SERVICE AND THERAPY DOGS IN AMERICAN SOCIETY

ABOUT THE AUTHOR

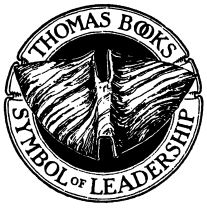
John J. Ensminger is an attorney, writer, and skilled dog advocate. He is a widely known and requested speaker on tax law and financial issues, the U.S.A. Patriot Act, and most recently on the law and science of skilled dogs. He has been the Chair of the Banking & Savings Institutions Committee of the American Bar Association Tax Section, editor in chief of the *Journal of Taxation and Regulation of Financial Institutions,* an adjunct professor, and a legal advocate for mental patients' civil rights. John and his dog Chloe are a therapy dog team and regularly visit hospitals, eldercare facilities, schools, libraries, and a cerebral palsy institute. He reports on legal and scientific issues affecting skilled dogs at doglawreporter.blog spot.com. John lives with his wife Joan in Stone Ridge, New York, and Phoenix, Arizona.

SERVICE AND THERAPY DOGS IN AMERICAN SOCIETY

Science, Law and the Evolution of Canine Caregivers

By

JOHN J. ENSMINGER, J.D., LL.M



CHARLES C THOMAS • PUBLISHER, LTD.
Springfield • Illinois • U.S.A.

Published and Distributed Throughout the World by

CHARLES C THOMAS • PUBLISHER, LTD.
2600 South First Street
Springfield, Illinois 62794-9265

ISBN 978-0-398-07931-4 (hard)
ISBN 978-0-398-07932-1 (paper)

Library of Congress Catalog Card Number: 2009053527

With THOMAS BOOKS *careful attention is given to all details of manufacturing and design. It is the Publisher's desire to present books that are satisfactory as to their physical qualities and artistic possibilities and appropriate for their particular use.* THOMAS BOOKS *will be true to those laws of quality that assure a good name and good will.*

Printed in the United States of America
MM-R-3

Library of Congress Cataloging in Publication Data

Ensminger, John J.
Service and therapy dogs in American society : science, law and the evolution of canine caregivers / by John J. Ensminger ; foreword by Joan Esnayra.
p. cm.
Includes biographical references and index.
ISBN 978-0-398-07931-4 (hard) ISBN 978-0-398-07932-1 (pbk.)
1. Service dogs, United States. 2. Dogs, Therapeutic use, United States. I. Title.

HV1569.6 E57 2010
362.4'048, dc22 2009053527

FOREWORD

Over the last 20 years, there has been a notable expansion in the diversity of service dog types that are being utilized by persons with disabilities. In many cases, persons living with invisible disabilities have adapted the service dog concept to meet their unique needs. Service dogs for persons who experience seizures is one such example, as are psychiatric service dogs (PSDs) for persons living with severe mental illness, and autism service dogs for those living on the autism spectrum. The Psychiatric Service Dog Society has played a significant role in the development of the PSD therapeutic model and is currently engaged in establishing its clinical evidence base.

We recognized as early as 1997 that PSDs would positively impact the lives and functional abilities of tens of thousands of mentally ill individuals, if not millions eventually. Similarly, Patty Dobbs Gross of the North Star Foundation in Connecticut knew when she conceived of autism service dogs in 1997 that there was a great need for the services a dog can provide to a person living on "the spectrum." Acceptance for these newer types of service dogs has been mixed. Seizure-alert dogs have been widely accepted by the disability community, but psychiatric service dogs and autism service dogs were much slower to gain acceptance due to prevailing ignorance, stigma, and society's fear of persons living with brain disorders that have behavioral sequelae. The advent of psychiatric service dogs for military veterans living with post-traumatic stress disorder (PTSD) has greatly facilitated public acceptance for the psych-genre of service dogs. What good American is going to deny a wounded warrior four paws that have the potential to mitigate their PTSD?

With the expansion of new service dog types has come a greater complexity with regard to service animal laws and regulations and the interpretation of these by the courts. John Ensminger's timely book carefully examines these complexities at both the state and federal levels. Concomitantly, the expanded use of therapy dogs in facilities and institutions has brought with it a paradigm shift in society's acceptance and acknowledgement of the canine capacity to contribute in meaningful ways to the lives of ill persons.

The increased use of therapy dogs in new environments and roles challenges society's traditional assumptions about the rights of the dog-loving public relative to those who prefer to live their lives in the absence of dogs. Where do the rights of one group begin to infringe upon those of another? There is a genuine need for scholarly analysis of the impact the changes in uses of dogs are having on social attitudes and therefore on laws and rules at federal and state levels. The analysis provided by John Ensminger's book will be useful to the disabled public, government agencies, private businesses, educational institutions, hospitals, health care providers, housing developments, airlines and other public transportation providers, among others.

With regard to those disabled persons who are partnered with service dogs, there is much information available through the internet that is designed to confuse. For example, a number of physical disability service dog organizations choose to misrepresent federal service animal access laws on their websites, thereby biasing their readership in order to serve a larger political agenda that aspires to exclude other service dog groups from coverage under the law. Such behavior is unethical and intellectually dishonest. Additionally, the internet plays host to numerous websites owned by less-than-reputable dog trainers who provide poorly trained service dogs at a steep price to unsuspecting customers. Some websites sell service dog certifications, ID cards, and service dog jackets indiscriminately so that anyone can take their pet into a restaurant and perhaps claim tax and social service benefits. There is a considerable amount of policing that needs to happen online, yet, we cannot advocate for a higher behavioral or informational standard without first educating the public as to what the laws really are.

This book will level this uneven playing field, and conquer the prevailing digital divide, because the information contained within it is well-researched, factual, and appropriately cited. With a firm grounding in case law and regulatory history, readers will come away with a clearer understanding of the many federal and state laws that bear upon handlers of service and therapy dogs.

Joan Esnayra

Dr. Joan Esnayra is the founder of the Psychiatric Service Dog Society (www.psychdog.org) and is an internationally known lecturer, researcher, and author on psychiatric service dog topics. PSDS is located in Arlington, Virginia, and regularly contributes to Congressional and federal agency discussions of prospective statutory and regulatory developments regarding service dogs. PSDS is currently engaged in research projects analyzing the benefits of psychiatric service dogs for veterans of the wars in Iraq and Afghanistan.

ACKNOWLEDGMENTS

In an obedience class I took with my labradoodle some years ago, the teacher remarked that Chloe had the right personality to be a therapy dog. I thought she was suggesting that I give up my dog to a sick person and I did not take kindly to the idea. The teacher was Elizabeth Stroter, who had been testing therapy dogs in Ulster County, New York, for Therapy Dogs International, Inc. for many years. She explained that being a therapy dog meant visiting people in various types of facilities, and making them feel better. She said that with Chloe's wide accepting face, big brown eyes, persistent smile, calmness, and obvious love of people and other dogs, she could provide many benefits to children and adults in hospitals and residential care facilities. This book would not have been written had I not followed Liz's advice.

My interest in the law of dogs began when members of the Ulster Dog Training Club in New York State (where we live part of the year) were talking at one meeting about how they drove over two hours to some assignments but could not take the therapy dogs into restaurants on the way or when returning home. Summers in the mid-Hudson Valley can be stifling hot, and winters can be brutally cold. The only solution was to go to a drive-through and eat in the car. I volunteered to look into the legal issues with Frances Breitkopf, then president of the Club. In time this led to a legislative initiative that, as of this writing, is under consideration by various New York legislators. I must also thank Professor David Favre who worked with Fran and me on an article that came from this initial research and was published in the *Journal of Animal Law* of Michigan State University School of Law.

I wish to thank my wife, who took some of the photographs in this book and whose suggestions improved many sections. I should also thank my father, M.E. Ensminger (no longer with us), for instilling in me a love of dogs and appreciation for the science of animals. My father wrote a book, *The Complete Book of Dogs,* that I edited while I was in law school and which I have consulted on a number of matters discussed here. Other people who made suggestions based on various stages of the manuscript include Dr. Joan

Esnayra, Professor Michael Perlin, and Dr. James Lawrence Thomas.

And finally, there is "Chloe," who has brightened the lives of many people, including the patients at the Sunview Skilled Nursing Facility in Youngtown, Arizona, children at the Sahuaro Range Elementary School in Glendale, Arizona, and more children at the Velma Teague Library, also in Glendale. She is now visiting the patients and staff at Benedictine Hospital in Kingston, New York, and the children and adults at United Cerebral Palsy of Ulster County in Lake Katrine, New York.

CONTENTS

PART III: CANINE CAREGIVERS, CRIMES, AND PRISONS

PART IV: CANINE CAREGIVERS AND SOCIAL BENEFITS

DEFINITIONS

Many definitions can be found of the terms service dog and therapy dog, with variations even between definitions used by professionals, including lawyers, psychologists, social workers, and veterinarians. Related terms, such as assistance or assistive animal, companion animal, emotional support animal, also have inconsistent definitions, and it is often difficult to tell when a term is inclusive or exclusive of other categories. It is appropriate, therefore, to attempt some basic definitions that will apply in this book unless otherwise specified.

Service Dog

A service dog is a canine service animal that generally serves a single individual with a physical or mental disability. Such a dog works with or performs tasks for this handler. Guide dogs for the blind and visually impaired are a type of service dog in this book, as are hearing or signal dogs for the deaf and hearing impaired. Dogs that help the mobility impaired, say by fetching dropped items or pulling a wheelchair, are another category of service dog, as are seizure-alert and seizure-response dogs.

Not all legal definitions consider that psychiatric service dogs qualify as service animals, but they will be recognized as such here. Dogs in this category may keep people away from a handler who is having a panic attack, or ground someone on the verge of a delusional state in the here and now. Dogs that provide emotional support to a person without a recognized mental disability will, in this book as generally in the law, be distinguished from psychiatric service dogs. Service dogs are increasingly being trained to work with autistic children, keeping them from running away from parents and stopping them from moving into traffic, and to fulfill other functions. Autistic children may also have dogs as pets, but pets for any type of individual will not be called service dogs in this book.

Some state laws use the terms assistance or assistive animal instead of service animal, most commonly where the individual's condition is a physical

disability. The term support animal also sometimes means a service animal, but here this term will be restricted to emotional support animals. Dogs providing emotional support may sometimes be called companion animals, but companionship is assumed in human-pet relationships and the terms companion animal and pet will generally not be differentiated here, and neither will be used to describe a service dog.

Although much is made about the level of training required to be a service dog, training can vary considerably depending on the services involved. Seizure-alert dogs may have little or no training, at least initially. Guide dogs and certain other service dogs can require between one year and even two years of training and can cost upwards of $50,000, though charities often pick up most or all of this expense. A rough but somewhat educated guess would place the number of service dogs, of all categories, in the U.S. at between 30,000 and 35,000.

Therapy Dog

A therapy dog is generally a dog that, with a handler, visits individuals or groups to provide some relief from an institution, such as a hospital, or condition, such as cerebral palsy or Alzheimer's. Therapy dogs may be used one-on-one as part of a treatment program for an individual, which is often called animal-assisted therapy (abbreviated as AAT), but most therapy dogs in the United States today visit facilities to help or at least cheer up the populations of those facilities. These kinds of visitation programs may be called animal-assisted activities (AAA). Therapy dogs licensed by national therapy dog organizations have to pass, with a handler, a test consisting usually of about 20 items, which are assumed to make the dog and the handler a suitable team for visiting schools, hospitals, nursing homes, hospice environments, and many other types of facilities. Professional therapy dogs, sometimes called facility dogs, are animals that live in a facility, such as a nursing home or mental hospital, and interact daily with the residents or patients of the facility. Therapy dogs are generally pets, whose owners or handlers qualify with them in order to work in therapy dog programs. Some specialized search and rescue dogs may also have therapy dog training to aid in comforting individuals until additional help can arrive. Therapy dog work is almost always volunteer work.

Another rough guess, setting qualification requirements rather low to be as inclusive as possible, would place the number of therapy dogs in the United States in early 2010 at around 50,000. Perhaps half of these dogs are making frequent therapy dog visitations.

ILLUSTRATIONS

TABLE

SERVICE AND THERAPY DOGS IN AMERICAN SOCIETY

John Ensminger and “Chloe” with a student at the school of United Cerebral Palsy of Ulster County. Photo by Joan Ensminger; permissions obtained by Susan Krogstad-Hill, Educational Director.

Part I

CANINES AND CANINE CAREGIVING

Chapter 1

CANINE CAREGIVING AND SOCIAL RECOGNITION

A Gulf War veteran with post-traumatic stress disorder is often afraid of going into crowded places but can handle the experience when she has her dog with her. The dog is trained to recognize when she freezes during a panic attack and to sit down behind her, his back pressed against the back of her legs, a defensive posture towards the direction she cannot look. Employees of a warehouse store do not see the dog performing any function and conclude he is a pet. The vest the veteran knitted for her dog reads SERVICE DOG, PLEASE DO NOT PET, but a store employee tells her the vest is clearly not official and she must remove her pet from the store.

A blind woman with a guide dog buys a ticket for an hour-long ferry ride. When she learns that there is a VIP lounge that costs $10 more for the journey she asks to upgrade her ticket and tries to give the ticket seller the additional fare. He says he cannot let her into the VIP lounge because a commuting passenger with severe allergies convinced the ferry management some years before to keep the lounge animal-free.

A boy with autism is in special needs classes at a regular school. His dog lives and sleeps with him, and is trained to stop him from running into traffic and other dangerous situations. The boy's parents tell the school that the dog can remain at the back of the classroom during the school day but that the boy will feel more secure if he knows the dog is near. The principal says the school is not equipped to deal with the dog, and that since the dog is not functioning as a service dog when it is at the back of the room, the parents must take the dog home during the school day and bring it back when the boy is ready to go home.

An elderly couple, both of whom are nearly deaf, move into a no-pets building with their dog, which they have previously informed the management is a hearing dog. They have trained the dog themselves to nudge one of them when the doorbell rings, when the oven timer goes off, when the smoke alarm sounds, or when the computer beeps that they have mail. The dog is not particularly obedient in public areas of the building and has several times relieved herself in the elevator. The couple always clean