



The added value of a private investigator in a motor-vehicle case

WHAT YOU DON'T LEARN FROM A POLICE REPORT MAY BE JUST WHAT YOU NEED TO PROVE LIABILITY AND IDENTIFY OTHER DEFENDANTS

It wasn't so long ago when private investigators supporting attorneys relied on smarts, shoe leather and people skills to help pull a case together.

Today's "old-fashioned" field work now incorporates significant new equipment, technologies and tactics. When matched with knowledge and experience, these tools provide valuable evidence that plaintiff's attorneys use to prove their cases. There's a whole new world of first-hand information out there in the form of social-media posts, GoPros and even Ring doorbell cameras to provide snips of information and turn a case toward the victim's favor.

This article explores the ways in which a private investigator uses technology and experience to help prove plaintiff's case in motor-vehicle cases.

Vehicle accidents by the numbers

There are more than six million car accidents every year in the U.S. – about 16,500 every day – with about six percent resulting in at least one death, according to National Highway Traffic Safety Administration data. NHTSA also estimates that nearly two million people each year involved in vehicle accidents suffer permanent, non-fatal injuries. More car accidents happen in California and Texas than in any other states.

The key to liability in many traffic cases is capturing evidence right after the crash. While law enforcement will investigate and try to determine a cause, it's always best to do your own work. Police reports can be useful, but often make errors or overlook important evidence. Police officers are only going to consider the human factor, but not contributing factors such as nonworking streetlights, obscured road signs, improperly striped lanes, or the absence of street markings. They're not likely to investigate for potential governmental-related factors, especially if there's a pedestrian involved. These factors often will play a major role for recovery.

Furthermore, opposing parties may change their stories from what they told police. Witnesses disappear. And other

responsible parties not immediately considered could take quick action to hide their potential liability.

Not too long ago, I investigated a fatal accident in Laguna Niguel. Two cars were racing at night when they hit a stretch where the road curved and merged into a single lane. One of the cars crossed into opposing traffic and collided head-on with another car, killing the driver and passenger in that car.

I went out the next day to investigate with FARO laser scanning technology and a drone, documenting the scene precisely and in context. The evidence showed that, although there was a traffic sign warning drivers to slow down because the road curved ahead, it was covered with a tree branch. The investigation also determined a dangerous condition of the roadway in that the merging lane wasn't long enough for two lanes of traffic to merge into one at a curve and at a speed limit of 55 MPH.

The insurance-company investigator went to the scene about four or five days after the accident. Their photographs showed the traffic sign was completely visible and unobscured by foliage. In the time between my documentation of the scene and the insurance company's investigation, the state apparently sent a crew to trim the trees back so the sign would be visible again.

With the evidence we were able to produce, though, the state was on the hook for not maintaining the trees. The case resulted in an eight-figure settlement.

Checklist for vehicle collisions

I developed a vehicle collision-personal-injury checklist to keep on hand. Time is precious, so it's good to memorize the key steps to take in order to preserve and obtain critical evidence at the start of any vehicle accident claim.

- Prepare and send out preservation-of-evidence letters. You want to preserve security-camera footage from surrounding businesses; you want to preserve the vehicle for inspection at the tow yard; and you want to get the evidence from the vehicle's Event Data Recorder.

- Complete vehicle inspections and obtain photographs.
- Research for potential product-liability issues that could have contributed to the loss: such as problems or recalls on airbags, braking systems, seatbelts, cruise control.
- Obtain access to the car's Event Data Recorder after issuing a POE letter. These are required on any new car sold in the U.S. since 2014.

There are a few more steps to take if the incident involves hit-and-run, possible negligent entrustment or occurred within the course and scope of employment. I've been working in legal support investigations for more than 30 years and recognize that many plaintiff firms just want to get the guilty party's policy coverage. They don't stop to consider other possible defendants: Does some of the liability fall on the state, the city, a homeowner, or an employer? These entities tend to be better insured and identifying them is very important in major-injury cases.

The strength of drones

Drones are quickly becoming a common sight at crash-scene investigations. With drones, police can quickly collect crash-scene data, which translates into clearing the scene sooner and making more efficient use of officers' time. Drones are also critical for many legal-support investigations, capturing a bird's-eye view of accident sites to document all roadway police markings, skid marks, impact points, and other evidence.

Pilots, who must be FAA licensed to fly Unmanned Aerial Vehicles, send the drones a few hundred feet above the accident scene. While the pilot operates the controls, a second person on-the-scene maintains visual contact with the drone while staying aware of any activity on the ground that could be dangerous if the drone malfunctions.

The drone is programmed to shoot high-resolution photographs in an overlapping grid pattern, in intervals of about every two seconds. The whole data-collection process takes an average of 30-45 minutes, depending on the size of the

accident and, of course, atmospheric conditions.

The high-def images are processed through photogrammetry software to create a 3D model of the scene. The models that can be produced clearly show the surrounding terrain and its features, as well as infrastructure such as guardrails, sidewalks, telephone poles and crosswalks. Any skid marks or police chalk will also be accurately recorded.

The strength of 3D scans

Traditional accident-scene investigations rely on investigators deciding which evidence is relevant. Someone decides what to photograph, measure and collect. The tools include measuring crash points, lane markings, roadways, still and video cameras, and so on. Accident reports rely on the lead investigators, usually law enforcement, to accurately record where evidence is found in relationship to other evidence, points of impact, final position and road markings.

There's always a possibility that something important gets overlooked or dismissed as unimportant. This is where FARO scans make a difference. Even the day after an accident, FARO scans are an essential tool in accurately and comprehensively reconstructing the event. More and more police agencies are using FARO in investigating accidents, especially in highway fatalities and if an officer is involved.

At the scene, a FARO scanner records hundreds of thousands of data points per second, creating a "point cloud" that measures and reconstructs every object in its view. It takes about seven minutes for each scan. Repositioning and employing the scanner at different points around the accident scene captures – with pinpoint accuracy – distances, heights, shapes, topography and every other kind of relational data that can be found at the scene.

A FARO scan brings the intersection back to the way it was on the day of the accident. You can illustrate the location of vehicles and debris. You can point and click your mouse and it will tell you the length of skid marks, points of impact and where the vehicles came to rest. A typical crash

requires about 10 to 15 scans. A large crash needs about four scanners and up to 60 or more scans because there's an enormous amount of raw material to collect.

In many cases, the involved vehicles should also be FARO-scanned from all four corners. With that, you can tell exactly the inches of buckle on the vehicle, the speed of impact, and the forces involved.

FARO technology doesn't come cheap. One scanning unit costs about \$65,000 and requires at least three days of certificated in-class FARO training, followed by field training, to learn its capabilities and how to use them. And just as old radar guns needed to be recalibrated regularly, each FARO scanner needs to be recalibrated annually, at a cost of about \$7,000 per device.

The defense will want to know when the FARO devices were recalibrated. If you can't come up with the certificate from FARO, the defense can get the whole FARO part of your case thrown out as inadmissible.

Pulling it together

Today's judges and juries expect high-tech presentations in the courtroom. For the jury or insurance-claims adjuster, it's all about visuals. The jury wants to stay awake, to see the location, how the accident occurred. Software puts them there, interfacing drone videos and HD images from the air with FARO images from the ground to create an incredible, immersive and animated visual for the jury.

This integration of laser scanning and full-color 3D models engages the jury and brings them to the accident scene. Unlike those involved in the accident, jurors know what happens, so they have fuller context as they follow the paths of the vehicles involved and the actions that led their operators there. This is a more effective, engrossing argument than static displays or photographs ever could be.

The depth and quality of collected information allows for 3D sight lines from different points of view, showing the sequence of impacts, the spread of debris – everything a witness would have seen. Images can be rotated and views, which can be crucial, for instance, in cases where witnessed testimony contradicts each other

or what the magnitude of the physical evidence demonstrates.

The human element

The latest investigative tech is exciting and fascinating, but it's only as useful as the people operating it. Experienced investigators still use the tried and true tools of the trade: shoe leather and people smarts.

An investigator at the scene can assess the neighborhood, for instance, and see if he or she can locate witnesses and gather statements from them as soon as possible. They may re-interview witnesses who already gave police statements. They'll go building by building looking for possible surveillance cameras which may have captured essential images; they may ask homeowners if they can have access to smart doorbell records. They'll send out preservation of evidence letters, if necessary.

Most business security camera DVRs recycle after 15 days. Larger entities, like supermarkets, recycle after about 30 days. Ring doorbell camera footage is available for about 60 days. And banks tend to keep it forever.

It can be detrimental to issue POE letters to larger business entities that do not wish to cooperate. Experience tells us that most larger corporations, once in receipt of POE letters, will keep the footage for up to six months but will only release it by way of subpoena during that time. And after six months that footage is gone.

This applies to businesses like Costco, Walmart, Target, Sam's Club. They have a blanket rule to not release without a subpoena, for fear of being named a defendant in the case. They want a court case number to keep track of the request and make it official.

Bear in mind that, for the most part, government security cameras at intersections and freeways – so we are told – are for monitoring purposes only and images are not recorded. Private toll-road cameras, however, often bear fruit.

I had a case in which there was a fatality, and the defendant's insurance company denied the claim. A site inspection showed a supermarket nearby; the supermarket's security-camera footage

showed traffic flow that was used to determine the defendant's vehicle was liable for the death. That case settled for seven figures. That would not have happened if someone wasn't out there to connect the dots and get the footage.

You would be surprised at what else can get left behind or overlooked. There was a case where a tire from the vehicle was left behind. Apparently, no one involved earlier had thought to pick it up and take it to a lab for analysis. Upon forensic examination, it was determined that there was a blowout in that tire that had something to do with causing the accident. It was in fact a popular tire model whose failures had led to multiple accidents and lawsuits.

Vehicle inspections are also needed to determine the condition of mechanical parts such as brakes, lights, steering column, windshield wipers or seatbelts. There'll also be a search to determine if the vehicle was subject to any recalls and whether that played a role in the accident.

And don't overlook the value of a 911 call-recordings summary, which can shed a lot of light. A call summary is very valuable to identify potential witnesses, the timeline and emergency life support response, for instance. Perhaps there was a delay of advanced cardiac life support, which cost someone their life; this could add another potential defendant to your case. This is especially important in police brutality or shooting cases. The 911 call summary information is also a public record. And while a death report could be delayed by a year or more, 911 call summaries are available earlier and can shed a lot of light as you build your case.

Event data recorders or black boxes

You've likely already noticed increased usage of information gathered from Event Data Recorders (EDR), known as vehicle black boxes. These small, nearly indestructible devices have been mandatory in all new cars sold in the U.S. since 2014. They gather all kinds of valuable data, including vehicle speed, tilt, braking, airbag deployment times, seatbelt issues, steering angle, airbag deployment, sudden turns and more.

Time is critical.

The person at the firm responsible for

case intake may sign up a case but not realize all the potential liability aspects. Things fail in accidents: seatbelts don't work properly, airbag shrapnel can hit the driver in the face and steering systems can suddenly lock up, to name a few. As soon as you take the case, send out POEs to the wrecking yard and insurance company. Then hire an expert to go and download information from the box. Be aware that sometimes you'll have to get a specialist from the car manufacturers, including Toyota and Ford.

If the car is sitting in a tow yard, chances are it no longer belongs to the defendant. Once the tow yard gets the go-ahead to resell the vehicle, some law firms actually pay storage fees and/or buy the cars outright in order to scrutinize the EDRs. We actually stopped an auction where the car was going to be sent to Mexico. A lot of time had elapsed, but luckily, we had perfect timing. A day later would have been too late.

We had another case where the defendant only had \$15,000 in coverage. By the time we got the case and found the car, it was at a salvage yard. The engine was gone, transmission gone, doors gone. The attorney purchased what was left of the vehicle; it really was just a hunk of metal. But the EDR was still in the car. And through analysis of that data we learned that the seatbelt and the airbag did not work properly, and the driver's seat broke after the car was struck from behind. Because that happened, the driver sustained fatal injuries due to airbag and seatbelt malfunction. The car manufacturer paid a substantial settlement to resolve the product-liability claim.

Collecting other data

Technology used by tow companies, police and parking attendants now provide a trove of information. We use a database provider who collects data from tow companies and police agencies that scans millions of license plates every day. That information will tell us where the vehicle was parked in the past 30 days. And scanners are now being used in parking lots and structures. This is becoming incredibly useful.

Another investigative tool being developed is something called a "textalyzer," which is being touted as a way to discourage distracted driving. Like a breathalyzer, the proposed device would be used in the field to quickly scan for phone calls, texts, emails and so forth being sent while the driver was behind the wheel. Of course, this is controversial and may never become an adopted investigatory tool. The information is often available through discovery or by subpoena, including timestamps and even location data.

Personally, the tech that gets me most excited is a new portable FARO scanner, which is about the size of a camera. It weighs "only" nine pounds – compared with the 35 pounds for your average FARO unit, which also requires lugging around a tripod to mount it on.

Evidence can lead to justice

There are a multitude of injury-accident claims that are settled by just relying on the police investigation report and the defendant's insurance. It's important to remember that private, personal-injury accident investigations rightfully focus on different issues than police or insurance investigations.

The objective is to identify all tortfeasors, to determine the maximum liability and the financial responsibility that ensures justice and an equitable settlement for the victim. Consider who else was involved, or potentially involved. Did negligence play a part in the accident – neglect from the manufacturer, the state, the utility company that didn't ensure the streetlights weren't blown out? Was there an employer involved?

With today's state-of-the-art technology in the hands of an experienced investigator, there's a whole world of evidence that can be gathered to reconstruct an accident scene, collect valuable evidence, identify other deeper-pocket defendants and lead to greater justice for your clients.

Over the last 30 years, Harry Kazakian, a licensed private investigator, and licensed independent casualty adjuster has helped over a thousand attorneys win their cases. ☒