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**CITY OF PORTLAND**  
**INDEPENDENT POLICE REVIEW**  
**Confidential Taped Statement**  
**Investigator Deirdre Perez**

7 **Interview Date:** 05/31/2016  
8 **IPR #:** 2016-B-0014  
9 **IPR File Name:** 16b0144-modica  
10 **Complainant:** Portland Police Bureau

11  
12 **Interviewed:** Kevin Modica  
13

14 **HURLEY:** This is Lieutenant ERICA HURLEY. It is May 31, 2016, at 9:52 AM, and we're at City Hall.  
15 I'm here with DEIRDRE PEREZ from IPR, and, oops, I didn't change your name there. Assistant Chief  
16 MODICA. The IA number is 2016-B-0014. Assistant Chief KEVIN MODICA has been advised that his  
17 conduct and/or the conduct of any other bureau member present on 04/21/2015 at approximately 1638  
18 hours at Harney County, Oregon, is the subject of this investigation. Assistant Chief MODICA has  
19 reviewed information necessary to be reasonably apprised of the nature of the allegations of the complaint.  
20 Assistant Chief MODICA has been informed that he is a witness member in the case and that  
21 CONSTANTIN SEVERE is in charge of the investigation. I have advised Assistant Chief MODICA that  
22 he can have an attorney or advocate present during the interview, and he has chosen to proceed without an  
23 attorney or an advocate. Assistant Chief MODICA, under the authority of the mayor of the City of  
24 Portland, I am ordering you to answer all of my questions fully and truthfully. If you fail to respond fully  
25 and truthfully, you may be disciplined up to and including dismissal. Do you understand?

26 **MODICA:** Yes.

27 **HURLEY:** Okay, go ahead.

28 **PEREZ:** Well thank you for meeting with us today. I know it was short notice, but we really appreciate it.

29 **MODICA:** Yes.

30 **PEREZ:** How long have you been with the Portland Police Bureau?

31 **MODICA:** 30 years.

32 **PEREZ:** And throughout those 30 years, can you touch on some assignments that you've had with the  
33 bureau?

34 **MODICA:** Well, as an officer and then as a specially beat officer with the North Precinct doing  
35 interdiction for prostitution and the customers of prostitutes, have also been assigned to the gang  
36 enforcement team at least three different iterations, our Youth Services Division and a couple of different  
37 iterations. All of the precincts I've been assigned as an officer. I've been assigned as a detective, and also  
38 been assigned as a uniform sergeant, a uniform lieutenant, a uniform captain, a uniform commander, and  
39 currently as a uniform assistant chief. I mean this is long, so – I was a lieutenant at North Precinct  
40 afternoons, a lieutenant at TOD, a captain at North Precinct, and acting captain at TOD, a captain of the  
41 current iteration of the Youth Services Division, a captain at Family Services Division, commander at  
42 Transit Police Division, and as I said, now as an assistant chief.

43 **PEREZ:** And can you describe the responsibilities of the Assistant Chief of Community Services?

44 **MODICA:** Well, like all the assistant chiefs, you know, we direct report to our chief, and my particular  
45 branch has traffic, transit, youth services division, TOD, gang enforcement, TOD EDU, TOD Cert, TOD  
46 air support, canines, and subsidiaries of traffic division with emergency management.

47 **PEREZ:** Okay, thank you. And how did you learn of the incident in Harney County?

48 **MODICA:** I was told of the incident along with the other assistant chiefs on our Monday morning meeting  
49 with Chief O'DEA after he returned from vacation.

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50 **PEREZ:** And that was on April 25th?

51 **MODICA:** I believe so.

52 **PEREZ:** Okay. Who else was present at the assistant chief meeting?

53 **MODICA:** Myself, Assistant Chief DONNA HENDERSON, Assistant Chief ROBERT DAY, Assistant  
54 Chief MIKE CREBS.

55 **PEREZ:** Okay. And can you describe what Chief O'DEA told you about how the incident occurred?

56 **MODICA:** Chief O'DEA was pretty contrite and said he needed to speak with all of us and sat down and  
57 said that he was hunting with a friend, that his friend had been shot, that he was responsible for that, and  
58 that he had notified the mayor and made other notifications as necessary. And then he was pretty specific  
59 and said it needed not to be discussed outside of that room.

60 **PEREZ:** Um-hm. And did he give you any more detail about what he told Mayor CHARLIE HALES?

61 **MODICA:** Only that he had, had the incident. He described Mayor HALES as being understanding.

62 **PEREZ:** Um-hm.

63 **MODICA:** Compassionate. That's really the measure of it.

64 **PEREZ:** Okay. Did he describe speaking to the Harney County Sheriff's Office?

65 **MODICA:** I don't recall that. What I recall is him talking about patching his friend up and getting him  
66 medical attention.

67 **PEREZ:** Okay. Did Chief O'DEA at any point indicate that he was the subject of a criminal investigation?

68 **MODICA:** No, ma'am.

69 **PEREZ:** Okay. When he mentioned patching his friend up, did he – did he suggest at any point that he  
70 believed his friend shot himself initially?

71 **MODICA:** I think that he said something about that, but then somehow – because I was not there – they  
72 determined that the shot came from Chief O'DEA's gun.

73 **PEREZ:** Okay. Did he give any information as to how he determined that it was him who shot his friend?

74 **MODICA:** No. No detail. I do want to go back–

75 **PEREZ:** Um-hm.

76 **MODICA:** –because you asked if he indicated there was a criminal investigation. I would say this. That  
77 the chief said he made all the notifications, and I'm trying to remember his precise words, but that – what  
78 he said – the information will be coming forward. And I think I personally presumed that he spoke with  
79 everyone he needed to speak with in Harney County.

80 **PEREZ:** Okay.

81 **MODICA:** You know, I mean you can't go into a hospital with a gunshot wound without the police or the  
82 sheriff's deputies showing up. I mean that's by law.

83 **PEREZ:** Yeah. So in your knowledge, any time a negligent discharge occurs, there will be a criminal  
84 investigation?

85 **MODICA:** That's correct.

86 **PEREZ:** Okay. Did Chief O'DEA mention his communication with Captain DEREK RODRIGUES?

87 **MODICA:** No.

88 **PEREZ:** And you had said that he made it very clear that the incident needed not to be discussed. Can you  
89 give me anymore information that?

90 **MODICA:** Well, you know, I can't populate what my peers thought, but I know that in my mind the chief  
91 was really specific this stays in this room, you know. He had made all the notifications, and quite frankly  
92 out of trust, you know, I don't think – well, I know myself. I didn't have any doubts, right? I mean, the  
93 chief says I want to share this with you but I don't want you to discuss it, that's kind of like an order. And I

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94 had confidence that, you know, quite frankly, if you – you know, if something like this happens, you've got  
95 to tell the world. You've got to tell everyone, you know, so that's – that's my perception, and that was my  
96 comprehension of what the chief said and what the chief wanted when he told the story.

97 **PEREZ:** Thank you. Did he tell you or any other of the assistant chiefs during the meeting to take any  
98 specific action in regards to the shooting?

99 **MODICA:** Absolutely not. Other than that this is just for this room.

100 **PEREZ:** Okay. And what was your understanding of your next actions that you should take after the  
101 meeting?

102 **MODICA:** Well, I will describe for you the environment and the atmosphere in the meeting, you know.  
103 We all felt bad.

104 **PEREZ:** Um-hm.

105 **MODICA:** Chief O'DEA seemed to be very contrite. Everyone just kind of surrounded him, and quite  
106 frankly, you know, it's kind of the city of huggers, you know. We all hugged LARRY and patted him on  
107 the shoulder and told him to, you know, just hang in there. I think that for me I felt comfortable doing that  
108 because I was under the presumption that he was taking care of business, you know? I mean you – I've been  
109 there 30 years. We've had two members that I know of involved in hunting accidents that unfortunately  
110 resulted in fatalities. The moment that happened, it was disclosed, right? To the public. To the press. To  
111 everybody that would need to know, right? Lots of condolences and heartfelt just compassion for the  
112 victims and the victims' families, but also compassion for the bureau member. We handle firearms. We are  
113 safe with our firearms. And so in this case, after the chief told us, I presumed personally that he had  
114 handled his business, and he was very specific. You don't need to discuss this outside of this room. I've  
115 made all the notifications. Hell, you know, I mean this is the chief. So as far as that, no. There was no order  
116 of anything other than to just be confidential about it.

117 **PEREZ:** And so he had mentioned he had made all of the proper notifications. Did he ever after this initial  
118 meeting mention to you that he was having difficulty in reaching the Harney County Sheriff's investigator  
119 or that the investigator had been on vacation at all?

120 **MODICA:** I don't recall any conversation like that.

121 **PEREZ:** Okay. Did you prepare any documentation regarding the incident?

122 **MODICA:** No. The chief's conversation was not to be discussed, keep it confidential.

123 **PEREZ:** And I'm sorry if this is repetitive.

124 **MODICA:** Oh, no. I understand.

125 **PEREZ:** But did you speak to anyone about the incident?

126 **MODICA:** No, ma'am.

127 **PEREZ:** Okay. And did you have any communication with Captain RODRIGUES or Professional  
128 Standards?

129 **MODICA:** No, ma'am.

130 **PEREZ:** Okay. Did you direct anyone under your command to take action regarding this incident?

131 **MODICA:** No, ma'am.

132 **PEREZ:** Okay. And have you spoken with Chief O'DEA about the shooting since that initial meeting on  
133 April 25th?

134 **MODICA:** I saw him – let's see. What was – not this past Friday. Let me look at the – at a calendar. Friday  
135 before.

136 **HURLEY:** 20th.

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137 **MODICA:** The 20th. So, I have been out of town at a conference. Chief O'DEA is a member of NOBLE,  
138 National Organization of Black Law Enforcement Executives, as a supporting member, and we had a  
139 NOBLE meeting Saturday. I hadn't seen LARRY in well over a week, and when I saw him, I greeted him.  
140 You know, gave him the bro hug. Said how you been? He goes, it's been rough. You know, he goes, more  
141 stories about my incident. I'm like, okay. No further discussion, right?

142 **PEREZ:** Um-hm.

143 **MODICA:** And so here's – here's where, you know, it gets really choppy because I didn't ask LARRY any  
144 details, but when I came back to work that following Monday and we had our Monday morning huddle,  
145 that's when the other assistant chief, Assistant Chief DAY and Assistant Chief HENDERSON – Assistant  
146 Chief CREBS was at Major City Chiefs for PERF – they just brought it forward and said hey, we've got to  
147 talk with the chief about moving forward, and I'm like, you know, big question mark, you know. Probably  
148 looked like a Dr. Seuss character, you know. Moving forward on what? Well, you know, all of this stuff  
149 about LARRY'S incident. I'm like well what about it? And so as a conversation was had with the chief, it  
150 was like chief, given all the news stories out there, you know, you need to do something to respond. The  
151 rank and file are very upset and believe that they'd be treated differently if it were them. And so it was an  
152 interesting conversation, you know, because I found myself just kind of like – I felt hedged in, right? I  
153 knew what LARRY had told us, and then my peers were saying, hey, you need to do this, chief. And I think  
154 it was Chief DAY that was – you know, I've just got to say maybe we didn't think about this all the way  
155 through. We should've advised you to say something publicly when you first told us, you know, and I'm  
156 like, hey, time out, you know? The chief said we're not discussing this, you know? This – so there was  
157 that, you know, and I was looking at the chief, you know, and he was listening. I couldn't really tell if he  
158 was thinking, yeah, that's a good idea or no, I don't want to say anything, you know. My suggestion was  
159 well if you say anything, don't be defensive. I mean you haven't said anything yet, but don't be defensive if  
160 there is any conversation. So, you know, there's more discussion about the rank and file, the men and  
161 women of the bureau, and the public just, you know, basically just thumbs down, you know. The whole  
162 thing stinks. We would've been treated differently. Yabba dabba doo. I think we all made checks, you  
163 know, with just different bureau members, how's it going?

164 **PEREZ:** Um-hm.

165 **MODICA:** You know. And what my peers said that morning was true. You know, the rank and file were  
166 just like uh-uh. I found out later that day that nobody knew. The PIO didn't know. I asked the PIO. He  
167 goes, he found out from a news story.

168 **PEREZ:** Um-hm.

169 **MODICA:** You know, and I was surprised. I just, you know – how messy. How very messy. But really  
170 that's just the size of any conversation about it, you know.

171 **PEREZ:** And how did you discover that the chief had been placed on admin leave?

172 **MODICA:** It was – I think I picked it up from a news story–

173 **PEREZ:** Okay.

174 **MODICA:** –to be honest. Which, you know, I've been trying very ha – I haven't read any of the newspaper  
175 accounts. You know, I didn't want to have stuff floating around in my head that I didn't know.

176 **PEREZ:** Um-hm. And on that note, have you have any conversations with any members of the media  
177 about a this incident?

178 **MODICA:** Absolutely not.

179 **PEREZ:** Have you spoken to any other law enforcement or investigative agencies about this incident?

180 **MODICA:** Absolutely not.

181 **PEREZ:** Okay, so the Oregon State Police hasn't contacted you at all?

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182 **MODICA:** No. No, ma'am.

183 **PEREZ:** Okay. And in your experience, what must the Portland Police Bureau do when a member is the

184 subject of a criminal investigation?

185 **MODICA:** Disclose it. That there's a criminal investigation that's ongoing. You don't have to give details.

186 **PEREZ:** Um-hm. And can you give me a little bit more information as to who the bureau should disclose

187 the incident to?

188 **MODICA:** Well, if it's not the chief, you know, it's up the chain to the appropriate assistant chief. To the

189 Professional Standards Division, IA, and then the presumption is that the chief would notify his direct

190 report, which is the police commissioner, and decisions are made, right? I mean, either the member stays

191 on, the member is relieved, there's a press statement that's organized through our communications unit to

192 say just those things. You know, if it's a hot case and there's immediate arrest, then, you know, it's public

193 information. So you have to be transparent otherwise jeopardizing the investigation.

194 **PEREZ:** Okay. And can you tell me where these expectations are documented in the directives?

195 **MODICA:** Well, I would have to say it's in the directive about criminal investigations. As a matter of fact,

196 I'm looking at the directive, which is 333.00.

197 **PEREZ:** Yeah. We have a copy of it in case you need it. So is there anything else you would like to add

198 about the incident and the month preceding your notification of it?

199 **MODICA:** You know, nothing to add. I mean I wasn't at the incident, and neither were any of the other

200 assistant chiefs that I know of. I became aware of it after the chief disclosed it in a confidential manner

201 with an expectation of confidentiality, and we currently in the public information space are where we are

202 at. You know, I had no knowledge that there had not been any wider discussion or disclosure by the chief

203 or the police commissioner.

204 **PEREZ:** Um-hm. Okay. Well, that's all I have.

205 **HURLEY:** I don't have any questions.

206 **MODICA:** Thank you.

207 **PEREZ:** Great. Thank you so much. It is 1010, and the interview is coming to a close.

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210 Transcribed 06/12/16 @ 10:00 p.m. Marcelle Ehrhart

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**CITY OF PORTLAND**  
**INDEPENDENT POLICE REVIEW**  
**Confidential Taped Statement**  
**Investigator Deirdre Perez**

7 **Interview Date:** 06/21/2016  
8 **IPR #:** 2016-B-0014  
9 **IPR File Name:** 2016-B-0014 - 2nd interview Modica, Kevin 6.21.16  
10 **Complainant:**

11  
12 **Interviewed:** Kevin Modica  
13  
14

15 **HURLEY:** Ready?

16 **PEREZ:** Yeah.

17 **HURLEY:** All right, its Lieutenant ERICA HURLEY, its June 21<sup>st</sup>, 2016. It is 1540 hours. We're at  
18 city hall, actually IPR office with DEIRDRE PEREZ, KEVIN MODICA. This is about IA number  
19 2016-B as in boy 0014. Assistant Chief MODICA has been advised that his conduct or the conduct of  
20 any other bureau member present on April 21<sup>st</sup>, 2015 at 1638 hours in Harney County Oregon is the  
21 subject of this investigation. Assistant Chief MODICA has reviewed information necessary to be  
22 reasonably apprised of the nature of the allegations of the complaint. Assistant Chief MODICA has  
23 been informed that he is an involved member in the case and that CONSTANTIN SEVERE is in  
24 charge of the investigation. I have advised Assistant Chief MODICA that he can have an attorney or an  
25 advocate present during the interview and JIM MCINTYRE is here in that capacity. Assistant Chief  
26 MODICA, under the authority of the mayor of the city of Portland I am ordering you to answer all  
27 questions fully and truthfully. If you fail to respond fully and truthfully you may be disciplined up to  
28 and including dismissal. Do you understand?

29 **MODICA:** I do.

30 **PEREZ:** All right, thank you for meeting with us again. I apologize for the confusion. We initially  
31 interviewed you as a witness member and then we were advised to add the assistant chiefs as involved  
32 members, so some of these questions may be repetitive, but if you could just bear with me, I'd really  
33 appreciate it.

34 **MODICA:** Okay.

35 **PEREZ:** So how did you first hear or learn about the shooting involving Chief O'DEA?

36 **MODICA:** Would have been from Chief O'DEA at one of our weekly standing meetings as assistant  
37 chiefs and chiefs.

38 **PEREZ:** Do you have an approximate idea of the date?

39 **MODICA:** I believe it was in April, and I want to think that it's the Monday after he had returned  
40 from vacation. I want to say the – like the 25<sup>th</sup> or something.

41 **PEREZ:** Okay, and were all of the assistant chiefs present at this meeting?

42 **MODICA:** Yes ma'am.

43 **PEREZ:** And how did Chief O'DEA explain what had happened?

44 **MODICA:** Well we went through our usual business. In those meetings we talk about our schedule for  
45 that day and then the rest of the days in the week and then anything in particular that is of importance  
46 that we need to pay attention to, so when we were done with that Chief O'DEA asked that we stayed  
47 back as assistant chiefs and – because usually there's support team members there and the captain from  
48 Professional Standards, so we stayed back as assistant chiefs and he goes, I want to share with you that  
49 I was involved in an accident when my friend was shot. I shot my friend accidentally, everything was  
50 great, you know, we got it patched up, got him evacuated out. I do believe I recall the chief saying  
51 something about Life Flight.

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52 **PEREZ:** Mm-hm.

53 **MODICA:** And then he said, I've made all the notifications, I've spoken with the mayor, you know, I  
54 appreciate it if there's no discussion about this outside of this room.

55 **PEREZ:** Mm-hm.

56 **MODICA:** And that was the lion's share of it.

57 **PEREZ:** Okay, did Chief O'DEA describe how or why the negligent discharge occurred?

58 **MODICA:** You know, he was talking about it. I mean, I could not factually quote what he said about  
59 it, but you know, the rendition is that – thought my friend shot himself, but for some reason it was my  
60 weapon that discharged and he was wounded and, you know, the chief's talking about how awful he  
61 felt and that kind of thing.

62 **PEREZ:** Did he say that it might have been due to a malfunction with the weapon?

63 **MODICA:** I don't recall anything like that.

64 **PEREZ:** Okay, and did he say how he made the determination that it was him who shot the weapon  
65 instead of his friend shooting himself?

66 **MODICA:** I don't really recall that either.

67 **PEREZ:** Mm-hm, did he say that he had notified Captain RODRIGUES prior to the meeting with all  
68 four assistant chiefs?

69 **MODICA:** I don't remember that. What I remember the chief saying about notifications was that he  
70 had made the notifications like, broad statement. I've made all the notifications; I've spoken with the  
71 mayor.

72 **PEREZ:** Mm-hm.

73 **MODICA:** And then there was the, you know, there's to be no discussion about this outside of this  
74 room, so you know, I'm pretty much under the impression that all notifications that would have needed  
75 to be made, were made.

76 **PEREZ:** Mm-hm, had he mentioned speaking with the Harney County Sheriff's Department?

77 **MODICA:** I presumed that, that happened because, you know, if you Life Flight somebody from an  
78 accident, you know, the law enforcement authority is supposed to show up. If a gunshot wound victim  
79 goes into the emergency room or even to a doctor's office, you know, the law enforcement authority is  
80 supposed to show up.

81 **PEREZ:** Mm-hm.

82 **MODICA:** I believe that's by statute, you know, I did not ask the chief directly. Hey, did, you know,  
83 how'd the sheriff treat you, you know, I mean, I really made this presumption that all that had  
84 occurred.

85 **PEREZ:** Mm-hm, and throughout, you know, from April 25<sup>th</sup> to now did Chief O'DEA ever indicate  
86 that he had a meeting with an investigator from Harney County, but the investigator was on some sort  
87 of leave?

88 **MODICA:** So I remember hearing something about that.

89 **PEREZ:** Mm-hm.

90 **MODICA:** I don't know if it was before or after communication restrictions.

91 **PEREZ:** Okay.

92 **MODICA:** You know, and quite frankly I don't remember who said it, right. I mean, this whole  
93 episode as you know, just continued to get populated with more and more information.

94 **PEREZ:** Mm-hm.

95 **MODICA:** You know, I pretty much made it a point not to read the papers and, you know, I had one  
96 bad morning. I listened to the radio coming in, and so I don't listen to that station anymore either.

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97 **PEREZ:** And when Chief O'DEA mentioned that he had spoken with the mayor, did he give any  
98 indication how the mayor responded to this conversation?  
99 **MODICA:** He said – he might even refer to him as CHARLIE. He said he was really great about it,  
100 you know, and he understands, he was supportive, maybe something about accidents happen.  
101 **PEREZ:** Mm-hm.  
102 **MODICA:** You know.  
103 **PEREZ:** But during this meeting Chief O'DEA never mentioned who he had spoken to or if he had  
104 spoken to Professional Standards?  
105 **MODICA:** No.  
106 **PEREZ:** Okay, did you hear the chief direct any other assistant chief to take any action following the  
107 meeting?  
108 **MODICA:** No.  
109 **PEREZ:** Okay, and just to clarify, Chief O'DEA never mentioned alcohol during the incident?  
110 **MODICA:** No.  
111 **PEREZ:** Did he say what they were doing at the time his friend had been shot?  
112 **MODICA:** Hunting.  
113 **PEREZ:** Hunting? Did he say what they were hunting?  
114 **MODICA:** No.  
115 **PEREZ:** Do you have a standing one-on-one meeting with Chief O'DEA?  
116 **MODICA:** I do.  
117 **PEREZ:** And how often does this occur?  
118 **MODICA:** While Chief O'DEA was sitting, once a week usually unless there was some type of  
119 schedule complication.  
120 **PEREZ:** Mm-hm, and based on the description given by Chief O'DEA, did you think police knew that  
121 Chief O'DEA had shot his friend?  
122 **MODICA:** Clarify for me, which police? Do you mean –  
123 **PEREZ:** Oh, the Harney County –  
124 **MODICA:** – their –  
125 **PEREZ:** – Sheriff's?  
126 **MODICA:** Certainly.  
127 **PEREZ:** Mm-hm.  
128 **MODICA:** Yes.  
129 **PEREZ:** Did he explicitly state that he had spoken with Harney County Sheriff's office on the day that  
130 his friend had been shot?  
131 **MODICA:** Again, I don't – I don't recall him saying, yeah, I spoke with the deputy, but I presumed  
132 that everyone there including the individual who was hurt had spoken with –  
133 **PEREZ:** Yeah.  
134 **MODICA:** – law enforcement.  
135 **PEREZ:** And did Chief O'DEA give you any direct action to take after the meeting?  
136 **MODICA:** No.  
137 **PEREZ:** Okay, in our last interview you stated that you had attended a conference.  
138 **MODICA:** Mm-hm.  
139 **PEREZ:** Can you tell me what days you were away from Portland for this conference?  
140 **MODICA:** Oh goodness, let's see, Safety and Justice Challenge, Policy Team Attendance, it was in  
141 Chicago, my daughter was married –  
142 **PEREZ:** Oh.

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143 **MODICA:** – the weekend before, let’s see, RACHEL was married – I think married on April 14<sup>th</sup>, I  
144 flew into Chicago for that Monday, so Monday, Tuesday, Wednesday, Thursday, I came back to  
145 Portland I think on that Friday, so it would’ve been like, 16, 17,18, like 19 something like that.

146 **PEREZ:** So that week of the – May 16<sup>th</sup> thru the 20<sup>th</sup>?

147 **MODICA:** Yes, yes and I can get documents if you –

148 **PEREZ:** Oh no, I’m – it was just – how did you find out that the incident had been made public?

149 **MODICA:** Two ways, one I get news feeds from my CP and NESS and Associates. JAMES NESS is  
150 a law enforcement retired professional, and so he runs his own web service, so there was a, you know,  
151 it’s any breaking news having to do with law enforcement, right, so there was a news banner, you  
152 know, Portland chief –

153 **PEREZ:** Mm-hm.

154 **MODICA:** – involved, shoots friend, blah, blah, blah and I’m kind of like, oh, hm. Didn’t call  
155 anybody, didn’t – nothing like that.

156 **PEREZ:** Okay, so it’s safe to say you found out on your phone just reading this news feed?

157 **MODICA:** Mm-hm.

158 **PEREZ:** Okay, did Chief O’DEA get in contact with you after the incident had been made public  
159 before the next Monday chief’s meeting, so over the weekend – that weekend?

160 **MODICA:** I want to say that he didn’t get in touch with me. We were in the same room for a NOBLE  
161 meeting which is the National Organization of Black Law Enforcement Executives and I saw LARRY  
162 obviously he came in like, how you doing? He goes, oh, you know, it’s rough, you know, press has  
163 been all over this. I’m like, oh okay, and no other discussion, right because this is not to be discussed.

164 **PEREZ:** Mm-hm.

165 **MODICA:** So there’s no discussion. I mean, the room was full of people that have nothing to do with  
166 PPB and some having to do with PPB, but, you know, we were there for other business.

167 **PEREZ:** Mm-hm.

168 **MODICA:** So there’s no discussion.

169 **PEREZ:** Okay, can you give me a little bit more information from the chiefs meeting on that Monday  
170 –

171 **MODICA:** That Monday.

172 **PEREZ:** Mm-hm.

173 **MODICA:** Following?

174 **PEREZ:** Yes.

175 **MODICA:** So we’re there, we’re meeting, I want to think that it was before the chief came in, Chief  
176 ROBERT DAY and DONNA HENDERSON were talking about well we have to talk to the chief  
177 about moving forward. I’m like, what, you know, I’m like, what am I missing?

178 **PEREZ:** Mm-hm.

179 **MODICA:** So they were talking about the press, right, and what a mess it was becoming and then after  
180 we were done with our daily business that morning, you know, Chief DAY goes, hey Chief we want to  
181 – we want to talk to you about what’s going on. I was still kind of – I don’t want to say in the dark, but  
182 I wasn’t getting it.

183 **PEREZ:** Mm-hm.

184 **MODICA:** You know, I wasn’t – and then Chief DAY said, hey I think that we might have been in  
185 need to advise you differently, right I remember those words and I’m still kind of just like – and then  
186 there was conversation about, you know, moving forward, maybe there should be some kind of press  
187 statement, blah, blah, blah. I really wasn’t getting that nobody knew.

188 **PEREZ:** Mm-hm.

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189 **MODICA:** Right, and then the chief had a couple things to say about it and quite frankly I'm still  
190 relying on what the chief had told us the weeks before and my recommendation was well, you know, I  
191 don't know that we as an organization should be defensive in the press, right. The chiefs notified  
192 everyone, let's just say that the investigation is going to take place, right and it's going to proceed and,  
193 you know, for me – I mean, it just didn't – the bell didn't ring that nothing had been said and then  
194 when I finally got it I was like, oh.

195 **PEREZ:** Mm-hm.

196 **MODICA:** You know, I still didn't have much to say about it and then, you know, I'm trying to recall  
197 whether it was a day after or two days after we got a communication restriction. I think Lieutenant  
198 HURLEY and Sergeant PASHLEY served those to us.

199 **PEREZ:** Mm-hm, and when Assistant Chief DAY brought it to Chief O'DEA'S attention that they  
200 should be moving forward, you said that the chief had said some things, can you tell me what he had  
201 said?

202 **MODICA:** Wow, you know, I mean, I don't want to imagine what he might have said. I just – what I  
203 recall was just general conversation. He might have reiterated that he made his notifications and, you  
204 know, there was nothing to talk about, but I really – I have to say that morning was strange because I  
205 wasn't getting it. I didn't know what the challenge was for the chief.

206 **PEREZ:** Mm-hm.

207 **MODICA:** I was pretty clear on what the concerns were for Chief DAY and Chief HENDERSON,  
208 but, you know, just getting back into town I mean, it's kind of like, what are you guys talking about?

209 **PEREZ:** Yeah.

210 **MODICA:** What are we – what are we supposed to be moving forward on, and of course you know,  
211 before we received the communication restriction, you know, people were – people – my peers were  
212 expressive about the displeasure, you know, of how this was turning out.

213 **PEREZ:** Can you tell me what they were most displeased about?

214 **MODICA:** I think most of the concern was just that they had found that what we were told might not  
215 have been what was really the case.

216 **PEREZ:** Mm-hm, so how do Portland Police Bureau directives and policies indicate the bureau should  
217 respond when a member is involved in a criminal investigation?

218 **MODICA:** Notify up, so if Lieutenant HURLEY – if it comes to my attention then I would make the  
219 notification up the chain and in my position I would start with her assistant chief, right and then there  
220 would be information between that assistant chief and her immediate command.

221 **PEREZ:** Mm-hm.

222 **MODICA:** And then that would be referred to investigations division, right. Investigations would take  
223 care of coordinating that, but I mean, in this case I – you know, my mind wasn't dealing with that there  
224 was a crime –

225 **PEREZ:** Mm-hm.

226 **MODICA:** – that had occurred in any way, shape, or form.

227 **PEREZ:** And do you think there were adequate policies in place when the chief is the subject of an  
228 investigation?

229 **MODICA:** That's kind of interesting. If you report up, even if it's an administrative investigation, you  
230 know, the report up would be through Professional Standards or IPR, you know, I mean that's really  
231 how things are set up for us.

232 **PEREZ:** Mm-hm.

233 **MODICA:** You know, I mean, but again, in this case I wasn't – let's see. It wasn't populated in my  
234 thinking that we were dealing with anything criminal.

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235 **PEREZ:** Mm-hm, okay, to your knowledge has the PPB ever investigated instances of off-duty  
236 shootings involving other members like, regular officers, sergeants, lieutenants, things like that?

237 **MODICA:** Well to be fair I'd have to say yes.

238 **PEREZ:** Okay, is there a specific directive that should be followed when a member is the subject of an  
239 investigation involving an off-duty shooting?

240 **MODICA:** Well off-duty behavior in general, you know, is incumbent upon the member to notify his  
241 RU, you know, but it's been my experience being here thirty years, you know, we've had individuals  
242 that have been involved in hunting accidents which is what I was thinking that all of this was about.  
243 Nothing criminal and two of those incidents resulted in, you know, a hunting partner or friend being  
244 fatally injured, but again I wasn't aware of a criminal nexus, right, or investigation.

245 **PEREZ:** Mm-hm.

246 **MODICA:** I mean, at best it would be administrative and, you know, reliant upon the time, place, and  
247 manner. Where it happened –

248 **PEREZ:** Mm-hm.

249 **MODICA:** – but on or off-duty behavior, you know, the members required to report up if another  
250 member becomes aware it rises to that level, you know, there's supposed to be a notification and then  
251 decisions are made what is going to proceed.

252 **PEREZ:** Mm-hm, so there is the expectation that if a member is involved in an off duty shooting there  
253 will be an administrative investigation?

254 **MODICA:** Well I think, you know, that takes on different – different situations, right. I mean, so if it's  
255 your bureau weapon of course you're going to report that you discharged or your bureau weapon  
256 discharged.

257 **PEREZ:** Mm-hm.

258 **MODICA:** If you've taken official police action, right, official police action; I think we had a member  
259 who used their firearm – used deadly force against someone trying to make forced entry who was on  
260 the run from law enforcement in a different county, in a different city and in this particular case again,  
261 for me when the chief said I made all the notifications and I've spoken with the mayor, you know, he,  
262 given that information, followed the directives.

263 **PEREZ:** Mm-hm, do any directives or policies specifically indicate that the assistant chief of –  
264 assistant – I'm sorry — the Assistant Chief of Community Services has a role in these investigations?

265 **MODICA:** Not by title and that is only if as a bureau member you become aware of something that  
266 has not been disclosed and could be a violation of laws, rules, and orders and directives and, you know,  
267 of which there are many, but in this case again, I mean, when the chief says I've made all the  
268 notifications, I've spoken with the mayor; I didn't have any compulsion to believe, think, or act that  
269 there was anything for me to do in my position.

270 **PEREZ:** Mm-hm.

271 **MODICA:** And especially when we're told this isn't to be discussed.

272 **PEREZ:** Mm-hm, do you typically receive updates on the status of administrative investigations?

273 **MODICA:** Not necessarily. I mean, if it involves somebody in my branch maybe. If there's the  
274 potential for a larger impact to the agency, maybe, but not necessarily as a matter of rule or anything.

275 **PEREZ:** Mm-hm.

276 **MODICA:** Because some things, you know, are confidential.

277 **PEREZ:** Mm-hm, have you ever spoken to Captain DEREK RODRIGUES about the shooting  
278 incident?

279 **MODICA:** Not about the content of the incident, no, you know, we are friends and we ask how one  
280 another's doing, but nothing of substance or detail.

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281 **PEREZ:** Mm-hm, have you spoken to anyone in the mayor's office about the administrative  
282 investigation or the shooting at all?

283 **MODICA:** No.

284 **PEREZ:** When you spoke with the other assistant chiefs before there was a communications  
285 restriction order issued, did you ever discuss whether there was an ongoing administrative  
286 investigation?

287 **MODICA:** No, I don't recall asking – asking anyone about that.

288 **PEREZ:** Do you know why that conversation might not have happened?

289 **MODICA:** Well if I understand your question correctly –

290 **PEREZ:** Mm-hm.

291 **MODICA:** – you asked if I've talked to anybody about if there was an investigation going on.

292 **PEREZ:** An internal administrative investigation.

293 **MODICA:** I didn't have any reason to ask.

294 **PEREZ:** Okay.

295 **MODICA:** And again, you know, after the news story broke and the details or alleged details start  
296 coming out, you know, it's just like, it – it's like, this doesn't make sense, I know what the chief told  
297 us, you know, there's really not much to talk about, you know, I will say I was surprised at the number  
298 of people who were suggestive of the chiefs need to step aside or step down.

299 **PEREZ:** Mm-hm.

300 **MODICA:** You know, as what's usually described as scuttlebutt, you know, those people are lending  
301 their own opinions to the issue.

302 **PEREZ:** Mm-hm, is this within the rank and file or command staff?

303 **MODICA:** I'd say generally within the rank and file and command staff as well.

304 **PEREZ:** Mm-hm, okay, and you touched on this a little bit, but does an assistant chief have a  
305 responsibility to act if they suspect the chief of any wrong doing?

306 **MODICA:** Generally speaking anyone that's a bureau member should proceed forward either with  
307 notification or asking the question if they suspect wrong doing or if they have knowledge of wrong  
308 doing, you know. I'd have to only speak personally for myself, which is I didn't suspect any wrong  
309 doing.

310 **PEREZ:** Mm-hm, and as you didn't suspect any wrong doing and you were instructed to keep what  
311 the chief told you confidential, do you feel as though there were other actions you could've taken?

312 **MODICA:** I think given the information that was provided to me, no. There's – I've thought about  
313 this. The chief says, hey this happened, I had this terrible accident, everything's great, I've made all the  
314 notifications, I've spoken with the mayor, I don't want this discussed outside of this room. I – no,  
315 there's, you know, I'm sure people think that's naïve, but quite frankly, no.

316 **PEREZ:** Do you believe there are any policy shortcomings or problems that may have contributed to  
317 this incident?

318 **MODICA:** Can you ask me again?

319 **PEREZ:** Have you identified any policy shortcomings or problems that might have contributed to this  
320 incident?

321 **MODICA:** No, I really haven't thought about policy. I will say it's been mentioned by one of my  
322 peers, but I still haven't thought about it.

323 **PEREZ:** Mm-hm.

324 **MODICA:** You know, and again, I – if the chief says, hey I've gone to my direct report, which is the  
325 mayor, he is the police commissioner; and I've made all the notifications and I mean, I'm not thinking  
326 that, well there has been some policy violation or there has been a criminal behavior here. I mean, I'm

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327 relying on you have gone to the highest level of oversight and supervision for the Portland Police  
328 Bureau and that quite frankly the chief told us as his assistant chiefs as a courtesy, you know, I mean,  
329 that's what I came away with until it became the story that possibly notifications weren't made.

330 **PEREZ:** Mm-hm.

331 **MODICA:** But I don't know that, right.

332 **PEREZ:** Mm-hm, so you have a copy of the allegation on the back, and I'm just going to read it, so  
333 Portland Police Bureau Assistant Chief KEVIN MODICA DPSST number 15909 failed to take  
334 appropriate action after being informed that PPB Chief LAWRENCE O'DEA DPSST number 18924  
335 was involved in an off-duty negligent discharge of a firearm, which resulted in injury and that is on  
336 directive 315.30 Satisfactory Performance, which I have a copy of in case you'd like to review it. How  
337 would you respond to this allegation?

338 **MODICA:** I would respond that again, as I've said, the chief articulated that he made the notifications,  
339 that he had spoken to the mayor that his friend was accidentally shot. I had no knowledge that it was a  
340 negligent discharge. I had no knowledge that it had been a firearm malfunction. I was not there in  
341 Harney County. I'm only reliant upon – I think reacting and taking action on what I was told and what  
342 I perceived to have been an order.

343 **PEREZ:** Okay, is there anything else you'd like to mention regarding the incident and what occurred  
344 afterwards?

345 **MODICA:** No.

346 **PEREZ:** Okay, Lieutenant HURLEY?

347 **HURLEY:** You said that on the 25<sup>th</sup>, which was the Monday, that you all were notified by the chief.  
348 He told you that he had had a conversation with Harney County Sheriff's office, is that right?

349 **MODICA:** What I said was I presumed that. That he had been in contact with the sheriff's office and  
350 what I mean by that is, his conversation was yeah, you know, we patched him up, we got him Life  
351 Flighted; we, you know, so I'm presuming that if you've done and gone through all of that, you've  
352 spoken to law enforcement. I think that what I did say earlier was that there was some reference to  
353 some Harney County investigator, but I, you know, I didn't hold onto it. I think it was LARRY saying  
354 something about that, but –

355 **HURLEY:** Knowing that someone was shot, Life Flighted and sent to the hospital, would you have  
356 the understanding knowing ORS that a criminal investigation would be opened to be investigated?

357 **MODICA:** My presumption would be that law enforcement would show up and start an investigation  
358 of what happened.

359 **HURLEY:** Okay.

360 **MODICA:** Right, it's an inquiry.

361 **HURLEY:** Mm-hm.

362 **MODICA:** Hey, what happened here, you know, did – were – did, you know, did you have your  
363 weapon unprepared and you tripped and fell or did, you know, was there something other than a person  
364 that would have been responsible for it and there's the next thing; well you know, is there a person,  
365 you know, what were the circumstances. I mean, you know, its – what my presumption was that when  
366 you say that you Life Flighted somebody it's not anything that happens in a vacuum, right. The  
367 moment that that helicopter is dispatched at least in my experience is that public safety, fire, and EMS  
368 are aware no matter where you are, right? I would have presumed that not only Harney County, but  
369 Oregon State Police would have been aware or that the ER where the person is going to be taken to for  
370 trauma admission, that notification would have come from the ER to the local law enforcement. Hey,  
371 you've got a gunshot wound victim coming in, you know, but again I wasn't there and quite frankly I

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372 did not ask LARRY O'DEA any details. The detail I did ask him was are you okay, how are you  
373 doing, which is presumably why I thought that he even informed us because it, you know, it's a deal.

374 **HURLEY:** So we have a specific directive and I wouldn't expect you to be able to quote it, but  
375 directive 333 is specific to criminal investigations of PPB members.

376 **MODICA:** Mm-hm.

377 **HURLEY:** Do you know what that directive states is supposed to happen when it's an outside agency  
378 criminal investigation?

379 **MODICA:** Oh, not verbatim.

380 **HURLEY:** Do you know – not verbatim. Do you know approximately who should be notified and  
381 what the process is to deal with that case?

382 **MODICA:** The assistant chief of investigations, the chief, and I believe the district attorney.

383 **HURLEY:** Okay, so what it actually says is that the Professional Standards division captain is to be  
384 notified and the chief of police is to be notified. There is no other notifications to be made, so knowing  
385 that would you in your position, should you have been notified of this?

386 **MODICA:** I'm not the Captain of Professional Standards and I'm not the Chief.

387 **HURLEY:** Right, so as the Assistant Chief of Community Relations would you have been notified of  
388 a criminal investigation in an outside county?

389 **MODICA:** Not necessarily, no.

390 **HURLEY:** Okay, okay, when he on the 25<sup>th</sup> talked about making the notifications, did he qualify or  
391 other than the mayor who else he notified?

392 **MODICA:** Not to my recollection. I mean, I – and, you know, trying to think back exactly what  
393 LARRY said, you know, what I've said is what I remember is that, you know, I've made all the  
394 notifications, I've notified, spoken to the mayor, he's been understanding, you know, presumption that  
395 the proper notifications would have been made.

396 **HURLEY:** Do you think that was your job or in your job description to clarify with the chief that he  
397 had notified the correct people based on directive?

398 **MODICA:** I didn't.

399 **HURLEY:** Would you ask him, if it hadn't been the chief, would you have clarified and made sure the  
400 chief did his job normally?

401 **MODICA:** What do you mean if it hadn't been the chief?

402 **HURLEY:** So if there was –

403 **MODICA:** Okay –

404 **HURLEY:** – another criminal investigation that you learned about, would you follow up to make sure  
405 the chief had done his job? Is that something you would normally do?

406 **MODICA:** Well, if I had found out that there was a criminal episode that allegedly occurred or  
407 occurred then, yeah, there'd be more conversation, but in this case I wasn't aware that a crime had  
408 occurred.

409 **HURLEY:** Okay, all right, that's it.

410 **PEREZ:** All right, Mr. MCINTYRE would you like to add anything?

411 **HURLEY:** Its 4:18.

412

413 2016-B-0014 - 2nd interview Modica, Kevin 6.21.16

414 Transcribed 07/06/2016 @ 11:00 p.m. Halla Stonehouse