

Opinion of SCALIA, J.

**SUPREME COURT OF THE UNITED STATES**

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No. 98–5881

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BENJAMIN LEE LILLY, PETITIONER v. VIRGINIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF  
VIRGINIA

[June 10, 1999]

JUSTICE SCALIA, concurring in part and concurring in the judgment.

During a custodial interrogation, Mark Lilly told police officers that petitioner committed the charged murder. The prosecution introduced a tape recording of these statements at trial without making Mark available for cross-examination. In my view, that is a paradigmatic Confrontation Clause violation. See *White v. Illinois*, 502 U. S. 346, 364–365 (1992) (THOMAS, J., concurring in part and concurring in judgment) (“The federal constitutional right of confrontation extends to any witness who actually testifies at trial” and “extrajudicial statements only insofar as they are contained in formalized testimonial material, such as affidavits, depositions, prior testimony, or confessions”). Since the violation is clear, the case need be remanded only for a harmless-error determination. I therefore join Parts I, II, and VI of the Court’s opinion and concur in the judgment.