You didn’t have to be a constitutional law expert in 2015 to grasp the impact of federal court decisions on everyday life in America. Big issues before the U.S. Supreme Court dominated the headlines, from same-sex couples’ right to marry to the solvency of federally-run health insurance exchanges. Behind those headlines, observers willing to dig a bit deeper quickly discovered the fingerprints of prominent UCLA Law scholars, whose research and amicus briefs were cited in some of the year’s most important decisions.
For **Gary Gates**, Blachford-Cooper distinguished scholar and research director of the Williams Institute at UCLA Law, *Obergefell v. Hodges*, which legalized same-sex marriage across the entire country, was the culmination of years of research on the demographics of LGBT parenthood. “There are an estimated 200,000 children under 18 being raised by same-sex couples right now,” Gates said. “Same-sex couples are three times more likely to have adopted or fostered children. At the time of the study, if they lived in states where same-sex couples were eligible to marry, they were actually five times more likely to have adopted or fostered. [The right to marry] facilitated somewhat easier access to public adoption or fostering agencies. It may have prompted even more adoption and fostering.”

Gates’s findings were reflected in the historic majority opinion for *Obergefell v. Hodges*, authored by U.S. Supreme Court Justice Anthony Kennedy. “Most states have allowed gays and lesbians to adopt, either as individuals or as couples, and many adopted and foster children have same-sex parents,” Kennedy wrote, citing Gates’s amicus brief. “This provides powerful confirmation from the law itself that gays and lesbians can create loving, supportive families.”

Gates was thrilled with Kennedy’s opinion, not just for the obvious civil rights reasons, but also because the citation of his amicus brief indicated the Supreme Court’s willingness to consider social science research to help inform its opinions. “Amicus briefs can provide for the court a view of the impact of a ruling beyond the legal impact,” Gates said. “It hasn’t always been the case that courts have felt comfortable enough relying on demographic research, my field of study. It’s very gratifying seeing the court use this work to help inform these very important decisions.”

At UCLA Law, amicus briefs aren’t just a way to bring the latest scholarship to bear on appellate court decisions about key issues of the day. They’re also an educational strategy. Professor Volokh leads the Scott & Cyan Banister First Amendment Clinic each fall, which offers students the opportunity to contribute research to appellate cases. “The main purpose of the clinic is to educate our students,” Professor Volokh, a First Amendment expert who has been cited by appellate courts half a dozen times in just the past eight months, said. “Because we work on real cases, it helps expose students to real responsibility. It’s a way for students to dip their toes into the ocean of lawyerly responsibility.”
Students in the clinic hone legal writing and editing skills and learn legal strategy by drafting and filing amicus briefs on behalf of nonprofit organizations and academic groups. The clinic, which launched in fall 2013, has already worked on notable cases. In *NAACP v. The Radiance Foundation*, the clinic came to the defense of a blogger who parodied an advocacy organization’s name as a form of political commentary. The blogger was sued for trademark infringement and lost in a lower court. Clinic students submitted an amicus brief to the U.S. Court of Appeals for the Fourth Circuit, representing the Electronic Frontier Foundation and the American Civil Liberties Union of Virginia. The ruling was reversed, and the clinic’s amicus brief was cited in the reversal decision.

In another example, the clinic submitted an amicus brief on behalf of several law professors urging the U.S. Supreme Court to accept a petition for certiorari to review a Ninth Circuit decision in *Reed v. Town of Gilbert, Arizona*. The case concerned an ordinance restricting certain kinds of speech on signs. The Supreme Court ultimately reversed the Ninth Circuit’s ruling, 9-0. “It was the only amicus brief filed in support of the petition,” Professor Volokh said. “It’s impossible for us to tell if our amicus brief helped flag the case for the court. But there’s that possibility.”

In addition to the Scott & Cyan Banister First Amendment Clinic, UCLA Law students can also gain firsthand experience working with faculty members on real cases through the law school’s Supreme Court Clinic. Under the direction of Professor Banner, the clinic, which launched in 2011, is on the verge of making its own Supreme Court headlines. Earlier this year, the Supreme Court accepted the clinic’s petition for certiorari on behalf of *Torres v. Lynch*, an immigration case that touches on the definition of an “aggravated felony” that can lead to deportation. The granting of cert was a first for the clinic.

“All of the students were very excited,” Professor Banner said. “Everyone was checking the court website that morning to see what happened.”

The students who worked on that case, including Adam Lloyd ’15 and Colin DeVine ’15, have graduated, but Professor Banner has continued to work on the case this summer and hopes to involve a new set of students this fall. “I’ll have finished the brief, but hopefully they can get involved in the reply brief and preparing for the oral argument,” he said.

Professor Banner is far from the only professor at UCLA Law recently involved in arguing important appellate cases. Professor Volokh argued six cases in the last two years, including two clear wins for his clients in the Ninth Circuit. Professor Daniel Bussel, a bankruptcy law expert, represented Thorpe Insulation Company, the prevailing party in *Continental Insurance Co. v. Thorpe Insulation Co.*, both at the Ninth Circuit and then on certiorari at the Supreme Court (cert was denied). Neil Netanel, Pete Kameron professor of law, argued the appeal in *Seven Arts v. Content Media and Paramount Pictures Corp.*, before the Ninth Circuit.

Seana Shiffrin, Pete Kameron professor of law and social justice and professor of philosophy, followed a unique path to her recent appearance before the Ninth Circuit. Her journey started with a concern about an inconsistency between the constitutional treatment of punitive damages and statutory overrides of common law protections against penalties in contract law when it came to penalty fees for credit card charges. Troubled that punitive damages were constitutionally capped in tort actions, but that governmental statutes facilitated the enforceable imposition of heavy and disproportionate penalties against consumers for trivial breaches of contract, she wrote a law review article, “Are Credit Card Late Fees Unconstitutional?” 15 *William & Mary Bill of Rights Journal* 457 (2006). “I’m interested in a variety of ways that banks and large corporations are treated more permissively than consumers are,” Professor...
Shiffrin said, “Consumers are held to a higher standard than corporations. At the very least, the same rules should apply to them. Why should consumers have to pay highly disproportionate damages when they accidentally pay a bill a day or an hour late, but when an insurance company deliberately frauds a consumer or an oil company negligently pollutes the environment, the Constitution ensures that the damages they pay closely track actual damages? Why has the federal government overridden common law protections, grounded in due process values, to permit banks to levy legally enforceable penalties that have no relationship to any damages the banks suffer? The banks are already made whole by the interest they charge on late payments. These penalty charges are pure windfalls, while poor and middle class consumers are hobbled by needless debt.”

When the article was accepted, but before it had been published, Professor Shiffrin was connected to attorneys Tyler Meade and Michael Schrag, who specialize in complex class actions. The article helped to convince them of the merit of her idea that fees charged for late payment are a form of contractual punitive damages, which were arguably rendered unconstitutional by the theory adopted by the Supreme Court in State Farm v. Campbell. Professor Shiffrin partnered with Meade & Schrag LLP and Coughlin, Stoia, Geller, Rudman & Robbins to bring the class action, In re Late Fee and Over-Limit Fee Litigation, and she argued the case before the Ninth Circuit. Although the decision did not hold for the consumers, Judge Stephen Reinhardt authored a long concurrence, joined by Judge Nelson, which fundamentally agrees with Shiffrin’s approach and suggests the Supreme Court should draw the conclusions that she argued for.

Professor Shiffrin’s path from scholarly theory to direct impact in the courtroom may be unusual, but it is also typical of the ease with which UCLA Law scholars move from the so-called ivory tower to the courtroom—and are inspiring a new generation of appellate lawyers.

Samantha Booth ’14, who participated in one of Professor Volokh’s smaller “pop-up” clinics and worked with him on appeals before the Washington Supreme Court and the Texas Court of Criminal Appeals, was, as Professor Volokh puts it, “bitten by the First Amendment pro bono bug.” After graduation, she went to work at Munger, Tolles & Olson LLP, but she asked Professor Volokh to keep an eye out for cases she could contribute to. Thanks to his match-making, Booth and her co-counsel from Munger will argue in front of the Fourth Circuit this fall on behalf of Melanie Lawson, plaintiff in Lawson v. Gault. Lawson was a government employee who was terminated from her position after running against her boss, a county clerk of court.

Booth’s arguments will hinge on rights to speech and political affiliation. “Courts have long held that government officials cannot terminate a non-policymaking subordinate simply because the subordinate does not support his or her boss for re-election, or even because the subordinate supports someone else’s campaign instead,” she said. “Our question is: What if the subordinate actually runs for office herself—is that protected political affiliation, too? We argue that it should be. Intuitively, it can’t be that it’s protected to support someone else for office but not protected to run yourself. It arguably strikes closer to the core of the First Amendment for the subordinate to undertake a campaign herself.”

Professor Volokh and his clinic students filed an amicus brief in the case in spring 2015, supporting Booth’s arguments and on behalf of Common Cause, the Brennan Center and the Pennsylvania Center for the First Amendment. “I hope we are providing a service for courts across the country,” Professor Volokh said. “Sometimes we can bring an extra perspective and raise arguments that parties aren’t in a position to make. The clinic is a win-win: good for our students, and also helpful to judges.”

From the scholarship that is directly impacting courts throughout the country and shaping the law to the teaching and appellate lawyering that is motivating the advocates of the future, the saying, “If you can’t do, teach,” does not apply at UCLA Law. Here, teaching and real-world impact go hand in hand.