

# THE UPDATE

SAN DIEGO DEFENSE LAWYERS ASSOCIATION

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## Ins And Outs

- Jim Boley of Neil, Dymott, Perkins, Brown & Frank was recently honored by being selected as one of San Diego Metropolitan Magazine's 40 Under Forty, San Diego's "young outstanding leaders". The annual award selects San Diegans for their professional success and civic involvement. Jim is currently the 40th President of the Kiwanis Club of Lake Murray, East County's most active community service organization. Look for the article in the September edition of the magazine.
- New address:  
Letofsky & McClain  
8899 University Center Lane  
Suite 310  
San Diego, California 92122  
(858) 642-1372  
(858) 642-1379 (Facsimile)

## HIPAA Privacy Regulations

By: *Dan Groszkruger*

*Counsel DiCaro, Coppo & Popcke*

Attorneys who defend physicians and other health care providers and medical malpractice liability insurers appear to qualify as "Business Associates" under the new HIPAA privacy regulations. This article summarizes the new privacy regulations, which become enforceable by mid-April 2003, as a "heads up" for those attorneys and firms who may be asked to sign HIPAA "Business Associate" agreements, and thereby agree to safeguard protected health information (and raises some questions for potentially all attorneys who review confidential medical records).

The Health Insurance Portability & Accountability Act of 1996 ("HIPAA"), originally known as "Kennedy-Kassebaum," was widely publicized for its treatment of such issues as transfer of health insurance coverage when changing jobs, and Medical Savings Accounts. Less well-known were HIPAA's provisions addressing the privacy and security of medical records. The HIPAA law instructed the Department of Health and Human Services (DHHS) to adopt rules protecting the privacy and security of medical records, if Congress failed to pass legislation by 1999 (it did not). Almost five years later, the

current regulations went into effect on April 14, 2001. Although an exception for "judicial proceedings" [45 CFR § 164.512(e)] appears to exempt the subpoena of medical records from requirements for patient consent or authorization, covered entities must obtain "satisfactory assurances" that privacy will be protected under a "qualified protective order." Thus, all attorneys who review medical records, not just medical malpractice defense attorneys, may be required to comply with HIPAA's new privacy and security rules.

### Background

By mid-April 2003, virtually all health care providers (physicians, hospitals, etc.) will be expected to comply with the new HIPAA Privacy regulations. The new rules were just published in late December 2000, and the 2-year implementation schedule began running on April 14, 2001. As detailed below, privacy violations will become a matter of Federal law, carrying potentially serious fines and penalties. The major changes are highlighted below. But, the most important feature of the HIPAA Privacy regulations is the shift of power from providers to patients. California law (Civil Code § 56, et seq.) has always

provided for the confidentiality of personal health information, and safeguarding the privacy of medical records has been entrusted primarily to the medical profession. Now, HIPAA places the decision-making power with patients. This is a radical change, from a health care provider's point of view. The impetus behind the HIPAA privacy regulations was a realization that electronic storage and transfer of confidential health information (as compared to paper records) multiplies the opportunities for abuse. In fact, the regulations were initially targeted at only electronic transactions involving personal health information. However, the final regulations apply to all forms of communication, including electronic, written and oral communications.

Only slowly, is recognition of the proportions of this radical change dawning on the health care provider industry. Providers are not only required to designate someone to serve as "privacy officer," and to adopt and to train their staffs regarding radically new policies and procedures. Also, they are obligated to ensure that most third parties with whom they do business (and with whom they share protected health information)

*Continued on page 3*

## The Bottom Line

The Bottom Line is a column that lists favorable defense results at trial and/or arbitration. If your firm has had such results since June 1, 2001, and wishes to be listed in the next edition of **The Update**, please provide that information to: Clark R. Hudson at Neil, Dymott, Perkins, Brown & Frank, 1010 Second Avenue, Suite 2500, San Diego, CA 9210. Phone: 619- 238-1712, Fax: 619- 238-1562, E-mail: [chudson@neil-dymott.com](mailto:chudson@neil-dymott.com).

### **Brian Burns v. Scripps Mercy Hospital, Michael Bongiovanni, M.D., and et.al.**

- Case No. GIC 748521
- Judge: Hon. William Pate
- Plaintiff Counsel:  
Richard Castillo and Joe Duran ,  
Haight Brown & Bonesteel
- Defendant Counsel:  
Bruce S. Bailey for Scripps Mercy  
Hospital, Dummit Faber & Briegleb
- Clark Hudson and Kendra Ball  
for Dr. Bongiovanni, Neil,  
Dymott, Perkins, Brown & Frank
- Type of Incident:  
Alleged Medical Malpractice.
- Failure to appoint in a timely  
fashion a conservator for patient  
with a mental disorder, and  
failure to appropriately treat  
bilateral tibia fractures.
- Settlement Demand by Plaintiffs:  
\$200,000
- Settlement Offered by  
Defendant: None
- Verdict: Defense verdict for Dr.  
Bongiovanni. Scripps Mercy  
Hospital was dismissed on trial  
day 6 with a nonsuit pending.
- Trial length: 7 days
- Jury out: 40 Minutes

## President's Message

By: *Ray J. Artiano Stutz, Gallagher, Artiano, Shinoff & Holtz*

As we move into the second half of the year, we are well-positioned to benefit our members in a number of different ways. We continue to make educational opportunities available to our membership. We have provided six of the planned 14 MCLE units to our members. The four brown bag seminars have been extremely successful. As you know, one of the most significant benefits available to you as SDDL members is the SDDL website, which is now fully operational. Like many other sites, [www.sddl.org](http://www.sddl.org) has access to many legal resources. In addition, the current site also contains a bulletin board which allows the members to post messages and ask questions. The bulletin board can only be reached by other SDDL members who gain access through a password (which you should have already received). The bulletin board has been functional for a short time, but it is being underused. We are now considering an upgrade to the website which will make available distribution lists to all members so that your

questions or messages can be sent directly to your fellow SDDL members. Instead of posting an inquiry on the bulletin board and having to depend upon other members to routinely review the bulletin board, you will be able to have immediate access and, hopefully, feedback from the membership. The website is an extremely valuable resource and I encourage everyone to use it.

We are continuing in our effort to offer additional benefits to our membership. To help ensure that our voice is heard, we have asked one of our board members, Norm Ryan, to participate as a member on the Superior Court Committee. We are currently looking into representation on the Bench/Bar Committee as well. We have spoken with representatives at both Defense Research Institute and Southern California Defense Counsel about opportunities which they may be able to provide our members. Both organizations have been very receptive, and a separate mailing on the arrangements will be announced in the near future. We are in the process

of gathering survey data from questionnaires which were sent to member firms. The survey deals with law firm management issues and the results will be released by the end of the year. We believe this will also be a valuable tool to all member firms.

We do need your continued input on matters which effect the defense bar. You need to tell us how we can best serve you. What types of programs would you like to see? What benefits can SDDL provide? Would you like to see more social events? Would you like to see a different format for the educational seminars? Are there rule changes in the court system which you would like to see considered? We want to hear from you. Please email us at [info@sddl.org](mailto:info@sddl.org). Let us know what you are thinking. If you can donate some time to the organization please let us know. If there are others in your firm who are not SDDL members, please encourage them to join. Our strength is partly dependent upon the size of our membership. We need your continued support in order to remain a strong and vital organization.



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## The Bottom Line

### Alfonso Borda III and Nicole Borda v. James Bingham

- Case No. GIN 007117
- Judge: Honorable Thomas Nugent
- Plaintiff Counsel: John M. Siciliano, Temecula
- Defense Counsel: Peter S. Doody of Higgs, Fletcher and Mack, San Diego
- Type of Incident: Defendant rear-ended plaintiffs' 1994 yellow Ferrari on I-15 causing soft-tissue injuries to plaintiffs. In addition to personal injuries and property damage, plaintiff Mr. Borda alleged one month lost income in the amount of \$18,000 being unable to produce and film adult XXX videos.
- Settlement Demand by Plaintiffs: Mr. Borda- \$28,000, Mrs. Borda-\$15,000
- Settlement Offered by Defendant: Mr. Borda-\$10,000, Mrs. Borda-\$6,000
- Verdict: Defense verdict
- Trial Length: 3 days
- Jury out 2 hours

will observe the same privacy protections. Every provider, and many of the individuals and entities with whom they do business (including malpractice defense attorneys), will be forced to tackle significant legal and regulatory issues regarding privacy.

### HIPAA Privacy in a Nutshell

Protected health information ("PHI") may not be disclosed without the patient's consent [CFR § 164.506], and specific disclosures require a separate, signed, written authorization. Every patient must receive a copy of the provider's privacy policy, called a Notice of Privacy Practices ("NPP"), including examples of how discrete items of PHI will be handled. If the patient refuses to give consent, the provider may withhold service, except in certain emergencies. Sharing information for treatment or billing purposes is included in the consent, but other disclosures (e.g., for research [see: CFR §§ 164.501, 164.508(f), and 164.512(i)], fund-raising, etc.) require a separate authorization.

Identifying or demographic information (e.g., name, address, telephone number, SSAN) is within the definition of PHI, in addition to health and medical data. The purpose of the HIPAA privacy regulations is to set "a floor" of protection, imposed by federal law. But, more stringent state laws are not preempted. Thus, wherever a state law provides more protection (e.g., for HIV status or AIDS information), the state law applies.

Patients have a panoply or

new "rights" concerning their PHI, including the following:

- to revoke consent
- to limit or restrict disclosures
- to inspect and copy records
- to appeal a denial of access
- to amend or correct records
- to receive an accounting of disclosures
- to file a complaint
- and other rights

First and foremost, patients must receive a written copy of a provider's NPP prior to signing a consent. The regulations suggest that the consent must qualify as an "informed consent." But, it is unclear who has the responsibility to explain the details of the NPP to the patient, or to answer the patient's questions.

Violations of the privacy regulations through neglect or inadvertence are punishable by fines (\$100 per violation, up to \$25,000 per person, per year, per standard). Willful violations are subject to fines up to \$250,000 and/or imprisonment for up to 10 years.

### Minimum Necessary Disclosure [45 CFR §§ 164.502(b), 164.514(d)]

One interesting feature of the HIPAA privacy regulations is the requirement that a holder of PHI disclose only the "minimum necessary" for a particular purpose. The new rules are quite vague and non-specific regarding exactly how this determination is made, but the "privacy officer" must

make the decision, on a case-by-case basis. Presumably, the Feds will come along, after the fact, and somehow determine whether a particular disclosure satisfied the "minimum necessary" requirement. The potential for significant fines and penalties associated with this new feature appears manifest.

### Business Associates [45 CFR §§ 160.103, 164.502(e), and 164.514(e)]

Another new feature is the requirement that the holders of PHI obtain assurances (presumably, by means of contract from those to whom they disclose PHI) that "business associates" will observe the same standards of privacy for subsequent use and disclosure of the patient's health information. In other words, the HIPAA privacy regulations purport to extend their protections to individuals and businesses who do not fit within the definitions of "covered entities," consisting only of: (1) health care providers, (2) health plans, and (3) health care clearinghouses. The effort to hold covered entities responsible for the privacy practices of their business associates is one of the most controversial provisions.

### Oral Communications [45 CFR §§ 160.103, 164.501]

The holders of PHI must develop policies to ensure the privacy of oral disclosures, as well as written or electronic transactions. The reach of the HIPAA privacy regulations to both written and oral communications was a "last minute" change, and there is very little guidance as to what standards apply. About all

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## The Bottom Line

### H.O.F. Cards I, LLC v. Uchidaof America

- Case No.: GIC735602
- Judge: Hon. Kevin A. Enright
- Plaintiff Counsel: C. David Herring and Margaret Herring of Herring & Loftus
- Defendant Counsel: Michelle Van Dyke and Steven M. Shewry, Shewry, Stoddard & Van Dyke, LLP
- Type of Incident: Product defect. Damages related to an art pen the plaintiff contended was defective.
- Settlement Demanded by Plaintiffs: \$1.1 Million
- Settlement Offered by Defendant: \$15,000
- Verdict: Defense Verdict
- Trial Length: 10 Days

### David Spinks v. Ray Michael Smith, D.D.S., et al.

- Case No.: GIC 740923
- Judge: Hon. Charles Hayes
- Plaintiff Counsel: James Mangione, Esq.
- Defense Counsel: Robert W. Harrison, Esq. of Neil, Dymott, Perkins, Brown & Frank
- Type of Incident: Professional Negligence (oral surgery malpractice) Plaintiff alleged that the defendant lacked the necessary skill and qualification to perform the subject surgeries and that he misrepresented his skill and experience in that regard.
- Settlement Demand by Plaintiffs: none
- Settlement Offered by Defendant: waiver of costs
- Verdict: Defense verdict
- Trial Length: 4.5 days
- Jury out: 3 hours

that is known is that installation of physical soundproofing is not required to prevent unauthorized persons from overhearing private conversations between patients and physicians or care-givers. Realistically, the control of oral communications will probably fall to those entrusted with HIPAA Security regulations, the details of which are beyond the coverage of this article.

### Parent and Child [45 CFR § 164.502(g)]

Generally speaking, state laws concerning parental rights to consent to medical treatment of children are not preempted. Subject to many state law exceptions, parents still have the right to see their

children's medical records. The HIPAA privacy regulations do not create any new rights for children to obtain treatment without their parents' knowledge or consent. Examples of state law exceptions include rules for "emancipated minors" and for reproductive rights (i.e., sterilization, birth control, and abortion) issues.

### Marketing and Fund-Raising [45 CFR §§ 164.501, 164.514(e)]

Special rules define what activities are considered marketing or public relations, and certain uses and disclosures are specified. For example, holders of PHI may not sell lists of patients with particular diagnoses to commercial providers (e.g.,

hospitals may not sell lists of pregnant women to baby formula manufacturers; physicians may not sell lists of patients with specific diagnoses to pharmaceutical companies). On the other hand, marketing may be directed to present and former patients, recommending further diagnostic or treatment activities, or even offering commercial products. Patients must have the opportunity to "opt out" of such communications in the future. Thus, all attorneys who review medical records, not just medical malpractice defense attorneys, may be required to comply with HIPAA's new privacy and security rules.

## What Can the San Diego Defense Lawyers do Better to Serve its Members?

The board of directors for the San Diego Defense Lawyers are always interested in hearing from the members as to how the organization can best meet the members needs. Receiving input from

the members is a vital element to accomplishing this goal. How can we serve you? Do you believe the defense lawyers should have more bench/bar mixers? Different educational seminars? More

social functions, highlight recent rulings of note, etc. (Please contact Clark Hudson at [Chudson@Neil-Dymott.com](mailto:Chudson@Neil-Dymott.com).)

## SDDL Can Help Your Paralegals Meet Their Continuing Education Requirements

As of January 1, 2001 the legislature enacted Business and Professions Code Section 6450 - defining who can be a paralegal, prohibitions, and requirements for certification. This code section now requires paralegals to certify completion of mandatory continuing education requirements and legal ethics

every three years. Every two years the paralegals must complete mandatory continuing education in either general law, or a specialized area of law. (Business and Professions Code Section 6450(4)(d)). This certification process is self-regulated. To help members of the San Diego Defense

Lawyers paralegals will now be invited to attend the educational seminars that are offered by the San Diego Defense Lawyers. Paralegals will be welcome to attend the San Diego Defense Lawyer Brown Bag Seminars for a cost of \$10.00. They will be able to attend the two-hour seminars for a cost of \$25.00.

## The Bottom Line

### Thomas v. Richards

- Case No.: EC019370
- Judge: Hon. Victor Bianchini
- Plaintiff Counsel: Donovan J. Jacobs, Law Office of Donovan J. Jacobs
- Defendant Counsel: Michelle Van Dyke, Shewry, Stoddard & Van Dyke, LLP
- Type of Incident: Personal Injury (automobile accident)  
Defendant admitted liability for the accident.
- Settlement Demanded by Plaintiffs: \$131,326.50
- Settlement Offered by Defendant: No Offer
- Verdict: Defense Verdict
- Trial Length: 3 Days

## Upcoming Events

### September

#### September 20-21

#### DRI seminar "Construction Law"

For those of you who practice Construction Law, please be aware that the Defense Research Institute (the national defense bar association) is putting on a Construction Law seminar September 20-21, 2001 here in San Diego. Karen Holmes of Jaroszek & Kennedy is Chair of the DRI Construction Law Committee and she would be happy to send you a brochure with the specifics or you can view and print the whole program from the DRI web site at [www.dri.org](http://www.dri.org).

Please feel free to call Karen at 619-233-8591 or the DRI directly at 312-795-1101. This seminar qualifies for 12 MCLE credits.

Eva Camargo v. Tjaarda Dairy, et al 2001 DAR 6933

## Privette and Beyond

By: *Kenneth T. Calegari Drath, Clifford, Murphy, Wennerholm & Hagen LLP*

On July 5, 2001, the California Supreme Court extended the rationale of Privette v. Superior Court (1993) 5 Cal. 4th 689 and Toland v. Sunland Housing Group, Inc. (1998) 18 Cal. 4th 253, which involved tort liability under the doctrine of peculiar risk, to the tort of negligent hiring. The California Supreme Court ruled in Camargo that an employee of an independent contractor is barred from bringing a negligent hiring action against the hirer of the independent contractor.

### Case Study

Albert Camargo, an employee of Golden Cal Trucking, was killed when his tractor rolled over as he was driving over a large mound of manure in a corral belonging to Tjaarda Dairy. Golden Cal Trucking was an independent contractor hired by Tjaarda Dairy to scrape the manure out of its corals and to haul it away in exchange for the right to purchase the manure at a discount. Camargo's wife and 5 children sued defendants Tjaarda Dairy and Perry Tjaarda on the theory that they were negligent in hiring Golden Cal Trucking because they failed to determine Albert Camargo was qualified to operate the tractor safely.

The trial court granted defendant's motion for summary judgment relying on Toland for the conclusion that an injured employee of an independent contractor may not bring an action against the hirer of the contractor. The Court of Appeal reversed the trial court's

decision. The California Supreme Court reversed the Court of Appeal's decision and, relying on the Privette/Toland Rationale, ruled that an employee of an independent contractor is barred from bringing a negligent hiring action against the hirer of the independent contractor.

### Peculiar Risk Doctrine & Privette/Toland

Under the doctrine of peculiar risk, one injured by inherently dangerous work performed by a hired contractor can seek tort damages from the person who hired the contractor. The doctrine provides an exception to the common law rule that an individual who hires an independent contractor is generally not liable for injuries to others caused by the independent contractor's negligence in performing the hired work. This exception was created in the late 19th Century to ensure that innocent third parties injured by inherently dangerous work performed by an independent contractor for the benefit of the hiring person could sue not only the contractor, but also the hiring person, so that in the event of the contractor's insolvency, the injured person would still have a source of recovery. Toland, supra, 18 Cal. 4th at 258.

Sections 413 and 416 in the Restatement Second of Torts both set forth theories of peculiar risk liability. Under Section 413, a person who hires an independent contractor to do inherently dangerous work, but who fails to provide in the

contract that special precautions be taken to avert the peculiar risks of that work, can be liable if the contractor's negligent performance of the work causes injury to others. Under Section 416, even if the hiring person has provided for special precautions in the contract, the hiring person can nevertheless be liable if the contractor fails to exercise reasonable care to take such precautions and the contractor's performance of the work causes injuries to others. Toland, supra, 18 Cal. 4th at 256, 257.

In Privette, an employee of a roofing company that was hired to install a new roof on a duplex building fell off a ladder and was burned by hot tar while trying to carry 5 gallon buckets of hot tar up to the roof. The employee sued the owner of the building under the peculiar risk doctrine. The California Supreme Court held that liability of a hirer of an independent contractor does not extend to the employees of the independent contractor under the peculiar risk doctrine. The Supreme Court reasoned that an employee of an independent contractor is already entitled to recovery under the workers compensation system and that the workers compensation system advances the same policies that underlay the doctrine of peculiar risk.

After the Privette decision, there was disagreement in the trial courts and courts of appeals as to whether Privette only barred recovery in actions brought under Section 416, or

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## Upcoming Events

### October

#### October 4th

##### Brown Bag Luncheon - Fifth in a series of six

Paulson's Reporting Services  
555 W. Beech Street, First Floor

Noon to 1:00 p.m.

"Appellate Law for the Trial or Transactional Lawyer"

Appellate attorney Robert H. Lynn of Lynn, Stock & Stephens, LLP will give this presentation addressing what every (trial/corporate/intellectual property) attorney needs to know about an appeal (but didn't know whom to ask). How much does it cost? How long with it take? Can I believe trial counsel's rosy estimate of success? Do I need an appellate lawyer? If so, at what stage and for what purposes? What's the one thing that most ensures success on appeal?

#### October 18th

##### Construction Defect Trial Motions

U.S. Grant Hotel

5:30pm reception

6:00 - 8:00pm program

2.0 Hours of MCLE Credit

Join construction defect litigation attorneys Karen Holmes of Jaroszek & Kennedy, Bob Titus of Stutz, Gallagher, Artiano, Shinoff & Holtz and Tim Lucas of Parker-Stanbury as they present an evening program of information and instruction covering motions in limine, indemnity motions and issues and expert witness motions.

also under the theory of peculiar risk in Section 413. The California Supreme Court clarified in Toland that employees of independent contractors were barred under both Sections 413 and Section 416 from bringing actions against the hirer of the independent contractor under the theory of peculiar risk.

#### Camargo Decision

The Supreme Court in Camargo extended Privette/Toland Rationale to bar a cause of action for negligent hiring under Section 411 of the Restatement Second of Torts which provides that "an employer is subject to liability for physical harm to third persons caused by his failure to exercise reasonable care to employ a competent and careful contractor (a) to do work which will involve a risk of physical harm unless it is skillfully and harmfully done,

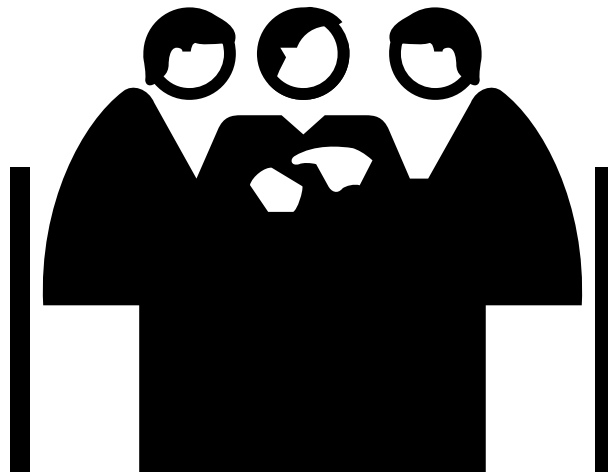
or (b) to perform any duty which the employer owes to third persons." Camargo citing Rest 2d Torts, at page 376.

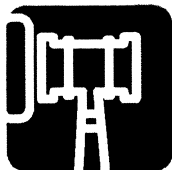
The Supreme Court provided several reasons for extending the Privette/Toland rationale to negligent hiring. First, the Court reasoned that the term "third persons" did not extend to employees of independent contractors. Second, the Court stated that it would be unfair to impose liability on the hiring person when the liability of the contractor, who is primarily responsible for workers on the job injuries, is limited to providing workers compensation coverage. Third, workers compensation coverage should equally apply to the person hiring the contractor because the hirer has indirectly paid the contractor for such coverage which is presumably calculated into the contract price. Finally, recovery against the hiring person would give

employees of independent contractors a windfall that is denied to other workers.

#### Conclusion

Camargo bars an employee of an independent contractor from bringing a negligent hiring action against the hirer of an independent contractor. Still before the court, however, is whether the Privette/Toland Rationale should apply as well to the tort of negligent exercise of retained control or the tort of negligent provisions of unsafe equipment. These two decisions are pending before the California Supreme Court in Hooker v. California Dept. of Transportation (Review granted Nov. 1, 2000., S091601) and McKown v. Walmart Stores, Inc. (Review granted Oct. 18, 2000, S091097), respectively, and the Court makes it clear that the opinion in Camargo should not be read as prejudging those issues.





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Views and opinions expressed in THE UPDATE are those of the authors and not necessarily those of SDDL. Products and services advertised are paid advertisements and not endorsed by SDDL.

We welcome the submission of articles by our members on topics of general interest to our membership. Please submit material to Clark R. Hudson at Neil, Dymott, Perkins, Brown & Frank, 1010 Second Avenue, Suite 2500, San Diego, CA 9210. Phone: 619- 238-1712, Fax: 619- 238-1562, E-mail: [chudson@neil-dymott.com](mailto:chudson@neil-dymott.com).



## BROWN BAG UPDATE

The SDDL held its most recent Brown Bag Seminar on August 7, 2001, entitled "What Clients Want to Know." This program was presented by Aileen Houston, Claims Specialist for Safeco Insurance Company and Dave Dolnick, Risk Manager for the Brady Company and moderated by SDDL Vice President, John R. Clifford. The seminar was well attended by SDDL members

and highlighted the need for communication between defense lawyers and their clients. Ms. Houston provided a good road map concerning your first report to the client and provided a handout. Mr. Dolnick provided a good overview of the "do's and don'ts" and also provided a handout entitled "10 Rules (more or less) on What Clients Want." Both of these handouts can be

obtained in the MEMBERS section of the SDDL website located at [www.sddl.org](http://www.sddl.org)

SDDL would like to thank its presenters Aileen Houston and David Dolnick and Paulson's Court Reporting for graciously hosting this event. The next Brown Bag Seminar is scheduled for October 4, 2001 and will address issues of "Appellate Law for the Trial or Transactional Lawyer."

**San Diego Defense Lawyers Would Like to Thank**

**Paulson Reporting Service**

**555 W. Beech Street, First Floor**

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**For Hosting Our Brown Bag Lunch Series**

## Membership Information

- Membership is open to any attorney who is primarily engaged in the defense of civil litigants.
- Membership dues are: \$90 for attorneys in practice less than one year and \$120 for attorneys in practice more than one year.
- Applications are available on the web at [www.sddl.org](http://www.sddl.org).

## JUSTICELINK - E-FILING WITHIN THE SAN DIEGO SUPERIOR COURT

In July, 2001 several of the San Diego County Courts initiated an e-filing system. Courtrooms where we can expect to encounter the e-filing requirements include Judge Prager (some construction defect and tobacco litigation), Judge DeFiglia (firearms litigation), Judge May (construction defects), Judge Enright (construction defect), and Judge Hayes (DSL litigation). Cases subject to the e-filing requirements will be provided with a judicial counsel coordinated proceeding (JCCP) case number.

The courts listed above will identify the cases that are subject to the electronic filing requirements. An electronic filing and service order will be issued and served on the parties. These orders should outline for the attorneys the requirements for the court's e-filings.

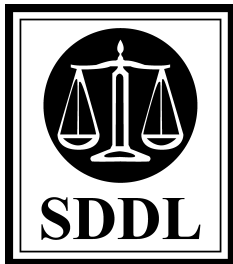
The San Diego Superior Court has contracted through a service agreement with CourtLink to accomplish the electronic filing. To use the JusticeLink system from CourtLink, attorneys must simply logon at [www.courtlink.com](http://www.courtlink.com). First time users will be required to subscribe to the CourtLink service. CourtLink's website will walk individuals through the subscription requirements. Once enabled, all documents in the matter will be filed and served with the court electronically. Counsel on the service list for the matter will be notified via email of all new filings.

There is obviously a cost to using the CourtLink system. Parties serving documents will be charged \$.10 per page to have documents filed, and served. (With a \$2.00 minimum. The \$.10 page charge is

for each party served, i.e. if there are 40 parties, you will be charged for service of the document on all 40 parties.) Users of the system will then be invoiced monthly for the charges that are incurred.

JusticeLink also provides subscribers a means of making hard copies of documents that are electronically filed. The attorneys will be able to view documents that have been filed for no charge. However, if documents are printed and/or downloaded there will be a charge of \$.10 per page, with a \$1.00 minimum.

The CourtLink's main web page includes the comprehensive list of the services available. Interested parties can simply log on to the CourtLink website and take a virtual tour of the JusticeLink system.



**San Diego  
Defense Lawyers**

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