

DAVID E. MILLS

Member, Washington, D.C.

Litigation – Communications Litigation; Complex Commercial Litigation; Government Investigations/White Collar Defense; Intellectual Property Litigation; Tax & Trust Litigation; Appellate Litigation

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BIOGRAPHY:

Over the past 25 years, David Mills has focused his practice on complex commercial disputes, class actions, communications and telecommunications litigation, intellectual property, media and technology cases, securities fraud, and government investigations. In addition to taking more than 50 cases to trial, he has argued numerous appeals in several different United States Courts of Appeals and state appellate courts, including the Third, Fourth, Ninth and D.C. Circuits, briefed cases nationwide, including substantive briefs before the United States Supreme Court, handled complex class actions in multiple jurisdictions, represented individuals and companies in highly charged public investigations and represented clients in several dozen mediations and arbitrations across the country. Mr. Mills brings a creative and efficient approach to each client's particular matter. David Mills is the co-leader of the Litigation Practice Group at Dow Lohnes.

Mr. Mills joined Dow Lohnes in 1986, after graduating from Duke Law School and completing a judicial clerkship. In 1989, Mr. Mills left the firm to serve as an Assistant United States Attorney in the District of Columbia. While serving as a federal prosecutor, Mr. Mills handled several dozen jury trials, appeared regularly before the grand jury, and was appointed to a special unit prosecuting violent crime. In 1990, he received a United States Department of Justice Special Achievement Award for his service. He returned to Dow Lohnes in September 1992 and became a partner in 1994.

Examples of recent cases include defending a major wireless carrier in three class actions alleging improper roaming fees, defending a communications company in a two-week trial before an administrative judge in a suit alleging unlawful carriage discrimination, representing a common carrier in class actions under a statute prohibiting unsolicited fax advertisements (seeking more than \$2 trillion in damages), representing an elderly widow in a complex suit for breach of fiduciary duty, fraud and malpractice against a longtime investment advisor and financial planner, representing an independent committee of a board of directors of a large public company in a dispute with the controlling shareholder concerning assets worth approximately \$700 million, representing an individual in a case of first impression in the Fourth Circuit regarding the statute of limitations for co-ownership claims under copyright law, representing a plaintiff in a copyright infringement suit seeking to enjoin publication of certain intellectual property and obtaining an order for the immediate seizure of computers and related equipment, representing a large cable company in the Ninth Circuit and Supreme Court seeking to uphold an FCC decision that cable modem

service is an unregulated information service, and representing a publisher and owner of copyrights in old radio shows against a rogue but persistent internet publisher claiming ownership of copyrights by adverse possession.

Mr. Mills also regularly represents companies and individuals in a wide range of civil and criminal investigations, including internal investigations for various businesses, grand jury investigations and special prosecutors' investigations. As examples, he has represented clients in investigations by the Department of Justice, the Department of Defense, the Federal Trade Commission, the Treasury Department, the Securities and Exchange Commission, the National Association of Securities Dealers, the Federal Communications Commission, the Federal Bureau of Investigation, the Independent Counsel's Office and the Senate Whitewater Subcommittee.

REPRESENTATIVE MATTERS:

- Johnson v. Sprint Solutions, Inc., 08-CV-00054 (W.D.N.C.)(dismissed), aff'd, No. 08-1948 (4th Cir. 2009) (defended against purported class action challenging roaming fees; dismissal affirmed in Fourth Circuit after oral argument).
- Torkiver v. Sprint Solutions, Inc., 08-CV-00852 (E.D.N.Y. 2009) (defended against purported class action challenging international roaming fees; dismissal not appealed).
- Pendergast v. Sprint Solutions, Inc., 08-20551-CV (S.D. Fla. 2008)(dismissed), appeal pending, 09-10612 (11th Cir. 2010) (defending against purported class action challenging roaming fees; dismissal on appeal to Eleventh Circuit which certified state law arbitration clause and class waiver issues to Florida Supreme Court).
- Herring Broadcasting, Inc. v. Cox Communications, Inc., et al., MB Docket No. 08-214 (FCC 2009) (FCC review of trial decision pending) (representing defendant in suit alleging unlawful discrimination against cable network; AJL recommended ruling for defendants after two-week trial).
- Estate of Joan A. Stanton v. Starr et al., No. 601122/08 (N.Y. Sup. Ct. 2008) (represented elderly widow in complex suit seeking recovery of millions in damages for breach of fiduciary duty, fraud and malpractice against longtime investment advisor and financial planner, as well as against certain investment firms).
- Advance Magazine Pub. Inc v. Leach, 466 F. Supp. 2d 628 (D. Md. 2006) (represented publisher and owner of copyrights in old radio series "The Shadow" in case against rogue but persistent internet publisher claiming ownership of copyrights by adverse possession; judgment obtained on summary judgment).
- National Cable & Telecommunications Ass'n v. Brand X Internet Services; 545 U.S. 967 (2005) (rev'g 9th Cir. at 345 F.3d 1120) (represented cable operator in Ninth Circuit and as a petitioner in U.S. Supreme Court successfully seeking to uphold FCC decision that cable modem service is an unregulated information service, rather than a regulated telecommunications service).
- Redefining Progress v. Fax.com, Inc., et al., Case No. C 02-4057 (N.D.Cal. 2003); David v. Fax.com, Inc., et al., Case No. 2002063723 (Cal. Super. 2003) (represented common carrier in class actions brought under telecommunications statute prohibiting unsolicited fax advertisements and seeking more than \$2 trillion in damages; secured trial court dismissals in both cases).
- Bureau of Nat'l Affairs v. Citation Publishing, et al., Case No. CV 04-2396-PHX-DGC (D. Ariz. 2006) (represented plaintiff publisher in copyright infringement suit successfully obtaining immediate seizure of computers and related equipment, and seeking permanent injunctive relief and damages).
- Davis v. Meridian Films, Inc., 2001 WL 758765, 14 Fed. Appx. 178 (4th Cir. 2001) (represented successful appellant in case of first impression regarding statute of limitations for co-ownership claims under copyright law).

- *Bova v. Cox Communications*, No. 7:01CV00090 (W.D. Va. 2002) (defended company in purported class action claiming cable internet service was regulated telecommunications service rather than unregulated information service; obtained dismissal under telecommunications statute).
- *DirecTV v. FCC*, 110 F.3d 816 (D.C. Cir. 1997) (represented large cable company at FCC and before D.C. Circuit successfully defending against satellite company challenge seeking to force carriage of terrestrial regional sports network).

SELECTED ADDITIONAL CASES AND INVESTIGATIONS:

- Represented Waco newspaper and reporters in suit and subsequent congressional investigations alleging improper newsgathering activities in connection with reporting on ATF raid on Branch Davidian compound in Waco, Texas;
- Represented independent committee of Board of Directors of large public company in dispute with controlling shareholder concerning ownership of assets totaling approximately \$700 million;
- Representing large non-profit educational institution in investigation concerning sale of television station;
- Represented Chinese medical device company and surgeon in breach of contract suit in federal district court in Minneapolis; and
- Represented several individuals in connection with Independent Counsel Whitewater Investigation.

PROFESSIONAL ACTIVITIES AND MEMBERSHIPS:

Bar Admissions – Maryland, 1986; District of Columbia, 1986

Court Admissions – United States Supreme Court; U.S. Court of Appeals for the District of Columbia Circuit; U.S. Court of Appeals for the Federal Circuit; U.S. Court of Appeals for the Third Circuit; U.S. Court of Appeals for the Fourth Circuit; U.S. Court of Appeals for the Fifth Circuit; U.S. Court of Appeals for the Sixth Circuit; U.S. Court of Appeals for the Ninth Circuit; U.S. Court of Appeals for the Eleventh Circuit; U.S. District Court for the District of Columbia; U.S. District Court for the District of Maryland; U.S. Tax Court; U.S. Court of Federal Claims; Maryland Court of Appeals; District of Columbia Court of Appeals

Assistant United States Attorney, 1989-1992

Recipient – U.S. Department of Justice Special Achievement Award, 1990

Member – Assistant United States Attorneys Association

AV Rated Lawyer (Martindale) – over ten years

Co-Chair – Next Generation Board-DC, United States Holocaust Memorial Museum

Executive Vice President – Beth El Congregation, Bethesda, Maryland

Articles Editor – Alaska Law Review (Duke Law School), 1984-85

EDUCATION:

B.A., with honors, Brandeis University, 1982

J.D., with honors, Duke University, 1985