

Litigating Issues Under the Iowa Constitution

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How we got here

Iowa Constitution

- “Every person may speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right.”
- Article I, § 7
- Different at numerous points; the same at others
 - does this mean more conservative or liberal?

Article I

- § 8—search & seizure
- § 9—due process
- § 10—speedy trial, public trial, impartial jury; to be informed & get copy; compulsory process; effective assistance
- § 11—grand jury

Article I

- § 12—double jeopardy
- § 13—habeas corpus
- § 16—treason
- § 17—cruel & unusual punishment

Article I

- But, see this:
- § 19 imprisonment for debt...unless fraud
- § 23 no slavery or involuntary servitude, “unless for the punishment of a crime”

Article I

- What rights are “missing?”
- right to bear arms
- double jeopardy following conviction
- “nor shall be compelled in any criminal case to be a witness against himself.”

Pre-Incorporation

- Slaughter House Cases, 83 U.S. 36 (1873)
- Iowa may have been more liberal, but

Incorporation

- Iowa arguably not as liberal as the Warren Court
- *State v. Rye*, 260 Iowa 146 (1967)

Modern era

- State v. Cline (2000)
- RACI (2004)
- Effler special concurrence (2009)

Defense Counsel's Duty

- Growing insistence on duty to seek relief on State Constitutional grounds
- Effler
- —> Halverson
- —> Gaskins
- —> Jackson
- —> Schlitter

Current Departures

- No less than 27 departures on state law grounds since 2000
- Warrantless searches...consent, probationer/parolee
- Juvenile sentencing

Does it pay & how?

- It's the concurrences/dissents, as well as issues not reached that say or suggest you must
- four ways
 - state alone
 - fed alone
 - state and fed, but only a citation
 - state and fed and fully briefed

The ideal challenge

- Cline/Allen factors
 - Iowa cases
 - sister states
 - dissents/concurrences
 - academic work
 - sociological data
 - books/biographies

Iowa Cases

- Anything pre-incorporation...
 - look at what it *means* not what it says considering the era
 - e.g. *Tonn*

Iowa Cases

- Even post-incorporation, if before there was a more restrictive federal rule...
- e.g. *Rosensteil*

States with similar constitutional provisions

- 50-state survey on Westlaw
- Washington, Hawaii for search and seizure
- Pennsylvania for cruel & unusual punishment
- Southeast U.S. for funds
- “not followed on state law grounds”

Statutes from other states

- Why statutes and not cases?

Dissents and Concurrences

- Looking for names...respectable jurists

Academic Work

- Click on “secondary sources” every time

Sociological data

- Open records
- Consent decrees
- Criminal Justice statistics...or any

Books

- They're still a thing?
- Texts on State Constitutionalism
- Titles on the concepts of liberty, equality, historicity

But see...

- Recent authorities show court will depart with less than all seven factors...or even none
- Gaskins concurrence...even differently worded constitutional provisions can support relief under our constitution.

Areas of challenge

- Search & Seizure
- Due Process / Trial Rights
- Effective Assistance of Counsel
- Cruel & Unusual Punishment

Search & Seizure challenges

- Plain view
- Exclusionary rule in parole/probation revocation.
- Administrative searches
- Consent by deception

Search and Seizure

- Consent by deception
- Consent by third party
- Why an objective standard for reasonable suspicion or probable cause?
- Shared knowledge doctrine

Search and Seizure

- Open fields
- Search incident to arrest
- Anything to do with electronics

Due Process

- Discovery
- Evidence—
- Entrapment—subjective *and* objective?
- Resisting excessive force
- Presence of counsel at identification
- General verdicts

Effective Assistance of Counsel

- Discovery—combined or instead of Due Process
- Reject *Strickland* as too deferential

Cruel & Unusual Punishment

- Why limit *Ragland*—>*Sweet* to people under 18?
- Enhanced sentences
- Fines, especially \$150,000 for death
- Sex Offender Registration...shaming/banishment