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Opening Remarks

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OPENING REMARKS

VINCENT ROUGEAU*

I'd like to thank all our speakers today, for taking the time from their busy schedules to be with us. We appreciate them offering their thoughts and insights on a remarkable man, and on the issues of access to justice, criminal justice and procedure, and equity and the legal profession, all of which were near and dear to him.

What is it worth to help those who have no one to speak for them in court?

.....

What is it worth to have a Commonwealth where the poor, the vulnerable, and the challenged can obtain the legal assistance they need to understand their rights, to be able to invoke those rights, and to get a fair chance to obtain justice?

Is it not worth \$26 million dollars? With 6.86 million residents in this Commonwealth, that is \$3.79 per person per year. What can you buy for \$3.79?¹

These are not my words. These are the words of Chief Justice Gants, from his remarks at the 20th Annual Walk to the Hill at the Massachusetts State House in 2019.

Access to justice, criminal justice reform, equality. These are the ideals that drove him, animated and inspired him. He was a leader, but not the kind who demanded praise; he led by example, and he cared about the human side of the law—particularly how it impacted our most vulnerable.

* Former Dean of Boston College Law School (now President of College of the Holy Cross). Thanks to Max Fabiszewski and Caitlin Durand—the *Boston College Law Review*'s Editors in Chief from the class of 2021—for planning this symposium, and Caroline Gelinne and Scott Sheltra—the *Review*'s current Editors in Chief—for editing this issue. Special thanks to Nate Kenyon for his help preparing these remarks, and to Meg Green '21 for all her invaluable contributions. You may access the symposium program and the participants' biographies at this link: <https://www.bc.edu/content/dam/bc1/schools/law/pdf/law-review-content/BCLR/symposium-april-2021/Gants-Symposium-Program.pdf> [<https://perma.cc/9AKH-UMTA>].

¹ Ralph D. Gants, Chief J., Mass. Supreme Jud. Ct., Remarks Delivered at the 20th Annual Walk to the Hill at the Massachusetts State House (Jan. 24, 2019), <https://www.mass.gov/news/sjc-chief-justice-gants-remarks-delivered-at-the-20th-annual-walk-to-the-hill-at-the> [<https://perma.cc/5E4N-CNGX>].

The Chief Justice was a brilliant man, and a keen legal mind. At Harvard Law School, he was notes editor of the Law Review, and then clerked for U.S. District Court Judge Eugene Nickerson. Later, he served Massachusetts as an Assistant U.S. Attorney before entering private practice at Palmer & Dodge. But public service was his calling, and it wasn't long before he was appointed a Judge of the Massachusetts Superior Court, and then the Supreme Judicial Court (SJC). In 2014, he became Chief Justice, replacing Roderick Ireland.

Among his many activities, he served as co-chair of the Massachusetts Access to Justice Commission, and the Conference of Chief Justices Access and Fairness Committee, and the Justice for All initiative. That alone is a powerful statement. But it is only when you begin to speak to others about him—when you read their reactions to his passing, and their recollections of his impact on the law and society—that his influence really becomes clear.

“The Chief Justice was the embodiment of an ally,” Suffolk County DA Rachael Rollins wrote in a recent remembrance:

He received no personal gain from doing what was right and speaking out against systemic racism, wealth disparities, and access to services and justice, but he did it anyway because he knew it was right, just, and honorable. He used his privilege and his position to help and include, to educate and elevate, to mend and amend.²

In a *Boston Globe* article, Robert J. Cordy, a retired SJC Associate Justice, said: “I have always had the highest regard for him as a person, a lawyer, and a judge who cared deeply about ensuring that our system of justice was indeed just and fair to everyone.”³

Here is what Susan M. Finegan, a partner at Mintz Levin and Chair of the firm's Pro Bono Committee, said about the Chief Justice. “I was so fortunate to have worked so closely with my dear friend and colleague . . . throughout the last ten years on access to justice and pro bono initiatives, and observed first-hand his efforts on ensuring equal justice for all.”⁴

Sue Finegan co-chaired the Access to Justice Commission with Chief Justice Gants. Last fall, Sue was named the inaugural recipient of the Ralph D.

² *Remembrances of Chief Justice Gants*, MASS.GOV (Sept. 17, 2020), <https://www.mass.gov/info-details/remembrances-of-chief-justice-ralph-gants> [https://perma.cc/NPY5-CLS3].

³ Bryan Marquard, *SJC Chief Justice Ralph D. Gants, a Fearless Advocate for Racial Justice, Dies at 65*, BOS. GLOBE (Sept. 14, 2020), <https://www.bostonglobe.com/2020/09/14/metro/sjc-chief-justice-ralph-d-gants-has-died/> [https://perma.cc/PUZ9-WFRN].

⁴ Press Release, Mintz Levin, Mintz Member Susan Finegan Honored with Inaugural Ralph D. Gants Award for Extraordinary Leadership in Pro Bono Service by Massachusetts Supreme Judicial Court Standing Committee on Pro Bono Legal Services (Oct. 21, 2020), <https://www.mintz.com/insights-center/news-press/mintz-member-susan-finegan-honored-inaugural-ralph-d-gants-award> [https://perma.cc/5C77-L7LN].

Gants Award for Extraordinary Leadership in Pro Bono Service by the Massachusetts Supreme Judicial Court Standing Committee on Pro Bono Legal Services.⁵ She is a BC Law graduate.

We are holding this symposium today, not just to honor a great public servant, although that is a good enough reason. But also because those values that the Chief Justice held so dear—access to justice, criminal justice reform, equality—are our own values here at BC Law. This is our mission, deeply rooted in our Jesuit heritage.

In January, I had the honor to assume the presidency of the Association of American Law Schools, and, in my presidential address, I reflected on the theme of equality and how in this nation we continue to struggle to realize its meaning. Equality eludes us in our inability to secure truly unfettered access to the right of suffrage in many parts of this country, and in our unending work to create a criminal justice system that dispenses real justice and fairness to people of color and the poor.

Racial inequality continues to persist in a society where other forms of inequality have hardened and remain unaddressed. The data demonstrating the lack of social mobility and the chasm of income inequality in the United States continue to mount, and are impossible to ignore or explain away: the richest one-tenth of one percent of American households have the combined net worth of the bottom eighty-five percent, and that same group controls close to twenty percent of the nation's total wealth.

The U.S. performs poorly relative to its economic peers on any number of other measures, including life expectancy, the percentage of children living in single-parent households, and educational outcomes. Life has gotten demonstrably worse for most Americans over the past forty years. Consequently, we should not at all be surprised that we are seeing a surge in the appeal of authoritarianism, nationalism, and xenophobia, and an outburst of acts of mayhem and violence. As Michael Sandel argued, for many people in this country, the American dream may well be best “described as a ‘noble lie,’ a belief that, though untrue, sustains civic harmony by inducing citizens to accept certain inequalities as legitimate.”⁶ The problem is, the facts on the ground are becoming too obvious to ignore—even for those who want desperately to believe otherwise.

Chief Justice Gants was deeply committed to working for equality as both a lawyer and a jurist, and he understood that these inequalities are not only *illegitimate*, but destructive to our system of justice and ultimately, our democ-

⁵ *Id.*

⁶ MICHAEL J. SANDEL, THE TYRANNY OF MERIT: WHAT'S BECOME OF THE COMMON GOOD? 77 (2020).

racy. As Sue Finegan also noted in her powerful reflection shortly after Chief Justice Gants's passing:

He carried his passion for access to justice through to his work on the SJC. He used his judicial role to ensure that the voiceless in the court system had a voice. And he availed himself of every tool at his disposal, including: drafting opinions that impacted low income litigants; making rule changes that were equitable for all litigants, including the unrepresented; and expanding the court budget to increase the number of court service centers to assist more unrepresented litigants. He used his many speaking opportunities, such as the annual State of the Judiciary, to advocate for the racial justice, civil rights, criminal justice reform, and access to justice, issues about which he cared deeply.⁷

Justice Gants was aware of the power he wielded as the Chief of the Commonwealth's highest court, and he used it to lift up the oppressed and draw the marginalized back into our common life. In this he stood out as an incredible role model for the values we work so hard to instill in our students at BC Law. We were so fortunate to have his example to look to and to admire. These values are why we are here today—and why we have gathered such an impressive list of speakers to talk about these important issues.

Before I turn to our first panel, I want to end with comments the Chief Justice made at a keynote address at BC Law in 2017. He was the featured speaker at our Rappaport Center for Law and Public Policy's conference on criminal justice reform, where he discussed wrongful convictions, reducing recidivism, and ideas for sentencing reform. The Chief Justice called for drastic changes in probation and parole, and adequate funding for recovery, education, and assimilation programs. He said that some of the biggest challenges for parolees are "needless collateral consequences" and the imposition of fees they cannot pay.⁸

"The justice system must also be careful, he warned, to not find itself 'imprisoning people just because they are poor.'" ⁹ "[N]o person should be put into jail," he said, "for the inability to pay a court fee."¹⁰ He ended his speech by saying that "[e]very court and every judge should have the individual in

⁷ Susan M. Finegan, *Access to Justice: Reflections on Chief Justice Gants*, BOS. BAR J., Winter 2021, at 34, 35, <https://bostonbarjournal.com/2020/12/16/access-to-justice-reflections-on-chief-justice-gants/> [<https://perma.cc/ZJQ6-8VHQ>].

⁸ James Barasch, *Chief Justice Gants Argues for 'More Human' Courts*, Posting to *Online Exclusives*, BOS. COLL. L. SCH. MAG. (Mar. 3, 2017), <https://lawmagazine.bc.edu/2017/03/chief-justice-gants-argues-for-more-human-courts/> [<https://perma.cc/H2K6-A4JF>].

⁹ *Id.*

¹⁰ *Id.*

mind when coming to the bench, and ‘take concrete steps to ensure that the sentence and the system does all it can to introduce the individual back as a law-abiding member of the community.’”¹¹

This was Chief Justice Gants’s overarching mission—one might say his life’s mission: to provide fair and equal access to justice, treat everyone who enters the system with compassion, and provide real and actionable criminal justice reform policy changes that lead to a productive re-entrance into society.

He was taken from us too soon, but may we all learn from him and apply those same values as we work toward productive and lasting change in our profession, our society, and our world.

¹¹ *Id.*