

Annual Address:
State of the Judiciary

October 27, 2021

Remarks by

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Chief Justice of the Supreme Judicial Court

Thank you, President Bond, for your kind introduction. I also want to thank you and the Massachusetts Bar Association, and your Chief Legal Counsel and Chief Operating Officer Marty Healy, for sponsoring our program today.

And thanks, too, to all of you in the audience who have joined us for this event. It is a privilege for me to have this opportunity to speak with you, even if only virtually.

It seems unreal that we are well into month 20 of this pandemic. Who would have imagined when the first cases of COVID-19 began to appear, that we still would be battling multiple waves of infections after all this time?

Sadly, hundreds of thousands of people in the Commonwealth have fallen ill, and thousands have died. Many others have lost loved ones or jobs. And even for those whom it has not touched so directly, COVID has created unprecedented disruptions in our daily routines.

For our courts, the health and safety restrictions required by the pandemic forced us to make huge changes in how we conduct business to minimize in-person contacts. Hearings were often held by videoconference or telephone. Paper filings were largely replaced with electronic filings. And emergency orders were issued to accommodate the needs of litigants and lawyers affected by the pandemic.

And in the midst of dealing with all of these issues, we suffered a devastating blow with the death of our chief, Chief Justice Ralph Gants in September 2020. It was for that reason that we did not hold a State of the Judiciary event last year.

For those of us at the SJC, the death of Chief Justice Gants came as a great shock not only because it was so unexpected, but because he was such a huge presence in our daily lives. He was always in touch, by phone, or email, or showing up in person – offering encouragement,

seeking our advice or sharing his own, almost always leavened with his self-deprecating humor. His wisdom, energy, and can-do spirit buoyed us all during a dark time.

For me personally, he was a great mentor and friend, and I still find it hard to grasp that he is not just down the hall, or a phone call away.

But even though I can't ask him for advice anymore, I can still look to things that Chief Justice Gants wrote, or said, or did, as I now endeavor to do the job that he did so well.

In fact, a passage from the very last State of the Judiciary address that he gave inspired my remarks today. At the outset of that address Chief Justice Gants said:

"If we bend the arc of the moral universe towards justice, one case at a time, we do so because a wise and patient judge presides over a courtroom that is well organized by an experienced clerk; that is kept calm and safe by a savvy and good-humored court officer; that is supported by probation officers who care deeply about the success of the persons under their supervision, and the safety of the public; that sits in a courthouse that is kept functional and clean, often despite its old age and deteriorating condition, by a committed facilities staff."

Chief Justice Gants recognized that "justice is a team effort." He knew that we can only attain our lofty ideals about how our courts should function through the collective contributions of everyone in the court system.

I would like to extend my deepest thanks to the more than 6,000 employees of our court system for all that you have done to help us weather the many challenges of COVID-19. You have demonstrated remarkable resilience, ingenuity, flexibility and teamwork as you have overcome so many obstacles to keep our courts operating and accessible during this difficult period.

Judges and clerks have had to master new technologies and learn how to conduct court proceedings via Zoom. Probation officers have similarly had to hold many of their check-ins remotely. And court officers and facilities staff have added compliance with health and safety protocols to their list of duties.

Our IT staff, led by the late Craig Burlingame – another sad loss in our court family – and more recently by our new CIO Steve Duncan, and our Deputy CIO Jeff Travers, have worked tirelessly to shift court operations online, and to expand the infrastructure needed to support that shift.

The members of the Jury Management Advisory Committee, led, until her retirement, by former Chief Justice Judy Fabricant, have devoted many hours to researching the safest ways to conduct jury trials. The recommendations in the committee's reports to the Justices have been adopted by the court and implemented by Jury Commissioner Pam Wood and her staff. Thanks to their work, we have been able to resume jury trials in all the courts that ordinarily conduct them.

In fact, I recently appeared for jury duty and had a first-hand look at the process. All of the court personnel – court officers, assistant clerks and judges, made it work seamlessly.

Appeals Court Chief Justice Mark Green, Trial Court Chief Justice Paula Carey, former Court Administrator Jon Williams and new Court Administrator John Bello, Probation Commissioner Ed Dolan, and the Trial Court's departmental chiefs, deputy court administrators, regional administrative justices and first justices, clerks, registers, the recorder and their staffs have all managed countless changes in court operations.

In particular, I want to commend Chief Justice Carey not only for her extraordinary leadership in shepherding the Trial Court through the pandemic, but for making time to carry on

several important projects that Chief Justice Gants launched before his death, including the Eviction Diversion Initiative, which you will hear more about from Chief Carey. She, along with Chief Justice Timothy Sullivan of the Housing Court, Chief Justice Paul Dawley of the District Court, and Chief Justice Roberto Ronquillo of the Boston Municipal Court have worked in partnership with Executive branch leaders to make it easier for tenants and landlords to access financial and legal assistance and stabilize tenancies. Thanks to their collective efforts, along with safeguards enacted by the Legislature, Massachusetts has largely avoided the wave of eviction cases that we once feared.

As you know, Chief Justice Carey recently announced her intention to retire in January, after two decades of dedicated public service as a judge in the Probate and Family Court, as chief of that department, and as Chief Justice of the Trial Court. She has made enormous contributions to improving our court system, and we will deeply miss her passion and energy. It is hard to imagine anyone caring more about our court system. Thank you, Paula, for all that you have done for the court system and the Commonwealth!

I would also like to express my heartfelt appreciation to my colleagues on the SJC for everything that they have done to meet the many challenges facing us during this tumultuous time.

Since March of 2020, our court has promulgated 29 orders modifying court operations and legal practice in response to the changing conditions created by COVID-19. And we have issued numerous opinions deciding difficult questions arising out of the pandemic.

After Chief Justice Gants died, Justice Barbara Lenk generously stepped up to lead the SJC until his successor was appointed. She did so even though she was only weeks away from

her retirement – which she had already postponed to help with our caseload. Her service in this role was a fitting conclusion to her 27 years of distinguished service on the bench.

Our two newest additions to the SJC – Justices Dalila Wendlandt and Serge Georges – have wasted no time in diving into the work of the court.

Since I became Chief Justice, all of my colleagues have been a steadfast source of support and wise counsel for me as we have worked together to chart the future course of the SJC and the court system. I am so grateful to each of them.

I would also like to thank Governor Charlie Baker, and the members of the Supreme Judicial Court Nominating Commission and the Governor's Council, for their confidence in giving me the opportunity to lead the SJC, and for choosing such talented and hard-working justices to join us on the court.

I would also like to thank the Governor, and others in his administration, for their collaboration with the courts on the Eviction Diversion Initiative.

The Legislature also deserves our deepest thanks for its support during this difficult time. Our courts have been able to respond to the challenges of COVID-19 because our legislators have understood those challenges and given us the resources to meet them. I am grateful to Senate President Karen Spilka, Speaker of the House Ron Mariano and his predecessor Robert DeLeo, and Ways and Means Committee Chairs Senator Michael Rodrigues and Representative Aaron Michlewitz for their leadership.

And finally, but just as importantly, I want to thank bar associations and attorneys for your many contributions over the last year-and-a-half. Attorneys have assisted the courts in dealing with COVID-related challenges in so many ways – through bar association activities,

participation in court committees, and providing pro bono legal services to people affected by the pandemic.

- The MBA and the Boston Bar Association produced materials on participating in remote court hearings.
- Attorneys working with the Access to Justice Commission's COVID-19 Task Force helped to publicize changes in court procedures, give feedback to the courts about the impact of these changes on court users, and recruit attorneys for pro bono projects.
- And many attorneys volunteered to provide pro bono legal services to those in need, such as small business owners, and tenants and small landlords affected by the pandemic.

What we have all been able to accomplish together has been nothing short of remarkable. Although there may be things that, in retrospect, we might have done differently and better, that does not diminish the magnitude of our achievement in keeping the courts open and serving the public during the pandemic.

We are not out of the woods yet, of course. The latest wave of COVID cases reminds us that we must continue to be vigilant. For that reason, the SJC has continued to require masks in courthouses under most circumstances. And as we go forward, we will continue to carefully monitor changes in COVID conditions in the Commonwealth, recommendations by public health authorities, and what other state and federal courts are doing.

Nevertheless, with rising vaccination rates and ebbing case counts, we can at least begin to foresee a return to "normal" court operations in the not-too-distant future.

Now, however, we must face another task that, in its own way, is as difficult as those just completed – envisioning what "normal" court operations will look like in the future, and plotting a path to reach that goal.

I doubt that anyone believes that we should go back to exactly the way things were before the pandemic, and we expect to continue many of the advances it brought about.

We have learned, for example, that not all court events need to take place at the courthouse. We can save litigants and their lawyers considerable time and expense by holding some hearings virtually when appropriate.

But we must recognize that not all litigants or their lawyers have access to the necessary technology, or sufficient familiarity with it, to participate effectively in virtual hearings.

This is but one example of the dilemmas we will face in seeking to envision what "normal" court operations should look like in the future.

We will need to sift through the many procedural and technological changes we have made in response to the pandemic, and think carefully about whether to adopt them permanently, modify them in some way, or abandon them.

And to undertake that review, we will need input, not only from judges and court staff, but from the attorneys who appear in our courts.

The SJC and the Trial Court have been preparing a survey for members of the bar, which you should receive soon, soliciting your opinions. Please take the time to respond when you receive it, for your answers will help to shape the future of our courts.

As we emerge from the pandemic, we also need to do more to fight another kind of virus that has affected our legal system for far too long – the problem of racial and ethnic inequities.

Even as we were battling COVID over the last year-and-a-half, the repeated, tragic and unjustified deaths of Black men and women in police encounters across the country sparked a national reexamination of the role of race in our legal system.

Here in Massachusetts, the long-awaited Harvard Law School study on racial disparities in our criminal justice system that was released last fall concluded that Black and Latinx people are overrepresented in the criminal caseload compared to their population in the state, and that Black and Latinx people are given longer sentences than their similarly situated white counterparts.

And another report issued by the Supreme Judicial Court Standing Committee on Lawyer Well-Being last February called attention to how attorneys of color and from other historically excluded populations often experience differential treatment in our courts.

Although issues of racial and ethnic inequities in our legal system are longstanding problems, these recent events and reports have reminded us that they are no less urgent than dealing with the pandemic. Left unchecked, they undermine the fundamental principle of equal justice for all.

Within the courts, we have made this issue a top priority. We have begun convening quarterly meetings of the Chief Justices of each court and the Commissioner of Probation to discuss what each court is currently doing, and to share new proposals, to combat racial and ethnic inequities. Chief Justice Carey will discuss the work that the Trial Court is doing in this area.

And I would also like to take this opportunity to again ask all of you for your input. If you have a suggestion as to how the courts can promote equity in our legal system more

effectively, please feel free to reach out to my office. This is a complicated problem, and we need everyone's best ideas.

Our courts have been sorely tested by unprecedented challenges over the last year-and-a-half, and we have done our collective best to meet those challenges.

And now we have the opportunity to profit from what we have learned, and to make our courts more efficient, more transparent, more responsive to the needs of court users, and more equitable in treatment of all. Let us all join together to make the most of this extraordinary opportunity.

Thank you.