ing the offending party's pleadings or a part thereof, dismissal of the action and judgment by default.

It is evident that both the Federal and Iowa Rules are extremely tight on this point. So far as rule 134 is concerned, one might reasonably say it presents the boldest concept in the Iowa interrogatory process.

ROBERT L. WALTERS, (June 1955).

CONFESSIONS—WHAT CONSTITUTES A VIOLATION OF DUE PROCESS OF LAW?

The sole criterion for either admitting or excluding a confession in evidence is, whether the confession was freely and voluntarily offered by the accused without promise of reward or leniency, or without threat of violence or fear of bodily harm.[1] In Iowa, as in several states, there exists a legal presumption that a confession is voluntary,[2] and the burden rests with the defendant to show otherwise;[3] and where a written statement purports to be freely given by the accused, it is prima facie considered voluntary.[4] The reason for excluding an involuntary confession in evidence is not mere legal caprice. The basis for this theory was concisely stated by the Illinois court which said:

> ". . . The rule requiring that a confession be voluntarily made before it is competent was not established to protect guilty persons against a truthful confession but is to guard the innocent against a false confession made under duress, promise of reward or other inducement."[5]

The rule of evidence excluding a confession obtained by the use of undue influence is based upon the untrustworthiness of the confession. The testimonially untrustworthy theory is founded

---

[1] State v. Johnson, 241 Iowa 135, 39 N.W.2d 123 (1949); State v. Gasperavich, 231 Iowa 11, 300 N.W. 638 (1941); State v. Heinz, 223 Iowa 1241, 275 N.W. 10 (1937); State v. Thomas, 193 Iowa 1004, 188 N.W. 689 (1922); other cases collected in 22 C.J.S., *Criminal Law* § 817; 3 WIGMORE, EVIDENCE §§ 824-828 (3d Ed. 1940).

[2] Indiana, Maine, Massachusetts, Missouri, North Carolina, and Oklahoma. *Contra:* Alabama, Arkansas, California, Connecticut, Florida, Georgia, Illinois, Louisiana, Maryland, Mississippi, Montana, Nebraska, Nevada, New Jersey, Oregon, Utah, Virginia, West Virginia, and Wisconsin. See cases collected in 22 C.J.S., *Criminal Law* § 835.

[3] State v. Webb, 239 Iowa 693, 31 N.W.2d 337 (1948).

[4] State v. Hofer, 238 Iowa 820, 28 N.W.2d 475 (1947); State v. Boston, 233 Iowa 1249, 11 N.W.2d 407 (1943); State v. Bisanti, 233 Iowa 748, 9 N.W.2d 279 (1943); State v. Dunn, 202 Iowa 1188, 211 N.W. 850 (1927); State v. Icenbice, 126 Iowa 16, 101 N.W. 273 (1904).

[5] People v. Ardelean, 368 Ill. 274, 276, 277, 13 N.E.2d 976, 978 (1938), citing from People v. Ziderowski, 325 Ill. 232, 242, 243, 156 N.E. 274, 278 (1927).

upon the proposition that by the observation of human conduct, an individual who is placed under definite stress will often times follow the path of least resistance. As a consequence, where the alternative is to either acquiesce to the insistent demands of interrogating officers, or to remain silent and suffer punishment, the result is that the prisoner will often take the "easiest way out." This happens frequently with a person of defective mentality, peculiar temperament, or pathological disorder, who may falsely acknowledge guilt under unorthodox circumstances,[6] especially those created by the aura of stringent police authority.[7]

Therefore, it may readily be observed that the confession obtained by threat or promise is not excluded upon the personal privilege basis of self-incrimination sometimes believed.[8] The principle present essentially is "that the confession rule aims to exclude self-incriminating statements that are *false*, while the privilege rule gives the option of excluding those statements that are *true*."[9] Thus without declaring that the privilege against self-incrimination was involved, all the Justices of the United States Supreme Court agreed in *Brown v. Mississippi*[10] that the use of a coerced confession extorted by brutality and violence was a denial of due process of law, even though coercion was not established until after the confession had been admitted in evidence and defense counsel did not move for its exclusion.

Consequently, if a confession is obtained clearly by reason of threats, violence, or like inducements to the detriment of the con-

---

[6] 3 WIGMORE, EVIDENCE § 823 (3d ed. 1940).

[7] See e.g., "Justice on Trial", TIME, Vol. LXV, No. 7, Feb. 14, 1955. The French Bar has become aroused because of the great injustices being perpetrated upon their fellow citizens. According to TIME, one French expert stated: "The Code exists to protect society from the criminal, not to protect the criminal from judicial error. We run our courts to convict the guilty, not to acquit the innocent. Examples: (1) Seven years ago police beat a confession out of a stevedore accused of killing an old man, beating his wife and robbing them of $50.00. He was sentenced to ten years at hard labor. Last year police discovered that three other men committed the crime. At his retrial last week the stevedore explained why he had confssed, 'I was afraid. There were a lot of police there.' (2) One woman acquitted last month of poisoning her lover's wife, had been illegally held by police for three days while police kicked her, pulled her hair, and insulted her in every way to get a confession. (3) In 1948, a sanitarium worker was kept standing for 28 hours without food to force her to confess killing a man who later was proved to have died from a cerebral hemorrhage." See also BORCHARD, CONVICTING THE INNOCENT (a study in judicial error) (1932).

[8] Iowa and New Jersey have no self-incrimination provisions in their state constitutions. However, Iowa does not have a statutory qualification. IOWA CODE § 622.14 (1954) provides: "When the matter sought to be elicited would tend to render a witness criminally liable, or to expose him to public ignominy, he is not compelled to answer, except as otherwise provided." IOWA CODE § 622.15 lists sixteen exceptions, and Code § 622.16 allows immunity from prosecution for testimony given under the exception in § 622.15.

[9] *See* 3 WIGMORE, EVIDENCE § 823 (3d ed. 1940).

[10] 297 U.S. 278 (1935) (undenied strangulation and whipping by the sheriff aided by a mob).

fessor, then by the weight of authority the confession so acquired is inadmissable as a matter of law.[11] By the same token, where there is any promise of leniency, favoritism, or reward designed to elicit a confession from the suspect, the confession so produced is inadmissable in evidence.[12] The threat or promise must necessarily be the sole motivating factor or proximate cause of the suspect producing the confession to constitute it as inadmissable.[13] Where there is conflicting testimony, or conflicting evidence regarding the voluntary nature of the confession, the question as to whether it was freely given becomes one for the jury to determine.[14] The Supreme Court of Iowa in *State v. Johnson*[15] asserted:

> "It is also . . . the established rule in Iowa that the admissability of a confession is a question for the court to determine, but if a substantial conflict arises in the evidence the question becomes one for the jury under proper instructions."

And the court further stated citing *State v. Harding*:[16]

> ". . . If, however, it clearly appears from the record that the alleged confession was not freely and voluntarily made, or if the State, by its own evidence negatives these essentials, it is the duty of the court to sustain the objection and refuse its submission to the jury."

Where there is no request by the defendant for a preliminary hearing to determine whether the confession was voluntary, the court is not required to give such a hearing in the absence of a specific request.[17] In *State v. Stewart*,[18] the defendant, after he was arrested, signed a written statement or confession of his own free will, knowing that it might be used against him, and with full knowledge of his constitutional rights. At the trial, the defendant asked for a directed verdict because there was no evidence existing to corroborate the confession. The court held that the crime or corpus delicti may be established by circumstantial evidence considered with the confession. Two more recent cases hold that if the commission of a crime by someone is shown, a confession alone is sufficient to sustain a conviction, although there is no other evi-

---

11 State v. Johnson, 241 Iowa 135, 39 N.W. 2d 123 (1949); *cf.* State v. Webb, 239 Iowa 693, 31 N.W.2d 337 (1948); State v. Hofer, 238 Iowa 820, 28 N.W.2d 475 (1947); State v. Thomas, 193 Iowa 1004, 188 N.W. 689 (1922) (threat of possible mob violence); State v. Storms, 113 Iowa 385, 85 N.W. 610 (1901) (disapproving United States v. Bram, 168 U.S. 532).

12 See cases cited in previous footnote.

13 *See* 3 WIGMORE, EVIDENCE § 824 (3d ed. 1940).

14 State v. Williams, 62 N.W.2d 742 (Iowa 1954); State v. Beckwith, 242 Iowa 228, 46 N.W.2d 20 (1950); State v. Sims, 241 Iowa 641, 40 N.W.2d 463 (1950) *cert. denied*, 350 U.S. 833; State v. Bennett, 143 Iowa 214, 121 N.W. 1021 (1909).

15 241 Iowa 135, 138, 39 N.W.2d 123, 125 (1949).

16 204 Iowa 135, 216 N.W. 642 (1927).

17 State v. Plude, 230 Iowa 1, 296 N.W. 732 (1941).

18 231 Iowa 585, 1 N.W.2d 626 (1942).

dence connecting the confessor with the crime.[19] This seems to be the law at present in Iowa. Confessions are not rendered inadmissable simply because they are taken while the suspect is a prisoner.[20] Even the use of artifice, fraud or deception to obtain a confession does not render it inadmissable, if the means employed are not calculated to procure an untrue statement.[21] It has been held that the admissability of a confession is not affected where defendant was unrepresented by counsel at the time he confessed nor told of any right he may have had to consult counsel.[22] But under similar circumstances except that the confession was in testimony before a coroners' jury, it was held not to be voluntary and therefore not admissable at the trial of such person for homicide.[23] Even where a confession is involuntarily obtained, a later confession at a time when the improper influences are not operating is admissable.[24]

Insofar as due process is concerned, the leading case in Iowa[25] involved the arrest of a person, who upon trial was found guilty of second degree murder by the use of three alleged confessions. The facts in this case are undisputed. The defendant Archer had departed Clinton shortly after the murder of an elderly woman. Approximately nine months later he was arrested in Casper, Wyoming, jailed, and subsequently questioned about this murder.

---

[19] State v. Saltzman, 241 Iowa 1373, 44 N.W.2d 24 (1950); State v. Webb, 239 Iowa 693, 31 N.W.2d 337 (1948).

[20] State v. Kelso, 198 Iowa 1046, 200 N.W. 695 (1924); State v. Westcott, 130 Iowa 1, 104 N.W. 341 (1906); State v. Storms, 113 Iowa 385, 85 N.W. 610 (1901); See 22 C.J.S., *Criminal Law* § 819.

[21] State v. Wescott, 130 Iowa 1, 104 N.W. 341 (1906); State v. Storms, 113 Iowa 385, 85 N.W. 610 (1901).

[22] State v. Heinz, 223 Iowa 1241, 275 N.W. 10 (1937); State v. Neubauer, 145 Iowa 337, 124 N.W. 312 (1910). *But see*, State v. Clifford, 86 Iowa 550, 53 N.W. 299 (1893). (Here, defendant, while under arrest and in the county jail charged with the commission of a crime for which he was afterwards indicted and tried, was brought before the grand jury, then in session, by the sheriff at the request of the grand jury foreman. Defendant was examined under oath as to his supposed connection with the crime of larceny. Defendant was not informed of his rights, or of the effect of the answers he might give, or as to the fact whether such answers might later be used against him. The court held that the examination and course of procedure pursued by the grand jury was unprecedented and unjustifiable, that it had no right to compel the defendant to give testimony without advising him of his rights under such circumstances, and that it was attempting to take unfair advantage of the situation to his prejudice. A statement so procured could in no proper sense be deemed voluntary). See also, *Powers of the Grand Jury*, 2 DRAKE L. REV. 26 (1952).

[23] State v. Meyer, 181 Iowa 440, 164 N.W. 794 (1917).

[24] State v. Foster, 136 Iowa 527, 114 N.W. 36 (1907); other cases collected in 22 C.J.S., *Criminal Law* § 817(a), and 20 AM. JUR., EVIDENCE § 487.

[25] State v. Archer, 244 Iowa 1045, 58 N.W.2d 44 (1953).

During nearly four days of interrogation,[26] the defendant stoutly maintained his innocence. He was told by officers that he was lying when his story did not conform to the wishes of the interrogating officials. It was repeatedly demanded that he admit the crime. On the fourth day, the defendant, after being continuously accused of falsification when he denied any knowledge of the crime, said, "If I tell you I did this, will you let me get some sleep?" *The officers all testify to this.* Defendant then made the three confessions. In a five to three decision,[27] the Supreme Court of Iowa, in reversing the judgment of the trial court, held that the confessions were inadmissable as a matter of law, since the confessions were obtained in violation of the defendant's constitutional rights and their admission constituted a violation of due process of law under both the Federal Constitution[28] and the Constitution of the State of Iowa.[29] The majority opinion delivered by Justice Thompson stated in part:

> "The defendant simply gave up what seemed to him an unequal struggle. He was being held illegally and there seemed every indication it was the intention of the officers, sworn to uphold the law but who were actually and effectively flouting it, to hold him and continue their questioning until he told them what they wanted to hear."[30]

In effect, the court held in this case that where the murder suspect was summarily seized and held in jail without formal charge, without opportunity to secure help, without being advised to his right to counsel, and was subjected to prolonged questioning for nearly four days after which he confessed committing the crime by the method which accorded with the interrogating officers theory, the confessions were inadmissable as a matter of law.

---

[26] IOWA CODE § 758.1 (1954) provides: "When an arrest is made without warrant, the person arrested shall, without unnecessary delay, be taken before the nearest or most accessible magistrate in the county in which the arrest is made, and the grounds on which the arrest was made shall be stated to the magistrate by affidavit, subscribed and sworn to by the person making the statement, in the same manner as upon preliminary information, as nearly as may be." See also WYOMING COMP. STAT. § 10-2414 (1945). Statutes of this type appear to be general throughout the United States.

[27] Bliss, Hays, Mulroney, and Oliver, JJ., concurred with Thompson, J. Wennestrum, J. dissented, Smith, C.J. and Garfield, J., joining. Larson, J., took no part in the proceedings.

[28] U.S. CONST. amend. XIV § 1: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; *nor shall any State deprive any person of life, liberty or property, without due process of law;* nor deny to any person within its jurisdiction the equal protection of the laws." (emphasis added)

[29] IOWA CONST. art. I, § 9: "The right of trial by jury shall remain inviolate; but the General Assembly may authorize trial by jury of a less number than twelve men in the inferior courts; but no person shall be deprived of life, liberty, or property, without due process of law."

[30] 244 Iowa 1045, 1057, 58 N.W.2d 44 at 50 (1953).

Query: Did the court transcend the rule set forth by the United States Supreme Court? Did it establish a rule of law for the State of Iowa, or did the court merely rationalize a decision because they believed the defendant innocent?

The scope of the due process clause is broad indeed,[31] and in recent years decisions by the United States Supreme Court have held the use of coerced confessions to procure a conviction of crime violative of the due process clause.[32] More directly, the *Archer* case appears to concur with the rule propounded by the Court in *Ashcraft v. Tennessee*,[33] where a confession was held inadmissible because of a delay in arraignment combined with prolonged interrogation by relays of officers under circumstances which the Court stated created a coercive atmosphere. In this case the Court stated in part:

> "We think the situation such as that shown here by the uncontradicted evidence is so inherently coercive that its very existence is irreconcilable with the possession of *mental freedom* by a lone suspect against whom its full coercive force is brought to bear. It is inconceivable that any court of justice in the land . . . would permit prosecutors serving in relays to keep a defendant witness under examination for thirty six hours without rest or sleep in an effort to extract a *voluntary confession* . . . The Constitution of the United States stands as a bar against the conviction of any individual in an American court by means of a coerced confession."[34]

Similarly, in an earlier case, *Chambers v. Florida*,[35] the Court proclaimed that due process is denied when convictions of murder are obtained in State courts by use of confessions extorted by "dragnet" methods of arrest without warrant and protracted questioning in jail, where prisoners are without friends or counsel, and in surroundings calculated to break the "strongest nerves and stoutest resistance." Again, in *White v. Texas*,[36] the Court reversed a conviction of a capital crime obtained by the use of a confession extracted after long and continuous questioning conducted in a manner similar to that in *Chambers v. Florida*. In conformity with these rulings, the Court in *Ward v. Texas*,[37] set

---

[31] For an enlightening dissertation concerning the evolution of the due process clause of the Federal Constitution, see MOTT, DUE PROCESS OF LAW (1926).

[32] Harris v. South Carolina, 338 U.S. 68 (1949); Turner v. Pennsylvania, 338 U.S. 62 (1949); Watts v. Indiana, 338 U.S. 49 (1949); Haley v. Ohio, 332 U.S. 596 (1947); Malinski v. New York, 324 U.S. 401 (1945); Ashcraft v. Tennessee, 322 U.S. 143 (1944); Ward v. Texas, 316 U.S. 547 (1942); White v. Texas, 310 U.S. 530 (1940); Chambers v. Florida, 309 U.S. 227 (1940); Brown v. Missippi, 297 U.S. 278 (1935).

[33] 322 U.S. 143 (1944).

[34] *Id.* at 154.

[35] 309 U.S. 227 (1940).

[36] 310 U.S. 530 (1940).

[37] 316 U.S. 547 (1942).

aside a conviction based upon a confession acquired by methods indicative of coercion and duress from a defendant who had been arrested illegally, without warrant, by the sheriff of another county, and removed to an adjoining county, and who for three days while being driven from county to county was questioned incessantly by various officers and falsely informed of threats of mob violence.

In a more recent case, *Haley v. Ohio*,[38] a 15 year old boy, suspected of murder, was held incommunicado for three days, even though he had confessed after several hours of persistent questioning during the first day of illegal detention. The Supreme Court held that the defendant's constitutional rights had been violated by such procedures in that the tender years of the suspect would no doubt induce him to succumb to the insistent demands of the officers and the coercive atmosphere created by persons in authority. In all these cases, the procedures utilized to obtain confessions included something more than illegal detention and the concommitant delay in arraignment.

The most recent cases to come before the Supreme Court, *Watts v. Indiana*,[39] *Turner v. Pennsylvania*,[40] and *Harris v. South Carolina*,[41] were all decided at the same term. The late Justice Jackson concurred with the majority in the *Watts* case, holding six to three that the methods used by the Indiana authorities were violative of due process of law. However, in the *Turner* and *Harris* cases, he recorded an illuminating dissent in which he indicated the danger of usurping State court functions. He expressed his belief that the trial court or the appeal court had much greater insight and knowledge of the situation at hand. He also considered it perhaps hazardous and unwise to allow those convicted of capital crimes to be released into society merely because police officers were likely overzealous in the performance of their duties. What he was probably pointing towards was the fact that illegal detention or delay in arraignment is not enough, per se, to create the coercive atmosphere, necessary to invalidate a confession under the due process clause of the Fourteenth Amendment. Justice Jackson apparently felt that in reversing these decisions the Court was overreaching the authority given it by the due process clause.

Prior to the *Ashcraft* case, in such cases as *Brown v. Mississippi*[42] and *Chambers v. Florida, supra*, the Court was unanimous in its holdings. However, with the advent of those cases in which delay in arraignment and psychological pressures were determining factors, a split of opinion developed in the Court. With the exception of the *Watts* case, the Court has been narrowly divided

---

[38] 332 U.S. 596 (1947).
[39] 338 U.S. 49 (1949).
[40] 338 U.S. 62 (1949).
[41] 338 U.S. 68 (1949).
[42] 297 U.S. 278 (1935).

5-4 on cases dealing with illegal detention or failure to arraign within a reasonable time as violative of due process of law. Clearly, it would seem, the Supreme Court would reverse any conviction based upon a confession elicited by brutality or torture, but the fate of the decisions regarding alleged undue influence in the form of psychological pressures, periods of protracted questioning, or delay in arraignment now seems to be in doubt. With the tenuous 5-4 decisions emanating from the Court, a mere change in personnel could render the controlling legal effect of these decisions nugatory. It appears manifest that the Court is reluctant in the later decisions to invade the realm of the State courts.

The rule as to the admissability of confessions in federal courts is decidedly more realtistic. It was held by the Supreme Court in the case of *McNabb v. U. S.*[43] that confessions secured from the defendants while under illegal detention were inadmissable as a matter of law, the Court saying:

> "Quite apart from the Constitution . . . we are constrained to hold that the evidence elicited from the petitioners in the circumstances disclosed here must be excluded. For in their treatment of the petitioners the arresting officers assumed functions which Congress has explicitly denied them. They subjected the accused to the pressures of a procedure which is wholly incompatible with the vital but very restricted duties of the arresting and investigating officers of the Government and which tends to undermine the integrity of the criminal proceeding."[44]

The reasoning in the *McNabb* case is prosaic and forthright. The Court has obviously taken cognizance of the fact and the manifold problems that arise when a suspect is not haled before a judicial officer as soon as practicable. The temptation to ignore this requirement often becomes too great, and a suspect is apprehended and spirited away for a lengthy period of questioning without benefit of proper procedural steps. In order to obviate this temptation, the Court has pronounced that failure to observe the federal

---

[43] 318 U.S. 332 (1943).

[44] *Id.* at 341. In *Upshaw v. United States*, 335 U.S. 410 (1948), the Supreme Court reaffirmed the ruling set forth in the *McNabb* case, despite the fact that that ruling had been the subject of criticism in lower court decisions.

statute[45] requiring immediate arraignment nullifys any admissions or confessions made by a suspect during the period of illegal detention.[46] As a consequence, the Court does not rely upon due process incorporated in the Fifth Amendment[47] or any constitutional prohibition to exclude the confession, but depends upon the statute promulgated by Congress which expressly forbids delay.[48] The statute itself does not exclude the confession, but the exclusion of a confession acquired during the illegal delay is a rule of evidence formulated by the Court to prevent the abuse of the arraignment statute. The holding in the *McNabb* case palpably presents the better rule. In any event, a statute appearing on the books usually is enacted for a purpose and of course is the law. And until abrogated, the logical view would seem to be that the Court take timely judicial notice of the existing statute prohibiting delay; and any information acquired during an illegal detention should be held to be inadmissable as a matter of law.

Thus, in the *Archer* case,[49] the Iowa Supreme Court undoubtedly achieved the correct result. However, it would seem

---

[45] FED. R. CRIM. P. 5, 18 U.S.C.: (a) "Appearance before the Commissioner. An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest available commissioner or before any other nearby officer empowerd to commit persons charged with offenses against the laws of the United States. When a person arrested without a warrant is brought before a commissioner or other officer, a complaint shall be filed forthwith."

(b) "Statement by the Commissioner. The Commissioner shall inform the defendant of the complaint against him, of his right to retain counsel and of his right to have a preliminary examination. He shall also inform the defendant that he is not required to make a statement and that any statement made by him may be used against him. The commissioner shall allow the defendant reasonable time and opportunity to consult counsel and shall admit the defendant to bail as provided in these rules."

The reason for this rule is to abolish unlawful detention. United States v. Carignan, 342 U.S. 36 (1951). The burden of showing unreasonableness of delay in arraignment rests on the defendant. United States v. Leviton, 193 F.2d 848 (C.A. 2d 1951), *cert. denied* 343 U.S. 946. The statute in force at the time of the *McNabb* ruling provided: "It shall be the duty of the marshal, his deputy or other officer, who may arrest a person charged with any crime or offense, to take the defendant before the nearest United States Commissioner or the nearest judicial officer having jurisdiction under existing laws for a hearing, committment, or taking bail for trial." 18 U.S.C. § 595. This statute has been supplanted by Rule 5, quoted above.

[46] McNabb v. United States, 318 U.S. 332 (1943).

[47] U.S. CONST. amend. V.: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

[48] See note 45, *supra*.

[49] State v. Archer, 244 Iowa 1045, 58 N.W.2d 44 (1953), and text supported by note 25, *supra*.

that the result could have been based upon grounds other than denial of due process. For example, the court could have invoked a rule of evidence similar to that of the federal courts, excluding a confession obtained during the period of illegal detainment on the principle of the statutory requirement[50] ordering arrignment without unnecessary delay. But the Iowa court has been unwilling to take this position. In the recent case of *State v. Williams*,[51] the court clearly stated that mere delay in arraignment does not constitute a violation of due process of law, but is only indicia of such.

Nevertheless, the court has pointed up the fact that due process does exist. The *Archer* case might have been merely an admonition to the police officials, or the court might have sincerely believed the defendant innocent of any wrongdoing, and rendered its decision accordingly. Irrespective of the basis of the decision, the cogent fact remains that a state court should be willing to take the initiative with respect to keeping state officers conduct in line with public and judicial approbation. If the state court does not, the U. S. Supreme Court will invade the province of the State to do so, hence a loss of state court sovereignty. This perhaps is the danger of utilizing the due process clause of the Fourteenth Amendment in that it allows the federal courts to assume a role in dispensing state justice. This clearly should be left to the state; it can and should do its own "housecleaning".

HENRY HARTMAN WOLSLEGEL (January '56)

---

[50] IOWA CODE § 758.1 (1954), quoted in note 26, *supra*.
[51] 62 N.W.2d 742 (Iowa 1954).