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Remembering Chief Justice Gants as a Champion for Housing Justice

Larisa G. Bowman
University of Iowa College of Law, larisa-bowman@uiowa.edu

Esme Caramello
Harvard Law School, ecaramello@law.harvard.edu

Nicole Summers
Harvard Law School, nsummers@law.harvard.edu

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REMEMBERING CHIEF JUSTICE GANTS AS A CHAMPION FOR HOUSING JUSTICE

LARISA G. BOWMAN*

ESME CARAMELLO**

NICOLE SUMMERS***

Abstract: In this Essay in remembrance, Professors Larisa G. Bowman, Esme Caramello, and Nicole Summers grieve the loss of Chief Justice Ralph D. Gants: a past, present, and future champion for housing justice. Housing as an area of unmet civil legal need occupied his final thoughts; he called it “the greatest access to justice challenge of our lifetime.” This Essay charts Chief Justice Gants’s evolution in becoming a champion for housing justice. Part I discusses his early housing-related judicial opinions as well as the exposure to housing issues he gained as Co-Chair of the Massachusetts Access to Justice Commission. Part II covers his time as the Chief Justice, reviewing some of his seminal opinions related to housing issues and his advocacy for broad changes across the entire Massachusetts court system, such as expansion of the Housing Court, that would increase access to justice for low-income litigants. Finally, in Part III, this Essay ends with Chief Justice Gants’s leadership during the COVID-19 crisis. He paid close attention and threw his full weight behind the cause because he believed that the legal system, with reform and ingenuity, could deliver justice in housing.

INTRODUCTION

Early in the morning of September 14, 2020, Chief Justice Ralph D. Gants of the Massachusetts Supreme Judicial Court was not supposed to be working. He was supposed to be recuperating from a heart attack he had suf-

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* Larisa G. Bowman is a Visiting Associate Professor of Law at the University of Iowa College of Law.

** Esme Caramello is a Clinical Professor of Law at Harvard Law School and the Faculty Director of the Harvard Legal Aid Bureau.

*** Nicole Summers is a Lecturer on Law at Harvard Law School and a Clinical Instructor at the Harvard Legal Aid Bureau.

Professor Caramello worked closely with Chief Justice Gants as Co-Chair of the Justice for All Project Housing Working Group and was co-author of its housing plan; on the Massachusetts Access to Justice Commission, where she serves as Co-Chair of the Housing Working Group and a member of the COVID-19 Task Force Leadership Team and Access to Lawyers Committee; and in the pandemic-era “Housing Stakeholders” process described in Part III. Professors Bowman and Summers are former law clerks to Chief Justice Gants, having served during the 2009–2010 and 2015–2016 court terms, respectively.

ferred ten days before. But he was not a man prone to rest even in normal times, and these were not normal times. Just one month later, the temporary moratorium on non-essential evictions and foreclosures put into place by the Massachusetts Legislature in response to the COVID-19 pandemic would expire. Chief Justice Gants knew what lay ahead absent swift action by the judicial branch. He saw “an avalanche”¹ of new court filings brewing that would put thousands of people across the Commonwealth at risk of losing their homes. Chief Justice Gants was determined not only to avoid this catastrophe but also to seize the moment to usher in new housing programs and resources—prefiling rental assistance and mediation, simpler and more forgiving court procedures, free legal aid for those who needed it—that would transform the court system and its delivery of justice beyond the pandemic. There was no time to rest. He was not going to miss this chance “to do things that we’ve never done before.”² And so, he worked that morning, hard as ever—until his heart stopped and he died.

In losing Chief Justice Gants, we grieve the loss of a past, present, and future champion for housing justice. Grief is perhaps always one part for who the person was and another part for who the person was yet to be. Chief Justice Gants was extraordinary in how he used his platform to “save homes, communities, and lives,”³ but he would have saved *more* homes, communities, and lives if his own life had not been cut tragically short. Housing as an area of unmet civil legal need occupied his final thoughts; he called it “the greatest access to justice challenge of our lifetime.”⁴

In this Essay in remembrance, we chart Chief Justice Gants’s evolution in becoming a champion for housing justice. Housing was an issue that he came to over time and from different angles. We begin in Part I with his early hous-

¹ Ralph D. Gants, Chief J., Mass. Supreme Jud. Ct., Remarks at the Graduation Ceremony of the 2020 Access to Justice Fellows, *reprinted in* 62 B.C. L. REV. 2795 (2021) [hereinafter Graduation Ceremony Remarks].

² *Id.*

³ Ralph D. Gants, Chief J., Mass. Supreme Jud. Ct., Annual Address: State of the Judiciary 11 (Oct. 30, 2019) [hereinafter State of the Judiciary].

⁴ See Russell Engler, *Chief Justice Gants and Access to Justice: A Case Study in Leadership, Compassion, Brilliance, and Strategy*, 62 B.C. L. REV. 2814, 2815 n.4 (2021) (quoting 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/W2H5-KJ4F>]). When the COVID-19 pandemic hit, Chief Justice Gants called the looming eviction crisis not only the greatest access to justice issue of his lifetime, but also “the largest civil rights, racial justice, and public health crisis that he had seen.” Adrian Walker, *Extending Eviction Moratorium Would Finish Ralph Gants’s Last Project*, BOS. GLOBE, <https://www.bostonglobe.com/2020/10/18/metro/extending-eviction-moratorium-would-finish-ralph-gants-last-project/> [<https://perma.cc/J3JY-HJGM>] (Oct. 18, 2020).

ing-related judicial opinions as well as the exposure to housing issues he gained as Co-Chair of the Massachusetts Access to Justice Commission.

Part II covers his time as the Chief Justice. We discuss an opinion he authored for the Supreme Judicial Court that captured so completely the paradox of eviction—exceedingly fast yet hopelessly complex, making it all but impossible for a tenant without counsel to save their home, especially when most landlords, in contrast, are represented. We also recount the work Chief Justice Gants did in his role as supervisor of the entire Massachusetts court system to advocate for broad changes, such as expansion of the Housing Court, that would increase access to justice for low-income litigants. We weave into this Part his public speeches where he shared his support for a right to counsel in housing cases and other systemic reforms like a prefiling mediation program.

Finally, in Part III, we end with Chief Justice Gants's leadership during the COVID-19 crisis, which helped to avert untold numbers of Massachusetts residents from losing their homes due to pandemic-related economic hardship. As dark of a time as it was, Chief Justice Gants observed in the pandemic the opportunity to usher in yet more reforms and new initiatives that would transform the Massachusetts court system's delivery of justice in housing cases. He died before this work was finished, but these seeds he planted in his final months are now blossoming. Chief Justice Gants's wildest dreams for what he could achieve during his lifetime—those “things we've never done before”—are now becoming “how things always are.”

Although we proceed more or less chronologically, we hope that what emerges from this Essay is Chief Justice Gants's vision for housing justice. It was, of course, one of equal justice. But he also talked about fairness in a way that recognized that the playing field in eviction and foreclosure cases is often not level. He understood that tenants and foreclosed homeowners, who typically appear in court without counsel, have a more difficult time asserting their rights than do landlords and mortgage lenders, who usually are represented. He saw this imbalance as structural, and he wanted to change the structures that made it so. At the same time, he had a substantive view of housing justice. Fundamentally, Chief Justice Gants wanted the court system to promote housing stability and believed that stability benefited everyone.⁵ This meant keeping people housed when possible and ensuring dignified, peaceful transitions when it was necessary for a tenant or homeowner to leave their home.

If this does not sound transformative, it should. It is not just that this goes against the grain of how eviction and foreclosure cases typically get resolved.

⁵ Engler, *supra* note 4, at 2823 n.37 (sharing Chief Justice Gants's approval of “promoting housing stability” as the appropriate framework for “reimagin[ing] housing court,” an exercise that members of the Justice for All project undertook in 2017 and in which he participated). The work of the Justice for All project is addressed further in Part II.

Rather, what made Chief Justice Gants's vision so remarkable was his willingness to lead the charge on housing justice. He was not content to wait for the Legislature or the Governor to intervene, although he patiently and strategically secured their help and collaboration to realize the humanitarian progress that he, from his position as the Chief Justice, was in a unique position to envision. Chief Justice Gants believed that the judiciary, when equipped with innovative tools, resources, and support, could help to stabilize housing at both the individual and community levels, and that this would be justice in housing.

PART I: THE EARLY YEARS

Chief Justice Gants was, first and foremost, a judge, and he began his education in housing through the cases that came before him. First on the Massachusetts Superior Court as the Administrative Judge of its Business Litigation Section, and then as a newly appointed Associate Justice to the Supreme Judicial Court (SJC), Chief Justice Gants authored several housing-related opinions that shaped, perhaps in equal parts, Massachusetts jurisprudence and his own thinking on the subject. His views on housing, particularly as emblematic of the widening civil justice gap in the Commonwealth and nationwide, developed further through his new role as Co-Chair of the Access to Justice Commission, to which he was appointed in 2010.

Chief Justice Gants first grappled with power dynamics in the housing market in 2008, during the era's foreclosure crisis. As a Superior Court judge, he heard a consumer protection challenge to the lending practices of a major subprime lender, Fremont Investment and Loan.⁶ The Massachusetts Attorney General had deemed hundreds of Fremont's loans to be inherently unfair and had objected to the company's plans to foreclose on more than two hundred of them, filing suit to block the foreclosures.⁷ With a foreclosure crisis unfolding around him, Chief Justice Gants saw clearly how Fremont's business practices had in fact produced loans that were "doomed to foreclosure," and he found it appropriate to hold them responsible for the inevitable damage.⁸

In a detailed decision that laid bare Fremont's (and the industry's) reckless approach to mortgage lending, Chief Justice Gants issued a preliminary injunction restricting Fremont's ability to foreclose on home loans with certain features that he deemed "presumptively unfair" under the Massachusetts consumer protection statute.⁹ Chief Justice Gants acknowledged that the character-

⁶ See *Commonwealth v. Fremont Inv. & Loan*, 2008 WL 517279, at *1–2 (Mass. Super. Ct. Feb. 26, 2008), *aff'd*, 897 N.E2d 548 (Mass. 2008).

⁷ *Id.* at *1–3.

⁸ *Id.* at *10.

⁹ *Id.* at *14; MASS. GEN. LAWS ch. 93A, § 2 (2021).

istics of the loans did not render them in violation of chapter 183C of the Massachusetts General Laws, which prohibits “high cost mortgage loans.”¹⁰ However, drawing upon established precedent interpreting the Massachusetts consumer protection statute he found it to be “reasonable . . . to consider whether the loans at issue in this case fall within the ‘penumbra’ of the concept of unfairness reflected in [chapter 183C].”¹¹ He interpreted the Legislature’s intent in enacting chapter 183C as to prohibit lenders from issuing mortgage loans when “the lender reasonably believed that the borrower could not meet the scheduled payments.”¹² Chief Justice Gants held that the lender should have known that certain loans it issued met this standard, and that it therefore shared with borrowers responsibility for the resulting default. Justice required that “Fremont, having helped borrowers get into this mess . . . take reasonable steps to help them get out of it.”¹³

Chief Justice Gants’s opinion in *Commonwealth v. Fremont Investment & Loan* formed the basis for the SJC’s decision when the case was reviewed on appeal later the same year.¹⁴ The SJC upheld Chief Justice Gants’s decision and embraced his reasoning, holding that the loans issued by the lender were “doomed to foreclosure” and the lender should have known that the borrower would be unable to pay them.¹⁵ This opinion set the standard for unfairness in mortgage lending practices in Massachusetts, becoming precedent for subsequent SJC and lower court decisions related to predatory and subprime lending practices in the years that followed.¹⁶

Not long after *Fremont*, Chief Justice Gants joined the Supreme Judicial Court as an Associate Justice in 2009. Near the end of his first full term on the court, he agreed to co-chair the Massachusetts Access to Justice Commission

¹⁰ *Fremont Inv. & Loan*, 2008 WL 517279, at *9–10 (quoting MASS. GEN. LAWS ch. 183C, § 2 (2021)).

¹¹ *Id.* at *10; ch. 183C, § 2.

¹² *Fremont Inv. & Loan*, 2008 WL 517279, at *10.

¹³ *Id.* at *16.

¹⁴ *Commonwealth v. Fremont Inv. & Loan*, 897 N.E.2d 548, 551 (Mass. 2008) (affirming Chief Justice Gants’s opinion).

¹⁵ *Id.* at 560–61.

¹⁶ See, e.g., *Drakopoulos v. U.S. Bank Nat’l Ass’n*, 991 N.E.2d 1086, 1096–98 (Mass. 2013); *Eaton v. Fed. Nat’l Mortg. Ass’n*, 969 N.E.2d 1118, 1132–34 (Mass. 2012); *Bevilacqua v. Rodriguez*, 955 N.E.2d 884, 886–87 (Mass. 2011); *U.S. Bank Nat’l Ass’n v. Ibanez*, 941 N.E.2d 40, 52–53 (Mass. 2011); *Forbes v. Countrywide Home Loans, Inc.*, 2011 WL 10621226 (Mass. Super. Ct. July 29, 2011); see also Paul R. Collier, III, Eaton, *Title and Foreclosure: Where Is “Here,” How We Got “Here,” and Where We’re Going*, BOS. BAR J., Winter 2013, <https://bostonbarjournal.com/2012/12/19/eaton-title-and-foreclosure-where-is-here-how-we-got-here-and-where-were-going/> [<https://perma.cc/5FA4-3U4W>] (suggesting that then-Judge Gants’s opinion in *Fremont* was the foundation for “the Supreme Judicial Court’s foreclosure trilogy” of *Ibanez*, *Bevilacqua*, and *Eaton*).

(Commission).¹⁷ At the time, the Commission was closely watching two housing right-to-counsel pilot programs commissioned by the Boston Bar Association Task Force on Expanding the Right to Civil Counsel; the Task Force had identified housing as an urgent and unmet area of need for access to representation.¹⁸ The pilots were surfacing the enormous difference that a lawyer could make in an eviction case, with represented tenants in one pilot retaining possession twice as often, and winning rent abatements five times as much, compared to tenants who received only limited legal help.¹⁹ The Commission also was attuned to the difference in resources available to the 69% of Massachusetts tenants who had access to a Housing Court—with its specialist judges and clerks, its mediators, a “Tenancy Preservation Program” for tenants with disabilities, and volunteer lawyers for the day—compared to the 31% of tenants who lived in areas outside the Housing Court’s jurisdiction.²⁰ As the Chief Justice, Gants would later publicly support both a right to counsel in eviction cases and statewide expansion of the Housing Court. But at the time, it was just becoming clear to him that the vast majority of summary process defendants were facing the loss of their homes in a complex system without much assistance, and that this was making a difference in the outcomes the courts produced.

Meanwhile, the foreclosure crisis raged on in Massachusetts’s communities and in its courts. Borrowers who had lost their homes to foreclosure continued knocking on the SJC’s door, seeking relief. The landmark 2011 case of *U.S. Bank National Ass’n v. Ibanez* deemed illegal the then-widespread practice of assigning a mortgage retroactively to a foreclosing loan servicer and declared void any foreclosure that followed a late (or missing) assignment.²¹ Later that year, the SJC affirmed that borrowers could challenge void foreclosures after the fact, in post-foreclosure eviction cases in the Housing Court.²² A slew of post-foreclosure eviction cases followed, with Gants and his fellow

¹⁷ *History*, MASS. ACCESS TO JUST. COMM’N, https://massa2j.org/?page_id=591 [<https://perma.cc/UY39-PTWF>]. Chief Justice Gants joined the SJC midway through the 2008–2009 court term. He was Co-Chair of the Second Access to Justice Commission from 2010 to 2015 and then Co-Chair of the Third Access to Justice Commission from 2017 until his death.

¹⁸ BOS. BAR ASS’N TASK FORCE ON THE CIV. RIGHT TO COUNS., THE IMPORTANCE OF REPRESENTATION IN EVICTION CASES AND HOMELESSNESS PREVENTION 6–7 (2012), <https://bostonbar.org/docs/default-document-library/bba-crtc-final-3-1-12.pdf> [<https://perma.cc/FJ4F-8355>] [hereinafter BBA TASKFORCE]. At the time, tenants were represented by counsel only about 6% of the time, with 66% of landlords represented. The disparity has grown since that time, with tenant representation remaining relatively stable at 8% and landlords appearing through lawyers more than 80% of the time. See *Housing Court Department, Fiscal Year 2020 Statistics*, MASS. TRIAL CT., <https://www.mass.gov/doc/2020-housing-court-self-represented-represented-litigants-by-court-location/download> [<https://perma.cc/WLP2-F98R>].

¹⁹ BBA TASKFORCE, *supra* note 18, at 15.

²⁰ *History*, *supra* note 17.

²¹ 941 N.E.2d at 54–55.

²² *Bank of New York v. Bailey*, 951 N.E.2d 331, 331–33 (Mass. 2011).

justices hearing story after story of homes lost to an industry so disorganized and disinterested that it could not even follow its own rules.²³

Foreclosed homeowners were not the only ones facing eviction in Housing Court—their tenants were, too.²⁴ Institutional lenders were quick to evict any tenant who remained in possession after the foreclosure sale, even if properties would then sit vacant. Federal law required that tenants be given time to vacate,²⁵ but this only delayed the inevitable. Massachusetts decided to go further, enacting a statute prohibiting institutional lenders from evicting residential tenants of foreclosed properties without “just cause.”²⁶ The statute, entitled “Tenant Protections in Foreclosed Properties,” was effective immediately.²⁷ In *Federal National Mortgage Ass’n v. Nunez*, the SJC considered whether the statute should apply to cases that were pending at the time it was signed into law.²⁸

Justice Gants, in writing for the court, interpreted the protection against eviction without just cause to apply to all tenants in occupancy on the date that the statute took effect, even where the bank owned the property prior to that date. Justice Gants rejected Fannie Mae’s arguments that this made the statute retroactive. First, he refused to adopt Fannie Mae’s narrow definition of “eviction” as the commencement of a legal proceeding in court to recover possession of real property; rather, he applied the statute’s ban to “the broadest reasonable definition of acts” that might result in displacement.²⁹ Next, Justice

²³ See, e.g., *Fed. Nat’l Mortg. Ass’n v. Marroquin*, 74 N.E.3d 592, 593–94 (Mass. 2017) (applying to a summary process case pending on appeal the prospective ruling in *Pinti v. Emigrant Mortg. Co.*, 33 N.E.3d 1213 (Mass. 2015), which held that a mortgagee must comply strictly with the power of sale terms contained in the mortgage contract); *Bank of America, N.A. v. Rosa*, 999 N.E.2d 1080, 1082 (Mass. 2013) (holding that a homeowner may bring a title challenge as an affirmative claim for equitable relief in a post-foreclosure eviction case in the Housing Court); *Eaton v. Fed. Nat’l Mortg. Ass’n*, 969 N.E.2d 1118, 1128 (Mass. 2012) (holding that a foreclosure sale is void unless foreclosing entity holds the mortgage note at the time of the foreclosure).

²⁴ Between 2009 and 2012, 40% of the families facing foreclosure-related loss of their homes in the United States were renters. NAT’L LOW INCOME HOUS. COAL., *RENTERS IN FORECLOSURE: A FRESH LOOK AT AN ONGOING PROBLEM 1* (2012), <https://nlihc.org/sites/default/files/rentersinforeclosure2012.pdf> [<https://perma.cc/9WX5-8ZWS>]. From January 2010 to March 2011, more than 35,000 Massachusetts tenants lived in buildings affected by foreclosure. *Id.* at 3–4.

²⁵ Protecting Tenants at Foreclosure Act of 2009, Pub. L. No. 111–22, 123 Stat. 1660, *amended by* Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Pub. L. No. 111–203, 124 Stat. 1376 (2010) (requiring that most tenants be given ninety days’ written notice to vacate). The Protecting Tenants at Foreclosure Act had a sunset date of December 31, 2014, but in 2018 it was revived and reinstated permanently as self-executing law. Economic Growth, Regulatory Relief, and Consumer Protection Act, Pub. L. No. 115–74, sec. 304(a)–(c), §§ 701–704, 132 Stat. 1296, 1339 (2018) (amending the Restoration of the Protecting Tenants at Foreclosure Act of 2009).

²⁶ MASS. GEN. LAWS ch. 186A, § 3 (2021).

²⁷ *Id.*

²⁸ 952 N.E.2d 923, 925 (Mass. 2011).

²⁹ *Id.* at 930, 930–31. Justice Gants defined “eviction” as, “‘without limitation,’ any ‘action’ ‘intended to actually or constructively evict a tenant or otherwise compel a tenant to vacate.’” *Id.* at 929–30 (quoting ch. 186A, § 1).

Gants addressed the arguably more complicated challenge raised by Fannie Mae: that applying the statute to a home that was foreclosed before the effective date rendered its application retroactive because it impaired the property rights of Fannie Mae at the time it purchased the home.³⁰ Drawing upon Supreme Court precedent regarding the determination of whether a statute is “retroactive in effect,”³¹ Justice Gants concluded that the ultimate question before the Court was one of fairness: whether applying the statute to foreclosed properties purchased prior to the effective date was “so unfair” such that “the Legislature would not have intended such unfairness.”³²

Justice Gants came down decidedly on the side that applying the statute to such properties was not unfair. He identified the specific burden imposed on foreclosing owners—at most, a modest reduction in the fair market value of the property—and determined that this is not the sort of burden that is “so unfair as to render [the statute] retroactive in effect.”³³ Interestingly, Justice Gants did not balance the harms in his analysis. He did not refer specifically to the harms that would be faced by tenants were the statute interpreted to exclude properties where the foreclosure had transpired but the eviction had not. Yet Justice Gants’s sense of relative justice lurks in the shadow of the text. He noted that “[b]y definition” a foreclosing owner does not purchase the property as a place to live; it is merely an “asset” to be sold, or perhaps rented.³⁴ This interest in a property is, of course, in stark contrast to the interest that tenants hold in their home, which is precisely that it is a place to live.

Throughout the foreclosure crisis, Justice Gants was careful to prioritize fidelity to the law over whatever sympathies he might have for the people coming before him facing the loss of their homes.³⁵ In *U.S. Bank National Ass’n v. Schumacher*, for example, Chief Justice Gants supported the SJC’s decision to reject the homeowner’s title challenge on the ground that the pro se litigant had failed to take the procedural steps necessary to challenge the defect.³⁶ For the Co-Chair of the Access to Justice Commission, it was arguably an odd vote. But Gants placed a high value on stability in the residential property market and on integrity in his jurisprudence, so he found a creative way to

³⁰ *Id.* at 931–32.

³¹ *Id.* at 933 (citing *Landgraf v. USI Film Prods.*, 511 U.S. 244, 268 (1994)).

³² *Id.* at 932–33.

³³ *Id.* at 933.

³⁴ *Id.*

³⁵ See Larisa Bowman & Mike Kaneb, *Appreciation of Chief Justice Gants*, BOS. BAR. J., Winter 2021, at 17–18, <https://bostonbar.org/docs/default-document-library/bbj---winter-2021-vol-65-no-1.pdf> [<https://perma.cc/W2H5-KJ4F>] (“The clearest expression of [Chief Justice Gants’s] judicial philosophy is the statement he made . . . that deciding cases required him to balance the ‘sometimes conflicting obligations of following the law and ensuring fairness.’”).

³⁶ 5 N.E.3d 882, 890 (Mass. 2014) (Gants, C.J., concurring).

promote access to justice for pro se homeowners in the future: in a separate concurring opinion, he wrote to explain the right way to raise the kind of title defect that Mr. Schumacher had failed to properly litigate.³⁷ The concurrence was written expressly “with the recognition that many mortgage borrowers who will claim such violations will not have the benefit of legal representation, and that our jurisprudence in this area of law is difficult for even attorneys to understand.”³⁸ Through these types of cases, Gants had learned something significant about housing in his years on the Commission and the SJC, and he was signaling that it was important for others to pay attention, too.

PART II: THE CHIEF YEARS

In April 2014, four weeks after *U.S. Bank National Ass’n v. Schumacher*, Justice Gants became “the Chief,” nominated by then-Governor Deval Patrick to lead the judicial branch. It was quickly obvious that he was born to inhabit this role. His leadership style was to convene the best and the brightest, listen to and learn from their diverse experiences, collaborate with them, and then guide them to where he wanted them to go. His process was participatory, even where he already knew the direction to take. He sought input at every turn, but he was not one to delegate all control. He did the hard work himself.³⁹ This is why so much of what he did to promote housing stability across the Commonwealth really is *his legacy as Chief Justice*. His leadership brought housing into sharp focus through the distinct lenses of the court he presided over, the commission he co-chaired, and the other projects and initiatives he developed, promoted, and led. In this Part, we try to capture his extraordinary years as the Chief Justice.

Gants ended his first term as Co-Chair of the Access to Justice Commission the year after he became the Chief Justice, but his work on access to justice only intensified in the years that followed. Housing continued to be an area of focus. In 2016, Gants threw his weight behind a legislative campaign to expand the Housing Court statewide, calling it a question of “equal access” to expert judges, mediators, pro bono “Lawyer for the Day” volunteers, and social workers skilled at preserving the tenancies of tenants with disabilities

³⁷ *Id.*

³⁸ *Id.*

³⁹ This was true when it came to his opinion writing, too. Although he expected a full draft from his law clerks, once he had read it and the cases cited therein, he would then open Word Perfect and begin with a blank document.

through connections to resources and counseling.⁴⁰ The campaign was ultimately successful, no doubt aided by Chief Justice Gants's support.

That same year, after efforts at the national level to focus attention on the plight of pro se litigants,⁴¹ Chief Justice Gants helped the Commonwealth to secure a "Justice for All" grant from the Public Welfare Foundation. The grant funded a yearlong project, run by a management team that Chief Justice Gants assembled and led, to study how Massachusetts might meet the goal of "100 percent access to effective assistance for essential civil legal needs."⁴² At a statewide summit held halfway through the project year, Chief Justice Gants chose to spend the afternoon with the housing working group as it examined the lifecycle of an eviction from the birth of a housing problem to the levy on an eviction judgment, identifying arbitrary barriers to housing stabilization along the way.⁴³ Chief Justice Gants listened quietly as the group brainstormed solutions, including the "upstream[ing]" of stabilization resources to minimize costs, protecting tenants against the stigma of an eviction filing, and reducing court dockets, among other benefits.⁴⁴ The resulting Justice for All Strategic Action Plan contained twenty-one pages of description of the barriers tenants faced in getting their legal needs met and dozens of concrete recommendations for removing them.⁴⁵ In a move that illuminated Chief Justice Gants's broadening vision of access to justice in housing, the Strategic Action Plan was not limited to court system interventions but included four full pages of material focused exclusively on "effective assistance for essential civil legal needs" in the months before an eviction case was filed.⁴⁶

⁴⁰ Ralph D. Gants, *Housing Court Needs to Be Expanded*, BOS. GLOBE (Feb. 12, 2016), <https://www.bostonglobe.com/opinion/2016/02/12/housing-court-needs-expanded/IZjchniWVdPAv3wdjBBtpN/story.html> [<https://perma.cc/H599-W2DK>].

⁴¹ Chief Justice Gants was a national leader in the access to justice field and served as the Co-Chair of the Access and Fairness Committee and the Co-Chair of the National Justice for All Initiative of the national Conference of Chief Justices until his death. CONF. OF CHIEF JUSTS. & CONF. OF STATE CT. ADM'RS, RES. 1, CONDOLENCES (2021), https://ccj.nesc.org/_data/assets/pdf_file/0013/60223/Resolution-1-Condolences.pdf [<https://perma.cc/73G4-5N2J>].

⁴² *The Massachusetts Justice for All Project*, MASS. ACCESS TO JUST. COMM'N, https://massa2j.org/?page_id=811 [<https://perma.cc/5AFF-SNXE>]. The expression of the goal itself raised important questions—What does it mean to have "access"? What makes assistance "effective"? Which legal needs are "essential"?—and Chief Justice Gants and his team used the project to elicit court users' insight on those questions as well as on solutions to the access problem.

⁴³ MASS. JUST. FOR ALL, STRATEGIC ACTION PLAN 38 (2017), <https://massa2j.org/wp-content/uploads/2018/01/Massachusetts-JFA-Strategic-Action-Plan.pdf> [<https://perma.cc/VM4S-R8K8>].

⁴⁴ *Id.*

⁴⁵ *Id.* at 34–55 (recommending improvements in the pre-court, pleading, and court stages, among others).

⁴⁶ *Id.* at 39–43 (quoting 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/D7TM-XZ6F>]).

Never one to let a useful report sit on a shelf, Chief Justice Gants—now returned to his role as Co-Chair of the Access to Justice Commission⁴⁷—established a Housing Working Group at the Commission and tasked it with bringing the housing ideas from the Strategic Action Plan to life. He then helped persuade the Public Welfare Foundation to fund an “upstream” housing pilot in the gateway city of Lawrence, Massachusetts.⁴⁸ The pilot enabled Chief Justice Gants to workshop the idea that housing justice was easier and cheaper to achieve outside the court system than inside it. And his hunch turned out to be correct. With a diversion of cases from the court system before filing, an infusion of rental assistance funding, and the allocation of stabilization workers and legal aid lawyers to at-risk tenants and former homeowners, the project was able to preserve the tenancies of one hundred percent of the participants, with just one tenant leaving because she bought a house.⁴⁹ In fact, nearly half of the participants increased their monthly income through the program, for a total of \$26,310 per month spread across seventeen families.⁵⁰

The Justice for All project and the extraordinary results of the resulting upstream pilot cemented Chief Justice Gants’s view that “justice for all” in housing meant more than the fair adjudication of eviction cases—that it would take pre-court resource infusions and not just court reform to achieve it—and that he as superintendent of the court system nonetheless had a central role to play in bringing about change. His conviction, and the expertise he earned during this time, would shape both his public speaking and his jurisprudence in the years to come. It would also shape his response to the COVID-19 pandemic, and the way he spent the last moments of his too-short life.

After the Justice for All project, when Chief Justice Gants talked about access to justice, he talked about housing. He saw how the loss of one’s home could “upend[]” a person’s life⁵¹ or have “life-altering consequences,” like homelessness.⁵² During the 20th Annual Walk to the Hill at the Massachusetts State House in 2019, Chief Justice Gants called for increased funding for civil legal aid as a homelessness prevention strategy.⁵³ He recounted having gone to Starbucks for the purpose of seeing what he could buy for \$3.79—the amount per Commonwealth resident that it would cost to fund civil legal aid at \$26

⁴⁷ *History*, *supra* note 17.

⁴⁸ MASS. JUST. FOR ALL, HOUSING PILOT SUMMARY REPORT 1 (2020), <https://massa2j.org/wp-content/uploads/2020/02/JFA-Housing-Pilot-Summary-Report.pdf> [<https://perma.cc/2UQB-N7L5>].

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Ralph D. Gants, Chief J., Mass. Supreme Jud. Ct., Remarks Delivered at the 20th Annual Walk to the Hill at the Massachusetts State House (Jan. 24, 2019) [hereinafter 20th Annual Walk to the Hill].

⁵² State of the Judiciary, *supra* note 3, at 9.

⁵³ 20th Annual Walk to the Hill, *supra* note 51.

million per year.⁵⁴ He shared that for that very modest amount he could buy a coffee or hot chocolate, although not a latte.⁵⁵ He highlighted how investing in eviction defense to keep low-income tenants housed made better fiscal sense than providing emergency shelter beds once they lost their homes.⁵⁶ According to the Boston Bar Association, he said, every dollar spent to fund a right to counsel in housing cases would save between two and three times as much in homelessness costs.⁵⁷ Chief Justice Gants called funding for civil legal aid both “a moral obligation” and “a sound investment.”⁵⁸

While he was on the Walk to the Hill, Chief Justice Gants was also in the midst of writing what would become the apogee of his housing jurisprudence, *Adjartey v. Central Division of the Housing Court*.⁵⁹ *Adjartey* showed, in almost painstaking detail, how complex and fast-moving eviction summary process is and how challenging it is for a pro se litigant to represent themselves successfully. In *Adjartey*, several tenants in eviction proceedings filed a petition with the Supreme Judicial Court alleging, among other claims, that the Housing Court improperly applied the process for indigency fee waivers, failed to grant them reasonable accommodations, and denied them access to audio recordings.⁶⁰ Chief Justice Gants affirmed the denial of the petitioners’ requested relief on procedural grounds, but took the opportunity presented by the case to speak broadly, as well as specifically, about the injustices inherent in summary process.⁶¹ He emphasized three defining features of the summary process system: cases are “complex, fast-moving, and generally litigated by landlords who are represented by attorneys and tenants who are not.”⁶²

To show the complexity of summary process, Chief Justice Gants spent five paragraphs of the decision outlining the procedures involved in litigating a case from start to finish. Reading these paragraphs is dizzying; even for a seasoned attorney, the rules are hard to follow. There are qualifying uses of “if,” “generally,” and “however” throughout—every rule seems to have an excep-

⁵⁴ *Id.*

⁵⁵ *Id.* Chief Justice Gants was not a coffee drinker. We can’t help but smile at the thought of him marveling at the drinks on the Starbucks menu.

⁵⁶ 20th Annual Walk to the Hill, *supra* note 51.

⁵⁷ *Id.* (citing BOS. BAR ASS’N STATEWIDE TASK FORCE TO EXPAND CIV. LEGAL AID IN MASS., INVESTING IN JUSTICE 4, 17–20 (2014), <https://bostonbar.org/docs/default-document-library/statewide-task-force-to-expand-civil-legal-aid-in-ma---investing-in-justice.pdf> [<https://perma.cc/8W4K-HWMG>]).

⁵⁸ *Id.*

⁵⁹ 120 N.E.3d 297 (Mass. 2019). Chief Justice Gants loved to think while walking and would often talk with his clerks while on a walk, so it is quite possible that he was thinking about this opinion while he was on the Walk to the Hill. See Bowman & Kaneb, *supra* note 35 (discussing that Chief Justice Gants would go on “working walks” with his law clerks).

⁶⁰ *Adjartey*, 120 N.E.3d at 302–03.

⁶¹ *Id.* at 303 (denying petitioners’ claims for relief).

⁶² *Id.* at 304 (footnote omitted).

tion, and every deadline is contingent on another deadline or event. Yet this outline was only intended to “briefly summarize the process,” in an appendix to the decision, he described the entirety of the rules and deadlines.⁶³ He explained that these procedures are the product of a “web of applicable statutes and rules,” even though there are specific procedural rules, the Uniform Summary Process Rules, that are supposed to set forth the process for eviction cases.⁶⁴

Throughout the appendix of the decision, Chief Justice Gants highlighted the unfairness inherent in the rules he described. Although his tone was characteristically respectful, his exasperation was apparent. He described the confusing titles of documents despite their significant legal force, the tightness of deadlines, the absence of information conveyed to tenants, and the imprecise nomenclature used on court forms. He also demonstrated the unfairness of the rules by showing their practical effect. He described, for example, that the effect of the default judgment rules is that a tenant has less than twenty-four hours to timely learn of a default judgment and move to contest it. He similarly described how, because the rules require a tenant to assert a jury demand prior to their first court date, and because this deadline is not clearly stated on the summons and complaint, an unrepresented tenant may “unknowingly miss the deadline” to exercise this core constitutional right.⁶⁵

Adjarthey also discussed the short timeline of summary process. Chief Justice Gants noted that the timeline can proceed as quickly as under seven weeks or under nine weeks if discovery requests are filed. He acknowledged that this timeline was designed by the Legislature to “provide ‘just, speedy, and inexpensive’ resolution of summary process cases.”⁶⁶ But he spoke directly about the consequences of designing a process as speedy as this one. As he described, the rapid timeframe “leaves little room for error.”⁶⁷

Although the complexity and speed of summary process poses challenges for any tenant facing eviction, Chief Justice Gants emphasized that the challenges are significantly greater for those who lack legal representation.⁶⁸ And this is, he noted, the vast majority of tenants facing eviction—in the body of the opinion, he cited statistics from the Housing Court showing that in 2018, 92.4% of summary process defendants were unrepresented, compared with only 29.8% of plaintiffs.⁶⁹ The result, he concluded, is that in most summary

⁶³ *Id.* at 304, 315–25 (describing, in depth, the complex rules).

⁶⁴ *Id.* at 305–06.

⁶⁵ *Id.* at 322.

⁶⁶ *Id.* at 306 (quoting *Bank of New York v. Bailey*, 951 N.E.2d 331 (Mass. 2011) (citation omitted)).

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

process cases, “the landlord has an attorney who understands how to navigate the eviction process and the tenant does not.”⁷⁰

Chief Justice Gants closed his general discussion of summary process by making a strong case for why what had been done thus far to mitigate the civil justice gap was not enough. He noted the existence of a Housing Court standing order granting judges discretion to apply the rules flexibly to accommodate unrepresented litigants.⁷¹ But despite this standing order, Chief Justice Gants noted the “continued difficulties” that persisted for unrepresented parties given the complex requirements and tight deadlines.⁷² He explained that legal services programs exist, including the volunteer Lawyer for the Day program. But he emphasized that this level of resources is insufficient given what is needed—the vast majority of tenants who face eviction still do not have access to any legal representation whatsoever.⁷³ Finally, he remarked about the information available online to help self-represented litigants understand the legal procedures. To Chief Justice Gants, these resources are inadequate on their own because of the “intricacy and speed of [summary] process” which “make[s] it difficult” for a pro se litigant to understand and properly represent themselves.⁷⁴ Chief Justice Gants implored that in the absence of access to legal counsel, litigants, at bare minimum, need the assistance of non-attorneys to decipher the available materials and understand their rights.⁷⁵

Chief Justice Gants’s sweeping indictment of summary process and the state of access to justice in the Housing Court did not come out of nowhere. *Adjarney* followed a series of opinions issued during Chief Justice Gants’s tenure in which the SJC spoke to the challenges faced by pro se tenants facing eviction.⁷⁶ In *Rental Property Management Services v. Hatcher*, for example, Chief Justice Gants, writing for the court, explained that eviction filings by property managers were particularly damaging, in addition to being unlawful, because self-represented tenants would be unaware of the need to implead the landlord in order to properly assert their defenses and counterclaims.⁷⁷ In another decision authored the same year as *Hatcher*, the SJC vacated a judgment

⁷⁰ *Id.* at 307.

⁷¹ Standing Order No. 1-04, Time Standards for Cases Filed in the Housing Court Department (Mass. Housing Ct. Sept. 1, 2004).

⁷² *Adjarney*, 120 N.E.2d at 306–07.

⁷³ *Id.* at 307–08 (noting that “due to insufficient resources, Massachusetts civil legal aid programs turn away approximately two-thirds of eligible cases” (citing BOS. BAR ASS’N STATEWIDE TASK FORCE TO EXPAND CIV. LEGAL AID IN MASS., *supra* note 57, at 1)).

⁷⁴ *Id.* at 307–08.

⁷⁵ *Id.* at 308–09.

⁷⁶ See, e.g., *Cambridge St. Realty, LLC v. Stewart*, 113 N.E.3d 303 (Mass. 2018); *Rental Prop. Mgmt. Servs. v. Hatcher*, 97 N.E.3d 319 (Mass. 2018); *Meikle v. Nurse*, 49 N.E.3d 210 (Mass. 2016).

⁷⁷ 97 N.E.3d at 331–32.

issued after trial in part because the Housing Court had failed to provide notice of the date of the trial to the unrepresented tenant.⁷⁸ Using language that would later be echoed by Chief Justice Gants's opinion in *Adjarthey*, the SJC emphasized that failing to provide adequate notice of a trial to a self-represented tenant denied them the "fair opportunity" to develop their claims and defenses.⁷⁹ Although in both cases, the SJC went out of its way to emphasize the important roles played by existing non-attorney advocates and legal services programs such as Lawyer for the Day, Chief Justice Gants used his opinion in *Adjarthey*, only a year later, to illustrate how these existing partial measures were insufficient to close the access to justice gap.⁸⁰

Thus, *Adjarthey* begged the question: what *can* be done to level the playing field? A key answer, as Chief Justice Gants knew from his decade-long study of access to justice in housing, is to ensure all litigants in Housing Court, indigent tenants and landlords alike, have access to legal counsel. But to say this in *Adjarthey* would have been to veer beyond the parameters of the court's review. Instead, *Adjarthey* opened the door for Chief Justice Gants to use his 2019 Annual State of the Judiciary Speech, delivered only months later, to push for the Legislature to fund a right to counsel in eviction cases.⁸¹ In the speech, he again reiterated the statistics about the disparities in access to counsel, noting that, at that time, fewer than 10% of tenants but about 70% of landlords were represented by counsel. He described these statistics as troubling for cases "where so much is at stake."⁸² Various cities and states nationwide, he commented, had passed, or were considering passing, legislation ensuring low-income litigants have access to counsel in eviction cases. Chief Justice Gants advocated for similar action in Massachusetts, indicating his "hope" that a right to counsel in eviction cases would "finally come to fruition" within the next year.⁸³

He did not stop there, however. He said, "[W]e must do more than provide legal counsel."⁸⁴ What he said next in his speech perhaps best encapsulates how completely he had come to know housing over the past decade. He acknowledged that typically an eviction is the fastest way for a landlord to get the rent paid. The landlord's real interest is the return on their investment, not possession of the apartment.⁸⁵ And yet the landlord's primary remedy in an

⁷⁸ *Stewart*, 113 N.E.3d at 313–14.

⁷⁹ *Id.* at 313.

⁸⁰ *Adjarthey*, 120 N.E.3d at 315; *Hatcher*, 97 N.E.3d at 327–28; *Stewart*, 113 N.E.3d at 313–14.

⁸¹ State of the Judiciary, *supra* note 3, at 1.

⁸² *Id.* at 10.

⁸³ *Id.*

⁸⁴ *Id.* at 11.

⁸⁵ See Phillip ME Garboden & Eva Rosen, *Serial Filing: How Landlords Use the Threat of Eviction*, 18 CITY & CMTY. 638, 641–42 (2019).

eviction action is possession. Because the summary process is adversarial, moves at lightning speed, and involves court costs and attorneys' fees, too often the result is that the tenant loses their home, and many times the landlord still does not get paid. It is a lose-lose situation. As Chief Justice Gants laid out in his speech, this outcome could be avoided with the availability of emergency funds to help tenants cover the rent before an eviction is filed. Or, in those cases where there is no chance of the tenant affording the rent going forward, programs to help them find new housing within their financial reach also could save everyone from going to court.

With that speech, Chief Justice Gants started to sketch a vision for an eviction diversion program modeled on the Justice for All project and upstream pilot. It was a plan to leverage the resources of the court, essentially, to stop cases from becoming cases. Even before the pandemic, Massachusetts's Housing Courts received more than 30,000 eviction filings every year.⁸⁶ Much like the way that funding for civil legal aid saves homelessness costs, decreasing caseloads would allow judges and their staff to devote greater energy and resources to the cases that really presented a legal issue in need of a solution. Diverting eviction cases away from the courts and into social services would be a win across the board. Landlords would get paid, tenants would keep their homes, and judges would be free to focus on those cases demanding a court resolution rather than a social services intervention.⁸⁷

Eviction diversion, then, was the final component of Chief Justice Gants's vision for housing justice. And when the COVID-19 pandemic threatened an "avalanche" of evictions and forced a dramatic reworking of the way courts approached eviction cases,⁸⁸ he had both the opportunity and the expertise to make it a reality.

PART III: THE PANDEMIC MONTHS

The 2019 State of the Judiciary speech in which Chief Justice Gants called for a right to counsel in eviction cases and the upstream distribution of rental assistance opened with a moment of more general reflection on social progress: "I have learned many things since I first became a judge twenty-two years ago," he began, "but perhaps the most important lesson is that justice is a team effort."⁸⁹ As a judge faithful to the law but focused on justice, and one

⁸⁶ See, e.g., *Housing Court Department, Fiscal Year 2019 Statistics*, MASS. TRIAL CT., <https://www.mass.gov/doc/filings-and-dispositions-by-court-location-3/download> [<https://perma.cc/YZ9G-J43V>].

⁸⁷ State of the Judiciary, *supra* note 3, at 13.

⁸⁸ Graduation Ceremony Remarks, *supra* note 1.

⁸⁹ State of the Judiciary, *supra* note 3, at 2.

ambitiously committed to tackling the system's most complex challenges,⁹⁰ Chief Justice Gants knew and reminded his audience that that “none of us can solve these problems alone.”⁹¹ “Collaboration,” he said, “is the key to accomplishment.”⁹²

When the COVID-19 pandemic hit in the Spring of 2020, shuttering courthouses and moving court operations—indeed the entire social service safety net—online, the Chief Justice immediately recognized the impact this would have on lawyer-less tenants facing eviction. Most tenants were poor and had no access to home-based computers, printers, scanners, or other office equipment needed to litigate a case virtually; many were elderly or had limited English proficiency, limited literacy, or cognitive or mental health disabilities that would make it extremely difficult for them to navigate a remote court system on their own. The resource-rich courthouses he had fought for in the Housing Court expansion campaign could no longer serve to connect landlords and tenants in trouble with the social services they needed to solve their problems. Experts were already predicting a “tsunami” of eviction cases,⁹³ making access to the small number of free lawyers both more necessary and more scarce.

After years of studying and working towards housing justice, Chief Justice Gants understood the collateral consequences of eviction—declines in mental and physical health and in children's educational success, job losses, the stigma of an eviction record and its impact on access to future housing, the likelihood that a family's next house would be less safe and more distant from economic opportunities than the last—and was absolutely determined to do something to avert a humanitarian crisis.⁹⁴ Fortunately, Chief Justice Gants's years of study that focused his attention on the eviction problem also gave him the solution: early intervention with stabilization workers, legal aid, and substantial rental assistance to prevent the filing of eviction cases, followed by a user-friendly, stabilization-focused court process that acknowledged and accounted for the huge barriers that unrepresented litigants would inevitably face in navigating a remote eviction system.⁹⁵ Knowing the solution, of course, was just a starting point. From his position inside the judiciary, Chief Justice Gants

⁹⁰ Chief Justice Gants's other areas of focus in his final years—racism in the legal profession and racial disparities in the criminal justice system, for example—show that he was unwilling to let the complexity or intractability of a problem deter him from addressing it.

⁹¹ State of the Judiciary, *supra* note 3, at 2.

⁹² *Id.*

⁹³ Zoe Greenberg & Tim Logan, *A 'Tsunami of Evictions' Threatens to Strike Boston*, BOS. GLOBE, <https://www.bostonglobe.com/2020/06/28/metro/tsunami-evictions-threatens-strike-boston/> [<https://perma.cc/8YP3-ZUDP>] (June 28, 2020).

⁹⁴ *See, e.g.*, State of the Judiciary, *supra* note 3, at 7; Walker, *supra* note 4.

⁹⁵ MASS. JUST. FOR ALL, STRATEGIC ACTION PLAN, *supra* note 43; MASS. JUST. FOR ALL, HOUSING PILOT SUMMARY REPORT, *supra* note 48.

could not fund or staff a massive rental assistance program or infuse the housing ecosystem with lawyers and stabilization workers; nor could he single-handedly change the way that the Housing and District Courts processed their eviction dockets. Justice, as he predicted in 2019, would have to be “a team effort.”⁹⁶

It is difficult to overstate how busy government officials were in the early months of the pandemic and how difficult it was to focus their attention on any one problem. Chief Justice Gants was in the rare position of having everyone’s ear, but even he had to be creative if he wanted to convince the Legislature, the administrators, judges and staff of the Housing and District Courts, the Governor, key executive branch agencies, municipal officials, social service providers, landlords, tenants, and finally members of the bar who needed to work together to solve the rapidly worsening rental housing crisis.

To accomplish this task, Chief Justice Gants did something unprecedented: he organized a virtual “Convening of Housing Stakeholders” to jump-start a collaboration.⁹⁷ The four-hour Convening brought together over seventy-five participants from every corner of the system, from government officials to social service providers to landlord and tenant advocacy groups, to walk through a detailed case study of a COVID-related housing problem, from the moment the tenant lost income due to the pandemic to the time she and her family might lose their home and need somewhere else to go.⁹⁸ The unforgiving case study format was a brilliant innovation. It left no room for vague assurances of readiness but instead forced each and every participant to look honestly at the potential scope of the humanitarian problem and to acknowledge the many ways in which the Commonwealth’s systems were not ready to handle it. The event was co-hosted by Chief Justice Gants and Governor Charlie Baker’s Legal Counsel, Robert Ross—a signal to participants that the Commonwealth was taking the matter seriously, and that it would be addressed through a collaborative effort.

Following the convening, Chief Justice Gants leveraged his influence as Chief Justice—and as the smartest, kindest, and most hardworking person anyone knew—to persuade participants to work quickly and collaboratively towards solutions. There were assigned tasks, reports due back, a second big convening, and countless individual phone calls. Chief Justice Gants pushed the Governor and the legislators towards an extension of the eviction moratorium and a massive infusion of rental assistance funding. He pushed the courts toward a diversion program that would protect tenants from the stigma of an

⁹⁶ State of the Judiciary, *supra* note 3, at 2.

⁹⁷ List, Housing Stakeholder First Meeting Participants (Aug. 19, 2020) (on file with author).

⁹⁸ Case Study from the Convening of Housing Stakeholders (2020) (on file with author).

eviction record, avoid the waste of rental assistance funds on eviction case filing fees, and ensure that cases did not proceed so quickly that the stabilization resources could not keep up. He was unrelenting in his efforts, laser-focused on success. On September 4, he suffered a heart attack. Ten days later, on his return from the hospital, he had breakfast on the deck, told his wife that despite his state he needed to do some work on the eviction crisis, and made three phone calls trying to solidify the details of an eviction diversion program. A few hours later, his heart gave out and he died.

Many who loved and respected Chief Justice Gants jumped in to salvage his housing project. This was in part to honor him, but also in part because he had made them realize that success was both necessary and possible. He had drawn the blueprint for a solution. Today in Massachusetts, rental assistance is available to pay up to eighteen months of a tenant's rent, without a monetary limit. Funds are available upstream, before a case is ever filed, as are mediation, financial counseling, and legal aid. Although the moratorium was lifted and eviction cases can now proceed, the first court date is now a mediation rather than a trial, and tenants are entitled to a postponement of the eviction trial while a rental assistance application is pending. Housing nonprofits and legal aid programs have hired dozens of lawyers, social workers, mediators, and administrators to help people navigate the new systems and take advantage of the resources available. This, along with many other access-to-justice protections and innovations in housing and beyond, is Chief Justice Gants's legacy.

CONCLUSION

We conclude this Essay on a personal note. We are housing lawyers. In our legal aid careers, we have represented countless tenants and homeowners facing eviction or foreclosure or both. We bear witness to the daily indignities that poor people face in finding and holding onto safe, affordable housing. Amidst the high caseloads and frenetic pace of the work, we do our best to hold space for the fear, desperation, and even resignation we encounter in people whose homes are on the line but whose cases we often cannot accept for representation. It can be heartbreaking work.

But the system does not have to operate in this way. Falling behind on the rent or mortgage does not have to mean losing one's home without a second chance. A past eviction or foreclosure on one's record does not have to mean the denial of future opportunities to rent or buy. Being too poor to afford lawyers like us does not have to mean a diminished chance of success in saving one's home.

Chief Justice Gants understood this, and he used his power—as judge, as nationally recognized leader on access to justice, and as head of the third branch of the Massachusetts government—to change it. He highlighted, over

and over, how “much is at stake”⁹⁹ in a housing case. He pushed the Massachusetts court system to innovate new ways to give litigants in housing cases “a fair chance to obtain justice.”¹⁰⁰ This vision included solutions like expansion of the Housing Court, a right to counsel in housing cases, upstream distribution of rental and mortgage assistance, and prefiling mediation. Chief Justice Gants developed his substantive and prescient vision for housing justice by listening, learning, and collaborating. This was who he was as a leader; he believed that an inclusive process was key to the legitimacy of the outcome.

In part because he worked so collaboratively, many have eulogized Chief Justice Gants as “humble.”¹⁰¹ But his humility was more than eschewing attention or recognition. Rather, Gants was humble in that he devoted his life’s work—certainly his housing justice work—to improving the lives of people who would never read one of his opinions, hear one of his speeches, or see his obituary in the *Boston Globe*. He was always thinking about the world outside the rarefied halls of the courthouse. He knew that his stewardship of the court system impacted the everyday existence of the Commonwealth’s residents in the most profound ways. He recognized that what he said, did, and wrote would be translated into real-world action or inaction, change or the status quo, hope or disillusionment. Gants’s relentless efforts to stabilize housing across the Commonwealth are a testament to what *is* possible when those responsible for upholding the law make the law work for the people.

In Chief Justice Gants, we found someone willing to open his eyes to the daily indignities we clamor to change in our work as housing lawyers. He paid close attention and threw his full weight behind the cause because he believed that the legal system, with reform and ingenuity, could deliver justice in housing. Chief Justice Gants worked so hard to repair this corner of the world; it is up to us, and all those who will remember him and care about housing justice as deeply as he did, to finish the task.

⁹⁹ State of the Judiciary, *supra* note 3, at 10.

¹⁰⁰ 20th Annual Walk to the Hill, *supra* note 51.

¹⁰¹ Radha Natarajan, ‘Always Humble, Always Committed’: Remembering SJC Chief Justice Ralph Gants,’ WBUR (Sept. 16, 2020), <https://www.wbur.org/cognoscenti/2020/09/16/ralph-gants-tribute-radha-natarajan> [<https://perma.cc/35XX-EKBS>]; Justice Diana Maldonado, Remarks at Northeastern University School of Law Virtual Gathering Celebrating the Life of Chief Justice Ralph Gants (Sept. 23, 2020), <https://static1.squarespace.com/static/56a67d1e05caa777b1877b09/t/6047bbf27eb5ac3b0ec34910/1615313951466/Celebrating+the+Life+of+Chief+Justice+Ralph+Gants.pdf> [<https://perma.cc/YV3B-VY3Y>] (“Yet despite all his achievements, he remained humble, known to even the parking attendant at the lot across from the courthouse as simply ‘Judge Ralph.’”); see also *Remembrances of Chief Justice Ralph Gants*, Comments by Lynette Paczkowski, MASS.GOV, <https://www.mass.gov/info-details/remembrances-of-chief-justice-ralph-gants> [<https://perma.cc/XHM3-VANF>] (“I was struck by how engaging and humble he was . . .”).