

4-1-1998

## Close to Home: Desmond Moot Court Debates Native American Rights

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### Recommended Citation

UB Law Forum (1998) "Close to Home: Desmond Moot Court Debates Native American Rights," *UB Law Forum*: Vol. 11 : No. 1 , Article 25.

Available at: [https://digitalcommons.law.buffalo.edu/ub\\_law\\_forum/vol11/iss1/25](https://digitalcommons.law.buffalo.edu/ub_law_forum/vol11/iss1/25)

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*Honorable Ann T. Mikoll '54, of the NYS Supreme Court, Appellate Division, 3rd Dept., and H. Kenneth Schroeder Jr. '61, of Hodgson, Russ, Andrews, Wood & Goodyear judge the final round*

# Close to home

## *Desmond Moot Court debates Native American Rights*

**T**he volatile real-world issue of Native American sovereignty, and a state's right to collect sales taxes on goods sold to non-Natives, underwent a thorough and spirited debate in the 11th annual Desmond Moot Court Competition, a five-day event that concluded on Nov. 1, 1997.

"Everyone thought this was a timely issue that was pertinent to Western New York. There was a lot of interest in it," said Angela Zwirecki, a third-year UB Law School student who directed the competition as president of the Buffalo

Moot Court Board. "Also, the *Buffalo Law Review* held a symposium this year on Indian law, and they said they would consider publishing the best brief resulting from the competition."

The case was New York State Department of Taxation and Finance, Petitioner, vs. William Red Jacket, Respondent. It presented two issues: whether or not the state has the right to collect sales tax on gasoline sales made by Indians to non-Indians on reservation land, and whether the use of blockades by the Department of Taxation as an

enforcement tool is constitutionally permissible.

Twenty-six teams comprising 56 participants took part in the competition. That was a decrease from last year's 44 teams; Zwirecki said this reflected the smaller size of this year's second-year Law School class. The competition was open to second-year and third-year students, but "it was almost all second-



*Jeffrey Reina '99 argues his case before State Supreme Court Justice Edward A. Rath Jr. '54, foreground, and Buffalo attorney H. Kenneth Schroeder Jr. '61*

years," she said.

"One of the critical things in determining where you want to practice in your law career is, are you comfortable with oration?" Zwirecki said. "There aren't a lot of people who are comfortable with oral argument. This gives you a way to test yourself before a live audience in a situation where your job is not on the line."

That motivation paid off greatly for at least one participant, Patrick Roth, who teamed with fellow second-year student Jeffrey Reina on what proved to be the championship team. They defeated Dennis Schaeffer and Robert Marinovic in the final round, argued in the Ceremonial Courtroom at Erie County Hall.

"We did an oral argument and brief in Research and Writing class last year," Roth said, "and I was awful — nervous and unprepared. That was one of the reasons I decided to do Moot Court."

The experience of arguing before a panel of judges (more than 150 jurists and attorneys volunteered as judges, and the final round was argued before a panel of five) is different from, say, giving a speech, because of the intense questioning, Roth said. "The most unnerving thing was the questions," he said. "It is a little harder to anticipate than when you are giving a normal presentation."

"It was really enjoyable — in retrospect," said Reina, his partner. "While it was happening it was a little nerve-wracking. You have to get used to public speaking; you have to get used to talking to judges. But one of the judges gave me a good piece of advice in the early rounds: Just treat it like a conversation. Even though sometimes it may seem confrontational, I took that to heart and kept it in the back of my mind throughout the competition."

"I thought it was a great learning experience."

Each team prepared a brief based on facts provided to the participants; no outside research was allowed. That in itself was a major task. Reina and Roth's brief, for example, ran 35 pages total, with 20 pages of argument. As well, during the six-round competition they ended up arguing "off brief" — taking the position opposite to the one advocated in

their brief — three times. "When you are writing your brief, you sometimes come up with good counterarguments. It is good to argue off brief because you can anticipate those arguments," Reina said.

"We put a lot of time into it, and I think we presented a good oral argument."

The final-round panel of judges consisted of Justice Ann T. Mikoll '54 of the Appellate Division of State Supreme Court; State Supreme Court Justice Edward A. Rath Jr. '54; Buffalo City Court Judge Timothy Franczyk; Buffalo attorney H. Kenneth Schroeder Jr. '61; and Patrick NeMoyer '77, newly elected to the State Supreme Court.

"It's a great program. It's good for the students and it's good for the community," said NeMoyer. "It gives people better lawyers out there to represent them."

"Every lawyer at some time has to

stand up and make a presentation, whether it's to a town board or a court or a community group. This helps them learn to organize their thoughts and present them well, and they come out better lawyers because of it."

NeMoyer said he and some of the other judges had done outside reading on similar cases, and said he was impressed throughout the competition by the caliber of the participants.

"In terms of the vote (on the winners), it was pretty close," he said. "I was impressed by all four finalists. They were good lawyers."

"The judges were pretty tough on the competitors," Zwirecki said, "and they provided great feedback."

Dennis Schaeffer and Robert Marinovic had the distinction of having their brief named best in the competition. Named Best Oralist was Kinda Serafi. ■

### Family violence clinic receives \$140,000 in state funding

**T**he Family Violence Clinic in the University at Buffalo Law School has received \$140,000 in state funding to expand its work throughout the Eighth Judicial District of New York and serve as a regional resource center offering technical assistance and training to various government agencies and community-based organizations.

The funding, announced by Barry B. Boyer, dean of the law school, and John B. Sheffer II, director of the Institute for Local Governance and Regional Growth at UB, includes a \$70,000 member item from New York State Sen. Mary Lou Rath and a \$70,000 STOP Violence Against Women grant from the New York State Department of Criminal Justice.

The Family Violence Clinic, directed by Suzanne E. Tomkins, provides critically needed legal support for victims of domestic violence. It offers students an enriching educational component and strengthens relationships with a broad spectrum of agen-

cies in the legal and social-service system throughout Western New York.

The clinic has used the new funding to join with the Institute for Local Governance and Regional Growth in a cooperative venture that began in the fall to serve as a regional resource center for the Eighth Judicial District, which includes the counties of Allegheny, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans and Wyoming. The clinic is providing technical assistance to the counties in the form of training and development of resource materials tailored to the needs of each locale. The clinic also is working closely with each official in each county to develop community-coordinated response projects.

Students, under faculty supervision, are assisting in developing and implementing protocols for law enforcement, courts, and social-service and health-care providers.

The clinic continues to provide training for court advocates, court personnel, law enforcement personnel and the judiciary. A training and resource manual published by the clinic is adaptable for use in any county throughout New York. ●