UCLA Law's Supreme Court Clinic Snagged Four Cases This Term

Tony Mauro, Supreme Court Brief

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With the U.S. Supreme Court accepting 75 or fewer cases for review each term, competition is fierce among law firms and law school clinics for the chance to write briefs on the merits and appear before the justices.

How did the University of California at Los Angeles School of Law Supreme Court Clinic, a relative newcomer to the field, get to participate in four cases the court has granted this term? (Founded in 2013, the clinic had not had any cases granted until this term.)

Stuart Banner, the professor who heads up the clinic, thinks it is partly because “we got lucky and got good cases” to bring before the court for this term. But the other secret ingredient, he acknowledges, may be the one of clinic’s policies: “We tend not to take over cases.”

That may be an advantage when lawyers who have lost a case before a federal appeals court are deluged with calls from Supreme Court advocates who offer to help petition the high court—but want to handle the argument if certiorari is granted. Several other clinics, in addition to UCLA’s, take a less aggressive approach.

In Heffernan v. City of Paterson, set for argument Jan. 19, Banner said he called local counsel Mark Frost of Mark Frost & Associates in Philadelphia soon after Frost lost before the U.S. Court of Appeals for the Third Circuit. The court ruled that in spite of the First Amendment, a public employee could be demoted based on a supervisor’s incorrect perception that the worker was supporting a political candidate.

Frost told Banner he had gotten numerous calls offering to take the case to the Supreme Court. “It’s like a feeding frenzy,” Banner said. But Frost went with UCLA and will argue the case himself. “We’re happy to help out,” Banner said.

UCLA professor Eugene Volokh, a First Amendment expert, is part of the school’s team helping with the Heffernan case, along with the six third-year students in the clinic. Lawyers from Munger, Tolles & Olson also assist the clinic on some, but not all, of the cases.

The other three merits cases in which the UCLA clinic is playing a role are Torres v.
Lynch, an immigration case argued last November, Betterman v. Montana, a speedy trial clause dispute, and Utah v. Strieff, which explores the exclusion of evidence in criminal cases. Betterman and Strieff will be argued later in the term.

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Stanford Law School professor Jeffrey Fisher said UCLA’s success in finding cases this term is proof that “there is still a role for the clinics in certain areas of the law,” despite intense competition for cases. Stanford was the first of a half-dozen or so Supreme Court clinics that popped up in the last decade.

Other advocates arguing in cases during this cycle:

► Gibson, Dunn & Crutcher partner Theodore Olson, whose last high court appearance was in 2014, returns to the lectern on Jan. 13 to argue on behalf of victims of Iran-backed terrorism in Bank Markazi v. Peterson. The victims and survivors have been seeking compensation for decades for loved ones killed in the 1983 attack on U.S. Marine barracks in Beirut and other terrorist acts. The former U.S. solicitor general was assistant attorney general in the Office of Legal Counsel at the U.S. Department of Justice at the time of the Beirut bombing. Facing off against Olson for Bank Markazi will be Jeffrey Lamken of MoloLamken, who once worked for Olson in the solicitor general’s office.

► Carolyn Shapiro will make her first argument as solicitor general for Illinois on Jan. 12 in Duncan v. Owens, a criminal case. When appointed in 2014, Shapiro said the prospect of arguing before the court was “not the reason I decided to take the job.” But she knows the court, having served as a clerk for Justice Stephen Breyer. She is also a professor on leave from Chicago-Kent College of Law and founding director of its Institute on the Supreme Court of the United States, known as iSCOTUS.

► In one of his occasional pro bono representations, Paul Clement of Bancroft is set to argue Jan. 20 on behalf of the Omaha Tribal Council in Nebraska v. Parker, a dispute over the jurisdiction of Indian tribes over liquor stores in Pender, Nebraska. Clement, a former U.S. solicitor general, represented a different tribe, the Yankton Sioux, in a similar case in 2011.

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