Friedman ‘confronts’ the U.S. Supreme Court

Professor Richard D. Friedman’s decade-long crusade on behalf of the U.S. Constitution’s Confrontation Clause is taking him to the U.S. Supreme Court for the second time—and this time he is making his own oral argument.

Friedman sat quietly at the counsel table when Jeffrey Fisher ’97, argued Crawford v. Washington before the Court. When the Court ruled in the case in 2004 that “[w]here testimonial statements are at issue, the only indicium of reliability sufficient to satisfy the constitutional demands is the one the Constitution actually prescribes: confrontation,” Friedman knew there would be clarifying followup cases. Indeed, the Court itself invited successive cases by saying that “we leave for another day any effort to spell out a comprehensive definition of ‘testimonial.’”

One of those clarifying cases is Hershel Hammon v. State of Indiana, which Friedman has been working on since last summer and was preparing to argue on March 20 as this issue of Law Quadrangle Notes was going to press.

Hammon is a companion case of Davis v. Washington, which Fisher is arguing. The Court granted certiorari for both cases on October 31, 2005, the two will be argued in tandem, and both should help clarify Crawford. The question presented in Davis is “whether the victim’s statements to a 911 operator, which implicated the defendant and were admitted at trial as ‘excited utterances,’ constitute testimonial statements.” In Hammon, “the question is whether an oral accusation made to an investigating officer at the scene of the alleged crime is a testimonial statement within the meaning” of Crawford.

Herschel Hammon was convicted in a bench trial of domestic battery in 2003 in a consolidated process that also dealt with his probation violation on an earlier battery conviction. His wife Amy was subpoenaed but did not attend the trial and the state made no attempt to show that she was unavailable. The court admitted both the arresting officer’s testimony and Amy’s oral statements to him when he responded to the call at her home and also an affidavit that the officer asked her to complete immediately afterwards.

In reviewing the case, the Indiana Court of Appeals and then the Indiana Supreme Court took into account the Crawford ruling, which the United States Supreme Court issued after Hammon’s trial, but they both upheld Hammon’s conviction.

The Indiana Supreme Court held that Mrs. Hammon’s oral statements were not testimonial, and there was no error in admitting them. The court also held that admission of the