



**American
Prosecutors
Research
Institute**

The Research and Development
Division of NDAA

**19TH ANNUAL CRIMES
AGAINST CHILDREN
CONFERENCE
AUGUST 13-16, 2007
DALLAS, TX**

This conference, presented by the Dallas Children's Advocacy Center and Dallas Police Department, will provide practical instruction, using current information, the newest ideas and most successful intervention strategies, to those professionals responsible for combating the many and varied forms of crimes against children.

Learn more about the conference and register at www.dcac.org
<http://www.dcac.org/>.

**AMERICAN HUMANE
ASSOCIATION'S ANNUAL
CONFERENCE
SEPTEMBER 27-29, 2007
ALEXANDRIA, VA**

American Humane's Annual Conference gives animal welfare and protection professionals a compelling and powerful environment where they can exchange ideas, enhance their careers, attend informative workshops, and network with fellow professionals from all over the country. In addition to plenary sessions, there are tracks on The Link, Humane Education, and more. For more information please visit http://www.americanhumane.org/site/PageServer?pagename=ev_professionals_pa_conference

UPDATE is published by the American Prosecutors Research Institute's National Center for Prosecution of Child Abuse. Items may be reprinted if attributed to APRI's National Center for Prosecution of Child Abuse. Please provide copies to NCPA. Contact us if you have inquiries or article suggestions at 703.549.9222.

Update

Animal Assistance Part II

Pets in the Courtroom: The New "Comfort Item"

by Rena Marie Justice¹

...His head on my knee can heal my human hurts. His presence by my side is protection against my fears of dark and unknown things... He is just my dog.
—Gene Hill²

The first part of this article detailed the benefits of animal assistance, such as therapy pet programs, at local child advocacy centers. Part II will explore the use of therapy pets, particularly dogs, in the roles of "support person" or "comfort item" with traumatized child witnesses in a court of law. The benefits of animal assistance, responses to possible objections, and actual approaches to introducing dogs in the courtroom will be examined.

Benefits in the Courtroom

When a child witness is accompanied to court by a dog that he or she has previously bonded with from the local Child Advocacy Center (CAC), the effects are immediate and profound. Prosecutors and judges note that these effects are even stronger than when a child holds a doll or sits with a support person. The trust, acceptance, and tactile comfort of a friendly dog change the physiology of the nervous child. For example, as discussed in Part I of this article, human heart rate decreases and blood pressure falls in the presence of companion animals. The child may simply feel safer to recall past events, even with an audience of strange adults, and testimony is improved.

Response to Objections

The most common defense objection to the inclusion of a therapy dog in court would be based on undue prejudice before a jury. There are ways to avoid the jury viewing a therapy dog that are discussed below; however, if the jury were to observe a dog sitting near a child, this is no more prejudicial than a support person sitting with a child, or a child clutching a favorite comfort item. It is interesting to note that objections have been minimal in the jurisdictions that have used these dogs.

Resources such as legislation and case law can be used to support the presence of a dog. Every state addresses the rights of crime victims to be free from fear and to have a support system in place. Some have actual Crime Victims' Bill of Rights by statute or constitution, and some have an additional specific focus on children.³ For example, Rhode Island's law states that children will be provided "with special consideration and treatment beyond that usually afforded to adults..."⁴ and that child victims shall "be permitted to testify at all judicial proceedings in the manner which will be least traumatic to the child, consistent with the rights of the defendant."⁵ The state of New York has legislated that judges themselves are to "be sensitive to the psychological and emotional stress a

child witness may undergo when testifying."⁶ Finally, the American Bar Association has recommended procedural reform in abuse cases involving child witnesses for more than two decades.⁷

The federal example of child-specific victims' rights legislation is 18 USCS § 3509. The statute lists a variety of techniques to lessen the traumatic impact of the court system on child witnesses and to protect them. These techniques include closed circuit television testimony, privacy protection, closed courtrooms, victim impact statements, and the right to have an adult attendant for support.⁸ The adult attendant, at the court's discretion, may remain in close proximity to the child witness for purposes of providing emotional support, and even physical contact is allowed, which includes holding the child's hand or sitting with the child.⁹

Comfort items and support persons have been upheld in case law across the country, as well.¹⁰ Support persons can include such parties as parents, school personnel, or victim advocates.¹¹ Traditionally, comfort items are toys such as dolls and teddy bears.¹² The benefit of calming a child witness and having coherent testimony has been found to outweigh any possible prejudice to the defendant.¹³

A therapy dog accompanying a child witness to court may be likened to a "support person" or "comfort item." Therefore, if there are objections to the use of a therapy dog in the courtroom, both case law and victims' rights legislation can be used to support the dog's presence. Look carefully at these resources, as they may pave the way for use of therapy dogs as support for child witnesses across a jurisdiction.

Finally, while some prosecutors may worry about the distraction of a live dog, this has not been the case in courtrooms thus far. Like a teddy bear or a silent support person, a certified therapy dog remains quiet and well-trained. Any allergic reactions should be minimal, as the visit is temporary and within a large space. The dog's presence will comfort the child, and this can ultimately lead to more complete testimony.

Examples in Action

The Mississippi Children's Advocacy Center in Jackson, Mississippi, had an award-winning¹⁴ dog named Vachss through the early 1990s. This German shepherd was one of the first of his kind to work as a therapy dog at a CAC and actually accompany children to court. Local judges realized that the dog's presence helped to increase efficiency and assisted in the truth finding process.

For example, one judge, who had Vachss accompany a child during a preliminary hearing, commented that the dog “opens them up and helps the child testify in a very clear, forthright manner.”¹⁵ In another case, Vachss was allowed to be seated at the foot of the child victim, outside the immediate view of the jury.¹⁶ Here the judge ruled that the dog had no prejudicial effect on the defendant’s rights and that the dog could assist the child in giving testimony¹⁷. The judge decided this after hearing from the prosecutor that the child had bonded with Vachss through the dog’s presence at her therapy sessions and visits to the local child advocacy center.¹⁸

Currently, Johnson County Child Advocacy Center in Cleburne, Texas, has a whole team of volunteer handlers and certified therapy dogs. In 2004, all local juvenile and district court judges were invited to a special breakfast thanking them for their service. It was at this breakfast that the concept of using the therapy dogs in court was introduced. The judges unanimously agreed it would be a good thing. Later it was decided that if a dog was to accompany a child to court, the dog would be introduced in *voir dire*, to better avoid defense issues.

To date, the dogs have been to the courthouse many times, waiting with child witnesses. However, most cases have resulted in last minute plea agreements, and the dogs were not needed to enter the courtrooms. Recently, after a guilty plea in a child rape case, a yellow lab named Justin accompanied the 13-year-old victim into the courtroom while she read her victim impact statement at sentencing. The judge was amazed at the effect of the dog on the child and stated that he saw no difference between the therapy dog and allowing other service animals in court, such as seeing-eye dogs.¹⁹ The assistant district attorney on this case commented that, “As prosecutors, we are always looking for any help we can get that will allow us to aid children in summoning all of the courage they have inside them to seek justice...In this case the dog...gave her the confidence she needed before she ever stepped into the courtroom.”²⁰

Four Legged Advocates²¹ is a Florida non-profit organization that provides therapy dogs for victims and their families during the many phases of the court process. Referrals are taken from law enforcement, prosecutors, and even at the request of victims themselves. Last summer, a Four Legged Advocates therapy dog named Duke was present in a Polk County, Florida, courthouse while a 10-year-old girl attempted to testify and began crying uncontrollably. While the victim advocate and the prosecutor tried to console the girl, the three-year-old collie nudged the adults out of the way to get to the crying child. The traumatized girl reached out and gave Duke a hug. She was able to complete her testimony and the defendant was convicted. The victim advocate, who also founded Four Legged Advocates, stated that the dogs “always go exactly to who needs them.”²²

Other jurisdictions such as the Queens, New York, District Attorney’s Office²³ and Bexar County Courts in Texas²⁴ have incorporated the help of therapy dogs with child victims. Approaches vary in the way animal assistance is used, but can include having a therapy dog openly accompany a child in court, having a dog sit with a child during closed circuit testimony, or even having a dog enter early and stay seated at the feet of the child behind the witness stand, outside the immediate view of the jury. However and whenever a jurisdiction chooses to include a therapy dog, the benefits will outweigh any concerns. The human-animal bond²⁵ is strong and evidence of its power is being seen in therapists’ offices, advocacy centers, and hospitals across our country. Perhaps now it is time for the courtrooms.

Phillips, director of Government Affairs for the American Humane Association, for their support and assistance with this research.

² This quote can be found at <http://www.dogquotes.com/>.

³ States such as Utah, Rhode Island, New York, and Washington all have additional victims’ rights for children. A comparison of certain statutes such as speedy trial provisions and closed circuit testimony statutes can be found on our Web site at <http://www.ndaa-apri.org/apri/programs/ncpca/statutes.html>. In addition, please contact us for sample motions on Special Courtroom Procedures for children.

⁴ R.I. Gen. Laws § 12-28-8(a)(2007).

⁵ R.I. Gen. Laws § 12-28-8(c)(4)(2007).

⁶ For example, see NY CLS Exec § 642-a(4)(2007), also referenced in *State v. Gutkaiss*, 206 A.D.2d 628, 631 (1994).

⁷ American Bar Association’s Center on Children and the Law, *Guidelines for the Fair Treatment of Child Witnesses in Cases Where Child Abuse Is Alleged*, July 1985, available at <http://www.abanet.org/child/abuse-neglect.shtml>.

⁸ 18USCA §3509(b)(1),(d),(e),(f),(i) (2007).

⁹ 18USCA §3509(i) (2007).

¹⁰ See Carol A. Crocca, *Propriety and prejudicial effect of third party accompanying or rendering support to witness during testimony*, 82 A.L.R. 4th 1038 (1990) for a discussion of case law across the country.

¹¹ See *id.*

¹² See, e.g., *State v. Cliff*, 782 P.2d 44, 47 (1987); *State v. Gutkaiss*, 206 A.D.2d 628, 631 (1994); and *State v. Marquez*, 951 P.2d 1070, 1074 (1997).

¹³ See *Cliff* 782 P.2d at 47; *Marquez*, 951 P.2d at 1074.

¹⁴ In 1994, Vachss was named “Hero Dog of the Year” by the German Shepard Dog Club of America. See Karyn Smith, *Dog Comforts Abused Children in Court*, THE CLARION-LEDGER, November 4, 1994, available at www.vachss.com/dogs/vachss_dog.html [hereinafter Vachss Article].

¹⁵ Vachss Article, *supra* note 14.

¹⁶ Transcript of Record, *State of Mississippi vs. Jimmy Tatum*, No. 3610 (Cir. Ct. Rankin County Feb. 27, 1992). The portion of this transcript addressed in this article, without page numbers, is available at http://www.vachss.com/dogs/vachss_transcript.html [hereinafter Tatum Transcript].

¹⁷ Tatum Transcript, *supra* note 16.

¹⁸ Tatum Transcript, *supra* note 16.

¹⁹ Telephone interview with Judge William Bosworth, Johnson County Texas General District Court (April, 2007).

²⁰ See Misty Shultz, *Therapy dog comforts girl in trial*, CLEBURNE TIMES REVIEW, February 26, 2007, available at http://www.cleburnetimesreview.com/archivesearch/local_story_057134000.html.

²¹ For more information on FLA Four Legged Advocates, please visit <http://www.fl4-fla.org/>.

²² Amy Edwards, *Dogs give abuse victims comfort in trying times*, ORLANDO SENTINEL, August 6, 2006, available at <http://www.fl4-fla.org/press/flaOrlandoSentinel.pdf>.

²³ See, e.g., Wendy Lin, *Retired Guide Dog Tips Scales of Blind Justice Toward Victims*, NEWSDAY, November 12, 1989, available at www.vachss.com/dogs/av_dogs/sheba.html.

²⁴ See, e.g., *Bexar County allows dogs to calm children in court*, THE DALLAS MORNING NEWS, September 6, 2006, available at <http://www.dallasnews.com/sharedcontent/dws/dn/latestnews/stories/090706dntexcomfordog.7116237e.html>.

²⁵ For more information on the human-animal bond, including training opportunities, please visit the American Humane Association’s Web site at www.americanhumane.org.

¹ Rena Marie Justice is a Staff Attorney with the National District Attorneys Association’s National Center for Prosecution of Child Abuse in Alexandria, VA. Rena would like to thank all the child advocacy centers mentioned and Allie