

Eulogy for Bob Toner by Tom Kelly

February, 10, 2018, Sydney

Helen, and the very many members of the Toner clan, friends.

The Acknowledgement of Country, which commenced this commemoration of Bob's life was even more appropriate than usual. Bob was the first of the handful of trial judges in this state to arrange for the local elders to conduct Welcome to Country, with smoking ceremony, at the start of the sittings at the courthouse in Taree, a town with a high volume of aboriginal criminal litigation.

Our friend Jim Poulos QC will be covering Bob's legal career, but I should state that, in addition to a considerable dose of the smarts, much of the excellence of Bob's work, as a barrister and as a judge can be explained by the breadth of his interests, as well as his experiences outside the law.

In the limited time I have been given, I want to touch on three of the areas outside of law in which Bob was involved.

Bob's father Fred, Deputy Head of the NSW Housing Commission, used to drink after work with my father at the Chatswood Pub. Coincidentally, Bob and I both joined the Chatswood branch of the Labor Party in about 1970. He was an 18 year old, politically active law student, then working as a clerk in the civil registry of the District Court, where he would be appointed as a judge 40 years later.

Along with John Pinnock and Michael Joseph, we decided to take over the branch from the NSW Right. When we succeeded in this task we were a bit like the dog that chased cars and finally caught one. What do we do now, we wondered?

This question was soon answered when head office called for nominations for preselection for the state election scheduled for 1973.

Bob decided to run in the unwinnable seat of Lane Cove against Askin's law & order attorney general, Sir Kenneth McCaw, as did our good friend the late Ron Schapira.

Ron was a lovely, older, very sincere, holocaust survivor, who Bob correctly thought might want the members to undertake unnecessary time & effort with door knocking, letterboxing and fundraising, during this unwinnable contest. Bob was offering very little of that.

The preselection ballot was deadlocked at 14 all. Instead of the usual draw from the hat Bob persuaded Ron to have the issue determined by a cut of cards and arranged for another party member & mutual friend, a professional bridge player, to organise the exercise.

As no member in the Gordon ALP branch was prepared to run in the that even safer seat, at Bob's suggestion it was agreed between the two candidates that the loser would run for Gordon. A win-win outcome.

The deck was shuffled & I think Bob drew a king and Ron a 3. But it was Ron who really came out the winner and had his 15 minutes of fame.

As fate would have it, the member for Gordon, Harry Jago was so busy being Minister for Health, that he failed to lodge his nomination form with the Electoral Commission until after the required time. Thus, his political career abruptly ended.

Ron thought he would win the seat by default, but soon learned that the DLP had nominated an electrician from Mosman. So, the good protestant bourgeoisie of Killara & Gordon had the terrible dilemma of deciding whether to vote for the left wing Jew or the right wing Catholic.

They held their collective noses and voted the Catholic into parliament for a single unmemorable term.

Meanwhile Bob ran a fun campaign which had two noteworthy events: As a fundraiser Bob successfully bet various drinkers in the Longueville Hotel one Saturday, that he would drop his trousers in the pub. He used the proceeds of this bet to purchase some orange coloured T shirts, onto which he wanted to have a photo of his face with the words 'Toner/Lane Cove'.

He took them to the former gasworks at Waverton, then occupied by an artists' collective, which had screen printing equipment available for use. He began trying to screen print the shirts. The result was a hopelessly smudged mess.

A Harpo-Marx look-like fellow, who was painting on a canvass in the corner came over and told Bob the obvious: that he was doing it all wrong and enquired what it was all about. When told that Bob was the ALP candidate against the unloved McCaw, this bloke took over the task and ran off about a dozen perfectly printed T shirts.

I had one that I played tennis in for years, and when it disintegrated I used it to clean the car. Bob unsuccessfully searched and enquired high & low for any of the T shirts that might now exist.

Has anyone here got one? Be worth some money, as they were hand screen printed by Brett Whiteley.

Bob got a 2.5% better swing than the party did generally and thought he might next try for a more winnable seat. But he was taken aside by our mentor, Jim Staples, who told him to stop being so diverted from his law studies by various political campaigns, and get on with qualifying, and then think about politics. But Jim also added that he thought Bob should aim to ultimately work as a lawyer rather than a politician. This was advice that Bob never regretted taking.

He switched from the Solicitors Admission Board non-degree course to the UNSW Faculty of Law, although he still maintained active political involvement. In particular, with the anti-apartheid movement, through his friendship with anti-apartheid refugees and heroes, John & Margaret Brink; and also successfully agitating for a Royal Commission into prison bashings, through his friendship with Jim Staples & me. He also became an active opponent to development in Victoria St Kings Cross, when he was living in a flat in that street.

Terry Budden, then a lecturer in the UNSW Law Faculty told me on Saturday that he and other of the academics of the faculty soon realised that they had 'someone special' among the student body.

Bob also had a truncated career as a bus conductor, operating out of the Willoughby Depot. He soon became the shop steward. One day he had an altercation with an arrogant middle aged besuited male passenger, who offensively claimed that Bob had given him too many coins as change. But Bob knew what was allowable as legal tender and informed the passenger accordingly. This resulted in the passenger

demanding Bob's name, which he gave him. The passenger said 'I am a friend of the Minister'. Bob then tipped all the very many one and two cents coins he had in his bag into the besuited lap. Bob was sacked next week, an event that Bob, who certainly never saw a long-term career on the buses, wore as a badge of honour.

Bob was quite a useful cricketer and when he was a uni student, Terry Budden was the then captain of UNSW 2nd 11 and. When Terry found he was a man short, just before a competition game, he phoned Bob at short notice to fill in, which he did. The opposing team had a brilliant 18-year-old, with a receding hairline, who was obviously destined for greatness. But he was very annoyingly overly aware of his wonderful talents.

As Bob had been brought into the team at very short notice, the approval protocols for him to play had been ignored, so the deal was that Bob should be as unobtrusive on the field as possible, in order to avoid the team losing competition points. But he was unable to help himself and to the delight of the uni team and probably members of the opposition, Bob told the lad, in the most direct language, to pull his head in. This was shouted while the lad was batting and Bob was fielding some 40 metres from the wicket.

Greg Matthews went to become a distinguished member of the Australian cricket team, although there is no doubt that Bob's counsel had no effect on him at all. Bob did not always tolerate fools easily.

I think the palliative doctor, who told Bob, two months ago, that caution should be observed in supplying him with morphine, lest he became addicted, received a very direct response.

On an election day in the 1996 when handing out how-to-vote flyers for Robert Tickner at an Oyster Bay school, Bob sorted out the repulsive Liberal Party President, Senator Bill Heffernan, when tried to cause some grief the Labor Party workers.

Whilst working as a managing clerk at the debt collecting firm of solicitors, HN Chippendall & Co, Bob thought he might be able to supplement his income by doing some of the firm's process serving.

One day he went to serve a debt summons on a woman at an inner west address. He parked his old car outside the house and proceeded to the front door, where he effected service, but only after receiving a very hostile reception from the defendant and her friend, which caused him to beat a speedy retreat. He got in his car and drove off. But he then learned an important lesson in process serving: first check the escape route. The car was pointing towards the end of a cul-de-sac. He did a U-turn and as he proceeded past the house, the two women ran from behind a hedge throwing projectiles at his car.

In 1975, 3 armed prisoners named hijacked a delivery van and tried to shoot and crash their way to freedom through the boom gate at Long Bay Gaol. I acted for Marco Motric and Bob, then a managing law clerk, for Russell Cox (nick named by the coppers, Mad Dog). They were charged with attempted murder.

I briefed Jeff Miles. Bob had the experience of briefing Malcolm McGregor. We used to visit our clients in the notorious Katingal Prison, now closed. I think this was Bob's first criminal matter. Some of us start off in the Traffic Court, but not Bob.

Bob taught us that even very serious matters usually have their humorous side, and that this should be cherished. In recent years Bob became more mellow, wise, and contented. With an acute insight into human behaviour, he maintained his concern for fairness, as well as justice with compassion. And he never lost his appreciation of the ridiculous or his antipathy to humbuggery.

I was privy to some but certainly not all the events that I have described. So, I would like to acknowledge the primary author of many of these stories, which I have heard Bob tell so well against himself. I hope I told them at least half as well as he did.