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POLITICS, IDEAS & CIVIC LIFE IN MASSACHUSETTS



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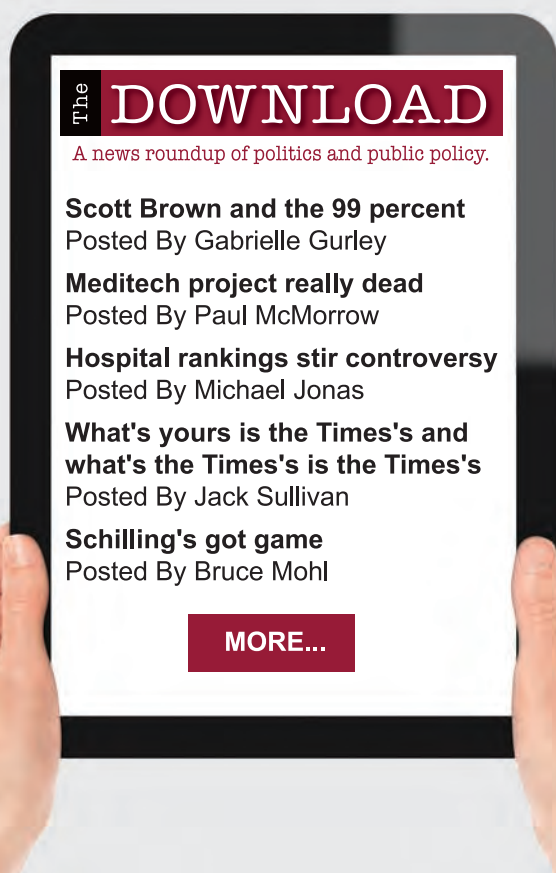
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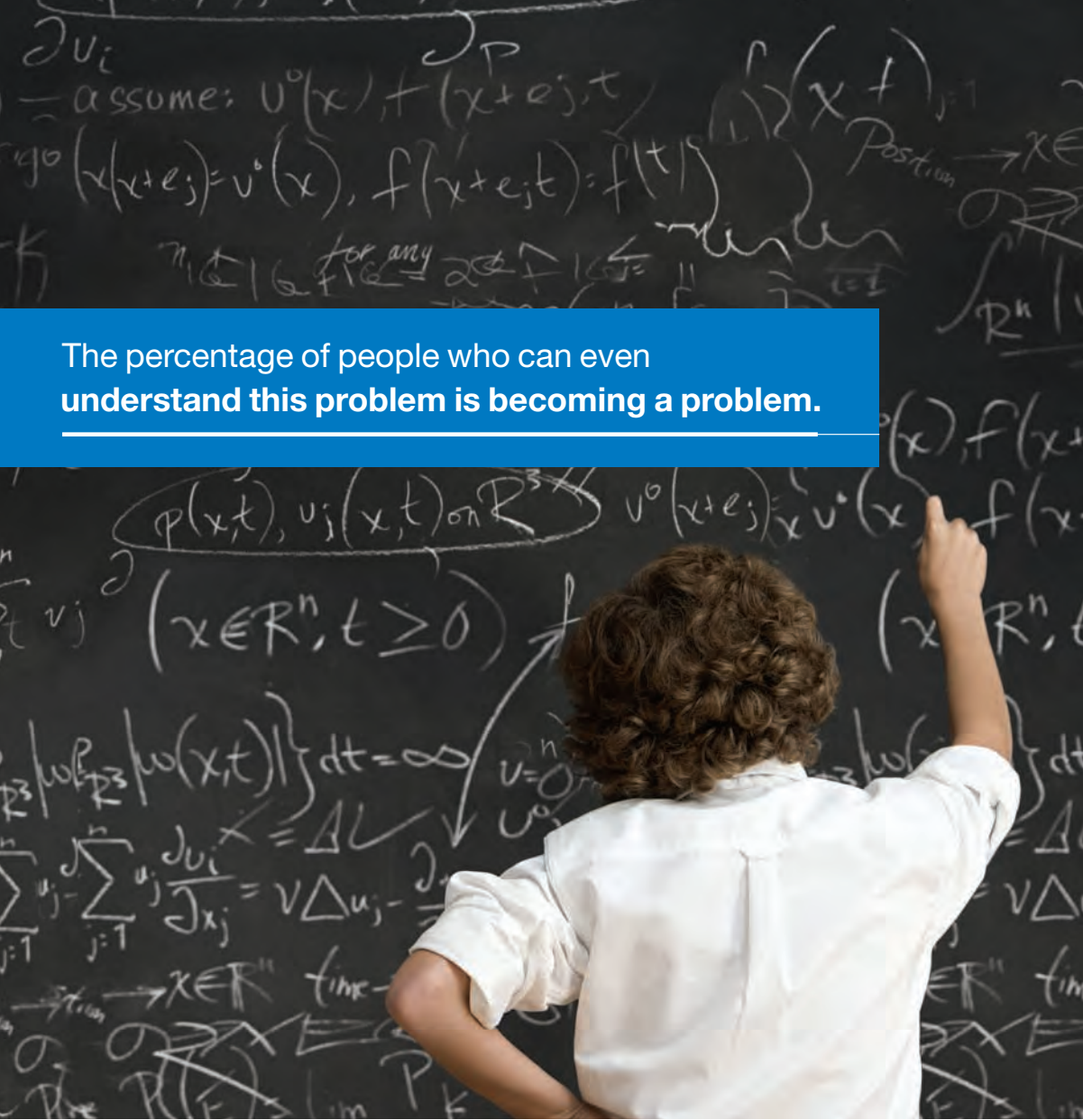
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## DEMOCRACY IS MESSY, BUT NOT A WEAKNESS

Your Editor's Note, "Closed-door democracy" (Spring '12), was meaningful to me. It's human nature not to appreciate what we have until we lose it. I'm sure reporters on Beacon Hill don't have deadline problems now because without debate there aren't many stories.

Democracy's very design makes it "slow, messy, and sometimes divisive." When everyone has a voice, it takes time to air and resolve differences. In the 1980s, many bills in the Legislature, including at least two budgets, were forced back to committees for changes because of vociferous debate and dissent. That is how what we now call "transparency" works.

In 1980, voter anger focused on local and state government, which resulted in Proposition 2½ and 23 new members elected to the House who insisted on being heard. For the next four years, the new members and 42 Republicans created havoc for the dictatorial House leadership. In 1985, Speaker Thomas McGee was unceremoniously dumped for his autocracy.

Each member of that coalition had his or her own personal agenda. Some wanted to be heard and respected, while others wanted to fill the power vacuum and start their own autocracies. Fortunately, the new speaker, George Keverian, recognized members' desire for respect and embraced small "d" democracy. Budding autocrats and reporters with deadlines grumbled that the speaker was "weak," but the opposite was true. Under his leadership, democracy flourished. When he left, the House returned to autocracy and the trappings of power. Three successive speakers were convicted of felonies.

None of these people came to the

House to do wrong, but they are only human. Almost anyone spending 15 to 20 years with the trappings of power, prestige, and adulating sycophants will have an unrecognized change of attitude. It is a weakness of human nature to succumb to temptation and a sense of entitlement. As stated in "Time Out" by Gabrielle Gurley, Rep. Ellen Story, who came to the House as a reformer but is now a member of the current speaker's "inner circle," said there would be "consequences" for members if they voted against the speaker on casino gambling. This is democracy?

Today, voter anger is focused on the waste, abuse, and corruption in Washington that threatens our nation.

Nothing will eliminate corruption, because it's part of human nature, but term limits would substantially reduce it. However, we will never see it, because voters also have agendas. The common refrain: "My representative is great (i.e., got my kid into college, moved a utility pole, got our pond dredged, got my town a fire truck, etc.), but the others are bums!" If people are getting what they need from their elected officials, they will continue voting for them, and 20 years later will be shocked that their representative has been brought up on charges. But it's part of the problem—the easy re-elections give many of the long-serving officials a sense of invincibility, as well as discourage other potentially great candidates from running against them. If we impose term limits on our president, why not



on all elected officials?

If we ever return to the late 1980s democracy, I will guarantee one thing: Reporters will grumble about missing deadlines, because they are human, too.

Jack Flood

Norton

(Former Canton state representative,  
1981-1990)

## CW IN THE NEWS

An article in *CommonWealth's* Winter issue about private entities getting favorable land deals from the state became the basis for a WBZ-TV I-Team report and then fodder for WGBH's *Beat the Press*. WBZ acknowledged after the fact the story was prompted by Colman Herman's reporting for *CommonWealth*, but the station insisted it had added value that wasn't there before, which is why the magazine was given no credit. The *Beat the Press* panel took the side of *CommonWealth*, but without a lot of outrage. The panelists noted this type of repurposing of stories happens all the time. The discussion is still available at [www.beatthepress.org](http://www.beatthepress.org).

We welcome letters to the editor. Send your comments to [editor@massinc.org](mailto:editor@massinc.org), or to Editor, *CommonWealth* magazine, 18 Tremont Street, Suite 1120, Boston, MA 02108. Please include a city or town, as well as a daytime phone number. Letters may be edited for clarity and length.

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## Was it something we said?

**MASSINC IS A** small nonprofit that does research, hosts civic events, and publishes *CommonWealth* four times a year. Most people outside of our fairly wonky world have never heard of us. Yet you'd never know that from reading the *Boston Herald* in June.

Over the course of three days, the tabloid ran a series of stories and an editorial suggesting that MassINC is bankrolled by corporations, lobbyists, and state authorities who use the think tank and its magazine to gain access to politicians and to influence state policy. The stories also reported something displayed each issue on the back cover of the magazine and on our website: We have 12 donors who have asked to remain anonymous and a polling operation that respects the privacy of its clients.

Some have suggested the *Herald's* coverage was payback for articles we have written about the tabloid and Secretary of State William Galvin, who criticized us in the *Herald's* stories. I don't know if that's true, but I do know the stories were the worst type of journalism: one-sided, full of distortions, and simplistic. MassINC President Greg Torres and I were both quoted, but only to say we disagreed with the *Herald's* conclusions. Our reasons were not included.

For example, the *Herald* made much of the fact that David Begelfer, a MassINC board member and the CEO of the commercial real estate trade group NAIOP, was quoted in our story earlier this year about a major business development in Freetown that ran into a roadblock at the Massachusetts Historical Commission. Galvin, who oversees the commission, told the tabloid that Begelfer's presence in the story represented pay-to-play journalism.

Nonsense. Begelfer was quoted not because he is a MassINC board member but because his organization represents developers frustrated with the commission. We probably should have identified him as a board member in the story (he is listed as such in the magazine), but we quoted lots of people, including Galvin, and also reviewed hundreds of pages of documents related to the project to provide a comprehensive look at what went wrong and why.

The *Herald* also zeroed in on a story last year about the

politics behind the governor's crackdown on salaries at the state's quasi-public authorities. The tabloid hinted the story was done as a favor to the authorities that donate to MassINC, but actually it highlighted inconsistencies in the governor's policies and how the low salaries were making it difficult to fill empty positions. As I told the *Herald*, the story turned out to be prophetic. The top positions at the MBTA and Massport are still empty after nearly a year.

The *Herald* also noted that the authority story included a reference to Richard Davey, who at the time was running the MBTA and formerly ran Mass Bay Commuter Railroad Co., which was a past donor to MassINC. All true, but totally irrelevant. And there was no mention of our last story on

### We do nonprofit journalism here at *CommonWealth*.

the T and Mass Bay Commuter Rail, which reported the premature breakdown of concrete railroad ties on the South Shore that led to a \$100 million repair bill.

We do nonprofit journalism here at *CommonWealth*. Instead of raising money from advertisers, as most newspapers and magazines do, we raise money from donors. Our donors come from all walks of life. They include individuals, foundations, businesses, labor unions, and, yes, some public authorities. We seek their support and their ideas, but our research and our journalism are our own. That's why people value it.

Even the *Herald* said in its editorial that it was a fan of our "well-researched reporting," but warned that a magazine can't be a watchdog over government agencies while accepting money from those agencies. Yet the *Herald* runs the ads of state authorities all the time and has received more than \$630,000 in state funds over the last three years.

We don't intend to alter our commitment to substantive, policy-oriented journalism. In this issue, you'll see a story about Galvin's slow-motion public records office, which was prepared long before the *Herald's* story on us hit the front page. You'll also see an opinion piece from David Begelfer. But this time he isn't criticizing Galvin; he's criticizing MassINC for its recent report on climate change. **CW**



**BRUCE MOHL**





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# inquiries

## Glove, glove me do

Odds are one of the four Republican state senators in Massachusetts has a better chance of getting one of his bills passed than he does of catching a foul ball at a Major League Baseball game. Unless that senator is Robert Hedlund.

The 11-term incumbent from Weymouth is a magnet when it comes to foul balls, going back to grammar school when former Red Sox third-base coach Eddie Popowski fielded a couple foul balls and tossed them into the stands, where the young Hedlund grabbed them.

Since then, Hedlund has caught three more foul balls at Fenway Park and another at the old Shea Stadium in New York. He also caught one at a spring training game, though he dismisses that the way ball players dismiss Grapefruit League results. (A couple years ago the *Wall Street Journal* tried to determine the likelihood of catching a foul at a Major League Baseball game and put the odds at somewhere between 884 and 1,189 to 1.)

"My first one was a one-hander off the bat of Don Baylor," says Hedlund, relishing the memory. "I held onto my hot dog with one hand and snagged it with the other."

He missed a ball a few years ago in Cincinnati when he dropped a foul that smacked his hand at "about 100 miles an hour."

Hedlund says, tongue firmly implanted in cheek, that the foul ball experience has made him a better legislator. "It's taught me to be alert, nimble, be able to maneuver and adapt, stay focused and, of course, to be fiscally conservative, since I didn't drop the hot dog," he says.

► JACK SULLIVAN

## Sex offenders challenge Lynn's residency ban as unconstitutional

► CHRISTINA PRIGNANO

**A COURT CHALLENGE** to a Lynn ordinance that bans Level 2 and 3 sex offenders from living within 1,000 feet of a school or park could impact 43 other cities and towns across the state that limit where sex offenders can live or go.

The suit in Essex Superior Court by the American Civil Liberties Union of Massachusetts alleges that Lynn's residency ordinance violates both the state and federal constitutions because it unlawfully restricts offenders' freedom. The complaint also claims that Lynn's ordinance violates the Massachusetts home rule amendment, which forbids municipal laws from interfering with state policy.

John Reinstein, one of the Massachusetts ACLU lawyers representing the offenders, says they chose to bring the suit in Lynn because of the city's size, the large number of offenders living there, and the scope of the restrictions. The suit alleges that about 95 percent of residential properties in the city are covered by the ordinance's regulations prohibiting offenders from living in proximity to the city's many parks and schools.

"There's really nothing left after you get through drawing the circles around the facilities," says Reinstein.

## RESIDENCY LAWS ARE UNTESTED

State law regarding sex offender management currently bans Level 3 offenders from living in nursing homes, rest homes, or intermediate care facilities for the mentally disabled. These restrictions are in addition to the state's role in registering sex offenders and publishing Level 3 offenders' information online. The Sex Offender Registry was the focus of a feature in *CommonWealth's* spring issue.

A growing number of municipalities are taking the additional step of placing restrictions on where sex offenders can live, travel, or both. In cities such as Revere, Fitchburg, and Everett, sex offender residency ordinances typically prevent an offender from establishing a residence within a certain distance of a location frequented by children, such as a school or park.

Other restrictions involve banning offenders from visiting places where children may be present, like the public library. These restrictions are often deemed "child safety zones" and are found in communities such as Lowell, Fall River, and New Bedford. Some municipalities, such as Lynn and Springfield, combine the two and ban offenders from both setting up a residence near child safety zones and visiting them. The ordinances have so far been untested by Massachusetts courts, and a decision on Lynn's rule could open

the door for challenges in other places or reinforce the restrictions communities have passed, according to legal experts.

The Lynn ordinance has already had an impact on at least one individual not involved in the lawsuit. Late last year, Richard Galzerano, a Level 3 sex offender, moved into a house on Daytona Road in Lynn near Shoemaker Elementary School, a move that represented the first cited violation of Lynn's amended ordinance. Galzerano had been convicted in 2008 enticing a child under 16, according to the Sex Offender Registry Board's website.

In early January, amid public outrage, the city started fining Galzerano \$300 per day until he moved out later that month, according to news reports. The Sex Offender Registry Board's website indicates Galzerano now lives in Peabody, which does not have a residency ordinance.

Lynn City Council President Timothy Phelan defends the ordinance and says he's not concerned about how much space remains available to Level 2 and 3 sex offenders. "Not only do I think it's a good ordinance but I think I have a responsibility and obligation to protect" children and the community, says Phelan.

Phelan says he will abide by the law if the judge strikes down the ordinance, but argues the community should have a say in where sex offenders can live. "I don't need a judge to tell me what's right and what's wrong," he says. "I think that every mother and father should be the judge in rendering this decision."

Reinstein says no matter which way the court rules residential bans on sex offenders in any community could be affected. More specifically, if the court decides that Lynn's ordinance indeed interferes with state policy, that finding would have larger implications for other communities than if the judge strikes it down on grounds specific to Lynn, says Reinstein. Lynn city officials have agreed to refrain from enforcing the ordinance until a hearing occurs. A hearing has not yet been scheduled.

Fitchburg City Councilor Dean Tran played a key role in passing Fitchburg's sex offender residency regulation, which restricts Level 2 and 3 offenders from living within 1,000 feet of any school, park, or child care facility. Tran says the Massachusetts ACLU made similar threats to sue when he worked on Fitchburg's ordinance, and he pointed to a federal case in which a statewide sex offender residency restriction in Iowa was upheld.

"The organization never goes through with the threat simply because the circuit courts have already rendered favorable decisions for the ordinances. So a precedent has already been set at the federal level," says Tran. "It would be a monumental task for the ACLU to try to overturn the ordinances that the cities and towns across the Common-

wealth have enacted."

Dr. Laurie Guidry, a clinical and forensic psychologist and the president of the Massachusetts Association for the Treatment of Sexual Abusers (MATSA), argues that residency restrictions have not been proven effective at keeping communities safe.

"We don't want to keep [engaging in] practices and policies that don't work. I certainly concur with the public's concerns about being safe—it's a priority," says Guidry. "And if this measure actually kept communities safer, we, MATSA, would support it."

## Changes in laws keep teen drivers safer

► SAM OBAR

**FOR MOST TEENS**, obtaining a drivers' license means newfound freedom and independence. For many decades, it also meant something more sobering: a higher risk than any other age group that they would die on the road.

But new statistics indicate that risk is diminishing. Teen driver fatalities have fallen to a record low in Massachusetts and nationwide.

According to the National Highway Traffic Safety Administration, the number of teen drivers who died in car accidents in Massachusetts dropped to a low of 51 in 2010, the most recent year for which data are available. That made 2010 the third straight year that teen driver fatalities fell in Massachusetts.

Across the country, only 3,115 teens were killed in 2010, a far cry from the high of more than 8,000 teens who were killed in 1975. Even at the lower number, car accidents remain the leading cause of death among teenagers.

Mary Maguire, spokeswoman for AAA Southern New England, says the state's move to a graduated drivers' license with a new junior operators' license (JOL) in 2006 is a major reason for the drop. "The JOLs have definitely been a factor. There is no doubt about that," Maguire says.

## LICENSE LIMITS KEY

Different versions of a graduated license system, designed to gradually grant a teen driver more privileges as he or she gains more experience on the road, have been enacted in all 50 states, starting with Florida in 1996. In Massachusetts, teens can get their learner's permit at age 16 and must take 30 hours of a driver's education course along with 40 hours of supervised



driving with someone over 21. The driver's education requirement is waived if they are over 18.

After six months with a permit, teens may take a road test to obtain a junior license. Junior operators cannot drive with underage passengers in the car and cannot drive at certain hours of the night without adult supervision. They face license suspension and/or fines if they violate the restrictions or receive a speeding ticket. The JOL restrictions are lifted when the licensee turns 18.

"Those laws are aimed at taking teens out of the situations that research shows are the most risky—things like driving with other teen passengers in the car and driving at night," says Russ Rader, spokesman for the Insurance Institute for Highway Safety.

Peter Ellis, a 17-year-old from Walpole, is one of those affected by the JOL law. Ellis, who got his license earlier this year, has so far avoided getting into an accident or even being pulled over. While he readily admits he isn't a fan of the passenger restriction or waiting so long between permit and license, he acknowledges the safety aspects. "I know that with passengers in the car, I'm probably going to crash so I just don't do that," Ellis says.

Another major component of the law is the requirement that parents attend a special class before their son or

daughter can get their license. Maguire says the class—which Massachusetts is the first and, so far, only state to require—has been highly successful.

"The parent class has enlightened a lot of parents and made them aware of the need to place restrictions on their teens," Maguire says.

Maguire thinks the state's texting-while-driving law, passed in 2010, may also be a factor in the reduction in fatalities. The law bans all drivers from texting, but includes a total ban on junior operators from using cell phones in any manner while driving. An 18-year old Haverhill man was found guilty in June of killing another driver while the then 17-year-old teen was texting and driving and was sentenced to a year in jail.

"You reduce the number of distractions for teens who are the most at-risk group of drivers, and that makes a difference," Maguire says.

But because teen crash statistics aren't yet available for 2011 or 2012, Maguire cautioned that it might be premature to declare the ban a success. Rader also says it's too early to tell how successful the ban actually is. A 2008 study by the Insurance Institute conducted in North Carolina found that even after a cell phone ban was enacted, teenagers actually used cell phones while driving more than

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they did before the ban.

For Ellis and other teens, economic conditions may also be at play. Because he can't afford to buy a car and relies on his parents' cars and gas to get him where he needs to go, he isn't on the road very often. The statistics suggest he's not alone. According to the federal traffic safety administration, Americans as a whole drove 1.2 percent less in 2011 than they did in 2010—a decrease of 35.7 billion miles. The Federal Highway Administration also reported that total gasoline consumption went down by 1.9 percent between 2010 and 2011.

"I would think that the high price of gasoline has had a chilling effect on teen driving," Maguire says. "I think gas prices have led all drivers to drive less."

## Galvin's slow-motion public records office

► COLMAN M. HERMAN

**THE STATE OFFICE** charged with ruling on the appeals of citizens whose requests for public records have been denied operates at a snail's pace.

About 250 appeals are filed each year with the state Division of Public Records, but it often takes months to get a decision even though four full-time lawyers plus a full-time administrative assistant work in the office, and many of their decisions are copy-and-paste jobs because the appeals are so similar.

"I don't know what they do with their time," says one lawyer who has filed a number of appeals with the office and spoke on the condition of anonymity because he deals with officials there frequently. "Most of the cases they see are same-old, same-old."

Secretary of State William Galvin, the elected official who oversees the Public Records Law, declined to comment for this article, as did Shawn Williams, who, as supervisor of public records, heads up Galvin's public records division.

*Cambridge Chronicle* reporter Scott Wachtler last October filed a public records request with the city of Cambridge for copies of settlement agreements made with two city employees, Mary Wong and Linda Stamper. When the city denied Wachtler's request, he filed an appeal last November. He thought the appeal would be handled quickly because Galvin's own guide to the Public Records Law states that settlement agreements are public records.

Yet it took six months for Wachtler to get a decision,

which was in his favor. And what really irks him is that he couldn't find out what was going on with his appeal during that six-month period.

"I made three calls to the supervisor's office, but no one has ever called me back," says Wachtler. "They really move at a glacial pace over there."

At least Wachtler received a ruling. Boston criminal attorney Rosemary Scapicchio filed a public records appeal on November 22, 2010, after the State Police denied her request for certain criminal records. Amy Codagnone, an attorney in Scapicchio's office, says the public records division never responded to the appeal, even to acknowledge its receipt, which was confirmed by postal records.

A compelling case with a delayed response time involved *Slate* reporter Emily Bazelon's efforts to obtain a copy of the settlement agreement between the town of South Hadley and the parents of Phoebe Prince, the 15-year-old South Hadley High School freshman who hanged herself, a death widely linked in local and national media to bullying by a number of Phoebe's fellow students.

*Slate* is an online daily news website owned by *The Washington Post*. Bazelon had written a series of 12 articles on the Prince case, including a three-part series, "What Really Happened to Phoebe Prince?"

Last May, Bazelon filed a public records request with the town of South Hadley seeking a copy of the Prince settlement agreement. The very next day, town counsel Edward Ryan, Jr. denied Bazelon's request, saying that the document was being withheld based on attorney/client privilege as well as a confidentiality provision in the settlement. He also said that no taxpayer funds were used to pay the Prince family, since the town's insurer paid the settlement.

Last July, Bazelon filed an appeal with Williams, the head of Galvin's public records division, arguing that a settlement agreement is not an attorney-client communication

## APPEALS TAKE MONTHS

and there is no blanket exemption in the Public Records Law for confidential records. She also said the fact that the settlement was paid by the town's insurer did not mean there was no financial impact on the town, since the insurer could respond by raising the town's future premiums. (Subsequent documents revealed that the town indeed wound up paying a higher premium for its liability insurance—\$10,255 more—as a result of the Prince settlement.)

Last August, South Hadley provided Williams with a copy of the settlement agreement for his eyes only so he could make a determination as to whether the settlement agreement was a public record. Almost four months

later, Williams still hadn't reached a decision, so Bazelon convinced the American Civil Liberties Union of Massachusetts to sue the town in court. Court suits involving public records denials are rare because they can be costly.

It took the court only three weeks to rule that South Hadley had to turn over to Bazelon the settlement agreement, which indicated the Prince family received \$225,000 with no admission of wrongdoing by the town. Two weeks later, Williams closed the public records appeal after he was told by a reporter that a court had already ruled.

## Restaurants in Boston get infrequent inspections

► COLMAN M. HERMAN

**THE MASSACHUSETTS SANITARY** code requires municipalities to check restaurants for health code violations twice a year, but the city of Boston often is doing the inspections less frequently, in some cases as little as once in two years.

"We don't have the resources to do every place twice a year," says Charles Cook, assistant commissioner of the health division of Boston's Inspectional Services Department (ISD). "So we do it based on what is called a risk-based inspection schedule. We have urgent, high, medium, and low risk. The higher the risk [to the public health], the more inspections they get."

State officials say municipalities can adopt a risk-based inspection schedule instead of the standard twice-a-year approach, but they have to first seek permission from the Department of Public Health, which Boston failed to do. Cook says he will ask for the state's approval.

ISD inspections, which are unannounced, can trigger three categories of health code violations: non-critical, critical, and critical foodborne. Left unchecked, both non-critical and critical violations can lead to critical foodborne violations, which can directly cause illness. An example of a non-critical violation is the failure to label food containers, while the presence of dirty food surfaces is deemed a critical violation. An example of a critical foodborne violation is storing raw food alongside cooked food, which can lead to bacteria in the raw food contaminating the cooked food.

Some restaurants in Boston aren't being inspected at

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all for more than a year at a time. For example, the Island Creek Oyster Bar and Deuxave on Commonwealth Avenue, both categorized as medium-risk, were never inspected last year. Cook blamed “administrative error” and ordered inspections after learning of the lapse.

The inspection of the Island Creek Oyster Bar in February turned up 18 health code violations, one of them critical and five of them critical foodborne. At Deuxave, the restaurant was cited for seven violations, one of which was critical foodborne.

Island Creek and Deuxave weren’t the only restaurants that weren’t inspected for more than a year. For example, Smith & Wollensky, Lala Rokh, and Mare, all medium risk, were never inspected in 2011, and Locke-Ober, Mistral, Sorellina, and O Ya, all medium risk as well, were never inspected in both 2011 and 2010.

Restaurants cited for sanitary violations are supposed to be reinspected to make sure the problems are corrected, but that doesn’t always happen. For instance, Express Coffee, Pigalle, Prezza, and Casa Romero (all considered medium-risk restaurants) were cited for violations in March or April of 2011. Not until 2012, after inquiries from *CommonWealth*, did they get reinspected. Pigalle, Prezza, and Casa Romero passed, but Express Coffee was cited for another 13 health code violations, three of which were of the critical foodborne type.

As of June 9, for the previous 60-day period, only three Boston restaurants failed their inspections and were temporarily shut down. When asked for a copy of the criteria for failing a restaurant or for the lesser sanction of reinspection required, Cook says there is no written policy, adding, “[It] depends on type and number of violations.”

During a March 6 inspection, the Cheers restaurant at Faneuil Hall Marketplace was cited for 39 health code violations, two of them critical and eight of them critical foodborne. Yet the medium-risk restaurant “where everybody knows your name” was allowed to stay open and instead only a reinspection was required.

“Cheers [was not suspended] because critical violations were able to be taken care of at the time of the inspection by the person in charge,” Cook says. But records indicate a reinspection on March 26—20 days later—uncovered 13 violations, some of which were new. Not until another reinspection on April 2—almost a month after the initial inspection—were all the violations corrected.

The same scenario played out at Mamma Maria. On May 3, the North End medium-risk eatery was cited for 24 health code violations, two of them critical and five of them critical foodborne. Yet Mamma Maria was allowed to stay open as well. When the inspector returned four days later for a reinspection, only four of the 24 viola-



tions had been corrected. And when the inspector returned two weeks later, two violations still had not been corrected. At press time, a third reinspection was pending.

Some Boston restaurants are being cited over and over for the same critical health code violations. The Barking Crab, a restaurant in the urgent category, was cited during an April inspection for having dirty food surfaces, a critical violation. The restaurant was cited for the same infraction four times before in 2011 and twice in 2010.

## EATERIES RARELY SHUT

At one of The Barking Crab's inspections last year, the inspector wrote, "There is peeling paint on the counters, door frames, walls. This peeling of paint may not be part of the decor." One year earlier, the inspector's report said the same exact thing.

The Barking Crab has had seven ISD inspections since 2010, all of them requiring reinspection. Since 2010, the restaurant has been cited for 57 health code violations—11 of them critical and nine of them critical foodborne, with many of them being repeat violations.

"We maintain a close working relationship with the city of Boston and take all requests for compliance very

seriously," says Robert Webb, The Barking Crab's director of operations, in a statement issued on March 16. Just a month later the restaurant was cited for nine health code violations, including three critical foodborne.

Cook, the assistant commissioner of ISD's health division, says it's not difficult for restaurants to understand what needs to be done in order to comply with ISD health code requirements. But he's stumped why so many restaurants do a poor job of complying with those requirements. "I can't read their minds," he says.

Of the 2,922 food service establishments (including mobile trucks) in Boston, there are none in the low-risk category, 2,784 in the medium-risk category, 31 in the high-risk category, and 107 in the urgent category.

The higher the risk, the more times a restaurant is supposed to be inspected. But that's not always the case. For example, AFC Sushi at Simmons College required two reinspections in 2011 and one in 2010, but the restaurant is in the medium-risk category, while AFC Sushi at UMass Boston has passed its last five inspections since 2010, yet it is listed in the urgent category.

"There needs to be better monitoring and accountability systems in place and we are working on getting them implemented," Cook says. **CW**

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# What happens to unused campaign funds?

BY WILDER FLEMING AND JACK SULLIVAN

**WHEN ELECTED OFFICIALS** leave office, they take a lot of things with them: memories, the appreciation of colleagues and constituents, and a pension if they served long enough. Some also leave with unused funds in their campaign accounts, money that can legally be spent however they wish as long as it satisfies the loose definition of furthering their political fortunes.

A *CommonWealth* review of campaign finance records found former officeholders spending their unused campaign donations on a wide range of items and services, from cups of coffee and leased espresso machines to paintings, cars, cell phones, political contributions, and even holiday cash bonuses. The review examined reports from more than 100 people who have left office since 2002 and found the amounts left in campaign accounts ranged from a few hundred dollars to more than \$800,000.

Former Senate president Robert Travaglini left office in March 2007 to become a high-powered lobbyist. In the weeks leading up to his retirement, he raised \$23,641 in political donations, bringing his campaign account to more than \$238,000. Over the next 21 months, Travaglini nearly emptied his account.

His biggest expenditure was \$30,000 for an oil portrait of himself that now hangs in the Senate Reading Room at the State House alongside other former Senate presidents. In addition to the \$30,000 payment for the painting itself, Travaglini used an additional \$13,000 in campaign funds for the frame, an “unveiling fee,” and refreshments for the unveiling event.

Travaglini spent more than \$24,000 on food and beverages over the 21-month period. He donated \$10,000 to East Boston Central Catholic School and another \$10,000 to the now-defunct Dom Savio High School in East Boston, which closed in 2007. He paid \$3,560 for tickets to a Senate holiday party at the Wang Center; \$2,300 for tickets to the Boston Symphony Orchestra; and spent \$3,500 on “gifts” from the Boston Winery. Travaglini did not return

a call for comment.

State campaign finance officials say a former officeholder can continue to spend campaign funds if the spending enhances or benefits them politically if there is a chance they will return to the ballot. Many former officeholders continue to file campaign reports for years after they have stepped down, despite giving no other indication that they plan on running for office again. For an account to be formally dissolved, the residual money must



be donated to the state, a municipality, a charity, or a scholarship fund.

Former state senator Joan Menard of Somerset, now an acting vice president at Bristol Community College, sent a letter to the campaign finance office in November 2010, prior to her retirement in January 2011, saying she intended to keep her \$156,000 account active “in the event that I might run for public office in the future.” In a number of interviews after she announced her retirement, however, the 76-year-old Menard said she had no plans to return to public office.

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## STATISTICALLY SIGNIFICANT

Among the more than \$50,000 in campaign expenses from her first year of retirement, Menard, who earns \$123,600 at the school, paid Barbara Laughlin of Raynham \$3,250 to prepare her campaign finance filings and ethics forms. She also gave Laughlin, who served as an aide in her Senate office, a \$500 Christmas bonus. Menard could not be reached for comment.

Campaign finance law dictates that registered candidates may use campaign funds for legal defense purposes, but not for the payment of penalties or fines. Former House speaker Thomas Finneran, who was indicted by fed-

## Few limitations on use of funds.

eral prosecutors on charges of perjury and obstruction of justice in 2005, used \$350,000 of his \$805,000 campaign account to pay his defense lawyer, Richard Egbert.

Many ex-lawmakers donate generously to charity using the money supporters gave them. Former state senator Robert Havern left office in late 2007 with just over \$105,000 in his campaign account. He has since given more than \$78,000 to charity and scholarship funds. Others who donated a lot of their campaign cash to charity include former state representative Frank Hynes (\$52,500), former state senator Cheryl Jacques (\$60,000), Travaglini (\$60,000), and Finneran (\$28,000). Jacques gave \$25,000 to the state Democratic Party, and Rachel Kaprielian, a former member of the House who was appointed Registrar of Motor Vehicles in 2008, gave the state committee \$15,000.

Not everyone with a large sum goes on a spending spree. Former state senator Jarrett Barrios of Cambridge left office in mid-2007 with more than \$540,000 in his account. Barrios, who briefly mounted a campaign for Middlesex district attorney and may have his eye on a possible run for attorney general in the future, still has a little more than \$540,000 in his coffers after raising and spending a few thousand each ensuing year.

While there's no such thing as a "typical" account, former state representative Michael Festa's reports offer a good example of what former politicians do with unspent campaign funds. Festa, of Melrose, left the Legislature in the fall of 2007 to become secretary of elder affairs for Gov. Deval Patrick. At the time, he had roughly \$50,000 in his campaign account. Over the next three years, Festa spent more than \$11,000 on meals and just over \$3,300 on a rented office coffee machine and supplies from Espresso, Etc. for his office staff at Elder Affairs. He also spent about \$9,500 on lodging and \$4,800 on airfare for events such as the American Bar Association convention and Council of State Governments conferences between 2007



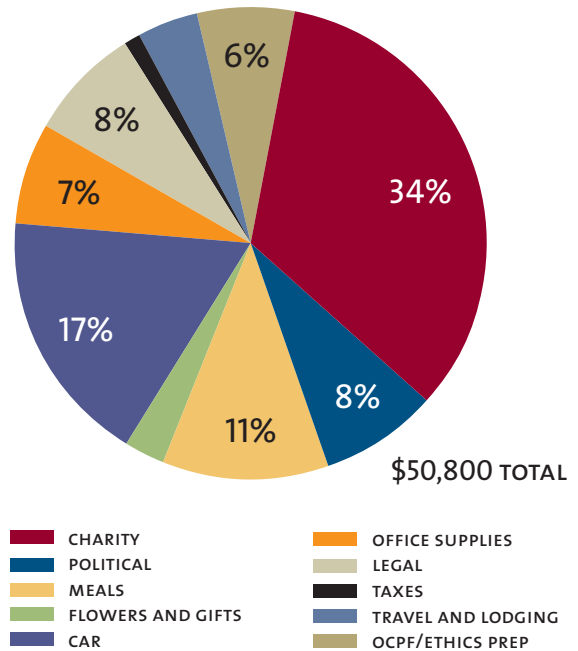
and 2009. Two of those trips included stays at Frenchman's Reef and Morning Star Marriot Beach Resort on St. Thomas in the Virgin Islands.

"Sometimes you go to Buffalo and sometimes you go to Pittsburgh," says Festa. "I go wherever those conferences were."

Festa left Elder Affairs in January 2009 and, by the end of that year, spent all of the \$16,270 remaining in his account. Among his expenses were more than \$1,200 on cell phone bills, \$355 on a holiday dinner at Abe & Louie's in the Back Bay, and more than \$2,600 on travel to and lodging at conferences. On December 30, 2009, Festa donated the remaining \$5,288 in his campaign account to the Carroll Center for the Blind, where he had served as president. Festa continues to file annual reports because of a \$2,581 debt owed to a Marblehead charter boat company for a 1990 fundraiser. Festa said the bill was from his first unsuccessful run for office.

"I didn't feel I had that obligation anymore," Festa says when asked why he didn't pay it before spending all his money. "The bill was incurred in 1990. Frankly, when you have a debt that you carry for that long a period of time, as a creditor, you look at it as uncollectable. I never felt I had to pay it." **CW**

#### EX-SEN. JOAN MENARD'S 2011 SPENDING



SOURCE: Massachusetts Office of Campaign and Political Finance

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# The university connection

At UMass Lowell, polling helps educate and provides visibility

BY WILDER FLEMING

**SCOTT BROWN AND** Elizabeth Warren have been running neck and neck in the polls for months, but when an October survey conducted by the University of Massachusetts Lowell became one of the first to indicate the competitiveness of the Senate race, it made big headlines. The poll was cited in news stories across the country, with the name of the school and its media partner, the *Boston Herald*, prominently mentioned. “We’ve never gotten so many hits in the history of the university,” says Chancellor Marty Meehan.

UMass Lowell went on to do polls on Joseph P. Kennedy III, who is hoping to fill Barney Frank’s seat in Congress; voter attitudes and priorities in Massachusetts; public perception of the Occupy Wall Street and Tea Party movements; and the Brown-Warren race for a second time. Each survey generated publicity for the school, which is one reason why so many colleges and universities have jumped into public opinion polling in recent years. But officials at UMass Lowell say their polling operation isn’t just about burnishing the school’s image.

Frank Talty, a professor of political science and director of the new Center for Public Opinion at UMass Lowell, says the polling was primarily conceived with an eye to education and research, and with an emphasis on student involvement. “It’s a research center for our students,” he says. “They’ve really gravitated towards it.”

In “Intro to American Politics” and other classes, students are given the opportunity to discuss actual polling questions before the surveys are conducted, and review the polling data with Talty afterwards. They look at why questions are relevant and how to formulate them for maximum clarity. Next semester, Talty says, students will be involved in the initial tabulation and analysis of the data as well. The center has also held two public forums and one political debate among the potential Democratic candidates for the US Senate, which have been organized and moderated in large part by students. “This center adds a significant exper-

iential learning opportunity,” says UMass Lowell Provost Ahmed Abdelal.

Talty says university officials had already been considering the creation of a public opinion center when the *Herald* approached them last summer. He says the relationship between the school and the tabloid is mutually beneficial. The university gets a guaranteed media outlet for the polls and the *Herald* receives the polling results before other news organizations at no cost. During the debate among Democratic contenders for Brown’s Senate seat, students blogged about the event for the *Herald*. *Herald* staff also guided students through the process of organizing and executing the debate, and the paper has provided internship opportunities for students as well. (The *Herald* declined to comment for this story.)

University polling outfits have become increasingly prevalent over the past few decades, mirroring the general rise in popularity of polling and survey research in the 20th century. Public opinion polling, in one form or another, has been around for ages; but it really took off in the 1930s, with the rapid spread of telecommunications networks and the rise of scientific survey research methods. In 1936, George Gallup and a handful of other pollsters accurately predicted Franklin Roosevelt’s presidential victory, prompting a surge in private polling operations.

Universities were also beginning to embrace survey research at about the same time. The National Opinion Research Center, now located at the University of Chicago, was conceived at the University of Denver in 1941. The University of Michigan’s Survey Research Center was founded in 1946. But these institutions focused exclusively on social science research, leaving the media-oriented polls to the private canvassers.

It was in the early 1970s that some public university-based survey research institutes, such as the Eagleton Center for Public Interest Polling at Rutgers University, began conducting political polls in addition to survey research. According to Cliff



Zukin, a professor of public policy and political science at Rutgers, the university polls tended to survey citizens in their home states in order to build an understanding of election and policy issues. More recently, he says, private schools, such as Marist College, in Poughkeepsie, New York, and Quinnipiac University in Connecticut, have gained national visibility with their polling.

“Schools like Quinnipiac and Marist do them as loss leaders to get institutional visibility, and generally just focus on elections, even in states that have nothing to do with where they are located,” Zukin says.

By the late 1970s and early 1980s, other state schools, such as the Universities of New Hampshire, Cincinnati, and Kentucky, were conducting horserace political polls as well. “The great majority of survey centers were not started with the sole, or even major, intention of doing this kind of work,” says Andrew Smith, professor of political science and current director of The Survey Center at UNH. “Rather, it seems to have developed organically because they had the capacity and infrastructure, and there was a media organization that approached them.”

Founded in 1976, The Survey Center at UNH conducts

40 to 50 survey research projects each year for faculty, government bodies, private businesses, and nonprofit organizations. It also produces election polls on the New Hampshire primary with WMUR-TV and does survey work for the *Boston Globe* on a regular basis. Most of the UNH data collection and analysis is performed in-house, by a staff that is two-thirds students who are paid for their work.

In Massachusetts, the Center for Policy Analysis, established at UMass Dartmouth in 1992, performs a sim-

## Some schools do polling as loss leaders for visibility.

ilar mix of survey research, program and policy evaluation, and media-oriented polling as UNH. The Suffolk University Political Research Center has been conducting polls since 2002, and UMass Amherst has produced a handful of political polls in the past few years as well.

Independent think tanks are getting into polling as well. *CommonWealth's* publisher, the nonprofit organization MassINC, helped launch the for-profit MassINC Polling Group in 2010, which conducts polls for WBUR and other clients.

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UMass Lowell's Center for Public Opinion is the school's second foray into the field. An earlier polling operation at the university was run by Louis DiNatale, a researcher and pollster who was let go after he ran afoul of the state Ethics Commission for freelancing as a private political consultant on the side.

According to Christine Gillette, a UMass Lowell spokeswoman, DiNatale's polling operation had no connection to students or faculty. The center operated on a \$500,000 annual budget, \$350,000 of which paid the salaries of DiNatale and two other staff members.

In 2007, the Ethics Commission investigated DiNatale for conducting a private political poll for convenience store magnate Christy Mihos in 2005. A potential gubernatorial candidate at the time, Mihos hired DiNatale to survey Republican voters about political issues and attitudes. The poll included many questions about Mihos as a candidate. Around the same time, DiNatale also conducted a university poll of registered voters of all political affiliations, which included questions about Mihos as a candidate.

The commission concluded that, as a state employee, DiNatale had violated the state's conflict of interest law by conducting a university poll with questions pertaining to a politician while simultaneously entering into a private contract with that same politician. DiNatale only received a public reprimand from the commission. But in 2008, under the direction of Meehan, the school's new chancellor, the polling center was dissolved and its entire staff let go.

The new polling center was designed with this cautionary tale in mind. Officials say its bankroll comes not from the state, but from the \$60 million pool of foundation and private research funding raised by UMass Lowell annually. University faculty who work at the center do so for no additional pay, and the actual polls are designed, conducted, and analyzed with the help of Mike Mokrzycki, an independent survey expert who formerly worked as the head of polling for the Associated Press.

Not only is there a focus on student involvement, but some polling topics have been conceived with an eye to faculty research as well. (The poll concerning public attitudes about the Occupy Wall Street and Tea Party movements is relevant to Talty's academic interest in how ideology shapes voter behavior.) "It's not worth the investment if it's just for the PR," says Meehan.

As if to confirm that the new center's priorities lie firmly with the university's students, Talty says the center has shut down for summer vacation, even as the political races are heating up. "We have not finalized plans for the next academic year, but we expect to have more polls, debates, and forums when students return to campus in the fall," he says. **CW**

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## Shifting alliances

The leftward lurch of the American Medical Association may be coming to an end amid concerns about red tape and regulation **BY SHAWN ZELLER**

**THE AMERICAN MEDICAL** Association, the venerable lobby organization for doctors, was for years a reliable Republican-leaning voice on big health care issues. For much of the past decade, however, the organization seemed to be on a drift to the left. First, it endorsed the Patients' Bill of Rights guaranteeing patient protections against insurance companies. Then the AMA really turned heads by endorsing President Obama's health care law. The leftward lurch, however, may prove to be short-lived, as the organization is now joining the Republican chorus complaining about burdensome government regulation—some of it brought about by the 2010 health care overhaul the AMA embraced.

The group says doctors are overwhelmed with pending deadlines to implement updated coding for their diagnoses and inpatient procedures and to adopt electronic health records systems and e-prescribing programs, as well as deadlines to change how they report their work for Medicare patients.

Massachusetts figures prominently in the dispute. Nearly 5,500 Massachusetts doctors are members of the AMA, making the Bay State delegation bigger than all but 10 other states. And the man who until recently drew doctors' wrath was Donald Berwick, who headed the Centers for Medicare and Medicaid Services (CMS) until he resigned in November to take a job with a left-leaning think tank in Washington. Berwick, a former Harvard School of Public Health professor, previously ran the Institute for Healthcare Improvement, a Cambridge think tank that has championed the quick implementation of new health care information technology practices that the AMA is now fighting.

Berwick is "certainly a pioneer in all of this," says Lynda Young, who recently finished her term as president of the Massachusetts Medical Society, which represents doctors in Massachusetts.



The AMA hasn't sugarcoated its displeasure. Last year, it sent Berwick a lengthy letter outlining doctors' need for relief from regulations ranging from the requirement that they hire translators for hearing-impaired Medicaid patients to new documentation they have to provide on treatments given to Medicare patients.

In April, the group wrote to Berwick's successor, Marilyn Tavenner, to express its "profound concern about the imminent storm that is about to occur due to simultaneous implementation of multiple programs that will create extraordinary financial and administrative burden as well as mass confusion for physicians." Doctors, the AMA explained, are under pressure to adopt electronic health records systems and electronic prescribing over the next two years at the same time they are required to use new reporting systems for Medicare aimed at tracking the quality of care.

"Facing all of these deadlines at once is overwhelming to physicians, whose top priority is patients," says AMA President Jeremy Lazarus. "We have asked CMS to develop solutions for implementing these regulations in a way that reduces the burden on physicians and allows them to keep their focus where it should be: caring for patients."

Berwick declined to comment about the hard line he took, but one of his new colleagues at the Center for American Progress, Topher Spiro, says all of the initiatives Berwick supported are crucial to making health care more efficient, reducing medical errors, and driving down health care costs. "These types of changes can't be done quickly enough," says Spiro, who leads the health care policy team at the center and is a former aide to the late Sen. Edward Kennedy. "They will save billions in health care costs over the long term."

So doctors' reluctance to move on them quick-

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## WASHINGTON NOTEBOOK

ly, despite more than \$1 billion in subsidies provided in the 2009 economic stimulus law, has put them at odds with both advocates of health care reform and with health care information technology providers.

At primary issue are three programs that Congress has mandated to require doctors to prescribe medicine by computer, to keep track of patient information electronically, and to report to Medicare on the results of procedures they perform.

Congress first ordered doctors to computerize their prescriptions in 2008, then added the requirement for electronic health records in the 2009 stimulus law.

Those mandates won't go away even if the Supreme Court this summer overturns the 2010 health care law. Still, it's ironic that doctors would get some of the relief they want if the court does strike down the law the AMA endorsed. That's because the health care law added requirements for doctors to report on their treatment of Medicare patients as a means of gauging whether patient care is adhering to best practices. The health care law also mandates that, as of 2015, the government pay doctors who treat Medicare patients based on their performance rather than the number of treatments they provide. Doctors who keep costs down and whose patients do well will receive bonuses; those deemed to be spending too much on poor care will see their reimbursements drop.

Right now, however, the government is paying doctors to adopt the new systems. This year, for example, doctors can receive incentive payments of \$18,000 if they move to electronic health records. If doctors are prescribing medicine by computer or reporting under the new quality control system, they can tack on an additional 1 percent to their Medicare bills.

The electronic prescribing payments totaled \$420 million in 2009 and 2010, according to the Centers for Medicaid and Medicare Services, while the agency says it has spent \$653 million to help doctors adopt electronic health records.

Janet Marchibroda, who leads the health care information technology research team at the Bipartisan Policy Center, a Washington think tank, says the incentives have been generous. "All of these initiatives started with incentives first, with the penalties pretty far down the road in the hope that they could get the lion's share of clinicians in before the penalties hit," she says.

Doctors say the money has helped, but that the payments have only covered a fraction of the costs of e-prescribing systems, which can run around \$2,500, and electronic health record programs, which cost about \$20,000. And Young, the Massachusetts Medical Society president, notes that many small practices didn't qualify for the money because too few of their patients are on Medicare, or Medicaid in the case of pediatricians and other doctors

who don't see older patients.

Soon the incentives will give way to penalties that will cut doctors' Medicare payments by 1 or 2 percent a year, depending on how long they are delinquent. The AMA is particularly irked that the Medicare and Medicaid agency is basing the penalties on physicians' actions in years prior to the penalty phase. For example, this year doctors who don't move to electronic prescribing will face a 1.5 percent

## None of the AMA's recent positions are a surprise.

reduction in all their Medicare claims next year. Likewise, doctors who aren't using electronic health records by next year will pay penalties on Medicare claims in 2015. The same is true for the Medicare quality reporting.

Doctors' complaints have started to resonate. In April, the federal government pushed back by a year another initiative, the roll-out of new codes to better describe diagnoses and procedures, from 2013 to 2014, to the great dismay of the companies that make health care computer software.

Such matters may seem arcane, but they will delay bet-

ter quality care, says Dan Rode, the vice president of policy and government relations for the American Health Information Management Association, a trade association for people in the health care technology business. The old coding system, he notes, provides no information about the severity of injuries or diseases or how they were incurred. "The system now doesn't say whether a person with a puncture wound was stabbed in a gang fight or cut themselves peeling potatoes," he says.

The lack of specificity in current coding procedures means specialists have to spend more time with patients getting up to speed. The code problem also prevents

public health researchers from having access to reliable data about the spread of disease.

None of the AMA's recent positions is much of a surprise to students of the organization's history. The AMA was for years an unyielding opponent of government interference in medicine. It famously fought the creation of Medicare in 1965, and its political action committee for decades favored Republican candidates.

That seemed to be changing, though, in the late 1990s when Democrats pushed for a Patients' Bill of Rights to regulate health insurance companies and to give doctors

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back some of the control over patient care that they'd lost to insurers. Though Republicans eventually killed off that bill, the AMA's new bond with the Democratic Party seemed to grow when it endorsed President Obama's health care law. In 2008, the AMA gave 55 percent of its political action committee contributions to Democratic congressional candidates. And in 2010, it gave 57 percent to Democrats.

The shift coincided with a continuing decline in the AMA's membership, as doctors moved increasingly into specialty societies, many of them more conservative than the AMA. Two generations ago, three in four US doctors were members of the AMA. Today only a bit more than one in five are, or 215,854 out of 985,375 doctors practicing in 2010.

Soon after the AMA endorsed President Obama's health care law that year, the group's anger over its implementation began to grow. In addition to the deadlines for Medicare reporting imposed in the law, doctors also fought to eliminate perhaps the most important provision aimed at better controlling health care costs, the creation of a new Independent Payment Advisory Board, which was charged with finding ways to slow Medicare's growth. In March, the AMA endorsed a House Republican bill to eliminate the board.

The payment board "puts important health care payment and policy decisions in the hands of an independent body that has far too little accountability," says James Madara, chief executive of the medical association. "Major changes in the Medicare program should be decided by elected officials."

The doctors say they fear the board would order further cuts akin to the existing Medicare "sustainable growth rate" formula that Congress enacted in 1997. Each year, the formula calls for a large reduction in the fees paid to doctors serving Medicare patients and each year Congress suspends the cuts under pressure from the AMA.

But supporters say the advisory board is the only way to get around the difficult politics of containing Medicare spending. The board would reach decisions without being influenced by outside interest groups—including the AMA—and Congress would have to vote on its proposals without the opportunity to amend them. A similar system has enabled the Pentagon to close military bases despite local opposition.

The AMA is doing more than just complaining. The group is again reversing course with its campaign giving. So far during this election cycle, Republican candidates are getting 60 percent of its contributions. **CW**

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# Tap vs. bottled

DC Water is trying to transform cheap, environmentally friendly tap water into a powerful brand **BY ELIZABETH BENNETT**

**IN THE BATTLE** between tap and bottled water, bottled water usually has all the zest. Perrier, Poland Spring, Fiji, Glacier—these companies reel consumers in with big-budget advertising campaigns promoting crystal clear waters from exotic locales all over the world. It's not easy to counter those images if you're running the local public water authority. But one tap provider is fighting back. The DC Water and Sewer Commission, the public authority that provides tap water to the nation's capital, changed its name to DC Water in 2010 and launched a campaign to transform tap water into a product that is just as hip and exciting as its bottled brethren.

Other water and sewer commissions—including many in Massachusetts—strongly encourage local tap water consumption. But DC Water goes further by actively trying to sell its customers on the idea. DC Water believes a just-the-facts approach in its struggle against bottled water isn't enough. The agency has coupled its appeal to the mind with an appeal to the senses, coining the logo “dc water is life” and sticking that phrase on trucks, websites, and publications across the city. Its utility trucks have become moving billboards with the message “put down the plastic” on their side.

“There are very few products that speak for themselves and don't need somebody speaking for them,” says George Hawkins, the general manager of DC Water since 2009. A graduate of Princeton University and Harvard Law School who began his career in Boston, practicing law at Ropes & Gray, Hawkins has become the voice of DC Water. He speaks all over the district, preaching a common-sense message of environmentalism and handing out reusable water bottles with DC Water emblazoned on the side.

Hawkins says tap is on top relative to bottled water in terms of quality, cost, and environmental impact. He says DC Water analyzes and publicly releases the results of thousands of tests each year on the water it supplies to its customers, while bottled water companies are not required to dis-

close their water quality testing results. He says bottled water costs 100 times more than tap water. What's more, he says, tap water is delivered by pipe directly to homes and businesses, while bottled water often is shipped hundreds or thousands of miles in containers that 75 percent of the time end up in landfills, waterways, or discarded as roadside litter.

Hawkins's PR campaign for tap water is part of a broader effort to reassure District of Columbia residents that the city's water is not only safe but a bargain, even as water and sewer rates have gone up by more than 50 percent over the last few years. Hawkins's predecessors often hid operational problems at the agency, and between 2002 and 2005 minimized the dangers of lead leaching from pipes into the water, a problem that was later corrected. Hawkins has been more upfront about problems that need to be addressed and the cost of addressing them. Two big priorities are building massive tunnels to capture polluted storm-water runoff and replacing aging pipes. DC Water purchases its water from the US Army Corps of Engineers Washington Aqueduct, a federal agency responsible for treating water drawn from the Potomac River.

“It is fundamental that people trust and rely on our product,” says Hawkins. “While the cold, clear, clean water coming out of the tap may speak for itself, the cost differentials are not so obvious. I think that the customer base needs to understand the efforts that we put in on their behalf.”

Sarah Neiderer, DC Water's marketing coordinator, says the agency's campaign isn't expensive, costing about \$180,000 so far for signage, uniform patches for 1,000 employees, vehicle decals, and the cost of shifting to the new [dcwater.com](http://dcwater.com) domain. Because the decals are displayed on the company's own trucks, websites, and publications, the entire process is fairly inexpensive. She says the goal of the agency's campaign is not to boost sales, but to increase public awareness about the importance and value of public water.

## WHAT WORKS

“There is absolutely no financial incentive behind our tap water promotion,” says Neiderer. “We only hope to overcome any misconceptions about the water and we want the public to trust and be able to rely on the tap water here in Washington because it is safe and clean.”

DC Water is also trying to counter bottled water’s convenience factor. Through a partnership with TapIt, a non-profit network of restaurants and cafes that provide the

## The MWRA chief is not convinced.

public with access to free tap water, DC Water is trying to make tap water as easy to use when consumers are out and about as bottled water. TapIt has more than 160 participating locations in the District of Columbia where people can fill reusable water bottles. The establishments are easy to locate through [tapitwater.com](http://tapitwater.com), iPhone apps, city partner websites, downloadable maps, and lime green TapIt stickers pasted to business windows.

“We have very high name recognition in the district for the program, with many regular users,” says Will Schwartz, TapIt’s campaign director. “It has had the effect of letting

people know that they can and should drink tap water in DC because it is easy, safe, and convenient.”

It’s unclear whether the DC Water campaign is having an impact in the District of Columbia because there is no reliable tracking of bottled water usage there. But Hawkins is convinced the campaign is having a positive impact on his customers’ views of tap water. He says other cities and states could benefit by mounting similar campaigns. “A campaign like this is doable anywhere and well worth the payoff,” he says. “A win-win.”

Fred Laskey, executive director of the Massachusetts Water Resources Authority, which serves as the wholesale distributor of water to 61 metropolitan Boston communities, is not convinced. The MWRA regularly reports on water quality to its municipal customers and their residents, preferring to let the facts speak for themselves.

“We’re not going to go out and pay for advertising because, frankly, our product speaks for itself,” says Laskey.





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"I would say our approach is a bit more subtle."

Laskey's strongest personal pitch for MWRA water probably occurred in 2005, when he participated in a blind taste test sponsored by the *Boston Globe*, pitting MWRA water against several bottled waters. A very nervous Laskey was relieved when he and his fellow judges found either no difference between the MWRA and the bottled waters or that the MWRA water was superior.

"Regionally, locally, and nationally, we have been recognized as some of the best drinking water in the country," Laskey says. "We pass with flying colors."

Now, when MWRA officials are invited to speak to groups, they bring along a mobile drinking fountain allowing those in the audience to do their own taste tests. Laskey says the key when comparing bottled and tap water is making sure the conditions are the same for both. "Refrigeration and cooling of water improves the taste," says Laskey. "People will compare a glass of tap water to the bottle they retrieved from a cooler. If you like cool, crisp water, get a pitcher and put it into the refrigerator."

While Laskey is reluctant to make a more aggressive pitch, Massachusetts would seem to be receptive to a tap water campaign. Bay State residents tend to be environmentally conscious and concerns about the environmental impact of transporting bottled water appear to be growing.

Town meeting members in Concord voted in late April to outlaw the sale of all bottled water containers of a liter or less within the municipality's borders. The tally was 403-364. Anyone caught selling bottled water when the measure takes effect next year will first be given a warning, but a second offense will be accompanied by a fine of \$25, while any subsequent offenses will carry a \$50 fine.

Schwartz, the TapIt campaign director, said his organization has had little success so far in Boston because there is no official campaign pushing for tap water usage.

While there are 168 TapIt locations in Washington, there are only four in Boston. Even that figure may overstate the program's support. A manager at Flour Bakery and Cafe, whose two outlets account for half of the Boston restaurants listed on the TapIt website, said that chef and owner Joanne Chang didn't know about the initiative and wasn't aware the restaurants were listed.

Massachusetts residents may lean green, but the effort by DC Water suggests that alone is not always enough. In nature, water may seek its own level. In commerce, reversing the public thirst for bottled versions of it may require a push from public officials and policy makers. **CW**



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The Holy Trinity School in Lawrence, which closed in 2004, was recently sold with the restriction that it not be used as a charter school for the next 90 years.

# What would Jesus do?

The Boston Archdiocese places  
90-year restrictions on the property it sells:  
No abortion counseling, no stem cell research  
—and no charter schools or other churches

BY JACK SULLIVAN

**BOSTON CARDINAL SEÁN O'MALLEY** condemns the Obama administration's requirement that all employers, even religious ones, offer insurance covering the cost of birth control, even after the president backtracked and offered a compromise. "It is important that Catholics not be deceived into thinking that this issue is simply another battle in the 'culture wars,'" O'Malley wrote on his blog in February. "Rather, it is an attack on the right of all people of faith to live their faith in freedom."

Yet O'Malley appears to have no First Amendment qualms about a legally questionable real estate practice by the Boston Archdiocese that seeks to impose the church's religious mores and anticompetitive mandates on those who buy surplus church

property. Scores of sales over the past several years come with deed restrictions that prohibit the use of the buildings or land for abortion clinics, abortion counseling services, stem cell research, euthanasia counseling, and birth control advice.

The Boston Archdiocese isn't alone. The Springfield Diocese opts for a blanket deed restriction, barring the use of former church property for anything that conflicts with Catholic teachings. The restriction theoretically could bar a law office that handles divorces because of the Vatican's stance against divorce. It could bar gay couples because the church views homosexuality as "unnatural" and a sin against God. And it could ban a bookseller from selling books deemed satanic or pornographic.



Boston Cardinal Seán O'Malley is taking a hard line on charter schools.



two charters expected to open this fall. The nonprofit Community Group Inc., which operates the Community Day Charter Public School and will run the two new charter schools, has had a difficult time finding appropriate and affordable space in the city.

The most logical solution would be for Community Day to expand into parochial school buildings abandoned by the Boston Archdiocese, but the archdiocese won't sell to the charter or to its surrogates. One of the parochial school buildings, St. Mary of the Assumption School, sits empty except for Thursday night bingo games, while another was recently sold with a 90-year deed restriction that specifically bars the purchaser and all subsequent buyers from using the building as a charter school.

A church spokesman refused to discuss the archdiocese's deed restrictions in any detail and declined to make any official, including Cardinal O'Malley, available for questions. The charter schools also declined comment, hoping the church will soften its stance. Yet individuals who have tried to buy the closed schools on behalf of the charters say they are

All of the activities forbidden by the Boston and Springfield branches of the Catholic Church are lawful and in some cases constitutionally protected, yet the deeds bar purchasers from engaging in them. Most of the deeds also extend the prohibitions to subsequent purchasers for a period of 90 years. In some cases, the deeds state the prohibitions will remain in effect forever.

The restrictions imposed by the Boston Archdiocese in some instances go beyond church teachings and are designed to stave off competition for parishioners and parochial school students. On some deeds, the archdiocese has required purchasers of shuttered churches to agree to never sell the property to anyone who wants to use it as a church or house of worship. In the case of closed parochial schools, the church has let some stand empty while selling a handful of others with a restriction in the deed barring their use as a charter school.

In Lawrence, a city with such bad public schools that the state has taken them over, the charter school restriction is becoming a major public policy issue. More than 4,400 children are on waiting lists for the limited number of coveted seats in the city's two existing charter schools and the

astonished at the church's actions. The individuals say they have made above-market offers for the properties and even agreed to financially compensate the church's remaining schools in Lawrence if their enrollment drops. But the archdiocese has refused to budge.

Suzanne Wright, a trustee of a foundation that tried to buy a closed parochial school on behalf of Community Day, says she finds the Boston Archdiocese's actions mind-boggling. For Wright, the moral course of action for the archdiocese is simple: Sell the buildings to charter schools and give a future to children hungering for a quality education. "Anybody who believes in God has a responsibility to do that," she says, "especially people who believe in Jesus."

### LOTS OF UNUSED PROPERTY

For generations, the Catholic Church has accumulated properties cumulatively worth billions of dollars, mainly through bequests or gifts, and built churches, schools, rectories, parish centers, seminaries, convents, and a host of other facilities that became intertwined with communities.

But after the clergy sex abuse scandal exploded in 2001,

the church's fortunes, especially in the Boston Archdiocese, began to plummet. Mass attendance dropped and donations began to dry up. To right its finances, the Boston Archdiocese responded by closing or merging 108 parishes since 2000. The archdiocese's schools have also been hard hit; their enrollment, which hit a peak of 153,000 in the 1960s, began a rapid decline in the past decade and is now down to 42,000. The cutbacks have left the archdiocese with a lot of unused property, which the church has been selling to individuals, developers, and communities.

A months-long review by *CommonWealth* of hundreds of land transactions over the last 20 years found the four Massachusetts Catholic dioceses handle real estate sales very differently. The Fall River and Worcester dioceses do not appear to attach use restrictions to deeds but the Springfield Diocese and the Boston Archdiocese do.

Since the mid-1990s, Springfield has opted for one very broad restriction, a prohibition on any use of former church property for any activity that is inconsistent with or contrary to Catholic teachings—forever. The restriction even extends to signage. A 2005 deed legalizing the sale of a piece of church land in Westfield bars any outside advertising inconsistent with church teaching, as determined by church officials. Mark Dupont, a spokesman for the diocese, declined to answer hypothetical questions about what types of activities the restriction would prevent.

The Boston Archdiocese began attaching use restric-

## After the clergy sex abuse scandal exploded in 2001, the church's fortunes began to plummet.

tions to its land sales around 2007. Since then, the archdiocese has sold nearly 60 of its properties for more than \$150 million. Many other properties are empty and presumably for sale. The standard Boston Archdiocese restriction lasts 90 years and prohibits church property from being used for abortion clinics, abortion counseling services, stem cell research, euthanasia counseling, and birth control advice. Many deeds contain the standard restriction but tack on additional prohibitions, such as a ban on rooming houses, exotic dance clubs, or sale of books and magazines the church deems sinful. The church also requires its legal fees be paid by the buyer in the event of a court challenge, regardless of the result or who brings the challenge. Other "extras" include:

- A provision barring church land in Boston's Back Bay from being used as a church or house of worship. ADG

Scotia, which purchased the land in 2008 for \$13.9, is planning a mixed-use retail, hotel, and housing development on the site.

- A restriction banning a "fast food operation or some other retail or restaurant use which will detract from the solemnity or religious tenor" of St. Anthony's Church in Woburn. The restriction is included in the deed to a piece of vacant property next door to the church that the archdiocese sold for \$857,000 in April.

- A prohibition on any activity involving "prurient or sexually explicit activity" included in deeds for properties the church sold near the former St. Casimir School in Brockton and the former Sacred Heart School in Lowell.

More recently, the Boston Archdiocese began attaching deed restrictions to the sale of a handful of its closed schools, barring their use as schools or, in at least one instance, a charter school. The archdiocese's policy on school use is evolving and appears to reflect a change in attitude. Previously, the church frequently leased space in closed schools to charters, but as more and more church schools closed and charters expanded, the archdiocese has become less welcoming.

In September 2007, the archdiocese sold the former St. Mary's Parish, including the rectory and school, in Marlborough for \$1.1 million with the restriction that it could be used for "housing only," precluding any possibility of a school on the property. That same year, a parent-led group that purchased the former Our Lady of the Presentation School in Brighton for \$1 million had to agree to a clause that forbids opening any kind of school for grades 1 through 8 at the site, to avoid competition with another nearby parochial grammar school.

Last year, the archdiocese moved in the other direction. It sold an abandoned school in Quincy to the city for use as a public school. It also sold the former St. Mary's Star of the Sea School in East Boston to the Excel Academy Charter School for \$1.85 million. After the Excel purchase, other charter school leaders asked the church if the Excel sale indicated a willingness to sell to them. Sources say the church's response was that the sale was an anomaly and, likely, the last such sale to any charter school organization for the foreseeable future.

That sentiment was reinforced in May when church officials agreed to enter into a three-way compact of cooperation with Boston Mayor Thomas Menino and the Boston Alliance of Charter Schools. The archdiocese balked at a portion of the agreement requiring it to assist in finding facilities for charter schools but acquiesced after the language clarified that the church would only have to "discuss" ways of helping charters find facilities.

The deed restriction in Lawrence prohibiting the use of a closed parochial school as a charter school appears to

confirm the church's new, hardening attitude toward charters. The shift coincides with the launch of the "2010 Initiative for Catholic Education," an effort led by Boston advertising mogul Jack Connors and a foundation led by Fidelity Investments legend Peter Lynch. The initiative seeks to merge church schools into academies that would consolidate students and faculty from several struggling or closed schools into one campus and place them under regional oversight rather than individual parishes.

One source who is working on the initiative says there is no written policy barring sales to charters but confirms there has been a shift in approach by "miseducated" church leaders who now believe sales or leases to charters should be blocked. The source, who did not want to be identified for fear of upsetting archdiocese officials, says the decision whether to sell surplus property to charters has shifted from pastors at individual churches to the archdiocese's central office.

The source says some outside the church have urged the archdiocese to rethink the change in approach as a way to help communities, especially poor urban areas, and bring in badly needed revenue. Those in favor of selling surplus property to charters point to a recent study by the Pioneer Institute indicating only 6 percent of charter school enrollment comes from parochial schools.

Archdiocesan officials declined to say what is prompting their opposition to charters. "As a practice we do not generally discuss our real estate strategies related to church property," says Terrence Donilon, a spokesman for the archdiocese. "This is consistent with most organizations that want to protect their competitive ability to market property and get a fair return."

#### LEGALITY OF RESTRICTIONS QUESTIONED

In 1945, a black family bought a home in St. Louis that, unbeknownst to its new owners, had a deed restriction that barred the sale of the property "to people of the Negro or Mongolian race." The deed restriction had been in place since 1911. The white owner of a nearby property sued to block the sale. A lower court refused to overturn the sale, but the Missouri Supreme Court ruled against the black family, holding that the deed restriction was a valid agreement between two private parties and ran with the land. The case, *Shelley v. Kraemer*, was appealed to the US Supreme Court, which held in 1948 that the race-based deed restriction was illegal because it violated the equal protection clause of the Fourteenth Amendment, the same clause that formed the basis for the court's landmark 1954 school desegregation decision in *Brown v. Board of Education*.

"We have noted that freedom from discrimination by the states in the enjoyment of property rights was among

the basic objectives sought to be effectuated by the framers of the Fourteenth Amendment," Chief Justice Fred M. Vinson wrote in the majority opinion.

Some of the same issues raised by the Supreme Court in its 1948 decision arise with the deed restrictions imposed by the Catholic Church in Massachusetts. Alfred Brophy, who teaches property law at the University of North Carolina, says some of the church's deed restrictions, particularly those prohibiting use of a property as a church, may violate constitutional protections.

"A restriction on use of property for religious purposes would be a clear violation of the Fourteenth Amendment," Brophy wrote in an email after reviewing some of the church deeds for *CommonWealth*. "I'm guessing that a court would be very, very reluctant to give effect to that."

The church's 90-year restrictive covenants, not to mention the restrictions put in place for perpetuity, also appear to violate Massachusetts property laws that cap use restrictions at 30 years, with possible extensions for an

## Deed restrictions raise questions for cities buying church property with public tax dollars.

additional 20 years under certain circumstances. Church officials, however, say the state restrictions don't apply to a religious organization.

The archdiocese's restrictions also raise delicate questions for municipal buyers, who use tax dollars to buy church property that comes with restrictions that some taxpayers may object to. Some Massachusetts municipalities have backed out of sales because of the restrictions, while others have gone along with them, convinced problems will never surface.

In May, Wellesley officials entered into an agreement to buy the former St. James Church on Route 9 for \$3.8 million. Town officials tentatively acquiesced to restrictions on the eight-acre property dealing with abortion and stem cell research. After some residents raised concerns about whether the restrictions are constitutional and legally enforceable, town officials sought a legal opinion. In the opinion, the town counsel insisted the restrictions were legal while acknowledging they were "religion-based."

But after the American Civil Liberties Union of Massachusetts expressed concern that the "religion-based" restrictions gave the Catholic Church effective control of the town's public property, Wellesley officials renegotiated the purchase and sales agreement, replacing the 90-

## YOU CAN'T DO THAT

Catholic Church officials in Massachusetts have a growing list of restrictions they place on deeds for land they sell. In addition to the common prohibition on entities that offer abortion services or counseling, stem cell research and counseling on euthanasia and birth control, some deeds carry further specific bans. In the chart below, the Holyoke and Westfield sales were from the Springfield Diocese and the other five are from the Boston Archdiocese.

PROPERTY	DATE	PRICE	BUYER	RESTRICTIONS
Our Lady of the Presentation School, Brighton	10/12/07	\$1,000,000	Presentation School Foundation	No grades 1-8 in exchange for reduced sale price
St. Jerome Church, Holyoke	3/5/04	\$250,000	E&M Realty	No abortion clinic, exotic dance club, satanic materials
33 State St., Westfield (Near St. Peter's Church)	5/13/05	\$140,000	Florida Corp.	Residential or home business only, no signage inconsistent with church teachings
St. Cecilia's, Back Bay, Boston	5/5/08	\$13,850,000	ADG Scotia	No church or chapel
Society of Oblate Father's Mission, Lowell	8/23/11	\$540,000	Moore Street Development	No "prurient activity" such as nude or semi-nude or sexually suggestive activity or entertainment; production, publication, display or promotion of pornography
Sacred Heart School, Cambridge	8/21/07	\$1,425,000	Just-A-Start Corp.	Housing only
Holy Trinity School, Lawrence	3/5/12	\$500,000	Nuñez, LLC	No charter school

Source: Massachusetts counties Registries of Deeds

year restrictions on abortion and stem cell research with a 40-year agreement barring non-municipal uses of the property. The new restriction would bar charter schools, which are not municipally owned or run, even though they are considered public schools.

Barbara Searle, head of the Wellesley Board of Selectmen, says she was "not personally" troubled by the church's initial restrictions but agreed to modify them to avoid delays in purchasing the property. "Everybody has an opinion, but I would say we got the best outcome," she says.

In Quincy, Mayor Thomas Koch, a devout Catholic whose children attend parochial schools, agreed last year to purchase the former St. Ann's School on Hancock Street for \$4 million as the site of the city's new middle school. He agreed to the church's standard restrictions without question. A spokesman for Koch says the church's restrictions on use of the land don't pose a problem. "It would probably be the city's contention that it's going to be a school for 90 years," says Christopher Walker. "This is a site and an area that has always been home to a school."

Sarah Wunsch, a staff attorney for the ACLU who reviewed the Wellesley deed, says no community should agree to limit use of property it purchases from the church regardless of the intended use. "Government can't be controlled by religious doctrine," she says. "Even if you're building a recreation facility, you'll likely have programs for teens, which could include sex education. Or a senior center, where some of the seniors will look for and receive end-of-life counseling. Ninety years is a long time. You

don't know how things will change. . . The control of religious doctrine over public uses and the discrimination aspect over other religious entities [are] unenforceable."

Church officials insist their restrictions are legal, noting their freedom to pursue religious rights cannot be limited by state laws. Donilon, the archdiocese's spokesman, says the church's push for property restrictions is also part of being a good citizen, helping to keep communities in line with Christian mores. "Money is not the only factor we take into account," he writes in an email. "We want what is good for the Church and also the local community."

Dupont, the Springfield Diocese spokesman, says the deed restrictions are based on the teachings of the church. In a 2005 deed, however, the Springfield Diocese acknowledged the courts could overrule the church. The Springfield Diocese sold a closed church school to the city of Springfield for \$1.6 million. The accompanying deed prohibited any practice contradicting Catholic doctrine but added a caveat, unseen in other deeds. The caveat said that if a court rules the restriction invalid or unenforceable, title to the property shall pass to future grantees free of the restriction. Dupont and Springfield officials declined to comment on the caveat.

Dupont says the diocese's restrictions are not imposed on anyone. "It's a free marketplace so individuals are made aware of the conditions upfront," he says. "If they don't agree with the restrictions, they can choose not to buy our property. If we lose a sale because of these conditions, so be it."



## NO CHARTER SCHOOLS

The Holy Trinity School sits vacant on a dead-end street in Lawrence, its isolation giving shelter to drug dealers and the homeless since it closed in 2004. The playground where generations of parochial students once laughed and screamed during recess is now fenced in and locked up, piles of branches strewn around the asphalt.

Albert Nuñez says he was negotiating with the archdiocese for more than a year to buy the property to use it as a charter school, which he says is the best use for the building. But Nuñez, who has developed about 50 properties in Lawrence for affordable housing, says church officials were unyielding. He went ahead and purchased Holy Trinity in March for \$500,000, accepting a restriction that the former school not be used as charter school for the next 90 years.

But Nuñez says he is considering challenging the restriction in court because of his belief in the importance of charter schools to lift his embattled city up. Charter schools, he says, could be “the future of the city of Lawrence.”

In some ways, that future is already here. The performance of the city’s charter schools is so impressive that the state receiver in charge of the Lawrence schools has invited Community Day to assist in the management of

several of the troubled district schools. Five of the city’s public schools have been designated underperforming for the past two years, part of the trigger for the state takeover of the system, and the district as a whole has been fraught with inconsistent teaching and unstable leadership. Less than half of the city’s 12,000 public school students—48 percent—scored proficient or higher on the English language arts component of the MCAS test compared with 69 percent statewide, and only 28 percent scored proficient or higher in math, compared with the statewide average of 58 percent. Half of Lawrence’s high school students never make it to graduation, and nearly one out of every four freshmen fail to get promoted to 10th grade.

By contrast, Community Day Charter Public School and Lawrence Family Development Charter School, both K-8 schools, have MCAS results that meet or exceed statewide averages, especially in the upper grades. Community Day is bursting at the seams and has more than 3,000 students waiting for a chance to enroll. The school has already received charters from the state to open up two more schools this fall, initially with 120 students each, rising to 400 apiece by 2019. The lottery for admission occurred in March but there is still no announcement on where the two schools will open come fall. The operators of Law -



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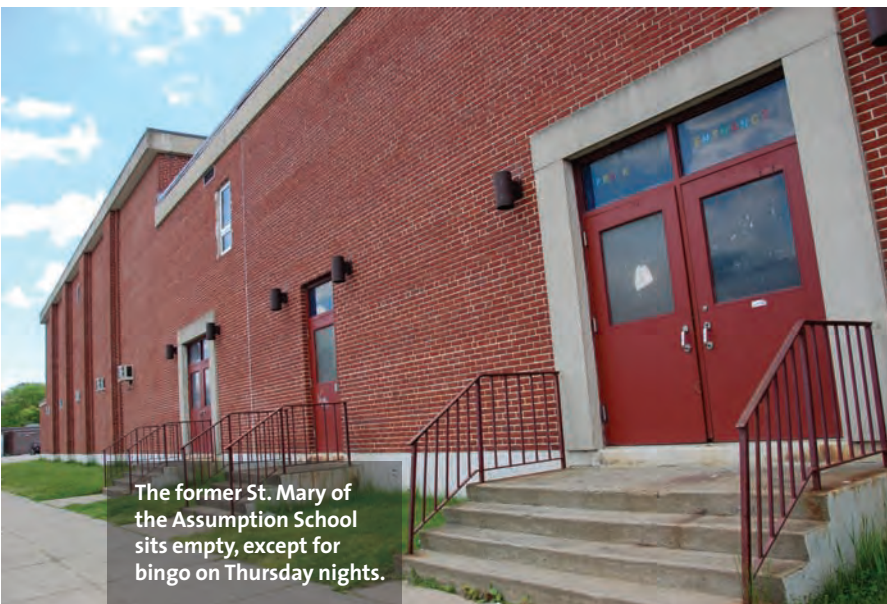
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The former St. Mary of the Assumption School sits empty, except for bingo on Thursday nights.

rence Family Development have also announced they will seek a new charter for a second school for the fall of 2013.

Across the intersection on Haverhill Street from where Community Day operates in a former public library building, teachers, students, and parents can see salvation. The former St. Mary of the Assumption School closed its doors last year and the building now sits largely unused. The 70,000-square foot building with dozens of classrooms would be ideal as a charter school but the Boston Archdiocese won't sell it for that purpose.

Suzanne Wright, a trustee of the Ibrahim el-Hefni Technical Training Foundation, named after her late father, who was an Egyptian-born engineer and fierce education advocate, says her group made an offer to the archdiocese to buy the building, fix it up, and lease it to the charter school. The response was silence, she says. Wright says she and other charter supporters were told the church did not want competition for their remaining parochial schools in the city.

"I didn't know they had this aversion to charter schools," Wright says. "If they could improve education in Lawrence, they could turn the city around."

Vincent Manzi, a local attorney and product of Lawrence's parochial schools and graduate of a Catholic college, tried to broker the St. Mary's deal for Wright's foundation. The foundation initially offered \$1.5 million for the school, which also houses Notre Dame High School, and agreed to assume the cost for all of the repairs, including a collapsing roof and \$170,000 to replace an aging heating system. While city records show the building and land were assessed at \$4.8 million at the time of the offer, Wright says she had an independent assessment of the property done and the \$1.5 million offer the foundation made "was at the high end." The foundation would lease the buildings back to both Notre Dame and Community Day at a nominal price.

After learning the archdiocese did not want the competition, Wright instructed Manzi to send a follow-up letter to increase the offer to include a five-year, \$75,000 donation to the Lawrence Catholic Academy for scholarships as well as \$50,000 in grants to the academy to ensure the church would not be economically harmed. Manzi says the offers were again met with silence. With Catholic churches and schools boarded up across the city, he says the archdiocese's hard line on stifling competition is irrational.

"We have a drastic need for charter schools to supplement the remaining Catholic schools in Lawrence," says

Manzi, who ticked off a list of shuttered parishes and their schools around Lawrence. "St. Augustine's is empty, Mount Carmel is empty. It's an absolute waste of valuable space. Education is education in a city that desperately needs it. There's no logical reason to deny this."

Donilon, the archdiocese spokesman, would not directly address the reasons for not selling to charter schools, only indicating that the church's top priority is to maintain its own schools even as enrollment is dropping. "The Archdiocese of Boston is committed to excellence in education," Donilon wrote in an email response. "Our particular focus

**"It's an absolute waste of valuable space. Education is education in a city that needs it."**

is on Catholic education where our schools are responsible for the education of more than 42,000 students."

While the Boston Archdiocese has tried to tamp down competition, others in the church don't share that vision as part of their mission. Dupont, the spokesman for the Springfield Diocese, says the western Massachusetts diocese would never consider barring schools or other churches even as enrollment and attendance diminishes.

"We've suffered an erosion of enrollment but that is not a reason to restrict use," Dupont says. "Our Catholic community extends beyond just those who use our schools and our churches. We see no advantage to say we will not sell to charter schools because we see a threat to our Catholic schools...We're not Wal-Mart competing against Kmart. To some degree, we're all in the business of saving souls." **CW**

# Cerberus's health care play

The private equity firm named for the mythological three-headed dog gobbles up 10 eastern Massachusetts hospitals, creates Steward Health Care, and takes a run at Boston's big teaching hospitals.

BY BRUCE MOHL | ILLUSTRATION BY YUTA ONODA

Chris Hopey, the president of Merrimack College, brought an intriguing proposal late last year to his board of trustees: Steward Health Care, the upstart, for-profit hospital chain that is challenging some of the biggest players in the Massachusetts health care industry, wanted to transfer Carney Hospital in Dorchester to the North Andover school.

Three sources familiar with the hush-hush discussions say Hopey told the board members that Steward was looking to unload Carney and Laboure College, a nursing school attached to the hospital that is also owned by Steward. Merrimack was seen as a potential match for the hospital and the nursing school because the college is interested in getting into the health care education field. Merrimack is also Catholic, making it a good fit for







a hospital that formerly was part of the Boston Archdiocese's Caritas Christi hospital chain.

But Steward's overture to Merrimack raised a lot of questions. Why did Steward want to unload Carney, a hospital it acquired only a year before? Was Steward's focus on community-centric health care unraveling? And could Steward legally transfer Carney to someone else? When Steward purchased the Caritas chain of six Massachusetts hospitals in October 2010, the Boston-based company agreed not to close, sell, or transfer a majority ownership interest in any of the hospitals for at least three years. Would a transfer to a third party be a violation of the agreement?

Hopey and school officials aren't talking. Steward spokesman Christopher Murphy is also tight-lipped. He initially insisted the hospital chain never offered "to give away" any of its hospitals, but refused to discuss whether Steward entered into discussions with Merrimack about the future of Carney. Just before *CommonWealth* went to press, however, Murphy said it was Merrimack that approached Steward to discuss an academic relationship with Laboure. He declined to comment further, but it would appear those initial talks led to a broader discussion about transferring both Carney and Laboure to Merrimack.

Whatever the genesis of the idea, Merrimack's board ultimately decided not to pursue a Carney-Laboure deal, probably for the same reasons Steward was interested in pursuing it. Located in one of Boston's poorest neighborhoods, Carney reportedly has been losing money for years and was on the verge of closing when Steward bought it. Steward officials say 70 percent of the residents in the surrounding neighborhoods bypass Carney and go elsewhere for their care. Even within Steward, there is no consensus about what to do with Carney, which became evident in April when Bill Walczak, the popular neighborhood activist hired by Steward to run the hospital, was fired after just 14 months on the job. Neither Steward nor Walczak will say what prompted his departure, but it's a safe bet there was a disagreement about the future of the hospital.

The discussions with Merrimack are a sign that Steward's bold plan to turn a string of money-losing hospitals into a profitable health care juggernaut may be facing some glitches. Owned by Cerberus Capital Management, a secretive New York private equity firm, Steward has been shaking things up in one of the state's biggest and most important industries. The company's 10 hospitals may not be big names and their finances may be shaky, but Ralph de la Torre, the CEO of Steward, has fashioned them into a health care network that he says can provide high quality

care at much lower cost than the big Boston teaching hospitals. De la Torre, who used to work at one of those teaching hospitals as the chief of cardiac surgery at Beth Israel Deaconess, says Steward, if it can win over residents and businesses near the hospitals, can not only turn a profit for Cerberus but lower health care costs overall.

Steward officials say they will turn a profit this year and are poised to take their health care experiment beyond the state's borders and onto a national stage. De la Torre declined to talk to *CommonWealth* (his spokesman says he is booked for months), but there is no shortage of people in the state's health care community who will talk about him, as long as their comments are kept off the record. Many expect him and Cerberus to crash and burn in Massachusetts, but no one is saying that publicly. Indeed, de la Torre is riding high right now. *Boston* magazine, in its April "power issue," put de la Torre on the cover,

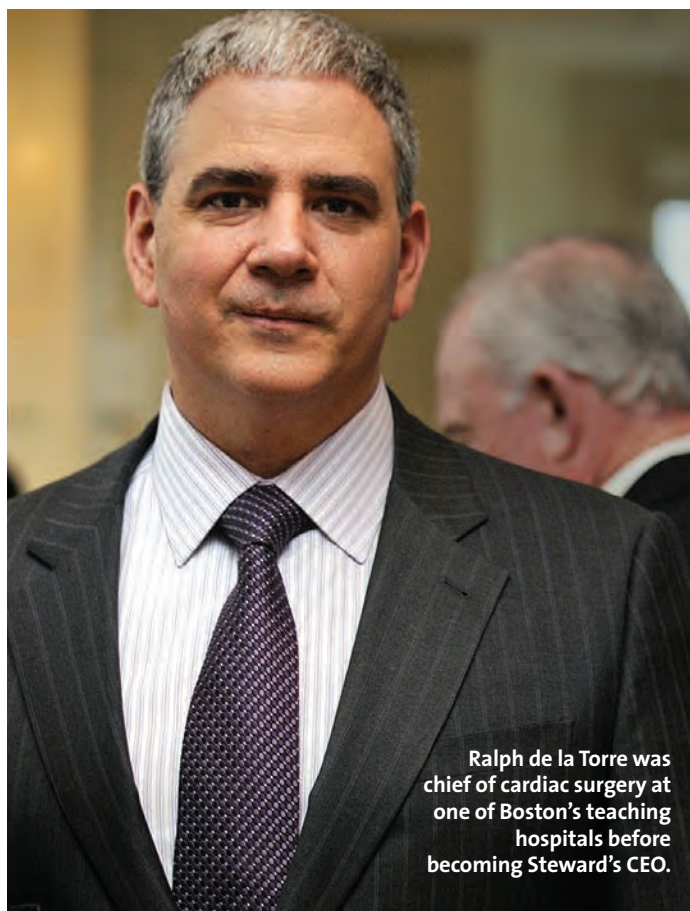
## Steward officials say they will turn a profit this year and are poised to take their health care experiment onto a national stage.

ranking him 12th among the 50 most powerful people in Boston, right behind Gary Gottlieb, his counterpart at the much larger Partners HealthCare, the corporate parent of Massachusetts General Hospital and Brigham and Women's Hospital.

Tom Glynn, a former Partners HealthCare executive who is now a lecturer in public policy at Harvard's Kennedy School of Government, says de la Torre deserves all the attention. "If you asked me which health care leader over the last five years has had the greatest impact, I'd say Ralph de la Torre. It's been a great first act," he says. "The question is: What's his second act? He's assembled this thing, but how's he going to make it profitable?"

### STEWARD'S STRATEGY

Steward may be a collection of somewhat tired community hospitals, but employees talk about the company's business strategy as if it's a killer app. De la Torre wants to put the brakes on the flow of patient traffic heading into Boston's academic medical centers, such as Massachusetts General, Brigham and Women's, and Beth Israel Deaconess, and redirect it to Steward's hospitals. Steward says 50 to 60 percent of routine inpatient care takes place at teach-



Ralph de la Torre was chief of cardiac surgery at one of Boston's teaching hospitals before becoming Steward's CEO.

ing and specialty hospitals, even though state data indicate the cost of that care is significantly higher than what other hospitals charge and the patient outcomes, on average, are not dramatically different. At a time when private insurers and state and federal regulators are trying to rein in the cost of health care, Steward thinks its cost advantage over teaching hospitals gives it a significant competitive edge. "Our model is very disruptive to the academic medical centers," says David Morales, Steward's vice president of public policy and strategic planning.

Steward currently operates 10 hospitals in eastern Massachusetts and is in the process of adding an eleventh. It is also buying a hospital in Rhode Island. Two of Steward's Massachusetts hospitals are in Boston—St. Elizabeth's in Brighton and Carney in Dorchester. The others are Nashoba Valley Medical Center in Ayer, Good Samaritan in Brockton, St. Anne's in Fall River, Merrimack Valley in Haverhill, Holy Family in Methuen, Morton Hospital in Taunton, Norwood Hospital, and Quincy Medical Center. New England Sinai Hospital, in Stoughton, is going through the regulatory process for converting a nonprofit hospital to a for-profit one, as is Landmark Medical Center in Woonsocket, Rhode Island.

Individually, the hospitals are all major employers in their local communities, but tend to be minor players on the Massachusetts health care scene. Together, however, they represent an imposing force, a \$1.8 billion company that is the third largest employer in Massachusetts.

Steward's 17,000 workers care for 1.2 million patients annually. Approximately 40 percent of the patients are on Medicare and 15 percent are on Medicaid, the state and federal health insurance program for the poor and the disabled. A quarter of the acute care hospital beds in eastern Massachusetts are controlled by Steward.

During an interview at Steward's Boylston Street headquarters in Boston, Morales says the company's business model revolves around a series of 2011 reports done on the Massachusetts health care market by the state and the attorney general. The reports indicate prices paid for health care services vary significantly from one hospital to the next while the outcomes do not. The reports also suggest that a disproportionate number of patients flock to higher-cost teaching hospitals for their care. In an interview last year with *The Deal* magazine, de la Torre said patients seeking routine care at teaching hospitals are paying far more than they should. "It's as if you took your Ford to the Ferrari Formula 1 garage for repairs," he said.

Rich Copp, a spokesman for Partners HealthCare, says his company recognizes that care has to be provided in the appropriate setting. "When it comes to the patient, we agree that providing the right care in the right place, close to home if possible—that's the best thing for patients," he says. "Partners' community hospitals, community health centers—they're all important components of delivering the best care possible to our patients close to home."

Morales and Murphy, the Steward spokesman, say the only reason the big Boston teaching hospitals are gobbling up community hospitals in the suburbs is so more patients can be referred into Boston "to feed the beast." By contrast, they say, Steward wants to keep care (and jobs) in local communities where it can be provided more cheaply. Morales estimates community hospitals are 25 percent less expensive than teaching hospitals. "The key for us is the economics," he says. "Our hospitals, and community care in general, are lower cost."

But Steward isn't low cost across the board. The state's 2011 report on health care cost trends found wide variations in prices. The private payer severity-adjusted median price of a vaginal birth, for example, ranged from a low of \$3,430 to a high of \$6,185 among 46 hospitals surveyed. Steward's St. Elizabeth's in Brighton had the highest price, edging out Massachusetts General (\$6,146), Brigham and Women's (\$5,943), and Beth Israel Deaconess (\$5,413). Other Steward hospitals included in the survey were more moderately priced. Good Samaritan in Brockton charged \$4,749 and Holy Family in Methuen charged

\$4,392. The prices of Morton and Norwood Hospitals were \$4,077 and \$4,067, respectively.

Morales says prices for individual hospital services are less important than broader indicators that measure a hospital's total medical expenses or how much the hospital is being paid by insurers relative to its competitors. On both scores, Morales says, Steward is below the state median, and below the Boston teaching hospitals. Still, there is fairly wide pricing variation within the Steward network of hospitals, with St. Elizabeth's consistently on the high end.

Steward is trying to enhance any cost advantage it has by paring back the cost of services it provides and attempting to reduce how often those services are needed. The Steward chain is also cutting costs by merging many of the business functions at its hospitals. Instead of each hospital operating its own human resources, finance, purchasing, and information technology divisions, Steward is consolidating them all in one location.

Steward is also positioning itself to take advantage of a shift by insurers toward paying health care providers based on patient outcomes rather than the individual services they provide. More than 80 percent of Steward's patients are currently under so-called global budgets, where Steward receives a fixed amount of money per patient to provide care. Under these contracts, Steward makes more money the more efficient it is in caring for patients. Wherever possible, company officials say, they are shifting treatment to lower-cost settings, such as a doctor's office or a patient's home.

Perhaps the most visible evidence of Steward's pricing advantage is its limited network health plan, which it unveiled earlier this year and offers to small businesses through Tufts Health Plan and Fallon Community Health Plan. Subscribers are required to seek all their care at Steward hospitals, although referrals to Massachusetts General, Brigham and Women's, or MGH Pediatric are permitted if Steward doesn't provide the needed service. The referral must be approved by a Steward care coordinator.

By keeping nearly all the care within the Steward network, the hospital chain says it can offer significant savings. For example, the company says a South Attleboro firm with 17 employees will see its annual premium for HMO coverage drop from \$188,000 to \$134,000 on Steward's limited network plan, a savings of \$54,000, or 29 percent. Similarly, an Andover company with 25 employees will see its bill drop from \$191,000 to \$146,500, saving \$44,500, or 23 percent.

Steward officials say 100 small businesses signed up for the limited network plan in the first 100 days, but they de-

cline to say how many subscribers the plan has. Tufts and Fallon referred all questions about the plan to Steward.

### CERBERUS'S PROFIT PURSUIT

The biggest mystery surrounding Steward is how its owner, Cerberus Capital Management, plans to make a profit. Cerberus officials have said little about their long-term plans, other than that they want Steward to be successful and they want to hold on to the company, at least for awhile. De la Torre has suggested Cerberus wants to develop and refine the Steward business model in Massachusetts and then roll it out to other states.

Cerberus typically buys distressed companies at bargain-basement prices, fixes them up, and flips them, either by selling stock to the public or selling them to another buyer. Cerberus often charges its acquired companies a fee for providing management services and leverages its own investments with borrowed money.

Cerberus investors expect a hefty rate of return on the \$23 billion they have pumped into the company. Cerberus rarely disappoints, but setbacks do happen. Cerberus lost about \$1 billion on its investment in Chrysler when the auto manufacturer declared bankruptcy in 2009. And the company was accused of essentially driving the California-based Mervyn's department store chain into bankruptcy by pulling hundreds of millions of dollars out of the firm and stripping it of its real estate assets. Cerberus is currently an investor in 22 companies, everything from a

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## Cerberus typically buys distressed companies at bargain-basement prices, fixes them up, and flips them.

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Burger King franchisee to a Los Angeles movie studio.

What initially drew Cerberus to Massachusetts was de la Torre. Cerberus had attempted to hire him in 2009, but he was busy trying to turn around the six Caritas Christi hospitals owned by the Boston Archdiocese. De la Torre was making some headway, but the chain's finances were a mess, so the Caritas board began exploring a sale. Caritas signed a letter of intent to sell to Vanguard Health Systems of Nashville in early November 2009, but that deal fell apart a month later, in part because Vanguard wouldn't agree to keep all of the hospitals open. Cerberus agreed to buy the chain in January 2010, but it took another 10 months before regulators gave the green light for the six nonprofit hospitals owned by the Boston Archdiocese to





**Steward quietly entered talks with Merrimack College for the school to take over Carney Hospital and its nursing school, Labouré College, just one year after purchasing the facilities.**

become the first health care acquisition of a company named for the dog that guards the gates of hell.

The health care industry is going through a massive consolidation, brought on by the weak economy, growing pressure to rein in prices, and changes in the way hospitals are compensated. Most hospitals have decided bigger is better as they cut costs and try to coordinate care better. Smaller hospitals in particular are wary of going it alone. Kaufman, Hall & Associates, an Illinois-based health care consulting firm, says there were 88 hospital mergers and acquisitions in 2011, the highest since 2000. The company is forecasting the pace will accelerate and the number of mergers and acquisitions may double over the next few years.

In Massachusetts, academic medical centers are reaching out to the suburbs and beyond. Partners Healthcare announced a closer relationship with South Shore Hospital of Weymouth in June. Massachusetts General acquired Cooley Dickinson Hospital of Northampton in February. And Beth Israel Deaconess acquired Milton Hospital in January. Lowell Hospital and Saints Medical Center, two smaller hospitals in Lowell, are merging. But the biggest change in the market has been the emergence of Steward.

Cerberus's Caritas deal, and its subsequent acquisitions, follow a similar pattern. Cerberus agrees to pay off existing long-term debt and, over time, start addressing the hospitals' pension liabilities and capital needs. The numbers are big—about \$250 million in debt, \$360 million in pension liabilities, and nearly \$537 million in capital expenditures. (These numbers don't include any costs associated with the purchases of Nashoba Valley Medical Center and Merrimack, both of which were for-profit hospitals.)

Cerberus had invested \$251.5 million in Steward as of

September 30, 2011, according to documents filed by Steward in connection with its proposed acquisition of Landmark in Rhode Island. Most of that money probably went to retire debt. It's unclear whether Cerberus has invested more money in Steward, or whether Steward is drawing from its own cash flow to pay for capital improvements at its hospitals and to cover pension liabilities. Cerberus declined comment.

The capital commitments are very flexible. As part of the Caritas deal, Steward agreed to spend no less than \$400 million on capital expenditures over four years. If it fails to reach that goal, Steward agreed to make a donation equal to the unspent amount to a charity chosen by the attorney general. But the definition of capital expenditure in the Caritas purchase agreement was extremely broad. Any expenditure "to promote the financial health, well being, or growth of the health system" would qualify, even money spent to buy another hospital.

Steward's hospital acquisitions brought with them considerable real estate. Property records indicate Steward now owns real estate across eastern Massachusetts with an assessed value of \$599 million. As a for-profit, Steward must now pay property taxes on that real estate (nearly \$20 million a year), but it can also leverage that real estate to raise money.

In April, Steward granted 99-year leases on 13 of its medical office buildings to an Arizona real estate firm for an up-front payment of about \$100 million. Steward is now renting those same buildings back from the Arizona firm under 12-year leases. The terms of Steward's leases have not been disclosed. Steward has also not disclosed whether it kept the cash generated by the deal or the money went to New York and Cerberus's investors.



Murphy, the Steward spokesman, says Cerberus isn't charging Steward any management fees and is barred from borrowing against Steward assets for the purpose of paying dividends or distributions until late next year.

Documents filed in Rhode Island indicate Steward incurred a net loss of \$57 million in fiscal 2011 and negative cash flow of \$33 million. A consultant hired by the state of Rhode Island to review Steward's 2011 financials said they raised a number of red flags, but Murphy says the company is on track and expected to turn a profit this year.

"What is remarkable is that as Steward sits today, with 10 hospitals and 2,700 doctors, we are the only investor owned or publicly traded health care system in the United States with no long term debt," Murphy said in a statement. "Any individual knowledgeable in the health care field would understand Steward's financial situation."

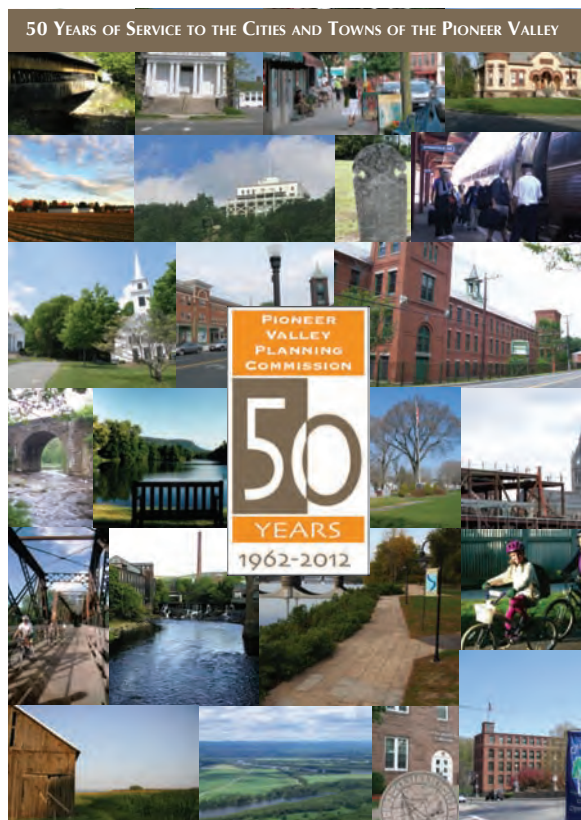
### CHANGING PERCEPTIONS

Steward's biggest challenge may be marketing. The company has to convince patients to come to its hospitals for routine care instead of going to the big teaching hospitals in Boston. It's a tough sell because those teaching hospitals in Boston are regarded as among the best in the world,

while nearly half of Steward's hospitals were close to going under when Steward bought them. Quincy Medical Center, in fact, was in bankruptcy.

Hospital rankings are controversial, but they reflect public perceptions. In its 2011-2012 ranking of the best hospitals in the Boston area, *US News & World Report* picked Massachusetts General, Brigham and Women's, and Beth Israel Deaconess as one, two, and three. MGH was also ranked No. 2 nationally. In Greater Boston, Steward's St. Elizabeth's tied for thirteenth and Steward's Holy Family in Methuen and Good Samaritan in Brockton tied for sixteenth. No other Steward hospitals made it into the top 25.

At a troubled hospital like Carney in Dorchester, the challenge of changing patient perceptions is daunting. Morales, Steward's strategy guy, notes there are several teaching hospitals and community health centers in close proximity to Carney. "The community, if it embraced Carney and its local physicians for routine care, which is 95 percent of what it does, would have a very vibrant hospital. But because most of the community still perceives that a better brand of care is over there," he says, pointing in the general direction of Massachusetts General, "almost 70 percent of that community chooses to go to higher-cost



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settings where they perceive a routine service is better even though the facts say it isn't."

Morales recognizes that Steward needs to change the perception of its hospitals, and that starts with fixing up facilities that were allowed to deteriorate by the previous owners. Steward has spent close to \$200 million so far on a variety of projects, including new emergency rooms at Holy Family, Good Samaritan, and Saint Anne's; new operating rooms at Saint Anne's and Carney; a cardiac catheterization lab at Norwood Hospital; and a new radiation therapy center at St. Elizabeth's. Quincy Medical Center has received an infusion of \$30 million in capital spending.

Steward is also running full-page newspaper advertisements trumpeting the savings available with its limited network health plan. The ads emphasize the Steward name rather than the names of the company's individual hospi-

## To attract more patients, Steward is adding doctors to its physician network, wooing them away from the big teaching hospitals.

tals and represent an attempt to build a new brand associated with savings and quality care.

To steer more patients to its hospitals, Steward is aggressively adding doctors to its physician network, in several instances wooing them away from the networks run by Boston's big teaching hospitals. "The number one driver of where a person goes for care is the recommendation of their physician," Murphy says.

Dr. Mark Girard, president of the Steward physician network, says his stable of doctors has grown 150 percent since January 2010, rising from 1,000 (400 directly employed by Steward) to 2,500 today (600 directly employed by Steward). Officials at other hospitals, some of whom have lost doctors to Steward, say the company is offering a myriad of financial incentives to physicians, including income guarantees and, in some cases, lavish salaries. But concrete examples could not be documented, and Girard says such tales are overblown.

Girard says doctors are joining with Steward because the company offers them a number of ways to keep care in their local communities and improve their profit margins. A Steward-owned medical malpractice insurer offers lower rates. Grant and infrastructure money provided by Steward allows doctors to install electronic medical record systems at virtually no cost, Girard says. A Steward

call center can handle appointments, scheduling, and other grunt work that previously was handled by workers in a doctor's office.

The Whittier Independent Practice Association in Newburyport, a group of 150 North Shore doctors, dropped its affiliation with Beth Israel Deaconess and joined Steward late last year. Whittier was followed a month later by the 90 doctors of Compass Medical, which operates practices on the South Shore and had been associated with Partners. Sources say a key factor in their defections was a global payment contract Steward had signed with Blue Cross Blue Shield of Massachusetts.

The Blue Cross contract capped what Steward would receive for providing care to patients, but the cap initially included a hefty growth factor, meaning Steward would receive more money for its care than it did the previous

year. That growth factor would slowly be scaled back in each ensuing year of the contract. In essence, the contract was designed to allow Steward to adjust over time to the new payment approach rather than all at once. Sources say Steward gained a significant additional financial advantage when the economy tanked and health care spending in general slowed. Steward was left with a contract that brought in revenue that far exceeded its expenses, allowing it to

share the wealth with doctors who joined with Steward. Officials at the doctors' groups and Blue Cross declined comment.

Morales said he wasn't familiar with the details of the Blue Cross contract. "Even if that was the case, credit to Dr. de la Torre for taking an incentive which most hospitals should have taken that actually rewards quality and rewards keeping costs down," Morales says.

As Steward seeks to change the public perception of its hospitals, there is a feeling of urgency, largely because Cerberus is probably hungry for a return on its investment and eager to disprove the naysayers who say the company will fail. There is also a desire to go national with the concept Steward developed in Massachusetts. De la Torre said as much earlier this year at the JPMorgan Global Healthcare Conference in San Francisco as he laid out his national vision for investors.

"In a world of Neiman Marcuses, we're OK being Filene's," de la Torre said, according to a report in *The Boston Globe*. "The key, when you're a regionally focused, community-based, accountable care organization, is to keep health care local."

What was probably lost on the audience in San Francisco was the fact that Filene's, once an iconic retailing brand of Massachusetts, no longer exists. **CW**





Richard Davey, the state secretary of transportation, wants to wean the Greenway Conservancy off public funds.

# Rumble in the park

The Greenway has become a signature Boston destination, a vibrant ribbon of urban parkland. A battle over who should pay for the tract's pricey upkeep is threatening its future.

BY PAUL McMORROW | PHOTOGRAPHS BY FRANK CURRAN

**STATE TRANSPORTATION SECRETARY** Richard Davey darts across Atlantic Avenue, lays down his umbrella, and settles under the roof of the Boston Harbor Islands Pavilion. It's a raw, wet day that feels more like March than June, but even with the raindrops and the grey skies, Davey can't help remarking how good the park he's standing in looks. The elevated Central Artery once rumbled over the spot where Davey stands; now, he looks admiringly at a lush green lawn.

On days when the sun appears, the Rose Fitzgerald Kennedy Greenway is jammed full of people. Scores of office workers crowd the farmers' market and food trucks across from South Station. Couples laze around on the grass. Kids screech as they run through the fountains. Trees and shrubs are filling



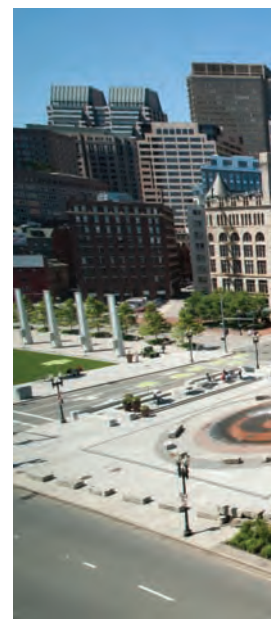
in. Four years after it opened to derisive jokes about being little more than a glorified median strip, the Greenway is an unalloyed success. The place has never looked better.

The same cannot be said, however, for the Rose Fitzgerald Kennedy Greenway Conservancy, the independent nonprofit group that runs the mile-long string of parks. The Greenway Conservancy combines public and private funds to pour more money into public, open space than a government agency ever could afford. It has its own management structure, and a horticultural staff dedicated to caring for the Greenway parks. But the Conservancy is now locked in a standoff with the state agency that owns the Greenway parks, and that must sign off on a new land lease to keep the Conservancy in business beyond next year. The showdown is threatening to blow the Conservancy to pieces.

The agency Davey runs, MassDOT, is the Conservancy's single biggest funder. The state transportation agency has made it clear that it wants to end that arrangement. In January, Davey asked the Conservancy to produce a business plan that demonstrates the group's ability to operate the Greenway without state cash by 2018. He has said the Conservancy won't get a new lease if it won't commit to operating without any state funding by the end of its new five-year lease.

MassDOT's demand threw the Conservancy for a loop. The nonprofit, hobbled by state cuts and a cold fundraising environment, had been working to expand its budget by signing commercial property owners along the Greenway into a business improvement district, an organization that would help pay for park maintenance with voluntary contributions from nearby property owners. It had been wrestling with the details of a Greenway BID for more than a year, and it was finally closing in on a deal. The BID would allow the Conservancy's annual budget to swell from \$4.6 million to \$6.2 million, with DOT, neighboring property owners, and private fundraising contributing roughly \$2 million each. MassDOT's ultimatum removed the Conservancy's largest source of income, and it put BID negotiations on ice; the Greenway's big commercial landlords were willing to supplement state funds, but they refused to stand in for public support. The Conservancy has frequently likened its public-private-BID funding model to a three-legged stool. Suddenly, the stool had no legs.

The Greenway Conservancy's position looks increasingly tenuous. Conservancy leaders have gone out of their way to say they don't know whether they can meet Davey's



request, putting them on a collision course with the state transportation secretary, who insists he means what he says about forcing the parks off state funds. At the same time, acceding to the state's demands would financially gut the Conservancy. It would close the door to a BID and force the nonprofit to rely entirely on private fundraising efforts that have never hit the levels the group would need to survive on its own.

The Greenway has seen moments like this before. The 15-acre park system sits atop the Big Dig's O'Neill tunnel in Boston, and the parks are the \$15 billion highway project's most tangible byproduct. Throughout its history, though, the Greenway has been a political orphan. The same questions that are now pushing the Greenway to the brink have been plaguing it for 20 years. The space has

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**If it were only a simple matter of mowing the lawn, the Greenway standoff would be easy enough to resolve.**

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long been riddled with controversy over who controls the park, and how it's paid for. The Conservancy was supposed to be the entity that would stomp those questions out, but they persist. Now they're coming to a head.

Rick Dimino, CEO of A Better City, a group of Central Artery business interests that originally organized around the Big Dig, has watched with increasing dismay as things have come undone. "It's a physical asset most cities would



be dying to have,” he says. “And we’re arguing about who should cut the grass.”

### SHELTER AN ORPHAN

If it were only a simple matter of mowing the lawn, the Greenway standoff would be easy enough to resolve. But the Conservancy has developed an expensive showpiece park, complete with elaborate lighting displays, public art installations, a high-maintenance array of three fountains, each with its own intricate subterranean controls, and finicky, high-end vegetation, all sitting on the roof of a busy interstate highway tunnel.

For all the park’s modern-day features, the entity charged with its oversight was conceived in a scene of decidedly old-world political deal-making. James Aloisi, a longtime Massachusetts Turnpike Authority lawyer who would later become state transportation secretary, remembers the day well. He was sitting in the office of his old East Boston pal, Senate President Robert Travaglini. Aloisi’s meeting had just wrapped up, but Travaglini asked him to stick around because of his knowledge of Big Dig history. In walked former Senate president William Bulger, Gerry Doherty, a longtime confidante of Sen. Ted Kennedy, and Kennedy’s father-in-law, Edmund Reggie. They told Travaglini that Kennedy was concerned that “the park is named for his mother, and no one was figuring it out,” Aloisi says. Kennedy would be playing a major role in the 2004 Democratic National Convention, and he didn’t want to have to explain to party heavies that Beacon Hill couldn’t figure out who was in charge of his mother’s park.



Kennedy had good reason to be worried. The state and the Turnpike Authority were legally obligated to build the Greenway, but on Beacon Hill, the parks “largely became orphaned,” Aloisi says. “Nobody at any significant level—legislative, executive, at the Turnpike—nobody took the question of what is it, how it would function, as their task.”

Reggie, a courtly retired Louisiana judge, brokered a deal agreed to by the Turnpike and Gov. Mitt Romney, who were engaged in a nasty turf battle, and Boston Mayor Tom Menino. The plan, announced at the Democratic National Convention, established the Conservancy to run, and raise private funds for, the Greenway parks. The agreement committed the Turnpike to financing construction of the parks, and shouldering the Conservancy’s startup costs. The authority put \$5 million in seed money into the Conservancy, and agreed to put as much as \$20 million more into the nonprofit’s endowment.

Prior to the Kennedy team’s intercession in 2004, the





Nancy Brennan, the Conservancy's executive director, became the center of a storm over her handling of media inquiries about her salary.

governor's office was at war with the Massachusetts Turnpike Authority, the quasi-public agency that oversaw the Central Artery/Tunnel project; each laid an ownership claim over the new Greenway parks. Meanwhile, the state feuded with the city of Boston over land use control along the Greenway corridor, and over who would foot the bill for policing and snowplowing the new space. The city studiously avoided making any financial commitments to the Greenway parks; according to several sources close to the Greenway, Menino didn't want to be seen by vocal neighborhood residents as showering funds on a posh downtown park that would benefit wealthy developers. The Greenway Conservancy wasn't created just to act as a single-minded caretaker for the Central Artery parks. It was also a structure for managing the tangled rivalries that created it.

Kennedy's work in muscling the Conservancy into existence underscored something that has been at play from the park system's inception right up to the current debate over its financing and management: The Greenway is an elaborately manicured park, but the space has always been defined by highly charged, politically contentious clashes. It took years of political wrangling to strike a deal over who would control the new parks orga-

nization, and who would fund its work. The current standoff over state and BID funding for the Conservancy is a continuation of these old battles.

## REVENUE SCHEMES

The Greenway looks the way it does today because of a run-in between the state and the city of Boston that dates back to the late 1980s. In the Big Dig's early days, then-state transportation secretary Fred Salvucci was tossing around ideas about what would replace the elevated Central Artery, which had formed an impassable wall between Boston's downtown and its waterfront. Salvucci's architects were fiddling with sketches showing new commercial developments, built to match the scale of the North End, filling the gash where the highway ran. Steve Coyle, then head of the Boston Redevelopment Agency, caught wind of what Salvucci's staff was working on and strenuously objected to state transportation bureaucrats making land use decisions in downtown Boston.

Coyle commissioned four teams of architects to sketch out differing densities for the post-Artery land, settling on a scheme where 75 percent of the acreage would become

open space. Salvucci asked state regulators to write that land use mix into the Big Dig's environmental permits, locking the scale and scope of the Greenway parkland into place. "The rewritten, false history is that the park was an afterthought," Salvucci says. "It was written that way because that's what the city wanted, and it became an obligation of the Big Dig."

The notion of a conservancy took hold in the late 1990s because no one agency, from the city or from the state, had taken ownership of the future Greenway parks. Planning and park design were largely the result of citizen-led volunteer efforts. Activists working in this political vacuum began calling for the creation of a strong, new organization to run the Greenway parks. "We wanted an entity to wake up every day and have the care, quality, and future of the park space be their core mission," Dimino says. The grassroots call for a standalone entity to oversee the Greenway meshed with public agencies' reluctance to take control of the new parks.

The first serious stab at financing Greenway operations would have required the parks to operate without annual state appropriations. In 2002, then-House Speaker Tom Finneran lined up Menino and then-Gov. Jane Swift behind the so-called Millennium Greenway Trust, which



would have been financed by a graduated assessment on commercial properties lying within a quarter-mile of the new parks.

Finneran's office wanted to guarantee a significant revenue stream for the Greenway that stood outside the volatilities of the state budget. In that way, Finneran correctly anticipated the budget battles now gripping the parks. At the same time, he proposed creating a powerful new quasi-public state trust to manage the parks. The entire plan sank amid broad opposition to the trust's management, which critics assailed as a distant, unaccountable patronage haven in the making.

The Conservancy's framers wound up modeling the nonprofit after the groups that run Central Park in Manhattan and Prospect Park in Brooklyn. "We knew we needed an outside entity to raise funds, because the city, the state, whoever was in charge of it, wouldn't be providing enough money to program and take care of the space," says Robert Brown, an architect who served on the Mayor's Central Artery Completion Task Force. Notably, the 2004 deal that created the Conservancy didn't include any funds from businesses along the Greenway. The Conservancy's framers made a conscious decision to structure the nonprofit as a public-private partnership, with the private end of that equation coming from philanthropy, not fees on developers. "The park doesn't exist because the private sector asked for it," Aloisi argues. "If it becomes solely and exclusively the domain of the private sector, it loses its inclusiveness."

The Conservancy's creators anticipated giving the new

pike in the spring of 2009. He also fundamentally altered the nonprofit's financing model, moving it from one that relied on its endowment to one that depended on annual appropriations from the state. He seeded the nonprofit with \$2 million, and promised annual Greenway funding of up to \$5.5 million per year.

On paper, the state is committed to funding half the Greenway's annual operations and maintenance costs. In practice, the state's financial contributions have been much more fluid. The initial \$2 million in DiMasi's 2008 legislation was borrowed from a state budget surplus that never materialized. The state's annual payments to the Conservancy were supposed to be drawn from the interest on a highway trust fund, but that fund has never generated the kind of revenues DiMasi's bill anticipated. As a result, Greenway appropriations that were structured to be paid from found money have instead weighed on MassDOT's own strained budget. MassDOT has responded by repeatedly trimming its payments to the Conservancy. And now it's demanding that the Conservancy prepare for a future with no government cash at all.

#### INTO THE OPEN

Georgia Murray doesn't work when she's on vacation. She doesn't take phone calls or check her email. She unplugs. So when Murray, the chair of the Rose Kennedy Greenway Conservancy, flew back into Boston on the night of January 24, after five days abroad, she had no idea what sort of firestorm was awaiting her.

The messages to Murray came pouring in. The *Boston Herald* had been hounding the Conservancy's executive director, Nancy Brennan, about her salary. Brennan had fired off an email to the organization's PR flak, asking whether Brennan should ignore the requests, respond to them, or call back after the *Herald's* deadline. She wound up stonewalling the paper. But she also mistakenly sent the email asking about the wisdom of ignoring the *Herald* to the *Herald*, which was a far bigger gift than a

returned phone call. The tabloid could only run so far by reporting that Brennan's current salary was close to what's already been reported in the tax forms that all nonprofits have to file publicly. But a misfired email laying out a ham-handed strategy for brushing off a hungry tabloid? That's the stuff brutal front-page hits are made of.

The *Herald* story savaged Brennan and the Greenway Conservancy, and the blowback was severe. The day of the *Herald's* front-page splash, Davey fired off a stern letter to Brennan, saying he was concerned the Conservancy's

## The Conservancy's framers made a conscious decision to structure the nonprofit as a public-private partnership.

organization a long runway—until 2012—to build up its endowment. Dimino's group claimed the Conservancy's initial \$20 million endowment target was half what would be needed to fund annual expenditures it pegged at between \$4 million and \$6 million per year. Peter Meade, the Conservancy's first chairman, said the nonprofit needed to raise \$50 million. But in 2008, with less than \$10 million in the bank, House Speaker Sal DiMasi pressed the Conservancy into action.

DiMasi pushed through a bill that instructed the Conservancy to take over Greenway operations from the Turn-

lack of transparency “undermines our efforts to promote the park as a marquee attraction in downtown Boston.” Brennan’s handling of the tabloid brought into the open discontent with the Conservancy that had been simmering in private. It hardened the attitudes of developers along the Greenway who didn’t trust the Conservancy with their money. Meanwhile, community activists, who viewed the Conservancy as an aloof organization, sat on their hands; the muted public defense of the nonprofit was glaring. Davey chose this moment to publicly announce the state expected the Conservancy to become self-sufficient.

It’s notable that none of the criticisms have been about the quality of the park space, how the green part of the Greenway has been cared for. “Nobody is complaining that it’s not properly maintained,” argues Robert Beal, the prominent Boston developer. “Nancy has done an outstanding job. Everyone enjoys the Greenway.”

Brennan gets paid to run a world-class park, and she assumed that if she focused on that goal, things would turn out fine. The problem is, the Greenway Conservancy was as much a political creation as it was a horticultural one. The Conservancy ignored the politics behind the space, and because of that, it’s now getting eaten alive.

Davey has bigger problems than the Greenway on his hands. He just emerged from an MBTA fare hike and service cut tour, yet the T’s budget for future years remains deeply out of balance. The state’s roads and bridges face several billions of dollars in deferred maintenance costs. MassDOT hasn’t been able to shake the awful habit of paying employee salaries with bond funds. Running a park in downtown Boston probably isn’t in the top hundred things that keep Davey up at night.

“It’s a beautiful park and they do a phenomenal job, but some day it’s quite possible the state won’t have the resources to fund it,” Davey says. “It’s prudent to encourage them to really step up their fundraising activities, so they no longer have to rely on annual appropriations from the Legislature and the governor.” He adds that, across state government, agencies and contractors have been asked to do more with less. Unlike those others, Davey says, the Conservancy has “the ability to raise money outside the state budget.”

#### A WEANING STRATEGY?

Davey has put the Greenway Conservancy in a precarious spot, since the secretary has conditioned its new lease on a business plan that gets the park off state funding by 2018. But the Conservancy has responded to Davey’s demand with a cocksure, almost confrontational tone. *CommonWealth* spoke to several sources with an interest in the park’s upkeep who had been led to believe that Davey

didn’t actually mean what he said about winding down the Conservancy’s public funds. (He did.)

Murray and Brennan say they can’t yet commit to ramping down the Conservancy’s state revenues. In conversation, they frequently defer to a business plan the Conservancy will unveil later this summer. “We’re pretty clear about our expenses,” Murray says. “We need to know where the possible revenues are. Until we know that, it’s impossible to know what level the state will be in at.”

That stance puts the Conservancy fundamentally at odds with MassDOT. Asked whether the Conservancy’s business plan will meet Davey’s request, Murray replies, “The secretary would like a plan that says that’s possible. But he’s a smart, realistic man, and he knows some things are possible and some things aren’t, so he’s willing to take

## Murray and Brennan say they can’t yet commit to ramping down the Conservancy’s state revenues.

a look at the study and see what that says.... Over a long term, it’s possible the state funding could become more and more de minimis. I think it’s unlikely it would be de minimis by the end of five years, but we’re willing to see what the study says and what’s possible.”

Brennan readily allows that the state budget “is under tremendous stress,” but she underscores the fact that the Greenway is a public park, saying, “I don’t know if there’s another piece of public land that is not funded or supported in some way by public support.”

The Conservancy is counting on \$2 million annual contributions from the state, BID members, and philanthropy, but those three revenue streams aren’t equal. State revenues form the foundation for the other two. “It’s fair to say the majority of [commercial owners along the Greenway] have been clear that it’s a state park, and they’d like to see the state at the table as a financial partner,” Brennan says. Beal, one of the leaders of the BID effort, says landlords along the Greenway are “pressing hard” for continued state funds for the park. Jonathan Davis, another downtown developer, says it was “a struggle” to get abutters to the point of being willing to shoulder the portion of Greenway expenses outlined in the BID plan. “I’m extremely skeptical that you could get abutters to pay a meaningfully larger share of the costs,” he says.

Commercial owners are already paying a premium to

own property along the Greenway, even without paying into a BID. That premium goes into city coffers, in the form of elevated property taxes; the Greenway, however, doesn't see any of it. It took a year of cajoling to get most abutters to the point where they were willing to pay, in effect, two surcharges for owning along the Greenway, but they've drawn the line at paying for the park while the public sector walks away. Business improvement districts are, by definition, groups that pour private funds on top of a baseline of public support.

Thus, the prospective BID would likely collapse in the absence of state funds, throwing the Conservancy's finances into a shambles. Because of this, many along the Greenway doubt the Conservancy's ability to survive without significant infusions of public funds. At the same time, there's ample fear about the fallout that would ensue, should the Conservancy tell MassDOT they can't go without state revenues.

"I'd much rather hear that they'll push to get it done, and if, after year five or six, they can't get it done, we could revisit things," Davey says of his call for the Conservancy to move to become completely self-sustaining. "I am not willing to accept at the outset a declaration that this can't be achieved."

From the time of its conception, the mile-long Green-

way was held up as the crown jewel of the Big Dig, the big payoff for surviving 15 years, and \$15 billion, in road construction. Instead, it's been passed around like a secondhand coat. When the highway project was in full swing, it easily could have absorbed \$50 million or \$75 million to fund the parks—a required piece of environmental mitigation—in perpetuity. But the project's managers didn't fund the parks then, and when Washington capped its financial exposure to the project and walked away, the state was left scrambling for places to cut costs. It created an outside entity, the Conservancy, to shoulder much of the cost of maintaining the parks above the Big Dig tunnels, and then promised to fund the parks with dedicated revenues that never materialized. And when that illusory revenue stream failed, an agency with no expertise in parks and a budget crisis of its own was left holding the bag. The Greenway has been open for four years, the parks have existed on paper for 20, and there's still no long-term plan for how to pay for them.

"If there's a study that says the park maintenance can be done for less, I haven't seen it," Murray argues. "So if you say the park looks good, if you say no one can do it for less, my question, what's the big problem? Can somebody explain to me the problem we have here?" **CW**



## CiVICsense

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# Not adding up

Nearly two decades after the state adopted a bold school financing system designed to ensure an adequately-funded education for all students, the aid formula is broken and Massachusetts is again becoming a place of have and have-not school districts.

BY LINDA ENERSON | ILLUSTRATION BY RICHARD MIA

**ORANGE, A SMALL** town of 7,800 along the Millers River in Franklin County, is exactly the sort of place state leaders had in mind almost 20 years ago when they agreed on a sweeping new education reform and financing plan for Massachusetts schools. The town was bustling up through the 1960s with its manufacturing plants churning out everything from raincoats to tapioca. But those days are long gone. Today,

the average household struggles to get by on \$42,800, putting Orange among the poorest 3 percent of all Massachusetts communities.

The 1993 Education Reform Act was built on the promise of a quality education for all Massachusetts students, whether they grew up in poor towns like Orange, or the wealthiest Boston suburbs. If education is supposed to be the great equalizer, giving all



# School Financing Formula

Foundation Budget =

State Aid

+

Local Funds

children the opportunity to reach their full potential, the reform law was the state's most ambitious effort to live up to that vision.

New accountability measures were put in place aimed at boosting student achievement, while a far-reaching new school funding formula was designed to ensure that even the poorest districts would have the resources for their students to receive an adequate education and meet the state's new performance standards.

Billions of state dollars flowed to schools in the state's lower-income districts, including Orange's three elementary schools, and the regional middle and high schools the community shared with neighboring towns. Class sizes and teacher-student ratios were kept at reasonable levels. Art and music enriched the school curricula.

About 10 years ago, however, the funding formula started unraveling, and things have only gotten worse.

The reform law established a required minimum level of spending for each district, a "foundation budget" with annual adjustments that assumed a steady rate of inflation over time. Beginning in the early 2000s, however, health care and special education costs began to take off at rates far beyond the inflation adjustment, leaving less money for other classroom expenses. Wealthier districts have been able to compensate by appropriating more money for their schools, going well beyond the required foundation budget. Poorer districts that are only able to fund schools at the minimum foundation budget level, on the other hand, are witnessing a steady decline of staffing levels and program quality.

The education funding system that brought such hope to lower-income districts now has towns like Orange backed into a corner and on the ropes.

Over the past decade, as teachers retired, their positions remained vacant or were filled with aides. Rain dripped into classrooms through leaky roofs, as maintenance got deferred. Textbooks weren't replaced. Computers bought in the 1990s were never updated.

Last year, Orange did not even meet the minimum school spending requirement established in the funding formula, triggering state fines that town officials say only aggravated problems. Twenty-two elementary school personnel were laid-off last summer, wiping out all art and music programs.

Meanwhile, state budget shortfalls over the last decade have led to a 40 percent decrease in local aid to communities for all non-school services. With local aid revenue down, health care costs soaring, and Orange struggling to keep up with its mandated school spending level, critical town services are suffering.

The austerity measures the town has resorted to seem

positively Dickensian. Understaffing is creating holes in police patrol coverage. The town's streetlights are now off. And heating oil became a luxury last winter in one department, leaving employees to work in frigid buildings. A donated woodstove was brought in to take the chill off at the town cemetery department building.

"That we're having to argue over whether to fund the schools or keep a third shift of police is egregious," said School Committee member Joan Cohen-Mitchell after a meeting this spring to discuss the town's dire budget condition. "This is an awful situation."

Kathy Reinig, a member of the town's Board of Selectmen, says Orange's back is against the wall. "We want to fund our schools above the required level, we want to provide services everyone needs—but we can't," she says.

Of the town's \$16.7 million annual budget, the state formula requires that \$4.5 million go to school spending.

Ultimately, in communities like Orange, the school spending bar is both too high and too low. The state-mandated school spending level is too much for Orange to shoulder while facing cuts in state aid for all other town services. At the same time, the foundation budget provides far too little to adequately meet all the demands of running schools today. It's a double-whammy that is hitting more and more lower-income school districts in Massachusetts, and undermining the "grand bargain" of ade-

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## **"That we're having to argue over whether to fund the schools or keep a third shift of police is egregious."**

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quate funding in exchange for greater accountability that the education reform law set forth nearly two decades ago.

The Massachusetts Business Alliance for Education, the nonprofit group that was formed to spearhead the education reform effort in the early 1990s, issued a report two years ago that sounded that alarm. Without a way to ensure more resources for poorer districts, the report said, "we cannot in good faith continue to hold teachers and principals accountable for reaching the reform law's performance goals."

Retired Supreme Judicial Court Justice John Greaney, who ruled in two key cases concerning the state's obligation to provide adequate funding for schools, puts it more bluntly. If we don't fix the broken state of school funding, he says today, "kids growing up in Holyoke or Orange or Springfield don't stand a chance...they're going to get a thoroughly inadequate education."





Juggling Fall River's commitment to schools and public safety is a struggle, says William Flanagan, the mayor and school board chair.

## FORMULA BREAKDOWN

Orange wasn't supposed to be in this bind, struggling to provide even a barebones education to its students without art or music, while wealthy communities fund everything from state-of-the-art science labs to school orchestras.

Indeed, it was just those kinds of yawning gaps in educational resources that inspired a series of court battles culminating in a landmark Supreme Judicial Court case, *McDuffy v. Secretary of Education*, which inspired passage of the 1993 reform law. Just three days before Gov. William Weld signed the education reform law, the SJC ruled in favor of student plaintiffs in poorer districts in the *McDuffy* case, finding that the state has an obligation under the Massachusetts Constitution to fund public schools so that all children receive an adequate education.

The *McDuffy* ruling turned on the court's interpretation of a single word in a single paragraph in the constitution, drafted by John Adams in 1779. The "rights and liberties" of citizens are dependent on the diffusion of "wisdom and knowledge, as well as virtue," he wrote. "It shall be the duty of Legislatures and Magistrates in all future periods of this commonwealth to cherish the interests of literature and the sciences...."

The SJC pondered the use of the term "cherish," delving into texts of the 18th century, Shakespeare, and even the Bible to determine whether Adams intended the state's educational duty to be obligatory or aspirational. The court concluded that, in Adams's day, the term meant "nourish" or "support," imposing "an enforceable duty" on the state to provide and fund an adequate education for all. Education was the heart stone of democracy, to be nurtured as such "for all future periods." But the SJC left to "Legisla-

tures and Magistrates" the task of solving glaring inequities in school funding and programs.

The 1993 law was that solution. Rigorous curriculum standards and standardized MCAS tests measuring student achievement were the centerpiece of the accountability measures, while a new school financing formula was intended to ensure schools had the resources needed to meet these higher standards. A minimum, or foundation, budget was calculated for each district based on the costs of all facets of school operations, including personnel, professional development, curriculum resources, operations, and maintenance.

The formula determined how much cities and towns could be expected to contribute to school spending, based on a combination of local property values and average resident income. State education aid made up the difference between that figure and the foundation budget in each district.

For the current budget year, the state pays 83 percent of the foundation budget for the schools in Orange, with the town responsible for 17 percent. Fall River has a similar breakdown, with the state assuming 82 percent of the foundation budget costs for the blue-collar South Coast city, while local government is responsible for 18 percent.

The breakdown is almost exactly reversed at the other end of the wealth spectrum. The tony Boston suburb of Wellesley pays 84 percent of its foundation budget from local revenue, with the state chipping in 16 percent. In Weston, the wealthiest community in the Commonwealth, the town-state split is 89-11.

The formula called for additional funds for low-income students, English language learners, and special education students, based on the increased needs of those students. Because districts like Orange and Fall River educate many more students from these higher-need populations, they have higher foundation budgets. The mandated annual per pupil spending is \$11,123 in Fall River and \$9,877 in Orange, compared with \$9,074 in Weston and \$9,063 in Wellesley.

The formula adjusts the budget based on a set rate of inflation each year—and that is where the problems have come in. The state ramped school aid up in the first seven years after the reform law's passage in order to bring every district up to the minimum foundation spending level by 2000. Just as all communities finally met that budget bench-



Paul Reville, the state's education secretary, says the state needs to adjust to a new budget reality.

mark, however, health care and special education costs began to soar far faster than the inflation adjustment in the aid formula.

The 2010 Massachusetts Business Alliance for Education report, written by economist Edward Moscovitch, who devised the original funding formula, assessed the adequacy of the foundation budget by comparing current spending levels with the level that districts would have been at if the formula had been adjusted for disproportionately rising costs, primarily in health care.

According to the report, school spending in the state's poorest districts in 1993 was 21 percent below the foundation level. By 2000, even with proper adjustment for inflation, spending in such districts was nearly at the targeted foundation level. But by 2010, spending in poorer districts was 16 percent below the foundation level if adjusted for actual cost increases. In other words, poorer districts were barely better off in 2010 than they were at the start of the education reform effort in 1993.

"The gains made by the neediest districts in the years before 2000 have all but been nullified by losses in the years since," says the report.

The 2010 report by the business-backed nonprofit was followed last year by a study from the liberal-leaning Massachusetts Budget and Policy Center that drew much the same conclusion—the foundation budget no longer keeps pace with the cost of delivering an adequate educa-

tion to Massachusetts schoolchildren.

The Mass. Budget report concluded that the foundation formula underestimates actual health insurance costs by \$1.1 billion, and actual special education costs by \$1 billion.

Problems with the foundation budget formula are disproportionately felt by poorer districts because wealthier communities are able to fund schools well above the required foundation budget level using their richer local tax base. While most poorer districts spend at the foundation level, in 2010 the wealthiest 20 percent of districts spent, on average, 39 percent above foundation level, according to the Mass. Budget report.

Despite the drain of health insurance and special ed on school budgets, the report found wealthy schools are still able to fund regular education teachers slightly above the foundation target. In the poorest districts, on the other hand, where local government lacks the capacity to make up for the growing share of the education funding pie eaten up by health care costs and special education, spending on regular education teachers was 32 percent below the foundation target.

#### BACK TO COURT

Questions about the adequacy of the foundation budget are not new. In 2003, the Supreme Judicial Court assigned then-Superior Court Judge Margot Botsford to hear testimony and gather evidence in a case called *Hancock vs. Driscoll*. The suit contended that student plaintiffs in 19 lower-income districts were not receiving an adequate education, despite the increase of billions of dollars in state school aid since the 1993 ed reform law.

Botsford's 342-page report to the SJC supported the plaintiffs' claim. She found staffing levels, laboratory equipment, curricular materials, and resources were so inadequate that teachers were unable to implement the state's K-12 curriculum framework, and education quality was far

## Health care and special ed costs rose faster than the inflation adjustment in the formula.

below that of wealthier comparison districts.

With the exception of health care costs, which had not yet started to take off, Botsford identified many of the same problems with the foundation budget highlighted in the recent Mass. Budget and Policy Center and Mass. Business Alliance for Education reports.



While state officials argued that leadership and management shortcomings were to blame in underperforming districts, Botsford determined funding to be the “very important and independent” cause of lower quality education. She also found that underfunding of the state education department meant it lacked capacity to help school districts and leaders to meet performance standards.

But in a 5-2 decision, the SJC rejected the argument of the Hancock plaintiffs. Chief Justice Margaret Marshall acknowledged some of issues raised by the plaintiffs, but wrote that the state was “moving systematically toward addressing those deficiencies.” Greaney, one of two dissenting votes (the other was Roderick Ireland, now the court’s chief justice), says Marshall “cherry picked” pieces of Botsford’s report to support her opinion the state was making headway in righting what she admitted were “sharp disparities” between poorer and affluent districts.

Problems with the foundation budget have only grown since that time. With the court threat now behind them, state leaders pushed aside any thought of a major overhaul of the foundation funding formula. What’s more, lawmakers made an adjustment in 2007 that actually increased state aid to wealthy districts.

Responding to concerns about unequal funding of communities with similar property and income wealth, the changes sought to eliminate some disparities in funding levels for similar districts that had been grandfathered in at the time the ed reform law was adopted in 1993. But in response to complaints from wealthy districts that they ought to get some guaranteed minimum level of state aid, the Legislature also adopted a new target that even the wealthiest districts receive at least 17.5 percent of their foundation budgets from state aid.

State Rep. Alice Peisch, the House chairwoman of the Legislature’s Education Committee, says, referring to the chapter of the state law covering education aid, the idea was to create a “Chapter 70 carrot” so that every community received enough aid to motivate legislators to go to bat each year for state education funding.

Peisch emphasized that the floor was “a goal, not a promise,” and that communities are being slowly brought up to that level. “I personally have concerns about 17.5 percent as a target for every single community,” says Peisch, whose hometown of Wellesley is one of those that benefits from the minimum aid target. “We should be funding poor communities first who don’t have the ability to pay for education in this tough economy.”

Jim Slavas sits on the town finance committee in Wendell, which is part of the regional middle and high school district with Orange. “It is unconscionable to continue to divert this magnitude of scarce and critically needed resources to communities of vastly higher wealth and little need,” he says.

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The state has, in fact, slowed down the effort to ramp up high-wealth districts to the minimum aid target. “It has assumed secondary priority in the midst of the budget crisis, and I think that’s appropriate,” says Paul Reville, the state education secretary.

## NO WIGGLE ROOM

Many of the same school finance challenges facing Orange are playing out on a much larger scale in Fall River, another struggling former mill town. The South Coast city of 92,000 is trying to figure out how to maintain its schools amidst rising costs, a flat tax base, and the cuts in non-school state aid that all communities have had to contend with.

Superintendent Meg Mayo-Brown says the city must “back into” the minimum spending requirement much like Orange officials do, by first covering fixed overhead costs such as employee health care. “Whatever’s left is what we have to run our schools on,” she says, and “there’s not a lot of wiggle room.”

William Flanagan serves as both Fall River mayor and school board chair. That means he probably understands better than anyone the tension between the demands on Fall River’s school budget and the shrinking pool of money available to fund basic services. “We can’t ignore our commitment to students in our school district,” he says. “But it’s a struggle to also see that streets are safe, potholes are fixed, streetlights are on, and we have enough firefighters out there to battle blazes.”

The exploding costs for health insurance and mandated special education have forced Mayo-Brown to divert money from regular education. Those runaway costs were huge factors forcing the lay off 200 school department employees several years ago. While some were hired back through grant funding, that one-time money is gone. Unless she can convince the city to add \$1 million to the \$118 million foundation-level budget for the coming year, says Mayo-Brown, “I’m laying off personnel.”

With fewer regular education teachers, class rosters in the lower grades are bulging beyond recommended levels. Over half of the district’s elementary school classrooms have 26 or more children. At that point, she says, “Teachers can’t get to all the kids.”

Fall River’s experience illustrates just how the problems with the funding formula are working their way down to the classroom level in poorer school districts across the state.

Reville acknowledges that “the foundation budget is under tremendous strain” because of rising special ed and health care costs. But he calls the idea that the funding formula is broken “an extreme characterization,” and says the Massachusetts Business Alliance for Education report offered a “hyperbolic conclusion” in saying that without a



The decision by former SJC Chief Justice Margaret Marshall said the state was making progress toward addressing inequities between poor and affluent districts.

significant change it is no longer reasonable to hold schools accountable for student performance.

Reville—a leader in the state’s ed reform movement who served as the first executive director of the Massachusetts Business Alliance for Education in the early 1990s—says the state can’t “let the perfect be the enemy of the good.” The state is still spending some \$4 billion a year on K-12 education, he says. And with Massachusetts students ranked first among all states in math and English scores, he says the combination of high standards and new funding from the 1993 education reform has “vaulted us from the middle of the pack to the top of the pack.”

Reville says the state has to adjust to a new budget reality far different from the period following passage of the ed reform act. “We’re not going to have the revenue picture we had in the 1990s again anytime soon,” he says. Reville says measures like the recent move to have cities and towns join the state insurance system, which has done a better job restraining the growth of health care costs, represent the sort of approach that’s needed to attack the problem on the cost side rather than attempting to address it with new revenue.

State education officials say schools also need to do a better job utilizing existing resources to drive student learning. “Above a certain level, it’s not clear that more money yields results,” says Reville.

He and other state education leaders say the state must look toward promising results from initiatives aimed at getting the most from every dollar. For example, hiring math coaches to improve instructional quality rather than more regular classroom teachers to lower class sizes has been shown to be more effective in boosting student achievement with less financial investment. Increased use of online learning can also be a cost-effective way to increase course offerings, while supporting the diverse learning styles of students.

The question of funding versus reform strategies or instructional innovations, of course, isn't an either-or proposition. Adequate funding of schools is necessary, but not itself sufficient, to ensure quality education.

Nonetheless, Michael Weisman, the lead plaintiff attorney in both the *McDuffy* and *Hancock* cases, wonders whether the state again could be ripe for a court challenge to the funding system. He points to language in Marshall's decision in the *Hancock* case that he says left that door ajar. "Nothing I say today would insulate the Commonwealth from a successful challenge... under different circumstances," Marshall wrote. According to Weisman, growing disparities in educational quality and resources "are the circumstances that make it the right

time to bring forth a new challenge." If the *Hancock* decision bought the state more time, he says, "time's up."

Greaney, the former SJC justice, doesn't think the state's highest court has an appetite to dive back into the issue. "I doubt any of the justices would do a U-turn on it," he says of the court's current stand that these issues are issues best left for the Legislature to grapple with.

Lawmakers now seem ready to dive in—at least to a point. The Senate included in its version of the 2013 budget a provision calling for the convening of a Foundation Budget Review Commission, a panel provided for in the 1993 law that has been dormant. If the move is approved by the House, the stage will be set for a formal examination of many of the concerns over what has happened to the grand bargain of adequate school funding in exchange for rigorous new standards and accountability.

Given the tough budget straits the state is in, members of the Foundation Budget Review Commission are likely to find it much easier to raise good questions than to answer them. **CW**

*Linda Enerson covers Orange for The Recorder. She also works at the Collaborative for Educational Services in Northampton, which provides services and training to area school districts.*

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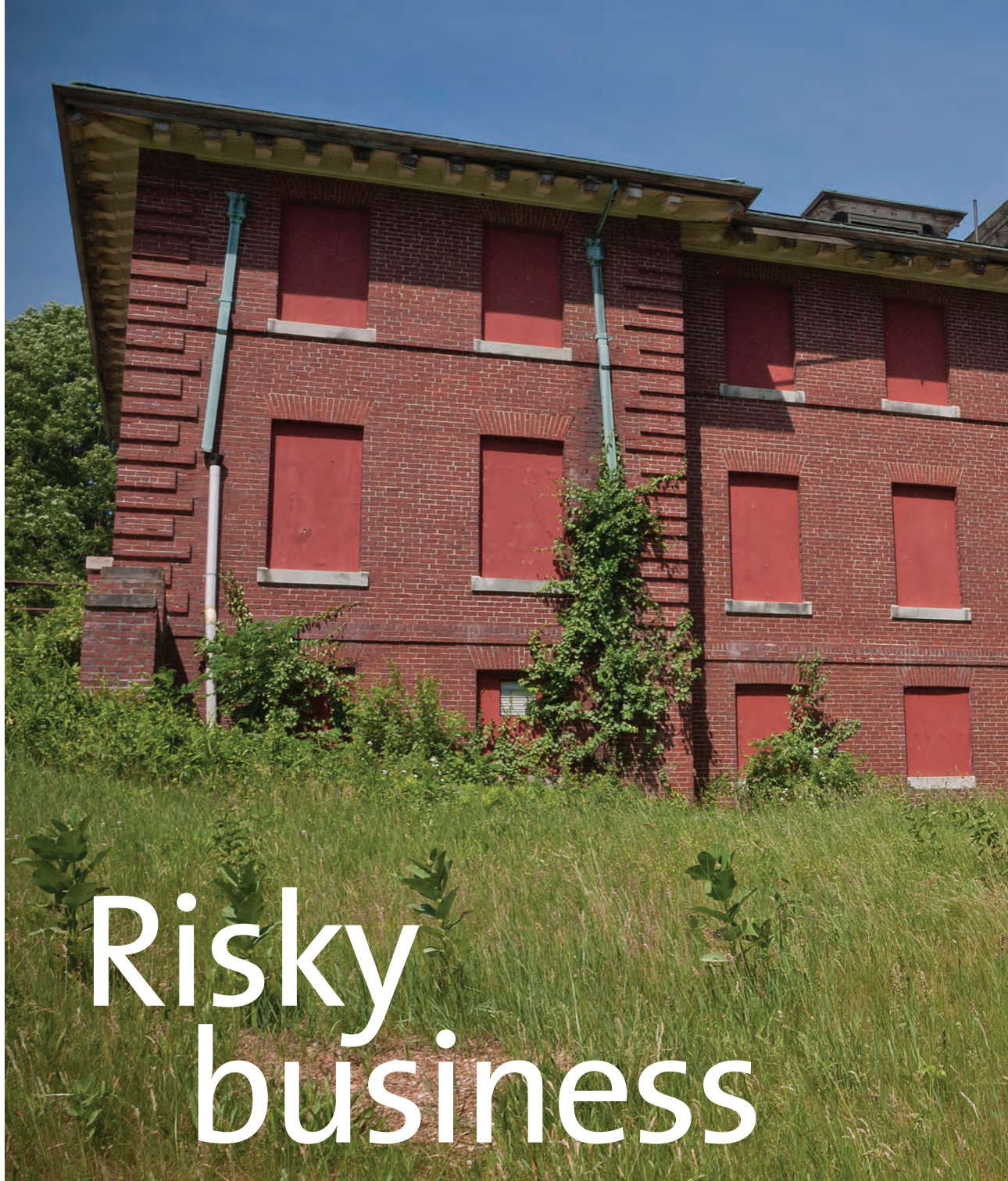
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# Risky business

When it comes to cleaning up a mess at the former Medfield State Hospital, can the state police itself?

BY GABRIELLE GURLEY | PHOTOGRAPHS BY MARK MORELLI





"You either clean it up correctly or you don't clean it up correctly," says John Harney of Medfield.

**Decades before cities and towns learned to deal with** waste in eco-friendly ways, workers at Medfield State Hospital threw refuse into a dump on the banks of the Charles River. Noxious medical waste, mixed in with a gumbo of bricks, glass, asphalt, concrete, and other debris, never left the hospital grounds. Most of it went into the ground, right along with metals and other toxic chemicals. When the hospital closed in 2003 after more than a century, the on-site landfill was up to 15-feet deep in places.

The Massachusetts Division of Capital Asset Management, the agency that owns the abandoned property today, acknowledges the state has the sole responsibility

for cleaning up the land and protecting the health of Medfield residents. DCAM's cleanup plan for the former hospital site involves removing some of the 75,000 tons of waste, trucking it off-site to dispose of it at a special facility, and covering the rest with a synthetic liner and soil barrier. Officials say the remedy eliminates risks to people and the environment and is appropriate for the location and the type of contamination involved. But of the four possible options the state examined, it's also the least expensive.

The residents of this well-to-do town 17 miles southwest of Boston say the state shouldn't be pinching pennies when it comes to cleaning up pollution, particularly in their community. "You either clean it up correctly or you don't clean it up correctly," says John Harney, a Medfield resident who has been heavily involved in the hospital cleanup debate. "I don't see that there's a third way."

US Rep. Stephen Lynch, whose current district includes the town, says that there are intangibles that are more important than dollar signs in the Medfield State Hospital cleanup. "It's our obligation to leave the site in the condition that we found it before the state began their operation there," he says. "I know that DCAM is pushing the capping option as a way to save money."

Many of the residents wonder whether the state, when it comes to cleaning up its own mess, can police itself. State Sen. James Timilty, a Walpole Democrat who represents Medfield, said as much in a letter to Gov. Deval Patrick, arguing that the state wouldn't approve a cleanup plan proposed by a private company if it didn't address 100 percent of the waste at the site.

"It's a classic case of how clean 'clean' should be," says Greg McGregor, a Boston environmental attorney.

Medfield and DCAM are so far apart on how the cleanup should be done that the town requested that a mediator be brought in to help the parties sort out the issues and see if common ground can be found. Surprisingly, DCAM agreed, and at press time the two sides were talking but remained far apart. All the town and state officials who commented for this story made their remarks before the mediation process was scheduled to begin in mid-June.

#### DUMPING ON MEDFIELD

The abandoned Medfield state hospital has the vibe of a quaint, if creepy, New England college campus on a long break. The majestic 19th century red brick buildings, many of them with rotting porches and boarded up windows, earned the site a spot on the National Register of Historic Places in 1994.

When the hospital opened in 1896, mental health professionals thought a farm-like setting would be therapeutic

for mentally ill patients. Patients grew crops and raised livestock, and the hospital officials ran the facility like a town within a town. The hospital had its own power plant, its own water and sewer systems, and, for nearly a century, its own dump.

Modern waste management practices slowly replaced the toss-it-out-back mentality of yesteryear and the hospital began sending waste off-site for disposal in the early 1990s. The main toxins that remain in the dump area are metals, such as lead and mercury, and incineration by-products, such as dioxins and partially burnt coal and oil. There is asbestos in the ground, too, which is not a hazard until it is exposed to air.

The old dump site covers about three acres and is located just west of the northernmost section of the hospital campus, near a bend in the snaking Charles River. There are several other polluted areas on the 269-acre hospital property, including petroleum-laced sediment in the Charles River. But most of the polluted areas other than the dump have either already been cleaned up or the town and the state are working on what needs to be done. DCAM has spent about \$3 million so far cleaning up polluted areas at the hospital site.

The dump site itself has become contentious because it borders the Charles River, an aquifer runs underneath the landfill, and one of the town's six water wells is about 3,000 feet away. The abandoned dump is also close to the

## The dump site is contentious because it's near the Charles River, sits atop an aquifer, and is near a town well.

old hospital campus, which the town of Medfield has shown interest in purchasing and possibly redeveloping.

Federal environmental officials reviewed the status of some open sewers on the hospital property in the mid-1990s and concluded they weren't dangerous enough to warrant adding the area to the Superfund program reserved for the most hazardous waste sites in the country. That left environmental jurisdiction to other federal, state, and local programs. DCAM has been categorizing all the pollution on the property and developing remediation plans. DCAM has held more than 30 meetings with town residents about its cleanup plans over the last three years.

The Medfield site falls in a category that is one step below the classification for the state's most hazardous waste





sites. As a result, oversight of the cleanup process has fallen to DCAM and not the state Department of Environmental Protection. The actual remediation will be carried out by independent professionals who will do the work and then certify that it meets state standards. State environmental officials audit some remediation sites for compliance once the cleanup is completed.

The Medfield State Hospital cleanup is the latest of the state's efforts to rehabilitate abandoned state hospitals. Over the past several decades, DCAM has spent about \$57 million on remediation of contamination at six other closed sites. MassDevelopment, a quasi-public state authority, spent another \$6 million removing asbestos at Northampton State Hospital as part of a development project there. Some of these sites are near wetlands and streams, but none spawned the type of controversy that has occurred in Medfield or triggered a public review process.

The most expensive cleanup was at the former Boston State Hospital site, where about \$29 million was spent removing asbestos, petroleum, and various metals. Nearly all of the contaminants at the Boston site were removed to make way for housing developments and a Massachusetts Audubon nature center.

#### **CLEANUP CREW**

The state's first proposal for dealing with the Medfield hospital dump site in 2009 called for removing just a small

fraction of the waste. Town residents panned that plan so DCAM went back to the drawing board, developing a menu of four options.

One option was a roughly \$17 million plan to remove and dispose of nearly all the waste at the site. A second proposal costing \$7.4 million called for removing about half the waste, capping the remaining contamination with a liner and soil, and shoring up the riverbank and restoring wetlands with new plants, trees, and shrubs. A third idea involved extracting the waste only from an area of the dump near the town well.

The fourth plan, and the one favored by DCAM, would cost nearly \$4 million, remove roughly 15 percent of the contamination at the dump, and install a liner-and-soil cover system and plantings. The DCAM plan would also require periodic monitoring of the site for 30 years and replacement of the cover system every five years. To protect the liner-and-soil cover, residential and agricultural uses would most likely be prohibited at the site, though the restrictions have not been finalized. Once all the cleanup work is complete, the area would be turned over to the Department of Conservation and Recreation, which would own the land in perpetuity.

Under Massachusetts hazardous waste regulations, a contaminated site doesn't have to be cleaned up to a pristine state to be safe. "I have always said that I define the state's responsibility as ensuring that the site poses no health or safety risks to the community," says Carole Cornelison,



A photograph of a man with white hair and a mustache, wearing glasses and a blue and white striped button-down shirt, sitting on the stone steps of a red brick building. The building features a classical portico with white columns and a pediment. A sign on the red door reads "ENTRY TO BUILDINGS PROHIBITED".

ENTRY TO  
BUILDINGS  
PROHIBITED

Medfield resident William Massaro says the safest course is cleaning up as much of the site as possible.

the DCAM commissioner.

State officials say their cleanup plans for the dump and the riverbed carry “no significant risk” to human health or the environment. Under the state’s rules for evaluating and cleaning up hazardous waste sites, a clean-up plan that meets the “no significant risk” standard “means that long-term exposure to chemicals from the site is not hazardous to health.... A finding of no significant risk means a site is clean enough, and no further action is required to protect human health.”

DCAM began testing samples from the landfill and the river to gauge the extent of contamination in 2005. Some 600 samples have been taken and tested and, aside from some seasonal differences in the results that fell within normal limits, nothing was amiss. DCAM officials say they have “gone over and above” previous ecological and health investigations. (Medfield officials have not been satisfied with the state’s tests and have asked for permission to do additional testing; the agency agreed to that request as long as state officials were present.)

Sandra Duran, who directs DCAM’s building maintenance and operations, says the Medfield town well near the hospital dump site is uphill from the contamination, which makes it physically impossible for the contamination

## DCAM officials said the cleanup wouldn’t be about the money, but the town is convinced it is about the money.

tion to seep into the well due to the geology of the site. Duran says for 12 years, the town has independently tested its own water supply. “Never once has any contamination showed up in that data,” she says. To make sure that remains the case, state officials plan to install a monitoring system that will keep tabs on any changes in the area.

However, DCAM noted in one of its earlier draft plans that there is an “unacceptable risk to human health if groundwater in the [land]fill is used as a source of drinking water in the future” due to chemicals from another area of the hospital campus that are being addressed as part of a separate cleanup plan. The reference to groundwater concerns was dropped once state officials decided to limit future uses at the site.

“It won’t be an area that will be available to the town for any drilling for well water,” says Cornelison.

### ALL ABOUT THE MONEY?

Three years ago, DCAM officials told Medfield residents that the hospital cleanup would not be about money, but most of the town is now convinced it is about money. DCAM Deputy Director John O’Donnell told town residents that “human health and the environment” were the top priorities in the cleanup of Medfield State Hospital. “This is not a case of we’re going to do what we can do for the cheapest amount of money, just because that’s all the money we’re going to spend,” O’Donnell said, according to a transcript of the meeting.

But after DCAM began pushing for the cheapest cleanup alternative, town residents felt they had been misled. “It appears that cost is the only factor in terms of a more significant cleanup that’s better for the environment and better for the state ultimately,” says John Thompson, chairman of the town’s state hospital environmental review committee, whose day job includes managing hazardous waste cleanups.

Medfield residents have responded by mobilizing their neighbors, turning out at meetings, and raising questions about the state’s environmental assessments and the motivation for them. Many residents remain convinced that the state is taking a short-term view of the cleanup, while they focus on the long-term and the potential for the site.

Some towns rely on unpaid residents who lack experience in the area they are overseeing, but environmental cleanup experts from within the community volunteered to make Medfield’s case, and officials also hired additional outside consultants. The town’s congressman and state senator rallied to the cause. Medfield’s fight with the state has garnered coverage in the local press and landed on the front page of *The Boston Globe*.

Margaret Stolf, a former Department of Environmental Protection general counsel who began working on hospital environmental issues for the town earlier this spring, says she is mystified by the state’s reluctance to take a comprehensive approach to cleaning up the dump site.

“Where a private party might want more finality now and be done with a cleanup, it appears that DCAM is not worried about future risk for some reason,” she says. “The Commonwealth is the only known liable party and they should be concerned about it.”

If the landfill were further inland, the state’s proposal probably wouldn’t attract much more than a ripple of opposition. But fears about future groundwater contamination are driving the town’s insistence on the most thorough cleanup possible. Town officials worry about their nearby well, the aquifer underneath the old dump site, and the potential for fallout from future Charles River



flooding. In essence, the town answers all the “what if questions” with a push for full cleanup.

William Massaro, a Medfield resident handling hospital remediation issues for the town, says the safest possible course is cleaning up the site as much as possible. “Who is going to take responsibility 10 or 30 years from now when you find a new contaminant or the EPA changes how many parts per something or another you can have in the water?” he says.

Deirdre Menoyo, who served for six years as an assistant commissioner of DEP’s Bureau of Waste Site Cleanup, questions why the state wants to give up on a future water source when fresh water scarcity in Massachusetts is a real problem. “A potentially productive aquifer in this day and age should not be written off,” she says.

Menoyo, referring to her own experience in state government, also has little faith in the agency to follow through on liner replacement plans and does not believe the town should rely on the vagaries of future funding and the shifting concerns of governors and lawmakers. “I’ve had things cut that should have been funded and commitments not followed through on,” she says.

Flooding is another flashpoint for Medfield. There are concerns that flood water could dislodge the liner that

DCAM wants to use to cover the dump area and expose the waste, especially if flooding persists for an extended period of time. State officials say the soil-and-liner cover system could withstand storm water runoff and flooding, but town officials are not convinced.

The Charles River is prone to flooding in the Medfield area, and the hospital site is in a 100-year flood plain, an area that has a 1 percent chance of being hit with severe flooding in any given year. Town officials believe the dump site, particularly if it’s covered with a liner, will accentuate flooding because water will have a harder time seeping into the ground. The US Army Corps of Engineers says it plans to study this issue as part of its oversight of tracts of land bordering the Charles River that provide flood protection.

The Medfield hospital campus has been flooded in the past. In 1938, the year of the most severe hurricane ever to hit New England, the state hospital’s annual report noted that two severe rainstorms put large sections of the campus under water. Medfield also regularly experiences severe flooding, with notable deluges in 1955, 1979, and 2006.

“This [plan] might be an appropriate remedy if this site were not located next to the river,” says Margaret Van

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Deusen, the Charles River Watershed Association's deputy director. "But it is."

Lynch, the town's congressman, worries that there will always be a concern about the contamination leeching into the water table or even the river if a complete remediation doesn't happen. He is convinced that DCAM can do better. "They are pushing to do the minimal amount in compliance with the regs, I'll admit," Lynch says. "But we have higher expectations, especially given the sensitivity of this site."

Timilty has applied legislative pressure to DCAM. He tried unsuccessfully to drum up an additional \$5 million for the Medfield cleanup through an amendment to the Senate version of the 2013 state budget. A second amendment that was approved in the Senate budget would require DCAM to clean up the hospital site so that it can be used without any restrictions and report on those and other findings to the Legislature. The final state budget was pending at press time.

The biggest wildcard in the struggle over the cleanup of the hospital site is the mediation process now taking place. Agreeing to mediation was an unusual move for DCAM because state regulations do not require the agency to sit down with the town. Agency officials are tight-lipped about what they expect the mediation to accomplish and how long they will keep at it.

Should the mediation teams find common ground, any agreement must go before the board of selectmen at a minimum. And the Legislature could be looking over the agency's shoulder through Timilty's proposed reporting requirement, another uncommon development in this environmental remediation project.

Town officials have given no indication that they will accept anything less than the cleanest possible cleanup. McGregor, the environmental attorney, says the mediation could work if both sides show a willingness to compromise. "When reuse is involved, you have to have a level of clean-up that reaches consensus," he says.

But consensus won't be easy, as attitudes have hardened among town residents. When state officials came to town hall in April to explain their cleanup plan, they were greeted by a small group of protestors outside and a hostile audience inside. A visibly upset Jessica Benson seemed to sum up the town's position by telling the audience about a conversation she had about the state's proposal with her young daughter. After explaining that the state intends to leave most of the hazardous waste and cover up the remainder with a liner and dirt, Benson said her daughter looked at her and replied: "So it would be like us only cleaning the kitty litter [box] halfway and then telling the cat not to go in the area that's full of poop?"

Benson thought her daughter hit the nail on the head. "An eight-year-old gets this," she said. **CW**



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# Hold your fire

David Kennedy, architect of Boston's successful anti-gang strategy of the 1990s and author of a book describing it, is determined to show that the mayhem of urban gun violence can be stopped.

PHOTOGRAPHS BY WILLIAM MOREE

**DAVID KENNEDY IS** an unlikely figure to be leading the charge on behalf of an innovative policing strategy to combat urban gun violence. For starters, he's not a cop and has no law enforcement background. Though he's a full professor at John Jay College of Criminal Justice in New York, the 54-year-old Kennedy has no formal training as a criminal justice academic, either. What Kennedy does have is credibility and standing that have been honed from the central role he played in the remarkable decrease in Boston homicides and gang violence in the mid and late 1990s.

The drop in gun violence gained national attention, and quickly was dubbed the "Boston Miracle." The label has always bothered Kennedy, for the decrease in gun violence was not the mystical result of any divine intervention, but the product of a carefully thought out and focused strategy.

At the core of the approach, which Kennedy developed with academics and police officials while working at Harvard's Kennedy School of Government,



was a strategy for dealing with gang members that relied on delivering a forceful message that gun violence would no longer be tolerated in the community. The beauty—and effectiveness—of the approach, which has come to be known as Ceasefire, was its limited focus. It was not an attempt to solve the root causes of urban poverty or to turn gangbangers into choirboys. The goal was to curtail the gun violence that was taking so many young lives and destabilizing urban neighborhoods.

Under the Ceasefire model, gang members, many of whom were under some form of court supervision through probation or parole, were ordered to attend meetings where they were met by a phalanx of law enforcement muscle. The gatherings often included not only police, but probation officers and state and federal prosecutors. Also present were clergy and youth outreach workers, who were there to say the community was fed-up with gang violence but also ready to extend a hand with jobs or schooling to those who were ready to put down the guns. The message from the law enforcement crowd: Stop the gunplay or we lower the prosecutorial boom on everyone affiliated with your group the next time there is a shooting that any member is involved in. The poster boy for these efforts became a Boston gangbanger named Freddie Cardoza, a career felon who received a federal prison sentence of 19 years and 7 months, with no possibility of parole, when caught carrying a single bullet.

In this way, the strategy carries a harsh, throw-the-book-at-them promise to gang members who don't heed the message that the violence must stop. At the same time, the real aim of Ceasefire is to quell gun violence without locking up every perpetrator—and to focus on the small number of offenders responsible for most of the urban chaos. The ultimate goal is prevention, to get those involved to wise up and turn away from guns and gangs before a Freddie Cardoza-length federal sentence is imposed.

The strategy depends on making common cause with leaders of the affected neighborhoods, and it stands as the community-oriented alternative to the stop-and-frisk approach that has poisoned police-community relations in New York City. "We are destroying the village in order to save it," Kennedy writes of the "orgy of incarceration" that is sending so many black men to prison.

Many of those involved in gang life, Kennedy says, get sucked in by the peer pressures of the street and are as scared as anyone of its deadly consequences. That makes them surprisingly open to a way out of the craziness, he says, which is exactly what the strategy gives them.

Ceasefire has been implemented in dozens of cities, often with almost immediate decreases of 25 or even 50 percent in gun violence. But it's not easy to sustain. The effort in Boston fizzled out after a few years, and the same thing happened in many of the other early-adopter cities.

The strategy depends on the relentless focus of a large cast of law enforcement and community players, something that Kennedy says requires a full-time coordinator and explicit commitment to its use from everyone involved. Those lessons are now being applied in the 70 cities that are part of the National Network for Safe Communities, a coalition Kennedy co-chairs that consists of law enforcement and community leaders committed to the Ceasefire approach.

Kennedy was shunned by Boston police officials when he publicly criticized the department's turn away from the strategy in the early part of the last decade, a period that saw a significant increase in homicide and gang shootings. He has now been brought back into the fold as a consultant to the department under Police Commissioner Ed Davis, who has vowed a renewed commitment to the Ceasefire approach.

Kennedy has spent years on the road, explaining the strategy and coaxing police officials across the country to give it a try, telling them gang violence and open-air drug dealing do not have to be permanent fixtures on the urban landscape. "Give me half an hour before you decide I'm crazy," is how he prefaced a presentation to a North Carolina police chief.

A 2009 profile of Kennedy in *The New Yorker* said there is a "High Plains Drifter" feel to him, "the mysterious stranger who blows into town one day and makes the bad guys go away." It's an image helped along by Kennedy's preference for dark suits, beard, and shoulder-length hair, a combination that gives him the look of a more kempt and younger Willie Nelson.

Jeremy Travis, the president of John Jay College, recruited him in 2005 with the offer of a tenured professorship even though Kennedy's formal education ends with a B.A.

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Kennedy was  
shunned by  
Boston police  
when he publicly  
criticized them.

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in philosophy from Swarthmore College. Kennedy is "recognized in our field as one of the original thinkers who's pushing the boundaries of both theory and practice," says Travis.

A review paper published in April reported that 9 of the 10 studies that have carefully evaluated the Ceasefire approach found statistically significant crime reductions associated with its use. Travis, who co-chairs the National



**“Give me half an hour before you decide I’m crazy,” Kennedy told one North Carolina police chief.**

Network for Safe Communities with Kennedy, thinks the strategy is reaching a “tipping point” from which its use will spread much more broadly.

Last year, Kennedy committed the Ceasefire story to book-length treatment. *Don’t Shoot: One Man, a Street Fellowship, and the End of Violence in Inner-City America* is part memoir, part criminal justice theory spun in narrative form. Kennedy can come off as brash, and his book doesn’t pull punches. He is dismissive of many popular claims about the causes of and cures for gang violence that he says don’t hold up to rigorous scrutiny.

“There’s sort of a delightful impatience about David,” Travis says of Kennedy. “He just wants the rest of the world to see what he has seen. Particularly when you put on top of this description his passion that we’re talking about saving lives, saving communities, and restoring communities to good health, there’s an understandable impatience that some people confuse with arrogance.”

I spoke with Kennedy by phone from his office in New York. What follows is an edited transcript of our conversation.

—MICHAEL JONAS

**CW:** The Ceasefire story has its roots here in Boston. Can you take us back to the early and mid 90s and the situation on the ground in Boston neighborhoods as you started to delve into this work on urban gun violence?

**DAVID KENNEDY:** It was bloody chaos, and that’s not just Boston. What was going on in Boston was the same basic thing that was going on everywhere. The crack epidemic had unleashed a wave of violence that really was unprecedented in kind, in scope, in intensity. The homicide rate for young black men went up 400 percent in just a couple of years. On the ground in these places it just felt like Armageddon had been unleashed.

**CW:** How did you get started in this work?

**KENNEDY:** I got sucked into this whole area essentially working as a journalist. I wanted to be a serious nonfiction writer, but I had a wonderful job at the Kennedy School at Harvard writing teaching cases for the school. In the early ’80s and mid ’80s I ended up getting tapped at the school by a group that was interested in the then not very respectable idea of community policing. I got completely captured, not by policing as such, but by what the assignments I got showed me about what was going on in poor black neighborhoods all over the country. I found myself walking crack markets all over the country. But over those 10 years that I systematically went to the worst areas all over the country, they weren’t getting any better. What that led to in 1994 was a step out of that kind of Boswell role to something that was intended to be more active. Anne Piehl, an economist, and I put together a proposal to the

Justice Department to try to do problem-oriented policing with the Boston Police Department around kids killing kids in Boston. Against all odds, the National Institute of Justice funded that work early in 1995, and very shortly after that, Anthony Braga [a Kennedy School criminal justice researcher] and I started working systematically with the Youth Violence Strike Force [the Boston Police anti-gang unit]. Our idea was, let's try to figure out as a first step what is happening. We had a reasonably fancy set of ideas about how to gather different kinds of information—formal data, qualitative data, school surveys. We basically never did very much of that because when we hit Roxbury and started talking to the guys in the Youth Violence Strike Force and others in BPD, they knew exactly what was going on and they told us, and it changed everything.

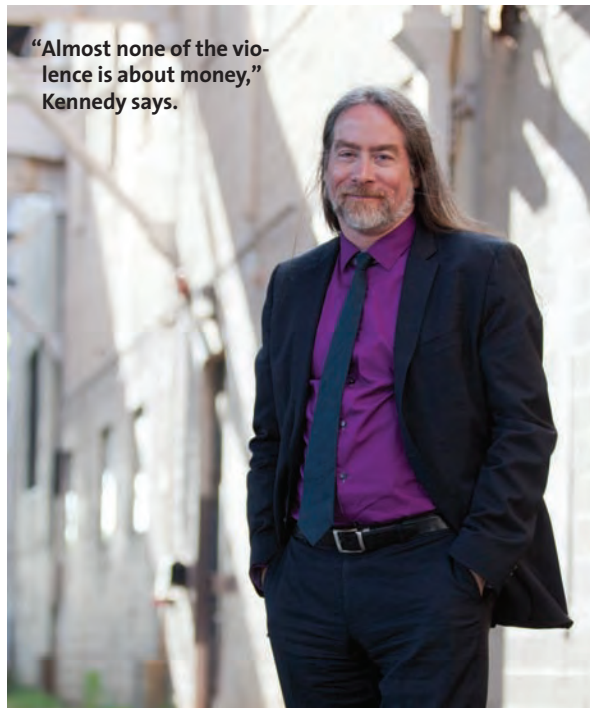
**CW:** What did they tell you?

**KENNEDY:** They told us something that was so profoundly different than the normal stories that were out there that I didn't believe them. We sat in their beat-up conference room and they told us: They're gang kids, there aren't very many gang members, almost all of the killing and the dying is gang members, they mostly hurt each other. Every time we lose a kid we know who they are, not by going and running their records. We know them by name, by face. We know nearly every time who the killers are. A lot of these murders are going uncleared in the formal sense. They don't come to a prosecution, we can't make arrests, because people don't talk. But do we know what happened? Yeah. We nearly always know what happened.

**CW:** There was also something striking about the basis for what was happening, right—the reason for the killings.

**KENNEDY:** Maybe the most unexpected and, again, to my mind, unreasonable thing that they said was that nearly none of this is about money. A big part of this story nationally had been everybody's supposition that these guys are drug dealers, these are drug markets. You get ripped off or somebody tries to take your corner, you can't go to the Better Business Bureau, you can't file a civil suit, so you shoot the guy. It's perfectly plausible, it's internally consistent, everybody believes in it, and it just turns out not to be true. What the police gang unit guys knew was—yes, there are drug dealers and, yes, nearly everybody who pulls a trigger and the overwhelming proportion of those who get shot are members of these drug crews—and almost none of the violence is about money, drug turf, markets, bad debt, any of that kind of thing. Nearly all of the violence is personal. It's vendetta. It's back and forth, patterned, almost predictable violence between these groups. It's respect, it's disrespect. Your new

**"Almost none of the violence is about money," Kennedy says.**



boyfriend is a member of that group and I'm mad at him and he knows it, so he took a shot at me and I took a shot at him and the enemy of my friend is my enemy.

**CW:** From this very surprising set of revelations about the nature of youth gun violence came an equally surprising approach or structure to deal with it.

**KENNEDY:** We learned two huge things from the folks that we came to know [in the police gang unit]. One of them was that the shootings involved very small numbers of

**Every time we lose  
a kid, we know who  
they are. We know  
them by name,  
by face.**

people. The other was what to do about it. We started hearing from the beginning of our time with them about something that they had done in Dorchester that had completely quelled the shooting by one of the most active gang drug crews in the city. I couldn't connect the dots. Then there was literally one moment when one of the detectives, Fred Waggett, finally made me understand what had happened. What Fred said was: We were putting all kinds of pressure on them, and not just law enforcement pressure. If people wanted jobs, we set them up for summer jobs.



We had the street workers and the Ten Point ministers in there, trying to calm people down. So we were focusing on this group in a very, very intense way. But what he then said was the single transformative moment in all of this, and it has been defining our work ever since: “We told them what it would take for us to stop, and what we meant by that was we were putting all this pressure on them because they were shooting. The Strike Force cared about violence.”

What I hadn’t understood was that all the time that they were putting all this pressure on this group, the Wendover Street crew in Dorchester, they were saying explicitly to them: “This is because of the shooting, and if the shooting stops, we’ll take things back to normal.” So they essentially gave the gang the tool it needed to make [the intensive police pressure] stop. The price they had to pay for all this special pressure to go back to normal levels was the shooting had to stop. That was an entirely new way of thinking about what we, at the time, were calling “demand reduction.” How do you do something about the desire for these young men to get and use firearms? The thing that nobody had thought of was raise the cost of the gunplay to the group to a level that’s so high they don’t want to pay it. It turned out that without any new law, any new resources, or anything fancy except a new

idea about how to operate, street officers and their partners could actually do this and did it.

**CW:** So they had been practicing the principles of the Ceasefire technique without having formalized it in any way?

**KENNEDY:** Yes. In my cumulative astonishment, I said to Fred, “You’ve done this before?” He said, very matter-of-factly, “Yeah. We do this sometimes.” And I said, “Well, what happened the other times?” And he said, “Oh, it always works.” That’s what became Operation Ceasefire, the platform for everything else in this whole area that has grown into a kind of school of approaches and a school of thought. It’s been used to shut down drug markets. It’s been used to stop street robbery, it’s being used as a central plank in probation reform. It’s being used to control knife crime in Glasgow, Scotland. It turns out to be a very, very powerful and still actively evolving framework.

**CW:** And you took the essentials of that and developed the more formal structure of the Ceasefire “call-ins” where you bring gang members in to lay all of this out?

**KENNEDY:** Yes. And all the formal theory and scholarship



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## CONVERSATION

that comes out of that. There's a whole new generation of deterrence theory and crime control thinking that you can now find in the journals and in academic treatments. It's changing policing. It's really changing the way we think about public safety. What I think people don't understand is that it didn't start with the theory and the scholarship, it started with street practice in Boston. It started by cops talking to gang kids on Wendover Street.

**CW:** Ceasefire in Boston was systematized and put into practice in 1996. Talk about what happened then.

**KENNEDY:** In March of 1996, we had the first meeting with gang members at the Dorchester Court, and we explained to a group called the Vamp Hill Kings what had just happened to them—we had orchestrated a very, very intense systematic crackdown because they had committed a bunch of homicides. We brought gang members in who were on parole and probation and from jail, and the street workers and the probation officers just talked some into showing up. We said to them, "This is business as usual. This is the way we are going to respond to violence. Go home, tell your friends, this is essentially up to you now. This is not a drugs conversation, it's not a crime conver-

sation. This is about shooting people. Where groups are shooting people, we are going to focus this kind of intense law enforcement attention." The message was also that the street workers would like to help you; it was not just this iron fist message. The way we came to characterize the message was really simple: We know who you are, we know what you're doing, we would like to help you. We will help you if you let us, and we will stop you if you make us. To our absolute astonishment, that immediately rippled through the city in a way that we could not have possibly anticipated. That one meeting started a big change on the streets. Things got really quiet. It was weird and unbelievable and surreal, but it seemed like something was happening.

**CW:** What were the numbers like over the next few years?

**KENNEDY:** We ran a formal evaluation that looked at the period between that first meeting in 1996 through the end of 1999, and we were tracking especially homicide victims 24 years old and under. They went down by two-thirds. Homicide across the city went down 50 percent.

**CW:** Going all the way back to the Great Society days in the '60s, people have felt that the challenge in poor urban

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neighborhoods—and it extends into the challenge of quelling gang and gun violence—is to solve the big problems of the day around poverty, joblessness, dreadful schools, and so on. There’s been criticism of Ceasefire that it does nothing to address those root causes. In reading your book, it seems you plead guilty. Right?

**KENNEDY:** Yes. Absolutely.

**CW:** Explain that.

**KENNEDY:** There are three things to be said about that. One is many, many people are convinced that the way to address these problems is to foster fundamental change and uplift in the neighborhoods that have these problems. What has to be acknowledged about that position is that there are no examples of it working. There are literally no examples of troubled neighborhoods with high levels of gun crime and public drug activity and everything else that we’re talking about here where those problems have been meaningfully addressed through fundamental core community work.

**CW:** So I take it you decided to very self-consciously focus on very specific outcomes and behaviors that you’re looking to prevent?

**KENNEDY:** Yes. Lots of folks will look at that fact [that the root causes of urban violence have never successfully been tackled] and say, well that’s because we’ve never

We can’t do fundamental  
uplift in these communities  
when we’re arresting  
all the men and  
sending them to prison.

really tried it seriously. Even if we grant that, then we need both to show that we can get that investment and commitment, and that if we had that investment and commitment that it would be effective. The second point is, even if it worked, this is a process that will operate at best on a scale of decades and probably generations. For communities that are losing their kids every day, that’s not an effective response. This is sort of like distinguishing in medicine between trauma care and public health and long-term prevention. Each has merit and strengths. I have friends who are trauma surgeons. And when these [gang] guys get shot, the surgeons turn themselves inside out to keep them alive, and they’re pretty successful. We

don’t say to them, what you do doesn’t matter because there are these other deeper problems he’s going back to. The third thing that I believe very firmly now is that you actually can’t do that fundamental community work when communities are experiencing this level of violence and fear and dislocation. We also can’t do fundamental uplift in these communities when we’re arresting all the men and sending them to prison. You can’t do economic development in a neighborhood where all the men have criminal records. We need a way for the law and law enforcement to operate that deploys authority in an effective way without resulting in mass incarceration.

**CW:** So you’re saying the gun violence prevention work is kind of like triaging the worst of what happens in urban neighborhoods?

**KENNEDY:** Yes. It doesn’t dishonor those other longer term goals. It just doesn’t confuse them.

**CW:** You write very forcefully that, contrary to a lot of the popular accounts of what happened here, the clergy-led efforts in Boston were not what led to the steep drop in gun violence. But you also discuss how vital it is to the Ceasefire effort to reset the often poisoned relationships between poor black communities and the police. A lot of this does have to do with local leadership—in Boston, the clergy were key to this. And a lot of it centers around race.

**KENNEDY:** I have enormous, enormous respect for that [the clergy-led efforts by the Ten Point Coalition and others]. And we always said that. What was so toxic about the way this played out in Boston was it was very clear if you looked at the evidence and the record that none of the things that people held up as having been solely responsible had worked. And you can fill in the blank there. Ten Point by itself didn’t work. Outreach workers by themselves didn’t work. The police department by itself couldn’t carry it. If you were serious about what had worked, what it was going to take to keep people alive, you had to recognize that. And in the toxic debate that arose in Boston, a lot of this was personalized to me being characterized as saying those things and those people didn’t matter. We never said that. It was never true. We went out of our way not to say that and to honor all these different contributions. You need this community stand saying this is not okay with us. You need police and people in law enforcement who are willing to say, even if you are on the street, we respect you enough to treat you like adults and tell you how the game is going to be played. You need people in the social service world who are willing to work with the 5 percent of the young men in these neighborhoods who are really out on this very, very extreme place.



**CW:** So that's a resetting of the whole terms of community-police relations that is kind of a precondition for this all working?

**KENNEDY:** Or it's part of the work. A big part of the work is bringing folks who are very angry and suspicious of one another to a place where they can see each other differently and work together. Communities really do believe in a very strong way that the cops are not their friend. They may believe that the cops are race enemies. They may believe that the cops are part of the conspiracy to bring the drugs in and use them as an excuse to lock their men up. And that makes them angry. That makes them silent. The cops can look at that silence and say, the violence must be okay with them, they never say anything. And that misunderstanding and anger and suspicion separates the two sides that need each other the most. And you can fix that. But you need to be explicit about it. You need to say what it is. You need to be very, very clear about what the views in each direction are. And you need to be very clear that they're wrong and you need to be very clear that they're irrational. They're not crazy. But they're not right.

**CW:** Give a sense of what the feeling is in the Ceasefire "call-ins." The term itself has a sort of transformative kind of ring to it—a calling to account or something.

**KENNEDY:** They're transcendent. They're transformative. I'm not able to convey that. I'm really not. I've tried in various ways. But in all honesty, unless you've seen it, you don't get it. You can't get it. There's an electricity and a power to what goes on that you only get in places like church or a tent revival or those sort of magic moments in public life or private life when the hair on your arms stands up. You see people who don't like each other. They don't trust each other. They have terrible ideas about each other. They are, many of them, convinced that the other is an enemy. They are convinced that the other is corrupt, that they're "the other." They can speak about things that are normally unspoken. They are pretty human and pretty familiar and they actually want the same stuff. And it's—it's unbelievable when it all clicks.

**CW:** In the book, you talk about how Ceasefire fizzled out quite badly here in Boston and in many other cities where it was first used. In the early 2000s we saw this resurgence of gun violence in Boston. At one point you came up, you met with Mayor Menino, you talked about the rationale for a return to Ceasefire. You say in the book that Ed Davis, the police commissioner, has now committed himself to its use. Gun violence is certainly not as bad as it was in the early 1990s, but neither is at the low levels we saw in the late 1990s. How do things look in Boston today?

**KENNEDY:** The city's almost where it needs to be. The fact about these approaches is until all the pieces are there and operating correctly, you don't see much in the way of results, and then when they're all there and operating correctly, you get really dramatic changes, but they're pretty binary in that way. Commissioner Davis understands this. He absolutely understands the place the city's been in since about 2000, when it said it was doing this work but it wasn't actually doing it. He is committed to getting it properly constructed and running and showing results. The one thing that's missing at the moment is that one of the most fundamental ideas in Operation Ceasefire is that you address all or at least the key violent groups in a jurisdiction simultaneously. You get citywide effects by reaching out to all the groups that drive most of the violence and resetting their behavior. The approach that has been used is to calm down particular groups. The move that the department needs to make now is to move from that kind of tactic of using the approach to calm down a particular group to one of outreach to multiple groups at the same time.

**CW:** You write that a lot of this was serendipity that landed you in this work. But you have really become consumed by and focused by the tragedy of gun violence in poor black neighborhoods. It has really become, in many ways, personal for you.

**KENNEDY:** It absolutely has. Yeah. And it has also for the large and growing community of people committed to this way of thinking about things. It's a group that's intellectually serious about the work—and it has to be done well, it has to be done right. But what's really driving everybody is this core sense of outrage about just how bad it is, and our collective understanding of what's bad about it has expanded well beyond the original focus on people getting hurt, people getting killed. It's mass incarceration, it's these poisoned relationships between needy neighborhoods and people on the outside that honestly are trying to help them. It's the way that alienation continues a toxic American story of race and race relations. It just goes on and on and on.

**CW:** And you have not just a hope, but a belief based on what's happened, that it doesn't have to be that way?

**KENNEDY:** That's absolutely right. The reason it felt like it was time to write *Don't Shoot* is because the work and the national experience and the research—it's all gotten us to a point where we really feel that we can say with genuine grounding that we don't have to accept this anymore. There is actually a way out of some of the worst of this. We're far enough along to really know it. **CW**



## Natural gas: Good news and bad news

A growing supply is driving down prices, but the fuel's dominance is posing challenges **BY GORDON VAN WELIE**

**IN JANUARY 2011**, extremely cold temperatures enveloped New England, and demand for natural gas soared. Why does demand for natural gas matter to ISO New England, which operates the regional electricity grid and manages the wholesale electricity markets? Because natural gas has become the dominant fuel used to generate electricity in our region. The story of what happened on January 24, 2011—which was not an isolated occurrence—helps illustrate why our reliance on natural gas is of critical importance.

As the cold snap moved into its second week, demand for natural gas to heat homes and businesses was rising. The extreme cold caused operational problems at some major natural gas-fired generators, and others without contracts for guaranteed fuel delivery found themselves unable to get gas. By the morning of January 24, ISO New England's control room operators faced extremely tight system conditions: electricity demand was near an all-time winter high, and several power plants were having trouble delivering.

The ISO initiated several emergency procedures to keep the power flowing, cancelling all routine transmission work, verifying that natural gas-fired generators had secured the fuel they needed to produce electricity, and curtailing electricity sales to neighboring areas. And with projections that demand would peak on Monday, January 24, system operators called for the region's older, oil-fired generators to start up over the weekend—because these older plants can take 12 to 24 hours to ramp up to full production.

This spring, on March 2, system operators faced a similar set of challenging circumstances. Transmission lines in Rhode Island and southeast Massachusetts were out for planned maintenance, and natural gas-fired generators in the area were called

on to support reliability. But an unplanned transmission outage occurred at the same time two natural gas pipelines serving those local plants began experiencing problems. To protect reliability, system operators called upon other generators, elsewhere in the region, which were able to procure the fuel they needed.



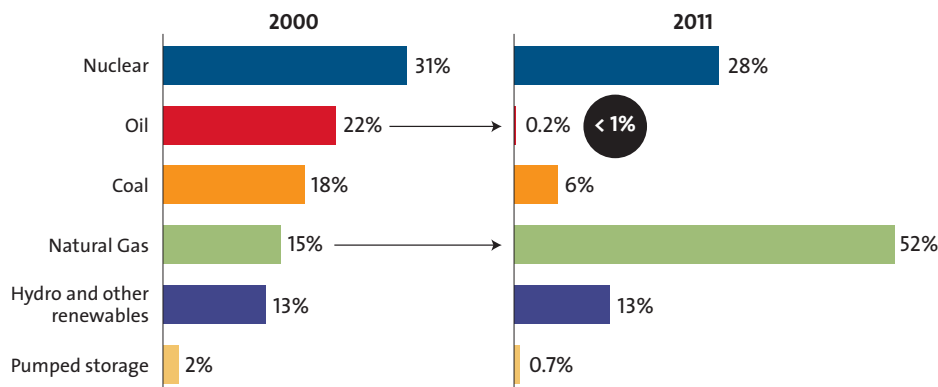
Two important themes emerge from these examples. First, when winter demand for electricity peaks in New England, demand for natural gas—both for power generation and to heat homes and businesses—is also peaking. Electric generators often do not have firm gas supply contracts and therefore can only get delivery of gas if there is space on the pipeline. Even at other times of the year, some of the region's natural gas-fired generators may be unable to get fuel if there is an outage or constraint on a pipeline.

Second, at times of system stress—which can occur in any season—or when power plants are unable to secure natural gas, electricity production from the region's older oil- and coal-fired power plants is currently essential. Yet many of these older plants could opt for retirement in the near future due to market pressures and the cost of complying with environmental regulations. If coal and oil plants retire, they are likely to be replaced by more natural gas power plants.

This reliance on natural gas to produce electricity marks a relatively recent shift in the region's power plant fleet. Since 1999, more than 13,000 megawatts (MW) of new generation have been built, with most of that natural gas-fired. In 2000, oil produced 22 percent of the region's electricity; last year, oil plants generated less than 1 percent. At

## SHIFT IN ENERGY PRODUCTION

Addition of new natural gas units makes natural gas the dominant fuel in region



Other renewables include landfill gas, biomass gas, wind, solar, municipal solid waste, and misc. fuels

Source: ISO New England

the same time, the share of electricity produced by natural gas went from 15 percent to 52 percent.

The region's reliance on natural gas is only likely to grow as abundant new supplies, low prices, and stronger environmental regulations converge to favor continued investment in gas-powered resources. Gas plants operate efficiently, emit relatively few pollutants, and help meet regional environmental goals.

Another important development is underway a few hundred miles away in the hills of Pennsylvania and western New York. An enormous deposit of natural gas—the Marcellus shale—has resulted in record levels of domestic natural gas production. After decades of living “at the end of the pipeline” that brought most of the region's natural gas from the Gulf of Mexico, New England is suddenly next door to a major source of energy, although expansion of natural gas pipeline infrastructure is needed between the regions.

The region's reliance on natural gas has continued to grow, but with the lessons learned from several power system events, the ISO has developed improved operating procedures to deal with the possibility that natural gas-fired generators may be unable to obtain fuel. The electricity and natural gas industries in New England have significantly improved their coordination and communications to help maintain their vital services.

Natural gas is powering the region and, as a result, the price of wholesale electricity now follows the price of natural gas here. With the significant increase in domestic production, natural gas prices have plummeted. Wholesale electricity prices also have fallen. As a result, many utilities across New England have announced rate cuts for their electricity customers.

It's evident that generating electricity with natural gas has its benefits. But becoming heavily reliant on just one

fuel poses challenges to the long-term stability of the power system.

The transition to lower-priced gas has pushed the older, fossil-fuel-fired generators into tenuous financial territory. Nearly one-quarter of New England's generation capacity is provided by oil and coal plants that are more than 30 years old. Because natural gas plants have become far less expensive to operate,

these oil and coal units have gone from market-makers to bench players, running just a few times a year when demand is peaking or to fill in for generators that are out of service. In addition, new federal environmental regulations could require additional capital expenditures to retrofit these units with pollution control equipment.

The changing economics of the electric and gas industries could also affect the development of renewable power. While wind power accounts for less than 2 percent of the total power mix, current proposals would increase the amount of wind power by a factor of five. By 2020, the six New England states are aiming for renewables and energy efficiency to make up 30 percent of total supply. But as the price of natural gas has fallen, the financial outlook for wind power development has become less clear.

The region's reliance on natural gas and the consequences

## Natural gas plants are less expensive to operate.

of fossil fuel-fired generator retirements are among several interconnected challenges being addressed through a Strategic Planning Initiative launched more than a year ago by ISO New England, market participants, regulators, and other government officials from all six New England states. The goal is to assess these challenges and find solutions that will lay the groundwork for a power system that continues to be reliable and economically efficient.

The initiative is paying particular attention to the natural gas issue because of its near- and long-term implications for system reliability. A comprehensive study of the region's natural gas pipeline capacity and its ability to meet power generation needs was completed last year.

The initial results indicate that under normal system



conditions during summer peak demand, no shortfall in the ability to deliver natural gas for power generation is expected. On a winter peak day, with all pipelines and liquefied natural gas (LNG) imports available and demand at normal levels, the natural gas system in New England can meet power system demand from 2014 to 2017.

While the study focused on winter peaks, the ISO's experience shows problems can surface year-round. Temperatures—and demand—in New England can hit extremes, and equipment can break down. The study found that if winter demand is particularly high, current pipeline capacity won't be sufficient to transport gas for both heating and electric generation needs. If pipeline disruptions occur, or if gas demand rises because retiring oil and coal power plants are replaced by natural gas plants, the pipeline deficit worsens.

Furthermore, the assumption that LNG imports will remain at historical levels is proving to be incorrect. In the global marketplace, LNG has recently been able to command prices that are four to eight times the US price. The study will be revised with an assumption that LNG imports will be lower, with the likely result that the pipeline deficit will be greater than forecast.

While reliability can be maintained in the near term

with existing tools and better utilization of existing power system infrastructure, these are not long-term solutions to the challenges. The Strategic Planning Initiative has begun to outline potential solutions, many of which are ambitious, complex, and will take years to implement; others may be more easily instituted in the short term to begin mitigating these risks. Potential solutions include:

- Alignment of the wholesale electric market and gas market timelines, so power plants will know if they've been scheduled to run before the deadline to buy natural gas.
- Allowing generators to update their offers in the energy market to reflect real-time changes in fuel prices.
- Increasing the performance incentives for generators to deliver electricity and the consequences for failure to deliver energy.

Other interim solutions, such as ensuring power plants have sufficient fuel levels, may be necessary as we work to implement long-term solutions to the region's fuel security needs. Looking ahead, the one certainty is that days like January 24, 2011, will come around again until the region has fully addressed its reliance on natural gas for electricity generation. **CW**

*Gordon van Welie is president and CEO of ISO New England Inc.*

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# Out front on climate change

Reducing emissions is a worthy goal, but costs should also be considered

BY DAVID BEGELFER

**MASSINC'S RECENT RESEARCH** report, *Rising to the Challenge: Assessing the Massachusetts Response to Climate Change*, was billed as “the first independent assessment of state action on climate change.” We, at NAIOP Massachusetts, believe that it missed an opportunity to provide a more complete, non-partisan account. Although it is acceptable to inquire into the progress that the state is making to reduce greenhouse gas emissions as required by statute, this report is by no means a sufficient analysis of the issue.

The Massachusetts Global Warming Solutions Act, passed in 2008, required the state's secretary of energy and environmental affairs to set a greenhouse gas reduction goal of between 18 and 25 percent for the year 2020 (one of the most ambitious in the nation). Ian Bowles, who was the secretary at the time, chose to set that target at 25 percent. The secretary was required to submit an action plan to the Legislature that could assist in meeting this goal; however, there was no requirement that the plan be followed or that other means could not be used to achieve this target.

We have no argument with the statute's basic premise that climate change is a serious global problem and there need to be international and national plans in place to reduce greenhouse gas emissions in a timely manner. But we feel that questions need to be raised regarding the practical challenges of emissions reductions—where and how they can best be achieved, at what cost, and over what period of time?

Climate change is not a local issue. One state's reduction in greenhouse gas emissions will have little impact on how that state will be affected by global climate change. Any other expectation is unrealistic. However, pursuing policies that could unintentionally hinder growth will most definitely put the Commonwealth at a competitive disadvantage when it comes to attracting or retaining jobs.

MassINC's stated goal was to uncover the facts and reach independent conclusions based on evidence. Its approach was developed from the perspective that the state has committed to achieving

ambitious greenhouse gas reduction goals, and that there should be a dialogue about the best way to do so. Unfortunately, the report comes up somewhat short. Rather than offering a dialogue, the report simply checks off which measures in the plan have or have not been completed to date. It accepts these recommended measures as the only path to achieving the required reductions and lacks any qualitative critique of these mitigation methods.

A comprehensive assessment of this issue would include a serious discussion of the economic



and financial impacts that will result from recommendations of the state plan. This includes a cost/benefit analysis of any presumed impacts on businesses and residents. However, the only mention of cost impact in MassINC's

report is general statements from environmental advocacy groups indicating that these measures are fully balanced by the savings they will produce. The groups also imply that the costs would be less detrimental as valued against the cost of building a new power plant, which is a very unsuitable standard by which to judge individual policies. In addition, many of the policies outlined in the plan would have dramatic impacts on the economic development goals of the Commonwealth and should be questioned accordingly.

The report is also lacking more substantive examination of the controversial decision to fund many of the alternative energy and efficiency programs with increased electricity costs for ratepayers. What are the impacts of the plan's recommendations? What are the associated costs to those existing businesses that are dependent on high energy consumption? Are these investments the right ones for the Commonwealth? Does the growth of new jobs created by the grants and incentives justify the jobs lost due to high energy costs? Besides the anecdotal evidence, what are the firm data regarding these investments and the return in terms of



jobs, tax revenue, and economic development?

Also overlooked is the question of whether the aggressive greenhouse gas target for Massachusetts will significantly alter the projected impacts of climate change in the Commonwealth. The report describes projected climate change threats that include a rise in sea level, more frequent severe storms, and temperature spikes in the summers. If the Commonwealth is successful in meeting (and even exceeding) its greenhouse gas reductions at a substantial cost to the public, does anyone credibly believe such reductions would meaningfully reduce potential climate change impacts?

The Massachusetts Department of Energy Resources needs to be more open and transparent with its decisions to pursue mitigation plans. These should be grounded in sound economic cost-benefit analyses using data from its regulated industry stakeholders. Advancing policies without reliable data and analysis of their impact could cause the state to make decisions that have unintended negative consequences on our future economic growth.

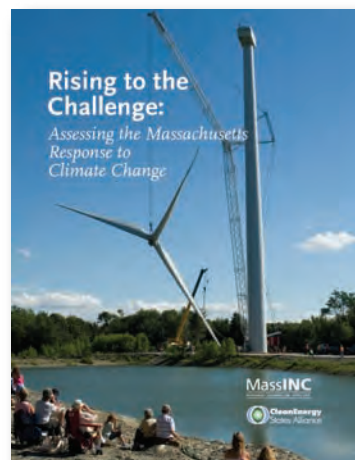
Critical first steps would be to educate the marketplace, provide additional support to make these methods financially attractive, and recognize that the state of the economy is an important determinant of when to require greater efficiency measures. We should be researching whether there are more cost effective ways to get to the appropriate goals before we accept and mandate the most expensive solutions.

Increased energy efficiency in new development and existing buildings is a prime target for achieving the 2020 target goals. But it is important to keep in mind that not all markets

around the Commonwealth are created equal. Statewide energy mandates for all building types will create a disincentive to develop new properties in areas where the markets cannot absorb the increased costs. Unfortunately, many of the “one-size-fits-all” government proposals do not account for varied building types or tenant energy requirements, and they rarely take into account actual investment/payback ratios.

The more stringent energy efficiency requirements disregard the mismatches between who pays the cost of an option (owner) and who gains the benefit (tenant), making it difficult to justify economically the investment in the first place. There is also too much emphasis being put on regulating the energy efficiency of the building shell. Much of a building’s energy use actually falls within the tenant spaces and therefore is not directly influenced by mandates for increased energy code efficiency. However, with appropriately scaled tax incentives, owners could receive financial benefits for the upfront investment and tenants could see reductions in their operating costs.

**The MassINC  
report on the  
state’s response  
to climate change  
can be found at  
[www.massinc.org](http://www.massinc.org)**



On a national basis, rather than using regulatory mandates, President Obama has announced the Better Buildings Initiative, an innovative economic development program using tax incentives to make existing buildings more energy efficient through retrofit projects. The amount of the incentive would grow with increased energy savings, encouraging ambitious projects and also rewarding more moderate retrofits that achieve meaningful levels of energy savings.

Since Massachusetts has among the highest energy costs in the nation, it makes good business sense to reduce a property’s controllable operating costs, especially if it can help to also reduce greenhouse gas emissions. Becoming more energy efficient is an important consideration in today’s commercial real estate industry. Many developers, owners, and tenants understand that it makes economic sense to find ways to increase initial capital investments

## Will Massachusetts moves reduce climate change?

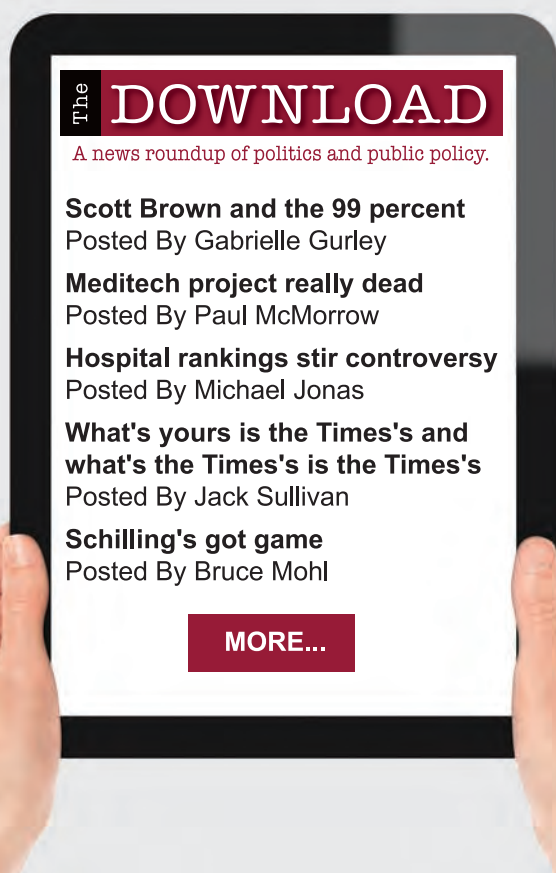
for energy efficient technology and design elements that will result in a reasonable payback of energy savings.

As a result, the market is becoming more responsive to the need for energy efficiency, especially with volatility in energy costs, and a more educated and demanding tenant base. We have already seen that, without regulatory requirements, more buildings are now built as LEED-certified “green buildings.” Before the state moves toward aggressive mandates, policy makers should consider incentive-based solutions. Doing so could leverage and support private investments in order to help businesses reach higher levels of energy efficiency. MassINC should follow-up its report with a more critical look at the existing, proposed mitigation measures, as well as other alternatives, which could lead the Commonwealth down the right path to our greenhouse gas reduction goals. **CW**

*David Begelfer is the CEO of NAIOP Massachusetts, the Commercial Real Estate Development Association. He also is a MassINC board member.*

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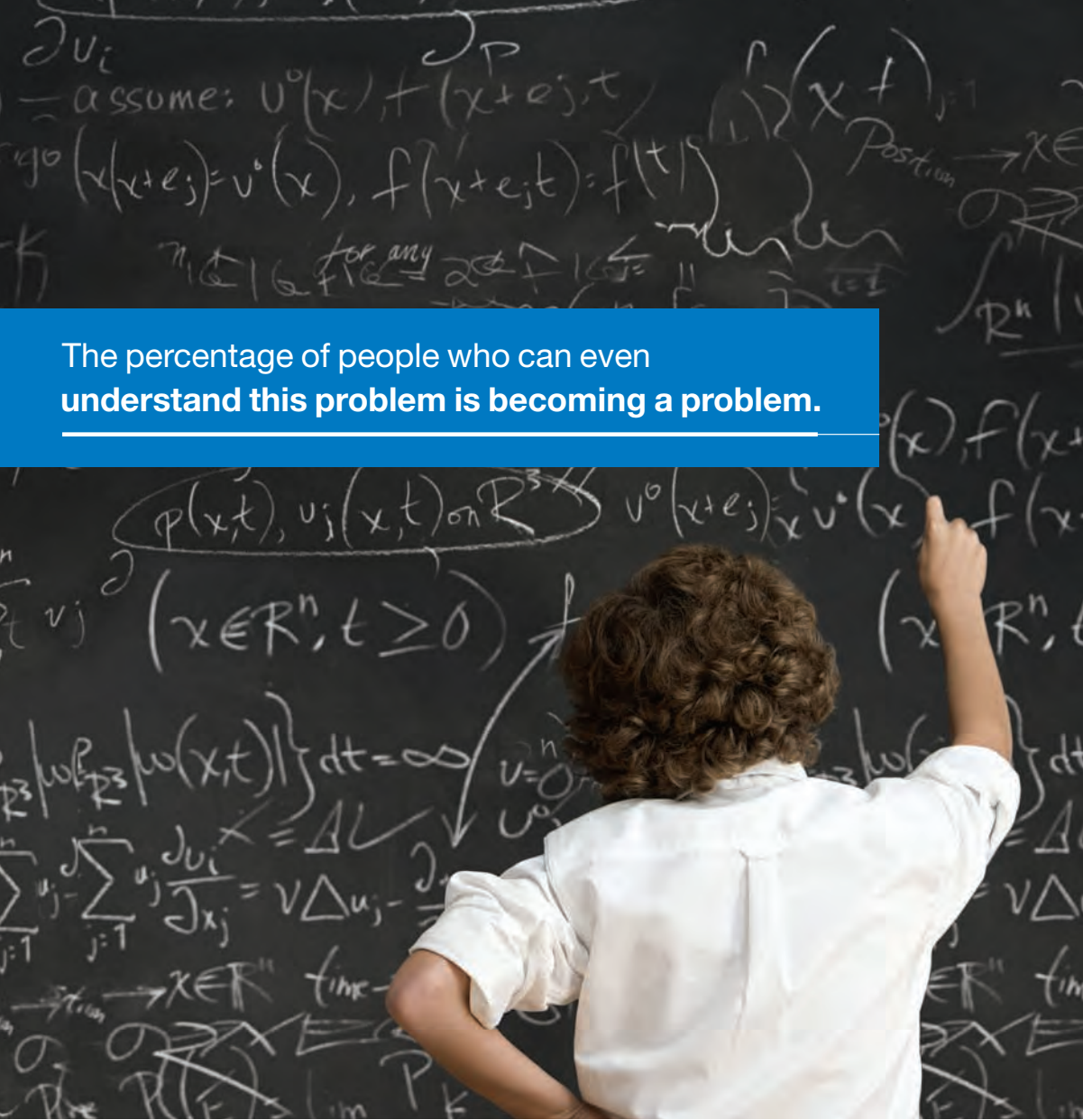
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