

JOE MURPHY | Pioneering Telecommunications Law

by Allison Petty

CHAMPAIGN—On the wall in Joseph D. Murphy's office hangs a white dry-erase board.

Murphy often enlists its help in explaining complicated telecommunications systems, which take up the bulk of his practice along with intellectual property matters, including

property clients, Murphy could be writing technology-based licenses or handling franchise registration.

"It's a nice novelty for me," he says. "Most lawyers get pigeonholed into either being transactional or being litigators. I get to do both."



franchise licensing. In both areas, the 51-year-old president of **Meyer Capel P.C.** draws on a wealth of experience that his clients say makes him invaluable.

"He particularly represents a wide variety of clients," says Kevin Saville, vice-president and associate general counsel at Frontier Communications Corporation. "A lot of times, you'll find other lawyers that maybe just represent AT&T or just represent Verizon, but I think that he has a very diverse client group and as a result of that he's got probably a better perspective."

A typical day in Murphy's practice could involve working on telephone regulatory matters within the Illinois Commerce Commission, or handling transactional work for telephone company clients. For his intellectual

and learn, as we used to say in the day, how to think like a lawyer," Murphy says, "which is a useful tool as long as you don't make that the only way you ever think."

He graduated in the top 5 percent of his law school class in 1985. After a two-year judicial clerkship with Judge Stanley Roszkowski in the Northern District of Illinois, Murphy worked for the Washington D.C. office of Sullivan & Cromwell LLP. He gained substantial experience in intellectual property litigation over the following three years before moving to Brownstein, Zeidman and Schomer, also in Washington.

After six years in Washington, Murphy's first child was born, and he decided to move back to Illinois. That move ultimately gave him expanded opportunities to develop his practice.

"I think most of my D.C. friends thought I was retiring to the hinterlands, but my practice got more complex," Murphy says. "I used to tease them when I'd talk to them that yes, I have a harrowing commute: It takes me eight minutes to get to work and 10 if I have to drop the kids off at school on the way, and I can go home for lunch."

Though the commute is low-stress, his cases remain challenging. Murphy has successfully argued in front of high courts in Illinois and Missouri, and he argued *Panavision v. Toeppen*, one of the first cases concerning Internet domain names, in front of the Ninth Circuit Court of Appeals.

Path to a Complex Practice

Murphy grew up in Champaign, but he took several interesting detours before finding his way back to practice at Meyer Capel in 1994.

The journey began in college. After a year at Illinois State University, Murphy took advantage of a foreign-exchange program to study in Japan for a year. Upon his return, he packed up a car and drove to Boston College, where he graduated in 1982 with a bachelor's degree in English literature.

At a loss for what to do with that degree, Murphy enrolled in American University Washington College of Law. He initially had no intention of practicing law but found that he enjoyed it.

"I just wanted to learn how to be a lawyer

Developing Experience, Lending Insight

In the *Panavision* case, Murphy represented defendant Dennis Toeppen, a Central Illinois businessman who had acquired a number of domain names, including panavision.com. At issue was whether the company could bring a lawsuit against Toeppen in California.

"Our position was that he hadn't done anything other than register the name," Murphy says. "Panavision argued that because he knew that Panavision was headquartered in California and he knew that it would harm them there, they should be able to bring the case there. The Ninth Circuit ultimately agreed with that position and it was a pretty big expansion of federal court jurisdiction, certainly as far as Internet cases go."

The court was also asked to interpret federal trademark law as it related to the Internet. Ultimately, the appeals panel sided with Panavision, making the 1998 decision one of the first to address trademark law and Internet domain names. Although oral arguments in these cases are normally put under strict time limits, the three judge panel, recognizing the novelty of the issues, threw out the clock and let the lawyers argue the case for almost two hours.

Murphy jokes that his case wasn't helped by the fact that Panavision's lawyer had been the mayor of Pasadena, responsible for building the courthouse where the case was argued. The argument remains one of Murphy's favorites, even though it was unsuccessful.

In the 2004 Illinois Supreme Court case *Harrisonville Telephone Company v. Illinois Commerce Commission*, the issue concerned the state's universal service fund, which subsidizes phone service in rural areas where they are more expensive to provide. State lawmakers had directed the Illinois Commerce Commission to establish the fund, but the commission argued it could subsidize only one telephone line for every rural business or residence.

Murphy successfully argued that the Illinois General Assembly intended for the universal fund to apply to all rural telephone lines. The subject matter remains one that is relevant to Murphy's practice today, as he is working with carriers and the Illinois Commerce Commission on an update to how the fund is administered. The subsidy amounts set in 2001 have not accounted for the rising cost of business, particularly in light of the declining number of rural wireline customers.

"You used to have one customer every two miles, and that was your cost of providing service. Now, you may have one customer every three miles, but you still have to provide all the facilities to everybody who wants them, so your cost of providing service to fewer people goes up," Murphy says.

The 2006 Missouri Supreme Court case *State ex rel. Alma Telephone Company, et al v. Public Service Commission of the State of Missouri* related to interconnection agreements between wireline and wireless carriers as they were governed by the federal Telecommunications Act of 1996.

Interconnection agreements dictate which party pays for a call, for instance, between a wireless and wireline carrier. The issue becomes more complicated if a long-distance carrier is also involved.

"There was an obvious legal obligation on the local exchange carrier, the wireline carrier, to negotiate with anybody who asked that company. It was less clear that the wireless

company had any obligation to negotiate unless it did the asking," Murphy says.

Rural telephone companies in Missouri proposed placing "access tariffs" on wireless carriers. Ultimately, the high court ruled in Murphy's favor, saying such a proposal would be unlawful because of the interstate and intrastate nature of the access charges.

Murphy's clients unerringly use the word "thorough" to describe him. They appreciate his calm demeanor, good judgment, and accumulation of experience.

Lee Whitcher, chairman of the Illinois Independent Telephone Association and vice-president of regulatory compliance at Harrisonville Telephone Company, says it is rare for an attorney to possess Murphy's level of knowledge about nuances of the telecommunications business.

"In general, there's not going to be that many attorneys who are that versed in our business and those types of intricate details about things like universal service," Whitcher says.

Saville works with lawyers across the country, as his company does business in 27 states, and says Murphy brings more than just legal expertise to the table.

"It's a combination of understanding the law, but you also have to understand and appreciate the political dynamics because the Illinois Commerce Commission, they are a quasi-political body," Saville says. "Joe is very in tune in understanding that dynamic."

Charles Linville, president of Ploughman Analytics, Inc., says Murphy also stays in touch with the needs of business owners. He exercises good judgment about the level of legal effort that is appropriate for a particular question, which Linville says is a particularly valuable quality to entrepreneur clients who typically do not have deep pockets.

Also, Murphy's intelligence and experience make him a reliable source, Linville says, and their conversations often yield new insights into Linville's business.

"In the information business, it's not always clear where the value is. Joe has good enough insight that as we are discussing how to structure a license agreement or subscription agreement, we end up getting ideas from him about additional things to protect that we might not have thought of protecting," Linville says.

Following His Clients

"I think most lawyers will tell you that the practice they develop is whatever their clients need at the time, so your practice tends to follow your clients," Murphy says. "I've had clients who needed it, who have asked interesting questions and thrown me into areas of practice that I find really interesting, so that

worked out."

When Murphy began practicing at Meyer Capel in the 1990s, the firm's clients included small, independent wireline phone companies as well as cellular companies, including Cellular One. As Illinois was one of the pioneer states in developing number portability, Murphy participated as Cellular One's representative in the process.

"I would go to all these working group meetings where I was really the only lawyer in the room; everybody else was an engineer, and they worked for all sorts of different companies," Murphy recalls. "But when the engineers—who I knew well—were trying to sort out what their own companies' legal interests were, they would frequently come ask me because their own lawyers had no idea what they were talking about."

"I was the only lawyer in the room who actually understood how the telephone numbering system worked and how number portability worked, and it was fun and interesting."

Murphy jokingly says it is the "dumb luck of his career" that he finds himself positioned between the Internet and telecommunications, with knowledge of both, as the areas begin to converge. In explaining the factors at play, Murphy speaks with the conversational ease of someone who is well accustomed to describing complicated situations.

"The phone system is highly regulated, based on the history of the system; the Internet is almost not regulated, and there's a real disparity in how they can compete, because now they have to," Murphy says.

"There's a disparity in how they compete because the wireline system is hobbled by regulations that may or may not make sense depending on current situations. The Internet isn't. They're taxed differently so the costs are all different," he continues. "Now, they're merging, so the question is: Should this cause the phone system to be less regulated so it's more like the Internet? Or should this cause the Internet to be more regulated because it's a lot like the phone system? Luckily, that creates work that keeps shoes on my kids."

Murphy's children are Cullynn, 19; Quinn, 15; and Maeve, 13. The four share a house with their Welsh terrier named Jonesy. When the kids are not filling the house with vocal, guitar and piano music, they are involved in bands and various theater productions, including the Champaign Urbana Theatre Company, where Murphy is a board member.

When he is not working, cooking for family or friends, or designing or building sets for one of his kids, Murphy enjoys running. He finished in his first marathon when he was 40 and continues to compete in various races with friends. ■