

## Orcutt's negligence or Ada County Sheriff office's inadequate training?

**Q** So are there any other factors besides what you just discussed that you think are relevant to understanding why this incident occurred?

**A** Well, when I assess this, I have to see if it is the most appropriate application, right, was this an appropriate application of the dog and the decision making and all these things. If that's not the case, then there are other considerations. Was it a mistake or was it intentional and then the depth of the mistake. And so, of course, **the other consideration would be that it was an appropriate use of police K-9 in all aspects. I don't believe that that was the case. I think that there were several failures here at various points along the incident.** So to answer your question, yes, it would be that it was handled correctly, but I think I've outlined where the mistakes were or that inappropriate decision making had occurred, if that answers it.

**Q** Okay. Yes. Thank you. In your experience as a law enforcement officer, would you say that an investigation can be conducted in accordance with all laws, policies, and procedures and things can still go wrong?

**A** Of course.

**Q** Okay. And is it your opinion that Ada County or that Ada County Sheriff's office is responsible for any -- for inadequate training related to this incident?

**A** I would have to have more definitive information to determine who or how much -- I will say this, that the -- especially in my -- in my practical applications as investigating internal affairs issues and then in my experience dealing with expert witness issues and things of that nature, I evaluate a lot of cases and take relatively few. And the ones that I do take, I take because I think there is substance there, right? I don't undertake any of this without looking at it from an improvement standpoint, and this could be almost anything. I think that if we consider everything that went on with this particular case, **I think especially given the policy -- this is the K-9 handler will be the person most responsible -- I think it is Ada County that is responsible for this.** And that's not to try to beat up Ada County or the officer or anybody else. It's just mistakes happen but they don't -- they don't just happen, right? There are situations where investigations can take a different turn and they don't end up exactly as they should. And in my experience, that doesn't mean we dismiss those or ignore those. We use those as learning lessons and we move forward. I've never worked for a department that was perfect in everything it's done, but I have worked for departments who have tried to, after the fact, clean up a situation, and I know that happens. For many, many reasons, but ideally what we do is we look at something. We find where the failure points were, and then we learn from that and we fix those failure points so that things don't happen again. And that's really my intention and the

way that I look at this, or the perspective that I look at all of these cases, and especially this one. It's from where the failure points were and honestly, what I hope I'm doing for you is giving you a map to fix those points down the road and share that with the county.

**Q** Okay. Thank you. Understood. Have you formed any opinions regarding the actions of any Boise Police Department officers that were involved in this incident?

**A** Only superficially because of the very clear -- the very clear responsibility of Deputy Orcutt being the handler and the one that was in charge. I would say that Officer Martinez, given his experience at the time -- and he says as much in his deposition, that he wasn't an expert and he didn't know and he has to defer, except he didn't defer when he went to the door. He should have told Deputy Orcutt, I don't know anything about K-9 use and K-9 warnings. I think you should do it. But he didn't do that, and I don't know the reason for that, but I think that's a failure point. And I would hope that Boise PD learns from that, that there has to be a specific direction given and it could be in a K-9 use; it could be in a riot control situation. There are reasons why we use definitive language, and that is directive, not informative, right, and so to have somebody go to a door and say what Officer Martinez did is more informative than directive. I think his failure was not telling Deputy Orcutt, I'm not comfortable with this, and I don't know what I'm doing.

**Q** Okay. Do you -- do you think had Officer Martinez deferred back to Deputy Orcutt, as you just mentioned, had that occurred, do you have an opinion on what you think the outcome of the incident would have been?

**A** I would have no way of knowing that. The only thing that I could say and forecast would be that then it would have been up to Deputy Orcutt to either provide a definitive and directive warning. Whether he did or not, I have no idea whether he would have done that. But it would have been up to him at that point, not another officer.

**Q** Thank you. And then you mentioned some of the actions of Sergeant Servatius in your -- in your report just based on his involvement as the sergeant. But have you formed any opinions on Sergeant Servatius' actions as it relates to this incident?

**A** Again, not particularly. Now, if this was not a K-9 incident, then I would have said if he was the ranking officer on scene, that he had certain responsibilities and so forth. But I think it's been pretty much made clear that despite Deputy Orcutt having a lower rank, he had more operational responsibility, and the sergeant would have had to acquiesce to what the deputy was saying given the nature of the K-9 and so forth. I wouldn't expect the sergeant to know just as -- and Officer Martinez, the same thing. I wouldn't expect them to know precisely what the canine needs, what the potential is, what the warning should be. Now, I know from the department that I worked for, we made sure that we trained, typically, on a regular basis

through patrols at least with each new patrol shift on what their requirements were, what their responsibilities were and so forth; what they could do, what they shouldn't do, how they were supposed to take up positions, who would be giving what. We did those things because we knew of the confusion that was involved and that was, **I hate to say, 30 years ago, but that type of situation existed back then and it exists today.** So I can't expect the sergeant to know what -- but they should know and they should -- that training should be applied. They should have a greater knowledge. But in this particular case, I can't put any specific responsibility because I don't know well enough of what he knew about it. **And then really, the culminating or the most important thing is that Deputy Orcutt had the responsibility, and that was in place and agreed to by Ada County and Boise.**