The ACLU in the Courts Since 9/11

The judiciary was established as a check on the other two branches of government. It is the first line of defense for individuals whose civil liberties have been violated and, for many, it is the last resort.

Since September 11, 2001 the American Civil Liberties Union has received many complaints about detention and torture; discrimination and the No-Fly List; illegal surveillance, searches, and seizures; government attempts to stifle dissent and punish First Amendment protected activity; and government secrecy. Because actions taken by the Bush administration and Congress on the pretext of fighting terror threatened fundamental constitutional protections, the ACLU and its clients took their concerns to the courts.

In some cases, the ACLU filed direct challenges to unconstitutional policies; in others, it filed friend-of-the-court briefs supporting lawsuits filed by others. Here is a summary of the ACLU's past litigation to safeguard democracy in a time of crisis:

PAST CASES

Detention and Torture

Kar v. Bush (U.S. District Court for the District of Columbia)
U.S. citizen and documentary filmmaker Cyrus Kar and his cameraman were held in Iraq for over 50 days in a U.S. run detention center. ACLU National Office and the ACLU of Southern California filed a lawsuit in federal court against top U.S. officials for violating Kar's constitutional rights and federal and international law. One day before the federal judge was scheduled to hear the case, Kar was released.

Al-Kaby v. Bush (U.S. District Court for the District of Columbia)
Numan Adnan Al-Kaby, who was a long term resident of the United States, had returned to Iraq to reunite with his family and was arrested by the U.S. military in April 2005. He was declared innocent by a military court July 4, 2005, but still remained in custody without contact with his family or access to a lawyer. The ACLU of Southern California filed a habeas petition on his behalf after learning about his case from Cyrus Kar. The government released Al-Kaby on September 6, 2005.

Nadarajah v. Gonzalez (9th Circuit Court of Appeals)
Ahilan Nadarajah is a refugee from Sri Lanka who was detained by the U.S. for over four years. The government presented evidence that he provided material support to a terrorist organization based on the statements of a confidential informant. At the hearing, these statements were discredited and the Judge granted Mr. Nadarajah asylum. The Board of Immigration Appeals affirmed that finding. The

government continued to appeal, keeping Nadarajah in detention during the process. The ACLU of Southern California filed a habeas petition seeking Mr. Nadarajah's release, which was reviewed by the Ninth Circuit Court of Appeals. On March 17, 2006 the court granted Nadarajah's motion for immediate release.

Rasul v. Bush; *Al Odah v. United States* (U.S. Supreme Court)
On January 14, 2004, the ACLU joined a broad-based coalition in filing a friend-of-the-court brief calling on the Supreme Court to assure that the detainees being held at Guantanamo Bay have access to the courts to challenge the legality of their detentions. The brief supported an appeal in two related lawsuits filed by relatives of 16 Guantanamo detainees who argued that their continued detention without any legal process violates the government's constitutional and treaty obligations. On June 28, 2004, the Supreme Court ruled that Guantanamo detainees have a right to press their claim in the lower courts if their detention is unlawful.

Hamdan v. Rumsfeld (U.S. Supreme Court)
The ACLU National Office filed a friend-of-the-court brief in *Hamdan v. Rumsfeld*, a case challenging the military commissions system established by President Bush to try detainees at Guantánamo Bay. In June 2006, the Supreme Court ruled that the system violated the law of war and the Geneva Conventions.

Padilla v. Rumsfeld; Padilla v. Hanft (2d and 4th Circuit Courts of Appeals, U.S. Supreme Court)
Jose Padilla is an American citizen labeled an "enemy combatant" and held for three years without charge. In September 2005, the Fourth Circuit ruled unanimously that the President could indefinitely detain a U.S. citizen captured on U.S. soil in the absence of criminal charges, holding that such authority is vital to protect the nation from terrorist attacks. On November 22, 2005, Alberto Gonzales announced that Padilla would be transferred from military to Department of Justice custody and that DOJ was proceeding with criminal prosecution. The Fourth Circuit ruled against the transfer, saying the government was trying to avoid Supreme Court review of Padilla's enemy combatant status. However, the Supreme Court granted the transfer. Padilla pled not guilty to criminal charges.

United States v. Osama Awadallah (2d Circuit Court of Appeals)
Osama Awadallah, a Jordanian-born college student, was charged last year with making two false statements during a grand jury proceeding arising out of the September 11th attacks. Awadallah was held by the U.S. government, often shackled and in solitary confinement, for a total of 83 days, from September 21 until December 13, 2001. He was initially held on a material witness warrant. After his appearance before a grand jury 20 days following his detention, he was indicted on charges of perjury because he had denied knowing the name of one of the Sept. 11 terrorists. In May 2002, District Judge Shira A. Scheindlin dismissed the perjury charges against him and ruled that his detention as a material witness without being charged was unlawful. The government appealed the decision to the Second Circuit and the ACLU filed a friend-of-the-court brief urging a federal appeals court to uphold the ruling that the government unlawfully used the material witness statute to detain Awadallah. On November 7, 2003, the Second Circuit reinstated the charges against Awadallah, and held that the material witness statute could be used in connection with grand jury proceedings. The court noted, but did not discuss at length, the ACLU's argument that the government must either bring a witness before the grand jury promptly or else release the witness after preserving his or her testimony through

deposition. The opinion cannot, therefore, be read as a blanket endorsement of long-term detention under the material witness statute.

In re Application of the United States for Material Witness Warrant (Abdallah Higazy) (U.S. District Court for the Southern District of New York)
At issue in this case is the government's attempt to suppress a report concerning a confession obtained from an Egyptian student arrested for alleged involvement in the World Trade Center attack. The student, Abdallah Higazy, was arrested in December 2001 and charged with lying about ownership of a ground-to-air radio that reportedly had been found in a safe in his room at a hotel at the World Trade Center, where he was staying when the attacks occurred. Federal Judge Jed Rakoff ordered Mr. Higazy held without bail after the federal government reported that Mr. Higazy had confessed to owning the radio in an FBI interrogation. Two weeks after the supposed confession, another person came forward to claim the radio, and Mr. Higazy was fully exonerated. Judge Rakoff then demanded that the government explain how it had obtained a confession from Mr. Higazy. The government delayed providing the report to the judge and then asked that it not be released to the public. The New York Civil Liberties Union entered the case as co-counsel for Mr. Higazy and argued for disclosure of the report. On November 22, 2002, the federal government informed Judge Rakoff that it agreed with the position of the NYCLU and would consent to release of the report. Judge Rakoff released the report three days later.

Discrimination/No-Fly List

Kaukab v. Harris (U.S. District Court for the Northern District of Illinois)
The ACLU of Illinois filed this case in January 2002 on behalf of Samar Kaukab, a 22-year-old U.S. citizen who was pulled out of a group of airline passengers and subjected to repeated and increasingly invasive searches based on her ethnicity and her religion. Ms. Kaukab's religion was evident because she was wearing a traditional head covering for Muslim women known as a hijab. The ACLU arrived at a settlement in principle with Argenbright, the private security company conducting the searches.

Green v. TSA (U.S. District Court for the Western District of Washington)
The ACLU National Office and ACLU of Washington filed a class action suit on behalf of several individuals inappropriately added to the No Fly List in Seattle, WA. The lawsuit asked the court to declare that the “no fly” list violates airline passengers’ constitutional rights to freedom from unreasonable search and seizure and to due process of law under the Fourth and Fifth Amendments. The judge dismissed the case ruling that the federal district court had no jurisdiction to hear the claims. The ruling did address the due process claim and ruled that plaintiffs failed to show tangible harm.

Gordon v. FBI (U.S. District Court for the Northern District of California)
Airline agents told two Bay Area anti-war activists, Rebecca Gordon and Jan Adams, that their names were on a FBI no-fly list. The ACLU of Northern California filed a lawsuit on their behalf in order to get records related to “no fly” lists and other transportation watch lists. The Justice Department ultimately released some 300 pages of documents that reflect confusion, inter-agency squabbling, and subjective criteria in placing names on the no-fly lists.

National Council of La Raza v. Department of Justice (U.S. District Court for the Southern District of New York)

The ACLU National Office and the NYCLU joined the National Council of La Raza and several immigrants rights groups in litigating a FOIA request for records relating to state and local police authority to enforce federal immigration laws. An appeals court ultimately ordered the government to produce a secret memo, which had offered legal justification for granting state and local police such authority. For a copy of the memo, *see* http://www.aclu.org/FilesPDFs/ACF27D8.pdf.

Gebin v. Mineta (U.S. District Court for the Central District of California; 9th Circuit Court of Appeals)
A challenge to the citizenship requirement for continuing employment imposed on screeners at the Los Angeles and San Francisco International Airports, filed January 17, 2002 by the ACLU and its affiliates in California, on behalf of the Service Employees International Union and nine airport screeners. As part of the Aviation and Security Transportation Act, non-citizens were barred from working as screeners even though no such requirement was put in place for airline pilots, flight attendants, mechanics or members of U.S. military. This provision of the new law affected an estimated 8,000 non-citizen screeners, most of whom lost their jobs as a result. On November 13, 2002 a federal district judge in California denied a government motion to dismiss the ACLU challenge. Two days later, the same judge granted a court order that allows qualified, non-citizen airport screeners to remain on the job or be considered for jobs they lost. On May 20, 2003, the Ninth Circuit sent the case back to the district court for reconsideration based on a relatively minor change in the federal law and the district court dismissed the case.

Rajcoomar v. U.S. Department of Transportation (U.S. District Court for the Eastern District of Pennsylvania)
In September 2002, the ACLU National Office and the ACLU of Pennsylvania filed a claim for damages on behalf of a 54-year-old Florida doctor of Indian descent who was handcuffed and detained by air marshals in Philadelphia because they "didn't like the way he looked." In letters sent to lawmakers in Philadelphia and Florida, ACLU officials described how Dr. Bob Rajcoomar became a victim of racial profiling after a flight on which air marshals subdued an unruly passenger and held other passengers at gunpoint for 30 minutes, refusing to allow anyone to get up, even to use the bathroom, after the disruptive passenger was subdued and shackled to his seat. After the plane landed, marshals also handcuffed Dr. Rajcoomar without explanation and turned him over to the Philadelphia police, who detained him for four hours. In April 2003, the ACLU filed a federal lawsuit against the Transportation Security Administration (TSA) for civil rights violations stemming from the wrongful arrest of Dr. Rajcoomar. The lawsuit sought damages and other sanctions on behalf of Dr. Rajcoomar and his wife Dorothy. In September, the ACLU sent a letter to the TSA urging federal officials to investigate the reckless actions of air marshals and to take steps to improve air marshal training or otherwise safeguard the public. In an order issued in July 2003 Judge John P. Fullam outlined the three-part settlement in which DHS and its TSA agreed to revise internal policies and training procedures to ensure there would be no repetition of the incident involving Dr. Rajcoomar. The settlement includes a substantial undisclosed compensation to Dr. Rajcoomar and his wife, and required a written apology to Dr. Rajcoomar from Admiral James M. Loy, first Administrator for the TSA.

Hay v. Ridge (U.S. District Court for the Middle District of Pennsylvania)
This case arose in late 2003, after a Pennsylvania resident, Alexandra Hay, appeared on a "no-fly" list. Hay was told on two separate occasions that her name was on the list. The ACLU filed a lawsuit

seeking to remove Hay's name from the list and to force the government to establish a system for challenging the list. The case was settled on January 2, 2004, less than a week after the ACLU filed the lawsuit. The government said it would send an official to the airport to ensure Hay could board her flight. The government also provided an official form for challenging the "no-fly" list.

Hussein v. City of Omaha (U.S. District Court for the District of Nebraska)
The ACLU of Nebraska filed a federal civil rights lawsuit on June 9, 2004, against the city of Omaha on behalf of Lubna Hussein, a Muslim woman who was told she must remove her religious garb in order to accompany her children at a municipal swimming pool. In June and August 2003, Hussein took her three young children to the Deer Ridge municipal pool in Omaha, only to be turned away at the gate after informing city employees that she could not wear a bathing suit without violating her religious beliefs. Pool employees told her that she could not be in the pool area in her street clothing, even though she observed other people in the pool area who were not wearing bathing suits. On one occasion, officials told Mrs. Hussein that her children could enter but that she would have to remain outside and observe them from the other side of the pool fence. In following her religion, Mrs. Hussein is required to keep all of her body covered except her face and hands. The ACLU complaint charged that the policy, and the city's actions in enforcing it, violated Mrs. Hussein's rights under the 14th Amendment to equal protection under the law, as well as a number of federal civil rights statutes. The case was settled and the City of Omaha amended its policies to allow a variance in their dress code based on religious and/or medical needs.

Bayaa v. United Airlines (U.S. District Court for the Central District of California)
The ACLU of Southern California represented Assem Bayaa, who was ejected from a United Airlines flight based on prejudice. The case has been settled.

Sader v. American Airlines (U.S. District Court for the Northern District of Maryland)
The ACLU of Maryland represented Hassan Sader, who was ejected from an American Airlines flight based on prejudice. The case has been settled.

Cureg v. Continental (U.S. District Court for the District of New Jersey)
This lawsuit accused Continental of discrimination against, Mr. Edgardo Cureg who was ejected from a flight based on prejudice. After passenger claimed that the "brown-skinned men are behaving suspiciously," Cureg, along with Michael Dasrath, were thrown off the flight. The ACLU National Office and the ACLU of New Jersey agreed to dismiss this case, but continue to litigate on behalf of Mr. Dasrath.

Hamdi v. Rumsfeld (4th Circuit Court of Appeals, U.S. Supreme Court)
Yaser Hamdi is an American citizen who was designated an "enemy combatant" by the President after being captured by the Northern Alliance while allegedly fighting with the Taliban in Afghanistan. For two years, he was held in military brigs, first in Virginia and then in South Carolina, without charges or trial and, for a long time, without any access to counsel. The ACLU filed a friend-of-the-court brief with the U.S. Court of Appeals for the Fourth Circuit challenging the lawfulness of the government's decision to detain U.S. citizens. In August 2002, a federal district court judge in Richmond, Virginia, ordered the government to produce additional evidence to support its decision to designate Hamdi as an "enemy combatant." Rather than comply with the judge's decision, the government appealed. On January 8, 2003, the Fourth Circuit held that the government's minimal showing was nonetheless

sufficient to detain Hamdi as an "enemy combatant" and to deny him access to counsel. Hamdi appealed to the U.S. Supreme Court, which agreed to hear the case. The ACLU filed a friend-of-the-court brief in the Supreme Court arguing that the President lacks authority to designate American citizens as "enemy combatants" and subject them to indefinite military detention; and Hamdi's treatment as an "enemy combatant" is unlawful under the Geneva Conventions. On June 28, 2004, the Supreme Court rejected the Bush administration's arguments, ruling that "enemy combatants" held by the United States, such as Hamdi, are entitled to challenge their detention in court. Writing for an 8-1 majority in the case of American-born detainee Yaser Esam Hamdi, Justice Sandra Day O'Connor said the Court has "made clear that a state of war is not a blank check for the president when it comes to the rights of the nation's citizens."

Domestic Spying/Surveillance/Illegal Search and Seizure

Doe v. Gonzales (U.S. District Court for the District of Connecticut; 2d Circuit Court of Appeals)
On May 19, 2005, the FBI served a National Security Letter (NSL) to Connecticut consortium called Library Connection. For a year, Library Connection was gagged from telling anyone about the NSL, which demanded subscriber and billing information and access logs relating to IP address in their system. The ACLU represented Library Connection in its refusal to comply with the NSL and a constitutional challenge to NSL provision. In June 2006, the government dropped their demand for Library Connection's records entirely. The NSL can be viewed at http://www.aclu.org/images/nationalsecurityletters/asset_upload_file924_25995.pdf.

ACLU MATRIX FOIA requests
In 2003, the ACLU filed simultaneous Freedom of Information Act requests in eight states concerning those states' participation in the "MATRIX" database surveillance system. The MATRIX (or Multistate Anti-Terrorism Information Exchange) was essentially a state-run equivalent of the Pentagon's highly controversial Total Information Awareness program - a data-mining program that Congress terminated based on overwhelming privacy concerns. The program gathered large quantities of information about individuals from government databases and corporations that sell aggregated personal information. It then made those dossiers available for search by federal and state law enforcement officers. The ACLU's requests, which were filed under individual states' open-records laws, followed a federal FOIA request filed Oct. 17, 2003. Due to mounting privacy concerns, the MATRIX was terminated in April 2005.

ACLU v. Department of Justice (U.S. District Court for the District of Columbia) (two cases)
The ACLU, along with Electronic Privacy Information Center, the Freedom to Read Foundation, and the American Booksellers Foundation for Free Expression filed a lawsuit against the Justice Department when they failed to respond to a FOIA request related to the pervasiveness of domestic surveillance. After the ACLU filed suit, the Attorney General released approximately 350 pages of responsive material. The released records provide a glimpse into the nature and extent of FBI surveillance after the Patriot Act. In May 2003, a federal district judge in Washington held that the FOIA did not require the Attorney General to disclose further information about the FBI's use of new surveillance power. The judge found, however, that public advocacy groups had advanced a "compelling argument that the disclosure of this information will help promote democratic values and government accountability." After the Attorney General announced publicly that the FBI had never used Section 215, the ACLU filed a second FOIA request regarding the use of the Patriot Act. Judge

Huvelle ordered the expedited processing of the request. On June 17, 2004, the FBI, compelled by the court's order, released a set of records, including an FBI memorandum, dated October 15, 2003, which revealed that the FBI submitted an application for an order under Section 215 of the Patriot Act less than a month after the Attorney General announced the provision had never been used. *See* www.aclu.org/patriotfoia.

In re Appeal from July 19, 2002 Opinion of the United States Foreign Intelligence Surveillance Court
In the first case of its kind, the ACLU National Office and a coalition of civil liberties groups filed a friend-of-the-court brief before a secret appeals court, urging it to reject the Justice Department's radical bid for broadly expanded powers to spy on U.S. citizens. The issue in this case – which focused a spotlight on the Foreign Intelligence Surveillance Court – was whether the Constitution and the USA PATRIOT Act adopted by Congress after the Sept. 11 terrorist attacks permit the government to loosen foreign intelligence standards to conduct criminal investigations in the United States. The ACLU argued that expanding government surveillance powers would also jeopardize other constitutional interests. Though the court accepted the friend-of-the-court brief, the government was the only party permitted to appear at the hearing. On November 18, 2002, ruling for the first time in its history, the review court issued a decision approving the Justice Department bid to broadly expand its powers to spy on U.S. citizens. The ACLU, along with the National Association of Criminal Defense Lawyers and two Arab-American organizations filed a motion to intervene and petition for certiorari with the U.S. Supreme Court asking it to review this expansive new interpretation of the government's surveillance powers. On March 24, 2003, the Supreme Court rejected that request.

In the Matter of 750A Miller Drive Leesburg, Va. (U.S. District Court for the Eastern District of Virginia)
The ACLU of Virginia filed a friend-of-the-court brief on May 3, 2002 on behalf of three Muslim establishments and ten Muslim families in Northern Virginia whose possessions government agents seized during raids in March 2002. The ACLU argued that many of the items, especially books, magazines and pamphlets, should not have been taken because the First Amendment affords them extra protection against seizure. The ACLU also argued that the affidavits used as the basis for issuing the search warrants should be unsealed to determine whether the government had proper justification for taking the items. The court refused in May to unseal the affidavit for the warrants and rendered an unfavorable ruling on the return of property.

United States v. Battle (U.S. District Court for the District of Oregon)
A group of U.S. citizens was charged with attempting to travel to Afghanistan in order to contribute their services to the Taliban and Al-Qaida. The government said in legal papers that agents secretly entered people's homes to install bugging devices that remained in place for months. The devices recorded the conversations of everyone in the house, including children and visitors. In this case, one of the first of its kind, the court was asked to review the constitutionality of wiretap evidence obtained under the Foreign Intelligence Surveillance Act (FISA), which was recently expanded under Section 218 of the PATRIOT Act. Prior to the PATRIOT Act, the government could only use these wiretaps to gather foreign intelligence, not to gather evidence of criminal activity. On September 19, 2003, the ACLU of Oregon and the ACLU National Office filed an amicus brief arguing that the government is using its expanded wiretap powers under the PATRIOT Act to bypass the Fourth Amendment in criminal cases involving United Sates citizens. The defendants pled guilty immediately before the

suppression hearing. Accordingly, the court never resolved the constitutional issues raised by the ACLU.

Abdinasir Ali Nur v. U.S. Treasury Department
On December 19, 2001, the ACLU of Washington filed claims with the U.S. Treasury Department on behalf of two Somali businessmen in Seattle, Abdinasir Ali Nur and Abdinasir Khalif Farah, seeking fair compensation for more than $300,000 in losses during a November raid by agents who sought assets of a completely separate money transfer business. The U.S. Treasury has reimbursed the men for checks it took during the raid. The ACLU continues to pursue claims for merchandise, including specially prepared halal meats (central to the religious practices of the Somali immigrants) destroyed in the raid. The ACLU is also seeking the return of money that local Somalis sought to send to relatives abroad, sums frozen since the raid. After two years of negotiations, the two men finally received partial compensation for their losses.

United States v. Ashqar (U.S. District Court for the Northern District of Illinois)
Abdelahaleem Ashqar is a defendant in a federal criminal case along with Muhammad Salah and Mousa Marzook for allegedly financing the operation of Hamas. The government seeks to introduce evidence collected in a 1993 break-in of Ashqar's home, which was conducted without a warrant or other judicial review, and then kept secret. The ACLU of Illinois and the Center for National Security Studies filed a friend-of-the-court brief in support of the defendant's motion to suppress that evidence, arguing that the search plainly violated well-established Fourth Amendment protections against unreasonable searches and seizures, that the government's reliance on its own executive order was an improper and unconstitutional basis for the search, and that neither the then-existing 1993 FISA legislation nor its 1994 amendment permit the government to bypass judicial review before conducting such a search. On June 22, 2006, the court denied defendant's motion to suppress.

Stifling Dissent and Other First Amendment Protected Activities

ACLU v. US Office of Personnel Management (U.S. District Court for the District of District of Columbia)
On behalf of 6 organizations, the ACLU challenged the Office of Personnel Management requirement that organizations seeking to participate in the federal employees charitable contribution program certify that they have checked the names of current and prospective employees against government "terrorist watch lists." On November 7, 2005, the Office of Personnel Management issued a new regulation that no longer requires the list checking the ACLU had opposed.

ACLU of Illinois v. General Services Administration (U.S. District Court for the Northern District of Illinois)
In December 2001, the ACLU of Illinois filed an amended complaint in a lawsuit challenging Chicago's closing of Federal Plaza, a central venue historically used for demonstrations, prayer vigils and the distribution of leaflets on important matters of public policy. The lawsuit was filed as an amendment to a pre-Sept. 11 complaint about overly restrictive leafleting policies. In March 2002, the city reopened the plaza in response to the ACLU lawsuit, and settled the leafleting complaint seven months later. It agreed not to deny a permit solely because another group already holds one to use the plaza at that time. This agreement specifically protects the rights of counter-demonstrators to express

opposing views. In November 2002, the court approved a settlement agreement between the two parties.

Consolidated Government of Columbus v. Roy Bourgeois, Jeff Winder, Eric Lecompte, and Ken"Doe" (U.S. District Court for the Middle District of Georgia)
In October 2001, the ACLU of Georgia came to the defense of demonstrators barred from holding an annual protest march at the entrance to Fort Benning. The groups included School of the Americas Watch, which opposes the training of foreign soldiers in schools operated by the U.S. military. Although marches had been allowed in the past, the city cited a need for increased security after the September 11th attacks. In November 2001, Federal Magistrate G. Mallon Faircloth ordered that the protest go forward in accordance with President Bush's charge for Americans to get back to their lives.

School of Americas Watch v. Peters (U.S. District Court for the Middle District of Georgia); *Bourgeois v. Peters* (11th Circuit Court of Appeals)
On November 13, 2002, the ACLU of Georgia filed a lawsuit challenging last-minute plans by the City of Columbus to conduct mass searches of over 10,000 marchers at the upcoming School of Americas demonstration on November 17, 2002. The ACLU asked for an immediate hearing and requested that the court stop the City's plan to search all protesters. The ACLU lost the hearing, but appealed to the Eleventh Circuit Court of Appeals. In October 2004, the appellate court ruled the searches were unconstitutional, because they violated the First and Fourth Amendments.

Handschu v. Special Services Division (U.S. District Court for the Southern District of New York)
In 1985, the New York Civil Liberties Union and others negotiated a comprehensive settlement agreement with the New York City Police Department establishing a set of procedures and safeguards designed to address past abuses regarding political surveillance. In 2002, the Police Department asked the Court to relax those restrictions in the wake of the September 11th attacks. The NYCLU opposed the motion. On February 11, 2003, U.S. District Judge Charles Haight ruled that the original Handschu agreement could be modified to permit the NYPD to conform its practices to the new (and relaxed) FBI surveillance guidelines.

Coalition for Peace and Justice Coalition v. City of Pleasantville (U.S. District Court for the District of New Jersey)
The ACLU of New Jersey threatened to sue the City of Pleasantville for trying to bar a post-September 11th rally by the Peace and Justice Coalition under an overly restrictive local ordinance. The city had erected numerous obstacles to the permit application process and threatened to arrest demonstrators. After the ACLU entered the case, the City agreed to revise its policy. However, after negotiations over the revised ordinance proved unsatisfactory, the ACLU filed a First Amendment lawsuit in May 2003. The City subsequently agreed to revise the ordinance again, this time eliminating the overly restrictive provisions.

City of Lynchburg v. Payden-Travers (Lynchburg District Court; Virginia Circuit Court; Virginia Supreme Court)
Acting on behalf of local anti-war protesters, the ACLU of Virginia challenged the Lynchburg City Code, which prohibits groups of more than five people from gathering in a public forum for a planned demonstration. In October 2001, Jack Payden-Travers and other members of the Lynchburg Peace Center began protesting the war in Afghanistan every Friday at the Monument Terrace in Lynchburg.

During one of these demonstrations, Payden-Travers was arrested for protesting in a group of more than five without a permit. He was convicted of the misdemeanor in Lynchburg District Court in December 2001 and appealed his conviction to the Circuit Court. The ACLU filed a motion to dismiss the charges, arguing that the permit ordinance violates the First Amendment rights of free speech and public assembly. On April 23, 2002, the judge held that the ordinance violated the First Amendment and dismissed the case against Payden-Travers. The City of Lynchburg filed a petition for appeal with the Virginia Supreme Court, which the ACLU opposed. The Virginia Supreme Court decided to hear the case. After the case was fully briefed, however, the City revised its ordinance and subsequently withdrew its appeal.

American-Arab Anti-Discrimination Committee v. City of Dearborn (U.S. District Court for the Eastern District of Michigan; 6th Circuit Court of Appeals)
On January 21, 2003, the ACLU of Michigan filed a federal lawsuit against the City of Dearborn challenging the constitutionality of a city ordinance that makes it a crime to protest unless a permit is obtained at least 30 days before the event. The lawsuit was filed on behalf of the American-Arab Anti-Discrimination Committee, a national civil rights organization with offices in Dearborn, and Imad Chammout, a Dearborn resident and business owner. Dearborn officials prosecuted Chammout in the spring of 2002 for participating in a march without a permit, a crime punishable by up to 90 days in prison and a $500 fine. The march, which was not organized by Chammout, was held to protest Israeli policies a few days after Israeli soldiers entered into a Palestinian refugee camp in Jenin. The district judge ruled that the ordinance, as applied by the City of Dearborn, was constitutional as there was a reasonable basis for the 30-day delay period. The ACLU of Michigan appealed the decision and the Sixth Circuit Court of Appeals found the ordinance unconstitutional because it violated the First Amendment. The case was remanded and in October 2005 the district court also found the ordinance unconstitutional.

United for Peace and Justice v. City of New York (U.S. District Court for the Southern District of New York; 2d Circuit Court of Appeals)
As part of a worldwide demonstration on February 15, 2003, antiwar protesters requested permission to march past the United Nations in New York City. In an unprecedented response, the NYPD refused to allow any march at all, insisting instead that the demonstrators be routed to a stationary rally. The New York Civil Liberties Union sued on their behalf, seeking a preliminary injunction before the District Court. The District Court denied the ACLU request, and the ACLU appealed the case to the Second Circuit on Feb. 5, 2003. On Feb. 12, 2003, the Second Circuit affirmed the District Court denial of the preliminary injunction.

ACORN v. City of Philadelphia (U.S. District Court for the Eastern District of Pennsylvania)
According to ACLU legal papers, at events attended by President Bush and other senior federal officials around the country, the Secret Service has been discriminating against protesters in violation of their free speech rights. Local police, acting at the direction of the Secret Service, violated the rights of protesters in two ways: people expressing views critical of the government were moved further away from public officials while those with pro-government views were allowed to remain closer; or everyone expressing a view was herded into what is commonly known as a "protest zone," leaving those who merely observe, but express no view, to remain closer. In one example, retired steelworker Bill Neel, 66, was handcuffed and detained by local officials at a rally in western Pennsylvania after he refused to be herded into a remote "designated free speech zone" located behind a six-foot chain-link

fence. The ACLU national lawsuit, filed in Philadelphia on September 23, 2003, originated earlier in the year when the ACLU of Pennsylvania sought enforcement of a 1988 decree requiring city officials to treat protesters fairly. That lawsuit was amended to include similar incidents around the country. The ACLU's legal papers listed more than a dozen examples of police censorship at events around the country. The incidents described took place in Arizona, California, Connecticut, Indiana, Michigan, Missouri, New Jersey, New Mexico, South Carolina, Texas and Washington, among other places. The government filed a motion to dismiss, which was granted based on plaintiffs' lack of standing.

Abbate v. Ramsey (U.S. District Court for the District of Columbia)
This case stems from the unlawful arrest and detention of peaceful antiwar demonstrators and bystanders in and around Washington, D.C.'s Pershing Park on September 27, 2002. The ACLU of the National Capital Area charged police officials with deliberately violating the constitutional rights of more than 400 individuals by directing them into a police trap and then arresting them although they had not violated the law. According to the ACLU lawsuit, filed along with the National Lawyers Guild D.C. Chapter, and the law firm of Covington & Burling in federal court on March 27, 2003, arrestees were charged with failing to obey a police order, but no order to disperse was ever given and people who tried to leave were physically prevented from doing so. The lawsuit also states that arrestees were unjustly detained for as long as 30 hours in tight handcuffs and restraints, with limited access to food and toilets, and were denied access to lawyers and given false information about their legal options. Among those arrested were a retired U.S. Army Lieutenant Colonel and his daughter; a Maryland grandfather; and a man who suffered from broken ribs after being knocked down by the police. The class action lawsuit, which named as defendants D.C. Police Chief Charles Ramsey and officials in the District, seeks compensation for each person whose rights were violated and a court order prohibiting the government from using similar unconstitutional tactics in the future. An internal Metropolitan Police Department investigation into the mass arrest found that all of the arrests were unlawful. The police report was released on Sept. 12, 2003, by order of federal judge Emmet G. Sullivan. The internal investigation confirmed that the police had confined hundreds of people in the park and then arrested them even though no police officer had seen them commit any crime. The case was settled in January 2005.

United States v. Pickett (District of Columbia Circuit Court of Appeals)
The ACLU of the National Capital Area filed a friend-of-the-court brief in the appeal of Capitol Police officer J.J. Pickett, who was convicted of making a false statement when he wrote a satirical note criticizing the department for its failure to train officers to deal with the anthrax threat in the fall of 2001. The ACLU brief, filed on behalf of 89 Capitol Police officers and the ACLU, asks the appeals court to overturn the conviction on the ground that satire is a form of commentary protected by the First Amendment, not a "false statement." In early 2004, the Court of Appeals reversed Pickett's conviction and ordered that the charges against him be dismissed on the ground that the facts simply did not amount to a crime.

Local 10 ILWU v. City of Oakland (U.S. District Court for the Northern District of California)
The Oakland Police Department and the City of Oakland violated the constitutional rights of dozens of demonstrators, dockworkers, legal observers and others who were injured at a peaceful anti-war demonstration, according to a federal lawsuit filed by the ACLU of Northern California and a coalition of rights groups in June 2003. The lawsuit charges that plaintiffs' First Amendment rights to freedom of speech, assembly and association were violated when the Oakland police opened fire on a peaceful

antiwar protest on April 7, 2003. At least 40 people, including nine dockworkers from Local 10 of the International Longshore and Warehouse Union, were injured with large wooden bullets, sting-ball grenades and shot-filled beanbags. The lawsuit sought damages for persons who were injured, as well as an injunction to prevent the Oakland Police Department from repeating such practices against demonstrators in the future. The class action lawsuit was filed on behalf of 40 individuals by the ACLU, the National Lawyers Guild, Local 10, ILWU and a team of prominent civil rights attorneys including John Burris and James Chanin. The lawsuit led to an Oakland Police Department ban on the use of less lethal weapons against demonstrators and the case was settled.

Barber v. Dearborn Public Schools (U.S. District Court for the Eastern District of Michigan)
This case arose on February 17, 2003, when Bretton Barber, a junior at Michigan's Dearborn High School, wore a t-shirt to school that displayed a photograph of President George W. Bush with the caption, "International Terrorist." He was told to turn it inside out or go home. The school's assistant principal claimed that the shirt promoted terrorism and would cause a disruption, despite the fact that Barber wore the shirt for three hours without incident. On March 27, 2003, the ACLU of Michigan filed a lawsuit in federal court challenging the schools decision and charging school officials with violating the First Amendment rights of their students. According to the ACLU, there are strong indications that the reaction of school officials to Barber's t-shirt was prompted by their disagreement with its message. On October 1, 2003, Judge Patrick J. Duggan ruled in ACLU's favor, finding that Barber must be allowed to wear the shirt to school. Judge Duggan further rejected the school district's argument that the schoolyard is an inappropriate place for political debate.

Dobson v. Springettsbury Township (U.S. District Court for the Middle District of Pennsylvania)
Protester Dobson was billed more than $3,000 for "police-protection costs" stemming from a December 2003 rally/protest. In March 2004, the ACLU of Pennsylvania secured an injunction that prohibited the Township from collecting money from Dobson or enforcing its unconstitutional public assembly ordinance. In September 2004, the Township repealed its public-assembly ordinance and replaced it with yet another unconstitutional version. In November 2004, the Township filed a motion to dismiss the case based on its repeal of the first ordinance. On May 13, 2005, Judge Kane denied most of the Township's motion, finding that the new ordinance still contained some of the provisions we challenged in the first law, most significantly, relatively long advance application requirements. In October 2005, the parties settled the case. The Township fixed the unconstitutional provisions of the ordinance.

Gutman v. City of New York; Stauber v. City of New York; Conrad v. City of New York (U.S. District Court for the Southern District of New York)
During a February 15, 2003 demonstration against military action in Iraq, Jeremiah Gutman, Ann Stauber, and Jeremy Conrad were a few of the many demonstrators whose person and/or property were harmed as the result of controversial practices on the part of the NYPD. On November 19, 2003 the NYCLU filed these three cases on their behalf, challenging a series of NYPD practices used to police large demonstrations that were expected to be used at the 2004 Republican National Convention. On June 2, 2004, the NYCLU moved for a preliminary injunction. In addition to damage claims for injunctive relief, the suit also sought damages in two of the cases (*Gutman* and *Stauber*). Complaints regarding only the first three practices listed above were included in the motion. The City moved simultaneously to dismiss the plaintiffs' claims for injunctive relief and damages. On July 16, 2004, the District Court granted the NYCLU's claim for injunctive relief with respect to the use of pens on

First Amendment grounds, and with respect to the bag search policy on Fourth Amendment grounds. The Court noted that less intrusive searches, such as those involving magnetometers, did not fall within the scope of the injunction. The NYCLU's claim for relief with respect to the use of horses by the Mounted Unit was denied for lack of standing. The City filed a notice of appeal on August 6, 2004. However, it did not seek any emergency relief from the Second Circuit, which meant that the District Court's order remained in place for the Convention and the November 2004 elections and will do so for the foreseeable future. The NYCLU and the City now are discussing settlement of the case.

Government Secrecy

Detroit Free Press v. Ashcroft (U.S. District Court for the Eastern District of Michigan)
This lawsuit challenged a government policy imposing a blanket ban on media and public access (including family members) to immigration hearings of people detained after Sept. 11, 2001. The ACLU National Office and the ACLU of Michigan filed the challenge on behalf of Rep. John Conyers (D-MI), the Detroit News and the Metro Times, a weekly newspaper. Their reporters were among hundreds turned away from deportation hearings in the case of Rabih Haddad, a Muslim community leader from Ann Arbor who had co-founded an Islamic charity suspected of supporting terrorist activities. The ACLU challenge was consolidated with one brought by the Detroit Free Press. The district court granted the ACLU's motion for a preliminary injunction against use of the policy in Haddad's case. After the government appealed, the Sixth circuit upheld the district court opinion. On April 13, 2004, the Department of Homeland Security released new guidelines, providing that the closing of immigration hearings to the press and public, bond decisions and other procedural steps will be taken only on a case-by-case basis – in contrast to the blanket approach closed hearing ban adopted by the Justice Department after September 11th.

North Jersey Media Group, Inc. v. Ashcroft (3d Circuit Court of Appeals)
This was a second challenge to the government policy blocking media and public access to immigration hearings of people detained after Sept. 11. The ACLU National Office and the ACLU of New Jersey filed the case in March 2002 on behalf of two local media organizations whose reporters had been blocked from attending routine proceedings. We won at the district level, with the court rejecting the government's blanket policy of secrecy. However, the Third Circuit ruled 2–1 that immigration hearings involving people detained after Sept. 11 may be closed by the government without the input of the court. The Supreme Court denied our request to review the case. In its brief opposing Supreme Court review, the government claimed it was not currently conducting any more secret hearings and that its policies relating to secret hearings are under review and will "likely" be changed.

Center for National Security Studies, et al. v. U.S. Department of Justice (U.S. District Court for the District of Columbia; District of Columbia Circuit Court of Appeals)
In December 2001, the ACLU, the Center for National Security Studies and others filed a challenge to the federal government's refusal to disclose basic information about individuals arrested and detained since Sept. 11, 2001. In August 2002, U.S. District Court Judge Gladys Kessler ordered the government to release the names of detainees and their attorneys, but stayed her decision pending appeal. In June 2003, the DC Circuit upheld by a 2-1 vote the government's continuing refusal to release the names of more than 700 people detained in connection with the 9/11 investigation. The decision repeatedly referred to national security concerns as a justification for the unprecedented secrecy. However, a report issued by the Department of Justice's own Inspector General makes clear

that many people with no connection whatsoever to terrorism were picked up indiscriminately and haphazardly in the government's post-September 11th sweep. On Jan. 12, 2004, the U.S. Supreme Court denied the petition for certiorari, declining to review the decision by the Court of Appeals.

ACLU of New Jersey v. County of Hudson (New Jersey Superior Court)
The ACLU of New Jersey filed this case after the government refused to give them the names of INS detainees held in Hudson and Passaic County jails. ACLU-NJ filed the case in New Jersey Superior Court and argued that state law required disclosure of the names. In March 2002, New Jersey Superior Court Judge Arthur D'Italia granted access to the records, calling secret arrests "odious to a democracy." In April 2002, the Justice Department issued an interim regulation that purported to override state law in New Jersey and elsewhere by prohibiting state and local officials from releasing the names of INS detainees housed in their facilities. On the basis of this regulation, the state court of appeals reversed the trial court, and the New Jersey Supreme Court declined further review, effectively ending the case.

Edmonds v. DOJ (District of Columbia Circuit Court of Appeals)
Sibel Edmonds was an FBI translator who was fired for reporting poor work and security breaches to her supervisors. Her case was dismissed on state secrets grounds in the district court and the ACLU National Office and the ACLU of the National Capital Area represented her in the appeal of the decision. The appellate court affirmed the lower court decision without issuing a written opinion and the Supreme Court declined to hear the case.

United States v. Richard Reid (U.S. District Court for the District of Massachusetts)
The ACLU of Massachusetts filed a friend-of-the-court brief opposing a broad gag order that barred the accused shoe-bomber's lawyer from talking to other lawyers, including anyone in his office, about his case. The government opposed the motion, but the court said that it was for the judicial branch, not the attorney general, to decide what was appropriate. The court gave Reid's attorney permission to expand the number of people he talked to as long as the discussion related to the defense of Reid. However, the court did not allow the attorney to talk to the press and public about the case, except about general matters such as how Reid was being treated in prison. The government did not appeal the court's decision and Reid subsequently pleaded guilty.