

Polishing up Bainton's practice seems to have included finding briefs for him outside his usual fields, which everyone (except for Bannon) thought were confined to revenue law, commercial law, corporations and securities law and professional liability.

In those halcyon days of the 1970s and 1980s no brief was ever allowed to leave the Seventh Floor. The powers of persuasion of the clerk were not inconsiderable. However, those powers came to an end after Bainton was persuaded to accept a brief for a defendant in a defamation trial. Bannon says that even Bainton's well-known and well-justified self-confidence was shaken by his loss; although only for a short time.

Bainton was a founding member of the Barristers' Superannuation Fund when it was established in 1957. He was a director, and later chairman, until his appointment to the Bench in 1995. During his chairmanship he ran the fund almost single-handedly from his own chambers. Of course this was done without fee and without fuss in the highest traditions of the Bar.

The same can be said of his elevation to the Bench. He accepted it at the age of 64 out of a sense of duty to the court to fill a vacancy which had arisen and for which he was thought to be the best candidate.

Despite his love for the law, Russell Bainton's first love was his family. His profession and his vineyard ran a dead heat for second. His many other interests were not far behind.

Patrick Costello (1943 - 2001)

A eulogy by Anthony J Bellanto QC, delivered at the memorial for Patrick Costello on Thursday 1 February 2001.

At Pat's funeral service on Saturday last, at Byron Bay, following each of three eulogies, something extraordinary occurred. The large congregation applauded. Each eulogist spoke about his life and the response was typically Patrick: unexpected, spontaneous and enthusiastic.

When he was called to his maker on Saturday 20 January at about 11:10pm, his face changed and evinced a look that could only be described as angelic and at peace. The peaceful expression may have been because he had achieved his commitment to face the inevitable head on and complete a seamless transition to a better place. As for the angelic expression, Pat was generous, charming, stylish, flamboyant, gregarious and thoughtful - but he was no angel. The paradox is perhaps emblematic of his life - sometimes there is simply no explanation and he is up there keeping us guessing.

When my wife Trish and I arrived on that Saturday morning he waved his trademark admonishing finger (which has been known to capture the ire of many a

magistrate) and said 'I'll be watching over you two from up there'. He then demanded Chris Watson and I take his clubs and golf cart and have a game of golf - which we did. On returning he enquired who won. Winning was a passion reflected throughout his life, particularly in the law. His zeal in court often brought him into conflict with the bench and opponent and he shares the distinction along with my late father of being the recipient of some barbs from the New South Wales Court of Appeal. A decision which, incidentally, was split 2-1. Whilst such comments may deflate the egos of most of us, Pat embraced the challenge and honed his considerable forensic skills to become a fantastic cross-examiner, at times having the witness agreeing to propositions earlier disavowed or which the witness hadn't heard of.

A good way to judge an advocate is to speak to someone who has been opposed to them. Peter Hastings QC, who prosecuted on behalf of the Commonwealth Crown in a number of cases in which Pat defended, describes him in fond terms. They got on very well although Pat described Peter as his nemesis, commenting that he knew too much about his past.

Testimony to Pat's reputation and standing was reflected on the Monday following his death when Justice Reg Blanch, Chief Judge of the District Court, in open court made special mention of Pat's passing, expressing his and the Court's condolences.

Pat brought a charisma to the courtroom and on a good day would dominate the court. Even a busy court with a long list seemed to revolve around the matter or matters involving Pat Costello. The wake following his funeral last Saturday engendered such discourse that there were people mingling and talking about Pat from 11:30am to 9:00pm in the evening, swapping stories, anecdotes, all reflecting some aspect of Pat's life. It was a very special scene at the Beach Hotel looking out to sea across Byron Bay. Not only is it geographically idyllic, but a scene appropriate for such an occasion.

It is also worthy of note that the press has acknowledged his passing with obituaries and articles, again testimony to his reputation. The press loved him for his flare and colour, which transcended the courtroom.

At the Downing Centre recently I was in conversation with Major Joyce Harmer, the Court and Prison Chaplain and she spoke of Pat giving her a kiss on the cheek, asking how she was and if he could help her with anything. He often gave his time without fee for the underprivileged. He was humble and caring. Joyce said that when he was in the building it gave her a sense of comfort. Pat had this effect on people. She gave me her card and on the back of it were these words 'Never be afraid to trust an unknown future to a known God'. These words say a lot about Pat Costello whose fearless advocacy broke boundaries in pursuit of his commitment to his client but at the same time there was a deep humility and reverence for his God, perhaps the result of his Jesuit upbringing.

He was a straight shooter and expected the same in return. If Pat liked you, you had the feeling he was looking

into your soul. He had an uncanny knack of pre-empting what you were thinking.

At the Woollahra golf club the flag flies at half-mast - he spent many mornings playing golf. It was common to see Pat on the course at 5:30am having a quick nine holes before work. When I played with him it was not uncommon to be on the receiving end of a good humoured but sarcastic barb, such as driving the ball from the tee a few feet sideways and his response being 'Oh, what a terrific putt'.

He was Catholic in faith and in life. He had a wide variety of friends and acquaintances and his interests produced a rich tapestry of intrigue and excitement. There was the roguish fringe, the diverse social interests, his golf, sailing and of course his family and friends that he cherished at Byron Bay.

He was cutting edge. He was always so charming to men and women alike - a people person. In fact, I was in court recently last year when Pat became engaged in a discourse between Bench and Bar and on this occasion he was so persuasive and endearing that the Magistrate started calling him Pat. David Higgs QC who shared a floor at Chalfont Chambers with Pat speaks of those early days at the Bar when Pat was cutting his teeth and very busy. He took David under this wing and gave him mentions in the Local Court but always ensured that he was paid. This was the beginning of Pat's flamboyant period and David speaks with great affection of Pat's assistance and they became very close friends, spending a lot of time together, although David did make the observation that he (David) was pleased he wasn't born a woman.

In those early days there were only two colourful characters on Chalfont, namely Jack Bernie and Pat Costello. There was not enough room for the two of them and something had to give. It occurred when Pat and Jack got involved in a fist fight over the entitlement to a room. This was a floor in which my late father was leader and in respect of whom Pat modelled his career.

Through the thin walls, Pat's admonition to clients could often be heard 'No dough, no show.' A catch phrase that he repeated to the end.

His flamboyance was reflected on one occasion when he was seen going to the Local Court in a chauffeur driven limousine having consumed a glass or two of champagne on the way, only to greet the Magistrate arriving in a tinny Torana.

He organised a large and well-publicised function at the Savoy Hotel in London. Process servers attended on Chalfont Chambers on behalf of the Savoy seeking out Pat for payment. On arriving at Chambers, Pat was sitting in the foyer. When asked if Pat Costello was on the floor, Pat responded that he was in Dubbo. The Savoy wrote to the Bar Association to follow up the matter and were politely told it was private.

His opponents in court were usually Crown or police prosecutors. When news of his illness circulated recently he was told that some of his former opponents were considering sending a card expressing condolences. His

retort was that those who signed it should think carefully because if they did their noses would grow.

He not only was seen arriving at court in a chauffeur driven limousine but he also had a friend who was a pilot who he purloined to fly him to various courts and on one occasion landing on the taxiway rather than the runway.

He was very intelligent and quick-witted. On one occasion he was sought out by a bookmaker for payment of a debt. The bookmaker approached Pat who was holding court in a coffee shop in Double Bay and said: 'Pat you've owed me a substantial amount of money for too long and I am becoming impatient. I'd like you to pay up'. Pat responded with the following. 'Every month I put all my debtors into a barrel and give it a turn or three and the name that comes out gets paid and if you don't behave yourself, you won't even make the draw.'

He also tested the patience of many a judge and magistrate; however he was never malicious and his behaviour reflected his Irish ancestry. Recently he was representing a client before a District Court judge and at the end of the judge's summing up to the jury he asked Pat, 'Is there anything further you would like me to tell the jury?'

'Yes' said Pat. 'I have two directions I'd like you to give them.'

'Very well, what are they?' said the judge.

'I think you should write these down' said Pat. And the judge picked up his pen ready to write. 'Direction No 1' said Pat. 'During Mr Costello's address I wasn't paying attention.'

There was the characteristic heated exchange between Counsel and Bench and then when things settled down and the judge made it clear he considered the matter closed, Pat interjected and reminded his Honour that he hadn't given the jury the second direction that was sought.

'Very well', said the judge.

Pat again reminded him that he should pick up his pen and commence writing. The judge picked up the pen, whereupon Pat said, 'During the Crown Prosecutor's address I wasn't paying attention.'

Pat's favourite colour was yellow and it reminds one of the sunflower and in turn is emblematic of his personality - colourful and bold. Pat's impish charm and good humour, quick wit and style are reflected in his two daughters Chloe and Kate who adored their father and have displayed great courage.

Over the last eight months Pat's life has been enriched and fulfilled through his relationship with Sam and their deep spiritual bond enabled him to cope in the face of the inevitable. At the end, as usual, Pat was surrounded by his harem of women who loved and cared for him. We've all lost something in his passing.

If there is an expression that sums up Pat's life, it is to be found in the phrase '*Carpe diem*'.