



## CITY ATTORNEY UPDATE

### U.S. SUPREME COURT DENIES REVIEW - UPHOLDING UNANIMOUS CALIFORNIA SUPREME COURT DECISION ON DUI'S

By City Attorney Jan Goldsmith

The United States Supreme Court on Monday [rejected](#) a DUI defendant's final challenge to the overall reliability of breath-alcohol testing instruments in California. This is a big victory in the war against drunk driving by the San Diego City Attorney's Office.

On November 21, 2013, in a [unanimous decision](#) written by Chief Justice Tani Cantil-Sakauye, the California Supreme Court held that a defendant charged with driving with a blood-alcohol level of 0.08 percent or more may not call an expert witness to challenge the overall reliability of breath-alcohol testing instruments. Such instruments are regularly used by law enforcement on a daily basis throughout California to test drivers' blood-alcohol levels.

California Highway Patrol Sergeant Richard W. Berg arrested Terry Vangelder on suspicion of DUI after stopping him for driving 125 miles per hour on Highway 163. Vangelder exhibited few signs of impairment on the field sobriety test. A handheld breath testing device recorded 0.095 and .086 BAC readings. At the police station, a breathalyzer test produced two 0.08 BAC readings, just over the legal limit.

At trial, the judge refused to allow defense experts to testify that breath alcohol readings are inherently inaccurate. The jury could not reach a verdict on the generic Driving Under the Influence charge, but it found Vangelder guilty of "per se" DUI because the breathalyzer read 0.08. The California Court of Appeal reversed the trial court decision in 2011. The San Diego City Attorney's Office appealed to the California Supreme Court, where Deputy City Attorney Jonathan Lapin argued the People's case.

The California Supreme Court held: "[D]efendant remained free to argue, and present evidence, that the particular machines used in this case malfunctioned, or that they were improperly calibrated or employed. But the fundamental reliability of the breath-testing models used in this case to produce results that are pertinent to the [§23152(b)] has been determined by the Legislature. That legislative determination is not subject to rebuttal as a defense in a criminal prosecution."

Steve Lykins, Executive Director of Mothers Against Drunk Driving in San Diego hailed the decision, stating: "It is a victory for all those impacted by impaired drivers, including those injured or killed. My sincere gratitude goes out to San Diego City Attorney Jan Goldsmith and his exemplary staff for fighting the good fight."

**"Driving under the influence claims thousands of lives each year." said City Attorney Jan Goldsmith. "Our office prosecuted more than 5,500 DUI cases last year with a conviction rate of higher than 99%. The rejection by the U.S. Supreme Court of this last appeal in the Vangelder case is a major victory in the war against drunk driving in California."**