

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15

CITY OF PORTLAND
INDEPENDENT POLICE REVIEW
Confidential Taped Statement
Investigator Eric Berry

7 **Interview Date:** 06/21/2016
8 **IPR #:** 2016-B-0014
9 **IPR File Name:** 2016-B-0014 day.robert.06.21.16.int.trs
10 **Complainant:**

11
12 **Interviewed:** Robert Day
13
14
15

16 **BERRY:** All right, I'm rolling.

17 **MYERS:** Really need a couple more.

18 **BERRY:** Right.

19 **HURLEY:** All right, this is Lieutenant ERICA HURLEY and it is June 21st, 2016 at about 1400 hours.
20 We're at City Hall. We're here with ERIC BERRY, DEIRDRE PEREZ, and ROBERT DAY in the
21 room. The IA number is 2016-B as in boy 0014. Assistant Chief DAY has been advised that his
22 conduct and the conduct of any other bureau member present on April 21st, 2015 at approximately
23 1638 hours in Harney County Oregon is the subject of this investigation. Assistant Chief DAY has
24 reviewed information necessary to be reasonably apprised of the nature of the allegations of the
25 complaint and Assistant Chief DAY has been informed that he is an involved member in the case and
26 that CONSTANTIN SEVERE is in charge of the investigation. I have advised Assistant Chief DAY
27 that he can have an attorney or advocate present during the interview and STEVE MYERS is here in
28 that capacity. Assistant Chief DAY under the authority of the Mayor of the city of Portland I am
29 ordering you to answer all of my questions fully and truthfully. If you fail to respond fully and
30 truthfully you may be disciplined up to and including dismissal. Do you understand?

31 **DAY:** Yes.

32 **BERRY:** All right, Chief DAY thanks for coming in today. I appreciate it, I appreciate your
33 availability. So investigator PEREZ and I hope to interview you for our current open case 2016-B-
34 0014 and we opened that case when we learned of Chief O'DEA'S negligent discharge incident and
35 during the course of the investigation we were directed to add additional involved members and to
36 interview them as well. It's that capacity that we're interviewing you today. Hope to just ask you some
37 questions about how you learned of the shooting incident and what actions you took after you learned
38 of it. I don't think that I've got anything really surprising prepared and its definitely an interview, so if
39 you need to take a break or use the restroom or anything like that you're of course welcome to do so.

40 **DAY:** Thank you.

41 **BERRY:** Do you have any questions for me before I get started?

42 **DAY:** No sir.

43 **BERRY:** All right, well if you come up with anything along the way, please let me know. I realized I
44 don't know – may I ask how long you've been with the bureau?

45 **DAY:** I was twenty-six years in April. I was hired April 26th, of 1990.

46 **BERRY:** All right. Boy, a lot has changed since 1990 for the city and everything.

47 **DAY:** Yes it has.

48 **BERRY:** Different place now, yeah. Well and I understand you've been with the bureau for a while,
49 can you kind of briefly describe the assignments that you've had since joining?

50 **DAY:** Well from 1990 to about 2000 I was a police officer. I worked the various precincts, primarily
51 North Precinct and in the Mounted Patrol unit. There's a short period of time I was an officer in

CONFIDENTIAL TAPED STATEMENT

IPR #2016-B-0014
/ Robert Day

June 21, 2016
Page 2 of 13

52 training and personnel and then I was promoted to sergeant in 2000. I worked night shift at Southeast
53 Precinct for about three years and then transferred back to the training division as a sergeant, and then
54 in '06 I was promoted to lieutenant, and I was about two years as the day shift lieutenant at North
55 Precinct '06 to '08, and then '08 to my promotion to captain, which was December of '09. I was a
56 lieutenant in the Detectives Division, so I oversaw, and the floor's split, but I oversaw robbery and sex
57 assault, things like that and then in 2009 I was promoted to captain and went to North Precinct and in
58 February of 2010 I was promoted to – then the rank of commander for the training divisions, now a
59 captain title, but at the time it was commander of training, so it was a promotion. I was in training
60 February of '10 until September of '11 and then 2011 I went to Central Precinct as a commander and
61 then January of last year I was appointed Assistant Chief of the Operations Branch.

62 **BERRY:** And as AC of Operations, can you describe your duties and responsibilities?

63 **DAY:** Primarily I oversee personnel assigned to the three precincts, so we have North Precinct, Central
64 Precinct, East Precinct. Roughly about four hundred personnel maybe a little bit less and then I'm also
65 responsible for critical incident call outs, so if we activate our Special Emergency Response Team,
66 which is our SWAT team essentially or our Crisis Negotiation Team or loud scale demonstrations like
67 the Rapid Response Team, those all fall under my direct supervision when they're occurring and the
68 planning stages and I was a Critical Incident Commander and a Crowd Control Incident Commander
69 during my time at Central Precinct. I'm the only command officer to hold both of those positions at the
70 same time, but I had, you know, overall responsibility for that and then currently now I have it for the
71 whole bureau.

72 **BERRY:** That's a pretty big set of responsibilities. I had no idea that you were – had been a member
73 of Mounted Patrol way back when.

74 **DAY:** Mm-hm, yeah that was a great job.

75 **BERRY:** Yeah, it sure seems like it. Well to jump right into the matter at hand, can you tell me when
76 you first learned of Chief O'DEA's shooting incident?

77 **DAY:** I believe it was the 25th of April and the reason I'm – I believe it's that is my daughter's
78 birthday is on the 25th.

79 **BERRY:** Oh.

80 **DAY:** Of April, so it just sort of rings a bell.

81 **BERRY:** Was that at the AC meeting that day?

82 **DAY:** Yes, on the Monday morning meeting.

83 **BERRY:** Do you remember who else was present for that meeting?

84 **DAY:** Assistant Chief CREBS, Assistant Chief HENDERSON, Assistant Chief MODICA and Chief
85 O'DEA.

86 **BERRY:** Okay, and how did Chief O'DEA describe what happened?

87 **DAY:** To the best of my recollection he was emotional and wanted to share with us that there had been
88 an incident over the weekend or an accident over the weekend as he characterized it. It wasn't
89 particularly clear at that time if we – what his role was. He appeared to be processing that with us, but
90 it was clear that a friend of his had been shot and he was explaining to us that, you know, he thinks
91 there may have been some responsibility on his part.

92 **BERRY:** It might be a little too much to ask given the time that's transpired, do you remember what
93 the Chief's exact words were describing the incident?

94 **DAY:** No, I just remember it was very general, very broad, but I do not remember specifics.

95 **BERRY:** Okay. Did he ever indicate that he was responsible for shooting his friend?

96 **DAY:** I can't recall specifics. I think that the intonation of the conversation was that he was coming to
97 grips with that, but there – I do not remember a – an admission or a forthright, you know, I did this, but

CONFIDENTIAL TAPED STATEMENT

IPR #2016-B-0014
/ Robert Day

June 21, 2016
Page 3 of 13

98 like I said, he was very emotional and talking, you know, broadly about the – about the incident, but I
99 don't remember a specific, you know, I shot my friend comment.

100 **BERRY:** Yeah, he shared the incident that happened over the weekend, he's pretty emotional in the
101 course of sharing it, described his friend getting shot, kind of had the impression he was processing it
102 as he spoke with you, and he – I'm just trying to understand. I want to make sure I understand what
103 you said about his responsibility. You had some sense that he might've had some involvement in that?

104 **DAY:** Yes, yes, the indication was that he had some time to reflect over the course of the weekend,
105 and so now as he's sitting with us Monday morning he's, you know, talking about this incident. Could
106 have had a role in it, could have had a responsibility, but not – I don't remember a specific statement
107 where I'm owning this, but, you know, it's possible. I'd rather not be quoted, but its possible phrases
108 like, you know, I think, I might have, I could have, something to that effect, but there was never a –
109 that I recall a direct admission.

110 **BERRY:** Did he talk about kind of the mechanics of how the shooting happened at all, like, what gun
111 it was or where everybody was or –

112 **DAY:** The only thing I recall in regards to that was a reference to this friend being shot and not
113 understanding how that happened. I don't know what kind of gun it was. I don't know if he was sitting
114 or standing or anything like that. I just remember that he returned to his friend and his friend had been
115 shot and that's what they're trying to piece together.

116 **BERRY:** Okay, did he say what they were doing at the time that his friend got shot?

117 **DAY:** Not that I recall, no.

118 **BERRY:** Okay, did the Chief mention talking to the Mayor?

119 **DAY:** Yes.

120 **BERRY:** Yeah, can you tell me what he said about that?

121 **DAY:** He told us that he'd already spoken with the Mayor about this. He told us that he had talked to
122 Harney County deputies at the scene and that he was in touch with the Professional Standards
123 Division.

124 **BERRY:** Okay. I'm writing slow today. Do you remember as he described it, did he – I'm asking
125 because there's been so much media coverage of this. Did he use – did he specifically say Harney
126 County Sheriff's deputies or deputy?

127 **DAY:** That – it's possible. That's a conclusion of mine, but I'm fairly certain he did, but you're right
128 there's been a lot of media coverage about this.

129 **BERRY:** Yeah.

130 **DAY:** But I know for a fact that he had spoken to law enforcement and I – it – I am very confident –
131 I'm fairly confident that he said Harney County because it just – it rings a bell with me, but there has
132 been a lot of talk of it, so –

133 **BERRY:** Yeah, did he provide any details of what he told police?

134 **DAY:** No.

135 **BERRY:** No. Might be a broad question – during that initial report where the Chief's describing what
136 happened, did he ever indicate that Harney County was still investigating the matter?

137 **DAY:** Yes.

138 **BERRY:** Okay. So after the Chief described the incident, did he direct you or any of the other ACs to
139 do anything?

140 **DAY:** No, other – the only direction he gave at the end of the conversation was he did not want it
141 discussed outside of that room.

142 **PEREZ:** Did you interpret that as meaning he wanted it kept confidential?

143 **DAY:** Yes.

CONFIDENTIAL TAPED STATEMENT

IPR #2016-B-0014
/ Robert Day

June 21, 2016
Page 4 of 13

144 **BERRY:** All right, well after you heard about that incident, what was your understanding of what your
145 next actions were going to be?
146 **DAY:** Well my understanding was that he had – there was an outside agency involved, the Mayor,
147 which is his supervisor, was notified, and the Professional Standards Division had been notified and
148 I'd been directed not to speak of it, so my actions going forward were to maintain that confidential –
149 confidentiality and allow the investigation to play out.
150 **BERRY:** Okay, and what was your understanding of next actions for the rest of the ACs in that
151 meeting?
152 **DAY:** I couldn't speak to them. I don't know what their actions or thoughts were going to be. I didn't
153 talk about it with them at the time.
154 **BERRY:** Okay. After that meeting did you take any action regarding the incident?
155 **DAY:** No.
156 **BERRY:** At any point have you prepared any documentation of any kind? Any written material
157 regarding the incident?
158 **DAY:** No I have not.
159 **BERRY:** Okay, have you spoken to anyone else about the incident?
160 **DAY:** At what point?
161 **MYERS:** With exception of his lawyer.
162 **BERRY:** Of council?
163 **MYERS:** Yeah.
164 **BERRY:** Yeah, and thank you for making that –
165 **MYERS:** Yeah.
166 **BERRY:** With the exception of council –
167 **DAY:** Right.
168 **BERRY:** – have you spoken to anyone about that incident?
169 **DAY:** Not since the gag order.
170 **BERRY:** Not since the CRO?
171 **DAY:** Yeah, not since the CRO has been issued.
172 **BERRY:** Okay, and how about prior to the CRO, did you have a conversation with anyone about it?
173 **DAY:** I spoke with Chief O'DEA a couple of different times during that course of that, you know, that
174 month or so before the article came out and –
175 **BERRY:** Yeah.
176 **DAY:** – we had a couple of conversations after the article came out and then once the restriction orders
177 were issued – any conversations I've had with anybody has not been about, you know, my nature and
178 involvement and knowledge of the case.
179 **BERRY:** Yeah, can you describe those – let's take them one at a time. Can you describe the
180 conversations you had with the Chief prior to the news articles coming out?
181 **DAY:** Sure, so I believe we established the 25th was when he told the ACs.
182 **BERRY:** Yeah.
183 **DAY:** I know that the next time him and I spoke about it privately it was on a Friday and the reason I
184 know that is because he was going out to dinner on Saturday and at that point he had told me that he
185 had shot this friend, so on that date he said I'm going with this guy who's – there'd been the shooting
186 with, and so I'm pretty sure that was on Friday May 6th, Mother's Day weekend and I'm not a hundred
187 percent confident, but I know it wasn't the 13th because I was out of town and the 20th is when the
188 article came out, right, so –
189 **BERRY:** I think so.

CONFIDENTIAL TAPED STATEMENT

IPR #2016-B-0014
/ Robert Day

June 21, 2016
Page 5 of 13

190 **DAY:** – I’m assuming it’s the 6th, it might have been the week of the twenty, you know, the 29th, but –
191 **BERRY:** Somewhere in there.
192 **DAY:** Somewhere, but I know it was a Friday because like, hey what are you doing this weekend?
193 Tomorrow night I’m going to go have dinner with this guy that was shot and, you know, talk to him
194 and duh, duh, duh.
195 **BERRY:** Yeah.
196 **DAY:** So that was the extent of it, you know, and then there were some how are you doing with that,
197 how’s he doing with that, you know, and, you know, how’s your friendship? We never talked about the
198 specifics of the case as to what happened.
199 **BERRY:** And did you tell me by then he had realized that he had shot his friend?
200 **DAY:** Yes, at that point it was pretty clear, I believe in his mind that that is what had occurred.
201 **BERRY:** Okay, did he talk at all about how he made that determination?
202 **DAY:** No, huh-uh. We didn’t get into any specifics about it, you know, it’s an ongoing investigation
203 both internally and externally.
204 **BERRY:** Right.
205 **DAY:** So I’m very sensitive to not ask him a lot of questions and trying to, you know, pry that
206 information out of somebody.
207 **BERRY:** Yeah. But just to make sure that I understand, it sounds like in that initial description when
208 he talked about what happened, he didn’t so much indicate that he had shot his friend and this follow
209 up contact you had, whenever it was it seemed more like he was taking responsibility?
210 **DAY:** It seemed like that to me, yes.
211 **BERRY:** Okay, that’s that contact, he’s going out to dinner with the fellow and then did you have
212 additional contact with the Chief or conversation about the incident with him?
213 **DAY:** I don’t believe – I don’t recall discussing anything with him again until the weekend of the news
214 article.
215 **BERRY:** All right, and can you tell me about those contacts after things started coming out?
216 **DAY:** Well, so was that a Friday afternoon?
217 **BERRY:** I think that was when the story first broke. It was definitely on a Friday.
218 **DAY:** Right, and so he left the building, I had no conversation with him, I didn’t know about it.
219 Somebody in the office said hey you need to look at the Willamette Week. I read the article and I
220 simply sent him a text that just said keep your head up and that was it. Over the course of that
221 weekend, and I’m not sure if it was Saturday or Sunday. I think it was Saturday, but there was actually
222 a critical event out at 82 and Foster and the Fred Meyer where there’d been a bomb placed inside the
223 Fred Meyer and I get notified on all critical events, and so, you know, sometimes I call the Chief about
224 them, sometimes I don’t. This was significant enough that I called him and let him know about it. We
225 talked about the, you know, the call.
226 **BERRY:** Yeah.
227 **DAY:** And then I just asked him how he was doing personally in light of the article the day before, you
228 know, Chief O’DEA and I have worked together as my boss for nearly five years almost, and so I have
229 a relationship with him and I was concerned about him personally, but once again we never discussed
230 any of the facts of the case nor did we ever discuss the article itself. It was more of just to check in at
231 the end of that briefing.
232 **BERRY:** Yeah. How did he say he was doing?
233 **DAY:** Said he was struggling, something to the effect of similar to, you know, this is one of the hardest
234 things he’s ever gone through or something to that effect. I remember that he – [REDACTED]
235 [REDACTED]

CONFIDENTIAL TAPED STATEMENT

IPR #2016-B-0014
/ Robert Day

June 21, 2016
Page 6 of 13

236 [REDACTED] – compared to what you’re going through I really shouldn’t be, you know, that upset about
237 this, but he said, you know, it’s really hard or whatever, you know, I understand that, so we just talked
238 more about life and the difficulties of life and not about the actual incident.

239 **BERRY:** Yeah, yeah. Well, and so some point after that I know you received your CRO, other than
240 that last conversation that you had briefing him for the other critical event, have you had any other
241 contact with the Chief about this matter?

242 **DAY:** So on Monday morning, which I believe is the 23rd, I’m not sure. Monday the 23rd, my birthday,
243 these seem to be falling on birthdays. We had our usual meeting. At the end I asked that people be
244 excused and at that time it was AC HENDERSON, AC MODICA, and the Chief and I, so we had the
245 article on Friday, series of articles over the weekend and now Monday morning it’s the four of us, AC
246 CREBS is not there and we talked, you know, specifically about going forward.

247 **BERRY:** And can you tell me what you mean by that, going forward?

248 **DAY:** Well, we never discussed the facts of the case, but I was very frustrated that at that point, you
249 know, there was all of this energy being generated, you know, primarily through the media, but largely
250 claiming, you know, this was a cover up and really felt strongly that my integrity was being challenged
251 and I really was very direct with the Chief that at that point, you know, I know that we’ve been ordered
252 not to discuss this, but it needed to get out. That it had to be – we had to have a public statement and
253 we had to have an internal statement and part of his reasoning behind ordering us not to talk was that it
254 was an ongoing investigation and therefore we don’t comment publically on ongoing investigations,
255 which is true. There’s several investigations over the years that we haven’t released publicly that we,
256 you know, but I told him in this particular case he’s the Chief of Police, it’s out, we need to make a
257 statement. We have a responsibility and pushed him really hard about it and told him that, you know,
258 to the affect. I’m summarizing here, these aren’t quotes, but I told him to the effect that, you know,
259 having been ordered to not talk about this has really hindered our ability to have a broader
260 conversation and prepare the organization, and so that’s what I meant in terms of going forward was
261 how are we going to message this? How are we going to handle this, you know, both internally and
262 publicly?

263 **BERRY:** Have you ever – have you yourself had any contact with the Harney County Sheriff’s office?

264 **DAY:** No.

265 **BERRY:** No, have you spoken to – may have been Oregon DOJ and OSP took the investigation over
266 from Harney County. Have you had any contact with –

267 **DAY:** I had a phone call with Oregon DOJ investigator.

268 **BERRY:** Okay. Remember about when that might have been?

269 **DAY:** I’m going to guess early June. I don’t have the specifics of that without my –

270 **BERRY:** That’s fine.

271 **DAY:** I didn’t make any notes; it was just returned her call.

272 **BERRY:** Yeah, all right, what is your understanding of what PPB must do when it learns that a
273 member is the subject of a criminal investigation?

274 **DAY:** Well there’s the responsibility to notify the boss. Whoever your immediate supervisor is, you
275 know, there’s a responsibility to notify the Professional Standards Division. The Professional
276 Standards Division is required to contact Independent Police Review, as well as contact the outside
277 agency and form a liaison with them for the course of the investigation and its very specific that, you
278 know, we’re not to issue undue influence or, you know, on the case once the case has been initiated.

279 **BERRY:** And when you say undue influence are you referring to the investigating agency?

280 **DAY:** Well both.

281 **BERRY:** Or both.

CONFIDENTIAL TAPED STATEMENT

IPR #2016-B-0014
/ Robert Day

June 21, 2016
Page 7 of 13

282 **DAY:** Actually, you know, but then once that case has been initiated, it really needs to stand on its
283 own and be handled by the Professional Standards Division and the Independent Police Review and
284 the outside agency.

285 **BERRY:** And is there a directive where those expectations are outlined or described?

286 **DAY:** I believe they're outlined in the 330 directives where it talks about those responsibilities.

287 **BERRY:** Okay, somewhere in the 330s?

288 **DAY:** Right.

289 **BERRY:** Yeah, so you've had some time since you received notification and obviously had some time
290 since you learned that the matter was being investigated. Have you had a chance to review Directive
291 333?

292 **DAY:** Likely yes, I've –

293 **BERRY:** Likely.

294 **DAY:** – reviewed several.

295 **BERRY:** Yeah, well asking about that one and kind of perhaps more broadly, do you feel like you've
296 adhered to directives regarding your own actions in this incident?

297 **DAY:** I believe that I have, yes.

298 **BERRY:** Okay, have you ever or did you ever at any point talk to Captain RODRIGUES about the
299 incident?

300 **DAY:** No.

301 **BERRY:** No. And can you tell me why not?

302 **DAY:** Well once again, you know, procedurally speaking once the – these start and the proper people
303 have been notified I believe it's, you know, very important that we remain neutral or lacking, not
304 seeing as having that influence. I've been a – as I mentioned, I've been a captain or commanding
305 officer since 2009. I have reviewed – I have referred multiple cases to Internal Affairs or the
306 Professional Standards Division for review.

307 **BERRY:** Yeah.

308 **DAY:** And I do not follow up once it's sent to find out the status of that case. I don't call IPR to make
309 sure that they're notified, certainly as a commanding officer that could be seen as trying to have that
310 influence, so, you know, in this particular case I had – never had a reason to believe that Chief O'DEA
311 wasn't a man of his word and hadn't followed through and I've never had experience or reason to
312 believe that Captain RODRIGUES and Professional Standards Division weren't completely – excuse
313 me, weren't completing their responsibilities, so it would've been, you know, highly unusual for me to
314 make a phone call and I wasn't having conversation with my peers, so, you know, I don't know if, you
315 know, AC HENDERSON's calling, AC MODICA's calling, AC CREBS is calling, I'm calling, that
316 could really begin to generate a lot of energy, you know, so in my position, you know, being consistent
317 with my role going back to as long as I can remember allow the process to play out.

318 **BERRY:** And you talked about the importance of remaining neutral and not influence – influencing
319 the process. Just so I understand, do you feel like making those kind of contacts might be seen as an
320 effort to put your thumb on the scale one way or the other or influence the investigation?

321 **DAY:** I believe it could be interpreted that way.

322 **BERRY:** Okay.

323 **DAY:** And I didn't want to risk that. Have to explain later why I was making these phone calls.

324 **BERRY:** Yeah, yeah. Have you ever spoken to anyone in the Mayor's office about this?

325 **DAY:** No, not that I recall.

326 **BERRY:** Stepping back for a moment. Forgive me if I already asked it, I just want to make sure I
327 don't miss it. After hearing the Chief describe what happened and hearing him talk about having

CONFIDENTIAL TAPED STATEMENT

IPR #2016-B-0014
/ Robert Day

June 21, 2016
Page 8 of 13

328 spoken to the Mayor and being in touch with Professional Standards, did you have an understanding
329 that there was going to be an administrative investigation about the incident?

330 **DAY:** Well that was my assumption, you know, because Professional Standards had been notified
331 once again, whether there was going to be that investigation is determined by Professional Standards
332 not, you know, by – by myself.

333 **BERRY:** Right.

334 **DAY:** You know, so I refer cases all the time and say, you know, I want you take a look at this and
335 make a determination. I don't say to them I want an Internal Affairs investigation on this, so my
336 understanding was he notified PSD if there was a need for an administrative investigation that would
337 happen. It seemed likely, typically there is, but that was my assumption, yes.

338 **BERRY:** All right. Well and I know you all eventually received CROs, but prior to that did you have
339 any conversation with the other ACs about whether or not there would be an administrative
340 investigation?

341 **DAY:** Not that I recall, no.

342 **BERRY:** Broadly speaking, does an assistant chief have a responsibility to act if they suspect that the
343 Chief might have engaged in wrong doing?

344 **DAY:** If – yes, if we believe that they've engaged in wrong doing, yes. I would follow up with that,
345 you know, with the understanding that the proper steps haven't been taken to make sure that there's an
346 accountability piece.

347 **BERRY:** Okay, so if you're aware that there's potential wrong doing and you're – but you're not
348 aware of the normal appropriate steps haven't been followed.

349 **DAY:** Right, right, on this particular case with all of the steps having been followed with no prior
350 history to believe that the Chief hadn't followed those steps properly and with no prior issue to believe
351 that Captain RODRIGUES hadn't done his part, I was confident that the proper steps had been taken
352 and were being taken to allow this to play out.

353 **BERRY:** So the old expression is that hindsight is 20/20 and of course that's true. With the benefit of
354 hindsight and as you've reflected on the incident, what you heard about and when you heard about it
355 are there things you might've done differently if you had been more fully informed?

356 **MYERS:** Really? It – I mean, is it the proper scope to ask him speculative of questions or hypothetical
357 questions?

358 **BERRY:** Well, part of the purpose of this investigation –

359 **MYERS:** Fact gathering?

360 **BERRY:** – is to understand kind of what happened and what didn't happen. There's a very clear
361 expectation that these matters be administratively investigated. There's a very clear expectation that
362 IPR conducts command level investigations. Part of the purpose of the investigation is understand why
363 the heck that didn't happen. So certainly it's not my intent to get you to say something and then ask
364 you why you didn't do that, but you're a very thoughtful person and I'm asking if there are areas –
365 things that you've thought, maybe I might've done differently next time and if there aren't there aren't,
366 but I hope to benefit from your wisdom.

367 **DAY:** No, I'm comfortable with the decisions made. I'm disappointed in the process and how it's
368 occurred, but I'm comfortable knowing that the proper people have been notified with no prior history
369 believing anything was out of the ordinary and following the direct order from the Chief not to discuss
370 this outside of – I believe that those are all, you know, within reasonable expectations. Once I learned
371 that IPR had not been notified, which was after the media had come out and so forth, I challenged the
372 Chief on that specifically and he basically said and this is not a quote, but he said to me, you know, I
373 literally said to something the effect of – please don't quote me, but I said something to the effect of,

CONFIDENTIAL TAPED STATEMENT

IPR #2016-B-0014
/ Robert Day

June 21, 2016
Page 9 of 13

374 you know, I can't believe IPR doesn't know about this. Didn't you check with them or follow, you
375 know, how did that happen and he said that, you know, he had talked to Professional Standards about it
376 and once again going back to the mindset that, you know, once we turn it over to PSD it goes forward.
377 We are not to be involved in it. I was very disappointed about that and that IPR finds out about this in
378 the Willamette Week, from what I'm being told, so on that Tuesday morning – so that was Monday the
379 23rd when all this was kind of coming out, so on Tuesday morning I had to go to a roll call out of East
380 Precinct.

381 **BERRY:** Mm-hm.

382 **DAY:** On my way back I was walking over here to speak to CONSTANTIN, Director SEVERE and
383 ran into him on the street corner and said something to the effect of, you know, I understand there's an
384 investigation or, you know, I don't know when the Chief was issued his CRO, I don't remember, but I
385 said, you know, there's an investigation and he agreed and I told him on the street corner, I said, here's
386 the people you need to talk to. You need to get CROs out to the Assistant Chiefs and to PETE
387 SIMPSON. Those are the four that I knew that – or the five that I knew that had knowledge and he
388 wasn't aware of that. He was appreciative that I'd given him that information and passed that on, so
389 once I realized that the process had not been followed through then I did take the unusual step of going
390 to IPR and saying hey, here's what you need to do, here's what you need to know, here's how much I
391 know, here's who needs to be gagged, here's who you need to talk to.

392 **BERRY:** Yeah.

393 **DAY:** So I, you know, like I said, just disappointed that it did not follow the normal flow.

394 **BERRY:** Well and I understand this incident from everything that everyone has told me, has had kind
395 of a disruptive effect on things over at the Bureau or caused a little bit of turmoil. Did you – and I
396 don't know – forgive me, I'm a little vague on timelines. At some point did you attend a meeting
397 involving sergeants at the East Precinct?

398 **DAY:** That's what I'm talking about –

399 **BERRY:** That day there –

400 **DAY:** – the eight o'clock meeting on that Tuesday morning –

401 **BERRY:** Okay.

402 **DAY:** – with East Precinct.

403 **BERRY:** Yeah.

404 **DAY:** You know, I was also at a four o'clock roll call Monday night and a ten o'clock roll call at
405 North Precinct on Monday night.

406 **BERRY:** Okay.

407 **DAY:** As well. I'm very engaged with the precincts.

408 **BERRY:** Yeah.

409 **DAY:** And as this thing was coming unraveled, you know, I believe it's important to be out and to be,
410 you know, with the members and, you know, trying to assure them that, you know, we're trying to take
411 steps in the right direction because they're getting all their information from the media.

412 **BERRY:** Yeah, across any of those meetings, the roll calls, the meeting with the sergeant – sergeants,
413 did you ever indicate that directives didn't apply to the ACs?

414 **DAY:** Absolutely not.

415 **BERRY:** Okay, is there – I'm just trying to understand how someone might've reached that
416 conclusion. Can you think of anything you might have said about directives?

417 **DAY:** When I was meeting with the sergeants at East Precinct and Commander HENDRIE was
418 present, Captain KING and Lieutenant MAHUNA was present. Sergeant STEINBRONN brought up a

CONFIDENTIAL TAPED STATEMENT

IPR #2016-B-0014
/ Robert Day

June 21, 2016
Page 10 of 13

419 conversation about the notification of your boss when you're the subject of a criminal investigation we
420 have a directive that requires that you immediately notify a supervisor, a Portland Police supervisor.

421 **BERRY:** Yeah.

422 **DAY:** And he told me, you know, this is once again through the paper and not word for word, but
423 essentially the boss – the Chief had not notified the Mayor for a few days following and Sergeant
424 STEINBRONN was somewhat sarcastic in his tone of saying basically does that, you know, what do I
425 tell my officers? Does the policy not apply anymore, do you have four or five days, do you – and I
426 said, no. I said the policy is the policy and it applies to all of us the same. There was a – there was a
427 follow up comment made by Commander HENDRIE to the group regarding policies.

428 **BERRY:** Mm-hm.

429 **DAY:** And that came across as if it didn't apply to the Chief or didn't apply to the ACs. Well you can
430 imagine the room, you know, for lack of a better term lost its mind rightly so.

431 **BERRY:** Yeah.

432 **DAY:** And Commander HENDRIE apologized and clarified that. That that was not what he was trying
433 to communicate and I don't even recall exactly what he was trying to communicate except that he was
434 explicitly clear that this is not – that's not what we're saying and then I reiterated to everybody and
435 including Sergeant STEINBRONN that all of these directives apply to all of us top to bottom.

436 **BERRY:** Excellent, thank you for that. I have one more somewhat speculative question. You can
437 answer in as much detail as you feel like. As you reflect on this have you identified any policy short
438 comings, you feel like you contributed to this situation?

439 **DAY:** I believe that we need to build in some type of protection in regards to investigations involving
440 the Chief of Police. It wasn't until just recently, I can't give you a time frame, that we moved the
441 reporting of Professional Standards to a direct report to the Chief of Police.

442 **BERRY:** Right.

443 **DAY:** And by doing so, you know, that's taken away that sort of middle person, you know, normally
444 they report it to an AC, so now that everything goes to the Chief of Police and we have an
445 investigation involving the Chief of Police, I think that we should create a policy that designates
446 somebody outside to be that liaison with PSD. Even if there's a direct order from the Chief not to
447 speak about or excuse me, do anything with it. I think we need to build that capacity into the policy
448 somewhere, so that, you know, we don't have this one – two-way street type of thing.

449 **BERRY:** Yeah.

450 **MYERS:** Or perhaps when he's more informed we can discuss the policy because I'm not sure my
451 client understands the full fruits of the investigation right now.

452 **BERRY:** Certainly.

453 **MYERS:** And what Chief O'DEA did or didn't do which would dictate a part of the response here.

454 **BERRY:** No I'm asking –

455 **MYERS:** I think he needs to be informed to discuss policy things.

456 **BERRY:** All right, well getting investigated is an uncomfortable process. I've never met someone who
457 enjoys it. The investigation report includes an allegation that's written against you. I'd like to read the
458 allegation and give you a chance to respond to it, so I'll read it and then I'll ask you how you respond.
459 Portland Police Bureau Assistant Chief ROBERT DAY 23474, failed to take appropriate action after
460 being informed that Portland Police Bureau Chief LAWRENCE O'DEA 18924, was involved in an off
461 duty negligent discharge of a firearm, which resulted in injury. I wrote that as a conduct allegation,
462 wrote it against Directive 315.30 – Satisfactory Performance. So hearing that how would you respond
463 to that?

CONFIDENTIAL TAPED STATEMENT

IPR #2016-B-0014
/ Robert Day

June 21, 2016
Page 11 of 13

464 **DAY:** Well I believe that I – that my action was appropriate given the circumstances and we covered
465 it, but just to reiterate at the time of the initial notification it was unclear to me whether there had been
466 this – whether there was a criminal nexus to it, a criminal conduct, but I knew that there was an outside
467 agency involved, I knew the Mayor had been notified. I was told that Professional Standards Division
468 was notified, so the three qualifications required for our processes piece were in place and then being
469 ordered not to speak about it puts me in the directive with laws, rules, and orders and an understanding
470 of what that would mean to discuss it and one of the things that I recall and this is how I've been given
471 this explanation is we talked about the conversation where the Chief was going to have dinner with his
472 friend, one of the things that he mentioned to me, and this also affirmed that there was this
473 investigation because he was telling me something to the effect of the deputy is on vacation or the
474 deputy is not available at this time and he's hoping to get that cleared up. I remember that now, but
475 once again that affirmed there was this criminal investigation going on, there's this internal
476 investigation going on, the Mayor's been notified and I've been ordered not to talk about it, so we
477 don't get involved in those things, so I believe that action on my part was appropriate and then once I
478 learned that that was not the case and the investigation – IPR was just being notified. I took that
479 appropriate action by getting ahold of Director SEVERE and making sure he knew my involvement
480 and the involvement of anybody else that I was aware of immediately learning upon the fact that there
481 was an investigation being started.

482 **BERRY:** And just to – I want to make sure I understood what you said. The part where Chief O'DEA
483 was talking about the Harney County deputy not being available, you think – did that occur when he
484 was talking about going to dinner with his friend?

485 **DAY:** That was – yeah, that's what I recall from this – I apologize, but I remember now just kind of
486 going through these timelines that there was that – and the reason that's significant to me is because it
487 affirmed the fact that there was this ongoing criminal investigation occurring, so in my mind we have
488 processes in place to deal with that.

489 **MYERS:** I think he's referring to that May 6th.

490 **BERRY:** The May 6th.

491 **MYERS:** What he believes to be May 6th meeting.

492 **BERRY:** Thank you, thank you. Well Chief DAY you've put up with us asking – or me asking a
493 bunch of nosey questions. Is there anything you'd like to add to our conversation or do you feel like
494 it's important we make note of?

495 **DAY:** No.

496 **BERRY:** No, excellent. Investigator PEREZ is there anything you'd like to ask?

497 **PEREZ:** Yes, so on the April 25th meeting when Chief O'DEA brought you all together he had
498 indicated that there had been a shooting versus that he had shot someone? Is that right?

499 **DAY:** Well that's the part that I'm uncertain about.

500 **PEREZ:** Mm-hm.

501 **DAY:** It was never entirely clear to me when I left that meeting other than the fact that he had a friend
502 that was shot. That he was processing the belief that there – that he may have been the one and that
503 there was an investigation going on by Harney County.

504 **PEREZ:** Okay, did he give any indication that he told Professional Standards that he had shot
505 someone or just that he had been involved in a shooting of someone?

506 **DAY:** I don't know exactly what he reported to Professional Standards.

507 **PEREZ:** Okay, after – or on May 6th when he told you that he had actually shot his friend, did he
508 mention anything about Professional Standards?

509 **DAY:** No.

CONFIDENTIAL TAPED STATEMENT

IPR #2016-B-0014
/ Robert Day

June 21, 2016
Page 12 of 13

510 **PEREZ:** Okay, can you go into just a little bit more detail as to how he disclosed that he had shot his
511 friend or how he came to that conclusion on May 6th?

512 **DAY:** I don't recall specifics. It was something, you know, we're talking about him going to dinner,
513 you know, we're talking about him being really upset about this and there was some sort of disclosure
514 at that point, but once again, I'm not – I don't recall, but I know that I've been very intentional over the
515 course of this to not, you know, dig deep or ask more questions, prod for information, etcetera.

516 **PEREZ:** Okay, and you had advised CONSTANTIN SEVERE to issue a CRO to PETE SIMPSON,
517 when is it your understanding that PETE SIMPSON knew about the incident or found out about it?

518 **DAY:** I don't believe and I'm putting some goal posts here, but I don't believe that PETE knew about
519 it until Friday evening when the story broke was how I recall.

520 **PEREZ:** Have you had any contact with any members of the media?

521 **DAY:** MAXINE BERNSTEIN called me at some point. I should have put her in my phone, but I
522 didn't know what the number was, so I answered and she asked for a statement and I told her that we
523 had been restricted from conversation.

524 **PEREZ:** Have you had any conversations with JOSH ALPERT about this incident?

525 **DAY:** I've had a meeting with JOSH at some point. I do not remember when specifically that was, you
526 know, I have a lot of conversations with the Mayor's office staff and I remember having a meeting
527 with JOSH, but I don't recall talking about the incident at all. What I do recall are two things, one he
528 was fighting a cold or hay fever or something to that effect and two he was – we were concerned about
529 the organization moving forward. We didn't talk about specifics of the case, but we talked about, you
530 know, acting chief, interim chief, you know, what's the process going to look like going forward.
531 Who's going to be in charge? How do we manage this and I – I'm not a hundred percent sure when
532 that occurred. I'm fairly confident it was possibly on that Tuesday morning after I talked to Director
533 SEVERE, seems to make sense to me.

534 **PEREZ:** Mm-hm.

535 **DAY:** But I'm not a hundred percent sure, but I don't recall ever having any specific conversations
536 with JOSH or anybody from the Mayor's office about this case.

537 **PEREZ:** Okay, did you discuss with JOSH the possibility of placing Chief O'DEA on admin leave?

538 **DAY:** No, boy not that I recall, I don't – I do not remember that. There was a lot of energy around that
539 time, so once again I don't – I don't remember what day I met with JOSH, maybe it was later.
540 Whatever the case may be, I don't remember having a conversation about putting JOSH on admin
541 leave. What I do know is that on the day the Chief was placed on admin leave he – so maybe I met
542 JOSH on Monday. Anyway, the Chief had come to City Hall for a meeting. I didn't know that at the
543 time and I was out and about and it was just about noon on that Tuesday and I got a phone call from
544 the Chief and he said I'm trying to get a hold of DONNA and I can't get ahold of her, AC
545 HENDERSON. So I know that AC HENDERSON responds to text, so I sent her a text and said, the
546 Chief's trying to get ahold of you. She said, thank you. Several minutes later AC HENDERSON called
547 me and said, the Chief's going to be put on admin leave and they're going to make an announcement in
548 like, ten minutes. Could you please notify the organization and I'm going to be the acting, so at that
549 point I put out a quick text message to multiple RU managers saying hey, in ten minutes there's going
550 to be a press release and that was the first that I knew that the Chief was going to be on administrative
551 leave.

552 **PEREZ:** In any of your conversations with Chief O'DEA about this, was alcohol ever mentioned?

553 **DAY:** No.

554 **PEREZ:** All right, that's all I have.

555 **BERRY:** All right.

CONFIDENTIAL TAPED STATEMENT

IPR #2016-B-0014
/ Robert Day

June 21, 2016
Page 13 of 13

556 **PEREZ:** If Lieutenant HURLEY has anything.
557 **HURLEY:** Did Chief O'DEA say when he notified PSD and who he notified in PSD?
558 **DAY:** When we had the conversation on Monday morning, that first one, I do not remember a specific
559 name. I do know that we clarified that PSD had been notified, but I do not recall a name or time other
560 than it had occurred.
561 **HURLEY:** That's all I have.
562 **BERRY:** Excellent, Mr. MYERS is there anything you want to add or ask for clarification?
563 **MYERS:** Well there'd be a lot that – just – I just want to make sure that we understand just by – as far
564 as the way you phrased one question that as I understand it the meeting on April 25th and then the other
565 meeting that we've been talking about with the ACs May 23rd, that those are regularly scheduled
566 Monday meetings that the Chief has with the Assistant Chiefs. You had referred to it as when the Chief
567 called you all together on April 25th, it wasn't a call altogether, that was – they were attending a regular
568 scheduled – it wasn't a special meeting I should say.
569 **BERRY:** Makes sense. Is there anything else?
570 **MYERS:** That's all.
571 **BERRY:** No, okay.
572 **HURLEY:** All right, its 3:01 we'll end the interview.
573
574 2016-B-0014 day.robert.06.21.16.int.trs
575 Transcribed 07/08/2016 @ 9:00 p.m. Halla Stonehouse