAO) cases covered by the article, found documentation to support the terrorism-related classifications for these cases.

As for the accuracy and reliability of EOUSA's terrorism-related statistics included in its annual performance reports, we found that DOJ does not have sufficient management oversight and internal controls in place, as required by federal internal control standards, to ensure the accuracy and reliability of its terrorism-related conviction statistics. At least 132 of the 288 USAO cases (about 46 percent) were misclassified as resulting in terrorism-related convictions in fiscal year 2002. Without the implementation of adequate management oversight and internal controls to ensure accurate and reliable terrorism-related conviction data, DOJ's and the Congress's ability to accurately assess terrorism-related performance outcomes of the U.S. criminal justice system will be limited.

### A Review of EOUSA Fiscal Year 2002 Terrorism-Related Convictions Revealed That at Least 46 Percent Were Misclassified<sup>a</sup>

Type of terrorism-related conviction	Number of USAO convictions prior to EOUSA validation efforts	Number of USAO convictions after EOUSA validation efforts	Percentage change
International terrorism	174	43	-75%
Domestic terrorism	92	85	-8%
Terrorism-related hoaxes	22	28	27%
Terrorist financing	0	0	0%
<b>Total</b>	<b>288</b>	<b>156<sup>b</sup></b>	<b>-46%</b>

Source: GAO generated based on EOUSA data.

<sup>a</sup>At our request, EOUSA followed-up with USAO districts reporting four or more domestic or international terrorism-related convictions to validate and test the accuracy of conviction data reported for fiscal year 2002.

<sup>b</sup>The classification of these remaining cases is questionable because EOUSA's validation efforts were limited to USAO districts reporting four or more international or domestic terrorism convictions.

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**Figure**

Figure 1: Difference in the Number of FBI and EOUSA Terrorism-Related Convictions for Fiscal Years 1997 through 2002

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**Abbreviations**

DOJ	Department of Justice
EOUSA	Executive Office for United States Attorneys
FBI	Federal Bureau of Investigation
LIONS	Legal Information On-line System
TRAC	Transactional Records Access Clearinghouse
USAO	United States Attorneys Office



United States General Accounting Office  
Washington, DC 20548

January 17, 2003

The Honorable Dan Burton  
House of Representatives

Dear Mr. Burton:

In accordance with the Government Performance and Results Act of 1993,<sup>1</sup> the Department of Justice (DOJ) provides the Congress and the public with an annual performance report. These annual performance reports serve as an important mechanism of accountability and measure of DOJ's progress related to its strategic goals and objectives, including statistics on its efforts to investigate and prosecute terrorist acts. A December 2001 *Philadelphia Inquirer* article alleged that DOJ had inflated terrorism statistics in its *Fiscal Year 2000 Performance Report* to the Congress by labeling cases as terrorism-related that involved crimes not generally defined as terrorism. This article further alleged that DOJ had overstated the number of terrorism-related convictions in its annual reports, in part, to justify its budget request.

You asked us to examine how DOJ reports terrorism-related conviction statistics. On September 17, 2002, we briefed your office on the results of our review. This report summarizes and adds to the information presented during that briefing. Specifically, we are providing information on (1) the criteria DOJ's Federal Bureau of Investigation (FBI) and Executive Office for United States Attorneys (EOUSA)<sup>2</sup> used to classify cases and any resulting convictions as terrorism-related prior to fiscal year 2002; (2) what effect, if any, the use of different classification systems had on the number of convictions classified as terrorism-related prior to fiscal year 2002; (3) the basis for the number of terrorism-related convictions in DOJ's *Fiscal Year 2000 Performance Report*; (4) whether FBI case files contained documentation to support its terrorism-related classifications; (5) the factors contributing to recent increases in terrorism-related conviction statistics reported by EOUSA; and (6) whether DOJ has sufficient management oversight and internal controls in place to ensure

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<sup>1</sup>P.L. 103-62 (Aug. 3, 1993).

<sup>2</sup>EOUSA is the executive office representing the 94 USAOs that prosecute federal cases. Among other things, EOUSA provides guidance, management direction, and oversight to USAOs, including policies and procedures for classifying cases.

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the accuracy and reliability of terrorism-related statistics included in its annual performance report.

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## Scope and Methodology

To address our objectives, among other things, we interviewed DOJ's Criminal Division, Justice Management Division, FBI, and EOUSA officials; reviewed FBI's and EOUSA's policies and guidance for classifying cases; researched terrorism definitions in the United States Code and Code of Federal Regulations; compared FBI and EOUSA conviction data for fiscal years 1997 through 2002; and reviewed conviction data included in DOJ's Fiscal Years 2000 and 2001 Performance Reports and similar data the 94 USAO districts had reported to EOUSA for fiscal year 2002.

Additionally, to determine whether documentation supported the FBI's classification of certain cases as terrorism-related, we reviewed information in the FBI case files for 28 convictions. This included all 19 convictions that the FBI had classified as terrorism-related for fiscal years 1999 and 2000 in three FBI field offices (Baltimore, Dallas, and Washington, D.C.).<sup>3</sup> Additionally, concerning the 18 USAO terrorism-related convictions investigated by the FBI that were covered by the scope of the *Philadelphia Inquirer* article, as requested by your staff, we reviewed documentation in the FBI case files for all 9 convictions that were classified by the FBI as terrorism-related. We did not review investigative files for the remaining 9 convictions that were not classified by the FBI as terrorism-related convictions because these cases were classified under other categories (e.g., violent crime, National Infrastructure Protection and Computer Intrusions, foreign counterintelligence, and civil rights).

To determine the scope of USAO's cases covered by the article, we compared and analyzed EOUSA, FBI, and Transactional Records Access Clearinghouse (TRAC) data,<sup>4</sup> which the *Philadelphia Inquirer* had relied on. We did not review cases that the FBI did not classify as terrorism-related or cases that were investigated by other law enforcement agencies. We also did not attempt to review the appropriateness of the FBI's

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<sup>3</sup>We selected these offices because they were located in regions near our assigned staff. Also, DOJ's *Fiscal Year 2000 Performance Report* highlighted by the *Philadelphia Inquirer* article covered these fiscal years.

<sup>4</sup>TRAC is a data gathering, research and distribution organization associated with Syracuse University. Among other things, TRAC data include information about federal enforcement activities. We reviewed these data because the *Philadelphia Inquirer* used this information as part of its review.

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investigative activities. Rather, we sought to determine whether documents in the case files detailing the investigative activities supported a terrorism-related classification based on the FBI's classification system.

Because of concerns we had with the significant increase in the total number of USAO terrorism-related conviction statistics that resulted from EOUSA's efforts late in fiscal year 2002 to have USAO districts retroactively identify cases relating to terrorism, we reviewed data detailing specific statutory charges in these cases. Discrepancies we found led to a request that EOUSA follow-up with all USAO districts reporting four or more domestic or international terrorism-related convictions to validate the accuracy of the districts' reclassification efforts. The results of EOUSA's follow-up with these districts raise concerns about the accuracy and reliability of EOUSA's fiscal year 2002 statistics included in this report.

We conducted our work at FBI headquarters and EOUSA in Washington, D.C., and at FBI field offices in Baltimore, Dallas, Philadelphia, and Washington, D.C., between February and December 2002 in accordance with generally accepted auditing standards.

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## Background

Multiple federal agencies have a role in U.S. efforts to combat terrorism. The DOJ components primarily responsible for investigating and prosecuting terrorism-related cases are the FBI and the USAOs. The FBI is the lead federal agency responsible for investigating crimes for which it has primary or concurrent jurisdiction and which involve terrorist activities, or acts in preparation of terrorist activities, within the statutory jurisdiction of the United States.<sup>5</sup> The USAOs prosecute federal criminal cases, including those related to terrorism.

There is no single, uniform definition of terrorism. Several federal statutes define terrorism in a variety of contexts. Appendix I provides examples of various statutory terrorism definitions. In addition to these statutory definitions, the FBI has a regulatory definition of terrorism, which refers to the "unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives."<sup>6</sup>

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<sup>5</sup>28 C.F.R. 0.85(1).

<sup>6</sup>*Id.*

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Although the FBI's regulatory definition of terrorism relates to cases involving the unlawful use of force or violence, this same regulation designates the FBI as the lead federal agency for investigating both terrorist activities and acts in preparation of terrorist activities.<sup>7</sup> Thus, the FBI may investigate cases that do not involve the use of force or violence that may be terrorism-related (e.g., cases involving money laundering or drug trafficking in support of a terrorist organization).

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## Results in Brief

The FBI and EOUSA used different criteria to classify cases and resulting convictions as terrorism-related. The FBI classified a case as terrorism-related based on the overall violation being investigated; its classification criteria are contained in its *Manual of Investigative Operations and Guidelines*. USAOs, following EOUSA's guidance in effect prior to fiscal year 2002, classified a case based on the statute under which an individual was indicted or convicted. The different classification criteria resulted in differences in how each entity ultimately classified a case. For example, if the FBI arrested an individual for money laundering and, as part of its investigation, gathered evidence that indicated that the defendant was laundering money for a terrorist group, it generally classified such a case and any resulting conviction as terrorism-related. On the other hand, if a USAO prosecuted the defendant and obtained a conviction solely on money laundering charges, it generally classified the conviction as a money laundering conviction and not as terrorism-related.

The total number of convictions classified by the FBI and USAOs as terrorism-related differed because each entity was using different classification criteria. In addition, because USAOs only prosecute federal cases, their classification system only includes federal convictions. In contrast, FBI's classification system includes not only federal convictions, but also convictions in state, local, and international courts obtained with FBI investigative assistance.

As table 1 shows, the FBI and EOUSA have reported different terrorism-related conviction numbers over the last 6 fiscal years.

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<sup>7</sup>*Id.*



**Table 1: Total Number of Terrorism-Related Convictions for the FBI and EOUSA<sup>a</sup>**

Component	Fiscal year					
	1997	1998	1999	2000	2001	2002
FBI	124	162	173	249	225	373
EOUSA	13	44	59	30	29	156 <sup>b</sup>

Source: GAO-generated based on FBI and EOUSA data.

<sup>a</sup>FBI statistics include convictions resulting from terrorism-related hoaxes.

<sup>b</sup>As discussed in more detail later in this report, following September 11, 2001, EOUSA modified its case classification system and began tracking and including convictions resulting from criminal activity in support of terrorist activity or organizations and also began tracking and including terrorism-related hoaxes. However, during the course of our work, we found discrepancies that raise some concerns about the accuracy of EOUSA's fiscal year 2002 figure.

In its *Fiscal Year 2000 Performance Report*, DOJ used the FBI's terrorism-related investigation and conviction statistics to highlight its accomplishments. The FBI's statistics were used because they reflect DOJ's accomplishments beginning at the investigative stage through the prosecutive stage, according to DOJ officials. The *Philadelphia Inquirer's* allegations that DOJ had misclassified certain terrorism-related convictions were based on how USAOs had classified certain cases versus how the FBI had classified these cases. Beginning with the *Fiscal Year 2001 Performance Report*, DOJ switched from using FBI's statistics to using the statistics reported by EOUSA. This decision was made, according to DOJ officials, in response to concerns raised by the *Philadelphia Inquirer* article and because EOUSA conviction data was less likely to be misinterpreted.

Documentation existed in the FBI's case files for the 28 convictions included in our review that the FBI had classified as terrorism-related. Specifically, we found documentation to support all 19 convictions that the FBI had classified as terrorism-related for fiscal years 1999 and 2000 in three FBI field offices. We also found documentation in the FBI case files for the 9 USAO convictions that fell within the scope of the *Philadelphia Inquirer* article that were classified by the FBI as terrorism-related.

EOUSA's terrorism-related conviction data increased significantly, going from an average of 35 convictions per year for the previous 5 years to about 160 in fiscal year 2002.<sup>8</sup> EOUSA attributes the increase in its terrorism-related conviction statistics to (1) the Attorney General's and

<sup>8</sup>As previously noted, during the course of our work, we found discrepancies that raise some concerns about the accuracy of EOUSA's fiscal year 2002 figure.

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President's direction to make antiterrorism efforts a priority and heightened awareness, investigation, and prosecutorial efforts after September 11, 2001, and (2) the implementation of a new EOUSA classification system in fiscal year 2002, intended to better capture terrorism-related efforts.

During the course of our engagement, we discovered that DOJ does not have sufficient management oversight and internal controls in place to ensure the accuracy and reliability of terrorism-related conviction statistics included in its annual performance reports. We found that DOJ lacks a formal system, as required by federal internal control standards, to verify the accuracy or oversee the reliability of case data entered in its Legal Information On-line System (LIONS)<sup>9</sup> by the various USAO districts and subsequently included in the annual performance reports. Specifically, the various USAO districts had originally classified 288 convictions as terrorism-related for fiscal year 2002. Our subsequent request that EOUSA follow up with selected USAO districts<sup>10</sup> revealed that at least 132 of the 288 convictions (about 46 percent) were misclassified as terrorism-related. This misclassification occurred despite a semiannual effort by EOUSA requiring managers in the various USAO districts to certify the accuracy of case data. These 132 cases did not result in terrorism-related convictions and were subsequently reclassified under other categories. EOUSA officials attribute these discrepancies to limited time afforded to the various USAOs to thoroughly reevaluate caseload and investigative data during their efforts to retroactively reclassify cases going back to the beginning of the fiscal year 2002.<sup>11</sup>

The overall accuracy of the remaining 156 convictions is questionable because, at the time of our review, EOUSA had not validated the reliability of the terrorism-related conviction data for USAO districts that reported

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<sup>9</sup>LIONS is the automated case tracking system used by the various USAO districts and EOUSA to manage and track caseload data. It is also the system EOUSA relies on in deriving annual performance statistics for its fiscal year performance reports.

<sup>10</sup>At our request, EOUSA followed up with USAO districts reporting four or more domestic or international terrorism-related convictions to validate and test the accuracy of conviction data reported for fiscal year 2002.

<sup>11</sup>As discussed in more detail later in this report, EOUSA issued an August 7, 2002, memo instructing the various USAO districts to, among other things, retroactively ensure that all terrorism and antiterrorism matters were opened in LIONS and that they review all terrorism and antiterrorism matters and cases closed during fiscal year 2002 to ensure that the most appropriate terrorism-related or antiterrorism-related criminal program category code(s) had been entered into LIONS.

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less than four domestic or international terrorism-related convictions or convictions involving terrorism-related hoaxes or terrorist financing. Thus, we have concerns about the overall accuracy of EOUSA conviction statistics to be included in DOJ's *Fiscal Year 2002 Annual Performance Report* and the sufficiency of management oversight and internal controls to validate the accuracy of terrorism-related statistics reported by USAO districts. We are making a recommendation intended to better ensure the accuracy and reliability of EOUSA's terrorism-related convictions.

We provided a draft of this report to the Attorney General and the Director of FBI for comment. DOJ and the FBI agreed with the report findings and DOJ agreed to implement our recommendation.

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## FBI and EOUSA Classification Criteria Differ

Prior to fiscal year 2002, the FBI and EOUSA's criteria for classifying cases and any resulting convictions differed. The FBI classified a case as terrorism-related based on the overall violation being investigated. USAOs, following EOUSA guidance, classified a case based on the charges in the indictment or the charges for which the defendant was convicted. For example, if the FBI arrested an individual for money laundering and, as part of its investigation, gathered evidence that indicated that the defendant was laundering money for a terrorist group, the FBI generally classified such a case as terrorism-related. On the other hand, if a USAO prosecuted the defendant and obtained a conviction solely on money laundering charges, USAO generally classified the conviction in the case as a money laundering conviction and not a terrorism conviction.

Although the FBI's regulatory definition of terrorism refers to cases involving force and violence, as previously noted, this same regulation also designates the FBI as the lead agency responsible for investigating both terrorist activities, and acts in preparation of terrorist activities, within the statutory jurisdiction of the United States.<sup>12</sup> Thus, a case need not involve force or violence to be classified by the FBI as terrorism-related. For example, the FBI may also classify nonviolent crimes (e.g., money laundering and fraud) as terrorism-related if they are undertaken to support terrorism-related activities. To capture and track the volume of its counterterrorism work, the FBI used the classification criteria contained in its *Manual of Investigative Operations and Guidelines*. The *Manual*, among other things, set forth multiple classification codes for domestic and international terrorism investigations and extensive guidance for

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<sup>12</sup>See 28 C.F.R. 0.85(1).

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agents and squad supervisors to determine the appropriate classification of an investigation.

As stated previously, at the time of the *Philadelphia Inquirer's* allegation, EOUSA used a classification system that was based on the charges in an indictment or the charges for which a defendant were convicted. EOUSA's classification guidelines are set forth in the *Legal Information On-line System (LIONS) Users Manual*. As outlined in the *Manual*, for an international terrorism classification, EOUSA used a representative (but not exhaustive) list of statutes that may relate to an international terrorist incident, (e.g., 18 U.S.C. 32 relating to destruction of aircraft or aircraft facilities and 18 U.S.C. 1203 relating to hostage taking). For a domestic terrorism classification, the case must involve force or violence or the threat of force or violence undertaken by an individual or group seeking to further political or social goals.

EOUSA's classification had no bearing on the FBI's classification of a conviction resulting from a terrorism-related investigation, according to an FBI official. Occasionally, the FBI may reclassify a case when new facts become available that were not known at the time of the original classification.<sup>13</sup>

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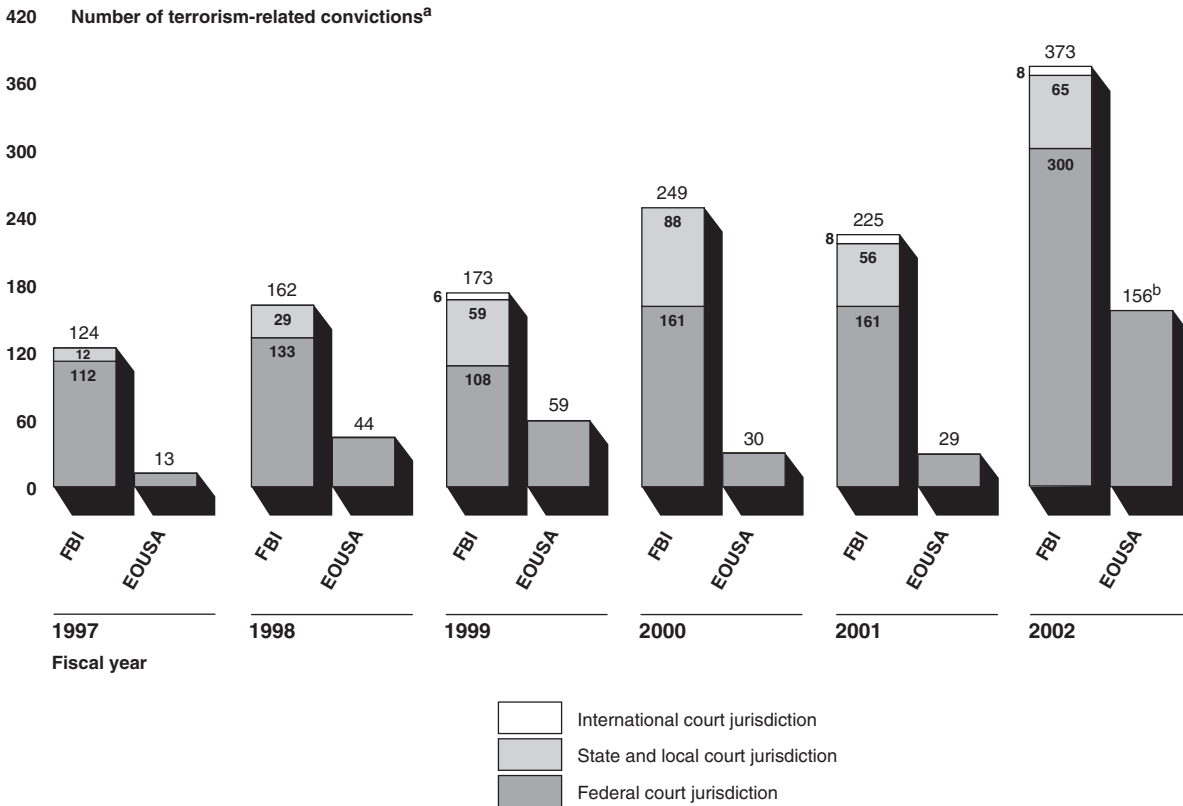
## Number of Reported FBI and EOUSA Terrorism-Related Convictions Differs

The FBI's number of reported terrorism-related convictions will differ from EOUSA's because (1) the FBI and EOUSA had been using different criteria to classify terrorism-related cases and resulting convictions and (2) the FBI numbers include federal, state, local, or international court convictions resulting from its investigative efforts while EOUSA's numbers include only federal court convictions. As shown in figure 1, the FBI has reported a different number of terrorism-related convictions than EOUSA over the past 6 fiscal years.

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<sup>13</sup>The FBI's *Manual of Administrative Operations and Procedures* outlines the procedures that FBI agents are to use when reclassifying a case, including obtaining Squad Supervisor and Assistant Special Agent in Charge approval. In addition, according to FBI officials, to ensure the accuracy and completeness of all case files, supervisory agents are required to complete a file review every 30 to 90 days. Additionally, FBI case files are subject to periodic reviews by the agency's Inspection Division.

**Figure 1: Difference in the Number of FBI and EOUSA Terrorism-Related Convictions for Fiscal Years 1997 through 2002**



Source: GAO generated based on data provided by FBI and EOUSA.

<sup>a</sup>Number of convictions are as of September 30, 2002. FBI statistics include convictions resulting from terrorism-related hoaxes.

<sup>b</sup>As discussed in more detail later in this report, following September 11, 2001, EOUSA modified its case classification system and began tracking and including convictions resulting from criminal activity in support of terrorist activity or organizations and also began tracking and including terrorism-related hoaxes. However, during the course of our work, we found discrepancies that raise some concerns about the accuracy of EOUSA's fiscal year 2002 figure.

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## DOJ Used the FBI's Terrorism-Related Statistics in Its 2000 Performance Report but Has Since Switched to Reporting EOUSA Statistics

In its *Fiscal Year 2000 Performance Report* provided to the Congress, DOJ used the FBI's number of terrorism-related investigations and convictions. This report highlighted DOJ's terrorism-related investigation and prosecution accomplishments. As noted earlier, DOJ used the FBI's statistics because they track DOJ's accomplishments beginning at the investigative stage through the prosecutive stage.

In response to concerns raised by the *Philadelphia Inquirer* article and to avoid any misinterpretation of DOJ's statistics, beginning with the *Fiscal Year 2001 Performance Report*, DOJ switched from using the FBI's statistics to using the statistics reported by EOUSA, according to DOJ officials. EOUSA's statistics are intended to be representative of the cases prosecuted in federal courts that result in terrorism-related convictions and are less likely to be misinterpreted, according to DOJ officials. These statistics do not include cases for which the FBI had conducted a terrorism-related investigation that resulted in (1) a conviction in a state, local, or international court or (2) a federal conviction that was investigated by the FBI as terrorism-related but not classified by EOUSA as terrorism-related.

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## FBI Case Files Contained Documentation to Support Terrorism-Related Classifications

We reviewed FBI investigative case files to ascertain whether documentation existed to support the FBI's classification for 28 FBI terrorism-related convictions included in our review. We found documentation to support the FBI's terrorism-related classifications for all 28 convictions. This included all of the convictions (19) that the FBI had classified as terrorism-related for fiscal years 1999 and 2000 in three FBI field offices (Baltimore, Dallas, and Washington, D.C.) and 9 of the 18 USAO terrorism convictions covered by the scope of the *Philadelphia Inquirer* article that were investigated by the FBI.

Concerning the 18 USAO terrorism-related convictions investigated by the FBI that were covered by the scope of the *Philadelphia Inquirer* article, we found that the FBI had classified 9 of these cases as terrorism-related and had documentation in every case file to support these classifications. The FBI did not classify the remaining 9 convictions as terrorism-related and as a result, we did not review those investigative case files. These cases were classified under other categories (e.g., violent crime, National Infrastructure Protection and Computer Intrusions, foreign counterintelligence, and civil rights). Appendix II provides a summary of the case files that we reviewed, including a description of the cases.

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## Several Factors Contributed to Recent Increases in EOUSA's Number of Terrorism-Related Convictions

As figure 1 shows, EOUSA's number of terrorism-related convictions increased significantly in fiscal year 2002, going from an average of 35 convictions per fiscal year for the previous 5 years to about 160 in fiscal year 2002. EOUSA attributed this increase to (1) the Attorney General's and the President's direction to make antiterrorism efforts a priority and heightened awareness, investigation, and prosecutorial efforts after September 11, 2001, and (2) the implementation of a new EOUSA classification system in fiscal year 2002, intended to better capture terrorism-related efforts.

On November 8, 2001, the Attorney General announced plans to prioritize the Justice Department and its components to focus on antiterrorism. The Attorney General noted that the attacks of September 11, 2001, had redefined the mission of DOJ. He described defending the nation and defending the citizens of America against terrorist attacks as the department's first and overriding priority. On November 29, 2001, in a speech at a U.S. Attorney's conference, the President said that terrorist violence on the home front must be prevented and defeated with vigilance, aggressive investigation, and certain punishment.

In December 2001, EOUSA issued new procedures for classifying cases as terrorism-related. Through these new procedures, EOUSA instructed all USAO district offices to immediately begin using terrorism-related program codes as the first code to identify and report on criminal and civil matters and cases arising out of terrorist attacks on the U.S. In addition, the policy memorandum added a new code to track terrorism-related hoaxes that had not been previously tracked under the old classification system.<sup>14</sup> In an August 7, 2002, policy memo, EOUSA added a new code to track terrorist financing,<sup>15</sup> updated its guidance for classifying international and domestic terrorism cases,<sup>16</sup> and provided additional

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<sup>14</sup>EOUSA generally defines terrorism-related hoaxes as cases where someone knowingly and falsely reports information concerning conduct which if true would constitute a threatened or actual terrorist act.

<sup>15</sup>EOUSA generally defines terrorist financing to include federal criminal violations committed with the intention of providing material support to terrorists or concealing the provision of such support.

<sup>16</sup>Under the new classification policy, domestic and international terrorism cases involve violent or dangerous acts, including threats or conspiracies to engage in such acts, if the crime was undertaken with a terrorist motive; such crimes may include, but are not limited to, the list of "federal crimes of terrorism" in 18 U.S.C. 2332b(g)(5). The difference between the domestic and international terrorism classifications depends on whether the crime was transnational in nature, as discussed in the guidance.

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procedures regarding how USAOs are to report terrorism-related cases.<sup>17</sup> In addition, the August 7, 2002, policy memo, instructed the various USAOs to retroactively review the classification of cases opened or closed during fiscal year 2002 to ensure that all cases related to or involving terrorism-related activities were coded in LIONS and that the most appropriate terrorism-related or antiterrorism-related criminal program category code were used. This resulted in the reclassification of convictions in USAO cases.

The new policy introduced changes to EOUSA's classification system. According to EOUSA officials, under the previous system cases were classified based on the lead charge for which a defendant was indicted or convicted. For example, if the lead conviction charge was money laundering, the primary classification of the case would have been classified as money laundering, even if terrorism-related purposes were also evident during the investigation. Under the new system, a case of this nature would result in the case being classified as a terrorism-related conviction. The new case classification system accounts for evidence that the crime was committed for terrorism-related purposes, as does the FBI's classification system.

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## DOJ Lacks Internal Controls to Ensure Reliability of EOUSA Terrorism-Related Statistics

Federal internal control standards require agencies to implement adequate controls over information processing. A variety of control activities may be used in information processing such as edit checks of data entered into information systems, reconciliation of summary information to verify data completeness, and management review of output reports.<sup>18</sup> However, during the course of our engagement, we discovered that DOJ does not have sufficient management oversight and internal controls in place to ensure the accuracy and reliability of terrorism-related conviction statistics included in its annual performance reports.

We found that DOJ lacks a formal system, as required by federal internal control standards, to verify the accuracy or oversee the reliability of case

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<sup>17</sup>In the August 2002 policy memo, EOUSA also added seven antiterrorism codes to track any matter or case where the underlying purpose or object of the investigation is anti-terrorism, even where the offense is not obviously a federal crime of terrorism that would be coded under one of EOUSA's terrorism-related classification codes. Anti-terrorism statistics are not included in the fiscal year 2002 EOUSA terrorism-related convictions statistics included in this report.

<sup>18</sup>U.S. General Accounting Office, *Standards for Internal Control in the Federal Government*, GAO-00-21.3.1 (Washington, D.C.: Nov. 1999).



data entered in LIONS by the various USAO districts and subsequently included in DOJ's annual performance reports. Specifically, as table 2 shows, the various USAO districts originally classified 288 convictions as terrorism-related for fiscal year 2002. However, our subsequent request that EOUSA follow-up with all USAO districts reporting four or more domestic or international terrorism-related convictions to validate the accuracy of the districts' reclassification efforts revealed that at least 132 of the 288 (about 46 percent) USAO convictions were misclassified. These 132 cases did not result in terrorism-related convictions. 127 of the 132 were subsequently reclassified as anti-terrorism-related convictions.<sup>19</sup> The remaining 5 were reclassified as related to other types of crimes. These discrepancies occurred despite a semiannual effort by EOUSA requiring managers in the various USAO districts to certify the accuracy of case data.

**Table 2: Misclassification of Fiscal Year 2002 Terrorism-Related Convictions Reported by Various USAOs**

Type of terrorism-related conviction	Number of USAO convictions originally reported as terrorism-related prior to EOUSA validation efforts	Number of USAO terrorism-related convictions after EOUSA validation efforts <sup>a</sup>	Percentage change
International terrorism	174	43	-75%
Domestic terrorism	92	85	-8%
Terrorism-related hoaxes	22	28	27%
Terrorist financing	0	0	0%
<b>Total</b>	<b>288</b>	<b>156<sup>b</sup></b>	<b>-46%</b>

Source: GAO generated based on EOUSA data.

<sup>a</sup>As previously noted, at our request, EOUSA followed-up with a sample of the USAO districts to validate the accuracy of their fiscal year 2002 terrorism-related convictions.

<sup>b</sup>The overall accuracy of the classification of these remaining cases is questionable because EOUSA's validation efforts were limited to those USAO districts reporting four or more international or domestic terrorism-related convictions.

EOUSA officials attributed the discrepancies we found with the fiscal year 2002 statistics to limited time afforded the various USAOs to thoroughly

<sup>19</sup>EOUSA policy guidance described antiterrorism conviction cases as those resulting from efforts on the part of DOJ to prevent or disrupt a potential or actual terrorist threat even where the offense is not obviously a federal crime of terrorism that would be coded under one of EOUSA's terrorism-related classification codes. For example, the conviction of a defendant arrested and subsequently convicted for identify fraud during a sweep of an airport, as part of a DOJ effort to prevent or disrupt terrorist activity, would be counted as an antiterrorism conviction.

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reevaluate caseload and investigative data during their efforts to retroactively reclassify and identify convictions in closed terrorism-related cases dating back to the beginning of the fiscal year. Because EOUSA did not validate the accuracy of the terrorism-related conviction data reported by the remaining USAO districts, we have some concerns about the overall accuracy of EOUSA conviction statistics to be included in DOJ's *Fiscal Year 2002 Annual Performance Report*.

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## Conclusions

Efforts on the part of EOUSA to implement new procedures to better ensure that DOJ prosecutors fully account for their efforts to combat terrorism-related activities are commendable. However, because the Congress and the American public rely on DOJ, in accordance with the Government Performance and Results Act, to provide annual performance data on the progress of its efforts to combat terrorism, it is equally important that the various USAOs accurately account for their efforts and not misclassify cases as terrorism-related that are not terrorism-related. Without reliable terrorism-related conviction data, DOJ and the Congress's ability to accurately assess terrorism-related performance outcomes of our criminal justice system and the results of efforts to combat terrorism will be limited. Discrepancies discovered in the accuracy of fiscal year 2002 terrorism-related conviction statistics that the USAO districts had initially provided to EOUSA raise concerns about the overall quality and reliability of EOUSA terrorism-related conviction statistics. In addition, these discrepancies identify the need for improvements in management oversight and internal controls to better ensure the accuracy of USAO terrorism-related performance data.

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## Recommendation for Executive Action

To improve the accuracy and reliability of terrorism-related conviction statistics reported by DOJ in its annual performance reports, we recommend that the Attorney General, in accordance with federal internal control standards, implement a formal system to oversee and validate the accuracy of case classification and conviction data entered in LIONS by the various USAO districts. This system should entail edit checks of data entered into information systems, reconciliation of summary information to verify data completeness, and management review of output reports.

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## Agency Comments and Our Evaluation

We provided copies of this report to the Attorney General and the Director of the FBI. DOJ and the FBI agreed with the report findings and DOJ agreed to implement our recommendation.

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Unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the issuance date. At that time, we will send copies of this report to the Attorney General, the Director of the FBI, and other interested parties. We will also make copies available to others upon request. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact Charles Michael Johnson or me at (202) 512-8777 or at [johnsoncm@gao.gov](mailto:johnsoncm@gao.gov) or [ekstrandl@gao.gov](mailto:ekstrandl@gao.gov). Key contributors to this report are acknowledged in appendix III.

Sincerely yours,

A handwritten signature in black ink that reads "Laurie E. Ekstrand". The signature is written in a cursive style with a large, stylized initial "L".

Laurie E. Ekstrand  
Director, Justice Issues

# Appendix I: Summaries of Selected Statutory Terrorism Definitions

U.S. Code Citation	Terrorism Definition
8 U.S.C. 1182(a)(3)(B)(iii),(iv)	Generally defines “terrorist activity” as an unlawful activity, undertaken with the intent to endanger the safety of one or more individuals or to cause substantial damage to property, which involves the hijacking or sabotaging of any conveyance; hostage-taking; violent attacks upon internationally protected persons; assassinations; the use of weapons or dangerous devices, including explosives, firearms, biological, chemical, or nuclear weapons; or a threat, attempt, or conspiracy to do any of the foregoing. The statute further defines the term “engage in terrorist activity”—conduct that can render an alien inadmissible to the United States. The term encompasses not only the commission of terrorist activities, but a broad range of conduct in support of terrorist activities, generally involving such things as preparation or planning; gathering information on potential targets; soliciting funds or members, or affording material support.
18 U.S.C. 2331(1),(5)	Generally defines terrorism as unlawful acts that are dangerous to human life and that appear intended to intimidate or coerce a civilian population; to influence the policy of a government by intimidation or coercion; or to affect the conduct of a government by mass destruction, assassination, or kidnapping. Terrorism may be domestic or international under 18 U.S.C. 2331 depending on whether the crime occurred primarily outside or within the territorial jurisdiction of the United States, or whether the crime transcended national boundaries in certain respects defined by the statute. <sup>a</sup>
18 U.S.C. 2332b(g)(5)	Lists numerous offenses in defining the term “Federal crime of terrorism” where the offense was calculated to influence or affect the conduct of government by intimidation or coercion or to retaliate against government conduct. <sup>b</sup>
22 U.S.C. 2656f(d)	Defines “terrorism” for purposes of the State Department’s annual country reports as premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents. Further defines “international terrorism” as terrorism involving citizens or the territory of more than one country.
22 U.S.C. 2708(j)	Defines an “act of international terrorism” for purposes of the State Department’s rewards program as any act substantially contributing to the acquisition of unsafeguarded special nuclear material or any nuclear explosive device by individuals, groups, or non-nuclear weapon states, or any act that materially supports the conduct of international terrorism, including the counterfeiting of U.S. currency or the illegal use of other monetary instruments.

Source: GAO summary of U.S. Code provisions.

<sup>a</sup>The terrorism definitions at 18 U.S.C. 2331 are used for the Attorney General’s rewards program for information concerning terrorist acts. See 18 U.S.C. 3071(a), 3077(1). In addition, U.S. nationals injured by an act of international terrorism have a civil cause of action under 18 U.S.C. 2333.

<sup>b</sup>The Attorney General has primary investigative responsibility for “Federal crimes of terrorism.” 18 U.S.C. 2332b(f). In addition, the federal Sentencing Guidelines provide for a sentence enhancement if the offense involved, or was intended to promote, a federal crime of terrorism. U.S. Sentencing Guidelines Manual, Sec. 3A1.4 (2001).

# Appendix II: Summary of Case Files GAO Reviewed

The following table provides a summary of Federal Bureau of Investigation (FBI) field office case files we reviewed for 28 convictions to determine whether documentation existed to support the FBI's classification of these cases.

FBI Field office	FBI case classification	Type of case	Summary of case	No. of defendants	No. of convictions cited in case files
Baltimore, Md.	Domestic terrorism	State/local	The case involved a man who made repeated bomb threats against, among other things, a federal building and a courthouse in Maryland. During these telephoned threats, the defendant referred to himself as a "terrorist." Note: Based on FBI guidance, all bomb threats in which a case is opened are classified as terrorism-related.	1	1
	Domestic terrorism	State/local	The case involved a man who was a self-proclaimed neo Nazi with a violent history. He was alleged to be stockpiling firearms and explosives at his home in preparation for starting his own militia group.	1	2
	Domestic terrorism	State/local	The case involved a group of anti-military activists who broke into an Air National Guard facility and intentionally damaged U.S. Air Force aircraft in promotion of their antimilitary beliefs.	4	4
Dallas, Tex.	Domestic terrorism	State/local	This case involved threats to bomb a public school in an attempt to stop an Scholastic Aptitude Test. This incident took place in May 1995, 1 month after the Oklahoma City bombing.	1	1
	Domestic terrorism	Federal	This case involved a paroled felon with a history of violent crime. While on parole, the defendant was arrested for possession of firearms and ammunition, as well as for conspiring to commit armed robbery to raise money for a suspected hate group.	2	2
	Domestic terrorism	Federal	This case involved a man who threatened to blow up a federal building by filling up his recreational vehicle with explosives and parking it in front of the federal building. His vehicle was found to contain no explosives.	1	1
	Domestic terrorism	Federal	The defendant in this case was found to have mailed a vial labeled as anthrax and to have placed another vial labeled as anthrax in a public area.	1	2

**Appendix II: Summary of Case Files GAO  
Reviewed**

<b>FBI Field office</b>	<b>FBI case classification</b>	<b>Type of case</b>	<b>Summary of case</b>	<b>No. of defendants</b>	<b>No. of convictions cited in case files</b>
	International terrorism	Federal	This case involved a joint FBI and Immigration and Naturalization Service task force in which the defendant was arrested for harboring an illegal alien. During the investigation, the FBI uncovered evidence (i.e., telephone records and wire transfers) linking the defendant to a known associate of Usama bin Laden who was connected to the U.S. Embassy bombings in Kenya and Tanzania.	1	1
	International terrorism	Federal	This case involved a man who was deported from the United States in 1997 for counterfeiting, but who had returned to the United States and owned and operated convenience stores in Texas. The FBI investigated him for laundering money, using stolen and fraudulent credit cards, and shipping generators to a Middle Eastern country, in violation of a U.S. embargo.	1	1
	International terrorism	Federal	The case involved two brothers who were arrested in a joint FBI/Bureau of Alcohol, Tobacco and Firearms operation in which the men were attempting to purchase automatic weapons and deal guns without a license. During the investigation, FBI agents learned that the men were originally from India and were associated with a violent Sikh faction.	2	2
Washington, D.C.	International terrorism	Federal	This case involved a foreign national and his son who had attempted to enter an agreement with a Middle Eastern country to build an electrical power plant in violation of a U.S. embargo on doing business with this country. The State Department had designated this country as a sponsor of terrorism.	1	1
	Domestic terrorism	State/local	In this case, a juvenile made a threat to bomb FBI headquarters in Washington, D.C.	1	1

**Appendix II: Summary of Case Files GAO  
Reviewed**

<b>FBI Field office</b>	<b>FBI case classification</b>	<b>Type of case</b>	<b>Summary of case</b>	<b>No. of defendants</b>	<b>No. of convictions cited in case files</b>
Miami, Fla.	International terrorism	Federal	Four defendants were investigated for purchasing and shipping dozens of weapons from various U.S. locations to the United Kingdom and Northern Ireland. The weapons were purchased at various gun shows, shops and from individual person. The defendants were citizens of the United Kingdom and the Republic of Ireland, and one of the defendants had claimed membership in the Irish Republican Army. Among other items found by investigators, was literature on the Irish Republican Army. The Anti-terrorist branch of New Scotland Yard opened this investigation and contacted the FBI.	4	4
Philadelphia, Pa.	Domestic terrorism	Federal	This case involved a defendant that made bomb threats against a federal government facility in New Jersey. FBI agents found that the defendant had made a pipe bomb.	1	1
	Domestic terrorism	Federal	This case involved a man who made a biological bomb threat against a U.S. courthouse in Pennsylvania. A Joint Terrorism Task Force investigated this case.	1	1
	Domestic terrorism	Federal	This case involved a man who mailed letters including the words, "Anthrax, Anthrax, Anthrax" to his former place of employment.	1	1
San Francisco, Calif.	Domestic terrorism	Federal	This case involved a defendant who fired 20 shots to the Pacific Gas and Electric power substation in Redwood City. His actions eliminated power in the immediate area and caused over \$500,000 in damage. The suspect was described as a possible terrorist member and to have protested the Oklahoma City trial.	1	1
Seattle, Wash.	Domestic terrorism	Federal	This case involved a defendant who made death threats against a U.S. Magistrate Judge and two other individuals. The defendant belonged to a group that refers to themselves as Cypherfunks who advocate the overthrow of established governments via crypto-anarchy.	1	1
<b>Total</b>				<b>26</b>	<b>28</b>

Source: GAO generated based on review of FBI investigative case files.

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# Appendix III: GAO Contacts and Staff Acknowledgments

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## GAO Contacts

Laurie E. Ekstrand (202) 512-2758  
Charles Michael Johnson (202) 512-7331

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## Acknowledgments

Chan My J. Battcher, Christopher Conrad, Christine F. Davis, Michele Fejfar, Melissa Hinton, Anne E. Laffoon, and Kay Muse made key contributions to this report.



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