

PETS IN THE EYE OF THE STORM:
HURRICANE KATRINA FLOODS THE COURTS WITH
PET CUSTODY DISPUTES

By
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“Then the king said, ‘Bring me a sword.’ So they brought a sword for the king. He then gave an order: ‘Cut the living child in two and give half to one and half to the other.’”¹

The story of King Solomon includes the often-told tale of two women, both claiming ownership of one baby, who come before the king’s court in order to resolve their quarrel as to which of them is the true mother. This article recounts a modern-day King Solomon story: the baby is the animals left behind during Hurricane Katrina; the two mothers claiming ownership of the “baby” are the original owners of the animals and those who adopted the animals after the hurricane; and the role of King Solomon is played by judges in the custody cases that arose after the storm. This article provides a summary of those custody disputes while examining the question of whether those who left their pets behind during Hurricane Katrina have the right to reclaim them from the animals’ new adoptive family. The animals of Hurricane Katrina became trapped in the middle of an unfortunate and complicated situation largely because of defects in our national policies and laws regarding animals and disasters. Therefore, this article also reviews legislative changes that have and should occur concerning pets and disasters, pet adoption, and animals as property.

I. INTRODUCTION	72
II. BACKGROUND	73
A. <i>Animals as Property</i>	73
B. <i>What Happened During Katrina</i>	75
C. <i>Legal and Ethical Issues</i>	76
1. <i>Abandonment</i>	76
2. <i>Best Interest of the Animal</i>	79
a. <i>Health Concerns</i>	81
b. <i>Class and Race Factors</i>	82
III. THE KATRINA PET CUSTODY DISPUTES.....	84

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¹ 1 King 3:24–25 (New Intl.).

A. <i>Pending Cases</i>	84
1. <i>Johnson v. SPCA of Texas</i>	84
2. <i>Charles v. Humane Society of North Texas</i>	86
3. <i>Couture v. Bondi</i>	86
B. <i>Decided and Settled Cases</i>	90
1. <i>Arguello v. Behmke</i>	90
2. <i>Best Friends Animal Society v. Animals Benefit Club of Arizona</i>	92
3. <i>Case of the Polks</i>	94
C. <i>Dropped Cases</i>	94
1. <i>Combs v. Welsh</i>	94
2. <i>Case of Victor Marino</i>	95
3. <i>Case of Brielle Sylvia</i>	95
4. <i>Cavalier v. Fox</i>	96
5. <i>Sumrall v. Deserio</i>	98
D. <i>Cases Waiting to be Filed</i>	99
1. <i>Case of Hunter</i>	99
E. <i>Cases with Unknown Status</i>	101
1. <i>Best Friends Animal Society Cases</i>	101
2. <i>Case of Thomas Exnicious</i>	102
3. <i>Marks v. Humane Society of Central Illinois</i>	102
IV. LEGISLATIVE CHANGES	103
A. <i>Laws Addressing Pets and Disasters</i>	103
B. <i>Laws Addressing Pet Adoptions</i>	105
C. <i>Laws Addressing Animals as Property</i>	106
V. CONCLUSION	108

I. INTRODUCTION

Hurricane Katrina made landfall at 6:10 a.m. on August 29, 2005. Within hours Louisiana's levee system was overtopped and breached. By August 31, eighty percent of New Orleans was under water.² The media bombarded the public with images and stories of abandoned animals stranded alone amidst the devastation. These accounts poignantly conveyed the message that our national policies and laws were severely flawed when it came to animals and disasters.³

Since our laws and policies failed to address or make provision for animals in disaster situations, we are now faced with the difficult question this paper examines—do those who left their pets behind during Hurricane Katrina have the right to reclaim them from the animals' new adoptive families? This is an extremely controversial issue that spawned passionate debate and garnered much publicity. Though federal and state legislation passed in 2006 as an attempt to prevent

² Joseph Bednarik, *Animals and Disasters 2* (unpublished CLE material) (copy on file with *Animal L.*).

³ This article focuses on the effect Hurricane Katrina had on companion animals; however, the effect it had on other animals, such as livestock and wild animals, should not be forgotten. Companion animals are animals kept by humans for companionship and enjoyment, rather than for economic or other reasons. *Ency. of Animal Rights and Animal Welfare* 111 (Marc Bekoff ed., Greenwood Press 1998).

this problem from re-occurring, for the time being, the problem is being dealt with in the courtroom. The custody battles, and the judges deciding the cases, could set new precedent by breaking away from tradition and considering the interest of the animals at issue. Even if traditional theories are applied in these cases, or the cases settle before making it to court, they remain significant. The cases will serve as precedent in this unique situation and will likely be the impetus for additional policy changes in the animal law realm.

Part II of this article discusses how property law is applied to animals. It also examines how companion animals were dealt with during Katrina and the legal and ethical issues that followed. Part III provides a summary of the custody disputes that arose out of Katrina. Part IV discusses the legislative changes Katrina should prompt and has already prompted. Part V concludes by summarizing the common themes of the cases as well as the desirable legislative changes.

II. BACKGROUND

Before proceeding to the main subject of this article—the pet custody disputes arising from Hurricane Katrina—this section presents an overview of the existing law and ethics relevant to animal custody cases. This section also explains how the law disintegrated during Katrina, creating a situation where judicial intervention is now required to determine the rightful owner of the animals.

A. *Animals as Property*

Animals have borne the status of personal property throughout the course of legal history. Because of this status, animals are subject to the absolute control of humans.⁴ However, modern courts are beginning to recognize that pets do not fit neatly within traditional property doctrines.⁵ On the one hand, because animals are different from other types of property as they manifest intent, independently transport, and replicate themselves,⁶ the law has evolved to allow animals certain protections that override property concerns. Legislation such as anti-cruelty statutes and federal laws regulating the slaughter of animals demonstrate how animals are treated differently from inanimate property.⁷ On the other hand, traditional property concepts still apply to animals.⁸ As with any other property, animals may be bought, sold,

⁴ Gary L. Francione, *Animals, Property, and the Law* 34 (Temple U. Press 1995).

⁵ *Morgan v. Krupa*, 702 A.2d 633 (D. Vt. 1997).

⁶ Geordie Duckler, *The Economic Value of Companion Animals: A Legal and Anthropological Argument for Special Valuation*, http://www.animallaw.info/journals/jo_pdf/lralvol8_p199.pdf (May 3, 2002).

⁷ Francione, *supra* n. 4, at 43–44.

⁸ *Id.* at 34.

sued for, and bequeathed.⁹ “They are by law treated as any other form of movable property and may be the subject of absolute, i.e., complete ownership . . . [and] the owner has at his command all the protection that the law provides in respect of absolute ownership.”¹⁰

Problematic ownership issues arise when an animal becomes separated from its family. When an animal is lost in a non-disaster setting, it usually enters a local animal control shelter and is held for a statutorily mandated number of days. After this time expires, the animal is considered by the law to be abandoned; ownership of the animal transfers to the local shelter, which can adopt out the animal and reassign legal title.¹¹

Ownership of a lost animal is more complex in a disaster setting, such as Hurricane Katrina. The statutory scheme concerning animal ownership disintegrated during Katrina.¹² The operator of two temporary shelters in Mississippi and Louisiana, Best Friends Animal Society (Best Friends), asserts that all those who helped during Katrina stepped in as caregivers, not owners, of the animals.¹³ Therefore, shelters had no legal right to adopt out the animals and the original owners are still vested with ownership rights, even though the adopters may have possession.¹⁴ However, the shelter officials who did adopt out animals maintain they had authority to do so because of legal agreements they signed with localities.¹⁵ The courts in the Katrina custody cases will certainly be discussing these issues as they address the fundamental question of who owns the Katrina animals left behind. Russ Mead, General Counsel for Best Friends, confirms that “the Katrina disaster highlighted the ongoing debate about whether and to what extent animals can be defined as property under the law. . . . [T]hese legal battles will almost certainly yield inconsistent results over the question of the ownership of these animals.”¹⁶ He goes on to explain that the only person who can decide who owns these animals is a judge in a particular case, in a particular jurisdiction, with a particular set of facts.¹⁷

⁹ Susan J. Hankin, *Not a Living Room Sofa: Changing the Legal Status of Companion Animals* 7 (bepress Legal Series Working Paper No. 1700, Sept. 2006) (available at <http://law.bepress.com/expreso/eps/1700/>) (accessed Nov. 17, 2007).

¹⁰ Francione, *supra* n. 4, at 34 (quoting T.G. Field-Fisher, *Animals and the Law* 19 (U. Fedn. for Animal Welfare 1964)).

¹¹ Russ Mead, *Position Statement Regarding “Ownership” of Katrina Animals* ¶ 2 (unpublished ms., Feb. 3, 2006) (copy on file with *Animal L.*).

¹² For a discussion of the disintegration of the statutory scheme, consult *infra* pt. II B.

¹³ Mead, *supra* n. 11, at ¶ 4.

¹⁴ *Id.* at ¶ 6.

¹⁵ *Infra* pt. III (discussing cases where shelters present this argument).

¹⁶ Mead, *supra* n. 11, at ¶¶ 2, 9.

¹⁷ *Id.* at ¶ 9.

B. What Happened During Katrina

During Hurricane Katrina, the entire statutory scheme regulating lost, abandoned, and stranded animals disintegrated. Volunteer groups estimate that at least 50,000 pets were stranded after the storm.¹⁸

Approximately 15,000 of these animals were rescued by Animal Control, rescuers working with Animal Control, and by self-deployed rescuers.¹⁹ In addition to the rescued animals, some owners made pre-Katrina agreements with the shelters to hold their pets. Other owners turned in their animals with the intent to surrender ownership or with unclear intentions.²⁰ This resulted in a chaotic situation involving a number of animals beyond the capacity of the local shelters that were still standing. Temporary emergency shelters sprung up, both within and outside of the government scheme, but even these shelters could not accommodate all the animals in need. As a result, many animals were transported out of the afflicted areas.²¹

With masses of “Katrina animals” now in the possession of various shelters across the country, the question became what could legally be done with them. The answer to this question depended upon who “owned” the animals. Animal Control maintained that ownership transferred immediately to it and the group could do whatever it wanted with the animals.²² Best Friends argued that ownership rights did not pass to the rescuers until the statutory number of days according to Louisiana law (i.e., three years) tolled without the original owner claiming their pet.²³ However, each Louisiana parish²⁴ has ordinances of their own pertaining to household pets. “The state says clearly that parishes can develop their own laws related to animal control,” explained Laura Maloney, director of the Louisiana Society for the Prevention of Cruelty to Animals (SPCA).²⁵ “We can’t hold an animal in a shelter for three years, it’s inhumane.”²⁶ Therefore, various parishes instructed shelters to wait only thirty days before transferring ownership to adopters. Adding to this confusion, the Louisiana

¹⁸ *Dark Water Rising* (Shidog Films 2006) (motion picture).

¹⁹ *Id.*

²⁰ Russ Mead, Speech, *Ownership of Katrina Animals* (Lewis & Clark L. Sch., Oct. 13, 2006) (VCR recording on file with Natl. Ctr. for Animal L.).

²¹ Humane Socy. of the U.S., *After the Storm*, http://www.hsus.org/press_and_publications/humane_society_magazines_and_newsletters/all_animals/volume-8-issue-3-summer-2006/after_the_storm.html (accessed Nov. 18, 2007).

²² Mead, *supra* n. 20.

²³ *Id.*

²⁴ “In Louisiana, [a parish is] a governmental subdivision analogous to a county in other U.S. states.” *Black’s Law Dictionary* 1148 (Bryan A. Garner ed., 8th ed., West 2004).

²⁵ Gwen Filosa, *Paw-Abiding Bandit is Home, A Refugee No Longer*, <http://www.nola.com/news/t-p/frontpage/index.ssf?/base/news-6/1157093292289320.xml&coll=1> (Sept. 1, 2006).

²⁶ *Id.*

state veterinary office and numerous rescue groups set their own adoption dates.²⁷

When things settled down and the original owners started looking for their animals, the shelters were either destroyed or closed, records were ruined, and there was no official database to track the animals that were shipped all over the nation.²⁸ Out of the approximately 15,000 animals that were rescued, around 3,000 were promptly reunited with their owners and the other 12,000 were adopted.²⁹

C. *Legal and Ethical Issues*

The legal and ethical issues of the Katrina custody disputes can be divided into two categories—abandonment, which is addressed primarily by Louisiana statutes, and the best interest of the animal, which is a common law theory consisting of health, class, and race issues.

1. *Abandonment*

There are three key statutory provisions of Louisiana law that relate to the Katrina custody disputes. The first is a provision regarding “lost things.” The Louisiana Civil Code states that “[o]ne who finds a corporeal movable that has been lost is bound to make a diligent effort to locate its owner or possessor and to return the thing to him. If a diligent effort is made and the owner is not found within three years, the finder acquires ownership.”³⁰ The Katrina animals qualify under Louisiana law as a “corporeal movable.”³¹

The second and third key Louisiana provisions address abandonment. The Louisiana Civil Code’s section concerning “acquiring ownership of things” reads, “One who takes possession of an abandoned thing with the intent to own it acquires ownership by occupancy. A thing is abandoned when its owner relinquishes possession with the intent to give up ownership.”³² The third provision, found in the Louisiana Revised Statutes’ section concerning “cruelty to animals,” defines “abandons” as: “to completely forsake and desert an animal previously under the custody or possession of a person without making reasonable arrangements for its proper care, sustenance, and shelter.”³³ The statute exempts a person who “delivers to an animal control center an animal which he found running at large.”³⁴

The courts of the Katrina animal custody disputes must decide whether the animal at issue was “lost” or “abandoned.” This is a criti-

²⁷ Mead, *supra* n. 20.

²⁸ *Id.*

²⁹ *Dark Water Rising*, *supra* n. 18.

³⁰ La. Civ. Code Ann. art 3419 (1994).

³¹ *E.g. State v. Chambers*, 194 La. 1042 (1940) (applying state larceny statutes to dog theft).

³² La. Civ. Code Ann. art 3418 (1994).

³³ La. Stat. Ann. § 14:102(2) (2004).

³⁴ *Id.* at § 14:102.1(1)(d).

cal question because if the animal is deemed “lost,” the original owner has three years under the law to reclaim it. Because the three-year time frame has not expired, the original owner would likely win. If the court deems the animal abandoned, the original owner is viewed to have relinquished his or her ownership rights immediately upon abandonment, and thus the adoptive parent is the rightful owner.

The Louisiana Attorney General issued an opinion that Katrina animals are lost, not abandoned, property. Mimi Hurley, the deputy attorney general assigned to handle the Katrina custody disputes says:

These animals were left behind by people who had no choice, they weren’t voluntarily relinquishing ownership rights, and the definition of abandoned animals does not apply in this situation. Our official position is that we are relying on the Louisiana law that gives three years for an owner to claim unclaimed property. It sounds cold, but under Louisiana law, animals are considered property, and these owners have not relinquished their rights.³⁵

However, because the Attorney General’s opinion is not binding on the courts,³⁶ judges are free to determine whether the Katrina animal at issue was surrendered or abandoned.

Making a blanket determination as to whether Katrina animals were lost or abandoned is difficult since the facts of each case vary.³⁷ For example, many New Orleans pet owners were forced to evacuate without being given the option of taking their animals. Because emergency responders typically do not take animals into account, many New Orleans evacuees relying on government transportation were told they had to leave their animals behind.³⁸ Denise Okojo, blind and ill with cancer, was evacuated from her New Orleans apartment.³⁹ Although she was in need of treatment, she did not want to leave her Seeing Eye dog and companion of six years, Molly, a Labrador retriever.⁴⁰ Okojo recalled, “[t]he Coast Guard airlifted me from my roof to Lake Charles Memorial Hospital’s oncology unit . . . [t]hey said no animals and pulled Molly away from me. I screamed and yelled, but they lifted me into a basket and off I went.”⁴¹

When met with resistance, some emergency responders forced the evacuees by gunpoint to leave their animal behind. Such a story, often told by the media, which poignantly epitomizes this point, is that of a little boy who was boarding a bus at the Superdome when his dog,

³⁵ Best Friends Animal Socy., *Should Katrina Animals Always Be Returned To Their Original Owners?*, <http://network.bestfriends.org/legalanimal/news/5760.html> (July 3, 2006).

³⁶ Charles H. Koch, *Attorney General Opinions*, 2 Admin. L. & Prac. §§ 7.35, 7.35[2] (2007) (available at WL, ADMLP database).

³⁷ *Infra* pt. III (discussing the various facts of each case).

³⁸ Sally J. Altman & Dick Weiss, *Katrina Pet Tales*, ch. 1, <http://www.hsno.org/katrinapet Tales/chapter1.php> (accessed Nov. 18, 2007).

³⁹ Douglas Brinkley, *The Great Deluge* 517 (HarperCollins Publishers 2006).

⁴⁰ *Id.*

⁴¹ *Id.*

Snowball, was forcefully taken from his arms by the National Guard at gunpoint.⁴² Other evacuees were tricked to leave pets behind or were allowed to take their pets only to be promptly separated from them by a government authority.⁴³

It was also common for owners to leave their animals behind with minimal food and water, expecting to return in a few days as they had during past mandatory evacuations. This was further complicated by the fact that, of this group, some owners left their animals tied outside to stakes and fence posts, against the pleas of SPCA staff members that were often broadcast by the media.⁴⁴ In addition, there was the official weather forecast issued by the National Hurricane Center at 10:01 a.m. the day before the storm, which included statements such as:

Most of the area will be uninhabitable for weeks . . . perhaps longer . . . airborne debris will be widespread . . . and may include heavy items such as household appliances and even light vehicles . . . persons . . . pets . . . and livestock exposed to the winds will face certain death if struck.⁴⁵

Nevertheless, some animal law experts maintain that the original owners did not surrender or abandon their pets. For instance, David Favre, an animal law professor at Michigan State University College of Law, notes, “[i]t is irrational to argue otherwise—Katrina was an extraordinary situation.”⁴⁶ This sentiment is echoed by others, like Duke University professor William Reppy, who claims that post-Katrina pet owners “have absolutely no right to keep the dog. . . . You can’t lose your ownership in an emergency when the state of mind is so clear. It’s just preposterous.”⁴⁷

Joseph Bednarik, an attorney who has researched this situation extensively, disagrees with Favre and Reppy. Though he firmly believes that the *Arguello* court⁴⁸ correctly decided that the animal in that case was not abandoned because the original owner did everything she possibly could to find her pet, Bednarik believes that some people who come forward to reclaim their animal did abandon their pet.⁴⁹ Bednarik uses the example of his adopted Katrina dog, Trina.⁵⁰ This is a situation that presents facts sufficient, in his opinion, to establish abandonment.⁵¹ Trina was rescued thirty-one days after the

⁴² *Id.* at 516.

⁴³ Mead, *supra* n. 11, at ¶ 3.

⁴⁴ Altman & Weiss, *supra* n. 38, at ch. 3.

⁴⁵ Brinkley, *supra* n. 39, at 79–80.

⁴⁶ E-mail from Joseph Bednarik, Atty., to Megan McNabb, Author, *Animals & Disasters Written Materials* at ¶ 5 (Sept. 20, 2006, 3:27 p.m. PST) (copy on file with *Animal L.*).

⁴⁷ Colleen Jenkins, *Law a Little Fuzzy*, http://www.sptimes.com/2006/07/16/State/Law_a_little_fuzzy.shtml (July 16, 2006).

⁴⁸ *Infra* pt. III B (discussing *Arguello v. Behmke*).

⁴⁹ E-mail from Joseph Bednarik, *supra* n. 46, at ¶ 8.

⁵⁰ *Id.* at ¶ 6.

⁵¹ *Id.* at ¶ 7.

storm.⁵² She was found under a house with a cut off rope around her neck.⁵³ No identification, no rabies tag, and no registration were noted.⁵⁴ Upon examination, she was heartworm positive, tapeworm positive, and had advanced venereal cancer.⁵⁵ The cancer was easily visible to anyone who cared to view her from behind.⁵⁶ She was not spayed.⁵⁷ Simply put, Bednarik believes her prior owners cared for her miserably.⁵⁸ “To all those who talk about the ‘poor’ in [New Orleans], there is a minimal degree of care for a pet no matter your situation. These folks, whether rich, poor, or middle class, failed to meet that standard.”⁵⁹ After heartworm injections, eight weeks of chemotherapy, and four thousand dollars in vet expenses, Trina is perfectly healthy, happy, and adjusted.⁶⁰

2. *Best Interest of the Animal*

The “best interest of the animal” standard, also referred to as the “welfare of companion animals” standard, comes up in typical companion animal custody disputes. These are lawsuits that primarily arise when roommates or couples who have jointly cared for an animal in a shared residence decide to separate.⁶¹ In these cases, the best interest of the animal may be taken into consideration for making the decision about who should own the animal. For example, *Zovko v. Gregory* presented a situation where roommates jointly cared for a cat named Grady. Though Grady originally belonged to Gregory, his roommate Zovko cared for the cat and became attached to Grady. When the roommates separated, a legal dispute over Grady’s custody arose. Judge Kendrick made his decision based upon “what is in the best interest of Grady. . . . From what I have seen, Grady would be better off with Mr. Zovko.”⁶² The rationale for such a consideration is offered by Barbara Newell, an animal law attorney. Newell writes, “[i]t makes no sense to punish cruelty to animals as a serious criminal offense on the one hand, yet act as though their welfare were immaterial in civil cases that set a course for the rest of the animals’ lives.”⁶³

Because the defense attorneys representing the adoptive owners in the Katrina custody disputes are not voicing their views or legal theories, it can only be surmised that they will argue for an application

⁵² *Id.* at ¶ 6.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ E-mail from Joseph Bednarik, *supra* n. 46, at ¶ 6.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Barbara Newell, *Animal Custody Disputes: A Growing Crack in the “Legal Thinghood” of Nonhuman Animals*, 6 *Animal L.* 179, 179–80 (2000).

⁶² *Id.* at 180.

⁶³ *Id.* at 183.

of the best interest analysis.⁶⁴ Those with first-hand knowledge of the condition in which some of the Katrina animals were left feel very strongly that it is not in the animals' best interest to be returned to the original owners. The Winn Dixie rescue group is a group of volunteers that formed as a result of frustration with the Humane Society of the United States (HSUS) and SPCA bureaucracy in handling the Katrina animals.⁶⁵ The group rescued animals from appalling conditions in which their owners left them to fend off the storm.⁶⁶ The movie *Dark Water Rising* showcases the group's effort and shows them saving animals such as marred pit bills clearly used for fighting and left outside, chained to trees with three feet of logging chains, without any food or water.⁶⁷ After saving pets such as these, members of the group feel strongly that they should not be returned to their owners to continue in this miserable existence.⁶⁸ To prevent reunification, the rescuers oftentimes did not document where the pet was found or other identification information.⁶⁹ The Winn Dixie group acknowledged this was a tough choice, but the correct one to make.⁷⁰

However, there are significant obstacles to the courts in the Katrina custody disputes taking the best interest of the animal into account when deciding the future course of their lives. For example, if Louisiana law governs the case, "the weight of legal authority is heaviest with the Louisiana Civil Code, not the jurisprudence," because it is a civilian legal state rather than a common law state.⁷¹ Therefore, it would be difficult for the best interest analysis to trump the statutory provisions concerning animals. Also, in general, "the law has already decided [by classifying animals as property] that animal interests will [usually] not be protected whenever . . . human property rights are at stake."⁷²

There is a divide in the animal law community concerning whether the best interest of the animal should be considered in the Katrina custody disputes. Lawyers who represent the pre-Katrina owners feel strongly that the best interest of the animal should not be considered in these cases. For example, one attorney who wishes to remain anonymous is concerned about bringing this standard into a situation where, she feels, the Louisiana Civil Code clearly governs.⁷³ In her opinion, these "best interest" lawyers are merely after the large

⁶⁴ The defense attorneys of the Katrina custody disputes were non-responsive to the author's communication attempts and they rarely speak with media outlets.

⁶⁵ *Dark Water Rising*, *supra* n. 18.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ E-mail from Susan H. Crawford, Asst. Atty. Gen., La. Dept. of Just., Consumer Protec. Div., to Megan McNabb, Author, *Fwd: RE: your law review article* (Sept. 18, 2006, 3:27 p.m. PST).

⁷² Francione, *supra* n. 4, at 49.

⁷³ Tel. Interview with Anonymous (Sept. 19, 2006).

amounts of money spent in custody disputes, and this is unfair because the pre-Katrina owners do not have this kind of money to spend.⁷⁴ Furthermore, she questions who is to determine the best interest of the animal because “the court doesn’t speak canine.”⁷⁵

Steven Wise, an animal law expert and representative of two pre-Katrina pet owners, similarly disagrees with an application of the “welfare of the companion animal” standard in these cases.⁷⁶ Wise says the application of this standard would be like Bill Gates, billionaire and CEO of Microsoft, coming to Wise’s house and taking his children away because they would have a better life with Gates.⁷⁷ Or, it is like a neighbor who takes your painting for safekeeping during a hurricane and will not return it.⁷⁸ Wise believes this is morally and legally wrong.⁷⁹ Another animal law expert, David Favre, agrees: “Whether or not you treat something right, if it’s property, [its treatment] simply is not relevant.”⁸⁰

a. Health Concerns

Factoring in to the “best interest of the animal” analysis is the reality that ninety-eight percent of Katrina pets were not spayed or neutered, an estimated eighty-five percent had heartworms, and many had serious medical conditions.⁸¹ Also, dog fighting is extremely popular in New Orleans, so many of the animals rescued were severely marred pit bulls.⁸² These facts are used by adoptive owners and their supporters to argue against returning the animals to their pre-Katrina owners. Some argue that adequate heartworm medical treatment is too expensive for New Orleans pet owners, but Dr. Zack Mills, executive director of veterinary medical affairs at Merial, does not buy it.⁸³ He explains, “The cost of heartworm prevention is less than ten cents a day. . . . To me, owning a pet is a privilege. And it’s a privilege you have to take some responsibility for.”⁸⁴

Pre-Katrina owner advocates argue that the norms in Louisiana governing the care of pets differ quite a lot from other areas of the country. “Standards of care differ by region,” says Becky Adcock of the

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Steven Wise, *Legal Developments for Animals and their Rescuers in Disasters*, <http://lawlib.lclark.edu/podcast/?p=129> at 1:28:00–1:31:00 (accessed Nov. 18, 2007).

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Jenkins, *supra* n. 47.

⁸¹ Joseph Bednarik, *supra* n. 2, at 4.

⁸² *Dark Water Rising*, *supra* n. 18.

⁸³ Steve Dale, *Good News for Pets, Pet World with Steve Dale, Heartworm Disease Continues to Spread*, <http://www.goodnewsforpets.com/petworld.asp?ID=669> (accessed Nov. 18, 2007).

⁸⁴ *Id.*

Louisiana State University veterinary school.⁸⁵ “What is acceptable in the rural South may not be in the urban Northeast. Some out-of-state volunteers were horrified that many dogs in the area had fleas, but poor families can’t afford expensive treatments.”⁸⁶ She ends by positing that “not being spayed or neutered isn’t a sign of abuse.”⁸⁷

A member of the Stealth Volunteers, a group that fervently supports re-unification, says: “I do not know anyone who knows how to tell what an animal’s treatment was before a hurricane, a flood and life on the street for weeks! Yet so many adopters claim the animals they have were mistreated.”⁸⁸ Stealth Volunteers have also been quoted as saying: “I also hear that animals were found with heartworm and therefore were not on medicine. Heartworm is endemic in the south. Preventative medicine is not 100% effective in preventing heartworms. That is why your dog must be tested every year even if it is on medication!”⁸⁹

However, it is noteworthy that many health issues, such as heartworms, only show up on tests after having been in an animal for several months.⁹⁰ This means that many animals were sick long before the hurricane. Nevertheless, Best Friends believes that courts in the Katrina cases are “unlikely to take into consideration matters such as the [pets’] pre-existing health problems and medical care” because, as aforementioned, pets “are considered property under the law, and provisions are rarely made to consider what is in the best interests of the animal.”⁹¹

b. Class and Race Factors

A common argument made by those who support pre-Katrina owners is that those arguing for the animals’ best interest have a class bias.⁹² Indeed, the Katrina custody disputes have erupted into a class and race war. Court documents and the media explain that “class and race have become issues since some defendants claim that the animals are better off in wealthier homes than poorer ones, where care may be substandard.”⁹³

⁸⁵ Kathy Boccella, *A Culture War Erupts as Many Keep Foster Pets*, <http://www.philly.com/mld/inquirer/news/local/15047173> at ¶ 38–39 (accessed July 16, 2006) (site no longer available) (copy on file with *Animal L.*).

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Stealth Volunteers, *Katrina Pet Law*, <http://www.illyria.com/shelter/foundpetlist.htm> (accessed Nov. 18, 2007).

⁸⁹ *Id.*

⁹⁰ Am. Heartworm Socy., *What is Heartworm Disease?*, <http://www.heartwormsociety.org/article.asp?id=17> (accessed Nov. 18, 2007).

⁹¹ Best Friends Animal Socy., *The Ugly War Over Master Tank and Nila*, http://network.bestfriends.org/legalanimal/news/print_5937.html (accessed Nov. 18, 2007).

⁹² Boccella, *supra* n. 85.

⁹³ Patrik Jonsson, Best Friends Animal Socy., *Rescued Katrina Animals in Custody Battle*, <http://network.bestfriends.org/louisiana/news/7148.html> (Aug. 28, 2006).

The Stealth Volunteers are vocal proponents of the class bias theory. One volunteer, speaking of the Marin County California service dog dispute,⁹⁴ offers her disdainful opinion of the post-Katrina owner:

Marin is one of the wealthiest count[ies] in Callifornia] maybe even in the nation. The person who has [the dog], more then [sic] likely has more money then [sic] all the residence[s] of Saint Bernard Parish put together will even see in their whole lives. How they can keep [the dog] from [the pre-Katrina owner] after she's lost everything is beyond me. All I can say is I don't see how they can live with themselves.⁹⁵

This Stealth Volunteer also claims that the Marin County Humane Society director, as justification for keeping the dog with the adoptive owner, said: “[the pre-Katrina owner] was poor and the adopter was rich.”⁹⁶

Many adoptive owners have asked for police protection because the pre-Katrina owners, and those who support them, have threatened and harassed the adopters.⁹⁷ In a court document from *Sumrall v. Deserio*,⁹⁸ counsel for the adoptive owner (co-defendant) scolds the original owner’s (plaintiff) determination to “paint the rescuers as ‘Cruella Deville’ type characters . . . [while] the truth is that defendants are and have been animal lovers . . . for their entire lives.”⁹⁹ A defendant in this case also filed a defamation suit against plaintiff’s attorney, Kathryn Bloomfield, based upon Bloomfield’s online lambasting of her.¹⁰⁰ According to the defamation suit, Bloomfield posted a profanity-laced poem aimed at defendant on at least two websites. One poem warned, “no rich [expletive] who don’t do Nuthin right is gonna take my dogs without a fight.”¹⁰¹

Steven Wise paints the Katrina pet custody disputes as a class and race issue. Wise notes that there is “a movement of dogs from poor black owners to middle-class white owners. The message is, ‘You’re poor, and we can take care of these dogs a lot better than you can.’”¹⁰² Another attorney, Kathleen Makowski, representing a pre-Katrina owner asks, “If this was a child adoption, would a wealthy family get a child instead of its biological parents?”¹⁰³

⁹⁴ *Infra*, pt. III D (discussing the Marin County service dog dispute).

⁹⁵ E-mail from Anonymous to Megan McNabb, Author, *FW: Marin, CA Won't Release Service Dog for Deaf Katrina Lady* (Jan. 26, 2007, 8:43 a.m. PST).

⁹⁶ *Id.*

⁹⁷ Rayne McKenzie, *Hurricane Katrina Pet Lawsuits*, <http://www.wtvynews4.com/news/headlines/3290901.html> (last updated July 9, 2006).

⁹⁸ *Sumrall v. Deserio*, 2006 WL 852344 (E.D. La. March 26, 2007).

⁹⁹ Def.’s Response to Pl.’s Mot. to Remand ¶ 3 (Mar. 17, 2006).

¹⁰⁰ Ernesto Londono, *Fangs are Bared Over Md. Group's Katrina Dog Rescues*, <http://www.washingtonpost.com/wp-dyn/content/article/2006/08/13/AR2006081300964.html> (Aug. 14, 2006).

¹⁰¹ *Id.*

¹⁰² Denise Flaim, *Calling King Solomon: Katrina Custody Battles*, http://newsday.typepad.com/news_local_flaim/2006/08/index.html (Aug. 28, 2006).

¹⁰³ Boccella, *supra* n. 85.

On the other hand, James Bias, president of SPCA of Texas, who is being sued by Wise, rejects the idea that Katrina cases are about class and race. "Such refusals to return animals are not unique to Katrina," he says.¹⁰⁴ "They happen every day in shelters around the country."¹⁰⁵ Joseph Bednarik, addressing the Katrina rescue efforts, recounts that as he was on-site providing assistance, "it occurred to me that I could not think of any assistance that was more color-blind. We tended to dogs whose owners were completely unknown to us. They were someone's animals but whose?"¹⁰⁶ His feelings about not returning his dog Trina, described above, "would not be influenced to any degree by the race of the former owner. To imply otherwise is demagoguery."¹⁰⁷ Bednarik writes, "These are not race issues. These are not economic issues. They are animal welfare issues."¹⁰⁸

III. THE KATRINA PET CUSTODY DISPUTES

This section presents the first known attempt at compiling the Katrina pet custody disputes. The compilation is a useful and necessary venture because these cases are unique and will have a profound affect on animal law. Whether the judges apply traditional property and contract theories or whether they choose to apply innovative theories such as the "best interest of the animal" analysis, they will be interpreting and applying the law to animals in an uncharted situation. Though there have been animal custody cases following other disasters, none have reached this scale. Some of the cases that follow were resolved prior to appearing before a judge. Nevertheless, these cases still serve as important animal law lessons because they illustrate the legal issues of pet custody disputes, as well as the amount of emotions and debate surrounding this area of law. Details beyond the legal theories of each case are given so the reader may see the varying circumstances of each case, while also noticing common threads that connect them. And, of course, the details make the cases interesting and real.

A. Pending Cases

The following cases are being litigated and are set for a judicial hearing.

1. Johnson v. SPCA of Texas¹⁰⁹

When Katrina struck, Japheth Johnson was serving as a Lieutenant in Baghdad. Missy, his four-year-old Shih Tzu, was home in Louisiana with Johnson's mother. Johnson's mother evacuated New

¹⁰⁴ Flaim, *supra* n. 102.

¹⁰⁵ *Id.*

¹⁰⁶ E-mail from Joseph Bednarik, *supra* n. 46.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ Wise, *supra* n. 76.

Orleans, without Missy, thinking she would only be gone for a day. However, it was two months before she was allowed to return to the city. When Johnson came home several months after Katrina, his first course of action was to post a lost dog report on the Petfinder website, which was used by many Katrina evacuees to find their missing pets.

A woman in Belgium made an on-line match while comparing the “lost dog” and “found dog” sections and contacted Johnson who began making calls in order to claim Missy. After contacting several people, Johnson discovered that Missy was taken to the Texas SPCA shelter. He called the shelter but, according to Johnson, SPCA treated him disrespectfully—telling him to “go away” and refusing to divulge details about Missy’s location. After trying unsuccessfully for months to get his dog back, Johnson contacted attorney Steven Wise.

Wise filed suit in Louisiana against the SPCA of Texas, suing for the French equivalent of replevin.¹¹⁰ He decided not to file a tort action because Wise believes the SPCA is made up of “good people” and wanted to keep the legal dispute equivalent to a family argument. Wise asked for a temporary restraining order (T.R.O.) and a preliminary injunction demanding that the SPCA either give the dog back or divulge the location of the dog. Wise speculates that the SPCA will not provide information regarding Missy’s location because of internal policies. Or, its refusal may be because the SPCA was not candid with the adopters and now fears the family will file suit or a suit will be brought against the adopters. Wise knows there is a general policy against giving out the adoptive owners’ information, but he believes this is a different situation and the SPCA’s denial of information is not legal. He says the SPCA has no right to rescue a dog, give it away, and then refuse to provide information—especially when the original owner worked hard to find the pet.

The judge granted the T.R.O., but nothing happened and the preliminary injunction keeps getting postponed. The SPCA has moved to dismiss on grounds of personal jurisdiction. Wise contemplates that the group’s defense will involve the Memorandum of Understanding (MOU), which is a contract between the SPCA and the adopters that states if the original owner does not claim his or her dog by October 1, 2005, the dog belongs to the adoptive owner. Wise says it is difficult to understand how that legal document will affect Johnson.

¹¹⁰ Replevin is “an action for the repossession of personal property wrongfully taken or detained by the defendant, whereby the plaintiff gives security for and holds the property until the court decides who owns it.” *Black’s Law Dictionary* 1325 (Brian A. Gardner ed., 8th ed., West 2004). A similar legal action is available in Louisiana but it is called an “action en revendication” (i.e., a revendicatory action), rather than replevin, due to the lingering influence of the French Civil Code on Louisiana law. Using this action, “[the] owner of a thing is entitled to recover it from anyone who possesses or detains it without right and to obtain judgment recognizing his ownership and ordering delivery of the thing to him.” La. Stat. Ann. § 526 (1980).

2. Charles v. Humane Society of North Texas¹¹¹

Steven Wise is also representing Linda Charles. Eight members of Charles' family had to evacuate and there was no room in the car for their German Shepherd. Charles, like Japheth Johnson's mother and many others, thought they would just be gone for a couple of days, so she left some food and water for the dog. However, the family was not permitted back home for two months. Wise says that Charles persistently worked to find the dog, taking action such as filing a lost dog report on the Internet. She eventually made a match that linked the dog to the Humane Society of North Texas. Charles went to the Humane Society but says they were uncooperative, disrespectful, and accused her of abandoning and neglecting the dog.

Wise argues that a pet owner who is ordered to evacuate and is not allowed to take his or her pet has not legally "abandoned" the animal. The defense attorney in this case maintains that if Wise can prove the dog was properly cared for, he will be returned to the pre-Katrina owner. Wise says this is impossible to show because all the medical records were destroyed by the hurricane.

3. Couture v. Bondi

Pam Bondi is a well-known prosecutor in Florida. She also makes guest appearances on MSNBC and the Fox News Channel as a legal analyst.¹¹² She has been in the news lately, not as a legal analyst, but as an adopter of a Katrina pet who is fighting to retain custody of the St. Bernard she rescued, named Master Tank (since dubbed Noah). Bondi is being sued, along with the Humane Society of Pinellas, Florida, by the Couture family—the original owners of Master Tank.

Bondi's position is that she "legally fostered and adopted a dying dog who had a serious medical condition that long predated the hurricane. . . . [H]ad he been properly cared for, I would have been driving him back to New Orleans myself."¹¹³ However, Bondi says the Coutures kept Master Tank outside, even in extremely high temperatures that are particularly unhealthy for a St. Bernard (the Coutures concede he was an outside dog).¹¹⁴ Most importantly, Bondi claims that when she adopted him, Master Tank was emaciated, full of intestinal worms, had a broken nose, eye and ear infections, stomach problems, and severe heartworm disease.¹¹⁵

Bondi assumes some of these problems came as a result of the ordeal the dog endured during Katrina but argues other problems,

¹¹¹ Wise, *supra* n. 76.

¹¹² Keith Morelli, *Bondi 'Loves Being Prosecutor'* ¶5, <http://www.tbo.com/news/metro/MGB32HMOH7F.html> (Oct. 7, 2007).

¹¹³ Pop Art Pet Unleashed, *Katrina Custody Battle*, <http://popartpet.com/blog/2006/07/01/katrina-custody-battle/> (July 1, 2006).

¹¹⁴ *Id.*

¹¹⁵ Best Friends Animal Socy., *supra* n. 91, at *Bondi Claims She Saved Dog from Death*.

such as the heartworm infection, were the result of long-term medical neglect. "They had taken over his heart, there were so many that they had taken over his lungs."¹¹⁶ Bondi worries that, if she were to send Master Tank back to the Coutures, he may not get the ongoing medical care he needs and his condition would deteriorate.¹¹⁷ "It's like adopting a child," she says. "Morally, ethically, legally, it's not even a close call to me. I'm saving his life and protecting him."¹¹⁸ Bondi's veterinarian concurs with her assessment of Master Tank's health. "He was absolutely in danger of death, and untreated he would have died."¹¹⁹ Rhonda Rineker, the lesser known adopter of another Couture dog, is also being sued.¹²⁰ She too claims that her adopted dog, Nila (now Gracie), was infested with heartworms and in poor physical health.¹²¹

The Coutures maintain they took proper care of their dogs. Ceily Trog, manager of St. Bernard Parish Animal Control, disputes that Master Tank was dying from heartworms or was near death when brought to the shelter. "If he had been as close to death as Ms. Bondi claims, he would never have been placed on a transport that would take on a good day over 10 hours to get to the destination."¹²² Bondi counters by saying that those vets were working on triage in a disaster zone, and could not have been expected to diagnose conditions such as advanced heartworm disease.¹²³

The Coutures also argue they never wanted to leave Master Tank and Nila behind.¹²⁴ Mr. Couture stayed in the house with the dogs through the hurricane while Mrs. Couture and the children evacuated.¹²⁵ After the hurricane passed and the house started to flood, Mr. Couture moved the dogs to the top floor of the house (in addition to Master Tank and Nila, the Coutures had a Chihuahua named Sandy, and were keeping two other dogs for a relative).¹²⁶ When the evacuation boats arrived, they were only taking humans so Mr. Couture left the dogs in the house with food and water.¹²⁷ However, as would later come out in litigation, Couture left an un-opened bag of dog food and

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ Colleen Jenkins, *Dispute Nips at Prosecutor's Heels*, http://www.sptimes.com/2006/07/04/Tampabay/Dispute_nips_at_prose.shtml (accessed July 4, 2006).

¹¹⁹ Best Friends Animal Socy., *supra* n. 91, at *Bondi Claims She Saved Dog from Death*.

¹²⁰ Demorris A. Lee, *Who Are Pets' Real Owners After Katrina Left Them Homeless?* http://www.sptimes.com/2006/05/20/Tampabay/Who_are_pets_real_ow.shtml (May 20, 2006).

¹²¹ Best Friends Animal Socy., *supra* n. 91.

¹²² Demorris A. Lee, *Family Pleads to Reclaim Pets*, http://www.sptimes.com/2006/06/28/Tampabay/Family_pleads_to_recl.shtml (quoting Ceily Trog) (June 28, 2006).

¹²³ Best Friends Animal Socy., *supra* n. 91, at *Bondi Claims She Saved Dog from Death*.

¹²⁴ *Id.* at *The Couture's Reluctant Evacuation*.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

jugged water without the caps removed.¹²⁸ When asked how the dogs were expected to get into the sealed items, Couture responded: “Bite into it. . . . It’s a dog. It’s survival.”¹²⁹ After two weeks, Couture returned to his house and took the dogs to Camp Lucky, where he asked them to keep the dogs until the Coutures could reclaim them.¹³⁰ The dogs were checked in on September 18, 2005, and marked as “owned” by Mr. Couture.¹³¹

Master Tank and Nila were transported to the Pinellas Humane Society in Florida on September 21, 2005.¹³² According to the Couture’s lawsuit, Master Tank was then released to Bondi on October 1, 2005, and Nila was released to Rineker on October 28, 2005.¹³³

Humane Society officials say they followed county law, which required that groups taking animals from disaster areas hold them for [thirty] days before their adoptions become final. Representatives of the humane society also claim that they did their best to find the owners of the dogs, although officials have declined to say publicly what actions were taken.¹³⁴

The Coutures tracked down the location of their dogs in January 2006, after finding copies of the original paperwork from the Camp Lucky files.¹³⁵ Soon thereafter they filed suit in Florida against Bondi, Rineker, and the Pinellas Humane Society. The suit asks the court to force the return of Master Tank and Nila.¹³⁶ In addition, “the lawsuit seeks actual damages and costs from the Pinellas Humane Society, which it charges with negligence in adopting the dogs out when it was clear they had owners.”¹³⁷ The lawsuit also claims that the Humane Society did not follow county law by failing to hold the dogs for ten days at the shelter and make a diligent search for their owners.¹³⁸

On September 22, 2006, Judge Andringa ruled on a significant motion brought by Murray Silverstein, the attorney representing the Coutures.¹³⁹ Silverstein wanted the judge to decide the case based on the theory that dogs are considered personal property and not “living and breathing creature[s] capable of feeling pain, pleasure and emo-

¹²⁸ Demorris A. Lee, *Bondi Tries to Hang on to Katrina Dog by a Toenail*, http://www.sptimes.com/2006/10/28/Southpinellas/Bondi_tries_to_hang_o.shtml (Oct. 28, 2006).

¹²⁹ *Id.*

¹³⁰ Best Friends Animal Socy., *supra* n. 91, at *The Couture’s Reluctant Evacuation*.

¹³¹ *Id.*

¹³² *Id.* at *Controversy Begins with Actions of Humane Society*.

¹³³ Lee, *supra* n. 122.

¹³⁴ Best Friends Animal Socy., *supra* n. 91, at *Controversy Begins with Actions of Humane Society*.

¹³⁵ Lee, *supra* n. 122.

¹³⁶ Best Friends Animal Socy., *supra* n. 91, at *Coutures File Lawsuit for Return of Dogs*.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ N. Co. Gaz., *Judge Rules Dogs Personal Property in Katrina Custody Case*, <http://www.northcountrygazette.org/articles/092306DogCustody.html> (Sept. 23, 2006).

tion” as Rineker’s attorney argued.¹⁴⁰ Rineker’s attorney urged the court to apply the “best interest of the animal” standard and consider who can provide the best home for the dogs.¹⁴¹ Silverstein, on the other hand, argued that to do this and ignore the personal property status of the animals would set the law back one hundred years. He pointed to common law, which

generally holds that a finder of lost property has rights superior to anyone else in the property *except* the true owner. Dogs and other companion animals are considered the personal property of the owners and if a rightful owner finds his or her dog, he or she can then assert ownership.¹⁴²

The judge ruled for Silverstein.¹⁴³ This means the ultimate court decision will be based on property law rather than who is capable of providing the best home for the animals. Silverstein says the court will now focus on whether the Coutures owned the dogs before Hurricane Katrina, whether they were abandoned, and whether the Coutures placed the dogs in a temporary shelter.¹⁴⁴ The Coutures were also successful in their next two court battles: Judge Andringa ruled, on October 30, 2006, that the dog adopted by Bondi is the same dog the Coutures lost and, on December 26, 2006, Bondi and Rineker were ordered to make the dogs available to the Coutures for visitation.¹⁴⁵

In January of 2007, defendants argued that plaintiff’s claim should be dismissed because the Humane Society of Pinellas took legal custody of the displaced dogs by virtue of state police power and exercised its “power of authority under Pinellas County code” in adopting them out.¹⁴⁶ However, in a January 31, 2007 order, the judge refused to dismiss plaintiff’s claim, writing that “the two dogs in question were not impounded pursuant to the county’s ordinance.”¹⁴⁷ The trial was scheduled for April 16, 2007.¹⁴⁸

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.* (emphasis added).

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ Demorris A. Lee, *Judges Gives Visitation Rights to Former Katrina Dog Owners*, http://www.sptimes.com/2006/12/26/Tampabay/Judge_gives_visitatio.shtml (Dec. 26, 2006).

¹⁴⁶ *Katrina Dogs May Go to Trial*, Orlando Sentinel (Orlando, Fla.) B5 (Feb. 3, 2007).

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* After this article was written, the case was officially dismissed on August 30, 2007 (according to the Pinellas County Civil and Small Claims docket). Bondi decided to voluntarily return Master Tank to the Coutures after establishing a relationship with the family, which includes visits to their home in Louisiana. Rineker also voluntarily agreed to return her adopted dog to the Coutures. Associated Press, *Lost Katrina Dogs Returned to Owner*, <http://www.cbsnews.com/stories/2007/05/23/katrina/printable2840816.shtml> (May 23, 2007).

B. *Decided and Settled Cases*

This section presents three cases—two Katrina custody dispute cases in which litigation has been concluded, as well as a custody dispute that reached settlement.

1. *Arguello v. Behmke*

The New Jersey case of *Arguello v. Behmke*,¹⁴⁹ decided on January 26, 2006, was the first Katrina custody case litigated in court and the subject of a published judicial opinion.

When Hurricane Katrina forced Annabelle Arguello to evacuate, she claims she could not fit her three dogs (the Great Dane named Chopper is at issue here) in the car so she left them at her house with food and water.¹⁵⁰ She returned one week later and took the dogs to the HSUS Lamar-Dixon emergency shelter.¹⁵¹ Arguello informed HSUS in writing that she intended to return to her Louisiana home and instructed HSUS to call her if the shelter closed so that she could retrieve the dogs.¹⁵² She entered into an oral agreement with the employees whereby they agreed to hold Chopper for two weeks.¹⁵³ When she returned to the shelter less than two weeks later, Chopper was gone.¹⁵⁴ Apparently, HSUS entered into an agreement with a New Jersey rescue group, People for Animals, during the time it had Chopper.¹⁵⁵ Consistent with this agreement, People for Animals posted Chopper's information on Petfinder for the required time period and, at the expiration of that period, Chopper was adopted out to Pam Behmke.¹⁵⁶ Arguello contacted Behmke, but she refused to return Chopper.¹⁵⁷ Arguello instituted a writ of replevin for the return of her dog.¹⁵⁸

Arguello argued that for the possessor of the chattel to divest the true owner of title, the chattel would either have to be abandoned or the demand for possession by the true owner would have to be made after the expiration of the New Jersey six-year statute of limitation.¹⁵⁹ Arguello explained that neither of these situations apply in her case.¹⁶⁰ To prove that she never intended to give up ownership of Chopper, Arguello pointed to the bailment agreement she made with the Lamar-Dixon temporary animal shelter in Prairieville, Louisiana,

¹⁴⁹ *Arguello v. Behmke*, 2006 WL 205097 (N.J. Super. Ch. Div. Jan. 26, 2006).

¹⁵⁰ *Id.* at *1.

¹⁵¹ *Id.*

¹⁵² *Id.* at *4.

¹⁵³ *Id.* at *1.

¹⁵⁴ *Id.* at *4.

¹⁵⁵ *Arguello*, 2006 WL 205097 at *5.

¹⁵⁶ *Id.* at *6.

¹⁵⁷ *Id.* at *2.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

which stated Lamar-Dixon would hold Chopper until she could return home.¹⁶¹ Furthermore, the statute of limitation has yet to toll.¹⁶²

Behmke argued that Arguello signed a form with the Lamar-Dixon shelter that required her to claim Chopper within fifteen days. After that time passed, the shelter had the legal option of adopting the dog to Behmke.¹⁶³ Behmke relied upon the contract between People for Animals and HSUS, which allowed the Katrina dog to become property of People for Animals, thus allowing the shelter to adopt him out to Behmke.¹⁶⁴

The New Jersey court granted the writ of replevin and ordered that Chopper be returned to Arguello.¹⁶⁵ The court relied upon the bailment agreement saying that, pursuant to the terms of the agreement, Arguello arrived at the HSUS shelter before the time period for reclamation lapsed.¹⁶⁶ Though the form she signed had language about claiming the pet within fifteen days, Arguello modified that language with handwritten terms of her own, which gave her until October 7, 2005, to reclaim Chopper.¹⁶⁷ She arrived at the HSUS shelter before this date.¹⁶⁸

Furthermore, given this bailment agreement, the court concluded that HSUS had no legal right to transfer Chopper to People for Animals without first contacting Arguello.¹⁶⁹ The transfer agreement between HSUS and People for Animals was based upon two mutual mistakes—that the parties had a right to place Chopper up for adoption without Arguello’s consent and that the parties assumed the dog was unclaimed.¹⁷⁰ The court then exercised its equitable power to cancel the transfer agreement between HSUS and People for Animals.¹⁷¹

Significantly, the court stated that the result would have been the same even if it upheld the validity of the transfer agreement since “equity will not knowingly become an instrument of injustice.”¹⁷² According to the court, “[i]f this were a lost child, reunited with its parents who searched for it, no one would question the decision of the return.”¹⁷³

¹⁶¹ *Arguello*, 2006 WL 205097 at *2.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* at *8.

¹⁶⁶ *Id.* at *4.

¹⁶⁷ *Arguello*, 2006 WL 205097 at *4.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* at *5.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.* at *7.

¹⁷³ *Arguello*, 2006 WL 205097 at *7.

2. Best Friends Animal Society v. Animals Benefit Club of Arizona

Paula Duming did not evacuate prior to Hurricane Katrina. Instead, she stayed in New Orleans with her dog, Pablo.¹⁷⁴ Once the Hurricane hit the city, however, she was forced to evacuate on September 3, 2005, but was not allowed to take Pablo with her.¹⁷⁵ So, she left him behind in the house with food and water.¹⁷⁶ When Duming returned to her home in October 2005, a mark on the door indicated that Pablo was rescued on or about September 25.¹⁷⁷

Apparently, once rescued, Pablo was taken to an emergency animal shelter operated by Duming's co-plaintiff Best Friends Animal Society.¹⁷⁸ Best Friends placed the dog with Animals Benefit Club of Arizona, Inc. (ABC), defendant, pursuant to a foster agreement.¹⁷⁹ The terms of the agreement were that ABC agreed to provide all necessary care and shelter for Pablo, hold him for at least three months, and release him to the owners upon request and reasonable proof of ownership.¹⁸⁰ At the end of the three month holding period, ABC placed Pablo with Wendy Shieh and Dustin Jones, who renamed him Boots.¹⁸¹ Despite repeated demands, ABC and the adopters refused to return the dog and plaintiffs Best Friends and Duming thus commenced litigation.¹⁸²

Plaintiffs alleged several claims: (1) conversion—"[d]efendants actions in willfully and wrongfully refusing to return the dog to Ms. Duming constitute a conversion of Ms. Duming's property . . .,"¹⁸³ (2) conspiracy—defendants entered into an agreement to take and keep Pablo unlawfully;¹⁸⁴ (3) breach of contract—ABC breached its agreement with Best Friends;¹⁸⁵ (4) equitable estoppel—ABC intentionally or through culpable negligence induced plaintiffs to believe and have confidence that it would return Duming's dog, plaintiffs relied upon the inducement, and there is direct and proximate causation since plaintiffs have sustained injuries and damages, including the loss of the dog.¹⁸⁶

¹⁷⁴ Pl.'s Amend. Compl. 2, *Best Friends Animal Socy. v. Animals Benefit Club of Ariz.* (Sept. 1, 2006).

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ Ariz. Super., Maricopa Co. Pub. Info., *Court Rulings: Best Friends v. ABC*, <http://www.superiorcourt.maricopa.gov/publicInfo/rulings/rulingsReaditem.asp?autonumb=256> (site no longer available) (copy on file with *Animal L.*); See also Pl.'s Amend. Compl., *supra* n. 174.

¹⁷⁸ Pl.'s Amend. Compl., *supra* n. 174.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.* at 6.

¹⁸³ *Id.* at 2.

¹⁸⁴ Pl.'s Amend. Compl., *supra* n. 174, at 7.

¹⁸⁵ *Id.* at 8.

¹⁸⁶ *Id.* at 9.

Plaintiffs sought injunctive relief enjoining ABC from (1) withholding the names, current address, and phone number of the people now in possession of the dog and (2) withholding possession of the dog.¹⁸⁷ Plaintiffs further seek compensation for “losses, attorney’s fees, costs and any other relief [the] Court deems just and proper.”¹⁸⁸

Defendants denied plaintiffs’ claims and affirmatively alleged that Boots was not the same dog that Duming had prior to the hurricane.¹⁸⁹ Defendants maintained that the markings, age, temperament, ear color, mannerisms, and medical history were different.¹⁹⁰ When Duming contacted ABC, she described the dog as being eight months old at the time of Hurricane Katrina and as having bright pink ears.¹⁹¹ Duming also said she kept him tethered to a choke chain and he would respond to Pablo.¹⁹² By contrast, a veterinarian determined Boots to be two to three years old, his ears are all black, and he does not respond to Pablo.¹⁹³ Wendy Roberts of Petfinders, who originally sought to intervene on Duming’s behalf, concurred with ABC that Boots was not Duming’s dog.¹⁹⁴

The matter appeared before the Maricopa County Superior Court in March 2007. The sole issue was whether Boots was the same dog as Pablo.¹⁹⁵ Based upon the evidence presented at trial, Judge Whitten found that Boots and Pablo were the same dog and ordered on March 13, 2007, that the dog be released immediately to Duming.¹⁹⁶ The Court relied primarily on two pieces of evidence. The first was a photo of Pablo that Duming took immediately prior to her evacuation, which showed her dog wearing a silver choke chain with a piece of twine attached to it.¹⁹⁷ At the time of the dog in question’s rescue, Best Friends noted that he had on a silver choke chain with twine attached.¹⁹⁸ The second piece of evidence was Duming’s check stub from a veterinary visit, which recorded Pablo’s rabies vaccination tag number.¹⁹⁹ The number on the stub matched the number noted for the rescued dog’s tag.²⁰⁰ The dog has been reunited with Duming and both are back in Louisiana.²⁰¹

¹⁸⁷ *Id.* at 6.

¹⁸⁸ *Id.* at 10.

¹⁸⁹ Response to Pl.’s Mot. to Dismiss 4, *Best Friends Animal Socy. v. Animals Benefit Club of Ariz.*, 2007 WL 1849954 (Ariz. Super. Mar. 13, 2007).

¹⁹⁰ *Id.* at 3–4.

¹⁹¹ *Id.* at 3.

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.* at 4.

¹⁹⁵ Minute Entry 2, *Best Friends Animal Socy. v. Animals Benefit Club of Ariz.*, 2007 WL 1849954 (Ariz. Super. Mar. 13, 2007).

¹⁹⁶ *Id.* at ¶ 10.

¹⁹⁷ *Id.* at ¶ 2.

¹⁹⁸ *Id.* at ¶ 4.

¹⁹⁹ *Id.* at ¶ 3.

²⁰⁰ *Id.* at ¶ 4.

²⁰¹ Best Friends Animal Socy., *Paula and Pablo Are Reunited!*, <http://network.bestfriends.org/neworleans/news/13178.html> (updated Mar. 16, 2007).

3. *Case of the Polks*²⁰²

The Polk family cats, displaced after Katrina, were supposedly located at a Connecticut shelter, but the shelter refused to return them, allegedly “due to the thoughts that [the original owner] practiced witchcraft.” Attorney Lori Meyer spoke with the Polks and their attorney. She says that the Polks identify themselves as Pagan and, when they went to Connecticut to pick up their cats, somehow the shelter found out about their “religion” and denied knowing where the cats were placed, claiming to have lost the records.

HSUS paid for a lawyer to help the Polks reclaim their cats but the Connecticut shelter maintained, during extensive discovery and depositions, that it did not know the cats’ location. Meyer and the Polks’ attorney realized there was nothing else that could be done unless evidence surfaced that the shelter was lying. Meyer believes they ended up settling for about one thousand five hundred dollars in order to end the lawsuit. This case is important because it is the only known Katrina custody dispute case to have settled with monetary compensation and it is cited by those who claim that shelters are biased against the original owners.

C. *Dropped Cases*

The following cases present situations where the adopter voluntarily returned the animal to the pre-Katrina owner or where the pre-Katrina owner dropped his or her lawsuit, allowing the adopter to keep the pet.

1. *Combs v. Welsh*

Pre-Katrina pet owner Sheila Combs dropped her Pennsylvania lawsuit against Lynne and Joseph Welsh in November 2006 when the Welshes returned Combs’ ten-year-old dog Rocket.²⁰³

Rescuers picked up Rocket in New Orleans after Hurricane Katrina. The dog was placed in a Pennsylvania shelter where the Welshes adopted him in November 2005.²⁰⁴ The Welshes say they made attempts to find the dog’s owner in 2005 by calling the phone number on the dog tag, sending letters, and putting information on the Internet.²⁰⁵ Combs did not contact the Welshes until June 2006, after being prompted by the Stealth Volunteers.²⁰⁶ At that time, the Welshes refused to return Rocket because they felt it was best for the dog,

²⁰² E-mail from Lori Meyer, Atty., to Megan McNabb, Author, *Fw: ANYONE WANT TO HELP* (Jan. 26, 2007 8:49 a.m. PST).

²⁰³ Associated Press, *Katrina Dog Returned After Custody Suit*, <http://www.cbsnews.com/stories/2006/11/09/katrina/main2165233.shtml> (Nov. 9, 2006).

²⁰⁴ Gloria Campisi, *Who Should Own Katrina Dog?*, http://findarticles.com/p/articles/mi_km4470/is_200607/ai_n16586473 (accessed Oct. 14, 2007).

²⁰⁵ Associated Press, *Families Battle for Custody of Lost Katrina Dog*, <http://www.msnbc.msn.com/id/13595315/print/1/displaymode/1098/> (June 28, 2006).

²⁰⁶ Campisi, *supra* n. 204.

re-named Rusty, to stay with them. The Welshes' attorney explained that they "came upon information that Ms. Combs . . . left New Orleans at the time of the flooding with the child and her mother and left the dog in the front yard. . . . This dog was simply left to drown or otherwise expire. . . . We're trying to do what's best for the dog."²⁰⁷

The voluntarily dismissed lawsuit alleged that Rocket was "wrongfully adopted out" to the Welshes and that the Welshes reneged on promises to return Rocket.²⁰⁸ Combs' attorney, Kathleen Makowski, argued that animals are considered property and thus the property laws of either Pennsylvania or Louisiana should apply.²⁰⁹ Makowski also asserted that the Welshes "think the dog would be better off with them because they're richer."²¹⁰ These arguments were never played out in court and it is unclear why the Welshes decided to return Rocket to Combs. The Welshes were the target of repeated harassment, which likely was a factor in their decision.²¹¹

2. *Case of Victor Marino*

Victor Marino was able to reclaim his dog, Max, without filing a lawsuit.²¹² Marino evacuated New Orleans without Max because he could not find a hotel that would accept pets. He left some food and water for his dog, expecting to return in a couple of days. Of course, it ended up being more than a few days and, by the time Marino returned to his house, Max was gone.²¹³

In January 2006, Marino discovered that Max was rescued by Camp Lucky and sent to Pinellas, Florida.²¹⁴ Marino found the Humane Society of Pinellas uncooperative, but he did learn that Max was adopted out to a new owner. At first, Max's new owner refused to return the dog but later caved under, what appears to be, public pressure.²¹⁵

3. *Case of Brielle Sylvia*²¹⁶

Brielle Sylvia, on the eve of filing her lawsuit, decided she did not have the emotional stamina to go through with the suit she planned on initiating to reclaim her dog. She was expecting a baby, her family situation was highly chaotic in the aftermath of Katrina, and after think-

²⁰⁷ *Id.*

²⁰⁸ Associated Press, *supra* n. 203.

²⁰⁹ Campisi, *supra* n. 204.

²¹⁰ Boccella, *supra* n. 85.

²¹¹ Patrick Lester, *Dogfight Escalates Over Katrina Pet*, <http://www.phillyburbs.com/pb-dyn/articlePrint.cfm?id=676652> (June 28, 2006) (site no longer available) (copy on file with *Animal L.*).

²¹² Friends of Bandit and Malvin, *Opinion Piece on Katrina Custody Cases*, http://banditandmalvin.blogspot.com/2006_10_28_archive.html (Oct. 28, 2006).

²¹³ Best Friends Animal Socy., *supra* n. 91, at Max, the "Forgotten" Pinellas Dog.

²¹⁴ *Id.*

²¹⁵ Friends of Bandit and Malvin, *supra* n. 212.

²¹⁶ Interview with Lori Meyer, Atty. (Sept. 30, 2006).

ing about the necessities of litigation, Sylvia felt she could not go through what could be a “long and ugly” process.

Before Hurricane Katrina, Sylvia lived in New Orleans with her father-in-law. When Sylvia evacuated the city as Katrina approached, she left her five-year-old pit bull, Gia, with her father-in-law. He stayed behind with Gia and his dogs until the day before the hurricane at which time he fled, leaving the dogs with his cousins in New Orleans because he did not think there was room for the dogs in his car. Once the city started to flood, the cousins got a boat and put the dogs in it. At one point, all the dogs ran to the back of the boat and it sank. Gia jumped out of the boat and floated away in the current.

About one month later, Sylvia’s cousins told her what happened. She searched the Internet and posted pictures of Gia. Around the end of December 2005, a rescue organization recognized Gia online and called Sylvia. Sylvia then called the New York rescue organization that supposedly had Gia, but the organization questioned whether the dog was actually hers.

Sylvia contacted attorney Lori Meyer in 2006 for help retrieving Gia. Meyer met the same resistance with the New York shelter. The shelter refused to allow Meyer or Sylvia to see the dog to ascertain whether it was Gia. Meyer believes that this refusal was a result of rescue organizations’ mentality that those who left their pets behind during Hurricane Katrina do not deserve them. The shelter also charged that the dog was neglected because she had pre-Katrina hip dysplasia. Sylvia admitted that Gia had this condition but claimed it was difficult and expensive to treat, and Gia did not appear to be in pain.

Although the case did not go to court, Meyer offers several legal issues that might have been considered: (1) the contract between Best Friends and the New York shelter that transferred Gia and set the terms for adoption (Meyer planned to move to dismiss the contract as void on its face because Sylvia was not a party); (2) a bona fide purchaser defense to the contract and a laches defense; (3) a choice of law decision—the dog was picked up in Mississippi, is currently in New York, and the original owner is in Louisiana; (4) the jurisdiction—Meyer is not licensed to practice in New York so she would need the assistance of an attorney in that jurisdiction; (5) the cost of litigation and problems associated with it—attorneys and their clients are often not committed enough to stick with a case; (6) the implications, such as social services monitoring, of a court ruling that a person may lose possession of his or her pet if someone else is better equipped to care for the animal; (7) the standard of care—Louisiana norms governing how pets must be cared for differ from other areas of the country.

4. *Cavalier v. Fox*

In September 2006, Lisa Fox, who adopted a poodle named Bandit from a Pittsburgh shelter after Hurricane Katrina, returned the dog to

Malvin Cavalier, the pre-Katrina owner, after months of negotiations.²¹⁷

Cavalier says he left Bandit, his dog of ten years, behind in New Orleans when he evacuated the day before Katrina hit.²¹⁸ He left the dog some food and water, thinking that he would be back in a few days.²¹⁹ However, a few days turned into weeks and by the time Cavalier returned home, Bandit was gone.²²⁰

Bandit passed through many hands before arriving in Pittsburgh. Found on a New Orleans street, Bandit was taken to the HSUS Lamar-Dixon shelter.²²¹ The shelter posted Bandit's picture on Petfinder in September 2005 and thereafter Peter McKosky, representative of the Chenoa Manor Animal Shelter, transported Bandit to Pennsylvania.²²² Before taking the dog, McKosky signed an agreement with HSUS promising that Bandit would be held until September 30, 2005, after which time he would be placed in a foster home.²²³ The agreement also required the foster home to hold the dog until October 15, 2005, and return the dog to the original owner if the owner claimed the dog before that date.²²⁴ McKosky placed Bandit at the Voices for Animals shelter in Pittsburgh which adopted him to Fox.²²⁵ On October 13, 2005, Cavalier's son tracked down the poodle and called Chenoa Manor at which time, according to Cavalier, McKosky refused to help.²²⁶ Cavalier filed a complaint in replevin against Fox in Pennsylvania, an equitable action seeking the return of Bandit.²²⁷

In September 2006, Fox contacted Eric Rice, a Maryland businessman who created an online documentation of his Katrina animal rescues.²²⁸ Fox told Rice she wanted the real story about what happened with Bandit.²²⁹ Rice arranged for Fox to speak with Cavalier and, after that discussion, Fox made plans to return Bandit.²³⁰ "When [Fox] learned the truth, [Fox] quickly made the decision to give the dog back," Rice says.²³¹ "I feel strongly that [Fox was] not culpable in this

²¹⁷ Best Friends Animal Socy., *Bandit Cavalier Returns Home to New Orleans After More Than a Year*, <http://network.bestfriends.org/legalanimal/news/7305.html> (Sept. 1, 2006).

²¹⁸ Best Friends Animal Socy., *Elderly Katrina Victim Fights to be Reunited with His Closest Companion*, <http://network.bestfriends.org/legalanimal/news/5713.html> (July 1, 2006).

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ Best Friends Animal Socy., *supra* n. 217.

²²² Best Friends Animal Socy., *supra* n. 218, at *Bandit's Journey*.

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ Best Friends Animal Socy., *supra* n. 218, at *Cavalier Aided in Lawsuit*.

²²⁸ Best Friends Animal Socy., *supra* n. 217.

²²⁹ *Id.*

²³⁰ Best Friends Animal Socy., *supra* n. 217, at *Bandit Cavalier Returns Home to New Orleans After More Than a Year*.

²³¹ *Id.*

whole thing, and had [Fox] been told the absolute truth on [October] 13, the dog would have gone back home then.”²³²

5. Sumrall v. Deserio²³³

When Hurricane Katrina hit, Kim Deserio traveled to Louisiana to help SPCA rescue abandoned pets.²³⁴ She found two dogs on the streets of St. Bernard Parish and parish officials gave her permission to take the dogs to Maryland, where they could be placed in foster care.²³⁵ The parish required SPCA to post photographs of the dogs on the Petfinder website.²³⁶ The parish also asked SPCA to sign an agreement that stated the animals would become the property of SPCA if their owners did not come forward by November 1, 2005.²³⁷

After Katrina, Belinda Sumrall, who left her dogs Sandy Marie and Coco Lee behind while fleeing the storm, posted online queries about her missing pets but received no response.²³⁸ A volunteer helping her look discovered they had been taken to Maryland. However, the dogs were now with their adoptive family and re-named Andi and Foxy.²³⁹ The adoptive family treated the dogs for heartworms and paid for one to have expensive surgery to remove a mass on her salivary gland.²⁴⁰

Sumrall filed an action for a judgment declaring her to be the rightful owner and demanding the return of her two dogs.²⁴¹ She argued that Louisiana law treats these animals as property,²⁴² she owns them because she never intended nor did she relinquish ownership,²⁴³ SPCA officials made no effort to find the dogs' owner before putting them up for adoption,²⁴⁴ edicts of the State of Louisiana extended all legal deadlines running against Katrina victims,²⁴⁵ the SPCA agreement should be interpreted as a contract of deposit and not as an act translative of ownership,²⁴⁶ and the contracts should be declared void because of mutual mistake as in *Arguello*.²⁴⁷

²³² *Id.*

²³³ *Sumrall v. Deserio*, 2006 WL 852344 (E.D. La. Mar. 23, 2006).

²³⁴ Londono, *supra* n. 100.

²³⁵ *Id.*

²³⁶ Def.'s Response in Opposition to Pl.'s Mot. to Remand 4 (Mar. 17, 2006).

²³⁷ *Id.*

²³⁸ Londono, *supra* n. 100.

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ Mot. and Inc. Memo. in Further Support of Req. for Prelim. Injunctive Relief 1 (n.d.).

²⁴² *Id.* at 5.

²⁴³ *Id.* at 6.

²⁴⁴ *Id.* at 8–9.

²⁴⁵ *Id.* at 4.

²⁴⁶ *Id.* at 5.

²⁴⁷ Opposition to Def.'s Declinatory, Dilatory and Peremptory Exceptions 3 (Apr. 20, 2006).

Defendant SPCA refused to return the dogs. SPCA argued that it considered the dogs abandoned, deemed the dogs to be its own property to transfer, and entered into lawful negotiations with an adopter.²⁴⁸ It relied upon the aforementioned agreement signed with the parish. According to the terms of that agreement, Sumrall did not reclaim her dogs before the stated deadline and, therefore, the animals became the shelter's property and it could legally adopt out the animals.²⁴⁹

In January 2006, a Louisiana district court issued a T.R.O. against SPCA, ordering that the dogs be returned to Sumrall.²⁵⁰ However, in December 2006, Sumrall voluntarily relinquished ownership of her dogs.²⁵¹ She moved back to Louisiana and, according to her lawyer Kathryn Bloomfield, her living situation became unpredictable.²⁵² Bloomfield says that "[u]pon confirmation that her two dogs were healthy and happy and staying with the family who had adopted them, with no threats of return to the shelter, she gave up the custody fight."²⁵³

D. Cases Waiting to be Filed

Many pre-Katrina owners are still looking for lawyers willing to take on their case. In some instances, this is because the original owner does not have the money to hire an attorney and it is difficult to find attorneys willing to take these cases on a pro bono basis.²⁵⁴ The following is an example of such a situation.

1. Case of Hunter²⁵⁵

Fay Bourg is searching for an attorney who is willing to help reclaim her dog, Hunter. Bourg's story is like a made for television movie (and apparently it may become one) with an interesting cast of characters including: Diane Allevato, Marin County California Humane Society director; Donna Dickerson, the chaplain of a hospital where Bourg stayed after Katrina; and the Stealth Volunteers, the group mentioned throughout this article with a deep dedication to reuniting Katrina animals with their original owners.

Bourg stayed in her St. Bernard Parish apartment as Katrina approached, supposedly because she did not want to leave Hunter behind. She stayed in the apartment even after the roof collapsed. Four

²⁴⁸ Mot. and Inc. Memo. in Further Support of Req. for Prelim. Injunctive Relief 2.

²⁴⁹ *Id.* at 3.

²⁵⁰ Corrected T.R.O., *Sumrall v. Deserio* (n.d.).

²⁵¹ E-mail from Lori Meyer, Atty., to Megan McNabb, Author, *Re: Your Case* (Jan. 28, 2007 6:55 p.m. PST).

²⁵² *Id.*

²⁵³ *Id.*

²⁵⁴ The majority of attorneys representing the original owners in the Katrina custody disputes are handling the cases for free. *E.g.* Campisi, *supra* n. 204 (Kathleen Makowski, plaintiff's attorney in *Combs v. Welsh*, handled that case for free).

²⁵⁵ E-mail from Anonymous, *supra* n. 95.

days after Katrina, rescuers arrived and, according to a Stealth Volunteer's email, they "ripped" the dog from Bourg's arms and

threw him [aside] like he was nothing. She was fighting them to get to Hunter, she even jump[ed] into the water to get to him. The[y] grabbed her and handcuffed her and drug her back to the boat. Even while handcuffed she tried to jump into the water to get Hunter. This time they drug her back and threw [her] down in the boat and held her down.

The rescuers told Bourg that Hunter would be taken to Beauregard Middle School, where other abandoned animals were being held.

Beauregard Middle School was the site of a now infamous pet slaughter.²⁵⁶ However, Hunter was not believed to be one of the slain. He was instead found by the Houston SPCA in a St. Bernard Parish yard. The Houston SPCA took the dog to the HSUS Lamar-Dixon shelter, where he was supposedly microchipped. Hunter then traveled to the Lake Charles shelter and finally to the Marin County California Humane Society shelter on September 27, 2005.

Re-unification efforts began in September 2006, when a Stealth Volunteer, Josie, spoke with Allevato, the Marin County California Humane Society director. At this time, Allevato allegedly claimed that the shelter knew Hunter's location and that the adopter was planning to bring Hunter (now Buddy-Boy) to the shelter to have pictures taken and shown to Bourg. The adoptive owner did visit the shelter as planned, though she did not bring Hunter because she wanted to speak with Bourg first.

The adopter's cooperation and, to a limited degree that of Allevato, apparently terminated with the involvement of Dickerson—a hospital chaplain that cared for Bourg. Dickerson believes that Bourg's story is a lie and that the Stealth Volunteers should leave Hunter alone. Bourg claims to be hearing impaired (totally deaf in one ear and only partial hearing in the other) and that Hunter is her service dog. Dickerson questions the extent of her hearing impairment and Hunter's duties. The documentation needed to prove Bourg's impairment and Hunter's service dog status was supposedly destroyed by Katrina.

After Dickerson spoke with Allevato, Allevato claimed she lost touch with the adopter. Allevato also said that, when the dog came to the shelter, they scanned him but the number on his chip did not match Hunter's chip. Allevato refused to provide the adopter's name, saying the Stealth Volunteers needed a court order to obtain that information. In October 2006, according to Josie, Allevato spoke with Bourg. She allegedly accused Bourg of abandoning Hunter, told Bourg the dog was adopted and she could not legally get him back, and that Hunter was happy and should stay at his new home. Allevato stated her position in a November 2006 email:

²⁵⁶ Richard Webster, *Owners Allege "Gruesome" Pet Slayings*, <http://www.neworleanscitybusiness.com/viewStory.cfm?recID=17461> (Dec. 4, 2006).

The dog in controversy is not in our possession. He was fostered upon his arrival in the Bay Area and subsequently adopted by a family that has had him now more than a year. Neither they nor the dog are in my possession or control. I can and have encouraged dialogue between the parties—and will continue to do so.

At the time of publication, it is unknown whether Bourg found an attorney willing to help her reclaim Hunter.

E. Cases with Unknown Status

The following is a sample of cases with unknown status.

1. Best Friends Animal Society Cases

The Utah-based Best Friends Animal Society is involved in several cases. In many instances, the group is filing lawsuits on behalf of pre-Katrina owners.²⁵⁷ Best Friends representative, Russ Mead, says the suits are generally being brought on property and breach of contract grounds.²⁵⁸ An example of such a case is the aforementioned *Best Friends Animal Society v. Animals Benefit Club of Arizona*.²⁵⁹

Best Friends is also involved in the case of Terry Leichty and her dog Ah Boo.²⁶⁰ Leichty is a blind elderly woman who did not evacuate as Katrina approached. It was not until authorities came to her door that she left her apartment.²⁶¹ CNN's Anderson Cooper was there for the evacuation and reported on Leichty's refusal to leave Ah Boo.²⁶² Though the show's transcript reports that authorities agreed to let her take Ah Boo (who is not a service dog), in reality, the two were separated.²⁶³ Leichty ended up in Kentucky and Ah Boo went to the Best Friends shelter in Mississippi.²⁶⁴ Best Friends then released Ah Boo to Sherry Morrall, president of the Puppy Angels animal shelter in New Hampshire.²⁶⁵ Morrall signed a contract with Best Friends stating that Puppy Angels would keep the dog in foster care for ninety days in order to give the original owner time to reclaim.²⁶⁶ By the time Leichty's son located the dog, the ninety-day holding period had expired and Ah Boo had been adopted.²⁶⁷ Morrall agreed to release the names of Ah Boo's current owners to Best Friends' legal department

²⁵⁷ Connie Bloom, *Owners Try to Recover Pets Lost in Katrina*, <http://www.ohio.com/mld/ohio/living/home/150445685.htm> (accessed Feb. 8, 2006) (site no longer available) (copy on file with *Animal L.*).

²⁵⁸ Mead, *supra* n. 11.

²⁵⁹ *Supra* pt. III B (discussing decided and settled cases).

²⁶⁰ Sarah Liebowitz, *Who Rightfully Owns Ah Boo?*, <http://www.concordmonitor.com/apps/pbcs.dll/article?AID=/20060908/REPOSITORY/609080308> (Sep. 8, 2006).

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ *Id.*

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ Liebowitz, *supra* n. 260.

²⁶⁷ *Id.*

and, if they refuse to return the dog, Best Friends will take legal action.²⁶⁸

2. *Case of Thomas Exnicious*

Two lawsuits are supposedly advancing in this case. In one suit, Thomas Exnicious, the pre-Katrina owner of a dog named Trickysy, is suing the post-Katrina adopters of the dog.²⁶⁹ In the other suit, the animal shelter that adopted out the dog, Animal Compassion Network in North Carolina, is suing Exnicious.²⁷⁰ This is the only known Katrina custody dispute case in which a shelter is suing someone.²⁷¹ Unfortunately, Caroline Ryan, the attorney for Exnicious, cut-off communication and attempts to gather additional information on this case failed.

3. *Marks v. Humane Society of Central Illinois*

Deborah Marks evacuated New Orleans, leaving her four-year-old golden retriever mix, Goldie, at her mother's home, believing she would be back the next day.²⁷² However, several weeks passed before officials let Marks return to the city.²⁷³ During those weeks, Goldie was loaded onto a plane and taken to Bloomington, Illinois by the Humane Society of Central Illinois.²⁷⁴ The Humane Society adopted Goldie out and now has no intention of asking the adopter to return the dog.²⁷⁵ Accordingly, Marks filed an action of replevin against the shelter.²⁷⁶

The Humane Society's position is that it is unsure whether the dog at issue is, in fact, Goldie.²⁷⁷ The Humane Society is also concerned about giving the dog to Marks because she told inconsistent stories about where she left Goldie during the evacuation and did not start asking about the dog until January 2006—more than four months after Hurricane Katrina.²⁷⁸

Lastly, the Humane Society says: “[t]here were no documents signed concerning ownership of the pets.”²⁷⁹ The volunteers who

²⁶⁸ *Id.*

²⁶⁹ Jenkins, *supra* n. 47.

²⁷⁰ E-mail from Caroline Ryan, Atty., Nelson Mullins, to Megan McNabb, Author, *Katrina Pets* (Sept. 15, 2006, 5:10 p.m. PST).

²⁷¹ *Id.*

²⁷² Brett Nauman, *Katrina Victim Wants Dog Back*, <http://www.pantagraph.com/articles/2006/06/28/news/115391.prt> (June 28, 2006).

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ *Id.*

²⁷⁸ Nauman, *supra* n. 272.

²⁷⁹ *Id.*

handed over the dog, as well as St. Tammany Parish, represented her as relinquished and abandoned.²⁸⁰

IV. LEGISLATIVE CHANGES

Hurricane Katrina made ripe the possibility of legislative changes in three areas: laws addressing pets and disasters, pet adoption, and animals as property.

A. *Laws Addressing Pets and Disasters*

Hurricane Katrina highlighted the flaws of federal and state laws concerning pets and disasters. For example, because emergency responders were not allowed to consider or accommodate pets during the evacuation, many would-be evacuees chose to stay behind and risk death rather than leave their pets.²⁸¹ According to a recent survey, forty-four percent of those who did not evacuate during Katrina claimed they stayed because of their pets.²⁸² “People died because they refused to leave their pets behind,” Louisiana SPCA director Laura Maloney said, “[a]nd people who did leave their pets risked their lives to re-enter New Orleans after the hurricane. That should never happen again.”²⁸³ This phenomenon is not just true of New Orleans; a recent Zogby International poll found that forty-nine percent of adults “say they would refuse to evacuate if they couldn’t take their pets with them.”²⁸⁴

Another significant flaw in federal and state pre-Katrina legislation addressing pets and disasters was the lack of strategies and precise plans to find animals separated from their owners.²⁸⁵ For example, there was no unified tracking system and, while many shelters tried to post the animals’ pictures on Petfinder, this was not enforced nor ideal as many pictures were unclear and just added to the confusion.²⁸⁶ The legislative void has generated litigation aimed at locating the lost Katrina animals and determining whether the animal at issue is the same one as the pre-Katrina owner’s pet.

The Katrina pet disaster has already sparked significant legislation, hailed by animal rights representatives, aimed at addressing the aforementioned deficiencies. This legislation alleviates the need for people to make a choice as to whether pets must be left behind during disasters by making it relatively easy to include pets in family evacua-

²⁸⁰ Josh Brogadir, *Hurricane Katrina Victim Sues to Get Dog Back*, http://www.hoinews.com/news/news_story.aspx?id=11989 (June 28, 2006).

²⁸¹ Maryann Mott, *Katrina’s Pet Legacy: Better Evacuation Plans, Bitter Custody Lawsuits*, <http://news.nationalgeographic.com/news/2006/08/060821-katrina-pets.html> (Aug. 21, 2006).

²⁸² *Id.*

²⁸³ Altman & Weiss, *supra* n. 38, at Epilogue.

²⁸⁴ Associated Press, *House Passes Pet Evacuation Bill*, <http://www.cbsnews.com/stories/2006/05/22/politics/main1644260.shtml> (May 22, 2006).

²⁸⁵ See generally Altman & Weiss, *supra* n. 38, at ch. 3.

²⁸⁶ Mead, *supra* n. 20 (describing shelters impacted by Hurricane Katrina).

tion plans. Also, Homeland Security has expressed interest in making new efforts to track and locate pets so they can be reunited with their owners after natural disasters occur.²⁸⁷ Hopefully, these efforts will prevent pet custody litigation following disasters.

An example of new legislation, on the federal level, is the Pets Evacuation and Transportation Standards Act of 2007 (PETS).²⁸⁸ PETS was signed into law in October 2006 and has been received by states with open arms.²⁸⁹ The Act requires local and state disaster plans to include provisions for household pets and service animals in the event of a major disaster or emergency and it uses Federal Emergency Management (FEMA) grants as leverage.²⁹⁰ To qualify for FEMA grants, the locality must have some plan for how to get pets out of a disaster zone; it must accommodate both the owner and the pet. For example, the government may no longer say the animal is not allowed to accompany its owner on the evacuation bus without providing alternatives.²⁹¹ Localities that fail to accommodate both people and their pets will not receive FEMA grants.²⁹²

State and local governments have several possible PETS compliance options. The Act authorizes federal funding for states to open and run owner- and pet-friendly shelters.²⁹³ PETS also allows FEMA to provide assistance to those with pets following disasters.²⁹⁴ This assistance may take the form of putting up both the owner and pet in a pet-friendly hotel or financing the pet's stay in a veterinary office or local boarding facility.²⁹⁵

Various legislation is also passing on the state level. In Louisiana, Senate Bill 607, passed by the legislature and signed into law during the summer of 2006, "has drawn national attention as the most sweeping attempt to keep pets and their owners together during disasters."²⁹⁶ The law requires that the state Office of Homeland Security and Emergency Preparedness, as well as each parish, formulate emergency plans for the humane evacuation, transport, and emergency sheltering of service animals and household pets in times of emergency or disaster.²⁹⁷ The law contains detailed requirements for such emer-

²⁸⁷ *E.g.* Brinkley, *supra* n. 39, at 518 (Homeland Security is working with SPCA to create a database of humans and pets so they will not become permanently separated due to disasters).

²⁸⁸ Pub. L. No. 109-308, 120 Stat. 1725 (2006).

²⁸⁹ Interview by Robert Siegel, Natl. Pub. Radio with Kim Intino, Dir. of Animal Sheltering Issues for Humane Socy. U.S. (Dec. 27, 2006) (audio file available at <http://www.npr.org/templates/story/story.php?storyId=6687058>).

²⁹⁰ Pub. L. No. 109-308 at § 2.

²⁹¹ Siegel, *supra* n. 289.

²⁹² Associated Press, *supra* n. 284.

²⁹³ Pub. L. No. 109-308 at § 3.

²⁹⁴ *Id.* at § 4.

²⁹⁵ Siegel, *supra* n. 289.

²⁹⁶ John Gramlich, *Legislators Help Pets in Disasters*, <http://www.stateline.org/live/printable/story?contentId=121779> (June 27, 2006).

²⁹⁷ La. Stat. Ann. § 29:726E(20)(a) (2007).

gency operation plans. For example, persons with disabilities cannot be separated from their service animals.²⁹⁸ Also, plans must identify or, if necessary, establish shelters for animals in close proximity to a human sheltering area.²⁹⁹ The plans must include guidelines for such animal shelters with respect to health and safety and basic minimum animal care needs.³⁰⁰ And, to facilitate location and reclamation of displaced pets by their owners after the emergency or disaster, the state should establish an identification system.³⁰¹

Like Louisiana, since May 22, 2006, the governors of Florida, Hawaii, New Hampshire, and Vermont have signed bills that provide more protection for pets during emergencies.³⁰² These laws call for authorities to develop plans for pet evacuations. For example, Vermont's new law requires that state and local emergency planning commissions include representatives from animal rescue organizations.³⁰³ Maine became the first state to sign an "animal emergency" bill into law that establishes an Animal Response Team to respond to disasters affecting animals.³⁰⁴ Additional legislation passed in Oregon, Connecticut, Nevada, and Texas.³⁰⁵

B. Laws Addressing Pet Adoptions

The Katrina custody disputes will likely create new case law regarding pet adoptions during disasters. However, case law is not enough. Current laws addressing this situation need to be revised in a couple of ways. First, the statutory time frame for reunification should be shortened. As it was during Katrina, the state or shelter was responsible, under Louisiana law, for keeping the animal for three years.³⁰⁶ The Louisiana law, and other statutes in place, are flawed because they apply lost property statutes designed for inanimate objects to companion animals. This does not work. Three years is too long for an animal to be held in a shelter. Shelters do not have the space or money to accommodate animals for this amount of time and it is unfair to the pet to live in a cage for three years. It is also untenable to ship a traumatized pet, displaced in a disaster, from shelter to shelter until it is adopted, have it become attached to its adopter and vice versa, then

²⁹⁸ *Id.* at § 29:726E(20)(a)(i).

²⁹⁹ *Id.* at § 29:726E(20)(a)(ii)(aa).

³⁰⁰ *Id.* at § 29:726E(20)(a)(ii)(bb).

³⁰¹ *Id.* at § 29:726E(20)(a)(iii)(bb).

³⁰² Mott, *supra* n. 281.

³⁰³ Vt. Stat. Ann. tit. 20, § 32(b) (Supp. 2006).

³⁰⁴ 7 Me. Rev. Stat. Ann. § 1901 (Supp. 2006).

³⁰⁵ Humane Socy. U.S., *Animals in Disasters*, http://www.hsus.org/legislation_laws/state_legislation/oregon/sb570_animals_in_disasters.html (accessed Nov. 18, 2007); http://www.hsus.org/legislation_laws/state_legislation/connecticut/hb_5186_animals_in_disasters.html (accessed Nov. 18, 2007); http://www.hsus.org/legislation_laws/state_legislation/nevada/sb81_animals_in_disasters.html (accessed Nov. 18, 2007); http://www.hsus.org/legislation_laws/state_legislation/texas/hb_88_animals_in_disasters.html (accessed Nov. 18, 2007).

³⁰⁶ La. Civ. Code Ann. art 3419 (2003).

turn its world upside down yet again when the original owner finally comes forward to reclaim the animal. Assuming that the tracking systems will be improved post-Katrina and the rescue groups act in good faith, three to four months seems to be sufficient time for a former owner to identify and reclaim the pet.³⁰⁷

Second, the laws protecting adopters and rescuers should be strengthened. The lawsuits pre-Katrina pet owners are bringing against adopters and rescue groups run the risk of deterring such benevolent behavior in future emergency situations. And, if the judges in the Katrina custody disputes order reunification within the three-year statutory period no matter what the facts, there is the possibility that, come the next disaster, fewer volunteers and rescue organizations will be willing to help. Many will think twice about rescuing animals and spending a great deal of money to nurse them back to health only to then surrender them long after the animals have adjusted to their new lives. Public policy favors adopters and rescuers because such people should be encouraged to rescue and provide health care and proper homes to animals displaced by disasters.³⁰⁸ The court in *Morgan v. Kroupa* adhered to this view, saying:

A rule of decision that made it difficult or impossible for the finder to keep the animal after many months or years of care and companionship might deter these salutary efforts, and would not be in the public interest. . . . [W]here the finder of a lost pet makes a reasonable effort to locate its owner, and responsibly cares for the animal over a reasonably extensive period of time, the finder may acquire possession of the animal.³⁰⁹

Based on this logic, the court awarded ownership of the lost dog at issue to the finder on public policy grounds.³¹⁰ It rejected an application of Vermont's lost property statute, finding it inapplicable to lost pets.³¹¹ The court reasoned that, because society places great value on companion animals, the law should encourage finders to take in and care for lost pets.³¹²

C. Laws Addressing Animals as Property

The fact that animals are considered nothing more than pieces of property was one, if not the primary, reason many of them were left behind and not accommodated for during Hurricane Katrina. One of the greatest obstacles to safety and justice for animals has been the law's stance that animals are merely property.³¹³ To label something as property is to conclude that the thing possesses no interests that merit protection and that it is solely a means to a human-determined

³⁰⁷ E-mail from Joseph Bednarik, *supra* n. 46.

³⁰⁸ *Id.*

³⁰⁹ 702 A.2d at 633.

³¹⁰ *Id.*

³¹¹ *Id.*

³¹² *Id.*

³¹³ Newell, *supra* n. 61, at 179.

end.³¹⁴ Just as the biggest barrier to the exertion of rights by women and African Americans was their status as property, classifying animals as property is a means of oppression used to quell the rights of animals.³¹⁵

The traditional legal view of animals as articles of property has been questioned and modified by several courts. These courts recognize that pets “do not fit neatly within traditional property law principles.”³¹⁶ For example, the court in *Corso v. Crawford Dog & Cat Hosp., Inc.*, held “[a] pet is not an inanimate thing that just receives affection; it also returns it.”³¹⁷ Changes are being made to recognize the unique status of animals in tort law (e.g., in the way that damages are calculated for lost or injured animals), estate planning, and in legislation that increases criminal penalties for cruelty to animals.³¹⁸

The law is following a general societal shift toward valuing animals and viewing them as more than just property. People take their pets on vacation, go to great lengths to prolong their lives, and celebrate their birthdays.³¹⁹ Hurricane Katrina and its aftermath is yet another example demonstrating how animals are so much more than just pieces of property. People stayed behind and died with their pets, while others dropped everything to help rescue animals after the storm. The Katrina custody disputes also illustrate that people are willing to spend a great deal of time, money, and effort to litigate over animals.

Whether there should be an official change in the legal recognition of companion animals as property (in other words, whether the difference between pets and inanimate property should be clearly reflected in our laws) has been debated extensively. Gary Francione advocates eliminating the property status of animals and granting them legal personhood.³²⁰ David Favre believes eliminating the property status of animals is unnecessary and instead advocates dividing their title into legal and equitable components, creating a form of self-ownership that he calls “equitable self-ownership.”³²¹ Cass Sunstein, like Favre, “focuses on the role of existing laws to provide protections for animals.”³²²

The case law that arises as a result of the Katrina custody disputes will surely add to this debate. In particular, it will be interesting to see whether the judges apply the previously discussed “best interest of the animal” standard in resolving the custody disputes. The applica-

³¹⁴ Derek W. St. Pierre, *The Transition From Property to People: The Road to the Recognition of Rights for Non-Human Animals*, 9 *Hastings Women's L.J.* 255 (1998).

³¹⁵ *Id.* at 271.

³¹⁶ *Morgan*, 702 A.2d. at 633.

³¹⁷ 97 Misc. 2d 530, 531 (N.Y. Civ. Ct. 1979).

³¹⁸ Hankin, *supra* n. 9, at 4.

³¹⁹ *Id.* at 53.

³²⁰ *Id.* at 57.

³²¹ *Id.* at 58.

³²² *Id.* at 59.

tion of this test would be an inroad into the legal system's view of companion animals as something distinct from inanimate property.³²³ For the advocates of that inroad, "a fresh judicial view of the status of animals is, perhaps, the best means presently available to change the legal view of animals as property, given that legislative efforts to protect interests of animals have been largely ineffective."³²⁴

V. CONCLUSION

The Katrina custody cases present several common themes. The majority of plaintiffs, the pre-Katrina pet owners, brought actions of replevin to recover their pet and rely upon traditional property concepts as well as breach or invalidity of contract arguments. The majority of defendants, the post-Katrina pet owners and shelters, argue for a "best interest of the animal" analysis and advocate the validity of the contracts made during the disaster. As only two cases have garnered a court opinion at this time, we can only speculate as to what law will arise from this litigation. It appears that existing law favors the pre-Katrina owner but the courts could apply innovative theories such as the "best interest of the animal" standard to rule in favor of the post-Katrina owner.

Regardless of the case law that develops in this area, Hurricane Katrina made it clear that federal and state laws were lacking in several respects and needed revision. First, laws addressing pets and disasters were flawed, as they did not allow emergency responders to consider or accommodate the animals and they contained no strategies to find animals separated from owners. Federal and state legislation has already passed to correct these flaws. Second, it became clear that the laws addressing pet adoptions needed modification. The statutory time frame for reunification needs to be shortened while the laws protecting adopters and rescuers should be strengthened. Changes are still awaited in this area. Third, the inadequacy of laws addressing animals as property became apparent. The topic of whether or not there should be an official change in the legal recognition of animals is extensively debated. However, it is certain that so many pets were left behind because they are considered nothing more than just pieces of property. It may not yet be the time to change the laws addressing animals as property, but the Katrina custody cases surely advance that decision.

³²³ *Id.* at 32.

³²⁴ Thomas G. Kelch, *Toward a Non-Property Status for Animals*, 6 N.Y.U. *Envtl. L.J.* 531, 532 (1998).