

J. McKeig: Chris Pratt, Chris Evans, Chris Pine, and Chris Hemsworth. Yeah I don't think I know who any of those are. You guys are hilarious.

Mark Thomson: Welcome to The ComMN Law. Minnesota's best and only podcast about the Minnesota Supreme Court. My name is Mark. I clerked for Justices Lillehaug and McKeig.

Alison Key: And my name is Alison. I clerked for Justices Stras and Hudson.

Mark Thomson: We've got a [The] ComMN Law first today. That's an interview with Justice McKeig. We are asking some questions that don't typically get asked of Minnesota Supreme Court Justices. Frankly, people don't ask questions of Minnesota Supreme Court justice of any variety often enough. So she was very kind to sit down with us and it's fun time.

Alison Key: Yeah. And we hope to interview all seven justices coming up, so stay tuned for more interviews with Minnesota Supreme Court Justices.

Mark Thomson: So before that, we've got some legal news and then we've got a big case that was published this month. So we'll start with legal news

Alison Key: This month of July, one of the biggest pieces of news at the Minnesota Supreme Court would be that Justice Thissen was officially sworn in as the 95th Associate Justice of the Minnesota Supreme Court in a public ceremony on July 24th. So he has been sitting for cases in the June session, as we covered on our last episode, but he was sworn in quickly before sitting for those cases. And this public investiture was on July 24th. And Mark and I were bumming around the court the next day and heard from everyone that it was a beautiful ceremony and it went swimmingly. So now all the i's are dotted and t's are crossed, so he is officially supposed to get to work.

Mark Thomson: Yeah, it's brilliant timing on his part because he joined the court in the last month of oral arguments. And so now there's a bit of a respite before they start hearing cases again. They're obviously still working, writing cases, et cetera. But it gives him a nice kind of entrance ramp to life on the court.

Alison Key: An opportunity to spend a lot of time researching every single day in Minnesota Supreme Court history.

Mark Thomson: As we will hear. Another piece of news on June 29th of this year, Chief Justice Lorie Gildea gave the annual State of the Judiciary. This is an address that she gives to an actual room of people. It's also published on the court's website. There's a transcript. A lot of really interesting stuff there. I'll just pull out one item that was of interest to me, which is about the proposal for Limited License Legal Technicians in Minnesota. This is something that certain other states have done, at least the state of Washington, and it basically allows licensed paralegals or administrative assistants to acquire additional education and certification

that allows them to practice law in specific areas and specific scopes. So, those are defined, but that's the idea and the kind of policy thrust of it is to allow people who don't have access to the civil justice system, or have very restricted access, to get more representation. So there was a discussion of this idea last year in the Minnesota Bar. There was a task force and a proposal to allow this kind of thing, and it was rejected by the bar. And that's the last I had heard of it until this Address, and we'll just quote you a couple sentences from the Chief Justice here. She says, "of course, I knew that the bar after much discussion ultimately declined to endorse any of the recommendations. What I'm proposing to my fellow judges as part of our strategic planning process is that we take the task forces report off the shelf, blow off the dust, and give it another look. I'm convinced that there is real value in those recommendations in it real path forward for finally shrinking Minnesota civil justice gap. The taskforces report concludes by stating that failing to act on these ideas will mean people of low and moderate incomes will continue to face barriers to justice in our state." So, notable in that, you know, it's a new policy proposal, but also in that the Chief Justice is basically standing up to the bar, which made one decision, and concluding that at the very least, that decision needs to be reexamined if not reversed.

Alison Key: And I think it's an interesting example of where, despite the fact that the judiciary and the Bar Association often work closely and have similar goals, this would be one example where maybe their interests are not aligned and you can see where they represent different aspects of the judicial system. The bar obviously representing legal practitioners and the Chief here representing what's good for the judiciary and people who need its services.

Mark Thomson: Yeah, from my perspective, a really courageous move by the Chief Justice and super supportive of it.

Alison Key: Good for her. On to another piece of legal news. This summer there have been a few proposals to amend rules for admission to the Minnesota Bar. One particularly interesting one is on June 28th, the MSBA petitioned the supreme court to consider changes to rule 4(c) for admission to the bar. So these proposed changes would permit law students to sit for the February bar in final year of law school. The MSBA has been researching this proposal and discussing it for many years. And so this is a culmination of their work. In support of this petition, the MSBA cited the student loan crisis and low starting salaries for most law school graduates as reasons why this new proposal would be good for the bar. Primarily to help ease the burden—the financial burden—on new lawyers. The MSBA also made a point to note that this wouldn't harm the bar in any particular way. And as evidence of that, they note that 16 states already allow students to sit for the bar before graduation under various rules and restrictions that vary from state to state. As an attachment to its petition, the MSBA submitted a survey that was conducted about student loan debt among members of particularly the Hennepin County Bar Association. And one question stands out. Question 34 reads, "In what year do you expect to have your student loan debt fully paid off?" Of the nearly 200 responses, 15 of them

simply said, "never." And that doesn't include responses, including, "God only knows," "I will take my debt to the grave with me," "I don't expect to be able to pay it off," and "I honestly have no idea." The survey that they attach also asks participants how the student loan debt has affected their lives. And the responses were so depressing, I cannot quote them and I had to stop reading the report. So if this change that the MSBA is proposing will help ease this burden even a small amount, it sounds like something the bar and the judiciary, frankly, owe to its newest members of the profession to at least give it some serious consideration.

Mark Thomson: One way you might pay off your student loans is by starting a hit podcast about the Minnesota Supreme Court. However, that option is taken and, uh—

Alison Key: And has not proven to be as profitable as we initially anticipated. So on July 19th, the court issued an order requesting comments on this proposed rule. The last day to file comments will be September 17th. The court will then set a hearing for the proposed rule sometime after that, and we will keep you posted on how the justices seem to be leaning in that hearing.

Mark Thomson: From a different area of Minnesota law, there's a article in MinnPost by Ibrahim Hirsi titled why the people who serve as interpreters in Minnesota courts are not happy with those who run Minnesota courts. Super interesting piece. Here's the basic background. Courts in Minnesota have to provide qualified interpreters for people who have limited English proficiency. However, it turns out to be the case that there is a significant pay gap between different types of interpreters, specifically ASL interpreters are making about \$86 an hour in Minnesota, while spoken language interpreters get paid \$52 an hour. So like \$34 an hour difference. Pretty significant. So this is an issue that has been brought to the fore by the spoken language interpreters who feel that they are being underpaid. One might ask why this pay discrepancy exists or how it came to be. And in the article, one of those spoken language interpreters said this: "For me, as a person of color, I believe it's about our color. All of the ASL interpreters are white. Their clients are white. They can speak up; they can file a lawsuit. [But] all of our clients cannot even speak English. When I was working for the state, if we couldn't find a sign language interpreter, their attorney would call the state and they would sue us for not having an interpreter. Immigrants and refugees are very nice that they don't speak up and they are afraid of the system because they think they don't have rights." Some of those spoken language interpreters have organized together and they sought a meeting with Jeff Shora, who is the state's top court administrator. They were asking for a pay rise. They received a \$2 pay raise in recent years, but obviously not enough to catch up with the ASL interpreters. And Shorba pretty much denied it out of hand. Said that they took a market study and that was the rate that they came up with, but the spoken language interpreters a disputed the universe of people that they studied to come up with this number. So certainly an issue I had never heard about, but obviously a crucial one for litigants. And you know, as we've been talking about people of low income in Minnesota as civil and criminal justice system. Another important issue for them.

Alison Key: Jeff Shorba is quoted in this article as saying "it's an increase whether you like it or not," referencing the \$2 increase at the spoken interpreters have gotten in the past 20 years. So as a matter of optics, I'm not sure what they were doing here is setting aside all of the larger problems that we have. It just seems very surprising to me based on what we know about the Minnesota judiciary that this would've been handled like this. So definitely very important to highlight. Moving on to a recurring segment that we now have at The ComMN Law, Top Thissen Tweets. So I think we should quick first give a shout out to honorable mention Tweeter Justice Anderson for really stepping up his Twitter game since we first announced this segment about Justice Thissen. Justice Anderson has some incredibly thoughtful baseball commentary and everyone should check it out. Plus bonus points to him for retweeting The ComMN Law about Justice Thissen's investiture. So good job, Justice Anderson. Okay. So since we announced our newest segment, Top Thissen Tweets for our June episode, which has been incredibly popular and successful, Justice Thissen, whom we have since confirmed, is a ComMNers, has started a practice of tweeting these admittedly informative but also long threads that take a very long time to read. I can't help but think he might be trolling us. I don't know what you think about that, Mark, because obviously everything he does is about us and this podcast.

Mark Thomson: Fair play, Justice Thissen.

Alison Key: So he just started this very cute thing that the online people love where he tweets threads about important things that happen on this day in Minnesota Supreme Court history. Very fun, very important, we love that he shares his knowledge with us. So you should go read his threads on Minnesota Supreme Court history, even ones that we don't cover on Top Thissen Tweets.

Mark Thomson: Onto the top tweets.

Alison Key: Do you want to do any?

Mark Thomson: No. I don't have any of them.

Alison Key: We only have two to share with you this month for July. Not because we didn't want to spend all that time reading them.

Mark Thomson: For totally unrelated reasons.

Alison Key: So the first tweet he tweeted on July 23rd where he says, "Fornication—when any man and single women have sexual intercourse with each other—remains a misdemeanor in Minnesota today," cites the Minn. Stat. "Apparently missed in 2014 'unsession.' #mnleg" That is number two for Top Thissen Tweets for July. And moving on to the number one Thissen tweet for July 2018. We have a tweet of his on July 24th where he says, "Sorry, not much happened on July 24th in Minnesota Supreme Court history," which is funny for many reasons. One, because he's working hard to bring us interesting facts about Minnesota

Supreme Court history. But two, the best part about this is this tweet was the day of his investiture ceremony. So next year on July 24th, I hope he feels a little differently about that day in Minnesota Supreme Court history.

Mark Thomson: I got nothing to add. In the summer months, there's no oral argument at the Minnesota Supreme Court nor no new cases. However, they still do publish cases from the prior term. So, we were fortunate enough to have a significant opinion come down in Cruz-Guzman v. State. Alison, do you want to kind of set the table for that?

Alison Key: Cruz-Guzman and other plaintiffs in this case were parents of children enrolled in Minneapolis and Saint Paul public schools. They filed a lawsuit against the state in 2015, alleging that the state had failed to meet its mandate under the Education Clause of the Minnesota Constitution. So this case is particularly fun for us because Cruz-Guzman is relying on the Minnesota Constitution, not the federal constitution. Minnesota, like all states, and unlike the federal constitution, has an Education Clause in Article VIII of the Minnesota Constitution that reads, "The stability of a Republican form of government, depending mainly upon the intelligence of its people, it is the duty of the legislature to establish a general and uniform system of public schools." So the Minnesota Supreme Court has determined that "general and uniform" in the Education Clause of the Minnesota Constitution means "adequate," in a case called Skeen v. State from 1993. And Skeen said there is a fundamental right under the education clause to a general and uniform system of education which provides an adequate education to all students in Minnesota. So there was some argument in the briefs and in oral argument as well as the dissenting opinion on this point, how much did Skeen really say that the Education Clause guarantees an "adequate" education? And it's worth maybe quick listening to Justice Hudson in oral argument on this point where she really stakes out her position that Skeen does in fact go there and declares that the Education Clause does guarantee Minnesota kids and adequate education.

J. Hudson: Counsel, with respect to that, I want to back up and take issue a bit with your characterization of Skeen when you were referring to the fact that the court used the word— used the word "adequate" loosely and in various places. And I guess I take some issue with that because, you know, we're wordsmiths up here and actually it would seem to me if we had only used— if the court here had only used the word once or twice, that might suggest that the court was using that word loosely or in some undefined manner. But in Skeen, the court uses the word repeatedly and then there's the major, paragraph where, at least as I read it, when the court says, "There's a fundamental right under the education clause to a general and uniform system of education which provides an adequate education to all students." To me, when I read that language, and tell me how you read it, that's a declarative, a clear declarative statement about adequacy. And it's repeated throughout the opinion, which would suggest to me that the court meant to use that word and had a very specific thing in mind when it did so.

Alison Key: So Cruz-Guzman and the rest of the plaintiffs claim that the state violated the fundamental right of these kids to what the court in Skeen said must be an adequate education, specifically because these students attended schools that are highly segregated by race and socioeconomic status, which affected educational outcomes, the scheme of education that the plaintiffs claim cannot possibly be adequate under Skeen. The court of appeals had thrown out this entire case, saying that the education claim for violation of the right to an adequate education was essentially a claim for education of a certain quality, which the court of appeals said was nonjusticiable as a political question, meaning left to the legislature. So the question at the Minnesota Supreme Court is justiciability. Can the court even make decisions about adequacy of education under the Education Clause, or does the constitution say only the legislature can decide what is adequate? So Justice Hudson, writing for the majority in Cruz-Guzman, says yes, we can adjudicate these cases under the Education Clause.

Mark Thomson: So Justice Hudson takes a tour through the Minnesota Supreme Court's Education Clause jurisprudence, which is pretty limited, I don't think they say in the opinion exactly how many cases ever have interpreted the education clause, but it sounds like maybe half a dozen tops. So there are a few interesting quotes from the opinion. She says, "Although we have not had many occasions to interpret or apply the Education Clause, we have consistently adjudicated claims asserting violations of the Clause." Later she says, "we have also explained that the Education Clause constitutes 'a mandate to the Legislature,' 'not a grant of power.' Although specific determinations of educational policy are matters for the Legislature, it does not follow that the judiciary cannot adjudicate whether the Legislature has satisfied its constitutional duty under the Education Clause. Deciding that appellants' claims are not justiciable would effectively hold that the judiciary cannot rule on the Legislature's noncompliance with a constitutional mandate, which would leave Education Clause claims without a remedy. Such a result is incompatible with the principle that where there is a right, there is a remedy."

J. Hudson: Whatever, regardless of whatever we think and you think a general in uniform a school system is, how do the courts enforce the Legislature's obligation to provide that system? Because it seems to me, that's our job. And we would be abdicating our job if there were no mechanism for us to actually enforce the obligation that the constitution puts on the Legislature to provide such a system. So regardless of what it is, what is the mechanism, in your mind? If these are all nonjusticiable claims, what is the mechanism by which we fulfill our duty?

Alison Key: Some time was spent in oral argument and in Justice Hudson's opinion differentiating between the court actually having to decide what an adequate system of education would look like versus the court making a simple yes or no decision on whether the Legislature discharged that duty to provide an adequate system. And there are some differences on the court and obviously in the dissent of opinion from people who do not think that there's a real difference between those two. But Justice Hudson, for the majority, in her

opinion, says this, "Providing a remedy for Education Clause violations does not necessarily require the judiciary to exercise the powers of the Legislature. Appellants stress that their complaint 'does not actually ask the court to institute any specific policy.' In essence, appellants' claims ask the judiciary to answer a yes or no question— whether the Legislature has violated its constitutional duty to provide 'a general and uniform system of public schools' To resolve this question, the judiciary is not required to devise particular educational policies to remedy constitutional violations, and we do not read appellants' complaint as a request that the judiciary do so. Rather, the judiciary is asked to determine whether the Legislature has violated its constitutional duty under the Education Clause."

Mark Thomson:

Yeah. Fundamentally, I think you can understand the majority's opinion as, the majority thinks that a substantive right to an adequate education exists under the Minnesota Constitution, and given that they believe that right exists, they believe the right needs to be enforceable. I think that probably the dissent disagrees on both of those scores. They would disagree that a right to inadequate education exists. And even if it did, they would disagree that the judiciary should enforce it. But once you see Justice Hudson and the majority deciding that students in Minnesota have a right to an adequate, nonsegregated, in all likelihood, education, I think she feels that it's obvious that a right has to have a remedy. She had this sentence that toward the end of the majority opinion, "We will not shy away from our proper role to provide remedies for violations of fundamental rights merely because education is a complex area." So we'll say a few words about the dissent. This is a four-justice majority in dissent. Writing is Justice Anderson, And joining is the Chief Justice. Justice Anderson first notes that he has a different reading of this Skeen case that the majority and the plaintiffs rely quite heavily on. This is from about 25 years ago and it was about education financing. And the dissent says, because this case was about education financing, the fact that there are multiple references to adequacy of education and some discussion of that idea doesn't kind of transport to this current setting where we're talking about substantive adequacy for students. That rather, what must be adequate is the financing. And so he says that adequacy here is basically dicta. And for that reason, it shouldn't carry any weight. There's a line that stood out to me and the dissent, which is this, "this is because we are a branch of government, wholly unsuited to setting constitutional minimums in education adequacy, whether it be the provision of textbooks, the availability of particular courses or even the organization, school districts." And you can see where the dissent's concerns come from. And we've seen how these things go. Sometimes when the plaintiffs win and the current situation is declared unconstitutional, you enter this kind of twilight zone of repeated efforts at reform followed by assessments by a court to determine whether the new state of affairs finally meets the constitutional requirements. And it's a messy, weird posture for courts to be in. To me, to use the school analogy there, they're basically like grading tests over time, which states often fail repeatedly and so it's an unfamiliar and probably uncomfortable position for courts to be in. And I think probably the dissent feels extremely uncomfortable at that. At the same time, I think you can see from that that

sentence, you know, "wholly unsuited to setting constitutional minimums," there are just some justices who are— who believe that courts have an obligation to set constitutional minimums, even in unclear complex areas of law as Justice Hudson said in the majority, and then there are other justices who feel that that is outside the purview of courts.

Alison Key:

Probably an inevitable hole in Justice Hudson's reasoning in this case. And like you said, some people are— there's going to be a hole, no matter what you do. So Justice Hudson's opinion, where she says we don't need to decide what the policy is. We just need to decide yes or no— for her to pretend that that's not setting policy is a fallacy. And I think Justice Anderson is saying that is a fallacy. But it's also, as you mentioned, the alternative is that courts will not be able to enforce constitutional rights in education at all. But I do think Justice Anderson does correctly isolate the fallacy in Justice, Hudson's opinion where she says we're not setting policy because in effect this will be setting policy. And the example that Justice Anderson points to about policy setting even when you're simply deciding a yes or no question, as Justice Hudson phrases it, is in the charter-school question that is closely intertwined with this case. And we will let Justice Anderson say it in his own words as he brought it up in oral argument.

J. Anderson:

Some intervener or some parties, amicus— I guess they actually are interveners— charter schools which were perceived to be, maybe still are, part of the solution to the problem that you have suggested here and are now complaining or contributing to the problem. So let's assume that for some reason we're not able to get to a solution that's going to come back to the courts and the courts are then going to be in the business of having to devise a remedy. Isn't, isn't that where we wind up?

Alison Key:

So what does this opinion then mean for charter schools? As Justice Anderson mentioned in oral argument, charter schools intervened in this lawsuit which was originally filed by the parents against the state and the charter schools made the case that they cannot be segregated by definition because people choose to be there, and further they say that there's no poorer educational outcomes in charter schools, particularly the ones that did intervene, so there was no adequacy concern under Skeen. But in a lot of commentary on this case that's subsequently been published, a lot of people are arguing that certain language and Justice Hudson's majority opinion doesn't bode well for the charter schools' argument. Specifically in a blog post published on the Institute on Metropolitan Opportunity Will Stancil writes that footnote 6, specifically, is going to "shake Minnesota education to its core." The footnote states that it is "self evident that a segregated system of public schools is not general uniform thorough or efficient," and for this Justice Hudson's opinion cites the Education Clause of the Minnesota Constitution itself. So to some observers, including Will Stancil, this "self evident" fact from the constitution suggests that segregation, regardless of whether it is at a charter school of choice, and regardless of whether it produces inferior or superior outcomes, does not matter. Segregation itself is presumed unconstitutional under the Minnesota Education Clause in footnote 6, not just because it violates equal protection, not just

because it violates due process, just inherently. So, we'll see how prevalent that footnote is in Education Clause jurisprudence going forward.

Mark Thomson: We should note that Will Stancil is not a disinterested party here. He submitted an amicus brief on behalf of the concerned law professors, which was in support of the plaintiffs, so interesting analysis, nonetheless.

Alison Key: Also interesting to note is that other state high courts are considering this same case. As we mentioned, all states have some education clause in their constitution, though the language does vary somewhat state to state. However, most state courts that have heard this type of case under their analogous Education Clauses have dismissed them on justiciability grounds. In fact, no court has found this type of claim to be justiciable. The cases from other states cited by the petitioner-parents in this case largely don't address the justiciability of educational adequacy and instead address Educational Clause claims under more of a financing perspective that Justice Anderson talks about in his dissent.

J. Anderson: Counsel, I want to ask another one of those 35,000 foot questions and it's sort of about the state of the law generally. As I read the briefs in this case, what I understand is there's been a lot of litigation around the country about adequacy provisions, or alleged adequacy provisions, in state constitutions. But in terms of applying those principles to claims of segregation, with the exception of Connecticut, which has a special provision in its constitution, the claims that you are making here today have not been successfully— there has been no, there's been no court-of-last-resort decision recognizing such a claim. Am I right about that?

Parent Counsel: Yes. With the exception of Connecticut.

Alison Key: So that's one of the more surprising aspects of this opinion, that it's truly the first of its kind in the country. So Justice Hudson with a true piece of history with this majority opinion.

Mark Thomson: So that wraps up our discussion of the Cruz-Guzman opinion. That case obviously not decided, just decided that it's justiciable. So we will cover developments as it gets back to the merits in district court. Without any further ado, here is our interview with Associate Justice of the Minnesota Supreme Court Anne McKeig.

Alison Key: Alright, ComMNers. We are here with Justice Anne McKeig. She's the 94th Associate Justice of the Minnesota Supreme Court. And now the second newest justice on the Minnesota Supreme Court. So

J. McKeig: No longer the newbie.

Alison Key: No longer the newbie! Thank you for sitting down to talk with us today.

J. McKeig: It's a pleasure.

Alison Key: So we kind of want to, in this interview cover, not the things that most people hear when they hear interviews with you or read profiles of you because you've done that many times.

J. McKeig: A few.

Alison Key: But want to cover maybe some of the things that are a little off the wall or things that maybe people don't care about you very often.

J. McKeig: That sounds like more fun.

Alison Key: But having said that, just to start most of our ComMNers off who haven't heard you speak, can you give us maybe like a 30-second intro to your life and where you came from and how you got here?

Mark Thomson: No pressure.

J. McKeig: No. Right? Ready, set, go. What I would tell everybody is that I'm from Federal Dam, Minnesota, which is up on the Leech Lake reservation. Population 106. A couple of stop signs. A couple of bars. One closed, one barely open. It's a— there is a federal dam in Federal Dam.

Alison Key: I did not know that.

J. McKeig: That's, that's why it's there. People always ask that question, and there is indeed. And it's a fishing spot and it's on the reservation and it's where I grew up. I'm the only girl, four brothers. Grew up in pretty simple times. Followed my mother to Saint Katherine's University where she was the all pro and then had to try to live up to that. Did not live up to that. On purpose. And moved on to Hamline School of Law. Graduated and then started a career in the Hennepin County Attorney's office doing child protection.

Mark Thomson: Cool. Now that that's out of the way. One of the things that you did is went through judicial process, the judicial-selection process. Not once but twice for this job. And so given that you have more experience with that than even a regular supreme court justice, probably. Do you feel like it went well? How did, how did it feel to go through it?

J. McKeig: Well, I went through it actually four times for the district court position and then once for the Supreme Court. And it is a very intimidating process that— it's kind of like the bar exam. I think you in a moment might think you did okay. And then the more you think about it, you're like, I absolutely failed. There's no way. And so it's really hard to— it's hard to figure out how you did in the end. And, and who knows? I mean, I think it depends on how everybody else is able to answer the questions and what they're really looking for at the time. But I think

people just have to not give up if it's something that you want to do. And that's what, that's what other people on the bench told me. It's like, "Hey, I did it five times, six times, so then you don't feel like such a loser."

Alison Key: So you've kind of mentioned before that coming from the district court, transitioning into the supreme court was kind of a, I don't want to say difficult, but it was a transition to be sure. Now that you've been here over a year, how do you think things are going and what has changed about yourself or how you do this job in the year that you've been here?

J. McKeig: Well, I don't think anything's changed about myself. I think that's an impossibility. I think people have tried to make improvements on me for 51 years and I, I seem to be holding steady with where I'm at. But I will say that I'm more comfortable than I was in the first couple of months because it's— it was a difficult transition. Transitions for me are hard in the first place. I can remember when I got on the district court, I went to the press conference and I was thinking I had that buyer's remorse immediately. And I thought, "Oh, I've, I've made a grave error. I really just wanted to see if I could do this and now I'm going to go back to my job at the county attorney's office and I'm just going to stay in my office and do my work." And so that was a difficult transition. But there you are extremely busy. It's like emergency room work, if you look at it, you know, compare it to the medical field. And then you come up here and it's really, it's very quiet. It's very quiet. It's very formal. And there's a lot of time for thinking and writing, which is important in this job. But it certainly is a transition from handling something or multiple things at one time.

Mark Thomson: You were going to have a contested election this year maybe. But you don't. Nobody filed to run against you. I assume they were impressed by the strength of your character and jurisprudence.

J. McKeig: Oh, I'm sure that's what it was.

Mark Thomson: That's certainly what I've told everyone. How did it feel to think that you were going to have an election and how does it feel that you don't have, at least, a contested election.

J. McKeig: You know, even when thinking about applying for the district court jobs, I would say that the fact that there had to be an election was not something that I was looking forward to. Because I don't consider myself a politician. I don't necessarily want to be a politician. I just want to go to work every day and do my job. And that's the weird thing about being a judge and having to run an election because we're neutral. We can't give positions. And I think it makes it really challenging. But I was prepared. People have prepared me very well for the fact that I was more than likely going to have a competitor. And so when it closed and I didn't, I was just like, Yes! Hallelujah! I can have a summer!

Mark Thomson: Mostly impacts as far as summer vacation.

J. McKeig: Well, summer vacation and my kids, you know, I'm already gone a lot. I'm speaking around the state and so sometimes I feel like I'm missing things that are important to them and important to me. So I'm happy to be able to spend some more time at home with them.

Alison Key: What do they think about you being a Minnesota Supreme Court Justice? Are they impressed?

J. McKeig: No, they are definitely not impressed. And in fact I can tell you that on the— after I was appointed in June of 2016, my now 17 year old went to the first day of school and he came home and he said, "Mama, you're not gonna believe it, but the social studies teacher told us that there was this big event this summer and that they appointed the first Native American to the Minnesota Supreme Court." And I said, "well, did you say anything?" And he said, "no." I said, "why?" He said, "it's embarrassing!" And it was a similar response to my now 15 year old as well. In fact, they were not happy when a photo of them appeared in the front page of the Star Tribune and it was busted that they actually were my children.

Alison Key: Blew their cover, huh?

J. McKeig: It blew their cover. Yeah. They were not happy.

Mark Thomson: So other than your kids, has having this job at the Supreme Court as opposed to the district court or your jobs before that, has that changed your personal life at all? Are you recognized in public? Do people laugh at your jokes more?

J. McKeig: Yeah, I know people say, how are you doing? And I say, well, I think I'm fine, but I don't really know because now really no one tells you the truth. Not that they did before on the district court, but I think it's even more so. I am recognized more in public. And so sometimes you know, when I'm there with the baseball cap on and you know, didn't shower for a day or two and don't have an ounce of makeup on. And somebody says, "hey, aren't you Anne McKeig?" And sometimes you'd like to say no, but you know, what the heck. I am who I am. And, I just, I just take it as it comes.

Mark Thomson: I thought you were saying you went out in a baseball cap like Leonardo DiCaprio and try to not, you know, paparazzi.

J. McKeig: Oh no, it's because my hair. I was having a bad hair day, Mark.

Alison Key: Yeah I've been with you in the Capitol and someone stopped and asked you for directions, so sometimes you can still fly under the radar.

J. McKeig: Absolutely. And I love that. In fact I was getting, I think it was getting a pedicure, which I don't get to do very often and this woman said, "I recognize you!" And I didn't say anything. And my girlfriend was with me and she always wants me to

tell. And I'm like, "I'm not saying nothing. I'm incognito." And then she said, you know, "do you work, do you work at Target?" I said, no. She goes, "Walmart?" I'm like, no. And my friend is elbowing me, she's like, "tell her, tell her." I'm like, I am Mum's the word if that's where she thinks she saw me, great, all the better.

Alison Key: Right. Maybe it's from your, uh, illustrious singing career that she recognized you.

J. McKeig: Now that could be possible. Now that I'd like to be recognized for since I was born to be a country music singer, at least I thought so.

Alison Key: Well, our Twitter followers certainly agree with you on that. They've heard what you have to offer and they were quite impressed.

J. McKeig: That's good. Hopefully I'll be getting a call from the Grand Ole Opry and, you know, make an appearance there.

Alison Key: So you seem to have a reputation as kind of a fun justice. Are you really, really fun? Is that true?

J. McKeig: I think I'm fun. I think my kids don't think I'm fun, but we recently celebrated my daughter's Quinceanera in Mexico and I will say that I think this is evidence of the fun factor. There were other soccer moms who came and had rented a house in the same complex, and when the soccer girls appeared, my door open and nine 15 year olds came in with their luggage and informed me that they were not staying with their moms, they were staying with me because I was the cool mom. So I think that is clear evidence that I am; I've got to have some fun factor in there that is worth some credit. I think so, yeah. Fifteen year olds are hard to please.

Mark Thomson: It's true. Literally the hardest. I think. So. I think it's been reported a little bit that you are a prankster in your personal life and at the court. I don't— I think we're short on details, though. So I wonder if you could just pick one prank from your time here. I know there's a big library from your whole life.

J. McKeig: Yes, there is quite the library. I'm proud of the prank that I played on Justice Lillehaug where it was about the Quinceanera and I had given him an invite for him to go to Mexico and it probably not in his normal course of vacation schedule. So I had a good friend of mine call him and pretend to be my travel agent and she said that she was, I'm going to assist him in booking his hotel room and was quite insistent on needing his credit card information. And he was very polite but firm that he was not booking a room, and that he had not decided whether he was going or not yet. And then he promptly called me to tell me that my travel agent was trying to hoodwink people into giving them their credit cards. So I feel like that was a very successful prank.

Alison Key: Sounds very successful.

J. McKeig: I laughed for sure.

Alison Key: I wonder, are most of your pranks directed toward Justice Lillehaug?

J. McKeig: Lillehaug does really take the brunt of them and I think he's handling it quite well. I did have a partner in Justice Stras when he was here. He would help me, you know, try to come up with some new ideas. So when Justice Stras left, I did inform Justice Barry Anderson that he was going to have to pick up that spot and help me come up with ideas. He's not really fulfilling his role yet on that, but he does, he has been put on notice that that is one of his roles. Yeah, it is— it is an expectation.

Mark Thomson: I hope that's worked its way into the candidate selection for future.

J. McKeig: Well, I think maybe perhaps it should be a question that the selection committee asks.

Alison Key: Or at least a question you ask clerks if they were willing to help you out with that.

J. McKeig: Absolutely. Yes, because I do believe, including the two of you, have assisted in a way where it would not get you in trouble in pranks. Although sometimes I think I had to be pretty firm, Mark, in making you, making you partake in the prank because you really were not all that willing. But you were under, you know, some employment issues at the time.

Mark Thomson: Assist sounds voluntary.

Alison Key: So we also wanted to ask you some questions about oral argument and the nitty gritty of your actual job here. Are there any rules for your behavior on the bench? Do you have to not see your mints too loudly? Do you have to not make too many faces of counsel's questions? What are the kind of, the parameters of what you guys are expected to do while you're sitting on the bench during argument?

J. McKeig: Yeah. I think, while we don't have a list or anything like that, those are, I think it's just the normal expectations of judicial demeanor and what we expect from our bench, whether it's district court, whether it's court of appeals or whether it's the supreme court. I know that it's something I have to remind myself all the time, honestly because I'm not a great poker player and— but I had to do that at the district court. So thankfully I had some years of practice of keeping that face and not rolling my eyes like I used to do when I was a litigator. You just don't have as much freedom because you really want to be respectful of the people's time. And every case is an important case, because it's important to the litigants. And so we want to give them our full attention, our fair attention, fair questions, and then be able to come up to what hopefully is the right decision.

Mark Thomson: What is your kind of questioning style? Are you someone who thinks of questions in advance or more inspired during arguments and like what kind of questions do you try to ask?

J. McKeig: I don't— sometimes I'll come up with questions ahead of time, but that's more rare for me and I think that's probably just based on my whole practice, you know, as a county attorney and having to think on your feet and then as a district court judge and asking questions as issues come up. You know, I know some of the justices— like Justice Lillehaug is always going to have some hypothetical that he has thought of ahead of time, but I— that's not the way I operate. So a lot of them I would say it—"inspired" is probably a good word—by something that counsel says and then it makes me think of something that I would like the answer to. I find oral argument extremely helpful. Whereas I know others might say that they have a pretty good idea of what they're going to do prior to, but I actually really enjoy oral argument. I think it's extremely helpful.

Mark Thomson: That relates to one of our questions, which I'm just going to read it verbatim, "is oral argument boring?" As clerks, we sat through a number of oral arguments and not all of them were great from my perspective.

J. McKeig: Oh, well that's, I think that's— of course, if I said they were all exciting that would be a lie. Some are drier than others, but it's your job as the justice or as a judge to pay close attention. And thankfully, you know, I mean these are— we only hear two cases and if you're on the district court you might hear eight or ten. So I have some good training to be able to sit there and to pay attention. And I think that's why we have the mints there. Sometimes if we're getting a little sleepy or, or just something, you know, to help us keep our attention. We pop a mint.

Alison Key: I hear that you have about four times as many mints up there as other justices. Should we be reading into that?

J. McKeig: No, I just feel like, I have really bad coffee breath in the morning and so let's add those mints.

Mark Thomson: Very courteous.

Alison Key: What do you wear under your robe?

J. McKeig: Oh, Alison, why do we have to ask these questions? Well, there's a difference between what I wear and what I want to wear. I am more formal at the supreme court than I was at the district court because a lot of times we are seen, obviously, outside of the courtroom, but I'm not wearing a prom dress, that's for sure. You know, I don't— the heels, I'm done with those. I've hit the 49 plus 24 months and so I've passed on the heels. I would like to wear my converse tennis shoes. I get by with that perhaps once in a while.

Alison Key: Are there any areas of law that you find particularly challenging? I know Justice Stras always said he liked the tax cases because they were always a challenge for him. Are there any areas of law that you like or don't like because they're kind of more difficult for you?

J. McKeig: You know, I mean, I think when the cases come at this level, they're all challenging for multiple reasons and so there isn't a particular area that I like or don't like. I do find the tax cases interesting and I'm glad that we're. Have we have a tax court. Although I liked tax law in law school, people find that quite surprising about me. In fact, I do believe I got an A in tax law. I know. And in fact when I announced that at the county attorney's office when I was working there and one of my friends said, well, you're smarter than you look. Apparently I don't look all that smart, but—

Mark Thomson: Do people not say things like that to you anymore?

J. McKeig: No, they do. And which I'm glad because I, I have a very good group of friends that surround me and I was just out of town with one of them and her brother is a lawyer and she and I—she was my former secretary, but we became very good friends—and she said that her brother, who's a lawyer, is always like, well, what do you call her? And she's like, well, a lot of things, some of them not so nice, but mostly it's just McKeig and I prefer it that way.

Mark Thomson: So, I think people tend to know that justices on this court hear cases, but they might not know that you have a bunch of other responsibilities, both kind of public facing and as far as administering the Minnesota legal system. So I wonder if you could describe the latter like what kind of committees or other obligations you have in Minnesota law?

J. McKeig: Yeah, I think it's probably the part of the court that's really unknown and it's a shame because I think we spend a really good chunk of our time either on committee work or being out and about being the face of the court. So there's committees related to ADR to No Fault to the Rules of Evidence to Criminal Procedure, to Tribal State Court Forum to Children's Justice Initiative. I mean it's a very large range and we all have a few of those committee assignments. And then we're all liaison to either one or two of the judicial districts. So we try to get to their bench meetings, try to be informed as to what their issues are and bring that back to the court. And then there's a lot of requests for public speaking. Last year I think I did 54 speeches across the state and so that keeps you pretty busy, but it's really fun too, because you're not then just stuck here in this beautiful building. Not that it's stuck, but it is nice to be able to get out and see different parts of the state. So I've been down south and I've been all the way up north and of course going north is like going home. So I always love that.

Alison Key: So in your work at the county attorney and at the District Court, you were definitely kind of an advocate for children when you were there. How does that

manifest itself now that you're a Minnesota Supreme Court justice? Are you still involved in that work?

J. McKeig: I am, and at a different level. And a level that hopefully, where— at a level that hopefully you can make a difference. I used to be, well I am still, an admirer of former Chief Justice Kathleen Blatz because one of her legacies, I think, has been to advocate for children and their rights and their needs. And that we as a community have a special responsibility for the welfare of kids. And so she set up the Children's Justice Initiative and the Chief Justice, our current Chief Justice, Chief Justice Gildea, is working on that, but she's allowing me to be a part of that, which is great. I teach at two of the law schools. I teach at Mitchell Hamline and then also at St. Thomas. And so I teach a course related to child protection and child abuse. So I'm able to stay involved that way. And then I'm also on some committee work where it's behind the scenes trying to change practice and policy so that hopefully we as a state can improve our outcomes as to how we're dealing with dealing with kids.

Mark Thomson: Has that family law background ever come up in a case in your time at the supreme court or a or informed how you've seen cases here?

J. McKeig: Absolutely. And I'm really glad you asked that question because I will say that when I was in the whole application process for district court, many, many others who are naysayers said, you know, you only have child protection experience. You only worked in the juvenile court. As though that we're a negative. And I will say that both at the district court level and at this level, there is nothing that I have actually used more than my knowledge of that system because it's so specialized. And it's really the entry point for anyone who might end up unfortunately having longterm contact with the criminal justice system. And I say that because when you look at our adult male prison population, a good percentage, 70+, had their very first contact with the system as a child in need of protection or services. So I am very proud of that work and I don't think it's, um, it didn't hurt me at all. It's only helped me.

Mark Thomson: You don't have to answer this if you don't want. Do you have a case that you've written here that stands out to you or that is your favorite in some way?

J. McKeig: Well, I would— no, I don't have— I have a case that I wish I was part of, and that was a decision before I came here, which was I think Justice Chutich worked on it at the court of appeals level. And it was related to an issue of domestic violence, where a woman was in the northern part of the state and was assaulted by her husband or boyfriend. And then she ended up fleeing the scene but got arrested for driving under the influence. And that's an important case that had some serious ramifications. And I wish I could have been a part of that discussion.

Mark Thomson: I think it's time for the lightning round.

Alison Key: All right. We have a series of lightning round questions for you.

J. McKeig: Ready.

Alison Key: All right. First question, what is your favorite travel destination?

J. McKeig: Mexico.

Mark Thomson: What's your favorite place to eat around the Capitol?

J. McKeig: None.

Alison Key: What superpower would you have, if you could have a superpower?

J. McKeig: Protect children.

Mark Thomson: Corndogs versus Pronto Pups, which are better?

J. McKeig: Corn dogs.

Alison Key: Would you consider yourself a little bit country? Or a little bit rock and roll?

J. McKeig: Both.

Mark Thomson: New Star Wars or the original Star Wars?

J. McKeig: Original Star Wars.

Alison Key: And this one's for our Twitter followers: Pratt, Pine, Hemsworth, or Evans?

Mark Thomson: Let the record reflect that Justice McKeig is . . .

J. McKeig: . . . making a face of: What are you talking about?!

Alison Key: That is also an answer that we would accept.

Mark Thomson: Yeah, we'll take that.

J. McKeig: Okay. All right. Very good. I know, I'm like oh. See? I think I'm so hip, and then I'm like, what?

Alison Key: Those are the Hollywood Chrises, if that makes any more sense to you or less . . .

J. McKeig: Sort of.

Mark Thomson: Your daughter would be deeply disappointed.

J. McKeig: One of them. Well, they— both of them. The whole family would be deeply disappointed, let's just face.

Alison Key: Oh, thank you so much for sitting down to talk with us, we really appreciate it.

J. McKeig: It's been a distinct pleasure.

Mark Thomson: The first of many interviews of the Minnesota Supreme Court justices. Thank you Justice Anne McKeig.

J. McKeig: You guys have a great day.

J. McKeig: Have you guys interviewed Lillehaug yet? I can't wait.