

**CAPE COD REGIONAL GOVERNMENT
ASSEMBLY OF DELEGATES**

APPROVED Journal of Proceedings –October 16, 2013

Speaker BERGSTROM: Good afternoon. Welcome to the Wednesday, October 16th meeting of the Cape Cod Regional Government, Assembly of Delegates.

I would like to call this meeting to order. And we will begin with a moment of silence to honor our troops who have died in service to our country and all those serving our country in the Armed Forces.

(Moment of silence.)

Thank you.

We will now stand for the Pledge of Allegiance.

(Pledge of Allegiance.)

Speaker BERGSTROM: The Clerk will call the roll.

Roll Call (87.60%): Richard Anderson (9.15% - Bourne), Cheryl Andrews (1.36% - Provincetown), Ronald Bergstrom (2.84% - Chatham), Leo Cakounes (5.67% - Harwich), Christopher Kanaga (2.73% -Orleans), James Killion (9.58% - Sandwich), Marcia King (6.49% - Mashpee Teresa Martin (2.30% - Eastham), Suzanne McAuliffe (11.02% - Yarmouth), Deborah McCutcheon (0.93% - Truro), Patrick Princi (20.92% - Barnstable), Julia Taylor (14.61% - Falmouth).

Absent (12.40%): Ned Hitchcock (1.27% - Wellfleet), John Ohman (6.58% - Dennis), Anthony Scalese (4.55% - Brewster).

Clerk O'CONNELL: Mr. Speaker, we have a quorum with 87.60 percent of the Delegates present; 12.40 percent absent.

Committee of the Whole

Speaker BERGSTROM: Thank you.

In front of you, you have the Calendar of Business. Any additions or corrections to the Calendar? If not, I need a Motion to Approve.

Deputy Speaker MARTIN: Motion to Approve.

Ms. KING: Second.

Speaker BERGSTROM: Okay. Moved and seconded. All those in favor, say "Aye."
"Opposed?"

(Motion carried.)

Speaker BERGSTROM: You should have also received a copy of the Journal of October 2nd, 2013. Are there any additions or corrections to the Journal?

Hearing none. I need a motion.

Deputy Speaker MARTIN: Motion to Approve.

Ms. MCAULIFFE: Second.

Speaker BERGSTROM: Moved and seconded. All those in favor say "Aye."
"Opposed?"

(Motion carried.)

Communications and Discussion with Human Services Director Beth Albert

Speaker BERGSTROM: Okay. We'll skip number 8 because both Bill is not available and Sheila is out of town and I don't know where Mary Pat is.

Speaker BERGSTROM: So we'll go right to Communications and Discussion with Human Services Director, Beth Albert, on the work of the Department relative to the issue of substance abuse.

Beth.

Ms. BETH ALBERT: So thanks for inviting me here today to provide you all a brief update on the department's work relevant to the issue of substance abuse.

Right now, we are investing our resources in two strategic areas. For the past year and a half, we have been working to make existing data around the problem of substance abuse available to towns, community-based groups and organizations.

And to that end, we did issue two major reports in the past year compiling that data as well as responded to specific requests by the towns and other organizations for this information if we could get it down to the town level.

And so those two reports were about Behavioral Risk Factor Surveillance System. We did a 2008 to 2010. All of these -- both of these reports are online as well as all of the other data and research that the Department does.

This particular piece of work aggregated three years of data. It's the Behavioral Risk Factor Surveillance System Survey is something done by the Massachusetts Department of Public Health. It's part of a nationwide survey. It looks at not only behavioral indicators but also health indicators like wealth -- health, weight and exercise to alcohol consumption, quality of life, depression. So it's kind of this big range of factors it looks at.

And so we pulled looking at the state data pulled it down to a County level and have issued that report. It was used extensively in the hospitals' most recent Community Needs Assessment. So we have that available. We can dig into that sometimes in getting information on a town level. So that was one piece of work.

And the other piece of -- major piece of work regarding substance abuse was Substance Abuse Treatment Statistics. We issued that in July. And that looks at trends on enrollment to substance abuse treatment facilities for Barnstable County residents into facilities that are regulated by the Mass. Department of Public Health.

So what you need to pull out of there is that it's trends data on admissions, okay, to facilities that are licensed by the Massachusetts Department of Public Health. That's the information we have available to us.

I need to stress that the information in this report should not be interpreted as prevalence as far as it doesn't tell you about how much use is going on. It simply looks at how many people are being admitted to these facilities.

I would be happy to have staff come back at a later time and really dig into this. That's not what I have prepared for today.

Really, I just wanted to let you know that in the past year and a half as far as the County's -- our departments' resources have really been acting as to supplements of the other work that's been going on in the community by providing this research and data that can be used by other organizations working in the area of substance abuse by the hospital and by the towns.

And I actually prepared just kind of a quick little cheat sheet. I'm not sure if you're interested in that on some of the data that we found?

Deputy Speaker MARTIN: Yes.

Ms. MCAULIFFE: Yes.

Ms. BETH ALBERT: You can pass it down. I just kind of pulled out what I thought was kind of the -- because it gets really deep into it and I didn't want to do that.

So, I'll just give you a minute to pass that around.

Speaker BERGSTROM: Just a quick question.

Ms. BETH ALBERT: Yes.

Speaker BERGSTROM: Does the data you collected, did that give us an opportunity to judge year by year the increase in incidents of, let's say, admissions?

Ms. BETH ALBERT: We can look at trends for admissions, yes. And there's other data that's collected that gives you kind of some insight into correlations between incidents, but I just want to caution you that it's very different what we're talking about as far as admissions.

It's strongly associated with substance abuse prevalence but it's not the same thing. We also, and I say this in my notes, we're a County who has the great resource in Gosnold, which is one of the lead treatment providers in the state here. So you always have to wonder sometimes proximity may not be leading to some of those.

But, regardless, what we do know and what I've given you is just some selected data. If you're more interested, we really have all of it in these reports, is on admission rates in Barnstable County.

So inpatient admissions by County residents, so this is anybody who's a County resident regardless of where they have inpatient admissions in the state.

So Barnstable County is one of the higher rates of treatment admissions contrasted to the rest of the state. And, again, whereas treatment admission rates are strongly associated with substance abuse prevalence, we do have to be somewhat cautious in making the assumption that County residents -- because County residents do have access to Gosnold.

As far as enrollment, the cluster of you know when you look at the age range, it's the age range 20 to 29-year-olds that represent almost 38 percent of admissions. So that is kind of the cluster, that age range.

And this surprises people but treatment admission where alcohol is listed as the primary substance remains the largest portion of admissions. So alcohol is the largest portion of admissions if someone's going into treatment. And that comprised 46 -- in fiscal year '11, that comprised 46 percent of the admissions.

Treatment admissions over time because again we did this from 2007 to 2011 because we want to look at the trends, how things are going. So treatment admissions for other opiates and how that's defined because all this is based on coding, how they code things when people come in to a facility, is all narcotics other than heroin.

So for other opiates as a primary substance at the time of admission that has increased significantly over time and in fiscal year comprised almost 30 percent of admissions.

And just some other indicators that we've looked at around substance abuse show higher rates for Barnstable County contrasted to the state, in particular looking at emergency room visits and ED data including opioids, which I can never say.

So in a nutshell, that's kind of the facts that we have pulled out that kind of give you the background around admissions data. And then we also have the Behavioral Risk Factor Survey.

So our role primarily up to this point, we do have seats in our Health and Human Service Advisory Council. We're involved in substance abuse and a lot of different ways, but not in a prime kind of convening role.

And over the past six months or eight months, I've been approached by several members of our Health and Human Service Advisory Council and elected officials looking for the department to really take a stronger role, a more leadership role as far as organizing a Countywide something around substance abuse.

What I see out in the community is I go to the Outer Cape and work with Lower Cape Outreach folks that are putting together forms, and we have churches that are really passionate about this issue and want to do something but have no idea what evidence-based prevention strategies there are, what's been going on in the town of Falmouth for many years that they could draw on.

So we have a lot of energy and a lot of passion around this issue and a lot of talking about we have a problem, we have a problem, we have a problem.

What we don't have, in my opinion and from what I'm told by many others who are really closely involved in the actual working and delivery of service, is that we're not well organized to take advantage of funding opportunities. There are municipalities who've organized, in particular Falmouth. They were successful in getting a drug-free grant for five years. Unfortunately, they were not funded for the sixth year, 6 through 10.

So, Falmouth as a town has done some really great things. I was at the Town of Barnstable the other night when their Human Service Committee made a recommendation to the Council and substance abuse was the issue that they had reported out on. And they're looking to kind of, you know, join forces around regional effort.

The other thing that's happening at the state level is the Bureau of Substance Abuse, or BSAS, put out an information -- an RFR in the spring because they are looking at reorganizing how they give monies to communities for substance abuse prevention. And they are particularly looking at municipalities organizing and being the lead for some of the funding that's coming.

I have been able to bring in some free technical assistance from the state as we kind of move into this planning phase about what this substance abuse council would look like.

We do have an Ordinance that created the Health and Human Service Advisory Council that lends itself to creating something along the lines I'm thinking.

But I'm interested in really hearing from all of you, you know, what you're seeing, what kinds of things the role you would want the County to take.

I'll leave it at that.

Speaker BERGSTROM: Okay. Any questions for Beth on this? Yes, Pat.

Mr. PRINCI: Thank you, Beth, for being here.

Ms. BETH ALBERT: Oh, hi.

Mr. PRINCI: I got to hear your presentation earlier on the supplemental budget on part 2 and that sounds pretty good.

Ms. BETH ALBERT: Yes.

Mr. PRINCI: One of the problems that we have here isn't up-to-date. I mean your statistics are a little old, back to 2009, and then, as you know, the problem has gotten much worse since then.

And it's not just -- we have Barnstable County residents that are in need. But what happens a lot of times is residents throughout the Commonwealth come down to Barnstable or Falmouth so to speak because we have good treatment facilities here. And then they end up staying in Barnstable County with relapses and so forth that it can add to our statistics of our residents -- the people that are living here that are having substance abuse issues.

It seems as if a huge problem is lack of beds at treatment facilities. Since we do get such an influx of individuals from outside of Barnstable County, is there any ideas or things that you've been thinking of as far as possibly trying to increase the amount of beds whether they be - - I don't know if you can do this legally, but perhaps some contracts with Gosnold or other agencies that do provide a detox treatment to have beds for County residents available.

Because there's a lot of County residents that have called to get a bed and they won't be able to get one. And you always worry about the health fears of people overdosing etcetera.

It's just that that's something that seems to be a huge problem here is just the lack of resources available. It seems like we know that there's a problem. We know the statistics, and we just don't have the resources available to actually treat individuals that need it.

Ms. BETH ALBERT: So I can't address that specifically because, again, we're just, as a Department, getting more involved in this and becoming more knowledgeable. What I will say is I think as you pointed out, I mean we know that there's a problem. We hear it from everybody.

I think we need to have a plan and treatment beds, or the lack of treatment beds is one of the things of the unmet needs that we can actually mobilize around and plan for how we're going to meet that need.

I'm really thinking similar to the work that we did in the regional network to address homelessness that we actually have a regional plan on what we need. And then be able to speak with one voice to mobilize around that to do some Legislative advocacy around that, whatever, education around that.

But until we, I think, work regionally on this and really look at it, I mean it's a good suggestion and I wrote it down, but I don't actually know the proportion of County residents who cannot get into beds. Where I sit, it's anecdotal at this point. I'm sure if we talked to other experts in the area we could get specifics but I don't have that today, but it's a very good point.

Speaker BERGSTROM: Okay. Yes, Cheryl.

Ms. ANDREWS: Oh, I was thinking about asking a question but I hadn't decided to but thank you anyway.

Other than picking up the Cape Cod Times and seeing some stories, I don't know the statistics. So I guess I would turn to you and say, "Why are we talking about this today? Is there a higher proportion of people on the Cape now struggling with this?" I mean I know we've had a population increase over the last 20 years. Is there a higher proportion, and frankly, a little data from you towards us would be helpful.

And then if, I guess I would ask you to take a look at what you think the County can do. And at the risk of sounding wonkish, give us some measurables. Because I think what's hard for folks, especially when we're all counting pennies, is that throwing money at a problem doesn't necessarily mean anything.

Ms. BETH ALBERT: Right.

Ms. ANDREWS: What we really want to do is say, "Hey, let's set a goal and here's a plan to achieve that goal." And then go back in a year or two and say, "Did we make any progress?"

Ms. BETH ALBERT: Right.

Ms. ANDREWS: I've seen this problem firsthand in my family, with my friends, my neighbors. Call me crazy, it doesn't feel all that different than it has my whole life. There's always been a decent group of people that didn't seem to have that ability to pull back and it gets out of control. And I do want to say I've gotten use to living with it, but it doesn't seem to go away.

On some folks do seem to get into treatment or somehow maybe just it seems like they get older and they realize they're not -- they are going to live past age 30 and they change their ways and that's a wonderful thing.

I certainly have a few relatives and dear friends that are alive now that 20 years ago we didn't think would be. So it's something I've lived with. I bet we all have. So I don't mean to sound flip when I talk about measurables. I mean they're human beings.

Ms. BETH ALBERT: No, you're absolutely right.

Ms. ANDREWS: But if we're going to do something new that we're not doing now, I

guess I would just say let's really put our heads together and see that it's something of value.

As a dentist, I can tell you I am seeing things that have questionable value including all of this new opioid prescription and pain management education demands that are coming down from the state for dentists, and I see these 90 year old dentists going into these classes. They're not even practicing anymore. But they're making them take these classes.

There's just some crazy stuff because the folks coming up with these ideas are too removed from it and I would hate for us to be a part of that. I'd rather hear more from folks that are right on the ground helping.

Ms. BETH ALBERT: Okay. Thank you. I think you're right on though when you say - - I call them deliverables but measurables with outcomes. Again, we can talk about this stuff till the cows come home and we tend to do that. People love to sit down and talk about the problem, the problem, the problem. I'm like, "Okay. We know it's a problem."

But I think having some really actionable objectives is where I'm very -- that's where we're going with this. I don't want -- the last thing I want to do is sit around and talk about the problem. Do we need another piece of data that we don't have? Yes. Do we need to make that widely available to the community in one place? Yes, we do.

But it's almost like a report card on the state of the state and where we're moving, you know, where we're going to be two years from now.

Speaker BERGSTROM: Yes, Suzanne.

Ms. MCAULIFFE: I sit on a foundation that does -- gives grants to a variety of groups. And on that foundation is Michael Lauf, the President of Cape Cod Hospital, the CEO, excuse me, the Cape Cod Hospital. And he raised the increase in drug use as a significant issue for Cape Cod Hospital. He said they are seeing -- he gave a statistic that I thought was very high in terms of drug addicted babies, which is new. It's a significant increase from Cape Cod Hospital's perspective.

Now for the Delegate from Provincetown, maybe it's no different than it was but now it's just getting into the system or being acknowledged or recognized.

Traditionally, the Cape has had a history more of alcohol use. And I think that the thing that's kind of opened peoples' eyes up now is it's more and more drugs, not so much just alcohol.

And that's, yes, anecdotal but it's also the meat and potatoes of what Cape Cod Hospital is doing, I think, for its long range planning in going forward because drugs aren't -- you don't just come in and treat people for drugs. It impacts everything else in their health. So that's why it's a huge issue for the health care system.

I agree with Beth. I think that it's a multi-billion-dollar problem. I don't think there's any possibility that a County agency can necessarily get its arms around it. But I think that a County agency might be an ideal group to kind of organize, facilitate, study, kind of pulling in all the resources as you indicated.

We have a lot of things that are going on, and we should survey -- make sure we know what's going on, pull people together, and try and implement things that are working. And that is where I see the County is more of a perhaps study the problem, come up with a plan, and then be the key for networking.

Speaker BERGSTROM: Okay. Yes, Teresa.

Deputy Speaker MARTIN: Beth, you said something that I think is important. You noted there are a number of groups. You cited church groups as one example who wants to do something. People are coming to them for help.

And I think a really important role for the County is making that connected fiber between people who are out there on the ground and people are coming to them. And how are they doing

the best thing, the best practices? How are they able to refer appropriately when that's appropriate?

So building the connective fiber is what I think is really important. It's not so much studying it but how do you make the pieces work together so that we're really leveraging assets that are everywhere in our community.

Ms. BETH ALBERT: Thank you. I think that is really key. I really do. And what you said too I mean as far as the convening and the connecting role, I mean that really is a role our department has played and can play around this, not to do the direct service. We don't want to do that. And if there are missing pieces of information, you know where are those?

A lot of this stuff is existing. We don't need to do that. We just need to compile it and pull it in, as well as doing asset mapping which is an over use, but there is so much good work already going on. So, thank you for both of those -- all of those comments.

Speaker BERGSTROM: Yes, Leo.

Mr. CAKOUNES: In your little summary here, you state that Barnstable County has a higher rate of treatment admissions in contrast to the rest of the state.

Ms. BETH ALBERT: Yes.

Mr. CAKOUNES: The inpatient admissions by County residents are they voluntary or are they court ordered or does it define either of the two?

Ms. BETH ALBERT: I don't know how it breaks down, but it may include both of them. I think it does. I can find that out for you.

Mr. CAKOUNES: Well, you know, just once again for discussion purposes, I mean obviously there's a problem going on.

And as I mentioned earlier, I know that the Sheriff's Department is looking into and hoping to get some state Legislation changed. I guess Randy Hunt, State Representative down this area has been working with them. And they specifically, from what I've heard anyhow, I haven't seen the Legislation, but they are targeting a lot of repeat offenders, if you will, and not real bad criminals, I mean the people who are addicted, either drug abuse or alcohol abuse and may be doing smaller crimes and they get to see them repeatedly.

And I did hear the sheriff talk about this that they're saying that they feel that these people really aren't criminals. What they are is addicts, and, unfortunately, they're relying on a criminal life to supplement their incomes.

And I'm hoping and it sounds like through the Sheriff's Department and, again, with Mr. Hunt's efforts, that there maybe some state help for you in this also because they look like they're trying to move forward to, once again, take these lower repeat offenders out of the system by getting them some kind of treatment.

Ms. BETH ALBERT: And the DA, one of the key people I've been talking to is Kathy Petronomy (phonetic) at the DA's office. We actually met with the DA the other day with Mary Pat Flynn about this issue because they've been doing a lot of work around diversion, which is essentially what you're talking about, people who are diverting them from the criminal justice system if they're coming to them with addictions/substance use issues.

So reaching out to Randy Hunt, and I know Jeff Perry has also been very active down with the Falmouth Prevention Partnership would be part of the plan. Yep, yeah, we want to marshal kind of these things that are happening.

Speaker BERGSTROM: Beth, the reason I also started on this path with talking to an executive from Cape Cod Healthcare, Jeff Dykens last May. He's now a Chatham Selectmen. So I've known Jeff for a long time. And we started at the end of some little political get together.

I started to talk to him and he cited the same statistics that Suzanne cited and their beds

are filling up every night with detox and also overdoses. And it's a multimillion dollar problem for them.

So with that, I started to pay attention a little more towards the news surrounding drug abuse. And one thing I found out is that I agree with you that Jeff Perry and the Sheriff's Department and also Randy Hunt are talking about converting people from the criminal justice system.

But I've been following the court reports out of Barnstable, right here, for the last few months and 90 percent of the cases that come before Barnstable County for possession, possession with intent to sell and so on are dismissed; dismissed, dismissed, dismissed, dismissed.

So there's a contradiction between they saying, "Oh, we're throwing too many people into jail for drug abuse." When you look at the court reports, they never -- I mean basically everyone gets sent out the door or they're sentenced to time served and so on. So I don't know what's going on there.

But a lot of the admissions that you cite may be people -- I mean there are people in Chatham who are retired and they worked for 45 years and they get into a house and next thing you know they're drinking. Instead of having a couple cocktails they have too many, and, after a while, they admit themselves to someplace for treatment.

Ms. BETH ALBERT: Yes.

Speaker BERGSTROM: They're not a problem. They're a problem to themselves and they recognize it.

The heavy drug abuse, this is my observation, just knowing even in Chatham, OxyContin, methamphetamines, and heroin. I mean there's been a heroin problem even among the fishing community in Chatham. I mean very few, 99 percent don't do it, but even a few, four or five, can make a difference.

And unlike alcohol abuse where it's only the individual that gets hurt, basically a lot of these drug abuses results in crime. So society doesn't mind if you overdose in the street, but they might if you break into their car. You know, they might if you shoot somebody because that's really what gets people excited is, hey, now this is affecting me.

Ms. BETH ALBERT: Right.

Speaker BERGSTROM: And more and more on Cape Cod we've seen, unfortunately, a few news stories, shootings, murders here. And I think there's unwillingness in a lot of communities to recognize this because it's not the image we want to portray.

So now here we are in the winter and most of the tourists are gone, and I think that -- my feeling is we've come to the point where we can no longer sweep it under the rug. We can no longer deny that we have a problem. Like you say, it's obvious and we have to do something to deal with it.

And the reason I think that Barnstable County and the Human -- your department, as Suzanne said, obviously we haven't gotten the resources to deal with it, but we can be a lead agency in trying to get all the players together, law enforcement, treatment, and the social service agencies to try and do something about it.

Ms. BETH ALBERT: Right. It's not just --

Speaker BERGSTROM: I don't want to lay this on you too but --

Ms. BETH ALBERT: No, no, no, no. It was funny -- not funny that you called. As I said to you on the phone, it was perfect timing because I had been hearing -- you were one of many who were calling.

So that's, you know, and, again, we have been doing the data piece of it for a while but there is a need and people are looking to the Department to step up, again, around the convening,

the connecting, the facilitating because there is a lot going on and there's a lot of passion around it.

And I think you're right when you point out the increased coverage around crimes and the increased criminal activity is really an eye-opener for people.

I think Cape is catching up. Someone said this to me, "The Cape is catching up to other parts of the state." So --

Speaker BERGSTROM: So if you had a wish list, we're coming into the budget cycle pretty soon, do you have a wish list -- what would you need?

Ms. BETH ALBERT: Coming back into the budget cycle?

Speaker BERGSTROM: Not offering any money but I'm saying if you had to make a wish and say these are the resources you would need in order to organize some kind of a comprehensive approach to this, what would you ask for?

Ms. BETH ALBERT: Can I get back to you on that? No. I mean I did put -- I did ask for a supplemental request earlier to -- I guess I can say this, to the Finance Committee --

Speaker BERGSTROM: Yes.

Ms. BETH ALBERT: -- for some additional \$25,000 to help kind of get this moving and get this off the ground in addition to the staff support that we already have in house.

Speaker BERGSTROM: Okay. Anything else for Beth?

Ms. BETH ALBERT: Yeah, I really appreciate your feedback because it kind of affirms the direction that I've been heading in. So it's nice to get that from all of you. So, thank you.

Ms. ANDREWS: Do we have anything other than anecdotal on crime statistics, drug-related crime statistics?

Ms. BETH ALBERT: That's one of the things we're starting to make a list of all the pieces we need to get and that is I don't have it but it's there.

Speaker BERGSTROM: It's there.

Ms. BETH ALBERT: We just need to pull it and make that request in a particular way. Thank you, very much.

Clerk O'CONNELL: Are there any extra handouts?

Speaker BERGSTROM: Oh, yes, I'm sure there is.

Ms. ANDREWS: We ran out.

Ms. BETH ALBERT: I made like 30 copies.

Speaker BERGSTROM: All right. Thanks Beth.

Ms. BETH ALBERT: Thank you.

Communications from the Board of Regional Commissioners

Speaker BERGSTROM: Okay. Moving right along. I will move to 8, which is Communications from the Board of Regional Commissioners. Do you have communications for us? Mary Pat? Hello?

Commissioner FLYNN: Hello.

Speaker BERGSTROM: Why don't you take the mic. Don't be afraid. We won't hurt you.

Commissioner FLYNN: Hello. I really wasn't prepared to make a report today, but I can tell you one thing that we are moving along with hiring the Interim County Administrator.

We have selected an individual. His name is Michael Brillhart. He currently lives in Florida, and he's been working there. He has a great deal of County experience. He has been involved in a lot of the projects that we are looking at right now. And we have forwarded him a draft of a contract, which he has agreed to, which is pretty interesting.

So, now we're ready to -- it probably will be on our agenda next week to actually vote to approve the contract and have him come.

And I think right now we're also looking for space which is a huge problem, but that's also one of the projects that he will be working on this coming year is a study of what our space requirements are. Both, not only in the courthouse but also up on the hill.

We're getting a lot of pushback from the court system. They want more space in the Superior Court, and there is space in the basement, which was vacated by the Department of Health. But there isn't really a whole lot of space in that building. And it does need a considerable -- what do I want to say --

Ms. MCAULIFFE: Upgrade?

Commissioner FLYNN: Yes, upgrade in many respects. And so we have to work that in. We have to really -- we are looking at the future, and we know that we have to have the proper space allocations and the proper -- the proper look of the space and the amount of space that people need and who should be in that building and who should be somewhere else.

So that will be coming to fruition. I'm hoping that his first day will be November 4. So he will be here a year November 4 to October 31. And I'm looking forward to bringing him over and introducing him to you.

He comes with a great deal of respect and good credentials and a willingness to take on this type of position for just a year. And he knows it, he gets it. He's not going to make any fuss about if we like him a whole lot or wanted him to say, we can't and he knows that he couldn't if he wanted to either. It's really cast in cement.

Once you advertise the position that's interim in that, no, you can't apply for the permanent. You can't go back on that. You have to stick with it. It would be totally inappropriate.

So there's a lot going on as you can imagine but a lot of its in flux.

Speaker BERGSTROM: Any questions?

Commissioner FLYNN: So that's the big news of the day.

Speaker BERGSTROM: Leo.

Mr. CAKOUNES: Just to clarify what you just said, this gentlemen that you're hiring for a year, when you decide to hire a full-time position, if that's what we decide to do, he cannot apply for that job?

Commissioner FLYNN: That's correct.

Mr. CAKOUNES: Well, why is that again?

Commissioner FLYNN: Because that was the original intent because part of the reason we're hiring someone interim is because we don't know what our County government is going to look like after the Charter Review Committee completes its work and it goes on the ballot.

It would be very difficult to hire someone to be a County Administrator or County Executive if you don't know what the structure of government is. And I would think that anyone who was really looking for the job would sure what to know what the future was going to be if they were to commit themselves to a position, so that's why we're doing it that way.

And it's also a question of fairness. If he had had the job for a year and then he could apply along with everybody else. It obviously gives him more of an advantage because he had been there for a year.

So it's really a question of what is proper personnel procedure and appropriate legal considerations in a situation like this.

Mr. CAKOUNES: May I?

Speaker BERGSTROM: Go ahead.

Mr. CAKOUNES: I've been out of the loop for the last two weeks, and I really not have

followed a lot of the Charter Review Committee's recommendations. But prior to a couple weeks ago even the town administrator or the Administrator's position really wasn't targeted or changed an awful lot in the three different scenarios which were being proposed.

The biggest changes were to the County Commissioners to the Assembly or neither or some kind of a metamorphosis of the two. But that Executive position really didn't seem to change an awful lot in the three major scenarios that were being looked at.

And, I don't know, I just find it kind of, I don't know, odd that we would prohibit this gentleman or person from, once again after being here a year, to at least applying for it. I understand that they would be probably looked at differently than someone new. But it's a decision that's been made so there's nothing you can do about it.

Ms. TAYLOR: Mr. Speaker.

Speaker BERGSTROM: Yes.

Ms. TAYLOR: Just a comment on that. It's pretty common that people will make themselves available for an interim position. My school hired an interim headmaster knowing that we were not going to have him for the final person. That would be a different search.

And one of the reasons is that you really can -- that can offer certain information and certain things -- things might happen for a person on a short-term approach that might be a little different from a long term. So I think it is a fairly common practice whether it's a terrific idea or not. I can't say but it is not -- especially for someone who is maybe semi retired, they would be willing to do a year of work that really could set up some of the parameters of this new kind of administrator that is going to be somewhat invented by this person.

Commissioner FLYNN: If I may comment on that too. There's another really important reason why we do this, and it's not uncommon in municipalities in that the town manager or town administrator resigns that if the Board of Selectmen is not really prepared to make a full-blown search, then they hire someone in the interim.

First of all, they may need somebody in the interim just to manage the day-to-day operations.

Secondly, if we were to hire a County Administrator, we would make this a much bigger search and have more people involved in the hiring of that person. We would have possibly a search committee or a screening committee, as committee of citizens along with some elected officials to really participate in the hiring of this individual.

But when you don't know for sure what your government structure is going to be, that's a very difficult thing to do. And if someone were moving here from out of state, that's a huge decision for anyone to make. And to make it and not know whether their position might even be in the new structure or not or it may be so totally changed that they would find that it wasn't suitable to them or maybe they didn't have the right qualifications for that particular position. And so it's really hard to say.

And when you look at the proposals coming from Charter Review Committee, either stay the same or have 11 -- a Legislative group elected -- or 11, I think it is or thereabouts, elected by district and do away with the Commissioners and that's fine because that's what we were proposing in the beginning.

I think the mistake we made was calling them Commissioners because they're really not. What we were suggesting was a Legislative group of seven, and that meant -- but they were called Commissioners.

And sometimes it's all in a name. Something can go down just because of the name that's applied to it, but we were very much aware all along that we don't need three branches of government. We don't need a County Executive and Commissioners and an Assembly. You need an Executive branch and a Legislative branch and that's what we were proposing was the

Legislative branch. They just happened to be called Commissioners. But, actually, their job would be Legislative, which is the Assembly.

We could have called them Delegates. We could have called them a Board of Supervisors. You could call them anything. But what's important is what do they do and what's their important function in County governance.

So I think the idea of having a Legislative group that's elected by districts is not a bad idea. And it really, in a way, supports the suggestions that the Special Commission on County Governance made from the very beginning. They just used the wrong name. Anyway, but I don't --

Speaker BERGSTROM: Yes. I just want to ask you one quick -- one thing that we've looked at in the Charter -- I don't want to get into the governance structure, but the Charter Review Committee looked at the Administrator, and I think that hiring an interim Administrator is a good idea for one purpose is we didn't know what this person was going to do.

There are two, for instance, in the town of Chatham, the town manager sees himself as a manager. He may speak to the issues and so on but he's more in the background whereas the Board of Selectmen and the Chairman of the Board of Selectmen takes the role, the head role.

In a place like Barnstable for many years, the manager would take -- he would be the spokesman, you know, when they had a State of the Town address.

So really the question was is this person going to be an Administrator in the sense he's going to be in the office and let's say the Chairman or the Speaker or whatever the group is will be the face of the County, or will they take a leadership role where they're the face of the County. They're the ones that go out to the public. They're the ones who go out to the -- and really haven't resolved that.

It's something that I think the Commissioners are going to -- depending on where we go with this, what kind of a profile this person's going to have. Are they going to be a local -- let's say, just throw out names just like a Rob O'Leary or somebody like that, known to the public and go out and say this is what we're going to do for you, or is it going to be someone who's an Administrator and concentrates mostly on the budget and making sure everything works. And I think that's going to be a decision that is going to affect who you want for the job.

But more important and a meatier question is are we going to have to transfer funds to pay this man's salary or is that already written into the budget?

Commissioner FLYNN: It's already in the budget.

Speaker BERGSTROM: That's right. Because you were supposed to hire him earlier.

Commissioner FLYNN: In July.

Speaker BERGSTROM: Yes, okay. Well. Okay. Thank you.

Communications and Discussion with County Counsel Robert Troy

Speaker BERGSTROM: We have now Communications and Discussion with County Counsel Robert Troy on Public Records and Website Postings.

Attorney Troy is with us. He sent a memo out and I hope you all got it and read it. And I will let Attorney Troy explain what the issue is -- further explain what it is.

County Counsel ROBERT TROY: Thank you. Good afternoon. Thank you for hearing me. I actually prepared this memo somewhat earlier in the year, but I wanted to make sure that everything that I had included in it was up to snuff with the authority.

So I spent some time checking with the Attorney General's Office and the Secretary of State's Office, Public Records Division. And, basically, what it is and there's not any momentous decision that has to be made now. I'm going to be very brief. It's just kind of a

menu of options you might want to consider down the road in terms of what is necessary and legally required to be posted on the Web, and what things you should think about if you are doing beyond that.

So I think the memo is long. I apologize it got to you so late. I just reread it and its not easy reading. But what it says, basically, is that the legal requirements all you have to do under state law is to post basically the time and the place and the matters which the Chair believes likely to be discussed on the agenda. That's basically all the law requires.

And if you do that, everybody in Massachusetts state government is happy. And if you do that, you're probably not going to occur any difficulties or have any administrative snafus.

If you decide to do more than that, then there are two things that have been recommended that you should consider. The first is that whatever policy you have comports with the Open Meeting law. And that second is that it comports with the public records statute.

I'm going to give you an example in a minute that will kind of make this clear. But, basically, as I understand it, the Assembly is posting on its website literally everything that is brought to the meeting. That can be problematic. And at some point, it could be more than problematic.

Let's say, this is the example I'm going to give you, that I come into the meeting and I speak, recognized by the Chair, and I say, "I have some information about a County employee, and the expense attributable to that County employee's medical expenses." And then I go on to describe in detail the information that's reflected in that.

Or, let's say instead, I come in and I say to you, "I have information about a County employee that has to do with that County employee's character and reputation." And maybe it's documents. It could be photographs. What do you do?

If you have a policy that doesn't contain constraints and a red light, then what you are in the situation of is you are then, at that point, you don't put that stuff on the Web, you are violating the de facto and you are picking and choosing what you're putting on. And that all leads to the disagreement as to whatever the document is. In those extreme examples, it probably is an easy decision.

Now what would you do if that happened? Well, David Higgins -- Mark Higgins yesterday, I spoke to him at the Attorney General's office. He gave me this advice. He said what the Assembly would do in that instance is the meeting would immediately have to stop and the Chair would have to move the matter into Executive Session. And everyone else in the room would be excluded. And the document would then be something that would be -- is part of the Executive Session and preserved. It is a public document to the extent it is a public record. But it would not be one, obviously, that would be posted on the Web, and it would not be one that would necessarily be disclosed and be available.

One of the interesting things that the law has provided is in making the distinction between what's a public record and what has to be on the Web is the public record process allows the person, the custodian of public records, in this case it's the Clerk of the County, the discretion and imposes at the same time the obligation on that person to determine whether a public record comes within one of the exceptions. And the exceptions, as you know, one of them in this case would the privacy would obviously not allow any type of publication of anybody's medical records.

And the other example I gave you as to the character and reputation would not allow personal matters or matters about the County employees that are elected officials otherwise to be part of the public domain. There's a process by that you notify the Secretary of State, and after that the Secretary of State, if you appeal it, can make a decision as to whether or not it is a public record or not. So there are built-in safeguards in that process.

What I am asking you to think about and, obviously, it doesn't have to be now is to formulate and actually vote an official policy for what is going to be posted on the Web. If you decide, which is completely within your discretion, that you want to do more than is legally required, I think you need to give the public and those who come to the meeting notice of what is permissible, what you are going to put on the Web and what you're not going to put on the Web.

And I could formulate that language for you and give you some type of draft policy to consider, but the one that I would recommend would be one that would say that we will post on the Web if you decide you want to do more than the legally required only those materials that comport with the requirements of the Open Meeting law and the Public Records statute.

And I think if you do that, it allows you the kind of in-house discretion that you can deal with. And you can deal with materials and kind of sift through them and see what is in the materials before it automatically goes on the Web.

Ultimately, if there is something that is fabricated or something that violates the public record's statute and a person has given it to you and you are transmitting it to the world through the Internet, the responsibility for doing that is yours. And you want to make sure that you honor the requirements of the Public Records law by deleting from any type of Internet access, records which you wouldn't be able to do if you made a written request.

That's the example I gave is that if you have a policy which just says anything at the meeting we're going to put on the Web, you would create the anomalous situation where the world is going to see something that a person would not see had they made a document request to the Clerk of the County.

So that was pretty much what it was. I just wanted to give it in a memo. We don't have to do anything about it today, but I'm happy to proceed. I think that's a good idea.

Speaker BERGSTROM: I have a quick question. I have had this issue before me many of times in Chairing meetings is that it's one thing for someone to sit there, for instance, and say that "Ron Bergstrom is dishonest," you know, "I think Ron Bergstrom is dishonest." It's another thing to say that I'm incompetent.

All right? If they say "I'm dishonest" that's a personal attack on me. If he says I'm incompetent, that has to do with my position, you know.

So I've always made the distinction is it a personal criticism of someone that is say inherent to their character that is out of order and I usually stop people.

But there's a fine line between the two. If somebody says that I think the Speaker is doing a terrible job and he doesn't know what he's doing and he's lazy and so on, that sort of has to do with -- I didn't say it's a valid criticism, I hope not, but I can't stop someone -- I don't feel I can stop someone from saying that; do you know what I mean?

Do you know what the distinction is between a personal attack, the criticism of County employees saying he's stealing money, that's totally inappropriate? But the criticism of a County employee or me or anybody else to say, "Well, I think they're horrible at their job. I don't agree with their opinions." I mean they're entitled to say that; do you know what I'm saying?

So, if they, in turn, submit that kind of stuff, should we make that distinction? Should we just say we're not going to take any kind of criticism? What is the --

County Counsel ROBERT TROY: Well I think the statutes each reflect the concern that you have just voiced. The Open Meeting Law says, as you know, that you can't talk about the character reputation of somebody unless you give them certain procedural notice.

So if somebody comes in and does that, there is under each statute a heavy burden on the Chair -- we've talked about this before in other situations. The Chair has the gavel. It cannot go forward because it is a violation of what the law requires and so does the public records.

The public records statute also prevents from public knowledge and scrutiny certain information. It's not every piece of information. Although, the trick of it is that if the record is at the meeting, it is a public record. It's just whether it's disseminated further. And the ultimate decision whether it is disseminated is with the Secretary of State's office.

So I think we all know that Public Officials are subject to in terms of their carrying out their duties, they're fair game for criticism, and I think everybody understands that.

Speaker BERGSTROM: All right. Suzanne.

Ms. MCAULIFFE: Mr. Speaker did you or the Clerk request this memo from Mr. Troy?

Speaker BERGSTROM: No. Well, actually, that's not true and I'll let Mr. Troy speak.

Ms. MCAULIFFE: I'm just wondering what the reason was for the --

Speaker BERGSTROM: It came to us in a communication from Mr. Troy's office that we should look at our policy.

Ms. MCAULIFFE: Okay. So this is just out of the blue? It has nothing to do with the fact that CLC and CVEC have been under fire by people?

County Counsel ROBERT TROY: My involvement in this is nothing with CLC.

Ms. MCAULIFFE: No. I'm just saying County employees have been disparaged in a lot of presentations. And there's been a lot of back-and-forth between CLC and some of their critics. And I'm just wondering if this is an attempt to try and -- I'm not accusing you of this. I'm just saying from the County to try and protect County employees from the detractors that certainly are prolific.

County Counsel ROBERT TROY: Right. Well let me clear the air on that point. I do not speak to the County Commissioners or to any of you here. I think you all know that - except with Janice. I deal with just the administration. This came up in a question that Janice had about whether there guidelines to what you can put on the Web. And it's more of an academic thing that I said I really don't know.

As a matter of fact, the interesting part about it which I reaffirmed in the last few days when I was calling around the Attorney General's Office and the Secretary of State's Office is there's not a lot out there.

I gave you something from *Common Cause* which is kind of an academic article, and I know it's not exciting reading but it kind of shows you it's more of an academics issue of what you want to do, how you want to do it.

In other words, if you just do what's legally required, as I say, end of story, there's no problem. You're never going to have an issue. It's off the charts.

If you decide to do beyond that, the question is what do you want to do? What is the criteria? It's all going forward. It's nothing to do with anything. I'm actually not familiar with what you're referring to.

Ms. MCAULIFFE: I have a follow-up?

Speaker BERGSTROM: Yes.

Ms. MCAULIFFE: Through the years we've always been told on every elected body that I sat on that everything is fair game for public records.

So if I wrote a note to my compatriot at the table, even that is fair game if it's during the public meeting.

County Counsel ROBERT TROY: Right.

Ms. MCAULIFFE: So now you're saying that we can elect to either delete or choose what we choose to post and release as a matter of public record?

County Counsel ROBERT TROY: What I'm saying, and the Attorney General's Office reaffirmed this yesterday, is that the requirements for posting on the website and for maintaining public records are different.

Ms. MCAULIFFE: Okay.

County Counsel ROBERT TROY: And for maintaining public records, everything is a public record as I just said. But then it's subject to a process. If I hand you something that is scurrilous, that is permanently part of the public record.

But whether or not anyone gets to see what it is goes through the public records process. They have to make a request to Janice as the Clerk of the Assembly. She has to decide her interpretation of the reading of the law. And then if the person wants the note that I gave you, they have to appeal it to the Secretary of State. It's sent up to the Secretary of State in camera. The Secretary of State looks at it and that's it. And it's determined whether it is or not.

Everything that is a public record does not have to be on the Web. That's all I'm saying.

Ms. MCAULIFFE: Okay.

Speaker BERGSTROM: Just, you know, this is confusing because I know that there was some communications between you and Janice and so on that talked about potential liability if we put something on the Web. And I don't know that -- maybe how this whole thing started, but I mean I didn't start it. I didn't mean to say that. I didn't solicit your advice. At some point, it came to me and I appreciate it.

But Janice, do you know --

Clerk O'CONNELL: Can I ask a question?

Speaker BERGSTROM: Yes.

Clerk O'CONNELL: In thinking about this, I'm viewing it as trying to protect the Assembly from any possibility that something could be on the Web that would create a lawsuit.

So when I look at your memo and I'm trying to digest what my responsibility is, right now we place on the Web governance records, such as the calendar, or the agenda, the minutes; we have our Ordinances on. And I understand that to be the basic information we should have on there. If we did nothing else, we'd be good to go having that information on the Web.

In addition to that, currently, we place information on the Web when somebody comes in and makes a presentation that goes on. Somebody hands a document in that you're going to be discussing and talking about, that gets PDF'd and placed on the Web. So that's available for everyone to see and to access.

What you're talking about is the difference between an Open Meeting Law and the things that -- those governance records and other types of documents that people submit. And sometimes it's obvious when a document comes to you, oh my God, you can't -- they're talking about someone's health information that should not go on the Web.

But sometimes it's not obvious and it could be a 400-page document somebody comes in and slams on the table and says, "I'm going to talk a little bit about this but I'm submitting to you right now for the record," or it could be a single sheet of paper with one paragraph, and there might be one sentence in that paragraph that's going to be problematic or it could be buried in a 400-page document.

My concern is I have to take that information and I've got to determine whether or not it's okay to release some of it, all of it. And at times it's not going to be practical because I'm going to have to sit and sift through that. And I'm not an attorney, or I'm going to have to turn around and say to our attorney, "You're going to have to look at this because there might be something questionable in it."

It's a tough determination. And you want to do it in a timely manner. Now if someone comes in and says I want the document that was handed over to you during your last session, well, I have to respond to that request and I have so many days to do that.

But anything that just routinely comes in that it's really a nice idea to have all that available for the public immediately when they want it, but there may be a danger in doing that

because it's got to be analyzed to make sure that there isn't something there that shouldn't be.

Speaker BERGSTROM: Okay. Julia.

Ms. TAYLOR: Well I do agree, for Janice's sake and for ours, based on what Attorney Troy has said, we should create a policy. And my policy would include, if I were writing it, that anything over a page is not going on the Web because it's too long and it does create some of these issues.

So just sort of like Letters to the Editor, if you want something on the Web, you're going to have to have a précis of it and people could then request to see the 400 pages. But things -- so that would be one criteria. Obviously, things that are confidential should be confidential would be spelled out is another criteria.

But I honestly think that in terms of length, if they want to submit a big pile of documents, that can be part of our -- we'll keep it, but if they want it on the Web, it's going to have to be a précis.

Speaker BERGSTROM: Okay. Chris.

Mr. KANAGA: Yes. I just think it would be wise to not post anything on the Web that's not a -- what Janice has referred to as a governance document, minutes. Anything that we've said anyway is already been published.

But to publish things that get turned in by the public or somebody giving testimony really doesn't afford anyone an opportunity to vet before it gets posted. And I think that is a mistake. I think you're better off from the liability standpoint of being a publisher of statements not to do that unless it's part of a committee hearing, a regulation, minutes of a committee, minutes of this meeting, and those kinds of things.

I understand posting those, but they've already been published. But to take things that somebody else submits and posts them I think is a mistake.

Speaker BERGSTROM: Okay. Teresa.

Deputy Speaker MARTIN: I probably have a rather different opinion from the rest of you. I think that the legal bar is pathetically low. It is. It's sad.

It says the only thing we have to tell people that go on is when we meet, where we meet, and a general vague agenda of what we're going to talk about. And if we were to be relevant to people, we want people to engage, we want people to know what's going on, then you know we owe it to people to share the information that we get and we receive.

And I agree there should be guidelines. In some of those guidelines, we should be putting into practice in our own meetings, when people start to talk about things that are not appropriate that should not be discussed in the public meeting and we should not be talking about them. And, of course, we should not be publishing any information regarding them. That makes sense to have those kinds of guidelines.

But it frightens me to say we're going to adhere to these extremely low standards of basically saying, "We have a pulse. We were here." That's really sad. And that's not what we're supposed to be about.

Speaker BERGSTROM: Okay. I'd just like to make a quick comment and I'll recognize -- is that my objective in this when this issue first came up, I got the impression well we're publishing something that could be in some way libelous or inappropriate or not vetted and so we should go back and look at the documents before hand and say, "Well, okay, we don't like this and we don't like that" and at least Janice would do that.

And I said, you know, if we have a policy in place that says, okay, "We throw everything out there," then there's no subjective judgment.

But if you have a policy which says that the Clerk has to look at something and decide whether it's appropriate or not appropriate, that means that by publishing it we're saying it's

appropriate.

In other words, before that we're not saying anything. We're just saying, "Hey, they handed this, here it is." Now we're saying if we put it on somehow we vetted it and it's appropriate, which I don't want the Clerk to be put in that position.

So what I'm looking for is a policy that removes all subjectivity to what we put on the Web and what we don't. So that's the question.

Yes. Deborah.

Ms. McCUTCHEON: I rather strongly agree with Teresa on this point. I think we have to be very carefully how we craft any kind of a policy. For example, something that says, "If it is longer than a page, it doesn't go on the Web," means that the journal of our proceedings won't go on the Web which means nobody will have a right to know what exactly what we talked about. Most minutes wouldn't go on.

I think that that's a little too draconian --

Ms. TAYLOR: I was only speaking of people who handed something in. Not our documents.

Speaker BERGSTROM: Well, anyway. Leo.

Mr. CAKOUNES: I'm not really a Web person but I guess a lot of people do use it.

First I want to say for the record I absolutely do believe we should have a policy to make our Clerk's life easier. I don't agree with --

Speaker BERGSTROM: That's strange coming from you, Leo.

Mr. CAKOUNES: I don't agree with the length of a document being something that we should judge whether it should be posted on the Web or not. I just think that -- I don't know, I just don't like that terminology. I don't like the limitation there.

I would like to ask, through the Speaker, Attorney Troy how about a policy that says, "Any information given to the Assembly members in which they will be using in their deliberations shall be posted on the Web."

Ms. ANDREWS: Yes, that's excellent.

Mr. CAKOUNES: That way there if the general public comes in on an issue on whether we want to evict Leo from being an Assembly member and they give a whole bunch of documentation as they come in, not only give their verbal comments, but they hand in some documents. And the rest of the Assembly is going to actually look at those documents and help them make their decision on that particular question.

And I say that because I'm trying to not post on the Web general letters that the Assembly may receive on "Gee, we'd like to see Leo step down from the Assembly." It's not something that they're deliberating. It's not an issue before us. It's an individual's spot. It's an individual's position, and that individual would like to have the Assembly know their position so they put it in writing and hand it in. That, to me, doesn't necessarily need to be put on the Web. It doesn't need to have everyone in the public an ability to look at it.

As opposed to as I said earlier documents that are going to somehow affect my decision making as an Assembly member whether they're given by, once again, the general public, some other member of County government or whatever. If I'm compiling this evidence, if you will, that's going to help me make a decision; I believe that the general public really should have access to that same documentation if you will.

I know I've sat at many meetings where I've listened to Boards of Selectmen and other committees say, you know, "Well, we've read this document. We've read that document," and I'm out there in the audience and I don't have access to them. And it kind of bothers me a little bit because they're using that information in their deliberation, and I think I should have access to it. I know I do under the law, but in our case we're talking about our procedures.

So maybe if you can either respond to that or I don't know if it was put in the form of a question, could that be worked into our policy if you will?

County Counsel ROBERT TROY: Yes. And that certainly could be worked into the decision about -- that is legal and that could be worked in and we could create legal language to make it as tight as possible and as clear as possible.

I think the decision as to how you want to do it is yours. I don't have any say in that at all. I was just saying that I think it is important to have a policy.

I will tell you this. Janice and I talk frequently, relatively frequently, when it comes up, and these matters that she -- she perceives these as heavy responsibilities, and I think she gets very concerned about it. She doesn't want to make a mistake, and she doesn't want to do anything that is not consistent with the law.

So I think any policy that you adopt that makes it clear what it is is going to help. And I think it's going to help you ultimately because some day if you don't have a policy, somebody's going to come in here with stuff that maybe, you know, there's debate about it. You don't know what to do with it. You've had a policy that you -- or de facto policy that's to put everything on and you don't put it on and, hey, you talk about lawsuits, you may get a lawsuit over that.

Speaker BERGSTROM: Jim and then Cheryl.

Mr. KILLION: What I don't understand is, and I understand the argument, but seeing as everything we're doing and saying here today is part of the public record. What is the difference if someone comes in and reads that piece of information, a statement? It's on the public record. They submit it, it's on camera; it's in our record for everybody to see. I'm not sure what the real distinct difference is.

Things on our website, contrary to statements here, I don't think we're publishing them. We're just making them available. And it's a little difficult for me as I agree with some other members is how do we get decide where that line is drawn? I think we're running afoul more trying to draw a line somewhere where people feel that they've been slighted because their opinions don't meet some sort of a criteria than putting things that are submitted in a spot on the cite where we put a disclaimer. "This is information submitted. It's neither endorsed by the Assembly or by the County government whatsoever." I don't see how we could run afoul of a rule with that. I think quite the opposite would be true.

County Counsel ROBERT TROY: Well, the only thing I would point out is the Legislature envisioned the possibility that someone would come to a meeting and the cameras would be here and there would be a stenographic record and start talking. And what they were saying was not information that is appropriate.

And so what the Legislature said is, and I think I referred to this; it's a very surprising part of the law. A person does not have a right to speak at a public meeting. And if a person speaks and the Chair tells the person to stop, that statute actually authorizes the Chair to call the police and have the person removed and put in jail until the meeting's over. That's what the state law is in Massachusetts. That's what the Legislature said. Anyone does not have the right to come and say anything they want at a meeting.

I think when you say that you are not publishing something when you take something that I give you and put it on the website; I'm not sure that in today's kind of technological world that's really a fair characterization. It's true you're not actually publishing, but you are disseminating it.

And don't forget under the Torts Claim Act, you, as public officials, are liable for negligence. So if you do something negligibly or I do something negligibly, we don't follow the law, we can be sued.

So that's something else to have in mind. So I think it depends on what you're dealing

with. If you have well-intentioned people all talking about issues and here's this, look at this zoning map, look at that, that's all fine. That's great.

But if you have people with an agenda that may intrude into areas that aren't protected by law, the question is what protection do you have when you take that information and you disseminate it?

If somebody comes into your meeting and says, "I want to talk about this and look at these documents," and starts speaking, at some point the Chair says, "Well, no, this is not germane and this is not appropriate." The question is where do those documents go? They are still public records. You're a 100 percent right. But the question is do you want, as a governmental body, do you want to take them and send them out to the world? That's what the policy does.

So I respect what you're saying about the policy. I think the Assembly as a whole has to wake up its mind what they want to do. I'm not saying -- all I said about the minimum was if you do the minimum, obviously there's going to be no problems. But that's not saying that's the right thing. You might want to -- an incidentally you've got Appendix A of the *Common Cause* document has a list of documents which includes minutes and agendas and the minutes of the meeting and what everybody said, they recommend that that -- so they've got some input on it too.

So I knew you weren't going to have time to absorb it given that you just got it yesterday. But at some future time if you want, you want to give me some ideas, I'll be happy to come back and work on what you've decided.

Mr. KILLION: Just a follow-up?

Speaker BERGSTROM: Yes.

Mr. KILLION: So through a practical matter, what is the difference between somebody coming into the office and opening up a file and getting a document or logging onto their computer and getting it?

County Counsel ROBERT TROY: Well, the difference is exactly what -- the difference is the legal requirements. If somebody comes into the office and asked for a document that I give you right now, the Clerk can elect not to give it to you because the Clerk, the County Clerk, can decide it is not a public record.

And then the person who wants it goes to the Secretary of State. If the Secretary of State agrees, that document stays a public record but nobody gets to see it. The difference is when you put it on the Internet that process is short-circuited and it immediately goes on the Internet without any kind of analysis.

Mr. KILLION: But from a practical point of view, we're not publishing documents that people come into the office to get. They're going to get them just like they're going to a website to get them.

So I think it might be a semantical argument. But the reality is we're not pushing these out to the public. They are there for them to review just like if they came into the office to review them.

And I agree that there's a step there. But, again, we're back to the same argument of what we, as the Assembly, are telling the Clerk to release and what we're not. That's really what it comes down to. The means that people get them I think is immaterial.

County Counsel ROBERT TROY: Well the difference is very simply if you have a de facto policy, you're going to put everything that comes in to the meeting on the Web if that's the de facto policy.

And you are then allowing access to a document that the Secretary of State may say is not available to the public. So it's not how you get it; it's what you're getting. You might not have

access to the document.

Mr. KILLION: I understand.

County Counsel ROBERT TROY: Okay.

Mr. KILLION: But it is the means.

County Counsel ROBERT TROY: But other than that, assuming that it passes that test, how you get it doesn't make any difference. I agree with that.

Speaker BERGSTROM: I hate to see the Assembly put in the position of arguing with our counsel. We can ignore him but we won't change his mind. He's paid to tell us what he's telling us.

Yes, Cheryl

Ms. ANDREWS: Thank you. It didn't sound like arguing. It sounded like a good debate.

One question on the definition of a public record. Is a confidential document then still called a public record?

County Counsel ROBERT TROY: If it's used in the meeting, yes.

Ms. ANDREWS: If it's used in a meeting.

County Counsel ROBERT TROY: In a public meeting.

Ms. ANDREWS: Well, confidential documents can't be used in a public meeting to my understanding. You'd have to be in Executive Session to use --

County Counsel ROBERT TROY: Oh, I'm sorry, if you could help me out. When you call it a confidential document, what do you mean by that?

Ms. ANDREWS: Confidential. It doesn't go to the public. Its personnel records; its contracts.

County Counsel ROBERT TROY: Oh, okay. Oh, I'm sorry. I didn't understand.

Ms. ANDREWS: Do you call that -- I'm just understanding your terms, do you call that a public record?

County Counsel ROBERT TROY: No. It --

Ms. ANDREWS: Okay. I don't either but you said earlier --

County Counsel ROBERT TROY: No. That type of document, a personnel document or a health document, no, that is not.

Ms. ANDREWS: All right.

County Counsel ROBERT TROY: It is a public record but it falls under one of the exemptions.

Ms. ANDREWS: So it is a public record.

County Counsel ROBERT TROY: It's semantics. It is a document that is an exception to the public record, but until the exception is determined by the Secretary of State, they call it a public record.

Ms. ANDREWS: Because it's subject to the Public Records law.

County Counsel ROBERT TROY: Right. Exactly.

Ms. ANDREWS: Okay. The second point I wanted to get to and I was really glad the Delegate from Sandwich mentioned it because no one else had, including you, which is the television camera. This is totally different from 10 years ago. And now everything is out live long before we even think about whether we put it on a Web.

So I was kind of amused that the focus here was on the Web when the reality is we're now streaming Board of Selectmen's meetings live. The key is the Speaker has a gavel.

County Counsel ROBERT TROY: Right.

Ms. ANDREWS: And so if he starts to speak or someone starts to say something that's out of order, he stops them. If you go into Executive Session, you turn the TV off which you

didn't mention but, of course, we all know that that happens. And by definition anything that happens in those circumstances doesn't go to be published.

I think the word that's missing from this entire conversation is redacting. And I think what would be helpful possibly for all of us in crafting a policy that is short enough for all of us to agree to is to explain to the Delegates what kinds of things we would redact from a public record.

If you keep following my lovely town, you're going to see something hit the press real soon about a bunch of documents that were released that never should have been, including an anonymous complaint. It's just getting crazy up north.

But the concept of redacting I think would be helpful to all of us to understand what shouldn't be released. An example would be if a member of the public walked in and began to read a document that would cause all of us to stop the television camera and the Speaker would stop him from reading, that's the kind of stuff that gets redacted from a public record.

So I would suggest if you could simply explain to us the kinds of things that would get redacted before you'd release it to the public.

County Counsel ROBERT TROY: Okay.

Ms. ANDREWS: And then the next issue is, you know, is the document that -- I think also the issue is really stuff that's coming in from the public, not what's coming in from the Commissioners or coming in from staff.

So if someone comes in from the public and hands us a 20-page document, it kind of does feel to me sensible that we would expect our staff to take a peek at it and see if it looks like anything needs to be redacted. It's not all that difficult, I don't think.

If I'm wrong, maybe if you can help us with that issue alone, I think that would help Jan and help us developing a policy.

Mr. CAKOUNES: Can I ask a question?

Speaker BERGSTROM: Did you get that? First, did you have something to say? I think you had your hand up.

Ms. McCUTCHEON: I think we get into trouble when we start using these words like "redacted" and "confidential" and "privileged." You know, you can having something and write "confidential" across the top of it and you hand it out to 100 people, it's not confidential anymore.

You can have something and you can say it's privileged between you and your lawyer and you go give it out to everybody in a meeting, it's not privileged anymore.

I think that what we're really talking about is saying that prior to the information about people, whether they be Assembly members or members of the general public, ought not to be part of our general records and ought not to be released.

I think we're also talking about personal health -- I think he can -- this is a very intelligent man here. I think he can probably draft for us a policy that would give Janice the guidance she needs without us now all of the sudden thinking that we're going to be passing out papers that had been, you know, like the Watergate stuff and somebody's taken a black marker to it. I mean I don't think we have anything that's that sensitive.

And I think that we should have a policy because I think we should all understand it. But I think when we toss some of these things around, they become much more important than they really are.

Speaker BERGSTROM: I'll recognize a couple more people, but I'd like to say, not to cut anybody short, is I agree that I and Attorney Troy and Janice and perhaps IT will sit down and we will try to come up with a policy that everyone will vet.

Yes, Teresa.

Deputy Speaker MARTIN: I just want to say I actually agree with my colleague from Sandwich that the policy doesn't matter if it is delivered online or if it's delivered in person in paper.

The only difference is right now you don't have to deal with it until someone takes the effort to physically drive here at a certain time to show up in person to ask for something in paper.

So whatever policy applies to what's posted online should be the same policy that applies to any documents period. The only difference when you post them online is it takes away the barrier for people to access something. That's the only difference. And I don't think we should be adding extra barriers to people. But I think we should be consistent in what we say is available in paper or available as a PDF. We're getting hung up with the delivery medium.

County Counsel ROBERT TROY: And I agree with you. What I was actually recommending is a policy for the Web that mirrors the Public Records statute which means that the same type of things that you would give out if Janice were asked would also be on the Web.

Deputy Speaker MARTIN: Yes.

County Counsel ROBERT TROY: How extensive you want to make that is up to you. But I agree and maybe my previous -- and maybe I was not clear on that. It doesn't make any difference how you get it. It matters what it is.

Speaker BERGSTROM: Leo.

Mr. CAKOUNES: Can I ask our Clerk a question?

Speaker BERGSTROM: Sure.

Mr. CAKOUNES: Emails that we receive as Assembly members through the Barnstable County email thing, whatever it's called, from different people, are those emails posted on the Web?

Clerk O'CONNELL: No. I don't post those on the Web.

Mr. CAKOUNES: You don't.

Clerk O'CONNELL: No.

Ms. MCAULIFFE: They are available.

Mr. CAKOUNES: Okay. They're public records -- but they are public record.

Speaker BERGSTROM: If I call you on the phone, that's a public record.

Mr. CAKOUNES: See, this is why I differ with what Teresa just said then because I do believe we need and should have, and I go back again to my original statement, a policy for what we are posting on the Web. And it just makes our Clerk's life a lot easier. It makes the whole system work better.

There's no reason that if someone was to either walk in here with a letter with their opinion on whatever, Leo Cakounes, that that needs to be put on the Web. I know it's a public record. I know it was here on TV. I know it's going to be filed inside there that if someone ever wants to see it they can come and get a copy of it. But there's no really need for it on the Web.

And I go back to my original suggestion. I think that one of the things in the policy should be that if the documents are submitted to the Assembly for our deliberation, I would like to see those available for the public to look at because that's what's making our mind up way or another.

And if we're not using the document then it can just be held inside there in a file. It doesn't need to be on the Web.

Speaker BERGSTROM: Okay. Suzanne.

Ms. MCAULIFFE: I'm used to thinking of an elected official as operating in a fishbowl. That's what I was told when I was first elected 26 years ago. There really isn't anything that you can do about things that are uncomfortable or messy or you don't want to hear or you don't want

to see.

People have confidential and privacy issues that they have the right to not be made public and I totally agree with that.

But there's a lot of other things, and with 15 of us, we all have different things that we -- and different points of view about what we think we were using for deliberation or what we weren't.

I would submit that anything you read is part of your deliberation because it's something that you're either agreeing or disagreeing with.

So you're going to get in a very slippery slope when you start discussing what needs to be censored and not censored.

In many ways, if you don't want to do just the minimum, it's just easier to do what the Sandwich Delegate suggested and it's "Here it is. We don't endorse it. It came to us. It's part of public information." And it gets very, very challenging to decide what's scurrilous, what's, you know, if you don't agree with something, you might have a very strong reaction to it. It gets to be very, very challenging.

I'm just advising you that I'll be very interested to see if we can agree on even a policy at this table.

Speaker BERGSTROM: I think we've beat the subject to death, and we may have even beaten up our attorney there.

Mr. CAKOUNES: Disclaimer. Can I just ask real quick? Attorney Troy, in regards to the disclaimer, does that help us legally at all if there's a disclaimer on the Web that says, "These items were sent to the Assembly, and we neither endorse them nor agree with them. They're only here for your viewing." Does that help us legally at all?

County Counsel ROBERT TROY: It helps. It certainly doesn't hurt. But whether it does the trick, that's up to the courts.

Clerk O'CONNELL: My habit is to put anything that we do have on the Web; it's got an author on it somewhere. It's either submitted by or they signed it.

A lot of this is so subject to interpretation as with almost everything. And, you know, when you talk about somebody submitting one single sheet of paper, I can tell you what's going to happen. They're going to start at the top left-hand side and in like a three type, and like you know that itty bitty type, and it's going to be like this all the way down to the bottom corner so that they get their full page. I mean --

Speaker BERGSTROM: All right. All I can say is it's obvious that even from just a simple problem with volume that we're going to have to at some point decide what to put on and what not. And I will get together with Janice and -- not necessarily together, but through communications among us, come up with a policy that we'll present to the Assembly. And then you guys can beat it around, amend it, do whatever you want. At least we'll give Janice some guidance as to how to go forward.

So I appreciate your being here.

County Counsel ROBERT TROY: Thank you, very much.

Speaker BERGSTROM: Thank you. Moving right along. Communication -- do we have any Communications from Public Officials?

Speaker BERGSTROM: Do we have any Communications from Members of the Public? Hearing none.

Assembly Convenes

Committee Reports

Speaker BERGSTROM: The Assembly will now convene. Do we have any Committee Reports? No.

Report from the Clerk

Speaker BERGSTROM: Report from the Clerk?

Clerk O'CONNELL: Nothing.

Other Business

Speaker BERGSTROM: Other Business?

Deputy Speaker MARTIN: Move to Adjourn.

Speaker BERGSTROM: One quick question -- well, never mind. Move to Adjourn. Do I hear a second?

Ms. MCAULIFFE: Second.

Speaker BERGSTROM: All those in favor, say "Aye."

Nobody said "No"?

Whereupon, it was moved, seconded, and voted to adjourn the Assembly of Delegates at 5:40 p.m.

Respectfully submitted by:

Janice O'Connell, Clerk
Assembly of Delegates