

U.S. Supreme Court Decision Favorable to NDAA Position

In late January, NDAA filed an amicus brief in *Rivera v. Illinois*. On March 31, 2009, the U.S. Supreme Court issued a decision that was favorable to NDAA's position in its amicus brief.

At issue in the case was the state trial court's erroneous denial of the defendant Rivera's peremptory challenge to the seating of a juror. The defendant appealed his conviction based on the trial court's denial of the preemptory challenge. The Supreme Court of Illinois held that the peremptory challenge should have been allowed but that the error was harmless and did not warrant a reversal of Rivera's conviction. The U.S. Supreme Court "granted certiorari to resolve an apparent conflict among state high courts over whether the erroneous denial of a peremptory challenge requires automatic reversal of a defendant's conviction as a matter of federal law."

NDAA asserted in its amicus brief that a ruling in the petitioner's (defendant's) favor would place prosecutors in an untenable position by forcing them "to reserve *Batson* objections for only the most obvious and overt instances of juror discrimination ... [resulting in] ultimately more discrimination in the use of peremptory challenges." NDAA also maintained that since "no federal right [was] at stake, it is the state courts—not [federal courts] that should determine whether a particular trial court error is subject to review for harmlessness."

The Supreme Court agreed, ruling that "the loss of a peremptory challenge due to a state court's good-faith error is not a matter of federal constitutional concern. Rather it is a matter for the State to address under its own laws."

Rivera v. Illinois, 556 U.S. ____ (2009).

Copies of the amicus brief and the Supreme Court decision can be found on the NDAA Web site. To discuss the case, contact Margaret C. Daun, Associate, Winston & Strawn, 35 W. Wacker Drive, Chicago, IL 60601-9703, 312.558.3227.