NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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REGULAR SESSION

SENATOR NEIL D. BRESLIN, Acting President

ANGELO J. APONTE, Secretary

P R O C E E D I N G S

ACTING PRESIDENT BRESLIN: The Senate will now come to order.

I ask all to rise and repeat the Pledge of Allegiance.

(Whereupon, the assemblage recited the Pledge of Allegiance to the Flag.)

ACTING PRESIDENT BRESLIN: The invocation today will be given by the Reverend Peter G. Young, from Mother Theresa Church in Albany.

REVEREND YOUNG: Thank you.

Let us pray.

The wisdom of God is beyond imagining, and God's goodness a boundless treasure. You, O, Lord, unfailingly enlighten own minds to open up new and better means of sharing with each other here in this Senate chamber our constituencies' ideas, information and aspirations.

Last night we heard our President talk about the power that we have to create "green technology" that can be of great assistance to our citizens in New York and can

bring them the kind of financial help in the time of need for our needed resources and our quality of life. We pray that we might be able to make this positive opportunity available.

Amen.

ACTING PRESIDENT BRESLIN: Thank you, Father Young.

The reading of the Journal.

The Secretary will read.

THE SECRETARY: In Senate, Tuesday, March 24, the Senate met pursuant to adjournment. The Journal of Monday, March 23, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT BRESLIN: Without objection, the Journal stands approved as read.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from

state officers.

Motions and resolutions.

Senator Klein.

SENATOR KLEIN: I have a motion to recommit with instructions to strike out the enacting clause: Print Number 140, Calendar 83, to the Committee on Veterans, Homeland Security and Military Affairs, at the request of Senator Sampson.

ACTING PRESIDENT BRESLIN: So ordered.

Senator Klein.

SENATOR KLEIN: Are there any substitutions at the desk?

ACTING PRESIDENT BRESLIN: Yes, there are, Senator Klein.

The Secretary will read.

THE SECRETARY: On page 8, Senator DeFrancisco moves to discharge, from the Committee on Insurance, Assembly Bill Number 317 and substitute it for the identical Senate Bill Number 764, Third Reading Calendar 49.

ACTING PRESIDENT BRESLIN: So

ordered.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

On behalf of Senator DeFrancisco, I believe Senate Number 2046, Mr. President, I move that the following bill be discharged from its respective committee, Investigations and Government Operations, and be recommitted with instructions to strike the enacting clause, please.

ACTING PRESIDENT BRESLIN: So ordered, Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

ACTING PRESIDENT BRESLIN: Senator Klein.

SENATOR KLEIN: Mr. President, can we at this time take up the reading of Senate Calendar Number 26.

ACTING PRESIDENT BRESLIN: The Secretary will read.

THE SECRETARY: Calendar Number 59, by Senator Stavisky, Senate Print 1547A,

an act to amend the Vehicle and Traffic Law, in relation to requiring.

ACTING PRESIDENT BRESLIN: Read the last section.

SENATOR VOLKER: Lay that bill aside, please.

ACTING PRESIDENT BRESLIN: The bill is laid aside.

THE SECRETARY: Calendar Number 114, by Senator Valesky, Senate Print 2258, an act to amend Chapter 335 of the Laws of 2005 amending the Education Law.

ACTING PRESIDENT BRESLIN: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT BRESLIN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BRESLIN: Announce the results.

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT BRESLIN: The bill is passed.

THE SECRETARY: Calendar Number 115, by Senator Squadron, Senate Print 3099, an act to amend the Public Service Law.

SENATOR KLEIN: Would you lay this bill aside for the day.

ACTING PRESIDENT BRESLIN: The bill is laid aside for the day.

Senator Klein, that completes the reading of the noncontroversial calendar.

SENATOR KLEIN: Can we now go to a reading of the controversial calendar.

ACTING PRESIDENT BRESLIN: The Secretary will please ring the bell.

Members are asked to come to the chamber for the reading of the controversial calendar.

The Secretary will read.

THE SECRETARY: Calendar Number 59, by Senator Stavisky, Senate Print 1547A, an act to amend the Vehicle and Traffic Law.

SENATOR VOLKER: Senator Stavisky, could I ask a couple of questions, please? Through you.

ACTING PRESIDENT BRESLIN:

Senator Stavisky, through the chair, Senator Volker has asked if you would yield.

SENATOR STAVISKY: Yes.

SENATOR VOLKER: Senator, could I ask you where this bill came from? I mean, did it come from a law enforcement agency? Or where did it come from?

ACTING PRESIDENT BRESLIN: Senator Stavisky.

SENATOR STAVISKY: Through you, Mr. President. I have been interested in traffic safety for many years, and the correlation between using a cellphone and the number of accidents that have occurred I think is very apparent. You are four times more likely to have an accident if you're using a cellphone than not.

It came from my desire to help improve traffic safety, but also to determine whether the statistical evidence shows that there really is a correlation. The accident reporting information does not include reporting the use of a cellphone during an accident.

SENATOR VOLKER: Senator Stavisky -- Mr. President, could I ask another question?

ACTING PRESIDENT BRESLIN: Senator Stavisky, do you yield for an additional question from Senator Volker?

SENATOR STAVISKY: Yes.

SENATOR VOLKER: The reason I ask you this question is, Senator, are you aware that in any accident report involving an accident, if there is any reason for an accident -- that is, if it contributes to an accident, whether it's a cellphone or somebody's distraction or anything of any kind -- it has to be reported?

And I guess the reason I am pretty aware of this is that I used to do a lot of reporting when I was younger, and even then -- and I was in charge of accident investigation for the village that I was in.

And although there's nothing specifically on the form, according to the rules of law enforcement, if a cellphone -- at least as I understand it, if a cellphone is

part of the reason for the accident, it's supposed to be listed there whether you have it on your form or not. At least that's my information.

ACTING PRESIDENT BRESLIN: Senator Stavisky.

SENATOR STAVISKY: Through you, Mr. President. 2007 is the latest year for which we have data, and there were a total of 323,106 accidents.

And let me find the number where -- it's a very small number, I think it was 149, if I'm not mistaken -- I'm sorry, 400, where they claim that the use of the cellphone contributed to that accident. And I am absolutely convinced that the number should be higher.

SENATOR VOLKER: I understand.

SENATOR STAVISKY: In other words, if there are 323,106 accidents in New York State, more than 400 were caused by the use of a cellphone while driving.

SENATOR VOLKER: Mr. President, on the bill.

ACTING PRESIDENT BRESLIN:

Senator Volker, on the bill.

SENATOR VOLKER: I just want to say that I'm not really objecting to the bill except that I happen to know that the Department of Motor Vehicles originally opposed this bill. The reason they opposed it is they say that -- just as I was just saying, that if there is an indication about the accident to a police officer that the cellphone had anything to do with the accident, he's duty-bound to report it on the accident report. It's an integral part of the accident report, whatever the reason, whatever any kind of reason.

For instance, if speeding was one of the reasons for an accident, that's supposed to be listed in the accident report. And the same thing is true with cellphones.

And I happen to agree with you, I think cellphones contribute to an awful lot of accidents, probably more than is reported. The only question, I guess, is it's sometimes difficult for a police officer to determine

whether that's the actual reason for the accident or not.

And I would also question whether you could even report that there was a cellphone, because that might be considered to be something that is more than a law enforcement officer could respond to.

But one thing is for sure, that any police officer who believes that a cellphone contributed to an accident right now should certainly report it as part of the accident report.

ACTING PRESIDENT BRESLIN: Thank you, Senator Volker.

Senator DeFrancisco, on the bill.

SENATOR DeFRANCISCO: Would the sponsor yield to a question?

ACTING PRESIDENT BRESLIN: Senator Stavisky, would you yield to a question from Senator DeFrancisco?

SENATOR STAVISKY: Yes.

SENATOR DeFRANCISCO: You know, I have a copy of MV-104A, which really lists how a police officer has got to complete the

various boxes on the accident report. And one of the areas says "apparent contributing factors." And not only does that indicate "cellphone, handheld," if it's a contributing factor, but also "cellphone, hands-free" if it's a contributing factor.

What additional benefit is it to put in a police report whether a cellphone was in use at the time of the accident if it was not a contributing factor?

ACTING PRESIDENT BRESLIN: Senator Stavisky.

SENATOR STAVISKY: First of all, different jurisdictions have different rules, different police jurisdictions have different rules concerning reporting of accidents.

I have a copy of the MV-104A form also. There's no mandate currently that they check that box. And in fact, there is an underreporting, many people feel there is an underreporting of accidents involving cellphone use as a result -- which causes an accident.

SENATOR DeFRANCISCO: All right.

On the bill.

ACTING PRESIDENT BRESLIN: Senator DeFrancisco, on the bill.

SENATOR DeFRANCISCO: Presently, as I just mentioned, police officers, in completing a police report, have to list the apparent contributing factors. And obviously, if cellphone use is a contributing factor, even if it's a hands-free device, it's one of the categories that has to be filled out.

Now, I'm not so sure what is the value of requiring police officers to put information that has nothing to do with the accident. Should we have a statute that says apparently the individual was eating a sandwich at the time of the accident if it was not a contributing cause, or putting makeup on at the time of the accident if it's not a contributing cause?

In other words, what we're doing here is micromanaging a police activity. And the police officer obviously wants to know and provide as much as information as possible to avoid future accidents and to tell what

contributed to the accident.

And so to get information about various and sundry things that may have been going on that the police officer believed has nothing to do with the accident, to me, is something that is not only not necessary, but we're micromanaging a police officer's role and getting away from the true purpose of an accident report. It's not to gain general information about what people do when they are involved in an accident, but to find out what happened so we can avoid it again if the happening had various contributing factors.

So I don't think the bill is a good bill, and I think it leads us down a road of having police officers providing information that may be socially enjoyable or interesting in finding statistics about, but has nothing to do with the role of a police officer in an accident report.

Thank you.

ACTING PRESIDENT BRESLIN: Thank you, Senator DeFrancisco.

Why do you rise, Senator

Marcellino?

SENATOR MARCELLINO: If Senator Stavisky would yield for a couple of questions.

ACTING PRESIDENT BRESLIN: Senator Stavisky, will you yield to Senator Marcellino?

SENATOR STAVISKY: Yes.

SENATOR MARCELLINO: Thank you, Mr. President.

Thank you, Senator Stavisky.

As you all know, I was the author of the hands-free cellphone bill in the past, and this chamber passed it and it became law. And I too am interested in the information that Senator Stavisky is seeking to find in this piece of legislation.

I would just ask you, Senator, how would the police officer who didn't witness the accident know there was a cellphone situation?

SENATOR STAVISKY: Through you, Mr. President.

ACTING PRESIDENT BRESLIN:

Senator Stavisky.

SENATOR STAVISKY: Yes. If there's a cellphone on the seat, if he sees a cellphone. And it's very easy to determine whether the cellphone was in use at the time of the accident.

There's no question that there is an underreporting of the numbers, and that is the purpose of this bill, to make sure that they check to see if there is a cellphone visible. Nobody's suggesting anything else. But if there's a cellphone visible, then it should be so noted on the MV-104A form.

ACTING PRESIDENT BRESLIN: Senator Marcellino.

SENATOR MARCELLINO: Would the Senator yield again?

ACTING PRESIDENT BRESLIN: Senator Stavisky, will you continue to yield to Senator Marcellino?

SENATOR STAVISKY: Yes.

ACTING PRESIDENT BRESLIN: You may continue, Senator Marcellino.

SENATOR MARCELLINO: Thank you,

Senator. Through you, Mr. President.

Senator Stavisky, are you suggesting that the police officer reporting to the scene of the accident pull the phone records of both parties to the accident?

ACTING PRESIDENT BRESLIN: Senator Stavisky.

SENATOR STAVISKY: First of all, the cellphone is visible, and you can see whether a call has been made. That does not require subpoena power. Instead, they have the right to ask for an ID, a registration and an ID identifying the driver and the inhabitants of that vehicle.

ACTING PRESIDENT BRESLIN: Senator Marcellino.

SENATOR MARCELLINO: Would the Senator continue to yield?

ACTING PRESIDENT BRESLIN: Senator Stavisky, will you continue to yield?

SENATOR STAVISKY: Yes.

ACTING PRESIDENT BRESLIN: Senator Marcellino.

SENATOR MARCELLINO: The fact

that a cellphone may be visible does not necessarily mean it was used, number one.

And two, if it was being used in a hands-free situation, that is not a violation of law. They would be in compliance with the law.

In order for you to look at that cellphone, shouldn't the police officer require some type of authorization, searching somebody's personal possessions?

ACTING PRESIDENT BRESLIN: Senator Stavisky.

SENATOR STAVISKY: First of all, if he were to look at the cellphone, he can tell if -- if there were no calls made, then there's no question that the cellphone was not involved as a result of -- in connection with the accident.

However, they have the right to take a look at the cellphone and see whether a call was made.

ACTING PRESIDENT BRESLIN: Senator Marcellino.

SENATOR MARCELLINO: Through you,

Mr. President, would the Senator continue to yield?

ACTING PRESIDENT BRESLIN: Will you continue to yield, Senator Stavisky?

SENATOR STAVISKY: Yes.

SENATOR MARCELLINO: I am not an attorney, Senator --

SENATOR STAVISKY: Neither am I.

SENATOR MARCELLINO: I know you're not either; we're both former teachers. So we are somehow at a loss for this.

But it would be my understanding, before a police officer can look at your personal property, that either a search warrant or some type of a court authorization is required. I don't think they have a right.

If that cellphone, for example, was in a woman's pocketbook, does the police officer have the right to say, "Madam, do you have a cellphone? Can I look at it?" or "I want to look at it"?

ACTING PRESIDENT BRESLIN: Senator Stavisky.

SENATOR STAVISKY: The fact that

a cellphone is visible means that it's part of the accident scene and he has a right to investigate an accident.

Nobody is suggesting the constitutional rights to unreasonable search and seizure should be violated. But at the same time, if a phone is visible, there's a presumption that it could have been in use during the time of the accident, at the time of the accident.

SENATOR MARCELLINO: Thank you, Senator. On the bill.

ACTING PRESIDENT BRESLIN: Senator Marcellino, on the bill.

SENATOR MARCELLINO: Mr. President, the argument that -- the response that I got from the Senator, I appreciate it, but it makes no sense.

If the cellphone is visible, it does not mean it was in use. It could be not visible and have been in use. Perhaps somebody put it in their pocket. What if the cellphone is in my breast pocket? I was using it, but I put it away. I turned it off and

put it away, got out of my car. Is the police officer going to say, "Do you have a cellphone, sir? Was it in use? I want to see it"?

That's a search. They're now searching my person, they're searching my possessions for an automobile accident.

I think what the Senator is seeking is laudable. I'd love to know the information. I think it would be a good idea. But I just think the way this bill is written, you're asking police officers to do something that I don't necessarily think you want them to do.

It just extends their purview, it extends their searches, it extends their imposition of their presence on someone's person more than they have to be, especially at a time of stress. People involved in an accident are under stress. They're upset, they're angry, they're nervous. There's all kinds of problems here. And now the police officer is going to start going in and prying.

As the Senator said, what if they

were coming their hair? You're going to ask them for a comb? What if they were eating a sandwich? You're going to ask them if they were eating? There's such a thing as distracted driving. That's a violation also. You know, there's a whole host of things that you open up here, Senator, with this piece of legislation.

While I think your intent is worthy, I think the method you're seeking by mandating this is not. I think the police officers, with their training, are fully capable of knowing and looking and asking the appropriate questions.

And if there's a determination that the cellphone was in use -- you know, if somebody witnessed it, that's one thing. If there's an accusation by one of the parties, that's one thing. If someone says, Well, he or she was on the phone when they hit me -- well, okay, now you've got a reason to do something.

But just giving the police officer the authority to go in and start searching

people or searching their property or searching their possessions and then seeing if the cell was used, it makes no sense to me. And I think that's an imposition and invasion of privacy, in my mind.

So I think, Senator, the intent, I agree, is a good intent. I think the information would be useful to help us with our traffic safety rules and laws. But I think the way you're trying to get it is a bit intrusive on somebody's personal property and time and possessions.

Thank you.

ACTING PRESIDENT BRESLIN: Thank you, Senator Marcellino.

Senator Little.

SENATOR LITTLE: Thank you, Mr. President. Would the sponsor yield for a question, please?

ACTING PRESIDENT BRESLIN: Senator Stavisky, would you yield for a question from Senator Little?

SENATOR STAVISKY: Yes.

SENATOR LITTLE: Thank you.

Senator Stavisky, we certainly all want to see that we have safe drivers and that we have drivers paying attention when they're driving. This cellphone issue is something that everyone hangs their hat on as being the major distraction for people driving.

I will tell you that I was hit from behind one time by someone tuning a radio, which I often wonder if maybe we should outlaw tuning your radio while you're driving. We can't get to that.

Is your intention just to get a record of how many people have a cellphone in their car while they're driving?

ACTING PRESIDENT BRESLIN: Senator Stavisky.

SENATOR STAVISKY: Only if there's an accident. But the answer to your question is yes.

ACTING PRESIDENT BRESLIN: Senator Little.

SENATOR LITTLE: Okay, thank you. And through you, Mr. President.

I understand you're not going to

stop cars and ask if they have a cellphone. So you're trying to get a record of every automobile that has an accident, is there the presence of a cellphone in that car. Should that cellphone be grabbable or reachable by the driver?

ACTING PRESIDENT BRESLIN: Senator Stavisky.

SENATOR STAVISKY: Only if there's an accident. If there's no accident, then --

SENATOR LITTLE: Right. If there is an accident.

SENATOR STAVISKY: If there's no accident, then it doesn't apply.

SENATOR LITTLE: No, if there is an accident.

ACTING PRESIDENT BRESLIN: Allow Senator Stavisky to answer.

SENATOR LITTLE: All right.

SENATOR STAVISKY: I think I've responded that if there is an accident.

This does not, obviously, apply if a police officer sees a cellphone on a seat;

this does not apply. It only applies in the case of an accident.

ACTING PRESIDENT BRESLIN: Senator Little.

SENATOR LITTLE: Well, I think we determined that, Mr. President, in the first question, that we're only talking about getting a record of cellphone presence when there is an accident.

So the question was will the policeman have to note on the record, yes, there was a cellphone present, will he have to note whether it was reachable or grabbable by the driver?

ACTING PRESIDENT BRESLIN: Do you yield for that question, Senator Stavisky?

SENATOR STAVISKY: All the legislation requires is that the police officer report whether there was a cellphone in use at the time of the accident.

ACTING PRESIDENT BRESLIN: Senator Little.

SENATOR LITTLE: My understanding was not, Mr. President, that it was whether it

was in use, but whether there was the presence of a cellphone in the car, when we first began this discussion.

ACTING PRESIDENT BRESLIN: Is this on the bill, or are you asking a question?

SENATOR LITTLE: No, I'm asking another question.

ACTING PRESIDENT BRESLIN: Would you continue to yield, Senator Stavisky?

SENATOR STAVISKY: Yes.

Only if the cellphone was in use and there was an accident. If there was an accident and the cellphone was not in use, then it wouldn't apply.

SENATOR LITTLE: So there will be no -- nothing on --

ACTING PRESIDENT BRESLIN: Through the chair.

SENATOR LITTLE: Thank you, through the chair. So there would be -- Senator Stavisky --

ACTING PRESIDENT BRESLIN: Would you continue to yield, Senator Stavisky?

SENATOR STAVISKY: Yes.

SENATOR LITTLE: So there would be nothing on the report if the cellphone was not in use at the time of the accident?

SENATOR STAVISKY: That's correct.

SENATOR LITTLE: And who determines whether the cellphone was in use at the time of the accident?

ACTING PRESIDENT BRESLIN: Through the chair.

SENATOR LITTLE: Mr. President, through you.

ACTING PRESIDENT BRESLIN: Do you continue to yield?

SENATOR LITTLE: Who would determine that they were in use? Is it just through a question of the driver: Were you using a cellphone? Or does the policeman have to ask and check it out and verify it?

ACTING PRESIDENT BRESLIN: Senator Stavisky.

SENATOR STAVISKY: The applicable section starts by saying every police or

judicial officer to whom an accident resulting in injury to a person shall have been reported. That's line 4 of the bill.

ACTING PRESIDENT BRESLIN: Senator Little.

SENATOR LITTLE: Well, just to be a little more clear, if I could ask another question.

ACTING PRESIDENT BRESLIN: Certainly.

Do you continue to yield to Senator Little?

SENATOR STAVISKY: Yes.

ACTING PRESIDENT BRESLIN: You may proceed.

SENATOR LITTLE: So my question was how does the policeman determine whether the cellphone was in use. Does he ask to see it? Does he ask the driver? What happens here?

ACTING PRESIDENT BRESLIN: Senator Stavisky.

SENATOR STAVISKY: This requires the judgment of the police officer.

ACTING PRESIDENT BRESLIN:

Senator Little.

SENATOR LITTLE: Thank you. If I may, another question, Mr. President.

ACTING PRESIDENT BRESLIN:

Senator Stavisky, do you continue to yield to Senator Little?

SENATOR STAVISKY: Yes.

ACTING PRESIDENT BRESLIN: You may proceed, Senator Little.

SENATOR LITTLE: Since we have legislation that you have to use a cellphone hands-free, we're now going to determine -- do you include using OnStar in a car, or using a built-in cellphone in a car? And supposing the policeman doesn't see a cellphone but there is one built into the car; how does he determine that?

ACTING PRESIDENT BRESLIN:

Senator Stavisky.

SENATOR STAVISKY: I happen to have OnStar in my car. I've never used it, fortunately. And I don't think there's any way they could determine except by contacting

OnStar to see if it was in use at the time of the accident.

But generally speaking, if there is an accident, OnStar will be notified automatically when there is an impact.

ACTING PRESIDENT BRESLIN: Senator Little.

SENATOR LITTLE: Thank you, Mr. President. Another question, if I may, to Senator Stavisky.

ACTING PRESIDENT BRESLIN: Senator Stavisky, do you continue to yield to Senator Little?

SENATOR STAVISKY: Yes.

ACTING PRESIDENT BRESLIN: You may proceed.

SENATOR LITTLE: Thank you.

By the same token, if I'm driving my car and I'm using a built-in cellphone, there is no cellphone actually to be seen. Supposing my cellphone is in my pocketbook or something, and I have a Bluetooth in my ear. How does the policeman determine that a cellphone has been used then?

ACTING PRESIDENT BRESLIN:

Senator Stavisky.

SENATOR STAVISKY: He will not have seen the cellphone, and therefore he cannot determine whether the cellphone was in use.

ACTING PRESIDENT BRESLIN:

Senator Little.

SENATOR LITTLE: Thank you. I have another question, because -- if I may.

ACTING PRESIDENT BRESLIN:

Through the chair.

Would you continue to yield, Senator Stavisky?

SENATOR STAVISKY: Yes, I do. And I'd like to respond in more detail when I --

ACTING PRESIDENT BRESLIN: Go ahead, Senator Stavisky.

SENATOR STAVISKY: Let me just respond in a little more detail.

The existing statute says every police or judicial officer to whom an accident resulting in injury to a person shall have

been reported pursuant to the foregoing provisions of this chapter, shall immediately investigate the facts or cause the same to be investigated and report the matter to the commissioner forthwith, provided, however, that the report of the accident is made to the police officer or judicial officer within five days after such accident.

That is in the existing law, and that would cover the reporting of accidents.

ACTING PRESIDENT BRESLIN: Senator Little.

SENATOR LITTLE: Thank you. If I may, also, I would like to ask the Senator --

ACTING PRESIDENT BRESLIN: Senator Stavisky, do you continue to yield to Senator Little?

SENATOR STAVISKY: Yes.

ACTING PRESIDENT BRESLIN: You may proceed, Senator Little.

SENATOR LITTLE: I have a concern for the accident report, because it is now going to say that there was a cellphone which may have been used, if he could determine it.

Does he also indicate on that report whether you're using the cellphone in heavy traffic, whether the cellphone is being used on a rural road?

I typically drive the Northway and then, as many times, there are no cars ahead of me or behind me and I may be using a cellphone. And it's not illegal.

So I have a concern that eventually, if there is an accident, that now we have a cause or something that legally they can go after that person with that maybe is not really factual.

ACTING PRESIDENT BRESLIN: Senator Stavisky.

SENATOR STAVISKY: I'm not sure I understood your question.

SENATOR LITTLE: I did get a little confusing in my question, I'll admit.

ACTING PRESIDENT BRESLIN: You may repeat, Senator Little.

SENATOR LITTLE: Thank you. I am concerned that if the accident report says there is a cellphone that may have been used,

does it also add other factors -- heavy traffic, rural road, vacant area, stopped in traffic, got hit from behind -- so that the cellphone is not as big an indicator of inattention?

ACTING PRESIDENT BRESLIN: Senator Stavisky, with the aid of Senator Adams.

SENATOR STAVISKY: Always.

The MV-104 that we fill out if we have an accident, and the MV-104A that the police officer fills out, has all of these conditions noted in the report. They talk about road conditions, they talk about the environment, they talk about glare and lane markings and all sorts of conditions that occur on rural roads as well as on city streets.

SENATOR LITTLE: Thank you. Another question, if I may.

ACTING PRESIDENT BRESLIN: Senator Stavisky, do you continue to yield to Senator Little?

SENATOR STAVISKY: Yes.

ACTING PRESIDENT BRESLIN: You may proceed, Senator Little.

SENATOR LITTLE: If there is a cellphone in use in the car, must it be the driver who is using that cellphone? Or could it be a passenger or someone in the back seat or a passenger with the cellphone on speakerphone?

ACTING PRESIDENT BRESLIN: Senator Stavisky.

SENATOR STAVISKY: All the legislation says is that the police officer shall determine whether a mobile telephone was in use. It does not specify.

But presumably this is another judgment call on the part of the police officer.

ACTING PRESIDENT BRESLIN: Senator Little.

SENATOR LITTLE: One more time I would just ask, if I may, Mr. President.

ACTING PRESIDENT BRESLIN: Senator Stavisky, do you continue to yield to Senator Little?

SENATOR STAVISKY: Yes.

ACTING PRESIDENT BRESLIN: You may proceed, Senator Little.

SENATOR LITTLE: Shouldn't the legislation say who was using the cellphone? If the driver was using the cellphone, not the passenger?

ACTING PRESIDENT BRESLIN: Senator Stavisky.

SENATOR STAVISKY: The purpose of the legislation is to determine whether the use of a cellphone was a contributing factor in causing the accident.

Now, if a passenger is using a cellphone and the person driving the car is listening to the conversation and perhaps, since it's going to be a hands-free device, then the person who is driving the car may be participating in the cellphone discussion with the outside party.

The point here is that we want to determine how accurate the data is in reporting accidents. The use of cellphones in cars is totally underreported, as I indicated

earlier, and that's the purpose of the legislation.

I can think of a lot of instances where the person sitting in the passenger seat hands the cellphone to the driver and says "Here, you talk to them." Obviously, the cellphone may belong to the person in the passenger seat. But at the same time, that's what caused the accident, and that's what is determined in the police report.

SENATOR LITTLE: Thank you.

ACTING PRESIDENT BRESLIN: Senator Little.

SENATOR LITTLE: Thank you. One more question, if I may.

ACTING PRESIDENT BRESLIN: One more question, would Senator Stavisky continue to yield to Senator Little?

SENATOR STAVISKY: Yes.

ACTING PRESIDENT BRESLIN: You may proceed.

SENATOR LITTLE: My fear here is that we are looking at coming to the conclusion that cellphone usage in a car by

anyone is a distraction.

And I would have to ask the Senator if you don't feel -- or do you feel that talking and having a conversation with someone in the passenger seat could be just as much of a distraction as talking, hands-free, to someone on a telephone? What is the difference?

ACTING PRESIDENT BRESLIN: Senator Stavisky.

SENATOR STAVISKY: We're obviously not going to require everybody to have one person in a car so there's nobody to talk to.

ACTING PRESIDENT BRESLIN: Senator Little.

SENATOR LITTLE: Thank you. On the bill, if I may.

ACTING PRESIDENT BRESLIN: Senator Little, on the bill.

SENATOR LITTLE: You know, I drive a lot, and many of us who live in rural areas drive a lot. Certainly far more than people who live in Manhattan and the boroughs

of New York, I would guess. And there are many distractions when you're driving. But my fear here is that we're going pin cellphones as being the biggest distraction while you're driving a car.

Maybe just talking to someone in the front seat, talking to someone in the back seat -- I will have to tell you that I have six children, and at one time -- not now, but at one time -- I drove around with five children under the age of 8. Now, if you don't think that's a distraction, you don't know what I was into.

But there are so many issues here. We should pay attention to our driving. We need to be more attentive to our driving. Zeroing in on cellphones is inappropriate because we can have conversations, you can have -- you could be listening to a GPS, trying to find directions. You could be on the OnStar. You could be on a cellphone that is not in sight and you're talking. You could be talking to yourself and be distracted. So let's concentrate on getting people to pay

attention to their driving, and we will have safer driving.

But because of so many issues involved with this, and because of the focus on the cellphone presence in the car, I intend to vote no on this legislation.

ACTING PRESIDENT BRESLIN: Thank you, Senator Little.

Senator Adams.

SENATOR ADAMS: Thank you, Mr. President.

I think that we need to --

ACTING PRESIDENT BRESLIN: This is on the bill, Senator Adams?

SENATOR ADAMS: On the bill, I'm sorry.

ACTING PRESIDENT BRESLIN: On the bill, Senator Adams.

SENATOR ADAMS: We need a little clarification.

First of all, this is a good bill. It fills a loophole. Talking to someone in the passenger seat, talking to someone behind the seat, having five children in the car,

that's not against the law.

It's against the law to talk on a cellphone while you're driving. You could get a summons for that. A summons is in lieu of arrest.

If an officer comes to the scene and there was an accident and he sees a beer can in the car, he can question someone about that beer can: "Have you been drinking?" If the person is talking on the cellphone to merely inquire --

ACTING PRESIDENT BRESLIN: Excuse me, Senator Adams.

Senator Little, why do you rise?

SENATOR LITTLE: Thank you. Would Senator Adams respond to a question, please, a clarification?

SENATOR ADAMS: I will be more than willing to after I finish my thought. I'll be more than willing to yield to a question after my finish my thought, if it's all right.

ACTING PRESIDENT BRESLIN: Fine.

SENATOR ADAMS: Okay?

If a police officer comes to the scene and if the law is passed and he sees that there's a cellphone in the car, for him to inquire -- of course, no one is advocating that he should search a person who's in a crime. But the main purpose of the crime is to -- I mean the accident is to determine the cause of the accident. That's why on the back of the report you indicate the road conditions, you indicate everything that will allow us to determine what's the cause of the accident.

Now, what's the purpose of that? Because, particularly in larger police agencies like the NYPD, you gather all that information and you use that information to determine what new laws, what new procedures, what new practices should be put in place. So it's more than just blaming the cellphone; it's trying to make the roadways safer. And that information that's on that accident report is used to analyze how do we make the roadways safer.

If we have a disproportionate

number of accidents that are taking place due to cellphone usage, then clearly you should not allow the problem to exist without analyzing those problems. Police officers on the front line, their job is to investigate and determine the cause of. If it's an accident, if it's a crime, if it's an injury, that's their job.

And the more information you provide on the reports will allow you to do that in an appropriate fashion and will allow those who go back and analyze the information to determine how to prevent it from reoccurring.

And I will yield to any question that the Senator, my colleague, had.

ACTING PRESIDENT BRESLIN: Senator Little, Senator Adams has consented to yield.

SENATOR LITTLE: Thank you.

Senator Adams, if I may -- through you, Mr. President -- you made a statement that it was not against the law to have five children in the car, et cetera, et cetera, but

that it was against the law to talk on a cellphone while you're driving.

That is not accurate. It is not against the law to talk on a cellphone while you are driving. It is against the law to hold the cellphone to your ear while you were driving. You may have hands-free, Bluetooth, OnStar, built-in phone. It is not against the law to talk on a cellphone while you are driving.

ACTING PRESIDENT BRESLIN:

Senator Adams.

SENATOR ADAMS: Through you, Mr. President. There was two things that I pointed out. One, it's against the law to talk on a cellphone while you're driving -- and my indication to be corrected is while holding it. Two, it's important for police officers to be able to analyze the cause of the crime and go back and figure out how we prevent future -- cause of the accident so we can go back and figure out how to prevent future accidents from taking place.

So yes, it's illegal on the surface

to have a handheld device, but it's also imperative for us to continue to analyze what caused the accident. And that information on that report will give us that information.

ACTING PRESIDENT BRESLIN: Why do you rise, Senator DeFrancisco?

SENATOR DeFRANCISCO: I wonder if Senator Adams would answer a question.

SENATOR ADAMS: Yes, I will.

ACTING PRESIDENT BRESLIN: Senator Adams has agreed to yield. You may ask your question.

SENATOR DeFRANCISCO: Through you, Mr. President. What I understand Senator Adams saying is that it's important for a police officer to do an investigation and determine contributing causes of the accident, and that's why this bill is important.

Is that basically the thrust of what you're saying?

ACTING PRESIDENT BRESLIN: Senator Adams.

SENATOR ADAMS: Through you, Mr. President, I gave several reasons on why

it's important.

One, it's illegal to use a handheld device. Two, the reason we have information on accident reports is so that after an accident it can be analyzed and determined how to prevent future accidents from taking place by finding out what are the reasons for the accident taking place.

SENATOR DeFRANCISCO: Would Senator Adams yield to another question?

ACTING PRESIDENT BRESLIN: Will you continue to yield to Senator DeFrancisco, Senator Adams?

SENATOR ADAMS: Through you, Mr. President, yes.

SENATOR DeFRANCISCO: And is it fair to say, then, the reason it's important for police officers to find the contributing causes of the accident and report them is so that you can help prevent future accidents?

ACTING PRESIDENT BRESLIN: Senator Adams.

SENATOR ADAMS: Through you, Mr. President, I believe that is one of the

reasons, yes.

SENATOR DeFRANCISCO: Okay. And I think this is my last question.

ACTING PRESIDENT BRESLIN: Would you continue to yield to Senator DeFrancisco, Senator Adams?

SENATOR ADAMS: Anything for Senator DeFrancisco.

SENATOR DeFRANCISCO: Anything?

ACTING PRESIDENT BRESLIN: You may proceed, Senator DeFrancisco.

SENATOR DeFRANCISCO: Okay, maybe it will be two questions.

No, but the next question is basically this. If after an investigation and the police officer determines that something was not a contributing cause, is it fair to say that there's absolutely no reason to have to report something that is not a contributing cause to the accident?

ACTING PRESIDENT BRESLIN: Senator Adams.

SENATOR ADAMS: Through you, Mr. President. Yes.

And I don't believe the bill is stating that if it wasn't a contributing cause that it should be reported. And it should be in the details of the accident report, whatever information, additional, that the police officer wants to provide.

SENATOR DeFRANCISCO: On the bill.

ACTING PRESIDENT BRESLIN: Thank you, Senator Adams.

Senator DeFrancisco, on the bill.

SENATOR DeFRANCISCO: As I said at the outset when I first got up to speak, the current police report requires an indication of cellphone use or cellphone -- either handheld or not handheld -- be recorded if it's a contributing cause. So that's the law as it now exists.

And I think Senator Adams is agreeing with me that if it's not a contributing cause, there is absolutely no reason to indicate whether there's a cellphone use or anything else if it's not a contributing cause.

So by this bill we're asking police officers to put superfluous information in their police report when it's not even a contributing cause. And that's precisely why I think the bill is not only unnecessary, but it micromanages police officers' obligations and requires them to put information that is really not relevant to anything other than maybe to a social scientist who might want to understand how many times cellphones are used while being driven.

So I appreciate that interchange.

ACTING PRESIDENT BRESLIN: Thank you, Senator DeFrancisco.

Senator Stavisky.

SENATOR STAVISKY: Yeah, let me just summarize the purposes of the bill.

ACTING PRESIDENT BRESLIN: Senator Stavisky, on the bill.

SENATOR STAVISKY: On the bill.

ACTING PRESIDENT BRESLIN: Excuse me. Excuse me, I'm sorry. Senator Morahan, why do you rise?

SENATOR MORAHAN: I was going to

ask Senator Adams if he would yield.

ACTING PRESIDENT BRESLIN: Senator Adams, will you yield to Senator Morahan?

SENATOR ADAMS: Yes, I will.

ACTING PRESIDENT BRESLIN: You may proceed.

SENATOR MORAHAN: Senator, I know you have personal experience and therefore you make a very good point and are able to clear up some of the concerns that Senator Stavisky has.

Senator Stavisky, in her opening explanation, indicated that there's two sets of data. One says there's a good reason to believe -- I don't know how it was phrased exactly -- why that there is a greater use of cellphones related to accidents, and yet when you look at the data from the Motor Vehicles that it's only like 400 out of 300,000 accidents.

So the implication is that the police officers aren't reporting those incidents where the accident may have been

contributed to by the use of a cellphone.

I wonder, Senator, if the reason for the difficulty in matching those numbers is because of the difficulty in determining whether a cellphone was or was not used and a contributing factor in the accident.

ACTING PRESIDENT BRESLIN: Senator Adams.

SENATOR ADAMS: Well, through you, Mr. President. And the reason that I articulated why I felt this bill was important is not because I only served as a patrol officer but, as you know, I moved up through the ranks from a patrol officer to a sergeant to a lieutenant and eventually to a captain. That I fully understand what the officers are doing where the rubber meets the road, and that's in the street.

Oftentimes when you don't have clear captions or clear discussions of what you expect from the officers, sometimes they miss it. This bill is going to make sure that the officers clearly indicate, number one, if a person is using the cellphone when there was

an accident that's taking place. I think that is underreported.

And by using this method that Senator Stavisky is pointing out, we're going to ensure we get an accurate reporting and we make our roads safer. This information does not hurt the safety on the roads; it helps the safety on the roads.

SENATOR MORAHAN: Will the Senator continue to yield?

ACTING PRESIDENT BRESLIN: Senator Adams, will you continue to yield to Senator Morahan?

SENATOR ADAMS: Through you, Mr. President, yes.

ACTING PRESIDENT BRESLIN: Senator Morahan.

SENATOR MORAHAN: So it's your contention, Senator, that the reason for the underreporting is that the police officers are not following what they ought to do and they're not reporting when the cellphone is truly part of the accident, and they're not reporting it because there's nothing on the

form?

ACTING PRESIDENT BRESLIN: Senator Adams.

SENATOR ADAMS: Through you, Mr. President. I am stating that -- officers are not neglecting their responsibilities, I am stating that Senator Stavisky is assisting officers by clearly indicating the information that we should collect, and that is if a cellphone was used in an accident.

And she's attempting to clarify to make our officers' job easier to properly report when a cellphone may be the contributing cause of an accident.

SENATOR MORAHAN: Thank you, Senator.

Thank you, Mr. President.

ACTING PRESIDENT BRESLIN: Thank you, Senator Morahan.

Senator Lanza.

SENATOR LANZA: Thank you, Mr. President.

Mr. President, would the sponsor of the bill yield for a question?

ACTING PRESIDENT BRESLIN:

Senator Stavisky, will you yield to Senator Lanza for a question?

SENATOR STAVISKY: Yes.

ACTING PRESIDENT BRESLIN: You may proceed, Senator Lanza.

SENATOR LANZA: Mr. President, I understand fully the motivation behind this bill. I think anything we can do to reasonably restrict the sort of distractions that lead to automobile accidents in this state, we ought to do that.

And I had intended to support this and vote in favor of this legislation. But in listening to the discussion this afternoon, I have some concerns that I would hope the sponsor would address.

And I'd like to go back to the issue of whether or not and how the police officer would determine whether or not a mobile phone was in use. And I think Senator Stavisky stated that it would be in the judgment of the police officer as to how to determine that.

So I'm asking the sponsor what that means. If the police officer, in his or her judgment, believes that in order to make that determination that he or she ought to see the phone, would that be permissible under this legislation?

ACTING PRESIDENT BRESLIN: Senator Stavisky.

SENATOR STAVISKY: There would be a number of ways in which the police officer could determine if a cellphone was in use at the time of the accident.

For one thing, if the police officer could visually observe the phone. Secondly, there may be witnesses. He can certainly ask the witnesses what happened. There may be second- and third-party witnesses. Perhaps the victim, the other party, if there are two cars involved, will say "I saw the person talking on the phone." There may be bystanders who may have witnessed the accident, and they can report to the police officer their observations of the accident.

And, obviously, they can ask the driver directly: "Were you on a cellphone when this accident occurred?"

ACTING PRESIDENT BRESLIN: Senator Lanza.

SENATOR LANZA: Mr. President, would the sponsor continue to yield for a question?

ACTING PRESIDENT BRESLIN: Senator Stavisky, will you continue to yield to Senator Lanza?

SENATOR STAVISKY: I think I have a call. Yes.

ACTING PRESIDENT BRESLIN: You may proceed, Senator Lanza.

SENATOR LANZA: Thank you. Through you, Mr. President.

That's all fair. I think those are all reasonable ways in which a police officer can determine whether or not a cellphone was in use.

But I go back to the one question of judgment. If in the judgment of a police officer -- when you talk about visually

determining that a cellphone is in use, I'm just trying to understand what that means. If a police officer sees a cellphone present, would a police officer then be able, under this legislation, to demand -- to see whether or not a phone is in use you would have to actually more than see the phone, you would have to take possession of the phone, arguably. If the phone were off at that point, you would have to turn the phone on. You'd have to see whether or not a call was placed. You would have to look at to whom the call was placed, at what time the call was placed.

And so I'm asking if the police officer at an accident scene determined visually that there was a phone present and the police officer requested to have possession of that phone, would the driver of the car be required to hand over possession of the phone to the police officer so that the police officers can then examine and investigate that telephone?

ACTING PRESIDENT BRESLIN:

Senator Stavisky.

SENATOR STAVISKY: I am not an attorney, and I don't know whether that would constitute self-incrimination. However, there is a period of five days to follow up with an accident investigation.

Secondly, presumably the police officer, in the nature of being a police officer, will exhibit judgmental qualities that they can bring to bear, certain experiences in training and an experience as a police officer, so that they can determine if a phone was in use.

SENATOR LANZA: Mr. President, would the sponsor continue to yield?

ACTING PRESIDENT BRESLIN: Senator Stavisky, will you continue to yield to Senator Lanza?

SENATOR STAVISKY: Yes.

ACTING PRESIDENT BRESLIN: You may proceed, Senator Lanza.

SENATOR LANZA: Thank you, Mr. President. Through you.

So I'm still trying to understand

this. Assuming that this is an accident scene and not a crime scene, and taking the Fifth Amendment out of the equation here, if a police officer requested that the driver hand over possession of the phone to the police officer so that the police officer can then turn the phone on and view what calls were made and when they were made and to whom they were made, would the driver of the car at an accident scene be required, under this legislation, to turn that phone over to the police officer?

ACTING PRESIDENT BRESLIN: Senator Stavisky.

SENATOR STAVISKY: I don't believe so. All this legislation does is ask that the investigating officer determine if a phone was in use at the time of the accident.

ACTING PRESIDENT BRESLIN: Thank you, Senator Stavisky.

Senator Lanza.

SENATOR LANZA: On the bill.

ACTING PRESIDENT BRESLIN: Senator Lanza, on the bill.

SENATOR LANZA: Thank you, Mr. President.

And I want to thank the sponsor, Senator Stavisky, for yielding to the questions and for engaging in this discussion. And again, I agree that anything we can reasonably do to remove distractions from drivers that would help decrease the number of automobile accidents is a good thing.

But the sponsor said that she was unclear with respect to whether or not a driver would be required to turn the phone over to a police officer at the scene of the accident. And I'm unclear on that as well, in reading this legislation. I think that's something that ought to trouble all of us.

I recall last year when legislation was proposed on this side of the aisle with respect to a police officer asking someone their name and that required that that person actually be truthful in giving that response. There was a lot of opposition, and in fact that bill did not pass here. And I think there was a reasonable discussion on that

front.

So if this legislation would require -- remember, most accident scenes are not crime scenes. The majority of accident scenes in this state are not crime scenes. And so I think it would be helpful to be able to gather information so that we can make better laws so that we can protect citizens so that we can reduce accidents.

But I'm concerned that this bill either is not practical, not workable, or goes too far. And because of that concern, I would ask the sponsor to revisit this and tighten the legislation up to make sure that we just address this concern that I have that in fact we are turning accident scenes into crime scenes, authorizing police officers to go further than perhaps the state and the United States Constitution would allow.

And for that reason, I'm going to vote against this legislation.

ACTING PRESIDENT BRESLIN: Thank you, Senator Lanza.

Are there any other Senators

wishing to be heard?

Senator Stavisky, on the bill.

SENATOR STAVISKY: Very briefly.

There's no crime involved in this bill. It simply is a reporting bill. And I think that has to be made clear. You're simply asking was the cellphone a contributing factor to the accident.

I quoted some numbers of 300 and some odd thousand accidents. There were, in 2007, almost 190,000 accidents in New York State alone where the human factor played a role in the accidents, and only 478 were reported as involving a cellphone. Clearly, that number is underreported. Clearly.

AAA last year stated that dialing a handheld device resulted in triple the odds of being involved in an accident. Rochester Institute of Technology has done a lot of research in this. They use the quadruple factor of a cellphone and the correlation between a cellphone and an accident.

Interestingly, the number of cellphones in use today has mushroomed. Many

people do not have a land line anymore, they use the cellphone. In 2001, for example, a study at the University of Utah said there were 160 million cellphone subscribers in the United States. And in 2007, there were 255 million cellphone subscribers. That's a lot of cellphones.

And yet in New York State, we're only reporting 478 were a factor in an automobile or a vehicular accident. And I think we've got to determine that this number is underreported.

This does not provide a penalty. It simply says -- simple question -- was a cellphone in use at the time of the accident. That's all. They're not asking for anything else except was a cellphone in use.

Thank you for your patience, Mr. President.

ACTING PRESIDENT BRESLIN: Thank you, Senator Stavisky.

Senator Craig Johnson.

SENATOR CRAIG JOHNSON: Mr. President, will the sponsor yield for a couple

of quick questions?

ACTING PRESIDENT BRESLIN: Senator Stavisky, will you yield to Senator Craig Johnson?

SENATOR STAVISKY: Yes.

SENATOR CRAIG JOHNSON: Thank you, Mr. President. Through you.

Just, Senator Stavisky -- and I applaud you on this bill. As you know, I am a cosponsor with you on it. I just want to ask you a question.

For mobile telephone, does that include a Blackberry and the use of a Blackberry at the same time?

ACTING PRESIDENT BRESLIN: Senator Stavisky.

SENATOR STAVISKY: My Blackberry has a telephone on it. So the answer would be yes.

SENATOR CRAIG JOHNSON: Okay. Thank you very much. To explain my vote -- on the bill, thank you. I get those confused sometimes.

And I want to thank all the members

from both sides of the aisle who have participated and offered some very important questions and some important insights on this piece of legislation.

But I'm supportive of this legislation. And I applaud you, Senator Stavisky, on this important piece of legislation. Because it's become too clear that oftentimes we have a number of accidents that are as a result of somebody talking on the phone. As we drive up and back through the Thruway or some of us who, you know, take the time, we see and we can see people still haven't learned and are still driving while holding that cellphone. Still can't invest in a Bluetooth or haven't purchased a new car that maybe has the actual Bluetooth within the car. They still haven't gotten it.

Notwithstanding the fact that you can see oftentimes, on the nightly news, a tragedy that unfolds involving the death of somebody's loved one at the hands of a driver who was too busy talking on a mobile telephone while holding it.

I don't think it's asking too much that in this small amendment, in this important piece of legislation to start creating a report and start getting that information so we as Senators, if we need to take appropriate steps, can do so.

Because that's what reports do. We have reports done all the time, and the result of those reports oftentimes give this great body the insight and the information to pass tough crime laws. Yesterday in the Senate Investigations Committee we heard testimony from the members of the SIC who talked about their report on methamphetamine and were proud of the fact that that report on methamphetamine had the State Senate enact tough laws prohibiting the sales of methamphetamine.

Same here, that hopefully, if need be, we can use the reports that maybe come out, these police reports that come out, to maybe pass even tougher laws, if necessary, to deal with -- I still feel it's a real problem when it comes to somebody driving while using

a handheld cellphone while holding onto it.

And so I applaud you, Senator Stavisky. I support this great piece of legislation. I thank the members for participating in this debate. And I will be voting yes, Mr. President. Thank you.

ACTING PRESIDENT BRESLIN: Thank you, Senator Johnson.

The debate is closed.

The Secretary will ring the bell.

Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 180th day.

ACTING PRESIDENT BRESLIN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BRESLIN: Senator Marcellino, to explain his vote.

SENATOR MARCELLINO: Yes, Mr. President, thank you. I wish to explain my vote.

This bill I think is a reach. My original bill on the cellphone use requires the commissioner of motor vehicles to issue

the very report that Senator Stavisky wishes to obtain as to the number of accidents involving cellphone usage. And that should be reported, and the commissioner is required to do so by that legislation.

What we are saying here is that a police officer should use his or her best judgment to as to whether this actually occurred. Because the police officers 99 percent of the time aren't at the scene when the incident occurs. They're not witnesses to the act. They didn't see it happen. Rarely does an accident happen right in front of a police officer.

So either the police officer doesn't see it and he's going to rely upon the testimony of someone else as to the accuracy -- and we all know the accuracy of eyewitnesses is questionable at best. So the determination based on -- the fact is based on someone else's second or thirdhand judgment at best.

I don't think anybody in this chamber would like to have their careers rest

on the judgment, the second or thirdhand judgment of some nonwitnessing agent as to the facts of a case or an incident that may or may not have occurred.

This is dangerous. We're opening up a major can of worms here, and I don't think we want to go that far. I don't think the bill's sponsor intended this bill to go that far. But in fact it sets a precedent that makes me worry about the civil rights of individuals involved here. They're going to have to go in and search phone records to make an accurate determination. That is the only way you can determine if a cellphone was in fact in use at the moment of the accident. That is, if you can establish accurately the time that the accident occurred.

Mr. President, this bill has a problem and needs to be amended to fix the problem. There are several of them, but it needs to be amended before it goes forward. I recommend the sponsor do that.

I'm going to vote no on this legislation. But I do look forward to it

being reintroduced in a corrected form so I can vote for it. But in this case I have to vote no.

ACTING PRESIDENT BRESLIN: Senator Marcellino to be recorded in the negative.

Senator DeFrancisco, to explain his vote.

SENATOR DeFRANCISCO: Yes, I'm going to vote in the negative as well.

Right now the police reports require that if a cellphone is being used, either handheld or otherwise, that it's got to be reported if it's a contributing cause. And if it's a contributing cause, then it's relevant, it has some usefulness for people to have with respect to future accidents.

To suggest that we just have to have the police officer make a guess whether or not a cellphone was being used -- and even if it was, if it's not a -- if it's a mechanical -- if it's one where you put on your ears, whatever that's called, and it's not -- and the Bluetooth does not contribute

to the accident, then what's the point? It's legal to do it, so what's the point of recording something that's irrelevant? It's like saying there were 17 people on the corner when the accident happened. Who cares?

And lastly, and I think which is also important, now let's suppose we do this and police officers waste their time putting information on that's totally irrelevant to the accident. Now we got that information, what are we going to do then? Outlaw the use of cellphones, which are already outlawed? What are we going to do with the information?

So there's absolutely no reason for this bill, and it provides additional work that the police officer has to do for absolutely no reason.

Thank you.

ACTING PRESIDENT BRESLIN: Senator DeFrancisco will be recorded in the negative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 59 are

Senators DeFrancisco, Flanagan, O. Johnson, Lanza, Little, Marcellino, Robach, Seward and Winner. Also Senator Larkin. Also Senator Nozzolio. Also Senator Leibell.

Absent from voting on Calendar Number 59: Senator Hannon.

Excused: Senators Alesi, Farley, and Saland.

Ayes, 46. Nays, 12.

ACTING PRESIDENT BRESLIN: The bill is passed.

Senator Klein, that completes the reading of the controversial calendar.

SENATOR KLEIN: Mr. President, can you call on Senator Ruth Hassell-Thompson for a brief announcement.

ACTING PRESIDENT BRESLIN: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Yes, thank you, Mr. President.

I just would like to announce that immediately following session there will be a meeting of the Majority Conference in the Majority Conference Room, in Room 332. Thank

you.

ACTING PRESIDENT BRESLIN:

Senator Klein.

SENATOR KLEIN: Mr. President, is there any further business at the desk?

ACTING PRESIDENT BRESLIN:

Senator Klein, the desk is clear.

SENATOR KLEIN: There being none, I move we adjourn until Thursday, March 26th, at 11:00 a.m.

ACTING PRESIDENT BRESLIN: There being no further business to come before the Senate, on motion, the Senate stands adjourned until Thursday, March 26th, at 11:00 a.m.

(Whereupon, at 4:27 p.m., the Senate adjourned.)