Boston Bar JOURNAL
A Peer Reviewed Publication of the Boston Bar Association
Fall Edition 2025
Volume 69, Number 4

Table of Contents

Voice of the Judiciary

Comments from Recently Appointed Probate & Family Court Chief Justice Brian J. Dunn

By The Honorable Brian J. Dunn

When taking on the position of Chief Justice of the Probate and Family Court in July 2025, I knew how crucial my role would be to the ongoing development of the court. I entered this position with many ideas that I planned to implement based on my own experience as a judge. Since my appointment, it has become clear that ideas for the improvement and evolution of the Probate and Family Court come in many forms and derive from a wide variety of sources, including judges, registers, staff, attorneys, litigants, and organizations. The input of people closely involved with and invested in the court is integral to a Probate and Family Court Department that has the capacity to evolve with time and experience.

As I have met with our First Justices and Registers and listened to their wants and needs, I am impressed with their focus on providing access to justice for our litigants and supporting our judges and staff to meet our mission of justice with dignity and speed.

In this article, I highlight projects that impact both "sides" of the Probate and Family Court—probate and domestic relations. Throughout my term, I will continue to examine existing projects and initiatives to assess whether changes could or should be made to enhance them, while also creating new initiatives as I find gaps in our ability to meet our mission. I am proud to be Chief Justice of the Probate and Family Court and look forward to working with all stakeholders to have a Probate and Family Court that allows us to address the needs of the citizens of the Commonwealth.

Office of Adult Guardianship and Conservatorship Oversight

The creation of the Office of Adult Guardianship and Conservatorship Oversight (OAGCO) is the end result of a multi-year Elder Justice Innovation Grant. It is also the beginning of an office within the Probate and Family Court devoted to the comprehensive tracking of cases and review of data relating to guardianships and conservatorships in Massachusetts, and support of guardians, conservators, and attorneys through the Ombudsman Service Program (OSP). Since February 2025, the OAGCO has operated under Probate and Family Court Standing Order 1-25.

As of June 2025, the Probate and Family Court had 29,314 active guardianship cases and 10,721 active conservatorship cases. In 2025 alone, more than 4,000 new guardianship and conservatorship cases have been filed across the Commonwealth. However, according to early data collection, fewer than 25 percent of the appointed guardians had timely filed the required Guardian Care Plan Report (GCPR), and fewer than 4 percent of appointed conservators were compliant with their reporting requirements.

The OAGCO has sent notices of non-compliance to 10,710 guardians and conservators who were past due with their requisite annual reporting. As a result of those notices and follow-ups to inquiries through the OSP, 48 percent of non-compliant cases became compliant.
We expect that the compliance rates will increase with time and awareness of the OAGCO. To assist with compliance, I have implemented a monthly Zoom hearing session for cases where guardians, despite being sent multiple notices of non-compliance, have failed to appear or file a GCPR.

The OAGCO has three avenues for communication: (1) the Ombudsman Service Program offers a monthly Zoom meeting, available to the bar and the public, to assist with questions about reporting requirements and relevant court procedures; (2) the OAGCO has a dedicated email account (OAGCO@jud.state.ma.us) to receive inquiries; and (3) the OAGCO's webpage provides helpful resources, including forms, instruction booklets, and a series of training modules related to guardianship and conservatorship case types.

As of September 2025, the OAGCO has answered and/or provided helpful resources in response to over 260 emails and has assisted with numerous in-person Zoom inquiries from guardians, conservators, attorneys, and other members of the public; in addition, the webpage has been viewed over 4,600 times.

Guardianship: Helping Vulnerable Adults Explore Alternatives to Guardianship
In the fall of 2024, the Probate and Family Court was awarded a second Elder Justice Innovation Grant. This project, titled *Guardianship: Helping Vulnerable Adults Explore Alternatives to Guardianship*, will develop an adult guardianship diversion program using a multidisciplinary approach in collaboration with community partners.

The project will collaborate with the National Center for State Courts to develop a model for conducting community mapping – a process that brings together local stakeholders working with adults who may be vulnerable to being placed under guardianship. Community mapping has three objectives: (1) assessing the community's existing resources that help individuals navigate guardianship and its alternatives; (2) identifying opportunities for improvements to these resources; and (3) developing action plans for improving current practices at the local level.
Two divisions of the Probate and Family Court will host community mapping events. The outcomes will be reviewed at a statewide Stakeholder Summit, expected to take place in late 2026. The goals of the project are that fewer adults will be under guardianship, more individual rights will be protected, and there will be an increase in public knowledge of alternatives to guardianship.

Pathways

The Pathways case management process that has been utilized in the Probate and Family Court for a number of years, continues to be adapted to the current needs of the Court, most recently by the implementation of Probate and Family Court Standing Order 2-25: Pathways Case Management System that became effective on April 11, 2025.

Pathways uses early intervention to connect court users with appropriate resources and offers broader dispute resolution options by setting cases on three different tracks, or "pathways." The goal of Pathways is to promote timely and effective resolution so that parties can focus on cooperative problem solving instead of engaging in long, expensive litigation. The Pathways process utilizes court staff, such as Assistant Judicial Case Managers, to triage cases, initiate contact with parties and attorneys soon after service is accomplished, and hold virtual case management conferences for cases that are on the Pathways 1 track. The case management conference is scheduled between 30 and 45 days from the return of service being filed with the Court. Even if the Pathways 1 case management conference does not result in an agreement, valuable insight into the case is developed, which can ultimately help the Court resolve the matter. Under the Pathways 2 track, the case is referred for dispute intervention with the Probation department or a conciliation or mediation session. If the case is not resolved in either track 1 or 2, the case is scheduled into the Pathways 3 track with the assigned judge.

Until the implementation of Standing Order 2-25 in April 2025, the focus of Pathways was modification actions (actions where parties were looking to modify prior judgments). Now, divisions may expand the case types utilizing Pathways. For example, the Barnstable Division uses Pathways for all case types. In other divisions, if a modification and contempt have related issues, and it seems likely that the contempt could be dismissed if the parties resolve the modification, the matters will be scheduled together for a conference. Other divisions use Pathways to assist self-represented parties with uncomplicated uncontested divorces, but who have filed materials with deficiencies.

Child Support Guidelines

In June 2024, Chief Justice of the Trial Court Heidi E. Brieger appointed the 2024-2025 Child Support Guidelines Task Force to conduct the quadrennial review of the Massachusetts Child Support Guidelines (“guidelines”). During its review, the Task Force considered federal and Massachusetts statutory requirements, oral comments submitted at three virtual public forums, written comments submitted to the Trial Court email address established for public comments, survey results from judges and staff of the Probate and Family Court and the Massachusetts Probation Service, as well as comments from the experienced members of the Task Force. The Task Force reviewed deviation statistics, economic models and data, and information on child support from other states.

The Task Force submitted its recommendations in June 2025. The new guidelines and worksheet were announced on October 30, 2025 and are effective as of December 1, 2025.

These highlights from four of our department's projects only touch on the expansive work performed by the Probate and Family Court. The next five years will be invigorating for everyone involved in the Probate and Family Court and I am honored to usher in the future of the Court.

Chief Justice Brian J. Dunn was appointed as an Associate Justice in the Probate & Family Court in 2013. He served for over seven years as First Justice in Suffolk County Division before he was designated as Chief Justice of the Probate and Family Court Department in July of 2025.

Heads Up

Involuntary Commitment: More Than a Need for Treatment

Beau Kealy and Carrie Domzalski

On July 24, 2025, the President issued an Executive Order entitled "Ending Crime and Disorder on America's Streets," sanctioning long-term institutionalization of unhoused people living with mental illness. Explicitly touting the President's goal of promoting public safety and overturning civil rights jurisprudence, the Order urges states to expand civil commitment laws.[1] Based on our perspective as practitioners who regularly defend against involuntary commitment petitions and in light of this Order, we provide this brief overview of involuntary commitment law in Massachusetts,[2] and address some reasons why expansion of the reach of civil commitment laws is problematic.

The Elements and Burden of Proof for Involuntary Commitment

Involuntary commitment proceedings in Massachusetts reflect its *parens patriae* authority to protect citizens from harm allegedly resulting from mental illness. Balancing this power against one's Constitutional guarantee of freedom requires "the least burdensome or oppressive controls over the individual that are compatible with the fulfilment of the dual purposes of our statute, namely, protection of the person and others from physical harm and rehabilitation of the person." *Commonwealth* v. *Nassar*, 380 Mass. 908, 917-918 (1980). The following statutory elements necessary for involuntary commitment, and the high burden of proof, strive to reflect this guidance.

Mental Illness. The first required element is that the person lives with a substantial mental illness, as provided for in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5),[3] that impairs judgment, behavior, perceived reality or ability to meet life's ordinary demands. The definition specifically excludes alcohol/substance use disorders, intellectual/developmental disabilities, autism spectrum disorders, traumatic brain injuries or psychiatric symptoms caused by another medical condition unless co-occurring with a mental illness.

Likelihood of Harm. The second required element is that there must be evidence that the mental illness presents an imminent risk of physical harm. This "likelihood of harm" element can be satisfied by any of three distinct "prongs." *See* G.L. c. 123, §1; *see also* *In the Matter of G.P.*, 473 Mass. 112, 125 (2015).

- Prong 1: Substantial risk of physical harm to self from suicidal ideation, as evidenced by specific threats and/or attempts at self-harm.
- Prong 2: Substantial risk serious physical harm to others (or one's reasonable fear of it) from homicidal ideation, as evidenced by violent conduct.

- Prong 3: ***Very*** substantial risk of harm, to self or others, as evidenced by highly impaired judgment that cannot be mitigated in the community. Examples include the failure to appreciate the risk of untreated diabetes and concerns that someone in the community will victimize a person based on unusual behaviors or statements. Homelessness alone is insufficient, and while it may be considered with other evidence, courts should do so only "with extreme caution." , 486 Mass. 117, 124-25 (2020).

Because of the liberty and bodily integrity issues at stake, the Supreme Judicial Court recognized long ago that any of the alleged risks of harm must be imminent, "to assure that the individual's potential for doing harm, to himself or to others, is great enough to justify such a **massive curtailment of liberty**." *Nassar*, 380 Mass. at 916-917 (emphasis added). In this context, "imminent" means "that the harm will materialize in the reasonably short term -- in days or weeks rather than in months." *Matter of G.P.*, 473 Mass. at 128.

No Less Restrictive Alternative. The third and final element is proof that no less restrictive alternative can keep the person (or others) safe. This is necessary to justify the infringement of one's liberty, where no crime has been committed, in accordance with the strict scrutiny analysis of law. According to *Matter of a Minor*, 484 Mass. 295, 310 (2020), "a less restrictive alternative need not eliminate all risk to a respondent. Rather, the proper focus is on whether there are any viable, plausibly available options that bring the risk of harm below the statutory thresholds that define a likelihood of serious harm." Such options could include, fFor example, a family member who is willing to assist with one's care and/or having outpatient psychiatric providers could be such options.

Burden of Proof. The burden of proof is *beyond a reasonable doubt*. *See Sup't of Worcester State Hosp. v. Hagberg*, 374 Mass. 271, 276 (1978). This recognizes the grave liberty deprivation: an initial order may last six months, with successive one-year renewals sought indefinitely.[4] Though civil in nature, involuntary commitment proceedings deviate greatly from other civil proceedings. Evidentiary rules apply, but hearings are not governed by the rules of civil procedure.[5] Some procedural safeguards that are otherwise reserved for criminal matters, however, do apply – *e.g.*, respondents are entitled to an appointed attorney and funds for an independent medical examiner.

Safeguards Exist, But Discrimination Persists Creating Unjust Results For Respondents

Despite the due process protections that exist for civil commitment proceedings, all that is required to justify detaining and restraining a person from the community is a highly subjective standard: "reason to believe that failure to hospitalize such person would create a likelihood of serious harm," which can be based solely on a preliminary diagnosis and/or unverified third party reports.

Where a person has committed no crime,[6] § 12(a) authorizes their initial detainment in an emergency room/department for an indefinite period, without any process, right to counsel, or meaningful treatment. A person may then be transferred to a facility for formal psychiatric evaluation, for no more than three business days, pursuant to § 12(b). This process is not well communicated and problematic, for various reasons. For example, a person admitted to a facility on the Friday before a holiday weekend can be held against their will for nearly two weeks without judicial intervention. A risk is that challenging this legal reality is often pathologized, can result in forced chemical restraints and, ultimately, be misperceived as evidence establishing likelihood of harm.

Caselaw reflects the historic discrimination against persons with alleged mental illness, with only recent recognition of fundamental rights. See *Matter of N.L.*, 476 Mass. 632 (2017) (finding that respondents have a right to an initial continuance to prepare a meaningful defense); *Matter of F.C.*, 479 Mass. 1029 (2018) (holding that appeals should not be mooted out due to discharge, in light of the continued stigma after discharge).

Courts often commit people based solely on their mental illness without the requisite nexus to harm. This is most evident after a person has been committed, when a facility may request authorization to forcibly medicate them while hospitalized. Despite valid reasons for rejecting diagnoses and/or treatment with antipsychotic medication, courts often find that committed respondents are incompetent to make medical decisions.

Defending against an involuntary commitment petition is uniquely challenging. Unlike criminal defendants who may post bail, respondents facing commitment must remain hospitalized while their case is pending. In addition, continuances, when permitted, are typically too short to allow for prudent discovery. Evidence is routinely limited to expert testimony offered by the petitioning facility, as well as medical notes from various staff on the unit who regularly pathologize emotion or disagreement.

In Closing

Proponents of involuntary commitment may view the adversarial nature of such proceedings, and its constitutional safeguards, as obstacles to care, but this perspective fails to appreciate the core values of our legal system. A compelling state interest can only justify the deprivation of a fundamental right in narrow terms, and in the least restrictive manner. Massachusetts provides respondents with protections when threatened with involuntary commitment. But the subjective nature of psychiatry and risk prediction allows overly paternalistic results rarely deemed clear error upon review. Lastly, the loss of autonomy and trauma caused by involuntary commitment

and forcible treatment impacts the person's future decisions to choose suggested medications and treatment after discharge and creates a distinct distrust of medical providers.

Carrie Domzalski resides in Northampton, MA, where she works as Attorney in Charge of the Western Mass unit of the Mental Health Litigation Division, for the Committee for Public Counsel Services. She has spent the last decade defending against involuntary commitment petitions on behalf of her clients. In addition to her trial work, Attorney Domzalski is an Adjunct Clinical Professor of the Mental Health Litigation Practicum at Boston University School of Law.

Beau Kealy is the Training Director for the Mental Health Litigation Division, (MHLD), at the Committee for Public Counsel Services. She trains staff attorneys and private counsel to zealously defend clients facing civil commitment and adult guardianship petitions. Previously a criminal defense attorney, Attorney Kealy became a mental health litigator when she joined MHLD in 2016 as a trial attorney litigating commitment trials and appeals out of the Roxbury commitment unit. Together with Attorney Domzalski, she teaches and supervises student attorneys participating in the BU School of Law's Mental Health Litigation Practicum which she co-founded in 2023.

End Notes

[1] It is unconstitutional for any state to involuntarily commit someone with mental illness if they do not pose a danger to themselves or others. *O'Connor* v. *Donaldson*, 422 U.S. 563 (1975).

[2] The relevant legal principles are codified in G.L. c. 123 and the procedural standards of 104 C.M.R. 27.00. While G.L. c. 123 governs all civil commitments, including those as a result of alleged alcohol and substance use disorder (§ 35), this article focuses on civil commitment based on mental illness, and briefly addresses forcible treatment petitions filed as a result of an alleged mental illness.

[3] See 104 C.M.R. 27.05(1) for the full definition of mental illness.

[4] Often petitions for the authorization of medical treatment under G.L. c. 123, § 8B, accompany petitions for civil commitment, but they can only be adjudicated if the commitment order is allowed and involve a different burden of proof and evidentiary analysis. We do not address those proceedings here, other than to flag the significant and separate issues of bodily integrity and autonomy triggered by forcible treatment.

[5] The exception, Mass. R. Civ. P. 6, applies for time calculations.

[6] Forensic civil commitment petitions do involve underlying criminal matters which are initiated after evaluation for competency to stand trial and/or criminal responsibility per G.L. c. 123, §§ 15, 16; as well as § 18 petitions for pretrial defendants or those serving sentences.

Case Focus

When Technology Testifies: ShotSpotter, Due Process, and the Limits of Sound Technology

By Samantha Mazzone

As part of their recent decision in *Commonwealth v. Rios*, 496 Mass. 11 (2025), the Supreme Judicial Court ("SJC") addressed evidentiary concerns involving a technological tool currently at the forefront of the law enforcement investigative arsenal: ShotSpotter. Specifically, the SJC denied the defendant's motion for a new trial under the claims of ineffective assistance of counsel and newly discovered evidence, both arising from the Commonwealth's use of ShotSpotter evidence at trial. *Rios* and other cases nationwide provide useful guidance on the factors judges are applying to decide if, when, and how ShotSpotter information may be introduced at trial.

What is ShotSpotter?

ShotSpotter is an acoustic gunshot detection technology used by law enforcement to identify, locate, and respond to shootings. Microphones inside black boxes attached to telephone poles capture gunshot decibels, triangulate their location, and send the data to an acoustic expert employed by ShotSpotter's parent company, SoundThinking. The acoustic expert interprets the detected "gunshots" alongside their "sophisticated machine algorithms" to "ensure and confirm that the events are indeed gunfire." *See ShotSpotter Frequently Asked Questions*. SoundThinking's acoustic experts can "append the alert with other critical intelligence such as whether a fully automatic weapon was fired or whether there are multiple shooters," all in sixty seconds. *Id.* The captured sounds and expert analysis are delivered to law enforcement in the same timeframe. *Id.*

A detailed forensic report is later provided containing both computer-generated and human expert analysis, though the report does not distinguish between the two. Some reports include an initial disclaimer notifying the reader of human intervention with the data. However, the report does not typically specify where the data has been modified, leaving questions about the amount of discretion acoustic experts have in interpreting the raw data on a case-by-case basis and the reliability of the reports. Although SoundThinking discloses some details regarding their specialized software in their annual reports, they "rely in part on trade secrets, proprietary know-how and other confidential information to maintain [their] competitive position." See *SoundThinking 2022 Annual Report* at 46.

Commonwealth v. Rios

A Springfield jury found Lee Manuel Rios guilty of murdering Kenneth Lopez. *Rios*, 496 Mass. at 12. After discovering Lopez's body, the police determined he died by multiple gunshot

wounds and recovered the relevant ShotSpotter data from the closest activation site. *Id.* at 13, 18. The police used SoundThinking's automatically generated summary report to support a finding that five shots were fired approximately two hundred to three hundred yards from where they found Lopez's body. Upon police request, a SoundThinking employee provided a detailed forensic report that mapped the same five gunshots to the exact Dwight Street address where the police found Lopez's body. The SoundThinking employee informed police that he determined the more precise location based on his manual recalibration of the data as part of his "postprocessing" analysis. *Id.* at 18-19.

The Commonwealth agreed to provide all data, report information, and communications exchanged with SoundThinking, but objected to providing the mechanics behind ShotSpotter's location calculation and calibration process. *Id.* at 21. Before trial, Rios filed a motion to preclude the SoundThinking expert's testimony because SoundThinking had "refused to share, or allow (the expert) to share, the underlying 'mechanics,' 'calculations,' 'algorithms,' and 'data' of the manual recalibration process" or "sufficient information to enable the defendant to review and test its calculations." *Id.* at 25. The trial judge denied the defendant's motion and the expert testified to the general mechanics of ShotSpotter and the postprocessing analysis he conducted. After the jury found Rios guilty, he filed a motion for new trial arguing, *inter alia,* (i) that his counsel was ineffective because she failed to hire an audio expert to rebut the reliability of the ShotSpotter results and (ii) that testimony from a SoundThinking employee in a California criminal case constituted newly discovered evidence that undermined the reliability of ShotSpotter's postprocessing methods. *Id.* at 24. The trial judge denied the motion and the SJC reviewed Rios' conviction pursuant to its authority under G.L. c. 278 § 33E. *Id.* at 39.

SJC's Ruling and Reasoning

To support his claim of ineffective assistance before the trial court, Rios submitted an affidavit and report from an electrical engineer that attested the ShotSpotter forensic report lacked sufficient detail "to assess the accuracy of ShotSpotter's calculations." *Id.* at 24. To support his claim of newly-discovered evidence, Rios submitted testimony of a SoundThinking manager in a California criminal trial who testified that analysts manually modify the ShotSpotter data, making the adjustments subjective, and that neither the postprocessing functions nor the system's overall gunshot detection capabilities had been validated by outside sources. *Id.* at 27.
In holding that Rios' trial counsel was not ineffective, the SJC pointed to counsel's vigorous cross-examination of the Commonwealth's expert witness and the testimony elicited challenging ShotSpotter's reliability. The expert identified deficiencies in ShotSpotter's overall accuracy and disclosed he had "undocumented discussions" with Springfield police about the case before he finalized the "ostensibly objective geolocation" of the shooting. *Id.* at 25. He also acknowledged SoundThinking's guarantee of ShotSpotter's ability to accurately capture "eighty five percent of all detectable events" within a specified radius was merely a general policy statement and not

actually a guarantee. *Id.* Finally, the expert admitted essential sounds and echoes critical to his postprocessing analysis were not contained in his forensic report, and that he had "'manually selected some of the data and reprocessed it through a process that [he] won't disclose.'" *Id.* The SJC held that trial counsel's vigorous cross-examination effectively highlighted ShotSpotter's reliability issues to the jury and that additional expert opinion would have been cumulative and would not have meaningfully influenced the jury's determination of Rios' guilt. *Id.*

In holding that no new trial was warranted, the SJC concluded that, regardless of the ShotSpotter analysis, the prosecution had provided sufficient evidence to establish both the time and location of the shooting and evidence of Rios' guilt independent of the ShotSpotter data. *Id.* at 27-28. Specifically, not only did a witness record Rios saying he killed the victim by shooting him five times and "'count[ed] the houses'" to indicate his location, he also wrote a letter to his sister stating, "'[T]hat's why I did it by myself.'" *Id.* at 18, 20. The letter placed Rios on Dwight Street just before the shooting, and he admitted to shooting a .38 caliber revolver, which matched the ammunition recovered from the scene and the victim's body. *Id.* at 28. Therefore, any impeachment of the Shotspotter evidence would not "have been a 'real factor in the jury's deliberations'" where other evidence sufficiently established the time and location of the murder, number of shots fired, and "overwhelming evidence of the defendant's guilt." *Id.* at 28.

Judicial Treatment of ShotSpotter Evidence Nationwide

Judges around the country are grappling with applying the law of digital evidence to ShotSpotter technology. The Massachusetts standard jury instruction for authenticating digital evidence requires the prosecution to authenticate digital evidence beyond a reasonable doubt if such evidence is submitted as proof of an element of any offense. . If it is being submitted for any other purpose, such as corroboration of other testimony, the judge may admit the evidence if the authenticity is proven by a preponderance of the evidence. *Id.* Courts nationwide are applying similar principles in admitting or excluding ShotSpotter evidence.

In *People v. Hardy*, 65 Cal. App. 5th 312 (Cal. Ct. App. 2021) the California Court of Appeals reversed and remanded the defendant's semi-automatic weapon conviction based on the trial court's erroneous admission of ShotSpotter evidence to prove the type of weapon the defendant used in the shooting. Before trial, the court preliminarily indicated the ShotSpotter recording would be admitted for the limited purpose of corroborating the officers' testimony. *Id.* at 321-22. However, the trial court then admitted the evidence at trial "without further explanation" despite the defendant's objection. *Id.* The officers who witnessed the shooting could not identify the type of gun the defendant allegedly used but testified they heard six "and possibly seven" shots in a short period of time, which led them to believe he had fired a semi-automatic weapon. *Id.* at 317-18, 320. Consequently, the prosecution relied heavily on the ShotSpotter audio recording

purporting to capture "seven distinct sounds, one right after another" as proof that the defendant possessed a semi-automatic weapon. *Id.* at 319.

The California Court of Appeals reversed the conviction, citing other cases where experts had testified about ShotSpotter's margin of error, training protocols, and outdated mathematical models – all evidence missing in this trial. Where the ShotSpotter audio recording served as the "strongest and only unambiguous evidence" that Hardy fired a semi-automatic weapon, reversal was warranted. *Id.* at 327-28.

In *J.A.R. v. State*, 374 So. 3d 25 (Fla. Dist. Ct. App. 2023) the prosecution properly presented expert testimony to support its use of ShotSpotter evidence at trial. After ShotSpotter alerted officers to gunfire, the officers used real-time surveillance cameras to locate the defendant and found a firearm and magazine in his pocket. *J.A.R.*, 374 So. 3d at 27. Upon appeal from the defendant's conviction of multiple firearm charges, the *J.A.R.* Court found the trial judge properly admitted the recording and supportive testimony where the ShotSpotter expert, who had seven years of experience as SoundThinking's forensic services manager and had testified about the technology 70 times, provided sufficient support for admission. *Id.* at 30.

In contrast, the prosecution in *State v. Thornton*, 309 So. 3d 366 (La. Ct. App. 2020) called a District Attorney Investigator, who was not an expert, to explain how ShotSpotter was used and accessed during the investigation and how the technology corroborated other evidence. *Id.* at 371-72. Where the prosecution did not use the ShotSpotter evidence as direct proof of an element, the *Thornton* Court found it properly admitted with the lay testimony. *Id.* at 372.

Finally, the Supreme Court of Pennsylvania joined the Massachusetts SJC on the short list of appellate courts that have used hearsay rules to evaluate under what circumstances the ShotSpotter forensic summary report may be admissible. In *Commonwealth v. Weeden*, 304 A.3d 333 (Pa. 2023), the Court upheld the trial court's decision to admit the ShotSpotter forensic summary report to establish the time and location of the shooting and number of shots fired. The trial judge allowed a detective to testify about ShotSpotter's mechanics and its role in the investigation. During cross-examination, the detective explained that after the computer generates the summary, ShotSpotter analysts may add updates based on information from responding officers, and admitted to not having ShotSpotter training, not personally working on the report, and believing that ShotSpotter was "not completely foolproof." *Id.* at 336. Despite the defendant's Confrontation Clause argument—where he claimed the summary report should have been excluded as testimonial rather than admitted as machine-generated because ShotSpotter analysts manipulated the data—the Court deemed the ShotSpotter analyst's manipulation insufficient to categorize the document as human-created and, therefore, testimonial. *Id.* at 338.

Notably, in his concurrence, Justice Wecht scrutinized the disclaimer on the ShotSpotter summary report that disclosed the ShotSpotter analyst's interpretation and work on the final product, stating it "bears many of the hallmarks [of] the type of unreliable evidence for which the Confrontation Clause is designed to test." *Id.* at 359. Pointing to the detective's admissions of ShotSpotter's flaws, the vague disclaimer about human manipulation of critical data, and the company's own warnings that the results should be "used with caution," the concurrence expressed concern that the trial court admitted the report without requiring the government to present expert testimony from the report's creator. The concurrence specifically took issue with the six-month gap between the date of the shooting and the date on which the summary report was created, noting that "there is at least a colorable argument that [the summary report] was not generated in response to an ongoing emergency." *Id.* at 358. Despite the concerns and disagreement with the majority, however, the concurrence did not believe there was a legal basis to reverse the conviction based on Supreme Court precedent allowing non-testimonial statements to be admitted without confrontation. *Id.* at 362.

Conclusion

While the treatment of ShotSpotter evidence in Massachusetts is still evolving, the *Rios* decision aligns with the nationwide trend and Massachusetts digital evidence jury instruction for determining if digital evidence is admissible. Under this framework, the trial court should evaluate if the Commonwealth is offering the evidence (i) to corroborate other evidence of the crime, or (ii) to prove an element or an essential part of its burden. If the Commonwealth is using the evidence to corroborate other evidence, the burden of proof remains a preponderance of the evidence. If the Commonwealth is attempting to use digital evidence to prove an element of the crime or an essential part of its burden, the standard is raised to beyond a reasonable doubt. As exemplified in *Rios*, when ShotSpotter evidence is used only to support other independent proof—rather than to establish an essential element of the offense—the court is more willing to admit it, since the reliability of the conviction does not hinge solely on the accuracy of the digital evidence.

As it concerns ShotSpotter evidence, the proponent of the evidence should consider if support from a lay or expert witness is needed. Courts across the Commonwealth may look to factors similar to those considered for digital evidence generally to determine the reliability of ShotSpotter evidence in their own courtrooms, including reports assessing the reliability of the data and modifications made to the data by a SoundThinking acoustic analyst. ShotSpotter is a powerful technology that helps emergency responders save lives and attorneys facilitate justice. With the right framework, courts may properly evaluate the circumstances in which ShotSpotter data may be admitted as trustworthy evidence of proof at trial.

Samantha Mazzone is a third-year law student at Suffolk University Law School, a Paralegal at the Suffolk County District Attorney's Office, and SJC 3:03 practitioner in the Suffolk Prosecutor Program.

Case Focus

Restrictive Covenants And Forfeiture Provisions After MIELE V. Foundation Medicine, Inc.

By Vicki Fuller and Victoria Ranieri

This summer, the Massachusetts Supreme Judicial Court ("SJC") offered new guidance on what types of competitive activity are prohibited by noncompetition agreements and how those agreements are enforced. By definition, a non-solicitation agreement is not a noncompetition agreement subject to the requirements of the Massachusetts Noncompetition Agreement Act, (the "MNAA"). But what if a separation agreement states that an employee forfeits benefits if she violates a non-solicitation agreement, would the MNAA apply? The Supreme Judicial Court reviewed this question in *Miele v. Foundation Medicine, Inc.*, 496 Mass. 171 (2025), concluding that it does not. *Miele* teaches that a forfeiture provision does not convert an otherwise excluded agreement into a noncompetition agreement subject to the MNAA.

The Massachusetts Noncompetition Agreement Act

On October 1, 2018, after nearly a decade of debate, the MNAA was signed into law, setting forth the requirements for noncompetition agreements to be valid and enforceable. The MNAA bans employers from enforcing noncompetition agreements against certain categories of employees and implements substantive and procedural legal protections for employees who may be subject to these agreements. G.L. c. 149, § 24L(b).

The MNAA defines a "noncompetition agreement"—as an agreement between an employer and an employee (or, in some cases, a prospective employer and employee) under which the employee agrees that "he or she will not engage in certain specified activities competitive with his or her employer." G.L. c. 149, § 24L(a).

Next, the MNAA tells us what a noncompetition agreement is not. Not all restrictive covenants are noncompetition agreements, and a number of restrictive covenants are specifically excluded from the definition, including—importantly for *Miele*—non-solicitation agreements. *Id.*

The MNAA's definition of noncompetition agreements expressly *includes* "forfeiture for competition" agreements and *excludes* general forfeiture agreements. So what is the difference? The prerequisite of competition. Under a general forfeiture agreement, an employee forfeits benefits by ceasing employment. Under a forfeiture for competition agreement, an employee only forfeits benefits after termination by competing with the employer. A general forfeiture agreement imposes "adverse financial consequences on a former employee as a result of the termination of an employment relationship, regardless of whether the employee engages in

competitive activities" following the termination. *Id*. A forfeiture for competition agreement, in contrast, "by its terms or through the manner in which it is enforced imposes adverse financial consequences on a former employee as a result of the termination of the employment relationship if the employee engages in competitive activities." *Id.*

The MNAA makes this distinction for one simple reason. If noncompetition agreements were subject to the MNAA, but forfeiture for competition agreements were not, then employers could avoid the requirements of the MNAA simply by using a forfeiture for competition provision in a restrictive covenant as a proxy for a noncompetition agreement. In fact, the SJC spotted this loophole almost fifty years ago in *Cheney v. Automatic Sprinkler Corp.*, 377 Mass. 141 (1979). The SJC in *Miele* was concerned that if forfeiture for competition agreements were not subject to the same scrutiny as noncompetition agreements, "overreaching" employers would be tempted to avoid scrutiny by using forfeiture for competition agreements rather than adhering to the prohibitions and requirements for noncompetition agreements as currently set forth in the MNAA. *Id*. To close this loophole, the MNAA's drafters included forfeiture for competition agreements within the MNAA's definition of noncompetition agreement. Brief for Russell Beck as Amicus Curiae, *Miele v. Foundation Medicine, Inc.*, 496 Mass. 171 (2025) (No. SJC-13697).

The MNAA's drafters were also mindful of an additional avenue for an "overreaching" employer to avoid the MNAA's requirements using forfeiture agreements—selective enforcement. *Id*. By enforcing forfeiture agreements solely against competing employees, an employer could achieve the desired result of quashing competition while avoiding the requirements of the MNAA. To prevent this, the MNAA's definition of forfeiture by competition agreement includes the phrase "through the manner in which it is enforced." *Id*. As a result, if an employer selectively enforces a forfeiture agreement in a way that results in employees forfeiting benefits only where they have engaged in competition, then it becomes, by definition, a forfeiture by competition agreement that falls squarely within the MNAA's scope. Put simply, to be a true forfeiture agreement exempt from the requirements of the MNAA, the agreement must be enforced against all employees equally, and not just those who go on to compete with the employer.

Miele v. Foundation Medicine, Inc.

With this backdrop, we examine *Miele*. As the Court heard, when Foundation Medicine, Inc. ("FMI") hired Susan Miele in 2017, she signed a non-solicitation agreement. *Miele*, at 172. She agreed that, if she left, she would not solicit, entice, or attempt to persuade employees of FMI to leave FMI for any reason. Three years later, when she left FMI, she signed a separation agreement, which included the non-solicitation agreement. *Id*. The separation agreement, however, went a step further, stating that if Miele violated the non-solicitation agreement, she would forfeit her termination benefits. *Id*. According to FMI, Miele did exactly that and asked three of her former colleagues to join her new employer. *Id*. at 173. As a result, FMI stopped

paying Miele termination benefits. Miele sued and FMI counterclaimed, each citing a breach of the separation agreement by the other. Miele moved for judgment on the pleadings, arguing that the forfeiture for solicitation provision was subject to the MNAA. FMI opposed, arguing that non-solicitation agreements are not subject to the MNAA. The trial court sided with Miele, but the Supreme Judicial Court reversed, holding that a non-solicitation agreement is not a noncompetition agreement, even when it includes a forfeiture provision.

In its decision, the Court was guided by the plain language of the statute. In particular, the Court noted two elements of the MNAA's definition of noncompetition agreements. First, noncompetition agreements do not include non-solicitation agreements. *Id*. at 174. And second, forfeiture for competition agreements are included within, or, as the Court explained it, are "a subset of," noncompetition agreements. *Id.* Since non-solicitation agreements are not included in the definition of noncompetition agreements, the Court held that it necessarily follows that non-solicitation agreements are not included within the definition of forfeiture for competition agreements, even when they contain a forfeiture for solicitation provision. *Id*. at 175. The Court found support in the legislative history, confirming the drafters' intent to include forfeiture for competition agreements within the definition of noncompetition agreements to address the concerns raised in *Cheney* at 147 n.7. *Id*. at 176.

Finally, the Court rejected Miele's invitation to interpret the phrase "competitive activities" within the definition of forfeiture by competition agreement more broadly than the phrase "certain specified activities competitive with [the employer]" in the definition of noncompetition agreement. While Miele argued that "competitive activities" could include solicitation activities even though the phrase "certain specified activities competitive with" did not, the Court found that this interpretation would make the statute internally inconsistent. *Id*. at 176-177.

Conclusion

Miele's holding gives employers and employees clarification and guidance as to which restrictive covenants are, and are not, governed by the MNAA. It clarifies that the use of a forfeiture provision (other than a forfeiture for competition provision) does not create a back door through which restrictive covenants that are otherwise excluded from the MNAA may come within its scope. The holding is important because employers commonly include many of these provisions--including nondisclosure, confidentiality, garden leave, no-rehire, and, of course, non-solicitation provisions--in separation agreements.

However, a word of caution. *Miele* does not stand for the proposition that all forfeiture provisions are lawful. Employers should still tread carefully when considering using forfeiture provisions and ensure doing so does not run afoul of other potentially applicable employment laws, such as the Massachusetts Wage Act.

Victoria Fuller is a Partner and Co-Chair of the Labor and Employment Practice Group. She practices out of White and Williams' Boston office and is admitted in Massachusetts and New Hampshire. Victoria has almost 20 years of experience as a civil litigator, and regularly defends small, mid-size and large employers before state and federal agencies, as well as in state and federal court. She also counsels employers on a variety of employment issues including hiring and termination, accommodations, and wage and hour issues, among others.

Victoria Ranieri is an Associate in the Commercial Litigation Department at White and Williams, based in the firm's Boston office. She is a member of the Labor and Employment, Higher Education, and Insurance Coverage and Bad Faith practice groups. Victoria regularly defends businesses and educational institutions in proceedings before the Massachusetts Commission Against Discrimination and EEOC, as well as in state and federal courts. She also counsels employers on a wide range of workplace issues including development of policies and procedures, employee discipline and termination, and accommodation requests.

Case Focus

This isn't about vaccines! **Landmark SJC Holding Addresses the Reach of Parents' Religious Rights in Care & Protection Proceedings**

By Kylah Clay

If the Department of Children and Families ("DCF") obtains temporary custody of a child, the legislature authorizes DCF to make decisions about that child's housing, education, and medical care of a child in the temporary custody of DCF while the parents await a trial on the merits. G.L. c. 119, § 21 (defining DCF's custodial authority). A parent's objections to DCF's custodial decisions are reviewed pursuant to the highly deferential abuse of discretion standard. *Care & Protection of Walt*, 478 Mass. 212, 230 (2017). But how should trial courts respond when a parent's objection is rooted in their First Amendment right to decide and direct their child's religious upbringing? Until earlier this year, Massachusetts trial courts did not have any clear guidance on the issue from Massachusetts appellate courts.

In a case of first impression, the Supreme Judicial Court ("SJC") held that, when "the Commonwealth has assumed control over certain decision-making concerning the child, at least temporarily, that assumption of control does not extend to the religious upbringing of the child." *Care & Protection of Eve*, 496 Mass. 42, 52 (2025). Rather, because "parents retain residual constitutional rights regarding the religious upbringing of their child," a parent's sincere religious objection must be honored *unless* DCF demonstrates that doing so would substantially hinder it from pursuing an unusually important governmental goal. *Id*. at 53-54. The SJC firmly established the parents' religious rights concerning their children while they await a trial, but questions remain about the scope of these rights.

Background

DCF removed Eve (the child's pseudonym) from her parents' custody immediately after her birth due to concerns of intimate partner violence. During the temporary custody hearing, both parents testified about their religious beliefs as practicing Rastafarians. *Id*. at 45. Specifically, the parents explained that, in their view, they are "not supposed to put anything inside [their] body outside of what nature has already given [them] because it goes against God's plan." *Id*. Given their beliefs, the parents refused vaccinations and avoided Western medicine unless used as a "last resort[.]" *Id*.

After being granted temporary custody of Eve, DCF, along with Eve's court-appointed attorney, asked the trial court for permission to vaccinate her pursuant to the standard immunization schedule recommended by the Center for Disease Control and Prevention ("CDC"). *Id*. at 46. In an affidavit signed by two of Eve's treating physicians, DCF argued that the vaccinations were medically necessary, relying on the CDC's general vaccine recommendations for all children. *Id*. at 46. The parents objected, citing their sincere religious beliefs against vaccination and a state statute granting parents a religious exemption to vaccine requirements on behalf of their school-aged children. *Id*.; G.L. c. 76, § 15. The trial court assumed that the parents' religious beliefs were sincere but nonetheless decided that Eve's best interests required her to be vaccinated over

the parents' beliefs. *Id*. The parents filed an interlocutory appeal which was taken by the SJC for direct appellate review. *Id*. at 46-47.

Notably, at the time of her removal and throughout the interlocutory appeal period, Eve's three older siblings were also in DCF custody, but DCF never attempted to vaccinate Eve's siblings. *Id*. at 58.

Opinion

In its decision reversing and remanding the trial court's order, the SJC held that G.L. c. 119, § 21 does not grant DCF "any authority to direct the child's religious upbringing or affiliation." *Id*. at 48. Consequently, "parents retain *residual* constitutional rights" to direct their child's religious upbringing even when their child is in DCF's temporary custody. *Id*. at 53 (emphasis in original). The SJC reasoned, "[t]here is no question that the rights to freely practice one's religion and to raise children 'according to the dictates of [one's] own conscience' are among the most 'sacred private interests,' long recognized as such by this court and the United States Supreme Court." *Id.* at 49.

With the parents' religious rights clearly articulated, the SJC next decided the applicable standard of review when trial courts are faced with a parent's religious objection to DCF's custodial decisions. Reasoning that the parents' right to the free exercise of religion is protected by the State Constitution, the SJC held that when a decision by DCF substantially burdens or conflicts with a parent's sincerely held religious beliefs the State can only prevail by demonstrating that its custodial decision "pursues an unusually important governmental goal" *and* "an exemption would substantially hinder the fulfillment of the goal." *Id*. at 54 (internal citations/quotations omitted).

Applying this framework, the SJC held that, although vaccinating children generally is an undoubtedly important governmental goal, DCF failed to show how an exemption would harm this goal where (a) the state legislature freely grants religious exemptions to compulsory vaccination of school-aged children, G.L. c. 76, § 15, and (b) DCF itself allowed Eve's three older siblings to remain unvaccinated. *Id*. at 56-58. The Court concluded, "Given the exemptions already allowed by the Commonwealth and the inconsistent application of the vaccination requirement by the department here, we cannot conclude that allowing this child to remain unvaccinated would substantially hinder the department's interests." *Id.* at 57-58. The Court also disregarded DCF's argument that children in foster care are at higher risk of exposure to vaccine-preventable illnesses, stating that such general claims "are insufficient alone to demonstrate that allowing this specific child to remain unvaccinated would unduly hinder [DCF]'s compelling interests." *Id*. at 58 (internal citation/quotations omitted).

Remaining Questions and Broader Implications

Although the Court could have confined its holding to the narrow facts of this case, *Care & Protection of Eve* broadly establishes that "parents have not lost the right to direct their child's religious upbringing when they have temporarily lost custody[.]" *Id*. at 55. This holding opens

the doors to possible complex issues when considering the interplay between DCF's custodial authority and parents' religious rights. For example, can parents demand that DCF place their child with a foster family that shares their religious beliefs or that DCF enroll their child in a specific religious school? Can parents require DCF to ensure a child's participation in a baptism, First Communion, B'nai mitzvah or other type of religious milestone ceremony?

Furthermore, the SJC does not address the further complications if a child does not agree with their parent's religious beliefs. In *Eve*, the newborn child's appointed counsel used substituted judgment to support DCF's position. *Id*. at 53, n.6. However, the SJC found that, "Counsel did not, and could not, directly express the views of the child given the child's age." *Id*. Consequently, it is unclear how trial courts should proceed when a child's expressed religious beliefs are contrary to their parents' beliefs.

Finally, there is the practical question of how these disputes should be brought before the trial courts. Since decisions concerning religious upbringing fall beyond DCF's custodial authority under § 21, *id*. at 48, if a parent tells DCF that they object to a custodial decision that substantially burdens or conflicts with their sincerely held religious beliefs, who bears the responsibility for bringing the matter before the trial court? Must DCF petition the court for permission to act? Or must the parent petition the court to restrain DCF from enacting that decision?

These questions may be answered by future appellate decisions. In the meantime, *Care & Protection of Eve* should be required reading for any practitioner before the trial court in care and protection matters.

Kylah Clay is a solo practitioner in Boston, Massachusetts. She graduated from Suffolk University Law School in 2022 and joined the CPCS Children and Family Law Appeals Panel as a bar advocate shortly after passing the bar exam. Attorney Clay represented the mother on appeal in Care & Protection of Eve.

Case Focus

Tips and Tricks for Presenting Digital Evidence

By Christopher A. Lisy and Kayla M. LaRosa

Digital (electronically-stored) information and evidence is more than an emerging trend – it is now ubiquitous. In fact, lawyers are ethically obligated to stay current on technology developments. Here in Massachusetts, for example, the Supreme Judicial Court has directed that lawyers "should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, and engage in continuing study and education." *See* Mass. Supreme Judicial Court Rule 1.1, cmt. 8.

Those of us who practice in the courtroom need to understand how to present digital evidence persuasively to the fact-finder. And even before that, we need to understand what digital evidence might exist that is relevant to our case. This article suggests some practical guidance on these topics.

First, position your case with digital evidence right from the start

Your plan to present digital evidence shouldn't wait until the eve of trial – it should start at the beginning of the case by identifying what evidence exists and where it can be found.

Digital evidence is now much broader than the "traditional" forms of business email and native documents. For example, messages sent by SMS and through apps like Facebook Messenger and WhatsApp are perhaps the most common form of digital communication and tend to be more casual than email (and sometimes, therefore, more interesting). Corporate collaboration tools like Slack and Microsoft Teams are used by countless employees. Social media accounts often contain years of videos, pictures and conversations. Document metadata reflects who created and modified documents, and when. This evidence can reside in many different mediums, including on computers, mobile phones and in the cloud.

Nearly every case will involve some kind of digital evidence. Sometimes, as in a case involving trade secret misappropriation, it's obvious – but not always. If your case involves a car crash, for example, digital evidence exists on the data recorders that are installed on many modern vehicles and that record speed, location, and driver inputs like gas pedal application and seat belt status. Brainstorming early will pay dividends later.

Next, use discovery to your advantage

You have an entire toolbox to obtain discovery of digital evidence – and to get that evidence in a form that's presentable at a hearing or trial.

Under Rule 26(f) of the Massachusetts Rules of Civil Procedure, the parties must discuss the discovery of digital evidence (including the form of production) if one of the parties makes a written request. This is a powerful tool that can be used early in the case.

Written discovery is also essential. For example, Rule 33 interrogatories can be used to request identification of every email address and social media account for relevant individuals. Rule 34 requests for production (which specifically address requests for electronically stored information) can be used to obtain an inspection of an opposing party's electronic devices or computer systems. That rule also requires the production of electronic and digital evidence in the form in which it is ordinarily maintained or in a reasonably useable form. You should insist on this when it matters; for example, by requesting "native" Microsoft Excel spreadsheets that would be otherwise unusable in printed form.

Then, think about evidentiary hurdles – particularly authentication

Evidentiary hurdles are nothing new, but digital evidence presents fresh complexities. The rise of AI-generated content in particular raises novel and significant authentication questions. To authenticate evidence, the proponent must show that it is what it purports to be. That is easier said than done if the AI content is close to or indistinguishable from the "real" evidence. The prevalence of audio and video "deepfakes" create challenges that didn't exist just a few years ago. Internet-based messages sent outside of traditional corporate email systems present a similar challenge. How can the proponent demonstrate that a Facebook message was actually written by the purported sender?

Rule 36 requests for admission can be very helpful here, as that rule expressly permits requests targeted to the "genuineness of any document described in the request." Massachusetts Rules of Evidence 901 and 902 also provide various means to authenticate evidence, including through the testimony of a witness with knowledge that an item is what it is claims to be (Rule 901(b)(1)) or by distinctive characteristics of the item (Rule 901(b)(4)). You should think about authentication issues early in the case and have a plan to admit the evidence.

Finally, make your evidence trial-ready

You've finally arrived at an evidentiary hearing or at trial – this is the fun part.

First, consider technical issues. How will you actually display your digital evidence to the fact-finder? A good consultant and trial presentation software can add significant value, but even an experienced colleague running PowerPoint can deliver impressive results. Visit your courtroom while another trial is in session and observe the layout and the presentation of digital evidence.

You might discover, for instance, that not everyone can see the screens clearly. You should also inquire with chambers about what technology is available, as some courtrooms are more advanced than others.

Make your exhibits compelling. Use a variety of media to keep things interesting. If you are planning to present digital evidence "live," be sure it actually works. Websites in particular may not display properly; links may be outdated or dead by the time your case gets to trial. Think ahead and plan for this, which may involve archiving evidence earlier in the case.

Be aware that many digital exhibits are data-heavy and dense. Be prepared to navigate the fact-finder to the key parts by using callouts, underlining and highlighting.

As always, be thoughtful about the number of exhibits (the fact-finder may not have your attention span).

Finally, don't forget about the requirements of your court, which may include directions on virtual exhibit stickers, procedures for submitting voluminous digital evidence to the court or to the jury, naming conventions, and requirements for digital exhibit file types.
Digital evidence is a critical part of almost every litigation. With early and proper planning, you can present it for maximum effect.

Christopher A. Lisy is a member at Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C.. Chris is a litigator with more than twenty years of trial experience, particularly in cases involving technology issues.

Kayla M. LaRosa is an associate at Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C.. Kayla focuses her practice on complex commercial litigation, data privacy, and cybersecurity matters.

Practice Tips

Expanding Access to Justice with Online Tools

By Sam Glover

AI-powered online legal tools fill a critical need. According to the Legal Services Corporation's justice gap study, LSC-funded organizations turn away at least half the requests they receive due to limited resources (in Boston, over 60 percent must be turned away). Potential clients who are turned away must try to solve their legal problems on their own, while legal aid organizations face growing need and shrinking resources. (Maybe that's why legal aid organizations are adopting AI solutions at twice the rate of the rest of the profession.)

At the same time, most Americans do not even seek help from a lawyer for their civil legal problems. Most people with a civil legal problem try to solve it on their own. That means they must navigate a legal system that is designed by and for expert users—lawyers—not regular people with everyday legal problems. This puts them at a serious disadvantage.

There are many ways AI technology can help reduce the disadvantages experienced by those who are not represented, including:

- Guiding people through completing and filing court forms and other legal documents
- Streamlining routine processes so legal aid organizations can serve more clients
- Helping self-represented litigants access and understand the law

We're building some of those tools—carefully and responsibly—at Suffolk Law's Legal Innovation and Technology Lab, in collaboration with courts and legal aid organizations across the country. So are other law schools and entrepreneurs in and around Boston and beyond. In this article we will examine several tools that leverage artificial intelligence to increase access to justice:

- The LIT Lab's Court Forms Online guided interviews for court forms
- Lemma's AI-assisted intake workflows for legal aid
- Descrybe's simplified case law summaries

Will AI replace lawyers?

But first, let's briefly address the elephant in the room: will AI-powered tools replace lawyers? Well, maybe someday, but not yet.

Lawyers have been preoccupied with losing their monopoly at least since the invention of the printing press, but there are more lawyers than ever, working more than ever, and there still aren't enough lawyers to close the access-to-justice gap.

AI's "jagged technological frontier" means AI is better than a human at some tasks and worse at others. Similarly, when a human works with AI, together they are better than a human or AI alone at some tasks, but *worse than humans or AI alone* at others. In other words, sometimes AI is better, sometimes a human is better, sometimes they are better together, and sometimes AI makes both worse. According to the authors of the paper that introduced the jagged frontier concept, "It is clear that the best approaches to using AI are not fully understood and need to be deeply examined by scholars and practitioners."

To help with that examination, Dazza Greenwood, an MIT professor, Boston-based entrepreneur, and Suffolk Law graduate, developed Lake Merritt, an open-source tool intended to help lawyers evaluate AI quality. A lawyer first defines the tasks (prompts) and the results they expect for each task in a spreadsheet or structured text file. Then, Lake Merritt gives the tasks to the AI to be tested and collects the results. A second AI "judge" scores the results by comparing them to the lawyer's expected results. Reports contain a detailed analysis with the AI judge's reasoning for evaluating the evaluation. Lake Merritt is free and open-source, but Greenwood is also offering early-access evaluations for a fee.

AI is a powerful and sophisticated tool, but it is still a tool, not a panacea—or a replacement for a lawyer. When used carefully and responsibly, AI can increase the effectiveness of online legal tools, and it offers some new ways to solve old problems. Americans with legal problems are desperately in need of access-to-justice gap fillers, and AI can help meet that need.
Here are three examples that show how.

Online guided interviews

The Suffolk LIT Lab's Court Forms Online website has dozens of online guided interviews to help self-represented litigants complete and file court forms. These guided interviews embed legal knowledge into a rules-based expert system to help users complete and file complex legal forms successfully. The online guided interviews on Court Forms Online are designed to be used from a phone or computer. Some, like the eviction sealing petition launched this past spring, can be e-filed directly with Massachusetts courts.

Many of the guided interviews on Court Forms Online are built by law students in Suffolk Law's Legal Innovation and Technology Clinic, taught by David Colarusso and Quinten Steenhuis (with some help from me). In the LIT Clinic, students collaborate with the Massachusetts Appeals Court and Trial Court, as well as other courts and legal aid organizations. Students build, update, and maintain online guided interviews using open-source software, including Docassemble and the LIT Lab's Assembly Line tools. The LIT Clinic (and similar clinics, courses, and labs at other law schools) trains law students to design and build technology

solutions to legal problems. They build tools, test prototypes, and evaluate how technology intersects with ethics and professional responsibility. This results in lawyers who understand and have experience with the potential and pitfalls of technology—including AI—and have a robust toolbox for solving legal problems.

Court Forms Online is part of the LIT Lab's Document Assembly Line project, a collection of open-source tools for court forms, guided interviews, and e-filing. Through the Document Assembly Line, the LIT Lab supports and provides hosting and e-filing services to a growing community of courts and legal aid organizations across the country that are also building online guided interviews.

Streamlining legal aid intake

Since legal aid organizations receive more than twice the requests they can handle, it requires significant staff time to interview and qualify people who ask for help. To lighten that load, Boston's Lemma builds AI-powered intake workflows for legal aid organizations, including Greater Boston Legal Services, the Virginia Legal Aid Society, Mid-Missouri Legal Services, and the Oregon State Bar's lawyer referral service.

Lemma customizes its intake workflows for each client, but AI components can include:

- **Voice conversations**, where the AI speaks with the potential client, asking questions, listening to answers, and following up
- **Forms** that start the process, then AI-created follow-up questions based on the potential client's entries
- **Text conversations**, or AI chatbots
- **AI-driven follow-up**, in which the AI can automatically generate and send questionnaires to gather missing information or trigger follow-up activities, via email or SMS

Humans are kept in the loop, especially for emergencies, safety issues, and ADA accommodations. The potential client is always informed when engaging with AI, and humans make all final decisions.

By taking on some of the more time-consuming steps of the intake process, AI-assisted workflows free up precious legal aid resources so organizations like Greater Boston Legal Services can serve more clients.

Simplifying case law

Case law is complex, but Descrybe uses AI to simplify it. Descrybe was created by former Suffolk Law communications director, Kara Peterson, and her husband, Richard DiBona, in Greater Boston. It offers free plain-language summaries of U.S. case law in English and Spanish, plus simplified summaries in both languages, calibrated to a 5th-grade reading level. (Here is *Marbury v. Madison*, as one example.)

Descrybe also offers an AI-powered legal research toolkit for a fee. Paid tools include the Cytationator brief checker, which analyzes citations to determine whether they actually support the underlying proposition. Other tools include a brief checker, legal issue explorer, and instant translations.

It's relatively easy to find free case law, but that mostly helps people who are already used to interpreting opinions. Descrybe's AI-generated plain-language summaries and translations make case law easier to understand.

The near future

Those are just three local examples. Academics, practitioners, companies, and courts are all looking for ways to address increasing need (or decreasing legal budgets in the private sector) with AI.

Here are some innovations you can expect to see in the near future:

- AI document analysis to help self-represented litigants understand legal notices and documents and guide them to the resources they may need to respond
- AI drafting assistants that can help self-represented litigants and volunteer lawyers create more persuasive, complete court forms and other documents
- AI-assisted triage for legal aid organizations to help route clients to the resources or referrals they need
- AI filing assistants that can check documents for completeness, formatting, and required attachments before submission
- Judicial workflow assistants to automate routine tasks, summarize filings, or screen for procedural compliance

All of these are already in various stages of formal and informal testing right now by academics, practitioners, companies, and courts.

Online legal tools, used responsibly, are an access-to-justice multiplier

The tools described above represent different but complementary strategies: making court forms and legal documents easier to complete and file, making legal aid organizations more efficient,

and making the law easier to understand. Each addresses a different friction point, where those without legal training and experience are likely to be excluded or overwhelmed.

With any innovation, the challenge is to find its jagged frontier—the tasks where the technology can improve on existing results. That's why when AI is used in online legal tools, it is almost always used for specific, narrow tasks where the AI is proven to be effective.

Since most people with a civil legal problem don't have a lawyer to help them, it's not appropriate to compare the results of an online legal tool with help from a competent lawyer. For an online guided interview, an appropriate comparison might be to assess whether a self-represented litigant is more likely to complete and file a court form successfully (perhaps using a cell phone) with AI assistance than if they have a bare PDF form. For an intake workflow, it might be appropriate to compare the mistakes made with an AI-powered workflow to a human alone.

The overarching goal for access to justice, of course, is to make it more likely that someone with a legal problem will get the help they need, whether that means finding, completing, and filing a court form, securing representation by a legal aid lawyer, or advocating effectively for themselves. Each improvement, from the printing press to standardized court forms to online guided interviews to AI assistants, multiplies the impact and chips away at the access-to-justice gap.

Sam Glover is a Clinical Fellow at Suffolk Law's Legal Innovation and Technology Lab (LIT Lab). Sam is an American Bar Association Legal Rebels Trailblazer, a Fastcase 50 honoree, and writes for the LIT Blog as well as his own.

New Lawyer's Corner

Mentoring – A Career-Long Imperative

By Lisa Goodheart and Alessandra W. Wingerter

For both new and very experienced lawyers, a mentor can help to provide perspective, confidence, and a sense of belonging in the legal profession, as well as open doors and identify opportunities. Lisa Goodheart, a partner at Fitch Law Partners, LLP, and Alessandra ("Alle") Wingerter, an associate at Fitch Law Partners, LLP, share their thoughts about the value of mentoring relationships at every stage of a legal career.

What makes a good mentor?

Alle: A good mentor is nonjudgmental and uncompetitive—someone who genuinely wants to see you grow. The best mentors push you outside of your comfort zone and give you the confidence to take on new challenges. Recently, I attended an event for women judges and mentioned that I was writing an article for the *Boston Bar Journal* on mentorship. (It was a great conversation starter!) One overwhelming takeaway from those discussions was how many judges hadn't originally thought to pursue the bench. In many cases, it took a mentor to say, "You'd make a great judge." That simple encouragement was the spark that changed their career path. It's a reminder that a good mentor doesn't just help you navigate where you are; they help you see what's possible next.

Lisa: That is so true! I've been lucky to have had many mentors over the course of my career, and one lesson that I've learned over and over again is that no one succeeds alone. A good mentor is not just someone who will let you cry on their shoulder, although there is a place for that, from time to time. A good mentor is interested in envisioning a positive future for you. It's a person who has ambitions on your behalf and a confidence in your abilities that may at times exceed your own. It can be so helpful, as well as reassuring, to have an experienced lawyer, professor, or judge whom you admire point out an opportunity that they believe you are qualified to pursue or suggest a direction that will help you grow. Another quality of a good mentor is that they will act as your ambassador, where appropriate, and talk about you in favorable ways to other professionals who may not know you.

What makes a good mentee?

Lisa: A lot of things go into making someone a good mentee. A good mentee has healthy professional ambitions and a positive outlook and understands that honest feedback and constructive criticism are valuable gifts. A good mentee enjoys sharing some aspects of her personal life and is interested in her mentor's life as well. A good mentee will find a way to telegraph that she wants your critical assessments and is not shy about asking for advice. And a

great mentee will make a point of circling back to her mentor to talk about how a particular challenge turned out, to think through what lessons can be learned, and to thank the mentor for any advice he or she may have offered.

Alle: Yes, I think a quick thank you email can go a long way. I do a lot of "coffee chats" with law students or new graduates, and those that send a note of thanks stand out. I think a good mentee also doesn't solely rely on the mentor, but rather, does 85-90% of the work themselves—be it a brief or a job hunt—and uses the mentor's experience or connections for the final touch. It's totally fine to ask questions along the way, but a good mentee takes ownership of the case or his or her career.

How do you find a good mentor?

Alle: Finding a mentor takes some work, but it's not impossible. I've found that mentorship is a natural and ingrained part of the legal profession, and people are generally willing to help. For new lawyers, it's likely that your firm or organization has a formal mentorship program. Even if it doesn't, many firms have a strong culture of informal mentorship and can suggest someone who might be a good fit. Also, just show up. Attend firm or bar association events. When your firm circulates tickets to a community or professional event, take one and go—ideally with colleagues. It's a natural, low-pressure way to connect with other lawyers, and those interactions often open unexpected doors. You might learn that so-and-so is taking a deposition next week and ask to sit in. Almost any senior lawyer would be happy to accommodate that request, but having you observe probably isn't top of mind, which is why asking is important.

Lisa: I have seen strong mentoring relationships emerge through structured programs, but for me, some of the mentoring relationships that have helped me the most have come about quite organically, like friendships do. Don't underestimate the power of letting someone know that you are interested in what they do and would welcome a chance to work with them. If you enjoyed someone's remarks at a conference or a bar association meeting, don't be afraid to greet them and tell them so. See if you can find some common ground that might lead to an opportunity to follow up with them, in a gracious way that allows for either a yes or a no. Soft invitations and communicating an openness to further conversations can get you surprisingly far.

Keep in mind that a mentor doesn't have to look like you or be like you in order to be helpful. Getting the perspective of someone who's had very different experiences than you've had can be especially valuable. It's also helpful to have a group of mentors who have had a range of experiences, have different networks, and can offer a variety of perspectives. Also, be aware that mentors can be found in the unlikeliest of places. I first met a person who eventually became one of my most deeply influential mentors when we were cast in the roles of opposing counsel and found ourselves tangling quite regularly over discovery disputes.

When's the optimal stage in your career to have a mentor?

Alle: Law school teaches you how to think like a lawyer, but a good mentor teaches you how to *be* one. Early on in your career, a mentor can help you navigate the transition from theory to practice and provide insights that really can't be found in the classroom, like how to handle client relationships and navigate firm norms. As your professional network grows, those you consider mentors may grow and morph as well. I've found it invaluable to seek advice from lawyers who are just a few steps ahead of me to get a sense of what I should be thinking about.

Lisa: You *always* need mentors! And hopefully you will have quite a few of them throughout your professional life. I've never had a week of my career when I wasn't well aware that I could benefit from some good mentoring. And if ever I can't think of someone to call for help, I think of someone I admire and try to imagine how they would handle whatever predicament I find myself in.

Alle is right that the focus of a mentoring relationship depends on what is happening in the lives and careers of both the mentee and the mentor at any given time. The problems and challenges may evolve over time, but the human impulse toward mutual support is always there. Practicing law well is hard, so having relationships with people who remind you that you are not alone and that they are there to support you is essential if you hope to stay strong and succeed over the long haul.

What's the secret to making a mentoring relationship work?

Alle: For the mentoring relationship to work well, much depends on personality fit. It's ultimately a relationship of professional and personal friendship. In my opinion, finding a personal connection is just as important, if not more so, than finding a match with a senior or junior lawyer who practices in the same substantive area of law that you are focused on. I think that's something new lawyers don't always think about when looking for a job—sure, you may want to work in IP or practice criminal law, but when you're in the office until midnight filing a brief, are you laughing and smiling together (perhaps at your collective distress, but laughing nonetheless)?

Mentorship is, at its core, about connection and confidence. It's someone taking the time to say, "You can do this, and I'll help you get there." For new lawyers, that guidance can make all the difference. For seasoned lawyers, it's one of the most meaningful ways to give back to the profession and to pay it forward. Whether it's a partner handing an associate the lead on a case, a judge encouraging a lawyer to apply for the bench, or a friend offering advice over coffee, mentorship reminds us that no one builds a legal career alone.

Lisa: I agree. I would say that the secret to making a mentoring relationship work well is the same as the secret to making any kind of relationship work well. You have to enjoy each other's company, make a deliberate commitment to the relationship, and share the things you can cheer, rage, cry, and laugh about together. At different points along the way, the practice of law offers everyone some opportunities to do that. Those opportunities are precious. Spot them and take them.

Lisa C. Goodheart is a partner at Fitch Law Partners LLP, where her civil litigation practice is focused on environmental, real estate, governmental, and business disputes. She has benefited from many wonderful mentors over the years.

Alessandra W. Wingerter is an associate at Fitch Law Partners LLP, where she represents private and public clients in environmental, real estate, land use, and governmental disputes. She is always on the lookout for a good mentor/mentee relationship.