TRUTH ENAHAN HUMAN

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INTRODUCTION

When Jessica Lenahan (formerly Gonzales) brought her petition to the Inter-American Court of Human Rights ("IACHR"), she had already exhausted all of the possible procedural steps in an effort to obtain justice within the U.S. legal system.[1] The U.S. Supreme Court had recently affirmed the dismissal of her case filed against the Town of Castle Rock, Colorado for failure to enforce a protection order against her husband, Simon.[2] Dismissed before discovery was conducted,[3] Ms. Lenahan's suit against the town had failed to provide her with any relief, including information that could have been obtained as part of the litigation process. Most importantly, Ms. Lenahan did not receive answers to her many questions surrounding the deaths of her three young girls. The girls died after they were unlawfully taken by their father.[4] Later, in 2005, Ms. Lenahan sought redress from the IACHR.[5] That body, in employing a human rights framework, focused on the State's accountability, based upon the government's obligation to protect those at risk.[6] In seeking relief through the IACHR, Ms. Lenahan introduced domestic violence advocates to a new form of justice seeking.[7] Many advocates experienced for the first time U.S. human rights advocacy in a forum outside of the traditional U.S. legal system. While those who previously advocated for U.S. survivors of gender violence had intuitively, and sometimes consciously, used the language of human rights advocacy, it was

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1. Jessica Lenahan (Gonzales) v. United States, Case 12.626, Merits, Inter-Am Comm'-

not until Lenahan v. United States that many U.S. domestic violence advocates incorporated the human rights framework in a conscious and organized way.[8]

Part I of this essay addresses the role of determining truth as part of human rights remedies. Truth is essential so that all involved may provide appropriate remedies to those harmed, as

families seek as part of their search for remedy and relief.[13] Mourning is onerous enough without unanswered questions surrounding the violation of a loved one. While no process will ever remove all suffering from violent personal loss, truth helps move the mourning process.[14] For these reasons, uncovering truth plays a fundamental role in human rights process and remedies.

The right to truth coincides with the U.S. founders' understanding of truth's essentialism in creating and maintaining democracy.[15] Some may see an international legally enforceable right to truth as separate from democratic societal interests in knowing the truth;[16] however, in the United States those principles are interdependent. Democratic autonomy cannot be maintained if residents do not have access to the truth.[17] Likewise, access to the truth is necessary to the establishment of autonomy through democratic political organization.[18]

The right to truth is well-established[19] and is embedded in various human rights documents.[20] The role of the IACHR in establishing the right to truth for individual victims, their families, and their societies is significant. "[E]very society has the inalienable right to know the truth about past events, as well as the motives and circumstances in which aberrant crimes came to be committed,

13. Right to the Truth, ORG. AM. STATES, http://www.oas.org/en/iachr/expression/showarti

Religious and civil perspectives on truth have influenced U.S. legal systems since their inception. U.S. justice systems demand truth of witnesses, who swear to tell the truth, the whole truth, and nothing but the truth.[27] Some oaths included "[s]o help me God."[28] Religion and law are noticeably blended in this version of the courtroom oath. The religiou

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For this reason, one goal of truth finding for individuals is to find reconciliation with the State, not necessarily with the individuals who perpetrated the violations.[44] This is exactly what Ms. Lenahan sought. Not only did the State have the power of remedy, but the State was a party to the harm entrenched in both the events that led to the girls' deaths and the obstruction of the ensuing investigation.[45] The search for truth could not be separated from either justice or remedy.

Before examining the application of the right to truth in the case involving the town of Castle Rock, a comparative review of the U.S. and IACHR findings is necessary.

II. PROCEDURAL HISTORY AND COMPARATIVE FINDINGS

A. Town of Castle Rock v. Gonzales

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In 2001, Ms. Lenahan filed suit in the Federal District Court for Colorado.[53] The Town of Castle Rock's Motion to Dismiss was allowed citing Ms. Lenahan's failure to state a claim that she had a positive right to enforcement and thus had not met the substantive or procedural due process tests.[54] The Tenth Circuit Court of Appeals ultimately reversed the District Court's ruling.[55] The Defendant, Castle Rock, appealed to the U.S. Supreme Court.[56] The case was accepted, and Justice Scalia wrote for the majority.[57]

Because the facts as reported by the court are integral to the comparative analysis of the U.S. Supreme Court and the Inter-American Commission's approach to justice, a summary of facts as found by the U.S. Supreme Court majority follows:

> A temporary restraining order issued against Simon Gonzales on May 21, 1999 and was served on him on June 4, 1999.[58] The permanent order entered on the same date permitted visitation between Simon and the girls on alternate weekends, two weeks over summer vacations, and during a midweek visit to be arranged between the parents.[59] Simon could pick up the girls for the midweek visit.[60] Ms. Lenahan called the Castle Rock police on June 22, 1999 to report that her three girls were missing.[61] The call was made about two hours after Simon took the children from the yard.[62] The police responded to Ms. Lenahan's home, were shown the restraining order and informed Ms. Lenahan that there was nothing they could do about enforcing the order, and Ms. Lenahan should call them at 10 p.m. if the children were not returned by then.[63] At 8:30 p.m. Ms. Lenahan called the police to report that she has spoken with Simon who said he had taken the children to a Denver amusement park.[64] Ms. Lenahan asked that someone be sent to the amusement park but was told again to call at 10 p.m.[65] At 10:10 p.m., Ms. Lenahan called the Castle Rock police and was told to wait until midnight to call again.[66] Ms. Lenahan called at midnight and then went to Simon's apartment, found it empty and called the police at 12:10 a.m.[67]

53. Gonzales v. City of Castle Rock, 366 F.3d 1093, 1098 (10th Cir. 2004).
54. Id.
55. Id. at 1095.
56. Town of Castle Rock v. Gonzales, 545 U.S. 748, 751, 754-55 (2005).
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> She was told to wait for an officer to arrive.[68] The police did not arrive and Ms. Lenahan went to the police station and filed a report at 12:50 a.m.[69] The officer who took the report went to dinner, making no "reasonable" effort to enforce the restraining order.[70] At 3:20 a.m., Simon arrived at the police station and fired at the police with a semiautomatic handgun he purchased that evening.[71] The bodies of the three girls, whom Simon had already murdered, were found inside his truck cab.[72]

While the decision itself has been criticized as a misapplication of DeShaney,[73] Justice Scalia cannot be faulted for stating the facts as narrowly as he did, despite serious factual omissions. The federal process for deciding a motion to dismiss looks to the pleadings for allegations.[74] Justice Scalia followed that practice. The Supreme Court needed only as much of the facts that set the groundwork for a motion on whether there existed a cause of action that should survive a motion to dismiss.[75] The Justices need not assess the harm done because of incriminating facts, even though Justice Scalia noted that the facts are "horrible."[76] Under American jurisprudence, the horror of the acts and any State involvement that permitted or enhanced those acts are considered irrelevant to the procedural issue.[77]

The facts as found by the U.S. Supreme Court were an incomplete, but not an inaccurate, reading of the pleadings.[78] The holding of the majority shielded the Town of Castle Rock, particularly the police, from liability for the acts that resulted from their blatant refusal to enforce Ms. Lenahan's protection order.[79] The Court went on to reverse the findings of the Tenth Circuit and said that Ms. Lenahan lacked a due process "property interest" in having the terms of her

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protection order enforced.[80] In tying the right to police enforcement to a property interest, the Court based its finding upon legal theory that subtly ties justice to privileges of ownership and wealth.[81] Rather than focusing on holding the State accountable, the Court focused on whether Ms. Lenahan had a right to hold the State accountable.[82] The Court decided that no such federal right exists.[83] The facts as found by the IACHR, however, resulted in more expansive fact-finding and a significantly different focus on the rights of the individual.

B. Lenahan v. United States

In 2005, Ms. Lenahan (Gonzales) filed suit against the United States with the IACHR. The Commission reported, among other determinations, that the State failed to properly investigate Ms. Lenahan's claims, that the State engaged in discrimination against Ms. Lenahan as a woman, and that officers who failed to protect Ms. Lenahan and her daughters had not been held accountable.[84] The facts found by the Commission provide a fuller picture of the human rights violations. A portion of those facts are repeated here:

> The Castle Rock police were aware that Simon Gonzales had attempted suicide on at least one prior occasion.[85] In general, Simon had a history with the Castle Rock Police Department ("CRPD").[86] Incidents of which they were aware included road rage with his daughters in the car; two break-

against Simon Gonzales.[92] Police arrived at her home at 7:50 p.m. and were shown a copy of the restraining order, which expressly ordered them to arrest Simon upon violation of the order.[93] Jessica Lenahan explained clearly to the officers how Simon had violated the restraining order, and still police claimed that because the children were with their father, they could do nothing.[94] They promised to go by Simon's apartment to see if Simon and the girls were there.[95]

Around 8:30 p.m., Ms. Lenahan spoke with Simon by telephone and learned that he and the girls were at a Denver amusement park.[96]

Rosemary Young, Simon's girlfriend, called Ms. Lenahan asking about Simon's mental health history, his capacity for harming himself or his children, and his access to firearms.[97] She also told Ms. Lenahan that Simon had threatened to drive off a cliff earlier in the day.[98]

Ms. Lenahan called police a third time, and was told an officer would be sent to her house, but the officer never arrived.[99] Ms. Lenahan spoke with the officer who had been to her house earlier and further communicated her concerns.[100]

Ms. Lenahan called the police a fourth and fifth time before 10:00 p.m., requesting that officers be dispatched to Denver to locate Simon and the girls.[101] She asked that the Denver Police be contacted and that a statewide bulletin be put out to locate Simon and the children.[102] She asked that Rosemary Young be contacted.[103] None of these requests were acted upon.[104]

Ms. Lenahan called the police a sixth time around 10:00 p.m., reiterating the existence of the restraining order and was scolded by the dispatcher, who told her to call back on the non-emergency line.[105]

At midnight, Ms. Lenahan called the police for a seventh time, reporting from Simon's apartment that no one was home and relaying her fears.[106] She was told that an officer would be dispatched but no officer ever arrived.[107]

92. Id.
93. Id. ¶ 26.
94. Lenahan, Report No. 80/11, ¶ 26.
95. Id.
96. Id. ¶ 27.
97. Id.
98. Id.
99. Lenahan, Report No. 80/11, ¶ 28.
100. Id.
101. Id. ¶ 29.
102. Id.
103. Id.
104. Lenahan, Report No. 80/11, ¶ 29.
105. Id. ¶ 30.
106. Id.
107. Id.

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Answers to the following are necessary in determining the fates of those who have died because of the actions or inactions of government.[121]

1. Knowing the Identity of the Perpetrators

There was no need for the Town of Castle Rock to destroy Simon's vehicle. The vehicle would have yielded information as to which bullets and casings were inside the truck. Importantly, an examination of the truck, combined with a prompt examination of the deceased children, would have determined whose bullets lay in the children's bodies. The U.S. Supreme Court failed to address the Castle Rock police interference with what should have been otherwise

A floodgate argument[133] that courts would be overwhelmed with litigation against the State fails, particularly in the context of the circumstances presented in the Lenahan case. Inability to provide protection is easily distinguished from intentional failure to provide protection. Failure to enforce a protection order because of an approaching dinner break[134] is markedly different from failure to enforce the order due to serious understaffing and simultaneously competcseoarg(e)0.8 (o)-14.3 3ice a p.1 (e

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differing levels of liability.[139] Judges, juries, parties, and attorneys will be free to fashion remedies tailored to each case. For those who envision a less formal disposition, opportunity is created for commissions and other alternative entities to explore circumstances and uncover truth. Those entities could also assess accountability and fashion remedies. Implementing a human rights framework, with a goal of providing effective remedies to those whose rights have been violated, is required in order to uncover truth and provide remedy.

The outrage[140] of the U.S. Lenahan case is not only that the police ignored Ms. Lenahan's requests for help, but that she suffered horrific harm because of extensive State involvement, yet was left without legal recourse within the U.S. civil legal system. Implementing the proposed adjustments in legal perspectives and practices will ensure that U.S. claims of State-involved human rights abuses will include a right to truth and a right to effective remedy.

139. See