Written by **Beverly K. Eakman** on September 26, 2011

Can Kidnap/Assault Victim Jaycee Dugard Successfully Sue the Feds?

Even though the Dugard family received a $20-million settlement in 2009 through the California's Victims' Compensation Fund, Jaycee Dugard wants to send a message to federal officials and parole agents who "failed on numerous occasions to properly monitor" Phillip Garrido, her captor, a criminal with a history of drug abuse and violence dating back to 1976, when he abducted a woman from the Tahoe area and took her across state lines to Reno, Nevada, and raped her.

Any proceeds from the lawsuit, says Dugard, will go to her private charity, the JAYC Foundation, which assists families recovering from abduction and other trauma. She has quite enough money now, after all. It's her childhood she can't recover — and the welfare of two children conceived in rape, whom she still nurtures.

The National Institute of Corrections and the Bureau of Prisons are component agencies of the U.S. Department of Justice, the cabinet-level agency responsible for national policy on parolees and federal-level crimes. In legal terms, kidnapping occurs when any person is unlawfully and non-consensually transported and held — for ransom or reward; or, as in Dugard's case, for terrorizing or inflicting bodily injury on the victim. Kidnapping is usually severely punished because it typically accompanies other offenses.

The crime of rape (or "first-degree sexual assault") generally refers to non-consensual sexual intercourse that is committed by physical force, threat of injury, or other duress. A lack of consent can include the victim's inability to refuse, which certainly applied in Dugard's case, as she was handcuffed. Federal code U.S.C. TITLE 18 cites aggravated sexual abuse (§2241), sexual abuse of a minor or ward (§2243) and repeat offenders (§2247), all of which apply in Dugard's case. Section 2244 specifies that if the sexual contact is with an individual under the age of 12, a maximum term of imprisonment may be imposed up to twice that otherwise provided. Dugard's ordeal included repeated rapes, two impregnations (first time, age 14), and being forced to bear the children in Garrido's backyard under unsanitary conditions, which constitutes child endangerment and abuse on a triple level. Not to mention the emotional abuse. Add to that, Garrido's initial 1976 offense across state lines, for which he serve a measly 11 years of a 50-year sentence. Worse, federal parole records show that Garrido failed mandatory drug tests multiple times during his first 1½ years of so-called supervision, despite the Parole Commission's laughable "zero tolerance" policy for drug use by parolees, and parole agents neglected to search his unkempt premises six times — missing the signs of a little girl being held and

abused.

So, just why is Dugard's federal case a "long shot"?

It seems the federal government has become clever at insulating itself from prosecution over the years, says Detroit attorney Mary Massaron Ross, "because of the strong immunities in place to [shield] local, state and federal officials." Author and lawyer Norm Pattis weighed in on Dugard's lawsuit prospects, explaining that "sovereign immunity typically bars suit against the federal government. Even if there were no immunity, the Supreme Court has made failure-to-protect claims virtually impossible to advance to a jury."

Pattis adds that Dugard "cannot establish that better monitoring would have prevented her abduction." No matter how sympathetic she may be as a plaintiff, he says, "the case should be dismissed without discovery."

Better monitoring? How about not having cut short Garrido's time in prison in the first place, or returning him to prison for failure to pass his drug tests? If children can be suspended from school for bringing an aspirin, surely a violent sex-offender can be taken off the streets for consuming *illegal* drugs.

But the Reuters news story by Emmett Berg (reprinted in the *Christian Science Monitor*'s online service) points to what may be a surprising wrinkle in this lawsuit, one that the plaintiff probably doesn't know — especially given that federal authorities twice brushed off Dugard's attempts at mediation.

Villanova University law professor Michelle Dempsey says there are other grounds for consideration: "While U.S. courts have been trending away from the principle that government has an obligation to protect women and children against violence, international legal trends have been headed in the opposite direction, calling such protections a basic human rights issue." Ms. Dempsey brings up a recent decision that highlights this point in the case of a Colorado woman, Jessica Gonzales, who sued the local police after her estranged husband kidnapped and killed her children. Gonzales pursued her case through the U.S. Supreme Court, where she lost. However, in August she won her petition to the Inter-American Commission on Human Rights, in which she claimed that the United States was responsible for human rights violations resulting from police inaction and the Supreme Court's decision.

The Inter-American System for the Protection of Human Rights emerged with the adoption of the American Declaration of the Rights and Duties of Man in April 1948 — the first international human rights instrument of a general nature, predating the United Nations General Assembly's Universal Declaration of Human Rights by some six months. The latter was picked up as a model by the UN's Committee on the Rights of the Child and the International Criminal Court. Because the wording is purposely fashioned in the mode of the American Constitution, one can easily miss the differences unless reading closely.

While Dempsey acknowledges that the Dugard case will be decided on U.S. legal principles, she adds, "It is important to realize that courts all over the world are moving towards seeing the protection of women and children against violence as a basic human right." *This provides a perfect wedge for the UN to insert itself into our justice system and further compromise our sovereignty.* So, it is in the UN's backhanded interest for Dugard to win her lawsuit. Will it quietly seek to influence the outcome?

Consider: Over the last few decades, there have been several Supreme Court landmark cases that have altered capital offense laws. In 1977, for example, the court ruled that the rape of an adult woman is no

longer a capital offense punishable by death, likely a reaction to the feminist movement, which insisted there were no differences between men and women — ergo, women didn't need "protecting" until, oops, they did — as per the Violence Against Women Act of 1994 (VAWA), passed as Title IV, §40001-40703 of the Violent Crime Control and Law Enforcement Act of 1994, H.R. 3355, and signed as Public Law 103-322.

While most of the UN's member nations couldn't care less about protecting women and children, the UN Convention on the Rights of the Child (CRC), among other human rights proclamations, says it does. For years, the UN has been pushing its International Criminal Court and working to supersede U.S. laws. They look at cases such as Dugard's and lick their chops, because they can say, with some truth, that the United States does a lousy job of apprehending criminals, not to mention keeping them off the streets.

There have been a burgeoning number of cases eerily similar to Dugard's in recent years, often involving convicts who were either on parole or persons having long rap sheets involving violence, such as Hadden Clark, who admitted to the abduction-torture-slayings of as many as 12 women and girls, and is serving a 60-year sentence in Montgomery County, Maryland, for the DNA-confirmed torture-killings of six-year-old Michele Dorr in 1986 and 23-year-old Laura Houghteling in 1993.

Brian David Mitchell and his companion Wanda Ileen Barzee were convicted in the Elizabeth Smart case. Elizabeth Smart was kidnapped at knife point on June 5, 2002, from her Salt Lake City, Utah, bedroom. She was found alive nine months later in Sandy, Utah, about 18 miles from home, in the company of a manipulative, Bible-quoting rapist, who was finally indicted along with his wife for Smart's kidnapping, after mighty efforts by psychiatrists trying to determine whether the couple were faking psychiatric symptoms or were truly insane.

Which brings up the seemingly unmerited influence exerted by psychiatry in criminal cases. Reviewing the Dugard, Clark, and Smart cases, it is clear that psychiatrists don't have a handle on what constitutes sanity, even by their own bible, the *Diagnostic and Statistical Manual of Mental Disorders*, or DSM. Criminals fake symptoms and psychiatrists fake cures. One can hire as many psychiatrists as one wishes to testify one way as another in almost any given case.

More ominous, however, is the relatively recent (since 1982) practical removal of constitutional safeguards involving the right to refuse psychiatric medications. U.S. law allows psychiatrists to forcibly medicate a defendant until he or she is deemed "competent to stand trial," even though drugs have never been proved effective for such a purpose. The potential for abuse is troubling, as political dissidents can be easily targeted, as has happened even in a post-Cold War environment. As attorney James B. Gottstein wrote in his seminal 2002 paper, "Psychiatry: Force of Law": "With respect to the mental illness diagnosis, itself, when a psychiatrist decides that a person has a mental illness and that person disagrees, according to the psychiatrist, that disagreement just shows the person lacks 'insight' and is in itself proof of the mental illness. Catch-22." Similarly, "Under the 'professional judgment' standard, if scientifically invalid pharmacology is 'accepted practice,' then it doesn't matter that it is invalid. Catch-22 [again]."

Moreover, the Dugard lawsuit just might end up successful. The case would seem to stand on its own merits. But as our criminal justice system continues to spiral toward the nonsensical, ironically a win here may prove a detriment if the UN finds an opportunity to interject itself as the "good guys" in the U.S. legal system. Already, an anti-parent mentality dominates when it comes to "a child's best interests" — which fits right in with UN *diktats*. There, the role of parents is seen as assisting the State

in raising children (CRC, Article 18), but whenever parents try to assert authority on important issues, such as educational curricula or the administration of vaccination cocktails, they are rebuffed.

The best response to Dugard's lawsuit may be a proactive approach, like that of California's East Bay State Assemblywoman, Susan Bonilla (D-Concord). She has co-authored a bill to broaden the information the state parole board can consider when evaluating whether to release an inmate: the Parole Board Act of 2011. As reported by Paul Thissen on the *Contra Costa Times* website, Bonilla pointed out, correctly: "Right now, the parole board can only consider an inmate's behavior while in prison when deciding whether to parole him. [This] bill would allow the parole board to consider the type of offense the inmate was convicted of, as well as any prior convictions. It would also require the inmate to produce proof that he or she is ready for parole, as opposed to placing that burden on the parole board, as is currently the case.… Even though Phillip Garrido was released on federal — not California — parole, his ability to escape detection brought the problems in the system to light."

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