

Opinion of THOMAS, J.

SUPREME COURT OF THE UNITED STATES

No. 98–5881

BENJAMIN LEE LILLY, PETITIONER v. VIRGINIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
VIRGINIA

[June 10, 1999]

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

I join Parts I and VI of the Court’s opinion and concur in the judgment. Though I continue to adhere to my view that the Confrontation Clause “extends to any witness who actually testifies at trial” and “is implicated by extrajudicial statements only insofar as they are contained in formalized testimonial material, such as affidavits, depositions, prior testimony, or confessions,” *White v. Illinois*, 502 U. S. 346, 365 (1992) (opinion concurring in part and concurring in judgment), I agree with THE CHIEF JUSTICE that the Clause does not impose a “blanket ban on the government’s use of accomplice statements that incriminate a defendant.” *Post*, at 5. Such an approach not only departs from an original understanding of the Confrontation Clause but also freezes our jurisprudence by making trial court decisions excluding such statements virtually unreviewable. I also agree with THE CHIEF JUSTICE that the lower courts did not “analyz[e] the confession under the second prong of the *Roberts* inquiry,” *ibid.*, and therefore see no reason for the plurality to address an issue upon which those courts did not pass.