# James Ellsworth Noland

Born in LaGrange, Missouri, on April 22, 1920, James Ellsworth Noland came into the world as a member of a large, politically active, Democratic family. LaGrange was a town of about 1,000 people located on the Mississippi River north of Hannibal, Missouri. His father, one of ten children, grew up in Cape Girardeau, Missouri, graduated from St. Louis University Dental School, but, rather than practice dentistry, engaged in farming with his brothers. When the farm depression hit in the 1920s, the Noland family, including James and his two sisters, moved to Roachdale, Indiana, in 1923, where his father became the only dentist in town. Three years later, in 1926, the family moved again to Spencer, Indiana, where they resided until 1934. Judge Noland grew up there during the depths of the Depression, delivering newspapers and remembering for years thereafter the difficulty he encountered in collecting the twelve-cent fees from people who could not afford to pay even that meager amount. Unable to make a living practicing dentistry, his father took a job with the Federal Land Bank appraising farms. The family made occasional visits to see his father's clan in southeast Missouri, where the poverty of the area during the Depression made a huge impression on young James, especially the widespread lack of electricity and the dependency on outdoor pumps for water. When one of his uncles in Cape Girardeau sought the Democratic nomination for sheriff, Judge Noland and his father helped the cause by tacking up signs on telephone poles. Everyone in the family was a Democrat, which loyalty was fairly typical in Missouri at the time. His father was also bitten by the political bug and, in 1930, made an unsuccessful bid for the Democratic nomination for Indiana Secretary of State.

In 1934, the family packed up again and this time moved to Bloomington, Indiana, where his father resumed the practice of dentistry, and Judge Noland entered his freshman year in high school. The principal reason for the move was to enable Jim and his sisters to attend college. Judge Noland's leadership skills were recognized when he was elected president of his senior class at Bloomington High School and later, president of the freshman honorary society, Phi Beta Sigma, at Indiana University. Having entered the university in 1938, he landed a job in the campus bookstore and later managed the men's lounge in the student union. As part of a three-year pre-law curriculum, Judge Noland majored in government with a minor in journalism. He began law school in 1941. The Japanese attack on Pearl Harbor occurred on December 7, 1941, requiring all the young male students to examine their military options. Judge Noland learned of a reserve officers training program offered by the Harvard Graduate Business School where, upon completion of a master's program in business administration over an accelerated sixteen-month period, the graduates would qualify to become officers in the Quartermaster Corps. With no financial resources for such a program, Judge Noland applied for a scholarship and was accepted at Harvard, about which he admitted years later, "I never had any idea of going to Harvard Business School up to that very minute."[1] Supporting himself through multiple part-time jobs, Judge Noland completed the course as part of the last class to receive a full master's degree before entering the service in World War II, while also mastering the requirements to be a quartermaster.

Years later, Judge Noland credited his experiences at the Harvard Business School as having had "a very strong impact upon my thinking and upon my conviction that the free enterprise system should be given as much leeway as possible to permit business and industry to

[1] Honorable James E. Noland, interview by William C. Potter II, March 27, 1990, Indianapolis, IN, transcript, Historical Society of the U.S. District Court for the Southern District of Indiana, Indianapolis, IN.

continue to operate without being trammeled with excessive regulation and either excessive congressional or judicial regulation." While acknowledging that he might not always support every action undertaken by a business, he viewed the free enterprise system as "the basis for the strength and the greatness of this country" and believed that "corporate and business responsibility transcends the evils that are oftentimes ascribed to them."[2]

Upon graduation from Harvard in May 1943, Judge Noland discovered that the Quartermaster Corps already had too many officers. Thus, he was placed in the enlisted reserve and inducted at Fort Devens, Massachusetts, while awaiting orders to attend the Army Officer Candidate School. However, after learning that the Army Transportation Corps needed additional officer personnel, he and some and his friends, "being young and brash and having been exposed to Harvard, being sure that we knew more than anybody else in the world, why, we just sat down and composed a telegram," thereby applying to transfer to the Army Transportation Corps.[3] Within two days, he and his buddies were on their way to New Orleans to attend Officer Candidate School for the Transportation Corps, from which he graduated four months later, and was assigned to the New Orleans Port of Embarkation where he stayed for about two years, attaining the rank of captain. At the end of the war, he commanded a small troop transport named *Cuba,* tasked with ferrying returning troops around the Caribbean. His tour of duty ended in May of 1946.

Before leaving the Army in the spring of 1946, Judge Noland, at his father's suggestion, began a campaign for the Democratic nomination to Congress from his home district in Indiana. He narrowly won the primary, beating a popular high school coach from Vincennes, but was

[2] Ibid.
[3] Ibid.

defeated in the general election by incumbent congressman, Gerald Landis. The judge next decided to return to pursue his original goal of getting a law degree. Indiana University had awarded him his A.B. degree in 1942 *in absentia*, after accepting some of his academic credits from Harvard, but he still had two and a half years of law school to complete for a degree. Taking classes on an accelerated schedule, the judge received his law degree in August 1948. In February of that year, he married Helen Louise Warvel of Indianapolis, having first met her during his 1946 campaign when she was employed as executive secretary of the Young Democrats of Indiana. After finishing law school, Judge Noland decided to try again to win the Democratic primary for Congress. This time he was successful in both the primary and the general election, in part due to the farm vote. Judge Noland was elected in November 1948 to the U.S. House of Representatives as one of its youngest members. Sworn into the Indiana bar on December 7, 1948, he went, as he put it, "from law school direct to the United States Congress."[4]

As a new congressman, Judge Noland maneuvered successfully for a spot on the Veterans Affairs Committee. In his first speech to Congress, he spoke out against blanket pensions for veterans of World War I and II, believing that "with veterans and their families soon to make up 40 per cent of the population, the problem of the old veteran is the problem of the old citizen. It is our duty to think of the entire nation."[5] His position, however, reflected a minority view of the Congress at the time. During his term in Congress, Judge Noland and his wife traveled to Germany where he witnessed firsthand the hostility felt by ordinary Germans fueled in part by Communist propaganda. Having seen the complete devastation of Germany's public buildings as a result of the bombings during World War II, he expressed his support for the

[4] Ibid.
[5] *Indianapolis Star*, March 23, 1949.

Marshall Plan and a clear optimism for the future, saying, "It is my belief that with such a great destruction as a daily reminder, the German people will abhor war in the future as strongly as we in this country."[6]

Two years later, Judge Noland's bid for re-election to a second term in Congress proved unsuccessful. He and his family, now including three small children, made the decision to move to Indianapolis, where he entered the practice of law while remaining active in Democratic politics. During the second administration of Governor Henry F. Schricker, between 1949 and 1953, Judge Noland served as a deputy attorney general assigned to counsel the State Board of Tax Commissioners. In 1953, he served as counsel on the staff of the Legislative Reference Bureau, which was responsible for drafting bills for introduction by members of the General Assembly. From 1956 to 1957, under Indianapolis Mayor Philip L. Bayt, Judge Noland served as first assistant city attorney and counsel for the Board of Public Works and Off-Street Parking Commission. In 1957, he left his government positions to take up the full-time practice of law as a partner in the law firm of Hilgedag and Noland. His legal practice took him frequently to federal court. During the administrations of Governors Matthew E. Welsh (1961-65) and Roger D. Branigin (1965-69), Judge Noland served both as a member of the State Election Board and as secretary of the Indiana Democratic State Central Committee.

In 1966, Judge Noland was appointed to serve as Special Master to oversee land condemnation proceedings relating to the federal government's condemnation of private property for inclusion in the Monroe Reservoir project by the U.S. Army Corps of engineers. Shortly thereafter, Indiana's two U.S. Senators, Birch E. Bayh, Jr., and R. Vance Hartke, jointly recommended him to fill a newly-authorized fourth judgeship created by legislation to expand

[6] *Indianapolis Times*, December 11, 1949.

the United States District Court for the Southern District of Indiana. President Lyndon B. Johnson nominated James Noland to the federal bench on October 6, 1966, and, following his confirmation by the Senate, he was sworn in on November 11, 1966. At his swearing-in ceremony, in response to the glowing remarks of those participating in the occasion, Judge Noland told those gathered, "I am extremely honored. I read an article once that said any judge who believed all the nice things said about him is indeed a lost soul…I don't intend to get lost."[7]

In 1968, Judge Noland was assigned a case arising from a violent strike by members of the Upholsterer's International Union against Hillenbrand Industries located in Batesville, Indiana. Beginning in June of that year, the town was in turmoil, with beatings of non-striking workers and dynamite explosions at or near personal residences a seemingly common occurrence. The home of John W. Hillenbrand, company president, was the site of one such explosion. Judge Noland enjoined the union and its members from "doing or encouraging others to do" a variety of violent-prone actions targeting persons and property, though he was careful not to restrict the "lawful exercise of free speech and the right to picket."[8] The judge also ordered the United States Marshals to occupy Batesville as observers to ensure that his injunction against strike violence was not violated.

In another of Judge Noland's early significant cases, in *Banks v. Muncie Community Schools* in 1969, an injunction was sought seeking to prohibit several actions thought to be inimical to the civil rights of students: the construction of a third high school in Muncie, Indiana, which allegedly would have disrupted the racial balance in the two existing schools; the busing of elementary school students to schools not nearest their homes; and the use of Confederate

[7] *Indianapolis Star*, November 12, 1966.
[8] *Indianapolis Star*, August 20, 1968.

symbols or other "racially or politically inflammable" symbols at Muncie Southside High School. In denying the injunction, Judge Noland found a lack of evidence of racial motivation by the school board in selecting a site for the new high school, holding, "The Plaintiffs have not established by the greater weight of the evidence that there now is or will be racial discrimination in the high school system." He did note, however, that future events might justify future judicial intervention. Judge Noland also found no evidence to support a racially discriminatory motive for the student busing system. When Southside High School opened in 1962, the school board had permitted the students to choose the symbols to represent their school, and a theme was selected based on the "old South," with the school flag resembling the flag of the Confederacy, the athletic teams called the "Rebels," the glee club the "Southern Aires," and the homecoming queen the "Southern Belle." The plaintiffs claimed these symbols were offensive to black students and discouraged their participation in school activities. While Judge Noland found that plaintiffs had failed to establish any racial or political discrimination behind the school board's "consistently applied policy," he did admonish the board about the advisability of maintaining offensive symbols:

> This Court would recommend to the school authorities that they exercise their discretion to bring about the elimination of school symbols which are offensive to a racial minority. I think it is axiomatic that many symbols are inappropriate for use in public institutions in this country. For instance, some such symbols are the Nazi Swastika, the hammer and sickle, the hooded white-sheet of the Ku Klux Klan, the clenched fist, etc...Tyranny by the majority is as onerous as tyranny by a select minority…An exercise in democracy which results in offense to a sizeable number of participants should be seriously reconsidered by the student body.[9]

The Seventh Circuit Court of Appeals agreed with Judge Noland, affirming his decision.

[9] *Banks v. Muncie Community Schools*, 433 F.2d 292 (7th Cir. 1970), quoting Judge Noland's unpublished decision.

Judge Noland participated in two significant decisions affecting Indiana's legislative redistricting, the first in 1969 after he had been on the bench for less than three years. In that case, *Chavis v. Whitcomb*, the rights of African-American voters in Marion County's inner city district to have adequate representation were at issue.[10] Plaintiffs argued that the Senate and House multi-member district which elected eight state senators and fifteen representatives in Marion County violated the Equal Protection Clause by diluting voting strength for black and poor residents. Joined by Judges Otto Kerner of the Seventh Circuit Court of Appeals and William E. Steckler of the District Court, Judge Noland, ruled in favor of plaintiffs, concluding not only that the multi-member districting provisions of the current legislative apportionment statutes as related to Marion County were void as unconstitutional, but also that the entire state of Indiana was unconstitutionally apportioned due to population inequalities between and among the various districts. The panel ordered therefore single-member redistricting statewide for both chambers of the General Assembly. Two years later, after Indiana's 1971 General Assembly had redistricted the state into single-member districts, the United States Supreme Court ruled that multimember districts were in fact constitutional, thus, overturning the 1969 decision of the three-judge panel.[11] The Supreme Court held that there was insufficient reason to find that the plaintiffs lacked effective representational choice and that a uniform districting scheme was not constitutionally required, although it affirmed the panel's decision to require a new state-wide reapportionment based on the evidence of significant population disparities. Despite the Supreme Court decision, a majority of the Indiana House and Senate still favored maintaining the single member districts.

[10] *Chavis v. Whitcomb*, 305 F. Supp. 1364 (S.D.Ind. 1969); and *Indianapolis Star*, July 29, 1969.
[11] *Whitcomb v. Chavis*, 403 U.S. 124 (1971); and *Indianapolis Star*, June 8, 1971. See also A. Scott Chinn, "The Role of Indiana's State and Federal Courts in Legislative Redistricting, 1962-2003," 37 *Ind. L. Rev.* 3 (2004): 643-660.

Another of Judge Noland's early notable cases involved a North Central High School male student who had allowed his hair to reach shoulder length, prompting school officials to bar him from enrolling for the fall semester in 1969. The student filed a lawsuit seeking a restraining order on the grounds that his constitutional rights were being violated by the school policy. In *Crews v. Cloncs*, the school administration presented evidence to show that the student's appearance caused disturbances and disruption of the educational process, both in the classroom and during physical education classes.[12] Judge Noland ruled that plaintiff was not entitled to an injunction requiring his admittance to the high school without first complying with the school's regulations as to hair length, concluding that "although plaintiff's conduct may have been protected under the First Amendment, still the defendants have not unconstitutionally infringed his substantive due process rights for the reason that plaintiff's conduct directly and materially interfered with a vital interest of the state." Judge Noland permitted the student to gain admission to North Central High School by simply complying with the school's "above the collar, over the ears and above the eyes" regulation. However, the Seventh Circuit Court of Appeals disagreed with Judge Noland's assessment of the evidence submitted by the school, believing it insufficient to satisfy the "substantial burden of justification" in such cases, holding that, "despite the rationalizations offered by defendants, we believe that their action in excluding plaintiff from North Central resulted primarily from a distaste for persons like plaintiff who do not conform to society's norms as perceived by defendants."[13] The appellate court ordered the student reinstated at the school.

Another case from that same time period revealed Judge Noland's judicial conservatism and preference for governmental interests versus individual rights. During the Vietnam War, a

[12] *Crews v. Cloncs*, 303 F.Supp. 1370 (S.D.Ind. 1969); and *Indianapolis Star*, September 18, 1969.
[13] *Crews v. Cloncs*, 432 F.2d 1259 (7th Cir. 1970); and *Indianapolis Star*, August 11, 1970.

case involving a 20-year old Indianapolis man who had refused to report for induction into the Army because he opposed the goals of the war was assigned to Judge Noland's docket. Following a conviction for draft evasion, the young man was sentenced to three years in prison. In meting out that penalty, Judge Noland said, "This type of attitude makes a shambles of society. The court does not believe in civil disobedience, either as far as the draft is concerned or anything else."[14]

Judge Noland's conservative views surfaced in a non-judicial context in 1970 in connection with Wellesley College where his daughter Kimberly was enrolled as a student. Judge Noland spearheaded a parents' committee that disagreed with the college's plans to allow unlimited visiting privileges in its dormitories. Judge Noland cautioned Wellesley's trustees that an open-door policy would be "inimical to the safety, security and physical and mental well-being of our daughters," and warned that the parents committee would hold the trustees responsible if any students were injured as a result of the open visitation policy. Judge Noland's advocacy succeeded in evoking a promise from the chairman of the board of trustees to reconsider the policy.[15]

In 1970, seven prominent Indiana physicians and three clergymen sued to have the 1905 Indiana criminal abortion law declared unconstitutional. That law permitted abortions only to save the mother's life. Three years later, a three-judge panel comprised of Judges Luther M. Swygert of the Seventh Circuit Court of Appeals, S. Hugh Dillin of the District Court, and Judge Noland declared Indiana's abortion laws unconstitutional, adopting the U.S. Supreme Court standard that the abortion decision and its implementation must be left to the attending physician

[14] *Indianapolis Star*, August 13, 1978.
[15] *Indianapolis Star*, April 18, 1970.

and the patient, not to the statutory prohibition. This decision contradicted a prior ruling by the Indiana Supreme Court handed down less than a year earlier which upheld the state laws and deferred to the General Assembly as the place where changes, if any, should be made. This significant decision by Judge Noland and his colleagues influenced the Indiana legislature in deciding to adopt soon thereafter a new abortion law to conform to U.S. Supreme Court precedent.[16]

Judge Noland received high praise for his handling of the 1975 trial of twelve Black Muslim inmates at the Terre Haute Federal Penitentiary who were accused of the brutal knifing murder of fellow inmate, Walter Murray, the reputed leader of a rival in-prison sect, the African Cultural Society. During the trial, Judge Noland assigned twenty-two deputy U.S. marshals to escort the inmates to and from the courtroom each day. Throughout the course of the seven-day trial, rumors spread that the defendants had threatened violence against their own attorneys should convictions result, which led Judge Noland to order the defendants be restrained in leg irons and hand cuffs when the verdicts were read. The judge also instructed persons in the court to remain seated when he entered to prevent any unusual obstruction or distractions for the deputy marshals. Judge Noland's calm but stern demeanor and his intolerance of theatrics as well as his efforts to have the attorneys on both sides reach agreement on various procedural issues and questions of evidence contributed to the efficiency and security of the trial, earning him the respect and appreciation of the marshals. When the jury returned a verdict of acquittal due in part to a lack of eye witness testimony, Judge Noland withheld any words of

[16] *Indianapolis News*, March 25, 1970; *Indianapolis News*, March 5, 1973; *Indianapolis Star*, March 6, 1973; and *Indianapolis Star*, March 13, 1973.

commendation to the jury for its service, as is otherwise customary, his silence likely revealing his disappointment in the decision.[17]

In 1975, six Indianapolis policemen filed a class action seeking to enjoin the City from hiring blacks as policemen in any proportion smaller than their percentage of the City's total population. The plaintiffs requested that all federal funds be withheld until the City complied with constitutional and statutory requirements on nondiscrimination and that the City be enjoined from hiring any new policemen until that time. Judge Noland declined an injunction, saying the balance of harms redounded in favor of the City because the good it might do the plaintiffs and the public were outweighed by the interests in the effective operation of the police force. Not until July 1978 was the issue finally settled, when the city and the U.S. Justice Department submitted to Judge Noland a negotiated plan for minority recruitment and promotion in the Indianapolis Police Department.[18]

In late August 1975, wildcat strikes shut down much of the nation's soft coal industry, which included approximately 3,000 miners in Indiana who had walked off the job. The United Mine Workers Union was unable to control its members, who complained of the slowness of its grievance procedure and dissatisfaction with their contract. UMW picketers believed to be from Illinois and West Virginia arrived in the southern Indiana coal fields, and the local members refused to cross the lines, even though many were entirely unfamiliar with the basis of the dispute. At the request of the coal companies, Judge Noland issued temporary restraining orders against picketing and wildcat striking, ordered the arrest of all out-of-state pickets and appointed a U.S. marshal to monitor the mines and investigate any reports of picketing. No UMW officials

[17] *Indianapolis Star*, May 7, 1975, May 11, 1975, and August 13, 1978; Recognition Dinner honoring The Honorable James E. Noland, 678 F. Supp. LXIX (Mar. 27, 1987) [hereinafter Noland Recognition].
[18] *Indianapolis Star*, June 10, 1975, and July 1, 1978.

or members were found in criminal contempt, because, "in the court's opinion the labor union and the membership made an effort to remove the confrontation with the court." In less than a week, almost all the Indiana miners were back to work and the mines were again in operation.[19] Two and a half years later, during the winter of 1977-1978, the bituminous coal industry suffered a crippling industry-wide strike. Interviewed after that disturbance had ended, Judge Noland opined that the settlement of the 1975 dispute had provided a time during which a buildup of stockpiles occurred that partially cushioned the impact of the later strike on Indiana.[20]

In yet another case relating to the coal industry, the Secretary of Labor, Mine Safety and Health Administration (MSHA) filed suit against a small family-owned strip-mining operation which had refused to permit MSHA inspections of its mine. The family claimed that it was not subject to federal safety standards because its products were only sold intrastate (within Indiana) and thus interstate commerce was not affected. In response to the Secretary's motion for a preliminary injunction seeking to compel the family to permit MSHA inspections, Judge Noland issued a Memorandum Order denying the motion on the grounds that the defendants had "ask[ed] not to be protected from themselves."[21] Two years later, an administrative law judge ruled that the mine was indeed subject to federal regulations and that the family must pay the assessed civil penalties.

On April 20, 1979, the United States Auto Club (USAC) rejected the Indianapolis 500 entries of six racing teams affiliated with Championship Auto Racing Teams (CART), its upstart rival, claiming that the six were "not in good standing with USAC." CART, the six teams, and

[19] *Indianapolis Star*, August 29, 1975 and September 3, 1975; *Indianapolis News*, September 2, 1975.
[20] *Indianapolis Star*, August 13, 1978.
[21] *Secretary of Labor, Mine Safety and Health Administration v. Haviland Brothers Coal Company*, Memorandum Order, February 24, 1978 (S.D. Ind. 1978); *Indianapolis Star*, August 13, 1978.

their eight drivers therefore commenced a lawsuit against USAC and the Indianapolis Motor Speedway (IMS), charging violations of the Sherman antitrust laws based on a conspiracy between USAC and the IMS, for which they sought a preliminary injunction prohibiting the exclusion of the six teams from the upcoming 500 race. The action was assigned to Judge Noland and played out in a highly charged and much publicized environment. Judge Noland initially allowed the eight individual drivers to remain as plaintiffs in the case despite USAC's claim that the drivers lacked standing and were individually welcome to enter the race as parts of other teams. This claim seemed disingenuous to Judge Noland, however, since all eight were bound by contracts to their respective owners and could not drive in the race or at the Speedway unless with those owners. Judge Noland agreed with CART that the drivers were also proper plaintiffs as they had much to gain or lose by the outcome of the proceedings.[22] A banner headline in the *Indianapolis Star* on May 6, 1979, proclaimed "Judge Gives CART 'Go Sign'," after Judge Noland ruled finally that the six teams and eight drivers from CART were eligible to participate in the 63rd running of the Indianapolis 500. Following three days of testimony, the Judge handed down his decision in forty-two minutes, holding that the defendants' action in excluding the teams was "too severe," and reasoning that "if only CART entrants were excluded, the court might let monetary damages decide this matter. But because of the irreparable harm that could be suffered by these drivers—the keystones of these teams—there is no way the driver plaintiffs can sit out the Indianapolis 500." Finding insufficient evidence of a per se violation of the Sherman Antitrust Act, Judge Noland noted that there was considerable evidence that USAC had tried to coerce the IMS management into making various rule changes, and his decision would likely not end the dispute between CART and USAC. He stressed that it "would preserve

[22] *Indianapolis Star*, May 2, 1979, May 3, 1979, May 4, 1979, and May 5, 1979.

the status quo and serve the public interest."[23] The 500 race that year was won by Rick Mears, one of the eight banned drivers and CART chose not to pursue further its antitrust claims.

After a series of eight closely timed bombings terrorized the residents of Speedway, Indiana, in 1978, causing serious injury to two persons, Brett C. Kimberlin, a former Indianapolis health store owner and convicted drug smuggler, was charged with six of the bombings along with impersonating a Department of Defense security guard and illegally possessing a federal guard insignia. Judge Noland presided over Kimberlin's first trial in the fall of 1980. In resolving a motion to move the trial from Indianapolis due to extensive pretrial publicity, Judge Noland took over the questioning of the jurors himself in an effort to determine their states of mind, questioning each panelist in considerable detail. Ultimately, he rejected the defense motion, stating his belief that the passage of time since the 1978 bombings had softened the otherwise prejudicial impact of the publicity. Another defense motion which sought to limit the testimony from government witnesses which had been obtained under hypnosis induced by police investigators was also rejected by the court, although jurors were specifically cautioned not to give extra weight to testimony from these witnesses based on their having been hypnotized. The prosecution was limited largely to a circumstantial case, while Kimberlin's defense focused on alibi evidence. Following a twelve-day trial, the sequestered jury deliberated fifteen and a half hours before convicting Kimberlin, but only on nine lesser charges (including impersonating the DOD security guard). The jury informed Judge Noland that it could not reach a verdict on the bombing charges, prompting him to declare a mistrial on those counts. A few weeks later, the judge sentenced Kimberlin to twelve years in prison, commenting that Kimberlin appeared to have a "double personality" and that, if released, he would likely continue to "spread

[23] *Indianapolis Star*, May 6, 1979.

human misery." Judge Noland expressed his view that Kimberlin had masqueraded as a respectable businessman prior to his arrest, using his business as a front for illegal drug trafficking.[24] Ultimately, three trials were required before Brett Kimberlin was convicted of the Speedway bombings themselves. The second trial in June 1981, was presided over by Judge William E. Steckler, resulting in Kimberlin's conviction of illegal possession of explosives. The third trial lasted fifty-three days and involved the testimony of 118 witnesses before Judge Steckler. Kimberlin was finally convicted of the bombings.[25]

In 1982, Judge Noland presided over the high-profile public corruption trial of Phillip E. Gutman, the former president pro tempore of the Indiana Senate, who was charged with joining in a conspiracy to extort $55,000 from the Indiana Railroad Association (IRA) between 1972 and 1976. Payments had been funneled by railroad lobbyist Howard Odom, the IRA's executive director, to another former Senate leader, Martin K. Edwards, who allocated the money among himself, Gutman, and the late Senator James A. Gardner in exchange for their assistance in securing the repeal of the Indiana "full crew" law, which required all train crews to include a fireman. The eventual passage of the repeal law sought by the IRA saved the railroads millions of dollars. While Gutman never denied receiving the money, he characterized it as a legitimate retainer for legal work. Shortly before trial was set to begin, Odom pled guilty and agreed to testify against Gutman, and after the jury had been impaneled, Gutman's codefendant Edwards pled guilty and left the courtroom. To avoid prejudice to Gutman, jurors were told only that the cases had been separated.

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[24] *Indianapolis Star*, September 21, 23, 24, 25, 26, 27, 28, and 30, 1980; October 1, 2, 3, 4, 7, and 9, 1980; and November 4, 1980.

[25] The verdicts from all three trials were substantially affirmed on appeal. See *United States v. Kimberlin*, 527 F.Supp. 1010 (S.D.Ind. 1981), *aff'd*, 805 F.2d 210 (7th Cir. 1986), *cert. denied*, 483 U.S. 1023 (1987). See also *Indianapolis Star*, October 6, 2010, for a retrospective on the case.

Judge Noland faced several difficult procedural and evidentiary issues during Gutman's trial. Two involved the mental state of Howard Odom, who had previously manifested signs of mental illness. Gutman's counsel moved to have Odom examined by a psychiatrist before being permitted to testify, followed by a hearing on his competency to testify. Judge Noland denied both of these requests. As the Seventh Circuit noted in affirming these rulings, courts "are reluctant to open the doors to sanity hearings for witnesses." Judge Noland "was entitled to conclude that the reports taken as a whole did not suggest that Odom was incapable of telling the truth or of appreciating the significance of his oath as a witness." The jury, which had been made aware of Odom's mental condition, could have chosen to discount his testimony. Gutman's counsel also sought a mistrial after discovering that several jurors had learned the real reasons for Edwards's disappearance; again, the motion was denied. The judge did excuse those jurors who said they could not consider Gutman's case independently of Edwards's, replacing them with alternates. These decisions were upheld on appeal, the reviewing court saying, "That several jurors were willing to come forward and state to the judge that they could not decide the case impartially shows only that the judge had succeeded in creating an atmosphere in which jurors were unafraid to voice in open court doubts about their own impartiality." After the jury returned its verdicts against Gutman, Judge Noland sentenced him to three years in prison and fined him $10,000.[26]

Judge Noland was assigned a second legislative redistricting case in 1984. Two lawsuits, one filed by members of the Democratic Party and the other by the NAACP, challenged the legislative districts that had been approved by the Republican-controlled Indiana General

[26] *United States v. Gutman*, 725 F.2d 417 (7th Cir. 1984), *cert. denied*, 469 U.S. 880 (1984); *Indianapolis Star*, February 22, 23, 24, 25, 26, and 27, 1982; March 3,4, 5, 6, 9, 10, 11, and 12, 1982. Judge Noland subsequently reduced the sentence to one year of executed time.

Assembly, alleging that plaintiffs had been unconstitutionally denied their fair share of seats in the legislature due to political gerrymandering. Again, a panel of three federal judges—Judge Noland and fellow District Judge Gene Brooks of Evansville, and Judge Wilbur F. Pell, Jr. of the Seventh Circuit Court of Appeals—was impaneled to hear and decide the consolidated cases. In a two-to-one decision, Judge Pell dissenting, the panel ruled that the legislature had drawn the legislative districts intentionally to discriminate against Democrats in both houses of the General Assembly, in violation of the Fourteenth Amendment's Equal Protection Clause. In a lengthy opinion, the judges found "pervasive examples of irrational mapmaking," citing contorted districts with no consistent considerations of voters' mutual interest and multi-member House districts which effectively "stacked" black voters into large majority areas. Noting the bizarre configurations of the legislative map, the court noted, "Without some requirement of compactness, no restrictions exist upon the map maker to prevent lines which meander in search of partisan support." While the multi-member districts were not unconstitutional *per se*, the judges believed they were clarly conceived to purposely further political discrimination which harshly impacted black voters. Though the panel did not support the NAACP's assertion that the legislative map drawers intended to discriminate against blacks because of their race, they did conclude that the drafters effectively discriminated against blacks because blacks primarily were Democrats.[27] In a direct appeal to the United States Supreme Court, the decision was reversed in a little less than two years thereafter. Although the Supreme Court believed that the issue of political gerrymandering was justiciable under the Equal Protection Clause, it held that the District Court used an "insufficiently demanding standard in finding unconstitutional vote dilution." Further, the Court held that "a group's electoral power is not unconstitutionally

[27] *Bandemer v. Davis*, 603 F.Supp. 1479 (S.D. Ind. 1984); *Indianapolis Star*, February 9, 1982, December 14, 1984, October 6, and November 19, 1985. See also A. Scott Chinn, "The Role of Indiana's State and Federal Courts in Legislative Redistricting, 1962-2003," 37 *Ind. L. Rev*. 3 (2004): 643-660.

diminished by the simple fact of an apportionment scheme that makes winning elections more difficult, and a failure of proportional representation alone does not constitute impermissible discrimination under the Equal Protection Clause." Under the Supreme Court's ruling, "a threshold showing of discriminatory vote dilution is required for a prima facie case of an equal protection violation," a threshold which was not met in this case.[28]

In 1985, the nation was first becoming aware of the disease known as AIDS—acquired immune deficiency syndrome—and much misinformation existed concerning whether it was contagious and, if so, how it could be spread. In Kokomo, Indiana, a thirteen-year-old boy, Ryan White, a hemophiliac, had contracted the disease from a blood-clotting treatment and, because of his condition, was banned by the school superintendent from returning to classes in August of that year, a decision unanimously supported by the teachers at Ryan's school. The school district maintained that the teenager posed a danger of spreading AIDS to other children. His mother, Jeanne White, filed a lawsuit in federal court against the Western School Corporation, charging school officials with violating Ryan's rights to equal protection and illegally discriminating against him as a handicapped person under the federal Education For All Handicapped Children Act. While not dismissing the lawsuit, Judge Noland refused to require Ryan's admission to school, saying that Ryan and his mother had not exhausted the administrative remedies established by such Act. The safety issues raised by the school district were thus never litigated before Judge Noland, who, in reliance on U.S. Supreme Court precedent, held that Congress intended for local governments to have the responsibility of ensuring the rights of the handicapped, and that "no federal court can duplicate that [administrative] process." Jeanne White and her lawyers criticized Judge Noland's decision, fearing that administrative processes

[28]*Davis v. Bandemer*, 478 U.S. 109 (1986).

could take months or years and were likely to be futile given the expressed sentiments of school officials. Ultimately, the administrative process was pursued and the Indiana Board of Special Education Appeals ruled that Ryan White should be placed in regular classes with proper precautions followed. Neither the school district nor Jeannie White requested any further review by the court.[29]

Judge Noland participated in a notable antitrust case in 1987, when he set aside a $9.3 million jury verdict that had been returned against Rose Acre Farms of Seymour, Indiana, one of the nation's largest egg producers and wholesalers. The company had grown aggressively, prompting a group of six Midwestern competitors to sue Rose Acre Farms for violations of federal antitrust laws. In the fall of 1987, a jury found that Rose Acre had used separate price structures in various markets, thus injuring plaintiffs, and awarded them $9.3 million, which by law was to be tripled. Judge Noland overrode the jury's verdict, holding, "The fundamental characteristics of the production, processing, sale and distribution of eggs is such that Rose Acre Farms Inc. can in no way monopolize the egg business in the Midwest and surrounding areas." The judge ruled that, even if Rose Acre had intended to raise prices in a predatory manner, it would never have been able to dominate the markets since it would immediately have lost "business to the many other egg producers in the Midwest market." The Seventh Circuit Court of Appeals upheld Judge Noland's ruling in an opinion distinguishing antitrust violations from mere aggressive business practices.[30]

Near the end of Judge Noland's judicial tenure, he gained international notoriety by a 1989 decision he handed down in a case watched closely by museum officials and antiquities

[29] *Indianapolis Star*, August 16 and 17, 1985; and Noland Recognition.
[30] *A.A. Poultry Farms, Inc. v. Rose Acre Farms, Inc.*, 683 F.Supp. 680 (S.D. Ind. 1988), *aff'd*, 881 F.2d 1396 (7th Cir. 1989), *cert. denied*, 110 S.Ct. 1326 (1990); *Indianapolis Star*, December 30, 1987 and August 8, 1989.

dealers around the world. A suburban Indianapolis art dealer, Peg Goldberg, had acquired four sixth-century Byzantine mosaics removed from the ceiling of the Panayia Kanakaria Church in northern Cyprus after 1976, for which she paid $1.1 million to a Turkish art seller operating out of West Germany. The mosaics were among a handful of surviving artifacts of Byzantine religious decorations with significant artistic, cultural, historic, and spiritual value. Contending that the archbishop of Cyprus was the true owner of the church and all its contents, the Federal Republic of Cyprus and the Autocephalous Greek-Orthodox Church of Cyprus sued Goldberg to prevent the sale of the mosaics to the Getty Museum in Malibu, California, for $20 million. Goldberg maintained that she had purchased the mosaics in good faith, believing they were abandoned relics pulled from the ruins of the church, and that they were ripe for salvage under international conventions. With a courtroom full of witnesses and interested media from around the world, including a Greek Orthodox abbot from Cyprus who appeared in lavish religious robes and carrying a gold-tipped staff, Judge Noland oversaw what surely was one of his most fascinating cases from throughout his long career. Press coverage in the *Indianapolis Star* included daily hand drawn illustrations of the key players in the courtroom. The political split between Greek Cyprus and the Turkish Republic of Northern Cyprus, the self-proclaimed government of the Turkish occupation forces in northern Cyprus, served to heighten the drama in the courtroom. Because the United States did not recognize the Turkish Republic of Northern Cyprus, Judge Noland refused to allow it to intervene in the litigation.

One of Judge Noland's biggest challenges in this case was to decide the choice of law issue. Because the sale of the mosaics was effectuated in Geneva, Goldberg argued that Swiss law should be applied, which protected buyers in good faith even if the seller turned out to be a thief. The church urged the court to apply Indiana law, holding Goldberg to a higher standard

that dictates that a thief obtains no title to stolen goods. Judge Noland concluded that Switzerland had "an insignificant relationship to this suit, and because Indiana has greater contacts and a more significant relationship to this suit, the substantive law of the state of Indiana should apply to this case." The question of Goldberg's good faith and/or due diligence therefore was irrelevant since "a thief cannot pass any right of ownership of stolen items to subsequent purchasers." Since all parties agreed that the mosaics were stolen, under Indiana law, "Goldberg never obtained title to or right to possession of the mosaics."

Alternatively, Judge Noland considered what the outcome would be if Swiss law were applied. In claiming to be a good faith purchaser, Goldberg's actions when offered the mosaics would be subject to scrutiny "to determine whether the purchaser knew that the seller lacked title, or whether an honest and careful purchaser would have had doubts with respect to seller's capacity to transfer property rights, and if so, then whether the purchaser reasonably inquired about the seller's ability to pass good title." In the light of those factors, Judge Noland concluded that Goldberg was not a good faith purchaser under Swiss law. In presenting her defense, Goldberg claimed that she had contacted customs officials in four nations as well as UNESCO and a New York clearinghouse for art thefts before determining whether she could legally import the mosaics into the United States. However, when pressed, she admitted she had not contacted either the Republic of Cyprus or the Turkish Republic of Northern Cyprus. Other factors such as the disparity between the appraised value of the mosaics and the price paid by Goldberg, the questionable backgrounds of some of those involved in the deal, and the haste with which the transaction was conducted should have caused Goldberg to delve more deeply into the propriety of the sale. Judge Noland found that "suspicious circumstances surrounded this sale sufficient to cause an honest and reasonably prudent purchaser in Goldberg's position to doubt

Dikman's [the seller] capacity to convey property rights to the mosaics." Quoting one of the witnesses who had testified that Goldberg should have proceeded with caution, Noland wrote: " "'all the red flags are up, all the red lights are on, all the sirens are blaring.'" Thus, even if Swiss law had been applied, according to Judge Noland, Goldberg would not have prevailed. He therefore ordered that possession of the mosaics, then stored in an Indianapolis vault, be handed over to the Autocephalous Greek-Orthodox Church of Cyprus.[31]

The reaction to Judge Noland's decision was widespread. Most observers applauded his ruling giving the mosaics back to the church. The *New York Times* ran the story about the ruling on its front page while Cyprus's ambassador to the United States called at the White House in Washington, D.C., to "express my joy and delight, and that of my country." In Cyprus, the President of the Republic announced the decision at a public ceremony, causing the crowd of nearly 10,000 to break into prolonged strenuous applause. The head of the Autocephalous Greek-Orthodox Church of Cyprus also praised Judge Noland and expressed his "confidence in the American courts." Goldberg appealed the decision, during which proceedings the parties agreed the mosaics would remain in Indianapolis but in the possession of the plaintiffs. In affirming Judge Noland's decision, the Seventh Circuit Court of Appeals wrote: "Indiana law controls every aspect of this case," thus sidestepping a review of his alternative ruling under Swiss law. As a gesture of goodwill to the people of Indianapolis, the Greek Church put the mosaics on display in a month-long exhibition at the Indianapolis Museum of Art before finally

[31] *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg*, 717 F.Supp. 1374 (S.D. Ind. 1989); *Indianapolis Star*, May 31, June 1, 2, 3, 5, 6, 7, and August 4, 1989.

sending them home to Cyprus.[32] Sadly, the mosaics could not be reinstalled in the Kanakaria Church in the Turkish Republic of Northern Cyprus.

Judge Noland's decision was hailed for its influence in allowing countries to seek to reclaim national art treasures that were bought and sold in the international black market. Gary Vikan, curator of medieval art at Baltimore's Walters Art Gallery and a witness at the trial, reflected the views of many in the art world when he said, "The significance of the decision is quite profound. We are going to use this decision as the basis for formulating a policy on the purchase of antiquities….The more suspicious the circumstances, the more circumspect the buyer must be." A spokesman for the International Foundation for Art Research in New York, which maintained records on stolen art, said, "This decision really tells both museums and private individuals that the danger of buying stolen art is very serious, and their investigations should be very thorough."[33] Walter Hopps, the former director of the Menil Collection in Houston which had a world famous collection of antiquities, called it an "extraordinary victory for the church and archaeology," saying, "It may make honest suitors of the world's great museums and tend to deter their practice of going through the backdoors to acquire objects of questionable background."[34] In Judge Noland's obituary in the *New York Times*, which, sadly, appeared a short three years after this case was concluded, prominent mention was made of the importance of this litigation and his wise decision.

One of Judge Noland's last decisions led to a seminal Supreme Court ruling that has been cited thousands of times since it was issued in 1994. In the case of *Heck v. Humphrey*, a state

[32] *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg*, 917 F.2d 278 (7th Cir. 1990); *New York Times*, August 4, 1989; *Indianapolis Star*, August 5, 8, 9, 13, 25, 1989' May 30, 1991, June 1, 1991.
[33] *New York Times*, August 4, 1989.
[34] *Indianapolis Star*, August 4, 1989.

prisoner brought suit under 42 U.S.C. Sec. 1983, seeking damages, but not injunctive relief or release from custody, claiming that unlawful acts by the state had led to his arrest and conviction. Judge Noland dismissed the action without prejudice, reasoning that if plaintiff's victory would require his release even if he had not sought that relief, the suit must be classified as a habeas corpus action and dismissed if plaintiff had failed to exhaust his state remedies. Both the Seventh Circuit and Supreme Court affirmed Judge Noland's decision. The *Heck* rule has become ubiquitous in prisoner litigation, i.e., a prisoner seeking damages for unconstitutional conviction or imprisonment must have the conviction or sentence reversed on appeal or otherwise declared invalid before his Section 1983 claim can proceed.[35]

During his distinguished judicial career, Judge Noland served in a variety of important court-related capacities. From 1972 to 1982, he served as a member of a special committee of the Judicial Conference of the United States dealing with the oversight and operation of the magistrate judge system. He also served as chairman of the National Conference of Federal Trial Judges of the American Bar Association in 1981-82, as chairman of the ABA's Judicial Administration Division in 1984-85, and as chair of the District Judges Association of the Seventh Federal Circuit in 1984-86. In May 1983, Chief Justice Warren E. Burger appointed Judge Noland to serve a seven-year term as one of the seven judges of the highly sensitive U.S. Foreign Intelligence Surveillance Court, which reviews and approves or disapproves applications authorizing electronic surveillance on suspected foreign intelligence agents. In 1988, Chief Justice William Rehnquist elevated him to the position of chief judge of that court. In 1985, Judge Noland was appointed to serve as a member of the Judicial Conference Committee on the Bi-Centennial of the Constitution of the United States.

[35] *Heck v. Humphrey*, 512 U.S. 477 (1994), affirming 997 F.2d 355 (7th Cir. 1993).

Judge Noland became chief judge of the U.S. District Court for the Southern District of Indiana in June 1984, serving in that role until he took senior status in early 1987. During his tenure as chief, the court's four bankruptcy judges were thrust into jurisdictional uncertainty when the U.S. Supreme Court declared the Bankruptcy Reform Act unconstitutional and Congress failed to pass remedial legislation. To deal with this hiatus, Judge Noland designated the four bankruptcy judges as special masters empowered to continue to rule on bankruptcy matters until new legislation was enacted. Construction of a new courtroom and adjoining chambers was completed on the third floor of the United States Court House at Indianapolis during Judge Noland's tenure as chief judge.[36]

Those familiar with Judge Noland's career find it difficult to label his judicial philosophy as either conservative or liberal. He was no doubt the most conservative of the Democrats serving with him on the federal bench at the time, but he also was perhaps the most lenient in the scope of evidence he allowed to be adduced by the lawyers at trial. Evidencing his belief that fairness in the proceedings was key, Judge Noland once commented, "It's essential to a fair trial that the judge or jury have the chance to know any background that may be relevant to the case, even if some would turn out to be irrelevant." He promoted the importance of a defendant's confidence in the fairness of the proceedings, whereby the accused always had the opportunity to tell his story "within [reasonable] limitations."[37] At a dinner in his honor after he took senior status, Judge Noland listed twelve things that he had learned during his time on the bench. In addition to his being courteous to lawyers and not being concerned by what might happen at the Court of Appeals, Judge Noland summed up his philosophy as follows:

[36] Noland Recognition.
[37] *Indianapolis Star*, August 13, 1978.

> A Judge should pay attention to the same admonition he gives a jury; that is, keep a clear and open mind throughout the entire proceding, listen to the arguments of the lawyers, then render a fair and impartial judgment.[38]

Judge Noland once explained what he thought accounted for the conservative label some placed on him, saying that he had a deep faith in the importance of the free enterprise system in the development of the United States and no personal desire to tamper with it unless such was unavoidable. Recognizing that judges are maintaining the proper functioning of the judicial system, he noted, "A judge should remember that other agencies, both governmental and private, are the functioning entities that have accomplished so much in America. Few judges are sufficiently wise or omnipotent to attempt to interfere or direct such agencies in carrying out their respective functions." By Judge Noland's standards, "the power of the court should be exercised with thoughtfulness and restraint." Tending to prefer overseeing civil cases to criminal cases, he was generally a lenient sentencer, except with those whose business was the distribution of drugs, whom he viewed as having "no regard for their fellow man." His demeanor in court was calm and courteous but always fully in charge. One attorney likened Judge Noland's technique as "a fine example of the iron fist in the velvet glove."[39]

Regarding the ways in which he was viewed by lawyers who practiced before him, a survey in 1981 conducted by the *Indianapolis Star* revealed that, while all four of the judges in the Southern District received roughly the same overall rating, Judge Noland scored the highest. He was considered the least political, the judge most free of bias and without favoritism, and, along with Judge William E. Steckler, was rated very high for judicial temperament. One survey

[38] Noland Recognition.
[39] Ibid.

respondent noted that while Judge Noland "has the establishment mentality," he was "so courteous, so polite, so orthodox."[40]

Sadly, Judge Noland's life ended quickly and prematurely in Indianapolis, following a brief illness, on August 12, 1992, at the age of 72. An editorial in the *Indianapolis Star* extolled his many extraordinary qualities as a judge and his remarkable tenure of service to the judiciary and the country, noting: "He was patient, warm, kind, compassionate, considerate, clear thinking, wise and fair…He will long be remembered in the hearts and minds of his colleagues and friends both as a good judge and a fine human being."[41] Governor Evan Bayh, who had served as a law clerk for Judge Noland in 1982, lamented, "In the time that I was privileged to serve this man dedicated to the law and to Indiana, I found in Judge Noland an inspiring commitment to public service and a lifelong friend as well."[42] One of his colleagues, Judge Sarah Evans Barker, remarked on one of the attributes that served him best as a judge: "There is a maxim about what it takes to make a good judge: patience, patience and patience. He mastered it."[43] Former dean of the Indiana University School of Law in Indianapolis, Professor William Harvey, in speaking of Judge Noland, noted:

> The trust he inspired and the respect he received did not come… from occupancy of position or function. They came because he understood the dual restraint imposed upon judicial power by the humility and grace in the spontaneous social order.[44]

Several of Judge Noland's former law clerks spoke of him with great respect and admiration. A law clerk in 1986, Michael C. Frische, now a Supervisory Staff Attorney at the

[40] *Indianapolis Star*, May 19, 1981.
[41] *Indianapolis Star*, August 17, 1992.
[42] *Indianapolis News*, August 13, 1992.
[43] *Indianapolis News*, August 14, 1992.
[44] *Memorial Service and Courtroom Dedication for the Honorable James E. Noland* (Indianapolis: United States District Court, Southern District of Indiana, Indianapolis Division, December 11, 1992).

District Court, recalled the judge as even keeled, patient, attentive, and as someone who "didn't hesitate to show his sense of humor." Frische noted that "when it came to the law, [Judge Noland] was not only knowledgeable but also understood the whole federal judiciary process and his role in it. That gave him the perspective that his work could be undone tomorrow." An Assistant United States Attorney, Jill Julian clerked for Judge Noland from 1986 to 1988 and spoke of him as "a gentlemen's gentleman," who believed strongly in "allowing everyone to feel they were part of the process. As a judge, he was very mindful, especially when clients were present, that attorneys and their clients be included and given a chance to speak." Using the Ryan White case as an example, Julian noted that Judge Noland "appreciated process" and how "the role of the court was to respect that process" and its part in the administration of justice. As an Assistant U.S. Attorney, Julian has carried with her two important lessons imparted from Judge Noland. The first is that "more is expected of attorneys for the United States" and they are held to a higher standard. The second lesson passed on is "never to underestimate any opponent or opposing counsel and always to assume that they know everything that you know."

Judge Noland's courtroom demeanor was truly memorable and remarkable for his civility to attorneys and litigants alike. As former United States Attorney Virginia Dill McCarty once remarked, "Judge Noland was a gentle man in the true sense of the word. He was faithfully courteous and kind to all that came before him: lawyers, litigants, court personnel.[45] Attorney and former law clerk Richard Darko noted that Judge Noland "went out of his way not to embarrass anyone in the courtroom…He always expected people to be civil, to be polite."[46] His quiet sense of humor and fairness were also appreciated by many. A memorial resolution of the

[45] Ibid.
[46] Suzanne M, Buchko, "'Three Bank Tellers is Enough': Personal Reminiscences of Legal Practice by Members of the Bench and Bar," 37 *Ind. L. Rev.* 3 (2004): 699-727.

Federal Bar Association, Indianapolis Chapter, distilled the many virtues of Judge Noland's life in these words, spoken at the presentation of his memorial portrait rendered by artist Edmund Brucker:

> Those of us who knew the Judge can attest that Edmund Brucker successfully reflected not only Judge Noland's physical features, but in the gentleness of his expression, also captured his amiability and civility, and in the uprightness and dignity of his form, captured his strength of commitment and unwavering dedication to doing justice.