One Man Band

BY DAVID HOPPE

When he was a senior in high school, in Syracuse, N.Y., Will McAuliffe played Jean Valjean in a production of *Les Misérables*. An epic-scale character, Jean Valjean is a convict who spends a considerable part of his life in prison for stealing a loaf of bread. When he is finally released, Valjean steals from a bishop who has offered him shelter. But instead of seeking revenge, the bishop turns the other cheek and shows Valjean a quality of mercy that will change the thief’s life.

“I think it teaches some important lessons of mercy, compassion and an ability to reform,” McAuliffe says. “I’m certainly not suggesting that capital crimes are on par with stealing a loaf of bread, as in *Les Mis*, but there’s something to remembering the human element in all this that gets lost sometimes.”

Today, McAuliffe is in Indianapolis. This is the home he’s chosen for himself after graduating last year from the University of Notre Dame — although “home” may be putting too fine a point on McAuliffe’s situation. Indianapolis is really a base of operations, the place McAuliffe lives while he engages in a one-man campaign to change the way Hoosiers think about the death penalty.

Path to activism

McAuliffe’s path to activism began in the political science department at Notre Dame. There was never, he says, an epiphany regarding capital punishment. There was, rather, a process of inquiry and discussion that led McAuliffe to a life-clarifying conclusion: Capital punishment doesn’t work.

“I saw this as an issue because it doesn’t make sense as a government program,” McAuliffe says matter-of-factly. “It’s one of the few government programs that is an act of commission.”

According to McAuliffe, most government programs are designed to address social omissions — areas like poverty or homelessness — where it can be said that government isn’t doing enough or spending enough money. Capital punishment, McAuliffe says, “is the one issue that is unique in that the government is carrying it out from start to finish.”

Where many arguments about the death penalty revolve around the moral issue of whether the government should award its right to take the lives of certain citizens, McAuliffe takes a different tack. For him, the death penalty is nothing more than another government program. And as government programs go, McAuliffe finds it wanting.

“It hasn’t proven to do anything,” he says. “We spend about 40 percent more on it than it would cost to imprison somebody for the entirety of their life. What are we getting for that? There are no conclusive results. Capital punishment gets the least scrutiny and honest discussion by society as a whole.”

McAuliffe believes this lack of scrutiny is due, in part, to the perverse coupling of an elongated judicial process — it takes, on
average, 12.5 years for capital cases to run a gauntlet of appeals before finally arriving at the death chamber door — and a society with a short attention span.

“We need to look at it and ask, what are we paying for? What are we getting?”

What works

Before graduating from Notre Dame, McAuliffe started a discussion group to explore the death penalty as an instrument of government policy. The Notre Dame culture, with its tendencies toward a pro-life ethic and fiscal conservatism, provided what McAuliffe calls “an interesting proving ground” for this exercise.

The group adopted certain ground rules from the outset.

“Let’s not talk about this as right or wrong or black or white,” McAuliffe says, recalling those meetings. “Let’s talk about individ issues. Let’s talk about the racial disparity in sentencing. You’re three times as likely to be sentenced to death if you kill a whi person than if you kill a black person. Are we OK with a system that ends up with that result? Why are we paying so much mo for something, rather than imprisoning someone for the entirety of their life?”

Although Notre Dame is known for including a moral dimension in its curriculum, McAuliffe says he learned to avoid a moraliz approach.

“If you can figure out how to think about something in an accessible way that doesn’t judge people for their stance, that’s wha works.”

Matt Storin is a professor in Notre Dame’s journalism program. A former ND spokesperson and Boston Globe editor, Storin observed McAuliffe in action and got to know him.

“For a senior in college, Will was very sophisticated about politics and also more articulate than most,” Storin wrote in an e-m: “His efforts stand out.”

Getting people to talk

“I thought I had an idea about how to do things differently — in a way that’s not being discussed,” McAuliffe says of his decisi to devote his first years out of college to advocating for a moratorium on the death penalty in Indiana.

For McAuliffe, advocating for a death penalty moratorium rather than total abolition simply makes sense. First of all, it’s a way keeping the conversation going. It is also an idea that most Hoosiers — 61 percent — favor.

“People have doubts,” McAuliffe says. “Abolition is about certainty. Moratorium resides in the realm of doubt.”

McAuliffe denies that a moratorium is really a backdoor way to abolish capital punishment. Rather, he says, “It’s a way of givi people a chance to learn what’s being done on their behalf. What I’m ultimately striving for is a larger public discussion of this the form of a moratorium on execution coupled with a study commission with representatives from victims’ families, the law enforcement community, the political community, academics, social organizations — everyone with a stake in our justice system.

“The road to that involves getting people to talk — which is democracy. That’s exciting.”
Moving to Indianapolis

That road also involved moving from the relative comfort of Notre Dame’s South Bend campus to Indianapolis. At a time when many of McAuliffe’s peers were thinking about enrolling in graduate school or finding 9 to 5 jobs, McAuliffe was dedicating himself to testing the proposition that one person can make a difference.

“As to what motivates him,” Storin says, “I can only say that [Will] fits a pattern among Notre Dame students. Not all of them by any means. But there is a great emphasis here on service to community and, depending on their personal situations, including such realities as student loans, a number of students want to go this route, at least for a few years.”

McAuliffe met with his family in Syracuse. McAuliffe’s father is an attorney and his mother teaches Montessori preschool and kindergarten. The McAuliffe family table is a place where Will, his sister, mom and dad gather to test ideas. Needless to say, they had a lot to talk about.

“Thank God for them,” McAuliffe says of his parents, “because they’re so supportive. They were very encouraging while asking the questions that needed to be asked. And they would ask them not as a challenge, but so I wouldn’t fall on my face.”

Upon graduation, McAuliffe received a small trust fund from his grandparents. “I said, I think I know what I want to invest it in, he recalls. INCASE, the Indiana Coalition Acting to Suspend Executions, was born.

Paying the bills

McAuliffe moved into a small apartment on North Pennsylvania Street in September 2007. Since then his life has been about multitasking: creating an effective and informative Web site, www.indianacase.org; writing nonprofit bylaws and getting INCAS incorporated as a 501(c)(3); and recruiting board members.

“A lot of what I’ve been doing is going to people and asking what they think. That’s a constant process,” McAuliffe says.

Fortunately, Indianapolis has proven to be remarkably accessible to a newcomer. “It’s not a city where people don’t have five minutes for you. The most encouraging thing has been the willingness and candidness of people who have talked to me.”

McAuliffe has set himself a number of goals. At the moment, his main thrust is to act as a viable source of information on the death penalty for the public, the media and policymakers. Other, related goals involve establishing an education component for INCASE, providing people with the appropriate tools they need to talk about death penalty issues; organizing people to support the moratorium idea; and, finally, lobbying state legislators to put a moratorium on the Statehouse agenda.

“I have to prove myself,” McAuliffe admits.

At the moment, he is learning the ropes of fund raising. In addition to his own limited funds, he has succeeded in getting financial support from a number of his former professors and, most notably, from actor and activist Cameron Mannheim.

While encouraging, these contributions fall far short of what’s needed to assure INCASE’s staying power.

“Things take longer and cost more than you initially plan, and that’s a real world constant,” McAuliffe says about what he’s learned so far. His college friends, he says, sometimes ask him what it’s like being on his own, without the imposed structure provided by life on campus.

“You still have tests, but they’re called bills. It’s a pass/fail test every month. So far, I’m passing.”

McAuliffe’s Storin calls what McAuliffe is doing a “rather lonely role he’s cut out for himself.” But McAuliffe remains upbeat, if
somewhat chastened by the scale of the challenge he’s set for himself.

“Being able to accept there’s only so much you can do in a day can be discouraging. But learning how to do things more effectively and efficiently is a lesson I’m learning every day, and as I get used to that it becomes less discouraging and more an acceptance of being human.”

How long is he prepared to soldier on? McAuliffe says he is committed to working for a death penalty moratorium at least until 2010, when he would like to enter law school. By that time he would like to see INCASE as a self-sustaining organization with base of donors and a solid board of directors, known as a provider of worthwhile programs that facilitate constructive discussion about the death penalty and as a resource for the media and state legislators.

What justice is

Whether or not the death penalty is doing what we think it should — acting as a deterrent to lethal crimes and serving as a just punishment for heinous acts — is an issue McAuliffe wants people to think and, more importantly, talk about.

“I don’t know what my work will be able to achieve but, at the very least, I think I can make a contribution in helping people know how to discuss the death penalty in ways that aren’t right or wrong,” McAuliffe says. “I can provide facts. I can provide analysis of reports. My contribution can be to help people talk about this in a way that’s real, that matters.”

The lives of potentially innocent people are at stake. But that’s not what McAuliffe bases his work on. “I go at this with the assumption that everybody’s guilty. That’s not always true — in Indiana alone we’ve exonerated two individuals on Death Row. But, at the same time, you can’t be waiting for that cathartic moment.

“Even if everybody is guilty, our system still isn’t working. This is about a system and about what we, as a people, do after a crime is committed. It’s about what we do in figuring out what justice is and how we go after it.”

McAuliffe says that if the death penalty could be shown to create probable deterrence, he would have no problem supporting it. But, as things stand now, no one can demonstrate with any certainty that this is true. In the meantime, Indiana perpetuates a form of punishment that, at best, is inefficient as well as expensive.

“We spend money on the death penalty, but there are so many preventive measures we could be investing in: education, child welfare, counseling for victim’s families or boots on the ground that really serve as a deterrent.

“I’m not comfortable being a citizen in a society with a process that has these flaws, costs us money and hasn’t proven to do anything,” McAuliffe says. “I don’t want the government to just keep rolling with it because that’s what we’ve done before.”

Polling may indicate most Hoosiers agree that a moratorium on the death penalty is a good idea, but the temptation to maintain the status quo regarding an issue people would rather not think about is powerful. Pushing through that inertia is what McAuliffe wants to do. “Politics,” he says, “is an organized discussion.”

In this case, a discussion that McAuliffe hopes might lead to suspending the death penalty in his adopted state. But, he says, “It’s up to Indiana to decide.”

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Will McAuliffe
Organization: INCASE (Indiana Coalition Acting to Suspend Executions; www.indianacase.org)

Born: April 13, 1985

Major: Notre Dame Class of ’07; political science

What are you reading? Predictably Irrational by Dan Ariely, The Nine by Jeffrey Toobin

What do you do in your free time? I’ll let you know when I have some.

Long-term career vision? Working with the government to tackle difficult social issues.

What if you succeed in your quest? I will take a week off.

Will McCauliffe speaks

Will McAuliffe will participate in an interactive roundtable discussion sponsored by The Indy Artists’ Peace Project, “Abolishing the Death Penalty,” to be held at the Nora branch public library Monday, July 7 at 7 p.m. Other panelists will include Chris Hit Bradley of the Indiana Information Center on the Abolition of Capital Punishment and Richard Kammen, a local attorney who has worked on several Indiana death penalty cases. Jeff Matheus and Michelle Gussow will moderate. Admission is free; the Nora branch is located at 8635 Guilford Ave. For more information, e-mail indyartists@aol.com or phone 317-255-0673.

Facts and figures

• Over 1,100 people have been executed in the United States since 1976.

• Nineteen people have been executed in Indiana since 1977.

• There are 12 people currently sentenced to death in Indiana.

• Two people in Indiana, Larry Hicks and Charles Smith, have been exonerated of their crimes and released from Death Row. Hicks was two weeks away from his scheduled execution when he happened to meet a lawyer who was able to help him receive a stay. Smith was just three days away from his scheduled execution at one point during his appeals process.

• Sixty-one percent of Hoosiers support a moratorium on executions.

• One hundred and twenty-three people in the U.S. have been exonerated from Death Row since 1976.

• Although investigations and appeals for innocence officially end after execution, the Northwestern University Bluhm Legal Clinic estimates that at least 39 innocent people have been executed in the United States.

indianacase.org, aclu.org, deathpenaltyinfo.org

Landmark Cases

1973
Furman vs. State of Georgia: The U.S. Supreme Court ruled 5 to 4 that existing death penalty laws were unconstitutional (specifically that they constituted cruel and unusual punishment) largely because they were carried out arbitrarily. The sentences of all 629 people on Death Row were commuted and an effective moratorium was issued on the death penalty across the country as states re-evaluated their laws.

1976
Gregg vs. State of Georgia: U.S. Supreme Court approved the new laws in Georgia, Florida and Texas as constitutional, thus reinstating the death penalty and ushering in the capital punishment system of today.

1977
Indiana passed its own new death penalty laws in line with those that the Supreme Court had approved in Gregg vs. Georgia. The new laws made specific crimes “capital crimes,” which meant they could bring the death penalty. They also established a list of nine “aggravating circumstances” that must be present for the death penalty to be used.

Illinois Moratorium
In 2000, former Illinois Gov. George Ryan issued a moratorium on the state’s death penalty, calling it a system “fraught with error” in reference to just how close the state came to executing innocent people.

At the time, 13 people on Death Row had been exonerated since the state reinstated the death penalty in 1977, which is more than the number of people the state has executed in that same period (12), giving the state the highest rate of overturned capital convictions in the country.

One of the most famous of these cases and one that heavily influenced Ryan was that of Anthony Porter, who was exonerated just days before he was sentenced to die. Porter had been in prison for 14 years for the 1982 murder of two teenagers, but the work of investigative journalism students at Northwestern University and their professor David Protess found that another man, Alstory Simon, actually committed the crime.

Four other Death Row inmates were freed due, at least in part, to the work of Protess and his students.

In a statement at the time of the moratorium, Ryan called the state’s responsibility for taking an innocent life “the ultimate nightmare,” adding that he would not allow anyone to be executed until he felt certain that everyone sentenced to death in his state was actually guilty. The governor, a Republican, also said that he still supported the death penalty in response to certain crimes.

Just before leaving office in 2003, Ryan commuted the sentences of 167 death row inmates to life in prison and pardoned four other inmates, who were part of a group known as the Death Row 10, a group of inmates that claimed they were coerced by police torture into making confessions.

Ryan’s successor, Democrat Rod Blagojevich, continued the moratorium, though he too said he supports capital punishment.

The state has made sweeping reforms to its death penalty system since then, but Blagojevich has not given any indication he plans to lift the moratorium in the near future.

Currently, the state has 14 people on Death Row. Unless a gubernatorial order is issued overturning the moratorium, they will actually receive life in prison.

Problems with eyewitness testimony
According to the American Psychological Association, flawed eyewitness testimony played a prominent role in more than 78 percent of overturned convictions, but sometimes it’s the only solid evidence in a case. In the absence of irrefutable evidence such as DNA, juries must rely on eyewitness accounts as the only reliable evidence, and it often makes the difference between a conviction and an acquittal.
One major problem with this, as University of California, Irvine and University of Washington professor Elizabeth Loftus explains in her book Eyewitness Testimony, is that memory is far from infallible. She points out that the mind does not store information and call it back up on command like the hard drive of a computer. Rather, the information that does find its way into a person’s psyche is constantly being added to and altered by new information. Therefore, the amount of time (and subsequently, information) that passes between the crime and the event of identification increases the likelihood that a witness will make a false identification.

The Innocence Project, a New York City-based organization that works to overturn false convictions, suggests that the solution to this problem is not to eliminate the use of eyewitness testimony in trials, which is still valuable to the justice system despite shortcomings, but instead to reform the identification procedures commonly used in law enforcement. Field research has suggested that adopting standards such as double blind, sequential lineups can improve the chances of a correct identification.

In a double-blind lineup, neither the witness nor the administering officer is aware of who the suspect in a lineup is, eliminating unintentional "cues" given by the administrator, which might influence the witness’ identification in some way.

Furthermore, the use of a sequential lineup, when members of a lineup appear separately, rather than a simultaneous lineup, when the suspect and the “fillers” appear all at once, is also an effective way to decrease the likelihood of false identifications. Furthermore, a statement prepared by the witness immediately after an identification is made that expresses the level of confidence they have in their choice can also be an effective trial tool.

Still, opposition to eyewitness identification reform has surfaced, usually in the form of prosecutors who feel that such measures inhibit their investigations. This group often quotes a field study performed in Illinois, which found that traditional methods of identification were more effective than the suggested reform procedures. However, some experts, such as Iowa State University professor Gary L. Wells, have refuted the findings of the study, questioning its methods and calling it “unscientific.” They point instead to another, similar study performed in Minnesota, the findings of which support the reforms identified by the Innocence Project. Until such reforms can be adopted, the risk of wrongful convictions remains.