

CommonWealth

POLITICS, IDEAS & CIVIC LIFE IN MASSACHUSETTS

CLERK-MAGISTRATES:
KINGS OF THE COURT

Who does he think he is?

**GOP's Dan Winslow is
shaking things up**

**No easy cure
for patronage**

**Lawrence on
the mat**

**The Tea Party
flunks history**

**Public sector
union tempest**

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MassINC Associate Board initiatives supported in part by generous contributions from Highland Street Foundation, State Street Corporation and Zipcar.

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> Full contents, as well as online exclusives, are available at www.commonwealthmagazine.org

CommonWealth (ISSN pending) is published quarterly by the Massachusetts Institute for a New Commonwealth (MassINC), 18 Tremont St., Suite 1120, Boston, MA 02108. Telephone: 617-742-6800 ext. 109, fax: 617-589-0929. Volume 16, Number 2, Spring 2011. Third Class postage paid at Holliston, MA. To subscribe to *CommonWealth*, become a Friend of MassINC for \$75 per year and receive discounts on MassINC research reports and invitations to MassINC forums and events. Postmaster: Send address changes to Circulation Director, MassINC, 18 Tremont St., Suite 1120, Boston, MA 02108. Letters to the editor accepted by email at editor@massinc.org. The views expressed in this publication are those of the authors and not necessarily those of MassINC's directors, advisors, or staff. *CommonWealth* is a registered federal trademark.

Education reporting in *CommonWealth* is sponsored in part by the Nellie Mae Education Foundation.

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CommonWealth magazine is printed on FSC-certified recycled paper, manufactured with an elemental chlorine free process, using soy inks and 100% certified wind-energy credits for production.





34



64



74

ARTICLES

- 34 | **ON THE COVER WHO DOES HE THINK HE IS?** Dan Winslow is a freshman state rep—but a wily veteran of Massachusetts politics. He's taking Beacon Hill by storm and challenging the way business gets done there. **BY PAUL McMORROW**
- 44 | **REIGNING SUPREME** Clerk-magistrates, with lifetime tenure and no mandatory retirement age, rule the roost in Massachusetts courthouses. **BY JACK SULLIVAN**
- 54 | **NO EASY PATRONAGE CURE** Some say Civil Service is the way to rid government of patronage hiring. But is the cure worse than the disease? **BY BRUCE MOHL**
- 64 | **LAWRENCE ON THE MAT** The scrappy Merrimack Valley city has never had it easy. These days things are even tougher than usual. **BY GABRIELLE GURLEY**

DISCUSSION

- 74 | **CONVERSATION** Jill Lepore says the Tea Party movement has more in common with religious fundamentalism than with serious consideration of American history. **BY MICHAEL JONAS**
- 85 | **ARGUMENT & COUNTERPOINT** The state can save millions by putting lawyers for the poor on the state payroll, instead of contracting for their services **BY JAY GONZALEZ** The touted savings are overstated, and the plan conflicts with constitutional separation of powers principles. **BY ARNOLD R. ROSENFELD**
- 91 | **BOOK REVIEW** Ed Glaeser's *The Triumph of the City* makes a strong policy case for a vibrant urban future; the politics of getting there will be much harder. **BY JOHN SCHNEIDER**

DEPARTMENTS

- 7 | **CORRESPONDENCE**
- 9 | **EDITOR'S NOTE**
- 11 | **INQUIRIES**
- 18 | **STATISTICALLY SIGNIFICANT**
Public sector pay
BY BEN FORMAN AND KATIE MCGINN
- 21 | **STATE OF THE STATES**
R&D spending
BY JACK SULLIVAN
- 23 | **HEAD COUNT**
Wireless competition
BY JACK SULLIVAN
- 25 | **WASHINGTON NOTEBOOK**
Fish fight
BY SHAWN ZELLER
- 29 | **WHAT WORKS**
Piloting global payments
BY PIPPIN ROSS
- 96 | **REAL TALK**
Labor's love lost
BY MICHAEL JONAS

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UTILITIES ARE THE RATS

Regarding your article “The Meter is Running” (Winter ’11), the only rats hiding under the rocks are the electric utility companies who refuse to buy meaningful amounts of clean, renewable energy and the regulatory agencies who won’t require them to do so.

Business as usual is simply not acceptable with our air quality deteriorating and our climate changing at an alarming pace. The utilities were given monopoly status to provide core services to the public, not to stand in the way of the public good. In my opinion, the first priority of the policy-makers, regulators, and the regulated utilities should be to stop polluting our world by burning fossil fuels, admit the real cost of these polluting sources of energy, and give clean renewable energy at least the same treatment in terms of subsidization and incentives. Absent the hidden subsidies we as taxpayers and ratepayers bear to support the coal, oil, gas, and nuclear industries, making energy from renewable sources like wind and solar is far less expensive.

A report funded by Congress and released in October 2009 concluded that \$120 billion in taxpayer subsidies to the fossil fuel industries is not reflected in the price of electricity and gasoline. This figure does not include the price of damage associated with climate change, harm to the ecosystem, the health effects from toxic air pollutants such as mercury, and the added military costs related to our protection of fossil fuel producing countries.

For every \$1 spent on governmental support for emerging clean renewable energy technologies, the fossil fuel guys get \$5 of pork. Transferring those subsidies from dirty to clean energy would put the price of renew-

able energy well below the cost of fossil fuel-fired energy. And what if we no longer needed to throw away all the money that goes to energy-related military encounters—or shall we call it “protection of our oil addiction”—to the tune of trillions of dollars.

Last, but far from least, is local job creation. These clean energy projects are homegrown, keep the money in the local economy, benefit communities with new revenues, and become a source of great community pride. We send over \$360 billion a year to the Middle East to support our addiction to fossil fuels. If Massachusetts picks up a fiftieth of that cost, that’s over \$7 billion out of our pockets every year. How many jobs do you think \$7 billion would create? A lot.

I for one am proud of what we are doing in Kingston and other towns in Massachusetts where enlightened local and state officials have teamed up to promote a clean energy future. We should be pushing for more clean energy development instead of promoting the bloated, polluting, fossil fuel-based economy we know has been degrading our quality of life and sucking money out of our pockets for years.

Mary O'Donnell
Kingston

NET METERING UNFAIR

Somebody needs to tell Mary O'Donnell that electricity is not produced



with oil, foreign or otherwise. It is produced with hydropower, nuclear power, natural gas, and coal.

This deal is simply a way for Kingston to get its bills paid by the residents of all the other towns. Is that fair?

Rhode Island has the same controversy with “net metering.” See a video report on the controversy at hummelreport.com. The Rhode Island Division of Public Utilities believes that federal law trumps state laws on energy, so this deal is probably illegal.

Benjamin C. Riggs
Newport, Rhode Island

WINN'S NICE RETURN

The most interesting thing to me about Paul McMorrow's impressive article (“Money Talks—and Delivers,” Winter ’11) is the ratio between the spending by WinnCompanies and the government benefits they receive. After spending \$2 million on campaign contributions and lobbying, the firm

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receives \$62 million. Thirty bucks for investing one. Who wouldn't like that deal? Except, of course, for the taxpayers, who provide the \$62 million.

*Sue Bass
Belmont*

WHAT DID HELEN CADDEN DO WRONG?

"A Son Seeks Answers" (Winter '11) raises important questions. How is it possible that the State Police blame Helen Cadden for the accident that ended her life?

The sign on the street said "State Law: Yield for Pedestrians in Crosswalk." Evelyn Pursley failed to obey this law. What difference does it make at what speed Mrs. Cadden was walking? I am often a pedestrian at such crossings. I welcome them. I value them. And I trust them. Like most people, I cross as rapidly as I can. But

some people may not be as agile and quick as others, so motorists may have to wait a few seconds longer.

After a careful reading of the article, I still do not understand exactly what, in the opinion of the police, Mrs. Cadden did wrong. My faith in the law has been shaken, and I will proceed with less confidence and extreme caution.

*Alan Emmet
Westford*

HIGH MARK FOR PRINCIPAL

Regarding "Grade Expectations" (Winter '11), Dr. Szachowicz's grade as principal at Brockton High School on this most challenging assignment: A+!

*Dr. Charles L. Mitsakos
Chelmsford,
Professor Emeritus of Education,
Rivier College*

PERSPECTIVE DESPICABLE

The Perspective piece "A call to reason" (Winter '11) is despicable. So we stop lobbying for harsher penalties for sex offenders because they're not your textbook ski mask type? That's ridiculous. As a victim of sexual abuse myself, I find this child rapist-sympathizing article absurd. Offenders should be put on the spot and they should be made to feel guilty and ashamed by their disgraceful actions.

*Scott Moore
Pittsfield*

GIFT FROM GOD

MAP class 54 ("MAP Shows the Way" What Works, Winter '11) changed my entire life. St. Francis House is a true gift from God.

*Steven Gilboard
Boston*



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Public or private?

GOV. DEVAL PATRICK clearly doesn't think much of the judiciary's management skills. He's filed legislation calling for a professional manager, instead of a judge, to oversee the trial court. He wants to move the patronage-plagued Probation Department out of the judicial branch and into the executive branch. And he wants to abolish the judiciary's Committee for Public Counsel Services, which hires private attorneys to represent most indigent defendants, and replace it with a new executive agency staffed by 1,500 state employees he would oversee.

The public counsel proposal is by far the most ambitious of these. Patrick estimates he can save the state \$60 million a year by using state lawyers instead of private attorneys to represent indigent defendants. That's nearly a third of what it costs the state now to provide legal representation for poor people.

In this issue of *CommonWealth*, two people on the frontlines of this high-stakes debate argue their points of view. Jay Gonzalez, the governor's secretary of administration and finance, makes the case for transforming the so-called public counsel service into a public agency within the executive branch of government. Arnold Rosenfeld, an attorney at K&L Gates and a member of the board of the Committee for Public Counsel Services, argues for keeping the operation within the judiciary and continuing the practice of using private attorneys.

The two sides are far apart. Gonzalez essentially says state workers can do just as good a job as private attorneys but at far lower cost. "The purpose of the program is not to provide private bar advocates with work," he writes. "It is to provide indigent criminal defendants with quality legal representation as cost-effectively as possible."

Rosenfeld says Gonzalez's savings estimates are illusory, in part because he relies on faulty assumptions. Rosenfeld also questions whether it makes sense—or is even constitutional—to give the executive branch of government the twin responsibilities of both locking up criminals and defending them.

"The long-run possibility of serious interference by the executive branch in the conduct of the public defense over which it has oversight is exactly why the 'separation of powers' was adopted," Rosenfeld writes.

Naively, I had always assumed that private attorneys stepped forward to represent indigent defendants largely out of a spirit of public service. In reality, there's a lot of money at stake. Many private attorneys make their living handling indigent defense cases and a large percentage of them make more money than attorneys working for the state doing the same job.

There is an organization called the Massachusetts Association of Court Appointed Attorneys and it lobbies on Beacon Hill on behalf of its members. On the organization's website, there is a sample letter that supporters are being urged to send to key House and Senate lawmakers. Under the governor's proposal, the letter says, the newly hired state attorneys will be low paid and overburdened yet will still end up costing more than using private attorneys because of their pensions and health care. Worse yet, the letter says, the attorneys could unionize. (The letter doesn't elaborate, but the union reference seems to be an attempt to tap into the angst created by the public sector union fight in Wisconsin.)

The bottom line, according to the association, is that the governor's proposal won't benefit taxpayers and it won't benefit indigent defendants. The association's letter dismisses the governor's proposal by saying indigent defendants "deserve a genuine defense, not one in name only."

Both sides in this debate raise legitimate issues. Rosenfeld's concerns about the separation of powers need to be addressed, while Gonzalez's cost savings, if they can be achieved without sacrificing the quality of representation, are impossible to ignore. The situation cries out for a quick, independent review of the costs associated with hiring state attorneys to represent indigent defendants. Perhaps this is an area where the new state auditor, Suzanne Bump, could jump in and play referee. **CW**

Bruce Mohl

BRUCE MOHL

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Endless loop

Nearly a year ago Attorney General Martha Coakley proposed new regulations to protect auto insurance consumers, but she's never pulled the trigger and implemented them.

Coakley solicited feedback on her proposal last summer and since then has kept extending the deadline for comments for several months at a time. The current deadline is April 15.

Automobile insurers say they don't know what's going on with the regulations or with Coakley. When the regulations were first unveiled, the insurers made clear they didn't like them. They hope the delays continue indefinitely.

Coakley's regulations focus on the rating factors that insurers use to decide how much to charge drivers for coverage. When the state used to set auto insurance rates, insurers could only consider factors such as a customer's driving history, their vehicle type, and the vehicle's garaging location.

After the Patrick administration embraced managed competition among auto insurers, more experimentation was allowed. Coakley fears some companies are using a customer's payment history or purchase of homeowners insurance as proxies for banned factors like income, home ownership, and credit ratings.

Insurers say Coakley's regulations would kill off many of the pricing discounts they have introduced and drive up premium costs. Coakley isn't saying much of anything about her regulations, which seem to be caught in an endless feedback loop. "We continue to receive feedback and to evaluate the proposed auto insurance regulations," says Coakley's spokeswoman.

► BRUCE MOHL

Lottery plots against 'slots'

► COLMAN M. HERMAN

LIKE THOSE RUNNING any gambling enterprise, officials at the Massachusetts State Lottery don't like anyone muscling in on their turf. And when they think someone is, they can lower the boom on the interlopers with the best of them.

Court records indicate that in 2009 the Lottery became so alarmed about devices resembling slot machines popping up at convenience stores and other locations that it went on a major offensive. The Lottery informed its sales agents in no uncertain terms that it would terminate their licenses to sell Lottery products if they also placed the slot-like devices in their stores.

"The Lottery does not want to be in partnership with agents that engage in such business," the state agency said in a late 2009 letter. "Therefore, this letter will serve as notice that pursuant to [state law governing Lottery licensing] the Lottery will terminate agents discovered to be using non-Lottery gaming or gaming-like devices."

The devices targeted by the Lottery occupy a murky legal area. They sell a prepaid phone card for a dollar, but with the phone card comes the chance to play what is essentially a video slot machine, complete with spinning fruit and cash payoffs to winners. Other vendors operate Internet sweepstakes cafes, where patrons buy computer time along with the chance to play video games for cash prizes.

Distributors of the devices claim their machines are perfectly legal, offering sweepstakes promotions that are no different from those run by companies like Coca-Cola, Kellogg, Nestlé, and Sunkist.

King's Prepaid Phone Cards, one of the major distributors of the phone card machines, is suing the Lottery, claiming the agency's actions have wreaked havoc on its business, since most of its machines are placed with Lottery licensees. The Billerica-based company contends that in early 2009 the Lottery "began a campaign of threats, intimidation, and coercion designed to eliminate [King's] from the marketplace."

King's says it had about 150 of the machines operating in about 100 locations in more than 70 cities and towns throughout Massachusetts, generating about \$100,000 a month per machine in gross revenue. But in the wake of the Lottery's crackdown, King's says its business shriveled, plummeting to 12 machines in five locations. The suit is still pending. All parties declined comment.

The Lottery isn't the only one trying to block the spread of these machines. Cities and towns are also trying to shut them down or force them to seek licenses for their operations. Chelsea shut down one King's operation last August for failing to have an entertainment license. In Boston, an eight-machine operation at Evelyn's Place, an East Boston storefront completely dedicated to the devices, shut down abruptly in February after Boston Mayor

COMPETITION FOR THE LOTTERY.

Thomas Menino began raising concerns.

Menino, whose spokesman was contacted by *CommonWealth* for a comment about the Evelyn's operation, responded by sending a letter to Attorney General Martha Coakley asking her to investigate. "I am concerned that such unregulated gambling activity will victimize seniors and other vulnerable residents," Menino wrote.

An official from Coakley's office declined to say whether the attorney general was involved in the shuttering of Evelyn's. Lottery officials said they were not involved. The former owner of Evelyn's could not be reached for comment.

Whether the devices are legal or not hinges on whether they are lotteries, which are illegal unless they are state-run. According to case law, a lottery requires three essential elements: a game of chance; payment of some consideration, such as money, to play the game of chance; and a prize. Remove any one of these elements and there is no lottery. Operators of the slot-like devices say there is no payment to play the game of chance because the player is actually paying for a phone card or time on the Internet. Operators also say it's possible to play without even buying a card.

The free-play option was the deciding factor in a 2007 Appeals Court lawsuit brought by South Dartmouth-based Nutel Communications, a competitor of King's, that

found machines in Fall River were legal because investigators failed to show that players could not play for free.

On a visit to Evelyn's one morning in early February before it shut down, the place was bustling with activity. It was obvious players were focused on winning cash prizes and not the phone cards. There was also no free-play option, according to the attendant.

One of the players, a senior citizen, whispered that she had lost \$300 playing the machine that day. "Like Foxwoods, you can't beat the machines," she said. "It's an addiction."

Hollywood stars not paying taxes?

► BRUCE MOHL

SOME OF HOLLYWOOD'S hottest stars may be shortchanging Massachusetts on their taxes.

A brief reference at the end of the state Revenue Department's latest report on the film tax credit says the agency received no income taxes on residual payments to

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actors and directors who shot movies in Massachusetts between 2006 and 2009. There was no further explanation, but the implication was that actors and directors like Ben Affleck, Steve Martin, Tom Cruise, and Martin Scorsese aren't paying all the taxes owed on money they technically earned in Massachusetts.

Robert Bliss, a spokesman for the Revenue Department, says the agency is looking into the issue. He declined to



elaborate.

Residual payments are one of the quirks of the movie business. Actors and directors are typically paid salaries for their work on a movie, but many also get a cut of any revenues or profits generated after the film's release. These residual payments often are triggered when a movie goes into DVD release or is sold to television.

Proponents of the state's film tax credit often call the salaries of big stars the gift that keeps on giving, since big-name actors pay taxes on their initial salary for a film and are supposed to keep paying taxes to the state as income from residuals flows in. But so far tax revenue from residuals has been the gift that never arrived.

Revenue Department officials aren't sure why they aren't receiving tax payments on residuals. Part of the problem is they aren't privy to deals on income derived after a movie wraps and is released. Indeed, DOR officials have had some problems even collecting taxes on the initial salaries paid to actors and directors.

"The first priority for DOR has been to make sure that nonresident actors are paying income withholding tax on the salary paid for their work in Massachusetts at the time of production," Bliss says.

Movie productions are fond of creating complex financial structures to reduce their tax exposure. Producers often pay stars through intermediary companies called loan-outs, an arrangement that makes it difficult to determine how much has been paid and to whom.

To end the confusion, DOR last year approved new regulations requiring movie production companies to remit withholding taxes from a star's check before an application is submitted for the state's film tax credit. But those regulations did nothing to address the payment of taxes on income generated after the film wraps and all the actors and directors have gone home to California.

Joe Maiella, president of the Massachusetts Production Coalition, a trade group formed to boost the state's budding film industry, often mentions taxes on residuals as a benefit of the state's film tax credit. He says the fact that the state hasn't received any of the tax revenue means the Revenue Department will probably need to do some detective work to track it down.

"To accurately assess this, it would seem the DOR would have to identify every principal actor and director who has worked on a feature film, commercial, TV pilot, or PBS program since 2005, determine who of those are out-of-state residents, and determine if taxes had been paid on residual income over

the last six years," he says.

The Revenue Department's most recent report on the film tax credit generated some concern among supporters of the credit—and provided fresh ammunition to those who oppose it. The report said the credit had spurred \$319 million in new spending on movies, TV shows, and commercials in 2009, but only a third of the money went to Massachusetts residents or businesses. The rest flowed out of state.

A delegation, led by Secretary of Housing and Economic Development Greg Bialecki and former actor and now ad man John Dukakis traveled to Hollywood in February seeking to reassure studios that the state's film tax credit wasn't going to fall victim to state budget cutbacks. No one was releasing details of the discussions with Hollywood studios, but it's a good bet the subject of unpaid taxes by actors and directors never came up.

Fall River gambler

► PAUL MCMORROW

IN UPENDING A planned 300-acre biotech park, Fall River Mayor William Flanagan picked a fight with the governor, angered the state university, junked a decade's worth of planning, and endangered a \$23 million development project. He did it all for a roll of the dice with the Mashpee Wampanoag, who promised to bring a casino to the land that was supposed to become the biotech park. And he'd do it all again tomorrow.

"We didn't lose anything," says Flanagan, who ended his dance with the Mashpee and went back and cemented a deal with the biotech park's anchor tenant, UMass Dart-

mouth, earlier this year. “My responsibility is to go after every economic development opportunity. My constituency would expect nothing less.”

Flanagan shocked the state last May, when he called a press conference announcing a deal to sell 300 acres off Route 24 to the Mashpee. The tribe promised to abandon plans to build a resort casino in Middleboro, and instead erect a \$500 million gambling palace on the Route 24 parcel.

Fall River’s deal with the Mashpee immediately ruffled feathers inside Gov. Deval Patrick’s administration—and not just because officials first learned of Flanagan’s deal with the tribe when they began receiving phone calls from reporters.

A year before, the state had sold the 300 acres to Fall River’s economic development arm for a scant \$2.5 million. The land transfer capped a decade of planning, which envisioned the creation of a new commercial park in the jobs-starved region. Patrick opened up the potential biotech cluster for development by committing \$33 million in federal stimulus funds to build a new exit linking Route 24 to the park. Patrick also promised state funds to the park’s anchor tenant, a new \$23 million UMass Dartmouth biomanufacturing facility.

The administration tried to back Flanagan down by

threatening to demand repayment for the Route 24 roadwork. Inspector General Gregory Sullivan warned that the sale to the Mashpee could run afoul of state bidding rules, and would violate a deed restriction explicitly banning casino development on the 300-acre parcel. Flanagan didn’t blink, even after legislation legalizing casinos failed on Beacon Hill. “This is not a bridge to nowhere or a folly,” he insisted. “This is a \$500 million project.”

Pressure from a rival Wampanoag tribe and UMass ultimately forced Flanagan to backtrack. In November, weeks before the first round of the \$21 million land deal was supposed to close, a group of 10 taxpayers sued to block the sale. That group was led by the chief of Fall River’s Pocasset Wampanoag tribe. The Pocasset saw the Mashpee land deal as an incursion into their territory. The group also included several environmental and anti-gambling activists. “To me, the whole thing smelled,” says Lesley Rich, the attorney for the Pocasset and the taxpayer group. “It was obvious the mayor had cut a deal and he just lunged forward and tried to ram it through.”

Flanagan bristled at the lawsuit. He characterized it as “a war on jobs.” But he reversed course after two judges blocked the land sale, and UMass Dartmouth said it would rather not build its biomanufacturing plant at all, rather



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than settle for a site outside the 300-acre park. That was enough for Flanagan. He told the Mashpee the deal was off, called up UMass and the Patrick administration, and got them to recommit to building at the park.

"I always thought we were walking a very tight rope," Flanagan says. "It would be too detrimental to lose the casino and lose the tech park, given the unemployment in the region. The goal was to entertain both. Once I saw signals that we were close to losing both, it was time to huddle back up on the definite project."

Rich says the mayor had little choice. "Politically, the mayor realized it was a dead end, and if he didn't do something, he'd be sitting empty-handed the next election," he says.

Paul Vigeant, vice chancellor for economic development at UMass Dartmouth, says that by building the \$23 million bio plant in a pad-ready green field off Route 24, rather than downtown or on campus, the university hopes to spur private biotech and pharmaceutical manufacturing in the park. Those linkages weren't available anywhere else, he argues.

"There's efficiency to the real estate transaction," Vigeant says. The new facility will let Cambridge researchers test-manufacture new drugs at dramatically discounted rates.

"When their product is ready to go and they need a site for manufacturing, they'll see these sites are available, and they'll compare the costs. The reasons why people leave the state don't evidence themselves here."

The UMass facility, which is being built with a \$15 million state grant, should be ready for construction bids by this fall. Flanagan calls it "a game-changer." So does he regret putting it on hold for a year while he chased a casino? "Not at all," he says. "The casino is still a possibility. Once the Legislature passes a gaming bill, we will be at the table for that, too."

Schools set aside funds for special ed increases

► ANDREA DOWNES

BROOKLINE PUBLIC SCHOOLS are scrambling to close a nearly \$1.5 million budget gap for the fiscal year beginning in July, yet the School Committee is nevertheless setting aside \$400,000 in case the city's cost for private special education rises.

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Public school systems that cannot accommodate certain special needs students internally often pay to send them to privately run schools that provide specialized instruction. Many communities set aside funds for the private school tuitions in case charges increase or a student with special needs moves to town. Lexington, for example, just learned a child requiring placement at a residential school is moving to town. The annual tuition is \$297,000. Brookline last year saw its \$5.9 million private school special education budget rise \$43,000 due to tuition increases at the private special education schools it uses.

Children attending these schools typically need services that the local public school can't provide, such as therapy for extreme behavioral issues, maintenance of multiple medical needs, or training in independent living for blind or deaf students. Most of the time, tuition for these "out of district" schools increases by a state-controlled rate pegged to inflation, which has ranged from .75 percent this year to as high as 3 percent in previous years.

But private special ed schools can raise their rates much higher if they go through a process called program reconstruction, which involves documenting needed changes in programs or staffing and the hike in tuition payments

needed to accommodate them. Communities say a private special ed school that reconstructs its programs can raise its rates by as much as 25 to 40 percent. Annual tuitions are already steep, ranging from \$27,000 to \$102,000 per child for a day program and \$108,000 to \$297,000 for a residential program.

"It feels like a surprise, not because we don't get notice, but because of the significance of the cost increase," says Peter Rowe, Brookline's deputy school superintendent for finance. Next year, he said, tuition for one student alone will increase \$18,000 following a reconstruction. "We don't have the ability to grow our revenue by that amount."

The state Department of Education says 28 programs at 18 private schools have been granted reconstruction increases in the last five years, affecting 182 public school districts that are home to 1,075 special needs students. Another 22 programs at 17 private schools have applied for reconstruction increases for the 2011-12 school year. Four have already been approved.

James Major, executive director of the association representing private special ed schools, says the institutions seeking reconstruction increases are responding to the needs of the children they serve. He says enrollment is dropping at his member schools except for students with



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autism, but he adds that the students the schools do enroll tend to have more complicated needs. The schools raise money privately, but not enough to keep tuitions from rising, he says.

Major cited one residential program that has applied for a 5.7 percent increase in tuition to cover an additional three to four nurses to manage psychotropic medications and to expand to a full-year program.

Major said the state restricts private special needs schools to one reconstruction process every six years.

Boston NAACP moves to recapture relevance

► GABRIELLE GURLEY

THE NAACP'S BOSTON branch all but dropped out of sight in recent years, but new president Michael Curry is looking to erase doubts about the all-volunteer organization's relevancy by stepping up its advocacy for civil rights in education and the workplace.

Since moving into the top slot earlier this year, the 42-year-old Curry has focused on recruiting a team of teachers, doctors, lawyers, and community activists to prioritize the specific issues that the branch will home in on in the months ahead. But he's concerned about school closings in Boston and their impact on students of color, and employment discrimination.

Curry would like to launch a polling project to begin to get a handle on how many people have experienced discrimination in the workplace. "I get more [employment] discrimination calls than I would have ever imagined," he says. "Most employment discrimination cases never make it to [the Massachusetts Commission Against Discrimination], but they do come through our office."

He recognizes that apathy may be one of the local NAACP chapter's biggest obstacles. "People have given up and given in to racial profiling and police brutality," says Curry, who grew up in Roxbury and Dorchester. "We live in a generation where people say, 'Hey, no one is going to do anything about it anyway.'"

Curry understands the stresses of living in violence-plagued neigh-

borhoods. Curry was twice mugged at knife-point as a teenager, and says fights, shootings, and the murders of family members were facts of his life. Now the senior counsel and legislative affairs director at the Massachusetts League of Community Health Centers, he pushed himself to excel, graduating from Boston Latin Academy, St. Paul's Macalester College, and the New England School of Law.

Breathing new life into the Boston branch of the NAACP won't be easy. Jamarhl Crawford, the editor of Blackstonian, a news and features website, compares the organization to a favorite restaurant whose customers trickled away over the years as the quality declined. "Now you have to convince them that the sweet potato pie is good again," he says.

Opinions vary on what the organization should be doing. Crawford says it should do what it does best, legal advocacy and bringing attention to specific issues percolating in black neighborhoods, such as returning to an elected school committee. But Barbara Lewis, director of the Trotter Institute at the University of Massachusetts Boston, thinks the organization, which marks its centennial this year, needs to initiate long-overdue conversations about Boston's troubled racial history.

Curry wonders if even a broader discussion about race can happen. "To be very honest with you, I don't think people...want to have an honest conversation," Curry says. "They want to say, 'Hey, slavery happened a long time ago; segregation is over; we're all good; we love each other now; we've got a black president, let's move on.'"

Curry says Deval Patrick's rise to governor is the exception, not the rule. "The reality is that we are dealing with the taint of racism in the attitudes of people and institutions," he says. **CW**



New NAACP president Michael Curry aims to reinvigorate the Boston branch.

Public sector pay: reasonable or excessive?

BY BEN FORMAN AND KATIE MCGINN

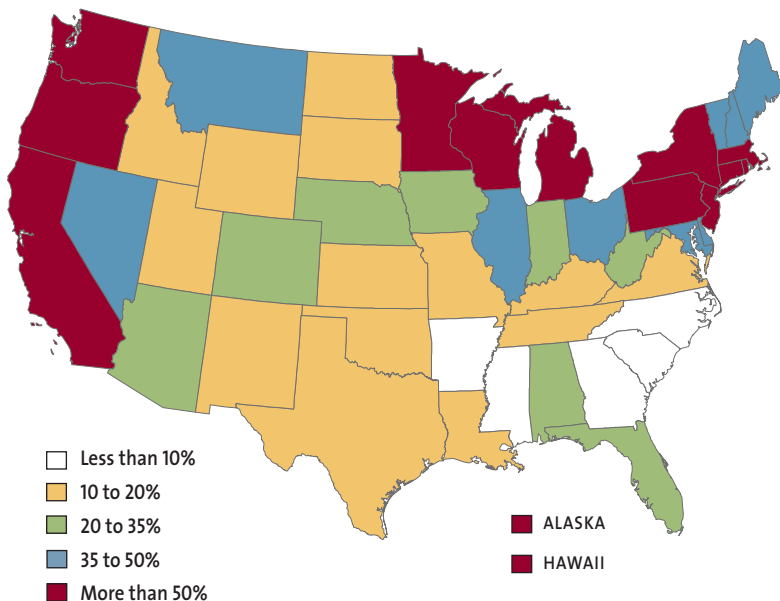
GOV. SCOTT WALKER'S victory in curbing collective bargaining rights of Wisconsin public sector workers casts a spotlight on the issue of disparities between public and private sector compensation. The same issue—whether public sector workers are getting overly generous pay and benefits—is simmering here in Massachusetts, particularly with the state facing huge budget challenges this year.

At first glance, disparities between compensation (wages plus benefits) in the state's public and private sectors seem large. The most recent data from the US Bureau of Economic Analysis (BEA) show state and local government jobs in Massachusetts offer 22 percent and 15 percent more compensation than private sector jobs, respectively. But these disparities in gross earnings can be misleading. Jobs in the public sector typically require more education and training, which could explain the appearance of additional compensation when looking at the BEA's raw figures.

Still, BEA numbers do reveal some useful facts about compensation for the Commonwealth's state and local workers.

First, growth in compensation for public sector employees in Massachusetts outpaced the private sector in recent years, but overall, public sector workers aren't doing much better relative to their private sector counterparts than they have in the past. Between 2000 and 2008, compensation per job in the private sector fell by 3 percent. But for state and local workers, compensation continued to rise (13 percent and 6 percent, respectively). While public sector workers did relatively well in the slow growth 2000s, private sector workers seem to do much better in a strong economy. In the 1990s, their earnings increased by 14 percent, while compensation for state and local workers grew at less than half that rate.

UNIONIZED PUBLIC WORKERS



All told, disparities between public and private sector pay in Massachusetts aren't significantly larger now than they have been over the last two decades. The gap actually peaked in 1994, when state workers earned 29 percent more than private sector workers. The state-private sector pay gap is slightly larger now than the average over the last two decades, while the gap between local government and private sector compensation is a bit smaller.

The second interesting find in the BEA data is the relatively modest disparity between public and private sector pay in Massachusetts in contrast to other states. Only three states (Missouri, Indiana, and Pennsylvania) have smaller gaps between state government compensation and private sector compensation. This relative parity isn't driven by the state's high private sector pay.

Source: Heritage Foundation analysis of 2006-2009 US Census data.

Other wealthy states, including Connecticut (32nd) and New Jersey (41st), have much larger disparities between public and private sector compensation.

Unionization doesn't seem to explain this variation, either. Nearly two-thirds of state and local workers in Massachusetts are represented by unions compared with less than half in Pennsylvania. Despite this dramatic difference in collective bargaining power, ratios of state to private sector compensation for the two states are nearly identical.

Some caution is needed in interpreting BEA figures, but they do give support to two conclusions.

First, Massachusetts local governments appear to have done better than the state at tightening their belts in recent years. These compensation figures include fast-rising municipal health care costs. Even with those costs, adjusted for inflation, local governments held compensation growth flat over the last four years, while state compensation grew by nearly 2 percent. With lawmakers cutting local aid once again, they must be sure state government is bearing an equal burden.

Second, public sector pay doesn't seem to be as bloated as some might assume and cuts could have real consequences. Voters are still feeling the recession and don't have much of an appetite for overpaid public sector workers. But the economy is growing and private sector pay is rising again. Before we give public employees encouragement to leave government, elected leaders might remind voters about the critical services public employees provide. **CW**

Ben Forman is research director at MassINC. Katie McGinn is a Northeastern University student and an intern at MassINC.

PUBLIC-PRIVATE PAY GAP

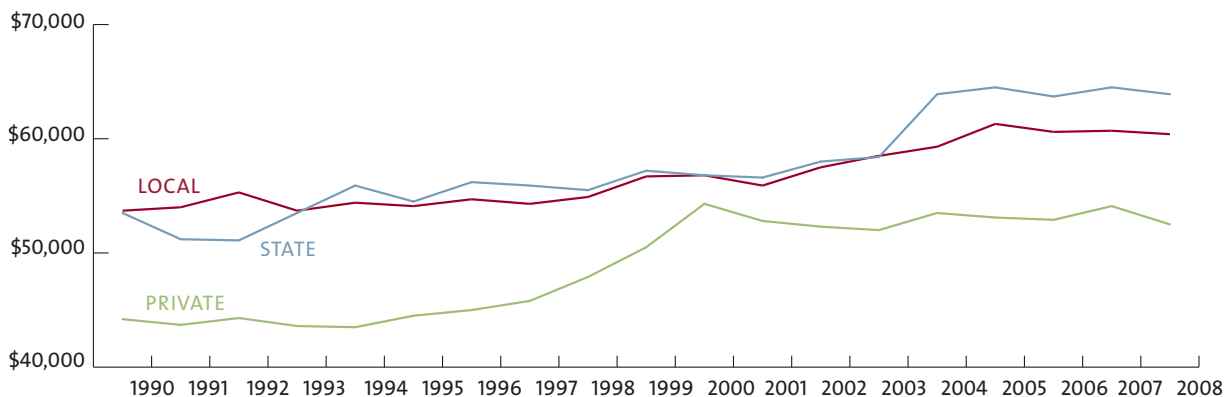
State rankings based on ratio between state government and private sector compensation. Larger ratios mean larger gaps.

STATE	RATIO
1. Missouri	1.18
2. Indiana	1.20
3. Pennsylvania	1.22
4. Massachusetts	1.22
5. New Hampshire	1.25
Natl. Average	1.46
46. Arkansas	1.66
47. Utah	1.67
48. New Mexico	1.69
49. Montana	1.80
50. Vermont	1.94

Source: US Bureau of Economic Analysis

MASSACHUSETTS AVERAGE ANNUAL COMPENSATION PER JOB (ADJUSTED FOR INFLATION)

State and local workers earn more than their private sector counterparts.



Source: US Bureau of Economic Analysis

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- Ann Cove

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The next great thing BY JACK SULLIVAN

DESPITE THE ECONOMIC woes in the country, investment in research and development continues to expand in all public, private, and nonprofit sectors, according to federal statistics.

Nowhere is that impact felt greater than in Massachusetts, where more money is spent on business research and development than in any other state in the country except California, according to National Science Foundation surveys for FY2008, the most recent data available.

Massachusetts also ranks second overall nationally in total R&D expenditures as a percent of the state's Gross Domestic Product. Only New Mexico, which has a GDP one-fifth the size of Massachusetts's and where research and development spending was less than a quarter of the \$24.6 billion spent in the Bay State, ranks higher.

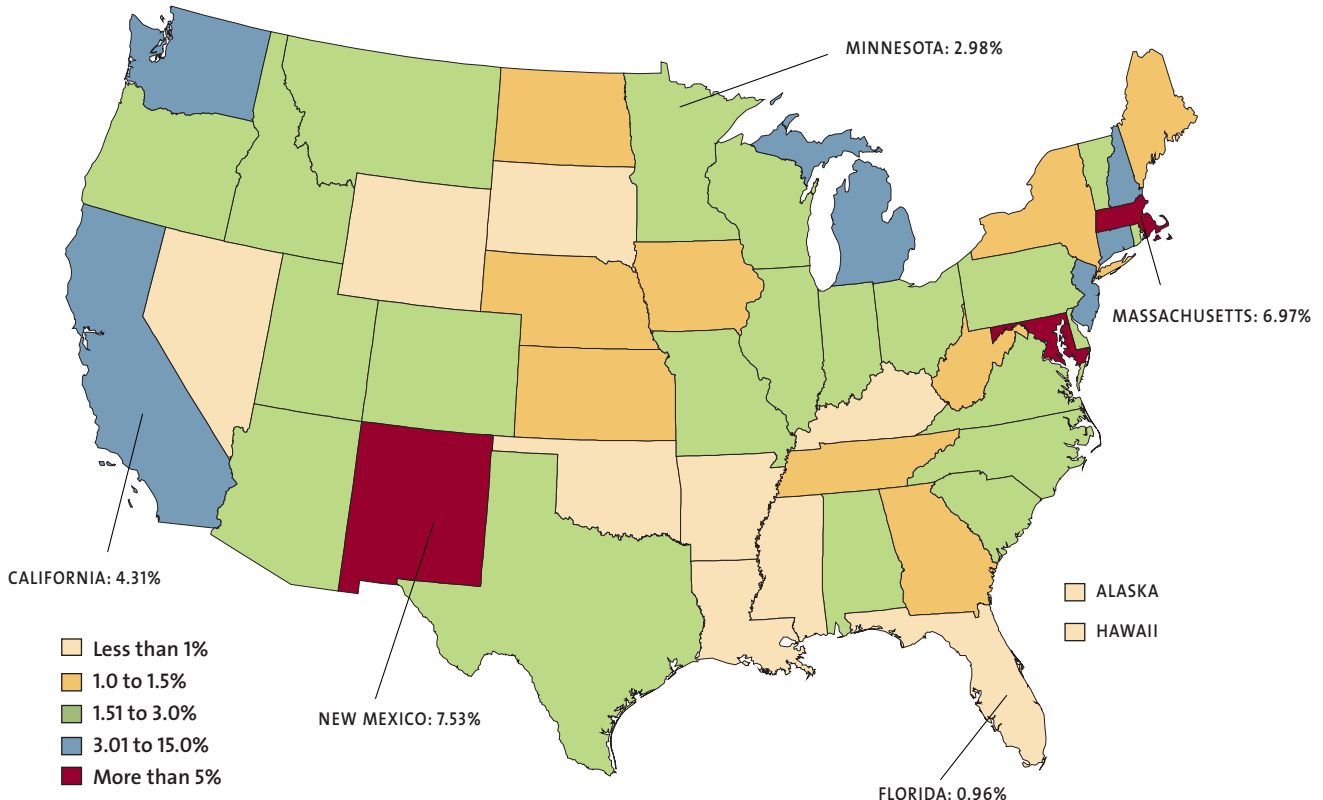
"We have a lot of high tech and electronics here, so those folks are already invested in research and development," says Charles Atherton, a professor of finance at

Suffolk University. "It's the technological advancement that enables businesses to grow. If you continue to make the same product you made in 1955, you're probably not going to be a market leader anymore, no matter how much of a leader you were in 1955."

California's \$77.4 billion in total R&D expenditure dwarfed all other states and accounted for 21.6 percent of all state spending on research and development. Massachusetts was a distant second to California, but it was the only other state to exceed \$20 billion.

Businesses spent \$19.5 billion on R&D in Massachusetts. Surprisingly, given the state's powerhouse educational institutions, only \$2.2 billion was spent by the state's colleges and universities, placing Massachusetts sixth in that category. With its bevy of world-class research and teaching hospitals, Massachusetts ranked first in nonprofit R&D with \$1.3 billion spent. California was second with \$1 billion. No other state topped \$400 million. **CW**

RESEARCH AND DEVELOPMENT AS PERCENT OF STATE GDP



Source: National Science Foundation

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Untethered competition

BY JACK SULLIVAN

WIRELESS PHONES, it seems, are ubiquitous. Talking, texting, surfing. On the street, on the T, and in the car. You can't swing a dead Samsung without hitting someone with a cell phone of some kind.

In Massachusetts, as you would expect, cell phone saturation is near 90 percent, with more than 5.8 million wireless phones on the air in the state, according to the 2010 Massachusetts Department of Telecommunications and Cable Competition Status Report.

More people are dropping their home landlines in favor of all wireless, though not at the same rate as nationally. Bay State residents, it seems, have a hard time cutting the cord completely. Between 2005 and the end of 2008, the most recent data available, the number of households with wireless-only service nearly tripled from 4.1 percent to 11.3 percent, according to state estimates. That is still below the national average of 20.1 percent.

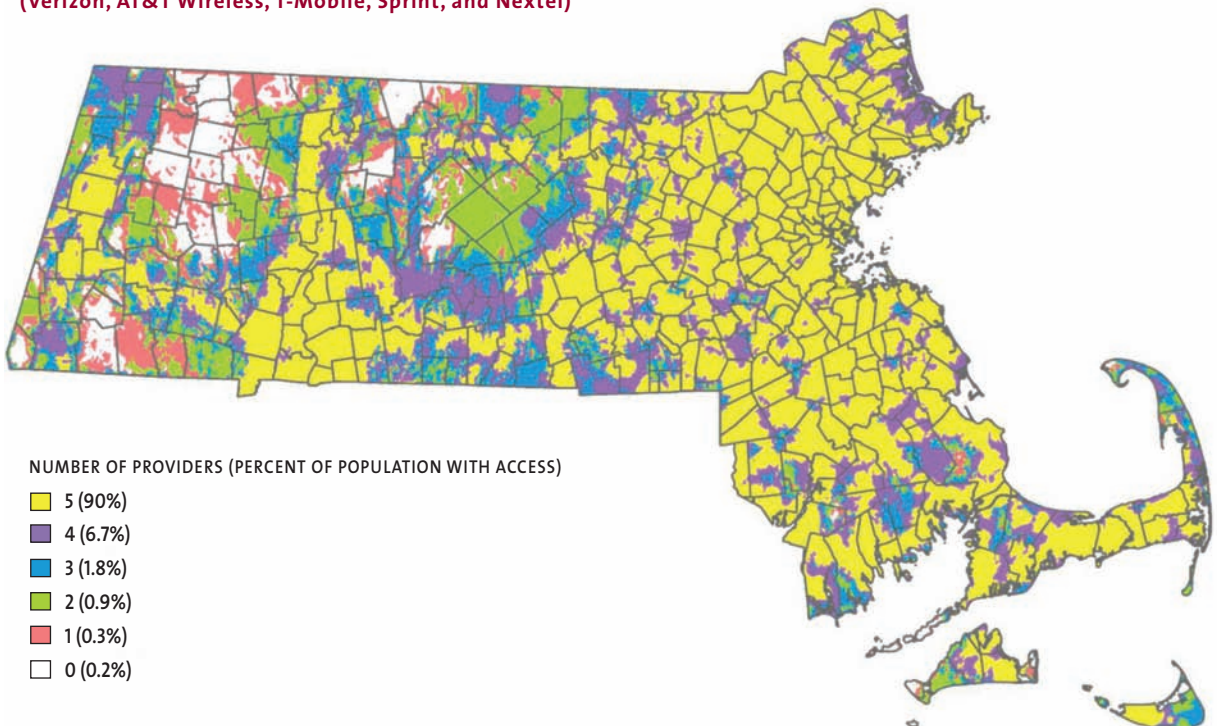
According to the state report, more than 90 percent of the state's subscribers have their choice of five carriers —

Verizon, AT&T, T-Mobile, or Sprint Nextel, which is counted as two because the company has two separate wireless systems. The competition will be reduced with AT&T's acquisition of T-Mobile. The five carriers only have overlapping service in 50 percent of the land mass in Massachusetts, and about 6 percent of the state has no cell service at all.

The farther west of Interstate 495 you are, the fewer your choices. In the population-rich metro area inside Route 128, all five carriers are available to 97 percent of the population. Out in the Berkshires, only 55 percent of subscribers have the full range of choice. An estimated 15,000 people from 58 towns, mostly in the western part of the state, cannot subscribe to any cell service, while another 20,000 have only one provider available.

"Not surprisingly," the report says, "coverage correlates with population density and flatter topography, as wireless signals are blocked by obstacles such as terrain and foliage." **CW**

WIRELESS VOICE SERVICE AVAILABILITY IN MASSACHUSETTS (Verizon, AT&T Wireless, T-Mobile, Sprint, and Nextel)



Source: Massachusetts Department of Telecommunications, overlay of coverage maps

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Fish fight

The Massachusetts congressional delegation is usually in sync with environmentalists, but not on fishing limits **BY SHAWN ZELLER**

MASSACHUSETTS DEMOCRATS ARE close allies of the environmental community, routinely receiving top scores on environmental scorecards and leading the charge on major environmental legislation in Washington.

But don't tell that to Peter Shelley, senior counsel at the Conservation Law Foundation in Boston, or Tom Lalley, oceans communications director of the Environmental Defense Fund in Washington.

They are fighting hard to maintain strict federal limits governing what Massachusetts fishermen can catch on the grounds that the restrictions are the only way to restore depleted stocks of cod, flounder, and other species. Their sworn enemies in the fight are not just the fishermen of New Bedford and Gloucester, but also US Reps. Barney Frank and John Tierney, Democrats who represent those communities in the House, and Democrat John Kerry and Republican Scott Brown, the Bay State's senators. Gov. Deval Patrick, another political ally of the fishermen, made a personal appeal in January to his friend President Obama to ask him to intervene on behalf of the fishermen.

It's a situation that leaves Shelley "perplexed and disappointed." Lalley takes it less personally. "It's hard to make assumptions about where members of Congress will stand on fishing," he says. "It tends to be a constituent services issue."

But the Massachusetts representatives insist that it's they who are in the right, defending an ancient way of life against rules that they believe will drive small fishermen out of business. The catch limits, they insist, are based on flawed science and should be higher.

"I don't see an environmental issue here," says Frank. "We're not talking about making the ocean dirty. We're not talking about fouling the air. We're not talking about anything that degrades the envi-

ronment. The debate is over how many fish you can catch without depleting the stock."

The issue has simmered for years but came to a boil over last year's rules implementing a 2006 law that requires an end to overfishing by 2011. The rules, which are set by a regional fishery council for New England that reports to the Commerce Department in Washington, set a total allowable yearly catch for each fish species, with quotas established within each species for individual fishermen. It's called a "catch share," which fishermen can use, lease, or sell—something like a cap-and-trade system for fishing.

Environmental groups say the catch share system holds the greatest hope of rebuilding depleted stocks after numerous other approaches—time limits forcing fishermen to spend more time at port, temporary closures of prime fishing grounds, and limits on the use of the most efficient fishing gear—have mostly failed.

But Massachusetts's main fishing ports, New Bedford and Gloucester, are suing the Commerce Department to overturn the rules. They fear that small businesses won't have enough capital to stick it out when the catch limits are most strict and will be forced to sell their shares to bigger operators, only to see the catch shares rise in value when fish stocks recover.

"For too long, self-interest, environmental extremism, and undue influence from special interests have shaped [the fishery] council decisions," says New Bedford Mayor Scott Lang, whose city's fishing catch, principally scallops, is the most valuable in the nation.

Frank and Tierney filed a friend of the court brief supporting Lang's lawsuit last year. Frank calls the catch shares system a consolidation measure. "I don't see why environmentalists should be in



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favor of fewer small independent people,” he says.

The debate has become so heated that last year Frank and Tierney called on the Obama administration’s top fishing regulator, Jane Lubchenco, the head of the Commerce Department’s National Oceanic and Atmospheric Administration, to resign. She is a former board member of the Environmental Defense Fund, one of the environmental groups most enthusiastic about the catch share system.

Frank later backed off, but was front and center last fall when he and Gov. Patrick met in Boston with Lubchenco’s boss, Commerce Secretary Gary Locke, to urge him to raise the limits. Locke, who has since been nominated as US ambassador to China, got an earful from local fishermen as well and pledged to consider carefully whether to raise the catch limits.

The fishermen’s hopes were dashed in January when Locke wrote to Patrick and Frank to say his hands were tied. Frank, not normally someone to call fellow Democrats to account, blasted Locke for a lack of “courage.” He also suggested Locke’s actions may make him less supportive of Obama administration initiatives in Congress.

At the root of the dispute is whether Commerce’s predictions of collapsing fish stocks are, in fact, true. Brian Rothschild, a professor of marine science at the University of Massachusetts Dartmouth, says that catch limits are at least 30 percent too low for most species and that Commerce could allow the state’s fishermen to pull an additional 100,000 tons of fish out of the water, valued at about \$30 million, without negatively impacting conservation goals.

The law “says you take economics into account as well as the pace at which you replenish” the fish stocks, Frank adds, setting a 10-year deadline for replenishing the stocks. “We’ve said: ‘If it’s going well, and we’re making progress, why not 12 or 13 years?’”

But environmentalists see the problem as far more precarious. And they point to New England’s signature fish as a prime example. A study by professors at the University of New Hampshire found that the cod population on Georges Bank, about 60 miles off of Cape Cod, would need to expand by nine times to reach a healthy level.

The overfishing problem began, in environmentalists’ view, a century ago when steam-powered trawlers first took to the seas off New England. In the 1950s, regulations restricted the size of nets the trawlers could use, only to be circumvented by foreign ships that swarmed the waters off New England.

It wasn’t until the early 1970s that international rules took effect. Later that decade, Congress passed the Magnuson-Stevens Act, which declared US control over waters out to 200 miles from shore and set up a system of regional fishery councils to regulate the industry. But the

law also provided government tax breaks for US fishermen to upgrade their boats, leading to more overfishing.

Fish stocks continued to drop, a Commerce Department history of the New England fishing industry contends, “in the wake of ever-advancing harvesting technology, and failure of the management system to take steps necessary to rebuild the populations.”

Environmentalists say rebuilding began in earnest in 2006 when Congress revised the Magnuson-Stevens law,

The fishing industry is still big business in Massachusetts.

and set a strict deadline to end overfishing by this year. The Obama administration has pushed regional fishery councils to adopt the catch share system, which has seen success in other fisheries.

All this comes at a time when the fishing industry, whatever its struggles, is still big business in the Bay State. According to a federal report issued last year by the Commerce Department’s National Marine Fisheries Service, Massachusetts fishermen pulled in 326 million pounds of fish, worth \$400 million, in 2008. The state’s fish were

sold at retail for nearly \$4 billion, supporting more than 73,000 fishing industry jobs. By contrast, the state with the largest fishery in the United States, California, saw fishing contribute \$4.7 billion to its economy and support 160,000 jobs. Florida was the only other state to see more economic impact from fishing than Massachusetts.

Shelley acknowledges that the catch share system will cause at least some short-term pain for many fishermen, and that it will lead to some consolidation in the industry.

But he says that’s nothing new. Previous restrictions limiting the number of days Massachusetts fishermen could be at sea had the effect of cutting the number of

active boats in half between 2001 and 2009, from about 1,200 to around 600, he points out.

Advocates of catch shares hope that they will ultimately lead to not only greater efficiency, but a healthier fishery, albeit one that supports fewer fishermen. They figure it may only take a few years before Massachusetts begins to see healthier stocks of key species like cod and flounder.

And environmentalists aren’t without allies in the fishing community. In fact, it was the 2,500-member Cape Cod Commercial Hook Fishermen’s Association that first

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lobbied the regional fishery council to adopt an experimental catch share system in 2004. The association says it sees benefits in a system that allows fishermen to fish when they want, eliminating the rush to sea that occurred when old rules set specific fishing seasons. And they hope that will also reduce temporary price fluctuations that accompanied seasonal oversupply.

Environmentalists worry, though, that the system could fail if there isn't enough enforcement of the quotas. Only 30 percent of Massachusetts boats are staffed with observers, leading to ample opportunity to cheat.

Heightened enforcement is not in the offing, given the pressure Bay State lawmakers are bringing on the Commerce Department to ease off. And not without cause, environmentalists admit, given last year's report by the department's inspector general, an independent watchdog at the agency, which found that Commerce had been particularly tough on Massachusetts fishermen who'd violated fishing limits. The report prompted the agency to reassign its top enforcement officer in the state.

Bay State lawmakers led by Tierney, Frank, and Kerry

pushed Commerce in January to allow fishermen who'd missed a deadline another chance to appeal their cases. Locke initially turned down the request, enraging the lawmakers and Patrick. "It's a bad decision. He does have discretion and it's unfortunate he's chosen not to use it," Tierney said at the time.

Patrick wrote directly to the president later that month, asking him to overrule Locke. "The fishing families of Massachusetts deserve better," he wrote.

In March, Locke and Lubchenco eased the appeal process after a meeting with Kerry. The arrival of new White

'The fishing families of Massachusetts deserve better,' Patrick wrote to Obama.

House chief of staff William Daley has also given the lawmakers some renewed hope. Daley, as commerce secretary in the 1990s under President Clinton, worked with them on easing restrictions on harvesting scallops. Frank says he expects he'll prove receptive again. "We are talking about working people feeling some pain," says Frank. **CW**



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Piloting global payments

The new *prix fixe* system for health care reimbursement is getting a try-out in Lowell, but key details are still murky

BY PIPPIN ROSS

GERRI VAUGHAN, THE executive director of the Lowell General Physicians Hospital Organization, answers a question about the state's rush to embrace a global payment system with a question. "If Pat the patient comes, how do we deal with Pat?" she asks. Dr. David Pickul, seated across from Vaughan in a conference room at Lowell General, offers a choice. "We could pull out a pen and in 30 seconds order a long list of expensive inconsistencies and redundancies. Or we could own Pat's problem and deploy clinical integration."

To an observer, the exchange between Pickul and Vaughan comes across as a parody on doctoring from the hospital sitcom *Scrubs*. But this is no joke. Pickul says the global payment approach is an overdue attempt to change the way health care is delivered. "We're attempting to fix a system that is broken, unsustainable, and can't continue on the path it's on," he says.

Massachusetts led the way on expanding health care coverage through the 2006 law signed by then-Gov. Mitt Romney. The state is now trying to lead the way on cost containment. Pickul, Vaughan, and Lowell General are in year two of a Blue Cross Blue Shield of Massachusetts experiment to change the way health care providers are paid for their services. The state's largest health plan is working with a total of 12 hospital systems and 7,000 doctors that are providing care to 500,000 patients. Instead of paying for each test or office visit provided, Blue Cross is now paying a lump sum per patient. It's like ordering a *prix fixe* meal instead of a la carte.

Blue Cross says the new approach is promoting more coordinated patient care and has the potential to reduce costs, although it hasn't resulted in any savings yet. Massachusetts, a major medical center where health care costs are among the highest in the nation, is an ideal laboratory for the global payment experiment. But no one is quite sure who will be the winners and losers among doctors, hospitals, community health centers,

insurers, and consumers if this experiment in delivering health care services takes off.

To explain how the global payment approach differs from the current fee-for-service system, Pickul returns to his hypothetical crash-test patient Pat. "Three years ago," he says, "Pat comes to me. I don't know her. She just shifted insurers, and I'm her third primary care doctor in about nine months. Because of the system, her medical history hasn't been passed along from her last doctor. The effort to retrieve it would take forever. Her opening line is: 'Doc, I need a MRI.' My response? An MRI for what?"

When he learns Pat is struggling with headaches, Pickul says he would basically start from scratch, ordering a battery of tests to find out if she actually needs a MRI. After all the tests, the need for an expensive MRI test may still be unclear. "Because she wants it and because I'm an internist, not a neurologist, I do the paperwork for the MRI because under that system, the easiest way to get her to a head doc is with the MRI results," he says. After weeks of tests for which Pat makes copayments, the MRI results are compelling enough to convince Pickul to send her to a neurologist. After that, she's largely the neurologist's responsibility.

The compassion-filled teamwork seen on TV dramas like *Grey's Anatomy* rarely happens with the fee-for-service system. But Pickul says it's beginning to gain traction with global payments. "It's freeing us to do consults with each other, to get away from endless and often pointless tests," says Pickul.

Under a global payment system, insurers work with frontline providers and administrators to predetermine a fixed payment with monthly adjustments that applies to the age, gender, health history, and health status of every patient. Setting those individual rates correctly is the key to the success of the system, but it's also the part that none of the parties will talk about. What, for

WHAT WORKS

example, is the correct rate for a person in their 20s with relatively few health issues? How does that compare to an obese patient with chronic health problems?

One thing Blue Cross, Pickul, and Vaughan will talk about—often—is how global payment is not capitation. That's the term for the 1990s attempt to control health care costs by capping how much health care providers were paid for patients. Capitation, however, provided little incentive for doctors to do anything other than hold costs down by ordering fewer services. Pickul says global payment offers incentives to provide quality care as well as avoid costly medical procedures unless they are necessary.

If the cost of Pat's care is less than predicted in the flat-rate global payment, the Lowell group gets to pocket the difference, and each doctor receives 10 percent of the budget's total savings. Since the contract began, the Lowell network has earned substantial bonuses, meaning the cost of care has been less than the payments, but those overseeing the project declined to



Physician bonuses are, some say, a cause for concern.

divulge any specifics.

The physician bonuses that are part of a global payment system have been flagged by some policy experts as a potential cause for concern. Could an evil Dr. No pad his pocket by giving Pat the patient Advil instead of angioplasty?

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Vaughan says global payment systems are designed specifically to avoid that sort of scenario. She says health care providers have to prove their patients' health is authentically better, or at least improving. "We're not talking random surveys and phone calls to patients," says Vaughan. It's now a score-driven team sport in which the higher the score, the higher the income. The scores are based on 64 measurements established by the US Department of Health and Human Services covering the quality and results of the care a patient receives out of the hospital in the form of office visits and things like preventive care screenings and what happens during and after hospitalization. Now, Dr. Pickul's financial incentive comes directly from delivering good care, not excessive services.

When it's documented that a patient is regularly given the preventive care recommended for their age group, such as mammograms or colonoscopies, that translates as points. If a diabetic is receiving regular outpatient blood-sugar and cholesterol screening from a nurse practitioner and isn't having any problems, that nets a maximum score of five. Scores can also be lowered by incompetency or accidents. If Pat the patient was readmitted to the hospital because she got a bacterial infection after her brain biopsy, that brings down a group's entire score. "If I actually lower Pat's high blood pressure? That's a shot-score!" says Pickul, sounding like a hockey announcer calling a goal. "If I haven't called Pat in for a mammogram for three years? That's bad."

Dana Safran, senior vice president at Blue Cross Blue Shield of Massachusetts, says the global payment approach offers health care providers the right incentives. "What we have to understand is that there are perverse incentives in the current system," she says. "We created an 'if-you're-paying-I'll-have-the-lobster' mentality."

Safran says the outcomes after one year under global payment are where Blue Cross expected to be in three or four years. "The amount of money being spent hasn't changed yet, but the outcomes are serious testimony to the fact that more—in tests and doctors and visits—isn't always better," she says. "We're getting a lot more for our money than we expected."

Safran says Blue Cross padded first-year global payment budgets to entice hospitals and doctors to sign on. She stressed that the current goal is not to actually reduce costs, but to cut in half the rate of growth in medical costs after five years.

Gov. Deval Patrick has filed legislation to move state government's payments for health care services in the global payment direction and to encourage the rest of the health care industry to follow. He's also addressing the cost issue more directly by proposing that state regulators be given the power to reject health plan premium increases

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based on a review of their underlying costs, essentially what hospitals and doctors are charging for their services. Patrick says he's seen waste in the health care system up close. "When my mother was suffering from cancer and hepatitis, the lack of coordination between the hospital, the primary care physician, the long-term facility, and then hospice was profound," he says.

The biggest blunder so far under global payment at Lowell General is that health care consumers were not briefed on the changes. "Poor Pat doesn't have a clue what's going on," Vaughn says. "The beginning was incredibly bumpy," adds Pickul. "In the HMO world, patients were trained to pick their doctor for this and that. Need a referral? Just call my office and I'll give you one. In this huge redesign, the consumers, patients, and businesses were seriously left out of the fact that we're not doing it like that anymore."

Vaughn and Pickul attribute any first-year bumps to patients feeling "locked-down" after decades of buffet-style medical care. "They're the buyers," Vaughn says of patients, "and Blue Cross Blue Shield forgot to explain what they're buying."

Blue Cross officials say they didn't get a chance to do

much public outreach on global payment because the program was developed on a short timetable and received such an overwhelming response from providers. Even so, they say patient care experience measures they tabulate haven't shown much change, indicating patients haven't reacted negatively. Officials at the health plan say coverage discussions are better left to patients and their physicians. In fact, the Blue Cross customer service line says:

'What's happening here is so logical and simple.'

"Your primary care doctor knows what's best for you."

Lots of kinks in the system are still being worked out and new technologies and copayment incentives are being deployed to steer patients to lower-cost providers. But Blue Cross executives and many of the health care providers involved in the project say enormous progress is being made. Pickul leans forward to make a point with the intensity of Dr. House having a diagnostic epiphany. "What's happening in this hospital for doctors and patients is so logical and simple, it's shocking it's taken this long." **CW**

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Who does he think he is?

Dan Winslow, a veteran Massachusetts Republican turned freshman state rep, is shaking up the State House with a flurry of policy proposals and a scathing critique of the Beacon Hill status quo.

BY PAUL McMORROW | PHOTOGRAPHS BY MICHAEL MANNING

IT'S AN EARLY March afternoon and a gaggle of reporters are waiting outside the House chamber. The focus of their interest finally steps out and obliges the group. He and the governor, whatever their differences, both agree on the importance of unions to the public workforce, he says. It shouldn't have been a remarkable scene. But this was not the House Speaker holding forth on the issue of the day or even one of his leadership deputies or a committee chairman. The man of the moment was a freshman state rep, and a lowly Republican to boot.

On Beacon Hill, freshman reps are expected to be

seen but not heard. And Republican freshmen are barely seen at all. But Dan Winslow, a judge-turned-Romney-chief-counsel-turned-Republican lawmaker, is seen everywhere these days. And heard. He's organizing press conferences, calling in to radio shows, appearing on television, and jousting with the lefties on Blue Mass Group. He's on Twitter, playfully likening the House Speaker and Senate President to North Korean dictator Kim Jong Il. And it seems like he's getting himself quoted in a news story every day.

Winslow's antics are in some ways a throwback—not to a musty time best forgotten but a period perhaps worth reclaiming. In the 1970s and 1980s, the culture of Beacon Hill was more open. Reformers on both sides of the aisle gained traction and climbed the political ladder on the power of their proposals. That's how Michael Dukakis, Barney Frank, Andrew Card, and Andrew Natsios all rose within and, ultimately, out of the Legislature. The State House's power structure is far more rigid these days. Committee deliberations are largely perfunctory. The Speaker and Senate president set the legislative agenda, and the party faithful either follow along or dissent at their own peril. It's not a model that Winslow is quietly abiding.

At today's installment of the Dan Winslow Show, an Associated Press reporter has some questions about a Scot Lehigh column in that morning's *Boston Globe*, one that dubbed a Winslow proposal to rein in collective bargaining "the most interesting notion I've heard during the pyrotechnics about public-employee unions." The seeds for the column may have been planted a few days before, when Winslow used the hyperventilation over Wisconsin Gov. Scott Walker's union-busting to crash onto Blue Mass Group, the left-leaning political blog. He pitched a bill that would crib a 1980s-vintage law Barney Frank sponsored to rein in union costs at the MBTA, take that system statewide, and maybe save a few hundred million dollars along the way. Winslow argued his case to the lefty netroots online, and then offered to hash out the state's full range of maladies with them, over dinner and a moderate quantity of drinks. In the weeks that followed, Winslow's collective bargaining proposal led to a union-led occupation of his office and to a State House rally at which the freshman lawmaker was labeled a "yahoo," a "right-wing idiot," and an "ass-hole," and threatened with expulsion to Rhode Island.

All of this—the media spotlight, the bold ideas, and the relentless gossip that follows—is stuff Beacon Hill hasn't seen from a new lawmaker in decades. But Winslow isn't just another legislative newbie. He is the former presiding justice at the Wrentham District Court. He served

as chief legal counsel to former governor Mitt Romney, and was the top lawyer for Scott Brown's successful Senate campaign. He could easily be working in Washington, DC, right now or sitting in a downtown office tower, charging several hundred dollars per hour for legal work. Instead, Winslow left his partnership at the white-shoe law firm Duane Morris to run for the House seat Brown once held. His immediate reward was a windowless office in a dark corner of the State House basement, a cubby widely believed to be one of the building's worst workspaces.

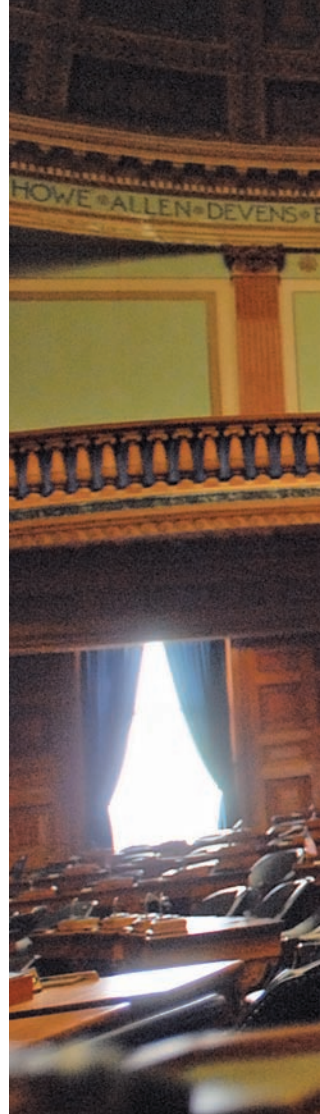
It's difficult for a pen of concrete and laminate wood paneling to contain Winslow. From his little subterranean office, Winslow is cranking out legislation and carving out a unique place for himself—that of the defiant cage-rattler—in the largest freshman class Beacon Hill has seen in two decades. Whether he will end up regarded as blunt-talking flash-in-the-pan or a model for a more freewheeling style in the Legislature is unclear. But Winslow has the nerve to think that ideas should matter to the legislative process, and he's going put that notion to the test.

"I don't need the job," says Winslow, who hails from an

"His enthusiasm is not contrived. He's always asking, 'Why don't we do this?' It never starts with, 'We can't do this because...'"

old-line Yankee family and evinces an air of *noblesse oblige* without the stuffy trappings. "If decent, honest, and hard-working people don't get involved in government, government won't be decent, honest, and hard-working. If good people stand on the sidelines, our democracy will devolve to the lowest common denominator of talent and motive. And I refuse to do that."

"His enthusiasm is not contrived," says Daniel Haley, a Boston attorney and former Romney aide who worked



Winslow describes his politics as “socially tolerant and fiscally conservative.” His style thus far in office has been anything but restrained.



with Winslow on Brown's Senate campaign. “He's exactly the same one-on-one as he is when 10 people are standing around him. He's always asking, ‘Why don't we do this?’ It never starts with, ‘We can't do this because....’ It's always reasons why something can be done, should be done.”

ROBED REFORMER

Much of Winslow's career has been spent behind the scenes, first as a lawyer for the Massachusetts Republican Party, and later as a gubernatorial aide. He led the GOP's challenges to legislative redistricting following the 1985 and 1990 Censuses, and sued the Governor's Council to overturn a string of judicial confirmations in the last days of the Dukakis administration. He was Gov. Bill Weld's choice to take over the state party chairmanship in 1992 (he was outmaneuvered in that contest), and served as legal counsel during Romney's 1994 campaign against Ted Kennedy.

Winslow's family pedigree stretches back to the early days of the Plymouth Colony (an uncle far up the family tree arrived on the Mayflower), but the married father of three lacks the old money and political lineage of the Cabots and Lodges. Winslow's father fought in Korea, then attended UMass Amherst on the GI bill and settled

there. Winslow, who is 52, grew up in Amherst, and wound up in Norfolk after graduating from Tufts and Boston College Law School.

Winslow's name was floated twice in the early 1990s as a possible pick for US Attorney. He was named to the state bench in 1995, after Weld's reelection. He gave up that lifetime post in 2002, to join the Romney administration as the governor's chief legal counsel. Winslow left the Romney administration in early 2005, becoming a partner at the law firm Duane Morris; he's now a senior counsel at Proskauer Rose, where his practice includes litigation and corporate strategy services. But politics is in his blood, and along with his legislative duties he remains employed as the Brown campaign's counsel. “When you run, the first call you make is to Dan,” says Charley Manning, a Republican political consultant. “He knows more than anybody else—all the arcane rules.”

During Winslow's seven years as a judge, he won some tabloid notoriety by proposing that repeat drunken drivers have orange warning stickers affixed to their vehicles. (He tested the idea by placing one on the back of his Volvo, and then studying drivers' reactions.) He also spearheaded an effort to expand jury trials beyond Norfolk County's Quincy and Dedham courthouses. The Wren-

tham courthouse, however, wasn't built to accommodate juries. Elissa Flynn-Poppey, a lawyer who interned for then-Judge Winslow, recalls him arriving early and in his robe, moving around courthouse furniture.

But the biggest stir he caused while on the bench was among his own judicial brethren. Winslow won the Pioneer Institute's 1998 Better Government Competition for a paper that decried the judiciary's case management system. That paper invited stiff blowback from judges who perceived personal criticism in Winslow's analysis. He was also criticized for suggesting that judicial funding should be tied to courthouse caseloads—a challenge to the Legislature and to individual judges' political power. While with Romney, he made the level-funding of the judicial budget contingent upon the collection of \$40 million in fees and fines, and drew a sharp rebuke from the chief justice of the Supreme Judicial Court for his troubles.

Now, Winslow notes, several of his case management reforms have been implemented, courthouse budgets are allocated based on caseloads, and Gov. Deval Patrick has increased the judiciary's fee collection target to \$47 million (to plaudits from the SJC). The lessons are twofold, he says. One, "the judiciary is even more hidebound than the legislative process," he says, so the House won't be the toughest institution he has taken on. And two, "if you put your head down and you're willing to do the work, and weather the barbs and arrows, you can get a lot done."

MARRIAGE MAN

The governor's chief legal counsel is normally not a position that generates publicity. But that mission was thrown for a loop in late 2003, when the SJC's *Goodridge* decision declared the prohibition of same-sex marriages unconstitutional. Romney was an ardent opponent of same-sex marriage, and his national political ambitions were clear, but it was up to him to enforce *Goodridge*. Winslow became the administration's point man on the issue, and its public face.

Citing attorney-client confidentiality, Winslow won't discuss the administration's internal response to *Goodridge*. However, the moves Winslow made publicly, in Romney's name, drew praise from gay advocates, and stinging crit-

icism from the right. Winslow appeared at a state convention of justices of the peace, and told them they could not refuse to perform same-sex marriages. He also traveled the state, training municipal clerks on the administration of same-sex marriages.

"He worked with an administration that was hostile to equality, and in that hostile environment, he managed to quietly effectuate changes on behalf of marriage equality," says Arline Isaacson, co-chair of the Massachusetts Gay and Lesbian Political Caucus.

Winslow, who describes his personal politics as "socially tolerant and fiscally prudent," downplays that interpretation. He says town clerks and justices of the peace took the same oath Romney did, and his legal guidance to them was simple—follow the law when you agree with it, and follow the law when you don't.

"There was spin that Romney was backing away and softening his position, and that was not the case," Winslow says. "The governor had a choice. He could be like George Wallace and block the entrance to the college. And he was criticized for not doing that. He did the lawful thing. I



think it bespoke his integrity.”

Much has been made of Winslow’s exit from the Romney administration. Some Beacon Hill wags believe there was a split between the two men in the aftermath of *Goodridge*, pointing to the fact that Romney replaced Winslow with a former Connecticut lawmaker who had sponsored a defense of marriage act. Others say Winslow showed too much ambition and independence, and was too cozy with the press, for Romney’s liking. Beacon Hill watchers note that Romney recently gave \$5,000 to union-busting Wisconsin Gov. Scott Walker, but he never contributed to Winslow’s legislative campaign. Winslow simply says his plan was to serve two years on Beacon Hill and then return to the bench.

Depending on whom you ask, when Winslow’s time in the governor’s office was over, Romney was either unable or unwilling to steer Winslow through a repeat judicial

Winslow calls himself an environmentalist, and is the only Republican cosponsor of legislation to expand the bottle bill.

confirmation by the Governor’s Council. At the time, Governor’s Councilor Christopher Iannella told the *Globe* votes were lining up against Winslow because “there is a sense that [Romney’s staff] feel they are better than us.” Iannella shrugs that off today. “It’s always rocky with everyone,” he says. “That was so long ago, I don’t know why they pulled his name.”

But Winslow is convinced there was an anti-Romney agenda at work. “There was a real negative energy level in the building against the governor, against his senior team, and I was it,” he says. “I wasn’t convinced I would be confirmed, so I asked the governor not to nominate me.”

GOP PRAGMATIST

The 2010 election cycle was supposed to be a breakthrough year for Massachusetts Republicans. Scott Brown’s shelacking of Attorney General Martha Coakley gave the party a new base of volunteers and activists, energized downbeat town committees across the state, and drew out dozens of new candidates. The GOP challenged the state’s Democratic establishment across the board. And they suffered stinging defeats at nearly every turn, including the governor’s race, where Charlie Baker, long the Republicans’ next

great hope, fizzled out. The party actually lost a seat in the state Senate, reducing its caucus to four members in a body of 40.

Those shortcomings leave the House as the Republicans’ last and only outlet for influencing state policy for the next two years. November’s election doubled the GOP’s numbers in the House, as Republican candidates knocked off 11 incumbent Democrats and claimed four open seats previously held by Democrats. Winslow is one of 20 freshman Republican reps on Beacon Hill. The turnover in the Legislature was so great that House leaders had to move the bullpen, normally a fourth-floor holding pen for new lawmakers, to two large hearing rooms in the State House basement.

Even with their November gains, Republicans still only control 20 percent of the seats in the House. However, Massachusetts has one of the nation’s least competitive state legislatures, and any turnover tends to spawn uncertainty. November’s election “opened up the majority to the idea that they are vulnerable,” says Brad Jones, the Republican House minority leader. “People are hearing footsteps. The Speaker isn’t going to bring up votes that he thinks might jeopardize his members.”

House Speaker Robert DeLeo has already vowed to close a more than \$1.5 billion budget gap without tax increases. He has also begun likening new fees, such as an expansion of the bottle bill, to taxes. He’s fending off the Republicans while fighting on their fiscal turf.

The defensive stance adopted by House leadership should benefit a legislator like Winslow, who campaigned largely on fiscal issues. A good chunk of the freshman rep’s proposed legislation is aimed at lowering costs and boosting the volume of cash in the state’s economy. Winslow has filed legislation that would allow residents to write off sales tax expenditures on their income tax claims; establish free enterprise zones in municipalities; create a home refinancing guarantee under MassHousing; and allow municipalities to bond out Community Preservation Act revenue through the state treasury, thereby slashing administrative costs. He believes the governor’s office should aggressively target entitlement fraud, and he wants to push the forward-funding of labor contracts on the municipal level. Then, of course, there’s that proposal to expand management rights to local and state employers.

These are clearly the proposals of a guy who ran with an R next to his name on the ballot. Even so, Winslow isn’t a GOP caricature. He labels himself an environmentalist, and is the only Republican cosponsor of the expanded bottle bill. During the campaign, he rode his bicycle door to door, rather than drive. (He also used the bike to film a

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campaign video spoofing Brown's famous truck ad.)

"When he was in the Romney administration, he wasn't perceived as an ideologue," says David Guarino, a veteran Beacon Hill operative. "He was viewed as somebody who could be worked with." As for Winslow's early moves in elected office, Guarino says the amount of legislation Winslow is now pursuing, and the traction he's getting, are "virtually unheard of" for a freshman.

He's getting that traction, in part, because Winslow is relentless about putting his ideas in front of people. He returns reporters' phone calls, and when he does, he says something interesting. He's on Facebook and Twitter, even though they get him in trouble sometimes (like that North Korea crack, or a lead-balloon joke he Tweeted about how a global warming symposium had been snowed out).

And then there's Blue Mass Group. Winslow began posting on the website, under a pseudonym, in 2006. He outed himself during his legislative race, and he's currently the only legislative Republican engaging the liberal-leaning site. "He's been persistent about participating, and he's always saying something constructive and interesting," says David Kravitz, one of Blue Mass Group's editors. "He doesn't do drive-by posts. He'll come back and answer some really pointed questions. He's really using the site as a source of dialogue, rather than a dumping ground for press releases."

MAP-MAKING ALLIANCES

For all his optimism about the ability to bring good ideas to the legislative arena, however, in the most far-reaching political fight happening on Beacon Hill right now, Winslow is participating as a civilian, not as a legislator.

A bipartisan advocacy group, Fair Districts Mass, headed by longtime GOP gadfly Jack E. Robinson, has retained Winslow the lawyer to champion its cause in the upcoming redistricting battle. That means Winslow the lawmaker will recuse himself from redistricting deliberations at the State House. He will vote up or down on the House's new legislative map, but he won't be involved with state Rep. Mike Moran's map-making committee. Instead, he's laying the groundwork for a possible federal lawsuit challenging Moran's maps.

"Redistricting is, ultimately, an exercise in incumbent protection," Winslow says. He wants to wipe the current legislative map clean, and believes that wouldn't happen if he were working as the Republican Party's redistricting point man, as he did following the 1985 and 1990 Censuses. "There's always this disconnect between incumbent protection and party growth," he says. Winslow says Fair Districts Mass will push for what he calls fair, constitutional districts—districts that open up Congress and the State House to new challengers from both political par-

ties. In other words, Winslow could wind up angering not only Democrats but fellow Republicans as well.

“I’m of the view that the whole issue of partisanship is getting a little old,” he says. “I don’t like the notion that you lose because I win. Redistricting is the best means for

already losing one congressional district in this redistricting round) and open up electoral opportunities for Republicans outside Suffolk County. That’s what happened after the 1990 Census, when Winslow helped push new districts that ultimately led to the election of two

Republican congressmen, Peter Blute and Peter Torkildsen, and competitive contests on the South Shore and in the Merrimack Valley.

“He’s playing the hand that works for Republicans and works for minorities,” says Joyce Ferriabough-Bolling, whose Black Political Task Force partnered with Winslow and state Republicans to influence the new legislative maps that followed the 1990 Census. Winslow got four com-

petitive congressional districts, and Ferriabough-Bolling got strong minority voter influence over the Eighth Congressional seat currently held by Michael Capuano. “I don’t see him as a soldier of fortune for diversity rights,” she says. But Ferriabough-Bolling thinks he was also happy to advance that goal. “He’s for minority and Republican [advancement]—he believes in both,” she says.

In the upcoming redistricting battle, Winslow could end up angering not only Democrats but his Republican colleagues as well.

a political paradigm shift, and if there’s ever a state in need of a paradigm shift, it’s ours.”

The group’s main focus will be the creation of a majority-minority congressional district anchored in Suffolk County, and compact, logical districts throughout the rest of the state. Such an approach would drastically alter the current congressional district boundaries (Massachusetts is

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NO TIME TO LOSE

Winslow called his first press conference as a state rep weeks before he was even sworn in. He figured most people were focused on shopping in the last few days before Christmas, which would make it as good a time as any to kick off a debate about lowering the sales tax. So on the Wednesday before Christmas, on an afternoon when the State House was emptying for the end-of-year break, a handful of newly-elected Republicans called a press conference outside the House minority leader's office and announced their intention to push for a sales tax credit in the upcoming legislative session. The freshmen, led by Winslow, said they would be issuing \$2 billion worth of economic growth and cost-cutting proposals in the coming months, and this was the opening shot.

A handful of reporters listened, scribbled notes, and then asked a question: Where was the minority leader, Brad Jones? Why were the freshmen calling this presser on their own? The sight of four freshmen legislators (who hadn't even been sworn in yet) talking shop and issuing press releases was so rare

that it was noteworthy. As far as Winslow is concerned, it shouldn't be.

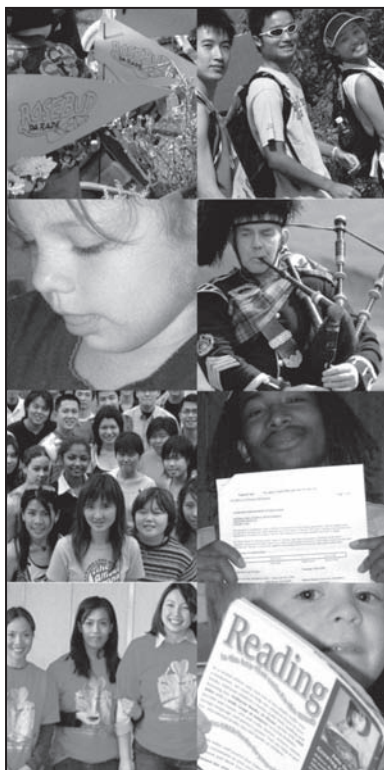
"I think the Legislature hasn't lived up to its fullest institutional potential as a place for debate and discussion, as an incubator for ideas," he says.

Winslow has already pledged to serve three terms, at most. The self-imposed term limit "lights a fire under me," he says. If he were on a 20-year plan, he says, he wouldn't

Winslow works the mainstream press and social media channels relentlessly. It sometimes has the feel of shameless self-promotion.

feel as much pressure to get ideas to the House floor.

"I talk to folks who tell me they've been here for 24 years," Winslow says. "Well, respectfully, what are you going to do in the next two that you haven't done in the



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previous 24? The people who have been there the longest, you've never heard of, because they've never done anything! Why are they there, other than to consume oxygen and to pander to the special interests that sustain them in their roles?"

He pauses. The man of big ideas can also throw a sharp elbow, sometimes before he even realizes it. "They're all nice people," he continues. "When they read this, they're all going to be mad at me. That's fine."

His legislative colleagues have more than the occasional barb to stew over. In his constant churning out of proposals and policy views, Winslow is working the mainstream press and social media channels relentlessly (he now boasts more than 1,000 Facebook "friends"). It sometimes has the feel of shameless self-promotion, and some of Winslow's colleagues undoubtedly see it that way. But in a body that has become so sclerotic with top-down authority, a media-savvy outside strategy like Winslow's might be the only way to get traction on an issue.

"The easiest thing to do in government is nothing," Winslow says. "People expect nothing of you in government. They'll not criticize you for doing nothing, because that's the level of expectation. It's when you stick your

head up and you start putting ideas out, that's when you get the criticism and the pushback and the pressure."

That pushback and pressure are already mounting. It's not because any one of Winslow's 19 bills has angered some great and powerful lobby on Beacon Hill. It's the pace he's working at, his refusal to refuse comment, and his ever-growing pile of press clips—that's what's catching his colleagues' attention.

Legislators and staff have taken to asking reporters what office Winslow is running for. There is no shortage of theories. Some believe he's angling for governor, or attorney general, or secretary of state. Others believe he wants to depose Brad Jones and seize control of the House Republican caucus. Still others think it's about revenge—those goons on the Governor's Council wouldn't let him back on the bench, so now he's going to make life miserable for every Democrat on Beacon Hill.

On the topic of any political ambitions he may harbor, the usually loquacious lawmaker is a man of few words. "I'm running for reelection in 2012," he says.

Maybe Winslow does have his eye on higher office. Or maybe the very fact that there's so much gossip equating legislative vigor with power lust just means Winslow's critique of Beacon Hill is dead-on. **CW**



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Reigning supreme

The state's little known clerk-magistrates have lifetime tenure and virtually unchecked power over many aspects of the operation of Massachusetts courthouses.

BY JACK SULLIVAN

Ronald Arruda is the clerk-magistrate of the Bristol Juvenile Court, which is a little like saying he is the king of his court. He was appointed to the job by former Gov. Edward King in 1982 and, while six governors have come and gone since then, Arruda hasn't budged. The 66-year-old clerk-magistrate can keep earning his \$110,000-a-year salary as long as he wants because the job is the only one in state government that comes with lifetime job security and no mandatory retirement age. Some of his fellow clerks work into their 80s; some even into their 90s.

Arruda's 20-person kingdom may be small, but he has practically absolute control over it. Arruda, who has six assistants, has used that power to hire into assistant clerk positions Angelo Ligotti, the son of Hingham District Court clerk-magistrate Joseph Ligotti, and Susan Correia, the daughter of former House majority leader and Fall River mayor Robert Correia. He also hired Mark Tobin, the son of longtime Quincy District Court clerk-magistrate Arthur Tobin, who has since transferred to Norfolk Juvenile Court in his hometown of Quincy.



Clerk-magistrates have authority to issue search and arrest warrants, set bail, and rule on other matters, along with serving as the courthouse traffic cop, directing the flow of cases.

Arruda says it's "just a coincidence" that he hired relatives of fellow clerks and politicians. A former probation officer himself, Arruda says there is no similarity between the situation at his office and the widespread patronage hiring at the Probation Department that has spawned numerous task forces and law enforcement investigations. "There is no problem here," he says. "We don't have that situation like they do in Probation."

Yet there are remarkable similarities between the oversight of Probation and the clerk-magistrate offices across the state. At Probation, the Legislature in 2001 gave the commissioner exclusive authority to hire, fire, assign, and discipline within the Probation Department, which employs 2,000 people. Less well known is the fact that the Legislature at the same time took away from judges the power to hire assistant clerks at the court and gave that authority to the 82 clerk-magistrates. The clerk-magistrates now have the power to convey lifetime job security on their 400 assistant clerks. They also oversee thousands of other clerical staff.

"It doesn't make any sense whatsoever," says Linda Carlisle, a former member of the Court Management Advisory Board, which advises judges on the best way to operate the court system. "There's virtually no way what-

soever to get them out of the office...They have, pretty much, little fiefdoms."

The keys to these kingdoms tend to go to politically connected people. Despite an increase in the judicial powers given to clerks, there is no requirement that a clerk-magistrate or the assistants have a law degree—or any college degree, for that matter.

There are 72 clerk-magistrates across Massachusetts who have been appointed by governors and another 10 acting

'There's virtually no way whatsoever to get them out of the office... They have, pretty much, little fiefdoms.'

clerks who have been appointed on a temporary basis by each court division's chief justice. Of the 72 gubernatorial appointments, 25 percent have political ties to the Legislature or the executive branch. At least six are themselves former representatives or senators, three are related to current or former reps or senators, six are former legislative aides, and three are former administration officials.

Arthur Tobin, the 81-year-old clerk-magistrate at Quincy

District Court and a former mayor of Quincy, city councilor, and state senator, says the calls to him from lawmakers for courthouse jobs have slowed, mostly because of a court hiring freeze that began in 2008. But he says he has no doubt that once the money begins flowing again, the phone will start ringing.

“People who serve in the public office respond to their constituency,” Tobin says unapologetically. “The legislators feel it’s part of their job...It goes on in private industry, too.”

Tobin admits “there might be a couple people” in his own clerk’s office who got jobs through his intervention when he was in the Legislature more than three decades ago, maybe a few others who have since retired. Tobin will not say if he influenced the hiring decision of his son, Mark, or his transfer from Bristol to Quincy. But he recalls a conversation with former *Patriot Ledger* publisher Prescott Low about his ascension to the top position at the paper.

“I said to him, ‘Do you think you’d be the publisher if your father didn’t own the paper?’” Tobin says. “It’s part of life. It’s the same things in unions, where people get jobs for brothers or nephews or cousins. I never did it for a stranger.”

NEVER WANT TO LEAVE

Clerk-magistrates are like Energizer bunnies. They keep going and going and going, even if perhaps not quite as vigorously. It’s not unheard of for clerk-magistrates and their assistants to serve well into their 80s and beyond. The record is probably held by the late John E. Flaherty, the legendary South Boston District Court clerk-magistrate, who was coming up on 60 years in office when he died at the age of 94 in 2005.

The oldest current clerk is 82-year-old Thomas Noonan, the Worcester District Court clerk-magistrate, who was appointed by Gov. Michael Dukakis in his first term. The longest-serving clerk is Henry H. Shultz, who was just 31 years old when Gov. Francis Sargent appointed him clerk-magistrate of Newton District Court. He’s been in that job 40 years.

Records indicate 10 of the appointed clerks are more than 70 years old, the mandatory retirement age for judges. At least six clerks have occupied their positions for 30 years or more and were in their 30s when they were appointed.

In addition to administrative duties, clerk-magistrates can issue search warrants and arrest warrants, set bail for criminal defendants, handle arraignments for misdemeanors, rule on uncontested motions, and hold hearings for moving violations and small claims. They are the local courts’ traffic cops, working behind the scenes to ensure an orderly flow of cases.

Unlike judges, whose positions are mandated by the state constitution, clerk-magistrates are a statutory creation

of the Legislature. In Massachusetts, there are elected clerks in the county Superior Courts and appointed clerks in the district, housing and juvenile courts, as well as an appointed land recorder. The duties and responsibilities are fairly equal, as is the pay, but over the years the Legislature has expanded the powers of the clerks and shielded them from oversight by the judiciary—and nearly everyone else.

While the Trial Court’s Chief Justice for Administration and Management, known as the CJAM, is the titular head of clerks, in reality, they are their own bosses. The law states that the powers of the CJAM, the chief justice of the district court, and the first justice of each district court “shall not include the authority or power to exercise, supersede, limit, prevent the exercise of or otherwise affect any of the powers, duties and responsibilities of the clerks or registers of probate in any general or special law, including laws authorizing or governing the selection and appointment of personnel.”

Many clerks are attorneys, but it is not a requirement. In fact, judges grumble that there are no background requirements at all for clerks even though they deal with the law on a daily basis, including issuing rulings in small claims cases valued as high as \$7,000. A couple years ago a “mini-law school” was organized for the clerks to brief them on legal issues they needed for their jobs.

Forty of the 72 appointed clerk-magistrates have law degrees, while 27 have a bachelor’s or master’s degree in non-legal disciplines as their highest level of educational attainment. Five of the current clerk-magistrates have no four-year degree at all.

Of the 32 clerks that had no law degrees when they were nominated, 21—or nearly 66 percent—either had lawmakers testify on their behalf at their confirmation hearing or write letters of recommendation. In contrast, of the 40 who were lawyers, only 17, or about 42 percent, had lawmakers stand up for them, and that included seven nominees who were themselves either former legislators or aides.

The job of clerk-magistrate comes with some attractive perks. For those who started as clerks before 1987, the six-figure salary comes with 30 days of vacation and 30 sick days per year, which can accumulate up to 180 days and is paid out of retirement. Those who started after 1987 get 20 days of vacation to start, increasing to 30 days after nine years. They also receive 15 days of sick time, and unused sick days can be carried over year to year without limit. Court spokeswoman Joan Kenney said each clerk’s office maintains their own attendance and payroll records.

Clerks can also make money on the side by setting bail for defendants arrested after court hours. The bail fee is \$40 per case, which nets the clerks as a group about \$2.5 million a year.

A number of current and former elected officials have




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had family members on the payroll, some of whom started as assistants and rose to clerk-magistrate. The most infamous was John "Jackie" Bulger, brother of former Senate president William Bulger. Jackie Bulger retired as clerk-magistrate of the Suffolk Juvenile Court, but was stripped of his pension for lying about contact with his fugitive brother, Whitey Bulger.

Brian Kearney, husband of former state representative Marianne Lewis, is clerk-magistrate in Natick District Court. Margaret Albertson, daughter of former state representative and Boston Municipal Court Judge Michael Flaherty, is clerk-magistrate of the South Boston Court.

Clerks also hire their assistants, many of whom are top-notch administrators. But the clerk and assistant clerk ranks also include people with strong political connections. Stephen Leduc, who represented Marlborough in the Legislature, is now an assistant clerk in Marlborough District Court. Raymond J. Salmon Jr., whose namesake was a clerk-magistrate in Clinton, is First Assistant Clerk in Leominster District Court. Robert Tomasone, clerk-magistrate in Somerville District Court, is the brother of retired Suffolk County assistant clerk Anthony Tomasone.

Former House majority leader and Fall River mayor Robert Correia, who has a daughter working as an assistant in the Bristol Juvenile Court, also has a daughter-in-law working as an assistant clerk in the Southeast Housing Court in Fall River. Two of the current acting clerks, who are typically drawn from the assistant ranks, also have familiar names. Jody Menard-Parece is the acting clerk in Taunton District Court. She is the daughter of former state senator Joan Menard of Fall River, who is now an administrator at Bristol Community College. Charles Ardito II, the acting clerk of Orleans District Court, is the son of a retired judge.

There is nothing illegal about any of this, nor is it a violation of rules and procedures. Once appointed, a clerk-magistrate has total control over his or her assistants according to statute. The chief justice has 21 days after being notified to veto an appointment and, if no action is taken, the hiring is permanent.

Since assistant clerks have no mandatory retirement age, newly appointed clerk-magistrates often have to wait a long time before hiring an assistant. In Boston Municipal Court, for instance, Clerk-Magistrate Daniel J. Hogan says the average length of service for his assistants in the criminal division is about 28 years.

"I inherited all of his people, some of whom are extraordinary employees, some of whom are not extraordinary employees," Hogan says of the staff hired by his predecessor. "I had assistant clerks that had been here 50 years."

One of the assistants was Rosemary T. Carr, whom Hogan knew well. While serving as an assistant clerk and attending law school after his parents retired and moved

Daniel Hogan, clerk-magistrate of the Boston Municipal Court, is president of the state's Association of Magistrates and Assistant Clerks.



to Florida, Hogan and another sister lived in the three-family South Boston home of Carr and her husband. Carr is now Hogan's first assistant, earning \$92,000 a year. "The Carrs took us in and we'll be forever grateful," Hogan says.

GETTING RID OF THEM IS IMPOSSIBLE

Once someone is named a clerk or assistant clerk, it's nearly impossible to remove them from the post. The last—and only—time it happened was in 1992.

A court advisory report last year described the process for removing a clerk as onerous and likely only if the individual had been convicted of a crime or official malfeasance. Any clerk removed for cause must have his or her case heard by an advisory committee made up of judges and clerks and also be given a hearing before the Committee on Professional Responsibility for Clerks of the Court, which in turn must decide whether or not to refer the matter to the Supreme Judicial Court for action.

"The process is rarely tested and these positions (as noted by the Monan Report) are tantamount to a system of lifetime tenure," according to a report issued last year by the Court Management Advisory Board. The Monan

Report refers to a study issued in 2003 by a group headed by Rev. J. Donald Monan, the former president of Boston College.

According to records at the committee on professional responsibility, only six appointed clerks-magistrates or assistants have been the formal targets of removal over the years, with no action against one, three resigning or retiring before the hearings were concluded, one being reassigned, and only one being removed for cause.

In the fall of 2000, longtime Framingham District Court Clerk-Magistrate Anthony S. Colonna Sr., then 85 and in the clerk's job for 37 years, was charged with assaulting a female court employee, Denise Fiandaca. Fiandaca filed a complaint with the Massachusetts Commission Against Discrimination and later filed suit in court saying court officials knew about Colonna's behaviors for years and did nothing.

A judge ruled Colonna, a former state representative, incompetent to stand trial on the charges but he did not retire until five months later when he was again charged with assault, this time for an alleged attack

on several family members with a knife. He had been placed on paid leave but no move was made to bring him before the committee on professional responsibility. He died in October, 2001. The Trial Court made a confidential settlement with Fiandaca in 2004.

In 2007, Fox 25 reported that Roxbury clerk-magistrate Michael Neighbors had a spotty attendance record. Then, in a follow-up report, the television station obtained an internal report that showed the clerk's office in total disarray, with restraining orders not being served, warrants

As with Probation, the roster of clerk-magistrates and assistant clerks includes many with strong political ties.

that were cleared not being removed from the system, phones not working in the office, and the number of backlogged cases being misreported. Despite being a no-show for months on end in the Fox investigation and the organizational mess in the office, Neighbors continues to hold



Arthur Tobin, clerk-magistrate of Quincy District Court.

his job with no report of public action taken.

In 1997, West Roxbury District Court Clerk Michael McCusker, a one-time racing commissioner appointed by Dukakis in 1990, was shipped to Brockton District Court after he was accused of making threatening statements to a judge and, at another time, waving a gun in his office. McCusker had charges filed against him by the committee on professional responsibility but retired with his pension intact in 1999 before his case was heard.

The ability to remove assistant clerks is equally difficult. Short of criminal conviction, as in the 2009 case of Chelsea District Court assistant clerk James M. Burke, who was fired for soliciting sexual favors from two prostitutes, assistant clerks can be removed only for cause.

Just what "cause" means became the focus of a lawsuit

filed by James M. Whalen, an assistant clerk in Springfield District Court. Budget cutbacks forced the layoff of Whalen in 2002, but he was returned to his post in 2004. Whalen sued, claiming people with less seniority were not subject to the layoff, a distinction that to him meant he was let go "for cause."

A judge ruled Whalen should have been granted the hearings required under the law for dismissing someone for cause. State officials agreed to a settlement in the case and last year, Whalen was paid more than \$190,000, more than twice his \$84,870 salary. The extra money represented back pay under the agreement for the time he was laid off, according to a court spokeswoman.

POWER CONNECTIONS

With their connections to the Legislature combined with regular contributions to campaign coffers, clerk-magistrates have been successful in expanding their earning power, increasing their autonomy, and beating back restrictions on their authority and pocketbooks.

Since 2001, individual clerk-magistrates and their assistants and their advocacy organization, the Association of Magistrates and Assistant Clerks, have combined to con-

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tribute more than \$140,000 to candidates around the state, many of them Beacon Hill's most powerful members such as past and present governors, speakers and Senate presidents, judiciary committee chairmen and ways and means chairmen from both chambers. The generosity has apparently not gone unnoticed by lawmakers.

Clerks' salaries have traditionally been tied to the pay of judges, with clerk-magistrates earning 75.4 percent of a court's chief justice's salary, while assistant clerks made 71 percent of a clerk-magistrate's salary. For the fiscal year 2006 budget, legislators passed a 15-percent boost in judge's salary to nearly \$131,000, meaning clerks received about an \$11,000 hike.

But during deliberations in November 2005 on a supplemental budget for FY2006, and without a recorded vote, an amendment was quietly introduced in the Senate that increased the salary for clerks to 81.6 percent of judges' pay, meaning clerks got a total raise of \$22,000 to more than \$110,000. Assistant clerks received an increase to 77 percent of their bosses' salaries, to \$84,870 a year. There was no author identified in the records.

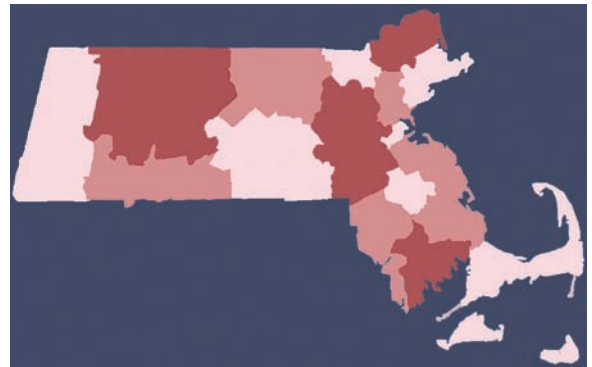
A few years ago, as budget deficits began growing, a move was made to direct to the state coffers some or all of the \$40 fees clerks can make from setting bail for defendants arrested after court hours at night or on weekends. The proposal went nowhere in the face of heavy lobbying from the clerks.

In 2008, the Legislature was considering a bill to decouple the clerks' salaries from judges, a move that could mean lower pay. Again, it was successfully defeated by strong lobbying and campaign contributions of at least \$25,000 to lawmakers from clerks and their association that year.

The clerk-magistrates are also very sensitive to any encroachment on their authority, no matter how minor. Last year, Mulligan, the chief justice of administration and finance, issued a directive that all early releases of clerk and other court employees during weather or other emergencies had to be cleared through his office as a way to ensure adequate staffing coverage at courthouses.

Hogan, the Boston Municipal Court clerk-magistrate, serves as president of the state's professional association of clerks. With the unanimous backing of his group, Hogan protested that only clerks had the statutory authority over the personnel in their offices. Mulligan subsequently revised his directive to say that first justices at courthouses could make decisions about employees during emergency shutdowns but only "after consultation" with clerks.

One former member of the Court Management Advisory Board said the power of the clerks is formidable. "When we were talking with probation officials, even they expressed their envy for the power of the clerks," says the official, who asked not to be identified.



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WHAT SHOULD BE DONE?

The 2003 Monan report identified lifetime tenure and near-total autonomy as the biggest impediments to effecting change in the courts, a charge that has been made countless times by a number of panels studying court management.

"There are also obstacles to good management within individual courthouses. First Justices often are armed only with moral suasion in their dealings with probation officers and clerks," says the report. "Clerks who are appointed for life openly feud with the judges they are supposed to support."

Some judges and clerks say the animosity referred to in the Monan report has lessened in recent years, in part because the courts are now using metrics to gauge the performance of each court and the judges and clerks realize cooperation is key to keeping those metrics high.

Both the Monan report and last year's Court Management Advisory Board report call on the Legislature to revamp the structure of the appointed clerks' offices, giving judges more power to hire assistants and making clerks more accountable to the judges in their courthouses. The Monan report did not specifically recommend a mandatory retirement age but pointed out the pitfalls of lifetime tenure. Last year's advisory board report cited eliminating lifetime tenure and instituting a retirement age as one of its seven core recommendations.

State Rep. Daniel Winslow, a former judge and Romney administration official, has introduced a bill calling for a mandatory retirement age of 70 years old for clerks and assistant clerks, the same as the mandatory retirement age for judges.

Hogan, who was appointed to his position in 1999 at the age of 34, says members of the clerks' association would be open to a mandatory retirement age—in exchange for a better pension classification. Hogan says some members would support a mandated retirement age if they could get a Group 2 or Group 4 pension classification, the same as public safety jobs such as state or local police, firefighters, and some sheriffs' positions.

The change would allow them to collect far more generous retirement benefits at a younger age. A clerk who retired at the age of 55 with 20 years service in Group 1, which is what clerks now get, would receive about 30 percent of his or her salary. If the retirement was under Group 2, they would get about 40 percent, or if Group 4, about half their salary. And they could max out their benefits at an earlier age in either of the higher categories.

Hogan, who could retire at age 70 with 80 percent of his salary no matter what category he was in, makes clear he does not support the pension-retirement age swap. "I could name several judges who have reached the mandatory retirement age at 70 but who are in better shape than I," Hogan says. "I think it's a very dangerous, dangerous

proposition for some of my colleagues to say, ‘We’ll take retirement if we get Group 2 or Group 4.’ If you’re not cutting it, it’s something your family should say, ‘Hey, maybe it’s time to do something else.’”

Mulligan, the trial court’s chief justice for administra-

the lifetime appointments of appointed clerk-magistrates, Mulligan begged off. “They have certain autonomy, there’s no question about that,” he says. “But at this point we have enough to take on without taking on the issue of what autonomy clerks should have.”

‘At this point, we have enough to take on without taking on the issue of what autonomy clerks should have.’

tion and management, told *CommonWealth* last year that everyone in the court system should have a term and serve at the pleasure of his or her superior. His own position, he noted, and those of department chief justices and the jury commissioner all come with five-year terms. Even Supreme Judicial Court justices have a mandatory retirement age of 70.

Yet when asked after a February panel discussion on hiring controversies in the Probation Department about

But it appears a panel appointed by the Supreme Judicial Court to investigate court hiring will look into clerk-magistrate offices. Former attorney general Scott Harshbarger, who heads the panel, says he has heard stories about the insular clerks and their ties to the Legislature. But he says he has no empirical evidence about the clerks, only anecdotes.

“We had the Ware report,” Harshbarger says of the SJC-commissioned study of the Probation Department. “So in effect the facts had been found for us there. One of the issues with the court officers and the clerks is we don’t have that kind of detailed investigative fact-finding. Our mission is to figure out whether we need to do that kind of factual review to determine whether or not in the past there have been inappropriate influences in hiring and promotion practices.” **CW**

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A photograph of Christopher Bowman, chairman of the state Civil Service Commission. He is a middle-aged man with short brown hair, wearing glasses, a light blue button-down shirt, and a striped tie. He is seated at a wooden desk, looking slightly off-camera to his right. His hands are raised in front of him, palms facing up, in a gesture of explanation or emphasis. A blue pen and some papers are visible on the desk in the foreground. The background consists of vertical blinds or a wall with vertical panels.

Christopher Bowman,
chairman of the state Civil
Service Commission.

No easy patronage cure

Civil Service stamps out political hiring, but it comes with lots of baggage.

BY BRUCE MOHL | PHOTOGRAPHS BY MARK MORELLI

THE MASSACHUSETTS TRIAL Court's policies and procedures manual says all hiring is to be based strictly on merit. No practice or appearance of nepotism or favoritism is allowed. Yet for almost a decade the state's Probation Department did just the opposite. The hiring process was rigged top to bottom to employ job candidates recommended by high-ranking politicians.

Now Beacon Hill lawmakers, including many who landed jobs for friends at Probation, say they are trying to find a way to remove politics from the hiring process. Some want to ban politicians from making any job recommendations. Others say recommendations should be allowed, but only introduced at the tail-end of the hiring process. One probation task force has called for having an outside group select the pool of job candidates. Another task force says hiring should be based on exam scores.

House Speaker Robert DeLeo, who recommended his godson and others for jobs at Probation, said back in December that he planned to file legislation placing Probation and its 2,000 employees under the state's Civil Service system. The speaker said 30 other states do it that way.

Civil Service would seem to be the Holy Grail of anti-patronage policy. It uses tests to rank job candidates and a fairly rigid process of checks and balances to make sure any favoritism or nepotism is excluded from the hiring process. But aside from some favorable comments from union officials, the response to DeLeo's proposal was uniformly negative.

"Cut the shit about Civil Service, as if Civil Service is a reform of anything," says former attorney general Scott Harshbarger, who was appointed by the Supreme Judicial Court to head a task force reviewing hiring

Paul Dietl, the state's chief human resources officer, says it's complicated to design Civil Service tests to gauge accurately a candidate's suitability for a job.



procedures at Probation.

Bedford Police Chief James Hicks, who heads a Civil Service committee within the state chiefs of police association, also warns against putting Probation in Civil Service. "If you think probation is a broken system, then you're adding it to an even more broken system by bringing it in to Civil Service," he says.

What the critics of Civil Service are worried about is not the system's ability to root out patronage, nepotism, and favoritism. By most accounts, it does a good job of that. Their concern is with the excess baggage that accompanies it (see "Rank Injustice," *CW*, Spring '04). Hiring under Civil Service is not always based on merit because a number of groups, particularly veterans, move to the head of the job queue as long as they get a passing grade of 70 on the test. The system is also ravaged by budget cuts, subject to legislative tinkering, and often stalemated with endless and counterproductive


litigation. Civil Service is a cure that some say is worse than the patronage disease it was meant to eradicate.

DeLeo got the message. He put off filing his legislation

Patronage has been a problem in the United States since George Washington assumed the presidency.

and began quietly backing away from Civil Service. In March, he switched gears and joined forces with Gov. Deval Patrick and others in pushing for a heavily modified version of Civil Service at Probation, while leaving intact the old Civil Service system that currently covers some 24,000 employees in state government and thousands more in municipalities.

David Sullivan, the general counsel in the governor's



Boston Police Commissioner Ed Davis: “We don’t need a more militarized police department.”

office of administration and finance, says Patrick wants to take an incremental approach on hiring practices, piloting new policies at Probation and, if those are successful, pushing for changes elsewhere down the line. “This is, frankly, a political calculation,” he says. “We want to get something passed. Honestly, it’s very difficult to change the system.”

SPOILS SYSTEM

Patronage has been a problem in the United States since George Washington assumed the presidency. Politicians naturally want to surround themselves with employees who share the same philosophy. They also want to reward with jobs those who helped them gain office. By the mid-1800s, those two tendencies had morphed into a spoils system that turned the federal government into a patronage dumping ground. A series of Republican presidents campaigned against patronage with limited success, until one disgruntled job seeker shot and killed President James Garfield in 1881.

“That cruel shot,” wrote historians Charles and Mary Beard, in *The Rise of American Civilization*, “rang throughout the land, driving into the heads of the most hardened political henchmen the idea that there was something disgraceful in reducing the chief executive of the United States to the level of a petty job broker.”

Congress responded by establishing the federal Civil Service system in 1883 and a year later many states, including Massachusetts, followed suit. In Massachusetts, Civil Service introduced merit-based tests to create lists of the best candidates for jobs and promotions. It also allowed employees who felt they were unfairly bypassed, disciplined, or dismissed to appeal their cases to the Civil Service Commission.

The system in Massachusetts helped curb patronage, but at an unsustainable cost in terms of money and red tape. As recently as the early 1980s, the state’s Human Resources Division had 500 people administering Civil Service. Today the office has just seven employees. The Civil Service system

used to cover most of state and municipal government, but today covers primarily public safety employees—some 24,000 workers at parole, corrections, and the environmental police at the state level, and police officers and firefighters in 160 cities and towns.

Adding in Probation and its 2,000 employees would represent the first significant expansion of Civil Service in some time and require the development of a new series of tests for various positions at the agency. Paul Dietl, the state’s chief human resources officer, says developing tests to assess the skills of job applicants is a complicated process. It’s critical, he says, that the test measure accurately an applicant’s suitability for the job. “It’s important you do the right science so if you get sued, you have the science on your side,” he says.

VETERANS DOMINATE

The test is the centerpiece of Civil Service. It is designed to gauge in an objective manner the applicant’s understanding of the job’s duties and his or her likelihood for suc-



Bowman, the Civil Service Commission chairman, and general counsel Angela McConney hear a case.

cess. The higher the score, presumably, the better the job candidate. But that's not always the case in Massachusetts.

Several groups are given absolute preference in hiring under the state system. Absolute preference means that as long as a person in one of the special groups receives a passing score of 70, he or she is moved to the top of the hiring list and competes based on score with others in their group. That means someone can score 100 on the

was given in 2009. The 150 top-ranked applicants on Boston's list were all from one of the absolute-preference groups, primarily veterans. Boston Police Commissioner Ed Davis says he has the utmost respect for veterans, particularly combat veterans. But he thinks they should be given extra points on their test scores instead of absolute preference. He says Boston, which is trying to implement community policing, needs police officers with a variety of skills and backgrounds.

"We don't need a more militarized police department," he says. "It needs to be balanced. No one wants an army."

There are ways around the preferences. The Boston Police Department hired 55 people from the list over the last two years, so they all should have come from one of the absolute-preference groups. But the department hired, in fact, only 13 of those job candidates. The 42 other hires went to people outside the preference groups under an

exception granted when an agency needs employees with specific skills. In Boston's case, 27 of the jobs went to women needed for rape crisis prevention and transport of female prisoners. Eight jobs went to job candidates who speak Cape Verdean and seven went to Haitian Creole speakers.

The Legislature also sometimes meddles with Civil Service lists. A review of Civil Service bills approved over

In dozens of cases, applicants who exceeded age requirements for a job got exemptions through special legislation.

test and still not make it near the top of the list because he or she is not a member of one of the absolute-preference groups. Top preference is given to Massachusetts-based sons and daughters of police or fire officials killed or injured in the line of duty, and Massachusetts-based disabled and able-bodied veterans.

Records indicate veterans tend to dominate hiring lists, particularly in Boston. The most recent police test

the last decade found dozens of instances where applicants who exceeded age requirements for a position were granted reprieves through special legislation.

In 2009, the Legislature took the unusual step of moving six individuals by name to the top of the Civil Service hiring list for firefighter in Fall River. Lists typically last two years and then expire. The six hopefuls had risen to the top of one list, but didn't get hired before the list expired, which meant they would have to take the test again and work their way up again. The individuals accused the city of deliberately delaying job offers to avoid hiring them. One of them alleged the hiring delay was retaliation against him because he previously had a relationship with the mayor's chief of staff, who later married then-Mayor Ed Lambert.

Whatever the cause of the delay, Fall River officials, including the mayor, took up the cause of the firefighter candidates, winning passage of state legislation to move them automatically to the top of the next hiring list. Patrick vetoed the measure, noting in his veto message that the Civil Service exam was created to "avoid patronage and special treatment of the nature authorized in this bill." The Legislature brushed aside his concerns and overrode his veto. Rep. David Sullivan of Fall River, who

sponsored the legislation, said it was a matter of fairness. "What happened to these individuals shouldn't have happened," he says.

BOSTON VS. COMMISSION

Davis, the Boston police commissioner, is engaged in a fierce legal battle with the five-member Civil Service Commission, which he claims is biased against him and other managers who are trying to weed out job applicants who shouldn't be carrying guns.

Since January 2008, 35 people have filed appeals with the Civil Service Commission alleging they were improperly bypassed for jobs by the Boston Police Department. The commission ruled against the department in 19 of the cases, or 54 percent of the time.

Davis isn't backing down. He appealed 17 of the 19 negative commission decisions to Superior Court. His track record so far is nine wins and two losses, with six cases still pending. Davis says the results speak for themselves. "It's so clear that the process is swayed in favor of the candidate," he says.

Nearly every disputed case hinges on the legal issue of whether the commission went beyond its mandate to

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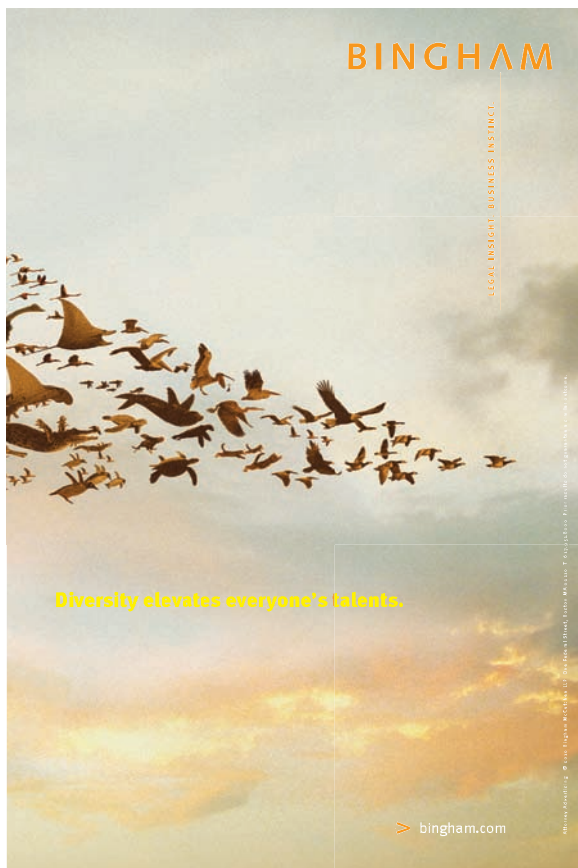
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decide whether the police department had “reasonable justification” for bypassing a job candidate.

In one appeal filed by Juan Rodrigues, who at the time was working for the Providence Police Department, the commission ruled 3-2 that the reasons the Boston Police Department gave for bypassing him—disciplinary issues while in the military and while working for Federal Express—were invalid. On appeal, Superior Court Judge Linda E. Giles ruled that the commission improperly substituted its judgment for that of the Boston Police Department. “When an individual, such as Rodrigues, has displayed poor impulse control or been cited for prior misconduct, it is for the appointing authority, not the commission, to decide whether to take on the risk inherent in hiring that individual,” Giles wrote.

Davis singles out one commissioner in particular for bias. He says Commissioner Daniel Henderson, an attorney and former probation officer, has demonstrated “personal animus” toward the police department and to many of its staff.

In the 35 Boston Police Department cases that came before the commission, Henderson voted against the department 25 times, or 71 percent of the time. He voted against the department in all 19 decisions it lost as well as six of the 16 cases it won. In those six cases, Henderson was often the lone holdout. And in nine of the 10 cases where Henderson supported the department, they were unanimous decisions.

Henderson, who declined comment, writes decisions that are thoughtful and well written, but it’s clear he is skeptical of many of the reasons given by the Boston Police Department for bypassing job candidates. He is particularly skeptical about the department’s psychological testing.

For example, David Chaves of West Roxbury was bypassed by the department because he “appeared paralyzed by his anxiety” and presented “as a rigid, moralistic man who has difficulty acknowledging any limitations,” according to the department’s psychological analysis. But Henderson, who wrote the commission’s 3-2 decision overturning the police department’s bypass, spent 57 pages undercutting that assessment. “The preponderance of the credible evidence shows simply that the appellant did not live up to the subjective expectations of the clinical interviewer,” he wrote.

Henderson isn’t the only one on the commission who has raised concerns about the Boston Police Department’s psychological testing.

Shawn Roberts of Boston was bypassed for a patrolman’s job because he was perceived as vulnerable to “extreme anxiety, with attendant distortion of his thinking and behavior.” Commissioner Paul Stein made clear in writing the 5-0 decision in Roberts’s favor that he thought

the diagnosis was unfounded. “The facts of this case leave little doubt that Mr. Roberts is a ‘solidly’ normal candidate for the position of Boston Police Officer and the commission is skeptical that any fair and objective psychiatric medical evaluation reasonably could come to the opposite conclusion,” he wrote.

Davis says Commissioner Daniel Henderson has shown ‘personal animus’ toward the Boston Police Department.

Stein’s decision was appealed to Superior Court, and Judge Christine M. Roach sided with the commission. “The clinicians’ interview conclusions are not supported by substantial, reliable, psychiatric evidence,” she wrote.

While Davis alleges the commission is biased against his department, commission records indicate hiring

authorities win most bypass cases overall. Since the beginning of 2008, the commission has ruled against the hiring authority only 26 percent of the time, far less than the 54 percent rate in Boston. The rest of the appeals were either denied (48 percent) or mutual agreements were approved (26 percent).

Davis says his success rate on appeals demonstrates that the Civil Service Commission repeatedly oversteps its authority. He says police departments in other major cities, such as Los Angeles, New York, and Miami, operate their own hiring systems without a Civil Service commission constantly looking over their shoulder. He says Boston should be allowed to do the same. “We should be at a point where we can do this ourselves,” he says.

ROMNEY AND PATRICK

Former Republican Gov. Mitt Romney and Democratic Gov. Patrick couldn’t be more different politically, but their views are not that far apart on Civil Service. Romney, for example, appointed a chairman of the Civil Service Commission who was openly critical of rules such

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as the absolute veteran preference, which he said promoted mediocrity among public safety workers. Patrick and his appointees haven't been outspoken about Civil Service, but they've quietly pushed for some of the same changes.

Both governors have had problems with Daniel Henderson, the commissioner viewed as too close to labor. Henderson served as a commissioner under Romney from 2002 to 2006. When he applied for reappointment, Romney turned him down and replaced him with Christopher Bowman, a member of his administration.

Henderson applied for a new opening on the commission in 2007 when Patrick came into office. Patrick not only appointed him but named him chairman. But two weeks later the governor changed his mind and asked Henderson to resign. Henderson refused, so Patrick bumped him out of the chairman's slot, cut his pay, and named Bowman chairman.

Patrick administration officials wouldn't discuss what happened, but it's a fair bet negative reports flowed in about Henderson after his appointment. Patrick didn't just give up. He tried to force Henderson off the commission again last year by filing a government reorganization bill that would have effectively eliminated Henderson's

salary. Public sector unions protested the backdoor move, and the House and Senate rejected Patrick's bill. The governor resubmitted a new version of the bill, this time without any Civil Service changes.

Like Romney, Patrick has steadily cut funding for Civil Service. The commission's budget is currently \$450,000, down 11.5 percent from fiscal 2008 and 23 percent from fiscal 2001. The commission has a total of seven employees—five commissioners, a legal counsel, and an administrative assistant. Of the five commissioners, three receive salaries ranging from \$77,000 to \$96,000, while the other two work only a couple days a month. One of the part-timers receives no salary and the other receives an \$8,300 annual stipend.

John Taylor, who served as a commissioner from 2003 until 2010, said the budget cuts are a major reason why it takes so long to move cases through the commission. "That's the biggest problem," he says. "If they fund the Civil Service Commission, it can do the job."

Bowman, the commission's chairman, says even with the budget cutbacks the agency has made significant progress in reducing the backlog of cases. By bringing in outsiders to hear some cases, Bowman says the number of appeals pending at the agency has dropped from 884 when

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Patrick came in to office to 186 at the end of January this year. He says 90 percent of cases are now disposed of within 12 months.

In 2009, Patrick's Human Resources Division proposed giving police chiefs more hiring flexibility by allowing them to choose any job candidate within a range or band of scores instead of only the candidates with the top scores. Public sector union officials protested, and administration officials withdrew their proposal.

The governor's bid to merge probation with parole

‘Civil service may not be perfect, but it’s the only mechanism to level the playing field.’

probably best reflects his current attitude toward Civil Service. Parole workers are already under Civil Service, but Patrick proposed a new system for hiring at Probation. Like Civil Service, job applicants would be ranked by their scores on a test and hires would be made based on the rankings. But, unlike Civil Service, veterans would only receive two extra points on the test instead of an absolute preference in hiring. There would also be no appeals to the Civil Service Commission.

With reform of Civil Service elusive on Beacon Hill, many cities and towns are taking action on their own. Many mayors have pushed through home rule legislation exempting their hiring of police and fire chiefs from Civil Service. Wellesley last year went even further, winning passage of legislation removing it from Civil Service for all new police hires.

Terrence Cunningham, the Wellesley police chief, says the police union agreed to the change in return for a two-year contract extension and continuation of advanced-education benefits under the Quinn Bill.

Under Civil Service, Cunningham said that if he needed to hire three new officers, he would notify state officials and be sent the names of seven job candidates at the top of the current police list. He would have to choose the top-ranked candidates or bypass them and run the risk of being challenged before the Civil Service Commission. His biggest beefs with Civil Service were that the absolute preferences yielded a narrow applicant pool dominated by veterans and many of the questions on the test were not relevant to Wellesley.

Cunningham conducted his first non-Civil Service hiring late last year. Wellesley conducted its own exam, which asked questions about the town's bylaws and the

police department's operating procedures. Scores were tabulated and ranked, with veterans given extra points but not absolute preference. "I had 400 people take it," Cunningham said, noting job candidates came from all across the country. "As long as they passed it, I could take anyone I want."

The Wellesley system offers managers hiring flexibility, but its weakness is that it is potentially subject to the sort of political manipulation that Civil Service systems were created to stop. By contrast, the Civil Service system is cumbersome and time-consuming, and, with its preference set-asides, is not strictly merit-based, but it's effective in eliminating patronage. Many examples of the system's success in blocking patronage hires are contained in the commission's case files.

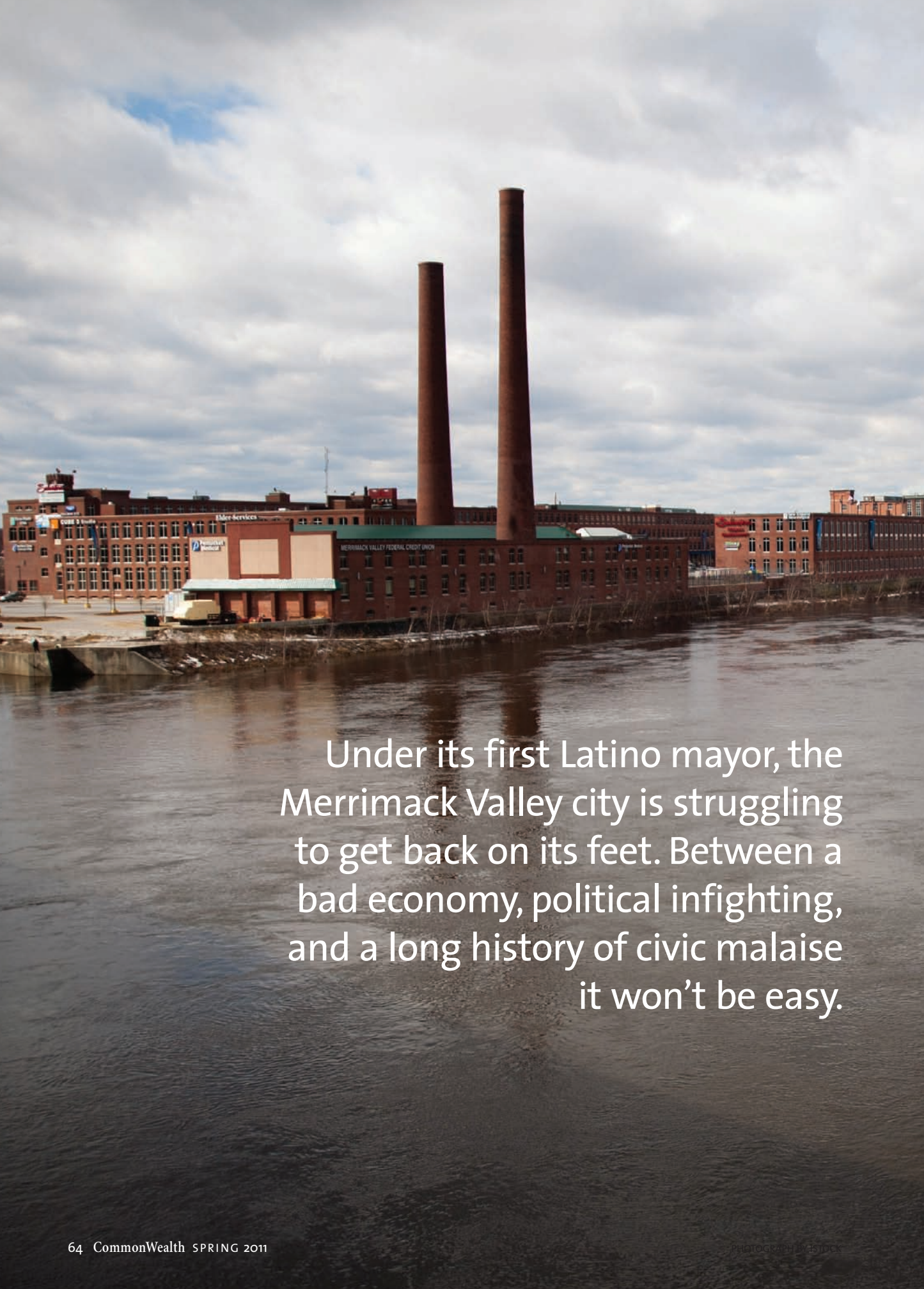
Last year, for example, the commission ruled in favor of a candidate for a police lieutenant's job in Quincy who alleged bias by then-Mayor William Phelan and former Police Chief Robert Crowley. Three of the mayor's relatives were also applying for the job. In 2006, the commission intervened when the Medford Fire Department bypassed a candidate serving in the armed forces to hire the fire chief's son and the sons of two other firefighters. And in 2009 the commission blocked the city of Methuen from skipping over one group of candidates for police jobs to reach a second group that included the police chief's niece, her fiancé, a police captain's nephew, the relative of a school committee member, and the nephew of a city councilor.

"The system works. A test is a test," says Hugh Cameron, president of the Massachusetts Coalition of Police, a statewide union representing some 3,500 police officers across the state.

In many ways, the fight over Civil Service is part of the much larger struggle taking place between states and municipalities and their unionized work forces. State and local managers say Civil Service is no longer based on merit and doesn't offer them enough hiring flexibility, while union leaders defend Civil Service as a system that brings transparency, credibility, and fairness to government hiring.

Ed Kelly, president of the Professional Firefighters of Massachusetts, backs the overall concept of Civil Service and the absolute preference for veterans. Kelly, a veteran himself, says a typical Boston kid hanging out on the street corner can go into the military, serve his country, and come out with a chance at a middle class life. "That is a path to the American Dream," Kelly says. "I know. I was that kid."

He says he won't let politicians take that dream away without a fight. "Civil Service may not be perfect," he says, "but it's the only mechanism to level the playing field and take politics out of hiring and promotions." **CW**



Under its first Latino mayor, the Merrimack Valley city is struggling to get back on its feet. Between a bad economy, political infighting, and a long history of civic malaise it won't be easy.

A wide river flows through an industrial city. In the background, a large brick building with a clock tower stands on the left bank. To the right, several industrial buildings with tall smokestacks are visible. The river is calm, reflecting the overcast sky. The foreground shows a grassy bank on the right side of the river.

Lawrence on the mat

LAWRENCE, WITH AN anemic tax base and the state's highest poverty rate, is no stranger to the usual litany of urban woes facing struggling cities. But Lawrence's problems suddenly became the state's problems last year when city found itself teetering on the fiscal brink. With Lawrence sinking under the weight of a \$24.5 million budget deficit, Beacon Hill leaders quickly crafted a rescue package that included up to \$35 million in loans to keep the city afloat.

Last year's budget crisis wasn't the first time Lawrence landed on the radar of state leaders. For years, the city government barely did its job. A state oversight board parachuted in to clean up the books in the 1990s, managing to keep order for about eight years. After the

BY GABRIELLE GURLEY

PHOTOGRAPHS BY MEGHAN MOORE



Lawrence has long been a destination for immigrants.



board disbanded, state officials loosened the reins, and Lawrence city officials slipped back into their old bad habits. Departments overspent their appropriations. Top directors came and went. And poorly trained municipal employees struggled to keep City Hall running.

Municipal mismanagement is hardly the only thing Lawrence must contend with. The city is hamstrung by low-performing public schools, high unemployment and poverty, and a transient population, heavy with immigrants who often lack the education skills needed to make it in today's knowledge-based economy. State aid accounts for more than 66 percent of the city's revenues, making it more dependent on Beacon Hill than any community in the state.

Once a magnet for European immigrants looking for work in the city's mills, Lawrence today draws immigrants from Latin America and the Caribbean, with smaller numbers from Southeast Asia. About 70 percent of the city's 76,000 residents are Latino. In 2009, those numbers propelled William Lantigua, a former state representative, into City Hall as the first elected Latino mayor in Massachusetts.

The Dominican-born Lantigua wears his commitment to "the great city of Lawrence" (a phrase he uses often) on his sleeve. He combines a back-to-basics outlook for the city with a well-known willingness to butt heads. And butting heads is one thing everyone agrees Lawrence's political leaders have a history of doing well. Lantigua's devotion to the city is obvious; his economic

development plans for it less so. Whether Lawrence's heavy hitters can drop the gloves long enough to agree on a direction to confront its problems is a big question mark.

Finding common ground has never been easy in a city seen as a temporary stopover on the way to a better someplace else. But if Lawrence is ever to snap out of its persistent funk, the Immigrant City will have to come up with a workable vision for the future.

SMOKE-STACKED DECK

Lawrence wasn't established as a high-minded haven for people seeking religious or political freedoms. It was set up to make money. In 1845, a group of Boston businessmen,

The absence of titans of industry and a stable middle class has meant there is no glue to hold together civic life in Lawrence.

the venture capitalists of the 19th century, marked this spot along the Merrimack River as the place to build their textile mills.

The tiny homestead of 100 or so people ballooned to a city of nearly 10,000 in three years. The Irish, French Canadians, Italians, and others came to work in the mills



and live in densely-built boarding houses and tenements. Disputes over hours and wages led to the 1912 Bread and Roses Strike, the seminal event in the city's history, and a major milestone in the American labor union movement.

The wealthy men who made their fortunes in Lawrence did not invest in the city by founding museums or universities, or even by building mansions in exclusive precincts like the elites did in Boston's Back Bay or even in nearby Lowell's Belvidere neighborhood. Immigrants unwittingly followed this pattern. Since Lawrence, a city of about seven square miles, did not have many areas with the spacious homes and yards that newly successful workers wanted, those that made it moved to Andover, North Andover, Methuen, or elsewhere.

The absentee titans of industry, combined with a mobile middle class, has meant there is no glue to hold the civic infrastructure together. A city like Springfield, by contrast, despite its own set of fiscal woes, retained long-time civic players like MassMutual, the financial services company, and firearms maker Smith & Wesson, and is still viewed as the economic engine of the Pioneer Valley. Lawrence plays no such role in the Merrimack Valley.

Fresh off of working with city leaders in Lowell, Bill Traynor, a Lawrence native and the former executive director of Lawrence CommunityWorks, a nonprofit community development organization, went looking for the people "in charge" when he moved back to Lawrence in the late 1990s. The bankers told the community organizer that they had not been involved for years. City officials were just happy for whatever help Traynor could offer.

Residents were also disengaged. "The white folks, their perspective was they had lost their city," Traynor says. "The


Latinos were really busy trying to make life work." The upshot? "Who is thinking about the future, the best positive vision for Lawrence in a global economy?" he says. "There wasn't anybody thinking about that."

LATINO RISING

That job now falls to William Lantigua. Known around town as "Willy," the mayor enters the anteroom of his City Hall office one February morning, greeting everyone with a firm "¡Saludos!" In a nod to the warm winter day, the trim, bald 56-year-old sports a light tan suit with a spring green shirt and diamond-patterned tie.

Born in the Dominican Republic, Lantigua came to the US in 1974 as a young man. A former community activist who worked on Latino voting rights and political empowerment, Lantigua ousted incumbent Democratic incumbent state Rep. Jose Santiago in 2002. (Lantigua had once been Santiago's campaign manager.) Lantigua ran as an independent in order to challenge Santiago in the higher-turnout November election, but later switched his affiliation to Democrat. He landed a seat on the powerful House Ways and Means Committee, and used the perch well. Lantigua brought home tens of thousands of dollars for local projects and organizations, according to his former Beacon Hill colleague, Rep. David Torrisi, a North Andover Democrat who also represents about one-third of Lawrence.

Lantigua's election as mayor two years ago represents a coming-of-age for Dominican political power in Lawrence. Despite their numbers, Latinos in general existed on the periphery of the city's power structure. Domini-

A close-up portrait of William Lantigua, a bald man with a warm complexion, smiling and looking down. He is wearing a light beige suit jacket over a light green shirt and a patterned tie with green, blue, and white diamond shapes. The background is softly blurred, showing hints of an indoor setting with light-colored walls and a window.

William Lantigua, the city's first Latino mayor, faces a tall task in getting Lawrence back on its feet.

cans, in particular, tended to be more involved in politics back in the Dominican Republic than they were in Lawrence. Dominicans had to gain US citizenship to vote, unlike Puerto Ricans, the city's other major Latino group, who were already citizens.

Prior to Lantigua's victory over opponent David Abdo in the 2009 mayoral race, Latinos could not unify around a single candidate. In the previous mayoral election, Lantigua himself threw his support to the mayor, Michael Sullivan, rather than Sullivan's Latino opponent, Marcos Devers.

Lantigua's immigrant roots notwithstanding, he is an "old-school" American politician who knows that politics is "retail, everything is local," says City Councilor Dan Rivera. "He has been able to mobilize people when he needs to," Rivera says. "People think that's more Dominican than not, but I think that's community organizing in the United States more than anything else."

As canny as Lantigua is, he is also his own worst enemy. Before last year's debate in the Legislature on the \$35 million financial rescue plan for Lawrence, Lantigua, who had only weeks earlier been sworn in as mayor, stunned Beacon Hill by announcing that he intended to keep his new job and his House seat. His colleagues howled. Gov. Deval Patrick asked him to choose one or the other. At an unusual joint hearing of the House and Senate Ways and Means Committees convened to examine the Lawrence crisis, he failed to show up to testify (as mayor) or to hear other testimony (as a member of the committee). Lantigua defied his colleagues until they presented an offer he couldn't refuse: Give up one of the seats or Lawrence would not get the money. Lantigua relented and resigned from the Legislature. (Devers now holds the 16th Essex House of Representatives seat once held by Lantigua, and the two have had a long-standing, tumultuous relationship.)

"I am more of a community activist than a politician," Lantigua told the *Eagle-Tribune*, the regional newspaper, last year after the debacle. Lantigua continues to make *Eagle-Tribune* headlines in unorthodox ways more in keeping with his community activist past than his mayoral present. The mayor led a large group of supporters waving signs into a City Council meeting to protest accusations that Lantigua was handing out city jobs to political supporters. The City Council, in response, is now considering a ban on signs and placards at its meetings.

Going into the second year of his four-year term, Lantigua gets mixed reviews. Some praised this winter's snow clean-up in recent interviews about the mayor's first year with *Siglo 21*, a Spanish-language paper; others faulted his handling of crime and the schools. But Torrisi says he

remains popular and would be reelected if the election were held today.

MAKING LAWRENCE WORK

Whether winning another term at the helm of Lawrence city government is more of a curse or a blessing is another matter. A responsive, well-run city government is a prerequisite for any credible vision for economic revitalization in the city. And Lawrence has been so badly mismanaged for so long that city officials have to prove that they can set a "baseline of competence," as Traynor calls it.

As far as Lantigua is concerned, that means you first have to talk trash—and snow plowing. Lantigua garnered some good press this winter by catching a contractor illegally dumping snow into the Merrimack, a new twist in

Lantigua thinks dirty streets make people feel 'insecure,' a version of the 'broken windows' theory that neighborhood blight increases crime.

Lawrence's ongoing crusade against illegal dumping. Dealing with municipal nuts-and-bolts like trash and snow plays to Lantigua's strengths. According to Lantigua, economic development has many tiers, but how the city looks is at the foundation.

The mayor believes dirty streets breed unease, a version of the "broken windows" theory that neighborhood blight increases crime. "If you feel insecure, you are not going to invest your money, you are not going to relocate your workforce, you are not going to open a plant and recruit people," says Lantigua. He doesn't hesitate to point fingers, either. "If we are 70 percent Latino, 70 percent of the trash out there is our trash," he says, "so I have asked the community to come out as whole and help out."

As important as it may be to get the streets clean, cleaning up operations in city government is what's needed to give Lawrence a boost that will matter over the long term. A 2008 state review of the city's financial management called for a "change in the culture at city hall and a shift from a loose work environment to one where clarity of purpose and accountability exists."

Under state guidance, the mayor produced a balanced budget this year for the first time in recent memory. A



Lantigua, with US Sen. John Kerry, at announcement of \$6.6 million federal grant to bolster the city's depleted firefighting force.

review of progress reports submitted to the Executive Office of Administration and Finance and the chairmen of the House and Senate Ways and Means Committees over the past year shows that Lawrence moved to collect back payments for overdue water and sewer bills, levy local options taxes on meals and rooms, create a parking meter plan (the city has never had metered parking), and control other municipal expenditures.

Of the \$35 million the state authorized Lawrence to borrow to date, the city has borrowed \$24 million to close the books on fiscal years 2008 through 2010 and used another \$3.3 million to balance the 2011 budget. However, under the legislation that allows Lawrence to borrow funds, the city cannot borrow to balance the 2012 budget.

If the outlook for most cities and towns in Massachusetts is tough, the prospects for a city with a very weak tax base are worse. To balance Lawrence's fiscal 2012 budget, the city will have to rely on "a combination of fee increases, new revenue initiatives, and budget reductions," according to the state fiscal overseer, Robert Nunes, a deputy commissioner in the Department of Revenue. Then there is the long road ahead to repay the borrowed funds. Nunes can call for a control board if the city fails to balance its budget, and some degree of state oversight will

remain in place regardless as long as the bonds are outstanding, approximately 20 more years.

Lantigua gets good marks for coming to grips with the financial challenges. The "mayor has demonstrated sound budget practices and addressed past irresponsible budgeting practices by prior administrations that helped lead the city to its current crisis," Nunes wrote in a June report.

When it comes to basic city services, businesses are particularly concerned about fire protection, especially in a city that became synonymous with arson in the 1990s. The layoff of 23 firefighters last July did little to calm those fears. As if to dramatize what was at stake, the city saw a rash of fires last summer that required neighboring fire departments to help out. US Sen. John Kerry and US Rep. Niki Tsongas secured a two-year \$6.6 million Homeland Security grant that addressed the problem, at least temporarily, allowing the city to rehire or recruit 38 firefighters; whether the grant program survives the current Washington budget climate is difficult to know.

A city chasing a mix of federal, state, and private dollars to keep afloat requires professional management. Beginning in 2000, however, Lawrence went through five finance directors and four comptrollers in seven years. As of mid March, the city had vacancies for a treasurer/tax

collector and another budget and finance director.

Lantigua is limited in his ability to bring wholesale change to city government by the city charter, which gives the City Council a role in all top-level hiring and firing decisions. Although some key City Hall employees were let go when he took office, Lantigua says he did not have the “luxury of saying, ‘everybody’s out.’”

Some people think a change in the city charter is needed, not to strengthen the mayor’s hand, but to put a city manager in the role of the top administrator. “Politicians get elected based on many things, but not on their ability to run the human resources, contracting, budgeting, and general management of a multi-million dollar organization,” says former senator Susan Tucker, a North Andover Democrat whose district included Lawrence. “I came to the conclusion that Lawrence needed a professional city manager many years before Mayor Lantigua was elected, so this is not a commentary on his administration.”

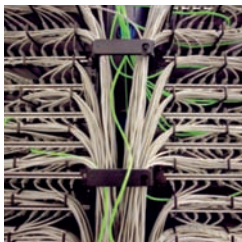
Lawrence city government will remain weak unless the city makes reforms starting with the city charter so that new hires can be held accountable, according to Ramón Borges-Mendéz, a Clark University professor of community development and planning who has studied the city for nearly 30 years. “You can switch the administration

from a white Anglo administration, dominated by Italians, Irish, and French Canadians, and put in the Latinos. Nothing much is going to happen,” he says.

GETTING DOWN TO BUSINESS

In spite of the downturn, there is a modest amount of development underway. To bring jobs to the city, Lantigua has personally recruited new businesses like J.S.B. Industries, a baked goods producer, to open facilities or encouraged others to stay. Last year, Northern Essex Community College opened a new campus facility in the Riverwalk complex, owned and operated by local commercial real estate developer Sal Lupoli, and the school plans to open a \$27 million allied health and technology center in a vacant mall downtown.

The \$75 million Union Crossing project, a partnership of Lawrence CommunityWorks and a private development team, aims to create a new working family-oriented neighborhood in the mill district. The first phase of construction is scheduled for completion later this year. Lawrence is also sprucing up parks and recreational facilities through state-funded Gateway City initiatives like a parks program that funneled \$2.6 million to the city for river-



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Mills and markets in Lawrence.

front pathways.

Long ignored by city officials, the outlook for small businesses like the *bodegas* and beauty salons, whose owners constitute part of a tiny and slowly growing Latino middle class, is less clear. City officials would like to revive a dormant small business loan program. A small business center that aides local entrepreneurs would go a long way to integrating those businesses into the city's economy, according to Nelson Butten, of Lawrence Community-Works.

"Bill Gates is not going to come in and say, 'We are going to put a Microsoft here,'" says Borges-Mendéz, the Clark University professor. He argues that cities like Lawrence, Holyoke, and New Bedford require multiple strategies, such as small business training, new job creation incentives, and more effective state workforce development programs that go beyond getting workers any old type of job.

Lantigua and his chief economic development director, Patrick Blanchette, are vague on how all these pieces sync up. Bringing together key players in the business community to talk about future challenges is "something we've been thinking about," says Lantigua. But he shows little interest in a more sweeping approach that would try to get Lawrence's business leaders all on the same page. "I believe that the one-on-one approach, going [to the business] and sitting down, and having that face-to-face conversation is much more productive than an open forum," he says.

FEUD FIGHTS

Ask about politics in Lawrence and words like "contentious" and "vicious" tumble out. That's not surprising in a community where immigrants have always competed for limited resources. "Many of us come from places where you could

not express your opinions about the political process," says Lantigua. "We raise our voices a little bit higher because at one time we were not allowed to do that." The political climate is bitter even by the Bay State's rough and tumble standards. Rivera says Lawrence's "cantankerous political situation" is one of the reasons why city leaders have a difficult time recruiting and retaining professional government officials.

Nearly a year and a half after Lantigua's election, tensions linger between some Latinos and some white residents who are not fully accepting of the new political order. Majorities of voters in the two south Lawrence districts where many white voters live went for Lantigua's white opponent. "Lantigua needs to bridge some divides with some of the Anglo community," says Torrisi, the local state rep. "This is the first Latino mayor and some people are having a tough time with that."

Lantigua is "personable, but he's a proud guy, sometimes too proud," says Rivera. "Like every first-generation ethnic leader, he's very sensitive to what people do and say about the community he comes from."

City Councilor Marc Laplante, a frequent Lantigua adversary, says Lawrence is held back by the political infighting that goes on. "We need to get past the petty politics that divides our city and really find out what it is that brings us together," says Laplante. "If we can't even accomplish that...how do we expect to accomplish anything else?"

If conflicts between the administration and city councilors are par for the course in many cities, a mayor taking on his city's own police force is not. But that was the focus of one of Lantigua's most recent dust-ups.

Lawrence ranks among the top 10 cities in the state for violent crime. Its image as a dangerous urban wasteland, though, is a misconception, say some residents. "It's not



like criminals are just walking among us, just destroying the city,” says Ana Luna, executive director of Arlington Neighborhood Trabajando, a nonprofit community development group.

However, the city has been forced to lay off more than 50 police officers since 2009 and eliminate the auto theft and fraud unit that went a long way toward curbing those crimes. On the heels of those cuts, coupled with the economic recession, it may not be altogether surprising that from last July to January felonies like auto theft or aggravated assault were up sharply compared to same period in

‘I’d like to go to the table of the people that run Lawrence and become a partner with them, but there is no table. It never has existed.’

2009. But to Lantigua, the big jump in crime was due to lax policing. In March, he went on Spanish-language television to blast the police force over the increase in auto thefts. “A lot” of officers, he said, “intimidate the city and don’t do their jobs.” Police Chief John Romero quickly took exception, telling the *Eagle-Tribune* that the mayor’s comments were “incorrect and inaccurate.”

Lantigua’s feuding extends into the media world, where he is barely speaking to reporters from the *Eagle-Tribune*. “One of the big issues here is that our mayor has been at war with the paper from before the beginning of time,” says Traynor, the Lawrence CommunityWorks founder.

“It’s a real tragedy.”

Lantigua admits he does not “speak to the paper much,” citing issues that many politicians complain about: inaccurate quotes, insufficient background details on policy stories, and unfair reporting. “We know that the people we represent could care less about what’s printed now,” he says.

At least what’s printed in the establishment English-language press. Ethnic media in Lawrence now carry a lot of clout. “The reality the mainstream media needs to face is they don’t influence this mayor,” says Torrisi. “What influences this mayor is the local Latino media, the radio, and some of the local Latino newspapers.”

Torrisi argues that some of the criticism of Lantigua “is not based in reality,” but he adds that the mayor “doesn’t do himself any favors, either, when he doesn’t talk to the *Eagle-Tribune*.”

Meanwhile, relations between the city and the business community it desperately needs to woo are similarly in need of a jump-start. The commercial developers and others have long gone their own ways without waiting for signals of interest from city leaders.

Lawrence was originally designed to extract labor out of its inhabitants without doing much more than giving them a roof over their heads. That legacy seems to still be in the air, and it exasperates potential coalition-builders. “I’d like to go to the table of the people that run the city of Lawrence and become a partner and work with them,” says David Hartleb, the Northern Essex Community

College president, who is stepping down in June. “But there’s no table. It never has existed. People attack each other over issues rather than sit down to discuss them and rather than reason about them.”

There’s a desperate urgency to fill the city’s leadership void. What Lawrence needs most is a convener, someone or some group with the standing or the clout to get the major players to the table for a series of adult conversations on the many challenges facing the city.

Rebranding Lawrence hinges not only on clean streets and balanced budgets, but also on improving public safety, its public schools, and promoting cultural assets, including its significant labor history. For Lawrence to thrive, the city will have to knit a coherent economic vision to a stronger civic fabric. Plenty of people don’t care much about what happens in Lawrence, but Hartleb insists that they should. “Merrimack Valley is going to rise or fall on Lawrence, because it’s the poorest and most challenged city,” he says. “It’s going to drag us all down if we don’t work together to bring it up.” **CW**

History lessons

Jill Lepore says the Tea Party movement has embraced an approach to American history that is more rooted in religious fundamentalism than in any serious examination of the past.

JILL LEPORE, OF all people, ought to be celebrating the fascination Americans have with the country's Revolutionary War era. After all, Lepore specializes in early American history at Harvard, where she has been on the faculty since 2003. Lepore is heartened by interest in the nation's early history. But she is less taken with the ways the past gets interpreted and put to use in contemporary political battles

Americans have always tried to appropriate the ideas and events from the country's founding in

PHOTOGRAPHS BY FRANK CURRAN



order to advance various causes of the day, she says. It was happening in the late 1700s, when the Revolution's muskets had barely been stilled, and has been part of American political culture ever since. In the 1970s, anti-busing protesters in Boston invoked the Founding Fathers when they decried court-ordered school desegregation as a new "tyranny dressed in judicial robes." And appeals to various touchstones of America's founding were made by anti-war protesters during the Vietnam era, crusaders for women's rights, and civil rights activists led by Martin Luther King, who said "the Boston Tea Party was nothing but a massive act of civil disobedience."

But Lepore says today's Tea Party movement, which she explores in her latest book, *The Whites of Their Eyes: The Tea Party's Revolution and the Battle over American History*, has taken popular use of American history to new, and much more troubling, level. With its references to founders who are said to be rolling in their graves, study sessions that treat the Constitution like Holy Scripture, and reverential treatment of Revolutionary-era leaders whose views are stripped of all ambiguity or contradiction, the Tea Party movement, says Lepore, takes an approach to history that has more in common with religious zealotry than any sort of reasoned scholarship that examines the past.

"That is not history," she writes. "It's not civil religion, the faith in democracy that binds Americans together. It's not originalism or even constitutionalism. That's fundamentalism."

Some of the blame for today's treatment of history lies with historians themselves, Lepore says. Over the past 40 years, academic historians have largely retreated from the public arena, no longer offering sweeping narratives that try to tell the entire story of the country's past and present. Filling that vacuum, she says, have been pundits-as-historians and various political movements that have laid claim to the role of national story-tellers. The freefall of US newspaper circulation has also played an important role, Lepore says, as fewer Americans share a common reading and understanding of current events.

While academic historians have been less engaged in public life, Lepore, who is also a staff writer for *The New Yorker*, cuts against that grain. A fluid writer who ambles comfortably out of the research stacks and into the reporting trenches, Lepore has written pieces for the magazine about the Tea Party, the Constitution, and other matters connected to early American history, but has also ranged across topics as varied as parenting and the politics and culture of death in America (the topic of her next book).

Nothing may capture better the ease with which she moves between mining the past and observing the present



than her new book, which sprang from a *New Yorker* piece she wrote last May. In it, Lepore drops in on meetings of the Boston-area Tea Party and heads to the Boston Common for last spring's big Tea Party rally with Sarah Palin. What she sees and hears is interwoven with the history that the Tea Partiers claim as their inspiration.

In an interview, Lepore is quick to say that she enjoyed the local Tea Partiers and the time she spent with them, describing their political views as not that different from those of the Republican family in which she was raised in Spencer, 10 miles west of Worcester. But she's considerably less charitable on paper in describing the version of American history that the broader movement began peddling when the Tea Party exploded on the scene in 2009. It "wasn't just kooky history; it was *antihistory*," she writes.

Rather than trying to understand history in its time and place, she says, the Tea Party has collapsed the idea of the passage of time, treating the Revolutionary era leaders as if they are here with us today—or we are somehow

living in their time. Lepore says the yearning of today's Tea Partiers for a straightforward story of an idyllic American past, as the country grapples with complex problems, is understandable, but ultimately misguided. She traces its roots to a similar quest that emerged at the time of the national Bicentennial, when the social upheaval of the 1960s and 70s was exposing just how messy and complicated our history was.

Lepore wants us to consider and study the country's early history, not raise it on an altar. "The founders were not prophets," she writes. "Nor did they hope to be worshipped. They believed that to defer without examination to what your forefathers believed is to become a slave to the tyranny of the past."

I sat down with Lepore in her office at Harvard. What follows is an edited transcript of our conversation.

— MICHAEL JONAS

CW: You're an academic scholar of early American history. What inspired you to write a book looking at the most current wave in American politics?

LEPORE: By period, I study early American history, but, thematically, I study race, violence, and the writing of history. My first book, *The Name of War*, was about King Philip's War, in 1675 and 1676, a war that, while devastating—the Indians were trying to kick the colonists out of New England, and destroyed more than half the existing English settlements—and abundantly chronicled at the time, has been almost entirely forgotten today. Nevertheless, it was memorialized, politically, at key moments in the 18th and 19th centuries. I've always been interested in how, why, and when wars are remembered and forgotten. The Tea Party's rhetorical use of the Revolution is not unlike, say, the invocation of King Philip's War by New England ministers at the war's centennial, in 1775 and 1776, to argue for ousting the British. They said, in effect, "We are the Indians now."

CW: Your book's title, it becomes clear in reading the text, is a double *entendre*—or maybe it's even a triple *entendre*: It's obviously a reference to the famous battle call from Bunker Hill. You write that it's not clear such a cry was actually uttered, which seems to make a point about how some things that take on legendary status in history may be mythic. But you also use it at one point to capture the idea that the Tea Party movement yearns for a particular version of American history that is almost literally white-washed, a story in which only white people figure.

LEPORE: Yes, the mythic. I also wanted to point out, in particular, that the story of slavery in the North has been largely forgotten. My last book, *New York Burning*, was

about New York City in 1741, where 13 black men were burned at the stake and 17 more hanged on charges that they were conspiring to burn the city down, to liberate the slaves. Every time I spoke about the book in public, people were genuinely surprised, and deeply troubled. "You mean, there was slavery in New York?" In 1741, one in five New Yorkers was a slave. It's not surprising that people don't know this history. Consider New England. By the end of the Revolution, slavery had been abolished in all of New England but, as a number of scholars have demonstrated, New Englanders then set about erasing slavery from their memories, as if it had never been a part of this place's past. Academic historians have been trying, for the last half century, to write an integrated history of the United States, a history both black and white, a history that weaves together political history and social history, the history of presidents and the history of slavery. The story of the Revolution told by the far right today is, among other things, a rejection of that scholarship.

Voter turnout in 2008 was the highest since 1968. That is not a failure of democracy or, by any measure, a lack of representation.

CW: Looking at the current Tea Party movement, one question that jumps out is, how did the cry of "no taxation without representation" turn into a cry of "no taxation" or "much less taxation." That wasn't exactly what was going on.

LEPORE: On the one hand, it's very easy to look at the Tea Party and say, OK, taxation without representation—that's just a patently false analogy. We are looking at a democratically elected Congress and a democratically elected president, during an age of universal suffrage. Voter turnout in 2008 was the highest since 1968. That is simply not a failure of democracy or, by any conceivable measure, a lack of representation. And of course, during the 2010 mid-term Congressional elections, many candidates supported by the Tea Party were brought into office. That is not a failure of democracy, either: disgruntled voters brought in new legislators, starting here in Massachusetts with Scott Brown. So the big story is that our political system allows people who are discontent to go to the polls, and make a difference. The big story is just, patently, not a lack of representation. On the other hand, it's almost

too easy to point out that it's a false analogy. Because it's a very powerful image for people, and the Revolution itself, including the dumping of the tea, contains all kinds of elements that I think work like kind of civic folklore, that matter a lot to people, and that are important. They're important enough that they're worth debating and arguing over.

CW: You write that this whole period during the Revolutionary era contains "an ocean of ideas; you can fish almost anything out of it." Is that a danger in terms of our relationship with history?

LEPORE: Yes and no. If you want to Google something, the Founding Fathers' papers are online. You can search for, say, "arms," and you can very easily find some quote to support your point of view. But what you have found is, by definition, something you have taken out of context; that is how your search, in fact, worked: you took something out of context. To Google is, fundamentally, to yank something out of context. So, yes, there is an ocean of ideas, and always has been, but going fishing for them hasn't always been so easy as it is just now. And, it's not only that there's an ocean of ideas, it's that, over the course of, say,

the 18th century, different ideas were expressed and debated; even individual people had different ideas over the course of their own lives. These people were living in an age of revolution, the most exciting political ferment in a millennium, and having profound political arguments about the relationship between people and their rulers.

**They argued, they
changed their minds
all the time.**

**They weren't writing
slogans for us to put on
bumper stickers.**

People thought hard; they thought deeply; they argued with one another; they changed their minds all the time. They weren't writing slogans for us to put on bumper stickers.

CW: And what would you say history is for?

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LEPORE: I think history is for finding ourselves in the lives of others and studying the human condition, and learning not only about universals but more about particularities—how different we are from people from different times and places. What we have in common with people who lived long ago matters, but so does what we don't.

CW: People resist that, though. They want to locate in this period of history in particular some timeless moments or truths.

LEPORE: Sure, and there's more than one way to think about the past. We draw inspiration from the past and we look to the past for lessons and we look to the past for models. Those are all fine things to do. But to make a political argument based on the claim that certain documents constitute a kind of revealed religion, and to insist that to argue against them, or even to question them is

blasphemy, well, that's not history; that's fundamentalism.

CW: You use the term fundamentalism a lot in describing the Tea Party movement. What do you see as the connection there?

LEPORE: If you listen to the rhetoric long enough—"what is wrong with America today?"—there's this constant sense of panic that we are in an unprecedented state of decline and disaster. When you listen to the rhetoric of people on the far right—and I wouldn't say only the Tea Party, or even that most people who support the Tea Party subscribe to this—you hear that the problem is that we have forsaken our Founding Fathers, our ancient patriarchs: they left words for us that were divinely inspired and that were brought down to us by God; we have forsaken them and they are judging us, and they will come back to haunt us. That's not history. That's not folklore. That is a way of thinking about the relationship between the past and the present that comes out of certain varieties of religion.

CW: At one point you quote Glenn Beck saying, "reading the Founders is like reading the Bible." I guess that's pretty explicit in drawing the connection.

LEPORE: Lately, the Tea Party has made a big shift from all the rhetoric of "we need a new revolution" to "we need to read the Constitution." And in that move, the connection with Biblical reading is often made very explicit. In fact, people read the Constitution now in Bible study groups. Reading the Constitution is, of course, a good idea. But I don't think the Constitution was meant to be read devotionally. I don't actually think the answers to our problems are found in those 4,400 words nor were they meant to be found in those 4,400 words.

CW: The Constitution was read on the floor of the House when Congress convened in January. What did you make of that?

LEPORE: The rhetoric surrounding that act of political theater was that it marked a return to the nation's founding principles. Interestingly, though, of course, the Constitution had never before been read on the floor of Congress. Reading the Constitution on the floor of Congress was a break with tradition, a novelty. And, of course, they didn't "read the Constitution"; they read a redacted and amended Constitution, having removed, most notably, everything about slavery, presumably because they under-

stood that the Constitution drafted in 1787 doesn't actually explain our lives today. What explains our lives today are all the changes that have happened since 1787. The Constitution is not a document, Felix Frankfurter once wrote, it's a stream of history.

CW: You talk a lot about this line of connection from today's Tea Party movement to events in the 1970s around the time of the Bicentennial. What's the connection there, or why is it that today's Tea Party is really following in that tradition in some ways?

LEPORE: I don't think it's fair when people accuse the Tea Party of shameless hucksterism in making political arguments by reviving stories from American history, as if this has never been done before, as if this always comes from the right. That's just not true. It's done by the left all the time, too. And it was certainly done by the left more than by the right in the 1960s and in the 1970s during the Bicentennial of the American Revolution. Think about the political violence and the political disillusion, the disenchantment of those years. Think about the Civil Rights Movement, Vietnam, Watergate, Kent State, the US invasion of Cambodia, the assassinations. And then think

The Tea Party seemed to offer a balm: 'We can have our story of America, and it's going to be a whole story and a good story.'

about those things taking place at a time when Americans were trying to tell a story about the country's origins. It's not surprising that the left used that story to critique what was going on in the United States at that moment.

CW: But then there was in the 1970s a right-wing reaction to these left-wing critiques, which you say the Tea Party is the most recent manifestation of.

LEPORE: I have tried to understand what I think is earnest and sincere and somewhat moving about what draws a lot of people into the Tea Party. A generation of people—generally it's older Americans—who were coming of age in the 60s and 70s, at a time when the story of the nation's origins, a kind of consensus American history, was falling apart, and being challenged by activists and also by historians. And I think that was, for many of those people, an incredible loss, a loss that left them mourning, and the

Tea Party seemed to offer a balm: "We can have our story of America, and it's going to be a whole story, and it's going to be good story and it's going to be inspiring and uplifting." As if the 60s and 70s never happened. And that's what's not okay about it. But I think the earnestness and the sincerity of wanting that—that's not to be trifled with, and I think it is for many people a real and kind of heart-breaking sentiment.

CW: The 1970s were rich in invocations of the Tea Party and the Revolution: anti-busing activists here in Boston laid claim to this legacy as did antiwar activists who staged a reenactment at Lexington and Concord, a huge protest that our senior senator [John Kerry] himself was involved in and got arrested at. You don't seem too taken with the efforts on either side.

LEPORE: I'm a historian, so it's not surprising that when people use history in these ways, it's not going to thrill me.

CW: But there's this idea that all sorts of debates and arguments involve metaphor or a likening of two things, and history is like this too: "This is like that," or "this is the same as that." It seems like a natural way to frame arguments is to draw on things and make reference to things that are familiar to people.

LEPORE: I guess. And there's insight to be had there. But I think, finally, it's shallow insight. I would say, as a scholar, as a teacher, where is that going to get you? That's a curiosity; that's not an analysis. When the swine flu panic hit in 2008, the job of most newspaper reporters or magazine reporters or television reporters was to say, let's find something like this that has happened before. Let's find a precedent. And so in that instance, everybody focused on the influenza epidemic of 1918, which, as you know, was devastating, an international epidemic of massive proportions, at a time when medical care was fundamentally different than it was in 2008. You had all these people on radio shows and on TV, nattering on about flu in 1918. As a historian, you're just thinking, of what possible use is this analogy? What's interesting about 1918 and 2008 are the differences, not the similarities. If I had a student come to me and say, I want to write a paper about how the 2008 swine flu was just like influenza in 1918, I would say, "Come again?"

CW: But take the current debates around education reform, for example, and the efforts to close the achievement gap. A common refrain is that this is "the civil rights issue of our time." Yet trying to figure out a way to provide high quality urban education for poor kids is fundamentally different from the Civil Rights Movement.

LEPORE: I'd have to look at it, but I might say that is a legitimate argument, that's actually not a false analogy, not a leap between now and then. That's actually an origins story. That's seeing this struggle as a piece of a continuum that we can trace all the way back to the cases in the 1850s, when black Bostonians petitioned the Massachusetts Legislature for equal education and were denied. We want to see this as part of that, that it has its origins in this place. So if we want to think about this educational moment in that context, I think that's about marking continuity, it's not actually about specious comparison.

CW: But you could imagine somebody saying, "If Martin Luther King Jr. were here, he'd be championing charter schools." You can see it working its way into very specific arguments. As with the Tea Party, they're efforts to seize the moral high ground, right?

LEPORE: Sure. People do that. That's how arguments are made, that's a rhetorical move. I don't find it convincing but so what? I do think, though, that the Tea Party tried to make a much bolder intervention in how we think about who we are as a people than to say something about Martin Luther King and education. That's not a one-off.

CW: You wrote about the historian Richard Hofstadter, who died in 1970, that he was "one of the last university professors of American history to reach readers outside of the academy with sweeping interpretations both of the past and of his own time." You say the absence of historians in the period since then who played that kind of role has been an important factor in American life.

LEPORE: For one thing, pundits have replaced scholars as political commentators. For another, academic historians, American historians, have been engaged in a different kind of project, which is telling the stories of smaller groups of people and conflicts between groups. Finally, scholars no longer often write the way Hofstadter did, about the near-present, or in the way that he did. There are many forces we could identify for that change. Much excellent historical work has been done since 1970. But I think a kind of cultural space was created by the retreat of academics from public debate, and into that space has come Glenn Beck, America's history professor.

CW: You say this started to take place as early as the mid-70s. You wrote, "Historians mocked the Bicentennial as schlock but didn't offer an answer, a story to a country that needed one. That left plenty of room for plenty of other people to get into the history business." So the role of history-telling abhors a vacuum?



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CONVERSATION

LEPORE: Americans love history. There's the History Channel. Ancestry-dot-com is a huge industry. Professional genealogy, hiring someone to research your family, is big business. Where do we come from and who are we as a people? Those are still good questions, even if historians don't want to answer them.

CW: So what does that leave us with? Do you see a danger in the way history gets practiced out there?

LEPORE: Not danger. Promise. Eric Foner, who was actually a Hofstadter student, wrote this great book, *The Story of Freedom*, an attempt to tell the story of America as a story about all of us, as a people. People are still writing those books.

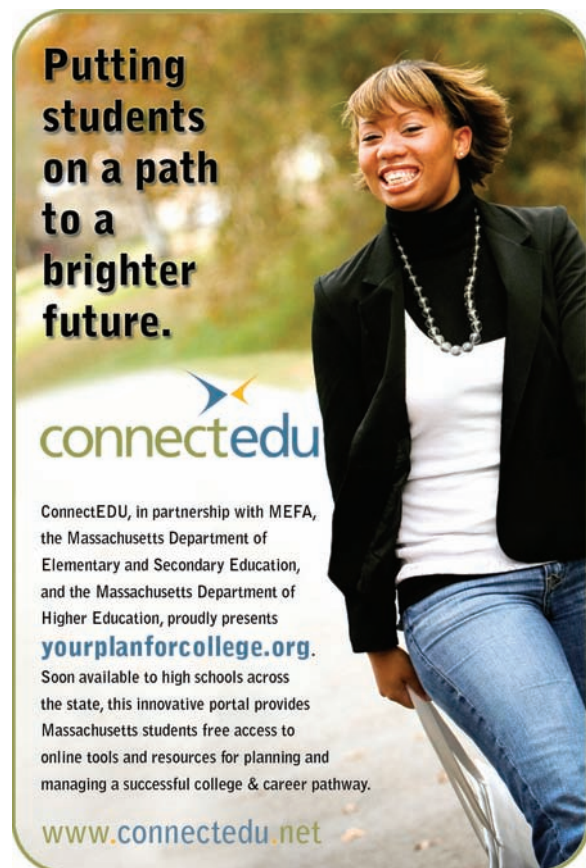
CW: What was it like for you to spend time with the Tea Party people? On the one hand, you say you have a lot of sympathy for their wish to find a connection to history or see a unitary sort of national purpose that binds us together. But it also pretty clear you aren't close to being on the same page politically.

LEPORE: They were all smart people. They were all incred-

ibly welcoming and generous with their time, and very open with me. And I liked them to a person. I think a lot of them are basically Republicans who have always been a minority in this state and who were excited about a chance to be active politically in an organization that might actually be effective—and that *was* effective, with the Scott Brown victory. We really disagreed about politics, but that's like every Thanksgiving dinner I have ever been to. I find it very comfortable to sit around a table and disagree with people about politics. That's about the best thing that any of us could do. The problem is that people sit in their living rooms and scream at the TV and disagree about politics with people who aren't even in the room.

CW: But is there something that disturbs you about their claim on history? People can say, "We don't want a further government role in health care"—that's a position one can take. But the idea that this is contrary to what this country is about....

LEPORE: There's nothing about this particular group of people that disturbs me. These are ordinary citizens getting involved in politics. There is a piece of it—some guy



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from 'BUR told me he was doing a story and people from the Tea Party were harassing Freedom Trail interpreters about their interpretation of the Freedom Trail – that bothers me. But that's not the people I met.

CW: We're in such an era of information overload with so much available online. But it doesn't always seem particularly helpful or that it brings a more reasoned reckoning with history. Are you more hopeful or pessimistic going forward about how we'll treat our history and bring it into current debates and discussions? Now I'm asking you to be a forecaster.

LEPORE: Historians are not supposed to prophesy. I think it's great that Americans are interested in the past, and the one thing that I most liked about doing book events at town halls was, when people from the Tea Party came, we would have a really good conversation, because what we share is we're all really interested in the Revolution. I could talk about the Revolution for hours. What they knew did not make a lot of sense to me, but they were really eager to talk about it. And that seemed sort of promising. I'm stretching to find something promising, though, you will notice.

CW: Yes, I see. So there's a lot about the current times that is worrisome.

LEPORE: I make the argument in the book that the rise of the Tea Party and the death of the newspaper are causally related. American democracy and the American newspaper were born together, and the newspaper is now dead, and it's thrown our politics into a sort of disequilibrium, and we won't get past that for a while.

CW: Is it just newspapers? Isn't it also the death of the network newscast? We used to all sit down and get a shared sense of what's going on in the world, whether in the newspaper or on TV.

LEPORE: Right. It's not just newspapers. It's a lot of things, including a shared sense of the past. Losing that consensus was good and bad. American history, as it was written during the Cold War, served as an argument against totalitarianism. It was good to have a story about the origins of democracy; it's too bad it wasn't better history. Better history has since been written, much better history, but it doesn't make as good a story. **CW**

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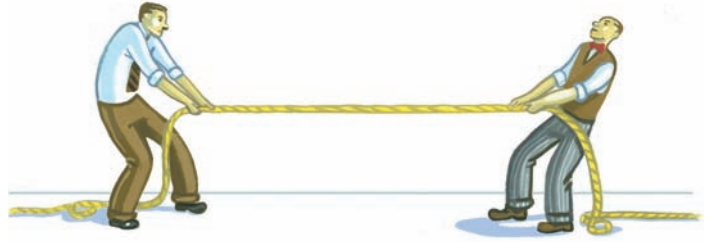
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More efficient legal services for the poor

BY JAY GONZALEZ

THANKS TO A relatively strong economic recovery and our prudent fiscal management during the recession, Massachusetts is in a much better financial position than most other states. Even so, we will be facing our most challenging budget in the upcoming fiscal year. While tax revenues are expected to grow as the economy continues to recover, the unprecedented drop in tax revenues during the recession created a hole that will take us years to climb out of. The expected tax revenue growth will also make up for only half of the federal stimulus funds that will no longer be available next fiscal year. As a result, the state budget next year will need to be \$570 million less than this year's budget, the largest cut in year to year spending in 20 years.

In the face of this new fiscal reality, Gov. Deval Patrick's fiscal year 2012 budget proposal builds on the many reforms enacted during his first term with many new proposals to make government more effective and efficient. These proposals are necessary to preserve critical investments in our future, including historic levels of funding for our schools and for efforts to close the achievement gap among our students; investments in job creation and economic growth; and investments in programs that address youth and urban violence. These reform initiatives are also necessary to mitigate the extent to which we need to eliminate or reduce critical programs and services. We cannot avoid deep cuts that will have real impacts on people across the Commonwealth. We can and we must, however, take steps to change the way government does business to preserve as many critical programs and services as possible.

Toward this end, one of the many reforms Gov. Patrick has proposed is to change the way the state provides legal services for criminal defendants who cannot afford attorneys on their own. The state is constitutionally required to provide

free legal services to indigent criminal defendants, and Gov. Patrick is committed to ensuring that quality legal services are provided to those legally entitled to them. The governor is also committed, however, to providing those quality legal services in the most cost-effective manner as possible. Just as state government has an obligation to provide quality legal services to indigent criminal defendants, it also has an obligation to be a good steward of the taxpayers' money and to stretch every taxpayer dollar as far as possible to provide all of the programs and services people expect and deserve from their government.

The Committee for Public Counsel Services (CPCS) is the state agency that currently oversees the provision of free legal counsel to indigent criminal defendants and to others in certain limited civil cases. In this fiscal year, the total cost for this agency is projected to be \$207 million—a \$21 million dollar increase since fiscal year 2007 and a \$100 million increase since 2003. Of the \$207 million expected to be spent this year, CPCS is expected to spend over \$160 million on bills from approximately 3,000 contract lawyers, called private bar advocates, who are given 90 percent of the cases and bill the state at an hourly rate. The remaining 10 percent of the cases are handled by full-time staff attorneys employed by CPCS. The agency as currently operated is one of the most expensive for the provision of public defender services in the country. Not only can we no longer sustain the rate of growth in costs that we have seen in CPCS over the last few years, we need to reduce costs in order to preserve as many other critical state services as possible.

The governor's reform proposal would do just that, saving taxpayers \$60 million a year once fully implemented while improving accountability and preserving quality legal services for those entitled to

them. There are three major elements to his reform proposal.

First, the governor proposes to use state-hired public defenders to handle the current caseload instead of paying private lawyers hourly rates. Based on conservative estimates, the state would need to hire about 1,000 new lawyers to take on the caseload currently handled by the private bar advocates. This assumes that each public defender would have annual caseloads of only 200 cases per year, well below the 275 cases per year determined to be appropriate by the American Bar Association, the US Department of Justice, and the National Legal Aid Defenders Association. This conservative caseload assumption was made in order to ensure that the public defenders will not be overburdened and will be able to provide good quality legal services. Even with this conservative assumption about the number of new lawyers that would be needed, as well as conservative assumptions about all of the additional costs that would be incurred, including support staff, health insurance, unemployment insurance, pension costs, additional rent, supplies, and other overhead, this proposal to move to a state-staffed public defender system would result in tens of millions of dollars in savings.

It is important to note that this proposal is not made

out of concern for the quality of services provided by the 3,000 private bar advocates and does not reflect a lack of appreciation for their work. It is also important to note, however, that the purpose of the program is not to provide private bar advocates with work. It is to provide indigent criminal defendants with quality legal representation as cost-effectively as possible. We are the only state in

Paying by the hour provides wrong incentive.

the country that contracts out 90 percent of its cases to private lawyers. Half of the 3,000 private bar advocates bill the state more in a year than the average annual salary of our full-time public defenders. A system that pays private bar advocates by the number of hours they work provides an incentive to take longer to resolve cases, not necessarily to achieve a better result. Based on our conservative analysis, we can provide good quality legal services to indigent criminal defendants with a state-staffed public defender system much more cost-effectively than we can through the current system that relies heavily on private bar advocates. Our proposal does, however, allow



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for the use of private bar advocates when necessary due to conflicts of interest or other extraordinary circumstances.

Second, the governor's proposal would replace CPCS with a new, independent executive branch agency called the Department of Public Counsel Services. CPCS is a judicial branch agency governed by a 15-member board of lawyers appointed by the chief justice of the Supreme Judicial Court. Only six states in the nation provide public defender services exclusively within and under the control of the judicial branch. In Massachusetts, members of the CPCS board who govern the agency on behalf of the public are permitted to take cases from and be paid by the agency. Last year, four members of the board billed CPCS over \$250,000 in the aggregate for the cases they took as court appointed private attorneys. While this practice is not prohibited under current law and there is no charge that any of these board members made decisions that were contrary to the public interest, this governance structure raises the potential for conflicts of interest. By making our public defender agency an independent executive branch agency overseen by a chief legal counsel to be appointed by the governor for a term co-terminus with the governor's, the governance structure will be consistent with how more states provide public defender services, eliminate the potential for conflicts of interest, and improve public accountability.

Third, the governor's proposal will institute a more

rigorous process for ensuring that those receiving free legal services are in fact entitled to free legal services. Currently, the Probation Department determines eligibility based on quick interviews with applicants and without cross-checking against any income records. The governor's proposal would shift indigency verification to the new Department of Public Counsel Services and require that systems currently used to verify income levels of applicants for other state programs against Department of Revenue tax data be used to verify income-eligibility for public defender services as well. By tightening the eligibility determination process, the department's caseload will decrease and the fee collections from people deemed "able to contribute" to the cost of their counsel will increase. This is not about changing the income-eligibility standards; it is simply about doing a better job making sure those receiving free legal services are in fact entitled to them.

Our new fiscal reality demands that we change the way government does business to stretch every taxpayer dollar as far as possible. Gov. Patrick's proposal to reform the way in which we provide public defender services is motivated by this imperative. We simply cannot ask taxpayers to pay \$60 million more than is necessary to meet government's obligation to provide quality legal services to indigent criminal defendants. **CW**

Jay Gonzalez is the state's secretary of administration and finance.

Plan violates separation of powers provisions

BY ARNOLD R. ROSENFELD

THE COMMITTEE FOR Public Counsel Services (CPCS) board and management staff have no quarrel, and in fact are in agreement, with the overall point made by Secretary Gonzalez. We feel that legal services to the indigent, required by law to be provided by CPCS, should be supplied in the most efficient and economical way as long as the quality of representation is not compromised. Where we differ is how to accomplish this goal.

We believe that the proposals for change described by Secretary Gonzalez and in the governor's budget are ill-advised and rely on some erroneous assumptions. In particular, we think the plan to hire 1,000 new full-time public defenders and 500 support staff and to place what is now CPCS into a new, independent executive branch agency is misguided, will not save the \$60 million Secretary Gonzalez

claims, and is in violation of the "separation of powers" clause of the Massachusetts Constitution.

We also are seriously concerned that the adoption of this proposal will compromise a legal services program that is the paradigm for other states. Nevertheless, we agree that we must find new ways to make available the services that we are mandated to provide by the federal and state constitutions and by statute, while reducing, or at least slowing the growth, of the CPCS budget. We enthusiastically accept the responsibility for working with the governor and the Legislature to achieve that goal.

There are a number of problems with Secretary Gonzalez's proposals. First, his claim that the new proposal will save \$60 million in the budget relies on the incorrect notion that every single case in which CPCS provides rep-

representation is a district court case. Murder cases, superior court felony assignments, civil matters, such as cases related to children and families, civil commitments, and mental health cases all are more complex than district court cases and inevitably will take more time and be more expensive than district court cases.

Furthermore, the governor's budget proposal fails to provide funding for cases where private bar appointments must be made when there are conflicts of interest, as is required by the Massachusetts Rules of Professional Conduct (ethical rules for lawyers in Massachusetts), either because there is more than one defendant in the matter, or one of the full-time public defenders concurrently is representing or previously has represented a person directly adverse to the present client. Based on our data, these conflicts arise in about 25 percent of criminal cases and in as many as 75 percent of children and family law cases.

Secretary Gonzalez undervalues the cost benefits that come with private bar representation, which include the fact that in the privately assigned cases, the Commonwealth does not have to pay for health insurance, retirement, office support staff, office space, and equipment, all of which will be required for the 1,000 new state lawyers and for the 500 additional support staff that will be needed. In addition, he fails to grasp that the cost of training the 1,000 new lawyers is much more substantial than the training required of private attorneys, who are not paid by the state for training.

Another significant, and perhaps insoluble, problem with the governor's proposal is that shifting CPCS services from the control of the judiciary, and specifically the Supreme Judicial Court, where it has been since its inception in 1960, to the executive branch, runs afoul of the "separation of powers" provision of the Massachusetts Constitution. Article 30 of the Massachusetts Declaration of Rights prohibits the other branches (executive and legislative) from exercising judicial powers. The SJC, in *Abodeely v. County of Worcester*, has held specifically that the provision of defense lawyers to the indigent is one of the SJC's inherent powers. Furthermore, the SJC has exercised its inherent authority to oversee the system for assigning counsel for indigent murder defendants since 1807, and its right to do so has been formally recognized by the Legislature since 1820.

Transfer of oversight of the public defense to the executive branch, as proposed in the governor's budget, would also raise serious ethical problems for CPCS lawyers. The separation of powers provision of the state constitution operates to prevent an unconstitutional conflict of interest between the executive and the judicial branches. If CPCS were transferred to the executive branch, CPCS lawyers handling cases related to children and families or mental

health would be pitted against lawyers from another executive branch state agency such as the Department of Children and Families or the Department of Mental Health.

In addition, public safety is quintessentially an executive function while the public defense is quintessentially a judicial function. It is not hard to imagine who would be given priority in budget and staffing between the State Police, who investigate and arrest alleged criminals, and CPCS, which has the highly unpopular duty of defending persons charged with even the most heinous crimes, a duty in which representation of a criminal defendant is conducted with total concern for the zealous protection of the individual's constitutional rights without consideration for the possible impact on the public safety. The long-run possibility of serious interference by the executive branch in the conduct of the public defense over which it has oversight is exactly why the "separation of powers" was adopted.

The tangential point Secretary Gonzalez brings up

The change would raise serious ethical problems.

regarding the potential for a conflict of interest involving the four members of the CPCS board who last year received assignments and were paid for their work on those cases is a red herring. The CPCS board is appointed by the SJC. The SJC's appointments to the CPCS board include individuals with a variety of backgrounds, including law professors, large and small firm lawyers with both prosecution and defense experience, former public defenders, a federal defender, former legislators, as well as some lawyers who take assignments of cases. These latter members of the board add the perspective of lawyers currently experiencing the same difficulties as the other lawyers who take assignments. They often point out problems and propose ways for management to deal with those problems. The board plays no role in these or any appointments, the setting of rates, or the amount paid to any lawyer. There is no potential for conflict of interest under either the state ethics laws or the Massachusetts Rules of Professional Conduct.

The argument that other states have adopted the governance structure proposed in the governor's budget is not pertinent. Of the 13 states whose public defender agency operates out of the executive branch, three have no written separation of powers provision in their state constitution, nine have separation of powers provisions that have been substantially weakened by a qualifying clause, and one has no explicit requirement for separation between the branches of government as we do. Under the circumstances, there is no good reason why a transition from the judiciary to the executive would be appropriate.

We support Secretary Gonzalez's proposal to imple-

ment changes in the verification system for determining indigency. Indeed, these changes were authorized in 2005 by the Legislature. We agree that by using Department of Revenue tax data and Department of Transitional Assistance methods, significant savings can be achieved. Despite legislative authorization, the enhanced verification protocol has never been implemented. By adopting Department of Transitional Assistance verification methods and fully implementing the 2005 legislation, we believe significant savings can be achieved, and there is no reason why these methods should not be put into practice immediately. We also submit that it would be a mistake to transfer the responsibility for this task from the Probation Department to CPCS. Probation is perfectly placed in the courts to collect and verify this information with its existing staff while CPCS has no experience or capability to carry out this duty.

We also support complete implementation of the recommendations made by the 2005 Commission to Study the Provision of Counsel to Indigent Persons in Massachusetts (the Rogers Commission) regarding converting some minor crimes to civil infractions or crimes which do not have incarceration as an option. Both of these options eliminate the constitutional right to counsel. Some of these changes were made in the fiscal year 2010 state bud-

get. Based on comparisons with spending in the previous three fiscal years, they resulted in an estimated savings of more than \$1.7 million over the first six months of implementation through a reduction in counsel assignments. We estimate that from fiscal year 2007 through September 30, 2010, there could have been savings of approximately \$6.6 million. We are confident that, if the additional offenses identified by the Rogers Commission were converted, it would further decrease the number of assignments requiring counsel appointment.

CPCS recognizes that every effort must be made to avoid unnecessary expenditures in this time of fiscal crisis. The committee is working with its staff to consider initiatives that would reduce costs, and we intend to evaluate any and all suggestions. We believe that with our experienced board and management team, we can achieve savings without reducing the quality of representation for all indigents entitled to counsel. We look forward to working with the governor's staff and the Legislature to implement appropriate modifications to the present system. **CW**

Arnold R. Rosenfeld, an attorney at K&L Gates, is a Committee for Public Counsel Services board member. He was a public defender for 16 years, and the first chief counsel of CPCS.

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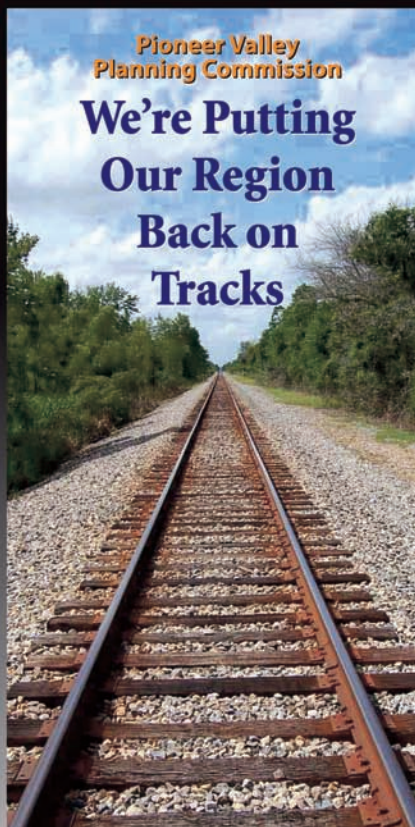




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Urban (love) affairs

Ed Glaeser explains why cities are the hub of economic innovation — and our best hope for saving the planet

Triumph of the City: How Our Greatest Invention Makes Us Richer, Smarter, Greener, Healthier, and Happier

By Edward Glaeser

New York, The Penguin Press, 352 pages

REVIEWED BY JOHN SCHNEIDER

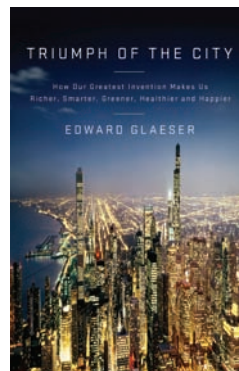
CITIES HAVE ALWAYS been my hometown. I've lived in five of them during my lifetime. The only house I have ever owned is in a city. My neighborhood is diverse and compact, and I like it that way. No leafy suburbs for me. I've always assumed I just gravitate toward more bustling settings. But along comes Edward Glaeser to pronounce cities nothing less than mankind's "greatest invention." That's a weighty load to carry, but he makes a good case for it. In the process, Glaeser makes his new book, *Triumph of the City*, important reading for anyone who thinks about cities and wants to understand the potential of this great invention — as well as the consequences when it fails to adapt quickly enough to a rapidly changing world.

Why are cities such a great invention? They are the cradle of innovation, providing a rich environment within which we learn from each other and build upon our strengths, Glaeser says. Ideas emerge more readily in the ferment of city life and spread more rapidly around the world. "Cities are the absence of physical space between people and companies," Glaeser writes. "They are proximity, density, closeness. They enable us to work and play together, and their success depends on the demand for physical connection."

According to the United Nations, the greatest urban growth the world has ever known is now occurring. By 2030 more than half the world's population, 5 billion people, will be living in metropolitan regions. Cities work because they are crowded. They move ideas from person to person, from invention to production to the marketplace.

This is a book that does not lack vision, ambition, passion, and boldness for describing how cities enhance human living in all sorts of

ways. Given the projected growth of cities worldwide, it has become increasingly important to understand why some cities thrive and others



don't. Glaeser, a Harvard economics professor, points the way toward a global urban future that could renew our economy, lift the poor out of poverty, and just possibly save our planet. It's a tall order. What's more, doing so will require a good deal of counterintuitive thinking and the adoption of public poli-

cies that will be tough to sell to a politically dominant middle class now sprawled out across suburbia and beyond.

Glaeser argues that prosperous cities are "gateways between markets and cultures." Our task is to figure out how to make those "gateways" function better. It begins with people. As we all know so well, these days skilled, educated people ("human capital" in today's lexicon) often determine a city's fate. "To thrive," Glaeser writes, "cities must attract smart people and enable them to work collaboratively. There is no such thing as a successful city without human capital." No argument from me here. Why has Boston prospered while Detroit and our own similar, but smaller, industrial "Gateway cities" like Springfield, New Bedford, and Fall River have fallen further behind? They have lost the skills race to Boston, and for that matter, to Bangalore, Milan, and Singapore. Fair or not, not every city will attract enough educated people to help it grow in the 21st century.

The factors determining a city's fortunes have changed dramatically over the last 30 years. Cities once got rich because of their access to dense transportation networks and a reliable pool of labor. Glaeser explains that New York City's better port gave it a strategic advantage over Boston. The building of the Erie Canal opened up New York to markets in the American heartland and spurred the growth of Rochester, Buffalo, and Chicago. These cities once prospered because they "grew on spots where goods had to be shifted from one form of transportation to another," he writes. But by the 1970s that competitive advantage had disappeared, replaced by the need to attract and retain knowledge workers. Cities that failed to see this coming faced a long decline.

Many of these cities have become home to growing numbers of poor. But slums—the right kind of slums, at least—can be good, according to Glaeser. While he says the middle class has long gone to the suburbs—pursuing a suburban lifestyle (like Glaeser's own) of more living space, "spongy lawns for toddlers," and better schools—cities that have cheap housing, adequate public transportation, and work provide opportunities for the poor to move up the economic ladder. As the noted urban thinker Jane Jacobs wrote: "A metropolitan economy, if it

is working well, is constantly transforming many poor people into middle class people... Cities don't lure the middle class, they create it."

That's still happening in cities with growing, dynamic economies. In others, however, that transformative effect Jacobs celebrated has vanished. "If an area has become the home of default for the poor people who are staying poor, then that area is failing," Glaeser writes. It's the lack of social mobility—not poverty—that's the real problem cities must solve.

Overall, cities are more prosperous and productive than rural areas. According to Glaeser, when a nation's urban population rises 10 percent, per capita output increases by 30 percent. One confusing detail is whether Glaeser sometimes means "metropolitan area" when describing cities. Metropolitan Boston consists of more than 100 cities and towns, and it is this agglomeration, not just the area within Boston's boundaries, that defines Boston's successful knowledge economy.

What does become clear is that sprawl is the real enemy in Glaeser's view. His book is really about the social benefits of density. Regulations, Glaeser says, need to be streamlined to encourage the construction of skyscrapers and discourage sprawl, ushering in "a new emerald-green

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age of cities.”

Glaeser is also in the vanguard of new thinkers making the convincing case that cities are good for the environment. “Simply put,” he says, “if we wanted to reduce emissions by changing our land-development policies, more Americans should live in denser, more urban environments.” Families need a car (or two or three) to get around too much of America, and, increasingly, India and China

Sprawl is the real enemy in Glaeser’s view.

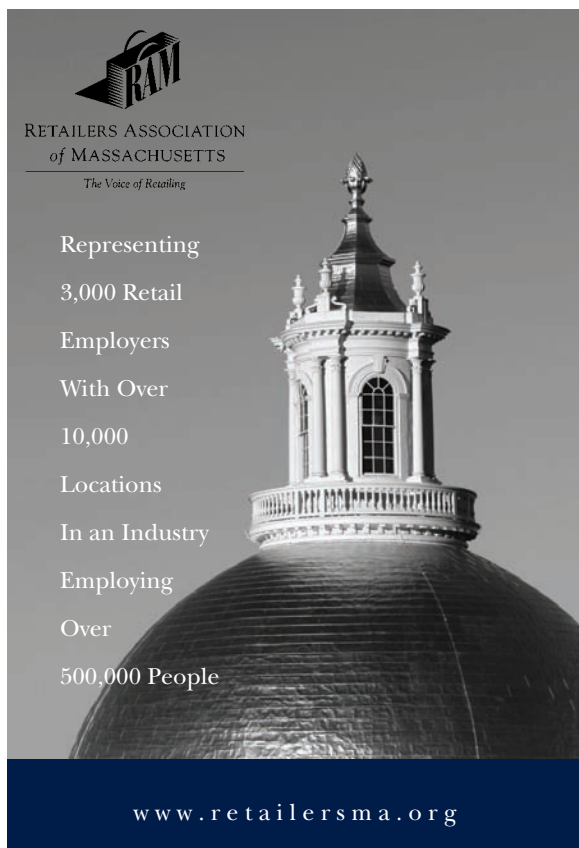
as well. New York and other cities, in contrast, are actually our greenest places, with their dramatically lower automobile use and compact, stacked dwellings with heating and cooling carbon footprints that are a fraction of those of an average house in the suburbs. “Anyone who believes that global warming is a real danger should see dense urban living as a big part of the solution,” Glaeser concludes.


But city-friendly policies creating incentives that result in more sustainable growth will require a completely new way of politics. For example, to attract and retain the urban middle class, Glaeser says we need to improve city schools

with policies that promote more competition and school choice—like a large-scale regional voucher program. Otherwise, urban public schools are doomed to educating only the poor. Capping the federal home mortgage interest deduction will encourage more “thrifty living in modest residences” by the middle class, writes Glaeser. We should challenge zoning decisions that restrict growth, make housing more expensive, and contribute to sprawl.

And while we’re at it, he says, we might want to adopt higher gasoline taxes like Europe’s or “congestion pricing” to reduce our reliance on cars and control rising CO2 emissions.

As an economist, Glaeser looks for the right incentives to nudge us toward better behavior. Congestion pricing was conceived in the late 1950s by a Nobel Prize winning economist, William Vickery, as an efficient way to charge commuters for the congestion they create. It has been adopted in Singapore and London. But since New York Mayor Michael Bloomberg flirted with the idea several years ago, I am aware of no US mayor even commissioning a study of whether or not it would work here. Imagine what charging commuters for their rush hour travel would do to help us pay for the Big Dig, buy the T reliable new trains, and build Boston a 21st-century




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transportation infrastructure. Now imagine getting such legislation passed.

That's a shortcoming of this book. There's a wide gulf between Glaeser's rational policy ideas and a winning political strategy to see them adopted. The urban/suburban coalition needed for policies more favorable to cities doesn't exist yet. Still, new ideas need to be planted, nurtured, and discussed, and that the book does well.

Mobilizing a political coalition strong enough to turn Glaeser's many bold ideas into law will require the kind of leadership that has been absent for some time. Chicagoan Barack Obama, our first city-based president in decades, said all the right things when he established the White House Office of Urban Policy to coordinate federal efforts to revitalize cities. But not much has happened and, as is often the case, it really is up to mayors and local leaders to make cities work better. There is no tougher job in government than mayor, especially in a city on the outs. If you have any doubt, watch one episode of *Brick City*, the reality TV show starring Newark Mayor Cory Booker.

What does Glaeser's way of understanding the economics of cities mean for us here? Glaeser says that "Massachusetts rises or falls with Boston." Lately, that has made us a state on the rise. Over the last 30 years, Boston has become a

global hub for the knowledge economy.

But that does not mean we should ignore the state's smaller cities and watch them just fade away. Worcester, the second largest city in New England, is proof that targeted state investment, in this case a public medical school, can spark economic growth. Lowell and New Bedford are leveraging universities, national parks, and old mill buildings to attract artists, entrepreneurs, and empty-nesters. Pittsfield, once a General Electric company town, has learned that it cannot rely on just one industry and is diversifying its economy to generate growth.

Although it has not been easy, these cities have stuck to a strategy that is starting to turn things around. But creating educational and economic opportunity and accelerating growth in these places as well as Boston—in other words, reinventing the invention we call cities—will ultimately require not only Ed Glaeser's bold policy ideas, but a new political coalition for the 21st century that's ambitious and confident enough to embrace cities as the best hope for our future. **CW**

John Schneider is executive vice president of MassINC and directs the organization's Gateway Cities initiative targeting the state's smaller cities.



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Labor's love lost

How public sector unions became the *bête noire* of uneasy times

WHEN IT COMES to rising anger toward public sector unions, Wisconsin's hard-charging Republican governor, Scott Walker, has taken the battle to a new—and caustic—level. But think of Barry Bluestone as the canary in the coal mine. Nearly two years ago, Bluestone penned an op-ed in the *Boston Globe* warning of a growing backlash against public sector unions that resist everything from changes in generous health care and retirement benefits to reform of outmoded teachers contracts. That backlash (along with the backlash to the backlash) is now in full fury, as cash-strapped states and local government struggle to maintain services, while education reform advocates target hidebound union contracts that they say hold back schools.

It's not just that Bluestone, dean of the school of social science at Northeastern University, was ahead of the curve in warning public sector unions to change their ways or see their fortunes and public support slip further. It's that he was such an unlikely guy to deliver this message. The liberal-leaning economist is not only a believer in the union cause, his late father, Irving Bluestone, spent 40 years as a top United Auto Workers union official.

The industrial union movement “is what converted an insecure working class into a more secure middle class,” says Bluestone. But public sector unions seem to be turning that idea on its head. With taxpayers fretting over cuts to services and schools, the squeeze that public sector unions are putting on public coffers can make them look more like a threat to the middle class than a guardian of its security and quality of life.

In the labor movement's heyday in the 1950s, when one-third of all US workers were union members, the union surge caused a rising tide that lifted all boats, as non-union employers felt pressure to increase wages and improve benefits. But today just 11.9 percent of the US workforce belongs to a union.

What's more, with almost all the falloff in union membership occurring in the private sector, public sector workers now make up a majority of all union members. That is a dramatic change, and it has turned union battles into a zero-sum scramble over scarce public dollars, where union gains are often seen as a community's loss.

“The problem today with public-sector unions is too many taxpayers, too many cities, too many parents of

school children see unions not as fighting for them but as only defending their own members,” says Bluestone. That view is reflected in policy shifts by even union-friendly liberals like Gov. Deval Patrick, who has significantly altered his stand on issues such as charter schools and the need to force savings in municipal health care costs.

Labor leaders say the assault on public sector unions is simply driving a race to the bottom—a deterioration of public workers' benefits that will only put them on the same shaky ground as those in the private sector. While some, like Wisconsin's anti-union governor, are seizing on the budget stress to try to drive a stake through the heart of labor, Bluestone fervently hopes unions can save themselves. Nearly 20 years ago, he coauthored a book with his father, *Negotiating the Future: A Labor Perspective on American Business*, that may help point the way. They argued that traditional, adversarial negotiations over labor contracts, which imply conflicting interests, should give way to “enterprise compacts,” agreements that build off of shared interests.

There are some glimmers of hope. Bluestone hails the recent election of Paul Toner as the new president of the Massachusetts Teachers Association. In contrast with other union chiefs, Toner has signaled the MTA's willingness to help craft new teacher evaluation tools that include measures of student achievement, a reform embraced by everyone from President Obama and his education secretary, Arne Duncan, to state education leaders.

MIT management professor Thomas Kochan helped mediate negotiations between state officials and unions under the new merged state Department of Transportation. Agreements were reached that “got rid of a lot of complicated and costly work rules,” he says, with a share of the savings directed to workers. “This is the moment for really transformative change,” says Kochan.

Bluestone says public sector unions must recognize the need to embrace reforms, not fight them, and help fashion solutions to the problems facing public budgets. “Progressive unions are crucial to society and I rue the day when unions are so weak that they will not be able to play that traditional role,” he says.

But the time for unions to step up is now. “It's the eleventh hour,” he says. **CW**

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