

*An interview with the Clerk of 11 Wentworth/Selborne and 5 St James Hall*

# Paul Daley: 40 years not out

By Rena Sofroniou

**Disclaimer and confession:** Paul Daley was my clerk for a wonderful readership year on 11 Wentworth/Selborne during 1993. There were about 25 silks on the floor at that time and people like Doug Staff, Frank McAlary, Kevin Lindgren, Hal Sperling, Bob Hunter, Dick Conti (to name only a very few) would pop their heads in to the reader's broom closet, which I timeshared with Michael Wigney, to proffer the odd word of encouragement and advice. Meantime, Paul Daley never had an off day. He was always impeccably serene, polite, brisk and positive. Always positive. He would provide the readers with piles of junior work 'to cut their teeth on.' Solicitors would ring Paul and request a 'wig on the floor' to accept a junior brief on the various matters they had to hand. No names proffered by the solicitor- they just trusted Paul's judgment. He had monstrously high fitness and sporting levels and was invariable smiling and, well, perky! I never had the nerve to find an answer to the question: what is with this guy?

Here, at last, in his fortieth year in the harness, is the opportunity I have been waiting for...

**Sofroniou:** Hi Paul. Have you thought of writing your memoirs?

**Daley:** (Laughs) No not yet, but I have been in the practice of jotting down some of the amusing things that happen from time to time. They might come in handy one day.

**Sofroniou:** Are you a Sydney boy?

**Daley:** Yes. I was born at Parsley Bay in 1944. I am the second eldest of five boys. I went to Rose Bay Christian Brothers School and left at intermediate certificate level, aged 16.

**Sofroniou:** I gather that's where the clerking story begins. How did you and the Bar discover each other?

**Daley:** I saw an ad in the newspaper for a junior



Paul Daley

to 11 Wentworth Chambers and I applied for it.

**Sofroniou:** Why?

**Daley:** Well, I didn't really know what I wanted to do. I had been thinking of joining the police force, but you needed to be at least 17 to join. So I needed a job to do in the meantime until I made up my mind.

**Sofroniou:** Did you know what a barristers' clerk or junior did?

**Daley:** I had no idea at all. There were no lawyers in my family.

**Sofroniou:** What was 11 Wentworth Chambers like at that time?

**Daley:** Selborne Chambers had not yet been built. The building had one of the old PABX switchboards, which used

cords. There was no carpet at all on the floor. The rooms had either boards or green lino. The clerk was Jack Caffrey and the chairman of the floor was Mr Bernard Riley QC, a very gentlemanly man. There were 14 barristers on the floor then.

**Sofroniou:** Can you tell me some of the names?

**Daley:** Yes. Frank McAlary was then a hugely busy junior, and we had Doug Staff (who had a huge equity practice and who had become a QC at age 35), Jim Staunton, Des Ward, Ray Loveday, A B Kerrigan (he was one of the greats), Bernard Riley, a very young Theo Simos and Gerrold Cripps, among others.

**Sofroniou:** It must have seemed very formal to a 16 year-old?

**Daley:** Barristers chambers then were quite forbidding places and the barristers as a whole were not as outgoing as they generally are now. The times did not really encourage informality of any kind. Everyone was referred to as 'Mister'.

**Sofroniou:** Can you remember your initial job interview?

**Daley:** Very clearly. Bernard Riley interviewed me. He asked me a few questions about myself, school, etc and I remember him telling me: 'There most

probably won't be a future for you here because Mr Caffrey is the clerk and will remain here. The job's really for a year or two' and I said 'fine, that's all I'm looking for' and he hired me on the spot.

**Sofroniou:** In what should come to be known as the 'Famous Last Words' conversation.

**Daley:** (laughs) Yes, I never left.

**Sofroniou:** How did you manage to stay after the one or two years was up?

**Daley:** When Selborne Chambers was constructed, Doug Staff QC and Preston Saywell were the driving forces behind an amalgamation of the new 11 Selborne with the existing 11 Wentworth. The members of Chalfont Chambers at 140 Phillip Street mostly moved to 11 Selborne. We amalgamated from the outset and, to my surprise, no other floor did at that time. So we inherited Bill Deane, Geoff Stuckey, Bob Hope, Bob Hunter, Simon Sheller, John Newton, John Spender and a very young Rob Macfarlan. At that time Doug Staff asked me if I could stay on and share the clerking with Jack Caffrey.

**Sofroniou:** How did you share the job with Jack Caffrey?

**Daley:** We split the court lists between us. In those days the listing of cases was left up to the dozen or

so clerks of chambers and the court clerks. I was responsible for the District Court list and Jack Caffrey did the Supreme Court and the Court of Appeal lists. Every afternoon at 2pm I had to go to where the Mint building currently is on Macquarie Street for the calling of the list. I had my barristers' District Court cases marked and I would negotiate, that is, check with them and their opponents to see if the matter was ready for hearing, the length etc. Then when the court clerk called the case I would say who was appearing and give the estimated length, then I would return to chambers and tell my barrister something like 'you've got a start tomorrow in front of Harvey Prior'.

**Sofroniou:** Good heavens - a clerks' collover!

**Daley:** That's right. We ran the District Court list and the undefended divorces list that way. Most of the young barristers did those. I still remember going to that calling of the undefended divorces list where the clerk, 'Smacker' McCarthy, would give me the dates for my barristers.

**Sofroniou:** 'Smacker'?!

**Daley:** Smacker (laughs). He always had a cigarette hanging out of the side of his mouth.

**Sofroniou:** Did the Supreme Court list work the same way?

**Daley:** The Supreme Court was a little different. Jack Caffrey would obtain his barristers' hearings for the next month, would submit them to the court clerk and would try to obtain convenient court dates. You would then find out on Monday to which cases specific dates had been allocated. By and large they would try

to fit in with counsel's commitments if they could.

**Sofroniou:** Was it ever boring?

**Daley:** No. I never had time to be bored. I was always wanting to work as hard as I could. I think I was a bit hyperactive. Also, by then, I was married with three children and was getting £8 per week, so to supplement that income for school fees and the like, I worked for my barristers on the weekends - washing cars, cutting lawns, polishing books. They knew I wanted to earn extra money so they were happy to find me extra jobs to do.

**Sofroniou:** Now when did you find time in the midst of all this to get married?

**Daley:** I married Jeanette when I was 22 and we remain married to this day! We have two girls and a boy, now aged 32, 30 and 28.

**Sofroniou:** And the number of lawyers among them is...

**Daley:** Nil! They are a nurse, a schoolteacher and a real estate agent.

**Sofroniou:** Smart thinking. How long were you sharing the clerking with Jack Caffrey?

**Daley:** He retired in the mid-seventies, and after that I was clerking for 32 barristers.

**Sofroniou:** When you compare the Bar of the seventies to the Bar now, what kinds of changes seem

obvious to you?

**Daley:** Barristers had a bigger input into the hiring and firing of staff then. Much of that these days is delegated to me by my floor. Also it was common practice for solicitors to call clerks with their briefing requirements and for clerks to recommend barristers to suit the cases. For example I can recall that Alan Mitchell of Henderson, Taylor and Mitchell would call me on any given Monday with his next month's list of, say, thirty workers' compensation cases for me to find barristers to do them.

**Sofroniou:** How did you develop that sort of trust relationship with the solicitors?

**Daley:** I had observed that Fred de Saxe, the clerk on 7 Wentworth - a very strong floor, there were people like Jack Smythe, Laurence Street there - had developed that sort of rapport. He had got to know the solicitors and they trusted his judgment. The point was to provide a thorough, trustworthy service to the solicitors so that you always did find them someone suitable for the type of matter. Also it was developed by marketing.

**Sofroniou:** By the barristers or the clerk?

**Daley:** The clerk. There wasn't anything contrived about it. I was involved in a great number of other activities outside the law and chambers. Sport was and still is an enormous entrée, a wonderful opportunity to meet and get to know solicitors. As they found out during a sporting event what I did for a living they would say, 'well, fine, so when I need a barrister for my matters, I can just come to you'. That type of thing.



'Not a problem.'

**Sofroniou:** But I gather sport was, and is, a love of yours anyway. What type of sporting involvement have you had?

**Daley:** I loved playing sport and also conditioning and coaching teams. My sports include surf lifesaving - I competed at Queenscliff Surf Club and I'm still an active member there. Also rowing - in the early days I was earning extra money by working as a conditioner for the Sydney Rowing Club two nights per week. I conditioned the Riverview First Eights and I conditioned two Australian Eights teams for the Munich and Montreal Olympic games.

**Sofroniou:** !!!! (hard to transcribe gasping sound emitted by interviewer here). And football too?

**Daley:** I played second grade rugby for Easts for a couple of years, but various injuries stopped me. In those pre-trolley days I was carrying books to court for the barristers with my good arm whilst my other one was in a sling after I'd broken my shoulder in a match. So then I coached their juniors and conditioned the Easts first to fifth grades and coached the footballers at Saint Ignatius College.

**Sofroniou:** And you've run in the City to Surf?

**Daley:** In all of them.

**Sofroniou:** I'm exhausted just hearing about it. You've mentioned being 'a bit hyperactive'. What do you attribute that to? Family background?

**Daley:** Yes, my dad really encouraged all of us boys to always work hard. He wouldn't let us sleep in. He taught us how to box when we were quite young. I had weekend jobs from the age of 14. Mum had the same view. My parents ran a business, so I was helping them on the weekends from then.

**Sofroniou:** So, is all this hard work and activity an obsession, or do you enjoy it? Have you been satisfied with your choice of career-by-default?

**Daley:** I loved it from the outset and have loved every day of it ever since. I feel I've been unbelievably lucky to work for about 120 different barristers with no cross word with or from any of them.

**Sofroniou:** I have a suspicion that there's more than luck involved, Paul. I don't imagine you would have tolerated it any other way. And I gather the boys' 'matey' environment of the Bar at the time would have been an extension of the male sporting type environment you enjoyed?

**Daley:** True, there were few women at the Bar and few women briefing barristers. It was a very conservative period. But I have to say that I think having women at the Bar now is an enormous advantage and benefit to the Bar as a whole. They have a huge role to play, given that they are 50 per cent of the population and at least 50 per cent of the law students. I also think it's not right to suggest that men can or should only do one sort of job and women can only do one sort of job. Any man or

woman can do the barrister's job if they are good enough. We've had Jenny Blackman, Margaret Renaud, Helen Coonan, Jackie Gleeson as floor members and more recently Sarah Pritchard and Ruth McColl S.C.

**Sofroniou:** How do you account for the comparatively small percentage of female barristers?

**Daley:** I take a commonsense view. I can't say why individuals don't choose to come, but I think it's a matter of personal preference rather than any hostility to women on the part of the Bar. I think a lot of people - men and women - choose not to come because it's a very hard job. It's unbelievably taxing on your time and on your nerves. It takes a big toll on family life. You are trained, essentially, to be a fighter and you have to do it every day. You can't ever afford to be off your game.

**Sofroniou:** Is it still like that or are there different approaches?

**Daley:** It's still the same fight. But there's room for different styles now. Some people are more bombastic, others are quieter. It's what the Bar's all about.

**Sofroniou:** Yes one hears of some great eccentrics from time to time.

**Daley:** (laughs) Yes. Clive Evatt was one of the great characters of the Bar. I have an image of me, knocking on his door and hearing him call 'Enter!' A voice said 'And your name is?...' But he wasn't there. I looked around to see where the voice was coming from. I eventually located him. He was lying underneath his desk.

**Sofroniou:** And he was...?

**Daley:** Well, just having a rest, I suppose. I was 17 at the time. You can imagine that this was pretty extraordinary to me.

**Sofroniou:** I gather eccentricity was tolerated then?

**Daley:** Yes, even welcomed. Horrie Miller, on 13 Wentworth, was a great property owner. His clerk, who at that time was Ernie Stanhope, received a badgering one day from a lady who rented one of Horrie's properties. She was complaining about a leaking water pipe that Horrie had refused to repair for the preceding six months. Ernie felt sorry for her and thought Horrie should be held to account for his neglect. He sent the lady straight round to Horrie's room. She marched in and got stuck into him about the leaking pipe. Horrie listened silently to her complaints, then lied to her as follows: 'Madam, I'm afraid you have the wrong Miller. I think you need Eric Miller QC. You will find him on the sixth floor'. Poor Eric Miller was meek, conservative and totally upright. Horrie's total opposite, in other words. We never heard how he handled the complaint!

**Sofroniou:** Great fun.

**Daley:** Yes. Then there was the great annual cricket match played between the bar clerks and the barristers. After ten years the barristers couldn't understand how the clerks always won the toss. In

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fact it was not that the clerks were anxious about getting to bat first, it was just that they were paranoid about getting first use of the keg.

*Sofroniou:* So obviously...

*Daley:* Yes, the clerks always tossed with a double-headed coin...

*Sofroniou:* And they always called...

*Daley:* Heads.

*Sofroniou:* The Bar lost some of that in the commercial eighties?

*Daley:* The Bar, all sections of it, flourished in the eighties and the work speeded up as well. In that era John Kearney would have what was called a 'huge Friday list'. That meant six, seven or eight mentions or motions.

*Sofroniou:* Things that the solicitors now choose to do themselves?

*Daley:* Yes. The junior Bar had it much easier then than they do now. You could survive on just the motions, the PCA's, directions hearings in all of the courts.

*Sofroniou:* (whimper) When I was doing the readers' course in 1992 all of the speakers would tell us at the beginning of their talk (somewhat sadistically I thought) that it was a *terrible* time to be coming to the Bar. They were comparing it to those times I think.

*Daley:* Yes, well they always say that. Certainly in the eighties the Bar was smaller than it is now and the work was expanding in all directions. Remember too that that was when the technology increased hugely. Photocopies, faxes - they hadn't been around when I started.

*Sofroniou:* Oh yes, I can just about remember those ghastly smelly purple ink spirit devices.

*Daley:* To make multiple copies of documents, yes. And even automatic typewriters weren't around then. It was only manual typewriters and carbon paper. So the work increased and sped up when these innovations came in. Not to mention e-mails and the Internet now.

*Sofroniou:* Was the Bar as specialised (or perhaps polarised is the better word) in terms of types of work as it is now?

*Daley:* Yes, it was quite specialised even then. There were really only a few barristers who could truly be called all-rounders.

*Sofroniou:* So it was important then, as now, for readers to try to read on good floors doing the type of work they wanted ultimately to practice in?

*Daley:* Yes, but they should also think things through and work towards being seen in as many courts as possible in the first year to eighteen months.

*Sofroniou:* To what extent is that harder to do now than it was for readers in the eighties?

*Daley:* Well, even though solicitors have started to do more of their own appearance work in the last few years, I believe that people coming to the Bar can still make a good career of it. But they have to be prepared to build a practice, not just be in it to make a quick buck.

*Sofroniou:* Can you elaborate on that?

*Daley:* Yes, it means really setting out to provide a one hundred per cent service. The Bar still rewards effort. It means being pleasant to deal with and working conscientiously and following through with their commitments and having work done in under the estimated time. It requires a lot of enthusiasm and working as hard as possible.

*Sofroniou:* I can hear Dad talking here.

*Daley:* (laughs) That's right.

*Sofroniou:* What about the manner in which floors recruit readers and juniors?

*Daley:* I liken it to a surf club or a football team. It is only as strong as its juniors. If the seniors retire and there are no good juniors to replace them the club or team - or, in this case, floor - becomes weak. My own floor has been very lucky in this regard and when it comes to good juniors on any floor, being a good person is as important as being a good lawyer.

*Sofroniou:* There's been some fairly low morale around the Bar of late, problems with tax-dodging, bankruptcies, financial problems, etc?

*Daley:* I think it's at its lowest ebb at present. Certainly the lowest that I can remember. Practice management is just so crucial these days. That involves getting help when the barrister requires it, from a clerk, accountant, other barristers, bankers, whoever.

*Sofroniou:* But there seems to be some inane taboo over all matters financial, don't you think? I mean the barristers won't let on that they're having difficulties in case it makes them look somehow inferior to the others or as if they are doing less well than their neighbours?

*Daley:* Well, help can be sought in confidence. And it's important to seek it early because there are things one can do to get on and keep on track, like having a flexible home loan that can be paid into in advance and drawing down from that loan when it's time to pay tax. Paying all bills from one credit card, which is paid each month. It's important to think about these things so one can use money properly.

*Sofroniou:* (sigh) Will you be my financial advisor?

*Daley:* (laughs) I think it's part of my job to address these things if required. My big kick in this job is seeing readers doing really well - becoming busy juniors, taking silk and ending up on the Bench,

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assuming that's what they want to do. I like to be associated with that.

**Sofroniou:** It's a very nurturing job from that point of view?

**Daley:** Well, I'm watching it, really, but I like to think I have been of help when needed.

**Sofroniou:** No doubt about it, Paul! Well what advice for the weary mid-juniors for whom one year is pretty much looking like another, moving neither forward nor back (little sigh)?

**Daley:** Two things. One, life is too short not to be doing what they want to be doing. Second, you must make it a point to take proper rest breaks to refresh and recharge yourself.

**Sofroniou:** Oops. But something always seems to come up, and, well I don't know...

**Daley:** It's important to cross the time out of your diary and do it, otherwise you burn out. It's not easy to do. One person I know had to knock back six briefs to take a fortnight off, but he did it. It was the right thing to do, because he was due for his rest and the work will be there when he comes back.

**Sofroniou:** OK - now, good barristers - born or made? Your views please?

**Daley:** I think there are people who are born to be great barristers. There are people who are born to be great judges. Some both, but not necessarily. And good barristers can be made by hard work. But you can recognise very gifted ones. Similarly, there's not much point being gifted if you don't work.

**Sofroniou:** OK, Paul, bite the bullet. You've seen enough of them - what is a good barrister anyway?

**Daley:** A good barrister, to my mind, is a good human being, first and foremost. It comes across in his or her conferences and in court. You can't be lofty and distant and arrogant. Clients used to want that, along time ago. They held the barrister in awe. Now they want to feel comfortable. But they also want to be told either (a) or (b). Not maybe. I think the Bar must never give away the paramount job of giving a final answer.

**Sofroniou:** What else?

**Daley:** They have to be eloquent on their feet and very persuasive. Although that can be done with different styles.

**Sofroniou:** Yes, when I started, everyone seemed to be trying to do a Murray Gleeson QC impersonation. Very concise, clipped, incisive, even spare. Doesn't suit everyone, does it?

**Daley:** No. Before that it was the bombastic style. No one should ever try to change their own style and become someone they're not.

**Sofroniou:** OK, nice person, decisive answers, individual, persuasive eloquent style. Phew - what else?

**Daley:** They have to be able to handle stress. It's

an intrinsic part of the job. It's a really good idea to have interests outside the law, to be able to get away from it from time to time.

**Sofroniou:** Working alone or working with silks - your views?

**Daley:** It's imperative to work both on your own *and* with silks. In a barrister's first year, it's great to work with a very good silk to watch how it's done correctly. But it's also beneficial to have to go and stand in front of a magistrate and have to think on your feet. It's good to try to get experience in different areas of the law because they seem to help develop different skills.

**Sofroniou:** You would still encourage people wanting to become barristers to come to the Bar?

**Daley:** I think whatever you want to do, do it. I've known a successful merchant banker who was a great debater, give it all up to come to the Bar. He talked to me about it six years ago. I told him 'It's tough but if you want to make it at the Bar you can'. He gave up his very well paid job, started studying law. He's now at the Bar. He's doing well and he loves it.

**Sofroniou:** How do you juggle clerking for 11 Selborne/Wentworth Chambers and 5 St James Hall Chambers?

**Daley:** By phone hook up and lots of visits. It's worked out really well.

**Sofroniou:** Why do some members of the public seem to be fascinated by lawyers and barristers in particular? There are so many TV series, newspaper reports, etc? Can you understand it?

**Daley:** Barristers used to be put on a sort of public pedestal. They are eloquent, they are perceived as earning a lot of money - although bear in mind that really 20 per cent earn a lot of money and 80 per cent do not. But the 'tall poppy' syndrome plays a part too.

**Sofroniou:** Will the independent Bar survive? Your tip?

**Daley:** As long as we still have our current legal system it will. Advocates will always be required and there will always be people wanting to do that as individual operators.

**Sofroniou:** Finally, and perhaps most importantly, you have become very involved in raising money for Prostate Cancer Research. You paddled in the '20 Beaches Race' from Palm Beach to Manly Beach last year and done other things besides. How much have you raised?

**Daley:** I've raised about \$30,000 altogether, which will go towards research for early detection and treatment of prostate cancer.

**Sofroniou:** Given your very high fitness and health levels, did you ever feel at all 'betrayed' by your body when you were diagnosed with prostate cancer?

**Daley:** You know I never felt bitter about it. I never for a minute thought 'Why me? Why not me?'



Daley snaring another brief...

And anyway, if I didn't have it, who would I be willing to pass it on to instead?

*Sofroniou:* In fact I suppose your fitness operated to maximise your recovery?

*Daley:* Yes (laughs) the doctors told me 'you've trained for this operation'. The fact that I was pretty fit and healthy really assisted the recovery.

*Sofroniou:* And you have a clean bill of health today, touch wood?

*Daley:* That's right.

*Sofroniou:* What type of support did you receive throughout the ordeal of the diagnosis and the prostatectomy operation?

*Daley:* I had a lot of support and as I said I accepted the diagnosis from the beginning. I had a positive attitude to fighting it.

*Sofroniou:* Did you know anything about prostate cancer before the diagnosis?

*Daley:* No. The scary part is that I had no symptoms. The cancer was discovered in the course of a yearly check up, which I started having as an annual routine when I turned 50.

*Sofroniou:* It's really not spoken about much, is it? Do you think people know much about it?

*Daley:* No. Prostate cancer is treated as 'private men's business'. There is really not much awareness about it, yet it's the second biggest cancer killer of men, after lung cancer. It is as frequently occurring as women's breast cancer. I also don't think people know much about the ramifications of having prostate cancer or the range of available treatments for it.

*Sofroniou:* I guess as far as available treatments are concerned, if you are going to contract prostate cancer, you'd want to be living in Australia in the twenty-first century?

*Daley:* Absolutely.

*Sofroniou:* Thanks for your time Paul.

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Paul Daley paddling the 20 Beaches Race from Palm Beach to Manly to raise money for prostate cancer research.