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# Mother Lode

*Desmond competitors wrangle over the difficult case of Susan Jones*

**A** newly introduced contraceptive for women — the under-the-skin device Norplant—ran up against age-old constitutional protections in this year's Desmond Memorial Moot Court Competition.

Forty-five two-person teams, mainly second-year students, argued the merits of *Susan Jones vs. People of the State of New York*. The hypothetical case, devised by the Moot Court Board, involved the prosecution of a female drug addict who took crack cocaine while pregnant and thus delivered drugs to her baby through the umbilical cord. It also cited the state's demand for contraception to prevent the addict from becoming pregnant again and harming another innocent child.

Under debate were two issues:

- \* Whether prosecuting the woman violated her Eighth Amendment rights by targeting her on the basis of status;

- \* Whether the forced implantation of the birth control device would violate her rights under the 14th Amendment, which says individual states may not abridge their citizens' constitutional rights — including, it was argued, the right to procreate.

The final-round arguments were made before a panel of volunteer judges and "a couple hundred" spectators at John Lord O'Brian Hall, said third-year

student Michael T. Hewitt, director of the 75-member Moot Court Board.

In a sense, it was a victory for both the winning team, Brian Mercer and Gary Simpson, and the runners-up, Helen Pundurs and Jennifer Willig, who took the top award for best brief. (All competitors write a joint brief that is judged separately from the oral argu-

Supreme Court ruled that states have the authority to impose a waiting period and other restrictions on women seeking abortions.

The compelling interest in the moot court case, Simpson argued, was that "any children that would result from pregnancies would be the responsibility of New York State. She had already



ments; in the moot court competition, they are required to argue both on and off brief.)

In the finals, Mercer and Simpson took the side of the respondent, arguing that the state has a "compelling interest" in preventing this woman from having more children — an interest that necessitated Norplant.

"It came down to the constitutional issue of whether or not the state had the authority to contravene someone's reproductive rights or infringe upon those rights," Simpson said. He added that his task was made easier by the recent decision in *Casey vs. Southern Pennsylvania Reproductive Services*, in which the

been proven an unfit mother by the courts."

Brian Mercer, his partner, argued the status question, saying Susan Jones was in trouble not because she was a drug addict, but because she in fact delivered drugs to her child through the umbilical cord as the baby lay on the delivery table. Her drug-taking, Mercer argued, was a "specific overt act," outside the protections established in the landmark status case *Robinson vs. California*. Adding a public-policy argument, he said, "If you usurp this, you usurp the state's power. The state is working in the valid interest of protecting the health and welfare of its citizens."

Helen Pundurs, arguing for the petitioner, asserted that prosecuting Susan Jones for being pregnant and an addict at the same time amounted to prosecution on the basis of status. However, she conceded later, "the body of law on that particular point was not there. The preponderance of legal thought on status questions" was behind the state in this case.

Jennifer Willig asserted that the state "had no interest in a theoretical life. It was seeking to prevent a life that was not yet in being." Arguing against the Norplant insertion, she said less intrusive means of controlling Susan Jones' behavior, such as residential drug rehabilitation, would be more appropriate.

All four finalists said they had spent endless hours in preparation, even videotaping their arguments to refine their delivery. And all agreed that the long weeks of work paid off in satisfaction — and learning.

"It seems like a really interesting way for the student body to get together and work on something interesting together," Mercer said. "You don't get that feeling from a lot of other things here."

"Actually getting in there to argue is exhilarating," Pundurs said. "It's sort of like going to the Olympics. It doesn't matter if you come in last — it's just an honor to be there." ■



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*Left to right, front row: Shirley Sostre-Oquendo, Suzanne D. Abair, Penelope G. Stothers, Robin Kaplan, Marianne Mariano. Second row: K. Jill Barr, Jack Canzoneri, Tamra Diamond, Tamie Jo Morog, Deanna Nelson, Perri Guido, Amy Sassenhausen, Jennifer Pitarresi, Michelle Parker. Third row: Senta Siuda, Brian Mercer, Kevin Raphael, Linda Chodos, Scott Rudnick, Michael T. Hewitt, Nelson Vargas, Michael Yehl, Rhonda Weir, Christa Bowden. Fourth row: Francisco Duarte, Sarah E. Swartzmeyer, Joel M. Sunshine, Srikant Ramaswami, Walter Rooth, Andrew A. Vitale, Todd Card, John Dillon, Michael Vargha. Back row: Kevin Woods, Patrick Dudley, Christopher Belter, William F. Trezevant, Michael Culp*

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