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Over 60 years, defense attorney amasses fans—even in plaintiffs' bar

By Kris Olson

In 60 years of practicing law, William J. Dailey Jr. has accumulated more than a few fans.

But counterintuitively, some of the most fervent are members of the plaintiffs' bar.

"He's cost us millions, and I still love him," says Boston personal injury attorney John J. Carroll Jr.

At 85, the man Carroll describes as the "dean of the defense bar" still comes into the only office he has ever known, Boston's Sloane & Walsh, even if his days of winning over juries are over.

He's not what people call a "gotcha lawyer," John P. Ryan says of colleague William J. Dailey Jr. (pictured)

In his most notable cases, Dailey has sometimes scored complete victories, even if he had to try them multiple times, like his defense of the doctors sued after the death of former Celtics star Reggie Lewis or those who had performed gastric bypass surgery on New England Patriots offensive coordinator Charlie Weis.

Other times, "winning" has simply meant navigating a thicket of competing interests in a complicated matter involving multiple parties, like the litigation on behalf of the family of Milena Del Valle, who was crushed to death when a concrete slab weighing at least 12 tons fell from the ceiling of one of the Big Dig tunnels.

Part of Dailey's genius has been his unfailing ability to discern which cases should be tried and which should be settled, say those who have watched him work.

Just as he has had only one professional home over the years, Dailey is also back living on the Lexington farm where he grew up.

"My great-grandfather actually started it in 1861, and the family has been there ever since," Dailey says.

Dailey and his wife moved back onto the property about 15 years ago, and while Wilson Farm leases and tends the fields of garlic, tomato, zucchini and sunflowers, Dailey is free to hop aboard a tractor when the mood strikes.

"That's a little bit of physical work that I enjoy doing," he says.

Dailey also was an accomplished baseball player back in his day, catching for the 1960 Boston College Eagles team that advanced to play in the College World Series in Omaha, Nebraska.

The team's stay in the double-elimination tournament was short. It won its first game but then dropped the next two. But Dailey says it was "quite a thrill to be out there."

Upon graduation from the Georgetown University Law Center in 1963, Dailey asked and received permission to use BC's placement services. One of the interviews he landed was at Sloane & Walsh. He started at the firm in February 1964, exactly 60 years ago, and that was that.

"I was happy from the beginning," Dailey says. "It's been a wonderful experience here, and I have enjoyed it immensely."

He adds: "When you're trying good cases, you meet good lawyers. And it was fun having the friendships that have developed over the years and getting the opportunity to meet some wonderful clients along the way, people that you can be proud to represent, and cases that were challenging."

Few if any have been better at rising to meet those challenges, his admirers say.

Faith in juries

Dailey calls the Reggie Lewis case "a real challenge." In the first trial in 1999, jurors

acquitted three of the doctors involved in the care of Lewis, who collapsed and died while shooting baskets with friends at Brandeis University on July 28, 1993. But the jury deadlocked with respect to whether Dr. Gilbert Mudge had committed malpractice by failing to diagnose the former Northeastern University star's lethal heart condition.

A second jury rendered a defense verdict in May 2000, and the verdict survived an appeal by Lewis' widow.

"But over all these years, I've found that juries can be very objective, and if they feel that there has been no error made, while there's maybe a great amount of sympathy surrounding the facts in the case, they're able to make a fair decision," Dailey says. "I admire jurors for doing that. That's how the system has to work if it's going to work."

From across the courtroom in another case, Carroll recalls the way Dailey shrewdly undercut any faith the jury might have placed in the plaintiff's expert.

Because no Massachusetts doctor would testify against one of their own, the plaintiff had to seek out her expert in Ohio. In his closing, Dailey asked the jurors to put themselves in the position of a patient and consider whether they would rather be treated by a physician whose office was on the second floor above an Ohio gas station or at Massachusetts General Hospital.

"End of case," Carroll says with a laugh.

The Weis trials were also a challenge, Dailey recalls. The first ended when a juror developed a medical problem, and Dailey's clients rushed into the jury box to render aid, prompting the judge to declare a mistrial.

"I thought we could keep going, but the judge didn't agree with me," he says, chuckling.

During those proceedings, Dailey had the opportunity to cross-examine none other than seven-time Super Bowl champion quarterback Tom Brady, who was called to testify about his coach's diminished

William J. Dailey Jr. (at right) with his son and colleague, William J. Dailey III

level of activity after he nearly died from complications of his gastric bypass surgery.

"He was a very good witness, a very straightforward fellow [who] told it as it was," Dailey remembers.

While others laud Dailey's role in resolving the tragic Big Dig tunnel collapse case, Dailey is quick to deflect credit to now-retired Superior Court Judge Stephen E. Neel.

"We had five or six of seven different defendants, and everyone was arguing over what share they should pick up, and it took the talent of Judge Neel to get everyone in a position where they were willing to talk," Dailey says.

He calls it "a good case to get settled for everyone involved."

While in one sense, no amount of money could compensate Del Valle's children for the loss of their mother, Dailey says the settlement was as fair as it could be under the circumstances.

'The big ones'

Legendary attorney Edward Bennet Williams, the one-time owner of the Baltimore Orioles, was famously dubbed "The Man to See," which signified his status as the go-to advocate whenever a particularly thorny issue arose that required a high level of skill and bedside manner, notes Boston plaintiffs' attorney Leo V. Boyle.

Updating the phrasing for modern times, Boyle calls Dailey "The Lawyer to See" in Massachusetts.

"When the big ones come along that scare everyone else, Bill's 'The Lawyer to See,'" Boyle says.

That was the message conveyed to Constance D. Sprauer, who recently retired as general counsel of Exeter Hospital in New Hampshire, when one of those "big ones" landed in her lap. The case involved a rogue traveling technician and had potential criminal, regulatory, tort and insurance litigation aspects to it.

Sprauer says she interviewed others — including members of her former firm — for the complicated role of keeping all the legal teams responding to different aspects of the crisis on the same page, lest one undercut the efforts of another. In the end, she selected Dailey, which proved to be the right call.

"He basically kept us calm," Sprauer says. "He has a very nice way about him, and behind the demeanor, he knows exactly what to do."

There was no getting around the hospital's liability, "but it could have been a lot, lot

worse," she says of the ultimate result.

To Dailey, the most gratifying part of his efforts was that he was able to help preserve the hospital's reputation, allowing its doctors to continue to serve their patients.

"The people up there remained faithful to the hospital, which is a great thing," Dailey says.

Signature moves

But as effective as he might be behind the scenes, Dailey was also one of the best in the courtroom, says Boston medical malpractice attorney Clyde D. Bergstresser.

In fact, whenever he would try a case against a Sloane & Walsh attorney, Bergstresser could tell they had molded how they examined witnesses by learning at Dailey's foot.

One true measure of a litigator's courtroom acumen is how he or she conducts cross-examinations, Bergstresser says. One of Dailey's signature moves was to sidle up with his back to the jury box and then slip into the second person — beginning a question with "If we were to think" — subtly forging a bond between the jury and himself.

"He did it in such a smooth way," Bergstresser says.

Dailey's colleague John P. Ryan says that he has long appreciated that Dailey's modus operandi has been to avoid ambushing the other side with tricks or procedural traps, instead striving to "get down to the true facts of the case."

There may have been some theatrics to those cross-examinations, but they were always grounded in the evidence and the facts of the case, rather than any sort of collateral material related to the witness.

"He's not what people call a 'gotcha' lawyer," Ryan says.

While never compromising the defense of his clients, Dailey also never lost his empathetic view of the patient at the heart of his medical malpractice cases, according to Ryan.

"That is a hard balance to strike," he notes.

Boyle says one of Dailey's superpowers is his "otherworldly calm."

"Nothing rattles him," Boyle says. "He would never get rattled in court. He would never get rattled in negotiations."

Dailey is proud to now count among his colleagues his son, William J. Dailey III, who inadvertently provided his father with a late-career opportunity to shine in the court when he fell ill after a jury had been impaneled in a medical malpractice case.

The next morning, court opened, and the elder Dailey was standing at counsel table, insisting that the trial could go on as scheduled.

"It was a little audacious," says Dailey's longtime colleague Edward T. Hinchey, who now practices on Cape Cod.

But as he did so often, Dailey secured a defense verdict.

"It wasn't well into the case, so it was something that I could jump into, and I did," Dailey says matter-of-factly. "I knew a little bit about the case and quickly got to know everything that I had to about the case. Thank goodness, it turned out alright."

Hinchey considers Dailey a mentor.

"He got me to work like a dog and have fun doing it," he says.

Another side

Talk to Dailey's admirers long enough, and eventually they will be unable to resist the temptation to tell you about his less public side: his hours of pro bono legal work and his anonymous donations of money or truckloads of food.

But then they stop, remembering Dailey's preference for operating under the radar. They insist you ask his permission before sharing too many details.

"I'd rather do that quietly," he says of his charitable endeavors. "If you're in a position where you can help some unfortunate person, it's nice to do it. You can do it quietly, and you can get a lot of satisfaction out of it."

Carroll recalls one day about 20 years ago when he showed up at the old Lowell Superior Court and immediately noticed that the perennially drab surroundings looked strikingly better. The walls had a fresh coat of paint, all the junk had been removed, and the floors were gleaming.

Turns out, Dailey had hired a contractor to come in and do the work without telling anyone.

"That sums up Bill Dailey," he says.

Mention the high esteem in which he is held, even by plaintiffs' attorneys, and Dailey insists the feeling is mutual.

"Trying serious cases, you usually have a lawyer representing the plaintiff who is a good lawyer, and how do you not respect a good lawyer?" he says. "You know that they're going to give you a heck of a battle, and you can't stop respecting them."

Dailey says he has not tried a case in four or five years and has no intention of seeing the inside of a courtroom again. He keeps himself busy with a fair amount of pro bono work and mentoring less experienced lawyers.

If anything bothers Dailey these days, it would be the erosion in faith in the justice system that he has observed sweeping the country.

"That's unsettling because that's not a perception that someone will give up quickly," he says.

Court decisions — especially U.S. Supreme Court decisions — have long been a source of disagreement, Dailey says.

"But now I sense it's more ingrained," he says. "Somehow, we have to get by this, and hopefully we can."