



WellnessCast™ Conversation with R. Ashby Pate, JD, Co-Prosecutor in the 2016 Judicial Ethics Case Against Roy Moore

Musical Opening: Ring the bells that still can ring. Forget your perfect offering. There is a crack in everything. That's how the light gets in. [Leonard Cohen, *Anthem*]

Joe Bankman: Welcome to the Wellness Cast. I'm Joe Bankman, professor at Stanford Law School, and also a psychologist. My partner in these podcasts is Sarah Weinstein, lawyer-turned-therapist, and External Director of the Wellness Project here. Our guest today is Ashby Pate. Ashby is a former associate justice of the Supreme Court of Palau, and now a lawyer in Birmingham, Alabama. Last year Ashby delivered the closing arguments in the judicial ethics case that resulted in the removal of then judge, Roy Moore, from Alabama's highest court. Pate is also well known for a speech he gave to the American College of Trial Lawyers entitled '*Be the Light.*'

Today the podcast is going to be a bit different from our past episodes. Usually, we focus on the individual side of wellness: stress, anxiety, addiction, and so on. It's what keeps us up at night.

Sarah Weinstein: Yes, Joe. I think what's keeping my clients up at night recently is what's going on in our country.

Joe Bankman: The same is true with my clients, Sarah. Today, we're going to focus on a concept of public wellness. Shared acceptance of each other, truth in government, and public discourse.

Sarah Weinstein: Our guest today, Ashby Pate, comes to prominence by his inspirational *Be the Light* speech, which, in part, is about the connection between the two types of wellness. The individual need for connection, the rule of law in

making or breaking that connection, and the need to hear out both sides. The way it came about, Ashby, for you to be on the WellnessCast, is through a mutual acquaintance in Birmingham who sent me a link to your speech. I think my quote to you at that time was something like, "It made my entire weekend." Welcome, Ashby, we're very glad that you're here.

Ashby Pate: Thank you so much for having me, Joe and Sarah. I really appreciate being here.

Joe Bankman: One of the doors that opened for you after your speech, was that you were asked to be co-prosecutor in the 2016 judicial ethics case against Roy Moore. As a co-prosecutor, and now simply by being a lawyer in Alabama, you've been thrown into one of the biggest social disconnections we can imagine. The Roy Moore case seems to be a symbol at this moment of the incredible divisiveness in our country.

Before we go into the details of that case, what's the general feeling there in Alabama right now?

Ashby Pate: I can tell you that it's really a toss-up. I think there's a reason for that. One of the reasons, it really goes back to, maybe the content of the speech I gave a couple years ago, which is a real lack of connection between the electorate and the people who are reporting to run for office in Alabama. A lack of connection between various classes of the electorate. That's my main observation as I watch this unfold, it's how quickly we separate into our camps, into these little silos, echo chambers if you will. How quickly we dismiss information that doesn't help our candidate, and how quickly we lap up the ones that do.

Joe Bankman: Can you give us a sense of the camps?

Ashby Pate: My personal observation is that it doesn't fall on any racial lines, or any gender lines, as some people might think, given the nature of some of the allegations against Mr. Moore. I think more than anything, it probably falls along class lines. That's not a Democrat/Republican divide. The same was true in the Republican primary between the incumbent Luther Strange and Roy Moore. I don't really pretend to understand that, but I can tell you this: One of the observations I've made in watching the national press' attention onto this, is that it's really accentuating that class divide. Because when you have Hollywood, California, New York, the coastal elites, as they are called, telling Alabama voters how they should vote. There really is an accentuation of the class divide that I think is missed by some of the well-meaning folks outside of Alabama's borders.

Joe Bankman: So, the election can be a plebiscite against coastal elites as opposed to a decision on the merits?

Ashby Pate: I fear that that's what it's turning into. Before all of this, there was a general sense, I think, that there were two camps. There was sort of, Roy Moore's faithful, which tend to just be a static group that are going to vote for Mr. Moore no matter what, and then everyone else. The everyone else camp was Republican and Democrat. Now, with the national attention, and with President Trump's endorsement, it's becoming more of a Republicans versus Democrat thing.

Sarah Weinstein: Hearing that, it's so interesting. We'd love for you to talk more specifically now about the Roy Moore case. How do you view the hearing in retrospect, given what is now alleged to be both sides of Moore's story?

Ashby Pate: I assume you're referring to the allegations that have recently come to light.

Sarah Weinstein: Yes.

Ashby Pate: You know, I don't view that trial any differently as a result of that. That trial was about a very specific issue, which was whether then Chief Justice, Roy Moore, defied both a standing federal injunction and defied the Supreme Court's holding in *Obergefell* when he ordered Alabama probate judges not to issue marriage licenses to same sex couples.

Joe Bankman: What was the atmosphere on that trial? It's the subject of gay marriage. Where are Alabamans on that issue? Did Roy Moore have the position that most of the state's voters share?

Ashby Pate: The atmosphere around that trial was very heated, very dynamic. Some might say it sort of resembled a circus outside on the courthouse steps. The camps had sort of entrenched themselves. There were rainbow flags and drag queens on one side of the street, and families holding pro-Roy Moore signs on the other, shouting across the street. In so in downtown Montgomery, Alabama, that was certainly the most activity most people had seen in a long time. Walking up those steps on the morning of the trial was really like going in a gauntlet. There was a lot of finger pointing. As I sat at counsel table with my co-counsel, I remember thinking to myself that we were definitely in the minority in that room, in terms of the people who had turned out for that trial.

Joe Bankman: What did it feel like when you got word that you'd won?

Ashby Pate: I had a mixture of emotions. Obviously I was happy because the rule of law, in my opinion, had been upheld. I was also selfishly happy that I'd won a lawsuit. Anyone who gets into this business has to admit to their own selfish motivations in the adversarial process. But it was also a sad day for Alabama, in my opinion. That we're still fighting that fight, and that the Chief Justice, the state's highest judicial officer, was having to be removed for, in my opinion, for defying the rule of law.

Joe Bankman: Did you get blow back from the community, or is this one of these split cases where parts of the community are happy about the verdict and other parts are sad and they meet only at the courthouse steps?

Ashby Pate: You're probably correct on the latter. Most people with whom I interacted were pleased. Obviously, there was an entire faction of people in this state that were not, but I think that goes to the serious disconnect that is occurring both in our state and in our country right now. That really fuels these types of issues, which is, there really is a lack of ability to empathize and meaningfully connect with other human beings. To really understand where they're coming from.

Sarah Weinstein: What you just said and what we've been talking about makes me think of the work of psychologist Daniel Kahneman. I heard him speak recently, and something he said really resonated with me, which is that we have *reasons* for our beliefs that sometimes come to us quickly, but the *causes* of the beliefs are often rooted in our personal history coming from people who we trust and our family.

That also connects well to your speech, Ashby, too, because I think the world is made up of stories, not facts. And it may provide some explanation as to why the facts are not really very persuasive to people.

Ashby Pate: That's exactly right. I couldn't agree more.

Joe Bankman: Tell us, Ashby, how we should think about Roy Moore's supporters. You're in Alabama. Give us a sympathetic portrayal of what's leading to that vote.

Ashby Pate: I don't know if I'm the best person to ask that. Look, there's a lot of factors that play in to being told how to be, and being told how to vote. Roy Moore has tapped into, maybe what is a very southern, and certainly a very Alabaman way of thinking, which is, we don't need someone to tell us how to mind our house. I think in that sense, that comes from a very admirable place, which is a sense of rugged individualism, and a sense of

this desire to be seen as somehow not less than someone who lives on the coast.

There's also some value in the holding on to certain traditional beliefs, which I think many people in Alabama and all across America, feel are under sort of constant assault. And the demeaning of a belief system that in terms of one's personal story, is what defines so many people. Not only in Alabama, but across the country. And so it doesn't take that big of a jump to understand why someone would support someone who purports at least, to be fighting for someone's firmly held religious beliefs, or sort of Alabama for Alabamans belief.

Joe Bankman: Now Ashby, thank you. Could you do the opposite for us, because you're all about hearing both sides. You said how the Roy Moore supporters are thinking in an empathic way. What would you tell them to convince them that Roy Moore doesn't stand for those values? How would you make the other argument to those supporters?

Ashby Pate: Well, I would say to look at his record. That's what I'd say. I'd say, look at what is at least alleged to have been a self-enriching foundation that he founded after he was removed from office the first time. And which has certainly been a cash cow for him and his family. I'd say, look at his ability even to get along with fellow Republicans here in Alabama, or lack thereof. And ask yourself whether the result would be any different if he goes to a Congress that is far more hostile in terms of actually having different views, than here in Alabama where it's pretty easy to be a Republican.

And I'd ask them to search their hearts about the type of tactics that I believe that Roy Moore has engaged in over the years. I recently was reflecting about that day when I left the courthouse after giving closing arguments in that trial. And as I walked down those steps, I watched as then Chief Justice Moore relished in the adoration of an agitated crowd and enjoyed watching and encouraged that crowd, which had children no older than my own daughters, holding signs that spewed venom towards the peaceful protestors below. I watched him walk back inside that court house smirking a bit underneath what's inscribed in the rotunda, which says, "Equal and Exact Justice for all Men of Whatever State or Persuasion."

And I thought to myself, this isn't the type of person that believes in what he's saying.

Joe Bankman: One final question on Roy Moore. Any predictions?

Ashby Pate: I believe that the people of Alabama will do the right thing, and I believe that Doug Jones is going to win. I may be proven wrong, but I have a lot of faith in the people here. I think it's a toss-up, but I'm going to go with Doug.

Sarah Weinstein: Typically, we like to sign off by asking our guest about a wellness practice that you use to thrive in your own life and career. But today, because we're talking about public wellness, which, of course, is really just our collective personal wellness, we thought it might be helpful to talk a little bit about how each of us is managing during this challenging time.

Let's start with you, Joe. How are you coping with all of this?

Joe Bankman: Sarah, I try to do whatever I can to push the ball forward as best I can. Stanford Law School has given me a bully pulpit, and I might write an editorial. And I have, and I'm a talking head from time-to-time on various shows. After I've done that, I try to have a lot of me time, and frankly to avoid conversations where people are just getting worked up and angry with no visible output.

How about you, Sarah?

Sarah Weinstein: I've been thinking a lot about this recently and for me there really are three things that have been helping me cope. The first is friendships and, in particular, those friendships that go way back where I know the people very well and they know me very well. And there's something that's been feeling very important about those connections, because what's going on in our country, it's not only the content of what I've been reading in the news, but also just the way it's being presented in my opinion with a lack of complexity and nuance. So, those deep connected friendships have just felt very important to me recently for having conversations that feel more satisfying.

The second is music and music has always been something that helps me in my life, it's a little bit of an escape maybe, but it just takes me to a much happier place than what I've been reading in the news lately.

And the third actually on that point, and I discuss this quite a bit with my clients, is that I think we all know how much news we can take in for ourselves, and I have to admit I think I'm at my saturation point so I've been limiting it.

How about for you, Ashby? What have you been doing to keep yourself grounded in what is maybe a little bit of a challenging political moment there in Alabama?

Ashby Pate: One of the things I've learned over the past few years is I don't argue as much. I think it's our natural inclination to, as we've talked about so far on this podcast, to dig in and try to prove a point. I'm right, and you're wrong. Anyone who's been around the dinner table over the past year and a half with people who have strong feelings about the last presidential election knows that doesn't really get you anywhere.

That's actually been a very enlightening practice for me, because as a lawyer and as someone who has defined his identity for so long on his ability to argue, it's been really liberating to avoid arguments. Not just for the sake of avoiding confrontation, but to try to use that time when you're with someone who you know thinks differently than you, and I assure you in the state of Alabama, I'm surrounded by that. Rather than trying to prove a point, show why I'm wrong, is to try to understand, right. Try to understand that person's story and what motivates them to believe that.

Sarah Weinstein: I've joked with you many times, Ashby, that I think maybe you're a psychologist at heart instead of a lawyer, so I appreciate your answer about arguing less and listening more.

Joe Bankman: Well, I'm thinking, Ashby, that you're a singer rather than any of those things because that *Be the Light* speech starts off with an unbelievably great, brief cover of, I believe the song is Lead Belly's Midnight Special.

Ashby Pate: That's right. I always wanted to play first base for the Chicago Cubs. When I realized that wasn't going to happen, I picked up a guitar, spent a lot of time working on that. It means a lot to hear you say you enjoyed that, because I worked really hard on that for a long time. I do love singing, that's for sure.

Joe Bankman: Ashby, we didn't script this at all. Would you be willing just to hum a few bars to kind of give us our closing?

Ashby Pate: (singing)

Joe Bankman: Thank you so much, Ashby.

Sarah Weinstein: Thank you, Ashby. What a lovely way to close. For anyone who would like to hear more of Ashby's singing and to listen to his *Be the Light*

speech, which I highly recommend, please see our website at www.law.stanford.edu/wellnessproject. We hope you've enjoyed our special episode on public wellness. Thanks very much for listening, and please tune in again next time for another episode of the WellnessCast.