


Witness for the Prosecution...or Defense Dog trainers, behaviorists may be called for expert testimony

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As professionals in the field of applied animal behavior, we are well-placed to understand the antecedents that cause an animal to act in a certain way. In cases where an animal has been implicated in causing injury, nuisance, or destruction of property that has resulted in civil or criminal legal proceedings, or cases where humans are accused of animal cruelty, this understanding can be critical in determining who is responsible and what ought to happen next.

Prosecutors and defenders can make use of our professional perspective on animal behavior by calling us as expert witnesses. Sometimes an animal trainer or behavior consultant might be called to testify about animals they have had previous contact with; for example, if a horse they were working with injured a person or some property. They also, however, might be called upon as an expert witness in cases with which they are not directly involved. That is the focus of this article.

I have been working as a trial consultant and a dog behavior consultant for many years. I've testified as an expert witness in civil and criminal cases when I was working as a trial consultant and prepared many different professionals to testify as an expert witness. These skills are the same in cases related to dog behavior. What follows is a distillation of my personal and professional experience, supplemented with insight from Ann Killenbeck, professor of law at the University of Arkansas.

What is an expert witness?

According to Professor Killenbeck, the role of an expert witness in a trial is to "Assist the trier of fact (either the judge in a bench trial or a jury in a jury trial) in understanding one or more facts at issue in the case. An individual may be qualified as an expert based on his or her academic, scientific, or other specialized training, or on his or her extensive practical experience, in an area relevant to the factual issues in the case. Generally, you will be asked about the following items to establish your credentials as an expert witness: your academic training and licensure in animal behavior, your practical experience assessing and training animals, your membership in professional organizations relevant to animal behavior, whether you've published anything in print or online, and any honors or awards you've received in the field."

You don't need any particular qualification to be considered as an expert witness; if you have a proven record of practical expertise, you may be called upon if a legal team finds your name in connection with a relevant part of their case. If an agility dog runs out of the ring and bites someone, for example, a legal representative (for either the prosecution or the defense) looking for an expert witness might simply start by doing an Internet search for "agility dog trainers near me." If your name comes at the top of the list, you may be contacted.

If you are contacted to provide expert witness testimony, ask your attorney about the specific court procedures and rules regarding what would qualify you as an expert. Ultimately it will be left up to the judge to decide whether you can testify.

A SAMPLE CASE

This is a case that I was asked to help with, specifically to advise and assist the expert witness in preparing for her first experience in court.

A dog trainer with 15-years experience in obedience training has been asked to testify regarding two dogs who were impounded due to multiple complaints by the neighbors, who wanted them declared as dangerous. It seemed the dogs were large and unsocialized, with a history of escaping and roaming the neighborhood. They had not shown any aggression to the staff at the shelter where they were impounded, and as far as the trainer knew, they had not been directly aggressive toward anyone in the neighborhood.

Although the trainer had no prior knowledge of these dogs, after obtaining their history and visiting with them in the shelter, she felt comfortable enough to testify. I'll use this sample case as to illustrate my points about how to prepare for court.

Before the Court Date: The Deposition

The first thing you'll be asked to do by the attorney is prepare a deposition, which is a fact-finding mission for both sides. It is given under oath with both parties, their attorneys, and a court stenographer present, but no judge. It is generally done in an attorney's office and is informal. Because of this, be careful not to let the other side make you feel too safe; remember they are out to get information to discredit your side of the case.

Listen carefully and think about your answers. Make sure you understand the questions and if you are unsure, ask them to repeat or clarify. During this process, you should always give honest answers (you are under oath!) but keep them short and concise. Don't volunteer information. Telling the story should be saved for the actual courtroom testimony when you have the fact finder—usually the judge or magistrate—present to listen.

Your attorney should also give you some help with preparing answers to the kinds of questions they expect you may face during cross-examination and will be able to answer any concerns you have about the process on the day.

How to Prepare Your Report

I first stressed to the dog trainer in the sample case that she would need to do a complete functional analysis and gather as extensive a history as possible for her deposition and testimony. I suggested the dog trainer visit the dogs at the shelter and administer a temperament test like Safety Assessment for Evaluating Rehoming (SAFER), ideally more than once. I also suggested the trainer take the dogs to a public location, if permitted by the shelter, so she could observe and make notes on the dogs' behavior in a location that more closely resembled the neighborhood where the complaints had originated. Finally,

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I recommended interviewing people who had been interacting with the dogs during their stay at the impounding shelter and including their opinions along with the trainer's own impressions.

On the Day

Once the court date arrives, you will be sequestered in a small room outside the courtroom. These are the witness rooms. Be prepared to bring your own coffee and something to do as there may be a long wait. Dress as if you are going to a place of worship: conservative and professional. From the moment you leave your car you are not allowed to talk with anyone—they don't want you to even say good morning in passing. Upon arriving, the bailiff of the courtroom will direct you to the correct witness room; be sure and tell them if you are for the plaintiff or the defendant. Then you wait. Courtrooms are open to the public, so you can bring a friend or family member as support

for when you testify—they won't be able to accompany you for this part, but they can watch your testimony and be there for you afterward.

Being Accepted as an Expert

The first part of the process is being accepted as an expert witness. The fact finder—usually the judge—must accept you are sufficiently qualified to give expert testimony. When your name is called, the bailiff will escort you into the courtroom where you will take the witness stand next to the judge's bench and be sworn in. The plaintiff and the defendant will be seated at separate tables in front of you with their respective attorneys. The attorney for your side will stand up and qualify you as an expert. They will question you about your education, training, certifications, and experience, and will then submit you as an expert.

The other side will either agree or ask some cross-examination questions to discredit you. Don't worry—your attorney will give you an opportunity to let you clarify and then resubmit you. The judge can accept you as an expert with or without the opposition's objections. Oppositional objections are rare. Most often witnesses are accepted by both sides, as well as the court, as an expert witness.

Direct Examination

Questioning by your attorney regarding the key areas of the case will begin; this is called direct examination. This is where your story comes in, along with your evaluation, assessment, and report. Testify in the manner of a teacher; teaching and explaining a new subject by giving examples is always an effective way to communicate. If you are feeling a little intimidated, pretend the courtroom is a classroom filled with new students. Focus your testimony by speaking to the fact finder, whether it is the judge or jury.

Unfortunately, animals—and perhaps especially large, under-socialized dogs—don't always go into court with the protection of innocent until proven guilty. I explained to the trainer from our sample case the judge would err on the side of caution and probably begin the hearing with the premise that “the dogs are vicious or have the potential to be vicious,” and it would be her job to illustrate otherwise. He certainly is not going to start out with, “Gee, these dogs are safe and what are these neighbors complaining about?”

The task of an expert witness is to give the judge reasonable assurance based on the evidence from their research, and on their experience in creating management and behavior modification plans. In this particular case, the burden would ultimately be on the dogs' owners to convince the judge they are capable of doing what's necessary to mitigate the situation.

I want to emphasize that expert witnesses are not advocates for the animals for which they have been called in to testify. If the trainer from the sample case were to testify the dogs in her case were definitely not aggressive and never would be, then the judge would be left with only one option: to agree or not to agree.

In that case, he probably would rule on the safe side—against the dogs. By being an advocate, you have now taken off your “expert” hat with the accompanying ability to be listened to as an objective voice, and put on your “advocate” hat. You can't have it both ways.

In this case, I suggested my friend try to demonstrate that her main goals were the same as the judge's and the prosecutor's. For example, the trainer from the sample case could agree:

- We don't want dogs running around loose.
 - The safety of the community individually and collectively is the primary concern.
 - The safety of the dogs themselves is also important.
- She could then take the opportunity to educate, explaining to the judge there is a difference between dogs being a neighborhood nuisance and behavior that suggests potential for aggression. The best predictor of future behavior is past behavior, and because I recommended the trainer temperament test the dogs and talk to their caregivers at the shelter, she had evidence the dogs had no history of aggression. This meant she could argue that, unfortunately, the neighbors' fear had led them to mischaracterize these dogs as aggressive, when there was not yet any evidence to justify this claim.

After that line of questioning has been completed, the other side will get up and perform a cross-examination, addressing any weak or controversial issues in the case. After cross-examination, your attorney will have an opportunity to come back and clarify or clean up any issues that the opposition may have raised. This will conclude your testimony.

How to Handle Cross-Examination

Cross-examination means being asked questions by the attorney on the other side—if you were hired by the defendant, like the trainer in our sample case, then it will be the prosecutor. This can be the most stressful part of the process, but remember that you, the judge, the defender, and the prosecutor are all on the same side up to a point—you all want safety for everyone concerned. State your case based on the evidence you gathered before making your report.

Be ready for hypothetical questions on cross-examination. For example, in our sample case, the trainer could be asked, “Isn’t it possible that if these dogs got out, they could harm a child?” Under cross-examination, you may feel pushed to give a definite, categorical opinion one way or another; remember to stay objective and stick to the facts you’ve already given. Be willing to agree with the prosecutor on obvious questions such as, “We don’t really know what these dogs will do, do we?” However, if you rely on a recognized authority in your testimony, like using the SAFER test, as well as what you know about the animal’s history and your observations of them, you can give an informed and justified opinion. Your evaluation is based on a functional analysis, a recognized tool in the scientific community, which will boost your credibility with the court. Stay in your teacher mode!

After You Testify

When you are done testifying, you will be allowed to stay in the courtroom to observe the rest of the proceedings. Once you finish testifying it is best not to speak to anyone except your attorney and the client regarding the case until the judge has ruled, then you are free to speak to whomever. He may rule that day or take it under “advisement,” in which case you will have to wait.

Summary

Testifying as an expert witness can be stressful, but also very rewarding, as you have the opportunity to make a real difference in people’s lives and to use your experience in a completely new situation. It can also come with financial benefits; some behavior consultants specifically advertise themselves as able to provide expert testimony alongside their regular services.

You will be asked to testify and commit to an opinion based on your experience and education, as well as your testing and observation of the animals you’ve been called in to testify about.

Remember to have clear criteria and stick to them. One question to ask yourself to help clarify your thoughts is, would you feel comfortable working with this animal in a normal class-based or public setting? Would you allow this dog to play with others? Would you walk this dog in a park around other dogs and children?

Remember, no matter the particulars of the case you’re testifying about or which side has engaged your services, you are always working for safe animals in the community collectively, and for the safety of the animals you’re testifying about specifically.



Melissa McMath Hatfield, M.S., CBCC-KA, CDBC, earned a master’s in counseling psychology and is a retired licensed psychological examiner. Her mission is to enhance the human-dog relationship through understanding, knowledge and empathy. Currently she has a private behavior consulting practice where her main focus is performing temperament assessments and behavior evaluations of dogs who are exhibiting mental health issues. For further information please go to her website: www.lovingdogs.net. She is also a much sought after Jury Consultant providing professional insight into pre-trial preparation, jury profiling, jury selection, focus groups, and case analysis. She has been a trusted advisor on many high-profile cases. Her skills have proved invaluable in assessing both verbal and non-verbal communication of jurors and witnesses.