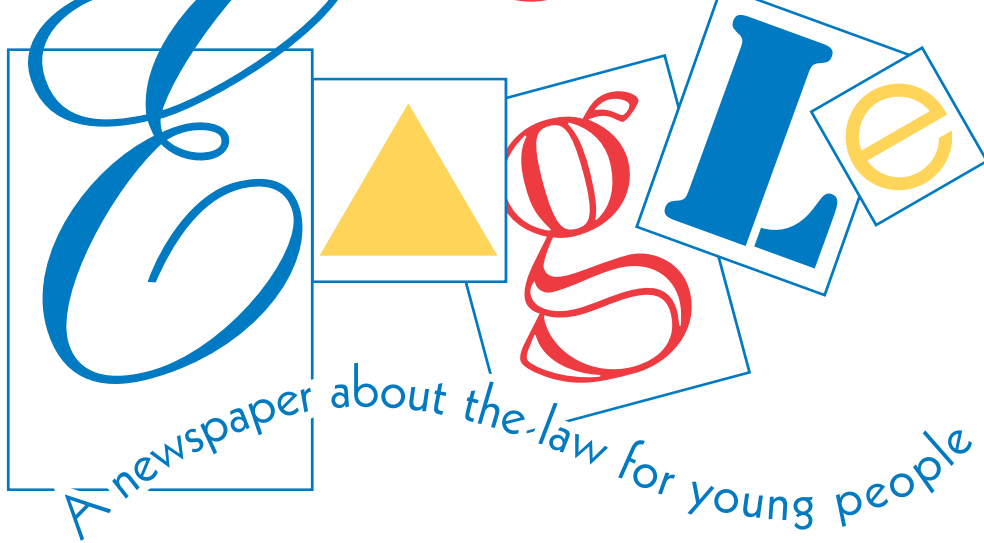


THE LEGAL



SPRING 2007

Ride at Your Own Risk: The Safety of Thrill Rides

by Phyllis Raybin Emert

According to a Washington non-profit organization called Consumer Alert, the odds of dying on an amusement park ride are one in 450 million and the odds of getting badly injured are one in 25 million. Whenever a death occurs at an amusement or theme park, however, the incident usually gets national media attention. In *Gomez v. Walt Disney Co.*, a 2005 ruling by the Supreme Court of California, the court held that amusement parks have the same standard of accountability as other companies that provide public transportation.

Gomez v. Walt Disney Co.

One death reported widely in the media was 23-year-old Cristina Moreno, a newlywed from Spain who rode the Indiana Jones ride at Disneyland in Southern California with her husband. After the ride, Cristina was hospitalized, suffering from bleeding of the brain. She was subjected to numerous brain surgeries and eventually died. In

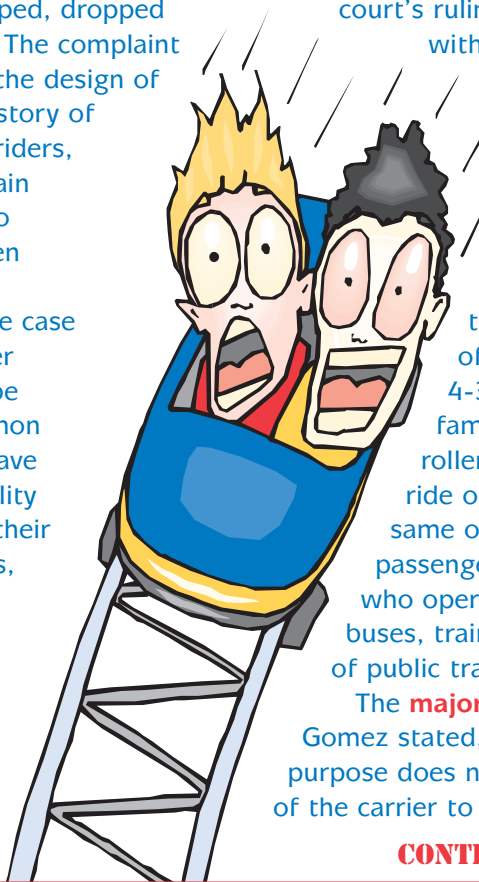
2000, shortly after Cristina's death, the family sued the Walt Disney Company for wrongful death in *Gomez v. Walt Disney Co.* According to the lawsuit, the computer-controlled ride violently changed direction and jumped, dropped and shook riders. The complaint also alleged that the design of the ride had a "history of causing injury to riders, causing severe brain bleeding similar to that seen in shaken baby syndrome."

The issue in the case hinged on whether the rides should be considered "common carriers," which have higher accountability for the safety of their passengers. Buses, airplanes and other types of transportation are considered "common carriers." The trial court ruled

that the ride was not a "common carrier" and therefore could not be held to the standards of care and safety required for means of public transportation. The Court of Appeal, however, disagreed with the trial court's ruling and sided with the family in the lawsuit.

Disney then appealed the case to the Supreme Court of California. In June 2005, the Supreme Court of California ruled 4-3 in favor of the family and stated that roller coaster and other ride operators have the same obligation to ensure passenger safety as those who operate airplanes, buses, trains and similar types of public transportation.

The **majority opinion** in *Gomez* stated, "the passenger's purpose does not affect the duty of the carrier to exercise the highest



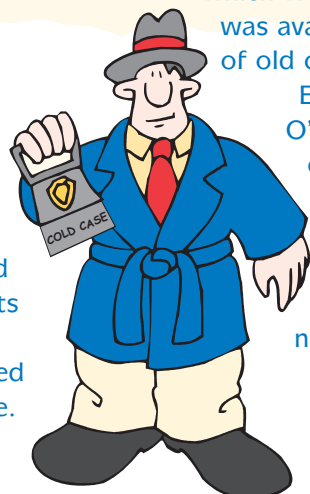
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DNA Testing Heats Up Cold Cases

by Dale Frost Stillman

With television shows like *Cold Case* and the *CSI* series on CBS, the term DNA testing has become embedded in society's consciousness. Each person's DNA is unique, making it a powerful tool in identifying offenders or eliminating suspects in a crime.

Before DNA profiling, law enforcement had to rely on fingerprints and eyewitness accounts when investigating a crime. Because of new technology, DNA profiles can now be developed from very small samples of biological evidence. This is exciting news for law enforcement who can now return to cold (unsolved) cases



which were set aside before the new technology was available, and help police eliminate a backlog of old cases.

Executive Assistant Prosecutor Robert O'Leary of Union County defines a cold case as one in which no suspect has been found, but explains that these cases are not "reopened," as is often reported, because they were never closed. In addition, O'Leary points out that there is no **statute of limitations** in **homicide** cases.

Why the focus on cold cases?

A U.S. Department of Justice publication contends that cold cases leave

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Striking Out Against Metal Baseball Bats

by Cheryl Baisden

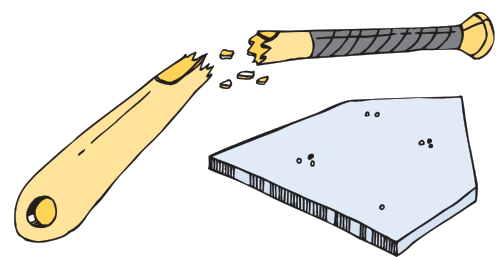
In most sports, faster is definitely better, from passing the hockey puck to an open man on the ice to intercepting the ball and barreling toward the end zone on the football field. But when it comes to baseball, some people believe the increased speed of a ball hit with a metal bat, rather than a wooden one, is cause for concern.

The debate over the safety of metal bats began in New Jersey in June 2006, after 12-year-old Steven Domalewski was hit in the chest by a line drive off a metal bat while pitching in a Police Athletic League game in the town of Wayne. The speed of the ball knocked him to the ground and temporarily stopped his heart and denied his brain of oxygen.

After a long hospital stay, Steven finally went home in February 2007. He is confined to a wheelchair, has limited speech and it is uncertain how much more progress Steven can make in his recovery. Montana pitcher Brandon Patch was not as lucky. In July 2003, a line drive off a metal bat hit him in the head. The 18-year-old died in the hospital a few hours later.

Legislation proposed

Following Domalewski's injury, New Jersey Assemblyman Patrick J. Diegnan Jr. introduced a bill to prohibit the use of metal bats in youth and high school leagues in the state. According to the lawmaker, a baseball travels about 20 miles an hour faster when hit by a metal bat than when hit with a wooden one. In a 2002 study, researchers from Brown University in Rhode Island confirmed that metal bats produce greater baseball speed. They found that 37 percent of the balls hit with metal bats exceed 100 miles per hour, while only two percent of the balls hit with a wooden bat travel that fast. A baseball traveling at that speed can reach the pitcher's mound in a matter of seconds, the study found.



"It can take less than a second from the time a pitcher releases a ball to the time he finds that ball careening straight back," Diegnan said in a press release announcing his proposed bill. "Anything that can lengthen a fielder's reaction time — even fractionally — can go a long way to preventing a traumatic injury. The speed at which a ball comes off an aluminum bat can be so great that the reaction time for a pitcher to protect him or herself is reduced to almost zero."

According to the proposed New Jersey bill, 17 baseball players were killed by batted balls nationwide between 1991 and 2001. In all but

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degree of care for the safety of the passenger. Certainly there is no justification for imposing a lesser **duty of care** on the operators of roller coasters simply because the primary purpose of the transportation provided is entertainment...Riders of roller coasters and other 'thrill' rides seek the illusion of danger while being assured of their actual safety. The rider expects to be surprised and perhaps even frightened, but not hurt."

Ironically, other states, such as Georgia, Texas, Connecticut and Virginia, have reached the opposite conclusion, finding that the rides are for entertainment purposes and not transportation.

In January 2007, the Walt Disney Co. finally settled the wrongful death suit. The terms of the settlement were not disclosed, but the family of Cristina Moreno was seeking more than \$1 million in damages. As part of the settlement agreement, Disney admitted no responsibility in Moreno's death.

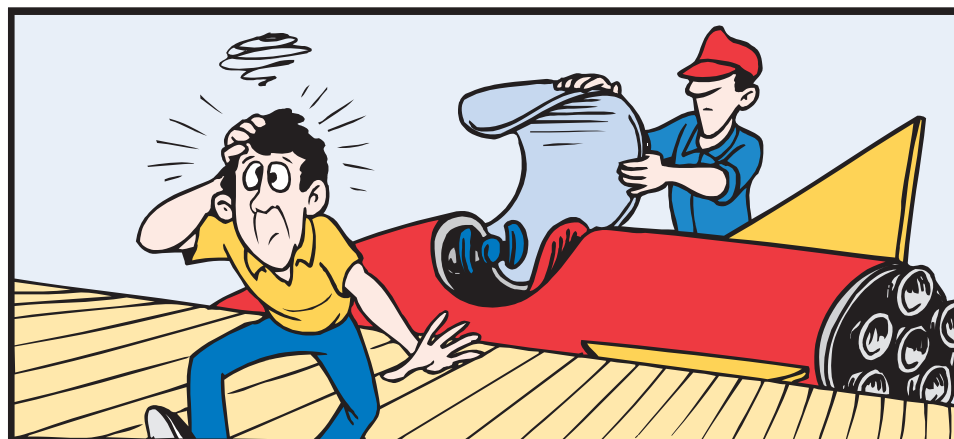
Stats and studies

While it is of little comfort to a family who has experienced an amusement park tragedy, according to the International Association of Amusement Parks and Attractions (IAAPA), one and a half billion amusement park rides existed worldwide in 2004 and there were less than 2,400 injuries that required an overnight hospital stay.

Researchers at the University of Pennsylvania conducted a study in 2002 to determine whether roller coasters generate enough force to damage the brains of healthy riders. The two authors of the study, one from the Department of Neurosurgery and the Head Injury Center at the University of Pennsylvania School of Medicine and one from the University's Department of Bioengineering, concluded that they do not. Gathering G-force data from three of the most powerful roller coasters in the country at that time, including the Rock 'n' Roller Coaster at Disney-MGM Studios in Orlando, Speed: The Ride at the NASCAR Café in Las Vegas and Face-Off at Kings Island in Ohio, the study used a mathematical model of head acceleration as the basis of their findings. The authors stated that only high G-forces experienced for more than 43 seconds would cause damage to the brain, and no roller coaster subjects its riders to forces for that long.

"The amount of rotational acceleration known to create injury in the white matter of the brain is roughly 18 times higher than the maximum accelerations calculated on the roller coasters," one researcher said. "For healthy people who meet the size requirements for the ride, you are probably safer on the average roller coaster than driving to the amusement park."

Despite this study, New Jersey passed a regulation in 2002



stating that rides should never exceed a G-force rating of 5.6 for more than one second. As an example, the Batman and Robin ride at Great Adventure peaks at a rating of five.

According to a report conducted by the U.S. Consumer Product Safety Commission (CPSC), titled *Amusement Ride-Related Injuries and Deaths in the United States: 2005 Update*, "from 1987 to 2002, for mobile and fixed-site amusement rides combined, there was an estimated 4.4 amusement ride fatalities per year." The report also states that the CPSC had reports of five amusement ride fatalities in 2004 and five in 2003. The report notes, however, that it is impossible to tell whether injuries are on the rise since the CPSC has no jurisdiction over fixed-site parks. Pending federal legislation, however, would change this.

Federal legislation

Independent ride owners Michael Wood of Wood Entertainment and Bob Johnson of the Outdoor Amusement

Business Association both told the trade publication *Amusement Business* there should be more uniformity in state regulations dealing with amusement park rides. The CPSC has the authority to look into accidents that occur only at traveling carnivals and amusement parks. Since 1981, when the U.S. Congress specifically exempted permanent amusement parks, CPSC has had no jurisdiction at fixed sites like Six Flags or Disney World. Congressional hearings were held on this issue in 1984 and again in 2000, but no legislation resulted.

For now, you are only as safe riding an amusement park attraction as the regulations from that state requires. According to the CPSC, seven states (Alabama, Kansas, Montana, North Dakota, South Dakota, Utah and Missouri) do not require safety inspections on amusement park rides. Six other states (Arizona, Minnesota, Mississippi, New Mexico, Tennessee and Texas), according to the CPSC, do not require inspections by state regulators, but do have private inspections

CONTINUED ON PAGE 4

New Jersey at the Forefront of Amusement Ride Safety

Although New Jersey has had its share of headlines from tragedies occurring at amusement parks, it also has one of the strictest carnival and amusement ride safety statutes in the nation.

In 1975, the New Jersey Legislature passed the Carnival and Amusement Ride Safety Act. The Act established a process of review and safety analysis and certification regulations. Annual inspections of all fixed-site and mobile carnival and amusement park rides were required in addition to detailed maintenance records. Except for minor changes, the Act was not amended until 2001, when official responsibility of carnival-amusement ride safety was transferred from the New Jersey Department of Labor to the Department of Community Affairs, Division of Codes and Standards. The 2001 amendment also increased owner or operator liability insurance from \$100,000 per occurrence to \$1 million per occurrence, if someone was injured on a ride and sued for damages.

Ride injuries, complaints, structural damage or mechanical breakdowns must be reported to the Department of Community Affairs, which is authorized to shut

down, investigate, and re-inspect a ride. In 2003, the Department of Consumer Affairs adopted new, tougher standards and more specific regulations. Carnival-amusement rides must now pass the F-24 standards of the American Society for Testing and Materials (ASTM), which deals with engineering and structural requirements.

The majority of injuries on amusement park rides in New Jersey are not the result of mechanical failures, the Department of Consumer Affairs found, but rider misconduct. In other words, not observing basic safety rules, like standing up or undoing a protective harness. In 2004, the New Jersey Amusement Association (NJAA) together with the Department of Community Affairs released and distributed a safety brochure, titled *Ready to Ride*, listing the Dos and Don'ts of ride safety. The Department of Consumer Affairs also set up a 24-hour Ride Safety Hotline to report accidents or amusement park concerns (609-292-2097 or 609-292-2099).

—Phyllis Raybin Emert

Protecting Sources at Any Cost

by Cheryl Baisden

When it comes to journalistic freedom in the United States, there is more to consider than just the First Amendment and Freedom of the Press. Journalists can also protect the people who provide them with information used to prepare their reports. These, often unnamed, sources usually agree to speak with a reporter as long as their identity is kept confidential. Many times they fear they will be fired or punished in some other way if their identity is revealed.

"Sources often demand this kind of protection before they will speak with a reporter so government officials don't attempt to punish them for providing information," says Bruce S. Rosen, a Chatham lawyer who is also a former journalist.

Journalistic sources are protected under what are known as shield laws. These laws are similar to doctor/patient and lawyer/client confidentiality privileges. Although shield laws vary a little from state to state, generally they give journalists the right to refuse to answer questions about their unnamed sources if those questions would reveal the source's identity.



CONTINUED ON PAGE 4

Confidential Sources Survey

In 2004, the Center for Survey Research and Analysis at the University of Connecticut conducted a national survey for the First Amendment Center about American's attitudes toward confidential news sources.

The First Amendment Center, which maintains offices at Vanderbilt University in Nashville and also in Arlington, Va., is a **nonpartisan** organization that studies free-expression issues, including freedom of speech, of the press and of religion. The First Amendment Center works to preserve and protect First Amendment freedoms through the dissemination of information and education.

The survey consisted of three statements and respondents were asked to agree or disagree with those statements. Below are the results of that survey.

Journalists should be allowed to keep a news source confidential.
72 percent agreed; 23 percent disagreed

When a news story relies on an unnamed source, one should question the accuracy of that news story.

86 percent agreed; 10 percent disagreed

News stories that rely on unnamed sources should not be published in the first place.

52 percent agreed; 44 percent disagreed

Striking Out CONTINUED FROM PAGE 1

two of those cases, the balls were hit with metal bats, which are lighter to swing and are designed to give the ball more speed.

Steve Keener, president of Little League International, which uses metal bats, told *The New York Times* that the number of injuries has dropped in recent years due to a change in design of metal bats, making them perform more like wooden bats. However, those opposed to the use of metal bats point to bat manufacturers' own words as proof that they are still being designed for speed. For example, sporting goods manufacturer Easton advertises its new metal Stealth bat on its website as providing "maximum 'whip' for a quicker bat and more power through the hitting zone."

While metal bats were first developed in the 1970s as an alternative to wooden bats that were prone to break, risking injury to nearby players, improvements in design now make wooden bats safer than metal ones, according to Diegnan. The speed of the ball is really the most dangerous factor, he said, and even a slight difference in ball speed between a metal and a wooden bat may give a pitcher enough time to avoid or catch a line drive.

"The safety of our kids must be our paramount concern," he said. "We cannot make baseball — or any sport — totally injury-free, but we can give players tools that can level the playing field for all participants."

Steven's Law

Though the bill has a long way to go before it becomes a law, Assemblyman Diegnan named the bill after Steven Domalewski. Steven's Law was voted out of the Assembly Law and Public Safety Committee and is awaiting a full vote by New Jersey's General Assembly. The next step for Steven's Law would be to get approval from the New Jersey Senate. If approved, it would be the first statewide law of its kind in the country. The bill would outlaw the use of metal bats in all school and community baseball games in the state involving players 18 years of age and under, except in games being played against out-of-state teams.

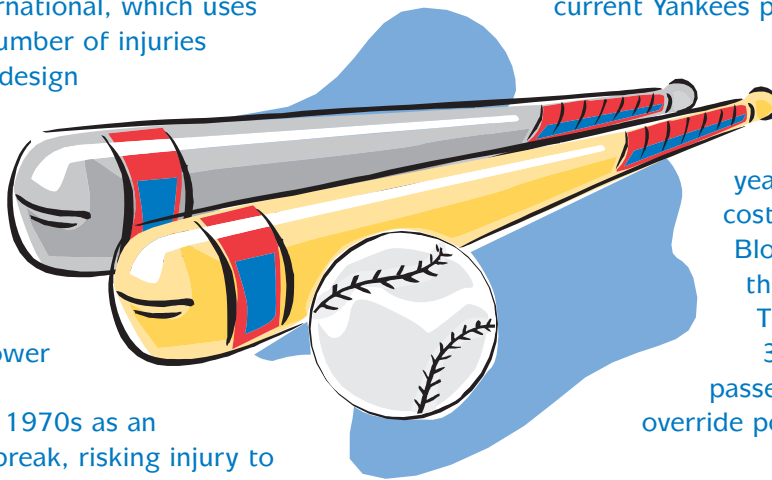
Although no state has acted to ban metal bats on the level that New Jersey is proposing, all North Dakota high school teams will begin using wooden bats in their 2007 season. In 2006, some high schools in Illinois began testing wooden bats on the field as well. The Illinois decision, just like the proposal in New Jersey, was the result of an injury on the baseball field. In April 2005, a line drive from a metal bat hit 16-year-old high school pitcher Bill Kalant in the head. After spending two weeks in a coma and undergoing brain surgery, he had to relearn everything from walking to brushing his teeth.

Several other groups across the country also have started investigating bans. The Montana high school team that Brandon Patch played on now uses only wooden bats, and teams that play against them abide by the ban. But the state's Legislature, in a close vote, decided against banning metal bats statewide.

Most recently, in March 2007, the New York City Council passed legislation that would ban the use of metal bats in high school games. Before it voted, the council heard from Brandon Patch's mother and

uncle, as well as Steven Domalewski's father, Joseph. In addition, former New York Mets pitcher John Franco lent his support for the bill and current Yankees pitcher Mike Mussina spoke against it.

New York's City Council estimates that the city's high schools, with 169 baseball teams, would need \$253,500 to equip them with wooden bats and \$67,600 per year after that to keep up with replacement costs on the bats. New York City Mayor Michael Bloomberg has said publicly that he would veto the legislation when it comes across his desk. The bill would need a two-thirds majority, or 34 votes, to override his veto. The bill passed by a vote of 40 to 6, making an override possible.



Glossary Word Search

Q H K P I M L R Q T V S U B A V O F P V
 F G R J O M D U T Y N I K C Z A B D Y)
 S T A T U T E O F L I M I T A T I O N S
 M A N B T K N B A C T W Y S D C M W M A
 C E W J S A W Y C M N U I I U K A E L A
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 N C H A I N O F C U S T O D Y M O D E C
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 E F U L V D I N W T H Y P V F J I H X
 M H N K L O P N A U O B R N C O T Y M)
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 C I R S L Z O R N O D I J B K C N L K E
 O B T N I C Y Q X L E N T W M A I N I P
 U T I F M O J N Y Z K E N W J Y O B T V
 R U S G I U H K V W P X M X O C N M N A
 T C A D E R H Y I N W P O R N S K T L V
 A X N W 7 V M N R I F O I G K C M U D F

Find the words below. The words may be found across and up & down.

- | | |
|-------------------|------------------------|
| CHAIN OF CUSTODY | MAJORITY OPINION |
| CONTEMPT OF COURT | NONPARTISAN |
| DUTY OF CARE | PROBABLE CAUSE |
| HOMICIDE | STATUTE OF LIMITATIONS |

ANSWER ON PAGE 4

DNA Testing CONTINUED FROM PAGE 1

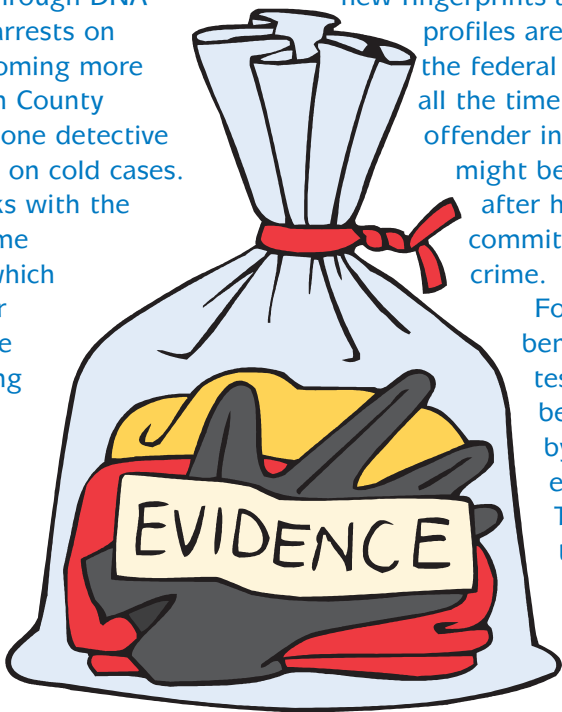
the door open for more murders to be committed since perpetrators, who have not been arrested, could kill again. For this reason, special cold case squads are common in law enforcement agencies today. Through DNA technology, new arrests on old cases are becoming more common. In Union County O'Leary said that one detective is always working on cold cases. O'Leary also works with the Union County Crime Stoppers Board which offers rewards for residents who give information leading to the arrest and indictment of criminals.

Anatomy of a cold case

How are cold cases selected for review? Law enforcement officials contend that violent persons' crimes like homicides and sexual assaults are perfect selections because there is a wealth of evidence and the cases lend themselves to DNA testing. Sometimes in older cases, however, there is less chance that physical evidence is still available. Another consideration when focusing on a cold case is whether the key victims, witnesses and suspects are still alive.

"Prosecutors need **probable cause** to pursue a cold case, and the standard for a jury is proof beyond a reasonable doubt," O'Leary contends.

An article in *Police Magazine* reported that the passage of time can also be an asset in a cold case. A witness who was previously unwilling to talk might change his or her mind. And since new fingerprints and DNA profiles are added to the federal database all the time, the actual offender in a cold case might be matched after he or she commits a new crime.



For all its benefits, DNA testing can be hampered by degraded evidence. This refers to the way samples have been collected and stored.

For example, if evidence has developed bacteria or mold, it is no longer usable. Prior to DNA being used forensically, older evidence may have been contaminated. In addition, there are legal considerations when pursuing a cold case. Proving that a proper **chain of custody** was maintained and that the statute of limitations has not run out are two such considerations.

Once a cold case has been selected, law enforcement officials must locate old files and original evidence. After files and evidence have been reviewed, a DNA profile can be developed through lab analysis. The profile is

then entered into the Combined DNA Index system (CODIS), a system of hundreds of thousands of convicted offender DNA profiles looking for a potential match to solve the case.

Stolen years

DNA testing can also, and in many cases has freed those already imprisoned for crimes they did not commit. Peter Neufeld is an attorney and, with renowned DNA expert Barry C. Scheck, co-founded The Innocence Project at the Benjamin N. Cardozo School of Law in 1992. A non-profit legal clinic, the project focuses on cases where post conviction DNA evidence can prove the wrongfully accused is innocent. In an interview at the Institute of International Studies at UC Berkeley, Neufeld stated that prosecutors, in many cases, are not willing to have post conviction DNA testing because they do not enjoy having participated in a wrongful conviction. Neufeld contends that some prosecutors feel they let the victim and the victim's family down. He suggests reforming some of our rules "to make it easier for the truth to surface."



chain of custody — refers to the history of how evidence is handled. If chain of custody can be proven, that means that the evidence was not tampered with and is reliable.

contempt of court — intentional failure to comply with a court order or judgment. Contempt of court is punishable by fine or imprisonment, or both.

duty of care — a legal obligation for an individual or entity to exercise a reasonable standard of care when performing an act that could potentially harm others.

homicide — a murder.

majority opinion — a statement written by a judge that reflects the opinion reached by the majority of his or her colleagues.

nonpartisan — not adhering to any established political group or party.

probable cause — a reasonable belief in certain facts.

statute of limitations — a law that imposes time limits on when certain actions can be pursued.

Protecting Sources CONTINUED FROM PAGE 3

While 31 states and the District of Columbia have shield laws in place, there is no protection for journalists at the federal level. Four bills are currently being considered in the U.S. Congress. Over the years, nearly 100 such bills have been proposed at the federal level, however none have passed.

Without shield laws, according to Rosen, journalists could find it impossible to report on illegal or questionable activities, because people with insider information would be too frightened to speak with them or provide them with documents.

While shield laws provide strong protections for journalists and their sources, there still are instances where the court can demand information about a source.

"The U.S. Supreme Court has ruled that in federal courts this protection is 'qualified', meaning that it could be overruled by an important government need to obtain information," explains Rosen.

An example of this involved Judith Miller, a reporter from *The New York Times*, who spent 12 weeks in jail for **contempt of court** when she refused to reveal a source. Miller had been asked to testify about her sources in connection with news reports naming a woman who may have been a top-secret CIA official.

Although Miller never published an article about the woman, "federal prosecutors were attempting to find out whether someone unlawfully leaked government secrets or tried to cover up leaks," explains Rosen. "Because of this, the court ruled that the government's need for information was more important than her right to protect her source."

Miller was released from jail when her source agreed to let her reveal his identity to the grand jury.



The Safety of Thrill Rides

for insurance purposes. In Florida, which is home to Disney World, the largest fixed-site park, the rule is that any amusement park with more than 1,000 employees is exempt from state inspections and considered self-regulated. In fact, in Florida, amusement parks do not even have to report an incident unless someone is taken to the hospital.

Congressman Edward Markey of Massachusetts along with 14 co-sponsors, including Congressman Donald Payne of New Jersey, want to restore the authority over fixed-site park rides back to the CPSC. Markey's bill was introduced twice in 2001 and reintroduced again in 2005 as the National Amusement Park Safety Act of 2005. The legislation would give the CPSC the power "to investigate accidents, develop and enforce action plans to correct defects, require reports to the CPSC whenever a substantial hazard is identified, and act as a national clearinghouse for accident and defect data." In addition, the bill would "restore the jurisdiction of the CPSC over amusement park rides which are at a fixed site."

Congressman Markey declared in his statement of introduction to the U.S. House of Representatives that his bill would "close the special-interest loophole that prevents effective federal safety oversight of amusement park rides."

In an email from Congressman Payne's office, the congressman emphasized the importance of the role of the national government to

CONTINUED FROM PAGE 2

guarantee the safety of thrill rides. He stated, "I believe the federal government has a positive role to play in ensuring the safety of children and their families at our nation's amusement parks. We have a responsibility to enact the strongest possible measures to prevent further deaths and injuries, and empowering the CPSC to monitor amusement park rides will help us to accomplish that goal." Payne added, "Operators of the rides have nothing to fear by strengthened safety enforcement."

On May 19, 2005 the bill was referred to the House Committee on Energy and Commerce, and on June 3, 2005 it was referred to the Subcommittee on Commerce, Trade, and Consumer Protection. The chairman of the subcommittee is Representative Cliff Stearns from the Orlando, Florida area who opposes government safety regulation for theme parks. No action has been taken and the bill is still in committee.

Glossary Word Search Solution

Q H K P I M L R Q T V S U B A V O F P W
F G R J O M D U T Y N I K C Z A B D Y X
S T A T U T E O F L I M I T A T I O N S
M A N B T K N B A C T W Y S D C M W M A
C E W J S A W Y C M N U I I U K A E L A
O B C N T S O N L I M I T A T D J B I E
N C H A I N O F C U S T O D Y M O D E C
T T S Y O R M Z H S W Z T U O E R W F G
E F U L V D I N W T H Y P V F J I H X I
M H N K L O P N A U O B R N C Q T Y M S
P G O W E C I M T V M V O P A O Y R L S
T A N D C F H G I J I K B L R M O E I C
O E P R O B A B L E C A U S E U P T M A
F B A O R M P M S X I W V M F W I S G R
C I R S L Z O R N O D I J B K C N L K E
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A X N W Z Y M N B I F O J G K C M U D E