

## Immigration and speculation

**To the Editor:**

In her article “Family-Based Immigration Petitions” in the February 2018 *Michigan Bar Journal*, Patricia Sullivan states “[d]espite the current rhetoric of the Trump Administration to build a wall on our southern border, ban designated foreign nationals, and deport mass numbers of foreign nationals from the U.S.—all designed to remove or keep certain foreign nationals out of the country—the Immigration and Nationality Act provides for legal immigration of people to the U.S. without discrimination as to race or religion.” In support of this assertion, she references commentaries and media stories from CNN—hardly a reliable and unbiased source. The identification of these “certain foreign nationals” is left to our conjecture.

While a wall may attempt to restrict illegal entry of persons from across the Mexican border, it does not per se aim to hinder only Mexican nationals but would also prevent illegal immigrants from other South American countries and even non-Latino persons who may be abiding in South America. Furthermore, an attempt to deport illegal foreign nationals from the U.S. can and should apply to any such illegals regardless of their nationality. The fact that the vast majority of these illegals are Hispanic does not color the intent of the administration. Finally, the suggestion that the administration’s attempt to “ban designated foreign nationals” to keep them out of the country

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falsely assumes that the administration has a bias against a certain group of foreign nationals, whereas instead the administration states that it is only attempting to limit the access of persons from countries with radical desires against our citizens for a period of time as a security measure.

Ms. Sullivan needs to resist injecting her assumptions into an otherwise lucid and well-written description of the snarl of laws and regulations governing immigration into the United States.

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## Operator error?

**To the Editor:**

I read with interest the new model criminal jury instructions M Crim JI 15.23, 15.24, and 15.25 for violations of MCL 257.904(2) and (7) that rely on the definition of “operating” as defined by the Michigan Supreme Court in *People v Wood*, 450 Mich 399; 538 NW2d 351 (1995), presented in the March 2018 issue of the *Michigan Bar Journal*. The question I have is, why?

In *Wood*, *supra*, at pages 405–406 the Court stated:

We conclude that “operating” *should be* defined in terms of the danger the OUIL statute seeks to prevent: the collision of a vehicle being operated by a person under the influence of intoxicating liquor

with other persons or property. Once a person using a motor vehicle as a motor vehicle has put the vehicle in motion, or in a position posing a significant risk of causing a collision, such a person continues to operate it until the vehicle is returned to a position posing no such risk. (Emphasis added.)

The above appears to be dicta rather than an actual “holding” because the case really centered on a suppression of evidence motion and whether a sleeping operator should be considered in “actual physical control” in accident situations.

The Michigan legislature has defined “operate” and “operating” more restrictively in MCL 257.35a as meaning:

(a) Being in actual physical control of a vehicle. This subdivision applies regardless of whether or not the person is licensed...

(b) Causing an “automated motor vehicle” to move under its own power in automatic mode upon a highway or street regardless of whether the person is physically present in that automated motor vehicle at that time. This subdivision applies regardless of whether the person is licensed under this act as an operator or chauffeur. As used in this subdivision, “causing an automated motor vehicle to move under its own power in automatic mode” includes engaging the automated technology of that automated motor vehicle for that purpose. (Emphasis added.)

At the time the *Wood*, *supra*, decision was issued, “operating” was very similar to MCL 257.35(a), but did not include subsection (b). Further, the limited definition was also set forth in MCL 257.36!

Clearly, the definition of “operating” espoused by the Michigan Supreme Court is much broader than that authorized by the Michigan legislature. Just who controls the definition? I would suggest that the Michigan Supreme Court justices may have overstepped their constitutional authority and reliance on such an opinion may render the model criminal jury instructions noted above as suspect.

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