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NEWS RELEASE

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Court of Appeals Mourns Passing of Circuit Judge John T. Noonan, Jr.

SAN FRANCISCO – Judges of the United States Court of Appeals for the Ninth Circuit are mourning the passing of Senior Judge John T. Noonan, Jr., a member of the court for more than three decades. Judge Noonan, who had his chambers in San Francisco and was a longtime Berkeley resident, died Monday (April 17, 2017) with his loving wife and family at his bedside. He was 90.

“Judge Noonan was a distinguished jurist and an eminent scholar with a particular focus on the historical development of moral concepts. He was well known and highly respected by the bench and bar and had many admirers in academia,” said Ninth Circuit Chief Judge Sidney R. Thomas.

Appointed by President Reagan, Judge Noonan came onto the Ninth Circuit Court of Appeals in 1985. He served as an active judge for 11 years, assuming senior status in 1996. As a senior judge, he continued to serve the court for many years, hearing cases and authoring opinions, the most recent of which was published in December.

Among his many noteworthy cases was Compassion in Dying v. State of Washington, a 1995 appeal arising out of the first federal litigation related to physician-assisted suicide by terminally ill patients. Judge Noonan authored the opinion in the 2-1 decision, reversing a lower court finding that a state law prohibiting assisted suicide was unconstitutional. Although made moot when the case went en banc, the decision was ultimately upheld by a unanimous Supreme Court. Other important cases included:

- Hutchinson v. Grant, 796 F.2d 288 (9th Cir. 1986), in which Judge Noonan authored an opinion reversing a grant of summary judgment in favor of a police officer, who had stopped and detained an African American physician while he was out for an evening walk. The physician alleged that the officer acted with racial prejudice in concluding that he was a suspect in an earlier burglary, and the court held that he was entitled to have his claims heard before a jury.
- Lazo-Majano v. INS, 813 F.2d 1432 (9th Cir. 1987), in which Judge Noonan authored a seminal opinion articulating the doctrine of imputed political opinion in asylum law. The appellant

had been raped and beaten by a member of the Salvadoran military after her husband left El Salvador for political reasons. The court held that her political opinion must be evaluated from the perspective of the persecutor, who had imputed a political opinion to her.

- Harris v. Vasquez, 901 F.2d 724 (9th Cir. 1990), in which Judge Noonan, sitting alone, stayed the execution of the defendant, Robert Alton Harris. In so doing, Judge Noonan found that Harris was entitled to an evidentiary hearing to discern whether he received competent psychiatric assistance during the penalty phase of his capital trial. Judge Noonan identified the question before him not as “the rightness or wrongness of the death penalty,” but as “whether the petitioner’s rights under the Constitution of the United States have been violated.”
- Mockaitis v. Harclerod, 104 F.3d 1522 (9th Cir. 1997), in which Judge Noonan held that a district attorney’s taping of a priest’s encounter with a murder suspect, while the suspect was in county jail, violated the Religious Freedom Restoration Act and the Fourth Amendment.
- United States v. Kyllo, 190 F.3d 1041 (9th Cir. 1999), in which Judge Noonan dissented from the majority’s holding that police officers did not violate the Fourth Amendment when they used a thermal imaging device to monitor the defendant’s home without a warrant. The Supreme Court ultimately reversed, agreeing with Judge Noonan’s conclusion that the use of sense-enhancing technology constituted a “search” within the meaning of the Fourth Amendment; and
- United States v. Black, 733 F.3d 294 (9th Cir. 2013), in which Judge Noonan dissented, concluding that government agents overstepped their authority when they solicited persons engaged in innocent activity to commit robberies of drug stash houses. Judge Noonan reasoned that the government not only tempted persons to commit fictitious crimes as part of a “reverse sting operation,” but also controlled and expanded their sentences.

Judge Noonan was particularly cognizant of the plight of immigrants, including those seeking asylum after being persecuted in their native countries for political or religious reasons. On one occasion, he criticized immigration judges, suggesting their procedures resulted in denials of asylum without possibility of appeal to a higher court.

With 31 years on the bench, Judge Noonan had ranked 12th in seniority among the court’s 44 active and senior judges. During his long tenure, he heard oral arguments in 3,459 cases and authored 1,080 opinions, dissents and memoranda decisions. Former law clerks have said he wrote all of his opinions in longhand on yellow legal pads.

A prolific author and sought after lecturer, Judge Noonan was equally celebrated in the halls of academia. His major publications include 13 books, most notably “Bribes,” a magisterial historical study of bribery published in 1984; “The Lustre of Our Country: The American Experience of Religious Freedom,” a 1998 tome tracing the origins of religious freedom back to the Founders; and “Contraception: A History of Its Treatment by the Catholic Theologians and Canonists.” Published in 1966, “Contraception” is said to have influenced Pope Paul VI to create a commission to study the issue, to which Judge Noonan served as an advisor.

Other works include “Narrowing the Nation’s Power: The Supreme Court Sides with the States,” published in 2002, which was highly critical of high court rulings that expanded states’ rights, and “The Responsible Judge: Readings in Judicial Ethics,” published in 1993. His legal philosophy is perhaps best expressed in his classic “Persons and Masks of the Law,” published in 1975. He has contributed numerous essays, articles and reviews to magazines and journals, including *Commonweal*, the *National Review* and the *New York Times Book Review*.

A Boston native, Judge Noonan attended Harvard College, earning his B.A. in 1947. He continued his education at St. John’s College, Cambridge, where he studied English literature, followed by the Catholic University of America, where he received an M.A. in 1949 and Ph.D. in 1951. He returned to Harvard Law School, earning his LL.B. in 1954.

Judge Noonan began his professional career as a special assistant to Robert Cutler, director of President Eisenhower’s National Security Council from 1954 to 1955. He was in private practice in Boston from 1955 to 1960, when he moved to academia. He was professor at the Notre Dame Law School, from 1961 to 1966, and at the University of California, Berkeley, Boalt Hall School of Law from 1967 until his judicial appointment. After coming onto the bench, he continued to teach at Boalt Hall for many years as a professor emeritus.

Judge Noonan is fondly remembered by his colleagues:

“To those of you who didn’t know him well, John Noonan was a wonderful man. He took his religion to heart and turned it to the pursuit of social justice. We were lucky to have had him with us,” Judge Stephen Reinhardt said.

“Judge Noonan was a great scholar, a loyal colleague and a good friend. Indeed, he was a Renaissance man who contributed to his country, his church, the legal academy and the rule of law,” said Senior Judge Diarmuid F. O’Scainnlain. “He was a giant on this court and I shall miss him deeply.”

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“I will dearly miss John Noonan as an exceptional colleague and true friend. His great intellect and legal scholarship is well known; he was also courageous, warm and a man of great goodness,” Judge Kim McLane Wardlaw said.

Judge Noonan was elected to the American Academy of Arts and Sciences in 1976. He held fellowships at the Institute for Advanced Study in Princeton, the Woodrow Wilson Center in Washington, D.C., and the Center for Advanced Studies in the Behavioral Sciences at Stanford. In 1991, Judge Noonan was elected to the Board of Overseers of Harvard University where he served a six-year term. He also served on the governing board of the Graduate Theological Union at Berkeley and the University of San Francisco.

Honored with numerous awards, Judge Noonan was the 1984 recipient of Notre Dame’s Laetare Medal, given annually to a Catholic “whose genius has ennobled the arts and sciences, illustrated the ideals of the church and enriched the heritage of humanity.”

Judge Noonan is survived by his wife of 49 years, Mary Lee (nee Bennett); their three children, John K. Noonan (Dixie), Rebecca Murray (Stuart) and Susanna Howard (Jim); and seven grandchildren.

A Mass of the Resurrection will be held at St. Albert’s Priory, Birch Court, in Oakland on Saturday, April 22, 2017, at 10 a.m.

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