

TUNE IN TO THE
SOUND OF DEMOCRACY

Justice Talking Radio Transcript

Protecting People and Their Pets—Air Date: 8/14/06

A recent court order sentencing a cat to house arrest after it mauled at least six neighbors raises questions about how the law tries to safeguard public safety and mediate disputes when pets get out of control. Should communities ban pet pit bulls or venomous snakes? How about pet sheep, pigs and poultry? Can government force pet owners to use dog runs or keep their animals on leashes? Join us for this edition of Justice Talking as we look at pets and the law and ask whether new laws are needed or whether they are just more bark than bite.

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MARGOT ADLER: From NPR, this is Justice Talking. I'm Margot Adler. Communities around the country have laws about pets. Most are mundane like curf laws or dictating the number of pets you can own. But the other ways in which the law and pets intersect are more notable. In Denver, they've banned so-called dangerous dogs like pitbulls. In Connecticut, a judge put a cat under house arrest for attacking the neighbors. And in Maryland, there's a court where owners can present their cases, sometimes involving the not-so-average pet.

UNIDENTIFIED MALE: A gentleman who took his monkey with him to a bar to drink one night. And the monkey apparently didn't like one of the other patrons in the bar and attacked the patron and bit the patron and went wild tearing the bar up. And our officers had to seize that monkey and bring it in.

MARGOT ADLER: Breed bands, pet ordinances and whether the law should treat Fido like a person or property. That and more, after the news.

MARGOT ADLER: This is Justice Talking. I'm Margot Adler. On today's show, we'll look at the law and one of America's biggest obsessions - pets. You might ask: pets and the law? Why do a program on that? Well, at first we at Justice Talking had the same reaction. Until we heard about Louis the cat.

UNIDENTIFIED FEMALE: Many neighbors call Louis the cat a terror. They say his long claws along with cat-like stealth have allowed the feline to attack at least a half-dozen people and ambush the Avon lady as she was getting out of her car. The cat was ordered confined to Cisero's home.

MARGOT ADLER: That story from WSHU, an NPR affiliate in Connecticut, is just a sample of the media storm that followed Louis, a Fairfield cat, when he was placed under house arrest earlier this year. Louis's five minutes of fame also included a MySpace page, "Save Louis" T-shirts and a clouder of cat owners--clouder means a group of cats--ready to bear their claws at the law. But still you might ask: a whole hour on pets? Well, look at it this way: 63 percent of American households have a pet. That's over 70 million dogs alone. And not only do dogs have their day, but it seems they also have their laws--licensing laws, noise laws, and curbing ordinances. But there are also far more controversial laws like banning so-called dangerous dogs like pitbulls from our communities. On today's show, we'll hear a debate on pit bull bans. But we'll also look at the broader ban discussion of whether pets should be treated more like people under the legal system. And later, a new area of law that lets you create a trust fund for Fluffy should you pass away before she does.

But first to give us an overview of how the law deals with pets, I spoke with David Favre. He's a law professor at the Michigan State University College of Law. He has written several books, including "Animal Law and Dog Behavior." I asked him when we first started seeing laws regarding pets in America.

DAVID FAVRE: Well, the first cruelty laws that actually focused on animals as individual beings who feel pain was back in, believe it or not, 1867 in New York. But those laws have been on the books for a long period of time. And it's really only the past ten years that we seem to be passing a new set of laws that focus on sort of upscaling our concern about pets themselves and not just animals generally.

MARGOT ADLER: So are dogs the most regulated category of pets?

DAVID FAVRE: Oh, easily, by far and away. You know, hundreds of thousands of people are bitten every year by dogs. And although we have pretty well set aside the issue of rabies in the United States, that for the first part of the last century was a really serious concern, about dogs with rabies.

MARGOT ADLER: Banning a specific breed of animal seems like one of the more controversial laws regarding pets. Are there other regulations out there that approach this in severity?

DAVID FAVRE: Well, I think what I'm seeing just in the past year or so is that a new issue that's arising is whether or not you can make mandatory to spay and neuter home pets. Some

cities have actually adopted an ordinance requiring that all pets be spayed and neutered unless they get a special breeding license. And I think a lot of people are going to be a little bit upset about that.

MARGOT ADLER: So how common are dangerous dog laws?

DAVID FAVRE: Over half the states have a specific law that we would put under the category of dangerous dogs.

MARGOT ADLER: And besides dangerous dog laws, what kinds of pet ordinances exist? I know they must vary widely state to state, location by location, but could you broadly categorize how these laws address pets?

DAVID FAVRE: Well, one of the important ones is exotic pets.

A lot of local ordinances specifically outlaw certain species of animals to preclude them from coming into the town. Snakes come to mind for that.

MARGOT ADLER: Having a lion in your home.

DAVID FAVRE: Well, yeah. The next category was the big cats. And that happens at the state level quite often. The State of Michigan, we have a law that just simply does not allow you to have a large cat, meaning a lion-size cat, as a pet. We also outlaw the keeping of wolves as pets in Michigan and in several other states as well. So some things are outright banned at the state level where there's an obvious public risk involved.

MARGOT ADLER: There have been some custody battles over pets lost during Hurricane Katrina. Some Louisiana residents couldn't or weren't allowed to take their pets with them. Their animals were rescued, they were placed in new homes, and now the original owners want them back and have sued humane societies and the people who now have the pets. In general, what do laws say when it comes to pet custody?

DAVID FAVRE: The facts that you just presented are much narrower than just pet custody per se. The laws of Louisiana do not contemplate that an owner would not be able to find their pet within ten days. And as a result, it's not clear what law does apply.

MARGOT ADLER: And in general, when we're not talking about a hurricane like Katrina, how long do people have before someone who finds a dog or a cat can say they're mine?

DAVID FAVRE: Well, very good question. And I have to break that into two categories. One is who is the finder, because if the finder is the police or the animal control or the Humane Society, then almost every state has a very limited window. And if you don't get your pet back within like ten days or two weeks, it becomes the property of the Humane Society or the animal control people. If a pet is found by a third party, just by an average person, not part of one of those organizations, then the law is very unclear as to what happens. There's a series of cases in

Vermont that help clarify that in Vermont if you have it six months or a year, that sometime after that you consider it to be your pet.

MARGOT ADLER: Now, suppose the pet had a microchip in it with the owner's name and address. Would that change the situation as far as the law?

DAVID FAVRE: Yes. All the laws say that there's a duty on the collecting agency to notify the owner that they have the animal. And if that's done because of a collar or because of a chip, then the agency has that duty to do so. And if you're a general finder, member of the public, and you find an animal, I think at this point there would be an expectation that you would have the pet scanned to see if there is or is not a chip.

MARGOT ADLER: How are animals protected under the law from abuse or neglect?

DAVID FAVRE: Well, those are two different categories. Abuse normally entails intentional acts of cruelty. And neglect obviously means a passive not having provided sufficient care for the animal. And in every state, and now in 40 states, those issues can give rise to felony criminal provisions for those who violate the law.

MARGOT ADLER: Now, let's say my dog bites a neighbor. Am I liable?

DAVID FAVRE: Well, that depends on the state you're in. And it depends on upon the prior behavior of the dog. If you are aware that that dog is at risk of biting people, then in every state you're liable. If that dog had never ever shown any inclination or caused harm to another human being, then in another set of states, you're not liable.

MARGOT ADLER: I'm wondering if you think dogs are so highly regulated because of the way Americans now live, particularly in cities, for example, where people live closer together, with fewer public spaces.

DAVID FAVRE: I think that density is an important component of dog regulation. But the other part is also that the dogs are becoming more and more important to people. And therefore, they're willing and interested in pursuing the interest of the animals more than they did 20 years ago.

MARGOT ADLER: Thank you so much, David.

DAVID FAVRE: You're welcome.

MARGOT ADLER: David Favre is a law professor at the Michigan State University College of Law. He's written several books, including "Animal Law and Dog Behavior" and "Animal Law, Welfare, Interest and Rights."

MARGOT ADLER: In Anne Arundel County, Maryland, an animal court meets about once a month to take up cases that involve four-footed and sometimes even beaked plaintiffs and defendants. It's not the people's court. It's pet court.

UNIDENTIFIED MALE: In the Animal Control Commission system, the cases are heard by an independent body established in Article 12, Title II of the Anne Arundel County Code to hear animal-related complaints and appeals. These are their stories.

MARGOT ADLER: Cases are heard by seven commissioners and come before the court through citizen complaints or if someone appeals a decision made by the county's animal control agency. Lieutenant Jonathan Church is the commander of community relations for the Anne Arundel Police Department in Maryland. He oversees animal control and enforces the decision made in pet court. What kind of animals do your cases deal with?

JONATHAN CHURCH: Well, they're from all walks of life. We've had monkeys involved in some of the cases, and obviously, dogs, cats, ferrets, horses, livestock. So it depends basically on the particular scenario. Probably the majority of what the animal control section puts in front of the Commission is potentially dangerous and dangerous orders that deal with public safety on dogs that have bitten...either attacked other animals or humans.

MARGOT ADLER: In your time of being involved in the Commission and in the court, what's been your favorite case?

JONATHAN CHURCH: Probably the most interesting case was there was a gentleman who took his monkey with him to a bar to drink one night. And the monkey apparently didn't like one of the other patrons in the bar and attacked the patron and bit the patron and went wild tearing the bar up. And our officers had to seize that monkey and bring it in. Well, the owner didn't believe that the monkey should be forfeited. We were going to send the monkey to a rescue outside of Anne Arundel County where it could be dealt with properly. And the owner fought that decision. The commission ultimately did side with animal control. And the monkey was relocated to a wildlife rescue. But it was really an interesting scenario.

MARGOT ADLER: Now, I gather the animal court is not really like a real court of law. You don't follow the normal rules of evidence. I gather that hearsay evidence can be presented. That must make the hearings pretty wild.

JONATHAN CHURCH: It certainly makes for an interesting scenario for the commissioners sitting on that board. And certainly, the rules of evidence are out the window. They do allow only relevant information, or try to restrict it to relevant information. But sometimes the evidence and the presentation of what somebody believes is important will get sidetracked quite a bit.

MARGOT ADLER: You know, in a recent story that I read about the court in the press, one of the headlines was often that humans at the court misbehave more than the animals. Is that true?

JONATHAN CHURCH: Folks are very passionate about their animals and about their...and their livelihood, because we're really talking about equality of life issues. But, yes, people become very passionate when we deal with it.

MARGOT ADLER: They even scream at each other, right?

JONATHAN CHURCH: Absolutely. There have been some instances where I as a police officer have had to ask people to leave the hearings.

MARGOT ADLER: And do you think having sat on, you know, and watched these proceedings week after week, month after month, do you think it does good?

JONATHAN CHURCH: It's a perfect educational tool. And then our county executive, Ms. Janet Owens, recently came to me, probably about eight months ago, and asked that we start televising these proceedings. And we've been televising them on the Anne Arundel County cable channel. And it's been very educational and informative to citizens. Citizens recognize the commissioners out on the streets now. They're local celebrities. But what's more important is that they're educated as to the laws that a lot of citizens may not be aware of. So the Commission does a very good job in informing and mediating and really dealing with these issues without tying up the court systems with them. But then this televising of these hearings has certainly done a great deal in informing the citizens as to what goes on in their county.

MARGOT ADLER: Lieutenant Jonathan Church oversees animal control for Anne Arundel County in Maryland. Thank you so much for being with us.

JONATHAN CHURCH: Thank you.

MARGOT ADLER: Coming up, two animal advocacy groups debate one of the most controversial pet laws: banning so-called dangerous dogs. Are pitbulls evil attack dogs? Or are some owners to blame?

UNIDENTIFIED FEMALE: But just seeing the hundreds of pitbulls I've seen in my lifetime who are beaten up and battered and scarred, there's no reason for this not to be enacted, because these are not the kinds of homes that you want them in.

UNIDENTIFIED FEMALE: Well, the ASPCA believes that all pitbull bans do is just victimize the dog yet again.

MARGOT ADLER: Nature or nurture when it comes to pitbulls--stay with us.

MARGOT ADLER: This is Justice Talking. I'm Margot Adler. Today we're tackling pets and the law. And one of the pet laws that has riled pet owners, home owners and the police alike is

the practice of banning pitbulls. Ontario, Canada and Denver, Colorado are two such examples. Some argue that pitbulls are unpredictable and dangerous, while others say they are gentle and sociable despite their breed. To debate this are Laura Brown, an animal care specialist with PETA, People for the Ethical Treatment of Animals. She is in favor of breed bans. Also with me is Ledy VanKavish, senior director of legislation and legal training for the ASPCA, the American Society for the Prevention of Cruelty to Animals. She is opposed to breed bans.

Laura, your organization, PETA, is one of the biggest animal advocacy groups in the country. Many people would be very surprised to hear that PETA is in favor of banning particular breeds of dogs. So why is PETA taking this position?

LAURA BROWN: We're taking this position because they are so horribly abused. And we know the fates that are awaiting them. I mean, in my years of working with animals, I've just seen hundreds of them, you know, covered in scars and wounds, kept in cruel conditions, just horrifically abused.

MARGOT ADLER: So why don't animal cruelty laws...aren't they enough to deal with that kind of a problem?

LAURA BROWN: Unfortunately, they're not. You know, they can always be strengthened. And in PETA's opinion, they're too weak. And I'm sure that Ledy would agree with that to some degree. Animals don't have enough protection. And certainly, if you have a chance to afford some legal protection to the most abused dog out there, we're certainly going to advocate for that.

LEDY VANKAVISH: Well, actually I do disagree with Laura on this. I do think we have a problem with enforcement, not the animal cruelty laws. I think a lot of the states have wonderful felony cruelty laws on the books now. And it's just that the problem is getting the police to enforce them. I think that would solve a lot of the problems. What the ASPCA believes that pitbull bans do is just victimize the dog yet again, basically going after the dog simply because of its breed--canine profiling--and ripping friendly dogs that are cared for out of loving homes. We don't think that is an answer, and it's not effective for public safety either.

MARGOT ADLER: Ledy VanKavish of the ASPCA. When people think of bad, scary attack dogs, they often think of pitbulls. Is this stereotype warranted? I'll ask both of you that. Let's start with you, Ledy.

LEDY VANKAVISH: Well, actually if you read the media and the media hype, a lot of times it is. I mean, pitbulls do bite occasionally. But there's no indication in recent statistics that they bite unproportionally [sic] to what they are in the community. The problem is that we really don't know how many pitbulls are out there. There's no U.S. census that tracks the number of dogs that are there. We just did a survey of media reports and dog attacks on June 9th in 2006 of this year, and an eleven-year-old girl who was attacked and bitten in the leg by a pitbull in California made 91 papers, including Fox News, Chicago Trib., LA Times. But on that same day, a three-year-old Virginia boy was attacked by a golden retriever mix. The kid ended up with 300 stitches, required additional surgeries to function, to repair muscles and nerves and

work on scars. That made it in two local papers. So now anytime that a pitbull bites anyone, it's front page news.

MARGOT ADLER: Laura, there are lots of other dog breeds that are responsible for fatalities, as we heard. Why focus on pitbulls? I mean, is it fair to punish the dog or a whole breed of dogs instead of punishing the owner of the dog, the trainer who may have trained the dog to be aggressive?

LAURA BROWN: Well, we feel that this legislation does hold people accountable who want to use and abuse these dogs. And again, we don't feel that this is something against the dogs. It's to put some protection in place for them because they are so horribly abused. There are certainly other breeds of dogs who if chained up and driven mad by confinement, when they break off, they have attacked people as well. But just seeing the hundreds of pitbulls I've seen in my lifetime who are beaten up and battered and scarred, there's no reason for this not to be enacted, because they're not the kind of homes that you want them in.

MARGOT ADLER: Laura Brown of PETA. I'm also speaking with Ledy VanKavish of the ASPCA. Ledy, if you don't believe in breed bans, what's the alternative?

LEDY VANKAVISH: Well, actually we urge communities to take a three-prong approach. We examine what the factors are in fatal dog attacks which are: Last year, there were 27 fatal dog attacks in the United States. Eighty-nine percent of those involve intact animals, animals who are not spayed or neutered. So we encourage communities to enact strong differential licensing to try to get people to spay or neuter their dogs, make sure only dogs of sound temperament are being bred. The second factor obviously is function of the dog, dogs that are used for fighting, dogs that are guard dogs. So we urge communities to not allow junkyard dogs, to outlaw guard dogs per se. Or to crack down on dog fighting. These are felonies in most states. The police need to enforce that. Last year, 59 percent of the fatal dog attacks involved dogs that had irresponsible owners. The people let their dogs roam. They tethered their dogs. Or they were abuse and neglect cases. So if police started enforcing abuse and neglect laws, there would probably be fewer fatal or serious dog attacks.

MARGOT ADLER: Do you believe there are any times when a pitbull or other dog should be killed?

LEDY VANKAVISH: Oh, sure. I mean, you know, we believe in temperament-testing any dog. I don't care if it's a Pomeranian or a Rottweiler that has an unsound temperament, that is a danger. They should be euthanized. But you can't just say all pitbulls are bad, all Rottweilers are bad, all German shepherds are bad, because there are wonderful dogs of each breed. I mean, canine profiling is a witch hunt. It simply doesn't protect the public.

MARGOT ADLER: And Laura, how would you answer those arguments?

LAURA BROWN: Well, first off, I just...it's inexcusable if there's any breeding of any breed of animal. I mean, we have 70,000 puppies and kittens who are born everyday in this country. And every year, six to eight million animals will come into U.S. shelters. And half of them have to be

euthanized, because there aren't enough responsible loving homes out there. I mean, these animals are suffering from a tremendous over-population crisis. So anything to have some kind of sterilization mandate put in place, we are definitely in support of that. And again, you know, we feel for the shelters. And myself, you know, working in shelters for years, when these dogs come in, there are shelters who have made the very responsible decision to not adopt them out, because they cannot guarantee that these animals will not go into an abusive situation.

MARGOT ADLER: But breed bans I gather will increase the numbers in the shelters.

LEDY VANKAVISH: Well, indeed they will. This is Ledy speaking. They'll increase the number in the shelters. And actually, in some of the states and cities where there are breed bans, like Ohio, pound seizure is in effect.

MARGOT ADLER: What's pound seizure?

LEDY VANKAVISH: Where the animals go to research labs. So in Ohio, you know, the dog has 24 hours in the pound before they can destroy it. They have to offer it to a research lab. So if the research lab says sure, I can use a nice friendly pitbull for experimentation, they'll take that dog. And the dog is ripped from a loving home, put into a shelter and then possibly goes to research. I mean, that's unconscionable.

MARGOT ADLER: Laura, you're with PETA. I would imagine that PETA would be really against that.

LAURA BROWN: Oh, absolutely. Yeah, absolutely. We've been working on the pound seizure issue for just years and years. And we, you know, currently work with hundreds of shelters across the country to just make better shelters, to not have pound seizure put in place. It's horrifically cruel. I can't believe that it's legal anywhere right now.

MARGOT ADLER: But you don't think that breed bans increase the propensity for those kinds of pound seizures.

LAURA BROWN: Fortunately, no. Because we do have millions of animals coming into the shelters, you know, and three to four million are going to be euthanized every year. And our whole mission as ASPCA is to alleviate the suffering of animals. And, you know, to us it's not realistic that you're just going to stop the euthanasia. You know, as Ledy was saying, some animals will have to be euthanized. And, you know, if it's a choice between this dog going into a backyard where he'll be possibly left without food and water and kept on a towing chain, then at the very least that animal deserves to have a humane peaceful death.

MARGOT ADLER: Ledy, one of the things that Laura said was that maybe we shouldn't be breeding dogs at all because there are so many that end up being killed or euthanized. Isn't there something to be said for at least reducing the breeding of pitbulls and some other dogs?

LEDY VANKAVISH: Well, actually the ASPCA does support, you know, strong measures in reducing the number of animals that are bred. However, we do think that some people do want a

German shepherd. And some people do want a Rottweiler. And some people do want a Chihuahua. So we hope that there are responsible breeders. We're against puppy mills. We're against backyard breeders. But we do think that the breeder that has a litter once every two years...

MARGOT ADLER: What's a backyard breeder?

LEDY VANKAVISH: A backyard breeder is somebody who's just trying to make money off their dogs. They get a dog from, you know, with papers. And for some reason, they feel they have to recoup their expenses. So they're not entering the dog in any shows. They're not, you know, doing it for the betterment of the breed. They're not breeding for temperament. They're just breeding for cash basically. And the ASCPA does not feel that's appropriate. But we do think there are a few good breeders out there who really do care about the dogs.

LAURA BROWN: There is no such thing as a responsible breeder, given the millions of animals who are out there who are homeless and who are terribly abused and the millions who never make it into our shelters. And just the cruelty cases we see at breeders or backyard breeders or puppy mills. It doesn't matter if you're breeding two dogs or a hundred. There's very little legal protection for these animals. And I just think it's inexcusable for anyone to be breeding animals when there are so many homeless ones out there.

MARGOT ADLER: Laura Brown is an animal care specialist with PETA, People for the Ethical Treatment of Animals. Ledy VanKavish is senior director of legislation and legal training for the ASPCA, the American Society for the Prevention of Cruelty to Animals. Thank you both for coming on the show.

LEDY VANKAVISH: Thank you so much.

LAURA BROWN: Thank you so much.

MARGOT ADLER: You've just heard a debate over breed bans. But what happens when one goes into effect? In Colorado, laws banning pitbulls in Denver and a handful of surrounding suburbs have forced owners to send their dogs packing. And an increasing number are winding up in and around Colorado Springs, about an hour's drive south, where there are no bans. As Eric Mack reports, the influx of the controversial breed is keeping area shelters busy while raising safety concerns among residents.

ERIC MACK: Even though Toni Phillips is the only person at home right now, she has a full house.

TONI PHILLIPS: This is Milly. She's got notches in her ear. That's old wounds. She's got a lot of head injuries and head wounds that point towards fighting or being used as bait versus being a family pet.

ERIC MACK: Phillips runs Mariah's Promise, a no-kill shelter for dogs out of her home in the hills west of Colorado Springs. Right now she has over 70 dogs on her 43-acre property. And more than half of them are pitbulls. Some of the dogs come from shelters, but Phillips says most are dropped off by owners living where the dogs are banned to avoid fines and the possible euthanization of their pet.

TONI PHILLIPS: Our experience has been with the people who loved and cared and respected their animals and didn't just want to dump them. As I have placed the dogs for the people, I have contacted the people who released the dog, so that they can talk to the people who've adopted the dog. So there is closure.

ERIC MACK: Over the years, there are more than 150 pitbulls from banned areas that have come to Mariah's Promise to be adopted out elsewhere. Phillips says that a small number of the dogs, like Milly, show signs of abuse or fighting, but that most of the pitbulls she takes in don't live up to the breed's ferocious stereotype.

TONI PHILLIPS: The dogs that we've taken in here have been phenomenal. I had a 65-pound pitbull that a 12-pound Min Pin would always...he'd posture at him and Rue would say down and say, okay you win. I mean, he could have eaten him. And he didn't. They're not vicious. This dog happened...he came from a shelter. He was a stray.

ERIC MACK: But some of Phillips' neighbors aren't convinced. Cynthia Nichols and her husband live in a nearby subdivision. She says her main complaint so far has been with the noise from Mariah's Promise. But she also has serious safety concerns.

CYNTHIA NICHOLS: We're all very leery of the pitbulls that she has. She didn't have those when she first moved out here. I have Parkinson's. I'm not going to be able to move very fast if six of them get loose and come after me. We also have children in the neighborhood and some elderly people. And we're all very concerned about them being across the street.

ERIC MACK: Charles Nichols says the pitbull bans in the state have introduced new anxiety into what was once his quiet mountain neighborhood.

CHARLES NICHOLS: We don't like that. And the fact that we're...it looks like we're being dumped on by Denver and Aurora and other places where they ban these dogs. They all seem to wind up over here. They're notorious for bad behavior for no apparent reason.

ERIC MACK: Pitbulls earned that reputation in the state following a series of high profile and occasionally lethal attacks on humans in the 1980s. In response, the City of Denver banned the dogs in 1989. The ban was enforced for 15 years until Colorado outlawed bans on specific breeds of dogs in 2004. Denver challenged the state law, claiming it violated the city's rights of home rule. In the case, City Attorney Corey Nelson also argued that the need for a ban of pitbulls is just as strong as in 1989.

COREY NELSON: Should a pitbull attack a person or another domesticated animal, there is a much higher likelihood that that attack will result in serious bodily injury or death as compared

to other breeds. And that's where the science is without a doubt justifying this type of legislation.

ERIC MACK: In the end, the court agreed with the city on both points, and the ban on pitbulls was reinstated last summer after not being enforced for almost a year. That wasn't exactly welcome news at the Humane Society back in Colorado Springs. Executive Director Wes Metzler says that the number of pitbulls coming into the city's shelter has increased by 80 percent over the past few years, which he blames in part on bans in the Denver area. The number of pitbulls that go unadopted and must be euthanized has more than doubled. But Metzler says the shelter does everything it can to give the dogs a second chance.

WES METZLER: This is an area that's normally a garage. And because we had the situation where we picked up 17 pitbulls at one time, we made this into a temporary kennel. ERIC MACK: Metzler says the pitbull is the latest in a long line of breeds, like the Doberman pinscher or Rottweiler that earned a bad reputation with the public.

WES METZLER: It is the fighting breeds and the fighting lines of these dogs that are gradually being changed. And fighting is, you know, more and more people are being prosecuted for that. So I think given some time, if they're bred to be more friendly, eventually I think they can certainly have a place in society. And a number of them can be owned safely.

ERIC MACK: The fatal mauling in 2003 of a 40-year-old woman in adjacent Albert County and other incidents prompted some concerned calls to the Colorado Springs City Council. But Councilman Bernie Herpin says that there have not yet been any serious discussions about following Denver's example in banning the breed.

BERNIE HERPIN: The bigger problem is how are the owners training and controlling their dogs as a first step? You know, we have leash laws and control laws and stuff like that on the books already. I'm not sure we need another law.

ERIC MACK: Denver City Council recently discussed allowing confiscated illegal pitbulls to be adopted and taken outside the city. If the measure becomes law, it could mean even more pitbulls might soon be headed south. For Justice Talking, I'm Eric Mack.

MARGOT ADLER: Coming up, should pets be treated more like people under the law? Some pet owners already treat their pets like people.

UNIDENTIFIED FEMALE: They're my children. I don't have children. They are my children. And they're the loves of my life. I couldn't...they've saved me. I couldn't live without them. So there isn't anything that's too good for them.

MARGOT ADLER: Stay with us.

MARGOT ADLER: This is Justice Talking. I'm Margot Adler. On today's show, we're talking about pets. Some argue that pets aren't simply property like a truck or a flat screen TV, which is the way the law treats pets now. That's not likely to change at all in the near future. But the legal boundaries continue to be pushed. Take, for instance, a lawsuit in Oregon that was argued earlier this year. A family sought over a million dollars after its dog was run over by a neighbor. But the money isn't what pricked up our ears. The lawyer in the case argued the family was entitled to compensation under the law for loss of companionship, a claim normally used for people. Geordie Duckler was that lawyer. He heads the Animal Law Practice, a private law practice in Portland, Oregon. I asked him to describe the facts of the case.

GEORDIE DUCKLER: These are tree farmers out in a rural part of Oregon in which they have large amounts of land. My clients are extended family with two families welded together that have dogs on a private road. The defendant was a neighbor who was angry at the dogs being on the road and one day decided to destroy one of them. He planned it out, had someone come to watch. And he drove over the dog with his pickup truck three to four times. In the middle of that incident, my clients saw what was happening. Two of the young girls of the family tried to pull the dog out from under the tires, but he kept going. The end result was that he was convicted of an animal abuse crime, served 90 days in jail. We sued him under some novel tort theories. And we obtained a fairly large verdict against him in civil trial.

MARGOT ADLER: Now, you were going to argue that the loss of a pet was a loss of companionship. Usually, that argument is only used for the loss of a human companion. What does loss of a companion mean, first of all, when it comes to human law?

GEORDIE DUCKLER: As a tort, we call it wrongful death. And in the states, it's been codified. So that every state now and for awhile now has had a statute that talks about when a human is killed, the wrongful death of a human whose beneficiaries of that claim would be...it's usually the spouse or the child or the parents, and then what the rules are that applies to what they're entitled to get for the death of their person. Loss of companionship is a tort. It's not necessarily a parallel to wrongful death. For one thing, all the wrongful death statutes in states all use the word person. And so you can't really apply the wrongful death statutes to animals. But loss of companionship is kind of a different approach that tries to take into account the fact that animals are property, and yet still tries to open the door to seeing animals as something more than just the same property like a TV or a house or a car.

MARGOT ADLER: Now, you were going to use that argument, but I gather it didn't work.

GEORDIE DUCKLER: It has actually worked five times in the past. It's a tort that's in its infancy. No question about it. It stemmed from opinions in New York and in Florida in the late 1980s, early '90s, that considered it to be an element of damages. And some courts were okay with it. But in terms of it actually being a tort, I have, in Oregon anyway, five times now over the course of at least that many years, had at least five different judges say it should be a tort. It can go to the jury and the plaintiff can sue under it.

MARGOT ADLER: Now, if that companionship argument had been allowed, what kind of evidence would you have been able to bring? How would the case have been different?

GEORDIE DUCKLER: When that door is open, it allows me to put on evidence that there is such a thing as a relationship between an owner and their pet. We already recognize that socially. There is no question that right now, and for quite a long time, everyone has recognized that animals and owners do have relationships. Or at least domesticated animals like cats and dogs do. The law has never really been able to recognize it. And the evidence rules about character evidence and propensity evidence and intent and what's in the mind of a person or an animal have been very restrictive. And they certainly have restricted anyone from being able to testify about how someone felt about an animal, how the animal felt about them, whether the relationship had some sort of intrinsic value, the length of the relationship. All those things, were this tort to go forward, I'd be able to put on expert testimony about.

MARGOT ADLER: Would this only apply to dogs, or could it apply to cats, other animals?

GEORDIE DUCKLER: There's a big difference between what a pet is and what a companion animal is. And even in terms of companion animals, which we think of as dogs and cats, the reason why they are companions is because they've been domesticated. And the reason they've been domesticated is a function of a number of things, including thousands of years of artificial selection by humans for certain types of characteristics in those types of animals. Even though you can have a goldfish for a pet or a lizard for a pet or a turtle or any number of animals, they're not domesticated animals in the same sense that a dog or a cat is. And the reason why you would be able to establish or prove or put on the value of a relationship wouldn't work in the same way that it would work with a dog or a cat.

MARGOT ADLER: Geordie Duckler heads the Animal Law Practice, a private law practice in Portland, Oregon. Thank you so much for coming on the show, Geordie Duckler.

GEORDIE DUCKLER: Thank you, Margot, for having me.

MARGOT ADLER: Human societies have always had domesticated animals. So I wondered if the clashes in our legal system about pets speak to the changing relationship we have with our companion animals. Paul Waldau is the director for the Center for Animals and Public policy at Tufts University. He holds a doctor of philosophy degree, a law degree and a masters degree in religious studies. I requested he keep on all of his hats and I asked him to describe this evolving role of pets in our lives.

PAUL WALDAU: Increasingly in the United States, pets are seen as family members. More households in the United States today have companion animals than have children. So they truly have become family members in most people's eyes. I think polls show well over 95 percent of people would say, yes, this pet is my family member. So they are integral parts of our lives these days.

MARGOT ADLER: Pets are treated as property by the law. But others have been arguing that pets should be treated more like people. Let's explore the logic behind both of these assumptions.

PAUL WALDAU: In our legal system there are two fundamental categories, legal persons and legal things. Dogs and cats, though family members by most people's reckoning today, are legal things. And in that category would be books, chairs, computers. That's very much out of touch with this family sense that most people hold. So the legal system is out of touch. And we have tools available in the legal system and outside the legal system to fix it. And people begin to turn to some of the legal tools, like rights, anti-cruelty protection, to try to remedy the overall imbalance of holding dogs and cats to be mere legal things.

MARGOT ADLER: Does this come down to how we define a person? Some argue that animals feel, that they communicate. They develop bonds just like people do. So that would make them more than property.

PAUL WALDAU: Yes, it does come down to this important person concept. Outside our society, some cultures have held many non-human animals to be persons. Orangutang in its original language means person of the forest. In our society, though, because we're dominated often by legal thinking, this division between legal things and legal persons is of the utmost importance. And only humans are legal persons. So in our society, in order to address the imbalance that comes from a very strict legal reading of what dogs and cats might be, we now find people using the legal system to dismantle this basic division and try to add additional protections for these treasured members of our family.

MARGOT ADLER: Some people argue that pets deserve personhood standing because they are no less able to negotiate the world than small babies or very elderly people or the severely mentally disabled. Certainly controversial philosopher Peter Singer has said as much. What do you think of that argument?

PAUL WALDAU: The legal system isn't flexible enough to accommodate that argument. Personally, for me, I see its strength. And I live my life in a way to respect them as very important individuals as I do humans. But there are other systems, moral system, social system, religious systems, economic systems, that are methods you might say which we can use to protect these animals. We don't have to accord them full personhood as if they were the same as us. We could accord them another status, let's say, which offers fundamental protections and allows them to live full lives without necessarily calling them persons. The bottom line is: Can we give them effective, fundamental protections?

MARGOT ADLER: Another issue just like the companionship issue has been the whole question of calling pet owners guardians instead of pet owners. Some cities like Boulder, Colorado and Berkeley, California have changed the way their ordinances refer to pet owners in the law. Now, animal advocates say it promotes animal welfare, it fosters a greater responsibility and respect towards pets. What are your thoughts about this kind of a change?

PAUL WALDAU: Well, what's in a word? I do think it's true that if you pick respectful words that you can teach those lessons to our children and to others sooner and better. But by no means is that necessary. The bottom line is the fundamental nature of the protections. Whether or not we call them guardians, whatever, the issue is we can teach this in any number of ways. So I welcome the debate over that change. Personally, I don't think it will end up prevailing. I think what really needs to happen is people recognizing the consequences of their actions. Where do you buy your companion animal? How do you treat it? Can you get the local district attorney to enforce the anti-cruelty laws effectively? Those real protections, that real awareness, will make the ultimate difference, not the particular word that's used.

MARGOT ADLER: Paul Waldau is director for the Center for Animals and Public Policy at Tufts University. He holds a doctor of philosophy degree, a law degree and a masters degree in religious studies. Thanks for coming on the show, Paul.

PAUL WALDAU: Thank you, Margot.

MARGOT ADLER: Though the legal system treats pets as property, some people are using the law to protect their pets just like they would a son, a daughter or a spouse. A state law, for instance, is getting a new twist as more and more people are creating trusts for their pets, ensuring that Fido or Garfield will be taken care of if their owner dies. Amy Shever is the founder of Pet Guardian, a service that helps pet owners create trust funds for their pets. People probably ask you this all the time, but why do pets need a trust?

AMY SHEVER: Well, one of the biggest issues right now is a lot of people who end up passing away before their pets leave the pets behind. And no one's left to take care of them because they haven't made the appropriate arrangements for them. So over the last several years, there's been an influx of pet trusts. There are actually 32 states now that have pet trust law, trying to help pet owners have some kind of legal arrangement, so that they have this opportunity to have a legal plan in place that outlines how they want their pets taken should something happen to them.

MARGOT ADLER: I would imagine that it's mostly well off people who do this.

AMY SHEVER: Not necessarily. You know, pets are becoming part of our family. And a lot of us feel that our pets are our family members. They are our children. And so just to have that peace of mind, a lot of people are doing some things, either a pet trust or some kind of arrangement so that their pets are going to have somebody there to take care of them. And we encourage people that if the pet trust is not the right thing, at least they should have somebody committed to caring for their pet should something happen to them. In light of all the tragedies over the last several years with the hurricanes and fires and floods, we've all been seeing more and more pets in the news that, you know, are out there. And they're homeless. And they've been left behind. And it really tugs at our heartstrings that these are helpless animals. And we've created all these domesticated animals that now rely on us to take care of them.

MARGOT ADLER: Now, what's the typical amount of money that's left for a trust? And how much does this all cost?

AMY SHEVER: That's an interesting question. I'm glad you brought that up. Because one of the things that's really critical is that the biggest problem with pet trusts is that they tend to get over-funded. Which basically gives a red flag when these pet trusts get introduced to courts.

MARGOT ADLER: In other words, too much money is put in.

AMY SHEVER: Too much money is not a good thing. So it really depends on how much a pet owner spends on their pet every year. So, for example, if you know you have a bird and it's got approximately 50 more years to live and you're spending \$500 every year on that bird, then you have to either set aside a large amount for that bird, or some people tend to use their life insurance policy and name a human beneficiary. And that human beneficiary in turn takes care of that pet trust fund when the owner passes away.

MARGOT ADLER: What kinds of questions should pet owners be asking themselves?

AMY SHEVER: Well, the first thing is, you know, what I really try to get people to think about this, I have them think about an emergency situation, because a lot of people don't want to think about their own death or their own mortality. And if there's an emergency, you can't make it home or you're in a car accident, you're in a hospital, who can come over? And they know how to get into your home and how to find the leashes and medications and supplies. And they know how to take care of your pets. And your pets aren't going to freak out when that person walks in the door. And then I tell people if something more serious should happen, then what's going to happen to your pets? Because a lot of people assume, oh, my son or daughter, they're going to take my pets. Well, unfortunately, that's not always the case.

MARGOT ADLER: Amy Shever is the founder of Pet Guardian, which helps pet owners create trust funds for their pets. Thanks for joining us.

AMY SHEVER: Thank you.

MARGOT ADLER: If there are over 40 million households that own a dog, we didn't think it would be too difficult to track some of them down and find out if they treat their dogs like people. We met them in a Philadelphia park.

UNIDENTIFIED FEMALE: I try not to humanize her too much because I watch "The Dog Whisperer" on TV, and that's what he says.

UNIDENTIFIED MALE: He ends up actually taking a lot more room in the bed than both of us. So we just kind of...it's his bed, and we kind of sleep in his bed. That's how I kind of put it.

UNIDENTIFIED FEMALE: Yes, I send my dogs to a hotel. They actually stay in a suite. And in the suite, they have a full-size...it's like a full-size room. They have a full-size couch. There is a TV that's mounted to the wall that plays "Animal Planet" throughout the whole day until they leave at night, the people that run the place. And then they pipe in classical music for them to sleep by.

UNIDENTIFIED FEMALE: He's a dog. I mean, dogs are dogs. It's not like they don't have emotions or anything like that. All people and animals have emotions. But, like, it's a dog.

UNIDENTIFIED MALE: Well, she insists on being spooned in bed at night. And she's also a side-sleeper. So she has to have her head sideways on the pillow. Yeah. And she refuses to have...actually to be in a position where she's to my back. So she can't be spooning me. And if she does, she'll stick her paws out in my back with her claws. So I have to actually turn over and then spoon her and go to bed with her.

UNIDENTIFIED FEMALE: They're my children. I don't have children. They are my children. And they're the loves of my life. I couldn't...they've saved me. I couldn't live without them. So, there isn't anything that's too good for them.

UNIDENTIFIED MALE: I probably don't treat him that ridiculously special, because he's a dog. And I don't want it to be that different. You know, I want him to be a dog and act like a dog.

MARGOT ADLER: How should the law treat your pet? Tell us what you think. You can share your thoughts on our website, justicetalking.org. While there, you can also listen to past shows or sign up to podcast our show.

And a correction from our wind power show. We stated that the Cape Wind Project would have 30 wind turbines when in fact it's 130.

Thanks for joining me. I hope you'll tune in next week. I'm Margot Adler, owner of Dragon, the bearded dragon.
