

Borchard cont. from page 24

recognition of the role the Yale jurist played in the legislation.”³ The compensation amounts specified in that 1938 bill remained unchanged for 66 years, until they were increased by The Justice For All Act of 2004.

A less well-known aspect of Borchard’s career is that as one of the world’s leading experts on international law, he was a life-long advocate of U.S. neutrality. He was a vocal critic of the United States’ entry into WWI – arguing that there was no national interest to do so. He was also the country’s leading legal professional opposed to 1936’s so-called “Neutrality Bill.” In his January 1936 testimony before the House Foreign Affairs Committee, Borchard described the bill as misnamed because it altered established rules of international law that ensured the United States’ neutrality in disputes between other countries. Borchard prophetically told the Congressional committee that the bill “would be likely to draw this country into the wars it is intended to avoid.”⁴

In 1937 Borchard co-authored the seminal work advocating U.S. neutrality, *Neutrality for the United States* (rev. ed. 1940). After his worst fears about what would result from the failure of the U.S. to follow neutral policies were realized and the country became embroiled in WWII, Borchard opposed the federal government’s disregard for the rights of Americans in the name of national security. Borchard wrote briefs in two of the most important cases to reach the Supreme Court involving challenges to the U.S. military’s summary imprisonment of 120,000 innocent Japanese-Americans in concentration camps. The two cases were *Hirabayashi v. U.S.*, 320 U.S. 81 (1943), and *Korematsu v. U.S.*, 323 U.S. 214 (1944).⁵

In June 1950 Borchard retired after 33 years as a member of Yale Law School’s faculty. He died in July 1951 at the age of 66.

Sources:

Edwin Montefiore Borchard, *Dictionary of American Biography*, Supplement 5: 1951-1955.

Endnotes:

1 European Systems Of State Indemnity For Errors of Criminal Justice, by Edwin Borchard, 3 *J. Am. Inst. Crim. L. & Criminology* 685, May 1912 to March 1913. Available on JD’s website, www.justicedenied.org/borchard_1913.pdf

2 The Case of Sacco and Vanzetti, by Felix Frankfurter, *Atlantic Magazine*, 1927

3 Edwin Borchard, Law Expert Dead, Obituary, *New York Times*, July 22, 1951.

4 Neutrality Bill Is Called Peril, *New York Times*, January 10, 1936.

5 For background information about *Korematsu v. United States*, see, “In Memoriam, Fred Korematsu (1919-2005),” *Justice:Denied*, Issue 28, Spring 2005, p.5.

David Janssen – a.k.a. Dr. Richard Kimble a.k.a. The Fugitive



house who either murdered Kimble’s wife or knew who did. Kimble’s quest was hampered by being a fugitive from the police, since he escaped from the train taking him to the death house after he was wrongly convicted of his wife’s murder.

Although actor David Janssen starred in four television series from 1957 to 1975, his most memorable role was his four year portrayal as Kimble.¹

Janssen’s role as Kimble touched a nerve in viewers. Many prisoners wrote Janssen that they too had been wrongly convicted. People around the country reported sighting a suspicious one-armed man. A southern pris-

From 1963 to 1967, many millions of people throughout the world watched *The Fugitive* and Dr. Richard Kimble’s four-year pursuit of the one-armed man he saw running from his

on warden changed his mind when prisoners threatened to riot after he announced that he intended to stop them from watching *The Fugitive*. In England a grass-roots action committee formed by viewers was successful in persuading Granada TV to reverse its decision to take the program off the air as a bad influence.²

Kimble was exonerated when the mystery surrounding the death of his wife was resolved in *The Fugitive*’s final episode in August 1967. That program was the highest rated program in U.S. television history up to that time. Four decades later it is still the third highest rated episode of a television series in history.³ Janssen was so popular as Kimble that the series finale was seen by many times more people than saw the 1993 movie version in theaters, that starred Harrison Ford as Kimble.

David Janssen died of cancer at the age of 48 in 1980.

Endnotes:

1 David Janssen’s four series were:

• *Richard Diamond, Private Detective*. Four years, 1957-1961.

• *The Fugitive*, Four years, 1963-67.

• *O’Hare, United States Treasury*. One year, 1971.

• *Harry O*. Two years, 1974-75.

2 *The Fugitive* website,

<http://www.nostalgiacentral.com/tv/drama/fugitive.htm>

3 Only the final episode of *M*A*S*H* (1983) and the Who Shot JR? (1980) episode of *Dallas* outrank it. *All-Time Top-Rated TV Programs*,

http://www.chez.com/fibler/tvstats/misc/all_time.html

The Fugitive debuted on September 17, 1963 as an hour-long weekly ABC television series. The plot of *The Fugitive* was straightforward: Dr. Richard Kimble saw a one-armed man in his headlights running away from his house as he arrived home one night. When he went inside he found his wife Helen dead in their living room. Kimble had been seen by neighbors arguing with his wife earlier that evening – so the police didn’t believe his story about the one-armed man, and neither did the jury that convicted him of murdering her. It looked to them like he had murdered his wife and tried to manufacture an alibi for himself by leaving and then returning home. An innocent man sentenced to death, Kimble was able to escape when the train carrying him to death row wrecked. He was thus given a reprieve from the grim reaper, and a chance to embark on what turned into a four-year search for his wife’s killer.

However a twist in the storyline of *The Fugitive* from the beginning of the series in 1963

The Lost Days Of The Fugitive

by Hans Sherrer

WANTED

INTERSTATE FLIGHT - MURDER
RICHARD KIMBLE



DESCRIPTION
Criminal Record

to its final episode in 1967, was what makes the series unique in television history. Week after week, year after year, as Kimble pursued his Don Quixote like quest for his wife’s killer, strangers from one end of this country to the other helped him. While not always knowing Kimble’s identity at the beginning of an episode, the people he befriended each week, who he rented a room from, or who had given him a job, knew who he was by the end of the program. Yet knowing he was an escaped convicted murderer – of his wife no less – those people believed in his innocence and helped him elude capture. How did they help Kimble? They would give him money, or a tip on where to maybe look next for the one-armed man, or try to keep the police one step behind him by telling them when questioned, that he went in a different direction than he had actually gone, or by denying that they had seen him.

Lieutenant Philip Gerard was Kimble’s nem-

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esis. Gerard was as relentless in his pursuit of Kimble around the United States as Inspector Javert was in tracking Jean Valjean around France in Victor Hugo's *Les Misérables*. Gerard was constantly frustrated by Kimble's knack for eluding capture, but he was ever optimistic that he would soon nab him. While Kimble saw finding the one-armed man as his salvation, Gerard saw Kimble as his resourceful quarry.

Kimble was the ultimate underdog, a homeless, penniless, hunted man who had to spend his hours awake looking over his shoulder and sleep with one eye open.

This country's television viewers took Kimble's search for his wife's killer very seriously. The 120th and final episode of *The Fugitive*, titled Judgment, was broadcast on August 29, 1967.¹ Four decades haven't diminished the gripping drama of that episode as Kimble finally cornered the one-armed man, Gerard learned the truth of what happened the night of Helen Kimble's death, and Kimble and Gerard went their separate ways from the courthouse after the murder charge was dropped against Kimble.

The popularity of *The Fugitive* was such that it seems like all America watched the final episode: Almost 3/4ths of the nation's television viewers saw the finale, and it was the highest rated program in TV history up to that time. Forty years later, and after more than half-a-century of regular TV broadcasts, Judgment remains the third highest rated episode of a television series in history: Only the final episode of *M*A*S*H* (1983) and the Who Shot JR? (1980) episode of *Dallas* outrank it.²



The Fugitive's unique place in television history continues to be recognized by those with a memory of the time when it was broadcast. *The Fugitive* was so skillfully produced and popular that *TV Guide* honored it in 1993 as the Best Dramatic series of the 1960s. In the same year, best-selling author Stephen King wrote, "*The Fugitive* ... was .. absolutely the best series done on American television. There was nothing better than *The Fugitive* – it just turned everything on its head."³

Yet as dramatically powerful and popular as it was in the mid-1960s, today's television viewers would likely find *The Fugitive* quaint, its storyline unbelievable, and not

watch it in sufficient numbers to keep it on the air after its initial run of episodes. Why? In the United States of today it is unimaginable that over a period of four years, hundreds and hundreds of people across the country would knowingly risk imprisonment by committing the crime of aiding an escaped convicted wife killer to keep him from being recaptured. Even if they believed him innocent.

However in the mid-1960s, the spirit of people in this country was such that the idea was believable that Kimble's freedom from capture depended on the compassion of strangers and their willingness to take risks on his behalf.

Although it certainly may be possible that today a clannish group of people or those of a particular ethnicity or religion might band together to protect someone they think is being unjustly treated or pursued by the police – that wasn't what *The Fugitive* was about. People of different regions, ethnicities, races, and religions who had not had any previous contact with Kimble reached out to help him. Furthermore, there was nothing phony or contrived about the spirit of human goodness portrayed on *The Fugitive*. Its gritty realism was due in part to being filmed on location throughout the country as Kimble hunted the one-armed man from Washington to Florida, from California to New York, while being hunted himself.

Although the 1993 movie version of *The Fugitive* was a box office success, it was made as an action flick that had the draw of starring Harrison Ford and Tommy Lee Jones. The original series of *The Fugitive*, in contrast, was a low budget human interest drama featuring Barry Morse as Lt. Gerard and David Janssen as Dr. Kimble, neither of whom was a matinee idol.

The noticeable change in this country over the past four decades that people as a whole are more subservient toward authority is summed up in the title of the book *Snitch Culture* by James Redden.⁴ That book documents that the U.S. has evolved into a society dominated by people all too willing to snitch on their friends, neighbors, co-workers and family members – not to say strangers. The popular television program *America's Most Wanted* e.g., glorifies snitching, and provides a toll free hot line to make it as easy to do as ordering from Domino's Pizza.

So if law enforcement authorities say someone is guilty – such as Richard Kimble – people will dutifully call 911 and ease the

path for him to be carted to the death chamber even though he is innocent.⁵

The transformation of a large segment of this country's populace into eager undeputized "cops" is so noticeable that it has been seriously analyzed and written about by scholars.⁶

The reduction in the independent spirit of Americans has been catastrophic for the innocent. That change is symbolized by observation that in the 1960s about 20% of all defendants took their case to trial, while today that figure is about 4% (in some federal districts the trial rate is 2%). That reduction of at least 500% can be attributed in part to the "trial penalty" of a harsher sentence imposed on a person who doesn't take a plea bargain, and the prospect of being on the receiving end of that penalty is compounded by a higher rate of jury convictions today than in the 1960s. So it is much riskier for an innocent person to go to trial today than it was when *The Fugitive* was broadcast each week into America's homes.⁷

So the end of *The Fugitive* in 1967 symbolizes the "lost days" of a time when the innocent were less likely to be convicted, and it was believable that strangers would risk imprisonment to help right the wrong that a person had suffered at the hands of the legal system.

An epilogue to *The Fugitive's* theme is its accurate portrayal that without the generous help of strangers outside the legal system – and his sister that he occasionally had contact with and who refused to sell him out to the authorities – Kimble would have been captured long before tracking down his wife's killer. All hope of proving his innocence would have then ended with the slamming of the death chamber's door, and his gassing by those within the legal system whose main concern was closing his case file, and not whether he was guilty.

JD note: A paperback unabridged edition of *Les Misérables* by Victor Hugo (1488 pgs) is available from JD's Bookshop for \$7.95 plus \$5 S&H (Stamps OK). Or combine with books on p. 37 & 38 to order \$35 worth of books and eliminate S&H. Order from: Justice Denied; PO Box 68911, Seattle, WA 98168. Or order with a credit card from JD's website, www.justicedenied.org/books.html

Endnotes:

- ¹ *The Fugitive* website, <http://www.fiftiesweb.com/tv/fugitive.htm>
- ² *All-Time Top-Rated TV Programs*, http://www.chez.com/fbible/tvstats/misc/all_time.html
- ³ Stephen King, Introduction, p. xi, *The Fugitive Recaptured*, Ed Robertson, Pomegranate Press, Ltd, Los Angeles, 1993.
- ⁴ See the review of *Snitch Culture* in *Justice: Denied*, V. 2 No. 5.
- ⁵ A related instance of this attitude is that 90% plus of people in the United States supported the bombing and invasion of Afghanistan after the events of September 11, 2001, even

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system punishes the honest and innocent and rewards those who are guilty and manipulate the process!

Excuse me? The State's Attorney said ... our prosecutors went to prison to get him out." As Herb observed, "I couldn't believe that! The prosecutor said they came looking to find Hank and release him only to learn he had passed away! I'm sure they came to find and release Hank the same way they came to find and release Michael Austin when they suddenly discovered he was innocent!"

Excuse me? Hank died in prison, but the State doesn't even know what year it was, much less how he passed? Baltimore *Sun* stories echoed that fuzziness on when Hank died. On April 9, 2002, the *Sun* headlined their article, "Inmate who died in 1995 was innocent." On April 10 the *Sun* reported, "... in May 1997, Roberts died at age 68 ..." And on April 11 the *Sun* reported Hank "... collapsed outside his cell ... and died a day later, on December 22, 1996"! Thus on three consecutive days the *Sun* reported that Hank died in 1995, then 1997, and finally got it right that he died in 1996.

The most unsettling aspect of Hank's case is that if he had been a little less ornery he may have lived to see his vindication.

"You know Hank believed everything people told him," said Herb. "They told him Jessup had a better program for seniors, that they weren't locked up all the time. When he first got into processing at Jessup he was locked down almost all day. They went in one morning to check on him and found him deceased. And it happened only about two weeks after he left here, and then he laid in the morgue longer than he was in Jessup, because they had a hard time locating his sister."

Hank had heart problems after Tomczewski shot him in the chest, but Hank was in an annex with just a score of prisoners. We looked out for him, and Sergeant Verdier and Officer Decker also looked out for him. There was something special about Hank; his guardian angels seemed to tell us we'd better keep helping him, and Hank knew it.

And while Hank listened to others, once he had made up his mind about something he was more stubborn than an old mule. He knew about the POPS program – Project for Older Prisoners – from *Washington Post* and *Wall Street Journal* articles outlining Professor Turley's program at George Washington University School of Law. POPS enabled

students to conduct exhaustive and detailed investigations into an older prisoner's background, criminal history and parole plans to evaluate whether they warranted consideration as a low risk for violence or recidivism, and thus might merit release. Ever hopeful, Hank thought the POPS program just might be able to do something for him.

Hank heard POPS was operating from the "Old Man's Dorm" at the House of Correction in Jessup, where about 100 prisoners 60 years of age or older have their own space. He wanted some freedom. We fussed with Hank and pointed out that as the only old-timer in the annex we could get him prompt medical attention every time he was feeling ill. Also, several times Warden Waters had gone out of his way to see to it that Hank got his prescriptions renewed when the medical contractors tried to skimp on costs.

We begged Hank not to transfer, pointing out that as just one of a hundred old-timers in Jessup's "Old Man's Dorm" his voice for care and attention would be overwhelmed by others, and the officers would probably be too burdened to look out for him. They'd have their own concerns and ignore Hank.

But Hank had faith, said it was what he needed to do, and impatiently waited for months until classification got him transferred to Jessup. At Jessup he would also be closer to Gary Garland, so Gary wouldn't have to travel so far to see him.

Hank never even made it into the vaunted "Old Man's Dorm" much less into the POPS program. It didn't seem like ten days after his transfer when we got word by telephone, letters and messages from friends and family members, as well as prisoners at Jessup, that Hank had trouble getting his medication renewed, and he had died.

Adding insult to injury, Maryland's criminal justice system has never acknowledged its last "oversight" in the case of Henry Myron Roberts. I looked in every paper for his obituary, but never saw it. I guess run-of-the-mill criminals who die in prison don't deserve one.

But now we know the Hankster wasn't run-of-the-mill, now we know he was innocent. Perhaps by printing this eulogy and tribute to his spirit, and an anatomy of the body of his case, we can finally say, "Rest in Peace, Hank."

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Fugitive Endnotes cont. from p. 26

though the government of Afghanistan did not commit any act of war against the United States.

6 See e.g., *The New Individualists: The Generation After the Organization Man*, Paul Leinberger and Bruce Tucker (HarperCollins 1991), at pp. 16-18. Also see, *Managing Globalization in the Age of Interdependence*, George C. Lodge (Jossey-Bass 1995). See also Mr. Lodge's previous book, *The New American Ideology*, George C. Lodge (Alfred A. Knopf 1975). Written less than a decade after *The Fugitive's* last episode, it was apparent to Lodge that the men, women and children who accept the sovereign authority of an organization – such as the government – are considered to be one of its appendages.

7 Yale psychology professor Stanley Milgram's obedience experiments first conducted in 1961 demonstrated that a significant segment of society at that time in the United States was unduly obedient to authority. However, his experiment also revealed a solid one-third of the participants drew a clear line in the sand and refused to obey an instruction when they thought their action would cause harm to an innocent person. See, *Obedience To Authority*, Stanley Milgram, 1975, New York, Harper & Row. It is people of the ilk of those conscientious people that either overtly would have helped, or at the very least would have done nothing to harm Kimble.

Peirce Endnotes cont. from p. 22

4 "When Sir Ian heard who the lawyer was, it is likely he let out a long, hard sigh," By Andrew Alderson and Nina Goswami Nina, *Telegraph* (UK), August 21, 2005.

5 In the Name of the Father, By Hans Sherrer, 2 *Justice:Denied* 4, http://forejustice.org/wc/in_the_name_of_the_father_JD_v2_n4.htm.

6 Guildford Four, *Wikipedia*, http://en.wikipedia.org/wiki/Guildford_Four
7 British P. M. Tony Blair Apologizes To Guildford Four and Maguire Seven, *Justice:Denied*, Issue 31, Winter 2006, p. 45.

8 Gareth Peirce, *Wikipedia*, http://en.wikipedia.org/wiki/Gareth_Peirce

9 "When Sir Ian heard who the lawyer was," *supra*.

10 The CCRC can refer a case to the Court of Appeal when it finds there is a possibility to overturn a conviction based on:

- An argument not raised in the court proceedings.
- Evidence was not presented to the court; or,
- Other exceptional circumstances were present.

As of February 28, 2007, the conviction was quashed in 218 of 310 cases referred by the CCRC to the CoFA. (70%). *CCRC website*, http://www.ccr.gov.uk/cases/case_44.htm. The U.K. has about 20% of the U.S.' population, so the 218 exonerations due to the CCRC would be the equivalent of about 1,100 in the U.S.

11 Profile: Gareth Peirce, By Andrew Walker, *BBC News*, March 10, 2004.

12 "When Sir Ian heard who the lawyer was," *supra*.

13 *Id.*

14 Profile: Gareth Peirce, *Supra*.

Hirschberg Endnotes cont. from p. 28

5 *Id.*, at 195-99. (See also, "Pathology of Criminal Justice," *supra* at 546-8.)

6 *Id.*, at 199.

7 *Id.*, at 203.

8 *Id.*, at 200. The articles were written from 1927 to 1935.

9 *Id.* at 262. Hans Frank was one of the Nazi Party's earliest members, having joined in 1919, and he knew Hitler intimately. He was captured after WW II ended, and he was one of the defendants in the Trial of the Major War Criminals Before the International Military Tribunal in Nuremberg. During his defense he testified, "A thousand years will pass and the guilt of Germany will still not have been erased." Frank was found guilty of war crimes and crimes against humanity, and sentenced to death. He was executed by hanging on October 16, 1946.

10 *Id.* at 256-263 (Events related to the trial); Hitler's quote at 262.

11 *Id.* at 264.

12 The Justice Institute is attempting to have Hirschberg's book translated into English.

13 Lawyer's courtroom battles with Nazi party, *Greenwich Time* (Greenwich, CT), June 18, 2006.

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