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CHIEF JUSTICE GANTS AND ACCESS TO JUSTICE: A CASE STUDY IN LEADERSHIP, COMPASSION, BRILLIANCE, AND STRATEGY

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Abstract: The unexpected passing of Chief Justice Ralph D. Gants was a shock to the legal community in Massachusetts and beyond. “The Chief” greatly influenced all aspects of the legal system, and devoted his life to the problems facing the administration of justice. He sought zealously to address obstacles and inadequacies in both the criminal and civil justice systems. This Article provides a perspective into the scope of his work and his philosophy through the lens of access to justice. It reviews Chief Justice Gants’s work during the last decade, with an emphasis on housing law and eviction as a case study. Chief Justice Gants labeled the looming crisis in evictions and displacement due to the COVID-19 pandemic, “the greatest access to justice challenge of our lifetime.” As such, to honor the Chief’s legacy and lifelong contributions, we must embrace the task of carrying on his work.

INTRODUCTION

The sudden death of Chief Justice Ralph D. Gants in September 2020 sent shockwaves through the legal community. “The Chief” touched and shaped all corners of the legal system. He relentlessly addressed challenges in the criminal justice system, including racial disparities. He fought to break down barriers and inefficiencies within the civil legal system. He persistently addressed longstanding issues facing the administration of justice generally. The tributes that flowed in Massachusetts and beyond, from those with and without power, painted a consistent picture: Chief Justice Gants was not only a towering figure in the legal community, but a compassionate and caring person. He treated everyone with respect and fought tirelessly to eradicate injustice wherever he found it.¹

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¹ The Boston Bar Association dedicated its Winter 2021 issue of the *Boston Bar Journal* to the late Chief Justice Gants, with other reflections on his career and legacy. BOS. BAR J., Winter Edition

Those of us privileged to work with him on access to justice issues observed his remarkable traits up close for over a decade. Then-Associate Justice Gants would have been the first to admit that he had a great deal to learn about access to justice when he became Co-Chair of the Massachusetts Access to Justice Commission (Commission). And learn he did.

He identified everyone he could find who knew anything about access to justice. He asked a seemingly endless stream of questions, listened carefully and respectfully to everyone, and remembered everything. As he became both a national leader in access to justice and the Chief Justice of the Massachusetts Supreme Judicial Court (SJC), he continued to listen and learn. He also brilliantly devised strategies to implement change and increase access to justice. He used every tool at his disposal: his decisions, his duties as Chief Justice, the power of the pulpit, and his role as Co-Chair of the Commission. Chief Justice Gants seized every opportunity to move access to justice forward and to ameliorate the inequities of the legal system that so disproportionately impact those without power.

This Article offers a window into the breadth of his work and his thinking about access to justice. Part I provides an overview of his work over the past decade.² Part II focuses on housing and the evictions process as a case study of his leadership and contributions to access to justice.³ Chief Justice Gants lauded the looming crisis in evictions and displacement due to the COVID-19 pandemic, “the greatest access to justice challenge of our lifetime.”⁴ He was working on that very topic, while supposedly convalescing after his first heart attack, on the morning he died. The brilliance and creativity that he brought to his access to justice work is stunning. Yet, access to justice was only one of many issues that he worked on tirelessly, relentlessly, and so effectively.

I. A DECADE OF ACCESS TO JUSTICE WORK

Former Chief Justice Margaret H. Marshall enlisted Justice Gants to help lead the Second Commission that began its work in 2010.⁵ Justice Gants

2021, <https://bostonbar.org/docs/default-document-library/bbj---winter-2021-vol-65-no-1.pdf> [<https://perma.cc/6CP9-3TCQ>].

² See *infra* notes 5–29 and accompanying text.

³ See *infra* notes 30–53 and accompanying text.

⁴ Susan M. Finegan, *Access to Justice: Reflections on Chief Justice Gants*, BOS. BAR J., Winter 2021, at 34, 36, <https://bostonbar.org/docs/default-document-library/bbj---winter-2021-vol-65-no-1.pdf> [<https://perma.cc/6CP9-3TCQ>].

⁵ *Id.* at 34. The First Commission was created by order of the SJC and was in existence from 2005-2010. *History*, MASS. ACCESS TO JUST. COMM’N, https://massa2j.org/?page_id=591 [<https://perma.cc/597T-HSDE>]. The Commission sunsetted in 2010 at which time the SJC created the Second Commission. *Id.* Chief Justice Gants also co-chaired the Second Commission that also sunsetted after five years. *Id.* The Third Commission was created by order of the SJC and remains in existence. *Id.*

formed a formidable leadership team with his Co-Chair David Rosenberg and consultant Gerry Singen, whose vision largely influenced the creation of the Commission in Massachusetts. From the outset, Justice Gants made clear that the Commission would be measured not by reports that would languish on shelves, but by real and tangible accomplishments. He invited all commissioners to articulate their goals and vision for the Commission at its initial meeting in March 2010. He oversaw, inspired, and led a dizzying array of initiatives over the five years that the Commission existed.

Justice Gants's emphasis on collaboration and relationship building were two essential components of the Commission's success. Justice Gants insisted on collaborating with those outside the Commission. He had a keen ability to build strong working relationships that increased the range and effectiveness of the Commission's work.

Inside the court, Justice Gants worked closely with the Special Trial Advisor for Access to Justice Initiatives, such as training judges to handle cases involving self-represented litigants. To increase pro bono work, he collaborated with the SJC's Standing Committee on Pro Bono Legal Services (Committee).⁶ To support the work of the core legal aid programs, he devised creative ways to expand financial resources. Through his efforts, the Commission supported initiatives—including Technology Innovation Grants—to develop and enhance tools that increased access to justice for individuals without counsel, by providing direct assistance or by matching them with organizations that could help.

His emphasis on collaboration went beyond the courts and formal legal organizations. Chief Justice Gants cared deeply about individuals and identified people committed to access to justice work within the Commission and through various access to justice projects. Susan M. Finegan, one of Chief Justice Gants's closest collaborators, described his prioritization of "collaboration and teamwork" as "one of the hallmarks of his commission work."⁷ "He relished working with the impressive and committed people of the commission" and "made the work enjoyable."⁸ As Co-Chair, Chief Justice Gants celebrated

For the balance of this Article, the term "Commission" refers to the Second Commission if the events occurred between 2010 and 2015 and the Third Commission for events from 2015 onward. *Id.*

⁶ Mass. Supreme Jud. Ct. & Mass. Ct. Sys., *Standing Committee on Pro Bono Legal Services*, MASS.GOV, <https://www.mass.gov/service-details/standing-committee-on-pro-bono-legal-services> [<https://perma.cc/8MMQ-V3J4>]. The Committee is separate from the Commission. The chair of the Committee serves as an *ex officio* member of the Commission. While serving as Co-Chair of the Commission, Justice Gants also served as the SJC's liaison to the Committee.

⁷ Finegan, *supra* note 4, at 34.

⁸ *Id.*

a participatory approach, especially when working with those so qualified and profoundly dedicated to access to justice.⁹

The 2011 and 2012 reports of the Commission attest to the breadth of these collaborative efforts.¹⁰ Civil legal aid programs were reeling in the aftermath of the Great Recession, as decreased funding exacerbated an increase in urgent legal needs. In response, the Commission supported the creation of a fifty-one-dollar Access to Justice Fee as part of yearly attorney registration and an increased fee charged to non-Massachusetts attorneys for *pro hac vice* work.¹¹ The Commission also created a revenue enhancement committee to explore ways to increase funding.¹²

Additionally, the Commission's Special Planning Committee met with core legal aid programs, studied their operations, and issued two reports urging ways that the programs might work more efficiently and effectively.¹³ In pro bono work, the Commission supported the creation of what became the nationally-recognized Access to Justice Fellows program. The program enlists retired lawyers and judges to work with nonprofit programs to increase access to justice. Justice Gants and the Commission also supported other pro bono efforts, including increasing in-house counsel pro bono work, creating a pilot Appellate Pro Bono program, developing a state pro bono website, and reinvigorating the court's pro bono recognition program for lawyers and law students.

In collaboration with bar associations, the Commission explored the ways that the bar examination deters law students from performing access to justice-related work and identified changes to offset that trend. Within the courts, the

⁹ *Id.* Attorney Finegan not only served with Chief Justice Gants as Co-Chair of the Commission, but also collaborated with him in her involvement with the Committee, the Justice for All Project, and countless other initiatives.

¹⁰ *See generally* MASS. ACCESS TO JUST. COMM'N, REPORT ON 2012: OBJECTIVES AND ACCOMPLISHMENTS (2013), <https://massa2j.org/wp-content/uploads/2020/01/Report-on-Activities-in-2012.pdf> [<https://perma.cc/JVU6-85AQ>] [hereinafter MA2J 2012 Report] (detailing the work and accomplishments of the Commission in 2012); MASS. ACCESS TO JUST. COMM'N, REPORT ON ACTIVITIES IN 2011 (2011), <https://massa2j.org/wp-content/uploads/2020/01/Report-on-Activities-in-2011.pdf> [<https://perma.cc/GPU5-PEJF>] [hereinafter MA2J 2011 Report] (outlining the Commission's contributions in 2011).

¹¹ MA2J 2012 Report, *supra* note 10, at 8; MA2J 2011 Report, *supra* note 10, at 1.

¹² MASS. ACCESS TO JUST. COMM'N SPECIAL PLAN. COMM., SECOND INTERIM REPORT OF THE SPECIAL PLANNING COMMITTEE 17 (2011), <https://massa2j.org/wp-content/uploads/2020/01/The-Special-Planning-Committee%E2%80%99s-Second-Interim-Report-adopted-by-the-Commission-September-15-2011.pdf> [<https://perma.cc/4WC7-M3TX>].

¹³ *See id.* at 2-4 (summarizing the Special Planning Committee's meetings with and recommendations for legal service providers within Massachusetts); *see also* MASS. ACCESS TO JUST. COMM'N SPECIAL PLAN. COMM., PROGRESS REPORT AND RECOMMENDATIONS 4 (2013), <https://massa2j.org/wp-content/uploads/2020/01/The-Special-Planning-Committee%E2%80%99s-Progress-Report-and-Recommendations-adopted-by-the-Commission-Fall-2013.pdf> [<https://perma.cc/R4GY-AQ4M>] (setting forth a three-part plan for the delivery of legal aid services in Massachusetts).

Commission supported initiatives to improve forms, enhance technology, and expand the Court Service Center model. The Commission also supported trainings for court personnel—including judges—about the challenges that those without lawyers face in navigating the system.

The Commission's 2012 annual report reflected the energy and approach characteristic of Justice Gants's endeavors. The report, covering only the first two years of the Commission's work under Justice Gants, is thirteen pages long and carries the subtitle "Objectives and Accomplishments."¹⁴ It references forty separate action items grouped into seven categories, each related to the Commission's mission statement.¹⁵ It also names the many allies with whom the Commission collaborated.¹⁶ Reflecting Justice Gants's insistence that the Commission be about action and not just ideas, the report identifies each project's measurable annual goals and specific individuals or organizations "with the lead responsibility for the project."¹⁷

As the Commission feverishly proceeded, Justice Gants became an access to justice leader nationally. His work helped shape many access to justice resolutions of the Conference of Chief Justices (CCJ), including the landmark Resolution 5, "Reaffirming the Commitment to Meaningful Access to Justice for All."¹⁸

In 2014, Justice Gants became Chief Justice of the SJC. With the sunsetting of the second Commission in 2015, the SJC created the third Commission and appointed Justice Geraldine Hines and Attorney Susan M. Finegan as Co-Chairs. Nevertheless, the Chief was never far from the work of the Commission and continued to push access to justice initiatives as Chief Justice.

When Massachusetts was awarded a Justice for All (JFA) grant, Chief Justice Gants joined the project management team and provided the vision behind the Strategic Action Plan (SAP), a blueprint for increased access to justice in the Massachusetts legal system.¹⁹ At Chief Justice Gants's insistence, the

¹⁴ MA2J 2012 Report, *supra* note 10, at 1.

¹⁵ *Id.* at 2.

¹⁶ *Id.* at 2–3.

¹⁷ *Id.* at 5–13.

¹⁸ 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.nesc.org/_data/assets/pdf_file/0013/23602/07252015-reaffirming-commitment-meaningful-access-to-justice-for-all.pdf [<https://perma.cc/73YV-2W3G>]; see *CCJ-COSCA Resolutions by Category*, CONF. CHIEF JUSTS., <https://ccj.nesc.org/policy-resolutions> [<https://perma.cc/YHH4-4BUL>] (listing approximately thirty other access to justice-related resolutions adopted by the CCJ as well as by the Conference of State Court Administrators).

¹⁹ See generally MASS. ACCESS TO JUST. COMM'N, MASSACHUSETTS JUSTICE FOR ALL STRATEGIC ACTION PLAN (2017), <https://massa2j.org/wp-content/uploads/2018/01/Massachusetts-JFA-Strategic-Action-Plan.pdf> [<https://perma.cc/8GWU-MQ53>] (assessing the spectrum of access to justice resources in Massachusetts with chapters dedicated to core areas of housing, family, consumer debt, and overall access to the justice "ecosystem").

SAP provided: (1) a perspective on the existing status of access to justice in the state from the litigant's point of view; and (2) plans for future strategies to realize the "aspirational goal" of broad availability of appropriate civil legal aid for critical legal areas.²⁰ The SAP carefully positioned itself not as a statement of policy of any of the justice partners, but rather, as a shared dialogue among civil justice stakeholders.²¹

With Justice Hines's retirement from the SJC in 2017, Chief Justice Gants stepped back into the role of Co-Chair of the Commission. He ensured that working groups of the Commission were responsible for implementing the SAP and helped oversee the JFA implementation grants awarded to the state for housing and consumer debt.

One could hardly miss the reach of the access to justice work in the state by the summer of 2020. As always, Chief Justice Gants was quick to acknowledge the work of those with whom he and the Commission collaborated. He supported and touted the Access to Justice Fellows program that had enlisted 139 retired attorneys and judges, worked with more than eighty non-profit organizations, and delivered over 110,000 hours of pro bono work.²² He also supported the Appellate Pro Bono project that had enlisted 290 lawyers and twenty law firms to serve over 750 litigants.²³ The Commission tackled issues of court cellphone policies that disproportionately harmed those without counsel, as well as the spread of online dispute resolution, with its challenges and opportunities. The financial footing of the legal aid programs had improved. The Commission endorsed principles to guide the reconciliation of right-to-counsel bills and continued to support technological innovations to support litigants, social service providers, pro bono lawyers, and many others.²⁴

By that time, the pandemic was in full swing. It laid bare the inequities inside and outside the legal system by demonstrating glaring racial disparities and the disproportionate impact of COVID-19 on those without power. In response, Chief Justice Gants continued to lead from within the courts. He pushed each department to establish procedures and emergency orders to allow the courts to function as well as possible and to ensure that those who could not navigate the system would not be left behind.

²⁰ *Id.* at 5 (quoting CONF. CHIEF JUSTS. & CONF. STATE CT. ADM'RS, *supra* note 18).

²¹ *Id.*

²² MASS. ACCESS TO JUST. COMM'N, ANNUAL REPORT ON ACTIVITIES 4 (2020), <https://massa2j.org/wp-content/uploads/2020/08/Access-to-Justice-Commission-Annual-Report-August-2020.pdf> [<https://perma.cc/A664-337V>].

²³ *Id.*

²⁴ *Id.*

Chief Justice Gants recognized that the pandemic had worsened racial and economic inequities and disparately harmed at-risk communities.²⁵ To ensure that the “user” and “consumer” perspectives were recognized as the courts fought to resume operation, he urged the Commission to provide input and to insist on considering and addressing the concerns of those being left behind. In response, the Commission created a COVID-19 Task Force (Task Force) in March of 2020.²⁶ Attorney Finegan chaired the Task Force that brought together over one hundred key institutional players to promote collaboration and allocate assets to combat access to justice issues during COVID-19.²⁷ A smaller COVID-19 Leadership Committee oversaw this work as the pandemic persisted.

As he grappled with the immediate crisis of COVID-19, Chief Justice Gants also recognized that with crisis comes opportunity. He sensed that the courts would never return to their pre-COVID “normal” and the solutions to the immediate crisis, if carefully planned and implemented, could lay the groundwork for positive change post-pandemic.²⁸ For the last decade, he had fought against the trend of decentralization in the courts, believing access to justice could be enhanced with more uniform processes, forms, and other tools. He envisioned the potential of standardization not only for forms and procedures, but also for remote hearings, online dispute resolution structures, and virtual Court Service Centers. He was determined to have the courts avoid creating a “two-tier” system of justice, where the most vulnerable litigants could not participate meaningfully.

In August 2020, the Commission’s executive committee identified five priority areas for the upcoming year: (1) abolish the “two-tiers of justice” within the courts; (2) champion racial equity and fairness within the civil court system; (3) enhance outcomes for pro se litigants in matters in which they are disproportionately impacted; (4) evaluate the effects of “court decentralization” on pro se litigants and facilitate court standardization and streamlining; and (5) continue the achievements of the Task Force.²⁹

²⁵ *Id.* at 2.

²⁶ *Id.*

²⁷ *Id.* The Task Force created three committees to focus its work throughout the first six months of the pandemic: an access to courts committee, a materials and communications committee, and a pro bono committee. *Id.*

²⁸ Ralph D. Gants, Chief J., Mass. Supreme Jud. Ct., Address at the Access to Justice Fellows Program Graduation Ceremony, June 16, 2020 (transcript on file with author) (explaining that one aspect of the pandemic-response work was “to be the foundation for what will be a new court system”).

²⁹ Draft Memorandum from Mass. Access to Just. Comm’n Exec. Comm. on Commission Priorities for 2020–2021 to Mass. Access to Just. Comm’n, (Dec. 17, 2020) (on file with the author).

The pending disaster in housing stability loomed large in August 2020. The imminent lifting of the eviction moratorium stood to devastate vulnerable litigants and communities through the likely wave of displacement, evictions, and housing instability. Chief Justice Gants was well-equipped to lead on this issue, given his approach to access to justice and leadership honed over the prior decade.

II. A DECADE OF ACCESS TO JUSTICE WORK IN HOUSING

With his characteristic humility, Justice Gants would have said when he became Co-Chair of the Commission that he had much to learn about housing cases and evictions. Although that was most likely not true, he was an incredibly quick study with anything and everything. His involvement with housing issues and access to justice over the past decade provides a stirring illustration of what happened when he employed his brilliance, compassion, strategic thinking, and leadership qualities.

At the start of the Second Commission, the Co-Chairs and consultant created six working groups to organize the Commission's work.³⁰ The Housing Court Working Group (Working Group) included representatives of landlords, tenants, and the courts.³¹ Justice Gants monitored the issues with which the Working Group was grappling. This process provided a window into the many challenges facing the Housing Court and litigants, as well as the court's potential benefits as a forum for summary process cases. Justice Gants listened, learned, and guided.

Justice Gants also closely observed the activities of the Boston Bar Association Task Force on Expanding the Civil Right to Counsel in Massachusetts (BBA Task Force). He particularly focused on the reports about the "civil Gideon" pilots involving summary process cases in Quincy District Court and the Northeast Housing Court (Housing Court). The BBA Task Force partnered with Professor James Greiner, whose data and articles revealed a stark difference in key areas, including the outcomes of proceedings in Quincy District Court and the Housing Court. Along with Professor Greiner, Justice Gants worked with Housing Court Chief Justice Steven Pierce, Housing Court Judge David Kerman, and Quincy District Judge Mark Coven to discuss the role the different courts played in enhancing access to justice.

³⁰ As it turned out, many of the Commission's accomplishments occurred outside these groups, reflecting Chief Justice Gants's ability to be flexible in the process of achieving results. The task forces and special committees, for example, focused on the legal aid system, the Court Service Centers, and the court cellphone policies. Other achievements resulted from collaborations with stakeholders outside the Commission, such as the SJC Standing Committee on Pro Bono Legal Services.

³¹ MASS. ACCESS TO JUST. COMM'N HOUS. CT. PRAC. WORKING GRP., FINAL REPORT 5 (2012) (on file with the author).

The data from the Quincy District Court study in particular, revealed the measurable impact of full representation by counsel on case outcomes, a topic that Justice Gants carefully noted.³² Justice Gants used the BBA report and Professor Greiner's articles to inform the Housing Court Working Group's efforts. Justice Gants also focused on judicial ethics in cases involving self-represented litigants and actively participated in a 2012 judicial ethics training addressing this issue.³³

Additionally, Justice Gants asked the Commission to discuss judges' crucial role in approving settlement agreements in cases with at least one self-represented litigant, as often occurs in Housing Court, District Court, Municipal Court, and Probate and Family Court. Eviction cases presented a particularly challenging scenario because landlords were so often represented by counsel, but tenants were rarely able to secure legal representation.³⁴ One lively discussion during a June 2013 Commission meeting revealed significant disagreement among commissioners about the court's role in overseeing the settlement process. Many commissioners within the court believed that judges were limited in what they could do beyond approving most settlement agreements. Other commissioners stated that judicial ethics permitted a far more active, though still neutral, role to avoid one-sided agreements and a miscarriage of justice. These commissioners noted further that the more constrained the role of judges, the stronger the case for a right to counsel in eviction cases. As always, Justice Gants listened carefully to the discussion at the Commission, asked probing questions, and took extensive notes.

Justice Gants became persuaded that a crucial step to expanding access to justice was to expand the jurisdiction of the Housing Court statewide. A newly established coalition led the fight for a statewide housing court and Justice

³² BOS. BAR ASS'N TASK FORCE ON CIV. RIGHT TO COUNS., THE IMPORTANCE OF REPRESENTATION IN EVICTION CASES AND HOMELESSNESS PREVENTION 2–3 (2012), <https://bostonbar.org/docs/default-document-library/bba-crtc-final-3-1-12.pdf> [<https://perma.cc/8ZBB-3J7J>] (noting that comprehensive representation by counsel is key to assisting tenants in securing housing stability).

³³ The training was hosted by the Flaschner Judicial Institute and the Trial Court's Judicial Institute. See Hon. Peter F. Doyle, *Top Ten List: Best Practices for Handling Cases with SRL's*, in FLASCHNER JUD. INST., SELF-REPRESENTED LITIGANTS IN THE COURTROOM: MANAGING IN THE GRAY AREAS 36 (2012), <https://www.flaschner.org/wp-content/uploads/2018/06/Self-Represented-Litigants-in-the-Courtroom-6.1.18-Materials.pdf> [<https://perma.cc/YET5-A6W7>] (providing an overview of the guidelines and its purpose).

³⁴ See *Why*, MASS. RIGHT TO COUNS. COAL., <https://www.massrtc.org/why.html> [<https://perma.cc/A479-MVB2>] (noting that for overall eviction cases in Massachusetts, tenants were represented in no more than 8.5% of the cases between fiscal years 2012 and 2020, whereas the representation rates for landlords were up to 81.4%); see also *All Residential Eviction Cases, Non-Payment of Rent*, MASS. TRIAL CT. DEP'T OF RSCH. & PLAN, <https://public.tableau.com/app/profile/drap4687/viz/Massachusetts-TrialCourtSummaryProcess/SummaryProces> [<https://perma.cc/3L5C-VH7H>] (reporting that as of August 2021, 93% of defendants in eviction cases brought for nonpayment of rent appeared without counsel, compared to only 15.4% of plaintiffs who appeared without counsel).

Gants prioritized supporting its work within the Commission. He added to this cause his power, voice, and vision as Chief Justice, a role he assumed in 2014. After a five-year campaign, the statewide Housing Court became a reality in July 2017.

The JFA project, described above, focused on access to justice work in Massachusetts throughout 2017.³⁵ At a daylong JFA conference, Chief Justice Gants inspired attendees to be as visionary as possible in developing courts that would provide access to justice for all through a spectrum of impactful and competent resources.³⁶ He joined the housing breakout session, listened carefully, and approved the group's choice of "promoting housing stability" as the organizing principle of the reimagined housing court.³⁷

The housing chapter of the SAP reimagined the court's handling of housing matters with the overarching goal of promoting housing security. The chapter examined each stage of eviction proceedings: (1) "Pre-Court"; (2) "Pleadings"; (3) "Court Appearances, Hearings and Trials"; and (4) "Post-Judgment."³⁸ Each section in the chapter assessed barriers to access and recommended strategies to ameliorate them to promote housing stability.³⁹ In recognizing the importance of the "Pre-Court" phase, the SAP positioned Massachusetts to apply for and receive a JFA implementation grant for housing, to focus on "upstream" work.⁴⁰

Additionally, the SAP did not shy away from the topic of a right to counsel in housing matters. The SAP noted that courts in other jurisdictions had already recognized and financed the right to representation in housing, and recommended that Massachusetts do the same.⁴¹ In speeches, Chief Justice Gants highlighted the challenges in housing court and identified the need for

³⁵ See generally MASS. ACCESS TO JUST. COMM'N, *supra* note 19 (outlining the Commission's key objectives).

³⁶ CONF. CHIEF JUSTS. & CONF. STATE CT. ADM'RS, *supra* note 18.

³⁷ See MASS. ACCESS TO JUST. COMM'N, *supra* note 19, at 38 (illustrating the Housing Court Working Group's visual of the potential continuum relating to housing stability). The Chief was so energized by the visual representation, that he ensured that a photograph of it be reproduced in the SAP. See *id.* (explaining how the visual presents both the opportunity for progress as well as the difficulty of the problem). Chief Justice Gants noted in the session that the frame of housing stability "is an idea I can sell to the legislature."

³⁸ See *id.* at 34–55 (outlining the barriers and opportunities to increasing housing stability in Massachusetts through all phases of housing matters).

³⁹ See *id.* (outlining opportunities to enhance housing security in Massachusetts).

⁴⁰ See MASS. ACCESS TO JUST. COMM'N, JUSTICE FOR ALL HOUSING PILOT SUMMARY REPORT 1–2, 5 (2020), <https://massa2j.org/wp-content/uploads/2020/02/JFA-Housing-Pilot-Summary-Report.pdf> [<https://perma.cc/U2GV-TTLY>] (describing the Commission's 2018 implementation grant to establish a "Justice for All Housing Pilot").

⁴¹ MASS. ACCESS TO JUST. COMM'N, *supra* note 19, at 36. ("New York City has recently instituted a right to counsel for tenants in most eviction cases and has provided the funding necessary to implement that right; Massachusetts should consider following suit.")

the right to counsel.⁴² Under his leadership, the Commission endorsed the principles supporting right to counsel legislation. Although other judges present recused themselves at the time of the vote, the Chief Justice did not.

The breadth of Chief Justice Gants's vision, understanding, and sensitivity in housing became clear in his remarkable 2019 SJC decision *Adjarthey v. Central Division of the Housing Court Department*.⁴³ *Adjarthey*, the capstone of his housing jurisprudence, involved an appeal from pro se litigants alleging bias in the operation of the Central Housing Court in Worcester.⁴⁴ Although the court did not grant the appellants the requested relief, it issued a nineteen-page decision with a ten-page appendix, illustrating the challenges unrepresented litigants face in summary process eviction cases in Massachusetts courts.⁴⁵

Under the heading "The complexity and speed of summary process cases, and disparities in legal representation between landlords and tenants[,]” the court reviewed the distinct characteristics of summary process housing matters.⁴⁶ The court noted that “summary process cases are complex, fast-moving, and generally litigated by landlords who are represented by attorneys and tenants who are not.”⁴⁷

After discussing data showing the disparity in representation between landlords and tenants, the court observed that “[t]he result, in most cases, is that the landlord has an attorney who understands how to navigate the eviction process and the tenant does not.”⁴⁸ The court noted that legal aid organizations are incredibly over-burdened and that even the wealth of online resources is an insufficient alternative to counsel.⁴⁹ The court added that the services of non-lawyers may be the only option “[i]n a complex, high-stakes process where the

⁴² See Ralph D. Gants, Chief J., Mass. Supreme Jud. Ct., Annual Address: State of the Judiciary 10 (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>] (noting the ongoing work in the state to deliver legal services to financially strained parties in evictions matters and the opportunity to provide more comprehensive access to legal services in the coming year).

⁴³ See 120 N.E.3d 297, 302 (Mass. 2019) (noting the fast pace and difficulty of summary process matters and the burdens they present to parties confronting evictions).

⁴⁴ *Id.*; see Larisa G. Bowman, Esme Caramello & Nicole Summers, *Remembering Chief Justice Gants as a Champion for Housing Justice*, 62 B.C. L. REV. 2840, 2851 (2021) (noting the inherent unfairness in summary process evictions cases involving pro se tenants and landlords represented by counsel).

⁴⁵ *Adjarthey*, 120 N.E.3d at 304–315 (outlining and discussing the problems facing pro se and indigent litigants in eviction processes).

⁴⁶ *Id.* at 304.

⁴⁷ *Id.*

⁴⁸ *Id.* at 307.

⁴⁹ *Id.* at 307–08.

right to counsel is not guaranteed and professional assistance is not universally available”⁵⁰

When the pandemic hit, Chief Justice Gants was ever-present with the eviction crisis looming large.⁵¹ He labeled the crisis “the greatest access to justice challenge of our lifetime.”⁵² He believed that the scheduled lifting the Governor’s eviction moratorium would unleash an avalanche of evictions and housing instability, financial and human misery, and an accompanying public health crisis. Understanding the system’s lack of preparation to handle this crisis, he summoned members of the judicial and executive branches, the landlords bar, legal aid organizations, rental assistance programs, social services organizations, and others to an extraordinary one-day summit to work through the eviction process and test the system’s readiness.

The exercise revealed the obvious to him: the system was not ready and disaster was imminent. He threw himself into the process of pushing the judicial and executive branches to establish processes and programs that might actually provide housing stability despite the extent of the crisis. Using his power as Chief Justice in this way—to persuade all stakeholders within the system to think creatively about this crisis—eventually led to innovative upstream approaches to mitigate some of the seemingly imminent, disastrous consequences.⁵³ Despite suffering a first heart attack, he continued to insist he was fine and kept working on the issue. The morning he died, he made at least three phone calls on the topic and sent e-mails, before his heart gave out.

CONCLUSION

It is unimaginable to think that he is gone. In retrospect, perhaps we should have seen the warning signs. We often marveled at how much he took on and how relentless he was in his efforts. How could he possibly keep that up? We thought that his first heart attack might be a signal for him to slow down. But he could not.

⁵⁰ *Id.* at 308.

⁵¹ See Gants, *supra* note 28, at 1–3 (articulating Chief Justice Gants’s concerns about the pending eviction crisis).

⁵² Finegan, *supra* note 4, at 36. Some listeners heard the Chief frame the challenge as “the greatest access to justice challenge of *my* lifetime.”

⁵³ See Mass. Dep’t of Hous. & Cmty. Dev., *COVID-19 Eviction Diversion Initiative Overview*, MASS.GOV, <https://www.mass.gov/info-details/covid-19-eviction-diversion-initiative-overview> [https://perma.cc/QV86-NMNM] (Apr. 14, 2021) (detailing the resources made available to low-income tenants and owners, including emergency rental assistance, community mediation, an expansion of the Upstream Tenancy Preservation Project, and the creation of the COVID Eviction Legal Help Project). It is unlikely that the state would have launched its COVID-19 Eviction Diversion Initiative without the efforts of Chief Justice Gants to help focus on the issue.

As the tributes flowed, what we had sensed became more and more apparent. We had been privileged to work closely with a giant, who attacked injustice everywhere, as if there was not a moment to lose. The extent of his efforts with access to justice was replicated in every piece of the legal system that he touched. He used every tool at his disposal, inspired others to join the fight, and refused to accept “we can’t” as an answer.

I can still see him, in a meeting of the Commission’s executive committee, where we aired one of many vexing problems: how to move forward in criminal-civil crossover issues, our label for the package of access to justice issues that seem to fall between our largely separate criminal and civil justice systems. These issues harm the poor and powerless, whose lived experience does not reflect the separateness of our justice systems. As a result, neither system prioritizes these issues, which often go unaddressed. In characteristic fashion, Chief Justice Gants listened to the litany of barriers and challenges, nodded thoughtfully, and then pronounced: “We can do better. And we must.” He suggested strategies and assigned tasks. As always, he assumed the lion’s share of the work.

The Chief was so human and compassionate that he surely would have understood our need to grieve. Yet, he would have soon become impatient with our tributes and our words. He made crystal clear that the success of our work would not be measured by our words, but by our accomplishments. As we move forward with the unimaginable task of carrying on with the work—so much more difficult without his leadership—we should reflect on his ideas, vision, energy, and relentlessness. We should embrace the task of carrying on. There is not a moment to lose. Only in our actions, rather than in our tributes, can we truly honor the extraordinary life and work of Chief Justice Ralph D. Gants.