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## THE STORY OF THE GARY, INDIANA CRUCIFIX

Robert M. Jarvis\*

### I. INTRODUCTION

In the spring of 1955, the Knights of Columbus erected an enormous crucifix in a public park in Gary, Indiana.<sup>1</sup> Incensed by this flagrant constitutional violation, Harrison J. Mellman, a bright, well-liked, but

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\* Professor of Law, Nova Southeastern University (jarvisb@nsu.law.nova.edu). In writing this Essay I received assistance from many people, including: Donald Bixon, Ivan E. Bodensteiner, Ronald D. Cohen, K. Richard Hawley, Michael Hopkins, Seymour H. Moskowitz, Gail L. Richmond, Mark J. Stern, John B. Ulrich, and Fredrica W. Wechsler. Special thanks go to Jennifer Holik-Urban, the principal researcher at the Chicago genealogical firm Generations (www.generationsbiz.com), and Stephen G. McShane, the curator of the Indiana University Northwest Calumet Regional Archives (www.iun.edu/~cra/). Much of the information appearing herein about attorney Harrison J. Mellman comes from my wife Judith A. (nee Mellman) Jarvis (Harrison's niece and a Fort Lauderdale lawyer) and Alvin D. Rosenbloom (Harrison's brother-in-law and a Los Angeles lawyer). I am deeply indebted to both of them for sharing their knowledge and memories with me.

<sup>1</sup> *Knights Erect Crucifix Along Road Near Gary*, CHI. DAILY TRIB., May 29, 1955, at S2. Gary is located in Lake County in northwest Indiana, approximately twenty-five miles east of Chicago. As is well-known, the city owes its existence to U.S. Steel:

Between 1906 and 1909, U.S. Steel transformed thousands of acres of mostly uninhabited swampland and sand dunes into one of the largest steel-producing centers in the world. In addition to the massive mills lining [Lake Michigan], U.S. Steel built an adjoining city, which it named after its chairman, Elbert H. Gary, to house the steelworkers. The construction of Gary was part of U.S. Steel's attempt to not only expand in terms of size and steel production capacity but also escape the labor pressure and constrictive laws of South Chicago and the Pittsburgh area.

S. PAUL O'HARA, *Envisioning the Steel City: The Legend and Legacy of Gary, Indiana*, in BEYOND THE RUINS: THE MEANINGS OF DEINDUSTRIALIZATION 219, 220 (Jefferson Cowie & Joseph Heathcott eds., 2003). For a further look at the city's early history, see ISAAC JAMES QUILLEN, *INDUSTRIAL CITY: A HISTORY OF GARY, INDIANA TO 1929*, iv-v (1986); see also *infra* note 18 (discussing Gary's later history).

Lake County is Indiana's second most populous county. See *Indiana Population by County - Total Residents*, US-PLACES.COM, available at <http://www.us-places.com/Indiana/population-by-County.htm> (last visited Jan. 22, 2105), archived at <http://perma.cc/7SBV-H4A5> (listing Marion County as the largest county, with a population of 918,887, followed by Lake County at 493,118 according to estimates of the 2012 census). Organized in 1837, it now covers approximately 500 square miles and has almost 500,000 residents. *State & County QuickFacts: Lake County, Indiana*, U.S. CENSUS BUREAU (2014), available at <http://quickfacts.census.gov/qfd/states/18/18089.html>, archived at <http://perma.cc/FA2P-HSUQ>. In addition to Gary, its other major population areas include Crown Point, East Chicago, Hammond, Hobart, and Munster. *Indiana Cities by Population*, CUBIT (2015), available at [http://www.indiana-demographics.com/cities\\_by\\_population](http://www.indiana-demographics.com/cities_by_population), archived at <http://perma.cc/5TQK-JFXM>.

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still green local lawyer, began making plans to challenge the towering structure in court. Today, more than half a century later, the edifice remains, undisturbed, in its original spot. And so begins, and ends, a most unusual tale.

II. PRELUDE

On February 26, 1926, Mollie Krieger, a thirty-year-old Hammond legal secretary, and Israel H. Mellman, a thirty-five-year-old Gary furniture salesman, were married in the Chicago home of Rabbi Benjamin A. Daskal.<sup>2</sup> The next day, Mollie's hometown newspaper described the bride as "a most attractive young woman [who] is popular among her large circle of friends here in Hammond" and called the

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<sup>2</sup> Mollie was born on September 28, 1895 in Buffalo, New York to Jennie (nee Glaser) and Harry Krieger, who originally were from Russia. See State of Florida, Office of Vital Statistics, *Certificate of Death of Mollie Mellman*, State File No. 89-060064, Local File No. 008447 (June 8, 1989); U.S. DEPARTMENT OF COMMERCE, BUREAU OF THE CENSUS, FIFTEENTH CENSUS OF THE UNITED STATES (1931) [hereinafter FIFTEENTH CENSUS] (providing Mollie's information at line eighty-seven). When she was a teenager, Mollie's family moved to Indiana. See *Lithuanian GLASERS*, ROOTSWEB (July 16, 1999, 10:02 PM), <http://archiver.rootsweb.ancestry.com/th/read/GLASER/1999-07/0932137324>, archived at <http://perma.cc/V9Q9-CDHL> ("Jennie and Harry KRIEGER left Buffalo about 1910 for Hammond, Indiana."). As a young woman, Mollie worked at Crumpacker & Friedrich, "one of the leading law firms in this part of the state—especially in corporation practice." *Wedding is Announced*, GARY POST-TRIB. (Ind.), Mar. 1, 1926, at 13; see 2 HISTORY OF THE LAKE AND CALUMET REGION OF INDIANA: EMBRACING THE COUNTIES OF LAKE, PORTER AND LAPORTE 482 (Thomas H. Cannon, H. H. Loring & Chas. J. Robb eds., 1927) (providing historic background on Edwin H. Friedrich).

Israel was born on May 23, 1890 in Seduva, Lithuania to Mona (nee Mehr) and Mordecai Mellman. See U.S. Selective Service System, *Registration Card of Israel Hyman Mellman*, Serial No. U 575 (1942); State of Florida, Office of Vital Statistics, *Certificate of Death of Israel Hyman Mellman*, State File No. 71-035977, Registrar's No. 6890 (June 15, 1971). He immigrated to the United States in 1910 and became a citizen in 1944. See FIFTEENTH CENSUS, *supra* (providing Israel's information at Line Eighty-Six); *Alien Group Admitted to Citizenship*, HAMMOND TIMES (Ind.), Dec. 3, 1944, at 7 (listing Israel among the swearers). Israel was lured to America by a job offer from the House of Muscat, a furniture store owned by his relatives. See *Wedding is Announced, supra* (adding that Mollie is "a secretary in the law offices of Crumpacker and Friedrich in Hammond," Israel "is a nephew of the Muscats and is employed in [their] store," and "after a short eastern trip Mr. and Mrs. Mellman will make their home in Gary"); see also *House of Muscat Now \$200,000 Firm*, LAKE CNTY. TIMES (Ind.), Jan. 25, 1917, at 2 (describing the firm's hyper growth during its first decade).

At the time of the ceremony, Daskal was the leader of Congregation Rodfei Zedek. KERRY M. OLITZKY, *THE AMERICAN SYNAGOGUE: A HISTORICAL DICTIONARY AND SOURCEBOOK* 128 (Marc Lee Raphael ed., 1996). His long tenure (1918–43) was marked by great changes, including conducting Friday night services in English, establishing a confirmation program; developing a uniform prayer book, and relocating the congregation from Chicago to Hyde Park. *Id.*

groom “a splendid man well known in Gary.”<sup>3</sup> The couple soon had two sons—Harrison and his younger brother Thomas.<sup>4</sup> Congregants at Temple Beth-El, Gary’s Orthodox synagogue, and the family, were all deeply religious.<sup>5</sup> After opening their own store—the Mellman Furniture Company—in 1938, the family began to enjoy substantial financial success.<sup>6</sup>

Handsome, intelligent, and charming, Harrison stood out from his peers at an early age.<sup>7</sup> At Lew Wallace High School, he was president of the student government, a member of the honor society, and active in

<sup>3</sup> *Mollie Krieger Weds Gary Man*, HAMMOND TIMES (Ind.), Feb. 27, 1926, at 14.

<sup>4</sup> *See Births*, HAMMOND TIMES (Ind.), Mar. 14, 1927, at 10 (reporting that Harrison was born on March 12, 1927); *Stork Feathers*, GARY POST-TRIB. (Ind.), May 11, 1931, at 14 (reporting that Thomas was born on May 10, 1931).

<sup>5</sup> *See, e.g., Krieger Family Has Three Events to Celebrate*, HAMMOND TIMES (Ind.), Mar. 19, 1940, at 10 (reporting on Harrison’s bar mitzvah). Temple Beth-El was organized shortly after Gary was founded. *Historical Sketch: Temple Beth El*, <http://www.indianahistory.org/our-collections/collection-guides/congregation-beth-israel-collection.pdf> (last visited Mar. 4, 2015), archived at <http://perma.cc/K24-K49A>. In 1976, it merged with Hammond’s Kneseth Israel to form Congregation Beth Israel, which is now located in Munster. *Id.* Like many in Gary’s small Jewish community, the Mellmans also were members of Temple Israel, the city’s Reformed congregation. Telephone Interview with Alvin D. Rosenbloom (Jan. 31, 2011) [hereinafter Rosenbloom Interview]. For a further look at the two congregations, see KENDALL F. SVENGALIS, GARY, INDIANA: A CENTENNIAL CELEBRATION 133–35 (2006) (providing a history of the Temple Beth-El, Gary’s Orthodox synagogue); *see also* LEE SHAI WEISSBACH, JEWISH LIFE IN SMALL-TOWN AMERICA: A HISTORY 35 (2005) (reporting that approximately 1000 Jews live in Gary in 1930). For more information regarding the early years of Gary, Indiana, see Jeannette Goldhar & Frances Nelson, “As We Remember:” *Early History of the Jewish Community in Gary, Indiana*, 28 IND. JEWISH HIST. 2, 2–6 (June 1992).

<sup>6</sup> *Sol Muscat Funeral Held*, HAMMOND TIMES (Ind.), June 22, 1945, at 26. Israel had remained an employee at the House of Muscat until a rift between Samuel Muscat and his son Sol caused the business to break up in 1937. *See id.* (discussing the feud and explaining that the firm was reconstituted after Samuel’s death in 1939). As a result, Israel opened his own store at 3825 Broadway, a half mile from the family’s home at 3648 Monroe Street. Compare R.L. POLK’S GARY (LAKE COUNTY, IND.), CITY DIRECTORY 1937, 282 (1937), with R.L. POLK’S GARY (LAKE COUNTY, IND.), CITY DIRECTORY 1939, 287 (1939), and Mapquest, *Directions*, <http://www.mapquest.com/#c52cfe2e486746e6bb56e95a> (last visited Mar. 3, 2015), archived at <http://perma.cc/84EM-JRMZ> (calculating the distance between the two addresses). Both were located in Glen Park, an upscale neighborhood on the city’s South Side. The area is described in more detail by SVENGALIS, *supra* note 5, at 390–99.

<sup>7</sup> *See, e.g., Beautiful Ceremony Marks Wedding of Roe Krieger and Dr. Jerome Rubin*, HAMMOND TIMES (Ind.), Aug. 7, 1933, at 9 (praising Harrison’s maturity while serving as the ring bearer at his aunt’s wedding, for which he wore a “full dress suit with high hat”); *Winners Named in ‘Men Behind Flags’ Contest*, CHI. DAILY TRIB., May 23, 1937, at 12 (reporting that Harrison had won \$10 for himself, and \$100 for his teacher, Mrs. Gertrude K. Edmiston, in a current events contest); *Announce Fair Prizes Given for Good Teeth*, HAMMOND TIMES (Ind.), Aug. 25, 1937, at 17 (explaining that Harrison had taken third place, and received \$5, at the Northwest Indiana Dental Society’s oral hygiene competition).

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nearly a dozen other organizations, including the chemistry club, the debate team, and the AV squad.<sup>8</sup> These accomplishments allowed him to overcome the Ivy League's notorious Jewish quotas and win admission to Harvard University, where his classmates included Robert F. Kennedy and George Plimpton.<sup>9</sup>



Harrison J. Mellman

Harrison entered Harvard in July 1944 with plans to become a doctor—he majored in biology and during his sophomore year helped restart the Pre-Medical Society, which had folded during the war.<sup>10</sup> But

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<sup>8</sup> See *Quill and Blade*, LEW WALLACE HIGH SCHOOL YEARBOOK 30 (1944).

<sup>9</sup> See, e.g., JEROME KARABEL, *THE CHOSEN: THE HIDDEN HISTORY OF ADMISSION AND EXCLUSION AT HARVARD, YALE, AND PRINCETON* 180 (2005) (“Even at the height of a war against a fanatically racist, anti-Semitic enemy, it seemed that nothing—not even the reports of the extermination of European Jews already making their way into the newspapers—could dislodge Harvard’s policy of restricting Jewish enrollment.”). For a further look at the hardships Jews faced during this period, see NITZA ROISOVSKY, *THE JEWISH EXPERIENCE AT HARVARD AND RADCLIFFE* 8–12 (1986).

Although Kennedy finished on time, military service delayed Plimpton’s graduation until 1950; nevertheless, he considered himself a member of the Class of 1948. Richard Severo, *George Plimpton, Author and Editor, is Dead at 76*, N.Y. TIMES, Sept. 27, 2003, at A13, available at <http://www.nytimes.com/2003/09/27/arts/george-plimpton-author-and-editor-is-dead-at-76.html>, archived at <http://perma.cc/SC3M-FBHN>. Like Plimpton, Harrison also received his call-up orders while at Harvard. See *Harrison Jacob Mellman Service Card* (bearing the notation “Report June 4, 1945—S.K. saw orders”). They arrived just before the end of his freshman year and directed him to the U.S. Navy’s boot camp in North Chicago (“Naval Station Great Lakes”). *Id.* Japan’s surrender on August 8, 1945, ended Harrison’s obligation and allowed him to make it back to Cambridge just before the start of his fall classes. See *id.* (showing that Harrison returned to Harvard on August 20, 1945). For a look at what boot camp was like, see U.S. Navy, *History: Recruit Training Command* (June 23, 2011), available at <http://www.bootcamp.navy.mil/history.asp>, archived at <http://perma.cc/U8BR-QT63>.

<sup>10</sup> See *THE HARVARD ALBUM 1947–1948*, HARVARD YEARBOOK 265, 354 (listing Harrison’s activities while attending Harvard and recounting the Pre-Medical Society’s history).

by the time he earned his A.B. in 1948, he had switched to pre-law—a change of heart that can be traced, in part, to his involvement in two highly-political campus groups that helped awaken his social conscience: the American Veterans Committee (“AVC”) and the Harvard Zionist Society (“HZS”).<sup>11</sup> Even more important, however, was the fact that by now he had fallen in love with Bernice M. Rosenbloom, whose father, Herbert B. Rosenbloom, was a prominent Gary real estate attorney, civic leader, and political reformer.<sup>12</sup> Like the Mellmans, the Rosenblooms were active in temple affairs.<sup>13</sup>

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Like other Harvard undergraduates, Harrison was assigned to a residential dormitory and ended up living in Lowell House along with Anthony Lewis, who would go on to write the 1964 legal masterpiece *Gideon's Trumpet*. *THE HARVARD ALBUM 1947-1948, supra*; Susan Herman, *Anthony Lewis's Trumpet*, ACLU (Mar. 29, 2013), available at <https://www.aclu.org/blog/criminal-law-reform/anthony-lewiss-trumpet>, archived at <https://perma.cc/79F9-EZTP>.

<sup>11</sup> The AVC had been set up during Harrison's second year at Harvard to help returning servicemen adjust to civilian life. *THE HARVARD ALBUM 1947-1948, supra* note 10, at 337. In addition to campaigning for an expanded federal G.I. Bill and a state rent-control law, the group engaged in voter education efforts and organized a weekend school to teach political action methods. *Id.* The HZS was equally committed to its causes. According to its yearbook profile:

By means of publicity and personal contact the organization has striven to achieve the numerical strength necessary to make Zionism a watchword on the college scene. The group has sponsored a number of distinguished speakers in order to acquaint the membership and the general public with Zionism's more important facts. By means of study groups, a deeper insight into the problems of Palestine and their meaning for the student in America has been encouraged. The society has also actively aided in the reconstruction of the Jewish State in Palestine through fund-raising activities.

*Id.* at 347.

<sup>12</sup> See *Herbert Bernard Rosenbloom*, in 1 *AMERICAN JEWS: THEIR LIVES AND ACHIEVEMENTS* 347-48 (1947) (noting that Herbert was “the executive director of the Gary Jewish Welfare Federation, . . . past president of the local B'nai B'rith Lodge, a director of several corporations, including the Cleveland Orphan Home, and . . . a member and contributor in numerous organizations which furthered the work of liberal democracy in the United States”).

Herbert had begun his career as a newspaper reporter in Minnesota, but in 1916 moved to Gary and became a school teacher. *Id.* When World War I broke out, he joined the U.S. Army. *Id.* After returning home, he went to law school at Northwestern University and then opened a law firm at 708 Broadway with his classmate Jacob Zalkind. *New Gary Law Firm*, GARY EVENING POST (Ind.), Sept. 7, 1921, at 5. He later moved into Suite 1016 in the Gary State Bank Building. Rosenbloom Interview, *supra* note 5. This ornate building was considered downtown's most elite business address:

The Gary National Bank at 504 Broadway was the city's largest and most prestigious office building. Located on the site of the former Gary State Bank (the name was changed in 1943), the new ten-story structure was completed and occupied in 1928. With the first three floors occupied by bank offices and departments, its upper seven

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Harrison and Bernice married on July 4, 1948 and honeymooned on Mackinac Island, Michigan's fabled beach colony.<sup>14</sup> When they returned, they moved to Bloomington and enrolled in Indiana University.<sup>15</sup> While Harrison toiled away in the law school, Bernice finished her library science degree, which she had started at the University of Michigan, and worked in the law library.<sup>16</sup>

Following his second year of law school, Harrison spent the summer working for Herbert.<sup>17</sup> In June 1951, after receiving his J.D. and passing

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floors provided offices for dozens of physicians, dentists, lawyers, and real estate and insurance businesses.

SVENGALIS, *supra* note 5, at 248. In 1949, Charles O. Finley, the future owner of the Kansas City, later Oakland, A's, moved into offices down the hall from Herbert and launched the insurance company that made him rich. G. MICHAEL GREEN & ROGER D. LAUNIUS, CHARLIE FINLEY: THE OUTRAGEOUS STORY OF BASEBALL'S SUPER SHOWMAN 24 (2010).

<sup>13</sup> See, e.g., TEMPLE BETH-EL, 40TH ANNIVERSARY SOUVENIR ALBUM 1908-1948, 28 (1948) (including both families in a listing of the congregation's major donors).

<sup>14</sup> See *Harrison Mellman and Bride are on Trip to Mackinac*, GARY POST-TRIB. (Ind.), July 7, 1948, at 28 (reporting that the wedding took place at the Gary home of Bernice's uncle, Dr. Philip J. Rosenbloom).

<sup>15</sup> See 3 THOMAS D. CLARK, INDIANA UNIVERSITY: MIDWESTERN PIONEER 165-96 (1977) (explaining that like other colleges, Indiana University was unprepared for the post-war enrollment surge and, as a result, students found the campus cramped and antiquated).

<sup>16</sup> HARVARD COLLEGE CLASS OF 1948: TRIENNIAL REPORT 146 (1951); Rosenbloom Interview, *supra* note 5. According to one of his law school classmates, Harrison was bright, funny, and respected:

I remember Mellman quite well. I didn't know his first name, last names were easier then since the [professors] used them. I got married just before the start of the third year of law school and Mellman was married too. He invited my wife and I over to his place for dinner one night. We had a good time. He was a quiet[,] thoughtful kind of guy. A group of guys would get together at exam time to review notes and prepare for tests. He was a good student and I remember that at the meetings he was listened to.

E-mail from K. Richard Hawley to author (May 23, 2011). According to the *Arbutus*, the Indiana University's yearbook, when Harrison was not in class or studying, Harrison was an assistant in the University's Audio Visual Center ("AVC") and participated in Hillel. ARBUTUS, INDIANA YEARBOOK 122 (1951).

Harrison's job at the AVC, which paid him roughly \$1.50 an hour, was considered a plum assignment and was reserved for graduate students and preference was given to those who, like Harrison, had prior AV experience. L. C. Larson, *Developing an Integrated College Audio-Visual Program*, 38 THE PHI DELTA KAPPAN 211, 212-13 (1957). Despite the many demands on his time during his final semester of law school, Harrison published a note in the law review. See 26 IND. L.J. 233, 233 (1951) (listing him as a "contributor" to the 1951 issue). Because the eight student pieces in the issue are all unsigned, it is not possible to say which one is Harrison's. *Id.*

<sup>17</sup> *Herbert B. Rosenbloom*, in 2 AMERICAN JEWS: THEIR LIVES AND ACHIEVEMENTS 458 (1958) [hereinafter 2 AMERICAN JEWS].

the Indiana bar exam, Harrison joined Herbert on a full-time basis.<sup>18</sup> When Herbert died unexpectedly at the age of fifty-nine the following April, Harrison inherited the practice.<sup>19</sup>

In a 1954 update to his Harvard classmates, Harrison reported that he and Bernice were the proud parents of two children, a daughter

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<sup>18</sup> 2 AMERICAN JEWS, *supra* note 17, at 458 and accompanying text; *see* 58 *Hoosiers Pass Indiana Bar Exam*, LOGANSPORT PHAROS-TRIB. (Ind.), June 2, 1951, at 2 (listing Harrison among the successful applicants); ARBUTUS, *supra* note 16, at 122 (indicating that Harrison received a J.D.). Like many other law schools during this period, Indiana University reserved the J.D. for students graduating with honors; all others received the LL.B. *See generally* BRYAN A. GARNER, GARNER'S DICTIONARY OF LEGAL USAGE 491 (3d ed. 2011) (explaining that this convention faded away in the 1960s).

Although it now may seem odd that Harrison would choose to return to Gary, his decision has to be viewed in context—his parents, childhood friends, and houses of worship were all in Gary; Herbert had a lucrative practice as well as a wealth of contacts; and the steel industry, which had built the city, was still providing good jobs and good wages, as it would for another decade. Moreover, the problems that would later make Gary the poster child of urban decay—crime, drugs, rampant unemployment, and white flight to the suburbs—did not yet exist. For how the town's fortunes changed so drastically, and why it has never recovered, *see* SANDRA L. BARNES, *THE COST OF BEING POOR: A COMPARATIVE STUDY OF LIFE IN POOR URBAN NEIGHBORHOODS IN GARY, INDIANA* (2005), ROBERT A. CATLIN, *RACIAL POLITICS AND URBAN PLANNING: GARY, INDIANA, 1980–1989* (1993), EDWARD GREER, *BIG STEEL: BLACK POLITICS AND CORPORATE POWER IN GARY, INDIANA* (1979), ANDREW HURLEY, *ENVIRONMENTAL INEQUALITIES: CLASS, RACE, AND INDUSTRIAL POLLUTION IN GARY, INDIANA, 1945–1980* (1995), JAMES B. LANE, "CITY OF THE CENTURY": A HISTORY OF GARY, INDIANA (1978), and S. PAUL O'HARA, *GARY: THE MOST AMERICAN OF ALL AMERICAN CITIES* (2010).

It is also worth noting that at the time Harrison graduated from law school, most new lawyers were following the exact same career path:

[T]here were 171,110 lawyers working in the United States in 1948. Among the roughly 152,600 working in private practice, 66.2% were identified as solo practitioners. . . . According to statistics compiled in 1947 by the U.S. Department of Commerce, the average law firm had an average of 1.64 members. . . . A 1950 survey of lawyers in private practice inquired about the most important sources of help in finding employment or making a start in practice. Nearly 80% reported personal contacts followed by 47% from personal efforts.

William D. Henderson, *A Blueprint for Change*, 40 PEPPERDINE L. REV. 461, 470–71 (2013) (footnotes omitted).

<sup>19</sup> *Heart Attack is Fatal to Gary Lawyer*, GARY POST-TRIB. (Ind.), Apr. 8, 1952, at 1; *see also* RICHARD S. KAPLAN, *HISTORY OF THE GARY BAR ASSOCIATION 1907–1964*, 181 (1964) (noting that at his passing, Herbert was "one of the oldest members of the Association in point of membership"). Following Herbert's death, Harrison was mentored by two lawyers who had been friends of Herbert—Ray C. Thomas (1898–1971; admitted 1924), and Benjamin Saks (1910–1988; admitted 1936). Rosenbloom Interview, *supra* note 5. Like Harrison, both were alumni of the Indiana University law school. *Obituaries Ray C. Thomas*, VALPARAISO VIDETTE-MESSENGER (Ind.), Aug. 25, 1971, at 13; *see George Langford, Retired Entomologist Dies*, WASH. POST, Jan. 30, 1988, at B6, available at 1988 WLNR 2553234 (listing several obituaries, including one for Saks).

named Miriam and a son named David, and that he was enjoying a quiet but fulfilling existence:

Since June, 1951, I have been engaged in the private practice of law in Gary. Most of my work involves land titles as well as probate law and general business counsel, together with the usual smattering of divorce and collection items. I have been active in a number of civic and Jewish organizations in Gary, besides having earned a ham radio license and having pursued a photographic hobby. I have also been interested in the formation of an Indiana Chapter of the American Civil Liberties Union and have also worked with the Harvard Club of Chicago in recruiting prospective candidates for admission to the College.<sup>20</sup>

### III. DIFFERENCES

Although the American Civil Liberties Union was founded in 1920, the Indiana Civil Liberties Union, headquartered in Indianapolis, was not organized until 1953.<sup>21</sup> Harrison quickly became a member, obtained a seat on the Advisory Board, and in March 1955 hosted a luncheon in Gary to explore the possibility of forming a local chapter.<sup>22</sup>

The idea soon received a boost when the Knights of Columbus unveiled a plan to erect a series of large crucifixes throughout Lake County. The project was the brainchild of the Catholic Affairs Committee of the Lake County Abraham Lincoln Fourth Degree

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<sup>20</sup> HARVARD COLLEGE CLASS OF 1948: SEXENNIAL REPORT 148–49 (1954). In addition to his other hobbies, Harrison was a passionate model train (HO gauge) collector. Rosenbloom Interview, *supra* note 5.

Harrison's reference to "land titles" requires a word of explanation. During the Depression, Herbert had begun buying up delinquent "special assessment bonds," paying as little as five to fifteen cents on the dollar for them. *Id.* In time, he amassed so many of these instruments that they filled a safe "the size of an icebox." *Id.* Later, as the underlying properties regained their value, it became Harrison's job to dispose of them. *Id.* For a further discussion, see Rosenbloom v. Hutchins, 55 N.E.2d 315, 318 (Ind. 1944), describing Herbert's methods and providing a sense of how much money could be made from a single bond.

<sup>21</sup> Rebecca S. Shoemaker, *Indiana Civil Liberties Union*, in THE ENCYCLOPEDIA OF INDIANAPOLIS 733 (David J. Bodenhamer & Robert G. Barrows eds. 1994); SAMUEL WALKER, IN DEFENSE OF AMERICAN LIBERTIES: A HISTORY OF THE ACLU 3 (2d ed. 1999).

<sup>22</sup> See Letter from Jeanette Berman, Executive Secretary, Indiana Civil Liberties Union, to Harrison J. Mellman (Feb. 22, 1955) (on file with the author) (listing Harrison on the letterhead and expressing appreciation for agreeing to "set up an I.C.L.U. meeting in your community on Friday afternoon on March 11").

Assembly.<sup>23</sup> According to the CAC's chairman, a former Democratic congressman named William T. Schulte, the crucifixes would serve as memorials "to Americans who gave their lives in this country's wars"<sup>24</sup> and also "carry a religious message to the thousands of motorists who will pass by [them]."<sup>25</sup>

Although Schulte initially talked about erecting eight crucifixes, he soon scaled back the number to five, with one each in East Chicago, Gary, Hammond, Highland, and Whiting.<sup>26</sup> On May 26, 1955, the first crucifix went up in Gary in Jordan Park.<sup>27</sup> Three days later, a formal ceremony dedicated the "[twenty] foot crucifix," which consisted of an "oaken cross and terra cotta corpus fac[ing] west from the center of the junction, ready to catch the eye of travelers entering Gary."<sup>28</sup>

<sup>23</sup> The Fourth Degree is the highest degree of membership within the Knights of Columbus and is considered to be the "patriotic degree." For more information on the Knights of Columbus, see CHRISTOPHER J. KAUFFMAN, PATRIOTISM AND FRATERNALISM IN THE KNIGHTS OF COLUMBUS: A HISTORY OF THE FOURTH DEGREE (2001).

<sup>24</sup> *War Memorial: Mass Will Dedicate Park Crucifix Sunday*, GARY POST-TRIB. (Ind.), May 27, 1955, at 17. Originally from Nebraska, Schulte and his family had moved to Indiana when he was a teenager. SCHULTE, *William Theodore (1890-1966)*, BIOGRAPHICAL DIRECTORY U.S. CONG., <http://bioguide.congress.gov/scripts/biodisplay.pl?index=S000145> (last visited Feb. 7, 2015), archived at <http://perma.cc/S5XN-4MVV>. After a stint on the Hammond city council (1918-1922), he was elected to represent Indiana's First District in the U.S. Congress and served five terms (1933-1943). *Id.*; *William Theodore Schulte*, FIND A GRAVE (Aug. 21, 2002), <http://www.findagrave.com/cgi-bin/fg.cgi?page=gr&GRid=6711311>, archived at <http://perma.cc/VXD9-X5UZ>.

<sup>25</sup> *War Memorial: Mass Will Dedicate Park Crucifix Sunday*, *supra* note 24.

<sup>26</sup> *Knights Erect Crucifix Along Road Near Gary*, *supra* note 1; *K. of C. Group Will Dedicate Roadside Cross*, CHI. DAILY TRIB., Oct. 9, 1955, at S2. One person, however, claims that the CAC's original goal was to put up twenty-five crucifixes. *Infra* note 67 and accompanying text. While no explanation has been found for the reduction, financial considerations presumably played a role.

<sup>27</sup> *War Memorial: Mass Will Dedicate Park Crucifix Sunday*, *supra* note 24. Older sources typically give the crucifix's location as "6th Avenue and U.S. [Routes] 12 [and] 20." *Id.* Newer sources normally list it as being "at the intersection of Martin Luther King Drive, formerly Indiana Street, and Dunes Highway." JOHN C. TRAFNY, IMAGES OF AMERICA: GARY'S EAST SIDE 26 (2002). Despite its name, Jordan Park is not a park at all; instead, it is a triangular spit of land located in a poor neighborhood. GOOGLE MAPS, [https://www.google.com/maps/@41.600587,-87.318241,3a,75y,222.81h,74.89t/data=!3m4!1e1!3m2!1s5sltH8NQ8cXeQ9v\\_XTPBKg!2e0](https://www.google.com/maps/@41.600587,-87.318241,3a,75y,222.81h,74.89t/data=!3m4!1e1!3m2!1s5sltH8NQ8cXeQ9v_XTPBKg!2e0) (last visited Feb. 7, 2015), archived at <https://perma.cc/V4FH-525P>. Indeed, the Gary Parks Department does not even list it on its website. Gary Parks Department, *Locations*, available at <http://www.gary.in.us/parks/locations.asp> (last visited Mar. 4, 2015), archived at <http://perma.cc/M25W-XX8V>. As a result, even long-time Gary residents normally draw a blank when asked about "Jordan Park."

<sup>28</sup> See *Knights Erect Crucifix Along Road Near Gary*, *supra* note 1 (explaining that the day's program included a march, the celebration of mass, and a sermon).



The Gary, Indiana crucifix in Jordan Park

Within a week of the installation, Harrison sent out the following letter to every ICLU member living in Gary:

Mr. William Sanborn, Area Director for the American Civil Liberties Union, will be in Gary for a dutch treat supper to be held Thursday night, June 9, at 6:00 P.M. at Cooley's Cupboard, formerly the Marshall House Restaurant.

In addition to a discussion of a membership and finance campaign to be held in this area, there will be considered at least one important matter regarding a local civil liberties issue.

I hope that you will be able to come and will contact my office by Wednesday so that we may expect you.<sup>29</sup>

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<sup>29</sup> Letter from Harrison J. Mellman (June 6, 1955) (on file with the author). Attached to the letter is a list providing the names and addresses of the fourteen recipients. *Id.* The Marshall House was a popular Gary eatery that billed itself as the city's "leading restaurant," especially for important occasions. See Ad, *Remember Mother at The Marshall House*, VALPARAISO VIDETTE-MESSENGER (Ind.), May 11, 1951, at 12 (offering full dinners for \$2.50).

Although no notes from the dinner still exist, subsequent correspondence makes clear what happened that night. First, Harrison received a letter from the ICLU thanking him for his “generous contribution of \$50.00 toward the work of the I.C.L.U.” and mentioning that “Mr. Sanborn has told us of the fine work you are doing and we are sure your enthusiasm and support will make a vital contribution to civil liberties.”<sup>30</sup>

Second, Fredrica W. Wechsler wrote a letter to Sanborn. After explaining that she was doing so in her capacity “as acting secretary of our fledgling ICLU chapter” and that the group was exploring how “to obtain more members and finances,” she explained that “Harrison has continued to look up the law concerning the crucifix matter, and is still unsure whether there are any applicable precedents. I know he is giving the matter much time and thought.”<sup>31</sup>

By the following month, Harrison had concluded that a lawsuit was feasible.<sup>32</sup> In a letter with the subject line “In re: *Gary Crucifix*,” he advised Sanborn:

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<sup>30</sup> Letter from Jeanette Berman, Executive Secretary, ICLU, to Harrison J. Mellman (June 14, 1955) (on file with the author).

<sup>31</sup> Letter from Fredrica W. Wechsler, Acting Secretary for the Calumet Area Branch ICLU, to William Samborn, Area Director, ACLU (July 2, 1955) (on file with the author).

Fredrica, better known as Fredi, was the wife of Burton D. Wechsler, a Gary estate lawyer who later became a noted First Amendment scholar. Richard Grey, *Former Gary Lawyer, Activist is Dead: Burton David Wechsler Helped Elect Gary's First Black Mayor in 1967*, MERRILLVILLE POST-TRIB. (Ind.), Feb. 3, 2004, at A5. After the couple moved to Washington, D.C. in 1973, Fredrica became the cultural affairs director of the National Academy of Sciences, served as the political action coordinator of the National Women's Caucus, and worked on civil service reform in the Carter White House. Telephone Interview with Ms. Fredrica W. Wechsler (May 25, 2012).

<sup>32</sup> It is unclear exactly what finally persuaded Harrison, as no case citations appear in any of his surviving papers. In attempting to duplicate his research, I found no decisions squarely on point. However, in *Smith v. Pedigo*, the Indiana Supreme Court certainly gave Harrison reason to think he was right:

[E]ver since the complete separation of church and state in the crowning glory of civil government among men by the constitution of the United States declaring “that [C]ongress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof,” which was followed by similar provisions in most of the state constitutions, and especially our own, the law has known no religious creed, no religious opinion, no religious doctrine, no standard of belief in matters pertaining to religion. Our state constitution, framed by wise men, and adopted by the people, has still more securely placed us out of the reach of those fierce and bloody struggles arising out of a difference in religious opinion in former times by declaring that all men shall be secured in their natural right to worship Almighty God according to the dictates of their own consciences, and that “no law shall in any case whatever control the free exercise and enjoyment of

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We have available an attorney ready to prosecute this matter and those of us in Gary who are interested are presently searching for a resident taxpayer who will be willing to serve as a plaintiff in this matter. As soon as such an individual is found, the various national agencies interested will be further contacted for advice in the matter. I shall certainly keep you and the others informed of any progress and assure you that the matter is by no means dead.

We shall also be contacting the local K of C officials with regard to the matter, maintaining of course a friendly atmosphere.<sup>33</sup>

While Harrison looked for a suitable plaintiff, Schulte and the Knights pushed forward with their plans. As a result, on October 16, 1955, the second crucifix was dedicated in Wicker Park in North Township.<sup>34</sup>

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religious opinions, or interfere with the rights of conscience;" and that "no preference shall be given by law to any creed, religious society, or mode of worship; and no man shall be compelled to attend, erect, or support any place of worship or to maintain any ministry, against his consent." And that "no religious test shall be required as a qualification for any office of trust or profit."

33 N.E. 777, 778-79 (Ind. 1893), *reh'g denied*, 44 N.E. 363 (Ind. 1896). Harrison probably also took comfort from *Ill. ex rel. McCollum v. Bd. of Educ. of Sch. Dist. No. 71, Champaign Cnty., Ill.*, which had prohibited public schools from hosting religious teachers. 333 U.S. 203, 212 (1948). In finding the practice unconstitutional, Justice Black had written:

Here not only are the State's tax-supported public school buildings used for the dissemination of religious doctrines. The State also affords sectarian groups an invaluable aid in that it helps to provide pupils for their religious classes through use of the State's compulsory public school machinery. This is not separation of Church and State.

*McCollum*, 333 U.S. at 212.

<sup>33</sup> Letter from Harrison J. Mellman, to William Sanborn, Area Director, ACLU (Aug. 17, 1955) (on file with the author). Harrison never revealed the name of the lawyer who was "ready to prosecute this matter." Telephone Interview with Ms. Fredrica W. Wechsler, *supra* note 31. It therefore seems highly likely that he intended to handle the case himself.

<sup>34</sup> *Dedicate Memorial Sunday*, GARY POST-TRIB. (Ind.), Oct. 14, 1955, at 14; see *K. of C. Group Will Dedicate Roadside Cross*, *supra* note 26 (describing the crucifix as "a duplicate of the one erected early this summer at the intersection of U.S. Highways 12, 20, and 6, near Gary").

Unlike Jordan Park, Wicker Park more than lived up to its billing as a park. Dedicated in 1927 by President Calvin Coolidge, its 226 acres now include a golf course, tennis and volleyball courts, a splash pad, a dog run, a playground, bicycle rentals, walking trails, banquet halls, and picnic areas. WICKER MEMORIAL PARK (2015), available at <http://www.wickermemorialpark.com/index.php?page=home>, archived at <http://perma.cc/8LRM-YSRK>.

By now, however, various groups had become concerned about the Knights' activities and had begun to openly complain about their crucifixes.<sup>35</sup> At a meeting on October 19, 1955, called by the Ministerial Association of Greater Hammond, the park's overseer was implored to "take whatever action he can devise" to remove the crucifix.<sup>36</sup> When asked about the issue, however, Wicker Park Superintendent Stephen Grabovac said he did not see what all the fuss was about—"We want to be fair to everyone. Any other religious group can erect a monument right next to it if it gets permission."<sup>37</sup>

In response to these events, Harrison wrote a long letter to Sanborn on October 24, 1955.<sup>38</sup> The subject line read "*In re: Gary Crucifix and Hammond-Highland Crucifix*" and sought to explain what was going on:

The North Township Trustees, who have jurisdiction over the public park upon which the Hammond crucifix was erected, stated last week that they would make a public report within ten days as to a decision to move the crucifix from the public park. The statement came as a result of a resolution of the Greater Hammond Area Ministerial Conference. A number of Catholic priests also have expressed regret over the erection of this crucifix, feeling that further permission than that of the K. of C. should have been obtained. As you may know, there has been a great deal more public discussion of this crucifix than there has been of the Gary crucifix. Two of the chief factual circumstances responsible for this greater discussion in the Hammond area are the far more prominent display of the crucifix in the Hammond-Highland area, and the different religious makeups of the communities. Those in Gary who have been interested in the matter, also believe that because the Hammond community, in particular, the Ministerial Conference, was sensitized and warned by the concerned people in Gary, they were much better able to meet the situation immediately upon its arising.

It now appears that if the report of the North Township Trustees relative to the Highland crucifix

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<sup>35</sup> *Talk Court Fight over Crucifix*, GARY POST-TRIB. (Ind.), Oct. 17, 1955, at 15.

<sup>36</sup> *Told to Remove Crucifix: North Trustee Backed by Church*, GARY POST-TRIB. (Ind.), Oct. 20, 1955, at 13 (internal quotation marks omitted).

<sup>37</sup> *Dedicate Memorial Sunday*, *supra* note 34.

<sup>38</sup> Letter from Harrison J. Mellman, to William Sanborn, Area Director, ACLU (Oct. 24, 1955) (on file with the author).

should be unfavorable to the resolution of the Hammond ministers, there will be considerably more protest and very likely some form of legal action will be instituted. Regardless of the outcome as to the Highland crucifix, most of us in Gary are very pleased that so much more public discussion has been held and we feel that we are now better equipped both further to initiate legal action and to proceed with friendly discussions with K. of C. officials. I have been eager to have such discussions during the past several months, but have not been able to do so because I have not been able to secure the cooperation of enough non-Jewish individuals to hold such a meeting. And you will recall that the Jewish community here does not want to be unaided in this situation.

I have also been assured that the Gary Inter-Ministerial Conference has a committee considering the preparation of a resolution similar to that adopted by the Hammond group. I shall be in further touch with you on the matter.<sup>39</sup>

In the weeks following this letter, the situation grew increasingly tense with the Hammond ministers at one point asking the National Council of Churches of Christ to speak to the Knights.<sup>40</sup> As Thanksgiving approached, no one knew what would happen next.

#### IV. TRAGEDY

On November 29, 1955, Mrs. Wechsler stopped crying long enough to send the following letter to Sanborn:

I am deeply grieved to have to inform you that on November 23, Harrison Mellman died suddenly of a cerebral hemorrhage. He was ill only one day and died in the evening when he attempted to get out of bed. I know you are terribly shocked to learn this, as were we all. Harrison was a much beloved member of our community, and for one so young (he was [twenty-eight]) had gained respect and admiration from not only those much older than himself, but those of differing

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<sup>39</sup> *Id.*

<sup>40</sup> *Clerics Ask Removal of Crucifix*, GARY POST-TRIB. (Ind.), Nov. 8, 1955, at 11.

opinions. Personally, of course, the loss to his family is immeasurable; but the community too has suffered a loss, for he was an active and interested participant in many organizations.

Our own organization also suffers a setback, but we intend to continue working at its organization. I saw Harrison's wife last night, and she told me that one of the things he had been deeply concerned with recently was the crucifix issue. We do not intend to let it go by the boards, but will continue seeking a plaintiff so that a law suit can be brought.<sup>41</sup>



Harrison J. Mellman's tombstone

<sup>41</sup> Letter from Fredrica W. Wechsler, Secretary, Calumet Area Branch ICLU, to William Sanborn, Area Director, ACLU (Nov. 29, 1955) (on file with the author). Two days later, Sanborn reacted to the news by writing:

You have received a copy of Fredrica's letter to me on November 29th. You, I am sure, as well as I, feel that Harrison Mellman's death is a great loss. He was a fine man and one whom I took pleasure in knowing.

Memorandum from William Sanborn, Area Director, ACLU, to Jeanette Berman, Executive Secretary, ICLU (Dec. 1, 1955) (on file with the author).

To those who knew him well, Harrison's death was somewhat less shocking. A life-long diabetic, Harrison was often careless about his condition and the years of neglect finally had caught up with him. See Rosenbloom Interview, *supra* note 5 (recalling that Harrison had a "big sweet tooth"); see also E-mail from Len Pryweller to Don Fisher (two boyhood friends of the Mellman family) (Mar. 11, 2013) ("Harrison . . . a brilliant Attorney . . . died prematurely in a diabetic coma. . . . The world did not know much about diabetes at that time.") (on file with the author). For a further look at Harrison's death, see *Mellman Dies; Gary Lawyer*, GARY POST-TRIB. (Ind.), Nov. 25, 1955, at 1, 22, and *Harrison Mellman*, FIND A GRAVE (Mar. 12, 1927), available at <http://www.findagrave.com/cgi-bin/fg.cgi?page=gr&GRid=66224231>, archived at <http://perma.cc/WE3G-27PP>.

One week later, Wechsler again wrote to Sanborn. Among the matters discussed in this letter was the crucifix issue:

Item # 2: I am enclosing a copy of a letter drafted by Harrison but never sent by him. I would like you to see it and ok before we send it out. I'm reasonably sure Nelson Reck will sign it—if not, I'm willing too. Also enclosed is a statement drawn up at a Ministerial Ass'n. meeting in Hammond. Incidentally, the meeting drew a front page story in the *Gary Post Tribune*, with incidental mention that there was also such a crucifix in Gary. Thought you'd like to see the statement.

Unfortunately, I knew nothing of the meeting, nor evidently did any of the other ACLU members around, until the story appeared. However, Harrison's brother-in-law, who shares his office[,] was informed by a Chicago representative of the American Jewish Congress, and he (Alvin Rosenbloom is his name) and Harrison's widow attended the meeting and brought back the statement.<sup>42</sup>

Harrison's unsent missive, titled "Draft of a Letter to be sent to Municipal, Township, and County Officials, Public School Corporations in Lake County, and Park Boards," read as follows:

I am contacting you as chairman of the Calumet Area members of the Indiana Civil Liberties Union, an affiliate of the American Civil Liberties Union.

It has come to our attention that various groups have in good faith requested permission to erect religious monuments and statutes on public property in Lake County.

Many people are not aware of the fact that monuments so located are violative of the spirit and letter of the Constitutions of both Indiana and the United States.

We should like to explain the reason for this infringement of constitutional principles. It is the use of publicly owned, tax supported property for the display

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<sup>42</sup> Letter from Fredrica W. Wechsler, Secretary, Calumet Area Branch ICLU, to William Sanborn, Area Director, ACLU (Dec. 11, 1955) (emphasis added) (on file with the author).

of a religious symbol. This is in direct contravention of the principle of separation of church and state. History has demonstrated that it is essential for the maintenance of religious freedom to separate the functions of church and state and prevent each from aiding or interfering with the other.

We would be pleased to place our resources at your disposal if, in the future, anyone should request permission to erect similar monuments on public property. We would be happy to talk with you at any time, and hope you will feel free to contact us should the situation arise.<sup>43</sup>

The "Statement of the Principle of the Separation of Church and State Given by the Greater Hammond Ministerial Association on December 7, 1955" was almost identical:

In October, 1955, a crucifix was erected by the Fourth Degree Assembly, Knights of Columbus, in Wicker Memorial Public Park. This park is supported by the taxes of all the citizens in North Township, Lake County, Indiana. Six months earlier, a crucifix was erected in a public park in Gary. Late this spring other such monuments are expected to be erected in other public parks in Lake County.

At the time the crucifix was erected in Highland, we of the Greater Hammond Ministerial Association revealed to the community our deep concern about this infringement of the constitutional principle of the separation of church and state. We hoped, however, that we could resolve this violation of the Constitution in friendly private discussions. We believe those responsible for the erection of this religious symbol on public property were motivated only by a concern which we mutually share for the religious welfare of the community. We believe those responsible were not aware that they were undermining a principle that was written into our Bill of Rights by our Founding Fathers. We have made every effort to resolve this conflict in a friendly way.

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<sup>43</sup> Draft of Letter from Harrison J. Mellman (on file with the author).

As ministers, we would have preferred to see this issue settled quietly and privately without the rancor and hostility that is bound to come from a lawsuit. As ministers, we bear a heavy responsibility for the defense of religious liberty as it is guaranteed in the American principle of separation of church and state. It is an obligation we cannot forfeit.

We believe that the courts will reaffirm this principle. Therefore, we find no alternative but to encourage recourse in the courts of our land. We of the Hammond Ministerial Association pledge our moral support to those individual citizens who have decided to take this issue to court.

We still hope and pray that this issue may be resolved before the case opens in court. All religions of this great land are best served by the state and the church separately performing their functions without either becoming the tool of the other. We hope and pray that the Fourth Degree Assembly, Knights of Columbus, will join with us in preserving this American tradition.<sup>44</sup>

On January 8, 1956, having not received an answer to her earlier question, Wechsler again wrote to Sanborn:

In regard to the draft of the letter dealing with the crucifix which I enclosed in my letter to you of December 11, have you reached a decision about it? I understand there is an article about the crucifix in the January 9 issue of the *New Republic*, but so far I have been unable to obtain a copy of it. Thought you might like to look it up.<sup>45</sup>

Two weeks later, with Sanborn's approval now in hand, Wechsler contacted Mario B. Tomsich, the lawyer who had been hired by the Ministerial Association.<sup>46</sup> As usual, Wechsler got right down to business:

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<sup>44</sup> Statement of the Greater Hammond Ministerial Association (Dec. 7, 1955) (on file with the author).

<sup>45</sup> Letter from Fredrica W. Wechsler, Secretary, Calumet Area Branch ICLU, to William Sanborn, Area Director, ACLU (Jan. 8, 1956) (on file with the author).

<sup>46</sup> Decidedly left-wing in his politics, in 1936 Tomsich ran for governor on the Socialist ticket and lost. See *Socialist Candidate Speaks to Philosophers*, HAMMOND TIMES (Ind.), Nov. 9, 1936, at 16. A year later, he started a "people's cooperative" to buy food in bulk. See LANE, *supra* note 18, at 186 (explaining that the enterprise went out of business in 1940). Throughout his long career, Tomsich delighted in coming to the aid of unpopular clients

Enclosed please find a copy of a letter drafted by Harrison Mellman shortly before his untimely death, the issuance of which has been approved by William Sanborn, our area director. Nelson Reck, who was Harrison's co-chairman in our young ACLU chapter, has indicated that he will sign the letter if he could be joined by one or two others. I have already informed him that as secretary I would be happy to put my name to the letter, and it occurred to us that in your dual capacity as both an ACLU member, and legal counsel for the Hammond plaintiffs in their crucifix case, perhaps you would join us in affixing your name to the letter.

Harrison viewed this letter, and I am inclined to agree with him, as an educational device. However, it is also possible that it might turn up a plaintiff for a legal action in Gary.

Along that line—as I was leaving the Hammond Ministerial meeting Monday night, I was approached by Mrs. John Steenson, wife of one of the plaintiffs, who suggested that her sister might be willing to be a Gary plaintiff. She indicated that her sister's husband was not favorable to the idea, but that the sister might be willing to go ahead with the matter anyhow. She further stated that if her sister were not willing to take on the action herself, she might be able to suggest someone who would. In view of the familial complications, Mrs. Steenson requested that if the sister were contacted, her (Mrs. Steenson's) name not be mentioned. I promised to respect her [wishes]. Her sister's name is Mrs. Catherine Curten and her residence is 669 Harrison Street, Turner 2-5559. I have not yet contacted her, feeling you might

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and causes. See, e.g., *Wasy v. State*, 138 N.E.2d 1, 2 (Ind. 1956), *reh'g denied*, 139 N.E.2d 438, 440 (Ind. 1957) (defending a woman who had performed an illegal abortion); see also RONALD D. COHEN, *CHILDREN OF THE MILL: SCHOOLING AND SOCIETY IN GARY, INDIANA, 1906-1960, 194-96* (1990) (describing Tomsich's 1946 fight to improve Gary's schools by raising the property tax). Despite this fact, Tomsich was personally very popular, and in 1939 was elected president of the Gary Bar Association. *Presidents of Bar Associations*, 15 IND. L.J. 354, 355 (1939-40). Later, he regularly served as a special judge. See, e.g., *Minister is Acquitted in Beating Case*, VALPARAISO VIDETTE-MESSENGER (Ind.), Oct. 12, 1955, at 6 (reporting on his decision in a closely-watched child welfare case). Near the end of his life, Tomsich served as a U.S. consul in Mexico. *Mario Benjamin Tomsich, Sr*, FIND A GRAVE (Apr. 15, 2011), [http://www.findagrave.com/cgi-bin/fg.cgi?page=gr&GSlN=Tomsich&GsbYrel=in&GSdyrel=in&GSob=n&GRid=68400160&archived\\_at=http://perma.cc/94Q9-G2GB](http://www.findagrave.com/cgi-bin/fg.cgi?page=gr&GSlN=Tomsich&GsbYrel=in&GSdyrel=in&GSob=n&GRid=68400160&archived_at=http://perma.cc/94Q9-G2GB).

have some suggestions in the matter. However, I would be happy to do so if you think it is advisable.

I hope to hear from you shortly regarding these matters. I would be happy to discuss them further with you at your convenience.<sup>47</sup>

Two days later, Wechsler forwarded her letter to the ICLU's headquarters along with the following note:

The letter to Mr. Tomsich is an outgrowth of my attending a meeting of the Hammond Ministerial Association, January 23, referring to the legal action to be initiated in the crucifix matter. I attended as an observer and representative of ACLU. Purpose of the meeting was to get the plaintiffs together with Mr. Tomsich, the lawyer who will handle the case, and the ministers, to determine what steps are to be taken next. Also attending the meeting were representatives of the American Jewish Congress and Anti-Defamation League of the B'nai B'rith, from Chicago. Upshot of the meeting was that Mr. Tomsich will write a letter to the head of the Knights of Columbus in this area stating that he has been retained by plaintiffs, and requesting removal of the crucifix. He will also state in the letter that unless this is done within a reasonable time, legal action will be taken. He then intends to commence suit. It was also decided that from here on the matter be treated as a strictly legal one, and the Ministerial Association take no more active leadership in the matter. Incidentally, perhaps you would like to have the names of the plaintiffs for your records. They are: Mr. John Steenson, 4740 Pine Street, Hammond; Mr. Charles Palmer, 263 Humpfer Street, Hammond; Mr. Lee T. Johnson, 8419 Oakwood Avenue, Munster. I will keep you informed of any further developments on this matter.<sup>48</sup>

As expected, the Knights refused to take down the Wicker Park crucifix. Accordingly, on May 22, 1956, Tomsich filed a declaratory

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<sup>47</sup> Letter from Fredrica W. Wechsler, Secretary, Calumet Area Branch ICLU, to Mario B. Tomsich (Jan. 26, 1956) (on file with the author).

<sup>48</sup> Letter from Fredrica W. Wechsler, Secretary, Calumet Area Branch ICLU, to Jeanette Berman, Executive Secretary, ICLU (Jan. 28, 1956) (on file with the author).

judgment action against John Sertich, the North Township trustee, in the Lake County Circuit Court in Crown Point.<sup>49</sup>

#### V. AFTERMATH

On March 8, 1963, Judge Felix A. Kaul dismissed Tomsich's case for lack of record activity.<sup>50</sup> Incredibly, despite the passage of nearly seven years, only two things had happened: (1) in 1958 North Township had been added to the lawsuit as a defendant; and (2) in 1959 Sertich had been replaced by John Brozovic, his successor as township trustee.<sup>51</sup> For the next twenty years nothing more was done about either of the crucifixes. But then in 1983, a man named Mel Schlesinger marched into federal court and demanded that the Wicker Park crucifix be removed. In a long piece years later, Schlesinger explained why:

The 4th Degree Knights of Columbus, of the Abraham Lincoln General Assembly, whose building is located in East Chicago, Indiana (about one mile away), concocted a scheme to erect [twenty-five] giant crucifixes at prominent highway locations all over northwest Indiana. The purpose, as explained to a Chicago Tribune reporter, was to put the fear of God into the hearts of the inhabitants of this area as they drive by the crucifixes.

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<sup>49</sup> See *Ministerial Group Sues over Erection of 20 Foot Crucifix*, CHI. DAILY TRIB., May 26, 1956, at 5 (explaining that the "suit seeks to have John Sertich, North township trustee, remove the crucifix and also to enjoin him from allowing the future erection of any sectarian religious symbol on the property under his jurisdiction. Because Highland is an unincorporated area, jurisdiction in the case is with the township.").

<sup>50</sup> See Declaratory Judgment at 137-78, *Palmer v. Sertich (Brozovic)* (May 22, 1956) (Lake County Circuit Court, No. C056-405) (copy on file with the author). One month earlier, Kaul had warned Tomsich that the lawsuit was in jeopardy:

[This] cause has been set on the regularly printed calendar of this Court for several consecutive terms without any action having been taken thereon. Unless some action is taken in this matter on or before March 8, 1963 . . . this cause will be dropped from the docket, pursuant to Court Rule No. 11.

Letter from Felix A. Kaul, Lake Circuit Court Judge, to Mario B. Tomsich (Feb. 11, 1963) (on file with the author). Kaul (1905-2001), a Buffalo native, settled in Gary in the late 1920s after catching a glimpse of the city's sand dunes while on a train trip to Chicago. Carole Carlson, *Former Judge Felix Kaul Dies: Respected Jurist Served as Lake Circuit Court Judge from 1944 to 1980*, GARY POST-TRIB. (Ind.), Sept. 10, 2001, at A10. Following two terms as the county's top prosecutor, Kaul was elected to the circuit court in 1944, a post he held until his retirement in 1980. *Id.*

<sup>51</sup> See *Palmer v. Sertich* (Lake County Circuit Court, No. C56-405) (on file with the author).

Before the erection of the monument, the Knights of Columbus told the Hammond Times, and others, that they were donating a “War Memorial” to the fallen soldiers and sailors of the United States.

Surprise! On Oct. 15, 1955, the “War Memorial” was unveiled, and it turned out to be a regular crucifix, with a 6-foot figure of a man being tortured to death on it. . . .

The crucifix in Wicker Park was located at the most prominent corner of the park, corner of Rt. 6 (Ridge Road) and Rt. 41 (Indianapolis Blvd). There was a small 11” x 11” bronze plaque, dated Oct. 16, 1955, on the crucifix, stating that it was a memorial to our soldiers, attached to the vertical beam about four feet above the base. The plaque was soon overgrown with evergreens, and was later lost or stolen. No one noticed it when it was there, and no one missed it when it was gone. . . .

It was a problem for me to take action to remove the crucifix while operating a sizable real estate office in Hammond. [My wife Annette and I] listed and sold real estate all over North Township of Lake County. I could not take action until we retired in 1980.

I spoke to the Indiana branch of the ACLU, the ICLU. On Aug. 5, 1981 I wrote a letter to the ICLU requesting action to remove the crucifix. The legal committee discussed the case, and decided to help. They asked for additional plaintiffs. Four other members volunteered to become plaintiffs. . . .

We were lucky to have a Professor of Law, Ivan Bodensteiner, who was a member of the ACLU. He was the head of the Law Department of Valparaiso University, which is only about thirty miles from Wicker Park. He was willing to undertake the lawsuit (even though he is a Catholic). He is a very nice and competent lawyer.

On Oct. 7th, 1982, I received a letter from Ivan, stating that the ACLU would send a letter to the Township authorities asking them to remove the crucifix or we would file a lawsuit. I agreed to pay the initial court costs of \$100.00. Our suit was filed in the Federal Court in Hammond, Indiana on June 24, 1983.

. . . [T]he Federal District Judge, Michael S. Kanne, who had jurisdiction over this case, sat upon it, and did

nothing for five years. He was then elevated to the 7th Circuit Federal Court in Chicago. The case, by February 1988, was then in the hands of Judge Moody, but he was too busy to rule on it.

In the spring of 1988 it was turned over to Judge Rudy Lozano, who sat on it for four years. How we finally got action from Judge Lozano: we created a news event.

We planned to picket the crucifix. We notified reporters, newspapers, the police of every town, and the sheriff of Lake County. . . .

For one hour on Sunday, July 12th, 1992, we picketed the crucifix in Wicker Park. I had made eight signs, 2' x 3', but had been warned not to attach any wood or metal to them, so they could not be used as weapons with which to hit us. The signs were all cardboard. Some said "Separate Church & State." Others said "Crucifix in Park is Illegal."

. . . The next day there was a petition drive by the churches. Judge Rudy Lozano was inundated with [1500] signatures on petitions requesting that he immediately render a decision to allow the crucifix to remain in the park. Happily, he did so, in July, 1992. It was the best thing that happened in ten years. His rulings were ridiculous, but they allowed us to file an appeal to the 7th Circuit Court in Chicago.

The appeal was argued on March 29, 1993. A decision in our favor was handed down in September 1993, requiring that the crucifix be removed without delay, and that the Township must pay the defendants for their frustration and discomfiture, and their attorneys for their work.

Final results: the crucifix has been moved to a churchyard. It has been replaced by an everlasting gas flame mounted on a rectangular 4' x 6' x 4' stone war memorial which had been constructed months earlier in anticipation of the inevitable decision. . . .<sup>52</sup>

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<sup>52</sup> Mel Schlesinger, *The Crucifix in Wicker Park*, FREEDOM FROM RELIGION FOUND. (Oct. 1994), available at <http://ffrf.org/legacy/fttoday/1994/oct/schlesinger.php>, archived at <http://perma.cc/94J4-H4V6>. For the actual court decisions, see *Gonzales v. North Twp. of Lake Cnty., Ind.*, 800 F. Supp. 676, 690 (N.D. Ind. 1992), *rev'd* 4 F.3d 1412, 1423 (7th Cir.

VI. CONCLUSION

Following his victory, Bodensteiner looked into the possibility of bringing a similar suit against the Gary crucifix, but like Harrison, was unable to find anyone willing to be a plaintiff.<sup>53</sup> As a result, the Gary crucifix is still in Jordan Park. After the early protests in Wicker Park, the Knights erected only one more crucifix. Because it was built on private property in Crown Point, it never aroused any objection.<sup>54</sup>

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1993) (“We reverse the district court and hold that the presence of the crucifix in Wicker Park violates the Establishment Clause of the First Amendment.” (emphasis removed)).

As Schlesinger indicates, the Wicker Park crucifix was moved several miles east to St. James the Less Catholic Church in Highland. MARK SKERTIC, *A NATIVE’S GUIDE TO NORTHWEST INDIANA* 110 (2003). A picture of the crucifix now appears on the Church’s homepage. See *St. James the Less Catholic Church: Highland, IN*, CATHOLICWEB, <http://www.stjameshighland.org/> (last visited Mar. 4, 2015), archived at <http://perma.cc/EYV2-AJ23>.

<sup>53</sup> Telephone Interview with Professor Ivan E. Bodensteiner (Feb. 4, 2011). For a further look at Professor Bodensteiner’s experiences with the Gary crucifix, see Ivan Bodensteiner, *Not Surprisingly, A Crucifix Conveys a Religious Message*, 49 VAL. U. L. REV. 897 (2015).

<sup>54</sup> See Bob Brown, *Dispute over Wicker Park Still an Unsettled Case*, NWI TIMES (July 22, 1991), available at [http://www.nwitimes.com/uncategorized/dispute-over-wicker-park-crucifix-still-an-unsettled-case/article\\_25909688-325b-5919-8043-0ac2f0bd0ac1.html](http://www.nwitimes.com/uncategorized/dispute-over-wicker-park-crucifix-still-an-unsettled-case/article_25909688-325b-5919-8043-0ac2f0bd0ac1.html), archived at <http://perma.cc/5SFB-VER9> (giving the location of the Crown Point crucifix as 93rd and Main Street).