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CHIEF JUSTICE RALPH D. GANTS AND THE PURSUIT OF JUSTICE FOR ALL IN THE MASSACHUSETTS COURTS

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Abstract: The Honorable Ralph D. Gants served as an Associate Justice and later as the Chief Justice of the Massachusetts Supreme Judicial Court for over eleven years, until his untimely death in September 2020. During most of that time, he also served as Co-Chair of the Massachusetts Access to Justice Commission. His work in these two settings enabled him to recognize and combat many of the problems experienced by the most vulnerable participants in our legal system, especially pro se litigants. This Article analyzes how Ralph Gants used his dual roles as Chief Justice and as Commission Co-Chair to promote access to counsel and court services, and to advocate for justice for all in the Massachusetts courts.

“Until we create a world in which all who need counsel in civil cases have access to counsel, we must do all we can to make the court system more understandable and accessible for the many litigants who must represent themselves.”

—Hon. Ralph D. Gants, Annual Address:
State of the Judiciary, Oct. 30, 2019

INTRODUCTION

The Honorable Ralph D. Gants served as an Associate Justice of the Massachusetts Supreme Judicial Court (SJC) from January 2009 through July 2014, and as Chief Justice of that court from July 2014 until his untimely death in September 2020. During that time, he also served as Co-

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Chair of the Massachusetts Access to Justice Commission (Commission) for more than eight years, from March 2010 through March 2015, and again from August 2017 until his passing.¹

These dual roles gave him a unique vantage point for understanding and addressing the challenges faced by many litigants in the Massachusetts courts. In particular, these roles allowed him to recognize and combat the problems experienced by those who cannot afford an attorney and have no right to appointed counsel in matters involving their essential civil legal needs, such as housing, family issues, and consumer debt. As Commission Co-Chair, Chief Justice Gants collaborated with others in the justice system to gather information about the needs of litigants who must represent themselves² and to develop proposals for improving the justice system to address those needs. As a member and then as a leader of the SJC—which has superintendence authority over the Massachusetts court system—he brought access to justice problems and proposed solutions to his colleagues in the courts and advocated for helpful changes in court rules, procedures, policies, and operations.³ In sum, Chief Justice Gants used his dual roles on the SJC and the Commission to facilitate open communication between the court system and the people it serves, helping his colleagues better understand and respond to the needs of court users, especially those who lack counsel.

Working together, the many partners in the Massachusetts civil justice system achieved an extraordinary list of accomplishments during Chief Jus-

¹ In 2005, the SJC initially established the Massachusetts Access to Justice Commission for a five-year term. Retired SJC Chief Justice Herbert P. Wilkins chaired the Commission at that time. The SJC reauthorized the Commission in 2010 for a second five-year term, at which point then-Associate Justice Gants and David Rosenberg, Esq. acted as Co-Chairs. In 2015, the SJC established the Commission as a permanent body, subject to review after five years, and appointed SJC Associate Justice Geraldine Hines and Susan M. Finegan, Esq., as Co-Chairs. Following Justice Hines's retirement in August 2017, Chief Justice Gants returned to Co-Chair the Commission along with Attorney Finegan. See MASS. ACCESS TO JUST. COMM'N, [https://massa2j.org/\[https://perma.cc/B9F6-6VJ2\]](https://massa2j.org/[https://perma.cc/B9F6-6VJ2]) (detailing the Commission's history and accomplishments in its annual reports and other published papers).

² In accord with common usage, we refer to litigants who cannot afford counsel as “self-represented.” It is also appropriate to refer to them as “unrepresented,” however, in recognition of the fact that for these litigants, representing themselves in court proceedings is not a matter of choice, but of necessity, and that they often lack the specialized legal knowledge necessary to represent themselves effectively. See Russell Engler, *And Justice for All—Including the Unrepresented Poor: Revisiting the Roles of the Judges, Mediators, and Clerks*, 67 FORDHAM L. REV. 1987, 1992 n.23 (1999) (describing the significance of the term “unrepresented litigants”).

³ See MASS. GEN. LAWS ch. 211, § 3 (2020) (setting forth the SJC's authority over “courts of inferior jurisdiction” in the state); *In re DeSaulnier*, 274 N.E.2d 454, 456 (Mass. 1971) (holding that the SJC has “inherent common law and constitutional powers” as the state's supreme court, to safeguard the justice system and to oversee the “administration of justice”).

tice Gants's years at the helm of the Commission. Increased legislative appropriations, in combination with new sources of revenue, provided additional funding for civil legal aid organizations. This enabled them to provide free legal assistance to more litigants who would otherwise have been unrepresented. Further, pro bono activity increased across the board, a civil appeals clinic was established, and the Access to Justice Fellows program, which enlists retired lawyers and judges to donate their services to community organizations serving people of limited means, enjoyed great success. The Massachusetts Trial Court also established Court Service Centers, where court-employed attorneys provide legal information and assistance to unrepresented litigants, and a vision for a virtual Court Service Center also developed.

In addition, the Commission, court leaders, and other partners joined in designing and drafting the Massachusetts Justice for All Strategic Action Plan (SAP) that laid out a blueprint for making the civil justice system easier to navigate for self-represented litigants. The Commission then collaborated with courts, legal aid organizations, and community partners on two pilot projects in housing and consumer debt to test some of the ideas proposed in the SAP.

The Commission also successfully advocated for statewide expansion of the Massachusetts Housing Court and supported a right to counsel for tenants and small landlords in summary process cases. A Commission working group studied the impact of cell phone bans in courthouses on court users, especially self-represented litigants, and proposed alternative solutions that the Massachusetts courts ultimately adopted. During the COVID-19 pandemic, the Commission played a key role in communicating the needs of unrepresented litigants and other court users to court leaders. It informed the public about changes in court procedures and helped coordinate increases in pro bono and legal aid assistance for those most in need, particularly in housing cases. Most recently, advancing an initiative that Chief Justice Gants had proposed before his death, a committee of the Commission prepared a comprehensive report on online dispute resolution that outlines how the Massachusetts courts can best harness this technology to serve the needs of self-represented litigants.

Our goal in this Article, however, is not to catalog the Commission's many achievements during Chief Justice Gants's tenure, but rather to analyze how he used his dual roles at the SJC and as Commission Co-Chair to lay the foundation for these accomplishments. Part I of this Article explores some general observations about the qualities of mind and character that Chief Justice Gants brought to his work and how they enabled him to be

particularly effective.⁴ The following Parts then discuss three examples of how he approached access to justice in the courts. Part II examines the establishment of Court Service Centers.⁵ Part III analyzes the development of the SAP.⁶ Part IV delves into the investigation and proposed elimination of courthouse cell phone bans.⁷ As explained below, Chief Justice Gants created a culture of communication, collaboration, and consensus-building that united the court system and the larger legal community in a collective effort to enhance access to justice in Massachusetts, and beyond.

I. AN EXTRAORDINARY AND EMPATHETIC LEADER

In all of his work at the SJC, Ralph Gants focused on the implications of any decision—whether it was a ruling in a case before the court or an approval of a rule or policy—for the individuals who would be affected by it. In exercising the SJC’s supervisory authority over the Massachusetts court system, and in leading the Commission, he examined every issue through this lens. He asked the important question of how the administration of justice affects real people—including people without lawyers; people with limited English proficiency; people who often face closed doors due to their race, ethnicity, place of origin, sexual orientation, or gender identity; and people who struggle with scarcity in every aspect of their lives.

As Co-Chair of the Commission, Ralph Gants once said he was, “ever mindful of the many challenges faced by litigants who cannot afford counsel,” particularly “in cases that can have life-altering consequences, such as eviction from a home or loss of child custody in a divorce.”⁸ For these individuals, access to the justice system is an existential imperative. Ralph Gants dedicated himself during his last decade to crafting structural solutions to meet their needs, persistently striving to make the Massachusetts courts places “where all are truly equal.”⁹

⁴ See *infra* notes 8–9 and accompanying text.

⁵ See *infra* notes 10–21 and accompanying text.

⁶ See *infra* notes 22–41 and accompanying text.

⁷ See *infra* notes 42–80 and accompanying text.

⁸ Ralph D. Gants, Chief J., Mass. Supreme Jud. Ct., Annual Address: State of the Judiciary 9 (Oct. 30, 2019) (transcript available from the Massachusetts Supreme Judicial Court), <https://www.mass.gov/doc/2019-state-of-the-judiciary-address-by-sjc-chief-justice-ralph-d-gants/download> [<https://perma.cc/BV8W-KR9R>].

⁹ Ralph D. Gants & Paula M. Carey, *Creating Courts Where All Are Truly Equal*, BOS. BAR J., Winter Edition 2021, at 1, <https://bostonbar.org/docs/default-document-library/bbj---winter-2021-vol-65-no-1.pdf> [<https://perma.cc/6CP9-3TCQ>] (quoting Letter from the Seven Justices, Mass. Supreme Jud. Ct., to Members of the Judiciary and the Bar (June 3, 2020)) (discussing the importance of establishing a justice system “where all are truly equal”).

He brought to this work a host of admirable qualities. He was unquestionably brilliant and extraordinarily hardworking. He had an intellectual capacity and level of productivity that could have made those around him feel utterly inadequate, were it not for the fact that he was also so warm, humble, engaging, and enthusiastic. And that was truly the key to his effectiveness. For although his intelligence and seemingly inexhaustible energy commanded the respect of all who worked with him, it was his willingness to listen, his utter lack of pretention, and his selfless dedication to doing whatever he could to better the courts and the justice system that inspired our love and devotion.

Though we called him “the Chief,” he was entirely approachable. Whenever he worked in his office, he kept the door open for impromptu visitors, unless he was already in a meeting. When you called his phone, he picked up. When you had a question, he answered it. When you disagreed with him, he wanted to hear your point of view. He gave people his undivided attention, both because he saw humanity in everyone, and because he was always on the lookout for good ideas and knew they could come from a multitude of sources. Ever inquisitive, he constantly asked, “Help me understand this.”

As a leader and colleague, Chief Justice Gants always seemed to know just where to place himself in the access to justice work that he so valued. Whether charging ahead in the lead or pushing forward from behind, he was somehow also right there at your side to lend a hand. Sometimes he would publish an op-ed or speak out publicly in support of an initiative, and other times he would work quietly behind the scenes. He could set an agenda at a high conceptual level and give us the space to carry it out, but he was equally willing to pitch in and do the real pick-and-shovel work on the ground when needed. He was willing to do whatever it took to get the work done. And because he always gave more of himself than he asked of others, he inspired us to do our best for him and the issues he cared about.

When we did fall short of our goals, he wasn’t discouraged; he was already thinking about the next step or strategy. The Chief always focused on continuing to move forward. And like other great leaders, he took all the blame for shortcomings and gave away all the credit for success. He did not do the work to feed his ambition; he was ambitious to get the work done.

These qualities of mind and character led the Chief to adopt a collaborative, deliberative approach to access to justice. As eager as he was to make progress, he never acted preemptorily on his own. Rather, he embraced an evidence-based, participatory approach. He gathered information and opinions from a wide range of stakeholders, both inside and outside the courts. He analyzed that input in concert with other court and bar leaders. In

particular, he consulted closely with his Co-Chairs on the Commission, first David W. Rosenberg, Esq., and then Susan M. Finegan, Esq., and relied heavily on their counsel and perspectives as experienced members of the private bar. More often than not, he also asked people outside the courts to help draft reports and proposals. Through this process of engagement and dialogue he would build a consensus around the proper course of action.

II. INTRODUCTION OF COURT SERVICE CENTERS

The effort to introduce Court Service Centers in Massachusetts courthouses is an early example of how Chief Justice Gants deployed an investigative, collaborative approach in the service of self-represented litigants. Court Service Centers are offices where attorneys and trained staff provide information about court procedures and assistance with court forms to litigants, especially those without an attorney. When he became Commission Co-Chair in March 2010, a number of states had already begun implementing Court Service Centers.¹⁰

After observing Court Service Centers in operation in neighboring Connecticut, the SJC Steering Committee on Self-Represented Litigants noted in its 2008 final report that Court Service Centers could better prepare litigants for court appearances and free clerks' offices to focus on daily court operations.¹¹ It recommended creating Court Service Centers as a pilot project in Massachusetts courts.¹² In addition, a 2009 survey demonstrated substantial support for this concept among Trial Court judges and staff.¹³ When Chief Justice Gants became Commission Co-Chair in 2010, however, the idea had yet to take flight.

Chief Justice Gants quickly became a proponent of Court Service Centers and supported their development in Massachusetts. After discussions with others in the court system and on the Commission, the Chief asked

¹⁰ See SELF-REPRESENTED LITIG. NETWORK, BEST PRACTICES IN COURT-BASED PROGRAMS FOR THE SELF-REPRESENTED 9–11 (2008), <https://www.srln.org/system/files/attachments/SRLN%20Best%20Practices%20Guide%20%282008%29.pdf> [<https://perma.cc/F44S-JGN3>] (describing existing court service centers across the country as of 2008).

¹¹ SUPREME JUD. CT. STEERING COMM. ON SELF-REPRESENTED LITIGANTS, ADDRESSING THE NEEDS OF SELF-REPRESENTED LITIGANTS IN OUR COURTS 30–31 (2008), <https://www.mass.gov/files/documents/2016/08/mr/self-rep-final-report.pdf> [<https://perma.cc/G2KQ-9TQU>].

¹² *Id.* at 39.

¹³ DINA E. FEIN & SANDRA E. LUNDY, INTERIM REPORT ON ACCESS TO JUSTICE INITIATIVES IN THE TRIAL COURT 4–5, 22 (2010), <https://www.masslegalservices.org/pt/system/files/library/atjreport-2.pdf> [<https://perma.cc/LP8L-WFJY>].

Anthony Doniger, a former President of the Boston Bar Association and respected member of the Commission, to prepare a memorandum on the topic for the Commission. In his memorandum, Commissioner Doniger pointed to the major increase in the number of pro se litigants in the Massachusetts courts who lacked resources to navigate the justice system, compromising their ability to “assert[] [and] defend[] their rights,” and the challenges the judicial system faced in trying to meet their needs.¹⁴

He noted that many states had focused on the development of court service centers, also known as self-help centers, to aid litigants traversing the courts and to expand the legal system’s capacity to provide meaningful access.¹⁵ He cited various examples of such centers in Alaska, California, Connecticut, Florida, Illinois, Maryland, Montana, Nebraska, New Jersey, New York, Washington, and the District of Columbia.¹⁶ In the memorandum, he also pointed out that these centers were especially effective in meeting the needs of self-represented litigants because they could deploy attorneys and staff to provide personal assistance to litigants by answering their questions and helping them fill out forms.¹⁷ He also made clear that the role of attorneys and staff at such centers would be “limited to providing information, assistance and referrals, but not legal advice or advocacy.”¹⁸ He noted the benefits that these centers provide for courts, including decreasing the burdens on court personnel, empowering self-represented litigants to comprehend and better present their cases, allowing courts to handle those cases more effectively, and, as documented in cost-benefit studies, saving time and money.¹⁹ The memorandum also reviewed the key components of a model center, including personnel, location, language, resources, and court organization, and offered suggestions as to how they could be implemented in Massachusetts.²⁰

Persuaded by this compelling argument and the evidence supporting it, the Commission adopted a resolution urging the creation of Court Service Centers in Massachusetts, building new momentum for this idea. Trial Court leaders responded well to the resolution, and the effort to roll out Court Service Centers was off and running. Like a proud parent, Chief Justice Gants made it a point to speak at the opening ceremonies for a number

¹⁴ Memorandum from Anthony M. Doniger on Self-Help Centers to Access to Just. Comm’n 1 (Nov. 2012) (on file with author).

¹⁵ *Id.* at 2.

¹⁶ *Id.* at 9–11.

¹⁷ *Id.*

¹⁸ *Id.* at 5.

¹⁹ *Id.* at 7–8.

²⁰ *Id.* at 4–7.

of Court Service Centers, acknowledging supportive legislators and bar leaders.

Thanks in large part to his efforts, the court system now offers seven onsite Court Service Centers at multi-court facilities around the state. These Centers offer a range of services to self-represented litigants, including information about court rules, procedures, and practices; court documents and written instruction; one-on-one assistance with court forms; help with legal research; computers with access to online resources; interpreter services; and contact information for community resources, legal assistance programs, and social service agencies. In fiscal year 2019, Massachusetts Court Service Centers served nearly sixty thousand visitors, and they continue to play an essential role in supporting self-represented litigants and streamlining operations in the courthouses where they operate.²¹

Beyond working to establish the Court Service Centers, Chief Justice Gants also recognized that to reach all the self-represented litigants who need help, Court Service Centers would have to expand beyond their physical locations to provide services virtually by phone, videoconference, email, and other online means. In October 2019, the Commission hosted a presentation by Trial Court leaders and the Massachusetts Appleseed Center for Law and Justice (Appleseed) outlining the concept of a virtual Court Service Center. The Chief also highlighted the idea in his annual State of the Judiciary speech. This recognition proved to be prescient indeed when, just a few months later, the COVID-19 pandemic forced Court Service Centers to shift to a remote service model. Fully realizing that vision of a virtual Court Service Center remains one of the tasks we must complete to fulfill the Chief's legacy.

III. MASSACHUSETTS JUSTICE FOR ALL STRATEGIC ACTION PLAN

At their annual meetings in 2015, the national Conference of Chief Justices and Conference of State Court Administrators adopted Resolution 5: "Reaffirming the Commitment to Meaningful Access to Justice for All."²² This resolution put forth an aspirational goal of providing "100 percent access to effective assistance for essential civil legal needs" and rec-

²¹ RALPH D. GANTS, MARK V. GREEN, PAULA M. CAREY & JONATHAN S. WILLIAMS, ANNUAL REPORT ON THE STATE OF THE MASSACHUSETTS COURT SYSTEM: FISCAL YEAR 2019, at 20, 38 (2019), <https://www.mass.gov/doc/fy-2019-annual-report-for-the-court-system/download> [<https://perma.cc/X68E-CGRY>].

²² CONF. OF CHIEF JUSTS. & CONF. OF STATE CT. ADM'RS, RES. 5, *Reaffirming the Commitment to Meaningful Access to Justice for All* (2015), https://ccj.nscs.org/_data/assets/pdf_file/0013/23602/07252015-reaffirming-commitment-meaningful-access-to-justice-for-all.pdf [<https://perma.cc/73YV-2W3G>].

ommended that members collaborate with their respective Access to Justice Commissions or other organizations to create strategic approaches for reaching that goal.²³ The resolution also called on the National Center for State Courts and other entities to facilitate states in providing a range of legal resources.²⁴

Following up on that resolution, the National Center for State Courts worked with experts in the field and the Public Welfare Foundation to establish the Justice for All (JFA) initiative.²⁵ This initiative offered grants to states to assess their existing resources and develop plans to strengthen their capacity to support people with unmet civil legal needs.²⁶ Not surprisingly, Chief Justice Gants eagerly endorsed this initiative. Although he had stepped down from leading the Commission due to his other duties as Chief Justice, he strongly urged the Commission's Co-Chairs and its Executive Committee to give serious thought to applying for a JFA award. They agreed, and in November 2016, Massachusetts was one of seven states (out of twenty-five applicants) to receive a JFA grant.²⁷

Thus began a massive year-long undertaking that mobilized representatives from a wide range of parties interested in access to justice issues to join in developing the SAP for Massachusetts. Chief Justice Gants led a project management team consisting of the Commission's Co-Chairs (Justice Hines and Attorney Finegan) and representatives from the courts, legal aid entities, and the legal community. That team in turn hired a consultant who helped organize the project, met with various stakeholders, and collected survey data on existing access to justice assets in the state.²⁸

The project management team established four working groups comprising many different stakeholders.²⁹ Three of these groups focused respectively on critical case types involving “essential civil legal needs” where the need for legal services was most urgent in Massachusetts: (1) housing; (2)

²³ *Id.*

²⁴ *Id.*

²⁵ See NAT'L CTR. FOR STATE CTS.: THE JUST. FOR ALL INITIATIVE, JUSTICE FOR ALL: A ROADMAP TO 100% CIVIL ACCESS TO JUSTICE 1, 2, https://www.ncsc.org/_data/assets/pdf_file/0031/64975/5-year-report.pdf [<https://perma.cc/T7B5-9MKD>] (outlining the history of the JFA initiative).

²⁶ *See id.*

²⁷ THIRD MASS. ACCESS TO JUST. COMM'N, ANNUAL REPORT ON ACTIVITIES 1, 8 (2018), <https://massa2j.org/wp-content/uploads/2018/09/Third-Annual-Report-of-the-Third-Commission-for-2017.pdf> [<https://perma.cc/F7JL-356D>]; *The Massachusetts Justice for All Project*, MASS. ACCESS TO JUST. COMM'N, https://massa2j.org/?page_id=811 [<https://perma.cc/DD66-P3C6>].

²⁸ MASS. ACCESS TO JUST. COMM'N, MASSACHUSETTS JUSTICE FOR ALL STRATEGIC ACTION PLAN 1–2 (2017), <https://massa2j.org/wp-content/uploads/2018/01/Massachusetts-JFA-Strategic-Action-Plan.pdf> [<https://perma.cc/8GWU-MQ53>].

²⁹ *Id.* at 2.

consumer debt; and (3) family law.³⁰ The fourth group considered the access to justice “ecosystem,” covering issues such as the “infrastructure of resources available to persons who need legal assistance but cannot afford a lawyer”³¹

Throughout the process of developing the SAP, the project management team also met with numerous stakeholders to exchange ideas and collaborate.³² Team members and the consultant led four regional gatherings across Massachusetts during the spring of 2017.³³ In June of that same year, they also held an all-day statewide summit involving approximately seventy participants from a diverse array of entities and organizations.³⁴ Subsequently, in October 2017, working group leaders met with the project management team to report and discuss their findings and proposals.³⁵

The entire process culminated in the SAP—nearly 150 pages long. The SAP assessed access to justice resources and problems comprehensively, by reviewing the existing institutional framework supporting access to justice in the state; describing the continuum of available services for litigants who cannot afford counsel, gaps in that continuum, and barriers to developing a more complete range of services; inventorying access to justice services; and, most importantly, incorporating the reports of the four working groups. Additionally, each of the working groups that addressed the three key case types—housing, consumer debt, and family law—walked through the litigation process, from pre-litigation and pleadings, to court proceedings, judgment, and post-judgment. They identified stumbling blocks for self-represented litigants and changes that could improve their experience.

In cooperation with the Massachusetts Legal Assistance Corporation, the Commission subsequently applied for and received additional funding from the JFA project to test some of the proposals contained in the SAP.³⁶ In one pilot, Northeast Legal Aid and Lawrence Community Works collaborated to develop a Housing Stabilization Center in Lawrence, Massachusetts.³⁷ The Housing Stabilization Center offered “emergency funding, supportive services,” and alternative dispute resolution to landlords and tenants in an effort “to stabilize at-risk tenancies” before the commencement of formal

³⁰ *Id.* at 2, 27.

³¹ *Id.* at 2, 27, 30.

³² *Id.* at 2, app. at A-1-A-3.

³³ *Id.* at 2, app. at A-1-A-2.

³⁴ *Id.* app. at A-2. For example, the participating groups included “courts and other government agencies, legal service providers, bar associations, law firms, law schools, libraries, advocacy groups, and other stakeholders.” *Id.*

³⁵ *Id.* at 2, app. at A-3.

³⁶ *The Massachusetts Justice for All Project, supra* note 27.

³⁷ *Id.*

eviction proceedings.³⁸ In the other pilot, an attorney from Greater Boston Legal Services helped community entities deliver informational sessions on consumer debt and consumer rights topics.³⁹ The attorney also supported the creation and operation of a lawyer-for-the-day service for consumer debt matters, in partnership with the Volunteer Lawyers Project and the Dorchester Division of the Boston Municipal Court.⁴⁰

The SAP proposed a host of innovative ideas and continues to guide much of the work that the Commission and the courts carry on today. But it was equally important, especially for Chief Justice Gants, that the process for developing the SAP had established a model for the Commission, the courts, and the broader community to work together on solving access to justice issues. As the SAP's conclusion stated:

We have come this far only through extraordinary collaboration among the courts and a wide range of organizations within the access to justice community, and we will be able to continue moving forward only through continued collaboration. The access to justice community is composed of a multitude of independent institutions, each with its own leadership; there is no single access to justice "czar" who can, or should, tell them all what to do. Instead, we must keep talking and listening to one another, keep sharing new ideas, and keep trying out innovations to find out what works and what does not Only through this collaborative process can we develop and realize a shared vision of how best to achieve the goal of "100 percent access to effective assistance for essential civil legal needs."⁴¹

IV. ELIMINATION OF COURTHOUSE BANS ON CELL PHONES

Among many other issues, the SAP identified courthouse bans on the possession of cell phones and other personal electronic devices as a significant access to justice barrier for many court users.⁴² The Massachusetts Trial Court 2015 Policy on Possession and Use of Cameras and Personal Electronic Devices generally permitted members of the public to bring cell phones into courthouses, as long as they turned off their phones or silenced

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ MASS. ACCESS TO JUST. COMM'N, *supra* note 28, at 96–97.

⁴² *Id.* at 48.

them while in a courtroom.⁴³ This policy, however, also allowed individual courthouses to impose further restrictions on the possession or use of cell phones, and many did so.⁴⁴ Typically, these additional restrictions prohibited members of the public (other than attorneys and jurors) from bringing cell phones into the courthouse.⁴⁵

Courts created such cell phone bans primarily due to concerns about courthouse protection and security.⁴⁶ They sought to prevent people from using cell phones to intimidate victims, witnesses, jurors, or court personnel by photographing or recording them.⁴⁷ They also intended to prevent gangs from calling on members to instigate conflicts with rival gangs in the courts.⁴⁸

Nevertheless, courthouse cell phone bans created serious problems for many court users. Massachusetts courthouses did not provide any onsite storage for cell phones.⁴⁹ As a result, court users who were not aware of the cell phone bans and did not drive to the courthouse faced a difficult dilemma when they arrived at the courthouse: abandon their cell phones in an unprotected location, default on their court appearance, or incur expenditures to store their cell phones elsewhere.⁵⁰

Indeed, the SAP noted that some litigants resorted to “hiding [their cell phones] in the bushes outside . . . the courthouse.”⁵¹ In addition, the SAP observed that the bans could cause particular difficulties for litigants who expected to use their cell phones in court to present photos and texts stored on cell phones as evidence, to communicate with family or employers, or to arrange for childcare or transportation.⁵²

In light of these issues, the SAP recommended that cell phones be allowed in all courthouses or, if not allowed for safety purposes, that free onsite storage be provided.⁵³ An Access to Justice Commission meeting

⁴³ MASS. ACCESS TO JUST. COMM’N, REPORT OF THE WORKING GROUP ON POSSESSION AND USE OF CELL PHONES AND SIMILAR DEVICES IN THE COURTS OF MASSACHUSETTS 10 (2019), <https://massa2j.org/wp-content/uploads/2019/05/Cell-Phone-Report-FINAL-with-cover-forward-and-exhibits.pdf> [<https://perma.cc/2AS6-MZZS>].

⁴⁴ *Id.* at 1–2; *see id.* at 9–13 (describing Massachusetts court policies and rules on cell phone possession and use); *see also id.* at 33–42 (setting forth the Trial Court policy and restrictions on possession and use of cameras and personal electronic devices).

⁴⁵ *Id.* at 1–2.

⁴⁶ *Id.* at 2.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at 9.

⁵⁰ MASS. ACCESS TO JUST. COMM’N, *supra* note 28, at 48, 78–79.

⁵¹ *Id.* at 79.

⁵² *Id.* at 48.

⁵³ *Id.* at 51, 80.

presentation reinforced that recommendation, as did a later report by Appleseed that elaborated on the issues raised in the SAP.⁵⁴

The Appleseed report noted, for example, that evidence of text messages on cell phones can be particularly significant for domestic violence cases.⁵⁵ The report also pointed out that permitting attorneys to bring cell phones into courthouses while prohibiting other court users from doing so exacerbated power imbalances in cases where self-represented litigants faced parties represented by counsel.⁵⁶ In such cases, the attorneys could use their cell phones to check statutes, case law, and facts online, but the self-represented litigants could not.⁵⁷

Chief Justice Gants was well aware of the problems that courthouse cell phone bans created for many court users, both from his work on the SAP and from his knowledge of Appleseed's presentation and report. If he had wanted to do so, he might well have been able to rally his colleagues on the SJC to join in issuing an immediate order countermanding or limiting any courthouse cell phone bans.

But that is not what he did—perhaps because such an order might have appeared both heavy-handed and naive to Trial Court judges who had understandable concerns about preserving the security and integrity of trial proceedings. Instead, he took steps to establish a consensus that courts should reconsider the bans and investigate potential solutions that balanced courthouse security with court users' needs.

During the summer of 2018, Chief Justice Gants drafted a proposed resolution concerning courthouse cell phone bans and presented it for consideration to the Access and Fairness Committee of the Conference of Chief Justices, of which he was a member. Subsequently, both the Conference of Chief Justices and the Conference of State Court Administrators adopted the resolution at their annual meetings that August.⁵⁸

⁵⁴ See MASS. APPLESEED CTR. FOR L. & JUST., CELL PHONES IN THE COURTHOUSE: AN ACCESS TO JUSTICE PERSPECTIVE 1 (2018), https://massappleseed.org/wp-content/uploads/2020/02/Cell_Phones_in_the_Courthouse.pdf [<https://perma.cc/NX3A-PFBD>] (noting that a lack of cell phone access especially disadvantaged pro se litigants by restricting their access to evidence, legal precedent, and communication channels for childcare, transportation, and medical purposes).

⁵⁵ *Id.* at 7.

⁵⁶ *Id.* at 1, 7.

⁵⁷ *Id.*

⁵⁸ CONF. OF CHIEF JUSTS. & CONF. OF STATE CT. ADM'RS, RES. 7, *In Support of a Review of Courthouse Cell Phone Policies* (2018), https://www.ncsc.org/_data/assets/pdf_file/0016/23461/08222018-review-courthouse-cell-phone-policies.pdf [<https://perma.cc/6WAF-QWMM>].

Significantly, this resolution did not dictate what particular policies courts must adopt regarding cell phones.⁵⁹ Rather, it simply enumerated both the reasons for the cell phone bans and the significant burdens that those bans imposed on court users.⁶⁰ Further, it encouraged the members of both conferences to consider and evaluate their courthouse cell phone policies thoughtfully to balance appropriately the interests of safety with the interests of litigants, specifically those litigants without counsel.⁶¹

Meanwhile, Chief Justice Gants had already begun the process of reviewing and assessing courthouse cell phone policies in Massachusetts. In June 2018, he and Commission Co-Chair Sue Finegan established a working group on courthouse cell phone policies, composed of two retired jurists—former Appeals Court Associate Justice Cynthia Cohen and former Superior Court Judge Paul Chernoff—and Commissioner Jeffrey Catalano, former president of the Massachusetts Bar Association.⁶²

The working group undertook an extensive review of rules and policies on the use of cell phones and related electronics in Massachusetts courts, and investigated other states' approaches and possible innovative solutions.⁶³ They met with the chief justices and administrators of the Massachusetts Trial Court and its departments, and consulted its Director of Security frequently.⁶⁴ They visited courthouses with and without cell phone prohibitions and nearby businesses that provided device storage for a fee.⁶⁵ The working group spoke with judges, heads of security, and Court Service Center staff.⁶⁶ They received input from the union representing court and probation officers.⁶⁷ They interviewed two justices of the Georgia Supreme Court regarding Georgia's recently implemented cell phone policy.⁶⁸

Additionally, the working group studied magnetically-locked pouches that some courts in other jurisdictions have employed.⁶⁹ These pouches allow court users to retain possession of their cell phones but still regulate the use of their cell phones. Further, the working group met with representatives of Yondr, the magnetic pouch manufacturer, and traveled to Philadel-

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² MASS. ACCESS TO JUSTICE COMM'N, *supra* note 43, at 1.

⁶³ *Id.* at 4.

⁶⁴ *Id.* at 5.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

phia, Washington, D.C., and Prince George's County, Maryland to learn about the deployment of the pouches in various courthouses.⁷⁰

Based on this research, the working group determined that cell phone bans constitute intolerable burdens for court users.⁷¹ They concluded that the bans should be eliminated as soon as practicable and replaced by other safety procedures to protect against the abuse of cell phones in courthouses while still accounting for those who need them for various legal and personal reasons.⁷²

In other words, court policies should focus on “regulating and controlling” cell phone access within courthouses, rather than on barring cell phones altogether.⁷³ Among other proposals, the working group recommended that courthouse cell phone bans be evaluated to assess whether they are reasonable in light of major security hazards, that where bans are not reasonable, they be replaced by policies employed effectively in other courts, and that a pilot project be implemented to assess the use of magnetic security pouches for controlled cell phone access in high-risk courts. The working group also suggested that, until courts eliminate the bans, they implement a comprehensive exception for pro se litigants.⁷⁴

On the same day that the working group presented its report to the Commission in May 2019, the Trial Court pledged to: (1) consider and assess existing court cell phone bans with the purpose of repealing bans where proper; (2) modify the Trial Court policy on possession and use of cell phones to facilitate the utilization of cell phones in courts by pro se litigants; and (3) assess the feasibility of magnetic pouches in courts that limit cell phone access because of security risks.⁷⁵ Through their extensive outreach and communications concerning the cell phone policy with many different players in the Trial Court, Chief Justice Gants and the working group had already prepared the court system for this change.

Eventually, this work culminated in the complete elimination of courthouse cell phone bans in Massachusetts. In June 2020, due to the COVID-19 pandemic, the SJC issued an order suspending all bans due to litigants' heightened dependence on cell phones to connect with courts and to aid in

⁷⁰ *Id.* at 5.

⁷¹ *Id.* at 3.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.* at 4.

⁷⁵ Mass. Access to Just. Comm'n & Mass. Supreme Jud. Ct., *Massachusetts Access to Justice Commission Releases Report on the Use of Cell Phones in the Courts of the Commonwealth*, MASS.GOV (May 29, 2019), <https://www.mass.gov/news/massachusetts-access-to-justice-commission-releases-report-on-the-use-of-cell-phones-in-the> [<https://perma.cc/32MN-RXSB>].

court processes.⁷⁶ The Trial Court, in turn, issued a related order temporarily permitting individuals entering the courts to use cell phones in public spaces, so long as they did not interrupt court processes or use them for photography or recording.⁷⁷ This order also required that cell phones must be powered down or silenced and put away in court, unless the judge allows otherwise.⁷⁸ More recently, the Trial Court issued a subsequent order making these changes permanent.⁷⁹ Through that order, the Trial Court authorized possession and use of cell phones in courthouses subject to the above restrictions, rescinded its 2015 policy, and prohibited all courthouse cell phone bans.⁸⁰

CONCLUSION

Anyone who spent much time with Chief Justice Gants knows that he was fond of sprinkling his conversation with pop culture references. In that spirit, we might say that he was so effective at persuading others to see things as he did that it sometimes seemed as if he had mastered the art of the Jedi mind trick from the Star Wars movies.⁸¹ But, obviously, that analogy is overly simplistic.

In his access to justice work, Chief Justice Gants did not force his opinions on others. Instead, he persuaded them by methodically developing the argument for change through investigation and fact-finding. In most cases, he did not even develop the argument himself. He engaged others to do it, such as respected members of the bar or the judiciary. Then, he would build a coalition to support the argument, by seeking the endorsement of the Access to Justice Commission or the broader legal community. In some

⁷⁶ *In Re: COVID-19 (Coronavirus) Pandemic, Third Updated Order Regarding Court Operations Under the Exigent Circumstances Created by the COVID-19 (Coronavirus) Pandemic*, OE-0144 ¶ 8 (Mass. 2020), <https://www.mass.gov/doc/repealed-sjc-third-updated-order-regarding-court-operations-under-the-exigent-circumstances/download> [<https://perma.cc/GX82-PANB>].

⁷⁷ *Emergency Administrative Order 20-10: Order Concerning Trial Court Policy on Possession & Use of Cameras & Personal Electronic Devices*, MASS. TRIAL CT. (June 24, 2020), <https://archives.lib.state.ma.us/bitstream/handle/2452/828774/on1159718042.pdf> [<https://perma.cc/6C8Z-2M4F>].

⁷⁸ *Id.*

⁷⁹ *Trial Court Administrative Order 21-1: Order Concerning Trial Court Policy on Possession & Use of Cell Phones & Personal Electronic Devices*, MASS. TRIAL CT. (June 15, 2021), <https://www.mass.gov/doc/trial-court-administrative-order-21-1-order-concerning-trial-court-policy-on-possession-use-of-cell-phones-personal-electronic-devices/download> [<https://perma.cc/WF7G-GDQC>].

⁸⁰ *Id.*

⁸¹ *See Jedi Mind Trick*, STARWARS.COM, <https://www.starwars.com/databank/jedi-mind-trick/> [<https://perma.cc/PSA4-XQ4T>] (“The Force can have a powerful effect on the weak-minded An experienced Jedi can use the Force to implant a suggestion in the minds of those they encounter, encouraging them to comply with the Jedi’s wishes.”).

cases, such as the SAP, he brought so many people into the process of developing consensus around an argument, that coalition-building occurred simultaneously and organically. Whatever process he chose, by the end of it, the argument for change was so clear and the support for it so broad that the necessity of taking the next step seemed self-evident.

Chief Justice Gants left us too soon; there was so much more he wanted to do. Many whom the Chief left behind still pick up the phone to call him—to worry when the work is not gaining traction, to strategize about how to move it forward, and to celebrate the small victories. When they realize he is not there to pick up, they undoubtedly try to channel his spirit by asking themselves, “What would the Chief do?” It is a very helpful mantra that is both calming and constructive.

Chief Justice Gants gave so much in the short time we had him that he left behind a reservoir of commitment and ideas from which we can, and should, draw for years to come. The contributors to this special Law Review Volume in his memory all know that he would be moved by the honor, but impatient for us to get back to work. If we truly want to honor his memory, we should do just that.