

PUBLIC HEARING ... *Feb. 28, 1966,*

on

SENATE BILL NO. 8 [DRIVING WHILE
IMPAIRED BILL] and SENATE NO. 9
[IMPLIED CONSENT BILL]

before

New Jersey, Legislature.
SENATE, COMMITTEE ON LAW AND PUBLIC SAFETY,

Held:
Assembly Chamber
State House
Trenton, New Jersey
February 28, 1966

MEMBER OF COMMITTEE PRESENT:

Senator Ned J. Parsekian [Chairman]

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SENATOR NED J. PARSEKIAN [Chairman]: Ladies and gentlemen, I would like to call to order the hearings that were commenced last Monday on Senate Bills No. 8 and 9, - Senate No. 8, which we will call the "driving while impaired" bill, and Senate No. 9 the "implied consent" bill.

We are going to ask witnesses again this week to please assume the chair just to the right of the stenotypist because that microphone is connected, and if there are any questions to be asked of the witness after the conclusion of his testimony, or her testimony, they can be relayed through the Chairman.

May I call Dr. Edwin H. Albano, Medical Examiner of Essex County.

May I, Dr. Albano, ask you to briefly outline your qualifications which I know are heavy but so that we will have it for the record.

E D W I N H. A L B A N O: Well, I am a graduate of Bellevue Medical College in 1933 and my practice has been limited to the field of pathology since 1934, over 30 years. And in the field of pathology I am certified in the branches of anatomical pathology, clinical pathology, and forensic pathology.

I am a member of the American College of Pathologists; I am a Fellow of the American Academy of Forensic Sciences; I am a Fellow of the American Society of Clinical Pathologists; I am a Fellow of the New Jersey Society of Clinical Pathologists; I am a Fellow of the

Royal College of Medicine, tropical medicine, in England; I am a Professor of Forensic Medicine at the New Jersey College of Medicine and Dentistry.

SENATOR PARSEKIAN: Thank you, Dr. Albano.

Will you proceed with your prepared testimony.

DR. ALBANO: I'm going to review the statistics of 1965 in the number of motor vehicle deaths in Essex County during that period of time.

During the year of 1965 we had 120 motor vehicle deaths. Now, of the deaths due to a collision of autos there were a total of 36. Of the 36, 14 were drivers and 22 were passengers.

Incidentally, we perform a complete autopsy on all patients that die as a result of a motor vehicle accident. We remove the brain and have the brain analyzed for the alcoholic content.

Now, in the number of deaths due to a collision of autos, there were 14 drivers and 22 passengers. Of the 14 drivers, 36% had been drinking. Of the passengers, 23% has been drinking.

In the collision of autos with trees, poles, abutments, any solid object, there were 24 deaths, 14 of which were drivers and 10 of which were passengers. 21% of the drivers had been drinking and 10% of the passengers had been drinking.

We had one collision of an auto with a motorcycle and the driver had not been drinking.

We had a collision of a bicycle struck by a

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passenger car -- two such incidents, and neither of which
were drinking.

We had pedestrians that were struck by a motor
car. 36 deaths in all during the year 1965.

We have no statistics as to the drivers, whether
they had or had not been drinking, but 25% of the
pedestrians struck by a car had been drinking.

We had 11 pedestrians who died as a result of
a hit-and-run accident. Of the 11 pedestrians, 36% had been
drinking. There is no knowledge as to how many of the
drivers had been drinking at the time.

Then we had pedestrians struck by a truck - 5
such deaths. 20% of the pedestrians struck by a truck
had been drinking.

We had two motorcycle deaths. Both the driver
and the passenger had been drinking.

All in all, the deaths of drivers of motor
vehicles, there were 30 and 30% of the drivers had been
drinking. And that would include the drivers involved
with collision of autos and collision of autos with
trees, poles, abutments, etc.

Now as to the percentage of deaths resulting
from motor vehicle accidents involving passengers, there
were 33, in all, and of the 33, 27% had been drinking.

I'm here as a representative of the New Jersey
State Medical Society and the New Jersey State Medical
Society endorses the recommendations and the actions
of the American Medical Association insofar as their

standards for determining the impairment of ability to drive an auto because of the consumption of alcoholic beverages on the basis of alcohol concentration in the blood. If the concentration of alcohol in the blood is less than .05%, it is presumed that the individual is not under the influence of alcohol and should not be prosecuted for driving while under the influence of alcohol.

If the concentration of alcohol is 0.1% or more, it is prima facie evidence that the person tested is under the influence of alcohol. If the concentration of alcohol is between .05 and 0.1% prosecution for driving while under the influence of alcohol is recommended only if the circumstances, the behavior, and the result of the physical test give definite confirmation of such influence.

I think we should define what is meant by under the influence of alcohol. In my opinion, anyone under the influence of alcohol, in that particular person there is deterioration of his mental faculties as well as his physical reactions to the point where he cannot exercise proper judgment, proper perspective, and loses control of his physical activities.

My personal opinion is that no matter how much you drink there is some degree of impairment of skill or ability to drive an auto.

In the range of zero to .05% there is that impairment; not to a great extent, not to the point where the driver would be dangerous on the road but there is

impairment in his judgment and in his ability to drive an automobile.

Now, in my opinion also, there is no difference whether the alcohol level concentration is .1% or .15%. Over .1% there is marked impairment of judgment, marked impairment in the ability and skill in driving an automobile. And these are the individuals with an alcoholic blood concentration of .1% or more who are very dangerous, extremely dangerous on the road.

In the intermediate zone between .05% and .1% you cannot be too arbitrary as to whether all individuals are under the influence of alcohol, but the chemical test should serve only as a piece of collaborating evidence together with the results of clinical findings, the behavior of the individual and the result of the physical test.

SENATOR PARSEKIAN: Dr. Albano, am I correct in the overtones of your testimony that the American Medical Association has recommended that the drinking and driving standards in the present law be shifted from a .15% to .10% for finding a person under the influence, and that this has the support of the New Jersey Medical Association.

DR. ALBANO: Yes, it has the support of the New Jersey State Medical Society and this is only because of a great deal of experience and research on the part of the committees of the American Medical Association

SENATOR PARSEKIAN: Doctor, I recall that the standards of .15% were established in 1938 or 1939 by the American Medical Association. Am I right in assuming that

since that time further experience has had something to do with the change in the standards of the American Medical Association?

DR. ALBANO: Yes. Because of the experience, because of the research work done on a national and international scale the figure of .15% was reduced to .1% and that happened in 1960 at a meeting of the House of Delegates of the American Medical Association.

SENATOR PARSEKIAN: Dr. Albano, we had a discussion last week at these same hearings on the amount of drinking that would lead to these percentages of .10 and .15. In order that people would know what we're talking about in the context of social drinking, if we're to assume that a cocktail contains three-quarters of an ounce of liquor, and, of course, we would have to, with that assumption, accept the fact that this is not absolute alcohol, this three-quarters of an ounce, but something like 86 proof, - if a person were to take a cocktail with three-quarters of an ounce of liquor every 15 minutes, could you estimate, if that person weighed let's say 150 pounds, how many drinks it would take and, therefore, how much time also it would take for him to reach a .10 level?

DR. ALBANO: Yes. Now, an individual weighing 150 pounds, two-thirds of his body weight would be made up of soft tissue and that would include the viscera and the organs of the body, including the brain, the heart, the lungs, the kidneys, liver, and so on, as well as all

parts of the vascular system; and one-third of the body weight would be made up of hard tissue and that would include bone, cartilage and skin.

Now if a man, or an individual, weighed 150 pounds we would conclude that the weight of his soft tissues would amount to two-thirds of 150 or 100 pounds. So we take that 100 pounds and convert that to ounces - you multiply the 100 by 16 and you come up with 1600 ounces as the weight of the soft tissues in this individual's body that weighs 150 pounds.

Now, one-tenth percent of alcohol is found in the system. How many ounces of alcohol do we have in the system? So we multiply 1600 by .001 and we come up with 1.6 ounces of alcohol in his system. Now that's alcohol.

Now we are going to convert that to ounces of liquor. Now if we are talking about 86% proof, 43% of an ounce of liquor will be alcohol. If we're talking about 100% proof, 50%. It all depends upon the proof. The higher the proof, the more alcohol we have per ounce of liquor.

So, accepting that the three-quarters of an ounce of liquor that he takes every 15 minutes is 86 proof, that would make 43% of alcohol. You divide 1.6 by .43 and you come up with 4 ounces of liquor, not alcohol, liquor now. He had 1.6 ounces of alcohol. We convert that to ounces of liquor by dividing 1.6 by .43 and the result is 4 ounces of liquor.

Now, he's taking three-quarters of an ounce

every 15 minutes, so how many drinks does he take to make up 4 ounces. So we divide 4 by three-quarters and that would be 4 times 4 over 3. That's 16 divided by 3, that would be 5 drinks. That's not enough.

Now, he's lost $2/3$ of an ounce of alcohol per hour. And $2/3$ of an ounce of alcohol would - well, we're talking about 86 proof - to about a drink and a half, say it would come out to about $6\ 1/2$ to 7 drinks. He would have to take between 6 and 7 drinks before he could reach a level of .1%.

SENATOR PARSEKIAN: So that to define it from your calculations, if a person of 150 pounds were to drink a cocktail every 15 minutes and if that cocktail had $3/4$ of an ounce of 86 proof liquor in it, it would take him from 6 to 7 drinks to reach .10 level, that is the level recommended by this legislation.

DR. ALBANO: Yes. We found .10 in his system, so we're calculating how much he drank. Now, drinking this wouldn't give him .10. That's a matter of individual susceptibility or tolerance to alcohol. But we know that this individual does have .10% so we're going to work backward and we come to the conclusion that it takes not less than 6 and not more than 7 drinks.

SENATOR PARSEKIAN: Now, Doctor, in the usual case, or in any case, and you've worked on hundreds of them involving accidents, the test is made some time after the last drink has been taken.

DR. ALBANO: Yes.

SENATOR PARSEKIAN: There's the drink, there's the entry into the car, the driving, the accident, the waiting for the ambulance, the ambulance taking him to the hospital, the preparation for the test, and the test. Now, would you want to comment on what that delay would do to the alcohol level that's found in taking the test.

DR. ALBANO: That delay - we know that the body burns up or oxidizes .015% alcohol per hour. Now, if at the time of accident there was a chemical determination of the amount of alcohol in the body, - if that were made at the time of the accident and you arrived at a figure of .1%, you would assume that that individual was under the influence of alcohol; but if a test were not taken until an hour later then you would come up with a figure of .085 and he's in that mid-zone. So the longer the delay, the lower the figure is going to get.

SENATOR PARSEKIAN: So, realistically, if we estimate that it might be one hour from the last drink until the test is taken, are we saying that he would have to be drinking 10 or 11 drinks in order to reach the .10 level?

DR. ALBANO: 10 or 11?

SENATOR PARSEKIAN: I guess I've overestimated it.

DR. ALBANO: You've overestimated that. I would say about 8.

SENATOR PARSEKIAN: About 8.

DR. ALBANO: Just an extra drink.

SENATOR PARSEKIAN: Just an extra drink. All right.

Doctor, could you estimate the number of drinks to be taken under these same conditions, every 15 minutes, in order for a person to reach the present drinking and driving standard in the law of .15%.

DR. ALBANO: All right. Let's start with .15%. We'll start all over again now. He's taken $3/4$ of an ounce every 15 minutes, a man weighing 150 pounds. Two-thirds of his body weight is made up of soft tissue, and converting 100 pounds, which would be $2/3$ of his body weight, into ounces, we would get 1600 ounces again.

Now, the amount of alcohol in his body is .15%. Convert that to ounces in the body. So we multiply that by .0015 and find that he has 1.4 ounces of alcohol in his body.

Now we're going to convert the 1.4 ounces of alcohol into ounces of liquor -- Oh, wait, I forgot to multiply by that 5, it didn't look right - 1600 times .0015 - so he ends up with 2.4 ounces of alcohol in his system. We're going to convert the 2.5 into ounces of liquor so we divide 2.4 by 0.43 - that's half of the proof - that would be about 6 drinks of 1 ounce each, but each drink contains $3/4$ of an ounce, so you divide 6 by $3/4$ or you multiply it by $4/3$ - that's $24/3$ and that would make 8 drinks in all that he's had. Now you calculate the amount that he did lose as a result of oxidization of the alcohol within his system - that would be $2/3$ of an ounce of alcohol and $2/3$ of 43% -

that would be about another drink. That would be 9 drinks, between 9 and 10 drinks.

SENATOR PARSEKIAN: 9 to 10 drinks every 15 minutes.

DR. ALBANO: That's right.

SENATOR PARSEKIAN: -- in order to reach the present standard of the law .15%.

DR. ALBANO: That's right, everything else being equal, absorption, combustion and everything else in that particular individual.

SENATOR PARSEKIAN: Doctor, from your experience as a medical doctor and a medical examiner, as a pathologist, do you recommend the legislation in Senator No. 8 which sets new standards of .10 for the new offense of driving while impaired?

DR. ALBANO: May I say, Senator, that I've done over 6,000 autopsies. Many, many of them were deaths due to motor vehicle accidents. The performance of an autopsy or the attending at an autopsy of a victim, the result of a motor vehicle accident, is one that one can never forget. The bodies can be mangled. These patients, these individuals sustain terrible injuries, fractured skulls, fractured legs, fractured limbs, fractured chests, rupture of all the internal viscera. It's something that you cannot forget. But at the same time I have a feeling that a good portion of it could be avoidable and the only way that it can be made avoidable is to have legislation such as we are thinking about today. And that is the only way you are

going to decrease or reduce the amount of manslaughter - I'll even call it murder - on the highways. It's manslaughter because the man doesn't know what he's doing when he's under the influence of alcohol, there's no premeditation. And I am absolutely and firmly in agreement with this piece of legislation that is being proposed today.

SENATOR PARSEKIAN: Doctor, would you address yourself to its twin, Senate No. 9, which would provide that the motorist impliedly consents to take a drunkometer test.

DR. ALBANO: Without implied consent, forget the whole program. Forget it. Because if you're going to leave it up to a doctor to determine whether an individual is under the influence of alcohol or not, or if you leave it up to two doctors, - two doctors can seldom agree on any one particular subject. That's medicine. And if you leave it to a doctor to come to any conclusion as to whether that individual is or is not under the influence of alcohol because of his behavior, because of his lack of perception, and because of his physical activity, we'll never get anywhere because one doctor will believe that that particular individual is under the influence of alcohol and another doctor may not feel that that individual is under the influence of alcohol.

So, without implied consent in the bill, you better forget the whole program and let's go right back to the old days.

SENATOR PARSEKIAN: Thank you very much, Dr. Albano.

Is there anyone who would like to address a question to Dr. Albano through the chair? (No questions.) Thank you, Doctor.

DR. ALBANO: You're welcome, Senator.

SENATOR PARSEKIAN: Dr. Asa Crews.

Dr. Crews, may I ask you, for the record, to please establish your credentials to testify on this legislation?

A S A C R E W S: I am a graduate of Hahnemann Medical College in Philadelphia, year 1960. I finished my training for the specialty of Internal Medicine at Newark Beth Israel Hospital in 1964. I am presently a member of the Essex County and New Jersey Medical Societies and also I am Chairman of the Committee on Medical Aspects of Drunk Driving of the Physicians for Automotive Safety.

SENATOR PARSEKIAN: Can you speak for that group?

DR. CREWS: Yes.

SENATOR PARSEKIAN: Can you also, Doctor, please explain for us what this group, the Physicians for Automotive Safety, is?

DR. CREWS: The Physicians for Automotive Safety is a national organization concerned primarily with the slaughter occurring on our highways yearly.

Our feeling is that the number of deaths that occur are not entirely preventable but certainly can be modified by being particularly attentive to those things that can be changed, such as the improvement in the automobile itself, the safety factors which are just now being adopted, and other safety modifications in the automobile that could be adopted to cut down on the number of deaths that occur; and, of course, drunk driving, which is my topic today; the problem of getting the implied consent legislation so that we can gain the opportunity to test individuals suspected of drunk driving and in some way inform the public of the intent of the physicians and the Legislature to cut down on the number of accidents that occur because of persons driving while impaired.

SENATOR PARSEKIAN: Do you have a prepared statement, Doctor?

DR. CREWS: Yes, I do.

SENATOR PARSEKIAN: Would you like to proceed with it.

DR. CREWS: Senator Parsekian, the Physicians for Automotive Safety and the American medical profession share the urgent concern of this Committee on Law and Public Safety about the appalling loss of life on our highways - a probably one million Americans in the next fifteen years. The cost to the health and economy of this state and our nation is incalculable. As an important step in our control of the present epidemic, Physicians for Automotive Safety urges the adoption of the "Driving While Impaired"

and "Implied Consent" legislation.

That motor vehicle accidents will always occur reflects only the probability of human error. However, there are myriads of variables which, if curtailed, would result in a highly significant decline in the number of those destined to die or be maimed on the highways. Chief among these variables is the problem of drinking and driving.

Three questions, basic to the relationship between alcohol usage and motor vehicle accidents, must be answered before a systematic prevention effort can be initiated. These questions are:

1. Is the ingestion of alcohol prior to driving a factor in traffic accidents?
2. How does the drug-alcohol affect driving so as to increase the likelihood of an accident occurring?
3. If it is determined that the use of alcohol is a significant factor in traffic accidents, what can be done about it?

The magnitude of the problem of drinking and driving is echoed in studies throughout the country, as shown by the table on the last page. (See page 57)

These studies show consistently that over 50% of accident-responsible fatally injured drivers had been drinking. Of those fatally injured drivers, blood levels of 0.10 to 0.15% predominated. It is well known that alcohol "misusers" are involved in a disproportionate number of personal-injury automobile accidents as compared

to the general public.

The physiologic effects of alcohol with which we are most concerned are those on the central nervous system. Pharmacologists agree that this effect on the brain is always one of deterioration of function and never an improvement. Less efficient vision and hearing, clumsiness of voluntary muscles, and deterioration of judgment and self-control are the broad divisions of this adverse effect.

One researcher reported that, with abstainers, reduced visual acuity begins at blood alcohol level of .01 to .02% with the threshold for moderate drinkers .02 to .03% and for heavy drinkers .04 to .07%.

Another study showed that at a blood alcohol level of .115% and above all 50 subjects tested showed impairment in one or more of seven functions involved in vision.

Additional work has shown that alcohol causes an increase in the auditory discrimination threshold, i.e. a higher intensity was required for the subject to perceive a given tone or to differentiate between tones.

The efficient transmission of nerve impulses from brain to voluntary muscle is impaired by the presence of alcohol in the brain tissues and causes erratic muscular response. This impairment depends on the level of body alcohol and varies from lessened efficiency in situations requiring intricate muscular coordination through various stages of thick speech and staggering gait. Lengthened

reaction time, one criterion of the efficiency of muscular response was found to be increased 10 to 30% at a blood alcohol concentration of .1 to .2%.

Judgment and self-control, the highest functions of the brain are impaired by lower concentrations of body alcohol than the levels which will inhibit the brain functions previously mentioned. Euphoria and loss of inhibitions are the most common results, quite suitable for a social gathering but hardly so when supposedly controlling a ton of steel. Improper driving behavior, which can happen at any level of blood alcohol, roughly depending upon the tolerance of the individual, leads to accidents just as injurious and just as fatal as those caused by overt drunken incapability.

Generally there has been agreement on a level of 0.15% blood alcohol content dividing those guilty of drunk driving and those innocent of the charge. It is the conviction of many, both here and abroad, that 0.15% is much too high for public safety. Research findings reveal that some individuals are significantly affected in actual driving conditions by an alcohol blood level of as little as 0.03%. Fifty percent of tested subjects in repeated series showed objective impairment of driving ability at a blood alcohol concentration of 0.08%. All subjects exhibited some evidence of impairment at levels of less than 0.15%. The hazard of accident, when the blood alcohol level is 0.10 to 0.15% is two and one-half times that when the concentration is less than 0.05%. We are speaking now of the accumulation

in the blood of 2 fluid ounces of 100 proof liquor in a 150 pound man, which would give him a level of 0.05%. Four more ounces, 6 ounces, and his level would be 0.15%. This is 100 proof liquor in contrast to the 86% in the theoretical case that Dr. Albano spoke of.

It is obvious that the levels now in force are unrealistic and actually dangerous. It is for these reasons, most likely, that the Norwegians have been enforcing a level of 0.05% for forty years. And there is now a movement afoot to reduce the permissible limit to 0.03%.

Physicians for Automotive Safety and the American Medical Association recommends setting the level at 0.10% and to indicate the zone of suspicious alcoholic influence between 0.05 and 0.10% which in turn could be utilized in a punitive scheme such as the "Driving While Impaired" bill.

The implied consent law, now in effect in 15 states, will enhance public concern on the seriousness of this problem. It must become unmistakably clear that the intent of the legislative, enforcement officials, public health and medical professionals is to protect the safety of all who travel the highways.

We submit that implied consent legislation will advance the control of drinking drivers. We also submit that each of us have a measure of responsibility in the preservation of community health and that accepting a breath test or a blood test to determine the role of intoxication in accident causation is no more an infringement of personal liberty than being vaccinated against a communicable disease

or being fingerprinted for identification. The psychological advantages of such legislation, related to public awareness and cooperation, would be immeasurable.

In conclusion, the medical profession must rely upon the legitimate responsibility of legislative and law enforcement agencies to control the drinking driver. The clinical lessons which we doctors learn in our care of the increasing epidemic of bodily injury and death from automobile accidents are clear and convincing. There has been a failure of all previous campaigns to prevent the accident itself. That the eradication of all controllable variables is urgent, is mandatory, needs not be stressed. The preponderant relationship of alcohol in accident causation is one such variable that the State of New Jersey should attack as a true public health hazard. Massive public educational programs should be mounted in conjunction with the passage of this legislation.

1966 should be the year that New Jersey faces the issue squarely. As President Johnson has said, "The gravest problem before this nation, next to the war in Viet Nam is the death and destruction . . . on our highways. There is cause for sacrifice in Viet Nam. There is no excuse for suicide at home."

SENATOR PARSEKIAN: Thank you, Doctor. Doctor, I notice that attached to your testimony there is a chart (p. 57) which shows the result of 20 separate studies made on the role of alcohol in fatal accidents. Some of those studies in the same cities - for example, the first five for varying

years in New York City, but a total of 20 studies, - and that the blood alcohol level of .10% or more was evident in 50% or substantially more than 50% of the fatal accidents in this composite. Is that correct?

DR. CREWS: That's correct, sir.

SENATOR PARSEKIAN: So that this is the first testimony we've had in these hearings on the specific amount of alcohol in the people who were killed in automobile accidents. We've talked about more than 50% without saying to what degree did they have alcohol in their bloodstream, but this shows 20 studies in which the .10 level or more - the level we're aiming at in this legislation - was present in the people killed in automobile accidents. I stand corrected, there are 15 studies.

DR. CREWS: There are many more studies. These are just --

SENATOR PARSEKIAN: There are only 15 on the chart here.

DR. CREWS: There are only 15 shown here.

SENATOR PARSEKIAN: One interesting aspect of your testimony - when you got to the question of judgment and self-control, various things that are affected by alcohol and you discuss them individually, - you said there was a loss of inhibitions as one of the more common results. This was alluded to in testimony last week. Could you spell out how that would affect a driver?

DR. CREWS: I can illustrate this by quoting a study that was done in England, reported in the British

Medical Journal, I believe it was 1958. The physicians involved used bus drivers in one of the English cities and attempted to determine how much alcohol would impair the judgment and the ability to drive of these skilled men. The method of the test was to allow the bus driver to make a decision as to whether he could drive his bus between two barriers. The barriers were such that they could be varied in the width between them. It was found that as the alcohol content of each bus driver began to increase the decision as to whether they were able to take their buses through or between the barriers was impaired to the point that many times the barriers would be as much as one to two feet narrower than the bus itself, yet the drivers would attempt to make that trip after taking alcohol which they would not have attempted to make prior to taking the alcohol.

SENATOR PARSEKIAN: So that, spelling that out further, in the case of people on the highways who have had a drink or two?

DR. CREWS: Well, as you can see, if the alcohol would impair the judgment of highly skilled men, such as bus drivers, - highly skilled drivers, actually, - you can see that drinking with someone less skilled, say with youngsters who have just barely received their licenses and have just begun to drive, say the 21 year old age group, - and, of course, they are having problems in New York in that they allow drinking at a younger age there - these essentially unskilled drivers, compared to the London bus drivers, would be seriously impaired in their judgment

at a much lower level of blood alcohol content. The author of this particular article found that judgment was impaired at a level even lower than the .05 which is considered now a level below which there is no influence of alcohol. This is not true.

SENATOR PARSEKIAN: I notice you made calculations, by coincidence, as to how drinking affects the same weight man that we discussed with Dr. Albano, 150 pounds.

DR. CREWS: Well, that's more or less universal, a 70 kilogram man or a 150 pound man is usually medically the weight that's used. It's easy to figure.

SENATOR PARSEKIAN: I notice too that it would seem that you completely corroborated his calculations, you dealing with 100 proof alcohol or liquor and he dealing with 86 proof came out, therefore, with identical results.

DR. CREWS: The same results, yes.

SENATOR PARSEKIAN: Thank you, Doctor.

Are there any questions anyone wishes to put to the Doctor through the Chair? (No questions)

Thank you very much, Doctor.

Mr. D. Louis Tonti, Executive Director of the New Jersey Highway Authority.

D. L O U I S T O N T I: Thank you very much, Mr. Chairman. The Garden State Parkway is most appreciative of this opportunity of appearing before your Committee this morning on a subject of such grave importance.

After 11 years of full operation, Mr. Chairman,

there is hardly any question that the Garden State Parkway stands out as one of the safest superhighways in the nation.

Only once in those 11 years did the Parkway's annual traffic fatality rate exceed 2 deaths for each 100 million miles of vehicle travel. And on two occasions the annual rate was even less than 1.0.

Last year, when an estimated 130,670,000 vehicles used the Parkway for a total travel distance of some 1.66 billion miles, its fatality rate was 1.20 per the 100-million-mile standard.

Contrasted with the average rates of 5 or more deaths for the nation's roads over the past decade, the Parkway record reflects a bright glow of safety. But we who operate the Garden State Parkway, as proud as we are of that record, are ashamed and disgusted by the experience with drinking and drunk drivers.

I am not trying to suggest that the problem of drinking drivers is peculiar to the Parkway. We all know better. But I can only speak definitely on the basis of the Parkway experience since that is the New Jersey Highway Authority's sole jurisdiction. And for a road that represents the highest in traffic safety, such experience should be enlightening and impressive.

Alcohol, Mr. Chairman, has been a major factor in almost half of the Parkway's annual total of traffic deaths. That alone should point up the magnitude of the problem faced in trying to come to grips with drinking drivers.

Look beyond the figures and you are bound to recognize that many more incidents not in the "black book" involved drinking drivers. The injuries and the near-misses are too numerous and too intangible to put down in neat figures.

How many times have you seen a weaving or otherwise erratic driver enter and leave your view without incident or collision? He may not count in those figures, but he definitely counts as a menace to safety and life - his as well as ours. The police may nab him if they spot him, and even when they do there is no assurance that we are rid of this menace.

All which brings me to the point of my presentation today. Every tool, every tool we can give to the police in coping with this menace on the road is necessary and desirable - even if it appears to come close to or step on our constitutional rights. There is no right to drive as we see fit, it is a privilege - a privilege that should be removed in the public interest and necessity if the driver is unfit.

The implied consent of a licensed driver would remove a definite impediment to the enforcement of the laws controlling drinking or drunken operators of vehicles. The State Police on the Parkway, for one, have done a magnificent job in enforcing the laws and furthering safety. The record proves that. But they are frustrated in their efforts, Mr. Chairman, to do even better - frustrated by such deficiencies as a motorist's prerogative to refuse a drunkometer test

regardless of circumstances.

State Police aid many motorists - something like 38,000 motorists were helped last year on the Parkway - but they need and deserve an aid from us to help motorists even more effectively. We can't continue to deprive them of such essential weapons in fighting this madness.

Parkway State Police records show that 16 motorists refused to take the drunkometer tests in 1964 and 19 refused last year. Interestingly enough, all six drivers who were found not guilty of drinking driver charges in the past two years had refused to take the tests.

I might add, Mr. Chairman, I was present at one of those incidents and it points up the problem here very clearly. I happened to be present at the Raritan Plaza near the Raritan River when over the police radio came the observation of a weaving driver coming north on the Parkway and I was there when the Parkway personnel stopped him, and when the man got out of the car he fell to the ground. He was riding alone. He had been fishing for a number of hours but, obviously, he was drinking considerably while he was fishing. Yet he had enough presence of mind, Mr. Chairman, to refuse to take a test in spite of the fact that his performance was unbelievable. And our State Police were definitely frustrated in seeing this case through to its logical conclusion.

If you need more statistics and stories to tell you how bad things are in the matter of drinking drivers, permit me to submit the facts that on the Parkway there

were 73 accidents involving drivers who had been drinking in 1963; 87 accidents in 1964; and 93 last year. Note that the number has been increasing each year.

Perhaps the impact which drinking drivers have had on fatalities can best be indicated by the story told many times before of the death of three young women on the Parkway in a single accident which occurred August 15, 1964 because a drunken driver - whose alcohol rating, by the way, Mr. Chairman, was .157 -- because a drunken driver was going the wrong way. Mind you, the three girls were in two different automobiles and none in the drunken driver's vehicle. They were completely innocent.

The fact that the drunken driver himself was also killed in this terrible tragedy does not make it any less an example of horror and injustice on the road. We have got to save drinking drivers from themselves as well as the motoring public at large. And any weapon we can furnish our law enforcement agents in dealing with such irresponsible citizens moves us at least a step closer to that objective.

Mr. Chairman, I would like to conclude with some remarks I made to the Attorney General after that terrible tragedy of the three girls being killed.

I told the Attorney General that sometimes I think we prefer to create slogans instead of adopting stern measures in dealing with this terrible problem which has become a national disgrace.

The Legislature does not need any more evidence.

The statistics are a clear and unmistakable indictment of our failure to discipline the irresponsible minority in order to protect the great majority of our citizens. A bottle of whisky remains a personal matter with any individual who drinks from it but when that same individual decides to use a public highway it becomes a matter of grave public concern.

The time has come, Mr. Chairman, when all of us in public life, whether in the Legislature, the Judiciary or in the Administrative facet of our government, must look up from the accumulated pile of memos and reports and studies and fearlessly come to grips with this grave statewide problem. The responsibility that faces all of us demands human action to save human lives, not just another report for an already overburdened file in the Legislature and in safety committees.

Thank you, Mr. Chairman.

SENATOR PARSEKIAN: Thank you, Mr. Tonti.

You raised two points that had not been really covered before and it is most appreciated. First, the point that it is not only the fatalities involved but the tremendous number of serious injuries. Dr. Albano referred to some of them but I gathered he was talking about injuries to persons who had been killed, but you speak of the tremendous number of serious injuries involved in drinking and driving and the risk to the public that may not in each instance manifest itself in an accident and injury or death but the real risk that every driver who is under the in-

fluence subjects hundreds of people he passes on the road to - pedestrians and other drivers - as he proceeds. And finally you brought it home in specific case of the three girls on the Parkway who were killed as a result of a drunken driver's complete cause of the accident, going the wrong way on the Parkway. We are really defenseless against that kind of thing, aren't we?

MR. TONTI: We are. I think, Mr. Chairman, if your colleagues in the Senate had been with me at the office that Sunday morning after that tragedy and had seen the astonishment, the bewilderment, the expressionless faces on the relatives and parents of those three girls who were completely innocent in this tragedy - and, incidentally, conforming to all the slogans like the one "Drive safely, the life you save may be your own." Well, they were driving safely. Their lives weren't saved simply because of this misguided missile by a motorist who had been using the Parkway for years but under his condition of .157 alcohol he made a U-turn in the northbound lane of the Parkway and couldn't be flagged down - people tried to flag him down and he disregarded them and gestured to them annoyingly and kept going down and killed these three girls. This is unbelievable. Engineering of a highway can't solve this, nor can all the attention being given, I think, to the less important problem of vehicle design and highway design. The real problem is the driver. And I think more emphasis has to be given to this. And when the facts are so conclusive, I fail to understand the reluctance on

the part of our lawmakers in many states, and especially in New Jersey, in not coming to grips with this problem and giving our wonderful State Police an opportunity to do their job more effectively.

SENATOR PARSEKIAN: Mr. Tonti, how long have you been Director of the Parkway?

MR. TONTI: The end of this week, Mr. Chairman, it will be 12 years.

SENATOR PARSEKIAN: And on the basis of your knowledge in administering the Parkway, the intimate knowledge that you have, as I know you are a functioning day-to-day and night-to-night administrator, do you recommend Senate 8 which sets up a new offense of driving while impaired at .10 level; and do you recommend Senate 9, the implied consent bill?

MR. TONTI: The Commissioners and staff join me vigorously in supporting both pieces of legislation, Mr. Chairman, which we feel from experience and observation will make one of the greatest single contributions to highway safety in our state.

SENATOR PARSEKIAN: Thank you, Mr. Tonti.

Are there any questions anyone wishes to address through the Chair to Mr. Tonti? (No questions)

Thank you, Mr. Tonti, very much.

We will take a recess until 11:30.

(Recess)

(After recess)

SENATOR PARSEKIAN: May I thank Attorney General Arthur J. Sills for coming to these hearings to testify on Senate No. 8, the Driving While Impaired bill, and Senate No. 9, the Implied Consent bill.

Attorney General, we are very grateful for your presence.

A R T H U R J. S I L L S: Thank you, Senator. I am pleased to be hear.

SENATOR PARSEKIAN: Would you like to proceed, sir?

MR. SILLS: Yes.

The ever-increasing number of traffic fatalities and accidents which occur each year on the highways of this Nation and this State is shocking. Indeed, our on-going highway holocaust is akin to an epidemic, the magnitude of which is unparalleled in modern times. President Johnson has said:

"We cannot accept the intolerable drain on our human and economic resources" caused by the critical traffic safety problem, and "We must expand and intensify our efforts to. . . deal more effectively with it."

Last year, approximately 50,000 people died on the highways of this Nation and the total in the State of New Jersey amounted to the tragic loss of 1095 lives. If this vehicular genocide were merely to repret itself each year for the next decade, more than 10,000 people will be slaughtered on New Jersey highways and a half-million will be

massacred throughout the country. These estimates may well be conservative, since all factors concerning highway safety do not remain static.

Any reasonable man would freely admit that our traffic safety crisis is one of immense complexities, one which will not succumb to panaceas or quick and easy solutions. But the overwhelming nature of the problem should not cause us to lose sight of the fact that it has specific aspects which demand and cry out for our most immediate concern and attention.

Certainly a most important aspect of the problem is the person who insists on driving after drinking more liquor than he should have. Such person is a major menace on our highways. I do not intend to repeat in detail the grim statistics which have been presented to this Committee in previous testimony. I do remind you of the results of the New Jersey Alcohol Determination Program which have found consistently since 1961 that 55% to 58% of the persons tested in post-mortem examinations had been drinking prior to the accidents in which they were involved. Furthermore, half of the 55 to 58% were found to have a blood alcohol content in excess of 0.15%, the level at which a person is presumed under the influence of intoxicating liquor or, in common parlance, legally drunk.

Based on the results of our program, therefore, it may be suggested that approximately 25% of the persons killed in automobile accidents annually are too drunk to drive. This, too, may be a conservative estimate, because

there is expert opinion to the effect that an alcohol/blood ratio less than 0.15% makes a person unfit to drive.

I point out that in May, 1962, the National Committee on Uniform Traffic Laws and Ordinances modified its Uniform Code to change the upper critical level of the alcohol/blood ration from 0.15% to 0.10%. It is noted the modification of the Code

"is generally a reflection of current judgment expressed by many interested organizations, the most authoritative of which is probably the American Medical Association."

My primary purpose for being here today is to comment on Senate Bill 8 (driving while impaired) and Senate Bill 9 (implied consent) in the context of what our sister states have done in this area and what the courts have said with respect to the constitutionality of such measures.

During the course of the last 20 years the various states have attempted to refine their drunk-driving laws to provide for fairer and more consistent enforcement. An important part of this refinement is reflected in the gradual acceptance of chemical test laws which provide statutory standards for interpreting the results of chemical tests performed on persons charged with the offense of driving while under the influence of intoxicating liquor. The most recent aspect of this refinement has been the use of the so-called "implied consent" law, originating first in New York State in 1953.

New Jersey has, to a degree, kept pace with this refinement of drunk-driving laws. We are among the 40 states which have some kind of chemical test law. The courts in 6 of the remaining 10 states have upheld the use of chemical test results and explanatory expert testimony in cases involving the offense of driving while under the influence of intoxicating liquor.

The difficulty, however, with present New Jersey law is that a person apprehended on the suspicion of violating R.S. 39:4-50 may refuse a sobriety test and thereby deny the magistrate scientific evidence as to the degree of his intoxication.

Under Senate Bill 9, the implied consent law, he could not refuse a sobriety test without suffering a 6-month revocation of his driving license. This would be advantageous in a dual sense in that it would serve as a safeguard for the innocent as well as allow for the conviction of the guilty. For this reason, the implied consent bill is the priority item on the agenda of this Administration's traffic safety legislative program.

The passage of an implied consent law would allow New Jersey to remain in the forefront with the steadily-increasing number of states which have sought to refine their drunk-driving laws.

Since 1953, sixteen states have enacted implied consent laws, the most recent being Missouri, New Hampshire and Oregon, during their 1965 legislative sessions.

Other implied consent measures are pending in the legislatures of Michigan, Pennsylvania, and, of course, this State, and in Congress for the District of Columbia.

How does Senate Bill 9 compare with measures enacted in the other 16 states? I think those aspects which are important for comparison are the alcohol/blood ratio at which a person is presumed to be under the influence of intoxicating liquor and the severity of the suspension or revocation period penalty which may be assessed for refusal to submit to a chemical test as required by law.

Our implied consent bill maintains the current upper critical alcohol/blood ratio of 0.15% to establish the presumption that a defendant was under the influence of intoxicating liquor. This is definitely more lenient than the 0.10% ratio prescribed in certain other states and the Uniform Vehicle Code and suggested, among others, by the American Medical Association.

It is at this point that Senate Bill 8, the impaired driver bill, reveals its importance in the over-all picture. This bill provides that the presence of 0.10% by weight of alcohol in the defendant's blood would create a presumption of what we term "impairment." This provision, therefore, takes into account for the first time those persons who, while they may not be subject to the more stringent penalties for driving while under the influence of alcohol, may, nevertheless, be guilty of a lesser degree of intoxication which still makes them a highway menace.

As part of their implied consent laws, certain

other states have already accepted the guidelines of the Uniform Vehicle Code and have established their critical alcohol/blood ratios at 0.10%. One of these, New York State, is the only state which has a dual standard such as would be provided in New Jersey with the passage of Senate Bill 8. In New York a ratio of 0.10% or more but less than 0.15% is prima facie evidence of "impairment," while a content of 0.15% or more invokes the conventional presumption that a person tested was under the influence of intoxicating liquor.

In summation, it can be said that the passage of Senate Bill 8 would allow New Jersey to join with those states which have recognized an alcohol/blood ratio in excess of 0.10% to be dangerous and to join with New York State in recognizing that not all degrees of dangerous intoxication should be dealt with in the same degree of severity.

In the absence of Senate Bill 8 it would be my personal view that Senate Bill 9 should be amended to reduce the presumption as to when a person is driving under the influence of intoxicating liquor from 0.15% to 0.10%.

Returning again to Senate 9, and with respect to the penalty for refusal to submit to a sobriety test, I believe our implied consent bill strikes a reasonable balance in comparison to penalties assessed by other states. Four states provide a one year revocation, one state allows a revocation of up to one year, one provides for revocation from 120 days to a year, four states authorize revocation or

suspension of 6 months, four provide revocation or suspension of 90 days, and two states make no specific provision. This means that penalties for refusal to submit to a sobriety test in 10 of the 16 states with implied consent laws are equal to or greater than the 6-month revocation period prescribed by Senate Bill 9.

It should be pointed out that this 6-month revocation may very well be too lenient in certain cases. If, for example, a person is convinced he may be convicted with a sobriety test, yet acquitted without it, he may be willing to refuse a test and accept a 6-month revocation, rather than a two-year revocation if convicted with the sobriety-test evidence. He still however, runs the risk of conviction and, therefore, a total penalty of 30 months.

From my foregoing remarks, I believe it fair to say that the passage of an implied consent law in this State would be in keeping with the reasonable and more reliable approach to the drunk-driving problem effectuated by an ever-increasing number of our sister states. Nevertheless, there are still some people who object to implied consent legislation for the reason that it may in some way be unconstitutional. I, therefore, turn briefly to the point at issue.

Two positions have been advanced to support the constitutional validity of these statutes. The first of these theories is basically that driving is a privilege which may be granted or withheld by the state. Since this privilege may be withheld altogether, it may also be

granted upon a condition.

The second of these theories is that the state is under the obligation to provide for the health, safety, and welfare of the people within its boundaries; that in order to meet this obligation it may impose reasonable restrictions which do not violate due process of law and are, therefore, a reasonable exercise of the police power.

The usual constitutional attacks which are made against implied consent laws is that they violate the privilege against self-incrimination, they allow for unreasonable search and seizure and they offend the due process of law provision of the Fourteenth Amendment to the Federal Constitution.

Most attacks in state courts have been on the ground that such laws violate the privilege against self-incrimination, and, in these cases, the courts have upheld their constitutionality. The prevailing view is that this privilege extends only to oral or written utterances and not to physical evidence. Since a breath sample is not an utterance but falls into the category of physical evidence, it follows that such evidence does not fall within the privilege of self-incrimination.

In 1957 the U. S. Supreme Court in Breithaupt v. Abram, upheld the admissibility of blood test results where the blood had been taken from an unconscious motorist. At that time the Court rejected both the self-incrimination argument and the unreasonable search and seizure argument on the ground that Wolf v. Colorado still applied, thus the

Fifth Amendment was not applicable to the states.

It has been suggested since Breithaupt, however, that in view of Mapp v. Ohio, the facts surrounding Breithaupt constituted an unconstitutional search and seizure. Yet, it has been written that,

"Although a 'revisiting' of Breithaupt would involve radically difficult precedent and problem, the decision of the Supreme Court should not change."

In fact, in at least two state cases in recent years the opinions of courts have been that Mapp does not alter the result reached in Breithaupt. In a California case, almost identical to Breithaupt, the court noted its appreciation of "the imperative public interest involved." It has been said that this California case follows that of Ker v. California, wherein the United States Supreme Court "recognized that the circumstances facing state courts were as varied as the investigative and enforcement techniques employed by their law enforcement agencies.

The third argument, that implied consent laws offend due process requirements, was squarely met in the Breithaupt case. In rejecting the defendant's contention that he had been denied due process of law, the Supreme Court notes that blood tests are routine in our everyday life and stressed that the blood was withdrawn by a "skilled technician." A test so conducted, concluded the Court, was not in violation of due process.

We must, of course, keep in mind that the

Supreme Court in Breithaupt was faced with the use of blood tests to determine a blood-alcohol ratio. Our implied consent bill involves only the use of the breath test to determine a person's sobriety. Thus, I should think there would be far less reason for the charge to be made, as was contended in Breithaupt, that the administration of our bill might be "shocking" or offensive to the "sense of justice," therefore, in violation of due process.

I think there are at least two other areas of consideration which should merit the attention of this Committee and, subsequently, the Legislature before passage of Senate Bills 8 and 9 is finalized. First, we should be able to answer the question of whether these bills will result in an increased number of proper convictions for drunk-driving charges. Second, every effort must be made to see that potential defects are not overlooked before these bills are effectuated.

With respect to the first question, there is no doubt in my mind that Senate Bill 8 will result in a substantial number of convictions for driving while impaired. This will involve a great many motorists who pose a definite threat to themselves and others who use our highways.

With respect to implied consent legislation, a survey was made in 1964 by the Division of Motor Vehicles to determine the experience of other states in terms of the number of convictions before and after their laws were passed. Of those states which responded, Utah reported a 36% increase (1958-59 over 1955-56); North Dakota reported a 31% increase (1960 over 1958); Minnesota reported an 8%

increase (1962 over 1960); and Idaho reported a 25-30% increase in convictions in 1963, but did not indicate whether this was over 1962 or the year in which their law was enacted (1955).

These statistics indicate to me that implied consent laws have a positive effect on the number of persons removed from the roads for drunk-driving in the interest of public safety.

Finally, we should ask if Senate Bills 8 and 9 are in need of some adjustments or amendments. On the whole, my answer would be that both bills are satisfactory. Nevertheless, some questions have been brought to my attention and I am sure they will be considered by this Committee.

One question which has been raised is whether the implied consent bill should provide standardized training for the certification of drunkometer experts. Our Division of State Police has a training and certification program recognized for its excellence. Perhaps, it may be desirable to require that all drunkometer experts in this State receive training and certification from the State Police in accordance with rules and regulations to be prescribed.

Additionally, with respect to the revocation of driving privileges for refusal to take a sobriety test, paragraph 3 of Senate Bill 9 is definitive with respect to a non-resident or a person without a permit or license, but is ambiguous and awkwardly phrased with respect to a licensed state resident.

I suggest that these provisions be clarified and perhaps it would be desirable to spell out in distinct sections those provisions relating to residents, non-residents, and persons without a license or permit. Furthermore, I note that revocations for nonresidents and persons without a license or permit is to commence within 6 months from the date of the alleged offense. This means that the time lapse between the alleged offense and the hearing, if requested, may consume most of the 6 month period. If, after a hearing, the Director finds against the offender, the period of revocation may be much less than 6 months. A 6-month revocation would also have little significance to persons who are 6 months or more away from their 17th birthday.

It is my suggestion that this section be amended to provide a 6-month revocation from the date of adjudication or from the date of the hearing, if one is requested, whichever date is later. With respect to minors, however, they should not be permitted to receive a license until they are 21 years of age -- for the moment, if I may, it's my suggestion that this section be amended to provide a 6 month revocation from the date of adjudication following a hearing if one should be requested or the date of the offense, whichever might be later.

With respect to minors, however, they should not be permitted to receive a license, in my opinion, until they are 21 years of age or after two years have elapsed, whichever is later.

This would make Senate Bill 9 consistent with the law passed last year which precludes a minor convicted for driving while under the influence of intoxicating liquor from receiving a license until he is 21 or after 2 years have elapsed, whichever is later.

Concerning adults who were on the revoked list or never had a license when the offense was committed, I believe this should be a matter for this Committee to ponder since, obviously, revocation is no penalty. And I am going to ask Director Strelecki to review the matter and advise the Committee before the end of the week as to her opinions with respect thereto.

In any event, whatever minor amendments need to be made, it is my position that the increasing slaughter on our highways, for that matter the increase in crime in general, may best be prevented through the use of modern investigative techniques. Chemical test laws and implied consent laws have become recognized as contributing to these techniques.

To conclude with the question as to whether the danger of the drunk driver warrants imposing this condition upon all drivers, one observer has said:

"It seems that the answer. . . depends upon whether the right of the many to use the highways without being endangered by intoxicated drivers outweighs the privilege of the individual driver to refuse to submit to a chemical test without fear of those sanctions contemplated by the implied consent statutes. Protection from the dangers posed by drinking drivers to the vast number of persons using the highways should outweigh the right of the individual to be protected from a slight encroachment."

SENATOR PARSEKIAN: Attorney General Sills, I have attended these hearings - this is the second time around - I was on the other side of this table several years ago and presenting evidence and this is the second full day of hearings on these two bills this time, and I must say that this testimony just excels and is extremely valuable. And I want to thank you so very much for taking so much time and trouble to develop such an excellent presentation.

MR. SILLS: Thank you, sir.

SENATOR PARSEKIAN: It is greatly appreciated. But may I ask you one or two things?

MR. SILLS: Yes, surely.

SENATOR PARSEKIAN: First, may I ask, General, in view of the time you took to point out the possible improvements in drafting technique of the bills, would you be kind enough to submit to the Committee recommendations on language?

MR. SILLS: Yes, we would be pleased to do so.

SENATOR PARSEKIAN: Incidentally, we had with us last Monday Robert Donigan from Northwestern University who went into great detail on the constitutional question, and his research coincided precisely with yours that 6 other states had upheld the implied consent laws.

There was a suggestion, General, in the Uniform Vehicle Code that the standards of operating the drunkometers and the training of the operators should reside in the Department of Health of the State. I wonder if you would want to comment on that suggestion as against the suggestion

you have made for New Jersey that these matters be under the guidance of the Attorney General of the State.

MR. SILLS: Yes. I think that it must be pointed out, as I have done, that many of the other states, most of them, go beyond the drunkometer or breath test, which is the only one being suggested by way of implied consent in the State of New Jersey. These other states include, for example, blood testing.

Now, if we were to have blood testing, we would have to be concerned with the health of the person from whom the blood is being drawn. But the drunkometer test has nothing involved which would affect the health of any individual. All that need be done is to blow into a balloon, so to say, so that a recording can be made of the alcohol by this breath test.

Now, the New Jersey State Police have been conducting these tests for many years now and they have, in fact, been training many of the local police. And I believe that, in view of the fact that there is no health problem involved, in view of the fact there is presently a setup in the New Jersey State Police whereby their expertise could be used, there would be no necessity for this being now in the Department of Health. And, as a matter of fact, all we would be doing at the present time would be duplicating administrative facilities.

SENATOR PARSEKIAN: General, one thing I would like to comment on is this: In the normal course of a motorist being apprehended as the result of an accident

or an observation of erratic driving he is stopped, the situation is discussed with him, he then may be brought to the nearest police barracks for testing or to the nearest hospital for testing - what is the effect of that delay in timing on the level that is read on the drunkometer and how does that affect the situation?

MR. SILLS: Well, of course, any delay reacts to the benefit of the motorist or the person being tested since the greater period of time which elapses from his last drink gives him that much more opportunity to rid his system of the alcohol.

SENATOR PARSEKIAN: So that these standards that we suggest in the driving while impaired bill would then be conservative as against the state of the driver when he assumes the wheel of the automobile.

MR. SILLS: Oh, I would say so. I think it necessarily follows.

SENATOR PARSEKIAN: One thing that you touched lightly on, General, but perhaps for emphasis I wanted to question you on was this aspect of the bill that goes to protection of the innocent motorist or the motorist who may have the smell of alcohol or may not even have that smell of alcohol and is accused of driving while under the influence, and how would the implied consent legislation be a protection to him?

MR. SILLS: Well, the courts, and especially here in the State of New Jersey, have already recognized that the drunkometer is that scientific so that when

properly administered its findings may just about by themselves be used as evidence of whether a man is or is not too drunk to drive. If someone should have a particular physical disablement or should be stunned because of an accident and takes the drunkometer test and the test reveals that he has a .05 or less level, there is probably no question at that point that he would not even be charged with driving while drunk.

On the other hand, if the test were to show that he were .15 or over, we would have scientific evidence to the fact that he was too drunk to drive.

SENATOR PARSEKIAN: Coincidentally, every now and then, as an Administrator of Motor Vehicles, motorists would say, in response to a violation of some sort, that this was a vindictive situation or "the cop had it in for me" or "I've had political trouble in the area," I would never know whether or not to believe the charge but certainly it was within the realm of possibility, if not probability, and I would suspect that that would erase any such notion.

MR. SILLS: Yes. Well, I think that almost every conceivable excuse has been thought of or rationalization of justification by every motorist who has had occasion to appear before a magistrate for drunken driving -- he hit his head on the wheel or he was taking a certain drug which gave him the appearance of having taken alcohol -- well, almost every conceivable thing, including the fact that the officer had it in for him or he didn't like the way he spoke to him or things of that nature, and all of

that, of course, would be eliminated by the use of the drunkometer.

SENATOR PARSEKIAN: One interesting discussion last week concerned this matter of a person having some drug and then having a drink or two, or the person who may be injured and as a result of the injury act erratically, and the situation was speculated that a person with a concussion or a fractured skull or was in need of certain medication could be charged with being under the influence when in fact what he really needs is medical attention right away, and that a drunkometer test would indicate this and he could be given that attention and, therefore, perhaps save his life.

MR. SILLS: I think that's a very good point.

I would like to also point out to you, Senator, that in my reading I came across this statement not too long ago, which was in one of our newspapers in the State of New Jersey: "New Jersey is a society where there is a great problem. The State has the second highest rate of alcoholism in the United States." And I think that that kind of highlights ~~many~~ many of our problems in the State.

SENATOR PARSEKIAN: Is there anyone who wishes to address a question through the Chair to the Attorney General? (No questions.)

Thank you, General, very much.

MR. SILLS: Thank you, Senator.

SENATOR PARSEKIAN: We are very pleased to have testify next the Director of Motor Vehicles of the State of

New Jersey, Miss June Strelecki.

J U N E S T R E L E C K I: Thank you, Mr. Chairman.
I am, of course, pleased to be here.

I am appearing this morning as a witness to urge the General Assembly and Senate of the State of New Jersey to take positive action in enacting into law the "implied consent" and "driving while impaired" legislation in the State of New Jersey.

I am asking the passage of this legislation, not only as a Director of Motor Vehicles but as a citizen of the State of New Jersey.

Now General Sills in his comments pointed out that New Jersey has the second highest rate of alcoholism in the country. And if I just might add some additional figures to that, drinking and driving in the Nation and in our State is approaching the proportion of a physical illness; in fact, alcoholism has been declared by the United States Public Health Service as the Nation's 4th worst illness, preceded only by heart disease, mental illness and cancer.

I think these statistics point out the enormity of the problem.

The Public Health Service estimates that there are between 5 million and 6 million alcoholics in the United States today; that 1 out of every 15 Americans drink; and it is estimated that the economic loss to business and industry from absenteeism and inefficiency due to alcohol runs into \$2 million annually. And I think if you translate

these figures, first, into the horrifying loss of lives which often results, and then, secondly, into the economic loss resulting on New Jersey highways in fatal accidents, you once again are given a vivid picture of the enormity of the problem with which we are dealing.

Now, to further illustrate the proportions of the menace of the drinking driver in New Jersey, I refer to a research study conducted by the Division of Motor Vehicles for the year 1964 and 1965.

The Division's research project involved autopsy examinations of all drivers killed in traffic accidents during the period with 3 exceptions - one, when the victim was under the age of 16; two, if death occurred more than 6 hours after the accident; and, three, where body fluids were contaminated or destroyed such as the result of fire.

Now, during 1964, 351 drivers involved in fatal accidents were tested and of this number 198 exhibited the indication of the presence of alcohol which is approximately 56% of those tested.

This program was carried on again during 1965 and the figures available for the first 10 months are as follows: 256 drivers tested, 144 of this number indicated the presence of alcohol. This again brings us to the constant figure of 55 or 56% of those tested.

Now, this study is based solely on the result of the drivers tested who were involved in fatal accidents. I would ask you to consider the fact that not all of those

that have been drinking are involved in fatal accidents. Some are involved in accidents where no fatality takes place but does produce bodily and property damage.

I would also ask you to consider the possibility that some drivers operating under the influence of alcohol cause accidents but are not directly involved in them.

I would like to say very emphatically, at this point, that I am not against the drinking of alcoholic beverages but I am definitely and positively against the individual who imbibes alcohol to the point of dulling his or her senses and operates a vehicle thereby endangering the lives of other citizens.

We, therefore, urge the passage of both bills under consideration here.

SENATOR PARSEKIAN: Miss Strelecki, the figures you have quoted on drivers tested in 1964-1965 indicated an alcohol plus factor in 55 to 56% - is this the same percentage determined back through the beginning of the program in 1961, I believe it was.

MISS STRELECKI: That's correct. It ran approximately 57%, so that it's constant, it's something more than 50% in the complete study.

SENATOR PARSEKIAN: Well over half.

MISS STRELECKI: Yes.

SENATOR PARSEKIAN: You are not only the Director of Motor Vehicles, Miss Strelecki, but I do know that you are a practicing Lawyer and that you have had

considerable experience as an Assistant Prosecutor in Essex County and you have been aware of this and allied problems of law enforcement for many years. Would you care to comment on the effectiveness of the implied consent law, not only as an enforcement tool against the motorist who is under the influence or impaired but as a means of safeguarding his civil liberties.

MISS STRELECKI: Well, of course, I was here during the testimony of Attorney General Sills and I think that he fully covered the constitutionality of this legislation and I personally feel, having observed the test being given, that there are no rights being violated. I say this both because I have observed the test being given and also because I too have studied the legislation that has been enacted in other states and I have done research with regard to the case decisions, and it is my opinion, as an Attorney, that this legislation is constitutional, that it does safeguard the right of the individuals who are involved, and I think the one point which perhaps should be emphasized again is that it also protects the innocent citizen because it's a scientific test made of his condition so that if the officer charges him with being under the influence and if the officer's judgment is incorrect the test will reveal this. So that it not only reveals the individual who is under the influence but it also will point out by scientific data the fact that an individual is not under the influence.

SENATOR PARSEKIAN: Director Strelecki, how would

rate the need for the implied consent and the driving while impaired bills as against other considerations that have been given over the years for traffic safety improvement in New Jersey?

MISS STRELECKI: Well I, of course, agree with Governor Hughes and General Sills that this is of the utmost urgency. We in the Division and the Department of Law and Public Safety and Governor Hughes have placed this at the top of the list of legislation which we feel is needed in our State. And, as indicated previously, we have this legislation in 16 states and I think the statistics quoted by General Sills indicate clearly that it has apparently proved to be a positive factor in the reduction of fatalities in states which now have such legislation. New Jersey should also have the benefit of this legislation.

SENATOR PARSEKIAN: Director Strelecki, this is the second full day of hearings and we have had a number of witnesses - we put a call out to anyone who wished to testify to come forward - and up to this point we haven't found anybody who has come in to testify against the bills, yet, as we all know, the legislation hasn't gotten anywhere in the past, hasn't even gotten out of committee. Do you know any reason why these bills did not or should not pass or can you speculate in any way as to what there could be about either the legislation or traffic safety enforcement that conceivably could be a reason for this?

MISS STRELECKI: I think that the testimony has clearly indicated that the question in the past on the

constitutionality is no longer an issue. I believe that that was one of the blocks, if you will, in the past. Then, additionally, it would seem to me that one of the problems might be the fear of the individual that he might be subjected to a test about which he knows very little. And I would think that the demonstrations that have been given throughout the State explain the nature of the test and how extremely simple it is to administer, how painless it is, and I would think that this kind of thing has also probably removed a lot of doubt in the minds of some of our citizens who felt that this kind of compulsory test would be objectionable. And I am hopeful that one of the reasons why you found no objectors is that the programs you had in the past, for example, as Director of the Division, wherein you sent speakers around the State demonstrating the use of the test, have helped to expel some of the doubts and fears that some citizens may have had. And I think that this education, if you will, of the public with regard to the benefits of this legislation has probably helped in this regard.

SENATOR PARSEKIAN: Then I take it you think we are now ready to act on this.

MISS STRELECKI: I am confident that now, with your leadership and your past experience, we will obtain the legislation this year.

SENATOR PARSEKIAN: Are there any other questions that anyone wishes to address to Miss Strelecki? Yes, your name, sir?

E D W A R D C O S T I G A N: My name is Edward Costigan. I am Associate Counsel for the New Jersey Licensed Beverage Association.

SENATOR PARSEKIAN: Yes. If you will address your question to me, Mr. Costigan.

MR. COSTIGAN: I would like to ask the Director, through the Chairman, concerning her statistics on the 351 1964 fatal cases which she examined through autopsy or some other method to determine that there were more than 55% involving alcohol, if this number of 351 were all of the fatal cases available to her for such examination?

MISS STRELECKI: My difficulty with the question, Mr. Chairman, is that I don't know what is meant by the term "available."

MR. COSTIGAN: Well, how many fatal accidents, Director Strelecki, were there?

MISS STRELECKI: 1,071 in 1964 and 1,095 in 1965.

MR. COSTIGAN: Do I understand that respectively you examined 351 and 256?

MISS STRELECKI: That's correct.

MR. COSTIGAN: How do you select which cases to examine?

MISS STRELECKI: Well, as I indicated at the outset, there were three categories which we excluded -- if the victim was under 16, where death occurred more than 6 hours after the accident, and where the body fluids were contaminated or destroyed. So that it is not an examination

of every fatality which resulted as the result of a traffic accident.

MR. COSTIGAN: This isn't intended to be a tricky question but is it possible that all the other fatal cases did not involve alcohol?

MISS STRELECKI: Well, it is possible but I think if you take the statistics on the ones which we were able to examine it would certainly be --

MR. COSTIGAN: It would show that more than 55% had involved alcohol.

MISS STRELECKI: -- a very slim possibility that alcohol was not involved. I cannot tell you what the projection would be.

MR. COSTIGAN: But there is no doubt in your mind, Director, that the others were caused by some reason perhaps even including alcohol or also perhaps other than alcohol.

MISS STRELECKI: Oh, I would say it's a positive fact that certainly alcohol was not a factor in all of the other cases.

MR. COSTIGAN: Thank you.

SENATOR PARSEKIAN: Any other questions?

Thank you very much, Director Strelecki. I appreciate your coming.

We have a formal list of witnesses yet to testify this afternoon but we can take some time before breaking for lunch. Is there anyone else present in the room who came in order to testify who wishes to do so at this time?

This would be a good opportunity. (No response.)

Then these hearings will adjourn until the next scheduled witness is to be heard and that is 2 P.M.

(Recess for lunch)

THE ROLL OF ALCOHOL IN FATAL TRAFFIC "ACCIDENTS"

Region Reported	Data for Years	Fatal Accidents	Driver Fatalities	Drinking Drivers PERCENT	Blood Alcohol over 0.15%	Blood Alcohol over 0.10%	Blood Alcohol 0.05-0.15%	Blood Alcohol 0.01-0.04%
N.Y. City	1928-1937		215	60		50%		
	1957		69	55		55%		
	1959-1960		34*	59		50%		
Westchester County	1950-1957		83*	73	49%	56%	20%	4%
Cleveland	1937-1955		885	54	40%		12%	2%
Montana	1956		134	55				
Maricopa Co. Ariz.	Jan. - June 1958	60**		47				
Delaware	1955	97		57				
	1956	75 58**		51 65	33% 43% ++			
Maryland including Baltimore	1950-1959		983	69	40%		22%	6%
Baltimore	1951		156	62	37%		21%	4%
Middlesex Co., N.J.	1948-1959		264	50	17%		33%	
State of New York	1959		92#	87	51%	75%	33%	3%
State of Conn.	1959		36#	67				

+Dying within six hours of the crash
 *Single-vehicle accidents, with death within 4 hours
 **Pedestrian fatalities eliminated
 ++62% of the drinking drivers had blood alcohol readings over 0.15%
 #One-car fatal accidents, with death within 24 hours

AFTERNOON SESSION

SENATOR PARSEKIAN: I would like to bring the hearing to order for the afternoon session. May I inform those present that Senator Hunt and Senator Musto, who are members of this Committee, are also members of the Appropriations Committee and are actively considering appropriation matters in another room in this building, and that is why they are not here today.

May I call to testify, Mr. George S. Fischler, an attorney-at-law. Mr. Fischler is a member of the firm of Clapp & Eisenberg of Newark, New Jersey, and is attorney for the New Jersey Automobile Club.

GEORGE S. FISCHLER: Thank you, Senator. As you indicated, I am here representing our firm, Clapp & Eisenberg, and we in turn represent the New Jersey Automobile Club.

The New Jersey Automobile Club has taken a stand in favor of proposed Senate Bill No. 9. A little bit later, the Manager of the Club, Mr. Kenneth Schultze, will indicate his feelings about the bill.

As counsel for the Club, one of my partners actually who could not be here today, Jerome C. Eisenberg, rendered an opinion as to the constitutionality of the bill, and we have concluded that the bill is constitutional. It is my understanding that Mr. Eisenberg has already submitted a copy of his opinion to you. However, I do think it significant and important that I do read the highlights of his opinion.

SENATOR PARSEKIAN: I would appreciate your doing that.

MR. FISCHLER: At the start of our opinion, we merely reviewed the different aspects of the proposed legislation,

pointing out the changes that have been made from the existing statute. Then we began talking about the constitutionality of the proposed legislation. Now, I will begin reading that portion of the opinion:

"So much for the bare outline of the proposed legislation.... As is well-recognized, this type of law is referred to in capsule form as 'implied consent' legislation; that is, the driver's consent to the breath sampling is implied from his use of the highways. The question is: May the State lawfully enact legislation by which an individual's consent is deemed to have been given by his use of a public facility?

"Almost the precise question was raised in Kane v. New Jersey, 242 U.S. 160 (1916), when the New Jersey Automobile Law of 1908 was attacked as being a denial of rights under the 14th Amendment of the federal constitution and the interstate commerce clause. That law provided that no person, whether or not a resident of New Jersey, shall drive an automobile on any public highway of New Jersey unless he had been licensed to do so and his car registered by New Jersey (which included the payment of fees) and, if a non-resident, unless he had appointed the Secretary of State his attorney upon whom any summons could be served in any legal proceeding caused by the operation of the automobile in New Jersey. Kane, a New York resident, en route from New York to Pennsylvania, was arrested in New Jersey and convicted for failure to register his car in New Jersey

and for failing to file the authority designating the Secretary of State as his attorney. He appealed the conviction because, he said, the law was invalid as to him, a non-resident, in that it violated the Constitution and laws of the United States regulating interstate commerce and also because it violated the 14th Amendment. Justice Brandeis, speaking for a unanimous court, wrote the opinion affirming the conviction. Among other things, he said (242 U.S. at p. 167):

'The power of a state to regulate the use of motor vehicles on its highways has been recently considered by this court and broadly sustained.'

A little further on, Justice Brandeis said:

'And in view of the speed of the automobile and the habits of men, we cannot say that the Legislature of New Jersey was unreasonable in believing that ability to establish, by legal proceedings within the State, any financial liability of non-resident owners, was essential to public safety. There is nothing to show that the requirement is unduly burdensome in practice. It is not a discrimination against non-residents, denying them equal protection of the law. On the contrary, it puts non-resident owners upon an equality with resident owners.'

I will interrupt for a minute to say then that this opinion goes on and quotes from another Supreme Court case - Hess v. Pawloski, 274 U.S. 352 (1927). The same result obtains in that case and in that case, in upholding the validity of the Massachusetts law, Justice Butler, again writing for a unanimous court, said (274 U.S. at p.356):

'Motor vehicles are dangerous machines; and, even when skillfully and carefully operated, their use is attended by serious dangers to persons and property. In the public interest, the state may make and enforce regulations reasonably calculated to promote care on the part of all, residents and non-residents alike, who use its highways. The measure in question operates to require a non-resident to answer for his conduct in the state where arise causes of action alleged against him***. Under the statute the implied consent is limited to proceedings growing out of accidents or collisions on a highway in which the non-resident may be involved. It is required that he shall actually receive and receipt for a notice of the service and a copy of the process. And it contemplates such continuance as may be found necessary to give reasonable time and opportunity for defense.'

"These principles are now well settled. We may conclude that a driver's consent to name the Secretary of State as his agent may be implied from his use of the highways. But what about the consensual use of evidence against an accused? What about the citizen's right to be protected against self-incrimination? Or can it be said that the taking of the sample and its use as evidence constitutes an unlawful search and seizure violative of the Fourth Amendment?

"In State v. Alexander, 7 N.J. 585 (1951), the defendant was convicted of second degree murder. He appealed the conviction on the ground that evidence of specimens of his blood taken while he was in jail should not have been permitted at the trial, on the grounds that such evidence was a denial and an invasion of his rights and privileges against self-incrimination, an unreasonable search and seizure, and a denial of due process of law.

The State contended that the defendant stabbed the victim with a knife and then pushed her through a plate glass window, while the defendant contended that the victim's death was caused not by a knife but by a piece of plate glass which entered her heart when she went through the broken window. He also contended that the victim cut him with the knife and whatever he did thereafter was in self-defense. There were no eye-witnesses. Without going into further details, it is sufficient to say that the State relied upon expert testimony that blood on the handle of the knife was of the same type as the defendant's. The defendant contended that he never allowed the specimen of his blood to be taken with the understanding that it was to be used against him. The New Jersey Supreme Court held that the privilege against self-incrimination was established to protect an individual against the use of legal process 'to extract from the person's own lips' an admission of his guilt. The court relied upon Bartletta v. McFeeley, 107 N.J. Eq. 141 (Ch. 1930), affirmed 109 N.J. Eq. 241 (E. & A. 1931), which upheld the right of the police to photograph and fingerprint a defendant after arrest; also, upon State v. Davis, 57 A. 2d 289 (Ct. of App. Md. 1948), where the Maryland Court of Appeals affirmed a conviction for murder where the evidence consisted of a blood sample taken from the defendant's body; that court held that there was no substantial difference between obtaining a blood specimen and obtaining fingerprints. The New Jersey court also relied upon Commonwealth v. Statti, 166 Pa. Super. 577 (Super. Ct.

Pa. 1950), in which the defendant's blood specimen had been taken for typing, without his consent; the result was introduced in evidence, over his objection; the defendant claimed this violated his privilege against self-incrimination. The Pennsylvania court held that the constitutional provision applied only to prohibit the compulsory oral examination of the defendant, - to prevent his being required to incriminate himself 'by speech or the equivalent of speech.' So did the Supreme Court of New Hampshire in State v. Sturtevant, 70 A. 2d 909 (1950), and so did the Supreme Court of Oregon in State v. Cram, 176 Or. 577, 160 P. 2d 283 (Sup. Ct. Or. 1945).

"The most recent case is one decided by the Supreme Court of the United States, Breithaupt v. Abram, 352 U.S. 432 (1957). The petitioner was convicted in a state court of New Mexico of involuntary manslaughter arising from an accident involving a truck driven by him. Three occupants of a car he struck were killed; he was seriously injured. He was hospitalized at once and, while he was lying unconscious in the emergency room, a police officer smelled liquor on his breath and asked that a specimen of petitioner's blood be taken. A subsequent laboratory analysis showed the blood to contain .17% of alcohol. The analysis was admitted in evidence over the petitioner's objection. The conviction followed. He did not appeal but later sought release from prison on a petition for habeas corpus. He argued that the

use of the evidence abused his privilege against self-incrimination and was the result of an unreasonable search and seizure. Among other things, he relied on Rochin v. California, 342 U.S. 165 (1952). In that case, state police broke into the accused's home and saw him place something in his mouth; the officers forced his mouth open after a struggle in an unsuccessful attempt to retrieve whatever he put there. A stomach pump was forcibly used later; this resulted in the extraction of narcotic pills. The conviction based upon that evidence was set aside by the Supreme Court on the ground that the police conduct was 'brutal and offensive' and did not comport with traditional ideas of fair play. In denying the writ of habeas corpus in Breithaupt v. Abram, supra, the Supreme Court (6 to 3 vote) distinguished the Rochin case, by asserting that there is nothing brutal or offensive in taking a blood specimen. Justice Clark, who wrote the majority opinion, said (352 U.S., at p. 435):

'To be sure, the driver here was unconscious when the blood was taken, but the absence of conscious consent, without more, does not necessarily render the taking a violation of a constitutional right. * * * the blood test procedure has become routine in our everyday life. * * * Likewise, we note that a majority of our States have either enacted statutes in some form authorizing tests of this nature or permit findings so obtained to be admitted in evidence.

"It may thus be seen (i) that the consent implied by the use of highways - insofar as it applies to the appointment of a state official to receive process for a non-

resident - has been upheld as lawful, and (ii) that the use of blood specimens has been held not to violate the privilege against self-incrimination or to be an unreasonable search and seizure. The synthesis of the two; namely, that a state may lawfully provide that a motorist's use of the highways shall be deemed his consent to the use of a breath sample to determine whether he has been driving under the influence of liquor (when a police officer has a reasonable basis for such a belief) would, in my opinion, be upheld as valid by our courts, if attacked on the grounds mentioned. As Justice Clark put it in Breithaupt v. Abram, supra (352 U.S. at p. 439):

'The increasing slaughter on our highways, most of which should be avoidable, now reaches the astounding figures only heard of on the battlefield.* * *

'As against the right of an individual that his person be held inviolable, even against so slight an intrusion as is involved in applying a blood test of the kind to which millions of Americans submit as a matter of course nearly every day, must be set the interests of society in the scientific determination of intoxication, one of the great causes of the mortal hazards of the road. And the more so since the test likewise may establish innocence, thus affording protection against the treachery of judgment based on one or more of the senses.'

"Note, too, that Senate 9 does not provide for blood specimens but only for a 'breath test.'

"I conclude, therefore, that Senate 9 would withstand constitutional attack."

In brief then, Senator, our client, the New Jersey Automobile Club, believes it is good legislation and is supporting it. We believe it is constitutional. Thank you.

SENATOR PARSEKIAN: Mr. Fischler, I want to thank you and the New Jersey Automobile Club for taking the time and sustaining the expense of having this memorandum of law submitted to the Committee. I know that the New Jersey Automobile Club has traditionally been jealous of the rights of the motorists and it is very slow in giving the prestige of its organization to any enforcement activity unless it is sound and has been carefully examined, because it is one of their functions, as representing motorists, to make sure that no onerous or unfair methods are used or even annoying methods are used against the motorists who are of their membership. So in coming here, in effect you are saying "we think it is in the best interest of the motorist to have this legislation." I understand that you represent 75,000 -

MR. FISCHLER: No, I represent -

SENATOR PARSEKIAN: 15,000.

MR. FISCHLER: 39,000 in three counties.

SENATOR PARSEKIAN: 39,000 motorists in three counties. So it is very significant that you would feel it important to come in and testify on behalf of the "implied consent" bill, and I thank you.

Are there any questions that anyone would want to ask through the Chairman?

MR. FISCHLER: I might just say, Senator, that the New Jersey Automobile Club in the past has certainly declined to approve certain pending bills, but because of

the safeguards that are present in this bill, they are now taking a different stand.

SENATOR PARSEKIAN: Very good. Thank you.

Is Colonel Kelly here? Colonel David B. Kelly of the New Jersey State Police. Colonel Kelly is Superintendent of the State Police, an arm of the Attorney General's Office of New Jersey.

Colonel Kelly, thanks very much for coming.

C O L O N E L D A V I D B. K E L L Y: Thank you very much, Senator. I have a copy of this, if you care to have a copy.

SENATOR PARSEKIAN: Colonel, when you finish, if you have a copy, I am sure the stenographer would like to have one, and if you have a second one I would like to have one also.

COLONEL KELLY: If I give you the second one, then I won't have one for myself.

SENATOR PARSEKIAN: All right, then I will get it from the transcript.

COLONEL KELLY: I think I should preface my statement by saying that most of the things that are of a general nature have been said prior to my coming here. I would like then to comment specifically on what we of the State Police are involved in and concerned with in this matter.

First, I would like to state that during the fiscal year 1964-65, of the 514 persons who were either tested or observed, 114 or 22% were not prosecuted for driving

while under the influence; 94 persons or 18% were given a drunkometer test, and 20 persons or 3% were involved in physical observations. The drunkometer tests that were below .15% and the combined physical observations were not strong enough to present a prima facie case in court. The drunkometer tests in these instances resulted favorably for the suspects. We are saying in effect that those people who took the test favor it because it proved that they were not under the influence.

SENATOR PARSEKIAN: May I interrupt to ask one question in that category, if you happen to know, Colonel. If you gave the test and didn't prosecute, were any of those people within the .10 and .15 range?

COLONEL KELLY: Yes.

SENATOR PARSEKIAN: So you only prosecuted the .15 and above?

COLONEL KELLY: Right.

SENATOR PARSEKIAN: That's important because, in other words, the present law is not effective, as a practical matter, from the .10 to the .15 level.

COLONEL KELLY: This we feel from experience that we cannot support, even with the physical observations supported by the less than .15.

SENATOR PARSEKIAN: Now, the present law, Colonel, I think we both understand. In the point .15 and above range, there is a presumption that the person is under

the influence. In the .10 to .15%, there is no presumption either way. So that you could bring the case but, as I understand it, as a practical matter there is no use bringing it.

COLONEL KELLY: Right.

SENATOR PARSEKIAN: Thank you, Colonel.

COLONEL KELLY: And this, again, is supported by the physical observation test in addition to the drunkometer test.

Now, let me explain the physical observation. It is our policy that with the physical observation there would be two troopers, the arresting officer, and the drunkometer operator who would be present making observations of a subject who must both have the opinion toward sobriety or insobriety to prosecute. A conflict of opinion is resolved in favor of the suspect and there is no doubt that some of the 94 would have been convicted with a lower standard from .15% to .10%, but under the present law to prosecute, as I said before, would be a waste of man-hours and of the court's time and our time.

The chemical test is the best method of separating the innocent from the guilty. We presently appear in court in many instances without a chemical test having been given and presentation is based strictly on opinion evidence. This method is antiquated and may be unfair to the defendant, to society, and the police officer. It is a possibility, no matter how rare, that the prosecution,

though presented and testified to with all honesty, may be unjust. There are over 60 pathological conditions existing which may cause one to appear intoxicated. The chemical test eliminates these possibilities. Now, we are talking about people who may be suffering from insulin shock, tumors, nervous conditions, or under medication.

We say again that every so often one hears of a person who is believed to be intoxicated being jailed. Instead of sobering he becomes worse and dies. We have situations that we know of - again because of the insulin or because of the physical condition or mental condition that may be a problem of the individual. A simple chemical test would eliminate this situation which is unfair to the victim, the relative, society, and the officers involved. There should be no doubt of the value of an "implied consent law."

As you know, there are 16 states that have passed an "implied consent law" and you know how many have recommended the passage of this "implied consent law." To name some: the American Trial Lawyers Association; National Safety Council, etc. I know you have those lists.

We feel that the passage of the "implied consent" will be an asset to the innocent, to society, to the courts, and to enforcement.

I believe that we can substantiate some of the statements by breaking down, if you so desire, the drunkometer tests

in cases that we have been involved in. To give an example, we have 50 drunkometers that are used in the State Police. Every station has them. Now, last year or the fiscal year 1964-65, 261 drunkometer tests were given by the State Police at the request of 111 municipal police departments. We inspect and service the municipal police department's drunkometers. Seventy-nine municipal drunkometers are inspected and serviced by the State Police.

To give you an evaluation of the State Police involvement - again in the fiscal year - 514 reports were State Police. Of this number, 358 were given drunkometer tests. The balance were given physical observation tests by troopers, excluding 13 who were given a doctor's examination.

SENATOR PARSEKIAN: Colonel, I can recall that roughly 3,000, plus or minus a hundred, convictions in the State of New Jersey for the offense of driving while under the influence every year - the State Police have roughly 500 each year, apparently, that they test.

COLONEL KELLY: Right.

SENATOR PARSEKIAN: What does that mean? Does that mean that there are a lot of cases without the test, or does it mean that the balance are probably with the local police. Do you happen to have that?

COLONEL KELLY: The balance would be probably with the local police. I'll give you again the fiscal report: Of the 514 that were tested by State Police or observed

by State Police, 400 were given summonses, 136 refused the chemical test; 114 of the 514 were not issued summonses. Let me break that down for you: Of the 114 who were not given summonses, 94 were involved with the drunkometer test, which means they had a reading of less than .15%, which again proved the validity of the drunkometer.

SENATOR PARSEKIAN: Could it be that in those 94 cases, the motorist really was assisted by having taken the test?

COLONEL KELLY: Right. This acted to his advantage.

SENATOR PARSEKIAN: He may well have been prosecuted from physical evidence then.

COLONEL KELLY: Possibly.

SENATOR PARSEKIAN: Well, probably, if he was picked up on demeanor evidence.

COLONEL KELLY: O.K.-- probably.

SENATOR PARSEKIAN: I'm sorry. I'm not trying to sway your opinion; I'm really trying to learn. Let's talk that over again.

COLONEL KELLY: Right.

SENATOR PARSEKIAN: As I understand it, of the 114 not prosecuted, 94 were -

COLONEL KELLY: 114 were not prosecuted; 94 were given the drunkometer test and then not prosecuted.

SENATOR PARSEKIAN: And absolved.

COLONEL KELLY: Twenty did not take the test and were given a physical observation test. Now, it is obvious that evidently there had to be some suspicion

of alcohol or they wouldn't be given the test or asked to give the test.

SENATOR PARSEKIAN: Now, I just get the impression, and I wish you would correct me if I'm wrong, that of those 94 cases that were tested by the drunkometer and then there was no prosecution, there seems to be physical observation evidence that this person was under the influence and the drunkometer proved to the contrary and, therefore, he wasn't prosecuted.

COLONEL KELLY: Right.

SENATOR PARSEKIAN: So to that extent, these people really found a safeguard in having the drunkometer test given.

COLONEL KELLY: Right. If these people did not take the drunkometer test, there would be a physical observation test, and then it would be the opinion of the arresting trooper to determine whether this would be a violation or a charge.

I could continue by saying that of the 400 summonses that were involved, we have 275 that were convicted; 95 are still pending and 26 were found not guilty. I am saying as a conclusionary remark that 97% of the people who have taken a drunkometer test were convicted, and only 82 per cent that we had given the physical observation test were convicted.

I will also add this, if I may: There were 301 cases that went to trial; 124 pleaded not guilty and 177 pleaded

guilty. When we go to court, it means that the arresting officer, the drunkometer operator, and the man in charge of the testing of the tubes must go. That means that 3 state police officers are involved every time we go to court in a contested case.

SENATOR PARSEKIAN: Colonel, can you explain the accuracy of the Harger drunkometer? How can we be assured from its operation that it is accurate, mechanically correct, and so on?

COLONEL KELLY: Senator, let me say this: I am not an authority or a technical man in that field, but I do have a Sergeant who is with me who can best testify or give some statement to this effect. I can tell you of our drunkometer program; I can tell you what we do administratively; I can possibly tell you something of the technical aspects, but I think I have a Sergeant who is much more qualified than I am.

SENATOR PARSEKIAN: Colonel, can you tell me in conclusion - I take it your testimony is completed, your formal testimony?

COLONEL KELLY: Yes, sir.

SENATOR PARSEKIAN: Can you tell me in conclusion, Colonel, what your recommendations are on S-8, "the driving while impaired" bill, and S-9, the "implied consent" bill?

COLONEL KELLY: Well, as I previously stated, I recommend and I subscribe to the passage of the proposed legislation. I feel that it will help us, the police

officer; it will help the innocent; it will eliminate the element of uncertainty in drinking-driver cases and the officer need not guess to the degree of intoxication; it may induce many people to limit their drinking prior to driving if they know they must submit to a test or forfeit their driving privileges, and it will present the court with an actual, measurable degree of intoxication upon which to render a fair judgment. A very important consideration but one often overlooked in the passions of pro and con of implied consent is the very real opportunity to protect the innocent and assist those afflicted with certain infirmities which have physical symptoms resembling intoxication. Chemical tests will eliminate the innocent and send the ill to medical assistance instead of the lock-up. We have many cases of this kind.

SENATOR PARSEKIAN: Thank you very much, Colonel. Your appearance is appreciated and you have lent a lot of weight to the record from the authority of your office and your many, many years with the State Police.

COLONEL KELLY: Thank you.

SENATOR PARSEKIAN: Are there any questions?

KENNETH SCHULTZE: Colonel Kelly, I'm Ken Schultze from Florham Park and I am wondering if any of your boys in operating the drunkometer are practicing with it because I know they have to practice to keep good and, incidentally, I'm for this bill too so I'm not trying to

work against it. I just came up with a thought. Have your boys at any time experimented with how long a balloon just receiving the breath of a suspect, if it is tied tightly right away, - how long will that balloon hold potent fumes?

COLONEL KELLY: I can't answer your question but I can assure you that Sergeant Holmes can answer it.

SENATOR PARSEKIAN: I believe the practice is to immediately put it on the pipette-

MR. SCHULTZE: Why I am asking is, my thought was that police stations could be supplied with a supply of balloons if they didn't own a drunkometer and then the balloon could be sent to the nearest State Police for checking if the balloon will hold potent fumes.

COLONEL KELLY: I don't know. Senator, if you so desire, the Sergeant can answer his question. I don't think I can.

E D W A R D C O S T I G A N: My name is Edward Costigan. I am Associate Counsel, New Jersey Licensed Beverage Association. In the event, sir, that you forget, although I don't think you will - I have watched you do it with almost all of your witnesses - this one, indeed, should be complimented. You really have a witness here, with all due respect to the other witnesses you have had. I have just one question of you, Colonel. You are so direct and so experienced evidently that I missed a lot of your statistics. You were too quick for me. I understood you to say you had a certain number of refusals out of the

reports that you had. May I ask you if you have been able to mathematically calculate what your percentage of refusals to take the test has been so far?

SENATOR PARSEKIAN: I believe the Colonel gave it in real numbers in his testimony.

MR. COSTIGAN: And percentagewise, too.

SENATOR PARSEKIAN: And percentagewise. We already have that. It's in the record.

MR. COSTIGAN: Do you remember it, Senator?

SENATOR PARSEKIAN: No, I don't remember it but it's in the record.

MR. COSTIGAN: I don't remember it either.

SENATOR PARSEKIAN: O.K.

MR. COSTIGAN: Unless there's some reason for my not having it.

SENATOR PARSEKIAN: Well, there isn't. But maybe if you listened and took note-

MR. COSTIGAN: You listened but you don't recall.

SENATOR PARSEKIAN: We really don't want to rehash ground; we have so many waiting.

MR. COSTIGAN: If the Chairman rules against that, then my question is out of order.

SENATOR PARSEKIAN: It's in the record.

Now, I will call Sergeant Thomas Holmes.

MR. KELLY: There were 136 who refused the test.

S E R G E A N T T H O M A S H O L M E S takes the stand.

SENATOR PARSEKIAN: Sergeant, I understand that you are the drunkometer expert for the New Jersey State Police?

SGT. HOLMES: Yes, sir, I supervise the program for the State Police.

SENATOR PARSEKIAN: I wonder if you can tell us something about the operation of the drunkometer and what steps are taken to insure that the solutions are properly standardized, that they don't go stale, and that the tests are properly conducted and that those not in the State Police who may want to learn of its operation are adequately trained?

SGT. HOLMES: Yes, I'll be glad to. To meet your first point with reference to the chemicals, we operate it in this way: We make and prepare the potassium permanganate ourselves. The potassium permanganate is titrated and checked for its strength prior to its issue, and monthly we inspect the drunkometers for the State Police and also for the 79 municipal police who have drunkometers and request our service. On the following months, we remove that solution of potassium permanganate from the drunkometer, it is brought back to Trenton and it is re-titrated to determine whether or not the solution has lost strength. If it has, then it is recorded. As far as the loss of strength in a month's time, this is practically negligible. Of the many drunkometers that I've inspected - and I have been in this program since 1954 - there are only two occasions where I

have found the potassium permanganate to depreciate as much as 2 per cent. I may find, out of one hundred solutions that I check, possibly one that might be down about 1/2 per cent. Now, if the solution is within plus or minus 1 per cent, it would still give accurate results. The effect it would have on the over-all reading would be infinitesimal. If there was a depreciation in the potassium permanganate, this could be calculated for its court presentation, correcting the reading that the operator obtains.

Now with respect to the program itself, we run a 5-day course and at the onset of the course we give to the students, and the students may be motor vehicle inspectors, they may be state police, or they may be municipal police officers - we advise them what the standard for the course is. They must get a certain scholastic grade and they must be able to run the test properly. We have had instances where we have failed- in fact, I recall one class where we failed 33 per cent of those in attendance. Our objective here is to try to produce the best possible drunkometer operator that we can give to society.

With reference to the drunkometer operators, annually we run a refresher course to cover such points as whatever recent court decisions may be, also to go over techniques of testing, and also we set up a laboratory class where we recheck the operator to see if he is still running the test as he was originally instructed.

SENATOR PARSEKIAN: Sergeant, do you, on call from local police, supply a state police operator and drunkometer for testing?

SGT. HOLMES: Yes, sir, we have done that.

SENATOR PARSEKIAN: In all counties?

SGT. HOLMES: Wherever the request comes in to a state police station, we offer the drunkometer test.

SENATOR PARSEKIAN: And the facilities of the State Police then are available for training local police in proper operation.

SGT. HOLMES: That is correct, sir.

SENATOR PARSEKIAN: And they are certified, are they, as operators by the State Police?

SGT. HOLMES: If they meet the standards.

SENATOR PARSEKIAN: We are talking about the Harger drunkometer?

SGT. HOLMES: That is correct.

SENATOR PARSEKIAN: And the State Police of New Jersey do not, as I understand it, use any blood test methods.

SGT. HOLMES: Not as police officers. We do have our crime lab which analyzes blood and also in fatal accidents analyzes brain - but the officer doesn't get involved in these tests at all as far as testing.

SENATOR PARSEKIAN: And you understand that this legislation involved only the breath test?

SGT. HOLMES: Yes, sir.

SENATOR PARSEKIAN: Sergeant, have you examined S-9 in detail?

SGT. HOLMES: Yes, sir, I have.

SENATOR PARSEKIAN: That's the "implied consent" legislation. Did I understand that you had a suggestion for the improvement of paragraph 2 (a), which reads:

"Any person who operates a motor vehicle on any public road, street or highway in this State shall be deemed to have given his consent to the taking of samples, etc.." ?

SGT. HOLMES: Yes, I mentioned that to the attorney outside chambers, that your Senate Bill 8 has by exclusion no reference to the -

SENATOR PARSEKIAN: Senate Bill 9. Go ahead, I'm sorry.

SGT. HOLMES: That Senate Bill 8 has by exclusion no reference to a public highway, where your Senate Bill 9 does have and does stipulate public road, street or highway, and the point I mentioned was that there are two cases - State vs. O'Grady and State vs. Sisti - decided cases. O'Grady involved a case where an arrest took place on a Hoboken dock; and Sisti involved an arrest that took place by the Paramus police in the Garden State Plaza parking center - or shopping center parking lot - which houses about 10,000 cars. Now, your Senate 9 would restrict consent in these particular areas.

SENATOR PARSEKIAN: Thank you. We will take that under advisement.

Do I understand, Sergeant, that the State Police supplies the potassium permanganate to the local police free?

SGT. HOLMES: Yes, sir. There is no charge for the

chemicals or the course.

SENATOR PARSEKIAN: Can you tell us the cost of a kit with the drugs?

SGT. HOLMES: Yes, sir. The test unit which comprises the sulfuric acid ampule, the balloon, wooden adapter to the balloon, glass bubbler and a rubber sleeve that connects the ampule and the glass bubbler to the drunkometer-- this unit is a disposable unit which is used only once and this unit costs 75¢.

SENATOR PARSEKIAN: Thank you very much, sir.

MR. SCHULTZE: Maybe the Sergeant could answer the question I put to the Colonel as to how long will a tightly-tied balloon hold potent breath.

SGT. HOLMES: Sir, I would not recommend this for the simple reason that here you would have a lapse of time which affects the temperature of the contents of the balloon. Consequently you would have condensation within the balloon. Alcohol is a water-loving substance and it has an affinity toward water. Therefore, if one were to run the test, one would come out with an extremely low answer.

MR. SCHULTZE: In other words, you have tried this?

SGT. HOLMES: Yes, sir.

MR. SCHULTZE: That's all I want to know.

SENATOR PARSEKIAN: Is Chief Harry Knowles here?

[No response].

Mr. H. George Buckwald, Past President, New Jersey Licensed Beverage Association.

H. G E O R G E B U C K W A L D takes the stand.

SENATOR PARSEKIAN: Mr. Buckwald, is your counsel also going to testify?

MR. BUCKWALD: I believe he is here for the purpose of answering a legal question that may be relayed to me that I don't feel qualified to answer.

SENATOR PARSEKIAN: Very good.

MR. BUCKWALD: My name is H. George Buckwald of Lakewood, New Jersey. I am a past president of the New Jersey Licensed Beverage Association, with offices at 224 Market Street, Newark, New Jersey. In appearing here today, I represent the on-premise licensees of New Jersey, numbering more than 9,200, through their recognized state trade association made up of 62 local divisions in the 21 counties.

At the outset, let me clearly state, for the record, the purpose of our appearance at this hearing in opposition to Bill S-8 and S-9 should in no way be construed as an argument to support those who drink to excess and drive. Our association has a long record of cooperation with local, county and state law enforcement agencies in the many efforts that have been made to make our highways safe.

This industry feels that the protection of the public is of paramount consideration. For this reason we have offered our thousands of places of business as bulletin board locations for the familiar warning posters published by the New Jersey Traffic Safety Council. We also have endeavored to make suggestions to this Council with regard

to these safety messages.

We should like to point out that any legislation affecting auto travel strikes a sensitive area in this state where highway construction has lagged far behind the population growth and road use. New Jersey is a highly mobile state, where the percentage of highway travel by commuters far exceeds the use of the meager public transportation presently offered.

Add to the lack of rail and bus facilities for commuting, the vast resort travel to our fine lakes, mountain and seashore resorts, and we see a problem compounded by factors other than drinking - serious enough to be the subject of a hearing before your official body at this or another time.

We submit that the high speed of the modern car on our inadequate and sometimes poorly engineered highway systems is a major fatality factor.

I quote one of the prior witnesses, Mr. W. Robert Warwick, President of the New Jersey Traffic Coordination Association, in a newspaper article of last week: "Piece-meal construction (of highways) is a major cause of accidents. A very dangerous situation is created when you have four lanes running into two and three lanes."

Most likely he is referring to highway construction in New Jersey which has produced, for example, Route 35 which from Keyport to Seaside Heights in its 44 miles squeezes and expands auto traffic from four lanes to six

lanes, back to four, to three lanes, to two, to four again, to two, to four, to two, to four, to two and to four lanes at end. In the three-lane stretch through Ocean Township, five motorists have died in the past 14 months, and the various local and county officials are clamoring for the State to widen the road to save lives.

Our point is that all factors contributing to highway deaths should be reviewed in their proper perspective - that the statistical evidence presented here with reference to drinking should not be isolated from companion highway safety factors which together show the real problem to be studied.

New Jersey is in a continuing spiral of population growth, expanding into formerly underdeveloped areas, far from major employment centers, necessitating heavy increases of commuter driving over decidedly inadequate road systems. This added highway travel and the resort travel increase have raised local accident rates and have affected percentages used at this hearing.

We feel the almost widespread use of tranquilizers, as has been noted here earlier in testimony, add to the above factors as traffic hazards as do also the many drugs used in modern dieting.

To say the least, if the purpose of these Senate bills is to provide for the safety of the public without taking into regard the above-mentioned pertinent factors, it would seem that one single phase of the larger problem has been emphasized beyond proportion, and due effort should be directed to correct all of the road hazards.

We might point out in addition the appearance at this hearing by certain factions to give testimony on these bills is in keeping with their continued program to argue the cause of dry legislation in whatever form at every available opportunity.

The "implied consent" and "impairment" bills concerning drinking and driving are admittedly not unconstitutional, but it is respectfully submitted that they are unconscionable and impractical. Please draw no inference that this speaker considers death on the highway as a practical thing. One senseless death is most impractical, to say the least, and we are so well aware, from all the testimony before this Committee, how the highway fatalities are multiplied many, many times.

The Committee has heard some statistics concerning drinking drivers and drunk drivers. The good members of the clergy and other conscientious persons and experts with great knowledge of this traffic dilemma have offered many facts and figures to this Committee. I respectfully submit, however, that like any other statistics they may be misunderstood and/or misleading, and for the reason given by Mr. Costigan that they are given in rapid succession here.

SENATOR PARSEKIAN: Now, just a moment. If there is anything you don't understand or any statistics you question, may I recommend that you get the information before you say something that you may not be able to back up.

MR. BUCKWALD: All right. I'll explain that -

SENATOR PARSEKIAN: We don't want any discussion on things that are of no value here.

MR. BUCKWALD: I agree with you. I'll explain that in the statement that I'm going to make, the short statement. There is a discrepancy in our notes and we were not able to get the exact figures and I would stand to be corrected if they are not right.

SENATOR PARSEKIAN: Well, I would be very happy for you to get the material before you testify.

MR. BUCKWALD: Well, the transcript has not been made up.

SENATOR PARSEKIAN: What information are you looking for.

MR. BUCKWALD: Mr. Byrne's statements.

SENATOR PARSEKIAN: As to what?

MR. BUCKWALD: On the Essex County figures.

SENATOR PARSEKIAN: Well, I don't want you to testify on figures if you don't know whether they are accurate or not. I would suggest that, if you want to put into the record, comments on Mr. Byrne's testimony, Mr. Byrne would be glad to give you those figures and you can write us on it, but I don't want testimony on something that may not be accurate at all, and I would exclude it. Now, you are free to contact Mr. Byrne or contact this Committee who will furnish you with the information, and you are free to write in your comments and they will be incorporated in the record. I don't want comments on figures that are not accurate.

MR. BUCKWALD: While Mr. Byrne was testifying, you, Senator, discussed the effect of a certain number of cocktails with Mr. Byrne and former witness, Mr. Robert Donigan, the gentleman from a midwestern university. The gist of the three-way conversation concerned the approximate number of cocktails one would need to consume in order to affect his pathology to the extent that the scientific reading to discover the alcoholic content would be .10%. The weight of the hypothetical consumer was not accurately fixed, although several suggestions were made and I was at a loss to understand how any expert would come to any realistic or accurate conclusions without knowing what kind of cocktails were consumed, at what time of the day, or under what conditions.

SENATOR PARSEKIAN: I'll have to stop you there. We specifically discussed the weights of the drinker under the questioning of both Mr. Donigan and Mr. Byrne; in fact, I read from the blood-alcohol chart that was before my eyes then and is before my eyes now, so that the discussion was on a specific weight. Furthermore, we spoke about a specific amount of alcohol in the drinks and we didn't talk about a drink or a cocktail without specifying. In fact, Mr. Buckwald, you were present then and you were present this morning when this same discussion took place with Doctor Albano who is one of the foremost pathologists in the country, and we talked not only about the specific amount of alcohol in the drink but 86 proof alcohol, so there is no misunderstanding about what we are talking

about.

MR. BUCKWALD: I wasn't present when Dr. Albano was here. I did hear Mr. Donigan relate to a 200 proof factor in alcohol. Now that statement by Mr. Donigan shows that he is not entirely accurate.

SENATOR PARSEKIAN: What he said was that 200 proof alcohol is absolute alcohol, which is the case.

MR. BUCKWALD: But the question is whether it's 190 proof or 200 proof.

SENATOR PARSEKIAN: I don't pretend to be a chemical expert, Mr. Buckwald, but I do recall from my experience as an assistant biochemist with General Foods Corporation that we kept absolute alcohol on the premises for experimental purposes and it was 200 proof alcohol, and we bought it as such and it was certified as such by the federal government.

MR. BUCKWALD: I think, Senator, and I may have to agree with you on that particular figure - but in reference to drinking alcohol and alcohol used in the sense of a beverage, we don't ever get that high. Now, whether he was discussing it in the use that you are talking about, I'm not sure.

SENATOR PARSEKIAN: I can tell you exactly, and the transcript will show, that he first said that absolute alcohol is 200 proof and, when he spoke about whisky, he said that he was considering it at 100 proof, which is higher than most whiskies in proof, as you know. So we were very careful and he was very careful in defining the proof of alcohol and explaining the difference between

proof and percentage.

MR. BUCKWALD: Would you want me to continue with this?

SENATOR PARSEKIAN: Yes, please continue.

MR. BUCHWALD: No doubt you, Senator, have attended association and other affairs where you have seen some of your colleagues become, as the bill says, "impaired." I have seen some who came at the beginning of an affair and stayed to the very end who would have won the "championship" at that event for alcohol consumption and, except for an abundance of joviality, they appeared quite unimpaired. On another occasion, I have seen the same good fellows have only a few and not appear their usual selves, but apparently intoxicated. Drinkers who consider themselves good at it are prone to suggest that martinis have the fastest effect upon the brain and behavior and, in fact, they compare and/or contrast the brands of gin used and the degree of dryness or wetness, whatever they are. Surely, any experiment concerning a certain number of drinks would have to include the kind and the proportion of the mixture, as well as the attitude and health of the consumer and the food he has consumed, in addition to his size and weight.

One of the clerical gentlemen who spoke against the bill talked about drinkers whom he described as becoming "super-men" due to the influence of alcohol. No doubt, Senator, you have observed certain drivers in the early morning on their way to work who acted as if they were

"super-monsters," and I assume that they are merely on their way to business after a good night's rest without any alcoholic influence. And so much, Senator, for statistics of witnesses.

I think you are on the right road to doing something practical about the senseless death rate on the highways caused by the "drunk" drivers. If you legislate against drinking drivers, it is my guess that you will be affecting approximately 70%, if not more, of the adult licensees.

Every witness and you, Senator, have apparently attempted to defend the legislation propositing that it protects the innocent, as well as convict the guilty. You and I know that the innocent need no protection, and I cannot see how this bill could be designed to protect the innocent, especially where the entire matter is in the hands of the police officer's judgment. I do not think that the police officers want this burden upon them. It would certainly be greater than the one which Mr. Byrne complained of when a drunk driving conviction is appealed.

Let us get legalistic for a moment, sir. Bill S-8, called the "impaired bill" is something like the sugar with the pill,- the pill being Bill S-9. It seeks to sweeten the severity of the penalty, changing the present fine from a minimum \$200 mandatory one to \$50, and the suspension from 2 years to 6 months. On the other hand, for impairment it cuts by one-third the percentage of the alcoholic reading which is now required for the presumption of intoxication. Senate Bill No. 9, the "implied consent

bill" provides that every licensee has the implied condition of consent to his driving privileges. It makes the police officer at the scene the judge of whatever is "reasonable grounds" to believe that the licensee is impaired in his operation of the vehicle. If the licensee refuses because he does not feel that the officer has reasonable grounds, or for any reason whatever his license will be revoked for 6 months without a hearing on his alleged impairment. Would not any driver who has the slightest doubt as to his ability to pass the drunken driving test under such conditions elect to refuse to take the test? He would merely lose his license for six months, thus saving the fine, since Bill S-9 provides no fine with the director's six-month suspension provision and he will not be throwing himself and his license in the jeopardy of having to face a second offense for drunk driving in the future, for which, if convicted, he would be subject to a two-year suspension under Senate Bill 8 and for impaired, and three months in jail and ten years' suspension for under the influence. Bill S-9 provides in lines 25 through 27 that the director's revocation shall be independent of any revocation imposed by virtue of a conviction under 39:4-50. Although I don't quite understand this clause of Bill S-9, it would seem to rely upon a conviction on visual observations and opinion of intoxication inasmuch as the refusal of the operator would preclude the drunk-o-meter test. Do I understand, Senator, that the bills read this way or is my understanding of the bills unclear in this

regard? If it's not, then the bills need to be re-written.

The combination of the two bills, although not unconstitutional, do practically amount to an oppression upon the driving privilege which is unreasonable and impractical. The deterrent which it attempts to provide would deter the largest percentage of operators from going to and from many of the business places which provide a great deal of the tax dollars in our State - some for our highways. Drinking drivers would naturally be afraid to go almost anywhere. I, myself, might be afraid to drive to and from a trade association banquet, Chamber of Commerce, or other affair where alcohol will be served. I don't think that the Legislature wants to do this to the drinking driver. As far as he is concerned, the members of the New Jersey Licensed Beverage Association are always desperately careful to see that their patrons are not apparently intoxicated because you know the liability to which they are exposed by recent cases on automobile negligence involving drunk drivers.

I said I think you must do something, but I don't believe that the implied consent, at least as it is set out in these bills, is the answer. If you could provide for an implied consent to be courteous, considerate and careful, then I am sure you could cut down the accident statistics. Several witness have reflected on statistics several years old. I respectfully submit that the statistics from the last hearing, 1963, on the drunkometer bill are most relevant and should be made a necessary part of this hearing.

SENATOR PARSEKIAN: May I have that again? I didn't understand it.

MR. BUCKWALD: The 1963 hearing on the drunkometer bill.

SENATOR PARSEKIAN: What about it?

MR. BUCKWALD: I request that the statistics and the testimony given during that hearing be made a part of this report.

SENATOR PARSEKIAN: I'd be delighted to do it. You are talking about the hearing before Senator Stout?

MR. BUCKWALD: Yes, the 1963 hearing.

SENATOR PARSEKIAN: Before Senator Stout?

MR. BUCKWALD: Yes.

SENATOR PARSEKIAN: Well, at your suggestion I'll be glad to incorporate by reference all of the transcript of the testimony taken before Senator Stout at the hearings there.

MR. BUCKWALD: In closing, I would like to quote Dr. J. H. W. Birrell, a police surgeon of Melbourne, Australia, who told representatives at the Fourth Annual International Conference on Alcohol and Traffic Safety -

SENATOR PARSEKIAN: What was his name?

MR. BUCKWALD: Birrell - B-i-r-r-e-l-l.

SENATOR PARSEKIAN: And he was from Australia?

MR. BUCKWALD: Yes. He told representatives at the Fourth Annual International Conference on Alcohol and Traffic Safety that public education on drinking and driving is largely ineffective, at least in Australia and

the U.S.A. Another speaker, Dr. J. B. Havard of the British Medical Association said that alcohol affects drivers in different ways. Ultimately, the problem of drinking and driving is one of individual personal responsibility. Legislation can only reinforce individual responsibility, not replace it.

SENATOR PARSEKIAN: Does that complete your testimony?

MR. BUCKWALD: Yes, thank you.

SENATOR PARSEKIAN: I have a couple of questions. You represent the Licensed Beverage Association. Are these the people who own taverns and restaurants that have liquor licenses?

MR. BUCKWALD: These are the on-premise licensees. They are hotels, restaurants, bars, bowling alleys, wherever licenses are issued for the purpose of serving on premise.

SENATOR PARSEKIAN: Now, you refer to some statements by a Dr. Birrell of Australia and a Dr. Havard of the British Medical Association. Can you tell me first whether either of the two specifically were referring to either the implied consent law or to the driving while impaired bill?

MR. BUCKWALD: I believe these were comments made in general at this symposium.

SENATOR PARSEKIAN: So they were not addressed to these two bills. Am I right?

MR. BUCKWALD: I couldn't be sure of that, sir.

SENATOR PARSEKIAN: Well, do you or don't you know?

MR. BUCKWALD: I don't have the entire transcript. These statements are available and I thought they were pertinent.

SENATOR PARSEKIAN: But my question is: Do you know whether they concerned these two bills?

MR. BUCKWALD: I don't know.

SENATOR PARSEKIAN: Do you know what their credentials are? Are they pathologists? Are they Chiropractors? What are they?

MR. BUCKWALD: I stated that Dr. Birrell is a police surgeon.

SENATOR PARSEKIAN: A police surgeon?

MR. BUCKWALD: Yes. And Dr. Havard is a member of the British Medical Association. I don't know his exact title.

SENATOR PARSEKIAN: Do you know their credentials in this field?

MR. BUCKWALD: I could supply them.

SENATOR PARSEKIAN: You might do that. I would like to know whether they are pathologists or internists or what.

Now you also said that the implied consent laws presently being proposed could be revised. Could you tell me how you would suggest they be revised?

MR. BUCKWALD: Well, we picked up, for example, and it has been mentioned here in earlier testimony, the six-month revocation by the Director where it begins from the date of the alleged offense.

SENATOR PARSEKIAN: Yes.

MR. BUCKWALD: And I believe if Mr. Costigan wishes to, he could testify on that point.

SENATOR PARSEKIAN: Your suggestion is that it should stem from when?

MR. BUCKWALD: From either the hearing - the finalization of the hearing --

SENATOR PARSEKIAN: Or --

MR. BUCKWALD: -- or at least the charge.

SENATOR PARSEKIAN: I agree with you that that

should be revised. In fact, the Attorney General has suggested that the date of the commencement of the period should be from either the hearing or from the date of conviction.

Now did you suggest too that under the six-month suggestion that persons would obviously refuse to take the test rather than be tested and then be faced with a two-year --

MR. BUCKWALD: Yes.

SENATOR PARSEKIAN: Are you recommending that we revise the six-month suspension and make it two years for refusing to take the test?

MR. BUCKWALD: No, I am not recommending that. I am showing that in the drawing up of the bill, all of the points certainly were not taken into full consideration.

SENATOR PARSEKIAN: Well, Mr. Buckwald, I want to assure you that the six-month period was taken after careful consideration. So it wasn't by mistake. But what I want to know is whether you recommend that it be altered so that it be two years to match the present drinking and driving penalties so that the people won't be encouraged to refuse to take it and get the lower suspension. I just wanted to know what your views are on that. Do you think it ought to be two years?

MR. BUCKWALD: I think that part of the intent in writing this particular bill was to try to ameliorate some of the former requirements in the past bills that were written and I do believe personally that the six-month period was

put in to make it a little easier on the driver.

SENATOR PARSEKIAN: On whom?

MR. BUCKWALD: On the driver.

SENATOR PARSEKIAN: So do you recommend it be two years?

MR. BUCKWALD: I think if the bill is to be written strongly and without fault, probably you would be correct in that statement.

SENATOR PARSEKIAN: You are recommending two years instead of six months; is that right? I am not trying to put words in your mouth. I am trying to understand.

MR. BUCKWALD: Well, I am not in a position to recommend your law. But I am here certainly representing these people who have asked me to come here and I didn't try to rewrite the law. We looked at the law from a realistic approach.

SENATOR PARSEKIAN: Well, do you or don't you recommend two years? That is what I am trying to find out.

MR. BUCKWALD: I don't think I would be in a position to recommend an increase or a decrease.

SENATOR PARSEKIAN: You don't recommend either way?

MR. BUCKWALD: No.

SENATOR PARSEKIAN: Are there other recommendations you would make on the technical aspects of the bill?

MR. BUCKWALD: No. We have over the years studied the drunkometer itself and I was interested in Sergeant Holmes' testimony as to the method in which the men are trained who operate the machines. Of course, we have pointed

out weaknesses in the testing.

SENATOR PARSEKIAN: What are those weaknesses?

MR. BUCKWALD: Well, I believe that there have been corrections in the machine itself to take care of some of these weaknesses.

SENATOR PARSEKIAN: Let's talk about the weaknesses that are there now. What weaknesses are there in the drunkometer now that you recommend should be checked?

MR. BUCKWALD: Well, I said I was interested in his testimony as to the age of the chemical used.

SENATOR PARSEKIAN: Yes.

MR. BUCKWALD: There are still factors that I could ask questions about. For example, we know that if the potassium permanganate is allowed to be exposed to the air, there will be a weakness. Of course, these men are not supposed to allow this to happen.

SENATOR PARSEKIAN: You say "we know." Can you present - and you are free to do so - any scientific evidence about the deterioration of potassium permanganate and how it affects the drunkometer? I would be glad to accept it.

MR. BUCKWALD: I think this was presented in the '63 hearing.

SENATOR PARSEKIAN: I don't recall it. I was at those hearings.

MR. BUCKWALD: I believe it was, Senator. I don't have these facts with me.

SENATOR PARSEKIAN: You don't have them with you. Would you like an opportunity to publicly present chemical information on the potassium permanganate deterioration?

I would be glad to allow it.

MR. BUCKWALD: Well, I would like to consider it and I will certainly call you if we have that information. I believe you have the information in the other hearing. I would like to look at the transcript of the other hearing first.

SENATOR PARSEKIAN: You look at it and may I say that I will give you until next Monday, March 7th. If I don't hear from you, I will assume that you don't have information on deterioration of potassium permanganate that will be of value in the context of the drunkometer. Is that fair enough?

MR. BUCKWALD: Certainly.

SENATOR PARSEKIAN: Now you said something about the need for more highway construction and that this State is behind and how it is necessary that we build more highways in order to keep pace with the increased use of transportation by motor car here. Was there any implication, Mr. Buckwald, that drinking and driving is not a problem in the State of New Jersey?

MR. BUCKWALD: No. I tried to point out in my statement that it is one of several problems and that to take only the drinking problem without accepting and acknowledging the other traffic safety hazards that exist in the New Jersey road system today would not be entirely fair and proper.

SENATOR PARSEKIAN: Well, you don't mean to suggest that the Committee on Law and Public Safety hold hearings

on highway construction, do you?

MR. BUCKWALD: No, I didn't. But I certainly think that somewhere in this record mention should be made and was made in my statement that a factor in these deaths certainly, and it goes along with other factors, is the fact that our highway system is thoroughly inadequate. In fact, in the areas that have recently been built up, such as my own county, where last week it was announced that we have in five years grown 30 per cent --

SENATOR PARSEKIAN: What county is that?

MR. BUCKWALD: Ocean County. [Continuing] -- that our highway systems have not been added to in a major way for some twenty years.

SENATOR PARSEKIAN: Mr. Buckwald, you came here to testify on the implied consent bill and the driving while impaired bill and you are from Ocean County. Did you in addition to discussion of highway construction and two- and three-lane roads and so on, bring with you statistics on the number of people killed in Ocean County in highway accidents during any year period and statistics on the number of drunken drivers responsible for those deaths? Do you happen to have that with you?

MR. BUCKWALD: I don't have the list.

SENATOR PARSEKIAN: Do you think that might be pertinent to this inquiry?

MR. BUCKWALD: No. I felt that those statistics would be entered in by other people who have better access to them than I do. I certainly don't represent

Ocen County here today, Senator.

SENATOR PARSEKIAN: Well, do you accept the statistics that were presented on the number of deaths due to drinking and driving?

MR. BUCKWALD: I accept basically those statistics, but I added in my statement that some of the increase in the percentages used here were due to new people and a bulk of people as opposed to lesser people in the former years from which some of these statistics were made up.

SENATOR PARSEKIAN: As a matter of fact, Mr. Buckwald, the statistics that were presented at this hearing and the last hearing went back as far as 1952 in various parts of the country and in New Jersey and the New Jersey statistics went back to 1961 - every person killed in an automobile accident was checked for alcohol in the blood - and there wasn't any increase in percentages; relatively, it is stable. You recall that Miss Strelecki, the Director of Motor Vehicles, testified that drivers killed in automobile accidents since 1961 are around 56 to 57 per cent and the first years tested in '61 and '62, they were within one percentile of the same. So there really isn't any increase in relative numbers of people killed. It is consistently over 50 per cent and about in the same area.

MR. BUCKWALD: We find that the statistics shown, for example, in Middlesex County percentagewise do not add up in general.

SENATOR PARSEKIAN: How do you mean?

MR. BUCKWALD: Well, we find they are higher; the percentages are higher.

SENATOR PARSEKIAN: All right. Would you like to address yourself to that? Do you have Dr. Wilentz's breakdown?

MR. BUCKWALD: I am not prepared, Senator, to offer statistics of my own.

SENATOR PARSEKIAN: These are statistics that have been presented by Dr. Wilentz and I wonder if you could compare them with the rest of the State and show me where they are any different in any substantial degree. Do you have his statistics?

MR. BUCKWALD: I don't know that these are accurate. As has been said here before, some of these come out so fast, it is hard to write them down.

SENATOR PARSEKIAN: Well, I don't want to put inaccurate things in the record.

MR. BUCKWALD: I don't either.

SENATOR PARSEKIAN: So just take your time and make sure you get what you want accurately and we will be glad to discuss them.

My recollection is - and I would be very pleased to be corrected - that Dr. Wilentz's studies which go back to 1931, and I think his autopsies of every fatality in the county go back at least fifteen years, are very consistent with the rest of the State. But I would be glad to be shown otherwise.

Do you want to comment specifically on Dr. Wilentz's

figures or do you want to write in anything on it?

MR. BUCKWALD: I would like the opportunity to write in. I am sure that I couldn't do this right this morning.

SENATOR PARSEKIAN: All right. We'll be glad to receive it.

There was some testimony by Dr. Asa Crews of the Committee on Medical Aspects of Drunk Driving of the Physicians for Automotive Safety, concerning judgment and self control and Dr. Crews said that euphoria and loss of inhibitions are the most common results of drinking in lower concentrations of alcohol. Now a while back you alluded to the super-man discussion of last week which I think we can agree pairs with what Dr. Crews was saying. Now do you have any scientific evidence which you would want to present - we'd be glad to receive it - that in any way takes issue with this medical concept which this doctor has presented?

MR. BUCKWALD: I find, Senator, that each of these medical men, scientists, and they certainly are valued people as witnesses, describe their results in different ways. We were given a schedule by your former department some years ago - it was circulated on cards and in charts - as to how many drinks a person could take without feeling the effects or being impaired, I should say.

SENATOR PARSEKIAN: Well, I think the chart did something quite different, Mr. Buckwald. The chart gave varying weights of individuals and it showed graphically how

many drinks you had to take, depending on your weight, to achieve certain percentages of alcohol in your blood.

Isn't this what it did?

MR. BUCKWALD: Yes.

SENATOR PARSEKIAN: All right.

MR. BUCKWALD: We find - and I can't quote you again here specifically, but in general - and I think representing our people who deal with people who drink certainly all of the time - that these hard and fast rules as set out by the experts do not hold up for many reasons in the practical sense. And as we have alluded to in the statement, it depends not only on the weight of the person and what he is drinking, it depends on what he has eaten before he started to drink. It depends on his physical demeanor in general - if he is in good health, if he is not tired. It depends on what he has been taking, for example, in the way of medication for some sickness that he may have had or may be recovering from.

SENATOR PARSEKIAN: You don't mean, Mr. Buckwald, that if a person takes medicine that does not contain alcohol that the amount of alcohol in his bloodstream would be affected by it.

MR. BUCKWALD: Are we talking about impaired?

SENATOR PARSEKIAN: Yes, or any degree.

MR. BUCKWALD: I think in general most people, and certainly we, test our patrons by how they appear. We certainly have no way to test them any other way.

SENATOR PARSEKIAN: Are you really saying, Mr. Buckwald, wouldn't it be nice if there was a sure scientific

way of knowing how much he is drinking instead of by demeanor because you just can't tell looking at people, can you?

MR. BUCKWALD: Yet this is the way --

SENATOR PARSEKIAN: Isn't that what you said?

MR. BUCKWALD: Yes, that's true. This is the way the arresting officer makes his decision.

SENATOR PARSEKIAN: That's right. And this is the way the bartender makes his decision on whether to serve a person any more liquor, isn't it?

MR. BUCKWALD: Yes.

SENATOR PARSEKIAN: And what you said was that you really can't tell by looking at a man. Some people will sit there and drink all night and you don't know whether they are under the influence or not. Isn't that so?

MR. BUCKWALD: By the same token, that's so.

SENATOR PARSEKIAN: Well, isn't that so? And wouldn't it be nice if there was some scientific way of knowing whether he is impaired or not?

MR. BUCKWALD: I don't think --

SENATOR PARSEKIAN: -- in abstract.

MR. BUCKWALD: I don't think there is a way.

SENATOR PARSEKIAN: No, but in abstract wouldn't it be nice if there could be?

MR. BUCKWALD: If you could get consent.

SENATOR PARSEKIAN: All right. Now suppose the American Medical Association says over a period of twenty-five years that there is a method and unanimously recommends

that it is accurate. Would you accept that? Or their Committee on Traffic Safety unanimously recommends that it is accurate. Would you accept that?

MR. BUCKWALD: You mean for the purposes of testing drivers?

SENATOR PARSEKIAN: For the purposes of determining whether a person is impaired or not. They say there is a method. What do you say to that?

MR. BUCKWALD: I would be interested in looking at it and seeing exactly how it operated, to see if there were any faults.

SENATOR PARSEKIAN: But you would think that that might be worth something.

MR. BUCKWALD: I find, Senator, that the laboratory method of establishing intoxication or impairment is a method that can't be used practically in any other way.

SENATOR PARSEKIAN: But, Mr. Buckwald --

MR. BUCKWALD: The laboratory method may be a fine method, but in a practical sense it has something lacking.

SENATOR PARSEKIAN: All right. Mr. Buckwald, you are speaking in a practical sense as a representative of the man that makes money by selling liquor in highway stores.

MR. BUCKWALD: We make a living and we pay our taxes.

SENATOR PARSEKIAN: Fine. But you are not speaking as a doctor.

MR. BUCKWALD: No, certainly.

SENATOR PARSEKIAN: Wouldn't you think in all

fairness that if the American Medical Association with a panel of eminently qualified pathologists says that there is a method of testing and that it is deadly accurate, it might be of some value in determining whether a person is drunk or not? Do you think that might be worth accepting by the Licesned Beverage Dealers Association?

MR. BUCKWALD: I think at that time we would take it under consideration.

SENATOR PARSEKIAN: All right. Then let me inform you, sir, that they have done this. In 1938 they did it and in 1958 they recommended the same. We have had representatives of the American Medical Association here saying the same thing in testimony. And if you are really sincere about it, sir, I would recommend that you reconsider your testimony and come out for the implied consent bill and for the driving while impaired bill because there is very heavy testimony to the extent that these methods of testing are accurate. In fact, no one of any medical or scientific background has come into these hearings to challenge it and the door is open and I wonder if perhaps you wouldn't want to take a look at the reports of the AMA on this matter. They are available. In fact, I would be glad to get them for you.

MR. BUCKWALD: I would be glad to look at them.

SENATOR PARSEKIAN: You will have them.

MR. BUCKWALD: I would like to say though, you refer to whether or not we are really interested and I am sure that our statement was based on an interest as an industry

dealing in the beverage, certainly, but also as an industry coming to this hearing with a side of the issue that may not have been brought up if it were not for the fact that we were here and came in for the purpose of bringing it up.

SENATOR PARSEKIAN: May I say this, Mr. Buckwald, that I have spent several years in the traffic safety field as have some others like Colonel Kelly and the Attorney General and some of the policemen who have come in here and some of the doctors that have come in here like Dr. Wilentz and Dr. Albano, and they have been in the emergency rooms of hospitals where people are brought in, and if you were here this morning, you would have heard Dr. Albano talk about the cases that come in. We not only see the individual cases, but we see the bulk statistics which are rather cold, but which tell a dramatic story that over half of the people killed in auto accidents had been drinking. Then somebody comes forth today and says, "As a matter of fact, Mr. Chairman, New Jersey has the second highest rate of alcoholism in the country." So I think you would agree that there is a problem here. People are dying on the highway and people aren't controlling the social habit of drinking. We are not talking about prohibition at all. We are talking about proper control. And I assure you that the reason I am discussing this with you is that I think you are a very fair person - I have known you for some years and I respect you - and I can't help but believe that you don't have the facts on the extent of this problem to all of us and how it

affects Mr. Buckwald and the people he represents as well as the rest of the community. And I have here a report from the American Medical Association which I am going to hand to you and you will notice that it reports the fact that the AMA has recommended a change in the drinking and driving standards and you might wish to reconsider your testimony on studying it. [The Chairman hands paper to Mr. Buckwald.]

MR. BUCKWALD: Thank you.

SENATOR PARSEKIAN: Are there any other questions to be asked of the witness? Thank you, Mr. Buckwald. Is there anything else you want to present?

MR. BUCKWALD: I would ask Mr. Costigan if he has any further statement to make.

SENATOR PARSEKIAN: Mr. Costigan.

E D W A R D A. C O S T I G A N: Senator, I am not sure. Up until Mr. Buckwald, I didn't know exactly what a witness was here for the last two days, but under your expert cross examination and attempt to destroy his credibility, I am a little bit afraid to take the stand. I do have, however, as an attorney and as a layman --

SENATOR PARSEKIAN: -- who can easily match my cross training.

MR. COSTIGAN: I am at a terrible handicap, Senator, because you said you knew my friend George Buckwald for many years and respected him. I have neither of those advantages. So I am at a terrible handicap.

I do have what I am sure Mr. Buckwald has, and you do

too, Senator. I have known you and respected you. We all have one element here which is in common and that is sincerity. I would expect, therefore, that you would treat me as someone who appears sincerely to try to help you.

SENATOR PARSEKIAN: I assure you that is the case.

MR. COSTIGAN: Thank you.

As Mr. Buckwald said, you are on the right road. Something should be done. If I were in your position, I think I would keep the present legislation and put more teeth into it. My people might not like to hear me say that. But I doubt that such mouthy legislation with such strong molars would pass your house or the Assembly.

I do feel this way, Senator, about these bills: As a lawyer, I do think that as the great General today pointed out in his testimony, you do have to change one or two little technicalities of draftsmanship. I also believe that the implied consent clause is really unnecessary. It ought to be compulsory if it is as important as this Committee feels it is. And the word "implied" should be "cumpulsory consent." This would leave us with a problem. "Implied" whether it be written or expressed would raise in my mind a serious doubt as to the ability of a suspicious person, that is, one who is an operator and is under reasonable grounds of suspicion for drunken driving, as it would not require a greater degree of sobriety and mental comprehension to possibly surrender that which makes his livelihood, his driving privilege, by giving consent than it would to drive or merely mechanically manipulate the gears

or other mechanisms of a gearless automobile. I do believe that maybe what the bill tries to implicitly assert, it implicitly denies. On one hand it says, "Are you sober enough to take this test, which if you fail might cost you your livelihood and maybe a jail sentence too, because we don't think you are sober enough to manipulate the mechanism of a simple gearless automobile and show proper reflexes?"

What I would like to say more than any of these fringe items, Senator, is that I believe what you ought to really do is to remove the mandatory tenor and nature of the bill. It deprives the magistrate or any hearing officer of any discretion whatsoever. And I really verily believe that if a guy as an operator is up for a second offense, he might be on the fringes of alcoholism and all of your expert testimony, the AMA and all the other good expert gentlemen who offer their sincere testimony in behalf of your intentions, which are good intentions, seem to say that alcoholism is a disease and that New Jersey, startling to an uninformed audience, has the second highest rate of alcoholism. If this is the case, then that offender instead of a mandatory 90-day sentence should be subject to a probationary sentence of perhaps 90 days of out-patient, clinical treatment as an alcoholic or potential alcoholic because to deprive him of his family and his livelihood, his job, and everything and not do anything for him certainly may raise an awful problem in our society. He will still be an alcoholic and if he waits the six months under the

impaired bill, he will still be driving a car.

May I please tell you this story? I won't take any longer than I have to, but it is a most interesting story. When I first began to practice not long ago, I had all the junk cases as most young attorneys do. One of them was not so junky because I really believed in this chap, my defendant. His name was Claude Dillahay. He was a second offender at the time that I got him down in Mercer County in one of the nooks and corners of our county. He was being tried for a second offense of drunken driving. His first offense which occurred some two years or so before found him in a terrible accident on Route 130, I think it was. He went through the roof of his convertible car and he hit smack on his head on the highway. He suffered brain damage. Some time later, after going through more days of alcoholism, many months in fact, he swore off. He was off of alcohol for approximately three or four months, according to testimony which seemed fairly reliable. He had a wonderful war record. He was in his middle 40's. He took care of his father who had lost an arm on the farm where they lived and he stayed with his father. He had made a good living as a steamfitter, but he was subject to blackouts. And on his way home from his job in Camden, back to Mercer County, he stopped on the side of the road in order to prevent an accident from a blackout. When he started to pull out, he was careless. He didn't look back, he didn't put his signal on, and took off and almost ran a fellow off the road. It wasn't almost.

According to the witness, it was almost. But the facts showed that it was not even close.

This gentleman, however, was what we might call a Keystone cop. He chased him, pursued and blew his horn. He had been discharged from a park policeman's job in North Jersey, I think, and he made a cause celebre about this thing and I asked the magistrate to please have my client examined before he would be sentenced mandatorily, that a week before this happened, he had fallen down the cellar steps carrying a lot of things which were too much of a burden for him and that he had bumped his head again. The bump on his head was clearly visible at the trial. He had a swollen jaw on the side of his face and a big bump over his left temple. The magistrate said he could not and he sentenced him under the mandatory sentence to 90 days.

Dillahay was up at the Work House three or four days when a chap who was also an inmate, sitting across the luncheon table, noticed that his eyes were "doing funny things, Claude." And Claude said he didn't feel very well. He fell down and Dr. Sherman operated on him some time later for severe brain damage. He came out of the operation blind and he died about ten days later. It is only one isolated case.

But if this is a problem of alcoholism - and I sincerely believe it is, Senator - if a guy shows .15 twice, he must be close to being an alcoholic. He should be treated, not merely kept off the road, not mandatorily sentenced to 90 days. He should be treated. I think that the mandatory part of your present legislation and under your new bill

should be considered for a change, possibly to give the courts an opportunity to do something about rehabilitating this driver, not merely taking his license, which, of course, he should lose, but they should do something more about it.

I do believe too, as Mr. Buckwald said, the implied part does give the guilty an opportunity to get out from under. Surely if someone has no doubt that he is impaired, then he should say, "Well, I'll refuse to take it." The arresting officer's only recourse then is to give him an examination under visual observation or what we call opinion evidence, which, as you know, is pretty easy for a good defense attorney to beat on a hearing. But here he might take this opportunity because there is no fine on your implied consent for the six months Director's revocation. So he would get away from the fine. He would also not be involved in the jeopardy of the second offense for either impaired or while under the influence of intoxicating liquor. So for draftsmanship, the bills need further consideration.

My main point, just to repeat, Senator, is that I think you are on the right track, and Lord knows something must be done, and if you could do something more about rehabilitating these people as well as deterring them from driving - as Colonel Kelly very well said, "It will limit their drinking attitude if they know that they might have to take a test." Well, then maybe the test should be compulsory and not implied.

If there is any way that I can help you - I'm a studious

guy as far as these things are concerned, although I am not well experienced - I would give you my time and services, Senator, to be of whatever help I can because I admire your intentions here and I think that something must be done. I always worried whether it would be me or my mother or somebody very close to me who would be run over by a drunken driver. But I don't believe that I or other people who might be drinking drivers coming home from the Bar Association meeting should be subject to implied consent. Thank you, Senator.

SENATOR PARSEKIAN: Mr. Costigan, I would be very pleased to receive any technical suggestions you might have for redrafting this legislation. We are going to consider several changes in technique in Committee as a result of this testimony. And if you would like to submit any, I would appreciate it, if at all possible, if you could have them in to me by next Monday.

MR. COSTIGAN: I shall, and thank you for the opportunity to be here today.

SENATOR PARSEKIAN: Thank you, Mr. Costigan.

We will take a ten-minute recess. The reporters have been working pretty steadily.

[Short Recess.]

After Recess

SENATOR PARSEKIAN: Ladies and gentlemen, could we proceed.

May I call Mr. Harry Persky of the New Jersey Retail Liquor Stores Association.

H A R R Y P E R S K Y: Mr. Chairman and the rest of the Committee: My name is Harry Persky. I am the Executive Director of the New Jersey Retail Liquor Stores Association, with offices at 24 Commerce Street in Newark.

The New Jersey Retail Liquor Stores Association represents package store licensees in all 21 counties of our State through our affiliated local County Associations. And I might define package stores as those stores that sell packaged alcoholic beverages for off-the-premise consumption.

At this point I would like to have the record show that Mr. Milton Barnett, the President of the New Jersey Retail Liquor Stores Association, is present and that he is in complete agreement with the statement I am about to make.

We welcome the opportunity, Mr. Senator, to comment on Senate Bills 8 and 9 and we applaud the members of this Committee and all other legislators who show concern for and expend efforts to alleviate the problems caused by the excessive drinker.

We have examined Senate Bills 8 and 9 and find no justifiable reason to oppose these measures. In a recent report to the press, the Attorney General of our State deplored the inordinately high New Jersey highway accident rate, and suggested that alcoholic beverages were a factor in 56 per cent of all of these accidents.

We have no way to refute or confirm the Attorney General's estimate, but whatever the figure, we believe that

the strong penalties imposed against the wayward driver should have a sobering effect.

Senate Bills 8 and 9 are designed to discourage and to deter excessive drinking so as to minimize the need for the use of any type of sobriety tests, rather than to promote such use.

We believe as do great number of the public and people in government, including members of this Committee, that to discourage excess is to encourage the greatest measure of success in the never-ending campaign to keep our entire population alert and apprised of the need to heed the basic philosophy or theme of our liquor laws. That theme, as you know, is Temperance. This philosophy is wholeheartedly endorsed by the United Nations World Health Organization. This organization's official publication known as "World Health" had this to say in its last issue:

"The global medical experts emphasize that many adults as well as youngsters need to be protected against excessive use. For the vast majority of grown-ups, liquor is not harmful and may even be beneficial if taken in moderation."

Members of our State Government, including members of your fine committee, have, for the past number of years, invested time, money and mind to convince our neighboring State of New York of the wisdom, the justice and the propriety of raising their legal drinking age to conform with our own State's minimum legal drinking age.

The purpose and importance of this campaign was no doubt to stop, as our Governor and others have repeatedly stated, Slaughter on the Highways.

This Committee's prime objective is, we believe, to

attain the desirable climate of Temperance and to halt the slaughter on the highways.

Based on this conclusion, we respectfully urge that your Committee and all interested legislators give serious consideration to the inclusion, in your overall program, of a few proposals we believe pertinent and necessary if the greatest measure of success in the pursuit of moderation is to be gained. These proposals do not contradict nor do they countermand the measures under consideration here. They are, we believe, helpful, and hope acceptable, for in our opinion they will greatly enhance and not replace Senate Bills 8 and 9.

These suggestions are prompted by the knowledge that you, Mr. Chairman, and your Committee are interested in the fundamental problem of INTEMPERANCE.

On the matter of sales to minors and drinking by minors, although complete solutions are not easy to come by, we believe great strides can be made in this area through legislation mandating the inclusion of a photograph on every motor vehicle driver's license. Such a law can be a powerful deterrent, and can be helpful to New Jersey liquor licensees in determining the correct age of a potential buyer, and such a law would discourage the illegal and deceitful practice of the bold minors who use borrowed or counterfeit identification cards or drivers licenses to trick the package store clerks or the bartenders into selling or serving them alcoholic beverages. And I might say that my good friend George Buckwald and his membership

fully agree with this particular proposal of getting a photograph on a driver's license.

We are led to believe that New York State whose present opposition to increasing their own minimum drinking age would cooperate with its neighboring states if it were suggested that a photograph law similar to the one proposed heretofore, coupled with legislation prohibiting sales of alcoholic beverages to any non-residents of New York under the age of 21, be enacted.

Although all lives are precious, our Governor and all New Jersey parents are rightly and primarily concerned with the well-being of their own. Success in this area is surely worth trying for, for it will be a major breakthrough and a sizeable if not complete solution to a serious matter that has inspired headlines and heartaches for the past many years.

We are fortunate to have as the head of the Division of Alcoholic Beverage Control a highly qualified administrator whose awareness to his responsibilities as head of one of the most sensitive branches of government is constantly in evidence. Along with his numerous other weighty chores, the Honorable Joseph P. Lordi has found the time to plan a program designed to minimize the pressing problem of sales to minors and drinking by minors.

Senate Bills 8 and 9 buttressed with an almost tamperproof photo identification driver's license and Director Lordi's Youth Program would, we suggest, be a strong aid in our goal to minimize intemperance.

To further enhance this most desirable climate of moderation, the press suggests statewide uniform hours for sale of all alcoholic beverages consumed upon a licensed premise.

As recently as six months ago, the City of Paterson considered the adoption of an ordinance shortening the hours of sale for all alcoholic beverages for both on-premises and off-premises consumption. At a public hearing on this matter, Paterson licensees expressed their opposition to the proposed changes. The municipalities in close proximity of Paterson expressed concern. They feared, as the press reported, that Paterson's earlier closing would create a serious problem for them as the result of the caravans that would be leaving Paterson pubs in search of nearby spas.

Editorializing on this controversy, the Paterson News in its September 10th, 1965, edition summarized its thoughts as follows, and I quote:

"There is no reason why taverns' closing hours should not be the same throughout the State. It would make for better regulation and for uniformity and there would be no need for unilateral activity by any governing body. The State Tavern Owners Association should be able to impress this on the State regulators."

[End of editorial and end of quote.]

The Passaic Herald on the same hours of sale issue as it related to the City of Clifton, had this to say in its editorial columns in the September 7th, 1965, edition:

"State Curfew the Answer" was its title.

The opening paragraph read:

"The current controversy over the closing hours for taverns emphasizes again the need for statewide uniform curfew."

And further comments:

"Experience has shown that drinking into the early morning hours often leads to trouble of a serious nature."

The editorial concludes:

"A state law on closing would solve many problems."

If the editors' conclusions have merit, then a law to implement their thoughts will be a helpful additive to further enhance the effectiveness of Senate Bills 8 and 9 as a deterrent from the resultant harm caused by the immoderate drinker. The members of the New Jersey Retail Liquor Stores Association, that's the package stores' association, in the interest of promoting a most desirable climate of temperance will raise no opposing voice to a revision in the present ABC Regulation #38, to shorten the present statewide uniform sales hours for all alcoholic beverages consumed off the licensed premises.

While it may appear paradoxical for a group which depends upon the sale of alcoholic beverages for its livelihood to advocate the passage of measures which tend to limit or decrease such sales, it is, and has always been, the position of our members that conditions which tend to cast discredit on our industry can, as they have in the unlamented past, lead to the loss of public favor and finally to its destruction.

Anything we can do to prevent such a course of events is in our own selfish interests, albeit, fortunately

for us, in the public interest as well.

Mr. Chairman, I am honored to appear here before you and to commend the legislative sponsors of S 8 and 9 for their awareness and for their courage, and we encourage the consideration of any legislative acts that will support the basic philosophy of our liquor laws. We believe that S 8 and 9 do indeed help perform that function. Thank you very much.

SENATOR PARSEKIAN: Thank you, Mr. Persky. I would like to comment on one thing you said. You suggested photos on driver licenses as helpful in determining the age of purchasers of alcoholic beverages and the relationship of this to the 21-year drinking age problem between New York and New Jersey. I thoroughly agree with you that this would be a great advantage. There are, I am sure, problems, technical problems and cost problems, which would have to be solved. Incidentally I have heard people in the retail trades in general suggesting the same because of the check-cashing problems involved in retail trades. They take the driver licenses as the Bible.

MR. PERSKY: Right.

SENATOR PARSEKIAN: And they are sometimes a little shakey about cashing a check without a photo. And enforcement people make the same comment and I am very glad you brought it to the attention of the Committee.

MR. PERSKY: Might I comment one moment there?

SENATOR PARSEKIAN: Yes.

MR. PERSKY: I hope that you got the entire impact

of what I was saying. I feel that this driver's photo will not only help us detect the wayward, but it will help us get that little nitch - not the "nitch," but the little wedge in the door of New York because I have heard some Senators mention - New York Senators - I have attended a couple of hearings - and I have heard some New York Senators say that they would be happy to stop our own people from drinking if they came over there, provided they could detect who they were. And I feel that they would not hesitate to follow suit in a photo operation which presently is in vogue in quite a number of states. So I think this might be the wedge we are looking for to get them to look at our problem and possibly to resolve a very difficult one that has, as I said before, inspired so many headlines and caused so many people to fall into either disrepute or demise, or both.

SENATOR PARSEKIAN: I wonder if Mr. Buckwald has ever thought about this or is this too new to comment upon?

MR. BUCKWALD: Senator, we have been before the Motor Vehicle Department with a suggestion for the picture, as you will remember, I believe --

SENATOR PARSEKIAN: Some years ago..

MR. BUCKWALD: [Continuing] -- we sat in conference several years ago. We were able to get favorable attention to the fact that a colored card, a card of a distinctive color, would help us. However, we are in the position now with the law that is written where the change in color was so slight, it isn't really of any help. And we do believe that if a method were obtained where a picture could be

imposed upon a license and sealed, we would have an adequate source for identifying these young people.

MR. SCHULTZE: We will endorse that, and add a space on the back to put the violations of the different magistrates' offices.

SENATOR PARSEKIAN: Are there any questions to be asked of the witness through the chair? [No questions.] Thank you very much, Mr. Persky.

MR. PERSKY: Thank you very much too.

SENATOR PARSEKIAN: Mr. Ken Schultze of the New Jersey Automobile Club.

F. KENNETH SCHULTZE: I am Ken Schultze, General Manager-Trustee of the New Jersey Automobile Club, Florham Park - Morris County, Essex County and Union County.

Mr. Senator, it is a privilege and a pleasure, as well as my duty as an interested citizen, to bring the impressions of the leaders of a large group of law-abiding motorists, to you, that you may better understand that we in the Auto Club are not always against your ideas.

I believe some of the younger members of both Houses, when they get the opportunity of reading these minutes, will be amused to hear that originally the New Jersey Automobile Club was formed just prior to the year 1900 for the express purpose of protecting its members from the activities of untrained police authority, and today we find our Club programs protecting the police from the motorists.

Times do change and people change with them. A few years ago, we opposed a bill somewhat similar to Senate 9

because it gave too broad a power to untrained, new peace officers who might have been tempted to embarrass a neighbor or motorists for whom he had a dislike. Senate 9 does not provide him with this privilege, and as you heard our attorney, Mr. Fischler, state the legal reasons why we, the trustees of the New Jersey Auto Club endorse this bill - I as a layman bring you the assurance that all safe and sane motorists, who, thank God are in the majority among drivers, after they have had this Senate Bill 9 explained to them, are completely in favor of its passage.

The very fact that Senate 9 gives a partially sober or sober motorist his choice of tests, shows that all law-abiding, non-intoxicated drivers have nothing to fear from its passage.

We thank you for the opportunity of exercising the right of a citizen to express his thoughts to the law makers in both Houses of this Legislature and please call on us more often and get the feel of our pulse.

One last item that I have written on the bottom of page 2 of Senate 9 since I entered the room - I believe that occasionally you would have a driver too drunk to cooperate and if a member of his immediate family is sober and promptly available, the consent of such member of the driver's immediate family should be deemed as lawful for the taking of a breath sample.

Senator Parsekian, anything we can do to serve you at any time, you know we will be more than glad to do it. Thank you.

SENATOR PARSEKIAN: Thank you, Mr. Schultze. It was very kind of you to come down and have your counsel down today.

Are there any questions to be asked of Mr. Schultze by anyone present? [No questions.]

I might note that I have received a letter dated February 23, 1966, from Attorney Joseph Stevens of 108 Church Street, New Brunswick, which letter will be incorporated in the record. He has certain suggestions on the bills.

(Mr. Stevens' letter can be found on page 75 A of this transcript.)

Also, the brief from which Attorney Fischler read is taken from a memorandum dated February 19, 1966, which is addressed to me and the entire brief will be incorporated in the record. Mr. Fischler, while you are here, may I ask the stenographer to use the brief rather than quotations which you took from the brief. Would that thoroughly cover your testimony?

MR. FISCHLER: Certainly.

(The portion of the opinion referred to above which was not read by Mr. Fischler can be found on page 72A of this transcript.)

SENATOR PARSEKIAN: Also I would like to enter into the record an Addendum, dated 1960, to Chapter VIII of Chemical Tests for Intoxication Manual, which was received from the National Safety Council. This Addendum indicates that in 1939 and in 1945 the House of Delegates of the American Medical Association approved the .15 per cent level for considering a person to be under the influence of intoxicating liquor. It also indicates that the same Association

subsequently on further experience and experimentation recommended that the proper standard should be .10 per cent of alcohol in the blood stream and refers to a symposium on Alcohol and Road Traffic, held at Indiana University, in December, 1958, which was attended by the foremost scientists in the field, such as R. N. Harger, Henry Newman, Herman Heise, T. A. Loomis, Leonard Goldberg, D. W. Penner and H.W. Smith. At that conference these doctors said that alcohol concentrations at .10 per cent definitely impair all individuals. There are further references to Committee decisions along the same lines in the fall of 1960 through the end of November.

(The Addendum referred to above can be found on page 77A of this transcript.)

Are there any other persons that wish to testify at these hearings, either for or against S 9 or S 8? [No response.]

On hearing no indications to the contrary, I will therefore call these hearings officially closed.

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Portion of brief of Jerome C. Eisenberg which was not read
by George S. Fischler in his testimony:

February 19, 1966

"Hon. Ned J. Parsekian
210 River Street
Hackensack, New Jersey

"My dear Senator:

"The New Jersey Automobile Club has asked me to give you my opinion of the constitutionality of Senate Bill 9 which has been proposed as an amendment of and supplement to Title 39 of the Revised Statutes of New Jersey. The Trustees of the Automobile Club wish to support the proposed legislation, despite their reluctance generally to endorse any law which seemingly permits the police to compel people to furnish the evidence necessary to convict them, if such proposal is constitutionally sound.

"As I understand the current situation, R.S. 39:40-50.1 (being §30 of chapter 23 of P.L. 1951, supplementing chapter 4 of Title 39) provides that in any prosecution under R.S. 39:4-50 relating to driving while under the influence of intoxicating liquor, the amount of alcohol in the defendant's blood - as shown by chemical analysis of his blood, urine, or breath - gives rise to certain presumptions, based upon percentages stated in the law. However, that section (R.S. 39:4-50.1) includes the following language:

"No chemical analysis, as provided in this section, or specimen necessary thereto, may be made or taken unless expressly consented to, or requested by, the defendant,"

" Because of the alarming increase in fatalities resulting from automobile accidents, and the studies thereof showing that

liquor was a factor in a majority, and the inability to get the consents of drivers to submit to tests for alcohol, a bill has been introduced (Senate 9) to supplement chapter 4 of Title 39 of the Revised Statutes, which will in effect amend R.S. 39:4-50.1, first, by eliminating the sentence quoted above.

"Second, Senate 9 proposed to add several other sections to the existing statute. Section 2(a) (the first additional section) provides that any person who operates a motor vehicle on any public road, street, or highway in New Jersey:

"shall be deemed to have given his consent" to the taking of samples of his breath for the purpose of chemical analysis to determine the alcoholic content in his blood, provided that the sampling is done at the request of a police officer who has "reasonable grounds" to believe that such driver had been operating a motor vehicle under the influence of liquor. . .

"Section 2(b) provides that a record of the sampling disclosing the date and time, as well as a result of the test, shall be made and a copy given to the driver tested, if he requests it.

"Section 2(c) provides that in addition to any such test made at the direction of a police officer, the driver may have other tests (breath, urine, or blood) made by his own physician.

"Section 2(d) provides that the police officer shall inform the driver tested of his rights under sections 2(b) and 2(c) outlined above.

Section 2(e) provides that no test or specimen provided by section 2(a) may be made

"or taken forcibly and against physical resistance thereto by the defendant."

"Section 3 outlines the procedure to be followed if the driver refuses to submit to the test when asked to do so. This includes a sworn report by the arresting officer to the Director of Motor Vehicles, a suspension of the driver's license, unless the driver within 10 days of arrest asks the Director for a hearing on the issue of the driver's reasonableness in refusing to submit to the test, and provided that the Director finds that the arresting officer acted in accordance with the provisions of the act.

"If the director rules against the driver on such a hearing, or if the driver fails to ask for the hearing within the time permitted, the Director shall revoke the driver's license for 6 months.

"Section 4 provides for severability of the various sections of the act if attacked and held invalid, and Section 5 provides that the law shall become effective 91 days after the bill is enacted into law.****

[The remainder of the brief was read
by Mr. Fischler [p. 2-A]

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February 23, 1966

Honorable Ned J. Parsekian
New Jersey State Senate
State House
Trenton, N.J.

Dear Senator Parsekian:

I am writing to you in your capacity as Chairman of the committee conducting hearings on the proposed bill concerning driving while under the influence of alcohol. May I respectfully make the following suggestions:

1. That if a drunkometer or other apparatus is to be used for the measurement of alcohol in a suspected driver's body, then that apparatus or instrument should be operated only by an educated, intelligent, honest, well-trained and otherwise suitably qualified operator. I would recommend that such a person be a college graduate, with an appropriate scientific degree in chemistry or physics, and that he should be particularly trained in the operation of an examining instrument, and pass a stringent examination to prove his capability to operate such an instrument.
2. "Pools" of similarly trained experts should be available and on call for use by motorists who are charged with driving while under the influence. Such an expert should be called to participate in and observe the actual testing of the accused person.

I am influenced in the making of the above recommendations based upon my observations as a practicing attorney, as an attorney in the defense of driving while under the influence cases, and with experience as a magistrate for three years trying "driving under the influence" cases. I am particularly impressed with the reasoning and philosophy incorporated in State v. Johnson, 87 N.J. Super. 195, 208 A 2d 444 (Essex Co. Ct., Law Div. 1965). If I understand that case correctly, it indicates that the prosecution begins its prosecution of a motorist at the time he is halted by a police officer. Fundamental fairness in keeping with the due process requirements of our State and

Honorable Ned J. Parsekian

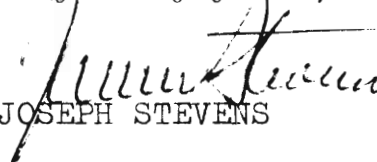
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February 23, 1966

Federal Constitutions requires that the accused motorist be permitted to begin his defense at the same time. I, therefore, believe that no action should be taken concerning the examination of a motorist unless his attorney be present, or unless a trained drunkometer operator be present on his behalf.

The revocation of a motorist's drivers privileges is a very serious step. Any law that is passed should be one aimed at obtaining the truth, namely whether the person who is accused really was driving while under the influence of alcohol, and that his ability to drive was deleteriously affected by the alcohol in his body.

Very truly yours,



JOSEPH STEVENS

JS/ief

The following was received from the National Safety Council:

1960

A D D E N D U M

TO CHAPTER VIII of Chemical Tests for Intoxication Manual

In 1939 and again in 1945 the House of Delegates of the American Medical Association approved the enactment of state legislation establishing 0.15% by weight of alcohol in a person's blood as the point above which he will be presumed to be under the influence of intoxicating liquor. The recommended figure is now 0.10% as the following chronological statement of events will demonstrate:

December 12, 13, 14, 1953 - At a symposium on Alcohol and Road Traffic, Indiana University, the following was adopted: "As a result of the material presented at this Symposium, it is the opinion of this Committee [R. N. Harger, Henry Newman, Herman Heise, T. A. Loomis, Leonard Goldberg, D. W. Penner and H. W. Smith] that a blood alcohol concentration of 0.05% will definitely impair the driving ability of some individuals and, as the blood alcohol concentration increases, a progressively higher proportion of such individuals are so affected, until at a blood alcohol concentration of 0.10% all individuals are definitely impaired."

September 18, 29, 1960 - The Committee on the Medical Aspects of Automobile Injuries and Deaths and the Committee on Medicolegal Problems of the American Medical Association adopted resolutions suggesting that the 0.15% figure be reduced to 0.10%.

October 20, 1960 - The Committee on Alcohol and Drugs of the National Safety Council adopted a resolution suggesting that the 0.15% figure be reduced to 0.10%.

November 26, 1960 - The Board of Trustees of the American Medical Association recommended that "Blood Alcohol of 0.10% be accepted as prima facie evidence of alcoholic intoxication, recognizing that many individuals are under the influence in the 0.05% to 0.10% range."

November 30, 1960 - The House of Delegates of the American Medical Association, on recommendation of its Reference Committee on Public Health and Occupational Health, adopted the following policy statement: "Blood alcohol of 0.10% be accepted as prima facie evidence of alcoholic intoxication, recognizing that many individuals are under the influence in the 0.05% to 0.10% range."

