

# **LAW OFFICE OF CHARLES SEVILLA**

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## **RESUME OF CHARLES M. SEVILLA**

### **EDUCATION:**

LL.M., George Washington University, Washington D.C., 1971; J.D., University of Santa Clara, Santa Clara, California, 1969; B.A., San Jose State College, San Jose, California, 1966

### **ADMITTED TO PRACTICE:**

California: Supreme Court of California; U.S. District Court for the Northern District of California; U.S. District Court for Southern District of California; U.S. Court of Appeals for the Ninth Circuit

Washington, D.C.: U.S. District Court for the District of Columbia; U.S. Court of Appeals for the District of Columbia; Supreme Court of the United States

### **EMPLOYMENT:**

Law Office of Charles Sevilla (2004 to present)

Partner, Cleary & Sevilla, LLP (1983 to 2004)

Chief Deputy State Public Defender (1979 to 1983); Chief Assistant State Public Defender, Los Angeles (1976 to 1979)

Federal Defenders, San Diego, California; trial attorney (1971 to 1972). Chief Trial Attorney (1972 to 1976)

Washington, D.C., private practice (1971); VISTA Legal Services, Urban Law Institute, Washington, D.C., Staff Attorney (1969 to 1971)

**SELECTED PUBLICATIONS:**

“Campus Sexual Assault Allegations, Adjudications, and Title IX, **NACDL CHAMPION**, Nov. 2015, cited in Safko, “Are Campus Sexual Assault Tribunals Fair?: The Need for Judicial Review and Additional Due Process Protections in Light of New Case Law, 84 **Fordham L. Rev.** 2289 (2016).

“Antisocial Personality Disorder: Justification for the Death Penalty?” 10 **Journal of Contemporary Legal Issues** 247 (U. San Diego School of Law 1999)

"Criminal Defense Lawyers and the Search for Truth," 20 **Harvard Journal of Law & Public Policy** 519 (Winter 1997).

"April 20, 1992: A Day in the Life," 30 **Loyola Law Review** 95 (November 1996)

“Redefining Federal Habeas Corpus and Constitutional Rights: Procedural Preclusion,” 52 **National Lawyer’s Guild Practitioner** 33 (1995).

"Thoughts on the Cause of the Present Discontents: The Death Penalty Case of Robert Alton Harris," 40 **U.C.L.A. Law Rev.** 345 (Dec. 1992) [co-author with Michael Laurence].

"Investigating and Preparing an Ineffective Assistance of Counsel Claim," 37 **Mercer L.Rev.** 927 (1986).

"Polygraph 1984: Behind the Closed Door of Admissibility," 16 **Univ. West Los Angeles L. Rev.** 1 (1984).

"The Exclusionary Rule and Police Perjury," 11 **San Diego Law Review** 839 (August 1974), cited in **People v. Cook** (1978) 22 Cal.3d 67, 86 n. 7, **People v. Tallagua** (1985) 174 Cal.App.3d 145, 151, and **Franks v. Delaware**, 438 U.S. 154, 168 n.7 (1978).

"Between Scylla and Charybdis: The Ethical Perils of a Criminal Defense Attorney," 2 **Journal of Criminal Defense** 237 (Fall 1976). Published in California Defender Magazine, First Quarter 1999, p. 14-36, Vol. 8, No. 3, and updated December 30, 2016.

"In Defense of the Alien," 4 **Chicano Law Review** 1 (1977); also published in more abbreviated form in 1 **Journal of Criminal Defense** 255 (Fall 1975).

"Reliability of Polygraph Examination," 14 **Am Jur Proof of Facts** 1 (1977).

**California Criminal Defense Practice**, co-editor/consultant, (Matthew Bender 1982 to present).

**Law and Disorder** (W.W. Norton, 2014); **Disorder in the Court** (W.W. Norton, 1992, 1999); **Disorderly Conduct**, co-editor (W.W. Norton, 1987, 1999). Books of trial humor.

**Wilkes on Trial** (Ballantine 1993). **Wilkes: His Life and Crimes** (Ballantine 1990). Two novels.

### **BAR ACTIVITIES:**

President of California Attorneys for Criminal Justice (1979 to 1980)

San Diego Criminal Defense Lawyer's Club (President 1988 and active member to present); San Diego Criminal Defense Bar Association (Board of Directors, presently)

Member, Board of Directors, San Diego Defender Board, 1994-2009

Member, Ninth Circuit Advisory Committee on Rules of Court & Internal Procedures (1996 to 2002)

San Diego County Bar Association, Federal Court Committee, Chairman (1974 to 1975)

## MISCELLANEOUS:

Listed in **The Best Lawyers in America**: all editions from 1987-2019 (Woodward/White, Inc.); *see also San Diego Magazine*, April 2015 (top 50 attorneys in San Diego). Named one of the top 10 attorneys in San Diego in **Superlawyers Magazine**, 2010. AVVO rating: highest.

Awarded California Attorneys For Criminal Justice Lifetime Achievement Award, December 2011.

Member, Committee on Standard Jury Instructions, Criminal (CALJIC) (1976 to 1983).

Member, Governor's Interim Advisory Commission on Camarillo State Hospital (1976 to 1977).

Board of Governors, California Public Defenders Association (1978 to 1980).

## CRIMINAL LAW APPELLATE SELECTED PUBLISHED OPINIONS

### FEDERAL APPELLATE:

Argued and briefed scores of appellate cases before the Ninth Circuit Court of Appeals including **U.S. v. Singh & Azano** 924 F.3d 1030 (9th Cir. 2019) (federal election donation offenses upheld save for one count reversed); **Deck v. Jenkins**, 814 F.3d 954 (9th Cir. 2016) (habeas corpus reversal of state conviction for DA arguing “pre-crime” theory to the jury); **U.S. v. Boitano**, 796 F.3d 1160 (9th Cir. 2015) (reversing tax fraud convictions for insufficient evidence); **U.S. v. Mincoff**, 574 F.3d 1186 (9th Cir. 2009) (raising multiple issues in drug conspiracy including whether a “buy-sell” agreement between the defendant and another can become a conspiracy); **U.S. v. Awad**, 551 F.3d 930 (9th Cir. 2009) (finding constitutional error in instructions on intent element of 18 U.S.C. 1347 offense, but also harmless); **U.S. v. McTiernan**, 546 F.3d 1160 (9th Cir. 2008) (reversing the denial of the defendant’s motion to withdraw his guilty plea); *but see U.S. v. McTiernan*, 695 F.3d 882 (9th Cir. 2012) upholding conviction after the remand and hearing of wiretap issue; **Chein v. Shumsky**, 373 F.3d 978 (9th Cir. *en banc* 2004), *cert. denied* 125 S. Ct. 415 (2004) (reversing all three counts of perjury for insufficiency of evidence); **Medina v. Hornung**, 386 F.3d 872 (9th Cir. 2004) (finding federal constitutional error, but harmless); **U.S. v. Ziskin**, 360 F.3d 934 (9th Cir. 2003)(interlocutory [pre-trial] appeal on double jeopardy issue affirmed); **Sassounian v. Roe**, 230 F.3d 1097 (9th Cir. 2000) (overturning special circumstance based on jury misconduct); **Dubria v. Smith**, formerly at 197 F.3d 390, initial opinion reversing conviction itself reversed on rehearing *en banc* 224 F.3d 995 (9th Cir. 2000) (upholding doctor’s murder conviction based upon finding of no constitutional error in playing tape where officer opined about evidence of guilt); **U.S. v. Toothman**, 137 F.3d 1393 (9<sup>th</sup> Cir. 1998)(reversing because plea of guilty deemed involuntary); **U.S. v. Rutgard**, 116 F.3d 1270 (9<sup>th</sup> Cir. 1997)(reversing multiple counts, forfeiture, restitution and sentence orders after five month Medicare fraud trial); **U.S. v. Consuelo Gonzalez**, 521 F.2d 259 (9th Cir. *en banc* 1975) (probation search condition allowing law enforcement officers to search probationer's home held illegal); **U.S. v. Martinez-Fuerte**, 514 F.2d 305 (9th Cir. 1975) (warrant inspection held unconstitutional, but reversed by U. S. Supreme Court, see below); **U.S. v. Pena-Garcia**, 505 F.2d 964 (9th Cir. 1974) (judicial misconduct in accusing witnesses of perjury before jury warrants reversal); **U.S. v. Carpenter**, 496 F.2d 855 (9th Cir. 1974) (search and seizure of controlled substance from defendant's body cavity held unconstitutional); **U.S. v. DeBetham** (S.D. Cal. 1972) 348 Fed.Supp. 1377, *aff'd* 470 F.2d 1367 (9th Cir. 1972) (discusses introduction of polygraph evidence in discretion of trial court); **U.S. v. Preciado-Gomez**, 529 F.2d 935 (9th Cir. 1976) *cert. denied*, 425 U.S. 953, 96 S. Ct., 1730, 48 L. Ed. 2d 197. (discussing standards for vindictive prosecution claim); **Locks v. Sumner**, 703 F.2d 403 (9th Cir. 1983)(discussing due process implications of judge coercing verdict

on deadlocked jury.) This includes a decade of briefing and arguing the capital case of **Robert Alton Harris** in the Ninth Circuit: 692 F.2d 1189 (1982); 885 F.2d 1354 (1988); 901 F.2d 724 (1990); 913 F.2d 606 (1990); 928 F.2d 891 (1991); 949 F.2d 1497 (1991).

#### **UNITED STATE SUPREME COURT:**

Argued and briefed three cases in the Supreme Court of the United States: **Knowles v. Mirzayance**, 556 U.S. 111 (2009) (Ninth Circuit grant of federal habeas corpus relief to state conviction based on ineffective assistance of counsel overruled); **United States v. Martinez-Fuerte**, 428 U.S. 543 (1976), and **United States v. Ortiz**, 422 U.S. 891 (1975) (both involved the constitutional search and seizure limits of the agents of the Immigration and Naturalization Service.)

#### **CALIFORNIA SUPREME COURT:**

Briefed and argued the following cases before the state high court: **People v. Vangelder** (2013) 58 Cal.4th 1, reversing 197 Cal.App.4th 1, and holding that in a DUI case based on breath alcohol the trial court's exclusion of defense expert testimony that breath machines inaccurately measure breath alcohol was appropriate but only on the .08 count); **People v. Ault** (2004) 33 Cal.4th 1250 (confirmed defense position that abuse of discretion is the proper standard of review for a State appeal review from a granted motion for new trial based on jury misconduct); **In re Hambarian** (2002) 27 Cal.4th 826 (holding conflict of interest not established sufficient to warrant recusal of DA prior to preliminary hearing); **People v. Barton** (1995) 12 Cal.4th 186 (holding a defendant cannot refuse lessor included offenses if the evidence warrants giving the instructions); **In re Sassounian** (1995) 9 Cal.4th 535 (defines what "material evidence" means in context of a jailhouse informant's mendacious testimony in murder trial; see relief granted above on federal habeas, **Sassounian v. Roe**, 230 F.3d 1097 (9th Cir. 2000); **In re Alvernaz** (1992) 2 Cal.4th 924 (recognizing post-trial remedy for ineffective assistance of counsel in plea bargaining but denying relief to petitioner; *but see* **Alvernaz v. Ratelle** (S.D. Cal. 1993) 831 F.Supp. 790 (granting relief to same petitioner on federal habeas corpus); **People v. Hedgecock** (1990) 51 Cal.3d 395 (in reversing former Mayor of San Diego's convictions, the Court defined the materiality element of the crime of perjury); **In re Martin** (1987) 44 Cal.3d 1 (murder conviction reversed due to prosecution misconduct in suppressing defense evidence); **People v. Skinner** (1985) 39 Cal.3d 765 (new insanity test applied to reverse murder conviction); **People v. Robertson** (1982) 33 Cal.3d 21 (death penalty reversed for new penalty trial); **People v. Thompson** (1980) 27 Cal.3d 303 (death penalty reversed for lack of sufficient evidence to prove special circumstances); **In re Ramon M.** (1978) 22 Cal.3d 419 (Court adopted the sanity standard for the mentally disabled -- that of the American Law Institute); **In re Danny T.** (1978) 22 Cal.3d 918 (law requires judge to act on a petition for rehearing within 20 days or a de novo hearing is granted by operation of law).

**PUBLISHED CALIFORNIA COURT OF APPEAL CASES:** **People v. Saldana** (2018) 19 Cal.App.5th 432 (reversing conviction for violation of Miranda requirements where defendant was initially told he was free to go, but circumstances significantly changed during the 30 minutes before the admissions occurred, during which time the detective asked an unrelenting number of accusatory questions and repeatedly rejected defendant's denials); **People v. Rowe** (2014) 225 Cal.App.4th 310 (appellate court reversed magistrate grant of relief in declining to hold defendant to answer the solicitation charges because the evidence presented provided a rational ground for believing defendant committed charged offenses); **People v. Spector** (2011) 194 Cal.App.4th 1335 (affirming conviction of music producer; co-counsel with Dennis Riordan); **People v. Higgins** (2011) formerly 191 Cal.App.4th 1075; 119 Cal.Rptr.3d 856 (reversed defendant's convictions of burglary and ADW with a gun based upon a finding of pervasive prosecution misconduct which included, among the many errors, improperly undermining the credibility of the defendant, his counsel and his expert witness, *depublished*); **People v. Cissna** (2010) 182 Cal.App.4th 1105 (conviction reversed for jury misconduct); **People v. Singleton** (2010) 182 Cal.App.4th 1 (affirming conviction involving *Kastigar* issue and compelled statements; holding instructional error harmless); **Quinones v. Superior Court** (2008) formerly 166 Cal.App.4th 1519; 83 Cal. Rptr. 3d 468 (reversing denial of PC 995 motion where prosecution added new torture charge after a preliminary hearing on an ADW allegation; *depublished*); **Chapman v. Superior Court** (2005) 130 Cal.App.4th 261, 266 (estoppel doctrine not applicable where Port attorney advises Port Commissioner on conflict of interest issue); **People v. Basuta** (2001) 94 Cal.App.4th 370 (reversing baby shaking case for failure to permit the defense to present its case); **People v. Dunn-Gonzalez** (1996) 47 Cal.App.4th 899 (delay in bringing charges not deemed prejudicial); **People v. Mikhail** (1993) 13 Cal.App.4th 846 (murder appeal: court has no right to nullify a no sentencing limitation plea bargain, reversed); **People v. Stark** (1992) 18 Cal.App.4th 1657 (denial of admission of psychological expert found to be error, but harmless); **People v. Sassounian** (1986) 182 Cal.App.3d 361 (murder of Turkish Counsel to USA affirmed by split decision and now in state and federal habeas corpus litigation, but see Ninth Circuit reversal of the special circumstance *supra*); **People v. Rivera** (1984) 157 Cal.App.3d 494 (prosecution attempt to appeal reduction of sentence for illegal disparity dismissed); **People v. Blackington** (1985) 167 Cal.App.3d 1216 (murder case reversed for prosecutorial misconduct); **People v. Domenzain** (1984) 161 Cal.App.3d 619 (right to speedy sentencing claim rejected; right to be notified of credits reduction upheld and remanded for a hearing); **People v. Tyner** (1978) 76 Cal.App.3d 352 (conviction reversed based on *Faretta* violation); **People v. Tomas** (1977) 74 Cal.App.3d 75 (conviction reversed based on mental incompetency of defendant); **People v. Banks** (1976) 67 Cal.App.3d 379 (conviction reversed based on improper self-defense instructions).