Courthouse Facility Dogs
A Witness’s Best Friend
BY JILL MARIANI


Many victims of violence lose the power of their voice. Depending on the degree of trauma and the nature of the crime, a victim may feel ostracized and powerless. Articulating the details of the criminal acts perpetrated against a victim to strangers, including police, jurors, judges, spectators, and the perpetrator and their counsel, can trigger disturbing emotions and rekindle the trauma the victims experienced during the actual events.

Recognizing the therapeutic effect of canines, several courts throughout the United States permit professionally trained facility dogs to accompany vulnerable victims and witnesses during their testimony in the courtroom. This article familiarizes the legal community with the rapid evolution of this...
novel approach of enlisting the services of a courthouse dog, a particular type of facility dog, to assist anxious and traumatized victims/witnesses to provide complete and truthful testimony.

Definition

It is important to note what a facility dog is, and what it is not. The inaccurate use of the term facility dog by the courts and others often confuses other types of working dogs with facility dogs. Working dogs that provide assistance to a human being, but are not facility dogs, include (1) a service dog, trained to perform one or more specific tasks to assist a person with a disability; (2) a therapy dog, trained to provide psychological or physiological therapy to one or more individuals; (3) an emotional support/comfort dog, trained to respond to a particular crisis suffered by the dog’s handler; or (4) a detection dog, trained to find explosives, drugs, or contraband items or to engage in search-and-rescue operations.

A facility dog is an expertly trained animal that assists an anxious or traumatized individual to communicate the facts that he or she has experienced or witnessed. The temperament of this type of dog is more subdued than most other working dogs. Usually a golden or Labrador retriever, a facility dog is bred to detect a human being’s stress level. The facility dog can calm a victim/witness with a gentle nudge to that person’s leg or by simply laying a furry head on the person’s lap, making the individual feel safe.

A facility dog must graduate from an accredited dog association, such as Assistance Dog International, or one of its affiliated organizations. Undergoing at least a two-year training period, these dogs must pass the same public access test as other working dogs. From puppyhood, these dogs are sensitized to be resilient in stressful situations, while also expressing confidence and affection. Rebecca Wallick, Dogs in the Courtroom, Follow-Up Part II, The Bark (Feb. 2015), https://tinyurl.com/y9ty4wb7.

A facility dog can be paired with a myriad of handlers, including forensic interviewers, psychologists, social workers, counselors, therapists, victim advocates, law enforcement personnel, and prosecutors. These dogs can benefit victims or witnesses in a variety of circumstances, from an initial interview or forensic examination, to pretrial briefings, courtroom testimony, sentencing, and other post-conviction proceedings.

The Inspiration

The inspiration for the courthouse facility dog harkens back to Jeeter, a golden retriever/Labrador retriever mix, from Ellen O’Neill-Stephens’s household. In 2003, practicing as a drug court prosecutor in the King’s County District Attorney’s Office in Seattle, Washington, Ms. O’Neill-Stephens discovered that Jeeter could assist “at-risk” children or those “rehabilitating” from substance abuse with their recovery. Eventually, Ms. O’Neill-Stephens established the Courthouse Dogs Foundation, a nonprofit organization advocating for and educating others about the use of these dogs. Rebecca Wallick, Dogs in the Courtroom, The Bark (July 2018), https://tinyurl.com/yb4nnuek. At least one-third of these dogs have accompanied witnesses into courtrooms.

The Benefit

The courthouse facility dog, the preferred term, may assist any vulnerable participant in any court proceeding, including victims/witnesses in criminal proceedings; individuals recovering from substance abuse, mental illnesses, and post-traumatic stress disorders before drug courts and mental health courts; and even defense witnesses. Casey Holder, Comment, All Dogs Go to Court: The Impact of Court Facility Dogs as Comfort for Child Witnesses on a Defendant’s Right to a Fair Trial, 50 Hous. L. Rev. 1155 (2013).

The positive effects derived from a canine accompanying a victim/witness is rooted in science. Research has shown that traumatized individuals may experience a surge of the hormone cortisol that affects an individual’s cognitive capacity, resulting in difficulty recalling information or focusing on a question. Research has also found that interacting with a dog can produce another hormone called “oxytocin,” sometimes referred to as the “love hormone,” which is associated with the feeling of well-being and comfort and can assist a victim in communicating effectively. Gabriela N. Sandoval, Court Facility Dog—Easing the Apprehensive Witness, 39 Colo. Law,
People v. Johnson

By establishing a safe and stable environment, these dogs assist the victim/witness to recall and articulate critical and truthful information better. Trained to perform unobtrusively in public, the courthouse dog will sit quietly next to a victim/witness for long periods of time and will not interrupt the flow of testimony or disturb the courtroom proceedings.


Legal Authority

Initially the authority for permitting a canine to accompany a victim/witness into the courtroom was grounded in the trial judge’s inherent discretion to direct courtroom protocol and decorum. Such discretion has justified a judge’s ruling to limit the examination of witnesses, to remove an uncooperative or obstructive participant, or to allow jurors to ask questions of the witnesses. See, e.g., *People v. Johnson*, 315 Mich. App. 163 (2016) (citing *People v. Rose*, 289 Mich. App. 499, 509 (2010)).

Some courts have also invoked specific statutes to buttress that authority. For example, in 2013, a New York trial court permitted Rose, a graduate facility dog placed with the Poughkeepsie children’s home, to assist a child witness to testify against her father in a criminal sexual assault case. See *People v. Tohom*, 969 N.Y.S.2d 123 (App. Div. 2013), leave denied, 22 N.Y.3d 1203 (N.Y. 2014). The judge relied on a 1986 amendment to the Fair Treatment Standards for Crime Victims, pursuant to Executive Law on § 642-a(4), authorizing a judge to “be sensitive to the psychological and emotional stress a child witness may undergo when testifying.”

Several years before the enactment of a specific statute, a California trial judge relied on California Evidence Code § 765 to permit a facility dog to accompany two juvenile sisters in the courtroom during their testimony against the defendant, a relative charged with committing numerous lewd and sexual acts against them. *People v. Chenault*, 175 Cal. Rptr. 3d 1 (Ct. App. 2014). Many of the cases that permitted the presence of a dog in court have involved victims of sexual assault who were either minors or adults with developmental disabilities.

In the last five years, several states have enacted specific statutes permitting certified dogs to accompany victims/witnesses. At last count, at least 15 states have enacted statutes expressly permitting a professionally trained canine designated as a facility dog to accompany victims and vulnerable witnesses during their testimony in specified circumstances.

Some statutes limit the accompaniment of a certified canine to underage victims or witnesses (ranging from 13 to 18 years of age) in criminal matters or in noncriminal matters involving child abuse or neglect (see, e.g., Ark. Code Ann. § 16-43-1002; Idaho Code § 19-3023; Miss. Code Ann. § 99-43-101; Okla. Stat. Ann. § 2611.12(C) (therapeutic dog).) Other statutes extend the accommodation to adults who are intellectually, physically, or developmentally disabled; to victims and witnesses of sexual offenses, regardless of age (see, e.g., Cal. Penal Code §§ 868.4, 868.5 (codifying People v. Chenault)).


Burden of Proof

Although some statutes provide for such an accommodation upon the court’s own motion (see, e.g., Fla. Stat. Ann. § 92.55; Miss. Code Ann. § 99-43-101), the usual procedure is for a party to make an application. There appear to be three standards of proof among the jurisdictions to justify the presence of facility dogs. Some courts do not require the movant to make a showing but place the onus on the defendant to establish prejudice or impropriety. Other courts require the applicant to establish explicitly the necessity of the dog to facilitate the witness’s testimony. In some jurisdictions, this burden of proof is codified (see, e.g., Hawaii Rev. Stat. § 621-30(b) (a “compelling necessity”), Va. Code Ann. § 18.2-679.1(C) (preponderance of the evidence); Wash. Rev. Code § 10.52.110(S) (dog’s presence is necessary)).


Irrespective of the applicable standard, the moving
party should seek permission in written form from
the court and set forth the following facts, some of
which are required by statute: (1) the credentials of
the facility dog, including the type of training and
certification attained; (2) the extent of any prior
in-court experience by the canine; (3) details about
the experience and the training of the facility dog’s
handler; (4) any established relationship between
the witness/victim and the canine, and noting if the
presence of the dog was requested by the victim/
witness; and (5) the low risk of any disruption by
the canine in the court proceedings, including
information about any liability insurance
§ 2611.12(D)(1)(b); Wash. Rev.
Code § 10.52.110(a)(4)(b); see
also Ala. Code §§ 12-21-147(a)(3)(a)(5) & 12-21-
148(a)(1)(d) (requires a
minimum $500,000 liability policy). It is also
prudent to request that the
dog be present
during preliminary
hearings or other court
appearances so that the
trial judge can evaluate
the behavior of the canine
in settings where there is no
trial jury. Adherence to such
practices may well shape the law
in states where there is no specific
statute and make way for amendments
broadening existing laws.

Defense Objections
The major concern raised by defense counsel is that
the accused party may be unduly prejudiced by the
mere appearance of the canine in the courtroom.
More specifically, they argue that the dog may make
the witness appear more appealing to the jury or
may make the defendant appear so menacing that
the witness needs to be protected by a dog, or may
suggest that the witness is undergoing therapy as a
result of trauma inflicted by the defendant. William
Glaberson, By Helping a Girl Testify at a Rape Trial,
a Dog Ignites a Legal Debate, N.Y. Times (Aug. 8,
2011), https://tinyurl.com/42y8nnu9. The research of
Professor Dawn McQuiston of Wofford College
in Spartanburg, South Carolina, indicates that the
presence of the canines has no effect on jurors. See
Dave Collins, Comfort Dogs in Court Do Opposite

See, e.g., Ark. Code Ann. § 16-43-1002(e); Wash.
Rev. Code § 10.52.110(7)(a). Second, the
parties and the court should
agree upon the procedure for
the physical introduction
of the facility dog into
the courtroom. In most
reported cases, and as
specified in several
statutes, the facility
dog accompanies the
witness to and from
the witness box outside
the presence of the
jury. Furthermore, in
most instances, the dog
is not visible to the jurors
during the testimony
See, e.g., Wash. Rev. Code §
10.52.110(7)(b), (c). Third, the
parties should discuss with the
court the need for and wording of
any preliminary instructions to the jury
before the testimony begins, and any general
instructions at the conclusion of the testimony. The
jurors should be informed that while a dog may be
accompanying a particular witness during the trial,
the jury should “not make or draw any conclusions
based on the presence of the dog’s service.” Some
statutes have codified a requirement for jury

National Support
There is national recognition of the benefit of facility
dogs to victims/witnesses. In 2018, the National
District Attorneys Association and the Association
of Prosecuting Attorneys each passed a resolution
supporting the implementation of courthouse facility
dogs to accompany victims and vulnerable witnesses.
See Nat’l Dist. Att’y’s Ass’n, 2018 Resolution of The
tinyurl.com/ybktvpzl; Ass’n of Prosecuting Att’y,


Embraced Internationally

The American model of the courthouse facility dog has been embraced worldwide. It is being replicated in Argentina, Canada, Chile, the United Kingdom, and part of continental Europe. Dr. Elizabeth Spruin, a canine behaviorist and an investigative psychologist in the School of Psychology, Politics and Sociology at the Canterbury Christ Church University, in England, specializes in the use of dogs to support vulnerable members of society in her role as the director of the Justice Support Dogs International Laboratory. The research lab is dedicated to examining the benefits that specially trained dogs can provide victims and witnesses in the criminal justice system. Ella Rhodes, Paws for Court, 29 The Psychologist 896 (Dec. 2016), https://tinyurl.com/ybfbdazus. Oliver, a black lab certified facility dog, was the first canine to work throughout the British justice system providing support to victims and witnesses of crimes, including children with autism and emotional issues. Dr. Spruin’s research shows that Oliver’s presence makes victims/witnesses feel less anxious and more relaxed in legal proceedings, enabling them to communicate more clearly and openly.

Operating from its headquarters in Brussels, Belgium, Victim Support Europe (VSE), an international advocacy group, is committed to offering the assistance of facility dogs to victims. VSE has partnered with other European organizations to advance a multi-country project on research, best practices, and implementation of a facility dog program to address a significant EU-wide problem of secondary victimization or victim-blaming. There are currently facility dog programs in Belgium, Hungary, Ireland, Italy, Romania, and Serbia. For instance, Children at Risk in Ireland has partnered with Dogs for the Disabled to raise funds to train a courthouse dog to assist minors to testify in criminal matters. See, e.g., CARI Seeking to Employ Courthouse Dog to Help Children Give Evidence, Raidió Teilifís Éireann (Nov. 2019), https://tinyurl.com/ybc4t8ym; Patricia Hynes, Top Dogs, 112 L. Soc’y Gazette, no. 3, Apr. 2018, at 36, https://tinyurl.com/y9f8v4kq.

One of the Atlantic, Kim Gramlich is the founder and chair of the Justice Facility Dogs Canada (JFCDC), an organization that provides advocacy and education across Canada. JFCDC supports Canadian legislation that would permit facility dogs to aid victims within the Canadian criminal justice system. One of JFCDC’s goals is to develop Canadian crisis response teams that would respond to mass casualty incidents and disasters.


A few programs have been initiated in the jurisdictions Down Under. Joanne Baker, a nonlawyer in Australia with a Master of Science in Canine Science, is the president and managing director of Righteous Pups Australia, Inc. She pairs dogs with at-risk teens and young people with disabilities, including autism spectrum disorders, at her facility (https://tinyurl.com/y8z4zygs). In New Zealand, Gail Bryce, a court’s victim advisor, introduced the concept of courthouse facility dogs through Louie, her black lab who worked in the Tauranga court. Louie died in December 2018, after assisting in 35 trials. Ministry of Justice, Justice: Our People, Our Communities 14 (2017), https://tinyurl.com/ycfa7xzv.

Conclusion

Increasingly in the United States and internationally, courthouse facility dogs are recognized as assets in the courtroom. They assist victims/witnesses with trauma, mental illness, or intellectual disability and those who might otherwise be unable or unwilling to testify. A facility dog can give victims and witnesses a voice and the courage to speak their truth. With appropriate procedures in place and oversight by the courts, facility dogs deserve a role in the criminal justice system.