

Mark Thomson: We're back on The ComMN Law. My name's Mark. I'm here with Alison and Justice David Lillehaug of the Minnesota Supreme Court.

J. Lillehaug: Hello. Good to be with you.

Mark Thomson: So we thought we'd begin with a bit of background on your life before the supreme court and it's a bit of a big ask, but do you have like a kind of thirty-second or one-minute summary of how you ended up here? Just so we can get people caught up if they don't know anything about you?

J. Lillehaug: Sure. If you're talking resume, I went to Augustana College in Sioux Falls, South Dakota, where I grew up. Then Harvard law school, which was a big move for South Dakota boy. After that I clerked for two years for US District Court Judge Harry MacLaughlin of the District of Minnesota and that's where I learned to enjoy clerks and clerking. Following that, time at Hogan and Hartson and Washington DC. Traveling with Walter Mondale as his issues aid in the 1984 presidential campaign. We lost 49 states, so I had to come back to Minnesota and practiced at Leonard Street and Deinard, was United States Attorney for the District of Minnesota in the Clinton administration for four and a half years. I had time running for office, had time in solo practice and then about 11 years with Fredrikson and Byron before being appointed to the court by Governor Mark Dayton. It's a checkered career,

Alison Key: Certainly a very storied legal career. When did you first realize you wanted to go to law school or be a lawyer?

J. Lillehaug: Well, I think it was in high school. I was a debater and we had a jury, a topic on changing the jury system. So I spent a lot of time in law libraries and that's when the idea started going through my head. There'd never been any lawyers in my family. Most of my ancestors had been farmers. My dad was a band director, so it was, um, it was a bit of a stretch for me to be thinking about going to law school, but I think that's when it started.

Mark Thomson: Unlike some of the justices on this court, you've had some experience running for elected office before starting here, at least being involved in the political realm, through various jobs. What was that experience like running for office here?

J. Lillehaug: Well, running for the supreme court? Completely different than running in a political race. I mean, first of all, the constraints are substantial. Justices, judges cannot ask people for money. They can't know who is funding a campaign. We have a lot of work to do in September and October of election year and that's the time typically when everybody's out campaigning in political races. You can't talk about, issues, in general, because we wouldn't want judges to be announcing their positions on issues before cases come before them. So it's a completely different environment. I intend to run again in 2020 and will

navigate those constraints and I hope to do a good job and find ways to communicate with the people in Minnesota.

Alison Key: Even though you are not up for reelection this year, you said you're running again in 2020. What's it like having colleagues that are running for election? Does that change the workflow here? I mean it seems like there's a lot, like you said, they have to do they're full, full-time job and run for election.

J. Lillehaug: It doesn't change the workflow. Every justice has assignments, is responsible for cases each month, and, I don't notice any change whatsoever. Didn't notice that in 2014 with Justice Hudson and 2016 or now in 2018. I'm sorry. 2014 is when I ran. 2016 is when Justice Hudson ran. No, you have to get your work done and you can't just be out traveling around the state campaigning all the time. That's the nature of the job.

Mark Thomson: Was there a moment or a kind of event in time that convinced you to apply for this job or how did you reach that point?

J. Lillehaug: Well, I had thought about becoming a federal judge and way back in 1992, I applied to be a federal judge. I got the consolation prize, which turned out to be not just a consolation, which was being appointed US Attorney. And so after that I kind of gave up on the idea of being judge, but there was a moment—I recall sitting in courtroom 300 trying the 2008 US Senate election contest—where I looked up on the bench and I thought to myself, hmm, maybe I'd like to be on the other side of the bench than here. And that thought, just flashed through my mind. And then, in 2012, Justice Helen Meyer retired. I applied for that position, didn't get it. And, but then when Justice Paul Anderson retired in 2013, that's when the governor appointed me. So I'd say there was a space of about, oh, five years where the thought of being a Minnesota Supreme Court Justice was in my mind. And then I acted on it.

Alison Key: And you came at that time when you were appointed, you came from private practice, is that correct?

J. Lillehaug: I came directly to the court from private practice. I'd never worn a black robe before. And at least up until very recently, I've been the only justice sitting on the court to come directly from private practice, in this court. There are certainly many examples in Minnesota history, but I kind of take pride in that fact and think that it allows me to bring to our deliberations—and especially deliberations about rules and procedures—the view of the average attorney. I'm somebody who not that long ago is taking depositions, drafting interrogatories, working with clients. And I try to maintain that mindset in all of our discussions

Alison Key: Certainly doesn't make it any easier on the attorneys before you.

J. Lillehaug: Well, some— I'm not sure that's just right. Sometimes— are we talking discipline matters? Or are we talking oral argument.

Alison Key: Oral argument, I was talking about your punishing questions.

J. Lillehaug: Punishing? I hope my questions are professional and civil and courteous. They can be tough.

Alison Key: Sharp questions.

J. Lillehaug: Sharp implies implies a really bad edge. Precise, I would hope you would say.

Alison Key: Yes. I will say.

J. Lillehaug: Okay. Well anyway, I love oral argument. I loved oral argument as an attorney and I love it as a justice. And of course, the challenge then is not to have oral argument be a deposition where the attorney's the deponent and the person in the black robe is asking the questions and no one can make an objection. I really try to be professional, courteous, civil in oral argument, but I also want the attorneys to help establish the boundaries of the rule of law that they're advocating. And I do that oftentimes by asking hypothetical questions. When it— if it's statutory interpretation, I'm a little picky—word by word—in how is a statute is to be read. And so yeah, I'm probably a bit of a challenge to attorneys in oral argument and I think that's okay.

Mark Thomson: Are there things, now that you've been at the court for awhile, that you think make a particularly effective oral advocate, that are generalizable across attorneys?

J. Lillehaug: Yeah. The thing you always learned in law school and that never seems to stick with attorneys is when a judge asks a question, answer the question. And I feel very strongly that when I ask a question, I'd like to know the answer. Otherwise I wouldn't be asking the question and so filibustering or debating, just doesn't work with me. I think the best strategy for an attorney in oral argument is listen to the question and then try to answer the question "yes," or "no," or "Your Honor, I can't answer that question yes or no, and here's why." The moment you answer the question yes or no, then the judge or justice is going to be able to sit back and be ready for an explanation. If you don't answer the question yes or no, you have a big long lead in, a preamble, or it looks like you're bobbing and weaving, then the judge or justice is not listening anymore. Just wondering, well, what's the answer to my question? And so my first piece of advice to oralists is answer the question. Second, I think, is be prepared for telling the court what rule of law you're advocating, what relief you're seeking, and then be prepared to defend that rule of law or the relief. And you have to be ready for hypothetical questions, especially from me. Because I use hypothetical questions to establish the boundaries or the common sense of the rule of law that's being proposed. And spinning out hypotheticals, spinning out consequences from the rule of law proposed is a way that I think. And it really helps me decide the case. So those are a couple of suggestions for oralists.

Alison Key: Oftentimes in response to your hypotheticals, we've heard attorneys say, well, those aren't the facts before us. Is that not persuasive to you? Do you think they're just dodging, or do you think that that's not just your job to decide the facts before you?

J. Lillehaug: Well, first of all it's telling me that my hypothetical is not the case before us. Well, yes, that's why I'm asking it. I'm using it to, as I described, establish the boundaries of the rule of law that's being proposed in the case before us. So telling me your hypothetical isn't this case, doesn't help me at all. And the better approach is to recognize that the use of hypotheticals in oral argument is common. I mean, it's been used forever. It's used in the United States Supreme Court and the courts all around the world. It's just a way of thinking and analyzing and you have to accept it. So the best response isn't, "that isn't this case." The best response might be, "the rule of law in that case should be this because the facts are different than the case." So connect the facts being different to the rule of law that's being proposed and discussed.

Mark Thomson: From the clerk's perspective. I saw oral advocates pronounce your name probably 15 different ways over the year here. Can we set on the record correctly, whether there's a preferred pronunciation?

J. Lillehaug: It's Lillehaug, and that problem has dogged me ever since the playgrounds back in kindergarten. My name has been pronounced every conceivable way. We actually, we took a trip recently to Iceland. My family and I took a trip to Iceland and everybody could pronounce my name because it is Scandinavian. It's Norwegian in origin. It means a little hill. And my guess is that when my first ancestor came to immigration, probably at Ellis Island, instead of being a Peterson or an Olafsen or whatever, Johnson, they chose the name of the family farm, which was Lillehaug or little hill. I'm sure it was.— I haven't been there, but my father went there and he said it's really small and very rocky and no wonder they left it.

Alison Key: Do you have an opinion of yours from your career here that you're most proud of?

J. Lillehaug: A too early for that. Um, let's see.

Alison Key: Or conversely, when you have an opinion that you particularly struggled with or lost sleep over or wish you could've done again.

J. Lillehaug: I'll tell you the one that I probably felt the most passionate about and that was a dissent in the case of *Axelberg v. Commissioner of Public Safety*. And briefly the facts where the husband and wife went up north to a resort to have a nice weekend. They checked into their cabin, then went to the resort to do some partying and things got a little out of hand. Did too much drinking. They drove back to the resort and then a terrible fight broke out, or more accurately, the husband attacked the wife. And he had her cell phone. The only thing she could

do is jump into their car, locked the doors. He jumped up on the windshield, broke the windshield, and then she put the keys in the ignition and drove to the resort. And he was running after her. A terrible instance of domestic violence. And so when the police were called at the resort he was arrested for assault and she was arrested for DUI. And my dissent argued that in the implied consent revocation statute, the license revocation statute more accurately, there needed to be the defense of necessity, the common law defense of necessity. And I read the statute not to preclude that. It was a four to three decision. The majority of the court disagreed, but to my joy, the legislature in the next session unanimously, both houses of the legislature, passed the necessity defense in the license revocation statute. And, I felt very, very strongly about that case and continue to feel strongly about it to this day.

Mark Thomson: You've been on the court for about five years?

J. Lillehaug: Five years and three months.

Mark Thomson: Who's counting? Has anything changed about how you do the job over that time?

J. Lillehaug: No, the job is exactly the same as it was the day I was sworn in June 3 of 2013. Now what has changed is the makeup of the court, the membership of the court. I came in obviously at number seven in seniority and now I'm at number three. I'm sitting in the third chair, behind the Chief Justice and Justice G. Barry Anderson. And so there's been a lot of turnover on the court in a five year period. And also Justice Wright went off to the United States District Court. Justice Stras to the US Court of Appeals for the Eighth Circuit. So the constant adjustment to new colleagues has been not challenging but fun. I mean, getting to know people of different backgrounds and experiences and seeing— they say for the US Supreme Court that whenever you get new justice you get a new court and I think to some degree that's true in the Minnesota Supreme Court. We're all evaluating relationships, figuring out how people work, how they think, how they speak, how they write. And that's been a fun experience, a tremendously value all of my colleagues on this court.

Alison Key: Yeah. I remember when we in this room, we're in .the conference room now. When we were interviewing for our clerkship and we had all the justices here in the face of certainly looked a lot different even just three years ago than they do now.

J. Lillehaug: Yeah, and your reference to interviewing in the Minnesota Supreme Court conference room is apt. If anyone who's listening, who's interested in becoming a law clerk, you apply, go through the process and then we interview about 25 applicants. And we interview them as a group. Where the entire court is sitting there. And yeah, it's a little intimidating I would say for an applicant to come in at the end of the table and look up at the table and see seven justices, but we tried to make it a good experience and obviously the two of you did pretty well, or at least you didn't do too badly.

Alison Key: I remember you asked me a particularly tough question, but we can take that up later.

J. Lillehaug: Yeah, let's do that one offline.

Alison Key: You replaced Justice Paul Anderson. I think they had to pry him out of his chair.

J. Lillehaug: Justice Anderson really wasn't completely ready to leave. We have mandatory retirement at age 70 and, I saw him just the other day and he's very strong, vigorous and effective.

Alison Key: I was going to ask if you kept in touch with him, so that's kind of fun to hear that you kind of stay in touch. Did you feel, when you took over his seat, any sense of connection to him to kind of keep his office traditions or in any other way?

J. Lillehaug: Well, I felt a connection to him, first of all, because I know, I knew him. He was one of the most gregarious justices we've ever had and I would see him all the time and we would have lengthy conversations, and I enjoyed him tremendously. So it was a pleasure to succeed him in that way. It was also a pleasure to succeed him because when you look at the line of justices in the seat that I now occupy, it's kind of a civil line of justices. He was preceded by Justice John Simonett, who was one of the great civil practitioners in Minnesota history, preceded by Justice Rogosheske. So, and Justice Anderson was a civil practitioner, too, as I was mostly, although I was US attorney for a period of time. So I felt kind of a connection there and now being third in seniority, I'm sitting in the chambers that he occupied. Is there anything particular about the way we handle things in chambers? I really can't say I think probably all justices do pretty much the same thing.

Mark Thomson: You've written about the issue of unpublished opinions in Minnesota courts. How did you first come across that issue? And if you could kind of explain why you think it's something worth addressing.

J. Lillehaug: I came across the issue in private practice and there've been many, many private practitioners that have come up to me or written to me to thank me for drawing some attention to the problem of unpublished opinions. And what's the problem? The moment you designate an opinion as nonprecedential, no matter what's said in the opinion, it's kind of hard to use it. And our rules make it—they allow you to use lawyers to use nonprecedential opinions, but they're not, they're just persuasive, they're not controlling. My concern was that the court of appeals was being far too modest in what opinions were important and which ones weren't. When the court of appeals was created, about half of their cases were published. And now, by the time I wrote an article for Bench & Bar a couple of years ago, it was down to eight, nine percent. I'd been on the end of unpublished opinions litigating cases that I thought were important and that had important rules of law, issues of first impression. And then you get an unpublished decision and then you've got to be telling your client, now this is a

really important case and I think we can take it to the Minnesota Supreme Court, but then they're saying, wait a minute, it's not even precedential, it wasn't even important enough for the court of appeals to use it as precedent. And that's kind of a tough conversation to have with a client. So my suggestions were, first of all, that the court of appeals should be a little less modest about the importance of its work. And, I don't claim any credit from the article, but it does happen that the court of appeals has increased the percentage of published opinions, I think now up to 13, 14 percent, something like that. I also suggested that this is not a matter for legislation, this unpublished, the unpublished criteria found in Minnesota statute. That should be a matter of court rule. And I think the Minnesota State Bar Association agrees with me and they're pursuing some legislation to put this back in the hands of the courts where it belongs. Courts should be deciding whether it's a, whether court's opinions and decisions are precedential or nonprecedential.

Alison Key: Is that something that this court takes into consideration when it's deciding which cases to grant review on, whether it's published or unpublished, or is it other criteria that you use?

J. Lillehaug: Well, each, each justice applies the criteria of Minnesota Rule of Civil Appellate Procedure 117,, which set out the criteria for review. You can imagine though, that if the court of appeals thinks its opinion is not important enough to be precedential—applying some of its own criteria and the legislature's criteria, which are very similar to the criteria in rule 117—that can have an effect on one or more justices. And every time we get a bench memorandum on a petition for review from the Commissioner's office, the first line is, "this is an unpublished case from the court of appeals." And you immediately kind of say to yourself, oh, maybe it's not that important. I don't do that. I remind myself that if somebody is petitioning for review, I really shouldn't take into account whether it's published or unpublished. The question is, does it fit the criteria of Rule 117, that's the test that I apply.

Mark Thomson: It strikes me, you've held public office before when you were at the US attorney and that's a pretty public-facing job in a different way than this job is public facing. There, you're communicating with the public, updating them on what you're doing in a more personal way. Where here you're releasing opinions obviously to the public, but aren't at as much liberty to speak off the cuff, talk directly about your personal feelings perhaps about what you're doing.

J. Lillehaug: Yeah, it's a different job. And by the way, we do speak through our opinions and they are all published and precedential. And all of our oral arguments are both live streamed and they are video archived. So the work that we do as the court is transparent and I think that's important to accountability. But we speak through our opinions. It's a different job. When you raise your right hand and swear to defend the constitutions of the United States and Minnesota as a judge or a justice, you're embarking on a completely different enterprise. Other public jobs may be about policy, politics, and personalities. Being a justice is not about that. I mean there's judicial policy, but fundamentally we decide our cases

based on precedent, the law that's been handed down, and legal principles. And so the nature of the job is so much different. The nature of communicating with the public necessarily needs to be different. And that's why, as I mentioned earlier, I think in election campaigns for a judicial office, it's just inappropriate to be saying what your position is on particular issues that may come before the court. People don't want to think or know that their cases are going to be decided because somebody's a republican judge or a democratic judge. And it always bothers me in the paper when every legal issue is analyzed through that prism. This court is unanimous quite a bit of the time. Even though we've been members who've been appointed by different governors, come from different backgrounds. And the idea is that you hear each case one at a time and then in this, in the Supreme Court Conference Room, the magic of deliberation happens where you actually listened to your colleagues, hear what they have to say, see what their perspective is on the precedent and the principle, and their views are informed by their own diverse backgrounds and experiences. That's the judicial decision making process, it's not the political or policy decision making process. Very, very different.

Mark Thomson: There's a different way in which the court is public facing that the public may not know about in that each of the justices holds different administrative responsibilities with regard to the state court system, committees reaching out to the community in that way. Can you explain a little bit about what your responsibilities are and how those impact your life on the court?

J. Lillehaug: Sure, sure. And over five years they've changed. My primary administrative responsibility right now is to be the discipline justice. I am the liaison to the Lawyers Professional Responsibility Board, the Client Security Board, and the Office of Lawyers Professional Responsibility. And so anything relating to attorney discipline, I touch in one way or another. I take that responsibility very seriously for the reasons— Well, first of all, attorney discipline is a very important matter in terms of public trust and confidence and protecting the public from unscrupulous attorneys. But it's also very important because attorneys are people with licenses, they put tremendous time and effort into getting those licenses and they need to understand when they're license has an issue or they're potentially going to be disciplined, that due process controls, that the facts really do matter, that the law really matters. And as a former private practitioner that matters a great deal to me. In addition, I'm the supreme court's liaison to the Minnesota Rules of Criminal Procedure Committee, the Advisory Committee. And that's an important task. I'm the biggest tasks that committee has undertaken in the last five years is to really open, to a limited extent, open the criminal courtroom to cameras, which is again, part of the public accountability and transparency mission of the court. And the Chief Justice has been very supportive of that. It's limited in the sense that the right to cameras in the courtroom attaches only once a guilty plea has been entered. At that point it was the view of the committee in the view of the court that the balance shifts toward access, and once somebody has been adjudicated to be guilty. So those are a couple of the committees that I'm involved in. I recently left as liaison to the Tribal Court State Court Forum. And

that's an area that's been of great interest to me over the years growing up in South Dakota, visiting Indian reservations, and then as US attorney dealing with Tribal Nations on a sovereign-to-sovereign basis. So I was liaison to that committee for a number of years and I've turned it over to somebody who couldn't be better, Justice Anne McKeig, who is either the first or one of the very first natives to be appointed to any supreme court in the United States, in the history of the United States of America. So obviously that a liaison position is now in good hands.

Mark Thomson: Have you considered "the discipline justice" as your 2020 campaign slogan?

J. Lillehaug: I promise I will think of that for at least five seconds and then reject it.

Alison Key: So what do you plan to do when you retire? I know some of your former colleagues have taken different approaches in their post-Minnesota Supreme Court life. Do you have any plans for what you want to do when you retire?

J. Lillehaug: Absolutely not. I'm 64. I can serve until age 70 and I hope and expect to serve until age 70. Health and the voters willing. No. I'm going to wait probably until at least age 68 to start thinking about that.

Mark Thomson: But on a smaller scale, if you had an unexpected day off, are there things that come to mind that would fill that day?

J. Lillehaug: Well, it depends what time of year it is. If it's nice outside, I'm a very avid, mediocre golfer and I would really like to be out playing 18 holes. If it's the fall season, I'm a pheasant hunter and my brother and I have an annual pheasant hunting trip to South Dakota for opening day. We're going to do that again this year. There's a whole ritual attached to it in terms of the dogs, and the hotel we stay in, and the meals that we pack, and the meals that we eat. And we hope to get a few birds along side the ritual. Those are a couple of things that I like to do. We just came back from a family vacation to Iceland and Scotland and I found I actually enjoy hiking. We went hiking for five days in the Scottish Highlands and I'd always been, I, I found some muscles I didn't know I had, I found that I kind of liked finding those muscles and so there may be more hiking in my future.

Mark Thomson: You were training in a dog during part of our time here. How's that going?

J. Lillehaug: Her name is E

New Speaker: Isie. She's a yellow lab. She's the fourth yellow lab that we've had. And I would say the results are mixed. We had three yellow labs that we, that we obtained when they were a little older. Two and a half, three years. And they had various neuroses. So we thought this time we'd get a puppy and then she wouldn't have any neuroses. We find that she has neuroses and they're probably from us. She's a independent minded animal, let me say. And she, she did stay at a farm

for a couple of weeks while we were on vacation. I always hesitate when I say, well we're taking the dog to the farm, that usually doesn't mean a good thing. But it's a good farm and she is back and she's alive and she got along fine at the farm.

Mark Thomson: Do you have a favorite local craft beer, or craft beer of any kind?

J. Lillehaug: Yes. One of my law clerks turned me on to Indeed Day Tripper. And Mark, Alison was it your year when I actually did some crafting of beer on my own? It must have been, I think it was the year before. As a holiday gift, my daughter got for me the opportunity to go make beer at a Saint Paul Brewery. And so, I created beer that was kind of comparable I think to Anchor Steam. And then we bottled the beer and then the question is what to do with it because we had several cases of beer in the basement. So with the help of her boyfriend, a label was created and it became known as "Black Robe Ale." And the subtitle on the label was, "The Supreme Taste." So we distributed some examples of Black Robe Ale to the law clerks that year. I think they were appreciative, but I didn't get much feedback.

Mark Thomson: I'll be on Ebay after this trying to get those.

J. Lillehaug: I still have a few labels around and if I do any brewing, I haven't done any brewing since then, which probably tells you something. I stick with Indeed Day Tripper.

Mark Thomson: So in conclusion, we try to end with a series of fast, short answer questions, yes or nos or choosing between two choices.

Alison Key: Very low stakes.

Mark Thomson: Low stakes pop culture, personal preference.

J. Lillehaug: And you want me to answer the question? I assume.

Mark Thomson: We want you to answer the question, feel free to pass if you so choose. Are you prepared and willing?

J. Lillehaug: Yes.

Mark Thomson: Alright. Beer or wine?

J. Lillehaug: Typically beer.

Alison Key: Favorite Minnesota State Fair food?

J. Lillehaug: Oh, it's the corn dog. That's very old school and traditional, but it's the corn dog

Mark Thomson: Invisibility or the ability to fly?

J. Lillehaug: Oh, the ability to fly. I mean, we all have dreams that we're flying and that would be quite a trip.

Alison Key: Civil law or criminal law?

J. Lillehaug: Oh, I can't. Your honor. I can't answer that question. Yes or no.

Alison Key: And here's why.

J. Lillehaug: The reason is, that I have experience in both the civil arena and the criminal arena and I enjoy and am challenged by the experience in both. Now I will tell you that I think civil law is harder than criminal law, depending on the case. It was easier for me when I became US attorney moving from civil to criminal than I think it would be for somebody moving from criminal to civil.

Mark Thomson: Jason Bourne or James Bond?

J. Lillehaug: Bond, James Bond,

Alison Key: Murder mystery or romance novel?

J. Lillehaug: I don't read many romance novels. So no, it would be a murder mystery and I have a favorite Minnesota mystery author, John Sandford, who wrote all the books with the word "Prey" in the title. I kind of got hooked on those many years ago and I await eagerly each of his books coming out. And then he's got another spinoff character named Virgil Flowers. And there's a series of books about Virgil Flowers. I like those as well.

Mark Thomson: Beach vacation or camping vacation?

J. Lillehaug: Beach vacation. My wife— this is almost unpatriotic, but I have to say I've only been to the Boundary Waters once and it didn't go that well. My wife and I had some trouble coordinating the canoeing of our— our paddling of our canoe. And so probably a beach vacation that could include some opportunity to play golf. I'm sorry, Minnesota. I really feel bad that it's not camping in the BWCA.

Alison Key: Who would make a better friend, Beyonce or Rihanna?

J. Lillehaug: Unlike some justices, I am familiar with both, but I'm not sufficiently familiar to give you an expert opinion.

Mark Thomson: Climbing up a mountain or jumping out of a plane?

J. Lillehaug: Well, I've never had the urge to jump out of a plane, so I guess I'd rather huff and puff up the mountain.

Alison Key: Soda or pop pop?

J. Lillehaug: Oh, pop. Come on. I may have demonstrated some unpatriotic Minnesota attitude a moment ago. But that stuff is pop.

Mark Thomson: Beatles or rolling stones?

J. Lillehaug: Ooh, that's a tough one. When I was a kid it was the Beatles, but the Stones. They stayed together. Well, they mostly stayed together. I went to their concert here at TCF bank stadium a year or so ago.

Alison Key: You've quoted them in oral argument.

J. Lillehaug: I have, yes. Oh, you noticed that.

Alison Key: Many did.

J. Lillehaug: You can't always get what you want. Um, right now I'd say the Stones.

Alison Key: Text message or voicemail.

J. Lillehaug: Oh. Text message. Voicemail is so 1990s.

Mark Thomson: Morning person or night person?

J. Lillehaug: I'm a morning person. I get up. I'm used to be 5, now it's 5:25 on the dot. I walk the dog, feed her, and then sit down with the New York Times in the Star Tribune before getting onto electronic blogs and other websites. So yeah, I get a lot of thinking and work done, including in the shower. Especially getting ready for oral argument. I'm in the shower thinking what I'm going to be asking that day and I'm not a great night person. I'm usually in bed about 10:30.

Alison Key: Caribou or Starbucks

J. Lillehaug: Caribou. I mean that would be unpatriotic if I didn't choose the Minnesota alternative even though they're not a Minnesota company anymore, but I especially like their Mocha Java.

Mark Thomson: Thank you very much, Justice Lillehaug for joining us.

J. Lillehaug: My pleasure. Good luck with all your endeavors.