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The BRA's never-ending money machine

Also: City workers tap affordable housing



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*Flagship Wharf at
Charlestown Navy Yard*

A pension perk that won't go away
Marshall: Justice is not a policy option
Cahill says rein in health insurance effort

As New England's Economy Becomes More Knowledge-Based...

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...How Will We Be Sure Our Students Are Learning What They Need To Know?

According to the Nellie Mae Education Foundation's latest report, *What It Takes to Succeed in the 21st Century – and How New Englanders Are Faring*, the success of our region will depend in large part on how proficient our residents are in the skills necessary for success in New England's increasingly knowledge-based economy - skills like communication, creativity, problem-solving, critical thinking, the ability to work as part of a team, and the use of modern technologies.

Standardized tests still play an important role in an accountability system by providing assessments of certain skills. However, we must recognize that knowledge is obtained in various ways, through different methods in different places, and we must begin to measure competency accordingly.

In order to produce the well-rounded citizens New England needs, we must utilize performance-based assessments that are rigorous, valid and revealing of what learners actually know.

At the Nellie Mae Education Foundation, we know that institutionalizing and implementing this effort is a test we can and must pass.

For more information, visit www.nmefdn.org



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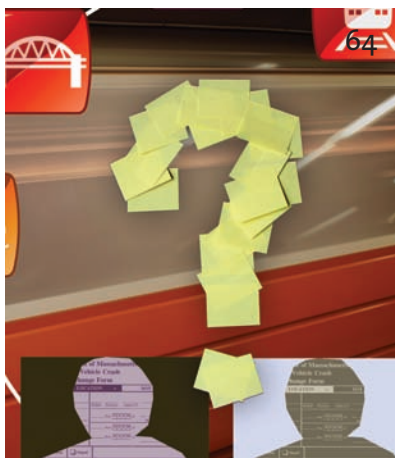
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IT'S TIME TO LEARN WHAT WORKS IN THE CLASSROOM

Who doesn't want to believe that teachers matter? It makes intuitive sense. It's what any good teacher knows instinctively. And now there's mounting evidence to support the notion that the quality of teaching in the classroom impacts the performance and engagement of the students in that classroom. But as Michael Jonas describes so well ("Teacher Test," *CW*, Fall '09), there's little evidence that our current methods of evaluating and rewarding teachers are helping us to identify, much less encourage and nurture, those skills and behaviors that make teachers matter.

For the sake of the 1 million schoolchildren in Massachusetts, and especially for the 10,000 children who drop out of school each year, we need to connect the dots. Identifying and encouraging teaching practices that will rescue more of our children from failure should be our top priority. This is a priority all of us must embrace—teachers, parents, and the community at large. But it means setting aside entrenched interests, outdated objections, and plain old fear of change.

One common objection is distrust of a single measure of teacher performance, especially one that is highly correlated with a number of other factors beyond the classroom. This is simply a red herring; no one is seriously proposing that student test scores form the sole basis for teacher evaluation. But to suggest that student performance has no place in the evaluation of teachers sounds like throwing the baby out with the bathwater.

Entrenched seniority rules and traditional career ladders all stand to lose from any new system of teacher evaluation. But the profession has

everything to gain in the long term—encouraging young teachers, identifying and nurturing excellence in teaching, and improving student achievement.

Right now, we have an unprecedented opportunity to make the connection between teacher evaluation, teacher quality, and improved student outcomes. Federal funds are available for willing states and districts. Massachusetts's new student growth model now lets us look at test data over time and compare academic improvement between similar cohorts of students. We can now identify statistically significant variations in student performance growth from one year to the next—and that can tell us where to shine a bright light to learn what works in the classroom.

Yes, teachers matter. It's time we started evaluating how and why they matter. Our kids are counting on us.

Leslie Nicholson
Executive director
Stand for Children
Waltham

THE HARD PART: FINDING RELIABLE MEASURES

Michael Jonas's article turns the focus of talking about improving student achievement exactly where it needs to be, on teaching. Having worked in public schools for 40 years, I believe that there are few things that we really control in public schools. Among them are who we allow to cross the threshold of a classroom as teacher and who we select to run schools as principals. Both decisions are absolutely essential to student success.

For more 30 years we have known about teacher behaviors that have been shown to be clearly related to improving student achievement. What



is mind-boggling is how little we use that information in teacher evaluation. While teacher evaluations should consider improvements in student achievement, the hard part is finding consistent, valid, and reliable measures of student achievement across content areas.

Teacher quality is much more than certification. A teacher can be certified with paper credentials yet not really be able to effectively teach in the classroom. In some cases the issue has to do with a lack of effective teaching skills or knowledge of subject matter; in others it may be a lack of desire to teach or a lack of comfort with students.

In measuring the effectiveness of teachers and schools, Jonas's article also makes important points about Eric Hanushek's work and "value added" research on teaching. But a fundamental error that people made with studies on educational inequality is in equating a correlation with cause and effect. Put simply, your momma doesn't have to have a master's degree for you to do well in school. Certainly, family background can have an impact on students' preparation for school. But we make a real error when we equate parental educational and income with a student's capacity to do well in school.

Schools can and do make a differ-

ence. In his landmark study in 1979, Ron Edmonds identified the qualities of effective urban schools that hold true to this day. We must turn our attention to spreading effective teaching and raising expectations of students and staff so that many more students acquire the skills and knowledge to do well in school and graduate.

*Nicholas A. Fischer
Superintendent
New London Public Schools
New London, Connecticut*

I'm appalled that this administration continues to recycle education ideas that are not supported by available, up-to-date research. They consider easy/trendy ideas to be education reform (charter schools, high-stakes testing, etc.). What makes all of this so egregious is that our children continue to suffer under these political policies. I yearn for the time when educators and education are truly valued. Perhaps I should move to Finland. They understand it there.

*Sondra H. Peskoe
Brookline*

STUDENTS SUFFER FROM TRENDY 'REFORM' IDEAS

Thank you, Edward Moscovitch ("Ed Reform Erosion," Perspectives). I've been waiting for someone to speak the truth about the claims from this administration that school funding has been "held harmless." In addition,

'COST-EFFICIENT' EDUCATION IS MOTIVE FOR PLAGIARISM

While regrettable, the plagiarism epidemic that Colman Herman's article "Term Paper Trafficking" describes is arguably a rational response to education becoming an economic invest-

ment, and to its long and winding journey from its roots in rhetoric. We evaluate students by their papers in part because it's cost-efficient, requiring far less face time (or none) on the part of faculty. But we pay a price in the depersonalization of education when we divorce learning from human interaction. After all, it's pretty hard to fake it when solving a physics problem at the blackboard or debating the merits of, say, physician-assisted suicide with an audience of one's peers. Interestingly, the work world hasn't lost sight of the value of interpersonal interactions: A recent survey showed prospective employers caring little about one's academic credentials and much more about personal references.

*Joshua Roth
Physics teacher
Winchester High School
Winchester*



Tackle Uncertainty

*Tedy Bruschi,
SBLI Spokesman*

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Zeroing in on the BRA

THE BOSTON REDEVELOPMENT Authority isn't easy to write about. The agency wears so many hats (regulator, landlord, banker, developer) and is involved in so many things (city planning, real estate, economic development, housing, and job training) that reporters tend to get overwhelmed and give up.

I became intrigued with the BRA during last fall's mayoral race. Mayor Thomas Menino's opponents talked about the agency as if it were riddled with conflicts of interest and the cause of many of the city's problems. I associated the BRA with downtown development deals but discovered its portfolio was much, much larger. When Menino wanted to give a loan to the shuttered *Bay State Banner*, for example, a BRA affiliate I had never heard of quickly stepped up and delivered a \$200,000 loan.

Jack Sullivan and I started looking at the BRA toward the end of the mayoral campaign. We spent a lot of time talking to people, studying the agency's finances, and poring over deeds. The upshot is the special report on the BRA in this issue. It focuses primarily on two aspects of the agency that intrigued us: A real estate policy that turned condo developments into never-ending money machines and an affordable housing program that seemed to be heavily populated by city workers.

The special report is by no means an exhaustive look at the BRA. In fact, we often came across something intriguing and had to put it aside because we were running out of time. We also struggled to obtain information from BRA officials right up until our deadline.

But the special report is a good example of what we are trying to do at *CommonWealth*. We focus on public policy issues important to working people that are ignored by the mainstream media because they are too complicated or too time-consuming to investigate. We also zero in on agencies or programs subject to little or no oversight. The BRA fit both priorities perfectly.

The same could be said of the feature story by Michael Jonas on a pension perk that refuses to go away. State

employees who have 20 years of service and get fired or see their jobs eliminated are entitled to start receiving a generous "termination" pension immediately instead of waiting until age 55. Michael has written about this questionable perk before, but he goes at it again because it somehow got overlooked during the passage of a pension reform law last year.

We also have a fascinating What Works story about electronic medical records from Alison Lobron and a report on the board overseeing the state's consolidated transportation system from Gabrielle Gurley. Our Conversation features a chat with Margaret Marshall, the charming and elegant chief justice of the Massachusetts

Check out our new magazine website.

Supreme Judicial Court. I came away impressed with her, but there's no question she speaks a different language from the lawmakers on Beacon Hill, which may explain why her push for more authority over the court budget has met with mixed success.

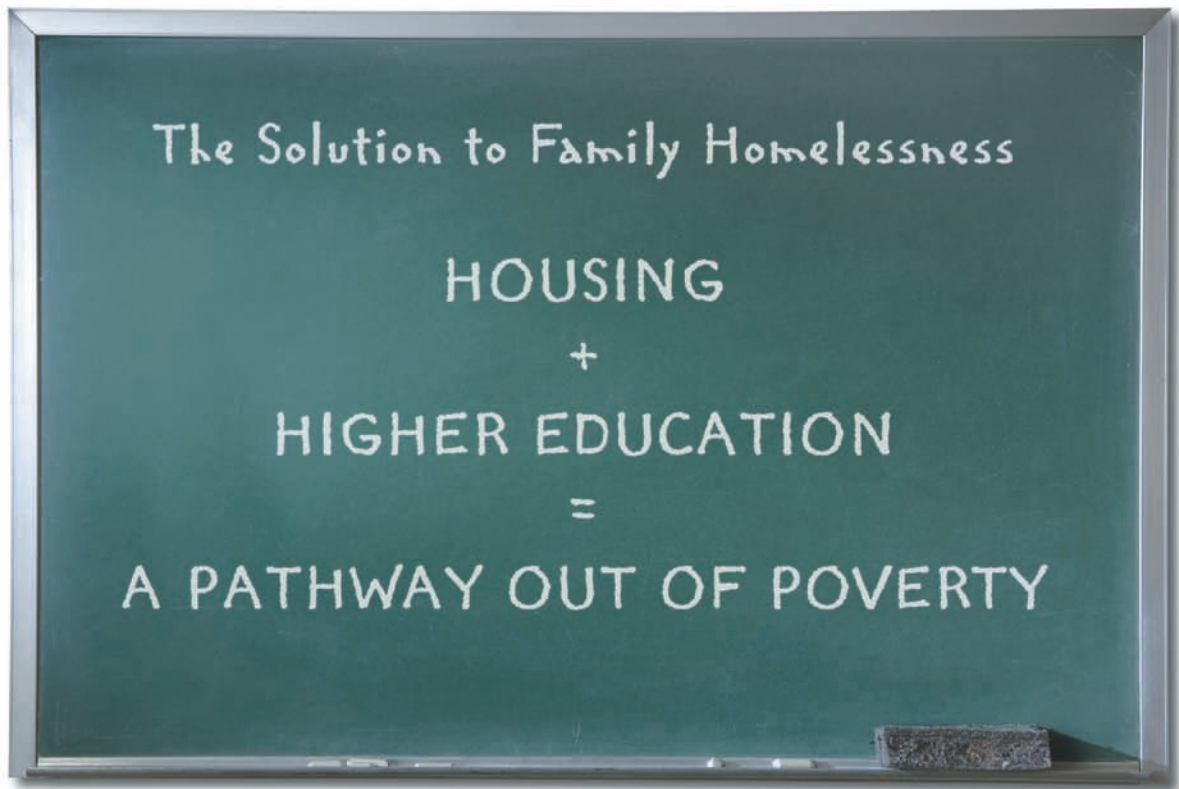
With his forceful argument that the state needs to scale back its efforts to extend health insurance to everyone, State Treasurer Tim Cahill made me appreciate his presence in the governor's race as an independent. His fiscal caution and his deep knowledge of budget issues should make him an interesting candidate for these times.

I've only skimmed the surface of what's in this issue, but I would be remiss if I didn't remind you that its publication coincides with the debut of our new magazine website (commonwealthmagazine.org). The online magazine will allow us to continue our reporting and commentary between print issues. It will also make it easier to bring you into the debates and conversations prompted by our coverage.

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BRUCE MOHL



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Four-day week deemed a success

A yearlong Utah experiment with a four-day work week for state employees has ended with a positive verdict, even as its goals changed along the way.

In August 2008, then-Gov. Jon Huntsman (now US ambassador to China) issued an executive order changing the operating hours of state agencies. Offices were shuttered on Fridays and stayed open for 10 hours, rather than eight, on the other four days. The governor's primary interest was lowering energy costs, says Mike Hansen, a strategic planning manager in the executive branch. (See Perspectives, *CW*, Summer '09.)

Energy consumption did decline by 10 percent during the yearlong pilot program, but cost savings were lower than projected. The state saw savings of \$500,000 on energy, rather than the hoped-for \$3 million, says Hansen. Another \$200,000 was saved in operational costs.

Meanwhile, Utah's leadership changed in the summer of 2009, and with a new governor came new priorities. According to Hansen, Gary Herbert—who took office when Huntsman became an ambassador—was primarily interested in the customer-service angle of the experiment. A telephone survey found that 66 percent of Utah citizens liked the change —“they thought it was a good, forward-thinking initiative,” says Hansen—while 20 percent were indifferent.

Given the largely positive response, Hansen said Utah will continue its “4/10” model for the rest of Herbert's term. He faces a special election in November 2010.

► ALISON LOBRON

Probation head responds to reports of excessive spending

► BY BRUCE MOHL

JOHN J. O'BRIEN, the reclusive state commissioner of probation, is coming out of his shell.

Faced with two reports suggesting that spending at his agency is excessive, O'Brien is suddenly talking. Well, not talking exactly, but sending out emails and letters through his spokeswoman denying many of the accusations and suggesting that his agency is actually understaffed.

In one email, O'Brien says the ratio of offenders to probation officers in his department is 167 to 1. Even excluding less involved administrative cases, O'Brien says, the ratio is 103 to 1, well above the caseloads recommended by the American Probation and Parole Association.

O'Brien also boasts that his agency is bringing in \$23 million in annual probation supervision fees, requiring offenders to do \$377,000 of community service work each month, and running an electronic monitoring program that is saving the state \$80 million a year.

It's a far cry from his agency's usual response to requests for information, which is to ignore them.

SOME SEE A HAVEN FOR PATRONAGE.

The probation department has been under fire. Problems started in early December when a former accounting clerk at the Lawrence District Court's branch of the probation department was arrested for allegedly stealing \$2 million over three years. Then came reports by two different groups indicating that probation spending is rising at a much faster pace than outlays for other corrections divisions and court units. Probation is a corrections agency but is located administratively within the state's Trial Court. Some officials in the state's correction system would like to move probation into the executive branch. Patrick administration officials declined comment.

The two probation reports did not speculate about the cause of the agency's budget growth, but the department is widely viewed on Beacon Hill as a patronage haven for the Legislature. The wives of Reps. Thomas Petrolati and Michael Costello, both members of House Speaker Robert DeLeo's leadership team, work for the department, as does the son of former Senate President William Bulger.

Like most other parts of state government, probation has seen its budget cut in the past two years. But lawmakers have repeatedly softened the blow by overriding vetoes of probation spending by Gov. Deval Patrick, giving the department special appropriations, and insulating the agency from cuts by court officials. The Legislature, for example, gave probation

\$4.5 million last October to stave off layoffs.

The Court Management Advisory Board, a group of businesspeople working on a broad review of the trial court system, discovered that probation spending was out of whack compared to the rest of the court system. Board data obtained by *CommonWealth* indicate that the caseload of probation increased only 2 percent between fiscal year 2005 and fiscal year 2008, while spending went up 17 percent. The data also show the number of probation



John J. O'Brien

workers increased 10 percent between July 2005 and July 2008, rising from 2,005 to 2,200.

Michael Keating, who heads the advisory board, confirmed that the numbers are accurate. He said the probation budget's growth was distorting the overall Trial Court budget and raised questions about the Legislature's decision to

insulate probation from court supervision. To help court officials manage budget cuts, the Legislature last year gave the officials the power to transfer funds between court accounts. But lawmakers specifically exempted probation from that directive. The Legislature has also limited the power of court officials to control probation hiring.

"From a management point of view, to take an important part of what has been designated a judicial function and insulate it from the person running the Trial Court doesn't make any sense," Keating said. "It's bad management. It's one of the things that has to be corrected."

In an interview with *CommonWealth*, Margaret Marshall (also see Conversation, Page 76), chief justice of the Supreme Judicial Court, said the ability to transfer funds between accounts within the court budget is needed. She said she didn't know whether funds would be transferred out of probation if court officials had that power.

Probation spending also surfaced in a report issued by The Boston Foundation last month on the rising cost of the state's corrections system. The report said corrections spending overall had risen faster in Massachusetts than the budgets of almost any other state service. It said the Department of Correction budget, adjusted for inflation, had increased more than 12 percent between 1998 and 2008, while the county sheriffs' budget went up 20 percent. Probation, the report said, went up 163 percent.

O'Brien, in his emails and letters, called the 163 percent figure "wildly inaccurate." He said the Boston Foundation report compares 1998, when probation spending was mar-

bled into line items for each court, to 2008, when spending was consolidated under his control.

"Simply put, the comparison of the FY1998 probation budget to the FY2010 budget is to compare apples to oranges," O'Brien wrote.

Leonard W. Engel, a senior policy analyst at the Crime and Justice Institute and the author of the Boston Foundation report, said he tried to adjust for the budgetary changes by reducing the actual FY2008 number by \$85.6 million to reflect the money earlier contained in court budgets. Engel said he was startled at the increase but checked the figures repeatedly and believes they are accurate.

O'Brien did not address the Court Management Advisory Board's numbers directly, other than to say that part of the increase in spending can be attributed to the \$2 million approved for the electronic monitoring of offenders using a global positioning system. He said the annual cost of electronic monitoring an offender is \$3,380, compared with incarceration costs of \$48,000. He called the system the most comprehensive in the nation, covering 1,800 offenders and saving the corrections system more than \$80 million.

O'Brien also said his agency collects \$23 million in probation supervision fees, up from \$6 million in 1998, and has offenders perform 52,000 hours of community service work each month, which he valued at the minimum wage of \$7.25 an hour, or \$377,000.

Teen use of smokeless tobacco leads to call for tax increase

► BY MICHAEL JONAS

WHEN STATE LAWMAKERS increased the tax on cigarettes two years ago by \$1 per pack, it was a good move, but they didn't finish the job, say anti-tobacco activists and their legislative allies.

Unlike the three previous tax increases on cigarettes, the 2008 measure didn't include similar-size increases on chewing tobacco, other smokeless tobacco products, or packets of loose-leaf "roll-your-own" tobacco. As a result, say anti-tobacco activists, the state is leaving more than \$10 million in easy tax money on the table and missing an opportunity to drive down tobacco use, particularly among young people whose habits are sensitive to even



small price increases.

State Rep. Jonathan Hecht is pushing legislation that would address what he and public health advocates call an oversight in the 2008 tax hike. A bill Hecht filed last year would raise the tax on other tobacco products to a level that is comparable to the cigarette tax. Hecht's approach would increase taxes on these products so they equal 110 percent of their wholesale cost, which is what the current state tax of \$2.51 on a pack of cigarettes corresponds to. Hecht calculates that the increase would yield \$10.5 million in new tax revenue per year, a portion of which he'd like to see dedicated to tobacco control programs.

'KEEP KIDS FROM BEING ADDICTED.'

"This is the right thing to do to keep kids from being addicted, and to create a revenue stream to help programs for those who want to break their addiction," says Hecht, a Watertown Democrat.

Hecht and anti-tobacco activists are particularly concerned about an explosion of various smokeless tobacco products that they say are being targeted at young people. US Smokeless Tobacco, which sells Copenhagen and Skoal chewing tobacco, and R.J. Reynolds have begun marketing a product known as "snus," a spit-free form of smokeless tobacco sold in small pouches similar to tea



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bags, which users tuck under their lip. And last year, R.J. Reynolds began selling Camel Orbs, tablet-sized dissolvable jolts of tobacco.

"They look like Tic Tacs," says Russet Morrow Breslau, executive director of Tobacco Free Mass, a coalition of anti-tobacco organizations. "So if you're a kid sitting in geometry class, you could be sucking on these lozenges or sucking on these tea bags and you could get hooked."

The use of smokeless tobacco among US 10th- and 12th-graders increased from 2006 to 2009, according a December report from Monitoring the Future, an ongoing survey of habits and attitudes of secondary school students and young adults, sponsored by the National Institute on Drug Abuse.

David Sutton, a spokesman for Altria, the parent company of Phillip Morris and US Smokeless Tobacco, says "underage access to tobacco products is something we're vehemently opposed to," and he denies that any marketing is done with underage users in mind. As for the proposed Massachusetts tax increase, he says Altria opposes raising levies on adult consumers and believes that stricter enforcement of laws prohibiting retail sales to minors is the best way to prevent young people from gaining access to the tobacco products.

The bill to increase taxes on non-cigarette tobacco products didn't make it out of the Legislature's Joint Committee on Revenue last year. Hecht is hoping the bill will gain traction in the new year. "It's a fix of an omission," he says.

Breslau says there is broad public support for the tax hike. In a March 2009 survey of 502 likely Massachusetts commissioned by Smoke Free Mass, 81 percent supported taxing other tobacco products at the same rate as cigarettes.

But passing any new tax, even on something as socially shunned as tobacco, is never easy, and advocates may find that is especially true heading into an election year.

State employee investigated for selling term papers

► BY COLMAN M. HERMAN

THE MASSACHUSETTS APPEALS Court has placed a senior staff attorney on paid administrative leave after *CommonWealth* reported that the attorney was running a side

business writing term papers for students in apparent violation of state law. (See “Term Paper Trafficking,” CW, Fall ’09.)

Alex McNeil, court administrator for the appeals court, said staff attorney Dominic Bonazzoli was placed on leave while an investigation is conducted.

“The integrity of our courts is of paramount importance, and all of those who work in the justice system must be held to the highest standards,” said Chief Justice Philip Rapozza in a statement.

A Massachusetts criminal law passed in 1972 bars the sale of term papers if those involved know or have reason to know that the material will be submitted for academic credit and represented as original work.

The Massachusetts Rules of Professional Conduct for lawyers states in part that it is professional misconduct for a lawyer to “commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as lawyer” as well as to “engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.”

The Bonazzoli episode was part of a *CommonWealth* sting operation that shined a light on the shadowy world of term-paper trafficking. Bonazzoli was one of 62 term-paper writers advertising on Boston’s Craigslist who responded to an email inquiry sent out by a *CommonWealth* reporter, posing as a student, asking to have a 20-page, double-spaced term paper written on the subject of physician-assisted suicide. The responders quoted prices ranging from \$90 to \$1,200. The average price was \$370, or \$18.50 a page.

Bonazzoli promised a “quality grade” if he was hired to write the 20-page paper. “I’m here to help you ace your term paper,” one of his Craigslist ads proclaimed. Another ad bragged, “I have authored over 200 judicial opinions and memoranda.”

As part of his pitch, Bonazzoli sent along, unsolicited, his resume, which revealed that he was employed as a senior staff attorney for the appeals court—a job that pays him \$94,000 a year—and a *summa cum laude* graduate of Boston College Law School. Bonazzoli wanted \$300 to write the paper on physician-assisted suicide.

“My academic history, coupled with my work experience, gives me an edge not many writers have,” Bonazzoli said in an email exchange about the 20-page assignment. He also claimed that turning in a paper that he had written would not be illegal. “I am aware of no state or



federal statute that prohibits such a practice. This is not the equivalent of, say, lying on a federal employment or tax form,” he said. “Could your school take disciplinary action? Of course. But that’s quite different from criminal prosecution.”

In a follow-up telephone interview in which the reporter identified himself, Bonazzoli said that he was unaware of the Massachusetts law on term papers. As to the ethics of what he was doing, Bonazzoli said, “It is the responsibility of students to adhere to the ethics codes that their schools set for them.” He then added, “I don’t see any ethical conundrum from my perspective.”

A handful of other individuals and businesses were contacted about writing admissions essays, which would not be a violation of state law. Dr. Rivka Colen, a neuro-radiology fellow practicing at the Beth Israel Deaconess Medical Center in Boston, offered to write admissions

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essays for medical school. Her fee for four essays was \$800. Colen has since left Beth Israel Deaconess for Brigham and Women's Hospital.

Dr. Jonathan Kruskal, chairman of the department of radiology at Beth Israel and professor of radiology at Harvard Medical School, said there is no policy in place at the hospital precluding Colen from doing what she did, but that he will be discussing the issue internally as well as with his counterparts at other hospitals.

"Personally, I cannot and do not support such activities being undertaken in my department, but fear that many people are doing this as the demand increases," Kruskal said. "This activity certainly raises several moral and ethical questions and is not the type of activity that I want any member of my department participating in."

Colman M. Herman is a freelance writer living in Dorchester.

Youth Villages show results with troubled kids

► BY ALISON LOBRON

WHERE SOME SEE reason for despair, Matt Stone sees possibility.

Stone is the Massachusetts manager for Youth Villages, a nonprofit that aims to replace some residential services for troubled youth with intensive in-home counseling. Founded in Tennessee in 1986, Youth Villages expanded throughout the southeast and, in 2007, opened its first Bay State office. Stone and his team of social workers,

**'WE ASK
FOR HARD
CASES.'** most from out of state, started with five kids here and are now serving 40 clients as a contractor with the state. And he thinks a significant chunk of the 8,700 youths now placed outside their homes—in foster care, group homes, or other outside-the-home residential settings—might do better with Youth Villages or other in-home counseling services.

"We ask for the really hard cases, the ones no one else wants," Stone says. "We tell them, 'If you've already checked the residential box, give them to us instead.'"

The approach centers on intensive in-home counseling (at least three times a week) and on improving a youth's total environment: family, school, and peer rela-

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tionships. While Stone is quick to say that for some kids, residential services really are the only option—"it's not safe for them to be at home"—he thinks taking a kid out of the home fails to address the environment that may have caused the problems in the first place. When the child leaves treatment, they may seem healthier, but once they're back in their old surroundings, the old problems emerge.

The cost is \$125 per child per day, while residential placement services can cost nearly three times as much.

THERE'S A FOCUS ON OUTCOMES.

And the organization's mission seems at one with the Department of Children and Families' stated goal of keeping as many kids at home as possible: The current number of out-of-home placements, 8,700, represents a 14 percent decline since 2003.

Allen Grossman, a professor at Harvard Business School who wrote a 2008 case study of Youth Villages, says the organization's focus on outcomes is essential to its success. Following every kid for two years after treatment ends allows Youth Villages to tell which practices are working and which are not. Nationally, two years after

treatment, 80 percent of Youth Villages clients are living at home and attending school. Grossman says it's hard to find comparative data for kids in state custody—most states, like Massachusetts, don't track the effectiveness of all the dollars they spend on child services. But, according to academic studies, only 40 percent of kids in out-of-home treatment are faring as well as the Youth Villages clients two years later. Youth Villages, Grossman says, "is twice as effective."

A spokeswoman for the Massachusetts' Department of Children and Families says the state is beefing up its tracking procedures as part of new national regulations. In October 2010, the state will begin gathering data—such as financial self-sufficiency, housing, and educational status—on kids who have "aged out" of the system. **CW**

We welcome letters to the editor. Send your comments to 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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Entrances and exits BY ROBERT DAVID SULLIVAN

EACH YEAR, THE state's Department of Public Health releases two thick reports on vital statistics: *Massachusetts Births* and *Massachusetts Deaths*. To mark the new year, we've culled some of the major data points from the reports for 2007 (reports for 2008 will come out later this spring) and noted comparisons with the latest available data at the national level.

BIRTH TRENDS

The birth rate in Massachusetts in 2007 was 12.1 per 1,000 people, which placed us 45th in the nation (with all five of the other New England states below us). Within the Bay State, the North Shore cities of Lawrence, Chelsea, and Lynn had the highest birth rates in 2007. (See table at right.) Among places with more than 10,000 people, the lowest birth rates were in Amherst, Concord, and Lexington.

In 2006, the last year for which complete data are available, the average age of a mother at first birth was 27.7 years in Massachusetts—which made us the highest in the nation and also the state with the biggest increase since 1970 (when the Bay State average was 22.5 years). But we may have reached a plateau, as the average age dropped slightly to 27.6 years in 2007.

Meanwhile, the percentage of mothers who were not married at the time of delivery continued to rise, going up another 1.2 points from 2006 to 2007 and passing the one-third mark. (See figures at right.) Still, we were well below the national average of 39.7 percent on that score; instead, we were comparable to other well-educated states, such as Minnesota and New Hampshire. The CDC reports that a majority of all births in Louisiana, Mississippi, and New Mexico were to unmarried mothers.

Finally, cesarean deliveries have become much more common in Massachusetts since the beginning of the century and now account for more than one-third of all births, slightly more than the national average. (See figures at right.) But use of the procedure varies widely from hospital to hospital—from a low of 17 percent at Tobey Hospital in Wareham to 44 percent at South Shore Hospital in Weymouth—and is generally more common in metro Boston than in western Massachusetts.

BIRTHS TO UNMARRIED MOTHERS AS A SHARE OF ALL BIRTHS IN MASSACHUSETTS

1990: 24.7%
2000: 26.5%
2007: 33.4%

HIGHEST BIRTH RATES BY CITY AND TOWN, 2007

CITY	BIRTHS PER 1,000 RESIDENTS
LAWRENCE	20.3
CHELSEA.	18.3
LYNN	17.8
LOWELL	17.7
NANTUCKET	17.5
EVERETT.	17.4
BROCKTON	17.0
SPRINGFIELD	16.9
MILFORD.	16.5
MALDEN	16.4

C-SECTIONS AS A PERCENTAGE OF ALL BIRTHS IN MASSACHUSETTS

1990: 22.3%
2000: 23.4%
2007: 33.7%

80.2 years

The life expectancy
for someone born in
Massachusetts in 2007,
an all-time high.

DEATH DATA

For only the second time in history, cancer was the leading cause of death in Massachusetts during 2007. Heart disease was the biggest killer in the Bay State for most of the 20th century (taking over from infectious diseases in the 1920s), but quicker advances in treating heart problems meant that cancer moved to the top spot in 2006. (See chart below.) In the US as a whole—and in most Bay State cities outside of Route 128—heart disease remains the leading cause of death. But rates have been dropping locally and nationally not only for cancer and heart disease, but also strokes and respiratory diseases. In contrast, rates have been rising for fatal injuries (in large part because of a sharp increase in falls among people over 65) and deaths attributable to Alzheimer’s disease.

The leading cause of “unnatural” deaths in the Bay State during 2007 was narcotics, which claimed 546 people, followed by suicide (504), motor-vehicle accidents (437), and homicide (183). Adjusted for population, Massachusetts ranks last in the incidence of fatalities from car accidents and is well below the national average in suicides and homicides—but is somewhat above the norm in drug-related deaths.

The table at right lists “premature death rates”—that is, deaths per 100,000 people under the age of 75—for 2007. Cambridge is the only one of the state’s 10 largest cities with a premature death rate lower than the state as a whole. One reason: There were only five deaths in Cambridge attributed to drugs in 2007, compared with 12 in almost identically sized Lowell and 18 in the much smaller city of Lynn.

PREMATURE DEATH RATES BY MAJOR CITY

CITY	PREMATURE DEATHS PER 100,000
BOSTON	376
WORCESTER	413
SPRINGFIELD	473
LOWELL	444
CAMBRIDGE	208
BROCKTON	383
NEW BEDFORD	408
QUINCY	360
FALL RIVER	432
LYNN	391

CHANGES IN MORTALITY RATES IN MASSACHUSETTS

CAUSE	2000	2007	CHANGE
CANCER	206.1	179.0	-13%
HEART DISEASE	216.7	166.0	-23%
STROKE	50.9	35.0	-31%
LOWER RESPIRATORY DISEASE	41.8	31.5	-25%
INJURIES	35.9	42.5	+18%
ALZHEIMER’S	19.5	20.9	+7%

All data are from the Massachusetts Department of Public Health and the National Center for Health Statistics (part of the Centers for Disease Control), with population data from the US Census Bureau.

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Going it alone

BY ROBERT DAVID SULLIVAN

ACCORDING TO DATA released late last year by the US Census Bureau, “nonemployer businesses”—mostly consisting of just one person, working full or part-time—have been on the rise, at least up until the economic crash of 2008. There were 21.7 million such businesses in 2007, and they were especially common in Florida, Texas, the Rocky Mountain region, and northern New England. The map below shows the number of such establishments for every 10,000 adults over the age of 24 (when most people have finished their educations). They were rarest in a swath of the Rust Belt, where manufacturing jobs are still common, and in Virginia.

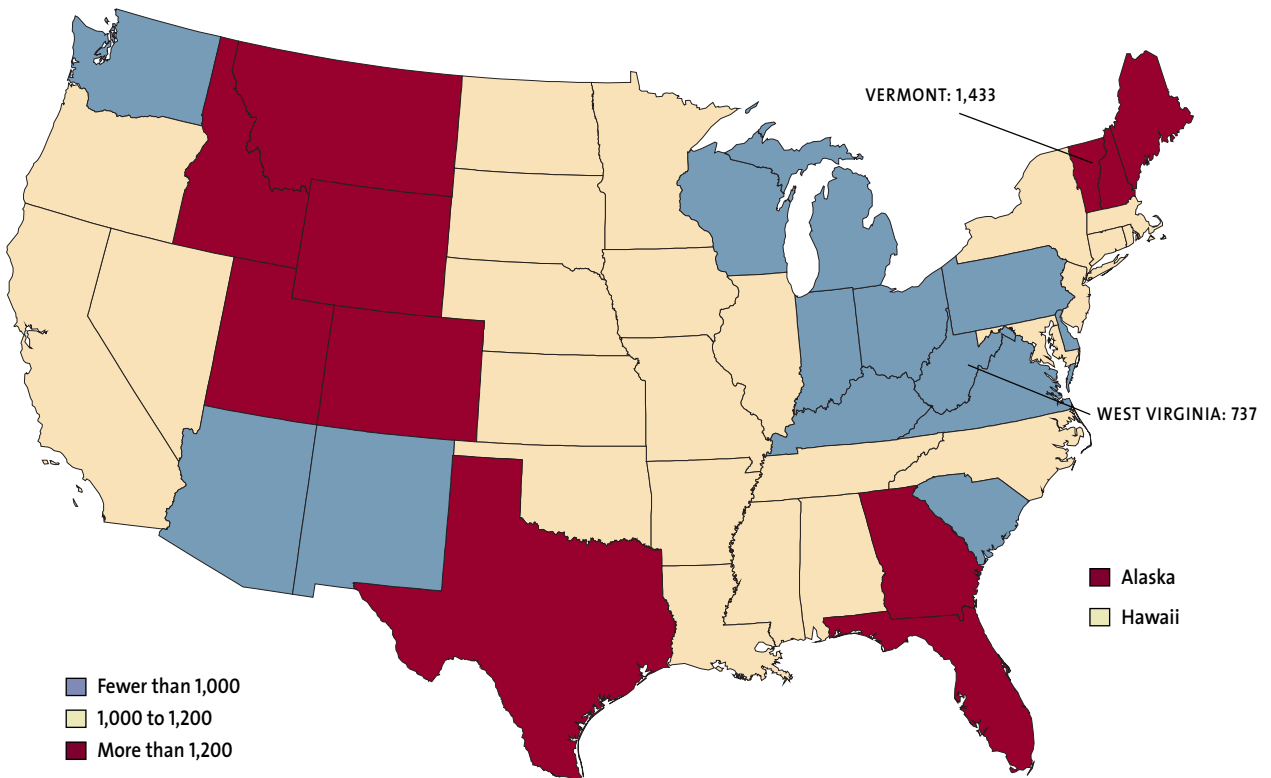
Massachusetts was almost exactly in the middle, coming in at 26th overall. But our rank changed dramatically depending on specific professions, with the Bay State placing at or near the top in several “creative class” fields. Our singularity was illustrated by the fact that Massachusetts was one of only two states where the leading self-employment sector (in terms of total revenue) was neither

construction nor real estate. In Alaska, the top profession for those going it alone was “hunting and fishing”; here, it was “professional and technical services”

The data indicated that, adjusted for population, Massachusetts had the country’s greatest concentration of self-employed physicians and legal services workers. We were second in “educational services” and mental health practitioners (with Vermont coming in first in both cases). We were fifth in “architectural, engineering, and related services,” sixth in computer design services, and eighth in “arts, entertainment, and recreation” (with Vermont on top yet again).

The flip side to our freelance scene? We finished 45th in beauty salon proprietors, 46th in real estate services, 48th in “repair and maintenance” (including auto repairs, a major sector elsewhere), 49th in the trucking industry, and 50th in “retail trade” (which includes everything from door-to-door salesmen to people selling *tchotchkes* on websites). **CW**

NON-EMPLOYER BUSINESSES PER 10,000 ADULTS



Source: US Census Bureau

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The wild, wild west

BY ROBERT DAVID SULLIVAN

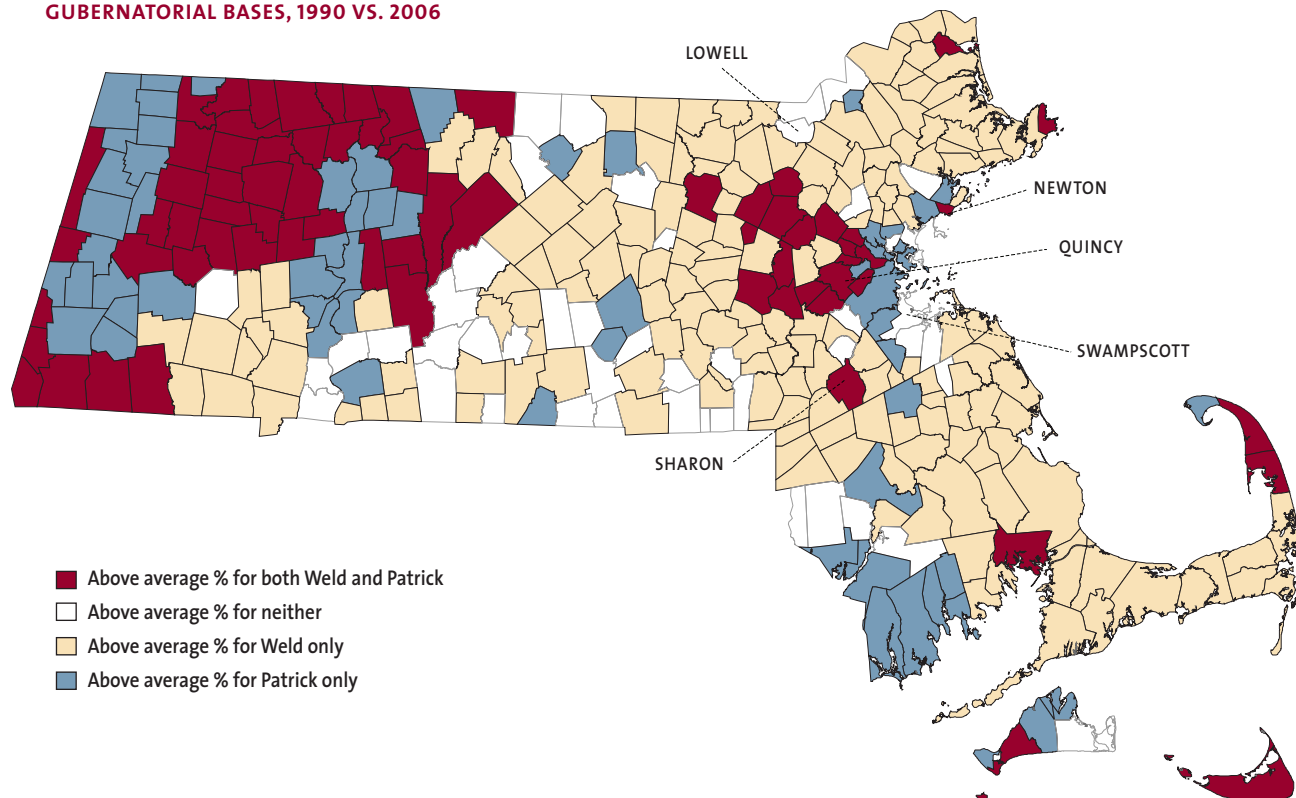
THE MASSACHUSETTS GOP is gazing longingly at 1990, the last time that anti-incumbent fever put one of their own — Bill Weld — in the governor's office. And Charles Baker, favored to win the right to challenge Gov. Deval Patrick and independent Tim Cahill, seems to be emulating Weld's mix of fiscal conservatism and social liberalism. So where would Baker need to pull votes away from Patrick? The map below gives some clues. Cities and towns in green were especially supportive of regime changes in both 1990 and 2006. That is, they gave both winning candidates percentages above their statewide showings (50.2 percent for Weld, 55.7 percent for Patrick).

There are towns all over the state in this category, but the real treasure trove of votes is in Boston's western suburbs. Acton, Concord, Lexington, Needham, and Wellesley all gave more than 55 percent of the vote to both Weld and Patrick. Some other places won by Weld—including Brookline, Newton, and Sharon—have since become more consistently Democratic and aren't as likely to go GOP in

2010, but Baker will have to cut down on Patrick's 2006 margins in these communities to win statewide. (A counter strategy involves places that have been cool toward reformers, including Lowell and Quincy. These blue-collar cities helped Paul Cellucci retain the Corner Office for the GOP in 1998—but they are also a natural base for Cahill.)

Affluent, well-educated towns (which also include Baker's hometown of Swampscott) trended toward Republican Mitt Romney when he was elected governor in 2002, and they went overwhelmingly for President Barack Obama, a Democrat, in 2008. There's a pattern of support here for outsiders running against "politics as usual." The question is whether voters will give Patrick more time to shake things up on Beacon Hill or go with a new face. In 2006, one sign of Patrick's strength was the number of TOGETHER WE CAN lawn signs and bumper stickers along Route 2. If you want to know how this year's election turns out, an apple-picking excursion sometime in late October might be instructive. **CW**

GUBERNATORIAL BASES, 1990 VS. 2006



Source: Massachusetts Secretary of State's Office. Data not available online.

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Stepping up

Filling Ted Kennedy's shoes isn't going to be easy, so John Kerry is stressing teamwork **BY SHAWN ZELLER**

WHEN EDWARD KENNEDY died in August, the country lost one of its most able lawmakers, a liberal who could cross the aisle on issues ranging from education to immigration. For Massachusetts, the loss was more visceral. During nearly 47 years in the Senate, Kennedy used his seniority, his family name, and his own persuasive skills to become the state's best advocate, ensuring that Massachusetts received its share of federal funds and that its interests were never trampled by congressional or bureaucratic decisions.

"Ted Kennedy is irreplaceable," says his successor as the state's senior senator, John Kerry. "Lord knows I feel his loss every time I'm on the Senate floor or in the cloakroom. I look around and it's still hard to believe he's not there, but one of the gifts he gave us was his example and his teaching."

If Kennedy was the Senate's liberal lion, a dominant player in shaping legislation and in securing benefits for his home state, Kerry was always a loyal member of the pride, doing his part for the liberal cause behind the scenes. Now, though, Kerry is trying to step into a bigger role, both as the leading Senate voice on the Afghan war—from his new perch as chairman of the Senate Foreign Relations Committee—and on global warming. He is one of the lead sponsors of legislation to cap carbon emissions, which figures to dominate 2010 in the same way health care dominated 2009.

Kerry is also showing he is an independent thinker, especially in the area of foreign affairs, where he's crossed President Barack Obama both in raising questions about the US military presence in Afghanistan and in moving legislation through his Foreign Relations Committee to overhaul the process by which the United States gives out foreign aid. (Obama would prefer to address the foreign aid issue without a congressional mandate.)

"I think Senator Kerry is rising to the occasion," says colleague James McGovern, who has represented Worcester in the House since 1997. "He's our new senior senator and he's been out front on climate change and Afghanistan. He's clearly taking on more responsibilities, and I'm glad to see it."

Kerry was often overshadowed by Kennedy during the quarter century in which they overlapped in the Senate. And during his early re-election campaigns, Kerry was often criticized by opponents for the dearth of laws that bear his name, a charge that George W. Bush milked even in 2004, when Kerry was the Democratic Party's nominee for president. So the new senior senator is understandably reluctant to discuss the prospect of filling Kennedy's shoes. He says he's "learned over the years not to get hung up on your role or your place in the scheme of things."

David Leiter, a former Kerry chief of staff who is now a lobbyist in Washington, says his old boss isn't changing his leadership style but is getting more scrutiny in the wake of Kennedy's death. "John doesn't toot his own horn about everything he does for the state," he says. "I think he's comfortable playing a behind-the-scenes role, and it's more important for him to be a team player."

KERRY IS ONE of the Democratic Party's elder statesmen. He has been in the Senate for 25 years and now is the ninth most senior Democrat in the body, out of a group of 58. Of the eight senators higher on the seniority list in Washington, Kerry, 66, is younger than all but one, Connecticut's Christopher Dodd. If Kerry stays on in the Senate and remains healthy, he should continue to climb the seniority list, accruing benefits for Massachusetts as he goes.

Kerry says he's ready to seize the moment. It's one, he says, he's long awaited: "To have a president of my party, to have a vice president who has been my friend for 25 years, to have a major committee chairmanship, and, finally, to have working majorities in the Congress."

Kerry was just 40 when he won his seat in 1984, defeating three-term Democratic Rep. James Shannon for the nomination to replace retiring Sen. Paul Tsongas. He then defeated businessman Ray Shamie in the general election. With the exception of the 1996 race, when Kerry defeated the popular GOP Gov. William Weld, he has never faced a serious challenge.

But Kennedy, at the time of his death, was the second most senior Democrat in the Senate and was heralded in his obituaries as one of the greatest senators ever, largely because he was able to tackle state needs and shape major legislation affecting the nation. It's a legacy that would be nearly impossible for anyone to live up to.

"To put it very simply, we will all have to work a hundred times as hard to try to make up for his loss, but even then his loss will be felt," says McGovern of Kennedy. "We're talking about a guy who spent decades in the Senate, mastered every maneuver, built friendships and relationships and alliances across party lines. It's that lifetime of experience that made him irreplaceable."

Christopher Anderson, the president of the Massachusetts High Technology Council, who teamed with Kennedy to save Massachusetts's military bases in 2005, says Kennedy was one of a kind. "There is not going to be another Ted Kennedy and it's unfair to expect John Kerry to be Ted Kennedy."

But Kerry's closest allies—including former staffers and his colleagues on Capitol Hill—say that while Kerry isn't Kennedy, it would be unfair to pigeonhole him as someone only interested in high-profile issues like Afghanistan and global warming, or someone not willing to tackle less prestigious assignments to benefit his state. For example, Kerry retains a keen interest in the far less glamorous task of promoting small businesses. For 12 years, from 1997 to 2009, Kerry was the top Democrat on the Senate's Small Business and Entrepreneurship Committee. There he often worked across party lines to reduce federal red tape for small companies and help them grow.

Kennedy, by contrast, was chairman of the Senate's Health, Education, Labor and Pensions Committee, which gave him broad influence on a range of social issues important to Massachusetts residents.

Still, Kerry took the less prestigious assignment seriously, and his interest in the concerns of entrepreneurs has not fallen by the wayside since he gave up the panel chairmanship to take Vice President Joe Biden's slot at the



The biggest concern about Kerry is his ability to bring home the bacon.

Foreign Relations Committee. This year, Kerry is pushing legislation that would direct federal small business loans to nonprofit child care centers and to doctors to help them modernize their patient records systems. In October, he helped secure \$230 million from the Treasury Department to help Massachusetts lending institutions increase credit for underserved populations in the state. And when the Senate Finance Committee passed its health care reform bill in October, Kerry ensured that it would include a tax credit for small businesses that provide insurance to their employees. When the bill went to the Senate floor, Kerry fought to reduce the health care bill's

Kerry says he's ready to seize the moment.

tax on medical device manufacturers, who represent a growing part of the Massachusetts economy.

The biggest concern about Kerry is his ability to bring home the bacon. Anderson says Kennedy's loss will be hardest felt in that area. "It's pretty much beyond debate how extremely effective Kennedy was at delivering federal financial resources to the region to support the technology, health care, or education communities," he says. "It's with that particular capacity that I think there's a

tremendous void.”

Kerry ranked 38th in the Senate in fiscal 2009 in procuring earmark funding for local projects, securing \$171 million for 148 projects, according to the nonpartisan Center for Responsive Politics. Kerry-sponsored projects ranged from \$160,000 in federal grants for research aimed at increasing cranberry and blueberry yields at the University of Massachusetts at Dartmouth to \$1.5 million to renovate the New Bedford Whaling Museum.

In reality, though, perceptions of Kerry’s work may be less positive than the reality, which is that Kerry wasn’t too far behind Kennedy in winning earmarks. The center credited Kennedy with securing \$180 million for 156 projects in the last fiscal year. Granted, Kennedy had been diagnosed with brain cancer in May 2008, requiring him to spend considerable time away from the Senate while seeking treatment. But even in fiscal 2008, Kerry wasn’t far behind Kennedy, according to the center’s data, pulling in \$240 million for 133 projects. Kennedy edged him out with \$260 million for 130 projects. Kerry says that he and Kennedy often teamed up on their appropriations requests. (Before fiscal 2008, senators were not required to reveal earmarked funding requests they’d sponsored.)

“John Kerry has always done his work,” says John

Tierney, the seven-term representative from Salem. “You can’t belittle that. If we House members do what needs to be done, we know that we don’t have to worry about John Kerry working hard to finish the job.”

Fortuitously for Massachusetts, its House delegation, rather than launch a bitter internecine battle for Kennedy’s Senate seat, decided to shepherd its seniority. Two of those senior representatives who considered running for Kerry’s seat in 2004, if Kerry had beaten George W. Bush to become president, decided instead to stay put when Kennedy’s seat opened up. Barney Frank remains chairman of the Financial Services Committee. Edward Markey is a senior member of the House Energy and Commerce Committee. Both are among the most influential members of the House Democratic caucus. In addition, Tierney and McGovern are both considered rising stars.

And with that lineup still in place, Kerry says he’s content to remain a team player. “Massachusetts has a very strong delegation who has always worked together when it comes to supporting programs at home,” he says, “whether we’re working on getting funding for research and development, funding for teaching hospitals, or defense funding. And we will continue to work together in this effort.” **CW**



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The big picture

Indiana EMTs get access to medical records, but better care comes with privacy concerns **BY ALISON LOBRON**

INDIANA PARAMEDIC TOM Arkins remembers the days, not too long ago, when he'd be called to an elderly person's home and find a giant box of medications on the bedside table. If the patient was disoriented or unconscious, as was often the case, Arkins had no way of knowing what the drugs were or what conditions they indicated. It posed a significant challenge to him as the first responder. "They have a blue pill and a red pill and an orange pill," he recalls. "Unless you're a pharmacist, you have no idea what they are."

Since July, Arkins and other emergency-response personnel in the Indianapolis area have had the potential—and responsibility—for much greater knowledge of patient conditions. That month, their ambulances were equipped with mobile access to an electronic health exchange: a privately run database that contains medical information for about 80 percent of Indiana's 6 million residents. Now, knowing only a patient's name and birthday, Arkins can access a summary of the patient's electronic medical record (EMR) and obtain clinical information, like allergies and current medications, that may guide the person's treatment.

"With EMRs, if we get a call to the house, I can see, OK, you have high blood pressure and diabetes," says Arkins, special operations manager for the emergency medical services at Wishard Hospital. "I can get a bigger picture of what the patient's medical problems might be."

Wishard officials believe they have the nation's first ambulances with mobile access to patient records. But ambulance use is just the latest technological addition for the medical community in Indiana, a leader in developing the kind of electronic health exchange that the Obama administration wants for the country, and that Massachusetts officials say the state will have by 2015. Widespread use of health exchanges promises the tantalizing possibility of both cost savings and better care, with emergency personnel quickly accessing the allergies and conditions of an unconscious patient; doctors easily emailing reminders

to patients about the need for routine screenings; consumers switching doctors and taking legible records with them; and patients avoiding duplicative tests when the doctor in the nursing home can see that they just had the same test done in the hospital. But it's also a plan that presents an enormous logistical challenge and, detractors say, poses the potential for privacy violations on a grand scale.

With \$19 billion in federal stimulus money available for health information technology, the race is on to create health exchanges, such as the one that's been taking shape in Indiana since the early 1990s. Micky Tripathi, the former CEO of Indiana's health exchange, is now the president of the Mass eHealth Collaborative, a coalition of the Bay State's major providers, insurance companies, and medical consumer-advocacy groups. The collaborative has three pilot community-level exchanges now underway in Brockton, Newburyport, and North Adams. Last year, the Patrick administration created a new quasi-public agency, the Mass eHealth Institute, and charged it with implementing a statewide exchange. Rick Shoup, the director of the institute, says work is in the planning stages, but he plans to contract with a vendor—possibly the similarly named eHealth Collaborative—to create the exchange starting in 2010. His ballpark estimate of the price tag is \$45 million.

CUTTING DOWN ON UNCERTAINTY

Creating a health exchange requires that all providers within a community use electronic health records. Practices that use them—and about 60 percent of Massachusetts physicians now do—keep information like lab tests, hospitalizations, allergies, and X-rays in an electronic file rather than in a manila one. Many electronic health record software systems also let physicians send reminder notices about routine screenings, like mammograms and colonoscopies, and submit prescriptions electronically to pharmacies. Presi-



Indiana paramedic Nicole Brown demonstrates mobile access to a health exchange.

dent Obama has called for all physicians to be keeping electronic records within five years, and the stimulus bill provides both sticks and carrots: financial incentives to purchase the software (which can run upward of \$25,000 per physician, not counting maintenance) and reduced Medicare reimbursement for those who don't get on board.

An electronic health exchange is like a database in which all medical personnel who might encounter a patient are working from and updating the same file. It's a way for consumers who might see multiple physicians to know that all their records are in one place and that a new doctor or specialist has access to their entire history. This already happens within multi-physician practices, like the Partners network; if your primary care physician at Brigham and Women's sends you to an orthopedic surgeon in the same hospital, that specialist can access any test results your doctor might have ordered and later add a follow-up about your tricky knee. But if your doctor has a solo practice, or just one partner, then any specialist or hospital you go to won't have access to information about your allergies, blood type, or past X-rays. It's usually incumbent on you to make sure essential information gets faxed from one place to another—or you'll have tests and procedures repeated.

Marc Overhage, a physician who serves as CEO of the

Indiana Health Information Exchange, says a study there showed the exchange saved \$26 per emergency room visit, largely by reducing the need for duplicative tests that can be avoided with historical patient information. "We spend a lot of time and energy seeking and gathering data to help us make informed decisions," he says. "We often repeat tests—expensive tests and risky tests—

A lack of data delays care and adds uncertainty.

because we don't have the data. It delays care, it adds money, and it adds uncertainty."

Exchanges, in a perfect world, cut down on that uncertainty. But Micky Tripathi, Overhage's predecessor who is now at the Massachusetts eHealth Collaborative, acknowledges that getting comfortable with sharing information across practices requires getting comfortable with a different approach to medicine.

"Both my parents are physicians, and they'll tell you they are trained to deal with the problem in front of them with the information they have immediately available to them," he says. "They're not trained to think of themselves as part of the system, to be able to reach out. They're trained to imagine they're on a desert island with

a patient who has a scrap of paper listing her pills.”

What that means is that many physicians now focus more on treating the symptoms or questions at hand than on assuming responsibility for a patient’s overall well-being.

“I tell you that you have a suspicious lump in your neck, and you need to go see a specialist. I don’t know if you’ve gone,” says Tripathi. “Then, conversely, you show up at a specialist’s door. National data shows that something like 20 to 30 percent of the time, the specialist doesn’t know why you’re there. And 25 to 30 percent of the time, the specialist doesn’t send a message back to the doctor who referred you.”

Just as preventative medicine changed the nature of physicians’ work—Americans now routinely go to the doctor when we aren’t sick—exchanges require another kind of philosophical shift. Or perhaps it’s more accurate to say exchanges reflect doctors’ changing attitudes. Just as it’s no longer OK for a teacher to say, “Well, he came to class the first week but not again, so he must not want to learn,” health-exchange advocates think it’s not OK for doctors to say, “Well, he came in for a prescription and we never saw him again.”

“We could call them,” says Overhage. “Certainly, patients

need to have some of the onus, but we have to have some ownership as well.”

SECURITY IS PARAMOUNT

Indiana created its exchange largely without state-government involvement; the effort was driven by affiliates of the Indiana University School of Medicine and focused on creating financial incentives for doctors to join. The exchange has data on 5.5 million people but, Overhage is quick to note, most records don’t tell a complete story. If even one provider—or one laboratory that conducted one test—isn’t in the exchange or joined it recently, then a patient’s record may be incomplete. “It’s the Swiss cheese effect,” says Overhage. “There are holes. But these days, there is more cheese than holes.”

The use of electronic records is a prerequisite to creating a health exchange. Starting in 2015, Massachusetts doctors must do both: switch their records from paper to computer and also share patient information through the exchange. But even when the last manila folder hits the last recycling bin, the exchange can’t work unless all software systems (existing and new) are interoperable. While large providers and insurance companies have handled



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claims electronically for three decades in Massachusetts, providers haven't been connected to each other. "We have to make sure we have an information highway that works," says Health and Human Services Secretary Judy Ann Bigby. "The state is taking on the responsibility for making sure that we don't have individual doctors in their office who can't share the information."

David Delano is in charge of information technology for the North Adams pilot program. With 13 practices and Northern Berkshire Hospital participating, it contains the records of 46,000 people in the Berkshires. Like Overhage, Delano cites a "Swiss cheese" effect—one he hopes a statewide system will eliminate. "The ideal is, everyone's on it, and everyone is using the same communications standards," he says. "If a patient goes to the ER, a nurse there can pull up the patient's record. Many times, people show up in the ER and they're stressed, they're injured, they don't have all the info. This gives us a way to jump-start the process."

But while electronic exchanges may allow for better teamwork, some say the only way for them to be truly effective is for every single provider in the country to access a single system. Jacob Appel, a physician at Mt. Sinai Hospital in New York who is also trained as a lawyer, believes an effective system would pose too many security risks, but a system with stricter access controls would not be effective. "The only way it's efficient is if it's interoperable for everyone," says Appel. "By a rough estimate, that means 12 million people"—every pharmacist, doctor or emergency responder in the nation—"would have to have access to your record."

The pilot exchanges in Massachusetts require passwords, and anyone viewing a patient record must enter a reason for the visit. Patients can also find out who viewed their information. The federal legislation authorizing stimulus funds for health technology requires that patients be notified of a breach in their electronic information.

But Appel says knowing that someone's snooped on you—that your pharmacist mother-in-law in Nebraska now knows about your recent drug-rehab treatment or your Viagra prescription—is small consolation once the snooping has occurred. And he is not comforted by the idea that many exchanges, including the North Adams program and Indiana's mobile access, show only partial information and do not include, for example, a doctor's private notes after a conversation.

"The less information, the less useful. The more information, the more dangerous," says Appel. "If I were to dose most medications, I'd want to know how much alcohol a patient consumes typically. If you delete alcohol use

that may be in a physician's notes, there's no way I can prescribe. Even something as basic as whether a patient is pregnant can radically change the course of their treatment, and that's not something people want anyone to know until they're ready to tell them."

Appel says that what concerns him most are hackers: the possibility that the medical records of an entire hospital or state or country could be downloaded and posted on the Internet. If your credit card information is compromised in a T.J. Maxx-style breach, you'll face a bureaucratic nightmare, but will (usually) be able to sort out your credit record. If your medical records are compromised, you can never make your co-worker or potential new boss *not* know something about you they know.

"There are few things in the world more private than your medical record," says Appel. "It's kind of terrifying."

As Massachusetts moves toward a working health exchange, Bigby says security will be paramount. "We have to put in certain procedures to ensure only people who need to see it have access to it, and ensure we have firewalls and other type of security," she says.

Indiana's EMTs have a three-step password process they go through each time they want to access the system, and every visit is logged. "You can't just look someone up

12 million people, including every doctor and EMT in the nation, could get access to your medical records.

randomly," says Tom Arkins, who works in emergency medical services.

For him, and other medical professionals in Indiana, the idea of sharing clinical information electronically is no longer new and strange. Extending access to ambulances felt like the natural outgrowth of a system they say is working well: making for quicker treatment, fewer expensive tests, and less chaos in the emergency room. These are all compelling results, one Massachusetts official hopes to replicate here. But doing so requires a leap of faith not everyone may want to take—namely, that a hacker-proof system can be built and that the new system's benefits will outweigh its inherent risks.

Still, six months after the first ambulances acquired mobile access, Arkins says his office has not heard much in the way of privacy concerns from citizens, whether because they are accustomed to electronic sharing or because of the circumstances in which they encounter it.

"When people call 911, there are so many other things on their mind," says Arkins. **CW**

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BY BRUCE MOHL

PHOTOGRAPHS BY MARK MORELLI

EVERY TIME ONE of the condominiums at Flagship Wharf in the Charlestown Navy Yard changes hands, the Boston Redevelopment Authority takes a piece of the action.

Unit 723, for example, has been sold five times since it first went on the market in 1993, including once by former Red Sox shortstop Nomar Garciaparra. The BRA collected almost 4 percent of the initial sale price and 2 percent every time thereafter, for a total of about \$50,000. For all 200 luxury condominiums in the building, the BRA pocketed an estimated \$4.5 million in so-called resale payments, an amount that will keep growing as long as the building remains standing and the units keep turning over. In essence, Flagship Wharf is a never-ending money machine.

The resale payments are a unique invention of the BRA, highlighting the agency's ingenuity and its daring. The resale payments ingeniously promote development by having the BRA take less money upfront for land it sells, leases, or clears for development, which makes it easier for a project to get off the ground. The agency recoups its



THE BRA: A SPECIAL REPORT

Under the BRA's resale payment initiative, condo buildings like Flagship Wharf in the Charlestown Navy Yard have become never-ending money machines.



money over time from subsequent condo owners who not only weren't involved in the original deal, but may not have been born yet.

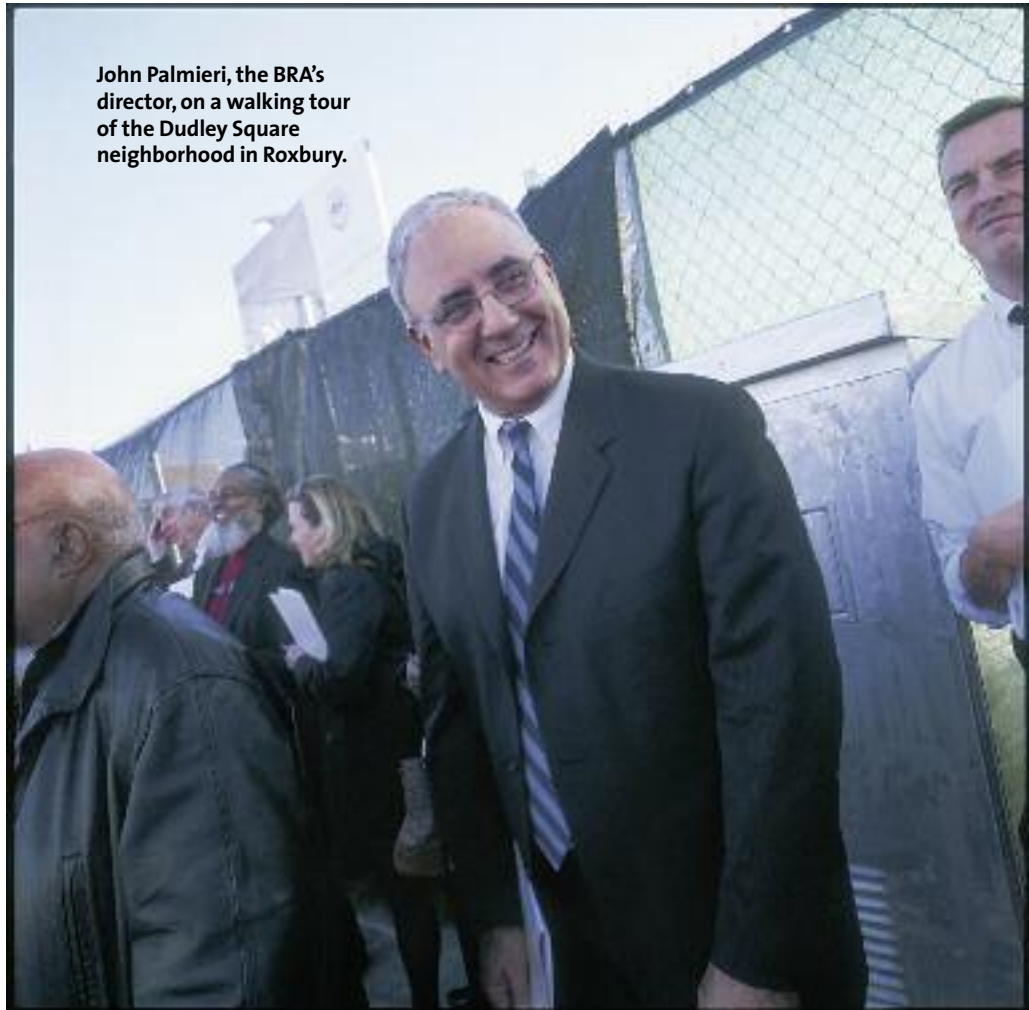
The arrangement is daring because it is so similar to a real estate transfer tax, which the BRA doesn't have authority to impose. The agency inserted language creating the resale payment into the original deed with Flagship Wharf's developer and mandated that the same language be incorporated in the deeds of all future condo owners. Some of the owners grumble that they are being taxed unfairly, but no one has challenged the payments in court. The BRA, meanwhile, is now collecting resale payments at about 25 properties across the city. The payments rise and fall with the economy, but in good years the BRA takes in \$1.3 million.

The resale payments are emblematic of an agency widely viewed as one of the most powerful of its kind in the nation. The BRA can seize property by eminent domain, decide what gets built and where, and hand out economic development grants and loans to businesses, often on extremely favorable terms. The BRA is financially independent, leveraging the projects it oversees and the nearly \$1 billion worth of property it owns to fund its \$50 million budget.

The quasi-public agency is also unusual in that it operates a lot like a private business. It pays its employees well by government standards, and they work with an entrepreneurial flair rarely seen in City Hall. The resale payments are a good example of that flair. The payments are a smart move for an agency trying to cover its costs and help developers get their projects built. But the fact that the payments go on in perpetuity, tapping owners not part of the original deal, strikes many as unfair, an indication the agency cares more about deals and developers than regular Boston residents.

Sherry Grancey, who has paid resale payments herself as an owner at Flagship Wharf and also listened to the

John Palmieri, the BRA's director, on a walking tour of the Dudley Square neighborhood in Roxbury.



complaints of others as a Charlestown real estate broker, says the fees don't sit well in the community, in part because none of the money comes back to improve the shipyard but instead goes into the BRA's coffers.

"At one time I suppose the fee made sense, but now it just keeps going on and on," Grancey says. "I feel the BRA steps way beyond its bounds."

ED LOGUE'S BRA

The BRA was officially created in 1957, but it wasn't until three years later, when Boston Mayor John F. Collins hired New Haven city planner Edward J. Logue as director, that the agency became a dominant force in Boston. Logue was fond of saying he didn't like to generate plans that wouldn't get built, so he demanded as a condition of his hiring that the city's planning agency be rolled into the BRA, giving the agency the power to not only seize land by eminent domain, but also to dictate what got built on it.

Brilliant and sometimes brash, Logue came to personify the BRA. Boston in 1960 was stagnant. Logue recruited top professionals to work for him, churned out visionary plans for the city, and used his agency's power and his own political skills to reinvent Boston. He replaced Scollay Square with Government Center and the new City Hall, redeveloped Faneuil Hall and Quincy Market, and completed the Prudential Center. In 1967, he used his BRA post as a springboard to run for mayor, but he failed to make a strong showing and left for New York.

As Boston emerged from the economic doldrums and began to prosper, so did the BRA. In a city where virtually every development deal requires BRA approval, the agency became a powerbroker. In 1993, it dramatically expanded its field of operations, merging with the city's economic development agency, the Economic Development Industrial Corp. The acquisition gave the BRA the power to hand out loans, to issue bonds, to oversee job training, and to run the city's Marine Industrial Park.

The BRA today is in many respects the fulfillment of Logue's vision, an agency with more control over planning and development than any other similar agency in the country. In San Francisco, by contrast, there is an independent redevelopment authority, but planning and economic development are overseen by separate city agencies. Economic development is handled by the mayor's Office of Economic and Workforce Development, and the city's planning department is overseen by a seven-member commission whose members are appointed by the

The lack of checks and balances became an issue in the campaign for mayor last fall.

mayor and the San Francisco Board of Supervisors.

John Rahaim, San Francisco's planning director, said his city's approach is full of checks and balances, but he says the decentralized approach often means his planners are not attuned to what it takes to actually get something built. "The BRA can not only do planning but buy and sell land and make things happen," Rahaim says. "The disadvantage is the lack of checks and balances."

The lack of checks and balances became an issue in the campaign for mayor last fall. All three of Mayor Thomas M. Menino's challengers called for the abolishment of the BRA. They said the agency was too powerful, too focused on downtown, and plagued by conflicts of interest with city planners working alongside those in charge of pro-

moting development.

"We're going to have a stand-alone planning department that puts the community first when it comes to development," said City Councilor Michael Flaherty Jr. during his first one-on-one debate with the mayor. City Councilor Sam Yoon, another of Menino's challengers, said in an interview after the election that the BRA often seems more interested in its own bottom line than the city's needs. "It's like the military industrial complex," Yoon says. "As a beast, it constantly needs to be fed."

The BRA campaign rhetoric never caught fire with voters, but the accusations so alarmed city officials that they urged Alex Krieger to weigh in. Krieger, a respected faculty member at the Harvard Graduate School of Design and a founding principal of the planning and design firm Chan Krieger Sieniewicz, wrote an op-ed piece about the BRA for the *Boston Globe* but ended up never submitting it.

In the article, which Krieger shared with *CommonWealth*, he said the BRA is viewed as "the gold standard" among city planning agencies throughout the country and the world. He praised the BRA's skill in mediating what he described as the often-conflicting goals of community planning and economic development, and he said the agency deserves a lot of the credit for transforming Boston from a "dispirited and emptying old industrial port to one of the most admired, livable, vibrant, and economically stable cities in America."

Krieger chalked up many of the complaints about the BRA to those frustrated by the agency's decisions. "We have all left BRA meetings muttering under our breath, convinced the BRA is the obstacle to progress," Krieger wrote. "Disagreeing with an action, or inaction, by the BRA does not justify questioning its unique organizational structure or powers."

Kairos Shen, the BRA's director of planning, says the agency's consolidated power is a plus, not a negative, in doing its job. "We can act with less bureaucracy," he says. "It doesn't mean there's less accountability, just that there's less red tape."

John Palmieri, the tall, soft-spoken director of the BRA, says that when he arrived at the agency in late 2007, he knew it had a reputation "as being less than open." He says that characterization is unfair; nevertheless, he has tried to change it, by including more financial information about the agency in its annual report, holding board meetings in the evening rather than during the day, televising the meetings on local cable, and trying to post more information about the agency's decision-making process online.

Several developers contacted by *CommonWealth* didn't question the BRA's powers, only its willingness to use them. These developers, who asked not to be identified because they often have dealings with the agency, grum-

bled that current BRA management lacks the vision and the guts to push through projects in the face of opposition from city residents. “On paper, the BRA’s independent,” says one of the developers, “but in reality everything is being run out of the mayor’s office, and that slows everything down.”

Tom Keane, the former city councilor who now heads the Boston Society of Architects, says the BRA has plenty of faults, but he thinks it would be better to fix them rather than scrap the agency entirely. “You know how they say democracy is the worst form of government except for all others?” he asks. “I feel the same way about the BRA. It’s the worst form of development except for all others.”

OFF BUDGET AND ENTREPRENEURIAL

During one of last fall’s mayoral debates, Menino fended off the calls for elimination of the BRA by saying that it would be a waste of money to scrap the agency and replace it with a series of city departments. “The BRA is off budget. It doesn’t cost the city anything,” he said.

The BRA doesn’t have a line item in the city budget, but it occupies the ninth floor of City Hall rent free, it administers bond money raised by the city, and it pockets the occasional indirect subsidy. In 2006, for example, the BRA purchased a number of parcels of land in Roxbury from the city for \$1, grouped those parcels with others it acquired on its own, and sold all of the land for \$2.4 million to the Salvation Army of Massachusetts, which is building a community center. Menino initially required that any proceeds from the sale of the city parcels go to the city’s Neighborhood Housing Trust, but a year later he dropped that requirement and let the BRA keep the money.

In general, however, the BRA is economically self-sufficient. It relies in large part on income from property it leases at the Marine Industrial Park in South Boston and the Charlestown Navy Yard, parking revenues from a lot at Sargents Wharf and a garage in the Marine Industrial Park, one-time development deals, and the ongoing resale payments. It also owns nearly \$1 billion of property in Boston, including City Hall Plaza and Christopher Columbus Park.

The agency’s annual report says the BRA took in \$58.7 million in fiscal 2009 and spent \$65 million, for a loss of about \$6 million. It was the second straight year the agency incurred a \$6 million loss. The BRA covered the losses by tapping reserves. The annual report said the agency had assets of \$35.7 million at the start of this fiscal year.

To return the agency to profitability, Palmieri says he

is paring back spending this year to \$50 million and eliminating 35 staff positions, a reduction of 12 percent, bringing the total to 258. The annual report says payroll spending will drop to \$24 million this year, but that still works out to an average salary per employee of \$93,000.

Yoon, the former mayoral candidate, says the BRA’s financial assets make it a cookie jar for the mayor, from which he can dispense financial goodies to businesses with little oversight. “It’s the mayor’s funny money,” Yoon says.

During last year’s mayoral campaign, for example, Menino decided he wanted to give a loan to the *Bay State Banner*, an African-American newspaper that shut down last July after saying it could not afford to keep operating. A nonprofit affiliate of the BRA subsequently approved a \$200,000, two-year, 9 percent loan for the *Banner*, which resumed publishing in August. The newspaper, which suggested in an editorial in April that it was time for Menino to step down, made no endorsements in the primary or general election.

Melvin B. Miller, publisher of the *Banner*, says the loan had nothing to do with his editorial stance. He says he never intended to endorse in the primary and decided not to endorse in the final election after Boston’s black community overwhelmingly backed Menino in the primary. “The people had rejected my thinking,” he says. “There was nothing to be gained by endorsing Flaherty.”

The BRA is self-sufficient, relying on income from parking fees, leases, development deals, and resale payments.

The Boston Local Development Corp., which issued the *Banner* loan, is essentially a bank staffed by BRA employees. It oversees a revolving loan fund staked originally with federal grant money. Between 1999 and 2009, it gave loans to 99 companies, everything from hair salons to laundromats to small biotech firms. Loan terms vary, with some recipients paying hefty interest rates and others paying no interest or principal at all for years. A few of the businesses that received loans have gone belly up, including C.F. Donovans, a Savin Hill restaurant that attempted to open a second location in Hyde Park with \$200,000 in loans from the Boston Local Development Corp. The BRA affiliate is now seeking to recover its losses in court.

The most generous loan of all went to the Boston Children's Museum in 2007. The BRA gave \$900,000 to the Boston Local Development Corp. and told it to loan the money to the museum, which was raising funds for a \$47 million renovation. The loan carried a 50-year term at a 1 percent interest rate, with no interest or principal due until the end of the 50 years. "We had a little extra money in the cookie jar then," says Bob Luisi, the BRA's director of administration and finance.

The BRA has also given a total of \$1 million over the last three years to Boston World Partnerships, a nonprofit corporation launched by former BRA director Mark Maloney. Maloney, who is taking no salary at the firm, is building an online networking and marketing tool for the city of Boston, leveraging the expertise of current and former Boston business people as ambassadors for the city. Menino and BRA director John Palmieri serve on the nonprofit's star-studded board.

Palmieri says Boston World Partnerships will help promote the city and attract people and businesses willing to invest here. He says the BRA money was seed money to get the company up and running, and now it has to fend for itself.

"It's money well spent," he says.

RESALE FEES

Revenue opportunities at the BRA come in all shapes and sizes. They vary from one-time payments from developers (Equity Residential paid \$2.6 million to the authority in 2006 as part of a "regulatory agreement" covering a West End project) to voluntary payments from building owners (\$1 million from the owner of 1 Beacon Street in connection with the transfer of a special tax arrangement) to a 20-year, \$18.5 million mortgage (paid by the owner of Rowes Wharf to the BRA in return for the ground lease under the building).

Resale payments are not as big as these revenue initiatives, but they are the most unusual. The payments were the brainchild of Paul McCann, one of the most influential BRA employees in the agency's 53-year history. He started at the BRA in 1958, worked with Logue during his tenure there, and for much of his career was either the top aide to the director or the acting director. He retired in 2005, but didn't actually leave until last year, after the *Boston Globe* reported that he was being paid \$162,000 a year as a consultant to the agency—which appeared to violate a state law prohibiting public sector retirees from earning more than their salary prior to retirement.

The Journey Never Ends.

Massachusetts General Hospital and Brigham and Women's Hospital have been the sites of many important medical breakthroughs. Essential work in the journey to fight disease and improve the quality of care to all patients continues to this day. Both hospitals are ranked in the top ten in USNews & World Report's annual listing of best hospitals.

1846 First public demonstration of ether use during surgery

— *Massachusetts General Hospital*

1896 First use of X-ray image for diagnosis in the U.S.

— *Massachusetts General Hospital*

1929 First use of iron lung to save polio victim

— *Brigham and Women's Hospital*

1954 First successful human organ transplant

— *Brigham and Women's Hospital*

1962 First successful surgical reattachment of severed limb

— *Massachusetts General Hospital*

1984 First heart transplant performed in New England

— *Brigham and Women's Hospital*

1993 Discovery of genes responsible for Huntington's disease and inherited ALS

— *Massachusetts General Hospital*



1998 First successful transplant of kidney with bone marrow, removing long-term need for anti-rejection drugs

— *Massachusetts General Hospital*

2003 Development of CRP test to predict risk of heart attack and stroke

— *Brigham and Women's Hospital*

2004 First quintuple lung transplant performed in the U.S.

— *Brigham and Women's Hospital*

2008 Development of microchip device to detect rare, minute cancerous tumor cells in bloodstream of cancer patients

— *Massachusetts General Hospital*

2009 Partial face transplant, only the second ever in U.S.

— *Brigham and Women's Hospital*



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CHARLESTOWN

- Owned by BRA
 - Properties where BRA is collecting resale payments
 - Both of the above
- City Hall Plaza
 - Christopher Columbus Park
 - Boston Marine Industrial Park
 - Charlestown Navy Yard (various properties)
 - Sargents Wharf
 - Old City Hall (45 School St.)
 - Long Wharf and nearby mooring areas

The long reach of the BRA

BOSTON HARBOR

TOP 10 BRA TENANTS

TENANTS	ANNUAL RENT
China Trade Building (Tenants are two state agencies)	\$1,712,939
Boston Freight Terminals/Cargo Ventures (Marine Ind. Park)	\$1,110,500
Massachusetts Port Authority (Marine Ind. Park)	\$918,258
Zoom Group LLC (Marine Ind. Park)	\$634,214
Boston Harbor Partners/Millennium (Marine Ind. Park)	\$587,500
Massachusetts General Hospital (Charlestown Navy Yard)	\$495,490
Bank of America Pavilion (Concert Stage, Marine Ind. Park)	\$390,487
Coastal Cement Corp. (Marine Ind. Park)	\$354,693
Harpoon Brewery (Marine Ind. Park)	\$348,058
John Nagle Co. (Fish processor, Marine Ind. Park)	\$255,939
TOTAL	\$6,808,078

BRA PARKING REVENUE

PARKING	FY09 REVENUE
Marine Industrial Park	\$2,500,000
Sargents Wharf	\$2,000,000
Tremont Street	\$500,000
Fulton Street	\$170,000
TOTAL	\$5,170,000

SOURCES: BOSTON REDEVELOPMENT AUTHORITY; SUFFOLK COUNTY REGISTRY OF DEEDS. GIS DATA FROM THE CITY OF BOSTON. NOTE: THE BRA ALSO OWNS OR MANAGES SOME PROPERTIES IN AREAS NOT SHOWN ON THE MAP.

3

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McCann says he came up with the idea for resale payments as a way of kick-starting development projects. The long-term revenue stream, he says, was merely a way for the BRA to recoup its costs. The revenue stream tends to jump when a condo project first comes on the market; otherwise, the payments rise and fall with the economy. In recent years, resale payments dropped as low as \$309,000 in 2003 and went as high as \$1.36 million in 2007. They were \$650,000 last year, according to BRA officials.

Surprisingly, BRA officials say they don't keep a list of the properties that yield resale payments, but interviews with agency officials and research at the Suffolk County Registry of Deeds indicate the payments are now collected at about 25 properties across the city. Some are large condo developments like Flagship Wharf, Parris Landing, and the Basilica in the Charlestown Navy Yard; Atelier on Tremont Street; and The Metropolitan in Chinatown. Condos at some of these developments sell for more than \$1 million.

Resale payments are also collected on more than a dozen smaller-scale condo developments and homes in Charlestown, the South End, and Roxbury. Some of these projects were built on land that originally belonged to the BRA, but many involved parcels that were sold by the city years ago for a pittance, with the restriction they remain open space. The BRA removed the restrictions so the land could be developed.

It's not unusual for an agency like the BRA to charge top dollar for land it sells to a developer or for eliminating land restrictions that bar construction. After all, the agency represents the public and is selling a highly valuable commodity to a developer who is out to turn a profit. But the BRA's resale payment changes the dynamics of the transaction to the benefit of the developer. Instead of charging only the developer for land or the right to build, resale payments shift a significant portion of the tab on to future owners.

The BRA has no handbook on resale payments. The terms, for example, are not standard from one project to the next. In most cases, the BRA collects 4 percent of the gross sale price when a developer initially sells a condo unit and 2 percent on all subsequent sales. But on some projects the BRA takes less. At Atelier, the Ronald Druker building on Tremont Street, the BRA took nothing when the developer initially sold a condo unit, collected 1 percent on the first resale, and collected 2 percent on subsequent resales. BRA officials say resale payments vary based on what the developer is putting into the deal.

"It's basically whatever the market will bear," says Lawrence DiCara, a real estate attorney with Nixon Peabody LLC and a former city councilor. "The city gets whatever it can whenever it can."

Sometimes the BRA doesn't even abide by the terms it

originally negotiated. Flagship Wharf's developer, for example, was required to pay the BRA 4 percent of the gross sales price on the initial sale of condo units. But when both the developer and the BRA encountered financial difficulties in the early 1990s, the BRA agreed to accept less than 4 percent in return for a lump-sum advance. The lump-sum agreement was not filed with the Suffolk County Registry of Deeds and BRA records are incomplete, but it appears the authority accepted somewhere between \$1.3 million and \$2.1 million, well below the \$2.8 million the agency would have received had it waited for each unit to sell, according to an analysis of Flagship Wharf condo sales by *CommonWealth*.

When its finances are tight, the BRA also negotiates advances on its resale payments with developers. According to agency officials, Kensington Investments, the designated developer of a major residential project on

One Boston attorney says the resale payments are 'a tax that wasn't properly ever put before the Legislature.'

lower Washington Street that has yet to break ground, agreed to pay the BRA a total of \$350,000 last year as an advance against future resale payments. Kensington and the BRA worked closely on the Washington Street project, fending off legal challenges by opponents.

Kevin McCrea, a strong BRA critic who ran for mayor last fall, told the *Boston Globe* during the campaign that he bid on a BRA project in 2002 to rehab rowhouses in Roxbury. He finished the project successfully but failed to win subsequent BRA contracts. He became convinced, according to the *Globe* story, that development deals were "all about who you know not what you know."

McCrea's 2002 deal in Roxbury involved resale payments. Records indicate he paid the BRA \$20,000 for two three-story brick rowhouses on Highland Street. His construction company agreed to rehab the rowhouses and turn one of them into three condos—two units to be sold at market rates and the other designated as affordable housing. As part of his agreement with the BRA, McCrea agreed to pay the agency 4 percent of the initial sale prices, while future owners of the market-rate units would pay the authority 2 percent. Registry records indicate McCrea sold the three units for a combined \$674,000, of which 4 percent, or \$27,000, would have gone to the BRA.

McCrea declined comment, saying he was too busy.

Developer Edward Fish was exposed to resale payments while building the Metropolitan in Chinatown. He apparently liked the approach so much that he included resale payments as a deal sweetener in the winning bid he submitted to the Massachusetts Turnpike Authority to build the Nautica condo complex near the Charlestown Navy Yard.

Fish did not return repeated phone calls, but a spokesman for the Turnpike Authority said the resale payment has worked well. "At first glance, it seems a little weird, but we found it very interesting," the spokesman said, adding that resale payments are now being incorporated into other projects. The MBTA is also starting to push for resale payments on some of its projects.

Shirley Kressel, a Back Bay resident and one of the BRA's harshest critics, says the resale payments are more than a little weird. She describes the BRA as a "giant tapeworm" gobbling up revenues wherever it goes and likens the resale payments to the fees Southern plantation owners would charge sharecroppers. "We're like a big plantation for the BRA," she says.

Barry Scheer, a Boston attorney who reviewed the legality of resale payments several years ago on behalf of several clients living at Flagship Wharf, says he believes they are an illegal tax. "It's a tax that wasn't properly ever put before the Legislature," he says. "I think it could be attacked successfully."

Scheer's clients never followed through, so the case was dropped. McCann, the former BRA official, says he recalls talk of a lawsuit at Flagship Wharf. He says he met with the condo association to discuss resale payments, after which talk of a lawsuit subsided. Several owners at Flagship Wharf said the potential cost of a lawsuit deterred them.

Another Boston lawyer familiar with resale payments says the BRA is able to assess them only because it's a governmental agency. "Think about it," says the lawyer, who asked not to be identified. "If this fee is legal, then why aren't private developers sticking the fee in their condo deeds and setting up a revenue stream that will come in to them forever? I don't think it passes constitutional muster."

Kevin Morrison, the BRA's legal counsel, says the resale payments are legal. He cites a state statute that says a redevelopment authority like the BRA can enforce restrictions and controls in a deed even if the agency no longer has any title or interest in the property.

"There are always people who say things are illegal," Morrison says. "If there's a challenge, we'll deal with it." **CW**



City workers tap BRA housing program

BY JACK SULLIVAN



From left: Carlton Wharf on Sumner Street in East Boston, Atrium Lofts on Porter Street in East Boston, and Reserve Channel Condominiums, 404 West 1st Street, South Boston.

Bowdoin Place, with its red brick and concrete façade and dark wood trim, sits in understated elegance at the back of Beacon Hill in the shadow of the State House. Some condominiums there are assessed for more than \$1 million, and two-bedroom, two-bath apartments rent for \$5,000 a month.

But not everyone who lives there is wealthy. Like all residential developments built in the city since 2000, Bowdoin Place was required to set aside a percentage of its units as affordable housing under an executive order issued by Mayor Thomas Menino and administered by the Boston Redevelopment Authority. The goal was to make room—even in luxury-residence buildings—for middle income and upper middle income Bostonians who couldn't otherwise buy into the American dream. At Bowdoin Place, that meant 19 condos that normally would

sell for \$500,000 to \$750,000 went for less than half that amount through a lottery open to anyone who met the BRA's income guidelines.

City workers won five, or more than 25 percent, of the 19 units at Bowdoin Place through the affordable housing lottery. In other buildings around the city, the percentage of city workers or their family members owning the BRA's affordable housing units ranges from single digits up to more than 40 percent.

Overall, 10.7 percent of the 421 affordable housing units

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THE BRA: A SPECIAL REPORT

created for ownership under Menino's mandate went to city workers and another 4 percent went to relatives of city workers, according to city payroll and county deed records. The percentage may be higher, but precise numbers are difficult to verify.

What's unclear is whether city workers are getting a disproportionate share of the BRA's affordable housing units. Full- and part-time city workers represent 6.8 percent of the Boston-based workforce and less than 3 percent of the city's overall population. Yet the group of people who would qualify for the BRA program is a far smaller, hard-to-quantify subset of both groups, defined by income and housing needs.

Samuel Tyler, president of the Boston Municipal Research Bureau, said he was surprised by the number of city workers tapping into the affordable housing program. "What we should do is take a look at procedures, what are they doing to advertise? Or is it city employees get an advantage?" he asked.

BRA officials say no one is getting a leg up, that city workers are treated the same as everyone else. The officials note that the city is a major employer in Boston and most of its workers are required to live in the city, giving them a strong incentive to put up with the paperwork and resale restrictions associated with living in affordable housing.

Sheila Dillon, the BRA's deputy director for housing, says city employees for the most part are simply "working stiffs" just trying to find a home they can afford like everyone else. "I've never heard or seen any kind of pattern that makes me think anything underhanded is going on," Dillon says.

Victoria Williams, director of the city's Office of Civil Rights, whose Fair Housing Commission is tasked with monitoring the marketing plans and lotteries for the BRA's affordable units, said no favoritism is shown to city workers, but neither can they be excluded from applying for the units if they qualify in every other way.

"Our goal here is to ensure that housing developments are affirmatively marketed to allow us to have the broadest housing program possible," she says.

'INCLUSIONARY' ZONING

As he entered his second full term in 2000, Menino and his administration were under fire for the flight of young professionals from the city, mostly because of the high cost of housing. To address the problem, Menino signed an executive order adopting "inclusionary zoning," a program that had worked well in other cities. In exchange for allowing developers to construct lucrative market-rate units, the city would require that a percentage of those units be made available at a reduced cost to people who

earned too much money to qualify for traditional affordable housing programs but were unable to purchase units going for a half-million dollars and more.

"We hear all the time, 'You do too much for low income and not enough for middle class,'" Dillon says.

Many other cities have created affordable housing exclusively for municipal workers, but Boston chose not to, fearing criticism.

The city's main affordable housing programs rely on federal or state money and, as a result, are required to target people earning 80 percent or less of the median household income in the area. The BRA initiative, by contrast, uses no government funding and is free to target those earning between 80 percent and 100 percent of the median, or between \$72,150 and \$90,200 for a family of four.

Until 2007, the BRA also made units available to households earning 120 percent of the median household income and, in one instance at an upscale South Boston development, 150 percent of the median income.

Many cities around the country have created some affordable housing exclusively for municipal workers, but Dillon said Boston officials decided against that, fearing criticism. As a result, the program is open to anyone who meets the income guidelines and agrees to a handful of resale restrictions. Those restrictions include a cap on the resale price if a unit is sold and a requirement that the unit be sold to another income-qualified buyer, a provision the city had trouble enforcing in the past. (In 1999,

Menino forced the resignation of then-BRA director Thomas N. O'Brien because O'Brien's chief of staff purchased an affordable housing unit on the Charlestown waterfront even though he didn't meet the income requirements.)

Under the BRA's inclusionary development program, developers are given three options. They can set aside

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13.5 percent of their units as affordable, build a slightly higher number of affordable units off-site, or buy their way out of the mandate. The buy-out option lets developers either pay \$200,000 to the BRA's Inclusionary Development Fund for each affordable unit they don't build or one-half of the difference between an affordable unit and a similar market-rate unit, whichever is higher. The BRA's Inclusionary Development Fund, which has collected \$25 million so far and is still owed another \$10 million, has invested \$19 million in affordable housing projects around the city targeted at low- and moderate-income households.

Now in its 10th year of operation, the mayor's inclusionary development program has created more than 800 units of affordable housing—421 condominiums and the rest rental units.

According to Business and Professional People for the Public Interest, a Chicago-based public policy group which analyzes affordable housing programs, Boston's production of inclusionary units lags behind other communities.

Prior to the recent housing market slump, Boston's program was creating about 121 units per year, roughly one unit per 4,300 residents. By contrast, Denver, which

adopted a similar program in 2002, has created nearly 10 times as many units per year, one for every 481 residents. Sacramento, California, which started its program the same year as Boston, has created 150 units per year, one for every 2,600 residents.

"This is testimony to just how damned hard it is to build affordable housing in Boston," says Barry Bluestone of Northeastern University's Dukakis Center for Urban and Regional Planning.

MATTERS OF ETHICS

Most city workers who buy or rent an affordable housing unit under the BRA's Inclusionary Development Program file an ethics statement with the city clerk's office, an acknowledgment that their purchase could be perceived as a conflict of interest. The practice began in 2003, when Alexa K. Pinard, then a planner with the city's environmental department and now an urban designer at the BRA, sought an opinion from the state Ethics Commission on what and how much she needed to disclose after being certified to buy an affordable unit in the Charlestown Navy Yard.

Ethics officials' advice was that a reasonable person

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could perceive the purchase as a conflict—a city worker certified by a quasi-public agency for a public benefit—and said filing a disclosure would dispel that potential conflict. BRA officials subsequently advised all city workers to file the disclosures if they or certain family members

upper-middle-income. Another 10 filed disclosures indicating they planned to rent BRA-controlled units.

Surprised by the relatively high number, I began reviewing thousands of deeds, certificates, and affidavits on file at the Suffolk County Registry of Deeds to see whether

all those who filed disclosures purchased an affordable unit and whether purchases were made by city employees who didn't file disclosures. (Rentals were impossible to verify because no public record of a renter exists.) I created a database of apparent city workers and family members using city payroll records, probate and civil court records, state records, newspaper clips, phone records, and social networking sites. Fox 25's Undercover investigative team, which

collaborated with *CommonWealth* on this story, also ran scores of names through databases available to them. The names were then sent for verification to the BRA, which had never tracked the participation of city workers in its program, even though the agency requires applicants to disclose whether they or an immediate family member work for the city.

Most Boston workers who buy affordable housing through the BRA file a conflict of interest disclosure with the city.

became eligible for the affordable housing.

I came across the ethics disclosures in researching another story and was intrigued enough to come back and look through them more closely. I discovered that 78 city workers had filed disclosures indicating they or a family member intended to purchase an affordable unit after having been certified by the BRA as middle- or

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BRA officials agreed that 39 city workers and 15 relatives of city workers owned affordable housing units in the inclusionary program. I added eight others to the total—six city workers who bought an affordable unit and filed an ethics disclosure about their purchase and two daughters of city workers who I was able to identify through various records. BRA officials didn't dispute the eight names but said they couldn't verify their accuracy.

Another 12 owners were in dispute. They included nine people I identified as city workers and three I identified as relatives of employees. BRA officials said they could not confirm that five of the 12 were city employees or that three were relatives of city employees. They said the four others were not actually city employees at the time of purchase, even though two of them checked on their housing applications that they were city employees within the last 12 months.

One of the two who identified themselves as a city worker was Kristin Langone, a former City Council chief of staff. She purchased a unit on the top floor of Carlton Wharf in East Boston overlooking the harbor. She filed a conflict-of-interest disclosure a month before her purchase identifying herself as a municipal employee, but BRA officials say she was not on the payroll at the time of the closing.

Another 29 city employees were certified as income-eligible for affordable housing by the BRA but ended up purchasing a unit through another city housing program.

City workers are also not the only public employees buying the affordable units. At Carlton Wharf, Rebecca E. Frawley, the director of the HOME program, which oversees affordable housing in the state Department of Housing and Community Development, purchased a condo on the sixth floor in 2005 for \$230,500. Frawley, one of three state workers who own units in the building, declined comment.

JUST THE RIGHT DEMOGRAPHIC?

The city workers buying the affordable housing units hail from a wide variety of departments. Firefighters, police, and teachers are represented, as are a deputy corporation counsel, aides to the mayor, a city gravedigger, and employees from the Boston Water and Sewer Commission.

Most of the affordable housing units they occupy are in the desirable waterfront neighborhoods of Charlestown, East Boston, and South Boston, rather than in inner-city areas such as Roxbury and Mattapan. Developers, according to officials and housing advocates, want the biggest bang for their market-rate bucks, and that is more likely to come from the higher-income neighborhoods, rather than the low-income zip codes.

Scores of calls were made to the condo owners, as many



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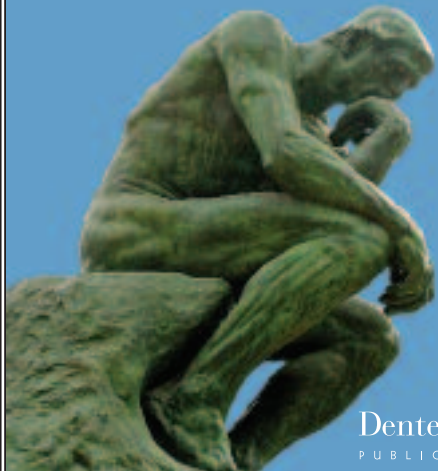
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as five to some of the buyers, but only two returned calls and neither wanted to be identified.

Some of the buyers had familiar last names. Michael M. Kineavy, a cousin of Michael J. Kineavy, the mayor's chief of policy and planning, purchased an affordable unit on Commercial Street in the North End. Michael M. Kineavy's sister is Joanne M. Flowers, a BRA administrative assistant.

The concentration of city workers at the Reserve Channel Condominiums at West 1st Street in South Boston was unusually high. Of the 26 affordable condos there that sold for nearly \$100,000 less than comparable market-rate units, 11 were purchased by city workers or their family members. Two units were purchased by couples where both spouses or partners are on the city payroll.

Many affordable housing lotteries attracted 100 to 200 applicants. At the Reserve Channel condos, for instance, 140 people who were income-eligible filled out lottery applications for the 26 units. One Boston firefighter, who did not want to be identified, said he was initially told he was number 90 on the list. A year later he said he received a call telling him a unit was available if he was still interested.

But the lotteries didn't always yield enough buyers for some units, so they were sold on a first-come-first-serve basis. For example, Tyson Tran, an aide working in Menino's public information office, bought the first of four available affordable units in 2007 at 4040 Washington Street. Tran did not respond to numerous requests for comment.

Ronald J. Gillis Jr., whose company developed and marketed the 28-unit complex at Washington Street and Whipple Avenue, a short walk from Roslindale Square and Forest Hills T station, said not enough people applied for the lottery. He said he was unaware that the first affordable unit buyer was a city worker.

Joe Kriesberg, executive director of the Massachusetts Association of Community Development Corporations, which did a review of Boston's inclusionary development program in 2006, was surprised when told about the number of city workers in the program. As he talked about the number, however, he said he didn't think city workers were receiving special treatment. From his knowledge of affordable housing programs and who could afford to buy the units and then pay the mortgage and condo fees, Kriesberg said city workers were probably just the right demographic for the city's inclusionary development program.

"Municipal workers aren't poor, they're not likely to be in rundown tenements, but they certainly can't compete at the high end of the market," Kriesberg says. "From an income standpoint, they're really right in the sweet spot for this type of product." **CW**



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JEFF SIMON

Position: Director, Mass. Government Land Bank

Salary: \$80,743

Termination from state government: Fired in 1995

Age: 45

Pension payments before reaching age 55: \$275,000



DAVID PETERS

Position: Commissioner, Department of Fish & Game

Salary: \$113,525

Termination from state government: Let go at start of Patrick administration in January 2007

Age: 52

Pension payments before reaching age 55: \$93,600

You win, you're fired

Despite “landmark” pension reform, lucrative perk for those fired from state jobs remains in place

BY MICHAEL JONAS

In mid-June last year, Gov. Deval Patrick and legislative leaders seemed to be tripping over each other to heap praise on a pension reform bill that the governor had just signed. “Welcome to a day we’ve been waiting for for a decade or more,” Patrick told a roomful of lawmakers, aides, and reporters, according to the *Boston Globe*. “Today we answer the public’s call for real reform to our pension system,” said Senate President Therese Murray. House Speaker Robert DeLeo chimed in, calling the bill “a giant step.”

But all the self-congratulation may have been a little over the top.

Among the most prominent pieces of the reform bill was the elimination of a provision of state pension law that had allowed elected officials with 20 years in the state system to begin collecting generous pension payments before the standard retirement age of 55 if they were defeated or simply

opted not to seek reelection. News coverage of lawmakers seizing on the pension perk was a big factor in the push for reform. But all the attention paid to elimination of the lawmaker perk has obscured the fact that state leaders left in place the broader statute that allows all other state workers to cash in on early pensions if they are fired or if their position is eliminated.

Hundreds of state employees—including cabinet secretaries and other high-paid officials—have done just that over the last decade, cashing in on so-called “termination pensions” that put the state on the hook for millions of dollars in added pension payments, often to professionals still in their 40s who go on to land top-flight private sector jobs while collecting monthly checks from the state. Those turning the little-known pension benefit into a lucrative cash cow include former cabinet secretaries and heads of state departments, one of whom is poised to pocket more than half a million dollars before turning 55.

Michael Widmer, president of the Massachusetts Taxpayers Foundation, calls the termination provisions “a total giveaway” and says last year’s reform bill failed to get the job done. “All the publicity was focused on the legislative abuses, but the most extensive abuse has been in the exec-

utive branch,” he says. “The larger problem was totally ignored.”

CABINET WINNERS

The termination pensions have been justified over the years as a means of protecting long-term state workers from being pushed out the door in favor of patronage hires when a new administration takes power or a new boss takes over a department in state government. But in practice the pensions have also been going to top-level executive branch officials—some of them former legislators—who rode up the ladder using political connections but then looked to start collecting generous pensions while in their 40s or early 50s, when the same political spoils system they benefited from turned against them.

In two previous reports, in 2002 (“Pension Liabilities,” *CW*, Spring ’02) and 2004 (“Cahill Says He’ll Tackle Early-Pension Reform Challenge,” *CW*, Winter ’04), *CommonWealth* documented abuse of termination pensions by high-level officials. Along with identifying eight legislators who tapped the pension provision—the one group for which the perk was eliminated by last year’s reform bill—the earlier stories reported on a number of promi-

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nent executive branch employees who had cashed in on the early pension payments. These enhanced pensions allow state workers who are not yet 55 to receive payments equaling roughly 40 percent to 45 percent of the employee's highest salary in state government.

Robert Durand, a former state senator who was tapped in 1999 by his longtime friend Gov. Paul Cellucci to serve as secretary of environmental affairs, was out of a job when Mitt Romney took office as governor in January 2003 and chose to replace him. But it was a soft landing for the Marlborough Democrat, then age 49, who submitted paperwork to begin collecting a termination pension of \$43,229 a year, then left state government to start his own consulting business. The move allowed Durand to pocket more than \$225,000 in pension payments before reaching age 55. Without the generous termination pension formula, Durand would have had to wait until 55 to begin drawing a pension. What's more, his annual pension under the standard calculation used for state retirees would have been \$33,612, or roughly \$10,000 less than he began drawing six years before turning 55.

In the mid-1980s, another former Democratic lawmaker, Timothy Bassett, was appointed by Gov. Michael Dukakis to head the Massachusetts Government Land Bank. When Gov. William Weld chose to replace him in 1996, Bassett, then 47 years old, not only received a \$212,000 severance package from the agency, he applied for and was granted a termination pension of \$38,419 a year.

Other former lawmakers seizing on termination pensions after working their way into high-paying executive branch jobs include Peter Webber, a one-time Republican state senator, and David Peters, a Republican state representative who served as the House minority leader in the 1980s.

Webber left the Senate in 1991 to become commissioner of the Department of Environmental Management under Weld. When he was let go by Romney in 2004, Webber, then 52, began collecting a pension of \$43,998 per year. Peters left the Legislature to become commissioner of the Department of Fish and Game under Cellucci. When he was replaced in January 2007 by incoming Gov. Deval Patrick, Peters, then 52, began collecting \$42,860 per year.

The grand-prize winner when it comes to termination pensions may be Andrew Gottlieb, who was also let go when Patrick took office. He had served as chief of commonwealth development, a "super secretary" position that Romney had established to oversee the state's housing, environment, and energy offices. Gottlieb, then just 43 years old, began collecting \$44,029 per year. Gottlieb is now working with an energy consulting and venture capital firm founded by Doug Foy, who held the common-



ROBERT DURAND

Position: Secretary of Environmental Affairs

Salary: \$111,596

Termination from state government: Let go at start of Romney admin. in Jan. '03
Age: 49

Pension payments before reaching age 55: \$225,000

wealth development post before him. Gottlieb is in line to collect more than \$530,000 in pension payments before reaching age 55. At age 80 he will have collected \$860,000 more in pension benefits than would have been the case if he had to wait and begin collecting a standard-formula pension at age 55.

Gottlieb had accrued 20 years and five days of state service, just barely putting him over the 20-year line to qualify for a termination pension. He cobbled together the 20 years by including two years that he served as an elected member of the board of selectmen in Mashpee, a panel that holds Monday evening meetings about twice per month in the Cape Cod town. What's more, using a provision that allowed elected officials to claim credit for a full year of service if they were in office for as little as a single day during a given calendar year, Gottlieb made his 20 years by getting credit for a full year of service in 1987 even though he only took office as a selectman in May of that year. (The one day/one year perk for elected officials was eliminated going forward in the reform bill passed last June.)

Gottlieb did not return a phone call made to Serrafix, the consulting firm where he now works.

TIMING IS EVERYTHING

In March of last year, as he was under fire for a controversial patronage appointment that was ultimately withdrawn, Gov. Patrick held an unusual Sunday press conference at the State House to issue a call for pension reform. Reacting to recent news accounts of prominent officials obtaining termination pensions after working the system to their advantage, Patrick decried such “gaming of the public retirement system,” which he said undermined the credibility and sustainability of the system for all public workers. “This is unacceptable,” Patrick said in a press release put out by his office.

But only a month earlier, Patrick tapped for a prominent state post a real estate developer who gamed the system in just the way the governor was condemning. Jeffrey Simon, selected by Patrick in February as the state’s stimulus czar, overseeing the distribution of billions of dollars in federal funds, served as director of the Massachusetts Government Land Bank until he was let go in the mid-1990s. The *Globe* reported in February that Simon began collecting a termination pension in December 1995, when he was 45 years old. Simon had collected just over \$400,000 in pension payments when he was brought back into state government last year, according to the *Globe*.

As with Gottlieb, Simon seized on a state law allowing him to count a limited-duty, part-time municipal post in order to hit the 20-year qualifying mark. In Simon’s case it was five years he spent as a \$150-a-year member of the Ipswich School Committee. The Essex County retirement board refused his request to include this part-time service, but Simon appealed the decision to a state administrative law judge who ruled in his favor.

CommonWealth’s 2002 report found that more than 1,000 termination pensions had been granted over the prior 12 years. Of these, fully one-third went to employees who had passed the 20-year qualifying mark by less than a year. In 10 percent of all cases, the employee had cleared 20 years by less than a month. The timing of these cases raised questions about whether some employees were not actually terminated but instead had asked to be

turned loose after hitting the 20-year mark.

One example was Susan Costello, a rising Republican Party activist, whose post as an assistant secretary of human services was said to have been eliminated in 1996 by the Weld administration just two days after she passed the 20-year mark in the state system. Costello was just 42 years old when she began collecting a \$27,483 a year pension. Costello hardly looked like a victim of political purge, however, as she went to work for the lobbying firm headed



Freshman state Rep. James Arciero says public service should not be a way to “hit the gravy train.”

State supervisors are sometimes willing to put off a firing so that an employee qualifies for a termination pension.

by then-Gov. Weld’s former chief secretary, John Moffit.

In the seven years since 2002, an additional 431 termination pensions have been granted by the state retirement board, with more than one-quarter of them going to workers who had cleared the 20-year mark by less than a year. Even in cases where there is no suggestion that the employee sought their own exit, state supervisors are sometimes willing to put off a firing so that an employee qualifies for a termination pension.

In 2003, as part of a wholesale reorganization of the Massachusetts Convention Center Authority, Alan Reid was fired from his position as chief financial officer. But

Reid remained on the payroll until 2004. At his retirement date in June 2004, Reid, then 48 years old, had accrued 20 years and one day of state service, and he started collecting an annual pension of \$42,429. Mac Daniel, a spokesman for the convention center authority, says Reid aided with the transition to a new CFO, but he acknowledges that the unusual arrangement was driven by Reid's wish to qualify for a termination pension. James Rooney, the convention center authority executive director, knew that Reid "needed to hit this pension milestone, and he was allowed to do so," says Daniel.

A similar situation occurred after Michael O'Keefe was elected district attorney for the Cape and Islands in 2002. When he took office in January 2003, O'Keefe opted to bring on someone new to run the office's victim/witness assistance program. But rather than terminate Virginia Bein, who had run the program for several years under his predecessor, the new DA appointed her to a "one-year, temporary position created in order for her to assist with the ensuing program transition," as O'Keefe wrote in a letter to the state retirement board supporting her application for a termination pension.

The retirement board initially balked at approving the pension for Bein, whose one-year appointment gave her

20 years and 21 days in the state retirement system. In a letter to O'Keefe, the retirement board's director, Nicola Favorito, asked him to outline Bein's duties in her temporary position, how her termination came about and "whether her appointment [to the temporary post] was done in contemplation of her retirement." In his reply, O'Keefe outlined her duties and the circumstances surrounding her termination, but he did not address the question of whether the temporary appointment was made with consideration toward her retirement benefits. The retirement board nonetheless approved her pension.

In an interview, O'Keefe acknowledges that Bein, whose temporary post paid less than half what she had been earning, was eager to stay on the office payroll for another year. "I know she wanted to stay on a little longer, and we [decided we] could use her to help the new director and to fill a spot at a lower level," says O'Keefe. "If there's something wrong with that, I would like somebody to point out what that is."

BAY STATE STANDS ALONE

Although it's not hard to see why people like Bein and Reid would do all they could to get to the magical 20-year

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mark, a bigger question is why the state maintains the termination retirement pension at all. In March, when he issued his call for sweeping pension reform, Patrick called for termination pensions to be eliminated for all new state employees. But when he testified two weeks later before the Legislature's Joint Committee on Public Service, Patrick backpedaled considerably, supporting elimination of termination pensions for elected officials but saying only that lawmakers should "tighten up the rules" for all other state workers.

Asked at the time about the reversal, Patrick administration officials said they concluded that termination pensions were important to offer protection for middle-level managers. But if the early pensions are a sensible public-sector policy, the wisdom of such a provision has escaped virtually every other large public pension system in the country. A state commission on pension reform, formed in March in the wake of reports of abuses of the Bay State system, looked at the rules governing the 107 largest state retirement systems outside Massachusetts. The commission found only two—those covering Montana state employees and District of Columbia teachers—that provided broad termination benefits of any kind, and the benefits in these two systems are far more modest than

those here. Montana allows terminated workers to "buy" up to three additional years of service, and D.C. teachers who are over age 55 when terminated receive pension payments calculated as if they were 60.

"It tells me that this is just even more of an outrageous anomaly than I already believed," says state Sen. Robert Hedlund, a Weymouth Republican who unsuccessfully pushed a budget amendment last year to eliminate termination pensions.

The pension commission issued a list of 32 possible further reforms to be considered by state lawmakers. Among them is eliminating the current termination pension provision and in its place granting a terminated employee credit for two additional years of service at the time they begin receiving regular pension benefits. The existing termination pension is "bad public policy," says Alicia Munnell, the director of the Center for Retirement Research at Boston College, who chaired the pension reform commission.

State Sen. Thomas McGee, the co-chairman of the Legislature's public service committee, which plans to propose new pension reform legislation this year, says he's unsure how far such a bill will go in addressing termination pensions. But he acknowledges something must be



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done about cabinet members and other high-level officials seizing on the pension perk. “Those are the ones that make us say, ‘we absolutely have to take a look at this,’” says McGee, who served on the pension reform commission.

The House chairman of the public service committee, Rep. Robert Spellane of Worcester, who also served on the

estimated in getting on everyone’s bad side just to file something that wasn’t going anywhere.” After the Legislature passed the reform bill eliminating the perk for elected officials, Cahill, who is mounting an independent campaign for governor this year, told *CommonWealth* he favors getting rid of termination pensions altogether.

The governor’s office announced in November that Patrick plans to file new pension reform legislation in late January, when he submits his proposed budget for the next fiscal year. However, a spokeswoman for Patrick says it is not clear whether his bill will address termination pensions.

‘I wasn’t interested in getting on everyone’s bad side’ with a doomed bill, says Cahill.

commission, did not respond to repeated phone calls.

In 2004, responding to *CommonWealth*’s earlier investigation, state Treasurer Timothy Cahill, who oversees the state retirement board, vowed to propose changes to rein in termination pensions. But he acknowledged last spring that he had not followed through on that, arguing that resistance in the Legislature would have made any such effort pointless.

“We backed off,” he told *CommonWealth* last May. “We got a lot of pushback from the Legislature. I wasn’t inter-

Freshman state Rep. James Arciero says it’s time to clear the abuse-plagued pension provision from the books once and for all. Arciero, who has filed a bill to end all termination pensions, says public service should not be a way to “hit the gravy train” at an age when most people are in the middle of their working years. “We shouldn’t be handing out these pensions before people are 55 at all,” says the Westford Democrat. “It’s ridiculous, and it’s hemorrhaging the state. It’s another one of these issues we need to tackle to get our financial house in order.” **CW**



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All aboard

Can the new Massachusetts transportation board get things moving?

BY GABRIELLE GURLEY

SEN. STEVEN BADDOUR, the co-chair of the Legislature's Joint Committee on Transportation, was ticked off. The five members of the new Massachusetts Department of Transportation board of directors had been invited to appear before a November oversight hearing called by the committee. Only one showed up. The Methuen Democrat made it clear he wasn't happy. "I wish more of them were here this morning, so I could say this to their faces," he said. The committee rescheduled the group for a December hearing. But less than 24 hours before that session was slated to begin, again only one board member had agreed to appear, leading frustrated lawmakers to postpone the

hearing yet again.

The MassDOT board of directors is now the public face of transportation reform in the Bay State. Board members' reluctance to show their faces early on to lawmakers who are anxious to discuss transportation issues made for an inauspicious start. The recent board no-shows at legislative hearings no doubt had something to do with the chilly reception some board members would have received.

Expectations for the new department, a merger of nearly all the state's transportation-related agencies, are running high. Worn-out roads, decrepit bridges, and almost daily snafus on bus, subway, and train

routes have commuters at their wit's end. Deferred maintenance and repairs are prompting big concerns about safety, especially at the debt-riddled MBTA. And Massachusetts doesn't have enough money to deal with any of it.

The unpaid directors have their work cut out for them if they are going to help guide the Bay State out of this unprecedented infrastructure and finance crisis. Yet there are doubts about whether these people are the right people to handle this monumental job. Lawmakers made it clear they wanted to see fresh faces, well-versed in transportation issues, who could hit the ground running, exorcise the ghosts of Big Dig-era mismanagement, and help nurse the entire system back to good financial health. What they got was a board dominated by individuals with limited professional transportation experience.

Three of the five members are holdovers from boards that had been abolished during the restructuring: insurance executive John Jenkins, the new board chairman,

who served on the Massachusetts Turnpike Authority Board; and corporate attorney Ferdinand Alvaro and hotel and food service workers union president Janice Loux, who both served on the old MBTA board. Only the two new appointees—MIT engineering professor Andrew Whittle, who worked on the safety review of the Big Dig tunnels, and Elizabeth Levin, a transportation consultant—have backgrounds related to transportation matters.

Not only did Gov. Deval Patrick bypass candidates



The new Department of Transportation's board of directors

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proposed by the chairman of the Transportation Finance Commission (which produced a widely praised 2007 report on financing problems) and the T Riders Union (a group of Boston-area public transit advocates), he ignored specific warnings about appointing Loux and any other former board members. There was immediate fire from lawmakers on both sides of the aisle, the Massachusetts Taxpayers Foundation, and newspaper editorial boards.

A *Boston Globe* editorial scoffed at Patrick's claim that his picks were drawing fire because "anything new draws critics." "Actually, governor, it's the prospect of the same old way of doing business that has people worried," said the paper's editorial. The *Globe* said Patrick could have avoided the worst of the controversy by not naming Loux to the new panel. Baddour went a step further and called for her resignation.

"The fact that we got the board we ended up with, that was so disappointing to so many, unfortunately made it easy to criticize," says Baddour.

Unlike many state agencies, transportation has a large reach. Walk out the front door and you'll soon be on MassDOT's turf. Walkers, bikers, drivers, bus, train, plane, and ferry passengers all rely on some segment of the state's transportation network. Kevin Sullivan, secretary of transportation under former governor Paul Cellucci, says it's up to the directors to show their mettle, especially because of the controversy over their qualifications. They have to "really put together a plan to show people that, notwithstanding the critics, this is a serious board that is looking out for both the riders and the taxpayers of the commonwealth and that they are not looking out to protect the status quo," he says. "There'll be a lot of people watching."

MERGERS AND ACQUISITIONS

Public sector boards of directors usually don't command the headlines. But the ongoing transportation missteps, from equipment breakdowns to a succession of short-lived transportation secretaries, have forced the MassDOT board of directors into the spotlight. Over the past 25 years, the state's transportation-related departments have been plagued by mismanagement and financial woes. The MBTA's finances have been on shaky ground; the understaffed highway department survived by pillaging its capital budget to pay for operations; and the Registry of Motor Vehicles succeeded in shortening wait times for its services only to have them creep upward again as the state's budget crisis forced cutbacks. But it was the Turnpike Authority's weak oversight of Big Dig costs and lack of accountability from its managers, culminating in 2006 when a woman was killed by a falling ceiling panel in the Ted Williams Tunnel, that finally destroyed any remain-



JOHN JENKINS Natick, *Chairman*, term expires 2014 • Ex officio member of both MassDOT committees • MA Turnpike Board 2008-2009 • President, West

Insurance Agency, Boston



JANICE LOUX Williamstown, *Vice Chair*, term expires 2012 • Member, MassDOT Labor and Compensation Cmte. • MBTA Board, 1997-2009 • President,

UNITE HERE! Local 26 (Metro Boston hotel and food service workers)



ELIZABETH LEVIN Boston, *Secretary*, term expires 2013 • Chair, Compensation and Labor Cmte., member, Finance and Audit Cmte. • President, Liz Levin and

Company (Transportation, design, environment management consulting company)



FERDINAND ALVARO Marblehead, *Treasurer*, term expires 2010 • Chair, MassDOT Finance and Audit Cmte. • Served on MBTA Board, 2008-2009 • Partner in

charge, Adorno & Yoss, Boston



ANDREW WHITTLE Boxborough, term expires 2011 • Member, Labor and Compensation/Finance and Audit Cmtes. • Member, "Stem-to-Stern" Safety Review (Big Dig)

Panel 2006-2008 • Dept. head, Dept. of Civil and Environmental Engineering, MIT

ing public confidence in the system and forced the Legislature to act.

Some of the system's problems were clearly financial. The various revenue streams—tolls, fares, and the state's gas and sales taxes—no longer met the demands of a modern transportation network. At the same time, management and operations also needed a thorough shake-up, with the boldest idea being to merge all the state's disparate transportation agencies. Initially, Patrick hitched his reform plan to a gas tax increase, arguing that it would pump much needed funds into the system. The Legislature coalesced instead around the idea of pushing a restructuring plan that became known through the shorthand expression, "reform before revenue." Though all parties eventually agreed last year on a small sales tax

increase, portions of which went to MBTA and the Turnpike Authority, there was no appetite for both a significant gas tax increase and a new transportation superagency.

Restructuring ultimately won out, with Patrick signing legislation last June creating the state's new Department of Transportation. The department has already saved millions: \$261 million as a result of a deal with UBS, releasing the Bay State from ill-advised financial agreements between the company and the former Turnpike Authority, and another \$40 million annually by transferring turnpike and MBTA employees into the state health insurance system. Other moves, such as consolidating Registry of Motor Vehicles office space and integrating information technology systems, are shaving off millions more. The savings are all helpful, but they won't be enough to address fully all the department's finance and maintenance problems and offset the eventual need for new revenues.

The merger brought together the former Executive Office of Transportation and Public Works, the MBTA and regional transit authorities, the Turnpike Authority, the

state highway department, the Massachusetts Aeronautics Commission, the Registry of Motor Vehicles, the Tobin Bridge, and some Department of Conservation and Recreation-managed bridges and parkways. (Lawmakers adopted an "if ain't broke, don't fix it" attitude toward

Transportation reform has produced a hybrid entity, one with features of both an independent authority and a state agency.

Massport, which successfully resisted being included in the new structure and was therefore left alone as an independent authority.)

Disappearing with the old regime were the MBTA and the Turnpike Authority boards of directors, as well as several other governing bodies and advisory boards. For some, the old boards were synonymous with failure:

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failure to ride herd on the Big Dig in the case of the Turnpike Authority, and failure to come to terms with a funding structure that crippled the agency in the case of the MBTA board.

In the past, the MBTA's advisory board had the power to veto the MBTA budget. Although the reform law left the advisory board in place, the group lost that veto power under the restructuring, so there is no longer an outside entity to cry foul if the MBTA's numbers don't add up; nor do cities and towns who pay MBTA assessments have any say. This change only adds to the responsibility of the MassDOT board. But the board's Ferdinand Alvaro, who now chairs its finance and audit committee, is prepared to make sure the numbers add up. "I will be having candid conversations with people before the budget is officially presented to the board, and I will not recommend any budget I think is foolhardy," he says.

In terms of governance structure, transportation reform has produced a hybrid entity, with features of both an independent authority and a state agency. Massachusetts lawmakers did this for several reasons. In a pure state agency, the Legislature would be in charge of tolls and fares, and the department budget would undergo the normal appropriations process. But a Deloitte and Touche

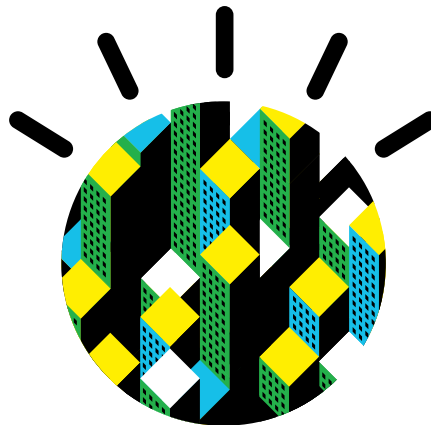
analysis of possible governance scenarios found that "having fare and toll-raising decisions subject to approval of the Legislature will make it impractical to finance against those revenues." Under an authority structure, which lawmakers put in place for revenue matters, those decisions are made by the board of directors, not the Legislature.

In addition, according to state law and administrative policies, Massachusetts can only absorb so much new debt. Transforming the transportation department into a pure state agency would have meant that lawmakers would have to sanction taking on more than \$2 billion in debt from the Turnpike and \$5 billion from the MBTA, pushing the state well beyond those limits. Though the Patrick administration believed that the state could have taken on more debt, lawmakers did not want to take the risk.

At least one potential problem is on the horizon. The staggered terms put in place for board members set up the system for the kind of confrontations that plagued the Turnpike Authority board between new governors and their old appointees—such as Romney appointee Mary Connaughton's various squabbles with Patrick's former secretary of transportation, James Aloisi, or the battles Cellucci appointees Christy Mihos and Jordan Levy had with Gov. Jane Swift over Turnpike toll increases.

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If Patrick wins a second term, this problem won't be apparent for a number of years (unless board members end up disagreeing with the governor over an issue, which poses a different set of problems). If he loses, a new governor won't have a majority on the board until three years into his or her term. Stephen Silveira, the chairman of the transportation finance commission, favored having incoming governors appoint his or her own board. "It's really going to be a big problem sooner rather than later," he says of the staggered-term structure.

If MassDOT were a mature bureaucracy with established policies, procedures, and relatively stable finances, Patrick's board appointees probably would have met with little resistance. However, because of the turmoil of the past two decades, there is a keen appetite for independent directors with transportation-related experience who won't blindly march in lockstep with management. Elizabeth Levin and Andrew Whittle came closest to the types of directors the lawmakers envisioned: experts in transportation finance, planning and policy, and civil engineering.

But the other picks have sparked outrage, especially Janice Loux, the politically connected president of "Unite Here! Local 26," the Greater Boston hospitality workers

union, who was dubbed two years ago by *Boston* magazine one of the city's the 50 most powerful people. Lee Matsueda, the T Riders Union's program director, says Loux's actions didn't match her words when she served on the MBTA board for more than a decade. "We heard a lot of talk about her members who use public transit, [but] when it came to making sure those folks had the service they needed or dealing with the fare increases or speaking out and finding out legislative solutions, I felt like [the actions] were missing."

Loux, Jenkins, and Whittle all declined to comment or failed to respond to multiple requests for interviews.

The Patrick administration has argued that picks from the prior boards offer institutional memory. Moreover, according to Jeffrey Mullan, who took over in November as Patrick's new transportation secretary, two of the holdovers, Alvaro and John Jenkins, were only in their positions for short periods of time and were brought in as "change agents." Bringing on people with 10, 20, or 30 years' transportation experience was not the goal, he says. "When you have a mandate to change the status quo, you are not going to see some of the usual suspects in transportation, and that's the balance we've struck here," he says.

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START THEM UP

Mullan and his senior staff handle the daily chores of implementing the massive reform effort. But unlike the structure of some public authorities, where the chief executive also serves as board chairman, Mullan has no seat on the transportation board. That lets him focus on the weighty task of managing the huge transportation bureaucracy. But the lack of a board seat clearly diminishes the power of the secretary. Ideally, the relationship is a collaborative one, but at the end of the day: Management proposes, the board disposes.

The board of directors is expected to focus on long-range policy and planning, such as strategies to generate new revenues and to fund rail expansion, as well as performance benchmarks. Though directors can delegate some powers to the secretary, they retain responsibility for charging and collecting tolls, developing long-term capital plans, approving budgets, and issuing bonds and refinancing debt for all the transportation departments.

So where to begin? The board needs to come to grips with the “traditional make or buy” decisions, according to Silveira. That is, the department must make a choice between what it can do on its own and the services it must contract out for. There are also big decisions regard-

ing what can be done feasibly to enhance the system versus what needs to be done to simply maintain it.

Election year realities, however, could put a lid on any discussions with lawmakers about the need for new revenues. Fred Salvucci, who was transportation secretary under Gov. Michael Dukakis, believes the new transportation board shouldn't accept that outcome.

“In the abstract, of course, no one wants to raise taxes,” he says. “The question is, in comparison to what? In comparison to a chunk of concrete on your lap? If they make the case graphic enough, they can get some movement.”

Thinking big about transportation is complicated by the need to shore up MBTA finances. With the Turnpike's financial meltdown arrested for the short term (thanks to the UBS agreement) and the other divisions unlikely to cause major problems, the board's first real test comes when the MBTA budget lands on their plates. One-time federal stimulus funds helped plug the fiscal 2010 deficit, but the T's projected gap for fiscal 2011 is approaching \$100 million.

Last fall, Patrick declared any MBTA fare increases or service cuts off the table until safety issues are addressed. So if the new board insists on cutting services or raising fares, those decisions may put the group at odds with



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Patrick and Mullan and force the Legislature to once again confront the issue of new revenues to prop up the T.

Surprisingly, neither Alvaro nor Levin believe that MBTA issues are paramount, nor do they think they should be. “Unless there is some catastrophe, I don’t see that any one department is going to overwhelm us and cause us to focus away from all the other issues we have to deal with,” says Alvaro.

“The board shouldn’t be engaged in the challenge of the minute,” says Levin, the only director who rides the T regularly, adding that the board has to keep tabs on Turnpike toll rates, funding for the highway program, and accelerated bridge repair projects.

Yet, with the MBTA budget due this spring, the board members have to figure out how to make it work. And here’s where getting off on the wrong foot with lawmakers may come back to haunt them. “The biggest problem with having a bad working relationship between the transportation leaders in the Legislature and the T is that [legislators] are not going to be inclined to provide any additional resources to the T, possibly even if the T has implemented all of the reforms,” says Stephanie Pollack, associate director of the Dukakis Center for Urban and Regional Policy at Northeastern University.

SWIMMING IN CONTRACTS

Though big-picture solutions are what everyone is looking for, what often dominates the board’s work is the discussion of detailed contracts, and there are plenty of them. If the board is going to consider other pressing issues in its portfolio, it has to free up time. So the directors voted unanimously to review only major highway, Registry of Motor Vehicles, and aeronautics contracts exceeding \$25 million—as well as “change orders” exceeding \$5 million for work not outlined in an original contract. At the MBTA, however, the general manager can only approve contracts up to \$500,000, so the board must sign off on most T contracts.

From January to October of last year, the now-disbanded MBTA board considered almost 100 financial agreements, discussions that ate up the greater part of its two-hour meetings. “Why on the highway side [staff members] can make \$25 million decisions and on the transit side they can only make \$500,000 decisions has never been explained to me,” says Silveira, the transportation finance commission chairman.

Mullan says the \$500,000 limit is “historical” and may increase after some study so the board can concentrate on major transit concerns. “I don’t think the board is inter-

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ested in spending a lot of time on relatively minor activities, small dollar contracts,” he says. The downside is a loss of transparency, as members of the public won’t be able to appear before the board to raise issues about medium-sized contracts for the smaller projects that get done in-house.

Meanwhile, the board could work more efficiently on multimillion dollar deals if the department supplied more details about them. Heated discussions regularly take place at board meetings about the inadequacy of background materials provided by staff members. At a December board meeting, members cited this in voicing misgivings about three separate \$500,000 MBTA engineering services contracts. Loux complained that she’d been asking for better information “for years.” Alvaro cut to the chase. “The financial impacts we get on every single project are almost useless,” he said. Despite their objections, the board approved the contracts.

STRIKING A BALANCE

To satisfy lawmakers and the public that old ways of doing business are finished once and for all, the board has to hold MassDOT accountable. It’s a delicate balance. If the department provides insufficient data and the board members approve contracts anyway, they’ll be perceived as rubber stamps rather than overseers. If they drill down into the bureaucracy to get answers, they risk being labeled micro-managers by lawmakers like Baddour, who want them to focus on solving key problems and stay out of day-to-day operations.

There are cautionary tales everywhere. At the former Turnpike Authority it was difficult for anyone, including Turnpike board members, to obtain information. James Kerasiotes, the Turnpike Authority executive director in the late 1990s, was especially secretive. Kerasiotes ultimately resigned in the wake of a federal audit that found he hid a cost overrun of more than \$1 billion.

The board has to ask the right questions and not take management’s views at face value, since managers are going to do what they need to do to get a job done, says Connaughton, the former Turnpike board member, who is now a Republican candidate for state auditor. “This new board has to be, or should be, extremely skeptical of what comes before it and approach it from the public’s perspective rather than management’s perspective,” she says.

In the end, the job may be simply too big for a five member volunteer board with significant day jobs. Though the Senate favored an 11-member board, the smaller number prevailed because of concerns about factions forming in a larger group. Alvaro is surprised that so many people are skeptical about the panel. “Do I think we have the firepower to take on these issues?” he

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asks. "Absolutely."

Even so, the biggest problem for the board is the tremendous amount of information they must master in wide variety of areas where management and staff currently have the upper hand. Of the MassDOT board members, Alvaro has the best grasp of the T's financial problems, but he says he is still "on a learning curve" with respect to the other divisions as well solutions to the system's financial troubles. At a November board meeting, Whittle said he's trying to "catch up" on MBTA issues. During a discussion at one recent meeting about the wisdom of \$17 million in improvements to the Fairmount commuter rail line in the current fiscal climate, Mullan patiently had to explain that the project was a Central Artery mitigation requirement, so there would be serious legal consequences with not moving forward with it.

The department plans a retreat for board members to get them up to speed on the vast portfolio they now oversee. Transportation officials also are trying to familiarize board members with agencies they supervise outside Greater Boston like the Worcester Regional Transit Authority, whose administrator gave an overview of the agency at a recent board meeting.

Initially, the state auditor will also provide some additional eyes and ears. The auditor's office is in the process of conducting close-out audits of all the former stand-alone agencies and authorities that have been folded into MassDOT. Meanwhile, Patrick established a 20-member advisory council headed by the Massachusetts Business Roundtable's Alan Macdonald, who served on the earlier transportation finance commission.

The board clearly needs extra support. "It is impossible for five members who are unpaid to give the level of scrutiny that the T board or the Turnpike board traditionally did," says Salvucci. Of the country's 10 largest transit agencies, the MBTA is now one of only two without a dedicated board of directors. (Metro Seattle's mass transit agency is the other.)

The MassDOT board of directors has considerable leverage in the new transportation bureaucracy. Connaughton hopes that one or two of the new directors "really step up" as true public advocates who aren't afraid to challenge management, when necessary. But she has her reservations. "I don't know if that's going to happen," she says, "given that all the board members are appointed by the same official at this particular point in time, which is a such a critical point in time."

Five people certainly cannot save the day. A lot of dust has been kicked up by the furor over the qualifications of the new board. But that controversy will fade to a dim memory if the MassDOT directors propose credible, and politically feasible, remedies for an ailing transportation network in need of more than just a tune-up. **CW**

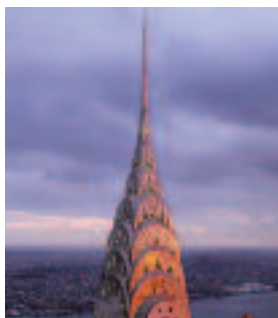
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Hail to the chief

Supreme Judicial Court Chief Justice Margaret Marshall says funding the state court system properly is not a choice but a constitutional mandate



Margaret Marshall ushers me down a series of hallways, turning on lights as she goes. It's nearly 5 p.m. on the 10th anniversary of her appointment as chief justice of the Massachusetts Supreme Judicial Court, and Marshall wants to show me the consultation room where she and her six colleagues deliberate. It's a large wood-paneled room with a fireplace on one wall and a long table down the middle, the same table that Marshall's predecessor, Oliver Wendell Holmes, used for such meetings 100 years ago. Papers are arranged in seven neat piles for the next day's monthly

PHOTOGRAPHS BY FRANK CURRAN

gathering of the justices. Marshall sits at the head of the table and the other six justices, arranged by seniority, sit along the sides. Like a mother hen, Marshall recites the name of each justice and where they sit until she comes to the court's newest addition, Justice Ralph Gants. She calls him "the baby judge."

Traditions are carefully observed when the justices meet, Marshall says. No food, drinks, or aides are allowed in the room. Justices address each other using their titles; first names are forbidden. The justices also dress appropriately. Marshall recalls telling one newcomer to the bench to put on a coat and tie after he came to the meeting dressed casually. As Marshall tells these anecdotes of court life, her pride in the court and its history is evident.

But the job of chief justice is more than writing judicial opinions on some of the most important issues facing the state. She also oversees the entire Trial Court, and she is worried that budget cuts here in Massachusetts and across the country are plunging state court systems into crisis. In a speech to the New York City Bar Association in November, Marshall said state courts handle 97 percent of all litigation in the United States yet are at "the tipping point of dysfunction." She says many state courts are forced to offer "turnstile justice" in the face of shrinking resources and rising case loads, although she tells me that's not happening yet in Massachusetts.

As we sit down to chat in the sitting room outside her office, Marshall, whose opinions and speeches are clearly and beautifully written, confesses she has a tendency to meander during interviews. She offers to condense answers by email if her answers go on too long during our interview. I didn't take her up on the offer, but I did discard chunks of the interview and rearranged the order of some questions to make it flow more smoothly. What follows is an edited transcript of our conversation. Excerpts will also be available on *CommonWealth's* website.

— BRUCE MOHL

COMMONWEALTH: One of your chief concerns is that state court systems don't have a seat at the table when budget cuts are being made, that lawmakers treat the courts like just another state agency instead of a coequal branch of government. Is that intentional?

MARSHALL: I don't think that they intend to treat us like another state agency, but the point I try to make as fre-



quently and as loudly as I can is that we're not a public policy option. I do not want to close day care centers. I do not want to find that people with substance abuse problems cannot get access to treatment programs. That is part of the safety net that we would hope to provide to all citizens. But those are choices that the Legislature has to make. Whether to keep the judicial branch functioning is not a choice; it's a constitutional mandate. The Massachusetts Constitution is the oldest written constitution in the world still being enforced. In that constitution, it calls for an impartial interpretation of the laws and administration of justice. I cannot say to the people of Pittsfield, "Sorry, we're not going to have a courthouse out there, you're going to have to travel to Boston."

CW: Traveling from Pittsfield to Boston is an extreme

example, but Massachusetts has more than 100 courthouses. Couldn't some of them be consolidated?

MARSHALL: One could collapse certain courthouses, although one of the strengths of the Commonwealth's delivery of justice is that you don't have to own a car. Are there ways that we might have to streamline? Yes. But it's not easy and I would think we'd want to do that as a last resort.

CW: Your budget has already dropped by \$50 million this year. If state revenues continue to slump and more budget cuts are needed, what will happen to the state court system?

MARSHALL: It will not be possible to deliver justice in the way that the constitution requires with those kinds of cuts. Chief Justice for Administration and Management Robert Mulligan and I have spent all of the last year try-

**'There has not been
one person hired
in the Trial Court
since 2008 because
we saw the signs.'**

ing to eliminate from the judicial budget all pieces that are not core functions of the judiciary. For example, alternative dispute resolution is one of the most successful ways to resolve disputes, especially civil disputes, in a way that is the least costly and with the greatest satisfaction for litigants. But we eliminated all of our alternative dispute resolution programs. I didn't like doing that. I don't think it's a good policy to do that. But it is, from my point of view, a public policy choice. We eliminated almost all *guardians ad litem*, who play a crucial function, especially with children and the elderly, in terms of making sure that someone is in there representing their views. We've cut back on court stenographers and are using recording devices. Chief Justice Mulligan has many of our court buildings in leased facilities. He has renegotiated almost all of those leases. We have tried everywhere that we possibly can to cut back. We're already down close to 600 people since July 2008. That's a large number of people who have left. There has not been one person hired in the Trial Court Department since October 1, 2008—in fact, March 2008, because we saw the signs coming.

CW: Other state court systems are shutting down one day a month. Will that happen in Massachusetts, too?

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MARSHALL: I hope not. I think there's a recognition by the governor and the Legislature that that would be a devastating blow to the judicial branch. I don't know of any occasion in the history of the Commonwealth where that has happened, and we've been through some tough times before. ...For me, because I grew up in a country [South Africa] that had no system of justice, I am passionate about having a justice system that works.

CW: Do you think the court system should receive a dedicated revenue stream, much like the MBTA does?



MARSHALL: What you're really looking for is stability. There are, in fact, a lot of discussions about whether there should be a minimum percentage of a state budget that should be allocated to the judicial branch without a debate over it. It sounds good on paper. But this is my view: The Legislature is charged with the business of raising taxes and appropriating money. I enjoy my discussions with the Legislature, helping them to understand

what I need to deliver justice. Of course I would feel more comfortable if there was some formula that said if you have *umpety-ump* number of cases in the system, we will ensure that you have a minimum amount of money and then we can talk about add-ons. But I don't think that's how it really works in a democratic process.

CW: What do you want then?

MARSHALL: I have asked for full transferability of all funds within the judicial budget in any given year. That does not mean that I'm asking for a blank check. What it means is, I go to the Legislature and say, "I have this number of judges, etc. I would like you to appropriate adequate funds. But if there is a crisis of some kind, I would like to be able to move funds around. When I come to you next year, I'm going to have to explain why I moved funds around." That's the kind of independence that I think would be most helpful. If I were an elected representative,

On more transparency
in the court system:
'I have moved from
management by anecdote
to management by data.'

I think I would want to know how money allocated to the judicial branch is being spent—for example in connection with my courthouse. I have made transparency and accountability hallmarks of my administration as chief justice in part because when I first became the chief justice, a regular complaint I heard from legislators—and I considered them legitimate complaints—is "we can never get a straight answer." For example, does the Boston Municipal Court have too many employees and the Springfield District Court too few? My answer was always, "I don't know." That was my answer in 2001 and 2002. I can now answer that question. I have moved from management by anecdote to management by data.

CW: How did you move to management by data?

MARSHALL: I became the chief justice in 1999, and we hit our first serious downturn just a couple of years later. It was apparent to me quite quickly that during my tenure as the chief justice, which goes until I reach age 70, I would probably face a number of economic downturns. None has been as serious as the one that we are presently in, but it was clear to me that this was a recycling occurrence. Part of what I tried to do is to make

sure that when I faced the next economic downturn, I had in place the data and the mechanisms to deal with it most effectively. That is one of the reasons why I, with the justices, invited this independent group of business experts [the Court Management Advisory Board] to come in and say how we can deliver [justice] in a more efficient way. I saw that we'd have fewer and fewer resources, and yet I have a constitutional obligation to make sure the court houses are kept open.

CW: What did the data show?

MARSHALL: How many people it takes to process cases. Through the National Center for State Courts, we use the most sophisticated analysis that's available to go into every courtroom and say, if you have an uncontested divorce with no children and no property, how many people does it take to process that case? I can now go on any single day into any courthouse in Brockton or Pittsfield or Fall River or Marblehead and look at how many cases are coming in the door, what kind of cases they are, and how many people I need to process them. Chief Justice Mulligan has said all along, and I agree with him, that we don't want staffing at the 100 percent level, that we want to be reaching so that our judicial staff and our judges have enough resources but not an abundance of resources. We estimate about 90 percent of staffing level. The Land Court is now 40-something percent. We can see in different courthouses—particularly in the probate and family courts, where there has been a huge increase in the number of cases, and in the district court—that we're way below staffing models. It will come as no surprise that the delivery of justice is very people-intensive. Technology can do so much. Buildings can do so much. But basically it's a people-driven business. So focusing on the staffing models gave me the very first way to determine when we are headed into crisis.

CW: You have tried to become more scientific about allocating resources, but it seems like the Legislature wants to micromanage the courts by directing funds to specific courts and specific projects.

MARSHALL: No, they don't want to micromanage. We have far fewer line items. They've given us significant transferability. I think there's a difference between saying you want to micromanage and you want accountability.

CW: So progress is being made in giving court officials more control over their budgets?

MARSHALL: Absolutely. It's a two-way discussion. It's a recognition that the Legislature wasn't doing this out of

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some kind of pique. If the Legislature couldn't find out exactly how the dollars are being spent, of course they are going to micromanage it and make sure they are spent in a certain kind of way.

CW: It seems like the probation system is one area where data isn't driving decisions. Michael Keating, the head of your Court Management Advisory Board, tells me his group was studying the courts and discovered that costs were rising and caseloads were falling or holding steady. He says the group couldn't figure out why until it looked at probation, which accounts for a quarter of the Trial Court budget. They discovered that from FY05 to FY08 the probation caseload went up 2 percent, its employee level rose 10 percent, and its budget increased 17 percent. Also, the Legislature doesn't allow you to transfer funds out of probation in times of crisis and gives you little control over hiring there.

MARSHALL: First, I don't know all of Mike's data because I haven't seen those data. It may be that the cases have declined. I don't know if the nature of the cases has changed. I do know that the Legislature has enacted statutes that require far more extensive monitoring of

certain categories of people. There has not been full transferability, and I would say that it would be helpful to have full transferability in any given year so that when there are shortfalls we can move money around to address the critical needs. I do not know whether or not we would have moved money out of probation because the services that probation provides are critical for our judicial branch.

CW: You've said transparency and accountability are hallmarks of your tenure as chief justice. Yet the probation system, from the outside, seems like a closed system. It's hard for someone like me to get data on how money is being spent there.

MARSHALL: I can't respond to that. When I talk about transparency, I'm talking about how many people are employed, what's the caseload.

CW: You obviously have that information for the courts, but do you have that for probation?

MARSHALL: Certainly, how many people are employed. Absolutely.

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CW: But do you have the level of detail you have on the rest of the court system? For example, can you tell whether probation is overstaffed or understaffed?

MARSHALL: When we did the staffing model for the processing of cases, the same study was not done for the processing of probation. Of course I'm aware of the concerns that are expressed, but if your question is, is there some way that I can't get access to data, the answer to that is no.

CW: Let's shift from the operation of the Trial Court to the SJC itself. You've been chief justice for 10 years. Is there such a thing as the Marshall Court?

On building a collegial atmosphere: 'If a justice wants to dissent from a position, I never try to change their mind.'

MARSHALL: No, I don't think there is. Let me try to answer it this way. This court has been in existence since 1692. When I became the chief justice in 1999, I had served for three years as a judge. As I came on, I faced a seismic shift in the court [due to judicial retirements]. We became almost overnight a very, very young court. I saw as my first and most important function establishing this new court as a collegial cooperative court that delivered judicial opinions of the highest, highest quality. I would hope that when people look at the Supreme Judicial Court, they say this is a great state court. If that is in fact the reputation of the court, and I think it is, it is because of the hard work of the colleagues who have worked with me. Melding this court into a wonderful place that lawyers and judges and the public respect has been one of my priorities.

CW: How do you build collegiality?

MARSHALL: That's an interesting and difficult question. One of the things we've tried to do is not to try to get everybody on to the same position. In other words, if a justice wants to dissent from a position, I never try to change their mind. But what I do try to do is make sure that the majority of the court writes with one voice and the dissenting justice or justices write with one voice.

CW: How does the court craft its opinions?



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CONVERSATION

MARSHALL: I can tell you some of my best prose has hit the cutting room floor because one of my colleagues has said, “I’ll go with you but I’m not going to sign on to this piece.” You have to move your independence to one side, so to speak, and try to reach accommodation with your colleagues. We have a tradition at this court—and it’s one that I strongly support—that, by and large, we only talk collectively. We only discuss drafts together when we’re all sitting around the table, all seven of us. Now, sometimes, if there’s a justice who has a particular expertise in an area and I’ve got a little troublesome issue in a case, I may go to that justice and say, “Help me think through this.” There are those kinds of side discussions, but, in general, immediately after oral argument we all sit down together and discuss the cases argued that day. I then assign the case to one of the jus-

*On shifting alliances:
‘I never know where my
colleagues are going
to come out, which is
part of the fun.’*

tices to write a draft opinion, and the process of what I call “almost joint writing” begins. Somebody prepares a draft and it gets circulated at the same time to everybody, and we sit around the table once a month [to go over opinions].

If you look on my desk, that pile is all draft opinions. I will have read them all. I will have made notes and comments. And we will go around the table in order of seniority. Justice Ireland, Justice Spina, Justice Cowin, Justice Cordy, Justice Botsford, Justice Gants. And everybody will comment. The comments will range from what we call little nits—just editorial things—to very helpful organizational things to real disagreements on particular language or a holding, whatever it is. I have seen cases that have changed, where the dissent has persuaded a majority of the justices to go the way of the dissent. Not often.

CW: The US Supreme Court has ideological factions. Does the SJC?

MARSHALL: The names [of justices on majority and dissenting opinions] change all the time. I never know where my colleagues are going to come out, which is part of the fun. It doesn’t matter if it’s a civil case, a criminal case, or a domestic case, I never know who I’m going to

persuade to be with me or who I'm going to agree with. I don't think there's anybody on this court who is pro law enforcement, or pro press, or pro management. You just don't know.

CW: There really are no ideological splits?

MARSHALL: The Massachusetts Constitution, which was the model for the federal Constitution, gives the governor the right to nominate anybody that the governor chooses to any judicial position. As a practical matter, since Gov. Francis Sargent, every governor has used what is in effect a merit selection panel by executive order. It's not required by the constitution. It's almost impossible to tell whether a justice has been appointed to the court by a Republican governor or Democratic governor based on the decisions. [Marshall was appointed to the court by Gov. William Weld and named the chief by Gov. Paul Cellucci.]

CW: Do governors ever ask you for your opinion on whom to appoint?

MARSHALL: Yes, and I never tell them. Never.

CW: Do they all ask you?

MARSHALL: The governor's legal counsel may ask me my views on particular people. If I have them, I'm happy to express them. But I always wait to be asked. With appointments to this court, I have always taken the view that that is absolutely the governor's choice. I do not want to be suggesting Candidate A rather than Candidate B and then getting Candidate B. I just think that would be very awkward.

CW: In one of your recent speeches, you talked about the Quock Walker case, in which the SJC ruled some 90 years before the Civil War that slavery violated the Massachusetts Constitution. Do you think that your ruling on same-sex marriage will be looked back on as equally momentous?

MARSHALL: I don't know the answer to that. I also don't know if there are other cases that, when the history is written, people will say that was a groundbreaking case. But the slavery case was obvious. It was such a marked shift.

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CONVERSATION

CW: And you don't think your ruling that the Massachusetts Constitution allows same-sex marriages represents a similar marked shift?

MARSHALL: I don't think or not think. History just has to play itself out.

CW: Are you following what's been going on in California, Maine, and New York, where opponents of same-sex marriage have scored victories at the ballot box or in the legislature?

MARSHALL: It's still very alive, but so are lots of other issues. I'm not trying to be cute. Of course when you say you want to talk about a case, I know [which one] you're talking about. I don't get quoted in the *Economist* every single day because of my various cases. One recognizes that something is a groundbreaking case. How history will view it is a very, very different question.

CW: What other cases would you consider to be groundbreaking?

MARSHALL: I would say, from the Legislature's point of

view, perhaps the court's decision on the Clean Elections Law garnered more headlines at the time. [In 2002, the SJC ordered the Legislature to either fund the law—a public financing system passed by the voters in 1998—or formally repeal it. Lawmakers eventually chose to do the latter.] The whole idea of publicly funded elections was a very, very important issue at the time. I don't know what's happened to the debate, but certainly how we fund our elections and who's available to run for office is not something that's disappeared.

I also think that new families—new not only because you've got many more divorces and remarriages, but also biologically new families—raises just a whole host of questions.

One of the other cases that we had, which I think is going to be a very important decision, is whether or not would-be legal parents, before the child is born to a surrogate mother, can obtain a judicial order that they be listed on the birth certificate. [Yes, according to the ruling in the 2004 case, *Hodas v. Morin*.] From the hospital's point of view, the mother is the mother. Let's assume the child is in crisis when it's born, who is going to make the decisions? I can't even remember whether that was reported in the newspaper, but when you talk about the

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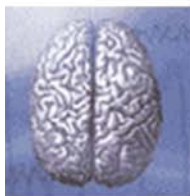
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lives of many people being affected, we know that in vitro fertilization and the whole science developed in respect to that is a new and growing field.

CW: Do you write all your own opinions?

MARSHALL: Yes. I have wonderful law clerks. They do a lot of hard work for me. But I love to write. It's a great reason to be an appellate judge.

On growing up in South Africa: 'I never thought I'd be a lawyer. I never thought I'd be a judge. I never thought I'd live in the United States.'

CW: Anything else?

MARSHALL: You mentioned the Quock Walker case. It was

the first case decided by this court under [the state's new] constitution, and [it put] an end to slavery. When I was growing up in South Africa, I didn't know a great deal about the United States. I didn't have any legal training. I never thought I'd be a lawyer. I never thought I'd be a judge. I never thought I'd live in the United States. But I did know two things. I did know about the Supreme Judicial Court and its decision in that case and I did know about *Brown vs. Board of Education*. Growing up under the apartheid system and, as passionately committed as I was against that system and in favor of racial equality, those are two big markers on the road to full human dignity for all people.

For me, to serve on this court is a remarkable privilege. It also is, I hope, a tribute to what has made this such a great country, that I could come with no connections, alone, no legal training, and start practicing law in Boston and find myself as the chief justice. [It] is a remarkable statement for any society. I try to make that point when I look at young people who are going to law school for the first time. You really can become anything. For those born in the United States, they may take that for granted because we have so many examples around us. I never take it for granted. **CW**

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The price of reform

Our new health care system has not been a Massachusetts miracle

BY TIMOTHY P. CAHILL

ONE OF THE hallmarks of a successful and compassionate society is its ability to provide care for its citizens. I believe that every individual and family in the Commonwealth should have access to quality, affordable health care. However, it's equally important to take affirmative steps to ensure the stability of the Massachusetts economy, and not place unnecessary fiscal burdens on our taxpayers. As we review the performance of our state's health care system since the passage of reform in 2006, it is imperative that we balance these objectives.

Health care reform has not been a Massachusetts miracle. The state's new health care system has been fraught with problems from the start, from excessive costs to taxpayers to unaffordable insurance options for families. An analysis shows that the Commonwealth's program has not been able to fully provide efficient, affordable health care in a fiscally responsible manner.

Health care reform was supposed to make it easier for individuals, families, and employees to obtain insurance coverage. However, simply having access to insurance does not guarantee health care, nor does it lead to a positive balance sheet for the program. The reform has placed an enormous hardship on middle-class residents who do not qualify for the state-subsidized Commonwealth Care program, as high premiums, deductibles, and bill payments—even for the least expensive plans—have rendered these options unaffordable.

Here's just one example. A report prepared by Drs. Rachel Nardin, David Himmelstein, and Steffie Woolhandler of Harvard Medical School states that the least expensive plan available to a middle-income, 56-year-old individual costs \$4,872 in annual premiums. That does not include a \$2,000 deductible if the person actually gets sick,

or the 20 percent of the person's medical costs—up to \$3,000 a year—he or she is required to pay, meaning that an individual's total annual bill for health care could reach \$9,872.

THERE IS A FUNDAMENTAL difference between access to insurance and actually obtaining treatment. High deductibles and other payments have, in many cases, decreased access to care for those who do have insurance but are unable to meet the financial demands their policies impose. Additionally, the Commonwealth's new insurance policies require co-payments for services such as prescriptions and office visits, which makes health care that previously would have been available through “free care” too expensive for some. (This may place less of a financial burden on the state, but it exposes a significant problem with the reform: a decrease in actual health care received by individuals.)



The state's health care program also fails to reach everyone in Massachusetts. While many advocates of the reform have lauded the program's success, claims that the state has achieved near universal health care fall short. Urban League studies from 2008 and 2009 claim the percentage of insured residents has risen to over 97 percent, but these surveys generally did not reach non-English speaking residents and individuals without land phone lines—demographics less likely to have coverage. Additionally, these studies were based on data reported prior to last year's economic downturn, which probably led to a reduction in the number of privately insured residents.

Discrepancies continue. The state Department of Health Care Policy and Finance has reported that the number of patients receiving free care has fallen by approximately 35 percent. However, the Harvard Medical School report referenced earlier estimates that the number of patients would have had to decline by at least 75 percent for Massachusetts to have achieved the 2.6 percent uninsured residents reported by the Urban Institute in 2008 and 2009, leading to the conclusion that there are more uninsured than those studies show. For example, the 2008 US Census Bureau survey indicated that 5.4 percent of state residents remained uninsured—a number that's likely higher now, given the dramatic increase in statewide unemployment.

From an economic standpoint, health care reform has proven to be an unsustainable financial burden that poses a long-term risk to the state's fiscal health. According to the state information statement submitted to bondholders in August 2008, the cost of the Commonwealth Care program has more than doubled since its inception, increasing from \$630 million in 2007 to \$1.1 billion in FY08 and over \$1.3 billion in FY09. This trend is project-

ed to continue, as state estimates reported by the *Boston Globe* indicate that the Commonwealth's subsidized insurance plan will top \$1.35 billion in annual expenses by the beginning of FY12. With significant unemployment and budget revenues increasingly scarce, our health care system is currently on the brink of representing another significant unfunded liability.

The state's health care plan is an unsustainable financial burden and a serious risk.

Rather than providing a solution, the Massachusetts health care laws have only created more problems, both on the state's balance sheet and in struggling households across the state. Our residents deserve accessible, affordable health care that will not jeopardize the Commonwealth's fiscal health, goals we cannot attain under the current system.

Timothy P. Cahill is the state treasurer and an independent candidate for governor.



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Pay for quality, not quantity

Global payments can keep health costs from spiraling out of control

BY DR. GENE LINDSEY

IT IS CLEAR in 2009 that fee-for-service medicine is not the most efficient or effective payment system we can devise. It should be pretty obvious to almost everyone, even those who benefit from the current system, that this form of payment hinders patients from receiving coordinated and patient-centered health care.

Massachusetts can and should take an important step to correct the current system by adopting what the Special Commission on Payment Reform recommended last July—a system of “global payments.” With global payments, providers receive prospective payments for all or most of the covered care they provide, along with financial rewards for providing accessible and high quality care.

As a practicing internist and cardiologist for 34 years, and more recently as the chief executive officer of Harvard Vanguard Medical Associates and Atrius Health, I have worked under a global payment system successfully for my whole career. Our organization knows how global payments can improve patient care and keep costs from spiraling out of control, and it is actively working with payers to convert more of our business to global payments.

Most care today is delivered on a “fee-for-service” basis, with providers reimbursed for each individual service, often irrespective of its medical appropriateness. Sadly, this system is fundamentally responsive to economic incentives. It tends to drive health care costs up because it creates incentives to increase the volume of services and pursue business lines that are most profitable and oriented toward illness rather than health maintenance. This shifts focus from primary care to specialty care and from the ambulatory setting into the more expensive setting of the hospital.

As a result, we’ve developed an exceedingly sophisticated yet tangled system of “sick care”—caring for people once they are sick. What we need to do is flip this sick-care system on its head to create an actual system of *health care*.

When you mention global payments, many

recall earlier versions of managed care and assume that setting fixed payments will mean that care will be denied. It’s important to note that we’ve come a long way from the hugely unpopular capitation plans of the 1990s, when many doctors



across the country were asked to accept fixed annual payments for each patient under their care. Then, the resources provided to physicians were not always well-matched to the care that was needed by their patients.

Today, we have the computational tools necessary to fix the health care system to pay for the quality of care, not the quantity of care.

HERE’S HOW GLOBAL payments work today: First, providers and insurers look back at the actual medical cost history of patients to estimate what future medical expenses will be across different care settings. Payments are then risk adjusted each year to account for likely variations in health status and cost of treatment for the provider’s patient population.

Proper risk adjustment is essential to ensure fair and adequate compensation for providers while removing any financial incentive to avoid high-cost patients. Typical risk factors include age, sex, and geography. More sophisticated models now include adjustments for the health of the patients, too. For example, the payment for a healthy 25-year-old male might be \$150 per month, while the payment for an older patient with a chronic condition like congestive heart failure could be in the thousands of dollars.

In contrast to prior managed care contracts, today it is critical to create a link between quality and payment through performance incentives. There are many more accepted measures for performance today that can be compared across providers and shared with consumers. Patients won’t be denied care they need because there is a

greater reward for quality and improvement outcomes.

With electronic medical records, we have data to identify and do outreach to the patients who need extra care. The data also allows providers to identify where global payments will allow for infrastructure improvements such as clinical pharmacists, care management programs, and hospitalists who can provide care before health problems escalate.

We also understand that working to keep people healthy is critical to reducing costs and requires services beyond the physician's office. For example, think about how physicians can provide care under a global payment system in the case of a patient we'll call Steve Johnson, a middle-aged executive with a history of obesity, hypertension, and elevated cholesterol, who barely has time to see his new primary care physician. At the initial evaluation, Mr. Johnson is prescribed medication to help manage his hypertension and consults a health coach to develop an individual program to control his weight and cholesterol. Through an Internet portal, Mr. Johnson can check lab results and email his physician with questions about the new medication's side effects. The health coach

is also monitoring his progress and will call to check in and help reschedule missed appointments.

This kind of coordination creates the support network Mr. Johnson needs to stick with his new regimen and meet his weight-loss goals. Without it, Mr. Johnson would play phone tag to get answers about medication and to reschedule follow-up appointments. Even worse, he might stop taking his medications or make an unnecessary visit to the emergency room. Without support, Mr. Johnson will likely revert to his old habits without any appreciable

Keeping people healthy requires services outside of the physician's office.

improvement in health—a path that leads to more serious illness and more expensive care.

A payment system that rewards focusing on the patient and putting the primary care physician at the heart of care will ultimately rebalance the health care economy and lead to lower-cost, higher-quality health outcomes.



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BECAUSE WE ARE fully committed to moving forward under a global payment system, and because we know that will mean coordinating care from the physician's office to the hospital and back, we have just announced that Atrius Health is partnering with Beth Israel Deaconess Medical Center to develop a new integrated delivery model of care.

Within Atrius Health, we have known for 40 years that integrated delivery is the right way to provide care, and we'll continue to do what we know is best for our patients.

History has a habit of repeating itself. We expect the debate on payment reform to continue as it has for generations. All the way back in 1933, a presidential committee charged with finding a way to address the rapidly increasing growth of health care expenditures (then 4 percent of GDP) concluded: "Medical service should be more largely furnished by groups of physicians and related practitioners, so organized as to maintain high standards of care, and to retain the personal relationship between patients and physicians."

To paraphrase T. S. Eliot, nearly 80 years later we find ourselves where we started and know that place for the first time. Now we need to take the next steps toward integrated care delivery under a global payment system. **CW**

Dr. Gene Lindsey is chief executive officer of Harvard Vanguard Medical Associates and Atrius Health.

No room for error

We need to make global payments work for everyone involved

BY ELLEN ZANE AND LYNN NICHOLAS

PART ONE OF Massachusetts's courageous leap into health system reform offered something for everyone. It brought health care coverage to uninsured residents; it promised (but could not deliver because of the soured economy) improved reimbursement for care to providers; and it brought more than 100,000 new members to insurance companies. It also required something of everyone: Most employers had to offer insurance or pay a penalty, and most individuals had to purchase insurance or pay a penalty. Providers continue to play a leading role in caring for these newly enrolled individuals while suffering significant and harmful cuts to our Medicaid rates.

Intentionally set aside for Part Two were the matters of payment and care delivery reform. Now, thanks to the work of the state's Special Commission on the Health Care Payment System, we have begun to tackle these challenges in tandem. Doing so makes sense because the way medical care is delivered is tightly intertwined with how we pay for it. And to bring about the cost containment so needed in our system, we must get these reforms right. Just as with Part One of health reform, it will take global participation to do this, with everyone doing their part and sacrificing a little.

Massachusetts hospitals agree with the Special Commission's primary points: The current fee-for-service system is not the most efficient way to pay for healthcare, nor does it encourage the best care for patients. The commission's recommendation—a move to “global payments”—will revolutionize the way care is delivered.

We know that revolutions can tear down vital systems or they can energize and rebuild them. What we want to avoid is tearing down our world-class health care system, which now employs one in five Massachusetts residents. The way the next set of reforms is implemented will go a long way toward determining what type of revolution we have. The Massachusetts Hospital Association is leading the way to make sure the Part Two reforms are translated from theory to action in a

responsible and thoughtful way.

SO JUST WHAT are “global payments?” Under a global payment system, insurers will make single payments to providers intended to cover all the care an average patient should need over a fixed period of time. Right now, providers bill insurers for each procedure, test, and visit. Anyone can see our current system has misaligned incentives.

For those with long memories, global payments may sound a lot like “capitation,” a payment system HMOs embraced in the early 1990s. Under



capitation, providers were paid a strict per-patient, per-month fee. This system substantially limited the risk of insurance companies and transferred much of the insurance risk to doctors and hospitals. Patients didn't like it because they suspected that their doctors were withholding needed treatment from them. For providers, it was a mixed bag. Some had contracts that enabled them to be creative to keep patients well. Other providers did not

receive adequate payments and support from insurers to care for their patients. In the end, the capitation system fell apart, and we saw health care costs skyrocket more dramatically than before, with consumers demanding unlimited choices even as they struggled with premium hikes.

We can't afford another failed experiment with capitation. That is why hospitals, doctors, and other patient advocates share a keen interest in ensuring that global payments work for everyone involved. We know the devil is in the details. Current models for global payment contracts include bonuses to providers for meeting quality measures—an important improvement over old-style capitation contracts. Such incentives are crit-

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PERSPECTIVES

ical to ensuring that doctors and hospitals are able to offer patients the right care at the right time.

A well-designed global payment system could offer patients more coordinated care while stemming the increases we are seeing in health care costs. For example, global payments may make it easier for providers to establish “medical homes” for patients. A medical home isn't just a primary care practice; it is a care network in which health care providers communicate seamlessly and are able to do more to keep patients well rather than just treat them when they're sick.

Medical homes are especially effective in helping patients manage chronic diseases, which cost \$1.5 trillion to treat annually in the United States. Consider a patient with diabetes, one of the most costly, widespread, and disabling diseases among the US population. In addition to their doctor, diabetic patients treated in a medical home could have access to nurse practitioners who monitor their blood sugar levels closely, nutritionists who help with diet, and care coordinators—an entire team that will help the whole system of care run smoothly and avoid unnecessary tests and emergency care.

Taken alone, global payments in no way guarantee cost savings or better care delivery. The Massachusetts Hospital Association is raising and addressing foundational issues to ensure successful implementation of a global payment system that will work for all of us.

A successful global payment system must generate better and more accessible information about our health care system. That should include more transparency about quality measures, more transparency around pricing by insurers and providers, and more information about consumer behavior and satisfaction. We can only know if the system is working for everyone if we collect and publish that data.

The new payment system must also enable providers to control the new insurance risks transferred to them. Insurance companies hold billions of dollars in reserves to cover financial risk. If insurers are passing a portion of these risks on to providers, they should be responsible for passing on the reserves as well. This would be a significant system change that could require reforming some of our insurance laws.

Significant infrastructure will have to be created—and paid for—to handle global payments. Accountable Care Organizations (ACOs) would encompass networks of doctors, hospitals, and other care providers to coordinate care and share the financial risk of treating patients. These provider organizations will need more than computer networks and electronic health records—although those will be necessary—to enable them to meet quality and cost goals. They will also need actuarial and data analysis capabilities to manage global payment contracts.

HEALTH PLAN DESIGNS must be changed to be consistent with the goals of reform. Right now, most consumers are given a health insurance card through their employer that entitles them to a vast array of choices, which often results in fragmented, uncoordinated care. To make ACOs work to coordinate care and contain costs, employers and insurers will need to partner with providers in the education of consumers. Consumers will need to truly understand the value of seeking their care within their ACO, and will need to understand that unlimited choices do not equal better, more cost-effective results.

Our medical system also performs other critical functions besides caring for individual patients, and those societal needs must be accounted for under a new payment system. Hospitals offer emergency and trauma services that may not fall neatly under a global, per-patient payment. A number of other services also don't fit neatly into a global payment system. Some of these include training the next generation of physicians, performing life-saving clinical research, and providing a health care safety net for the uninsured and underinsured. We also need to protect services for special needs populations, such as those in need of behavioral health services. All of these services are vital, and we cherish our

access to these aspects of our health care system—but we must understand that none of it is free.

How will this system look through a patient's eyes? It is our hope that patients will get more coordinated and better care with a primary care provider to function as their health system navigator. They will get support for a healthy lifestyle and appropriate access to the world's best tertiary care when they need it, along with the peace of

Unlimited choices do not equal better results.

mind that our health care system is ready for whatever emergencies and trauma befalls us. If payment and care delivery reform is conducted thoughtfully and prudently, we will succeed in containing costs and, most important, providing even better care. **CW**

Ellen Zane is the president and CEO of Tufts Medical Center and chair of the Massachusetts Hospital Association (MHA) Board of Trustees. Lynn Nicholas is the president and CEO of MHA and served on the state's 10-member Special Commission on the Health Care Payment System.



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Reform in the real world

Education leader Ted Sizer taught teachers to re-conceive their roles

IT SOUNDED SO easy. How could I not ace a college class called “Going to High School in America?” I had, after all, just finished going to high school in America. I was an expert.

The professor—noted educational leader Theodore Sizer, who died in October—taught the only education class at Brown University routinely taken by students with no intention of becoming teachers. That was most of us, since this was the mid-’90s, before teaching became cool. We weren’t going to be teachers. We were going to be dot-com tycoons.

But we filed into the crowded lecture hall because everyone said you had to take a class from Sizer, who was, apparently, a very big deal. (Only later did I learn how big a deal: Over the course of his career, he served as headmaster of Phillips Academy, dean of the Harvard School of Education, founder of one of Massachusetts’s first charter schools, and one of the last half-century’s most influential thinkers on education.)

After six weeks reading about educational theory, we broke into teams of four for the course’s main task: to design a high school, from scratch. Everything was up for grabs, from wall color to graduation requirements. My group did some preliminary writing and compared notes. That’s when we discovered that none of our “ideal” high schools matched. And none took into account any of our readings on school effectiveness.

Instead, each of us had invented a high school that looked exactly like our own.

I KNEW MY high school wasn’t perfect. The cafeteria smelled weird; my first-period teacher often seemed hung-over. But I couldn’t seriously imagine Concord-Carlisle differently. I couldn’t imagine that classes might be 80 minutes instead of 47 minutes long. And judging by the raised voices in the lecture hall, what happened to our team happened to others. In retrospect, I’m sure Sizer expected it. Asking college freshmen to invent the ideal high school is a little like asking them to re-invent the world. The task strained the imagination—and frightened us.

The assignment remains one of the most profound lessons I’ve had on the difficulty of school change. I did

work as a teacher for some years, and I now think of Ted Sizer every time a new education reform proposal pops up in the state legislature.

The usual finger-pointing is now underway at the State House. Those unwilling to act on Gov. Deval Patrick’s education reform bill are painted as lackeys of the teachers’ unions, cowards who don’t care about children. There may be some truth to this. But, having taught for nine years in private schools, I think teachers often catch the blame for a broader resistance to school change.

In my teaching days, I was often surprised by how many parents seemed to want their child’s academic experience to be similar to their own, *regardless of whether they themselves had liked school*. Parents would look at my syllabus and be relieved to see I taught Shakespeare; they’d ask whether I’d thought of doing such-and-such, which they remembered from their own school days. Kids, too, could be fierce advocates of the status quo, especially after they had graduated. Alumni would be horrified to learn an elective was no longer taught or that classes now went a week later in June. No wonder it’s so hard to implement even changes that everyone agrees make sense, like moving away from the agrarian calendar.

Sizer understood that change and progress sound better in the abstract than in the specific. He designed his course so we, fearless college students though we believed ourselves to be, were forced to confront our own conservatism. But many of us came to admire the changes Sizer dreamed of in public schools. He was for assessment by “exhibition” (through projects or portfolios) rather than by standardized test; he thought curricular depth mattered more than breadth.

He was skeptical of one-size-fits-all tests and “our fourth graders are smarter than yours” press releases in a way that makes many of his core ideas out of vogue now in policy circles. That’s too bad, because Ted Sizer sure knew how to inspire teachers. Read through the tributes on the Coalition of Essential Schools’ website (www.essentialschools.org) and you’ll hear stories of true transformation—teachers and principals encouraged by Sizer to reconceive their own role in the classroom.

As one Massachusetts educator wrote in his tribute, “Ted had a way of inspiring us to dream.” **CW**

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