

University of Arkansas

NEWS

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Killenbeck Returns to U.S. Supreme Court to Deliver Silverman Lecture

Oct. 03, 2019

FAYETTEVILLE, Ark. – Mark R. Killenbeck, the Wylie H. Davis Distinguished Professor of Law, will return to the United States Supreme Court to deliver the first lecture in the 2019 Leon Silverman Lecture Series. The general theme of this year's series is Dissenting at the Supreme Court. Killenbeck's lecture, titled "The Dissent as Concurrence – From Fletcher to Whitney," will be given at 6 p.m. Monday, Oct. 7, in the Supreme Court chamber.

"Dissenting opinions have played an important role in the development of the law," Killenbeck said. "While Chief Justice John Marshall preferred that the Court speak with a single, unified voice, dissents began to emerge when Justice William Johnson joined the Court in 1804."

Johnson would earn the reputation as a frequent and articulate dissenting voice on the Court. "That said, he was also sensitive to the role of the Court and couched his separate opinion in *Fletcher v. Peck* (1810) as a concurrence, even as he voiced basis disagreements with Marshall's opinion for the Court."

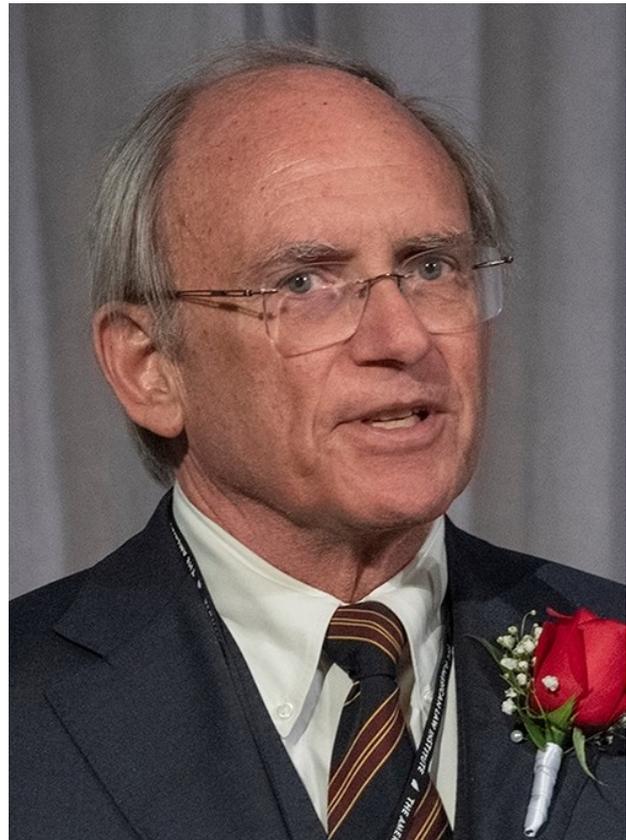


Photo Submitted

A similar *Mark Killenbeck*

phenomenon was evident in *Whitney v. California* (1927), within which Justice Louis Brandeis, joined by Justice Oliver Wendell Holmes, issued a concurrence that can only be read as a systematic and total repudiation of the majority holding that sustained Charlotte Anita Whitney's conviction for her political activities under the California Criminal Syndicalism.

"Both opinions reflect an important mix of substantive disagreement and strategic approval of the result reached by the majority," Killenbeck said. "By agreeing, and yet disagreeing, Johnson and Brandeis pursued a subtle combination of doctrinal diversion and institutional fealty."

According to Killenbeck, their opinions provide important insights into the role dissent has played and will continue to play in the life of the Court and the development of the law.

SUPREME COURT HISTORICAL SOCIETY



PAMELA BRANDWEIN is a professor of political science at the University of Michigan. She is the author of *Reinventing Constitutionalism: The Supreme Court and the Problem of Historical Truth* (Duke University Press, 2002) and *Building the Federal Judiciary of Reconstruction* (Cambridge University Press, 2007). Currently, she is working on a book that reexamines the relationship between antislavery politics and capitalist development in the United States.

CHARLES J. COOPER is a founding member and chairman of Cooper & Lyell, LLC. He served as law clerk to Judge Paul Ross of the Fifth (now Eleventh) Circuit Court of Appeals, and to Justice (later Chief Justice) William H. Rehnquist. Mr. Cooper joined the Civil Rights Division of the U.S. Department of Justice in 1981. In 1984 President Reagan appointed Mr. Cooper to the position of Assistant Attorney General for the Office of Legal Counsel. Mr. Cooper is a member of the American Law Institute and the American Academy of Appellate Lawyers, and serves on the board of trustees of the Supreme Court Historical Society.

JUSTIN DRIVER is a professor of law at Yale Law School. He is the author of *The Unwritten Constitution: Public Education, the Supreme Court, and the Battle for the American Mind*. A member of the American Law Institute, and of the American Constitution Society's Academic Advisory Board, Professor Driver was one of the Supreme Court Review's Selected Law Judge Merrick B. Garland of the District of Columbia Circuit Court of Appeals and for Justice Stephen Breyer and Justice Sandra Day O'Connor of the Supreme Court of the United States.

MARK KILLENBECK is the Wade H. Dowd Distinguished Professor of Law at the University of Arkansas School of Law. He is the author of *M'Culloch v. Maryland: Securing a Nation*, the first book-length treatment of the landmark case. He has co-authored lectures on a number of topics, including *The Oxford Guide to United States Supreme Court Decisions*, the *Encyclopedia of the Supreme Court of the United States*, and *Social Consciousness in Legal Decision Making: Psychological Perspectives*. Professor Killenbeck is an elected member of the American Law Institute.

Tickets for the series are \$125. Individual lectures are \$35 each. Advance reservations are required; seating is limited. The Society confirms requests for reservations in writing. To reserve tickets online, call 202.543.0400, or visit supremecourthistory.org/tickets.

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This will be Killenbeck's third appearance at the Court. In May 2012, he delivered a Silverman Lecture on the history of the Commerce Clause. In October 2014, he provided the expert introduction for the Frank C. Jones Reenactment of the oral argument in *M'Culloch v. Maryland* (2019).

Killenbeck earned an A.B. in English literature from Boston College and a J.D. and Ph.D. from the University of Nebraska. He has been a member of the University of Arkansas faculty since 1988 and teaches Constitutional Law, the First Amendment, American Constitutional History and a Supreme Court Seminar.

He is the author of numerous books, chapters, articles, and papers, with a special focus on federalism, American constitutional history, and affirmative action and diversity.

His articles have appeared in major national law journals, including the *Supreme Court Review*, *Journal of Supreme Court History*, *California Law Review*, *Michigan Law Review*, *Vanderbilt Law Review* and *Hastings Law Journal*.

His book, "*M'Culloch v. Maryland: Securing a Nation*" (2006) was the first book-length treatment of that important case. His

assessment of the Supreme Court's 2003 affirmative action decisions, "Affirmative Action and Diversity: The Beginning of the End? Or the End of the Beginning?," was published by the Educational Testing Service in their Policy Information Perspective series.

He has also contributed many chapters to works, including "The Oxford Guide to United States Supreme Court Decisions," the "Encyclopedia of the Supreme Court of the United States" and "Social Consciousness in Legal Decision Making: Psychological Perspectives."

The Leon Silverman Lecture Series, sponsored by the Supreme Court Historical Society, features lectures about unique and interesting events in the history of the Supreme Court. Associate Justice Stephen Breyer will serve as host and introduce Killenbeck. A reception will follow.

The lecture will be open to the public, with a nominal registration fee. Advanced registration is required and each person attending must have a confirmed registration at least 24 hours prior to the event. Further information may be found at the [Supreme Court's Silverman Lecture Series page](#).

C-SPAN will cover the lecture to be aired at a time and date to be determined.

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