Videoconferencing of Involuntary Commitment Hearings in the COVID Era

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Involuntary commitment hearings have been conducted utilizing videoconferencing technology for several years. There is limited information available in the published psychiatric literature pertaining to the use of this technology for commitment proceedings. The University of North Carolina Hospitals adopted a remote videoconferencing (tele-hearing) format for its civil commitment proceedings in response to the COVID-19 pandemic, and this provided us with the opportunity to investigate the use of such an arrangement. In this article, we review the use of videoconferencing for commitment hearings. We also review select case law related to the utilization of this technology for commitment hearings, which reveals that the courts have not been in full agreement about the legality of a virtual commitment tele-hearing format. Given that the general use of virtual platforms has expanded during the COVID-19 pandemic and many individuals and organizations are gaining confidence in operating this technology, more institutions may decide to shift to a virtual commitment scheme or make a commitment tele-hearing format permanent after the pandemic.

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The effects of the COVID-19 pandemic on the United States have been substantial and pervasive, and many sectors of American society have shifted to a virtual format for the purposes of attempting to slow the spread of the novel coronavirus while at the same time remaining operational. Indeed, the American medical profession has witnessed an unprecedented change in how it meets the health care needs of the public while abiding by the recommendation to maintain appropriate social distancing. The field of psychiatry has certainly not been immune to this upheaval, as many clinicians have transitioned from a direct (in-person) service delivery model to one that relies on synchronous two-way videoconferencing technology. The subspecialty of forensic psychiatry has also witnessed a dramatic change in how its practitioners are conducting court-sanctioned evaluations.[1] Many jurisdictions in the United States were conducting involuntary commitment hearings via videoconference prior to the onset of the COVID-19 pandemic. The University of North Carolina (UNC) Hospitals, operating inpatient psychiatric units in Chapel Hill and Raleigh, North Carolina, in partnership with the Orange County District Court and the Wake County District Court, shifted to a videoconferencing (hereafter, tele-hearing) model for all of its civil commitment proceedings in response to the pandemic. This change was permitted after North Carolina Supreme Court Chief Justice Cheri Beasley and the North Carolina Administrative Office of the Courts issued emergency directives postponing many court proceedings and authorizing a temporary preapproval for all civil commitment hearings to be conducted remotely with the use of videoconferencing technology.[2] UNC Hospitals' rapid adoption of a virtual format for its commitment proceedings during the COVID-19 pandemic presented us with the opportunity to review the published literature on the use of videoconferencing

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for involuntary commitment, and to review case law pertaining to the utilization of this technology for commitment proceedings. We provide an overview of the use of videoconferencing for involuntary commitment hearings as well as other forensic psychiatric applications, in addition to a review and discussion of notable legal cases that have involved challenges to a commitment tele-hearing format.

Background

While the use of videoconferencing technology for involuntary commitment hearings at UNC Hospitals has been a new phenomenon, commitment hearings have been conducted in this manner in several states as well as at the federal level (with the Federal Bureau of Prisons) for more than 20 years. Various factors contributed to a virtual format being adopted for commitment proceedings in venues around the country. Many jurisdictions required individuals facing commitment, who are referred to as respondents, to be transported from their treatment facility to a courthouse located off hospital premises; doing so increased the risk of respondent elopement and raised the prospect of respondents becoming acutely agitated or aggressive in environments (e.g., courthouses, transport vehicles) poorly equipped to handle this behavior in a safe and therapeutic manner. Hospital staff also needed to accompany respondents while off-site for the hearing, resulting in the treatment facility being without its full complement of behavioral health technicians for up to several hours. Furthermore, psychiatrists would be taken away from their clinical duties while testifying at the courthouse. In response to these drawbacks, several hospitals arranged to have the commitment hearings held on-site at the treatment facility. This scenario presented its own set of challenges, however, as the judges, courtroom administrative staff, and district attorneys involved in the commitment hearings were then burdened with having to leave the courthouse to travel to the hospital. To best accommodate the interests of all involved parties (i.e., respondents, hospital staff and care providers, and courtroom personnel) while upholding the integrity and dignity of the involuntary commitment process, some treatment facilities made the decision to utilize technology to conduct the commitment proceedings remotely (i.e., with the participants located at different places).[3]

In its Resource Document for Telepsychiatry via Videoconferencing published in 1998, the American Psychiatric Association (APA) formally endorsed the utilization of telepsychiatry for conducting commitment hearings.[4] When the APA updated its telepsychiatry recommendations in its 2014 Resource Document on Telepsychiatry and Related Technologies in Clinical Psychiatry, the topic of videoconferencing for commitment proceedings was not addressed.[5] In its 2016 Position Statement on the Location of Civil Commitment Hearings, however, the APA stated that videoconferencing is an acceptable and cost-effective alternative to in-person hearings that protects the privacy and due process rights of the patient.[6] Videoconferencing technology has also been utilized in the assessment of individuals who are facing involuntary commitment. While the amount of published scholarship on the use of telepsychiatry for commitment evaluations was limited until recently,[7] this practice has been in place since the 1990s[8] and is currently utilized in the state of North Carolina. The benefit of conducting commitment assessments via telepsychiatry is that it allows respondents who are located in settings that lack the presence of on-site qualified examiners (such as small, rural emergency departments) to be evaluated by practitioners with expertise in involuntary commitment, thereby eliminating the need for respondents to be transported long distances for a commitment evaluation. Another benefit of this model is that it reduces the number of unnecessary psychiatric hospitalizations through expert telepsychiatry consultation.[9]

Videoconferencing technology is also used for forensic psychiatric applications outside of involuntary commitment. Since the 1980s, telepsychiatry has been utilized for the evaluation and treatment of incarcerated persons. The use of virtual mental health care within corrections has expanded significantly, and correctional facilities in several states provide services to incarcerated individuals via telepsychiatry to improve access to mental health services and decrease the costs of care.[10] This remote care model is appealing to practitioners who have reservations about physically entering jails and prisons to provide services to incarcerated patients, as it eliminates the potential for correctional patient-on-provider violence. Telepsychiatry via videoconferencing is also used to conduct competency to stand trial evaluations. These evaluations represent the most common

type of forensic mental health assessment performed within the U.S. legal system, and investigation of the use of videoconferencing technology in conducting these forensic assessments has demonstrated positive results.[11] The benefits of this modality include lower operating costs, increased opportunities for defense attorneys or experts to observe the assessment, elimination of the risk of violence directed toward forensic evaluators, and general satisfaction with the videoconferencing medium.[12] A 2007 randomized controlled study of the use of telepsychiatry to evaluate competency to stand trial demonstrated that telepsychiatry is a reliable method of assessing competency to stand trial among pretrial forensic psychiatric patients.[13] Furthermore, an article published in 2020 describing the implementation and results of a program utilizing videoconferencing to conduct forensic competency evaluations in the state of Washington showed that this technology can improve the efficiency of competency to stand trial evaluations.[14] As considerable state psychiatric hospital bed space capacity is devoted to clients involved with the criminal justice system, the improved efficiency associated with conducting these court-ordered evaluations virtually via telepsychiatry serves the public interest by freeing up beds for nonforensic clients in the community who are in need of inpatient treatment.

Notable Legal Cases

There have been legal challenges to the use of commitment tele-hearings in various jurisdictions. We performed a LexisNexis search of involuntary commitment cases that involved videoconferencing, as well as a search of the Shepard's report for one prominent federal case, *United States v. Baker*.[15] From our review of the search results, we selected six noteworthy commitment tele-hearing cases to review. While the list of cases included is not exhaustive, the selected cases are representative of the reasons why respondents have appealed the outcomes of commitment hearings conducted via videoconferencing, and they cover a range of different commitment scenarios (e.g., state level, federal level, traditional civil commitment, commitment within corrections, commitment of a sexually violent predator, and commitment following adjudication of not guilty by reason of insanity). As demonstrated in these cases, the courts have not been aligned with each other regarding the legality of a commitment tele-hearing arrangement. For example, the U.S. Fourth Circuit and the Virginia Supreme Court offered support for a virtual commitment hearing format, whereas other courts have placed stipulations on the use of videoconferencing for commitment proceedings (e.g., the Florida Supreme Court held that respondents have a veto on conducting the commitment hearing virtually,[15] and Oregon's Court of Appeals ruled that trial courts must provide clear justification for holding a commitment hearing virtually in cases where the respondent objects to such a format[16]). The U.S. Supreme Court has not provided any guidance on the use of videoconferencing for commitment hearings, and there is no clear juridical consensus on this practice. These cases are summarized in Table 1.

United States v. Baker (4th Cir. 1995)

In 1993, a hearing was scheduled in the U.S. District Court for the Eastern District of North Carolina pursuant to 18 USC Statute 4245 to determine whether Leroy Baker, an inmate incarcerated at the federal correctional institution located in Butner, North Carolina, would be committed to a suitable facility for inpatient psychiatric treatment. The commitment hearing was conducted via videoconference; Mr. Baker, his appointed counsel, and the government's witness (a psychologist) were physically located in a conference room at the federal prison in Butner, while the federal district judge, the government's attorney, the court reporter, the deputy clerk of court, and a federal public defender were in a federal courtroom in Raleigh, North Carolina. At the tele-hearing, an involuntary commitment order was issued for Mr. Baker.

Mr. Baker filed an appeal, alleging that the procedure that was followed violated his constitutional due process rights and his statutory rights under 18 USC § 4247(d). The U.S. Court of Appeals for the Fourth Circuit rejected Mr. Baker's claims, holding that the commitment tele-hearing that was conducted did not violate his rights.[17] In its ruling, the U.S. Fourth Circuit disagreed with Mr. Baker's contention that videoconferencing both undermined his ability to make a favorable impression upon the court and impinged upon his right to effective assistance of counsel. The ruling in *United States v. Baker* represents the first federal court decision on the matter of utilizing teleconferencing technology for involuntary commitment proceedings.[17]

Table 1 Brief Summary of Selected Commitment Tele-Court Cases

Court Case	State	Holding
United States v. Baker, 45 F.3d 837 (4th Cir. 1995)[17]	North Carolina (federal case)	The commitment tele-hearing did not violate the rights of a federal prisoner facing involuntary commitment.
In re the Mental Health of LK (Mont. 2008)[18]	Montana	The use of microphone muting in involuntary civil commitment was permitted due to disruptive behavior.
In re G.N., 230 Or. App. 249 (Or. Ct. App. 2009)[16]	Oregon	Appellate court ruled that lower court abused discretion in denying respondent's request to be physically present without providing a justification.
Shellman v. Commonwealth of Virginia (Va. 2012)[19]	Virginia	Teleconferencing did not undermine constitutional or statutory rights in the civil commitment of a sexually violent predator.
Doe v. State of Florida (Fla. 2017)[15]	Florida	Civil commitment hearings can only be held virtually if the respondent approves.
People v. Thomas (Cal. Ct. App. 2019)[20]	California	Failure to object preemptively to videoconferencing forfeits the claim that its use violated rights.

In re Mental Health of L.K. (Mont. 2008)

In 2007, Montana's Ninth Judicial District Court ordered L.K.'s involuntary civil commitment following a hearing that utilized two-way videoconferencing technology. During the commitment proceeding, the respondent (L.K.) was located at the Montana State Hospital in Warm Springs, Montana, while the district court judge, the county attorney, L.K.'s counsel, and several witnesses (including a physician who had examined L.K.) were in the courtroom in Choteau, Montana. L.K.'s behavior was disruptive, as she frequently interrupted the judge and both attorneys. The district court judge informed L.K. on several occasions that she would be afforded an opportunity to address the court; however, L.K. continued to disrupt the hearing, and the judge ultimately instructed staff to deactivate L.K.'s microphone at various times so that the witnesses could offer their testimony and be cross-examined. L.K. appealed the commitment order on several grounds, one of which was her assertion that her constitutional rights were violated by having her microphone muted during the hearing. While L. K. did not contend that the use of two-way videoconferencing for a civil commitment proceeding was unconstitutional *per se*, she did argue that muting her microphone prevented her from being heard in a meaningful manner and from being effectively present during the hearing. The Supreme Court of Montana affirmed the lower court's decision, ruling that while L.K. was entitled to communicate with the district court and her counsel via videoconference, she was not entitled to disrupt the hearing continuously. Thus, the Supreme Court of Montana held that the district court's use of microphone muting during the commitment hearing was appropriate, given the circumstances.[18]

In re G.N. (Or. Ct. App. 2009)

The Umatilla County (Oregon) Circuit Court held a civil commitment hearing for a respondent (G.N.), to determine if he was mentally ill and a danger to himself or others. Prior to the hearing, the court issued an order requiring the hearing to be conducted via videoconferencing. G.N.'s counsel filed a motion requesting that he be transported to the courthouse so that he could attend the hearing in person. The circuit court denied counsel's motion to permit G.N. to be physically present at the hearing. During the commitment proceeding, G.N., his counsel, a witness for the state, and a certified court interpreter appeared via videoconference, while the judge, the district attorney, and the remaining witnesses were physically present in the courtroom. The court entered an order for commitment at the conclusion of the hearing. G.N. appealed the commitment order, asserting that the circuit court erred in conducting the hearing without allowing him to be physically present at the courthouse. G.N. argued that he was unable to see the judge clearly during the proceeding. He also claimed that being forced to participate in the hearing remotely deprived him and his counsel of the opportunity to assess the credibility of the witnesses. The Court of Appeals of Oregon reversed the lower court's commitment order, ruling that the circuit court abused its discretion in conducting the hearing in the manner in which it did by

not articulating any reason for denying G.N.'s request to be physically present at the courthouse.[16]

Shellman v. Commonwealth of Virginia (Va. 2012)

In 2010, the Circuit Court of Fairfax County, Virginia determined that Reginald Shellman met the criteria for being a sexually violent predator, and that there was no suitable alternative to secure inpatient treatment for Mr. Shellman. An order was issued committing Mr. Shellman to the custody of the Virginia Department of Behavioral Health and Development Services. An annual commitment hearing to review Mr. Shellman's status was scheduled for 2011, and it was ordered that this commitment status hearing would be conducted using two-way audiovisual communication, in accordance with Virginia Code 37.2-910(A). During the hearing, the trial judge, counsel representing the Commonwealth of Virginia, Mr. Shellman's counsel, and Mr. Shellman's mother were present in the circuit courtroom; Mr. Shellman and the state's witness (a psychologist) were located at the Virginia Center for Behavioral Rehabilitation located in Burkesville. The circuit court found that Mr. Shellman remained a sexually violent predator and ordered his continued commitment to a secure inpatient treatment facility. This ruling was appealed to the Supreme Court of Virginia, with Mr. Shellman claiming that the hearing arrangements violated his due process and statutory rights by hampering his ability to communicate privately with his attorney, thereby interfering with his right to effective assistance of counsel, his right to be heard, and his right to cross-examine and present evidence. The Supreme Court of Virginia, relying heavily on *United States v. Baker*,[17] held that the teleconferencing format utilized by the circuit court did not undermine Mr. Shellman's constitutional or statutory rights.[19]

Doe v. State of Florida (Fla. 2017)

An e-mail from the Florida Twentieth Judicial Circuit announced that a county court judge within the circuit would begin conducting involuntary civil commitment hearings (referred to as Baker Act hearings in Florida) remotely via videoconferencing technology. This decision represented a change in procedure, as previous Florida commitment hearings had been held in the physical presence of the judicial officer. Fifteen individuals petitioned Florida's Second District Court of Appeals, requesting that the judicial officer be physically present at the commitment hearing. The Second District Court of Appeals ruled that the county court judge had the prerogative to conduct commitment proceedings through teleconferencing. The matter was appealed to the Supreme Court of Florida. In its 2017 ruling, the Supreme Court of Florida disagreed with the Second District Court of Appeals, stating that respondents facing civil commitment in Florida possess the right to have a judicial officer physically present at the commitment hearing.[15] The Supreme Court of Florida went on to note that a judicial officer's physical presence at commitment hearings is a constituent component of the ministerial duty to preside over an evidentiary hearing. The Supreme Court of Florida permitted judicial officers to conduct civil commitment proceedings remotely only in cases where the respondents granted their approval for this format.[15]

People v. Thomas (Cal. Ct. App. 2019)

Frank Thomas was committed to the California Department of State Hospitals in 1983 after being found not guilty by reason of insanity for a felony. His commitment was extended on multiple occasions. For his commitment hearing held on March 14, 2017, Mr. Thomas appeared via two-way closed-circuit television from Napa State Hospital; his commitment was extended at the conclusion of the hearing. During the hearing, neither Mr. Thomas nor his counsel raised an objection to the use of videoconferencing technology. Mr. Thomas appealed the commitment extension on several grounds, including his assertion that his participation by way of closed-circuit television violated his constitutional and statutory rights to be physically present at the hearing. Mr. Thomas's commitment extension was appealed to the Court of Appeal of the State of California Sixth Appellate District, and the Court of Appeal affirmed the lower court's commitment order.[20] In its ruling the Court of Appeal indicated that Mr. Thomas forfeited his claim that the use of videoconferencing violated his rights by failing to raise an objection to this hearing format during the commitment proceeding. Furthermore, the Court of Appeal rejected Mr. Thomas's assertion that the use of two-way closed-circuit television interfered with his ability to communicate with his counsel, noting that the transcript of the commitment hearing revealed that he was able to speak directly and privately with his counsel during the proceeding.[20]

Implications of Commitment Tele-Hearings

While there is literature evaluating the delivery of psychiatric services with the use of videoconferencing technology,[21] information about how this technology might affect involuntary commitment proceedings is lacking. The most detailed resource on the utilization of videoconferencing for commitment hearings that we have identified is a report published by the National Center for State Courts in 2012, which was prepared for King County, Washington.[22] Much of the discussion about commitment tele-hearings has focused on this format's impact on public and patient safety, convenience, and cost and time savings.[3,23] While these are certainly important considerations, we want to highlight another factor that deserves attention: the psychiatrist–patient therapeutic alliance.

The therapeutic alliance is vital to treating a patient, as it is associated with enhanced treatment plan adherence and improved outcomes.[24] Studies have revealed an association between perceived coercion, involuntary hospitalization, and a poor therapeutic alliance.[25–28] Preserving procedural justice is one important way to mitigate coercion and improve the therapeutic relationship.[29,30] The psychiatrist who is charged with the responsibility of treating an involuntarily admitted patient is placed in the awkward position of appearing to the patient to be testifying against the patient in a commitment hearing. During the hearing, the psychiatrist explains to the court that the patient is mentally ill, dangerous, and not appropriate for release to the community; the psychiatrist is often situated just a few feet away from the patient when offering this face-to-face testimony. This interaction can lead to complicated transference and countertransference in the treatment relationship.[31] Previous work has cautioned against the treating psychiatrist offering courtroom testimony, warning that "the treating psychiatrist's appearance in court can have extremely destructive effects on the treatment relationship" (Ref. 32, p 1527).

It is not possible to eliminate the psychiatrist's need to testify in commitment proceedings while still upholding the respondent's due process protections. Any change in the involuntary commitment format that may alter a patient's perception of the psychiatrist's role in involuntary hospitalization deserves further investigation, as modifications that have a positive effect on how the patient perceives the psychiatrist–patient relationship would be beneficial from a therapeutic standpoint. A survey of federal prisoners' perceptions of the use of telepsychiatry revealed that inmates with thought disorders had positive perceptions of a virtual format.[33] The authors of a review of the use of videoconferencing with patients with psychosis noted that individuals may prefer the use of videoconferencing over face-to-face interactions in that the perceived distance of the interaction provokes less anxiety and reduces overstimulation.[34] We searched both PubMed and Google Scholar and could not identify any published research investigating whether a virtual commitment hearing format (in which the psychiatrist offers testimony remotely) alters patients' attitudes about their psychiatrist or their treatment. This question warrants further study, as it is important that the courts and the psychiatrists who participate in commitment hearings gain a solid understanding of the impact that a virtual commitment hearing format has on patients' perceptions of the psychiatrist–patient alliance and their treatment experiences.

Moving Forward

As we described above, UNC Hospitals transitioned to a virtual scheme for its civil commitment hearings in response to COVID-19. UNC Hospitals is not unique in this respect, as Sorrentino and colleagues recently noted that the majority of commitment proceedings are now being conducted remotely as a consequence of the pandemic.[35] To date, the judicial rulings on the use of videoconferencing for commitment proceedings have involved challenges to the use of this technology prior to the pandemic, and we are unaware of any rulings on the utilization of commitment tele-hearings that have been issued during the COVID-19 era. It is possible that expanded use of virtual commitment hearings will result in more legal challenges to this format, and it is worth considering how the current case law may affect future judicial decisions on this subject. The commitment tele-hearing cases we reviewed dealt with scenarios where the respondent was located offsite from where the commitment hearing was physically taking place, or where the judge was based remotely from where the other parties to the commitment proceeding were located. These tele-court arrangements are different from what now occurs at UNC Hospitals and other facilities, where all the parties involved in the hearing are located at different sites to accommodate social distancing, and there is an absence of a physical courtroom space for the

commitment proceeding. In *Doe v. State*, the Florida Supreme Court noted that respondents possess "a right to have a judicial officer physically present at their Baker Act commitment hearing, subject only to their consent to the contrary" (Ref. 15, p 1032). This ruling, however, was made in 2017, before the country was in the midst of a global pandemic. Questions remain regarding whether respondents facing commitment have this right under any set of circumstances, or whether situations exist where the collective interest (e.g., avoiding spread of a dangerous infection) outweighs a respondent's right to determine the format of the commitment hearing. Going forward, courts may need to offer guidance on how to balance the rights of respondents with the interests of other parties in considering the format of commitment hearings.

Furthermore, in *Doe v. State*, the Florida Supreme Court noted that respondents "are entitled to heightened consideration regarding the manner in which the hearing will be conducted [because individuals with mental illness] are among the state's most vulnerable citizens" (Ref. 15, p 1031). This acknowledgment speaks to the importance of gaining an understanding of the impact that a commitment tele-hearing format has on individuals who are facing involuntary commitment, and whether any potential harms are attached to such an arrangement.

In its ruling in *In re G.N.*, the Oregon Court of Appeals held that the trial court abused its discretion in conducting the hearing via videoconferencing by failing to articulate an acceptable reason for denying the respondent's request to have the hearing conducted in person. The court noted that "the location or locations [for the hearing] must be convenient not only to the court, but also to the allegedly mentally ill person" and indicated that respondent's counsel "made it clear that his and his client's location at the hospital, while the judge and opposing counsel remained at the courthouse, was not convenient" (Ref. 16, p 254). The Oregon Court of Appeals felt that counsel expressed valid concerns about conducting the hearing remotely and that it was incumbent on the trial court to provide an explanation for why a tele-hearing format was necessary. The Oregon Court of Appeals did not elaborate on what constitutes an acceptable reason to conduct a commitment hearing remotely over a respondent's objection. The court did acknowledge, however, that reasons could exist that would justify doing so. The decision of the Oregon Court of Appeals was made several years before the onset of the COVID-19 pandemic, and thus the need for social distancing was not a problem to be considered at the time. In the future, it may be necessary for the judicial system to specify what types of scenarios would allow trial courts to conduct commitment hearings virtually over a respondent's objection without its being considered an abuse of discretion.

There has been a dramatic increase in the general use of videoconferencing technology during the COVID-19 pandemic. As individuals become more comfortable and competent in working with this technology, it would not be surprising if institutions either transition to a virtual format for their involuntary commitment proceedings or decide to make a tele-hearing format permanent. It is our hope that this article will spur authoritative organizations such as the American Academy of Psychiatry and the Law and the American Bar Association to develop practice guidelines and resources to educate psychiatrists and attorneys about the appropriate use of videoconferencing technology for this specific application. It is also our hope that this review will encourage investigation into what impact, if any, a commitment tele-hearing format has on respondents' perceptions of their treatment and the psychiatrist–patient therapeutic alliance, as this is an area that deserves attention.

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