

ARTICLE

Virtual court hearings and therapeutic jurisprudence: challenges and opportunities

Sarah Murray¹ , Meredith Rossner², Lorana Bartels^{2,3}, Martha McCurdy⁴ and Eleni Kannis¹

¹University of Western Australia School of Law, Australia, ²Research School of Social Sciences, Australian National University, Australia, ³Adjunct Professor, Canberra Law School, University of Canberra; School of Law, University of Tasmania, Australia and ⁴University of St Gallen, Switzerland

Corresponding author: Sarah Murray; Email: sarah.murray@uwa.edu.au

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Abstract

The COVID-19 pandemic brought about changes to almost every aspect of life. Courts were no exception, with the pandemic dramatically increasing the use of virtual court hearings. This paper explores virtual hearings and their impact on therapeutic approaches to judging, which prioritise connection and engagement between judicial officers and participants. While particularly drawing on the experience in Australia and the United Kingdom, the paper draws on broader international research to identify the potential challenges of seeking to conduct therapeutic judging online, but also areas where the virtual environment might improve participants' therapeutic experience. Further research on this topic is likely to be fruitful, as virtual court hearings become a more entrenched part of court practice. We therefore canvass areas for future research, to enhance the therapeutic potential of the judicial role in a virtual environment.

Keywords: therapeutic jurisprudence; criminology; virtual court hearings; courts; therapeutic judging

1. Introduction

Virtual court hearings are an increasing global phenomenon, and the COVID-19 pandemic only accelerated their use. The impact of moving hearings online has particular relevance to therapeutic jurisprudence styles of judging, which emphasise respectful communication, empathy and connection between the bench and participants. Because these approaches depend on the quality of interaction, the shift from in-person to virtual hearings raises important questions about how presence and engagement are experienced when mediated by technology. This paper brings together research on the transition from in-person to virtual hearings to examine what is lost, what is gained and how judicial practices are adapting to online formats. It particularly draws on the Australian and United Kingdom experience while positioning this research within the international literature more broadly. In so doing, it seeks to draw out the degree to which virtual hearings may affect the therapeutic practice of judicial officers and the challenges and opportunities this may present for participants and courts alike. It concludes with possibilities for future research in this area, in light of the enduring and expanding use of this approach to court hearings.

The structure of this paper is as follows. Part 2 explains the concepts underpinning therapeutic jurisprudence and therapeutic judging. Part 3 sets out the evolution of virtual court hearings,

which first emerged in the 1990s and then accelerated rapidly as a result of the social distancing necessitated by COVID-19. Part 4 examines the central themes of connection and presence and considers the extent to which virtual formats can replicate or transform the interpersonal dimensions of justice. Part 5 turns to accessibility, highlighting how virtual hearings can reduce barriers but also re-shape courtroom practices in unexpected ways. Part 6 reviews emerging evidence from therapeutic courts, drawing together findings from surveys and interview-based research. Part 7 identifies key areas for future investigation, including the experiences of vulnerable participants and the flexibility of different court models, before providing our concluding comments in Part 8.

2. What is therapeutic jurisprudence and therapeutic judging?

Therapeutic jurisprudence is often considered a ‘lens or heuristic’ (Wexler 1995, p. 221) for approaching a legal problem, rather than a stand-alone theory. Developed in the 1980s by Professors Bruce Winick and David Wexler, in the context of mental health law, it adapts and applies interdisciplinary insights from psychology, criminology, addiction studies, mental health, sociolinguistics and other fields to legal practice. It is reform-focused and recognises that the law can be a ‘therapeutic agent’ (Wexler 1995, p. 220; see also King 2009, p. 24). Therapeutic jurisprudence acknowledges that a legal interaction can positively or negatively affect individual well-being and posits that legal responses should be designed to amplify the positive impacts or at least avoid negative consequences, where this can be achieved compatibly with other requirements, including legal or procedural limits (King 2008; Winick 2003). This means that sometimes ‘countervailing normative considerations’ may require more therapeutic aspects of court hearings to give way (Stobbs 2017, p. 12) or, at times, be ‘subordinated’ (King 2008, p. 1113). It recognises that this is not always a simple exercise, but identifies that judicial officers, lawyers and legislators impact on individual well-being, and indeed that of society more generally, and that legal actors should be mindful of that reality (Wexler 1995, 2008; Yamada 2021). Wexler subsequently (2015) articulated the important role of the ‘therapeutic design of law’ (e.g. legislation). However, most research in this context has focused on what Wexler came to describe as the ‘therapeutic application of the law’, especially the role of judicial officers, and this is also the focus of this paper.

Michael King is an Australian academic and judicial officer. As he explained:

‘the judicial officer is not a therapist; the role, does, however, have some significant similarities to that of a coach. . . . Better judging and legal practice requires knowledge of this effect and its significance for parties/clients and other participants in the process and for the goals of the justice system.’ (2008, p. 1118)

Elaborating on this, King noted, in the *Solution-focused Judging Bench Book*, that more solution-focused approaches have the capacity to enhance ‘rapport’ between the bench and participant through a collaborative approach that allows the judicial officer to connect at a much deeper level to ‘what is happening in their lives’ and what aspirations the court might be able to work with them to achieve (2009, p. 157).

As discussed further below, the range of contexts to which therapeutic jurisprudence can be applied is broad. At its core, however, its focus is on lawyering and judging with connection, empathy, compassion, empowerment and a genuine ear (Hopkins and Bartels 2019; King 2009; Winick 2003). It is based on the powerful idea that a legal interaction which embodies these values can be of benefit to the individual, while also addressing the legal conditions at hand.

Although therapeutic jurisprudence can be applied in a number of circumstances, one of the dominant ways is in the context of a ‘problem-solving’, ‘problem-oriented’ or ‘solution-focused’

court. According to the National Institute of Justice (2020), such courts ‘differ from traditional courts, in that they focus on one type of offense or type of person committing the crime’ and typically involve a judge or decision-maker who works alongside a range of disciplinary experts with a defendant to address substance use (or similar issues) and reduce offending through therapeutic case management.

Since evolving in the context of mental health, the use of such courts has burgeoned across a broad range of legal fields and jurisdictions (Wexler 1990; Wexler and Winick 1991, 1996), including drug, domestic violence, gambling, re-entry and veterans’ treatment courts. The best-known are drug courts, which generally involve intensive judicial monitoring, therapeutic case management and supervision, treatment and rehabilitation services and graduated sanctions and incentives for successful completion.

While it will depend on the particular jurisdiction, in the criminal solution-focused court context, therapeutic jurisprudence might also see a judicial officer defer a defendant’s sentencing after a guilty verdict, to allow them to obtain drug and alcohol counselling, with intermittent court appearances during this period. Therapeutic judging practice would involve the judicial officer working closely with the defendant, through motivational interviewing (Winick 2003), and with the court team, as the defendant is self-empowered to begin to address potential causes of their offending (King 2003). As Winick has explained, the goal is for the judicial officer to work with the participant, not to solve problems on their behalf, but instead to develop a relationship that is conducive to a ‘collaborative effort of solving the problem’ (2003, pp. 1067–8).

In a civil context, a judge practising therapeutic jurisprudence might strive to ensure a litigant has had a chance to state their case and that the particular experience that led them to court is acknowledged by the judge. By conducting the matter in this way, the litigant may have a greater chance of walking away from the hearing with a sense of closure and belief that the process was fair, regardless of whether they were successful before the court. Judging in a ‘therapeutic key’ (Winick and Wexler 2003) is of course also closely aligned with procedural justice (Tyler 2007; for the relationship between therapeutic jurisprudence and procedural justice, see Wexler 2016). This can include practices that seek to heighten procedural justice and the sense that a process is fair, by respecting the dignity of court participants, making sure they have an opportunity to tell their story, be heard and validated by the court and fully understand and participate in the court process (Burke and Leben 2007; King 2008; Winick 2003).

Generally speaking, therapeutic jurisprudence also focuses more on the process than the outcome (Wexler 1993). It is concerned with issues such as how the judicial officer interacts with court actors (both those affected by the decision, such as the defendant and victim, as well as legal practitioners and court staff), how the hearing is conducted, the degree to which the judicial officer draws on interdisciplinary insights and the mechanisms by which the actors participate in the process. Accordingly, any change to that process, including whether hearings are conducted in-person or virtually, is of much significance. Writing in 2003, King observed:

‘Judicial officers can help to make a difference for people appearing ... by expressing concern and compassion for the situation of their fellow human beings and by using processes conducive to a therapeutic effect. This has the potential ... to promote public confidence in the court as an institution that listens, acts and responds to the needs of those it serves. It allows a judicial officer to take a more comprehensive and creative approach to determining cases.’ (2003, p. 175)

Our interest in this paper is the extent to which virtual courts assist or impede this approach. In order to situate this discussion, the next section explores how virtual hearings are changing the nature of court proceedings and whether this trend is likely to continue.

3. The shift to virtual hearings

The COVID-19 pandemic led to a rapid expansion of virtual hearings (Townend and Magrath 2021).¹ Social distancing measures and lockdowns in 2020 forced courts and tribunals across the globe to close as physical institutions, compelling the move to virtual hearings (Nir and Musial 2022; Rossner *et al.* 2021; Webster *et al.* 2023). To enable legal procedures to be carried out during the pandemic, over 160 countries utilised remote technology (Remote Courts Worldwide, n.d. cited in Muir *et al.* 2023, p. 1).

However, the shift to virtual hearings did not begin with the pandemic. Legal frameworks for video hearings had been established well before COVID-19 across numerous jurisdictions. Council of Europe countries, including Albania, Austria, Belgium, Croatia, Czech Republic, Finland, France, Germany, Ireland, Italy, Lithuania, Norway, Poland, Romania, Russia, Spain, Sweden, Switzerland, Ukraine and the United Kingdom, had legal regulation for video hearings in place before the pandemic, though they were not used extensively (Sanders 2021). Similar frameworks existed in Australia, Singapore and the United States of America. In fact, some models dated back to the 1990s and were initially introduced to modernise civil procedure or make criminal trials safer (Sanders 2021; Wallace 2008).

Despite this, the pandemic response varied significantly across jurisdictions, with some countries being better prepared than others. Some countries, including Australia, Brazil, England and Wales, Finland and Indonesia, were already in the stages of digitalising their courtrooms (Nir and Musial 2022) and were therefore more technologically prepared to respond to COVID-19. In contrast, countries with less developed technological infrastructure faced greater challenges in implementing remote proceedings effectively.

In Australia, the pandemic necessitated the remote conduct of the majority of civil and appeal cases, including family, administrative and coronial law, through telephone, video conferencing and audio-visual links. Criminal cases were also conducted remotely, with judicial officers and lawyers participating from home or chambers, while jury trials were postponed or held as judge-alone trials.

In England and Wales, the court system was already undergoing a reform programme in 2020, with the closure of many local courts and the introduction of digital and remote services. The pandemic led to the suspension of all jury trials and the widespread use of telephone and video hearings. Existing audio visual link ('AVL') technology was utilised. While this approach was implemented across the United Kingdom, only a few 'priority' courts remained open for essential hearings (Ministry of Justice and Her Majesty's Courts & Tribunal Service 2020). As restrictions eased in mid-2020, socially distanced measures were introduced to allow for the resumption of jury trials (Rossner *et al.* 2021). In the United States of America, courts faced similar challenges, with a large-scale move across the country to limited in-person, hybrid or virtual formats (Baldwin *et al.* 2020).

The evidence suggests that many courts will not return to pre-COVID-19 modes of operation (Webster *et al.* 2023). Research conducted across multiple jurisdictions indicates that virtual hearings are likely to remain a permanent feature of court practice, with some countries reporting that video hearings are viewed as an important tool for the judiciary, both during and after the pandemic (Sanders 2021).

A critical difference that emerged from pandemic responses was that multiple parties participated in hearings remotely, distinct from traditional video-enabled hearings, where typically only one participant – often a witness or defendant – participated virtually, while others remained co-located in a physical courtroom (Rossner 2021). This represented a fundamental shift from hybrid to fully virtual proceedings.

¹Even prior to the pandemic, video technology had increasingly been a feature of courtrooms, though for select case types (Rossner *et al.* 2021). Expert witnesses, vulnerable witnesses and people in custody have been able to participate remotely since the 1990s (Wallace 2008).

4. Connection and presence – the nature of virtual judging

In this section, we discuss select empirical findings that focus on the extent to which virtual court hearings can help cultivate the human dimension, largely focusing on how connection is formed through the establishment of ‘co-presence’, the perception of mutual attentiveness and engagement. However, there are two important points to make about this discussion. The first is that the overwhelming majority of research in this area was conducted before the pandemic and examined video-enabled or hybrid courts; as discussed above, this meant that most participants were co-located in a courtroom and one person (such as a witness) joined remotely. This is significantly different from the virtual courts that largely developed during the pandemic, where all parties appear remotely. We must therefore be careful not to generalise from research on the first type of hearing to the second. In addition, while there has been a proliferation of articles and reflections on how COVID-19 and the shift to virtual justice have significantly changed the way justice operates, a significant amount of this work is largely ‘speculative’, with very little fine-grained empirical work (de Vocht 2022). Where possible, we focus below on empirical research that involves direct observation of virtual justice proceedings or survey or interview participants reflecting directly on their experience with virtual justice.² Our emphasis is on the scholarly literature of virtual court *processes*, not outcomes.³ What is clear is that, while some research suggests that the benefits of therapeutic jurisprudence practice are harder to achieve through these hearings, there is also evidence that such hearings can in some respects be more conducive to therapeutic engagement.

In Part 2, we suggested that a therapeutic jurisprudence approach is one marked by respect and care. Implicit in this characterisation is an assumption that parties are able to ‘connect’, which we define as the capacity for judicial officers and participants to establish rapport, trust and mutual understanding, through verbal and non-verbal cues. This reflects the ‘*human dimension*’ of justice practices: the sense that participants are treated with dignity, empathy and respect, and their experiences are genuinely heard and understood (King 2008; Winick 2003; Winick and Wexler 2003). Virtual hearings challenge this by altering the sensory and interactional cues through which connection is traditionally built. Yet they may also create opportunities for new forms of engagement, as we discuss below. Rossner and Tait (2023) have suggested that one way to conceive of this human dimension is by understanding the extent to which parties feel a sense of co-presence during a courtroom interaction. Campos-Castillo and Hitlin (2013) define co-presence as ‘the perception of mutual entrainment between actors, where entrainment is the mutual synchronisation of attention, emotion, and behaviour’ (p. 391). Importantly, they conceived of co-presence as something that is both subjective and continuous, meaning it may be experienced differently by different parties in the same interaction, and the experience can be felt along the continuum. It is not just the material or technological dimensions of an encounter, but actually how people interact that helps establish co-presence. Co-presence thus blends technological affordances with interactional practices, shaping whether participants feel genuinely engaged in

²A methodological challenge in this field is that participants are often asked to compare their experiences of virtual and in-person court. Such assessments are inevitably mediated by recall, professional ideologies and normative expectations about what ‘real court’ should look like. People draw on memory that may be selective, on strong beliefs about legitimacy and authority and on constructed comparisons between formats they have not experienced under identical conditions. In practice, this means that evaluations of one format are always filtered through perceptions of the other. Rather than yielding a pure assessment of either experience, these comparisons reflect broader narratives of legitimacy, authority and accessibility. For this reason, systematic observation offers a valuable complement, since it documents what judges, staff and clients actually *do* in hearings, rather than relying only on retrospective accounts.

³It is challenging to assess the causal effect of mode of hearing on judicial outcomes. A study by the New South Wales Bureau of Crime Statistics examined all bail hearings over a two-year period (prior to COVID-19), applying a range of statistical techniques. It concluded that there was no disadvantage as a result of appearing remotely, compared to appearing in-person, in terms of bail determinations (Kim 2021).

legal proceedings (Campos-Castillo 2012). Both the technological environment and interactional work of participants combine to create a sense of connected presence (Licoppe 2004).

Furthermore, we suggest there is a link between presence and procedural justice. Procedural justice research shows that perceptions of voice, respect, neutrality and trustworthy motives shape whether participants view legal processes as fair and legitimate (Tyler 2007). Presence underpins each of these dimensions: it signals attentiveness, allows participants to feel heard, conveys impartiality and humanises judicial authority (Factor *et al.* 2023; Rossner 2021). When hearings move online, reduced eye contact, altered body language and fewer informal interactions risk eroding these perceptions, unless judges deliberately foster co-presence, through explicit acknowledgement, structured turn-taking and visible engagement (Campos-Castillo and Hitlin 2013; Licoppe 2004).

4.1 Barriers to connection

Court scholars highlight multiple barriers to building connection online. Visual and auditory delays disrupt conversational flow; reduced eye contact and camera positioning limit perceptions of attentiveness; and fragmented turn-taking creates confusion about when to speak (Clark 2021; Jurva 2021; McIntyre *et al.* 2020; Rempel *et al.* 2021; Rossner and McCurdy 2018, 2020; Tomlinson *et al.* 2020; UK Magistrates' Association 2022; Wallace *et al.* 2019).

Non-verbal communication is particularly affected. Denault *et al.* (2025) show that judges worry about diminished access to facial expressions, gestures and demeanour cues, all of which shape witness credibility and empathy. One magistrate in the United Kingdom commented that '[t]he inability to access important aspects of non-verbal communication results in an extraordinary failure of best practice which is ultimately not in the interests of justice' (UK Magistrates' Association 2022, p. 18). For this reason, the UK Magistrates' Association recommended that remote hearings should be utilised for more 'administrative matters', where 'body language and interpersonal communication are less vital' (2022, p. 44). Public concerns echo this: some fear that remote proceedings 'dehumanise' participants and erode the gravitas of in-person hearings (Lemire-Garlic and Dunbar 2025). Yet such barriers can also occur in physical hearings, for example when judges or litigants avert their gaze to consult documents (Rossner and McCurdy 2018, 2020).

There is some evidence that virtual hearings disrupt the interactional cues that underpin participants' sense of being heard, respected and treated fairly. Factor *et al.* (2023), in systematic observations of 370 detention hearings, found that hybrid hearings (where all parties were co-located in the courtroom, but the defendant appeared remotely) significantly reduced three central dimensions of procedural justice – *voice, respect and neutrality* – compared to in-person proceedings. Importantly, they emphasised that these reductions were not attributable to any single technological feature, but to the cumulative effect of multiple small interactional disruptions: delays in audio transmission; altered eye contact due to camera positioning; reduced capacity to read non-verbal cues; and less fluid turn-taking. These small losses, when experienced together, undermined participants' perceptions of fairness, legitimacy and engagement.

4.2 Building connection and co-presence: judicial techniques

While the remote aspect of virtual hearings may initially hinder the development of trust and rapport between participants and the bench, there is some evidence that judicial practices can actively restore, and sometimes even deepen, the sense of connection online. In Rossner and McCurdy's (2018, 2020) evaluation of virtual hearings in the United Kingdom, judges adopted a more proactive role to overcome the technological and interactional limitations of this format. They began hearings with clear introductions and orientation, ensuring participants understood the process from the outset. They paused regularly to check whether litigants, especially self-

represented ones, could see, hear and follow proceedings. They repeated back statements for clarity; explicitly named participants to guide turn-taking; and slowed the pace of questioning to reduce confusion.

Rossner (2021) argued that such techniques create co-presence that might otherwise be impoverished in conventional, face-to-face hearings, where judges rarely employ such practices. Similarly, Rossner and Tait (2023) noted that virtual hearings have prompted judges to verbalise empathy and attentiveness more deliberately, thereby compensating for the loss of non-verbal cues. Licoppe and Morel (2014) observed, long before the pandemic, that mediated interactions require participants to ‘work’ to sustain a sense of being together; this is a process Licoppe (2004) described as producing ‘connected presence’.

From the perspective of therapeutic jurisprudence and procedural justice, these adaptations resonate with the principles of respect, voice and participant dignity. Strategies such as slowing proceedings, checking in and reflecting back participants’ words to ensure engagement and comprehension are well-established tools in therapeutic judging (see e.g. King 2009; Waterworth 2024). In virtual settings, these techniques become even more essential: they help participants feel heard, despite physical distance, thus addressing procedural justice concerns about voice and neutrality (Factor *et al.* 2023; Tyler 2007).

Further innovations have emerged. For example, the UK Magistrates’ Association (2022) recommends having a case-worker or support person physically present with the litigant during remote hearings to assist with both technological and emotional barriers. Breaking matters into smaller, more digestible components can similarly reduce cognitive and emotional overload. Combined, these adjustments illustrate that presence is not merely a product of technology but an *interactional achievement* (Schegloff 1982) – one that judges can actively cultivate through deliberate court-craft (Judicial College of Victoria n.d.; Yamada 2021).

5. Opportunities for accessibility

While much research has focused on the barriers of virtual hearings and ways to overcome them, the empirical evidence increasingly highlights how the constraints of technology have prompted innovative adaptations in courtroom practice. These adaptations address concerns about formality, alienation, audibility, comprehension and physical access. These innovations can be understood as addressing different dimensions of accessibility, making legal processes more approachable, comprehensible and inclusive for participants.

5.1 Formality and gravity

One concern raised in both scholarship and practice is that virtual hearings may *diminish the solemnity* traditionally associated with in-person courts. Lemire-Garlic and Dunbar’s (2025) study on public perceptions found that survey respondents expressed concerns that online hearings might be less formal or depersonalised, raising questions about whether remote courts can adequately convey the seriousness of proceedings. This echoes earlier critiques suggesting that physical courtroom rituals – such as rising for the judge or the symbolic use of space – communicate respect, authority and impartiality (Mulcahy 2008; Rossner 2021).

However, several studies note that virtual courts have developed new forms of procedural gravitas. Judges in Rossner and McCurdy’s (2018, 2020) evaluation of virtual hearings in the United Kingdom used explicit verbal acknowledgements, structured openings and clear explanations to replace the implicit authority once conveyed through architecture and ritual. Feedback from self-represented litigants in this study suggested that they found the virtual hearing convenient, comfortable and *appropriately* formal (Rossner and McCurdy 2018, 2020). Furthermore, Rossner and Tait (2023) have suggested that requiring judges to verbalise empathy

and respect online may enhance the perception of fairness and dignity compared to physical hearings, where such practices are often implicit or absent.

There is a paradox apparent here, as reducing formality may reduce gravitas in some sense. But for lay participants, it may lessen the alienating pressures of the courtroom, a theme we turn to next.

5.2 Alienation and intimidation

One evident benefit of virtual hearings is that they may reduce the alienating or daunting aspects of traditional courtroom appearances. As Carlen (1976) and Rock (1993) observed, many defendants and witnesses have historically experienced the physical courtroom as confusing, excluding and intimidating. Entering an imposing courtroom, being confronted with arcane rituals and facing rows of officials can compound feelings of disempowerment and alienation.

Virtual formats offer a potential counterbalance. For participants able to attend from their own home, the need to commute to court and face its daunting environment is removed (UK Magistrates' Association 2022). This may be especially beneficial for people with disabilities, those struggling financially, parents needing to arrange childcare and/or those living in remote areas (Bartels *et al.* 2024). Such adaptations can also make participants feel more comfortable in their interactions with judicial officers, fostering conditions more conducive to therapeutic relationships.

Judges themselves have recognised this possibility. As one judicial officer interviewed by Wallace *et al.* before COVID-19 reflected:

'[I]t's scary to be in court, you know, you go along and there's this old [person] sitting up there and they're wearing a wig ... If everybody's Skyping, nobody's going to be afraid of courts because I'll just be a face ... It might free up people to express themselves and not feel intimidated by the experience which is, which is good.' (2019, p. 56)

This perspective is echoed by participants. In her study of video-enabled hearings from prison, McKay (2018, p. 65) quoted one prisoner who preferred appearing remotely:

'[I] feel a lot more comfortable in a video room than on the stand ... because you're totally focused on that camera, on your solicitor, the judge, the magistrate and everything else ... but in the court you've got the whole room right looking at you ... so video link, it cuts that out.'

These findings suggest that virtual hearings can lessen the alienating environment of court by reducing the performative pressures of the courtroom setting. The online format may make participants more able to engage meaningfully with judges and other court actors without diminishing the seriousness of legal proceedings. We recognise, however, that an appropriate balance is required between accessibility and the symbolic weight of proceedings.

5.3 Audibility and comprehension

Remote formats highlight challenges and opportunities around audibility and comprehension, particularly for self-represented litigants or participants with limited legal knowledge. Technological issues – including poor sound quality, delays or overlapping voices – can undermine procedural justice by impeding participants' ability to understand and be understood.

Concerns about audibility and comprehension in virtual hearings have been especially pronounced in the context of sentencing. As one judicial officer in Wallace *et al.*'s study observed:

‘It’s a real concern in my view to sentence over a video because you’ve obviously just got someone on the other end who’s going to be nodding and appear to be compliant and understanding ... But it’s very difficult to ensure that the person has understood what’s going on and you haven’t got the person there to at least feel some vibe.’ (2019, p. 57)

This concern reflects a broader anxiety that virtual formats may erode judges’ ability to gauge whether defendants fully comprehend the seriousness and consequences of sentencing decisions (Poulin 2004).

Yet, as Wallace *et al.* (2019) pointed out, it cannot be assumed that physical presence in a courtroom guarantees understanding either. A long-standing body of scholarship shows that traditional courts frequently confuse, exclude, degrade and alienate defendants and witnesses (Brissette 2018; Carlen 1976; Rock 1993). For example, defendants may nod politely in physical hearings while failing to grasp the legal language, procedural rituals or implications for their daily lives. As such, comprehension difficulties are not exclusive to virtual hearings and no single format can be assumed to be universally superior without considering case- and participant-specific factors.

Indeed, some evidence suggests that virtual delivery may, in certain respects, improve audibility and comprehension. Some of the authors of this paper have observed instances where online delivery has been significantly more audible than face-to-face matters, often within the same sitting period (for example, when certain defendants appear by AVL from prison, while others are present in court). Research by Bild *et al.* (2021) confirms that audio quality directly affects perceptions of witness credibility and participant confidence; poor sound may make witnesses seem hesitant or unreliable, while clearer audio can enhance perceptions of neutrality and fairness.

Moreover, virtual hearings can incorporate real-time transcription or captioning, offering participants a supplementary channel for following proceedings. While automated captions are often imperfect and literacy barriers remain significant among court users (Wise *et al.* 2018), providing multiple modalities of communication may particularly assist people with hearing impairments or cognitive difficulties (Feldman *et al.* 2023).

These findings suggest that audibility and comprehension depend less on whether hearings are in-person or virtual than on the communication practices and technological supports employed. Pausing for clarification, using plain language, providing captions and explicitly checking for understanding all align with both the procedural justice principles of voice and respect and therapeutic jurisprudence commitments to participant dignity and engagement. Virtual formats may therefore expand, rather than contract, opportunities for comprehension, if courts design hearings with these practices in mind.

5.4 Physical accessibility

Perhaps the most widely cited benefit of virtual hearings is increased physical accessibility. Lemire-Garlic and Dunbar (2025) found that participants from rural areas, those with mobility impairments and individuals with childcare responsibilities valued remote hearings for reducing travel time, costs and logistical burdens. This was also a consistent finding in Rossner and McCurdy’s (2020) research. A surprising benefit identified by Kunkel and Bryant (2022, p. 4) in relation to the pandemic experience of virtual hearings in the United States of America was that virtual attendance may have a positive effect on the ‘failure to appear’ rate. This may suggest that failure to appear in court could be due to practical issues (e.g. access to transport, availability of childcare) rather than a flagrant disregard for the court’s processes.

However, accessibility gains may be unevenly distributed. The digital divide – encompassing limited internet access, lack of private space and low digital literacy – remains a significant barrier for disadvantaged groups (Factor *et al.* 2023). As Denault *et al.* (2025) noted, without targeted

support, such as training, provision of equipment or hybrid participation options, virtual courts risk reinforcing existing inequalities, even as they remove other barriers.

Travelling to court from prison can be a stressful and exhausting experience (Legg and Song 2021; UK Magistrates' Association 2022). The ability to stay in prison and attend court remotely can avoid the need for this to occur and can therefore ensure that the defendant is more physically and psychologically ready to engage with the judicial officer (Tait *et al.* 2017). We are aware of people being transported lengthy distances from prison to attend court, which may mean that they miss the opportunity to eat before they leave (see also Mulcahy and Rowden 2019).

Nevertheless, McKay's (2018) study of remote hearings from custody highlights the countervailing risks. Defendants reported being left waiting in AVL suites for hours, sometimes without explanation, in cramped and poorly ventilated rooms. One detainee described the experience as 'horrible being stuck in a stuffy little room . . . you're stressing out enough about court as it is. You have to ask the officer can you go to the toilet, all little things like that, it really adds up' (McKay 2018, p. 155). McKay argued that such conditions not only produce stress but also heighten feelings of exclusion and lack of control, creating further 'digital vulnerability' (McKay and Macintosh 2024).

6. Evidence from virtual therapeutic courts

The scholarship reviewed up to this point does not draw directly on the experiences of professionals and participants in a virtual therapeutic court and there is a dearth of specific literature in this context. However, two large national surveys – one a qualitative interview study and one focused on virtual treatment courts – give complementary insights into the experiences of clients, staff and practitioners as they moved online during the pandemic.

Two companion papers report findings from a national survey of United States virtual treatment courts, conducted during COVID-19. Ray *et al.* (2022) presented the views of 1,356 clients, while O'Neil *et al.* (2024) reported on data from 358 staff members collected for the same project. The survey methodology, while capturing important participant perspectives, relied on retrospective comparisons during crisis conditions and convenience sampling, which may affect the generalisability of findings to post-pandemic virtual court implementation. Nonetheless, a striking contrast emerges. Clients generally described virtual hearings as more comfortable and less intimidating than in-person court and many valued the convenience of participating from home. As one participant recalled:

'I appreciate all the help. I don't know how I would have attended all the classes, court appearances, and urinalysis due to gas and living in my car when I lost my apartment if we did not go virtual.' (cited in Kunkel and Bryant 2022, p. 4)

Despite this, clients were less likely to feel that judges were familiar with their cases or that treatment staff were strongly connected to them. Staff, in contrast, expressed strong support for retaining virtual hearings and especially virtual team meetings, which they found more efficient, but were more likely than clients to emphasise barriers. They worried that participants lacked stable internet, private space or technological literacy, and that the relational aspects of therapeutic practice were harder to sustain online. This divergence suggests that staff may perceive more barriers than clients themselves report.

Rowen (2024) complements these survey findings with qualitative interviews from eighty-four practitioners across forty-one Massachusetts treatment courts. Her study highlights the tensions between loss and adaptation. Some professionals felt that virtual hearings were less personal, while others described unexpected gains: graduations were easier for family members to attend and participants were more comfortable speaking or reading from home. In one case, a court invited a

comedian in recovery to join a graduation held on Zoom, which was seen as an important act of ‘community building’. At the same time, Rowen (2024) noted that team dynamics shifted in ways that were not always positive. While online meetings improved scheduling, they diminished the informal ‘hallway conversations’ that are often crucial for establishing trust and collaboration among staff.

Jalain and Stacer (2024) provided an additional perspective from veterans’ treatment courts, with a survey of seventy-seven practitioners across twenty-five states. Their findings echo those of the broader surveys: attendance often improved when hearings were online, especially for veterans balancing work and family responsibilities. Yet staff cautioned that maintaining rapport in a virtual environment requires intentional strategies, such as structured check-ins by judges and clear opportunities for feedback. Without these, hearings risked feeling impersonal or disconnected.

Together, these four studies reveal a common pattern. Virtual hearings and meetings clearly enhance accessibility and reduce intimidation, particularly from the perspective of participants. Staff and practitioners also acknowledged these gains, but were more alert to the risks: diminished presence, weaker personal connections and inequities linked to technology and resources. At the same time, some courts experimented with creative ways of sustaining or even enhancing connection, from family participation in graduations to online community-building events. The challenge for therapeutic jurisprudence is therefore not *whether* virtual formats can work, but *how* to ensure that accessibility gains are balanced with deliberate strategies to preserve rapport, presence and collaborative team dynamics.

7. Areas for further investigation

While the rapid adoption of virtual hearings during COVID-19 generated an important body of scholarship, the evidence base remains limited and uneven. Much of the research has relied on self-reports from clients, staff and judicial officers, often involving retrospective comparisons between online and in-person formats during an extraordinary period of crisis. Systematic observational research and studies conducted outside the constraints of pandemic conditions are still rare. As virtual hearings become embedded in court practice, more deliberate and comparative research is needed to evaluate their therapeutic potential (Rossner and Tait 2025). Some avenues that are particularly relevant to therapeutic justice are as follows:

Participants with vulnerabilities. Existing studies highlight concerns that vulnerable court users – such as people with disabilities or defendants in custody – may face additional challenges online (Legg and Song 2021; McKay 2018; UK Magistrates’ Association 2022). Limitations on judicial officers’ ability to read body language or family dynamics on screen may reduce their capacity to adapt proceedings appropriately. Yet virtual hearings can also lower barriers for some groups, for example by reducing physical travel or offering captioning technologies (Bartels *et al.* 2024). Future research should move beyond speculation to investigate systematically how different vulnerabilities interact with virtual participation and what accommodations best support meaningful engagement. Added to this is the need to ensure that virtual processes avoid paternalistic decisions about what will result in a therapeutic outcome independently of the views and needs of the particular participant involved (Petrila 1993, p. 881; Sela 2019).

Jurisdictional and case flexibility. The suitability of virtual hearings is likely to vary across legal settings and participant needs. For example, therapeutic courts depend on participants’ intensive, collaborative engagement with judicial officers and treatment teams. Research should examine whether hybrid models – where some actors are co-located, while others appear remotely – preserve or undermine the therapeutic goals of such courts. More broadly, studies should explore when in-person hearings remain essential (for example, in highly charged contexts, such as coronial inquests) and when virtual or hybrid models may deliver equal or greater benefits, particularly for participants in rural or remote communities.

Expanding access to therapeutic justice. Virtual hearings may extend therapeutic court models to populations previously excluded due to geography, mobility or resource constraints (Kunkel and Bryant 2022). This possibility is particularly relevant for First Nations people in remote communities across Australia and North America. Virtual hearings could potentially play a role in mainstreaming therapeutic options, which traditionally have only been available within particular areas or to service a specific population. Further empirical research should explore whether virtual modalities can increase access without sacrificing the interpersonal dimensions of therapeutic jurisprudence.

Cross-fertilisation with other fields. Courts could learn from adjacent domains, such as telehealth, online education or behavioural science, where evidence already exists about fostering rapport and engagement in digital settings. Research should consider whether and how strategies such as structured check-ins, multimodal communication tools or trauma-informed design can be adapted to judicial contexts.

These avenues point toward a central question: how can courts design virtual hearings that preserve the human dimension of justice while leveraging the accessibility gains of technology? Addressing this requires a mix of observational and participatory research, attention to diverse participant needs and a willingness to rethink how therapeutic jurisprudence principles can be enacted in digital environments.

8. Conclusion

The rapid expansion of virtual hearings during the pandemic has transformed how courts engage with participants, forcing judges, practitioners and researchers to re-examine the conditions under which justice can be meaningfully delivered and experienced. This paper has argued that the concepts of presence and accessibility provide useful lenses for understanding both the risks and the opportunities of digital courtrooms. *Presence* captures the interpersonal qualities of connection, empathy and recognition that are central to procedural justice and therapeutic jurisprudence. *Accessibility* highlights the ways that virtual hearings can reduce intimidation, remove logistical barriers and extend participation to people who might otherwise be excluded.

The evidence to date shows that virtual courts are neither a panacea nor a threat in themselves. Participants often report feeling more comfortable and less anxious online, while staff identify efficiency gains in virtual team meetings. At the same time, both groups raise concerns about diminished personal connection, weakened team dynamics and uneven access for vulnerable populations. These findings suggest that the therapeutic potential of virtual courts depends less on the technology itself than on how judicial officers and court teams adapt their practices to cultivate presence and ensure equitable access.

Virtual hearings challenge long-standing assumptions about the form and meaning of court rituals. They expose the fact that many of the practices associated with solemnity and authority can be reconstructed, and sometimes enhanced, through intentional forms of digital court-craft. At the same time, accessibility gains must not come at the expense of interpersonal justice. The task ahead is to integrate the lessons of this moment into a more deliberate and evidence-informed model of therapeutic jurisprudence that preserves the human dimension of justice while embracing the possibilities of new technologies.

Competing interests. Meredith Rossner has undertaken consultancy projects for the Australian Capital Territory and Queensland governments, and the United Kingdom's Ministry of Justice. Lorana Bartels has undertaken consultancy projects for the Australian Capital Territory and Queensland courts and is a member of the Tasmanian Sentencing Advisory Council. Martha McCurdy has undertaken consultancy work for the UK Ministry of Justice.

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