

PUBLIC HEARING... *Feb. 21, 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 21, 1966

MEMBERS OF COMMITTEE PRESENT:

Senator Ned J. Parsekian [Chairman]

Senator John E. Hunt

\* \* \* \*

*974.90  
A939 copy 2  
1966  
v. 1*



I N D E X

	<u>Page</u>
William C. Wilentz, M.D. Chief Medical Examiner Middlesex County	5
Robert Donigan Northwestern University Traffic Institute	10
Brendon Byrne, Esq. President, County Prosecutors Assn. of New Jersey	40
George Traver Executive Director and Executive Vice President New Jersey State Safety Council	51
Rev. George W. Lewis, Jr. New Jersey Council on Alcohol Problems	59
William C. Gray President, New Jersey Grand Jurors Assn.	64
Rev. Samuel A. Jeanes Legislative Chairman New Jersey Council of Churches	67
Mrs. Elgin R. Mayer President Woman's Christian Temperance Union of New Jersey	72
Fred Rosenberg Safety Director Motor Club of America	73
Hugh Langcaskey Executive Vice President New Jersey P B A	83
Robert Warwick, Esq. President New Jersey Traffic Coordinators Assn.	89
James Davidson Camden County Traffic Safety Committee	95



SENATOR NED J. PARSEKIAN [Chairman]: Ladies and gentlemen, these are hearings held by the New Jersey State Senate Committee on Law and Public Safety. I am the Chairman of that Committee and my name is Ned J. Parsekian. Serving on the Committee with me is Senator John Hunt. Serving also on the Committee are other Senators whose duties are at the moment holding them elsewhere. There is, I want you to know, an Appropriations Committee hearing going on currently downstairs and attending that hearing is Senator William Musto. All Senators have other duties that sometimes overlap so we are holding these hearings for the whole Committee.

I might say at the outset that Senator Hunt is also a member of the Appropriations Committee and he will have to retire from this hearing to attend that hearing whenever he sees that he must. And please don't misunderstand his retiring for that purpose. As a matter of fact, Senator Hunt has been one of those few people in the State Senate where for years he has been extremely interested in bills like S-8 and S-9 and has done much to foster them.

The two bills, S-8 and S-9, you will find stacked at the hearing table so if anyone wants a copy of each they may have them.

Briefly, the first bill, S-8, is the so-called "Driving While Impaired Bill;" and the second bill, S-9, is the so-called "Implied Consent Law."

S-8 sets up a new standard for an offense of drinking while driving which is termed "driving while impaired." The present law states that when a person has .15% or more alcohol,

by volume, in his blood stream he is presumed to be under the influence. This law does not in any way affect that law and the penalties that flow from it. It sets up, however, an additional offense called "driving while impaired," and if a person has a blood alcohol content of .10% he is eligible for conviction under that law with lesser penalties, specifically 6 months suspension of license.

The second bill, the "Implied Consent Law," states in effect that if you accept a license you impliedly consent to taking a drunkometer test, specifically the Harger Breath Test, as distinct from the urine test or the blood test or the brain test, to determine whether you have been drinking and to what extent. That law sets up certain safeguards for the motorist. Briefly, the police officer must have reasonable grounds to believe that the motorist is operating the vehicle after having been drinking; secondly, a record must be taken of the taking of the breath sample and the results and it must be furnished - the record and the results must be furnished to the motorist; thirdly, the motorist has the right to an additional test by a physician of his own choosing and he may not only have a breath test, if he chooses, he may have a breath, urine or blood test, as he chooses; fourth, no chemical test may be taken forcibly or against physical resistance by the motorist. And the last safeguard, if requested by the motorist, the Director of Motor Vehicles must hold a hearing on the issue of whether the person reasonably refused to submit to the test. The penalty for refusal to submit is a six months suspension of license.

Now there are several people who told us ahead of time, by letter or telegram or phone call, that they wanted to come in to testify today. There are others who have come in unannounced, and this is perfectly fine, we want them here.

I want to read off the names and associations of those who have already notified us and we will attempt to get these people in first and then we will go to others from the public who have not previously notified us.

There will be another hearing next Monday at the same place, same time, at which others who have sent notice or others who walk in today and next week will be permitted to come in and if we don't have enough time then we will hold hearings on the third day.

Already scheduled: Dr. William C. Wilentz who is Chief Medical Examiner of Middlesex County - Dr. Wilentz has been keeping records on this issue for over 30 years; Robert Donigan, an Attorney and Professor from Northwestern University Traffic Institute and Chief Counsel of that Traffic Institute; Brendan Byrne, a Prosecutor, Essex County, and President of the County Prosecutors Association of New Jersey; George Traver, Executive Director of the New Jersey State Safety Council; Fred Rosenberg, Safety Director, Motor Club of America; Richard DePhamphilis, Executive Vice President, South Jersey Police Chiefs' Association; Hugh Langcaskey, Executive Vice President, New Jersey PBA; and Robert Warwick, President of the New Jersey Traffic Coordinators Association, and Mr. Warwick is an Attorney.

May I ask Dr. William C. Wilentz, Chief Medical Examiner of Middlesex County if he would sit in this chair where all witnesses will be called to testify.

The microphone and recording setup is such that anything said that is for the record must be said into either this microphone or the one at the witness table, so that we can't permit questions from the floor. It would only be wasted, it would not be in the transcript. But we will give anyone the opportunity to question from this microphone at the opportune time.

Now Senator Hunt wishes to make a statement for the record.

SENATOR JOHN E. HUNT: Mr. Chairman, having been appointed on short notice to the Appropriations Committee and finding they are both in conflict today at the identical same time in different rooms, I would respectfully request that I be excused so that I might attend to the money propositions of the State.

I think my views on this particular question are well known and I believe that Senator Parsekian will ask the same questions that I would have asked had I been here. We have discussed this at Committee meetings and my views on it are well known.

The absence of Senator Musto, as noted by the Chairman, simply means that Senator Musto is the Chairman of the Appropriations Committee and, like myself, it is physically impossible for him to be in both places at the same time.

I will, whenever possible, come back to this

particular hearing if and when there is a break in the Appropriations Hearing throughout the day.

I want to thank you ladies and gentlemen for appearing today and I will obtain a copy of the entire testimony taken today and will look over the transcript prior to the passage or non-passage of this bill, as the Legislature sees fit.

SENATOR PARSEKIAN: Thank you, Senator Hunt.

I might add one more formal note. If there are questions which you feel must be asked of the witness, we can solve the mechanical problem if you will address the question to the chair and it can be rephrased to the witness.

Dr. Wilentz.

W I L L I A M C. W I L E N T Z: Mr. Chairman and members of the Committee, I appreciate very much this invitation to appear before this Committee this morning because it gives me another opportunity to re-emphasize my personal sentiment and opinion in this most serious aspect of modern living.

What I intend to present in this statement is more or less identical with what I discussed several years ago before one of your committees. There is, however, one exception and that is the fact that during the past few years the events have convinced me more than ever that some new avenues of approach must be adopted if we are seriously going to try to curtail the continuing slaughter of human lives on our highways.

I believe we have all gotten to the point where

we can no longer afford to delay some commitment in this regard.

When you think of the great amount of effort and time that has been given by all the news media, whether through the press, radio, TV, magazines and various governmental agencies, one must be candid and admit that we have failed in our objective. However, this failure must not be permitted to lessen our will and determination to find reasonable means and methods to halt this unbelievable situation. But just talking about it is meaningless unless something concrete is done.

With your permission and indulgence, I will take but a few minutes to present some of our statistical data regarding Middlesex County which is, incidentally, data that will correspond pretty near precisely with what occurs throughout the whole State. And what is some of this data that I would like to present?

We have autopsied 1032 cases, auto deaths, since 1933. We found that there was a total of 486 that showed some alcoholic factor. The number actually that had been drinking was 299 and those under the influence was 187.

This, of course, is quite indicative of the subject that we are talking about now. In other words, the resume shows that 21.6% of all of our cases autopsied by my department were auto deaths. 47% of the auto deaths showed an alcohol factor which I just told you about and I won't repeat it. But, percentagewise, 61.5% of this alcoholic group had been drinking; 38.5% of this alcoholic group was under the influence.

Now what is more striking, if it can be so, is the age groupings that are involved here. To pinpoint the thing as to its seriousness - the figures I give you now are from 1953 through 1965, and I would just mention just a few, I won't go through the whole thing in detail. But what does it show?

It shows that there were 574 cases, all told, during that period. We have them related here as to drinking and under the influence and alcohol factor cases. And what does it show? It shows that in the group between 20 and 29 years of age we have the highest percentage of alcohol factor cases - 57 cases. Now this is a group of people, youngsters between the ages of 20 and 29. They also show the greatest number of deaths by automobile in our group and that totaled 134. And the same group, of course, shows the greatest percentage of alcohol factor cases - there were 57.

To summarize it, 50% of the auto deaths in this group during the period of 13 years showed an alcohol factor of 287. 66.7% of this group had been drinking and 33.3% of this group had been under the influence.

This is, of course, extraordinary. The group that comes through the highest, of course, is what I stated. The one next to it are the teenagers, for real. Those between 15 and 19. They showed a percentage of 55.8 having an alcohol factor.

SENATOR PARSEKIAN: Doctor, may I ask, 55.8 of those killed in auto accidents?

DR. WILENTZ: Yes, in that group, the teenagers,

55.8%, in our grouping, showed an alcohol factor, while the next group, I stated, the group between 20 and 29 years of age, actually showed the highest group of alcohol factor cases, that was 57%.

I don't think it's important, but I have it here and I'll just give it for what it's worth, - of this group there were 431 drivers autopsied and they showed a 48.7% of alcohol factor; pedestrians 46.6%; passengers, which we're not too interested in, actually, showed 45.4%.

Now it seems quite apparent to me that some means must be found to curtail this mounting stream of senseless deaths and human carnage, bringing with it such tragedies into our homes and reaching into every town and village. I am convinced that one of these means and a great step forward would be the passage of this implied consent statute.

Thank you.

SENATOR PARSEKIAN: Thank you, Dr. Wilentz.

May I ask one or two brief questions?

DR. WILENTZ: Right.

SENATOR PARSEKIAN: You have been Chief Medical Examiner of Middlesex County since 1933?

DR. WILENTZ: That is correct.

SENATOR PARSEKIAN: And as I understand it, Doctor, every automobile death in that county has been autopsied since that time.

DR. WILENTZ: No, that's incorrect.

SENATOR PARSEKIAN: That is incorrect?

DR. WILENTZ: Yes, because you realize that many

of the deaths have occurred long after the accident took place.

SENATOR PARSEKIAN: I see.

DR. WILENTZ: And from a toxicological point of view that's of no value. But I would say that we autopsy - I would say over 75% of the cases.

SENATOR PARSEKIAN: I recall in the Division of Motor Vehicle's autopsy program, which is statewide now and I think was based on your own --

DR. WILENTZ: Right.

SENATOR PARSEKIAN: -- if a death occurred more than six hours after the accident they did not autopsy. Is that roughly the manner in which you proceed?

DR. WILENTZ: That is the procedure that we follow but we actually did it long after the six hours in many cases to prove to ourselves many other things.

SENATOR PARSEKIAN: Doctor, as I understand it, the kidney absorbs or burns off perhaps a half to three-quarters of an ounce of alcohol each hour.

DR. WILENTZ: That's correct.

SENATOR PARSEKIAN: Now, is it true then that when you take your autopsy the result will show a lower alcohol count than actually existed at the time of the accident?

DR. WILENTZ: Depending on the time, the hours following the accident itself and the time when the person died, that is correct, there is a difference, there is a lowering.

SENATOR PARSEKIAN: So that if a person lived any length of time the figures you give us are conservative.

DR. WILENTZ: That is absolutely so.

SENATOR PARSEKIAN: In your experience, Doctor, as a doctor and a chief medical examiner, how do you rate the alcohol factor in accordance with other factors in highway fatality deaths?

DR. WILENTZ: 50% of the cases showed an alcohol factor, in my figures.

SENATOR PARSEKIAN: In sum, Doctor, addressing yourself particularly to the legislation we're considering, S-8 and S-9, what are your recommendations?

DR. WILENTZ: I think it's imperative that this legislation be passed as soon as possible.

SENATOR PARSEKIAN: Are there any questions, through the Chair, to Dr. Wilentz? (No questions.)

Thank you, Doctor, very much.

Robert Donigan, Chief Counsel, Northwestern University Traffic Institute.

R O B E R T     D O N I G A N: Is there anything particular that the Chairman wants me to speak about?

SENATOR PARSEKIAN: Both S-8 and S-9, if you will, Mr. Donigan.

MR. DONIGAN: Well, as I understand it, I have not been invited here to speak either on behalf of or against any of these bills. My understanding is that this Committee would like to know a little bit about the legal aspects of this type of law and what has been done in other

states. Am I correct, Mr. Chairman?

SENATOR PARSEKIAN: Yes.

MR. DONIGAN: For that reason, I have prepared a paper here that covers this subject and I would like permission to read from it and then incorporate it into the record as a whole for the benefit of the members of this Committee. I will read excerpts from it for the purpose of this hearing. Is that all right?

SENATOR PARSEKIAN: Yes, that will be fine.

MR. DONIGAN: Most members of the judiciary are keenly aware of the role that the excessive use of alcohol on the part of motorists and pedestrians plays in the ever-increasing number of injuries and fatalities on the highways of our nation.

Most of our courts have welcomed the use of scientific evidence in the battle to control the drinking driver, as this problem has become more acute each year, rather than having to depend upon the mere opinion evidence of lay witnesses. This is manifested, particularly in the hundreds of appellate court decisions involving chemical test evidence, --

I might say as an aside here that there are about 550 appellate court decisions now in our law books from the appellate courts in 48 of our states and in the federal jurisdictions. The only two states that have not been called upon to decide any question like this in their courts of appeal are Wyoming and Hawaii.

This is manifested, particularly in the hundreds

You are viewing an archived copy from the New Jersey State Library of appellate court decisions involving chemical test evidence, by the fact that none has been reversed on the ground that chemical test evidence is not good evidence if the test has been properly conducted and the evidence has been properly presented.

However, as the use of chemical test evidence has become more and more prevalent throughout the country, it has been found that an increasing number of motorists suspected of or charged with driving while under the influence of intoxicants are refusing to submit to such tests, thus effectively depriving the courts and juries of this highly probative type of evidence. As examples, National Safety Council reports show the percentages of refusals in some jurisdictions have reached the following proportions:

In municipalities, as an example, Cleveland, Ohio is experiencing about 92% refusals; Mobile, Alabama, 80%; Baltimore, Maryland, 73%; El Paso, Texas, 70%; Chicago, Illinois, 57%; Cincinnati, Ohio, 56%; Milwaukee, Wisconsin, 53%.

In the state police agencies they report, for instance, Kentucky, 91% refusals; New Mexico, 80% refusals; Oklahoma, 66% refusals; Texas, 57%.

These are just some of them. In my paper I give a little more complete list. (See page 100)

This experience has been more pronounced, of course, in the cases of repeaters but is by no means limited to them. It is not unusual to hear this subject-matter

discussed at receptions, cocktail parties, and other functions at which intoxicating beverages are served as a matter of course, and occasionally to hear someone remark that his lawyer has advised him that if he is ever apprehended for driving while under the influence of intoxicants, to refuse to submit to any type of chemical test.

Also, it is not uncommon to find attorneys who specialize in the defense of such cases winning acquittals when the evidence depends mainly upon the opinions of lay witnesses, based upon what they saw the accused do, his obvious impairment, what they heard him say and the manner in which he said it, and what they smelled about his person. Having studied their medical textbooks, it is not too difficult in many instances for defense attorneys to plant the seed of reasonable doubt as to guilt in the minds of the fact finders by skillful cross-examination of lay witnesses, and, many times, medical witnesses, to indicate the possibility that other pathological conditions might have caused the impairment rather than the injudicious use of alcohol.

One of the chief advantages of scientific chemical test evidence is that it shows definitely whether the obvious physical symptoms of impairment are due to alcohol. If the result shows the absence of alcohol or only a small amount, the officers know then that the suspected motorist usually is a medical case requiring immediate treatment. As the Supreme Court of Kansas said:

"The blood test does as much to protect an innocent driver as it does to aid the state in the prosecution of a guilty one."

In the early 1950's, many people in this country were advocating, and many still are, compulsory chemical test laws - every motorist suspected of driving while under the influence of intoxicants should be compelled to submit to a chemical test. To this, a number of people in the traffic safety field have dissented, pointing out the possible legal problems in some jurisdictions, but also emphasizing that laws to be enforceable must be acceptable to the public. They ventured the opinion that there are far too many people in this country who are not yet ready to accept the fact that the hazards created by the drinking driver are so aggravated as to warrant this extreme type of legislative action - compulsory tests.

The suggestion of others was that every driver should be required to sign an agreement, as part of his application for a driver's license, to submit to a chemical test if and whenever he should be suspected of driving while under the influence of intoxicants. Many queried how this proposal would be effective in controlling the non-resident motorist, or the resident driver who neither had a license nor had ever applied for one, who therefore would not have been a party to such an agreement as part of a license application in the enacting state.

About this same time, an interim legislative committee in New York, studying the problems of traffic

safety and traffic laws, found that even though that state had been among the first to enact a chemical test law, only a comparatively few law enforcement agencies had established chemical test programs. After the committee investigated the reasons for this, some real and some fancied, it was decided the state needed a stronger law to bolster the chemical test statute.

After considerable study and research, the committee and its counsel decided upon what is known as the "implied consent law." It provided in effect that as a condition of the privilege of driving a motor vehicle upon the highways of the state, every motorist was deemed to have given his consent to a chemical test of his blood, breath, or urine to determine blood alcohol concentration if charged with driving while in an intoxicated condition; that if he was so charged and refused to submit to a test, no test was to be given, but his privilege to drive within the state was to be revoked because of his refusal to abide by this condition upon which the privilege is based.

The committee and its counsel considered their recommendation for such a statute to be based upon a sound legal foundation. The New York courts had held for many years, as had the courts of other states, that the use of the public highways, whether it be called a privilege, a right, or a freedom, was a matter which could be regulated and to which reasonable conditions could be attached by the state legislature.

Furthermore, an implied consent type of law was not a new kind of law. Most states have the "long-arm" law patterned after the recommended provision in the Uniform Vehicle Code, which provides that, as a condition of his using the highways in the host state, a nonresident motorist is deemed to have impliedly appointed the motor vehicle administrator of the host state as his agent upon whom service of process may be made in case he is involved in an accident in the host state and is sued therein as a result.

The United States Supreme Court had upheld the validity and constitutionality of a similar statute in Massachusetts and said:

"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 nonresidents alike, who use its highways. The measure in question operates to require a nonresident to answer for his conduct in the state where arise causes of action alleged against him, as well as to provide for a claimant a convenient method by which he may sue to enforce his rights. Under the statute the implied consent is limited to proceedings growing out of accidents or collisions on a highway in which the nonresident

may be involved. . . . It makes no hostile discrimination against nonresidents, but tends to put them on the same footing as residents. . . . The state's power to regulate the use of its highways extends to their use by nonresidents as well as by residents. . . . And, in advance of the operation of a motor vehicle on its highway by a nonresident, the state may require him to appoint one of its officials as his agent on whom process may be served in proceedings growing out of such use. . . . (T)he state may declare that the use of the highway by the nonresident is the equivalent of the appointment of the registrar as agent on whom process may be served. . . . The difference between the formal and implied appointment is not substantial, so far as concerns the application of the due process clause of the Fourteenth Amendment."

Accordingly, the New York legislature in 1953 followed the recommendation of its interim committee and enacted the implied consent law. Within a few months after this law became effective, the vast majority of law enforcement agencies in the state, including the New York City Police Department, established chemical test programs in their communities. Not too long afterwards, a motorist who had been arrested, tried, and acquitted on the charge of driving while in an intoxicated condition attacked the constitutionality of this law after the motor vehicle

administrator had revoked his operator's license because of the motorist's refusal to submit to a chemical test at the time of his arrest. Upon appeal from the order, the Supreme Court judge - that corresponds to your Superior Court here -- the Supreme Court judge held that the law was not unconstitutional on two of the grounds advanced by defense counsel (violation of protection against self-incrimination and illegal search and seizure) but did hold it was unconstitutional on the ground it was a denial of due process for the statute not to provide (1) the request of the motorist to submit to a test and his refusal were to be effective only if made after his arrest, and (2) the motorist was to be entitled to a hearing by the administrator before the order of revocation became final.

Without appealing from the order of the Supreme Court judge, the state authorities immediately recommended to the New York legislature, which was then in session, that the implied consent law be amended to conform to the judge's opinion. This was accomplished within a matter of a few weeks. Since then, - this is 1954 - there has been no further successful attack upon the constitutionality of the New York implied consent law as amended.

Subsequently, in 1955, three other states enacted implied consent laws- Idaho, Kansas, and Utah. Within the next several years a number of other states also enacted this type of law - Connecticut, Iowa, Minnesota, Missouri, Nebraska, New Hampshire, North Dakota, Oregon, South Dakota, Vermont, and Virginia.

In the meantime, while he was still chairman of the National Safety Council's Committee on Tests for Intoxication, a chair which he had occupied for a number of years, Mason Ladd, Dean of the College of Law, University of Iowa, drafted a proposed uniform chemical test for intoxication act, to be submitted for approval to the National Conference of Commissioners on Uniform State Laws, of which he is a member. This act included provisions similar to the chemical test law recommended in the Uniform Vehicle Code, and the implied consent provisions patterned mainly after the New York law. Before submitting the proposal to the Conference, the informal draft was sent to many persons who had experience with statutory and case law on the subject for comments, objections, and suggestions for possible improvement.

At its annual meeting in 1956, Dean Ladd formally presented his final draft of the proposed uniform act to the Conference. After discussion and consideration by the members of the Conference for a year, and after some revisions, this uniform act in 1957 was approved and recommended by the Conference for enactment in all of the states. Later that same year, the act was approved by the American Bar Association at its annual meeting in New York City.

In 1962 the implied consent type of law was included in the Uniform Vehicle Code by the National Committee on Uniform Traffic Laws and Ordinances at the recommendation of the National Safety Council, the American

Medical Association, and other national organizations interested in traffic safety and the prevention of traffic accidents. The Committee adhered closely to the provisions of the uniform act approved and recommended by the National Conference on Uniform State Laws and the American Bar Association in 1957, but did make some revisions and improvements dictated by subsequent experience and appellate court decisions construing existent implied consent laws.

The provisions of the implied consent statutes in a few of the states have strayed so far from the New York pattern and that of the Uniform Vehicle Code, and place so many restrictions and limitations upon conducting chemical tests to determine alcoholic influence, that they hamper law enforcement rather than help. As the Supreme Court of Vermont said, some of the shortcomings of the statute in that state "seem destined to make the testing procedure so cumbersome or prolonged as to render resort to chemical evidence of intoxication useless in many cases." As a result, many of the persons interested in successfully coping with the problem of the drinking driver in those several states have been highly disappointed in their law's effectiveness.

Let me make a recommendation here, as an aside, as I have done in many states, and that is, if you are going to have an implied consent law, stay as closely as you can to the suggestions in the Uniform Vehicle Code that have been in there since 1962. And if this Committee

is interested I have a Zerox copy of those pertinent portions of that Uniform Vehicle Code which have been marked - Mr. Chairman, you can see how they are marked here -- that have to do with implied consent and chemical tests.

Now, as to constitutionality, while the supreme courts of several states have refused to pass upon the constitutionality of their implied consent laws because the question was not properly raised, several have met the issue squarely and held such a law is valid and constitutional. In one of these cases, the Supreme Court of Kansas said:

"It is an elementary rule of law that the right to operate a motor vehicle upon a public street or highway is not a natural or unrestrained right, but a privilege which is subject to reasonable regulation under the police power of the state in the interest of public safety and welfare.

"The use of the public highways by motor vehicles, with its consequent dangers, renders the necessity of regulation apparent. Courts may take judicial notice of the problem, both local and national, of the drunken driver on the highways with its ever increasing toll of injuries and death. In line with many other states, Kansas, through its inherent police regulatory powers, in an effort to promote public safety and welfare, has seen fit to enact the statutes heretofore quoted or

summarized - one of which, 8-1001, puts a choice to a motorist who is accused upon reasonable grounds of driving while under the influence of intoxicating liquor."

\* \* \*

"The statute does not compel one in plaintiff's position to submit to a blood test, and does not require one to 'incriminate himself' within the meaning of constitutional provisions. And neither is it violative of due process. . . . It gives the driver the right of choice of the statutory suspension of his license, and further gives him the right to a hearing on the question of the reasonableness of his failure to submit to the test."

A similar case in Nebraska, upon which the Supreme Court of Nebraska upheld the validity of its implied consent law. I will not quote it but I have quoted it in the paper. (The following was not read by Mr. Donigan)

["The plaintiff in his petition alleges that the revocation of his driver's license was arbitrary and capricious because he was not convicted of an offense of operating a motor vehicle under the influence in the original court. The fact of acquittal of a criminal charge of operating a motor vehicle while under the influence of alcoholic liquor does not have any bearing upon a proceeding before the director for the

revocation of a driver's license under the provisions of law separate and distinct from criminal statutes."]

\* \* \* \*

["A license to operate an automobile upon the highways of the state is a privilege and not a property right, and the power given the director to suspend such operating privilege is an administrative and not a judicial function."]

\* \* \* \*

["Article I, section 12, of the Constitution of this state provides: 'No person shall be compelled, in any criminal case, to give evidence against himself, . . . .']

["The essence of the 'implied consent law' is that by driving a motor vehicle on the public highway, the operator consents to the taking of a chemical test to determine the alcoholic content of his body fluid. By the act of driving his car, he has waived his constitutional privilege of self-incrimination, which has always been considered to be a privilege of a solely personal nature which may be waived. See Schutt v. MacDuff, supra.

["In United States v. Nesmith, D.C., 121 F.Supp. 758, 760, it was held that the constitutional privilege against self-incrimination is restricted to oral testimony and does not preclude use of one's body or secretions thereof and their chemical analyses as evidence. The court said: 'The Supreme

Court, in an opinion by Mr. Justice Holmes, in *Holt v. United States*, 218 U.S. 245, 252, 31 S. Ct. 2, 6, 54 L.Ed. 1021, definitively ruled that the privilege is restricted to oral testimony and does not preclude the use of one's body as evidence.

\* \* \* The objection was raised that this course was a violation of the provision (the privilege against self-incrimination). Mr. Justice Holmes, after referring to this objection as an extravagant extension of the Fifth Amendment, made the following comment: "But the prohibition of compelling a man in a criminal court to be witness against himself is a prohibition of the use of physical or moral compulsion to extort communications from him, not an exclusion of his body as evidence when it may be material." See *Swingle v. United States*, 10 Cir., 151 F.2d 512. The court further said: "The law is clear, therefore, that the privilege against self-incrimination is limited to the giving of oral testimony. It does not extend to the use of the defendant's body as physical or real evidence. The conclusion is inevitable that it does not bar the use of secretions of the defendant's body and the introduction of their chemical analysis in evidence."]

\* \* \*

["The allegation of the plaintiff that the statutes violated the self-incrimination clause of the state Constitution is a conclusion of law.

In the light of the authorities heretofore cited, such an allegation is erroneous."]

Also the Supreme Court of Appeals in Virginia likewise has upheld its implied consent law as to constitutionality.

(The following bracketed material was not read by Mr. Donigan but was contained in his paper.)

["The constitutional prohibition against compelling one in a criminal court to give evidence against himself is restricted to oral testimony and does not preclude the use of one's body or secretions therefrom and the results of their chemical analyses."]

\* \* \*

[The history and purpose of the constitutional privilege against self-incrimination provided by (Article I, sec. 8, Constitution of Virginia) show that it is to protect an accused against the employment of legal process to extract from his lips an admission of his guilt, and it does not extend beyond testimonial compulsion. . . .

Hence the taking of blood from defendant's body, pursuant to sec. 18.1-55 (implied consent law), does not infringe upon his privilege against self-incrimination and does not come within the purview of testimonial compulsion."]

\* \* \*

["Moreover, the defendant was not compelled under sec. 18.1-55 to submit to the blood test. He had a choice of either allowing the test to be made

or refusing it."]

And so have the Supreme Courts of Iowa and Vermont. The Supreme Court of Idaho has also made favorable comment upon the constitutionality of its law. So you have six State Supreme Courts which have upheld the validity of this type of law.

Thus the courts recognize that the implied consent type of law is not to be construed as a "compulsory law." There is no compulsion upon the motorist to submit to a chemical test. He may submit to a test if he chooses, or he may refuse, in which case the law prescribes that no test shall be given.

Again, it is to be noted that the courts in these cases adhere to the general rule that the privilege against self-incrimination does not apply to obtaining physical evidence from a motorist, such as blood, breath, or urine for the purpose of chemical analyses. The scope of the privilege is limited to testimonial compulsion, protecting a person from being compelled to say things against himself through his own lips or by his writings.

Then I also further discuss the effect of the acquittal of the criminal charge where the courts have held that it doesn't make any difference as to the ultimate outcome of the charge of driving under the influence against him, that this is a civil matter under the implied consent law and the suspension or revocation of the privilege to drive.

(The following bracketed material was not read by Mr. Donigan but was contained in his paper.)

[As pointed out previously, under the implied consent law one of the main consequences of a motorist's refusal to

submit to a chemical test after being arrested for an offense involving driving while under the influence of intoxicants, is forfeiture of his driving privileges. This is accomplished by a civil proceeding, separate and apart from any criminal prosecution for the offense, and is not dependent upon the outcome of any such criminal charge. Conviction or acquittal thereof does not affect the ultimate disposition of the administrative proceedings to revoke the driving privilege.

[For example, in a Kansas case the lower court had vacated an order of the motor vehicle administrator revoking a motorist's license for refusal to submit to a chemical test. This ruling of the court was based on the ground the motorist had been acquitted on the charge of driving while under the influence of liquor. Upon appeal the Supreme Court reinstated the administrative order revoking the license and reversed the lower court, saying:

"After carefully reviewing the entire record submitted we are forced to agree with the appellant that the trial court has misconstrued the effect and purpose of 8-1001, supra, providing for tests for alcoholic content in the blood. Such section is not dependent on or necessarily related to K.S.A. 8-530 which provides for criminal prosecution and punishment of a person for driving while under the influence of intoxicating liquor. The blood test may be taken with or without a criminal prosecution and prosecution may take place without a blood test being suggested. . . .

"In fact, the blood test may eliminate the necessity for a prosecution if there was at the time less than 0.15

percent by weight of alcohol in a defendant's blood . . .  
The blood test does as much to protect an innocent driver  
as it does to aid the state in the prosecution of a  
guilty one.

["The nature of the two proceedings are entirely  
separate. One (8-530, supra) is a criminal prosecution  
for the violation of a criminal statute prohibiting driving  
while under the influence of intoxicating liquor. The  
other (8-1001, supra) is a civil proceeding to determine  
whether the appellee acted reasonably in refusing to  
submit to a blood test as a prerequisite to the privilege  
of using the public streets and highways."]

\* \* \*

["A license to operate a vehicle upon the highways is  
neither a contract right nor a property right. It is  
mere privilege the suspension of which does not deprive  
the individual of due process of law."]

\* \* \*

["We must conclude that the failure of the state to prove,  
beyond a reasonable doubt, that a person was driving a  
vehicle while under the influence of intoxicating liquor  
has no bearing on the question of the reasonableness of  
such person's refusal to submit to the requested chemical  
test to determine the alcoholic content of his blood."]

Do you want me to turn this over to you, Mr.

Chairman?

SENATOR PARSEKIAN: I would appreciate it if you  
would, Mr. Donigan, and then I will turn it over to the

reporter.

MR. DONIGAN: Would you like a copy of the applicable provisions of the Uniform Vehicle Code?

SENATOR PARSEKIAN: Yes.

Mr. Donigan, I recall that some two or three years ago you were here to testify on these same bills. Have you had a chance this morning to take a look at either the "implied consent" or "driving while impaired" laws which are the subject of these hearings?

MR. DONIGAN: No. I did some years ago. I think that you have strayed far enough from the Uniform Vehicle Code in your implied consent law that you may get into trouble later on in the courts if it's enacted in the form in which it is now.

SENATOR PARSEKIAN: Would you submit to the Committee a specific critique?

MR. DONIGAN: It will take some time. I have other commitments.

SENATOR PARSEKIAN: Well, I believe we have that specific critique from the last set of hearings.

MR. DONIGAN: No, I didn't make a critique then.

SENATOR PARSEKIAN: Well you did to me.

MR. DONIGAN: I did orally to you.

SENATOR PARSEKIAN: Yes, you did, and I have that.

MR. DONIGAN: I might say to the Chairman now that the Virginia law put so many restrictions upon the law enforcement officers that some police departments down there don't want to use chemical tests at all.

I just had a letter from one of the state officials

come across my desk saying that in the year 1965 the city of Norkolk, Virginia has not charged anyone for driving while under the influence of intoxicating liquor during that year. Now, that's a port town, a Navy town. They are so discouraged with the restrictions and limitations of their implied consent law that the police department doesn't even try to bring chemical test evidence into the courts anymore, in Norfolk, Virginia.

SENATOR PARSEKIAN: Do you find similar restrictions in the proposed New Jersey law?

MR. DONIGAN: I don't know. I haven't looked it over. I know one place where you are going to get into trouble.

SENATOR PARSEKIAN: Which one is that?

MR. DONIGAN: On this one statement alone - the Motor Vehicle Administrator is to conduct a hearing on the reasonableness of refusal. What is reasonable? Under this type of a law should a driver have any reason for refusal?

SENATOR PARSEKIAN: On the other hand, you don't, as I understand your testimony, recommend that it be mandatory or compulsory.

MR. DONIGAN: No, I don't think this country is ready for it.

SENATOR PARSEKIAN: Do you have any suggestion on how that middle ground could be handled.

MR. DONIGAN: It's handled in the Uniform Vehicle Code. The Motor Vehicle Administrator is to hold a hearing on

three things. The Legislature limits the scope of the hearing. It's in there, Mr. Levy, can you find it?

(No response.)

SENATOR PARSEKIAN: Have there been other states involved in this same problem, Mr. Donigan, in their administrative hearings other than Virginia?

MR. DONIGAN: Very few cases have gone up on the matter of the scope of the hearing. Those that have gone up mainly are New York's. And we find there that there hadn't been much problem on the scope of the hearing, it's been more on what constitutes refusal.

As an example, one of these cases is where the driver submitted to a blood test and the doctor took a specimen of his blood and discovered that he had not taken enough in order to run a good lab test, so he came back and asked the fellow for an additional specimen and the fellow turned him down, the motorist did. So when there was a hearing before the agent of the Commissioner he held that that constituted refusal. And when it got up into the Appellate Division of the Supreme Court, the Court held that there wasn't refusal there, that he wasn't required to give two specimens of his blood, that he had given one and if they made the mistake that was the doctor's hard luck but that did not constitute a refusal warranting a revocation of license.

Then there's the other one where a person with false teeth was asked to take a drunkometer test and blow up a balloon, and try as he would he couldn't blow up the

balloon either with or without his teeth. And finally - the officers had given him a number of balloons and he just couldn't blow them up. He tried them with his teeth and he blew his teeth out. He would try them without his teeth and he couldn't hold on to the rubber with his gums, and so on, and finally he gave up. So the officer said in the report that he refused. The Motor Vehicle Agent upheld the officer and when it got up in the Appellate Division the Court held that you must distinguish between refusal and inability, and held that it was not a refusal. And there has never been, as I recall, a question come up about reasonableness.

SENATOR PARSEKIAN: Mr. Donigan, to come to grips with your specific --

MR. DONIGAN: Wait a minute, Mr. Chairman, --

SENATOR PARSEKIAN: Yes.

MR. DONIGAN: There is a Kansas Supreme Court decision, just a recent one, where they did claim it was reasonable refusal and the Court held that the question of reasonableness was not involved - this is a Kansas Supreme Court decision.

SENATOR PARSEKIAN: Mr. Donigan, to come to grips with your specific recommendations on this legislation, on S-9, under the present S-9 the bill reads: "The Director shall hold a hearing on the issue of reasonableness of the person's refusal to submit to the test." No other standard is included in the legislation. Now, you referred us to the Uniform Vehicle Code. May I read the section to which

you refer?

MR. DONIGAN: Sure.

SENATOR PARSEKIAN: In this case the administrator holding a hearing on reasonableness, whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle upon the public highways of this state while under the influence of intoxicating liquor; second, whether the person was placed under arrest; and, third, whether he refused to submit to the test upon request of the officer; so that the question of reasonableness is limited to these three inquiries --

MR. DONIGAN: That's right.

SENATOR PARSEKIAN: And, if those are answered to the satisfaction of the Director, suspension follows.

MR. DONIGAN: Right.

SENATOR PARSEKIAN: And you recommend this restriction --

MR. DONIGAN: Very definitely because I have a great deal of trouble with the way it's worded now.

SENATOR PARSEKIAN: Thank you.

Broadly, Mr. Donigan, you have - in order to establish your credentials, you have reviewed, as I understand it, all cases in every state and in the federal courts having to do with drinking and driving and the legislation attempting to control it.

MR. DONIGAN: That's right. As a matter of fact, we have a prepared list of all those cases if you are ever

interested in looking at them.

SENATOR PARSEKIAN: We would be interested.

MR. DONIGAN: There are 550 court decisions.

SENATOR PARSEKIAN: And as I understand it, secondly, broadly it's your testimony that the theory of implied consent legislation has been upheld in at least 6 Supreme Courts of 6 separate states.

MR. DONIGAN: That's right.

SENATOR PARSEKIAN: And there have been no high courts of any state which have declared them to be unconstitutional.

MR. DONIGAN: That's right.

SENATOR PARSEKIAN: And is it also true, Mr. Donigan, that the Supreme Court of the United States has considered drunkometer tests, specifically blood tests, and its constitutionality as a device for determining whether a person is under the influence?

MR. DONIGAN: This case that I told you about in 1927 that dealt with the implied consent law that had to do with service of process after an accident when suit followed in the host state. Other than that there has only been one case so far and that's the Breithaupt v. Abram case in 1956 or '57, I forget the year, where a truck driver in New Mexico had run into an automobile and had killed several people in this automobile and it was such a bad wreck that he himself was badly injured and taken to the hospital unconscious. Then a State Trooper had asked the attending physician to obtain a specimen of blood, which was

done, and the result of this blood test was used in the subsequent manslaughter prosecution against this truck driver. Now, that went up to the Supreme Court of the United States and the Supreme Court of the United States held that none of his constitutional rights had been violated and in the majority opinion, which was written by Mr. Justice Clark, he comments favorably in a footnote to the implied consent law of Kansas in calling attention to the legislation that some of the states had enacted. Why he called attention to the Kansas law, I don't know. Why didn't he call attention to the New York Law or the Utah Law or the Idaho Law which were in effect at the time this opinion was written, but he picked out the Kansas Law and commented upon it favorably.

Now, since that decision was handed down by the Supreme Court of the United States, we have had the Mapp Decision from Ohio in which the Supreme Court - and, incidentally, Justice Clark wrote the majority opinion in this case too -- in which the Supreme Court of the United States imposed the exclusionary rule upon all of the states insofar as search and seizure is concerned.

Now at the time of the Breithaupt Case, the New Mexico Supreme Court was holding to the non-exclusionary rule, as far as search and seizure was concerned that it didn't make any difference whether the search was reasonable or unreasonable, whether or not there had been a violation of the constitutional protection against unreasonable search and seizure, that the courts would accept the evidence if

it was material and relevant and that the violation of the constitutional protection was a private matter between the officer and the persons whose rights had been violated. And that was the rule in the majority of the states up until *Mapp*. That included New Jersey. Your New Jersey Supreme Court had taken the same path and it held that even though there might have been an unreasonable search and seizure the evidence was admissible. We call that a non-exclusionary rule.

Well, when *Mapp* came along and imposed the exclusionary rule upon all states this would put a different picture upon the *Breithaupt* Case because at the time that the State Trooper asked for a specimen of the truck driver's blood from the doctor, it was not done as a result of a search warrant or under the authority of a search warrant; it was not done as an incident to the arrest because the truck driver was not arrested until later on; and, thirdly, it was not done with the truck driver's consent because he was unconscious and couldn't give consent.

So as to the illegal search and seizure, unreasonable search and seizure, you will find that the Supreme Court of the United States today would probably rule differently on that one particular point.

On this problem of self-incrimination, the Supreme Court of the United States, as most of the states, has taken a position that the privilege applies only to testimonial compulsion and not to the obtaining of physical evidence.

Now there is a case before the Supreme Court of the United States from the State of California today that probably will deal, to some extent, on the right to counsel in the taking of a blood specimen, and so on. And they may take up some of these other constitutional protections in this case. I don't know whether they will or not or whether they'll limit it strictly to counsel, the right to counsel.

SENATOR PARSEKIAN: Under the present interpretations of the law then in the various states and in the Supreme Court of the United States, would you say there is no merit, as an Attorney, to the allegation that implied consent laws are unconstitutional?

MR. DONIGAN: I would say the answer is in the affirmative there. There is no court in the United States that has yet held that the implied consent law is a violation of any person's constitutional rights.

SENATOR PARSEKIAN: There was one point that you raised earlier that I think is of great importance, from my observations and prior duties, and I wonder if we might ask a question on it to emphasize its importance. The value of an implied consent law as a protection to the innocent - I often have been concerned about the driver who may have had one or two drinks, at dinner or at a social event, or three drinks and who may be accused of being under the influence because there is a smell of alcohol coming from his breath or from passengers with him in addition to his own, and the value of an implied consent

law to protect him from being unjustly --

MR. DONIGAN: That's correct. Many of our Supreme Courts around the country have pointed out that this is a protection for the innocent as well as a means of showing the guilt of the guilty.

The value of any chemical test program within a police department is to show those persons that are really not under the influence -- if they show obvious symptoms of impairment, staggering and lack of muscular coordination, and so on, and there is just a small amount of alcohol that shows up in the test, that means this fellow needs some medical attention, and fast. And this does happen quite frequently.

SENATOR PARSEKIAN: It could be any variety of illnesses.

MR. DONIGAN: Oh, it could be a number of things. A fellow might have a skull fracture, if it's an accident case, he may have a concussion, he may be a diabetic - there are a number of other pathological conditions which may cause this exaggerated symptom of alcoholic influence. And we find too - I was talking to Dr. Wilentz about this combination of drugs and alcohol. This is killing people today. You all know of Dorothy Kilgallen's death and Alan Ladd's death, and Marilyn Monroe's death, people like that that get in the newspapers, where this has been caused by a small amount of alcohol combined with sleeping tablets and things of that sort, barbiturates and drugs like that where the potential effect instead of being 2 plus

2 it's about 4 times 4. And this protects those people who are out on the highways driving a car where they show symptoms of intoxication and when you get them in there you find only a small amount of alcohol on their breath or in their blood and they ought to be rushed to a hospital and have their stomachs pumped right away.

SENATOR PARSEKIAN: I think there are two problems then that an implied consent law would solve - one, that the driver who is actually not violating the law by being under the influence through alcohol can be saved from that opprobrium and from the sentence that flows; and, second, that that person may well need medical attention and he would not get it if there were not a means of finding out that he didn't have that alcohol in the blood stream.

MR. DONIGAN: Right. It's a protection of the innocent as well as a means of convicting the guilty.

SENATOR PARSEKIAN: Thank you, Mr. Donigan.

Are there any questions that anyone would like to address to Mr. Donigan from the floor? (No questions.) He has come all the way from Indiana to be with us today --

MR. DONIGAN: No, no, Evanston.

SENATOR PARSEKIAN: Evanston, Illinois, - and it's a rare opportunity to have him.

Thank you, Mr. Donigan.

We will have a ten minute recess and come back here in that time.

(Recess)

After Recess

SENATOR PARSEKIAN: The hearing will come to order. We would like to hear now from Brendan Byrne, an attorney-at-law, the Prosecutor of Essex County and the present President of the County Prosecutors Association of New Jersey. Mr. Byrne.

B R E N D A N B Y R N E, E S Q.: Thanks very much, Senator. I want to say I haven't been down here since the late '50's with any regularity and it is unusual to come down here and see you sitting on that side of the table.

One preliminary observation, and that is, that although I am as you indicated the President of the County Prosecutors Association of New Jersey and although the County Prosecutors have for at least six years to my knowledge been on record in favor of an implied consent bill, beyond that the individual views that I express are mine and the only weight I carry for the Association is to reflect that through the years they have been on record by formal resolution in favor of an implied consent bill.

SENATOR PARSEKIAN: Six years?

MR. BYRNE: To my knowledge.

SENATOR PARSEKIAN: Mr. Byrne, have they taken any position that you know of on the driving while impaired measure?

MR. BYRNE: No, not in my time.

SENATOR PARSEKIAN: Neither for nor against?

MR. BYRNE: Not in my time.

I would like to make a personal observation and that is that I would be against the driving while impaired bill if it

were not coupled with the passage of the implied consent law because to have an impaired bill and not an implied consent bill would merely water down your drunken driving law. However, if the objective standards are supplied by the implied consent law, I think the impaired bill could be an effective tool in the arsenal of law enforcement.

I would just like to make the over-all observation that there doesn't seem to be any constitutional question with respect to the implied consent bill and I know that the record is now abundantly full of documentation on that aspect of the proposed legislation. However, Mr. Donigan being from Northwestern might not be aware of the case of State versus Blair which is in the latest volume of the New Jersey Reports. That is at 45 New Jersey at page 43, which I call to your attention only in that the New Jersey court recently has, although not squarely on the issue of implied consent - recently has indicated that the taking of a blood sample does not violate any constitutional privilege and in that case an actual blood sample was involved.

Now there is also no question about the fact that drinking is a factor in automobile accidents and in the over-all problem of traffic safety. If it were not, certainly the Legislature would not be justified in considering for passage these bills. But, as you know, under the leadership of Dr. Wilentz in Middlesex County some years ago, the Attorney General instituted a program for examining by autopsy and toxicological examination those persons who were the victims of an automobile accident, that were killed in an automobile accident.

In 1965 in Essex County, there were 32 drivers killed

in automobile accidents and when I say "drivers," I don't mean that we had 32 auto deaths in Essex County. We had over 100. But of that 100, there were 32 drivers involved. Of those 32, 19 were tested for alcohol and again you are aware that if the person lives over six hours after an accident, you cannot make an effective toxicological examination of the body, the brain and the blood for alcohol content. So we tested in Essex County 19 bodies and of the 19, there was evidence of alcohol in 9 of the 19, and in those 9, there was one with a reading of under .05, one with a reading between .05 and .09, two between .10 and .14, three between .15 and .24, and two where the reading was over .25. So I think that those figures which I would like to put on the record are certainly an indication that we have a problem in terms of traffic safety.

SENATOR PARSEKIAN: Was that for a calendar year, Mr. Byrne?

MR. BYRNE: That's right.

SENATOR PARSEKIAN: And what year was that?

MR. BYRNE: 1965.

SENATOR PARSEKIAN: Thank you.

MR. BYRNE: I am sure you will have testimony indicating the alcohol factor in fatal accidents in New Jersey, over all, as approximately 55 per cent.

Now what I would like to address myself to briefly is the practical need for an implied consent bill from the standpoint of law enforcement. And I would like to call the Committee's attention to three or four factors which we think represent an important basis for the passage of this legislation.

First of all, such legislation would give strong impetus to a reduction in trial time in drunken driving cases. I do not come here to say that we would win a significantly larger percentage of drunken driving cases because our experience indicates that we win now somewhere in the neighborhood of 85 per cent of the drunken driving cases where the charge has been made. However, winning those cases represents the consumption of a great amount of time. There are fewer pleas in drunken driving cases. A good many of them go to trial and a good many of them are taken up on appeal and are retried in the county courts. So from the standpoint of saving time in the municipal courts and in the county courts, an implied consent bill with an objective reading would be of significant assistance to us.

Second, there is tremendous pressure on the arresting officer in a drunken driving case. Between the time of the arrest and the time that he testifies in a trial, he is often made aware of the fact that a conviction would represent a tremendous hardship on the defendant in terms of his family, his job, his status in the community, etc. And, as you know, in a good many drunken driving cases, without an objective reading from a drunkometer or breathalyzer the testimony is often subjective to a large extent. I think in a normal case if we had a drunkometer reading, that the arresting officer would have an objective standard which is not subject to change, not subject to anything subjective, that it would be of great assistance to him, which leads me to my third point, which is that there is in a drunken driving case a tremendous need for an objective standard. The New Jersey Supreme Court has been extremely helpful

in raising the status of a drunkometer reading in a drunken driving case to the point where if the drunkometer is shown to be in proper working condition and the test properly administered, a reading of .15 or above is almost conclusive and I think that the case, the State versus Johnson which gave rise to that opinion, by the way, is significant of the whole problem. In that case, there was a defendant arrested who had admitted in the middle of the forenoon to finishing off one bottle of vodka, to going to the store again at around lunch time to purchase another bottle of vodka, being arrested on the way home from the liquor store, and the arrest came to the attention of the officers when the car was driven off the road and on to somebody's front lawn. In that case the defendant consented to a drunkometer test, the reading was in excess of .15 and a conviction was had in the municipal court, affirmed by the county court. The Appellate Division of the New Jersey Superior Court, the Appellate Division, reversed that conviction on the ground that based on all of the conflicting evidence, there was a reasonable doubt as to whether that driver was under the influence and the Supreme Court in reversing the Appellate Division and reinstating the conviction indicated that the drunkometer reading in that case, being in excess of .15, ought to be given overwhelming weight.

So no matter what the evidence is in a drunken driving case, the factors of sympathy and the factors of subjectivity make them tremendously difficult cases and cases in which from everybody's standpoint. if there can be an objective standard, it ought to be imposed. And as you, Mr. Chairman,

pointed out earlier, an objective standard cuts both ways. It makes the case and it makes the case beyond dispute if the law enforcement officer has a case and on the other hand, it disposes of any suggestion of guilt and the tremendous embarrassment of going through a trial to establish guilt if there is no justification for making the charge in the first place. I am sure that in any community you have the experience of someone charged with drunken driving who has been acquitted and it is awfully difficult to remove the stigma of the charge, even though there has been an acquittal.

One further observation I would like to make on the value of this proposed legislation is that it would act as a deterrent. In other words, I do believe that if people driving in this State knew that when driving under the influence of intoxicating liquor they were under an obligation to consent to this type of test or to face the consequences of a refusal to consent, that fact in and of itself would represent and act as a deterrent. For instance, in Essex County we have used to a limited degree the motion picture camera to film drunken driving, and that motion picture camera together with some fairly wide publicity in the form of signs on the highways that a drunken driver is subject to being filmed has in my opinion and from experiences that have been related to me resulted in some deterrence just by reason of the fact that it exists. So I think that this type of legislation would have a beneficial effect in its deterrent value.

SENATOR PARSEKIAN: Mr. Byrne, earlier in your testimony you briefly referred to the constitutional question

and I believe you said in effect that it has been well established that the implied consent law is constitutional. Am I correct?

MR. BYRNE: Yes.

SENATOR PARSEKIAN: And you referred to a New Jersey case where the taking of a blood sample was ruled by our Supreme Court recently to be constitutional. Now we are talking here about a breath test rather than a blood test. Do you believe as an attorney and a prosecutor that the holding in the blood test would within its net refer also to the breath test that is the subject of this implied consent law?

MR. BYRNE: Well, I think to use the Latin expression "a fortiori," for a stronger reason, taking blood, which may represent an actual physical invasion, is not protected by constitutional doctrine; then taking a breath test would not be.

SENATOR PARSEKIAN: Now we have been considering this law in New Jersey for some time, Mr. Byrne, and there is always the cry raised of constitutionality and due process in the face of decisions of Supreme Courts in other states and of the United States. Do you have any opinion as to why that would be raised in the face of the clear holdings to the contrary?

MR. BYRNE: Well, I think when you get an objective standard set up in a piece of legislation or in a procedure, you have taken the uncertainty out of the case. I think there is a great deal of sympathy, despite the problem which the drunken driver represents on the highway, for the drunken driver

by a good many people including legislators. And this is not the first piece of legislation that I have seen objected to for grounds which weren't analytically valid.

SENATOR PARSEKIAN: Now the sympathy is in face of the fact that perhaps 50 per cent of the people killed on New Jersey highways involve automobile accidents in which the driver has been drinking to some extent. Do you think that that sympathy might be misplaced in this regard? Do you think there may be some misunderstanding in the minds of the public as to the extent of drinking involved when a person is either impaired under the proposed legislation, .10 level, or drunk under the existing legislation, .15 level? They don't know what .10 and .15 mean. Do you think there might be some misunderstanding as to what we are talking about?

MR. BYRNE: There could well be and I think the statistics I read to you on the toxicological surveys made on those drivers killed in Essex County indicate that certainly the majority of them had a reading of .15 or better, which is - I don't have it again in terms of drinks - but it is more than what you would drink at the average cocktail party.

SENATOR PARSEKIAN: Now my recollection is, Mr. Byrne, and perhaps it will refresh yours or you could substantiate it, that for a person of say 170 pounds to reach a blood alcohol level of .15 or in other words to become legally drunk within the meaning of the existing law, he would have to take about seven and one-half ounces or seven and one-half cocktails.

MR. BYRNE: I am not sure. I may have that chart in my briefcase.

SENATOR PARSEKIAN: I wonder if Mr. Donigan could tell us.

MR. DONIGAN: That is correct, Mr. Chairman, probably more than that.

SENATOR PARSEKIAN: Probably more. It is a conservative number.

MR. DONIGAN: Yes, at 170 pounds.

SENATOR PARSEKIAN: Now am I also correct that inasmuch as the kidney burns off alcohol --

MR. DONIGAN: The liver.

SENATOR PARSEKIAN: -- or the liver - thank you - burns off alcohol at rates estimated from one-half ounce to three-quarters of an ounce an hour, that in order to achieve that .15 per cent level or the present level which says you are drunk, you would have to take those, say, seven and one-half drinks in quick succession with no time lapse?

MR. DONIGAN: It is one-third of an ounce of pure alcohol per hour.

SENATOR PARSEKIAN: -- which is absorbed?

MR. DONIGAN: -- which is burnt off - burnt up by the liver.

SENATOR PARSEKIAN: So when you say "pure alcohol" --

MR. DONIGAN: -- 200 proof.

SENATOR PARSEKIAN: -- that is 200 proof. And if we took 100 proof, which is higher than almost any liquor --

MR. DONIGAN: Two-thirds of an ounce per hour.

SENATOR PARSEKIAN: -- as a standard, you would be talking of about two-thirds of an ounce an hour. Is it then

theoretically possible for a person to take a cocktail every hour for ten hours and not reach the legal limit? Is that theoretically possible, do you know, Mr. Byrne?

MR. BYRNE: I would yield again to Mr. Donigan.

SENATOR PARSEKIAN: Mr. Donigan, is that theoretically possible?

MR. DONIGAN: That's right. You just figure it out mathematically, if you want to, Mr. Chairman. You figure out that a person who drinks 80 or 86 proof whiskey today, which is the average bar whiskey that you get, and he throws off one-third of an ounce of pure alcohol per hour, if he drinks for ten hours at that rate of just one ounce of that liquor per hour, he will never get up to that point where he has had 15/100ths of one per cent. That is assuming he is a normal individual around 170 or 180 pounds.

MR. BYRNE: Incidentally, Mr. Donigan may not know this, but with our bar whiskey, you only get three-quarters of an ounce they tell me. He would have no way of knowing that.

MR. DONIGAN: Back in our state, Mr. Byrne, the legal amount according to our liquor law is one ounce.

SENATOR PARSEKIAN: Then when we are talking about a person who has a .15 level, the existing legislation, we are talking about someone who has taken - well, it would be pretty hard to achieve it, wouldn't it? If you were drinking a drink every fifteen minutes, I would guess, Mr. Donigan, that you would have to drink about a dozen drinks, wouldn't you, to reach .15?

MR. DONIGAN: That's right. Take a two-hundred-pound man like myself, it would take all of that.

SENATOR PARSEKIAN: Now is my recollection correct that a person at the .30 level might be comatose?

MR. DONIGAN: No, .4 - between .35 and .4.

SENATOR PARSEKIAN: Can you estimate how many cocktails, at three-quarters of an ounce, a person would have to drink, say, one every fifteen minutes, to reach .10?

MR. DONIGAN: I think one could, but I am not that good a mathematician to figure it out in my head.

SENATOR PARSEKIAN: All right.

Mr. Byrne, you talked about the tremendous pressure on an enforcement officer between the time of arrest under a drinking and driving charge and trial. Can you tell me candidly whether in your opinion this has resulted in fewer (1) arrests for the offense and (2) fewer convictions for the offense?

MR. BYRNE: Well, it would not result in fewer arrests because the pressures are not brought until after the arrest. I think that the recognized difficulty in getting a conviction will sometimes make an officer whose department does not have a drunkometer or where a driver refuses to submit to a test -- and incidentally the present law in New Jersey is that it is inadmissible to show in the trial that a driver refused to submit to any type of test, whether physical examination or a drunkometer test. From the standpoint of testimony, I think any enforcement officer taking the stand feels the subtle pressures of what he has

come to know with regard to the defendant.

SENATOR PARSEKIAN: You think then that the implied consent law would be an enforcement tool that would permit more objective handling of drinking and driving charges?

MR. BYRNE: I think where you have an objective standard, you get everybody off the hook.

SENATOR PARSEKIAN: Mr. Byrne, do they in Essex County use the Harger Drunkometer or breath test?

MR. BYRNE: I don't have a list of that. There are only five municipalities in Essex County that use any form of drunkometer or breathalyzer at all. Newark, for instance, doesn't use one, the largest city in the State.

SENATOR PARSEKIAN: Are there any questions that anyone wishes to address, through me, to Mr. Byrne while he is here. [No questions.]

Thank you, Mr. Byrne, very much.

I would like to ask Mr. George Traver, the Executive Director and Executive Vice-President of the New Jersey State Safety Council, to testify.

G E O R G E T R A V E R: Senator Parsekian, I very much appreciate the privilege on behalf of the New Jersey State Safety Council to testify at this hearing and may I make one personal observation and another about the Safety Council?

I have been identified with the organized safety movement in the administrative end of those kinds of activities since 1928 and the New Jersey State Safety Council, despite the fact that New Jersey is one of the smaller states geographically, is the largest and recognized to have the

[You are viewing an archived copy from the New Jersey State Library](#)  
most intensive program in traffic safety as well as in all areas of accident prevention of any State Council in the country. I would also like to put into the record that the New Jersey State Safety Council is entirely supported by business and industry. It is a private organization with no official responsibilities other than those of public education and enlisting public support behind officials in matters in this case to do with traffic safety.

I think you are all aware of the growing seriousness of this traffic accident problem, but I just wanted to make two or three comments for the record. From the year 1943 to 1964, motor vehicle accidents increased from 22,007 in 1943 to 167,717 in 1964, and last year, in 1965, it is estimated there will have been 177,000. That is all accidents.

SENATOR PARSEKIAN: In New Jersey?

MR. TRAVER: Deaths, injuries and property damage.

SENATOR PARSEKIAN: In New Jersey?

MR. TRAVER: In New Jersey.

In the ten-year period from 1956 to 1965, 8,681 persons were killed on New Jersey streets and highways.

In the nine-year period from 1956 to 1964, motor vehicle arrests rose from 323,317 in 1956 to 492,773 in 1964.

Now this figure I think is very significant. The arrests for "driving under the influence of liquor" in this period totalled 28,210 or an average of 3,134 arrests for driving under the influence a year with, in the last year, 492,773 arrests having been made.

It is significant to note that the arrests for driving under the influence of liquor have remained almost static

over this nine-year period while speeding violations rose from 131,404 in 1956 to 164,627 in 1964, and for other violations similarly the number of arrests or summonses were increased. In other words, practically the only arrests that have been made for driving under the influence have come as the result of accidents. I hope that the State Police if they testify before the Committee later will have some figures on this matter. But I believe that I am correct in saying that arrests from observation in this important category are few and very far between.

Dr. Wilentz has testified with regard to the prevalence of alcohol as a factor. We in the Safety Council regard it the major factor in our traffic accident problem in the State. This indicates that it is not being met head-on by our enforcement officials and we feel that the reason is that our enforcement officials, our police departments, do not have the necessary tools, the objective standards, for a determination of these kinds of cases.

The New Jersey State Safety Council maintains a contact with all civic organizations of the State, with all business and manufacturing organizations, and through 13 county traffic safety committees, some of which we have had as long as ten years, with all the county and municipal officials in these 13 counties - and these counties represent 90 per cent of the population of New Jersey. We had an average attendance in 1965 of 339 people at these 13 county traffic committees rather evenly divided between State and municipal officials and representatives of business and

industry and of organized citizen groups. And so far this year that figure has jumped up to an average of 375 persons. There are 2,000 people over all on those 13 committees. They all receive minutes of each meeting and know what is going on and for the past six years every one of our 13 county traffic safety committees have almost unanimously - there have been one or two perhaps in each committee who have had some questions with regard to implied consent or have been opposed to such legislation - but in general 99 per cent of the membership of these 13 committees has for the past six years recommended the enactment of implied consent as the basic need in New Jersey's traffic safety program.

As has been pointed out by others, the implied consent not only convicts the guilty, but it exonerates and safeguards the innocent.

I think I can make this statement on the basis of the contacts I have had in the organized safety movement over many, many years, that the general public will support the Legislature in the State of New Jersey - the general public in the United States will support the Congress - in enacting more stringent, more drastic and more aggressive tools for meeting head-on this growing seriousness of death and injury and property loss on the streets and highways of this State and of the Nation.

Now we don't expect that an implied consent law, if it were enacted in this session of the Legislature, would immediately result in a reduction of accidents. But what we do think is that it would make it possible to carry on a

concerted and uniform program against drinking drivers, drunk drivers, on the State's streets and highways, and to repeat again, in the opinion of these 13 country traffic safety committees of ours and of those responsible for the administration of the New Jersey State Safety Council, we feel that this drinking and driving problem is at the heart of the entire traffic safety problem and that we are never going to get anywhere, other than talk, until we are willing to face up to the facts and take some of these drastic steps that are necessary. And, as I indicated before, I feel very definitely that the public will support you, Senator, and your Committee and the Legislature of this State in taking this very important and, in our opinion, basic step to improve the situation on our streets and highways.

SENATOR PARSEKIAN: Mr. Traver, I notice in the appendix to some data which you submitted to this Committee, there is a chart of information you received from the New York City Police Department, under date of February 11, 1966. And from the years 1951 through 1965, this chart totals the number of tests given and the total refused.

MR. TRAVER: Yes.

SENATOR PARSEKIAN: And it gives the total arrests. It shows that total arrests were 33,000 plus, and total refusals, 8,000 plus or about 25 per cent.

MR. TRAVER: Yes.

SENATOR PARSEKIAN: It is interesting to note that in Mr. Donigan's testimony, he talked about the percentages of refusals in areas where there is not an implied consent

law, and to refresh our recollections, Cleveland had 92 per cent refusals; Mobile, 80 per cent refusals; El Paso, 70 per cent refusals; State Police records in Kentucky show 91 per cent refusals; State Police, New Mexico, 80 per cent refusals. I wonder if you would care to comment on what the implied consent law may have done to induce people therefore to take the test as an objective means of ---

MR. TRAVER: Well, I think, Senator, that the figures underscore the effectiveness of the New York program, with 33,879 arrests and 24,622 tests and 8,338 refusals. In other words, as you say, the percentage of those refusing under the implied consent law which became effective in New York State in 1953 indicates that that has given the New York City Police -- made it possible for them to carry on a more vigorous and more effective program against drinking and driving.

One interesting fact that the gentlemen who gave us these figures, Deputy Chief Inspector Gordon Dale, told us that the New York Police are doing in connection with the drinking and driving program is that they are giving the officers who handle these drinking and driving arrests, the preparation and presentation of the cases, certain credit points toward promotion for their participation and effective functioning in handling these drinking and driving cases, which I think is a very commendable incentive to getting more action.

I think, as you probably know better than I, Senator, that with the exception of the State Police and in a few

You are viewing an archived copy from the New Jersey State Library  
municipalities in the State of New Jersey, there has been little or no concentration on this drinking and driving problem on the part of local police. Practically all the cases that are brought to the court are those resulting from accidents and those from observation have been few and far between because of the fact that the local police departments don't feel that they have the objective standards or the necessary tools to do an intelligent job of handling these cases without an implied consent law.

SENATOR PARSEKIAN: Mr. Traver, I wonder if you want to comment at all on the Safety Council's position regarding the value of the implied consent law to protect the motorists charged without reasonable grounds?

MR. TRAVER: Well, I think that it is perhaps more important from that angle than it is from the standpoint of getting convictions because it very definitely, as I think two or three of the other witnesses have pointed out, protects the innocent as well as making it possible to have objective standards for determining whether a person is actually under the influence of liquor. I think the dialogue you had with Bob Donigan on the matter of the alcoholic consumption that is necessary to arrive at the percentage of blood alcohol content under the suggested implied consent bill or under our present statute which constitutes being under the influence very definitely proves that it is not something that is going to harass people, but it is something that is going to make it possible to get this small, but very dangerous, minority of drivers who do not recognize

that it is a privilege, that they can't take on a load and then go out on the street and operate a car.

SENATOR PARSEKIAN: You just made a point that really eluded us so far in the context of our discussion earlier about how very much drinking it takes to reach "under the influence" level, that we are talking about enforcing law against a very few motorists and that the bulk of the public wouldn't at all be affected by this legislation.

MR. TRAVER: I think that is a fair statement. Drinking and driving is a factor in a very large percentage of our accidents, but I don't think that under the implied consent bill you are going to have any sudden sky-rocketing in the number of people who would come under the .15 definition of under the influence. I think those that have had a drink and still have their heads and their judgment would have an opportunity to objectively indicate that.

SENATOR PARSEKIAN: Are there any questions that anyone wishes to address to Mr. Traver through the chair?  
[No questions.]

Thank you, Mr. Traver, very much.

Is Chief DePhamphilis here? [No response.]

We have four witnesses that will be in this afternoon who are not yet here. They didn't expect to be called until this afternoon. So we have a few moments to start hearing from those who have come in, in order to testify today. May I say if we don't reach everyone, we can certainly do it in succeeding hearings.

May I call first Rev. George W. Lewis, Jr.,  
Executive Director of the New Jersey Council on Alcohol  
Problems.

R E V. G E O R G E W. L E W I S, J R.: Mr. Chair-  
man, my name is George W. Lewis, Jr., 30 West Lafayette  
Street, Trenton. I am appearing on behalf of the New  
Jersey Council on Alcohol Problems. The Council is an  
agency of certain Protestant Church groups within the  
state, including the Methodist, Baptist, Presbyterian,  
Reformed and others.

The Council urges enactment of Senate Bills 8  
and 9.

S-8 is important because the public is not generally  
aware that relatively small amounts of alcohol in the blood  
can seriously impair driving skills even before the driver  
displays the obvious lack of coordination and the slowing  
of reaction time.

With a concentration of 0.10% alcohol in the blood  
a driver may be able to pass the usual physical tests with  
little evidence of lessened ability. But what would not  
be revealed by the physical tests is the extent to which  
his sense of responsibility is affected. This is apparent  
in his lack of judgment and a decline in his awareness of  
the rights of others. He tends to abandon normal precautions.  
He is more inclined to increase his speed, to pass on a  
curve or to try and beat the yellow light. He will insist  
that he has his car completely under control and take  
chances that he would not ordinarily consider if he had not

been drinking. This "super-man complex," which is more likely at 0.10% than in the more advanced stages of intoxication, is a hazard that could be reduced through the enactment and vigorous enforcement of S-8. For these reasons we request favorable consideration of this proposed legislation.

The Council on Alcohol Problems also recommends favorable consideration of S-9. In spite of safety engineering in highway construction and improvement in automobile design the number of injuries and fatalities on the streets and highways in this state has not been reduced. Obviously the human element is responsible for a large percentage of the accidents. Little consolation is to be found in the statistical reports indicating the accident rate per million miles traveled has decreased. The fact that in New Jersey there is in the neighborhood of 1,000 highway deaths each year is a matter of concern. We should be concerned if there were only 500 deaths, or even 100 fatalities annually.

Because the human factor is to a large extent responsible, it is entirely proper that every effort should be made to impress all drivers with the need to drive with care and consideration. Those who disregard the safety and welfare of themselves, their passengers and others using the highways, because of their having consumed alcoholic beverages, must be made to realize their responsibility. Any proper means that may be employed to apprehend, convict and punish such drivers should be employed and it is the considered opinion of this Council that S-9

will help accomplish that purpose.

Legislation similar to S-9 has been enacted in at least 12 other states and in several foreign countries. The results have not been uniform but there is evidence that when drivers are conscious of likely apprehension because of drinking other means of transportation will be employed. In Sweden a host in planning a party will arrange for non-drinking drivers to provide transportation for those of their guests who do imbibe. If S-9 would do nothing more than encourage such a practice in New Jersey it would be an asset.

It is time we give more consideration to the rights of a citizen to operate his car without the constant fear and threat of an encounter with a had-been-drinking driver. The right of an individual charged with drunk driving to refuse taking a test that will indicate his guilt or innocence should not usurp the right of an innocent victim to obtain justice.

To operate a motor vehicle is not an inalienable right but a privilege, a privilege that should be granted only when an individual indicates his willingness to abide by such rules and regulations as will guarantee the safety of others. In our opinion enactment of S-9 will help provide such an assurance.

SENATOR PARSEKIAN: Reverend, I want to get one point clear while you are here. So often when someone comes in from the National Council of Churches or a group of churches perhaps outside of the Council, the cry is raised,

"Well, they are prohibitionists." I didn't understand that from your testimony. You are talking about proper control of drinking and driving.

REV. LEWIS: That is correct.

SENATOR PARSEKIAN: I wanted to clear that up for your benefit and for the benefit of the Committee.

REV. LEWIS: Correct.

SENATOR PARSEKIAN: You touched a point that I had heard discussed many times by biologists and doctors in discussing the drinking and driving law, that a person with a .10 level or the level suggested in one of these two measures --

REV. LEWIS: S-8.

SENATOR PARSEKIAN: [Continuing] -- S-8, for driving while impaired gives the person a super-man complex more so than would the higher level of .15 per cent.

REV. LEWIS: Yes, at points in excess of .15 a person is conscious of impaired ability and will attempt to compensate for that lack of ability by driving more slowly or endeavoring to avoid tail-gating or to show respect for the yellow light, assuming that they can't get through before it turns red.

SENATOR PARSEKIAN: Or perhaps not drive at all.

REV. LEWIS: Correct.

SENATOR PARSEKIAN: Whereas at the lower level, you may have just enough of the bravado to think that you are doing very well or beyond your ability.

I recall some tests taken - and this has been done frequently - of marksmen and they are brought to the target

and they are asked to shoot, of course, and then they are given a shot or two of alcohol and they try again. Invariably the tests show that their ability has been somewhat impaired from their usual. But they seem invariably also to have thought they were doing better.

REV. LEWIS: That is true.

SENATOR PARSEKIAN: Do you care to address yourself at all, Reverend, to the point of whether the implied consent law serves in any way as a protection to that person who has had a social drink or two and is not involved in the higher levels?

REV. LEWIS: Yes, very definitely. Frequently persons will be apprehensive after drinking on the assumption that any test is likely to prove their guilt. For this reason they may be reluctant to comply with the request of law enforcement authorities, a request that could prove their innocence beyond any reasonable doubt. I think the fact that a person refuses to take a test very often infers that they have reason to be afraid that they will fail the test. If we can give assurance that the test is designed not only to convict the guilty, but also to protect the innocent, the public will have greater confidence in such tests and give support for their use.

SENATOR PARSEKIAN: Thank you, Reverend.

Does anyone have any questions to direct through the chair to Rev. Lewis. [No questions.] Thank you very much, Rev. Lewis.

REV. LEWIS: Thank you.

Mr. William C. Gray, President of the New Jersey Grand Jurors' Association.

W I L L I A M C. G R A Y; My name is William C. Gray and I am President of the New Jersey Grand Jurors' Association.

In view of the service that each person who becomes a grand juror renders in his community, the various crime cases which include death by auto have disturbed most of the grand jurors during their service because they find that even after an indictment has been handed up, the guilty person is not convicted and very seldom prosecuted because of the condition existing in the law at the present time.

The Grand Jurors' Associations of the various counties have studied this matter quite thoroughly and feel that something should be done about it, but it is a very technical question for laymen to come up with much of an answer and they realize that the best brains in the State have been working on it for five or six years or more and they were very pleased to learn about S-8 and S-9. They have asked me to come here and present their thinking on this matter.

The constitution and the by-laws of the State Grand Jurors' Association of New Jersey has as one of its objectives the following: to advocate such changes in the legislative rule and the administrative procedure as may from time to time seem desirable. The accident and death rate on our highways is disturbing and whereas reports indicate that more than 50 per cent of the examined driver fatalities were

considered under the influence of alcohol, the need for more effective prevention in driving under the influence of alcohol is obvious. Repeated unsuccessful attempts have been made in New Jersey for passage of implied consent legislation. Such legislation has been passed in 16 states with their constitutionality defended successfully in 6 of these states.

The situation has been studied by the Executive Board of the State Grand Jurors' Association and they have favorably reported such a bill with a recommendation of resolution that the attention of officials and interested persons be called to the fact that the Association, after carefully studying, supports implied consent bills S-8 and S-9.

It is therefore resolved by the Executive Board that the Secretary of the Association be authorized to convey to officials and interested persons this resolution which shows the Association's concern about the situation involving driving under the influence of alcohol and the need for implied consent legislation.

SENATOR PARSEKIAN: Thank you, Mr. Gray.

Mr. Gray, so that we can understand your representation, you represent the Grand Jurors' Association --

MR. GRAY: -- of the State.

SENATOR PARSEKIAN: [Continuing] -- which is made up of citizens who have served on grand juries.

MR. GRAY: Yes. That is imperative.

SENATOR PARSEKIAN: And as I understand it, the

grand jurors have banded into this Association which interests itself in matters of criminal or quasi-criminal activities to express opinions from their experience as grand jurors.

MR. GRAY: That's correct.

SENATOR PARSEKIAN: There was one point that we perhaps might clear up together. Rev. Lewis spoke about 12 states that had implied consent laws; you spoke of 16 and Mr. Donigan of 15. I think the number has risen since, Rev. Lewis, you had your statistics compiled. The differential between 15 and 16 comes from the North Carolina statute which some people consider as an implied consent law and some not, so that it is not a question of not knowing - it is a question of recent legislation. And it is 15 or 16 as you analyze North Carolina.

MR. GRAY: Thank you.

SENATOR PARSEKIAN: I wonder, Mr. Gray, if you could tell us from your experience as a grand juror and from your contacts with those involved in grand jury activities what your opinion is as to the value of the implied consent law to protect those who may be accused unjustly of driving under the influence?

MR. GRAY: Well, speaking personally on that matter, I believe that the drinking will not be reduced. I feel that this will be more of an act to punish a misconduct, I'll say, on the part of anyone who gets drunk and goes out to drive an automobile.

SENATOR PARSEKIAN: My point was: Is it your opinion

from your experience as a grand juror that the implied consent law will serve as a protection to the innocent motorist as well as an enforcement tool against those who may be under the influence?

MR. GRAY: Very definitely.

SENATOR PARSEKIAM: Are there any questions to be addressed to Mr. Gray? [No questions.] Thank you, Mr. Gray, very much.

Is Rev. Samuel Jeanes in the room of the New Jersey Council of Churches?

REV. JEANES: Yes.

R E V. S A M U E L A. J E A N E S: Mr. Chairman, I am Samuel A. Jeanes, Merchantville, New Jersey, the Legislative Chairman of the New Jersey Council of Churches.

The New Jersey Council of Churches urges your support of Senate Bills 8 and 9.

The legislative principles of the Council adopted by all of the member bodies of the Council state in part in the section on beverage alcohol, "We endorse legislative efforts to prevent highway accidents and deaths through the apprehension and conviction of the drinking driver by use of scientific apparatus."

We believe that no avenue should be left unexplored and any workable, legal means of suppression should be employed in every possible way to control the problem of the drinking driver for the public good.

The Council, for a number of years, has supported similar bills. We have considered objections to such

measures for we are not only interested in people but in the rights of people and would look askance at any unnecessary invasion of these rights or any failure to protect them. However, these bills not only seek to protect all of the people but they also protect the rights of those who might be suspected violators.

The President of the United States has recently thrown the light of publicity upon the rising number of deaths upon our highways and I think he used the term "senseless death" when he said this. This past year, New Jersey's record of fatalities continued to advance over previous years.

The National Safety Council has given us the reasons for motor vehicle accidents listing them as (1) Speed, (2) Alcohol and (3) Improper driving. And they claim that about 50 per cent of the fatal accidents have involved drinking drivers or drinking pedestrians.

We believe that these measures will not only do much to curb the drinking driver problem, but they could also provide impartial evidence whereby the law can be enforced. Such scientific tests can be very impartial. Alcohol is either in the blood to a certain percentage or it is not. Such scientific testings would seem to dismiss the possibility of convicting an innocent person.

There have been some objections to similar measures on religious grounds. However, we see no merit to any religious objection to such bills. Religion is interested in saving life - all of life. Indeed, its voice will always be

raised to protect the lives of people against needless death and injury. No religion would countenance its adherence to jeopardize the lives of others by operating a motor vehicle while under the influence of intoxicating beverages.

There may be some who object to the chemical tests recommended by these measures, but there are millions of others who do not object. We would say that the law for the good of all should take a reasonable and average person as a standard and certainly not jeopardize the well being of all for a few who might be abnormally squeamish.

The purpose of these bills is good. They are designed to keep drinking drivers off our highways. This is a good objective for 50 per cent of our fatalities are caused by these drivers who drink. If these bills can save lives, one of which may be your own, then they should become law.

Thank you.

SENATOR PARSEKIAN: Rev. Jeanes, I recall from my readings over the year in some association through the Social Action Committee of the Congregational Church of the great interest that your organization has had in civil rights and in protecting the rights of the individual. In fact, my recollection is that some of the strongest voices and soundest memoranda that have been issued in behalf of the people as a whole against invasion of privacy come from your organization. I think you have probably discussed wiretapping and the whole gamut.

REV. JEANES: Yes.

SENATOR PARSEKIAN: So in approaching this problem, I would take it that you were very careful to inquire as to whether there was an invasion of privacy or an unfair advantage or whether individual freedom was at all affected. Am I right?

REV. JEANES: This is true. This bill has been thoroughly discussed a number of years. Each year that a new bill has been introduced, it has come before our Legislative Committee and again gone to the Department and the legislative principle on this subject is one that has been in operation for six or eight years and every couple of years it is reviewed so that the statement that I quote today would take into consideration the thinking and the approval not of the body of a number of years ago, but as of recent months.

SENATOR PARSEKIAN: And apparently you have considered the question of whether the implied consent law would assist in culling the unfairly accused from that person fairly accused.

REV. JEANES: This is right.

SENATOR JEANS: And you find --

REV. JEANES: We feel that there is protection for the suspected individual. It also protects the innocent person.

SENATOR PARSEKIAN: Thank you. Are there any questions to be addressed to Rev. Jeanes? [No questions.] Thank you very much.

REV. JEANES: Thank you, sir.

SENATOR PARSEKIAN: I think perhaps it might be fair to all if we broke for lunch. I wish we could have gotten all of you in the morning, but it was physically impossible. I hope you will forgive us breaking for lunch. We will return and start promptly at 2:00 P.M.

[Recess for lunch.]

[After Lunch]

SENATOR PARSEKIAN: We will call this hearing to order.

May I ask Mrs. Elgin R. Mayer if she would wish to testify. Mrs. Mayer is President of the Woman's Christian Temperance Union of New Jersey.

M R S. E L G I N R. M A Y E R: Mr. Chairman, I am Mrs. Elgin R. Mayer of Yardville and President of the Woman's Christian Temperance Union of New Jersey, representing more than 4,000 members.

We are glad for the opportunity that you have given us to testify at the hearing on Senate Bills 8 and 9 in reference to alcoholic beverages.

Our women are banded together for the protection of the home and the triumph of the Golden Rule in custom and in law.

The longer we live, the more science is able to prove the Truth of God's Spoken Word in the Bible.

We are grateful for existing laws proving that "Wine is a mocker and strong drink is raging, and whosoever is deceived thereby is not wise." We give God glory that our forefathers established this sovereign state in His precepts and we continue to pray for God-fearing men to be seated in these sacred halls.

Today we have every confidence in you, honored gentlemen of the New Jersey Senate, to know the way of truth in man's use of alcoholic beverages and the wretched outcome of alcohol-caused problems.

The Lord hath said, "Thine enemies shall be as nothing before thee. Wax strong in the faith for the battle is the Lord's."

Yes, you have encompassed this mountain long enough. Therefore, we do earnestly favor the passage of Senate Bills 8 and 9.

Mr. Parsekian and members of the Committee on Law and Public Safety, we thank you.

SENATOR PARSEKIAN: Mrs. Mayer, your testimony has been of a rather general nature.

MRS. MAYER: Yes.

SENATOR PARSEKIAN: Did you bring with you anything of a statistical nature or law enforcement nature?

MRS. MAYER: No, nothing except the Bible. That's all.

SENATOR PARSEKIAN: Are there any questions that anyone wishes to ask Mrs. Mayer through the chair?

[No questions.] Thank you, Mrs. Mayer.

MRS. MAYER: Thank you.

SENATOR PARSEKIAN: Mr. Fred Rosenberg, Safety Director, Motor Club of America.

F R E D R O S E N B E R G: Senator Parsekian, my name is Fred Rosenberg. I am Safety Director of the Motor Club of America, the largest organization of motorists in New Jersey. In addition, I would like to note that I am a member of the New Jersey Youth Commission, although I am not appearing in that capacity this afternoon.

MCA's support of an implied consent law in New Jersey

is not a new crusade. During Senator Parsekian's term as Director of the Division of Motor Vehicles, we strongly advocated passage of such a law, and, as time progressed, we called for immediate implementation of a bill such as S-9 which is under discussion today. In addition to the materials which I submit to you as exhibits, Senator, I call your attention to the yellowed issue of Motor Club News dated October, 1962, which called for an implied consent bill at that time.

This active support is not without careful consideration. First of all, although it might not be necessary to dissect the alcohol and driving problem for this committee, I think that it might serve as pertinent background for our case.

According to information disseminated by the N. J. Division of Motor Vehicles, 469 drivers were killed in 463 fatal accidents in 1964. Of this number, 56 per cent of those who received post mortem examinations showed positive on the blood alcohol tests. And of this number 23 per cent showed a .10 to .14 per cent blood alcohol level, 37 per cent were in the .15 to .24 per cent category and 12 per cent indicated between .25 per cent and over.

We are convinced that the drunken driver is perhaps the most devastating menace on our highways. The figures supplied previously indicate only the driver fatalities. They do not take into consideration his passengers, those in other vehicles who are usually involuntarily drawn into the drunk's horrible wake or to the immensity of the loss

incurred through property damage.

Over the years, since 1961 to be exact, New Jersey's Accident Determination Program has shown that by post mortem examination about 25 per cent of the persons killed in auto accidents are actually too drunk to drive - and last year, according to Attorney General Sills' Office, this figure reached about 300.

Everyone's against drinking and driving - just like everyone is against sin and for education. But, unfortunately too few know what alcohol does to reaction time, eyesight, judgment, driving ability and a person's sense of responsibility. Reproduced on the attached sheet - that would be this small chart - [The chart can be found on page 101 of this transcript] - are the results of a test made recently in South Dakota in which ordinary citizens were chosen as subject. Each drank the type of liquor to which he or she was accustomed and none drank in a hurry. Beer drinkers drank for 90 minutes. Those who used the stronger stuff consumed it in about 2 hours. The amounts of liquor were calculated by the State's Chemist to bring the subjects to around 0.1 per cent blood alcohol and this was done under police supervision on a state course. The test was administered to the six who showed the best scores on the "before" driving run. Tests were composed of the Porto-Clinic for reaction time, breathalyzer and time and penalty points for the course which were scored by high school driver education instructors. The attached tells the story of the outcome of this game. And this is available for everyone in this room.

Thus, by the irrefutable, statistical evidence presented here, we realize that, although the drunken driver is a problem in New Jersey, the question of how to cope with him is the major consideration.

We at MCA therefore see two immediate problem areas. One is implied consent. We believe that our State's law enforcement agencies, from the municipal level to the State Police, are called upon to perform a monumental task. Their job is difficult enough, but to make an arrest on suspicion of drunken driving and then to make it stick weeks later at a trial - without a test as evidence - makes the task that much more difficult. We believe that the implied consent law would serve as a tool for our enforcement agencies and would make the driver more aware of the consequences of over-imbibing before taking the wheel.

Too, we feel that such a law would protect the innocent - the social drinker who takes a nip on a cold evening, who has a drink or two with dinner or who truly has had only a beer or two. No longer would he be put to the embarrassment of court proceedings and interrogation. He would be vindicated on the spot.

Thus, an implied consent law would protect the innocent as well as help to convict the guilty.

Like many other rights in a democracy, a driver's license is a privilege that carries with it enormous responsibility. When we get behind the wheel and accelerate to 50 or 60 miles per hour, we control in our two hands, with our minds and our other physical resources, a luxurious

potential of fun and convenience or two tons of potential death or agony. The choice is ours to make. Either we drive responsibly or are taken off the road. Eleven states have successfully incorporated an implied consent law into their statutes, and statistics prove that it has been helpful in reducing the incidence of drunken driving and driving under the influence of alcohol, thus adding to over-all safety on the highways.

The second area which we strongly support relates to a change in the blood alcohol level at which a person can be convicted for drunken driving. The present level is .15 per cent. We would like to see this reduced to .10 per cent, the figure supported by the American Medical Association and which is espoused in another bill pending, S-8.

Supporting this, I should like to introduce the following facts from the National Safety Council: If a driver's blood level is .05 per cent to .10 per cent (that is about 2 1/2 to 5 ounces of liquor in an hour), his chances of getting into a crash are, on the average, 50 per cent greater than those of the non-drinker. At .10 per cent to .15 per cent, they are 150 per cent higher.

As some wrap-up thoughts, Senator, may I say this: In Montana, during a test period, 48 per cent of drivers killed in auto crack-ups were drunk.

In Westchester County, New York, over an eight-year period, 49 per cent of all drivers in fatal single-car smashups were drunk, and another 24 per cent were on the way or hung over.

In Buffalo, New York, investigators picked a random stretch of road and compared drivers involved in crashes with those who passed by untouched. Result: 55 per cent of those in accidents had been drinking compared with only 13 per cent among those who went unscathed.

Yet for all the well-documented proof, myths die hard. How many times have you heard, "Alcohol doesn't affect me because I've built up a tolerance for it." Or "I can drive as well or better after a few drinks." Or, "One little drink won't hurt me."

Such comments reveal a popular misconception about alcohol and driving. The big problem is not the reeling drunken driver. He's dangerous, sure, but he's not as common as the drinking driver, the one who's had just a few beers or highballs and doesn't recognize that his judgment, reflexes and vision are impaired.

And this, gentlemen, is our case. MCA believes that implied consent is needed now. It will serve both as a tool for law enforcement agencies and will, at the same time, protect the innocent. It will help to reduce accidents on our roads - and so will passage of S-8, which should, in our estimation, also receive the priority treatment.

I would like to thank you for the opportunity of appearing before you today and for the privilege of stating MCA's views. As in the past, the State of New Jersey may expect our complete cooperation in matters relating to traffic safety, and I trust you will find the brochure prepared by MCA's Safety Department, both interesting and

useful.

SENATOR PARSEKIAN: Thank you, Mr. Rosenberg.

Mr. Rosenberg, first with your permission, we would like to include the exhibit or exhibits on the record of the proceedings.

Now can you tell me the number of motorists the Motor Club of America represents in the State of New Jersey?

MR. ROSENBERG: We have on our membership rolls approximately 75,000. This is actually families though. So really our membership actually touches almost a quarter of a million people in the State.

SENATOR PARSEKIAN: Seventy-five thousand motorists are individually represented through you here.

MR. ROSENBERG: Well, there are 75,000 memberships. Now a membership could include a husband and a wife and a driving teenager.

SENATOR PARSEKIAN: So it would be fair to multiply it by two and one-half or three.

MR. ROSENBERG: Yes, sir.

SENATOR PARSEKIAN: Traditionally, Mr. Rosenberg, associations of motorists, such as Motor Club, are quite wary of regulations involving motor vehicle operators. I can recall the outcry when anyone suggests, for example, raising the license fee by fifty cents or a dollar and Governor Rockefeller was pretty badly hurt two or three years ago on this basis. In fact, as Motor Vehicle Director, I found that the associations of automobile drivers were assiduous in keeping away from their constituencies any type

[You are viewing an archived copy from the New Jersey State Library](#)  
of regulation. So your testifying in behalf of your  
association and the 75,000 motorists or family memberships  
is a little unusual. I wonder why. May I suggest, and  
perhaps you can advise me - I am quite aware of the problem  
and the statistics you presented through some association  
with it in the last seven years - are you getting a demand  
or are you yourselves feeling that it is necessary to  
protect your membership against the few who do make it un-  
safe to drive because of drinking?

MR. ROSENBERG: Well, I think it is best to answer  
the question this way, Senator: First of all, we are rather  
unique. Although the Motor Club is expanding rapidly and we  
are currently operating in other states, we are basically  
a New Jersey automobile club and the 75,000 that I indicated  
here this afternoon are residents of New Jersey; the member-  
ships are involved with residents of New Jersey. We have  
at our disposal probably the same statistics that you do  
and we see on a regular basis what this particular problem  
is doing on our highways, the problems that are being caused  
on our highways in this area of drinking and driving. Our  
interests are with the motorists of New Jersey first and  
foremost and only and we feel that it behooves the motorist  
to have these laws in existence. We feel that it will reduce  
the number of accidents on our highways ultimately. This  
is what we are interested in. And we feel that as a motor  
club, as an insurance carrier, we will benefit as these  
accidents are reduced. So actually it is two fold. On one  
side we are talking about the human aspect of it where the

results of highway accidents cause death, injury, etc.; and on the other side, it is the property and bodily loss in terms of dollars and cents.

SENATOR PARSEKIAN: You also are an insurance carrier?

MR. ROSENBERG: Yes, sir, although I am not here representing the insurance company, just the motor club.

SENATOR PARSEKIAN: In your testimony, Mr. Rosenberg, you discuss the number of drivers involved in accidents at various alcohol levels and it was evident that a large number of drivers who were killed in accidents were in the area of .10 to .15 and under today's law there is no presumption that they are either under the influence or impaired in any other way.

MR. ROSENBERG: That's correct.

SENATOR PARSEKIAN: Now this legislation, S-8, is directed to the alcohol level so that attention can be placed on the .10 to .15 level. Now at another portion of your testimony you talked about the driver who has had just a few beers or highballs and doesn't recognize his judgment and reflexes and vision are impaired. Of course, I want to make sure that you and I and the Committee are talking about the same thing. To reach the .10 level, a person of 170 pounds would have to drink about 4 1/4 or 5 highballs in immediate succession.

MR. ROSENBERG: That is precisely why we are favoring the implied consent law, to protect the one side as well as to convict the guilty.

SENATOR PARSEKIAN: Can you spell that out a little?

MR. ROSENBERG: Yes. One of the reasons for our support of the implied consent law is to protect the person who has not been physically or mentally impaired by a small amount of alcohol, but who may have some visibly apparent on his breath or something of that type. This is what we mean when we say we want to see the innocent protected as well as the guilty convicted and we feel the only way that you can determine that is through a test, a breathalyzer test.

Senator, may I make another comment?

SENATOR PARSEKIAN: Yes.

MR. ROSENBERG: In this small chart that I have regarding that South Dakota test, there were, as I indicated, six subjects who were chosen and when their blood alcohol level was brought to .10 per cent, this is the difference in driving penalty points on that state-supervised course. The first figure would be before drinking and the second figure after. The first subject was 72 to 84; the second subject, 94 to 155; the third subject, 54 to 90; the fourth subject, 66 to 75; the fifth subject, 38 to 116; and the final subject went from 101 to 99.

SENATOR PARSEKIAN: So that in every case --

MR. ROSENBERG: Actually that is reversed - 99 to 101. That was an error.

SENATOR PARSEKIAN: What is in error, the chart or the testimony?

MR. ROSENBERG: The chart. I beg your pardon. It

should be before drinking 99 on Subject H; after drinking, 101.

SENATOR PARSEKIAN: So that in every case the driving errors increased after drinking?

MR. ROSENBERG: In every single case, yes, sir, after reaching this blood alcohol level.

SENATOR PARSEKIAN: These levels are all between .10 and .15, with the exception of the last, which is .152, I notice.

MR. ROSENBERG: Yes, sir. That's right.

SENATOR PARSEKIAN: And that area is not at all touched with the presumption under existing law.

MR. ROSENBERG: That's correct.

SENATOR PARSEKIAN: Are there any questions to be addressed to Mr. Rosenberg by anyone present through the chairman? [No questions.] Thank you, Mr. Rosenberg.

MR. ROSENBERG: Thank you, sir.

SENATOR PARSEKIAN: Mr. Richard DePhamphilis, Executive Vice-President, South Jersey Police Chiefs Association. [Mr. DePhamphilis does not respond.]

Detective Hugh Langcaskey, Executive Vice President of the New Jersey P B A,

H U G H L A N G C A S K E Y: Mr. Chairman, in behalf of the 15,000 members of the New Jersey State P B A, I am here to ask you to move along on Senate Bills 8 and 9. We in law enforcement feel that if we have these implied consent bills, it will aid the policemen throughout the State in

doing their duty.

I know that these bills have been in the Senate and in the Legislature here for the last four years and we haven't seemed to come up with anything. We strongly urge at this time that these bills be moved and voted upon by the Legislature.

SENATOR PARSEKIAN: Mr. Langcaskey, you represent the people who really do the enforcing --

MR. LANGCASKEY: That's correct.

SENATOR PARSEKIAN: [Continuing] -- who actually have to come to grips with the problem on the road so you are an important witness. And you represent, as I understand it, 15,000 P B A members.

MR. LANGCASKEY: That's right.

SENATOR PARSEKIAN: Are these all local police or local and State?

MR. LANGCASKEY: These are all local police.

SENATOR PARSEKIAN: All local police and in addition the State Police have their own organization.

MR. LANGCASKEY: The State Police have their own organization.

SENATOR PARSEKIAN: Now can you tell me whether in your opinion as representative of these men there is difficulty in determining when to make an arrest and when not to make an arrest in the area of the driver who may be suspected of drinking?

MR. LANGCASKEY: Yes, there is a difficulty in making an arrest when a driver may have had a few drinks, social drinks, or a man may be taking a drug; whereas if

if we have this implied consent bill, there would be no doubt in mind that when they do go to court, the man could be convicted. By the same token, I have personal knowledge of people who have given permission to have a blood sample taken and the sample is sent up to the State Police lab and when the report was returned to our particular police department, the man was not convicted of drunken driving; the percentage of alcohol in the blood content was not enough.

SENATOR PARSEKIAN: Would you spell out what that means to us?

MR. LANGCASKEY: Well, we had a very serious accident right here in the City of Trenton and a young fellow had been drinking.

SENATOR PARSEKIAN: Well, if I may backtrack, as I understood it, you said that when you would send the subject up to the police lab --

MR. LANGCASKEY: No, we send a blood sample

SENATOR PARSEKIAN: -- a blood sample for a test, you would find he wasn't within --

MR. LANGCASKEY: He was within the legal limits of the amount of alcohol --

SENATOR PARSEKIAN: -- allowable.

MR. LANGCASKEY: -- allowable, yes.

SENATOR PARSEKIAN: So how do you translate that into the benefits of this bill?

MR. LANGCASKEY: Well, the benefit there would be it would also help the motorist. You just asked about a

social drink. If he only had one or two drinks and somebody said he was drunk, they thought he was drunk, and they did take a blood sample or a drunkometer test and proved that he was less than a certain percentage, his ability to drive was not impaired.

SENATOR PARSEKIAN: It would be a protection for that social drinker.

MR. LANGCASKEY: It would be a protection for the social drinker and as I said earlier it would help the law enforcement officer in getting rid of the drunken drivers on the highways.

SENATOR PARSEKIAN: Mr. Langcaskey, earlier there was testimony that increasing numbers of motorists are refusing to take the drunkometer test. There was testimony, for example, that in Cleveland 92 per cent of the motorists apprehended refused and in another city such as Mobile, 80 per cent, and so on, and the testimony indicated that people are becoming more aware of the fact that without a drunkometer test, if they refuse to take it and there is no penalty, they stand a pretty good chance of not being convicted. Can you tell me whether this is the experience in New Jersey or not?

MR. LANGCASKEY: To the best of my knowledge that is the experience, that the man refuses to take the test. We have no penalty for it and he does stand a very good chance of beating the case in the local Magistrate's Court.

SENATOR PARSEKIAN: Are you getting a high percentage of refusals?

MR. LANGCASKEY: Yes, we are quite a bit.

SENATOR PARSEKIAN: And too, there is testimony that the problem is becoming more acute on determining whether or not to charge a man with driving under the influence because of the use of alcohol plus drugs or alcohol plus tranquilizers or alcohol plus a number of chronic illnesses or the possibility that there may be a smell of alcohol and a concussion or a fractured skull, and therefore difficult for the enforcement officer to determine whether there was an "under the influence" case or not. Do you have anything to say in this regard?

MR. LANGCASKEY: There again we have people who are suspected of being drunken drivers and refuse to take an examination. There is no penalty for it. Their defense later on will be as you just mentioned - they had bumped their head, they had a concussion, they had been taking medicine that had been prescribed to them by a doctor that led the policeman to believe they were drunk when they really were not drunk. The policeman has no way of knowing that a man has been taking drugs. Most of them never present that defense until they come to trial.

SENATOR PARSEKIAN: Let's take the other side of that coin where there is a person who actually had the fractured skull or a concussion or prescribed necessary medication and when the police officer apprehends him, he smells alcohol on his breath. Can you foresee a possibility of assistance being needed medically, but instead apprehension for drinking and driving? And can you see where there may be a safety to the motorists because with the test you could find

[You are viewing an archived copy from the New Jersey State Library](#)  
that he does not have an alcohol problem, but it must be something else that needs medical attention? Can you foresee any assistance in this vein?

MR. LANGCASKEY: Yes, I can see that, where a man can be given proper medical treatment. He could be walking around with a concussion not knowing it. This has happened in the past.

SENATOR PARSEKIAN: The reason I ask you is - we had testimony on perhaps the theoretical level so saying. Now you are coming in as a practical, operational police officer and I wondered whether in fact at that level there is truth to the possibility that people who are physically in need of attention or in need of medical attention may be denied it while you go through the process of charging them for drunken driving, whereas a drunkometer test would determine it and you would know there was something else needed here and perhaps get them the attention they need.

MR. LANGCASKEY: That's correct. Quite often when policemen investigate an accident and there is a head injury and a strong odor of alcohol on a man's breath, he is immediately sent to one of the local hospitals here in the City of Trenton. The doctors will never testify or say that the man is drunk. They always come back and say it could be his head injury. Whereas, if they had taken the blood sample or the drunkometer test, they could possibly take the man in court on a drunken driving charge.

SENATOR PARSEKIAN: Are there any questions anyone wants to ask through the chair of Mr. Langcaskey? [No questions.]

Thank you, Mr. Langcaskey.

Mr. Robert Warwick, an attorney, President of the New Jersey Traffic Coordinators Association.

R O B E R T        W A R W I C K,        E S Q.:        Mr. Chairman, ladies and gentlemen: I am Robert Warwick of Long Branch, New Jersey. I am the Traffic Safety Coordinator of the County of Monmouth. I am also President of the New Jersey Traffic Coordinators Association. And I wish to thank the Chairman of the Committee for asking me to appear here this afternoon to comment on Senate Bills 8 and 9.

I believe it is a matter of record that for many years the New Jersey Traffic Coordinators Association has actively supported and urged stronger legislation as is encompassed in Senate Bill 9 and I have polled the members of the organization and am very happy to say that I have received unanimous support of it.

We believe this is basically very good legislation and we hope that the Legislature will look favorably upon it.

I would wish to make one comment and I think it would affect some of the questions that might arise or are in the minds of the people. The Coordinators have voiced their sentiment that they would like to see incorporated in this bill some statement or direction for the establishment of a strict uniform procedure as far as the implementation of the bill, for instance, in the handling of the chemicals, for instance, in the drunkometer - for the accreditation of

hospitals. A strict procedure would protect everyone along the line. It would also make it possible to protect the law enforcement officers on the local level who are going to ultimately administer this piece of legislation and they will make it good or bad as they can. So to give them the maximum support, we would hope that something like that is incorporated. But we have long urged this type of bill and we feel it is very necessary for passage.

Senate Bill Number 8 which concerns itself with driving while impaired - the Traffic Coordinators of New Jersey while looking with favor upon this legislation do have a reservation which I have been directed to bring to your attention. I do not have the facts with me, but I am advised that there was some sort of parallel legislation in the State of New York.

SENATOR PARSEKIAN: There is.

MR. WARWICK: And I was told that the statistics which at first were unavailable were later obtained by the Division of Motor Vehicles here and that they showed that upon the enactment of provisions similar to Senate Bill 8, arrests for impaired driving rose considerably. At the same time and in the same period, arrests for drunken driving plummeted. And while we recognize the desirability of Bill 8, we wish to protect and urge the passage of Bill 9 and the Coordinators believe that perhaps further study should be given to Bill 8 at this time. While they do not deny its validity or their approval of it, they asked me to qualify their stand on Bill 8.

Thank you, Mr. Langcaskey.

Mr. Robert Warwick, an attorney, President of the New Jersey Traffic Coordinators Association.

R O B E R T        W A R W I C K,     E S Q.:     Mr. Chairman, ladies and gentlemen: I am Robert Warwick of Long Branch, New Jersey. I am the Traffic Safety Coordinator of the County of Monmouth. I am also President of the New Jersey Traffic Coordinators Association. And I wish to thank the Chairman of the Committee for asking me to appear here this afternoon to comment on Senate Bills 8 and 9.

I believe it is a matter of record that for many years the New Jersey Traffic Coordinators Association has actively supported and urged stronger legislation as is encompassed in Senate Bill 9 and I have polled the members of the organization and am very happy to say that I have received unanimous support of it.

We believe this is basically very good legislation and we hope that the Legislature will look favorably upon it.

I would wish to make one comment and I think it would affect some of the questions that might arise or are in the minds of the people. The Coordinators have voiced their sentiment that they would like to see incorporated in this bill some statement or direction for the establishment of a strict uniform procedure as far as the implementation of the bill, for instance, in the handling of the chemicals, for instance, in the drunkometer - for the accreditation of

hospitals. A strict procedure would protect everyone along the line. It would also make it possible to protect the law enforcement officers on the local level who are going to ultimately administer this piece of legislation and they will make it good or bad as they can. So to give them the maximum support, we would hope that something like that is incorporated. But we have long urged this type of bill and we feel it is very necessary for passage.

Senate Bill Number 8 which concerns itself with driving while impaired - the Traffic Coordinators of New Jersey while looking with favor upon this legislation do have a reservation which I have been directed to bring to your attention. I do not have the facts with me, but I am advised that there was some sort of parallel legislation in the State of New York.

SENATOR PARSEKIAN: There is.

MR. WARWICK: And I was told that the statistics which at first were unavailable were later obtained by the Division of Motor Vehicles here and that they showed that upon the enactment of provisions similar to Senate Bill 8, arrests for impaired driving rose considerably. At the same time and in the same period, arrests for drunken driving plummeted. And while we recognize the desirability of Bill 8, we wish to protect and urge the passage of Bill 9 and the Coordinators believe that perhaps further study should be given to Bill 8 at this time. While they do not deny its validity or their approval of it, they asked me to qualify their stand on Bill 8.

I have heard some requests for statistics. I believe on the local level there is concern in the populous as to "How is this going to affect me?" As Coordinator for the County of Monmouth for a number of years last past, where I would have 50 fatal accidents in one year, we would have alcoholic factors obtainable on approximately one-half. You must understand that people may linger in a hospital for a certain length of time so a test might not be available. But in the figures which we had - and 50 per cent on an average each year would be tested - one-half of the 50 per cent would be found to contain an alcoholic factor in the blood sample. The interesting thing about this is that when it was present, it was present in such large quantities that sometimes you were amazed why the person was not in a comatose state rather than operating a motor vehicle. That in itself, I believe, indicates the protection that we must give and the need for this bill. I believe that the proper administration of it, the strict procedural requirements, would protect the average motorist, the citizen, and at the same time will protect the law enforcement officer charged with the administering of the law and therefore we wish to urge Senate Bill 9 at this time.

SENATOR PARSEKIAN: Mr. Warwick, I think you were here earlier when some statistics were reviewed by Mr. Rosenberg. I don't know whether you were here this morning. I didn't notice.

MR. WARWICK: I was not, sir.

SENATOR PARSEKIAN: Well, similar statistics were

reviewed concerning alcohol blood counts in various categories. Now under the present law, a person is under the influence if he has .15 per cent by volume of alcohol in the blood or over. There is a presumption of such guilt. And in the .10 to .15, there is no presumption. It seems from the New Jersey studies of the last four years, the alcohol determination program, under which every person killed in a motor vehicle accident whether he is a passenger, a driver or a pedestrian, if he dies within six hours of the accident, is autopsied through a blood sampling, that a very high percentage - I believe usually the highest percentage - of people with alcohol are in that .10 to .15 range as against any other similar range or percentile. This parallels the experience in other parts of the country.

Now there was also testimony to the effect that the person who was really drunk - that's a .15 and over - is in such a state that he perhaps can't drive and therefore doesn't or is so drunk that he realizes he can't drive; whereas, in that slightly lower range, he thinks he can even though he can't.

Finally, let me throw into the balance the fact that in many countries, aside from New York State, that have had experience with this problem, such as Sweden, Belgium, Denmark, France, England, they have lowered to .10 or less - some .08, some .05. I wonder if that background would induce any thoughts on your part about the necessity for attacking that problem.

MR. WARWICK: Speaking personally on Senate Bill 8, I

realize that there are many variables and a person's emotional and physical condition can cause him to be in a condition where he can't drive at .05 to .15. So personally I can speak in favor of it - as far as I am concerned, yes. In fact, in many of your foreign countries it is much lower and I think they are taking the correct approach.

SENATOR PARSEKIAN: We will have next Monday testimony from medical doctors and I believe a representative of the American Medical Association. Do you recall that the standard of .15 was recommended by the American Medical Association in 1938?

MR. WARWICK: Yes.

SENATOR PARSEKIAN: And that was reviewed in 1958 or '59 --

MR. WARWICK: -- and reduced.

SENATOR PARSEKIAN: -- and reduced to .10.

I wonder with all of these agreed-upon premises whether the problem in New York in the change or swap of statistics between convictions in the lower levels as against the upper levels since they put in the "driving while impaired" law was not due to a preference on the part of enforcement officials for convictions with the lower penalty rate.

MR. WARWICK: I think it was a case of the kind officer, the so-called good guy, giving the man the lesser of the two. Of course, I don't know, sir, whether the statistics which were quoted to me, upon which I make my representation, were of sufficient duration to truly reflect

the situation. I am sure the Committee can secure those things themselves.

SENATOR PARSEKIAN: Do you have any reason to believe that we may lose some enforcement because we only have the one category of driving under the influence with the severe penalty without the category of driving while impaired with a lower penalty? Are people, do you think, if you are in a position to know, let out entirely because of the severity of the penalty under the existing law?

MR. WARWICK: Well, human nature being what it is, I would expect, yes, the discretion being there, it would be used. I am very happy to be convinced otherwise, but that I must say is my position now. Of course, we are so anxious to get acceptance of Senate Bill 9, that the Coordinators want nothing to jeopardize its being adopted and properly administered.

SENATOR PARSEKIAN: Mr. Warwick, when you said you had the unanimous support of the members, is that in 21 counties?

MR. WARWICK: Yes. There are some counties which do not have Coordinators presently - I believe, four - but they have State Police assigned where budgets have not been established by boards of freeholders for them. But when I say that I speak for the majority, yes, I polled them before I came here.

SENATOR PARSEKIAN: I don't understand. Do you speak for the 21 counties or 21 minus 4?

MR. WARWICK: I am speaking now of the 21 counties, yes.

SENATOR PARSEKIAN: All twenty-one.

MR. WARWICK: Yes, and the Prosecutor of the County of Monmouth, Mr. Keuper.

SENATOR PARSEKIAN: Are there any questions to be put to Mr. Warwick through the chair? [No questions.]

MR. WARWICK: Thank you very much.

SENATOR PARSEKIAN: Thank you.

Did Richard DePhamphilis come in? [No response.]

Now I have exhausted the list of people who formally notified the Committee that they wished to testify and I have exhausted the list of those who came forward during the course of the day. Are there any others who wish to testify today at these hearings? May I remind you that there are additional hearings next Monday at 10 A.M., at which we will hear testimony from people who have formally requested the opportunity. Are there any others today?

MR. DAVIDSON: I am James Davidson of the Camden County Traffic Safety Committee.

SENATOR PARSEKIAN: Mr. James Davidson of the Camden County Traffic Safety Committee.

J A M E S D A V I D S O N: I will be very brief, not as an expert as there have been so many here today, but just as perhaps a "grass roots" member of one of the committees that Mr. Traver spoke of, the Camden County Traffic Safety Committee, and on each of these committees we have a chairman who is delegated to follow through on the applied consent law.

I would just like to reiterate what has been said

this afternoon. We meet each month and we have police chiefs or their representatives and prosecutors at our meetings and repeatedly they point out the difficulty which they have in obtaining convictions or in even obtaining objective evidence in the case of a suspected driver who is driving under the influence or is driving impaired, and the time that is consumed in endeavoring to bring the case to a successful conclusion, either one way or the other.

I know from my own experience working with our own police force in our community and as a supervisor in employment that it is extremely difficult to get a doctor - doctors are busy as we know - to get a doctor to take time out from his practice to even make a subjective determination of whether or not a person is under the influence of alcohol. A great deal of this, of course, is because the doctor is reluctant to take the time to testify. Again the police officers complain that they are subject to a great deal of embarrassment during cross-examination and interrogation by counsel and this again is because they do not have a positive means of determining what the amount of influence is.

On the other hand, I happen to be a volunteer ambulance driver in the community of Palmyra, New Jersey, and I see the other side of the picture. I have seen many, many cases where innocent persons have been killed or seriously injured because of what appears to be someone driving under the influence of alcohol and again I have to say "appears to be." And this brings us to the point of

protection of the innocent because I know that many times I have been asked, was this fellow that I had taken to the hospital drunk. And I can only say, "I don't know." I can only say, "I did smell alcohol on his breath." But after some of the terrific crashes that we have, there is alcohol all over the road. So I have no means of determining. Then, of course, as a layman I would be unable to say because most of the people that I take in the ambulance have been so badly shaken up that they are suffering from severe shock and their symptoms are very much similar to a person who is under the influence of alcohol.

So as a representative of the Camden County Traffic Safety Committee and as an individual citizen, I would strongly recommend the passage of these two bills, Senate 8 and Senate 9, both for the assistance of police officers in getting off the highway individuals who are not qualified to operate a motor vehicle on the highway at a particular time and for the protection of the innocent person who appears to be intoxicated because of some other reason other than consumption of alcohol. Thank you very much.

SENATOR PARSEKIAN: Thank you. Mr. Davidson, are you in any way connected with law enforcement other than the committee assignment? Are you a policeman?

MR. DAVIDSON: No. I have been a special police officer in Palmyra, New Jersey, but I have not been actively involved. As a volunteer ambulance driver you work very closely with the police officers, but I am not involved in law enforcement as such.

SENATOR PARSEKIAN: Talking about the case where you

are called to the scene and you can smell alcohol and you are asked whether the person was drunk or even whether he was drinking - it wouldn't necessarily mean he was drinking - it is conceivable that a bottle of alcohol could have been involved in the crash and there was alcohol all over the car and his clothes and he hadn't been drinking, isn't it?

MR. DAVIDSON: Yes, it is.

SENATOR PARSEKIAN: Do you think that there may be instances where a person is therefore unjustly accused of being under the influence because of the lack of a scientific test?

MR. DAVIDSON: Oh, yes, I think there are. There could well be cases that an individual would be unjustly accused. While in the final analysis he may be acquitted or charges may never be formally made against him, there is a certain stigma attached to even the accusation, particularly in a smaller community.

SENATOR PARSEKIAN: Were you here this morning, Mr. Davidson?

MR. DAVIDSON: Yes, sir.

SENATOR PARSEKIAN: Are there any questions to be asked of Mr. Davidson from any other persons present? [No questions.]

Thank you, Mr. Davidson.

MR. DAVIDSON: Thank you.

SENATOR PARSEKIAN: Is there anyone else who wishes to be heard today? [No response.] Are there any people in opposition that wish to be heard? [No response.] We haven't heard anybody in opposition yet.

Then these hearings are adjourned until Monday,  
February, 28, at 10:00 A.M., in this same chamber.

[Hearing adjourned until  
February 28, 1966.]

Presented by Mr. Donigan - See page 12

- 2 -

Municipalities

Cleveland, Ohio	92%
Mobile, Alabama	80%
Baltimore, Maryland	73%
El Paso, Texas	70%
Austin, Texas	69%
Lansing, Michigan	69%
Dallas, Texas	60%
Kansas City, Missouri	59%
Tampa, Florida	58%
Chicago, Illinois	57%
Cincinnati, Ohio	56%
Milwaukee, Wisconsin	53%

States

Kentucky	91%
New Mexico	80%
South Carolina	74%
Michigan	70%
Wyoming	68%
Oregon	67%
Oklahoma	66%
Massachusetts	63%
Rhode Island	63%
Texas	57%

The following chart was presented by Mr. Fred Rosenberg, Safety Director, Motor Club of America:

### "Before" and "After" Performance

	Driving Penalty Points	Course Time (Seconds)	Stopping Distance (Feet-Inches) (From 20 m.p.h.)	Blood Alcohol % Just Before Driving As Determined by Breathalyzer	As Determined by Blood Analysis	Observer's Estimate of Intoxication	Average Porto-Clinic Reaction Time
<b>Subject A</b>							
Before Drinking ...	72	111	40-7				.513
After Drinking ...	84	123	52-3	.125	.113	Obvious	.673
<b>Subject B</b>							
Before Drinking ...	94	215	42-7				.413
After Drinking ...	155	177	48-6	.130	.127	Obvious	.437
<b>Subject D</b>							
Before Drinking ...	54	102	42-7				.397
After Drinking ...	90	145	40-6 (speed less than 20 mph)	.105	.103	Slight	.420
<b>Subject E</b>							
Before Drinking ...	66	106	48-6				.453
After Drinking ...	75	129	44-5 (speed less than 20 mph)	.128	.108	Slight	.477
<b>Subject G</b>							
Before Drinking ...	38	110	40-11				.390
After Drinking ...	116	152	50-6	.123	.136	Obvious	.470
<b>Subject H</b>							
Before Drinking ...	101	131	38-6				.290
After Drinking ...	99	125	52-6	.152	.126	Very Obvious	.613

