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Scratch a dog and you'll find a permanent job.

—Franklin P. Jones (humorist)

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FROM THE DOGHOUSE TO THE COURTHOUSE: FACILITY DOGS AS TRIAL AIDS FOR VULNERABLE WITNESSES

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In 1989 a seeing-eye dog named Sheba was used to comfort abused children in the Special Victims Bureau in Queens, New York. Largely believed to be the first “facility dog,” the practice did not gain traction until 2003, when Ellen O’Neill-Stephens began using her dog to comfort witnesses in courtrooms. She established the Courthouse Dog Foundation, which provided training for facility dogs and education for judges (Mariani, 2020). Today, 262 facility dogs are used in 41 states, formally or informally, to comfort witnesses (<https://courthousedogs.org/>).

Though courtroom proceedings are stressful for most people, children and other vulnerable witnesses might find testifying in court to be especially stressful. For example, many cases involving child abuse never go to trial, as children are often too stressed, anxious, or otherwise unable to provide effective testimony of their experiences. Due to the special challenges associated with prosecuting cases involving vulnerable complainants, special accommodations are sometimes made to lessen the stress of testifying and to aid cases in going to trial, thereby improving outcomes for victims (Caprioli and Crenshaw, 2017).



Different types of support dogs are becoming a common sight in courtrooms. What do judges and court staff need to know about using support animals to aid witnesses during trials?

These accommodations, also known as trial aids, include screens, support persons, and video testimony. Unfortunately, many established trial aids lead jurors to doubt the credibility of the witness (Chong and Connolly, 2015). The consequence of such effects (e.g., biased verdicts) makes understanding the effects of trial aids on all parties important. An increasingly popular trial aid involves facility dogs, also known as therapy dogs or courthouse dogs. Currently, more than 40 states allow facility dogs in courtrooms during some portion of a legal process.¹ How dogs are used also varies greatly (whether the witness is able to interact with the dog, whether the jury is allowed to see the dog), as does the dog's ownership (if the dog belongs to the judge or prosecutor or to a community member).

This article reviews the current state of dogs as trial aids. Specifically, we discuss why dogs are so popular as trial aids; describe the different types of support dogs and their respective rights; present current research, practice, and caselaw/legal precedent involving facility dogs; and offer considerations for judges who are contemplating using dogs.

WHY DOGS PROVIDE COMFORT

MacLean and Hare (2015) asked: "Why do we feel genuine friendship, love, and social attachment . . . with dogs?" (p. 281, emphasis added). The answer is complex, emerging, and beyond this article's scope. However, efforts to understand the form, function, and trajectory of human-animal bonds have engaged fields such as philosophy, evolutionary psychology, biology, genetics, and public health. Although more research is needed and some findings are mixed (e.g., mere dog ownership is not *universally* associated with lower levels of depression or increased exercise; Mueller et al., 2018), evidence is accumulating that the human-dog relationship is unique and beneficial to the well-being of both across myriad domains (Menna et al., 2019).

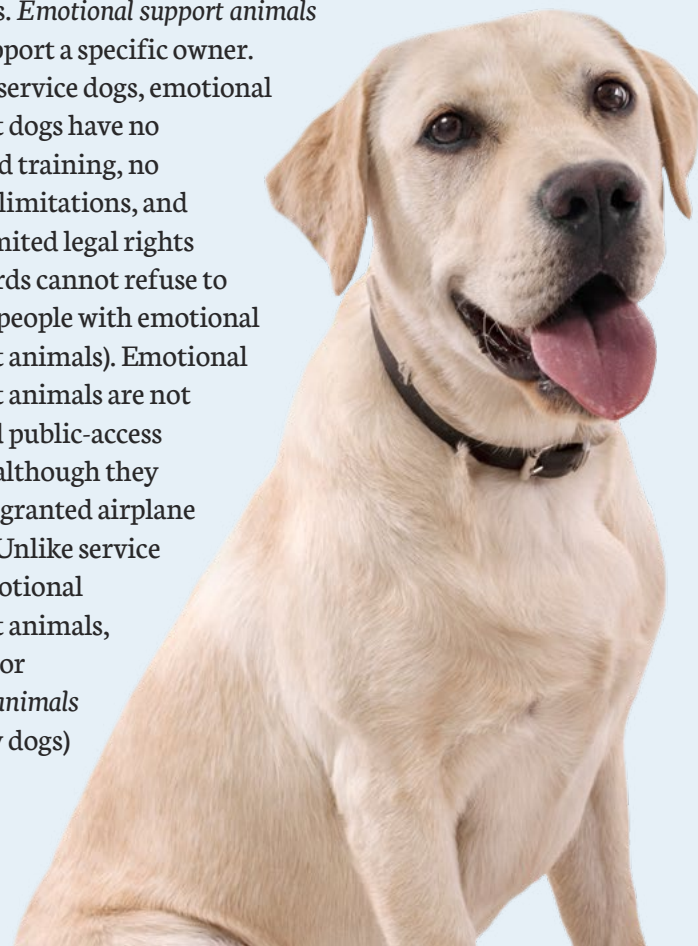
Specifically, various health benefits of human-dog interactions include lower blood pressure, fewer depression symptoms, and improved functioning after social loss (such as divorce or the death of a loved one). Petting a dog reduces anxiety and enhances mood, perhaps due to release of

"feel good" hormones in *both* human and dog. Human-dog encounters provide comfort, calm, and reciprocal bonding (Powell et al., 2019). This effect provides rationale for use of appropriately selected dogs to promote well-being in various stressful settings (e.g., universities, airports, or hospitals).

TYPES OF DOGS USED TO PROMOTE WELL-BEING

Although it is becoming more common to use animals to support well-being in public spheres, their presence remains somewhat controversial (see news stories of emotional support peacocks and other exotic animals brought onto airplanes). Contributing to this controversy is a misunderstanding of the differences in training and legal-access rights between types of assistive animals. Officially, there are four recognized classes of dogs that aid humans: working dogs (excluded from this discussion, as they do not work in courtrooms), service dogs, therapy dogs (which includes facility dogs), and emotional support dogs. Each differ in their training and legal rights.

Service animals are individually trained to help a specific person with a disability and have full public-access rights under the Americans with Disabilities Act. Currently, only dogs and miniature horses can be certified as service animals. *Emotional support animals* also support a specific owner. Unlike service dogs, emotional support dogs have no required training, no species limitations, and have limited legal rights (landlords cannot refuse to rent to people with emotional support animals). Emotional support animals are not granted public-access rights, although they may be granted airplane access. Unlike service and emotional support animals, *therapy or facility animals* (mainly dogs)



1 See [Courthouse Dogs Foundation](https://perma.cc/P948-SENV). Perma link: <https://perma.cc/P948-SENV>.



are not trained to work with a specific human. Instead, they are trained to be comfortable in new environments and interact with strangers (e.g., patients, witnesses, or students). Therapy dogs must complete a certification-training program, the contents of which differ among organizations. These dogs generally do not have public-access rights but are increasingly accepted in courtrooms and other stressful environments, such as post-disaster crisis intervention.



FACILITY DOGS IN THE COURTROOM

Although the use of facility dogs is increasingly popular, some concerns include:

- the visual appeal of dogs might cause jurors to perceive witnesses as more vulnerable, likeable, or sympathetic;
- some labels applied to facility dogs (“therapy dog” or “advocate dog”) imply the child needs therapy and endorse his or her status as a victim;
- dogs might distract jurors or witnesses;
- jurors might transfer their feelings toward dogs (good or bad) onto the witness;
- a dog in the courtroom limits access to people who are allergic to or afraid of dogs; and
- the calming effect of a dog could lead jurors to believe the witness was not severely harmed or was coached.

The overarching concern is that the dog’s presence could bias the jury; for example, the dog could lead the jury to think the victim must be *really* injured if she needs a dog to testify, or that the dog is a ploy to trick the jury into thinking her injuries are severe. There is less controversy about using dogs at hearings without juries, although judges could also be influenced by the dog’s presence.

Research indicates that the presence of a facility dog does not bias jurors (Burd and McQuiston, 2019). In the two known studies, participants read a detailed case summary and a partial trial transcript in which a child testifies with either a teddy bear, a facility dog, or no trial aid. In both studies, the facility dog did not affect mock jurors’ perceptions of the defendant or witness. Even so, the written nature of the manipulations lacks verisimilitude and, therefore, such findings should be interpreted with caution.

Based on this research and the general fund of knowledge regarding human-animal interaction, proponents of facility dogs believe that facility dogs calm children, improve testimony, and aid witnesses who would otherwise not be emotionally capable of testifying (Caprioli and Crenshaw, 2017). Legal experts tend to view facility dog use as an improvement over other trial aids, as they do not interfere with the defendant’s right to confront their accuser (as has been said of CCTV and other video testimony; *Crawford v. Washington*, 2004). Nor do they offer the potential distraction of nonverbal cues from a support person through unconscious reactions of disgust toward the defendant or empathy for the child. Judges have generally recognized that the benefits outweigh the potential drawbacks, with nearly 90 percent of judges surveyed indicating that they would welcome the presence of a facility dog in their courtroom (Firth, 2020). However, most of these benefits and drawbacks have not been tested empirically, and there is a need for continued research on dogs as trial aids.

LEGAL CONSIDERATIONS

Although research suggests that dogs have little negative effect, there have been a small number of legal challenges to the use of dogs in the courtroom, especially during trials. Most of these appeals include claims that the presence of a facility dog enhanced the perceived victimhood of the witness (e.g., *California v. Chenault*, 2014; *California v. Spence*, 2012; *Jones v. State*, 2020; *New York v. Tohom*, 2013; *State v. Hasenyager*, 2016). In all these cases, the courts ruled that facility dogs do not bias the jury’s decisions. Another case admitted the possibility of some bias stemming from facility dog use but found that the court’s attempt to minimize the stressful impact of testifying for witnesses outweighs the defendant’s objection to the facility dog (*State v. Lacey*, 2018).



An additional claim is that facility dogs violate due-process rights (*Michigan v. Johnson*, 2016; *Smith v. Texas*, 2016; *Washington v. Moore*, 2014) and the confrontation clause (*California v. Spence*, 2012). These claims were also rejected, citing the discretion of the court and other rulings making trial aids admissible (*California v. Chenault*, 2014; *New York v. Tohom*, 2013; *Washington v. Dye*, 2013).

While most cases involved the use of facility dogs for children, two cases also approved their use for adults with a mental disability (*State v. Dye*, 2013) or post-traumatic stress disorder (*Jones v. State*, 2020). Many judges have allowed the use of facility dogs, citing the Victims of Child Abuse Act of 1990 and the Uniform Child Witness Testimony by Alternative Methods Act, which allow the use of a teddy bear or support person.

In sum, every appellate decision we could find upheld the use of facility dogs. This paves the way for their use in courtrooms nationwide.

CONSIDERATIONS FOR JUDGES

A 2020 survey of judges by the National Judicial College indicated that the vast majority are in favor of using facility dogs (88.65 percent of 881 respondents; Firth, 2020). Supporting the use of facility dogs and using facility dogs in court, however, are different issues. Specifically, what are the practical considerations for judges who want to use facility dogs in court?² As judges are ultimately responsible for the practices and climates of their courtrooms, we offer some common considerations for both the human and dog elements of the interaction.

First, not all people like dogs, and some people are extremely fearful of dogs, possibly because of traumatic histories. Thus, introducing a facility dog to the court will require strong communication with both staff and litigants about the procedure—and their ability to decline direct contact with the dog. Perhaps a more difficult situation arises when someone is allergic to dogs, whereby residual hair or dander can trigger itching, eye watering, or even breathing difficulties (approximately 30 percent of the U.S. population has allergies to cats and dogs; www.aafa.org/pet-

[dog-cat-allergies](#)). Nonetheless, precautions can limit these issues (e.g., avoiding contact, routine cleaning, use of hypo-allergenic breeds, or strong grooming practices). Awareness of potential health challenges related to actual human-animal contact is important to acknowledge and plan for before introducing a facility dog to court.

Handlers should obtain any required certifications for their dogs, which vary by jurisdiction. Dogs should have a specified job description, which identifies their responsibilities, limitations, evaluations, and day-to-day duties—and the human responsible for the dog. This ensures everyone in the courtroom understands the dog's role.

Trainers and handlers of facility dogs are excellent sources for suggestions for mitigating potential contact challenges, as are organizations such as Courthouse Dogs. These sources are also well situated to advise on the overall care of the dog to ensure its health and safety. This includes feeding, grooming, regular exercise, a bed, a place to urinate/defecate, stimulation/recreation, and other day-to-day considerations of good pet guardianship. In some cases, facility dogs might be trained and handled by a court employee, external guardians, or specialized organizations, such as the Courthouse Dogs Foundation.

Finally, judges can take steps to mitigate the dogs' effects. The dog's handler can bring the dog in when the jury is out of the courtroom, and the dog can be placed outside of the jury's view. Judges can issue special instructions to juries to ignore the dog and any feelings it might evoke. Such instruction has been upheld (e.g., *People v. Chenault*, 2014; *State v. Dye*, 2013). These steps mitigate potential biases.

SUMMARY

Engaging appropriately trained dogs to support humans during stressful court proceedings is increasingly popular, but certainly neither universally practiced nor even accepted.³ Education and research on the legal and ethical use of dogs in this capacity—as well as benefits and risks—is an important endeavor. Judges largely appear supportive of this growing trend of adopting “human's best friend” to serve as a partner in the administration of justice.

² People interested in beginning a facility dog program should consult Jones and Miller (2021) and Courthouse Dogs Foundation for a discussion of [best practices](#). Perma link: <https://perma.cc/E953-533Q>.

³ This article discusses facility dog use during normal operating conditions; however, the COVID-19 pandemic has forced many trials to occur virtually. During virtual trials, a witness could potentially use their own well-behaved pet at the judge's discretion.



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