

GREAT EXPECTATIONS

New Bar President Dan McAuliffe

Dan McAuliffe is in a hurry. His attention, his focus, his determination: They all contribute to an impression that he is fully engaged in whatever occupies him. He drives agendas, usually politely but always irrevocably, whether he's a meeting participant or its leader. In whatever forum, he has a vision, his manner suggests, that should be implemented by his colleagues—sooner rather than later.

Speak with him, and you may be pleased to discover—or not—that he will say what he thinks, forcefully. He wants to hear your thoughts, yes, yes, but mainly in order to test his own hypotheses. And the evidence for your contrary position, it would be advised, should really be up to snuff. If not, well, your day may get very long very fast.

That impression is heightened by McAuliffe's appearance and surroundings. He is large-framed, imposing even when he's seated. His corner office contains the trappings of connectedness and power, plus a few more not usually seen, like his Phi Beta Kappa membership. He often sports a toothpick in his mouth, and a front shirt-tail hangs loose from his suit pants.

But appearances can be misleading. For this large man comes across as reserved in some ways. He has a small, friendly mouth, often pursed as he thinks, and otherwise bordered in a broad smile. His hands are large but almost delicate, important and expressive tools for this accomplished appellate lawyer. His vision and focus have always been on those who have very little, and deserve far more.

This is the story of a State Bar that is to be led in its 75th year by a man who is impatient—impatient for good thinking, for good services, for ... good.

When seeking the newsworthy, or even the noteworthy, historians and hydrologists think alike. Tracking the significant, they often begin by looking where rivers cross. That is where we find the settlements that turn to cities, the flotsam and jetsam of community travail.

These are the sites where great ships are built, launched and later broken. This is where trade and commerce—licit and otherwise—flourish. Where ideas and ideals are broadcast and tested in the harshest possible conditions.

The Tigris and Euphrates are only the most famous of these confluences. This story begins farther west, where the Hudson and Harlem Rivers meet. Their intersection forms the northernmost tip of the island of Manhattan. In fact, it is their meeting that separates the most populated of islands from the American mainland.

Just north of that confluence is the Bronx, birthplace of Dan McAuliffe. His earliest years were spent next to that river in a neighborhood named Spuyten Duyvil. Pronounced SPITE-uhn DYE-vuhl, it refers to a one-mile-long ship channel, named by the Dutch for the "Devil's Spout" or "Devil's Whirlpool," the powerful and wild currents that marked the passage. At least in McAuliffe's case, the Dutch were prescient in their prediction of tumult.

McAuliffe recalls the benefits and drawbacks of growing up in a surgeon's family. His father was presented with World Series tickets every year by a patient—the chief judge of the Bronx trial courts—who had received them from the Giants and the Yankees. On the other hand, the elder McAuliffe had enormous time commitments at his practice and in his work as the chief of surgery at St. Francis Hospital in the Bronx.

Early on, McAuliffe and his siblings learned to be independent and resilient, skills that were necessary as he began high school.

The phrase "high school" may be insufficient to describe the impression that Regis High School made on the young McAuliffe, an impression that continues to this day. As he delves into the topic, he pauses and drops his voice, not so much for effect, but because of an affinity he still feels.

"There's a very special Jesuit high school in New York City called Regis High School," he begins.

"They select 2,100 kids to take a special entrance exam; they take 210. Of that 210, generally on average, 105 graduate."

He relates, still with surprise after all these years, the story of the vice president of his class, who had failed Greek by one-quarter of a point in the second semester of his senior year, and as a result was denied a diploma. But standards and rules are important to McAuliffe, who is impressed by the school's rigor.

"My homeroom in senior year had 21 kids in it: 21 National Merit Scholars, four Danforths, three Fulbrights, two Rhodes Scholar finalists. Ninety-nine point nine percent from that school go to college on scholarship."

McAuliffe smiles: "I haven't studied since that place."

If Regis was challenging, so was his life outside. By the time he started high school, his family lived in New Rochelle, in Westchester County. Regis is on East 84th Street, which meant he commuted, starting at age 13, two and a half hours each way. He left the house at 5:30 in the morning and got home at 8:30 or 9 at night.



"You obviously were different than the kids across the street," says McAuliffe, "who would get on the school bus or get in the Lexus—we didn't have Lexuses then, they would get in the Nash."

His smile fades.

"It was very exciting, but it was very isolating too—very isolating. You wound up with all of my friends on weekends in New York City, and I was in New Rochelle; I didn't know anybody up there."

But the commute, and the Jesuit education, fostered independence and tenacity: "If something went wrong, it was you. You couldn't pick up a cell phone and call mommy and say, 'Come get me.'"

That tenacity was tragically called upon in 1961, when McAuliffe's father died. He had three strokes in six months, the last one at home. The effects were enormous.

"We were really orphans," says McAuliffe. "My mother had a nervous breakdown, not to put too fine a point on it. Somebody tipped New York. And social services came around with an order to show cause as to why the four of us should not go to foster homes. They walked away and left us with this paper, and we had 10 days."

McAuliffe still appears stunned at the sudden catastrophe that confronted his family. In a flash, he and his three siblings could be scattered to the wind. But determination would forestall disaster.

"It was one woman—one woman—who said, 'This. Will. Not. Happen. This *will* not happen.'"

"That woman was 17 years old, and my sister."

Seeing things clearly, his sister Alice rallied Dan, then 16, Paul and Kevin and came up with a plan. They got their grandmother discharged—"sort of"—from a nursing home, ensuring that there was an adult living at the house. And the kids McAuliffe took charge.

"We committed several major felonies in the first couple weeks," he recalls. "It was very much the inmates running the asylum. We ran the place, sold the house, eventually moved the whole kit-and-caboodle to Cape Cod."

"But from that point forward," he continues, "those kids put all four kids through college, two kids through law school: one Harvard, one Yale—which isn't U of A, but it's good. And one kid through the Columbia School of Journalism. On their own. On their own."

McAuliffe had wanted to attend Princeton, but staying near home to help with his siblings was important, so he studied at Fordham. To counteract the fact that the university was not the highest tier, he took its most difficult major—Russian.

He laughs as he recounts his senior-year final oral exam, conducted entirely in Russian. As he spoke, his teacher, an elderly Russian woman, sat listening with her

elbows on the desk, her face buried in her hands, as she remained for the rest of his exam.

"I thought, 'I really punted this one.' But I got an 'A,' and later on I asked her, 'Why did you do that?' And she said, 'I had to shut out that Irish face so I could hear the pure Russian.'"

When the Irish boy graduated, his GPA was 3.97, and he was eighth in his class—and the highest-ranked student of Russian.

With degree in hand, McAuliffe left New York City. (In fact, except for his youngest brother, Kevin, who remained in New York until his death in 2002, "everybody else got out," says McAuliffe.) He was bound for law school, at Harvard.

He volunteers that Vietnam War politics played a hand in that decision. The U.S. government had announced that there would be no more military deferments for graduate school—except for the Class of 1966 entering law school, which would be allowed to graduate.

"So I and a lot of other people elected to go to law school because we wanted three years to decide. Of course, everyone was hoping the war was going to end and this whole thing was going to go away."

At the largest U.S. law school, the young man from a cosmopolitan but insular world came to know people from all over the country. He was so taken with the diverse student body that he would spend part of every summer driving cross country.

As he began work with a Los Angeles firm, he got a call from a friend that changed his life: The Justice Department in the Nixon administration was putting together a special department to work on the "abysmal civil rights record they had in education."

He got a year's leave from his firm, but ultimately stayed in Washington, D.C. for four.

At the DOJ, he was detailed to a special task force to deal with desegregation in the South. There, he was able to put to the test a theory that he and others had devised in Boston.

"*Brown II* had urged 'all deliberate speed,' but it went case by case; Texas alone had 1,500 school districts. So we lit-

igated a theory in Georgia that we had in Massachusetts. Our theory was [based on the fact that when you] sue for an injunction, that binds not only the party you sue, but all those in active concert and participation with them. So we sued the Georgia State Department of Education and got an injunction against discriminatory practices. But then we said, 'Guess what? Every school district is in active concert and participation with you.' So we got every school district in Georgia under court order, with one case."

The shoe-leather work followed: developing multiple district plans and fighting community resistance. They spent a lot of time finding the quiet community leaders who could make a persuasive difference.

McAuliffe's time at Justice was also marked by work he did on the infamous Pentagon Papers case.

He and other Justice lawyers had been drafted to write briefs for the Solicitor General's Office, following massive defections after what came to be known as the "Saturday Night Massacre." (The night that special prosecutor Archibald Cox was fired—Oct. 20, 1973. As Cox investigated the 1972 Watergate Hotel break-in, President Richard Nixon ordered Attorney General Elliott Richardson to fire Cox. Richardson refused, and resigned in protest. Nixon then ordered Deputy Attorney General William French Smith to fire Cox; he refused and was fired by Nixon. Ultimately, Solicitor General Robert Bork, as acting head of the Justice Department, fired Cox.)

In Pentagon Papers, the issue arose as to whether the government should seek an injunction against the *New York Times* and the *Washington Post* as they sought to publish a government report on the planning and policy decisions regarding the Vietnam War.

"I hauled off and wrote this memo," recalls McAuliffe, "saying, This has got to be the dumbest thing I've ever seen this government do; you're not going to win, you don't deserve to win, *Near v. Minnesota* is just absolutely goddamn clear. We're not talking about troop movements here; we're talking about stuff that happened 8, 9, 10 years ago."

His memo suggested instead that the government prosecute the leakers, if they were found, based on a violation of signed secrecy agreements.

Soon, he was called by John Ehrlichman, counsel and assistant to the President: "I want you in my office."

The president's lawyer did not talk about the prior restraint issue. But he was interested in the theory that the leaker could be prosecuted. After that, McAuliffe got the chance to prove it, when he prosecuted a former CIA analyst who had written a book that divulged secrets.

As McAuliffe says, that was one time it paid off being stubborn and outspoken.

In D.C., McAuliffe and his then-wife had a daughter, Kelly, his only child. As they decided where to live, his spouse insisted that Los Angeles would not be their home.

A friend sold the young couple on Phoenix. It had the wide open space and a lack of harsh winters that he preferred, and it was known as a good place to raise a family. They arrived in early 1973.

Colleagues and friends admire the busy man.

Barb Dawson, a partner at Snell & Wilmer, says McAuliffe has always been "a wonderful mentor and teacher" from the time she began there as an associate. She praises how straightforward he is and says that he remains a great "safety net" for all those he mentors and works with. "He has all the other lawyers' best interests at heart."

Partner Jim Condo adds that for a man of such broad knowledge, McAuliffe is "very open and interested in new ideas." Condo thinks that openness will lead to improved professionalism and Bar services.

Snell managing partner John Bouma agrees: "Dan has no preconceived notions. He listens well and is blessed with intelligence and common sense. That will carry him a long way."

Ken Sherk, a director at Fennemore Craig, appreciates that McAuliffe is both "a very cerebral guy, and how down-to-earth he is. We're lucky to have him as the incoming president."

Condo laughs when asked about

McAuliffe's notoriously high expectations and his—um—straightforward manner of expressing displeasure.

"Dan does not suffer fools gladly," says Condo. "He has high expectations of himself and he expects that others will strive to be the best they can be."

Many point to McAuliffe's "tremendous sense of humor," as Dawson puts it. "He has a contagious if not alarming laugh." Paired with McAuliffe's "vast store of trivia," the humor, says Condo, can serve to disarm tense situations and put people at ease.

Paul Eckstein, at Perkins Coie Brown & Bain, admires McAuliffe's "flexible mind. He's always willing to reconsider his position." Eckstein appreciates how open McAuliffe is to new ideas, as well as what a "prodigious worker" he is. "For many people, it would be a full-time occupation" putting together and maintaining his scholarly books, the *Arizona Civil Rules Handbook* and *Arizona Civil Trial Practice*, among others.

Ken Sherk agrees. He calls the writing McAuliffe has done "painstaking." "Writing a book on the rules is not like writing a novel; he's got to be right on that stuff."

Peter Baird, at Lewis and Roca, marvels at McAuliffe's productivity and calls him "one of those round-the-clock guys." He adds that McAuliffe is not afraid to speak his mind, and that there is perhaps no one else who has given as much in Bar service.

"I think he'll be a great Bar President. Dan is a true, honest-to-God, get-down and do the rub-a-dub work that is absolutely essential for the Bar. And I can't think of anybody better for that job."

Attorney Mark Harrison sees McAuliffe often as they walk through their shared neighborhood. And he uses the opportunity to speak frankly about the lawyer regulation process and how it should be changed.

"We frequently disagree. Dan is a very strong-minded guy. I tease him all the time: 'Often wrong, but never in doubt.' He's got a good sense of humor. He has a short fuse, but if persuaded he was wrong, I've seen him change his mind."

"He's very thorough and very careful, and he manifests all the best qualities of good lawyers. He has a low threshold for people who aren't careful and don't think things through and don't exhibit that kind of detailed commitment." Harrison expects that McAuliffe's commitment to quality will be contagious.

Get McAuliffe talking about the practice of law, and especially the practice at Snell, and he is most animated as he speaks of professionalism, the ethical practice of an honorable trade.

And why not? This is the man who has written the seminal works on the subject that guide virtually all Arizona lawyers, including the *Arizona Legal Ethics Handbook*.

At the firm, he is the chair of "the second-most powerful committee," the ethics committee. In that role, he interacts with all of the firm's lawyers and has an effect on practice and culture. The firm says that it was the first to have such a committee, which was established in 1979.

"Snell is a firm that has a culture which assures you that you will never be ashamed to go to work in the morning," says McAuliffe. "You will never have to be worried if you have a professional problem. The firm's never going to ask you to cut a corner."

It occurs to a listener that the certainty of an ethical practice is a balm to an impatient man. Where that trait in others could lead to the cutting of corners, in McAuliffe, it leads to the opposite: a deep and abiding sense that no lawyer, especially a new one, should be dangled over uncertain ethical waters. In McAuliffe, the demand for certainty yields a remarkable focus on the imperative of mentoring. The man who describes himself as a "frustrated teacher" seeks to take pressure off the shoulders of other lawyers. Compassion born of impatience, but compassion nonetheless.

McAuliffe continues: "I've seen too many young lawyers elsewhere who are told to do things that are just wrong, unethical. That won't happen here. It's the legacy of Mark Wilmer. I like to think it's the legacy of me and John Bouma and a

bunch of others. We instill that from the day you start here. We have zero tolerance for unethical behavior."

Ethical behavior will be a natural focus of McAuliffe's in his year as president.

He thinks the Lawyer Regulation Department does well in its work, but he wants to ensure that the Bar is "going after the worst cases hell-bent for leather," not expending valuable resources on lesser matters.

He wants members to know the great value they get in "the discipline side of the house." He says that the work attorneys do faces a serious threat—in proposals to remove lawyer regulation from the State Bar's purview.

"We can't be beholden to people who are going to compromise our ability to protect the interests of our clients. To me, that's essential. If we lose self-regulation, we lose lawyer independence. And lawyer independence is the secret to a civilized society."

McAuliffe says his year will focus on the members.

"The theme of the year is going to be 'This one's for you.'"

He suggests it's time for "a healthy reevaluation" of what the membership want from the Bar. He believes lawyers want assistance running their practices, maybe better CLE offerings and law office management support. Besides that, he says one of his goals is to get a lawyer referral service up and running.

Finally, he points to development of the Bar Leadership Institute, in its formative stages, as a goal. Overall, he says, the Bar has done "terrible" in regard to gender and racial diversity. "I don't think we've done a good job at all." The BLI, he says, will help generate Bar leaders for years to come. McAuliffe says he understands there is a pipeline issue, with insufficient numbers of diverse high school and college students being encouraged into the legal profession. But "I really don't want to wait until we solve the pipeline issue before we start developing leaders here."

McAuliffe expects great things from his Bar, and it's time to get moving. 