

# A SUPREME VICTORY

By Aleta Mayne

**ONE COMPLETE SENTENCE.** That was all David Mills '99 had the chance to utter on the morning of November 1, 2010, before John G. Roberts, chief justice of the U.S. Supreme Court, interjected. Although he had spent weeks rewriting and perfecting the first few sentences of his opening argument, Mills was not rattled by the interruption. The 33-year-old attorney knew every detail of his case, *Ortiz v. Jordan*, and he believed his client deserved justice. For the next 27 minutes, as Mills stood at the U.S. Supreme Court podium in a navy blue suit, the justices fired questions at him and he answered with confidence. Behind Mills sat an intent audience of approximately 150 people, including his client, Michelle Ortiz, as well as his family and friends.

"I had to get up and leave because I was crying — I kind of hyperventilated," recalled Ortiz. This day was a long time coming for a woman who felt like she had been assaulted not only by her assailant, but also by the legal system, and she was overcome by an emotional tidal wave as the circumstances of her hardship were rehashed.

**THE CASE AT HAND** In 1996, Ortiz was serving a 12-month prison sentence for a domestic violence incident with her physically abusive husband. During this time, Ortiz was sexually molested twice by a guard at the Ohio Reformatory for Women, and when she reported it to prison officials, she was thrown into solitary confinement. Upon release, Ortiz sued state and prison officials for violating her constitutional rights. Although the jury awarded her \$625,000 in damages, the defendants appealed to the Sixth Circuit, which overturned the verdict.

Enter David Mills, who, one Friday afternoon in October 2009, received a phone call that would alter his future. For the past year, Mills had been running a solo appellate practice out of his apartment in downtown Cleveland, and he was surviving but certainly not thriving. His colleague on the other end of the line told Mills about Ortiz, who wanted to take her case to the Supreme Court and was frantically calling every lawyer in the phone book. Time was running out, and no one would take the case. In fact, the deadline was that very day. “My first reaction was that we would have to get an extension of time to even file anything in the Supreme Court,” Mills said. He called Ortiz up and spoke to her as he read more about the case online. It was an area of law Mills was familiar with, so he agreed to write and file the request for an extension of time — with only four hours remaining.

When Ortiz first spoke to him, she thought he sounded young, but he knew more than the other lawyers she had spoken to and she felt comfortable with him. “He was kind of shocked that no one else I spoke to seemed to know that I was entitled to an extension at the Supreme Court level,” Ortiz recalled. “I was asking him a bunch of questions, but he said to stay calm because the extension had to get filed first, so the quicker we got off the phone, the sooner he could get started.” Once Mills researched the case further, he found a hook — but it was a long shot to get a case heard by the Supreme Court, he warned his new client.

Ten days later, Justice John Paul Stevens granted the extension. That was their first victory. The court agrees to hear less than 1 percent of the petitions it receives each year, but both Mills and Ortiz felt in their bones that they had a viable case. On April 26, 2010, Mills logged on to [www.supremecourt.gov](http://www.supremecourt.gov), and saw that the case was one of only two accepted out of 170 cases up for consideration that day. In November, Ortiz would have her chance.

**‘HOT BENCH’** Sitting in the Supreme Court Building, Ortiz said, “I was finally in front of the people [whom] I truly wanted to see, to let them really know what’s happening in prison.” And there was no one she would rather have had pleading her case than Mills, she added.

Ortiz watched as the young lawyer performed what he described as “an incredible type of mental gymnastics.” Every time Mills began to further explain a point, another justice would jump in with a new question. “That day, they were what they call a particularly ‘hot bench,’” he said. “You’ve got active questioners coming at you from all sides, and any

question is fair game, so you need to be able to do a lot of things at once. You’re thinking about your presentation and where you want it to go, you’re listening as close as you can to the question, you’re trying not to be overwhelmed by the fact that you’re at the Supreme Court of the United States, and at the same time, you’re trying to remember what questions you’ve gotten and what you’ve said so you can respond to new questions and maybe refer to previous answers.”

Twenty-five minutes into Mills’s exchange with the justices, the white light on the lectern lit up, indicating that there were only five minutes of his allotted time left. Wanting to reserve those remaining minutes for rebuttal at the end, Mills was feeling tense as Justice Elena Kagan asked for clarification on a point. After responding to Kagan and a final question from Justice Samuel Alito, with three minutes left, Mills turned to Chief Justice Roberts and said, “I’d like to reserve my time.”

He then joined his co-counselors, Christian Grostic and Andrew Pollis, at their table next to the lectern to listen to the respondent’s argument. “I started scribbling notes while the other person was arguing, but I’m not sure David paid attention to a single thing I wrote,” Grostic recalled. “He was still ready and able to respond.”

Acknowledging that three minutes is “an incredibly short amount of time,” Mills said he nevertheless felt effective in his rebuttal. “Honestly, that was the best part of the argument,” confirmed Grostic, a litigator with Cleveland firm Kushner & Hamed Co. “He got up there, nailed a couple points, got this great final line out, and then it was done.”

Walking out of the courthouse, Grostic told Mills, “You’re going to win this case; you just won it on rebuttal.” Adding to the accolades, Michael Mills ’00 told his older brother, “That’s the most amazing thing I’ve ever experienced.”

**IT’S UNANIMOUS** Not knowing for sure whether a ruling would come down in January, February, or March of this year, on Monday, January 24, Mills sat anxiously at his computer hoping that news of the case would be delivered through SCOTUSblog, a website run by a Washington, D.C., firm that delivers live updates as the U.S. Supreme Court issues opinions. The site had given notice the previous week that opinions were going to be announced at 10 a.m. that day. “I knew it was possible that my case would be among them,” Mills recalled.

The click, click, click of the reporter’s typing sounded through the blog, and “The next case is *Ortiz v. Jordan*” popped up on the screen. Grostic, who was glued to the computer screen in his own office, immediately called Mills to ask, “Are you watching this?” They waited a few seconds. When the site updated, the decision appeared: “Sixth Circuit reversed, 9-0, in an opinion by Justice Ginsburg.” They had won. “It’s unanimous!” Grostic burst out. “I’ve got to

go; I’ve got to read this thing,” Mills told him, and hung up.

Although one would expect Mills to pop a bottle of champagne or jump up and down over this kind of news, he had a decidedly more composed reaction. Having prepared himself for the possibility of a win, “I knew I needed to be in the mind-set of handling a few things in a professional manner,” he said. “I needed to read the opinion, at least briefly, understand what was decided, and then let Michelle know before she found out some other way.”

Mills called Ortiz and said, “I have very, very good news. You won your case.”

“Oh my God! Praise the Lord!” Ortiz exclaimed. As Mills continued to explain the ruling, an overwhelmed Ortiz was unable to listen. She told him



Jim Stroup

**David Mills ’99 accepted a case that no other attorney would touch and presented it in front of the U.S. Supreme Court.**

that she would have to call him back after she had taken a few minutes to collect herself. “I was just pacing, repeating, ‘Oh my gosh, it’s over,’” Ortiz remembered. “Because I’m so tired of this.”

**CIRCUIT SPLIT** Whereas the story behind Ortiz’s case is like something out of a movie, the legal issue on which the case was accepted and won in the Supreme Court is something out of a law textbook. The guard who molested Ortiz vanished as soon as the investigation was launched; the responsible parties named in the suit were prison officials Paula Jordan and Rebecca Bright. Ortiz alleged that Jordan did nothing to ward off the second assault after she reported the first incident and that Bright retaliated against her by placing her in solitary confinement, shackled, without adequate heat, clothing, bedding, or blankets. “Her case involved what’s called a 1983 suit,” explained Mills, “which is basically a statute that enables people to sue state officials for a violation of their constitutional rights.” Both officers, she said, violated her rights, as safeguarded by the Eighth and Fourteenth Amendments, to reasonable protection from violence while in custody and to avoid retaliation for speaking out. It was an area of law Mills was familiar with, having encountered it often in his past work clerking for federal judges.

In Ortiz's case, the judge had refused to grant a pre-trial motion for dismissal by Bright and Jordan. The case went to trial, and Ortiz won. But, on appeal, the appeals court ruled 2-1 that the pre-trial motion should have been granted. In question was a matter of summary judgment — "whether a court of appeals can overturn a jury verdict based on arguments that the defendant had made even before the trial occurred," Mills explained. "Once I started researching it further, it became more clear to me that this procedural question was being treated very differently in federal courts across the country [a circuit split], which intrigued me because, as most attorneys know, if there's an issue that's dividing federal courts, that's something the Supreme Court might have an interest in."

When Mills initially told Ortiz he would take the case, she could not afford to pay him up front, so she asked if she could pay him in six weeks. "I was crying in his office," Ortiz recalled. She told him, "I know my case can make it all the way and I can't make it without you." She then gave him a hug and said, "Please think about it." Mills wasn't in a position to work for free, but after some consideration, he agreed, and she was able to pay him later. To offer her thanks, she also crocheted him a red-white-and-blue afghan that reads "God Bless America. Land That I Love." As she explained to the *Cleveland Plain Dealer*, "I wanted to give him something that he could tell I put a lot of work into, the way he was working on my case."

Part of his preparation involved four chances to practice through moot arguments at the University of Michigan Law School, his alma mater; Cleveland State Law School; Case Western Law School, where he is an adjunct professor; and Public Citizen, a non-profit in Washington, D.C., that brings in Supreme Court experts for these practice arguments. Mills described the moot arguments as "Very intense. You're in front of your colleagues, professors, and maybe 50 students watching you, so it's as if you have an actual argument going on and the same stress to perform under pressure." In the same breath that Mills mentioned how draining these practice argu-

**"I said that when I went to Washington, I would leave all the nightmares of the incident on the steps of the courthouse." — Michelle Ortiz**

ments were, he added that they took place within three weeks of his real Supreme Court hearing — not to mention the fact that he had two other real arguments in the Sixth Circuit in the same period. "The good news is, I got the Sixth Circuit to reverse the sentences in both of those cases, so I was doing something right," Mills said. "Although, sometimes, I felt like I was running on fumes."

**LOGICAL LEAP** At Colgate, Mills was "unusually serious about his academic work" and "deeply interested in questions of human rights and social justice,"

said his undergraduate adviser, mentor, and longtime friend, Dan Saracino, who is the Neil R. Grabois Professor of mathematics. Although math might be an unexpected major for someone who became a lawyer, Mills said, "All the training in mathematical logic helped with much of what is involved in being an attorney — not only identifying important issues, but also really being able to break them down into a cohesive, structured format to explain the points and conclusion."

He also expressed his interest in social justice issues by taking philosophy courses; participating in the Skin Deep retreat, a weekend-long workshop on racism and diversity; and serving as president of the Student Government Association (SGA). "I don't think he decided to run for president for any other reason than to try to make a change," his brother, Michael, said. One of his actions as SGA president was starting the Student Curriculum Initiative, which recommended incorporating issues of social justice into the core curriculum. Saracino said, "He had something different from what you might expect to see in somebody that age. It was not just youthful idealism; it was the more measured and mature view of someone who realized that the problems were complicated and that he had to understand a lot more if he was going to do anything in an effective way.

"And he did just that; he went to law school and learned what he needed to learn," Saracino added.

**NEXT STEP** Mills hadn't planned on attending law school, but in a conversation with his parents during his junior year at Colgate, he realized that becoming a lawyer might help him take his interest in social justice, poverty, and race issues toward accomplishing his goal of "having an impact on the real world in those contexts," he explained. He graduated with honors from the University of Michigan Law School

in 2002. Afterward, he joined one of the largest firms in the world, Jones Day in Cleveland, where he had interned during the summer.

Part of his attraction to the firm was its policy to encourage pro bono

work, which he took advantage of, even working on a death penalty appeal.

Although his colleagues have reported that Mills was on the fast track to partnership at Jones Day, after four years with the firm, he took a step back to consider where he wanted to take his future. The idea of clerking for a federal judge intrigued him. "You're basically an attorney advising the judge on all the cases he or she is facing, so you see the other side of the bench and how decisions are made on a variety of cases," Mills explained. He spent a year clerking for Judge R. Guy Cole in Columbus, Ohio, in



Jim Stroup

**In suing the officials who wronged her, Mills's client Michelle Ortiz said she was fighting for the rights of all prisoners who are harmed while incarcerated.**

the Sixth Circuit. "I liked it so much that I wanted to do it again the next year, maybe for a judge who was at the trial level in the federal system," he said. That desire led Mills to a clerkship for Judge Louis Oberdorfer, a now-92-year-old legend in Washington, D.C., who handled numerous cases on appeal. Clerking for the senior judge, Mills learned a lot about federal appeals and decided to take a chance on starting his own solo appellate firm.

"Many people thought I was crazy to say my practice is federal appeals," Mills recalled. "Rarely do attorneys practice solely in the federal system; often they handle state issues as well," he explained. "But it was the area I enjoyed and knew really well."

In addition to expressing doubts about the area of law Mills chose to focus on, his colleagues warned him that although he had solid credentials, he lacked name recognition. Despite the naysayers, Mills spent the last summer of his clerkship researching how to start and run his own practice, from office space to business cards to malpractice insurance. He reached a point where he thought, "I'm going to give it a run, and if, after a year, it's miserable and failing, I'll do something a little more 'normal.'"

**CRASH COURSE** The decision to run his practice out of a spare bedroom in his downtown Cleveland loft apartment was partly influenced by finances. With only \$20,000 in savings, "I had to make all these judgment calls about what to spend money on related to work, like upgrading my computer system and advertising," he said. The closest thing Mills had taken to a business class was Economics 101 at Colgate, so "Year One of Mills Law Office" was his crash course on business and economics. "That created some real stress ... it was very challenging in the beginning and very scary." His sacrifices included eating a lot of peanut-butter-and-jelly sandwiches and borrowing money from his little brother to pay the bills.

The close-knit Mills family has supported David in other ways, too — his mom is his part-time paralegal. The arrangement evolved naturally because

Elisabeth Mills — who has an MBA and formerly taught math — had always been interested in the law and decided to take paralegal classes at the same time that David opened up his practice. As she concluded her studies and began looking for work, David often bounced ideas off her, and “it became clear that the best thing was for her to become my paralegal.” Their trusting relationship was a bonus. “When you’re starting a business like this, every day something happens that you’ve never encountered before, so it was helpful to have somebody who knew my business and knew me very well,” he explained. “And, she has a very good gut sense.”

**MILLS LAW OFFICE** The notoriety of the Ortiz case has sent new opportunities his way, but much of Mills’s work — and what he takes great pride in — involves appealing criminal cases in which inmates have been convicted of federal crimes, typically drug distribution. “I find those cases unbelievably interesting, especially visiting prisoners in federal prisons across the country,” Mills said. “In talking with these guys, I’ve seen patterns emerge; I can see a lot of things that bother me about the system,” he added. “A lot of them have pled guilty and they’ll tell me, ‘Look, I did it, but it doesn’t seem right for me to serve 23 years in federal prison for this crime.’ I can understand that because so many of these guys just become numbers in the system and they get 20 years, which seems extreme to me.” With these court-appointed cases, Mills receives a relatively low statutory fee, but he believes it’s great experience, and it meets his desire to address social justice issues.

“He does a lot of thankless work where he meets with people who are basically our age or younger, and they’re in some of the most serious prisons in the United States,” said Michael. “He’s always had this awareness that we’re very fortunate for how we grew up, and there are other people who are just as intelligent, but yet, they grew up in impoverished conditions with no family structure. That lack of the same chance has led them to make some bad decisions and now they’re paying the price at a young age.”



As a thank you for Mills’s dedication to her case despite little pay, Ortiz crocheted him this afghan.

Jim Stroup

**FLIP SIDE** Those who know Mills best are quick to point out that he doesn’t take himself too seriously. “We’ve joked throughout this whole process that everyone knows him as a serious attorney — which he very much is — but there’s another side to him that’s really very goofy,” said Michael. Fulfilling his little-brother role, Michael tells stories about his elder sibling that few others know, like when David showed up for the first day of law school with green hair or how he’s always adding jokes to a standup comedy routine that he hopes to someday perform.

David has also showed his humorous side in the funny pages — he was a cartoonist for the *Maroon-News*, and in the same year that he started his practice, he created his own legal-cartoon site called *Courtoons.net*.

The ultimate example of the depth of his sense of humor happened at the hotel on the morning of the Supreme Court hearing. Michael was trying to gauge his brother’s nervousness, but noted that David was the one putting everyone else at ease. When lawyers present to the U.S. Supreme Court, their first line is always “Mr. Chief Justice, and may it please the court.” In mock practice, David was addressing the court and kept pretending to botch the opening line: “Mr. Chief Applejuice ... Oh, geez!”

“He came up with ten variations of that,” Michael remembered, laughing. “It was hilarious.”

**AN INSPIRATION** Having that sense of humor is essential when working on such weighty cases. The Supreme Court win was a momentous victory for Mills and Ortiz, but the case was remanded to the Sixth Circuit to iron out a few issues. At press time, Ortiz had not yet been awarded the judgment she initially won in the Sixth Circuit, and, therefore, Mills has not been paid for all of his work on the case.

In the meantime, Ortiz is trying to move on with her life. “I said that when I went to Washington, I would leave all the nightmares of the incident on the steps of the courthouse,” Ortiz explained. She said the Supreme Court win has helped, but it’s been difficult to completely leave the ordeal behind because of all the media inquiries, solicitations from foundations and long-lost “friends,” and even threatening phone calls telling her to “watch your back because someone is watching you.”

Mills, too, has been inundated with phone calls and e-mail, but he has also received a lot of support from the public. Before the hearing, Mills received an envelope from a business lawyer in Canada that contained a \$200 check stapled to his business card, with a note on the back saying simply, “Great story. Good luck. Take your mom to lunch.”

Others have called or written to tell Mills that he’s an inspiration. An attorney in Puerto Rico e-mailed Mills to tell him that he’s her hero. Another wrote him a letter saying that he started his own practice and was



Mills (left) and his brother, Michael ‘00, on the Supreme Court steps the morning of the hearing.

thinking about giving it up, but that Mills’s story inspired him to push on.

And when co-counselor Grostic described the Supreme Court hearing as “something out of a movie,” he’s not far off. Mills has been contacted about turning the story into a movie, and Ortiz has been offered three book deals.

But the best compliments have been those that are bolstering his practice. Attorneys nationwide have contacted Mills to hire him for consulting work on their Supreme Court petitions or cases. And coverage of the case by media outlets like the *Plain Dealer* and the *ABA Journal* (published by the American Bar Association and widely read by attorneys) has given him that name recognition he sorely needed.

**END OF THE DARK DAYS** The young attorney and his client have come out the other side of their fight with vindication, healing, and a new friendship. “He’s not just my attorney — he’s a really good friend of mine now,” Ortiz said, getting choked up.

“He works his way into your heart, not just your case, because he’s very passionate about the way he handles things. It’s like I’ve known him forever.”

Ortiz believes justice was served when the two prison officials were fired, and she’s appreciative to have had a platform to tell her story, as well as what’s happening to other women in prison — a promise she made to a friend who also was being molested by guards.

For Mills, it’s the end of the “very difficult, dark, and cold” start to the Mills Law Office and a triumph over those who doubted him. “To get this win, it means everything in terms of the risk I took to create this practice,” he said, “because there were plenty of people who were concerned whether or not I could represent my client in the right way and win, since there are a lot of big firms that specialize in the Supreme Court and I’m on my own.”

Knowing now that he can make it as far as the highest court in the country on his own (with some help from friends) and has the flexibility to collaborate with other attorneys as needed, Mills plans to keep flying solo in the fight for justice.