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The Extraordinary Criminal Law Jurisprudence of Justice Ralph Gants

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THE EXTRAORDINARY CRIMINAL LAW JURISPRUDENCE OF JUSTICE RALPH GANTS

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Abstract: The untimely passing of Chief Justice Ralph Gants represented a tremendous loss to the Massachusetts court system and communities throughout the Commonwealth. Ralph Gants positively impacted countless lives through his work both on and off the Supreme Judicial Court of Massachusetts. From his advocacy against minimum mandatory sentencing and his promotion of racial justice, to his efforts to advance eyewitness identification, first-degree murder theory, and *Brady* protections for criminal defendants, Chief Justice Gants's legacy reflects the visionary grandeur with which he tackled every issue presented to him. This Article honors his immense judicial legacy by considering several of the areas of the law where Chief Justice Gants's positive impact was most clearly felt.

INTRODUCTION

The death of Ralph Gants was a blow to those of us who knew him, and especially to those of us privileged to consider him a dear friend. It was also a blow to justice in the Commonwealth of Massachusetts. To say that the Commonwealth's loss of Justice Gants parallels the nation's loss of Supreme Court Justice Ruth Bader Ginsburg is not an understatement.

Justice Ralph Gants was an extraordinary judge on an extraordinary court. The Massachusetts Supreme Judicial Court (SJC) has counted legal giants among its members—Benjamin Kaplan, Charles Fried, Oliver Wendell Holmes, Jr., Robert Braucher, and Margaret Marshall.[1] Its opinions are widely cited in decisions of other courts and in academic journals, and are reprinted in law texts and taught in law schools across the country. SJC decisions have been particularly important given the substantial changes in the composition of the U.S. Supreme Court. Historically, the SJC has been far more protective of rights than has the U.S. Supreme Court.[2]

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[1] Three went from the SJC to join the United States Supreme Court: William Cushing (1790); Horace Gray (1882); Oliver Wendell Holmes, Jr. (1902).

[2] *See, e.g.*, Goodridge v. Dep't of Pub. Health, 798 N.E.2d 941, 948 (Mass. 2003) (striking down state laws that limited marriage to heterosexual couples based on the equal protection and due process guarantees of the Massachusetts Declaration of Rights before the U.S. Supreme Court did so); Commonwealth v. Upton, 476 N.E.2d 548, 550 (Mass. 1985) ("[P]robable cause to issue a search warrant should be determined by a stricter standard in this Commonwealth than under the Fourth Amendment

Justice Ralph Gants surely joined this pantheon. His decisions addressed cutting-edge issues and sought to reflect modern understandings of longstanding rules, including those addressing eyewitness identification or the longstanding and highly-criticized doctrine of felony murder. Although he deeply respected SJC precedent and the opinions of his colleagues, he nevertheless encouraged them to revisit precedents through the depth of his analysis and the thoughtfulness of his approach. He also understood his role as Chief Justice in administering the Massachusetts court system. He coordinated his work on the bench with significant initiatives, such as calling for a wide-ranging study on racial disparities in the Massachusetts criminal justice system. He acutely appreciated the role of the SJC vis-à-vis other players in the political system. Through his concurring opinions and speeches, he urged legislative reform when the court alone could not effectuate the changes justice required. These were not decisions made on the left or the right; they were thoughtful and incontestably humane ones.

This Article presents the legacy of the late Chief Justice Gants within a few of the numerous areas of law where his positive judicial influence is most strongly felt. Part I discusses his efforts to end mandatory minimum sentencing.[3] Part II discusses the advancements in eyewitness identification jury instructions under Chief Justice Gants's leadership.[4] Part III assesses his opinions that limited the felony murder doctrine and first-degree murder theory.[5] Finally, Part IV evaluates Chief Justice Gants's expansion of *Brady* protections for criminal defendants in the Massachusetts court system.[6]

I. Work for the Promotion of Racial Justice and Against Mandatory Minimum Sentencing

Ralph Gants was Chief Justice for less than a year when he delivered extraordinary testimony before the Massachusetts Joint Committee on the Judiciary calling for the abolition of mandatory minimum sentencing. Through this testimony, he brought issues of racial justice to the fore years before the Black

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[to the U.S. Constitution] . . . . [T]he test for determining probable cause is stricter under [Article] 14 of the Declaration of Rights of the Massachusetts Constitution than under the Fourth Amendment [to the U.S. Constitution] . . . ."); Moe v. Sec'y of Admin. & Fin., 417 N.E.2d 387, 405 (Mass. 1981) (concluding that the Massachusetts Declaration of Rights affords greater degree of protection to a woman's right to choose abortion than does the Federal Constitution); Dist. Att'y for Suffolk Dist. v. Watson, 411 N.E.2d 1274, 1287 (Mass. 1980) (holding the death penalty statute to be unconstitutional under Article 26 of the Massachusetts Declaration of Rights even if permissible under the U.S. Constitution).

[3] *See infra* notes 7–12 and accompanying text.

[4] *See infra* notes 13–40 and accompanying text.

[5] *See infra* notes 41–49 and accompanying text.

[6] *See infra* notes 50–63 and accompanying text.

Lives Matter movement. Chief Justice Gants was unafraid to say out loud what the data showed: "[I]n 2013, 44% of all persons convicted of drug offenses were persons of color, but 75% of all persons convicted of drug offenses with mandatory minimum sentences were persons of color."[7] He noted, "If [the legislature] do[es] not abolish minimum mandatory sentences for drug offenses, [it] must accept the tragic fact that this disparate treatment of persons of color will be allowed to continue."[8] Years later, in October 2016, Chief Justice Gants underscored these concerns in his State of the Judiciary address when he called for a research project in collaboration with Harvard Law School to take "a hard look at how we can better fulfill our promise to provide equal justice for every litigant."[9] The results of that study were stunning and more than confirmed the 2013 data Chief Justice Gants had cited. Racial disparities were not a one off; they were persistent and substantial.[10]

In addition to his promotion of racial justice, Chief Justice Gants also recognized the significance of mandatory minimum sentences in undermining important justice reinvestment initiatives: "[e]very time a judge is required to impose a mandatory minimum sentence that is greater than the sentence that the judge otherwise would have imposed if the judge were allowed to apply individualized, evidence-based best practices in sentencing, the taxpayer is paying money to incarcerate that offender longer than he or she should be incarcerated."[11] Chief Justice Gants believed that the money spent on razor wire and walls was better spent on programs dealing with opiate substance abuse or mental health treatment. Finally, he believed that mandatory minimum sentences should be abolished in the interest of simple fairness. Mandatory sentences are based on the false "one size fits all" principle. This is especially misguided with respect to drug offenses. Consider, for example, "[t]he drug dealer and his girlfriend who helps him package the drugs, the drug kingpin and the courier, the dealer who sells drugs to support his drug habit and the

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[7] Ralph D. Gants, Chief J., Mass. Supreme Jud. Ct., Testimony of Supreme Judicial Court Chief Justice Ralph D. Gants Before the Joint Committee on the Judiciary (June 9, 2015) [hereinafter Gants Joint Committee on the Judiciary Testimony] (transcript available from the Massachusetts Supreme Judicial Court), https://www.mass.gov/news/testimony-of-supreme-judicial-court-chief-justice-ralph-d-gants-before-the-joint-committee-on [https://perma.cc/JNK7-X3T8].

[8] *Id.*

[9] Ralph D. Gants, Chief J., Mass. Supreme Jud. Ct., Annual Address: State of the Judiciary 5 (Oct. 20, 2016) (transcript available from the Massachusetts Supreme Judicial Court), https://www.mass.gov/doc/2016-state-of-the-judiciary-address-by-sjc-chief-justice-ralph-d-gants-oct-20-2016/download [https://perma.cc/T4A2-8XYB].

[10] *See generally* ELIZABETH TSAI BISHOP, BROOK HOPKINS, CHIJINDU OBIOFUMA & FELIX OWUSU, THE CRIM. JUST. POL'Y PROGRAM: HARVARD L. SCH., RACIAL DISPARITIES IN THE MASSACHUSETTS CRIMINAL SYSTEM (2020), https://hls.harvard.edu/content/uploads/2020/11/Massachusetts-Racial-Disparity-Report-FINAL.pdf [https://perma.cc/7VCL-G4UT].

[11] Gants Joint Committee on the Judiciary Testimony, *supra* note 7.

dealer who sells to gets rich"—these actors can face identical criminal charges, even though they clearly "do not deserve the same sentence . . . ."[12]

II. Advancements in Eyewitness Identification Practices

Perhaps one of Chief Justice Gants's most significant achievements—as a justice writing opinions, as Chief Justice of the SJC supervising the Massachusetts court system, and as an administrator seamlessly working with police officers, court administrators, defense lawyers, and prosecutors—concerned eyewitness identification practices. Chief Justice Gants worked tirelessly to align the law with the evolving science of memory and perception. In 2009, shortly after then-Justice Gants joined the court, the SJC heard *Commonwealth v. Silva-Santiago*, "an appeal from a murder conviction in which the defendant challenged the reliability of photographic arrays that had led several eyewitnesses to identify him as the killer."[13] The defendant claimed the arrays were suggestive because the photographs were shown to the eyewitnesses simultaneously, rather than sequentially. Justice Gants rejected the defendant's argument that reversal was required.

Although his holding was entirely consistent with existing SJC precedent, in dicta he raised far broader concerns.[14] He explained that the eyewitness instruction protocols implemented by the U.S. Department of Justice—developed to avoid skewing eyewitness conclusions—had not been followed in the case.[15] Justice Gants added a warning, as he often did, in the hopes of influencing police practices without requiring court-imposed rules: "We decline at this time to hold that the absence of any protocol or comparable warnings to

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[12] *Id.* Indeed, in a concurring opinion in *Commonwealth v. Baez*, Justice Gants encouraged the "Legislature to consider the wisdom and fairness of the mandatory minimum aspect of those enhanced sentences, especially where the predicate offenses were committed when the defendant was a juvenile." 104 N.E.3d 646, 650 (Mass. 2018) (Gants, C.J, concurring); *see also* Commonwealth v. LeBlanc, 62 N.E.3d 34, 38 (Mass. 2016) (Gants, C.J., concurring) (encouraging the Legislature to "harmonize" contradictory provisions concerning whether a driver needed to remain at the scene after causing an accident); Commonwealth v. Burgos, 19 N.E.3d 843, 856 (Mass. 2014) (Gants, C.J., concurring) (calling for legislative changes to the Massachusetts wiretap statute); Commonwealth v. Tavares, 945 N.E.2d 329, 341 (Mass. 2011) (Gants, J., concurring) (same). *See generally* Tad Heuer, *Chief Justice Gants and the Power of Concurrence,* Bos. Bar J., Winter Edition 2021, at 19, https://bostonbar.org/docs/default-document-library/bbj---winter-2021-vol-65-no-1.pdf [https://perma.cc/6CP9-3TCQ] (describing Chief Justice Gants's influential concurring opinions).

[13] Eric A. Haskell, *Aligning Science and Law in the Realm of Eyewitness Identification Evidence*, Bos. Bar J., Winter Edition 2021, at 27, https://bostonbar.org/docs/default-document-library/bbj---winter-2021-vol-65-no-1.pdf [https://perma.cc/6CP9-3TCQ]; *see* Commonwealth v. Silva-Santiago, 906 N.E.2d 299, 309 (Mass. 2009), *abrogated by* Commonwealth v. Moore, 109 N.E.3d 484 (Mass. 2018).

[14] *Silva-Santiago*, 906 N.E.2d at 312–13; *see, e.g.*, Haskell, *supra* note 13, at 27.

[15] *Silva-Santiago*, 906 N.E.2d at 312.

the eyewitnesses requires that the identifications be found inadmissible, but we expect such protocols to be used in the future."[16]

Delving still further, Justice Gants recognized a "debate among scholars and practitioners [as to] whether the sequential showing of photographs leads to greater accuracy"[17] compared to a concurrent showing, referencing law review articles and an article from the American Psychological Association.[18] He determined that, "[w]hile that debate evolves," identifications rendered by way of either process could be admitted into evidence.[19] The decision reflected his growing interest not simply in the decades of precedent defining when eyewitness identification should be challenged, but the extent to which that precedent aligned with the science. This decision prefigured what he would do next.

In 2011, in *Commonwealth v. Walker*, Justice Gants wrote for the court, again declining to accept the notion that a simultaneous display of photographs was less accurate than a sequential display.[20] Justice Gants further declined the defendant's broader invitation to "revisit" the court's "jurisprudence under art. 12 of the Massachusetts Declaration of Rights and common-law principles of fairness, and require a trial judge to . . . exclude unreliable eyewitness testimony" even when the source of that unreliability was not police conduct or misconduct.[21] Massachusetts case law required such exclusion only when the police were responsible for the suggestive identification procedures, not when circumstances beyond their control cast doubt on the identification's reliability.[22]

Indeed, the SJC's position perfectly aligned with that of the U.S. Supreme Court in a case on that Court's docket at the same time as *Walker*. In 2011, in *Perry v. New Hampshire,* the Supreme Court—with Justice Ginsburg writing—expressly held that the Constitution's Due Process Clause did not require exclusion "when the identification was not procured under unnecessarily suggestive circumstances arranged by law enforcement."[23] The Court would not reconsider a 1967 precedent, *United States v. Wade*, notwithstanding the scientific consensus in the intervening years that showed the flaws of memory and eyewitness identification.[24] Although the Supreme Court was unwilling to consider the scientific evidence of potential unreliability—even when police conduct was not involved—Justice Gants was.

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[16] *Id.*
[17] *Id.*
[18] *Id.*at 312 & n.22.
[19] *Id.* at 312–13.
[20] 953 N.E.2d 195, 205–06 (Mass. 2011)
[21] *Id.* at 208–09.
[22] *See id.* (describing Massachusetts case law on the admissibility of eyewitness identifications).
[23] 565 U.S. 228, 248 (2012).
[24] *Id.* at 242–43 (citing United States v. Wade, 388 U.S. 218 (1967)) (noting the possibility of lineup eyewitness identification's inappropriate impact on witnesses).

Justice Gants's willingness lurked in a footnote to *Walker*. He explained,

> Because eyewitness identification evidence is the greatest source of wrongful convictions but also an invaluable law enforcement tool in obtaining accurate convictions, and because the research regarding eyewitness identification procedures is complex and evolving, we shall convene a study committee to consider how we can best deter unnecessarily suggestive procedures and whether existing model jury instructions provide adequate guidance to juries in evaluating eyewitness testimony.[25]

Justice Gants cited approvingly to the 2011 decision of New Jersey's highest court, *State v. Henderson*, decided only months before, that looked beyond police conduct. [26] *Henderson* called for a pretrial hearing to examine suggestive identification not only based on traditional "system variables" under the state's authority, such as pretrial identification, but also on "estimator variables" outside of the state's authority.[27] These included the victim's "stress," alcohol or drug use, problems of "memory decay," issues concerning "cross-racial identification," and the circumstances of the offense—all factors that the scientific literature made clear could profoundly affect reliability.[28]

After *Walker*, the SJC created the SJC Study Group on Eyewitness Identification (Study Group). The Study Group was comprised of representatives from all corners of the profession, including law school professors and attorneys, and representatives from the four trial court departments, the Attorney General's Office, the Public Defender's Office, the Office of Inspector General, and the Massachusetts Chief of Police Association.[29] The Study Group's resulting 2013 report was wide ranging. It urged the SJC to take "judicial notice" of certain "psychological principles" concerning the mechanisms of memory and recall, and of factors that degraded those mechanisms.[30] The report proposed a new jury instruction that would instruct the jury about the "findings of science" and the "often counterintuitive ways in which memory

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[25] 953 N.E.2d at 208 n.16.

[26] *Id.* at 208 (citing State v. Henderson, 27 A.3d 872 (N.J. 2011)) (analyzing multiple, interrelated variables that influence human memory).

[27] 27 A.3d at 896–902, 904–09.

[28] *Id.* at 921(providing a non-exhaustive list of estimator variables); *see Walker*, 953 N.E.2d at 209 (describing estimator variables).

[29] *See* SUPREME JUD. CT. STUDY GRP. ON EYEWITNESS EVIDENCE, REPORT AND RECOMMENDATIONS TO THE JUSTICES, at i (2013), https://www.mass.gov/doc/supreme-judicial-court-study-group-on-eyewitness-evidence-report-and-recommendations-to-the/download [https://perma.cc/NUW4-ELQ4] (listing the Study Group members).

[30] *Id.* at 2.

works."[31] It also offered recommendations on best practices for police departments, pretrial hearings, and continued education for judges and practitioners.

Shortly after the issuance of the report, Justice Gants was promoted to Chief Justice. At that time, three cases were on the court's docket concerning aspects of eyewitness identification. Chief Justice Gants authored the opinion of each one. The Chief was justly proud of the work, as he described:

> During my first year as Chief Justice, the court overhauled its treatment of first-time in-court positive eyewitness identifications in a pair of cases, *Commonwealth v. Crayton* and *Commonwealth v. Collins*, and crafted a provisional model eyewitness identification jury instruction in *Commonwealth v. Gomes*, which was subsequently revised after a public comment period. Meanwhile, individual police departments in Massachusetts have adopted new police protocols for eyewitness identification procedures, and legislation is pending that would establish uniform protocols. Eyewitness identification reform has progressed both inside and outside of the courts through a shared commitment to learning from reliable scientific research.[32]

In *Gomes*, Chief Justice Gants adopted a modified version of the Study Group's proposal. The *Gomes* jury instruction continued to urge the jury to consider "common sense" factors that the existing model instructions required, including the witness's opportunity to view the perpetrator and the quality of the witness's perception.[33] The court noted, however, that "common sense is not enough"[34] because some factors bearing on reliability are "not commonly known," and are even "counterintuitive."[35] Moving forward, jury instructions had to include additional information derived from a "near consensus in the relevant scientific community."[36] The court stated,

> (1) human memory does not operate like a video recording that a person can replay to recall what happened; (2) a witness's level of confidence in an identification may not indicate its accuracy; (3) high levels of stress can reduce the likelihood of making an accurate

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[31] *Id.*

[32] Ralph D. Gants & Erik N. Doughty, *Where Science Conflicts with Common Sense: Eyewitness Identification Reform in Massachusetts,* 79 ALB. L. REV. 1617, 1619 (2015) (footnotes omitted) (first citing Commonwealth v. Crayton, 21 N.E.3d 157, 252 (Mass. 2014); then citing Commonwealth v. Collins, 21 N.E.3d 528, 536–37 (Mass. 2014); and then citing Commonwealth v. Gomes, 22 N.E.3d 897, 916–17 (Mass. 2015)).

[33] *See Gomes*, 22 N.E.3d at 909 (describing the implications of relying only on common sense factors in eyewitness identification evidence). [34] *Id.*

[34] *Id.*

[35] *Id.*

[36] *Id.*

> identification; (4) information from other witnesses or outside sources can affect the reliability of an identification and inflate an eyewitness's confidence in the identification; and (5) viewing the same person in multiple identification procedures may increase the risk of misidentification.[37]

Gomes was a remarkable decision, remarkably rendered. It reflected multiple cases that had come before the court, substantial amicus briefing, the extensive work of the Study Group, and input from all corners of the criminal legal community. It aligned the law with science, and profoundly altered the legal landscape.[38] To ensure that the law would continue to reflect the latest scientific developments, the SJC established a Standing Committee on Eyewitness Identification to advise the court.[39] The Chief Justice noted the scope of the effort he had initiated when he explained,

> [I]t takes a village to reach [the goal of reforming eyewitness identification law and practice]: police departments committed to using proper protocols in conducting eyewitness identification procedures, a Study Group and Committee that includes prosecutors and defense attorneys dedicated to examining the scientific research regarding eyewitness identification, and courts willing to revisit long-standing practices in light of research findings broadly embraced by the relevant scientific community. Where common sense conflicts with reliable research, we must have the good sense to incorporate the research into the law.[40]

Indeed, it took a village. Rather than being content with oracular statements from the Commonwealth's highest court, Justice Gants worked to create consensus in the legal community and in law enforcement, matching that of the scientific community. It was a formidable achievement.

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[37] *Id.* at 903 (footnotes omitted).

[38] One author noted the influence of the Chief Justice in taking account of the application of science to law in later SJC decisions by other judges–requiring an instruction that "people may have greater difficulty in accurately identifying someone of a different race than someone of their own race," in considering new scientific understanding of "shaken baby syndrome," and in considering scientific research on adolescent brain development to "inform the definition of cruel and unusual punishment vis-à-vis late- teenaged offenders." Haskell, *supra* note 13, at 28 (quoting Commonwealth v. Bastaldo, 32 N.E.3d 873, 883 (Mass. 2015)) (first citing Commonwealth v. Epps, 53 N.E.3d 1247 (Mass. 2016); and then citing Commonwealth v. Watt, 146 N.E.3d 414 (Mass. 2020)).

[39] *See* Gants & Doughty, *supra* note 32, at 1626 (discussing the establishment of the Standing Committee on Eyewitness Identification)

[40] *Id.* at 1629.

III. LIMITING THE FELONY MURDER DOCTRINE AND FIRST-DEGREE MURDER THEORY

From eyewitness identification to less publicized innovations in substantive criminal law, Chief Justice Gants's impact was unmistakable. In 2017, in C*ommonwealth v. Brown*, Chief Justice Gants took on the common law felony murder rule—a relic from the English common law, now abolished in England and resoundingly criticized by scholars in the United States.[41] In *Brown,* the SJC unanimously agreed that the felony murder rule, which permitted a conviction of murder in the first degree for the commission of an underlying violent felony resulting in a death, was constitutional.[42] Chief Justice Gants, however, concurred in an opinion joined by a majority of the court in which he sought to narrow the rule to require actual malice, not constructive malice inferred from the underlying felony.[43] He reasoned that a defendant should not be convicted of murder without proof that they "intended to kill or to cause grievous bodily harm, or intended to do an act which . . . a reasonable person would have known created a plain and strong likelihood that death would result."[44] The decision effected a sea change in felony murder law. Chief Justice Gants noted:

> Felony-murder liability is a creation of our common law, and this court is responsible for the content of that common law. When our experience with the common law of felony-murder liability demonstrates that it can yield a verdict of murder in the first degree that is not consonant with justice, and where we recognize that it was derived from legal principles we no longer accept and contravenes two fundamental principles of our criminal jurisprudence, we must revise that common law so that it accords with those fundamental principles and yields verdicts that are just and fair in light of the defendant's criminal conduct.[45]

He added, as only he would, "And if not now, when?"[46]

Similarly, in *Commonwealth v. Castillo*, Chief Justice Gants called for a change in the criterion for one of the two theories of first degree murder: mur-

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[41] *See* 81 N.E.3d 1173, 1196–97 (Mass. 2017) (Gants, C.J., concurring) (recognizing the various criticisms and shortcomings of the felony murder rule). *See generally* Cameron Casey, Note, *Cruel and Unusual: Why the Eighth Amendment Bans Charging Juveniles with Felony Murder*, 61 B.C. L. REV. 2965 (2020) (describing the Eighth Amendment implications of utilizing the felony murder doctrine on juveniles).

[42] 81 N.E.3d at 1190.

[43] *Id.* at 1191.

[44] *Id.*

[45] *Id.* at 1199.

[46] *Id.* (citing CHARLES TAYLOR, SAYINGS OF THE JEWISH FATHERS 23 (2d ed. 1897) (quoting Hillel the Elder)).

der with extreme atrocity or cruelty.[47] Under this theory, the standard for conviction did not depend upon the defendant's culpable conduct or intent, but rather, depended on the "consciousness and degree of suffering of the victim."[48] In plain language, Chief Justice Gants described why this was unfair and needed to be changed.

> [Under that standard,] a defendant [could be found] guilty of murder in the first degree on the theory of extreme atrocity or cruelty if he shot a victim in the leg, precisely because he did not want to kill the victim, where the victim nonetheless died a painful death. In fact, the extent of a victim's conscious suffering may bear on matters of chance or on whether the defendant was a poor shot, rather than on whether the conduct of the defendant was unusually atrocious or cruel.[49]

Again, as with the felony murder doctrine, the evolution of the common law of homicide was up to the SJC to change when justice so required—and it did.

IV. Expanding *Brady* Protections for Criminal Defendants

One of the most significant matters of Chief Justice Gants's career was a case that he worked on just before he died. I called Chief Justice Gants when I heard that he had suffered a heart attack. He left a message to tell me that he was fine. He added a classic non sequitur, that I might want to look at his latest opinion in a grand jury matter. I called back and we chatted about his health, his family, and mine. He reminded me again—insistently this time—that I should look at his grand jury opinion. I did. It was masterful.

The matter that his opinion was written for involved two police officers who admitted to filing false police reports regarding the use of force by a fellow officer.[50] The two officers had observed, but did not participate in, the arrest of a citizen charged with, among other things, resisting arrest.[51] The arresting officer claimed the arrestee was threatening and needed force to be subdued.[52] This resulted in injuries to the arrestee.[53] The two officers filed a report

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[47] 153 N.E.3d 1210, 1214 (Mass. 2020).

[48] *Id.* at 1221.

[49] *Id.* The factors defining murder with "atrocity and cruelty" after *Castillo* were to focus only on the defendant's conduct and intent: (1) "whether the defendant was indifferent to or took pleasure in the suffering of the deceased," (2) "whether the defendant's method or means of killing the deceased was reasonably likely to substantially increase or prolong the conscious suffering of the deceased," and (3) "whether the means used by the defendant were excessive and out of proportion to what would be needed to kill a person." *Id.* at 1223 (citations omitted).

[50] *In re* Grand Jury Investigation, 152 N.E.3d 65, 70 (Mass. 2020).

[51] *Id.* at 71.

[52] *Id.*

confirming that account.[54] Video of the incident showed the opposite: the officer had struck the arrestee without provocation.[55]

During the grand jury investigation into the offending officer's conduct, the other officer witnesses admitted to lying in their reports.[56] The District Attorney sought permission from the Superior Court to disclose the confidential grand jury information to criminal defendants in other cases in which these officers were potential witnesses.[57]

In 2020, Chief Justice Gants wrote for the court in *Matter of Grand Jury Investigation,* and concluded that disclosure was required.[58] He reasoned that the constitutional duty to disclose exculpatory evidence pursuant to *Brady v. Maryland*, covered not only evidence of innocence but also evidence that related to the credibility of key witnesses.[59] Indeed, beyond the *Brady* rule, Massachusetts Rules of Criminal Procedure and the rules of Professional Conduct require the disclosure of all evidence or information that "negate[s] the guilt" or "mitigates the offense."[60] Chief Justice Gants added a powerful coda to the decision when he suggested that a prosecutor should not engage in brinksmanship about a defendant's due process rights:

> A prosecutor should not attempt to determine how much exculpatory information can be withheld without violating a defendant's right to a fair trial. Rather, once the information is determined to be exculpatory, it should be disclosed—period. And where a prosecutor is uncertain whether information is exculpatory, the prosecutor should err on the side of caution and disclose it.[61]

Further, Chief Justice Gants made it clear that whenever a prosecutor has information that "a police officer lied to conceal the unlawful use of excessive force . . . or lied about a defendant's conduct" to heighten the charges, the prosecutor was required to disclose that information "in any criminal case where the officer is a potential witness or prepared a report in the criminal investigation."[62] The decision was a Gants classic, dealing with the case at hand, but understanding fully and completely the implications of his decision to make the system more just.

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[53] *Id.*
[54] *Id.* at 70.
[55] *Id.* at 71.
[56] *Id.* at 70.
[57] *Id.*
[58] *Id.*
[59] *Id.* at 74 (citing Brady v. Maryland, 373 U.S. 83, 87 (1963)).
[60] *Id.*
[61] *Id.* at 76.
[62] *Id.* at 82.

Conclusion

Chief Justice Gants left us far too soon, but he left behind an indelible legal legacy. Nowhere is that clearer than in his criminal law jurisprudence. The late Chief Justice was a tireless voice in eliminating mandatory minimum sentencing and tackling racial inequities in the Commonwealth. From moving the needle on eyewitness identification, to felony murder doctrine, to *Brady* protections, Chief Justice Gants never backed away from reevaluating legal doctrines that were unfair or unjust, no matter what their pedigree.

In his 2015 State of the Judiciary speech, Chief Justice Gants said:

> [T]wo principles that come from the Jewish religious tradition, but probably are shared by nearly every religious tradition. The first is that each of us has an obligation to repair the world. The second is that, if you save one life, it is as if you have saved the entire world. In our courts, we seek to repair the world, sometimes even save the world, one person at a time. [63]

And he did.

[63] Ralph D. Gants, Chief J., Mass. Supreme Jud. Ct., Annual Address: State of the Judiciary 3 (Oct. 20, 2015) (transcript available from the Massachusetts Supreme Judicial Court), https://www.mass.gov/doc/2015-state-of-the-judiciary-address-by-sjc-chief-justice-ralph-d-gants-oct-20-2015/download [https://perma.cc/Y8FD-WQD2].