the potential detrimental effects of prolonged isolation (Reiter K: The most restrictive alternative: a litigation history of solitary confinement in U.S. prisons, 1960–2006. *Stud L Pol & Soc* 57:69–123, 2012).

In the case of *In re Medley*, 134 U.S. 160 (1890), the U.S. Supreme Court found a Colorado statute specifying solitary confinement before execution to be unconstitutional under an *ex post facto* prohibition. The Court discussed the effects of solitary confinement on prisoners, "A considerable number of the prisoners fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others still, committed suicide" (*Medley*, p 168). After *Medley*, the generalized use of solitary confinement fell out of favor.

Over the past 30 years, with the growth of correctional populations and the development of supermax prisons, the use of solitary confinement has again increased. Research has illuminated the untoward effects of solitary confinement, particularly on mentally ill inmates, leading professional organizations (National Commission on Correctional Health Care, the American Psychiatric Association, and others) to create guidelines curbing such practices (Metzner J, Fellner J: Solitary confinement and mental illness in U.S. prisons: a challenge for medical ethics. *J Am Acad Psychiatry Law* 38;104–08, 2010). Litigation challenging the constitutionality of solitary confinement in prisons often has resulted in significant reforms.

In Madrid v. Gomez, 889 F. Supp. 1146 (N.D. Cal. 1995), a class action lawsuit brought by prisoners of Pelican Bay in part contesting unconstitutional conditions of solitary confinement, resulted in a ban on placing mentally ill inmates in isolation at the prison. The Palakovics' lawsuit helped to initiate similar changes in Pennsylvania.

Since Mr. Palakovic's death, SCI Cresson has closed. The Pennsylvania DOC now houses inmates with severe mental illness in specialized treatment units and has banned the use of solitary confinement for this population. Inmates with mental illness are allowed more time out of their cells, and new training programs have been developed to make prison staff more proficient in managing people with mental illness (Ray P: Court reinstates lawsuit over inmate's suicide. *Altoona Mirror*. April 19, 2017. Available at: http://www.altoonamirror.com/news/local-news/2017/04/court-reinstates-lawsuit-over-inmates-suicide/. Accessed December 24, 2017). The *Palakovic* case represents another example of how litigation is sparking solitary confinement reform in prisons nationwide.

Disclosures of financial or other potential conflicts of interest: None.

Judicial Telepresence in Involuntary Commitment Hearings

Alana Pearson, MD
Fellow in Forensic Psychiatry

J. Richard Ciccone, MD
Professor of Psychiatry
Director, Psychiatry and Law Program

Department of Psychiatry
University of Rochester Medical Center
Rochester, New York

Patients Have a Right to the Physical Presence of Judicial Officer at Involuntary Commitment Hearings

DOI:10.29158/JAAPL.3753L3-18

In *Doe v. State*, 217 So.3d 1020 (Fla. 2017), the Supreme Court of Florida quashed the decision of the Second District Court of Appeal that permitted judicial telepresence at involuntary commitment hearings. The court held that individuals subject to commitment hearings have a right to have a judicial officer physically present at the hearings.

Facts of the Case

This case arose as a result of an email from Florida's Twentieth Judicial Circuit that read, "Per Judge Swett he will be doing Baker Acts beginning this Friday via Polycom. Thank you" (*Doe*, p 1023). The email announced a new policy. Baker Act hearings would be conducted remotely from the courthouse via videoconferencing, whereas the patients, witnesses, and attorneys would continue to be physically present at the psychiatric facility.

Proceedings used to involuntarily commit individuals with mental illness under Florida law are called Baker Act hearings. The Baker Act requires an evidentiary hearing to be conducted in a physical setting not likely to be injurious to the patient's condition (Fla. Stat. § 394.467 (2016)).

Either a judge or magistrate may preside as a judicial officer over the hearing, which typically takes place at the psychiatric hospital.

Fifteen individuals petitioned the Second District Court of Appeals for a writ of *mandamus* requiring judicial officers to properly fulfill their official duties by being physically present for the involuntary hearing at the receiving facilities where the patients, as required by law, were being held.

The district court, with some misgivings, found that Judge Swett's decision to preside over Baker Act hearing via video teleconferencing was within Judge Swett's discretion. The district court went on to opine that there was no absolute legal obligation found in law that required presiding judicial officers to be physically present in the hearing room with patients, witness, and attorneys when conducting involuntary hospitalization hearings.

The district court's misgivings included concern that the lack of a judicial officer's physical presence at a hearing was inappropriate and ill advised for three reasons: (1) potential difficulties with equipment and the inability of counsel to approach the bench for private conversations; (2) disregard of the opinion of a subcommittee (appointed by the court in 1997), which recommended against conducting Baker hearings via videoconference; and (3) disregard for the outcome of an attempt by the court to use a similar procedure for juvenile hearings. A dissenting justice said that the personal attendance at a hearing is a judge or magistrate's ministerial (i.e., official) duty and the historical norm.

In an *amicus* brief, filed by the chief judge of the 15th Circuit on behalf of the state, the justification for the judge not being physically present at the hearing was judicial efficiency and decreasing costs. Disability Rights of Florida, Inc., filed an *amicus* brief on behalf of the petitioners stating that the use of judicial telepresence was against a long-standing judicial policy and would be harmful for many patients with mental illness.

Ruling and Reasoning

The Supreme Court of Florida held that patients had the right to have a judicial officer present at hearings held to determine whether patients could be involuntarily committed to a mental health facility or hospital pursuant to the Baker Act. The court pointed out that the long-standing tradition of physical presence of judicial officers at trials and hearings is a fundamental right. In addition, the court indicated that the language of the Baker Act reflects the legislature's wish that these vulnerable individuals require heightened consideration regarding the conduct of their hearings. The Supreme Court of Florida quashed the decision of the Second District and remanded proceedings to the Second District for new instructions, consistent with the opinion that patients have a right to the physical presence of a judicial officer for an involuntary commitment hearing.

Discussion

The use of teleconferencing in legal and medical arenas is an evolving practice. In psychiatry, telemedicine is being used to provide psychiatric services to patients, especially in remote or underserved areas. Some studies have found that psychiatric patients reported similar satisfaction rates for evaluations conducted in person or remotely by interactive video (Antonacci DJ, Bloch RM, Sayeed SA, *et al*: Empirical evidence on the use and effectiveness of telepsychiatry via videoconferencing: implications for forensic and correctional psychiatry. *Behav Sci & L* 26:253–69, 2008). The Veterans Health Administration has the largest integrated health care system in the United States, and videoconferencing technology helps to improve veterans' access to psychiatric care. Correctional facilities are also using telemedicine to increase inmates' access to services in a secure environment while minimizing costs. The desire to make better use of resources, with reduced costs and improved convenience, has led to the use of teleconferencing with forensic evaluations, legal preparations, depositions, and court testimony (Kalifa N, Saleem Y, Stankard P: The use of telepsychiatry within forensic practice: a literature review use of videolink. *J Forensic Psychiatry Psychol* 19:1–12, 2008).

Court systems across the nation (e.g., California, Texas and New Jersey), use telecommunications to assist with hearings that involve judges, attorneys, inmates, interpreters, expert witnesses, and other parties. More efficient processing times for hearings may reduce time spent in jail by inmates and assist in lowering jail populations. In addition to saving time and money, teleconferencing allows out-of-state family members to participate more easily in family court hearings. Teleconferencing may also increase safety of the public and potentially unstable patients by decreasing the need for transportation to courts (Judicial Council of California Court Technology Advisory Committee: Video Remote Technology in California Courts, De-

cember 2014. Available at: http://www.courts.ca.gov/documents/02-_ctac-20141205-materials-VRTsurveyandreport.pdf. Accessed December 7, 2017).

The Supreme Court of Florida ruled that the telepresence of the judicial officer in Baker Act hearings can occur only if agreed upon by all involved parties. Attorney Robert A. Young, who appeared on behalf of the petitioners, stated that there was concern for the unstable psychiatric patient who was unable to appreciate the video of the judge as being a part of the proceedings or who did not accept the hearings as being real because of the physical absence of a judge. Attorney Young reported that, after the Supreme Court of Florida ruling in *Doe*, Baker hearings have not used judicial officer telepresence, despite the option being available with the consent of all parties (Young RA: General Counsel, Tenth Judicial Circuit. Personal communication, December 8, 2017).

Society has witnessed a dramatic increase in the use of technology over the past decade. Individuals, especially younger individuals, are becoming more comfortable with the integration of innovative technology into almost every area of life. However, we must be mindful of the impact of new technologies and maintain our humanity and respect for the individual. New technologies have both beneficial and pernicious effects. To sort out the answer to questions about the effects of the use of telemedicine, telepsychiatry, and telelaw, including judicial telepresence, requires more research. This research can inform answers to the legal and ethics-related dilemmas that we must confront, including the appropriate use of telecommunication at involuntary hospitalization hearings.

Disclosures of financial or other potential conflicts of interest: None.

Lack of Written Consent for the Administration of Antipsychotics in Psychiatric Treatment Facilities

Neha Gupta, MD
Fellow in Forensic Psychiatry

Kenneth J. Weiss, MD
Robert L. Sadoff Clinical Professor of Forensic Psychiatry

Department of Psychiatry
Perelman School of Medicine
University of Pennsylvania
Philadelphia, PA

The Seventh Circuit Reversed Summary Dismissal for a Psychiatrist Who Prescribed Antipsychotic Medication Over an Inmate's Objection, Allowing the Inmate to Pursue Claims That His Rights Were Violated Under Theories of Constitutional Due Process and Illinois Law

DOI:10.29158/JAAPL.3753L4-18

In *Johnson v. Tinwalla* 855 F.3d 747 (7th Cir. 2017), the Seventh Circuit Court of Appeals considered whether there was a violation of the Fourteenth Amendment and Illinois law when Dr. Tinwalla, a psychiatrist, prescribed antipsychotic medication to Terry Johnson, an inmate, without consent and in the absence of imminent dangerousness. The district court dismissed the case on summary judgment in favor of Dr. Tinwalla. Mr. Johnson appealed. The Seventh Circuit reversed the judgment, stating that the district court erred in its dismissal and remanded the case for further proceedings.

Facts of the Case

Mr. Johnson was an inmate at the Rushville Treatment and Detention Facility, a state treatment facility in Illinois for sexually violent offenders. His psychiatrist at Rushville was Dr. Abdi Tinwalla. On June 23, 2015, during a follow-up appointment with Dr. Tinwalla, Mr. Johnson complained of increased irritability, hopelessness, and passive thoughts of assaulting a staff member. His psychiatric history was significant for erratic and aggressive behavior. Given the psychiatric history and current complaints, Dr. Tinwalla thought it was best to start Mr. Johnson on oral risperidone, an antipsychotic medication. At the appointment, Mr. Johnson signed a consent form for risperidone, but quickly withdrew consent by crossing out his signature on the form. On the same form, Dr. Tinwalla documented that Mr. Johnson had "refused consent after signing it" (*Tinwalla*, p 749). Dr. Tinwalla, however, proceeded to prescribe the medication, testifying that he had written the prescription so that Mr. Johnson could take it if he felt the need for it. Mr. Johnson alleged that he was never informed that risperidone had been ordered and to be dispensed by the nursing staff at the treatment facility.

The nurses at Rushville normally dispense medications in cups marked only with the patient's name. In Mr. Johnson's case, the nurse did not inform him of the addition of risperidone to his blood pressure, cholesterol, and gastrointestinal medications. Mr.