

## **ANNOUNCEMENT OF AN IMPORTANT TASER COURT DECISION**

On October 17, 2011, the United States Ninth Circuit Court of Appeals finally decided the combined cases of **Mattos v. Agarano**, No 08-15567 and **Brooks v. City of Seattle**, No. 08-35526.

I am reporting only part of that decision rather than the entire decision because I am still briefing it. It is a long one. I thought it expedient to report the general findings by the Court at this early time so that you are aware of it. And if you want to read the entire opinion before my brief is completed I have attached it to this email.

In both cases, the Court concluded that the officers used excessive force against the two citizens, but that, since the law was not clearly established when the force was used so that a reasonable police officer would not have known it was excessive, the officers are entitled to the qualified immunity which means they will not have to go to court to be tried in a civil action for damages.

This case is important to officers every where in the nation because it establishes a precedent for what constitutes excessive force in the circumstances of those two cases and thus, will be referred to by other courts as established law that would enable a reasonable police officer, in similar circumstances, to know that his actions or use of force is unreasonable and therefore excessive and thus the officer will not be entitled to qualified immunity and will have to defend himself in a civil action for damages. It means that police officers

I am planning on drafting a set of guidelines for use of the taser by police officers based on this combined decision and others sometime soon and will publish them in the Bulletin when completed.

In the meantime, before using a taser on any person the officer must consider all the circumstances then existing and keep in mind that your use of it must be reasonable in light of the various factors outlined in **Mattos and Brooks**. The guidelines I draft will incorporate these factors in a way that will enable a police officer when considering and weighing them, will be able to make the correct decision on whether to use it at all, and if it is used, the reasonable manner in which it should be used, as a court of law will look at it in a lawsuit brought by a citizen over its use. The goal of the guidelines will be to enable a police officer following them to enjoy a decision by a court of law finding that there was no violation of the citizen's rights or, if there is such a finding, then a decision by the court granting the officer qualified immunity so that he/she will not be required to stand trial for the violation of rights.