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Justice Carter's Dissent in People v. Crooker: An Early Step Towards Miranda Warnings and the Expansion of the Fifth Amendment to Pre-Trial Confessions

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The Great Dissents of the "Lone Dissenter"

Justice Jesse W. Carter's Twenty Tumultuous Years on the California Supreme Court

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Justice Carter's Dissent in *People v. Crooker*:[1] An Early Step Towards Miranda Warnings[2] and the Expansion of the Fifth Amendment to Pre-Trial Confessions

*By Helen Y. Chang**

Introduction

By the middle of the 20th century, police interrogation of criminal suspects had developed into a fine art designed to extract confessions. The use of the "third degree," otherwise known as the infliction of physical or mental suffering, was not uncommon.[3] "[T]he most frequently utilized interrogation techniques have involved mental and psychological stratagems—trickery, deceit, deception, cajolery, subterfuge, chicanery, wheedling, false pretenses of sym-

1. *People v. Crooker,* 47 Cal. 2d 348 (1956).

2. "Miranda warnings" refer to the admonitions constitutionally required by the Fifth and Fourteenth Amendments of the U.S. Constitution pursuant to the landmark United States Supreme Court decision of *Miranda v. Arizona*, 384 U.S. 436 (1966). The *Miranda* decision is arguably one of the most influential and controversial legal cases of the 20th century.

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3. *See* Donald E. Wilkes, *The Attempted Murder of the Miranda Decision*, *available at* http://www.law.uga.edu/academics/profiles/dwilkes_more/31miranda.html (last visited Mar. 8, 2007).

pathy, and various other artifices and ploys."[4] As the United States Supreme Court noted in its famous *Miranda v. Arizona* decision,[5] this type of police interrogation involved "inherent compulsion,"[6] was "inherently coercive,"[7] "exact[ed] a heavy toll on individual liberty and trad[ed] on the weakness of individuals."[8] In sum, police interrogation tactics in and before the 1950s were contrary to the fundamental principles of fairness and justice set forth in the Constitution.

In *People v. Crooker*, Justice Carter was the lone dissenter with an unpopular position: reverse the criminal conviction of a self-confessed murderer. Why did Justice Carter dissent? For the now recognized principles that a criminal suspect is entitled to an attorney during custodial interrogation, and if he or she requests counsel, the interrogation must cease until an attorney is present.[9] Unfortunately for Mr. Crooker, in 1956, such protections were not yet constitutionally mandated. *Miranda* would not be decided for another 10 years. Mr. Crooker's confession, extracted during a police interrogation without the benefit of legal counsel, was admitted into trial. Mr. Crooker was convicted of murder and sentenced to death.[10]

Factual Background

In 1955, John Russell Crooker was a 31-year old law student working as a houseboy for a wealthy Southern California matron, Mrs. Norma McCauley. During his employment, Mr. Crooker became involved in an intimate and secret affair with Mrs. McCauley. Several days prior to her death, Mrs. McCauley informed Mr. Crooker that "they had been found out" and he agreed never to

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4. *Id.*

5. *See Miranda,* 384 U.S. at 436. *Miranda* remains one of the most famous criminal law cases the U.S. Supreme Court has ever decided, and the Miranda warnings may be the most famous words the Court has ever written. The Miranda Debate: Law, Justice, and Policing 249 (Richard A. Leo & George C. Thomas III eds., 1998).

6. *See Miranda*, 384 U.S. at 467.

7. *Id.* at 436.

8. *Id.* at 455.

9. *Id.* at 474.

10. Edmund G. (Pat) Brown was Governor of California from 1959–1967. In his second day in office, Brown received John Crooker's petition for clemency. Brown conducted a hearing and concluded that Crooker had a long history of mental illness. Brown commuted Crooker's death sentence to life imprisonment. *See* Edmund G. (Pat) Brown & Dick Adler, Public Justice, Private Mercy, A Governor's Education on the Death Row 5, 11–19 (1989).

see her again.[11] Despite his promise, Mr. Crooker went to Mrs. McCauley's home in the late afternoon of July 4, 1955. Finding no one home, he hid in a closet in the children's room and waited for her return. Because of the holiday, Mrs. McCauley had attended a Fourth of July barbeque and returned home around half past midnight. Mr. Crooker choked, strangled, and then stabbed Mrs. McCauley to death. Mrs. McCauley's son discovered her body in the morning.

On July 5, 1955, at 1:30 p.m., Mr. Crooker was arrested at his apartment. Mr. Crooker was taken to a Los Angeles Police Station, where he was photographed and asked to take a lie detector test. He refused to submit to the test, and indicated that he wanted to call an attorney.[12] This was the first of many requests for an attorney made by Mr. Crooker during his time in police custody. In fact, during this official police interrogation by four officers, Mr. Crooker specifically identified the attorney he wished to call.[13] Mr. Crooker was told that he could call his attorney after the police had concluded their investigation.[14]

Mr. Crooker remained in police custody and his interrogation by four police officers continued for the next fourteen hours into the early morning hours of July 6, 1955.[15] Mr. Crooker finally signed a detailed written confession at 2:00

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11. *Crooker v. Calif.*, 357 U.S. 433, 435 (1958). Mr. Crooker was later released on parole and became a model citizen; Mr. Crooker sent an annual Christmas card to Justice Mosk, who wrote the majority opinion for the California Supreme Court upholding Mr. Crooker's murder conviction. *See* Gerald F. Uelmen, "Remembering Stanley Mosk," 28 CACJ Forum 22 (2001).

12. *See Crooker*, 357 U.S. at 436.

13. Defendant testified that he made repeated requests for an attorney from the time of his arrest and throughout his questioning by the officers. Officer Gotch testified that the first time defendant asked to call an attorney was at the Central Station, when the following occurred:

> Q. When he made the request for an attorney, what did you tell him? A. I asked him who did he want for an attorney.
>
> Q. And he said what? A. He stated he didn't know.
>
> Q. What else did he say on this subject? A. I stated to him that after our investigation was concluded he could call an attorney, and if he didn't have funds to hire an attorney, when he went to Court a public defender would be assigned to handle his case.

He then stated that he had a friend who had been an instructor at Pepperdine College that would probably handle the case for him. I asked him who the name was, and he said it was a man by the name of Simpson, who lived in Long Beach.

People v. Crooker, 47 Cal. 2d 348, 351–52 (1956).

14. *Id.* at 352.

15. *See Crooker*, 357 U.S. 433, 436 (1958).

a.m.[16] At 5 a.m., he was jailed and allowed to sleep.[17] Later that day, Mr. Crooker was taken to the district attorney's office and asked to repeat his confession. When Mr. Crooker again asked for an attorney, the district attorney permitted a telephone call to Mr. Simpson, the attorney previously requested by Mr. Crooker. Mr. Crooker told Mr. Simpson that the police were making him answer questions.[18] The district attorney interjected that no coercion had been used and that "everything defendant said was free and voluntary."[19] Mr. Crooker met with Mr. Simpson later that evening and was thereafter represented by counsel.[20]

The trial court found that Mr. Crooker's confession was free and voluntary, and allowed it to be read to the jury.[21] The jury convicted Mr. Crooker of first degree murder and sentenced him to death. Mr. Crooker appealed his conviction to the California Supreme Court,[22] and then to the United States Supreme Court.[23] All appeals failed. Mr. Crooker's death sentence was later commuted by California Governor Edmund G. (Pat) Brown.[24]

Justice Carter's dissent in *People v. Crooker* marked the beginning of the judiciary's unwillingness to allow unfettered police interrogation and set the stage for the United States Supreme Court's 1966 decision in *Miranda v. Arizona*. *Miranda* reached two conclusions: (1) that the Fifth Amendment privilege against self-incrimination applied to all custodial interrogation; and, (2) that specific warnings regarding the suspect's constitutional rights to remain silent and request legal counsel must precede any custodial interrogation.[25] In reaching this important and controversial decision, the *Miranda* Court recognized that custodial police interrogation was "inherently coercive,"[26] implicating the Fifth Amendment privilege against self-incrimination, and that any confession obtained from such custodial interrogation was inadmissible into evi-

16. *Id.*
17. *Id.*
18. *People v. Crooker*, 47 Cal. 2d at 355.
19. *Id.*
20. *See Crooker*, 357 U.S. at 437.
21. *See People v. Crooker,* 47 Cal. 2d at 353–54.
22. Justice Mosk wrote the majority opinion for the California Supreme Court. Justice Carter was the lone dissenter. *See People v. Crooker*, 47 Cal. 2d 348 (1956).
23. *See Crooker*, 357 U.S. 433 (1958).
24. *See supra* note 11 and accompanying text.
25. The four specific Miranda warnings are: (1) the right to remain silent; (2) anything said can be used against him; (3) the right to an attorney; and, (4) if unable to afford an attorney, one will be appointed. *Miranda v. Arizona*, 384 U.S. 436, 467–79 (1966).
26. *Id.* at 534.

dence at trial.[27] Although Justice Carter relied upon the Due Process Clause of the Fourteenth Amendment, he essentially reached those same conclusions in his dissenting opinion, noting, "if our constitutional safeguards are to be observed, they should be observed to the letter."[28] Since Mr. Crooker's confession was made without the benefit of counsel that had been requested, Justice Carter believed that Mr. Crooker's conviction should have been reversed for error.

DISSENT

Carter, J. I dissent.

I disagree with the italicized portion of the following statement from the majority opinion:

> "The Due Process Clause of the Fourteenth Amendment of the federal Constitution and article I, section 13, of the California Constitution guarantee a defendant the right to be represented by counsel in every stage of the proceedings, and deprivation of this guarantee may be a violation of the Due Process Clause of the Fourteenth Amendment. *To constitute deprivation of due process, however, the denial of the right of the accused to be represented by counsel in every stage of the proceedings must have so fatally infected the regularity of his trial and conviction as to violate the fundamental aspects of fairness and result in a miscarriage of justice.* (citations omitted)."

....

In *In re Masching*, 41 Cal. 2d 530, 534, defendant requested counsel, and a continuance on the ground that he had been "confined to bed." His request was denied. We there said that "Under all the circumstances this procedure amounted to a denial of petitioner's constitutional right to counsel. It follows that his conviction cannot be permitted to stand and that he should be remanded to custody for further proceedings in the municipal court in conformity with his right to counsel. (citations omitted).

In *People v. Lanigan*, 22 Cal. 2d 569, 575 we said…

> *The right to have the assistance of counsel is too fundamental and absolute* to allow courts to indulge in nice calculations as to the amount of prejudice arising from its denial.… Although the Sixth Amendment is applicable only to trials in federal courts, (citation omitted) the

27. *Id.* at 444.

28. *See People v. Crooker*, 47 Cal. 2d at 360.

> same right is protected in this state by article 1, section 13 of our Constitution providing that 'In criminal prosecutions, in any court whatever, the party accused shall have the right … to appear and defend, in person and with counsel.'

In *People v. Robinson,* 42 Cal. 2d 741, we [stated:] "Even as we have held that the right to the assistance of counsel is so fundamental that the denial by a state court of a reasonable time to allow the selection of counsel of one's own choosing, and the failure of that court to make an effective appointment of counsel, *may so offend our concept of the basic requirements of a fair hearing as to amount to a denial of due process of law contrary to the Fourteenth Amendment*." (citation omitted).

[I]t appears to me that the statement in the majority opinion heretofore set forth is incorrect.… "The right to have the assistance of counsel is too fundamental and absolute to allow courts to indulge in nice calculations as to the amount of prejudice arising from its denial." (citation omitted).

….

The defendant's confession was undoubtedly an important factor in defendant's conviction of the crime of which he was accused. The confession was made without benefit of counsel which had been requested by defendant. It appears to me that if our constitutional safeguards are to be observed, they should be observed to the letter. This concept is forcibly declared by the Supreme Court of the United States in a recent decision (*Ullmann v. United States*, 350 U.S. 422 [76 S. Ct. 497, 100 L.Ed. 511]), decided March 26, 1956). Mr. Justice Frankfurter speaking for the court stated:

> Nothing new can be put into the Constitution except through the amendatory process. Nothing old can be taken out without the same process.
>
> No doubt the constitutional privilege may, on occasion, save a guilty man from his just deserts. It was aimed at a more far-reaching evil—a recurrence of the Inquisition and the Star Chamber, even if not in their stark brutality. Prevention of the greater evil was deemed of more importance than occurrence of the lesser evil. Having had much experience with a tendency in human nature to abuse power, the Founders sought to close the doors against like future abuses by law-enforcing agencies.
>
> As no constitutional guarantee enjoys preference, so none should suffer subordination or deletion. It is appropriate to read the conviction expressed in a memorable address by Senator Albert J. Beveridge to the American Bar Association in 1920, a time when there was also man-

> ifested impatience with some of the restrictions of the Constitution in the presumed interest of security. His appeal was to the Constitution–to the whole Constitution, not to a mutilating selection of those parts only which for the moment find favor. [He said:] 'If liberty is worth keeping and free representative government worth saving, we must stand for *all* American fundamentals–not some, but all. All are woven into the great fabric of our national well-being. We cannot hold fast to some only, and abandon others that, for the moment, we find inconvenient. If one American fundamental is prostrated, others in the end will surely fall. The success or failure of the American theory of society and government, depends upon our fidelity to every one of those inter-dependent parts of that immortal charter of orderly freedom, the Constitution of the United States.' (Beveridge, The Assault upon American Fundamentals, 45 Reports of American Bar Assn., 188, 216 [1920].) To view a particular provision of the Bill of Rights with disfavor inevitably results in a constricted application of it. This is to disrespect the Constitution.

I am of the opinion that defendant's requested instruction relative to the jury's disregard of the confession should have been given. Defendant was entitled to, and should have been accorded, the right to counsel at the time he made the confession. As a result, the confession was obtained in violation of his constitutional rights and should not have been considered by the jury.

I would therefore reverse the judgment.

Comment

Justice Carter's dissent in *Crooker* was based upon an interpretation of the Constitution that would not be recognized until eight years after Crooker's case was heard by the United States Supreme Court.[29]

Indeed, the historical development of the modern American privilege against self-incrimination is convoluted and the privilege was slow to develop as a fundamental constitutional right. Although the right to remain silent against incriminating questions is set forth in the Fifth Amendment of the U.S.

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29. Mr. Crooker appealed the California Supreme Court's decision to the United States Supreme Court. The appeal centered on the admissibility of his confession that was obtained without the benefit of legal counsel. In a 5–4 decision, the United States Supreme Court upheld Mr. Crooker's capital murder conviction. *See Crooker v. California*, 357 U.S. 433 (1958).

Constitution,[30] for the first ninety years after its adoption, American courts limited the application of the constitutional privilege to a defendant in his or her own criminal proceeding.[31] In civil proceedings, the "privilege against self-incrimination" referred to the common law right of a witness not to answer incriminating questions.[32] The modern American privilege against self-incrimination, which combines both the common law witness privilege and the constitutional criminal privilege, was not articulated until the 1886 decision of *Boyd v. United States*.[33] In *Boyd*, the Supreme Court held that any witness or party in a criminal or civil proceeding holds the right to remain silent under the Fifth Amendment.[34]

The explanation behind the American courts' delay in recognizing the privilege as an important civil liberty most likely lies in the English common law development of the privilege. Traditionally, the privilege against self-incrimination was thought to have developed from the use of the oath *ex officio* in the 16th century English ecclesiastical courts.[35] Modern scholars dispute the origin of the privilege in the ecclesiastical courts.[36] The research of John Langbein, Henry Smith, and Eben Moglen trace the origins of the English privilege to the emergence of defense counsel and changing rules of evidence in the 18th century.[37] The common law witness privilege allowed even a non-party to refuse to answer incriminating questions in both civil and criminal proceedings. Thus, early American cases involving criminal confessions applied the broader

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30. U.S. Const. amend. V ("No person … shall be compelled in any criminal case to be a witness against himself.…").

31. Kathleen B. Hazlett, *The Nineteenth Century Origins of the Fifth Amendment Privilege Against Self-Incrimination*, 42 Am. J. Legal Hist. 235, 235 (1998).

32. *Id.*

33. Hazlett, *supra* note 31 at 235 (citing *Boyd v. U.S.*, 116 U.S. 616 (1886)).

34. *Boyd v. U.S.*, 116 U.S. at 627–38 (1886) (relying on English and American legal history to support the conclusion that the 4th and 5th Amendments of the U.S. Constitution protected individuals from government intrusion; rejecting the arguments that the amendments applied only to criminal proceedings and where there was a physical invasion of property).

35. *See* Hazlett, *supra* note 31 at 236 (citing 8 John Henry Wigmore, Wigmore on Evidence §2250 (3d ed. 1940)).

36. *See* Hazlett, *supra* note 31 at 236 (discussing John Langbein, *The Historical Origins of the Privilege Against Self-Incrimination at Common Law*, 92 Mich. L. Rev. 1047, 1047 (1994); Henry E. Smith, *The Modern Privilege: Its Nineteenth-Century Origins*, *in* The Privilege Against Self-Incrimination: Its Origins and Development (1997); Eben Moglen, *Taking the Fifth: Reconsidering the Origins of the Constitutional Privilege Against Self-Incrimination*, 92 Mich. L. Rev. 1086 (1994)).

37. *Id.*

common law witness privilege.[38] Those cases did not refer to the Fifth Amendment as a basis for excluding such confessions from evidence.[39] The Supreme Court addressed this distinction in its 1854 decision of *United States v. Quitman*[40] by stating, "The Constitution of the United States does not allow the examination of a witness in any criminal case against himself, except with his consent. The common law of evidence extends the exemption, and he is not required to answer in any case either as a witness or a party" when the answer would incriminate him or subject his property to forfeiture.[41]

The passage of two witness immunity statutes in the 19th century was a significant development in the path towards the modern American privilege.[42] Although the two statutes were intended to raise tax revenue by compelling the production of prior records without incurring criminal tax liability, case law expanded the scope of the statutes to apply outside the tax arena.[43] Moreover, defense counsel began to argue, albeit unsuccessfully, that the witness privilege was a part of the Fifth Amendment.[44] This litigation raised an important issue as to whether the witness privilege was a part of the common law or the Constitution since Congress had the authority to abrogate the com-

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38. *See* Hazlett, *supra* note 31, at 240.

39. *See* Hazlett, *supra* note 31, at 240 (citing *U.S. v. The Schooner Betsey & Charlotte*, 8 U.S. 443, 446 (1808) ("It is contrary to the principles of the common law to make a man criminate himself."); *U.S v. Smith*, 27 F. Cas. 1192, 1225 (C.C.D.N.Y. 1806) ("I shall certainly not attempt to invalidate the maxim, 'that no one is bound to inculpate himself.' It is too well established, and too sacred in its nature, to admit of a dispute."); *U.S. v. Burr*, 25 F. Cas. 55 (C.C.D. Va. 1807) (discussing that constitutional arguments were frequent at the time, such as "constitution" being mentioned nearly one hundred times in the "long opinions surround the treason trial of Aaron Burr.… [B]ut never in association with the heated debates about privilege against self-incrimination those cases presented.").

40. *See* Hazlett, *supra* note 31 at 241 (citing *U.S. v. Quitman*, 27 F. Cas. 680 (C.C.E.D. La. 1854)).

41. *U.S. v. Quitman*, 27 F. Cas. 680, 681 (C.C.E.D. La. 1854).

42. Beginning in 1868, Congress enacted two witness immunity statutes which were intended to raise federal revenue by compelling a taxpayer to produce prior records (for the purpose of determining back taxes owed) without subjecting the taxpayer to criminal tax liability. *See* Hazlett, *supra* note 31, at 245–251, n.49, n.50, n.70 (citing 15 Stat. 37 (1868); *U.S. v. Hughes*, 26 F. Cas. 421, 423 (C.C.S.D.N.Y. 1875); 18 Stat. 186 (1874)).

43. *See* Hazlett, *supra* note 31, at 248 (discussing statutes to "aide in the collection of revenues"); *Id.* at 245 (citing *U.S. v. Brown*, 24 F. Cas. 1273 (C.C.D. Or. 1871) as an example of courts applying the 1868 witness immunity statute broadly).

44. *See id.* at 249–50 (citing *In re Strouse*, 23 F. Cas. 261 (C.C.D. Nev. 1871); *U.S. v. Three Tons of Coal*, 28 F. Cas. 149, 150 (C.C.E.D. Wis. 1875); *U.S. v. Mason*, 26 F. Cas. 1189, 1191 (C.C.N.D. Ill. 1875); *U.S. v. Distillery No. Twenty-Eight*, 25 F. Cas. 868, 869 (C.C.D. Ind. 1875)).

mon law but not the Constitution.[45] That issue was finally decided in the 1886 decision of *Boyd v. United States*.[46] In *Boyd*, the Supreme Court held that the 1874 witness immunity statute was "unconstitutional and void" because it caused a person "to be a witness against himself, within the meaning of the fifth amendment."[47] Since *Boyd* was a civil proceeding, the Court expanded the scope of the constitutional privilege to so apply, thus concluding that Congress lacked the authority to abrogate the privilege. The modern American privilege against self-incrimination was born. Post-*Boyd*, the Fifth Amendment privilege against self-incrimination was applied to parties and witnesses in any judicial proceeding, thus erasing the prior distinction between the common law witness privilege and the constitutional privilege.

Perhaps the most significant judicial interpretation of the modern American Fifth Amendment privilege against self-incrimination came in the Supreme Court's 1966 decision of *Miranda v. Arizona*.[48] In *Miranda*, the Court held that the Fifth Amendment privilege applied even before trial to "custodial interrogations," thus extending the constitutional protection of the privilege to pre-trial confessions.[49] Prior to *Miranda*, courts determined the admissibility of pre-trial confessions under the standard of "voluntariness"[50] according to the Due Process Clause. Post-*Miranda*, pre-trial confessions obtained during custodial interrogation without the benefit of legal counsel or a waiver of such, were deemed conclusively coercive and inadmissible. Further, if the suspect requests an attorney, the police are required to cease the interrogation.[51]

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45. *See* Hazlett, *supra* note 31, at 251.

46. *See id.* at 252–60 (discussing *Boyd v. U.S.*, 116 U.S. 616 (1886)). Mr. Boyd supplied glass to the federal government for use in the construction of several government buildings. Mr. Boyd was permitted to import duty-free the amount of glass supplied to the government. When Boyd claimed that a certain amount of glass had broken during shipment, thereby allowing him to import that amount duty-free, the government disputed his claim and subpoenaed the invoices. *Id.*

47. *Id.* at 252 (quoting *Boyd v. U.S.*, 116 U.S. 616, 639 (1886) (Miller, J., concurring)).

48. *Miranda* was a consolidation of four cases: *Westover v. U.S.*; *Vignera v. N.Y.*; *Calif. v. Stewart*; and *Miranda v. Arizona*. None of the defendants were advised of their constitutional right to remain silent or their right to counsel. All defendants had confessed during police interrogation. All confessions were admitted into evidence and all defendants were convicted of the crimes charged. The cases were consolidated because of their common "salient features—incommunicado interrogation of individuals in a police-dominated atmosphere, resulting in self-incriminating statements without full warnings of constitutional rights." *See Miranda,* 384 U.S. at 445, 456–57.

49. *See Miranda,* 384 U.S. at 444.

50. *Id.* at 461.

51. *Id.* at 473–74.

The *Miranda* decision generated much debate and controversy, including whether the warnings are too confusing, over-inclusive, under-inclusive, over the procedures required for the warnings, and the procedures required for an effective waiver. Also leveled was the criticism that criminals would be acquitted because of "technicalities."[52]

Justice Carter's lone dissent in *Crooker* should be heralded as a marker to the end of unfettered police interrogation and the beginning of increased judicial scrutiny regarding criminal confessions. Justice Carter's vision of an exclusionary rule for criminal confessions obtained without the benefit of counsel has become the modern rule of law.

52. *See* Laurie Magid, *The Miranda Debate: Questions Past, Present, and Future A Review of the Miranda Debate: Law, Justice, and Policing*, 36 Hous. L. Rev. 1251, 1258 (Richard A. Leo & George C. Thomas III eds., 1999).