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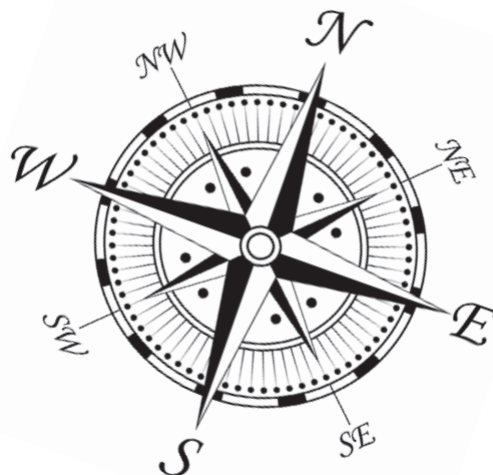
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# CommonWealth

**EDITOR** Bruce Mohl

[bmohl@massinc.org](mailto:bmohl@massinc.org) | 617.742.6800 ext. 105

**EXECUTIVE EDITOR** Michael Jonas

[mjonas@massinc.org](mailto:mjonas@massinc.org) | 617.742.6800 ext. 124

**SENIOR ASSOCIATE EDITOR** Gabrielle Gurley

[ggurley@massinc.org](mailto:ggurley@massinc.org) | 617.742.6800 ext. 142

**ASSOCIATE EDITOR** Paul McMorrow

[pmmcorrow@massinc.org](mailto:pmmcorrow@massinc.org) | 617.742.6800 ext. 155

**SENIOR INVESTIGATIVE REPORTER** Jack Sullivan

[jsullivan@massinc.org](mailto:jsullivan@massinc.org) | 617.742.6800 ext. 123

**ART DIRECTOR** Heather Hartshorn

**CONTRIBUTING WRITERS** Dave Denison,

Colman M. Herman, Phil Primack, Robert David Sullivan

**WASHINGTON CORRESPONDENT** Shawn Zeller

**EDITORIAL ADVISORS** Mary Jo Meisner, Daniel Okrent

**INTERNS** Adam Sennott, Alyssa Martino, David Ullman,

Yuxiao Yuan, Fritha Wright, Greta Musacchio

**PUBLISHER** Gregory Torres

[gtorres@massinc.org](mailto:gtorres@massinc.org) | 617.742.6800 ext. 103

**SPONSORSHIP, ADVERTISING & CIRCULATION** Caroline Palmer

[cpalmer@massinc.org](mailto:cpalmer@massinc.org) | 617.742.6800 ext. 145

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## DEPARTMENTS

7 | **CORRESPONDENCE**

9 | **EDITOR'S NOTE**

11 | **INQUIRIES**

17 | **ONE ON ONE** Dr. Paula Johnson is trying to convince the medical and research establishment that men and women really are different. **BY BRUCE MOHL**

19 | **STATISTICALLY SIGNIFICANT** Massachusetts cities and towns are turning deeper shades of blue and red. **BY STEVE KOCZELA**

23 | **STATE OF THE STATES** Is a tax gas pegged to inflation a forever tax or a smart way to fund transportation? **BY JACK SULLIVAN**

25 | **WASHINGTON NOTEBOOK** For Susan Liss, the Bay State's former top lobbyist in Washington, the battle against e-cigarettes is personal. **BY SHAWN ZELLER**

## ARTICLES

28 | **CLEARING THE COPS** State and local police have shot and killed 73 people since 2002. In every closed case, district attorneys found the police were justified in using deadly force. **BY JACK SULLIVAN**

38 | **HEALING HEALTH CARE** Do two Boston doctors have the cure for a system that costs too much and delivers too little? **BY MICHAEL JONAS**

48 | **THE CHANGE AGENT** Boston's interim school superintendent wants to give every principal the power to fill any job opening with whomever they want. **BY BRUCE MOHL**

56 | **PUBLIC DEFENDER BLUES** Anuj Khetarpal struggles with low pay, long hours, and loads of student debt. He has lots of company. **BY GABRIELLE GURLEY**

## DISCUSSION

64 | **CONVERSATION** Wendy Kaminer and Liam Kerr offer an outsider's and an insider's perspective on the burgeoning role of "dark money" in campaigns. **BY PAUL McMORROW**

75 | **PERSEPECTIVES** Massport head Tom Glynn calls for deepening Boston Harbor to accommodate larger ships; Chad d'Entremont and Linda Noonan are developing a new education vision for the state; Mayors Lisa Wong of Fitchburg and Kimberley Driscoll of Salem say a new approach to education is needed in Gateway Cities.

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## WHY NO OLYMPIAN EFFORT ON RACIAL DIVERSITY?

Just after I read your Fall 2013 cover story, “No seat at the table,” an article appeared in the *Boston Globe* about an effort by business chieftains to explore bringing the Summer Olympics to Boston. We learned that the team has already recruited Mitt Romney as an advisor and a bevy of architects, engineers, and planners to look at potential sites and consider other issues involved in an Olympic bid. How, I wondered, can powerful leaders be galvanized to unite and work on one civic challenge while largely ignoring another, which, in the words of Thomas Saltonstall, has been “deleterious to our economy and damaging to Greater Boston’s people, communities, and reputation”?

The answer certainly does not reside in lack of documentation. Your article cites the *Globe*’s 1983 series of articles but there have been other reports, including one in 2007 by the Center for Women in Politics & Public Policy at the University of Massachusetts Boston that occasioned a *Globe* editorial and spawned the Commonwealth Compact. Despite the periodic reports, as Robert Harnais says about local law firms’ efforts at diversity, “something is clearly not working.”

What’s not working, I believe, is that existing leaders have not prioritized this issue. With so many employers, diversity in hiring is simply relegated to the back burner. “There aren’t enough qualified candidates” is one lament. The Great Recession is another explanation, but it can’t account for Boston chronically lagging way behind Fortune 500 companies and other major cities. Why have executive suites and boards diversified elsewhere while we’ve hardly made a dent in Boston in 30 years?

Where local efforts fall down is in not recognizing that changing organizations involves a cultural evolution with emotional dimensions. Decision-makers who want to measurably shift the composition of their organizations need to take time to engage their colleagues on it, just as a group has coalesced around the Summer Olympics effort. Facing attitudes about race, however, is demanding emotionally. We grow up playing sports but we don’t grow up knowing how to talk about racial issues.

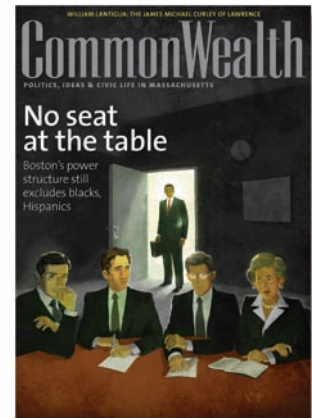
Mayor Marty Walsh has an opportunity to catalyze Boston organizations by virtue of his own journey toward greater racial awareness and the chance a new mayor gets to express his vision. In addition to appointing a chief diversity officer, I’d like to see him convene closed-door dialogues among high-level executives and board members from a variety of organizations—half people of color and half white—in which they candidly share challenges and successes they’ve experienced personally and professionally around racial issues. Executive pronouncements about commitment to diversity are essential but not enough. There’s no substitute for face-to-face dialogue to break stereotypes, create insight, build trust and generate solutions.

Jeff Stone  
Milton

Former director, City-Wide  
Dialogues on Boston’s Ethnic &  
Racial Diversity

## LETTER FROM THE MARGIN

Just as the Rev. Dr. Martin Luther King wrote a letter from a Birmingham jail in which he made the case for change in a hostile and segregated South, I am writing this letter from Boston’s margin calling for change in the city’s



power structure. Your article, “No Seat at the Table,” shows that Boston’s power structure, despite its support for diversity, still excludes blacks and Hispanics. Boston’s Mass High Tech Council, the Greater Boston Chamber of Commerce, Mass Bio, Boston’s hospitals, corporate boards, and law firms were all referenced in your article. We truly have some serious catchup work to do if we are to match other cities across this nation.

In spite of the challenge ahead, I am more focused, energized, and optimistic about our chances to improve the situation. The real question is do we have the will to make the substantive change that is required? If we think that continued evolution at our current pace is the answer to this problem, then I submit the answer is absolutely no. We need immediate change and results that demonstrate that the meter has actually moved. Hispanics, blacks, and Asians deserve a seat at the table in greater numbers.

Unlike Dr. King’s reference to the South, I am not suggesting that Boston is hostile, but I am making the case that we (blacks, Hispanics and Asians) are left out of the process. It feels the same way as segregation. For blacks, Hispanics, and Asians, gaining entrance to the Boston power structure is like pushing a rock up a hill with no end in sight. Even education, assimilation, private golf memberships, yachting, and other functions



still don't cut it. We are not invited into the power structure.

There needs to be an aggressive strategy of outreach, recruitment, cultivation, and placement. We need to increase the number of blacks, Hispanics, and women on corporate boards. We need to build a pipeline from the black, Hispanic, and Asian communities into the power structure rather than recycling the same few folks that were recommended by the existing power structure.

Massachusetts in general and Boston in particular are fascinating places to live and work, but the progress on diversity is far too slow and woefully inadequate. One of the best lessons I have learned from the Boston Red Sox is that they constantly scour the market for talent and if the talent is not there the team grows talent within its farm system. This is a win-win strategy. Being on the bench

or on the margin is no fun, but Boston needs blacks and Hispanics at the table in the power structure contributing and adding value. Our talents, skills, and contributions are too valuable to be wasted.

*Darnell L. Williams  
President/CEO, Urban League of  
Eastern Massachusetts*

## ON BOSTON'S PAST

Thanks to Michael Jonas for his review of Larry DiCara's memoir *Turmoil and Transition in Boston*. Not enough has been written about Boston's political and neighborhood history covering the last 50 years.

The desegregation of Boston schools by federal court order in 1974 and the events that followed were the most important and difficult part of our city's history in the past 100 years.

The period does not even get

called by the same name; one group refers to it as busing and the other as desegregation.

I think Anthony Lukas's *Common Ground* remains the monumental book about those events, but also about the race, class, and power issues that led to the events of those years.

We are fortunate that both Boston historian Jim Vrabel and long-term community leader Hubie Jones are at work on books about the history of the community issues of the 1960s through 1980s.

Those were times of great division, but there were people who stood up heroically then and since then to make our city a better place to live. We all can name our list of remaining unsolved issues, which are the challenges and opportunities before us.

*Lew Finfer  
Director, Massachusetts  
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## For the discriminating wonk

**PUBLIC POLICY AT** times can be very theoretical and dry, but this issue isn't like that at all. It draws you in with great writing and photography that helps you understand some of the biggest challenges facing our society today and the people who are trying to address them.

Our cover story, for example, focuses on police who use deadly force and how their actions are investigated. I wasn't sure what we'd find, but over the several months it took for Jack Sullivan to pull the story together I was amazed to learn that no one really tracks incidents of deadly force by police. I also learned how a relatively closed group of law enforcement officials makes the determination about whether deadly force was used properly. I wasn't surprised that most police shootings are deemed justified, but I was surprised that all of them are, even the ones where police obviously screwed up.

Michael Jonas tells the stories of two local medical pioneers who are trying to change the way health care is delivered in America. Forget the tech glitches with Obamacare that most of the press is fixated on, this is the real medical challenge facing the country. One line jumped out at me from the story. "The thing most needed in US health care is not more treatments or more money, but greater connection between patients and health care providers."

You'll also read about Anuj Khetarpal, who takes his job as a public defender very seriously even though the hours are long and the pay is small. Through Gabrielle Gurley's story on Khetarpal, you'll see how complicated it is for our state to provide quality legal representation for the poor and how difficult it is to rein in the rising cost.

John McDonough, the interim superintendent of the Boston Public Schools, is another fascinating character on the public policy stage. He's 62 and nearing retirement, but nevertheless pushing ahead with a fairly radical plan (for the Boston schools) to give principals the power to fill

job openings with whoever they want, even if it means shunting aside existing teachers who are owed jobs under the current teacher's contract.

Wendy Kaminer and Liam Kerr sit down with Paul McMorrow to talk about the so-called dark money flowing into political races. Kaminer's ideas are counterintuitive and intriguing. She says the problem isn't outside money, but outside money with its source unknown. She says the answer to the Citizens United court decision isn't a crackdown on outside money, but removal of the cap on individual contributions to political candidates. Kerr, meanwhile, is a voice worth listening to. He's an outside money man who is

**This issue explores everything from health care to teachers, dark money to deadly force.**

nevertheless worried about all the outside money flowing into political campaigns across the country.

Let's not forget Dr. Paula Johnson, who is trying to convince the medical and research establishment that men really are different from women, and Susan Liss, who is leading a crusade against e-cigarettes in Washington.

And then there is Steve Koczela, the head of the MassINC Polling Group. Steve was scrubbing election data from the last 40 years and discovered something unexpected was going on inside Massachusetts. While the state shows up on national political maps as reliably blue (for Democrat), cities and towns across Massachusetts are becoming increasingly polarized. Red municipalities are getting redder and the blue ones are getting bluer. A community that will go for a Democrat in one election and a Republican in the next is becoming rarer and rarer. Think on that. **CW**

*Bruce Mohl*

**BRUCE MOHL**



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# inquiries

## BRA lawyers don't do eminent domain

The Boston Redevelopment Authority has eight attorneys on staff, but apparently none of them are qualified to do eminent domain work.

Records indicate the agency farms out the eminent domain work to James Masterman of the law firm of Greenberg Traurig, who bills the BRA \$385 an hour. On two cases, the agency paid the firm \$252,000 in legal fees plus over \$28,000 in expenses, according to records obtained in August and September.

BRA Director Peter Meade and general counsel Kevin Morrison declined repeated requests to discuss their outsourced legal work. Herbert Gleason, a former chief city attorney reviewed the resumes of the on-staff attorneys and concluded they lack the skills to handle any cases that depend on the valuation of property.

"The BRA should have trained their own inside attorneys to do this kind of work years ago so they wouldn't have to shell out so much in legal fees now," said Gleason, who passed away in December.

The BRA paid Greenberg Traurig \$91,000 in legal fees to renegotiate a deal with the Boston Red Sox that would close off the portion of Yawkey Way abutting Fenway Park on game days for use as a food and entertainment court and maintain the Green Monster seats in the air space over Lansdowne Street.

The BRA also paid Greenberg Traurig \$161,000 in legal fees for an eminent domain case involving the taking of two properties in Roxbury's Dudley Square as part of the city's plan to revitalize the area and move city departments there.

► COLMAN H. HERMAN

## Lawrence school receiver cuts central office staff by 30%

► MICHAEL JONAS

**TWO YEARS AGO**, when Jeff Riley was put in charge of Lawrence's failing school system under a new state law, he made a surprising declaration for someone who had just been handed broad authority over virtually every aspect of the district's operation: He was not planning to use those powers as a state-appointed "receiver" to impose a sweeping plan on Lawrence from the central school office and then micromanage every aspect of its implementation.

Instead, Riley said he was coming to Lawrence in order help its schools take charge of their own turnaround, with the district administration there to play a supporting role, not to dictate everything in a command-and-control structure.

"This idea that I'm going to come in and suddenly be Darth Vader and everyone has to march in lockstep—this one-size-fits-all, blanket approach that we've seen over and over in urban education reform doesn't work," Riley said at the time ("High-stakes test," *CW*, Fall 2012).

As part of his vow to decentralize authority in Lawrence, Riley said he wanted to shrink the size of the central office and push more resources into schools.

### SAVINGS GO TO SCHOOLS.

Now, he's followed through on that. Since last spring, the central administration office in Lawrence has shed nearly 30 percent of its positions, down from 95 people to 65 to 70, says Riley. With that, he has pushed \$1.6 million of the savings into the schools to help fund, among other things, the added school hours that all students in grades 1-8 are getting this year.

"I've worked in large bureaucratic school systems, and I always felt the resources were better spent at the school level," says Riley, a former Boston school administrator. Riley says seven or eight administrators were laid off, while the rest of the positions were eliminated through retirements or by having those personnel move back to school-based positions.

In shifting some of savings to schools, he was able to help fund the added hours in Lawrence schools as well as support enrichment activities. Those include everything from musical theater to debate teams and swimming programs. "Things that suburban kids take for granted but my kids don't always have access to," says Riley. "Things that don't always show up on the MCAS, but I think are essential in life."

Riley says a well-rounded school experience must include more than just core academics. But raising student achievement is nonetheless the first order of business in Lawrence, the first—and so far only—Massachusetts district put in receivership under a 2010 education reform law that allows





"I always felt the resources were better spent at the school level," says Jeff Riley, the state-appointed receiver of the Lawrence schools.

the state to take over chronically underperforming school systems. In 2011, less than 30 percent of students were proficient in math and only about 41 percent tested proficient in English.

Scores from last year, the first under state receivership, were encouraging. Though English scores remained flat, math proficiency was up sharply, to 38 percent, the biggest growth recorded among any of the state's Gateway Cities. The district also saw a big jump in its graduation rate, from 52 percent to 61 percent, and a decrease in the drop-out rate.

Riley, a former Boston school principal, angered the Lawrence Teachers Union by using the receivership powers to review every teacher's performance when he took over in 2011. Riley has the authority to trump most provisions of the existing teachers' contract, and about 10 percent of the teaching force was let go following the reviews. The teachers union has two unfair labor practice filings pending with the state Labor Relations Board, and is supporting legislation on Beacon Hill that would restore some of the collective bargaining rights taken away by the receivership.

But Riley was much more aggressive in making change among school principals, with nearly half of the city's

principals replaced. "I think a lot the problem was leadership," Riley says of the district's woes.

School reform efforts have often adopted one of two contrasting approaches: a strong, top-down strategy overseen by a central office, or a highly decentralized approach. Proponents of the latter are sometimes called "relinquishers" because of their belief in handing full control over to individual school leaders.

Riley certainly leans in that direction, but he has favored a third approach. "We call what we're doing 'open architecture,'" he says, describing a more flexible model in which schools are accorded increasing degrees of autonomy from the central office based on their ability to deliver strong results.

As for the first year results under the turnaround plan, Riley sounds pleased but is guarded in making big claims. We are "cautiously optimistic," he says.

## DOR to taxpayers: Don't forget use tax

► ERIC TENCZAR

**REVENUE DEPARTMENT COMMISSIONER** Amy Pitter has three words for those still debating whether sales tax should be paid on Internet purchases: pay use tax.

Policymakers in Washington and on Beacon Hill may be split on whether out-of-state companies should be required to collect and remit sales tax on purchases made by Massachusetts residents. But Pitter says there is no dispute that Massachusetts residents are required to pay use taxes on purchases made out-of-state if the company selling the item doesn't collect the levy.

Under state law, any Massachusetts resident buying a taxable item online, by mail order, or out-of-state who

doesn't pay the 6.25 percent sales tax to the vendor is required to pay the equivalent amount in use tax on their tax return. The problem is most Massachusetts residents don't pay use taxes.

In the 2012 tax year, the state collected roughly \$3.5 million in use tax from individuals, which is under 2 percent of the estimated \$200 million in potential use tax owed.

Some taxpayers don't pay the use tax because they don't think they'll ever get caught, but Pitter thinks most people don't pay because they really don't understand how the use tax works.

## PEANUTS THAT ADD UP.

## ESTIMATING USE TAX

| ADJUSTED GROSS INCOME | USE TAX LIABILITY |
|-----------------------|-------------------|
| \$0 – \$25,000        | \$0               |
| \$25,001 – \$40,000   | \$20              |
| \$40,001 – \$60,000   | \$31              |
| \$60,001 – \$80,000   | \$44              |
| \$80,001 – \$100,000  | \$56              |

SOURCE: Massachusetts Department of Revenue

“People don’t want to be dishonest; they want to do the right thing,” Pitter says. “Sometimes they just need to be shown what to do.”

Pitter says she is considering different ways to bring greater awareness to the use tax over the next year, but emphasizes that she is not talking about raising new taxes but instead collecting taxes that are already owed.

The use tax is calculated two ways. People can either calculate their own use tax by saving receipts and totaling purchases, or they can pay a “safe harbor” use tax, an estimate of amount owed based on an individual’s adjusted gross income. As the accompanying chart shows, the use tax as a percent of adjusted gross income is well below 1 percent.

“It’s sort of peanuts, but it’s peanuts that add up,” Pitter says.

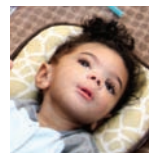
Verenda Smith, deputy director of the Federation of Tax Administrators, says she has spent over two decades brainstorming approaches to increase voluntary use tax reporting by residents across the country. Since people have grown up in an Internet era when shopping on the web was considered tax free, it’s not easy, she says. “You’re promoting a message that people don’t want to hear; it’s not free candy,” she says.

Massachusetts added a line for reporting use tax on individual tax returns in 2002, a move that increased the number of use tax payers from 200 in 2001 to 11,000 in 2002. As numbers plateaued, Massachusetts copied New Jersey by adding language on the tax form that specifically mentions Internet purchases as opposed to just out-of-state purchases. That move also increased the number of payers, and now state officials are looking at other ways to increase the number.

Brick-and-mortar retailers have been complaining for years about the unfairness of a system where they are at a competitive disadvantage because they are required to collect a sales tax while their out-of-state or Internet competitors don’t. Under a 1992 court ruling, out-of-state retailers only collect the sales tax if they have a temporary or permanent physical presence, such as a store or

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warehouse, within the customer's state. The rule has churned up battles between states and retailers across the country due to the lack of clarity in the description of what amounts to a "physical presence".

Starting November 1, Amazon began to collect sales tax from Massachusetts residents on their purchases from the company's website. The move is expected to bring in more than \$30 million in revenue for the state by the end of the fiscal year. Amazon currently collects sales tax on behalf of 16 states and that number will soon be growing. Over the past few years, Amazon has built warehouses or other company facilities in some states in return for deals postponing sales tax collections. Those deals are now reaching their expiration dates. According to New York law, Amazon is required to collect sales tax on purchases made through New York-based affiliates of the website. Amazon appealed to the US Supreme Court, but the court refused to hear the case.

In Washington, Congress has been unable to reach consensus on taxing Internet and out-of-state purchases. The Marketplace Fairness Act, proposed to Congress in 2011, would have given taxation power back to the states and given them the ability to require out-of-state retailers to collect taxes on purchases. The act, despite the backing of many states, has failed to make much progress.

## Post-coal decisions

► PAUL MCMORROW

**COAL-FIRED POWER PLANTS** are failing across Massachusetts. They're closing down because they can't compete with power plants that burn cheap natural gas. And as the coal plants close, communities are left wondering what to do with them. A fight has broken out in Salem over redeveloping that city's failed coal plant as a gas-fired power plant. In Somerset, residents and environmental advocates are warily eyeing Salem. They worry that Somerset's massive Brayton Point coal plant could follow Salem's example, and trade one fossil fuel for another, because nobody asks what else Brayton could be.

Brayton Point is New England's largest coal-fired power plant, but the Somerset power plant won't hold that title for much longer. The firm that took over Brayton late last year, Energy Capital Partners, has filed paperwork to leave the grid and shut down in mid-2017 ("The zombie coal plant," Fall 2013). Energy watchers believed that if any power plant could withstand the wave of cheap natural gas that's currently buffeting old-line coal plants, it



Brayton Point  
to close in 2017.

would have been Brayton. The plant's size (it's more than twice as large as Salem Harbor) means it runs more efficiently than the rest of New England's coal fleet. Brayton successfully bid into the 2016-17 energy auction of the region's power grid operator.

Coal provided 30 percent of Massachusetts's power in 2001, but in 2012 that figure was under 6 percent. Brayton joins Salem Harbor and Holyoke's Mount Tom in winding down operations; smaller coal plants across town, and in Connecticut, have already ceased operations. At Brayton, the question is what comes after coal. Battles at Salem Harbor, and across town at the shuttered Somerset Station plant, show that question can be a loaded one.

Richard Sullivan, the state's environmental secretary, chairs a committee the Legislature created to study redevelopment at closed or troubled coal plants. He sees his role as putting money and staffers behind efforts by cities and towns to move past coal power. "It's not the state dictating outcomes," Sullivan says. "We'll provide technical assistance, but, ultimately, it's going to be the community's plan."

In Salem, Sullivan's committee has lined up behind replacing the Salem Harbor coal plant with a natural gas-fired power plant. That bid has devolved into a nasty fight between the city's state rep and leading state environmental advocates.

Footprint Power, a New Jersey-based firm, plucked Salem Harbor off the scrap heap and proposed building a new natural gas power plant where the old coal plant stands. Salem officials, facing employment and property tax pressures, embraced the idea, but the Conservation Law Foundation is appealing state permits for the Footprint plant. Salem state Rep. John Keenan has retaliated by repeatedly inserting amendments favorable to the proposed Footprint plant in key State House bills. The CLF



has called those legislative maneuvers “unconstitutional and unconscionable.” The property looks destined for years of litigation.

Somerset Station, a smaller coal plant that sits upriver from Brayton Point, has been dark since early 2011, but it’s no closer to reuse. The plant’s first post-coal owner stripped it for scrap before letting it fall into foreclosure. Town officials beat back a 2011 citizen-led effort to rezone the Somerset Station plant for office and housing redevelopment, as they hoped for a resurgence in coal power that never materialized. So now the Somerset Station plant remains dark and padlocked, while Brayton Point, the much larger plant downriver, approaches a similar fate.

“We should be creating an environment where ideas are allowed to flourish, where we explore a variety of options,” argues Joel Wool, an organizer with Clean Water Action. Wool is part of a coalition of environmentalists who have been agitating against coal power in Massachusetts. Now, he’s pushing for a broad grassroots planning effort around Brayton Point’s future.

Wool worries that the longer Brayton goes without a redevelopment plan, the likelier Somerset is to follow Salem’s approach and trade one fossil fuel for another. Brayton’s new owners haven’t announced their plans for

the site after they stop burning coal, and the town hasn’t put any redevelopment ideas on the table. “It’s one thing to let the municipality decide,” Wool says, “but when a municipality only has one thing in mind, or doesn’t want to commit to an idea at all, it’s a problem.”

“What has the town been doing? Nothing. That’s what they’ve been doing,” says Pauline Rodrigues, who lives near the two Somerset coal plants. “We’ve been trying to say, look, we have to plan for the future. They’ve preferred to stick their heads in the sand and say Brayton won’t close, it’s too big to fail. Now they’re faced with it. We haven’t seen them do a thing.”

## South Coast Rail worries environmentalists

► GABRIELLE GURLEY

**SOUTH COAST RAIL**, which is already facing questions about its nearly \$2 billion cost, will also have to contend with environmental concerns about the impact of the rail

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**South Coast Rail would run from Boston to Fall River and New Bedford.**



line on endangered species and drinking water supplies.

Environmental groups so far have reserved judgment on the project itself, but only because state and federal officials have failed to provide much information on how they plan to reduce damage to wildlife and wetlands habitats as the line from Boston to New Bedford and Fall River follows the preferred Stoughton route through the Hockomock Swamp, the state's largest fresh water wetland.

The swamp, which straddles portions of Easton, Norton, Raynham, Taunton, and West Bridgewater, has been designated by the state as an area of critical environmental concern. Thirteen rare and endangered state-listed species, such as the blue-spotted salamander, Blanding's turtle, and eastern box turtle, live in the swamp. The area also supplies drinking water to towns in the region and provides billions of gallons of flood storage.

Priscilla Chapman of the Taunton River Watershed Association says she is disappointed that state officials have had so little to say publicly about the environmental impact of South Coast Rail. But she says she understands. "We know that this project is a high priority for the governor, and we know that state agencies work for the governor," she says.

One idea that MassDOT has proposed to help minimize impacts to the habitat is to run commuter rail trains across the swamp on a 1.5-mile elevated trestle with "critter crossings."

State officials will begin work on a comprehensive wetlands mitigation plan this year and the Army Corps of Engineers must review and accept that plan before federal

permits can be pursued, according to a MassDOT statement. Late last year, Richard Sullivan, the state secretary of energy and environmental affairs, issued a Massachusetts Environmental Policy Act certificate to kick off the state permitting process. The Department of Environmental Protection will prepare a final comprehensive mitigation plan once all state and federal permits are finalized.

In 2011, the EPA informed the Army Corps that "the proposed project may have a substantial and unacceptable impact on aquatic resources of national importance, which include, among others, the Hockomock Swamp." The EPA declined comment.

Trains ran through the swamp in the 1800s, but no one has done a study showing what the impact of those trains was on animals and plants, according to Chapman. "Nobody knew how many vernal pools were there before they built the railroad, what the populations of salamanders, turtles, and interior birds were," she says.

Trees have overgrown most of the old rail bed and a stream runs for about a half-mile where the tracks once were, according to Kyla Bennett, director of the Public Employees for Environmental Responsibility, a longtime opponent of the plan. Now it's "just a path through the woods," she says.

Tracts of Atlantic white cedar, globally rare trees that are sensitive to changes in water cycles, grow primarily on the west side of the old rail line now; for the most part, swamp red maple grows on the east side of the rail line. Chapman says the original rail line construction most likely disrupted water flows and the white cedars on the east side could not survive.

A Massachusetts Natural Heritage and Endangered Species Program fact sheet on Atlantic white cedar swamps notes that the two greatest threats to the wetlands are "land clearing" for development and disruptions to the water cycle caused by excavation and construction. "Due to the limited distribution of these unique [white cedar] communities," the fact sheet says, "it is recommended that no clearing or filling of these wetlands be allowed." About 12 acres of wetlands would be filled during the construction of the commuter rail project. **CW**

## SWAMP IS FOCUS OF CONCERN.

# Sex at the cellular level

Dr. Paula Johnson is trying to convince the nation's medical and research establishment that men and women really are different.

BY BRUCE MOHL | PHOTOGRAPH BY J. CAPPUCCIO

**What do you mean when you say every cell has a sex?** Men and women are different down to the cellular and molecular levels. You either have two X chromosomes, making you a female, or you have an X and a Y, making you a male. That is a fundamental biologic difference that makes men and women different. Those differences are expressed in every organ system.

**What kind of differences are you talking about?**

Women are 70 percent more likely to experience depression over their lifetimes. We also know that there are brain differences between men and women in the areas connected with mood. You can actually see the sex differences when you put men and women in a MRI scanner and you expose them to stressful images. Alzheimer's is also more common in women, and it's not just because women live longer. There is a difference in the way that men and women experience the disease. Heart disease is another good example.

**You're hosting a conference in Boston on March 3 on the 20th anniversary of the National Institutes of Health Revitalization Act. How does that law figure in?** That law made it mandatory that women and minorities be included in studies funded by the NIH. That was a game changer. Before then, women were not routinely included, nor were minorities.

**Are you saying that women are included in the studies now, but the bigger issue of sexual differences is still being ignored?** Exactly. Most studies still don't report outcomes by sex. Sixty-six percent of brain research that begins in animals is either performed in male animals or in animals whose sex is not identified.

**There was a 2010 report in the journal Science that said researchers typically use male mice in their experiments because males are cheaper and easier to work**

**with than females.** It's true. It's true. This sounds so absurd, but it's really true. This is what is happening today in modern science and medicine.

**Do you think it's happening because most researchers are men?** I don't think we can assume that if we just populate the field with more female investigators it would make a difference. It's the dominant culture of medicine and science that does not focus on these sex differences and we need to begin to transform the dominant culture.

**How do you do that?** Will it take a law? Will it take regulations? I'm not sure, but I can tell you it's got to be more than those of us making the rational arguments. The rational arguments haven't really turned the tide yet.

**You served on a panel assembled by the Institute of Medicine that recommended all forms of contraception be covered under the Affordable Care Act. Why?** It's very clear that the health impact of contraception is extremely positive for women. Being able to space your pregnancies has a very significant impact on the health and well-being of women.

**Were you surprised at the sometimes hostile reaction to the panel's recommendation?** The fact that there was such an outcry on birth control is a very unfortunate fact for our country. This isn't a political hot potato. One of every two pregnancies is unintended. Unintended pregnancy is an epidemic in our country. **CW**

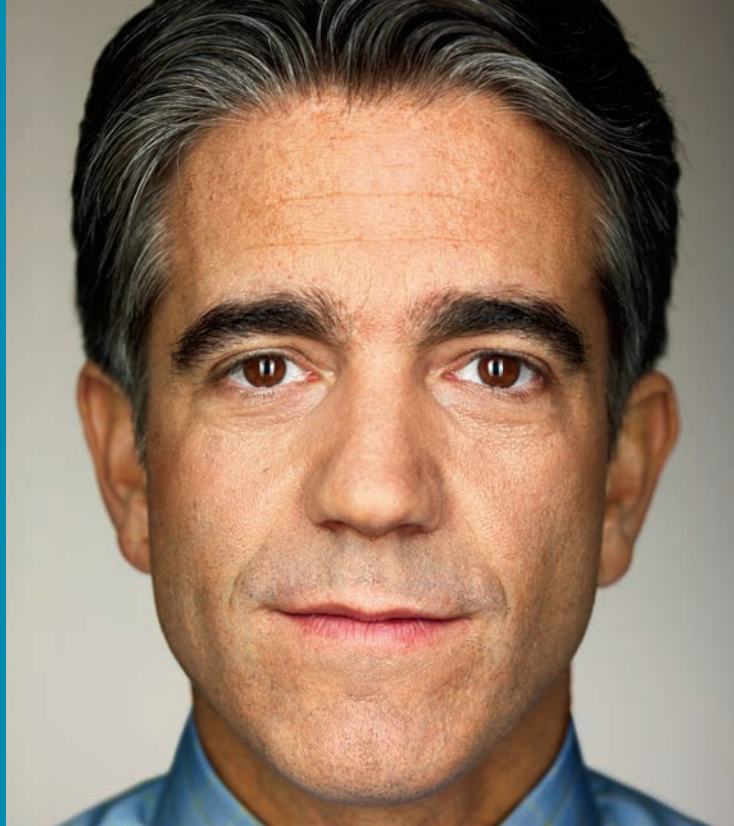
*Dr. Johnson runs the Connors Center for Women's Health and Gender Biology at Brigham and Women's Hospital, chairs the Boston Board of Health, and served on Mayor Marty Walsh's transition team.*





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# The blue-red color divide in Massachusetts

BY STEVE KOCZELA

**ON A NATIONAL** political map, Massachusetts is reliably blue, a Democratic stronghold. The congressional delegation is all Democrat, the State House is overwhelmingly Democrat, and every constitutional officer is a Democrat. While Republicans occasionally break through (Scott Brown's US Senate victory in 2010 or the string of Republican governors elected from 1990 through 2002), the default position of the state has been to vote Democratic.

But within the state a different type of phenomenon is occurring. Statewide voting data indicate Massachusetts is becoming more and more politically polarized at the city and town level. Blue Democratic towns are becoming bluer and red Republican towns are becoming redder. The middle ground, communities where the two parties battle for supremacy, is disappearing. Recent election outcomes are more and more the midpoint between two increasingly polarized voting blocs.

Political colors are also becoming more concentrated geographically within the state. Blue dominates in the western part of the state and in Greater Boston. Red dominates in central Massachusetts and north and south of Boston. Instead of a patchwork quilt of towns across the state voting Democrat or Republican, communities now seem to vote in political clusters. To win, candidates are driving up turnout in their own political strongholds rather than competing for votes in the smaller number of towns where the final margin is anywhere close to an even split.

To examine this phenomenon more closely, I looked at town-by-town voting results back to 1970 for all elections for US senator, governor, and president. Specifically, I looked at two-party-vote share, or the votes received by the Democrat and the Republican, with minor party and independent candidates excluded from the analysis.

Before 2010, 80 to 90 percent of Massachusetts cities and towns were within a predictable, 30-point range on either side of the overall state margin of victory in any particular race. The 30-point

range means that in a hypothetical election with a 10-point victory for the Democrat, most towns voted somewhere between a 40-point Democratic victory (the actual 10-point victory plus 30 points) and a 20-point victory for the Republican (30 points minus the actual 10-point loss). The 30-point cushion allows for some deeper red or deeper blue towns, but nothing too extreme either way. Prior to 2010, nearly all of the state's municipalities fit this pattern.

Since 2010, however, far fewer towns are within this predictable distance of the statewide margin, with more towns delivering massive wins for either the Democrat or the Republican. Overall, state results are now determined more by which campaign can drive up the margin on its own home turf, rather than real competition in towns that might go either way.

The number of municipalities within 30 points of the statewide margin plummeted to just 57 percent of towns in the 2013 Senate special election between Democrat Ed Markey and Republican Gabriel Gomez, the lowest in the period for which records are available. Practically speaking, this shift means the home turf of either party is now further toward the political extreme, with little back and forth travel across the middle of the political spectrum. The outcome is a smaller version of what we see at the national level, where the partisanship of each congressional district has increased dramatically in recent decades.

Nationally, partisan redistricting initiatives to ensure safe electoral outcomes have played at least some role in increasing partisan polarization between congressional districts. This dynamic does not apply to Massachusetts cities and towns. While the full explanation will require more research, polarized voting patterns in Massachusetts are probably due in some part to larger regional trends. The deep blue western Massachusetts, for example, has emerged in recent decades as a part of a larger blue region extending over the border into New York.

This polarization in Massachusetts at the

municipal level is also beginning to take hold regionally, with de facto partisan clusters now dividing up the state. The western part of the state is Democratic, as is Boston and its nearby suburbs, while the central region and the areas north and south of Boston tend to vote Republican. While Boston has always been blue (except in extreme Republican blowouts such as the 1972 Senate race between Republican Edward Brooke and Democrat John J. Droney and the 1994 governor's race between Republican William Weld and Democrat Mark Roosevelt), the homogeneity of the other two regions is a much newer

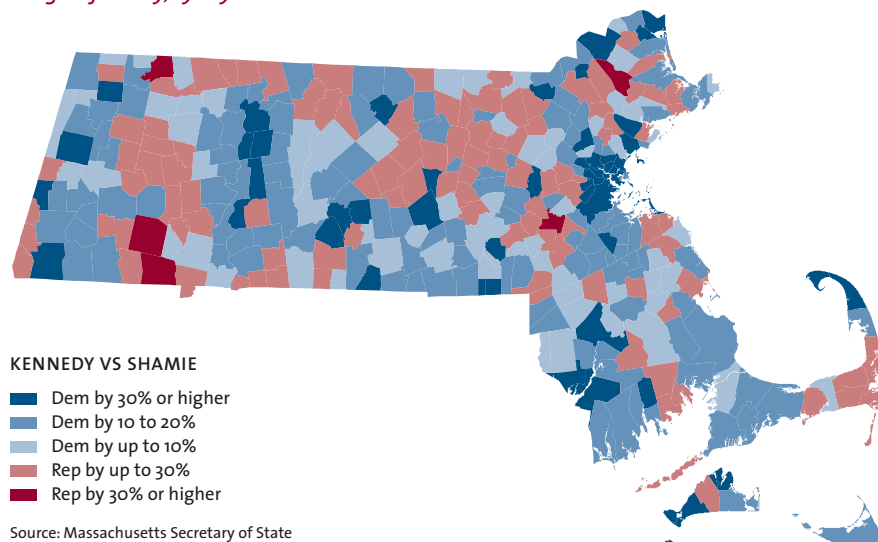
phenomenon.

From the 1970s to the 1990s, the election results map for a competitive statewide election would look like a patchwork quilt with darker blue in Boston but a mish-mash of different outcomes in neighboring towns all across the state. (See the election map below for the 1982 Senate race showing the two-party vote share between Democrat Ted Kennedy and Republican Ray Shamie.)

It's difficult to pinpoint when the changeover to the new, more polarized map took place, but it probably occurred at some point between 1996 and 2002. In 1996,

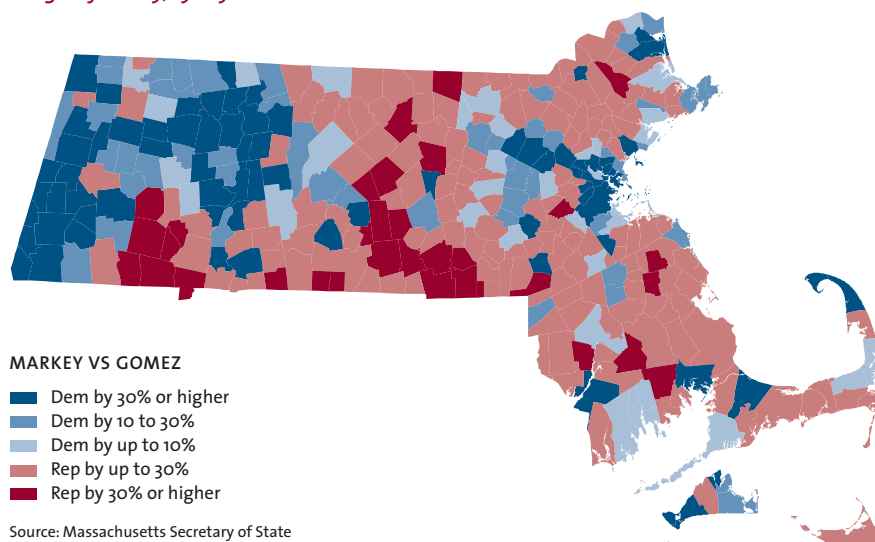
## 1982 SENATE RACE

*Margin of victory, by city and town*



## 2013 SPECIAL SENATE ELECTION

*Margin of victory, by city and town*





PERCENT OF TOWNS OUTSIDE OF 30-POINTS FROM MARGIN OF STATEWIDE RESULTS



Sen. John Kerry's victory over Bill Weld produced an election map that was the first to show real resemblance to what we see today. In 2002, Mitt Romney and Shannon O'Brien again divided up the state in a familiar way. From 2000 to 2008, consecutive lopsided wins for Sens. Kerry and Kennedy caused the red portions of the state to all but disappear in those elections. Come 2010, 2012, and

## Politically, Massachusetts is now 3 regions.

2013, both Senate and gubernatorial elections produced an even more pronounced version of the now-familiar map, as illustrated by the map at left of two-party vote share in the 2013 special Senate election between Democrat Markey and Republican Gomez.

The maps showcasing the results from these recent elections have taken on a consistent look and feel, with three main regions featuring specific partisan voting patterns. The borders of these regions move back and forth somewhat, depending on which party is winning and the size of the margin. In Democratic wins, the blue creeps in a little further from the west or expands out a little further from Boston. In Republican victories, the red bleeds in a little closer to Boston and a few towns in the west-central part of the state flip to red. But, overall, the shape of the map remains the same and the margins of victory within communities in the region appear to be increasing.

This regionalization means voters in many parts of the

state are now less likely to live near a town with a different voting pattern. Homogenization is thus reinforced, as the day-to-day lives of voters require little encounter with those with opposing views. A Pittsfield voter in the 2013 special US Senate election looking for a town voting for Gomez would have had to drive 39 minutes to Chester. Markey, Elizabeth Warren, and Deval Patrick could take

three different routes across the western part of the state from Northfield to Mt. Washington with little risk of setting foot in a town won by their Republican opponents. Similarly, Brown's campaign bus could have driven I-90 from Framingham to Springfield without passing through any municipality backing Warren but for a brief glance at Worcester out of the right hand window.

As we look ahead to this year's governor's race, the geographic polarization of our state may mean the campaigns focus on a combination of base building and border wars. Each side will look to drive up turnout in its base areas, while pushing the borders a little further back into their opponent's territory. But will we see active campaigning from each side deep in the other party's regions? Towns on the western border of the state went for Patrick by an average of 55 points and Ed Markey by 49. So as scarce campaign time and resources are allocated, it seems unlikely the dark red or dark blue towns will get much attention from the other side. **CW**

*Steve Koczela is the president of the MassINC Polling Group, a subsidiary of MassINC, which publishes Commonwealth.*

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# Pumped over gas tax

BY JACK SULLIVAN

**WHEN THE MASSACHUSETTS** Legislature voted last year to raise the gas tax by 3 cents to 26.5 cents per gallon and allow the tax to rise automatically in future years by the rate of inflation, the idea was to find a way to ensure enough revenue to cover the state's transportation maintenance and infrastructure costs into the future. The 23.5-cent tax, which didn't change for 20 years, failed to keep pace with infrastructure needs as inflation ate away at its buying power and fuel-efficient cars and spikes in gas prices caused gas consumption—and thus revenue—to taper off.

Now the Republican-led group Tank the Automatic Gas Tax Hikes is pushing a referendum to repeal the section of the law tying future increases in the gas tax to changes in the Consumer Price Index. The anti-tax group argues that the gas tax should not rise automatically—only when lawmakers vote to raise it. If there's no pushback now, they say, lawmakers will tie income and property taxes to inflation. The group uses catchy phrases (say no to the “forever

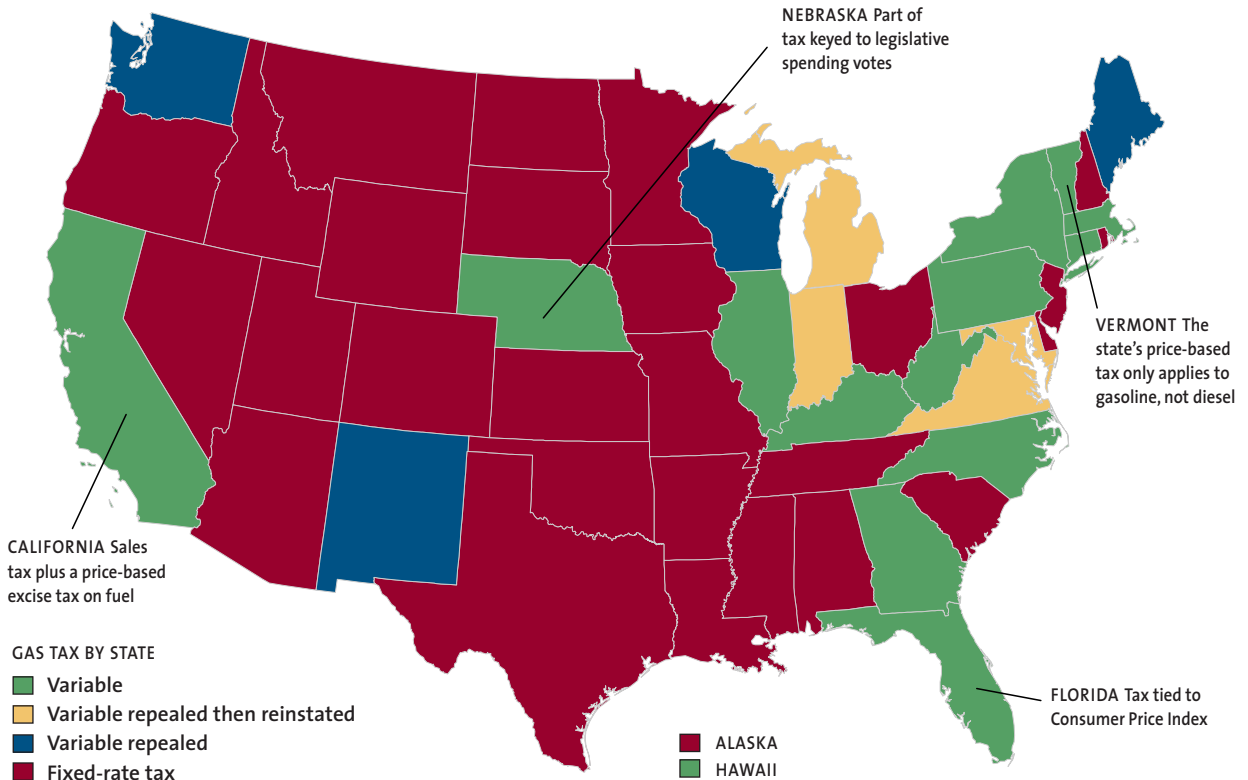
tax”) along with not-so-subtle digs at the Legislature's abject fear of voting for taxes.

More than two-thirds of the states have fixed-rate gas taxes, including four that adopted variable tax rates tied to inflation or the price of gas and then subsequently scrapped that approach and reinstated a fixed-rate tax.

Massachusetts is one of 18 states and the District of Columbia that tax fuel at a variable rate. The states are among the most populated, so a majority of Americans now drive in states with a variable gas tax. Florida, Massachusetts, and Maryland tie the levy to the CPI, the others link to the price of gas directly or through a sales tax.

A 2011 study by the progressive Institute on Taxation and Economic Policy found that states with a fixed-rate tax went nearly 15 years on average without adjusting the rate, causing an average effective drop in the rate of 29 percent. States with variable rates had an average effective increase of 1 percent. **CW**

## GAS TAXES BY STATE



Source: Institute on Taxation and Economic Policy



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## Leading the fight against e-cigarettes

For Susan Liss, the former top lobbyist for Massachusetts in the capital, the battle is personal **BY SHAWN ZELLER**

**WHEN SUSAN LISS** became the top lobbyist for Massachusetts in Washington in 2006, she had a million things to juggle, from the rollout of the state's new health care law to the search for federal funds. But it was a tough personal time for such a big assignment: Her husband, Jeffrey Liss, a partner with the law firm DLA Piper, was dying of pancreatic cancer.

Jeffrey died the following year at age 55, leaving behind Susan and two children in their twenties. The death was fateful, not only in the toll it took on her family but in the career redirection it eventually prompted. Liss blamed her husband's death on the second-hand smoke he breathed as a child. He was not a smoker himself. So when the Center for Tobacco-Free Kids, the leading anti-smoking group in Washington, advertised for a new executive director in 2011, Liss jumped at the opportunity. She is now leading the organization's fight against electronic cigarettes, devices that are essentially nicotine-delivery systems without tobacco and smoke.

Liss isn't convinced e-cigarettes are safe and fears cigarette manufacturers are using e-cigarettes to lure more people to try real cigarettes. "They are marketing with cartoon characters and using sexuality and glamour to promote their product," says Liss. "It's all designed to encourage a whole new generation to think smoking is cool."

But advocacy groups for e-cigarette makers say the devices should be welcomed because they are a far less dangerous alternative to smoking and in fact help some people kick their smoking habit. Elaine Keller, the president of Consumer Advocates for Smoke-Free Alternatives, says the nicotine delivered by e-cigarettes is not all that different from caffeine. "It will temporarily increase blood

pressure and heart rate, the same thing that happens with a strong cup of coffee," she says.

Keller's group, along with the Smoke Free Alternatives Trade Association, the Tobacco Vapor Electronic Cigarette Association, and the Heartland Institute are all lobbying against e-cigarette regulation. All receive backing from the cigarette industry. The groups have some non-tobacco industry allies. The American Association of Public Health Physicians, for instance, argues that e-cigarettes should be treated as a legitimate smoking cessation aid.

When a person takes a drag from an e-cigarette, a battery-powered metal coil inside heats a cartridge, vaporizing liquid nicotine. The smoker inhales the nicotine and exhales odorless water vapor, the reason e-cigarette users often call it vaping, not smoking. In addition to not being particularly unhealthy, Keller says, the devices help smokers quit using traditional cigarettes and pose no second-hand smoke danger to non-smokers.

But Liss fears that the big cigarette makers are using e-cigarettes as a gateway to the real thing. "Something like 20 percent of middle school kids who've never touched a cigarette tried an e-cigarette in the last year," Liss says, citing data from the Centers for Disease Control and Prevention. "That to me is a really scary number. It demonstrates a willingness for kids to try this in what could well be the first step in a progression to cigarettes that can do real harm in a very short period of time."

Liss says the tobacco companies are following their old playbook for cigarettes in promoting e-cigarettes on cable television with sexy or amusing ads. Former Playboy model Jenny McCarthy has done ads for Lorillard's Blu-eCigs company. "I get to have a Blu without the guilt," she says in one of

the ads. Lorillard, the number 3 US cigarette company, boosted its ad spending for Blu-eCigs to more than \$12 million during the first quarter of last year, according to Kantar Media, a firm that monitors the advertising market. Another e-cigarette firm, eJuiceMonkeys, has used a smiling, cartoon monkey with a cigarette in its mouth in its promotions.

Since their introduction into the US market in 2007, e-cigarette sales have grown steadily. The Tobacco Vapor Electronic Cigarette Association says more than 3.5 million Americans are using them now. By comparison, the Centers for Disease Control and Prevention says 43.8 million Americans smoke traditional cigarettes, a number that has been steadily dropping. The adult smoking rate has fallen from 42 percent in 1965 to 19 percent in 2011, the most recent year for which figures are available.

The major US tobacco companies are all moving quickly into the e-cig business. Lorillard in 2012 purchased Blu-eCigs and last year bought England's SKY-CIG. Reynolds launched its VUSE Digital Vapor Cigarette line last year. Philip Morris owns the MarkTen e-cigarette brand.

Liss says there hasn't been nearly enough research yet to deem e-cigarettes safe or unsafe. In 2009, the Food and

Drug Administration tested electronic cigarettes and warned doctors that they contained carcinogens and toxic chemicals. Since then, however, the CDC has said that electronic cigarettes "appear to have far fewer of the toxins found in smoke compared to traditional cigarettes."

For Liss, her position with the Campaign for Tobacco-Free Kids marks a big career shift. She's known best as a Democratic Party operative in Washington, who's held a

## US tobacco firms moving into e-cigs

range of high level jobs, from chief of staff to Tipper Gore, when Al Gore was vice president, to top aide to Deval Patrick when he was assistant attorney general for civil rights under President Bill Clinton. She ran Patrick's Washington office for a year, helping rebuild ties between the governor's office and the Massachusetts congressional delegation that had become strained during the 16 years Republicans held the governorship. Before joining the Campaign for Tobacco-Free Kids, she held a series of consulting gigs and a position at New York University promoting election reform.

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Still, her political connections are helpful in her new job, the No. 2 position at the Campaign for Tobacco-Free Kids, where she oversees lobbying in Washington and state capitals.

At first, it seemed her job would mostly entail watching over the implementation of a 2009 federal law granting the FDA authority to regulate tobacco as a drug, to restrict cigarette marketing, and to ban the sale of flavored cigarettes. The law gave the FDA the option to regulate e-cigarettes, but so far the agency has taken no action.

The states aren't waiting for the FDA. More than half of them have enacted laws banning the sale of electronic cigarettes to people under the age of 18. Others have banned their use in public places, such as restaurants and bars. On Beacon Hill, Jamaica Plain Democrat Jeffrey Sánchez, the House chairman of the Joint Committee on Public Health, is pursuing legislation to ban the sale of e-cigarettes to minors and to add them to the state's smoke-free air law.

The Bay State has traditionally taken a tough line on tobacco. It was one of the first states to use Medicaid funding to provide smoking cessation assistance, and in 1992 state voters approved an increase in the cigarette tax to fund a tough anti-smoking advertising campaign, one of

the first of its kind in the nation. The Centers for Disease Control and Prevention urged other states to follow Massachusetts' lead. The percentage of adult smokers in the state is now lower than in all but eight other states. The rate fell from 24 percent in 1992 to 16 percent, while the youth smoking rate has fallen from 30 percent to 14 percent.

Liss remains hopeful that the FDA will spring to action and there's plenty of reason to believe it will. Howard Koh, an anti-smoking crusader in his days as Massachusetts public health commissioner, oversees tobacco policy at the agency's parent, the Health and Human Services Department, and the FDA tried in 2009 to block e-cigarette sales, seizing imports of the devices from China as unapproved medical devices. It said the manufacturers needed to conduct clinical trials and prove the devices had a medical benefit. In December 2010, however, the e-cigarette industry won a court battle challenging the seizures.

As she awaits word on whether the FDA will regulate e-cigarettes, Liss is focusing on bills like Sánchez's in Massachusetts in order to slow e-cigarettes' growth. She has her organization's Northeast director, Kevin O'Flaherty, working to promote the legislation in Boston. "Right now, unless we have state and local regulation, it's the wild West," she says. **CW**



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# Clearing the cops

Do district attorneys rubber-stamp  
police use of deadly force?

BY JACK SULLIVAN | ILLUSTRATION BY RAFAEL RICOY

## From the tiny town of Colrain

at the Vermont border to the siren-pierced streets of Boston, state and local police have shot and killed 73 people across Massachusetts over the last 12 years. The deadliest year was 2013, when 12 people were killed. Every completed killing investigation found the police were justified in using deadly force; only three of the cases were presented to a grand jury or judicial inquest to determine if a crime was committed.

Most of the shootings were easy to justify. Milton police, for example, shot and killed 23-year-old Kerby Rebellus in 2009 to keep him from attacking his sister with a knife. Rebellus had already killed two other sisters, decapitating one in front of police. Suspected Boston Marathon bomber Tamerlan Tsarnaev went down in a

gunfight last year with police in Watertown after allegedly killing MIT Police Officer Sean Collier and trying to escape with his brother in a stolen car filled with homemade bombs. And Dominic Cinelli was killed trading gunfire with police on the day after Christmas in 2010. Cinelli, a career criminal, had shot and killed Woburn Police Officer John Maguire after a jewelry store robbery.

But in as many as 10 of the deadly force cases, the facts of what happened are not so clear and the police motivation far more murky. In some cases, the victim did nothing wrong and just was in the wrong place at the wrong time. In others, the police initiated the confrontation and didn't appear to take steps to avoid violence. In a few instances, the police story just doesn't add up.

Of the 73 deadly force incidents, 29 involved people wielding guns; 23 carried a knife, hatchet, machete, sword, or box cutter; three held a pointy household item such as a pen, screwdriver, or barbecue fork; 11 drove a car in a threatening way; five others were unarmed; one had a pellet gun; and one had a starter's gun.

In every case, the initial and primary investigation of the killing was handled by fellow police. The Boston, Springfield, and Worcester police departments investigate shootings by their officers while the State Police look into the use of deadly force in other local jurisdictions as well as by their fellow troopers. The ultimate decision on whether to prosecute is made by the local district attorney, who often works with police in his jurisdiction on a daily basis.

In a majority of the cases, the officer using deadly force claimed he fired in self-defense, fearing for his life or the life of a fellow officer. District attorneys say a claim of self-defense places the burden on the state to prove otherwise, which is difficult to do because the officer is often the only witness to the shooting and the premise that they were in fear is generally accepted as legal fact.

State Police Col. Timothy Alben, a 31-year veteran of the department, says the system is working well. "The overwhelming majority of them are unquestionably justified," says Alben. "I don't think we should burden a grand jury with these. I'm not surprised in the number 73. In fact, that seems to me to be a small number. I just don't see this as a problem that needs to be fixed. That's the system we live with. Firearm discharge in my department gets a lot of attention. It's not something here that anybody takes lightly."

Alben's contention that 73 is a small number cannot be verified. Law enforcement officials in Massachusetts don't track deadly force incidents carefully and national numbers are suspect, making state-to-state comparisons impossible. (For more on how *CommonWealth* compiled its numbers, see page 34.)

R. Michael Cassidy, a Boston College law professor and a former assistant attorney general, says what jumps out at him is the low number of incidents since 2002 that were

referred to a grand jury or an inquest. "I think the numbers alone suggest there is a different standard for police," he says. "Those are powerful figures. Does that suggest there is a possible double standard? Yeah, it might suggest implicit bias in police cases by DAs."

Maki Haberfeld, chairwoman of the Department of Law, Police Science, and Criminal Justice Administration at John Jay College of Criminal Justice in New York City and a consultant to police departments on training and ethics, says the small size of most police forces makes internal investigations a closed process by nature. "Literally 97 percent of police departments have less than 50 sworn

## In a high number of the deadly force cases, the facts of what took place are not so clear and far more murky.

police officers," she says. "Where everybody knows everybody can be a problem. Any profession that investigates themselves, there is always going to be doubts. Familiarity will always have some influence."

The Rev. Talbot Swan of Springfield is seeking an independent investigation into the 2011 shooting of 18-year-old Tahiem Goffe by a Springfield policeman, which was investigated by the Springfield police and ruled justified by the local district attorney. "There's no way that any type of objective decision can result out of an investigation by folks investigating themselves," he says. "We do have an attorney general, we do have State Police, we do have independent entities that can come in in those cases. The public deserves no less than to have full confidence in the results of an investigation. If my son were involved in the execution of a crime, and you allowed me and his mother and his siblings to do the investigation, you can imagine what the recommendations will be."

### STORIES THAT DON'T ADD UP

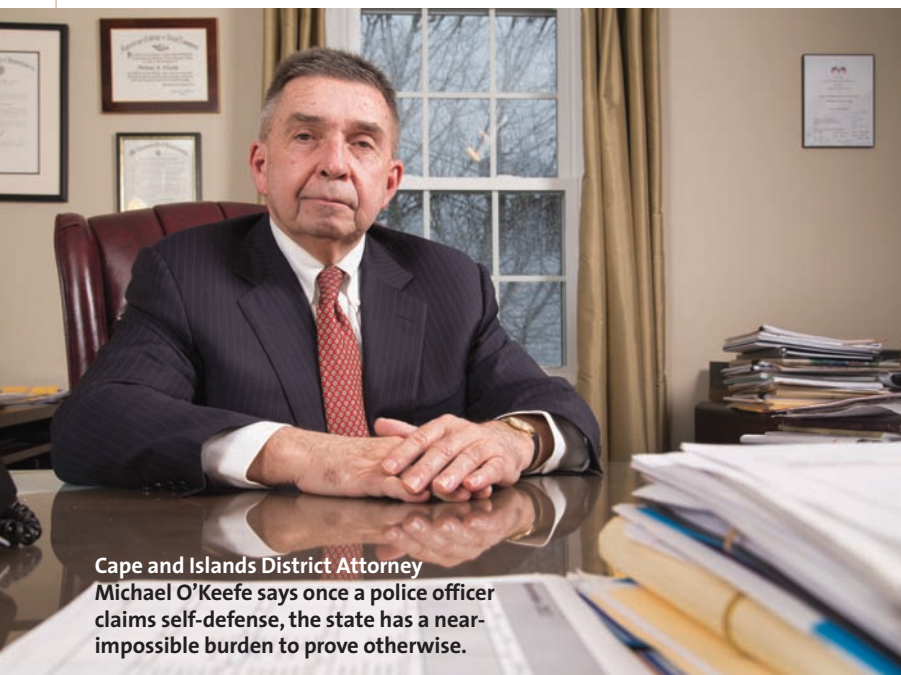
Yarmouth police officer Christopher Van Ness tried to pull Andre Martins over for speeding on the night of July 27, 2008. Martins, a Brazilian immigrant who by all accounts was a ne'er-do-well stumbling in and out of trouble with the law, refused to pull over. Van Ness and other officers pursued Martins and cornered him and his girlfriend in their car on the front lawn of a home. When Van Ness got out of his cruiser, Martins tried to pull away in his vehicle





Jessica Spinney says she's getting no answers in the shooting death of her fiancé, Denis Reynoso, who she believes was a victim of mistaken identity by the Lynn police.





**Cape and Islands District Attorney Michael O'Keefe says once a police officer claims self-defense, the state has a near-impossible burden to prove otherwise.**

and Van Ness fired three shots at him and killed him.

Michael O'Keefe, the district attorney for the Cape and Islands, ruled that Van Ness was justified in using deadly force because he was acting in self-defense. Van Ness said he was struck by the side mirror on Martins's car and feared he was about to be crushed against his own vehicle.

"In order to create one's claim of self-defense, it must appear that the person using the weapon has a reasonable apprehension of great bodily harm and a reasonable belief that their life is in danger. The law is the law and it applies to everyone," O'Keefe says.

In a deposition for a subsequent civil suit brought by Camilla Campos, Martins's girlfriend and the mother of his children, Van Ness was asked about firing the shots.

"Q. At the time you fired your weapon, the vehicle was no longer coming at you; am I correct?"

"A. It was passing by me."

"Q. Okay. So it was no longer coming at you, correct?"

"A. No, it was not."

Van Ness tried to get the case dismissed, as many are, on summary judgment through qualified immunity, a statute that protects public employees from being sued for actions taken in the performance of their jobs. But a US District Court denied his motion and the federal Appeals Court in Boston issued a strongly worded opinion upholding the denial. The three-judge panel, which included former Supreme Court justice David Souter, said Van Ness's version of events was, at a minimum, in dispute.

The opinion says the dueling testimony of Van Ness and Campos, coupled with a credible accident reconstruction report compiled by experts hired by Campos, raise questions that must be decided by a jury. A ballistics report shows at least two of the bullets Van Ness fired entered from the back of the car. The accident reconstruction determined the car was going between 7 and 13 miles per

hour, slow enough for most people to jump out of the way.

O'Keefe wrote in his investigation summary that there was no way he could challenge Van Ness's claim of self-defense. "It must be proven that the officer's apprehension of great bodily harm was unreasonable beyond a reasonable doubt in order to sustain legal proceedings against him," O'Keefe wrote.

Like the appeals court in the Martins case, Fitchburg District Court Judge Robert Greco also raised questions about a case of police deadly force. Former Worcester County district attorney John Conte asked Greco to conduct an inquest into the 2005

shooting death of Preston Johnson by State Trooper Donald Gray. Gray pulled Johnson over for drunken driving. Gray said he got out of his cruiser and moved off to the side of Johnson's car when Johnson aimed the car at him and stepped on the gas pedal. Gray said he feared for his life and the safety of a Fitchburg officer at the scene when he fired the single fatal shot.

Greco recommended that criminal charges be brought against Gray because Gray's testimony was contradicted by ballistic reports that show the bullet hit Johnson in the back of the head through the rear windshield. Greco labeled Gray's actions "wanton and reckless."

"Given the path of the bullet and the location of the entry wound, the major portion of the SUV had to have passed him by," wrote Greco in his report. "It would be pure speculation—and difficult to imagine in view of the direction the SUV was going and the size of the vehicles involved—to find that Gray was about to be crushed by the tail end of the SUV. That Gray gave a very different account indicates to me a concern on his part that a more accurate account would be inculpatory."

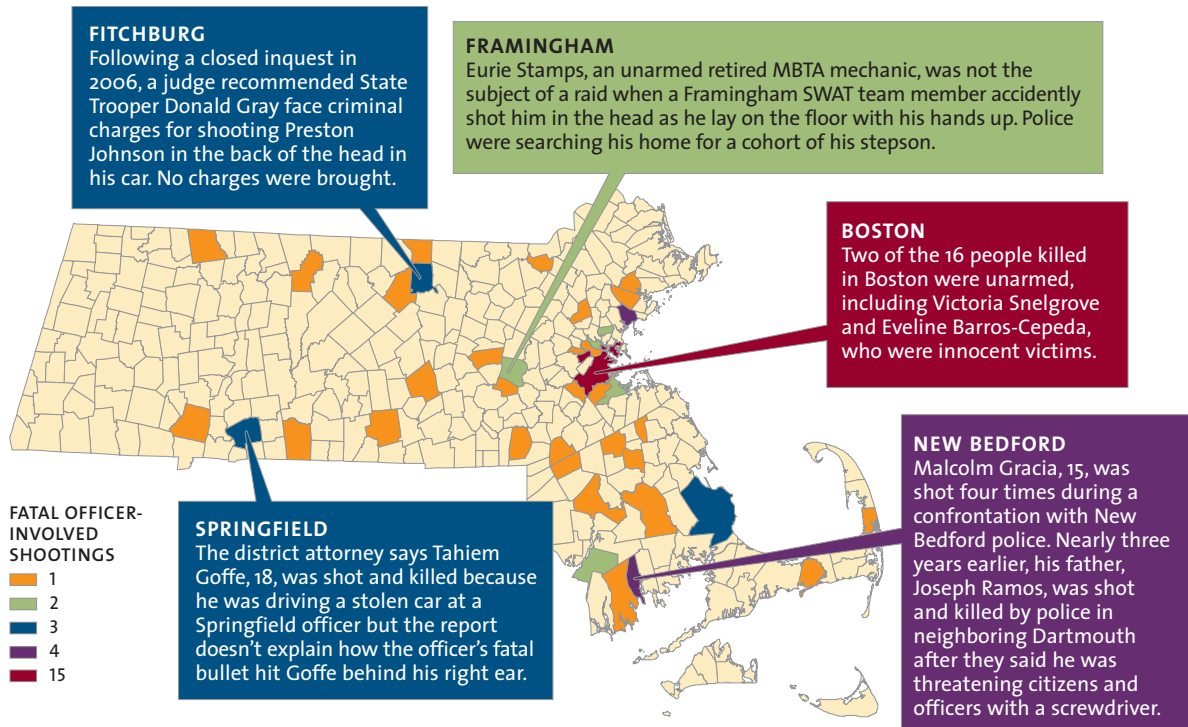
Conte, who was quoted in the local press supporting Gray's actions, submitted the Gray case to a grand jury, which declined to indict Gray.

## **MALCOLM GRACIA**

On May 17, 2012, a group of New Bedford police officers was watching a computer monitor showing a feed from a grainy surveillance camera set up at the Temple Landing housing project. The officers noticed two teens, one of whom was later identified as Malcolm Gracia, exchange what seemed like a gang-style handshake. That was enough for the police officers to head to the basketball court to confront them.

## DEADLY FORCE IN MASSACHUSETTS

Since 2002, there have been 73 fatal officer-involved shootings in Massachusetts. None have resulted in criminal charges and only one involved disciplinary action. There have been two inquests and only two police officers have been the subject of a grand jury, including one who a judge recommended after an inquest be criminally charged.



SOURCE: Massachusetts District Attorneys and State Police.

| DATE       | NAME                   | CITY/TOWN             | WEAPON           | DATE       | NAME                 | CITY/TOWN                | WEAPON             |
|------------|------------------------|-----------------------|------------------|------------|----------------------|--------------------------|--------------------|
| 10/23/2003 | Wood, Brian            | Amesbury              | Guns             | 12/25/2004 | Clancy, Andrew       | Lowell                   | Knife/hatchet      |
| 2/22/2011  | Padilla, Roger Reyes   | Ashby (1)             | Car              | 9/5/2013   | Reynoso, Denis       | Lynn                     | Gun **             |
| 7/2/2013   | Stigliano, Andrew      | Ashland               | Gun              | 7/22/2012  | Payne, Brandon       | Lynn                     | Guns               |
| 10/3/2005  | Seney, Stanley         | Boston                | Gun              | 5/27/2008  | Addesa, Michael      | Lynn                     | Knife              |
| 3/23/2010  | Carciero, Jay          | Boston                | Knife            | 4/10/2011  | Michaud, Michael     | Lynn                     | Knives, air pistol |
| 8/21/2012  | Ramsey-White, Burrell  | Boston-Back Bay       | Gun *            | 8/3/2009   | Nesom, Alexander     | Malden                   | Car                |
| 8/7/2013   | Hendrick, Roudy        | Boston-Dorchester     | Gun              | 3/23/2012  | Ekasala, William     | Malden                   | Gun                |
| 6/14/2011  | Cummings, Tyrone       | Boston-Dorchester     | Gun              | 4/24/2008  | Semenza, David       | Mansfield                | None               |
| 6/2/2013   | Batista, Ross          | Boston-Dorchester     | Gun              | 11/15/2012 | Coutinho, Bryce      | Marlboro                 | Knife              |
| 7/2/2002   | Jackson, Leveta        | Boston-Dorchester     | Knife            | 1/22/2003  | Griffin, Brian       | Middleboro               | Gun                |
| 9/8/2002   | Barros-Cepeda, Eveline | Boston-Dorchester     | None             | 6/28/2009  | Revelus, Kerby       | Milton                   | Knife              |
| 11/21/2007 | Barker, Marquis        | Boston-Dorchester     | Gun (in dispute) | 5/21/2003  | Merrill, Mark        | Monson                   | Barbecue fork      |
| 12/7/2013  | Dookhran, Darryl       | Boston-Dorchester     | Gun              | 5/17/2012  | Gracia, Malcolm      | New Bedford              | Knife              |
| 4/3/2010   | DaVeiga, Manuel ***    | Boston-Dorchester (2) | Gun              | 5/18/2008  | Tierney, Brian       | New Bedford              | Knives             |
| 10/21/2004 | Snelgrove, Victoria    | Boston-Kenmore        | None             | 10/26/2006 | Cruz, Lamont         | New Bedford              | Pellet gun         |
| 2/12/2002  | Murray, William L Jr.  | Boston-Roxbury        | Car              | 11/5/2009  | Garnett, Thomas      | New Bedford (1)          | Gun                |
| 5/23/2002  | Santiago, Nelson       | Boston-Roxbury        | Car              | 7/3/2013   | Navarrete, Corey J.  | Orange (1)               | Rifle              |
| 6/27/2004  | Bowen, Bert            | Boston-Roxbury        | Gun *            | 9/15/2008  | Noto, Phillip        | Peabody                  | Starter pistol     |
| 7/2/2004   | Gonzalez, Luis         | Boston-South End      | Box cutter       | 1/10/2006  | McGrath, Anthony     | Plymouth                 | Car                |
| 11/5/2008  | Parks, James Earl      | Brockton              | Gun              | 12/23/2008 | Curran, Jeffrey      | Plymouth                 | Gun                |
| 7/15/2002  | Furtado, Daniel        | Cambridge             | Hatchet          | 9/1/2003   | Glidden, James       | Plymouth                 | Knife              |
| 5/1/2002   | Twedt, Michael         | Charlton (1)          | Knife/lighter    | 7/3/2007   | Hart, James          | Quincy                   | Knife              |
| 1/12/2009  | Wood, Robert E. III    | Colrain (1)           | Gun              | 6/14/2013  | Justiniano, Wilfredo | Quincy (1)               | Pen                |
| 8/23/2013  | Kehoe, Scott           | Danvers (2)           | Knife            | 9/7/2011   | McMullin, Mark       | Rockland (Boston police) | Car                |
| 8/11/2009  | Ramos, Joseph          | Dartmouth             | Screwdriver      | 7/23/2010  | Kingsley, Carol      | Somerville               | Knife              |
| 6/14/2008  | Crosby, John           | Dedham                | Knife            | 11/2/2010  | Krister, Matthew     | Somerville (3)           | Gun                |
| 9/23/2013  | Watts, Jeffrey         | East Bridgewater (1)  | Gun              | 11/6/2011  | Goffe, Tahiem        | Springfield              | Car                |
| 10/18/2006 | Hill, David G.         | Eastham (2)           | Guns             | 8/11/2013  | Edwards, Wayne       | Springfield (1)          | Guns *             |
| 3/29/2002  | Viera, Brian           | Fall River            | Knife            | 5/15/2013  | Squires, Louis       | Springfield (2)          | Gun                |
| 6/8/2005   | Jimines, Noel          | Fall River            | Sword            | 10/4/2012  | Arraiol, David       | Taunton                  | Gun                |
| 10/13/2010 | Moore, Leslie          | Fitchburg             | Car              | 4/19/2013  | Tsarnaev, Tamerlan   | Watertown (2)            | Gun, bomb          |
| 3/19/2011  | Stafford, Eric         | Fitchburg             | Machete          | 4/7/2012   | Musto, Douglas S.    | Westfield                | Knife              |
| 11/3/2005  | Johnson, Preston       | Fitchburg (1)         | Car              | 10/25/2009 | Membrino, Michael    | Westminster              | Gun                |
| 6/23/2004  | Shea, Thomas           | Foxboro               | Knife            | 12/26/2010 | Cinelli, Dominic     | Woburn                   | Gun                |
| 8/2/2007   | Thomsen, Karl          | Framingham            | Knife            | 7/12/2012  | Davila, Victor       | Worcester (1)            | Car                |
| 6/11/2011  | Stamps, Eurie          | Framingham            | None             | 7/27/2008  | Martins, Andre       | Yarmouth                 | Car                |
| 10/15/2006 | McCarthy, Lawrence J.  | Franklin              | Gun              |            |                      |                          |                    |

Of the 73 people on the list, 56 were shot by local police unless indicated by (1) State Police; (2) Local and State Police; or (3) Local and federal officers. \*Gun recovered, no evidence of it being fired; \*\*Police say Reynoso wrestled officer's gun away; investigation ongoing; \*\*\*Cause of death was self-inflicted gunshot wound but shot three times by police.

## HOW THE DATA WERE GATHERED

It wasn't easy assembling the data for this report.

No one agency or office compiles a comprehensive list of instances when police use deadly force, so *CommonWealth* gathered the information from the state's district attorneys, the State Police, state and federal court records, and the state Department of Public Health, which tracks all shooting injuries and deaths that involve some sort of treatment at a hospital or clinic.

Each source had deficiencies in its data. District attorneys from at least four counties, for example, failed to list at least one case their offices had handled. The State Police data, covering all of the state except Boston, Worcester, and Springfield, where local police handle investigations, failed to include 11 fatal shootings in Plymouth, Bristol, and Norfolk counties. The State Police list, however, included three shootings by state troopers that were not identified by district attorneys.

Boston police, who were involved in 16 shooting deaths since 2002, the most in the state, initially promised to provide information on their cases but never did despite numerous follow-up calls and emails. Officials in the Worcester and Springfield police departments did not return calls or respond to requests for information.

The district attorneys, who decide whether prosecution of a police officer who used deadly force is warranted, responded in very different ways to requests for information on their deliberations. Some provided a list of all shootings in their districts and reports detailing their decisions on whether to prosecute or not. Others simply provided a brief paragraph on each case of deadly force. Some said their decisions were available at a cost after redaction because of legal exemptions and privacy concerns, exemptions not cited by those officials who provided reports.

One assistant district attorney initially declined to provide any information at all, saying the office was under "no obligation to create a record where none exist." An aide subsequently provided a list of deadly force incidents in the district after the district attorney was told he was the only one in the state who had declined to cooperate. (To gain access to the data provided by district attorneys as well as other records we compiled, go to [commonwealthmagazine.org](http://commonwealthmagazine.org).)

It's also tough to put the Massachusetts incidents of police deadly force in context with the rest of the country. Nationally, the FBI gathers data on deadly force incidents involving police, but the information is woefully incomplete because it is only collected from jurisdictions that report statistics to the agency. In 2012, the FBI data indicate there were a total of 410 justifiable homicides nationally by law enforcement officers, defined as the killing of a felon by an officer in the line of duty. The FBI data offer a state-by-state breakdown only for a category that lumps together justified homicides by both law enforcement officials and private citizens. For Massachusetts, that number was two in 2012, well below the eight we uncovered involving just police.

—JACK SULLIVAN

Gracia, 15, and his companion did not stop when approaching officers said they wanted to talk with them. The officers then detained the pair and put them up against a car to frisk them. Gracia took off running and the officers followed in pursuit. Gracia got into a scuffle with officers and stabbed one with a hooked fishing knife.

The four officers on scene said Gracia kept advancing toward them and refused to obey their commands to stop and drop the knife. They said Gracia kept coming even after being shot once, so they fired again. The autopsy report indicates Gracia was shot four times, three in the back and the apparent fatal bullet behind the right ear. There were no powder burns on the entry wounds, indicating the shots were not at close range.

The officers claimed they acted in self-defense and Bristol County District Attorney Samuel Sutter sided with them, ruling the use of deadly force was justified. Sutter, who was endorsed by the New Bedford police unions in his first run for office in 2006, says politics played no role in his decision.

The Gracia case illustrates how a fairly innocuous initial encounter with police can quickly mushroom into a case of deadly force. At least 30 of the 73 police shootings since 2002 began with a routine traffic stop or street encounter and escalated from there. Gracia, for example, wasn't suspected of any wrongdoing. The police officers didn't even know who he was. But because Gracia refused to stop and then ran, the situation quickly escalated.

"Malcolm wasn't committing a crime, Malcolm wasn't suspected of committing a crime," says New Bedford attorney Donald Brisson, who is representing Gracia's sister in a wrongful death suit. "If the police stop me on the street and they ask me a question, I'm free not to answer them and walk away. Malcolm did walk away the first time. What the heck are they chasing this kid for?"

Another teen who was at the Temple Landing housing project that night says the handshake police witnessed was not a gang greeting. "We are not a gang," says Alex Fernandes, 17, who returned when he heard the shots and saw his friend lying on the ground bleeding. "We are kids that all grew up with each other and we are from the projects. Yes, we have a handshake for it. We did it every time we saw each other and left each other. It's a brother thing we do. We're no Crips, Bloods, Latin Kings, none of that. We are just from the West Side of New Bedford."

Sutter and other district attorneys say the actions that lead up to the use of deadly force are typically not relevant to their investigations. The focus of the investigation is on the incident itself, not on the actions preceding the incident and whether the officers complied with departmental policy. "My inquiry from a legal point of view is very narrow: Was a crime committed and by whom?" says Suffolk District Attorney Daniel Conley. "If a situation

occurs where a policy was violated, I would still have to judge an act based on law, not on policy.”

Yet district attorneys seem to have no qualms about including information about the decedent’s background in their reports on a shooting, even when the information appears irrelevant and was unknown to the shooting officer. Sutter’s report on Gracia, for instance, cites the teenager’s mental health issues, his references to violent rap music on Facebook posts, pictures of him with a knife, and his anger over the fact his father, Joseph Ramos, was shot and killed by Dartmouth police in 2009. All of those things were true, but they were unknown to the officers who confronted Gracia that evening.

“The DA’s report went to great length to detail things that had nothing to do with” the shooting, says John Reinstein, a former senior counsel for the American Civil Liberties Union of Massachusetts, which sought unsuccessfully to

## Victoria Snelgrove’s 2004 death is the only instance of disciplinary action for police using deadly force.

have the investigation reopened. “If you’re trying to show he was on the ground and he was frenzied, then that’s important information to have in the report. They don’t have that analysis; they just threw [the unrelated issues] in.”

### SCREW UPS

Since 2002, only one case of deadly force has triggered disciplinary action for the officer involved. In 2004, crowds were celebrating in Kenmore Square after a Red Sox comeback victory over the New York Yankees in the playoffs. A Boston police officer fired a pepper ball, which is designed to explode upon impact with the street and emit irritant pepper powder to disperse a crowd. But instead of hitting the street, the projectile hit Victoria Snelgrove and killed her. The incident prompted the police department to demote the officer’s supervisor and suspend the officer for 45 days without pay.

But there are other examples where police made a fatal mistake yet no one paid any price. In 2011, a Framingham SWAT team executed a search warrant for two men believed to be dealing drugs. They arrested one man outside his home but then kicked down the door of the house the man lived at even though they knew his cohort did not

live there. Police found the arrested man’s stepfather, Eurie Stamps Sr., a retired MBTA mechanic, watching television in his bedroom. Stamps, a grandfather of 12, was not the subject of the warrant, had no criminal record, and was not armed. In fact, he was in his pajamas.

Police ordered Stamps to lie on the floor face-down with his arms out, which he did. But while he was in that position, a SWAT team member says he tripped and his assault weapon fired a bullet into Stamps’s head, killing him almost instantly.

Gerry Leone, who was Middlesex County district attorney at the time, ruled the shooting an accident and did not press any charges. He did not seek what amounts to a second opinion by taking the case to a grand jury or seeking a judicial inquest. To avoid similar incidents in the future, the Framingham police have since changed their SWAT team procedures, reducing the number of team members on a raid and requiring officers to keep their weapons in a non-shooting position until forced to shoot.

On September 8, 2002, Eveline Barros-Cepeda crouched down in the back seat as police pursued a car in which she was a passenger. The driver of the car had fired several shots earlier outside on a street, and then fled when police arrived. As he drove away, he struck one officer, causing minor injuries. But as the vehicle sped away, another Boston officer fired five shots into the back of the vehicle, fatally shooting Barros-Cepeda, a 25-year-old mother of two.

Conley, then the new Suffolk County district attorney, ruled the shooting justified as a matter of self-defense. His report also noted that Barros-Cepeda had drugs on her when she was found, even though the pursuit had nothing to do with drugs. Paul Evans, the police commissioner at the time, subsequently changed the department’s deadly force regulations, prohibiting officers from firing on a fleeing car unless they are being shot at or someone’s life is in danger. The policy change prompted an outcry from the Boston Police Patrolmen’s Association, which called on Evans to resign.

“The determination for criminal charges is based on whether there was a grossly disproportionate force in self-defense,” says Conley, who has never referred a deadly force case to a grand jury or sought a judicial inquest. “The [Supreme Court] said it must be based on what a reasonable officer at the scene, based on the information he has at hand, would decide. The calculus of reasonable must allow for the fact police officers are forced to make split-second judgments.”

Jessica Spinney thinks Lynn police may have mistakenly killed her fiancé, Denis Reynoso, in September. She says she has been given no detailed information by the police or the district attorney while an investigation is ongoing, but believes it was a case of mistaken identity.

Reynoso, 30, was at home in Lynn with the couple’s



5-year-old son when police arrived. They were investigating an outside disturbance at another address on a different street but somehow ended at the apartment of Reynoso and Spinney. Spinney wants someone to explain how and why Reynoso, an Iraq war veteran with no criminal background and no history of violence, would “lunge” for one of the officer’s guns, as police charge. Most of all, Spinney wants to know why anyone thinks Reynoso would jeopardize the safety of his small boy, who was close enough to the confrontation that his father’s blood splattered on him when police shot Reynoso.

“That’s not the type of person he was. He was the calm one in the relationship,” says Spinney, who at the time was in a seminar for work. “There were three armed police and one unarmed citizen. How could that happen? I just don’t understand. There are a lot of things that went wrong that day. I feel like I’m living in a nightmare.”

The Lynn police say Reynoso was the aggressor and the shooting was justified. Essex District Attorney Jonathan Blodgett is overseeing an investigation by State Police but the only witness besides the officers is Reynoso’s 5-year-old son. Spinney says he is traumatized and won’t say anything.

Spinney is trying to get Attorney General Martha Coakley or Gov. Deval Patrick to launch an independent inves-

tigation, something that hasn’t happened in any of the deadly force shootings.

### TRAINING AND TRANSPARENCY

Police work is dangerous business. Since 2002, there have been three Massachusetts police officers killed in the line of duty: Collier at MIT, Woburn officer Maguire, and Springfield Police Officer Kevin Ambrose, who was shot and killed in 2012 while responding to a domestic disturbance. In each case, the officer was either caught off guard or engaged in a shootout.

But in many of the cases in which police have used deadly force, the situation often starts with a minor incident or confrontation and escalates. Officials inside and outside of law enforcement say there is often both time and space to diffuse a situation using proper equipment and training.

“We privilege police officers to use force in a different manner than we might individual citizens,” says Reinstein, the former ACLU official. “Deadly force comes with its own standard. There is an inherent danger in being a police officer. That has some bearing on this. But that doesn’t mean that they’re exempt from the law or exempt from review or from the justice system.”

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Some police departments are buying Tasers for officers to use in situations where the suspect does not have a gun. Of the 40 communities in Massachusetts where there has been a deadly police shooting since 2002, only 21 have Tasers. But only seven of the communities had Tasers before the shooting; the rest bought the electric-shock guns after the fatal shooting.

In Essex last year, voters approved the purchase of Tasers for their officers after Police Chief Peter Silva convinced residents of the upside of having the devices. “If we have a tool that we can utilize and it shows my guys can go home at night, I’m all for it,” says Silva. “It reduces officer injury, reduces injury to the subject, and it reduces lawsuits. My guys want to go home to their families, they should go home to their families. We have seconds to make the best, healthy decisions we can make—seconds.”

Even when deadly force is used, critics such as Reinstein and Springfield’s Rev. Swan say there needs to be a careful review of what happened to assure the families of those killed, to maintain the trust of the public at large, and to look for ways to avoid such confrontations in the future.

“In a culture where people are acting in a manner that says shoot first and ask questions later, the police have to set a different type of example,” says Swan. “I know there are times where lethal force may be warranted, but I also know those instances are few and far between.”

Sutter, the Bristol district attorney, says proposals to reduce conflicts of interest by referring all police shootings to other district attorneys or even the attorney general or US attorney would cause even greater delays in justice and lessen the transparency of a local investigation. Sutter referred one case to Plymouth District Attorney Timothy Cruz because the state trooper involved was assigned to his office. Cruz similarly referred a police shooting in East Bridgewater last year to O’Keefe, the Cape and Islands DA, because the trooper involved was attached to his office. Those are the only two instances where DAs made referrals since 2002.

“Most of the time it’s not necessary,” says Sutter. The system here in Bristol County has worked well. To contemplate the other alternatives, you still have the situation where you have police investigating police. I’m not sure how different that would be. I’m not sure that would be enough of an improvement.”

Blodgett, the president of the Massachusetts District Attorneys Association, says he’d have no problem indicting a police officer, bringing the officer’s case to a grand jury, or referring a deadly force case to another DA if the circumstances warranted it. In his 10 years as a DA, Blodgett says, that’s never happened. But if the Legislature felt another approach was needed, he says he wouldn’t object. “I’m not going to abrogate my authority, but I wouldn’t be opposed to a change,” he says. “These are a heavy burden in our offices.” **CW**



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# Healing health care

Do Bob Master and Rushika Fernandopulle  
have the cure for what ails American medicine?

BY MICHAEL JONAS | PHOTOGRAPHS BY MICHAEL MANNING

**THROUGH THE FALL**, and on into winter, health care was everywhere in the news, with one story after another about problems with various aspects of the rollout of the Affordable Care Act. The one that seemed to capture all the woes with fitting digital-age symbolism was the virtual meltdown of the Obamacare website, the main access point to the new health plans developed under the law.

Stern-faced administration officials from the president on down vowed to pull out all the stops to get the site working. The underlying message seemed to be that, despite some bumps in the road, we are on the way to getting health care right. But as serious as the problem is, fixing a faulty website is hardly the biggest health care challenge facing the country. In many ways, it is American medicine itself that is broken.

The law takes some steps to try to address

that. But if you set out to design from scratch a system to deliver compassionate, high-quality health care and do so in as cost-effective manner as possible, you would probably change nearly everything about American health care.

Bob Master and Rushika Fernandopulle are trying to do just that. They do not preside over any massive health care bureaucracy or powerful government office, but that is not where big health care change will come from.

The two Boston physicians are trying to remake health care from the ground up. They have each developed innovative primary care practices that try to deliver good care not by battling through nonsensical reimbursement rules and all the maddening limitations of our current system, but by clearing those obstacles out of the way and making patients and their needs the central focus of





the organization and delivery of health care.

Master has been able to cut in half the days elderly patients with multiple health problems spend in the hospital. That might be because he sends nurses on house calls to check on patients, or provides home aides who make sure they are taking medicines on schedule. Or it might even be because he will use health care dollars to get patients a ride to church each week. With social isolation among the elderly a common trigger for depression, which can often start a downward spiral of serious health problems, a \$10 transportation charge might be the most powerful—and cost-effective—preventive medicine available.

Fernandopulle's primary care teams, meanwhile, gather in a "huddle" each morning to share information and strategy on patients being seen that day as well as on those who aren't but whose health they are keeping tabs on. They might hop on Skype to chat with a patient, or even to follow-up on a recent visit and see how well a rash is clearing. Avoiding unneeded office visits can free up time for doctor visits or regular sessions with a "health coach," a key part of his plan. Those visits might lead to a breakthrough that gets a patient ready to finally deal with a decades-long weight problem.

In some earlier versions of the model, Fernandopulle was able to decrease overall health care costs by 10 to 15 percent by giving patients more primary care attention.

The two doctors have zeroed in on something that is counterintuitive in the era of MRI imaging, laser-guided surgery, and pharmaceutical answers to every woe: The thing most needed in US health care is not more treatments or more money, but greater connection between patients and health care providers. That can improve our system's success at keeping people from needing all those high-cost treatments, which are regarded as shining successes of modern medicine but just as often represent its failure.

We now spend \$2.6 trillion every year on health care, nearly 18 percent of the nation's gross domestic product, a share that is more than 50 percent higher than any other country. Warren Buffett calls rising health care costs the "tapeworm" of the US economy, eating away from the inside at the productivity and competitiveness of US business, while straining public budgets.

What do we get for our orgy of health care spending? Since 1960, the US has dropped from 12th to 46th in infant mortality, and from 16th to 36th in life expectancy. We're literally bursting at the seams with soaring obesity rates, setting Americans up for all the chronic disease complications that follow. When they do, our system falters badly. In the case of high blood pressure, one of the most common serious diagnoses in advanced countries—and one that is almost entirely controllable

through good treatment—it is well-managed in only 44 percent of Americans who suffer from the condition.

"We continue to spend considerably more on health care than our counterparts in Europe, and what's shocking and upsetting is that outcomes are often worse," says Melinda Abrams of the Commonwealth Fund, a New York-based health policy foundation.

Spiraling costs and subpar outcomes are, in many ways, the logical results of a system that delivers disorganized and fragmented care, with patients bouncing from specialist to specialist, highly-trained doctors who tend to zero in on the malady or body part that is their expertise while ignoring the fuller picture that forms a patient's complete health profile. Meanwhile, the fuel driving the system is a misaligned health care financing structure that reimburses doctors and hospitals for each visit or procedure. In so doing, it encourages that fragmented system of care as well as over-treatment with unnecessary procedures and tests. Rather than providing incentives to help patients stay healthy, it rewards failures of care that result in return visits to doctors or readmission to the hospital.

For more than a decade, the manifesto detailing what ails the US health care system has been a 2001 report from the Institute of Medicine. "Between the health care we have and the care we could have lies not just a gap, but a chasm," it said.

That seems like an awfully grim assessment of a health care system that continues to lead the world in the development of cutting-edge treatments and miracle drugs. But there is a fundamental paradox in US medicine, one

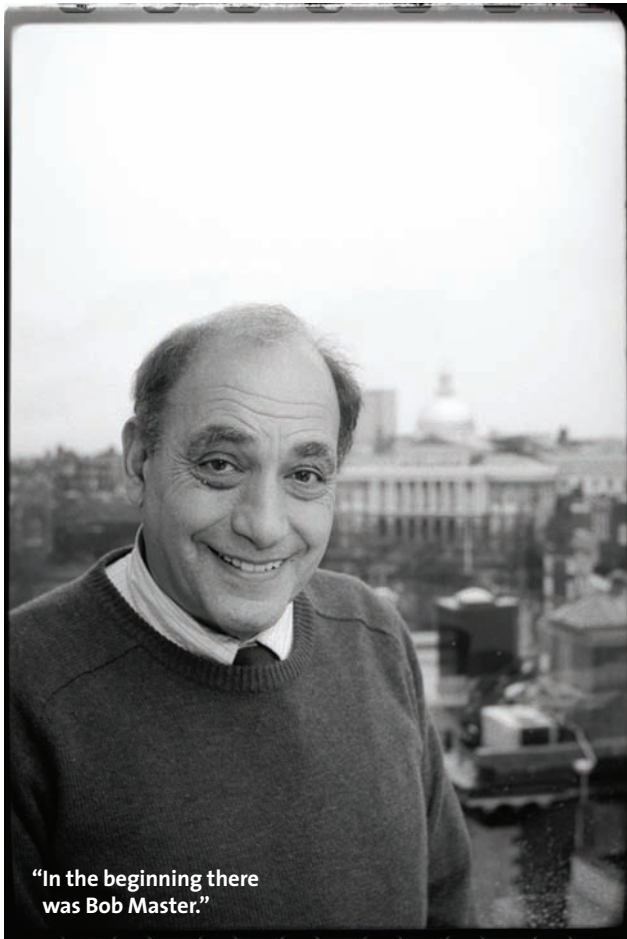
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## 'The sicker one is, the less our system meets your needs and the more you're on your own.'

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that lies at the heart of the problem that Bob Master and Rushika Fernandopulle are trying to untangle.

"A lot of people say we have the best health care system in the world, which in some ways we do," says Fernandopulle. "If all of a sudden you were diagnosed with a rare cancer or needed a very high-tech procedure or drug, this would, by all means, be the place you would want to come. Unfortunately, that's not the problem. The problem is the millions and millions of people who've got very common conditions—diabetes, hypertension, heart disease, etcetera—which we don't treat well at all, and not because we don't have the tools to treat them. It's that our systems are not designed to actually fix the problem."



**"In the beginning there was Bob Master."**



**Fernandopulle: An innovator with a sense of urgency.**

As John McDonough, a Harvard School of Public Health policy expert, puts it: "What to do is not the puzzle. How to get there is the puzzle."

Master and Fernandopulle may be putting together the pieces.

### **MASTER OF PRIMARY CARE**

If our health care system does a poor job at treating common conditions, it does an even poorer job at that for those with multiple serious diagnoses. These, of course, are the patients for whom quality, well-coordinated care could make the biggest difference.

When considering health care costs, policy experts often cite the "80/20" rule, which refers to the fact that roughly 20 percent of any population will account for 80 percent of its total health care spending. Bob Master has spent his career focused on that 20 percent. During his medical training, the observation that our health care system performs worst among those who need its help the most convinced Master that there must be a better way to organize care.

"The sicker one is, the more socially and medically complicated one is, the less our current system of care meets their needs and the more such individuals are on their own," says Master. He says such patients are left feeling like "an anonymous piece of baggage" being shuttled through an impersonal system of medical encounters.

Master has a warm, down-to-earth manner. Favoring sweaters over suits, he seems like the doctor who might have emerged if Mr. Rogers had gone to medical school. People in health care circles talk about Master in reverential, sometimes even biblical, terms when describing efforts to improve primary care in the US medical system.

"In the beginning there was Bob Master," says Robert Restuccia, executive director of Community Catalyst, a national health care advocacy organization based in Boston that works closely with Master.

McDonough, the Harvard health policy professor, calls Master "probably the most important person in primary care in the United States today."

For decades, Master has toiled as a largely unsung hero of American health care, devising better ways to care for the some of the poorest and most needy patients in the country. That is beginning to change, as the health care world wakes up to how potent his low-tech, patient-focused model could be.

Master, the grandson of Russian Jewish immigrants, was born in Roxbury and raised in a working-class household in Lawrence. Early on, Master says he saw how the fragmented way care was delivered, the fee-for-service payment system, and lack of attention to the social factors that can affect a patient's health all "subverted the goals of so many of us who became clinicians or physicians." He says it became clear that what patients needed was an "interdisciplinary care team," which included doctors and

nurses as well as non-medical members, who could work together to coordinate care and help guide patients through the often dizzying labyrinth of modern medicine.

“When you have that vision, it’s kind of a North Star” for how to proceed, he says. “A lot of the way I was trained had to be unlearned.”

Master was involved in several innovative practices that honed this approach, starting with a Jamaica Plain clinic in the late 1970s called Urban Medical Group. One of the most frustrating aspects of the work was trying to care for patients who were covered by both the federal Medicare program and the state-based Medicaid program for the poor. Taking care of these patients, usually poor and elderly, meant navigating through huge government programs, each with its own set of complicated reimbursement rules and sometimes conflicting regulations.

A decade ago, Master helped found the Commonwealth Care Alliance, one of the first programs in the country granted waivers from the federal government and state officials to develop a demonstration project to better coordinate care to those covered under both programs. It has mainly focused on seniors, but has also provided care for a few hundred younger people covered under both programs because of severe disabilities.

Now caring for more than 5,000 patients, the Boston-based organization operates from 25 different primary care sites across the state. In caring for these so-called “dual-eligible” patients, the program does not use the standard fee for service payment system, in which the government gets billed for each visit or procedure. Instead, it gets a single “global payment” to cover all of a patient’s health care needs, a figure that is adjusted by the government programs based on the patient’s health profile. Meanwhile, the Alliance is given wide latitude to organize patient care and use the payments as it sees fit, without following the extensive rules governing Medicare and Medicaid expenditures.

That means giving patients access by phone to a clinician at all hours, and sending nurse practitioners to make house calls. It might even mean buying an air conditioner for someone with severe respiratory disease, something that would never be covered under standard Medicare and Medicaid rules, but might do far more to improve or maintain their health than any expensive drug or hospital procedure.

The program will even pay for a patient’s transportation to church or other community activities. It’s not our usual idea of medicine, but Master and other health care innovators say it should be. We should be treating the whole person, not a discrete diagnosis, they say. For some elderly patients, isolation can be the gateway to declining health.

“You’re cut off from the very things that make life worth living, and when life isn’t worth living, people check out,”

says Master.

For Raymond Burcham, the things that make life worth living include Daisy, his frisky Welsh Corgi mix, and an ability to live independently in his modest Chelsea apartment. A cheerful 80-year-old who holds forth from a favorite recliner in his living room, Burcham is good-natured but not in great health. He suffers from diabetes, high blood pressure, and heart failure, and has severe back pain that can be limiting. His daily schedule includes 11 different medications.

For all of that, Burcham is more full of playful one-liners than complaints when Nida Lam, a nurse practitioner with the Commonwealth Care Alliance, comes to see him one afternoon in early December.

“How are you doing with your medications?” she asks.

“My blood sugar is continuing to run a little high,” says Burcham, a widower.

He and Lam go over his blood sugar readings. He measures it several times a day on a device that records the levels so that Lam can review two weeks’ of readings. Lam sees that at one blood sugar check he was hypoglycemic, with a dangerously low blood-sugar level.

“Were you feeling lightheaded?” Lam asks about the episode, which can result in fainting.

“No, I just called out, ‘Charlene, I need something to eat.’ That’s the advantage of having her in the house,” he says.

Charlene is Charlene Roberts, a friend of Burcham’s who shares his apartment. Under the flexible approach of the program, she is paid for 21 hours of work as a “personal care assistant,” making meals, driving him to appointments and, importantly, helping oversee his pharmacy-sized

## Harvard Business School professor Michael Porter calls the work Master is doing ‘a national model.’

complement of medicines, including the insulin that must be drawn up into syringes and injected twice a day.

Lam adjusts Burcham’s insulin dose, something she carefully goes over with him and Roberts, who jots down notes.

Asked how he would make do without Roberts, Burcham says, “It’d be tough, it’d be very tough. I wouldn’t be on schedule. I’d probably forget to take my morning this or my evening that—these zillions of pills I take. I like this situation,” he says. “I’m more independent here than I would be any other way.”

Care for elderly patients like Burcham does not come cheap. Commonwealth Care Alliance typically receives





**Raymond Burcham and Daisy.** The coordinated care he gets has helped him remain in his Chelsea apartment. "I like this situation," he says.

\$1,000 to \$5,000 a month from Medicare and Medicaid to care for patients. Three-quarters of them, a group that includes Burcham, are considered "nursing home certified," meaning they are compromised enough that Medicaid would cover full-time nursing home care.

That's why the sort of wrap-around care the program provides potentially could be such a benefit not only to patients and their quality of life, but to the budgets of government programs.

An analysis from 2008 showed that Commonwealth Care Alliance patients were hospitalized for about half the number of days as a comparable population of patients getting typical care in a fee-for-service structure. For the much smaller population with severe disabilities, the average monthly medical costs were \$3,061 compared with \$5,210 for similar fee-for-service patients in the Medicaid program.

A 2012 policy brief from the Kaiser Family Foundation examined nine studies of programs serving dual-eligible patients, including the Commonwealth Care Alliance. It concluded that there is no clear overall evidence yet of net cost savings from such efforts and cautioned that large savings may be difficult to achieve.

Harvard Business School professor Michael Porter has trained his sights on health care in recent years, and on what he calls "value-based" medical care. It's a way of looking at health care that considers the quality of that care and patient outcomes as well as cost. He calls the work Master is doing among extremely high-cost patients "a national model."

Health care policy is finally taking note of that. The Affordable Care Act established an office specifically assigned

to the task of better coordinating care for patients on both Medicare and Medicaid. Under a new demonstration project this office is running in 15 states, tens of thousands of "dual eligible" patients are being enrolled into practices that follow versions of the Commonwealth Care Alliance model of care. The CCA itself is dramatically expanding under the new initiative, enrolling thousands of low-income patients 21 to 64 years old who have pronounced health care needs, including physical disabilities as well as serious mental health diagnoses. The Commonwealth Care Alliance's new "One Care" program for these patients was the first of these new demonstration projects in the country to get underway, and more than 3,000 patients have enrolled since its launch in October. The Alliance could have as many as 20,000 patients enrolled over the next one to two years, which would push its \$300 million budget to an astounding \$1 billion.

Medicare spending reached \$592 billion last year and is projected to hit \$1.1 trillion by 2023. There are about 9 million Americans eligible for both Medicare and Medicaid. They account for 21 percent of Medicare enrollees but 31 percent of its costs. They represent 15 percent of Medicaid enrollment but 39 percent of its outlays. Just as outlaw Willie Sutton said he robbed banks because it's where the money was kept, caring for these patients is where the most intensive government health care spending occurs, making it easy to see how even modest savings could multiply into a lot of money.

What happens with the 15-state project "will be very significant," says Restuccia, director of the Community Catalyst advocacy group. "The whole country will be looking at this."



## BREAKING THE RULES

Master's patients are the canaries in the health care coal mine. The shortcomings of the siloed care that US patients get show up first in these high-need patients, who easily fall through the cracks and end up with an avoidable hospital stay, or worse. They are also the patients for whom a dramatically restructured primary care model like the Commonwealth Care Alliance can make a clear difference.

Rushika Fernandopulle has set out on an even bigger challenge: to remake health care in a way that delivers better care at lower cost not only to the sickest patients, but to everyone.

The 46-year-old Harvard-trained doctor still serves rotations at Massachusetts General Hospital, where he did his residency training in primary care. "You walk around the wards and you say, 'What percentage of these patients in the hospital might not have been here if they actually had better primary care?'" he asks. You can ask the same question in the emergency room, he says. "The answer is probably 40 percent to both those questions," says Fernandopulle.

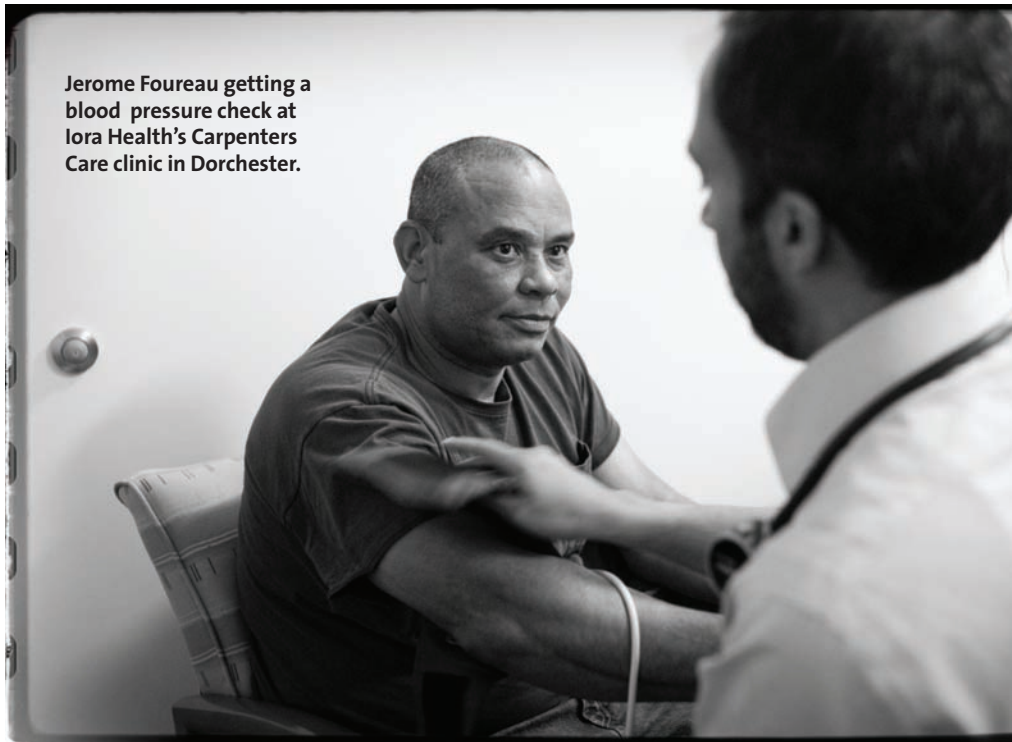
He says those patients represent the failures of primary care, the results of a health care system that's doing a miserable job at keeping people healthy and staving off avoidable—and much higher cost—types of treatment. That convinced Fernandopulle that fixing health care means fixing primary care, and that anything that just tinkered around the edges wasn't enough.

"What everyone else is doing is making incremental changes to the system," he says. "They're taking the existing model and tweaking it, but we know health care is fundamentally broken. Maybe we should just start over. Maybe what we need is a new entrant who can just break the rules."

Fernandopulle talks about the failures of US health care with a take-no-prisoners urgency, and he shows little restraint in dismissing reform efforts he regards as token moves unlikely to yield meaningful change.

Three years ago, convinced the only way to help drive transformation of the system was by demonstrating it himself, Fernandopulle founded Iora Health, a for-profit company that now operates four primary care practices, including one in Boston that opened last year. Fernandopulle has drawn \$20 million in venture capital from investors betting Iora's rule-breaking model of primary care might be the right medicine for what ails US health care.


Jerome Foureau getting a blood pressure check at Iora Health's Carpenters Care clinic in Dorchester.



The premise is straightforward, and has similarities to Bob Master's work. Fernandopulle says just 5 percent of US health care spending goes to primary care, while we spend 95 percent on everything else, including that big chunk he sees regularly at Mass. General that he says represents primary care's failures. Iora asks the sponsoring employer groups or unions it works with to roughly double the outlay for primary care—from about \$25 to \$30 per month to \$50 to \$60. In return, Iora promises a much more comprehensive model of care—and aims to show that it can more than make up for that added primary care premium through savings of "downstream" costs.

Born in Sri Lanka, Fernandopulle came to the US with his family at age 2½. By his third year at Harvard Medical School, when students began spending a lot of time on hospital wards, "it was pretty clear how screwed up the health care system was," he says. "We design drugs and procedures, but we let how we deliver it all to patients just happen." He studied public policy at Harvard's Kennedy School, which helped him realize that he not only wanted to care for patients, but wanted to help transform the entire system.

He directed something called the Harvard Interfaculty Program for Health System Improvement, meeting with policy big wigs at the university, but also traveling to scout out ideas. He and a partner opened a primary care practice in Arlington that set out to implement many of the same principles his company is now applying. "We got some opposition from the powers that be around here. We were accused of raising expectations and making other practices look bad and upsetting the status quo," he says. "Of course we would plead guilty to all of the above." He says one insurer stopped contracting with them, and it proved difficult to sustain the model under fee-for-service payments,



since the practice encouraged patients to do things like email simple questions rather than come in for an appointment, the sort of innovation that makes tremendous sense, but can't be billed for under conventional insurance rules.

Fernandopulle then helped develop primary care models for two big employers and a union group—Boeing in Seattle, a major Atlantic City hospital in New Jersey, and the union for workers in that city's casinos. "Give us this extra money for primary care," he told them, "and then we'll save money on the back end, and they can see the data."

Drug spending went up "because people were actually taking their medicines," he says. But emergency room visits fell—by nearly half in the Atlantic City practices. Hospitalizations there were down 41 percent, and overall net spending decreased about 15 percent.

The Seattle and Atlantic City projects restricted enrollment to workers with preexisting, serious health problems. In that way, they resemble the focus of the Commonwealth Care Alliance on high-need patients.

Iora has enrolled about 5,500 patients in its four practices: one set up with casino workers in Las Vegas, another for employees at Dartmouth College, a third through a Brooklyn organization for freelance workers, and a fourth with the Dorchester-based New England Carpenters Union. The Las Vegas practice is restricted to higher-need workers, but the other three are open to all.

The practices get a fixed global payment to provide primary care. They don't charge any copays—"why do we want to discourage people from getting care?" asks Fernandopulle, one of his many jibes at mainstream US health care. The teams that care for patients include a doctor

doctors to make the medical decisions, come up with the right diagnosis and the right treatments. But that isn't the hard part. The hard part is figuring out how that treatment gets played out in the patient's life."

"We can spend that extra time, develop that relationship, which gives the freedom to patients to speak more to what's going on their lives," says Mike Jeudy, a health coach at the Carpenters Union clinic in Dorchester.

That's the sort of relationship Jeudy has formed with Jerome Foureau, a millwright who starting getting his care last summer at Iora's Carpenter Care practice. He was overweight and suffering from high blood pressure that led the team to put him on medication. But he's been working steadily with Jeudy, a former wellness director at a New Hampshire YMCA, and has lost 32 pounds since August. "Mike helped me out a lot—with exercise and what to eat," says Foureau, who says he's cut out red meat, among other changes. His blood pressure is still high enough to keep him on medicine, but it's heading down.

Jeudy knows a lot about diet and exercise, but it's connecting and developing a rapport with patients that's at the heart of the model.

"Before, I didn't go to the doctor much," says the 50-year-old Foureau. "Now, I feel like I'm going to see my friends. I'm not joking."

So far, just 200 union members have joined the start-up practice, the most recent of the Iora offices to open. "Anecdotally, the level of satisfaction is sky high," says Mark Erlich, head of the New England Carpenters Union and a member of the board of MassINC, the publisher of *CommonWealth*. It's harder to know what will happen with

health care costs, the main motivation for the union. "From a common sense point of view," says Erlich, "it's just a much smarter way of delivering quality medical care that, in my view, has a much stronger likelihood of containing costs in a way that the standard medical care delivery system does not."

Health care experts, however, say Fernandopulle faces a tricky challenge.

"It's really hard to save money on people who are healthy," says Dr. Elliott Fisher, director of the Dartmouth Institute for Health Policy and Clinical Practice. "Rushika's problem is there are a lot of people who have bad health behaviors who are not sick but who will be sick. Someone who's smoking and is way overweight and has high blood pressure may not have obvious heart disease now or peripheral vascular disease. But it's coming. It will have a different time horizon and different pay off," he says of what Fernandopulle is doing.

Dr. Arnold Milstein, a Stanford health policy professor, worked with Fernandopulle on the projects in Seattle and Atlantic City. "Iora is a completely different kettle of fish

## 'Everyone else is making incremental change, but we know health care is fundamentally broken.'

and nurse, but the backbone of the practices are health coaches—four for every one physician—who are able to devote a lot of time to getting to know patients and helping them craft health plans and then follow them.

The use of health care coaches, some with backgrounds in health fields but others with none, borrows heavily from an approach used in poor countries, where health care professionals are scarce. Well-known Harvard doctor Paul Farmer has used the model in Haiti, and Fernandopulle spent time in the Dominican Republic during medical school, where he saw its impact first-hand.

"This is all about engaging patients," he says. "You need

that focuses on a much harder problem,” he says of the effort to provide more primary care and reduce spending in a more mainstream population. “The evidence to show that it can be done is much less well established.”

Fernandopulle says there may indeed be a longer pay-off, though he says preliminary data from the site treating Dartmouth College employees is already encouraging. “It’s starting to seem like we may even be saving money after a year,” he says, citing a 30 to 40 percent reduction in the costs for medical specialists.

But he says there is also a moral dimension to the effort to transform primary care for everyone, not just the highest-need patients. “To say, ‘Sorry, you’re not sick enough. Go back to your usual crappy care and when you get really sick we’ll take care of you,’ is not the answer,” he says. “That’s the system we’re trying to fix.”

#### ENVELOPE PUSHERS

For nearly four decades Bob Master has worked at what often seemed to be the margins of US health care, trying to call attention to the value of a more integrated, patient-focused form of primary care. “For a long time, we all felt like the little match girl outside the party. We were out

there in the community and there is a big party of big hospitals and specialists and technology inside,” he says. “That was the happening thing, and you’re scratching on the window and saying, ‘what about us?’”

Master and others who have been doing similar work are suddenly being invited to the dance. There is growing recognition that the party of big hospitals and specialists and technology has not brought us to a health-care promised land. The tools they offer can be lifesaving when appropriately deployed. But putting these features at the center of a system with little coordination, one that is awash in vested interests rewarded by greater utilization of high-cost health care, has not served patients well and has put the country on an unsustainable course.

While headlines about the Affordable Care Act have focused on the faulty website and health plans people had that aren’t deemed adequate by the law, the reform also contains a lot of provisions designed to move US health care closer to the sort of model Master and Fernandopulle are putting into practice.

Along with the 15-state demonstration project that the Commonwealth Care Alliance is part of, the law has also created a pilot program to test caring for Medicare patients through “accountable care organizations.” These are affil-



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iated groups of doctors and hospitals that agree to care for a set of patients using global payments to try to save money, while being evaluated according to a set of quality criteria designed to ensure they are not doing so by scrimping on needed care. Massachusetts is home to five of the 32 so-called Pioneer ACOs the government approved, and four of the Bay State pilots have shown promising initial cost-savings results. Meanwhile, Blue Cross Blue Shield of Massachusetts has also taken a leadership role nationally in moving away from fee for service coverage through a program similar to ACOs called an “alternative quality contract.” A total of 640,000 Blue Cross members in the state are now covered under these contracts. The first two years of results show a slowing of spending growth and improved quality of care.

Overall, the Affordable Care Act is already being credited with driving the biggest slowdown in US health care spending on record.

Master says the sorts of changes being brought by the law and other pressure being put on the system “would have been unthinkable in the past. So you put all this together and you have all the elements for real transformation,” he says. “We finally think the winds may be with us rather than in our face.”

Fernandopulle, whose passion for “bringing the humanity back to health care” is matched by an impatience with getting there, doesn’t think the law goes nearly far enough in bringing needed changes in how care is delivered. “Giving all these people access to a system which is wasteful and achieves poor outcomes is setting the house on fire, because it’s not clear where this money is going to come from,” he says of the expansion of insurance coverage under the Affordable Care Act. “There’s an awful lot of smoke and mirrors and noise going on, and it’s not entirely clear that a lot of actual care is changing for actual patients.”

“I completely agree with Rushika that stronger medicine was indicated,” says Milstein, the Stanford professor. “But I don’t think it was politically realistic to think it actually could have been done. There are very powerful lobbying forces that push for the status quo. You have to go for the strongest medicine that current politics will allow.”

That means Master and Fernandopulle will, at least for now, continue to serve as the shock troops in the effort to transform US health care, trying to disrupt the status quo and challenge the system by showing what’s possible.

Porter, the Harvard Business School professor, says change has to come from within health care, from those providing actual care to patients, but he thinks we’re on the right track.

“These are the innovators,” Porter says of Fernandopulle and Master. “These are the people that have a history of pushing the envelope, and in both cases they’re pushing it in the right direction.” **CW**

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**John McDonough, the interim superintendent of the Boston Public Schools, outside the central office on Court Street.**

# The change agent

With a bold plan to revamp the teacher hiring process, Boston's interim school superintendent is doing a lot more than just keeping the seat warm

BY BRUCE MOHL | PHOTOGRAPHS BY J. CAPPUCCIO

John McDonough is the interim superintendent of the Boston Public Schools. He's the anonymous guy who is supposed to keep the school bureaucracy at 26 Court Street running smoothly until Boston's new mayor, Marty Walsh, can orchestrate the hiring of a new superintendent. McDonough looks the part. He's got thinning white hair and is nearing retirement at age 62. He's been working for the Boston Public Schools for 40 years; he's on his fourth mayor now. He started out as a temporary clerical employee in the payroll department and worked his way up to the post of chief financial officer in 1996. He's a numbers guy, a bean counter with no teaching experience, the perfect guy to hold the fort.

Yet McDonough is forging ahead with a bold and risky move to change the way the school system hires its teachers. Exploiting a little-used provision in the teachers' union contract, McDonough is seeking to give every principal the power to fill job openings with whomever they want. He wants to give all school principals the same power that has been carved out for a small set of district schools and that is a mainstay of independent charter schools. McDonough, a guy who has spent his entire career in the school system's central office, is trying to push power out to the schools. "They do the work," he says. "I don't do the work."

In Boston and in many cities across the state, a hiring divide has emerged. Forty-three schools in Boston

have been given autonomy over teacher hiring as part of an effort to improve student performance. Officials leading turnaround efforts at these schools are being encouraged to put the right teachers and leaders in place. According to a statewide study last summer on turnaround schools by the Institute for Strategic Leadership and Learning, a Maryland research organization, those schools that replaced more than 50 percent of their teachers in the first year had the best achievement gains. Those that had the least achievement gains had staff turnover rates of less than 35 percent.

But what few people realize is that the teacher turnover at the 43 schools with hiring autonomy in Boston causes collateral damage at the city's 85 remaining schools. Those schools still operate under an employment system with limited hiring flexibility and are required to absorb the castoff teachers no longer wanted by the schools attempting turnarounds. McDonough says it's not fair. "We're increasing conditions for success for one group of schools and increasing probability for failure for another group of schools," he says.

His new hiring policy will put all of the city's schools on more equal footing, but it comes with enormous risk. Giving every principal the power to hire whomever they want means some of the teachers displaced each year by downsizings or turnaround efforts could be left without a teaching post. Since many of those teachers are still owed jobs under the teacher's contract, the Boston Public Schools could end up paying them not to teach. It's a potential budget and public relations nightmare, particularly with the average teacher's salary in Boston topping \$80,000 a year.

"It's a risk, and it's a big risk," the interim school superintendent says. "There will be a significant cost up front in order to make this happen." As for teachers getting paid to do something other than teach, he says surplus educators will be placed appropriately in support jobs and continue to be evaluated regularly, meaning they could be removed if they fail to meet expectations. "So, one way or another, they're either in and developing to be better, or they're not in," he says.

#### THE MARSHALL SCHOOL

Something didn't add up at the John Marshall Elementary School in Boston. Only one of every 10 students at the cavernous school on Westville Street in Dorchester was proficient or better in math and English during the 2012-13 school year. Yet the Marshall's teachers were rated above average for the Boston Public School system. School officials rated 98 percent of the Marshall's teachers as exem-

plary or proficient in evaluations. Only 2 percent needed improvement and none was rated unsatisfactory. The teachers were passing with flying colors, but their students were failing.

There are many possible explanations for the Marshall's failure—poverty and violence in the area, a rundown facility, the short school day, and on and on—but many think the school's leadership and teachers as a group weren't up to the task despite what the evaluations said. There are also indications that the teacher hiring process in Boston undermined efforts to turn the school around.

Boston Public School officials refused to release detailed data on teacher comings and goings at the Marshall, but some information could be gleaned from a much larger database on teacher movements developed using school department data by former city councilor and mayoral candidate John Connolly.

Connolly's database shows seven teachers moving from the school system's ominous-sounding excess pool to positions at the Marshall between 2009 and 2011. The excess pool at the Boston Public Schools is the educational equivalent of purgatory, a place where teachers with what amounts to tenure wait for a new assignment if their old job has been eliminated. Four of the seven teachers who came to the Marshall from the excess pool left turnaround schools where principals had been given greater hiring

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**'It's a risk and it's a significant risk,' says McDonough. 'There will be a significant cost up front to make this happen.'**

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autonomy. Of the remaining three teachers, one came from a school that was closing, one arrived from the central office, and one moved in from a traditional school.

Over that same time period, nine Marshall teachers with less than three years of experience were let go because, according to the database, no position was available to them. It's impossible to tell from the data whether one teacher's arrival caused another teacher's departure, but Marshall officials say they recall a handful of young, promising teachers bumped out by teachers coming from the excess pool.

"It didn't happen a lot, but it happened enough to make a difference," says Cynthia Tolbert Jacobs, who worked 13 years at the Marshall as assistant principal and for a brief time as acting principal. She is currently the principal of







**The John Marshall School:**  
Only one of every 10  
students was proficient or  
better in math and English.

the Ellis Elementary School in Roxbury.

Jacobs says teachers coming in from the excess pool often wouldn't even sit down for an interview with the principal. "You would just look up and here was a person coming in to take a job," she says. It wasn't an ideal situation, she says. "You as a principal know what your vision is and you want to get someone who agrees with that vision."

The size of the excess pool varies from year to year, but school officials expect it to stabilize at more than 300 teachers over the coming years as struggling schools continue to be placed in the hands of new managers who are given full hiring autonomy. Some of the teachers in the excess pool are good and get snapped up quickly by other schools. But others are treated like they are radioactive: No one wants to touch them. A 2010 study on Boston teachers by the National Council on Teacher Quality summarized the situation in stark terms: "Undesired teachers are routinely excessed and passed onto other schools rather than fired, a practice known as the 'dance of the lemons.'"

The choreography of the lemon dance is complicated, according to teachers, principals, and administrators. It begins with principals, who try to avoid hiring lemons by putting off job postings as long as they can or by making their openings sound as unappealing as possible. The lemons, meanwhile, use their seniority to secure a spot they covet at another school, sometimes at the expense of a young teacher with less experience.

All of these dance moves take a long time to execute, which means Boston's hiring process tends to drag on and on. Most schools do their hiring in the winter and early spring, so teachers can prepare during the summer for the start of school in the fall. But in Boston only 8 percent of

job openings for the next school year are filled before school lets out in June, the time when the best teacher candidates are on the market. Two-thirds of Boston hires are made in August and September, when the market for teachers is thin and there is less time to prepare for the start of school.

The delay in hiring also means younger teachers without tenure face tremendous uncertainty because they don't know if they are going to hold on to their job or be bumped aside at the last minute by someone with tenure. Jacobs said one promising young teacher at

the Marshall left to take a job outside of teaching because she couldn't run the risk of being left without a job.

Caroline Corcoran, a fourth and fifth grade reading teacher at the Kenny Elementary School in Dorchester, says the uncertainty for young teachers is a big problem. She landed her job a week before school started five years ago and she didn't learn she was rehired for a second year until mid-August the following year.

"I had no plan B if I didn't get a job my second year," she says. "My plan B was to default on student loans because there was no other financially feasible option. That can't be the case. We can't demand the world of all our teachers, but then refuse to hire back certain ones, regardless of their quality of work, just because they haven't been teaching long enough. The career doesn't sound very appealing when you have massive student loans, as so many people of my generation do, and you know you can't be assured a job for the next three years."

## UNLOCKING POTENTIAL

Boston school officials decided to start over at the Marshall last fall. They brought in a nonprofit Boston organization called Unlocking Potential—UP for short—and gave the group's leaders the autonomy to hire, spend, and teach pretty much however they wanted. UP immediately dismissed all of the school's 94 employees. The organization lengthened the school day by two hours and extended the teachers' work year by a month. Students were required to wear uniforms and abide by a strict system of discipline. The inside of the school was painted for the first time in 11 years and the front entrance of the building was redone.





"I believe that autonomy is a prerequisite for vast school improvement," says Scott Given, CEO of Unlocking Potential.

Renamed UP Academy Dorchester, the inside of the school is now bright and cheery, decorated with colorful posters and inspirational messages. Students are active, engaged, and learning. The teachers are young and full of enthusiasm, routinely working 10 to 12 hour days. Everyone in the school seems to be on the same page. A popular poster inside many of the rooms reads in part: "If I work hard at it, I will be what I want to be."

UP, which has run turnarounds at three other schools, forecasts that in four years three of every four students at the Marshall will be proficient in math and English. In 10

years, the organization expects to complete the turnaround of the school, with nine of every 10 students proficient or better. It's the sort of academic progress that has parents, teachers, and administrators salivating for more.

Scott Given, the 33-year-old CEO of Unlocking Potential, who developed the business plan for the company while attending Harvard Business School, says his organization wouldn't even be doing business in Massachusetts if the Legislature hadn't passed a law giving people like him the autonomy to hire whoever he wants.

"I believe that autonomy is a prerequisite for vast school improvement. It's not the only thing that matters, but it's absolutely a prerequisite," he says. "If you have just one adult in a building who is not strongly aligned to the goals of the school, that is going to create really significant challenges."

Lana Ewing, the superintendent of UP Dorchester, says UP received 4,000 applications—about half from people in Massachusetts and half from people around the country—for jobs at the Marshall. She ultimately hired 58 teachers and 25 other staffers. She says 37 percent of the teachers are people of color. The student body is 99 percent black and Hispanic.

Only five of the former Marshall employees applied for jobs with UP. Two of them, a teacher and the office manager, received

posts. A third person who worked at the Marshall for an outside contractor was also hired as a teacher. Several parents and school officials say most of the former Marshall employees chose not to apply for jobs at UP because they were unwilling to work longer days and a longer year with no increase in pay. Of the 48 Marshall teachers who did not land a job at UP, 40 ended up in the excess pool and eventually landed at another Boston school, three won approval for long-term leaves, and five left teaching.

What everyone notices about UP's new teaching staff

is how young they are. Ten of them are first-year teachers; the most experienced teacher has been in the profession nine years. Theresa Johnson, the 47-year-old office manager at the Marshall who is now handling those same duties for UP, said the age transformation at the school has been incredible. “Last year I felt like the youngest person there,” she says. “This year, I feel like I’m one of the oldest.”

Ewing says the move toward younger, less experienced teachers was not by design. “It’s just the way it turned out,” she says. But by going young, UP was able to hire nine more teachers than the Marshall had and still have a smaller payroll. Like the Marshall teachers, the UP teachers are members of the Boston Teachers Union. But because UP teachers have fewer years in service, their salaries are lower. The average teacher salary at UP is \$63,000 while the average teacher working for the Boston Public Schools earns \$83,000.

The larger teaching staff at UP is also instructing about 100 fewer students, since enrollment fell from 688 to 581 with the transition from the Marshall to UP. Several parents with children at UP say they were initially concerned by all the changes in staff and rules, but now are pleased with what’s going on. Anthony Dabney says he has seen a noticeable change in his son, who is in the fourth grade. “He dislikes the discipline,” Dabney says, “but I do see a difference in the learning. I see a lot of growth in my son. He really wants to do well.”

## What everyone notices about UP Academy Dorchester is how young the teachers are.

Maytee Pena, who has a son and daughter at the school, says the departure of so many teachers concerned her. But she says the emphasis on discipline is making a difference and the teachers are doing a good job. “They’re very young and they have lots of energy,” she says.

One of the young, new teachers is 24-year-old Alison Crawford, who attended a private Quaker high school and then went on to Haverford College just outside Philadel-



Teachers work 10-12 hour days at UP Academy Dorchester. Students seem to be engaged.

phia, where she grew up. After graduating, she was accepted into Teach for America, a two-year national teacher corps program for recent college grads, and was assigned to teach 10th-grade English at a high school in inner-city Baltimore. She spent two years there before hearing from a friend that UP was hiring teachers for an elementary school in Boston.

Crawford liked her Baltimore school and its principal, but she was open to a move. She says most of her tenth graders were already lagging too far behind to have a chance at getting into college, so she wanted to teach children who were younger. She also felt as if only a portion of the Baltimore school’s teachers were on board with the principal’s philosophy. “They were very resistant to his attempts to change the school culture,” she says of some of the teachers. “Even one or two not on board can really throw things off.”

UP appealed to her because of its emphasis on teacher development and the concept of a turnaround in place, the idea of moving into an existing city school and educating the same students who had been struggling under the previous leadership. Crawford says UP’s interview process was grueling but rewarding. She says she got more out of a phone review by an UP official of one of her Baltimore teaching tapes than she ever did from officials



at the Baltimore school.

Crawford says 18 of the 20 students in her second-grade class weren't prepared to do second grade work, so she spent the first few months just preparing them to learn, teaching them to sit in place and pay attention. She also focused on the school's core values of teamwork, integrity, grit, engagement, and respect. She says she worked 10 to 12 hour days in Baltimore and is continuing that schedule in Dorchester, but the difference is that every teacher is working at that level in Dorchester. "The mindset is whatever it takes," she says. "For a teacher, this is about as good as it gets. It's an opportunity to change people's lives."

### THE INTERIM SUPERINTENDENT

There's a lot of buzz about John McDonough's hiring autonomy initiative in the educational community. Everyone wants to know how McDonough is going to pull it off and how it's going to work.

He is using a fairly obscure provision in the teachers' contract that lets a principal hire whoever he or she wants to fill an opening as long as the new teacher is paid a \$1,250 stipend. The stipend provision was intended to give school officials a little more leverage in hiring hard-

to-find science and special ed teachers, but McDonough is going to make it standard procedure for every hire.

McDonough describes his new policy as "bounded autonomy." Principals will be given hiring freedom only if they comply with three requirements: perform annual evaluations of their existing teachers, pursue diversity hiring goals, and complete all their hiring within a six-week period.

McDonough knows there will be teachers left in the excess pool this spring who are owed jobs but unable to find them. He doesn't know how many there will be, but is emphatic on one point: "Boston will not have a rubber room."

The reference to a rubber room may mean nothing to people outside education circles, but inside those circles it is shorthand for waste and dysfunction in New York City schools. Rubber rooms became infamous following a 2009 article in the *New Yorker* that described them as administrative offices where unwanted teachers were required to report each work day to, for all intents and purposes, do nothing. The article described teachers playing board games, doing crossword puzzles, or just trying to catch a nap.

McDonough is clear there will be no rubber rooms in Boston but is vague about what will happen to Boston's un-

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wanted teachers. He says they will be assigned useful work. “We’re a labor intensive organization,” he says. “There are tons of uses for valuable employees in a whole bunch of areas.”

Richard Stutman, the president of the Boston Teachers Union, initially downplayed McDonough’s hiring autonomy initiative when it was first announced, saying there are plenty of teaching jobs to go around. But in December he filed a grievance over the new hiring policy, saying the \$1,250 stipend was supposed to be used on a limited basis. Making the stipend standard operating procedure will waste a lot of money, he says.

Linda Noonan, executive director of the Massachusetts Business Alliance for Education, which has advocated in the past for hiring autonomy, applauds McDonough’s decision and says it is an acknowledgement that teachers matter to a school’s success. “Our position is, if it’s good for low-performing schools, why isn’t it good for all schools?” she says.

Tom Scott, executive director of the Massachusetts Association of School Superintendents, says hiring autonomy is on every superintendent’s wish list. “The climate today is accountability, accountability, accountability,” he says. “You want to make sure you have the right people in the right seats on the bus.”

John Connolly, who campaigned to be the education mayor, says he is a big believer in McDonough. “John was often the only high-level voice of reason inside BPS,” Connolly wrote in a December email while away on a post-campaign vacation. “He wants to do the right things and he knows BPS inside out. If John is given the backing, he won’t hesitate to clean house and make critical changes that really should happen before the next superintendent is hired. That said, I am always wary of BPS statements about changes to teacher hiring and placement rules, timelines, and policy. There is so much off-the-radar deal making and just plain skirting of the rules behind the scenes that undermine supposed changes. In sum, I won’t believe anything has changed until I see it actually happening.”

McDonough knows everyone is watching him closely, but he doesn’t seem nervous. He says he has briefed incoming Mayor Marty Walsh twice on school issues, including the new hiring policy. So far, he says, no one has told him to start acting more like an interim superintendent.

“Shame on us if we wait for things to change for the better, because we have 57,000-plus students who are in our schools today,” he says. “They don’t care about the noise outside. They don’t care about the anxiety levels of adults. Our obligation is to ensure their success.” **CW**

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# Public defender blues

The taxpayer tab for indigent defense keeps rising,  
but the lawyers who do the work are among  
the lowest paid in the country

BY GABRIELLE GURLEY | PHOTOGRAPHS MEGHAN MOORE

Malden District Court is 50 shades of grim. The defendants in the packed courtroom—men and women, some young, most not—appear somber, resigned, or just plain petrified. The female judge whispers to attorneys. No one seems to know where the Spanish interpreter is, so the Portuguese interpreter does double duty. The court clerk yells out names and dates. Cell phones are banned, so a court



Public defender Anuj Khetarpal, right, discusses a settlement at Malden District Court.





**"I wanted to focus on people who are typically underrepresented and overlooked by society," says Khetarpal.**

officer kicks out a man who tries to use one.

Anuj Khetarpal radiates calm. The court is usually even busier, but two days before Thanksgiving, it is "quiet" for the 32-year-old public defender. Khetarpal, who recently completed his first year on the job, chats with his fellow lawyers as he waits for his case to be called. Like some of the other young lawyers, he favors a trendy closely-cropped beard that jazzes up his dark-suited, lawyerly persona. His client, a short brunette in a pink fleece and blue jeans, steps forward slowly when the clerk shouts her name. She is charged with two counts of larceny for cashing two Social Security checks worth \$2,168 that had been sent to her mother, who had died.

Khetarpal is on the case because his client is poor, which is the argument he makes in her defense. He huddles with a judge, a prosecutor, and a probation officer and they eventually reach a settlement. His client will pay \$62.50 a month for five months, returning nearly 15 percent of what she took. She will also continue to perform community service.

All in all, it's a pretty good deal. His client can move on with her life and Khetarpal can move on to his next case.

The pace never seems to slow for the state's public defenders, a group of state employees and private attorneys who collectively handle more than 220,000 cases a year. *Gideon v. Wainwright*, the landmark 1963 US Supreme Court decision, extended the Sixth Amendment right to counsel to state courts for a person who is too poor to pay. "In our adversary system of criminal justice, any person hauled into court who is too poor to hire a lawyer cannot be assured a fair trial unless counsel is provided for him," Justice Hugo Black wrote.

But fair trials don't come cheap. The taxpayer tab for the Committee for Public Counsel Services, the state agency that provides indigent representation in Massachusetts, grew by almost \$100 million between 2003 and 2011, an increase that caught the attention of the Patrick administration. So administration officials unveiled a plan to provide legal representation at a lower cost: Instead of 90 percent of the cases being handled by private attorneys paid by the hour, the Commonwealth would put 1,000 new attorneys on the state payroll and have them handle nearly all of the agency's cases internally. Patrick also wanted to move the public defenders out of the judicial branch and



into the executive branch and do a better job of screening clients to make sure they were truly indigent. Projected savings: \$60 million.

The Committee for Public Counsel Services opposed the effort to move the agency into the executive branch and warned that the millions of dollars in savings would never materialize. The Legislature decided to strike a compromise. Instead of giving the agency enough money to hire 1,000 new staff attorneys, it provided enough money for only several hundred more. Instead of handing all of the agency's cases over to staff attorneys, lawmakers approved giving them only a quarter of the cases. The agency continued to operate in the judicial branch and better screening procedures for clients were implemented.

Two years later this experiment in budget management is having mixed results. The budget for CPCS fell slightly in 2012 compared to 2011, but then rebounded in 2013 to its previous level of \$200 million. Staff attorneys are handling 23 percent of the agency's cases instead of the target goal of 25 percent; the rest are being handled by private attorneys retained by the agency. The committee hopes its staff attorneys will reach the 25 percent target in the coming fiscal year, but that goal is proving difficult to achieve because the agency is having a hard time hanging on to the lawyers it employs. Last year, according to agency officials, nearly 12 percent of them left, defeated by the long hours and low pay.

The \$40,000 starting salary of a full-time public defender in Massachusetts is among the lowest in the country. In New Hampshire, an entry-level public defender earns \$44,998. In Vermont, the starting salary is \$45,510. It's

## Khetarpal's friends in large law firms work the same unforgiving hours but some of them make five times his salary.

\$55,000 in Rhode Island and \$62,000 in Connecticut. Georgia is the lowest in the nation at \$38,000, while San Francisco County is among the highest at \$98,000.

Khetarpal is paid \$43,000 a year, a notch above the standard starting pay, largely because he came to the job with some previous experience. Still, it's hardly a lot of money for someone with a law degree working 10- to 12-hour days who often comes into the office on weekends and occasionally works until midnight. He lives with two roommates on the first floor of a Jamaica Plain triple-decker, paying

rent of \$750 a month, which adds up to about a fifth of his salary. He has \$50,000 in student loan debt, about half the national average for law school graduates, although he is exploring a federal program that would forgive the debt in return for 10 consecutive years of public service work.

Khetarpal's friends in large law firms work the same unforgiving hours, but some of them make five times his salary. When Khetarpal gets together with them, they are fascinated by his courtroom stories. But for the most part they don't understand the path he pursued. "They think I made a silly choice," he says.

### SWITCHING GEARS

Khetarpal's small office in Malden features a poster of Mahatma Gandhi high on the wall. A quote on the poster reads: "An eye for an eye makes the whole world blind." Years before Gandhi championed Indian independence and nonviolent resistance, he was a lawyer in South Africa fighting apartheid. Gandhi's legacy has had a tremendous impact on Khetarpal. "There are times when this job gets pretty stressful," he says. "That's kind of a reminder why you came into public defense in the first place."

Khetarpal is a first-generation American of Indian descent. His parents immigrated to the United States in 1981 and he was born in Brookline a year later. He and his younger sister grew up in a large extended family of aunts, uncles, and cousins—18 in all. His parents still live in Brookline; his father is a retired New England Life Insurance computer analyst and his mother is a CVS supervisor. Lean and athletic, Khetarpal was a captain of the University of Massachusetts Amherst crew team and once coached crew for Mystic Valley Charter School students. In recent years, he has taken up running. He qualified for the Boston Marathon after completing a Delaware race in 3 hours and 4 minutes.

After graduation from UMass, Khetarpal worked as risk engineer for Zurich Insurance, one of the world's largest insurance firms. He was in a fast-track management training program with a corporate salary in the mid-\$50,000 range that came with a bundle of perks, including a company car, cellphone, and Internet service. But after three years on the job, he decided that strategizing on how to pump up the profits of a large corporation was not what he wanted to do with his life. "I wanted to focus on people who are typically underrepresented and overlooked by society," he says.

As Khetarpal explored fields like politics and community work, he found that many people in those fields had law degrees, so he went to Boston University School of Law, graduating in 2010. "As a lawyer, you are taken more



Khetarpal goes over a court agreement with one of his clients.



Khetarpal at his Malden office.

seriously,” he says.

One summer during law school, Khetarpal helped organize a conference in India for International Bridges to Justice, an organization that helps train legal aid groups to assist people in developing countries. At the conference, he met a group of San Francisco public defenders who traveled to India at their own expense. They were “super enthusiastic” about their work, he recalls.

When the time for another summer internship rolled around, Khetarpal decided that a position at a large law firm did not suit him any more than the corporate world had. So he got in touch with one of the San Francisco public defenders. After a telephone interview, he headed to California, going to work in the San Francisco public defender’s homicide unit. He did a little bit of everything, including interviewing clients and writing motions.

Elizabeth Hilton, his supervisor there, says she is more cautious than most in her office about allowing interns to argue in court, but she decided that Khetarpal was ready to argue a motion for prosecutors to identify a confidential informant. Khetarpal won the motion, his first victory in a courtroom.

Hilton says Khetarpal understands what it takes to be public defender. “They have to be book smart, but they also have to have the ability to connect on a human level and with empathy and compassion for the underdog,” she says. “He definitely had that.” Today, Khetarpal finds that he connects well with his young defendants and says that some of his minority clients feel that, as a South Asian man, he has more empathy for their difficulties.

He is also versatile. At a BU law clinic, he had to switch sides and work as a student prosecutor in Quincy District Court. There, Khetarpal demonstrated that he could prosecute cases as well, a role that not every law student can handle, says David Breen, one of his former BU Law professors. “I’d like to think that has probably made him a better defense attorney,” Breen says.

After graduating from law school, Khetarpal worked as a law clerk in the Texas Court of Criminal Appeals in

Austin. The position, a prestigious one for a law school grad, enabled Khetarpal to dive into how legal decisions are made in the real world. In his first year, he wrote an opinion on the use of excessive force by law enforcement that he hoped would influence how police confront suspects trying to destroy evidence. Khetarpal considered staying in Austin, but with all of his family in the Bay State, he decided to return home.

Instead of heading to some well-appointed office suite, Khetarpal now rotates between courthouses in Malden, Somerville, Cambridge, and Woburn. At the end of November, he was in charge of roughly 55 cases. A quarter were larceny offenses, another quarter were assault and battery cases, and the rest were split between drug offenses and miscellaneous crimes such as disturbing the peace. Several cases involving drug evidence handled by former state chemist Annie Dookhan, who is now in prison for falsifying evidence, are also on his plate. About 70 percent of his cases include a felony charge in addition to a misdemeanor charge.

The number of cases is on the high end for a new lawyer, he says, but the day-to-day workload depends on the complexity of the case. Adding more cases to his workload would be a burden, he says. Public defenders do not have the same resources that are available to prosecutors,

## The Patrick administration thought it could save millions by shifting work from private attorneys to on-staff lawyers.

who can consult local, state, and federal law enforcement officers to help construct their cases. There are also a limited number of social workers who can look into treatment options for defendants who abuse drugs or have mental health issues or investigators to find and interview witnesses and gather physical evidence.

"There are so many moving parts for every single case," Khetarpal says. "If I have 100 cases, I don't have time to touch every single one of them. You can come up to a court date and not have done any adequate work or investigation on your client's case. How do you fight a case if you really don't know anything about it?"

### INDIGENT DEFENSE REFORM

Jay Gonzalez thought he could save the state some money. The Patrick administration's former secretary of administration and finance proposed doing away with the public defender system's heavy reliance on private attorneys and bringing all the cases inside the state agency. He wanted to hire 1,000 new attorneys, move the agency into the executive branch, set their workload at 200 cases a year, and bring spending on public defender work under control. Even including the cost of health insurance, pen-

sions, and work space for all the new state employees, he figured the state could save \$60 million a year.

In an Argument and Counterpoint debate in the Spring 2011 issue of *CommonWealth*, Gonzalez said the state's reliance on private attorneys to do public defender work was bad policy. He said the private attorneys had no incentive to rein in their hourly work and that half of them earned more than the state's own staff attorneys. He even raised questions about the ethics of some of the private attorney job assignments. "The purpose of the program is not to provide private bar advocates with work," he wrote. "It is to provide indigent criminal defendants with quality legal representation as cost-effectively as possible."

Arnold Rosenfeld, a former public defender and a board member of the Committee for Public Counsel Services, responded in the magazine that Gonzalez was all wrong. He said Gonzalez didn't understand the intricacies of defense work and his proposed reorganization could undermine the work the agency does. He added that the reorganization wouldn't produce the expected savings.

A furious battle ensued that no side won. Gonzalez got some money, but only for enough attorneys to go from a 90-10 split between private and staff attorneys to a 75-25 split. The Committee on Public Counsel Services hired hundreds of attorneys, bought them computers and furniture, and found them office space.

The budget for private attorneys dropped from \$117.5 million in 2011 to \$98 million in fiscal 2013, but the agency's overall budget, including the salaries of new attorneys and one-time costs for offices, furniture, and computers, has held relatively steady over the past two fiscal years. The share of work being done by staff attorneys is only at about 23 percent, in part because of the agency's inability to keep attorneys from leaving. Most of those who are leaving have been with the agency less than three years. Total state costs have probably gone up because the budget numbers don't include the cost of pensions for new employees hired.

"This is more than typical attrition and it's certainly going to affect our ability to get to 25 percent," says Anthony Benedetti, the chief counsel for the Committee for Public Counsel Services. "Attrition has always been a problem, but the gap between what we pay and the unions pay has really exploded." The unions he is referring to represent attorneys in the executive branch of state government, where entry-level attorneys make \$55,000 a year.

Anecdotally, Benedetti says he hears lots of stories about agency employees jumping to other public defender agencies in other states. "We've lost people to New Hampshire, to Connecticut, to New York," he says. He's also got employees working second jobs to make ends meet. David



Grimaldi, who was hired at the public counsel agency in 2007 at a salary of \$37,500, worked in a wine shop until the late nights and weekend work forced him to give it up. “I certainly miss that extra money,” he says.

Benedetti has always been skeptical that the Patrick administration’s plan to transition to staff attorneys would yield a lot in savings, but he says the agency has done its best to comply with the goals of the legislation. A company has been hired to evaluate how the reforms have worked and will report back in the spring. He fully expects the report to say that savings have been minimal. “Certainly not the millions that were talked about,” he says.

Patrick administration officials declined comment on the cost-saving efforts at the Committee for Public Counsel Services.

#### LOOK FOR THE UNION LABEL

In the \$217 million funding request being prepared for the upcoming fiscal year, the Committee for Public Counsel Services has proposed a salary increase that would put entry-level public defender salaries at \$50,000, closer to parity with their executive branch counterparts who make \$55,000 a year. The proposal includes modest hourly wage

increase for private attorneys.

Agency officials say they need a pay increase for staff attorneys to stem attrition. Talk about dramatically reducing the agency’s budget seems to have subsided, at least for now. The only cost-saving moves agency officials talk about now are enhancing social service programs to keep people from committing crimes in the first place and decriminalization of minor drug and driving offenses. Since voters approved a 2008 ballot initiative to make possession of an ounce or less of marijuana a civil rather than a criminal offense, the public counsel agency estimates its caseload has dropped, yielding savings of nearly \$4 million.

It’s unclear whether the Legislature will go along with a big pay increase for public defenders. (There is also talk that the state’s district attorneys will seek a pay increase for their assistant DAs, who make even less than public defenders.) Part of the reason for skepticism is the public’s low opinion of public defenders. One public defender, blogging at “Confessions of a Trial Addict,” describes how *Law and Order*, the popular TV drama, negatively portrays her profession. “Without a doubt L&O portrays public defenders and/or legal clinic lawyers as the most unprepared, sloppy, least legally informed dimwits,” she says.



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State Sen. Gale Candaras, a Wilbraham Democrat and vice chair of the Joint Committee on the Judiciary, says the public doesn't place a high value on indigent representation. Ask people to rank 10 priorities, from education to taxes to public health, but also include public defense, she says. "I guarantee you it's going to come in tenth every time."

Some public defenders are not content to wait for the Legislature to give them a raise and are taking matters into their own hands. Public defenders in New Hampshire, Vermont and New York are unionized, but past efforts to unionize public defenders in Massachusetts have always fizzled out. However, a group of attorneys at the agency recently recruited SEIU Local 888 to help spearhead a new push. Massachusetts public defense attorneys cannot bargain collectively due to a technicality under current law, so the group first needs to win passage of a bill pending in the Legislature that would allow them to form a union. Organizers say that any union that is created would also include the agency's social workers, investigators, and other staff members.

"What it means is that we have a voice in the process, so that we can advocate for ourselves just like we advocate for poor people in the courtroom every day," says Ben Evans, a staff attorney and member of the union organizing team.

The Committee for Public Counsel Services does not have a position on the union, according to Benedetti.

"I don't think there's any reason why they shouldn't be able to bargain collectively," says state Sen. Will Brownsberger of Belmont, who chairs the Joint Committee on Public Service, which heard testimony on the bill. "It certainly makes sense for them to have the ability to assert their economic interests, and I think that it is in the interests of the public to have a more stable work force," says Brownsberger, who as a private attorney represented indigent defendants.

Khetarpal supports the union-organizing effort, which he believes would help stanch high turnover at the agency. "You don't want inexperienced judges," he says. "Why do you want inexperienced lawyers?"

The young attorney is passionate about his work, but there is frustration, too. The criminal justice system has come a long way since *Gideon*, but Khetarpal and his peers wonder how long they can keep battling their finances before something has to give. "It's not a sustainable lifestyle based on the remuneration that you get," he says. "You are going to lose a lot of great attorneys and it is going to have a negative effect on the ability of the indigent to receive effective representation." **CW**



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# Dark money rising

Outside money, lots of it hard to trace, is flooding political races in the US, dramatically altering the campaign paying field. Wendy Kaminer, iconoclastic lawyer, civil libertarian, and political observer, and Liam Kerr, who heads a group that's part of the spending spree but nonetheless worries about its impact, consider what it's doing to campaigns and what, if anything, should be done about it.

PHOTOGRAPHS BY FRANK CURRAN

Citizens United upended electoral politics across the country. The 2010 Supreme Court decision, and the court rulings and regulatory decisions that have followed, held that corporations and unions could spend unlimited amounts of money on political efforts. The case recast the role of already weakened political parties, shifting money and power further outside the party system. It forced politicians, regulators, and citizens alike to try to adjust to a new reality that continues to shift in unpredictable ways. Boston was witness to that new reality in last fall's mayoral race, which drew an unprecedented influx of outside spending.

The arrival of big money from outside groups in local politics

is far ahead of the regulations governing it. There has been a surge in outside political spending by wealthy individuals, corporations, and labor unions, through a slew of new political committees and nonprofits. Savvy political operatives are increasingly using IRS rules to shield the identity of the donors behind all this spending from public scrutiny. Dark money is now coursing its way through all levels of American politics.

To Wendy Kaminer, a noted lawyer, author, civil libertarian, and Boston resident, there are grounds for concern, and a series of thorny free-speech issues lurk nearby. A contrarian on many matters, Kaminer has spent her career taking on everyone from self-help practitioners to Biblical literalists to pornography censors. She's a former ACLU board member who became a sharp critic of the organization over free speech matters. Fifteen years ago, in a spirited Conversation interview in these pages, she crossed swords with Rev. Eugene Rivers over church-state issues and education policy ("Education, religion, and prayer," Winter 1999). Lately, Kaminer has earned barbs from liberal activists for her argument that the hue and cry surrounding the rise of outside spending is overblown. Kaminer has been a leading critic of activists who are trying to overturn the Supreme Court's *Citizens United* decision. She views *Citizens United*, and its related cases, through a free speech lens. Kaminer is troubled by the increasing popularity of dark money groups, like Karl Rove's Crossroads GPS, that use their nonprofit status to duck donor disclosure rules. But she's equally worried that ongoing attempts to rein in hyper-political nonprofits will wind up exposing everyone from the Sierra Club to the National Rifle Association to disclosure regulations meant for political committees, not citizen advocacy groups. She believes the response to *Citizens United* shouldn't be to crack down on outside groups, but to lift contribution limits on individual contributions to political candidates.

Liam Kerr is a somewhat reluctant participant in the outside money arms race. Kerr is the head of the Massachusetts chapter of Democrats for Education Reform, a New York City organization with several hedge-fund managers on its board of directors. The group was formed to provide a financial counterweight to teachers unions, and in the recent Boston mayoral race it poured \$1.3 million into efforts to support John Connolly, who lost to Marty Walsh. Kerr, a graduate of Dartmouth's business school, says the money was spent defensively, trying to offset a host of pro-Walsh labor committees.

## GLOSSARY OF KEY TERMS

**Buckley v. Valeo:** 1976 Supreme Court decision allowing unlimited campaign expenditures by individuals.

**Citizens United v. FEC:** 2010 Supreme Court decision allowing unlimited outside campaign expenditures by corporations and labor unions.

**SpeechNow v. FEC:** 2010 Appeals Court decision allowing unlimited contributions to political action committees by individuals.

**Super PACs:** Political action committees that accept and spend unlimited contributions from individuals, corporations and unions. Donors are publicly disclosed.

**501(c)(4) Committees:** Nonprofit campaign committees regulated by the IRS, not elections officials. Their primary function is not supposed to be political. They may accept and spend unlimited contributions from individuals, corporations and unions, and may funnel money to super PACs. Donors are not publicly disclosed.

Spending totals from pre- and post-*Citizens United* races in Massachusetts tell a starkly contrasting tale. Less than 1 percent of the spending in the 2006 gubernatorial race came from outside groups; in 2010, outside money reached 31 percent of the gubernatorial race's total. The 2009 Boston mayoral race attracted just \$8,700 in outside spending. Four years later, outside groups dumped \$4 million into the race to replace Thomas Menino.

Outside money poured into Boston's mayoral race from all quarters. It came from Working America, a super PAC affiliated with the national AFL-CIO; from American Working Families, a Virginia-based super PAC run by Democratic media consultant Bud Jackson; from Democrats for Education Reform; and from One Boston, a mysterious super PAC run out of a two-family home in Roslindale. One Boston's chair and treasurer, Jocelyn Hutt, was a political unknown when her PAC dumped

Spending totals from  
pre- and post-*Citizens*  
*United* races tell a  
starkly contrasting tale.

\$480,000 into a series of pro-Walsh television ads, including spots that aired during the World Series. Hutt has declined to identify the funders behind her PAC and, under current state law, she didn't have to file any campaign disclosures until the new year—with Walsh already settling into Boston City Hall. And if Hutt's donors take a page from Karl Rove, and route funds into One Boston through a 501(c)(4) nonprofit corporation, they won't face any public disclosure.



For a time, outside spending looked like it would become a flashpoint in Boston's mayoral race. One candidate in the 12-way preliminary election, Rob Consalvo, pushed hard to emulate the People's Pledge that Elizabeth Warren and Scott Brown struck in 2012, and have the field of mayoral hopefuls voluntarily forswear outside expenditures. The effort gained steam in August, when the education reform group Stand for Children announced plans to spend \$500,000 promoting John Connolly's candidacy. Under public pressure, Connolly swore off all outside spending, asking Stand to stand down and also asking Kerr's Democrats for Education Reform to pull their canvassers off the street.

Marty Walsh refused to follow suit, calling the pledge against outside money a political gimmick. Outside groups wound up spending \$2.5 million on Walsh's behalf—slightly less than what Walsh himself spent. Democrats for Education Reform jumped back into the race in October, spending money at a furious pace in a bid to catch up with the pro-Walsh PACs. Outside spending totals soared well past the \$500,000 mark that ignited the Stand firestorm, but after the August imbroglio the pledge faded as a campaign issue.

Massachusetts isn't alone. Recent mayoral races in New York and Los Angeles attracted millions in outside

PAC spending. Outside groups in the recent Los Angeles school district race outspent the field by a wide margin. Democratic-aligned super PACs just poured buckets of money into small-dollar legislative races in New Jersey, while brothers David and Charles Koch, the well-known conservative activists, recently funneled money into local races in Iowa.

Locally and nationally, regulators are scrambling to get ahead of a likely wave of outside spending in 2014. The Internal Revenue Service is trying to impose new restrictions on dark money 501(c)(4) groups, which may spend unlimited sums on political races, or funnel unlimited sums into super PACs, but which are currently exempt from donor disclosure regulations. (Democrats for Education Reform, for one, channeled the funds it spent in Boston through a nonprofit.) The IRS effort raises serious constitutional questions, and is likely to invite fierce political opposition. In New York, an anti-corruption commission appointed by Gov. Andrew Cuomo is pushing for stricter disclosure of outside expenditures, lower individual campaign contribution limits, and the public financing of political campaigns. Massachusetts Secretary of State William Galvin is now calling for the disclosure of outside campaign spending in real time—one point both Kaminer and Kerr agree on.



Outside money's rise has changed electoral politics for politicians, regulators, and citizens alike. The changes remain volatile and unpredictable. In early December, I sat down with Kaminer and Kerr at the *CommonWealth* offices to talk about these changes. What follows is an edited transcript of our conversation.

— PAUL MCMORROW

**COMMONWEALTH:** How would you both classify the outside spending we've seen in the Boston mayor's race, in the Los Angeles mayor's race, in the LA school district races? Is this a whole new dynamic, or a shift that's been happening for a while?

**WENDY KAMINER:** I think the practice has shifted gradually. In some ways, the law has shifted more gradually than people realize. Citizens United is so widely misunderstood and over-simplified. People tend to use it as a symbol for whatever they don't like about campaign finance. I think it's an amplification of a gradual shift and, personally, I suspect it has more to do with growing inequality of wealth. Individuals for a long time have had the right, and I think they should have the right, to spend money in order to amplify their political opinions. I think what people often miss out in these debates is that 20 years ago you didn't have so many people who could put seven figures into a campaign.

**LIAM KERR:** In the Boston mayor's race, in particular, we saw by far the most aggressive spending by groups affiliated with labor unions. It's an extension of playing the game, playing the game to win, understanding the rules better than others, having the infrastructure and treasury to act on it. History is written by the winners, and so are campaign finance laws. A single pipefitter's union leader can contribute 30 times more to a campaign than an individual living in Massachusetts can. That certainly has something to do with the scale. You certainly have millionaires and billionaires contributing on one side, but in the case of Boston, it was labor.

**CW:** How did outside spending influence the way the Boston mayor's race was conducted?

**KAMINER:** There was a lot of goodwill toward Marty Walsh. It had nothing to do with money. What would have happened if he hadn't won the endorsement of Charlotte Golar Richie and Felix Arroyo and John Barros? We would have had a very different race. He didn't win those endorsements because he had more money from labor. My suspicion is, John Connolly didn't lose because of the money. He lost because of a whole host of reasons. I'm not saying money

didn't have an effect. It's really hard to quantify.

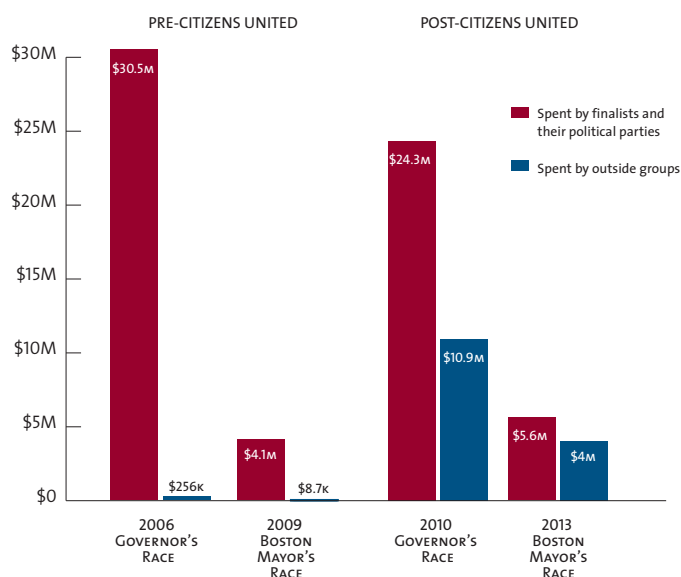
**KERR:** The financial number is the easiest gauge. There are secondary impacts that were felt greatly. We saw very clearly the ability of an outside group to go dirty without getting any dirt on the candidate. That can be invaluable. Another thing is that the opportunity cost of a candidate's time is as high as anything in a campaign. You have a candidate who, from the night of the [preliminary] election until a week before the [final] election, is focusing nearly entirely on raising money in three-figure denominations. That candidate's time could have been freed up, knowing there was a ton of outside money coming in. If you know there's a decent shot that a very generous benefactor from Roslindale, who hasn't previously been involved in politics, is willing to throw in a thousand maximum contributions' worth of television commercials, you will spend your time differently.

**CW:** Liam, tell how this race unfolded through your eyes, how you conceived of your organization's role initially, and how that changed in August when your candidate asked you to stop spending on his behalf, and then in October, when you made the decision to get involved again.

**KERR:** We went back to 2010, to that first election in a post-Citizens United world in Massachusetts politics, looking at the effect the Massachusetts Teachers Association had on that race. Three things stood out to us. One was the ability for this race to be shaped by outside money, and the need to be prepared for that. The second thing was the power that outside groups have from their money, even when they don't spend. The MTA could not spend a dime in the 2014 primary and be one of the biggest players because people know they have the capacity to spend. The third was making education the top issue. We were in a *Globe* article soon after Menino announced he was step-

An outside group went  
dirty without getting  
any dirt on the candidate.  
That can be invaluable.

ping down, with some polling data from the president's pollster, looking at some of the major issues in the race, education being number one. We started to think about taking on a role, separately from the polling on the issue. If there were to be a candidate that had education as their number one focus, we'd get ready for that. John Connolly emerged for us as the perfect combination of a viable



candidate, with the focus on the style of education that the president and others are focused on.

We thought this race would be won at the doors, in conversations with voters. We thought John Connolly would be greatly outspent. We thought EMILY's List and others would line up behind Charlotte Golar Richie. We thought other local or national groups might get behind other candidates. We thought an independent business-oriented candidate might get in and self-fund. We thought there was a chance that this moment would slip past without education being the focus, without a candidate who focused on education really having a chance to get into office based on the issue. So we hired a field director, got a field team going. Then we were asked to leave the race. The rule of do no harm, for us, was paramount. So we got out of the race.

By October, we realized the candidate we had supported might get completely blown out of the water, based on that combination of outside money on television, and negative campaigning. There was a time, given the poll numbers, and looking at the TV ads Bud Jackson had run in previous elections, we were concerned there might be a John Connolly education-focused administration that had been dragged down by negative advertising. Obviously that turned out to be not a concern we had to worry about. The negative ads didn't come out in the way we feared they would. But that second part, the ability to really accelerate spending, coincided with the change in the polls.

**KAMINER:** But along with those TV ads, there was so much one-to-one personal outreach. I know people who said they were called multiple times by Walsh. They were approached in person multiple times. It was an incredibly good field

operation. And a very smart and appealing candidate.

**KERR:** We can hold two thoughts simultaneously. The Walsh team ran an unbelievable campaign. They ran a masterful campaign. We think Marty Walsh is great on education issues. He's a great public servant. He has a very ambitious education plan that we hope he can achieve.

**CW:** Did your final spending break down along the lines you'd sketched out during the summer?

**KERR:** No, not at all.

**CW:** It went out the window based on the amount of time you had?

**KERR:** You can't ramp up field. I'm sure John Connolly would love to be able to ask 1,000 people to just take the day off. It's not a reality for us, or for the candidate we were supporting. We had close to 200 people on Election Day, but you can only ramp up personnel so far. If we could've gone straight through [without the pause from August to October], much more of our resources would've been dedicated toward field.

**CW:** What was the role of One Boston? This PAC comes from nowhere. No one has any idea who they are or what they stand for, and they drop half a million dollars on TV ads during the World Series. How much do they change the post-election conversation?

**KAMINER:** I wouldn't begin to quantify the effect of that spending, but I would say it exemplified the need for disclosure. I think you'll find wide support for disclosure, even among strong First Amendment advocates who would oppose depriving any corporate entity of the right to spend money on political speech.

**CW:** Is it fair to say One Boston's ad buy resonated in ways that the Working America or American Working Families or Democrats for Education Reform spending didn't? Because of the fact they just appeared out of nowhere?

**KERR:** That did seem to cross the line with people. That was an instance when people said, we have so little idea who these people are. I think it did get people looking at the broader role of outside money in the race, although not nearly as much as I would've thought. Coming out of the Citizens United ruling, John McCain and others said, wait for the backlash, there'll be a great backlash against this.



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## CONVERSATION

One thing [Working America and American Working Families] really understood was, people don't care.

**KAMINER:** You could look and say there was a real double standard here, the way Connolly turned down the money, and the benefits Walsh may have gained from the outside money. It was interesting to see that turning down this People's Pledge didn't seem to have any negative repercussions.

**CW:** Despite the fact that, if you poll on outside money, it polls terribly.

**KAMINER:** It may poll very badly as a general proposition, but it comes down to a particular race with particular candidates. First of all, remember that most people are disengaged. The minority of people who get engaged, a majority of them aren't getting engaged until fairly close to the election. They're more swayed by their impression of each candidate. Especially in a local race, where there is an opportunity for candidates to do a lot of retail campaigning, and everybody has to know somebody who is strongly endorsing a candidate, I don't think you can dismiss the importance of those types of personal factors.

**KERR:** We're asking a lot of the general public here. A campaign will try to get on the front page of the *Globe* to say, we had a big fundraising haul this period. But then, they don't really want anyone to know about all the outside money they get. And there were such similar headlines for both. Around October 15, there was a big headline that Connolly had raised something like \$700,000, and that was supposed to be a good thing. So the average voter picks up the paper and says, wow, he raised \$700,000, he has momentum. But then the next week the headline says, groups have spent \$700,000 supporting Marty Walsh, and that's bad? I don't think that translates to average voters.

**KAMINER:** It is an interesting phenomenon, that you can get this general recoil against the idea of a lot of spending, especially outside spending, yet it's very hard to figure out what the actual effect is in particular races.

**KERR:** It's also a very small Venn diagram between people who both get excited about criticizing Citizens United, and are willing to criticize anything a union does.

**KAMINER:** Or anything the candidate they support does. So the people who were yelling about the Koch brothers spending, were they yelling about George Soros, too?

**KERR:** You see the same thing even with Obama. In 2012, he'd been criticizing Citizens United for two years, and



then he spun off Priorities USA [a super PAC that spent \$66.5 million supporting Obama]. If you do have an issue you care about, the finance piece takes a back seat.

**KAMINER:** The original sin of all of this, the origin of all these problems we have, was the 1976 decision in *Buckley v. Valeo*. It affirmed the First Amendment right of individuals to make independent expenditures, but upheld limits on individual contributions to candidates. What that did over the decades was divert a lot of money that I suspect would have gone to candidates and political parties, to these outside groups. It really contributed to the weakening of political parties, which in my opinion is not a very good thing. Political parties were weakened at the expense of a lot of these dark money groups. I don't know if the Pandora's box of independent spending has been opened. I don't know if it would begin to close a bit if we lifted limits on contributions to candidates. But, if I were queen, that's what I would do.

**CW:** So this gets into, how do we respond to this new world? I've heard a lot of talk around here about raising contribution limits as one possible response. New York is considering lowering contribution limits and doing public campaign financing. Does any of this effectively get at the issues we're talking about today?

## Political parties were weakened at the expense of these dark money groups.

**KAMINER:** It remains to be seen. I think we need to figure out disclosure for dark money groups. And, at the same time, I think we should not just raise but lift limits on contributions to candidates that would be subject to full disclosure. There's a very important case before the Supreme Court this term, which challenges limits on aggregate contributions to candidates and political parties. If you lifted the aggregate limits, you could max out to as many candidates as you wanted to, you could give as much money to the party as you wanted to. There would be less money, I suspect, that would be going to these really unaccountable dark money groups.

**KERR:** I definitely agree that the weakening of the parties is problematic. You have, on both sides, a shrunken core structure that's formal and public and accountable, and these really powerful groups on the outside. The limits are

a good question at both the state and federal level. The \$500 state limit, given what we've seen from outside groups in the last few cycles, it's like we're saying to a teenager that their curfew is 7 p.m., and they sneak out at 8 p.m. and steal a car and go to a kegger—maybe we should just let you stay out until 11. It'll be safer for everybody.

**CW:** If the problem you're trying to correct is the volume of money in the system, the answer is to allow more money to flow into the system?

**KAMINER:** That's not the problem I'm trying to correct. The problem I'm trying to correct is, one, unaccountable dark money in the system. That's a really serious problem. The other problem I'm trying to correct, and I wish somebody would figure out a way to do it, is the problem of the growing concentration of wealth and inequality, which I said at the outset is a big piece of this.

**CW:** Lawrence Lessig at Harvard Law School has argued quite strongly that the problem is the amount of money in the system, that the problem is the divergence between the size of the electorate and the tiny slice of it that is involved in politics financially. Super PACs widen that disparity. So simply raising the individual contribution limits, or removing the individual limits on total contributions, doesn't really do anything to involve more people financially, or to blunt the impact of super-wealthy individuals on elections.

**KAMINER:** It's not a simple problem, and there's not going to be one way to correct it. If we've learned anything else from the history of campaign finance restrictions, we should learn something about the law of unintended consequences.

**CW:** At what level are reforms going to have to happen? How much room is there for state or local regulators to shape the activity of outside groups? Right now, we have state and local regulators responding to a federal Supreme Court case.

**KAMINER:** We had a case before the Supreme Court in the last year or so that came out of Montana, where Montana tried to defend its ban on independent expenditures by corporations, and the court wasn't going to hear that. I don't think there's much states can do to regulate, much less prohibit, independent expenditures by corporations and unions. The Supreme Court has declared it protected political speech. What the states do have the power to do is reconsider their own limits on contributions to individuals. We have a real serious imbalance, when you look at what the limits are on con-

## CONVERSATION

tributions to candidates, versus the free rein given to outside spending.

**KERR:** I generally agree there's little that can be done at the state level, given the mandate from the Supreme Court. I think the local office of political finance here does a good job. They're very proactive, very professional, and are working to increase disclosure. I think there are things that will be tightened up, and given the experience of this past year, should be tightened up around disclosure. You spoke about unintended consequences a moment ago. You do have a number of very smart, wily people working full-time to push as hard as they can within the bounds of the law. When you do shift one lever, those people will find a way.

**KAMINER:** Money always finds a way. It's a fact of life. It will always be a moving target.

**CW:** Have we seen the last People's Pledge?

**KAMINER:** Not necessarily.

**KERR:** In August, you would have said, will we see outside

money again? It can change. Money finds a way, politicians find a way to do things that will give them the slightest edge in winning.

**KAMINER:** I think that Marty Walsh had a lot of advantages, particularly advantages that helped him decline to sign the pledge and not pay a price for it. Other politicians in different races might not be in that position. It depends on what the equation is in any individual race. Personally, I don't like people's pledges, because I don't think it's candidates' business to tell me whether or not I can engage in political speech during a campaign. If they want to punish [themselves] because I engaged in political speech against their wishes, well that's their problem.

**KERR:** What's fascinating is the game theory. We tried to understand what cards everyone was holding, and we thought Walsh would sign the pledge. I was surprised he didn't. They could've kept getting \$15,000 direct campaign contributions from every union local in the country, and they would have insulated themselves from negative attacks. It was clear we wouldn't go negative on someone who was so close with us on the issues, but another group, knowing what cards everyone had, another group could



## CiVICsense

MassINC's Civic Sense network is an events and programming series aimed at cultivating a community of civically-engaged young people in the Bay State. Civic Sense is an initiative of the MassINC Associate Board: A group of young professionals in the business, government, and nonprofit sectors who advise and promote the work of MassINC.

have sprung up and gone negative on him.

**CW:** You talk about game theory. The interesting thing about outside money in general is the way you can run different scenarios on how it comes into play. There are several different scenarios where outside money could come into play in a governor's race. It's very much a prisoner's dilemma-type situation, where if you're running against Martha Coakley and you expect EMILY's List to spend on her behalf, and you're a partisan of

**Disclosure will  
at least bring the issue  
to a head in the media.  
Even if it doesn't  
lead all the way.**

someone else, do you then have to match that money? There's a possibility that national Republicans think they could make some great headlines taking back Massachusetts after eight years of Deval Patrick. So your calculus as a campaign adviser, as a wealthy supporter on the other side, in my mind it sets up where people raise and spend money defensively, because they expect someone else to.

**KERR:** The top argument against a Boston mayoral challenger over the last 50 years was, oh, they'll never raise the money. Nobody will give them \$500. What if a challenger coming up to Menino this time had a group ready to go? It changes a lot of dynamics. It changes the way people govern.

**CW:** If you're a state legislator, or if you're the head of the state Office of Campaign and Political Finance, what's at the top of your to-do list between now and next November?

**KERR:** Disclosure. Immediate disclosure.

**CW:** Can disclosure work in a world where the feds don't have a handle on 501(c)(4)s?

**KERR:** It'll at least bring the issue to a head in the media. Even if you say your number one donor is a nonprofit, that leaves it up to the nonprofit's donors to disclose themselves. Even if disclosure doesn't lead all the way, or doesn't change people's perceptions, at least it brings it out in the media, so at least the public can pay attention to what's going on.

**KAMINER:** I don't think you're going to find a lot of disagreement on disclosure. But again, you run into serious constitutional problems when you talk about disclosure and 501(c)(4)s. The problem is finding a way to do it that doesn't force disclosure on groups that shouldn't be forced to disclose. It's something the IRS really has to struggle with. The 501(c)(4) designation has been abused. But there are a lot of very real social welfare groups and advocacy groups that perform essential functions in a democracy. We should not have them subject to the same set of rules, especially the same set of disclosure rules, that we subject groups organized primarily, if not exclusively, for partisan electoral purposes. I do think it's very important to try to find some way of distinguishing between partisan electoral groups and these legitimate social welfare groups. The legitimate social welfare groups have an important right to privacy, the partisan electoral groups in my view do not.

**CW:** How difficult is it to crack open disclosure on 501(c)(4)s, specifically?

**KAMINER:** I think it is, and it should be, pretty near impossible, when you're talking about legitimate (c)(4)s. Let's say you want to give money to a gay rights organization and you live in a fairly homophobic community or you work for a fairly homophobic employer. You would suffer real consequences if your membership or your donations to this group were known. Those are very important rights. I don't think we should diminish the importance of the right to anonymous speech.

**CW:** One of the things you just said, and I think points toward the thorniness of this issue, was, "legitimate (c)(4)s." Who determines what a legitimate (c)(4) is? Where do you draw the line?

**KAMINER:** Law is an exercise in line-drawing. I know it's a large thing to put aside, but let's put aside the practical political obstacles to getting anything done right now, and let's just talk about what the ideals are. I don't think it's all that hard to fashion rules that would distinguish Crossroads [the 501(c)(4) Karl Rove founded] from Planned Parenthood or the ACLU.

**KERR:** Use a percentage. There's a number.

**KAMINER:** I just don't think it's that hard. If 60 percent, or even 48 percent of what you do, is partisan electioneering, I think you should be distinguished from all these other (c)(4) groups. I think advocacy groups are easily distinguished from groups that don't do anything but advocate for particular candidates in particular elections. **CW**

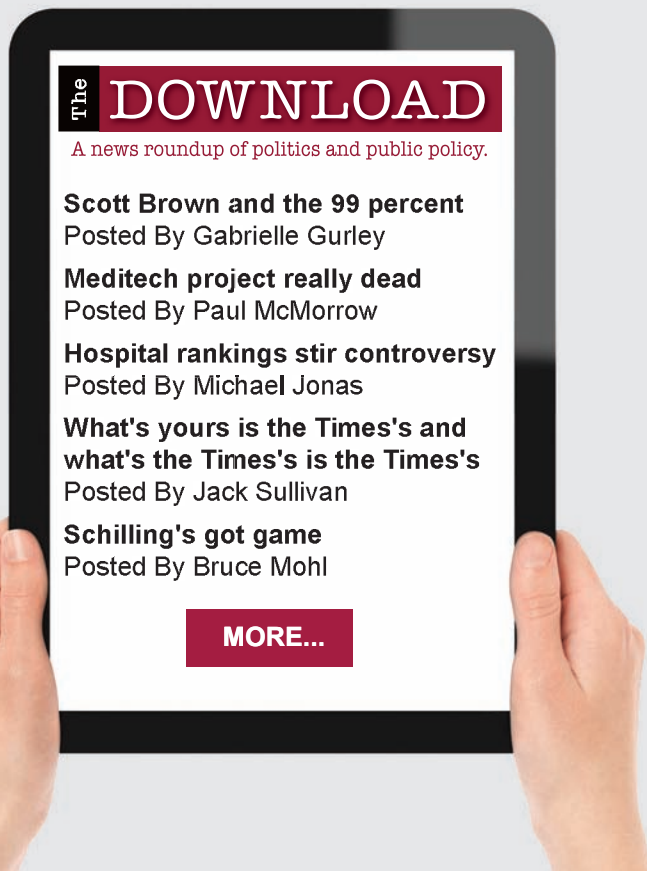


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# It's time to dredge

A deeper harbor is crucial to preserving a diverse waterfront

BY TOM GLYNN

**BOSTON HAS SOME** big decisions to make in the next few years that will impact one of the city's greatest strengths, which is the diversity of its workforce and the opportunities it has been able to provide to white collar and blue collar workers alike who are able to make a living and raise a family while living in what many of us consider to be one of the greatest cities in the world.

One of the bigger questions Massachusetts must resolve is whether to invest significant resources in deepening Boston Harbor so that larger ships will be able to dock at Conley Container Terminal and deliver heating oil and other fuels via the terminals along Chelsea Creek. Much larger cargo vessels will soon dominate world maritime trade once the expanded Panama Canal opens in 2015.

Currently, the channel at the Cruiseport dock is 35 feet deep and the container terminal has a depth of 45 feet of water. To continue to be able to dock the larger ships, the cruise terminal can remain at 35 feet but the container terminal needs to be dredged to 50 feet.

In September, the Army Corps of Engineers found the Boston Harbor Navigation Improvement Project to be "technically sound, environmentally and socially acceptable, and economically justified," as it recommended to Congress that federal funding be authorized for the \$300 million project. The Army Corps projects a doubling of volume at Conley if we dredge.

If Boston Harbor dredging gets included in the list of projects eligible for federal funding under the Water Resources Development Act, we must decide as a community whether we are able to identify the state's \$130 million local share to qualify for a federal match or, as the *Boston Globe* warned, to do nothing and "essentially foretell the death of Boston Harbor as a major cargo port."

This \$130 million could be shared 50-50 by the Massachusetts Port Authority and the state, as has been done in the past. An investment of \$20 million a year for three years or so for the state and Massport seems like a small price to pay for preserving a part of our heritage and blue-collar jobs.



The second big question is what changes need to be made to relieve traffic congestion in the South Boston Innovation District, where there has been an unexpected spike in congestion as the pace of commercial development in one of the hottest real estate markets in America right now is running more than a decade ahead of original projections. Some 30 million square feet of development has already been built or is permitted and another 15 million square feet awaits future growth.

Massport has entered into a partnership with A Better City, the Boston Convention Center Authority, the City of Boston, and MassDOT to identify both long- and short-range solutions to these traffic problems, while contributing our share of the \$1 million that was raised for a comprehensive multi-modal study involving all the major stakeholders in the district, both public and private.

Among Massport's key objectives in this effort is finding solutions that preserve important blue-collar maritime jobs that are dependent on the port. From Massport's perspective, the transportation plan must provide for growth in commercial and residential development in a way that preserves the important needs of the maritime industrial activities of the Port of Boston.

There are a few things that make Boston uniquely Boston. It is no more possible, for exam-

ple, to imagine the world champion Boston Red Sox playing anywhere but in 101-year-old Fenway Park than it is to think about Boston without a working Boston Fish Pier—which turns 100 next year.

And while it's true South Boston's bustling Innovation District may be more closely associated with the Internet than with fishing nets, some of the best jobs with good wages can still be found in New England's more traditional industries—whether it's the dock workers who load and unload ships at Conley Container Terminal or Cruiseport Boston, or the fishing captains and their crews who land their catch each day on Boston's famous Fish Pier.

But the fishing industry is more than boats. In 2011, Massachusetts ranked second behind only California in the number of seafood-related jobs, with more than 98,000, according to the National Oceanic and Atmospheric Administration.

Americans spend more than \$83 billion a year on seafood. Massachusetts residents alone consume about \$8 billion. That's a lot of fish. And chances are, if you are having lobster or cod for lunch or dinner in St. Louis or Kansas City, it was processed here and flown out of Logan. More than 500 jobs are tied directly to fishing and fish processing on Massport's Fish Pier and Marine Terminal

alone. In the Mass Maritime Terminal, Legal Sea Foods processes about 30,000 pounds of fish per day and North Coast another 100,000 pounds daily.

In South Boston, Massport is generating jobs with a balanced real estate agenda. About 9,000 mostly white-collar office jobs are connected to Massport-related commercial developments in the Innovation District while another 27,000 good paying blue-collar jobs are tied, either directly

## Boston Fish Pier turns 100 next year.

or indirectly, to Massport's container operations, its cruise business, or fishing and fish processing.

New England's maritime industries are a lot more than picturesque tourist attractions. They provide vital contributions to our city's economy and social fabric. But preserving those industries and the jobs that go with them requires that some hard decisions be made by the entire Boston community, and made soon. The clock is ticking.

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*Tom Glynn is the chief executive of the Massachusetts Port Authority.*

# TRANSFORMATIVE REDEVELOPMENT

Strategic State Policy for Gateway City Growth and Renewal



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# Resetting the bar

New education vision needed to guide Massachusetts schools in the 21st century **BY CHAD D'ENTREMONT AND LINDA NOONAN**

**WITH HEADLINES ROUTINELY** proclaiming that Massachusetts “tops the nation” on national or international comparisons of student performance, it might come as a shock that over 40 percent of all students and nearly two-thirds of high-needs students are not proficient readers by the end of third grade. And these numbers have remained largely unchanged for the last decade. In fact, Massachusetts was one of three states that saw a decline in fourth-grade reading scores on the 2013 National Assessment of Educational Progress. In a state dependent on education to fuel economic productivity and innovation, stagnation and decline are not good news. Our children must be prepared to compete not only within the US but also with Singapore, Hong Kong, and other countries.

It is true that since passage of the 1993 Education Reform Act, Massachusetts has distinguished itself as an education leader. However, the comprehensive reforms of the past 20 years, including the adoption of high standards, an accountability framework, and increased investment in our schools and students, are now proving inadequate. Far too many students lack the skills needed to successfully enter the workforce, and performance gains in other states and competitor nations are surpassing our own.

In short, we are at a crossroads. The Massachusetts gubernatorial race now underway presents an opportunity to engage in significant discussion of policy solutions to better serve all students. We are also approaching the point where federal funding for many important initiatives will be expiring. To determine how to proceed, we must assess the status of our education system, acknowledging both our strengths and deficits, and use this knowledge to pursue a comprehensive vision for the future. Maintaining the status quo is not an option.

The organizations we each direct are committed to informing and driving this important discussion, and are engaged in complementary efforts to play such a role. The Rennie Center for Education Research & Policy is conducting a detailed

diagnosis of the status of student progress and proficiency throughout our education pipeline, while the Massachusetts Business Alliance for Education (MBAE) is identifying the innovations that are producing the greatest results in the US and around the world in order to craft a state policy agenda for the future.

The Rennie Center’s November 2013 data report on the *Condition of Education in the Commonwealth* identified and measured educational



outcomes at critical stages of learning and development, from early childhood through the emergence of a strong and productive workforce. Important indicators in science, technology, engineering, and mathematics (STEM) were highlighted at each stage and specific attention was given to the need for prepared and effective educators. Findings showed that barriers to student success begin early but extend well into high school, where only

68 percent of students complete MassCore coursework, the recommended program of study to prepare students for college and the workforce.

It therefore is no surprise that 36 percent of Massachusetts public school graduates attending state institutions of higher education place into remedial courses, reducing the likelihood they will continue towards degree completion. Ultimately, in a state dependent on a high-tech economy and college educated workforce, it is alarming that just over half of all Massachusetts adults hold a two-year college degree or higher (only 39 percent hold a four-year degree) when nearly 70 percent of all jobs by 2018 will require some level of post-secondary education, according to the Georgetown University Center on Education and the Workforce.

To further inform the work ahead, MBAE has commissioned Brightlines, a collaboration of inter-

national education experts, to assess the present status of education in Massachusetts and the implications of these conditions for future policy direction and structural improvements. The analysis will provide a common, factual understanding of our current system and what we can learn from public education systems in other states and nations that consistently achieve high levels of student performance. Along with the Rennie Center data, this analysis of best practices can provide the basis for frank discussions among stakeholders about the action necessary to achieve new levels of success in Massachusetts.

Preliminary findings confirm that our challenges affect everyone—even the highest-performing schools and districts. Recent data point to a “top talent” gap between the Commonwealth’s highest achieving students and those in the highest performing countries globally. Data from the Programme for International Student Assessments (PISA) show that while 19 percent of Massachusetts students scored at proficiency level 5 or higher in math, nearly three times as many students from Shanghai scored at this level. Massachusetts also has a well-documented “employability gap” confirmed by a recent poll of employers conducted for MBAE and 15 business organizations. Over two-thirds of respondents struggle to fill available jobs because of a significant mismatch between skills and knowledge needed in our workforce and what our students know and are able to do.

There is a lot at stake, but Massachusetts has a track record of bringing the best minds together to solve problems. A pivotal player in the state’s previous education reform efforts was the late businessman Jack Rennie, a cofounder of MBAE and the inspiration for the Rennie Center, which bears his name. Just as he did 25 years ago, we can develop a blueprint for education reforms that will put us on a path to becoming a world leader not only in test rankings but, more importantly, in preparing our students to be engaged citizens, productive members of society, and lifelong learners capable of adapting to a changing workplace.

As we engage in this conversation over the year ahead, three elements can help us structure the debate. First, we have to consider what has worked and should be expanded or explored in system reform. The value of rigorous standards is well established, so implementation of the Massachusetts Curriculum Frameworks, revised and adopted in 2010, is clearly a top priority for the next few years. We also know that we need to assess a range of competencies, so new assessments tied to these standards must measure the skills and knowledge needed for college and career success. Similar system reform initiatives in human capital and the structure and organization of schools provide

direction for future work.

System reform, however, is not sufficient to get us where we need to go. We also need systemic innovation—imagining what the future looks like and unleashing the power of our schools to get there. The state is uniquely positioned to link our unrivaled higher education and technology sectors with our education system to become the world leader in education innovation. This means addressing the limitations of traditional schooling by acting on evidence demonstrating the need to expand learning opportunities through competency-based, individualized approaches, while simultaneously developing new schooling models to be welcomed as part of a portfolio of education providers able to meet a range of student needs.

Tying additional investments to measurable improvements is certain to be part of this process. A focus on efficiency and implementation is necessary in an environment

## Massachusetts has a top talent gap compared to other countries.

where limited resources are likely to be the norm for years to come. Supporting districts that undertake productivity reviews to examine current use of resources and identify ways to achieve greater effectiveness is one of a number of actions that should be examined.

By addressing these three elements, we can confront the underlying problem of current education reform. Too often, we make the mistake of building around our existing school system, introducing new strategies that are evidence-based but designed to augment limited and ineffective educational offerings. The result is we are preparing students for a 21st century economy by tinkering with an outdated 20th century school model. Instead, we must build on our strong history of educational entrepreneurship and recognize those innovations that can bring about transformative change statewide.

Our challenges are clear but we also have the capability to meet these if we have the will. Our focus must be on the long term—what does an educated citizen look like in 2030? What is the core of knowledge and skills all students will need to adapt to a rapidly changing global society and workforce? This is a debate that many countries around the world are having. Massachusetts can learn from and contribute to this debate. We have a new opportunity to lead, and we must take it.

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*Chad d’Entremont is executive director of the Rennie Center for Education Research & Policy. Linda Noonan is executive director of the Massachusetts Business Alliance for Education.*

# Educational teamwork

New approaches can prep students for jobs and draw middle class to

Gateway Cities **BY LISA WONG AND KIMBERLEY DRISCOLL**

**FLY OVER FITCHBURG,** Salem, or any of the state's roughly two dozen Gateway Cities and you'll get a glimpse of the industrial past in the outlines of old mill buildings. The future will also be in plain view, from the campuses of colleges and regional hospitals, to the stately slate roofs of museums and the clusters of homes near public school buildings. For Gateway Cities across Massachusetts, the future is leveraging large regional institutions—universities, companies, and cultural organizations—to create exceptional learning experiences.

Gateway Cities working to realize this vision must first expand the state's current education reform dialogue. As a Commonwealth, our approach to the pressing challenges of urban education is overly reliant on the school choice and school turnaround models. Charter schools may help us uncover innovative teaching strategies, but they tell us very little about bringing these new methods to scale. Turnaround schools, by definition, must experience years of struggle to get the resources and attention that come with this designation. These policies might be economical to implement in the short term, but if we fail to complement them with investments in more systemic solutions, it will cost us dearly in the long run.

Together, the state's 26 officially designated Gateway Cities educate one-quarter of all public school students in Massachusetts. New data show that too many of these students aren't getting the preparation they need to succeed in the state's economy: 70 percent of all jobs in Massachusetts will soon require a degree or credential beyond a high school diploma, yet fewer than one in four Gateway City students are completing a post-secondary program.

Massachusetts needs all of these youth to reach their full potential to replace hundreds of thousands of older workers aging out of the labor force. If we don't do more to prepare them for tomorrow's economy, the consequences will slowly become apparent as the state's skilled workforce shrinks, employers decamp, and revenues decline.

The long-term consequences of underperforming Gateway City schools are even more serious

when you factor in the fiscal health of these communities. Residential property accounts for about two-thirds of the tax base in most Gateway Cities. Lagging education systems deter middle-class families from purchasing homes in these communities, reducing property values considerably. The longer Massachusetts delays more systemic approaches to school improvement, the more local aid Gateway Cities will require from state taxpayers.

What's needed is a two-tier education policy: one tier of strategies that close achievement gaps by giving disadvantaged students additional support, and a second tier of strategies that help

Gateway Cities leverage their significant educational assets to draw middle-class families back into their neighborhoods. Policies that accomplish both goals simultaneously should rise to the top.

Universal preschool is an example of a policy that could cut both ways. Only about half of Gateway City children attend preschool, which means too many enroll in kindergarten without the early literacy skills today's rigorous curriculum demands.

Teachers are forced to slow instruction, penalizing kids who enter kindergarten well-prepared. Investments in high-quality early education will better position economically integrated Gateway City elementary schools to excel. Moreover, public preschool for three- and four-year-olds would provide one more reason for young middle-class families to give public education in Gateway Cities a try.


As children progress into higher grades, opportunities to take advantage of unique Gateway City institutions to the benefit of families across the economic spectrum emerge. For example, public universities are located in nearly every Gateway City. Offering high school students an early col-





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## PERSPECTIVES

lege experience is one of the most effective models to boost college completion for disadvantaged students. But dual enrollment leading to free college credits also has real appeal for middle-class families looking to overcome the escalating cost of higher education.

The concentrations of cultural institutions and employers in Gateway Cities present opportunities to make experiential and work-based learning a larger component of the curriculum. Solid research shows that having internships, participating in student-run enterprises, and taking interdisciplinary courses with real-world projects makes learning more relevant and increases graduation rates among low-income students.

Health care providers in Gateway Cities should be enlisted to provide programs fostering social and emotional development and to steer troubled students to proper care. For low-income students who often experience trauma, these courses and services are critical to prevention and healing. However, in a collaborative age, where interpersonal skills are of increasing value, all students can reap lasting benefit from schools that invest in practices to augment social and emotional growth.

There are also opportunities to exploit more modest policy initiatives that would help high-need Gateway City students, while enriching the educational experience of youth from middle-class families. Dual-language immersion schooling is one such example. For newcomers, dual-language immersion offers a chance to preserve and enhance their native tongue. English-speaking students, meanwhile, get a unique opportunity to master a second language through a true immersion experience. Research shows dual-language schools generate lasting academic and cognitive benefits for all students.

While there are many such “two-fers,” there are some targeted investments that Gateway City schools will require specifically to better serve disadvantaged students in challenging settings. Extended learning time tops this list. It’s become increasingly clear that high-performing, high-poverty schools get results by adding substantial time to their schedules.

Leveraging the assets of our regional cities to build more dynamic community-wide learning systems will require a substantial investment. In the months ahead, Gateway City leaders will work to initiate a dialogue around devoting resources to this more systemic approach to urban education. Working with state leaders, we hope to develop a better understanding of how much these models would cost to deploy at scale and the return on investment Massachusetts taxpayers could expect from them over the long term. **CW**

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*Lisa Wong is the mayor of Fitchburg. Kimberley Driscoll is the mayor of Salem.*

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