

MAP-21 and the Role of Black-Box Recorders in Discovery

Shamrock Anne Kennedy and Ralph P. Bocchino

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Event data recorders (EDRs), more commonly known as black boxes, are installed in approximately 85 percent of current automobiles. The National Highway Traffic Safety Administration (NHTSA) defines an EDR as a device "in a vehicle that records the vehicle's dynamic, time-series data during the time period just prior to a crash event or during a crash event, intended for retrieval after the crash event." However, automotive privacy was recently front and center when, on March 14, the U.S. Senate passed a transportation bill making event data recorders mandatory in all new cars. On the state level, it should be noted that there is pending Pennsylvania legislation regarding EDR data currently under review by the Committee on Transportation.

Historically, black boxes were synonymous with airplane crashes. The data downloaded from these boxes was a powerful tool for aircraft accident investigative engineers. The use of black boxes in automobiles dates to the early 1970s, when the National Transportation Safety Board (NTSB) made several recommendations that automobile manufacturers and the NHTSA gather data on crashes using onboard sensors and recorders. Within a few years, General Motors began installing early versions of EDRs in its vehicles.

The early recorders were mainly used to control airbag deployment and to document

crash severity data for impacts causing an airbag deployment. Black boxes became more sophisticated and, eventually, could record data from minor accidents during which airbags did not deploy. By 2005, General Motors, Ford, Isuzu, Mazda, Mitsubishi, Subaru and Suzuki were voluntarily equipping their vehicles with EDRs, according to the NHTSA.

Many drivers are unaware of the prevalence of black boxes in motor vehicles and don't realize that their vehicles are likely equipped with an EDR. However, if a new law, titled Moving Ahead for Progress in the 21st Century Act (MAP-21), passed in March by the Senate, is ultimately enacted, there will be significant changes to automotive privacy. This new law will make EDRs mandatory in all vehicles, starting in 2015. Additionally, under MAP-21, Congress wants assurance that manufacturers will make EDR data accessible with commercially available equipment.

The Institute of Electrical and Electronics Engineers (IEEE) reported in April, "Starting with 2013 models, EDRs must keep a record of 15 discrete variables in the seconds before a crash. Among them are the car's speed, how far the accelerator was pressed, the engine revolutions per minute, whether the driver hit the brakes, whether the driver was wearing a safety belt, and how long it took for the airbags to deploy."

Therefore, EDRs are becoming more technologically sophisticated and are able to provide a plethora of information regarding the events immediately before and during a motor vehicle accident.

This information, if readily available, has the potential to greatly affect the discovery process in both criminal and civil cases involving motor vehicle accidents. Additionally, a major benefit may be the streamlining of the claims and litigation processes for insurance companies, leading to the settlement of many cases and saving insurers millions of dollars in attorney fees. Further, increased awareness of and accessibility to black-box data could result in improved vehicle and roadway design and may lead to safer driving. Retrieved data can establish the speed of vehicles and lead to the prosecution of drivers who have disobeyed the traffic laws.

However, MAP-21 has ensured various privacy protections within the bill. Previously, it was unclear if the courts considered the black-box data to belong to the car owner or to the manufacturer. MAP-21 establishes that data compiled from an EDR belongs to the car owner. Therefore, insurance companies would be unable to collect EDR data without owner consent. There would, of course, be exceptions, including a court order granting access to law enforcement, when an emergency medical team needs the data, or in the event of an NTSB investigation.

If MAP-21 is passed, it will likely change the way the courts view the appropriate handling of EDR data. For example, in 2011, the Middle District of Pennsylvania examined black-box data in *Chisdock v. Monk*, No. 3:10cv1941, 2011 U.S. Dist. LEXIS 95274 (M.D. Pa. Aug. 25, 2011). In that case, the plaintiff argued that the

information from the black box could be used to determine the speed of the vehicle at the time of the accident, verifying or contradicting the testimony of the defendant, who stated that she was driving at a reduced rate of speed. The plaintiff requested the black-box data from the defendant, who was not able to produce the data. The defendant simply indicated that its service department did not have the capability to download the information from the black box. Therefore, the court found that the plaintiff failed to establish that the defendant destroyed or withheld information. However, because Congress wants manufacturers to ensure that EDR data will be readily accessible, regardless of make and model, with commercially available equipment, an argument that the black-box data is not accessible will be moot.

In Pennsylvania, legislation regarding EDR data and automotive privacy is currently pending. On March 10, House Bill 1534 (Pennsylvania Motor Vehicle Event Data Recorder Act) was filed and was subsequently transferred to the Committee on Transportation. This bill requires that the manufacturer of a new motor vehicle sold or leased in Pennsylvania shall disclose whether the car is equipped with an EDR. Further, the disclosure must outline what type of data can be recorded by the EDR.

The pending act also provides an outline for information retrieval, requiring consent from the owner of the motor vehicle to download data. Exceptions to the rule include the ability to download data without owner consent with a lawfully issued subpoena and after an accident involving the car. Similar to MAP-21, under the Pennsylvania Motor Vehicle Event Data Recorder Act, the data can be released if the NTSB makes a request as part of an official accident investigation.

Bill 1534 further provides that information downloaded in violation of the law is inadmissible as evidence in any civil, criminal or administrative action.

Additionally, the bill provides that data from an EDR is insufficient to support an adjudication of the cause of a motor vehicle accident unless it is corroborated by other evidence.

This pending law is similar to an established California statute that mandates car manufacturers to disclose the presence of EDR mechanisms in the owner's manuals of new automobiles manufactured after July 1, 2004, and sold or leased in California. The

California statute further requires that data downloaded from an EDR may only be released with owner consent, for research about safety issues, or in response to a court order. Since 2004, nearly a dozen other states have enacted black-box legislation similar to California's statute.

While those who are very protective of their privacy may not support a law making black boxes mandatory in all vehicles, it is undeniable that the data obtained from an EDR can help establish liability and deconstruct a motor vehicle accident without witnesses able to testify as to the sequence of events.

Shamrock Anne Kennedy has been an associate with Marshall, Dennehey, Warner, Coleman & Goggin since 2009, focusing her practice on matters in the Casualty Department and is a member of Casualty Group I. **Ralph P. Bocchino** is a senior shareholder at Marshall, Dennehey, Warner, Coleman & Goggin and the Chair of Casualty Group I in the firm's Philadelphia, Pennsylvania office.

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