Swaying the Supreme Court

Good lawyers, not new justices, may signal changing legal opinions

Why can abortion be legal one decade and severely restricted the next? Why does the Supreme Court find capital punishment unconstitutional in 1972, yet four years later deems it within our rights?

Political scientists — and the public — often blame such ideological shifts on membership changes on the Supreme Court. But that's not necessarily the reason, says Lee Epstein, Ph.D., associate professor of political science at the University of Chicago.

While factors such as new justices or the political climate often play a role in changing decisions, they don't do it alone. Instead, Epstein and a colleague outline the influence of ideology. "The court's composition, its ideological makeup, can be the principal precedent for all future legal arguments," Epstein says.

"And it's true that no legal argument could change the stance of eight hard-core ideologues. But we don't have eight hard-core ideologues," Epstein says.

The 500-page book examines two issues — abortion and capital punishment — and follows their ride through the Supreme Court. By researching oral arguments, public opinion polls, briefs, newspaper articles and the changing political climate, Epstein and his colleague conclude that conventional wisdom is wrong: new court members, whether conservative, liberal or moderate, don't necessarily mean new legal opinions.

"Ideology has become such an issue surrounding the Supreme Court. And it's true that no legal argument could change the stance of eight hard-core ideologues. But we don't have eight hard-core ideologues. So we argue that what matters a great deal is the language of the law," says Epstein.

The book notes that in 1972, the Supreme Court struck down the right to capital punishment with a 5-4 decision in the Furman vs. Georgia case. Yet just four years later, with only one personnel change on the bench, the Supreme Court reversed its decision 7-2. In that 1976 vote, two justices had reversed an earlier vote. As another example, Epstein points out that Justices Sandra Day O'Connor — a central player in the abortion tug-of-war — apparently was open to legal persuasion when she joined the bench. When President Ronald Reagan nominated O'Connor to the bench, the only opposition came from pro-life advocates who didn't like her abortion record as a state legislator. But in her first major opinion on the topic in 1983, O'Connor supported some restrictions on abortion. She based her decision on a legal standard proposed by a Reagan administration solicitor general. With that case, Epstein says, O'Connor showed she was open to an attorney's legal argument.

So how can attorneys and their arguments sway the Supreme Court? Epstein says the key is flexibility, by analyzing attorneys arguments before the Supreme Court, Epstein and Kobylka found that abortion rights attorneys had not made major changes in strategy since their first victory with Roe vs. Wade in 1973, the case that gave women the absolute right to have an abortion.

That strategy, says Epstein, is flawed. She contends that by clinging to the 1973 decision and not reading changes and changes in the Supreme Court, the attorneys have lost their case gradually.

"It's the tyranny of absolutes," she says. "A kind of all or nothing attitude on the issue.

Pro-choice litigators have ignored hints by Justice O'Connor that they might be able to save Roe vs. Wade from being overturned by setting for less than an absolute right to abortion, says Epstein. She says Justice O'Connor has hinted that litigators could legally support a scaled-down abortion law — one with more restrictions — within the 14th Amendment. But pro-choice litigators won't budge, says Epstein.

The belief that one big victory, such as Roe vs. Wade, can be the principal precedent for all future legal arguments may not be the best strategy, Epstein says.

Epstein's research doesn't dismiss the influence of ideology. "The court's composition, its ideological makeup, can set the stage for legal change," she says, "but it doesn't always provide the best explanation."

Epstein says attorneys presenting cases before the bench should remember that Supreme Court justices are attorneys as well. And because they are, at heart, lawyers, they are trained to appreciate a sound legal argument.

When Justice Clarence Thomas recently was appointed to the Supreme Court, much of the public felt a conservative majority was secured and future decisions would reflect that.

Continued on p. 5

First of many

History center's freedom study yields volume

The first volume has been published of a series that promises to be the most extensive study of the history of freedom ever undertaken. The center for the History of Freedom at Washington University is developing the series, titled The Making of Modern Freedom.

The first book was edited by J.H. Hexter, Ph.D., the University's John M. Olin Professor of Political Science and Freedom Emeritus and the center's founder.

"Parliament and Liberty contains eight chapters by American and British historians," Epstein notes. "Each volume in the series is a collaborative effort, written by Americans and foreign scholars. The chapters begin as papers, which are discussed and critiqued at an autumn symposium."

Arab-Israeli talks, 1992 presidential elections examined

Rahib Khalidi, adviser to the Palestinians for the Middle Eastern regional peace conference, will speak on "The Arab-Israeli Peace Prospect" at 4 p.m. Immediately following, he will present an overview in a panel discussion.

Thomas Mann, director of the Brookings Institution, will speak on "The Politics and Economics of the 1992 Presidential Elections" at 11 a.m. Wednesday, Feb. 19, in Graham Chapel.

Khalidi, who directs the Center for Middle Eastern Studies at the University of Chicago, is a recipient of the modern Middle Eastern history in the Department of Near East Languages and Civilizations.

The lecture and discussion are co-sponsored by the Assembly Series, Council of Students of Arts and Sciences (CAS) and Student Government.

In November 1989 the Brookings Institution named Mann the first recipient of the W. Averell Harriman Chair in American Governance. Mann serves as chairman of the Board of Overseers of the National Election Study, a program chair of the 1992 annual meeting of the American Political Science Association. He is a fellow of the National Academy of Political and Social Science.

The lecture is sponsored by the American Governance Series, Department of Political Science, Student Union and Washington University Press.

Both lectures and the panel discussion are free and open to the public. For more information, call 935-4620.
Theatre.
The Illustrated Theatre Touring
"Hansel and Gretel," "The Fisherman and his Wife" and "Cinderella" are the three fables slated for the matinee event at 2 p.m. Sunday, Feb. 23, in Edison Theatre as part of the "ovations! for young people" series.

This theatre company, which presents anything but "typical" children's theatre, brings the classic Grimm fairy tales to life using masks, magic and illusion. "Hansel and Gretel," "The Fisherman and his Wife" and "Cinderella" are the three fables slated for the matinee event.

Illustrated Theatre specializes in "transformation mime," a theatrical tool that incorporates a lot of imagination. Using no props and minimal costumes, the three actors on stage become everything from volcanoes to typewriters to heart beats.

The Chicago-based group was founded in 1983 and now tours nationwide. It has been invited to perform at the prestigious International Children's Festival just outside Washington, D.C., and has performed in numerous other children's theatre festivals.

"The Illustrated Theatre is more than just another touring children's theatre company," says the Arts and Entertainment Magazine. "Through the use of masks, original stories, old fables, music, clowning and improvisation, The Illustrated Theatre has quickly gained a national reputation for its original style and serious commitment to quality, fun theatre for young audiences."

Each script is written by the two artistic directors, Gale Farnsworth and Scott Smith, and by the three actors: Deborah Davis, Angela Demartia and Michael Orth. The group has adapted classic stories, such as Grimmer Fairy Tales, and created original scripts.

They recently were commissioned to create an original play for the 1990 Illinois High School Theatre Festival. "That work, "Festoons," opened the three-day festival with a roar and received a standing ovation.

Tickets for this "ovations! for young people" event are $7. For more information, call 935-6543.

Legal ethics expert to give 40th Tyrrell Williams lecture
Geoffrey C. Hazard Jr., executive director of the American Law Institute and the Sterling Professor of Law at Yale Law School, will deliver the 40th Tyrrell Williams lecture on "Doing the Right Thing." The lecture, which is free and open to the public, is scheduled for 11 a.m. Wednesday, Feb. 19, in the Courtroom, Room 216, Mudd Law Building.

Hazard is widely regarded as the nation's leading authority on legal ethics. He advises law firms on a variety of issues and appears frequently as an expert witness in litigation over ethical conflicts.

Hazard joined the law faculty at Yale in 1971. In 1986 he was appointed a Sterling Professor. The university's most prestigious chair. He also has served as the acting dean of the Yale School of Management. Prior to his appointment at Yale, Hazard was on the law faculty at the University of Chicago and the University of California in Berkeley.

The Tyrrell Williams Lecture was established in 1948 in honor of Tyrrell Williams, a faculty member at the University's School of Law from 1915 to 1946. Williams, who received his LL.B. degree from Harvard University, twice served as the School of Law's acting dean and was a charter member of the American Law Institute and an adviser on the Restatement of Criminal Procedure.

The lecture is co-sponsored by the School of Law and the Assembly Series. For more information, call 935-6621.

Historian discusses Soviet architecture
Russian architect and historian Sergey Ozhegov will discuss Soviet architecture, planning and urban development at 8 p.m. Tuesday, Feb. 18, in Steinberg Hall auditorium.

Ozhegov, who served as a private in the Red Army infantry from 1942-46, was educated at the Moscow Institute of Architecture. He has been chairman of the architecture research department since 1983. He has written and lectured widely on topics ranging from the art and architecture of Burma, Thailand and Laos, to the history of landscape architecture.

The Leningrad native traveled to the United States as a Fulbright Fellow in 1976. From 1977-82, Ozhegov served as deputy director of the United Nation's Centre for Human Settlements (HABITAT).

In addition to his scholarly work, Ozhegov has designed more than 50 buildings, including the reconstruction of the House of the Red Army in Moscow.

The free lecture is sponsored by the School of Architecture. A reception will follow in Room 120, Givens Hall. For more information, call 935-6280.

"Hansel and Gretel," "The Fisherman and his Wife" and "Cinderella" are the three fables slated for the matinee event at 2 p.m. Sunday, Feb. 23, in Edison Theatre.

Theatre company brings classic Grimm's fairy tales to life

The Illustrated Theatre Touring Company will present an afternoon of "Simply Grimms Stories" at 2 p.m. Sunday, Feb. 23, in Edison Theatre as part of the "ovations! for young people" series.

"Plenty" takes ironic look at life after World War II

Washington University's Performing Arts Department presents David Hare's "Plenty" at 8 p.m. Feb. 21, 22, 28 and 29, at 7 p.m. Feb. 23, 24, March 1 in the Drama Studio, Room 208 Mallinckrodt Center.

The play, which provides a tension-filled and ironic look at post-World War II history, follows the life of Susan Traherne (played by senior Maya Geyer). Susan is, in director Jeffrey Matthews' words, an "ardent romantic—-only at peace during war and at war with peace."

Susan's life parallels the decline of the British Empire, from the end of World War II to 1962. As a young woman, Susan was a resistance fighter in France. Surrounded by the Nazis and faced with constant danger, this was the only time she felt truly alive. A fleeting romance with a man whose name she doesn't know becomes the high point of her life. Everything that folowns seems pale and lifeless.

"Plenty" is full of irony. The title is a play on the British catch phrase "Peace and Plenty." Early in the play the characters are poor but full of dreams. By the end of the play the characters are no longer poor, but are morally bankrupt and disillusioned.

"It is one of the most difficult roles I've ever seen and Maya (Geyer) is certainly up to the task. She is on almost the whole time and the play covers 12 distinct time periods. It's like having to play Hamlet with 12 costume changes." —Jeffery Matthews

The 14-member cast comprises University students, some with substantial acting experience (such as Geyer), and some for whom this is their first time on stage. There is some nudity in the play.

Director Jeffrey Matthews says of the role of Susan, "It is one of the most difficult roles I've ever seen and Maya is certainly up to the task. She is on almost the whole time and the play covers 12 distinct time periods. It's like having to play Hamlet with 12 costume changes."

"Plenty" was originally produced in London at the National Theatre. The late Joseph Papp then produced it in New York, both on and off-Broadway. "Plenty" was then made into a movie starring Meryl Streep and Sting.

Newsweek said that the play, "has a near-epic resonance and Susan Traherne must be the most extensive woman's role in the contemporary English-language theatre ... cradles with the kind of passionate intelligence that these new woman-centered plays seem to have."

Tickets are $7 for the general public and $5 for senior citizens, students and Washington University faculty and staff.

For more information, call 935-6543.
Law school presents 'Isms' conference

Monts Dies, one of the county's leading civil rights attorneys, and the Rev. Bernice King, daughter of the late Martin Luther King Jr., were among the keynote speakers at an upcoming conference at the University of Missouri-Kansas City.

The school's third annual conference on "Isms" in legal education, "The New Conservatism: Forward to the Future," was held during the 1991 annual meetings of the Society for Applied Anthropology. The conference will look at how the shifting conservative mood in politics affects efforts to promote justice and equality in the law. The conference is open to the public. There is a $10 registration fee.

Dees, a founder and director of the Southern Poverty Law Center in Montgomery, Ala., will speak on "The Dangers of White Supremacist Institutions" at 5 p.m. Friday, Feb. 19. Dees is known for securing a $7 million lawsuit against the United Klans of America on behalf of the mother of a black man who, a jury decided, was killed by Ku Klux Klan members in Mobile, Ala. That case represented the first time a Klan organization was held liable for the violent acts of its members.

The Rev. King, a civil rights activist, is scheduled to speak on "Strive Towards Freedom" at 1:30 p.m. Saturday, Feb. 20. Twenty-eight-year-old King and her preaching style are already drawing challenges when they were appointed to the bench. The most recently appointed justice, Clarence Thomas, doesn't know what issues will arise in the coming years. While Thomas' natural political inclinations may play a role, Epstein argues that the legal arguments presented to the court may be more influential in his decision-making than any analysts suspect.

Breaking the Predictable Course

"The New Conservatism: Forward to the Future" will speak at 4 p.m. Friday, Feb. 21. The keynote speakers at an upcoming conference at the University of Missouri-Kansas City will be David Harris Sacks, Reed College; Holmes, Lady Margaret Hall, Oxford; Richard Zaller, Drexel University.

Another factor she points out is that, notes Epstein, who is the author or co-author of eight legal books, including "Conservatives in Court, Public Interest Law Groups, Constitutional Law for a Changing America and the Supreme Court Data Book," for 1993 publication. Epstein, the fact of the framers of the Constitution didn't want it to be tied to the same judges, fact, the framers of the Constitution did, says Epstein. In this great pains in creating and fact, the framers of the Constitution did, says Epstein. In this great pains in creating and fact, the framers of the Constitution did, says Epstein. In this great pains in creating and fact, the framers of the Constitution did, says Epstein. In this great pains in creating and fact, the framers of the Constitution did, says Epstein. In this great pains in creating and fact, the framers of the Constitution did, says Epstein. In this great pains in creating and fact, the framers of the Constitution did, says Epstein. 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CALENDAR

Thursday, Feb. 13
5:30-9:30 p.m. WU School of Law, Urban Law Seminar: "International Environmental Law" with Maxine I. Lipton; P72245CM at WUVMC. Jewish Hospital, 216 S. Kingshighway Blvd. For info., call 935-6543.

Friday, Feb. 14
11:30 a.m.-2 p.m. Thursday Evening Graduate Students Workshop: "Steel Lacing." 423 McDonnell Medical Sciences Bldg. For info., call 935-5787.

Saturday, Feb. 15
11 a.m.-4 p.m. Interdisciplinary Conference on Diversity: "The Scale of the Universe: Determination of the Hubble Constant." Michael Freidman Professor of Renal Diseases in Medicine and professor of pathology in the School of Medicine; Frank Morris Professor of Earth and Planetary Sciences in the School of Arts and Sciences. The "Exploring the Nematode Genome," Michelle Kisliuk, WU Dept. of Music. Room B-8 Blewett Hall. 423 McDonnell Medical Sciences Bldg. For info., call 935-5469.

LECTURES


Wednesday, Feb. 19


1:10 p.m. George Warren Brown School of Social Work Lecture. "Health Care: What Step Are We Taking?" Donal Fox, prov. of social work. 100 Brown Hall. Cost: $10 for general public; $5 for WU faculty and staff. For info., call 935-5469.

The deadline to submit items for the Feb. 29 calendar of the Record is noon Feb. 14. Because of the holiday date, place, date of event, sponsor and info., including admission cost. Date, place, event, sponsor and info. will not be printed. If available, include speaker's name and identification and telephone number. Send items to Marilyn Chell, Box 1070, or by electronic mail to p72245CM at WUVMC.

Backgrounds of the Dead Seminar. "Health Care: What Step Are We Taking?" Donal Fox, prov. of social work. 100 Brown Hall. Cost: $10 for general public; $5 for WU faculty and staff. For info., call 935-5469.

Saturday, Feb. 22

4 p.m. University College Seminar- "Alpha-Fetoprotein Update," Geoffrey C. Hazard Jr., Sterling Professor of Law, Yale University. Room B-8 Blewett Hall. For info., call 935-5469.

PERFORMANCES

February, 21

5 p.m. Performing Arts Dept. Presents: "Plenty." (Feb. 19 & 20, 8 and 9:30 p.m.; Feb. 27 & 28 at 7 and March 1 & 2 at 8 p.m.) Muriel Metz Auditorium. Room B-8 Blewett Hall.

8 p.m. "Grooms." (Feb. 21, 8 and 9:30 p.m.; March 1 & 2, 8 p.m.) Muriel Metz Auditorium. Room B-8 Blewett Hall. Cost: $7 for general public; $5 for senior citizens, students and WU faculty and staff. For info., call 935-5469.

Music, Friday, Feb. 15
4 p.m. Dept. of Music Presents a Voice Recital by California saxophonist, Stephen Neahey. Room 100 Brown Hall. Free.

EXHIBITIONS

"Washington University Art Collections." Through May 19. Gallery of Art, lower wing, Pfeiffer Hall. Exhibits open 11 a.m.-5 p.m. weekdays. Free. For more info., call 935-5469.

"Columbus of the Woods: Daniel Boone and the Kentucky Frontier." Through March 25. Gallery of Art, upper wing, Pfeiffer Hall. Exhibit hours 11 a.m.-5 p.m. weekdays; 1-5 p.m. weekends. For more info., call 935-5469.

"The Revenge of Style: Stannus Elkin, Sculptor." Through March. Special Collections, Level 5. Exhibit hours: 8:30 a.m.-5 p.m. weekdays. Free. For more info., call 935-5469.

MUSIC

Saturday, Feb. 15
4 p.m. Dept. of Music Presents a Voice Recital by California saxophonist, Stephen Neahey. Room 100 Brown Hall. Free.

FILMS

February, 13
6:30 p.m. Filmboard Feature Series Presents: "Four Weddings and a Funeral." Room 241 Compton Hall. $3. On Fit and Sat., both the 9 p.m. and midnight films can be seen for one fee.

Friday, Feb. 21
7:30 p.m. Filmboard Feature Series Presents: "Aliens." Room 241 Compton Hall. $3. On Fit and Sat., both the 9 p.m. and midnight films can be seen for one fee.

SPORTS

Tuesday, Feb. 18
7:30 p.m. Men's Basketball. WU vs. Maryville College.

Wednesday, Feb. 19
7:30 p.m. Women's Basketball. WU vs. Illinois College.

Friday, Feb. 21
7:30 p.m. Men's Basketball. WU vs. Brandeis U. Field House. Free.

MISCELLANEOUS

Tuesday, Feb. 17

Saturday, Feb. 15
9 a.m.-noon. University College Career Awareness Day. "Finding Your Career," Teris Kreist-Lovine, career planning consultant. (Workshop continues Saturdays through Feb. 26, same time.) Room 200 Jan Hall. Cost: $5 for WU faculty and staff. Special Collections, Level 5. Exhibit hours: 8:30 a.m.-5 p.m. weekdays. Free. For more info., call 935-5469.

Saturday, Feb. 15
8:30 a.m.-4 p.m. Center for the Study of Democratic Institutions, "The Future of Democracy." (Feb. 17, 8:30 a.m.-4 p.m.) Room. Room 241 Compton Hall. Cost: $100 for WU faculty and staff. Special Collections, Level 5. Exhibit hours: 8:30 a.m.-5 p.m. weekdays. Free. For more info., call 935-5469.

Music, Friday, Feb. 14
4 p.m. Dept. of Music Presents a Voice Recital by California saxophonist, Stephen Neahey. Room 100 Brown Hall. Free.

Films

Friday, Feb. 13
1:10 p.m. Gentlemen's Club. "Peerless." (Feb. 12, 8, 9 and 10 p.m.; Feb. 27 & 28, same time.) STIN Labs, 1144 Hampton Ave. Cost: $3 for WU faculty and staff. For public pricing, registrations or more info., call 935-5980.