Report

of the

Joint Select Committee appointed to consider and report on a Bill entitled

"The Motor Vehicles and Road Traffic (Amendment) Bill, 2006"

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REPORT OF THE JOINT SELECT COMMITTEE APPOINTED TO CONSIDER AND REPORT ON A BILL ENTITLED "THE MOTOR VEHICLES AND ROAD TRAFFIC (AMENDMENT) BILL, 2006"

APPOINTMENT AND COMPOSITION OF THE COMMITTEE

1 At a Sitting held on Friday November 03, 2006, the House of Representatives agreed to the following resolution:

> **"BE IT RESOLVED that a Joint Select Committee be established to consider and report on a Bill entitled "The Motor Vehicles and Road Traffic (Amendment) Bill, 2006."[1].**

2. Subsequently at a Sitting held on Friday November 17, 2006, the following Members of the House of Representatives were appointed to the Committee:

- Φ Mr. Colm Imbert
- Φ Mr. Fitzgerald Hinds
- Φ Ms. Pennelope Beckles
- Φ Dr. Adesh Nanan
- Φ Ms. Gillian Lucky[2]

3. On Tuesday November 14, 2006 the Senate[3] agreed to a similar resolution and at a subsequent Sitting held on Tuesday November 28, 2006 the following Members were appointed to serve on the Committee:

- Φ Mr. John Jeremie, S.C.
- Φ Mrs. Joan Yuille-Williams

[1] Hansard (House of Representatives Meeting of Friday November 03, 2006)
[2] Hansard (House of Representatives Meeting of Friday November 17, 2006)
[3] Hansard (Senate Meeting of Tuesday November 14, 2006)

- Φ Mr. Satish Ramroop
- Φ Dr. Tim Gopeesingh
- Φ Professor Ramesh Deosaran[4]

MANDATE AND TERMS OF REFERENCE

4. Your Committee was mandated to consider and report on a Bill entitled the Motor Vehicles and Road Traffic (Amendment) Bill, 2006, and to report to the Parliament upon completion of its deliberations.

ELECTION OF A CHAIRMAN AND DETERMINATION OF A QUORUM

5. At its first meeting held on Wednesday December 6, 2006, Mr. Colm Imbert was elected as Chairman of the Committee. At the said meeting, it was also agreed that a quorum would constitute five (5) Members, inclusive of the Chairman with at least one (1) Member from the House of Representatives, two (2) Members from the Senate and any other Member.

6. At a meeting held on Friday January 12, 2007, your Committee decided to reduce its quorum to four (4) persons, inclusive of the Chairman, one (1) Member from either House and any other Member. (See Appendix I for Members' Attendance)

SECRETARIAL ASSISTANCE

7. Ms. Shaarda Maharaj was appointed to serve as Secretary to the Committee and Mr. Ralph Deonarine served as Research Assistant.

[4] Hansard (Senate Meeting of Tuesday November 28, 2006)

TECHNICAL ASSISTANCE AND ADVICE

8. At its first meeting your Committee agreed to solicit the assistance and advice of technocrats and experts who would advise and guide your Committee during its deliberations.

9. Accordingly the following persons assisted your Committee during analysis of the Bill:

- Φ Mr. Paul Griffith – Senior Legal Officer, Legislative Drafting Department, Ministry of the Attorney General
- Φ Ms. Laurelle Ralph – Legal Officer, Ministry of Works and Transport
- Φ Professor Lexley Pinto Pereira, M.D. – Professor, Department of Paraclinical Sciences, Faculty of Medical Sciences, University of the West Indies
- Φ Dr. Sandra Reid – Consultant Psychiatrist, University of the West Indies and Director of the Caribbean Institute on Alcoholism and other drug Problems
- Φ Mr. Kirk Waithe, Mr. Brent Batson, Mr. Om Lalla, Dr. Andrew Persad -Members of Arrive Alive.

WORK OF THE COMMITTEE

10. Your Committee successfully held a total of eight (8) meetings; the ninth meeting of the Committee was rescheduled due to a Sitting of the House of Representatives and was aborted due to lack of a quorum. **(Appendix I refers)**

11. Your Committee meetings are detailed hereunder and the Minutes of the Meetings are at **Appendix II**:

- Φ Wednesday December 6, 2006
- Φ Wednesday December 13, 2006
- Φ Wednesday January 3, 2007
- Φ Friday January 12, 2007
- Φ Wednesday January 17, 2007
- Φ Wednesday January 24, 2007
- Φ Tuesday February 13, 2007
- Φ Tuesday February 27, 2007
- Φ Friday March 09, 2007 (rescheduled)
- Φ Wednesday March 13, 2007 (aborted)

DELIBERATIONS

12. Your Committee having conducted Clause by Clause scrutiny of the Bill agreed that certain areas of the proposed legislation needed reworking, strengthening and amending. Some of the areas of concerns raised were as follows:

a. The legislation should incorporate safeguards to protect the rights of motorists/individuals;

b. The necessity of a special majority;

c. Restricting the legislation to alcohol was also discussed. Your Committee deliberated on whether the ability to test for drugs should be included in the Bill;

d. The penalty of fine of up to $5000 and imprisonment for up to six months was viewed as harsh by some Members of the Committee;

e. Clarification was sought regarding the difference between a "breath test" and "breath analysis';

f. Specifying a time limit within which the accused can indicate his objections regarding the taking of a specimen;

g. Whether UK legislation provides for roadside testing for alcohol;

h. The issue of conducting multiple breath tests;

i. The ability of the Court to exercise discretion in the disqualification of first and second time offenders upon conviction;

j. The maintenance requirements for breath-analyzing devices to ensure proper calibration and functioning.

13. Resultantly your Committee caused the preparation of the redrafted Bill at **Appendix 3**.

14. Your Committee is also of the firm view that an aggressive public education campaign should be undertaken to ensure that members of the public are edified about the legislation and its implications.

15. Your Committee respectfully submits its report for the approval and adoption of the House of Representatives and the Senate.

Mr. Colm Imbert
Chairman

2007/03/14

Appendix I: Attendance Sheet

MEMBERS	1st Meeting 06/12/2006	2nd Meeting 13/12/2006	3rd Meeting 03/01/2007	4th Meeting 12/01/2007	5th Meeting 17/01/2007	6th Meeting 24/01/2007	7th Meeting 13/02/2007	8th Meeting 27/02/2007	9th Meeting 09/03/2007	9th Meeting 14/03/2007
Mr. Colm Imbert	✓	✓	✓	✓	✓	✓	✓	✓	-	-
Ms. Pennelope Beckles	X	X	✓	✓	✓	✓	✓	✓	C	A
Mr. Fitzgerald Hinds	✓	✓	✓	✓	✓	✓	X	✓	A	B
Dr. Adesh Nanan	X	X	X	✓	✓	X	X	X	N	O
Ms. Gillian Lucky	X	✓	✓	✓	✓	✓	X	✓	C	R
Ms. Joan Yuille-Williams	✓	✓	✓	X	X	✓	✓	X	E	T
Mr. John Jeremie, S.C.	X	X	X	X	X	X	X	X	L	E
Mr. Satish Ramroop	✓	✓	✓	X	✓	✓	✓	✓	L	D
Dr. Tim Gopeesingh	✓	✓	X	✓	✓	X	✓	✓	E	-
Prof. Ramesh Deosaran	✓	✓	✓	✓	✓	✓	✓	✓	D	-

✓ - Present X - Absent/Excused

MINUTES OF THE FIRST MEETING OF THE JOINT SELECT COMMITTEE APPOINTED TO CONSIDER AND REPORT ON A BILL ENTITLED "THE MOTOR VEHICLES AND ROAD TRAFFIC (AMENDMENT) BILL, 2006" HELD IN COMMITTEE ROOM No. 2, PARLIAMENT, THE RED HOUSE ON WEDNESDAY DECEMBER 6, 2006 AT 11.20 A.M.

PRESENT

Mr. Colm Imbert,	**Chairman**
Mr. Fitzgerald Hinds,	**Member**
Mrs. Joan Yuille-Williams	**Member**
Mr. Satish Ramroop	**Member**
Dr. Tim Gopeesingh	**Member**
Prof. Ramesh Deosaran	**Member**
Mrs. Shaarda Maharaj	**Secretary**
Mr. Ralph Deonarine	**Research Assistant**

ABSENT/EXCUSED

Ms. Pennelope Beckles.	**Member**
Dr. Adesh Nanan,	**Member**
Ms. Gillian Lucky,	**Member**
Mr. John Jeremie	**Member**

INTRODUCTION

1.1 The Secretary called the Meeting to order at 11:20 a.m.

ELECTION OF A CHAIRMAN

2.1 Nominations for Chairmanship of the Committee were invited by the Secretary.

2.2 Mr. Colm Imbert, MP was nominated by Prof. Ramesh Deosaran, the nomination was seconded by Mrs. Joan Yuille Williams.

2.3 There were no further nominations by the Committee; accordingly, Mr. Imbert was invited to take the Chair.

DETERMINATION OF A QUORUM

3.1 The Committee agreed that the quorum would consist of five (5) Members, inclusive of the Chairman, one (1) Member from the House of Representatives and two (2) Members from the Senate.

DISCUSSION OF MANDATE

4.1 The Committee's mandate was reviewed and Members agreed that the standard procedural rules regarding Joint Select Committees would apply including the engagement of experts to advise the Committee on technical matters.

4.2 Professor Deosaran indicated that he had two experts in mind to assist the Committee however he would require their consent before proceeding to divulge their names.

4.3 Mrs. Joan Yuille-Williams also indicated that she had spoken to Dr. Sandra Reid who affirmed her willingness to assist the Committee during its deliberations on the Bill.

4.4 Members were asked to advise the Secretary of the contact details of the experts.

4.5 The Committee agreed that technocrats from the Chief Parliamentary Counsel's office and the Ministry of Works and Transport should also be present at meetings during examination of the Bill.

PLAN OF ACTION

5.1 The Chairman invited Members' suggestions as to a plan of action.

5.2 The Committee agreed to a general timeline of six (6) weeks or not later than the end of January 2007 for completion of consideration of the Bill.

EXAMINATION OF THE BILL

6.1 The Committee agreed to begin examination of the Bill at next meeting and that expert presentations should be no more that twenty (20) minutes.

OTHER BUSINESS

7.1 The Committee agreed that meetings would be held on Wednesdays.

7.2 Prof. Deosaran asked the Committee to consider two issues concerning the Bill. The first concerned the input of safeguards for the purpose of protecting the rights of motorists/individuals and the second concerned the reliability and fairness of the instrument itself to persons that the device is applied to.

7.3 Dr. Gopeesingh suggested to the Committee that all correspondence and/or proposals on the Bill should be sent to the Secretary for circulation to members, to ensure that such

correspondence be received by all Members in a timely manner prior to Committee Meetings.

7.4 The Committee also asked the Secretary to provide Members with copies of the Hansard from the Sitting of the House of Representatives where the Bill was presented by the Minister of Works and Transport as well as a summary of issues raised on the legislation.

ADJOURNMENT

8.1 The Meeting was adjourned to Wednesday December 13, 2006 at 11:00 a.m.

8.2 The adjournment was taken at 11:45 a.m.

We certify that the above minutes are true and correct.

CHAIRMAN

SECRETARY

2006/12/07

MINUTES OF THE SECOND MEETING OF THE JOINT SELECT COMMITTEE APPOINTED TO CONSIDER AND REPORT ON A BILL ENTITLED"THE MOTOR VEHICLES AND ROAD TRAFFIC (AMENDMENT) BILL, 2006" HELD IN COMMITTEE ROOM No. 2, PARLIAMENT, THE RED HOUSEON WEDNESDAY DECEMBER 13, 2006 AT 11.20 A.M.

PRESENT

Mr. Colm Imbert	**Chairman**
Mr. Fitzgerald Hinds	**Member**
Ms. Gillian Lucky	**Member**
Mrs. Joan Yuille-Williams	**Member**
Mr. Satish Ramroop	**Member**
Dr. Tim Gopeesingh	**Member**
Prof. Ramesh Deosaran	**Member**
Mrs. Shaarda Maharaj	**Secretary**

ABSENT

Ms. Pennelope Beckles	**Member**
Dr. Adesh Nanan	**Member**
Mr. John Jeremie	**Member**

ALSO PRESENT

Mr. Paul Griffith	**Legal Officer, Chief Parliamentary Counsel**
Ms. Laurelle Ralph	**Legal Officer, Ministry of Works and Transport**

INTRODUCTION

1.2 The Chairman called the Meeting to order at 11:20 a.m.

(The Chairman informed Members that Channel 11 staff were interested in acquiring footage of the Committee at work. There were no objections to this request; the Committee accordingly agreed.)

CONFIRMATION OF MINUTES

2.4 The Minutes of the First Meeting were confirmed by Mr. Colm Imbert and seconded by Mr. Satish Ramroop.

PRESENTATION FROM EXPERTS

3.1 The Committee was advised that Dr. Reid and Professor Perriera were unable to attend the meeting of the Committee because of prior clinic commitments.

INTRODUCTION OF TECHNOCRATS

4.1 Mr. Paul Griffith from the Ministry of the Attorney General, Legislative Drafting Office and Ms. Laurelle Ralph, Legal Officer, Ministry of Works and Transport were introduced to the Committee.

EXAMINATION OF THE BILL

Explanatory Note:

Members noted that there would be consequential amendments to the Explanatory Note when changes are made to the clauses of the Bill.

Preamble:

Ms. Lucky explained that the special majority requirement was necessary because the issue of depravation of rights arises since the police would now possess more power such as - an officer does not have to be in uniform to request a sample from a suspect.

Mr. Griffith also pointed out that the question of taking blood and citizens' right to refusing to give a sample all contribute to the special majority requirement.

Clauses 1-3

Clauses 1 to 3 were noted by the Committee.

Clause 4

Mr. Griffith and Ms. Ralph were asked to note Clause 4 for amendment due to the requirement in the parent Act, if someone is under the influence of drugs they would not be subject to a penalty *(Mr. Griffith read section 70 of the parent Act).*

Mr. Hinds questioned whether the parent Act defined "drugs" to mean illegal or illicit drugs. Mr. Griffith advised that the Act does not make that provision. The issue of whether an offence would be committed if one uses legitimate medication e.g. cold medication which may cause impairment was discussed by the Committee. It was noted that the Bill may need a definition for drugs.

Professor Deosaran pointed out that although a definition may be included there should be an instrument to guide the Courts. The Chairman agreed that this was one of the issues of concern,

there is no standard of impairment. Members considered that there should be a provision in the Bill for regulations prescribing the levels and the instruments that would measure being under the influence of drugs.

Mrs. Yuille-Williams mentioned two issues -: firstly the need for the presence of the experts at meetings and secondly, the need for information regarding what provisions exists in other countries who already prescribed to this type of legislation. *(Members were advised that information of that nature was previously circulated.)*

The issue of restricting the legislation to alcohol was also discussed. The Chairman advised that the ability to test for drugs should be included in the Bill, but the prescribed standards can be covered by regulations at a later date. Concerns that if drugs are included in the legislation a distinction would have to be made between legal and illegal drugs, since many crimes are committed under the influence of marijuana and cocaine. The Committee noted that if properly incorporated the legislation will assist in cases involving possession of narcotics offences, thus providing a creative way to strengthen existing laws.

Clause 5

70A(1):-
The Committee noted that an "attempt to drive" and to "be in charge of a motor vehicle" was covered in the existing legislation i.e. "When driving or attempting to drive or when in charge".

70A(2):-
The issue that a fine of up to $5000. and imprisonment for up to six months was viewed as harsh by some Members of the Committee. Members agreed to review the existing provisions in other jurisdictions. Ms. Lucky also suggested that although the penalties may be viewed as harsh on paper the discretion of the Magistrate is also a determining factor.

70A(3)
Concerns were raised by Ms. Lucky that disqualification upon second conviction can be reviewed to the extent of incorporating the provisions in the Motor Vehicle Insurance legislation since the Courts should be able to exercise discretion. Mr. Griffith was mandated to review this suggestion and draft the necessary amendment.

Professor Deosaran indicated that public education programmes should be properly sensitizing citizens about the penalties. He also expressed the opinion that the penalties are harsh. The Secretary to the Committee was mandated to provide Members with the existing provisions before a decision is made on this matter. The Committee agreed to revisit this clause at its next meeting.

Subsection 5
Mr. Griffith was asked to review the wording relating to identification by police officers, that is, an officer who may be in plain clothes enforcing the law without identifying himself. Mr. Griffith was also mandated to look at the modern form of the word for "constable", whether the

words “police officers” may be a suitable substitution in the legislation. Mr. Griffith pointed out that section 71(3) of the Act says constable.

Mr. Hinds requested clarification on whether one can have alcohol in one’s breath. Dr. Gopeesingh clarified that the alcohol goes through the blood vessels into the lungs and thus through the breath. The Committee requested that Mr. Griffith should look at how to incorporate the regulations and the amendments identified.

Professor Deosaran reiterated that the rights of the citizen should be protected and due process should be guaranteed namely, the choice for a blood test to be taken at a police station. Mr. Imbert referred to page 10 section 70c which stipulates that the breath analysis can be taken at the station which is a more rigorous test than the one conducted at the roadside. Professor Deosaran indicated that the reliability of information should be guarded to ensure the evidence holds up in the Courts.

The issue of blood testing at police stations was discussed by the Committee and it was agreed that it would be some time before Trinidad and Tobago possesses such competence.

ADJOURNMENT

5.1 The Meeting was adjourned subject to the availability of members on Wednesday December 20, 2006.

5.2 The adjournment was taken at 12:35 p.m.

We certify that the above minutes are true and correct.

CHAIRMAN

SECRETARY

MINUTES OF THE THIRD MEETING OF THE JOINT SELECT COMMITTEE APPOINTED TO CONSIDER AND REPORT ON A BILL ENTITLED"THE MOTOR VEHICLES AND ROAD TRAFFIC (AMENDMENT) BILL, 2006" HELD IN COMMITTEE ROOM No. 2, PARLIAMENT, THE RED HOUSE ON WEDNESDAY JANUARY 3, 2007 AT 11.10 A.M.

PRESENT

Mr. Colm Imbert	**Chairman**
Ms. Pennelope Beckles	**Member**
Mr. Fitzgerald Hinds	**Member**
Ms. Gillian Lucky	**Member**
Mrs. Joan Yuille-Williams	**Member**
Mr. Satish Ramroop	**Member**
Prof. Ramesh Deosaran	**Member**
Mrs. Shaarda Maharaj	**Secretary**
Mr. Ralph Deonarine	**Research Assistant**

ABSENT

Mr. John Jeremie	**Member**
Dr. Tim Gopeesingh	**Member**
Dr. Adesh Nanan	**Member**

ALSO PRESENT

Prof. Lexley Pinto Pereira, M.D	**Professor, Department of Paraclinical Sciences, Faculty of Medical Sciences, U.W.I.**
Mr. Paul Griffith	**Legal Officer, Chief Parliamentary Counsel**
Ms. Laurelle Ralph	**Legal Officer, Ministry of Works and Transport**

INTRODUCTION

1.1 The Chairman called the Meeting to order at 11:10 a.m.

CONFIRMATION OF MINUTES

2.1 The Minutes of the Second Meeting was confirmed by Mrs. Joan Yuille-Williams and seconded by Ms. Gillian Lucky.

PRESENTATION FROM EXPERTS

3.1 The Chairman informed the Committee that Dr. Reid was not available to make a presentation at that meeting but Professor Pereira would be making her presentation to the Committee. Prof. Pereira was introduced to the Committee and subsequently delivered a presentation entitled, "**Alcohol - impairment of complex mental and motor functions - an approach to impairment testing."**

3.2 **The Committee following the presentation discussed the following issues with Prof. Pereira:**

3.2.1 Ms. Lucky asked if there were any substances that an inebriated person could take to try to cheat the test. Prof. Pereira stated that charcoal would be one such substance as it has an absorptive capacity for alcohol in both breath and blood. This would however have no effect on the metabolization process.

3.2.2 Mr. Hinds stated that since there were separate possibilities for in the first case, outright refusal to cooperate in taking the test and secondly, taking the test reluctantly; trying to influence the outcome, that separate provisions should be made in the legislation for this.

3.2.3 Mr. Hinds also sought clarification on what could be done to assist a drunk person from reaching a worsened state. The Professor stated that drinking large amounts of (plain) water would help to dilute the alcohol in the bloodstream and encourage the body to rid itself of the water more quickly.

3.2.4 Prof. Pereira suggested that the legislation should be worded to allow for a second test to be taken within 15 or 30 minutes of administering the first test. The Chairman stated that while the wording of the Bill allows for the taking of a test, it was unsure of this being limited to one-off testing. Mr. Griffith was asked to look into this.

3.2.5 The Chairman asked Prof. Pereira how accepted the breathalyzer test was, in terms of its acceptance as a measure of intoxication. The expert replied that from the information that she had seen, it is a very well-accepted test that stands up in court. However, since there will always be objections from forensic people pertaining to individual rights based on the manner in which the test was taken or how accurate the instrument, breath-testing needs to be backed up by psychomotor testing as another clear indication of cognitive impairment.

3.2.6 The Chairman also questioned if there were similar testing results for the effects of narcotics, similar to that outlined in her presentation. Prof. Pereira stated that the response for narcotics was not similar to that for alcohol and only a toxic or threshold level would be derived. Additionally she stated that each narcotic behaves in a different manner and as such the response curves would be difficult to determine. With regard to the effects of narcotics impairing driving ability, Prof. Pereira informed the Committee that she did not

have much information on the subject but would, if the Committee wanted, research the matter and forward her work to the Committee.

3.2.7 Prof. Pereira was requested by Sen. Yuille-Williams to explain in her opinion how long the system would take for proper implementation. The Committee was advised that with everything taking place uninterrupted and with everyone "on the ball" the process could be accomplished in as little as three (3) to six (6) months.

3.2.8 Mr. Griffith needed explanation on whether the threshold of .08% as stated in the current proposed legislation was adequate. Prof. Pereira indicated that an 80mg% limit was sufficient as it was in keeping with the Canadian and UK standard that Agencies of the Ministry of Health currently use as their benchmark for regulatory approval of drugs. The Chairman added that the threshold was chosen as one that would not pose too much of a culture shock to the Trinidad & Tobago population at the initial stage.

3.2.9 Committee members expressed concern whether the terms "breath test" and "breath analysis" meant the same thing, as the legislation suggests that these terms are different and asked Mr. Griffith to look at re-working Clause 70(c)(1)(a) and (b).

GENERAL DISCUSSION ON THE BILL

4.1 The Committee discussed the issue of testing for drugs in the legislation. The Chairman stated that the research and test data was not available for drugs as it was for alcohol and did not think it wise to deal with that at this time. Ms. Lucky suggested that the wording of the Bill be amended that the Committee retains what is in existence and are working on the methodology to make the determination, but has started with the one that has international acceptance, that is, the breathalyzer and alcohol.

4.2 Professor Deosaran asked that the Committee use the opportunity to make a policy statement that the legislation deal not only with driving under the influence of alcohol, but other substances also, before having to change the substantive legislation. He also stated that there was evidence that the testing for drugs was available, based on what takes place in the sporting world and as such the idea of testing for drugs should not be eliminated.

4.3 The Chairman stated that as far as he was aware, roadside testing for drugs is not legislated anywhere in the world; only experimental in Australia and in some States in the USA. He reminded members that the issue of testing for drugs was outside of the Committee's terms of reference.

ADJOURNMENT

5.1 The Meeting was adjourned subject to the availability of members and Dr. Reid to Friday January 12, 2006.

5.2 The adjournment was taken at 12:44 p.m.

We certify that the above minutes are true and correct.

CHAIRMAN

SECRETARY

MINUTES OF THE FOURTH MEETING OF THE JOINT SELECT COMMITTEE APPOINTED TO CONSIDER AND REPORT ON A BILL ENTITLED"THE MOTOR VEHICLES AND ROAD TRAFFIC (AMENDMENT) BILL, 2006" HELD IN COMMITTEE ROOM No. 2, PARLIAMENT, THE RED HOUSE ON FRIDAY JANUARY 12, 2007 AT 10.30 A.M.

PRESENT

Mr. Colm Imbert	**Chairman**
Ms. Pennelope Beckles	**Member**
Mr. Fitzgerald Hinds	**Member**
Dr. Adesh Nanan	**Member**
Ms. Gillian Lucky	**Member**
Dr. Tim Gopeesingh	**Member**
Prof. Ramesh Deosaran	**Member**
Mrs. Shaarda Maharaj	**Secretary**
Mr. Ralph Deonarine	**Research Assistant**

ABSENT

Mr. John Jeremie	**Member**
Mrs. Joan Yuille-Williams	**Member**
Mr. Satish Ramroop	**Member**

ALSO PRESENT

Dr. Sandra Reid	**Consultant Psychiatrist (UWI) and Director of the Caribbean Institute on Alcoholism and other Drug Problems**
Mr. Paul Griffith	**Legal Officer, Chief Parliamentary Counsel**

INTRODUCTION

1.1 The Chairman called the Meeting to order at 10:30 a.m.

1.2 The Committee agreed that the first order of business should be the presentation by Dr. Sandra Reid.

PRESENTATION FROM EXPERT – DR. SANDRA REID

2.1 The Chairman introduced Dr. Sandra Reid to the Committee, who subsequently made her presentation to Members.

2.2 **The Committee following the presentation sought clarification on the following issues with Dr. Reid:**

2.2.1 Prof. Deosaran enquired on the effect of elevated body temperature on the test results and whether it would affect a trial. Dr. Reid indicated that a higher body temperature would indicate an elevated breath alcohol concentration and that it was possible for a person to use this as an excuse in their defense; that the BAC reading was incorrect due to perhaps, a viral illness. The Committee deliberated that this could only be remedied by the test and recording of a person's body temperature at the time of conducting the breath test.

2.2.2 Minister Hinds asked Dr. Reid to confirm however, that if a person who has been subjected to a breath test, has a blood test performed for blood alcohol concentration, the test result would be accurate regardless of body temperature. Dr. Reid consented to this statement.

2.2.3 The Chairman questioned the source of one point made by the expert, that is, on taking a second breath test fifteen (15) minutes after the first, and whether this was common practice or incorporated into law in other jurisdictions. Dr. Reid replied that to her knowledge, this was found neither in practice nor in law in other countries and was merely a recommendation to improve test accuracy.

2.2.4 The Chairman requested Mr. Griffith to examine whether in other jurisdictions that their legislation stated an assumption concerning normal conditions when administering the test. Minister Imbert also asked that research be conducted on what is being done in other jurisdictions and how they deal with challenges to the accuracy of the test. He suggested that the possibility of inviting someone with expertise on administering the test and dealing with the challenges be invited to address the Committee.

2.2.5 Ms. Lucky asked whether any breath analyzer devices give a simultaneous reading of body temperature. Dr. Reid stated that she was yet to find such a device.

2.2.6 Committee members requested that Dr. Reid's presentation be circulated for future reference by the Committee.

2.2.7 Dr. Reid informed the Committee that based on our culture and attitude toward drinking, she would highly recommend the Committee investigate the issue of random testing. The Chairman iterated support for this measure if conducted via police road blocks, and proposed that the Committee review this at a later date for incorporation into the legislation.

CONFIRMATION OF MINUTES

3.1 The Minutes of the Third Meeting were amended as follows:

3.1.1 On page 3, delete “Se.” and insert “Sen.”

3.1.2 On page 4, section 4.3, after the word “that”, insert “as far as he was aware”.

3.1.3 The minutes of the third meeting were confirmed by Ms. Gillian Lucky and seconded by Mr. Fitzgerald Hinds.

MATTERS ARISING

4.1 The Chairman asked Mr. Griffith for an update on various aspects of the legislation that he was asked to investigate and report to the Committee on. Mr. Griffith answered that the re-drafted Bill was not done as he expected the Committee to finish its review of the entire Bill first. On the matter of the difference between the terms “breath test” and “breath analysis”, he stated that there was a difference, both in practice as well as in the UK legislation. The Committee was not satisfied and asked Mr. Griffith to present further clarification at the next meeting.

OTHER BUSINESS

5.1 The Chairman informed members that they were invited to the ICC presentation in the Parliament Chamber and asked members whether the meeting should be adjourned or continue its work. Members indicated that the Meeting should continue.

Change of quorum:

6.1 The Chairman proposed that due to members’ busy schedules and to avoid future delays the quorum should be changed from five (5) to (4) members comprising of one member from either House, the Chairman and any other member.

6.2 The question was put to members and a majority vote decided in favour of the quorum change from five (5) to four (4) members. Ms. Lucky and Mr. Hinds did not agree and asked that the record show that it was very important to have a collective intellectual input at a time when the public has a dim view of parliamentarians doing their work.

GENERAL DISCUSSION ON THE BILL

7.1 On page 9, Clause 70 (B) (5), the Committee proposed that the words, “subsection (1), (3) or (4)” be amended to read, “subsection (1), (3), (4) or (8)”.

7.2 Ms. Lucky sought clarification on the difference between the terms “breath test” and “breath analysis” as described in the legislation. The Chairman asked Mr. Griffith to investigate into what the UK legislation states on the matter.

7.3 Ms. Lucky enquired if the Chairman was able to procure samples of the breathalyzer equipment for the Committee’s edification. The Chairman stated that he was certain that a sample of the device along with someone to explain how the device is to be used could be sourced.

7.4 Prof. Deosaran raised the issue of the provision of a specimen based on the sensitivity of the equipment and asked the Chairman to seek clarification from an external source.

7.5 Prof. Deosaran suggested that on page 9, Sub-clause **70B (5)** an adjective be inserted before the word **“specimen”** so as to help the acquisition of a sample viable enough for a breathalyzer analysis.

7.6 Mr. Griffith stated that the training of police officers to use the equipment was an issue he raised with both experts and suggested that an opportunity was offered for the Committee to legislate the matter. The Chairman asked Mr. Griffith to examine the UK experience on the matter to determine what sort of regulations they have and whether they (UK) go to that level of detail in their regulations.

7.7 Ms. Lucky asked Mr. Griffith to examine whether the UK legislation has a provision for roadside testing for alcohol.

7.8 Mr. Griffith was also asked to investigate whether there was a section of the UK legislation that dealt with an accused having a time limit within which to indicate his objection to any matter relating to the taking of the specimen. Ms. Lucky stated that this would offer a level of protection to the accused as well as it could work in to the advantage of the prosecution as well.

ADJOURNMENT

8.1 The Meeting was adjourned to Wednesday January 17, 2006 at 11a.m.

8.2 The adjournment was taken at 12:15 p.m.

We certify that the above minutes are true and correct.

CHAIRMAN

SECRETARY

MINUTES OF THE FIFTH MEETING OF THE JOINT SELECT COMMITTEE APPOINTED TO CONSIDER AND REPORT ON A BILL ENTITLED"THE MOTOR VEHICLES AND ROAD TRAFFIC (AMENDMENT) BILL, 2006" HELD IN COMMITTEE ROOM No. 2, PARLIAMENT, THE RED HOUSE ON WEDNESDAY JANUARY 17, 2007 AT 11.20 A.M.

PRESENT

Mr. Colm Imbert	**Chairman**
Ms. Pennelope Beckles	**Member**
Mr. Fitzgerald Hinds	**Member**
Dr. Adesh Nanan	**Member**
Ms. Gillian Lucky	**Member**
Mr. Satish Ramroop	**Member**
Dr. Tim Gopeesingh	**Member**
Prof. Ramesh Deosaran	**Member**
Mrs. Shaarda Maharaj	**Secretary**
Mr. Ralph Deonarine	**Research Assistant**

ABSENT

Mr. John Jeremie	**Member**
Mrs. Joan Yuille-Williams	**Member**

ALSO PRESENT

Mr. Paul Griffith	**Legal Officer, Chief Parliamentary Counsel**
Ms. Laurelle Ralph	**Legal Officer, Ministry of Works and Transport**

INTRODUCTION

1.1 The Chairman called the Meeting to order at 11:20 a.m. and apologized to members for being late.

1.2 Ms. Lucky made the suggestion of electing a Deputy Chair, proposing Prof. Deosaran, if willing to do so, who would be able to conduct business such as reading Minutes or discussing matters without taking decisions.

1.3 The Chairman stated that the problem with such is that the Bill was under his Ministerial responsibility and if the Committee meets in his absence, discussions would have to be revisited in his presence.

CONFIRMATION OF MINUTES

2.1 On page 5, Item 7.5 should also state the reason why the adjective should be inserted. Prof. Deosaran suggested the words, "So as to help the acquisition of a sample viable enough for a breathalyzer analysis".

2.2 On page 5, item 7.8 should be amended to read, "Mr. Griffith was also asked to investigate whether there was a section of the UK legislation that dealt with an accused having a time limit within which to indicate his objection to any matter relating to the taking of the specimen".

2.3 On page 4, item 5.1.2 should be amended to read, "Ms. Lucky and Mr. Hinds did not agree and asked that the record…"

2.4 The minutes of the fourth meeting were confirmed by Ms. Gillian Lucky and seconded by Prof. Ramesh Deosaran.

MATTERS ARISING

3.1 Professor Deosaran informed the Chairman that there was a typographical error in the verbatim notes of the fourth meeting on page 11, where it stated, "Rather than a specimen could you put in a word something like improper or viable?" the word "improper should be replaced by the word "proper".

3.2 The Chairman asked Mr. Griffith for an update on those matters that he had been asked to look into. Mr. Griffith stated that the research requested under item 2.2.4 of the Minutes of the Fourth meeting required the services of a research officer from the CPC, and asked for a deferral of the matter by one week to address the issue. The Committee agreed to this.

GENERAL DISCUSSION ON THE BILL

4.1 On the matter of the difference between the terms, "breath test" and "breath analysis", Mr. Griffith began by reading from Section 6 of the UK legislation but was interrupted by Ms. Lucky who stated that the Archbold 2006 gave updated sections. Further to that, Ms. Lucky discovered that the terms were, in fact, defined in the draft Bill, under section 70G. Ms. Lucky outlined that in the UK, a preliminary roadside test is performed and if a suspect is found to be over the stipulated BAC, they are then arrested and taken to a Police Station for a breath analysis to be conducted.

4.2 Ms. Lucky suggested that the UK legislation be followed and also to consider the Clause concerning an officer entering a person's usual place of abode since this provision does not exist in the UK.

4.3 Professor Deosaran stated that he preferred if a mechanical printout were used as evidence rather than simply a statement in writing from the officer conducting the analysis.

4.4 Dr. Nanan expressed concern over the establishment of .08% as the BAC testing threshold. He stated that a person could be impaired at a level even lower than that. The Chairman offered Dr. Nanan the opportunity to revisit the issue at the next meeting, having had sufficient time to peruse the presentation from Prof. Pereira.

4.5 Ms. Lucky also suggested a revision of the term "or serious injury" under 70C (4) (a) (i). The Chairman asked Mr. Hinds his opinion on the matter, to which the member replied that the term "serious injury" was a construct that was very well known to law and secondly, on the frequency of occurrence of the matter of having to enter a suspect's usual place of abode and alongside that of death, he does not have a problem with the term being used.

4.6 Dr. Gopeesingh asked that Clause 70C (4) be amended to read, "Not withstanding subsection (3) (c)..." The Committee agreed to this.

4.7 Ms. Lucky pointed out that on page 12 of the Bill, under subsection (5), wording should be added to give warning to the person, as stated similarly in the UK legislation. The Committee agreed and Mr. Griffith was asked to draft suitable wording to include the provision for a warning.

Mr. Hinds asked the Chairman to investigate whether the warning would be given in writing or just verbally. The Chairman agreed.

4.8 Dr. Nanan raised an objection that the entire Clause 70C (7) dealt with breath analysis. The Committee deliberated the issue and the Chairman iterated that in addition to testing, the police officer has a variety of means to determine whether someone was over the limit.

4.9 The Committee discussed the issue of the equipment specifications; the breath analyzing device being able to give an exact BAC output as well as the margin of error on the reading.

4.10 The Chairman notified the Committee that he was still attempting to engage the services of a person with experience in dealing with breath testing and the associated challenges, to make a presentation before the Committee. He informed members that he would attempt to do so for the next meeting.

ADJOURNMENT

5.1 The Meeting was adjourned to Wednesday January 24, 2006 at 11am.

5.2 The adjournment was taken at 12:55 p.m.

We certify that the above minutes are true and correct.

CHAIRMAN

SECRETARY

MINUTES OF THE SIXTH MEETING OF THE JOINT SELECT COMMITTEE APPOINTED TO CONSIDER AND REPORT ON A BILL ENTITLED"THE MOTOR VEHICLES AND ROAD TRAFFIC (AMENDMENT) BILL, 2006" HELD IN COMMITTEE ROOM No. 2, PARLIAMENT, THE RED HOUSE ON WEDNESDAY JANUARY 24, 2007 AT 11.15 A.M.

PRESENT

Mr. Colm Imbert	**Chairman**
Mr. Fitzgerald Hinds	**Member**
Ms. Gillian Lucky	**Member**
Mrs. Joan Yuille-Williams	**Member**
Mr. Satish Ramroop	**Member**
Prof. Ramesh Deosaran	**Member**
Mrs. Shaarda Maharaj	**Secretary**
Mr. Ralph Deonarine	**Research Assistant**

ABSENT

Ms. Pennelope Beckles	**Member**
Dr. Adesh Nanan	**Member**
Mr. John Jeremie	**Member**
Dr. Tim Gopeesingh	**Member**

ALSO PRESENT

Mr. Paul Griffith	**Legal Officer, Chief Parliamentary Counsel**
Ms. Laurelle Ralph	**Legal Officer, Ministry of Works and Transport**

INTRODUCTION

1.1 The Chairman called the Meeting to order at 11:17 a.m.

CONFIRMATION OF MINUTES

2.1 The Minutes of the Fifth Meeting were confirmed by Ms. Gillian Lucky and seconded by Mr. Satish Ramroop.

CONTINUATION OF EXAMNATION OF THE BILL

3.1 Clause 70B (b) was flagged for further deliberation by the Committee;

3.2 The Committee considered for amendment on page 13, Clause 70C (8) and page 14, Clause 70C (9), to delete the words "70B" and insert "70C";

3.3 Professor Deosaran requested with respect to the breath analysis, a mechanical printout of the analysis be obtained so that a copy of such could be made available to the suspect;

3.4 On page 13, Clause 70C (7) the term "as soon as practicable" was debated and a decision was taken that Mr. Griffith would find suitable wording to change this to now state a time period of within one (1) hour;

3.5 The Committee also discussed the point of maintenance of the breath analyzing equipment to ensure proper calibration. It was suggested that this be made a part of the supplier maintenance contract for the equipment;

3.6 Mr. Griffith was asked to examine the last line under Clause 70D (1) to determine whether the term "breath test" was correct or whether it should be replaced by the term "breath analysis";

3.7 Deliberations took place on Clause 70E, to which the Committee asked Mr. Griffith was asked to review and amend the Clause;

3.8 On page 17, Clause 70F (3) (a) delete the word "personally". Mr. Griffith was also asked to draft a suitable definition for the word "served" as stated in this Clause;

3.9 The Chairman asked Mr. Griffith to examine Clause 70F (4) on page 18 to determine whether the sentence, "was taken from or provided by him" needed amendment. Members suggested deleting the words "from or provided by him";

The Chairman also suggested to members that expert advice be solicited on Clause 70F (4);

3.10 Mr. Hinds requested further clarification on the terms "breath test" and "breath analysis" under Section 70G on page 18. The question was raised whether an analysis could be conducted without first conducting a breath test;

3.11 Mr. Griffith was asked to draft a suitable definition for the term "blood test".

(First reading of Bill concluded)

OTHER BUSINESS

4.1 The Chairman informed members that at the next meeting, once he is able to, he would be inviting someone to demonstrate the use of the breathalyzer equipment before the Committee.

4.2 The Committee asked Mr. Griffith to compile a document that summarized the main issues from the Bill for further consideration by the Committee, stating the concerns that members iterated with respect to the various clauses.

4.3 Mr. Griffith was also asked to prepare the redrafted Bill for the next meeting of the Committee.

4.4 The Chairman informed members that he received an item of unsolicited correspondence from Mr. Victor Roach who was interested in making a presentation before the Committee. Members deliberated whether to entertain the request. The Chairman informed members that he would enquire of the person's motives and report to the Committee for a decision to be subsequently taken.

ADJOURNMENT

5.1 The Meeting was adjourned to a date subject to the availability of such person(s) who, on the invitation of the Chairman, would demonstrate the use of breath testing/analyzing equipment.

5.2 The adjournment was taken at 12:20 p.m.

We certify that the above minutes are true and correct.

CHAIRMAN

SECRETARY

MINUTES OF THE SEVENTH MEETING OF THE JOINT SELECT COMMITTEE APPOINTED TO CONSIDER AND REPORT ON A BILL ENTITLED"THE MOTOR VEHICLES AND ROAD TRAFFIC (AMENDMENT) BILL, 2006" HELD IN THE PARLIAMENT CHAMBER, THE RED HOUSE ON TUESDAY FEBRUARY 13, 2007 AT 11.05 A.M.

PRESENT

Mr. Colm Imbert	**Chairman**
Ms. Pennelope Beckles	**Member**
Mrs. Joan Yuille-Williams	**Member**
Mr. Satish Ramroop	**Member**
Dr. Tim Gopeesingh	**Member**
Prof. Ramesh Deosaran	**Member**
Mrs. Shaarda Maharaj	**Secretary**
Mr. Ralph Deonarine	**Research Assistant**

ABSENT/EXCUSED

Mr. Fitzgerald Hinds	**Member**
Ms. Gillian Lucky	**Member**
Dr. Adesh Nanan	**Member**
Mr. John Jeremie	**Member**

ALSO PRESENT

Mr. Paul Griffith	**Legal Officer, Chief Parliamentary Counsel**

INTRODUCTION

1.1 The Chairman called the Meeting to order at 11:05 a.m.

CONFIRMATION OF MINUTES

2.2 The Minutes of the Sixth Meeting was confirmed by Professor Ramesh Deosaran and seconded by Mr. Satish Ramroop.

DELIBERATIONS ON THE ISSUES PAPER PREPARED BY MR. PAUL GRIFFITH, LEGAL OFFICER, C.P.C

3.1 Mr. Griffith informed members that Clause 4 of the original Bill inadvertently repealed Section 70 of the Act, but should be reinserted and amended to include the points raised by Ms. Lucky and Prof. Deosaran. The re-drafted Bill was now worded to amend the error.

3.2 At Clause 5- 70A(3) raised by Ms. Lucky, the Committee asked Mr. Griffith to further investigate the matter, as there was uncertainty of what occurred in other jurisdictions in the case of third and fourth convictions. Committee members asked that this Clause be amended to enable the Court to exercise its' discretion in the disqualification of both first and second time offenders upon conviction.

3.3 At proposed Clause 70C (3) (a), Mr. Griffith was asked to refer to the other jurisdictions to determine which of the two readings from breath samples are to be used.

3.4 Under the same Clause 70C (3) (c), the Committee agreed that the maximum time between the provision of breath samples should be increased from ten (10) minutes to fifteen (15) minutes.

3.5 The Committee agreed to return to Clause 70E (2) since it was almost impossible for a person to be deemed unable to provide a sample of blood for testing. The Chairman indicated that Clause 70D (2) on page 14 of the redrafted Bill should be the only reason under which a person is unable to give a blood sample for testing.

3.6 The Committee asked Mr. Griffith to examine the Regulations of Australia and New Zealand to determine whether they have been incorporated into their respective legislation and to determine what level of flexibility the Minister is provided in amending the Regulations.

OTHER BUSINESS

4.1 The Chairman informed members that he had reconsidered procuring samples of the breath analyzers for the Committee's elucidation, since any attempt at such may be interpreted as a suggestive supply gesture, which can be interpreted as presenting bias to future tendering procedures.

The Chairman asked the Secretary to contact the relevant persons (Heineken and Carib proposed) inviting them to the next meeting to demonstrate to the Committee the use of the breath analyzing devices.

ADJOURNMENT

5.1 The Meeting was adjourned to Tuesday February 27, 2007 at 10:30 a.m.

5.2 The adjournment was taken at 12:07 p.m.

We certify that the above minutes are true and correct.

CHAIRMAN

SECRETARY

MINUTES OF THE EIGHTH MEETING OF THE JOINT SELECT COMMITTEE APPOINTED TO CONSIDER AND REPORT ON A BILL ENTITLED"THE MOTOR VEHICLES AND ROAD TRAFFIC (AMENDMENT) BILL, 2006" HELD IN THE PARLIAMENT CHAMBER, THE RED HOUSE ON TUESDAY FEBRUARY 27, 2007 AT 10.40 A.M.

PRESENT

Mr. Colm Imbert	**Chairman**
Ms. Pennelope Beckles	**Member**
Mr. Fitzgerald Hinds	**Member**
Ms. Gillian Lucky	**Member**
Mr. Satish Ramroop	**Member**
Dr. Tim Gopeesingh	**Member**
Prof. Ramesh Deosaran	**Member**
Mrs. Shaarda Maharaj	**Secretary**
Mr. Ralph Deonarine	**Research Assistant**

ABSENT/EXCUSED

Dr. Adesh Nanan	**Member**
Mr. John Jeremie	**Member**
Mrs. Joan Yuille-Williams	**Member**

ALSO PRESENT

Mr. Paul Griffith	**Legal Officer, Chief Parliamentary Counsel**
Ms. Laurelle Ralph	**Legal Officer, Ministry of Works and Transport**

ARRIVE ALIVE TEAM

Mr. Kirk Waithe	**Director**
Mr. Brent Batson	**Traffic Safety Consultant**
Dr. Andrew Persad	**Breath Alcohol Instructor/Technician**
Mr. Om Lalla	**Legal Advisor**

INTRODUCTION

1.1 The Chairman called the Meeting to order at 10:40 a.m.

1.2 The Chairman asked the Members of the Arrive Alive team to introduce themselves and made introductions on behalf of the Committee. Mr. Imbert then asked the Director of the Arrive Alive team to make their presentation to the Committee.

PRESENTATION BY ARRIVE ALIVE TEAM

2.1 The Arrive Alive Director notified the Committee that he had taken the liberty of bringing four (4) volunteers, two (2) males and two (2) females of different physique, who would be test subjects for demonstrating the breathalyzer equipment.

Mr. Waithe informed the Committee that Dr. Persad would be taking an initial, alcohol-free reading of the test subjects before they consume successive amounts of alcoholic beverages (beer for males and wine for females) after which they would again be tested. *The results were printed and passed to members for viewing.*

2.2 The Arrive Alive official stated that Arrive Alive was a Non-Governmental Organization (NGO) and was formed in 2004 by a group of citizens whose work involved spending much time on the roads of Trinidad and Tobago, and were disheartened by the carnage constantly experienced on the nation's roads.

Their main purpose is to highlight the problems on the roads and to present solutions by, for the most part, creating awareness of road safety. The group communicates via two-way telephone and works consistently with the traffic police, including participating in police road traffic exercises.

The members of Arrive Alive presented the Committee with statistics concerning the number of road fatalities over the period 2003 to present. The main causes of these road fatalities are alcohol and speed.

Professor Deosaran enquired as to what evidence the group had to support this statement, to which Mr. Waithe replied that members of Arrive Alive conduct their own research on persons leaving parties and fetes, and conduct breathalyzer tests on willing participants. Hence the data compiled supports the statements made.

2.3 The members of the Arrive Alive team delivered a PowerPoint presentation to Committee members present that addressed:

- How alcohol is treated with by the human body;
- The different types of alcohol;
- The effects of different Blood Alcohol Content on body functions;
-

2.4 The Chairman asked whether the breathalyzer devices were designed to deal with the fact that the liver absorbs most (80%) of the alcohol, so as to give accurate BAC's. The Breath

Alcohol Technician replied that the breathalyzer was designed to deal with a Breath Alcohol Content and not Blood Alcohol Concentration, however there was a very close relationship with a small margin of difference between both (possibly 5-15%) .

2.5 Dr. Gopeesingh informed those present that in the case of persons suffering with diabetes, of which there is a high percentage in Trinidad & Tobago, alcohol takes longer to metabolize than with a non-diabetic person. The implications of this are that a diabetic would have different alcohol tolerance and sustain higher BAC levels for longer periods of time.

2.6 The Committee asked on the source of the data used in the team's presentation. Members were notified that the scientific data was sourced from www.intox.com, a website that one can access and input one's physiologic data and how many drinks one has consumed, and the site will output an approximate level of alcohol in one's breath and system.

2.7 Professor Deosaran noted that the data suggested mean scores and asked whether distribution data was available, as only the distribution data was usable for Public Policy decisions. The Committee was informed that the data could be obtained from **Intoximeters**, one of the manufacturers of the breath analyzer equipment.

2.8 The Arrive Alive team displayed samples of the Intoximeter units, and the Committee was informed that they were programmed to give either breath alcohol content or to give a Pass/Fail reading, both displayed digitally. In road exercises, the usual mode of display was Pass/Fail, but the portable systems (one of which was being used by the team to measure the demonstration) are evidential systems capable of giving multiple print-outs of a test date, time and result. These portable systems are also able to log data for future use by police officers (e.g. production of statistics).

2.9 The Committee learned that all of the breath analyzers had to be calibrated to maintain accuracy of the unit either after every positive reading or every month. The accuracy check takes the form of a blast from bottled ethanol gas which contains a known concentration of alcohol. Some units were self-calibrating.

The Chairman asked whether the calibration requirement for breath analyzer devices would be in the regulations. *He asked Mr. Griffith to look into what other legislatures (US & UK) stated in their respective regulations concerning this.*

2.10 Dr. Gopeesingh asked what would happen in the case of persons with obstructive air passages e.g. those suffering from lung disease, who may not be able to provide a sample of sufficient volume for testing. The Team Technician informed the Committee that the devices contained a "manual" feature that the operator of the device can trigger at the last second of a person exhaling, to give a close approximation of breath alcohol content.

2.11 The Committee was also told how the devices operate and that the technology incorporated into them screened out substances such as acetone and ketone that are produced in diabetic persons.

2.12 The Chairman asked, under the assumption that the members of the team were not salesmen, what the average cost of the units was. The Committee was told that the cost of the devices used for the presentation ranged from $4,000.00 to $18,000.00.

2.13 The Chairman thanked the members from the Arrive Alive team for their most informative presentation. He stated that it had cleared up many of the issues that were before the Committee.

CONFIRMATION OF MINUTES

3.1 The Minutes of the Seventh meeting were confirmed by Professor Deosaran and seconded by Ms. Pennelope Beckles.

3.2 Professor Deosaran however, expressed a concern on whether there was a commercial aspect to the Arrive Alive Team and asked whether Carib and Heineken were contacted. The Chairman responded that Heineken and Carib were, in fact contacted and both referred the Committee to the Arrive Alive Team. Based on this referral and the fact that Arrive Alive was a neutral non-governmental group, the Chairman had consented to inviting them.

DELIBERATIONS ON THE ISSUES PAPER PREPARED BY MR. PAUL GRIFFITH, LEGAL OFFICER, C.P.C

4.1 On Clauses 4 and 5 of Section 70, Ms. Lucky stated that the power of the Magistrate as implied was allowable but would undertake to check it again.

4.2 On the issue of the scientific basis for intervals between breath analyses, Mr. Griffith informed members that in liaising with Professor Pinto-Pereira, it was learned that the fifteen (15) minute suggestion was based on a reference and suggested to Mr. Griffith that the Committee consider the Australian time period of between two (2) to ten (10) minutes. The Committee so agreed.

4.3 The third recommendation of inserting the words, “by reason of his physical condition” was agreed to by the Committee.

4.4 The fourth recommendation was accepted by the Committee without further amendment.

4.5 On Clause 70C (2), after the words, “The breath analysis referred to in subsection (1) shall be carried out at a police station…” the Committee asked Mr. Griffith to verify which of the words “reasonable” or “convenient” was used in the UK legislation and follow that wording to amend the Clause to include, “or at any other convenient/reasonable place”.

4.6 Mr. Hinds asked that the Committee recommend to the Parliament, a public education campaign, with the provision of handbooks and training for police officers, public programmes on radio, television and a public meeting in the Parliament Chamber. The

Chairman stated that as long as this was within the Committee's mandate, he welcomed the idea.

4.7 The Committee agreed to insert a Proclamation Clause within the Bill.

4.8 The Committee agreed to amend Section 70H of the Bill (Regulations) to include "subject to the affirmative resolution of Parliament". **Mr. Griffith was asked to make the necessary amendment.**

4.9 **On Clause 70 B (1), the Chairman asked Mr. Griffith to amend the Committee's previous change to dictate that only in the event of an accident that the amendment is effected.**

ADJOURNMENT

5.1 The Meeting was adjourned to a date to be announced.

5.2 The adjournment was taken at 12:30 p.m.

We certify that the above minutes are true and correct.

CHAIRMAN

SECRETARY

Appendix III: Redrafted Bill

THE MOTOR VEHICLES AND ROAD TRAFFIC (AMENDMENT) BILL, 2006

EXPLANATORY NOTE

(These notes form no part of the Bill but are
intended only to indicate its general purport)

The purpose of the Bill is to empower constables to demand specimens of breath and in certain instances, specimens of blood from persons thought to be driving under the influence of alcohol.

Clause 2 of the Bill would give effect to the Act for which this is the Bill, even though it would be inconsistent with sections 4 and 5 of the Constitution.

Clause 3 would provide the interpretation.

Clause 4 would amend section 70 of the Motor Vehicles and Road Traffic Act, Chap. 48:50 to increase the penalties under subsection (1) and to give the Court a discretion relating to disqualification from holding a driving permit.

Clause 5 would amend the Act by inserting new sections 70A, 70B, 70C, 70D, 70E, 70F, 70G and 70H.

Under clause 5, the proposed section 70A would create the offence of driving or attempting to drive or being in charge of a motor vehicle while the concentration of alcohol in the blood exceeds the prescribed limit. Conviction for the offence could result in disqualification for holding or obtaining a driving permit.

The proposed section 70B would empower a constable, whether in uniform or not to submit a person to a breath test where the constable reasonably suspects the person of driving, attempting to drive or being in charge of a motor vehicle on a road or public place or having driven or attempted to drive or being in charge of a motor vehicle or committed an offence on such road or public place with alcohol in his breath in excess of the prescribed limit.

Section 70B as proposed would also empower the constable to require a person involved in a motor vehicle accident to provide a specimen of breath for testing at **or near the place where the requirement was made** or at a police station nearby. Where the driver is a patient at a hospital, he may be required to provide a specimen of breath only where the medical practitioner in charge of the case does not object to the test on medical grounds.

A constable would **also** have the power to arrest without warrant, a person who is found to have alcohol in his breath in excess of the prescribed limit except that the person may not be arrested while he is a patient at a hospital.

Under section 70C as proposed, a person who fails to undergo a breath test or whose tested breath was found to contain alcohol in excess of the prescribed limit could be required to submit to a breath analysis conducted by an authorized constable **near the place where the requirement was made or** at a police station.

A person believed to have been involved in an accident within the preceding two hours and which resulted in death or serious injury could **under certain circumstances** be required to submit to a breath test at his home.

The proposed section **70C** would also set out the procedure to be followed subsequent to a person submitting to a breath test. Refusal to submit to a breath analysis or any attempt to alter the concentration of alcohol in the breath or blood would constitute an offence liable to a fine or imprisonment.

The proposed section 70D would deal with laboratory tests. A constable could, therefore, require a person under investigation for dangerous driving or driving with blood alcohol levels in excess of the prescribed limit, to provide a specimen of blood for a laboratory test where the person is physically unable to provide a specimen of breath for testing. The exception would be where the provision of the specimen would in the opinion of the medical practitioner in charge of the case, be prejudicial to the proper care or treatment of the person.

The proposed section 70E would deal with refusal to consent to **the** taking of or providing specimens of blood. Refusal would constitute an offence punishable by a fine or imprisonment.

The proposed section 70F would speak to ancillary provisions respecting evidence in proceedings **relating to offences committed** under section 70A.

The proposed section 70G would define terms used in the proposed new sections.

The proposed section 70H would empower the Minister to make regulations for carrying out or giving effect to the measures propounded**, subject to affirmative resolution of Parliament**.

BILL

AN ACT to amend the Motor Vehicles and Road Traffic Act, Chap. 48:50

Preamble

WHEREAS it is enacted by section 13(1) of the Constitution that an Act of Parliament to which that section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution, and if any Act does so declare it shall have effect accordingly:

And whereas it is provided in subsection (2) of the said section 13, that an Act of Parliament to which that section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three fifths of all members of the House:

And whereas it is necessary and expedient that this Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution:

Enactment

ENACTED by the Parliament of Trinidad and Tobago as follows:

Short title

1. **(1)** This Act may be cited as the Motor Vehicles and Road Traffic (Amendment) Act, 2006.

(2) This Act shall come into operation on such day as may be fixed by the President by Proclamation.

Act inconsistent with the Constitution

2. This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.

Interpretation
Chap. 48:50

3. In this Act, "the Act" means the Motor Vehicles and Road Traffic Act.

Section 70 amended

4. Section 70 of the Act is amended -

(a) in subsection (1) by deleting the words "two thousand" and "four thousand" and substituting the words "five thousand and "ten thousand", respectively;

(b) by repealing subsection (2) and substituting the following subsection:

" (2) A person convicted of –

(a) two consecutive offences under this section shall, unless the Court for special reasons thinks fit to order otherwise and without prejudice to the power of the Court to order a longer period of disqualification, be disqualified for a period of twelve months from the date of the conviction for holding or obtaining a driving permit; and

(b) a third conviction for a like offence, shall be permanently disqualified for holding or obtaining a driving permit;

(c) by inserting after subsection (3), the following subsection:

"(4) The Minister may by Order approve the device to be used for the detection of drugs pursuant to subsection (1)."

Act amended

5. The Act is amended by inserting immediately before section 71, the following sections:

"Driving or being in charge of vehicle while blood alcohol levels exceed prescribed limit

70A.(1) No person shall drive or attempt to drive, or be in charge of a motor vehicle on a road or other public place if he has consumed alcohol in such a quantity that the proportion thereof in his breath or blood exceeds the prescribed limit.

(2) Any person who contravenes subsection (1) is guilty of an offence and is liable –

(a) in the case of a first conviction, to a fine of five thousand dollars or to imprisonment for six months; and

(b) in the case of a second or subsequent conviction, to a fine of ten thousand dollars or to imprisonment for twelve months.

(3) A person convicted of –

(a) two consecutive offences under this section shall unless the Court for special reasons thinks fit to order otherwise and without prejudice to the power of the Court to order a longer period of disqualification, be disqualified for a period of twelve months from the date of the conviction for holding or obtaining a driving permit; and

(b) a third conviction for a like offence, shall be permanently disqualified for holding or obtaining a driving permit.

(4) No person shall be convicted under this section of being in charge of a motor vehicle under subsection (1) if he proves that at the material time, the circumstances were such that there was no likelihood of his driving the motor vehicle while there was alcohol in his breath or blood in a proportion exceeding the prescribed limit.

(5) Any constable in uniform or on showing his authority as a member of the Police Service may arrest without a warrant, any person committing an offence under this section.

Breath test

70B.(1) Where a constable in uniform or on showing his authority as a member of the Police Service has reasonable cause to suspect –

(a) that a person driving or attempting to drive or in charge of a motor vehicle on a road or other public place has alcohol in his breath or blood exceeding the prescribed limit or is in breach of section 70;

(b) that a person has been driving or attempting to drive or been in charge of a motor vehicle on a road or other public place with

alcohol in his breath or blood exceeding the prescribed limit and that the person still has alcohol in his breath or blood; or

(c) that a person has been driving, attempting to drive or been in charge of a motor vehicle on a road or other public place and has committed an offence against this Act whilst the vehicle was in motion,

he may, subject to subsection (4), require him to provide a specimen of breath for a breath test at or near the place where the **requirement is made**.

(2) No requirement may be made by virtue of paragraph (b) or (c) of subsection (1) unless it is made as soon as reasonably practicable after the commission of the offence.

(3) Where an accident occurs involving a motor vehicle on a road, a constable in uniform or on showing his authority as a member of the Police Service may, subject to subsection (4), require any person whom he has reasonable cause to believe was driving or attempting to drive the vehicle at the time of the accident, to provide a specimen of breath for a breath test either at or near the place where the requirement is made or, if the constable thinks fit, at a police station specified by him being a police station in reasonable proximity to that place.

(4) Where **a** person referred to in subsection (3) is at a hospital as a patient, he may be required by the constable to give a specimen of breath at the hospital but no such requirement may be made unless the medical practitioner in charge of his case –

(a) is given prior notice of the proposal to make the requirement; and

(b) does not object to the provisions of a specimen on the ground that its provision or the requirement to provide it would be prejudicial to the proper care or treatment of the patient.

(5) **Where a person**, without reasonable excuse, fails to provide a specimen of breath under subsection (1), (3), (4) or (8) **he** is guilty of an offence and shall be liable on conviction to a fine of five thousand dollars or to imprisonment for six months.

(6) A constable may arrest without warrant any person who, as a consequence of a breath test, is found to have a proportion of alcohol in his breath exceeding the prescribed limit but no such arrest may be made while the person is at a hospital as a patient.

(7) Where a person required by a constable under subsection (1), (3), **(4) or (8)** to provide a specimen of breath for a breath test fails to do so and the constable has reasonable cause to suspect

that the person has alcohol in his breath or blood above the prescribed limit, the constable may, without prejudice to section 70(3) **and 70A(5)**, arrest the person without a warrant but no such arrest may be made if the person is at a hospital as a patient.

(8) A person arrested under subsection (7)**,** section 70(3) **or 70A(5)** shall, while at a police station, be given an opportunity to provide a specimen of breath for a breath test at the police station.

(9) The Minister may, by Order, approve the device to be used for the purpose of obtaining an indication of alcohol in a person's breath.

Breath analysis

70C.(1) Subject to subsections (2) and (3) where –

(a) any person required by a constable under section 70B to undergo a breath test fails to undergo that test; or

(b) in consequence of a breath test carried out under section 70B, it is indicated that there may be present in that person's breath, a concentration of alcohol in excess of the prescribed limit,

the constable may require that person to submit, in accordance with the directions of the constable, to a breath analysis **and on any such requirement, warn him that a failure to so submit may**

render him liable to prosecution.

(2) The breath analysis **required under** subsection (1) shall be carried out by a constable authorized in that behalf by the Minister **to whom** responsibility for national security **has been assigned -**

(a) **at or near the place where the requirement is made if facilities for the specimens to be taken are available and it is practicable to conduct the analysis there; or**

(b) at a police station,

as the constable may direct.

(3) For the purpose of the breath analysis –

(a) **a person must provide two separate specimens of breath for analysis;**

(b) **such specimens must be provided in accordance with the directions of the constable referred to in subsection (2);**

(c) **there must be an interval of not less than two minutes and not more than ten minutes between the provision of specimens; and**

(d) **the reading from the specimen that indicates the lower concentration of alcohol in the**

person's breath shall be taken to be the result of the breath analysis.

(4) A constable shall not require any person to undergo a breath test or to submit to a breath analysis –

(a) if the person has been admitted to hospital for medical treatment and the medical practitioner in immediate charge of his treatment has not been notified of the intention to make the requisition**,** or objects on the ground that compliance therewith would be prejudicial to the proper care or treatment of that person;

(b) if it appears to the constable that it would, by reason of injuries sustained by the person, be dangerous to that person's medical condition to undergo a breath test or submit to a breath analysis; or

(c) at that person's usual place of abode.

(5) Notwithstanding subsection (4)(c), a person may be required to submit to a breath test at that person's usual place of abode -

(a) if the constable has reasonable cause to believe that -

(i) the person was involved in an accident on a road or other public place within the preceding two hours resulting in death or serious injury; and

(ii) at the time when the accident occurred the person had an alcohol level in his breath exceeding the prescribed limit; and

(b) if it was not feasible for a constable to require the person to submit to a breath test at the scene of the accident.

(6) Any person who –

(a) upon being required under subsection (1) to submit to a breath analysis fails to do so in accordance with the directions of a member of the Police Service; or

(b) wilfully does anything to alter the concentration of alcohol in his breath or blood between the time of the event referred to in section 70B (in respect of which he has been required to undergo

a breath test) and the time when he undergoes that test or, if he is required to submit to a breath analysis, the time when he submits to that analysis, is guilty of an offence and is liable –

(c) in the case of a first conviction, to a fine of six thousand dollars or to imprisonment for six months; and

(d) in the case of a second or subsequent conviction, to a fine of ten thousand dollars or to imprisonment for twelve months.

(7) It shall be a defence to a prosecution for an offence under subsection (5)(a) if the accused satisfies the court that he was unable on medical grounds at the time he was required to do so, to undergo a breath test or to submit to a breath analysis, as the case may be.

(8) **Within one hour** after a person has submitted to a breath analysis, the constable operating the breath analyzing instrument shall deliver to that person, a statement in writing signed by that constable specifying -

(a) the concentration of alcohol determined by the analysis to be present in that person's breath and expressed in microgrammes of alcohol in one hundred millilitres of breath; and

(b) the time of day and the day on which the breath analysis was completed.

(9) In proceedings for an offence under section 70, 70A or **70C** -

(a) evidence may be given of the concentration of alcohol present in the breath of the accused as determined by the breath analyzing instrument operated by the constable authorized in that behalf under subsection (2); and

(b) the concentration of alcohol so determined shall be deemed to be the concentration of alcohol in the breath of the accused at the time of the occurrence of the event mentioned in section 70B(1)(a) unless the accused proves that the concentration of alcohol in his breath at the time did not exceed the prescribed limit.

(10) In proceedings for an offence under **this** section, a certificate purporting to be signed by a constable certifying that -

(a) he is authorized by the Minister **to whom** responsibility for national security **has been**

assigned, to operate breath analyzing instruments;

(b) a person named therein submitted to a breath analysis;

(c) the apparatus used by him to make the breath analysis was a breath analyzing instrument **approved** by the Minister;

(d) the analysis was made on the date and completed at the time stated in the certificate;

(e) a concentration of alcohol determined by that breath analyzing instrument and expressed in microgrammes of alcohol in one hundred milliliters of breath was present in the breath of that person on the date and at the time stated in the certificate; and

(f) a statement in writing required by subsection (8) was delivered in accordance with that subsection,

shall be *prima facie* evidence of the particulars certified in and by the certificate.

(11) In proceedings for an offence under this section a certificate purporting to be signed by the Minister responsible for national security that the constable named therein is authorized to operate breath analyzing instruments, shall be *prima facie*

evidence of the particulars certified in and by the certificate.

(12) In any proceedings for an offence under this section, evidence of the condition of a breath analyzing instrument or the manner in which it was operated shall not be required unless evidence that the instrument was not in proper condition or was not properly operated has been adduced.

(13) The Minister may, by Order, approve the device to be used for the quantitative measuring of the proportion of alcohol in a person's breath.

Laboratory tests

70D.(1) Subject to subsections (2) and (3), in the course of an investigation as to whether a person has committed an offence under section 70A, a constable may require a person under investigation to provide a specimen of blood for a laboratory test if the person is unable, by reason of his physical condition, to provide a specimen of breath for a breath test.

(2) A person shall not be required to provide a specimen of blood for a laboratory test under subsection (1) if he is at a hospital as a patient and the medical practitioner in immediate charge of his case is not first notified of the proposal to make the requirement or objects to the provision of a specimen on the ground that the requirement to provide such specimen could be prejudicial to the proper care or treatment of that person.

(3) A constable shall not require a person to submit a specimen of blood for a blood analysis once a breath analysis has been carried out in respect of that person and the result is available.

(4) Nothing in subsections (1) to (3) shall affect the provisions of section 70F.

(5) For the purposes of this section and sections 70A, 70E and 70F, where any person is required to provide a specimen of blood, such specimen shall be taken only -

(a) with the consent of that person;

(b) at a hospital; and

(c) by a medical practitioner or qualified laboratory technician.

(6) The Minister **to whom** responsibility for health **is assigned,** shall by Order designate laboratories for the purpose of giving effect to this section.

Refusal to consent to taking of or providing specimen

70E.(1) Any person who is under investigation in relation to an offence under section 70A and who refuses to provide a specimen of blood for a blood test when required to do so under section 70D(1), is guilty of an offence and shall be liable –

(a) in the case of a first conviction, to a fine of six thousand dollars or to imprisonment for six months; and

(b) in the case of a second or subsequent conviction, to a fine of ten thousand dollars or to imprisonment for twelve months.

(2) A person shall not be treated as failing to provide a specimen of blood if he is unable to do so **for the reason set out in section 70D(2).**

Ancillary pro-visions as to evidence in proceedings for an offence under section 70A or 70B

70F.(1) For the purposes of any proceedings for an offence under section 70A, a certificate signed by an authorized analyst, certifying the proportion of alcohol found in a specimen identified by the certificate shall, subject to subsection (3), be evidence of the matters so certified and of the quali-fications of the analyst.

(2) For the purposes of any proceedings for an offence under section 70A, a certificate purporting to be signed by the medical practitioner that he took a specimen of blood from a person with that person's consent shall, subject to subsection (3), be evidence of the matters so certified and of the qualifications of the medical practitioner.

(3) Subsections (1) and (2) shall not apply to a certificate tendered on behalf of the prosecution -

(a) unless a copy has been served personally on the accused or on his counsel **or by prepaid registered post** not less than seven days before the hearing or trial; or

(b) if the accused, not less than seven days before the hearing or trial, or within such further time as the court may in the circumstances of the case allow, has served notice on the prosecution requiring the attendance at the hearing or trial of the person by whom the certificate was signed.

(4) Where, in proceedings for an offence under section 70A the accused, at the time a specimen of blood was taken from or provided by him in **accordance with this Act**, asked to be supplied with such a specimen, evidence of the proportion of alcohol found in the specimen shall not be admissible on behalf of the prosecution unless -

(a) the specimen is either one of two taken or provided on the same occasion or is part of a single specimen which was divided into two parts at the time it was taken or provided; and

(b) the other specimen or part was supplied to the accused.

(5) The Minister to whom responsibility for health is assigned may designate qualified persons to conduct laboratory tests in accordance with this Act, to determine the

concentration of alcohol in a person's blood.

Interpretation of sections 70A to 70F

70G.(1) In sections 70A to 70F, except so far as the context otherwise requires –

"authorized analyst" means a person designated as such by the Minister **to whom responsibility for health is assigned, under section 70F(5)**;

"breath analysis" means the quantitative measuring of the proportion of alcohol in a person's breath, carried out by means of a device prescribed for the purpose by the Minister **under section 70C(13)**;

"breath test" means a test for the purpose of obtaining an indication of the proportion of alcohol in the person's breath carried out by means of a device **approved** for the purpose of such a test by the Minister, **under section 70B(9)**;

"constable" means a member of the Police Service;

"drug" includes any intoxicant other than alcohol;

"fail" in relation to providing a specimen, includes refuse;

"hospital" means an institution which provides medical or surgical treatment for in-patients or out-patients and

includes **a laboratory accredited under the Standards Act and** recognized by the Minister **to whom responsibility for health is assigned,** as a place where laboratory tests are carried out;

"laboratory test" means the analysis of a specimen provided for the purpose;

"the prescribed limit" means in respect of –

(a) breath alcohol concentration, thirty-five microgrammes of alcohol in one hundred millilitres of breath or such other proportion as may be prescribed; and

(b) blood alcohol concentration, eighty milligrammes of alcohol in one hundred millilitres of blood, or such other proportion as may be prescribed.

(2) References in section 70B to providing a specimen of breath shall be construed as references to providing a specimen thereof in sufficient quantity to enable a breath test to be carried out.

Regulations

70H. The Minister may**, subject to affirmative resolution of Parliament,** make regulations for giving effect to the purposes and provisions of sections 70A to 70G.

Passed in the House of Representatives this day of , 2006.

Clerk of the House

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed in the House and at the final vote thereon in the House has been supported by the votes of not less than three-fifths of all members of the House, that is to say, by the votes of members of the House.

Clerk of the House

Passed in the Senate this day of , 2006.

Clerk of the Senate

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed in the Senate and at the final vote thereon in the Senate has been supported by the votes of not less than three-fifths of all members of the Senate, that is to say, by the votes of members of the Senate.

Clerk of the Senate

Appendix IV: Hansard Report of Committee Meetings

MEETING OF THE JOINT SELECT COMMITTEE APPOINTED TO CONSIDER AND REPORT ON THE MOTOR VEHICLES AND ROAD TRAFFIC (AMDT.) BILL, 2006, HELD IN COMMITTEE ROOM NO 2, RED HOUSE, PORT OF SPAIN, ON WEDNESDAY, DECEMBER 6, 2006 AT 11.20 A.M.

PRESENT

Mr. Colm Imbert	**Chairman**
Mr. Fitzgerald Hinds	**Member**
Mrs. Joan Yuille-Williams	**Member**
Mr. Satish Ramroop	**Member**
Dr. Tim Gopeesingh	**Member**
Prof. Ramesh Deosaran	**Member**
Mrs. Shaarda Maharaj	**Secretary**
Mr. Ralph Deonarine	**Assistant Secretary**

ABSENT

Ms. Pennelope Beckles	**Member**
Dr. Adesh Nanan	**Member**
Ms. Gillian Lucky	**Member**
Mr. John Jeremie, S.C.	**Member**

Mrs. Maharaj: I would like to welcome you all to the first meeting of the Joint Select Committee appointed to consider and report on a Bill entitled, the Motor Vehicles and Road Traffic (Amdt.) Bill, 2006. My name is Shaarda Maharaj, I am the secretary to the Committee.

In accordance with Standing Order 79(3) of the House of Representatives and Standing Order 71(3) of the Senate, privileges are made for the Joint Select Committee to elect a Chairman. I would now like to invite nominations for the Chairman of the Committee.

Prof. Deosaran: I suggest Mr. Colm Imbert.

Mrs. Maharaj: Prof. Deosaran suggests Mr. Colm Imbert. Can I have a seconder?

Mrs. Yuille-Williams: Yes.

Mrs. Maharaj: Sen. Joan Yuille Williams seconded the nomination. Is it the will of the Committee that Mr. Imbert be the Chairman?

Members: Yes.

Mrs. Maharaj: Mr. Chairman, I would like to invite you to—

Mr. Chairman: I thank Members for their confidence in me, notwithstanding the little informal discussion that we just had. Can we have a proposal on a quorum? How many Members we have in all? Ten?

Mrs. Maharaj: Ten.

Mrs. Yuille-Williams: How many from each House?

Mr. Chairman: A minimum of two from each House. Five persons with a minimum of two from each House.

Mr. Hinds: I just want to say one thing. What I have found from my experience from these committees, we must have a quorum for business to proceed, but we find ourselves always going through minimum, so we end up just skating through, somebody coming just barely to make the five. I find that this is so important that we should try to have all Members here. We should set a higher standard for that reason and really try to be here as this is so important. I find from my experience with other committees, we just come down to minimums and the work of the committees suffers as a result. It looks good on paper and the formality is nice, but the reality is not as substantive as it ought to be. That is my view on it.

Mr. Chairman: Any other views?

Mrs. Yuille-Williams: I did not have that experience.

Mr. Chairman: So you are okay with five, Prof. Deosaran?

Prof. Deosaran: Yes.

Mr. Chairman: Mr. Ramroop?

Mr. Ramroop: Yes.

[*Dr. Tim Gopeesingh enters*]

Mr. Chairman: Dr. Gopeesingh, we were about to select a quorum. There are ten persons who are appointed to this Committee and we were selecting a quorum of five. Is that okay with you?

We were going to say two from the House and two from the Senate, but the Secretary is proposing a variation; the Chairman plus one Member from either House. How does that sound or do you want to go with the two and two? I do not mind. The Chairman plus two and two?

It is the Chairman plus one other Member from the Lower House plus two Members from the Senate. Okay? At least one other Member from the Lower House plus the Chairman—because I am from the Lower House—plus a minimum of two Members of the Senate. You got that? A minimum of two from the Senate to make up the five. Procedural rules, Mrs. Maharaj, you want to help us with that?

Mr. Ramroop: Mr. Chairman, I just want to ask a question. With regard to the quorum, I know you said two and two, it could be yourself, Min. Hinds and myself.

Mr. Chairman: Let me just make it clear. Myself, one other Member of the Lower House, plus two Members of the Senate making up the quorum.

Mrs. Yuille-Williams: If we did not do that today we could not continue.

Mr. Chairman: Because if we did not do that we could not continue.

Mr. Ramroop: I want to say something, because just recently in the Senate it was an issue. Sen. Gopeesingh was not agreeing with certain decisions on how the meeting went; I am just saying yourself, myself and Mr. Hinds could come and make a decision and go back and say this is how—

Mr. Chairman: No, it is a minimum of five persons and within that five the Chairman must be present, plus at least one Member of the Lower House, plus at least two Members of the Senate. So it cannot be three of us.

Let me just read out the mandate of the Committee. The Committee has been established to consider and report on a Bill entitled, the Motor Vehicles and Road Traffic (Amdt.) Bill, 2006. I think we would just be guided by the standard rules that apply to Joint Select Committees, including the calling of experts and so on, as Prof. Deosaran had mentioned to me before we had the meeting. He felt that this Committee will be well served if we call in an expert or two to advise us on the technical matters. Do you have somebody that you could propose?

Prof Deosaran: Yes, there are two persons. The reason for it is that the Minister stated that they may propose legislation and he was wondering whether they had the expertise or some mechanism to find the expertise to determine the level for drugs. I thought that rather than us lay persons, with due respect, on that area, we should call one or two people who could guide us as

to how far we can go, if at all and how to treat with the legislation after hearing them and then we can move on a sounder basis than doing it by ourselves.

Mr. Chairman: Let me tell you how that matter arose. In my research on this Bill I discovered that very few countries test at the road side for dangerous drugs or hallucinatory drugs. Reason being, whereas with alcohol standards have been established for years on the level of alcohol that causes impairment; no such standards exists for drugs. For example, if you test somebody for cocaine, what level of cocaine would they need to have in their system in order to say this person should not drive. It being a dangerous drug it should be zero.

This is the kind of problem where somebody could have one drink and still be capable of driving without causing a problem. How much drugs? When you check countries like Australia, USA and the United Kingdom, they are all grappling with this problem. How do you specify the quantum of narcotics that you will find on a person's bloodstream or in their breath or saliva in this particular case? Beyond which, you would say this person should not be allowed to drive a car and we need somebody to talk to us about that. I would want an expert to talk to us about that. Is it possible?

Prof. Deosaran: We have pharmacologists here and I have literature I could leave with you.

Mrs. Yuille-Williams: There is a doctor, Dr. Donna Reed, I got a consent; I spoke to her today.

Mr. Chairman: You have someone. Can we agree on that? Dr. Donna Reed, she is a medical doctor?

Mrs. Yuille-Williams: Yes.

Prof. Deosaran: It is somebody who has to know about drug analysis. It is a more pharmacological than a general surgeon.

Mrs. Yuille-Williams: That might be only one thing, this whole thing consists of more aspects of the breathalyzer tests. I heard her on the radio.

Mr. Chairman: I would have no objections to the persons you wish to bring subject to their agreement. We can authorize you to name these people and once they agree let them come before the Committee.

Prof. Deosaran: I will liaise with Dr. Gopeesingh and we could work out something.

Mr. Chairman: Professor, if you get the consent, provide the Secretary with the contact information and we will invite them to the next meeting. Minister, we have agreed on that.

Dr. Gopeesingh: Is there a time frame or closure for this thing, Mr. Chairman?

Mr. Chairman: I am coming to that. We have agreed that we will invite experts to advise us. We have agreed that Dr. Reed will be the first expert. We have agreed that Prof. Deosaran will contact his experts and subject to their agreement, we will ask them to attend the next meeting and he will provide the contact details to the Secretary.

Mrs. Maharaj: Minister, if you could also provide Dr. Reed's address and so on, I will appreciate that.

Mrs. Yuille-Williams: Actually, I left it in the car, but I will call you and give it to you. I suppose on one day we could have more than one because she is not going to take long.

Mr. Hinds: Did you find in your research at all any country that does road side testing for drugs?

Mr. Chairman: Yes, Australia is in the experimental stage and they test it through saliva. I will bring as much information as I can on that particular aspect of this matter. I will make sure it is circulated for the next meeting.

Now, my biggest challenge is to try and finish this thing quickly. How long do you think, practically, it will take to sort this matter out.

Dr. Gopeesingh: The first thing I want to say is this country needs this legislation badly. I think lots of lives are being lost as a result of not having this and we can make a significant impact on the carnage on the roads with this legislation. So, I would like to recommend that we try to do it as expeditiously as possible; three months maximum.

Mr. Chairman: I was saying about two months. Could we shoot for two months?

Mrs. Yuille-Williams: That is a long time. I did not think it was for so long.

Mr. Chairman: So you want to go for one month?

Mrs. Yuille-Williams: How often are we going to meet?

Mr. Chairman: I was going to meet next week if you all do not mind.

Mrs. Yuille-Williams: Yes, but how often?

Mr. Chairman: We could meet once a week.

Mrs. Yuille-Williams: Once a week for two months is a long time. Let us try to go as quickly as we can.

Mr. Chairman: Shall we try for six weeks? Let us set ourselves a target of six weeks and try and achieve it. Okay?

Dr. Gopeesingh: Sure. That will carry us into January.

Mrs. Yuille-Williams: Before Carnival this will be done?

Mr. Hinds: Certainly before Carnival.

Mr. Chairman: Certainly by the end of January.

Dr. Gopeesingh: Certainly before the end of January so if it comes back to both Houses it would be passed before Carnival. The other thing is you have to think about regulations and so on.

Mr. Chairman: That is a point that was brought up in the Lower House. We have to get the CPC and the lawyers from the Ministry of Works and Transport to attend the next meeting. We have to get them working on regulations right away, so that this Committee will also sign off on regulations. Even though it is not part of your mandate, if you could sign off on the regulations.

Dr. Gopeesingh: The other aspect is when the law is enacted we probably would want to go head down into effecting the implementation of it and therefore we should start to consider putting the systems in place, if superficially, for the time being, then more in detail later. So we could probably alert the authorities of what we may seem to want to purchase for bringing the equipment and all of that.

Mr. Chairman: Apparently the breathalyzers are readily available; they are off the shelf; the problem is training of the officers in use of it and education of the public in the consequences of it. The implication of what is going to happen. I was thinking in the month of January we will have a big public education drive and training for police officers. That is what I targeted for the month of January.

Dr. Gopeesingh: Are they general public as well?

Mr. Chairman: Yes. Public education and training of the officers.

Mrs. Yuille-Williams: That training could only come after you decide on the method that you are going to use for the test.

Mr. Chairman: We can start with the breathalyzer that is used for alcohol. To assist you with that I will bring some examples of the typical devices, I am sure other Members will as well. The one for alcohol is not difficult. The drug one, there is an issue about that.

I was even thinking that we could prescribe those devices by order or by regulations or something in due course. Amend the Bill to give us the ability to bring regulations to Parliament—say for affirmative resolution—to deal with the testing for drugs. That is the kind

of thing I have in my mind rather than slow down everything waiting for those devices; it is not a simple thing.

Prof. Deosaran: What item are you on?

Mr. Chairman: I think we are almost done, unless you want to go straight into the Bill itself.

Prof. Deosaran: No, I just want to put on the table that I have some issues to raise. One primarily being the safeguards against people's rights and the way the Bill is outlined, the relevant clauses with the powers given to the constable. I would want to make a presentation at the appropriate time in that to help the Committee come up with something that will serve a better balance.

My other concern is with the instrument itself in terms of it having not only having a reliable output but one that is fair to the accused person. What I read here is that the constable would write down the result that he or she sees from the instrument. I want to make sure that what he or she sees could be made part of a permanent record which could be verified by both the defence as it were and the prosecution when the time comes, rather than merely leaving it up to the constable to write down something.

Mr. Chairman: My understanding is that you are tested at the road side—

Prof. Deosaran: We can discuss it.

Mr. Chairman: I am just making a point. I just want to make a general point to you. You are tested at the road side and if it is found that you are over the limit they then take it to the police station where the test is validated by another test under controlled conditions. That is my understanding.

Prof. Deosaran: We will discuss all those other things.

Mr. Chairman: Miss Lucky had looked at the United Kingdom provisions and there are some extensive—that is why I was hoping she will be here today.

Mrs. Yuille-Williams: Mr. Chairman, in terms of procedures I was listening to Prof. Deosaran; before we even bring in the experts we need to go through this to familiarize ourselves for those who have not gone through what it says. When the experts come we may ask questions that relate to what we are saying here. I think we need to do that first before—

Mr. Chairman: Leave them for about two weeks?

Mrs. Yuille-Williams: No, no, not so long. How long will it take us to go through this? How long a meeting is supposed to last?

Mr. Chairman: We can regulate our own procedure, we can take as long as we want; it is up to us.

Mrs. Yuille-Williams: To cut down on time, if we take time to go through the Bill and then have one person in after so that we do not come too many days; that is what I am saying.

Mr. Chairman: When are you suggesting our first expert speak to us? At the next meeting or the meeting after?

Mrs. Yuille-Williams: Could be next week but we will tell them to come a little late and that person will take about 20 minutes; nobody taking us too long.

Dr. Gopeesingh: My short experience with some of the committees, I think when colleagues have little comments or little ideas on certain things it might be a nice thing to circulate them to the Secretariat and then the Secretariat could send them to us for knowledge before we come to the meeting, so that effectively we manage our time properly.

Mr. Chairman: If anybody has any proposals send them straight to the Secretariat, which could be circulated to all the Members.

Mr. Hinds: As an adjunct to that, I think that what brought us to the Joint Select Committee on this Bill, it having been presented to the Parliament by the Minister of Works and Transport, was a number of concerns raised on the other side. I think what we could probably do is to get the *Hansard*; the points of objections and I think that our work will be completed soon and any additional—

Mr. Chairman: Could you circulate the *Hansard* to all Members?

Prof. Deosaran: The Ministers and the others.

Mr. Chairman: It is just Mrs. Kamla Persad-Bissessar and Miss Gillian Lucky who spoke as far as I can recall.

Mr. Hinds: Mr. Chairman, through you, is it possible that we can get—I mean this is not about laziness because we all can read it, so that there will be certainty among us—someone to go through the *Hansard* and identify the points that were raised and that is what should be presented to us.

Mrs. Maharaj: What we will do is we will give you all the *Hansard* as well as the issues raised during the debate.

Prof. Deosaran: I want my whole transcript.

Mrs. Maharaj: Certainly.

Dr. Gopeesingh: Just give us the dates and we can pull it down for ourselves too.

Mrs. Maharaj: November 17, 2006.

Mr. Chairman: It is true; it is on the Internet.

Mrs. Maharaj: But certainly we can provide that. We will give the *Hansard* as well as a list of issues raised.

Mr. Hinds: What I am saying is, very formally the Committee would have presented to us the issues that were raised for our consideration, then we can add our particular concerns to that; so that will be our work.

Dr. Gopeesingh: If we want to just look at one little area, the Committee may need to consider the part in the preamble on page 6, which says:

> "And whereas it is necessary and expedient that this Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution."

It is something we have to consider.

Mr. Chairman: Well it requires a special majority, because you are taking a sample from someone and you need their permission to do that. That is why the special majority is required because we need to have it, otherwise somebody could say "I am not doing any test" and the whole thing just fails.

Dr. Gopeesingh: That issue must be solved in the Bill by the fact that we need a two-thirds majority.

Mr. Chairman: Three-fifths majority.

Mr. Hinds: The sample would be a blood sample?

Mr. Chairman: It is both a breath and a blood sample.

Mr. Hinds: The breath raises constitutional issues too?

Mr. Chairman: Yes, that is my breath.

Dr. Gopeesingh: Remember we had a similar situation in the HIV Bill, where you—

Mr. Chairman: Saliva, breath, blood.

Prof. Deosaran: Urine.

Mr. Hinds: Urine, yes, in the DNA legislation, an intimate sample includes saliva and that sort of thing. I was just bearing that in mind.

Mr. Chairman: But the person does not have to give it if they do not want to. You have to get permission from the person.

Mr. Hinds: The reason for that is that you cannot take breath involuntarily, but the actual breath is not generally regarded as an intimate sample.

Mr. Chairman: How are you going to get it?

Mr. Hinds: That is the point; that is the issue.

Dr. Gopeesingh: The Minister is looking at the definitions of it to mean—

Mr. Hinds: It requires the consent of the person but for another reason.

Mr. Chairman: That is the reason. The problem here is that you are taking away the person's right to refuse to give you a sample.

Dr. Gopeesingh: The other thing we have to look at, sometimes you take a sample of breath at a particular point in time, and it may be over the limit, but as time elapses and the body circulation moves, the alcohol level falls. So by the time it reaches a police station the level might be within the normal level.

Mr. Chairman: I am aware of that and I have seen the literature where they actually worked it out. There is a formula for the time, the reduction; I am sure the experts may have some.

Dr. Gopeesingh: If they have traffic jam from moving from point A to the police station then we may find some—

Prof. Deosaran: Especially if the police station is far.

Mr. Chairman: The thing I see that we need to settle is the next meeting, which I would like to be next week Wednesday at 11.00 a.m. unless you all have any objections. Could we have it Wednesdays at 11.00 a.m. right through? It is a day that conflicts with nothing. Wednesday at 11.00 a.m.

The next thing is, what do we do at the next meeting? Do we go through the Bill clause by clause?

Mrs. Yuille-Williams: I will suggest we go through this; we have already had the *Hansard* and we discussed this for about an hour and we could have one person speak with us. I prefer give the date for Ms. Donna Reed; she is basic and for all of us she is useful, let her talk. I think that is enough for one meeting.

Dr. Gopeesingh: So we can analyze this Minister, in relation to the comments from the *Hansard*.

Prof. Deosaran: It is an important Bill but it has some serious implications.

Mr. Chairman. I just want to get it over with. If we take a month, two months, even if we take three months; we get it right; I just want to get this thing over with.

Dr. Gopeesingh: We have been talking about it for the last 15 years.

Mr. Chairman: Thirty years, sorry forty years.

I thank you very much.

11.45 a.m.: *Meeting adjourned*.

MEETING OF THE JOINT SELECT COMMITTEE APPOINTED TO CONSIDER AND REPORT ON THE MOTOR VEHICLES AND ROAD TRAFFIC (AMDT.) BILL, 2006, HELD IN COM.MITTEE ROOM NO 2, RED HOUSE, PORT OF SPAIN, ON WEDNESDAY, DECEMBER 13, 2006 AT 11.20 A.M.

PRESENT

Mr. Colm Imbert	**Chairman**
Mrs. Joan Yuille-Williams	**Member**
Mr. Satish Ramroop	**Member**
Mr. Fitzgerald Hinds	**Member**
Prof. Ramesh Deosaran	**Member**
Dr. Tim Gopeesingh	**Member**
Ms. Gillian Lucky	**Member**
Mrs. Shaarda Maharaj	**Secretary**

ALSO PRESENT

Mr. Paul Griffith	**Chief Parliamentary Counsel**
Miss Laurelle Ralph	**Legal Officer, Ministry of Works and Transport**

ABSENT

Ms. Pennelope Beckles	**Member**
Dr. Adesh Nanan	**Member**
Mr. John Jeremie, S.C.	**Member**

Mr. Chairman: Okay Members, we are being called to order. I got information about 10 minutes ago that the Parliament has arranged for the people from Channel 11 to take shots of us while we deliberate and I vetoed it because the committee had not been consulted. If it is the wish of the committee that Channel 11 take some footage of us, I am fine with that, but I did not want you to be surprised coming in here and meeting a television camera facing you. Can we table that as the first item of business?

Mrs. Maharaj: Without audio.

Mr. Chairman: No audio; just video. It was not my idea, so could you explain?

Mrs. Maharaj: One of the programmes that we are trying to do for the Parliament channel is on parliamentary committees—public education again. We need footage on one or two committees to put a programme together—maybe a 10 or 15 minute programme.

Mrs. Yule-Williams: Are they taping the proceedings?

Mrs. Maharaj: No! It is just footage that they would need for little clips. Absolutely no audio!

Members: No objections.

Mr. Chairman: Mrs. Maharaj, you are duly authorized to do a video without audio.

Mrs. Maharaj calls in Channel 11 members.

Mr. Chairman: Let us get straight into the agenda. Are there any corrections of the minutes? Page 1, page 2, page3, page 4?

Minutes confirmed by the Chairman.

Seconded by Mr. Ramroop.

Mr. Chairman: Before we go into agenda item (2), I have been advised that the expert that we had hoped would have been able to give us some information today is not available. Mrs. Maharaj, will you help us with this item?

Mrs. Maharaj: I was able to get in touch with both Dr. Reed, who was recommended by Sen. Joan Yuille Williams and Prof. Pereira, who was recommended by Prof. Deosaran. Both indicated that today would be their last clinic day for the rest of the year and they would not be able to attend. However, they would make themselves available.

I also indicated to them that they should be doing 20-minute presentations to the committee and they agreed to entertain questions after. They were given a copy of the Bill. They will be putting together a presentation and, hopefully, at the next meeting, they will be here.

Mr. Chairman: We also have some other issues. Dr. Nanan is ill.

Mrs. Maharaj: Miss Beckles is unable to attend and I was not able to get in touch with Mr. Jeremie.

Mr. Chairman: Can I ask Members how they will proceed, since we do not have the expert. Would you like to go into the Bill itself or go into the general issues raised in the Parliament?

Mrs. Yuille-Williams: If your second item is examination of the Bill, who was supposed to be leading that?

Mr. Chairman: Members of the committee will go through the Bill clause by clause and entertain comments.

Mrs. Yule-Williams: You are leading that. We can just do that.

Dr. Gopeesingh: [*Inaudible*]

Mr. Chairman: Can we arrange for everybody to get copies, please? I will need one, too.

We have with us one of the legal officers at the Ministry of Works and Transport, Ms. Laurelle Ralph, and Mr. Griffith, a very experienced legal officer from the office of the CPC. We can go straight into the Bill.

Are there any issues with the Explanatory Note?

Mrs. Yuille-Williams: Mr. Chairman, before we continue, I saw the issues raised on particular clauses. Probably, to get one thing done, we can address them as we move through, rather than coming back. As you walk through the Bill, we can use the—

Mr. Chairman: Does this paper contain all the issues raised?

Mrs. Maharaj: From the debate in the House.

Mr. Chairman: Are there any issues with the Explanatory Note?

Dr. Gopeesingh: [*Inaudible*] issue was the out-of-uniform constables.

Mr. Chairman: I suggest, because I want to go through the document in a sequential manner, that we just note the Explanatory Note, as there would be consequential amendments to the Explanatory Note when we make the changes to the clauses. We can go to the clauses themselves, which are on page 6 of the Bill. I would like members to note that the Bill would require a special majority because we are taking away persons' rights. I gave a layman's view on that at the last meeting. Miss Lucky, do you know of the actual rights that we are taking away?

Miss Lucky: In terms of actual rights, it would be that police officers are now being given a much wider scope in terms of their powers and an issue of concern would be that of police officers who are not even in uniform having the power to stop and take samples. Also, in terms of having the ability to go to a person's home, even if the sections are contentious, certainly the police's powers are much wider in terms of the presumptions that are included.

Holistically, because of the kind of legislation it is, it is a deprivation of rights but not, I think, unreasonable. It certainly requires a special majority.

Mr. Chairman: So, it is with respect to police powers. That is where the special majority is. They will be subject to certain majority.

Mr. Griffith: The question of taking the blood—

Mr. Chairman: I had thought of that; the question of taking samples of breath and blood. A person has a right to refuse and that is another reason why we require the special majority.

Clause 1 is simply the title, so I do not think that is of significance. Clause 2 is the normal statement about being inconsistent with the Constitution. Clause 3 is just an explanatory clause. Clause 4 was an issue that came up. That was an oversight. There was no intention to remove—Mr. Griffith and Miss Ralph please take note of that—the requirement in the parent Act that if somebody is under the influence of drugs, they would not be subject to a penalty. That is within the parent Act right now.

Dr. Gopeesingh: [*Inaudible*]

Mr. Griffith:

(1) Any person who, when driving or attempting to drive or when in charge of a motor vehicle on a road, is under the influence of drink or a drug to such an extent as to be incapable of having proper control of the vehicle is liable, on first conviction, to a fine of two thousand dollars and to imprisonment for six months and on any subsequent conviction to a fine of four thousand dollars and to imprisonment for twelve months.

(2) A person convicted of an offence under this section shall, without prejudice to the power of the court, order a longer period of disqualification, be disqualified for a period of twelve months from the date of the conviction for holding or obtaining a driving permit, and on the second conviction for a like offence, he shall be permanently disqualified for holding or obtaining a driving permit.

(3) Any constable may arrest without a warrant any person committing an offence under this section.

Mr. Chairman: Previously, it was prohibiting a person from being under the influence of both alcohol and drugs. That came out inadvertently in the repeal of section 70. So, Mr. Griffith, you will have to get some suitable amendments that would capture the original

intent of section 70 as it relates to drugs. He will come back to us at the next meeting with some suitable amendments to that.

Mr. Hinds: Mr. Griffith, what in that parent provision tells us that the word "drugs" means illegal or illicit drugs exclusively.

Mr. Griffith: There is nothing in that section.

Mr. Hinds: If I am using quite legitimate medication and I put myself in a position, for example, there are some preparations for colds that are "drowsy" and "non-drowsy", so I purchase a package of "drowsy" and I use it and I am now on the road and I am impaired. I would have committed an offence.

Mr. Griffith: Under the present section, it would so appear.

Mr. Hinds: It is something that, presumably, we would want to preserve because the issue, as the chairman put it in the debate, is that a motor vehicle is a dangerous weapon in the hands of an impaired person.

Mr. Griffith: We may consider defining what we mean by drug.

Prof. Deosaran: Even though you clarify the definition, what instrumentation or method would you use to have a conclusion before the courts?

Mr. Chairman: That was a concern I had when we did the research on this Bill. There is no standard of impairment that I am aware of that applies to being under the influence of drugs. There is no way of measuring this and no published standard that tells you that once you are over this limit, you are impaired: Members need to understand this.

When the Opposition member raised it, that point was not highlighted. Having tested for them, what are we going to do with the results? If you find a trace of, say, cocaine in someone's bloodstream, that means they have already committed an offence under the Dangerous Drugs Act, but what is the level of impairment in terms of driving a vehicle?

Mr. Hinds: It may not be that they have committed an offence under the Dangerous Drugs Act because I could have consumed a liquid at my friend's home with marijuana in it or a piece of Prof. Ramchand's cake and never knew, therefore I would not have committed an offence, but you found it in my blood. That, too, raises a complication. It is not so much a complication because the mere presence in my body does not mean I committed an offence. However, the presence in my body can deem me, particularly since it is an illicit drug, to be

incapable. The reason we made it an illicit drug in the first place is that it is known that these are dangerous and impair good judgment.

Mr. Chairman: What I was going to do to short circuit this process is recommend that we put a provision in the Bill that by regulations we will prescribe the levels and the instruments that will measure being under the influence of drugs. We do not have the time now to establish the levels to pass this Bill. We do not have time to establish the kind of device to measure the presence of drugs in your system and what a suitable level would be. We can achieve that over the next six months or so. I was going to recommend, in order not to hold back the breathalyzer which is an alcohol-based instrument, that we go ahead but that we also put into the law that we will also be testing in due course for the presence of drugs and by regulations will come back to Parliament for affirmative resolution. We can deal with the type of instrument and the level of impairment for drugs.

Mrs. Yuille-Williams: Mr. Chairman, two things struck me here. One, we need to have the expert with us as we are going through because, from what I am hearing, we lack the expertise. It seems that we will have to have some experts in this committee as we go through to answer some of these questions.

Secondly, I am quite sure we are not the first to bring in a breathalyser test. This is something the world knows. We are late and, therefore, on some of the things we are saying here now, we should have examples of what was done in other places. Clearly we need to go back to documentation of what other countries have done. People are well advanced in it and we are now doing this in 2006. We are very late. We have examples of how these things are done.

The question that Minister Hinds just asked I am sure that was taken up 20 years ago in the early stages. Just now I will ask about the athletes and the steroids and the drink that they take to do all kinds of things. We need not sit here and try to think of what happened. I am sure all those things are well documented. We need to look at that and get the experts or we will sit here trying to enter an area for which we do not have the competence. We are trying to do the legislation based on something that is established. I suggest we move in that direction.

Mr. Chairman: In one of the documents circulated to you would have been the situation in other countries, all documented in terms of New York, Canada, Australia, United Kingdom

and what they do in terms of testing for alcohol and to some extent drugs. The Ministry has done a lot of research on this matter which we will make available to the committee for the next meeting. We have discovered that testing for drugs is only in its experimental stage at this time in Australia and there are some states in the United States that attempt to test through the saliva. The practice in the world right now is that it is very limited in its application in countries in terms of tests for drugs. All the countries that we surveyed test for alcohol. There is a lot of research, experience and information in testing for alcohol, but drugs are in its embryonic stage and I will share that information with the committee on the next occasion. Of course, the experts will help us with that.

Mrs. Yuille-Williams: We are restricting this to alcohol.

Mr. Chairman: I am not proposing that at all. I am just saying that as we move forward, we put in the law the ability to test for drugs, but in terms of the prescribed standards, we do that at a later date, whereas, with alcohol, we prescribe the standard immediately. As soon as the Bill is passed, we can test for alcohol immediately and, shortly thereafter we can come back to the Parliament with the actual standards for the drugs.

Mr. Hinds: [*Inaudible*] We are consciously putting into the legislation a provision that we know is not now workable. That is no problem.

Mrs. Yuille-Williams: What are you saying? They are putting into the legislation—

Mr. Hinds: Based on what the chairman is proposing, that we put provisions in the legislation to test drugs at the road. Although we have not gotten the technological capacity to do it yet, six months down the road we will, but he is proposing to proceed with the legislation and not to exclude drugs. We just have to be open to the public that we would have done something that is workable.

Secondly, at the moment, there are measures to test drugs. A blood test will demonstrate marijuana, amphetamines, cocaine and so on, but not at the road. If the officer gets to the point where he has you blood tested, we will find the drug and, as I said earlier, it does not mean that you have committed an offence, but the fact that you have it in your blood and is driving is something that we can address. It does not stop us from addressing that now.

Dr. Gopeesingh: I remember section 70 deals with drugs, so perhaps in that recommendation you made to Mr. Griffith, we could include something there. That other section 70 could deal with the issue of the drugs in the law.

Mr. Chairman: In the law, we have more or less an unworkable provision which says that if you are under the influence of drugs, you commit an offence, but there is no way of testing at the present time.

Mr. Hinds: On the road. If I get to the hospital—

Mr. Chairman: There are instruments, but no standards. Having found the drug in the person's bloodstream, what do you do with that? With alcohol, we are saying if you are over .08 per cent, that is it for you. With drugs, the problem is what is the percentage of drugs in your bloodstream that will create the criminal offence.

Mr. Hinds: The fact that it is an illicit drug, which is outlawed internationally in the first place because we know of the danger to humankind and the impairment it will generate; the fact—and this is a fundamental question I am asking—that we find it in your blood, could we deem you, without a quantity like .08 per cent, to be impaired? In the first place, we deem the drug illegal and now we find it. It may mean criminal liability, which is a different thing. Although I have it in my blood, I may not have known—

Mr. Chairman: That brings us to Sen. Yuille-Williams' point. We really need to take a close look at what other countries do and we need to be advised by the experts.

Miss Lucky: I take the point of the Junior Minster. If it is accepted that we make the distinction between the drug, which, as it is used now, encompasses a legal and an illegal drug. We need to get a policy position for which we do not need experts. If we have a policy position, that if a person ingests an illegal substance, they should not drive, for example, if you take marijuana, whether it impairs you or not, you should not drive. You get that wording within section 70 because you would be saying that any person who ingests an illegal drug, or is under the influence of drink or a drug to the extent that it makes him incapacitated. That means that we can actually tell the country that we are going a step further to compensate for the point that the Minister is making. We would be putting in a section that would have an inherent means at this stage of not being able to implement.

At this stage, we can say you took a whiff of marijuana and you are not in a position to drive. We are not talking about whether you are incapacitated to drive. That sends a

powerful message. It will assist us, too, with the possession of narcotics offences. Many times with possession, we do not get the person to take the blood test. That is a way of being legally creative sending the message and if we can agree on that policy, it will be good. You take marijuana, you cannot drive.

Prof. Deosaran: I think Miss Lucky and Mr. Hinds are making a very powerful point because many crimes are committed under the influence of marijuana and cocaine. All the murders are based, not only on the trafficking of drugs, but also on the usage of drugs. The point that Mr. Hinds made about how to determine criminal liability, I do not think that should be an obstacle too hard to get over. Even in the drug trafficking laws, once it is in your motorcar, the burden is on you to prove how it got there. The same principle could apply.

I strongly support what is being said by the two members to create something as a deterrent, if only at this stage, to let the country and world know that in this country we are taking this practical step, not only to prosecute, but also to deter people from using the drugs, especially when driving

Mr. Chairman: I still would have to refer to Mrs. Yuille-Williams' point that we are not experts on this matter and we need to be advised. Before we reach the point to which you all want to reach, we need to be first advised, understand the issues, then we will get to that point.

Mr. Hinds: Clause 4 of this Bill where section 70 is to be repealed was incorrect?

Mr. Chairman: Mr. Griffith is coming back—

We were on clause 5, 70A(1). Are there any issues with 70A(1)? It seems pretty straightforward to me.

Mr. Hinds: I notice that we have two phraseologies here—"attempt to drive" and "be in charge of a motor vehicle". Some legislative packages carry one or the other. I see we have both. That, I presume, is to avoid the legal difficulties that one or the other would have created—the deficiencies. What does the current legislation have?

Mr. Griffith: "When driving or attempting to drive or when in charge"

Mr. Hinds: It has both. That is fine. I saw from the research documents we had in England, they used to have "attempt to drive".

Dr. Gopeesingh: If you are to be legally prosecuted, what would be a scenario like "attempting to drive".

Miss Lucky: It would mean that you will have to go beyond the preparatory act. The situation would be that you have to be behind the wheel, key inside, you have turned the ignition, putting the car in a position where it is reversed, in other words, getting the car to propel.

Dr. Gopeesingh: I envisage, too, that "attempting to drive" could mean that you are opening the car door and you are going to get in.

Miss Lucky: The law will protect such a person because the law makes it clear that even, for example, a robbery, if you went with all the equipment and you are waiting, that is still not enough for an attempt. So the law would come there and determine. I think it would really be before you put it into movement.

11.50 a.m.

Mr. Hinds: In layman's language, you do all that is necessary to put the vehicle in motion. What happens is that in other jurisdictions where they simply had attempt, the person could be—the car is idling; the car is there; he has come out of the vehicle and the police comes up on him because he is sitting at the side of the road slumped or he is on the phone; being in charge of. They argued then, successfully in the court that I was not attempting to drive, I was on the phone. I was not driving; I was not attempting to drive, I was on the phone, but being in charge of the vehicle succinct.

Mr. Chairman: Can we agree that subject to any consequential amendments that may come in with respect to the job issue that we are okay with 70A(1)?

Mr. Hinds: No.

Mr. Chairman: No, you are not okay?

Mr. Hinds: One of the issues we raised there was a question on the severity of the sentences. I think there was some suggestion from the Opposition Leader in the debate.

Mr. Chairman: I think you are missing the point.

Miss Lucky: That will be subsection 3.

Mr. Chairman: We are talking about 70A(1); we have not got to that point as yet.

Mr. Hinds: Okay, so that would not impact this, in your view?

Mr. Chairman: No, it does not. This is just to create the offense. We have not gotten to the penalties as yet.

Dr. Gopeesingh: Mr. Chairman, just to crave your indulgence. No. 18 on the issues; I do not know if that will apply. The Bill does not provide for a mandatory number of samples to be taken. So if he has consumed alcohol in such a quantity, I think the British legislation has two samples that are mandated and the lower reading is used. This is legislative protection of citizens and should similarly be considered. I do not know if that issue of 18 is amicable in 70A when we are finding somebody guilty. That may have some relevance there.

Mr. Chairman: All right, but I suspect we can settle that in regulations. That the regulations will prescribe the manner of taking the test, a number of samples, who would take the test, all that kind of thing. Let us move on now to 70A(2). Any comments on 70A(2).

Dr. Gopeesingh: Most legislation seem to have "and/or". Does "or" there means "and/or"?

Mr. Chairman: As far as I know.

Miss Lucky: The Interpretation Act says "or" and "and" are interchangeable.

Mr. Chairman: "Or" means "and".

Dr. Gopeesingh: I think on that aspect Mr. Hinds was alluding to the fact that the convictions somewhere along the line people felt that the penalties are a bit harsh.

Mr. Chairman: That is the disqualification that comes a little later.

Dr. Gopeesingh: Not this part?

Mr. Chairman: Not yet. What 70A(2)(a) and (b) deals with it, if you are first convicted, the penalty is a fine of up to $5,000 and imprisonment of up to six months.

Dr. Gopeesingh: You do not think that is a little harsh?

Mr. Chairman: Well, I do not know.

Mrs. Yuille-Williams: Mr. Chairman, what is 6 saying on the issues raised?

Dr. Gopeesingh: I feel for a first conviction an imprisonment of six months is a bit harsh.

Mr. Chairman: I do not know, this is kind of a breaking point here, because you have polarized views on this. Some people figure this is too lenient; some people figure this is too harsh. This is something this Committee has to deal with. If you ask me I think these penalties are—

Mrs. Yuille-Williams: They are not really criminals per se and for some of these people 14 days in prison is the biggest humiliation they can get in their lives. That is what I am saying, they are not criminals and the fact that certain people going to prison at all is a deterrent.

Mr. Hinds: But bear in mind, a motor vehicle in the hands of a drunken driver is a serious thing.

Mrs. Yuille-Williams: Yes, I am not saying that.

Mr. Chairman: So what are you proposing?

Mrs. Yuille-Williams: I think that is why probably the person might have said it was harsh.

Mr. Chairman: Are you proposing we take out the imprisonment in the first conviction.

Mrs. Yuille-Williams: No, I am not saying that.

Mr. Chairman: Before we even think about that, could I ask that we examine carefully what happens in other jurisdictions before we decide to debate that and get a resolution of whether it should be imprisonment or not. Could Members to do a little homework; I have to do it myself and go through what happens in England, Canada, USA, et cetera; what do they do there. Is it the first offence you get fined and then the second one the jail coming at you. Could you all check that for me, please?

Miss Lucky: Could I just make a point, Mr. Chairman and I think it is important that we keep going back to the section 70, the parent Act, which is the law of Trinidad and Tobago and I have had the opportunity to represent the State in magisterial appeals where there have been convictions. Remember even though there is the fine of $5,000 imprisonment for six months, in most instances the magistrate exercise the discretion and never gave any custodial sentence whatsoever.

The reason there was an appeal is that the person of course had a conviction recorded. Even so, to circumvent that, the magistrate can put the person on what is literally a bond and then your sentence is suspended. So there is a wide discretion that is given. When you read it on paper it looks harsh, but compare it to what we have; in section 70 of course the parent Act; it says on your first conviction a fine of $2,000 and imprisonment for six months and subsequent 4 and 12.

So how would you justify? I could tell you, the magistrate, in exercising it, they rarely give the imprisonment. He would get imprisonment if there are surrounding

circumstances that really make it harsh. For example, you were driving, you knocked down a lamp post and you caused physical injury to persons and so.

Mr. Hinds: You stole the car.

Miss Lucky: Exactly. That then would give them the leeway.

Mr. Chairman: Miss Lucky, I think it would be remiss of this Committee to back track on existing legislation and if there is already imprisonment I do not think we should debate that. That is my view, I am subject to it. Could we move on now to 70A(3)? I think this is the one that relates to the point system that comes up in issue No. 6; I remember that from the debate; that what the Opposition Leader was talking about was the fact that this is very severe; that somebody could be permanently disqualified from holding a driving permit or disqualified for a year. So I do not know if there are any views on this. What do you think? We should look at a point system?

Miss Lucky: Mr. Chairman, again I make the point that under section 70(2) as it exists now, it is mandatory that on the second conviction you shall be permanently disqualified. The point I had made during the debate however, is that I was wondering whether we could have—even though that exists—adopted what is done under the Motor Vehicle Insurance Act whereby if you drive without insurance, the court still reserves unto itself a discretion where it says that— I am just reading from the Motor Vehicles Insurance. If a persons acts in contravention with the section he is liable to a fine of $5,000 and imprisonment of six months, and a person convicted of an offence under this section shall—that is driving without your insurance for the vehicle—unless the court for special reasons thinks fit to order otherwise and without prejudice to the power of the court.

I felt that is something that we should have incorporated in this section, because I feel that a court ought to have or given some level of discretion whereby if for special reasons and the burden will be placed on the person convicted to convince the court that there is a special reason in existence as to why this has occurred. I do not think we should really try to see what kind of reasons, because sometimes something may really happen that you took control of the vehicle and yes, you might have been in a drunken state, but the designated driver unknown to you—I am just being a little hypothetical. I was not the designated driver but the person who was the designated driver said he had taken no drinks, but he took drinks

and he is really driving the car badly. Though I know I have ingested the alcohol I still feel I could do it better.

I am just saying I believe and this is the way I know that internationally they are moving with legislation, giving the court that discretion, especially in a system where in England they are admitting the penalty point system is convoluted. It is not an easy system to work out. I am just saying that if the Committee would just consider giving the court that level of leeway. Leave it the way it is but give the court that level of leeway.

Mr. Chairman: Right now on the existing law there is no discretion. Once it is a second offence, that it is; disqualification.

Miss Lucky: I agree, but I am saying that nothing prevents—I do not think that you are coming across as being less or more lenient if you give the court that, because you are saying that if this is hard legislation, it is draconian but you do have a level of protection. So anywhere we may have a deficiency with a constitutional right that we do not feel is as well protected as it ought to be, just always you will have the court having that level of buffer. They are not going to exercise it lightly. The court is special reasons and even the law on what is a special reason has to be something, according to them, that is so convincing and compelling.

Mr. Chairman: Is it possible for you to give us a form of words?

Miss Lucky: I would suggest that you use the exact words that exist here.

Mr. Chairman: Mr. Griffith, could you examine the form of words in the Motor Vehicle Insurance Act and could you draft a suitable amendment for the consideration of the Committee on this matter for the next meeting?

Mr. Griffith: Okay.

Prof. Deosaran: Mr. Chairman, let me signal something. I am aware you have a public education programme afterwards and the penalty should be properly publicized especially the extremes to which we are going. Secondly, I really want to register my reservation on the harshness of the penalty and I will give my reasons next week. I think when you consider the reality of a situation where somebody could get caught a second time, I really would like to revisit these penalties.

At least in the first instance, until we see how this thing operating, because when I look at these penalties here, especially with imprisonment, I know we all are within a haste to

correct things and to prevent accidents, but I do not think this within itself would help. So I want to put my reservation on record.

Mr. Chairman: What I would ask in that context therefore, Mrs. Maharaj, can we supply Members with what the existing provision is? You may have to do a bit of work here. I think Members need to see that what the existing provision is before we go to judgement on what we should do. Okay?

Dr. Gopeesingh: Mr. Chairman, I think you also mention that we will all look at other countries.

Mr. Chairman: You have some of that in the notes of the first meeting; that four or five countries; it was circulated.

Mr. Hinds: Mr. Griffith, subclause 3 says:

> "a person convicted of an offence under this section..."

Meaning of course, section 70A. It says here in subclause 3:

> " A person convicted of an offence under this section..."

Now, this section includes subclause 2(a), which is the first conviction and subclause 2(b). But subclause 2(a) does not speak to disqualification. It speaks to a fine and imprisonment for six months and in the case of a second or subsequent conviction. So when we say in subclause 3:

> "A person convicted of an offence under this section shall, without prejudice to the power of the Court to order a longer period of disqualification..."

It appears to me that -

Mr. Chairman: I think you are misreading it you know. What they are saying is when you are found guilty of a first offence you will be disqualified for 12 months or a longer period if the court so decides. And if you are convicted of a second offence you are permanently disqualified. That is what it is saying. In addition to the fine; in addition to the possible jail you are getting the disqualification as well.

Dr. Gopeesingh: Where is that?

Mr. Hinds: Oh, yes. When you read lower down.

Mr. Chairman: In subclause 3. If you read section 70A(3) on page 7; it says:

> "A person convicted of an offence under this section shall, without prejudice to the power of the Court to order a longer period of disqualification, be disqualified for a

period of twelve months ... and on a second conviction for a like offence, he shall be permanently disqualified..."

Mr. Hinds: Which implies that we are talking language of disqualification in the case too.

Mr. Chairman: Yes, we are; it is clear. In the case of a first offence, what is going to happen to you is, you can be fine up to $5,000; you can be imprisoned up to six months and you will be disqualified for a minimum period of 12 months, on the first conviction.

Miss Lucky: And therein lies the policy and I agree with what Prof. Deosaran said. Because it means that even though I may not be given a custodial sentence and my fine might be minimal, let us say $1,000, I am going to be using my driving permit for at least 12 months and I know it exists. That is why I am saying that even though it exists, I think we also have to recognize this was one of the problems—and again I am just sharing my experience as an attorney-at-law—that magistrates had with the present section 70. With the present section 70, which is worded in the same form as subsection 3, magistrates recognized that once there was a conviction against you, you have to lose for 12. So what they began doing in relevant circumstances, and I could not blame them, is doing the system of the suspended sentence, where you put on the bond because this will have to happen to you.

Mr. Chairman: We are going to revisit this at the next meeting. Subsection 3 we are going to revisit; can we go now to subsection 4. That is a protection clause, right?

Mr. Hinds: When you alleged that he was in charge of it, he can choose circumstances—

Mr. Chairman: He might have been asleep in it. They might have come and found the man sleeping in the back seat of the vehicle and they right, they hold him and they give him a test and say alcohol. That is how I see it, Miss Lucky.

Miss Lucky: That is actually right.

Mr. Hinds: Or the evidence shows that his brother has taken the key.

Mr. Chairman: Or it is true, that he could not possibly drive because he did not have the key. Subsection 4 is okay. Let us go to subsection 5.

Mr. Hinds: Just a second; before we go, Mr. Griffith. "No person shall be convicted under this section of being in charge of ..." I suspect it implies do not express attempting, because our offence under subsection (1) talks of attempting to drive and being in charge of, but subsection 4 deals only with being in charge of. Is it implied or do we express it as well?

Mr. Chairman: We will look at that; I see your point that we need to capture, not only in charge, also driving and attempting to drive. In other words this deals only with being in charge. I think we need to capture driving and attempting to drive.

Miss Lucky: I do not understand that point.

Mr. Chairman: He wants to make it clear; it is not only was there was no likelihood or not. It goes back to offence; the offence is being in charge, but when you go to 70A, it is not just being in charge that is dealt with; it is driving, attempting to drive or in charge. You follow?

Miss Lucky: I follow you. I do not understand.

Mr. Chairman: What he is trying to say is no persons shall be convicted under this section of driving, attempting to drive or being in charge or a motor vehicle. Is that not what you are trying to say?

Miss Lucky: But that would not make sense. Look at the logic of the words you are putting in; no persons shall be convicted under this section of driving, attempting to drive or being in charge of a motor vehicle, the circumstances were such that there was no likelihood of his driving. You would already be driving.

Mr. Chairman: This is why I have asked Mr. Griffith—

Miss Lucky: I am just saying, there is a reason.

Mr. Chairman: I do not doubt it.

Miss Lucky: Let me just explain why I do not think this section needs to be adjusted. The reason why you are only specifically limited to a person being charged, is the very reason the Minister said that there is some circumstances where you would be in charge of the vehicle, but there was really no likelihood that you would be causing any trouble in any way. You realized you were drunk; you sat behind the driver's seat and you were doing nothing. You were in charge of the vehicle but you are not going to be driving; you are not causing obstruction. This had to be put in only for that offence, dealing in charge of the motor vehicle. Everything else, driving and attempting to drive—

Mr. Chairman: Miss Lucky, I am with you on this; this is why I was asking Mr. Griffith to look at it and see if he could capture the point. I am with you on this; for Mr. Griffith to come back and say it is perfect.

Miss Lucky: I just did not understand why—

Mr. Hinds: I do not agree with that; I will tell you why. You can be convicted for attempting that which is impossible. My wife seeing my condition could have punctured the four tyres on my vehicle, making it virtually, if you like, I could drive on the rims, let us say or she took off a wheel just to make sure I do not drive the vehicle. I am in charge of it and still switch it on and I am attempting to drive it; so I skate across the road in front my house even though I cannot properly drive on three wheels. It is not to say that you cannot attempt while being in charge of, in those circumstances as you described.

Miss Lucky: I am enjoying his intellectual stimulation here, pardon me; you are very correct but that would not be something encompass in subsection 4, because you will be charged for the attempting to drive.

Mr. Chairman: Miss Lucky, I will have to exercise the power of the Chairman; you all cut that out. Minister, you wanted to close off early today?

Mrs. Yuille-Williams: Five minutes.

Mr. Chairman: I have five minutes? That is only for Mrs. Yuille-Williams to be with us; that is what that five minutes is. Subsection 5; that is the special majority?

Mr. Hinds: Plain clothes.

Mr. Chairman: Plain clothes? Yes, it says any constable; it does not say in uniform, unless there is something in the parent Act that when it says constable it means a police officer in uniform.

Mrs. Yuille-Williams: Sometimes if you ask for uniform, does he not present his identification?

Mr. Hinds: You supposed to demonstrate the fact that he is a police officer.

Mrs. Yuille-Williams: Can he not act as a constable even though he is not in uniform?

Mr. Hinds: Is there anything in the parent legislation defining constable in uniform and therefore there is no limit to what he could have done even in plain clothes previously. Insofar as the traffic law is concerned, generally a police officer in uniform is the one who could stop the vehicle and do traffic duty on the road; not in plain clothes.

Mr. Chairman: Okay, we will seek clarification on this.

Mr. Hinds: But I am taking the point that Sen. Gopeesingh is raising, that this really raises the question of plain clothes. Now it is a policy question; do we confine it to officers in

uniform or do we with the presentation of a badge—as Mrs. Yuille-Williams said—allow a plain clothes officer, who may be on the beach watching you picnic—

Mr. Chairman: I would think that once the person has proper identification then it is acceptable. This is something where we can seek clarification.

Dr. Gopeesingh: Anybody who is drinking and contemplating driving, they have to be aware that there might be plain clothes people around, which is a deterrent in any case.

Mr. Hinds: Of course, it is general public knowledge.

Mr. Chairman: I think once the person has proper identification that should be—

Mr. Hinds: He may not have the breathalyzer on spot but he can certainly get you to a police station or he can cause a police officer with a breathalyzer to come on the scene, but the idea is to protect the public from your drunken driving.

Mr. Chairman: So what we need to do with this subsection is to deal with the identification issue. Mr. Griffith could you look at that please; a form of words that prevent a plain clothes officer from enforcing this law without identifying himself.

Mr. Hinds: Although Mr. Chairman, there are other regulations and rules governing police operation that make it clear that once he is operating in plain clothes he ought to identify himself; that is written somewhere.

Mr. Chairman: Yes, but it is implied as Mrs. Yuille-Williams was saying in the next clause.

Mrs. Yuille-Williams: Yes, but 70B(1) would not have covered that?

Mr. Chairman: Yes, it is implied in the next clause, where a constable in uniform or on showing his authority. I think we could add to 70A(5): "Any constable in uniform or in showing his authority may arrest…" So we would just add that into the preceding subsection. Let us move on, 70B(1).

Mr. Hinds: Check this out, here the constable is in uniform and it still requires him on showing his authority.

Mr. Chairman: What is wrong with that?

Mr. Hinds: I mean it is not necessary superfluous.

Mr. Chairman: But you are leaving out the "or". You did not see the "or"

Mr. Hinds: "or on showing his authority"; that is right.

Miss Lucky: Mr. Chairman, may I just ask one question? Why do we say any constable instead of any police officer?

Mr. Chairman: Because a constable is defined as a member of the police service in the law.

Miss Lucky: I know what it is defined as, I am just asking in the sections, why do we say "any constable" as opposed to "any police officer". It was a point that was raised in the courts two weeks ago. What they said was, in the old system what happened was your constables were the people—and Minister you might be able to know—who did this. Your sergeants and so, it was unheard of them to be on the roads directing traffic. I am just saying, why do we use the word "constable" instead of a "police officer".

Mr. Hinds: In the olden days all members of the police service were constables and you had a chief constable, like the commissioner, an akin to our commissioner, but they were all constables; the post was constable. They still have it in old England.

Mr. Chairman: So would you recommend a more modern form of words?

Miss Lucky: I am just asking, let us go back to subsection 5; if a sergeant is the person, would he be able to arrest?

Dr. Gopeesingh: Yes, under the Act.

Miss Lucky: That is what I saying.

Mr. Chairman: It says, any member of the police service.

Miss Lucky: I know; I am just saying that it is something— I know we are conforming, it is just—

Mr. Chairman: Could we therefore look at a more modern form of words, Mr. Griffith? You will look at that right?

Mr. Hinds: Unless, Mr. Griffith, if the word "constable", because you see constable is a police officer regardless of his rank; an inspector. The Commissioner is the chief constable, but we in this modern time say police officer and commissioner of police in Trinidad; in England they still say the chief constable. Unless if the word "constable" appears in the parent legislation with a particular meaning all members of the constabulary. Subject to that I have no trouble going with the more modern terminology.

Mr. Chairman: Members, in due recognition of the Christmas period and the need for certain members to leave us, I would like to ask on this particular point, let us allow Mr. Griffith to do some research and get back to us on this.

Prof. Deosaran: To strengthen Mr. Griffith work, I think what you were going to say is the fact that we are going on a public education programme and police officer is a more persuasive element, I think that in itself should be a justification for going the—

Mr. Chairman: Sure. Mr. Griffith, you will come back to us on that.

Mr. Griffith: Mr. Chairman, I have not been able to find it, but I think that the term "constable" does appear in the parent legislation, but I will get back to you on that.

Mr. Chairman: Sure.

Mrs. Yuille-Williams: We are not having any interpretation at all for this, right?

Mr. Griffith: 70G.

Prof. Deosaran: Mr. Griffith, if it is in the parent Act, can we still not change it as a definition here?

Mr. Griffith: You will then have to go through the Act.

Mr. Chairman: That is why I will like you to look at a more modern definition.

Mrs. Yuille-Williams: But we have the interpretation here. That is what I am saying, there is an interpretation.

Mr. Hinds: A constable means a member of the police service.

Mr. Chairman: I know, that is there. The point Mr. Griffith is making is we are amending the parent Act with this legislation. So we would have amendments that would talk about a police officer and possibly other clauses that talk about a constable. Therefore, let him look at the modern words and then we will look at the consequential implications of changing that. We may not change it at all; we may stick with constable when we come to the—

Mrs. Yuille-Williams: I would want to think that we would just use the interpretation so that—

Mr. Chairman: So you want to stick with "constable".

Mrs. Yuille-Williams: Does not the interpretation means a member of the police service —

Mr. Chairman: Miss Lucky, are you hard and fast on this?

Miss Lucky: No, I am really not hard and fast; I just felt we would want to show a modern way of thinking.

Mrs. Yuille-Williams: Then in the parent Act you will have "constable" somewhere about.

Mr. Griffith: I found it.

Mr. Chairman: He has found it in the parent Act

Mr. Griffith: It is 71(3) says:

> "Any constable may arrest without warrant the driver of any motor vehicle who commits an offence under this section".

Mrs. Yuille-Williams: What is the interpretation there on that?

Mr. Griffith: There is no interpretation in the Act. I think the interpretation probably appears in the Interpretation Act or something like that.

Mrs. Yuille-Williams: This was put in here because of the fact they have that saying "constable" and people questioned this and the interpretation was put here, so that if we have to change this we would have had to go back there. So we said look, just put and interpretation for this and move on. That is why this is here.

Mr. Chairman: Let us the move on now.

12.20 p.m.

Mr. Hinds: Can I ask a question, this is probably for the expert; do you have alcohol, Dr. Gopeesingh, in your breath?

Dr. Gopeesingh: Yes, you do have it in your breath.

Mr. Chairman: That is the point with the breathalyzer; you are testing alcohol in your breath.

Dr. Gopeesingh: C_2H5_0H can be emitted through your breath.

Mr. Chairman: Yes, Mr. Hind you do not need an expert to tell you that. [*Crosstalk*]

Dr. Gopeesingh: It goes through your capitulary blood vessels into your lungs and by the oxygen diffusion it takes it from the vessels and brings it into the breath.

Mr. Chairman: And the 0.08 per cent that we are seeking to prescribe is in fact a measurement of the alcohol that is actually in your breath; not in your bloodstream.

Dr. Gopeesingh: This is why they may ask you to—how many samples you may want; whether two samples, one from the breath and one from the blood.

Mr. Hinds: Yes.

Mr. Chairman: We will prescribe that in regulation and Mr. Griffith could you look at how we are going to tie those regulations into these clauses in the Bill. So you will let us know at the next meeting.

Prof. Deosaran: Could I raise a question? I want to keep an eye out for the rights of the citizen and even though he or she might have consume alcohol, I think, perhaps, you all

might agree with me that we need to ensure that due process is followed. I know it sounds cumbersome but I want to propose giving the citizen a choice, for example and perhaps I am subject to correction; I would want to have an option for the citizen to say, no, he wants to take the blood test at the station; to me and for reasons which I have here with the kind of test and instruments being available; a blood test is a more reliable instrument and if the citizen has the choice by a constable at the roadside as against or going at the station for a blood test. I am wonder whether you all agree to put that option for the citizen at the station rather—

Mr. Chairman: If you jump forward to page 10, section 70c you will see that "any person required by a constable to undergo a breath test fails to undergo that test, the constable may require that person to submit in accordance with the directions of the constable to a breath analysis. Now the breath analysis is a more rigorous test that is taken in the Police Station; it is still of your breath but it is not on the roadside using a roadside devise. It is in the station using a more sophisticated breath analysis devise. You are saying that even that, you want to give the person the option to take a blood test instead.

Prof. Deosaran: What I have my eye on is really the improve reliability of the measure and it should stand up in court both in the interest of the defendant and the prosecution. I would also want to propose; I do not know if it is the right time because there are some instrument when used they give you a print out and they keep a permanent database rather than having the officer tell you this is what you are measured with. That is not as permanent—

Mr. Chairman: That brings me back to this—

Prof. Deosaran: Let me finish because it might look trivial.

Mr. Chairman: I am not saying—

Prof. Deosaran: I am going to come to the point where the instrument at the station should be such; it might cost a little bit more, but the print it gives officially, is also registered as a database in the machine, at least for a period, so nobody could interfere with the print out in terms of a hand writing or some other means of interference.

Mr. Chairman: Right, the point I was going to make is that this is precisely why they have the breath analysis in the station because the conditions and the equipment used are far more rigorous and robust than the equipment on the roadside. What is happening is that a policeman stops the person on the roadside; they observe the person and says, it looks like

you are drunk so take a breathalyzer test, they take the breathalyzer test but that is not the end of it—

Mr. Hinds: *Prima facie.*

Mr. Chairman:—that is only at the beginning of the process. Having taken the breathalyzer test at the roadside now and the person is over the limit according to the road devise and they say, come down to the station now and when you go in the station you do an analysis and it is based on the analysis—I am subject to correction—that is when the process—

Mr. Hinds: What is the difference between the 0.08 per cent he picks up on the road?

Prof. Deosaran: That is right; that is what I was getting to.

Mr. Chairman: The 0.08 per cent as far as I am aware is what is picked up in the breath analysis not in the roadside test. You have the same 0.08 at the roadside but the only effect it has is to cause the constable to tell you—

Mr. Hinds: Trigger analysis.

Mr. Chairman:—down to the station and let us do it under controlled scientific conditions and they have a more sophisticated instrument. [*Interruption*]

Prof. Deosaran: I was just wondering before I lose my trend of thoughts so I could withdraw completely; you have three levels then, a suspicion, a roadside test and a station test; am I right?

Mr. Chairman: Yes, that is my understanding. I am subject to correction but that is my understanding. [*Interruption*] They look at you and say, you are drunk, take the test now at the roadside; they test you and you have shown to be over the limit with the roadside devise, now you are a candidate to come down in the station—[*Interruption*]

I think it is the analysis in the station—I am subject to correction—that is the one used as evidence that you were over the limit not the roadside devise.

Prof. Deosaran: And relation would cover the instrument costing and so on.

Mrs. Yuille-Williams: Mr. Chairman, I am glad that Prof. Deosaran went a little further because I was listening to you whether you are moving away from the breathalyzer altogether [*Interruption*] and if you have a choice, then you will be move away from the breathalyzer which we are doing here to something entirely different and then it will not be this Bill. I am hearing Prof. Deosaran saying you have a choice, breath or blood; then we would not be doing the breathalyzer at all and this is what we are here to do, the breathalyzer. Whether it

is at the roadside or in the station we should be doing the breathalyzer; anything else, if you leave out that, it is another Bill entirely.

Mr. Hinds: That is the logical conclusion of the Professor's message.

Mr. Chairman: Madam Minister, I am amazed because we are exactly on the same wave length; that is a woman's intuition but I was going in the same direction [*Interruption*] that Prof. Deosaran was doing was taking us away from the breathalyzer; which is, no way I was going to support that. I was just going to hear what you had to say but there is no way I will support a Breathalyzer Bill that gives a person an option not to subject himself to a breathalyzer. No way, that is just my personal thing.

Ms. Lucky: But Prof. Deosaran is correct in that in the United Kingdom, my understanding of it is—you know in the old days they used to tell you to walk a straight line, the breathalyzer now is not to walk a straight line that is the replacement for walking a straight line and then you go down. But I take the Professor's point because even in England when you reach the police station now because the breathalyzer really suggest to me that you are going down in the same terminology that you said, that is where in the United Kingdom Professor and you are right, they give you the option for the blood. And at that point if you do not want to go through the breath analysis in which you have the presumption that the machine is working properly and so which is yet another point because there are so many presumptions on that. In England you give two samples of breath or—and they take the lower one—you could say, I am not going with this breath analysis, because, obviously, the accuse in defending his rights, and with the breathalyzer it is already showing up something here, I want to go down and do the blood and that I find is lacking. I take your point, give the person the option and then they bow by it.

Mrs. Yuille-Williams: But, Ms. Lucky, the breath was taken at some point in time at the roadside. Professor was moving away from all of that.

Ms. Lucky: We corrected all of that, Minister. What I am saying is that the breathalyzer is the breathalyzer, but I am saying his point is still valid but the option now when you are in the station; breathalyzer gone; I am saying the Professor made a good point because in England you do have the option now and I think it is a good opportunity.

Prof. Deosaran: It is in practice.

Ms. Lucky: Some people just prefer blood work over a breath analysis.

Mr. Chairman: Alright, before everybody leaves us Mr. Griffith has been trying to make a point. Mr. Griffith just put on your microphone. I think we are going to break up soon, I am getting that sense, some of the restless Members, including my legal officer, but I just said to her, she cannot leave.

Mr. Griffith: Subject to correction by Sen. Gopeesingh the breathalyzer is a kin to the strip that a physician uses to test the urine in the office; that gives a general idea as to the presence. [*Interruption*]

Dr. Gopeesingh: That is using another strip to test the alcohol there to determine—

Mr. Griffith: I was talking about test for sugar and then you go beyond that and do your fasting blood sugar to get your levels. While I have the floor, I think I understood Prof. Deosaran to be speaking about taking the blood at the station clause 70(d)(5) here speaks that the specimen of blood sugar only be taken at a hospital in Trinidad and Tobago. In the UK they take blood at the station but when the Bill was being drafted and discussions were taking place; I think a line was drawn that blood should not be taken—

Mr. Chairman: In Trinidad and Tobago I cannot see that we would have the competence, at least not for a while to take blood at the station.

Mr. Griffith: This is to deal with Prof. Deosaran's point about blood at the station.

Mr. Chairman: I think we can address this point latter on when you all had a chance to study the Canadian legislation. I am not in support of it today; I could be over ruled by the Committee, it is a democratic thing and also I maybe persuaded next time we meet to go with Prof. Deosaran. But I think if we go that way we are going to minimize the effect of what we are doing; this is introducing the breathalyzer as an instrument of testing whether somebody is under the influence of alcohol or not.

Mr. Hinds: As a final stage.

Mr. Chairman: Yes, as a final stage in the station not on the road and if we say, alright, the person can then say, "no", blood test and then they have to go to a hospital, by the time they reach the hospital the two-hour period has elapsed, when they get to the hospital there is nobody there to take the sample or the consultant is not there, which happen sometimes—"eh" Dr. Gopeesingh. [*Laughter*]

Mr. Hinds: Although one can ague.

Mr. Chairman: Or the consultant is not there and the house officer does not want to do it. [*Laughter*]

Mr. Ramroop: Do not let Dr. Rahael hear about it—

Mr. Chairman: I am not finished—and then you contaminate the procedure so that somebody like Ms. Lucky could go in the court [*Laughter*] and raise questions about the credibility of this test and the case gets thrown out on a technicality. I really am not in support of that, Prof. Deosaran, I am just letting you know.

Prof. Deosaran: Well, you seem to have 100 per cent confidence in the breathalyzer.

Mr. Chairman: No, I am not saying that. [*Interruption*] We will deal with that next week. Members, Mrs. Yuille-Williams is leaving, my officer wants to leave. It is now 12.30 p.m. I think we have done very well because we have reached Page 8 on a twenty page Bill, even though we have some serious clauses to tackle, w still got to Page 8 in one go. I think we have done exceedingly well and I would therefore like to suggest that we adjourn and I would like to ask whether you want to have a meeting next week or you want to have a meeting in January.

[*Discussion on next meeting*.]

We have the experts to come in, so the selection of next week will depend on the availability of the experts. Let us set the meeting for the time when the experts are available to us, which may be next week or may be the week after next week.

Mrs. Yuille-Williams: When the experts are coming, sometimes they come and speak and then leave; the kind of questions that we would be asking we need some experts to be sitting there with us. It is not like the normal committee where you come and you say something for an hour and you walk away; we have questions that we want to ask as we go along so the person should be available to us—

Mr. Chairman: The first meeting with the experts we will try and shoot for next week, we would probably have a second meeting with the experts, if they are not available next week we will see if they are available the following week and we will try and push the work along. So let us leave on that understanding the next meeting will be a meeting where we will have experts available to us. Minister Yuille-Williams is saying that we should have them for at least two meetings, so that is what we are going to shoot to. So the next meeting will be next week or week after, but the experts will be here.

Thank you very much.

12.35 p.m.: *Meeting adjourned*

MEETING OF THE JOINT SELECT COMMITTEE APPOINTED TO CONSIDER AND REPORT ON THE MOTOR VEHICLES AND ROAD TRAFFIC (AMDT.) BILL, 2006, HELD IN COMMITTEE ROOM NO 2, RED HOUSE, PORT OF SPAIN, ON WEDNESDAY, JANUARY 03, 2007 AT 11.12 A.M.

PRESENT

Mr. Colm Imbert	**Chairman**
Mrs. Joan Yuille-Williams	**Member**
Mr. Fitzgerald Hinds	**Member**
Ms. Pennelope Beckles	**Member**
Mr. Satish Ramroop	**Member**
Prof. Ramesh Deosaran	**Member**
Ms. Gillian Lucky	**Member**
Mrs. Shaarda Maharaj	**Secretary**
Mr. Ralph Deonarine	**Research Assistant**

ABSENT

Mr. John Jeremie, S.C.	**Member**
Dr. Adesh Nanan	**Member**
Dr. Tim Gopeesingh	**Member**

ALSO PRESENT

Mr. Paul Griffith	**Chief Parliamentary Counsel**
Miss Laurelle Ralph	**Legal Officer, Ministry of Works and Transport**

Mr. Chairman: May I take this opportunity to wish everybody a very productive, happy, prosperous and progressive new year. We have a quorum and I would like to convene the meeting. Let us go straight into the agenda. Has everybody looked at the Minutes?

Assent indicated.

Are there any corrections to the Minutes?

Dissent indicated.

Minutes are confirmed as read.

Minutes confirmed by the Minister Joan Yuille-Williams.

Seconded by Miss Gillian Lucky.

Today we are privileged to have Prof. Pinto-Pereira—Is this your expert, Sen. Yuille-Williams?

Mrs. Yuille-Williams: No.

Mrs. Maharaj: Prof. Deosaran's expert.

Mr. Chairman: I have been advised that Dr. Reid has difficulty with Wednesdays so we can schedule a special meeting to accommodate her, if required, and if it is convenient to everyone concerned.

I understand that Prof. Levley Pinto-Pereira has a comprehensive presentation for us and I would like to go straight into that presentation, if Members are comfortable with that, and then we could continue the examination of the Bill.

Prof. Pinto-Pereira: Good morning to all the Members of this Joint Select Committee for the amendment of this Bill. Ladies and gentlemen, I know I am talking in front of a very august and informed committee and I hope that the information that I have may, in some way or the other, be able to give you some added fillip to the information you already have to guide on the Bill.

The presentation which I am going to do examines the ways in which alcohol impairs our complex, mental and motor functions. It will discuss the approaches to impairment testing. In no way is it going to look at the effects of chronic alcohol intoxication, which happens after years of alcohol drinking. I am only looking at the effects after an acute episode of intoxication.

If we flash back to August 31, 1997, this planet lost a very beautiful, unique person. An enquiry which took three years to complete has just reached closure, with the finding that the driver of that vehicle was driving with twice the British legal limit of alcohol in his blood. He was intoxicated and he was speeding.

When we talk of alcohol, it is talked of in terms of weight, in volume and in proof and I thought let us just look at what we mean by that. So when you say alcohol weight—50 per cent weight—you are looking at 50 pounds of alcohol and 50 pounds of water. If you say alcohol by volume, it is 50 per cent of alcohol and 50 per cent water. Alcohol is a bit heavier than water, so 50 per cent weight by weight is not equivalent to 50 per cent volume by volume. It would be 50

per cent of alcohol in pounds is equal to 55 per cent of alcohol in volume, because it is a bit heavier. Sixteen ounces of water is a pound; 20 ounces of alcohol is a pound, so that is weight and that is volume.

In North America they are beginning to talk about alcohol in terms of “proof” and I thought it might be nice to look at what do we mean by “proof”. “Proof” is the amount of absolute alcohol in distilled spirits calculated at 60 degrees Fahrenheit or 16 degrees Celsius. In the United States, proof of a beverage is actually twice the alcohol content, so 100 per cent alcohol is 200 degrees proof. In Europe it is a bit different. It was on the physicist……. They have gone on that term but basically it is half American proof. So 200 proof is 100 per cent alcohol in America; in Europe it is 100 proof, 100 per cent alcohol. It is very simple. In Britain it is a bit more complex. The Crown always goes via the Cape of Good Hope and that is what happened.

The distilled spirit was originally proven by several methods but the most traditional one was, you take some gun powder, put it in alcohol and try and ignite it. If it ignites, it is proven; if it does not ignite, there is too much water in it. Now they measure proof by comparing equal volumes of water and alcohol at 51 degrees centigrade. It is about ¾ compared to the United States. So a beverage that is 100 proof under the British system would be 114 under the American system and that which is 100 under the American system would be about 86 per cent under the British system and 100 per cent alcohol is about 175 proof.

Having said that, I thought we might look into what happens when we take alcohol into the body. That is on the Pharmacokinetics of alcohol. It is simply how alcohol moves inside the body. Pharmacokinetics in a Greek word—Pharmacos and Kinetics; how the drugs move. On the absorption of alcohol, as soon as the alcohol is taken into the body it begins to be absorbed inside the gastrointestinal tract and about 20 to 25 per cent of that is absorbed by a simple process of diffusion; it is just something that just slips into—from the mucus membrane of the stomach and the intestine—the blood; that is the simple process of diffusion. There is no factor, no carrier system or no active energy transport involved. So as we take it, it just keeps diffusing out into the blood. About 20 to 25 per cent of it is absorbed in the stomach but about 75 per cent is absorbed in the small intestine. The small intestine is the most efficient organ for absorption of alcohol. It is not only efficient, it has got a vast surface area—this 22 feet of ileum. So most of it is getting absorbed from the ileum.

In the fasting state, within about an hour, we can get the peak blood levels of alcohol. In the non-fasting state it goes on to between one to six hours where alcohol would begin to reach its peak. That means that food is certainly going to influence the absorption of alcohol. From the time alcohol is taken in the absorption continues from 45 minutes to 2 hours and peaks anywhere from 15 minutes to 2.5 hours. Having said that food delays the absorption of alcohol—it is the type of food also, fatty foods delay it the most. So somebody who has had a full meal will have, perhaps, his delayed alcohol absorption by as long as 3 hours after the meal. When I say, delayed alcohol, I am talking about the full dose that has been taken in will take about 3 hours to be absorbed in contrast to the person who has had that amount on an empty stomach.

Alcohol has an extremely high affinity for water and is therefore found in all body tissues in as much as they would contain water. After absorption takes place—when all alcohol has been absorbed—it is in equilibrium in all tissues in the body, so there is a point of time after absorption where any tissue will have the same level as blood. But some tissues in some individuals who have got less body water are going to show proportionately higher levels of alcohol in the blood as against somebody who has got no body water, because it diffuses well and completely into body water.

The liver is the organ where most of the alcohol taken in is got rid of. Ninety five per cent of ingested alcohol is got rid of in the liver. The remaining 5 per cent gets off through the breath, the urine, saliva, milk and through faeces. The liver is very important for alcohol metabolism. They say life depends on the liver, very much so for alcohol, because it is the one organ that converts that alcohol by various metabolic processes to finally carbon dioxide and water, which are totally innocuous end results.

Until all the alcohol that is consumed has been metabolized, it is going to be distributed through all the tissues and this is the time, if it is not metabolized completely, it is going to have effects on the central nervous system functions. Healthy people will metabolize alcohol at a fairly consistent rate regardless of how much they take in. The metabolizing systems can get saturated and they can deal only with so much alcohol at a particular time. If somebody has drunk a ton of alcohol he is going to be able to metabolize just a proportion of that, which is about 15 milliliters of a standard drink in an hour—we will come to that. Once that has been metabolized, the next amount will be metabolized. There is no way the body can handle the total amount that is taken in.

The metabolism of alcohol can be affected and can be delayed by some substances. Aspirin is one of these; common solvents and heavy metals; some parizole compounds, the commonest are things like flagile, zentil. Drugs like tagamet, zantac and panadol can all delay metabolism. Having said this then, would the therapeutic dose be delaying the alcohol metabolism? Two factors: One is the state of the liver and, two, how much of that dose has been taken. If someone overdoses on one of these things or if he is taking zantac every day, he is going to have a residual level inside his blood. If he is taking zantac every day, then that zantac is going to have an effect on the liver and then it would delay metabolism. But if, in fact, I just took one zantac now, it is pretty unlikely that one would have interfered because this is long term effects which actually affect liver metabolizing enzymes.

As a rule of thumb a person demonstrates peak alcohol levels about a half an hour to 45 minutes after a standard drink. Your body can get rid of one standard drink roughly within the hour, which brings us to what is a standard drink. It is a can of beer that is 12 ounces; 1.5 ounces 80 proof hard liquor or 6 ounces of wine. There are some factors which influence the rate of metabolism. The rate tends to be higher when the levels are at the extreme. When they are very high or when they are very low elimination and metabolism seem to take place quicker.In chronic alcoholics, those people who have been drinking alcohol over many years—even if they are drinking every day—are more likely to get rid of that alcohol much faster than a naive drinker. They can metabolize that alcohol at least 75 per cent times quicker than somebody who is a novice to drink.

Women tend to absorb and metabolize alcohol differently from men. They reach higher blood alcohol concentrations if they consume the equivalent dose than a man would. They have lower activity of alcohol metabolizing enzymes; they also tend to reach higher blood alcohol levels because they have got more body fat and less water. It is like a man and a woman at 150 pounds, although she has the same weight is going to have higher alcohol blood levels than he would. It is like a bucket of water. She would have less water in her bucket; he has more water; you put alcohol in these two buckets, she will show a relatively proportionately higher rise than a man would.

Finally, as we tend to grow older, age is a factor which is going to delay metabolism and the capacity to hold liquor would probably be much less in somebody who is at an advanced age.

Prof. Deosaran: What is important for our exercise in my view: Could you illustrate a relationship between metabolization and impairment?

Prof. Pinto Pereira: Metabolization and?

Prof. Deosaran: Impairment—psychological or physical impairment. For example, the faster this is metabolized the more impaired you are—at what point—

Prof. Pinto Pereira: I suppose you are looking at an objective parameter of the metabolizing capacity?

Prof. Deosaran: Sort of.

Prof. Pinto Pereira: To do that, the thing to be done is to look at the liver function test. One of the liver function tests is in fact very susceptible to alcohol effects inside the liver; that is GGTP, and there are other tests. If these tests are deranged quite a bit, somebody is really going to investigate for alcohol effects on the liver and hepatic degeneration on the liver.

Prof. Deosaran: To put it more simply, the rate of consumption and impairment; that is: What does three glasses of a standard drink do to you, on the average? Is there such a result? Would you lose your eyesight? Would your reflexes get affected? Those kinds of relationships—

Prof. Pinto Pereira: Yes, Prof, I am coming to that later. It is a valid question and I hope I would be able to answer it on the slides.

The body metabolizes alcohol at a fairly constant rate. This is important because if the body cannot metabolize alcohol it is going to accumulate it and that accumulation is going to be affecting in all our tissues and it is going to cause central nervous system impairment. If the dose is not too large, metabolism takes place with the amount that enters into the blood stream. If it is greater than what we can metabolize then we are going to have higher levels of breath and blood alcohol. Therefore ingesting alcohol in a volume more than we can get rid of it, is going to cause cumulative blood alcohol concentrations.

This is important also for understanding what happens with somebody who had 10 drinks and gone out and somebody who had 2 drinks and gone out. It is a question of tolerance. Alcohol displays tolerance and we might want to know what we mean by “tolerance”. You could take it in a simple analogy as every day that I could get tolerant to him or somebody gets tolerant to somebody else, and the more you keep on saying something, somebody would react and one fine day he just does not react. So say every day across the table somebody throws a sentence at him or a phrase at him, he reacts and at some time he just does not take you on, and one day

somebody has to give him a whole paragraph or a page for him to react, that means that you can get that same reaction only when the dose is increased. You need increasing doses to produce the same response. That is tolerance, and tolerance will occur to all drinks—there is cross tolerance in all alcohol drinks.

There are two types of tolerance that work with alcohol. One is metabolic tolerance, which is seen in chronic users where their liver, once it has not been totally damaged and deranged, will metabolize that drug or get rid of that alcohol much faster than a normal individual would or a novice drinker. The second is, there is actual change in organ system sensitivity to the drug. However, despite these issues of tolerance coming in, there is conclusive data that even in heavy alcohol users the functional impairment, which is measured at the blood alcohol concentration level which is currently used, does show impairment and can be used for traffic enforcement and job safety sensitivity performance.

I just thought you might like to know some of the alcohol contents in some of the drinks that we drink: Carib beer contains, I think about 5 per cent; Shandy contains about 2 per cent; a table wine is 14 per cent, but a fortified wine like Port or Chardonnay can go right up to 24 per cent. Whiskey goes to 75 per cent; vodka or gin is 48 to 50 per cent; rum can be the top of the pops at a really high amount of alcohol inside the rum. I believe this might be able to tell you that.

Alcohol levels ideally have to be measured in the brain for impairment but this is very difficult to do. What happens is that alcohol from the blood will go to the brain so if we use blood alcohol, that is a good measure of what is happening in the central nervous system or accumulation in the brain. Alcohol in the blood is measured at grams per hundred ml or grams per 200 litres of breath. I will tell you why that is done later on.

Cognition gets impaired at around 30 to 50 milligrams per cent. By around 100 milligrams per cent there is physical evidence that the guy has taken alcohol. At 150 milligram his speech is slurred; at about 400 milligrams per cent he is beginning to get respiratory depression and at 500 he is dead.

Let me put that to you with more clarity. When the blood alcohol level is 30 to 120 milligrams per cent, this is the time the world is his oyster; he could do anything you ask him to do; he could rise to any challenge and he has got awfully poor judgment. He also has a short attention span and can understand nothing in front of him. This is the time of euphoria. This is

strange. Alcohol is a depressant of the central nervous system but it actually starts its toxicity with excitation. This is because it depresses the normal depressor functions that we have. Our central nervous system is balanced between drive and inhibition and if we do not have some inhibition we would always be on an adrenergic high. So alcohol inhibits the inhibition of normal inhibitory mechanisms, which is why in the beginning it comes up like an excitation.

At around 90 to 250 milligrams per cent he is sleepy; he cannot understand or remember anything that has been told to him even five minutes ago; his reaction time is terribly slow; he has lost his special senses starting with vision and then hearing and taste go. When alcohol is 130 to 300 milligrams he is now disorientated in time and space and he does not know where he is, what he is doing or why he is doing it; he is dizzy. This is the time we see them with exaggerated emotions. They fly off the handle for the slightest insult or stimulant and they can become disgustingly affectionate. This is the time nausea and vomiting also set in.

When blood levels reach 250 to 400 milligrams per cent, this is actually dangerous because they lapse in and out of consciousness and the nausea and vomiting has now been enhanced and if he continues to vomit, there is every chance he will aspirate his own vomit and die. He becomes comatose when the levels average 400 milligrams per cent. His heart rate begins to drop. At 500 milligrams per cent, he is up in the pearly gates, perhaps.

Should one need to be drunk to have impaired driving? It is not necessarily that one had to be really drunk as we know it. We see drunk when we see this level of confusion coming in sight; when they have lost their temper and they keep shouting and screaming and they come in and out of consciousness. But no, in some individuals, even one drink with a level of 20 to 30 milligram per cent noticeable cognitive changes are taking place. In the average population, that is if you take a bell-shaped poll of the population, 80 per cent of them will show cognitive changes after three drinks when blood alcohol reaches anywhere from 0.3 to 0.9 per cent. That of course would depend on—whether you are taking wine, whiskey or rum—the alcohol content of the drink. I just thought it was necessary to know that cognitive impairment can take place even after one drink in a susceptible individual, but 80 per cent of the population would need about three drinks to be impaired.

Although blood alcohol is the best, the most precise and most accurate way to determine the alcohol in the system, it is impractical; it is expensive; it is invasive; it is painful; it is costly and it cannot be done immediately. So we have now begun to rely on breath alcohol because in

the 1930s this principle came up that alcohol which is present in deep long breaths is actually proportional to the amount of alcohol that is present in blood, and this is the partition ratio which they talk about.

Alcohol has a partition ratio of 2,100 to 1. That means 2,100 parts of alcohol in blood will be present for every one part that is present in breath, or in other words, 100 milliliters of blood will contain 200 liters of air. If you convert this into gram percentage that is what it means. That is why blood alcohol concentration which is done is done in grams per 100 millilitres which is equivalent to the amount of alcohol in 210 litres of breath.

11.40 a.m.

Prof. Tinto-Pereira: This is in the partition ratio in the average population, and this is why alcohol can be measured in breath. We will come to it a little later on.

The breathalyzer is just a standard device for estimating blood alcohol content and now it is a generic term to a series of models which have been made by different manufacturers. Smith and Wesson was the original. I think Draeger is now using it but, in fact, the various tests that can be used with the instruments, they are available from the US Government's National Highway Traffic Safety Administration which gives a list of conforming products lists of devices which are approved for blood alcohol testing. This is data that has come out from New York from breath analyzer tests for driving while impaired. It is interesting. You can see how the number of drinks and body weight influence whether it will affect driving or not. So in somebody who has had one drink with body weight from around 100 to 240 peak may be impaired while driving. With a body weight of 100 to 160 pounds, two drinks will put him under the influence but from 180 to 240 pounds he still is border line. At three drinks from 100 to 140 pounds they are legally intoxicated and 160 to 240 pounds is still under the influence. Somebody who has got a real large somebody mass from 220 to 240 will be legally intoxicated after five drinks. I just thought that might, in fact, enhance what we were talking about in the relationship of drinks and blood alcohol concentration.

Many countries have different limits and they could express it either as gram percent or milligram percent, it does not make a difference. It is just a question of the decimal point being changed. So those countries in the USA, Canada, Mexico and New Zealand, the limit is 80 milligrammes percent. In some Scandinavian countries: Denmark, Finland, some European countries: France, Germany, Greece, Iceland, Spain and Turkey, the limit is lower as 50. For

some reason Japan up theirs in 2002 to be 250; I do not know why. In India, it is 30 and there are some countries that have zero tolerance. Obviously it would be Saudi Arabia, but there is the Czech Republic, Slovakia, Hungary and Malaysia.

The accurate measure of cognitive impairment is essential for traffic safety and law enforcement, but it is hard to do measures of psycho-motive skills and impairment on the road when you haul up someone whom you suspect is driving under the influence of alcohol. Therefore, most of the states and most of the countries have enacted laws by which they actually say that a blood alcohol level above a specified limit is sufficient evidence of impairment for legal purposes based on the assumption that blood alcohol alone remains an accurate indicator of impairment. For most of these facts which I believe are important I have provided a reference below.

The measured breath alcohol can accurately reflect blood alcohol concentration when it is done correctly, it is administered correctly and most important, the subject cooperates completely. He has every right to say no. If he cooperates completely then it is a pretty good reflection. It really should not get interfered with alcohol vapours from the mouth and even if that does happen these vapours are going to disappear within 15 minutes to half an hour, therefore, an individual should be pulled aside and one should have the option to do this evaluation again on him if one is suspecting that he drank a whole lot of mouth freshener just to vitiate test. This should be something that needs to be considered. The blood alcohol levels vary with age. It is higher in someone of below age below 25 and above 69 years and, in fact, crush rates are higher on these individuals. They vary at least 15 percent from actual blood alcohol concentrations and at least one in four individuals who are tested will have a breath alcohol reading which is much higher than the blood alcohol reading.

There are some assumptions for the test. We first of all assume the individual we are testing is averaged. We assume he does not have a batched up lever, we assume he is not a chronic alcohol, we assume he does not have any other hepathetic level disease, we assume he does not have intestinal malabsorbtion. These are assumptions that have to be made.

Everyone of these breath analyzers are computed based on the partition ratio, that is, 2100 parts in the blood is equivalent to one part in the breath. But this partition ratio varies from 1300 to 3100 so it is quite possible that a 150 pound gentleman who has a partition ratio which is lower than that of 1700 to 1, he would actually have in him a blood alcohol level maybe of 80

mg percent but when he is put on this machine he will show a higher rate because the machine is computing at 2100 and vice versa for somebody who has got a higher partition ratio of 2500, the machine will compute for 2100. This is an assumption which is made and for which we have to be careful. The similar assumption made in urine analysis is for one in every three parts in urine there is one part in blood. I had a reference with me but I do not have it with me. But recently, there are very accurate estimations from saliva. If it is okay, I will send that you that reference later on. They are very recent, they are very accurate and saliva is a very good indication too of blood alcohol.

The breath alcohol testing assumes that the subject is post-absorptive. It assumes that he has absorbs everything that he took. If that is not done and many forensic experts have problems. For example, if Ralph goes to Smokey and Bunty and drinks two tonnes of liquor he has not finished absorbing but if the police held him up, he is going to show really high blood alcohol levels. Why? He is not finished absorbing, he has not reached equilibriums and he has not even started metabolizing so he is still in the absorptive phase. If, in fact, they keep him for some time and take it later, they would probably get a lower level. That is something which we need to know about, when he started drinking, when he stopped drinking. To know he has probably stopped absorbing everything that he has had and this is something that forensic alcohol experts like to jump on.

The factors which affect the blood alcohol and by extension the breath alcohol concentration is how fast one drinks and how quick one drinks. The quicker and the faster one drinks the peaks are going to be higher. Large size people will have low blood alcohol levels than smaller people for the same amount of alcohol because of the body water. They have more body water to distribute the alcohol. Food is going to slow the rate of absorption and that will increase on an empty stomach. Water and fruit juices slow absorption. While carbonated beverages will increase the absorption. Advancing age magnifies adverse effect of low dosage of alcohol on tracking. Younger drivers are more susceptible to this. Not only that, they are more inexperience with driving, they are more inexperience with drinking. If blood alcohol concentration is done hours after the accident or the event, when the subject is in custody or in hospital then at that time it might be significantly lower that it was at the time of the event. There are calculations which are available based on the elimination where one can actually calculate what might have been his blood alcohol level at that particular time that he was hauled

in. However, it is absolutely essential to know that those calculations might have a considerable error when you extrapolate them from the population to the individual and that is a portion which we need to be cognizant of. There are gender differences with women reaching higher blood alcohol levels faster and all factors being equal, she has higher concentrations than he has. So what are the criteria for resort?

There is an ignition interlock system which is available and the National Highway Transportation Safety Administration in the US has the system and this system is very sensitive to blood alcohol and breath alcohol. So the minute he tries to turn on the key and reads into that system when breath alcohol is 80 milligram at peak it locks, he cannot do that. There are also tracking I think on these impairment tests. You can ask him to walk on a straight line. These are simple tests. He can walk on a straight line, heel to toe or you can ask him to do this very rapidly and see whether he does it. [*Demonstration*] Those are simple tests but I know Dr. Reid is coming in so she would perhaps give you more tests on psychomotor evaluation as a measure of mental impairment and cognition. What are the extent of the problem? Alcohol use is a well established factor for motor vehicle accidents and 39 percent of all traffic fatalities in the United States are actually due to alcohol. The Centre for Disease Control analyze data from 2004/2005 from the office of the chief medical examiner from West Virginia and found that in those individuals who were killed in vehicle crashes 27.7 per cent of them had blood alcohol concentration which were over 80 mgs per cent.

The first study to estimate the relative risk for drivers who had blood alcohol concentration of 800 mgs percent clearly showed that those drivers who had blood alcohol less than 100 that is, between 80 to 100, they were a risk to themselves and to passengers whom they were taking.

There was a case control study where they did those who drink and drive and those who were sober and they found that those who were drinking and driving were 4.7 times more likely to have a fatal collision.

Importantly, the risk of vehicle damage severity, it was more 4.4 twice times likely to be written off in those who were drinking and driving compared with those who were sober and the vehicle severely damaged at least twice as likely as those who were drinking and sober. Though these deaths have not been absolutely implicated in commercial airline crashes estimates of involvement by pilots in general aviation crashes range from 10 to 30 per cent. In recent reports

from the coastguard in the United States there is possible alcohol involvement in 60 percent of boating fatalities including those who fell overboard. Post-accident testing of railroad employees showed 3.2 percent of them tested positive for alcohol. The percentage of alcohol or any drug involvement is always higher when a fatality is involved.

Driving is a very subtle and complex task. Because it is so subtle and complex even low doses of alcohol can affect our skills. The skills involved in driving are of two types. Cognitive skills, information processing and there are psycho-motive skills like hand, brain and eye coordination. The brain control of eye movement is very vulnerable to alcohol. When driving it is important to have a visual tracking. We have to track the path we are driving and we have to track the lane that we are driving on. Trafficking is affected by doses of alcohol where the blood alcohol is as low as 30 to 50 mgs per cent. That is even lower than 80 mgs from the 80, UK/USA. It is difficult to track rapidly moving targets. Steering is another complex psycho-motor task and alcohol can affect the hand, eye movements and these effects are actually superimposed on the visual movements. Significant impairment in steering ability again as low at 350 to 500 mgs percent. Alcohol impairs nearly every aspect of information processing by the brain. So you can see when blood alcohol levels are at about three to four, 35 to 40 mgs percent, tracking and steering is affected. Between 50 to 60 mgs percent information processing coordination and judgment is gone, speed control and concentration and attention is lost between 70 to 80 mgs percent. Alcohol impaired drivers require more time to read street signs or to respond to traffic signals. Consequently, they look at fewer sources of traffic safety information and they are less aware of signs for vigilance.

One of the most important of features and the most sensitive aspect of driving is division of attention among component skills. That is, a division between cognition and tracking skills and drivers who had alcohol and take a traffic test, they tend to look after one skill more than the other so they tend to actually disregard the eye, brain, the visual skills and they concentrate only on steering. That is because they cannot do two skills at the same time. They tend to favour one of them.

The results of numerous of studies indicate that divided attention occurs with even very low does of alcohol of 20 to 60 mgs per cent. The epedimedial studies and the studies from traffic accidents allow some conclusions to be drawn. Firstly, is that the degree of impairment depends on how complex is the task and the blood alcohol concentration. The impairment rises

and dissicipates as blood alcohol concentration increases and decreases. Some skills are more effected than others that are given blood alcohol concentration. Cognitive skills are more effected than psycho-motor skills and there is no blood alcohol threshold below which impairment is not absorbed. These machines can test as low as 20 mgs percent and some very sensitive to 10 mgs percent, but there is no threshold below which you do not see cognition or impairment.

What is this test? It is a single **exolatio**n manoeuvre where the subject breathes into full capacity. He completely fills up his lung and then he is asked to exhale maximally to everything, to push out everything within his lung. At this time all he has in his lung which is about 100 millilitres of residual air inside the lung. There are very few restrictions placed on the breathing manouevres and very few constraints on the test. It is absolutely important that the test is administered by trained individual in a standardized way and that the subject does cooperate. The breathalyzer test does not determine his level of intoxication. It is only an indirect measure of what his blood alcohol is at that particular time based on the amount of the alcohol which he has eliminated in his breath.

Mr. Griffith: You spoke about the full cooperation of the subject being required and you just went through some more of that. I want to find out if a subject is not cooperative does that let him of the hook so to speak, even with a trained administrator?

Prof. Tinto-Pereira: But he has a right in my opinion to say no, I am not cooperating. If that is so—I am not a legal person but I will tell you what I think could be done. If that is so he can be requested to come across to the police station and he could be requested to perform some simple tests of coordination. He can be requested to walk on the straight line or do some psycho-motive tests which will look at his cognition, his impairment, his coordination and so forth. I am not sure that we can actually—

Mr. Chairman: Just excuse me; I got a different impression from Mr. Griffith that he was asking whether the accuracy of the test is affected when the subject was not cooperating.

Prof. Pinto-Pereira: Sure because he is not going to breathe out completely. He is just going to hold some of it inside.

Prof. Deosaran: Or he might fake the exhalation.

Prof. Pinto-Pereira: He might be asked to repeat that test a couple of times to look for consistent responses.

Mr. Griffith: In that case, basically he has cheated and probably as I indicated a little earlier on let off the hook and continue to drive intoxicated. Is that a risk?

Prof. Pinto-Pereira: Repeat that for me. I am not sure I understand.

Mr. Griffith: I am saying in that case he has cheated and the person administrating the test may allow him to proceed in which case he remains on the road in an intoxicated condition.

Prof. Pinto Pereira: I suppose if somebody repeats that test on him and asks him to repeat it three to four times, it is hardly likely that somebody every time would be able to hold his breath to the same percentage that he can do. So consistently he is not going to be able to push out say 50 per cent or 60 per cent of lung volume. So even if one of those goes to 80 mg. I would believe but again, I am not a legal person. I am just telling you based on physiology aspects what it would be like.

Mr. Chairman: Let me ask a clarification question. Are you saying therefore that the result could be lower if the person cheats, but it cannot be higher?

Prof. Pinto-Pereira: It could be lower. He could try to make it higher to fool you and say I just had these breath mints in my mouth and that is why it is high.

Mr. Chairman: No, that is not what I mean. If he does not exhale the full amount, it would be lower it would not be higher.

Prof. Tinto-Pereira: If he does not exhale it would be lower.

Mr. Chairman: So there is no chance that a person could be falsly accused of having a high alcohol blood level if he does not exhale the full amount.

Prof. Tinto-Pereira: A high blood alcohol?

Mr. Chairman: Yes. If he does not exhale the full amount?

Prof. Tinto-Pereira: No.

Mr. Chairman: So the person is protected in that way then?

Prof. Tinto-Pereira: I do not suppose so that that could be a conclusion. There are some limitations of this blood alcohol test. It is a machine and there is no machine which is of 100 percent accurate and you are always looking at a rough estimate of blood alcohol which is an indirect measure of breath alcohol given that he has expired completely as per the instructions. This is just a summary of the indications—we have gone through that before. I have not summarized them.

Tolerance can affect blood alcohol levels, in the number of drinks he takes, how quickly he

drinks it, more experience drivers as compared, body weight gender and fat and body fat percentage can influence blood alcohol levels and it is not necessarily an accurate indicator of the level of impairment.

It may need to be tide up with other physcho-motor tests that have been done. I think with that I have finished my presentation.

I would try and answer questions and I can tell you that if you do ask me some questions, if I can respond I would but if I would want to put in a reference I would come back to you with that. Thank you for your kind attention.

Mr. Chairman: Professor, thank you very much. That was very informative and if Members have any questions please feel free.

Miss Lucky: Mr. Chairman, through you, Prof. Tinto-Pereira, I am concerned about the accuracy of the test with respect to those persons who would seek to cheat. I know already we have pointed ought that there may be those persons who would through the method of exhalation tried then to not put in as much breath whatever Is there anything that a person can take in terms of food stuff—I have seen people when they are stopped on the road by the police. For example, you would see them throw nuts in their mouths all of a sudden to try and get it—

Prof. Tinto-Pereira: Charcoal would be something. Not nuts per say, because it will absorb the alcohol.

Mr. Hinds: What that will do is remove some of the alcohol from the breath or from the blood.

Prof. Tinto-Pereira: It absorbs it. It is like a sponge.

Mr. Hinds: It assists the metabolization process?

Prof Tinto-Pereira: No. It is just inside the mouth. It can just absorb the alcohol.

Mr. Hinds: And therefore, it will affect a breath test.

Prof. Tinto-Pereira: It could then, perhaps, maybe give you lower breath alcohol test. As you absorbing...some of it is going into the charcoal.

Mr. Hinds: But it would not affect the blood. So although he puts charcoal in there if he is made to do the test like the straight line, it would still show the effects of it so he would still goes on to do the blood test later.

Miss Lucky: Through you, Mr. Chairman, that is exactly the point. In other words, it cannot just be breathalyzer. It would have to be the walking a straight line.

Mr. Hinds: In specific circumstances. That is when he is trying to trick it.

Miss Lucky: That is the point, because you want to make sure that there is something cumulative. Not just you depending on one thing because everybody would use charcoal tablets.

Mr. Hinds: And then the other point to deal with the point that Mr. Griffith made you have to my mind, two clear issues where there is an out and out refusal to participate in the test and we should make provision for that, and then there is the situation where he participates but reluctantly and cooperatively, so you have another provision to deal with that.

One other question for my own edification. What can I do to assist someone who is drunk, full of alcohol, over 50 and I want to save him before he goes into that state? I saw one of the slides says carbonate soft drink might help the metabolism.

Prof. Tinto-Pereira: You could give him lot of water to drink. Plain water because it is going to help to dilute it and to distribute it quicker and it is going to increase the elimination and you will get more hepathetic blood flow coming to the liver for elimination. Water is really the best thing so even if somebody goes home drunk the best thing is to drink a jug of water. Alcohol keeps getting delayed metabolism and even after you drink that you get up next morning with a hang over, because that is the effects of the alcohol which is not being completely—it gets metabolized in two stages, that is why Chinese people get red. They cannot tolerate alcohol so much because it gets into this horrible thing called acetaldehyde which makes you feel nausea and vomiting. The metabolism is saturated. The rate cannot go on to get down to carbon dioxide and water.

12.10 p.m.

There was something I had seen in the Bill—I was wondering: section 70B on page 2—it is not my language, but there is something there—"to provide a specimen of breath for testing that was highlighted at the scene of the accident or at a police station nearby". If the committee wants to consider putting in the option that a repeat specimen or repeat test could be requested at a later time by the police—I do not know how you will put it over there—but they should not get away with only one time. You can pull him up and repeat it after 15 minutes or half an hour.

Mr. Chairman: The way the legislation is worded, it gives the policeman the power to ask the person to do a breath test, but it does not appear to me to be limited to one test. Perhaps Mr. Griffith can look at that. It also gives the policeman the option to ask the person to provide the specimen of breath at the roadside or at the closest police station where there would be a more

controlled environment. If a policeman is of the view that I need to take a test in a more controlled environment, he can take the person to the station and administer the test there.

In terms of repeated tests, that is something, from what you are saying, that we need to look at. The police officer may believe that the person is trying to cheat or he did not take the test properly. We need to look at that.

There has been a lot of concern expressed about human rights, the potential for abuse and the accuracy of the test. How well established is the breathalyser test in terms of its acceptance as a measure of intoxication?

Prof. Pereira: From the information I have seen, it is a very well accepted test. It stands up in court. There will always be forensic people fighting for the rights of the individual and they will do that based on how fast the test was taken; how accurate the instrument; if you took it too early—she had not finished absorbing everything—these things will come in. Therefore, to my mind, these need to be backed up by psychomotor testing. That is another clear indication of cognitive impairment.

Mr. Chairman: You showed some slides that gave an indication of what happens to a person after they have had one or two drinks, where the blood alcohol content goes from 20 to 30 to 40 to 50, et cetera. Is there any such information with respect to the use of narcotics? My research has shown that that is not in as developed a stage—the level of impairment of a person if they have snorted cocaine. The body of research does not exist.

Prof. Pereira: I do not think that you will get the response to that like you can get for alcohol, but you can get a toxic or threshold level.

Mr. Chairman: It is a point that came up and my research has led me to believe that this has been studied to death in respect of alcohol and how it affects the body, but not to any great extent with narcotics.

Prof. Pereira: They behave differently. The way cocaine behaves is different from morphine. With morphine, one might be able to say. You can only do these things after the patient is dead or going to die. However, blood alcohol levels you can do in normal people. Normal volunteers have been subjected to those response curves with alcohol. I cannot do that with morphine and cocaine. I can only do that when somebody has already been overdosed and gone to hospital. That limits finding the response curves for drug abuse.

Mr. Chairman: My research has led me to believe that this will happen in the future. There will be a sufficient body of information that will allow someone to prescribe a device that could determine the level of narcotics in someone's system that will impair his driving skills. That will happen eventually. There will be enough information, but we do not have it at this point in time. That is just my research. I need to find out what your knowledge is.

Prof. Pereira: I cannot give you a straight answer on that because CNS is not something that I like very much. I can research it and send it across to you. If that is the type of information you are looking for, I am happy to research it for you.

Prof. Deosaran: The Minister's question carries two elements and I myself might have to seek your help subsequent to this meeting. One element is the consumption of cocaine, for example, and the relationship to the driver's impairment as you would find in the relationship with alcohol. I think that is what the Chairman is searching for, but the other element is that just consuming an illegal drug is an offence. If he is caught having ingested the drug and it is in his bloodstream, that in itself is an offence.

Mr. Hinds: No! That is not an offence. As I told you, he could have eaten a piece of Prof. Ramchand's cake and not known, so he shows marijuana in his blood; or he may have bought root wine in the market one Sunday morning and he thought it was legal roots, but the seller put some marijuana in there too. He now has it in his blood. That may not necessarily be an offence.

I suspect that if you have the legalization of some of these drugs, then that kind of analysis will become relevant. For the time being it appears that the leaning is that because these are illegal narcotics—and they were made illegal originally because of the obvious danger to man—they are in a class by themselves, so we could in legislation deem a person who is proven to be—whether he committed a criminal offence by knowing that he consumed it or not, once he has it in his blood—unfit to drive because those are illegal drugs. Because alcohol is a legal drug, we get into the details we hear today.

Prof. Deosaran: It is my recollection in the debate that with the possession of cocaine in your car, the burden of proof rests on you. You have to show why it is not yours. I would like to extrapolate and say that if you ingested it, a defence could be you do not know how you got it, but at the instant point, you have to answer the charge.

Mr. Chairman: That is not where I was going. I understand how alcohol impairs one's ability to drive and there is a lot of information about that and we set a level proposed in the legislation of 80. We took the UK and United States standard and we know, from what you are now saying, that there varying levels occur and at 80 that is it.

I am unable to say what trace of cocaine would cause you to lose your motor skills, your hand/eye coordination; your ability to look at traffic signals, which is what you brought up with the alcohol. Therefore, I propose that the committee deals with it in a general sense, but it is impossible to prescribe a limit beyond which the person will be impaired.

Prof. Pereira: The only data available now is a threshold limit. If you want to do that—I do not know what drugs you are looking at Minister.

Mr. Chairman: I do not want to do that. I am just chairing the committee and others wanted to look at that.

Mr. Hinds: All narcotics under the Dangerous Drugs Act are—

Prof. Pereira: That is a lot of them.

Mr. Hinds: That is what I am saying. So that is in a category by itself and once you are found to have consumed any quantity—so, we take you; we have the blood test done and we find marijuana; we find morphine; we find cocaine and we find heroin. We can say in our legislation that you are deemed unfit to drive because these are illegal anyway.

Mr. Chairman: On what basis. Suppose the person is perfectly capable of driving? They have trace elements of marijuana from last year or three months ago.

Mr. Hinds: Marijuana cigarettes from last year will not show a trace element this year. Last month or six months. Prof. Deosaran made the point that it is a public policy position to dissuade people from using dangerous narcotics. In this legislation, we can continue the process of making a public policy position and deem them unfit for driving.

Mr. Chairman: That is a policy issue we do not need to involve the expert in. There is one other question I need to ask Prof. Pereira. The breathalyser can only test for alcohol?

Prof. Pereira: Yes.

Mr. Chairman: Nothing else?

Prof. Pereira: No.

Mr. Chairman: If you want to test for narcotics, you have to do another test with another machine?

Prof. Pereira: That could be blood; I am not sure. I am not sure that—

Mr. Chairman: What about saliva?

Prof. Pereira: I am not sure that they are tested or developed for saliva. With the expertise and the consistency and reproducibility as for—

Mr. Chairman: It is still in the experimental stage, then.

Prof. Pereira: Yes. It is more urine than saliva. I will send you the saliva one for blood.

Mrs. Yuille-Williams: I am going outside the box and looking down the road. We are looking at the legislation, being educated on what is happening. Sometimes we will put the legislation in place; we have to do the training; we have to take several steps. Judging from where we are at this time, how long do you think it will take to put a system like this in place?

Prof. Pereira: That is with committed training, reproducibility and—

Mrs. Yuille-Williams: Everything! Getting the equipment and doing everything. It is an enormous task.

Prof. Pereira: I think within three months—if someone is on the ball—to around six months.

Mr. Chairman: The acquisition of the machines is not difficult. The training is the hard part.

Prof. Pereira: It is the training that is going to be there; talking to the driver and getting him to cooperate with you completely.

Mr. Griffith: This Bill, as the Minister said, followed the English concentration levels. Having regard to what you showed us in terms of impairment, what do you think of the English level? Is it too high or should it be lower?

Prof. Pereira: The 80 mg, I think that we go with that. I will tell you why. At Food and Drugs, when we look at the Act for regulatory approval for drugs, we go by the Canadian system for drugs that have been already registered in Britain and the USA. We would not look at those with an eagle eye as we would look at other drugs. So we take those as our guidelines. If we are doing that at Food and Drugs and even at the Central Drugs Committee, in those two daughters of the Ministry of Health, I do not see why we cannot apply that here. It gives someone a wide berth. If you go to India, it is 30 mg per cent. We are still giving them a chance to drink without getting impaired.

Mr. Chairman: I also thought in terms of culture shock that it is better to start at 80, which is the United States and the UK's level, than to start at 20 or 30. That is one drink.

Prof. Pereira: And more acceptable to the population.

Mr. Chairman: Correct me if I am wrong. There are different levels of impairment and the United States and the United Kingdom have put 80 mg because they believe that beyond that you should not drive. Other countries believe it should be at a lower level. I felt that if there are two large developed countries using 80 whereas other countries use a lower level, why should we go lower at this experimental stage?

Thank you very much professor. Your assistance has been invaluable. [*Desk thumping*]

Mrs. Yuille-Williams: Just before you leave, Professor, you mentioned you know Dr. Reid, who has been your counterpart, very well.

Prof. Pereira: Sandra.

Mrs. Yuille-Williams: She is supposed to be one of the experts we are going to have. In terms of what you have done today, which is her special area?

Prof. Pereira: I think that she will talk about psychomotor testing and how to approach an alcoholic. She would be the one to say how to get him to breathe and the limitations in asking him to cooperate. She will really have a different kind of—

Mrs. Yuille-Williams: I heard her on that. That is why I asked, so that when you talk to her she does not duplicate what you have done already.

Miss Beckles: What is the difference between a breath test and a breath analysis?

Prof. Pereira: It is the same thing as the breathalyser.

Miss Lucky: That is why I am concerned. The legislation suggests two different things but to me it is the same.

Miss Beckles: The legislation says: "A constable shall not require any person to undergo a breath test or to submit to a breath analysis."

For the purposes of the committee, section 17C—

Prof. Pereira: The breath test submits to the breath analysis. Both are the same.

Miss Beckles: Once you put it that way in the legislation—

Miss Lucky: Mr. Griffith, one of the points is that clause 70C(3) talks about the constable not requiring any person to undergo a breath test or to submit to a breath analysis. The way it is phrased, to me, it suggests two different things. Someone can say I give you my breath, but not for the purpose of analysis. You can buy it, but I will not sell it to you—that kind of nonsense talk. We need to say "undergo a breath test for the purposes of a breath analysis".

Mr. Griffith: May I draw your attention to 70C(1) where you do not do the breath test; you go to the breath analysis.

Miss Lucky: That is why I ask how it is different. Your suggestion is that it would be different. We understand that the breath testing is that you give a sample of your breath, like a blood sample, then that will be analyzed. You have to look at the wording at (3). You have to change the wording.

Mr. Hinds: What you get on the crime scene in DNA is a sample and then you analyze it.

Miss Lucky: It might call for rewording or redrafting of clause 70C(1)(a) and (b).

Mr. Chairman: Thank you again. [*Desk thumping*] [*Professor leaves*]

I would like some guidance on how the committee wants to proceed. Should we have a presentation from the second expert whose area of expertise is apparently in terms of the behaviour of the body and how a person's behaviour affects his/her ability to drive? Should we get that presentation so that we can have a complete understanding of this, or should we continue with the examination of the Bill clause by clause?

Member: [*Inaudible*]

Mr. Chairman: We will have to schedule the next meeting. It will have to be on the Tuesday morning. I will have to check my schedule. We will all have to check our schedules. If not a Tuesday, what about a Friday? Shaarda, subject to everybody's availability, either Tuesday morning or Friday morning.

Let us adjourn and we will try to have it done next week Tuesday or Friday.

Mr. Ramroop: Tuesday's joint select committee, will it take place in the morning? Part I.

Mr. Chairman: It appears that most likely it will be Friday morning. If she is unavailable, we will have to press on with what we can do in the interim. We will determine that between now and next week.

Mr. Ramroop: Could we get someone with regard to drugs and how they will look at it in other areas?

Mr. Chairman: I do not really want to get there. I am convinced in my own mind that the breathalyzer is tested and tried. It has been tested in court. It has been subjected to all kinds of scrutiny and challenge. They have studied people's behaviour with respect to alcohol therefore we can do something meaningful once we introduce the breathalyser. If we go down the road of testing for drugs, that is unknown territory and I do not want to go there. If the committee wants

to go there, that is no problem. Later on, as the research develops in terms of people's reactions to narcotics, we can introduce some kind of roadside test, maybe saliva or something else, for drugs. At this time, I cannot see it.

Mr. Hinds: Mr. Chairman, we are attempting in this legislation to protect the citizens of this country from drivers impaired from alcohol. We need to protect them immediately as well from drivers impaired for any other reason. It is safe to say, even at this stage, if only because narcotics are already dealt with according to law and the reason they are deemed dangerous is from an understanding that they are dangerous. Nothing stops us, if I am reading you right, from disregarding the possibility of placing in this legislation that you could be deemed unfit for driving if you are under the influence of any amount of those drugs.

Mr. Chairman: The problem I have with that is that there is no objective or subjective test.

Mr. Hinds: There need not be is my argument.

Mr. Chairman: That is a policy issue and this committee cannot make policy. That will have to go back to Cabinet. That is a serious policy shift to introduce in the legislation that if you have a trace of narcotics in your system, you will be deemed to be—I can see that being a lawyer's paradise. It is my view that that will open a plethora of litigation.

Miss Lucky: I suggest we go the compromised route. That original section 70 that talks about being "under the influence of a drug to the extent that" so it would mean that the a police officer—which is as it is now—seeing someone driving erratically, could at that time make a determination, so you leave "drug to the extent that" and then lift "the alcohol" and all these sections apply. So the country is still aware that we have retained what was in existence and are working on getting the methodology to make the determination, but we have started with the one that has international acceptance, which is the breathalyser and alcohol. So we have preserved and upgraded as opposed to upgrading with alcohol and throwing out drugs.

Mr. Chairman: I totally agree with that. That was an oversight. We should have left that in. I want to put it back in. I am uncomfortable with the question of a roadside test.

Miss Lucky: They will have to come with a procedure to make their determination.

Prof. Deosaran: I want to put my view on record because it is something I would like to follow up. Minister Hinds put it quite succinctly for two reasons. On the question of "under the influence of drugs or alcohol", I heard your view but I want to have the record clear. We are dealing with a serious issue not only of alcohol consumption while driving, but wherever the

opportunity rises where we can send a message in terms of policy or the direction for a policy, we should seize the opportunity without damaging the substantive legislation.

To me, as a government, that should be welcome initiative, if not an elaborate expression of laws. Apart from that, I hear you say there is no reliable test, but they do apply tests for drugs for athletes and for a number of persons. As to what kind of test you want to apply, that is a different matter. I read every day in respectable journals where they make verdicts in courts in different parts of the world. So to eliminate the idea because there are no objective tests, I think that there is evidence that the test could be used.

Mr. Chairman: I was not suggesting that we eliminate anything. Miss Lucky has made the point that the existing legislation indicated that once you are under the influence of drink or drugs to the extent that you are impaired, you have committed an offence. We will leave that in.

The talk about athletes is an interesting point because there are limits. It all deals with performance enhancing stimulants and they determine that once you are over a certain threshold of some steroid, your performance will be enhanced and you have committed an offence. They have tested and measured this and it is not impairment. In fact, the athlete who takes the drug is not impaired in any way; he is enhanced. He can go faster and jump higher.

Prof. Deosaran: There is a continuum.

Mr. Chairman: In the sporting world, there is a huge body of research on the level of drugs over which your performance is enhanced beyond a normal person, but I am not aware of any body of research.

Prof. Deosaran: You are not listening to me. The point at which you are looking at the continuum is for enhancement, but on the other end of the continuum there are measures to show where you are impaired.

Mr. Chairman: That is the point. That information does not exist to the level of accuracy where it exists with respect to alcohol. That is what the doctor said.

Mr. Hinds: The over use of steroids, however it enhances your athletic prowess, has harmful effects later on. That is what he is saying.

Mr. Chairman: My point is that they might test you for Dynavox, a steroid. You have 100 mg in your system. That is over the limit. You can run like Ben Johnson. But they test you and you have 5 mg in your system, does that mean you will fall asleep at the wheel? The body of

medical research is not there on the other end of the spectrum where it impairs your performance as opposed to enhancing it. That is my information.

Mr. Hinds: This is trite, but I want to say that drugs in the context of athletics have their own meaning. Drugs in the context of dangerous drugs have their own meaning and the last time we were here we were trying to find the distinction between soporific drugs, dangerous drugs and medicinally prescribed drugs. In both cases you can be impaired.

12.40 p.m.

Mr. Hinds: I can take, as I said, Panadol—there are non-drowsy and drowsy. If I take drowsy and come on the road, I am dangerous to other people on the road and therefore—[*Interruption*]

Mr. Chairman: How are you testing for that?

Mr. Hinds: Just a moment. These could all be tested scientifically. This is what the Professor is saying. There are mechanisms for testing blood or urine. That is not an issue

Mr. Chairman: The point Miss Lucky is making, under the existing legislation, is if you suspect somebody is under the influence of drugs, then you can take a blood test and then conclusions can be drawn. We are not changing anything. That is already there. Miss Lucky is saying that we should preserve that in the law.

Mr. Hinds: We were going a little further and saying the police officer finds that you are driving—to use the member's description—erratically. He has you conduct the breath—he puts a breath sampling, the machine analyzes it and he finds no alcohol, but you were driving erratically. He allows you to drive again down the highway and he noticed that you continue to drive—he is driving behind you in the patrol car—erratically and he stops you again. He runs another blood test and he notices no alcohol again. He has a deep concern, according to the member. What does he do? There is no roadside mechanism for testing—[*Interruption*]

Miss Lucky: All he would do member, is he would charge you for driving without due care and attention. In other words, there are MVRTs. We would get it. What happened with drug and alcohol is that they recognized we want to set hasher penalties. Whereas with driving without due care and attention and negligently, recklessly and dangerous driving, you did not get things, for example, the suspension of your licence either on a temporary or permanent basis. The penalties made the difference. That is what he will charge you with.

Mr. Hinds: I am not so sure—[*Interruption*]

Miss Lucky: If I might just add, that is why countries—I feel this is where we have to take our thinking—recognizing that it might have been a drug causing you to do it, but you do not have the drug testing—I am not talking alcohol—came up with the penalty points.

If we find that you are always getting charged for driving without due care and attention, it is suggesting that something is causing it and, therefore, one penalty, two, or three—the point system. That is why the point system was invented. They recognized with drugs that were not alcohol, as the chairman was saying, you not have a scientific testing that led to—

Some people, strictly speaking, under the influence of marijuana might drive better. That is the whole point. That is why people want to legalize marijuana. Because some people—Bob Marley said he created his best when he had marijuana. It just affects people differently. I am just giving you the extreme.

You still have other laws and, therefore, the penalty system came up to deal with that problem. Maybe that is what we will have to consider, eventually going to a penalty point system also to buttress what we already have.

Mr. Chairman: I totally agree, but remember this is the Breathalyzer Bill and I would like to get the breathalyzer implemented and certainly we can look down the road and see what we can do.

Mrs. Yuille-Williams: Six months.

Mr. Chairman: Exactly. As Minister Yuille-Williams has very cleverly determined, it will take us six months. I think she is right, in terms of training policemen and public education. We have to be serious. This is June we are looking at. But we still want to push for the end of this month/the end of February. If we complicate it, with trying to introduce a roadside test for drugs, which does not exist in the world, in any kind of final form, it is an experimental form in Australia and some states in the United States—

Firstly, it is outside our Terms of Reference because this is the Breathalyzer Bill and secondly that is sending us into 2008. It depends on what we want to do in this committee and what we want to achieve.

Let me thank members once again and we will adjourn to a date to be fixed—[*Interruption*]

Mrs. Yuille-Williams: Probably Friday.

Mr. Chairman: Probably next week Friday—to receive a presentation from Dr. Reid.

Thank you very much.

12.44 p.m. *Meeting adjourned.*

MEETING OF THE JOINT SELECT COMMITTEE APPOINTED TO CONSIDER AND REPORT ON THE MOTOR VEHICLES AND ROAD TRAFFIC (AMDT.) BILL, 2006, HELD IN COMMITTEE ROOM NO 2, RED HOUSE, PORT OF SPAIN, ON FRIDAY, JANUARY 12, 2007 AT 10.30 A.M.

PRESENT

Mr. Colm Imbert	**Chairman**
Mr. Fitzgerald Hinds	**Member**
Ms. Pennelope Beckles	**Member**
Ms. Gillian Lucky	**Member**
Dr. Adesh Nanan	**Member**
Prof. Ramesh Deosaran	**Member**
Dr. Tim Gopeesingh	**Member**
Mrs. Shaarda Maharaj	**Secretary**
Mr. Ralph Deonarine	**Research Assistant**

ABSENT

Mr. John Jeremie, S.C.	**Member**
Mrs. Joan Yuille-Williams	**Member**
Mr. Satish Ramroop	**Member**

ALSO PRESENT

Mr. Paul Griffith	**Chief Parliamentary Counsel**
Dr. Sandra Reid	**Consultant Psychiatrist (UWI) and Director Caribbean Institute on Alcoholism and other Drug Problems**

Mr. Chairman: Members, we have a quorum now. I want to thank everyone for attending the meeting. Let me apologize to Dr. Reid for the late start which was

apparently unavoidable. So, do you all wish to deal with the Minutes or do you want to go straight into Dr. Reid's presentation?

Mr. Hinds: Let us go into the presentation.

Dr. Reid: Thank you very much hon. Minister and other Members of this Committee. I want to thank you all for inviting me to do this brief presentation. As I was sharing informally before this meeting started, when Mrs. Maharaj called me, the mandate was to share my opinion or my thoughts on the Bill which gave me great difficulty to read because of language but, I think, I have gotten the grasp of it. I know that Prof. Pinto Pereira did a presentation, so I decided that instead of looking at very chemical and technical issues, I was going to give my input as a psychiatrist and as somebody who works in the alcohol field. So, that is my way of introduction to who I am.

I am a consultant psychiatrist with UWI and Director of the Caribbean Institute on Alcoholism and other Drug Problems which is a teaching institute, and which has been in effect for over 30 years.

Now, just to look at an overview, these are things that we all know.

[*Slide Presentation*]

Prof. Deosaran: When you say that the temperature is going to affect the reading, does it means that if it is high it is going to increase the measure?

Dr. Reid: That is right.

Prof. Deosaran: If so, how will that affect a trial, if you can answer that? Could an offender produce evidence to show that his temperature was high at the time?

Dr. Reid: Well, I do not know how the legal system works, but if someone has a claim that his temperature was elevated and that was the reason why that person's breath alcohol was elevated, there will be no way to disprove that.

Prof. Deosaran: That is the point I am trying to make here.

Dr. Reid: Unless someone can say that at the time of testing he documented your temperature and it was normal, blood alcohol concentration may be normal, and because of the elevated temperature, breath alcohol is elevated, exceeds the legal limit and, therefore, the person is charged, but in defense they would say, "But my temperature was elevated."

Prof. Deosaran: So the breath content will be, of course, different from the blood content because of the temperature increase.

Dr. Reid: That is right.

Prof. Deosaran: It could be a defense.

Dr. Reid: Yes, it could be a defense, because one can then claim that the only reason that their blood alcohol appeared to exceed legal limit was that my breath alcohol measurement was incorrect.

Prof. Deosaran: How could he prove it? Is it by carrying an instrument?

Dr. Reid: Well, let me see, Trinidadians are good. He could get a doctor's letter saying that at that time he was suffering from an acute febrile viral illness. So, he cannot prove, but it means that on the other hand it can be proven that his blood alcohol concentration did, in fact, exceed the legal limit accurately.

Mr. Hinds: If our procedure is that he is made to give a breath sample on the road, if that reads positive, then he is taken to a station or to a hospital where a blood sample is taken then, in any event, the blood sample will show accurately his blood alcohol content.

Dr. Reid: That is right.

Mr. Hinds: And, therefore, the breath sample that triggered the blood sample will be of no consequence as a result of his temperature, because the blood sample, regardless of his temperature will give an accurate reflection.

Dr. Reid: That is right.

[*Slide presentation continues*]

Mr. Griffith: Dr. Reid, under "procedural issues" you talked about pre-exhalation and pre-test observation, does that mean that before you administer the test, you allow the person to just sit there for 15 minutes?

Dr. Reid: That is right.

Mr. Griffith: And then duplicate testing means that having tested, you wait may be for another 15 minutes, which Dr. Pinto Pereira had said is what we probably need to do, in terms of trying to catch those who want to cheat. So, it means then that at the time of the event the police officer would be tied up for 30 minutes.

Dr. Reid: Yes.

Mr. Griffith: Thank you.

Mr. Chairman: I am not certain that is what Prof. Pinto Pereira said. I think she said you should repeat testing, but I do not think that she said there should be an interval of 15 minutes between the tests. We can check that.

Dr. Reid: It is not necessary.

Mr. Chairman: This 15 minutes thing, where did you get that from?

Dr. Reid: That came out of research publications. So, I have a few citations here.

Mr. Chairman: So, it is not a practice and it does not appear in any law elsewhere then?

Dr. Reid: No, not that I am aware of.

Mr. Chairman: So, it is simply a recommendation.

Dr. Reid: It is a recommendation to improve accuracy.

Mr. Chairman: As far as you know, from the research that you have done in other countries, like the United States of America and the United Kingdom, do they require a 15-minute wait before administering the test?

Dr. Reid: I am not aware. I have not seen that written anywhere.

Mr. Hinds: It is a big answer to allegations of false positive.

Dr. Reid: That is right.

Mr. Hinds: It really, for the most part, other than temperature, defeats most of the other arguments in respect of false positives.

Dr. Reid: No, the waiting for 15 minutes has nothing to do now with false positives, because there are situations where the breath alcohol registers and elevated amount. That is a true reflection of the blood alcohol, but it does not mean that the person—okay, let me give an example, because I am going to sound very complex.

If an individual went to a party and they had not been drinking all night, but just before leaving that person took “one for the road”, and that person was stopped within minutes of leaving the party, the breathalyser sample would have a very heavy concentration of alcohol that would not be a true reflection of the general blood alcohol level. However, because of the way the blood alcohol concentration goes up, the blood alcohol is absorbed into the body steadily, but you can get a measurement that is very high and there is venus blood that has normal blood alcohol concentrations. So, the rationale is, if you let 15 minutes go by, it allows for absorption; it allows for this kind of equilibrium of the blood alcohol in the body. If, per chance, the individual is an asthmatic

who had just used an inhaler that delivers its medication in an alcohol-based, it allows for all of that and then you get an accurate measurement.

Mr. Hinds: So, what you would have gotten having had that drink for the road, would not necessarily have been a false positive.

Dr. Reid: That is right. It would not have been a false positive.

Mr. Hinds: A false positive is really where you get the reflection from the breath analysis.

Dr. Reid: It really depends on definition. If you think that the breathalyser is intended to give you an accurate measure of the blood alcohol concentration over a period of time recently, and you just get that measurement that reflects an oral concentration of alcohol, depending on how you define it, it is a false positive, but not false as it relates to the machinery, but false as it relates to what you are trying to measure.

Miss Lucky: Dr. Reid, getting back to the issue with respect to the blood sample and the breath test, if a person, because of law, does not have to be subjected to taking the blood sample—I am putting it in relation to the temperature, that concerns me—a person who has an elevated body temperature—what then, in terms of the accuracy of the reading, unless—there is some means of determining what the body temperature was, inherently, that gives an accused person an automatic defense.

Dr. Reid: Yes.

Miss Lucky: Whether it is true or not that person can say, at that point in time, my body temperature was higher. My concern then is that it would be left for the prosecution in order to satisfy. The prosecution always has to prove beyond all reasonable doubt. The problem with handwriting specimens, for example, that is a science that is concluded not to be 100 per cent accurate. The Minister was talking about the person who would go on to have the blood test, but the legislation is not saying that. In other words, the blood test is not mandatory. It is only if the person does not subject to the breath test, because of a physical incapacity, you would then go and look for blood. So, that is something that we are going to have to overcome. The accused does not have to give evidence. So, unless you reverse the burden and go on the presumption that is body temperature, and all conditions were in order, then you do not mandate him now to go in the box to answer that otherwise the lacuna in the law would be that inherent defense that he has.

This is very much like the copyright legislation where, at the end of the prosecution case, even if you show the crudest of pirated material, the accused could say that he is not going in the box. You have not proven that I did not have that authority. So, you have to reverse the burden and mandate that circumstances were right. That is something for us to consider.

Mr. Chairman: I would think that other countries have grappled with this issue and I think—Mr. Griffith, we need to check this—there is a presumption that normal conditions were operating. I am just saying that this is my belief, In all the breathalyser legislation that I have looked at, all they do is simply specify a blood alcohol content; the means by which you take the test; and the type of equipment that you use, but they do not go into the kind of details that are being discussed here in terms of taking the person's temperature and checking to see if they had any medical issues and so forth. So, I would think that because the other legislation is simply a straight number—blood alcohol content of 0.08 per cent or whatever it is—these other countries have dealt with these issues. I think that what you are raising is really more on the training side, because having established a limit of 0.8 percent, it really boils down to how you administer this test in order to avoid a successful challenge. I do not think that you could put in the legislation that they must take the person's temperature and check and see if they have acid reflux and so forth. That is some thing that we can obviously check.

Mr. Hinds: In the absence of—you see, the point that is being made is that you will take the blood sample, and you will find that the limit has been exceeded and you would prosecute that person. That person would tell the court the reason why that read over 0.8 percent: "I had excessive fever that day. Look, I have a medical certificate to prove that the day before my doctor checked my temperature and I had fever." So, it is a defense.

Mr. Chairman: Mr. Hinds, I would think, therefore, the burden of proof would have to be on the accused to prove that he had an elevated temperature and that sort of thing. If it goes the other way, then you are really going to be finding yourself in difficulty in getting any successful prosecution. That is my view.

Mr. Hinds: However, when you interface with the person on the street, he will say, I just had mouth wash, I had acid reflux issues—now, the 15 minutes would deal with the acid reflux problem and all the other issues other than the body temperature problems.

Therefore, if the man says, “Officer, you see that thing that you are going to put in my mouth, you may get a reading higher than normal because I have fever.” The officer should now be able to say. “No problem, here I have an oral temperature test, a brand new one, and you could have it.” The officer would check it because he is trained to do so, and he rules that out in his evidence or he rules it in. If he rules it in, it may be a case now where the law permits him to say that since his temperature is affecting this breathalyser, we need to go a little further. That is not going to be a very frequent kind of thing.

Mr. Chairman: Mr. Hinds, people have challenged breathalyser tests for the last 50 years. I saw a challenge where they demanded to know the computer codes and some of the companies said that they are not giving that out because that is a trade secret, and cases were thrown out on that basis, but that is not the point. The point is that there have been many successful prosecutions for driving under the influence of alcohol. All the legislation just set this blood alcohol level, and then you have to deal with how you are taking this test and how it will stand up in court. That is how I see it. I think that what we just need to do is to take a look at what is being done in other jurisdictions and how do they deal with challenges to the accuracy of the test. I am sure every imaginable thing under the sun has been proposed as a defense as to why the test was inaccurate.

Miss Lucky: Dr. Reid, to your knowledge, is there any breathalyser equipment that gives you a simultaneous reading of the body temperature?

Dr. Reid: No, none that I was able to find.

Miss Lucky: I am not belabouring the point, but I am just saying that the person in the case—Mr. Chairman, I take your point that there must be challenges in other jurisdictions and how they deal with, but remember that is going to be part and parcel of their rules of law which may be different to ours in terms of things like presumptions. As a prosecutor, I am just thinking that when the defense stands, they are going to ask the police officer who has to put in the breathalyser—two questions are going to be coming at him: Do you know how this operates? Yes or no to this question. Does the blood temperature affect the accuracy of it? He will have to say, yes. If he says he does not know, it is going to be even worse. The next question: Did you take it? No. That would have raised enough doubt; no case submission, and the case will be thrown out.

Mr. Chairman: That is no problem, but I am sure that other countries have had to deal with this problem

Miss Lucky: Mr. Chairman, you point is taken. All I am saying is that it is something that is very important that would need to be looked at because we do not want the first case to be the case where we have a successful challenge.

Mr. Chairman: I was thinking, when Dr. Reid was talking, that this is going to be a person who is barely over the limit. Miss Lucky, this person that you are talking about who are going to be challenging the test, based on temperature, would be somebody who is just barely over the limit, but somebody who is twice the legal limit is not going to be able to rely on these defenses of temperature and acid reflux and so forth. There must be some proportional effect as well. You said 23 per cent.

Dr. Reid: Yes.

Mr. Chairman: I am just saying that if somebody is at 0.5 or something like that, but somebody at 0.12 they cannot raise these issues as their defense. This is really the people in a little grey window there that is just over the limit. Again, I am sure that other jurisdictions have had to grapple with this. If the person is at .081, do you bother to prosecute this person in terms of the margin of error?

Prof. Deosaran: What Miss Lucky is saying is very important. My little view about these things is that when you are making legislation you also have to look at the possible loopholes, because you do not want to make legislation where, perhaps, you have to come back and revise it because of the successful challenges. That is why when I read the American literature—I am sure from what you are saying, you have read it—and there are several challenges and they were varying toward the possibility of using blood tests. I know it is difficult. I raised that very early for the simply reason of what we are talking about. So, Miss Lucky has made a very serious point. We have to make sure that we close the loopholes. I do not know if we can explore the possibilities of how much we can use the blood test as a validation.

Mr. Chairman: The whole point of the breathalyser is a quick and effective means of determining whether there is a reasonable suspicion that this person is over the limit. The blood test is a more absolute thing. I am thinking that since this is an issue that Members are raising, perhaps we can explore whether we can get someone—this is going to delay

us a little—who has the experience of dealing with challenges of blood alcohol testing. It may be hard to do it, but I would like to try that. Let us see if we can find someone—an expert of some kind to come and tell us how they address challenges to blood alcohol testing. I do not know what you think.

Dr. Gopeesingh: Mr. Chairman, what are the international countries doing in relation to the introduction of legislation on the breathalyser? Did they start with that and then moved on to the blood testing issue or they incorporated both into legislation?

Mr. Chairman: I cannot say. We need to look at that. We need to look at challenges and we need to look at the question as to whether we need to incorporate the blood testing.

Dr. Gopeesingh: In terms of the reference for this Committee, would that be included?

Mr. Chairman: I do not know.

Dr. Gopeesingh: That is another issue that we have to look at.

Mr. Chairman: What I do know is that the legislation, since I am the piloter of this thing, is purely aimed at allowing a quick and effective roadside test using a breath sample, not blood.

Dr. Gopeesingh: May I make a suggestion on that? I know the issue of blood testing is a very detailed type of thing that is subject to a lot of work. Subsequently, in terms of implementation, I would like to suggest that we go ahead with the issue of the breathalyser alone for the time being, which would be a major deterrent in the first place, and as we improve upon this there would be the need for bringing additional aspect of the amendments subsequently to include the question of blood testing.

Mr. Chairman: Mr. Gopeesingh, I could not agree with you more, because that is what I was thinking. Of course, there would be challenges; of course, there would be issues. We are going to have untrained policemen; and you are going to have creative people challenging it, but that is not going to be 100 per cent of the drunk drivers outside there. Half of them are going to stop drinking and of those who are caught, not everybody is creative as the person Miss Lucky has described. I think as a deterrent it will be tremendous. I would like to support that.

Miss Lucky: There is still a way we can solve the problem and it is quite easy, and that is you make it prima facie. Prof. Deosaran raised this point very early in the day. I remember when we first met he was talking about the greater accuracy of the blood

sample. I remember the professor asking why do we not go that way, and we said that in the United Kingdom, you could actually refuse to give your breath and say: "Look, I am not going the way with the breath, I want to go the way of the blood sample." Again, I am saying that is something that we should look at because that is provided for in the English legislation.

Also, the way to solve the problem is that you can say, that this is not the presumption of the accuracy of the working of the equipment, but you can say it is prima facie—the result itself is prima facie accurate. So, it would mean that you would prevent a no case submission from being made. I think that is the way they might do it in other jurisdictions where they say it is prima facie truth, so you would get away from a no case submission, because in a no case submission the standard is not beyond all reasonable doubt; it is prima facie. Then the accused now—you have just been told that the breathalyser has found you positive—could decide to go to his private doctor or to go and do something which will now be his build-up of his own evidence, and it would mean that we have overcome the no case submission problem.

Mr. Chairman: There is precisely where I was going; that the burden of proof would then be on the accused. That is fine. You see, if we try to link the blood test to this thing we would defeat the purpose of the breathalyser. It is a quick test. When you are testing blood you must have sanitary conditions. You have to be in a sterile environment otherwise all sort of other challenges are going to arise. I think that is why police officers have been reluctant to bother to go with a blood test, because you cannot just draw blood just like that. You must have a clinic and a laboratory environment or something like that. That is why over the years the blood test has not been used by police officers.

Prof. Deosaran: If I gleaned from what Miss Lucky is saying, whilst we have had experiences, those experiences and challenges have also contributed to the enrichment of the defense. People have learnt successful challenges. We are going into a terrain now with a more sophisticated line of defenses. I would, therefore, like the committee to be aware of that in the first instances, and depending on how you present the report you can take—

Mr. Hinds: I move that we continue to hear Dr. Reid.

Dr. Reid: If I may just make one comment based on the recommendation made by Dr. Gopeesingh which was endorsed by the Chairman, is it to do away with the blood alcohol content? Is that what was suggested?

Mr. Chairman: No, the legislation provides for blood testing, but what we are trying to do is to have a breathalyser as an effective means of testing. The blood testing is an additional test. We are not abandoning it. What we want is something quick; something that is effective; and something that is recognized and which is used in other countries to be able to determine, "Yes, you see you, you are driving under the influence." Then that person will have to prove otherwise.

Dr. Reid: As I said, I think I have just two more slides looking at youth driving and drinking.

[*Slide presentation continues*]

Dr. Reid: That is it. [*Applause*]

Mr. Chairman: Thank you very much, Dr. Reid. You have certainly completed our education. As I said, Members, I think, perhaps, all we are missing now is a practitioner who has had to deal with challenges with drunk driving. I am going to investigate that prior to the next meeting. Thank you, Dr. Reid.

Mr. Hinds: Dr. Reid, this is just an aside for general information. I have observed that along the East/West Corridor the drinking of Puncheon Rum, Forres Park in particular, has become very popular and prevalent and it is being chased with wines and Guinness and Beer. That is a potent mix. In one area of this country, Flanagin Town, by the gas station, there is a Chinese man—one person called me in my office from there to complain to me that he stocks Bay Rum and that he is selling this Bay Rum, and the youngsters in the area, many of them are falling like flies and they are becoming addicts on Bay Rum, and it troubled my heart. I have done nothing about it. Is there something in your research—

Mr. Chairman: Mr. Hinds, is this related to the breathalyser?

Mr. Hinds: Yes.

Mr. Chairman: How is it?

Mr. Hinds: Mr. Chairman, if you will permit me, I am going to show the relevance shortly.

Mr. Chairman: I have to move on. You could talk to her outside.

Mr. Hinds: Dr. Reid, I have a very serious concern with this Puncheon Rum. As a parliamentarian and as a citizen of this country, this is a matter of grave concern to me. It is very popular and, I think, something ought to be stated or done. Have you been seeing that in your research?

Dr. Reid: We have seen it. As a matter of fact, it is not new. The youths have been doing it, but what we are seeing though is the increased use of all of these potent cocktails by females. The males were doing it all along, but now the young girls are joining in and that is a source of concern.

Mr. Hinds: This marijuana question is a serious problem, as well.

Mr. Chairman: Mr. Hinds and Dr. Reid, if you all want to have a general discussion about substance abuse, there are many rooms in this fine building where you all can go and talk. Thank you very much, Dr. Reid.

Miss Lucky: Mr. Chairman, may I just ask if Members will be getting a copy of Dr. Reid's presentation? I thought it was excellent in terms of raising those policies that we will have to get.

Mr. Chairman: We should ask Prof. Pereira for a copy, and if we could get yours on a CD or as a hardcopy—

Dr. Gopeesingh: Generally, academics will have their work presented in a volume. [*Crosstalk*]

Dr. Reid: If I may just say one thing, I think that out of everything that was presented, the issue of the random testing is what I did not see. When one looks at what has happened in Britain that is very potent, and given the nature of our culture and given the attitude to alcohol, I think that is of vital importance.

Mr. Chairman: It certainly works for illegal arms and ammunition for narcotics. I mean roadblocks definitely work for all of those things, so it would certainly work for this and, really, I would like to support that. Later on, we could see how we could incorporate it into the legislation. Certainly, random road blocks test for alcohol is a very good idea.

Mr. Hinds: Mr. Chairman, if you just come and stop me that has constitutional implications. Britain does not have a written Constitution and it created a problem in

Britain when the Chief Constable whom we read about did it. It has constitutional implications in Trinidad and Tobago. It is quite different from a sobriety check.

Mr. Chairman: Yes, Mr. Hinds, we were talking about alternative to.

Mr. Hinds: Okay.

Dr. Gopeesingh: There is a stop and search aspect in the law, and you could only stop and search in certain conditions.

Mr. Chairman: I do not know if you were here, but Dr. Reid gave us two options. In Australia, they were actually engaging in massive random testing. They would just stop you whether they suspect that you are driving under the influence or not. In the United States of America, because people raised the issue of constitutional rights, they went the other way where they would just have roadblocks and if they suspect in the roadblock that you are under the influence they would test you. That is what I can see is more applicable to our culture, which is what she told us.

Dr. Gopeesingh: The question of stop and search—

Mr. Chairman: I was not contemplating that at all, I was contemplating the USA model where you just have random roadblocks and then if within the roadblocks you think there is somebody under the influence, then you test that person. Okay, thank you, Dr. Reid.

Dr. Reid: Thank you very much.

Mr. Chairman: Can we go to the Minutes, please? Are there any corrections on page 2 of the Minutes?

Mr. Hinds: No.

Mr. Chairman: Are there any corrections on page 3 of the Minutes?

Mr. Hinds. I do not know if this is the new way but on page 3, I see "Senator" is "Se.,"

Mrs. Maharaj: That is a typo.

Mr. Chairman: Are there any other corrections on page 3?

Mr. Hinds: No.

Mr. Chairman: Are there any corrections on page 4?

Mr. Hinds: No.

Mr. Chairman: Well, I have one. In "4.3", I would like to insert after the word that, "as far as he was aware." I have not yet reached that level where I can make these profound statements. Are there any other corrections on page 4?

Mr. Hinds: No.

Mr. Chairman: If there are no other issues, the Minutes are confirmed as amended.

Minutes confirmed by Miss Lucky.

Minutes seconded by Mr. Hinds.

Mr. Chairman: Okay, it is now 11.30 a.m. and would the Committee like to go straight into the examination of the legislation or would you like to adjourn? I got an invitation to that cricket presentation and I knew that I had this, and I would prefer to be here rather than there, but if Members want to go to the presentation—that is why I am raising the issue of the adjournment—they are free to do so. We have a quorum. Would Members like to go straight into the legislation? Mr. Hinds, we have a quorum and we have at least one other Member from the House of Representatives so if you wish to go to the Cricket World Cup presentation, you are free to do so.

Could we discuss this question of a quorum? I would like to reduce the quorum to four because we are all busy people. This morning we had a delay of 30 minutes because we did not have a quorum of five. I am proposing, subject to the agreement of the committee, that we reduce the quorum to one Member of the House of Representatives, one Member of the Senate, the Chairman plus one other. Dr. Gopeesingh?

Dr. Gopeesingh: Yes.

Mr. Chairman: Miss Lucky?

Miss Lucky: I prefer that we keep the quorum at five.

Mr. Chairman: Miss Beckles?

Miss Beckles: Yes.

Mr. Chairman: Professor Deosaran, what is your view on the quorum?

Prof. Deosaran: I think four is reasonable.

Mr. Chairman: Mr. Hinds?

11.30 a.m.

Mr. Hinds: I do not like it but I will go along with it.

Mr. Chairman: Dr. Nanan? Okay, Miss Lucky, it seems that you are in a minority of one.

Miss Lucky: That is not a problem, just let the record reflect the reason that I said that I do not think we need a reduction, one, because I think it is very important to have the

collective intellectual input and more importantly, and really at a time when the public has a dim view of parliamentarians doing their work, I do not think five in the beginning was, to be quite honest, excessive in number. I just want the record to reflect that that is my position, but I have no objection to the lessening and I do not mind standing alone.

Mr. Chairman: So noted.

Mr. Hinds: Let the record read that I concur with that view.

Mr. Chairman: So noted; let us move on. Mr. Griffith, you were supposed to do some work for us on various aspects of the legislation where we wanted some information and education from you. Can you recall, Mr. Griffith? It is in the minutes.

Mr. Griffith: In terms of the redraft, I have not done that; I expected that I will present a draft after the entire Bill has been reviewed. As far as the breath test and breath analysis are concerned, I have checked that and there is a difference between the breath test and the breath analysis. The breath test is what takes place with the breathalyzer. The breath analysis is where it is subjected to more careful analysis which will come up with the levels of—.

Mr. Chairman: How is it subjected to the more careful analysis, using what instrument?

Mr. Griffith: I cannot tell you exactly what device is used, but this is what I understand.

Mr. Chairman: Is that so? Well I think you need to give us some better and further particulars on that.

Mr. Griffith: Mr. Chairman, if you look at the British UK legislation you will see for a start, that you do have a differentiation there between the breath test and breath analysis.

Mr. Chairman: Mr. Griffith, can I ask you for the next meeting, could you clear the air on the difference between a breath test and a breath analysis, so that we all properly understand what the difference is?

Mr. Griffith: I will do that, Mr. Chairman.

Miss Lucky: Mr. Chairman, with the greatest respect, I feel that my ability then to really assess the legislation concerns me, if I do not understand clearly the distinction between the breath test and the breath analysis, because when I am reading through the provisions I am seeing or understanding there that the breathalyzer is the instrument. I got the impression that is what was being used to make the determination and it does affect the section. For example, when you talk about the presumption of the working condition of

the instrument being used; now I am confused because I am not sure which instrument we are talking about. I am not jumping your order of going through provision by provision but when you look at page 15, which is 70B(11), it says:

> "In any proceedings for an offence under this section, evidence of the condition of a breath analyzing instrument or the manner in which it was operated..."

That is the presumption of regularity there. We are talking a breath analyzing instrument.

Mr. Chairman: Just hold on; are you talking about subsection (10)?

Miss Lucky: Subsection (11).

Mr. Chairman: I will assume that is a breathalyzer.

Miss Lucky: Okay, go back then to the subsection with breath test or breath analysis. If there is a difference, which one are we talking about, if they are two different things?

Mr. Chairman: My understanding is that the taking of the sample is the test, so the act of making the person blow into the breathalyzer instrument and the retrieval of a sample of breath is the breath test. The act of analyzing what is contained in that sample is the analysis and it is the same instrument. The instrument retrieves the sample and then the instrument analyzes the sample. So that it is one instrument, let me tell you what I have believe. Mr. Griffith has to establish this as a fact; that the test is simply taking the sample, using the instrument and the analysis is the analysis of the sample that has been taken using the instrument.

Miss Lucky: Mr. Chairman, can I be very forthright and indicate that I have never seen a breathalyzer instrument and I would be very grateful if we could get—even if other members have seen it, I really have no problem admitting I have never seen it and I think I would be better equipped to operate in terms of the provisions if I were to at least see—

Mr. Chairman: I am overwhelmed by potential suppliers of breathalyzer equipment, so I am certain we can get one who would be trying to win our favour to come and demonstrate the use of the instrument. But I am pretty certain that what I have just told you is correct; that the test is the actual retrieval of the sample and the analysis is the analysis of the sample by the said instrument. The machine retrieves it and analyzes it. If you think about it, it is obvious; the test is actually taking the sample and the analysis is analyzing the sample.

Miss Lucky: Well, Mr. Chairman, it was obvious to me and I understood it your way, until I read the subsection on page 10, 70C(3):

> "A constable shall not require any person to undergo a breath test or to submit to a breath analysis—"

And I am saying that phraseology used there is what raised my concern in the first place, as to whether it was a same instrument or not, because I was happily understanding it to be one instrument and you blow in it—that is the breath sample so to speak. To me it was, they take your blood—that is your blood sample—it is then subjected to whatever the actual analysis of your blood and this was an instrument doing it. But when you read this—and I think it was acknowledged—

Mr. Hinds: Not your blood; your breath.

Miss Lucky: I used the analogy of blood but I am saying when you read this subsection here, it confuses it, because it says:

> "…to undergo a breath test or to submit to a breath analysis"

Mr. Hinds: Mr. Chairman if I may say, in the event that Mr. Griffith is unable to logically differentiate between a test and an analysis, then we will be guided by the one concept as has been explained by the Chairman and it will then become merely a drafting issue to be corrected.

Mr. Chairman: Yes, but Mr. Hinds, I am certain that Mr. Griffith is going to be able to do that because this is lifted out of the UK legislation.

Mr. Hinds: You believe that he will be what?

Mr. Chairman: I am certain he will be able to tell us the difference between a test and an analysis, because it is taken straight out of the UK legislation and there is adequate information available in the UK to explain the difference between a test and an analysis. So I do not think we are going to be in the situation that you have described where you have to depend on my opinion. Mr. Griffith, I am certain that you can find out the difference between a test and an analysis for the next meeting.

Mr. Hinds: Mr. Chairman, if he does, then the language that we have just read here in subsection (3) will be appropriate.

Mr. Chairman: We will deal with that as soon as we get the clarification. I certainly will not want the Committee to take my opinion on a matter as technical as this. Mr. Griffith, I am asking you to do this; I am sure you will be able to do it. Okay? Thanks.

So, Miss Lucky, how would you like us to proceed, now that you are saying that you are confused and you are not in a good frame of mind to look at this?

Miss Lucky: No, it is not that I am not in a good frame of mind; it is just that whenever I am asked to give an input with legislation I always found it necessary; even when prosecuting there is something called locus in quo, where you have to sometimes go to the site to appreciate the evidence. I just feel that I could still go ahead, but I am just saying when we come to those sections that are affecting my ability to give the proper legal input, I will highlight them and I do not think this will be our last meeting for sure.

Mr. Chairman: I can assure you I will give you an opportunity to tack back; more than one opportunity to tack back. Now, where had we reached? I am advised we were on page 8. Mr. Hinds, I know you and Dr. Nanan are closer now than you used to be, since your journey together to Dominica. We were on page 8, subsection (c).

Miss Lucky: Mr. Chairman, you were making the point earlier that although Dr. Reid was talking about random testing that the policy would not be to go the way of random testing.

Mr. Chairman: Not at this stage, we already have views that this is going to be a culture shock; I think to try and impose totally random testing in one and three people in the population you will have a riot and then you will be tying up the police; they have constraints and other things to deal with. That is all right; Australia took a long time to get there; let us walk before we run. Can we move on? We are on section 70 (b)(2). Mr. Hinds, are you with us?

Mr. Hinds: Yes.

Mr. Chairman: Thank you. Section 70(b)(2); that seems to make sense to me. Is that okay with you, Miss Lucky?

Miss Lucky: Yes.

Prof. Deosaran: Why you cannot put in an hour; like two hours, reasonably?

Mr. Chairman: You mean you want to put an actual time.

Prof. Deosaran: I am asking to give it some precision, both on the constable part—

Mr. Chairman: Could I ask those who practice in the criminal court, is that a term of art; reasonably practicable?

Miss Lucky: Yes, it is.

Mr. Chairman: So we are up to the judicial discretion?

Mr. Hinds: Yes.

Mr. Chairman: Subsection (3). Let us go to page 9, subsection (4); it seems okay to me. Subsection (5); any issues there?

Mr. Hinds: This simply says, he having been suspected by the police fails to give a test that is an offence in itself.

Mr. Chairman: Yes. The police believes that he is driving under the influence and they ask him to give a specimen of breath; in other words to subject himself to a breath test; he says no; they say right, you are guilty of an offence and you are liable on conviction to a fine of $5,000, imprisonment for six months. Everybody okay with that? Subsection (6).

Dr. Gopeesingh: What is it?

Miss Lucky: "Arrest without a warrant" means at that point in time you are taken into legal custody. In other words, you are at the side of the road; he may arrest you at that point and take you down to the nearest police station.

Mr. Hinds: Should we not at this point, right after subsection (5) because we are dealing here with the person who fails to provide a specimen or the breath sample. You remember the last time we were here we had discussions about what happens where he pretends to give it, but he gives it reluctantly; he gives it half-heartedly; he does not blow fully into the thing. Remember there were some issues around there? So we have already dealt with a question where the man out and out refuses. But what happens when he says, okay, I will give you to avoid that prosecution.

Mr. Chairman: Are you finished, Mr. Hinds? Because Prof. Pinto raised that point and said in those circumstances you ask the person to give more than one test and she also said it is highly unlikely the person will be able to cheat every time.

Mr. Hinds: That does not satisfy me.

Mr. Chairman: I know, but clearly the police officer will have to be trained; this all goes to the training into how you administer the test. You are talking about an extreme

event where the person continues to cheat, so that the police officer forms the view, well look, I cannot get a proper test. But should you legislate for such an extreme event?

Mr. Hinds: That is a question for the Committee to consider as soon as possible, since Trinidadians are very extreme people.

Miss Lucky: Mr. Chairman, through you, Mr. Griffith, this particular section, was it lifted from the UK legislation?

Mr. Griffith: Yes, this is from the UK legislation.

Miss Lucky: This particular subsection?

Mr. Griffith: Yes, this provision was here in the original Act, but the Minister of Works and Transport—has to have [*Inaudible*]

Miss Lucky: So in England if you do not provide there is also liability—

Mr. Hinds: If you do not provide; if you refuse to give a sample? So can we then construe his half-heartedness, his reluctance, and his pretentiousness to be deemed to be a refusal?

Mr. Chairman: Yes, but Mr. Hinds, that is really in the realm of prosecution and a trial and due process.

Mr. Hinds: No, no, that is a legislative matter.

Mr. Chairman: Yes, but I do not see how we could legislate for a half-hearted test.

Mr. Hinds: That is a problem because the guy can pretend he is breathing in there, which is what Professor raised the last time, but he is not. And then she in answer to our concerns about this said, you know if the officer asks him to do it several times at some point he must give enough.

Dr. Gopeesingh: Then it raises another issue if you think about that; there are some people who have an impaired lung function and really cannot expire to a full capacity.

Mr. Hinds: But he is drunk like hell and the police officer has come to that; precludes smell of alcohol and wobbly; in those circumstances or in the event of a reluctant, pretentious blow, then I think we should be able at that point to mandate a blood sample or something because he cannot be escaping on that basis.

Dr. Gopeesingh: But would that not be considered not willing to; if he is just only giving a small sample; that should be considered—

Mr. Hinds: That is what I said a while ago about deemed to be refusing as in the provision we just read. If the man says, I have a lung dysfunction that does not permit me to exhale, but he is still a threat to people on the road, what do we do?

Miss Lucky: Two issues, Mr. Chairman I think are being raised, but I think the legislation actually deals with it. I am on subsection (5):

"A driver who, without reasonable excuse, fails to provide…"

Minister, I think that caters for what you are talking about, because "he fails to provide" is in fact wide enough to encompass this recalcitrant blower. The second thing is, with respect to if the person is very drunk and you are not getting the specimen, I think we always have to just bear in mind, a police officer will still have his powers to take the person down to the police station to arrest him for driving without due care and attention, dangerous driving, reckless driving.

The breathalyzer is meant, in my view, to really become more of a deterrent; to deter people from drunk driving and it is meant to act in conjunction with all the others. I am saying, ideally, we want him to subject himself to giving the breath test, but let us say for all the other little creative ways he does not, the police officer has a fall-back position.

Mr. Hinds: Except I am saying in response to that, that I may be driving along a lonely road; I may be driving along the Hochoy highway, not a lonely road; my vehicle is the only vehicle 200 yards ahead of me and 200 yards behind me; I "ain't" lick down no street sign; I "ain't" do nothing. I may show signs of wobble or so, but I "ain't" lick down nobody; I "ain't" put no other driver or vehicle at risk and the question of driving without due care and attention may not necessarily arise because I wobbled my vehicle.

Miss Lucky: It does. There is case law that says even if you are on a road where you are not jeopardizing anyone because it is physical—and you have made this point also in relation to something else. Even though physically impossible because there are no cars—as you gave that suggestion—there are no pedestrians, no sign posts to knock down, I mean you really are just a hazard to yourself and the law says that is still enough, because there are certain rules; you are supposed to drive in your lane at all times, whether there are cars on the road or not. Driving without due care and attention still encompasses it.

Mr. Hinds: So if I left my side of the road to avoid a pothole?

Miss Lucky: That would be different because then you will give justifiable cause; go in the courtroom and explain why you did it.

Mr. Hinds: Just to answer Dr. Gopeesingh's point, now.

Mr. Chairman: Excuse me, Mr. Hinds and Miss Lucky, we are on page 9, subclause (5). Could we deal with this subclause and can we move on?

Mr. Hinds: We are dealing with it, Mr. Chairman.

Mr. Chairman: Could you show me which part of subclause (5) you are dealing with.

Mr. Hinds: The whole of subclause (5), Mr. Chairman, be patient, "nah". You see the "without reasonable excuse", Dr. Gopeesingh, the question of the condition that you raised that covers it. Now we can proceed.

Mr. Chairman: You are comfortable with the words "without reasonable excuse"?

Mr. Hinds: Oh yes, I am comfortable with the analysis as put dealing with the question I raised for the recalcitrant blower.

Mr. Chairman: So you are comfortable with the words "without reasonable excuse" to deal with that and the word "fails" to deal with wider—

Mr. Hinds: Yes.

Prof. Deosaran: Mr. Chairman, I have a view on this legislation. Apart from enforcing the law, I believe it is largely a preventive exercise; a deterrent.

Mr. Chairman: You are absolutely correct.

Prof. Deosaran: If you read the UK enforcement the thing will drop after a while, but the powerful objective of this is a deterrent, but at the same time, you must enforce the law. I am wondering though, because the question about the specimen remain an important point, it might be in a sense, not only a legislative matter but a technical matter. That is why we should have somebody here to tell us whether the equipment is sensitive enough and the extent to which it may or may not be fooled. For example, in chemical analysis, a drop of some material is sufficient to do all kinds of micro-analysis. Is it the same thing with a breath; does it have to come from the lung itself or is it—

Dr. Gopeesingh: I plead ignorance.

Prof. Deosaran: That is what I am saying. So, Mr. Chairman, you could perhaps advise the person. Thirdly, could we put an adjective before specimen so as to satisfy Mr. Hinds' concern?

Mr. Chairman: Which one are you on?

Prof. Deosaran: Subclause (5). Rather than saying "a specimen", could you put in a word—I think Mr. Griffith can help us—something like "proper" or "viable". Would that be superfluous?

Mr. Griffith: In terms of the specimen and cheating and whatever have you, what I was trying to find out, both from Prof. Pinto Pereira and Dr. Reid, was the whole question of the time and the number of tests that should be done, because what is coming out is that these officers should be properly trained. But if they are not properly trained, the Committee has the opportunity here to consider putting that in the regulations, so that the police would be forced to have the observation team then and the first and second test.

Mr. Chairman: Perhaps you could also look at the UK experience and see what sort of regulations they have and whether they go to that level of detail in their regulations.

Miss Lucky: Mr. Chairman, could I ask the question on this point? In the United Kingdom—through you to Mr. Griffith—is there provision for roadside testing in the UK?

Mr. Griffith: It appears so, Miss Lucky.

Miss Lucky: Could I ask you to check? The only reason I am asking you to check is this, bearing in mind what Dr. Reid said about the 15 minute delay, I am wondering if in the United Kingdom or maybe in other jurisdictions, they do not do the roadside testing with the breathalyzer, they make you perhaps walk in a straight line, touch your nose and so. By the time they get you down to the police station, by which time they will be monitoring you to make sure you are not throwing anything in your mouth and so, to throw off the test, 15 minutes or more may pass to get you down to the police station and that is how they circumvent the time problem. To make sure that by the time you have done it, you have been in their custody literally for 15 minutes or more. So that might be interesting to look at.

Mr. Chairman: We will check that, but I am 100 per cent certain they do breathalyzer testing in the UK at the roadside; this is where we got it from. We got concept of a roadside test using a breathalyzer—

Miss Lucky: I was just thinking that might have been the way to circumvent that problem.

Mr. Chairman: No problem and we can check all of that. Let us move on. Subsection (6).

Miss Lucky: Excuse me again, Mr. Chairman, I am really sorry to be the constant recurring decimal, but this brings back the point that the breath test and the breath analysis—because how else was the police officer going to know as a consequence of the breath test to have the proportion of alcohol in his breath exceeding the limit if the breath analysis was not being done simultaneously or at point. That again highlights the problem.

Dr. Gopeesingh: I think what Miss Lucky is bringing is a very relevant thing because this one is saying breath test and not breath analysis; so we really have to differentiate one from the other. And then, if it is really the analysis this section is speaking about we have to include it.

Mr. Chairman: Precisely, and this is why I asked Mr. Griffith to bring clarity to this issue at the next meeting, because as we turn the page we will see an entire section called breath analysis. Let us go on.

Dr. Nanan: I am dealing with subsection (6) with respect to breath test. I am sure you are aware that if somebody has alcohol in the vehicle and just took one sip or just drank one mouthful of alcohol, that will, in terms of a breath test, show up as a high level, because instantly, less than five minutes it is excreted in the lungs; the person is not drunk.

Mr. Chairman: Yes, correct. That is what the two medical doctors were dealing with; the absorption of alcohol, but they dealt with that. You see you have to have certain assumptions when you are taking this test; you have to assume the person has been drinking heavily; you have to assume the person is normal, that they do not have any medical condition; you have to assume that they are breathing properly; you have to assume that they do not have elevated temperatures, because if you do not make those assumptions then the whole thing is nonsense and that is why I had asked earlier on, perhaps we need to get an expert to tell us how do you deal with challenges such as the one you are possibly raising; that look, I only just took a sip of alcohol, I was not drinking at all; as you reached I took a drink or I have a fever and therefore the test is

inaccurate, or, I am an asthmatic or whatever it is. We need someone to come to us and tell us how do you deal with these issues such as the one you have also raised.

Mr. Hinds: But from a scientific standpoint, what the doctor said is that the 15-minute delay will be an answer to this problem.

Mr. Chairman: That will be captured in the CD, when the doctor gives it to us that Dr. Nanan could read.

Mr. Hinds: You understand? So if "de fella" says I just had one, the officer leave him for 15 minutes—

Mr. Chairman: Mr. Hinds, Mr. Hinds, please, I will have to cite a Standing Order on you for tedious repetition.

Dr. A. Nanan: If he wants to argue I could go even further to argue. If the man had a heavy carbohydrate meal it could mask the effect of the alcohol.

Mr. Chairman: Dr. Nanan, I am not accusing you of tedious repetition; not you Dr. Nanan.

Miss Lucky: Mr. Chairman, I am being so cautious to make sure I am tagging on to your points so that I do not get accused of tedious repetition, even though I feel the Minister is not really guilty of tedious repetition to be quite honest. Because I think, as the attorneys-at-law who practise in the courts, we want to make sure we get it right, not just in terms of law but in terms of successful prosecution because you do not want to deflate the impact by having somebody win and then it is like the same thing that happens with copyright and piracy in the country.

Through you, Mr. Chairman, Mr. Griffith, is there a section whereby we have done it for alibi defenses, for example, whereby if an accused knows he is going to raise an alibi, he has the time limit within which to indicate that to the court? Mr. Chairman, it is just something for us to think about. If somebody is going to challenge the breathalyzer result, could we not put in a section that says or gives it an opportunity; it would not be the end for him, but he could indicate immediately upon result what exactly; I just took the sip of alcohol? You could put that. So that would give him a level of protection which Prof. Deosaran, I think, is constantly concerned about and rightly so.

That is also going to help the prosecution at the end of the day. It would not be proof beyond a reasonable doubt but certainly what could be used to the advantage of the prosecution is, you had your chance and you did not; you are not deprived from further raising something, but clearly there could be some form whereby you say, look, yes it is positive—because you will have to be told—and indicate immediately I had just taken a drink. It is something to think about.

12.00 noon.

Mr. Chairman: If you look at Page 12 at the bottom, and I would ask, do not look at it for to long. It gives one of the possible defences to being found as driving under the influence that it shall be a defence to a prosecution to an offence under subsection 5(a) if the accuse satisfies the court that he was unable on medical grounds at the time he was required to do so to undergo a breath test or to submit to a breath analysis as the case may be.

I am simply using this as an example, so that what we can do is that, as we go through, if the legislation does not cover all of the possible defences raised by everyone in this room we can see whether we can add it to the legislation. Okay.

Dr. Gopeesingh: I will give you a practical application of this on Page 12 under subsection (6) if he has two fractured ribs he cannot expire properly so he may use this as an excuse.

Mr. Chairman: And we have the other one that Ms. Lucky is raising that persons could possibly say, look I just took a drink two minutes ago.

Ms. Lucky: I am saying that I do not want to go the way of listing every defence, that will never be possible and we, to creative a people to come up with it. I am suggesting something else which is a little more, all encompassing and not as specific. I am just saying that when we reach to this section—but I am asking you to think about it before we reach there because we are moving with rapid haste—is that when you get the result, because the legislation provides for the accuse to get result of his breath analysis indicating it is positive; I am saying at that point in time, maybe, there could be an attached form or something whereby he could indicate his position. He is not bound by it. It does not have to be admissible because he is not bound by it, but if he wants to in the

court case, certainly could be admissible to show his level of credibility or consistency as the case may be.

Mr. Chairman: Again, I do not want you to look at it for to long, but if you look at Page 13 you will see that as soon as the analysis is over the constable has to give the person a statement specifying the concentration of alcohol, the time of day, et cetera. So that all I am saying, in order to address the general issue that you are raising as we go through, if you do not think that it is covered in the legislation we can add it in. I am not suggesting we have 10 different possible defences, perhaps only the one that you are referring to would be appropriate.

Ms. Lucky: The excellent place and we would jump to Page 13. I am saying we will get back because, Mr. Chairman, you are very fussy about getting the chronology in order. I am saying that is exactly where you might contemplate putting it; that is exactly where.

Dr. Nanan: Mr. Chairman, this section shows that the man could be sober when he is being tested by the police.

Mr. Chairman: Which section?

Dr. Nanan: Page 13 subsection (7); this same record that is given by the police when the breath analysis is done at the station he could be sober in that car when he was first arrested by the police and he could be found drunk after this test is performed.

Mr. Chairman: No problem. When we reach Page 13 and subsection (7) we will address those issues, okay. Thank you very much. This is why I was telling Ms. Lucky, do not look at it for to long. I was hoping you would not look at it at all, okay. [*Laughter*]

Can we go back to Page 9 subsection (7), please? "Where a person required…" Mr. Hinds are you with us?

Mr. Hinds: Yes.

Mr. Chairman: Thank you. Page 9 subsection (7):

> "Where a person required by a constable under subsection (1) or (3) to provide a specimen of breath for a breath test fails to do so and the constable has reasonable cause to suspect that the person has alcohol in his breath or blood above the prescribed limit, the constable may, without prejudice to section 70A (5), arrest

the person without a warrant but no such arrest may be made if the person is at a hospital as a patient."

So we are dealing with the situation, the person has refused to provide a specimen of breath for a breath test and the constable has reasonable cause that he has alcohol in his blood above the prescribed limit, he arrest him and we move now to subsection (8): [*Interruption*]

"A person arrested under subsection (7) or section 70A (5) shall, while at a police station, be given an opportunity to provide a specimen of breath for a breath test at the police station."

So what this means is that you are at the roadside, they hold you and say, "Blow into this"; they know the person appears to be drunk and say, "Down to the station"; they are giving you another chance to blow into this instrument and it just another chance; That is what I am seeing here. Ms. Lucky, did you see any issue with this?

Ms. Lucky: Yes I do, and just to mention that with subsection (7) I still need the clarification so I am just putting that on the record. Subsection (8), Mr. Chairman, I like the idea of being given a second chance; how will that relate now to go back a bit subsection (5):

"A driver who, without reasonable excuse, fails to provide a specimen under…(1), (3) or (4)…"

So I did not give it at the roadside but on the way down I really thought about it and I realize now that you give me a second chance; you want to be the beneficiary of not having this section being used against you. I am talking about the charge.

Mr. Chairman: You cannot, because if you look at subsection (8) it specifically refers to 70A (5), so that it says, if you did not do it at the roadside we are giving you another chance to do it in the station. Therefore the conviction will only kick in—

Ms. Lucky: No, with the greatest respect that is not saying that.

Mr. Chairman: You are not seeing that?

Ms. Lucky: I am not seeing that at all. "A person arrested under subsection (7) or section 70A (5) shall…I am not even seeing the relation…while at a police station, be given an opportunity..."

How does that go on to relate to (5) to say that you are not going to—

Mr. Hinds: That (5) that the Chairman just read is from 70B not 70A.

Ms. Lucky: Correct.

Mr. Chairman: You are correct. So you are saying that this person could be charged twice? I do not see any offence.

Ms. Lucky: Not charged twice. No, no, no, excuse me, could I finish. I just want to finish the point and it is this; in (8) we are saying:

> "A person arrested under subsection **(7)** or section 70A(5) shall, while at a police station, be given an opportunity to provide a specimen of breath for breath test at the police station."

Mr. Chairman indicated what was an intention, which is, look, you did not give it at the roadside and you were being given a second chance to give it. I then said, well, look, I like the idea of the second chance, because you did not like the idea of the police pulling you at the side, but you are thinking about it now and you are willing to succumb and I am asking us to relate to subsection (5).

Mr. Chairman: Okay, what we can do, if we go back to Page 9 subsection (5) we can add in the third line under subsection (1), (3), (4) or (8) because what this means is that if they fail to provide it under subsection (1), (3), (4) or (8) they are guilty of an offence.

Mr. Hinds: I think that is a proposal that needs to be considered.

Mr. Chairman: No problem, I accept that. Okay, so Mr. Griffith you understand the intent. Let us move on now, we will come back to that in the next meeting.

Let us move on to the infamous breath analysis which is causing us all so many troubles. "Section 70C (1) Subject to subsections (2) and (3) where—

> (a) any person required by a constable under section 70B to undergo a breath test fails to undergo that test; or
>
> (b) in consequence of a breath test carried out under section 70B, it is indicated that there may be present in that person's breath, a concentration of alcohol in excess of the prescribed limit,
>
> the constable may require that person to submit, in accordance with the directions of the constable, to a breath analysis."
>
> Before we complete our deliberations on that I would also like to read (2) and (3):

"(2) The breath analysis referred to in subsection (1) shall be carried out at a police station by a constable authorized in that behalf by the Minister responsible for national security.

(3) A constables shall not require any person to undergo a breath test or to submit to a breath analysis—

(a) if that person has been admitted to hospital for medical treatment and the medical practitioner in immediate charge…;

(b) if it appears to that constable that it would, by reasons of injuries sustained…be dangerous to that person's medical condition to undergo a breath test…;

(c) at that person's usual place of abode."

So you cannot test somebody at their home? Is this what this is saying, Mr. Griffith?

Mr. Griffith: Right.

Mr. Chairman: So you have to test them on the road. You have to test them in the station. Fine! Let us go back to 70C (1), the person has failed to undergo a breath test—

Mr. Hinds: What is the rationale of not being able to do it at his home?

Mr. Chairman: A man's home is his palace.

Dr. Gopeesingh: Private home.

Mr. Chairman: Come on, I mean privacy, what are you going in the man's house for?

Ms. Lucky: Subsection (4) goes on to indicate the instances when you can do it as his usual place of abode. Subsection (4) does provide it, because it went on.

Mr. Hinds: Yes.

Ms. Lucky: I know we could have done that but before we reach there; Mr. Chairman, I have a question and again I am saying this particular subsection I feel I am shooting in the dark because I need this breath analysis and breath test thing properly explained. But I also have another suggestion to make, we have officers who have come from the United Kingdom, can you, through, speaking with your colleague from the Ministry of National Security, find out whether any of them are familiar with the process and whether the committee, if it thinks it fit, through you, Mr. Chairman—

Mr. Chairman: I will find out.

Ms. Lucky: I think that is the best thing because maybe, in the United Kingdom there is—because we have taken the law from them.

Mr. Chairman: Well, actually, I was going to recommend that this was a good place to stop and I think we can stop now, if nobody else has any objection to that. I think on the next occasion—Mr. Griffith—we really need to get this cleared up and if one of the UK officers who is willing to expose himself to us, because they all supposed to be anonymous and secret, can come and tells us about the breathalyser or some other expert—Shaarda we will try to get that.

But, Mr. Hinds, clause 4 is a particular exception; it is if you have been involved in an accident that caused death or serious injury then you go into the man's house and you test him, okay.

Mr. Hinds: Because you need it.

Mr. Chairman: Not if you have a suspicion that he was driving, he has not been involved in an accident, he has not bounce down anybody. Under those circumstances you cannot go into his house. But if you feel that he is being involved in vehicular manslaughter or something like that—

Mr. Hinds: Well yes, serious charges. [*Crosstalk*]

Mr. Chairman: Yes, then you can go into—and that to me seems reasonable, that under those circumstances you can enter a man's house but not on a normal circumstances.

So we will close here. [*Interruption*] Mr. Hinds, hold on! There is only one person robbing this train. We are on Page 10; we have reached subclause (8) and we were still considering 70C on Page 10 and Page 11. We have not finished our deliberations on 70C and I just want to settle the record. Yes. Mr. Hinds.

Mr. Hinds: That is quite alright; let me leave you to rob the train.

Mr. Chairman: Thank you. [*Laughter*]

Dr. Gopeesingh: You all have a good thing going. [*Laughter*]

Mr. Chairman: You have to rein him in Dr. Gopeesingh. You have to rein him in. [*Interruption*] [*Laughter*]

So we adjourn; the next meeting will be Wednesday, January 17, 2007 11.00 a.m.

Thank you.

12.15 p.m.: *Meeting adjourned.*

MEETING OF THE JOINT SELECT COMMITTEE APPOINTED TO CONSIDER AND REPORT ON THE MOTOR VEHICLES AND ROAD TRAFFIC (AMDT.) BILL, 2006, HELD IN COMMITTEE ROOM NO 2, RED HOUSE, PORT OF SPAIN, ON WEDNESDAY, JANUARY 17, 2007 AT 11.22 A.M.

PRESENT

Mr. Colm Imbert	**Chairman**
Mr. Fitzgerald Hinds	**Member**
Mr. Satish Ramroop	**Member**
Ms. Pennelope Beckles	**Member**
Ms. Gillian Lucky	**Member**
Dr. Adesh Nanan	**Member**
Prof. Ramesh Deosaran	**Member**
Dr. Tim Gopeesingh	**Member**
Mrs. Shaarda Maharaj	**Secretary**
Mr. Ralph Deonarine	**Research Assistant**

ALSO PRESENT

Mr. Paul Griffith	**Chief Parliamentary Counsel**

ABSENT

Mr. John Jeremie, S.C.	**Member**
Mrs. Joan Yuille-Williams	**Member**

Mr. Chairman: I apologize for being late. I was ambushed by some reporters.

With respect to the matter raised by Miss Lucky, off the record, I assume—do you want to put it on the record?

Miss Lucky: It was just a suggestion, Chairman, because I know that sometimes, as you indicated, there may be a level of bombardment. The suggestion I made was that if Prof.

Deosaran was willing—just as a Deputy Chair, because sometimes, as you no doubt know—we would not want to go into the substantive aspects of the sections in your absence—but things like the reading of the Minutes and seconded them or entering into some kind of discussion without taking any policy decisions or changes, I thought it might be a good idea.

Prof. Deosaran: Unless you promise to come early.

Mr. Chairman: The problem is that it is my Bill. If discussions take place in my absence, then I will have to get involved. You might have to revisit everything when I come back. What I can do is give an undertaking that I will endeavour to be on time every time. If I do not show for some reason, I guess you could go through the Minutes, but even within the Minutes there might be some things I would want to contribute to.

Miss Lucky: As you see fit; I was just looking at it from a logistics point of view, but that is fine.

Mr. Chairman: Do we have a quorum? Let us deal with the Minutes first. Are there any corrections on page 2; page 3; page 4; page 5?

Prof. Deosaran: I want to make an observation; in fact, it might be a correction, 6.5. It states correctly that an adjective be inserted before the word "specimen", it should say why. I am suggesting it could be, if members agree, so as to help ensure the acquisition of a sample viable enough for a breathalyzer analysis.

Mr. Chairman: Sure, no objection.

Prof. Deosaran: So as to help ensure the acquisition of a sample viable enough for a breathalyzer analysis.

Miss Lucky: In 6.8 it says that Mr. Griffith was also asked to investigate whether there was a section in the UK legislation that dealt with an accused who knowingly raises alibi", had a time limit. That is completely wrong. What I did ask was whether in the UK legislation there was a section that dealt with whether any objection raised by an accused with respect to the taking of the sample or the readings, whether there was any time limit. I used the example of an alibi defence within which an accused has 10 days.

Mr. Chairman: Do you want to propose a correction to the Minutes then?

Miss Lucky: Maybe we could just put that Mr. Griffith was also asked to investigate whether there was a section of the UK legislation that dealt with an accused having a time limit within which to indicate his objection. Take out that whole thing with alibi.

Mr. Chairman: His objection to what?

Miss Lucky: His objection to any matter relating to the taking of the specimen.

Prof. Deosaran: Chairman, a last point. How do you correct something on the transcript?

Mr. Chairman: I think you have to draw that to the attention of Ms. Maharaj.

Prof. Deosaran: They are usually accurate, but it is an important distinction between the words "proper" and "improper". I suggested on the transcript on page 11—

Mr. Chairman: We could go to that in a little while; let me just get the Minutes out of the way. We will come back to you.

With those two corrections, can someone move the confirmation of the Minutes, please.

Miss Lucky: There is another correction, 5.1.2 on page 4. The question was put to members and a majority vote decided in favour of the quorum change from five to four. Miss Lucky and Mr. Hinds objected or did not agree and asked that the record—that would be it.

Mr. Chairman: With those three corrections, can I have confirmation. [*Confirmed by Miss Lucky*]

[*Seconded by Prof. Deosaran*]

Mr. Chairman: Now let us deal with Prof. Deosaran's issue. This is the transcript of which meeting?

Prof. Deosaran: The last one.

Mr. Chairman: What page would you be on?

Prof. Deosaran: Page 11. It says:

"Rather than a specimen could you put in a word something like improper or viable?"

What I really said was proper or viable, not improper.

Mr. Chairman: You suggest that instead of improper, the word should be proper.

Before we go into Item II, Mr. Griffith, I distinctly remember that you had some work to do. Do you recall what you were supposed do?

Mr. Griffith: It involved research. The CPC has asked me to let you know that the work is in progress and we would also be soliciting the assistance of your legal officer to carry the process forward. In terms of the difference between breath testing and breath analysis; there is a difference.

Mr. Chairman: Before you go there, what work in progress are you referring to?

Mr. Griffith: The research the committee has asked me to do. It appears on Item 4.1? Are we dealing with the Minutes?

Mr. Chairman: I am seeing something on page 3 of the Minutes, Item 2.2.4—[*Interruption*]—the question of assumption concerning normal conditions; how they deal with challenges to the accuracy of the test. Is this the research you are referring to?

Mr. Griffith: I am referring to 4.1, the difference between the terms breath test and breath analysis.

Mr. Chairman: Is that the research you are referring to?

Mr. Griffith: Yes.

Mr. Chairman: Could you tell me what you are doing with respect to 2.2.4?

Mr. Griffith: This is what I just spoke to, Chairman. In other words, the other items for research, work is proceeding on that.

Mr. Chairman: Do you have a time frame for completion?

Mr. Griffith: We expect that we will have an officer on board on Monday who will be able to provide such a capability, because of the constraints that limit our research capability, having regard to the work.

Mr. Chairman: I was just asking whether you had a time frame for completion.

Mr. Griffith: No more than one week.

Mr. Chairman: What about the time frame for completing the matters in 4.1?

Mr. Griffith: I can address that now.

Mr. Chairman: You can tell us with respect to 4.1 now and with respect to normal conditions, challenges to the accuracy of the test, et cetera, you should be able to tell us something within one week?

Ms. Maharaj, I would like you to write Mr. Griffith and remind him of all the things he has to do for us. Copy that letter to all members of the committee; so we would tie us up all loose ends.

Could we go to 4.1.0, Mr. Griffith?

Mr. Griffith: In 4.1 it reads:

> "On the matter of the defence between the terms breath test and breath analysis, Mr. Griffith stated that there was a difference, both in practise as well as in the UK legislation."

Section 6 of the UK legislation deals with breath tests. Shall I read it?.

"6(1) Where a constable in uniform has reasonable cause to suspect—

a. That a person driving or attempting to drive or in charge of a motor vehicle on a road or other public place has alcohol in his body or has committed a traffic offence while the vehicle was in motion; or

b. That a person has been driving or attempting to drive or being in charge of a motor vehicle on a road or other public place with alcohol in his body and that person still has alcohol in his body; or

c. That a person has been driving or attempting to drive or been in charge of a motor vehicle on a road or other public place and has committed a traffic offence while the vehicle was in motion, he may, subject to section 9 of this Act, require him to provide a specimen of breath for a breath test.

(2) If an accident occurs owing to the presence of a motor vehicle on a road or other public place a constable may, subject to section 9 of this Act, require any person who he has reasonable cause to believe is driving or attempting to drive or in charge of the vehicle at the time of the accident provide a specimen of breath for a breath test.

(3) A person may be required under subsection (1) or subsection (2) above to provide a specimen either at or near the place where the requirement is made or if the requirement is made under subsection (2) above and the constable making the requirement takes it at a police station specified by the constable.

(4) A person who without reasonable excuse fails to provide a specimen of breath when required to do so in pursuance of this section is guilty of an offence.

(5) A constable may arrest a person without warrant if—

(a) As a result of a breath test he has reasonable cause to suspect that the proportion of alcohol in that person's breath or blood exceeds the prescribed limit; or

(b) That person has failed to provide a specimen of breath for a breath test when required do so in pursuance of this section and the constable has reasonable cause to suspect that he has alcohol in his body, but a person

shall not be arrested by virtue of this subsection when he is at a hospital as a patient.

(6) A constable may for the purpose of requiring a person to provide a specimen of breath under subsection 2 above in a case where he has reasonable cause to suspect that the accident involved injury to another person or of arresting him in such a case under subsection (5) above, enter, if need be by force, any place where that person is or where the constable with reasonable cause suspects…"

Mr. Chairman: Just allow me. What we want to know is the difference between the breath test and the breathalyzer. I did tell you to go ahead and read it, but that seems to be a repetition of some of the other issues we were dealing with. Could you go through to the breath test and breathalyzer, please?

Miss Lucky: I just want to ask Mr. Griffith if the legislation being read from is the UK Road Traffic Act?

Mr. Griffith: The UK Road Traffic Act of 1988.

Miss Lucky: The Archbold I have in front of me gives updated sections and, in fact, breath analysis and breath test are defined in our legislation. I must admit I discovered that only last week. They are in our proposed legislation; it was defined section 70(g). I saw it specifically defined. Breath analysis means the quantitative measuring—it is on page 18.

Mr. Chairman: Well, Miss Lucky, that leads us to the point of let us go through the whole legislation.

Miss Lucky: I still have a concern. The reason is that I decided to try and do some educating of myself. I was referring to the Archbold 2006 which quotes the sections. With the greatest respect, I think these may be the updated sections of the 1988 legislation and I think I got it quite clear in my mind, bearing in mind what was passed in England, where they now talk about the preliminary breath test.

What is done in England is that when we talk about the breath test consistent with what is in 70(g), that is where the police officer suspects, "Listen, you have alcohol," so he gives you this preliminary test, that is the breath test. Based on that test, which would be the equivalent of the mechanisms of making you walk, using your finger to touch your noes, he felt "Nah, this is really looking like you have over the prescribed limit." He takes you down to the police station

to subject you to the breath analysis, which is where you could be asked to give another sample of breath or blood.

Mr. Chairman: If you read what is on page 18 in 70(g), the breath test means a test for the purpose of obtaining an indication of the proportion of alcohol in the person's breath and it speaks to a device. Then it says above that, the breath analysis means the quantitative measuring of the proportion of alcohol in a person's breath; again carried out by a devised prescribed for the purpose by the Minister.

Miss Lucky: If I might just read something. I am reading from section 6(a) as amended in the 1988 Road Traffic Act. It states:

> "A preliminary breath test is a procedure whereby the person to whom the test is administered provides a specimen of breath to be used for the purpose of obtaining by means of a device of a type approved by the Secretary of State."

So even in England, it seems that there is this device which was approved by the Secretary of State whereby they make this initial testing or assessment as to whether you really have too much alcohol on your breath. Depending on the result—there is no issue of charging at that point, it is just a preliminary indication. If at that roadside test, as you have been calling it, Mr. Chair, and rightly so, they find that preliminary breath sample testing shows that you seem to have more alcohol than is allowed, they take you down to the police station whereby you are subjected—using another device, whereby they do breath analysis. That is the calculation or the printout and that device is what is used should they decide to charge you.

Mr. Chairman: That makes sense. You would do a preliminary test at the roadside; that is an indicator, and then you would go under more controlled conditions and do a proper analysis. That clears up the mystery about the difference between the breath test and the breath analysis. Miss Lucky, I assume that having done a breath test and gotten a preliminary indication that the person may be over the limit, then you can arrest the person?

Miss Lucky: At the roadside—you arrested and are coming down to the police station now.

Mr. Chairman: Now, let us do a more accurate test at the police station.

Miss Lucky: One of the things, Chairman, not belabouring the point, but I guess I am a little personally excited that I sorted this thing out. When we talked about usual abode, that being one of the protections that a person got, in England that is not the case, because suppose you do the roadside test and the police officer is of the view that, "Look, this suggests that we have to do a

breath analysis," and you just said, "Well, look, I'm going to the car to get something," and you sped off down the road now. The police officer could follow you to your home, mash down the door if necessary—even though there has been no injury, because our section is very limited.

There is not that limitation or restriction in the UK, because their point of view is once we find your preliminary testing to be above, we are now taking matters of the law into our own hands to subject you to the analysis. I am raising it, because we might want to rethink this section which limits what could be done at the person's usual house or place of abode. So I am sorry if I have taken the time, maybe we could better move on.

Mr. Chairman: I think it would be a very incompetent police man, that having taken the preliminary test, would allow the person to escape and run into their home. I know in the United States it is not that easy to get into somebody's home to take a breathalyzer test. The US is very different to the United Kingdom. You are saying that in the United Kingdom, if they suspect the person has been driving under the influence, they can break down their door. I don't think that could be done in the United States.

Miss Lucky: We would follow the United Kingdom. What is interesting is that the Archbold 2006 actually discusses whether it was a contravention of a person's constitutional right, in terms of even the presumptions. What I thought was very helpful, and this was always Prof. Deosaran's concern primarily in mind; what they point out, at the end of the day, is that the prevention, which I would think is the objective of this Act, are stated clearly. The prevention of having persons who are unable to drive because of they are under the influence of alcohol, is overriding and, therefore, once you have that as the overriding test, it is not that the defendant is unprotected, but you cannot just go in a compromising way, then you may defeat the purpose.

We were at that section, if I remember last time; when we come to usual place of abode I think that is something we should consider, whether the restriction should exist. In the United Kingdom it does not. It just says here:

> "A constable may enter any place using reasonable force if necessary for the purpose of…"

And there are two reasons, one, imposing when there has been an accident in which there has been any injury, not even death. We have death; we say no, any injury, even to a vehicle.

Mr. Chairman: I do believe we also speak to serious injury.

Miss Lucky: They have not put the qualification of serious; they put just injury.

Mr. Chairman: I think this is something we need to consider very, very carefully, because this is novel legislation. We really need to creep before we walk. If you want my view, I could see that down the road, once we get the testing sorted out, public acceptance of the use of these devices. Then we could take it to the next stage where you will allow a police officer to break down somebody's door, if they feel that they need to test someone. That is just my personal view, but we could discuss that.

Miss Lucky: Point taken.

Prof. Deosaran: In my view, there is something I would like us to be careful about. The evidence to the court would, therefore, arise from the second test?

Mr. Chairman: Yes, the second test, not the first test.

Prof. Deosaran: You mentioned a printout; in the mechanics you are getting a printout from the device?

Mr. Chairman: That is also here. If you go into the legislation—that is why I was suggesting on the last occasion that we go right down to the end and then come back; flag all the sections where we have a query and then come back. If you look at page 13, it speaks to a statement in writing.

Prof. Deosaran: A statement from the printout?

Mr. Chairman: You may wish to have that tighter and say that you have to have the actual printout from the device; that would be something I have no problem with. In this legislation, there is an arrangement where the person is going to be given the results of the test in some kind of agreed format. You are talking about a tighter type of format.

Prof. Deosaran: A type; I would prefer one as a mechanical output.

Mr. Chairman: How can the constable falsify the printout from the machine?

Prof. Deosaran: If I get into that in terms of police integrity, we are going to have a long debate. If you get in that area I want to take the precaution early. That is why without any debate I want to make sure we have the proper result.

Mr. Chairman: I do not want you to get into that.

Mr. Griffith, is there anything you need to add now that Miss Lucky has brought up that point?

Mr. Griffith: No, Chairman; I think my presentation after speaking to what happened in section 6 of the UK legislation with the breath test itself, to make the same point. I have nothing else to say.

Mr. Chairman: Let us go straight into the examination of the Bill. Where were we on the last occasion? Page 11; just above that is the person's usual place of abode. Do you want to deal with your point now, Miss Lucky, or we have passed that?

Miss Lucky: Just bear with me.

Dr. Nanan: Throughout the legislation they speak about the prescribed limits. When I read the legislation, the prescribed limit is .08 per cent. I am sure discussion took place with respect to the .08 per cent.

Mr. Chairman: We had presentations on that.

Dr. Nanan: But .02 per cent and .05 per cent is what is being used in countries like Sweden and Norway; .08 per cent is the highest limit. Why are we going in that direction?

Mr. Chairman: It is not the highest limit.

Dr. Nanan: It is one of the highest that is used. Why are we benchmarking?

Mr. Chairman: Well, in the presentation that we had from Prof. Pereira and also in my presentation in the Parliament I made the point that 0.08 per cent is used in the USA and the United Kingdom, where we are borrowing this legislation from. In the presentation by Prof. Pereira, she made the point that this is going to be culture shock. I think the other expert made that point as well. Dr. Reid made the point that this is culture shock; therefore, she also was of the view that since the United Kingdom was operating with 0.08 per cent and the United States and there are some other large developed countries which use that limit, that should be the first limit that we should implement and then later on, again, as there is public acceptance, it becomes apparent that the police are operating these devices properly, we could consider going below the 0.08 per cent. That is why we picked that out.

Dr. Nanan: That is high. With respect to physiology and the way alcohol operates on human beings, according to body weight, between 120 and 180 pounds, and you are look at .08 per cent.

Mr. Chairman: Dr. Nanan, allow me to interrupt. The expert went through the entire thing: age, gender, body weight, temperature and the time alcohol is absorbed in the body, how many drinks a large man could have and a small woman; there was a whole table, a whole presentation on that.

Dr. Nanan: I read the documents.

Mr. Chairman: I am just making a point; we had a presentation on that.

Dr. Nanan: I just want it recorded that when you are dealing with alcohol levels, whether you are going from .02 per cent and .05 per cent, it is culture shock. Between .02 per cent and .05 per cent, it is very difficult to operate a vehicle. In fact, as it comes down from .02 per cent—

Mr. Chairman: Dr. Nanan, that is why we had the experts make the presentation to us. They did an entire presentation on the effects on the body; on vision, on your demeanor, your whole approach; you should have been there.

Dr. Nanan: I am not doubting your experts, but there is information outside there. In fact, there is a chart.

Mr. Chairman: I think we need to send you the CD.

Dr. Nanan: I read the document, but there is a specific chart with respect to body weight and alcohol.

Mr. Chairman: That is on the CD.

Dr. Nanan: Not that one; there are many outside there.

Mr. Chairman: What she produced for us is a chart showing body weight, the number of drinks and the points at which you become intoxicated.

Dr. Nanan: And .02 per cent would be the beginning.

Mr. Chairman: This chart showed that your average person, 150 pounds or so, would be over the limit by the time they take their third drink and the drink is defined by one six-ounce glass of wine, one 12-ounce beer and one shot of alcohol, rum, whiskey and so on. She or the next expert showed the difference strengths and concentrations of various types of alcohol: whiskey, vodka and all that sort of thing. We had a detailed and elaborate presentation.

Dr. Nanan: I just want the record—

Mr. Chairman: To show that you were not present; that is all it would show. [*Laughter*]

Mr. Hinds: I came a little late. I genuinely want to hear the member. You have a concern about 0.08 per cent. What is the heart of your concern over that? I do not understand what the objection is.

Dr. Nanan: My concern is in terms of the alcohol concentration and the effect on the body and the situation with driving. If you operate in the industry, you operate between .00 and .02 per cent.

Mr. Chairman: What industry are you referring to?

Dr. Nanan: Any industry operating machinery, it is .00 and .02 per cent.

Mr. Hinds: In terms of health and safety?

Dr. Nanan: Right, industrial science; at .02 per cent, the research shows that it starts to affect you.

Mr. Hinds: Sufficiently impaired.

Dr. Nanan: Exactly; you may not be legally drunk—

Mr. Chairman: Let me tell you the problem I am having with all of this. Mr. Hinds, if you would excuse me.

Mr. Hinds: But I have not heard his argument. I want to understand what the member is saying.

Mr. Chairman: Mr. Hinds, if you would excuse me.

Mr. Hinds: Why? I want to hear what the member is saying.

Mr. Chairman: Mr. Hinds, if you would excuse me. Will you excuse me?

Mr. Hinds: No, I want to hear the argument. He was halfway through. I want to hear what the member is saying.

Mr. Chairman: Okay, Mr. Hinds; just excuse me, please.

Mr. Hinds: Would you allow me to hear the point being made by the member? That is all I want to hear what he is saying, so I could understand. Every time he is about to speak, there is an interruption, so I never get the argument. We need to go through this thoroughly. Let me as a member of this committee hear the argument.

Mr. Chairman: Would you excuse me, please, Mr. Hinds?

Mr. Hinds: I do not understand why.

Mr. Chairman: But will you excuse me?

Mr. Hinds Yes, but out of sheer courtesy.

Mr. Chairman: At the beginning of these meetings, Dr. Nanan, when you were unavoidably absent, Minister Yuille-Williams made the point that none of us in this room were experts. Of all the people in this room, you may have the most expertise in this matter. The committee agreed that rather than advise ourselves on the physiology of human beings and the effect of alcohol on the body, that we should get recognized experts, medical experts, to give us, more or less a lecture, on how alcohol affects the body and how alcohol affects your ability to drive; hence the presentation from Prof. Pinto Pereira, which, I must say, was extremely comprehensive and went

through in detail the effects of alcohol with respect to body weight; the effects of alcohol with respect to temperature; what happens at 0.01 per cent, what happens at .02 per cent, .03 per cent.

She went through the entire range of alcohol concentrations, showing what the reaction of the body is at various concentrations of alcohol and also what was the practice in other countries. So while I am certain that you have a lot of expertise in this area; I do not think it is appropriate for members of this committee to pronounce on this matter as experts. Do you understand where I am coming from? While you have the most expertise in this room on this matter, and I readily acknowledge that—Dr. Gopeesingh may have equal expertise—I do not think the committee should be guided by your views, as an expert, on the effect of alcohol on one's ability to drive. That is just my position as Chairman. If other members of the committee believe that we should be guided by Dr. Nanan as an expert on the effects of alcohol, I will have no difficulty with that. That is simply the point I wanted to make, Dr. Nanan.

Mr. Hinds: I cannot agree with that as a principle, because committees, apart from being non-partisan and cross-party, they also provide for Members of the House who have a certain amount of expertise, because the experts who come here may not be necessarily more expert than members of the committee. I understand the point you are trying to make. We are parliamentarians and we brought experts to bring their expert opinion, but there would be members with expertise in law, medicine, engineering and social and political science who have expertise that they cannot separate themselves from. So can you cannot take that away from them.

He is to bring everything that he is to the committee's deliberations. I do not accept that as a guiding principle. I will accept that if it comes to a difference of view, then the democratic principle kicks in. But I am still to understand fully, with your kind leave, Mr. Chairman, the point that the member was developing, because I, being as I am, because I have come to realize from my continued reading of this Bill, that it is a little more complex than usual. This Bill and what it involves requires a little more analysis than usual; suffice it to be so.

Mr. Chairman: I do not wish to for us to go back and retrace our steps, because we have a deadline and this whole question of the effect of alcohol on the body and its effect on driving and a person's reaction time, I think we have exhausted that in this committee, with the presentation from the experts. I do not wish to retrace our steps and to go over old ground.

Dr. Nanan was unavoidably absent, but I think the committee has already accepted—and you can check the Minutes—the level of 0.08 per cent based on the expert presentations made to us. I do not wish to go back there. If the rest of the committee wants to go back there, no problem. Miss Lucky, do you want to go back over? Prof. Deosaran?

Prof. Deosaran: I want to make a comment. We are at an important bridge, as it were, between the opinions of a member, to which he or she is fully entitled. I do not think that Dr. Nanan was parading himself this morning as an expert. He was giving an opinion as another member, but at the same time, I do not think we should retrace every step we have already covered. I understand and appreciate your dilemma and I believe that we should carry on, but at the same time, leave it open for a member to intervene if, as Mr. Hinds is trying to get at, if the suggestion is plausible and important enough for consideration, because we want to go back to the House with a document that reflect Government public policy. So I think it is not only a matter of expertise, but it is a public policy document to which we are all contributing in the end.

Mr. Chairman: Professor, with due respect, it is a matter of procedure. We are trying to move along. If a member is absent during the presentation and could not pose the questions to the expert to why you are picking .2 or .5. There is no way that I am going to support going back, because a member was absent.

Prof. Deosaran: Well, you have to rule.

Mr. Hinds: It is unfair for us to go back there.

Mr. Chairman: I maybe overruled by the committee. We will not be going back over that issue.

Mr. Hinds: We have to balance that with sacrificing a good point where substance may be coming.

Mr. Chairman: Dr. Nanan, are you willing to defer this matter?

Prof. Deosaran: Ask for a vote and let us see.

Mr. Chairman: Do you want us to go over this issue? I have a proposal for you; if you look at this presentation that Ms. Maharaj has just handed to you, which has the chart with body weight and so on, I will give you an undertaking that at the next meeting, having examined that presentation by Pereira, if you want us to revisit that issue, I would be most happy to do that. Is that okay with you?

Dr. Nanan: No, but we will see.

Miss Lucky: I just have one request, if the committee would consider a changing of words; instead of saying "or serious injury", if we could take out the word "serious" and leave "injury of any person".

Mr. Chairman: What about the usual place of abode?

Miss Lucky: I am looking at the exception, subsection (4) which gives the instances in which a constable could, in fact, take the breath sample at a person's usual place of abode; subsection (4)(a)1.

Mr. Chairman: What is the definition of injury?

Miss Lucky: Injury would be any incident, however, minor the effect it has been on a person.

Mr. Chairman: Even a scratch?

Miss Lucky: It would not just be a scratch. When you say "injury of any person", an injury itself is something considered serious enough. In the UK that is the terminology they use. When you put serious, then you get persons coming now to bring action of what you meant by serious. I would suggest injury of any person.

Mr. Chairman: Mr. Hinds, as someone who has practised in the criminal court, what is your view. If we put the word injury, what does that mean?

Mr. Hinds: First of all, serious injury is a construct that is very well known to law. Secondly, since we are talking about going to a man's place of abode and we understood last week the restrictions on that on the rare occasions we would want to do that, and we are talking about it in the context of death, serious injury comes alongside death, rather than general injury, because a broken finger may not constitute serious injury alongside death. I do not have a problem with serious injury.

Mr. Chairman: I am asking, if we deleted the word "serious" and had only the word "injury"— is a scratch of your finger an injury?

Mr. Hinds: I think it would reduce it to that and that is not what the substance of the intervention at the man's home is requiring.

Mr. Chairman: Prof. Deosaran, what do you think?

Prof. Deosaran: Miss Lucky is trying to prevent abuse of the clause, artificial defences in court that would nullify the objective of the legislation. I think I would go along with Mr**.** Hinds.

Mr. Chairman: Okay, so we leave it as serious for now. I will tell all members, at the end of this process we can always come back. I have no problem with that. If you want us at the end of

our deliberations to come back to serious injury, I have no problem with that. Let us move on now.

"Notwithstanding subsection (3) a person may be required to submit to a breath test..."

And we have now found out what that is.

> "at the person's usual place of abode if the constable has reasonable cause to believe the person was involved in an accident on the road or other public place within the proceeding two hours, resulting in death or serious injury and at the time when the accident occurred, the person had an alcohol level in his breath exceeding the prescribed limit."

It appears to me that the test has not been taken. When the constable is pursuing the man and going into his house, he has not taken the test yet.

Miss Lucky: What has happened here now is that the person has sped off. If you are not requiring the person to do a breath test or to submit a breath analysis at the person's usual house of abode unless—we are getting there. These are all the things has, that is why I was suggesting the thing with injury; he is still protected, because the police officer in order to take the test at the person's usual place of abode, one, he must believe that the person was involved in an accident and there was death or serious injury; two, it must be within two hours; three, that the person had alcohol in his breath exceeding the prescribed limit and it was not feasible.

Maybe it was the manner in which the person was driving. This is what it contemplates. So the police officer saw this car swerving or actually saw the car actually knock somebody down, so he tells his partner, "You stay and get help for the person knocked down; I am following this person," and they engage in some kind of chase. The person reaches to his home. I am putting it on the record, at that point the police officer cannot say whether there is serious injury or not, because remember, in my scenario, he was the one who decide, "Listen, partner you jump out, see about the person knocked down; let me continue."

He does not know the level of injury at that point. What he does know is that the way in which this car was being driven and the direct impact so somebody is down on the road, there has been injury to a person. That is why it does not talk about forced entry. England went even further; they said even if it is by force. This is an instance in which you would not be able to violate anybody's constitutional right, but I think it is important, because have lots of accidents which are hit and run. Let us face it, we have a lot of hit and run incidents in this country. I know

that the committee has already given its view on it, but it was in contemplation of that kind of thing, injury to any person. Let us consider the hit and run situation.

Mr. Chairman: Mr. Griffith, what is in the UK legislation on this particular point?

Miss Lucky: It says in 6(e), coming under the rubric "Power of entry", is:

> i. A constable may enter any place using reasonable force if necessary for the purpose of—
>
> A. Imposing a requirement by virtue of section 6(5)…"

That is the section talking about the preliminary testing, so that is the equivalent of the breath test.

> "following an accident in a case where the constable reasonably suspects that the accident involved injury of any person."

So it is an even lower test in the United Kingdom. We have a much higher test. We put in time limit restrictions and so on.

Mr. Chairman: What I am seeing is that the UK legislation just said injury.

Miss Lucky: Yes, involving injury.

Mr. Chairman: It did not say serious injury.

Miss Lucky: That is why I was suggesting, with all the restrictions we have with time limits—

Mr. Chairman: Mr. Hinds, what is your view?

Mr. Hinds: In the scenario with the hit and run that was just described, the "he" from your example is not the police officer. The "he" was the civilian driving in the car with his friend, so it is not his decision to make. The constable is at some point after the accident informed. In the course of his investigations, he will see the vehicle, the person injured; he will also hear from the person who ran down the man: "I ran him down; he lives at that place, so I can identify the car; it has gone into that garage."

During which time, the constable still has an opportunity to make an assessment as to whether the injury was serious or not. The point you are making and I am taking is that the English legislation merely says injury to any person. Now we have a written Constitution, which the English do not. We have entrenched privacy and other such matter, although they have the principle that a man's home is his castle too. We now want an opportunity to go into a man's home without warrant; his usual place of abode, he is inside, and to request from him a test. That is what imposes the high standard on us.

Mr. Chairman: What is the problem you are grappling with?

Mr. Hinds: I feel that injury *simplicita* as say a swollen chin, a scratch on your finger, may not in the case of an observer looking at protecting the person from the infringements that Prof. Deosaran talked about, be justified; whereas if you are dealing with serious injury, which as I said is a construct known to law, it may warrant it.

Dr. Gopeesingh: There are two issues I would like to clarified. What we are looking at here is section 4 and it says:

"Notwithstanding subsection (3)…"

But subsection (3) talks about a person being in hospital for medical treatment and section 4 talks about doing the test at the person's usual place of abode. I am not certain why they are saying notwithstanding subsection 3. It might be subsection (3)(c)—

Mr. Chairman: It is (3)(c).

Dr. Gopeesingh: You have to put in that. It should be 3(c). I am following the discussion on the question of whether we should leave it as serious jury or have it as injury. I cannot make any decision on that. It is a very difficult thing for me. Can we get from our lawyers with tremendous experience what the courts will deem as serious injury? Injury is anything else. What is considered serious injury?

The last thing I want to mention, Chair, if someone was involved in an accident, he went home, really frightened about this whole thing, but he never consumed alcohol and a scenario comes that he takes two drinks at home. During those two hours, they take two or three drinks to calm their nerves. How would we be able to know—

Mr. Chairman: You are both falling into the trap, with the greatest respect to you, Dr. Gopeesingh, of not reading the legislation. That point is covered in the next clause. Go to page 12. I fell into that trap too, with this breath test and breath analysis; I should have read to the end. We have actually found a definition of breath analysis and breath test.

Look at 5(b) on page 12. They are talking about the person willfully altering the concentration of alcohol, obviously at his home. They go home and take a drink and they change the concentration of alcohol.

Mr. Hinds: He would not alter it to his detriment, but to his advantage. He tries to drink sugar water or plenty water to reduce the quantity of alcohol or he tries to suck a charcoal.

Mr. Chairman: Mr. Hinds, they speak of alter; they do not say increase or decrease:

"Willfully does anything to alter the concentration of alcohol in his breath or blood between the time of the event referred to in section 70 and the time when he undergoes the test."

Dr. Gopeesingh: Can that be construed as altering the concentration to try and reduce it?

Mr. Chairman: Yes, that is the whole point.

Dr. Gopeesingh: Putting out the scenario that if he takes a drink he is not consciously trying to alter the concentration in his blood. He does not even know that a test would come, that he would be subjected to an alcohol test. He knew that he was not drinking and so he goes home and takes two drinks. Suddenly, the police officer comes up within 10 or 15 minutes and finds that his alcohol concentration is above 0.08 per cent.

Mr. Chairman: This must have been a scenario that would have been dealt with in other countries. I have seen on television people avoid a breathalyzer test finding, which will implicate them, by getting home, taking a drink and walking out with a glass of alcohol in their hands. I have seen that on television shows. That is in North America. That apparently can happen in North America, where you can run into your home and take a drink and then tell the police officer, "Well, you cannot test me now, because I have been at home and I have been drinking in the comfort and safety of my home."

Dr. Gopeesingh: Supposed that happens in Trinidad and Tobago?

Mr. Chairman: There must have been challenges to prosecution in these countries with respect to that. If you look at what we said at the last meeting—let me just go to the Minutes.

Dr. Gopeesingh: Sorry to belabouring this point.

Mr. Chairman: That is no problem.

Mr. Hinds: Those guys beat the system and won their case?

Mr. Chairman: Mr. Hinds, just let me finish with Dr. Gopeesingh, please. I am trying to prevent Mr. Hinds from unnecessarily delaying the progress of this report.

If you go to the Minutes, I had asked Mr. Griffith to do research on what is being done in other jurisdictions and how they deal with other challenges to the accuracy of the test. Miss Lucky had suggested that we try to get one of the Scotland Yard persons.

Miss Lucky: Can I read something from the Archbold that I find interesting?

Mr. Chairman: Hold on.

Miss Lucky: I think it answers what Dr. Gopeesingh was asking.

Mr. Chairman: Mr. Griffith is still to provide us with that kind of technical support; bring someone who can give us real life examples of how persons tried to beat the test and how the prosecutor managed to get around that.

Mr. Hinds: In that scenario, the man goes and takes the drink, he not having had any before the accident, but the drink come between the accident and the police arriving within the two hours.

The result of the blood test will not be false; we have to get that clear. It will read if he has more than the usual quantity of alcohol in his breath; that is not a false test. That maybe more accurately described as a false positive, but that is not false, because you will find over the limit on the breath test, because he just had the vodka. However, the real question will be: Did he have it before the accident or after? He will now have to provide evidence to demonstrate satisfactorily that, "I had the drink between arriving home after the accident on the main road and the police arriving at my home." That is a matter for him.

Mr. Chairman: Have you finished with that point? In the United States, that is precisely the scenario that has been outlined, that the police abandoned the attempt to take the breath test, because in the US the experience has been that the burden of proof was on the police officer to prove that the alcohol the person consumed was while he was driving or he was driving under the influence, rather than what he consumed at his home.

Miss Lucky: I think the answer is in the United Kingdom itself and the point that Mr. Hinds made is very correct. I just want to read from two things. Dr. Gopeesingh I think you and other member would find it interesting: Defences—it is not long. It says:

> "The evidence of the breath test device can be challenged, but the scope is narrow. The most fertile source of challenge in the past has been in connection with the calibrations being outside the accepted parameters or the presence of high acetone levels. The approved devices currently in operation have a greater ability:
>
> a. To differentiate between various substances contained within a sample;
>
> b. To take account of mouth alcohol in a breath sample; and
>
> c. To deal with differences in samples that exceed certain parameters.
>
> In a 2005 case of Celdric v the DPP this is the point that was made. It was held by the House of Lords that section 5(2) imposes a legal burden on the accused."

We have a similar burden that is being placed on the accused. It is a legal burden whereby, as Mr. Hinds was pointing out, there are certain things he would have to prove. You cannot keep going to the United States jurisdiction, because we have the UK laws that we follow.

In the United States, for example, you cannot used improperly obtained evidence in a court room. In the United Kingdom, as in Trinidad and Tobago, you can use improperly obtained evidence. I use that as an example to show that we are on either end of the spectrum. So to take Mr. Hinds' point:

"But such a burden is not beyond reasonable limits or in any way arbitrary…"

Prof. Deosaran**,** I know this always concern you.

> "notwithstanding that it may infringe the presumption of innocence. It presumes and pursues a legitimate object, that is, the prevention of death, injury and damage caused by unfit drivers and the defendant has a full opportunity to show that there was no likelihood of him driving, a matter so closely conditioned by his own knowledge and state of mind at the material time, as to make much more appropriate for him to prove, on the balance of probabilities, that he would not have been likely to drive, than for the prosecutor to have to prove beyond reason doubt that he would, if a driver tries and fails to establish a defence under section 5(2)."

So the first thing they are pointing out here is that you had better know if you were in condition to drive, if we find you driving or you were not going to drive, but you were in charge of.

Mr. Chair, I think we should do as in the United Kingdom where they are talking about the assumption; because there are certain assumptions made. For example, as Dr. Gopeesingh said, the assumption is that once you went to the person's home, you took the breath test or you subjected the person to a breath analysis and it showed—I will call it very crudely—positive. Dr. Gopeesingh's concern is what if the person was understandably shaken, so they were in a fixed state to drive and had the test been taken at the roadside, it would have shown that they were not subject to any kind of criminal prosecution. But they went home and guzzled down some alcohol; they were just really shaken.

What they say in England is that, first of all, the reading that you get from the breath analyzing machine it is assumed that your breath alcohol was not lower; so that is the first thing you are assuming. Mr. Chair, just allow me to take my time to explain. You were home and your concern, Dr. Gopeesingh, is that when you were driving, you did not exceed the limit. But when

you went home and you were nervous, you drank, so that when took the test at home it exceeded. But based on those facts, you would not have been culpable.

In the legislation they assume that the reading they got at your home would show that you were over the limit; that is correct; that is the assumption. However, the law goes on to say this: That assumption shall not be made if the accused proves—so you have the knowledge that you took the drinks when the police were coming to your home, so if you could prove that you consumed the alcohol before you provided the specimen or it had taken from him. So that you now would have to prove—and maybe your family saw you—and your wife is going to say, "When he reached home, he was really nervous and he said that he just needed to take a drink."

The onus is squarely now placed on you. There are other exceptions that mean you cannot rely on the assumption. But to say that you would not have or we should a give a certain burden to the accused is wrong. For example, if you are found with a firearm, it must be the burden on you to prove that you have a firearm user's licence. If you are found with some kind of drug or something, you must, because it is within your knowledge. If the law were to always cater for the legitimate defences people would have, then we would never get prosecution. The law in England clearly provided—

Mr. Chairman: I was satisfied five minutes ago. [*Laughter*]

12.20 p.m.

Dr. Nanan: Mr. Chairman, I do not think this is tedious repetition what I am going to say because it was current within the context of this meeting, and it deals with the same breath analysis and breath test. I think I need to bring a little more clarification—

Mr. Chairman: What section of the Bill are you referring to?

Dr. Nanan: Section 70G.

Mr. Chairman: Section 70G what?

Dr. Nanan: Section 70G.(1).

Mr. Chairman: Dr. Nanan, we are on 70C(4).

Dr. Nanan: I agree, but—

Mr. Chairman: Wait a minute. When we get to 70G we will deal with that point, and if we have to revisit 70C, 70D, 70E, or 70F, we will, but we will not jump to 70G before we are finished with section 70C.

Dr. Nanan: We are not going to jump to 70G, I am just trying to bring some clarification because you are discussing 70G in all the relevant sections.

Mr. Chairman: Dr. Nanan, what we are doing now is Agenda Item 2; continuation of the examination of the Motor Vehicles and Road Traffic (Amdt.) Bill clause by clause. I do not want to jump all over the place. We will get to 70G, so hold your ammunition and fire power until we reach 70G.

Dr. Nanan: It is not about ammunition and fire power, it is just an explanation of what is taking place. It is a simple variation—

Mr. Chairman: Dr. Nanan, could I go through the clauses clause by clause please? If you have a specific point on 70C(4):

> "(4) Notwithstanding subsection (3)(c) a person may be required to submit to a breath test at that person's usual place of abode—"

Could you give me your views on that? If you do not have any views on that, could you wait until we reach 70G please?

Dr. Nanan: Well, I have views on that.

Mr. Chairman: Okay. What are your views?

Dr. Nanan: My view is that based on what Gillian said with respect to the analysis and taking the breath at home, let me explain something to you and when you read this—that is why in my preparation for this meeting I dealt with breath analysis and breath test.

Breath analysis really is actually when you have a 0.8 per cent limit, so when you are taking that road side test, the officer will have an instrument measuring anything over .08 per cent, not the actual concentration of alcohol in the bloodstream. It is when you go to the police station you will get the exact figure.

Mr. Chairman: How does that relate to 70(c)(4)?

Dr. Nanan: That is why when she spoke about the specific breath test that was done initially and then the one at home, so I just want to put the clarification—

Mr. Chairman: This is not a test at home. The test has not yet been taken. This is the first test.

Dr. Nanan: The defence that she put forward was with respect to the one taken before—**Miss Lucky:** No.

Mr. Chairman: No, this is the first test; no test has yet been taken.

Dr. A. Nanan: Yes, but in her contribution—

Mr. Chairman: Dr. Nanan, we are talking about somebody who a constable suspects has been involved in an accident that has led to death or serious injury for the time being, and she gave the example that a person has been knocked down and one police officer tells the other one to attend to the victim because he is going after the man. [*Interruption*] It is two police officers.

Mr. Hinds please. So there are two police officers, one tells the other to stay and attend to the victim and he is going after the other person. The person has not yet been tested, but the second officer suspects this person was driving under the influence, pursues the person, arrives at the person's home, the person gets into his house before the police officer arrives and the police officer now wants to enter that person's home and administer the first breath test, not the second one.

Dr. Nanan: Which would be the first breath test?

Mr. Chairman: The first breath test is the one that gives an indication. It is only a preliminary test that gives an indication that this person might be over the limit, and once the police office does the first breath test and finds that this person is over the .08 per cent, then the officer is right to take him/her to the police station to do a breath analysis under more controlled conditions.

Dr. Nanan: So what is the difference between the road side test and what the police is doing at home with respect to the breath test?

Mr. Chairman: It is the same thing.

Dr. Nanan: Well exactly, that was my point.

Mr. Chairman: It is the first test, not the second one.

Dr. Nanan: That was my point. The same instrument is being used whether it is on the road side or in the home.

Mr. Chairman: What is your point?

Dr. Nanan: That is my point. I was explaining the breath test and the breathalyser.

Mr. Chairman: We have not reached there yet, Dr. Nanan.

Dr. Nanan: But it is the same thing, they are using the same instrument to measure the breath test.

Mr. Chairman: We are not examining the instrument, or the test itself, or the analysis of the breath in this clause. What we are looking at is the person's right, whether the police officer has a right to enter the person's house to administer the test; not how the test is taken, what kind of machine is used, what kind of blood alcohol, none of those things. We are talking about whether

we should give the police officer the right to break down the person's door in the event of a minor injury and attempt to administer this test. That is what 70(c)(4) is all about. We have not reached the physiology of it yet.

Dr. Nanan: You are wrong, Mr. Chairman, but I will give way.

Mr. Hinds: Yes, you have to give way, you cannot argue with that.

Mr. Chairman: I am wrong?

Dr. Nanan: You are wrong and I will give way because the discussion was based on the breath test. You are going to do a breath test whether you are going to do it then or after, the breath test is still involved in the discussion.

Mr. Chairman: Okay Dr. Nanan, thank you. Your comments are noted. Let us go back to 70(c)(4) which we have been struggling with for about half an hour.

> "Notwithstanding subsection (3)(c), a person may be required to submit to a breath test at that person's usual place of abode—
>
> (a) if the constable has reasonable cause to believe that—
>
> (i) the person was involved in an accident on a road or other public place within the preceding two hours resulting in death or serious injury; and
>
> (ii) at the time when the accident occurred the person had an alcohol level in his breath exceeding the prescribed limit; and
>
> (b) if it was not feasible for a constable to require the person to submit to a breath test at the scene of the accident."

I want to pause there now. Does anybody have any amendments to that section I just read? No?

Mr. Hinds: I just want to point out with respect to (a) for our edification. The words "reasonable cause" means that the injury may not in fact be serious but the constable should have reasonable cause to think so and that is what the court is looking at, sincerity of purpose.

Mr. Chairman: Are you okay with this wording?

Mr. Hinds: Yes, with that part. Now, insofar as (b) is concerned "it is not feasible for a constable to require the person" does not affect the runaway person, but a victim of an accident presumably.

Mr. Chairman: No, it also affects the runaway person. That is not feasible, the man take off.

Mr. Hinds: Okay, fine. It also of course includes a "fella" who lies down in his vehicle.

Mr. Chairman: All right. Can we move on to the next page now? Unless you want to make a change.

Dr. Gopeesingh: Mr. Chairman, "if it was not feasible for a constable to require the person to submit to a breath test…"

Mr. Chairman: The person was not available.

Dr. Gopeesingh: But the constable requires this person to submit to a test at any time.

Mr. Chairman: The scenario which Miss Lucky outlined; there are two police officer in a car on patrol, they see a driver knock down someone, one police officer stops to take care of the accident victim, the other pursues the person. While they saw what was happening, it was not feasible for them to require the person to take the breath test because the person took off, escaped, left the scene. That is where the "if it was not feasible" comes in.

Dr. Gopeesingh: I have a difficulty with the words "to require".

Mr. Chairman: Well, he could not require him because the person was not there.

Dr. Gopeesingh: But he would always be requiring the person to do the test, but the fact that the "fella" ran away…

Mr. Chairman: I think it is a term of art.

Dr. Gopeesingh: Miss Lucky, can you explain that to me?

Miss Lucky: You want to take out the words "to require"?

Dr. Gopeesingh: The words "if it was not feasible to require…"

Miss Lucky: You need the words "to require" there.

Mr. Chairman: You need it because if you do not submit to the breath test or—

Miss Lucky: There is a reason. If I could just say why we need to use the words "to require" and Mr. Griffith can correct me if I am wrong. One thing is that you want to ensure consistency in language and what was created on page 8 is the whole idea of a police officer having the power to require a driver to provide…and here now you come back with the same phrase "to require".

Mr. Chairman: The constable would come up to the person and say I require you to take a test. Do you follow?

Dr. Gopeesingh: Thanks for the elucidation on it.

Mr. Chairman: Okay. Page 12, we have achieved a half page in the last hour.

Miss Lucky: I have a concern with respect to subsection (5) before we make the non-compliance of criminal offence. I am saying that we should—that is what (5) does—I think what you must do is create a section here that says that you must give a warning to the person.

In England for example it states:

A constable must on requiring any person to provide a specimen in pursuance of this section warn him that a failure to provide it may render him liable to prosecution.

That is the first thing, and the second thing is that a warning must be given. It is done in traffic accidents all the time. So you warn him beforehand, otherwise he could turn around and say: "I didn't know if I didn't give it, it was an offence."

Mr. Chairman: I have no objection to that. What does the committee say? Does the committee have any objection to including a provision for a warning?

Mr. Hinds: No, it does not take away anything, it adds.

Mr. Chairman: Good, so we will put that in. Mr. Griffith, you would have to provide us with appropriate form of words for that. May we move on now? Well the person has been warned.

"(5) Any person who—

(a) upon being required and warned…"

Mr. Hinds: Let me ask one question about that. In traffic accidents you get a warning of intended prosecution; that comes a few days because it is written.

Mr. Chairman: This is a verbal warning.

Mr. Hinds: These officers serve a written notice to you.

Mr. Chairman: Well, this is different, this is a verbal warning.

Mr. Hinds: That is what I was coming to.

Miss Lucky: As soon as you go to the police station you say I have been involved, I was right, but someone hit me and he/she was wrong, and as soon as you make the report in compliance with the Act—because it must be made within 24 hours—and as you give them that report they warn you verbally.

Mr. Chairman: Yes, I can see that as well. You have to be warned.

Mr. Hinds: I will tell you something; you warn me verbally, I can easily say you never warned me.

Mr. Chairman: Well, that happens all the time.

Miss Lucky: That is an oral confession; you can say you were never told of your rights and privileges.

Mr. Hinds: I know a warning of intended prosecution is given in written form by the police, because I got one the other day.

Mr. Chairman: All right, Mr. Hinds, I am comfortable with the concept of a verbal warning. That is done all the time; it goes with the burden of proof.

Mr. Hinds: You see, the reason I was saying this is because if we are trying to get a scenario where the warning is a protection against the person saying he did not know, you will want to be able to show to the court that he got a warning.

Mr. Chairman: Mr. Hinds, I think that is a question of practice and I would ask Mr. Griffith to advise us on what the practice is.

Mr. Hinds: I agree with you and I am saying if we are going to give the man an oral warning, he can easily say: "He lying on me." That is one thing, and evidence will deal with that. On the other hand, if he got a written notice which was served on him then that makes his lie a little more difficult to sustain.

Mr. Chairman: Mr. Hinds, I will check what the practice is.

Mr. Hinds: Yes, we will come to that but I just want to make one other point here. In the context of the scenario of lie it may be difficult to give it in writing. Anyway, let us proceed.

Mr. Chairman: I wanted to proceed about five minutes ago, Mr. Hinds.

Mr. Hinds: I did not hear.

Mr. Chairman: All right.

"(5) Any person who—

(a) upon being required under subsection (1) to submit to a breath analysis fails to do so in accordance with the directions of a member of the Police Service; or

(b) wilfully does anything to alter the concentration of alcohol in his breath or blood between the time of the event referred to in section 70B (in respect of which he has been required to undergo a breath test) and the time when he undergoes that test or, if he is required to submit to a breath analysis, the time when he submits to that analysis,

is guilty of an offence and is liable—

(c) in the case of a first conviction, to a fine of six thousand dollars or to imprisonment for six months; and

(d) in the case of a second or subsequent conviction, to a fine of ten thousand dollars or to imprisonment for twelve months."

Do we have any proposals for amendment to those sections? No. Okay let us move on.

"(6) It shall be a defence to a prosecution for an offence under subsection (5)(a) if the accused satisfies the court that he was unable on medical grounds at the time he was required to do so, to undergo a breath test or to submit to a breath analysis, as the case may be."

Miss Lucky: I have one suggestion, Mr. Chairman and I feel the reason given in (6) "was unable on medical grounds" I find we should have it wider. I always believe that the court must have some kind of latitude and I want to suggest that we include that "he was unable on medical grounds" maybe these words, or the words "with reasonable excuse". In other words, on medical grounds or for some other reason.

Mr. Chairman: What would be the other reason? Could you give me an example? Religious grounds, because I do not want to introduce that you know. What would be reasonable excuse? They ask you to take a test and you say no. What is your reasonable excuse why you said no, other than a medical reason?

Miss Lucky: Okay, hear this. This is the Act in England.

A person who without reasonable excuse fails to provide a specimen when required to do so in pursuance of this section is guilty of an offence.

They have explained what is meant by "without reasonable excuse" and it says:

The defendant has an evidential burden to raise the issue, once raised, the prosecution must disprove it. Reasonable excuse is undefined in the Act but it has been held that it must arise out of a physical or mental inability to provide a specimen or a substantial risk to health in its provisions. There must be a causative link between the inability and the failure to provide.

So they have just said on medical grounds, but they are giving it some level of scope and I just think to ask would mental grounds cover it?

Mr. Chairman: From what you have read, I would think that physical and mental deformity are all medical. That does not seem to be anything other than medical to me.

Miss Lucky: Okay, that might be substantial because it goes on to say:

> No fear short of a medically recognized phobia and spotted by medical evidence would excuse the failure. Genuine but unreasonable phobias may still however be accepted.

Mr. Chairman: No problem.

Miss Lucky: So you may not have had medical grounds. I am just saying—

Mr. Chairman: But a phobia is a medical thing. We can use the expertise of Dr. Gopeesingh.

Miss Lucky: I am just making sure that the legal words "medical grounds" would incorporate what Dr. Gopeesingh is saying.

Dr. Gopeesingh: A phobia would fit in on medical grounds.

Miss Lucky: Once you are sure of that, Dr. Gopeesingh.

Mr. Chairman: He is not a psychiatrist, but we will take that.

Dr. Gopeesingh: It is of a psychotic nature, not psychiatric. It is still a medical thing.

Prof. Deosaran: This is the first time we are having this legislation and it is likely we may have to review it as you have pointed out.

Mr. Chairman: We will, quite dutifully in about a year or two.

Prof. Deosaran: After the practice both on the road and in the court has gone through. I think I would like to go along with Miss Lucky in terms of giving the court sufficient scope to see whether there are other reasonable grounds that come up apart from medical reasons.

Mr. Chairman: The point she was making when she was reading out the learning was that all the grounds are medical, there are no other grounds. Could you repeat it for him?

Miss Lucky: It says:

> Reasonable excuses undefined in the Act but it has been held that it must arise "out of a physical or mental inability to provide a specimen or a substantial risk to health in its provision."

My concern was one of the points raised is that what I have just read, which is the full gamut of what the courts have said it to mean in England is, in other words, when a physical inability amounts to medical ground. I am not so satisfied as a lawyer, but if Dr. Gopeesingh says that it does—you see sometimes in medicine something may be—well clearly a physical inability is a medical ground but you see in law they went on to talk about a substantial risk to health.

Prof. Deosaran: You quoted a phrase "physical, mental" could you take that phrase and put it in the legislation here?

Miss Lucky: Well, the phrase they have used is "reasonable excuse". In other words what they did in England was use the words "reasonable excuse" so this section actually reads in the reverse way. It says:

A person who without "reasonable excuse".

We cannot use the word "without", so we are putting ours in the positive. So I am suggesting the following:

"…satisfies the court that he was unable on medical grounds or with reasonable excuse."

I was trying to make sure because—Dr. Gopeesingh, I take what you say—I am saying that the law, bearing in mind what was said in England, they seem to have differentiated a physical inability, a mental inability, and a substantial risk to health as being three specific things. Dr. Gopeesingh's point is "medical grounds" would incorporate, but I am not sure because they use health which I thought would be medical, but they are talking here now about a physical or mental inability.

Mr. Chairman: Well that is health, that is medical.

Miss Lucky: Okay.

Prof. Deosaran: My view Minister, is that wherever there is an occasion that there is a doubt, I would like to give the benefit of that doubt to the accused person. Given the innovation in the legislation—and I do not want to use the word culture shock and so forth—in this first step in the national community, I would like that wherever there are such grey areas to give it to the benefit of the accused unless it is a very serious issue.

Mr. Chairman: Professor, that is no problem. That is why I want Miss Lucky to just read the three categories again very slowly; physical, what and what?

Miss Lucky: It says:

Out of a physical or mental inability to provide a specimen or a substantial risk to health in its provision.

Mr. Chairman: Mr. Griffith, can you capture physical or mental inability, or risk to health in a form of words that would replace the words "medical grounds" for us so we can look at it at the next committee meeting?

Mr. Hinds: I do not think that they mean the same thing.

Mr. Chairman: Neither do I, but in the interest of democracy.

Dr. Gopeesingh: Is there any other area in that Gillian which indicates reasonable excuse other than medical aspects?

Miss Lucky: It would not take long; may I just clear this part with you?

Mr. Chairman: Go ahead.

Miss Lucky: The evidential burden on the defendant will not be satisfied by evidence to the effect that he was trying his best. What is required is evidence of a mental or physical infirmity which in almost every imaginable case will need medical evidence in support thereof.

Mr. Chairman: It is crystal clear to me that medical grounds cover it. So Mr. Griffith, I rescind my instructions to you. It is now 12.45 p.m., we have managed to do one and a half pages. Do you all want to stop now or try to attempt page 13?

Mr. Hinds: Stop now.

Mr. Chairman: Dr. Gopeesingh? I do not want to stop.

Dr. Gopeesingh: I am guided by my colleagues who have to go to Parliament.

Mr. Chairman: That is at 1.30 p.m., Dr. Gopeesingh and the door is just 20 feet away.

Dr. Gopeesingh: They may want to speak, so they may want to get their thoughts together and so forth.

Mr. Chairman: That is unlikely. So you are guided. Miss Lucky?

Miss Lucky: I would be in the committee's hands, either way.

Mr. Chairman: Miss Beckles?

Miss Beckles: I am neither here nor there.

Prof. Deosaran: I have to leave; I have a one o'clock appointment.

Mr. Chairman: You are free to leave. Dr. Nanan?

Dr. Nanan: Mr. Chairman, I would like to come back fresh.

Mr. Chairman: I would like to crave the committee's indulgence to try and spend about five more minutes and try to attack (7).

Dr. Gopeesingh: I like your work ethics, Chairman.

Mr. Chairman: I want to finish this.

[*Prof. Deosaran leaves*]

Mr. Ramroop: Mr. Chairman, those Members who are going back and back can study the Bill at home like Miss Lucky and when she came, she presented something positive. We wasted time today just going back and going back.

Mr. Chairman: I totally agree with you, and I assure you that will not happen at the next meeting. I will bring a little hammer next time and bring it down to end the discussion.

> "(7) As soon as practicable after a person has submitted to a breath analysis, the constable operating the breath analyzing instrument shall deliver to that person, a statement in writing signed by that constable specifying—
>
> (a) the concentration of alcohol determined by the analysis to be present in that person's breath and expressed in microgrammes of alcohol in one hundred milliliters of breath; and
>
> (b) the time of day and the day on which the breath analysis was completed."

Dr. Nanan, do you have any views on clause 70C(7)?

Dr. Nanan: Yes, Chairman. The whole clause 70C(7) deals with breath analysis so to rule what I was saying initially with respect to breath analysis and it being not done in my opinion was wrong.

Mr. Chairman: Very well.

Dr. Nanan: I was trying to point out that the breath analyzing instrument that is initially going to be used at the road side or the home would be giving a figure over .08 per cent. It would be just reading anything over .08 per cent.

Mr. Chairman: One assumes that—

Mr. Hinds: Dr. Nanan, are you saying—

Mr. Chairman: Mr. Hinds, excuse me, let Dr. Nanan finish. Go ahead, Dr. Nanan.

Dr. Nanan: So with respect to clarification, that is what I was pointing out. I have not seen the instrument, but I would believe that it would be .08 per cent because the prescribed limit is .08 per cent.

Mr. Chairman: Correct. Go on.

Dr. Nanan: And once the instrument reads anything over that, the person would be pulled in to the police station and given the accurate report of the amount of alcohol and that would be recorded. So the difference would be that the constable who is doing the roadside check or the initial breath test would have the specific—

Mr. Chairman: Is there a specific amendment you would like to make to this clause?

Dr. Nanan: No, I am not making any amendment.

Mr. Hinds: Let me ask a question.

Mr. Chairman: Mr. Hinds, since Dr. Nanan does not wish to make a specific amendment to subsection (7) do you wish to make an amendment?

Mr. Hinds: I have to decide on that, but he has to answer the question first.

Mr. Chairman: Go ahead.

Mr. Hinds: Dr. Nanan, are you saying that the machine that is used at the roadside—we are to see one because Miss Lucky asked for it—will not possibly be able to show .05?

Dr. Nanan: No, because it would be a prepared limit of .08…

Mr. Hinds: So anything that is .08 and above it will signal so it is not possible to get .04, or .06 on that machine?

Dr. Nanan: No, that is why I introduced it into—

Mr. Hinds: All right if you are correct—I have to clarify that—then we know now that it is over .08 which is our legal limit. Why do we need an analysis now?

Dr. Nanan: That is for the record—

Mr. Hinds: Just now. It will make no difference in legal analysis now whether it is 40, whether it is .10, or .12 it makes no difference because the law says anything over .08 takes you outside and you are over the limit. Why do we now need to go to find out in an analysis that it is 13 or 15 per cent? I would like an answer to that.

Mr. Chairman: I would like to answer you Mr. Hinds. The point is—and we have belaboured this point with which we were dealing before you arrived, because you arrived late—that the original test is merely *prima facie* evidence that you may be over the limit, it is not used for the purpose of prosecution. Are you okay now?

Mr. Hinds: I understand that.

Mr. Hinds: And since the original test is not going to be used for the purposes of prosecution, that is why we do a second one. The first test is merely an indicator. It will be used with the other tests such as; walk in a straight line, touch your nose, put your hand on your head, and all the various things that police officers would ask persons to do—sobriety tests for observation—this will fall into that rubric that this is yet another indicator, but it would be one of the more powerful ones that we would now need to do a control breath analysis of this person, and it is the controlled breath analysis that yields the data that is then used for the purposes of prosecution.

12.50 p.m.

That why you need both the first one and the second one. The first one is an indicator but it is not evidence that is going to be used to prosecute the person. Are you all right now, Mr. Hinds? Yes or no?

Mr. Hinds: Yes, I will accept that.

Dr. Nanan: I just want to make the point that if it is .079 per cent, the person could be carrying a blood alcohol level in his breath of .079 per cent and not be pulled up by the constable because the constable is going to read anything over .08 per cent.

Mr. Chairman: I think you are misunderstanding me. The constable is going to use a variety of means, as I just said, in order to arrive at a suspicion that this person may be over the limit. The constable is going to give the person the roadside test. He is going to look at the way the person is walking; he is going to see how the person is smelling; he is going to look at the person's demeanor; his behaviour, and so on. Now, if he does a roadside test and he gets .079, that may very well be an indicator, because the constable will also know that the accuracy of the roadside test is questionable.

Dr. Nanan: No, Mr. Chairman, the constable will not be able to get a .079 per cent.

Mr. Chairman: Why?

Dr. Nanan: Because if the thing is going to read .8 per cent and over—

Mr. Chairman: Why did you arrive at that conclusion?

Dr. Nanan: That is what I am saying—

Mr. Chairman: Who is telling you that? It is a false assumption. Who is telling you that the roadside breathalyzer will only send off a red light or something, if the person is over? Who is to tell you that that instrument is not giving you an actual reading?

Dr. Nanan: That is what I am saying. Are you saying that is not true?

Mr. Chairman: We need to ask.

Dr. Nanan: Exactly. So my point is, if that breath test is just an initial recording and it is going from anything over .8 per cent—

Mr. Chairman: Where did you get that information?

Dr. Nanan: But you cannot dispute that. Let us just say, hypothetically speaking, that is what is happening—

Mr. Chairman: Why are you saying that? It is not, Dr. Nanan. If you had been at the previous meetings; if you had read the literature circulated, including copious

specifications on the typical infrared devices, both at the roadside and in the police station, you would have seen that it is actually giving you a reading of your blood alcohol content. It is giving you 0.1, 0.01, 0.001, 0.02. That is what is happening at the roadside, but it is accepted that the conditions at the roadside are sufficiently unscientific for a prosecution to be obtained, in other words, the legal challenge that would arise from you attempting to use that roadside test; it might be raining; there might be a heat wave; the temperature might have dropped, all these things might be occurring at the roadside that is not strong enough evidence to prosecute, but you are going to be getting a reading at the roadside, not simply an indication that you are over the limit. Your actual blood alcohol content is going to be measured at the roadside. It is simply the accuracy of that that is questionable.

So what they are saying is, all right, we test you at the roadside; we get .081, right; you are wobbling; slurring your words; you are excited; your face is flushed; your nose is red; "yuh cussing"; "yuh" want to beat the police officer, and so on. You have taken the roadside test; 0.0811 is what they get, the man says: "Right, down to the station for you." So I want to disabuse you of any notion you may have that that roadside instrument is simply saying either whether you are below or above the limit.

Dr. Nanan: Mr. Chairman, I want to ask you one question. You say it is reading the concentration of alcohol roughly—

Mr. Chairman: May I interrupt you, Dr. Nanan? Mr. Deonarine, in addition to the presentation by Prof. Pinto Pereira which you have now handed Dr. Nanan so he can read, would you also get all the specifications on the breathalyzer devices that were circulated to Members and give it to Dr. Nanan?

Dr. Nanan: I was given that.

Mr. Chairman: So all the views that Dr. Nanan has in his head that this roadside device is simply telling you whether it is below or above, will go away.

Dr. Nanan: Well, Mr. Chairman, if the accuracy of the breath test is roughly .05 per cent on the meter, what will the constable do?

Mr. Chairman: He has to have a reasonable suspicion that you are drunk or over the limit. If he reads .05 and if he cannot really determine from your demeanor that you are

under the influence, well, he may not test you. He has to have a reasonable suspicion that you are over the limit.

What I would like to do now is to adjourn the meeting. I just want to repeat for those Members who are still in the room, that I had attempted on the last occasion to secure the services of a police officer, or prosecutor, or somebody who has experience in dealing with challenges to the accuracy of breathalyzer testing and I am still attempting to do that. I will still try for the next meeting to get such a person to appear before this committee to give actual experiences of the taking of a test and the kind of problems you have with difficult people and the kind of challenges that have occurred in the courts to the accuracy of the test. Okay?

The next meeting will be next week Wednesday at 11.00 a.m. Thank you very much. Lunch is provided.

12.55 p.m.: *Meeting adjourned.*

MEETING OF THE JOINT SELECT COMMITTEE APPOINTED TO CONSIDER AND REPORT ON THE MOTOR VEHICLES AND ROAD TRAFFIC (AMDT.) BILL, 2006, HELD IN COMMITTEE ROOM NO 2, RED HOUSE, PORT OF SPAIN, ON WEDNESDAY, JANUARY 24, 2007 AT 11.15 A.M.

PRESENT

Mr. Colm Imbert	**Chairman**
Mrs. Joan Yuille-Williams	**Member**
Mr. Fitzgerald Hinds	**Member**
Mr. Satish Ramroop	**Member**
Ms. Gillian Lucky	**Member**
Prof. Ramesh Deosaran	**Member**
Mrs. Shaarda Maharaj	**Secretary**
Mr. Ralph Deonarine	**Research Assistant**

ABSENT

Mr. John Jeremie, S.C.	**Member**
Ms. Pennelope Beckles	**Member**
Dr. Adesh Nanan	**Member**
Dr. Tim Gopeesingh	**Member**

ALSO PRESENT

Mr. Paul Griffith	**Chief Parliamentary Counsel**
Ms. Laurelle Ralph	**Legal Officer, Ministry of Works and Transport**

Mr. Chairman: Members, I would like to call this meeting to order please. Can we start the meeting and let us go to the minutes of the fifth meeting.

Page 1, 2, 3, 4, and 5, there are no corrections

Minutes are confirmed as read.

Minutes confirmed by Miss Gillian Lucky

Seconded by Mr. Satish Ramroop

Can we start with the examination of the Bill? Where did we leave off the last time?

Can we start with e Mr. Griffith has a note. We did clause 7.

Clause 8 states:

"In relation to section 70A or 70B—

(a) evidence may be given of the concentration of alcohol present in the breath of the accused as determined by the breath analyzing instrument operated by the constable authorized in that behalf under subsection (2);"

Page 10, clause 70C(2) states:

"The breath analysis referred to in subsection (1) shall be carried out at a police station by a constable authorized in that behalf by the Minister responsible for national security."

Clause 8(b) states:

"the concentration of alcohol so determined shall be deemed to be the concentration of alcohol in the breath of the accused at the time of the occurrence of the event mentioned in section 70B(1)(a)…"

"that a person driving or attempting to drive or in charge of a motor vehicle on a road or other public place has alcohol in his breath or blood exceeding the prescribed limit or;"

"…unless the accused proves that the concentration of alcohol in his breath at the time did not exceed the prescribed limit."

Any comments on subclause (a) or (b)?

Miss Lucky: Here they are passing the burden on to the accused. He would have to prove on a balance of probability. He could argue that the time that you took his test, even though it is deemed in law to have been what his alcohol level would have been

when he was at the scene would have affected a proper reading. He is given a very wide ambit here to challenge.

The law is seeking to say that when the breath analysis is taken at the station it would be deemed to be what it was at the incident. The accused having been given that legal burden, it has been done many times you then have to rebut it. You can rebut it in many forms.

Mr. Chairman: Supposed he walks with his breathalyzer.

Miss Lucky: Sure, if he has his breathalyzer because he could always challenge the readings when he gets the results. He might want to give his breath sample at the incident or do some kind of independent testing. At the roadside he would b giving the breath and not the analysis. It is like for being in possession of drugs when they deem you to have it for the purpose of trafficking when the burden is passed over to the accused. The good news is that he would have a lower standard of proof. We learnt about the temperature. The onus will be on him to show why.

Hon. Member: When you say "he" you mean his lawyer?

Miss Lucky: Yes, because at that point he would be advised. He has to be advised when he is taking on his right to an attorney at law.

Mr. Chairman: Page 14.

Hon. Member: Is the decision of whether he is right or wrong made in court?

Miss Lucky: He gives the breath sample at the roadside; he goes down and there is an analysis. The police would depend on that analysis to determine the charge. They would have arrested him but not charged. They would use that analysis to determine whether they would charge him. At the point when they decide they would charge him, in the interim he would have had his lawyer. Based on the previous section he is supposed to get a copy of the breath analysis report or printout. At that point having been charged he could indicate that he wants to get a doctor or give a blood sample. He has his rights of challenge.

Mr. Chairman: They may still charge him but he has objected and made it clear that he does not agree with the readings and wants his independent readings. This speaks to evidence. If you back up to the first clause, evidence may be given of the constitution of

alcohol. If you go down, "unless the accused proves the concentration of alcohol did not exceed the prescribed limit."

In the court when the constable is giving evidence, he tested the man and that is what he found. They could apply to have that evidence thrown out.

Miss Lucky: No. This section is indicating that in (a), evidence may be given of the concentration of blood present by the person who operated it. If for some reason there is a challenge by the defence and the printout as documentary evidence, this would allow the police officer to give viva voce evidence. He would say what he did and the reading.

The second thing paragraph (b) is making the presumption. You are doing the analysis at the police station. An hour of half an hour may have passed. The evidence has to relate at the time of the commission of the offence. In the United Kingdom they said that what they got as the reading in the police station would be deemed to be the reading when they arrested you and brought you to the police station. You as the accused have the right of challenge. When the printout of the analysis is given to you, you can say, that is what you get here now but that is not how much alcohol I had in my blood when you pulled me across.

Mr. Chairman: Then they can throw out the evidence.

Miss Lucky: You do not throw it out at that point in time. There would be a challenge.

Mr. Chairman: Let us read it in its entirety. Go back to the line after (8) on page 13 which says, "evidence may be given" come back to the bottom "unless the accused proves that the concentration of alcohol in his breath at the time did not exceed the prescribed limit."

I read that as that evidence cannot be given if he proves this.

Miss Lucky: In other words (a) is completing itself. It says:

> "evidence may be given of the concentration of alcohol present in the breath of the accused as determined by the breath analyzing instrument operated by the constable authorized in that behalf under subsection (2);"

This has allowed either the constable to come or the printout.

Mr. Chairman: This is at the site.

Miss Lucky: We are in the courtroom.

Mr. Chairman: Is this evidence what we would take outside?

Miss Lucky: This is what you got from the breath analysis.

Mr. Chairman: At the station.

Miss Lucky: At the station. It goes on to say:

> "the concentration of alcohol so determined shall be deemed to be the concentration of alcohol in the breath of the accused at the time of the occurrence of the event mentioned in section 70B(1)(a) unless the accused proves…"

If he cannot prove—

Mr. Chairman: If he proves what happens?

Miss Lucky: If he proves it would be a matter for the finder of fact. Because you have put the burden on to the accused to prove that it was not, if he does not disprove it, then it is accepted that it was. If he proves it that means you would be believing his evidence and as a result, you would be disbelieving the evidence which is before the court. It would not be throwing it out because the evidence would still be before the court.

Mr. Chairman: It means that the concentration would not be deemed.

Miss Lucky: It means that having deemed it he was able to rebut it. It is a rebuttable presumption

Mr. Chairman: It is not longer deemed to be the concentration.

Miss Lucky: Yes. Because he would have overcome his burden.

Mrs. Yuille-Williams: What do I do at the station? If I am the accused, the drunken driver; the constable takes the reading; I disagree then at the station, what is my position?

Mr. Chairman: This is where you have the opportunity to prove that that reading is incorrect.

Mrs. Yuille-Williams: At the station?

Mr. Chairman: At the station.

Mrs. Yuille-Williams: Something is strange. I am hearing the courtroom. I am not hearing what is happening at the station.

Prof. Deosaran: The question of proof and rebuttals are matters before the court. It cannot be at the station. That is not the adjudication.

Miss Lucky: The Minister asked a very important question. She now has a printout and realizes that she is over the limit. They say that they are going to charge. The Minister wants to know what would be her position. This is my concern. If you are denied bail, it

means that you might want an independent assessment. You might decide to give a blood sample because you are trying to amass your evidence for when you go before the court. If you are denied bail it means that you cannot leave the police station. Unless you can get a doctor to come there to take a sample of your blood or do some kind of independent analysis, you would be in a problem. I am pointing out that. The Minister has made a good point. She realizes at once that she wants to challenge.

Mr. Chairman: Look at the practice in the UK for us please.

Page 14, (9) states:

> "In relation to section 70B, a certificate purporting to be signed by a constable certifying that—
>
> (a) he is authorized by the Minister responsible for national security to operate breath analyzing instruments:
>
> (b) a person named therein submitted to a breath analysis;
>
> (c) the apparatus used by him to make the breath analysis was a breath analyzing instrument prescribed by the Minister in accordance with regulations made under section 70H;
>
> (d) the analysis was made on the date and completed at the time stated in the certificate;
>
> (e) a concentration of alcohol determined by that breath analyzing instrument and expressed by in microgrammes of alcohol in one hundred millilitres of breath was present in the breath of that person on the date and at the time stated in the certificate; and
>
> (f) a statement in writing required by subsection (7) was delivered in accordance with that subsection,…"

You have to give the person the statement giving him the results of the test.

> "shall be prima facie evidence of the particulars certified in and by the certificate."

That seems straightforward.

Miss Lucky: 70B deals with the breath test. Here, we want the evidence of the breath analysis. That is (c).

Mr. Chairman: That looks like a typo. Mr. Griffith check that and the preceding page where they spoke about 70B. That seems to be 70C to me.

Miss Lucky: **"**(f) a statement in writing required by subsection (7) was delivered in accordance with that subsection,".

That talks about giving the constable operating the breathalyzer instrument as soon as is practicable.

Mr. Chairman: What do you want to say? Forthwith?

Miss Lucky: For consideration I am trying to throw out as soon as practicable. You do not want any accused person through his lawyer to say it was not as soon as practicable because he the analysis was done in the morning and he never got the reading until maybe, two days after.

Mr. Chairman: I feel he should get it within a couple minutes.

Prof. Deosaran: What about saying with a reasonable time?

Miss Lucky: That would be a bit challenging. That is why I reread the United Kingdom's position. The instruments we are going to use would be very important. Their entire legislation is based on the instrumentation and device. They actually created the legislation based on the device. That is why they have to change along the way. In England, now, it is as you do it there is a printout. You have to make sure that you have a device to do it otherwise you would create law—

Mr. Chairman: I would want an instrument where a print comes out and you hand it to the man. Would forthwith do?

Miss Lucky: Forthwith might be a bit tight.

Mr. Chairman: What do you want to say?

Miss Lucky: Could we say within and put a time period? Within one hour?

Mr. Chairman: One hour is what I had in my head. If you cannot do that, forget it. People have to be trained to do that.

Prof. Deosaran: I want to reaffirm what you said because it is one of my concerns. I would like a mechanical printout in addition to—

Mr. Chairman: We will do that in the regulations.

Mrs. Yuille-Williams: Will you have the time when you take the sample to get into the station?

Mr. Chairman: The person is in the station; the breath analysis has been performed on them; the machine has given the results; we are now saying that within one hour of that event you must hand the person the statement. Instead of "as soon as practicable", it is "within one hour".

Mr. Griffith change the words.

Let us go to page 15. It states:

> "(10) In proceedings for an offence under this section, a certificate purporting to be signed by the Minister responsible for national security that the constable named therein is authorized to operate breath analyzing instruments, shall be prima facie evidence of the particulars certified in and by the certificate.
>
> (11) In any proceedings for an offence under this section, evidence of the condition of a breath analyzing instrument or the manner in which it was operated shall not be required unless evidence that the instrument was not in proper condition or was not properly operated has been adduced."

You all okay with that? You are okay with that, Miss Lucky:

Miss Lucky: Believe it or not yes.

Mr. Chairman: Okay. So that is approved?

Miss Lucky: It will be a difficult thing for them to approve, but we are going at something that the United Kingdom is on the presumption of regularity, presumption it runs away.

Mr. Chairman: Okay. Laboratory test. Subject to sub-section—[*Interruption*]

Miss Lucky: Could I say just for the record that if think what would be important, I know you are talking about the rules and the regulations that will go with this, that we must have somebody who is monitoring if the machines are working properly so that the prosecution in case there is a challenge there is something there.

Prof. Deosaran: Maybe the manufacture could give you maintenance?

Mr. Chairman: No, I think it will have to be calibrated.

Miss Lucky: Yes.

Mr. Chairman: Some laboratory will have to calibrate these instruments at some interval.

Prof. Deosaran: Yes, but you are talking about maintenance too.

Mr. Chairman: No, that is what calibration is. They will check the machines to see if it is actually reading the proportion of alcohol properly.

Prof. Deosaran: But after a year or some the machines might want a little—[*Interruption*]

Mr. Chairman: No, then they will have to come back. They have to calibrate that machine every year or whatever it is. That is what I meant. That is what I intent to put in the regulations.

Mrs. Yuille-Williams: But you would have an operative for the machine?

Mr. Chairman: A constable will be trained to use the machine, no he is talking about the accuracy of the machine.

Mrs. Yuille-Williams: And what you are saying is some maintenance—[*Interruption*]

Miss Lucky: I want to make sure, the maintenance I understand is done through calibration. It is like a scale.

Mr. Chairman: Calibration is like any instrument. It has to be calibrated by a certified lab at regular intervals. 70D:

> (1) Subject to subsections (2) and (3), in the course of an investigation as to whether a person has committed an offence under section 70A, (which is driving under the influence) a constable may require a person under investigation to provide a sample of blood for a laboratory test if the person is unable, by reason of his physical condition, to provide a sample of breath for a breath test.

Fine. But Mr. Griffith, again, see if that is breath analysis or breath test. See if they have not fixed it up. Yes, Miss Lucky.

Miss Lucky: I am just concern, I know that Prof. Deosaran has raised this point. In England, for example, what is done is that they take two samples of your breath to be analyzed, but can waive giving the breath for analysis and you can go and give blood instead. You might decide that you is safer with a blood test. Now the way we have it here, it is really the constable who is exercising his discretion unless limited circumstances which will be coming up in sub-clause 2.

Mr. Chairman: I do not want to give the person the option to take the blood test because everybody will then say, I want a blood test and they will challenge the blood test. I just

see that as introducing a loop hole for the person to avoid getting caught by the breathalyzer because this is the Breathalyzer Bill.

Miss Lucky: Yes.

Mr. Chairman: So I do not want to give them an option to avoid the breathalyzer. Okay?

Prof. Deosaran: No, but the breathalyzer analysis is an inference as to what is contained in the blood.

Mr. Chairman: We going with that. That is the whole point of the thing.

Prof. Deosaran: I know, but—[*Interruption*]

Mr. Chairman: Why are we measuring if we are not going to use it?

Prof. Deosaran: Well, if you want an option to go directly to the blood.

Mr. Chairman: That is in the legislation already.

Prof. Deosaran: All right, what are the practical problems in supply a blood sample in equipment and—[*Interruption*]

Mr. Chairman: Hygiene; the doctor has to be present; the place has to be antiseptic; all kind of things. The person has to be trained to draw blood; they have to be able to hold the vein properly.

Prof. Deosaran: Miss Lucky how is it in England, is blood test an option or is it an—[*Interruption*]

Miss Lucky: It is an option. In other words, you are taken down to the police station and you are supposed to give two breath samples, but you can waive giving the breath samples and give blood instead. You can say I am not going with the breathalyzer, I am going with the blood

Mr. Chairman: Who are you giving blood to?

Miss Lucky: Sorry?

Mr. Chairman: Who you give blood to England?

Miss Lucky: In England, there are people who are well trained. We do not have that here.

Mr. Chairman: Exactly.

Miss Lucky: We have deplorable police station where—

Mr. Chairman: They have the facilities, they have the personnel and they have the arrangements for taking blood.

Miss Lucky: My concern would have been the hygiene because I would not really like to be subjected myself to giving blood and some needle that I cannot be assure it was not used on somebody before.

Mr. Chairman: Contract of disease, I do not want that.

> "(2) A person shall not be require to provide a specimen of blood for a laboratory test under subsection (1) if he is at a hospital as a patient and the medical practitioner in immediate charge of his case is not first notified of the proposal to make the requirement or objects to the provision of a specimen on the ground that the requirement to provide such specimen could be prejudicial to the proper care or treatment of that person."

It seems straightforward to me.

Mrs. Yuille-Williams: I know you are not a medical person, but could you go back to section 70D(1) "By reason of his physical condition", what physical condition?

Mr. Chairman: Unconscious. He is unconscious or he has a broken rib or a punctured lung. In other words, he is capable of exercising his lungs to exhale in manner that will produce the specimen. A court will figure that out, I would think so. Not so, Miss Lucky?

Miss Lucky: I agree.

Mr. Chairman: Page 16, we are doing well this morning. The usual protagonist is not here. [*Laughter*]

70D continues:

> "(3) A constable shall not require a person to submit a specimen of blood for a blood analysis once a breath analysis has-been carried out in respect of that person and the result is available."

You see they are going straight to the breath analyzer.

> "(4) Nothing in subsections (1) to (3) shall affect the provisions of section 70F."

Let us see what F is. That seems to be the manner in which you will take a blood sample and so on.

Miss Lucky: Yes.

Mr. Chairman: So, we will go on.

> "(5) For the purposes of this section and sections 70A, (so 70E is driving under the influence) 70E (someone under investigation and refuses to give a sample of blood) and 70F (is the procedures with respect to the taking of blood sample), where any person is required to provide a specimen of blood, such specimen shall be taken only—
>
> (a) with the consent of that person;
>
> (b) at a hospital; and
>
> (c) by a medical practitioner or qualified laboratory technician."

So it makes it clear that the blood sample must be taken at a hospital, which makes sense to me.

Miss Lucky: I think it does.

Prof. Deosaran: Would the word clinic be subsumed as a hospital?

Mr. Ramroop: It could be a health centre also.

Mr. Chairman: Let me see if there is a definition Hospital means an institution which provides medical or surgical treatment for inpatients or outpatients and includes any place recognized by the Minister as a place where laboratory test are carried out. Okay? So it will be any place—[*Interruption*]

Mr. Ramroop: Any health centre.

Mr. Chairman:—this meets those criteria. Now I was initially a bit concerned that you had too many Ministers making too many orders under this legislation because you have National Security and Works, now you have Health. If you look at the next one:

> "(6) The Minister with responsibility for health shall by Order designate laboratories for the purpose of giving effect to this section."

I previously was thinking of saying, "the Minister in consultation with the Minister responsible for Heath shall by Order designate…" What do you all think. I was trying to reduce the number of Ministers.

Mrs. Yuille-Williams: I think with all the health care facilities which will give the order. All the health care facilities are normally—

Mr. Chairman: So you just give one?

Mrs. Yuille-Williams: Yes.

Mr. Chairman: So you do not see it as a problem? Now that that I am going through, I no longer have that—I just felt that you have National Security specifying the instrument. Ministry of Works specifying everything and Health now saying the lab.

Mrs. Yuille-Williams: But at the moment, the Minister of Health specifies where the samples could be taken for other things. So it would be the same place

Mr. Chairman: No, no. I no longer have that view now that I realized what was going on that they want to make sure that it is under control conditions, the blood sample. Okay, I will leave that so. 70E:

> (1) Any person who is under investigation in relation to an offence under section 70A and who refuses to provide a sample of blood for a blood test when required to do so under section70D(1)—[*Interruption*]

Miss Lucky: For personal reasons [*Inaudible*]

Mr. Chairman: 70D(1) was he refuses when he is required under 70D(1), 70(D)2 was the physical reason. 70D(1) is subject to subsection (2) and (3)

Miss Lucky: No, 70D(1) talks about by reason of his physical condition, to provide a sample of breath of breath test.

Mr. Chairman: Okay, so he cannot give a breath test and he is now asked to give a blood. Okay.

Miss Lucky: And he is refusing.

Mr. Chairman: And he refuses to provide a sample of blood for a blood test when required to do so under section 70(1) is guilty of an offence and shall be liable —

(a) in the case of a first conviction, to a fine of six thousand dollars or to imprisonment for six months; and

(b) in the case of a second or subsequent conviction, to a fine of ten thousand dollars or to imprisonment for twelve months.

Now, what about the person who is on unconscious? Miss Lucky?

Miss Lucky: Then he cannot be deemed to be giving consent.

Prof. Deosaran: If he is unconscious, I think the first consideration should be revived him, not to charge him and prosecute him. You have to wait until he recovers.

11.45 a.m.

Mr. Chairman: Instead of calling it 70D(1), let us call it section 70D, because 70D(2) talks about the fact that the person is in hospital as a patient and the practitioner can object. If we change it to just 70D alone, do you think it will deal with that?

Miss Lucky: 70D(1) specifically deals with what comes after. It says: when required to do so under section 70D(1).

Mr. Chairman: But 70D(2) says he is not required to do so.

Miss Lucky: But look at the wording of it; it says: and who refuses...when required to do so under section 70D(1). To get when you want, you would have to put in another phrase then.

Mr. Chairman: That is what I want to do.

Miss Lucky: Just put in another phrase.

Mr. Chairman: Mr. Griffith, can you handle this for us? Do you understand what I want? The person is unable by of his physical condition to give any sample; breath, blood whatever; so you have to wait until he is able.

Mrs. Yuille-Williams: That is what I was asking at 70D(1): by reason of his physical condition... I asked if he was unconscious; but now this is saying if he is unconscious you still cannot take it.

Mr. Chairman: In (2) it says that he is not required to give a specimen of blood if:

> "the medical practitioner in immediate charge of his case...objects to the provision of a specimen on the ground that the requirement to provide such specimen could be prejudicial to the proper care or treatment of that person."

What I want to do with 70D(1) is to put some words in so that if the person is unable because of his physical condition to give any sample, he has not committed an offence.

Mrs. Yuille-Williams: I go back to 70D(1) which I asked about and you said that it could not be if he is unconscious, but now what you are saying is exactly the opposite.

Mr. Chairman: No, no, no, no. What 70E says is that: Any person who is under investigation in relation to an offence under section 70A... 70A is driving under the influence: and who refuses to grant a sample of blood for a blood test when required do so under section 70D(1). 70D(1) says: A constable may require somebody under investigation to provide the blood test... Obviously if the person is in a condition where they cannot provide it, we do not want him to be guilty of an offence; that is what I am

trying to avoid. I am trying to avoid somebody who is unconscious being charged for failing to provide the blood test and the breath test and all those kinds of things. Mr. Griffith, could you look at that, please.

Miss Lucky: You went one step further. Mr. Chairman, I know you hate when I use my terminology, but I like to put on record what I think. I did it years ago and it was never a problem. Section 70E(1) is already making the exemption which the Minister was concerned about, because clearly if you were unconscious you would not have been in a physical state to give the breath and that was already catered for. I am suggesting to let it read: when required to do so under section 70D(1) or is unable to do so by virtue of section 70D(2).

The other thing, Chair, that you were concerned about was that this section presently does not protect, and it should, is a person who was in a physical condition in terms of ability to give, but the doctor says, "Look, you cyar take blood from this man."

Mr. Chairman: Mr. Griffith, could you examine the proposal and we will sort that out at the next meeting.

Are you okay with the fines and imprisonment and so on?

> For the purposes of subsection (1), a person shall not be treated as failing to provide a specimen unless he is first requested to provide a specimen but refuses to do so.

70F says:

> For the purposes of any proceedings for an offence under section 70A a certificate signed by an authorized analyst certifying the proportion of alcohol found in a specimen identified by the certificate shall subject to subsection (3), by evidence of the matters so certified and of the qualifications of the analyst.

This has to be blood.

> (2) For the purposes of any proceedings for an offence under section 70A, a certificate purporting to be signed by the medical practitioner that he took a specimen of blood from a person with that person's consent shall, subject to subsection (3), be evidence of the matters so certified and of the qualifications of the medical practitioner.

(3) Subsections (1) and (2) shall not apply to a certificate tendered on behalf of the prosecution---

(a) unless a copy has been served personally on the accused or his counsel not less than seven days before the hearing or trial; or

(b) if the accused, not less than seven days before the hearing or trial, or within such further time as the court may in the circumstances of the case allow has served notice on the prosecution requiring the attendance at the hearing or trial of the person by whom the certificate was signed.

That is straightforward.

Miss Lucky: I am concerned with, "unless a copy has been served personally on the accused." I am not into the rules with respect to civil law. I do not know if anybody could assist me or if Mr. Griffith could check. You do not want it to be served personally, because if the accused seeks to evade service that is how he will circumvent it. In civil law what I think they do is that you are considered to be served with summons and so forth, provided it has gone to your stated address. I think that is how it is done; I am subject to correction. I would suggest take out the word "personally has been served" and, therefore, we would get the wider meaning; otherwise they will run away.

Mr. Chairman: Sure. We need a definition of service; so Mr. Griffith look at that and see whether we need a definition of service, like under the rules of the Supreme Court.

Miss Lucky: If you check with the Solicitor General's Department they could assist you with the new rules.

Mr. Chairman: Having been served many times. [*Laughter*]

Mr. Hinds: Since this is a criminal offence, civil rules may not so easily apply.

Mr. Chairman: I said rules of the Supreme Court.

Mr. Hinds: Yes, but they are civil rules; they may not necessarily apply. Given the fact that this is a criminal offence, I rather suspect that service in this context will mean much like service of a summons.

Miss Lucky: Service of a summons does not have to be personally; it is at the stated address of the accused person. Once the court is satisfied that it went to that address, then that is deemed to be service.

Mr. Hinds: Or sometimes thrown at a person's foot and that sort of thing.

Miss Lucky: I am talking about the criminal context, because in criminal law when they are checking for magisterial appeal... For example, we had an issue last week where the issue was whether it was served for a criminal matter and they said once it was sent, TTPost verified that it was sent to the address given, that it was deemed to be service; so Mr. Griffith could check. Take out the word "personally".

Mr. Hinds: We need to clarify that first, because you can send a summons... For example, even my driver's permit; if the police check the licensing records they may see an address. While I have a legal duty to inform of a change of address, I may not be living there.

Mr. Chairman: All of your concerns can be covered by the definition of service, because what we have asked Mr. Griffith to do is that in addition to deleting "personally" and just using "serve," we are going to insert a definition of what service means. What that definition comes to the committee, we can deal with all the issues you are raising.

Let us move on to page 18.

> (4) Where, in proceedings for an offence under section 70A the accused, at the time a specimen of blood was taken from or provided by him, asked to be supplied with such a specimen...

This is the point that was coming up earlier; that the person has a right to get a specimen of the blood that has been taken from them.

> "evidence of the proportion of alcohol found in the specimen shall not be admissible on behalf of the prosecution unless the specimen is either one of two taken or provided on the same occasion or is part of a single specimen which is divided into two parts at the time at which it was taken or provided and the other specimen or part was supplied to the accused."

That is giving some protection now to the accused.

Miss Lucky: For blood.

Mr. Chairman: With breath I do not know if that is possible.

Mr. Hinds: For my benefit, if somebody could tell me a little more about these words, "provided by him" how would this operate?

Mr. Chairman: There is something beforehand about how you take the blood test that such specimen shall be taken only with the consent of that person at a hospital and by a medical practitioner or qualified laboratory technician.

Mr. Hinds: So in what circumstances will it be provided by him?

Mr. Chairman: Firstly, it can only be taken at a hospital; secondly, it can only be taken by a medical practitioner or laboratory technician certified by the relevant authority and when the sample is taken, he has to supply the person with it. Are you concerned about the time? What is your problem?

Mr. Hinds: Usually, if the police are taking someone for a sample, they are going to be there and the sample is typically going to be handed to the police for the benefit of the prosecution. I can imagine immediately a situation where he can show up and say, "This is my blood sample and I am providing it."

Mr. Chairman: It says here:

> Where in proceedings for an offence under section 70A the accused at the time a specimen of blood was taken from or provided by him asked to be supplied with such a specimen. Evidence of the proportion of alcohol found in his specimen...unless the specimen is either one of two taken or provided on the same occasion.

So on the occasion that the police got it, he has to get it the same time. In other words, at the same time they gave the police, they give him. That is how I read it. Miss Lucky, how do you read it?

Miss Lucky: I agree with that reading.

Mr. Chairman: In other words, they cannot give the police today and give him tomorrow, that would be a defence. Under this Act, if they did that he would have a defence to say that is from the same time and same sample.

Mr. Hinds: It is the accused who is providing it here. In 70F(4) which we just read, this is not somebody providing the accused. It is the accused providing it and that is why I have to disagree with your analysis of this section.

Mr. Chairman: Why did you say that?

Mr. Hinds: This section as written here contemplates the accused providing the sample, if I am reading it correctly.

Mr. Chairman: In a hospital.

Mr. Hinds: Are we saying that "taken from him" or "provided by him" means the same thing?

Mr. Chairman: More or less.

Mr. Hinds: Then the words "provided by him" are superfluous.

Mr. Chairman: He is in a hospital.

Mr. Hinds: This is why I am raising it, because I cannot imagine a situation where he would be coming with a blood sample and saying, "This is the blood sample."

Mr. Chairman: Mr. Hinds, you have to go back to the original. You see, if you had come on time— It is with the consent of that person at a hospital by a medical practitioner.

Mr. Hinds: That is covered.

Mr. Chairman: That is the only circumstance under which a sample of blood can exist. .

Mr. Hinds: Let me just run over 4(4).

> Where in proceedings for an offence under section 70A the accused at the time a specimen of blood was taken from or provided by him...

So, therefore, if "taken from or provided by him" mean the same thing, then it is superfluous, unnecessary.

Mr. Chairman: **Mr. Hinds**, if you would read page 16.

Mr. Hinds: I will read it; just direct me to it. Which subsection?

Mr. Chairman: (5); if you would read it in its entirety:

> For the purposes of this section, where any person is required to provide a specimen, such specimen shall be taken only with the consent of that person at a hospital or by a medical practitioner. There is only one situation in which this sample of blood will exist; he is there; he is required to provide it and it is taken from him by this person.

Mr. Hinds: Do you agree with me that the way it is presented in 4, and I except what you have just analyzed, it lends to another type of impression . [*Crosstalk*]

Prof. Deosaran: Could we delete "or provided by"?

Mr. Hinds: If what you are saying is true, then it renders the word "provided by him" which gives the impression that he could show up with a sample and say, "This is the sample they are talking about."

Mr. Chairman: It cannot give that impression, because the other place gives the precise conditions under which the sample is taken.

Mr. Hinds: Then those words are not necessary.

Mr. Chairman: In that context, Mr. Griffith, could you take a careful look at "taken or provided" and see whether they are superfluous.

Mrs. Yuille-Williams: You might have to take out the words "taken from" and leave "provided." [*Crosstalk*]

Mr. Chairman: Mr. Griffith, what is your view?

Mr. Griffith: I understand the problems with the words "provided by him", but I also have a bit of a problem with the words "taken from". I wonder whether we could say a specimen of blood from. [*Crosstalk*]

Miss Lucky: Can I make a suggestion for Mr. Griffith's consideration? We can say "Where in proceedings for an offence under section 70A the accused at the time a specimen of blood was taken in accordance with" and, therefore, we take the particular section. I think that would cover everything; "in accordance with".

Mr. Chairman: Mr. Griffith, will you look at that, please. That, obviously, with be section 5 on page 16.

We have now come to the end of the main clauses. We are now going into definitions. I do not want anybody to get the wrong idea. As we have gone through this Bill, a number of issues have been raised. Obviously we have to have, at least, one more meeting, maybe more, to go through all the issues raised to make sure we have reached resolution on all of them. What I am trying to do is get to the end of the text.

Prof. Deosaran: May I make an observation, off the record?

[*Off the record*]

Mr. Chairman: All right.

Miss Lucky: With respect to page 18(b), the other specimen or part was applied to the accused. Could we put the timeframe in there? Because I think blood has a lifespan in

which you can do the test and, of course, you do not want them to comply when it is too late.

Mr. Chairman: You want to put within one hour or do you want to get expert advice on that?

Miss Lucky: I would like expert advice, but I was thinking that this one we could give forthwith. I would like phraseology that the blood is not in any way becomes contaminated in such a way that you cannot really get a proper test.

Mr. Chairman: I think we need expert advice; forthwith might be too soon and within one hour might be too long. We can ask Dr. Gopeesingh to advise us.

Prof. Deosaran: Or Dr. Nanan.

Mr. Chairman: He is a dentist.

70G says that in sections 70A to 70F, except so far as the context otherwise requires, "authorized analyst" means a person designated as such by the Minister by Order published in the Gazette.

Breath analysis means the quantitative measuring of the proportion of alcohol in a person's breath carried out by means of a device prescribed for the purpose by the Minister.

Breath test means a test for the purpose of obtaining an indication of the proportion of alcohol on a person's breath carried out by means of a device of a type prescribed for the purpose of such a test by the Minister on a specimen of breath provided by such person.

Constable means a member of the police service. Failed in relation to providing a specimen includes refuse.

Hospital means an institution which provides medical or surgical treatment for inpatients or outpatients. That is wide; that is down to a clinic.

Mr. Hinds: Before you proceed further, I will just like, as a member of the public, a citizen, to hear Mr. Griffith say to me in concise terms what is the difference between an analysis and a test.

Mr. Chairman: But it is there.

Mr. Hinds: That is legalese. I want Mr. Griffith to tell me, as a citizen of this country who is listening to the debate, in concise terms; a citizen with access to Mr. Griffith.

Mr. Chairman: Why would you want Mr. Griffith to tell you that?

Mr. Hinds: Because he is the lawyer and the draftsman.

Mr. Chairman: So you want Mr. Griffith to tell you? You want further clarification on the distinction between analysis and test? We will come back to that.

Let us go through all the definitions; flag all the ones we have an issue with and we will come back to it.

Mr. Ramroop: 70(3), with regard to hospitals, this could narrow down to even a pharmacy also.

Mr. Chairman: No. "and includes any place recognized by the Minister as a place where laboratory tests are carried out."

Mr. Ramroop: They take blood tests in a pharmacy.

Mrs. Yuille-Williams: The Minister will not authorize that.

Mr. Chairman: I am telling you no. I will tell you now why, because the top of it says an institution which provides medical or surgical treatment for inpatients or outpatients. I am not aware that a pharmacy provides medical or surgical treatment for inpatients or outpatients. Are you aware of any such pharmacy? It goes down to a clinic that has proper lab facilities authorized by the Minister, so it is like a district health facility, a major health centre. It may not get down to the one day, one week on, one week off things in the country. The Minister will decide.

Laboratory test means the analysis of a specimen provided for the purpose.

Prescribed limit means in respect of—

(a) breath alcohol concentration, thirty-five microgrammes of alcohol in one hundred millilitres of breath or such other proportion as may be prescribed; and.

(b) blood alcohol concentrations, eighty milligrammes or alcohol in one hundred millilitres of blood, or such other proportion or may be prescribed. .

References in section 70B to providing a specimen of breath shall be construed as references to providing a specimen thereof in sufficient quantity to enable a breath test to be carried out.

70H says:

The Minister may make regulations prescribing all matters which are required or permitted to be prescribed for carrying out or giving effect to sections 70A to 70G.

Where did Miss Lucky go? She is the expert on breath analysis. Mr. Griffith, you have had enough time, a whole seven days to figure out the difference between an analysis and a test; so please tell Mr. Hinds.

Mr. Griffith: As I understand it, Chair, the breath test is a simple test that is administered by a police constable who has reason to believe that at the spot where section 70A has been contravened, if the constable is satisfied—I should back up and say—that test is referred to as a preliminary breath test. If the constable is satisfied that the person has committed or contravened the Act then the constable may require the person to proceed with him to a police station where you will have something referred to as a breath analysis, which goes into much more detail.

Mr. Chairman: Mr. Hinds, to help you on that, the answer is reasonable cause to believe. To further assist you, the first test they take on the roadside with the breathalyzer is simple prima facie evidence that he may have a level of alcohol in his blood over the limit and it is using that preliminary test, as Mr. Griffith has pointed out, that you then take him down to the station and do a test under more controlled conditions. The results of the first test are not used in court. It is the results of the second test. The second test is the analysis and the first one is the test.

Mr. Hinds: I understand that and accept it without law. However, if that be so, then an attempt to distinguish between a breath test and a breath analysis is unnecessary. We could simply say two must be done. It is the same piece of equipment, on the one hand; secondly, breath analysis means a quantitative, meaning amount, measuring of the proportion of alcohol in a person's breath and the breath test means a test for the purpose of obtaining an indication—same quantitative—of the proportion of alcohol in a person's breath.

Mr. Chairman: Let me tell what will happen in real life; that is why I am going to get someone to bring the instruments for us, so we can see them. The machine at the station is going to be different to the machine at the roadside. At the roadside it is a portable device. If you can think of any machine that is portable, as opposed to something that is

fixed. A portable computer is a laptop that you carry around with you. It is very different to a desk top which is fixed to a place.

Mr. Hinds: It does the same thing.

Mr. Chairman: Correct, but the machine on the roadside is a portable device, much smaller and so on; the person is not restrained or anything like that. When the person is doing the breath analysis at the station, he will be sitting before a much more sophisticated device. The analysis is done on the device at the station and the test is done at the roadside on the portable device. The person is just tested at the roadside; that is merely an indication. It is not evidence that the person is driving under the influence. It is just an indication in addition to all the other problems the person may have.

Mr. Hinds: Interestingly enough, the word "indication" appear in the definition of test and the words "quantitative measuring" appears in the definition of breath analysis.

Mr. Chairman: It is very different. An indication is just that; a measurement is something completely different; that is a scientific term.

Mr. Hinds: So in the first instance it is not a measurement?

Mr. Chairman: It is just an indication. You are looking at the person; his eyes are glazed; he is wobbling; he cannot walk. They will perform a series of preliminary tests on this person; he would be asked to touch his nose; walk in a straight line; the police would look in his eyes and also see if the person is slurring his speech; determine whether he is smelling of alcohol, et cetera.

Mr. Hinds: The Act permits that?

Mr. Chairman: Just a second.

Mr. Hinds: I have a question independent of the one I was just asking. I am aware that they do these preliminary tests. Does our draft authorize that?

Mr. Chairman: It is an observation, Mr. Hinds.

Mr. Hinds: So it does not?

Mr. Chairman: No; the constable is simply looking at the person and determining in his mind whether he has reasonable cause to believe that this person is under the influence. He is going to use a series of measures to determine whether in his mind—

Mr. Chairman: But the only one he is authorized to use under this Bill is that portable instrument.

Mr. Chairman: It does not really matter.

Prof. Deosaran: Let me see if I understand it right. I think it is the preliminary benchmark that will lead to all the others. The constable observes the driver driving in a certain way which suggests to his observation he needs to be checked. So he stops the car, but before he applies the test or he will then move to apply the roadside test?

Mr. Hinds: That is what the law provides.

Prof. Deosaran: Which to me is a measure, but the measure will become an indication to further tests down the road. [*Crosstalk*] Then he takes him to the station, if he is satisfied that he is under the influence. So it is three stages: observation, the roadside and down at the station.

Mr. Chairman: That is correct.

Prof. Deosaran: Then charged or arrested?

Mr. Chairman: Correct. So what is the problem Mr. Hinds?

Mr. Hinds: Having heard you and accepted the fact that one is preliminary and the other one would be used for evidence. I maintained, in those circumstances, when you introduced in your last response to me, that the equipment used on the road and the equipment used at the station would be different; prior to that I was labouring under the false impression that it was the same equipment.

Mr. Chairman: It cannot be.

Mr. Hinds: In addition to that, having accepted that it is a different piece of equipment, we expect that both will be very accurate; except that we know it is the second one with the equipment at the station that would be used evidentially. I am maintaining my position that in light of the fact that we are doing measurements, the first measurement, according to you, is to say to the police officer, "I need to take this a stage further;" that is to say a proper analysis done at the station.

Mr. Chairman: Yes, Mr. Hinds.

Mr. Hinds: In the circumstances, I consider still an attempt to distinguish between test and analysis, as we have sought to do, is really unnecessary, because what, in effect, we are saying, and this hinges back to my assumption that it was the same piece of equipment, that if it turns out that it was the same thing, because it may very well be—It definitely is different?

Mr. Chairman: It is not the same. [*Crosstalk*]

Mr. Hinds: It is not the same piece of equipment, my argument falls.

Mr. Chairman: It was fallen long ago. [*Crosstalk*]

Prof. Deosaran: If he takes the first step and it turns out to be negative?

Mr. Chairman: When you say negative?

Prof. Deosaran: The level that he measured.

Mr. Chairman: If it is below the level, then what reason does he have to—

Prof. Deosaran: That is what I am saying. The second test does not follow. When Mr. Hinds said put two as one, I do not think—

Mrs. Yuille-Williams: What is happening here is not unusual in medicine anywhere. I went to the hospital; I laid there. Two doctors had taken a blood sample, the HB level; one of the best doctors came in and told me to open my eyes; he touched my tongue and said that I was all right for surgery. As he moved off, two guys came and told me, "Minister, that is not so; look at the results." One of the doctors called the other doctor back and he told me, "It seemed as though you have to get blood." Simple, that is just what it is.

Mr. Chairman: The first one is simply an indicative test and the second one is the analysis. In order to satisfy the members, I will attempt to get someone to show us the different machines, how they work and their levels of accuracy as well. You might find that the one by the roadside might be accurate within 1 per cent in other; in other words, you could measure .8.9, that kind of thing. The one in the station might be .001 per cent; it is all based on the calibration of the device, how it measures, what technology it uses to measure and so on. The one on the roadside would clearly not be as accurate as the one in the station; that is why the one in the station is used as evidence. The one on the roadside is simply empowering the constable to tell the person, "Right, let us go down to the station."

Mrs. Yuille-Williams: The constable at the roadside must have an instrument? The strong smell of alcohol would not do?

Prof. Deosaran: That is what **Mr. Hinds** was saying. [*Crosstalk*]

Mrs. Yuille-Williams: As an indication.

Mr. Hinds: We are moving away from the unscientific—

Mrs. Yuille-Williams: Some of you smell so strong, I could tell that you have been drinking. [*Crosstalk*]

Mr. Chairman: If you look at actual legislation on page 7 and page 8, 70B:

> Where a constable in uniform on showing his authority as a member of the Police Service has reasonable cause to suspect that a person driving or attempting to drive has alcohol in his blood or breath exceeding the prescribed limit...he may, subject to subsection (4) require him to provide a specimen of breath for a breath test.

It is at the discretion of the constable. What was the point you were making, whether the constable should have discretion or not?

Mrs. Yuille-Williams: Let us say for instance, I am a constable; I am at the side there; I see reckless driving; I stopped the person and I go a very strong smell of alcohol.

Mr. Chairman: He could do it.

Mrs. Yuille-Williams: That is an indication to me.

Mr. Chairman: You see the man weaving through the traffic.

Mrs. Yuille-Williams: So that instrument you are talking about at the roadside, he does not possess the instrument, but seeing what was happening, he smelled the breath of the driver. Could he not use that as an indication?

Mr. Chairman: Use what as an indication, the other signs? In other words, he does not test the person?

Mrs. Yuille-Williams: Every single constable out there must have that equipment at the roadside. So they are all going to have something in their pockets that could do it?

Mr. Griffith: Yes.

Mrs. Yuille-Williams: All police constables will now be equipped with instruments?

Mr. Hinds: That is a big point, but it is a different point from that we were taking.

Mrs. Yuille-Williams: I am asking this, because I remember that a young man came to my home one evening. As soon as I got there, I met him there wait for me. He had just got into an accident where he struck a young lady. He knew me. He was going to the police station, so he came to ask me if I would go with him. I got in his car, which was all damaged to the front. He went along and I drove my car. When I got there, I smelt him, clearly he was drinking.

Mr. Chairman: It would appear that this contemplates that the constable will have a device.

Mrs. Yuille-Williams: All our police officers will now be given this device?

Mr. Chairman: I would think the ones on patrol; the highway patrol for sure

Mrs. Yuille-Williams: You probably need to look at it.

Mr. Chairman: I will check other jurisdictions and see how they deal with this. This thing is not going to be done by "vaps". You are dealing with the unforeseen and unplanned event where a police office observes somebody driving erratically and does not have the breathalyzer with them.

Mr. Hinds: He is off duty, but he shows his authority; that is my point. The question the Minister is asking is in those circumstances—I am on the beach; I see you coming out of the car park; I come to you and I do not have the breathalyzer; can I take you to the police station for the second test? I think that is a big question. Can I go to stage two on the basis of appearance?

Mr. Chairman: It would not be the second test. It would be the first test.

Mr. Hinds: When they reach the police station, then they will give him what they would have done at the roadside before they go on.

Mr. Chairman: No.

Mr. Hinds: So what will they give you when you come to the police station in those circumstances?

Mr. Chairman: I am asking Mr. Griffith to determine what happens in other jurisdictions. I also will check, but that will not be the first test, because the first test is not evidence of anything. If they are taking you down to the police station and they are doing an analysis on you, which I am sure they will be doing, that will be the one for the purpose of evidence. But the question is: Can you do the analysis without first doing the test? We will check it out.

Mr. Hinds: The other point I want to raise in this regard is what you mentioned, Mr. Chairman. The legislation says:

> Where a constable in uniform or on showing his authority as a member of the Police Service has reasonable cause to suspect that you are driving or attempting to drive...

And it goes on. In the context of a roadblock, what we had referred to as a sanitization, a sobriety check point, the constable, in these circumstances, has no reason to think that you were driving in breach of the section I just read. But merely in a sobriety check point or a roadblock, everybody is coming up. Does this legislation authorize a constable in those circumstances to ask for a sample to test?

Mr. Chairman: Let us stop a second. This came up in a previous meeting; obviously, you were not there.

Mr. Hinds: I was here.

Mr. Chairman: At that time, the expert, Dr. Reid—were you here for the presentation by Dr. Reid?

Mr. Hinds: I was here for every meeting so far.

Mr. Chairman: Dr. Reid made the point that in the United States when they have a roadblock they only test you if they have reasonable cause to believe that you are driving under the influence. In other words, they are not testing anybody; they will look at you; they will see if you smell of alcohol, whether you are wobbling and so on and then they will administer the test. That is what will happen here too. The constables will use their powers of observation and say, "He look like he drunk," and then make you do the test.

Mr. Hinds: I am gratified.

Mr. Chairman: I just want to deal with a procedural matter. Mr. Griffith, could you please go through the Minutes, please, of all the meetings we have had so far and produce a position paper for us or a status report of some kind that highlights every single material issue that people raised and what our response was to that. Prepare that for members, clause by clause. So go through clause by clause and indicate, with respect to this clause members had this question; it was either answered or we are still deliberating on it and so on. Are you with me? Can you do that for me? Would you be able to do that for the next meeting?

Mr. Griffith: I think the meeting following.

Mr. Chairman: Either that or we will adjourn for two weeks. At the next meeting I want to have presentations by people who actually have produced these devices and maybe a demonstration on how the device is used. In fact, let us agree on that now that at the next meeting we will attempt to have a demonstration and ask them to bring the

device on the roadside and the one in the station. At the meeting after that, Mr. Griffith, we will then try to reach resolution on all the issues brought up in the committee meetings.

Mr. Griffith: You had asked me to come prepared to deal with a number of issues that had been raised before.

Mr. Chairman: Subsume everything into one.

Prof. Deosaran: We have definitions for a number of things: breath analysis, breath test, but do we need a definition for a blood test too or is that presumed in some other legislation?

Mr. Chairman: Let us get a definition for blood test. Are there any other questions on definitions? We need a definition of service; we have agreed on that, what service means.

Mrs. Yuille-Williams: I just wanted to apologize for my absence of two days because of a predetermined schedule, but I am extremely happy to hear that Dr. Reid was able to come, seeing that I recommend her.

Mr. Chairman: She was very helpful.

Mrs. Yuille-Williams: I heard that she was of some use to the committee. I am sorry I missed it.

Mr. Chairman: She is obviously a very experienced person.

At the next meeting we will attempt to get demonstrations of the equipment. Under "Other Business" there was a letter from an individual. An unsolicited individual has approached us, Victor Roach, claiming to have been involved in a coalition of anti-narcotic health and professional community organizations seeking to prepare the country for breathalyzer testing. I do not know the man from Adam. He would like to make a presentation to us. I do not know him. I do not know where he came out from. What is the view of the committee?

Mr. Hinds: Let him come.

Mr. Chairman: Just so? I personally do not want him to come until I check him out. I do not know who he is. Suppose he is a salesman.

Mr. Hinds: No problem; we will take it for what it is worth.

Prof. Deosaran: I think that we should put out tenders and do this thing properly.

Mr. Chairman: I do not really want to open the committee to persons selling breathalyzer devices.

Mr. Hinds: We need to determine whether he has a product for sale. Ask him a straight question.

Mr. Chairman: Your view is that we should entertain him once he checks out. My view is that we should not. Prof. Deosaran, what is your view?

Prof. Deosaran: I prefer to see.

Mrs. Yuille-Williams: If he is a salesman he should only come in the context of if we are inviting other persons. If he is coming like Dr. Reid with that type of information— I think the Chairman is right to check him out before.

Mr. Chairman: I will check him out and let you all know at the next meeting.

Prof. Deosaran: Even though you check him out, there has to be a procedural matter; he has to be invited like everybody else.

Mr. Chairman: I will check him out and apprise you of the findings of my investigation at the next meeting so the committee can then deliberate.

[*Off the record*] [*Crosstalk*]

Mr. Hinds: From what I have just read and I do not know anything of the man, like you, I have not come to the conclusion that he is a salesman. I have come to the conclusion, based on what I have read, that he sounds like a man who is experienced in this field and he might be able, like the persons you want to bring, to offer some information that we might use. I ask specifically that you try to in your checking him out to determine if he has a sales pitch to make. If he has, then he can be left alone. If it is not a sales pitch, then I think we should hear him.

Mr. Chairman: The Clerk has pointed out to me that is not within the mandate of this committee. We are not authorized to take comments from members of the public. We can call for experts to advise us. It is outside of the Terms of Reference.

Mr. Hinds: He may very well be an expert.

Mr. Chairman: The next meeting will be on Wednesday, January 31, assuming that we can find a bona fide person to show us samples of the devices, we will have a meeting. If I cannot find any such person, we will not have a meeting next week. We will have a

meeting two weeks hence, which will be February 07, to go through all the issues that we have raised and flagged and see whether we have reached resolution on all of them.

Mrs. Yuille-Williams: Will it be a conflict of interest if I recommend somebody I know to you?

Mr. Chairman: Sure.

I think we have done very well. Members I figure that we would not have more than two or three more meetings of this committee and we should be going back to the House in early or mid February for the latest.

12.30 p.m.: *Meeting adjourned.*

MEETING OF THE JOINT SELECT COMMITTEE APPOINTED TO CONSIDER AND REPORT ON THE MOTOR VEHICLES AND ROAD TRAFFIC (AMDT.) BILL, 2006, HELD IN THE PARLIAMENT CHAMBER, RED HOUSE, PORT OF SPAIN, ON TUESDAY, FEBRUARY 13, 2007 AT 11.05 A.M.

PRESENT

Mr. Colm Imbert	**Chairman**
Mrs. Joan Yuille-Williams	**Member**
Ms. Pennelope Beckles	**Member**
Mr. Satish Ramroop	**Member**
Prof. Ramesh Deosaran	**Member**
Dr. Tim Gopeesingh	**Member**
Mrs. Shaarda Maharaj	**Secretary**
Mr. Ralph Deonarine	**Research Assistant**

ABSENT

Mr. Fitzgerald Hinds	**Member**
Ms. Gillian Lucky	**Member**
Mr. John Jeremie, S.C.	**Member**
Dr. Adesh Nanan	**Member**

ALSO PRESENT

Mr. Paul Griffith	**Chief Parliamentary Counsel**

Mr. Chairman: Members, I would like to call this meeting to order please. Let us go to the sixth meeting of the Committee on January 24, 2007. Can we go to page two of the minutes? Any corrections? Can I get someone to move the adoption of the minutes and somebody to second that?

Minutes confirmed by Prof. Deosaran.

Seconded by Mr. Satish Ramroop.

Mr. Chairman: The minutes are confirmed without amendments. Can we go straight into the document from Mr. Griffith? Mr. Griffith, could you walk us through this document that you have prepared and relate it to the amended Bill before us, please?

Mr. Griffith: The first item related to section 70 of the parent Act and the issue there was that section 70 seems to have been inadvertently deleted.

Mr. Chairman: It was; it was a mistake.

Mr. Griffith: What we have done here by introducing in the Bill at clause 4 by speaking of section 70, we have taken care of that mischief. In other words, section 70 is back in the parent Act which deals with drink and drug.

Mr. Chairman: I do not have section 70 before me. Do you have it?

Mr. Griffith: Section 70 (1):

> "Any person who when driving or attempting to drive or when in charge of a motor vehicle on a road is under the influence of drink or a drug, to such an extent as to be incapable of having proper control of the vehicle, is liable on first conviction to a fine of $2,000 and to imprisonment for six months and on any subsequent conviction to a fine of $4,000 and to imprisonment for 12 months."

Mr. Chairman: So that the amendment that we are proposing deletes the words "relating to the power of the court" and substitutes which words?

Mr. Griffith: No, that is something else. In the Bill that was before the House, clause 4 said succinctly:

> "Section 70 of the Act is repealed."

Mr. Chairman: Right. And now what are we saying? We are no longer going with the repeal of section 70, and we are going with—I am a bit lost Mr. Griffith.

Mr. Griffith: Since this is not the Committee stage, Mr. Chairman, what we are seeking to do here is basically by putting back section 70. We have taken care of clause 4 and further we have dealt with two other things. We have dealt with Prof. Deosaran's concern, which we will see a little later on. Also Miss Lucky's concern about giving the court discretion in terms of disqualification.

Mr. Chairman: These words here: "under the influence of drink" are they not going to conflict with what we are doing later on in this legislation?

Mr. Griffith: No, Mr. Chairman.

Mr. Chairman: Okay. Any questions from Members? What we are seeking to do is to retain the concept of "under the influence of a drug", which was inadvertently taken out. Let us move on to to the next point, Mr. Griffith.

Mr. Griffith: The next point is clause 4. Mr. Hinds had asked whether the Bill should not contain a definition of drug, and we have done that and that now appears in 70G(1).

Mr. Chairman: What page will that be?

Mr. Griffith: That will be on page 17. Section 70G(1) starts on page 17, and on the following page you will see drug includes any intoxicant other than alcohol.

Mr. Chairman: Is this an international definition?

Mr. Griffith: This appears in the English legislation.

Mr. Chairman: Okay.

Mr. Griffith: Also under clause 4 and I alluded to it a little earlier on; it was Prof. Deosaran's concern there. That is now in your clause 4(b):

> "The Minister may by order approve the device to be used for the detection of a drug referred to in subsection (1)."

Mr. Chairman: What page is that?

Mr. Griffith: This is on page 2 of your Bill.

Mr. Chairman: Okay. So clause 4(b):

> "The Minister may by order approve the device to be used for the detection of a drug referred to in subsection (1)."

So that gives us the ability later on now to bring in this whole concept of drug testing.

Mr. Griffith: Yes. The following one deals with a distinction between legal and illegal drugs. This was discussed; we have researched it; we have not found any distinction in any other legislation and if your Committee wishes to make such a distinction then we would probably have to have professional expertise on how we would do that.

Mr. Chairman: I also think the fact that you have defined that drug as an intoxicant should deal with that.

Mr. Griffith: I think during the discussion what was raised was, for instance, legal drugs, my understanding in terms of legal drugs, that could influence your driving; maybe sedatives or whatever have you. But the English, the Australians, do not seem to make any distinction.

Mr. Chairman: Since we would not be implementing the drug aspect at this time, I prefer to just leave it and when we come to deal with that we can look at that again. We are just giving ourselves the ability later on to deal with testing for drugs.

Prof. Deosaran: This distinction in the legislation arise a test as to whether the level of intoxication is due to a legal drug or an illegal drug.

Mr. Chairman: No, There will be some instrument which we are not defining now that will test you at the roadside for being under the influence of drugs; driving under the influence of drugs and a drug is defined as an intoxicant. However, you could be using a legal drug but you are intoxicated and therefore you still would be driving in a dangerous manner. What I felt was since we are not going to implement that part of law right now, this fine technical point could be left for later. Is the Committee all right with that?

Member: Yes.

Mr. Griffith: The next issue, you will remember that Miss Lucky had found that clause 5 of our Bill on page 7, clause (3):

> "(3) A person convicted of an offence under this section shall, without prejudice to the power of the Court to order a longer period of disqualification, be disqualified for a period of twelve months from the date of the conviction for holding or obtaining a driving permit, and on a second conviction for a like offence, he shall be permanently disqualified for holding or obtaining a driving permit."

This also appears later on in the Bill. She referred the Committee to the Motor Vehicles Insurance (Third Party Risks) Act, section 3(2) and asked that the change be made here.

Mr. Chairman: What change have you made? Where does it appear in this document?

Mr. Griffith: I have to apologize for these comments that are erroneous. This should read: See clause 4, re: section 70(2).

Mr. Chairman: So instead of in the UK, whatever, that is an error.

Mr. Griffith: You delete that altogether.

Mr. Chairman: And make it: "see clause 4, section 70(2) of the Act".

Mr. Griffith: yes.

Mr. Chairman: Okay, where do we see what you have done?

Mr. Griffith: It is in clause four on page 2 of the new Bill:

> "Section 70 of the Act is amended—

(a) in subsection (2) by deleting the words "shall, without prejudice to the power of the Court to order a longer period of disqualification," and substituting the words "shall, (unless the Court for special reasons thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification)".

Mr. Chairman: What is the difference?

Mr. Griffith: This one gives the court the power, the discretion in terms of the finality of disqualification.

Mr. Chairman: Could you read the clause from the top as amended, for me please?

Mr. Griffith: It would read:

"A person convicted of an offence under this section shall, unless the Court for special reasons thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification, be disqualified for a period of twelve months from the date of the conviction ..."

Mr. Chairman: What was the point, Miss Lucky made?

Mr. Griffith: She was saying that this was too final and we needed to give the court the power.

Mr. Chairman: Okay, so that this allows the court to have a shorter period of disqualification?

Mr. Griffith: Yes, Mr. Chairman.

Mr. Chairman: And that is where it says, "unless the court for special reasons thinks fit to order otherwise"

Mr. Griffith: Yes, Mr. Chairman.

Mr. Chairman: Okay. So it gives the court the discretion now to do whatever they want, essentially; a shorter period and so on. But it is very confusing, Mr. Griffith.

Mr. Griffith: I can have a look at it again, Mr. Chairman, but we were following the—

Mr. Chairman: Please. But I gather from what you are saying that the words "shall, unless the court for special reason thinks fit to order otherwise" will now give the court the discretion to reduce the period of disqualification.

Mr. Griffith: Yes, that is my answer.

Mr. Chairman: Which is what she was asking for; give somebody a chance.

Mr. Ramroop: And then permanently?

Mr. Chairman: No, they could disqualify them permanently; they could disqualify them for a couple months. We are leaving it now up to the magistrate or the judge to use their discretion. In other words, it is not final; the way it is in the Bill before the Parliament is that once it is a second offence, that is it; you are gone. Is that correct, Mr. Griffith?

Mr. Griffith: That is correct.

Miss Beckles: Mr. Griffith, can I ask something? In the substantive Motor Vehicles and Road Traffic Act there is a procedure that would allow the applicant by affidavit so that this same discretion that exists, exists in that Act, but the applicant has to apply. The way this is worded, how does the court really exercise that discretion?

Mr. Griffith: I guess at the sentencing stage. I really have no knowledge of the court procedure, Minister.

Mr. Chairman: Where did you get this form of words from?

Mr. Griffith: This came from the Motor Vehicle (Third Party Risks) Act.

Mr. Chairman: Okay, let us move on.

Mr. Ramroop: Mr. Chairman, disqualification only comes after the second conviction.

Mr. Griffith: No, the court does—as the Chairman had indicated earlier—have to power to qualify or make to it.

Mr. Chairman: I would think the words coming in front, "shall (unless the Court for special reasons thinks fit to order otherwise" would cover everything coming afterwards.

Mr. Griffith: The court seems to be able to make any order there; order or otherwise.

Mr. Chairman: In other words, the permanent disqualification could be overruled by the court. The court could decide, all right, I would suspend you for two years or something like that; rather than for life.

Mr. Griffith: And you will find this appearing in the proposed 70A(3). You will find that on page 3 of the Bill, which reads:

> "A person convicted of an offence under this section shall, (unless the Court for special reasons thinks otherwise and without prejudice to the power of the Court to order a longer period of disqualification) be disqualified for a period of twelve months from the date of the conviction for holding or obtaining a driving permit, and on a second conviction for a like offence, he shall be permanently disqualified for holding or obtaining a driving permit."

Mr. Chairman: The question Mr. Ramroop was asking was whether the words in the beginning here. "unless the Court for special reasons thinks otherwise", would override the words at the end that, "on a second conviction for a like offence, he shall be permanently disqualified for holding or obtaining a driving permit"

Mr. Ramroop: Mr. Chairman, at the same time, override the 12 months.

Mr. Chairman: And the 12 months as well.

Mr. Griffith: My understanding is that on the second offence there will be permanent disqualification.

Mr. Chairman: So you have no flexibility there at all. What would the Committee want? To give the court the discretion?

Mrs. Yuille-Williams: What is implied, "unless the court for reasons..." If that is there and you still have the 12 months and disqualification.

Mr. Griffith: In terms of your first offence the court has the discretion to pattern the risk or to disqualify—

Mr. Chairman: Let us cut a long story short. Would the Committee want the court to have the discretion in both the first and the second offence?

Mrs. Yuille-Williams: I would think so.

Mr. Chairman: Okay. Mr. Griffith, could you just modify these words—

Miss Beckles: Are we sure about that?

Mr. Chairman: I do not mind.

Miss Beckles: Because I do not think in the second case you should and that is why I asked about the procedure under law because, for example, if you are charged at present for driving without an insurance policy, you are automatically disqualified, but within a period of six months you can do an affidavit, which is where the reasons come in and say the reasons and the court exercises its discretion. What you do not have here really, is you do not know how the court will interpret special reasons. That is the only thing.

Mr. Chairman: Mr. Griffith, we need to work through some more on this clause. Let us move on.

Mr. Griffith: The next issue is the question of the identification of police officers in plain clothes or in uniform. In the United Kingdom legislation they refer only to a constable, unlike us there is no reference to an officer in plain clothes. We do have here, officers functioning in plain

clothes and they have all the powers of a constable in uniform, but as I understand it, when they act they have to show their identification.

Mr. Chairman: I have no problem with that. Let us move on. Any Committee Members have any issues with that?

Mr. Griffith: The next one deals with the possibility of changing "constable" to "police officer". As I had indicated to the Committee in a previous meeting, the word "constable" appears throughout the Motor Vehicles and Road Traffic Act and in the interpretation Act, "constable" means any police officer.

Mr. Chairman: I am good with that. Let us move on.

Mr. Griffith: The next one deals with Prof. Pereira's question, as to whether there was going to be a provision for the taking of a second test within 20 to 30 minutes. She was unsure as to whether the Bill was limited to one-off testing. We have now included that in proposed 70C(3) which starts on page 7:

> "For the purpose of the breath analysis—
>
> there must be an interval of not less than two minutes and not more than ten minutes between the provisions of samples."

Now you will notice, Mr. Chairman, that there is a difference here. The professor had spoken about a 15-minute intervention, but the Australians from where this provision here was lifted, they spoke about two minutes, not more than ten minutes. So I am leaving it open to the—

Mr. Chairman: So it is open now to Australia?

Mr. Griffith: Yes. I am leaving it open to the Committee to decide whether—

Mr. Chairman: You think this is practical in Trinidad?

Mr. Griffith: Two minutes and 10 minutes? The 15 minutes—

Mr. Chairman: I find 10 minutes short, I would like to increase that. What does the Committee think?

Mr. Ramroop: What difference it will have with the change of the drug.

Mr. Griffith: It probably has to do with the equipment. In other words, the Professor was saying that if somebody was attempting to cheat, that after 15 minutes you would be able to, with the second sample, know whether the person was really attempting to cheat or not. She was also making the point that after 15 minutes, if someone was really under the influence antacids and

things like that and acid reflux and whatever have you, that that 15 minutes would take care of that. The Australians probably have this because of the equipment which they have.

Mr. Chairman: I noticed on the bottom of page 7, you are saying the person must provide two separate samples. Did we always have that, that they provide two samples?

Mr. Griffith: No, we did not always have that.

Mr. Chairman: This is something you added in? Why are you saying it has to be so?

Prof. Deosaran: If you could refresh my memory; why are we talking about a second test?

Mr. Chairman: I do not know; I am asking him.

Mr. Griffith: If we were going to be providing for the two tests and the Professor had highly recommended that, then it means we had to amend the provision for two—

Mr. Chairman: If you have two tests, which test result would you use?

Mr. Griffith: I think it is the last one.

Mr. Chairman: But the Bill does not say that.

Miss Beckles: Even if that was the case, is that a standard thing in any of the countries; either Britain or—

Mr. Chairman: Or the other jurisdictions? They have two?

Miss Beckles: They do two tests? All of them?

Mr. Griffith: Yes.

Mr. Ramroop: Mr. Chairman, is this second test inclusive of the breath test that you do? This is just with the analysis?

Mr. Chairman: No, this is breath analysis.

Mr. Ramroop: So this comes like a third or fourth then or a second and third?

Mr. Chairman: No, the one on the roadside is just an indicative thing. Just to tell the policeman to carry you in the station to do the analysis.

Mr. Ramroop: And when you go to the station then you do two other tests?

Mr. Chairman: This is what this is saying. Mr. Griffith, you are saying the other jurisdictions do two, but which one do you use?

Mr. Griffith: We have to speak to it.

Mrs. Yuille-Williams: Mr. Chairman, it must be the second test, otherwise there is no need taking two.

Prof. Deosaran: Because you are taking the second test to ensure something.

Mr. Ramroop: But they must state it.

Mr. Griffith: I have come across a provision where it seems that the driver was being given the benefit of the doubt because it referred to the lower level. It would need some research.

Mr. Chairman: I would think so; that you have to use the lowest level, not the highest. Therefore we need to have something in here that says the lower level shall be used for the purposes of prosecution or something like that. You have some work to do on this as well, Mr. Griffith.

Mrs. Yuille-Williams: Are we saying that the first test could have a lower level than the second?

Mr. Chairman: No. You do two tests for various reasons. One may give you a higher result than the other and what Mr. Griffith is saying, he found in a jurisdiction that you use the lower one, you give the person the benefit of the doubt; rather than the higher one, because the higher one might be an error. Just as well, the lower one might be an error, but you give the person the benefit of the doubt. Mr. Griffith you will have to do some work on that and find out how they treat with these two different test results. I would like to increase that to 15 minutes; if you said that is what Prof. Pereira said; let us go with 15 minutes, rather than 10 minutes. Let us move on.

Mr. Griffith: Miss Lucky had questioned whether the UK legislation provided for roadside testing. It does.

Mrs. Yuille-Williams: Before we get to that, Mr. Chairman, you said 15 minutes, anything scientific in why you said 15 minutes?

Mr. Chairman: No. I was just thinking that you have done a test and you are now getting ready to do another test; I am sure you might need to sanitize the machine or something.

Mrs. Yuille-Williams: I think he needs to check on it, make sure it is something scientific.

Mr. Chairman: Why did they come up with the 10 minutes? Do you know?

Mr. Griffith: There is no indication in the legislation. This is legislation from Australia where they spoke about the two minute to 10 minute-period.

Mr. Chairman: He said he pulled it out, but I just thought to— You see if you put that 10 minutes and you do not do that second test in the 10 minutes, for whatever reason, the equipment malfunctions on you or something like that; that is it; the person gets away, because you have to do two tests on them.

Miss Beckles: There is a little difficulty in that— In terms of a Trinidad reality, it is 10 minutes from the first test?

Mr. Chairman: It says intervals of not less than two and not more than 10. Yes, it is 10 minutes from the first test.

Miss Beckles: Yes, but how are we getting to a station in 10 minutes.

Mr. Chairman: No, this is at the station.

Miss Beckles: Right, right, right; at the station. I think 10 is good.

Mr. Chairman: When we are dealing with the issue of which test we are going to use, we will deal with that 10 minutes. Let us on

[*Dr. Gopeesingh enters the Chamber*]

Mr. Griffith: I did not hear your decision.

Mr. Chairman: No, we will have to look at that 10 minutes proper, see if we could get some more information as to if there is a scientific reason for the 10 minutes. Perhaps you could discuss it with Professor Pereira; she might be able to help.

11.35 a.m.

Mr. Griffith: Miss Lucky had questioned whether the United Kingdom dealt with roadside testing. The United Kingdom does deal with roadside testing and in the comments here we are seeing that the United Kingdom legislation provide that a specimen breath for testing only will be provided at, or near the place where the requirement is made, or where an accident has occurred at the police station specified by the constable. We have incorporated that in 70B(1) in (c) on page 4:

> "Where a constable in uniform or on showing his authority as a member of the Police Service has reasonable cause to suspect—
>
> > (c) that a person has been driving, attempting to drive or been in charge of a motor vehicle on a road or other public place and has committed …
>
> he may, subject to subsection (4), require him to provide a specimen of breath for a breath test at or near the where the accident occurred."

Mr. Chairman: What was there before? It just says he may require him to provide a specimen of breath for a breath test.

Mr. Griffith: Yes.

Mr. Chairman: All right? Fine! Okay, let us move on.

Mr. Griffith: Mr. Chairman, had enquired where there was a presumption of normal conditions operating. We have not been able to find any references in any legislation to any conditions.

Mr. Chairman: So that will be up to the court then?

Mr. Griffith: Sorry?

Mr. Chairman: That will up to the court?

Mr. Griffith: I think in England, it has to do with their training, in other words, in terms of trying to decide or to some to come conclusion on the types of factors to which Prof. Pereira spoke. We know that they do it, but we have not been able to find it anywhere, so I think that is probably in their handbooks or guidelines as the case may be.

Mr. Chairman: Right, but if somebody is challenging the results based on abnormal conditions, that is a matter for the judge. Right?

Mr. Griffith: I guess so.

Mr. Chairman: Right, so let us leave that alone, the court will deal with that. All right, so let us go on.

Mr. Griffith: Prof. Deosaran asked to have in 70B(5) some amplification of the provision to provide for a specimen viable enough for the testing. If you look at 70G(2)—

Mr. Chairman: What page is that, Mr. Griffith?

Mr. Griffith: This is on page 19. It takes care of that.

Mr. Chairman: In the definition section. Okay, thanks. Let us go on.

Mr. Griffith: Dr. Gopeesingh had asked for certain changes to be made in 70B(5). Amend subsections (1), (3) and (4) to read, (1), (3), (4) and (8). That has been done. In 70C(5), Dr. Gopeesingh had also recommended that clause 70C(4), should read: "Notwithstanding subsection (3)—[*Interruption*]

Mr. Chairman: So where did you make that change?

Mr. Griffith: 70C(5) on page 9.

Mr. Chairman: (5) right?

Mr. Griffith: Yes.

Mr. Chairman: 70C(5), so it is not 70C(4)?

Mr. Griffith: No. This is here because there were some consequential amendments, so the numbering was off a bit. This is correct.

Mr. Chairman: And what is the meaning of it? What does it mean?

Mr. Griffith: 70C(4), requires a constable not to require any person to undergo a breath test under certain conditions.

Mr. Chairman: And that included the usual place of abode?

Mr. Griffith: Yes.

Mr. Chairman: And now we are saying, they can do it at a usual place of abode if they figure that they were involved in an accident resulting in death or serious injury and it was not feasible to require that the person submit to the breath test at the scene of the accident. Right? Okay.

Mr. Griffith: Also under 70C(5), Miss Lucky had—[*Interruption*]

Mr. Chairman: To give a warning?

Mr. Griffith: Yes.

Mr. Chairman: Where is that now?

Mr. Griffith: Yes. That is in 70C(1).

Mr. Chairman: What page?

Mr. Griffith: That is on—

Mr. Chairman: I am seeing it now, in the middle of page 7.

Mr. Griffith: Yes, just before (2).

Mr. Chairman: Okay, is everybody all right with that?

Mr. Griffith: Mr. Hinds wondered whether it should not be in writing. We have found no precedent for that warning to be in writing.

Mr. Chairman: All right.

Mr. Griffith: Miss Lucky, in 70C(5) raised the question of alibi and we have found no provision on any other legislation that we have looked at for alibi. We believe that that is the normal defence available to an accused.

Mr. Ramroop: Excuse me, you said that they found no provision?

Mr. Chairman: For an alibi. In other words, there was no provision where a person would have say an hour or two hours to say look, I have a fever; I was not there, you know that kind of thing. There is no provision.

Hon. Member: The court [*Inaudible*]

Mr. Chairman: Yes, that is what he is saying, that the court will deal with that under a normal defence procedure.

Mr. Griffith: 70C(7)—

Mr. Chairman: What page?

Mr. Griffith: That is on page 11.

Mr. Chairman: And this is the delivery of the statement in writing, giving him the results of the breath analysis and the constable has an hour to do that. Fine.

Mr. Griffith: 70A(9) and 70C(10), there was a suggestion there that 70B in both clauses be deleted and 70C inserted. That appears now in 70C(9) and 70C(10).

Mr. Chairman: And what was the reason for that?

Mr. Griffith: It seems just to have been a—[*Interruption*]

Mr. Chairman: A typographical error.

Mr. Griffith: Probably because of changes when it was being drafted.

Mr. Chairman: No problem. Let us go then.

Mr. Griffith: 70D.

Mr. Chairman: What page?

Mr. Griffith: That is on page 14. There was the discussion there about amending the clause to provide for the protection of a person who was unable to provide a sample because of his physical condition and we attempted to speak to it in 70E(2) on page 15. I am not sure whether this is sufficient.

Mr. Chairman: Well it seems okay to me. If you cannot provide the sample, you cannot be convicted of an offence. Professor, have you seen this change here?

Mr. Ramroop: Is this included in any other jurisdiction?

Mr. Chairman: Was that in any other jurisdiction? Did you get this from anywhere?

Mr. Griffith: Yes, Mr. Chairman. I think we did come across it. I am sorry I would not be able to tell you exactly where we found it, but we did come across some.

Mr. Chairman: Okay, Members what this is saying, "A person shall not be treated as failing to provide a sample of blood if he is unable to do so." So it protects the person if he is unconscious or whatever; I do not what situation would occur.

Prof. Deosaran: I think that will be a problem. In adjucating what does it mean "unable"? Does he just say so or is there a standard? There has to be a standard.

Mr. Griffith: Most of the jurisdictions did not seem to treat it, but we did find it in at least one jurisdiction. Why I said we attempted to do it, was because we were not sure whether you

wanted to speak about medical reasons or just leave it as is, but it is probably too wide as it is here.

Miss Beckles: Well, the real issue there is you found it in only ction that is in itself a source of concern. But then you will need to find out how the court in that jurisdiction interprets unable.

Mr. Chairman: Could we use the words here, “unable because of physical condition to do so”? Well, it came about because we were looking at the situation of a person, because of their physical condition could not provide the sample. So could we just use those words, "is unable to do so because of physical condition" or the proper—[*Interruption*]

Mr. Griffith: Physical or medical.

Mr. Chairman: Physical or medical condition. Mrs. Yuille-Williams, do you have a problem with that? Dr. Gopeesingh, do you want to help us out here?

Dr. Gopeesingh: I am just wondering in a court of law, what could be considered physical? A whole heap of things could be brought in; I am a little confused about the use of the word—

Mr. Chairman: What we are trying to avoid is the mischief where a person cannot give a blood sample for some reason, and then he is guilty of an offence, automatically. It is no fault of his, but he is guilty of an offence what about the words “through no fault of his own”? No, you do not like that?

Miss Beckles: If it is only found in one jurisdiction, then it tells you something has to be wrong there and you must be able to say what is unable to do so, because you really shift—I do not know how the court will interpret when a person is unable to give. I like the ideal of physical or medical because then you are specific it is just for them to—

Mr. Chairman: Yes, but what Dr. Gopeesingh is saying that could mean anything.

Miss Beckles: Well, which is why if you put in such a clause, you must be able to say how the courts in those areas have interpreted what it is to be unable to do so.

Mr. Chairman: All right, Mr. Griffith, we will have to come back to this one. Okay, so let us move on.

Mrs. Yuille-Williams: [*Inaudible*] to be the end of it, what happens if he is unable to give blood?

Miss Beckles: Then, that is the end of the matter.

Mr. Ramroop: No.

Mr. Chairman: It means he has failed to provide blood.

Mrs. Yuille-Williams: He fails to provide it, and he was drunk, you understand what I mean.

Miss Beckles: The determination of drunk is through the test.

Mrs. Yuille-Williams: And therefore—[*Interruption*]

Miss Beckles: So that is the end of the matter.

Mr. Chairman: They could not test him, so he got away.

Miss Beckles: So you have to put something else.

Mr. Chairman: That is what happens, that is the inevitable result of this; if the person cannot give the blood sample, he gets off.

Mr. Griffith: And remember, Mr. Chairman, that there is the requirement for consent in terms of giving blood so if the person is out cold, you probably would not have his consent so therefore "he is unable"—[*Interruption*]

Mr. Chairman: We need to come back to this. Hope that is the last one we have to come back to. Three clauses so far.

Mr. Griffith: 70D(1). We were to examine the last line in 70D(1) on page 14.

Mr. Chairman: Dr. Gopeesingh, did you get one of these? It is attached to the papers for today's meeting.

Mr. Griffith: To determine whether "breath test" should be replaced by "breath analysis", and the comment is that "breath test" is probably correct based on the procedure set out in the Bill where the sample is the preliminary test and precedes the evidential.

Mr. Chairman: No problem.

Mr. Griffith: 70D(2). Miss Lucky was saying—well, we dealt with that already, (2) above, in terms of the physical conditions.

Prof. Deosaran: That ties into the same problem.

Mr. Griffith: 70E, review and amend the clause and we have rewritten or amended 70E(2) on page 15.

Mr. Chairman: That is the same thing about being unable to give a sample of blood.

Mr. Griffith: Can you tie that back to 70D(2),

> "A person shall not be required to provide a specimen of blood under subsection (1) if he is at a hospital as a patient and the medical practitioner is not first notified …"?

Can you tie this thing about "unable to do so'" back to 70D(2) which talks about the person is not required to give the blood if the doctor is not first notified and agrees that it is okay? Can

you tie that back? Could you just say, subject to that or pursuant to that, a person shall not be treated as failing to provide a sample if he is unable to do so? Could you just tie it back into that? Because to me that will be the only situation where a doctor says you cannot take blood from this person; that could be the only possible scenario. Okay? Not so?

Dr. Gopeesingh: [*Inaudible*] the situation that I am aware of that you really cannot take blood from anybody—

Mr. Chairman: Well, right, the doctor will say that. The doctor will say go ahead and take the blood.

Dr. Gopeesingh: When a patient is in ICU, they take blood all the time.

Mr. Chairman: You are unconscious, you can take blood, all kinds of things.

Dr. Gopeesingh: Unconscious, conscious. I do not see a doctor refusing.

Mr. Griffith: 70F(3)(a), there was a request to delete the word "personally". We took advice on this and we were—

Mr. Chairman: What page is that?

Mr. Griffith: This is on page 16 of the Bill. 70F(3),

> "Subsections (1) and (2) shall not apply to a certificate tendered on behalf of the prosecution—
>
> (a) unless a copy has been served personally on the accused or his counsel not less than seven days before the hearing or trial;"
>
> What we have done there is to widen it and also include "prepaid registered post".

We were advised that we should retain it as well.

Mr. Chairman: Served on his lawyer or sent by registered mail, normal standard.

Mr. Griffith: The next one—[*Interruption*]

Mr. Chairman: That deals with service, to put in the standards definition of service.

Mr. Griffith: The next one, the words “was taken from or provided by him" need to be amended. I think that they need to be retained and the reason why they were included there was because of the appearance of the words "provided by" in 70D(1) and also “taken from him” in 70D(5). I think the drafter here was just bringing everything together and to avoid any doubt, I have inserted the words "in accordance with this Act".

Define “blood test”, we have found no definition in any other legislation for “blood test”. If the committee wishes to have it defined, we would probably need advice on that.

Mr. Chairman: Test the blood. I do not think you need a definition for that. That is an English meaning.

Mr. Griffith: The next item deals with whether an analysis can be performed before the test. The way the Bill is written and—[*Interruption*]

Mr. Chairman: That does not make sense, so let us forget that. We do not need to talk about that.

Mr. Griffith: Examine the possibility of incorporating the regulations into the legislation.

Mr. Chairman: I agree with your comments entirely that we will lose the flexibility to make changes and so on. Can we recap now? Let us recap the three clauses that we still need to work on. We go to the first one.

Mr. Griffith: The three clauses that what, Sir?

Mr. Chairman: There are three clauses from my memory that you have to do some work on. The discretion of the court in terms of disqualification on a second offence, and also the 12 months on the first offence. Could I get a sense from the committee, if we want to give the court that discretion? Yes? Right, so we want to give the court the discretion—[*Interruption*]

Mr. Griffith: For the second offence?

Mr. Chairman: First and second, yes. I think that was the sentiment I was picking up in the House as well, but since this Bill is providing culture shock, the third offence that is it. Gone through.

Mr. Griffith: So, we should rewrite it to include "the third offence" and that should be—[*Interruption*]

Mr. Chairman: Third and subsequent would be permanent disqualification, but given the court the discretion with respect to a first offence and a second offence.

Miss Beckles: Let me still ask the question though. “Permanent disqualification” means what?

Mr. Chairman: Never drive again.

Miss Beckles: Is that normal?

Mr. Chairman: Three times they catch you driving under the influences?

Miss Beckles: I am just asking a question. Is it normal?

Mr. Griffith: As I understand it, the court has exercised its powers in that regard. There are people who have been permanently disqualified from driving.

Mr. Chairman: Why would you want to allow a person who has been convicted three times of driving under the influence—

Miss Beckles: Suppose the person subsequently goes and—you are an alcoholic—[*Interruption*]

Mr. Chairman: [*Inaudible*]

Miss Beckles: I am just asking a question. You go and rehabilitate yourself; you go up on the Mount, whatever, whatever. No, no, I am just asking. It might sound humorous.

Mr. Chairman: I am not laughing, I am saying no. You have the three strikes law. In the United States and that is for you.

Miss Beckles: If you tell me that after three times that is it for you—

Mr. Chairman: Yes, that is it. Three times? Nah, nah. Dr. Gopeesingh?

Dr. Gopeesingh: Miss Beckles, I miss the point basically.

Miss Beckles: I am saying, supposing that person is an alcoholic for argument's sake, personal problems whatever, that persons subsequently goes to alcoholic anonymous for rehabilitation, so that you have evidence that suggests that that disease, let us say for example, was related to something serious, personal and you actually have evidence that, I am saying whether there are not any provisions to treat with that. You see under the existing Motor Vehicle Act, you can go before the court and make an application if you can show change in circumstances where the magistrate has the jurisdiction, the power and discretion. It will have to be very serious circumstances and serious change where you will have to get affidavits maybe from a priest, a doctor, a whole set of people for the court to give consideration. So that is all I was raising and that was why I was asking because the legislation very often does not deal with practical situations because you do not know at all, based on this if that is—but to me a total and absolute is—[*Interruption*]

Dr. Gopeesingh: But that obviates the ability for the court to still decide. Even though one court says three strikes and out, can that be appealed and then go through the process?

Miss Beckles: Well, I suspect we would. I do not think that this system here will take away your appeal, but in the Magistrates' Court there is an inherent jurisdiction for the person to make that application. For example, you got convicted, motor manslaughter, you are driving without an insurance policy, that is it. The court takes away your insurance, but you can go back before that said court on exceptional circumstances to show that in some way you have tried to remedy yourself. But it is exceptional cases, if you understand what I am saying because a lot of it is

related to most times very personal problems that the person might have had. You have people who are wanton and just reckless, but you do have those who may have been—

Mr. Chairman: Does the committee want to give the court that kind of jurisdiction? It is neither here nor there with me.

Miss Beckles: I suspect they may have it anyhow. That is something you have to look at.

Mr. Ramroop: Mr. Chairman, as it was mentioned it was there in the other Act, it is a possibility, I see no problem for it

Mr. Chairman: Prof. Deosaran, what is your view?

Prof. Deosaran: I have to think more about this, but I will go along with the committee for now because—[*Interruption*]

Mrs. Yuille-Williams: I wonder as it is the first time that will be happening outside—I know what you are talking about, rehabilitation, we have limitations, but it is a serious charge.

Miss Beckles: I am looking at the issues of what you call still reform and rehabilitation of persons which I think we do not look at enough because—[*Interruption*]

Prof. Deosaran: Do you want to remove the sentence or it will be accompanied

Miss Beckles: No, your sentence cannot be removed, your sentence remains intact because the fact is the conviction remains there, but the point is sometimes, to me, you have to look ultimately in some cases, and these are very rare cases, that there may be an individual who has really made an extra effort to turn around their lives, that is the only case that I am looking at.

Prof. Deosaran: So you are saying really that everything stands except that you want an adjunct to the sentence, rehabilitation be ordered?

Miss Beckles: Yes, because you have to go to the President to get your conviction removed, you conviction remains in those cases.

Prof. Deosaran: Mr. Chairman, that might help the situation, but in special circumstances.

Mrs. Yuille-Williams: But then does not mean after—suppose he falls back into it where we do start to lime, what kind of penalty? Would you become a first offender again?

Miss Beckles: Your conviction remains.

Mrs. Yuille-Williams: No, you were disqualified; you are allowed to drive again because of rehabilitation. If you fall off again, what can kind of penalties would applied to you now?

Miss Beckles: All the powers of the court remain intact—

Mrs. Yuille-Williams: So you mean they will disqualify you again?

Miss Beckles: Yes, because everything remains. The only issue for you would have been the fact that you have brought something exceptional that causes the court to reconsider the fact that you have been permanently disqualified and cannot in any circumstances be considered.

Mrs. Yuille-Williams: I agree with that, but I am asking if that person drives again and commits an offence, where do we start on the chain? The person was disqualified before, rehabilitation; permitted to drive, get a licence again, drove—[*Interruption*]

Mr. Chairman: It seems to me that would be falling to subsequent defence, so that you are disqualified.

Miss Beckles: The disqualification becomes automatic.

Mr. Chairman: It would seem to me that when you commit that offence, which is the fourth offence, automatic disqualification. Unfortunately, again, you could go through rehab again; come back again; and plead again. It is a never-ending kind of thing.

Miss Beckles: The most of you get in a case like that is one opportunity. The courts never allow you two, three and four times. It is one chance you get.

Mr. Chairman: Mr. Griffith, could you get check other jurisdictions and see what they do. If they disqualify people on the third offence, I would prefer to go that way rather than put in all of this human rights thing inside of here. [*Laughter*]

Mrs. Yuille-Williams: But we started off on the second offence.

Mr. Chairman: That is what I am saying. Anyhow, Mr. Griffith you have to come back on this.

Miss Beckles: I am talking about those who are really badly off and are trying.

Mr. Chairman: And then Mr. Griffith, the second one, you have to come back to us on the two tests which test result is the relevant one? Do you take the lower? If you take the lower one, why? Do you average them? And also the scientific basis for the 10 minutes between testing—the Australian legislation. And the third thing we need to look at, about "unable to give a blood test" because of their physical conditions. There are some subsequent points that tie into that same point.

Mr. Griffith: You asked about tying two provisions together, I was unable to find the second one.

Mr. Chairman: If you look at clause 70D(2) on page 14 of your latest version of the Bill,

"A person shall not be required to provide a specimen of blood... if he is at a hospital as a patient and the medical practitioner is not first notified or objects to the provision of a specimen …"

I would like to make that the only reason why the person is unable to give the test. He is at a hospital and the doctor says, do not take the blood. Then he is not guilty of an offence, but any other reason, he is guilty. That is how I figure you can cure that ambiguity.

Prof. Deosaran: Before you go on, page 4 on Mr. Griffith's list, the last item; you are still convinced that the regulations should not be part of it.

Mr. Chairman: I think he is right that once you put the regulations into the legislation it means that there is no flexibility whatsoever for the Minister. You might want to specify a type of device for example, that is not in the legislation. You would have to come back to Parliament every time rather than just doing an order subject to negative resolution. It is not practical.

Dr. Gopeesingh: Is there any similar type of regulation in other jurisdiction that we can take a peep at to see what they may entail?

Mr. Chairman: Sure.

Dr. Gopeesingh: So, if it is possible, we could get an idea what regulations—[*Interruption*]

Mr. Chairman: Mr. Griffith, try and get something from the Australian jurisdiction and New Zealand. Let us take a look at what their regulations would looks like.

Dr. Gopeesingh: So we can get a little idea whether it is necessary or not necessary.

Mr. Chairman: Members, I would like to have one more meeting of this committee, one last and final meeting and then we will report to the Parliament. Can we set a date for that?

Dr. Gopeesingh: I think you are under some heavy fire for a little delay, so, the faster you gone, the better it is.

Mrs. Yuille-Williams: Mr. Chairman, did you have the equipment brought in at all?

Mr. Chairman: I did not want to do it because I reflected upon it and I thought that anybody bringing us equipment would be trying to sell it to us and therefore we fall into allegations that we are pandering to one or other; preferential treatment for somebody. I just thought. I do not know what the committee thinks, if the committee still want to go down that road—[*Interruption*]

Mrs. Yuille-Williams: Last weekend I went to a function; I saw them with it there and people went blowing into the thing. It is all around.

Mr. Chairman: Can you, Mrs. Yuille-Williams—[*Interruption*]

Mrs. Yuille-Williams: Not one setting, they have them in Trinidad and a lot of people are using them. [*Crosstalk*] They are using them at the booths. Heineken has one; Stag has one—

Mr. Chairman: Dr. Gopeesingh, what is your view?

Dr. Gopeesingh: I would like to suggest if more than one person has—I agree with the principle of having it, let us have it—[*Interruption*]

Mr. Chairman: At the next meeting, we will have at least two persons demonstrating the equipment on a no-commitment basis. All right, so we will set the next meeting for two weeks from today? Two weeks from today will be when?

Mrs. Maharaj: 27th.

Mr. Chairman: February 27, 2007, so by the end of this month, we done. Okay? Any other business?

Mr. Ramroop: Carnival Tuesday you can have it because people can have something so we can test it properly.

Mr. Chairman: Any other business? Thank you, the meeting is adjourned to February 27, 2007.

12:08 p.m.: *Meeting adjourned:*

MEETING OF THE JOINT SELECT COMMITTEE APPOINTED TO CONSIDER AND REPORT ON THE MOTOR VEHICLES AND ROAD TRAFFIC (AMDT.) BILL, 2006, HELD IN COMMITTEE ROOM NO 2, RED HOUSE, PORT OF SPAIN, ON TUESDAY, FEBRUARY 27, 2007 AT 10.40 A.M.

PRESENT

Mr. Colm Imbert	**Chairman**
Mr. Satish Ramroop	**Member**
Ms. Gillian Lucky	**Member**
Prof. Ramesh Deosaran	**Member**
Dr. Tim Gopeesingh	**Member**
Mrs. Shaarda Maharaj	**Secretary**
Mr. Ralph Deonarine	**Research Assistant**

ABSENT

Mr. John Jeremie, S.C.	**Member**
Ms. Pennelope Beckles	**Member**
Mrs. Joan Yuille-Williams	**Member**
Mr. Fitzgerald Hinds	**Member**
Dr. Adesh Nanan	**Member**

ALSO PRESENT

Mr. Paul Griffith	**Chief Parliamentary Counsel**
Ms. Laurelle Ralph	**Legal Officer, Ministry of Works and Transport**

Mr. Chairman: Ladies and gentlemen, can we start, please? Could I ask the members of the Arrive Alive team to introduce themselves to the joint select committee, please?

Mr. Waithe: Good morning. My name is Kirk Waithe; I am the Director of the Arrive Alive team.

Mr. Batson: Good morning everybody. My name is Brent Batson, also part of the Arrive Alive Team.

Dr. Persad: My name is Andrew Persad and I am the Breath Alcohol Instructor/Technician.

Mr. Lalla: Good morning, my name is Om Lalla; I am the legal adviser to the Arrive Alive team.

Mr. Chairman: Arrive Alive is so well-endowed they could afford such expensive counsel. [*Laughter*]

I want to invite the Arrive Alive team to make their presentation.

Would you like me to introduce the Members of the committee?

Mr. Waithe: That would be nice, Sir.

Mr. Chairman: The entire committee is not here. It is a joint select committee of Parliament, which means there are Members from both the House of Representatives and the Senate. The Members of the committee are myself as Chairman, Minister Beckles, Minister Hinds, Dr. Nanan, Miss Lucky; all from the House of Representatives, and then from the Senate: Senator Joan Yuille-Williams, Sen. John Jeremie, Sen. Ramroop, Sen. Dr. Gopeesingh and Sen. Prof. Deosaran. We have been trying to complete it so we have a quorum. The other Members may join us but I would like you to proceed as quickly as possible because this is the last item on our agenda. We have finished our work and Members just wanted a demonstration from persons who had some practical experience of how a breathalyzer is used and how it is operated and Miss Maharaj, the Clerk, happened to pick you.

Mr. Waithe: In the interest of time as well—because we want to show you a full demonstration to actually show you a process—we have taken the liberty of bringing some alcohol which our volunteers here are going to consume during the course of the presentation so that you can see the progressive readings and how the breathalyzer works. So while we are doing the introductions, Dr. Andrew Persad is going to actually test each of them. You will see a reading. Hopefully it would be zero because they were asked not to consume any alcohol prior to coming here; after which, the two ladies will consume a glass of wine each; the two gentlemen would consume one beer each. Dirk is our bartender.

Dirk, put the beers in the ice because I do not want them to drink hot beer.

There are specific reasons for this, because you will notice as well that one gentleman has some size; one is rather small; one lady is bigger than the other as well, because as Andrew and Brent would explain, with the breathalyzer it is not like three beers and you are drunk.

Mr. Chairman: I was just wondering why your male consumers would drink beers and they would not be drinking wine.

Mr. Waithe: Joy likes wine; that was all.

Again, I am Kirk Waithe. Our team is Dr. Andrew Persad who is a certified breath alcohol instructor; Brent Batson, Traffic Safety Consultant; Om Lalla, Attorney-at-law and our volunteer legal counsel—unpaid legal counsel.

If I could just take a minute to just go through from 2002. In 2002 there were—well, let me tell you a little bit about Arrive Alive first. We started in 2005. The programme was officially launched on December 31, 2004 so we are just going on enjoying our third year now. Arrive Alive was born out of a group of people who had come together that spent a lot of time on the road because of the nature of their work and just grew frustrated with the carnage that they constantly experienced on our nation's roads.

What we do, we communicate a lot via two-way telephone and I think that the real straw that broke the camel's back was one Sunday evening we were all doing what we do; I was at home listening on a two-way radio and between the space of about 7.00 p.m. and 10.00 p.m. over the radios, the different members of the team reported—between El Socorro and Trincity—three accidents that had claimed a minimum of five lives. That was when we said: "You know what? Something needs to be done about this. We need to create some awareness."

So Arrive Alive was created to, not only highlight the problems but to present solutions; to create awareness. It was initially created to heighten the awareness of road safety. One of the objectives was to bring road carnage and road safety to the front burner. If Arrive Alive has achieved anything, that it what it has achieved, because road safety and road carnage is now on the front burner, I believe, in part, because road carnage is simply the result of criminal behaviour on our nation's roads, so it is right up there with crime. So now you have other companies very involved in road safety campaigns, and so on.

However, from inception, we have supported the police on numerous road exercises, sensitizing the public to the dangers of drinking and driving; not wearing your seatbelt; obeying all the traffic laws, and so on. So we have worked with the traffic police consistently since 2005.

For us, as members who have worked on road exercises with the police, it has become quite disheartening and discouraging when you recognize the sense of disempowerment that the police feels because they lack the legislative support to basically enforce any kind of law.

When you are in a road exercise and you have people who are drunk—and you will see on some of the charts with some of the measurements we found people that have way exceeded any legal limit—who would stand and tell a police officer: "Charge meh nuh. Either charge meh or leh meh go." And there is really nothing much that the police officer can do. Over the course of the carnival season there was one arrest for drunk driving. To be arrested in this country for drunk driving you literally have to be falling out of your car—literally—for the police to even begin to suggest that they are going to arrest. Even in cases like that, they are almost afraid to, because they do not have the support or the tools to properly enforce.

Just to let you know as well, in 2002 there were 163 road fatalities; 2003, 199; 2004, 209; 2005, 217; 2006, 210. To date so far for 2007 there have been 33 as opposed to 37 last year. Twenty-three of the 33 so far this year are under the age of 35. Eighty-eight of the total that I just counted are under the age of 35. So we are losing a lot of our young people.

Part of the unfortunate issue is when you talk to traffic branch and you ask how many of these we know were alcohol-related, they cannot tell you that one was alcohol-related, because even when a body goes to the forensic centre and an autopsy is done, yes, part of what they might do is blood alcohol content, but that is not communicated back to the traffic branch so they have no way of knowing the causes of the accidents. I will tell you that the major causes of road carnage and road fatalities in this country are alcohol and speed and our police service has absolutely no way of measuring either at night and a bare minimum way of measuring speed during the day.

I will say that again. The major causes of road fatalities and road carnage in this country are alcohol and speed. Our police service which is there to protect and serve has absolutely no way of measuring at night, either one. If you cannot measure it, there is no way that you can even begin to control it and there is no way that anything can be done to enforce any behaviour.

Prof. Deosaran: How do you know that? How do you get your proportions?

Mr. Waithe: Based on what we have done on the road exercises, for example. Part of what we do as Arrive Alive which we have been doing since 2005, at major events and parties, and so on, we would have breathalyzer tests when people are coming out of parties. Sometimes we would

have breathalyzers in the road exercises which the police cannot ask to be done, but we as civilians, people volunteer and they voluntarily do the breathalyzer test and the readings are amazing. In road exercises that we do and that we support the police on, I would say, depending on the night and the event—and again, I do not have a scientific way of telling you this; this is just from observation—on any given night 30 to 50 per cent of the people that pass through there that we speak to, would miserably fail a breathalyzer test. However, there is nothing that the police can do about that because, as I said, unless you are visibly incoherent, meaning you are staggering and so on, the police cannot begin to make an arrest and you are a danger, as you would see in the presentation, not only to yourself but everybody else on the roads long before you get to that level.

Part of our objective, where we have reached with Arrive Alive now, the awareness is there. Everybody knows they should not drink and drive; everybody knows they should wear their seatbelts; everybody knows they should not speed excessively. The awareness is there. You hear people saying that we are an ill-disciplined society and that we are a drinking culture. If you take nine out of 10 Trinbagonians and you put them in the USA, Canada, Ireland or England, they immediately conform. So it is not a cultural issue, it is an enforcement issue. The only difference between us and the US, Canada, Ireland and England is that they have laws that can be enforced and laws that are enforced. People know that there is a consequence for poor decisions. In our country, which I not only love but I am in love with, there is literally no consequence for poor behaviour on the roads, which is what we hope could be fixed very soon. We are losing a lot of people. That being said, I would turn you over next to Brent Batson to go through some of his presentations.

Dr. Persad: Before we do that, what we want to do is just to breath test our samples. Also, we have two types of breathalyzers here. We have hand-held and we have portables which give you a printout and I will go into the details of these in a little while. First off, I am just going to test them and pass the printouts around to you all so you can see them.

Mr. Waithe: So they are going to be tested and then they will take a drink right after.

Mr. Ramroop: The Chairman should be tested, you know. [*Laughter*]

Dr. Persad: Anybody can be tested a little later.

Mr. Waithe: Andrew, could you move that around? In the interest of time, Brent can go ahead with his presentation. Anybody on the committee who feels that they want to be tested you are welcome to as well.

[*Breathalyzer tests taken and results passed to Members of the Committee*]

Dr. Persad: You have the time; the test number and zero is his alcohol reading. It is in triplicate.

Mrs. Maharaj: Is it normally printed out in triplicate?

Mr. Waithe: Yes, in triplicate. The difference between what we are seeing here and the one that we would actually recommend to be engaged by the police, there would be room for signatures so that right after the test the person tested as well as the police officer can sign.

[*Presentation begins*]

Mr. Batson: My name is Brent. Those of you who know me along with Mr. Imbert, you met me before with the TEA.

What we are doing folks, the reason I come on board is just to give you a brief example of what we do and how we came into play as part of the breathalyzer team. Kirk mentioned the point with regard to awareness, with regard to the Commissioner of Police always saying that—especially the ACP mobile—police cannot be everywhere every time. As you all know with road safety the three E's are: Enforcement, Education and Engineering. What we do is the education part as far as we can go. We help people make safer choices by educating them more on the consequences. It is as far as we can go, because the rest is up to the enforcement arm.

What we have done here, we have just put together some statistics here. A good example of this is the advance driver training that we do with some of the oil and gas industries. For people to get company cars you have to do advance defence driving, and even though they have a Government licence authorized by the licensing office and they come and do the driving test, they tend to fail, and you find that there is a problem with regard to the standard of driving from the beginning; little things like mirror scanning to understanding following distance; all these basic things. This is just part of the problem linked together.

Going straight into the presentation though—and I do not want to waste our time too much on statistics as you all already know, I am sure—what we got is some latest data here from the OECD with regard to the US scanner in the UK and Australia. What it goes to show is the percentage decrease just from 2002 to 2005 with regard to the amount of alcohol-related crashes and fatalities due to the breathalyzer legislation's strict enforcement. In all four countries, the

primary reason for the reduction was stated as the aggressive and consistent DUI checkpoints. To me, this is the most important part. If when this legislation is passed, the police are not able to do measurable results with regards to if the Ministry wants X amount of DUI checks done per month and therefore the data comes in, it is not going to make any sense because people would just think of it as another piece of legislation. The measurement must be there.

Decrease judicial sympathy across the world—

Mr. Waithe: What he is speaking to there is having the infrastructure in place to support the legislation and a prime example is the point system has been legislated in Trinidad and Tobago. Is that correct?

Mr. Chairman: We can deal with that afterwards. What we really would like to do is to explain how the breathalyzer works because the way this legislation is going to work is that there is a first offence, a second offence and there are severe penalties leading to disqualification of your licence for life, eventually. So there is no point system per se. It is just, the first conviction you have a severe penalty; the second conviction—if I can remember correctly—you lose your licence for life. Is that it?

Mr. Ramroop: The third one.

Mr. Chairman: So the point system is not enforceable at this point. That is something we would do in due course.

Mr. Chairman: I was not saying that to talk about the point system; I was saying that in the same regard, if we introduce the breathalyzer legislation, the infrastructure has to be put in place for it to be effective.

Mr. Chairman: What I would also give you the assurance on is that all of the other experts that have made presentations to the committee have stressed the need for collaboration and aggressive enforcement of the legislation and we are prepared for that. The committee has no intention of putting something on the books that would just be there and not enforced at all. I do not think the Parliament has that intention either.

Mr. Batson: And you are quite right because the final points with regard to the cooperation, with regard to the insurance companies, meeting with them and being able to get data and a combined tri-sector approach with regard to even working with NGOs; you are quite right, that is the only way it could possible work.

For more than 60 years blood alcohol concentration levels have been used to define impaired driving or driving while intoxicated (DWI) in terms of the amount of alcohol in the driver's blood, breath or other bodily fluids. Defining DWI offences in terms of blood alcohol concentration have served to simplify the process of identifying and convicting the offenders. The ultimate purpose in doing so, however, has been to reduce alcohol-related deaths and injuries. In this context, the selection of the most appropriate and effective BAC limit has often become a contentious and inherently political issue in a lot of countries.

In summary, classical laws were societies' initial efforts to acknowledge and control the hazards associated with operating a motor vehicle while under the influence of alcohol. As with other dangerous behaviours, governments enacted law prohibiting driving after consuming too much alcohol or while being drunk or intoxicated without any measurement. Such laws proved largely unworkable and did little, if anything, to deter the behaviour and reduce the incidence of alcohol-related vehicle crashes—from ROSS 1982; that is the booklet that we got it from. A defined system of measurement was essential for public safety on the roadways.

I do not mean to regurgitate; I know you all have most of the statistics, but I am just going to point out, like we said, as the country develops, more traffic is there and the collision risk would naturally increase, of course. That first one is amazing: Between 2002—2005 there was a substantial increase. You would see 127,032 reported motor vehicle accidents is phenomenal, resulting in 13,081 persons injured and 778 people being killed. We consider it as having epidemic proportions.

What is interesting with the data we got from the CSO was that we could see spikes, and the spikes were also on weekends. I will be honest with you all, some of it could be linked to fatigue and fatigue is one of the harder things to measure. Scientifically it is a worldwide problem.

Mr. Waithe: That being said, even with fatigue, alcohol, in many cases, plays a part in the fatigue because alcohol accelerates the onset of fatigue. So people, after they work and so on, they might go and have two/three beers; they are not drunk but the alcohol in their system accelerates the onset of fatigue.

Mr. Batson: What we are going to do now, we are going to go straight to the meat of the matter with regard to the breathalyzer and how the unit works. I am going to hand you all over to Andrew Persad. Before I hand over, this was some data—I forgot I had this slide in recently—

from ACP Mobile, Winston Matthews, who together with Geoffery St. Bernard produced a study called: “Analysis of Road Traffic Crashes”, and what was interesting was the drain on the economy from crashes, costing up to US $6 million per year on health care costs and US $14 million as the burden placed on the private sector. It was an interesting study done.

So let us hand you over to Dr. Andrew Persad.

Dr. Persad: Good morning again. My objective today is to talk a little about alcohol in the body, how it enters your system, how it exits your system and how it is used to give you an accurate result in terms of a breath alcohol reading. So I intend to cover these objectives; talk about alcohol, how it affects the body, how it enters and how it is eliminated so you can get an idea as to how the breathalyzer works when you actually give a breath sample.

The three common types of alcohol are: ethyl alcohol or ethanol which is present in alcoholic beverages; methyl alcohol, which is in industrial products and isopropyl alcohol which is an antiseptic.

Alcohol is a depressant. It acts something like Novocane. If ever you all have been to the dentist and you got an injection of novocane you know it numbs. So basically what it does is eventually, when you have a build up in concentration, it stops your respiratory act so you cannot breathe anymore. So the higher the amount of alcohol you have in your system is the greater the impairment.

Just a little background: This is ethanol (C2H5OH). The reason I am showing you this is because I want to talk to the specific nature of the breathalyzer, how it deals with ethanol and low molecular with alcohols only and not other products like acetone and other products like that which are byproducts from the breath which you actually get in diabetics. They breathe out acetone.

Some of the properties of ethanol are: It is a colourless, odorless, liquid so you cannot say you smell alcohol. You smell the additives that they put in alcohol. It is generally odorless. So the more refined alcohols you would not smell. It is soluble in water. Again, this is important because when we take in alcohol it dissolves in the blood stream then it is put out of your body; exhaled as breath. It starts off as a depressant and then eventually it is a poison and it can result in death.

So these are some of the levels and how they are viewed around the world. Now, if you look at .08, which is in the US; they talk about .08 and .1. In all States the limit is .08. In Europe

you notice they are a little more stringent; they have lower levels, .05. However, an interesting fact in the US, the average DUIs is .16 which is nearly double the limit. In our Arrive Alive campaigns we have been outside parties breath-testing people and we found a number of people who were going to drive, not only twice but three times above the limit. They could not walk well; they were staggering to their cars and they blew limits of .24/.25.

Mr. Waithe: Actually, we have encountered people in road exercises who were behind the wheel, stopped in the road exercise, voluntarily did a breath test and exceeded the .25 figure there, which is catastrophic.

Dr. Persad: In the workplace, the US DOT, .02 is the limit. If you are working in a safety-sensitive position and you blow above .02 you cannot return to your work; you blow .04 and they dismiss you from the position.

This slide is not too clear but what it demonstrates is, this is a limit of .08 which we all talk about. Again, I will talk about that a little later because in the DUI legislation I notice they mentioned 35 micrograms per hundred millimeters of breath. But I will go into that in a little while. But we will work with the .08 at this point in time, which is the limit in the US.

As you see, the higher your blood alcohol concentration, you find your coordination goes. So at around .04 to .05 your natural walking ability, your ability to do basic tasks, your reaction time diminishes. Then when you get up to the .08 your ability to judge speed diminishes and your focus is no longer on the task ahead of you. Your mind starts to drift and you start to think of other things, so your focus goes. Then you are a liability because you are trouble, because you are handling a vehicle and you are not in full control of it.

So when we take a drink what happens is the alcohol goes into our stomach. If we have food there, it starts to metabolize or it slows down. So the alcohol stays in your stomach if you have food there. If, however, you have no food there, it goes straight through to your small intestine where it is distributed rapidly throughout the body. Hence, if you drink on an empty stomach you are going to find that you get higher blood alcohol levels.

Mr. Waithe: It is faster in the system.

Dr. Persad: Yes. It is transmitted faster into and taken throughout your nervous system and all over your body. So that process is slowed down by the presence of food in the stomach. And if you look at the levels of alcohol with respect to when you have food in your stomach, you are going to have some alcohol being broken down. It is slowed up there; some of it is metabolized.

So if you are going to drink, do so on a full stomach because otherwise it is going to go straight into your system and you are going to get higher readings more or less instantly.

So once we have had a few drinks or any drink, the alcohol will go into our system; it dissolves in water; it is then taken into the blood stream and distributed all over the body. So it goes to your brain; everywhere the blood goes. Where the oxygen goes, the alcohol goes. Now some of it is also removed in sweat, urine and breath, but generally it is metabolized in the liver. So the alcohol is broken down in the liver to simpler substances. However, if you drink faster than you metabolize you are going to get a high level of alcohol in your system.

11.40 a.m.

Dr. Gopeesingh: May I ask a question, Mr. Chairman? People with obstructive airways: lung disease, have an inability to exhale over a long period of time as is required there. What happens—there are lots of people like that in Trinidad?

Dr. Persad: There is provision that one can take a manual sample where you ask the person to exhale and you can analyse it, so it will give you a close approximation. It gives you a reading.

Dr. Gopeesingh: On the same apparatus?

Dr. Persad: Yes.

Dr. Gopeesingh: At any time you can press that…

Dr. Persad: But you want to take it at the last possible seconds so you can get accurate results as possible. It takes practice, training, all part of the whole breathalyzer movement.

0.66—still a little over but it is higher.

[*Testing levels of drunkenness*]

Mr. Chairman: And how much time that would be?

Mr. Lalla: It is a very high standard so if people are responsible, this legislation ought not to interfere with anybody greatly. In the exercises we have had, we have literally pulled out seemingly responsible people who could not even stand up and were arguing and threatening the police in the most amazing manner so that you can tell.

I think a police officer can easily identify who should be subjected to a test like this. So it would not be just everybody randomly but certain persons, and we have seen it from road block exercises who looks visibly intoxicated by the simple judgement exercises.

Mr. Hind: This document here with the information, do you anticipate this is what would be actually tendered in the court?

Mr. Lalla: What we would be recommending is another document that can be printed out. There would be a place for a signature so it could be certified after printing. As with an exhibit, whoever takes the test could initial it together with a police officer for the purposes of verifying what has been printed out with that.

Dr. Gopeesingh: This same information would be on the form?

Mr. Lalla: Yes, indeed. And the different units have different formats for print out. I was looking at calibrating and designing it in such a way—some of the foreign units have a place for signature and the person who is being tested so no one can challenge you after to say you have made that up or you have done something false.

Mr. Persad: These are just some of the units from Intoximetres. We have a package with some of these portable units in it.

[*Package given out to Members*]

Advantages of those things, is that they are self-calibrating. You put the calibrating cylinder inside and they calibrate themselves. There are other advantages like data logging, downloading and so forth. These are just the procedures for the tests. We mention calibration. They are calibrated to a known standard. It has to be an NHTSA or approved body of known concentration of calibration gas. All units, screeners, desk tops or portable evidential and they go up to. 4 breath alcohol concentration.

The portable ones—the reason why they respond within five to ten seconds for a positive or negative reading. So they are very quick. It speeds up the process as opposed to having them go on a unit that you have to type in one's ID. So there are advantages to both. The AlCOFST contain two double AA batteries so you can get up to 1,000 tests from them.

[*Display of product*]

This is how the breathalyzers work. They work on electrochemical technology or fuel cell technology. There is a fuel cell about the size of a US $.25 coin. The breath passes over the sensors and the alcohol in the breath is oxidized to acids, and releases electrons and that gives you your digital read out. The higher the concentration of alcohol the longer the process, and the higher the reading. Things like acetone which is a concern I know, and other interfering substances do not react with the fuel cells so this process does not happen. So you get this for alcohol only. It is an alcohol specific process.

Dr. Gopeesingh: Could you explain to our colleagues the reason why you are speaking about

acetone.

Dr. Persad: Acetone is produced in diabetics so therefore, you do not want them to blow a reading that is not alcohol but acetone related. That has always been a concern but now this is being addressed through electrochemical oxidation.

Dr. Gopeesingh: It is what you call ketoacidosis in diabetics who release a lot of ketone and acetone in their breath. It is almost similar to alcohol.

Mr. Lalla: It has been addressed. That is why they use this technology and it does not cater for acetone and ketones. It does not give a reading, alcohol specific.

Dr. Persad: I want to touch on units of measure. I notice people talking about .08 and about 35. Thirty-five microgrammes per 100 mili-breath is what is in the legislation. This is a UK unit of measure but it closely relates to the .08 in the US as .076. Their units are grammes per 210 metres of breath and sometimes referred to as percentage.

Dr. Gopeesingh: But these are .076 grammes per 210 litres of breath?

Dr. Persad: Yes.

Dr. Gopeesingh: How did you come up with that value of 210?

Dr. Persad: It gets into a calculation where they used Henry's law. That is their units of measure that is why I think they changed it to per cent.

Dr. Gopeesingh: So when we are speaking about .08 what we are speaking of?

Dr. Persad: You are talking about grammes per 210 litres of breath.

Dr. Gopeesingh: And that is how your machined are calculated?

Dr. Persad: This one is a US unit. It can use UK units also so it can give you the 35 microgrammes per 100 mili-breaths.

[*Instrument shown and test done*]

I think there is some confusion of units but we need to be clear. If we are using UK units you need to say 35 is the limit. British units are measured in microgrammes per 100 mili; US units grammes per 210 litres of breath.

There is a sight called the "The Drink Wheel" where you plug in male, female, weight, alcohol consumed over length of time and it works out to give you these readings. So a 150 lb man, having one drink in an hour giving you 13 microgrammes per 100 mls, three beers 25 microgrammes. This would be 53 ml.

[*Demonstration*]

Mr. Waithe: Again it comes back to the different body weights. Females have a higher level than men.

Mr. Lalla: Essentially, these were some of the legal issues I identified which was addressed. The only other issue I was suggesting is one might consider from a social perspective giving the Magistrates the right to look at community service orders if they see fit depending on the circumstances.

Mr. Chairman: We had made an amendment to the legislation to give the magistrate some discretion.

Prof. Deosaran: Dr. Persad, could I ask the lady how she feels in terms of having that measurement?

Dr. Persad: Sure.

Prof. Deosaran: Does she feel that her perception is distorted, does she feel shaky, and does she feel out of control?

[*Lady's response was "fine"].*

Dr. Persad: She has a higher behavioural tolerance, maybe.

Prof. Deosaran: That is why there is an important junction in the legislation that the Constable would have to make an observation about some misbehaviour or disorderly driving, which is what Minister Beckles was talking about.

Mr. Waithe: The legislation does touch on the police officer having reasonable cause and that is where it would cause under the training to be identified as a behaviour, driving.

My question with the legislation came up with regards to, in the other countries, the question of entrapment. If the person is going towards the vehicle and stumbling, can you stop them at that point? Must he bounce the starter first?

Mr. Chairman: No. There was discussion on this. He has to be in charge of the vehicle.

Mr. Waithe: Once someone is not swerving and they are pulled over by the police and is asked to do a breathalyzer test and they have passed the legal limit, maybe they were speeding excessively, but they were not moving, they were not staggering. Does it still apply?

Mr. Chairman: It still applies.

Mr. Lalla: From the exercises we did with the police, you can visibly see persons who are way beyond the limit and you can tell persons who had a couple of drinks, but there are people who appear not to be in control of their senses would probably be the candidates who are likely to be

pulled. The training exercise with the police should probably direct them along these lines.

Mr. Chairman: …that could be dilated pupils, flushed appearance, it could be anything. It has to be reasonable doubt.

Mr. Waithe: Somebody like Joy. One cannot look at Joy and see...

Mr. Chairman: It is if you are driving, attempting to drive or in charge of a motor vehicle. So, the policeman may have noticed that she was driving recklessly or she did not stop at a red light, or smelled alcohol on her breath.

Dr. Persad: I thank the Joint Select Committee for having us here and I hope this was informative and it can assist you in your deliberations.

Mr. Chairman: It was most informative. You have cleared up a lot of issues. It is a pity Dr. Nanan was not here. He was querying the difference between the road side devices, the portable devices. I do not think he was aware of the differences between them.

Mr. Hinds was not aware of the difference because we have difficulty trying to figure out the difference between a breath test and a breath analysis and we came to our own conclusion that the breath analysis is this, the printout and the test is the indicative reading so we have confirmed all of that.

Dr. Persad: Thank you:

Mr. Waithe: We will volunteer if anybody wants to be tested to prove what their drinking abilities are.

Mr. Lalla: Mr. Chairman, if you all want as well, we are available on any Friday afternoon to come in when there is a Sitting to do some random tests.

Mr. Chairman: You have been extremely helpful. Thank you very much.

Dr. Persad, I am assuming you are not a salesman—I am not being facetious—or anything like that. Could you give us an idea of the cost of these things?

Dr. Persad: These units are around probably $18,000. The small ones are around $4,000. The desk tops run into a big sum, I cannot tell you the value.

Mr. Chairman: I do not think that is a big sum of money to save lives.

[*Presentation/discussion with invited entity ends here*].

Mr. Chairman: Can we proceed to the rest of the agenda please? Let us deal with the Minutes of the meeting of February 13, 2007. Are there any corrections on page, 2, 3?

If there are no corrections, can someone move the adoption of the Minutes?

[*Minutes confirmed by Prof. Deosaran*]

[Seconded by Miss. P. Beckles]

Prof. Deosaran: Mr. Chairman, before you go on, on the Minutes on page 3, 4.1, you were supposed to ask Heineken and Carib.

Mrs. Maharaj: We called Heineken and Carib and they put us on to "Arrive Alive" because they are the ones that were testing.

Mr. Chairman: Heineken and Carib are clients.

Prof. Deosaran: I am looking at it in the context of the preceded paragraph in terms of the commercial aspect.

Mrs. Maharaj: They are a voluntary NGO.

Prof. Deosaran: I do not want to be critical but I want to make sure we do not enter into an arrangement of contention.

Mrs. Maharaj: That is why we went that way. They were neutral.

Mr. Chairman: They have been doing that for years and that is why I feel comfortable with them.

Could we go now to the document circulated by Mr. Griffith. Does everybody have a copy of the legislation? Okay. Mr. Griffith, can you walk us through these amendments please?

Mr. Griffith: The Committee at its last meeting wondered whether the words, "shall unless the court for special reasons thinks fit otherwise" will give the court discretion to reduce the period of disqualification and also wondered whether the legislation should provide for permanent disqualification.

Initially it did.

What you see in clause 4, in the Bill.

Mr. Chairman: Could you direct us to the clause?

Mr. Griffith: Page 2, clause 4, section 70 of the Act.

We sought to give the court the power for the first two offences.

Mr. Chairman: Mr. Griffith, there seems to be a typographical error here. You mean clause 4 and not clause 5.

Mr. R. Deonarine: It is in clauses 4 and 5.

Mr. Griffith: Clauses 4 and 5. We are dealing with section 70.

Section 70 of the Act is amended by repealing subsection (2) and substituting the following

subsection. A person convicted of (a), two consecutive offences under this section shall, unless the court for special reasons thinks fit to order otherwise or without prejudice to the power of the court to order a longer period of disqualification, it is qualified for a period of 12 months from the date of the conviction for holding or obtaining a driving permit. And the third conviction for a light offence shall be permanently disqualified for holding or obtaining a driving permit.

That you will also find in clause 5 which deals with the proposed 70.

Mr. Chairman: Mr. Griffith, would this allow a judge to order community sentence if he so desired?

Mr. Griffith: I have not considered that Mr. Chairman, and I am not in a position to advise the Committee definitely on that.

Mr. Chairman: Ms. Lucky, what would you want us to do?

Ms. Lucky: I think that the community service legislation does in fact, operate in tandem so by putting this in, it will mean the Court is given its usual wide discretion which would include the use of community service. I think it is allowable but I will undertake to just check it again, but I think it is allowable as it stands without specific mention. Because as it stands a Magistrate could put you on a bond.

Mr. Chairman: Let us move to the next issue.

Mr. Griffith: The chairman wondered whether there was any scientific basis for intervals between breath analyses.

I discussed it with Prof. Pinto-Pierreira and she said that her 15 minute figure had been defined by a reference. She was unable to recall her references of that 15 minutes. She said that the 15 minutes was to provide for the stabilization of blood alcohol to allow a quantum of it to be sufficiently absorbed into the system. She undertook to find the reference for the 15 minutes or to validate the South Australian position of two to 10 minutes, but I have not heard from her since.

12.10 p.m.

Mr. Chairman: Where does that appear in the legislation?

Mr. Griffith: It is on page 8 of the Bill, under the proposed 70(c)(3):

> "For the purpose of the breath analysis there must be an interval of not less than two minutes and not more than 10 minutes before the provision of samples."

Mr. Chairman: Mr. Griffith, based on your discussions with Prof. Perriera, what do you suggest we put here?

Mr. Griffith: Basically, she said if she did not get back to me, I should recommend to the committee that we go with the Australian between two and 10 minutes.

Mr. Chairman: What does the committee think? It does not seem long to take long to take a test. We will go with that. Next.

Mr. Griffith: Mr. Chairman, in relation to 70(d)(2), we want to have the words clarified.

Mr. Chairman: What page is that? [*Interruption*] Mr. Hinds, that was a previous—We went through all of that already and we are now down to just four clauses.

Mr. Hinds: Which one are we dealing with now?

Mr. Chairman: We are on the third one. Mr. Griffith, can go to it please? This is where you have added in "by reason of his physical condition"?

Mr. Griffith: Yes. "By reason of his physical condition to provide a sample of breath for a breath test".

Mr. Chairman: We are no longer saying "unable to do so". We are saying "by reason of his physical condition". Dr. Gopeesingh, is that okay with you?

Mr. Hinds: How would 70(d)(2) now read? I am looking at page 14 of the last—

Mr. Griffith: I think Sir, that we are referring to 70 (d)(1)

Mr. Chairman: Look at the sixth line in 70 (d)(1). Previously, we had if the person was unable to do so. We have taken that out. We are saying if the person is unable by reason of his physical condition. There is no longer any question of what that now means. It now means the physical condition. That settles that. The last one now, Mr. Griffith.

Mr. Griffith: I would like to bring the attention of the committee to 70 (e)(2) on page 15.

Mr. Chairman: What is that all about?

Mr. Griffith: "A person shall not be treated as failing to provide a sample of blood if he is unable to do so for the reasons set out in section…"

Mr. Chairman: That was when we said if the doctor says you cannot test him, he is not guilty of an offence. Fine., that settles that.

Could we go now to 70 (h) please? This was to look at regulations in other countries.

There is one final point that the clerk is making to me; whether it should be a proclamation clause. I think so. What does the committee think? It should come into effect on

the day that it is proclaimed. What I would like to recommend to the committee is can we proceed to prepare the report? I think we have exhausted everything. We need to prepare the report to report back to the House and that is it. I think we have done very well.

Miss Lucky: Mr. Chairman, one thing.

Mr. Chairman: Let me clarify. I am just asking if we can proceed to do that and then we will deal with any or matters.

Miss Lucky: One of the points that have been raises is with respect to whether it should be a police station or any other place. That appears in 70 (c)(1)(ii).

Mr. Chairman: What page is that?

Miss Lucky: Sorry, I am going with the one that is attached to the report.

Mr. Chairman: I am with it.

Miss Lucky: The breath analysis referred to in subsection (1) shall be carried out at a police station—my suggestion is that we insert it right there—or at any other convenient place or reasonable place. I do not know whether the word "reasonable" or "convenient" was used.

Mr. Chairman: Could you take it straight out of the UK legislation?

Miss Lucky: That is where you may want to insert it.

Mr. Chairman: Whatever is in the UK legislation—

Miss Lucky: Let us use it.

Mr. Chairman: I agree with that. Mr. Hinds, did you have a point?

Mr. Hinds: That is what I was coming to. There is one other thing that troubles me. If we are moving from the position of—for the reason Dr. Gopeesingh highlighted and others, perhaps, the encumbrances and the use of man power to take people from the scene to the police station and, therefore, to save that and be more efficient we want to have to police mobile post with the equipment to deal with it right there, our law, as it is now written I recall, makes provision for two tests.

Mr. Chairman: At the police station.

Mr. Hinds: Two tests.

Mr. Chairman: At the police station, not at the roadside.

Mr. Hinds: Two tests at the police station.

Mr. Chairman: Two breath analysis at the police station.

Mr. Hinds: There was a time lapse that was mandated in between them.

Mr. Chairman: Okay, so what is the point you are raising?

Mr. Hinds: We will have to treat with that if we are doing it, not at the station but at the roadside.

Mr. Chairman: It will still apply. If you are doing it at the mobile unit, you still have to go between two and 10 minutes.

Mr. Hinds: If you are doing it at the roadside in a spot check, do you still have to do the first one with the hand-held machine.

Mr. Chairman: Yes, because that is an indicative test. That is not evidential. It is a different type of machine.

Mr. Hinds: Whatever applies in place station will now be applied on the scene.

Mr. Chairman: If you have to mobile unit and if it is properly set up where you could use one of the mobile or portable devices.

Mr. Hinds: We do not have this road thing after a fete, police officer—we may have a roadblock, not after a fete and the police encounter several persons drinking as well. You did not come with it with arrive alive, like we are anticipating in this development. In those circumstances, the concerns raised by Dr. Gopeesingh should be ignored; you just take them to the police. In other words, we are only envisaging a situation where we will need this mobile thing when you are doing—

Mr. Chairman: A roadblock.

Mr. Hinds: Specifically for the purpose of sampling.

Mr. Chairman: I would think so. You are doing a roadblock. You will have a mobile unit there. You know that you will catch people. You carry the mobile unit and deal with them immediately.

In the other situation, the man is swerving when driving. You should have enough time to carry him to the nearest police station and test him. When you have a large crowd of people in a roadblock you will be using the mobile unit.

Mr. Hinds: My mind is settled on that.

Dr. Gopeesingh: You can put that in police vehicle as well. You do not need a large. It seems to be practical.

This part 70 (h), in terms of the subsidiary legislation—

Mr. Chairman: That is the regulations.

Dr. Gopeesingh: Is some thing more? Someone may ask why we use a northern island rather than American or British regulations. Mr. Griffith, could we get something more national in scope, rather than state? For example the regulations from Britain or Canada?

Mr. Griffith: For some reason or other, the UK does not seem to have the regulations. It seems as if—we have been unable to find British regulations. This is the point I was making at one of the meetings, which is that it seems that much of it is in handbooks, guidelines and training. However, in the other jurisdictions such as Australia and New Zealand, much like our jurisdiction, it is set out in subsidiary legislation.

The thing about those states is that much like the United States, they are individual states and you will not easily find the Federal Government, Australia for instance, setting out federal legislation dealing with this. It is governed by the state. You have to look at the various states to be informed.

Mr. Chairman: How does the United Kingdom law function in the absence of regulations?

Dr. Gopeesingh: Good question.

Mr. Griffith: There are some regulations, but in terms of the depth to which some of these orders go, we have to find it; it is not the same.

Mr. Chairman: But it functions with the limited regulations that exist.

Mr. Griffith: Yes.

Mr. Chairman: Perhaps, you can circulate those limited regulations for the committee's consideration.

Mr. Griffith: I will do that, Mr. Chairman, but I was asked specifically for Australia and New Zealand.

Mr. Chairman: No problem.

Mr. Hinds: I want to recommend to the Parliament a public education campaign with handbooks for police officers.

Mr. Chairman: Did you put that in Shaarda?

Mrs. Maharaj: It is incorporated in the minutes.

Mr. Chairman: We need to put it in the report. Could we put it in as recommendations?

Mrs. Maharaj: No problem.

Mr. Hinds: With the provision of handbooks and training.

Mr. Chairman: Let us come to a point. How long do you think this programme of public education should take place before you proclaim this legislation?

Miss Lucky: Three months.

Mr. Chairman: That is what I thought too.

Miss Lucky: Because you want to hit for the vacation; period.

Mr. Chairman: That was my view.

Mr. Hinds: I also want to seriously recommend, Mr. Chairman, that, you piloted the Bill, part of this campaign, some interface with the public through the media about what we have proposed and settled, once the legislation gets back to the Parliament or perhaps even before. I think after is better, seriously speaking.

Mr. Chairman: What are you speaking about?

Mr. Hinds: During the three-month campaign I should include—

Mr. Chairman: What we have been exposed to?

Mr. Hinds: Some interface with the public.

Mr. Chairman: Interface between who and whom?

Mr. Hinds: As part of the education campaign. In other words, if we had a public meeting in the Chamber two people would come, but there is nothing that stops, not the committee, but the Government, or maybe the committee, from the engaging the public.

Mr. Chairman: What is the view of the committee on that?

Dr. Gopeesingh: I think that is a worthwhile suggestion.

Mr. Hinds: Television, radio, talking it through.

Mr. Ramroop: In the presentation we can have a working session with consultation with the people.

Mr. Chairman: Once we can do it. Once it is within our mandate and is allowable I would welcome that because it would show a bipartisan approach to this very serious matter.

Dr. Gopeesingh: One other point on the regulations. We always like to see regulations documented together with the legislation and the question would be asked about affirmative resolution or negative resolution. We need to consider that.

Mr. Chairman: The way the legislation is worded right now, the Minister simply makes regulations, which are not subject to Parliament. It states that the Minister may make regulations

prescribing all matters. What would you want to do? I have no problem with negative, but affirmative would just delay the process, in my view. What do you want?

Dr. Gopeesingh: My colleagues would always want me, on their representation, to sk for affirmative resolution.

Mr. Chairman: Miss Lucky, what do you think?

Miss Lucky: I agree.

Mr. Chairman: I have no problem amending it to affirmative resolution. Mr. Griffith you would amend it "subject to affirmative resolution of Parliament."

Dr. Gopeesingh: I thank you for agreeing to that.

Mr. Chairman: I need your support. I cannot tell you no.

Mrs. Maharaj, can we finalize this report now, immediately, so we can report to the Parliament at the earliest opportunity?

Mrs. Maharaj: If the committee wants to look at what we have and suggest what they would want included, so that by the next set of documents going out, there will be a final draft and we can meet one more time.

Mr. Chairman: I did not want to meet again. Do you think we need to meet?

Mrs. Maharaj: We have one or two things outstanding.

Mr. Chairman: When should we set the next meeting?

Mrs. Maharaj: Whenever the committee decides.

Mr. Chairman: How much time do you need to prepare the report?

Mrs. Maharaj: Once the committee looks at it today, by this evening I can do something. I have this on the system, I just have to add—

Mr. Hinds: You can prepare the report and we—

Mrs. Maharaj: It is done. Look at what I have and tell me what you need me to include again.

Mr. Hinds: Include the public campaign thing that the chairman—

Mr. Chairman: All we want in this report, we are changing the regulations to make it affirmative resolution. We are including the three months public education programme and that is it.

Mrs. Maharaj: If you look under "deliberation", I can put "deliberations/recommendations" and we can include the public campaign under there. The affirmative resolution will be taken up

in the draft Bill that Mr. Griffith will have to update for me. I think he is including not only the proclamation clause but also—

Mr. Hinds: Mr. Griffith, how long will it take for you to settle that?

Mr. Griffith: Two days.

Mr. Hinds: Within the next couple of days, we can get both Mr. Imbert and we can meet one more time and go through both.

Mr. Chairman: When are we setting that meeting?

Mr. Hinds: In another week.

Mr. Chairman: Next Wednesday? I feel I have a whole set of things to do next Wednesday.

Mr. Hinds: Tuesday is fine. By then we have the amended Bill and the report, we would go through the report and we are gone.

Mrs. Maharaj: March 06, 2007.

Mr. Chairman: I have a feeling that I had something today, which I rescheduled to next week Tuesday. I can adjust to suit. It is preferable Tuesday morning. We should not take long with this if we start at 11.00 a.m. I will confirm that with you.

Mr. Griffith: In relation to the recommendation that we should amend the provision that speaks to where the breath test should be made, originally we had:

> "He may subject to subsection (4) require him to provide a specimen of breath for a breath test."

Your committee asked to have a change made and we have changed it. It now appears in 70(b)(1) at the end:

> "He may subject so subsection (4) require him to provide a specimen of breath for a breath test, at or near the place where the accident occurred."

This was much in line with the English legislation, which reads:

> "A person may be required, under subsection (1) or (2) to provide a specimen either at or near the place where the requirement is made or if the requirement is made under subsection (2) and the constable making the requirement thinks fit, at a police station specified by the constable."

You have asked me to look at the British legislation. I am trying to point out that we have already—

Mr. Chairman: That is only in the case of an accident, that is not in the case where you suspect that the person is drunk or driving under the influence. Is that not so?

Mr. Griffith: Is not only in the event of an accident.

Mr. Chairman: The one I am reading says:

> "…require him to provide a specimen of breath or a breath test at or near the place where the accident occurred."

I would think that it is clear, that it involves an accident. If there is no accident how can you make him do that?

Mr. Griffith: Yes.

Mr. Chairman: You will adjust to suit. Fine, that is it. The committee is adjourned. We would have one last meeting and please could we get this back to the House. You all want to meet and meet and meet. I am a vegetarian.

12.30 p.m.: *Meeting adjourned.*