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NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 25, 2009

3:18 p.m.

REGULAR SESSION

SENATOR NEIL D. BRESLIN, Acting President

ANGELO J. APONTE, Secretary

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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

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

6 Amen.

7 ACTING PRESIDENT BRESLIN: Thank
8 you, Father Young.

9 The reading of the Journal.

10 The Secretary will read.

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

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

19 Presentation of petitions.

20 Messages from the Assembly.

21 Messages from the Governor.

22 Reports of standing committees.

23 Reports of select committees.

24 Communications and reports from

1 state officers.

2 Motions and resolutions.

3 Senator Klein.

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

10 ACTING PRESIDENT BRESLIN: So
11 ordered.

12 Senator Klein.

13 SENATOR KLEIN: Are there any
14 substitutions at the desk?

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

17 The Secretary will read.

18 THE SECRETARY: On page 8,
19 Senator DeFrancisco moves to discharge, from
20 the Committee on Insurance, Assembly Bill
21 Number 317 and substitute it for the identical
22 Senate Bill Number 764, Third Reading Calendar
23 49.

24 ACTING PRESIDENT BRESLIN: So

1 ordered.

2 Senator Libous.

3 SENATOR LIBOUS: Thank you,
4 Mr. President.

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

12 ACTING PRESIDENT BRESLIN: So
13 ordered, Senator Libous.

14 SENATOR LIBOUS: Thank you,
15 Mr. President.

16 ACTING PRESIDENT BRESLIN:
17 Senator Klein.

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

21 ACTING PRESIDENT BRESLIN: The
22 Secretary will read.

23 THE SECRETARY: Calendar Number
24 59, by Senator Stavisky, Senate Print 1547A,

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

3 ACTING PRESIDENT BRESLIN: Read
4 the last section.

5 SENATOR VOLKER: Lay that bill
6 aside, please.

7 ACTING PRESIDENT BRESLIN: The
8 bill is laid aside.

9 THE SECRETARY: Calendar Number
10 114, by Senator Valesky, Senate Print 2258, an
11 act to amend Chapter 335 of the Laws of 2005
12 amending the Education Law.

13 ACTING PRESIDENT BRESLIN: Read
14 the last section.

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

17 ACTING PRESIDENT BRESLIN: Call
18 the roll.

19 (The Secretary called the roll.)

20 ACTING PRESIDENT BRESLIN:
21 Announce the results.

22 THE SECRETARY: Ayes, 53.

23 ACTING PRESIDENT BRESLIN: The
24 bill is passed.

1 THE SECRETARY: Calendar Number
2 115, by Senator Squadron, Senate Print 3099,
3 an act to amend the Public Service Law.

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

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

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

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

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

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

17 The Secretary will read.

18 THE SECRETARY: Calendar Number
19 59, by Senator Stavisky, Senate Print 1547A,
20 an act to amend the Vehicle and Traffic Law.

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

24 ACTING PRESIDENT BRESLIN:

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

3 SENATOR STAVISKY: Yes.

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

8 ACTING PRESIDENT BRESLIN:

9 Senator Stavisky.

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

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

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

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

7 SENATOR STAVISKY: Yes.

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

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

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

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

5 ACTING PRESIDENT BRESLIN:
6 Senator Stavisky.

7 SENATOR STAVISKY: Through you,
8 Mr. President. 2007 is the latest year for
9 which we have data, and there were a total of
10 323,106 accidents.

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

18 SENATOR VOLKER: I understand.

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

23 SENATOR VOLKER: Mr. President,
24 on the bill.

1 ACTING PRESIDENT BRESLIN:

2 Senator Volker, on the bill.

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

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

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

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

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

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

13 ACTING PRESIDENT BRESLIN: Thank
14 you, Senator Volker.

15 Senator DeFrancisco, on the bill.

16 SENATOR DeFRANCISCO: Would the
17 sponsor yield to a question?

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

21 SENATOR STAVISKY: Yes.

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

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

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

11 ACTING PRESIDENT BRESLIN:

12 Senator Stavisky.

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

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

24 SENATOR DeFRANCISCO: All right.

1 On the bill.

2 ACTING PRESIDENT BRESLIN:

3 Senator DeFrancisco, on the bill.

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

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

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

1 contributed to the accident.

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

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

21 Thank you.

22 ACTING PRESIDENT BRESLIN: Thank
23 you, Senator DeFrancisco.

24 Why do you rise, Senator

1 Marcellino?

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

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

8 SENATOR STAVISKY: Yes.

9 SENATOR MARCELLINO: Thank you,
10 Mr. President.

11 Thank you, Senator Stavisky.

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

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

22 SENATOR STAVISKY: Through you,
23 Mr. President.

24 ACTING PRESIDENT BRESLIN:

1 Senator Stavisky.

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

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

14 ACTING PRESIDENT BRESLIN:
15 Senator Marcellino.

16 SENATOR MARCELLINO: Would the
17 Senator yield again?

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

21 SENATOR STAVISKY: Yes.

22 ACTING PRESIDENT BRESLIN: You
23 may continue, Senator Marcellino.

24 SENATOR MARCELLINO: Thank you,

1 Senator. Through you, Mr. President.

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

6 ACTING PRESIDENT BRESLIN:

7 Senator Stavisky.

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

15 ACTING PRESIDENT BRESLIN:

16 Senator Marcellino.

17 SENATOR MARCELLINO: Would the
18 Senator continue to yield?

19 ACTING PRESIDENT BRESLIN:

20 Senator Stavisky, will you continue to yield?

21 SENATOR STAVISKY: Yes.

22 ACTING PRESIDENT BRESLIN:

23 Senator Marcellino.

24 SENATOR MARCELLINO: The fact

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

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

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

11 ACTING PRESIDENT BRESLIN:

12 Senator Stavisky.

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

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

22 ACTING PRESIDENT BRESLIN:

23 Senator Marcellino.

24 SENATOR MARCELLINO: Through you,

1 Mr. President, would the Senator continue to
2 yield?

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

5 SENATOR STAVISKY: Yes.

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

8 SENATOR STAVISKY: Neither am I.

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

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

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

22 ACTING PRESIDENT BRESLIN:
23 Senator Stavisky.

24 SENATOR STAVISKY: The fact that

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

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

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

13 ACTING PRESIDENT BRESLIN:
14 Senator Marcellino, on the bill.

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

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

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

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

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

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

24 As the Senator said, what if they

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

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

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

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

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

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

13 Thank you.

14 ACTING PRESIDENT BRESLIN: Thank
15 you, Senator Marcellino.

16 Senator Little.

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

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

23 SENATOR STAVISKY: Yes.

24 SENATOR LITTLE: Thank you.

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

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

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

15 ACTING PRESIDENT BRESLIN:
16 Senator Stavisky.

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

20 ACTING PRESIDENT BRESLIN:
21 Senator Little.

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

24 I understand you're not going to

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

7 ACTING PRESIDENT BRESLIN:

8 Senator Stavisky.

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

12 SENATOR LITTLE: Right. If there
13 is an accident.

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

16 SENATOR LITTLE: No, if there is
17 an accident.

18 ACTING PRESIDENT BRESLIN: Allow
19 Senator Stavisky to answer.

20 SENATOR LITTLE: All right.

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

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

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

3 ACTING PRESIDENT BRESLIN:
4 Senator Little.

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

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

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

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

21 ACTING PRESIDENT BRESLIN:
22 Senator Little.

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

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

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

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

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

11 SENATOR STAVISKY: Yes.

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

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

18 ACTING PRESIDENT BRESLIN:
19 Through the chair.

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

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

1 SENATOR STAVISKY: Yes.

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

5 SENATOR STAVISKY: That's
6 correct.

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

10 ACTING PRESIDENT BRESLIN:
11 Through the chair.

12 SENATOR LITTLE: Mr. President,
13 through you.

14 ACTING PRESIDENT BRESLIN: Do you
15 continue to yield?

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

21 ACTING PRESIDENT BRESLIN:
22 Senator Stavisky.

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

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

4 ACTING PRESIDENT BRESLIN:
5 Senator Little.

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

9 ACTING PRESIDENT BRESLIN:
10 Certainly.

11 Do you continue to yield to Senator
12 Little?

13 SENATOR STAVISKY: Yes.

14 ACTING PRESIDENT BRESLIN: You
15 may proceed.

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

21 ACTING PRESIDENT BRESLIN:
22 Senator Stavisky.

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

1 ACTING PRESIDENT BRESLIN:

2 Senator Little.

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

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

8 SENATOR STAVISKY: Yes.

9 ACTING PRESIDENT BRESLIN: You
10 may proceed, Senator Little.

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

19 ACTING PRESIDENT BRESLIN:
20 Senator Stavisky.

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

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

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

6 ACTING PRESIDENT BRESLIN:
7 Senator Little.

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

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

14 SENATOR STAVISKY: Yes.

15 ACTING PRESIDENT BRESLIN: You
16 may proceed.

17 SENATOR LITTLE: Thank you.

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

1 ACTING PRESIDENT BRESLIN:

2 Senator Stavisky.

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

7 ACTING PRESIDENT BRESLIN:

8 Senator Little.

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

11 ACTING PRESIDENT BRESLIN:

12 Through the chair.

13 Would you continue to yield,
14 Senator Stavisky?

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

18 ACTING PRESIDENT BRESLIN: Go
19 ahead, Senator Stavisky.

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

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

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

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

11 ACTING PRESIDENT BRESLIN:

12 Senator Little.

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

15 ACTING PRESIDENT BRESLIN:

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

18 SENATOR STAVISKY: Yes.

19 ACTING PRESIDENT BRESLIN: You
20 may proceed, Senator Little.

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

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

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

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

14 ACTING PRESIDENT BRESLIN:
15 Senator Stavisky.

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

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

20 ACTING PRESIDENT BRESLIN: You
21 may repeat, Senator Little.

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

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

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

9 SENATOR STAVISKY: Always.
10 The MV-104 that we fill out if we
11 have an accident, and the MV-104A that the
12 police officer fills out, has all of these
13 conditions noted in the report. They talk
14 about road conditions, they talk about the
15 environment, they talk about glare and lane
16 markings and all sorts of conditions that
17 occur on rural roads as well as on city
18 streets.

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

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

24 SENATOR STAVISKY: Yes.

1 ACTING PRESIDENT BRESLIN: You
2 may proceed, Senator Little.

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

9 ACTING PRESIDENT BRESLIN:
10 Senator Stavisky.

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

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

18 ACTING PRESIDENT BRESLIN:
19 Senator Little.

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

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

1 SENATOR STAVISKY: Yes.

2 ACTING PRESIDENT BRESLIN: You
3 may proceed, Senator Little.

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

8 ACTING PRESIDENT BRESLIN:
9 Senator Stavisky.

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

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

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

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

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

11 SENATOR LITTLE: Thank you.

12 ACTING PRESIDENT BRESLIN:

13 Senator Little.

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

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

19 SENATOR STAVISKY: Yes.

20 ACTING PRESIDENT BRESLIN: You
21 may proceed.

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

1 anyone is a distraction.

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

9 ACTING PRESIDENT BRESLIN:
10 Senator Stavisky.

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

15 ACTING PRESIDENT BRESLIN:
16 Senator Little.

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

19 ACTING PRESIDENT BRESLIN:
20 Senator Little, on the bill.

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

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

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

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

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

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

7 ACTING PRESIDENT BRESLIN: Thank
8 you, Senator Little.

9 Senator Adams.

10 SENATOR ADAMS: Thank you,
11 Mr. President.

12 I think that we need to --

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

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

17 ACTING PRESIDENT BRESLIN: On the
18 bill, Senator Adams.

19 SENATOR ADAMS: We need a little
20 clarification.

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

1 that's not against the law.

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

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

12 ACTING PRESIDENT BRESLIN: Excuse
13 me, Senator Adams.

14 Senator Little, why do you rise?

15 SENATOR LITTLE: Thank you.

16 Would Senator Adams respond to a question,
17 please, a clarification?

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

23 ACTING PRESIDENT BRESLIN: Fine.

24 SENATOR ADAMS: Okay?

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

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

24 If we have a disproportionate

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

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

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

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

20 SENATOR LITTLE: Thank you.

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

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

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

11 ACTING PRESIDENT BRESLIN:
12 Senator Adams.

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

24 So yes, it's illegal on the surface

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

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

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

9 SENATOR ADAMS: Yes, I will.

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

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

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

21 ACTING PRESIDENT BRESLIN:
22 Senator Adams.

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

1 it's important.

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

9 SENATOR DeFRANCISCO: Would
10 Senator Adams yield to another question?

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

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

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

21 ACTING PRESIDENT BRESLIN:
22 Senator Adams.

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

1 reasons, yes.

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

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

7 SENATOR ADAMS: Anything for
8 Senator DeFrancisco.

9 SENATOR DeFRANCISCO: Anything?

10 ACTING PRESIDENT BRESLIN: You
11 may proceed, Senator DeFrancisco.

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

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

21 ACTING PRESIDENT BRESLIN:
22 Senator Adams.

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

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

7 SENATOR DeFRANCISCO: On the
8 bill.

9 ACTING PRESIDENT BRESLIN: Thank
10 you, Senator Adams.

11 Senator DeFrancisco, on the bill.

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

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

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

12 So I appreciate that interchange.

13 ACTING PRESIDENT BRESLIN: Thank
14 you, Senator DeFrancisco.

15 Senator Stavisky.

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

18 ACTING PRESIDENT BRESLIN:
19 Senator Stavisky, on the bill.

20 SENATOR STAVISKY: On the bill.

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

24 SENATOR MORAHAN: I was going to

1 ask Senator Adams if he would yield.

2 ACTING PRESIDENT BRESLIN:

3 Senator Adams, will you yield to Senator
4 Morahan?

5 SENATOR ADAMS: Yes, I will.

6 ACTING PRESIDENT BRESLIN: You
7 may proceed.

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

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

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

1 contributed to by the use of a cellphone.

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

7 ACTING PRESIDENT BRESLIN:

8 Senator Adams.

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

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

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

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

9 SENATOR MORAHAN: Will the
10 Senator continue to yield?

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

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

16 ACTING PRESIDENT BRESLIN:
17 Senator Morahan.

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

1 form?

2 ACTING PRESIDENT BRESLIN:

3 Senator Adams.

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

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

15 SENATOR MORAHAN: Thank you,
16 Senator.

17 Thank you, Mr. President.

18 ACTING PRESIDENT BRESLIN: Thank
19 you, Senator Morahan.

20 Senator Lanza.

21 SENATOR LANZA: Thank you,
22 Mr. President.

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

1 ACTING PRESIDENT BRESLIN:
2 Senator Stavisky, will you yield to Senator
3 Lanza for a question?

4 SENATOR STAVISKY: Yes.

5 ACTING PRESIDENT BRESLIN: You
6 may proceed, Senator Lanza.

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

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

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

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

7 ACTING PRESIDENT BRESLIN:
8 Senator Stavisky.

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

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

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

4 ACTING PRESIDENT BRESLIN:
5 Senator Lanza.

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

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

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

14 ACTING PRESIDENT BRESLIN: You
15 may proceed, Senator Lanza.

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

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

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

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

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

24 ACTING PRESIDENT BRESLIN:

1 Senator Stavisky.

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

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

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

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

19 SENATOR STAVISKY: Yes.

20 ACTING PRESIDENT BRESLIN: You
21 may proceed, Senator Lanza.

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

24 So I'm still trying to understand

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

13 ACTING PRESIDENT BRESLIN:

14 Senator Stavisky.

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

19 ACTING PRESIDENT BRESLIN: Thank
20 you, Senator Stavisky.

21 Senator Lanza.

22 SENATOR LANZA: On the bill.

23 ACTING PRESIDENT BRESLIN:

24 Senator Lanza, on the bill.

1 SENATOR LANZA: Thank you,
2 Mr. President.

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

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

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

1 front.

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

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

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

22 ACTING PRESIDENT BRESLIN: Thank
23 you, Senator Lanza.

24 Are there any other Senators

1 wishing to be heard?

2 Senator Stavisky, on the bill.

3 SENATOR STAVISKY: Very briefly.

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

9 I quoted some numbers of 300 and
10 some odd thousand accidents. There were, in
11 2007, almost 190,000 accidents in New York
12 State alone where the human factor played a
13 role in the accidents, and only 478 were
14 reported as involving a cellphone. Clearly,
15 that number is underreported. Clearly.

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

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

1 people do not have a land line anymore, they
2 use the cellphone. In 2001, for example, a
3 study at the University of Utah said there
4 were 160 million cellphone subscribers in the
5 United States. And in 2007, there were
6 255 million cellphone subscribers. That's a
7 lot of cellphones.

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

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

18 Thank you for your patience,
19 Mr. President.

20 ACTING PRESIDENT BRESLIN: Thank
21 you, Senator Stavisky.

22 Senator Craig Johnson.

23 SENATOR CRAIG JOHNSON: Mr.

24 President, will the sponsor yield for a couple

1 of quick questions?

2 ACTING PRESIDENT BRESLIN:

3 Senator Stavisky, will you yield to Senator
4 Craig Johnson?

5 SENATOR STAVISKY: Yes.

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

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

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

15 ACTING PRESIDENT BRESLIN:

16 Senator Stavisky.

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

20 SENATOR CRAIG JOHNSON: Okay.

21 Thank you very much. To explain my vote -- on
22 the bill, thank you. I get those confused
23 sometimes.

24 And I want to thank all the members

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

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

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

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

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

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

1 a handheld cellphone while holding onto it.

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

7 ACTING PRESIDENT BRESLIN: Thank
8 you, Senator Johnson.

9 The debate is closed.

10 The Secretary will ring the bell.

11 Read the last section.

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

14 ACTING PRESIDENT BRESLIN: Call
15 the roll.

16 (The Secretary called the roll.)

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

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

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

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

6 What we are saying here is that a
7 police officer should use his or her best
8 judgment to as to whether this actually
9 occurred. Because the police officers
10 99 percent of the time aren't at the scene
11 when the incident occurs. They're not
12 witnesses to the act. They didn't see it
13 happen. Rarely does an accident happen right
14 in front of a police officer.

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

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

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

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

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

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

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

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

7 Senator DeFrancisco, to explain his
8 vote.

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

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

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

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

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

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

18 Thank you.

19 ACTING PRESIDENT BRESLIN:

20 Senator DeFrancisco will be recorded in the
21 negative.

22 Announce the results.

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

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

5 Absent from voting on Calendar
6 Number 59: Senator Hannon.

7 Excused: Senators Alesi, Farley,
8 and Saland.

9 Ayes, 46. Nays, 12.

10 ACTING PRESIDENT BRESLIN: The
11 bill is passed.

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

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

17 ACTING PRESIDENT BRESLIN:
18 Senator Hassell-Thompson.

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

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

1 you.

2 ACTING PRESIDENT BRESLIN:

3 Senator Klein.

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

6 ACTING PRESIDENT BRESLIN:

7 Senator Klein, the desk is clear.

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

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

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

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