



## REMARKS FROM THE PRESIDENT'S DESK - *By: Fernando D. Vargas*

### The Tide Pod Challenge: Attractive Nuisance or Pure Foolishness?

You have to admit, Tide Pods look delicious. The little packs of laundry detergent look almost like hard candies, with blue and orange swirls around a glossy white center. They have a pleasingly squishy texture and an enticing smell too.

But as any competent person over age five should know, Tide Pods are not food. So why are so many teenagers putting Tide Pods in their mouths?

The answer is: the Tide Pod challenge.

No, not the advertising campaign of the same name launched by Tide in 2015. An internet phenomenon that was first seen in 2012, and then went viral at the end of last year.

The Tide Pod challenge is the latest in the list of foolhardy activities teens have been daring one another to do on film and share over social media. It joins the ranks of other challenges that went viral, such as the cinnamon challenge (which involves eating a spoonful of dry cinnamon in under one minute), the gallon challenge (which involves chugging a gallon of milk in under one hour), and the fire challenge (which involves dousing a body part in a flammable liquid like rubbing alcohol and then setting oneself on fire).

Google Tide Pod challenge and you'll find countless videos of teens attempting to eat Tide Pods—cooked or *au natural*—before spewing soap from their mouths. While the videos might seem humorous to some, the reality is that they depict a dangerous behavior.

Tide Pods contain chemicals that are great for getting your colors brighter and your whites whiter, but are toxic if ingested. The goopy detergent can also cause problems if it gets accidentally aspirated into the lungs. Numerous public health officials, including representatives from poison control centers, have spoken out against the Tide Pod challenge, begging teens to stop eating laundry detergent.

Unfortunately, teens seem undeterred from eating Tide Pods. According to the American Association of Poison Control Centers, within the first 11 days of 2018 there had already been 40 reports of teens age 13 to 19 ingesting liquid laundry detergent—half of them on purpose. Compare that to last year, when there were about 220 reports for the entire year (and only a quarter of them involved deliberate exposure), and you can see that teens are eating Tide Pods at a much faster rate in 2018.

The situation is so bad that Tide has had to acknowledge the foolishness: “Eating a Tide POD is a BAD IDEA,” the company tweeted on January 12.

YouTube has also taken steps to slow the spread of the viral challenge by taking down videos showing teens eating Tide Pods. After all, YouTube's community guidelines prohibit “content that's intended to encourage dangerous activities that have an inherent risk of physical harm,” and videos of the Tide Pod challenge certainly seem to qualify.

*(Continued on page 6)*

## Welcome WSBCBA New Members

**Henna Choi, Esq.**  
**Tiffany Gruenberg, Esq.**

## Inns of Court

### **Our Second Look at Sexual Harassment, Assault, and Offensive Behavior – Take #1**

*by Mark H. McGuire, President*

In this series of articles I have been asking all of us to take a second look at certain issues to see if we can find solutions to problems by looking at things in a new light. To assist me in these investigations, I have employed the age-old tactic of many a mediocre mind in interviewing others and making them do the heavy lifting on these sometimes difficult issues. The topic before us in public life today – which cannot and will not be ignored any longer – is the deeply embedded problem of sexual harassment, sexual assault and unwanted sexual behavior in the workplace. This two-part article will not read the same as the others. I will not spend precious print space on restating laws we all know and must review semi-annually in our obligatory “HR” meetings. Nor will I rehash the platitudes of people in the media today seeking to ride the tide of #mettoo and #time’sup, hoping to not be washed away or caught outside of this tide. Mostly this article will be different because it will be deeply personal and perhaps a bit controversial. In that, I hope you find that I support the end goals of the movements afoot today regarding this issue, if not always the process by which it has been raised.

First, to understand what we are talking about, like any good attorney we must categorize the concepts and define our terms. There are three distinct classifications of actions at issue here, and the differences between them must be understood to have any meaningful conversation about the issue. The classification (with an example) are as follows: 1) criminal sexual assault (rape), 2) civil sexual harassment (unwanted touching) and 3) offensive sexual behavior (inappropriate comments). The issues surrounding each are different, the law is different, the rights of the alleged perpetrator and victim are different, and so too, our discussion and solutions will likely be different.

Second, there may be a difference between how we, as lawyers in our profession, have caused – and how we should address – these issues. We have seen many high level scandals over the past few months, ‘taking down’ many powerful men in media and politics. We have seen some of the most powerful men in movies, TV, Washington D.C. and Sacramento fall to the full array of accusations from rape to sexual harassment and boorish

behavior. We even have one high level ‘take down’ (or step down), Justice Kozinski from the 9th Circuit Court of Appeal, but not much more from our profession. The standard narrative is that men in power with money do bad things to women for sex. But there are many men in power, with money, and in law who have access to young women looking for career advancement. Why have we not seen more fallout? Is it just under-reported? Or is there something in our profession, the ethics cannon, or our work environments that partially self-selects out those more inclined to the distasteful behavior at issue?

To assist me in this task I asked two of my mentors, Joan Nelms and Jack Osborn, not only because I knew they would each push me to see this issue in a new light, but also precisely because they had mentored me through the early years of my learning the practice of law in which many of these very problems – in cases before judges and with clients – had indeed come up. Both have always given me wonderful advice, and, like the best mentors, often not providing easy solutions to difficult problems, but forcing me to think for myself and work things out as best I could. I also chose the two of them (one male, one female) so as to give myself political cover from the possibility of a predictable and one-sided conclusions. They did not disappoint. Both challenged my analysis in ways I did not expect and in the end perhaps assisted us all in coming to some consensus on the issues and possible solutions.

Before I met with Ms. Nelms she had already told me I would not like what she would have to say on the topic. Being a highly experienced probate and estate planning attorney, she has seen everything one could imagine in our formerly all-male profession. Being fiercely independent and strong-willed as she is, her opinions on this topic do not fit into the standard mold. No one will tell her what to think, where she can or cannot work, and, as she most resolutely pointed out to me, no one will label her a victim simply because of her gender.

First she instructed me to ask her if she had ever been sexually harassed in the manner at issue today. I obliged, and her response was an emphatic no, with an explanation. She noted that throughout her career, she knew at various times that she was being asked to be in a situation that would likely lead to inappropriate behavior by male co-workers. She

*(Continued on page 4)*

***Get to Know Judge Paul Egly, Our  
2017-18 Western San Bernardino  
County Bar Association's Lifetime  
Achievement Award Recipient!  
by Dean McVay***



If you missed the October installation dinner, you missed a wonderful tribute to a very talented and deserving man. To put it simply, there is no one more deserving of the distinguished honor of "Lifetime Achievement Award" than Paul W. Egly. Judge Egly has dedicated his long and distinguished career to improving the lives of others.

Immediately following his graduation from George Washington School of Law in 1949, Judge Egly moved to Europe and practiced law. Prior to law school, he served in the army in Europe from 1942 to 1945.

In 1952, Judge Egly returned to California and began his legal practice opening an office in Covina. Shortly thereafter Howard Weiner joined him. After achieving prestige in the California legal community, in 1963 Judge Egly was appointed to the Municipal Court bench by former Governor Pat Brown. Shortly thereafter, former Governor Ronald Reagan appointed Judge Egly to the Los Angeles County Superior Court, where he served until 1981.

While on the bench Judge Egly started a law school at the University of La Verne, where he was Dean and taught Constitutional Law. Judge Egly was responsible for shaping the legal minds of generations of legal scholars and prestigious attorneys and judges, including many members of our bar association.

Judge Egly was asked to preside over *Crawford v. Board of Education of the City of Los Angeles*, the landmark anti-discrimination case which tested the constitutionality of California Proposition 1.

Following his noteworthy legal work in *Crawford v. Board of Education*, Judge Egly returned to his academic career. Judge Egly continued teaching despite losing his eye sight to macular degeneration at the age of 62. He taught at the Law School until age 85 and then wrote a

law review article for the University of La Verne Law Review discussing the *Crawford* case.

In a 1999 American Bar Association article, Judge Egly stated that the reason he continued to practice law was because, "I was stubborn! I didn't know when to give up...I asked myself, what is your greatest asset? It can't be my eyes. It's my brain...I knew the case law by heart." As such, Judge Egly continued to use his vast knowledge of memorized case law in his position as a panel member of the Judicial Dispute Resolution ("JDR"), where he specialized in complex constitutional law, employment law, public entity municipality law, educational law, mass tort and catastrophic injury.

Some of Judge Egly's attributes have been described as follows:

- **California born**
- **Loving parents**
- **Piano lessons**
- **Orange picker**
- **Tennis player**
- **Good student**
- **UCLA**
- **Railroad worker**
- **WWII soldier**
- **Liberated concentration camp**
- **Hated war**
- **George Washington Law**
- **Practiced in Europe**
- **Back to California**
- **Learning ropes**
- **Own practice**
- **Lots of clients**
- **Smart partners**
- **Built boats**
- **Origami teacher**
- **Ran for office**
- **Tapped as judge**
- **Took unwanted case**
- **Received hate mail**
- **Clear thinker**
- **Fabulous laugh**
- **Founded a law school**
- **Incredible teacher**
- **Loves sailing**
- **Sailed to Hawaii**
- **Great to talk to**
- **Greenbelt creator**
- **Helped preserve the Greenbelt**
- **Serious Angel baseball fan**

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orchestrated her professional life around the issue. She advanced on her own merit, choosing not to put herself at risk, and deciding not to partake in certain “opportunities” afforded her. Of course the obvious retort, as Mr. Osborn pointed out to me in our later interview (Take #2), most women do not have the options that perhaps Ms. Nelms did and cannot simply choose to not partake in certain jobs and still advance successfully. True, but we do a disservice to our profession to not look at this issue more deeply than can be stated in a five minute sermon to the choir and we perhaps miss the power and responsibility of our own agency to ignore her point.

Ms. Nelms reminded me of a deep lesson my father, a math teacher taught me years ago. When I was young we would always have students in our house being tutored for free by my dad after hours. Some of them, my classmates, simply hitched a ride home with us after class. My father would work with them late into the night and when it was time for them to go home (often a long drive through farmlands), he would always make me go with him to take the last student home. I would get upset with this. Why did I have to ride with my dad and a female classmate on the half hour round trip to take her home? Eventually, being a rude teenager I confronted my father. He explained to me that he could not risk being alone with a young woman where she could accuse him of any inappropriate behavior. He orchestrated his professional life around helping students but never putting himself in a position where he could be accused of wrongdoing. I know it made life a bit more difficult, but was it not worth it for all involved? Should we not require the same thoughtfulness and restraint in behavior from men and women to solve at least a part of this issue?

Ms. Nelms’ next point proved even more shocking. She stated that journalists should spend more time vetting the stories before running to print just to make money. She pointed out that she could not go to court with much of the “evidence” presented in many of the cases in the media today. She stressed that many of the allegations are years old and the accusers have financial and vested interest in coming forward now. Such criticisms may not be socially acceptable now, but certainly would have weight to a judge or jury. Her point is that accusers should not be automatically believed and that when dealing with taking down another person, possible victims should not be allowed their own truth. To make her point in dramatic fashion she said, “What if I left this interview and called the newspaper, told them who you

were and that you had asked me to coffee and then touched me inappropriately. Would it be printed? Yes. Would there be any proof? No.” Her point is that accusers of any kind should not be believed outright. We have requirements of proof and due process and rights of the victims and of the accused that must be followed. To fail at this may give us temporary satisfaction regarding an issue that is not going away, but does a grave disservice to who we are as a nation and to our profession grounded on procedural as well as substantive rights.

Although I had failed as an interviewer to guide her to discuss the issues in the manner I planned, she indeed forced me to see some of the issues in a different manner. She brought to light a rule my father handed down to me, one perhaps worth teaching again. So, surely Mr. Osborn would conform to my requests and discuss these important issues in the proper manner as I, the interviewer had proscribed... No. I was wrong again.

In Take #2 of the article we will review Mr. Osborn’s rebuttal and his second look at the issues presented by the current sexual harassment scandals.

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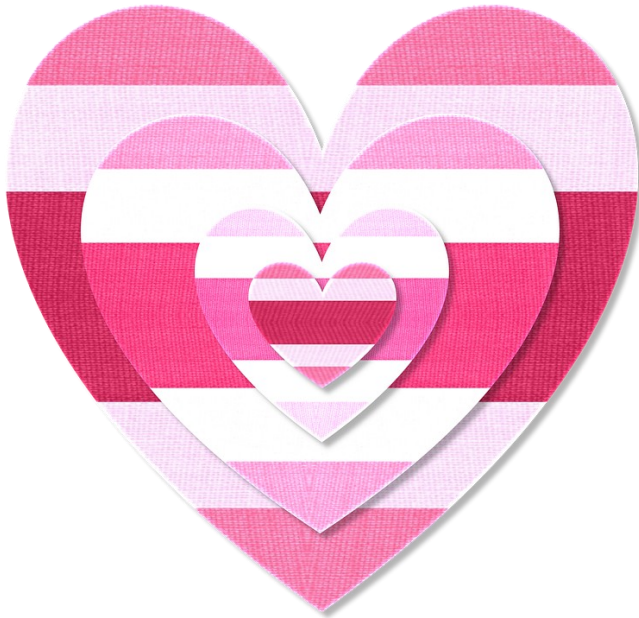
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at the WSBCBA Office today!**

**Phone: (909) 483-0548**

**Fax: (909) 483-0553**

**E-mail:**

***Lisa@wsbcbba.org***



### February 2018 Calendar

February 2 - Groundhog Day  
 February 12 - Lincoln's Birthday  
 February 14 - Valentine's Day  
 February 16 - Chinese New Year  
 February 19 - Presidents' Day

(Continued from page 3)

Some of Judge Egly's attributes (cont)

- Stick in the mud
- Father to a wonderful daughter
- Gardner
- Inventive cook
- Supportive step-father
- A tinkerer
- Proud Grandfather and step Great - Grandfather
- A creator of private judging
- Reader extraordinaire
- Author
- Traveler
- Barcelona resident
- Loves music
- Charming
- Interested in all
- Ignored blindness
- Read read read
- Democrat
- Interested in people
- Listens

There is absolutely no question that Judge Egly has left his mark on our legal community and community at large, and for that we as a bar association are eternally grateful.

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(Continued from page 1)

Unfortunately, teens aren't the only ones who find the idea of eating a Tide Pod attractive. In 2017, more than 10,500 incidents of children under age five being exposed to the capsules were reported to poison control centers across the country.

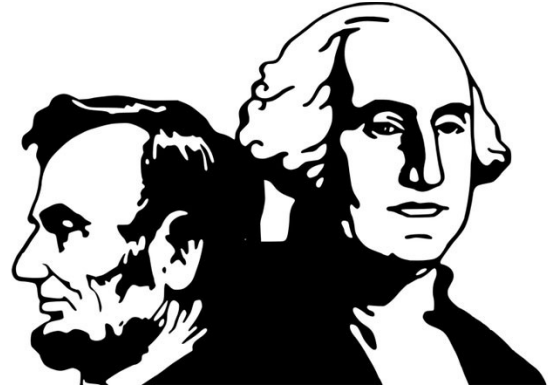
Ingesting detergent from a Tide Pod has resulted in the hospitalization of numerous children due to breathing difficulties (potentially requiring intubation), seizures, and/or loss of consciousness. Eight children aged five and under have died since 2012.

### Should We Be Blaming Tide?

Early on in the history of Tide Pods, there was a period where Tide was arguably to blame for young children eating Tide Pods. The company should presumably have known that the colorful little packets would look like candy to young children, and they should have taken extra steps to keep them out of little kids' hands from the

beginning. However, a double safety latch designed to prevent access by small children was only added to the Tide Pod containers at the end of 2012, after 485 children had already been poisoned.

The latest spree of poisonings associated with Tide Pods, however, can't be blamed on the company, but only on the foolishness of teenagers.



*Presidents' Day*  
*February 19, 2018*



*Happy Valentine's*  
*Day!*

## WESTERN SAN BERNARDINO COUNTY BAR ASSOCIATION

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David H. Ricks  
Mitchell Roth  
Michael Scaffiddi  
Will Wooten

EXECUTIVE DIRECTOR

Lisa Purcell-Rorick

# NEWS BULLETIN

## Save the Date

**MCLE**  
**“How to Influence Jurors”**  
**February 22, 2018**  
**12:00 noon - 1:30 p.m.**  
**WSBCBA Conference Room**

**WSBCBA**  
**Lawyer Night**  
**March 5, 2018**  
**University of La Verne**  
**College of Law**

**Judicial Officer of the Year**  
**Awards Ceremony & Dinner**  
**March 8, 2018**  
**5:00 p.m.**  
**DoubleTree by Hilton**  
**Ontario, CA**