

RAPID CITY POLICE DEPARTMENT

Internal Investigation 2010-02

Jene Newsome / ACLU of SD

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3/19/2010

A report summarizing an internal police investigation following a complaint filed by the South Dakota chapter of the ACLU. The complaint alleges police misconduct in the matter of the exchange of information negatively affecting Jene Newsome of Rapid City, SD

The internal investigation into the actions of the Rapid City Police Department is now complete. While we are and will be continually analyzing our findings, I am able to share pertinent details that may help people understand what happened, why it happened and what can be done to avoid this type of incident in the future.

First and foremost, the Rapid City Police Department (RCPD) strives to provide professional law enforcement services to all citizens of Rapid City. We take pride in being responsive to the needs of the community and in doing so, foster positive relationships with individuals, businesses and other private and public agencies. Of major importance to providing public service is hearing from our citizens. Few citizens proactively make their needs known to us. Although we conduct periodic surveys, there is limited participation from the public. Public meetings prompt only two or three citizens to attend. We and law enforcement agencies nationwide are left to identify community concerns and needs based on factors that seem important to us. We do our best with the information available to us, to meet public expectations, but that information is often limited. We often believe we have the necessary information to meet the public's expectations of how to deliver service to a diverse community, but we also accept that it is not always true. In 2009 the RCPD handled 120,000 calls for service. We employ 142 men and women of which 111 are sworn police officers, supervisors and command staff members, while 31 non-sworn support staff include clerical, technical and scientific positions. As the largest law enforcement agency in western South Dakota we and our sister agencies are dependent on inter-agency cooperation. We share similar goals, similar successes and similar challenges and investigate similar types of criminal activity. The Air Force, specifically Ellsworth Air Force Base is no exception to that rule. The tax-paying citizen is the beneficiary of the cooperative efforts of the RCPD, and agencies who work with us.

The chain of events surrounding the incident of November 20, 2009 are summarized as follows:

The Alaska State Patrol requested assistance from the RCPD in serving a felony warrant on Cheryl Hutson. Ms. Hutson was believed by the Alaska authorities to live with Jene Newsome, an active-duty non-commissioned officer stationed at Ellsworth Air Force Base near Rapid City. At about noon on November 20th an officer arrived at the residence. He attempted to make contact at the residence but there was no response. A short while later the officer called Sgt. Newsome at her duty station and asked her for assistance. Believing they were simply roommates, and considering Sgt. Newsome was a non-commissioned officer in the Air Force, the officer had a high expectation of gaining her cooperation. Sgt. Newsome indicated she did not know how to contact Ms. Hutson and explained that she needed to inform her chain of command. The officer assured her he understood the need to inform her chain of command as he was a member of the Army National Guard. Throughout the conversation with Sgt. Newsome, the officer was unable to obtain specific information about Ms. Hutson's whereabouts from Sgt. Newsome. The officer left the residence after an hour and fifteen minutes while waiting for Sgt. Newsome to call him back.

The officer's supervisor called the Air Force Office of Special Investigation (OSI) in order to brief them on the situation of a wanted person (Ms. Hutson) living with Sgt. Newsome, that Sgt. Newsome was not forthcoming with information about Ms. Hutson, and to gain assistance getting a call back from Sgt. Newsome.

More than four hours after the initial effort to make contact with Ms. Hutson at the house, the officer responded back to Sgt. Newsom's home after receiving confirmation from the Alaska Authorities that cell phone communications from Ms. Hutson to a third party in Alaska indicated she was inside the house when the officer was there the first time. Once the officer arrived back at the residence, he made contact with witnesses who saw Ms. Hutson look outside briefly just a few minutes before, then go back inside. The officer called for a second officer to respond. When the second officer arrived, he walked around the side of the house to check for a possible means of escape. While there, he noted the dryer vent was exhausting hot air. He looked through a ground level kitchen window of the home in an attempt to see anyone in the house. A table was directly under the window and a document was lying face-up on the table approximately two and a half feet from the officer's face. The document was a marriage certificate and he could read both names – Cheryl Hutson and Jene Newsome.

The unexpected discovery of the marriage license was an important moment in the investigation. The license certainly confirmed they were at the right house, but more importantly it shed light on the relationship between Ms. Hutson and Sgt. Newsome. Earlier when the first officer spoke to Sgt. Newsome on the phone, he believed he was merely speaking to a roommate. When Sgt. Newsome stated she was unaware of Ms. Hutson's whereabouts, unaware of how to contact her and that she (Ms. Hutson) didn't have a phone, these statements could be better understood given the relationship of mere roommates. The marriage license, whether recognized in South Dakota or not, spoke to the depth of the relationship between Sgt. Newsome and Ms. Hutson and shed a new light on Sgt. Newsome's earlier statements. At this point in time, Sgt. Newsome had become the subject of a criminal investigation for "Accessories to Crime" under South Dakota Codified Law. Below is the text of the statute with the applicable elements underlined:

22-3-5. Accessories to crime--Misdemeanors excepted. A person is an accessory to a crime, if, with intent to hinder, delay, or prevent the discovery, detection, apprehension, prosecution, conviction, or punishment of another for the commission of a felony, that person renders assistance to the other person. There are no accessories to misdemeanors.

The term, render assistance, means to: (any one is sufficient)

- (1) Harbor or conceal the other person;
- (2) Warn the other person of impending discovery or apprehension, other than a warning given in an effort to bring the other person into compliance with the law;

- (3) Provide the other person with money, transportation, a weapon, a disguise, or any other thing to be used in avoiding discovery or apprehension;
- (4) Obstruct anyone by force, intimidation, or deception in the performance of any act which might aid in the discovery, detection, apprehension, prosecution, conviction, or punishment of the other person; or
- (5) Conceal, destroy, or alter any physical evidence that might aid in the discovery, detection, apprehension, prosecution, conviction, or punishment of the other person.

A violation of this section is a Class 5 felony.

Sgt. Newsome's duty shift ended at 4:00 pm that day and between 5:00 pm and 6:00 pm phone contact with Sgt. Newsome was re-established by the officer. The officer attempted to negotiate a time for her to arrive home. Meanwhile a RCPD detective was summoned, arrived and was collecting data to process a search warrant for Sgt. Newsome's home. The scope of the search warrant was to be limited to locating Ms. Hutson.

Shortly after 6:10 pm the officer again spoke to Sgt. Newsome who agreed to return home and escort the officers inside the house. The conversation ended and within a few minutes, Ms. Hutson called the officer and told him she was coming outside. She came to the door and was taken into custody. Sgt. Newsome arrived shortly thereafter.

There was discussion between the officers regarding the option of charging Sgt. Newsome with being an accessory when the detective suggested they deal with it after the weekend. The officers left the scene.

On Tuesday November 24th, the detective consulted with a lieutenant about sharing the report with the Air Force. The Lieutenant stated that it was routine to share information with the Air Force when a service member's conduct is potentially criminal.

The lieutenant is correct. There is a long-standing practice (more than 25 years) of sharing information obtained through RCPD contact with Air Force members who are arrested or otherwise have committed a crime. The RCPD keeps an after-hours roster of first sergeants to respond to the field to address problems such as fighting, drunkenness etc. The communication may go from the RCPD to an Air Force sergeant, or to the OSI depending on the offense. It is done, fairly informally depending on the circumstances on a case by case basis.

The detective in this case would be in charge of initiating any further investigation in the Newsome case. He decided to forward the report to the Air Force to learn what if anything they might do to resolve this. This practice is also utilized regularly but more often after an arrest has been made. The two agencies decide informally or sometimes formally who will exercise jurisdiction over the matter at hand.

The report of Ms. Hutson's arrest and Sgt. Newsome's involvement contained a short reference about the discovery of the marriage license. There was no discussion as to the appropriateness of sharing the information about the relationship. The fax cover sheet contained a reference about Sgt. Newsome's "spouse", Ms. Hutson. The detective who sent the report is an Air Force veteran, and although he was sending the report for an evaluation of her possible criminal

conduct, he had a good idea the information about the relationship would cause problems for Sgt. Newsome. He did not consider redacting the information as this practice is never done when releasing a report to a government agency. The report was sent and Sgt. Newsome was discharged presumably for her sexual orientation or marriage to Ms. Hutson.

Important factors in this case as I see them:

Sgt. Newsome's conduct. Sgt. Newsome was keeping her sexual orientation a secret from the Air Force because she had much to lose had it gotten out. She made a few contributions in this case and I believe they are relevant to discuss here.

1. In October 2009 she was legally married to Ms. Hutson in a neighboring state which produced a public, historical document of that fact;
2. She or Ms. Hutson had that document lying face up on a table near a window, while;
3. A wanted person lived in her house, and;
4. When the police were attracted to the wanted person;
5. Neither were cooperative so that the incident could be resolved quickly before the document was discovered.

While it may seem in poor taste to assign any of this blame to Sgt. Newsome, she, not the RCPD, was in control of these factors. Had she or Ms. Hutson cooperated, then items one through four would not have led to the discovery of her secret. The public document was only discovered after police were on the scene for hours attempting to locate Ms. Hutson.

The officer's conduct. Police officers encounter many different scenarios during their career and one thing is obvious, a single tactic or procedure would be wholly insufficient to perform the varying duties required of them. Aside from varying procedures and tactics there is a need for creativity in solving problems. In this case, the officers have been publicly accused of "window peeking" and telling a lie about the discovery of the license. The officers were legally on Sgt. Newsome and Ms. Hutson's property searching for Ms. Hutson. Looking through a window could provide (and in the past has provided) important information about the location of a suspect and was an acceptable tactic in this case. The fact that the license was close to the window was coincidental to the search.

Once the information about the license was learned it was consistent with normal documentation practices to add that to the official report. As stated earlier, it appeared at the time to be a relevant fact in the case. When the detective followed up with the OSI on Tuesday, he had an idea it would be detrimental to her career. Any concerns he had about that were outweighed by the fact that Sgt. Newsome, a non-commissioned officer in the United States Military had been harboring a fugitive and was uncooperative with law enforcement officers. Being a former member of the Air Force and a current member of the RCPD, the detective believed the Air Force had a right to know of this incident. When the detective spoke to a RCPD lieutenant about reporting the issue, the lieutenant was aware of the incident and of the discovery of the license but was not made specifically aware of the sentence documenting the license at the time of the discussion. The discussion was about communicating with the Air Force generally and contained no dialog about revealing sexual orientation.

There have been public accusations that the detective released the information regarding sexual orientation out of vengeance or for punitive effect. I cannot know what is in the hearts of people

or what truly motivates them but I am very concerned with how emotions, prejudices, political or religious views may affect the decisions made by not only our officers but all people in government positions. This requires constant oversight and for practical purposes people must be judged by their actions rather than their thoughts. I have three points to make:

1. The detective's actions are consistent with long-standing practices of releasing information to the Air Force.
2. The detective states he intended to have the OSI evaluate Sgt. Newsome's conduct related to harboring a fugitive and lack of cooperation.
3. Based on all of the circumstances one could believe that he wanted to specifically report Sgt. Newsome's sexuality.

Which one is true? What if all three are true?

The answer to #1 and #2 are easy. They both make sense and appear to serve interests of the Air Force and RCPD. The answer to #3 is complicated because it requires the comparative analysis of the detective's actions in relation to his beliefs to the extent that we attempt to confirm or deny that any of his personal feelings on the matter affected his actions. The complication comes into play if or when, we conclude that #1 and #2 are true and reasonable, then #3 is immaterial. The release of information will be discussed more in the next section.

Policy issues. Mr. Doody of the American Civil Liberties Union (ACLU) of South Dakota alleges that the RCPD violated its own policies in the release of the report to the Air Force. He lists the following policies for consideration:

- RCPD Policy 761-03 (b-1) This policy requires the records custodian or designee to release records to persons not employed by the Department. This does not apply specifically to the Air Force as there are separate policies addressing release of information to other government agencies and there is a standing agreement and pre-authorization from the records custodian for employees to share reports with the Air Force when they involve Air Force personnel.
- RCPD Policy 761-03 (b-2) concerns the physical security of records held by the Department and does not specifically apply to the release of copies of those records.
- RCPD Policy 761-03(b-4) This policy requires that copying of records by persons not employed by the Department be directly supervised by the records custodian. This policy doesn't apply because no one, not-employed by the Department made copies of the original reports.

The RCPD has other policies that need to be considered as well:

- RCPD Policy 761-03 (b-5) Addresses the release of information to law enforcement agencies. The written request requirement may be waived for law enforcement upon oral request. The relationship and standard practice has been going on for so long that there is an implied request with every criminal matter involving Air Force personnel.
- RCPD Policy 761-03 (c-6) This policy authorizes release of investigative file to other law enforcement agencies. Although the OSI is part of a branch of U.S. Military they are clearly a law enforcement agency as well.
- RCPD Policy 121-01 (D-1) (D-2) This policy covers agency liaison with other agencies. (D-1) addresses agencies with concurrent jurisdiction of which the Air Force is one. (D-2) addresses cooperative exchange of information between agencies.

Relevant federal law as it applied to the armed forces appears in the United States Code, title 10. This law gives insight into the concern the Air Force has for the conduct of its members and it states:

Title 10 section 654 (a) (9-10) “The standards of conduct for members of the armed forces regulate a member’s life for 24 hours each day beginning at the moment the member enters military status and not ending until that person is discharged or otherwise separated from the armed forces. Those standards of conduct, including the Uniform Code of Military Justice, apply to a member of the armed forces at all times that the member has military status, whether the member is on base or off base, and whether the member is on duty or off duty.”

Title 10 of the U.S. Code goes on in detail regarding the issue of homosexuality and same-sex marriage but there is no need to discuss that here as it is irrelevant to the actions of the RCPD.

Don’t ask / Don’t tell. In 1993 congress passed and President Clinton signed legislation establishing a revised policy concerning homosexuality in the armed forces. The common misconception about Don’t Ask, Don’t Tell (DADT) could be that it somehow allows homosexual conduct which is untrue. Another misconception could be that the military cannot ask a person about it even if there is evidence of it. This too is untrue. The armed forces prohibit homosexual conduct and maintains jurisdiction over its members 24 hours per day and there have been nearly 14,000 members discharged for such conduct since 1993. DADT policy states that sexual orientation is a “personal and private matter and is not a bar to current military service ...unless manifested by homosexual conduct” which includes such things as written and oral communication and same sex marriage. Simply put, the Department of Defense is not to ask members about this conduct and members are not to discuss it.

Complaint process. The complaint process in this case has been handled according to the usual department procedure. However, due to efforts on behalf of the attorney for the complaining party, a media frenzy has been created. This internal investigation began when Mr. Robert Doody, an attorney working for the ACLU of South Dakota sent me a letter detailing the complaint of Jene Newsome. I responded by mail, acknowledging the complaint, giving the internal complaint number and establishing a point of contact with both phone number and e-mail address. In an apparent effort to bring public attention to the results of military’s Don’t Ask Don’t Tell policy, the ACLU has undertaken efforts to publicize Ms. Newsome’s plight, and presumably, to influence the national debate over Don’t Ask Don’t Tell. However, rather than focusing on the military policy, the ACLU’s attention, and therefore, the media’s attention, has been focused on the Rapid City Police Department. The current letter-writing campaign is clearly an effort sanctioned by the ACLU of South Dakota to apply political pressure to Rapid City elected officials into meeting their demands. It is unnecessary and begs the question – what is the real goal of this complaint?

Timeline of complaint and investigation: The complaint letter from the ACLU was dated February 8th. The letter from me to the ACLU acknowledging the complaint was dated February 18th. The investigation began on February 24th. The local media made the first inquiry to the matter on the evening of March 10th and Mayor Hanks was notified of the media interest the same night. The first local story aired March 11th. The Associated Press picked up the story and aired it on March 13th. The investigation was officially completed March 18th.

Conclusion. As pointed out in the previous several pages, there were no violations of department policy, there are valid reasons for documenting and reporting all of the facts of this incident in a police report and there are valid reasons to forward the report to the U.S. Air Force, and the military's right to know is in accordance with federal law. The fact remains that a member of the armed services was discharged following a communication to the Air Force from the RCPD. Sgt. Newsome is responsible for her own actions and on the same note we will be responsible for ours.

Although the complaint in this case is unfounded, based on the circumstances of this case, and given the impact to our ability to effectively police our community I believe some changes in department policy may aid the Department more effectively handling situations like this in the future:

- Effective immediately, we will review all policies related to the exchange of information with other agencies, including the US Air Force. We will establish a separate policy detailing information exchange specific to the military. This policy will take into consideration a renewed level of scrutiny and approval process.
- An advisory council will be formed from willing members of the gay and lesbian community. As stated in the second paragraph, our Department needs input from the community as a whole, but special groups within the community are even less likely to provide feedback especially when they fear ridicule. Working through the Black Hills Center for Equality, I believe we can assemble a group of interested individuals who can help us better serve.

I regret Sgt. Newsome was discharged from the United States Air Force as a result of the military's Don't Ask, Don't Tell policy. The Rapid City Police Department will continually strive to provide quality services to all members of the community while doing what we can to improve our agency. I trust through discussion and cooperation we can enjoy a mutual goal of healing and understanding.

Steve Allender

Chief of Police

Rapid City, SD Police Department