

Why spend more?

Save 5–10% on top contact brands compared to other retailers.

[Find your lenses](#)

WARBY PARKER

Implanted Birth Control Device Renews Debate Over Forced Contraception

f i s + ↻

By Tamar Lewin

Jan. 10, 1991



The New York Times Archives

See the article in its original context from January 10, 1991, Section A, Page 20 | Buy Reprints

New York Times subscribers* enjoy full access to TimesMachine—view over 150 years of New York Times journalism, as it originally appeared.

SUBSCRIBE

*Does not include Crossword-only or Cooking-only subscribers.

About the Archive

This is a digitized version of an article from The Times's print archive, before the start of online publication in 1996. To preserve these articles as they originally appeared, The Times does not alter, edit or update them.


Occasionally the digitization process introduces transcription errors or other problems; we are continuing to work to improve these archived versions.

Less than a month after the Federal Government approved a new birth control device that is implanted under a woman's skin, the long-lasting device is the focus of a renewed debate over forced contraception.

A county judge in California has ordered that a woman convicted of child abuse use the device for three years as a condition of probation. Experts in medical ethics say that because of the ease in using the device, which is not yet on the market, other judges may be tempted to order its use in cases where women are seen as unfit to be parents.

The device, Norplant, was approved by the Food and Drug Administration on Dec. 10 and was widely hailed as a "dream method" of birth control because it could easily be implanted in a woman's arm, remaining effective for up to five years.

The device, the first substantially new contraceptive in 25 years, consists of several soft, matchstick-size rubber tubes that are placed under the skin of the woman's upper arm, where they release the female hormone progesterin, one of the components of birth control pills. With the exception of sterilization, Norplant is expected to be the most effective contraceptive, because it does not depend on a person's remembering to use it.



DR. MARTY™

How Dogs Cry For Help: 3 Warning Signs Your Dog Is Crying For Help

[➔](#)

"Norplant presents a special temptation to judges because it's so long lasting and doesn't require any cooperation after it's implanted, and can be monitored by a parole officer just by looking at the woman's arm," said Dr. George Annas, director of the program on law, medicine and ethics at the Boston University School of Medicine. "I think we're going to see more of these cases. It's kind of amazing that this has happened already, when hardly any physicians even know how to implant this thing."

Dig deeper into the moment.
Special offer: [Subscribe for \\$1 a week.](#)

In the California case, Tulare County Superior Court Judge Howard Broadman last week ordered the implantation of the device in Darlene Johnson, a 27-year-old mother of four who pleaded guilty to beating two of her children with a belt.

The order was issued at her sentencing, without notice to either the woman or her lawyer, Charles Rothbaum. Judge Broadman is to reconsider the order at a hearing this morning on a motion filed by Mr. Rothbaum.

Mr. Rothbaum said his client had been completely taken by surprise by the Judge's decision. In a plea agreement arranged earlier, Ms. Johnson was to be sentenced to one year in jail and three years of probation.

He said she had agreed to the Judge's order only because she was afraid that if she refused she would go to jail for four years. Mr. Rothbaum said he did not know how much Ms. Johnson had understood about Norplant, because he was not at the hearing.

"We had already hammered out the plea bargain, and the sentencing hearing looked pretty routine, so I had another attorney stand for me, since I was going out of town," said Mr. Rothbaum. "The next thing I knew there were calls from all over the country about this Norplant thing. I had never heard of Norplant before and neither had Darlene Johnson."

When Norplant was first introduced last month, medical ethicists warned that the new technology was so attractive that it might be abused by those seeking to force certain groups of women, particularly retarded women or women receiving welfare benefits, to forgo having children.

A Dec. 12 editorial in The Philadelphia Inquirer, with the headline "Poverty and Norplant -- Can Contraception Reduce the Underclass?" suggested that because of growing poverty among blacks, welfare mothers should be offered incentives to use Norplant.

But so many members of the newspaper's news department denounced the editorial as racist that the paper took the unusual step of printing an apology. No Comment From Judge

In the California case, too, Ms. Johnson's status as a welfare recipient may have played a role. "According to the transcript, he asked Darlene Johnson whether she was on welfare," Mr. Rothbaum said. "She is. I think that's what's going on here."

Judge Broadman declined to comment on his decision yesterday, because of the hearing today.

Some have defended such sentences as innovative and effective. Of one such sentence, Daniel Polsby, a law professor at Northwestern University, said: "We send too many people down the river. We've got to be more creative."

Bruce Anderson, one of two prosecutors in Florida who worked last November on the case of 17-year-old girl who admitted smothering her newborn daughter, called requirement that the girl use birth control for 10 years after her release from two years in prison innovative. He also said it was the kind of last-resort solution forced on courts when controls in homes and schools fail.

' We're starting to reach the point where the courts are responsible for anyone,' he said. 'It's one final step to have to supervise teenagers in sexual relationships they aren't ready to handle.

"There's definitely a trend toward third-party involvement in reproductive decisions, including all the attempts to put women in jail for taking drugs that can affect the fetus," said Arthur Caplan, the director of the University of Minnesota's Center for Biomedical Ethics. Developer of Device Is Upset

The embryologist who developed Norplant, Sheldon Segal of the Rockefeller Foundation, said he was distressed by the Johnson case and other suggestions that the device might be forced upon some women.

"I just don't believe in restricting human rights, especially reproductive rights," he said. "And I'm also bothered because this is a prescription drug, with certain side effects and certain groups of women for whom it may not be appropriate. How does the judge know if the woman is diabetic, or has some other contraindication to the drug? That's not his business."

Mr. Rothbaum said Ms. Johnson, who is now seven months pregnant, was diabetic and thus not a good candidate for Norplant.

In recent years, there has been increasing interest in chemical castration of rapists, despite a 1942 ruling by the United States Supreme Court that struck down an Oklahoma law permitting castration for repeated felonies involving "moral turpitude." In a few scattered cases across the country, judges have offered men convicted of rape or sexual abuse a choice of chemical or surgical castration or long prison sentences. Such choices have generally been overruled or withdrawn before castration actually occurred.

In 1988, Melody Baldwin, a 30-year-old Indiana woman with a history of personality disorders, agreed to be sterilized as part of an agreement and pleaded guilty to killing her 4-year-old son with an overdose of psychiatric drugs prescribed for her.

"This kind of thing happens a lot in lower courts and never gets challenged because the defendant's happy not to be in jail," said Dr. Annas of Boston University. "A lot of people have given up on social policy, on taking care of poor women, and there is an increasing undercurrent that since we don't know really know what to do about crack addicts, people with AIDS and child abusers, we should stop them from having kids."

Lawyers say there has never been a ruling by a Federal appellate court on forced contraception, but civil libertarians argue that the right to abortion found in the Supreme Court's 1973 ruling in Roe v. Wade implicitly includes a more general right.

"There is some latitude for creative sentencing," said Rachael Pine, of the American Civil Liberties Union's Reproductive Freedom Project. "But where you're talking about someone having surgery to be sterilized or implant a contraceptive, you've clearly crossed the line. A plea bargain is so inherently coercive that reproductive decisions cannot constitutionally be part of the package. Even if it's presented as a choice, how voluntary can it be if the government has that block of cement over your head."

She and others said there seemed to be a growing number of cases raising these issues. The Johnson case is the first involving Norplant, but it is by no means the first in which a judge has tried to impose contraception as a condition of probation.

In what may be the only appellate ruling on the subject, the California Court of Appeals ruled in 1984 that a woman who had been convicted of child endangerment could not be ordered to use contraceptives as a condition of probation.

"That case involved a woman who adhered to a very strict macrobiotic diet, which had already caused neurological damage to one of her children," said Maggie Crosby, a lawyer with the American Civil Liberties Union of Northern California. "The judge didn't try to tell her what kind of birth control she should use, but even so, the court of appeals said it was unacceptable." Implanted Contraception

How Norplant's contraception method works. The method was approved for use in the United States last month.

Matchstick-size capsules, containing a hormone also used in some birth control pills, are implanted under the skin of the woman's upper arm in a minor surgical procedure requiring only local anesthesia. The capsules slowly release the hormone, progesterin; they remain effective for up to five years. When they are removed, fertility is restored.