

NYC Bike Attys Take Advocacy From Courtroom To The Street

By **Rachel Rippetoe**

Law360 (November 29, 2023, 4:52 PM EST) -- The website of New York City-based personal injury firm Flanzig & Flanzig LLP is filled with pictures of attorney Daniel Flanzig riding his bike.

And not just riding his bike; the photos also show him decked out in cycling gear or riding with his two young children in a buggy. So it's no wonder that he and his sister Cathy Flanzig chose to brand the personal injury practice they inherited from their father as "newyorkbikelawyers.com," focused solely on representing injured cyclists and pedestrians.

For Dan Flanzig, the choice was personal, coming after he and some of his friends were involved in crashes while cycling.

"Bankruptcy lawyers don't have that connection with their clients, like, 'Oh, you filed for bankruptcy? I filed for bankruptcy too,'" he said. "With my clients, there's a bond. I don't think I know of any other area of law where you can really bond with a client on that level."

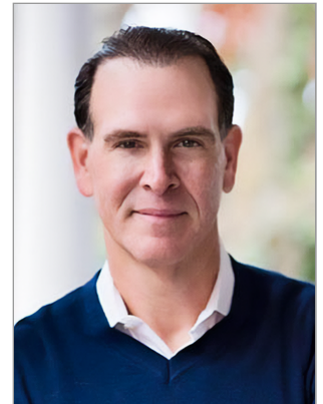
And his advocacy goes beyond just helping clients win damages in court. Joining the board of directors of both the New York Bicycling Coalition and the New York Coalition for Transportation Safety, Flanzig has made it his mission to make changes for the entire cycling community.

He's not alone; most bike lawyers in New York City are also fierce advocates of street safety.

In September, bike attorney Adam White filed a civil rights lawsuit against the New York City Police Department, not on behalf of a client but for himself, alleging he was wrongfully arrested for "criminal mischief" after removing a cover that had obscured the license plate of an SUV. His removal of the driver's license plate cover was a part of a broader movement to discourage a problem he's seen his clients face over and over again: drivers illegally obscuring their license plates, making them hard or impossible to identify for clients injured in hit-and-run crashes.

When police arrest people for removing license plate covers, White argued in his complaint that it tacitly endorses the illegal behavior of obscuring plates. He is asking that the city change its policies in responding to complaints about illegal "ghost plates."

"I've definitely seen an uptick in hit and runs and unidentified vehicles," White told Law360 Pulse. "Unfortunately, the knee-jerk responses are basically absolving the driver. But I've seen some shifts in that because of work that our firm and other street safety organizations have done over the years to call attention to it."



Dan Flanzig



Adam White



Steve Vaccaro

The number of cyclists injured by cars in New York City has been trending upward since 2010. By 2021, 7,203 pedestrians and 4,619 cyclists were injured by a car in New York City, according to city data. That jumped to 8,528 pedestrians and 4,678 cyclists in 2022. And this year is on pace to top the previous year's cyclist injuries, with 4,079 as of Oct. 31. .

"Twenty years ago, a bike crash was a one-off," Flanzig said. "But the world has changed now, so the courts and the jurors are seeing more press about bike crashes. They are having friends that are involved in bike crashes, they're interacting with cyclists on a roadway that they've never interacted with before. So it's becoming a lot more of a norm versus a one-off. And with that being said, they're more familiar with how a crash can occur."

A Personal Connection

One day in court, bike attorney Steve Vaccaro said he just about lost his mind watching as another plaintiff's lawyer made a blatant mistake arguing a motion in a case for an injured cyclist. Describing the crash, Vaccaro said the attorney told the court that "the cyclist hit the door."

"No, the door hit the cyclist," he told Law360 Pulse. "When you frame it that way — 'the cyclist hit the door' — you've already lost. Your client loses."

It's the kind of nuanced expertise that Vaccaro said bike and pedestrian personal injury lawyers are able to provide their clients.

"Many people think that everyone knows everything they need to know about traffic because we all move in it," he said. "That's not really true. And it's especially not true when it comes to interactions between cyclists and motor vehicles."

Where crash cases involving only cars can often get caught up in debates over the severity of each driver's injury, this is hardly ever an issue in bike and pedestrian crashes.

"When my clients get hit in traffic, they get hurt," Vaccaro said. "Typically, in this area, damages don't require much embellishment or advocacy to be demonstrated as substantial. Our great additional value to our clients' cases is on the liability side. Because the rights of cyclists to proceed in traffic and to be protected against the kinds of maneuvers motorists make all too often are not well understood."

It's expertise they've amassed through personal experience. Vaccaro, White and Flanzig are all avid cyclists. Vaccaro said he commutes 10 miles most days, saying it's the best part of his day. He also leads group rides for the New York Cycle Club, which can go for 100 miles or more.

While Vaccaro has been cycling since he was a child, it wasn't until he was riding around New York City with his own children that he started to truly pay attention to street safety and justice.

"It really raised my awareness and my sensitivity to the way drivers treat people on bikes in the city, especially if that's your kid," he said. "It really radicalizes you about how casually people subject you to traffic danger due to their negligence and aggressiveness or worse."



Personal Injury attorney and avid cyclist Dan Flanzig pictured riding his bike through Central Park. (Courtesy of Flanzig & Flanzig LLP)

Flanzig's personal experience as a cyclist has also given him an intimate understanding of bike gear — how it works, what it costs, and how he can better establish liability based on GPS tracking systems like Strava or Garmin, which he uses in bike races.

"There's all this other evidence that I look at that a non-bike lawyer might not even know exists," he said. "Did they have a GoPro? A Garmin? I can utilize and preserve that data to help prove their case."

Part of their expertise is in helping what Vaccaro, White and Flanzig called "a windshield bias" on the part of many jurors.

"There is a lot of bias and prejudice against cyclists because of a small minority of reckless cyclists," White said. "I even talk to judges who respect me and I like them, and they'll say, 'These damn cyclists, they just don't follow the rules of the road.'"

There's a fundamental misunderstanding that cyclists aren't as entitled to the roadway as drivers are, Vaccaro said, which makes it tricky to litigate these cases.

"A driver will say, 'Well, what was that cyclist doing on the road anyway? There was no bike lane,'" he said. "So you have a fundamental public education issue because cyclists have the same right to proceed on any roadway that motor vehicles are on, and motorists don't get that, so big surprise that they're negligent around them or perhaps even aggressive around them, causing injury."

This sentiment is even further enforced by the kind of language used in the media and the courtroom, the attorneys said, in which the term "accident" is usually the default when referring to a crash.

It's something Vaccaro said can leave his cyclist and pedestrian clients with "this kind of deep sense of injustice ... when they see how the world just treats what happened to them as a matter of 'accidents happen.'"

"'Oh, it was just an oopsie.' It's like you bumped into someone on the subway," he added. "Well it's not just being bumped into. It's like someone pushing you onto the subway track."

White said that while some media outlets and even the NYPD have gotten better about using a more neutral word like "collision" in reports, courtrooms have been much slower to change. He said he frequently asks judges to remove the term "accident" from their jury instructions, but it's an argument he rarely wins.

"The word 'accident' connotes a lack of fault," White said. "I've had jurors say, 'An accident is an accident, it's no one's fault.' And obviously that's a killer."

But White said he won his last case in Kings County with a unanimous jury verdict finding 100% fault against the driver.

"The more people who are cycling, even as this bias persists, I think that that can only encourage jurors to properly weigh evidence and hold drivers more accountable for injuring cyclists if the evidence supports it," he said. "We're moving in the right direction."

Going Beyond Personal Injury

For Flanzig, White and Vaccaro, securing settlements or jury verdicts is just one piece of a much larger mission.

"The public education angle, using my clients' cases as a teaching moment, not just with the parties in the litigation, but looking for opportunities to get media attention paid to the cases I'm involved in, it's all part of raising awareness," Vaccaro said. "For me, that's the name of the game."

Vaccaro was a mass torts lawyer at Debevoise & Plimpton LLP, mostly defending companies against asbestos litigation before his position was a casualty of the 2008 financial crisis. Even before leaving the firm, however, he was drawn to representing cyclists, doing pro bono work for those affected by an NYPD crackdown on cyclists following a 2004 protest ride on the eve of the Republican National Convention in New York City.

"It fascinated me because of the tactics that the police were using," Vaccaro said. "They were selectively enforcing the traffic laws against cyclists as a way of stopping the cyclists from engaging in protected First Amendment conduct."

At the beginning of 2013, Vaccaro joined up with White to form Vaccaro & White, handling what they

said was the bulk of cyclist crash cases in New York City for nearly a decade. But this year they went their separate ways. Both have continued their own solo practices representing cyclists and pedestrians, as well as their respective advocacy work.

"I have to admit, it's sort of bittersweet," White said. "Because I had hoped that we were going to build this ... powerhouse law firm, and we really had this reputation of being the go-to bicycle/pedestrian law firm. There are a lot of firms that handle crashes, but we had prided ourselves on having a special level of advocacy."

Similar to running a small practice related to civil rights or employment discrimination, lawyers in bike practices are usually fighting for broader goals surrounding equal treatment and safety for their clients, the attorneys said.

"I always joke: My nighttime job is trying to put myself out of business," Flanzig said. "I'm busy doing advocacy work to try to make sure I don't have any cases anymore. Unfortunately, I know that's not a reality. But that's kind of where our head is: What can we do to make it a little bit more safe?"

For his part, Vaccaro started a political action committee in 2013 aimed at supporting elected officials who push legislation around safer streets. The PAC successfully aided in passing bills reducing the city-wide speed limit to 25 miles an hour, and another creating a criminal penalty for drivers who strike and injure cyclists or pedestrians.

Flanzig has successfully advocated for legislation legalizing e-bikes, giving more validity in court to claims from e-bike riders who are struck by cars. He's now working with the various cycling organizations and coalitions he's part of to get a bill passed state-wide that would require motor vehicles to pass cyclists at a minimum distance of three feet.

But though New York's City Council and even the state legislature may be making some strides, enforcement is another matter, Vaccaro said.

For instance, he helped pass a bill requiring construction crews to create a safe detour for cyclists when doing work that tears up bike lanes.

"None of the construction companies got the memo," Vaccaro said.

Now he finds himself representing clients who wiped out on construction debris or equipment left in the bike lane by construction crews who weren't following the law.

"To fix a problem, you need legislation, and then oftentimes the legislation, even when you win it and it's enacted and becomes effective, people don't follow it and you have to sue the government in order to get them to follow it," Vaccaro said.

But as a former mass torts lawyer, he's thinking even bigger about ways to not only make cycling safer, but to also seek justice for bikers more systematically.

"Everyone is always looking for the actors and what they did in that specific instance, and they're never looking at the fact that there is this pattern of mortality and morbidity from traffic interactions that is absolutely shocking," Vaccaro said. "It's the leading cause of death in this country, and there are so many better systems. Other countries have proven there are better ways to handle traffic."

Vaccaro said he'd like to see traffic injuries to cyclists and pedestrians treated as a mass torts issue targeting auto manufacturers and sometimes government agencies.

He tried the former years ago, suing several auto manufacturers, including Honda and Ford, for failing to incorporate a safety feature that would alert cyclists when a driver unlocks their car door.

"Dooring is the most common way for bicyclists to be injured by far, when a driver opens their door in front of a cyclist," Vaccaro said. "There's usually maybe half a second between when you unlock the car and the door actually opens. That's an opportunity to warn the cyclist who's proceeding in a bike lane next to that car that that door is about to open. So why can't we sue the car manufacturers for

failing to incorporate that safety device?"

But Vaccaro said he quickly found himself "buried underneath the 800-pound gorillas of the auto industry."

Rather than try to settle the case, he said the industry threw its financial might at fighting the suit.

"It was millions for defense and not a penny for tribute, and I frankly didn't get anywhere with it," Vaccaro said. "But I still think it's an absolutely viable and meritorious claim that, with enough resources and attention, should be successful against the car manufacturers."

Vaccaro is now bringing a claim against New York City's Department of Transportation for what he says was a botched redesign of a Queens intersection the city knew to be dangerous. He is representing the family of Daniel Zuzworsky, a pedestrian who was struck and killed by a Mercedes-Benz in the intersection.

Whether he wins or loses, Vaccaro is hoping he can dedicate more of his practice to these challenging but rewarding fights.

"I think that there is an important role for a legal practice like this, in terms of sustaining the movement towards safer streets," he said. "And I'm interested in trying to create something that will endure after I start to move on to greener pastures, which won't be for a while. But that's important to me. I see all kinds of opportunities for developing aspects of the practice in a way that serves the needs of the community. That is the basis for this firm, a community-based law firm."

--Editing by Adam LoBelia.