

6. LEGAL ASPECTS OF CRASH RECORDERS

Questions that are often brought up with regard to automobile crash recorders are (1) whether crash recorder evidence is admissible in a court of law; (2) should it be admitted?; (3) can it be prevented from being admitted?

There is a useful parallel in the inflight recorders installed in commercial airplanes. In the event of a crash, the data in these recorders is read out and interpreted by the Federal Aviation Administration or National Transportation Safety Board staff personnel. Section 701 (e) of the Federal Aviation Act forbids the use of the NTSB report in any suit or action for damages arising out of an accident. The original policy considerations were that if such possibly legally damaging reports could be used in court, it would inhibit possible sources of information important to the cause of NTSB in promoting safety. But it is possible to get the FAA or NTSB staff member who read out the recorder to testify as to the facts and thus the "facts", data read or heard from the recorders can be received as evidence toward the proof or defense of an allegation of negligence. Neither the airlines nor the government has any privilege to exclude or restrict such evidence. *

Similarly one could expect that automobile crash recorder data could be admitted in evidence in a court of law; but there would be the usual problem of qualifying the evidence. In the absence of a stipulation of the opposing party as to the authenticity of the data and the reliability and accuracy of the recorder, the moving party would successfully have to demonstrate to the court the reliability and accuracy of the recorder and the expertise of the person who read out the data.

* From a private legal opinion.

On the question of whether crash recorder data should be admitted, the main point again is whether the recorder is reliable, accurate, properly read out, and provides a record of the particular event in question. The data of itself is not dispositive of liability, but merely serves as certain evidence of the event. As indicated earlier in this report, there is good correlation between the crash severity a recorder might measure and the extent of crash deformation to the vehicle in which it is installed; and it would be difficult to refuse evidence on the crash severity magnitude as interpreted from vehicle deformation. Thus if the recorder provides good evidence of the event, it seems appropriate that that evidence should be admitted.

It may be possible to restrict through legislation the admissibility of crash recorder evidence, particularly if the recorders are government-owned and the records are retrieved and interpreted by government employees. Consider, however, the objective of a very simple and widely used integrating accelerometer that is conveniently and readily read by any police accident investigator without special training. It would appear difficult to prevent testimony by a layman -- say a tow-truck operator or an auto mechanic -- as to what he saw immediately after the accident.

In summary, we believe that (1) the data from a crash recorder would be admissible, if it meets necessary qualifications, in a court of law; (2) the data should be admitted if it is good evidence; (3) it will be difficult to prevent admitting crash recorder data, even by Federal law, if the record can be easily read by an untrained person.