

## All Bark and Fiscal Bite—Are Breed-Discriminatory Laws Effective?

By Ledy VanKavage

**A** dog attacks, and city-council members want the city attorney to react—sometimes by drafting an ordinance that restricts or outlaws a specific breed of dog, most often the maligned pit bull.<sup>1</sup> After such an ordinance is passed, authorities must then ferret out and kill any dog that slightly resembles a pit bull. Prince George's County Maryland spends approximately \$560,000 every two years enforcing its ban. Miami-Dade County impounds and kills around 800 pit bulls a year, despite a ban dating back to the 1980s, resulting in a significant fiscal impact.<sup>2</sup>

Given the tremendous costs associated with breed-discriminatory laws, are they a prudent approach to community safety or a costly red herring? With passage of such ordinances comes a host of questions such as: How do you prove in court the identity of a mixed-breed dog? What sort of training do your animal-control or law-enforcement officers have regarding breed identification? If they aren't trained in breed identification, is a veterinarian employed to determine whether a dog is a certain breed? Now that DNA testing is available, are courts going to require the government to pay for such testing before confiscating and destroying citizens' property (i.e., their dogs)?



### Missing the Mark by Targeting Pit Bulls

Effective public lawyers counsel their clients to make decisions based on research and valid statistics, not emotion. So why the modern-day witch hunt concerning pit bulls? Karen Delise, author of "Fatal Dog Attacks" and "The Pit Bull Placebo," examined news stories regarding dog attacks that occurred during four days in August 2007. The results are telling:

- On Aug. 18, 2007: A Labrador mix attacked a 70-year-old man, sending him to the hospital in critical condition. Police officers arrived at the scene, and the dog was shot after charging the officers. This incident was reported in one article and only in the local paper.
- On Aug. 19, 2007: A 16-month-old child received fatal head and neck injuries after being attacked by a mixed-breed dog. This attack was reported two times by the local paper.
- On Aug. 20, 2007: A 6-year-old boy was hospitalized after having his ear torn off and receiving severe bites to the head by a medium-sized mixed-breed dog. This attack was reported in one article and only in the local paper.
- On Aug. 21, 2007: A 59-year-old woman was attacked in her home while trying to break up a dog fight involving her neighbor's Jack Russell terrier and two pit bulls. The pit bulls had broken off their chains and followed her neighbor's Jack Russell terrier in through her dog door. She was hospitalized with severe injuries. Her dog was not injured. This attack was reported in more than 230 articles in national and international newspapers and on major television news networks, including CNN, MSNBC, and Fox.

Thus, during those four days, four dog attacks made the news—including a fatality involving a mixed-breed dog—but only the incident involving the pit bulls captured national attention.

Given the hype, it isn't a surprise that public lawyers may be asked to research and draft ordinances to help stop dog attacks, with the focus frequently on banning pit bulls. However, a smarter approach is to examine the statistics in the community, seek citizen input and weigh the factors involved in the attacks.

### What Factors Are Involved in Severe Attacks?

According to Delise, now with the National Canine Research Council, the fatal dog attacks that occurred in the United States in 2006 had these commonalities:

- 97 percent of the owners did not neuter or spay their dogs.
- 84 percent of the attacks involved reckless owners—owners who abused or neglected their dogs, failed to contain their dogs or improperly chained their dogs.
- 78 percent of the owners did not maintain their dogs as pets (they were used as guard, breeding or yard dogs).

In lieu of drafting costly breed-discriminatory laws, public lawyers must decide if legislation targeting the aforementioned factors would be more effective.

### Restrict Reckless Owners from Harboring Dogs

It makes sense to restrict or even ban reckless owners from owning a dog—any breed of dog—because any dog can bite. And reckless owners, like reckless drivers, are often recidivists. Creative public lawyers have already realized this.

In 2007, the city of St. Paul, Minnesota, passed an ordinance targeting reckless dog owners. St. Paul pet owners cited more than once for abusing or neglecting an animal can't legally own another pet under the ordinance. The law targets pet owners who train their dogs to fight, puppy-mill operators and reckless dog owners. Reckless dog owners can't register a new animal if their dogs are removed twice in a five-year span. City law requires all dogs more than three months old to have a license that costs \$50 a year; the cost is reduced to \$10 a year if the animal is spayed or neutered.

Also in 2007, the city of Tacoma, Washington, created an ordinance regulating "problem pet owners." A person who commits three or more animal-control violations in a 24-month period can be declared a problem pet owner and forced to surrender all of their animals.

### Encourage a Community-Policing Approach to Animal Control

Since Calgary, Alberta, enacted and enforced a new aggressive-dog ordinance, the city has experienced a 56 percent decline in aggressive-dog incidents and a 21 percent decline in biting incidents in just two years. Calgary does not discriminate against particular breeds of dogs but focuses on protecting the public from all aggressive dogs regardless of breed. The city's animal-control wardens adopt a community-policing/problem-solving approach when dealing with members of the public. The focus is on stiff fines and public education. The city encourages its wardens to get out of their trucks and talk with folks. If a dog bites a person, a \$350 fine is imposed; if the person needs medical attention, the fine increases to \$750. There is also a \$250 fine for a dog-on-dog attack or if an owner fails to license their pooch.

This is in stark contrast to cities that have enacted breed-discriminatory laws. Studies show that breed-discriminatory laws are ineffective in protecting the public from dog attacks. One study involves the U.K.'s Dangerous Dog Act, which banned pit bulls in 1991. The study concluded that the ban had no effect whatsoever on stopping dog attacks.<sup>3</sup>

The most recent study compared dog bites reported to the health department of Aragon, Spain, for five years before and five years after the introduction of its Dangerous Animals Act. As with the earlier study, there was no change in numbers of reported dog bites after the implementation of breed-discriminatory legislation, and the breeds most responsible for bites both before and after the breed-discriminatory legislation were those unrestricted by the legislation: German shepherds and mixed-breed dogs. The restricted breeds—American Staffordshire terriers, pit-bull terriers and Rottweilers—were responsible for less

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## The CSI Impact on Breed-Discriminatory Ordinances: Doggy DNA

Recently, DNA testing became available to determine a dog's heritage. These scientific advances have impacted breed identifications by animal-control wardens, police officers and even veterinarians.

If a city or state has adopted a breed-discriminatory law, the burden of proof is on city officials to prove that a dog is a member of the targeted breed, either through preponderance of evidence or in some cases—if there are criminal penalties—beyond a reasonable doubt.

In Kansas City, a man won his eight-month legal battle with the city to keep his dog, Niko, after DNA testing proved Niko wasn't a pit bull, as the animal-control wardens had asserted. Niko was housed at animal control for the entire eight months of the court case, at a great cost to the town taxpayers. Niko, a mixed-breed dog, is now back home after the ordeal.

Breed-discriminatory laws now need to take DNA evidence and its cost into account.

than 4 percent of the reported bites both before and after the law took effect.<sup>1</sup>

### Eliminate Chaining Dogs, an Attractive Nuisance


According to Delise, 25 percent of all fatal attacks since the 1960s have been inflicted by chained dogs. Chained dogs can actually be attractive nuisances, luring children in to pet them. Many cities and some states, including Texas, have adopted chaining restrictions. Texas Health and Safety Code, Chapter 821, prohibits dogs from being tied up, chained or tethered under any of the following conditions:

- Between the hours of 10 p.m. and 6 a.m.
- Within 500 feet of school property.
- When the temperature is below 32 degrees.
- When a heat advisory or ozone alert has been issued.
- When a pinch, choke or improperly fitting nylon collar is used.

Restricting chaining between the hours of 10 p.m. and 6 a.m. can have the added benefit of reducing the number of barking complaints.

### Protecting the Public While Preserving Responsible Owners' Property Rights

Responsible dog owners should have the right to own whatever breed of dog they choose and reckless owners should be pro-

hibited from owning dogs. It is up to public lawyers to ensure effective ordinances that protect people from any dangerous dog, regardless of its breed. 

*Ledy VanKavage is an attorney with Best Friends Animal Society in Kanab, Utah. Formerly she was senior director of legislation and legal training, ASPCA. She also is vice-chair of the ABA Tort Trial & Insurance Practice Section's Animal Law Committee, and chair of the Dangerous Dog Subcommittee. She can be reached at ledyv@bestfriends.org.*

### Endnotes

1. "Pit bull" is a term commonly used to refer to several breeds of dogs, including the bull terrier, American Staffordshire terrier (also called the American pit bull terrier) and Staffordshire bull terrier.

2. REPORT OF THE VICIOUS ANIMAL LEGISLATION TASK FORCE, Prince George's County Council (July 2003); conversation at the Florida Animal Control Association Conference, Nov. 21, 2008, with Dr. Sara Pizano, Director of Miami-Dade Animal Care and Control.

3. Klaassen B., Buckley J.R., Esmail A. *Does the Dangerous Dogs Act Protect Against Animal Attacks: A Prospective Study of Mammalian Bites in the Accident and Emergency Department*, *Inj.* 27(2), 89-91(1996).

4. Rosado B., Garcia-Belengues, Leon M., Palacio J. *Spanish Dangerous Animals Act: Effect of the Epidemiology of Dog Bites*, *Jof Veterinary Behavior* 2, 166-174 (2007).

### Resources

- Kindness Index. Angel Canyon, UT Best Friends Animal Society, 2006. [www.bestfriends.org](http://www.bestfriends.org).
- National Canine Research Council, [www.nationalcanineresearchcouncil.com](http://www.nationalcanineresearchcouncil.com).

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# Five Pointers to Pass On

**M**any lawyers enter public service because they have a desire to litigate and have found that they can get into court earlier and more often than in private practice.



**Jennifer Meeks**

Division member  
Jennifer Meeks has litigated for over 10 years as an Assistant Attorney General

for the State of West Virginia, and in other positions with private and public entities. She passes on these pointers:

1. Be an excellent “real” litigator. Bill yourself as a litigator, and give your work the credit it deserves. Many public lawyers appear only before administrative bodies – this too is litigation. Toil as if your case will end up at the Supreme Court—it might!
2. Treat your client as if he or she has


the choice to engage another lawyer for legal services. The golden rule is a good rule of thumb. Good relations will serve you well both now and in the future.

3. Don't be afraid to speak up. Ask for help before getting overwhelmed. Ferret out the answer to troublesome points you discover in building your case. When alternatives are available, offer them.

4. Pursue lifelong education. Take advantage of formal training opportunities as well as informal ones. Train yourself. For example, read over that transcript with an eye towards critiquing your own performance, as well as finding quotations for your argument. Read all the Jim McElhaney you can find (there's always an article in the *ABA Journal*), and sign up for e-mail discussion lists to get other helpful advice.

6. Treat your support staff well. They can be lifesavers, and in government practice they are often great sources of information and experience. Don't let them run the show, but appreciate their professionalism and treat them accordingly. Remember that you (and your law license) are ultimately responsible.

and a bonus:

6. Dress the part. Even if you are not subject to last minute court appearances, you are probably subject to unscheduled meetings with your client, your boss, and perhaps other highly placed officials. Be prepared to look like a professional whenever it is required. 

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