

OFFICIAL 2012 MOCK TRIAL MATERIALS
FOR THE 40TH ANNUAL GEORGETOWN UNIVERSITY LAW
CENTER AND DISTRICT OF COLUMBIA PUBLIC HIGH SCHOOLS
STREET LAW MOCK TRIAL

DECKER
(PLAINTIFF)
V.
THE METRO CITY POLICE
DEPARTMENT
(DEFENDANT)



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STIPULATED FACTS

Note: "Stipulated Facts" are facts that both parties agree to be true. Attorneys agree not to argue about the truthfulness of these facts during the trial.

On January 16th, 2012, while responding to a loitering complaint, Officer Paul(ine) Parnes approached Terry Gibson in front of a convenience store on Rosa Parks Avenue, alleging that (s)he saw Gibson throw a plastic bag with white powder in it into a nearby sewer. Eric(a) Decker, who lives across the street from that convenience store, was doing yard work in his/her front yard when (s)he noticed Officer Parnes approach Gibson. Decker went inside his/her house and retrieved his/her cellular phone, which was equipped with a video camera, as well as his/her dog, Angel, a purebred pit bull. Decker returned to his/her front yard and faced the street, holding Angel on a leash in one hand, and filming the police encounter with his/her other hand.

At this point, there was a group of people standing in the vicinity of the convenience store. Some of them were observing the encounter between Parnes and Gibson. Officer Parnes decided (s)he had probable cause to arrest Gibson for drug possession. As (s)he was reading Gibson his/her Miranda rights, (s)he was hit with at least one unidentified object that was thrown by an unidentified person or persons. (S)he noticed Decker filming the arrest from across the street with Angel by his/her side. Officer Parnes yelled for Decker to stop filming and called for backup. Decker did not comply. At this point, Decker had left his/her yard and was standing in the street. Officer Parnes handcuffed Gibson and placed him/her in the back of the patrol car.

Parnes then crossed the street and approached Decker, who was still filming. Officer Parnes placed his/her hand in front of Decker's cellular phone and ordered

him/her to stop filming. Decker refused to do so. A few minutes later, while Parnes and Decker remained in a heated conversation, Parnes shot and killed Angel.

STIPULATIONS OF EVIDENCE

The parties stipulate to the authenticity and admissibility of the following pieces of evidence. However, to discuss such evidence at trial, or to submit the evidence to the judge for consideration, the parties must properly introduce the evidence according to the rules detailed in the Simplified Rules of Evidence, located in Appendix B. The parties reserve the right to dispute any other legal or factual conclusions based on these items and to make objections to these items based on other evidentiary issues.

EXHIBIT A: Map of the Scene

EXHIBIT B: Train-a-Pit Brochure

EXHIBIT C: Train-a-Pit Certificate of Completion

EXHIBIT D: Metro City Police Department Crowd Management Policy

EXHIBIT E: Speed-E-Mart Store Receipt

EXHIBIT F: Speed-E-Mart Customer Records

CLAIMS AND DEFENSES

Plaintiff's Claims

Decker claims that:

1. Officer Parnes is a member of the MCPD and was wearing a MCPD uniform and engaged in MCPD policing duties when (s)he confronted Decker and his/her dog, Angel;
2. Officer Parnes prevented Decker from videotaping on a public street by putting his/her hand in front of Decker's camera lens and repeatedly ordering Decker to turn off the video camera;
3. In stopping Decker from videotaping, Officer Parnes and the MCPD deprived Decker of his/her First Amendment rights;
4. Officer Parnes shot and killed Angel, who was on a leash, and who had made no aggressive movement towards Officer Parnes;
5. Angel was the property of Decker; and
6. By shooting Angel, Officer Parnes unreasonably seized Decker's property in violation of Decker's Fourth Amendment rights against unreasonable search and seizure.

Defenses

1. MCPD defends on the grounds that Decker was not protected by the First Amendment when (s)he was videotaping on Rosa Parks Avenue because Decker was inciting a riot and interfering with an arrest in violation of New Columbia Civil Code §§1322 and 5750;

2. Decker's dog was not under the control of Decker when he lunged at Parnes and thus was at large;
3. Parnes had no choice but to shoot Decker's dog to ensure his/her own safety and the safety of other citizens in the area; and
4. The shooting of the dog was reasonable under New Columbia Civil Codes §5500 and was thus not a violation of Decker's Fourth Amendment rights.

RELIEF REQUESTED

Decker requests the court enter judgment in his/her favor and against the defendant, and to find the MCPD liable for violating his/her First and Fourth Amendment rights. Specifically, Decker requests the following relief:

- that the entire MCPD be required to attend classes on how to interact with animals;
- that MCPD finance the installation of a plaque, statue, or other appropriate tribute to commemorate Angel's life and untimely death;
- a public apology by Officer Parnes;
- \$1.2 million dollars in compensatory damages for loss of reputation, humiliation, and emotional pain and suffering;
- all punitive damages as allowed by law;
- attorney fees and costs associated with this legal action, including expert witness fees; and
- any further relief that this court deems just and proper.

WITNESS LIST

Witnesses for the Plaintiff

Eric(a) Decker
Plaintiff

Terry Gibson
Arrestee

Dr. Lee Chen, Ph.D.
Security Consultant

Witnesses for the Defendant

Paul(ine) Parnes
Metro City Police Officer

Juan(ita) Morales
Speed-E-Mart Owner

Dr. Andre(a) Larsen, D.V.M.
Veterinarian

**Plaintiff's
Witness
Statements**

Witness Statement of Eric(a) Decker

My name is Eric(a) Decker, and I am a 39-year-old emergency medical technician. I was born and raised in Metro City, and I love this town. I love animals, in particular pit bulls. In 2009, I purchased Angel, a purebred pit bull, for \$5000. I've worked with him extensively to train him, particularly because he has so much contact with my children. I enrolled him in Train-a-Pit's 12-week training program. Angel and I missed one of those classes, but since Angel did so well on the final examination, I convinced Train-a-Pit to issue him a certificate. I was way too busy to go to any of the supplemental classes.

Once he completed his formal training, I started entering Angel into dog competitions. Angel was a born champion – he won first place in the 2009 Most Beautiful Pit Bull Competition and was runner-up in the 2010 Strongest Pit Bull National Show, among other awards. We were really making a name for ourselves in the pit bull community. For the last few months, though, we have taken a break from these competitions. At the last show we attended, Angel got distressed after watching a bystander reprimand her child. The mom had raised her voice and was pointing her finger in her kid's face. Screaming can really make Angel agitated. I guess Angel wanted to protect the child, because he started barking and snarling. It took all my strength to hold on to that leash.

On January 16th, 2012, I was minding my own business, taking care of my lawn in front of my house. I heard a commotion across the street, and I looked up and saw this cop getting into the face of someone in front of Speed-E-Mart. I recognized the person in

trouble – a kid named Terry Gibson who was on my oldest boy’s football team a few years ago. I would always take Angel with me to watch their games.

When I saw that cop harassing poor Terry, there on my own street, it was the straw that broke the camel’s back. It was time to stand up for my neighborhood and my rights as an American. I ran into my house and grabbed my cell phone and my dog. I wanted my camera so I could video what was happening; I wanted to submit a complaint about this cop to the mayor’s office, and I needed some evidence to get Mayor Green’s attention. I don’t really think it’s anyone’s business why I took Angel with me. If I want to take my dog outside, I can; it’s a free country. I guess I wanted Angel to make that cop feel as nervous as (s)he was making all of us feel. If we don’t defend ourselves, these cops are going to make it illegal to walk down Rosa Park Avenue.

Other people were mad too, and I think one of the bystanders yelled, “Look, pig, you’re on candid camera!” Somehow I caught the cop’s attention. (S)he started shouting at me, “Turn off the camera immediately!” His/her gun was raised pointing at Terry. I responded, “This tape is going straight to the Mayor! Let the kid go and come here so I can tell you how we treat each other in this neighborhood.” I also let him/her and everyone else know that the world was going to see this. I yelled for everyone to get into the shot because I was videotaping this, and it was going on MyTube as soon as I could upload it. I can’t tell you how many hundreds of dollars I’ve paid for fines after I got caught on speeding cameras: now it was time to catch the police on tape.

I wanted to get a better shot, so I left my yard and walked into the middle of the street, with Angel by my side. Everything happened pretty fast after that. The cop sprinted toward Terry and threw him/her to the ground and handcuffed him/her. Half a

second later, the cop had left the corner and was right in front of my face, with gun drawn. I kept the camera focused on him/her and adjusted the volume on my phone. I guess this is when I let go of Angel's leash – I was so nervous that I needed to use both hands to hold the camera and adjust the volume. Angel was my ally to the bitter end – he sat right next to me, staring up at that cop. Angel was being good: he may have barked a few times, but it was because he was so excited about the huge crowd that had gathered around us. He definitely was not growling at the cop.

The cop kept telling me to stop videotaping. (S)he threatened me - said I was going to end up in a jail cell right next to my buddy. I screamed right back at the cop – I said that (s)he should get out of our neighborhood and find some other people to harass. (S)he said something about restraining my dog, but my dog was where he belonged – heeling by my right side, just like he learned in obedience class. Finally, I couldn't take the tension any more. I felt like I had to stop filming or I was going to get arrested, or even injured by this cop. I turned off the recording function on my phone and lowered it to my side.

Right next to me, Angel got up – he shifted from a sitting to standing position. Pit bulls usually tense up and bare their teeth before an attack, and Angel was not in that attack mode. I was horrified to see the cop point his/her gun at Angel. I screamed, "Please don't shoot my dog!" But it was too late. As I said those words, the cop pulled the trigger and shot poor Angel through the head, not 3 feet away from me, as my children watched out the window.

I don't know if my family will ever get over that day. This experience has made me hate cops even more than I did before. Almost every day at work I treat someone

who was roughed up by police. The cop treated me like I was nobody, and (s)he should be punished for that reason: to teach every Metro City police officer a lesson – you can't push us around.

Beyond terrorizing my family and me, that officer violated my constitutional rights that I am guaranteed as a United States citizen. That's what bothers me more than anything else, and that's why I am bringing this lawsuit. If I want to videotape my street, I can – it's called the First Amendment, and it protects my right to free expression. Besides being a member of my family, Angel was also a significant investment: I bought him for \$5000, and he and I won between \$1000 and \$3500 a year in dog competition prize money. He was still young, and he could have competed for years to come. I could have earned thousands of dollars in breeding fees, too. Angel was my property, and as far as I understand it, the Constitution does not allow a cop to KILL my best friend for no good reason. Obviously, that cop did not have a warrant. (S)he was in the wrong and should be punished.

When Angel was shot, I lost control. When I turned to help my precious dog, I must have accidentally deleted the video. Trust me, the irony does not escape me.

Witness Statement of Terry Gibson

My name is Terry Gibson, and I am 20 years old and unemployed. Unless you've been living under a rock since 2008, you know that it's pretty tough to find a job here in Metro City - I'm one of more than 36,000 unemployed people living here. I'm an artist though; I love to paint and draw, and I sometimes restaurants and businesses hire me to paint murals. I have lived in Metro City for 11 years, since I was in the third grade.

I have had some incidents with the law in the past: I was arrested when I was 15 for shoplifting, and I was arrested when I was 18 for possession of marijuana. But I paid the penalty, and my past has nothing to do with the injustice that was done on me in front of the Speed-E-Mart.

On January 16th, I had gone into the Speed-E-Mart and bought some food, coffee, and other stuff. I'm not usually in that neighborhood, but I had come there that day to meet a bunch of friends. We were going to meet in front of the Speed-E-Mart and then find an open basketball court nearby. After I left the store, I stood outside for a minute to make a phone call - as far as I know, making a phone call on a public street is not illegal. There were a few other people in front of the store - a guy asking for change, and a few other people. I had never met any of them in my life. No one seemed to be out of control or causing a disturbance. A few of my friends who were going to play basketball with me had also showed up.

As I was talking on my cell phone, a police car rolled up. A cop got out and started acting like (s)he owned the corner. (S)he was acting like a real jerk, yelling at everyone and demanding to see IDs, and saying that (s)he was going to arrest everyone

for loitering. I stayed on my cell phone and started walking away – no good comes out of talking with cops. As I was walking away, I threw my empty sugar packets and coffee creamer down a sewer grate. This must have caught the cop's attention – (s)he ran over to me and bent down looking where I had dropped the trash. (S)he picked up what looked like an empty plastic bag and told me that I was under arrest for drug possession.

I thought I could correct the misunderstanding, so I took a few steps back and told him/her that I was just a normal guy walking out of a convenience store. You could feel the tension in the air – lots of people had stopped in their tracks and were waiting to see how this would resolve. People were yelling nasty things at the cop.

I heard someone yell my name from across the street, and I looked over there. I was shocked to see Mr(s). Decker – I had no idea the Deckers lived in that area. I played football with his/her son, and Mr(s). Decker came to every game with that crazy pit bull, Angel. Angel is no angel! Lots of parents who attended those football games complained that Angel was snapping at kids, and that Decker always let him run loose without a leash. Most of those parents didn't really know Angel; the truth is that for all she barks, she wouldn't hurt a fly. Eventually our coach asked Mr(s). Decker to leave the dog at home. Mr(s). Decker was yelling for people to gather at the corner to scare off the cop.

Nothing I said was convincing this cop to let me go. The cop had his/her gun pointed right at me – it was crazy! I was terrified. I hadn't done anything threatening. To the contrary, the cop was threatening me. (S)he called me a good-for-nothing kid and said I had no business in the neighborhood. (S)he shoved me to the sidewalk and pulled my hands behind my back. A spasm of pain shot through my body and my breath was

knocked out of me. I got thrown in the back of the cop car, and I saw the cop running across the street. towards Mr(s). Decker's place.

I couldn't really see what happened after that – my view from the back of the cruiser was blocked by all the people who had gathered on the corner. I could hear lots of yelling – Mr(s). Decker's voice, the cop's voice, other people yelling too. A dog barking, and then a gunshot and screams.

I got taken in, searched, and they found some weed on me. They charged me with possession and I have a trial date later this month. The bag that cop found on the street wasn't mine.

Witness Statement of Dr. Lee Chen, Ph.D.

My name is Lee Chen, and I am a graduate of the City College in New York, where I studied criminology and police studies. I then earned my Ph.D. in protection management from the John Jay College of Criminal Justice. Following this, I worked for 8 years as an independent security consultant in Iraq with private security guards. One of my primary tasks in Iraq was to coordinate the protection of dignitaries who visited Iraq. For instance, I was in charge of security when Hillary Clinton visited. Although I am not a lawyer, I believe I qualify as an expert in police practices, criminal justice, security, and the laws pertaining to these topics.

I've been back from Iraq for a year. I have mostly been consulting with airport security units, but about 25% of my business comes from educating police in appropriate responses and legal compliance issues. When I work with local police departments, I emphasize the old adage: an ounce of prevention is worth a pound of cure.

While in Iraq, I spent considerable time directing crowd control and teaching security guards how to not use excessive force against civilians. This was particularly important, because there were incidents where guards shot innocent civilians, which turned into a public relations disaster for the United States. I had to ensure civilians' security while also not causing undue damages against civilians and further alienating Iraqis. For instance, if there was a criminal incident in the neighborhood, security forces could not come in and bulldoze the entire community: we had to develop an appropriate response to crime. Even though it was time consuming and costly to strategize about this, I felt we had a professional and ethical obligation to do so. At the same time, we also had to minimize the risk against our security personnel.

Police officers and security personnel have tough jobs. They constantly face violence and danger. This sometimes comes from unexpected sources. Crowd control is particularly difficult. Police also have to make split-second decisions. Because they are responding to danger as they see it, we shouldn't second guess them unless we have good evidence they are wrong.

One of my most important conclusions from my time in Iraq is that it is never permissible to enforce the law and uphold order through actions that break the law. Police and security forces have a special responsibility to understand how to follow the law when interacting with citizens.

During Clinton's visit, I had to deal with a lot of reporters running around with cameras. All of their equipment made me really nervous – it would be so easy for a terrorist to hide explosive materials in some of that technology, and no one would know the difference. However, I respect the role journalists play in our society, and I balanced my security concerns with their right to report the news. After all, it's so important for our society to be well-informed on current affairs, and video is an impactful way to share with regular people what's going on in the world.

My security team in Iraq often utilized trained dogs in searches and seizures. We used German Shepherds and Golden Retrievers because of their high intelligence and dependability. While we discussed using pit bulls, we ultimately decided against it because of the breed's volatility and the public's flawed perception that all pit bulls are dangerous. Also, we prefer bigger dogs because they look a little more intimidating.

I have extensively reviewed studies discussing incidents when police use excessive force or otherwise act illegally when interacting with citizens. Police officers

who respond individually to police calls are twice as likely to break search and seizure laws than officers who respond to calls with a partner. Additionally, 48% of the US police force is not adequately trained in how to preserve citizens' constitutional rights when executing searches or arrests.

After reviewing the facts of Officer Parnes's response to both Gibson and Decker, I see serious deficiencies in this encounter. First of all, I believe that Officer Parnes used excessive force in arresting Terry Gibson. There was no reason to slam Gibson on the ground like that. Additionally, I believe that the police officer violated Decker's First and Fourth Amendment rights. In particular, I think Parnes overreacted to the presence of a video camera. If Parnes really was in the right and acting completely appropriately, it should not have bothered him/her that someone was filming the situation. Shooting the dog was outrageously inappropriate. Deadly force should only be used to protect against imminent harm. After all, the dog was Decker's property. When a government official takes a person's property unlawfully, the government is violating that person's civil rights.

I also reviewed the MCPD Crowd Management Policy, and I believe that Officer Parnes's actions deviated from this policy in numerous ways. His/her worst offenses were responding to the loitering call without backup and using way too much force against that poor dog.

**Defendant's
Witness
Statements**

Witness Statement of Paul(ine) Parnes

My name is Paul(ine) Parnes. I am 38 years old, and a 13-year veteran of the Metro City Police Department. I have two kids, one in college, and the other who is a junior in high school.

On January 16th, 2012, I was driving into work when the dispatcher requested a squad car to respond to a complaint from a convenience store on Rosa Parks Avenue that a crowd was gathering outside the store. I was pretty close to the location so I called in to say I would take the call.

When I arrived at the scene and assessed the situation, I was immediately alarmed. It didn't look like your typical cast of Rosa Parks Avenue characters. There were too many people there for it to be just a neighborhood gathering. I parked my squad car in front of the Speed-E-Mart, and counted at least twelve people standing in front of it. Nine of them were standing together in a circle, two others were talking to each other, and then one started walking away so quickly that it raised my suspicion. I later identified this person as Terry Gibson. I shouted at him/her to hold on a minute. Then (s)he used the oldest trick in the book – (s)he “accidentally” dropped something so (s)he could ditch his/her stash. I've been around long enough not to fall for that, so I quickly checked the sewer and found the baggy that (s)he had gotten rid of. The bag was later analyzed in the police laboratory, and a lab tech reported that traces of cocaine were identified in the bag. The rest of the drugs must have fallen into the sewer when Gibson dropped the bag.

I think I should step back and explain the crowd management training I just participated in at headquarters. The city's been having a bit of trouble with “flash mobs”

– and no, I don't mean the singing and dancing kind. A group of citizens will rush an area, sometimes stealing from a store, and other times causing trouble on the streets. The Metro City politicians have made it clear that the flash mob problem needs to stop immediately. We were told to pay special attention to situations that had the potential for spiraling into a flash mob and that when we encountered an unruly group, we should disburse the crowd as quickly and peacefully as possible. I find that busting a blatant crime in front of those crowds tends to do the trick and gets people moving on their way.

With that training in mind, I knew that I needed to break up this group because it had the potential to explode into disorder. I decided to bust Gibson for the drugs and to disburse the other people quickly and in an orderly fashion – they needed to leave. They were breaking loitering laws standing there in front of the store. However, as soon as I opened my mouth to the group, I was met with hostility. One of the guys outright refused to move, the others did not seem in much of a hurry to leave. One of them spit on the ground by my feet. It was disgusting! I yelled at Gibson, who was walking away, to stop. (S)he complied but didn't seem too pleased about it. It's a pretty horrible feeling to be an authority figure in front of a group that hates authority.

The crowd started heckling me, although I can't remember everything they were yelling at me. I surveyed the scene and saw that most of the screaming was coming from someone across the street with his/her phone pointed at me. (S)he was yelling, "Get over here everybody! Come watch this cop! Let's get him out of our neighborhood!" (S)he was clearly trying to incite the crowd, and it was working. I later identified this person as Eric(a) Decker. The group in front of the Speed-E-Mart had grown from 12 to about 20. I tried to refocus myself on getting this job done, but I was definitely feeling nervous that

I was there without backup. As the situation got worse, I called for additional officer support. Keep in mind that this was cutting into the department's limited number of officers available for crime control in the city.

I'm almost positive that I heard from across the street, "Run, Terry, run!" I was afraid that Gibson would listen to the advice, so I grabbed and cuffed him/her. I felt something hit my side – someone must have thrown something at me, but I'm not sure what it was. A rock hit the side of my patrol car. The situation was getting out of hand. I pushed past the people who had gathered by my squad car, threw Gibson into the back seat and raced across the street. I needed to stop the source of this growing crowd: the loudmouth neighbor videotaping. I also wanted his videotape; I remembered hearing at the crowd control training that we should gather all evidence associated with the arrest and my actions to control the crowd.

As the backup pulled up, I confronted Decker in the middle of the street, where (s)he was continuing to film. At this point, I clearly had Decker for inciting a riot, and also for interfering with an arrest. I gave Decker several commands to refrain from recording, which (s)he ignored. I was also nervous about the dog. I realized it was a pit bull. It was barking like crazy as it sat next to him/her and was shifting back and forth. I commanded Decker to restrain the dog, but (s)he wouldn't take his/her hands off the phone. The dog's leash was on the ground beside it. When I attempted to take the camera, I saw the dog bare its teeth.

From the corner of my eye, I saw the dog stand up, preparing to lunge. I made a split-second decision to preserve the safety of myself and the other citizens present and shot the dog. I have a family at home. If it's between a dog's life and my own, I'm

going to shoot first and ask the dog's owner questions later. This situation is a perfect example of all the tense decisions cops have to make every day. Imagine if instead of a dog in my face, it was a guy with a gun pointed at me. I do not take lightly the decision to discharge my weapon.

We decided not to pursue charges against Mr(s). Decker. It wasn't worth the police resources. Anyway, (s)he somehow erased the whole videotape. I wish (s)he hadn't. Maybe I wouldn't have to be involved with this case if the tape was around to show how well I handled this disturbance. But that's part of being a cop – we put our lives on the line every day and get nothing but criticism for it. I feel insulted that I have to participate in these proceedings – that I have to defend my behavior on that day. It's Decker that should be held accountable. I perceived Eric(a) Decker as a threat, and I acted accordingly to quell that threat.

Witness Statement of Juan(ita) Morales

My name is Juan(ita) Morales, and I am 58 years old. I have owned and operated the Speed-E-Mart on Rosa Parks Avenue for seven years. I started working in a Speed-E-Mart when I was 16 years old and worked my way up from clean-up crew to cashier to shift supervisor to manager to regional manager. My parents taught me the value of hard work at an early age, and I have always worked at least 60 hours a week to support my family and make a better life for us.

I bought my first Speed-E-Mart in New Columbia almost 20 years ago. I now own 5 Speed-E-Marts and hope to continue to expand in the coming years. My plans do not stop with Speed-E-Marts, however. I hope to open sandwich shops next to all my stores. Unfortunately, my permit application to build a sandwich shop next to my store on Howard Avenue was denied two years ago because of the risk that loitering violations would increase along Howard Avenue due to my shop. The Planning Board denied my appeal based on evidence from the police that new businesses similar to my proposal had led to an increase in foot traffic, misdemeanor citations, and police activity in the area. I plan to reapply soon.

In terms of my personal life, I am married and have three grown kids. I volunteer as a counselor and mentor to the local Narcotics Anonymous group. We meet once a week to counsel and support people working their way through the drug addiction recovery process. I am also an active supporter of the Military Veterans of America Memorial Fund and several other causes, including environmental groups and the "Clean Streets for New Columbia" organization. Too bad I can't clean the streets of all those troublemakers outside my stores who are costing me money.

At all Speed-E-Marts, we have a policy that all on-duty police officers get free coffee and one pastry. This encourages police officers to come into our stores and helps show the public how much we value police officers in our community. Some of the officers do not respect our one pastry limit though and take more - sometimes even a dozen donuts when they stop by. I haven't said anything to those officers yet. I think the police presence can be good for protecting my store and keeping troublemakers away.

In the last two months, two of my stores have been hit with "flash mobs." I was at both of them when this happened. All of a sudden, a dozen or more people came in at once. They spread out and started taking things. Then they ran out amid the confusion. I've lost a thousand dollars of goods this way.

On the day in question, I noticed that a crowd was gathering outside the store. I didn't recognize anyone from around the neighborhood. It looked to me like a repeat of the flash mobs that had hit my other stores, and I was especially nervous because so many of those people had just bought alcohol from my store. I called 911 at that moment. Then, a person I now know as Terry Gibson entered my store and bought a few things, although I can't remember exactly what (s)he bought. I can check my store records about that. (S)he left my store and talked to some of the people outside. I began to recall (s)he looked familiar and worried that (s)he was from those other flash mobs. The way (s)he was interacting with the others, (s)he looked like she was giving them orders, like a group leader would.

A few minutes later, a police car pulled up outside. Gibson saw the police car, too. I saw Gibson drop something white on the ground. I remember thinking how (s)he deserved it when a police officer approached him/her. I saw the police officer pick

something up off the ground and then approach Gibson. Pretty quickly, I could tell that the conversation was getting animated. Both of them were raising their voices and shouting so loud that I could hear them inside the store. The other people started to gather around the two of them, and I saw the police officer look across the street and yell at someone else.

The customer and the police officer were talking for a good few minutes and the whole time, the officer was yelling at somebody else that I couldn't see. In the meantime, lots of people had gathered around. It was getting near the dinner rush, so my store was getting crowded with the evening customers. Next thing I knew, the customer was sitting in the back of police car and the police officer was out of my sight.

I stepped outside my shop so I could see what was happening, and I saw the cop in the middle of the intersection, in front of Eric(a) Decker, one of my best customers. I saw Decker's dog bouncing around right next to Decker – that's not unusual, though. That dog is really hyperactive and never stops barking. It drives me crazy. I'm a little afraid of the dog – a few times, it has gotten loose and wandered in front of my store, growling at my customers.

Decker was holding up his/her cell phone while talking to the officer. I heard a gunshot, which terrified me, so I ran back inside my shop. A few minutes later, two more police cars pulled up and four officers jumped out. Just another day on Rosa Parks Avenue. Sometimes I have to remind myself why I even try to run a business here.

Witness Statement of Dr. Andre(a) Larsen, D.V.M.

My name is Andre(a) Larsen, and I graduated from Southwest Idaho State College of Veterinary Medicine with a doctorate of veterinary medicine. Following my graduation from Southwest Idaho, I completed a one-year fellowship in Canine Medicine & Surgery at the Sheehy Animal Hospital. I am currently a faculty member in the Canine Science Department at the University of New Columbia's School for Veterinary Medicine. I consider myself an expert in the care, treatment, and training of pit bulls, which my credentials and experience show.

I have been a licensed veterinarian in the state of New Columbia for 11 years. I am certified in Veterinary Acupuncture by the Camilleri Holistic American Association of Canine Practitioners. I'm also a member of the American Kennel Club, and the Association of Pet Dog Trainers. However, I would never join People for the Ethical Treatment of Animals. While animals should always be treated with kindness, it's ethical to use animals in science experiments to save human lives, in my view.

I grew up on a farm and have loved and taken care of animals all my life. My first pets (besides our farm animals) were injured swans that I rescued from a local pond after they were attacked by a neighbor's dog. We eventually adopted a Clydesdale and several animals from a disbanding circus, including a pony, a black bear, and a chimpanzee. I am familiar with the pain and associated trauma of losing an animal friend as I had to recently euthanize our family's poodle when she lost control of her bowels and front legs at the age of 18 (human years).

I am very much opposed to hunting and have been arrested twice for chaining myself to the doors of bear check stations to protest hunting in national forests. Animals are valuable contributors to the environment, not just target practice for hunters. Besides, careless hunters have

accidentally shot each other plenty of times. Last year my cousin was seriously wounded in a hunting accident. Both times I was arrested, I paid a fine and did not face jail time. My only other encounter with law enforcement occurred when I was cited for failure to maintain proper distance after I accidentally rear-ended a police car that had stopped suddenly and for no reason immediately in front of my car. That cop was such an idiot. He slammed on his brakes in the middle of the road and caused significant damage to my car.

I love being a vet in Metro City and have given at least ten lectures on the benefits of holistic canine medicine for managing pit bulls' temperaments at the New Columbia Canine Obedience School ("NCCOS"). Pit bulls, like any species, do not all act alike. The behavior of any domestic dog, including pit bulls, is a complex mixture of hard-wired genetics, environmental influence and human management. I have a \$40,000 per year contract with MCPD to help them train drug sniffing dogs. We don't use pit bulls in that program because they need so much training and because of their volatility.

Pit bulls are not for the casual pet owner, however, as they have been bred to be working dogs and are valued for their willingness to test their mettle against larger and stronger animals. Thus, pit bulls need much more energy, time, commitment, and respect from their owners than many other breeds. Pit bulls can be very friendly and often try to greet strangers with a "bully grin" and wiggling butt while the dog tries to get closer to the stranger in order to assess the stranger's scent. Pit bulls should always be leashed during these encounters in case the person does not understand these normal, friendly dog behaviors and interprets them as aggression.

Over the past four years, I have worked with NCCOS to develop a program specifically targeted at training pit bulls. We focused our program on human management and teaching pit bulls how to respond properly to environmental influences. The program teaches the dogs "manners training," which includes 4 major lesson areas: heeling, sitting, not jumping, and responding to verbal commands. One of the important components of any recognized dog training school's course on verbal direction is that when there is no verbal command, the dog should not act. For example, if a stranger engages with the dog, a properly-trained dog under the control of its owner will not react to the stranger without a verbal command from the owner.

If a pit bull is not properly trained, they are 60% more likely to attack a person or another animal. And even when a pit bull is properly trained, there is always the off-chance possibility that it will perceive a threat and attack. Over the past five years, I have euthanized 15 pit bulls. That's more than any other breed of dog. Anyone who tells you that a pit bull can be made completely safe doesn't know anything about the breed. In fact, I have turned down consulting offers from Train-a-Pit because of its ridiculous money-back guarantee and overblown claims it makes in its brochure, which I have reviewed. If something sounds too good to be true, it probably is.

I have examined the accounts of the events leading up to the shooting of Angel. Angel was exhibiting the characteristics of an aggressive dog. Although he had a leash on him, his owner did not have control of the leash. Knowing what I know about pit bulls, if I had been in Officer Parnes's position, I would have not let Angel attack me either.

**Statutes
And
Case Law**

STATUTES

New Columbia Civil Code §1983: Civil Action for Deprivation of Rights. If a person, while exercising power granted to them by state law or government, deprives (or causes to be deprived) any other person of any rights, privileges, or immunities secured by the United States Constitution, the injured party may bring a civil action to seek redress.

- a. **Damages.** If the injured party prevails in the civil action, the court may order a monetary award for damages, an injunction, reasonable attorney's fees and costs, or any other appropriate relief.
- b. **Individual Liability.** Only the government entity that granted power to the person who deprived the injured party of their rights shall be held liable, except that the individual may be found liable if they deliberately and indifferently deprived the injured party of their rights, privileges, or immunities.

New Columbia Civil Code §1322: Rioting or Incitement to Riot

- a. **Definition of 'riot.'** A riot is a public disturbance involving an assembly of 5 or more people, who, by tumultuous and violent conduct (or the threat thereof) create grave danger of damage or injury to property or persons.
- b. **Rioting prohibited.** Willfully engaging in a riot is prohibited.
- c. **Inciting rioting prohibited.** Willfully inciting or urging other persons to engage in a riot is prohibited.

New Columbia Civil Code §5750: Interfering with Arrest. A person commits the crime of interfering with arrest if, knowing that a law enforcement officer is making an arrest (or the person reasonably should know that a law enforcement officer is making an arrest) for the purpose of preventing the officer from effecting the arrest, the person interferes with the arrest of another person by causing the arrest to become more difficult through the use or threat of use of violence, physical force, or any other distraction.

New Columbia Civil Code §5500: Control of Domestic Dogs. It shall be unlawful for any dog owner to allow their dog to run at large within the city limits of New Columbia.

- a. **Definition of 'at large.'** The term 'at large' shall mean a dog that is not in an enclosure or otherwise confined, or is not under the control of the owner or other person by means of a leash, cord or chain.
- b. **Procedure for Dogs at Large.** Animal control officers are tasked with impounding any animal found at large.

- c. **Preventing Harm by Domestic Dogs.** It shall be unlawful for any dog owner to allow their dog to harm another person.
- d. **Government Response to Unlawful Dog Activity.** It shall be lawful for the animal control specialist or any police officer informed of unlawful dog activity to tranquilize or kill any dog at large within the city which cannot be safely impounded or which harms or threatens to harm any person.

CASE LAW

When a court makes a decision (a "holding") in a case, that decision is considered law and can be applied to other cases involving similar facts. No two cases will have exactly the same facts, however. You should look for cases that have facts similar to your case and use those cases to argue in favor of your position.

If the court made a decision in the similar case that is the same decision you are seeking, you should argue that the two cases are so similar that the court in your case must make the same decision as the court in the similar case.

If the court made a decision in the similar case that is not the decision you are seeking, you should be prepared to argue why the facts in the cases are so different that the court in your case should make a different decision.

The following cases include law that may help prove your case. You may not refer to or use any facts or arguments from either (a) parts of this case not specifically included below or (b) any other case. All cases have the same persuasive precedential value.

How to use these cases in trial:

- 1. Read the case excerpts below.*
- 2. Decide whether you think the facts from each case are similar to the facts in this case.*
- 3. If you think the facts are similar and you think the decision should apply to the current trial:
 - a. Establish during the opening and witness questioning how this trial's facts or issues are similar to the facts of one of the below cases.*
 - b. Mention the case in your closing: tell the court the case name, the law in the case, and why that law should be applied in this trial.**
- 4. If you think the facts are similar and you think the decision should not apply to the current trial:
 - a. Establish during the opening and witness questioning how this trial's facts or issues are different from the facts of one of the below cases.*
 - b. Mention the case in your closing: tell the court the case name, the law in the case, and why that law should not be applied in this trial.**

Glik v. Cunniffe

Facts: Simon Glik was arrested for using his cell phone's digital video camera to film several police officers arresting a young man on the Boston Common. Glik recorded the officers because he thought the officers might be using excessive force in making the arrest. Glik openly recorded the officers' actions from ten feet away from where the arrest was happening but did not speak to the officers or disturb them in any way. After the suspect was placed in handcuffs, an officer said "I think you have taken enough pictures." Glik replied, "I am recording this. I saw you punch him." Glik informed the officer that Glik had both video and audio recorded the officers' actions. The officers arrested Glik and confiscated his cell phone and a computer flash drive. The criminal charges were later dismissed. Glik then sued the officers for violating his First Amendment rights.

Holding: Glik's actions in filming the police officers carrying out their duties in a public space were protected under the First Amendment. The court noted that the right to film is not without limitations, however, and the right to film may be subject to certain time, place, and manner restrictions.

Robinson v. Fetterman

Facts: Allen Robinson was concerned about what he believed was the unsafe manner in which Pennsylvania state troopers conducted truck inspections on Route 41. Robinson obtained permission from a nearby landowner to videotape the troopers from the landowner's property. Robinson filmed the officers conducting inspections while maintaining a distance of approximately thirty feet from them. He did not interfere with the activities of the troopers. He was arrested and convicted of harassment.

Several years later, after his wife told him that she almost had an accident due to the traffic congestion caused by these inspections, Robinson obtained permission from a different landowner to videotape the police inspections from a farm with property near the inspection station. Three troopers entered the farm and asked him to stop videotaping. Robinson refused and was again arrested for harassment, a charge that was later dropped. Robinson then sued for violation of his First Amendment rights.

Holding: An individual does not lose his or her First Amendment rights simply because of a prior arrest or because s/he is disliked by the police. Robinson's videotaping was legally protected under the First Amendment, and the troopers were liable for their retaliation against Robinson.

Altman v. City of High Point

Facts: Several dog owners brought suit against the City of High Point after animal control officers shot and killed their dogs as the dogs ran at large in the city.

1. *The Larsen Incident.* Plaintiff Kimberly Larsen was the owner of "Heidi," a purebred Rottweiler. Larsen testified that Heidi always wore a collar and tags. On January 10, 1997, Larsen left Heidi in her fenced yard while she and a family member left to run some errands. That same day, Officer Perdue responded to a call about a large, vicious Rottweiler that was loose and had chased and attacked, or attempted to attack, a citizen. When Officer Perdue arrived on the scene, he spoke with Willie Sturdivant, the citizen who had reported the incident. Sturdivant told Perdue that he had been chased by the dog and had only been able to escape the attack by beating the dog off with a stick. Sturdivant was scared to walk back down the street, so Officer Perdue gave him a ride.

After dropping off Sturdivant, Officer Perdue began searching for the loose dog. A local woman told Perdue to be careful of the dog because it was dangerous and aggressive and had been in the streets chasing cars and people. She also told him where the owners of the dog lived, although she noted that they were not home. Perdue next came upon Charles Elkins, a neighbor of the Larsens, walking on the street, and he stopped to warn Elkins about the loose dog. Elkins reported that the dog lived at the Larsens' and directed Perdue to the house. Officer Perdue pulled into the Larsens' driveway, exited his vehicle with his shotgun, and began to walk toward the home.

Elkins observed what happened next from a distance of about 150 feet. He said that as Perdue walked toward the home, Heidi came walking around the corner of the house. Heidi slowly approached Perdue and jumped or lunged from the driveway up into the yard. At this point, Heidi was ten to twelve feet from Perdue. Heidi then stopped, turned around, and began walking away from Perdue toward the street. Perdue then fired, striking Heidi in the hindquarters. He fired again to end the animal's suffering. Perdue dragged Heidi's remains to the end of the driveway and called sanitation to dispose of the body. He then left the scene.

2. *The Frye Incident.* Wendy Frye owned four dogs-"Tut-Tut," "Bandit," "Boo Boo," and "Sadie"-that were approximately seven months old and weighed 15-20 pounds each. The dogs' mother was a Siberian Husky mixed-breed dog; it is unclear what breed their father was. The dogs wore collars but did not wear tags. They were kept in a pen in Frye's backyard but had a tendency to dig under the pen and escape.

On the morning of February 8, 1997, Officer Berman of the High Point Police Department responded to a call about a pack of dogs chasing people. According to him, when he arrived on the scene, the dogs charged his car, growling and showing their teeth. In the pack were three of Frye's dogs and two larger strays. Officer Berman remained in his car and called for Officer Perdue. While Berman waited for Perdue to arrive, the dogs ran across the street and began harassing a woman who was trying to exit her vehicle. Berman drove over and blew an air horn to disperse the dogs. The dogs ran, and the woman was able to leave her car and get to her residence. A man then came out of the residence. One of the dogs tried to bite him, but Berman again dispersed the dogs with his horn.

Shortly thereafter, Perdue arrived on the scene. The dogs aggressively rushed his truck as soon as he pulled up. One of the dogs jumped into the window of his truck and Perdue had to beat it off with his nightstick. When he exited the vehicle, the pack attacked him and Perdue fired into it with his shotgun, killing two of the dogs (Bandit and Tut-Tut). The rest of the pack disbursed.

3. The Wallace Incident. Plaintiff Gilbert Wallace owned a Golden Retriever/Labrador mixed-breed dog named "Sundance." Wallace asserts that Sundance was a well-behaved, passive dog, but that he had a habit of escaping from his fenced-in yard by digging under the fence. Wallace had several other dogs, which he also kept in a fenced area. Wallace had been cited on six previous occasions for allowing his dogs to run loose, and he had been warned about the poor condition of his fence. In addition, Officer Moxley had previously told Wallace that his dogs were becoming more aggressive.

On January 25, 1999, High Point Police Officer Blue responded to a call that a dog had bitten someone. When he arrived at the scene, a dog that Officer Blue described as a "black chow-lab mix," Sundance, charged him. Blue racked his shotgun, and the animal stopped, but continued to growl. Blue radioed for animal control to respond.

Blue then interviewed the bite victim, Lonnie Baldwin. Baldwin told Blue that the dog had chased his child to the bus stop. Baldwin chased the dog to protect his child, and the dog bit him on the hand. As Baldwin and Blue were talking, Officer Moxley arrived on the scene along with Officer Perdue. At this point, Sundance had retreated to Wallace's yard and was sitting outside the fence. Moxley informed Baldwin and Blue that this dog had given him problems in the past. He then got back in his truck and drove the short distance to the Wallace house.

Moxley exited his vehicle with his shotgun and proceeded toward the rear of the truck. At this point, Sundance charged at full speed, growling and showing his teeth. Moxley raised his shotgun and fired when Sundance was about five yards away, killing the dog. He then loaded the remains into his truck so the dog could be tested for rabies. Sundance was wearing no collar or tags.

4. The Altman Incident. The most recent of the four incidents involves plaintiffs Robert and Ann Altman, and their dog "Hot Rod," whose actual lineage was unknown but who the Altmans thought was at least part pit bull. According to the Altmans, Hot Rod was a non-aggressive, obedient dog, who always wore his collar and tags as required by law.

On the morning of March 24, 2000, Hot Rod was wandering the streets alone. Terry Evans, who owned a local business, saw Hot Rod following a meter reader, Roger Hendricks. Evans was familiar with Hot Rod, having seen him on the street before and having seen him behave aggressively. Fearing for Hendricks' safety, Evans called 911. When Officer Moxley arrived, Hot Rod "took off" toward the residential houses located further down the street. Moxley exited his vehicle with his shotgun and gave chase. Moxley fired between two of the houses in the direction of Hot Rod, who was about 75 yards away. Hot Rod was running behind the houses, and Moxley was running in front of

the houses. He fired again between two houses in the direction of Hot Rod, who was approximately 50 to 60 yards away. Moxley fired a third shot, and Evans heard Hot Rod "hollar." Hot Rod emerged from behind the houses bleeding and dragging his hind leg, but was still running. Moxley had Hendricks retrieve more shells from his truck, and then pursued the dog. A short time later, a fourth shot was heard and Moxley emerged dragging the remains of Hot Rod.

Holding: Dogs do qualify as "effects" under the Fourth Amendment and are therefore protected from unreasonable searches and seizures. The destruction of property, or shooting, of a dog is a seizure and in all four incidents, the seizures were reasonable because the officers' actions were objectively reasonable, considering the facts of each situation and the public interests versus the individual interests at stake.

Brown v. Muhlenberg

Facts: Kim and David Brown lived in a residential section of Reading, Pennsylvania and were preparing to move house. Kim was upstairs packing, while David was loading the car. Immi, their three year old Rottweiler pet, had been placed in the Browns' fenced yard. Although the Browns had not secured a dog license for her, Immi wore a bright pink, one inch wide collar with many tags: her rabies tag, her microchip tag, a guardian angel tag, an identification tag with the Browns' address and telephone number, and the Browns' prior Rottweiler's lifetime license. Unbeknownst to the Browns, the latch on the back gate of their fence had failed, and Immi had wandered into the adjacent parking lot beyond the fence.

A stranger parked in the lot observed Immi as she wandered about in it. After three or four minutes of sniffing and casually walking near the fence, Immi approached the sidewalk along the street on which the Browns lived. As she reached the curb, Officer Eberly was passing in his patrol car. Seeing Immi, he pulled over, parked across the street, and approached her. He clapped his hands and called to her. Immi barked several times and then withdrew, circling around a vehicle in the parking lot that was approximately twenty feet from the curb. Having crossed the street and entered the parking lot, Officer Eberly walked to a position ten to twelve feet from Immi. Immi was stationary and not growling or barking. According to the stranger observing from his car, Immi "did not display any aggressive behavior towards [Officer Eberly] and never tried to attack him."

At this point, Kim Brown looked out of an open, screened window of her house. She saw Officer Eberly not more than fifty feet away. He and Immi were facing one another. Officer Eberly reached for his gun. Kim screamed as loudly as she could, "That's my dog, don't shoot!" Her husband heard her and came running from the back of the house. Officer Eberly hesitated a few seconds and then pointed his gun at Immi. Kim tried to break through the window's screen and screamed, "No!" Officer Eberly then fired five shots at Immi. Immi fell to the ground immediately after the first shot, and Officer Eberly continued firing as she tried to crawl away. One bullet entered Immi's right mid-neck region; three or four bullets entered Immi's hind end. Immi had lived with

the Browns pre-school aged children for most of her three years and had not previously been violent or aggressive towards anyone.

Holding: While a police officer may restrain a dog so that it will pose no danger to the person or property of others, a police officer may not destroy a pet when it poses no immediate danger and the owner is looking on, obviously desiring to retain custody. Destruction in those circumstances would be an unreasonable seizure within the meaning of the Fourth Amendment.

Evidence

EXHIBIT A: Map of the Scene

Photo 1 (right)

An aerial map of the intersection where the incident occurred



Photo 2 (left)

A street view of the Speed-E-Mart on Rosa Parks Avenue looking towards the Decker home on the left

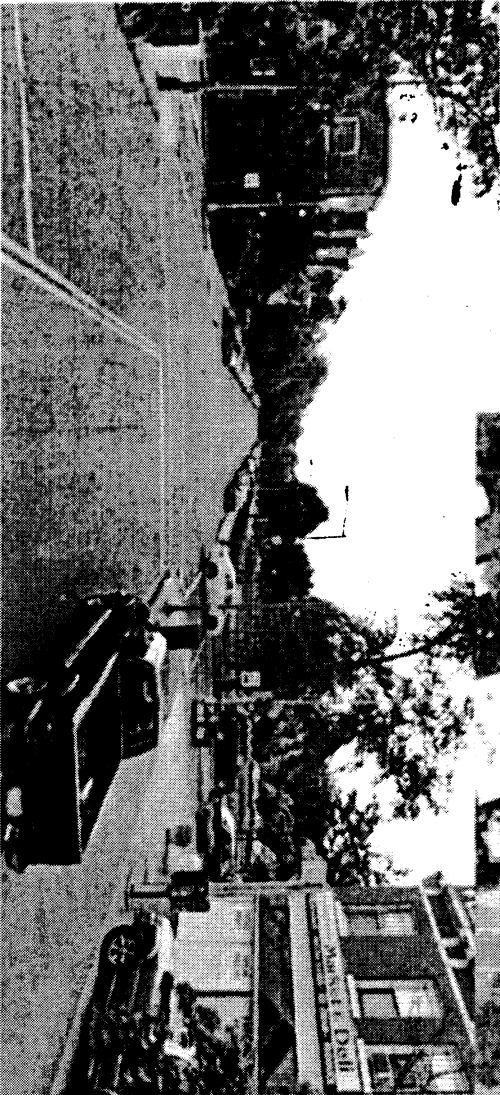


EXHIBIT B: Train-a-Pit Brochure



**Pit Bull Training
Program**

**A well trained dog
= safer streets**

Our program is the premier pit bull training program in the Metro City area. We are the program of choice for the American Kennel Club and our compliance program has been endorsed by Friendly PitBulls, Inc.!

Success Stories:

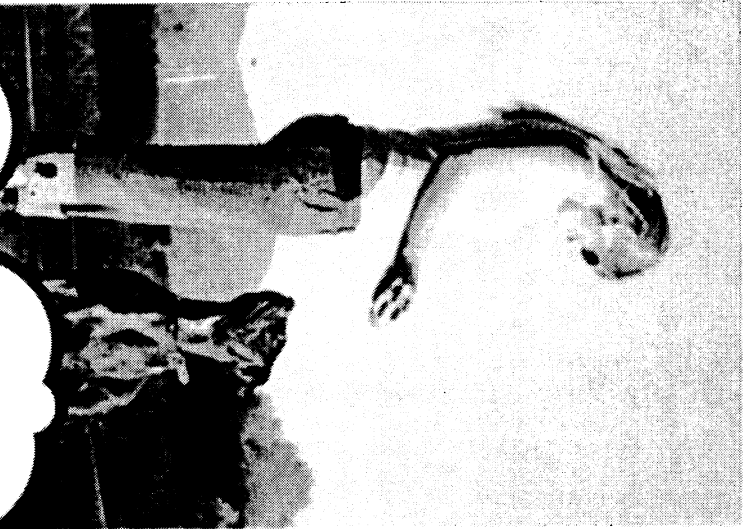
"Molly refused to respond to any verbal directives or to heel on command. Twelve weeks at Train-a-Pit and she does not act unless I give her a verbal command!" - Sherry, Metro Burbs



**Jakkie is a six year old Pit Bull. She was rescued from a high kill shelter in South Carolina when she was ten months old. Initially she was difficult to control, lunged at anyone she didn't know, and her owners wondered if they'd be able to keep her. After completing our training course her owners say that "she is the best dog we've ever owned!" -
Kyler, Metro City**

Train-a-Pit

**1234 Horace Mann Street
Metro City, USA
www.trainapit.com**

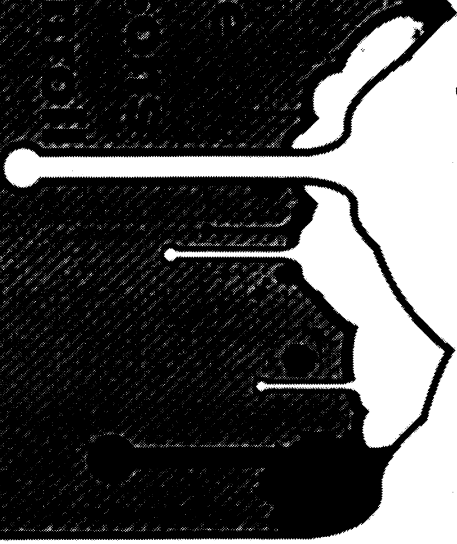


Train-a-Pit

**Pit Bull Training and
Behavior
Management Program**

The Train-a-Pit Program

How to Train a Pit Bull--Or Just About Any Other Dog For That Matter



1. An uncontrolled dog can lead to strained relationships with the neighbors. Not many people will put up with a dog that barks incessantly, day or night.
2. A misbehaving dog can put a strain on the owner's relationship with the animal. Instead of the time spent together being a happy period, it can be very stressful for both the human and animal.
3. Help end the prejudice against pit bulls. Many people criticize the breed for being aggressive. However, when properly trained, pit bulls are a fun and loving addition to any family.

The Train-a-Pit Program has the following key features:

- 40 hours of instruction for both pet and owner
- All programs include sessions on "How to manage your pit," "Teaching your Pit to Behave In Public," and "Polite Pits Please: Meeting New People"
- Money-back guarantee: We guarantee that every pit who passes our program will be a model citizen and never (yes, we said never) attack or injure another dog or person*
- Supplemental non-aggression and family-friendly programs available for free to 12 week enrollees

*Exclusions apply for provoked attacks or owner-directed actions



Program Features:

EXHIBIT C: Train-a-Pit Certificate of Completion

TRAIN-A-PIT

CERTIFICATE OF
COMPLETION

IS AWARDED TO

Margaret Decker

TO CERTIFY THAT HE AND HIS OWNER HAVE SUCCESSFULLY COMPLETED A 40
HOUR TRAINING COURSE ON PIT BULL BEHAVIORS, INCLUDING
RECOGNIZING AND CONTROLLING AGGRESSION.

MAY 24TH 2009

LAURA MASON, DOG BEHAVIOR
SPECIALIST

MEGHAN BAYER, HEAD TRAINER

EXHIBIT D: Metro City Police Department Crowd Management Policy

Metro City Police Department Crowd Management Policy and Procedures

M.C.P.D. Primary Objective: 100% staff adherence to all policies and procedures to achieve law enforcement objectives, protect the safety of all persons in Metro City, and uphold the constitutional rights of all persons and all applicable laws.

Guideline #37: Law enforcement agencies should follow the Standardized Emergency Management Protocols (SEMPs) when managing crowds and acts of civil disobedience.

37.1 LEOs should employ the following strategies, when applicable, and in approximately the priority order identified below; LEOs are authorized to omit initial steps with unexpected, non-compliant, or threatening crowd:

- a. Establish line of communication through pre-meeting with group organizers
- b. Pre-incident community training
- c. Deploy sufficient numbers of LEOs and public safety personnel to control all possible anticipated events
- d. Establish overt police presence
- e. Use of dispersal methods such as loud speech, amplified sound, clear signage, etc.
- f. Avoid direct confrontation when possible
- g. Slow down the incident as much as possible
- h. Emphasize teamwork and avoidance of individual action

- i. Prepare specialty vehicles or incident-specific specialists when situation deviates from norm
- j. Request and coordinate presence of support units when necessary to maintain control or when situation escalates beyond what was anticipated
- k. Plan for the safety of all bystanders and others not involved in the central incident
- l. Establish photo/video journal of chronology of events
- m. Employ a progressive force response, beginning with voice commands and utilizing available alternatives such as firm grip, pepper spray, plastic handcuffs, electrical control devices and non-permanent immobilization tactics
- n. Establish and preserve photo/video journal of arrest and booking

37.2 If possible in light of overall police objectives and particulars of the incident, LEOs should not:

- a. Place citizens or bystanders in any additional risk due to LEO presence or activity
- b. Proceed with any situation in which LEO is at a clear tactical disadvantage
- c. Knowingly endanger another LEO or citizen
- d. Extend the incident scene beyond what is critical to the central incident
- e. Employ lethal force unless absolutely necessary
- f. Permit any individual with critical evidence or information to depart the scene without producing identification displaying a name and present address

EXHIBIT E: Speed-E-Mart Store Receipt

SPEED-E-MART

435 ROSA PARKS AVENUE
METRO CITY, USA
243-756-1234



INVOICE#: 18405481

664084	COFFEE 16OZ	1.69
	- 2 Cream	0.00
	- 2 Sugar	0.00
566801	E-Z RIDER CIGARETTE PAPER	1.79
533581	SEALLOCK 100 SANDWICH BAGS 3 @ 2.99	8.97
545582	CHEWING GUM	0.79
	SUBTOTAL	13.24
	SALES TAX @ 7.75%	1.03
	TOTAL DUE	14.27
CASH		20.00
	TOTAL TENDER	20.00
	CHANGE DUE	5.73

ITEM COUNT 6

INV#: 18405481 MON JAN 16 16:47:39 2012

Register #: 2 CASHIER ID#: 122

THANK YOU FOR CHOOSING
SPEED-E-MART

EXHIBIT F: Speed-E-Mart Customer Records

Run Date 1/24/12

Page 1

Run Time 4:49 PM

User JM

HOURLY SALES REPORT

SPEED-E-MART

[SELECT OPTIONS]

Region Code: 01

Location Code: 01

Department Code: ALL

Sales Date: 1/16/12 to 1/16/12

Region: 01 SPEED-E-MART

Location: 01 SPEED-E-MART

Date: 1/16/12 to 1/16/12

Hours: 9am - 8pm

Alcohol Pct

Hours	Num Trans	Net\$	Alcohol Pct
9am - 10am	5	28.45	0.0%
10am - 11am	9	152.80	0.0%
11am - 12pm	21	442.23	3.7%
12pm - 1pm	103	2235.26	2.4%
1pm - 2pm	68	841.21	2.5%
2pm - 3pm	24	393.88	10.2%
3pm - 4pm	12	136.60	29.3%
4pm - 5pm	87	1443.59	39.5%
5pm - 6pm	196	2503.42	24.2%
6pm - 7pm	17	293.50	10.9%
7pm - 8pm	8	96.52	9.0%

TOTAL Report: 550 8577.46

Explanation:
 The hourly sales report for SPEED-E-MART has information about the number of sales transactions any given hour in the **Num Tran** column. It also gives the total amount of money that was made from all of those transactions, **Net\$**, each hour. The last column, **Alcohol Pct**, tells the percentage of each hour's sales that were alcohol.

APPENDICES

APPENDIX A:
2012 MOCK TRIAL TOURNAMENT RULES

The Mock Trial Tournament is governed by the rules set forth below, which are designed to ensure excellence in presentation and fairness in judging all trials.

TEAM PRESENTATIONS

1. The official mock trial materials, consisting of the (a) Statement of Facts; (b) Additional Stipulations; (c) Claims and Defenses; (d) Relief Requested; (e) Witness Statements; (f) Statutes; (g) Case Law; and (h) Evidence, comprise the sole source of information for testimony. The Stipulated Facts and any additional stipulations may not be disputed at trial.
2. Each witness is bound by the facts in their given witness statement. All participants agree that the witness statements are signed and sworn affidavits. Witness Statements may not be introduced as evidence, but may be used for impeachment.
3. Students may read other cases, materials, or articles in preparation for the mock trial. However, they may only cite the materials or case excerpts provided, and they may only introduce into evidence those documents given in the official mock trial packet.
4. A witness may testify to additional information not included in their witness statement which (a) is consistent with facts contained in the witness affidavits and (b) do not materially give an advantage to the testifying party.
5. If a witness testifies in contradiction of a fact in the witness statement during direct examination, there is no objection for “violating the rules of the mock trial” or “going beyond the scope of the packet.” The opposition must show the contradiction on cross-examination through impeachment. Likewise, if a witness testifies in contradiction of a fact on cross-examination, the attorney handling re-direct should show the contradiction through impeachment. Impeachment procedure is described in the Simplified Rules of Evidence. The scorers should consider such inventions of facts in scoring the witness’s presentation.
6. Witnesses are not permitted to use notes while testifying during the trial.
7. All participants are expected to display proper courtroom decorum and collegial sportsmanlike conduct. The decisions of the judges with regard to rules challenges and all other decisions are final.
8. The trial proceedings are governed by the Simplified Rules of Evidence. Other more complex rules may not be raised in the trial.
9. During the trial, teachers, attorneys, other coaches, affiliated non-participating team

members, parents and all other observers may not talk to, signal, or otherwise communicate with or coach their teams. Team members may communicate with each other during the trial. Instructors from opposing teams are advised to sit next to one another, if possible, and to be reasonable. The purpose of this rule is to prevent last minute coaching: it is not intended as a device to disqualify an opposing team.

10. Neither team may introduce surprise witnesses or call witnesses from the other side. All witnesses (three for each side) must take the stand, in any order or sequence determined by the party calling them.
11. Witnesses will not be excluded from the courtroom during the trial.
12. All teams in the tournament must consist of from three to eight attorneys, and three witnesses. Exceptions may be made by the D.C. Street Law Clinic after consultation.
13. Only students registered in their high school's Street Law class as of February 6, 2012 will be eligible to participate in the Mock Trial Tournament unless otherwise approved by the Director.
14. Teams are expected to be present at the Superior Court for the District of Columbia by 5:30 p.m. on Wednesday, April 18, 2012 and by 10:30 a.m. on Saturday, April 21. Trials will begin at 6 p.m. on April 18 and 11 a.m. on April 21.
15. The start time of any trial will not be delayed for longer than 15 minutes. Incomplete teams will have to begin without their other members, or with alternate members.

JUDGING

1. Presiding judges for the mock trials may include judges, law school faculty, members of the D.C. Bar, other attorneys, or others approved by the Director.
2. All judges receive the Guidelines for Judges, Judge's Score Sheet, the Simplified Rules of Evidence, and the Mock Trial Packet.
3. Presiding judges are asked to make a legal decision on the merits of the case, but this does not affect a team's score. The decision on team scores is made by a scoring panel, consisting of two or more scorers selected by the Street Law staff and, in some instances, the presiding judge. The criteria for scoring are discussed in the Guidelines for Scorers and the Score Sheet.
4. All decisions of the judges are final.

APPENDIX B:

SIMPLIFIED RULES OF EVIDENCE

To ensure that all participants enjoy a fair trial, rules have been developed to govern what evidence may be introduced, and how this evidence may be introduced and used. These rules are called the “rules of evidence.” The attorneys and the judge are responsible for enforcing these rules. Before the judge can apply a rule of evidence, however, an attorney must ask the judge to do so. Attorneys do this by making “objections” to the opposing side’s evidence or trial procedure. When an objection is raised, the attorney who asked the question that is being challenged will usually be asked by the judge why the question was not in violation of the rules of evidence.

The rules of evidence used in trials can be very complicated. A few of the most important rules of evidence have been adapted for mock trial purposes, and these are presented below. These are the only rules of evidence that apply during the mock trial.

You do not have to object when opposing counsel or the witness violates one of these Rules of Evidence. Your instructors will explain more about the pros and cons of objecting. If you do object, the judge will often give the opposing counsel the chance to explain why the Rules of Evidence were not violated. If the judge believes the Rules of Evidence were violated, the judge may allow opposing counsel to ask the question differently (rephrase) or instruct the witness to follow the Rules of Evidence.

Rule 1: Leading Questions. A “leading” question is one that suggests the answer desired by the questioner, usually by stating some facts not previously discussed and then asking the witness to give a yes or no answer. Leading questions **may not** be asked on **direct** or **redirect** examination.

Leading questions **may** be used on **cross-examination**.

Example: “So, Mr. Smith, isn’t it true that you took Ms. Jones to a movie that night?”

This is an example of a leading question. If this question is asked on direct or redirect examination, an attorney for the opposite side can object if they want to.

If this question is asked on cross-examination, do NOT object as leading questions are permitted on cross-examination.

Objection: “Objection, Your Honor, counsel is leading the witness.”

Possible Responses: “I’ll rephrase the question.” For example, the question can be rephrased: “Mr. Smith, where did you go that night?” (This question does not suggest the answer the attorney desires and so it

is NOT a leading question.)

The judge will decide if the question is leading or not. If the question is leading, opposing counsel may ask the question in a different way.

Rule 2: Narration. A witness may not narrate. Narration occurs when the witness provides more information than the question called for.

Example: Attorney: "What did you do when you reached the front door of the house?"
Witness: "I opened the door and walked into the kitchen. I was afraid that he was in the house -- you know, he had been acting quite strangely the day before."

Objection: "Objection, Your Honor, the witness is narrating."

Response: "Your Honor, the witness is telling us a complete sequence of events."

The judge will then decide if the witness should only ask the question asked or if the witness should be allowed to provide more information.

Rule 3: Relevance. Questions and answers must relate to the subject matter of the case; this is called "relevance." Questions or answers that do not relate to the case are "irrelevant."

Example: (In a traffic accident case) "Mrs. Smith, how many times have you been married?"

Objection: "Your Honor, this question is irrelevant to this case."

Response: "Your Honor, this series of questions will show that Mrs. Smith's first husband was killed in an auto accident, and this fact has increased her mental suffering in this case."

The judge will then decide if the information is relevant and allow or not allow the witness to answer.

Rule 4: Hearsay. A witness may not tell the court about "hearsay," something the witness has heard someone say outside the courtroom. Also, any written statement made outside the courtroom is hearsay.

There are many exceptions to the hearsay rule. For mock trial purposes, two exceptions are observed: (1) **a witness may repeat a statement made directly to him/her by another witnesses in the case;** and (2) **a witnesses may repeat a statement made by an individual who is no longer alive.** If an exception applies, the court will allow hearsay evidence to be introduced.

Example: “Harry told me that he was going to visit Mr. Brown.”

Objection: “Your Honor, that is hearsay.”

Response: “Your honor, Harry is another witness in this case and told me that he was going to visit Mr. Brown.”

The judge will decide if the information is hearsay (was it something the witness heard from another person outside the courtroom) and, if it was hearsay, if it falls within one of the exceptions. If the judge decides that the statement was hearsay and it does not fall into one of these exceptions, the judge will order the witness not to continue and the scorers will be told to ignore those statements.

Rule 5: Firsthand Knowledge. Witnesses must have directly seen, heard, or experienced whatever it is they are testifying about. If the witness did not see, hear, or experience it themselves, the witness may not testify about that information.

Example: “When I arrived at the bar, there were six empty beer cans sitting next to Harry. He must have drunk them all before I arrived.”

Objection: “Your Honor, the witness has no firsthand knowledge of whether Harry drank those beers.”

The judge will decide if the witness has firsthand knowledge of this information (that Harry drank the beers). If the witness does not have firsthand knowledge, the witness may not testify about that information. The judge will often let the witness rephrase his or her testimony.

Response: The witness can rephrase his response: “When I arrived at the bar, there were six empty beer cans sitting next to Harry.”

Rule 6: Opinions. A witness may not give an opinion about any matter requiring specialized knowledge unless the witness is FIRST qualified as an expert in the appropriate field, such as medicine or ballistics. Thus, attorneys should always ask a witness with specialized information (psychologist, forensic specialist, aeronautical engineer) questions as soon as that witness takes the witness stand to establish that the witness is an expert in that subject. (See below for information on qualifying an expert witness.)

Example: (Said by a witness who is not a doctor) “The doctor put my cast on wrong. That's why I have a limp now.”

Objection: “Objection, Your Honor, the witness is not an expert in medical care.”

If you think the matter does NOT require specialized knowledge, you may explain your position to the judge.

Response: “Your Honor, the witness may answer the question because ordinary persons can judge whether a cast was put on correctly.”

Ruling: A judge will likely sustain this objection because it is probably not within an ordinary person’s knowledge to know whether an incorrectly placed cast will cause a limp.

If your witness does have specialized medical knowledge, then the attorney should FIRST ask the witness questions to establish that the witness is an expert medical witness. Then the witness could answer questions requiring medical knowledge.

Exception to Opinion Rule: A lay witness may give an opinion based on common experience.

Example: “It looked to me like Devon was drunk that night. I’ve seen him drunk and have seen other drunks before.”

Objection: “Objection, Your Honor, the witness is giving an opinion.”

Response: “Your Honor, the witness may answer the question because ordinary persons may judge whether or not a person appeared drunk based on the witness’s experience.”

Rule 7: Opinions on the Ultimate Issue. Witnesses, including experts, cannot give opinions on the ultimate issue of the case, which is the guilt or innocence of the defendant or the liability of the parties. These are matters for the judge to decide.

Example: “I believe that Mr. Smith was negligent in driving too fast in this case and should pay the plaintiff money for her injuries.”

Objection: “Your Honor, the witness is giving an opinion on the ultimate issue – the negligence of Mr. Smith.”

The judge will then decide if the witness is giving an opinion on the guilt/innocence or liability of the parties.

Additional Rules of Evidence

1. Objections during the testimony of a witness must be made only by the direct examining and cross-examining attorneys for that witness.

2. Cross-examination is not limited to the scope of direct questioning.
3. If an attorney so desires, (s)he may conduct a short redirect examination, limited to no more than two questions, following the cross-examination. Redirect questions are limited to the scope of the cross-examination.
4. If an attorney (on direct or cross-examination) repeatedly asks a witness to discuss the exact same matter, opposing counsel may object to the question as being “asked and answered.” It is in the court’s interest to have the trial move along in a timely manner.
5. Witnesses must be treated with respect by opposing counsel. If an attorney continuously, and for no valid trial or evidentiary purpose, uses a disrespectful tone with the witness, the opposing counsel may object that the questioning attorney is “badgering the witness.”

Special Procedures

Procedure 1: Introduction of Documents or Physical Evidence. If a party wants to discuss a piece of evidence that is included in the mock trial materials, they must do so using the following special procedures (Remember: Mark-Questions-Admit)

Step 1: Introduce the Item for Identification So Attorney Can Question the Witness About It

1. Attorney says to the judge, “Your Honor, I wish to have this (letter, document, item) marked for identification as (Plaintiff’s Exhibit A, Defense Exhibit 1, etc.).”
2. Attorney takes the item to the judge, who marks it appropriately.
3. The attorney shows the item to the opposing counsel.
4. The attorney shows the item to the witness and says, “Do you recognize this item?”
Witness: “Yes.”
Attorney: “Can you please identify this item?”
Witness: “This document/letter/item is from XX date and was written by XX.”
(Witness describes the evidence).
5. The attorney may then proceed to ask the witness questions about the document or item.

Step 2. Move the Document or Item into Evidence.

After the attorney questions the witness about the document or item, the attorney must ask to move the item into evidence at the end of the witness examination. This will allow the judge to consider the document or item itself as part of the evidence (and not just the testimony about it).

1. The attorney says, “Your Honor, I offer this (document/item) into evidence as

- Plaintiff's Exhibit A, and ask that the court so admit it.”
2. Opposing counsel may look at the evidence and make objections at this time.
 3. The judge rules on whether the item may be admitted into evidence.

Procedure 2: Impeachment. On cross-examination or redirect, an attorney wants to show that the witness should not be believed. This is best accomplished through a process called “impeachment.” For example, if an attorney wants to show that the witness has said something on the witness stand that is NOT true according to the written witness statement, the attorney should impeach the witness in one of the following ways:

1. Asking questions about prior conduct of the witness that makes the witness's truthfulness doubtful (e.g., “Isn't it true that you once lost a job because you falsified expense reports?”);
2. Asking about evidence of certain types of criminal convictions (e.g., “You were convicted of shoplifting, weren't you?”); or
3. Showing that the witness has contradicted a prior statement, particularly one made by the witness in his/her written statement.

To impeach the witness by comparing information in the written witness statement to the witness's verbal testimony, attorneys should use this procedure:

Step 1: Repeat the statement the witness made on direct or cross-examination that contradicts the affidavit.

Example: “Now, Mrs. Burke, on direct examination you testified that you were out of town on the night in question, didn't you?” (Witness responds, “Yes.”)

Step 2: Introduce the witness statement for identification using the same procedure for identifying a piece of evidence (described above).

Step 3: Ask the witness to read the part of his/her affidavit that contradicts the witness's statement made on direct examination.

Example: “All right, Mrs. Burke, will you read paragraph three?” (Witness reads, “Markice and I decided to stay in town and go to the theater.”)

Step 4: Dramatize the conflict in the statements.

Example: “So, Mrs. Burke, you testified that you were out of town on the night in question, didn't you?”
“Yes.”
“Yet, in your affidavit you said you were in town, didn't you?” “Yes.”

Note: When impeaching a contradictory prior statement, the point is to establish that because the witness has made two contradictory statements about a matter, the witness

may not be believable on that matter. The contradiction also may cast doubt on the witness's truthfulness, generally. Impeachment does NOT disprove a statement; it only casts doubt on either statement.

Procedure 3: Qualifying an Expert. Only a witness who is qualified as an expert may give an opinion as to scientific, technical, or other specialized knowledge in the area of his/her expertise. (Remember, a witness who is not an expert may still give an opinion about something related to his/her common experience). Experts **cannot** give opinions on the **ultimate issue** of the case.

Before an expert gives his/her expert opinion on a matter, the lawyer must first **qualify** the expert using the following procedure:

Step 1: The lawyer lays a foundation that shows the expert is qualified to testify on issues related to that expert's field of expertise by asking the expert to describe factors such as schooling, professional training, work experience and books (s)he has written that make him/her an expert.

Step 2: The lawyer asks the judge to qualify the witness as an expert in a particular field.

Example: The wife of Harold Hart is suing Dr. Smith and General Hospital for malpractice. She claims they did not treat Mr. Hart for an obvious heart attack when he was brought to the hospital. Mrs. Hart's lawyer is examining his expert witness, Dr. Jones:

Q: "Dr. Jones, what is your occupation?"

A: "I am a heart surgeon at the Howard University Medical Center."

Q: "What medical school did you attend?"

A: "I graduated from Georgetown Medical School in 1978."

Q: "Where did you do your internship?"

A: "I did a two-year internship in cardiology at John Hopkins University from 1978-1980."

Q: "Did you afterwards specialize in any particular field of medicine?"

A: "Yes, I specialized in heart attack treatment and heart surgery."

Q: "Have you published any articles or books?"

A: "I wrote a chapter in a medical text on heart surgery procedures after heart attacks."

Q: "What professional licenses do you have?"

A: "I am certified by the D.C. Board of Medical Examiners to practice medicine in D.C."

Attorney #1: "Your Honor, I ask that Dr. Jones be qualified as an expert in the field of medicine."

Judge: "Any objection?"

Attorney #2: "We object. No foundation has been laid regarding Dr. Jones's ability to render an opinion as to all fields of medicine."

Judge: "Objection sustained. Dr. Jones's expertise seems to be limited to certain areas of medicine."

Attorney #1: "Thank you, your Honor. We ask that Dr. Jones be qualified as an expert in the field of heart surgery."

Judge: "Any objections?"

Attorney #2: "No, Your Honor."

Judge: "Let the record reflect that Dr. Jones is qualified to testify as an expert in the field of heart surgery."

Once qualified, an expert may give opinions relating only to the expert's area of expertise. That is, an expert cannot give an opinion in an area outside his/her expertise.

Example: (Dr. Jones has been qualified as an expert on heart surgery.)

Q: "Dr. Jones, what is your opinion as to Mr. Hart's cause of death?"

A: "The patient suffered a massive heart attack caused by clogged arteries."

Q: "Dr. Jones, in your opinion, is it true as the defense contends that the patient also suffering from a rare lung disease transmitted through contact with the North American mongoose?"

Objection: "The witness is testifying outside her area of expertise."

Judge: "Sustained. Please confine your opinion to matters related to care and treatment of the heart."

Q: "Dr. Jones, in your opinion, how should the patient's doctors have treated him?"

A: "They should have recognized that the patient was having a heart attack based on his chest pains, purple face, difficulty breathing, and numbness in his left arm. They should have given him the proper medication and treated him in the emergency room right away."

Q: "Who was at fault in this matter?"

A: "Dr. Smith and General Hospital were definitely negligent."

Objection: "The witness is testifying to the ultimate issue of the case, which is whether Dr. Smith and General Hospital are liable for malpractice. That is a question of fact for the judge (or jury, when the case is tried before a jury) to decide."

Judge: "Sustained."