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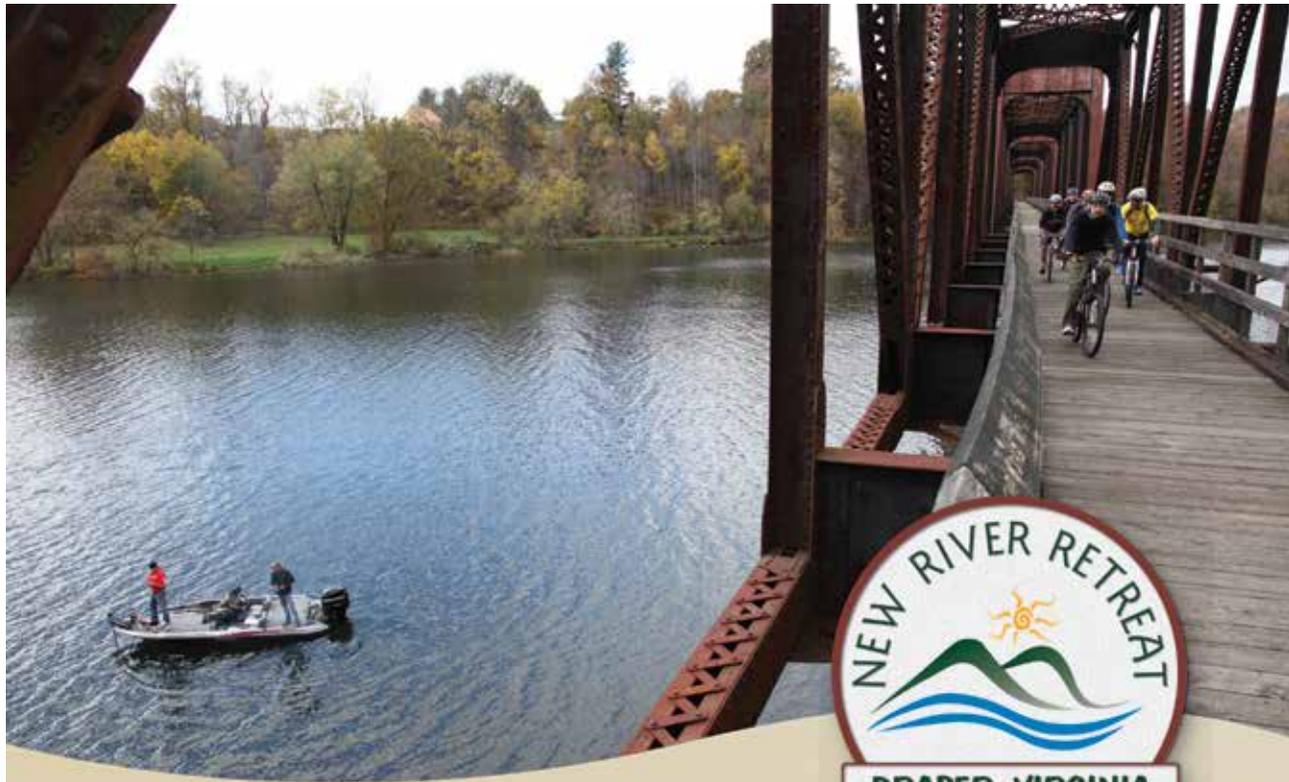
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"PERSONAL BLACK BOX" WINS IN COURT

Proving Your Unwitnessed Case with Invisible Electronic Witnesses

by **BRENDA RUBY**

Even though you may ride alone, if you wear a FitBit, an Apple watch, use a Garmin, or any device that can track your position, you have a silent witness to your activity. Though that may sound unsettling, it should offer some comfort that while we may be a slave to our devices, technology can also save the day.



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DOUG LANDAU, a Virginia attorney whose firm specializes in serving those who have been injured or disabled through no fault of their own, discussed one such case that, to him, highlighted the potential benefits cyclists may have and not even realize it.

Landau explains, "My client was biking on the W&OD trail and hit by a vehicle at a common crossing point where there's two lanes, a grassy median, and two more lanes. Usually I say no to these cases because the biker is going too fast, isn't looking, or gets waived across by the two northbound lanes and keeps going across the median into the southbound lanes thinking those vehicles will stop for him. In Virginia that's a loser, I can't win that case if my mother is the judge."

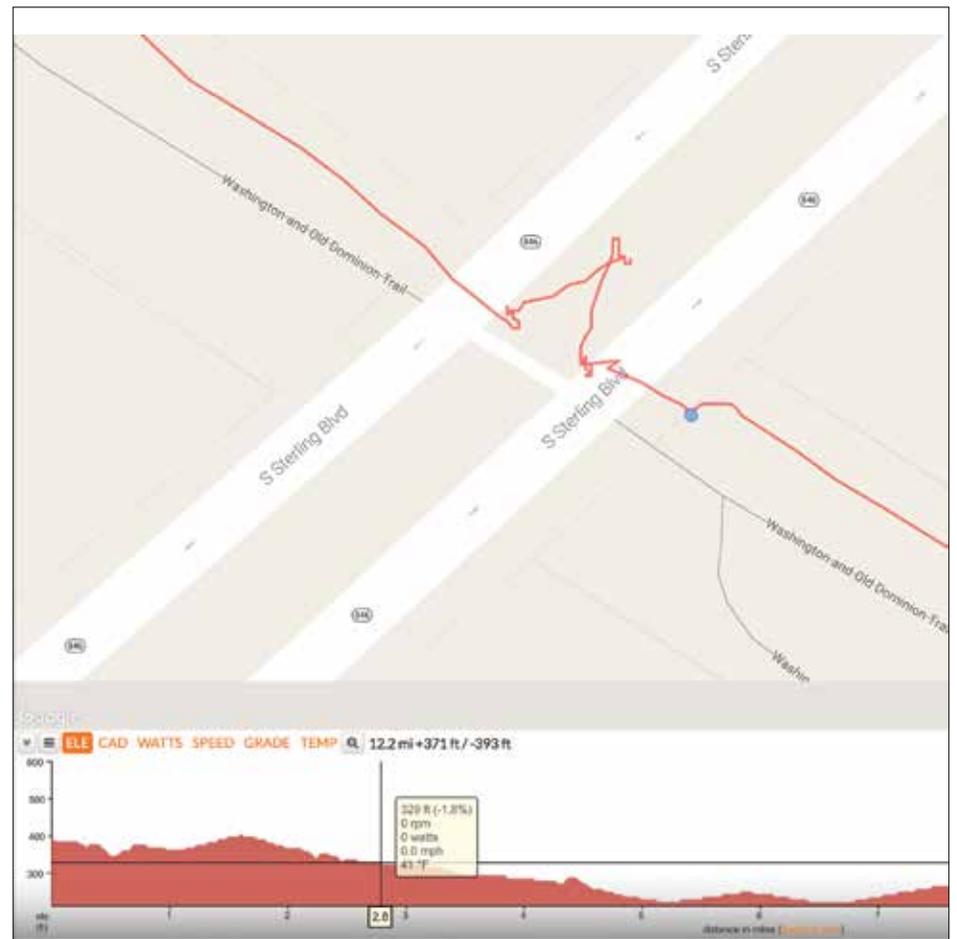
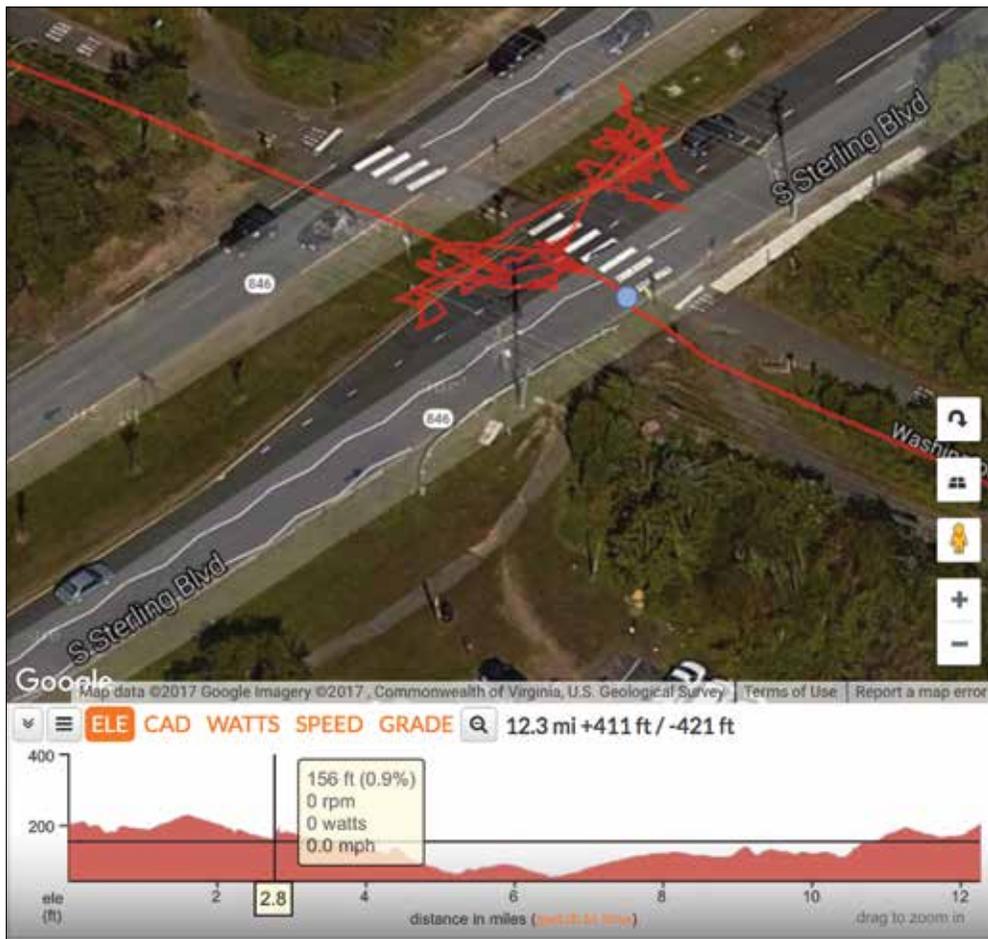
He continues, "This guy who was struck was badly injured but the driver said the biker came out of nowhere and slammed into the vehicle on their right side. The passenger said the same thing, and when the police officer got there, he yelled at the cyclist for not stopping, not looking, for going too fast. The driver said my client didn't stop, the passenger said he didn't stop, the cop didn't charge the driver, and he yelled at the cyclist."

The biker's story was that he was on a normal training ride. He said he stopped, looked, listened. The first lane waived him through, the second lane waived him through, and he said he was only going a few miles an hour. He was struck just as the third lane was forming to allow people to turn left into a development, right before the grassy median. The biker was thrown up on the driver's hood and the bike thrown for quite a distance.

Landau asked the cyclist if he had any witnesses, but he had none. "But then, he said there was a GPS on his bike because he keeps track of all his training rides. We downloaded the data, he mated his GPS data with Google Maps, so I actually saw the bushes, the trees, and the roads as he's travelling on them, and it showed him stopping at the intersection for eleven seconds — that's an eternity! Then it shows him crossing at three miles per hour. Then it shows his bike getting struck and being thrown. It doesn't show what happened to him because the GPS was on his bicycle."

The GPS data was promising, but just before the cyclist crossed, the data also showed the wheel speed spiked to 25. Landau said they had to address that because otherwise the data would have been thrown out as inaccurate. The cyclist explained that he was in a wrong gear and he got off and spun his wheel to gear down before the intersection. As Landau said, "Cyclists will understand this because they know what you do when you're in the wrong gear at an intersection, but a jury may not." However, the cyclist also had a different GPS device on his arm. That device showed him going the same speed at the same location on the Google Maps, showed him stopping for ten and a half seconds at the intersection, and importantly, did not show the spike in speed that the bike Garmin showed because that was reflective of the wheel. The Garmin on the cyclist also showed where his body ended up after the impact.

Landau used all of this evidence to create a different story than what was told by the driver. "Since we knew the cyclist's speed, his body height, weight, and all the data, we were able to calculate that the driver wasn't crawling behind traffic. In fact, she was going about 42 miles an hour in a 35 zone." Landau theorizes that the driver saw traffic stopping, didn't want to stop, and got in that turn lane to get around. Under deposition she said that she was lost, and was looking for a shopping center that was actually behind where she was so again, Landau theorizes that she was looking to make a quick U-turn.



The left image is from the GPS that was on Andrew Henle's arm, showing how far he was propelled by the impact of the vehicle. The right image is from the GPS on his bike. This data from his bike shows that Henle completely stopped right before he started crossing the road, then that he was going at about 2.9 mph when he got hit.

With the data now on their side, additional facts showed that the driver had other issues that may have played a role in the accident — she had been out on disability prior to the accident, was on medications, and had a terrible pre-crash driving record. Landau said, "Once we took her deposition and set a trial date, we showed the other side the video and all the data and the case settled fairly soon."

While it may seem like a slam dunk, Landau says that a case may still go to trial if the injured person has pre-existing conditions, or if there are more personal accounts than just the two people involved. Says Landau, "It's one tool in the arsenal but the jury still needs to decide, who do they believe, man or machine?"

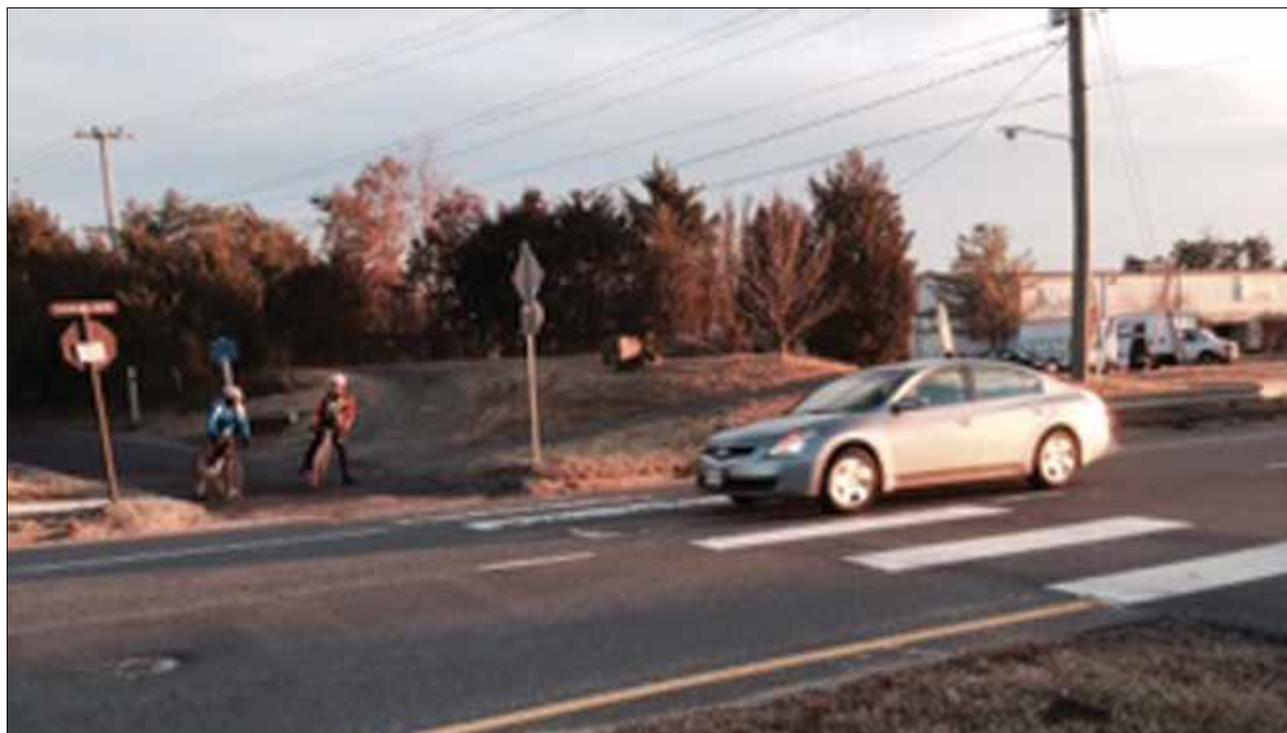
Still, Landau was excited to share that "the lesson is, the GPS can reveal data that can win a case and that may be true of FitBits, it may be true of Apple watch-

es, it may be true of all of this Global Positioning data." Landau says he was startled the first time he saw the movie of the GPS mated with the map.

But Landau warns, while this technology can protect you, it can also be used against you. It can show exactly what you were doing and how you were behaving prior to an accident. On this flip side, "If there is a crash and the cyclist erases the data or 'loses' it, that won't look good for the cyclist. If someone has evidence under their control and it disappears, it's generally looked at unfavorably by the courts."

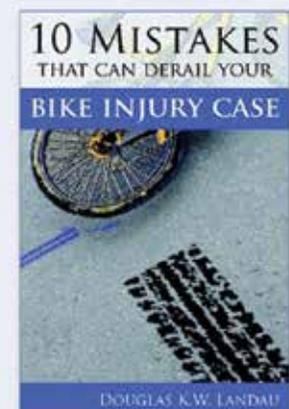
Landau's client was elated at the outcome — he had suffered some serious injuries and he was vindicated. The cyclist developed compartment syndrome and needed surgery, but Landau said, as with most cycling clients, he was in pretty good shape and motivated to recover and is going to make a good recovery.

The intersection where the accident occurred.



10 Mistakes That Can Derail Your Bike Injury Case

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Abrams Landau, Ltd. is a law firm located near the W&OD Trail Herndon Caboose 20 mile marker. Lawyer Landau helps families throughout the East Coast with personal injury, workers' compensation & Social Security Disability claims. Give us a call!
Doug is always eager to help a fellow cyclist.