



## Eugene Police Department

777 Pearl Street  
Eugene, Oregon  
(541) 682-8395  
[www.eugene-or.gov/police](http://www.eugene-or.gov/police)

---

# NEWS RELEASE

January 6, 2010

For further information contact:

Rachel Anderson, Acting Public Information Coordinator at 541.682.5197, or  
Melinda Kletzok, APR, Public Information Director at 541.682.5124

### **Chief Announces Adjudication of IA09-224, September 22, 2009 Incident**

Due to the community interest in the internal affairs case in which an officer responded to a trespassing call on September 22, 2009, and used a Taser during an incident with a UO student from China, the chief is publicly announcing his adjudication decision. The following is from a memo sent this morning to the City of Eugene Mayor and Council by Chief Pete Kerns.

-----

#### MEMO

I am sharing with you my conclusions on the internal affairs case in which an officer responded to a trespassing call on September 22, 2009, and used a Taser during an incident with a UO student from China. I made the adjudication on January 5, 2010, and have since notified our employees and the two involved students. I have also met with representatives of the Asian-American community and University to listen to their concerns and explain how I came to my decision.

The police department offers its sincerest regrets that this incident occurred and for any trauma caused by our response to a call for service from the property management company. We find no fault with the students in this incident. We take seriously our responsibilities to serve and protect our residents and visitors. Annually, we respond to hundreds of thousands of calls for service. Not all of those responses have predictable circumstances or outcomes. For any police department, this would be a highly unusual and unpredictable event.

I found this to be a difficult case to adjudicate. While this memo is longer than I'd like, it will be beneficial for you to have more detail due to the controversy surrounding the incident. Also, it is important to understand that in arriving at a finding I may only view



the facts of any case from the perspective of what the officer on scene knew at the time they chose to use force.

An executive summary is contained in the following paragraph.

### Summary

Officers were dispatched to a trespassing call, where the property management asked them to enter the residence and make an arrest. Visually, upon entry, the apartment unit's appearance was consistent with the call and witness reports. Officers announced themselves repeatedly, encountered an Asian man, and took him into custody without incident. Another officer continued the search upstairs, before having heard the first subject speak. He found another Asian man sitting on the floor, clutching a blanket to his chest, with one hand covered by the blanket. Despite verbal commands, turning on the light, and nudging the subject's shoulder the subject did not respond, possibly due to 'jet lag.' This would still be consistent with the appearance of a trespasser. The officer tried to pull the blanket from the individual's hand, and unexpectedly fell to the floor. While the officer was startled by the fall, the subject leaned toward him and when ordered to get back, continued to move toward him. At this time the officer deployed the Taser. The officers subsequently discovered during their investigation that the men were Chinese students and at the apartment legally. A sergeant was called to the scene and provided a translation service to the two men, who spoke little English.

The officers acted within policy when they entered and searched the apartment, conducted their trespassing investigation, and used force with the Taser. The policies at issue were Search Warrants (governing warrantless entries), Preliminary Investigations, Arrests (probable cause), Constitutional Rights, Use of Force, Authorized Use of the Taser, and Limited English Proficiency.

### Detail

The involved officers were dispatched to the scene to respond to reports of a trespasser sleeping or passed out in a vacant apartment. There were recent trespassing incidents at the apartment and according to the apartment's manager; this appeared to be another similar case. Witnesses describing the reported break-in were two employees of the property management firm; one who had witnessed the alleged trespasser just before calling police. They gave specific details as to how they believed the individual entered through a window, including what they saw as evidence of the break-in. The officers were asked to enter the apartment by the property's employees and arrest that individual. The apartment appeared vacant when the officers entered. It was without furniture or personal affects. They called out in loud voices identifying themselves as police and asked anyone present to show themselves when they conducted an initial ground level search with their flashlights and pistols. As they climbed the stairs, still calling out, they encountered an Asian man in his early 20s and handcuffed him.

One officer continued with the search, without having heard the first subject speak, and found another Asian man in his early 20s in a bedroom, sitting up on the floor, clutching a blanket to his chest, with one hand covered by the blanket.

- 1) The officer gave many commands to the man, asking that he show his hands. The man never spoke, stared at the officer, and appeared unresponsive.



- 2) The officer turned on the bedroom light, placed his pistol in its holster and withdrew the Taser. He continued giving commands that did not elicit any apparent response.
- 3) Continuing to give commands, the officer nudged the subject's shoulder, which also did not elicit any apparent response.
- 4) Finally, while giving commands, the officer attempted to pull the blanket from the subject's grasp.
- 5) Unexpectedly and unaware of what caused it, the officer fell to the floor next to the subject; perhaps with his legs tangled together with the subject's legs.
- 6) Over the course of a second or two the following happened: while the officer was startled by the fall, the subject leaned toward him. The officer ordered him to get back and the subject apparently continued to move toward him.
- 7) The officer discharged the Taser, striking the subject in the chest.
- 8) The officer can be heard on the Taser video calmly continuing to give commands to the subject to show his hands.
- 9) The officers found identification and a rental agreement in the apartment and confirmed with the property management firm that the two men had rented the apartment that day.
- 10) A sergeant was called to the scene and provided a translation service to the two men, who spoke little English.

### Policies

The purpose of my review was to determine if the officers acted within policy when they entered and searched the apartment, conducted their Trespassing investigation, and used force with the Taser. The policies at issue were Search Warrants (governing warrantless entries), Preliminary Investigations, Arrests (probable cause), Constitutional Rights, Use of Force, Authorized Use of the Taser, and Limited English Proficiency.

1. **Search Warrants (warrantless entries):** The officers acted in good faith when they were asked by the credible employees of a local, reliable property management firm to enter an apartment the employees believed they were in control of, to arrest a reported trespasser. The officers' entry and search of the apartment was within policy.
2. **Preliminary Investigations:** When the officers entered the apartment, it appeared vacant. After handcuffing the two men, the officers found identification and a rental agreement and questioned the employees again, learning the two men were the renters. The officers conducted an investigation that led to the conclusion the men were not committing the crime of Trespass.
3. **Arrests and Constitutional Rights:** Based on what had been reported to them by agents of the property management firm, the officers had probable cause to arrest or detain the men in the apartment. They handcuffed and detained the men briefly, then released them when they discovered a crime had not been committed. The detention of the two men was within policy and in compliance with our Constitutional Rights policy.
4. **Use of Force, and Authorized Use of the Taser:** In the split second the officer chose to use the Taser, he was in a vulnerable position with an unresponsive and thus unpredictable individual whom the officer reasonably believed to be a trespasser, outweighed him by about 40 pounds, and potentially had a weapon in a hand out of view under a blanket.
  - a. Officers had been calling to occupants in the apartment from the moment they entered
  - b. The officer attempted to use his visual presence to gain compliance by turning on the room light
  - c. He used verbal control by giving many clear commands
  - d. He applied two low levels of physical control (nudged with foot, attempted to pull blanket)



- e. He only used the Taser when he was in a vulnerable position, immediately next to the subject, when the subject moved toward him and did not get back. Based on what the officer knew at that moment, the decision to use the Taser was objectively reasonable under the circumstances and within policy.
5. **Limited English Proficiency:** After learning the two men spoke a dialect of Chinese and little English, the responding sergeant authorized the use of a translation line to facilitate effective communication with the two students.

### Policies, Practices and Training

I am sorry that this incident occurred; however we can use it to improve our policies, practices and training.

1. While I believe our practices are sound, we do not have a comprehensive policy on warrantless entries into homes, as some departments across the country do. We will work with the Police Commission and Police Auditor to significantly enhance both policy and training on this very important issue.
2. The threshold for the use of the Taser (threat to physical safety) needs clarification through policy and training. We will continue to work with the Police Commission on making improvements in our use of force policies and in particular Taser deployment.
3. As our demographic diversity increases, the department must continue to improve in its level of cultural competence. Our department will reach out to the university community to better identify the different cultures and languages served by the University of Oregon. We will also reach out to groups that represent the various culturally diverse residents and visitors we serve, to become more aware and improve our cultural competency.

---

###

