

Applying the Court Appointed Special  
Advocate Model to Dogs in the Legal System

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## **Summary**

Nonhuman animals are considered legal property in the United States legal system. Thus, they are the property of their owners or guardians. Several types of nonhuman animals may enter the legal system on under different circumstances. In each case, humans generally have lawyers to represent them. However, in certain instances, the best interest of the nonhuman animal may differ from that of his or her human owner or legal guardian, yet the nonhuman animal is not assigned a separate lawyer or advocate.

When children—who are acknowledged legal persons—enter the legal system, and their interests diverge from those of their parents, they are often assigned Court Appointed Special Advocates (CASAs). These advocates speak on their behalf and represent their best interests. This project examined the Court Appointed Special Advocate (CASA) program. It analyzed how CASAs work with the children to whom they are assigned, and how they determine what is in the “best interest of the child.”

The primary goal of this project, however, is to look at the Court Appointed Special Advocate program in order to determine if, whether, and how any or all of this type of program might be applicable to dogs in the American legal system. Such a program might open the human world’s eyes to the different needs of nonhuman animals, and perhaps might breakdown legal barriers to nonhuman animals’ standing issues due to lack of personhood.

Currently, animals are not entitled to their own lawyers or representatives in court. It is unclear whether attorneys and judges truly understand and meet the needs of nonhuman animals that enter the legal system. The purpose of this project is to study the

CASA program and to determine whether the program as a whole or parts of it might serve as a basis for a feasible prototype for a similar nonhuman animal-oriented program.

Perhaps more importantly, this project may enable the legal system to gain an overall deeper understanding of different kinds of nonhuman animals and their needs. It may give judges an opportunity to consider the best interests of the nonhuman animals that enter their courtrooms. This could lead to improvements in the quality of the lives and treatment of nonhuman animals. Particularly at a time when any and all nonhuman animals are still viewed as property, this project—if it enables a CASA-type program ultimately to be formed—might help courts to see some nonhuman animals as more than mere property. In the long run, if the legal system could begin to see some nonhuman animals as worthy of a CASA-type guardian to stand up for their best interests, it might be a step in the direction of granting some nonhuman animals legal standing, and thus recognition of some nonhuman animals as legal persons rather than property by the courts.

A review of the literature indicates that little, if any, research has been done on whether the CASA program might be a useful model to apply to nonhuman animals in the legal system. Thus, this paper examines several CASA programs and assess whether all or parts of them could be appropriate or modified specifically for dogs involved in the legal system.

## Introduction

Nonhuman animals often make an appearance in our justice system, whether it be in an abuse and neglect case, a divorce case in which custody of the nonhuman animal is being contested, a nuisance case because a dog is disturbing the neighborhood, dog bite case, or a contract case in which the nonhuman animal enters the legal system by virtue of its being a commodity. In most of these cases, the humans have their own lawyers, but there is no one to stand up for the best interests of the nonhuman animals, which may not be the same as those of the humans.

In situations where parents' interests may diverge from the best interests of their children, however, the children are often assigned personal advocates, called Court Appointed Special Advocates (CASAs), who speak on their behalf and in favor of their best interests. We are entering an age in which people are coming to believe that dogs, among other animals, have "interests."<sup>1</sup> It would therefore not be unreasonable to conceive of a standard of best interests of a dog. This Introduction examines how the CASA program works and looks at whether and how all or parts of existing CASA programs could be applied to dogs involved in the American legal system. It first considers the history of nonhuman animals as property, then looks at the development of the child protection laws and the development and function of the CASA program, and then concludes by examining the possible application of a CASA-type program to dogs in the legal system.

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<sup>1</sup> The concept of animal interests is talked about by a broad range of people. For example, David Favre maintains that "[t]he fact that chimpanzees have interests is simply a matter of the observations of science." *Primary Interest of a Chimpanzee*, NABR Animal Law Section at <http://www.nabr.org/AnimalLaw/InterestsOfAChimp2.htm> (last visited August 4, 2007). Furthermore, the concept of interests has played a significant role in the major philosophical literature since the 18<sup>th</sup> century with the rise of utilitarianism. Peter Singer, *ANIMAL LIBERATION* (2d ed. New York Review of Books 1990). People also easily seem to comprehend the notion of animal interests when used by the press and other forms of media.

## *Nonhuman Animals as Property*

In the American legal system “[c]ommon-law and civil-law traditions are dualistic in that there are two primary normative entities in these systems: persons and things. Animals are treated as things, and more specifically, as the property of persons.”<sup>2</sup> This rule holds true in all fifty states and many western nations<sup>3</sup>, for example Australia<sup>4</sup>. Although no nation has yet to grant full “personhood” to a nonhuman animal, some western nations, such as Germany and Switzerland, however, have begun to grant some nonhuman animals extensive protections in their laws and constitutions.<sup>5</sup> In New Zealand, for example, “apes—gorillas, orangutans, chimpanzees and bonobos—are granted special rights as ‘non-human hominids’ in 1999 to grant protection from maltreatment, slavery, torture, death and extinction.”<sup>6</sup> The Parliament of the Balearic Islands of Spain “has recently announced its approval of a resolution to grant legal rights to great apes.”<sup>7</sup> The resolution supports basic legal rights for apes. Its reasoning is based upon scientific evidence that great apes “like human children, experience an emotional and intellectual conscience similar to that of human children.”<sup>8</sup>

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<sup>2</sup> Gary Francione, *Animals As Property*, 2 ANIMAL L. 1, 1 (1996).

<sup>3</sup> SONIA S. WAISMAN, ET. AL., ANIMAL LAW: CASES AND MATERIALS 91, 91 (2d ed. Carolina Academic Press 2002); STEVEN M. WISE, RATTLING THE CAGE: TOWARD LEGAL RIGHTS FOR ANIMALS, 4 (Perseus Publishing 2000); Gary Francione, *Animals As Property*, 2 ANIMAL L. 1 (1996).

<sup>4</sup> Katrina Sharman, *Do Animals Need Lawyers?*, News and Events, University of New South Wales, [http://www.law.unsw.edu.au/news\\_and\\_events/news.asp?type=&name=811&year=2005](http://www.law.unsw.edu.au/news_and_events/news.asp?type=&name=811&year=2005) (last visited April 22, 2007).

<sup>5</sup> Lauren Magnotti, *Pawing Open the Doors of the Courthouse: Why Animals’ Interests Should Matter*, 80 ST. JOHN’S L. REV. 455 (Winter 2006).

<sup>6</sup> Kate Connolly, *Court to rule if chimp has human rights*, GUARDIAN UNLIMITED OBSERVER, Sunday, April 1, 2007.

<sup>7</sup> Michele L. Stumpe, Esq., *For Immediate Release*, The Great Ape Project, March 22, 2007 at <http://www.greatapeproject.org/news.php>.

<sup>8</sup> *Id.*

A notable case recently took place in Austria, in which lawyers and primatologists tried to prove that a chimpanzee “is one of us.”<sup>9</sup> It is only by proving this that the chimpanzee would be able to be assigned a legal guardian to protect his rights against going to a vivisection laboratory, as his sanctuary faced bankruptcy.<sup>10</sup> Unfortunately, on April 24, 2007, an Austrian judge denied the request to appoint a guardian to the chimpanzee, claiming that this action might create the perception that chimpanzees with guardians were on the same level as humans.<sup>11</sup> Although the Austrian case did not succeed, a Brazilian case in 2005 held a chimpanzee to be a legal subject.<sup>12</sup>

In the United States, one might say that dogs, in particular, are a special form of property: for example, “unlike most other property, [they] must be licensed and leashed.”<sup>13</sup> Admittedly, such things as cars and boats must be licensed as well. Unlike cars and boats, however, many companion animal owners consider their pets as members of the family, not as property:<sup>14</sup> “According to a recent survey, seventy-three percent of dog owners and sixty-five percent of cat owners consider their companion animals to be like a child or family member.”<sup>15</sup> Thus, the “[p]ublic perception is sharply at odds with

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Ned Stafford, *Chimp denied a legal guardian: Court turns down request in case aiming for 'ape rights,' News@Nature.Com*, April 26, 2007, at <http://www.nature.com/news/2007/070423/full/070423-9.html> (last visited April 29, 2007).

<sup>12</sup> *Ciro Brigham, Historic Decision Recognizes Chimpanzee as Legal Subject*, October 6, 2005.

<sup>13</sup> Ann Hartwell Britton, *Bones of Contention: Custody of Family Pets*, 20 J. AM. ACAD. MATRIMONIAL L. 1, 23 (2006).

<sup>14</sup> Anthony McCartney, *Animal Lovers Don't Consider Their Pets As Property*, TAMPA TRIBUNE, September 26, 2006, at Metro 1; Ann Hartwell Britton, *Bones of Contention: Custody of Family Pets*, 20 J. AM. ACAD. MATRIMONIAL L. 1, 1 (2006).

<sup>15</sup> Rebecca J. Huss, *Separation, Custody and Estate Planning Issues Relation to Companion Animals*, 74 U. COLO. L. REV. 181, 181 & n1 (2003).

the legal view.”<sup>16</sup> Nonetheless when a companion animal enters the judicial system, it is treated as a piece of property—just as a couch or a house would be treated.<sup>17</sup>

An example of one of the modern-day cases that solidified the fact that animals are property was *Pierson v. Post*.<sup>18</sup> In this case, Post was chasing a fox with his hounds. Pierson killed the fox and took it. Post sued Pierson, and the question was whether Post had a cause of action against Pierson. The key issue was “what acts amount to occupancy, applied to acquiring right to wild animals.”<sup>19</sup> The court ultimately held that Post had no cause of action against Pierson because the person in control of the animal has the animal as his property. Although this case was related to wild animals, it set the precedent for all types of animals as legal property. It is important to note, however, that there have been laws regarding animals since ancient times.<sup>20</sup>

Some courts, however, are beginning to recognize that animals are a different type of property. For example, in *Morgan v. Kroupa*, the court held that

modern courts have recognized that pets generally do not fit neatly within traditional property law principles. “[A] pet is not just a thing but occupies a special place somewhere between a person and a piece of personal property.” *Corso v. Crawford Dog & Cat Hosp., Inc.* 97 Misc. 2d 530, 415 N.Y.S. 2d 182, 183 (Civ. Ct. 1979).<sup>21</sup>

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<sup>16</sup> Ann Hartwell Britton, *Bones of Contention: Custody of Family Pets*, 20 J. AM. ACAD. MATRIMONIAL L. 1, 15 (2006).

<sup>17</sup> *Id.* at 1.

<sup>18</sup> 3 Cai. R. 175 (NY 1805).

<sup>19</sup> *Id.* at 175.

<sup>20</sup> Steven M. Wise, *Rattling the Cage: Toward Legal Rights for Animals*, 9 – 48 (Perseus Publishing 2000).

<sup>21</sup> 702 A.2d 630, 633 (Vt. 1997).

*The Mary Ellen Story: Why the Children's Model is Valuable*

In 1871, a story of the extreme abuse of a young girl, Mary Ellen, was brought to the attention of Henry Bergh, the head and founder of the American Society for the Prevention of Cruelty for Animals (ASPCA) in New York City.<sup>22</sup> Although Bergh had been asked for his help in similar cases, he found the Mary Ellen case harder to ignore. Bergh ordered the ASPCA's counsel to file a petition "to have the child removed from her present custodian and placed with persons who would treat her more kindly."<sup>23</sup> Bergh made it clear, however, that he was not acting in his official capacity as an officer of the ASPCA.

In her article, *Unraveling the Mary Ellen Legend; Origins of the "Cruelty Movement*, Costain notes that prior to the Mary Ellen story becoming public, "the press had alluded to children as 'human animals' who were as worthy of protection from cruelty as were horses, cattle, and dogs."<sup>24</sup> Furthermore, the humane literature at the time called children "little animals" and underscored the fact that both children and animals were defenseless and thus shared a right to protection.<sup>25</sup>

One result of the Mary Ellen story and similar ones was the emphasis on the link between animals and children. This had a significant impact on the child protection movement: the "animal organizations offered a tested model of carefully circumscribed organizational purpose, policy, and strategies of intervention into instances of cruel

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<sup>22</sup> Lela B. Costain, *Unraveling the Mary Ellen Legend; Origins of the "Cruelty" Movement*, SOC. SERV. REV. 203, 206 (June 1991).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 212.

<sup>25</sup> *Id.*

treatment.”<sup>26</sup> The ultimate result of the Mary Ellen story was the founding of the Society for the Prevention of Cruelty to Children.

Today there are many organizations and laws that protect children. One of the key laws protecting children is the Child Abuse Prevention and Treatment Act (CAPTA).<sup>27</sup> CAPTA states that each court must have

provisions and procedures requiring that in every case involving an abused or neglected child which results in a judicial proceeding, a guardian ad litem, who has received training appropriate to the role, and who may be an attorney or a court appointed special advocate who has received training appropriate to that role (or both), shall be appointed to represent the child in such proceedings . . . to make recommendations to the court concerning the best interests of the child.<sup>28</sup>

Furthermore, under CAPTA, federal grants for states are dependent on their creating a guardian ad litem program. However “[n]either the Act itself nor the implementing regulations provided guidance regarding who should serve as the guardian ad litem (GAL), or the qualifications and responsibilities.”<sup>29</sup>

### *Court Appointed Special Advocates*

Programs have developed in large part due to CAPTA, despite its lack of specific guidance. These programs have grown because of the need for judges to have assistance in making decisions in the best interest of children. One result of CAPTA was the formation of the Court Appointed Special Advocate (CASA) program in 1977 by King

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<sup>26</sup> *Id.* at 214.

<sup>27</sup> 42 U.S.C. §§ 5101, 5102, 5106a, & 5107 (1974) (amended 1996).

<sup>28</sup> 42 U.S.C. § 5106a(b)(2)(A)(xiii)(II) (1974) (amended 1996).

<sup>29</sup> Rebecca Hertz, *Guardians Ad Litem in Child Abuse and Neglect Proceedings: Clarifying the Roles to Improve Effectiveness*, CASAnet Resources, <http://www.casenet.org/library/guardian-ad-litem/gal-e-section1.htm> (May, 1997).

County Superior Court Judge David W. Soukup of Seattle, Washington.<sup>30</sup> The CASA program provided children with volunteers who advocated for their best interests and provided investigative information to the courts.<sup>31</sup>

### *Companion Animals in the Judicial System*

As mentioned above, there are many occasions in which companion animals enter the judicial system. In all the various types of cases the humans involved either represent themselves or have an attorney representing them, speaking for their best interests. Sometimes, however, the best interests of the owner may not be in line with the best interest of the animal. For example, in estate/probate cases, there are certain instances in which owners instruct that their pets be euthanized upon the owner's death.<sup>32</sup> In abandonment<sup>33</sup> and custody cases,<sup>34</sup> people are fighting over who should get ownership of the animal. In cruelty/abuse/neglect cases, the responsibility for the animal often falls on the local Animal Control Officer, local SPCA or Humane Society—people and organizations that are extremely busy and may not necessarily have time to consider the animal's best interest. It is in such cases that an animal advocate would be beneficial not only to the animal, but also to the legal system.

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<sup>30</sup> CASA Judges' Page, *What Do CASA Volunteers Do and How Did the CASA Movement Begin?* at [http://www.nationalcasa.org/judgespage/resource\\_startcasa.htm](http://www.nationalcasa.org/judgespage/resource_startcasa.htm) (last visited Feb. 4, 2007).

<sup>31</sup> There is a more in-depth discussion of the CASA program later in the paper.

<sup>32</sup> See e.g., *In re Estate of Howard Brand*, Probate Court, Docket No. 48273 (1999) (holding that the owner's wishes to have his horses euthanized upon his death was against public policy).

<sup>33</sup> Rebecca J. Huss, *Separation, Custody and Estate Planning Issues Relation to Companion Animals*, 74 U. COLO. L. REV. 181, 206-207 (2003).

<sup>34</sup> Ann Hartwell Britton, *Bones of Contention: Custody of Family Pets*, 20 J. AM. ACAD. MATRIMONIAL L. 1 (2006); Rebecca J. Huss, *Separation, Custody and Estate Planning Issues Relation to Companion Animals*, 74 U. COLO. L. REV. 181, 220-221 (2003).

## *A CASA Program for Companion Animals*

Currently, the CASA program is used only for human children. However, there are many similarities between the needs of children and those of nonhuman animals regarding the need for representation. For example, both need a voice to speak on their behalf in order to “ensure that their best interests are not just being considered, but actually championed throughout the legal system,”<sup>35</sup> as Stephan K. Otto, suggests in his article, *State Animal Protection Laws—The Next Generation*. Additionally, in the case of nonhuman animals, CASA-type programs could expedite the process when they enter the legal system by providing someone who could explain to a judge the intricacies of the needs of the particular nonhuman animal as well as provide simple observations that would aid the judge in making his or her decision.

Thus, this study explores what has not yet been covered by the current literature. It examines the history and the workings of the CASA program itself. The study then evaluates whether the CASA program could be a useful model for dogs in the legal system. The methodology of the study is laid out below.

### **Methodology**

This study of the possibilities of using the existing CASA system for children as a prototype for a potential CASA-type program for dogs relied on a review of the relevant literature and media describing the CASA program and noting changes occurring in our society regarding the social and legal status of dogs. To get a sense of the functions of

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<sup>35</sup> Stephan K. Otto, *State Animal Protection Laws—The Next Generation*, 11 ANIMAL L. 131 (2005). See also Marguerite Hogan, *Comment: Standing for Nonhuman Animals: Developing a Guardianship Model from the Dissents in Sierra Club v. Morton*, 95 CALIF. L. REV. 513 (2007).

CASA programs and possible ideas that they might offer, a number of interviews took place during the months of May and June of 2007. The interviewees were a member of the National CASA, a Massachusetts Juvenile Court Judge, and members of eleven CASAs across the country. The interviews involved contacting the interviewees by telephone or meeting them in person for confidential conversations about a range of CASA issues. The details are laid out in the sections that follow.

### *Study Subjects*

The interviewees consisted of one National Court Appointed Special Advocate official, eleven Court Appointed Special Advocate (CASA) volunteers and one judge. In order to find CASA volunteer subjects, I contacted the National CASA office by telephone (using the 800 number posted on the website). I first interviewed an official at the National CASA office. The official at the National CASA office suggested that I find local CASA volunteers by using the National CASA website's state/zip code search engine to find an office near me. I next interviewed a Massachusetts juvenile court judge. This judge had a contact at a local CASA office, and I got in touch with that contact. The contact suggested that I attend the final CASA training session, which I did. I then met with the CASA contact the following week. I also used the National CASA website's state/zip code search to locate several other CASAs and spoke to eleven CASA volunteers and program organizers in total.

Because it is not necessary for me to identify my subjects in the write-up of my project, I have kept all interviews confidential. I protected the anonymity of my subjects

by identifying each source by a letter. No names are mentioned in the write-up of my research. Furthermore, the names and letters are locked in Dr. Allen Rutberg's office.

### *Information to be Collected*

Regarding the CASA program, I was first and foremost seeking information on its history and how it functions. I wanted to know details about how the program itself is structured. I also was curious to know when, why, and in what cases children are appointed CASAs. I was interested in what role CASAs play in guiding children through their cases. I particularly wanted to obtain information about how CASAs aid judges in determining the best interests of the children involved and how one determines someone else's "best interest."

I used a semi-structured interview form in order to obtain the information that I was looking for. I planned for the interviews to take no longer than half an hour, but permitted them to last as long as the subject was willing to talk. I had a basic interview guide from which I started, but allowed the interviewee to expand on the questions or take the interview in a direction that he or she saw fit. (See Appendix 1 for the interview guide for CASAs; see Appendix 2 for the interview guide for judges.)

### *Analytical Techniques*

Because I am interested in how the CASA program works and whether it might be applicable to dogs in the legal system, I analyzed the responses to my questions about the structure and use of the CASA system in light of how the CASA program or parts of it might be used as a prototype for dogs in the legal system.

## *Timeline*

I spent the months of May and June establishing my contacts—both CASAs and the judge. During the month of May and June, I interviewed the contacts that I made. I wrote up my interviews as I met or spoke with each interviewee and then incorporated the interviews into my paper. I spent the months of June and July and the first two weeks of August writing up my findings.

## **The CASA Program**

The CASA program began because Seattle, Washington judge David Soukup felt that he was not getting enough facts to make sound decisions in child welfare cases. Attorney guardians ad litem (GALs), he believed, were too busy to dedicate sufficient time to their child welfare cases. It was also unlikely that GALs had the time to spend with the individual children to whom they were assigned. Judge Soukup maintained that local volunteers could be trained to assist in child welfare cases and be child advocates. He thus began the first CASA program. The federal government has been supportive of the CASA program, amending CAPTA in 1996 to include CASA volunteers as an option for the courts as a type of guardian ad litem.<sup>36</sup>

CASA volunteers are advocates acting on behalf of the children to whom they are assigned. They find out as much information as possible about the children's lives by interviewing people with whom the children interact, such as parents, teachers, and neighbors, among others. They then write up reports that are used in court. CASA

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<sup>36</sup> *Id.*; Hollis Peterson, *Casenote and Comment: In Search of the Best Interests of the Child: The Efficacy of the Court Appointed Special Advocate Model of Guardian Ad Litem Representation*, 13 GEO. MASON L. REV. 1083 (2006).

volunteers are also involved in the children's lives—they visit the children and spend time with them on at least a monthly basis.

The National CASA program currently has more than 50,000 volunteers and more than 900 local offices.<sup>37</sup> The CASA Mission Statement claims that the mission of the National CASA “together with its state and local members, is to support and promote court-appointed volunteer advocacy for abused and neglected children so that they can thrive in safe, permanent homes.”<sup>38</sup>

Many judges rely on CASAs “to be their eyes and ears when children are placed in the legal system.”<sup>39</sup> This is particularly the case in cases involving domestic violence. In fact, many judges wish that there were more CASAs available to them and feel that there are not enough CASAs to meet their current caseloads.<sup>40</sup> According to a June 1995 survey of family and juvenile courts in areas with CASA programs by Organizational Research Services, “[j]udges find CASA volunteers to be most effective in considering the best interests of the child and in monitoring the case.”<sup>41</sup> Additionally, national study of the forms of representation has shown that as opposed to the private attorney model and the staff attorney model, the guardian ad litem's CASA model “clearly excelled as a

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<sup>37</sup> *CASA Overview*, at [http://www.nationalcasa.org/about\\_us/index.html](http://www.nationalcasa.org/about_us/index.html) (last visited Feb. 4, 2007).

<sup>38</sup> *CASA Mission Statement* (2006), at [http://www.nationalcasa.org/about\\_us/mission.html](http://www.nationalcasa.org/about_us/mission.html) (last visited Feb. 4, 2007).

<sup>39</sup> Jerry Markon, *Keeping Watch Over Children in the System; CASA Volunteers Help Judges Decide What's Best for Kids in Troubled Families*, WASHINGTON POST, July 16, 2006, at T10.

<sup>40</sup> Carmela Welte, *Judges Highly Value CASA Volunteers But Need More of Them: Considerations for Assignment of Cases*, CASA Judges' Page, at [http://www.nationalcasa.org/JudgesPage/Article/judges\\_highly\\_value\\_casa\\_volunteers.htm#](http://www.nationalcasa.org/JudgesPage/Article/judges_highly_value_casa_volunteers.htm#) (last visited Feb. 12, 2007).

<sup>41</sup> *Id.*

method of guardian ad litem representation and produced the greatest number of outcomes in their child client's best interests."<sup>42</sup>

While CASAs can be very useful, there are limits to their power. For example, unlike attorneys, they "cannot subpoena records, call witnesses, conduct cross-examination, file motions, or appeal."<sup>43</sup> Additionally, because CASAs are "lay volunteers [who] represent the interests of children"<sup>44</sup> some view them as "at best, marginally trained part-time non-lawyers acting as guardians ad litem."<sup>45</sup> Although it is true that CASAs are lay volunteers, they do receive 30 hours of training prior to receiving any cases.<sup>46</sup> The 30 hours of training that they do receive, however, pales in comparison to the hours of training and experience of most GALs, who are attorneys. Nevertheless, "CASA programs do not necessarily operate in isolation, or without legal service backup. Several programs employ attorneys, to advise the CASA volunteers, or appear in court to afford actual legal representation in some cases."<sup>47</sup>

There is a National CASA, state CASAs, and local CASAs that are overseen by the state CASAs. The National CASA "offers critical leadership and support to provide quality advocacy and lead the continued growth of the CASA network."<sup>48</sup> It is involved in a variety of activities, including training and curriculum, technical assistance to state

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<sup>42</sup> Hollis Peterson, *Casenote and Comment: In Search of the Best Interests of the Child: The Efficacy of the Court Appointed Special Advocate Model of Guardian Ad Litem Representation*, 13 GEO. MASON L. REV. 1083, 1100 (2006) (quoting U.S. DEPT. OF HEALTH & HUMAN SERVICES, NAT'L STUDY OF GUARDIAN AD LITEM REPRESENTATION (1990)).

<sup>43</sup> Merrill Sobie, *The Child Client: Representing Children in Child Protective Proceedings*, 22 TOURO L. REV. 745, 755 n24 (2006).

<sup>44</sup> *Id.* at 753.

<sup>45</sup> *Id.*

<sup>46</sup> *The Volunteer Commitment*, at <http://www.nationalcasa.org/volunteer/commitment.html> (last visited February 18, 2007).

<sup>47</sup> Merrill Sobie, *The Child Client: Representing Children in Child Protective Proceedings*, 22 Touro L. Rev. 745, 755 n24 (2006).

<sup>48</sup> CASA—Our Network, at [http://www.nationalcasa.org/about\\_us/network.html](http://www.nationalcasa.org/about_us/network.html) (last visited June 12, 2007).

and local programs, volunteer recruitment, public awareness, and resource development and grants. Regarding the training and curriculum, all local CASAs must have training programs that meet the standards of the National CASAs training requirements.<sup>49</sup>

The state CASA programs work in partnership with both the National and local CASAs. They provide additional support to local CASA programs in the areas of technical assistance and information. The state CASAs also provide opportunities for networking among the local CASAs and support for local CASA program staff and volunteers.<sup>50</sup> Each state manages its organization slightly differently, as do the local CASA programs. Although all states have CASA programs, not all states have state organizations, thus each local program may vary slightly from the others.

What follows is a description of several different CASA programs across the country. Most of them are quite similar, particularly in that they all have extensive training programs that live up to the National CASA requirements. Most of these programs educate potential CASAs on aspects of the legal system, how to perform interviews, and how to write up reports, among other things. Additionally each program discussed below has some part that would be *useful* in forming a prototype CASA program to use for dogs that enter the legal system.

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<sup>49</sup> Information regarding the National CASA obtained via interview with a member of the National CASA, May 2007 (see Appendix 3).

<sup>50</sup> *Id.*

## *California*<sup>51</sup>

### *CASA of Monterey County*

The CASA of Monterey County was established 15 years ago. Volunteers are screened, interviewed, trained for 30 hours, and sworn in by the court before receiving their first cases. The training covers twenty separate issues, including advocacy; an introduction to discovery and evidence; child development and family systems; community resources for children; and court appearances and testimony, among others.<sup>52</sup>

The purpose of the CASAs trained by this program, as with the other CASA programs, is to advocate for children. The CASAs of Monterey County primarily advocate in four areas. The first, and most important, is permanency and stable placement of the child. The remaining areas are social development, education, and health. Judges have started appointing health rights responsibilities to CASAs, so now CASAs, rather than some parents, attend meetings regarding the child's health. Most of the CASAs' cases come from dependency court, although some come from delinquency court. CASAs are assigned to cases when a judge, county counselor, or social worker finds it appropriate and requests a CASA.

## *Colorado*<sup>53</sup>

### *The Denver CASA*

In Colorado, there exists a state-level CASA that provides legislative liaisons and technical support and aids in starting new programs.<sup>54</sup> The Denver CASA<sup>55</sup> is one of

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<sup>51</sup> Information collected via interview with a California CASA, conducted June 2007 (see Appendix 3).

<sup>52</sup> CASA of Monterey County, CA, *Training & Education* at <http://www.casamonterey.org/trainingdetail.htm> (last visited July 23, 2007).

<sup>53</sup> Information collected via interviews Colorado CASAs, conducted June 2007 (see Appendix 3).

Colorado's 14 local CASAs. The Denver CASA was established in 1995 and is a 501(c)(3) nonprofit organization.<sup>56</sup>

The Denver CASA serves children in abuse and neglect cases in the juvenile court. In 2006, The Denver CASA had 71 volunteers who served 230 of the hundreds of children in the juvenile court system.<sup>57</sup> The program works by getting references from judges, GALs, and social workers. The CASA volunteers are then matched up with the children based on personality, among other factors.

The CASAs from the Denver CASA program receive extensive training: they spend 32 hours in class and have 8 hours of additional in-court training. Further, 12 hours of in-service training is required each subsequent year.

All children are also appointed attorneys. The main role of the CASA is thus an investigative one. It is the responsibility of the CASA to talk to people in the child's life and then to write up a report recommending what is in the best interest of the child.

#### *Boulder County: Voices For Friends CASA*

In Boulder County, Colorado, the CASA program is called Voices For Friends (with a capital "F" in "For" just to be different). In Boulder, there must first be an allegation of abuse or neglect. Then the Department of Social Service investigates. If the allegation is substantiated, a Dependency and Neglect Petition is filed with the juvenile court. When the case is first opened, a GAL is assigned to the child involved to represent the best interests of the child. All children are appointed an attorney. The CASA

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<sup>54</sup> CASA for Children, *Colorado CASA*, at <http://www.coloradocasa.org/> (last visited July 23, 2007).

<sup>55</sup> The Denver CASA, at <http://www.denvercasa.org/> (last visited July 23, 2007).

<sup>56</sup> The Denver CASA, *Fact Sheet*, <http://www.denvercasa.org/about-casa/fact-sheet/>, (last visited June 23, 2007).

<sup>57</sup> *Id.*

program becomes involved when it receives a referral from the GAL. The CASA program refers to this system as a “team model.”

The CASA staff then works to match the appropriate CASA to each case. A CASA spends about 10 – 12 hours per month on an average case. CASAs write up monthly reports and turn them in to the main office, which then passes them on to the GALs. The GALs then decide how to use the reports.

*Florida: Ft. Lauderdale Guardian ad Litem Program, 17<sup>th</sup> Judicial District*<sup>58</sup>

Florida is divided into 20 judicial districts, each of which has a guardian ad litem program.<sup>59</sup> All the programs are united under the state office and follow the state-wide rules and regulations. Florida’s GALs are essentially the same as CASAs in other states. Unlike in many other states, in which the GAL is an attorney, in Florida the GAL is a lay volunteer. GALs receive 30 hours of training prior to taking their first case. They must attend 6 hours of additional training each subsequent year. Currently, there are over 5,413 GALs in the state of Florida.

Florida’s GAL program is run out of dependency court, a section of juvenile court. The order appointing a GAL comes directly from the court. The role of the GAL is to advocate for the best interest of the child. In order to do so, the GAL fulfills the roles of investigation, facilitation, advocacy, and monitoring. The GAL follows the case from beginning to end.

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<sup>58</sup> Information collected via interview with a Florida CASA, conducted June 2007 (see Appendix 3).

<sup>59</sup> Florida Guardian ad Litem Program at <http://www.gal.fl.gov/> (last visited July 23, 2007).

*Massachusetts*<sup>60</sup>

Massachusetts has no state CASA organization. Thus the individual local CASA programs act independently. State-wide, however, CASAs are only used in juvenile courts at the discretion of the judges. Unlike in many other states, in Massachusetts, children in juvenile court are always assigned an attorney. Furthermore, courts employ investigators. Consequently, CASAs may not be as necessary in Massachusetts as they are in other states. Nonetheless, when judges do request CASAs, the CASAs act as additional sets of eyes and ears for the court.

*Berkshire County, MA: Kids' Place & Violence Prevention Center*

The Kids' Place is located in Pittsfield, Massachusetts<sup>61</sup>. Because Massachusetts has no state CASA organization, the Kids' Place operates under the National CASA Organization's standards.

The Kids' Place program is in quite a rural area, thus group training is difficult. As a result, the organization runs an independent study program in order to train its volunteers.

The Berkshire County Kids' Place is able to serve an average of 400 child abuse victims from Berkshire County per year.<sup>62</sup> In 2001, almost 2,000 child abuse and neglect incidents were reported to the Department of Social Services in Berkshire County.<sup>63</sup>

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<sup>60</sup> Information obtained via interview with Massachusetts CASAs, conducted May and June 2007 (see Appendix 3).

<sup>61</sup> Berkshire County Kids' Place & Violence Prevention Center, Inc. at <http://www.kidsplaceonline.org/> (last visited July 23, 2007).

<sup>62</sup> Berkshire County Kids' Place & Violence Prevention Center, Inc., *Helping a Child*, at <http://www.kidsplaceonline.org/helpingachild.htm> (last visited July 23, 2007).

<sup>63</sup> *Id.*

*Worcester County, MA: The CASA Project*

The CASA Project is located in Worcester and serves five juvenile court sessions in Worcester County: Fitchburg, Dudley, Milford, Leominster, and Worcester. Like other Massachusetts CASA programs, the CASA project works only with juvenile courts. The CASA Project is an independent, nonprofit 501(c)(3) organization. It was founded in 1981 shortly after the original CASA program was founded in Seattle, Washington. It was created along with four other CASA programs by the National Council of Jewish Women, which has remained very supportive of CASA programs.

Prospective CASAs must go through 30 hours of training. The training is comprised of six sections: history of child protection and advocacy; federal and state laws; how child abuse and/or neglect are reported to the state; how the state responds to allegations of abuse and/or neglect; qualifications of a CASA volunteers; and responsibilities of a CASA volunteer. The CASA has three primary roles. The CASA is a fact-finder who must thoroughly research the current situation and background, and then prepare an objective report for the court. The CASA is also an advocate for the child's best interest. Finally, the CASA monitors the case throughout the entire life of the case.

The CASA Project is able to handle approximately 60 cases per year. Currently, there are 3 case supervisors. Each case supervisor handles 30 – 35 volunteers. The CASA Project hopes to have 100 volunteers by fall 2007, and hopes to add 1 – 2 more case supervisors.

*New York*<sup>64</sup>

*The New York State CASA*

The New York State CASA, like most state CASA organizations, does not deal directly with children or with CASA volunteers. It is not on the front lines as the local CASAs are. Instead, the New York State CASA assists with technology and training programs. Its primary purpose is to serve the local CASAs—the 24 CASAs in 35 counties.

*CASA of Westchester County*

CASA of Westchester County is considered an “umbrella” program because it operates under the auspices of the Mental Health Association (MHA). CASA of Westchester County was established in 1988. It deals only with abuse and neglect cases of children aged 0 – 21. In the majority of the cases that CASA of Westchester County handles, the children are in foster care.

CASA of Westchester County operates in family court. It follows the “friend of the court model,” in which the CASA is a neutral body appointed by the judge. All cases that CASAs handle are open both with the court and with social services. Once a CASA is assigned to a case, the CASA gets access to all court records. The CASA does not, however, get access to social service records.

The CASA interviews people in the child’s life, including the social worker, family members, therapists, and teachers, to name a few. The CASA is responsible for the child’s education, health care, mental health, and permanency planning. Prior to each

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<sup>64</sup> Information obtained via interviews with New York CASAs, conducted June 2007 (see Appendix 3).

hearing, the CASA writes up a detailed report that is given to the judge, social services, and all attorneys.

CASA of Westchester and other local CASA programs have recently begun to receive funding from the Office of the Court Administrator. This has helped them expand their program. In 2006, there were 800 children in foster care, 141 of whom were served in 73 cases by 54 volunteers. In 2007—from January to June—already 139 children have already been served in 63 cases by 69 volunteers.

Potential CASAs receive approximately 40 hours of in-class training. They then are required to complete 12 hours of in-service training. Furthermore, there is group supervision six times per year. The CASAs at CASA of Westchester are only assigned one case at a time and must see the child involved in the case at least once per month.

*Rhode Island: Office of Court Appointed Special Advocate*<sup>65</sup>

In Rhode Island, there is only one CASA program, the Office of Court Appointed Special Advocate. This is the second oldest CASA program in the country, founded in 1979. It is located in the Rhode Island Family Court building. It consists of ten attorneys, who act as guardians ad litem (GALs). As soon as a child is identified as abused or neglected and removed from the home, he or she is automatically assigned a team consisting of a GAL, a social worker, and a volunteer-CASA (v-CASA), who has been sworn in by the court.

The GAL and the social worker, while giving appropriate attention to the case at hand, admittedly have several other cases at the same time. The v-CASA, however, only attends to one case at a time. Thus the v-CASA is the only one who is able to follow the

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<sup>65</sup> Information obtained via interview with Rhode Island CASA, conducted June 2007 (see Appendix 3).

case very closely. The v-CASA acts as an investigator, and interviews people in the child's neighborhood and other people that impact the child's life. The v-CASA then has the option of appearing in court to testify to what he or she has seen or submitting an affidavit. Rhode Island judges rely heavily on the v-CASAs' testimony and affidavits.

Potential volunteers must attend a 30-hour training course prior to becoming a v-CASA. The course covers various issues, including how to interview a child, family systems and development, cultural competence, among others. There is a mandatory follow-up training and in-service training.

### *Tennessee*<sup>66</sup>

#### *Healthy Families of America*

Much of the CASA work depends on the county in which the CASA works. The Healthy Families of America program covers two counties. Whether and how a CASA gets assigned to a case depends on the county. In one county, the use of a CASA is at the judge's discretion. In the other county, CASAs are requested by the Department of Children's Services. The main reason for this difference is how the county wrote up its grant to get the program started.

#### *CASA of Memphis and Shelby County*

The CASA of Memphis and Shelby County program was started in 1986 under the auspices of Juvenile Court judge Kenneth A. Turner.<sup>67</sup> It was incorporated as a

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<sup>66</sup> Information gathered via interviews with Tennessee CASAs, conducted June 2007 (see Appendix 3).

<sup>67</sup> CASA of Memphis and Shelby County, *About Us—What We Do*, <http://www.memphiscasa.org/whatwedo.htm> (last visited June 14, 2007).

501(c)(3) non-profit organization in 1988. The CASA of Memphis and Shelby County serves abused and neglected children and is located in the juvenile court.

The program now has over 200 volunteers, who receive 32 hours in training, in which the potential CASA learns about courtroom procedure, effective advocacy techniques, child sexual abuse, early childhood development, and adolescent behavior, among other topics.<sup>68</sup> CASAs are assigned to cases based on which CASA is thought to be able to handle the case best. Requests for CASAs come from the court, the Department of Children's Services, and social workers. The reports and recommendations of CASAs are taken seriously by the judges.

*Washington, D.C.: CASA for Children of D.C.*<sup>69</sup>

In Washington, D.C., there is only one CASA program, CASA for Children of D.C.<sup>70</sup> This program uses the national standards dictated by the National CASA. Unlike Massachusetts, in Washington, D.C., CASAs are used only in family court. Judges often take advantage of the availability of CASAs.

There are currently about 2,500 cases of abuse and neglect in the D.C. court system. One thousand, five hundred new abuse and neglect cases are brought each year.

At CASA for Children of D.C., volunteers receive 30 hours of initial training prior to becoming a CASA. Each year thereafter, the CASA must have 12 hours of in-service training.

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<sup>68</sup> CASA of Memphis, *Fact Sheet*, at <http://www.memphiscasa.org/fact-sheet.htm> (last visited July 23, 2007).

<sup>69</sup> Information collected from interview with Washington, D.C. CASA, conducted June 2007 (see Appendix 3).

<sup>70</sup> CASA for Children of D.C. at <http://casadc.org/> (last visited July 23, 2007).

The role of the CASA is part investigator, part monitor of the case. A CASA is assigned to a case by the CASA full-time staff, based on availability, personality, and other factors.

### **Where We Are Today**

Currently, there are probably very few people who have even given a thought to using CASAs for nonhuman animals that end up in the legal system. In fact, there are no programs in which CASAs represent nonhuman animals in the legal system.

Nonetheless, this idea is not so farfetched. In fact, in Tennessee, recently, a judge assigned a GAL to a dog in a custody battle. Although the GAL in this case was an attorney, it is easy to imagine the case with a CASA in place of the GAL.

The Tennessee case was focused around the issue of the custody of a dog, Alex. When Alex's adult owner, Ronald W. Callan, Jr., committed suicide on New Year's Day, both of his divorced parents—Esther Snow Gnall and Ronald W. Callan Sr.—wanted custody of his 13-year-old golden retriever.<sup>71</sup> As administrator of Callan Jr.'s estate, Callan Sr. would not let Gnall see Alex. Gnall's attorney asked the court to appoint a GAL to Alex to determine his best interest. The court appointed Paul N. Royal to be Alex's attorney.

Royal took his job seriously; he truly attempted to find a situation that would be in the best interest of the dog. He interviewed all parties and evaluated their relationships with Alex.<sup>72</sup> Royal recognized the strong emotional bond that the parties had to Alex.

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<sup>71</sup> Stephanie Francis Ward, *Canine case is doggone tough: Tennessee lawyer is guardian to pet caught in custody battle*, at <http://www.abanet.org/journal/ereport/my18dog.html>.

<sup>72</sup> Paul Royal, *Report of Guardian ad Litem, In re Estate of Ronald W. Callan, Jr. Deceased, Esther Snow Gnall v. Ronald w. Callan Sr.* (2007).

The court took both the situation and Royal's work seriously. It valued his service at \$1,870.<sup>73</sup> The court recognized the importance of Alex to both parties in its Consent Order.<sup>74</sup> The court held that:

The petitioner, Esther Snow Gnall, shall have the right to have the dog, Alex, at her home or any other suitable location for alternating two week periods . . . provided that she makes arrangements to pick up Alex at the business offices of the defendant, Ronald W. Callan . . . and provided further that she arranges for Alex to be taken to his veterinarian . . . twice weekly during those weeks for his shots and any other treatment.

The defendant, Ronald W. Callan, Sr., shall have the right to have the dog, Alex, at his home or place of business or at any other suitable location for alternating two weeks . . . provided that he makes arrangements to pick up Alex at the home of petitioner . . . and provided further that he arranges for Alex to be taken to his veterinarian . . . twice weekly during those weeks for his shots and any other required treatment.<sup>75</sup>

Bottom line, the court did *not* treat Alex like a piece of property, but like a child.

## **Where We Want to Be Tomorrow**

Although it would be ideal if we could keep animals out of the legal system altogether, it is unlikely that this will happen any time soon. Because this is the case, we need to recognize dogs' need for guidance through the legal system. Dogs need someone to advocate on behalf of their best interests. A CASA-type system would not benefit dogs alone: it is likely that it would benefit humans and the legal system as well. Such a system could aid in placing dogs with those who truly care about them, which not only benefits the dogs but their owners as well. It also means that judges would have thorough

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<sup>73</sup> Consent Order Related to Estate Property, *In re Estate of Ronald W. Callan, Jr. Deceased, Esther Snow Gnall v. Ronald W. Callan Sr.* (2007).

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

information to make their decisions on a well-informed basis regarding the dogs that enter their courtrooms.

### *A CASA Program for Dogs*

There are several features of existing CASA programs (for children) that can be used as a prototype for a CASA program for dogs. A CASA program for animals could certainly make use of training programs similar to those used by current CASA programs. Many CASAs have extensive training programs. For example, the CASA of Monterey County, CA, covers such issues as introduction to discovery and evidence; community resources; and court appearances and testimony. Several CASA programs, such as the Boulder County, CO CASA, work hard to match the case to the appropriate CASA, given the individual's personality, and other personal factors. The CASA of Westchester volunteers are responsible for the children's education, health care, mental health, and permanency planning. In Florida, for example, the CASA is responsible for investigation, facilitation, advocacy, and monitoring. In Worcester, MA, the CASA is a fact finder who monitors the case throughout its entire life. In Washington, D.C., not only do all CASAs receive 30 hours of classroom training prior to the assignment of their first case, but must also complete 12 hours of in-service training each year thereafter. All of these CASAs' programs provide factors that could be used as prototype for the roles that a dog CASA could perform.

One area in which a dog CASA program would differ from most other CASA programs in order to be most useful would be the courts in which it could serve. Based on the information gathered from the CASA programs described above, most programs

operate only in either family or juvenile court. Additionally, CASAs are only assigned to abuse and neglect cases. To be most beneficial, a CASA program for dogs would need to be able to operate in all courts and in all types of cases. For example, a CASA for dogs might be most useful in probate and custody/divorce cases.

One of the key features of this type of CASA program would be a substantial training program. An important part of the training would emphasize an understanding the role of the CASA in relation to the case and the dog: that is, the CASA is not the dog's attorney, but rather a neutral advocate, speaking for the dog's best interest.

#### *A Hypothetical Training Program for Dog CASAs*

What follows is a hypothetical training program for dog CASAs.

##### 1. Legal Training

It is critical for any CASA to know the ins and outs of the legal system. While it is not necessary that the CASA be lawyer or know as much as a lawyer, it is important that he or she know about how the court system works and about the relevant laws in order to best advocate for their client. It would be most useful if a lawyer or judge taught at least one of these training sessions. First, and foremost, the CASA should know the roles of all the parties to the case. The CASA should understand the legal rights of his or her client, as well as the legal rights of the other parties. He or she should also be knowledgeable about the motions that may be filed throughout the case. Finally, the CASA must understand his or her role as advocate for the client.

## 2. Mental/Emotional Health of Dogs Training

This training section requires that the CASA acknowledge that dogs are sentient and sapient beings—that is, that they can have mental and emotional health issues.<sup>76</sup> The CASA should investigate the home environment of the dog. The CASA also should be taught to look for and be able to evaluate the following things, among others:

- presence or absence of
  - clean water
  - food
  - bed or comfortable place to sleep
  - appropriate enrichment
  - a fenced-in yard;
- number of people in the family;
- amount of attention is devoted to the dog;
- number of times the dog gets walked each day and the duration of each walk;
- many hours the dog is alone;
- training and overall disposition of the dog; and
- whether the dog looks and acts depressed or unhappy.

In order to perform these tasks, the CASA should have access to a veterinarian and a behaviorist to address any questions that may arise that are beyond the ken of the average person.

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<sup>76</sup> There is now abundant literature that attests to the sentience and sapience of nonhuman animals. See, for example MARK BEKOFF, *THE EMOTIONAL LIVES OF ANIMALS: A LEADING SCIENTIST EXPLORES ANIMAL JOY, SORROW, AND EMPATHY—AND WHY THEY MATTER* (New World Library 2007); RAYMOND COPPINGER AND LORNA COPPINGER, *DOGS: A NEW UNDERSTANDING OF CANINE ORIGIN, BEHAVIOR AND EVOLUTION* (University of Chicago Press 2002); and STEVEN M. WISE, *RATTLING THE CAGE: TOWARD LEGAL RIGHTS FOR ANIMALS*, 4 – 48 (Perseus Publishing 2000).

### 3. Physical Health of Dogs Training

The CASA must be able to make a visual evaluation of the dog. The CASA must learn signs of dehydration and emaciation and signs of poor health in general. During this section of training, a veterinarian should be brought in to teach the session(s). Additionally, slides should be shown depicting dogs in varying stages of health.

The CASA should find out whether the dog is up-to-date on his or her vaccinations as required by law, keeping in mind that many vaccinations are optional. The CASA should interview not only the family, but also the veterinarian, and possibly a behaviorist to assess the physical health of the dog.

### 4. Interviewing/Communication Skills Training

It is the CASA's responsibility to interview all people involved in the case. Thus, even though the CASA is the dog's advocate, he or she must act as a neutral party when interviewing. The CASA therefore must learn how to interview in an even-handed, non-aggressive manner. The CASA might interview, among others, the dog's owner(s) and/or primary care-giver(s), the owners' friends and acquaintances, the dog's veterinarian, trainer, and possibly the Department of Social Services due to new cross-reporting laws.<sup>77</sup>

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<sup>77</sup> M.G.L. Ch. 119, Section 85 (2004) ("During any investigation or evaluation reported under section 51A, any employee of the department or person employed pursuant to a contract with the department, when acting in his professional capacity or within the scope of his or her employment, who has knowledge of or observes an animal whom he knows or reasonably suspects has been the victim of animal cruelty, abuse or neglect, may report the known or suspected animal cruelty, abuse or neglect to the entities that investigate reports of animal cruelty, abuse or neglect, as described in section 57 of chapter 22C, or any local animal control authority." § 85(a)).

The CASA must learn first to identify him- or herself as a CASA volunteer. He or she must then be able to ask questions that elicit information about key facts, such as information about the dog's health care, exercise and other forms of stimulation, and other pertinent facts relevant to the dog's quality of life.

#### 5. Report Write-Up Training

Finally, the CASA must be trained in writing up reports of their interviews, communication, and other interactions with parties to the case. The styles of write-ups will likely vary from program to program and court to court, but it is important that each program educate the CASA volunteers on its own write-up format.

### **Policy Analysis**

There are several ways to perform a policy analysis on the issues raised by any proposal that dogs' interests be fully and fairly considered by a legal system. From a traditional policy analysis perspective, the focus is commonly put on what analysts see as a recurring policy cycle: one first defines the problem to be addressed; one then formulates a solution for that specific problem; next, one implements the proposed solution; and finally, one evaluates the solution to see if it, in fact, addresses the identified problem—the measure of “success” can be by any number of criteria. For example, has the solution solved the problem entirely? Has the solution solved the problem only partially? Is a partial solution good enough? Is it possible that the alleged solution has missed the problem entirely?

Once the cycle has been evaluated carefully as a whole and each component seen after the fact, it may well be the case that the problem has not been solved to the satisfaction of the policy makers, and thus the process then begins again until the problem is solved.

We might define the problem at hand as the lack of representation of dogs' best interests in the legal system. Judges have inadequate information and knowledge about dogs in general and, specifically, about the dog in the case at hand. Since good factual information is needed to carry out justice, the lack of information risks the court's failure to carry out its fundamental purpose. In situations such as custody or probate suits, just to name two examples, dogs' interests are often not represented because the court does not see any individual dog as a legally valuable entity. The suggestion that has been formulated above is to create a *CASA*-type program for dogs that will provide dogs with personal advocates who will provide decision makers with accurate information, which should help all involved—human and nonhuman alike.

Yet, the traditional approach to policy analysis is often inadequate because it is very one-dimensional. The traditional approach is not very self-conscious about the very framing of the problem—the choice of words, the particular concepts involved, and the assumptions of what constitutes a solution—which is often problematic. Furthermore, the traditional approach lacks an awareness of how the current discourse in the political system may simply distort things. For example, if the property discourse prevails, dogs will continue to be viewed and treated as property. If, however, the analysis is self-conscious about how that particular choice of words and concepts affects possible

solutions, perhaps the problem can be seen more clearly, and more creative and more realistic and responsive solutions for the public's needs can be proposed.

Another way to frame the “public policy issues” uses a notion of “public policy” that has been framed historically from a more strictly legal point of view. Often, legal decisions rest on the judge's conclusion as to whether something is consonant with or is, as lawyers and reported case decisions often assert, “against public policy.”

The phrase “against public policy” has been characterized as that which conflicts with the morals of the time and contravenes any established interests of society. Acts are said to be against public policy “when the law refuses to enforce or recognize them, on the ground that they have a mischievous tendency, so as to be injurious to the interests of the state, apart from illegality or immorality.” *Dille v. St. Lukes Hospital*, 355 Mo. 436, 196 S.W. 2d 615, 620 (1946); additional citations omitted.

*In re: Estate of Howard Brand*, Docket No.28473, Probate Court (VT 1999).

Thus, for example, a court will not uphold a contract that involves an illegal purpose, such as selling drugs, because doing so would be, in this legal sense of the term, “against public policy.”

Using this type of public policy analysis to look at the establishment a CASA-type program for dogs, it would be difficult to say that a CASA-type program for dogs would be against public policy. As mentioned above, dogs (and other nonhuman animals) have become such important parts of our lives—so much so that many consider them to be members of their family.<sup>78</sup>

Some, however, may argue that creating a CASA-type program for dogs would be poor public policy. Such an argument might rely on slippery slope reasoning—if we

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<sup>78</sup> Rebecca J. Huss, *Separation, Custody and Estate Planning Issues Relation to Companion Animals*, 74 U. COLO. L. REV. 181, 181 & n1 (2003).

have dog CASAs, what is next? Cat CASAs? Fish CASAs? Where will the line be drawn?

The slippery slope argument is an overreaction. While *any* new change risks further change, it still may make sense to implement any specific change on its own merits, rather than to avoid the theoretical and speculative possibility of future problems. The point is really quite simple—that it can be very good public policy to create a CASA-type program for dogs. Arguably, by producing more accurate information for decision-makers, this type of public policy would create justice results that are the purpose of the American legal system. It is particularly feasible to address the canine situation because dogs are the nonhuman animal subjects most often in the legal system. Thus, they are the neediest of someone to stand up for their best interests. Whether it is likely or unlikely that the time and effort will be put in to create something like a fish CASA is really irrelevant to the present situation in which the interaction of humans and dogs is not being well-handled.

Another slippery slope argument is that the concept of creating a best interest standard for dogs will lead people to bring suits on behalf of dogs if they feel that the dogs' best interests are not being met by their current owners. It is important to remember that there is a process outside the court system for addressing this problem: one must first go to the local animal control officer or local police. This is how animal abuse and neglect cases begin. Furthermore, it is extremely unlikely that a neighbor, for example, would have standing<sup>79</sup> bring a case on behalf of someone else's dog. To further allay this fear, it may be addressed by legislation that states that CASAs may only be assigned by judges in instances in which dogs are involved in litigation.

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<sup>79</sup> Standing may be defined as the right to stand before the court and assert a claim.

## **Policy Implications**

### *Beyond the View of Nonhuman Animals as Property*

As discussed above, currently, nonhuman animals are property under American law—much like a chair or a car. Nonhuman animals are viewed as things without interests. A CASA-type program for dogs could help the legal system to view at least some nonhuman animals less as property and more as living, breathing beings with interests in what happens to them. The less the legal system sees nonhuman animals as property, the less likely nonhuman animals will be treated like a chair or a car. Such a result would be consistent with the public’s desire that dogs not be treated as mere property.

This status of dogs could potentially lead to courts permitting recovery for the intentional or negligent harm or death of a companion animal, which some states have already begun to permit.<sup>80</sup> Additionally, viewing specific nonhuman animals as something other than property may alter decisions in custody, probate, and neglect and abuse cases, among others. It may, in fact, lead a court to consider the best interest of the nonhuman animal involved in a case. It is rather difficult to consider the best interest of a toaster, for example, because it is an inanimate object. It has no thoughts or feelings, and feels no pain—thus, it is neither sentient nor sapient. Once judges begin to realize that dogs are both sentient and sapient, and are practically forced to take their issues seriously by assigning them dog-CASAs, it is likely that judges will begin to take dogs’ best interests seriously. Judges can then better shape their orders that provide justice to dogs and humans.

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<sup>80</sup> For example, see Humane Care for Animals Act. IL § 510 ILCS 70/16.3 (2002); and Death of pet caused by negligent act of another - Damages. Tenn. Code Ann. § 44-17-403 (2007).

This view, however, may be problematic for certain people and groups. Those involved in research, for example, need nonhuman animals to remain property in order to perform their research upon them. Additionally, the American Veterinary Medical Association is also against the concept of nonhuman animals gaining status beyond property. For example, it is against the shift from the term “owner” to “guardian.”<sup>81</sup> It is unclear how certain other groups, such as breeders and pet stores would feel about such an issue. It may be the case that their reactions are mixed. Only time will tell.

### *Creating a Best Interest Standard for Nonhuman Animals: Improving Protection*

One significant effect of having a CASA program for dogs could be not only that courts would take nonhuman animal issues more seriously, but also that they might consider the concept of the best interest of the dog. Given the way people feel toward dogs and other nonhuman animals—such as feeling that they are family members and recognizing their sentience and sapience—a best interest standard for dogs and other nonhuman animals is intuitively appealing to many people. For example, it is not likely to puzzle a jury if they are given the instruction, “using the measure of the ‘best interests of this dog,’ is it better for the dog if X is awarded custody or if Y is awarded custody?”

What would such a “best interest” standard look like? While it is difficult to define the concept precisely, just as it is with the best interest standard for children, a best interest standard for dogs (and other nonhuman animals) would take into consideration some, if not all of the following factors, just to name a few:

- the dog’s health and wellbeing;

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<sup>81</sup> American Veterinarian Medical Association, *Animal Welfare Policy Issues*, “Owner vs. Guardian,” at [http://www.avma.org/issues/policy/animal\\_welfare/ownership.asp](http://www.avma.org/issues/policy/animal_welfare/ownership.asp) (last visited July 21, 2007).

- any perceived preference evidenced by the dog (in custody suits, for example);
- the opinion of a veterinarian and/or behaviorist; and
- the opinions of others who know the dog well.

One implication of a CASA-type program for one nonhuman species is that other nonhuman species could, similarly, be the subject of such a program. The justice in this is that development of each kind of case must be justified as thoroughly as the dog-CASA concept. If that standard can be met, then there is really no valid slippery slope argument that holds up—every proposal should be determined on its own merits.

A CASA program for dogs could cause the legal system—in particular the courts—to take nonhuman animal issues seriously. It could further cause them to acknowledge that there is a need to recognize a group of nonhuman animals as sentient and sapient beings with interests in what happens to them. Of course, the question then becomes, how far we take this best interest standard. It seems logical to apply it to sentient and sapient beings, but where we draw the line as to which beings are sentient and sapient is always a bit hazy. Nonetheless, this should not be seen as a large obstacle in this case at least, as it is clear that dogs are both sentient and sapient.

Additionally, establishing a best interest standard for dogs and other nonhuman animals could greatly impact the field of nonhuman animal protection. If nonhuman animals have interests, then it is all the more important to protect those interests—whether it is through legislation, litigation, or other means. It is likely that the creation of a nonhuman animal best interest standard would, at the very least, lead to the

strengthening of such laws as those preventing cruelty to nonhuman animals and making nonhuman animal fighting a crime.

### *Protection for Nonhuman Animals*

The establishment of a CASA program would also be a large step forward in the field of animal protection. While, a CASA program would not give nonhuman animals any specific legal rights, in acknowledging that nonhuman animals need someone to stand up for their best interest, the dog-CASA step could be used as a stepping stone in the fight for meaningful animal protection. In other words, if a nonhuman animal needs an advocate, it is conceptually possible for that animal to sue on his or her own behalf. This argument could be taken further and applied to the issue of standing—a matter for which many animal advocates have been fighting. As mentioned above, currently nonhuman animals may not bring suit on their own because courts have held that they do not have standing. Additionally, it has also been held that advocates may not bring suits on behalf of nonhuman animals largely because they have difficulty proving that they have been directly harmed—

an unfortunate result of constitutionally-mandated standing principles, which require evidence of an individual human injury-in-fact, even where nonhuman animals' statutory rights are at stake. However, this is actually a contemporary interpretation of standing doctrine that is not directly mandated by Article III, which confers jurisdiction on the federal courts to resolve legitimate claims brought by adverse parties.<sup>82</sup>

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<sup>82</sup> Marguerite Hogan, *Comment: Standing for Nonhuman Animals: Developing a Guardianship Model from the Dissents in Sierra Club v. Morton*, 95 CALIF. L. REV. 513 (2007).

It is possible, then, that the recognition that nonhuman animals need advocates which could be accomplished through a CASA program, may ultimately lead to progress in the arena of the standing issue.

### **Policy Recommendations**

This paper has explored the theoretical aspects of a dog CASA based upon the CASA model. The analysis above suggests that there are no insurmountable theoretical boundaries to establishing a CASA-type of program that advises judges on dog-related issues. Thus one policy recommendation that this paper has is that such a practice be actively considered.

Clearly, however, much more work must be done in order to make this concept a reality. Specifically, this paper recommends that more research be done on the practical features of a dog CASA program—namely, the day-to-day aspects of the program; the legislative feasibility in specific states; and the economic implications of the theoretical dog CASA proposed above.

Regarding the day-to-day aspects of such a program, even if a dog CASA program is modeled after the traditional child CASA program, there will likely be various problems that arise that are not seen in traditional child CASA programs. For example, if there is a custody battle over a dog, where will the dog stay during the duration of the case? Will it stay with the dog CASA? Will the dog be remanded to the local humane society or SPCA?

Additionally, the ability to make any progress with a legislature will vary greatly from state to state. Clearly, each state legislature's view of dogs—which will be

expressed in its dangerous dog laws, dog adoption rules, and other dog policies—will affect the reception of the concept of a dog CASA. Court rules and statutes regarding recovery in tort of emotional damages for the intentional or negligent death or injury of a nonhuman animal may also have an effect on what can be done, in terms of policy, with a dog CASA.

Finally, it is certain that the economic effect of a dog CASA program will impact the policy options available. This paper recommends that any dog CASA program keep costs to a minimum by relying on volunteers, replicating parts of existing CASA programs—such as parts of the training, administration, organization—to name a few. Although a budget that is too small might limit the utility of a dog CASA—for example, it might take away from training—it will create a greater amount of policy options than if the economic impact were larger.

This paper further recommends that animal lobbyists from national and state organizations form coalitions in order to address the concept of a dog CASA with state legislators. Doubtless, these will vary, and it will be extremely helpful where dog-CASA advocates can piggyback onto existing animal coalitions.

## **Conclusion**

Although nonhuman animals are considered property within the American legal system, it is clear that many, if not most, Americans—particularly nonhuman animal owners—view nonhuman animals as more than just a piece of property. Many see nonhuman animals as members of their families. Additionally, there is broad acceptance that several nonhuman animals, including primates, dogs, and cats, for example, have

both sentience and sapience. Although there is much debate about giving nonhuman animals rights, this should not prevent certain nonhuman animals from having advocates when they enter the courtroom.

Dogs, in particular, enter the legal system in a variety of circumstances. This paper has explored whether a CASA-type program for dogs would be beneficial to both dogs and humans in the legal system. It has examined eleven different CASA programs across the country with an eye toward whether these programs or any part of them might serve as prototype for a dog CASA-type program.

Many programs had useful parts that could be integrated easily into a CASA program for dogs. For example, the various programs all required significant training for potential CASAs prior to a volunteer receiving his or her first case. It would be crucial for a dog CASA to go through training—pertaining to issues related to dogs rather than children, of course—prior to receiving a case. Additionally, some CASA programs required that the volunteers report to a case administrator. This would be a wise idea in the case of a dog CASA-type program in order to keep cases centralized and ensure that reports are written up in the same manner.

This paper concludes that, although the CASA programs discussed in this paper differed slightly, they all had aspects that were appropriate as factors of a prototype for a dog CASA program. Thus, it would be possible create a dog CASA program modeled after traditional child CASA programs. Finally, this paper concludes that a dog CASA would benefit not only dogs, but the legal system, and humans as well.

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Interviewee D, from a CASA in the District of Columbia, conducted June 2007.

Interviewee E, from a CASA in Rhode Island, conducted June 2007.

Interviewee F, from a CASA in California, conducted June 2007.

Interviewee G, from a CASA in Colorado, conducted June 2007.

Interviewee H, from a CASA in Colorado, conducted June 2007.

Interviewee I, from a CASA in Tennessee, conducted June 2007.

Interviewee J, from a CASA in Tennessee, conducted June 2007.

Interviewee K, from a CASA in Florida, conducted June 2007.

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## **Appendix 1: Interview Guide for CASA Workers**

1. What is the history of the CASA program?
2. How does a volunteer get involved with the CASA program?
3. How and why do children get involved with the CASA program?
4. How are CASAs assigned to children?
5. What role do CASAs play in guiding children through the legal system?
6. How do CASAs interact with the children to whom they are assigned?
7. How do CASAs help judges determine what is in the best interest of the child?
8. Do the children have any say in the outcome?
9. How have CASAs been useful in helping judges decide on the best outcome?

## **Appendix 2: Interview Guide for Judges**

1. Do you use CASAs in your courtroom?
2. What role do CASAs play in your courtroom?
3. Do you interact with CASAs outside the courtroom?
4. Do CASAs help you in making your decision regarding the best interest of the child?
5. How do courts determine “the best interest” of a child?
6. What is the “best interest” standard?
7. Have you had any cases involving animals?
8. If yes to #7: Could you perceive of a situation in which a CASA for dogs might be helpful?
9. Could you see a “best interest” standard being applied to the welfare of a dog, for example?

### **Appendix 3: Confidential Interview Information**

Interviewee A, from the National CASA, conducted May 31, 2007 via telephone call that lasted 10 minutes.

Interviewee B, from a Massachusetts Juvenile Court, conducted May 31, 2007 in person at the Westborough Starbucks that lasted 1 hour and 25 minutes.

Interviewee C, from the Berkshire County, Massachusetts CASA, the Kid's Place & Violence Prevention Center, Inc., conducted June, 5 2007 via telephone call that lasted 12 minutes.

Interviewee D, from a CASA in the District of Columbia, CASA for Children of D.C., conducted June, 7 2007 via telephone call that lasted 11 minutes.

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Interviewee F, from a CASA in California, the CASA of Monterey County, conducted June 13, 2007 via telephone call that lasted 13 minutes.

Interviewee G, from a CASA in Colorado, the Denver CASA conducted June 13, 2007 via telephone call that lasted 9 minutes.

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Interviewee J, from a CASA in Tennessee, the CASA of Memphis & Shelby County, conducted June 14, 2007 via telephone call for 16 minutes.

Interviewee K, from a CASA in Fort Lauderdale, Florida, the 17<sup>th</sup> Judicial Circuit, conducted June 15, 2007 via telephone call for 14 minutes.

Interviewee L, from the New York State CASA, conducted June 15, 2007 via telephone call for 19 minutes.

Interviewee M, from a New York CASA, CASA of Westchester County, conducted June 16, 2007 via telephone call for 22 minutes.

Interviewee N, from a Worcester, Massachusetts CASA, The CASA Project, conducted June 22, 2007 in person at The CASA Project for 35 minutes.