



# JOURNAL

THE AMERICAN COLLEGE OF TRIAL LAWYERS

**HAWAIIAN DANCERS OPEN  
FRIDAY'S GENERAL SESSION AT  
THE SPRING MEETING IN MAUI**



# PALAU SUPREME COURT JUSTICE URGES FELLOWS TO BE THE LIGHT



The Honorable **R. Ashby Pate** addressed Fellows at the College's Spring Meeting in Maui as an Associate Justice of the Supreme Court of Palau, an island nation located in the western Pacific Ocean. Justice Pate was introduced by Former Regent **Brian O'Neill** of Minnetonka, Minneapolis. While on Palau's highest court, Justice Pate presided over several hundred civil and criminal trials and served as a panelist on over forty civil and criminal appeals. He also helped establish Palau's first jury trial system in 2009, contributing to its enabling legislation and authoring Palau's first jury trial rules and juror handbook.

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As part of his continuing efforts to advance jury trials in Palau, Justice Pate spearheaded the College's 2015 Advanced Trial Advocacy Symposium in Palau, in which thirteen Fellows presented a three-day workshop for lawyers from Palau and Micronesia, including Guam, the Commonwealth of the Northern Mariana Islands, and the Federated States of Micronesia. When appointed to the Court in 2013 at the age of 34 by President Johnson Toribiong, Justice Pate was the youngest justice in the island nation's history.

As an undergraduate, Justice Pate attended the University of Colorado. He received his legal education in England at the University of East Anglia, Norwich Law School, and at Samford University's Cumberland School of Law in his hometown of Birmingham, Alabama.

After law school, Pate served as clerk to the Honorable U. W. Clemon (United States District Court for the Northern District of Alabama), a prominent civil rights leader and Alabama's first African-American federal judge. Pate then practiced in Birmingham with the firm of Lightfoot Franklin & White LLC. In 2009, he became Senior Court Counsel to the Honorable Chief Justice Arthur Ngiraklsong of the Supreme Court of the Republic of Palau, where he worked as a judicial clerk and legal counsel for the Supreme Court.



Justice Pate was elected to the American Law Institute in 2014, where he now actively contributes to projects including The Restatement (Fourth) Foreign Relations Law of the United States, The Restatement (Third) The U.S. Law of International Commercial Arbitration, and The Restatement (Third) Torts: Liability for Economic Harm.

In 2016, Justice Pate rejoined Lightfoot Franklin & White LLC in Birmingham, where his practice focuses on international disputes, appellate practice, white collar crime and medical device litigation.

Aside from being an accomplished lawyer, a legal scholar and an internationally renowned jurist, Justice Pate is a true Renaissance Man. Prior to law school, he toured regionally in the Southeastern United States in two different bands, releasing two albums of original music. He is also the author of a children's book about Palau, titled *Sweet Dreams Palau* and published by the Etpison Museum in Palau.

After playing the guitar and singing *Midnight Special*, Justice Pate offered the following remarks:

Thank you. That's it, really. I was just going to reserve the rest of my time for questions.

In January of 1918, there was this young, promising blues musician named Huddie Ledbetter. He was already becoming popular in the blues clubs scene in Louisiana and Texas. One night, after playing a sold-out show in a seedy bar somewhere in Texas, Huddie Ledbetter made a terrible mistake. He got into a fight with a man from his audience over a woman. In the heat of the moment and in a drunken rage, he stabbed that man to death. For his crime, he was sentenced to thirty-five years in Sugar Land Prison, Texas, one of the most notoriously dismal prisons in our country's history. ▶

A few months later, Huddie found himself alone in a prison cell in the dark, in the middle of the night, utterly disconnected from the world that he knew and loved. He stood up from his bunk and he peered out of the small prison window of his cell. When he did, he caught sight of a train. It was a Southern Pacific Golden Gate Limited, to be precise. It always left the Houston station right around midnight. Then this amazing thing happened. As the light from the train started to illuminate the prison walls, Huddie heard his fellow prisoners start singing in this swelling sort of rapturous lament, 'Let the midnight special shine the light on me.'

What Huddie didn't realize was that his fellow prisoners superstitiously believed that if the light from this train shone on their prison cells, they would take it as a sign or a symbol of hope that they might soon be released, that they might soon be reconnected to the world that they had been separated from for so long. Huddie was so moved by his fellow prisoners' song, the next morning, he puts pen to paper and he turns this swelling traditional folk chorus into the song you just heard me sing a few seconds ago.

Here's the best part of the story: After serving the minimum seven years of his thirty-five-year prison sentence, Huddie sent a crude recording of that song to the hardliner Texas Governor Pat Neff, who had actually run for office on a campaign promise not to issue pardons. But Huddie asked for one. Amazingly, Neff broke his promise and he set this young man free. Upon his release, this promising young musician soon dropped the name Huddie and he assumed the blues name Lead Belly, becoming the man who was widely considered to be one of the most important and best American blues artists of all time.

Some of you are probably familiar with Lead Belly. Most of you, I would assume, are familiar with that song. It's been covered by just about everyone, including Creedence Clearwater Revival, but here's something I bet you're not familiar with. Last November, at this organization's Advanced Trial Advocacy Symposium, in the remote island nation of Palau, one of your very own Fellows, **Larry Robbins**, the ultra-prestigious Supreme Court advocate who has argued eighteen cases before the U.S. Supreme Court, that very same man played one hell of an organ solo of that song, alongside yours truly, in a small island bar.

## THE POWER OF HUMAN CONNECTION

I started my speech off with that song and this story because, on the final night of the Palau symposium, we

were all seated at a lovely resort, not so different from this, when I had an epiphany. As I rose to say a few words of thanks, I found myself staring out into a sea full of lawyers, judges and staff from all over Micronesia, from Palau, Yap, Guam, Saipan, Chuuk, Pohnpei, Fiji and about twenty-five different U.S. jurisdictions. I had this epiphany and I had this realization that, for the first time in my life, I wasn't necessarily passionate about the law. I wasn't passionate about being a Supreme Court Justice, and I wasn't passionate about advancing the rule of law, which, I admit, is a very noble sounding phrase. I realized what I was passionate about, right then and there, was human connection. To be more precise, the unique power that lawyers and judges have to create meaningful human connection in this world. That same visceral longing to connect with other human beings on an emotional level in the outside world that Lead Belly and his fellow prisoners sung about in that prison so many years ago. I knew at that moment that it was that same longing that literally defined the symposium. It was that, and certainly not something having to do with trial skills, that made it so remarkable and so special.

You see, when the news broke that the College was going to pay its own way to come present a free CLE seminar, to come to the remote island nation of Palau, that's what happened. About 100 lawyers, judges and staff from all over this side of the world clamored to attend. The turnout exceeded our expectation by orders of magnitude. When it was over, everyone agreed it was one of the best legal seminars they had ever attended. The camaraderie and fellowship was palpable. It was front-page news.

Now, it's a really small country and it's a slow news cycle, so take that for what it's worth. But, why? Why was it so special? Why was it the best legal seminar so many people had ever attended? Is it because you guys are really that special? Maybe. I submit to you, though, that there is a deeper reason.

Researchers across all disciplines, people who work in foster homes, psychologists, social workers, doctors, lawyers, qualitative researchers, they all agree on two things.

First, the need to feel connected to other human beings is one of our most basic needs. It's right up there with food and water. It's that ineffable whisper that got each and every one of you out of bed this morning. It is, I submit to you, why prisoners who are held in solitary confinement, who are denied that essential connection, lose their minds at a rate that is double to those in the general population. In California alone, prisoners who have spent time in solitary confinement

are thirty-three times more likely to commit suicide than those who have not.

Human connection is soul food. It is literally what keeps our minds and hearts alive. That's the first thing they agree on.

The second thing is that stories, the telling of them and the hearing of them, are the most essential way that we as humans achieve that connection. Because we yearn for a shared history, a shared purpose, a shared narrative, and we yearn to achieve meaning through metaphor, we do it through stories.

When Brian O'Neill stood up and told us the incredible story of deposing an alcoholic ship captain who had run the Exxon Valdez aground in Prince William Sound and spilled millions and millions of barrels of oil, triggering the worst environmental disaster in U.S. history as a way of teaching us how to use the fundamental principles of psychology to elicit favorable deposition testimony you can later use at trial, the whole room was spellbound. We connected immediately and emotionally to Brian and his story.

Or when **Tom Orloff** stood up and told you us the heart-wrenching tale of his prosecution of Black Panther affiliates in Oakland for the execution-style murder of a young Bay Area police officer as a way of teaching us how to use forensic analysis of gunshot wounds at trial, you could have heard a pin drop in the auditorium. We all connected immediately and emotionally to Tom's story. The lessons he taught us got stuck in that special part of our brain that's reserved for emotion and not just data.



## QUIPS & QUOTES

I want to thank the College and all of the Fellows who came to Palau, especially Brian O'Neill. Brian is a passionate, professional and kind lawyer. If it weren't for him, the Palau symposium would not have happened. But in Palau, he showed me another side, too. Before we adjourn, all of you deserve to see that side.

*Justice Pate*

Most people yawn and roll their eyes at the thought of a bunch of lawyers telling war stories for three days straight, but I disagree. The way they did it was masterful and, in the case of Palau, incredibly timely.

Palau recently adopted jury trials for the first time in its country's history. It was a process I was lucky to have a hand in. As everyone in this room knows, trying a case to a jury as opposed to a judge requires very different skills. Trying your case to a jury requires, more than anything, the ability to tell a compelling story and to connect emotionally with other human beings in that courtroom. When your Fellows came to Palau and told their stories, yes, they taught us some trial skills. But what they really did was teach us how to tell our own stories.

There's no way in the time I've been given to retell all the amazing stories we heard, but I want to tell you a story that **Joe Matthews** told us, not because it's a great story, which it is, but because it's a story about how to tell great stories.

On the first day of the conference, Joe Matthews stood up and he was giving his presentation on effective opening arguments in jury trials from the standpoint of the defense. He stood up and he said, 'I had this big commercial case one time. Plaintiff's counsel had just sat down and his opening argument was incredible, it was blistering. Everyone in the courtroom, including the judge and the jury, even me, were convinced that my guy had done whatever it was he was accused of doing. So I gathered myself and I walked to the front of the jury box. I held out my hand like and I said, 'Do you see my hand? If so, just nod your head.' Of course, he waited and they all nodded their head in affirmation, but then he said, 'No, you don't. You don't see my hand. You're just seeing one side of my hand. Now you've seen my whole hand. Now that you've seen my whole hand, I am going to tell you the whole story, the one that plaintiff's counsel failed to tell you.'

That is good. I remember it and everyone who was there will remember it because what Joe's story so beautifully illustrated is that the way to truly tell great stories and the way to truly connect with everyone, not just juries, but everyone you meet in life, is to embrace the fact that everyone's story has two sides. The ones that truly connect and the ones that truly resonate are the ones that tell both sides genuinely and vulnerably.

## PALAU'S STORY

After the symposium was over, I received numerous emails from judges in Guam and Saipan, my fellow colleagues on the bench in Palau and bar members, and they were marveling at all the stories we heard. But, without fail, they always ask me the same question: how did Palau, little, old, remote, disconnected >

Western Pacific Palau, pull this thing off? Symposiums as impressive as this, as successful as this, with the type of legal talent that this brought in, those happen in nice places, ritzy places like the Grand Wailea in Maui. The reason they asked that question is because Palau, like all of us, has a story.

Like all stories, Palau's story has two sides. It is, without fail, the most beautiful and exquisitely wonderful place on this Earth. It is a paradise that I have been lucky, along with my wife and daughters, to call home for four of the last seven years. Its rock islands are UNESCO World Heritage sites. They explode like some symphony out of the seas in and these wild coral pincushions. It is a country that has designated its entire marine territory as a sanctuary, off limits to commercial fishing, creating what can only be described as an Eden in the Pacific. The wondrous, staggering beauty that you see is a huge part of Palau's story, but it's not all of it. It's just the side of the hand that it shows its tourists.

Palau is one of the most remote and disconnected places on this Earth. It is the fourth smallest country by population on the planet, but its islands sprawl across an ocean the size of France. As a result of this, it is one of the last countries that still does not have fiber optic internet connection. That means it's still dial-up.

It's a place where most domestic workers still earn about \$200 a month and where subsistence farming and fishing is still a way of life for many. It's a place whose only hospital is so understaffed and lacks essential resources to such a degree that it doesn't even provide toilet paper to its patients. If you stay for longer than a day, you are told to bring your own. It's a place that was ravaged by occupational powers for over a century and decimated by World War II. It's a place whose legal system, which was put in place post World War II, by the Trust Territory Government of the United States, still suffers from a combination of a lack of modern legal resources and a shortage of homegrown qualified lawyers. There are no law schools in Micronesia. That's why people like me still have a job in these jurisdictions.

The reason why people responded with such enthusiasm, the reason why Micronesian lawyers clamored to attend the symposium is because they saw what is an all-too-rare chance to be connected to the outside world. And they jumped at it.

What I want to tell you is that what happened last November in Palau wasn't just some CLE in a sunny place, it was about human connection. Your Fellows and the stories they brought with them were the conduits. It is

amazing when we, as lawyers and judges, admit to our own need to connect and we step out in faith to connect with other human beings. It's amazing what happens inside your soul. Because we work and live in a profession that I would submit to you is addicted to disconnection.

It should not go unnoticed that almost every lawyer in this room is licensed to practice law in a jurisdiction and in a country that has five percent of the world's population, but 25 percent of its incarcerated population. The highest rate of institutionalized disconnection in the world. It has the highest rate of solitary confinement in the world. It has the longest and most protracted and acrimonious discovery disputes in the world. We lawyers and judges live, operate and breathe every day in a system that is defined by disconnection. But every so often, when we use our power to flip it and go the other way and create meaningful human connection, it feels good. You feel yourself brimming with energy and vitality.

## WHEN THE LAW BECOMES A LIGHT

I feel it right now, because I am going to try to tell you a quick story. I want to try to make this exchange as meaningful and memorable as the exchange we had back in November. When **Bart Dalton** emailed me about six months ago and asked me to come give this talk, he asked me to talk about the symposium, which I think I have, but he also asked me to talk about my story, the story of how a 34-year-old kid from Alabama becomes a Supreme Court Justice in paradise. None of you would be surprised to know that I get asked that question a lot. I have a rather standard 1,000-word response that tracks my legal career and the fortuitous, but unlikely, events that led up to my appointment. I am not going to tell you that side of the story today. I am going to tell you the other side, which is something I've never told in a setting like this. Apologies in advance if I get a little emotional.

The story of how a 34-year-old kid turns into a Supreme Court Justice starts on a cold winter's night in Birmingham, Alabama, about fifteen years ago, long before I decided to go to law school. Like Huddie Ledbetter, I was a promising young musician. I was playing a sold-out show at some seedy bar. Just like Huddie, I, too, made a terrible mistake.

There was a time in my life when my youthful experimentation with drugs was right at the cusp of becoming a serious problem. I was sitting outside that club in a parked car with some friends, celebrating what a cool rock star I thought I was. I was doing the type of drugs that I thought cool rock stars did. Suddenly, I

I stood there right at that moment in awe of the law's power to reconnect me back to the person I thought I was destined to be. I said, 'Thank you. Thank you, Your Honor.' He looked at me and he said, 'To whom much is given, son, much is required.'

*Justice Pate, sharing the story of when he stood before a judge for a nonviolent drug possession felony charge and how it shaped the man he is today*

was pulled out of that car by a plainclothes undercover agent. He slammed me against the hood of my car. He found the drugs he was looking for and put me in the back of his cruiser and took me to the Birmingham City Jail, strip-searched me and threw me into a dark cell in the middle of the night.

A few days later, I stood before a judge. His name was Judge Pete Johnson. I will never forget him. I stood before that judge and a young prosecutor and defense attorney, and I was so ashamed. I thought everything that I worked for, I had squandered. Everything that my parents had given me, I had flushed down the drain, because I knew then that the judge and the law itself had the power right then and there to disconnect me from my family, my goals and society. Because in Alabama, like many states, if you are convicted even of a nonviolent drug possession felony, you are instantly and permanently disconnected and disenfranchised. You immediately and permanently lose the right to vote forever. You lose the right to own a gun forever. You certainly compromise the opportunity to get admitted to any good law school or get admitted to the bar. I would submit you probably forfeit the opportunity to become a Supreme Court Justice one day.

Even though it was my first and only offense, I am not blind to the fact that if I had gotten a different judge or if I had been a different socioeconomic status, or even a different skin color, in Alabama, the statistics strongly suggest I might have been locked up. Instead, Judge Johnson looked down at me, as did he for many others, and he said, 'You need help, and I am going to give you some.' He ordered me to report to a program every day for a year, ordered me to drug testing, told me that I would have to do community service until my knuckles bled. But if I did all those things, he would reconnect me back to the person I thought I was destined to be. He would defer that prosecution and expunge it all, and he would allow me to have a second chance to become a person of value and consequence in the world.

I stood there right at that moment in awe of the law's power to reconnect me back to the person I thought I was destined to be. I said, 'Thank you. Thank you, your Honor.' He looked at me and he said, 'To whom much is given, son, much is required.'

So that's the other side of the hand. The accomplishments that got me here, they are modest compared to yours, and I am grateful for them. But none of them would have been possible unless someone had used the law's power to bring connection to a place where the status quo was disconnection. I don't tell you this story to appear somehow virtuous or to impress you with how far I've come since that night. I tell you because there is power when we commit to apply the law and our lives and the stories we tell to create meaningful human connection in this world, when we realize that the law's highest calling is not to disconnect, but to reconcile, not to lock people up, but to set them free. So what you did for Palau is, in my opinion, of the same quality and caliber as what Judge Johnson did for me and what Governor Neff did for Lead Belly. You used your significant power and resources to bring connection to a place and to a people where the status quo was disconnection.

The results were inspiring and extraordinary. Just like Judge Johnson had no way of knowing that one day the stupid kid he gave a second chance to would be standing on this stage talking to a roomful of the most powerful lawyers in the world, none of the Fellows who came to Palau yet know whose lives they touched when they came and brought connection with them. So thank you. Thank you for being the light on that train.

If my own war story today serves any purpose whatsoever, I hope it's only to encourage this organization to continue to commit to being the light wherever darkness and disconnection can be found because it is everywhere. Because I am standing on this stage, living proof, that you never know whose life or whose lives will be changed. To whom much is given, much is required. Keep being the light. ■