

requested by the defendant. The Court would appreciate specific comments on whether a court rule requiring the prosecuting attorney to provide the defendant with exculpatory information or evidence is necessary, in light of the prosecuting attorney's constitutional obligation to do so under Brady v Maryland, 373 US 83 (1963), and, if so, whether the proposed amendment of MCR 6.201(B)(1) is consistent with the requirements of Brady.

Issued: February 5, 2008

Comment period expires: May 1, 2008  
Public hearing: To be scheduled

Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by May 1, 2008, at P.O. Box 30052, Lansing, MI 48909, or [MSC\\_clerk@courts.mi.gov](mailto:MSC_clerk@courts.mi.gov). When filing a comment, please refer to ADM File No.2007-38. Your comments and the comments of others will be posted at [www.courts.i.gov/supremecourt/resources/administrative/index.htm](http://www.courts.i.gov/supremecourt/resources/administrative/index.htm).

## Public Defense Updates

***As activity continues to mount on reform of Michigan's public defense system, we will continue to provide updates to our readers. These updates will include those addressing attorney fees.***

***March 18, "Gideon Day," Celebrates an Obvious Truth: Lawyers in Criminal Courts are Necessities, Not Luxuries.***

National expert David J. Carroll's February 7, 2008, presentation to the Prosecuting Attorneys Association of Michigan (PAAM) showed how states in the U.S. have failed to heed that "obvious truth." Carroll is director of research and evaluations in the defender legal services division of the National Legal Aid and Defender Association. He is regarded as the top national expert on the right to counsel in America and will be releasing a widely anticipated report in Michigan this spring that analyzes Michigan's system of public defense services.

National polls show that the public understands the "obvious truth, by huge majorities. According to Carroll, 88 percent believe that the right to counsel is a fundamental part of due process. Well over 90 percent believe that due process includes access to DNA, investigators, experts and reasonable caseloads.

However, there is currently a huge disconnect between that obvious truth and reality. Carroll cited many examples of justice denied in Louisiana and Montana before those states overhauled their broken public defense systems.

Adequate state funding and a system that meets national standards are the keys to effective defense systems, Carroll emphasized. County-funded systems are particularly vulnerable to economic downturns and often cut budgets for public defense precisely when the system is facing its highest demands. Michigan is one of only seven states where counties provide one hundred percent of trial-level public defense funding.

The American Bar Association has established national standards in its Ten Principles of a Public Defense Delivery System. These include: independence from the judiciary, early appointment and continuous representation of clients, confidentiality of communications with clients, and reasonable workloads weighted by type of case. Additionally, attorneys must be qualified for the cases they take, receive adequate training, have their performance monitored and have resources commensurate with the prosecution in pursuing justice for their clients (investigators, expert witnesses, support staff, etc.).

Carroll emphasized that critical defense decisions should not be based on or influenced by a need or desire for defense counsel to please a judge to maintain his or her job.

Nationally, a number of organizations have joined forces to mend Gideon's broken promise – including the ACLU, NAACP Legal Defense Fund, the National Association of Criminal Defense Fund, and the Southern Center for Human Rights. Major law firms and a wide array of state partners, such as Michigan's Public Defense Task Force, join them.

The national reform movement has yielded a number of victories. Montana was the first state to intentionally implement the ABA's Ten Principles and require an independent public defense commission that implements workload and performance standards and conducts statewide training programs. Louisiana followed Montana's lead last year – surmounting the economic challenges of Hurricane Katrina – to significantly increase investment in a public defense system incorporating the ten ABA principles.

Carroll wrapped up his presentation by discussing Gideon's call in Michigan, where Senate Concurrent Resolution 39 authorized his examination of the public defense system in ten counties. Those counties, selected by an appointed advisory committee, include

Marquette, Chippewa, Alpena, Bay, Shiawassee, Wayne, Oakland, Jackson, Ottawa, and Grand Traverse.

He closed by citing Powell v Alabama, 287 U.S. 45 (1932): "The prompt disposition of criminal cases is to be commended and encouraged. But, in reaching that result, a defendant . . . must not be stripped of his right to have sufficient time to advise with counsel and prepare his defense. To do that is not to proceed promptly in the calm spirit of regulated justice, but to go forward with the haste of the mob."

Carroll's presentation was very well received. A number of prosecutors discussed similar problems with tight county budgets and ever-mounting caseloads and emphasized the benefits of a stronger justice system for all parties involved.

I was also invited to attend the conference to hear the Carroll presentation. The Campaign for Justice will

be continuing the dialogue with PAAM and other criminal justice stakeholders over the coming months, as we all eagerly anticipate the results of the Carroll study in Michigan.

On this anniversary of Gideon Day, we hope you will find time to share your experiences or lend your expertise as we educate the public about the need for reform. I can be reached at [lsager@michigancampaignforjustice.org](mailto:lsager@michigancampaignforjustice.org) or (517) 372-3050.

**by Laura Sager**  
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***Before joining the Campaign for Justice, Ms. Sager served as executive and national campaign director for Families Against Mandatory Minimums (FAMM). In Michigan, her efforts were instrumental in the repeal of mandatory minimum drug laws, leading to early parole for hundreds of prisoners.***

## **DUI Defense Column: Deportation**

In the course of the representation of a resident alien facing the charge of drunk driving, deportation may be paramount among the many possible collateral consequences. Like so many other questions, whether or not a conviction will impact the client's immigration status depends on the particular facts and circumstances of the case. When, and under what circumstances, the crime of driving under the influence of alcohol may be considered a deportable offense remains a point of controversy. Nevertheless, it is fair to say, that in today's "post 9-11" mindset the number of DWI-related offenses that might cause deportation is expanding.

Generally, in these cases, a question arises over whether an alien's conviction for driving under the influence of alcohol, which causes serious bodily injury in violation of a state's substantive law, also constitutes a "crime of violence" and, therefore, is an "aggravated felony" that warrants deportation under the Immigration and Nationality Act.

In many jurisdictions, the substantive drunk driving statute requires proof of causation, but does not require proof of mental state. Nor does it involve the use of physical force against the person or property of another. See e.g., Le v. United States Attorney General, 196 F3d 1352 (11th Cir. 1999) (*per curiam*) (holding that a conviction under the Florida drunk driving statute qualified as a crime of violence). In Leocal v. Ashcroft, 543 US 1, 125 S.Ct. 377 (2004), the United States Supreme Court decided, on a grant of a petition for writ of certiorari, that it would resolve a

split in the circuits on the issue of whether state drunk driving offenses similar to the one in Florida qualify as a crime of violence. The United States Supreme Court unanimously reversed the Eleventh Circuit, holding that state drunk driving offenses which either do not have a mens rea component or require only a showing of negligence in the operation of a vehicle are not crimes of violence under 18 U.S.C. §16.

Even if the crime is not violent, one can still be deported for crimes involving moral turpitude. In the case of Marmolejo-Campos v. Gonzales, 503 F3d 922 (9th Cir. 2007), Campos arrived in the United States in 1983 and in 1990 was convicted of felony theft. In 1997, he was convicted of aggravated DUI, and during his plea, admitted to having a BAC of .164 and that he did not have a valid driver license. In 2001, he became a lawful permanent resident. In 2002, he was again convicted of aggravated DUI, this time admitting to running a red light with a BAC of .233 and that he knew he was not licensed. After this conviction, he was sentenced to two and one-half years.

The Department of Homeland Security ("DHS") filed a Notice to Appear with the Immigration Court, charging Campos with removability under the Immigration and Nationality Act ("INA"), §§ 237(a)(2)(A)(i) and (ii), for being an alien convicted of a crime involving moral turpitude and being an alien convicted of two or more crimes involving moral turpitude not arising out of a single scheme of criminal conduct. Campos responded, arguing that his aggravated DUI convictions were not crimes of moral