

# George Mason Supreme Court Clinic Helps Obtain Victory in the U.S. Supreme Court for the State of New Hampshire

---

January 19, 2012

On January 11, 2012, the U.S. Supreme Court issued a decision in *Perry v. New Hampshire*, No. 10-8974. In an 8-1 decision by Justice Ginsburg, the Court held that the Due Process Clause does not require a preliminary judicial inquiry into the reliability of eyewitness identifications that are not procured under unnecessarily suggestive circumstances arranged by police. The Supreme Court Clinic at the George Mason University School of Law (GMUSL), led by Wiley Rein attorneys Thomas R. McCarthy and William S. Consovoy, filed an *amicus* brief in the case on behalf of the National District Attorneys Association (NDAA) and in support of the State of New Hampshire.

The NDAA's brief argued, among other things, that the Constitution and our adversarial system already provide sufficient safeguards to ensure that juries do not give undue weight to unreliable eyewitness identification testimony. The majority opinion emphasized this same point, holding that "[w]hen no improper law enforcement activity is involved ... , it suffices to test reliability through the rights and opportunities generally designed for that purpose, notably, the presence of counsel at postindictment lineups, vigorous cross-examination, protective rules of evidence, and jury instructions on both the fallibility of eyewitness identification and the requirement that guilt be proved beyond a reasonable doubt." The NDAA's brief also warned that the Court should not extend its jurisprudence in this area of substantive due process because the Due Process Clause is not a repository of substantive rights to fairness, a point touched on by Justice Thomas in a separate concurrence.

## Practice Areas

---

Issues and Appeals  
Litigation

Mason Law clinic students Lora Barnhart Driscoll, Elizabeth Garvey and Matthew McGuire assisted in drafting the NDAA's *amicus* brief.

The Court's opinion in *Perry v. New Hampshire* can be found [here](#). A copy of the Mason Law clinic's brief on behalf of the NDAA can be found [here](#).

\* \* \*

*This news release was originally posted on the George Mason University School of Law website.*