

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Special Court Session in Memory of

THE HONORABLE

JOHN T. NOONAN, JR.



*Monday, September 18, 2017,
at four o'clock*

Courtroom One
JAMES R. BROWNING UNITED STATES COURTHOUSE
95 Seventh Street
San Francisco, California

OPENING of the COURT

Arden Wong

Calendar Clerk

PRESIDING and OPENING REMARKS

The Honorable Sidney R. Thomas

Chief Judge, United States Court of Appeals for the Ninth Circuit

The Honorable Anthony M. Kennedy

Associate Justice of the United States Supreme Court

REMARKS

The Honorable Kim McLane Wardlaw

Circuit Judge, United States Court of Appeals for the Ninth Circuit

Bernard J. Cassidy

General Counsel and Secretary, Juno Therapeutics

Law Clerk to Judge Noonan, 1988 - 1989

Richard W. Painter

S. Walter Richey Professor of Corporate Law,

University of Minnesota Twin Cities

Chief White House ethics lawyer, 2005 - 2007

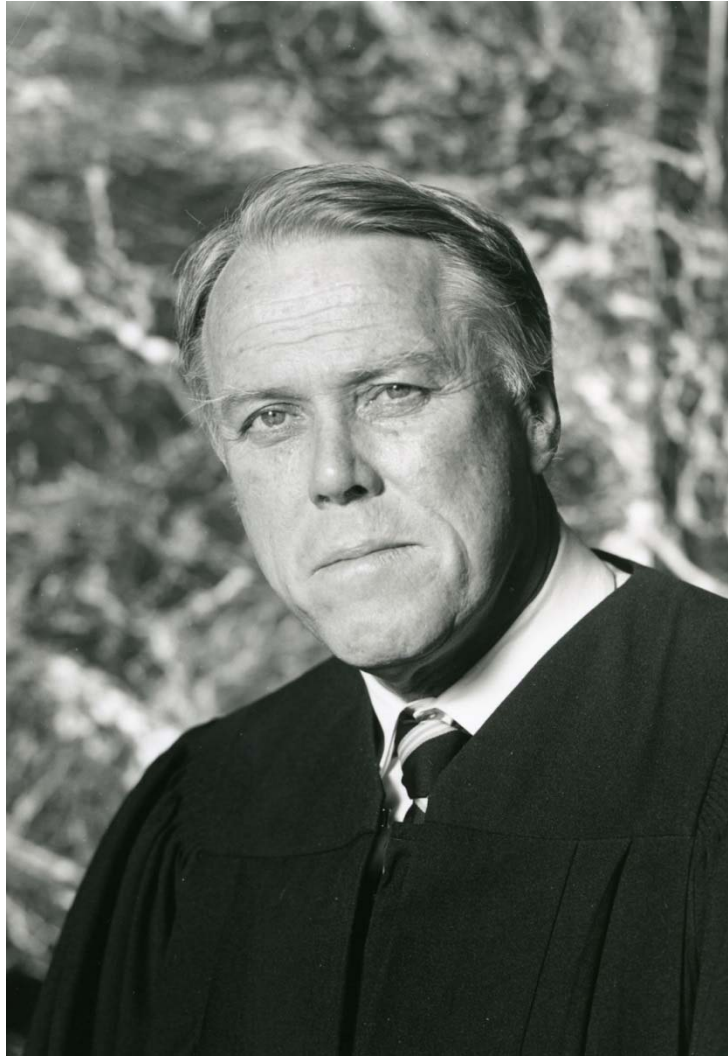
Law Clerk to Judge Noonan, 1987 - 1988

The Honorable Stephen Reinhardt

Circuit Judge, United States Court of Appeals for the Ninth Circuit

ADJOURNMENT

Reception immediately following in the Great Hall



JUDGE JOHN THOMAS NOONAN, JR.

1926 – 2017

The just man must also be kind

Wisdom: 12, v. 19

Judge Noonan was born in Boston on October 24, 1926, the first of three children in the family of John T. Noonan, a graduate of Harvard College and Harvard Law School, and the former Marie Frances Shea, a graduate of Trinity College.

In January of his senior year at Rivers Country Day School, Judge Noonan entered an accelerated wartime program at Harvard, graduating summa cum laude at the age of nineteen in 1946. An English major, he wrote his thesis on Dr. Johnson under the direction of Walter Jackson Bate. Judge Noonan later described how Bate and several other key professors had embodied for him three guiding principles: “Depth of knowledge of their subject, an impatience with conventional boundaries, and absolute independence of judgment.” It was a challenging standard that he would pursue throughout his life.

After Harvard, Judge Noonan continued his study of English literature at St. John’s College, Cambridge, as well as joining friends for travel in postwar Europe and relishing his assignments as a reporter for the university’s Varsity magazine. Among the writers whom he managed to interview were T.S. Eliot, George Santayana and Evelyn Waugh. It was an exhilarating year, the climax within a period of catching fire intellectually.

Judge Noonan then embarked on a course of study for a Ph.D. in philosophy at Catholic University, receiving his degree in 1951 with a thesis on “The Scholastic Analysis of Usury.” Having wrestled with the intricacies of canon law and the development of the Catholic Church’s doctrine on the payment of interest on a loan, he then entered Harvard Law School for a more traditional legal education. After serving on the Law Review as its book editor, he graduated in 1954.

His years of academic preparation were followed by three very practical experiences. During the Eisenhower administration, Judge

Noonan served on the staff of the National Security Council. Then returning to Boston, he spent five years as an associate in corporate law at his father's law firm, Herrick, Smith, Donald, Farley and Ketchum. During this period, he took on a third challenge, running for office and being elected to the Brookline Redevelopment Authority, defeating among others a young Michael Dukakis. In the trenches, he received a vigorous education in the challenges of corruption in local politics and in the machinery of the federal government.

In 1961, Judge Noonan was persuaded by Dean Joseph O'Meara to leave private practice to teach at the University of Notre Dame Law School and to edit their journal, the Natural Law Forum, now known as the American Journal of Jurisprudence. Moving further west in 1967, he joined the faculty at Boalt Hall, the University of California's School of Law at Berkeley where he continued as a professor for almost twenty years. In 1985, he was nominated to the Court of Appeals for the Ninth Circuit by President Ronald Reagan. In 1996, Judge Noonan assumed senior status but continued to hear cases for the next twenty years.

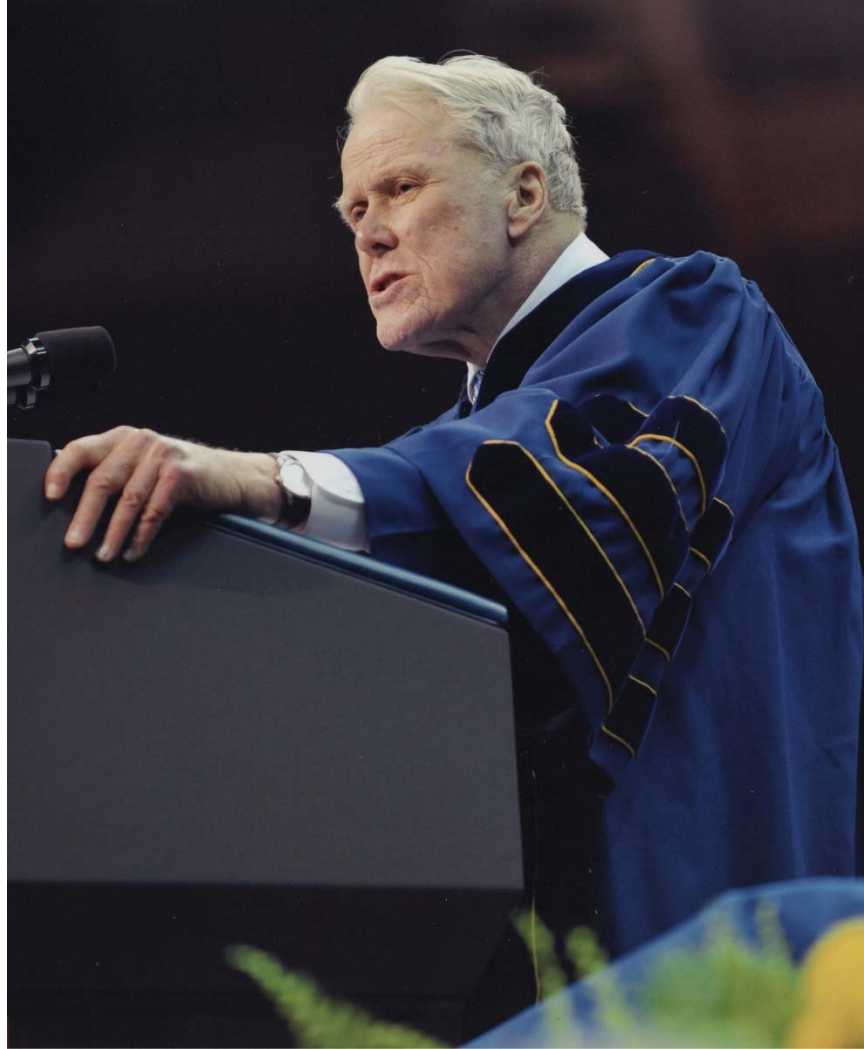
Within this framework, Judge Noonan's productivity was extraordinary. Writing with energy and grace, he completed sixteen books together with seven casebooks for classroom use and several edited volumes, along with a steady stream of articles, book reviews and opinions. The history of ideas, particularly the development of moral concepts, dominated his scholarship. Initially the focus was on the development of doctrines within the Catholic Church, specifically his books on usury, contraception, the dissolution of marriage and abortion. His books on slavery, bribery, professional responsibility and religious freedom ranged widely over a broad cultural canvas.

Many of these projects were facilitated by fellowships such as two Guggenheim awards, and sojourns at the Center for the Behavioral Sciences, the National Humanities Center, the Institute for Advanced Study, Princeton, and the Library of Congress. Stimulation was provided by visiting professorships that Judge Noonan managed to schedule around his regular teaching and court responsibilities. Among these were courses at Harvard, Stanford, Notre Dame, Boston College, Southern Methodist and Emory. Lectures, often related to

his scholarly research, took him back and forth across the country. He particularly appreciated the invitation from Harvard to give the Oliver Wendell Holmes, Jr. Lectures which were the genesis of *Persons and Masks of the Law*. Judge Noonan also served on multiple boards and commissions. Of special note are his service on the Papal Commission on Problems of the Family during Vatican II and his six year term on the Harvard Board of Overseers.

Near the end of his life, Judge Noonan started a memoir which he entitled “Family, Friends and Other Persons Met Upon the Way: A Cornucopia.” Life was a pilgrim’s path, a search from which he would never “retire,” a voyage in which he never lost sight of the centrality of the other person. Many of Judge Noonan’s most important cases can be understood in terms of his concern for the person in relation to the rule of law: *Lazo-Majano v. INS* (1987), *Harris v. Vasquez* (1990), *Compassion in Dying v. State of Washington* (1995) and *United States v. Black* (2013). Among the projects that Judge Noonan was never able to complete was a study of *Paul A. Weems v. The United States* (1909) that focused on the definition of “cruel and unusual” punishment and the question of proportionality in sentencing. For Judge Noonan the life of the law should never stop trying to navigate the tension between respect for the rules and respect for the person.

Judge Noonan died on Easter Monday, April 17, 2017. He is survived by his wife of 49 years, the former Mary Lee Bennett, their three children, John (Dixie), Rebecca Murray (Stuart) and Susanna Howard (James), seven grandchildren and his sister, Marie Sabin. A devoted husband, father and grandfather, he described his family as the foundation of his life.



Judge Noonan, former Laetare Award recipient, delivering the
Laetare Medalist Remarks, Commencement Day,
Notre Dame University, May 17, 2009

Books Written by Judge Noonan

The Scholastic Analysis of Usury (Harvard University Press) 1957

Contraception: A History of Its Treatment by the Catholic Theologians and Canonists (Belknap Press of Harvard University Press) 1965; translated into French, Spanish and German; paperback edition, New American Library, 1967. New paperback edition with addition, (Belknap Press, Harvard University Press) 1986

Power to Dissolve: Lawyers and Marriages in the Courts of the Roman Curia (Belknap Press of Harvard University Press) 1970

Persons and Masks of the Law (Farrar, Straus & Giroux) 1976; paperback edition, 1977; new edition (University of California Press) 2002

The Antelope (University of California Press) 1977; paperback edition, 1989

A Private Choice: Abortion in America in the Seventies (The Free Press/Macmillan) 1979; paperback edition (Life Cycle Books) 1981

Bribes (Macmillan) 1984. Paperback edition, University of California Press, 1987, Italian translation as *Ungere Le Ruote* (Vol. I) and *Mani Sporche* (Vol. II), 1985; Portuguese translation as *Subornos* (1989)

The Believer and the Powers that Are: Cases, History, and Other Data Bearing on the Relation of Religion and Government (Macmillan) 1987; 2nd ed. (The Foundation Press) 2001

The Responsible Judge: Readings in Judicial Ethics, co-edited with Kenneth Winston (Praeger) 1993

Professional and Personal Responsibilities of the Lawyer co-authored with Richard W. Painter (The Foundation Press) 1997

Canons and Canonists in Context (Keip Verlag; Biblioteca Eruditorum) 1997

The Lustre of Our Country. The American Experience of Religious Liberty (University of California Press) 1998; paperback edition, 1999

Religious Freedom: History, Cases, and Other Materials on the Interaction of Religion and Government, co-authored with Edward McGlynn Gaffney, Jr. (University Casebook Series) 2001

Narrowing The Nation's Power. The Supreme Court Sides With The States (University of California Press) 2002

A Church That Can And Cannot Change (University of Notre Dame Press) 2005

Shakespeare's Spiritual Sonnets, (Createspace) 2011

JUDGES OF THE UNITED STATES
COURT OF APPEALS
FOR THE NINTH CIRCUIT

Sidney R. Thomas, *Chief Judge*

Alfred T. Goodwin	William A. Fletcher
J. Clifford Wallace	Raymond C. Fisher
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