



Courthouse Facility Dogs

A Witness's Best Friend

BY JILL MARIANI

“Dogs are such agreeable friends—they ask no questions, they pass no criticisms.” George Eliot, *Scenes of Clerical Life* (1857), quoted in *People v. Tohom*, 969 N.Y.S.2d 123 (App. Div. 2013), *leave denied*, 22 N.Y.3d 1203 (2014).

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

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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 Kings 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/ycmxzlc8>.

The use of facility dogs was continued by Deputy Prosecutor Page Ulrey, whose dog, Ellie, a Labrador retriever mix, obtained "facility dog" status from Canine Companions for Independence. As the first recognized courthouse facility dog, Ellie worked with the prosecution team in the King's County District Attorney's Office. *Id.* Jeeter and Ellie spurred the development of programs in nearly three dozen states throughout the continental United States and in Hawaii that utilize hundreds of facility dogs. See Jenni Bergal, *Canines Helping Out in the Courtroom*, PEW (June 26, 2017), <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.*,

no. 4, Apr. 2010, at 17, <https://tinyurl.com/y9pn5v5r>; James C. Ha, *Dog Behavior: Modern Science and Our Canine Companions* (Academic Press 2018).

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 courtroom 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. Rebecca Wallick, *Stilson Comforts at Sentencing*, *The Bark* (Feb. 2015), <https://tinyurl.com/yc5dudos>.

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., 725 Ill. Comp. Stat. Ann. 5/106B-10; Fla. Stat. Ann. § 92.55 (facility dogs and therapy dogs)); or to victims of domestic violence (see, e.g., Cal. Penal Code §§ 868.4, 868.5 (codifying *People v. Chenault*)).

As the concept and its benefits have become better understood, some state legislatures have broadened the courts' authority to permit canines to accompany any vulnerable witness, as defined by the statute or case law. See, e.g., Ala. Code §§ 12-21-147 & 12-21-148 (therapy and facility dogs); Ariz. Rev. Stat. Ann. § 8-422; Conn. Gen. Stat. Ann. § 51-10d (therapy dogs); Hawaii Rev. Stat. § 621-30; La. Rev. Stat. § 15-284; Mich. Comp. Laws Ann. § 600.2163a; Va. Code Ann. § 18.2-67.9:1; Wash. Rev. Code § 10.52.110.

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. § 18.2-67.9:1(C) (preponderance of the evidence); Wash. Rev. Code § 10.52.110(5) (dog's presence is necessary)). Yet other jurisdictions simply require that the record clearly demonstrate that the witness would have difficulty testifying without the assistance of a facility dog. See, e.g., *People v. Tohom*, 969 N.Y.S.2d 123 (App. Div. 2013); Cal. Penal Code § 868.4(b)(3); Okla. Stat. Ann. § 2611.12 (D)(1)(c); Va. Code Ann. § 18.2-67.9:1(C) (2).

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 policy. See, e.g., Hawaii Rev. Stat. § 621-30(c)(2); Okla. Stat. Ann. § 2611.12(D)(1)(b); Wash. Rev. Code § 10.52.110(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/42y8nu9>. 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*

for Some Defenders, Judges, Chi. Trib. (Apr. 5, 2018), <https://tinyurl.com/y978xvbr>; Kayla Burd, *Facility Dogs in the Courtroom: Comfort Without Prejudice?*, Sage J. (May 2, 2019). Nevertheless, several precautionary measures can be taken to minimize any potential prejudice. First, the parties should seek the court's approval to voir dire prospective jurors on the issue of whether a facility dog accompanying a witness would create any undue sympathy for the witness or cause prejudice to a party in any way. Some statutes expressly permit such an inquiry.

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 instructions. See, e.g., Ariz. Rev. Stat. Ann. § 8-422(C).

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'ys Ass'n, *2018 Resolution of The National District Attorneys Association* (2018), <https://tinyurl.com/ybktypz1>; Ass'n of Prosecuting Att'ys,

Courthouse Facility Dog Resolution of the Association of Prosecuting Attorneys (Feb. 2018), <https://tinyurl.com/y96lbo9d>. On December 19, 2019, the US Senate passed a bill sponsored by Senator John Cornyn (TX) called Dogs as Witnesses Guardians Act (S. 1029) (DAWG Act), or Courthouse Dogs Act, which authorizes federal judges to permit a certified facility dog to accompany a witness testifying in criminal proceedings. Courthouse Dogs Act, S. 1029, 116th Cong. (2019), <https://tinyurl.com/y9jxsynd>.

The legislation is now pending in the House of Representatives with bipartisan support. Courthouse Dogs Act, H.R. 5403, 116th Cong. (2019), <https://tinyurl.com/y9vfwtpg>.

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/ybfdazus>. 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/ybc4teym>; Patricia Hynes, *Top Dogs*, 112 *L. Soc'y Gazette*, no. 3, Apr. 2018, at 36, <https://tinyurl.com/yc7nebwq>.

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

In 2009, Cecilia Marre, the executive director of Corporacion Bocalan Confiar, an assistance dog organization in Santiago, Chile, started a victim support program that employs canines to assist public prosecutors in nonjury criminal trials. Ellen O'Neill-Stephens, *Courthouse Dogs Go South*, *The Bark* (July 2018), <https://tinyurl.com/y9t9bo65>. Titan, a five-year-old golden retriever, is a courtroom dog working with children in Buenos Aires, Argentina. Bubble Staff, *This Argentine Courtroom Therapy Dog That Helps Kids Is the Best Boi*, *The Bubble* (Jan. 2020), <https://tinyurl.com/y85vq7yf>.

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. ■