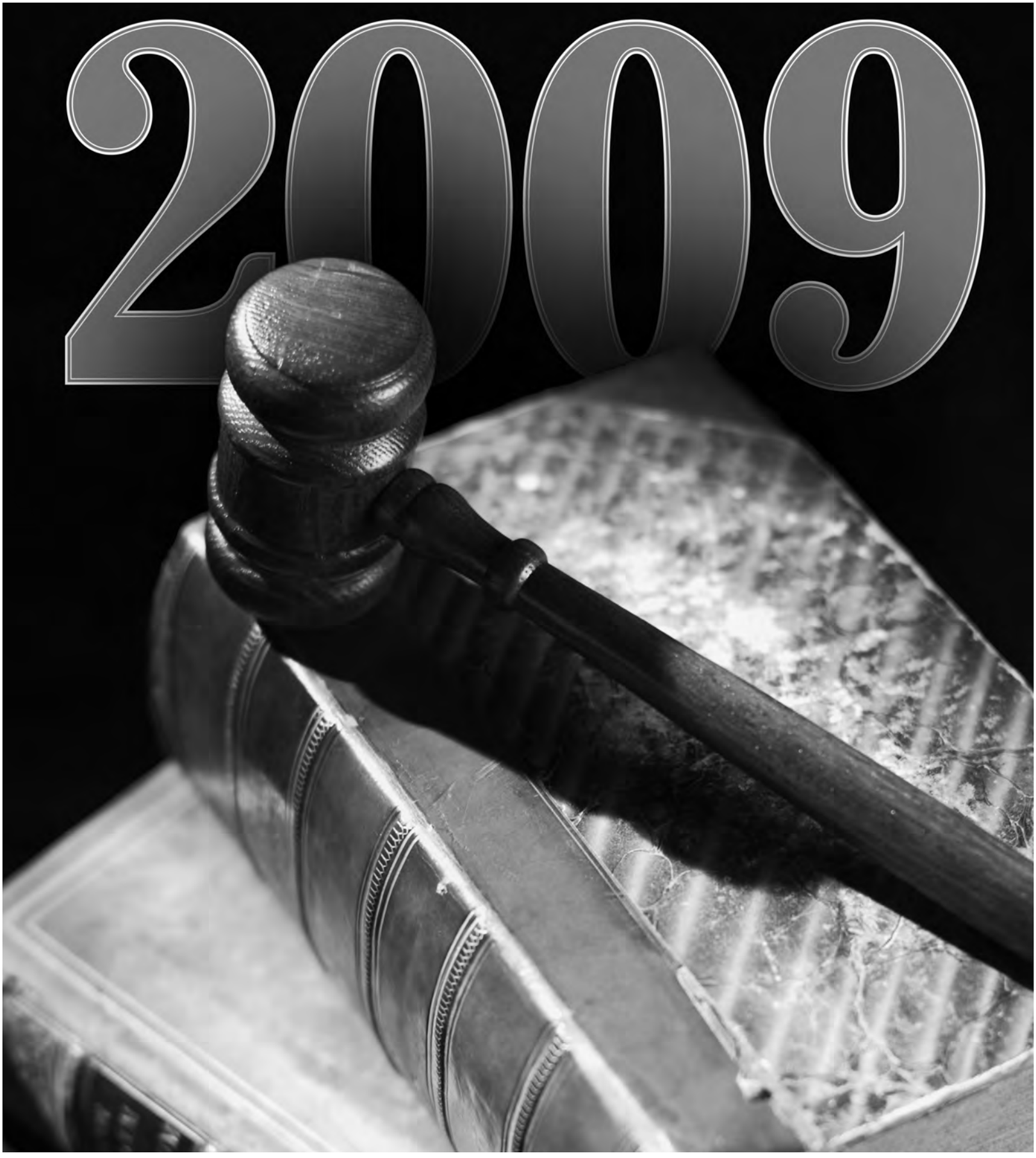
A Review of the Past Term

by Sophia M. Stadnyk



The blockbuster local government case from the United States Supreme Court's last Term was *Pleasant Grove City, Utah v. Summum*,[1] dealing with government speech and the right of local governments to express and shape their own local identity. An article on that case appeared in an earlier issue of this publication,[2] and companion articles in this issue will look at the Voting Rights Act case, the qualified immunity case, and the Court's employment law rulings.

This article will take a brief look at some of the other significant cases over the Court's last Term.

The Search Cases

In the first of the search and seizure cases, *Herring v. U.S.*,[3] the issue was whether the exclusionary rule applied to evidence seized incident to an unlawful arrest, made in reliance on erroneous information negligently provided by another law enforcement agency. The Court held that it did not. The facts in *Herring* were as follows: after Herring came to pick up something at a police vehicle impound lot, an investigator who knew Herring asked the county's clerk to check for any outstanding warrants. There were none in their county, but a clerk in the neighboring county advised that there was an active arrest warrant in that jurisdiction. In reliance on that information, Herring was arrested and searched incident to arrest, and drugs and a gun (which he, as a felon, was not permitted to have) were found. Shortly after the search, the clerk called back to say there had been a mistake: the warrant had actually been recalled five months earlier. Herring sought to suppress the evidence of the search, claiming that it had been obtained pursuant to an illegal arrest. The Eleventh Circuit, finding that the arresting officers were entirely innocent of any wrongdoing or carelessness, and that the failure to update the county records was simple negligence, ruled that the evidence was admissible under the good-faith rule in *United States v. Leon*.[4]

The Supreme Court affirmed, in a 5-4 opinion written by Chief Justice Roberts. The majority extended the ruling in *Arizona v. Evans*[5] (that, under *Leon*, the exclusionary rule did not require the suppression of evidence seized in violation of the Fourth Amendment because of clerical errors or miscommunications made by court employees) to certain mistakes made by law enforcement personnel. "To trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system."[6] Here, it was clear that the mistake fell far short of a flagrant or deliberate violation of rights, deliberate misconduct, or systemic, reckless or routine failures to keep accurate records; thus, suppressing the evidence would have marginal or nonexistent benefits with respect to deterrence. Accordingly, the mistake would not justify the application of the exclusionary rule.

The second case, *Arizona v. Johnson*,[7] dealt with traffic stops and a police "stop and frisk" of vehicle passengers. Officers patrolling a gang-intensive area stopped the vehicle Johnson was a passenger in because the car's registration had been suspended for an insurance violation. There was no reason to suspect the occupants of any criminal activity, but one of the officers thought Johnson was a gang member based his apparel. Johnson was cooperative and answered her questions, but, because the officer wanted to question him away from the other passengers to gather "intelligence" about his possible gang, she told him to get out of the car.[8] She suspected he might have weapons on him, so for "officer safety" reasons she patted him down. Johnson later moved to suppress the evidence – the gun found during this search – claiming that it resulted from an illegal search. The state court ruled that, although Johnson was lawfully seized prior to the frisk, the detention had evolved into a "consensual" and separate conversation about gang affiliation, something entirely unrelated to the stop.[9] Absent "reason to believe Johnson was involved in criminal activity," the officer had no right to pat him down for weapons, even if she had reason to suspect he was armed and dangerous.[10]

The Supreme Court reversed, with Justice Ginsburg delivering the opinion for a unanimous Court.[11] The patdown search did not violate the Fourth Amendment's prohibition on unreasonable searches and seizures. Under *Terry*, "stop and frisk" searches were constitutionally permissible if law enforcement officers reasonably suspected both that the person was committing (or had committed) a crime and was armed and dangerous. Most traffic stops resembled the kind of brief detention authorized by *Terry*, and previous caselaw confirmed that, for the duration of a traffic stop, police effectively seized "everyone in the vehicle" and could do a patdown of the driver and any passengers upon reasonable suspicion that they might be armed and dangerous.[12] Accordingly, in a traffic-stop setting, the first *Terry* condition (a lawful investigatory stop) was met whenever it was lawful for police to detain a vehicle and its occupants pending inquiry into a vehicular violation. The police did not need to have cause to believe any occupant of the vehicle was involved in criminal activity. However, to justify a patdown of the driver or passengers during a traffic stop, the police were required to have a reasonable suspicion that the person subjected to the frisk was armed and dangerous. Here, Johnson was initially lawfully detained pursuant the legitimate traffic stop. While the Court questioned the lower court's characterization of the ensuing encounter as "consensual," it found the officer's inquiries into matters unrelated to the justification for the stop did not convert the encounter into something other than a lawful seizure, as those inquiries "did not measurably extend the duration of the stop."[13] "Nothing occurred in this case that would have conveyed to Johnson that, prior to the frisk, the traffic stop had ended or that he was otherwise free 'to depart without police permission.'… [The officer] surely was not constitutionally required to give

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Johnson an opportunity to depart the scene after he exited the vehicle without first ensuring that, in so doing, she was not permitting a dangerous person to get behind her."[14]

The third case, *Arizona v. Gant*,[15] arose out of an appeal from a decision that found that police officers were not entitled to conduct a warrantless vehicle search incident to an arrest, where the scene had been secured and the arrestee was handcuffed and under the supervision of a police officer. The officers came to Gant's residence to investigate drug activity and had spoken with Gant. When they later discovered that he had a suspended driver's license and an outstanding warrant, they returned to the property and found Gant parking his car in the driveway. He was arrested, handcuffed, and locked in the back of a cruiser, all without incident. By then, the scene was secure, with at least four officers onsite. The officers then searched Gant's car and found a weapon and cocaine.[16] Gant moved to suppress the evidence, and the Arizona Supreme Court held that the search violated the Fourth Amendment.[17] Addressing the argument that the search fell within the constitutionally permissible scope of a vehicle search incident to arrest pursuant to *New York v. Belton*, that court held that the real issue was whether the police could conduct a search incident to arrest *at all* once the scene had been secured, citing the "twin rationales" for a search incident to arrest established in *Chimel v. California*.[18] The reasons supporting a warrantless search of the vehicle – officer safety and a need to preserve evidence – could not apply in the circumstances.

In a 5-4 ruling, the Supreme Court affirmed, clarifying and limiting the scope of the rule in *Belton*. Noting that its ruling in *Belton* had "been widely understood to allow a vehicle search incident to the arrest of a recent occupant even if there [was] no possibility the arrestee could gain access to the vehicle at the time of the search,"[19] the Court rejected this interpretation, pointing out that it "untether[ed] the rule from the justifications underlying the *Chimel* exception – a result clearly incompatible with [the Court's] statement in *Belton*"[20] affirming the fundamental principles established in *Chimel*. The majority opinion in *Gant*, written by Justice Stevens, formulated the rule as follows: police officers could validly search the passenger compartment of a vehicle incident to a recent occupant's arrest only if it was reasonable to believe that the arrestee could access the vehicle at the time of the search (i.e., that he was within reaching distance) or that "evidence of the offense of arrest might be found in the vehicle."[21] However, *Belton* did not authorize a vehicle search incident to a recent occupant's arrest *after* the arrestee had been secured and was not in a position to access the interior of the vehicle. In this case, as neither the possibility of access nor the likelihood of discovering offense-related evidence authorized the search, the search of Gant's vehicle fell outside the "incident to arrest" exception to the Fourth Amendment's warrant requirement.

The Immunity Cases

Two important immunity cases were decided by the Court. The first, *Van de Kamp v. Goldstein*,[22] arose out of a Section 1983 action against district attorneys based on alleged violations of the constitutional duty to communicate impeachment information, due to the failures of the defendant supervisory prosecutors to properly train or supervise prosecutors, or to establish an information system containing potential impeachment material about informants. The plaintiff, Goldstein, had been convicted of murder based, in part, on the false testimony that he had confessed to an informant. After 24 years in prison, Goldstein was released. He claimed that the informant had received reduced sentences in return for providing prosecutors with favorable testimony in other cases; that prosecutors knew, but failed to give his attorney, this potential impeachment information; and that this failure led to his erroneous conviction. The defendants claimed absolute immunity. The district court found that their conduct was "administrative," not "prosecutorial," and, thus, outside the scope of absolute immunity. The U.S. Court of Appeals for the Ninth Circuit affirmed.[23]

A unanimous Supreme Court reversed, finding that the defendants were entitled to absolute immunity with respect to the supervision, training, and information-system management claims. These claims focused upon a "certain kind of administrative obligation – a kind that itself [was] directly connected with the conduct of a trial"[24]–and distinguishable from administrative duties (e.g., workplace hiring or payroll administration) or investigative functions. Significantly, the kind of activities at issue necessarily required legal knowledge and the exercise of related discretion, and this weighed in favor of absolute immunity. The "faulty training" claim rested upon a consequent error by a prosecutor in the midst of trial. Because better training or supervision might prevent "most, if not all" prosecutorial errors at trial, allowing the claim would grant permission to criminal defendants to bring claims in similar instances, in effect claiming damages for trial-related training or supervisory failings.[25] The analysis and outcome were similar with respect to the information-management claim. Decisions on what to include in an information system were "little different from making similar decisions in respect to training,"[26] and determining the criteria for inclusion (or not) required a knowledge of the law. Because all these activities were connected with the prosecutor's basic trial advocacy duties, they were not "administrative" and were protected by absolute immunity.

Ashcroft v. Iqbal[27] was an immunity case that addressed pleading requirements. Javaid Iqbal, a Pakistani Muslim, was arrested on conspiracy and fraud charges in the U.S. shortly after 9/11. He was held for several months (confined in "lockdown" for 23 hours a day), pled guilty to some of the charges, and was later deported. He filed a *Bivens* lawsuit[28] against various federal officials, including Robert Mueller, the Director of the FBI, and John Ashcroft, the former Attorney General, alleging that Ashcroft was the "principal architect" of a discriminatory and unconstitutional detention policy, one based on religion, race or national origin; that Mueller had been "instrumental" in executing it; and that both had maliciously agreed

to subject him and others to harsh confinement pursuant to the policy.[29] Significantly, Iqbal did not challenge the constitutionality of his arrest or his initial detention. The defendants moved to dismiss based on qualified immunity, and challenged the complaint for failing to sufficiently allege their involvement in clearly established unconstitutional conduct. The district court denied the motion and the Second Circuit affirmed.

The Supreme Court reversed, building on the rule established in *Bell Atlantic Corp. v. Twombly*[30] some years previously. Assuming that Iqbal's First Amendment claim was actionable under *Bivens*, it was clear that vicarious liability was inapplicable to a *Bivens* and Section 1983 suit – each government official, "his or her title notwithstanding, [was] only liable for his or her own misconduct."[31] To state a claim of unconstitutional discrimination against officials entitled to assert the defense of qualified immunity, a plaintiff was required to plead that each government official, through the official's own individual action, had violated the Constitution, with "sufficient factual matter" to show that the defendants adopted and implemented the policy "not for a neutral, investigative reason but for the purpose of discriminating on account of race, religion, or national origin."[32] Applying the working principles of *Twombly*, the Court rejected Iqbal's complaint as insufficient. Allegations that Ashcroft was the "principal architect" and Mueller was "instrumental" were simply conclusory "bare assertions" that were not entitled to be presumed true; further, the complaint lacked facts "plausibly showing that [the defendants] purposefully adopted a policy of classifying post-September-11 detainees as 'of high interest' because of their race, religion, or national origin."[33] All Iqbal's complaint plausibly suggested was that "the Nation's top law enforcement officers, in the aftermath of a devastating terrorist attack, sought to keep suspected terrorists in the most secure conditions available until the suspects could be cleared of terrorist activity,"[34] which was not, in and of itself, unconstitutionally discriminatory. The ruling is good news for government officials, as the Court not only clarified the pleading standard for misconduct complaints against office-holders (especially for causes of action based on intent), but declined to postpone "weeding out" an insufficient complaint until the discovery stage.[35]

Looking Forward

There are several cases relevant to local governments on the Court's docket in the current Term. In addition to the Second Amendment cases discussed elsewhere in this issue, they include: *Salazar v. Buono*,[36] *Alvarez v. Smith*,[37] *Maryland v. Shatzer*,[38] *Perdue v. Kenny A.*,[39] *Pottawattamie County v. McGhee*,[40] *Hemi Group, LLC v. City of New York*,[41] and others. IMLA will keep you posted as these cases are decided.

Notes

1. 129 S. Ct. 1125 (2009).
2. Mary Jean Dolan, *Pleasant Grove City v. Summum: The Supreme Court's First Look at Municipal Government Speech*, MUNICIPAL LAWYER, July/August 2009.
3. 129 S. Ct. 695 (2009).
4. 492 F.3d 1212, 1218-19 (11th Cir. 2007). *Leon* held that the exclusionary rule did not bar the use of evidence obtained by officers acting in good faith reliance on a warrant which was later found not to be supported by probable cause.
5. 514 U.S. 1 (1995).
6. 129 S. Ct. at 702.
7. 129 S. Ct. 781 (2009).
8. *Id.* at 785.
9. State v. Johnson, 170 P.3d 667, 672-73 (Ariz. Ct. App. 2007).
10. *Id.* at 673.
11. 129 S. Ct. 781 (2009).
12. *Id.* at 784.
13. *Id.* at 788.
14. *Id.*
15. 129 S. Ct. 1710 (2009).
16. When asked why the search had been made, one of the officers testified: "Because the law says we can do it." *Id.* at 1715.
17. 43 P.3d 188 (Ariz. Ct. App. 2002).
18. *Id.* at 193. In *Chimel*, the Supreme Court held that, in making a lawful arrest, police may, without a warrant, search the person in custody as well as the "area from within which he might gain possession of a weapon or destructible evidence." In *New York v. Belton*, the Court extended that rule to arrests made of persons in vehicles, stating that officers may search the entire passenger compartment of a vehicle and all containers therein, as a "contemporaneous incident" of a lawful arrest.
19. *Gant*, 129 S. Ct. at 1718.
20. *Id.* at 1718.
21. *Id.*
22. 129 S. Ct. 855 (2009).
23. 481 F.3d 1170 (9th Cir. 2007).
24. 129 S. Ct. at 862.
25. *Id.* at 863.
26. *Id.* at 864.
27. 129 S. Ct. 1937 (2009).
28. Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388 (1971) (recognizing a private action for damages against federal officers alleged to have violated a citizen's constitutional rights).
29. 129 S. Ct. at 1944.
30. 550 U.S. 544 (2007) (on whether a complaint is sufficient to survive a motion to dismiss, the rule that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions; second, only a complaint that states a plausible claim for relief survives a motion to dismiss).
31. 129 S. Ct. at 1949.
32. *Id.* at 1948-49.
33. *Id.* at 1951-52.
34. *Id.* at 1952.
35. "Our rejection of the careful-case-management approach is especially important in suits where Government-official defendants are entitled to assert the defense of qualified immunity." *Id.* at 1953.
36. Buono v. Kempthorne, 527 F.3d 758 (9th Cir. 2008), *cert. granted*, *Salazar v. Buono*, 129 S. Ct. 1313 (U.S. Feb. 23, 2009) (No. 08-472).
37. 524 F.3d 834 (7th Cir. 2008), *cert. granted*, 129 S. Ct. 1401 (U.S. Feb. 23, 2009) (No. 08-351).
38. 954 A.2d 1118 (Md. 2008), *cert. granted*, 129 S. Ct. 1043 (U.S. Jan. 26, 2009) (No. 08-680).
39. 532 F.3d 1209 (11th Cir. 2008), *cert. granted*, 77 U.S.L.W. 3442 (U.S. Apr. 06, 2009) (No. 08-970).
40. 547 F.3d 922 (8th Cir. 2008), *cert. granted*, 129 S.Ct. 2002 (U.S. Apr. 20, 2009) (No. 08-1065).
41. 541 F.3d 425 (2d Cir. 2008), *cert. granted*, 129 S.Ct. 2159 (U.S. May 04, 2009) (No. 08-969).