

Litigating issues Under The Iowa Constitution
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Public Defender Association
Criminal Law Seminar

The last fifteen years have brought an accelerating awareness that the Iowa Constitution may provide a source of relief for criminal defendants who otherwise might have none under the federal constitution. The Iowa Supreme Court has addressed the Iowa Constitution in no less than 27 criminal cases since 2004. The Court has deferred ruling on state constitutional claims in a handful of other cases. Finally, the question of a novel approach under the state constitution has been briefed in many cases and with increasing frequency.

But, uncertainty flourishes. When and how should counsel assert these claims? Is there a downside for asserting a flimsy state claim? Is there an upside to holding fire and filing only a strong state claim? Sometimes cases will reach the appellate courts with little or no development of state claims. Many times state claims are not pursued on appeal, either.

In an effort to explain how to litigate state constitutional claims, this talk will summarize the history of state constitutionalism in Iowa. Then, we briefly cover the constitution itself. As one might expect, the talk will address the scope of defense counsel's duty to advance a state claim. Next, the talk will cover the ideally-supported claim, with examples, anecdotes, or suggestions for resources. Finally, I will touch on some of the many areas that I believe are more or less amenable to novel state claims.

I do not pretend to know the limits of state constitutional claims. As befits any appellate court, members of the Iowa Supreme Court may have differing views on the limits of the state constitution. Nevertheless, I believe it is clear that defense counsel have an obligation to pursue state claims in appropriate cases.

Thank you for your attention and for your commitment to defense of the indigent. Feel free to call me any time to discuss my thoughts on the state or progress of the law.

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