

Developmentally and Trauma-Sensitive Courtrooms

Journal of Humanistic Psychology
2019, Vol. 59(6) 779–795
© The Author(s) 2016
Article reuse guidelines:
sagepub.com/journals-permissions
DOI: 10.1177/0022167816641854
journals.sagepub.com/home/jhp



David A. Crenshaw^{1,2}, Lori Stella¹,
Ellen O’Neill-Stephens³, and Celeste Walsen³

Abstract

Courtrooms in the United States whether family court or criminal court fall far short of being either developmentally or trauma sensitive. While there is growing recognition that vulnerable child witnesses are at risk of retraumatization by court procedures and some judges have used their discretionary powers to render courtrooms less toxic to children, the system was designed by adults for adults, and certainly not for children. The court process especially in criminal trials does not typically take into account the developmental constraints of children nor do they fully understand trauma in children and the risks to testifying child witnesses. Humanistic psychology has long stood for social justice and compassion toward our most vulnerable humans, especially children, but the long and slow-to-change traditions of the court system in the United States creates an environment that is inhospitable to children and even older victims as illustrated by the low rate of prosecutions in rape cases. This article outlines the distressing conditions that await child victims/witnesses in this country in comparison with other developed countries and an innovative, out-of-the box solution that does not interfere with the rights of the accused.

¹Children’s Home of Poughkeepsie, Poughkeepsie, NY, USA

²Columbia University, New York, NY, USA

³Courthouse Dogs Foundation, Bellevue, WA, USA

Corresponding Author:

David A. Crenshaw, Children’s Home of Poughkeepsie, 10 Children’s Way, Poughkeepsie, NY 12601, USA.

Email: dcrenshaw@childrenshome.us

Keywords

child witnesses, U.S. court system, trauma sensitive, developmentally sensitive, courthouse dogs

Trauma-informed and developmentally sensitive approaches in the past decade have had a major impact in the fields of mental health and education, but only recently has the issue been raised with respect to the U.S. courts (Caprioli & Crenshaw, 2015; Crenshaw & Stella, 2015). Courts can be hazardous to the psychological safety of crime victims especially children. The U.S. Constitution does a superb job protecting the rights of the accused but does not provide equal safeguards for those who suffer the ravages of violent crime. Children as victims/witnesses are most likely to be thrust into the adversarial court arena as a result of child sexual or physical abuse. Sexual and physical assault leave child victims “voiceless” but at the same time expected to participate in a highly verbal process when testifying in court. Children are silenced because trauma and neuroscience researchers report that trauma is frequently encoded in regions of the brain not accessible to verbal expression (van der Kolk, 2014). When the body is assaulted (not to mention the spirit) of a child, the child’s brain is mobilized by the stress response system to rely on survival circuits in the brain (frequently referred to as the “lower brain”), while the higher, more sophisticated circuits of the brain that mediate language, thought, and reasoning shut down (Porges, 2011; van der Kolk, 2014).

Of particular concern to the authors is the long-held, but scientifically unexamined assumption in the judicial system that by creating an adversarial system in the criminal court process, and thereby increasing stress and tension in witnesses, the court is more likely to arrive at the truth. Not only is it difficult to find any empirical support for this long-held principle in the courts, recent evidence suggests that the opposite may be true. In a recent review, it was concluded that children are more likely to be able to testify in a more productive and complete manner when they are approached in a warm, supportive, and sensitive manner (Klemfuss, Quas, & Lyon, 2014).

Trilogy of Abuse-Related Secrecy, Shame, and Stigma

Children are also silenced by the trilogy of abuse-related trauma effects of secrecy, shame, and stigma (Caprioli & Crenshaw, 2015). Abuse-related experiences leave children unable to share the details of the events due to the shame and secrecy and isolation interwoven with their victimization. Trauma therapists are quite familiar with the need to establish safety with child

victims and to forge a strong, trusting relationship before children can tell the story of what happened to them. When the disclosure is forced by the pressures of the legal process, when there is no time to build a safe and trusting relationship, when sensitivity to timing and pacing is lacking, the risk of retraumatization increases (Porges, 2011; van der Kolk, 2014).

Safety and the Adversarial Courtroom Environment

In courtroom testimony, safety and sensitivity to timing and pacing are not what drives the questioning process. In fact, the court process embraces aggressive argument, strategic and selective presentation of facts, and in the case of child witnesses tolerates in many instances the use of developmentally inappropriate, complex language, and repeated questions with subtle variations for the purpose of demonstrating inconsistencies in the verbalizations of young children. The assumption is that this hostile, tense, adversary context aids the truth-seeking process. This assumption does not seem credible in the face of current knowledge of child trauma. Judith Herman (2003), a child trauma authority, stated, “Indeed, if one set out intentionally to design a system for provoking symptoms of posttraumatic disorder, it might look very much like a court of law” (p. 159). A recent study (Andrews, Lamb, & Lyon, 2015) analyzed 120 trial transcripts of 6- to 12-year-old children testifying in sexual abuse trials. Self-contradictions were identified in 95% of the cases. Self-contradictions were defined as responses that negated what the children had previously disclosed during the proceedings or provided self-conflicting information. They found that defense attorneys elicited more self-contradictions than prosecutors, but the vast majority of prosecutors elicited at least one self-contradiction. The authors concluded that neither prosecutors nor defense attorneys question children in developmentally appropriate ways. The authors of this study expressed concern that in adversarial jurisdictions such as the United States, cross-examinations by defense attorneys are intended to undermine the credibility of the child witness by persuading child witnesses to change details in their accounts. Often this is accomplished by exploiting the developmental limitations of children and deliberately violating research-based guidelines outlining the best ways to elicit truthful testimony. Andrews et al. (2015) concluded: “This raises serious questions about the extent to which cases are dealt with justly.”

In order for children to engage in effective social communication, they must feel safe. This is especially true of child trauma victims. It is critical that there be a “visceral feeling of safety” (van der Kolk, 2014, p. 79). If the child does not feel safe, the child’s own neurobiological survival response system will interfere with the ability to communicate effectively on the stand.

Often we encounter such youth who want to communicate about their experiences but the upheaval in their internal physiological stress response system overwhelms their ability to communicate effectively. It is not uncommon to see an adolescent when attempting to describe a traumatic sexual experience break eye contact, gaze at the floor, purse their lips, a tear flowing down their cheek, but unable to utter a word. Sometimes at that moment of “shutdown” when their neural survival circuits are driving their internal physiology, the child or adolescent can shift to another mode of communication. They may be able to write, or draw something, or make a picture in the sand tray to share what they are feeling or a memory that has been triggered. But they are simply unable to verbalize. The agony on their faces is evident; it a painful process to watch. It is not that they will not communicate, they cannot.

Conflict of Needs of Trauma Victims and the Court System

Experienced play therapists and child therapists know that timing and pacing are essential skills in eliciting trauma narratives in the course of therapy. The needs of the court system are dramatically different as Herman (2003) noted,

Victims need an opportunity to tell their stories in their own way, in a setting of their choice; the court requires them to respond to a set of yes-no questions that break down any personal attempt to construct a coherent and meaningful narrative. (p. 160)

It is important in terms of mastery that trauma victims have some control over the exposure to trauma material, but the court demands that they relive the experience in detail and in direct confrontation of the perpetrator (Herman, 2003). Jeopardy is heightened because, “Child sexual abuse (CSA) is by far the most likely cause of children becoming involved as witnesses with criminal courts” (Goodman, 2005, p. 873). Testifying about child sexual abuse in the highly exposed, open courtroom in the presence of strangers, recounting intimate details inextricably woven in secrecy, shame, and silence puts children particularly at risk on the witness stand.

Risks of Face-to-Face Confrontation With the Accused

The process of protecting vulnerable child witnesses in U.S. courts has been further complicated by a Supreme Court decision (*Crawford v. Washington*, 2004), which affirmed the Constitutional rights under the Sixth Amendment

for the defendant to confront his or her accuser face-to-face. Since that momentous decision, it has been much harder to gain approval from the courts for such accommodations as closed-circuit TV or videotaped testimony. Furthermore, when such accommodations have been granted and a conviction of the defendant resulted, such verdicts have frequently been overturned on appeal based on violation of the defendant's right to confront face-to-face the accuser (Lyon & Dente, 2012). These cases were overturned because children's out-of-court statements were admitted after they failed to testify (Lyon & Dente, 2012). The *Crawford* decision as Lyon and Dente (2012) concluded has made it difficult to prosecute cases in which the child witness initially reported the crime to authorities but later is too frightened, intimidated, or traumatized to testify.

Cultural Differences in the Treatment of Child Witnesses

The U.S. Constitution delegates the freedoms and rights to the citizens of the United States. The amendments set forth within the bill provide a foundation for this country's judiciary system. Today's court systems are strictly guided by the amendments to provide defendant's with a fair trial. Such rights include the right to a speedy trial and the right to face one's accuser in the court. In addition, the Constitution allows for a public trial, including the press's rights. Although implementing and ensuring that a defendant's rights is important, the Constitution does not provide rights to child witnesses, who may possibly be the victim of the defendant's crime. There are provisions that are allowed in some court cases; however, many times these provisions are not available to the child witness and the child is, or can be, exposed to re-traumatization. Despite the United States being so far ahead of many countries with what are said to be fair trials, the country is quite far behind in providing provisions for child witnesses.

Canada has significant provisions for child witnesses in court in order to prevent secondary traumatization to the child and allows for the case to be prosecuted effectively. Since 1988, changes within the Criminal Code and Canada Evidence Act have occurred in regard to children testifying in court (Cunningham & Hurley, 2007). For example, the Supreme Court of Canada, in 1993, upheld that a child who is an alleged victim of sexual abuse, younger than the age of 18 years, is able to be provided provisions during testimony. Such provisions include that the victim be able to provide testimony from behind a screen or via closed-circuit television, as long as the judge is in agreement that this provision is necessary to provide the full account of what

was alleged to have occurred. The screen, as would the closed-circuit television, shields the child from seeing the defendant, however, may allow for the accused to see the witness (Cunningham & Hurley, 2007). Therefore, the screen is able to block the child's view, providing a safer and secure environment for the child while testifying and still allowing the accused his or her constitutional rights. Through further expansion, in January 2006, the court was permitted to decide whether to exclude people from the courtroom (Cunningham & Hurley, 2007). This includes members of the public and not legal counsel, jury, or the accused. However, in order for this provision to be made, there must be evidence that the child witness's testimony would be inhibited, due to the presence of the public within the gallery (Cunningham & Hurley, 2007). With the gallery being approved to be cleared of the public, this would allow the child witness some privacy. Testimony regarding a horrific act such as child sexual abuse is difficult enough for a child to have to repeat in detail, without having strangers observe in the background. With people watching as the child witness testifies, the child may experience increased anxiety and shame, putting the child at risk for secondary victimization.

Canadian courts also do not permit the accused to personally cross-examine the child if the accused is self-representing himself or herself (Cunningham & Hurley, 2007). This provision allows for the child to be asked questions only by legal counsel and/or the judge if necessary. Another approach to assisting with a child witness's testimony is the use of video-recorded evidence. Rather than the child having to provide information that they were asked during pretrial interviews during the trial, a video may be shown. The video includes the child's statement to the police or other officials (Cunningham & Hurley, 2007). The video is then played in the courtroom and "the child is asked if they 'adopt the contents' and if so, cross examination proceeds" (Cunningham & Hurley, 2007, p. 10). While the child is testifying, there are also provisions that allow for a support person to be present with the child. The permitted support person may sit or stand near the child while testifying, regardless if testimony is given in open court, behind a screen, or television (Cunningham & Hurley, 2007). Allowing for a support person to sit with the child witness provides emotional support and comfort to the child while reducing stressors the child may experience during testimony.

In South Africa, further provisions are made during a child witness's testimony in court to prevent secondary victimization. In many South African courts, intermediary services are utilized to support the child through the difficulty of testifying in a sexual abuse trial. An intermediary is a person who is appointed by the judge and deemed competent. Such individuals may

include social workers, medical practitioners, psychologists, child care workers, teachers, and family counselors (Jonker & Swanzen, 2007). The purpose of the intermediary person is to assist with the administering of the oath and relay questions given from the prosecution and defense counsel to the child witness. The questions are allowed to be simplified by the intermediary in order to meet the child's developmental and cognitive needs. According to Jonker and Swanzen (2007), the intermediary is able to convey the questions to the child in an age-appropriate manner, however, is not there to interpret the child's response. The intermediary services are utilized outside of the courtroom; therefore, the child does not have to see the accused or hear anything occurring within the courtroom. The intermediary services can be provided to the court utilizing a one-way mirror or closed-circuit television (Jonker & Swanzen, 2007). The purpose of this setup is to reduce stressors for the child and to provide the child with an informal setting, along with allowing for the child's privacy.

In addition to intermediary services, South African courts allow for the child to utilize nonverbal communication during his or her testimony. According to the Criminal Procedure Act, "a witness under 18 can be deemed to include demonstration, gestures, or any other form of non-verbal expression" (Jonker & Swanzen, 2007, p. 93). Allowing for a child witness to utilize nonverbal communication assists the child in being able to demonstrate what he or she may not be able to verbally describe, due to age and trauma. The intermediary then will verbalize the child's responses to the court (Jonker & Swanzen, 2007).

New Zealand's Evidence Amendment Act also allows for similar provisions to be made for child witnesses. Alternative methods include prerecording forensic interviews, cross-examination via television link, and intermediary services. In fact, according to Spencer and Lamb (2012), the entire testimony of a child can be prerecorded outside the courthouse in the presence of counsel and a judge. Although the child's testimony is allowed to be prerecorded, their presence is required at the trial to be cross-examined; however, this can occur via screens, closed-circuit television, or intermediary services. Despite such reforms within the judicial system in New Zealand, it is important to note that these provisions are not regularly put into practice. According to Spencer and Lamb (2012), there is a lack of resources and training. In Western Australia, prerecorded evidence and use of closed-circuit television are also utilized. The country also notes that delays during trial can have an adverse reaction on the child witness and therefore, allowance for such provisions assists in avoiding delays. England, Wales, and New Zealand have also observed the same difficulties within their judicial systems, and have made cases that include child witnesses are given top priority (Spencer & Lamb, 2012).

European countries are also setting forth provisions and reform for child witnesses within the court system. Member States of the European Union declare that “all minors under the age of 18 fall within the category of vulnerable witness” (The Crime Victim Compensation and Support Authority, 2010, p. 53). In addition, the process in which trials are held can be different in comparison with the United States. Austria and Norway, for example, do not use an adversarial system and rather the judge interviews the child witness (Spencer & Lamb, 2012). On the judge’s completion of the interview, counsel are then able to ask additional questions. All of this is completed in private, and not in open court. In Sweden, if a case involves a child younger than 15 years, the child’s statements may be recorded and provided, so that the child does not have to appear at trial (The Crime Victim Compensation and Support Authority, 2010). Furthermore, in Ireland, a victim impact statement may be given by the parent or guardian, if the alleged crime occurred to a child younger than the age of 14 years and in Lithuania, a child younger than the age of 18 years, is only summoned to court under exceptional circumstances (The Crime Victim Compensation and Support Authority, 2010). The accommodations for child witnesses are all made in effort to assist the child in providing clear information and protecting the child from further harm. In Germany and Finland, the child witness has a possibility to appear in court without the defendant present (The Crime Victim Compensation and Support Authority, 2010). Additionally in Germany, the child witness is questioned by the presiding judge and if counsel wishes to proceed with further questions, counsel must do so through the judge and is not allowed to directly question the witness. The United Kingdom also utilizes measures to protect child witnesses including the utilization of screens and closed-circuit televisions. Additionally, legal professionals are asked to remove wigs and gowns and witnesses are able to utilize devices that provide resourceful communication (Clark, 2013).

While many of the countries around the world including the United States utilize provisions for child witnesses, ages regarding provisions seem to vary depending on the country. However, many of the countries researched were noted to provide provisions to child witnesses younger than the age of 18 or 17 years, whereas in other countries, the age was to be much younger. In the United States, the age when such special accommodations can be considered varies from state to state. In addition, although these countries have been able to enact reform to the judiciary systems in regard to child witnesses, they do face difficulty in effectively providing such provisions on a regular basis due to lack of funding, trainings, and availability. In addition, according to Spencer and Lamb (2012), there are also concerns regarding the jury’s impression of the child. A jury may not see such provisions as a tool to help

reduce stress and trauma. The jury may see the provisions, such as utilization of the witness screen, as a barrier to seeing the emotional effects the crime had on the child. Due to jurors seeing less effect of a child's reaction to questioning, this could pose doubt in a juror's mind as to whether the defendant is guilty (Spencer & Lamb, 2012). Other jurors may see the utilization of these provisions as automatic guilt for the defendant, despite the judge's instructions. These arguments are often made by the defense, which has put prosecutors in a position, specifically in the United States, to not utilize such provisions. In addition, research has shown that accommodations to child witnesses do not effect trial outcomes, according to Spencer and Lamb (2012). Despite there being some concerns in these countries about how juries will view the case, provisions are being made, in effort to assist the children.

A Promising Development With the Courts

One promising development in increased sensitivity to the trauma needs of vulnerable witnesses in the legal system is the use of courthouse facility dogs to provide calm and comfort to vulnerable child witnesses when testifying. One of the great advantages of the use of these dogs is that it provides comfort and assists a child witness to remain calm so that they can cognitively process and respond to the questions by the attorneys but it also does not interfere with the Sixth Amendment rights that ensure that the accused as the right to confront face-to-face their accuser.

One of the reasons that testifying in court is so stressful for child witnesses is that the successful prosecution often hinges on their testimony since children most often are called to testify about crimes (e.g., sexual abuse) for which they are the only witness.

Courthouse Dogs: History and Overview of the Courthouse Facility Dog Movement

Synchronicity, the occurrence of two or more events that are meaningful coincidences, was the genesis of the courthouse facility dog movement. By 2003 Ellen O'Neill-Stephens, a veteran King County deputy prosecutor, had spent 18 years witnessing people experience emotional trauma while participating in criminal justice proceedings and realized that this should not just be considered as collateral damage that occurs during the administration of justice. That same year, her son Sean, who suffers from cerebral palsy, obtained a service dog named Jeeter. When Ellen saw how Jeeter's calm presence

seemed to not only relax and delight Sean but all the people around him, it occurred to her that dogs like Jeeter could have the same effect on people involved in stressful legal proceedings. All it took was convincing the elected prosecutor and the assistance dog organization, Canine Companions for Independence, to take a gamble on making this placement. In about a year, history was made when Ellie, the first facility dog to assist people in the legal system, began working at the King County Prosecutor's Office in Seattle, Washington.

Why Dogs Are Uniquely Qualified to Provide This Support

Dogs play a special role in human life. For thousands of years, humans and canines have lived together. We count on dogs to alert us if there is any danger nearby. If a dog barks and leaps to his feet, we instinctively look to see what has caught the dog's attention. Conversely, when a dog is near humans in a relaxed posture, we trust that there is nothing to worry about. The image of a peaceful sleeping dog is synonymous with home for many people in our culture. When the dog is relaxed and quiet, we get a very strong subconscious message that there is nothing menacing in the environment. These aspects of how we feel around calm dogs is something that people intuitively know and now the scientific evidence for the physical and mental calming benefits of human interaction with appropriately bred and trained dogs is overwhelming, and includes both physical and psychological effects across short and long time frames. (Crossman, Kazdin, & Knudson, 2015; Wells, 2009).

What Is a Facility Dog?

Facility dogs have the same degree of training as a service dog but instead of helping one person with a disability, they work alongside a professional in a service capacity to assist many other people. The facility dogs that work in the legal system are graduates from assistance dog organizations accredited by Assistance Dogs International (ADI). This is important because ADI has set high standards of training for the health, welfare, and task work for assistance dogs (ADI, 2015). These dogs typically receive about 2 years of training before they are partnered with a professional and go to work. Their handlers are professionals working in the legal or therapeutic fields such as victim advocates, detectives, deputy prosecuting attorneys, forensic interviewers, and child therapists. These professionals receive extensive training from the assistance dog schools on how to handle their dogs in public and with their clients.

Unlike pet therapy dogs, who are untested for safe physical contact with children by the registering therapy dog organization, ADI requires the dog's

owner to be attached to the dog at all times by a leash, and have to be immediately removed from people or the environment if they show signs of stress, facility dogs have been carefully screened by the assistance dog trainers to make sure that the dog will be successful working in a high-stress environment placement. They can also work off leash, are comfortable working with multiple handlers and are expected to go to work every day with their handler. Facility dogs not only provide a calming presence to children during courtroom proceedings they now also work at child advocacy centers assisting children during forensic interviews, medical exams, and therapy sessions. This practice has spread rapidly over the past 10 years with over 90 facility dogs working in legal settings in 29 states throughout the United States and there is worldwide interest in this innovation from other countries. These placements continue to grow annually.

Best Practices

When a child is first introduced to a friendly facility dog this is an opportunity for the child to build a positive association with the child advocacy center or courthouse environment. One of the advantages of facility dogs having the same training as service dogs is that they have been taught dozens of commands, such as picking up objects and turning on and off lights that a child can ask the dog to perform. Children feel delighted and empowered when the dog follows their instructions. Suddenly, they are in charge of something when a short time earlier they entered the building feeling out of control and uncertain of what would happen to them.

To reinforce the sense that the children can exercise some control of their situation, handlers ask them if they would like the dog to be present during the procedures that are about to occur and have them decide how much, if any, physical contact they would like have with the dog. It is also important to note that because of the high degree of training that these dogs have received they can willingly engage in play with the child, but when work needs to be accomplished, the dogs easily learn when they should avoid distracting the child from the business at hand.

In order to maximize the benefits that a child receives when working with a facility dog, it is ideal for the same dog to accompany the child by providing a sense of continuity during the investigation and prosecution of crimes and their therapeutic sessions. This requires each professional provider be trained to work with the dog when the child is receiving the special services that this professional provides. On one occasion, a replacement substitute facility dog that looked like the dog that child first met, was brought in to assist the child during a court hearing because the first dog's handler was not available. Her

response was, "Hey, that's not *my* dog!" as though some trick was being pulled on her and it took a little while to adjust to her new friend. One mother, whose twin daughters had been sexually abused by their father, commented that the facility dog that assisted them during a trial was successful at keeping them calm, because unlike the judge, prosecutor and victim advocate who tried to be supportive during this process, the dog's only focus was to be there for them.

The History of Accommodating Children in the Courtroom

In the beginning, judges expected children to be treated no differently than adults when they had to testify in court. Then in the past 40 years, judges slowly began to realize that this was not a realistic expectation because children seemed to have difficulty testifying in court. As one trial judge stated, "It seems to me, children do present different issues and different considerations in terms of being witnesses in different cases. They have a peculiar need to find some security in an otherwise insecure setting, I suspect" (*State v. Hakimi*, 2004). Gradually state statutes and/or case law permitted a support person to sit near or in view of the child, or for the child to hold a comfort item, such as a stuffed animal, to help make them feel more secure during this process.

Defense attorneys usually objected to this out of concern that the presence of the support person or the comfort item would make the child more credible or sympathetic to the jury and that this would impinge on the defendant's right to a fair trial. Appellate court judges across the nation struggled with balancing the needs of the child versus violating the defendant's constitutional rights. Depending on the state where the trial was being conducted, the prosecuting attorney had to convince the judge that there was a "need," "a substantial need," or "a compelling need" for the child to receive this visual or tactile comfort in order to be able to testify in court.

In 2004, once facility dogs began providing emotional support to children and other vulnerable witnesses when they testified in court, the debate started all over again with defense attorneys arguing that having dogs provide this service was even more prejudicial to the defendant than having support people or comfort items provide this assistance. They have also argued that the presence of the dog in the witness box interfered with the defendant's right to confront a witness during a trial.

The Decision-Making Process

When judges are presiding over a trial, appellate courts give them wide discretion to exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence. This usually concerns:

1. Making the interrogation and presentation effective for the ascertainment of the truth
2. Avoiding needless consumption of time
3. Protecting witnesses from harassment or undue embarrassment

Appellate court judges rarely overturn trial judges' decisions unless they manifestly abuse their discretion.

Appellate Court Decisions and Case Analysis

Seth Fine (2014), Assistant Chief Criminal Deputy in Snohomish County, Washington, has analyzed the five appellate cases to date that have considered the propriety of a dog accompanying children and one man with physical and cognitive disabilities. Four of the appellate courts found that the trial courts did not abuse their discretion. The fifth appellate court reversed the conviction and remanded the case for retrial, finding the trial judge had abused his discretion in granting the prosecution's request. In Mr. Fine's analysis, he determined that the cases seem to fall into two groups, one with a "permissive rule" and the other with a "restrictive rule."

Permissive Rule

Appellate courts in New York (*People v. Tohom*, 2013) and California (*People v. Chenault*, 2014) permit the use of the dog if it will assist a witness in testifying. "[A] trial judge [may] utilize his or her discretion in fashioning an appropriate measure to address a testifying child witness's emotional or psychological stress, based upon the particular needs of that child" (*People v. Tohom*, 2013).

The reasons for the permissive rule are that:

1. The trial judge has discretion to control the courtroom.
2. The presence of a dog is no more prejudicial than other forms of witness support.
3. A dog does not prevent the defendant from cross-examining a witness.

Restrictive Rule

The appellate courts in Washington State (*State v. Dye*, 2013) and Connecticut (*State v. Devon D.*, 2014), however, will only permit the use of the dog if it is necessary to facilitate the witness's testimony.

"[I]t is the prosecution's burden to prove that a special dispensation for a vulnerable witness is necessary." The Washington Supreme Court found that

the use of a dog is a “special courtroom procedure” that “implicates constitutional rights” and that it is analogous to testimony via closed-circuit television or the physical restraint of defendant (*State v. Dye*, 2013).

In Connecticut, the appellate court stated that “[T]he court abused its discretion . . . because there was no finding, nor was there a showing, that this special procedure was needed” (*State v. Devon D.*, 2014).

Summary and Conclusions

The court system in the United States has carefully protected and preserved the rights of the accused. No one including the authors of this article would ever want an innocent person wrongly convicted and sent to prison. At the same time, the legal and judicial system in this country has been remarkably insensitive to the potential traumatization or retraumatization of child witnesses who are forced to confront face-to-face in a tense courtroom drama their alleged abusers, some of these children as young as 4 years. When the idea of dogs assisting testifying witnesses during legal proceedings was first presented to trial judges, many thought it was a ridiculous, outlandish request or denigrated the dignity of the legal system. The request seemed so beyond the norm that many prosecutors did not even want to bother trying to implement this innovation out of fear that appellate courts would quickly overturn convictions and they would be stuck retrying the case several years later. But the craziness of the idea had an unexpected benefit. It caught the attention of the media with reporters asking why it was necessary. The explanation that testifying in court can be emotionally traumatizing, for children in particular, brought worldwide understanding and attention to how inhumane the legal system can be. Now there was a spotlight on how the appellate courts would handle this matter and debates about the outcome. How satisfying that the appellate courts were open to this new practice and how ironic that dogs have made the legal system more humane.

Declaration of Conflicting Interests

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The author(s) received no financial support for the research, authorship, and/or publication of this article.

References

- Andrews, S. J., Lamb, M. E., & Lyon, T. D. (2015). Question types, responsiveness and self-contradictions when prosecutors and defense attorneys question alleged victims of child sexual abuse. *Applied Cognitive Psychology, 29*, 253-261.

- Assistance Dogs International. (2015). *Facility dogs: Training standards*. Retrieved from <http://www.assistedogsinternational.org/standards/assistance-dogs/standards-for-dogs/training-standards-for-facility-dogs/>
- Caprioli, S., & Crenshaw, D. A. (2015). The culture of silencing child victims of sexual abuse: Implications for child witnesses in court. *Journal of Humanistic Psychology, 55*, 1-20.
- Clark, A. (2013). Child witnesses: A short review of the National Institute of Child Health and Human Development Interviewing Protocol. In E. Roos, af Hjelmsäter & S. Landström (Eds.), *Interviewing child witnesses: Proceedings of the Erasmus Mundus Joint PhD in legal psychology theoretical course interviewing child witnesses* (pp. 36-44). Gothenburg, Sweden: Department of Psychology, University of Gothenburg.
- Crawford v. Washington, 541 U.S. 36 (2004).
- Crenshaw, D. A., & Stella, L. (2015). Court testimony: Animal-assisted trauma-informed play therapy to help traumatized child and adolescent witnesses. In N. B. Webb (Ed.), *Play therapy with children and adolescents in crisis* (4th ed., pp. 334-350). New York, NY: Guilford Press.
- The Crime Victim Compensation and Support Authority. (2010). *Child victims in the Union: Rights and Empowerment*. Retrieved from http://www.unicef.org/ceecis/Child_victims_in_the_Union_CURE.pdf
- Crossman, M. K., Kazdin, A. E., & Knudson, K. (2015). Brief unstructured interaction with a dog reduces distress. *Anthrozoös, 28*, 649-659.
- Cunningham, A., & Hurley, P. (2007). *Overview of issues related to child testimony* (Handbook 1). London, Ontario, Canada: London Family Court Clinic.
- Fine, S. (2014, October). *Making a bullet proof appellate record*. Paper presented at the 2014 International Courthouse Dogs Conference, Seattle, WA.
- Goodman, G. S. (2005). Wailing babies in her wake. *American Psychologist, 60*, 872-881.
- Herman, J. L. (2003). The mental health of crime victims: Impact of legal intervention. *Journal of Traumatic Stress, 16*, 159-166.
- Jonker, G., & Swanzen, R. (2007). Intermediary services for child witnesses testifying in South African criminal courts. *International Journal of Human Rights, 4*, 90-113.
- Klemfuss, J. Z., Quas, J. A., & Lyon, T. D. (2014). Attorneys' questions and children's productivity in child sexual abuse criminal trials. *Applied Cognitive Psychology, 28*, 780-788. doi:10.1002/acp.3048
- Lyon, T. D., & Dente, J. A. (2012). Child witnesses and the confrontation clause. *Journal of Criminal Law and Criminology, 102*, 1181-1232.
- People v. Chenault, 2014 WL 3568562 (Cal. App. 2014).
- People v. Tohom, 109 A.D.3d 253, 969 N.Y.S.2d 123 (2013).
- Porges, S. W. (2011). *The polyvagal theory: Neurophysiological foundations of emotions, attachment, communication, self-regulation*. New York, NY: Norton.
- Spencer, J. R., & Lamb, M. E. (2012). *Children and cross-examination: Time to change the rules?* Oxford, England: Hart.
- State v. Devon D, 150 Conn. App. 314, 90 A.3d 383 (2014).
- State v. Dye, 309 P.3d 1192 (Wash. 2013).
- State v. Hakimi, 98 P.3d 809, 812 (Wash. Ct. App. 2004).

van der Kolk, B. (2014). *The body keeps the score: Brain, mind, and body in the healing of trauma*. New York, NY: Viking Press.

Wells, D. L. (2009). The effects of animals on human health and well-being. *Journal of Social Issues*, 65, 523-543.

Authors Biographies



David A. Crenshaw, PhD, ABPP, is clinical director of the Children's Home of Poughkeepsie and adjunct assistant professor, Columbia University. He is a board certified clinical psychologist (American Board of Professional Psychology), Fellow of the American Psychological Association, Division of Child and Adolescent Psychology, and a registered play therapist-supervisor by the Association for Play Therapy. From 2009 to 2012, he was a faculty associate at Johns Hopkins University, where he taught graduate courses in counseling and play therapy. He is the author, coauthor, editor, or coeditor of 15 books in the field of child and adoles-

cent therapy, numerous journal articles, and book chapters on child trauma, abuse, the rage of children, the wounding of adolescents, and the resilience of children. His latest book is *Termination Challenges in Child Psychotherapy* coauthored with Eliana Gil by Guilford Press. He is also a coeditor with Cathy Malchiodi of a book series for Guilford Press called *Creative Arts and Play Therapy*. Along with his colleagues at the Children's Home, he has been a vigorous advocate for trauma-sensitive courts and the use of Facility Dogs in the Courtroom to comfort vulnerable witnesses. He is currently, Chair of the Board of Directors for the Coalition against Sexual and Domestic Abuse in Dutchess County and a member of the Professional Advisory Board of the Courthouse Dogs Foundation in Seattle. In addition, he is also a member of the Dutchess County Task Force against Human Trafficking.



Lori Stella, LCSW, is a licensed clinical social worker currently working at the Children's Home of Poughkeepsie. She provides trauma-sensitive treatment and case management services to the youth within the program, many who have been neglected and physically and/or sexually abused. In June 2011, she played an integral role in advocating for the first ever use of a courthouse dog during a trial in which one of her clients had to testify. This made New York State History. She has spoken on behalf of advocating for child

witnesses in the court system both nationally and internationally. Additionally, she serves on the Dutchess County Task Force Against Human Trafficking and is her agency's Safe Harbour designee. She also serves as an executive officer on the Board of Directors for the Coalition Against Sexual and Domestic Assault.



Ellen O'Neill-Stephens retired in 2011 as a senior deputy prosecuting attorney from the King County Prosecutor's Office in Seattle, Washington after 26 years of service. In 2003, she pioneered the use of facility dogs that are graduates of assistance dog organizations to provide emotional support to everyone in the legal justice system. She graduated from the University of Oklahoma School of Law in 1983. She is the founder of the Courthouse Dogs Foundation, a nonprofit organization that educates legal professionals and promotes best practices for the use of these dogs during the investigation and prosecution of crimes. In 2010, *The Bark* magazine named her among the "100 Best and Brightest for Amazing Advancements in the Dog World Over the Past 25 Years." In 2013, *Oprah* magazine named Ellen a "Local Hero" for her work and she also received recognition from the Hague Institute for the Internationalization of the Law for a successful innovation in their competition for the Innovating Justice Award. Her son Sean and his service dog Jeeter were the inspiration for her efforts to make the criminal justice system more humane.



Celeste Walsen, DVM, the executive director of the Courthouse Dog Foundation, assisted in the creation of the Courthouse Dogs Foundation in 2008. She has raised four puppies for Guide Dogs for the Blind and Canine Companions for Independence. One of those puppies was Jeeter's sister Junie, who also became a service dog. She also served on the board of directors for the nonprofit organization Seattle Purebred Dog Rescue. She graduated from University of California, Berkeley, with a BA in psychology and obtained her degree in veterinary medicine from Louisiana State University in Baton Rouge. She facilitates the scientific research in this field between the assistance dog organizations, the academic community, the courthouse facility dog handlers, and the Courthouse Dogs Foundation. She provides expert advice on best practices for the successful incorporation of a facility dog into office, child advocacy center, and courthouse settings. In May, 2014, Courthouse Dogs Foundation received the 2014 Victims' Rights Partnership Award from the National Crime Victim Law Institute for collaborative work in advancing the rights of crime victims. See (www.courhousedogs.org) for additional information.