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officer stops somebody on Interstate 80 and comes to suspect that there's drugs and he seeks permission to search the car and it appears to me, I don't know whether it's many times, but sometimes he gets permission and then later on in court there's denial that he got permission. So it seemed like to me a tape recorder at this time would be very appropriate. Can he carry that tape recorder routinely, push the button? Does he have to tell the probable defendant that he is using that tape recorder when he records at a stop, first of all? That's the first question.

SENATOR BRASHEAR: We are not techni...we are not requiring the specifics of the technology and, yes, any recorder that records, or in good faith you believed would record, would qualify for this purpose, number one. Number two, in the hypothetical factual situation which you articulated, it...this would not...this bill would not be applicable because the individual would not yet, at the point stopped on the highway, would not yet be in custody and...which is a term of art, in custody, and would not be being detained, which is a term of art, and would not be being interrogated.

SENATOR WEHRBEIN: Okay, so this is all after...

SENATOR BRASHEAR: This is all in custody, those under detention and interrogation,...

SENATOR WEHRBEIN: Okay.

SENATOR BRASHEAR: ...as those terms are known in the law.

SENATOR WEHRBEIN: Well, I won't confuse the issue then by asking about the stop, because it appears to me, and I...I'm off the subject, accepting your custodial terms, but it appears to me that many times what comes up in court, there's denial that I did or didn't allow them to search and so forth, but this really doesn't speak to that at all at this point.

SENATOR BRASHEAR: No, we're not dealing with that here, but now having heard your need we'll put that in the next omnibus criminal justice bill.