



A FEMINIST LEGAL DEFENSE FOR AN ABORTION CASE

SOLEDAD DEZA



Deza, Soledad

A feminist legal defense for an abortion case / Soledad Deza ; Editado por Martina Palavecino Bó ; Prólogo de Mariana Soledad Alvarez. - 1a ed. - San Miguel de Tucumán : Caleidoscopica, 2026.

Libro digital, PDF

Archivo Digital: descarga

ISBN 978-631-90037-9-6

1. Aborto. 2. Feminismo. 3. Derecho. I. Palavecino Bó, Martina , ed. II. Alvarez, Mariana Soledad, prolog. III. Título.

CDD 320.5622

WHO ARE WE?

Fundación MxM is a feminist, interdisciplinary, and intergenerational organization based in Tucumán, in northern Argentina.

For nearly 10 years, we have been advocating for access to sexual, reproductive, and non-reproductive rights in general, and to legally permitted abortion in particular.

We are an interdisciplinary and intergenerational team composed of professionals and students in law, medicine, mental health, social work, communication, and the humanities.

Our goal is to strengthen the sexual sovereignty of women and gender-diverse individuals so that they can exercise full citizenship in a state that guarantees, beyond all religious fundamentalism, full access to a life free from violence.

We engage in litigation, advocacy, research, and the development of resources to promote legal literacy and respect for the human rights of women and diverse communities from a feminist, anti-racist, and intersectional perspective.

We actively work toward a society that embraces all the uncomfortable, irreverent, defiant, rebellious, and messy bodies that the Patriarchy has historically excluded.

Foreword

Twelve years ago, Belén was arrested after suffering a miscarriage in a hospital bathroom where she had gone a few hours earlier to seek relief from intense abdominal pain. In 2016, she was sentenced to eight years in prison for “aggravated homicide due to the relationship, under special mitigating circumstances.”

Ten years ago, a feminist legal defense team, an organized movement of women and dissidents, and a press that amplified “Belén’s” voice managed to get her out of prison.

Six years ago, Law 27610 on voluntary termination of pregnancy was passed in the country, but the criminalization of various obstetric events continues under the relentless logic of the Hydra in our criminal justice systems: “Eva”¹, “Clarita”² (Tucumán), “Juana”³ (Buenos Aires), “Anabela”⁴ (Santiago del Estero), “Ana”⁵ (Corrientes), “LaChina”⁶

¹ See more at: <https://mujeresxmujeres.org.ar/8135-2/>

² See more at: <https://mujeresxmujeres.org.ar/pobre-clara-la-violencia-institucional-detras-de-una-investigacion-de-aborto/>
<https://www.instagram.com/juanalibre.ya/>

³ <https://redjuvenil-lac.org/en/noticias/agenda-de-generos-lleva-adelante-el-un-proceso-judicial-complejo-conoce-sobre-el-caso-de-anabela/>

⁵ <https://www.perfil.com/noticias/nea/presas-por-parir-la-injusta-detencion-de-ana-por-una-emergencia-obstetrica-en-corrientes.phtml>

(Buenos Aires) or Paola Ortiz⁷, are spread and replicated across the length and breadth of the country: with different “labels,” under different “charges,” with different legal narratives, but under the same mandate: “women must give birth at any cost.”

A feminist defense of an abortion case, published in 2018, returns as essential reading in a socio-political context of growing hostility and hatred toward women, feminism, and dissidence.

Soledad begins her article by questioning a practice that is not adequately addressed by legal practitioners, who, in these cases, unlike “classic” conscientious objections in the field of medicine when it comes to abortion, do not take the form of abstentions, but rather of open “conservative judicial activism”⁸ that will have a direct impact on access to justice and on the guarantees and rights of those charged with

⁶ <https://www.pagina12.com.ar/507275-absolvieron-a-la-china-la-mujer-que-estuvo-dos-anos-presa-po/>

⁷ <https://catolicas.org.ar/caso-paola-ortiz-13-anos-presa-por-un-parto-en-avalancha/>

⁸ For further discussion of this concept, see Deza Soledad: “The ‘Fetus’ and Conservative Judicial Activism,” L. L., RDF 2020-III, 104, Online Citation: AR/DOC/1476/2020.

crimes associated with reproduction and caregiving in general.

The article is troubling because it reveals and dissects the moral worldviews and sexist prejudices in the legal discourse that could have labeled a woman who suffered a miscarriage as a “baby killer,” disregarding evidence to the contrary, logical reasoning, the right to defense, and the presumption of innocence.

However, it also brings hope, because it explains in detail how a feminist legal defense was able to change the outcome of a court case that seemed sealed following a prison sentence. Thus, throughout the text, it focuses on the pillars of that defense in Belén’s case: “lack of defense due to negligence on the part of the legal counsel, nullity of the investigation due to violation of professional confidentiality, and arbitrariness in the assessment of the evidence.”

This legal defense was joined in a coordinated and organized manner by a women’s movement, which consisted of , , and , as well as , 30 organizations⁹ that

⁹ The Steering Committee was formed by: Catholics for the Right to Choose Argentina - Women for Women - Norma Nassif Women’s House - Women Workers’ Plenary - Mumalá – Bread and Roses - National Campaign for Legal, Safe, and Free Abortion - First Responders Network - Together and to the Left - Acción Respeto Tucumán - Darío Santillán Popular Front - Darío Santillán Popular Front National Current – Autonomous CTA Tucumán - Tucumán Workers’ CTA -

called the “Mesa de Libertad para Belén” (Freedom Roundtable for Belén) and a local feminist press first¹⁰ and then a national one¹¹ , which aligned itself and worked under a defined legal strategy, succeeding in subverting and bringing the behavior of the province’s judiciary under public scrutiny.

The breach of professional confidentiality, police and institutional violence, contradictory evidence, the expiration of pretrial detention, and a miscarriage that was deliberately omitted by the judiciary returned to the public arena to challenge the previously unshakable and monolithic judicial discourse.

Belén’s voice, which had not been heard since she was taken from that hospital, began to grow louder and was even heard internationally. The legal strategy joined forces with the Tucumán women’s movement and amplified her voice through the feminist voices and pens that lent their support

APDH Tucumán - ANDHES - Alternative Press Agency - Liberpueblo - Socialist Workers’ Party - Revolutionary Communist Party - Revolutionary Communist Youth - Workers’ Party - Nuevo Encuentro - Socialist Workers’ Movement - SITRAJU – HIJOS Tucumán - CLADEM Tucumán-Mujeres Arriba UNT- Warmi- Las Rebeladas- CEPA- La Cámpora-La Palta- Podemos- Unidad Popular.

¹⁰ Celina de la Rosa of APA! Alternative Press Agency, followed by other media outlets such as La Palta Comunicación Popular, which also joined the “Freedom for Belén Committee.”

¹¹ Mariana Carbajal, from Página 12, and Ximena Schinca, from the Herald, who even traveled to Tucumán.

She named reproductive injustice and managed to subvert the prevailing narrative surrounding it.

As a feminist, and as part of that “Roundtable” that met rigorously every Monday from 6 to 9 p.m. at the headquarters of our sisters at the Casa de las Mujeres, from the moment the appeal against her conviction was filed until she was released and later acquitted, I can only thank them for what I learned, because together, as sisters, we were able to surgically dismantle “a monster”¹², free Belén, and with her, free us all a little.

Mariana Soledad Álvarez

Founding Member of Women for Women

¹² “No one cared what I had to say. I spoke my truth, but no one listened to me. They believed me guilty the moment they saw me. Everyone has spoken of me as if I were a monster.” This is how Belén described herself in her third handwritten letter from Santa Esther Prison, which was made public on August 16, 2016.

A Feminist Legal Defense for an Abortion Case

by Soledad

Deza



Is there such a thing as judicial conscientious objection? Intuitively, the answer is no. But if we consider the case of Belén ⁽¹³⁾, it is reasonable to doubt this, because even though those who investigated her case, those who charged her, those who defended her, and those who convicted her did not verbally express conscientious objection, both the inconsistency of the criminal proceedings brought against her, as well as her unjustified pretrial detention and conviction without evidence, suggest that once legal practitioners are confronted with an “abortion” case, their failure to fulfill their obligations to ensure a fair, impartial judicial process in accordance with due process and respectful of the presumption of innocence may have been grounded in reasons of conscience.

Belén arrived early one morning at Avellaneda Hospital in Tucumán, Argentina, with abdominal pain. She was admitted to the emergency room and given painkillers under the diagnosis of “acute abdomen” made by the Chief of the Emergency Room. After at least two hours of being admitted, she began bleeding and was referred to the Gynecology Department. There, the Head of the Department diagnosed her with an “incomplete spontaneous abortion without

¹³ “Belén Case: Ruling of the Supreme Court of Justice of Tucumán.” Judgment available at <https://www.cij.gov.ar/nota-25407-Caso-Bel-n--fallo-de-la-Corte-Suprema-de-Justicia-de-Tucum-n.html>.

complications” in her medical record. She was immediately taken to the operating room to undergo a D&C. When she woke up, she was surrounded by police officers who were searching her body without her consent. She was accused by her doctors of having performed an abortion on herself in a hospital bathroom, linked—without any genetic compatibility testing—to a fetus allegedly found in a bathroom—there was no chain of custody, no photographs of the seizure report for that fetus, nor preservation of the supposed “crime scene” and the time of that discovery does not coincide with Belén’s admission to the hospital—and she was “apprehended” by hospital police personnel in her hospital bed, then “judicially detained,” and finally transferred to the Santa Ester Prison, where a criminal proceeding riddled with irregularities, violence, and nullities kept her in pretrial detention for 29 (twenty-nine) months. Belén’s feminist defense team—her fourth legal defense team in the proceedings—centered its litigation strategy to secure her release and acquittal on three lines of action: the use of strictly procedural tools available to overturn her pretrial detention and annul her conviction; the building of a strategic alliance with the alternative press to rewrite her story in society and secure public support for the demands for justice on her behalf; and finally, social mobilization as a mechanism to

amplify the demand and attempt to expedite the legal process. This work aims to reflect on the nuances of the concept of “access to justice” when a woman challenges the reproductive function and to share the development of a feminist strategy for the legal defense of those who, for having an abortion, faced sexist prejudices that compromised due process, the presumption of innocence, and the right to a fair trial¹⁴.

Gender Perspective: “The Black Hole of the Judicial System”

The 100 Rules of Brasilia warn that beyond the notion that “all” are equal before the law, there is in reality an “endless list of the excluded”—the vulnerable—who “wait in vain at the gates of the law” and “need a Judiciary that under no circumstances relinquishes its responsibility to ensure that guarantees are not merely words” (Ruiz, 2011).

Freedom and equality have historically been distributed unequally among people—by gender, sex, sexual orientation, social status, skills or abilities, ethnicity, age, criminal status, religion, etc. This unequal distribution of power results in

¹⁴ I would like to thank María Eugenia Monte and Julieta Arosteguy for their insightful feedback and suggestions.

The ability to bear children—among other biological characteristics that may imply it—constitutes a specific axis of inferiority construction that naturalizes sexual difference as inequality or domination of women.

The crime of abortion, insofar as it places “female sexuality up for debate” (Hopp, 2012), particularly undermines equality. In societies like those in our region, where motherhood is identity, destiny, and value, these types of criminal provisions condemn a particularly deviant behavior. In a “child-centered” scenario (Pitch, 2010) where the law equates cells with people, the stereotype of the woman who aborts as a “baby killer” provides legal practitioners with jurisdictional intuitions of gravity and certainty that overlap as another layer of vulnerability (Luna, 2008).

Judicial activity can correct these inequalities that the law accommodates as a tool of social control interwoven with other normative systems to unduly intervene in the lives of individuals (Raffin, 2006) and enable/disable subjectivities; and it can correct domination by revealing it as a “technology of gender” (Smart, 2000) that historically legitimized the guardianship, control, and exclusion of women—the creation of the “bad mother” that Smart refers to is a clear example—and thus, by recognizing that we are not—nor have we ever been—

equal before the law, turning the idea of access to justice into a praxis, not a formal predicament.

But the enormous symbolic judicial machinery can also consolidate inequalities through the function of self-legitimization that empowers the law to “perpetuate”—by universalizing—a state of affairs or power relations (Bourdieu, 2011) that mentally equate abortion with homicide simply because, in the conservative imagination, whoever aborts is a murderer, thus turning “access to justice” into a veritable “black hole” where the following converge: negligent legal defense, institutional violence by healthcare providers, patriarchal judicial interpretations of a criminal offense, sexist stereotypes held by legal practitioners, and finally, pretrial detention — outside current human rights standards — as a mechanism that functions as a preview of the sentence.

The criminal process as punishment

Luigi Ferrajoli (2000) points out that the criminal process functions in and of itself as a punishment due to the violence concealed by the judicial system itself, the structural inequality inherent in the prison system, and the selectivity with which the punitive model operates. In cases where abortion is investigated much more frequently (Álvarez, 2014), given that in our

In societies with a strong identification with Christian values, this crime implies not only a deviation from expected behavior but also a deviation from cultural norms that affirm motherhood as part of a woman's nature.

The legally confusing but morally pristine accusation



Although Belén's medical record—the central document of the doctor-patient relationship and a public instrument whose content is fully authenticated—indicates on page one (1) the diagnosis “incomplete spontaneous abortion without complications,” the criminal charge originally filed against her was “abortion followed by alleged homicide.” Abortion followed by homicide is a non-existent criminal offense that reflects the intersection of disciplines where the common denominator is criminal suspicion

against the patient. However, when Prosecutor’s Office V⁽¹⁵⁾ which opened the criminal investigation, requested Belén’s pretrial detention, the reprehensible conduct attributed to her in the preliminary hearing was framed under a different—and more serious—criminal charge: “homicide doubly aggravated by the familial relationship and malice aforethought.”

The homicide, which presupposes a person born alive, was charged against Belén even before there was any evidence—autopsy or postmortem examination—indicating the existence of extrauterine life of the fetus¹⁶. The familial relationship—child¹⁷—which cannot be presumed since there was no birth—was attributed to her without a DNA test, and the premeditation—an aggravating factor in the homicide—is described as the act of “pushing her child down the toilet.”

Subsequently, a court composed of three male judges¹⁸ sentenced her to eight years in prison for “homicide aggravated by the parent-child relationship under special mitigating circumstances.”

¹⁵ Conducted by Dr. Washington Navarro Dávila.

¹⁶ The date of the autopsy is 03/27/2014, and the first indictment is dated 03/26/2014.

¹⁷ There are contradictions in the autopsy report; at times it refers to the deceased as female, and at other times as a female corpse.

¹⁸ Members of Chamber III of the Tucumán Criminal Court: Dante Ibáñez, Rafael Macoritto, and Fabián Fradejas.

Ideology and the Administration of Justice

First, the key evidence used to convict her consists of medical testimonies; yet, the diagnosis in the medical record stating “uncomplicated spontaneous abortion” is unjustifiably omitted—effectively concealed. This distortion of reality is not accidental and was overlooked by the Public Defender’s Office, the Prosecution, and the Court that convicted her. Second, the life of a fetus is taken for granted in a forensic examination riddled with contradictions¹⁹, and the court fails to consider that there is a Fetal Death Certificate that technically proves the opposite: this is an intrauterine death incompatible with the concept of a person, which presupposes a live birth²⁰. Third, the conviction is based on a charge that includes the word “child” eight times in its wording without any proven filial relationship in fact²¹ or

¹⁹ The autopsy contains contradictions regarding the date (2004 and 2014), sex of the fetus (male and female), skin color (dark-skinned and white), gestational age (32 weeks and 32 months), and numerous contradictions in the anthropometric measurements.

²⁰ Law 26,413 specifies a different registration procedure depending on whether the death is fetal or not. The file contains only a fetal death certificate, and there is no prior live birth certificate (Art. 40).

²¹ No temporal or spatial overlap was found between the defendant and the fetus within the hospital, nor were there any signs of a connection between the two (e.g., sharing the same space, being connected by a cord, etc.). It is worth noting that Belén woke up from her dilation and curettage surrounded by police officers who were searching and

²² . Fourth, despite the spatial coincidence of a fetus and a woman undergoing an abortion in the same hospital, the manner, time, and place of that coincidence, and malice is constructed in the commission of the crime, which would consist of having given birth to a live child, having cut the umbilical cord, having placed that child in a toilet, having flushed the toilet, and having pushed to cause the child to drown. The law not only describes but also prescribes and establishes a single model of identity for the subject in question. The legal discourse embodied by the five male judges who accuse and convict Belén portrays her as a criminal not based on the evidence of the case, but on a patriarchal ideology²³ that rejects

was in their custody, but at no point—unlike Romina Tejerina, for example—did she physically coincide with the fetus to which they were attempting to link her. Nor had a genetic test been performed, meaning that the connection her doctors saw was the product of a moral construct and intuition, rather than scientific or factual evidence.

²² There is no DNA test, and there is documentation in the case file that the test could not be performed because the fetus “pertaining to the case” was lost at the Avellaneda Hospital morgue (pp. 67 and 68).

²³ Facio (2005) notes, “...the system specifies rights and responsibilities, as well as restrictions and rewards, that are different and inevitably unequal to the detriment of the sex understood as different from 'the model.' Furthermore, the system justifies negative reactions toward those who do not conform, thereby ensuring the maintenance of the status quo. This is the case with patriarchal ideologies that not only

abortion in any case—including when the woman does not consent—and not only when criminal law prohibits it as an autonomous choice.

Ideology is at play when the Prosecutor's Office charges the defendant with "abortion followed by alleged homicide"—a criminal offense that does not exist and is mutually exclusive. Ideology is at play when judges decide that the truth lies in the medical testimonies and not in the defendant's statement; when they choose to consider one piece of evidence and ignore another; when they edit testimonies and transcribe them only in part, taking their meaning out of context; when they choose to classify the conduct under one criminal offense or another; when they refer to a "child" or a "baby" as a victim without any proof of life or of a parent-child relationship. In each of these judicial interpretations that apparently denote, they actually connote. Behind the seemingly neutral interpretation that forms part of the administration of justice lies the ideology that permeates every value judgment and compromises the judicial decision. "Judges do not discover meanings nor do they objectively apply the law; their interpretations are conditioned by ideologies, prejudices, customs, habits of thought"²⁴ and by it

construct the differences between men and women, but rather construct them in such a way that the inferiority of women is understood as biologically inherent or natural."

²⁴ "To say that the judge 'discovers or finds meanings' present in the law can have no value for the sociology of law other than an opinion (that is, a social fact derived from

general, judicial conflicts related to reproduction—abortion cases in particular—tend to reveal the presence of patriarchal ideologies, whether through what is said or what is left unsaid²⁵ .

a particular conception of the law held at a given historical moment). Even if the jurist imagines that the judge finds objective meanings, and that he himself is bound by pre-established rules of interpretation, this necessarily refers us to the community's uses of language, or to those of the legal or judicial subculture. In both cases, there is information that determines the specific decisions that are made." (Fucito, 1989).

²⁵ Concealing the medical diagnosis of spontaneous abortion, failing to address discrepancies in the gestational age of the fetus throughout the investigation (15, 18, 20, 22, 23, 24, 27, 32 weeks and 32 months), concealing the contradiction in the timelines regarding the fetus's appearance, and remaining silent about its mysterious disappearance within the same hospital are examples.

From Defenselessness to Feminist Legal Defense²⁶



The case comes late to the women’s movement: Belén had been in pretrial detention for nearly 24 months when a feminist lawyer took on her defense. Until then, she had two male defense attorneys—hired for only a few days—and a female public defender who accompanied her throughout the preliminary criminal investigation, the hearing and ruling on her pretrial detention, and also during the oral arguments. However—as another sign of her disadvantaged position in this story—Belén had never read any of her court filings, did not know what evidence was against her, was unaware of the legal strategy of her previous defense attorney(s), did not know that the deadlines for her pretrial detention were nearly up, and had not been informed about the violation of her rights as a user of the healthcare system, nor as a defendant²⁷ The only thing she knew was that she faced a possible life sentence.

²⁶ I thank María Eugenia Monte for this title.

²⁷ During my first interview with her at the prison, she stated that she was unaware of her “case file” and had not read it

The judicial sphere intervenes by ensuring that the content and modes of interpretation of the law will be more favorable to those who hold power, to those who dominate. This is the role of the law in the pursuit of symbolic violence: to legitimize and delegitimize actions with apparent neutrality, without measuring their impact in terms of the concentration/accumulation of power for some and the loss of power for others (Bourdieu, 2000). If we take the idea of equality as “integral,” conceived as a “prerequisite for the functioning of a system of justice, democracy, social integration, and citizenship” (Cárcova, 2012), Belén’s inferiority is clear in terms of access to justice.

To the limitations caused by obscurantist judicial practices for anyone lacking the necessary knowledge, we must add, in Belén’s case, the social stigma surrounding any abortion case as a crime that subverts such deeply rooted norms that they blame and silence women. Consider that in her 29 months in prison, she never received a visit from her father or her brothers. Only her mother and

any of the written documents with which she theoretically could have “defended” herself. In Tucumán, the criminal process is largely written, so the “case file” is the backbone for understanding the alleged offense, exercising the right to defense, knowing the procedural status, appealing rulings, challenging dismissals, arguing for nullities, and appealing decisions.

sisters and female relatives visited her in prison. So
What standard of treatment can someone demand who
does not know their rights? To what extent does social
censure paralyze action when there is an accusation of
abortion?

How vulnerable is someone who is segregated by her own
legal defense? What quality of process can someone
demand if they do not know what is due to them? What
kind of justice does an opaque right (Cárcova, 2006)—one
that is concealed by those who are supposed to guarantee
it—hold in store for a woman who has had an abortion?

Critical theory points out that “Law occupies a
privileged place in the realm of ideology. Because it is
endowed with omnifunctionality, it can intervene through
the exercise of violence monopolized by the State via the
multiple mechanisms that produce consensus,
submission, and acceptance” (Ruiz, 1991). Only those who
possess this knowledge and understand the logic of its
operation are empowered to use it. That is why I maintain
that a “technical defense” is not the same as a feminist
defense. The “black hole of justice” does not gravitate
toward a judicial nirvana, but is driven by “the modern
sorcerers who transmit and interpret the word of power”
(Ruiz, 1991) within the institutional spaces pre-established
for this purpose: legal professionals who, from one side or
the other of the bench (whether as litigants or as
members of the Judiciary), determine a person’s status of
liberty, frame behaviors into criminal categories,
and design

technical defenses and, in every procedural step, ensure —or not— justice for every person subject to the law.

This is where a Feminist Defense becomes relevant, led by a feminist lawyer and supported by a Feminist Organization. Because the law, in addition to being a tool capable of transforming realities, is itself a gendered institution (Olsen, 2000) that has shaped the lives of women and, to a certain extent, constructed the woman who has an abortion as deviant. Therefore, only a feminist perspective is capable of deconstructing the premises upon which these prejudices rest, in order to unmask androcentric ideological cover-ups that have come to be accepted as objective through repetition, social practice, and discourse: as the norm.

The recursive strategy of her Feminist Defense to overturn Belén's conviction was structured along three distinct lines: lack of defense due to negligence on the part of the technical defense, nullity of the investigation due to violation of professional secrecy, and arbitrariness in the assessment of the evidence. "Defenselessness due to negligence on the part of the technical defense" was an argument advanced with emphasis on the moral prejudice held by the Public Defender, which prevented her from providing representation that was both committed to her client's interests and effective in ensuring due process; this resulted in practice—beyond formal legal assistance—

a

state of true defenselessness²⁸ . From a procedural standpoint, her Public Defender did not argue for the nullity of the investigation due to violation of professional secrecy, did not request the exclusion of evidence from testimonies collected illegally to the detriment of the patient, did not question the lack of a DNA test linking Belén to the fetus identified at the health facility as her “child,” did not challenge the homicide charge with the abortion diagnosis recorded in the medical record on page 1, and did not question the autopsy, which was riddled with contradictions. Instead, the defense invoked a “state of shock,” almost acknowledging the act and the perpetrator, seeking only to avoid liability. This stance contradicted the statements of the defendant herself. This argument also sought to highlight an “institutional” continuity in the violation of rights and the violence Belén suffered at the hands of the State, which began in the health sector—with police assistance—but extended to the Judiciary not only through the Prosecutor’s Office that indicts and the Court that adjudicates, but also through the Defense itself, which, due to its negligence, effectively serves the prosecution. In this way, a gender-based perspective was integrated

²⁸ "I have always defended Belén with great dedication," newspaper article from La Gaceta de Tucumán, May 8, 2016. Available at <https://www.lagaceta.com.ar/nota/681217/policiales/siemp-re-defendi-esmero-belen-dijo-norma-bulacio.html>.

aimed at highlighting this "helplessness" as yet another way in which the state exacerbates the asymmetry faced by a woman from a low-income background seeking an abortion, as she stands against a state that, instead of treating her with care, mistreats her; instead of protecting her, punishes her; and instead of ensuring due process, withholds her rights. Ultimately, this argument sought to drive a wedge—if that is even possible—between the Prosecutor's Office and the Court, both part of a Judiciary that is not accustomed to being held accountable for its practices, nor to questioning the very administration of justice that its decisions entail. The second challenge was the "violation of professional confidentiality as grounds for nullifying the investigation and the conviction." Healthcare professionals violated their duty of confidentiality on several occasions: when, in response to a police officer's question about "whether there was a woman who had had an abortion in the delivery room," Belén's doctor identified her as having had an abortion; when this same doctor provided Belén's medical records to the police, who noted "legal cause: homicide"; and when the entire healthcare team that treated her testified against their patient in court. The Court had justified the breach of confidentiality on the grounds of necessity: saving a life. As part of the defense strategy defense feminist feminist it it was repeatedly argued that the dilemma of "obligation to report vs. duty of confidentiality," to which one is falsely

The issue faced by healthcare professionals has been settled for 50 years by local case law ²⁹, and there is no moral justification for reporting an abortion on the grounds of defending life, since in all post-abortion care there is no life to save and therefore no dilemma (Deza, 2015).

Finally, it was argued that the Court committed “arbitrariness in the assessment of the evidence” by issuing a conviction without grounds. In this vein, the contradiction between the acts attributed to Belén and the evidence of their occurrence—what is commonly known in criminal doctrine as the “circumstances of time, manner, and place” surrounding the criminal offense under investigation³⁰—was brought to the fore. The legal rationale for the appeal expressly highlighted the absence of a gender perspective, revealing that the judicial reasoning behind the conviction was permeated by conservative ethical, moral, and religious worldviews that forced a misinterpretation of the evidence. Belén’s conviction constituted an exercise in logic contrary to that required by criminal reasoning, given that its analysis, rather than demonstrating the conformity of conduct to a criminal offense, demonstrated the conformity—and the abuse—of

²⁹ Supreme Court, in re “Baldivieso” (2010) and Plenary Session of the Criminal Chambers, in re “Natividad Frías” (1966).

³⁰ For a more in-depth examination of the arguments in the appeal, see DEZA, S., “Libertad para Belén,” cit., where some excerpts from the appeal are transcribed verbatim.

criminal offense to the moral worldview of the judges involved.



Media coverage of the case: the judicial strategy parallel to the litigation

When the Feminist Defense of Belén took over, she had been convicted of aggravated homicide due to the familial relationship under special mitigating circumstances. She was not only a “murderer,” but had also “killed her baby”³¹. The law has the “power to name,” and within the legal sphere, “the judiciary, through sentences carrying penalties that may consist of acts of physical coercion such as the deprivation of life,

³¹ “Tucumán: Woman Convicted of Killing Her Baby, She Claims It Was a Miscarriage,” article in the Clarín newspaper, April 29, 2016. Available at <https://www.lanacion.com.ar/1894002-tucuman-condenan-a-una-mujer-por-matar-a-su-bebe-y-ella-dice-que-fue-un-aborto-espontaneo>

of freedom or property, expresses the viewpoint that transcends particular perspectives and is the sovereign vision of the State, holder of the monopoly on legitimate symbolic violence" (Bourdieu, 2000). This "universalizing" or "normalizing" effect that legitimizes judicial decisions and gives effect to the law is the product—in Bourdieu's words—of the "monopoly" over this knowledge exercised by those who are "experts," and for this reason, is difficult to reverse for "the laypeople" who, even while accepting the rules of this game, do not find a position of equality within that structure which—in Belén's case—was debating what kind of punishment a woman who aborts deserves. For this reason, we needed to deconstruct the "murderous mother" that the power of legal discourse had constructed and to bring to light a user of the Public Health System who had been criminalized for an abortion within the context of a series of rights violations both outside and within the judicial process itself. And from another perspective—more macro but equally political—it was essential to reveal Belén as a woman victimized by a patriarchal and classist system because, in addition to being a woman, Belén is poor. In pursuit of these objectives, the Feminist Defense's legal strategy included communication as a decisive arena of contention where part of the legal battle for Belén's innocence would be fought.

The first news article on the case: disrupting the legal discourse

In partnership with Tucumán’s alternative press, the first article on the case was published; its headline upended legal discourse by referring to the conviction as an abortion rather than a homicide: “A young woman from Tucumán sentenced to 8 years in prison for a miscarriage”³². This tactic of the feminist defense involved, in a way, appropriating the “power to name” held by the judiciary and making a first attempt to speak about what had been silenced judicially under the protection afforded by legal practices in their function of constant self-legitimization.

Journalistically, special emphasis was also placed on the “spontaneous” nature of Belén’s abortion—a factual detail unnecessary for feminists but indispensable for forging alliances with other social sectors that only withdraw their condemnation of abortion when the woman’s lack of intent is established. Communicating this diagnosis, which appeared on the first page of the

³² The first news article titled “A young woman from Tucumán sentenced to 8 years in prison for a spontaneous abortion” dated April 23, 2016, was published by APA Prensa and received 47,000 views on its first day, an enormous figure for an alternative digital newspaper in Tucumán. Available at <http://apaprensa.com.ar/una-joven-tucumana-fue-condenada-a-8-anos-de-prision-por-un-aborto-en-el-hospital-a-vellaneda/>.

The medical record added to the case file—which had been —not naively— concealed by legal discourse, contributed to “universalizing” the injustice through the following reasoning: Belén is in prison for a miscarriage; any woman can have a miscarriage; and therefore, any woman could be in prison.

By framing Belén’s situation through the biological fact of her miscarriage’s spontaneity

—“It is the body that cannot carry a pregnancy to term, not the woman who chooses not to”—the initial aim was to separate the case from debates over the justice or injustice of criminalizing abortion, which fundamentalist Catholic groups were striving to link to the case³³ and which could divert attention away from the issue at hand, leading us to debate the moral rightness or wrongness of ending a life. The dominant local and national media remained in line with the Judiciary’s discourse—homicide, not abortion—almost until the end³⁴, changing their position to

³³ “Manipulating infanticide to legalize abortion,” news article dated 08/05/2016, available at <https://www.aciprensa.com/noticias/caso-belen-manipulan-infanticidio-para-legalizar-el-aborto-en-argentina-70> 233. “Argentina: The Abortion Lobby’s Maneuvers in the ‘Belén’ Case,” article dated August 23, 2016, available at <https://agenciaticatolicamx.wordpress.com/2016/08/23/argentina-las-maniobras-del-lobby-del-aborto-en-el-casobelen/>. ³⁴ “She was convicted of aggravated homicide, not abortion,” news article dated April 30, 2016, in La Gaceta de Tucumán,

in late July 2016, when the Prosecutor’s Opinion was made public—which, by repeating the new defense’s arguments one by one, acknowledged the lack of grounds for the conviction, the illegality of her imprisonment, and the violation of rights that had been committed. It was only at that moment, and in the face of that “authoritative judicial pronouncement,” that the local newspaper gave the floor to Belén’s new defense team³⁵. This fact corroborates the intrinsic legitimacy that legal discourse itself constitutes, which means it cannot be undermined or contested except by another discourse of equal authority. Because the translation of the law, as Alicia Ruiz argues, “reserves its knowledge to a select few, making secrecy and censorship its privileged mechanisms” (p. 41) and thus establishes itself as the only legitimate source capable of revealing the truth.

Available at

<https://www.lagaceta.com.ar/nota/680256/policiales/condenaron-homicidio-agravado-no-aborto.html>. “What the judges who convicted Belén said,” news article from A las Siete (Tucumán news program) dated 06/13/2016, <http://www.tucumanalas7.com.ar/local/gran-sanmiguel/2016/8/13/caso-belen-dijeron-jueces-condenaron-13894.1.html>.

³⁵ “The Prosecutor rules in favor of Belén,” news article dated July 26, 2016, published by La Gaceta de Tucumán, available at <http://www.lagaceta.com.ar/nota/691751/policiales/ministr-ofiscal-dictamina-favor-belen.html>.

Rewriting a legal history from a feminist perspective

The repercussions of that first article gave the case the national and international visibility that the Feminist Defense needed to accelerate the typically slow pace of the legal system, which in itself can be a form of “punishment.” The creation, in the public sphere, of an alternative forum to the courtroom from which to discuss Belén’s story enhanced the possibilities of rewriting it. The discourse on abortion with which we challenged the criminal classification of “homicide” in the press was introduced into public discourse—along with the lurid details the media sought to uncover³⁶—with detailed supporting evidence

³⁶ The media was primarily interested in the “police case,” so we selected the most significant details to share with the press. To questions about the “baby,” we responded by clarifying the legal differences between the concepts of “person” and “fetus,” and at the same time pointing out that the fetus had appeared before Belén arrived at the hospital—to highlight the contradictions in the police evidence—and that its size had been alternately increased and decreased several times during the investigation—to highlight the contradictions in the autopsy—that it had gone missing—to highlight the breach of the chain of custody and the loss of the fetus within the hospital morgue—and finally, we raised the question of how many fetuses were actually present that night, if there truly was one at all, and why not simply a “clot,” which is what Belén had stated. In response to questions about medical conduct, we spoke of the importance of doctor-patient confidentiality and the criminal nature of breaching that confidentiality, while also raising the question of whether

evidence had been gathered in court and consistently contrasting “the alleged facts” with the violation of Belén’s rights as a user of the healthcare system. Perhaps the most important aspect in terms of symbolic capital in this legal dispute played out outside the courts was our ability to weave a feminist discourse capable of demonstrating that in matters of abortion, women’s bodies—the most private—becomes public, and that with every accusation, complaint, or conviction regarding abortion, a little privacy, a little freedom, and a little dignity of all women is undermined, as motherhood embodies the banner that “the personal is political.”

To reinforce this idea, each article addressed the political bias implied by a power triad comprising the health sector, the police, and the judiciary, acting in collusion to unduly interfere in the lives of public health service users. It also addressed the conservative ideology that transforms an adverse obstetric event into a crime to consolidate a social order of compulsory motherhood for all women. Finally, its new feminist defense sought to frame the discussion of a judicial ruling in feminist terms

since the fetus had been lost, the hospital was not actually covering up malpractice, thereby allowing us to shift the focus to the deficiencies in the investigation that went beyond the absence of a DNA test to establish the biological relationship.

challenging the ideology hidden behind that judicial message. A patriarchal message that highlighted the power imbalance faced by users of the public health system when confronted with the powers of the State; a classist message, revealing a State willing to imprison only poor women who have abortions; a misogynistic message that reinforces the stereotype of the motherly woman so essential to social reproduction; and a fundamentalist message that embodies a State which, from its seats of power—and under the guise of legality—can, just as religious discourse does, turn anyone who has an abortion into a murderer.

In the first person: Belén's letters to women

The feminist question “Where is the woman?” had been on our minds from the very beginning, and although every step of the legal strategy was agreed upon with Belén and authorized by her, how could we give voice to what she felt from her position as a woman—poor, having had an abortion, religious, unmarried, and deprived of her liberty? In line with Spivak, we asked ourselves: Can the subaltern speak? Belén's subjectivity was blocked by external forces; she had no voice—nor did she have one during the trial—and “to be able to speak is to step out of the position of subalternity, to cease being subaltern” (2010). Thus arose the idea of her letters addressed to the women fighting for her outside prison. The letters Belén wrote while still in

captivity conveyed her sense of being a victim of injustice and helplessness. The first was read on the air on a national radio station and was immediately reprinted—verbatim—by one of Argentina’s most important mainstream media outlets under the headline “They took my life away”³⁷ which generated empathy among readers who are not usually sympathetic to this kind of issue—the media outlet is very conservative—and this considerably expanded the coverage of the case in terms of “injustice.” By the time the other two letters arrived, public support for the case was already very strong, and even artists, politicians, and journalists had publicly joined the call for her release. In terms of benefits for the case, her defense team calculated that her voice would also help humanize her, given that she was charged with what we consider one of the worst—if not the worst—crimes in the conservative social imagination: taking the life of a child, regardless of the legal classification used in dogmatic criminal discourse.

³⁷ "They took my life away from me," news article published in TN Noticias on 06/19/2016, available at http://tn.com.ar/sociedad/me-arrebataron-mi-vida-la-conmovidora-carta-de-belen-la-joven-tucumana-presa-por-un-aborto_681657.

Legal mobilization: taking the case to the streets



Accelerating the pace of (in)justice required social pressure and other actors to challenge, from spaces beyond the feminist sphere, a judiciary that is not accustomed to being held accountable for its own practices. To that end, Belén’s new legal defense team promoted, in parallel with the strictly procedural litigation, the creation of social spaces from which to drive the legal mobilization and strengthen the call for justice. Provincial Committee for Belén’s Freedom: a women’s movement in motion The Provincial Committee for Belén’s Freedom was formed—as part of the legal strategy—on the very day that local leaders accompanied the defense attorneys—at the courthouse entrance—to file the appeal that would formally challenge

of the conviction. The more than 30 organizations³⁸ that came together represented a broad, but above all diverse, political spectrum, including women's and human rights organizations, labor unions, political parties, neighborhood organizations, student groups, and alternative media outlets. It was agreed in advance that the Committee's operations and street actions would be aligned with the legal strategy, and this entailed arduous work for all members, as the case required countering the legal technicalities that had underpinned the conviction with technicalities of their own, and to

³⁸ Catholics for the Right to Choose Argentina - Women for Women - Norma Nassif Women's Center - Women Workers' Plenary - Mumalá - Bread and Roses - National Campaign for Legal, Safe, and Free Abortion - Network of First Responders - United and to the Left - Acción Respeto Tucumán - Darío Santillán Popular Front - Darío Santillán Popular Front National Current - Autonomous CTA Tucumán - Tucumán Workers' CTA - APDH (Permanent Assembly for Human Rights) Tucumán Regional - ANDHES (Northern Lawyers for Human Rights) - APA Alternative Press Agency - Liberpueblo - Socialist Workers' Party - Mujeres Arriba of the Law School at the National University of Tucumán (UNT) - Revolutionary Communist Party - Revolutionary Communist Youth - Workers' Party - National Women's Front of Nuevo Encuentro - Socialist Workers' Movement - SITRAJU (Tucumán Judicial Workers' Union) - HIJOS Tucumán - CLADEM Tucumán - Mujeres Arriba UNT - Warmi - Las Rebeladas CEPA - La Cámpora - La Palta - Podemos - Unidad Popular - Patria Grande - Mala Junta.

Thus, our comrades from other fields of knowledge became true translators of the law. For the new Defense of Belén, the challenge was to recognize how naturally legal practitioners coexist with solemn and ritualistic forms that are incomprehensible most of the time. And for the representatives of the organizations, it required the effort to navigate a foreign field of knowledge such as the law, which is often inaccessible to those who do not operate in that “field”³⁹ and is rife with intricacies that tend to obscure it rather than reveal it. That synergy regarding proceedings, appeals, deadlines, and procedural principles, crystallized in all the Monday meetings, enabled each representative to speak from their own perspective, their personal political ideology, and their own experience regarding “due process,” “violation of confidentiality,” “pretrial detention that did not meet human rights standards,” “a negligent public defender,” “a null and void sentence due to lack of grounds,” and “an arbitrary body of evidence.” We, the Steering Committee, organized a total of four marches calling for freedom for Belén⁴⁰, but the mobilization

³⁹ Here I use Bourdieu’s concept of “field” to denote the existence of a network or configuration of objective relationships between positions that are objectively defined in their existence by their current or potential situation in the distribution of different forms of power (or capital).

⁴⁰ The case had been taken up by the Ni Una Menos Collective and by the National Campaign for Safe Legal Abortion and

The most significant event was the one on August 12, which succeeded in mobilizing a march and ensuring that the demand was heard across the country through a call to action on social media. Two business days later, the Provincial Court ordered her release. Politically speaking, it was unprecedented that in a centralist country like Argentina—where events that do not take place in Buenos Aires seem to lack real existence—the smallest province in the anachronistic north could bring a feminist protest to the national stage. But perhaps the Committee’s greatest achievement was having been able to advance a feminist demand for justice regarding abortion within the very political spaces of which it was a part—where, especially in political parties and unions, patriarchal logic generally resists public engagement with these issues.

The “Outside” Perspective: International Organizations

Three international events socially reinforced the case’s visibility: an “Urgent Action” launched globally by Amnesty International, the visit of the Special Rapporteur of the UN Committee Against Torture, and the Recommendations issued by both the Human Rights Committee and the Working Group

, allowing for the unification of demands regarding women killed in situations of violence, and included within their demands as “Not one more prisoner for abortion,” and Belén had already been on the front page of two national newspapers: *Página 12* and the *Buenos Aires Herald*

on Arbitrary Detentions made to the Argentine State, referring expressly to the case. Amnesty International's "urgent action," gathering signatures worldwide, was of particular importance⁴¹. The UN Human Rights Committee joined the UN Special Rapporteur on Torture's request for information⁴² in the context of its Concluding Observations regarding the country's Fifth Periodic Review, concerning the state of compliance with obligations assumed under the International Covenant on Civil and Political Rights, where, in addition to expressing concern over the lack of implementation of legal abortions, it urges the State to "review the case in light of relevant international standards, with a view to her immediate release"⁴³. Although the current government's political agenda does not show special attention to the oversight of the agencies

⁴¹ "Amnesty International called for urgent action on behalf of the young woman imprisoned for killing her baby," La Nación newspaper, article published on 05/03/2016, available at <https://www.lanacion.com.ar/1894963-amnistia-internacional-pidio-una-accion-urgente-por-la-liberacion-de-un-a-joven-condenada-por-matar-a-su-bebe>.

⁴² "The Belén Case Reached the National Congress." News article dated 07/19/2016 published in La Gaceta de Tucumán, available at <http://www.lagaceta.com.ar/nota/682694/sociedad/reclam-olibertadparabelen-llego-al-congreso-nacional.html>.

⁴³ UN, Human Rights Committee, Concluding Observations on the fifth periodic report of Argentina, para. 11 (CCPR/C/ARG/CO/5).

With regard to international human rights standards—at least in theory—these statements had the effect, at the national and provincial levels, of transforming a demand for feminist justice into a demand for respect for human rights; and there is no doubt that the judiciary is more receptive to pressures coming “from outside” that allege violations of these rights than it is to the effective incorporation of a gender perspective.

The social pressure of “expertise”: the Court’s allies

Another strategy of Belén’s Feminist Defense was to bring in strategic actors with expertise in the field to provide the call for justice with additional arguments beyond social activism. Under the Amicus Curiae framework, leading figures from various sectors—and even the national government itself through the Public Defender’s Office and the National Council of Women—presented their expert perspectives on the social, political, and legal implications of the case⁴⁴. Without

⁴⁴ Innocense Proyect, ANDHES (Lawyers of the NOA in Human Rights and Social Studies), the Buenos Aires Bar Association (AABA), the Penal Thought Association (APP), Amnesty International, the Center for Legal and Social Studies (CELS), the Latin American and Caribbean Committee for the Defense of Women’s Rights (Cladem), the Latin American Justice and Gender Team (ELA),

however, a legal fact confined exclusively to the court record weakens its social impact and, at the same time, its significance is difficult to translate into social mobilization. To politicize this legal fact and amplify its effects on the case, it was decided to make it public through a press conference in which a representative from each organization presented their perspective on the case, their theoretical contribution to the cause, and the significance of this litigation for women's rights. This strategy of transforming purely procedural acts into political and social ones was a legal strategy employed by the defense that was also utilized after Belén regained her freedom, as a way to keep public interest in the case alive until her acquittal was secured. The involvement of prominent human rights figures—the first institutional visit Belén received was from the Chair of the National Congress's Human Rights Commission⁴⁵—allowed us to humanize Belén's claim and frame her imprisonment and conviction as a human rights violation. While there is significant criticism within feminist circles regarding how human rights address universal versus particular ideals, it is true that they represent a shared framework of great symbolic power for groups

the CTA de los Trabajadores, the Association of Women Criminal Lawyers, and the Women Workers' Plenary of the Workers' Party.

⁴⁵ Congresswoman Victoria Donda Pérez.

subalterns, and as Malena Costa points out, “the paradox of recognizing women as specific subjects does not diminish the strength of this discourse” (2016)⁴⁶.

The “patriarchal reaction”⁴⁷ in judicial behavior

The reality that the criminal justice system presents to the women who navigate it—whether as victims or perpetrators—has long prompted those of us who litigate these issues to stop waiting for the “Judge Hercules” described by Ost (2007): a judge who masters the “rule of law,” who devotes himself to each case—and with even greater effort to “difficult cases”—to find the “correct answer”⁴⁸. But even so, we cannot settle for a “caricatured judge” who, without taking any law seriously, imprisons people outside legal standards, validates invalid investigations, illegally collects evidence, forces the application of criminal charges, and sentences arbitrarily—whether due to ignorance of the law,

⁴⁶

⁴⁷ Rosa Cobo uses this term to describe the global reactions sparked by the organization or reorganization of the women’s movement to refocus its demands and refine its claims despite the harshness of the capitalist status quo. COBO, Rosa, “Toward a New Sexual Politics: Women Facing Patriarchal Reaction,” Ed. Los Libros de la Catarata, Madrid.

⁴⁸

Whether simple misogyny or sheer indolence, all are reasons that disqualify one from the role.

Immediate release within 55 hours or the legal timeframe



Belén left the operating room where she underwent the D&C at 7:05 a.m. At 8 a.m.—55 minutes later—she was taken into police custody; by 10:30 a.m. she was judicially detained. Four hours after being admitted to the hospital, she was transferred to Santa Ester Prison, and seven days later her pretrial detention was confirmed. In contrast: the preliminary investigation lasted four months, but the trial that convicted her took two years to take place. The same Judiciary that had held her in custody for 25 months took another 96 days to grant the request for release from custody and, following a Habeas Corpus petition, another 55 hours to enforce the “order for immediate release.” The frenzy with which the judicial apparatus operated when it came to arresting her, in

In contrast to the deliberateness with which they proceeded when it came to releasing her, they thus exposed another factor of power: the timing of sentences, which itself serves as a form of judgment. When we denounced this unjustified delay on social media—a delay that smacked more of revenge by judges wounded by the feminist struggle than of due process—the reaction of the Court’s members was immediately apparent. The most aggressive institutional action was summoning the press at the very moment Belén was to be notified of her release⁴⁹ and thus lifting the veil that had protected her image. This action was resisted by the Committee for Belén’s Freedom, which gathered spontaneously for five hours and used the bodies of its members to prevent the cameras from capturing that much-sought-after image. On another front, they discredited the defense team by attributing the delay in Belén’s release to a lack of diligence in paying a court fee⁵⁰ ; and finally, they disclosed her real name to the press⁵¹ , thereby, once her release was finalized

⁴⁹ I indicated that the news was leaked from the court because only Belén and her legal defense team were aware of this order, and it had been decided not to disclose it until it had taken effect precisely to avoid this risk.

⁵⁰ "Belén remains in prison because 400 pesos in court fees were not paid," news article from La Gaceta de Tucumán published on 08/18/2016, available at <https://www.lagaceta.com.ar/nota/695010/policiales/belen-sigue-presa-porque-no-se-pago-400-sellado.html>.

⁵¹ "After more than two years in prison, Belén returns home," news article from La Gaceta de Tucumán published

It was much harder for her to return home. However, this exercise of judicial power—which involves monopolizing the timeline as another form of criminalization—is a common practice in the courts. With regard to the criminalization of abortion specifically, through the use of procedural deadlines, the requirement of preliminary proceedings, and the demand for formalities for certain acts, the judicial structure operates as another obstacle standing between the individual and access to justice. Mariana Álvarez argues, after reviewing 20 years of judicial proceedings in abortion cases in Tucumán, that “In addition to these judicial malpractices [the author refers to the improper classification of cases] is compounded by the failure to dismiss cases involving women unjustly brought into the criminal justice system, as cases remain open indefinitely under the pretext of gathering new evidence and are ultimately closed without acquitting the woman charged. The

on 08/17/2016, available at <https://www.lagaceta.com.ar/nota/694873/policiales/tras-mas-dos-anos-prision-belen-vuelve-casa.html>. Due to this undue violation of Belén’s privacy, in breach of the Heredia Rules, the defense filed a formal written complaint with the Provincial Supreme Court of Justice requesting the initiation of an administrative inquiry to determine responsibility for the jurisdictional misconduct involved in revealing to the press a name that even the UN had jealously guarded. However, as a symptom of institutional bias, it was dismissed outright

“The stigma of being subjected to criminal proceedings for an abortion—which does not even result in dismissal—has consequences for women in various spheres; for example, they cannot obtain a certificate of good conduct, or if they request a criminal/police record in a job application or for a social welfare program, the record of the criminal case for abortion will appear” (2014).

Belén’s acquittal in various judicial instances

On March 23, 2017, nearly a year after her Feminist Defense took on her case, Belén was definitively acquitted. An in-depth analysis of this ruling would exceed the scope of this paper. However, I consider it important to highlight some significant issues that reveal the ideologies behind our ultimate interpreters of the law. For this reason, at least a superficial examination of the ruling is necessary so as not to leave the ending of this unfortunate story of a woman within the sexist labyrinth of the administration of justice incomplete. Although the decision was reached without dissent, I find in it three distinct positions that can be summarized as what I call: the human rights vote, the distracted vote, and the vote of shame.

The “human rights vote,” cast by the presiding judge, Dr. Daniel Posse, is a forceful vote that openly questions the

The actions of his fellow public defenders and judges: "Reading the ruling brought to my attention a circumstance I have never encountered in my professional career, first as a lawyer and now as a judge: the ruling cited the strategic approach of the public defender's office as one of the grounds for the conviction." Regarding the lack of defense Belén experienced throughout her entire proceedings—investigation and oral arguments—this dissenting opinion notes: "The most serious aspect of all is that, as I stated earlier, it is unheard of that in numerous passages of the judgment, the statements of the defense counsel herself are invoked to justify the conviction. If the public defender's work was perceived as incriminating or contrary to her client's interests, the Court, far from using it to justify a conviction, should have immediately removed the official and appointed another defender, or directly annulled the proceedings if that were impossible, given the serious impairment of the guarantees of defense in trial and due process resulting from the absence of an effective technical defense." After procedurally criticizing the administration of (in)justice against Belén—nullity resulting from the violation of professional confidentiality in the abortion complaint, nullity in the collection of evidence, deficiencies in the investigation, and shortcomings in the oral proceedings—this almost feminist opinion expressly refers to the "prejudices" and "stereotypes" that skewed Belén's judicial fate under the notion of a "gender issue" and explains

“probably many of the serious shortcomings noted would not have occurred in a case involving a man as the alleged perpetrator”⁵² . It identifies—and thus acknowledges the existence of—as “institutional violence” not only medical mistreatment but also judicial mistreatment: “her word was never taken into account in the courtrooms.” And she concludes by posing the feminist questions that undermine the “neutrality” of the law and its anachronistic practices: “Would a conviction for aggravated homicide based on the relationship between a man and a woman have been reached in a case where the corpus delicti was lost and there is no data to establish the actual relationship between victim and perpetrator?”

With an autopsy containing inconsistencies such as the victim’s sex or gestational age, and with a cause of death not clearly and precisely determined? Would it have been accepted that the defense made no arguments regarding these issues and did not propose exculpatory evidence? Would the defense have been allowed to argue contrary to the position of innocence maintained in the defendant’s statements and words at all times?”

I say it is an almost feminist ruling because I am not certain that the decision would have been the same in the case of an induced abortion⁵³ , but that does not detract from the

⁵² p. 52 of the judgment.

(⁵³) In fact, in 2014, while serving on this same Supreme Court of Justice of Tucumán, Justice Daniel Posse refused to investigate—citing the vast procedural doctrine

that this dissenting opinion attaches to the situation of women accused of having an abortion. Then, “the vote of the distracted one”⁵⁴ agrees with the arguments of the dissenting judge, but only on those key points that focus exclusively on criminal doctrine—arbitrariness in the assessment of evidence and lack of certainty regarding the defendant’s criminal intent—without delving into the gender-specific aspects that this criminal proceeding entailed for Belén, nor into the multiple forms of violence perpetrated against her by the Health and Judicial Systems. In this decision, the interpretive function of the law completely disregards contextual assessments and resolves—in a liberal style—with an appearance of neutrality, as if adjudicating any other case. However, it is evident that the “distracted vote” knows that what it remains silent about is important, and although it does not rule on the violation of doctor-patient confidentiality—which is a crime in Argentina—it “considers it pertinent and necessary to conduct a

criminal case—a case of breach of professional secrecy in a post-abortion situation publicly known as the ‘María Magdalena Case,’ currently before the Supreme Court of Justice of the Nation awaiting—with the Attorney General’s opinion—review. “A Pattern for Criminalizing Abortions,” article published in *Página 12*, available at <https://www.pagina12.com.ar/diario/ultimas/20-305162-2016-07-25.html>.

⁵⁴ Opinion of Justice Antonio Gandur.

"a comprehensive training process through lectures, meetings, and workshops organized by this Court's Secretariat for Human Rights in coordination with agencies of SI.PRO.SA. (Provincial Health System) to inform provincial medical practitioners of the current legal framework as well as the appropriate course of action regarding issues related to the present case." Finally, the "vote of shame"⁵⁵ while ruling in favor of Belén's acquittal on the grounds that there is no evidence against her, not only fails to address the defense's negligence and the breach of confidentiality, but unfortunately can be said to endorse the abortion report filed by the healthcare professionals, emphasizing that the status of "offender" does not entitle anyone to guarantees. I quote verbatim in this regard: "It must not be lost sight of that, typically, the criminal who sets out to break the law does so by putting their own life at risk. To assert that they are entitled to professional confidentiality to protect them from the physical traces that such a reckless decision might have left on their body is to encourage them to adopt that kind of behavior, to perform acts of personal "recklessness" in pursuit of the illicit goal sought, with the peace of mind of knowing that, if they were to be injured, they would always have access to medical care,

⁵⁵ Opinion of Dr. Antonio Estofán.

"and the complicit silence of the professional from whom he sought a cure for his ailments." This decision expressly contradicts the position held by the Supreme Court of Justice of the Nation in the case known as "Baldivieso"⁽⁵⁶⁾, which correctly cites "the human rights vote," and it appears the Justice is aware of this, as he does not naively refer to the earlier precedent "Zambrana Daza," which was overturned in 2010. And finally, he adds that the obligation to report "leads to a reduction in the incidence of the 'risks' of criminal conduct when making that anticipatory calculation, and for that reason I cannot endorse it. For a true Republic—one that genuinely seeks to guarantee the rule of law to enable the harmonious activity and life of its citizens—is not there to facilitate the criminal plans of any individual, but to make them as difficult as possible, within the framework of the rule of law." Perhaps this is the most shameful statement, in that it appears to enable the commission of a crime in order to reduce crime, or else it would be promoting a standard of rights in access to healthcare that differs depending on whether or not the person has broken the law.

⁵⁶ Supreme Court, in the "Baldivieso" ruling, cit.

Conclusions

Returning to the question that opens this paper: Does judicial conscientious objection exist? Legally, no, but in practice, the Belén case suggests otherwise. At a time when the legislative debate on the legalization of abortion has brought the issue out of the social closet, it is worth reflecting on the fact that conscientious objection is no longer limited to the strictly medical sphere, but rather seems to reinvent itself day by day, using various positions of power to challenge the sexual autonomy that struggles to fit within the hegemonic boundaries of the prevailing social order. When a person enters the judicial system, they face a structure that reasons oppressively according to its own ordering logic—forgive the redundancy—of the social order. However, when a woman who has had an abortion enters the same system, other facets deepen the structural inequality inherent in the law: the disciplining of bodies through ethical, religious, and moral worldviews is added; the power to label as a crime that which is morally disagreeable is also added, and due process guarantees are relaxed because that woman who dared to defy the mandate of compulsory motherhood, in addition to punishment, deserves far more than the full weight of the law. What is at stake when a woman has an abortion? Who are the key players involved in

This punishment? These are some of the questions a legal professional cannot help but ask when taking on the defense of a woman accused of abortion. The fact is that every abortion involves the values, beliefs, and identities of our culture. Abortion is countercultural, and for that reason it is governed through multiple alliances: the alliance between science and law has been highly successful in this endeavor (Mujica, 2007). Health, police, and the judiciary form an effective triad in the governance of women's bodies. To govern is to manage conflicts, to regulate confrontations, to direct adversaries, to articulate connections, to reconstitute bonds, and also to structure possible fields of action among social actors in relation to one another (Agamben, 1998). Belén's case suggests that the consciences of legal practitioners are not immune to the gender biases prevalent in our society. These judicial consciences have the power to undermine—without saying so—respect for the presumption of innocence and the guarantee of due process. If we are unable to recognize that the entire case of Belén was a moralizing interlocking of multiple conscientious objections stemming from different fields of knowledge, the law would abdicate in favor of a "legal fetishism" (Lemaitre Ripoll, 2007)⁵⁷ that disregards the

⁵⁷ For Françoise Geny, in line with Marxism's oldest critique of the law, "legal fetishism" refers to formalism in the interpretation of the law due to its attachment to

justice and which attempts to neutralize the harm that the lack of a gender perspective inflicts on bodies undergoing abortion, over which few horizons of impartiality loom. Perhaps the most interesting challenge is for our universities⁵⁸ to train professionals with a gender perspective so that the profile of graduates does not have the same “black hole” that the Judiciary has when it comes to access to justice and women who have abortions. Because no woman who has an abortion in a hospital should be imprisoned until she finds a feminist lawyer.

the letter of the law over considerations of justice, convenience, and even logic. As if they were in a sort of semi-religious trance that underpins the “fetishism of the written law.”

⁵⁸ A telling fact is the sustained silence from the law and medical schools (both public and private) in Tucumán regarding the Belén case, given that the officials who sent her to prison—from the health sector and the judiciary—are all graduates of these prestigious institutions.

Epilogue

by Soledad Deza

On March 27, 2017, the Supreme Court of Justice of Tucumán, with a 3-2 vote, finally acquitted Belén, ruling that there was insufficient evidence to link her to the crime for the that had 29 months in prison. In the book *Freedom for Belén. Grito Nacional* (2016), I analyzed each of these decisions: Dr. Daniel Posse's vote as "the human rights vote," in which the judge noted, among other things, that he had never seen such a deficient legal defense; Dr. Antonio Gandur's vote as "the distracted vote," in which, although he does not rule on the breach of professional confidentiality, he orders training for Public Services healthcare personnel; and Dr. Antonio Estofán's vote as "the vote of shame," since the justice, clearly frustrated at being unable to depart from the presumption of innocence, allows himself to cite old jurisprudential precedents from the Supreme Court of the Nation whose application had already fallen into disuse long before this case.

The logical expectations at that time, following the Belén case, indicated to us that this case would mark a turning point in the criminalization of obstetric emergencies. We also hoped that confidentiality would take on a stronger role in healthcare for women seeking abortions. However, in 2017 we defended "Clarita," a 14-year-old girl accused of aggravated homicide

due to the familial relationship with her father and mother following a home obstetric emergency, and we continued to litigate the case until 2022, when the local Supreme Court dismissed it. In 2018, we defended “Anita,” a 13-year-old girl summoned to testify in a Gessel Chamber as a defendant charged with aggravated homicide due to the familial relationship following an obstetric incident. In 2019, Prosecutor Adriana Gianononi attempted to criminally prosecute a young woman who had undergone a legal abortion at a public institution in Tucumán, and we secured her resignation a few months after calling for her impeachment. In August 2021, months after the right to voluntarily terminate a pregnancy was legalized in Argentina, fetal remains were found on a street in a working-class neighborhood of Tucumán, and Prosecutor Carlos Sale issued an order for the Minister of Health to provide him with all medical records of public health service users who, between August 30 and 31, had been treated for symptoms consistent with abortion. We filed a complaint of institutional gender-based violence with the Public Prosecutor’s Office, and that investigation was closed. In late 2023, “Eva” went into labor at the hospital where she had been treated and given medication; today we are conducting her legal defense against a homicide charge, and soon we will have a trial to prevent her from ending up in prison, like Belén. The common thread in all these cases is the breach of confidentiality by healthcare staff, in various forms. In other words, this continues. That is why safeguarding professional confidentiality and embedding abortion as a right in the healthcare system’s collective consciousness

remain on the agenda of the Fundación Mujeres x Mujeres.

Following Belén's acquittal, books were written about the case—**Somos Belén** (2019) and **Dicen que tuve un bebé** (2020)—and then a film that was nominated for an Oscar and won the Goya Award, among other prizes. Before that, there was **Jaque a la Reina** (2014), which could have prevented Belén's imprisonment because in that film, Mariana Álvarez and Alejandra Iriarte revealed that there were 532 abortion cases in Tucumán between 1992 and 2012. But undoubtedly, the spotlight drew greater interest with Dolores Fonzi's film. Suddenly, 10 years later, the world began talking again about the gender injustice that prison represents for women who have abortions. And so, by weaving a story for the screen, feminist advocacy gained recognition, and a large part of society—including those who do not agree with the right to abortion—expressed respect for those of us who provide legal services to women facing obstetric emergencies.

In the meantime, the old and new right-wing forces returned to the fray and dusted off the same old misogynistic narratives, but this time they won elections. The U.S. Supreme Court's "Dobbs" case overturned the legality of the right to choose that "Roe v. Wade" had established 40 years earlier, and libertarian voices reinvigorated their agenda of domination over feminized bodies, this time revealing essentialist alliances with certain trans-hostile feminisms and appealing to the "removal of the

“birth rate” as a social problem caused by women’s autonomy. Fortunately, Argentina’s “green tide” comes and goes, and the scarves are not put away; on the contrary, they also fly at other marches as a symbol of freedoms that, like memory, are non-negotiable.

As the struggles unfolded, that powerful cry that originated in Tucumán and sparked a nationwide march demanding “Freedom for Belén” evolved into the Niunamenos Tucumán movement and the local Forum for Sexual and Reproductive Rights. And that unprecedented exercise in feminism—the 2016 convergence of diverse feminist movements in the Mesa para la Libertad de Belén—has not been replicated in Tucumán. The fact is that feminist and human rights movements, just like student groups, unions, the gender-focused branches of political parties, and neighborhood movements, also have their own disputes over meaning and their own contradictions that give rise to other dialectics and other struggles—political ones as well. Glorifying feminisms and concealing the internal contradictions that emerge alongside advances and setbacks amounts to depoliticizing a movement that, both in theory and in practice, has established itself over the past 30 years as the undisputed protagonist of regional and global democratic struggles. Marches starting at different times, disparate gathering points, the struggle for “organization,” documents that, in trying to say everything, sometimes say nothing, and the desolation that takes hold of people’s spirits day by day—all these factors complicate the possibilities of broadening the bases of legitimacy for feminist demands. Especially when the political inertia

proposes the sectoral trap of fragmentation in the face of every social demand. Negotiating new agreements, avoiding the sexualization of demands, reconfiguring our agendas, and uniting struggles—in a context of fierce hostility—is our most urgent challenge in the face of the extreme violence that libertarian discourse promotes everywhere.

Belén was an emblematic case for several reasons. First, because it exposed the falsehood of the claim that the criminal offense of abortion was not used in women's lives, and this was a turning point in the subsequent discussion of abortion legalization. Second, because it brought a demand for reproductive justice from Tucumán to the national stage. Third, because it revealed the cruel articulation of biomedical knowledge, the police, and the judiciary in the machinery of criminalizing obstetric emergencies. Fourth, because translating the law to make an injustice intelligible requires an alliance of multiple disciplines. And finally, because it demonstrated that feminist lawyering requires skilled technical advocacy and legal mobilization; and it is essential for challenging patriarchal convictions.

To me, as a trial lawyer, Belén taught me that battles are fought within the legal proceedings and that street mobilization amplifies them; that is why no march can bring freedom if the legal work remains undone. She taught me that communication about the case is subordinate to legal strategy, and not the other way around. She taught me that defending a woman in prison is a task that is at times collective and at times very solitary. She taught me

that all forms of feminist legal practice are necessary: the one that writes the brief, the one that files the amicus curiae, the one that works within institutions, and the one that communicates—but that when the person who litigated the case is sidelined, feminist legal practice is merely legal practice. She taught me that a feminist legal defense is technical and must be financially recognized as such. It taught me that there is a feminist ethic that prevents us from instrumentalizing those we defend, no matter how just the cause may be. The same feminist ethic that succumbs to the logic of extractivism, which exploits others' litigation, rendering legal services within a case invisible. It taught me that sometimes we feminist lawyers who litigate must defend our work with the same convictions with which we defend the accused women, because the logics of social, judicial, police, biomedical, or academic domination are the same everywhere.

Belén ignited the collective consciousness to challenge the cruelest structural injustice: that of a prison designed solely for poor women. Belén showed us that even from the most remote corner, a feminist demand can be articulated that fills public squares across the country. Belén allowed us to confront the Judiciary with its racism, classism, and prejudices. Belén enabled us to organize politically around a table where we all set aside our personal agendas so that our demand could be feminist. Belén inspired us because we saw that united, we are invincible. Belén is just around the corner, like the memory of all the struggles that came before us. Belén, today, is all of us.

Bibliography cited and consulted

AGAMBEN, Giorgio, "Homo Sacer: Sovereign Power and Bare Life," Pretextos, Valencia, 1998

ÁLVAREZ, Mariana, "Which Women Are Criminalized for Abortion and in What Proceedings?", in Checkmate the Queen, Ed. Cienflores, Buenos Aires, 2014.

ÁLVAREZ, Mariana S., "Forms of Criminalization of Abortion: Which Women and Which Cases Are Prosecuted in Tucumán," Jaque a la Reina. Health, Autonomy, and Reproductive Freedom in Tucumán, Ed. Cienflores, Buenos Aires.

ALVIAR GARCÍA, Helena - JARAMILLO SIERRA, Isabel C., "Feminism and Legal Critique: Distributive Analysis as a Critical Alternative to Liberal Legalism," Law and Society Collection, Siglo del Hombre, University of the Andes, Bogotá, Colombia, 2012.

BARLETT, Katharine, "Feminist Legal Methods," Harvard Law Review, vol. 3, no. 4, 1990.

BOURDIEU, Pierre, "Male Domination," Ed. Anagrama, Barcelona, 2000.

BOURDIEU, Pierre, "Strategies of Social Reproduction," Siglo XXI Editores, Buenos Aires, 2011.

CÁRCOVA, Carlos María, "Equality as a Condition of Possibility for Democracy and Social Equity," Philosophy of Law Journal, vol. 1, no. 1, Ed. INFOJUS, Argentina, 2012.

CÁRCOVA, Carlos María, "The Opacity of Law," Trotta, Buenos Aires, Argentina, 2006, 2nd ed.

COSTA, Malena, "Legal Feminisms," Ed. Didot, Autonomous City of Buenos Aires, 2016, p. 148.

DEZA, Soledad, "Breach of Confidentiality and Post-Abortion Reporting," Rev. Bioethical Perspectives of the FLACSO Bioethics Observatory, No. 34, Abortion Dossier, Buenos Aires, 2015

FACIO, Alda - FRIES, Lorena, "Feminism, Gender, and Patriarchy," in Rev. Academia sobre Enseñanza del Derecho, vol. 3, no. 6, 2005, pp. 259-294

FERRAJOLI, Luigi, "Law and Reason: Theory of Criminal Guarantees," Ed. Trotta, Madrid, 2000, 4th ed.

FUCITO, Felipe, "Research Notebooks No. 10. Sociological Conception of Law," Ed. A. L. Gioja Institute for Legal and Social Research - School of Law - UBA, Buenos Aires, 1989

HOPP, Cecilia, "Criminal Policy on Abortion: Female Sexuality Under Debate," Rev. Derecho Penal, vol. I, no. 2, Ediciones Infojus, Argentina 2012.

LEMAITRE RIPOLL, Julieta, "Legal Fetishism, Law, Violence, and Social Movements in Colombia," Ed. SELA, Chile, 2007

LUNA, Florencia, "Vulnerability: The Metaphor of Layers," JA, 2008-IV, 30-67.

MACKINNON, Catherine, "Toward a Feminist Theory of the State," Ed. Cátedra, Spain, 1995.

MILLET, Kate, "Sexual Politics," Ed. Cátedra, Madrid, 2010.

MOLLER OKIN, Susan, "Political Liberalism, Justice, and Gender," in CASTELLS, Carme (ed.), *Feminist Perspectives on Political Theory*, Ed. Paidós, 1996, Buenos Aires, State and Society Collection.

MUJICA, Jaris, "Political Economy of the Body. The Restructuring of Conservative Groups and Biopower," PROMSEX, Lima, 2007.

OST, Françoise, "Jupiter, Hercules, Hermes: Three Models of the Judge," *Academia. Journal of Legal Education*, vol. 4, no. 8, University of Buenos Aires (UBA) Press, 2007, pp. 101–130.

PITCH, Tamar, "Sex and Gender in and of the Law: Legal Feminism," in *Rev. Anales de la Cátedra Francisco Suárez*, vol. 44, Spain, 2010, pp. 435–459.

RAFFIN, Marcelo, "Transmutations of the Legal Horizon of Postmodernity," *Materials for a Critical Theory of Law*, Lexisnexus - Abeledo Perrot, Buenos Aires, 2006.

RUIZ, Alicia, "Embracing Vulnerability," in *Institutional Journal of the Public Defender's Office of the Autonomous City of Buenos Aires*, vol. 1, no. 1, Ed. La Ley, Argentina, 2011, p. 37.

RUIZ, Alicia E. C., "The Illusion of the Legal: Part II of Ideological Aspects of Legal Discourse," in *Materials for a Critical Theory of Law*, Ed. Abeledo-Perrot, Buenos Aires, 1991.

SMART, Carol, "Feminist Theory and Legal Discourse," in BIRGIN, Haydée (ed.), "Law in Gender and Gender in Law," Ed. Biblos, 2000, pp. 31-72.

SPIVAK, Gayatri Chakravorty, "Can the Subaltern Speak?", Cuadernos de Plata, Buenos Aires, 2010.

TEUBNER, Gunther, "The Force of Law," Siglo del Hombre Editores, Faculty of Law of the University of the Andes, Ediciones Uniandes, Instituto Pensar, Bogotá, 2000, p. 196



ISBN 978-631-90037-9-6



9 786319 003796