The Sixth Amendment's Confrontation Clause provides criminal defendants with the right to "confront"—i.e., cross-examine—the witnesses against them.

But can a criminal defendant "open the door" to the admission of evidence otherwise barred by the Confrontation Clause? The U.S. Supreme Court will address that question in *Hemphill v. New York*, scheduled for oral argument next month. The outcome of that case may significantly expand when prosecutors at all levels, from local district attorneys' offices to DOJ Main Justice, can overcome defendants' right to exclude absent-witness testimony. Darrell Hemphill was convicted of murder in New York after another man was unsuccessfully prosecuted for the same crime. Hemphill argued at trial that the first suspect committed the crime. That was enough for the trial court, and ultimately New York's highest court, to determine he had opened the door for the prosecution to introduce evidence rebutting Hemphill's claim—specifically, an out-of-court statement by the first man that he did not possess the type of gun responsible for the murder. Federal and state rules of evidence like New York's typically allow a party to introduce rebuttal testimony like this—even if it could not do so originally—if the opposing party puts the issue into play. But Hemphill argues that the Confrontation Clause is a separate safeguard that cannot be overcome simply by opening the door. Under Hemphill's theory, the first man's statement should not have been admitted, even after Hemphill implicated him for the crime, unless the man could also be cross-examined at trial. The Supreme Court's decision in *Hemphill* will resonate far beyond violent crimes like the one in that case. The holding is sure to influence charging decisions and trial strategies for securities fraud and other white-collar crimes. A bipartisan coalition of thirteen state Attorneys General filed an amicus brief in support of New York, highlighting the risk that a criminal defendant may "create a misleading evidentiary picture by introducing only part of the evidence on a particular point, and then asserting his Confrontation Clause rights to exclude the testimonial hearsay necessary to complete the picture and avoid the misimpression." The National Association of Criminal Defense Lawyers disagrees. It argues in its amicus brief that New York's position forces a defendant into "a Hobson's choice between his right to confront witnesses and his right to present a complete defense—or even to go to trial at all." A favorable ruling for New York could invite white-collar prosecutors to have at the ready statements by absent witnesses—from former employees, vendors, or co-conspirators, for example—if a defendant shifts the blame to an outside party. It would make defendants' alibis more difficult to immunize and prosecutors' theories easier to adapt. A ruling for Hemphill would have the opposite effect. Supreme Court decisions have the most immediate effect on parties to the lawsuit. But it won't be long before prosecutors and criminal defense attorneys find themselves having to consider *Hemphill* and its treatment of the Confrontation Clause as they prepare for trial.

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