
Lección 3: *The Supreme Court and a Dissenting Opinion*

Trad. Jurídica - 4º Trad. Int. - Prof.
Campos - Lección 3: The
Supreme Court / A Dissenting
Opinion

Introducción (aspectos importantes) (1)

- recordar no TP en *the American Legal System* (pág. 61) y en *fraud* (pág. 64)
- Recordar diferencia *appellate court / Court of Appeal* (pág. 63)
- *senior*: no sólo edad/antigüedad, sino a veces categoría
- *Exhibit* : prueba material + documental (ver tb cap. 6 *El inglés jurídico norteamericano*)

Introducción (aspectos importantes) (2)

- Lenguaje de los jueces:
 - ◆ *Judgment (facts as found, points of law, finding)*
 - ◆ *Remedy, redress, relief*
 - ◆ *Decree <- Equity*
 - ◆ *sentence*
 - ◆ *Opinion*
 - ◆ *Injunction: no siempre cautelar (temporary vs. permanent)*
- *Attorney usually attorney-at-law (vs. attorney-of-fact)*
- Cuidado con traducción *injunction*: temporal o permanente
- *binding vs. persuasive precedents*

La intervención del Supreme Court: *appeal vs. certiorari*

- *appeal* (recurso)
 - ◆ *cases provided for in the law; Supreme Court is last resort*
 - ◆ *Not petition, but “right”*
 - ◆ *appellant, appellee*
- *(writ of) certiorari* (auto de avocación)
 - ◆ *Appeals no longer available, but court decides to intervene usu. when constitutional rights may be violated*
 - ◆ *party sends a “petition”, thus called “petitioner”; the other party called “respondent” (¿ventajas e inconvenientes de “recurrente” y “recurrido”?)*

Dissenting opinion

- *certiorari denied*
- *Opinion: “I would grant certiorari, to study limitations of First Amendment activities”*

Dissenting opinion (1)

Petitioner Michael Cloer is senior pastor of Siloam Baptist Church in Easley, South Carolina, and the founder and director of petitioner Pastors for Life, Inc. a group of pastors dedicated to protesting against, and offering alternatives to, abortion. Since 1989, Pastor Cloer and Pastors for Life have organized protests outside Palmetto State Medical Center, a facility in Greenville, South Carolina, operated by respondent Gynecology Clinic, Inc., that performs abortions.

- senior: no sólo antigüedad
- the founder, a facility: evitar anglicismo sintáctico en aposición
- Pastors for Life, Inc.: no se traducen las razones sociales o *business names*
- have organized: ¿siguen, o ya han acabado? Cuidado con el *present perfect* vs. pretérito perfecto
- protests: “actos de protesta”
- operated: evitar anglicismo

Dissenting opinion (2)

In 1994, respondent filed suit against Cloer, Pastors for Life, and others, in South Carolina state court, alleging private nuisance, public nuisance, and civil conspiracy under state law. Respondent initially sought injunctive relief and damages, but subsequently waived its claim for damages. The trial court granted defendant's motion to dismiss the public-nuisance cause of action; after a bench trial, it rendered judgment for defendant on the private-nuisance claim, and for respondent on the civil-conspiracy claim.

- under state law: recuérdense los problemas de *state* (“de dicho estado”)
- injunctive relief: NO es cautelar.
- waived: el verbo ha de ser “desistir”; en España es un “desestimiento”.
- trial court: recuérdese lo dicho sobre “primera instancia.” *Trial court* es el término habitual cuando se presentan recursos.
- ∴ el guión es correcto porque *civil-conspiracy* es una unidad que funciona como adjetivo; sería incorrecto si no estuviera *claim* después.

Dissenting opinion (3)

It entered an injunction barring the defendants from (1) trespassing on the private property of the clinic; (2) interfering with ingress to and egress from the clinic; (3) interfering with the free flow of traffic on the property of the clinic and adjoining public streets and sidewalks and approaching any physician employed by the clinic or any vehicle containing such a physician; (4) protesting within a 12-foot buffer zone along the public sidewalk on either side of the clinic; (5) obstructing the view of street traffic by any vehicle that is attempting to exit the clinic; and (6) making any noise that would be heard inside the clinic. [...] The South Carolina Supreme Court affirmed the judgment in a summary opinion. [...]

- entered an injunction: en ningún momento se dice “cautelar”; utilizar “orden”
- interfering: evitar TP
- ingress to and egress from: no “entrada y salida de”; mejor “los accesos”
- property: sin contexto suele referirse a “bien inmueble”; aquí, “instalaciones” o “dependencias”
- public streets and sidewalks: invertir el orden mantiene la atribución del adjetivo a uno o los dos elementos
- 12-foot buffer zone: la exactitud aquí sí importa. Asimetría *area / zone*
- exit: también “abandonar”
- South Carolina Supreme Court: aquí en principio se acaban los *appeals*. El *certiorari* es una petición aparte.

Dissenting opinion (4)

Although in my judgment the scope of the injunction is unconstitutionally broad insofar as it prohibits approaching any physician or any vehicle containing a physician, and prohibits any noise that can be heard inside the clinic, [...], there would be nothing about this case warranting our attention if the judgments were based upon, and the scope of the injunction determined by, unlawful acts committed by petitioners. The First Amendment is not a license for lawlessness, and when abortion protesters engage in such acts as trespassing upon private property and deliberately obstructing access to clinics, they are accountable to the law.

- judgment: evidentemente, no es jurídico.
- approaching: también “dirigirse”
- this case: evitar TP
- warranting our attention: nótese que éste es el espíritu del *certiorari*; no es que se recurra, sino que el Supremo estima oportuno intervenir
- upon: desdoblar frase para traducir preposiciones
- the: podría añadirse aquí “Es cierto que...” si tenemos en cuenta que toda esta frase tiene sentido concesivo.
- abortion protesters: manifestantes “antiabortistas”, o “contrarios al aborto”, evidentemente.
- accountable: recordar contraste con *liable* y *responsible*.

Dissenting opinion (5)

What makes the present case remarkable, however, and establishes it as a terrifying deterrent to legitimate, peaceful First Amendment activity throughout South Carolina, is the fact that the South Carolina Supreme Court's affirmance did not rest upon its determination that there was adequate evidence of unlawful activity. The analysis contained in its brief *per curiam* opinion begins as follows:

- however: los marcadores adversativos, mejor al principio
- establishes: evitar TP
- First Amendment activity: además de que es mejor “actividades”, nótese que es precisa la explicitación (“amparadas”)
- affirmance: las sentencias se pueden *affirm* y *reverse*.
- determination: evitar TP
- of unlawful activity: posible explicitación (“de que se había producido”). *Lawful* como uno de los significados de *legal*.
- begins as follows: considerar inversión (“Así es como empieza...”).

Dissenting opinion (6)

Appellants first assert that, because their actions are protected by the First Amendment, they cannot be the basis for a civil conspiracy. Under South Carolina law, lawful acts may become actionable as a civil conspiracy when the object is to ruin or damage the business of another ... The record is replete with evidence that appellants' goal is to discourage women from patronizing respondent's business with the goal of making abortion unavailable ... Assuming appellants' acts were lawful, that fact does not prevent the finding of a civil conspiracy."

- first: considerar transposiciones y modulaciones (“comienzan por afirmar” / lo primero que afirman”)
- actions: mejor “actos”
- are protected: también “gozan de la protección”
- be: recordar modulación *be* -> considerarse, entenderse...
- law: mejor plural, o incluso “legislación”
- ruin: evitar TP ; damage: perjudicar
- Assuming...: la frase es concesiva (incluso si aceptamos / asumimos...)

Dissenting opinion (7)

This extraordinary application of state civil-conspiracy law to attempts to persuade persons not to patronize certain businesses would outlaw many activities long thought to be protected by the First Amendment -routine picketing by striking unions, for example, and the civil rights boycotts directed against business with segregated lunch counters in the 1960's. It may well be that an attempt, by lawful persuasion, to harm someone's business out of sheer malice, or in order to capture his clientele, can be made illegal.

- extraordinary: sentido literal (*not* ordinary)
- would outlaw: la estructura de la frase entera es condicional; podría traducirse (“Si se acepta esta aplicación.... ello dejaría fuera de la ley / estaríamos dejando fuera de la ley...”)
- segregated lunch counters: mejor “cantinas separadas” o “zonas de comidas separadas por razas / para blancos y negros”
- It may well be that: “podemos aceptar perfectamente” “no nos parece mal que...”

But seeking to harm it [...] because of principled objection to the nature of the business, whether because of moral disapproval of abortion, or social disapproval of segregation, or economic disapproval of substandard wages is an entirely different matter. [...]

I would grant certiorari in this case, to consider the constitutionality of a novel civil-conspiracy doctrine that places routine, lawful First Amendment activity under threat of financial liability, and probably under threat of injunction, throughout the State of South Carolina.

- but: cuidar redacción tras pausa fuerte
- is an entirely different matter: mejor cambiar el orden
- moral disapproval: evitar TP, o incluso modular (“porque uno está en contra de...”)
- financiam: el calco es incorrecto (“financiero” no es “económico”)
- probably: también “incluso”