
Public Hearing

before

SENATE TASK FORCE ON ALCOHOL RELATED MOTOR VEHICLE ACCIDENTS AND FATALITIES IN NEW JERSEY

*“Should blood alcohol concentration at which a person
is prohibited from operating a motor vehicle be changed”*

LOCATION: Committee Room 11
State House Annex
Trenton, New Jersey

DATE: August 19, 1997
10:00 a.m.

MEMBERS OF TASK FORCE PRESENT:

Alexander Menza, Esq., Chairman
Declan J. O’Scanlon Jr., Vice Chairman
Janet G. Alteveer, M.D.
Paul Cymbaluk
Reverend Lonnie Ford
Antonio Martinez, Esq.
Nancy Waller

ALSO PRESENT:

Anne M. Stefane
Office of Legislative Services
Task Force Aide



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ALEXANDER MENZA, ESQ. (Chairman): Ladies and gentlemen, may we get started, please?

This is the first public hearing of the Senate Task Force on Alcohol Related Motor Vehicle Accidents and Fatalities in New Jersey, which was created by the New Jersey State Senate in June of this year for the purposes of reviewing, analyzing, and making recommendations with regard to the entire area of alcohol-related motor vehicle accidents, with particular emphasis, of course, on whether or not the State of New Jersey should change the percentage of alcohol from its current 0.10 figure.

The Task Force anticipates at least two other public hearings. The next public hearing will be in Newark. The date and the place has not been determined as of yet. Permit me, if you will, to introduce now the members of the Task Force.

The Task Force consists of 10 members, including myself. Three members are not here today; they're on vacation. Janet Alteveer, a physician -- Dr. Alteveer. Joseph Bell of Rockaway Township-- He's an attorney. He is unable to be with us today. Paul Cymbaluk -- you might want to raise your hand or something -- is a police officer in Cranford; the Reverend Lonnie Ford of New Brunswick, who is Pastor of a Baptist Church in New Brunswick; Antonio Martinez, Trenton, a sole practitioner attorney; Declan O'Scanlon, who's the Vice Chairman of this Task Force, a businessman, and a councilman; Dr. Robert Pandina -- P-A-N-D-I-N-A -- is the Director of the Center for Alcohol Studies, Rutgers University. He is not with us today. Sara Rosensweig, who should be here shortly, is an attorney; and Nancy Waller of Carney. Ms. Waller is a municipal court administrator of Carney.

My name is Alexander Menza, and I had the great pleasure of retiring on March 31 from the bench. As a matter of fact, the last time I was in this room was in 1959 when I was sworn in as an attorney, and it still intimidates me. (laughter)

We have some written testimony that you have been so kind as to submit to us. We do not have any transcripts that evolved from the committee hearing that considered S-1411 -- that's Senator Kosco's bill -- which was considered in March of 1997, but we do have other written testimony. We encourage you to submit to us any testimony, any reports that you wish to submit to us.

We ask you most respectfully to limit your comments to about 15 minutes, plus questioning from the members of the Task Force. We shall give the two experts about a half hour. They will testify second and third.

The first person who will testify is U.S. Senator Frank Lautenberg, who is with us today and who is sitting at the testifying table -- I guess you call that. I used to say witness stand. I don't often do these things.

So ready to go, Senator?

U. S. S E N A T O R F R A N K R. L A U T E N B E R G: Thank you, your Honor, if I may so address you that way. I guess that title continues out of the past service, especially when it's been a distinguished career like yours.

Mr. Chairman, and members of the Task Force, I want to thank you for allowing me the time to testify about the problem of drunk driving and the way to attack it, and in this case, it's lowering the legal limit at which a driver is considered too drunk.

Now, Senator Kosco, who is sponsoring this bill to lower the drunk-driving threshold from 0.10 BAC to 0.08, issued a challenge to those of us who are testifying in favor of the change. He said he wants just the facts not emotion. I hope that we'll be able to present that information today, because the facts alone persuade me that 0.08 should be the standard not just for New Jersey, but for the entire nation. I've introduced legislation in the Congress to do precisely that. But until my own bill passes, I want our State, my State, to join the 15 other states across this country that have adopted the 0.08 standard.

And make no mistake, New Jersey needs to take action because on this issue we are not a leader. A survey conducted by Advocates for Highway and Auto Safety, the Insurance Institute, and MADD rated all the states on their efforts to reduce drunken and drugged driving. New Jersey was rated a C minus, tied with Louisiana. Only Wyoming was worse. So we were one of the bottom three.

Drunken driving, as some in this room readily know, is a deadly serious problem. Last year, drunken drivers killed over 700 people across New Jersey and over 17,000 people across this country. At that rate, as many people will die on American roads in one year as a result of drunken driving than were killed in combat in Vietnam in the worst year of that war.

Opponents of a 0.08 standard will try to distract you. They want you to believe that those of us who advocate a 0.08 law are targeting social drinkers and are trying to kill the tavern and restaurant business. That's nonsense. Why would we want to kill businesses that serve our community and serve it well? That's hardly the truth, and I'm about to show you why, but

I would ask if we'd be better off allowing the killing of 500 to 700 people a year as an alternative to the notion that we're trying to kill the restaurant-tavern business.

A man of approximately my height and weight could drink more than these four beers (indicating) -- here for demonstration -- in one hour on an empty stomach and still be under 0.08. I mean that's a fair amount of drinking in an hour, and that certainly would allow people to be very social, but they need not with this little extra (indicating shot glass) that puts them over 0.08 typically -- that 170 pound person. These are hardly the standards for the Temperance League.

To break the limit I'd need another beer or that shot of hard liquor all on an empty stomach -- in one hour -- and that, my friends, is not social drinking. I'd still be under the present standard, by the way, of 0.10. Studies show that states that have adopted the 0.08 law have significant drops in alcohol-related traffic deaths.

We have a physician at the table, and I asked her the question before: How many injuries -- serious injuries -- accompanied these deaths? Well, the statistics are not fresh, but I would welcome those statistics, Doctor, and if we can get them from UMDNJ, we'll certainly do that or from whatever source exists here.

A recent study by someone I know, Dr. Ralph Hingson, from Boston University -- who you'll hear from later -- showed that if all states adopted the 0.08 standard, 500 to 600 fatal accidents a year would be prevented, with an even greater number of lives saved and crippling injuries

prevented. That's a conservative estimate. It's authenticated, again, by fact, as you'll hear.

Virginia, after it adopted the 0.08 law, saw a drop not only in traffic deaths, but in drunken driving and under-the-influence arrests. The reason 0.08 laws work is fairly simple. It is at 0.08 BAC -- not 0.10, not 0.15 -- that a person becomes significantly impaired and shouldn't be driving. Currently 41 percent of all fatal accidents in the United States are alcohol related. That's no surprise, I'm sorry to say, because the United States has among the highest legal drunken driving limits of industrialized countries. Canada and Great Britain are at 0.08. And France -- and if you can think of a country that enjoys its wine more than France-- They have a limit of 0.05 because they know the results of driving with a higher blood alcohol content.

When I introduced Federal legislation-- I was the author 15 years ago -- almost 15 years ago -- to make 21 the national drinking age. And, as all of you know, we got it passed. I am a Democrat. President Reagan, a Republican, was in office and cooperated fully with the Secretary of Transportation, then Elizabeth Dole, because we all saw the need to save our young people as much as we could. But at that time, the alcohol lobby made the same arguments that they're -- as the ones you're going to hear today.

They said that lowering the drinking age would make no difference, but there are statistics to confirm that our law saved 10,000 young lives. Think about it. That's 10,000 children who come home from school to a house that's not grieving. That's thousands of parents who tuck their kids into bed at night rather than mourning an empty room.

They said that lowering the drinking age would hurt the restaurant and tavern industries. Well, with the number of new establishments opening constantly, no one can convince me that the restaurant industry is hurting because we raised the drinking age. And I hope that they will see the wisdom of cooperating here instead of fighting it. They can't be happy to know that their resistance to this change may cost somebody their life or cost 500 to 700 people their lives across this country.

They said that the 21-year-old drinking age was not based on science, but scientific studies have shown that if we can keep our kids between the ages of 10 and 20 from abusing alcohol, they become less likely -- far less likely -- to develop drinking problems as adults.

All of us in public life have learned a lesson. The alcohol lobby wasn't frank with us, wasn't telling us the truth before, and they're not doing it now. We have a responsibility to base decisions on the facts, as Senator Kosco proposed, and to make sound decisions that will save lives.

I don't ask you to take my word for it, but listen to the National Safety Council and the National Highway Traffic Safety Administration. We have a booklet here (indicating), which we will distribute, that talks about it and will be, I hope, very persuasive in your analysis. I bring that booklet because it's sponsored by two objective, science-based organizations whose sole mission is safety.

Who else supports a 0.08 limit? It's not just the Federal government. It's the American Medical Association, the American Insurance Association, the American Trucking Association, the National Safety Council,

and the National Sheriffs' Association. Think about who opposes 0.08 and ask why they do it.

I commend each one of you for being of service in this review because what you're doing is important, and that is-- Assuming that you will agree with me -- it is assumed that when you hear the facts you will.

Thanks very much for the opportunity to testify.

MR. MENZA: Thank you, sir.

Are there any questions of Senator Lautenberg? (no response)

Thank you, sir.

SENATOR LAUTENBERG: Thank you very much.

MR. MENZA: Mr. Richard Berman, the American Beverage Institute.

Mr. Berman.

Richard Berman is the first expert who will testify.

RICHARD BERMAN, ESQ.: (speaking from audience) Well, I'm not going to testify too expertly unless I find my case. You can't have an expert without the expert having-- (assistant putting up charts on easel)

I'd like to-- Thank you, sir.

MR. MENZA: Just a moment.

MR. BERMAN: Yes.

MR. MENZA: We have 21 persons who have requested to testify today.

Yes, Mr. Berman, sorry.

MR. BERMAN: I'm going to take the liberty of giving a couple of short responses to some of what--

UNIDENTIFIED SPEAKER FROM AUDIENCE: Sir, we can't hear you.

MR. BERMAN: I'm sorry.

I'm going to take the liberty of addressing myself to some of the -- a few statements that Senator Lautenberg made, because, as with Senator Lautenberg, I'm most--

MR. MENZA: Is your mike on, sir? The red light goes on.

MR. BERMAN: Okay?

MR. MENZA: Now it's on.

MR. BERMAN: All right. I'm sorry.

As I started to say, I'd like to take a couple of minutes to depart from my prepared remarks and to address a couple of the points raised by Senator Lautenberg because I, like the Senator and along with Senator Kosco, agree that this hearing ought to be about evidence. I'm here, hopefully, to present evidence that many of you have not had an opportunity to hear before because the newest statistics from the National Highway Traffic Safety Administration have just been released for 1996. These were released within the last 30 days, and so some of the evidence that we have to present here today was not available for the earlier hearing that was held in March.

Firstly, I'm not here to give you a lot of emotion. I am here to give you evidence. I do find it necessary, though, to, as I said, to respond to some statements that have to do with New Jersey itself. Senator Lautenberg indicated that New Jersey was just above Wyoming and had been given a C minus by MADD as they rate the states. Those ratings are based upon what MADD thinks a state ought to do to reduce alcohol-related traffic fatalities.

It's how well you do compared to their scorecard, but the real scorecard that we need to be concerned about is how many people are killed by drunken drivers and how many drunken drivers are killing themselves.

New Jersey rates number eight among the fifty-one jurisdictions. That's the fifty states and the District of Columbia. New Jersey has the eighth-best record in the United States in reducing alcohol-related traffic fatalities. This is not based on someone's idea as to what they ought to do in New Jersey to reduce drunk driving. This is based on National Highway Traffic Safety Administration -- NHTSA -- based on NHTSA data. So you get a very different picture.

Again, Senator Lautenberg correctly states, and MADD has stated as well, that if you look across the breadth of Western Europe, as well as the Scandinavian countries, Japan, etc., you will find that these jurisdictions have much lower blood alcohol levels for enforcement purposes -- 0.08, 0.05, 0.02 in Sweden. The interesting thing to look at, though, is, once again, not what people say, but what people do. They don't enforce the law and so the laws are meaningless.

The United States has the lowest rate of alcohol-related traffic fatalities compared to all of those nations. So, again, we are doing something right. We're not just passing laws that feel good. Every state in this nation has been lobbied to pass 0.08 legislation. All of these states have passed tough drunk-driving laws since the early 1980s when MADD first got off the ground.

The leadership of MADD in the early 1980s did not support 0.08. They did support the 21-year-old drinking age. Candy Lightner, who was the founder of Mothers Against Drunk Driving, supported the 21-year-old

drinking age and worked with Senator Lautenberg, worked with President Reagan. The organization did a lot of good things and pressed a lot of states to pass tough drunken driving laws. There isn't a state in this nation that was not touched by the early leadership of MADD to put tough drunken driving laws in place.

But, interestingly, most of these states that have passed tough drunken driving laws and in passing them have had to incur some budgetary costs in doing so because of increased enforcement -- most of these states have rejected passing 0.08. And you have to ask yourself why. The answer, which I'm again about to show you in a few minutes, is that the evidence doesn't support arresting people who are at 0.08.

Now, one other thing I'd like to respond to, the Senator did say that there were some elements -- and I know he doesn't mean this across the board -- of the hospitality community that must have opposed 21, etc. Let me tell you, I speak for the hospitality community across the United States, as well as in New Jersey. We represent fine-dining restaurants. We represent family restaurants. We represent people who have taverns.

My organization did not oppose the 21-year-old drinking age. My organization did not oppose 0.02 for underage drinking. My organization did not oppose administrative license revocation. Our organization has uniformly opposed 0.08 and instead has supported tough drunken driving laws for people who are driving at excess levels of alcohol consumption.

I might also add anecdotally that Candy Lightner, the founder of MADD, also opposes 0.08, not because she has somehow turned coat on the drunken driving movement, but she opposes it for the same reason that we do.

It's feel-good, meaningless legislation that doesn't have any impact. And, again, the evidence will bear me out here.

I think the most important thing to look at is where the problem is, because it doesn't make any sense to start looking for solutions until we're all agreed on the problem. If you look at this chart here (indicating) we have national figures on where the alcohol-related traffic fatalities are and where they have been over the last 10 years -- 0.15 and above.

MR. MENZA: Excuse me, sir.

MR. BERMAN: Yes.

MR. MENZA: We're having a little difficulty seeing that. Why don't we bring them up here?

MR. BERMAN: Can you bring them up there? (speaking to assistant) Just bring all the charts up there and the easel.

Do I get a time-out on my 30 minutes? (laughter)

ASSISTANT: Where do you want them?

MR. BERMAN: Closer. Closer to the Chair.

Let me help you. You take the easel. (speaking to assistant) (moving display into center of dais)

MR. MENZA: Right there is fine. Wait just a moment, please.

MR. BERMAN: (speaking off microphone) Should we put them on the other side?

MR. MENZA: Just a moment.

MR. BERMAN: How about if Kristen stands right here and holds them up?

MR. MENZA: Look, we simply can't see-- Just put it somewhere where we can see it. Whatever you'd like. That's fine.

Then you can get up -- after we see it -- you can turn and show it to the spectators, please. (speaking to assistant)

All right, Mr. Berman.

MR. BERMAN: Well, I'll be at somewhat of a loss because I'm going to try and imagine what you're looking at.

But what you can see from that list of BAC cuts is that the 0.15 driver is where the problem is and where the problem has been. The first 0.08 law was passed in 1983 in Oregon. As you can see, 0.08 is not part of the problem, if you were trying to identify what we ought to do about the drunken driving problem nationally.

If you look at the next chart, it should be New Jersey.

MR. MENZA: Show that to the spectators, please.

MR. BERMAN: If you take a look at the New Jersey chart--

Maybe you can flip it around, Kristen, so everybody can see it before I start to describe it. That's good.

If you look at the New Jersey chart, you see somewhat the same pattern. In fact, every state that we've looked at demonstrates the same pattern. The high blood alcohol drivers are the ones who are causing the fatalities to themselves, as well as to others. Again, if we're focused on the problem, we ought to do something about going where the problem exists. I'm reminded of the old line "If you want to go duck hunting, you ought to go where the ducks are." The 0.14-and-above drivers are at the heart of the drunk-driving problem. They always have been, and they continue to be so.

If you flip to the last chart in the series here. Let everyone see it.

What I'm going to show you-- For the people in the audience, what we have here is the number of fatalities by BAC level.

That's fine, Kristen. You can flip it around.

If you notice, the big bar on the graph is BAC levels of 0.14 and above. If you want to know what the relationship is to 0.14 and above to the rest of the accidents that take place with any alcohol in your system at all--

For example, if you see the bar that is on your left -- the smallest bar -- that is trace amounts of alcohol. It's cough syrup territory. No serious traffic safety expert believes that people with 0.01 or 0.02 in their system, who are killed in a traffic fatality, were killed because alcohol was the cause of that fatality. Alcohol-related fatalities is not the same thing as alcohol-caused fatalities.

The government assesses alcohol-related fatalities as an accident where anybody in the accident who was a driver, whether they were at fault or not, had any alcohol in their system. So someone who had one beer in their system driving home and who is sitting at a red light doing nothing except waiting for the light to turn and is slammed into from behind by a perfectly sober driver and is killed -- the person with one beer in their system becomes an alcohol-related traffic fatality, even though they only had one beer in their system and they weren't even moving. So your alcohol-related traffic fatalities is a much larger number than alcohol caused, which is how you get some of those small bars on the extreme left-hand side of the graph as you look at it.

But interestingly, the 0.08-0.09 focus that we're here today to discuss-- The 0.08-0.09 focus, as you can see, is just about the same. In fact,

it's slightly smaller than the smallest -- than the bar at the far end. In other words, it is not where the problem is. The problem begins to take place when you start to go above 0.11, and obviously, it escalates rapidly when you get to the high BAC levels.

Now, the public-- It seems to me that the public has begun to understand this as well. If you take a look at the very last page in the testimony that has been distributed to you, you will see that the major news outlets have begun to identify where the problem is. For the first time, we are no longer talking about drinking and driving. We are back to talking about drunk driving, and everyone, from *The New York Times* to *USA Today*, *The Washington Post*, even Mothers Against Drunk Driving, in the last six months has publicly stated that the problem has become focused on that bar on that graph on your right-hand side, the high BAC driver.

We are focused on the high BAC driver. We have encouraged MADD to focus on the high BAC driver. I have worked with MADD in the past and have worked with them successfully. I have parted company with them on this issue because I don't believe that the 0.08 driver is who we should be arresting.

Now, let me depart, also, for a moment from what Senator Lautenberg had to share with you. This is a six-ounce glass, a six-ounce wine glass. (indicates) I had testified earlier that the six-ounce wine glass is very instructive. A 120-pound woman, I testified earlier -- a 120-pound woman -- drinking two six-ounce glasses of wine over a two-hour period would be considered drunk, subject to arrest, subject to jail, subject to fines, subject to higher insurance rates, subject to private and family humiliation because she

would now be a drunken driver for drinking two six-ounce glasses of wine over a two-hour period. Now, I was criticized earlier -- back in March -- for making this statement because it didn't fit people's description as to what drunk was. And I, quite frankly, was so delighted to again hear that we were going to be in an evidentiary hearing because the two six-ounce glasses of wine over two hours example that I have given you is definitely supported by the evidence.

Let me read to you from a communication that I have received from the National Highway Traffic Safety Administration, from Mr. Jim Headland (phonetic spelling), who is the Associate Administrator of Traffic Safety Programs and who, at first, disagreed with me about our comparison. But the problem is that I was using NHTSA data. I was using the NHTSA software program, which is the NHTSA BAC Estimator, which anybody can get, plug into a PC, and if you put in the right information, you will get out an answer that says what will be the blood alcohol content of any given scenario that you plug in.

Mr. Headland and I went around and around about this because I was very upset that he had told MADD and had communicated to a State Senator in Minnesota that we were wrong and that we were corrupting the evidence. And I visited with Mr. Headland, and we put the BAC Estimator in his computer. And Mr. Headland has a doctorate in mathematics, so we didn't have a very difficult time arriving at the answer. After that meeting, I received this communication from Mr. Headland.

This is dated April 21. Now, let me read it to you. In his cover letter he says, "Per your letter of March 21 and our subsequent conversations, I hope we can use this opportunity to make it very clear to everyone that we

agree on the science of alcohol impairment. To make this precise, do you agree to the statement on the following page? Note that Point No. 4 goes directly to the scenario at issue. If you agree, I have drafted a statement to MADD including it.”

Now, let me read to you No. 4, which goes to the scenario by Mr. Headland. Mr. Headland says, “NHTSA and the ABI agree that the blood alcohol estimator gives the estimated BAC for any combination of sex, body weight, alcohol consumption, and time over which alcohol is consumed on any empty stomach. For example, a 120-pound woman with an average metabolism who has consumed two six-ounce glasses of 13 percent alcohol content wine over a two-hour period on an empty stomach will reach a 0.08 BAC.”

Thirteen percent wine, by the way, is typical wine. Most wines that you get in restaurants are from 12.5 percent to 14 percent. We use 13 percent because it’s obviously typical, and this is a six-ounce glass of wine. (indicating) A typical wine pour in a restaurant is six ounces. You can check this for yourself. Some pour more, some pour less, but typical is six ounces. My point is that what we are here debating is whether or not we should arrest someone who is drinking at this level. These are not people who are at the level described here.

Now, I have talked to people about the scenario that the Senator uses, and it is true, you can come up with all sorts of scenarios by different combinations of body weight and time, and you remember the Senator used an hour. I’ve talked to people in the alcoholism community, and I’ve listened to MADD -- my former friends on this issue -- who talk about four or five

drinks in an hour. The alcoholism community laughs at this stuff because people who drink four to five drinks in an hour -- four to five drinks in an hour, that's one every 12 to 15 minutes for an hour -- do not stop drinking after an hour. They see 0.08 on the way up. They're at 0.08 for a moment in time. They are the ones who stay there for much longer than an hour and drink for two hours and three hours and four hours. How do you think you get to the bar on the graph on the right side? You don't get there in an hour's worth of drinking. People who have a consumption rate that is as rapid as that are not social drinkers. It's imperative that we understand what 0.08 really is all about.

I mentioned Mr. Headland's letter. Let me read to you -- this is a transcript from *The CBS Evening News*. (indicating) May 24, 1997, Troy Roberts, *CBS Evening News*, speaking about the legislation that Senator Lautenberg has introduced -- who, I understand, is doing this in a well-meaning way-- Senator Lautenberg has much of my respect for so many things he does. But in regard to that legislation, *CBS news* says, "The new legislation would lower the illegal blood alcohol concentration limit from 0.10 to 0.08. If that threshold becomes law, the National Highway Traffic Safety Administration says a 120-pound woman who drives after drinking two six-ounce glasses of wine over two hours could be driving drunk."

I'm not making this stuff up. We're talking about very small amounts of alcohol for some people, and we're talking about a penalty system that is designed, that was always designed -- that was originally pursued by Mothers Against Drunk Driving -- designed to go after people who are

criminally drunk, who are blind drunk, who are drinking to two and three times the level.

The average fatality in this country, the average drunken driving fatality in this country is 0.18 percent -- 0.18 percent -- and we're here arguing over whether or not we should be at 0.10 or 0.08. Do you know the difference if we pass this law? The difference between going from 0.09, which will be the new safe level, if you will -- excuse me, the new illegal level -- and 0.10-- Or better yet, the difference between 0.07, which will be the new safe level, and 0.08, which will be the new illegal level-- Do you know the difference in drinking between someone being considered safe, legal, not arrested versus being at 0.08? Do you know what the difference is? You should excuse the expression, if I spit in this glass, that would be the amount of liquid that would be necessary to put someone from 0.07 to 0.08.

We measure blood alcohol by weight, and we measure it in hundredths of a percent -- hundredths of a percent. It takes a sip. It takes less than a sip to go from legal to illegal, and at that point, the penalty is the same as if you had drank a bottle of vodka by yourself. There is no graduation.

We have petitioned the U.S. Congress, and I have petitioned every state that I have testified in, to have a graduated system of penalties. Just like speeding, you go faster, you create more danger; then, obviously, you ought to be subject to tougher penalties. Today, it doesn't matter. You go over the line, it doesn't matter how far over the line you go. It's as if we took people -- if the speed limit is 55, it's saying to somebody we give you the same penalty for going 56 as for going 96. Nobody would think that was smart, but that's what we do. That's what we do in most states, and that's what's going to happen

here. If you keep changing the definition of drunk, you will visit the penalty on a 0.08 drinker that was designed for somebody drinking too much higher levels.

Now, it's most important, again, to understand the evidence. I would like to show you three more graphs.

Before you get to that, Kristen--

Senator Lautenberg indicated that Dr. Hingson would testify in support of 0.08 based on a study that he had done, and I've heard Dr. Hingson testify before to this study. Let me tell you what the studies have been on 0.08, because we're not visiting this for the first time. As I said, states have looked at this for 15 years. And I will give the states who were initially involved in this the benefit of the doubt because they intuitively thought that if you lower the drunken driving threshold, you'll stop drunk driving. So we'll just assume that they didn't have any evidence to go on. But now, as states have seen the evidence, the rate of adoption of 0.08 has dropped off dramatically.

NHTSA studied 0.08. They looked at the first five states, and they looked at six different measures in each of those states where you would expect to find drunk driving going down if 0.08 made a difference. They did something that you would think would be instinctively correct, they looked at a given state, like California, before they had passed 0.08 and then they looked at California after they passed 0.08 and tried to do some comparative analysis. NHTSA looked at the first five states. Six different measures gives you 30 different benchmarks to determine whether or not 0.08 works.

In some of the 0.08 states, on some of the measures drunk driving went down. In some of the states, some of the drunken driving measures indicated that it went up. What NHTSA found was what you would find in a random distribution of experiences without any cause and effect, and NHTSA was unable to show any impact from 0.08. They studied it twice. They did a preliminary study; then, they did a secondary study and could not find any favorable impact in those first five states.

The one state out of the first five that did its own study was California. California passed 0.08 in 1990, along with administrative license revocation. California has subsequently done two studies by the Division of Motor Vehicles in their state on 0.08. California has said, "We cannot find any statistical significant evidence that 0.08 has worked."

MR. MENZA: I have to interrupt you. I don't understand--

MR. BERMAN: Yes, sir.

MR. MENZA: --what you mean by "has worked," and I don't understand what you mean by "impact." May I just interrupt you, Mr. Berman--

MR. BERMAN: Yes, sir.

MR. MENZA: --asking simply this -- and forgive me for doing so-- Your statistics demonstrate that a reduction of 0.08 affects alcohol-related automobile accidents and reduces fatalities?

MR. BERMAN: Our contention is that it does not.

MR. MENZA: Your contention is that reduction to 0.08 does not reduce fatalities?

MR. BERMAN: Correct.

MR. MENZA: Okay.

MR. BERMAN: And if I can-- I'll read to you from a recent newsletter that I received from California by the author of the California study for the DMV. It's just one sentence. They have a lot of bulleted points on this. One sentence says, in studying the California move to 0.08, "There were no reductions in total had-been-drinking accidents attributable to the 0.08 law." I mean, it's flat out, no change.

In fact, interestingly, there was a study done by NHTSA of the California experience which has since been discredited because it was just a projection. They were trying to estimate through a mathematical modeling process what would happen because they didn't have all the evidence in. In that projection, they showed that the blood alcohol levels between 1.5 and 1.9, which is where you get a lot of your drunken driving accidents, that those accidents went up after 0.08.

Now, I'm not here to tell you that when you pass 0.08 that the numbers go north. The point is that 0.08 doesn't make any difference, and what you end up doing is simply arresting people who are not part of the problem, but you don't impact traffic safety.

To go to the studies themselves and to go to the new evidence, I am left now with only one report to refute because the California people have said 0.08 doesn't work and NHTSA says that they can't show through their own study any statistical significance, so we are left with the report by Dr. Hingson.

Dr. Hingson did something different than NHTSA did. He looked at the same first five states, but rather than compare them to each other -- that

is, compare them to themselves, compare California pre-0.08 to California post-0.08, etc. -- he took those first five states and he compared them to what he called "nearby" states. Assuming that if a nearby state had 0.10 and the subject state had 0.08 that if you looked at them over some similar period of time, and because they were nearby they were kind of similar states -- you know, same weather patterns, whatever, I'm not real certain-- But if you looked at these two nearby states, one is 0.08 and one is 0.10, you looked at them over the same period of time, if the 0.08 state was reducing their traffic fatalities faster than the 0.10 state, you could make some assumption about -- 0.08 must work.

And it is off of that study that Senator Lautenberg has suggested that 500 to 600 lives would be saved, which, by the way, if it were true, would be more effective for that target population than the predicted savings of lives on a percentage basis of wearing seat belts. So this has got to be some pretty powerful stuff if you're going to save 500 to 600 lives over a relatively small population of people who you are now newly targeting.

So what have we got here? We've got the five-state comparison, but--

Kristen, if you'll flip over to the next chart.

Every one of these comparisons to a nearby state was, in fact, a nearby state except one. We looked at the State of California and we compared it to the nearby State of Texas. Now, I'm going to tell you that Texas-- Unless you've got a different map than I do, Texas does not border California. It is not a nearby state. In fact, Texas is as far from California as Wisconsin is to Virginia. And when we had another analysis of Dr. Hingson's

study looked at, what we found was that when you compare California to Texas, you change the results of the study. In other words, if you only looked at the first four states or the first four pairs that were truly nearby states, you would not get anything that said 0.08 works. But when you inject in the California-Texas comparison, when you inject in that one comparison, then, all of a sudden, the study proves that 0.08 works.

Now, the interesting thing about this is that California said that it doesn't work in their state. But because Dr. Hingson compared California to Texas, he proved that it did work in California because California did better than Texas. But out of the 51 jurisdictions, who do you think is number 51? Texas. Any state compared to Texas would have looked good. And so California-- When the California pair is put into this study, the whole study comes together. When you take California out, the whole study comes apart.

Now, if you look on that one graph that we have there, we asked Dr. Scopatz, who is a researcher -- he is a traffic safety researcher-- We asked Dr. Scopatz, from Data Nexus, to take a look at this report. Dr. Scopatz presently is developing for NHTSA a training program on the analysis of traffic safety data. So he's not just some doctor. He is a traffic safety expert employed by NHTSA. We said to Dr. Scopatz, if we don't compare California to Texas, what would be a nearby state to compare to? And, of course, the closest nearby state that is at 0.10 is Arizona. So we compared to Arizona, and the study falls apart.

Well, we said, "Arizona is not really fair because Arizona is not really like California," but then again, nobody's like California. Think of another state that's just like California to compare it to. It's not like doing

New Hampshire and Vermont or something like that or New York and New Jersey.

So we asked Dr. Scopatz what to do, and he said he would make a mythical state. He would take three states -- and you see them there-- (indicating) He would take the states of Michigan, Ohio, and Pennsylvania and combine them as if they were one state, and he would do what Dr. Hingson was trying to do, and that is, he would find an assortment of states who together would most mimic California in population, in land mass, in population density, and, most importantly, would mimic the State of California in the number of total fatal crashes in 1994, so that they had basically the same accident rate, which is most important.

When you take the phantom state of Michigan, Ohio, and Pennsylvania and compare it to California, guess what happens again? The study falls apart. There is no effect from 0.08, and I tell you again Dr. Scopatz is one of the best-known researchers on traffic safety analysis in this country and is employed by NHTSA to do this very same thing.

Well, this leaves us with just one other body of evidence.

If you can flip over there, Kristen.

This chart (indicating) is only made available because of the 1996 data. And now I'm going to give you the layman's version of 0.08, because, again, we're looking backwards. Hindsight is 20/20. California didn't have the benefit of hindsight. Most of these states that went to 0.08 did not have the benefit of hindsight; New Jersey does. New Jersey, who is ranked eighth in the nation, has the benefit of hindsight to see what the smarter -- the so-called smarter states have done who went to 0.08.

So I looked at the 0.10 states, which is the first bar that you're looking at up there. I looked at the 0.10 states comparing their 1995 versus 1996 fatality rates and saw how many of them were doing better in 1996 versus 1995 and how many were doing worse. Seventy percent of the 0.10 states improved their rankings relative to the rest of the country; 25 percent of the states worsened -- the 0.10 states, 25 percent of them worsened.

In the 0.08 states, only 28 percent got better and 57 percent got worse. In other words, the rate of worsening in the 0.08 states year to year was double the 0.10 states. And the 0.10 states that got better, got better by more than twice the rate than the 0.08 states got better. In other words, 0.10 states are doing much better year-to-year improvement 1995 to 1996 than the 0.08 states.

Lastly, to take another slice of the data that, again, just became available, I looked at all of the states that had 0.08 in 1996 -- you had to have 0.08 on January 1 of 1996 -- and looked at the average for the United States, and we asked ourselves, "How many of the 0.08 states are in the top half of the United States, and how many of the 0.08 states are in the bottom half?" Assuming that because most states have put tough drunken driving laws in place, and this is the only real big difference that we're arguing about in this 0.08 issue, you would expect to find that the 0.08 states were doing better. They were at least in the top half.

And guess what we got? What economists call a coin flip. You've got seven of the fourteen states that had it in the top half, and you've got seven in the bottom half. Exactly what you would expect if you flipped a coin.

MR. MENZA: Mr. Berman?

MR. BERMAN: Yes, sir.

MR. MENZA: Would you conclude, please?

MR. BERMAN: Yes, sir.

I'm going to show you one last graph. It's a very simple one. I told you that New Jersey was ranked number eight in the nation. This last graph that you're looking at shows the top 10 states for having the lowest alcohol-related traffic fatalities in the United States -- the top 10 states, lowest alcohol-related traffic fatalities: 8 of them have 0.10; 2 of them have 0.08. And in New Hampshire, which is one of the 0.08 states -- passed 0.08 back in 1992 and only got into the top 10 states this year, so it clearly wasn't the result of 0.08 or they would have been up there earlier. The only state that has consistently been in the top 10 with 0.08 is Utah. All of the other states that have the best record in reducing alcohol-related traffic fatalities have 0.10.

If this is an evidentiary hearing, there is enough evidence here to suggest that 0.08 is not working and that arresting people with relatively low levels of alcohol, who are not causing traffic accidents, is not the way to improve traffic safety in this country, and it's not the way to improve traffic safety in New Jersey. I would suggest -- strongly suggest -- that we would love to work with the Task Force developing further information for you if you would like to target the high blood alcohol content driver, because that's where the accidents are. It's where the problem is. And we think, most emphatically, that if we go to where the ducks are, we'll be successful in this duck-hunting mission.

Thank you, sir.

MR. MENZA: Yes, sir.

Yes, Doctor.

DR. ALTEVEER: Mr. Berman, I have several questions about your references.

MR. BERMAN: Yes, ma'am.

DR. ALTEVEER: When you talk about 120-pound female and, I believe you said, one six-ounce of wine in one hour -- I believe you said two glasses over two hours--

MR. BERMAN: Two six-ounce glasses of wine over two hours.

DR. ALTEVEER: What is your reference? What is your source for that? Because I believe that's a variance with many other published graphs.

MR. BERMAN: Well, I'm sorry, I might have gone too fast, but my source is NHTSA. It's the BAC Estimator. It's a software program, and that's when I was reading Dr. James Headland--

DR. ALTEVEER: Is that peer reviewed, published?

MR. BERMAN: Oh, this is the standard. This is what NHTSA uses to publish all their-- I can't tell you if it's peer reviewed, but I know NHTSA stands by it. This is the NHTSA document that says-- They have even a published document as to how to use the BAC Estimator. They talk about how it was developed. It is the bible, if you will, that NHTSA uses to determine blood alcohol.

DR. ALTEVEER: Okay, and when you said that the difference between going from 0.07 to 0.08 was a spit in the glass, what is your reference for that?

MR. BERMAN: Well, the reference is, again, the NHTSA BAC Estimator. You see, when you use the Estimator, you can't use a drink. I'm

very disturbed by the people who use a drink -- a drink is a drink is a drink -- a glass of wine, a bottle of beer, a mixed drink, because there are so many variances there. Is the mixed drink 80 proof? Is it 86 proof? Is it 90 proof? Is it 100 proof? Is it light beer? Is it ice beer? Is it draft beer? Is it regular beer? Is the wine a wine cooler? Is it merlot, which is 14 percent? So we're very specific--

DR. ALTEVEER: What is your reference?

MR. BERMAN: My reference is the BAC Estimator. The BAC Estimator talks about a drink being equal to 0.54 ounces of alcohol. Now, when you get to 0.54 ounces of alcohol, you're first talking about a drink. And then, you have to do your conversions. If you take a--

DR. ALTEVEER: I believe I just asked you for your reference.

MR. BERMAN: Okay.

DR. ALTEVEER: When you talked-- I have two more questions.

MR. BERMAN: Sure.

DR. ALTEVEER: When you talked about states getting better and states getting worse--

MR. BERMAN: Yes.

DR. ALTEVEER: --were these changes statistically significant? In other words, you can have a change from 330 to 331 and you could say that was better, but that might not be statistically significant. What is--

MR. BERMAN: When you ask me-- I talked about a lot of references to states moving around. So is there a specific reference that I made?

DR. ALTEVEER: Yes. When you talked about 70 percent of the states that have 0.10 improved their rankings.

MR. BERMAN: Right.

DR. ALTEVEER: Were those changes-- Were those based on simply numbers, or were those changes statistically significant?

MR. BERMAN: It's basically what MADD does. It's basically ranking the states in relationship to each other, and when you go down the list and NHTSA gives you your alcohol-related traffic fatalities -- here's the best, here's the lowest -- and we just rank them in order.

DR. ALTEVEER: So they were based on raw numbers?

MR. BERMAN: Certainly, it's based on raw numbers, yes.

DR. ALTEVEER: So it might not be statistically significant changes?

MR. BERMAN: Well, New Jersey is number eight, and I'm not suggesting that is a change one way or the other. It is number eight in the country. It could have been eleven last year. In fact, I have the numbers going back for four years if there is a particular state that you're interested in. But generally the better states have been better for a while and the worst states have been worse for a long time.

DR. ALTEVEER: And my last question, if you'll bear with me, on your graph about New Jersey--

MR. BERMAN: The second graph.

DR. ALTEVEER: The second graph, right.

MR. MENZA: The second graph.

DR. ALTEVEER: What are the values on the Y axis? In other words, going up and down, what are those numbers?

MR. BERMAN: Those are fatalities.

DR. ALTEVEER: No, what are the numbers?

MR. BERMAN: I don't have those numbers because we do those for every state. I can get them for you. I can give you--

DR. ALTEVEER: I'd appreciate that.

MR. BERMAN: Absolutely.

DR. ALTEVEER: Thank you.

MR. MENZA: Is there anything else? (no response) Is there anyone else?

MR. O'SCANLON: I do actually have a question.

MR. MENZA: Yes, Mr. O'Scanlon.

MR. O'SCANLON: When we talk about fatality rates, there is nothing on the graphs here to indicate what you would expect in the general population. In your first graph, you showed us with the bar way to the right at 0.14 and higher being dramatically higher. I wonder if we carried the graph out to the left, is there an automatic increase even with trace amounts of alcohol, or what would we expect from the general population?

MR. BERMAN: If you carry the-- Now, the graph out to the left -- the one with the trace amounts of alcohol?

MR. O'SCANLON: Yes.

MR. BERMAN: Now, you say-- I didn't hear the question.

MR. O'SCANLON: I'm wondering what we would expect from the general population without alcohol at all.

MR. BERMAN: Oh, so if you had one more bar?

MR. O'SCANLON: Yes.

MR. BERMAN: Oh, it goes way up. Because the next bar over to the right, which is no alcohol, would be the tallest bar on the graph.

MR. O'SCANLON: Over to the left. Okay, so there's no way for us to figure the-- Okay. I understand.

MR. MENZA: Mr. Berman, let me understand something. The bottom line in your testimony is that reduction to 0.08 has absolutely no affect on alcohol-related accidents.

MR. BERMAN: Correct, and has not had any as you look backwards over states that have--

MR. MENZA: And that's been demonstrated, you say, in other states?

MR. BERMAN: Absolutely.

MR. MENZA: All right. Thank you very much.

MR. BERMAN: Thank you, sir.

MR. MENZA: Oh, I'm so sorry.

Mr. Martinez.

MR. MARTINEZ: Mr. Berman.

MR. BERMAN: Yes, sir.

MR. MARTINEZ: It appeared to me from your testimony that in your studies you might have done some pre and post numbers on the states, per se, when they changed from 0.10 to 0.08 such as in California?

MR. BERMAN: We didn't study California. My references to California were the California studies themselves.

MR. MARTINEZ: But you made reference to the fact that when Dr. Hingson made his study, instead of doing pre- and post-California, he did them in comparative studies with different states.

MR. BERMAN: Nearby states, yes, exactly.

MR. MARTINEZ: But you don't have the figures, then, for pre- and post-California, pre- and post-New Hampshire.

MR. BERMAN: Actually, in our testimony there is a report by a Dr. Latham, who talks about the NHTSA study that did the pre and post in California, and I think you'll find references in there.

MR. MARTINEZ: Thank you.

MR. BERMAN: It's a brown-covered study there.

MR. MENZA: Is there anyone else? (no response)

MR. BERMAN: And if it's not there, Mr. Martinez, I'll be happy to supply it to you.

MR. MENZA: Mr. O'Scanlon.

MR. O'SCANLON: The information you had in front of you regarding Mr. Headland's comments, I don't think that's in the testimony.

MR. BERMAN: It is not, and I'll tell you-- You'll all be interested in this. This is kind of a funny situation here. Mr. Headland and I went around and around on this when he told me I was lying, and I used the BAC Estimator and I thought this is ridiculous. How can I be lying when I'm using the government's own statistics? So he sent me this fax. And he sent me this fax and he said, "Now, you understand I'm not authorized to send you this fax, but I want to get to a point where we can all agree on this." So he sent me the fax, and he said, "Will you agree not to distribute it until it is authorized?"

The political shop at NHTSA refused to authorize it because politically NHTSA is in favor of 0.08, and so, in all fairness to Mr. Headland, I have never distributed his statement, but I will be happy to let you read it and look at it and you can see that it is signed by Mr. Headland, etc. But I'm trying to be fair to him when I said I wouldn't distribute it.

But, again, I read to you *The CBS Evening News* report because -- as further evidence -- when *CBS Evening News* wanted to resolve this problem, I said to them, "Call Mr. Headland at NHTSA," and they called Headland at NHTSA. They got the same information, and that's why it was broadcast on national news.

MR. MENZA: Is there anyone else? (no response)

Thank you very much, sir.

MR. BERMAN: Thank you.

MR. MENZA: Senator Lautenberg has asked the Chair to testify in response very briefly.

SENATOR LAUTENBERG: (speaking from audience) I promise I'll be brief.

Mr. Chairman, I thank you very much, because I stayed out of courtesy to Mr. Berman and realized that I had given him a platform, which he, in many cases, chose to trivialize and dismiss. And I would summarize some of the things that I heard Mr. Berman say-- Unfortunately, Mr. Chairman, and members of the Task Force, you're going to hear from other witnesses who have developed a lot of this data, and you'll have a chance to confirm or challenge their veracity.

But what I heard Mr. Berman say I found almost shocking, because twice the Chairman asked a question about 0.08 and its effects and fatalities, and he dismissed it as having any influence, and I guarantee you that if you look at the fatalities from traffic accidents -- alcohol related -- that you will find people who had the difference between 0.08 and 0.10.

And I personally appeared with a family from Maryland where the mother saw her daughter killed by a woman driving whose blood alcohol content was 0.08. The name is Frazier. (phonetic spelling) The child who was killed was Stephanie. And her sister -- the older sister-- The child who was killed, I'm sorry, was Ashley. The child who testified was Stephanie -- at a conference that we had. And it was among the most painful versions of a family tragedy that I listened to. The people with the cameras from the television studios had tears rolling down their faces. And the woman who killed that child had 0.08.

I must say, it was less than amusing to listen to Mr. Berman talk about semantic differences and scare tactics and arrests, and you had visions of someone in handcuffs being led away. The problem is that we have seen a reduction in enforcement in these cases -- in these states -- and that's why you see a decline, perhaps, in the number of arrests or the number of involvements with 0.08-impaired drivers.

But lastly, I would say this, Mr. Berman was very careful to try to differentiate between the person who was behind the wheel of a car and someone who might have had over the tolerable limit who wasn't involved. Does that excuse the erratic driving that may have caused an innocent person to go off the road, stop too short, get hit from the back by someone else, be

moved one way or the other by the actions of someone driving who wasn't directly involved in the killing at the moment but who very well could have been the cause of a fatal accident? I'm just--

I'm pleased that you're going to have a chance to hear Dr. Hingson and people from MADD and have a chance to review some of the NHTSA testimony. It challenges directly the things that we heard Mr. Berman dismiss almost as incidental matters.

I thank you, Mr. Chairman.

MR. MENZA: Mr. Martinez.

MR. MARTINEZ: Senator, am I to understand, do you challenge the testimony given by Mr. Berman that a 120-pound woman over the course of two hours consuming two six-ounce glasses of wine that contained 13 percent alcohol by volume would be at 0.08?

SENATOR LAUTENBERG: I do challenge it, and we'll have an opportunity to hear from those people whose function is to analyze these from a more scientific perspective than I have.

But I would ask Mr. Berman this question: What in the world is the difference if this 120-pound woman reaches 0.08 in an hour or two hours or has consumed less alcohol? If she's at 0.08 blood alcohol content and she's out there on the road, she is a threat. I haven't heard Mr. Berman say that there is no impairment at 0.08. What he's done is defend what he saw was a statistical challenge to that which is -- to the information that we have.

MR. MARTINEZ: Senator, that takes me back to the first time you testified, and if I'm not mistaken, I heard you testify that the difference

between a 0.10 and a 0.08 would be that the 0.10 was too drunk. Implicit with that would be a recognition that a 0.08 is drunk, but that's fine.

SENATOR LAUTENBERG: The suggestion is that at 0.08 impairment begins to take place, and that anything above that can make it worse. But of 17,000 lives that are lost on the highway to alcohol-related accidents are we to say, as Mr. Berman implied, that the number, whether it's 500 to 600 or whether it's only 50 dead people out there, doesn't really matter? The fact is, that there is impairment that has begun at 0.08, and you'll have a chance to hear from Dr. Hingson and others who will give you the information that, I think, is far more reliable than we heard just now.

MR. MENZA: Is there anyone else?

MR. O'SCANLON: Please.

MR. MENZA: Mr. O'Scanlon.

MR. O'SCANLON: Senator, you mentioned just a few moments ago that the reason why some of the 0.08 states that Mr. Berman brought up got worse was due to a reduction in funds spent on enforcement. I'm wondering if you have any data to substantiate that or that's just a guess.

SENATOR LAUTENBERG: Mr. O'Scanlon, I say that that could be one of the reasons. We do know that nationally that there has been a reduction in enforcement. We have seen traffic fatalities overall curbed or reduced, but alcohol-related crashes -- fatal crashes -- have increased. It is said by NHTSA -- and we'll get you the data -- that it's due largely to less enforcement of the rules.

MR. MENZA: Is there anyone else? (no response)

Thank you again, sir.

SENATOR LAUTENBERG: Thanks.

MR. MENZA: Dr. Ralph Hingson, please, of Boston University.

(charts being set up on easel) We have the charts attached. Don't worry about it.

Dr. Hingson, please try to stay within the half hour.

R A L P H W. H I N G S O N, Sc.D.: I'm sorry, sir?

MR. MENZA: Try to stay within the half hour time frame.

DR. HINGSON: All right, I will.

MR. MENZA: Thank you.

All right, Doctor.

DR. HINGSON: Thank you.

Let me introduce myself. My name is Dr. Ralph Hingson. I'm Chairman of the Social and Behavioral Sciences Department at the Boston University School of Public Health. I currently serve on the Committee on Alcohol, Drugs, and Traffic Safety for the National Transportation Research Board. I'm a reviewer for the National Institute of Health on their research review Committee on Community Interventions and Prevention, and I'm a member of the National Board of Directors of Mothers Against Drunk Driving.

I would like, today, to comment on proposed 0.08 legislation in New Jersey -- lowering the limit from 0.10 to 0.08. I would like to first review the literature on alcohol consumption and driver impairment; secondly, comment on a study that you have already heard about that we published in the *American Journal of Public Health* looking at the first five states to adopt 0.08 legislation; and time permitting, I would like to share with you some data from my own state of Massachusetts which adopted a 0.08 law in 1994.

Before I begin my testimony, I would like to make a couple of corrections in the testimony that you heard from Mr. Berman. First of all, Mr. Berman claimed that European countries have higher proportion of fatal crashes that involve alcohol than the United States. There may be some European countries that have higher proportions, but there are also European countries that have lower proportions. What's important here is whether or not the proportion of fatal crashes involving drivers with blood alcohol levels at 0.08 or 0.10 or higher go down after one passes legislation that lowers the legal limit. Secondly, he said that New Hampshire passed its 0.08 law in 1992. That's incorrect. I actually testified in New Hampshire in 1993 when they passed that law, and the law went into effect in 1994.

Ten years ago -- and in the red packet which I have presented to you, you will have this document -- the Council on Scientific Affairs for the American Medical Association reviewed the existing scientific literature about alcohol consumption and driver impairment. In that document, they concluded and recommended that all states should adopt 0.05 as the legal criminal, per se, blood alcohol limit. They also encouraged all states to adopt administrative license revocation. There are now 15 states that have adopted criminal, per se, 0.08 legislation, and my own state of Massachusetts adopted a 0.08 administrative license revocation law with a presumption of intoxication.

According to the National Highway Traffic Safety Administration, someone my size -- I weigh about 160 pounds -- would have to consume four drinks in an hour on an empty stomach in order to reach 0.08. They also indicate -- and it's in the *Setting Limits, Saving Lives* booklet that the Senator

distributed to you -- that a 137-pound woman would have to consume three drinks in an hour on an empty stomach. If either that woman or that man had been eating, the amount of drinks would have to be considerably higher. I have also included in your red packet an *Alcohol Alert* from the National Institute on Alcohol Abuse and Alcoholism where they reiterate that it would take four drinks in an hour for a man to reach a 0.08 legal blood alcohol limit.

The question here, of course, is whether or not somebody is impaired at 0.08. I suppose if you give somebody a big enough wine glass and have a high enough alcohol level in it that you can get a 120-pound woman up to 0.08-- That's not the issue here. The issue is whether or not, if someone my size consumed four drinks in an hour on an empty stomach -- if you want to get in a car with me or if you would want someone to get in a car who reaches the same blood alcohol level that I would reach after consuming that amount. It seems to me, if the hospitality industry varies in terms of how large their wine glasses are, people ought to be concerned about how much wine they're drinking when they receive the drink.

There is evidence from a variety of different types of studies that there is impairment at blood alcohol levels well below the 0.10 legal standard here in New Jersey. That evidence comes from experimental laboratory studies.

Are you showing the chart with that? (speaking to assistant)
(affirmative response) The next one, there.

It comes from experimental laboratory studies, from driver simulation and road course studies, and roadside observational studies. All of

those studies show impairments on important driving functions such as peripheral vision, complex visual tracking, divided attention, and the like.

The next chart is a chart put together by the National Highway Traffic Safety Administration that shows that even at levels as low as 0.02 or 0.04, there is a reduction in important tasks that are needed in driving such as choice reaction time or simple reaction time or emergency response.

Perhaps the most compelling study in my mind, in the literature on this, was published after the American Medical Association document, which I have given you, from the Council on Scientific Affairs. That was a study that was published in the *Journal of Studies on Alcohol* -- and I believe that Dr. Pandina, who is one of your Task Force members, was an editor of the *Journal* at that particular time.

What that study did was it went to the states that had the most comprehensive level of blood alcohol testing in the United States. They had to test at least 80 percent of fatally injured drivers. They obtained blood alcohol levels on drivers who were in single-vehicle fatal crashes in those states. Why single-vehicle fatal crashes? Because in a single-vehicle fatal crash, it's more likely that the driver was responsible for the crash. In a multiple-vehicle crash, it might have been another driver who was responsible, so they looked at the single-vehicle fatal crashes. Then, they went to the same states, same roadways, same time of day, same day of week, same year and looked at drivers who were not involved in fatal crashes, and over 90 percent of those drivers agreed to submit to breath-alcohol tests. What they found was that each 0.02 increase in blood alcohol level nearly doubles the fatal-crash risk for miles driven.

In my original testimony to the Senate committee here in New Jersey, I provided a copy of that article. If you don't have it in your possession, I'd be happy to provide copies of that article to each of the members.

There was some variation by age and gender, but they found that in all age and gender groups studied between 0.05 and 0.09, there was at least a ninefold increased fatal-crash risk. So the evidence is quite clear. There is driver impairment and increased fatal-crash risk at levels below 0.10.

That study, by the way, replicated an earlier study conducted in Canada that compared younger drivers to older drivers. Even when drivers under 21 had not been drinking at all, because of their lack of driving experience, propensity of more likely to speed, to not wear safety belts, to run red lights, and so on, they're at higher fatal-crash risks per miles driven than are older drivers. If one adds alcohol on top of it, it's like throwing gasoline on a fire. Each drink for young drivers increases their fatal-crash risk even more than it does for older drivers, so we need to be very concerned about young drivers as we explore this particular issue.

Now, let me talk about the study that was published -- that we conducted -- in the *American Journal of Public Health* in September of 1996. In that study, we looked at the first five states to adopt a lower limit, lowering the limit from 0.10 to 0.08. We compared those five states to five nearby states that had similar population distribution. Mr. Berman has raised some concern about comparing California to Texas. Texas is the only other western state that I know that has multiple large metropolitan areas -- Dallas, Houston, San Antonio, Austin, and so on -- like California. Texas--

We also selected states that had the highest possible level of blood alcohol testing of drivers in fatal crashes and that had similar prelaw trends in their alcohol-related fatal-crash involvement. Texas looks much more like California than does Arizona or -- I don't know exactly what this "mythical state" is that he's talking about, but we do know what Texas looks like. We also selected states in that study that we had used in previous published studies comparing different types of laws. We felt that if we changed the states that we used that, certainly, there would be objections from those who are opposed to 0.08 legislation. So that was the rationale behind the states that we used.

We compared Utah to Idaho, Oregon to Washington, Maine to Massachusetts, California to Texas, and Vermont to New Hampshire. In each pair of states we've looked at an equal number of years before and after the law was passed. We looked at the maximum available number of years in each pair. It wasn't exactly the same years in each pair, because the states adopted these laws in different years. But within each pair, when we were comparing Utah to Idaho, we looked at an equal number of years before and after the law passed in Utah. When we compared Oregon to Washington, we looked at an equal number of years before and after, and so on, with each pair of states.

Now, this is what we found. (indicating chart) If you look at the ratios on the slides in front of you -- or on the charts in front of you -- we can see that in the comparison states, the proportion of the number of drivers who are at 0.08 or higher during the prelaw years was 5197. In the postlaw years, in the comparison states, it dropped to 4900. That's a 6 percent decline. In the 0.08 law states, in the prelaw period, there were 6187 fatally injured

drivers at 0.08 or higher. In the postlaw period, it dropped 23 percent. There were 4779.

In our research, we didn't just look at the number of fatally injured drivers at 0.08 or higher. There are many factors that can influence whether or not people are involved in fatal crashes, so we looked at the ratio of fatal crashes that involved drivers at 0.08 or higher. And what we found was that in the 0.08 law states -- the states that adopted 0.08 -- there was a 16 percent reduction relative to the states that did not adopt 0.08 laws in the proportion of fatal crashes involving fatally injured drivers at 0.08 or higher.

Now, Mr. Berman has said that the real problem is drivers at 0.15 or higher. Well, certainly drivers at 0.15 or higher are a problem. They're not all of the problem. They're part of the problem, and they're an important part to look at. We repeated our analysis stratifying -- looking only at fatally injured drivers at 0.15 or higher. What we found was that there was an 18 percent postlaw reduction in states that adopted 0.08 relative to their comparison states in the proportion of fatally injured drivers at 0.15 or higher. The number went from 4455 fatally injured drivers at 0.15 or higher during the prelaw years to 3482 fatally injured drivers at 0.15 or higher in the postlaw period: a 22 percent decline looking at the overall ratio of fatally injured drivers at 0.15 or higher. Overall fatal crashes an 18 percent decline.

In the states that we looked at, four of the five had more favorable -- of the 0.08 law states -- experiences than their comparison states. The only pair of states where the data went -- did not go in the direction that we had predicted was in Vermont and New Hampshire. Those are very small states. They accounted-- We looked, by the way, at 100,000 fatal crashes in this

analysis. So it's the largest study of 0.08 that has been done. Vermont and New Hampshire accounted for only 1 percent of the fatal crashes in the study. They're such small states a third of the drivers involved in fatal crashes in those states -- involving alcohol -- are from out of state. They're people just passing through and probably were unaware of the 0.08 legislation.

In this particular study, we were very fortunate that the first five states that adopted 0.08 laws had very comprehensive testing of fatally injured drivers. Nearly 90 percent of the fatally injured drivers in those states were tested for their blood alcohol levels. So we're not using proxy measures, as are often used in studies of traffic safety. We're looking at actual alcohol test results in these states. The level of testing was the same in the prelaw period as in the postlaw period and was very high in the 0.08 law states, 88 percent; in the comparison states, 75 percent.

The opponents to this legislation will try and tell you that nobody has ever found anything like this before. Well, that's not true. In European countries, in Great Britain, in France, in Austria, there have been similar findings. In fact, in the United Kingdom, when they passed the British Road Safety Act -- H. Lawrence Ross (phonetic spelling) was the author of the study in the *Journal of Legal Studies* in 1972 -- they had a decline in the proportion of fatal crashes with drivers fatally injured at 0.08 or higher from 25 percent down to 15 percent. This is not a new finding. This is a finding that one often finds.

Now, a concern that I think is a reasonable concern surfaced in California and some of these other states, and I think needs to be addressed. And that is--

May I see which one you're showing? (speaking to assistant)

Okay, you need that one. (indicating)

That is that many of the states that adopted 0.08 laws, in fact, all of them, also have administrative license revocation laws. The difficulty that was encountered in California in trying to identify the effect of 0.08 was that they passed administrative license revocation at exactly the same time as they adopted -- or within six months of the time they adopted their 0.08 law. So it was difficult for them to disentangle which was -- what was bringing the rate down. All of the states that have adopted 0.08 also have administrative license revocation. So this is an issue that I think needs to be addressed.

In our study -- in the study in California that Mr. Berman referred to -- the declines after these laws were passed -- the proportional declines -- were greater than have been attributed by any of the national studies of administrative license revocation to administrative license revocation laws. Those studies have found between 6 percent and 9 percent reductions in alcohol-related traffic deaths after administrative license revocation laws were passed. States that passed 0.08 in combination with administrative license revocation have a greater decline. We, as I mentioned, observed a 16 percent decline in this particular study that we published in the *American Journal of Public Health*.

I would conclude on the basis of that study -- and I would still hold this up (indicating) -- that if all states were to adopt 0.08 laws, there would be at least 500 to 600 fewer fatal crashes each year in the United States. I would say that even if we assumed the maximum impact that's ever been attributed to administrative license revocation laws in these national studies --

these multistate studies -- that that estimate is still a conservative estimate. When we derived that estimate, we tossed out the comparison states. We just looked at the states that went from 0.10 down to 0.08, and we just looked at fatally injured drivers. We didn't look at passengers or pedestrians. We just looked at the fatally injured drivers and made the projection off of that. I believe that it's a very conservative projection, and I believe that it will stand up over time.

Let me just make one other point that I think you should know about, and I'll try and do this very briefly. Mr. Berman has challenged my research in the previous hearings -- not only here, but in other states -- saying that Mothers Against Drunk Driving funded the study. They did not fund the study. At the time that this study was conducted I was supported on grants from the National Institute on Alcohol Abuse and Alcoholism, the U.S. Centers for Disease Control, and the Massachusetts governor's Highway Safety Bureau.

He's also alleged that I conducted that study in an effort to get on Mothers Against Drunk Driving's National Board, so that I could be remunerated by MADD for serving on their board. I'm proud to say that I am a member of the National Board of Mothers Against Drunk Driving. I do that work for free. No member of Mothers Against Drunk Driving's National Board has ever received any money from Mothers Against Drunk Driving for their service on that board.

Finally, Mr. Berman has suggested that my research is biased because I dedicated that study to a family that was involved in a crash with a driver at 0.08. Yes indeed, I did dedicate that study to a family that was

involved with a driver at 0.08. I did not meet them until I had made my first presentation of this research at a national conference.

I met Millie Webb (phonetic spelling) at that conference. I didn't make the dedication to their family until after the article had been accepted. It was in galley proof in the *American Journal of Public Health*, and then I asked Millie if she would be willing to let me do that and she said-- I told her-- I said, "You know, we're going to be attacked, and you should think very carefully about whether or not you want to have your name associated with a study that the opposition to 0.08 will go after. I don't know how they're going to go after it, but they're going to after it." And she said she was willing to do that.

(displays photographs) She lost her nephew Mitch Pewitt (phonetic spelling) in that crash. She lost her daughter Gloria Lynn (phonetic spelling) in that crash. She was burned over 60 percent of her body. She was pregnant at the time. As a result of the crash, she went into premature labor. She delivered her child, Kara (phonetic spelling), with a condition associated with prematurity called retrolental fibroplasia and left her daughter, Kara, permanently blind as a result of the crash.

I believe that by dedicating our study to them that we can help provide some meaning to her from this, and we would give a reminder to people who read our studies that these are not just numbers that we're talking about, these are people who we're talking about. I regret that Mr. Berman has tried to use that dedication -- how cynical, frankly -- as an argument against the research that we have conducted.

Let me conclude in just a couple more minutes and tell you about my own state. I think it's important for you to know that I was willing to go in front of my own legislature, not just come down to New Jersey where people don't know me, but to go in front of the people that I know, who I live with every day and will continue to live with for the rest of my professional career, I hope, in Massachusetts.

Massachusetts, fortunately, did not listen to Mr. Berman when he recommended that they not adopt 0.08 legislation. We adopted 0.08 legislation back at the end of May in 1994. What I would like to do now is to present some of the results from that.

We had just received data from the fatal accident reporting system. We compared Massachusetts to Connecticut, our neighbor to the south. Connecticut and Massachusetts have had very similar trends in alcohol-related fatal crashes over the five years preceding the adoption of the Massachusetts' 0.08 law. In Massachusetts, after the 0.08 law was adopted, the proportion of drivers in fatal crashes, who had blood alcohol levels that were at 0.10 or higher, declined 14 percent from 405 down to 331, over 1621 over 1540, a significant decline within Massachusetts and Connecticut during the same time period, even though prior to the law they were having reductions in the proportion of alcohol-related crashes. They had a 2 percent increase.

We looked at six different measures. I've put in your packet three of them. I'd be glad to provide you with all of them. There is some interesting data that I would like to share with you that comes from surveys that we collected before and after the law was passed in Massachusetts that I think helps to provide some insight into the mechanism. How is it that 0.08 laws

achieve these reductions in alcohol-related fatal crashes even at higher BAC levels? And I should point out that the reductions were not only at drivers at 0.10 or higher, but there was a 17.6 percent decline in the proportion of drivers at 0.15 or higher -- fatal crashes that occurred after the 0.08 law.

Even though, after the 0.08 law passed, the numbers of drunken driving arrests in Massachusetts declined--

No, go on to the next, please. (speaking to assistant) Yes, that's it.

The law passed in 1994. You can see that alcohol-related arrests and convictions went down. They didn't go up as some opponents have said, "Oh, you're going to flood the courts with people who've been arrested, a new class of criminal 0.08." The arrests actually went down. Even though they went down, however, the proportion of people from our prelaw statewide survey in 1993 to our postlaw statewide survey -- this is conducted for the Governor's Highway Safety Bureau in Massachusetts in 1996 -- the proportion of people who thought that drunken drivers were going to be arrested increased significantly. The proportion who thought that they would be charged with drunken driving increased significantly. The proportion who thought that they would be convicted and receive license suspensions increased significantly.

The next graphic shows-- Yes. (speaking to assistant) This looks at the proportion of people who thought that they could consume four drinks and drive safely and consume four drinks and drive legally. And what you see is that there was a significant decline after the 0.08 law passed and the proportion of people in Massachusetts who thought that they could drive after

four drinks safely, from 24 percent down to 15 percent, and who thought that they could drive after four drinks legally, from 18 percent down to 9 percent. Both of those findings are statistically significant. Response rates of 70 percent of the surveys that I'm citing for you.

We also found, if you look at the next chart, that there were significant declines in the proportions of drivers statewide who said that they drove after any drinking, that they drove after four or more drinks, or said that they drove after five or more drinks. So the law changed public perceptions of how much they could drink and drive safely, how much they could drink and drive legally, and it reduced the proportions who reported driving after drinking at these different amounts.

Again the question comes back to what about people who drink a lot. So we decided to take our samples and select out people who told us in the past month they had had at least 10 drinks on an occasion. So at least one time they had 10 drinks. These are very heavy drinkers. We asked them the same questions. What we found was, in this group of very heavy drinkers, the proportion who thought that they could drive after four or more drinks and do so safely hardly changed at all. We didn't change their attitude about that, but the law did result in a significant decline in the proportion who said that it was legal for them to drive after four or more drinks and a significant decline in the proportion who said that they drove after four or more drinks.

Now remember, the fatal-crash data showed exactly the same thing -- reductions not only in fatally injured drivers at 0.08 or higher, but also reductions in the proportion of fatal crashes involving drivers at 0.15 or higher. Lowering the legal limit from 0.10 down to 0.08 not only affects the general

driving public, but it also affects the high BAC drivers that Mr. Berman feels are so important.

They are important. It's important for us to pass laws that affect all drivers, not just drivers who might get over 0.08, but also the drivers that might be very high BAC drivers at 0.15 or higher, and 0.08 laws will do that.

MR. MENZA: I'm sorry. You're finished?

DR. HINGSON: I'm finished.

MR. MENZA: I have a few questions.

DR. HINGSON: Sure.

MR. MENZA: I'm sure the members of the Task Force also have a few questions.

If, as you suggest, any amount of alcohol impairs one's ability to drive, why not reduce it to 0.09, 0.07, or 0.05? Would that have the very same affect as -- were it lowered even as you suggest on fatal accidents?

DR. HINGSON: Well, let me say that there--

MR. MENZA: Or is 0.08 just a policy decision?

DR. HINGSON: --is evidence that lowering to even lower limits that we've talked about would reduce fatal crashes. We've looked at youth, for example. Among young people, we published a study in *Public Health Reports* back in 1994 where we found states that adopted what are called zero-tolerance laws set the limit at 0, 0.01, and 0.02. When we compared them using the same methodology that I've described in the studies that I've reported to you this morning -- when we compared the first eight to do that with eight nearby states, they had a one-fifth decline in the type of fatal crash most likely to involve alcohol.

MR. MENZA: Then would you suggest, sir, that we reduce it to 0.05?

DR. HINGSON: Sir, if you will give me a moment-- Let me-- I have two other points that I'd like to make, and then I'll answer your question, because I think it is a very important question.

So we know that zero-tolerance laws work among youth. And I'm happy to report now that 44 states have adopted zero-tolerance laws as of this month.

There is research and literature in Europe and Sweden where they adopted a 0.02 law that they had a significant reduction. Japan adopted a zero-tolerance law in 1970. That year they had-- The year before they passed, they had 1500 alcohol-related crashes. Last year they had about 375. During that time period, the number of licensed drivers in Japan doubled, the numbers of vehicles on the road tripled, and interestingly enough, for those who are concerned about whether or not these laws affect per capita alcohol consumption, per capita alcohol consumption during that time period doubled in Japan, bringing it very close to what our per capital alcohol consumption is in the United States. So you can lower legal blood alcohol limits without reducing alcohol consumption or harming the hospitality industry.

Do I believe that we should adopt a 0.05 limit? I don't believe that we have the evidence to date that would indicate that those laws will make an impact. We're doing some research where they've lowered to 0.05.

MR. MENZA: I have to interrupt you, please.

DR. HINGSON: Yes.

MR. MENZA: If alcohol impairs driving ability--

DR. HINGSON: Yes

MR. MENZA: --if you digest less alcohol, your ability is thereby greater? Why not 0.03, 0.04, 0.02? Any amount of alcohol must affect your driving ability.

DR. HINGSON: Yes. I think that--

MR. MENZA: We start with that premise.

DR. HINGSON: Yes.

MR. MENZA: And logic would dictate that we should have a zero tolerance. Is that correct?

DR. HINGSON: Well, one can take logic to an extreme. I think that what we have to do is we have to decide what will the public accept.

In Massachusetts, in my state, we had the passage of a safety belt law back in 1996. You may recall the governor, who later ran for President-- He was governor at the time. He had a great deal of influence over the state legislature. He proposed it. A couple of weeks later, it was passed.

The public didn't feel like they were part of the process in discussing it, and they repealed that lifesaving piece of legislation.

MR. MENZA: So it's really--

DR. HINGSON: And it took us 10 years.

MR. MENZA: It's really a public policy call. A balance of--

DR. HINGSON: That's right.

MR. MENZA: Let's assume for the sake of argument that penalties are changed. That the blood alcohol percentage remains the same, even increased, let's say, to the point of 0.12, but we impose a penalty for the

first offense and five-year revocation. Do your statistics demonstrate or your study demonstrate that that would have an impact on drunken driving?

DR. HINGSON: The literature on-- What was the penalty that you were proposing, sir?

MR. MENZA: Assume-- Leave it at 0.10 or 0.12, 0.15--

DR. HINGSON: Yes.

MR. MENZA: --but that the penalties are dramatically increased. Would that have the very same affect as reduction to 0.08?

DR. HINGSON: If the penalties are very dramatically increased, I believe that it will be more difficult to get convictions. The evidence, I believe, is more consistent and clearer that lowering the limit will achieve a greater deterrent effect than increasing penalties. If however--

MR. MENZA: Do you have figures on that?

DR. HINGSON: Yes. I'd be glad to share with you a review article that I published in *Alcohol Health and Research World* looking at a variety of different types of penalties and interventions to reduce alcohol and impaired driving. I'd be glad to give to each of the Task Force members that.

If there is evidence that would indicate that increasing penalties would reduce alcohol-related traffic fatalities, I would be supportive of it. I think the question here is not either-or, it's what combination of measures would work best. In New Jersey, I believe the combination of measures that would work best is if you were to adopt 0.08 in combination with administrative license revocation.

The problem in our *American Journal of Public Health* study and in the California study is it was difficult to disentangle which was what. Was it

0.08? Was it administrative license revocation, because they had both of them? Well, New Jersey had neither. I would encourage New Jersey-- The best thing that you could do in this State to reduce alcohol-related traffic fatalities would be to lower the legal limit and at the same time adopt administrative license revocation, which would permit the police to take the license on the scene from anyone who's found above the new legal limit of 0.08.

MR. MENZA: Without a trial?

DR. HINGSON: Pardon me?

MR. MENZA: Without a trial?

DR. HINGSON: No. Not without-- What is done in administrative license revocation states is that they take the license of the person who's intoxicated -- can't drive home or can't continue to drive -- and they hold the license until there is a hearing or issue a temporary-work drivers license for them to use. There are 39 states in the United States that have adopted administrative license revocation.

MR. MENZA: We, in effect, have that now. I suggest to you that we do.

One last question, if I may, sir.

You and Mr. Berman concentrate a great deal on fatal accidents. Are there statistics on the affect of alcohol versus driving under the influence on auto accidents?

DR. HINGSON: Yes. If one looks at all accidents, and by the way this is detailed in the article in the *Journal of the American Medical Association* that I've provided you in your red packet, alcohol is involved in

about 6 percent of all crashes -- 5 percent to 6 percent of all crashes -- and about a third of serious injury crashes.

The National Highway Safety Administration estimates that there are 17,000 alcohol-related traffic deaths every year, but 1 million, year after year after year, 1 million traffic injuries involving alcohol.

MR. MENZA: Task Force members?

Mr. O'Scanlon, do you have a question?

MR. O'SCANLON: Certainly.

In your study, did you control for confounding factors such as we know, because we've seen evidence throughout the country that PR campaigns have a dramatic impact in people's awareness of whatever the laws are. There seems to be reduction with PR campaigns.

Along with the reduction from 0.10 to 0.08, is it safe to assume there was a fairly large PR campaign touting that, and did you control for the impact of that PR campaign? I know we have the administrative license revocation as some impact that could be a confounding factor. Did you control for the added PR that was in these states where they lowered 0.08, which had it been employed in the states that did not lower it, they may have seen similar reductions?

DR. HINGSON: Well, in the *American Journal of Public Health* study, we did not specifically examine the public information campaign. In California, when they did their study that has been cited, they did take a look at the public relations campaign. They felt that it might have had some impact, but they didn't give it the magnitude of impact as the legal changes themselves.

In the studies of traffic laws, there is a very important study around zero tolerance. It gets at the issue that you've just raised. In Maryland, when they adopted zero tolerance for youth, Richard Blomberg (phonetic spelling) did a study where they went into some experimental counties and did an intensive public information campaign and compared them to some nearby counties where they didn't. What they found was, and this is what I think we would see with regard to 0.08, was that after zero tolerance passed there, there was a reduction in both sets of counties in crashes in the targeted age group where alcohol was involved. But in the counties that got the specific educational campaign, intensive educational campaign, there was a greater increase in awareness of the law among young people and about a one-third greater decline in crashes involving alcohol among young people.

So when you pass a law, if you pass it, whatever you do, make sure there is a publicity campaign about it to inform the public. That will give the law a larger impact.

MR. O'SCANLON: Okay. That would seem to suggest that even without a change in law, the public campaign-- Since within Maryland, from county to county where the law was the same at that point, they had a greater reduction almost by a third, I think you said, where they have a much greater public information campaign.

DR. HINGSON: About the new law.

MR. O'SCANLON: Okay. But do we know that was only because there was a new law, or could the public information campaign alone have accounted for some of that?

DR. HINGSON: Do public information campaigns make a difference? Of course, they do. Of course, they do, and I would encourage every state to spend as much energy and effort as they possibly can with their public information campaigns. However, if you combine the public information campaign with new legislation, and your public information campaign tells people about why you're having the new legislation and how the new legislation is going to be enforced, you'll have even a greater impact.

MR. MENZA: Mr. Martinez.

MR. MARTINEZ: Doctor, to repeat the question that I did to the Senator as well, would you yourself refute the scenario presented by Dr. Berman in that 120-pound woman over the course of two hours drinking two six-ounce wine, 13 percent alcohol by volume, would reach 0.08?

DR. HINGSON: I'll tell you the truth. I'm not exactly sure. I think that a woman could get very close. She might make it over. I don't know. But I think the important point here is, if she reaches 0.08, should she be behind the wheel of an automobile. And the answer to that, I think, is clearly no.

MR. MARTINEZ: A follow-up question to that is, after drinking two glasses of wine, six ounces, which I believe he left the glass on the desk in front of you, other than an educated woman who might be at this hearing, how would she know she'd be at a 0.08?

DR. HINGSON: I think that that's a very important reason for us to have the public information campaigns that we just alluded to in the last question. I think one of the values of passing this legislation will be to get the public talking about how much drinking gets them up to different blood

alcohol levels. And as I indicated in Massachusetts, we had a clear change in perception in how much people thought they could drink and drive safely and how much they could drink and drive legally with significant reductions, which were then accompanied by significant reductions in fatal crashes involving alcohol.

MR. MARTINEZ: One last question. Would you, as a man of science and in your experiences in life, think of a woman drinking two glasses such as that that's presented on that table -- would you view her as a social drinker or as someone with an alcohol problem?

DR. HINGSON: I would say that if somebody consumes alcohol to the point that they are above the legal limit and they know they're above the legal limit that they have a problem. They've made a mistake in judgment. Would I say that they are an alcoholic? No, I wouldn't say that they are an alcoholic. Would I say that they are alcoholic dependent? No, I wouldn't say they were alcoholic dependent. I would say that they shouldn't be driving.

This is not about prohibition. It's about how much people drink and can drive safely.

MR. MARTINEZ: I have nothing further.

MR. MENZA: Ms. Waller.

MS. WALLER: In any of your studies, do you examine the different machines that were used by the states to analyze the blood alcohol content?

DR. HINGSON: The data that we use comes from the U.S. Department of Transportation's Fatality Analysis System, and we rely on the data that are input into that system.

MR. MENZA: Mr. O'Scanlon.

MR. O'SCANLON: One last quick point. You mentioned before that if -- and I agree with you, that it is up to us to make what we do here and ultimately translate it into a change of behavior.

The chart, and I don't know if you will recognize it, that Mr. Berman presented us, with the fatality rate for people at various levels-- Okay, do you remember the chart now?

DR. HINGSON: Yes. I've not seen it up close, but--

MR. O'SCANLON: Okay. The charts -- I've seen it in other places, too, not just from Mr. Berman, or similar charts -- seem to suggest that there is a natural breakpoint between 0.10 and something lower than that. In fact, it's a fairly constant rate from trace amounts all the way up to 0.09, is how he has it labeled.

Our charge being making a distinction between impairment and what actually happens on the road, how can we make the argument that we ought to lower it to 0.08? And is that chart accurate? First, would you agree with it?

DR. HINGSON: Well, with an instant look at it, I'm sorry, I can't.

MR. O'SCANLON: Yes. I'm sorry to put you on the spot like that.

DR. HINGSON: I'd be happy to take a longer look at it and tell you whether or not I believe the numbers in here are accurate.

MR. O'SCANLON: Okay. Did you not do an analysis similar to this?

DR. HINGSON: What our research would show is that if you lower the limit from 0.10 down to 0.08, you will reduce fatal crashes involving not only drivers at 0.08, but also drivers at 0.15 or higher. In fact, there actually were slightly greater proportional declines in the drivers that were at 0.15 or higher than the drivers who were at 0.08 or higher.

MR. O'SCANLON: Okay, if I may interrupt. I remember from earlier testimony -- I think it was Mr. Berman -- mentioned that in California the accident rate in people of 0.15 went up after the 0.08--

DR. HINGSON: I think that you will hear testimony in a minute from the National Highway Traffic Safety Administration that actually drivers at 0.10 are-- Excuse me, there was a decline in the proportion of drivers at 0.20 or higher after the California legislation passed.

MR. O'SCANLON: Okay. But not between 0.15 and 0.20?

DR. HINGSON: Oh, yes. The curve was moved down.

MR. O'SCANLON: Okay.

DR. HINGSON: I think the cut point that they will use is 0.02.

MR. MENZA: Five percent to six percent of all automobile accidents in the country are alcohol related. Is that correct?

DR. HINGSON: Yes. That's fender benders and all the way up.

MR. MENZA: What percentage is 0.08 above? Do you know?

DR. HINGSON: What percentage of?

MR. MENZA: All automobile accidents demonstrated 0.08 blood alcohol.

DR. HINGSON: At the 0.08 percentage itself or--

MR. MENZA: Between--

DR. HINGSON: About a quarter of fatal crashes--

MR. MENZA: Putting aside fatal crashes--

DR. HINGSON: Fatalities. About a quarter of traffic fatalities--

MR. MENZA: Put aside fatalities. I'm most interested in knowing how many accidents are caused by people driving drunk, aside from the fatalities.

DR. HINGSON: I believe the information you have in front of you would indicate that about 5 percent to 6 percent of all crashes involve the driver with a positive blood alcohol level.

MR. MENZA: Is that broken down to percentages? Is that broken down to the blood alcohol percentages?

DR. HINGSON: In that particular article, no, I don't know if that is. But if you would like-- If the information that you are seeking is what proportion of all crashes occur at different blood alcohol levels--

MR. MENZA: Yes.

DR. HINGSON: --and what proportion of injury crashes occur at different blood alcohol levels, I'd be glad to go to the best available literature and get you those numbers.

MR. MENZA: I'd greatly appreciate it.

Thank you very much.

DR. HINGSON: I'd be happy to do that.

MR. MENZA: Anything else?

Yes. Mr. Martinez.

MR. MARTINEZ: In your home state of Massachusetts, the offensive driving drunk, is it a motor vehicle or a criminal matter?

DR. HINGSON: They have a vehicular homicide under the influence charge. Massachusetts has-- In Massachusetts, if you are at 0.06 or higher -- I believe that you have similar legislation here in New Jersey -- then one can begin to discuss whether or not there was impairment and intoxication. And if the prosecutor can prove it, then they can prove the case. At least that's what I was told by one of the Senators at the last hearing here.

We had a similar law in Massachusetts. If one is convicted of driving under the influence, it's a criminal offense.

MR. MARTINEZ: Is one entitled to a jury trial in Massachusetts to determine guilt or innocence?

DR. HINGSON: Yes.

MR. MARTINEZ: And you are aware that in New Jersey it is not?

DR. HINGSON: I've heard that. Yes.

MR. MARTINEZ: Okay.

MR. MENZA: Anyone else?

Thank you very much.

DR. HINGSON: Thank you very much. I appreciate the opportunity to be with you this morning.

MR. MENZA: Obviously not making good time.

I urge the speakers to limit their remarks and to be as succinct as possible. If more than one speaker-- If two or three people want to come up at the same time, that's fine. I would also ask you, most respectfully, not to be redundant. We have an awful lot of information that has been given to us prior to this hearing, and we have a lot of information that was given to us today, a lot of statistics which we will review. Please be so kind as to be as

succinct as possible so that we can give everyone an opportunity to be heard today.

The next speaker will be Ms. Donna Frandsen of MADD.

D O N N A F R A N D S E N: I'll be only seven minutes.

Good morning, Honorable Chairman and Task Force members.

I am Donna Frandsen, Public Policy Director for New Jersey State Mothers Against Drunk Driving and Director of an Intoxicated Driver Resource Center. My professional experience consists of 18 years in working in the field of alcohol and drug prevention and treatment with an emphasis in the last 10 years on screening, evaluating, and monitoring over 10,000 drunk drivers in Middlesex, Monmouth, and Union Counties.

I wish to personally thank you for the opportunity to speak to you today on a matter which Mothers Against Drunk Driving considers to be of utmost importance, that is, reducing drunken driving fatalities and injuries on New Jersey's roadways through adoption of 0.08 BAC legislation.

As Policy Director for New Jersey Mothers Against Drunk Driving, I am representing State Chairman for Mothers Against Drunk Driving-New Jersey, Chief of Police Frank Winters, and the 12 MADD chapters with over 80,000 members throughout New Jersey.

Mothers Against Drunk Driving is a nonprofit, volunteer organization with members representing various backgrounds, who have no special economic interest in any position it supports or opposes. Mothers Against Drunk Driving's mission is to eliminate drunken driving and support victims of this violent crime.

One of MADD's primary interests is the health, safety, and well-being of the motoring public. I wish to emphasize that MADD is not a crusade against alcohol consumption or a prohibitionist group. We say draw the line at 0.08 BAL, the level at which critical driving skills are impaired, such as reduced peripheral vision, poorer recovery from glare, poor performance on complex visual tracking, steering inaccuracies, and speeding and braking performance deterioration.

Point zero eight laws are part of the solution to the deadly problem of drunken driving. Point zero eight blood alcohol laws confront the drunken driving problem up front and can reduce the number of repeat offenders. These laws deter drunk drivers at all blood alcohol levels.

Today, you will hear expert testimony on how many drinks a person will need to reach a blood alcohol level of 0.08. A 160-pound male will reach 0.08 after consuming four drinks on an empty stomach in one hour. I have inserted a grid in our packet, by Dr. John Brick, which illustrates -- from Intoxikon International -- an estimation of drinks to reach 0.08 blood alcohol level.

Mothers Against Drunk Driving has studied the reports both private and governmental:

1. *Driving Under the Influence*, NHSTA report, October 1992.
2. *The Effects of Low Doses of Alcohol on Driving Skills: A Review of Evidence*, NHSTA, 1988.
3. *Alcohol Limits for Drivers: A Report on Its Effects of Alcohol and Expected Institutional Responses to New Limits*, April 1991.

4. *Lowering the Illegal Per Se BAC Limit to 0.08: Point/Counterpoint*, NHSTA, 1994.

5. *The 0.08 Alcohol Concentration Limit House Research Policy Brief*, Minnesota House of Representatives, March 1994.

6. *A Preliminary Assessment of the Impact of Lowering the Illegal Per Se Limit to 0.08 in Five States*, NHSTA, December 1994.

7. "Lowering the Legal Blood Alcohol Limits to 0.08: The Effect on Fatal Motor Vehicle Crashes," Hingson, Heering, and Winter, *American Journal of Public Health*, September 1996.

Based in this review, we are in total support for 0.08 BAL as the threshold for determining drunken driving in our State.

Additionally, you will hear testimony that those states that adopted 0.08 BAL legislation experienced 16 percent and 18 percent relative postlaw declines in the proportions of fatal crashes involving fatally injured drivers whose blood alcohol levels were 0.08 or higher and 0.15 or higher. If all states adopted 0.08, at least 500 to 600 fewer fatalities would occur annually.

In conclusion, this 0.08 legislation has been endorsed by the daily *Home News & Tribune*, *The Trenton Times*, *New York Times*, and supported by over 80 groups in the State of New Jersey. Some of the groups with representatives sitting in this room today:

The 0.08 Coalition

The New Jersey Prosecutors Association

The New Jersey Driving School Association

AAA

New Jersey PTA

The Governor's Council on Alcoholism and Drug Abuse

The New Jersey Federation of Women's Groups

The Intoxicated Driver Resource Center Associations

The Consumers for Civil Justice

The New Jersey Association of Counties

The American Medical Association

The National Highway Traffic Safety Administration

The New Jersey Council on Alcoholism and Drug Abuse

The New Jersey Brain Injury Association

The New Jersey Nurses Association

Isn't it time for this Task Force on drunken driving to add its name to our list of supporters and make New Jersey the sixteenth state for 0.08?

Thank you.

MR. MENZA: Thank you, ma'am.

Any questions? (no response)

Thank you.

MS. FRANDBSEN: Thank you so much.

MR. MENZA: Peter Lederman, an attorney.

PETER H. LEDERMAN, ESQ.: Yes. Yes, sir.

Your Honor, members of the Task Force, I'd like to thank you for having this opportunity to speak to you about these issues.

I feel very strongly about the issue that's before you today and about some of the issues that were referred to in some of the questions and

answers that the Task Force heard. I have some prepared comments that I will go through very quickly, and then I would like to make a few remarks after that if I may.

I'm an attorney who's practiced law in this State for the past 23 years. Over those years I have, among other things, prosecuted drunk drivers and defended drunk drivers. I have participated in the dialogue involving DWI both in the context of State and County Bar Association committees. I have known people who have suffered the tragedy as a result of DWI and those who have caused it. I'm also the father of two young ladies, husband of my wife, all of whom I care for and desire to protect.

In this context, I would like to provide the Task Force with the following thoughts. We must start with the axiom that I believe is unquestionable. That axiom is that motor vehicles accidents and fatalities resulting from intoxication are simply intolerable. This premise, as self-evident as it is, is easy to reach. The next question, however, is much more difficult. The question is: What is to be done? The specific question before the Task Force today is whether lowering the 0.10 percent BAC level, presently provided for in N.J.S.A. 39:4-50, should be reduced to 0.08 BAC.

I believe the answer is no for the following reasons. Firstly, lowering the BAC level from 0.10 percent to 0.08 percent would be an enforcement device rather than a device to prevent operations of motor vehicles by drivers who are intoxicated. It will help the State convict more motorists charged with DWI. It will result in more fines and suspensions and surcharges. It will cause more sanctions to be posed and posed against more people. It will result in greater numbers of people driving while suspended

after being convicted of DWI. At the same time, the lowering of the level from 0.10 percent to 0.08 percent should not reduce operations of motor vehicles under the influence of alcohol.

I'm sure by this time-- I'm sure you would know this by this time and you do know it by this time that there are all sorts of numbers that will support both propositions that 0.08 will be effective and 0.08 will not be effective. And, as you well know, the devil is in the details. And I'm not sure what you will conclude after hearing qualified people present statistics to you from both sides of the issue. But I believe the answer really lies in common sense and not in numbers. I believe that common sense tells us that an individual consuming alcohol will have no better way of knowing that he or she is approaching the presumptive level of 0.08 percent BAC than he or she does knowing that they have reached of level of 0.10 percent BAC.

By lowering the BAC level in determining intoxication, we are not providing the operator with any assistance in determining whether operation would be safe or dangerous or, for that matter, whether operation would result in the punitive sanctions that would follow a DWI conviction. Rather, the 0.08 percent BAC level would simply be an enforcement device exposing more people to punishment for DWI.

Now, to this argument the point can be made that enforcement and more enforcement is a good thing, because an individual convicted under the 0.08 percent BAC law would be discouraged from driving while intoxicated in the future. I believe that this thinking is wrong and does not really address the questions that involve accidents, fatalities, and intoxication. In my opinion, the whole approach of the law in our State over the past 15 years has

been to constantly make DWI laws and court procedures harsher and harsher when dealing with defendants' charge of DWI.

The rationale seems to be that if you only make the laws tougher, you will prevent people from driving while intoxicated. With this approach and the rationale which underlies the 0.08 BAC proposal presently under consideration by you fails to recognize that the problem is a drinking problem and not a driving problem.

The tough question then is, how are drinking habits to be changed in the particular situation where the person consuming alcohol is about to operate a motor vehicle? Common sense should tell us that simply lowering the level to 0.08 percent will not change drinking habits. Perhaps the answer lies in reexamination of 39:4-50 from the aspect of whether that law is an enforcement device or a law that will change drinking habits.

I suggest that our State consider what many other states are doing and what we do in certain cases involving drug offenses and even indictable offenses by offering diversionary programs in appropriate situations, for participation might change drinking habits and driving habits. Diversionary programs such as pretrial intervention and conditional discharge -- these are programs that are available in our State -- recognize that intervention at the outset of the problem is the most effective means of deterring the problem in the future. Both programs offer carrot-and-stick and encourage an adherence to program requirements. Both programs require counseling, testing, avoidance of involvement in similar offenses and other types of criminal activity. Rather than be punitive, this approach tries to identify the problem and then resolve it.

In the last analysis, we should address the real problem at hand which causes accidents and fatalities. That problem is drinking. If attitudes and habits concerning drinking are addressed by the Legislature in a real way, senseless loss of life and serious injuries might be avoided. On the other hand, by only toughening enforcement procedures and lowering the BAC level to 0.08 percent, we may raise more revenue for municipalities in the course of imposing sanctions on more people, but we will not address the problem at hand.

Now, having said that, I just want to add one or two thoughts. I came here to talk about 0.08 percent. I'm very glad to hear that questions before about the Breathalyser, about jury trials, about all of these issues, I believe, need to be addressed. And I don't know exactly what the legislative charge is to your Task Force, but if you find it within your charge, I would ask you to please reconsider how our State approaches DWI, to reconsider what the Breathalyser really is and how it is used in court, to recognize whether diversionary programs should be available, to recognize the realistic ability that defendants have in getting alternative breath tests or blood tests after they have been charged, to realize whether or not time to prepare for trial. In the case in New Jersey, a defendant is provided 60 days to prepare for trial, where the State has unlimited time to review the case law which, I think, takes fairness out of the equation.

I believe that justice is important. I'm proud to be an attorney in the State of New Jersey. I believe that our Bar and our Legislature has provided perhaps the highest quality of justice in our country, but I'm not proud to be a member of the Bar in the State of New Jersey when it comes to

DWI. I believe that we have looked the other way. I believe that we have dropped the ball. And if a person is going to be brought before a court and charged with a quasi-criminal offense, at the very least he is entitled to be treated with procedures and laws that are nothing less than fair.

I know what you have before you is a very important task. I know drinking and driving is a terrible problem. I wish you good luck in your considerations of all the testimony that's being brought to you today.

MR. MENZA: Mr. Lederman, your comments with regard to the charge of this Task Force are well taken. I want to reiterate that our charge is a broad one, to say the least. We will unquestionably look into the Breathalyser. We will review the current penalties with regard to whether or not they should be changed or not. We will look into the idea of trials and rights to defendants. We will definitely look into rehabilitation, alcohol rehabilitation, etc.

The charge of this Task Force is not limited to a determination of whether we should change the blood alcohol laws in existence at the same time. That's of great significance and of great importance. Don't misunderstand me, but our charge is much broader than that.

Mr. Lederman, do you appear on behalf of a particular group, or are you speaking on behalf of a client, a group, an organization?

MR. LEDERMAN: I was a prosecutor who prosecuted people with DWI. I'm an attorney who defends people who are charged with DWI. I'm here on my own as a citizen of this State, as a member of the Bar. I'm a member of the Middlesex County Bar Association Committee on Municipal Courts. I'm a member of the State Bar Association Committee on Municipal

Courts that is discussing these issues, addressing these issues, and hopefully will make recommendations.

I'm here by myself. I don't represent anybody. I feel strongly about these issues. This is the first time I've spoken before anybody such as this, and I felt it was important enough for me to come and say what I feel.

MR. MENZA: Thank you, sir.

Doctor.

DR. ALTEVEER: Mr. Lederman, one of the charges of the Task Force is to examine evidence from data and from published reports and from testimony to come up with recommendations. You've given us opinions and anecdotal experiences. Do you have any data to support your claim that passing 0.08 would result in increased number of arrests, increased suspensions or people driving without licenses? If so, I would be interested in obviously examining that.

MR. LEDERMAN: First of all, you've heard testimony from two people who have spent a good deal of time collecting figures and presenting it. I'm aware of some of the National Highway Safety Transportation Board's statistics, but I don't claim to be an expert or someone qualified to reflect those statistics. So you have had an opportunity and I'm sure you will have an opportunity to get all the details and statistics that you need.

What I will tell you, though, is that I have experience as an attorney who's practiced for 23 years and spent a lot of time in municipal court. Indeed, I would say that my specialty in law is municipal court practice and in DWI defense. I know police officers. I know judges. I know defendants. I know experts. I've been there. I believe, from my experience in

life, I have knowledge of what this is all about, and I know how things are configured in municipal courts right now. And, as you know, it takes meeting one of two standards to result in a conviction, the BAC level or the observation of intoxication. And I'm telling you, in my opinion, that if the level is reduced to 0.08, we will have more convictions of people who perhaps should not suffer the sanctions that our law provides for right now. I think we will have more lawlessness, because I think we'll have more people who will drive when suspended. We will not have the luxury of making a decision of whether they can drive to work or not drive to work, pay the mortgage or not pay the mortgage.

I think these are considerations that have to be kept in mind. The states provide for work licenses in certain cases. New York provides a work license. Pennsylvania provides, I understand, diversionary programs. There are many other ways to convince people not to drive while intoxicated. I think what we need to do is to review the approach that our State has taken and maybe not just look at the way that might be most easily understood by the population and by the voters, but rather, by ways that are more effective in getting the result that we really all want to achieve.

DR. ALTEVEER: I believe that you also said that this would just be an enforcement tactic, that people would have no idea what they drank would raise their blood alcohols to 0.08 versus 0.10.

MR. LEDERMAN: Yes.

DR. ALTEVEER: However, I believe Dr. Hingson, just prior to you, presented some convincing statistics that a passage of a law resulted in public perception, that an increasing number of people-- It raised their

perception as to what they could drink and drive safely and what they could drink and drive legally. So I believe that there is some data that goes against what you said.

Thank you.

MR. LEDERMAN: If I may just respond to that. The devil is in the details, and if there is any intelligent person in the State of New Jersey who doesn't know at this point in time with the 0.10 that it is dangerous both to other human beings and to property and is dangerous to their own well-being, as far as maintaining their driving privileges, that they consume more alcohol than they should, they will have a problem, then lowering it to 0.08 will not change one thing. I don't know how anybody will be able to make a decision as to whether or not they should drive when it's 0.10 or know when they should drive when it's a 0.08.

MR. MENZA: Anyone else? (no response)

Thank you very much, sir.

MR. LEDERMAN: Thank you, Judge.

MR. MENZA: Rena Levine Levy from the New Jersey Restaurant Association.

Excuse me just a moment, madam.

RENA LEVINE LEVY: Pardon me?

MR. MENZA: Excuse me just a moment, madam.

Yes, ma'am.

MS. LEVINE LEVY: Good afternoon. My name is Rena Levine Levy. I'm an Officer with the New Jersey Restaurant Association. I'm the CEO of the WindMill Franchise Company. What that means is that I sell

restaurant franchises, and our restaurants' main item is hot dogs. Alcohol is not part of what my business is all about. With that said, I think I need to explain to you why I'm here today. The reason that I'm here today is very simple. I have children. I brought a picture just like the other people to show that I have real live children. I have four of them, three of which are already driving in the State of New Jersey. I'm very, very concerned about the fact that my children and the children of my colleagues are on the roads in New Jersey.

I'm somewhat confused by what I've heard. I've done this before. I've been in different debates, different people on this issue, and I'm somewhat confused. What I don't understand is why everybody's talking about 0.08 to 0.10 and forgetting what happens from 0.01 to the top. I understand that they said 500 lives can be saved. Who's worrying about the 16,500 other lives. I don't understand why the people that are looking to pass 0.08 are not addressing the real issue. The real issue here is drunken driving.

Currently in the State of New Jersey -- which, as I'm sure you all know, is the only State in the nation in which it is not a criminal offense to drink and drive -- if an officer witnesses a driver that's demonstrated deviant behavior, he can pull the person over. And if that person is at 0.05, that person can be cited with a drunken driving offense. We have the law in effect for 0.08 in New Jersey. I'm also confused by the fact that in 1993 Massachusetts -- that's the year before Massachusetts passed 0.08 -- they would rank No. 37 in terms of the safest states in the United States. Well, in 1996, they are rated No. 38, so where does that demonstrate that 0.08 is addressing the issue?

As a layperson, and I don't study this for a living, I'm not a paid professional, this is not what I do. I'm confused. I'm a citizen of New Jersey. I want someone to explain to me why a state that passed 0.08 goes from 37 to 38 after they passed the law and our legislation (*sic*) wants to pass it. I'm confused about the fact that MADD was "appalled that a Task Force was called to study this issue." What are they afraid that you are going to find out? I don't understand. If we're all here on the same side trying to stop drunk drivers, why don't we want to study the issue and look at the bigger picture? What are we afraid to hide? I'm petrified that if the Legislature in New Jersey passes 0.08 that they're going to go home and they're going to forget about the rest of the problem. And that's why I take the time out of my day, take the time out of my life to come and talk to you and to anybody else that will listen. Because if 0.08 is passed, then everyone is going to home and say, "Look at the wonderful thing that we did. We passed this great legislation in New Jersey and we're going to protect everybody." Well, guess what? I don't think that's going to happen, and the statistics don't prove that that's going to happen. The statistics say that, yes, you will save a few lives, but the majority of the lives will not be saved, and no one is going to think that it's a problem anymore.

In New Jersey -- I have prepared notes for you, but I'm going to glance over them in deference to your request-- New Jersey is the only State that classifies drunken driving as a traffic offense, not a criminal offense. In other states, it's a criminal charge, either a misdemeanor or a felony.

This is in *The Trenton Times* in February 17, 1997: "There's always the question of how the laws are being enforced at the local level,' said

Passaic County Assistant Prosecutor Boris Moczula. ‘My sense overall is that the minimum penalties are imposed.’” And then the article goes on to say that “Sentencing guidelines call for up to 30 days in jail for first-time offenders, up to 90 days for second-time offenders, and 6 months for three-time offenders. Out of the 12 attorneys that we interviewed for this article none of the attorneys interviewed could recall a second offender sentenced to jail.”

Well, if we already have these laws on the books and no one is bothering to enforce them, what makes any reasonable citizen believe that passing 0.08 is going to make anybody do their job any better?

Another statistic that I don’t understand. At a time when Americans drove 45.8 billion more miles and all highway fatalities increased by more than 100 deaths, there were actually 148 fewer alcohol-related fatalities in ‘96 as compared to ‘95. As a country and as citizens in the State of New Jersey, the responsible already know what they need to do to keep themselves and the people around them safe. I don’t think 148 lives is enough lives saved. I think all 17,000 people deserve a right to live. I think we need to address the issue on a broader scale, not just on 0.08.

Thank you.

MR. MENZA: Ma’am, are you saying, if the Legislature adopts a 0.08 percentage, it would thereby ignore the rest of the problem, and is that why you’re opposed?

MS. LEVINE LEVY: I’m opposed because I believe that they will take their eye off the ball. They will think that they have addressed the issue and that it will be over. The New Jersey Restaurant Association supports the

strictest enforcement of the strongest laws in the United States of America. We can't serve dead people anything. We need to protect our customers.

MR. MENZA: The New Jersey Restaurant Association opposes the reduction because less people will drink alcoholic beverages in their facilities.

MS. LEVINE LEVY: I have not said that, nor has the New Jersey Restaurant Association. The New Jersey Restaurant Association says that we feel 0.08 does not address the issue and that we support stricter enforcement of the current laws and stronger laws against drunken driving. We have never once, at the New Jersey Restaurant Association, addressed the financial issue. We all have children. We all have spouses, and we all have loved ones.

MR. MENZA: Isn't the financial issue a real honest-to-God consideration for the New Jersey Restaurant Association?

MS. LEVINE LEVY: No, and as I told you in the beginning, I sell hot dogs. I did not take a day off from work today and a day off from work on Thursday because I had financial issues and financial gains in my mind. The other restaurateurs that are with me don't worry about their financial gains. We can't-- What would it do to our industry if the accidents in New Jersey went up from fatalities? You wouldn't need to be a rocket scientist to figure out that it would hurt all of our businesses if alcohol-related deaths and alcohol-related accidents went up. We're looking to protect ourselves.

MR. MENZA: Will a reduction in blood alcohol cause less automobile accidents that are alcohol related?

MS. LEVINE LEVY: I'm sorry. Could you repeat the question, please?

MR. MENZA: Would a reduction in the blood alcohol percentage to 0.08 reduce alcohol-related accidents?

MS. LEVINE LEVY: All of the information that I have read and listened to does not support that. I understand that you can--

MR. MENZA: So your answer is no?

MS. LEVINE LEVY: My answer is 100 percent no. After California passed 0.08, they had a 6.1 percent decrease in the rate of accidents caused by alcohol. The national average was 6.3. California lagged behind the national average. They had 0.08. Ten states-- The ten top states -- the safest states in the United States -- only two of them have 0.08.

MR. MENZA: Let me put it another way. Should persons with a 0.08 be driving an automobile?

MS. LEVINE LEVY: I don't feel that a person at 0.08 is that impaired. I feel that we have many other--

MR. MENZA: Is the person--

MS. LEVINE LEVY: Is impaired. Is impaired, period.

New Jersey restaurants, restaurants throughout this country are responsible. We take responsibility. We have financial responsibility for customers that leave and that are impaired. We have-- We can lose our licenses. We can lose our businesses if we let somebody leave our establishment that is not in good condition to drive.

MR. MENZA: Which brings--

MS. LEVINE LEVY: We support -- the New Jersey Restaurant Association supports having people that have designated drivers.

MR. MENZA: Which brings up my last question. Would your Association support mandatory liability insurance for restaurants?

MS. LEVINE LEVY: I'm not prepared to answer that question for you.

MR. MENZA: Would you, in the future, be able to answer that question? We are going to look into that area.

MS. LEVINE LEVY: I would go to the Executive Board and the Board of Directors and get consensus and be happy to bring you back the answer to that question.

MR. MENZA: Would you do that? Okay.

Any other questions?

Yes, Mr. Martinez.

MR. MARTINEZ: If I understand your position correctly, then you would be in favor of criminalizing the offense and making the other aspects of the law harsher for repeat offenders?

MS. LEVINE LEVY: Absolutely. That's the consensus of the New Jersey Restaurant Association.

MR. MENZA: We're going to take a very, very short break, perhaps five to ten minutes. Just bear with us.

(RECESS)

AFTER RECESS:

MR. MENZA: We're going to start.

Members of the Licensed Beverage Association: Mr. Rothbart, Mr. Ardire, Mr. Marsh.

Listen, we're going to lose some members of the Task Force. They have commitments -- not social, work commitments, obviously -- so I want to move this along as quickly as I can.

We will have two more public hearings. We hope that in the future we will be able to concentrate on Breathalyzers, penalties, rehabilitation, other matters. But we can also address the percentage -- blood alcohol percentage.

All right, is there going to be one person testifying, or are the three of you going to testify?

LEWIS ROTHBART: The three of us are going to testify.

MR. MENZA: I've been asked by the Task Force to really limit your remarks, if you don't mind. I'm so sorry; I'm not trying to be rude, but--

MR. ROTHBART: We understand.

Good morning, Chairman Menza and members of the Senate Task Force on Alcohol Related Motor Vehicle Accidents and Fatalities in New Jersey. My name is Lewis Rothbart, and I am President of the New Jersey Licensed Beverage Association, and I take this opportunity to thank you for allowing us and our Association for testifying in this manner.

The Licensed Beverage Association represents over 8000 on-premise licensed liquor retailers, utilizing over 110,000 employees and tens of thousands of related industry employees. We want to alert this Task Force that the constant push from some antialcohol social awareness groups to lower the legal blood alcohol level from 0.10 to 0.08 unfairly attacks the social

drinker while failing to address the real problem of how to effectively deal with repeat offenders and chronic alcoholics.

Making our streets safer is, of course, a matter that concerns all of our members. However, reducing the legal BAC to 0.08 would not increase overall safety, but will just burden local and State law enforcement officials in trying to enforce the law.

One reason the NJLBA takes such a position is because 0.08 BAC would do nothing to deter the flagrant and repeat offender. The National Traffic Safety Administration reports that 0.17 is the average BAC of drunken drivers involved in fatal crashes. That is almost double the current legal level of 0.10. If they are already disregarding the current level, why would a lower level deter them? The reality is that 53 percent of all those arrested for drunken driving are repeat offenders and many are driving on the revoked list. They would not be deterred by 0.10, so why would a lower BAC of 0.08 even matter to them?

Even one of the most respected traffic safety researchers in this country, Dr. Lawrence Ross, agrees that the effect of lowering the legal BAC from 0.10 to 0.08 when driving, and I quote, “may well be to reduce the chances of an impaired driver being arrested.” Dr. Ross points out that a change to a 0.08 BAC could increase the number of offenders as much as 60 percent, thereby, diluting an already inadequate control system and making it much less likely that the real offenders would be stopped.

Ironically, even the founder of MADD, Candy Lightner, calls efforts to reduce the legal blood alcohol level to 0.08 unrealistic. Quoting her, “Rather than putting our limited resources into laws that fail to address the

real problem, we need better enforcement of existing laws and proven policies that have demonstrated a significant impact.”

Another reason not to adopt such legislation is that provisions already exist in the current law to stop and arrest, if necessary, anyone who exhibits signs of driving while intoxicated, even if his or her BAC were under 0.10. Consequently, 0.08 BAC really only has a negative impact on those drivers who exhibit no questionable behavior but who may register a 0.08 or 0.09 BAC.

Is this small segment of the population really what we want to concentrate our efforts on? When 90 percent of all drunken driving fatalities occur because of drivers clearly in excess of the current 0.10 BAC, we, as a people, cannot afford to divert our attention from them. After all, who is it that we really need off the road?

Sometimes people can have the right motive but the wrong solution, and this is clearly the case with the antialcohol groups that are pushing for 0.08 BAC. Alcohol is a legal substance, and establishments that serve alcohol are legal, taxpaying venues. In the past 10 years, we have seen the legal BAC level lowered from 0.15 to 0.10. But there has to be a point at which we say, enough is enough. Prohibition failed in America because people wanted and have the right to enjoy moderate, reasonable drinking.

The New Jersey Licensed Beverage Association supports education and efforts to get drunken drivers off the road that our families drive on, too. However, we must speak out against 0.08 BAC legislation because bar and restaurant owners cannot be expected to be clairvoyant. BAC levels were set at 0.10 because that is the level at which some people’s conduct and demeanor

may begin to show signs of intoxication. Since in most cases, a person at the 0.08 BAC level will rarely exhibit signs of intoxication, it is putting an unrealistic burden on alcoholic beverage servers.

It is clear that we, as a country, have made great progress in public awareness about the dangers of drunken driving. Some states such as Maine, California, and Utah have opted to lower the BAC to 0.08, but studies show it is having little or no impact on the drunken driving accidents, and these states are actually not even fairing well in efforts to combat drunken driving.

In an effort to be brief this morning and allow others an opportunity to speak, we are submitting a packet of information regarding 0.08 to each Task Force member, and we ask that you spend time to review its contents. If at any time you have questions or need additional information, please do not hesitate to contact our Association.

Thank you for your time.

MR. MENZA: Thank you, sir. You know, you can also give us a copy of your written testimony.

MR. ROTHBART: It's in the packet, sir.

MR. MENZA: Sometimes, although one wants to be heard, it's not necessary to repeat stuff we've already heard.

Thank you very much.

Yes, sir.

JOSEPH ARDIRE: I think that I'll just give you my statement.

MR. MENZA: We appreciate that. Thank you. Do you have one copy?

MR. ARDIRE: Yes.

MR. ROTHBART: You have a copy. It's in your packet, sir.

MR. ARDIRE: Your Honor, let me just say one thing.

MR. MENZA: Yes, of course.

MR. ARDIRE: I won't read my prepared statement. The majority of our Association are small-business people, and we are like the hub of a wheel. There are hundreds of businesses that rely upon our industry to survive, like the vendors -- the meat vendors, the guys that sell us snacks, the guys that do our refrigeration repair -- and all sorts of other businesses are directly affected by our well-being. To reduce the blood alcohol from 0.10 to 0.08 is like asking us to sell 20 percent less product -- do 20 percent less business. We can't afford that.

And I'm a father of two children, and we don't want drunks on the road. Believe me, we train people to make sure that they don't get drunk in our places. The people that are causing the problem are bad people, and good legislation will not make bad people good people.

We believe in education, not incarceration. Thank you.

MR. MENZA: Doctor?

DR. ALTEVEER: You said that reducing from 0.10 to 0.08 would result in a 20 percent reduction of your business. Do you have--

MR. ARDIRE: Well, it's estimated--

DR. ALTEVEER: Excuse me, sir. Do you have the data to support that? Because I believe in all the states -- the data out there in the states that have reduced it did not show a decline in alcohol sales.

MR. ARDIRE: Well, yes, you're absolutely right.

DR. ALTEVEER: So if you have that data, we should have that data.

MR. ARDIRE: But just a minute. Yes, no, I'm sorry, I disagree. When they say that the alcohol consumption in that state stays the same, people are not drinking in the bars and restaurants. They are buying the booze and going home, or they're going to the colleges and fraternity houses.

DR. ALTEVEER: Again, sir, do you have that data? Do you have that in hard data?

MR. ARDIRE: Well, yes, I'll tell you, today that is available, because it is--

DR. ALTEVEER: Would you send that to this Task Force, if it is available?

MR. ARDIRE: All right, okay. We'll send it to you.

MR. MENZA: Anything else?

MICHAEL MARSH: My statement is also in there, so I won't bother reading it to you. The only other thing, you mentioned education before, and some of the programs we've been involved in since MADD brought this problem to the forefront 20 years ago. We have been steadily involved in training our employees to actually reduce our business. I mean, we actually don't serve people like we used to 20 years ago.

I'm sure everybody my age, at one time or another, did something very illegal, driving, which we don't do now -- we try not to do. Point zero eight is just an unrecognizable number. The police can stop you, driving down the road, if you are acting like you are apparently impaired, and they can give you a ticket at 0.05. It may not stand up in court. They have to go with

specific things to stand up in court, but they can give you a ticket for drunken driving at 0.05 in the State of New Jersey. Lowering it to 0.08 I don't see as doing anything other than making it very hard to prove.

MR. MENZA: Yes, sir.

MR. CYMBALUK: Excuse me, sir. You said that in the State of New Jersey, the police can issue a summons for driving while intoxicated for a 0.05.

MR. MARSH: The way I understand it, from 0.05 up, you can get a ticket for impaired driving.

MR. CYMBALUK: Is that-- Are you talking commercial, or are you talking the average citizen?

MR. MARSH: The average citizen.

MR. CYMBALUK: Under a CDL license?

MR. MARSH: No, on your driver's license.

MR. CYMBALUK: I don't really think that's factual, but I'll look into that.

MR. MARSH: You're a police officer; is that right, sir?

MR. CYMBALUK: Yes, sir, I am.

MR. MARSH: You can't stop somebody for impaired driving, under 0.10?

MR. CYMBALUK: I didn't say that. You said issuing a summons for a 0.05.

MR. MARSH: For 0.05 and above.

MR. CYMBALUK: No, sir. That's not-- That has been repealed a number of years ago. It used to be -- I don't want to comment on exactly

what the law was, because I can't remember it verbatim, but I'll get that information and review it. But I don't believe you can issue a summons right now for a 0.05.

MR. MARSH: I can't disagree with you. You'd have to go to court. You'd have to get a lawyer. But people who come in my bar have gotten a ticket, under 0.10. They have to go to court and prove whether they were impaired or not.

MR. CYMBALUK: Well, if there was an accident involved under 0.10, if there are mitigating circumstances, something to support that the person was impaired, then a summons could be -- but the police, for somebody just driving down the road, I don't believe they can arbitrarily issue a summons for 0.05.

MR. MARSH: I said, in the case of a policeman observing someone driving in an irresponsible manner, that they could issue a ticket -- a summons -- from 0.05 up, for being impaired. I did not -- not for any reason, going down the street.

MR. CYMBALUK: Okay.

MR. MARSH: But I'm just--

MR. MENZA: One last comment, if I may. Would you be so kind as to submit your position -- the position of your group -- on mandatory liability insurance under the Dram Shop law.

MR. ROTHBART: Traditionally, our Association--

MR. MENZA: You can submit it to us, all right.

MR. ROTHBART: Okay.

MR. MENZA: Traditionally, your position is?

MR. ROTHBART: Against it.

MR. MENZA: Against it?

MR. MARSH: What purpose would that serve?

MR. MENZA: We'd like to know what your position is, formally.

Thank you very much.

MR. ROTHBART: We will submit it. Thank you very much, Mr. Chairman.

MR. MENZA: I'm sorry, did you have something, Mr. Martinez?

MR. MARTINEZ: No.

MR. MENZA: Anyone else? (no response)

Okay, thank you so much.

Mr. Sami Richie, National Highway Traffic Safety Administration.

Mr. Richie.

SAMI M. RICHIE: Yes, good afternoon. I want to thank you very much for allowing us to testify before you today on this very important issue. My name is Sami Richie. I'm with the National Highway Traffic Safety Administration, Region II Office, in White Plains, New York. Our jurisdiction spans over New York, New Jersey, Puerto Rico, and the U.S. Virgin Islands Highway Safety Programs.

Before I give you an abridged version of the testimony that I just made available to you and to all your Task Force members, Mr. Chairman, I feel that I need to address several of the points that Mr. Berman has made in his remarks.

He alluded to NHTSA's studies that have been done in the past. He also talked about the BAC Estimator that has been talked about by other speakers. I think I can provide you with some clarifying information on that.

Let me say that what Senator Lautenberg has stated in his remarks, by saying that Mr. Berman has really attempted to trivialize all the data and all the studies by safety advocates and the National Highway Traffic Safety Administration, is correct. We believe that he has done that.

In reference to the BAC Estimator, what Mr. Berman has failed to indicate to you that he used different thresholds in calculating using the NHTSA calculator. The BAC Estimator is a diskette that allows you to calculate the BAC level that a person achieves at certain levels of alcohol consumption. What he failed to mention to you is that what Mr. Berman has done is to use a 16-ounce, 13 percent alcohol threshold as being a drink; whereas, the DSCUS, the Distilled Spirits Council of the U.S., uses a different threshold, which is the one that we, in fact, use with NHTSA; and that is, a 5-ounce, 11 percent alcohol constitutes a drink.

Equating the two, what we use and what Mr. Berman uses as his threshold, would equate to -- Mr. Berman's two drinks would actually be three drinks that that person would consume. He talked about the 120-pound woman who consumed the two drinks. I think you will see, through some of the remarks that I will be making, that there are a lot of clarifying remarks about the specific studies and the different levels of intoxication.

So allow me to say to you -- to begin my remarks by saying that impaired driving is the most frequently committed violent crime in America.

Every 30 minutes someone in this country dies in an alcohol-related crash. I think that really sets the stage.

The goal of our agency, the National Highway Traffic Safety Administration, is to reduce the annual toll of 41,000 deaths, 3 million injuries, and \$150 billion in societal costs that are due to motor vehicle crashes. Impaired driving plays a very substantial role in these crashes. However, the solutions to impaired driving are mainly at the state and the community level. It is not at the Federal government level nor, really, is it specifically at the state level but rather at the community level where all the action against impaired driving takes place.

We conduct research at NHTSA. We evaluate programs to see what is working, and when we find what is working, we import that information to other states so that they also can enjoy the gains in highway safety that we are all trying to achieve.

We do know that certain measures reduce impaired driving. We know that legislation works. We know that highly publicized and visible enforcement works. We know that public information and education works. I think your Task Force members have asked some critical questions that address these specific issues. Was it public information; was it legislation; what was it that caused the reduction, I think, were some of the questions.

And there is specific legislation that has proven effective in the impaired driving area. I am testifying in favor of legislation which proposes to lower the illegal blood alcohol concentration limit to 0.08 in New Jersey.

We, at the National Highway Traffic Safety Administration, believe that lowering the BAC will not only save lives and reduce injuries in

New Jersey, but it would also save your citizens a substantial amount of money in associated health care costs. Motor vehicle crashes cost the citizens of New Jersey approximately \$6.6 billion in 1996 dollar value on an annual basis. Out of those, alcohol-related crashes -- total alcohol-related crashes -- are estimated at \$2.1 billion on an annual basis. With a 12 percent reduction in alcohol-related fatalities -- a 12 percent reduction that would be associated-- This is just a reasonable, I think, a reasonable estimate. You've heard a lot of percentages of reductions, and so on, associated with lowering of the BAC. We believe that whether it's 10 percent or 12 percent or 16 percent -- I'm just using a 12 percent reduction -- associated with the reduction of the BAC level to 0.08, New Jersey can conceivably save an estimated \$250 million a year for things like--

MR. MENZA: Excuse me, I'm sorry. I just wanted to hit-- We have your testimony in front of us.

MR. RICHIE: Yes.

MR. MENZA: We will, of course, incorporate it in toto on the record. The suggestion is that maybe you just want to synopsise it or comment on it. Do you mind very much?

MR. RICHIE: Yes, I will do that. I thought it would be important, since the issue of the economic cost was not brought up during this whole discussion, it may be meaningful for the Task Force members--

MR. MENZA: That was an important issue.

MR. RICHIE: --and people here to hear it. But I will abridge the rest of my remarks.

These costs that I speak about, the \$250 million conceivable estimate of the savings in New Jersey, would be for things like emergency and acute health care costs, long-term care and rehab, police and judicial services, insurance, lost productivity, and things of that nature. These are the items that are paid for by the citizens of New Jersey.

We have, as an agency, produced two reports to Congress in the relative recent past on the subject of blood alcohol concentration, and in both of these reports we recommended to the U.S. Congress that every state and D.C. establish 0.08 BAC as illegal per se for drivers age 21 and older. And there are half a dozen reasons, all of them are enumerated in the report that I -- in my testimony that I passed out to you.

I will just simply say that virtually all drivers are substantially impaired at 0.08 levels. These are based on laboratory and track research that has been done that suggests and that says very strongly that significant decrements in performance in the driving tasks, whether it's braking, lane changing, divided attention issues, and so on-- Your ability to control the car and do all the tasks is terribly compromised at alcohol levels above 0.00, 0.02, and we've all talked about how it decreases your ability to control the car. But at higher, at the 0.08 level, those decrements are greatly enhanced. In other words, your ability to control the car at 0.08 is terribly compromised. In some instances, these tasks that would allow you to correctly control your car are compromised as high as 60 percent to 70 percent at that high level.

So 0.08, you have a lot of alcohol in your system. You are drunk. The risk of being involved in crashes increases substantially at 0.08. The Insurance Institute for Highway Safety says that the relative risk of being killed

in a single-vehicle crash between 0.05 and 0.09 BAC level is 11 times that of a person who has no alcohol in their system.

Lowering the per se limit is a proven, effective countermeasure which will reduce alcohol-related traffic fatalities. We've all talked about the California experience. We've talked about the five states. I think you've heard enough statistics. I can tell you that we are an agency that was created by Congress, and we work for the American public. We don't work for any private entity. We work for all of you, and the research that we do we hope is unbiased, totally scientific research, and that's what we present to you.

The information that we have, the studies that we have done on the states that have, in fact, lowered to 0.08 BAC have all experienced reductions in alcohol-related fatalities. These are significant -- statistically significant reductions.

One of the issues that was brought up: Has consumption really been reduced, because these states -- alcohol consumption reduced -- because these states passed it? And the answer is no. We looked at Maine, and, in fact, according to the Restaurant Association, their per capita consumption, in fact, went up by 11 percent. That's in the testimony that you have in front of you here.

So 0.08 is not just a couple of beers. It takes an awful lot of alcohol. You've heard the numbers that are correct that were stated by Dr. Hingson and others that it takes the four drinks for an average 170-pound male to reach that level in one hour. Four, that's a lot of alcohol.

Another issue that has not been brought up is the public support for BAC. NHTSA surveys have shown that people would not drive after

consuming two to three drinks in an hour. They all seem to understand that when you consume two to three drinks in one hour, you've consumed too much so that the ability to control that car is compromised.

MR. MENZA: Would you be so kind as to summarize, Mr. Richie? I'm not trying to be rude. Please forgive me for interrupting you.

MR. RICHIE: Yes, I will do that.

In summary, there are 15 states that already have the 0.08 per se laws, and we believe New Jersey ought to join those 15 states. Point zero eight is a level at which critical driving tasks are impaired. It is a level at which the risk of crash involvement increases substantially. It is a level that most of the public agrees that -- and which most industrialized nations have adopted. It is a proven, effective measure which will save lives and reduce injuries and economic costs for New Jersey. It is not just a couple of drinks. We're talking about a fairly substantial amount of alcohol that will get you to 0.08. I urge the State of New Jersey to consider the merits of this legislation and pass the measure to lower the illegal BAC to 0.08.

Thank you very much.

MR. MENZA: Thank you.

Are there any questions? Mr. O'Scanlon?

MR. O'SCANLON: Mr. Richie, I really am interested in the difference here between what Mr. Berman was saying and what you're saying and the fact that from six ounces to five ounces and 13 percent to 11 percent alcohol there is a major difference. How did you guys arrive at five ounces and 11 percent? Is that the average? If I go out to 50 bars, not that I will, and

have an average glass of wine poured, what is the percent alcohol and how many ounces of wine are in that glass?

MR. RICHIE: That is a great question. What we use for that BAC Estimator that Mr. Berman referred to is the standard that is used, not by any private -- or not by any public agency such as NHTSA, but by the DSCUS group, which is the Distilled Spirits Council of the U.S. That is what they use for their standards, so we use that.

What Mr. Berman has used is a much higher standard, which would equate -- instead of the five ounces, he was using six ounces. Instead of being at 11 percent alcohol, he was using 13 percent, and so his two drinks were truly three drinks. But the reality is, whenever people are served alcohol, there are good chances that it is more than even the six ounces, 13 percent in one single drink. So a person who is served a drink in that glass is consuming more than just a standard. So two drinks would actually be a lot more than that, which would specifically say that consuming those two drinks would get you to 0.08 much faster than you think.

MR. O'SCANLON: Well, okay, if that's the case, then we do have to be worried about impacting a woman who goes out for a social drink, as you just said, if she has two drinks that are substantially higher than these standards. Maybe these standards aren't even what we should be talking about. What we should be talking about is average people's behavior. And if an average person's behavior is going to cause them to be driving while intoxicated or be convicted of that, that's something we have to consider.

And that's where my question stems: What is it? I mean, if-- Even if it's three drinks at one two-hour dinner setting -- you know, I

occasionally go out with women, and it does happen that they consume two drinks, sometimes three, in a two-hour period. That does not strike me as being outrageous. Now, maybe it does lead to impairment, and maybe it's something we have to curb anyway -- I'm not saying that --but there does seem to be an argument here over some reasonable level, and by saying it's four or five drinks or it takes a lot of drinks to get there -- that's what we've heard up to now. Now your testimony is contrary to that, to a certain extent, that it doesn't take much to get to that point. And that's really what -- the source of my question.

I hope we can talk a little bit more and your agency will be available to this Task Force over the next few months to get to the bottom of this.

MR. RICHIE: We're absolutely happy to do that, and I think that is a very perceptive question and issue that you pose. I think Dr. Hingson said earlier that there is a lot of public information and education that has to take place in order to make people understand truly that maybe we are consuming a lot more alcohol than we should be feeling comfortable with.

MR. O'SCANLON: Okay. If I could then just very briefly-- If that's the case -- again, going back to the chart, which you saw a copy of that, again, Mr. Berman provided us with, so I won't testify as to its nonbiasness-- But I have seen in other areas and even in the numbers in the State of New Jersey there doesn't seem to be a spike in alcohol-related fatalities until you get up to 0.10. I'm wondering, does someone have a chart that refutes this, that this is incorrect? I would like to see that at some point.

We talk about impairment. How does that impairment translate to actual accidents and actual fatalities? Because I think it must for us (*sic*) to decide to legislate against it. I'm not sure of that yet, I'm still thinking about it, but I think that might be a reasonable standard.

MR. MENZA: Could you do that? Would you submit that information to us?

MR. O'SCANLON: Again, it's a chart--

MR. RICHIE: We would be happy to work--

MR. O'SCANLON: Again, we should talk more because your agency ought to be a resource for this Task Force, and we'll have to go into that a little more.

MR. RICHIE: We'd be happy to do that.

MR. O'SCANLON: Mr. Martinez, did you have a question?

MR. MARTINEZ: Yes.

Mr. Richie, what's to say that in the next 10 years, assuming that the level goes down to a 0.08, with your statistics meaning that from a 0.00 to even from a 0.05 to 0.09 someone is at least 11 times greater at risk to be impaired and be involved in an accident -- what's to say that in another 10 years you won't be before another Task Force committee pushing for a 0.05 or a 0.04?

MR. RICHIE: I can tell you that the 0.05 or 0.04 is not on the legislative agenda of the National Highway Traffic Safety Administration. I think what is important to understand here is that when -- and I believe -- the lady from the Restaurant Association says that we pass 0.08 and we think that we've solved the problem, we haven't. What we are doing is trying to guide

the states to take steps -- small steps at a time, steps within which our society allows us to do -- to curb the problems associated with drinking and driving.

The direct answer to your question is we have no -- we don't have that issue on our legislative agenda. If it becomes an issue that is important enough to the American public, I am sure that we would be charged by Congress to lead or to at least be available to provide resources that would allow people like you to make that judgement.

MR. MARTINEZ: It still seems to me, though, that there is really no refuting, if we were to accept Mr. Berman's representations, which to the BAC machine would prove that six ounces of wine is not an extraordinary significantly tall glass of wine and the difference between 11 percent alcohol by volume to 13 percent alcohol by volume is as quickly as just selecting it off the wine list-- When you pick a wine from the Napa Valley that you like, you don't necessarily always know what the alcohol by volume is of that wine. You know that taste and you know that you like it.

I'm a little concerned that regardless of it not being you or I at 170 pounds, an average woman, which I would say would be in the 120-pound range, can walk into an establishment over the course of a two-hour dinner and order two drinks of wine and be legally intoxicated. I think that presents a problem, and I would like you to address that -- not arguing that maybe it's two and a half to three glasses, because I think we can pretty much agree that whether it's two or three that's still in the range of a social drinker. That's not an alcoholic. So if you can address that I would appreciate it.

MR. RICHIE: All I can say to you is the BAC Estimator that we have allowed you to-- Maybe what you need to do is educate the general

public in a much more intensive way that, in fact, these specific differences in the kind of bottle that you choose from your wine list has these specific implications. We are not doing, and maybe all of us aren't doing, the job that we need to do to educate the public about what it is that we need to do in order to avoid getting in the position where we get behind the wheel and our ability is compromised in controlling that vehicle.

MR. MENZA: Mr. O'Scanlon and Mr. Martinez contributed important facts. Mr. O'Scanlon dates, we know now, and Mr. Martinez' wine list is limited to Napa Valley. (laughter)

Thank you very much, sir.

MR. RICHIE: Thank you.

MR. MENZA: Phyllis Scheps, New Jersey PTA.

PHYLLIS SCHEPS: Good afternoon. I represent a coalition of some 34 organizations, including the State PTA, as a quarter of a million members, and our total combined coalition of 34 groups we have over 300,000 members included who are supporting the issue of lowering the BAC from 0.10 to 0.08.

I know that you wanted me to brief, and I have taken my testimony and rewritten it 10 times since I am here, but I think I am going to just have to turn it around and just talk off the top of my head. I think there are a few facts that have to be known. I would like to give you one analogy to something and then give you a quick factual statement and some contradictions of things that have been said.

Back in 1978 I was part of a coalition in this State with Senator Lautenberg and started an issue of raising the drinking age to 21. I testified in Jersey and I testified in Washington on raising the issue. The very same

groups, liquor industry and, in New Jersey, the restaurant industry, gave the identical arguments. I took my old file out from 1978; it's the same arguments that they are going to lose business, it's not going to make any difference. I have to tell you that they were dead wrong. I have my testimony to you, I have submitted a chart from our own New Jersey Office of Highway Traffic Safety, which has been confirmed by the Fatal Accident Researchers. It's confirmed all over the nation.

The drinking age has made a difference. Our chart will show you that we went from 88 deaths a year, 18- to 20-year-olds, and went down to 11 a year now. So one piece of legislation works in many different ways. Will 0.08 make every bit of difference? No. Will it make people more aware? Yes. It will save lives. It will answer some of the arguments that the restaurant industry has gone after a 0.15 or 0.16. Well, you have to get to 0.08 to get to that. All of these little things make a difference. That fact is irrefutable that the laws work, they make a difference, and as I say, they don't make a difference with everybody or with everything.

Now, Mr. Berman -- I heard him back in March at the hearing when I was very disappointed that they didn't pursue it further-- He talked about Candy Lightner. You have all heard of the woman named Candy from MADD, Mothers Against Drunk Driving. She was a leader. We keep using her name, everyone in Jersey and the nationwide restaurant and the liquor industry. She was a leader in 21. She did support 0.08, but the next thing she did she went to work for the liquor industry, and then she suddenly doesn't support 0.08. So you have to know that facts that are happening, and that is the important thing that I want you to be aware of.

To condense my testimony I just want to ask a commonsense question. Even though we are talking DWI, at this point, all of us have occasion to think that we fly a lot. Would you be comfortable getting on an airplane knowing that the pilot had four or five drinks just an hour before? I don't think so. Are you comfortable going in for surgery knowing that your surgeon may have had the extra drinks? This is going to effect not only drivers, but pilots, doctors, and I think it's going to make a difference on everybody. Do we have a public awareness campaign to do? One hundred percent. That's in our laps know. We have that and that has to be done.

So I'm leaving you, in my testimony -- you'll have it here -- the coalition groups of 34 members, the blood alcohol and how it has made a difference not only in New Jersey -- my chart refers to New Jersey -- but you can check anywhere nationwide that the 21 has made a major difference. I have included a very, very simple chart of saying what your impairment is. Even at 0.02 you start to have a certain sense of impairment. Your tracking is distorted. There are several things. It is a very simple chart, which you will see.

You might just be interested, the question comes up, what is happening in other countries? I have the BACs from other countries. The industry and Mr. Berman keep reporting 0.08 makes no difference. This just came out August, *Highway Safety Report* from the nation. Illinois just went to 0.08 several months ago. They have already seen the dramatic decrease. It is working there as far as that is concerned. I have also included a packet that will give all of the industry arguments why it should not be lowered, and in giving our arguments, as they are called the antidrinking people, our arguments

are there. We are not antidrinkers and we are not prohibitioners. Frankly, we are here to try to reduce drunken driving accidents and incidents.

I thank you very much for your time.

MR. MENZA: Any questions?

The airplane comment reminded me of many years ago when I was on an airplane going to Paris on Air France, sometimes known -- at least at the time known as Air Chance, and I saw two pilots drinking wine with their meal. Surprising to say it had an effect on me. (laughter)

MS. SCHEPS: Yes, that's what they call intent. You're getting figures, frankly, from both sides.

MR. MENZA: You're not to glean anything or infer about those comments.

Thank you.

MS. SCHEPS: We're getting figures from both sides. It's really almost a commonsense issue. It's on the way, it's going to make a difference, but not the first thing.

Thank you for your time.

MR. MENZA: Thank you very much.

Carl DeBell, National Council on Alcohol and Drug Abuse.

C A R L D e B E L L: Mr. Chairman, Task Force members, National Council--

MR. MENZA: National Council.

MR. DeBELL: --of Alcoholism and Drug Dependence--

MR. MENZA: Sometimes I get confused between the New Jersey representatives and the national representatives. So you are a national representative of the New Jersey area.

Mr. DeBELL: National representative of North Jersey areas.

We have been in business for 20 years working with alcoholics and individual drug dependence. We enthusiastically support the concept of lowering the blood alcohol content to 0.08. You have our testimony.

Thank you so much.

MR. MENZA: Well, thank you, sir.

Are there any questions of this gentleman? (negative response)

Thank you, Mr. DeBell.

I can assure you that the Task Force members will read the material.

Mr. Doug Thomson, former restaurateur.

DOUG THOMSON: My name is Doug Thomson. I would like to thank you for allowing me to be heard today.

First, in regards to Senator Lautenberg's statement about drinking four drinks in an hour reaching 0.08. On August 7 of this year, our Governor, Christie Whitman, had a meeting of the LBA and stated that her husband had consumed--

MR. MENZA: Is your mike on, sir?

MR. THOMSON: Yes it is. Am I not speaking loud enough?

MR. MENZA: It's okay, go ahead.

MR. THOMSON: Okay. Like I said, Governor Whitman, at a meeting of the LBA, stated that her husband had consumed two glasses of wine

and it registered in the test 0.07. So that does vary quite a bit from person to person and test.

MR. MENZA: Does that imply a position from the Governor?

MR. THOMSON: I'm sorry.

MR. MENZA: Does that imply a position from the Governor with regard to this?

MR. THOMSON: No, it's just mentioning a statement that she made a fact.

I recently wrote an article regarding the issue of 0.08. Several area newspapers published it, including *The New York Times*, and the Morris County *Daily Record*. The *Daily Record* featured my points of view along with Senator Lautenberg's. I would like to, at this time, read that article to you.

Again, my name is Doug Thomson, and I do drink and drive responsibly. I am writing as a member of the true silent majority of the hardworking middle--

MR. MENZA: Please forgive me for interrupting you.

MR. THOMSON: That's okay.

MR. MENZA: But we have the article in front of us.

MR. THOMSON: Okay.

MR. MENZA: So it's really not necessary to read it. But thank you anyway.

MR. THOMSON: Okay. I would just like to make one more point. A little bit further down in here where I mention how you can be pulled over randomly in DWI checkpoints-- It is a fact that on the way here this morning I was pulled over in the DMV checkpoint and I was issued a ticket.

Unfortunately, I didn't have my safety belt on. I was breaking the law. Fortunately, I hadn't had two glasses of wine at the time or I may not be here today.

Thank you very much.

MR. MENZA: I always remember, when I was in the Legislature, that the police officers couldn't stop you because you have fancy plates on and the Constitution says that you can't be stopped going or coming from Trenton. It's wonderful. (laughter) Of course, I never exceeded the speeding limit in any event.

Ms. Mary Joyce Doyle, Legislative Chairman, New Jersey State Federation of Women's Clubs.

MARY JOYCE DOYLE: Good afternoon. Thank you, ladies and gentlemen, for the opportunity to present to you the position of the New Jersey State Federation of Women's Clubs in regard to the issue of drunken driving and, in particular, lowering the blood alcohol content of 0.08. I shall try to be very brief. If I sound nervous, I'm not, I'm freezing. (laughter)

An organization of approximately 18,400 members, the New Jersey State Federation of Women's Clubs, hereafter I will refer to as NJSFWC, voted unanimously at our State Convention in May 1997 to support passage of S-1411 and A-200. Having studied the problem of drunken driving and the 0.08 proposal, in particular, the Legislation Resolutions Committee, that I chaired, made its recommendations based on the facts, statistics, and data presented by both sides. We spent months studying both sides of the issue.

I realize that you have already heard, and no doubt you are going to hear again at the next two public hearings, the arguments for and against the 0.08 issue. Therefore, I don't propose to belabor the point by repeating them. Suffice to say, that after several months, almost a year, of review by our committee and discussion with State and local police, as well as others directly involved in this issue, we firmly support the 0.08 proposal.

I might mention, in our discussion with the State Police and local police, the point: we asked the question that has been raised here today, why not 0.04, why not 0.02? The police said to us that they wanted a level, that given the current materials, equipment that they have, that could then be enforced. We also, in asking the question from many other sources, were told that what we are working toward is a national standard, and the states that we are looking at it's 0.08, and that seemed to be, to our satisfaction, the reason for 0.08 rather than 0.04, and so on.

In addition, we would like to present for your consideration the number of concerns that our members raised during our research, and I will skim over those.

First of all, we can, with all good intentions, become mired down in statistics. While we pride ourselves on the decline that we've heard in drunken driving fatalities, we must acknowledge that whatever the remaining number, one fatality as a result of drunken driving is one too many. So while the statistics perhaps indicate a decrease and while we are looking at charts and figures, let us always keep in mind that they are human beings that we are talking about, innocent victims, and many of them children.

We urge you to think of this. Why should we not step up the challenge of changing today's social environment that right now is too accepting, too complacent of alcohol abuse and change that environment to one that demands that those who drink also act responsibly?

What are we doing and what needs to be done about the serious problem of binge drinking on college campuses? What must be done to protect our young people from the terrific peer pressure that is exerted on our underage groups?

How do we stem the number of alcohol-related crimes committed every day, and what is the role of alcohol in the transmission of sexually transmitted diseases? And is it a fact, and we have asked this of many, many people, is it a fact and why that New Jersey stands alone as the only state where drunken driving is a traffic offense, not a criminal one? I've heard this several times. I asked this downstairs when I came in this morning. If it is a fact, why is it a fact?

If you enact the 0.08 and stricter laws are enacted, what measures will be taken to ensure that these laws are strictly enforced?

The opponents of 0.08 frequently state that passage of this legislation will, and I quote, "create more criminals in a State whose court dockets are already backlogged and where caseloads are already backbreaking." To this argument, may I state: one, the conditions of our courts and prisons is not the issue here; secondly, laws do not create criminals. If I steal, I am morally and ethically a thief whether or not I am caught, but I can assure you that if I realize that that department is enforcing the law against shoplifting and there is a security officer there, I am going to think twice before I commit

that crime. Therefore, a major point, laws do not only protect the innocent, they are intended to act as a serious deterrent to the offenders.

I am by profession a librarian. I realize the importance of gathering data -- which you are doing -- compiling statistics, and analyzing all sides of an issue, but I know that there comes a point when the process of research is over and it's time to take a position, and in this case, 0.08 BAC, it is time to pass this vital legislation. This bill is not against social drinking. It's against the arrogance of anyone drinking to excess and endangering his or her own life and the lives of others.

On behalf of the thousands of members of NJSFWC, as well as all those who ride or walk the highways of our State, I urge you to act courageously, nobly, expeditiously, and have our legislators pass legislation in support of 0.08 BAC.

I thank you for your courtesy and for the opportunity to appear before you today. Attached to my testimony are copies of the resolution that was passed out at our State Convention.

Thank you.

MR. MENZA: Thank you, Ms. Doyle. Just a moment please.

Are there any questions of Ms. Doyle? (negative response)

Thank you very much, ma'am.

Joseph Johnson, Atlantic City Council on Alcohol and Drug Abuse.

Again, I respectfully suggest that you synopsise your remarks.

JOSEPH JOHNSON: Okay, I'll try and do that for you.

It's kind of interesting that we kind of get lost in our own arguments here. I sat here and I listened to a guy from the national

transportation authority say that no matter how you get it down -- two glasses of wine, four bottles of beer, three glasses of 11 ounces, 4 ounces of that -- when you get down enough alcohol that you have a 0.08 reading, you consumed a lot of alcohol and you are driving impaired. And at the same time he says the national transportation authority recommends that New Jersey set 0.08 as the threshold for DUI. We get lost in our own argument. Here is a guy telling you that they recommend that you set the limit to where you are impaired.

I am with the Atlantic County Advisory Committee on Drug and Alcohol Abuse, and I am here today on my own behalf just to put before you some of my thoughts on what is happening here because-- I am sorry that I didn't think that 0.08 was the major factor here. I thought you were looking at the more broader view, and that is what I have been dealing with in Atlantic County on this Committee. I would like to identify the three areas of drinking that we consider to be problems, and that is, underage drinking, excessive use of alcohol, and, of course, drunken driving.

In the spring of this year, in South Jersey we were able to place together a cooperative effort between the Atlantic County Justice Department, the area chiefs of police, and the owners and operators of many Atlantic County liquor licenses. Representatives of the prosecutor's office and a police officer visit the establishment serving liquor where marginal age groups ordinarily gather. The establishments were given the opportunity to have their personnel trained in the techniques of identifying false and tampered identifications. The response was gratifying. The level of participation, the attitudes of those involved from justice, police, and the employees of

establishments set some new precedents for cooperation. We were able to caution about consequences of underage drinkers on the premises. We distributed some literature, provided signs, and posted in the doorways warning reminders that they would be carded.

All in all everyone agreed that this cooperative approach payed. I'm not going to tell you that no minors were served alcohol in Atlantic County this summer, but fewer were, and the incidence reports of the Alcoholic Beverage Commission and local police blotters will bear this out.

This is an end to the subject of underage drinking because the underage drinker becomes the 17- to 21-year-old driver. You take the class of drivers with the highest accident rate sober and you introduce alcohol. The least-experienced drinker now becomes also the least-experienced driver, and that combination of the least-experienced drinker and the least-experienced driver is responsible for a very high level of the statistics that you have been listening to today. In fact, if you wanted to do something that would be far more beneficial in terms of reducing the highway death rate than the 0.08 argument, which is taking the big picture here and looking at that much of it, you would say, "Hey, we can take the drinking age and reduce it from 21 to 18, and we can take the driving age and increase it from 17 to 21."

Now, if you were genuinely interested in changing the level of deaths on the highway, that factor would be 20 times -- at least 20 times -- effective as the 0.08 argument. Here you have these underage drivers drinking. Now you can say let them drink if they didn't drive. You would never be re-elected if you are a politician and propose that, they would recall you. But, nevertheless, working in that area is where you could get the most out of the

effort. You are going to have together here the forces of change. The opportunity to do something, to do something really worth while.

Now, if you waste that opportunity with the big picture here, fooling around with this -- that's why I am here, because I think that is what is happening. You're not looking at the big picture, you're looking at that high line over here, because this is where you have got to make the thing stop. In that high line over here, the biggest part of that high line where all of these guys are 0.15 and above are getting killed are kids that are driving between the ages of 16 and 21.

MR. MENZA: Mr. Cymbaluk just mentioned a response to what you just said. Yes, we are.

I'm not trying to cut you off, but I am going to say for the fifth time today that our charge is quite broad. We are looking at the entire aspect of drunken driving -- all of it -- not just a change in the percentage of blood alcohol content. We will address all of the issues that you have commented on.

MR. JOHNSON: Okay.

MR. MENZA: In light of that, is there anything else, sir?

MR. JOHNSON: No. Most of everything else is a redundancy. The thing that brought me here today was my concern. I deal with this issue in the Atlantic County area. We operate the Intoxicated Driver Resource Center, and I can tell you that scanning the records of the Intoxicated Drivers Resource Center, you will find that of the people who are participating in that program or court ordered to participate in that program the 0.10 are almost none. And if these people are not being arrested, they can get 0.08, and it can't possibly make a bit of difference.

The people that are participating in this-- For the people who have been arrested and are participating in the Intoxicated Driver Resource Program are 0.13, 0.15. You don't get stopped for driving down the street at 0.01 because you are not that impaired in driving that you're going to be stopped.

Thank you.

MR. MENZA: Okay. Any questions? (negative response)

Thank you very much, sir.

Patrick Schultz, Tri-State Transportation Campaign.

PATRICK SCHULTZ: Thank you. I only want to offer a very, very brief comment.

I represent the Tri-State Transportation Campaign, which is a nonprofit coalition of 13 public interest groups in New Jersey, New York, and Connecticut, including groups such as the New Jersey Public Interest Research Group Citizen Lobby and New Jersey Environmental Lobby, Environmental Law Clinic at Rutgers, nationally the Environmental Defense Fund and the Natural Resources Defense Council.

Our coalition is dedicated to restructuring transportation policy, infrastructure, and choices to promote environmental health and sustainability, transportation safety at every level, economic efficiency, and social equity in the tristate area.

I would like this opportunity to state the strongest possible support for the New Jersey State Senate and Assembly bills and, if I may, Senator Lautenberg's bill providing for a national blood alcohol concentration standard of 0.08 to prohibit the operation of motor vehicles by intoxicated individuals and necessary provisions to strengthen statutory deterrent to DWI,

such as tougher repeat offenders provisions. The Tri-State Transportation Campaign's interest in this issue in the bill under discussion stems from its concern with the inadequacy of existing laws enacted to promote motorists', but our concern is especially with bicyclists and pedestrian, safety.

Senator Kosco's bill and Senator Lautenberg's Safe and Sober Street Act of 1997 represent necessary steps forward in the campaign to educate and successfully deter people from drinking and driving and to secure the safety of motorists, bicyclists, and pedestrians on our highways and streets. As a social commentary, I would like to say that as a society, we must make very clear that there is, quote, "no such thing as a drunken driving accident." These bills mentioned above will prove significant efforts to establish that, and these bills supply valuable pieces, if not very critical pieces, in the overall puzzle of creating a safer transportation system.

Tri-State also contends that it is our cultural imperative to offer safer means in access to mobility and not sit idle while our society practices and encourages dependency on the automobile, for this is also obviously the part of the problem. Alternatives to driving must, at the very least, be aggressively promoted and made readily available in environments where drinking is expected and prevalent behavior. This is all I have.

Thank you for your time and the opportunity to testify.

MR. MENZA: Thank you. Are there any questions for this gentleman? (negative response)

Thank you so much.

Barry Brendel, I understand that you need not testify. Where are you, sir?

UNIDENTIFIED SPEAKER FROM AUDIENCE: He had to return to his office.

MR. MENZA: We'll review his testimony.

Steve Carellas, New Jersey Chapter of the National Motorist Association.

Do you have any written testimony, sir?

STEVE CARELLAS: I provided written testimony a few weeks ago so that you would all have the opportunity to kind of read the details.

MR. MENZA: Okay.

MR. CARELLAS: I am Steve Carellas. I head the State Chapter of the National Motorists Association. There is some perspectives of the BAC issue that haven't been brought up yet today, so I certainly want to address them, some issues of terminology, and it should only take a few minutes, since if I were to use my written testimony, that would have only taken 10 minutes.

Now, I've been involved in representing-- Well, let me tell you about the National Motorists Association. We are a member-supported motorist advocacy organization that represents the interest of informed motorists. I personally have been representing motorist views for over 10 years, and I have looked at just about everything related to highway and vehicle safety on a national basis and here in New Jersey. This is the broader picture, not even just the alcohol part of it. It gets to be easier these days. You can get tons of stuff on a CD-ROM, and you don't need a data center anymore to review it.

New Jersey data from the State Police subscribe to alcohol, drugs, and driving. So you get to kind of see a lot of stuff over time. What happens

is-- I don't envy you folks. Unless you have been dealing with the whole issue of highway safety for a long time, it's all a lot at once. I developed-- Where I'm coming from of having years of integrating it and seeing it across a whole variety of highway safety issues and things start looking alike after a while and there are some real conclusions that you can start drawing.

We don't support 0.08 because we don't think it is going to help, and we also think that the data supports that. One of the things I want to start talking about is that we hear a lot about alcohol related -- and I think the number that was used today was 43 percent nationally -- alcohol-related fatalities. You have to be very careful with that term. Rick Berman did talk about an example of what it can mean, someone who's got some trace of alcohol in their blood, sitting at a light and someone rear ending them. Other things that are true is pedestrians, and in New Jersey, we are getting more and more pedestrian fatalities. A lot of them are finding themselves drunk and they are hitting the cars, as it were.

You try and apply that to motoring and you really have to understand what really is the cause. A lot of the data that you're looking at -- this is a word of warning because you are going to be doing a lot of reading and a lot of looking at the data -- really points to cause, or is it just saying that the involvement in the data that you're looking at had alcohol involved or the other causes that were attributed to an individual accident. Unfortunately, they get very much lost in this aggregate data that you end up looking at. After years of looking at it, it's like I said, I don't envy what you have to do.

We believe that while the average motorist supports the goal of preventing truly drugged or drunken drivers from operating motor vehicles

that that proposed reduction of the blood alcohol level from the 0.08 to 0.10 would do nothing whatsoever to reach that goal because it doesn't address the true source of the drunken driving problem. You've heard of it in a couple of ways such as repeat offenders and those at high level of alcohol -- or at levels above 0.15.

In point to my State Police data, I've reviewed a decade's worth of fatality data from New Jersey State Police and performed a comprehensive analysis of the applicable DWI data, and there are just a few things that I will point out from looking at the charts that I provided the Task Force.

The 20-year trend in the number of intoxicated drivers involved in fatal accidents is at an all time low in New Jersey. Getting more specific to the blood alcohol level, over the 8-year period from 1988 to 1995, the percentage of driver fatalities involving BAC levels between 0.08 and 0.10 average 4.3 percent, while the percentage of driving fatalities above the 0.10 level average 78 percent. In 1994, specifically, 2 percent of driving fatalities involve BAC levels between 0.08 and 0.10, while that same percentage of driving fatalities above 0.10 was 85 percent. So we should pay attention to what the New Jersey data is telling us about where we are seeing the incidents of drivers with alcohol in fatalities.

Keep in mind, while these figures reflect the distribution of BAC measurements without regard to alcohol being the cause of the accident, the data clearly show relatively few fatalities in that 0.08 and 0.09 range. Now, the benefit of a 0.10 or greater BAC standard is the strong correlation between that legal threshold and what is considered drunken driving. In other words, BACs of 0.08 or even lower, this correlation is either nonexistent or very

difficult to detect. When BAC standards no longer reflect or are no longer reflective of a reasonable behavior standard, enforcement and adjudication falls off accordingly.

This creates a new set of problems for law enforcement personnel, the courts, and most importantly, for the public and their support for DWI initiatives in general. After all, you don't want the hypocrisy to weaken the sheet with low speed limit standards.

What would happen if we adopted a 0.08 standard? Since there is little performance difference between 0.10 and 0.08, the police would be forced to rely on more Draconian tactics like road blocks to enforce the lower limit. Yet most of the additional drivers arrested would pose no threat to the other motorists. In fact, there is absolutely no valid scientific evidence that persons who operate a motor vehicle at 0.04 to 0.10 BAC levels are any more likely -- now pay attention to this part -- to be involved in a traffic accident than sober drivers. It's getting involved in the accident to begin with.

MR. MENZA: Repeat what you just said. I want to make sure that we heard it.

MR. CARELLAS: Okay. No valid scientific evidence that persons who operate a motor vehicle at 0.04 to 0.10 BAC levels are any more likely to be involved in a traffic accident than sober drivers.

MR. MENZA: The reason I ask you to repeat it is because I didn't understand it in the first place. I don't understand it now. Is it not the case that when you drink your driving abilities are impaired? Is that a fact, or is it not?

If I have two drinks does that affect my ability to drive? Not ability to drive--

MR. CARELLAS: I--

MR. MENZA: Does it-- Let me finish, sir.

If a have a couple of drinks, does that have any affect on my ability to drive?

MR. CARELLAS: I don't know the answer to that question because I am not you and I don't know how you handle two drinks.

MR. MENZA: The average person. The average reasonable person.

MR. CARELLAS: I can speak for myself. I don't detect an impairment after having the literal couple of drinks.

MR. MENZA: A person with a 0.08 reading -- 0.08 blood alcohol -- would you characterize that person as being impaired or not?

MR. CARELLAS: It depends. One of the problems that hasn't gotten talked about in terms of impairment is what it means to each individual. It's great to have a formula and it's all generalizing, but it all depends on a lot of other factors with the particular individual just beyond an empty stomach and their height and weight. There is metabolism issues. It goes on and on.

The point that I want to get here to my statement and why I said to be careful-- The point I was making gets to the randomness of accidents. It's the fact that other situations come about other than, let's say, for example, someone being very tired or someone being at some level of intoxication. There is other reasons that accidents happen solely than just those single causes. The fact that accidents, crashes -- whatever you want call them -- are

random events has a lot to do with what my statement was about. That they are not likely to be involved in a traffic accident than sober drivers. That is the context of accidents in general.

MR. MENZA: Why have drunken driving laws to begin with?

MR. CARELLAS: It's like any laws. It's laws at a reasonable standard, and I guess your focus today on giving 0.10 this 0.08 thing becomes a reasonable standard and it won't do any good.

MR. MENZA: Why is 0.10 now reasonable and not 0.08?

Point one zero conforms, as you put it, and point zero eight does not, why?

MR. CARELLAS: I referred to Mr. O'Scanlon who was showing -- Rick Berman was showing -- as I recall -- and where the fatalities are showing up as a big spike is after 0.10 in terms of what the data is telling us. Secondly, as I said moments before, the reasonable behavior standard in terms of demonstratable that people understand that at 0.10 or slightly above that is indeed what they understand. You start talking about these lower numbers, and we are all speculating what it means for us, what it means for you, what it means for the next person. But 0.10 generally reflects a behavior that you can see in the general population.

MR. MENZA: Are there any questions of this gentleman?

Mr. O'Scanlon.

MR. O'SCANLON: Mr. Carellas, you made the statement that the people who have -- from tracing amounts of alcohol up to 0.08--

MR. CARELLAS: By the way, I did not finish my testimony. I would be happy to entertain questions at any point along the line.

MR. O'SCANLON: On the subject that we are on right now.

They don't have any likelihood of being in an accident than people who have no alcohol in their system whatsoever. First off -- two-part question -- where do you get that? Second of all, if you do have scientific backing to state that, where we refer to other testimony here today, and we have seen it in a dozen charts, that people's likelihood of being in an accident doubles every 0.02 percent increase--

I'm missing something. I hope that you can clarify.

MR. CARELLAS: Well, that's not what they said. It's one of the other issues that I was going to address. In looking at studies, it's what are they really saying and what are they really comparing them to. What you just referred to isn't the likelihood of getting in an accident, it's talked about increased risk. I kind of put the onus on you folks, because they are providing the data that claims this. What does it mean when it says up by this, small amount of alcohol and increased by 11 times? Find out the risk of what and what it's based on.

People have to get into an accident to begin with. What is it that the alcohol is doing that they are talking about the increased risk? Is it like I am going to take an active role in being involved in an accident or is-- Someone can go along being tired and has some level of impairment or no level of impairment and they're not -- someone hits them and there is-- How does the fact that they were more tired or had alcohol in their system contribute to their higher risk when they were hit?

MR. O'SCANLON: Thank you for answering that question. It is also your testimony that the evidence doesn't air out. That someone at 0.08

-- whatever -- level of impairment, that this doesn't translate into accidents, and you are saying that it does translate at 0.10 and higher.

MR. CARELLAS: Yes, just looking at the data in New Jersey, if you look at 4 percent on average for the '88 to '95 being in a range of 0.08 and 0.09, and above 0.10 it's 78 percent. Well, there is a whole bigger percentage than 0.04; that's below 0.08. On the other hand, I don't think that we are talking about getting into the levels of 0.05 as a per se law in the State, especially because of the variability that it has with different people.

So look where the numbers are falling.

MR. MENZA: Again, I'm sorry for the intrusion, but could you sum up. Would you mind?

MR. CARELLAS: Well, given-- You have the written testimony to go over the supporting information on this. Where we wanted to move is given what we have learned from looking at 0.08 data. Where do we go? We think that despite New Jersey having some of the nation's tougher drunk and driving laws, there are a whole bunch of factors that do allow repeat offenders to be a threat. The testimony that I have contains that information, but in terms of the broader picture, we think that is something you have to look at.

Also in terms of just a conclusion -- this is the last page here -- obviously, when you are looking at all of the laws, we think the DWI laws need to be applied and modified with the appropriate emphasis on the habitual and the high BAC offender, this, for example, following existing guidelines for jail time. They are not necessarily followed today. Ensure adequate measurement systems so they can properly evaluate what is happening and the causes and effects.

Again, it is very, very difficult to use existing data to try and draw real conclusions. It's still going to be one's judgement after you look at all the numbers in the world. If we can set up a better way to determine what's going on, then we have a better basis to use those numbers with better judgement.

My last point is, as we all continue to develop our understanding on this issue, we believe that our current DWI laws and practices will likely require major restructuring, and we are happy that's part of your charter. The Breathalyser issue, which my testimony talks about, is something that I'm glad that you're looking into. The graduated penalty system, partially with a basis on BAC level, may make some difference.

The attorney who spoke before as a private citizen brought up many of the issues we plan to provide to you in writing that need to be looked at in your broader charter.

Finally, the last sentence, this is no silver bullet that is going to resolve the problem on drunken driving. It's just a lot of hard work on dealing with individual alcoholic drivers over the long term.

Thank you.

MR. MENZA: Thank you.

Are there any other questions of this gentleman? (negative response)

Thank you very much, sir.

William G. Wright, Chairman, Executive Director of the Teresa G. Wright Promise Foundation.

WILLIAM G. WRIGHT, ESQ.: Good afternoon. I'm sorry I don't have my written comments before you, but I will provide a copy of those to the Task Force very quickly hereafter.

Mr. Chairperson, members of the Task Force, and those assembled at these hearings, my name is William Wright. I reside in Randolph, New Jersey, and as noted, I am the Chairman and Executive Director of the Teresa G. Wright Promise Foundation, and I am also an attorney.

Please let me express my appreciation for allowing me to address you today in connection with your review of these alcohol-related crashes and fatalities. While I welcome the opportunity to testify and participate in this process, I only wish that my presence before you on these bills did not bear such extreme personal implications or come as such an overwhelming emotional cost as that borne by my family and my friends. Rather, I come before you to briefly relay the physical and emotional scars of the thousands of innocent victims of a tragic crime and their loved ones asking to be heard and to be protected from drunken, irresponsible, and reckless drivers.

I'm not going to focus specifically on the statistics and studies or the attempts of the alcohol industry to discredit the viabilities of these statistics. You have heard all of that today. I am going to instead take you briefly to the end result of the drinking and driving that the industry so cavalierly dismisses. This, for all of you, is the bottom line.

As many of you may know through media accounts, my wife, Teresa Wright, a beautiful wife, nurse, and mother of my three children, was struck and killed by a drunken driver in an intersection on Route 10 in Randolph, New Jersey, on February 22, 1995. The perpetrator of this crime

ran a red light at a speed in excess of 80 miles per hour. The car in which my wife and children were traveling was struck and catapulted into the air, finally coming to rest at approximately 100 feet from the point of impact where it burst into flames. My wife and my children were pulled from the burning vehicle by passing Good Samaritans. After being assured that her children survived the crash, my wife, who was lying on the ground covered with blood, quickly lapsed into a coma and before my injured children's eyes received CPR because her heart and breathing had stopped. She was transported barely alive by a State Police helicopter to Morristown Memorial Hospital for emergency surgery. My children were briefly hospitalized and recovered from their injuries. My wife, however, suffered massive brain trauma, as well as other severe injuries, and died two days later in my arms at the hospital.

I wish I could tell you that the personal and graphic scenario that I just relayed was an isolated one, but I am sad to say that it is not. It is far from that. Men, women, and children are being injured and killed almost daily across this State. The list of victims and locals are seemingly endless. It is now this Task Force's turn to see the tragedy, the trauma, the twisted steel, the physical and emotional scars that drunken and reckless driving can cause. This Task Force stands on a position that most of us do not. You have the direct ability and authority to stop this carnage on our highways.

As you know, there are over 17,000 drunken driving fatalities in the U.S. every year. On average, an individual is killed by a drunken driver once every 25 to 30 minutes, or almost 60 people per day. In the time that I will address you today, possibly 1 person may lose their life to a drunken driver somewhere in this country, while 200 others may be injured. In New Jersey

alone, statistics indicate that there are, on average, almost 700 motor vehicle fatalities per year. Of these fatalities approximately 30 percent involve alcohol to some degree. Driving while intoxicated has been listed as the major contributing factor in over 20 percent of these fatalities. This translates to an average of at least 1 alcohol-related driving fatality every three days in this State. Further, the over 5 million licensed drivers who traverse the roads of New Jersey in any given year, on average, the DMV has estimated that between 700,000 and 1 million of these drivers have had their licenses revoked for reasons related to their driving record such as drunk, reckless, careless driving, excessive violations.

Statistics such as these have prompted judicial and legislative response on the highest level. The United States Supreme Court has stated that drunken driving is a national tragedy and that no one can seriously dispute the magnitude of the drunken driving problem or the states' interest in eradicating it.

Further, the New Jersey Supreme Court has spoken of its intent to effect the strongest, legislative and public policy to eliminate drunken driving by refusing to allow drunken drivers to escape responsibility for their actions by insuring accountability of those who cause drunken driving and by penalizing drinking and driving offenses to the fullest extent of the law.

I submit to you that drunken and reckless driving has an even greater and far more pervasive impact upon society than even these austere institutions realize. It is time that we no longer be forced to play Russian roulette each time we drive on the highways of this State. Responsibility and accountability must prevail over irresponsibility.

While a decision to drink and drive is a personal one, the decision to drink and drive takes the act out of the realm of a personal freedom. It then becomes a dangerous decision with potentially lethal consequences for society at large. With every civil right there must be a corresponding civil obligation. As a civilized society, we must demand that drunken and/or reckless drivers who get behind the wheel of a vehicle take responsibility for the lethal weapon in his or her hands with the full knowledge that he or she will be required to answer for their acts.

I should note that I saw an interesting badge out in the audience today. It said, "Responsible people equal safe New Jersey roads." I would suggest that the industry will not be there. The alcohol industry will not be there to hold those individuals' hands as they pass through from responsibility to irresponsibility. Hopefully all of us will be miles away when that happens.

As a direct result of my wife's death, the State Legislature and Governor Whitman enacted Teri's laws to substantially increase the penalties for the acts of intoxicated or reckless drivers resulting in death on our highways, including meaningful and significant incarceration, as well as to provide for more stringent consequences for driving a vehicle with a suspended or revoked license. These provisions were implemented to prosecute, punish, and deter those individuals who daily put our lives and our families at risk. The time has come for us to discard the tolerant attitude that currently exists towards drunken, reckless, and irresponsible drivers, and it starts right here with this Task Force.

While this Task Force has been charged with the task of reviewing the merits behind adopting a blood alcohol level of 0.08 BAC, you will also be

considering other measures to address the overall intoxicated and impaired driving issue. Each has its own merits with respect to impact and effectiveness. What is needed is a comprehensive, coordinated, and integrated program of enforcement, awareness, education, and rehabilitation. All of the possible avenues must be examined, such as DWI criminalization, administrative license revocation, more extensive rehabilitation programs, but all of these must work in concert.

The problem must be attacked across the board, but the linchpin of this program is the enactment of a 0.08 BAC level. It is not often that you can point to a program or initiative and say that it can be quantitatively proven to have its intended results. However, 0.08 BAC level has been shown to have the fatality- and injury-reducing effect its proponents contest. Study after study, statistic after statistic show that lives will be saved by the implementation of this measure. A 0.08 BAC level will save lives in this State through a combination of deterrent and enforcement effect.

You will hear, over the course of your hearing, incontrovertible data that supports the implementation of a 0.08 BAC, and indeed you have heard that today -- it will reduce fatalities anywhere from 4 percent to 12 percent; and that injuries will decrease proportionately; and that individuals will still be able to consume a significant amount of alcohol and legally drive; that the prior 0.10 BAC level was based on studies conducted under technology and methods available in the '50s and the early '60s. Every driver, no matter what size or sex, has driving skills impaired at a 0.05 BAC and that profits and jobs will not be lost as a result of a 0.08 BAC level.

You will have heard this from the experts whose job it is to conduct and interpret these studies, and I leave it to them to do so. But you will also hear from those who wrongly believe that implementation of such a standard is an infringement on personal freedom, a return to prohibition, and an intrusion of government. More importantly, and as today's testimony shows, you will hear from those who ignore the data and callously and inexcusably look at the trade-off of lives for profit. I should note that just a few speakers ago someone indicated that they felt that if a 0.08 BAC was passed in New Jersey, their profits would drop 20 percent. I can tell you that after the loss of my wife my costs have more than increased 20 percent. My child care, my home care, my taxes, my meals -- I'm not a cook, everything is bought most of the time -- my costs have increased 20 percent, so I have really no feeling for those who say that they will lose 20 percent in profits.

I'm confident that you will be able to recognize this opposition in its true color and come to the conclusion that the lives of all of us, yours, mine, your families, and your friends, require that this and other appropriate measures be taken and taken without delay. The issue of a 0.08 BAC is now receiving much overdue attention. Editorials, media coverage, commentary all show the issue from an industry verses advocacy perspective. You will obviously encounter this during your hearings as we all have, but something that I learned in my first year of law school has put a lot of the frustrating industry gossip that I have heard against the 0.08 BAC in perspective for me.

I remember my first year, and in legal circles it is said that if the facts are on your side, argue the facts. If the facts are against you, argue the

law. If the law is against you, argue the equities, and if the equities are against you, just argue like hell about anything that comes to mind.

I have had the opportunity to listen to today's testimony and to debate the opponents of a 0.08 BAC in numerous forums, and I am, of course, acutely aware of any public discussion of the issue. I have observed this law school adage at work. Opponents initially claim, as they do today, that the studies showing that 0.08 BAC works were flawed, but the evidence presented to you today indicates that this is incorrect. They have also seen that the laws against drunken driving are being strengthened as the trend is to implement such legislation, so that has become a complication. The arguments then move to the equity saying that the State should not legislate how much people can drink and then drive, and it should be left to the industry to please itself and its servers and individuals to please themselves to remedy the problem. While server initiatives are worthwhile, there are obvious shortcomings that make a reliance on this very risky and a complete reliance on individuals an ineffective alternative.

So where are we now? Opponents are left to cry that it is unfair. I can speak from experience when I say that the definition of unfair comes complete with a picture of a victim, one whose only crime was to be on the road or a sidewalk or a bike when an irresponsible drunken driver committed a selfish, preventable, and hopefully someday, criminal act: deciding that his or her personal freedom is paramount to anyone else's. Unfairness is the loss of a loved one, a friend. Unfairness killed my wife and left my children without a mother, as it has for so many others.

As advocates for a 0.08 BAC, we ask for nothing more than fairness, a fairness that will insure that there will be fewer motherless children such as mine and that other mothers will continue to be at birthday parties, to see their daughters in communion dresses, to be at school graduations, to give a child away in marriage, to witness the birth of a grandchild, or to celebrate a wedding anniversary. A 0.10 BAC continues this unfairness. We ask for nothing more than a fighting chance.

While none of us can say with absolute precision a number of lives that will be saved annually by the implementation of this BAC level, we do know with certainty that lives will be saved. Once during a nationally televised discussion on a 0.08 BAC with a national spokesperson for the Alcohol Beverage Industry, I cited studies predicting that approximately 700 lives could be saved nationally each year by the enactment of a 0.08 BAC. The Industry's response to this was that such a number was statistically insignificant. Seven hundred lives, the Industry has considered statistically insignificant.

Victims of drunken driving are not an amorphous mass of statistics quantified and juggled in a search for an elusive, irreducible minimum. Each of the over 17,000 fatalities and 1 million injured in this country each year and the hundreds killed and injured in this State each year were unique, irreplaceable individuals with a name, a family, and dreams which now goes unfulfilled. Each represents far more than a faceless number to his or her family and friends who are now caught in tragic ripple effects that opt by each drunken driving crash.

Each and every single one of these individuals is statistically significant, every single one of them. Each one of us is entitled to the

protection, safety, and security that a 0.08 BAC level will afford us. I only wish that it was not too late for those who have gone before, but it's still not too late to save those to come.

A prior speaker on behalf of the alcohol industry today said that he didn't want to testify based on emotion. That is very easy for him to say and to do. He has not had to face the issue firsthand. It's easy for him to say that the difference in drinking, the amounts, etc., do not matter. He fails to recognize that a victim is as dead at 0.08 as he or she is at 0.10, 0.15, 0.20, or higher. To that person in that family the amount also doesn't matter, nothing matters. It doesn't come down to some antics, a coin flip, or a spit in a glass, as one suggested. It comes down to life verses death and responsibility verses irresponsibility.

I would also like to hazard a guess that if the shoe were on the other foot and the witnesses on behalf of the industry were in the victims' shoes, the song you hear today would be much different. The money that is being spent here today and a rather transparent attempt to maintain profits in the industry would be much better spent at keeping all of us and them alive through cooperative programs of education, etc.

I have to mention one important statistic in light of the data that you heard today. Whether 0.08 will reduce 1 percent, 4 percent, 10 percent, 25 percent fatalities in this State is for your determination. I know one statistic. I lost 20 percent of my family one afternoon, and only by the grace of God, I avoided missing and losing 80 percent of my family. Combining mine and my wife's family, we lost 10 percent. My children lost 100 percent

of their mother, and I lost 100 percent of my wife. These are the statistics that matter.

I apologize for the lengths of my comments, but I thank you for your time, and I also thank you for your commitment to your service on this Task Force.

Thank you.

MR. MENZA: Thank you. Are there any questions? (negative response)

Thank you very much, sir.

Robin Cincotta, Brain Injury Association of New Jersey.

We are moving right along. We don't have many more speakers, and again I urge you to please synopsise what you have to say, okay.

ROBIN CINCOTTA: I'll try to make it as quick as I can.

Good afternoon, my name is Robin Cincotta. I am the Director of Advocacy of Public Affairs for the Brain Injury Association of New Jersey.

We are a nonprofit organization dedicated to providing services, advocacy, and information to both people with brain injury, their families, and professionals in the field. In 1993, over 10,000 people were hospitalized for traumatic brain injury in New Jersey; 3 people a day died and 26 people were hospitalized as a result of traumatic brain injury. The leading cause of traumatic brain injury in New Jersey and in the United States is motor vehicle crashes. It accounts for over 50 percent of all traumatic brain injuries.

Crashes in which an impaired driver was involved account for approximately 18 percent of these injuries each year. This is an average of about 1100 traumatic brain injuries in New Jersey each year that could have

been prevented by not driving while impaired. In addition to the physical toll of these injuries, there is also an enormous economic cost to driving while impaired. The cost of property damage, medical, and rehabilitation costs, lost wages, and other factors have been estimated nationally at \$46 billion each year, and I think we heard from Highway Traffic Safety that in New Jersey it is approximately \$250 million.

Brain injury costs are not one-time occurrences. A traumatic brain injury is a permanent, lifelong disability. Once an individual incurs an injury, it can be taught coping skills to survive in their environment, but they might always need a helping hand, and a lot of times that hand comes from the public coffers.

Recent trends indicate a leveling and steady reduction in all fatalities and injuries associated with impaired driving. We applied every and all prevention efforts that have led to this reduction. However, the good news does not negate the need for policies and programs aimed at further reducing, and eventually eliminating, the incidents of impaired driving.

We urge this Task Force to look at the evidence that was presented today and recommend that New Jersey join the 15 other states that have already recognized the importance of lowering the state legal blood alcohol limit to 0.08.

Thank you for the attention and time that the members of this Task Force are paying this very important issue.

I tried to keep it brief. Does anyone have any questions?

MR. MENZA: Thank you. Any question? (negative response)

Thank you, again.

John Hulick, NCADD New Jersey.

UNIDENTIFIED SPEAKER FROM AUDIENCE: He went to his office, but he did submit testimony.

MR. MENZA: Next would be-- Oh, we'll just consider his testimony. Thank you very much.

Maria Fatima Esteves.

Are you representing any group?

M A R I A F A T I M A E S T E V E S: I'm represent myself.

Mr. Chairman and members of the Task Force, my name is Maria Fatima Esteves and I reside in Elizabeth. I am here today to represent my daughter who is eight years old.

MR. MENZA: Do you have your mike on?

MS. ESTEVES: I am here today--

MR. MENZA: Do you have your mike on?

It's a red light instead of a green light.

MS. ESTEVES: It's on now.

Should I begin from the beginning?

MR. MENZA: Yes, if you would like.

MS. ESTEVES: My name is Maria Fatima Esteves. I reside in Elizabeth, and I am here today to represent my daughter who is eight years old and killed by a drunken driver.

It was a woman who sat here and opposed the 0.08 and showed you a picture of her four live children. I show you a picture of my daughter who is dead. The driver who killed her not only killed her, my uncle was taking her and his two grandchildren to a local store two blocks and a half

away from the house where we lived. They were crossing the street, they were in the middle of the street when this driver hit them. Their bodies were thrown 72 feet, and he didn't stop for another 72 feet. Later, we found out that he was impaired. He was driving drunk and he was also speeding. My uncle died en route to the hospital. My daughter went into a coma and put into life support, and she died early the next day. This happened on a Saturday afternoon at 6:00 in the afternoon.

My life has not been the same and either has my family's. This driver registered 0.10, which is the legal limit. I strongly feel that if this was lowered to 0.08, it would deter a lot of drivers from injuring other families, such as myself, and making other families victims. This driver was impaired. All he could worry about, at that time, was the damage to his car, and he didn't realize that two people were laying on the floor in a puddle of blood dying.

At his trial he was found guilty on two counts of reckless manslaughter and death by auto. He was given the opportunity to speak and say something to the families. He said he had nothing to say and never apologized.

I am telling you this because I feel in my heart that if this driver was not impaired at the time, he would have stopped his vehicle and my daughter and my uncle would have been alive, but because of his alcohol impairment he was not able to judge. His speeding was high and I don't know why he didn't see them. They were right in the middle of the street. If he was not impaired, he would have stopped.

I am asking you to please consider everything. Point zero eight could be used as a deterrent to a lot of potential drivers out there who most likely would cause a lot of victims.

I speak once a month at a college to a group of IDRC people. There is about 60 to 80 people that I speak to and about maybe 5 or 6 come and talk to me. Those 5 or 6 really put out their hearts to me as I put my heart out to them, and I know that those 5 or 6 people that do speak to me will not be repeat offenders.

If the ABC, the restaurant and the bar association people think that they are hurting, they have never walked on my shoes. Not one of them mentioned if they had been a victim or if a member of their family had been a victim of a drunken driver. They don't know -- I'm assuming that they don't know -- what it is to live your life with the loss of your child, a loss that could have been prevented if only that driver had not been so intoxicated. Point one zero may not seem too much. Point zero eight, it's still not too much. I believe it should be even lower, but we accept point zero eight. It will serve as a deterrent.

That extra dollar on the restaurant and bar association on their ledger sheet could possibly mean a lifetime of pain not only to my family, but to many possible families that will lose someone.

Mothers Against Drunk Driving were appalled because they have a good thing. They are out there and they educate the public, they have billboards, they have support groups. I'm telling you, if it wasn't for their support groups and their support, I don't know how I would do the education that they put out, the education that I give out when I talk to anyone who will

listen to me, because not everyone wants to hear you. After a while, they think that you should go on with your life. Yes, I will go on with my life, but I have this loss in me. I have been told that my daughter and my uncle were at the wrong place at the wrong time. I disagree with that. Why was it so wrong for them to be crossing that street and so right for this driver to be intoxicated and killed them?

Thank you for your time and I apologize.

MR. MENZA: Any questions? (negative response)

Thank you ma'am.

Joseph Johnson.

MR. JOHNSON: I already spoke.

MR. MENZA: Oh, yes. I'm sorry.

There was no need to apologize, by the way. We should apologize for having you wait so long.

Ma'am, no need to apologize. We apologize to you for waiting so long.

MS. ESTEVES: I was glad to wait.

MR. MENZA: Jason Bernstein.

J A S O N B E R N S T E I N: Bernstein. (indicates pronunciation)

MR. MENZA: Yes, sir.

MR. BERNSTEIN: I would just like to comment. On June 8 of this year, my best friend was killed by a drunken driver. He was over my house. We were watching Saturday Night Live, and then he left with a couple of my other friends, and then I just remember waking up the next morning finding

out and almost falling over with disbelief. It was just senseless because we were sober, like, the whole night and he just didn't deserve it.

I remember there was hundreds of people at the funeral. He was such a good student. He got straight A's and was an excellent baseball player. Three days before this happened he went to his college orientation, and he would have been going to college in two weeks.

I think that this guy that was accused -- his blood alcohol was 0.125. So I was thinking, if the limit was 0.08, he would have thought twice about having that other drink, and it could have made the difference. I believe that everyone should be perfectly sober as they drink -- I mean as they drive. That's not always going to happen because people are going to keep drinking.

I read somewhere that at 0.04 coordination starts to decline, so I just can't understand how 0.10 could be the limit or even 0.08, but you have to start putting the limit somewhere. If this does pass and it saves one life, that's one life, and I think it's really worth it.

Thank you.

MR. MENZA: Thank you. We appreciate your testimony.

Does anyone have any questions? (negative response)

Thank you.

The last speaker is Richard Bellshot, Camden County Licensed Beverage Association.

Do you have any written testimony, sir?

RICHARD BELLSHOT: No, I didn't. Everything that I had to say was already said. I just have a comment for a couple of seconds.

MR. MENZA: Sure.

MR. BELLSHOT: I've been a bar owner and bartender for 25 years, and the difference between 0.10 and 0.08 is very, very, very difficult to distinguish. I don't believe that a person is significantly impaired at 0.08 and I also-- The discussion that was had a little while ago, what the gentleman was saying was that if 4 percent of the accidents are below 0.08, I think that sometimes a couple of drinks steadies a person and they might drive better. I know that sounds foolish, but I don't believe that I would become impaired with one or two or three drinks.

That's all I have to say.

MR. MENZA: Any questions of this gentleman? (negative response)

Thank you very much.

This concludes the public hearing. The next public hearing will address other issues of alcohol-related accidents, and we will notify the public as to the place and date of those hearings.

Thank you again.

(HEARING CONCLUDED)