The Court continues to view as "presumptively unreliable accomplices' confessions that incriminate defendants."[213]

Then, in 1970, the Court refused to equate the Confrontation Clause with hearsay rules. "While . . . hearsay rules and the Confrontation Clause are generally designed to protect similar values, it is quite a different thing to suggest that the overlap is complete and that the Confrontation Clause is nothing more or less than a codification of the rules of hearsay and their exceptions as they existed historically at common law. Our decisions have never established such a congruence; indeed, we have more than once found a violation of confrontation values even though the statements in issue were admitted under an arguably recognized hearsay exception. The converse is equally true: merely because evidence is admitted in violation of a long-established hearsay rule does not lead to the automatic conclusion that confrontation rights have been denied."[214] In holding admissible a statement made to police during custodial interrogation, the Court explained that "[T]he Confrontation Clause does not require excluding from evidence the prior statements of a witness who concedes making the statements, and who may be asked to defend or otherwise explain the inconsistency between his prior and his present version of the events in question, thus opening himself to full cross-examination at trial as to both stories."[215]

The Court favored a hearsay exception over a cross-examination requirement in *Dutton v. Evans*,[216] upholding the use as substantive evidence at trial of a statement made by a witness whom the prosecution could have produced but did not.[217] Presentation of a

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[213] Lee v. Illinois, 476 U.S. 530, 541 (1986); Lilly v. Virginia, 527 U.S. 116, 132 (1999).

[214] California v. Green, 399 U.S. 149, 155–56 (1970) (citations omitted) (holding statement admissible because the witness was present at trial and could have been cross-examined then). *See also* Dutton v. Evans, 400 U.S. 74, 80–86 (1970) (plurality opinion by Justice Stewart). *Compare* id. at 94–95 (Justice Harlan concurring), *with* id. at 105 n.7 (Justice Marshall dissenting).

[215] California v. Green, 399 U.S. at 164. Justice Brennan dissented. Id. at 189. *See also* Nelson v. O'Neil, 402 U.S. 622 (1971). "The Confrontation Clause includes no guarantee that every witness called by the prosecution will refrain from giving testimony that is marred by forgetfulness, confusion, or evasion. To the contrary, the Confrontation Clause is generally satisfied when the defense is given a full and fair opportunity to probe and expose these infirmities through cross-examination." Delaware v. Fensterer, 474 U.S. 15, 21–22 (1985) (per curiam) (expert witness testified as to conclusion, but could not remember basis for conclusion). *See also* United States v. Owens, 484 U.S. 554 (1988) (testimony as to a previous, out-of-court identification statement is not barred by witness' inability, due to memory loss, to explain the basis for his identification).

[216] 400 U.S. 74 (1970).

[217] The statement was made by an alleged co-conspirator of the defendant and was admissible under the co-conspirator exception to the hearsay rule.