

Capitol Report

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Metro East

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Thursday, August 18, 2011

The DFL's man on the inside

David Lillehaug is a hard driver both in and out of the courtroom



Since his advocacy on behalf of Sen. Al Franken in the 2008 recount, David Lillehaug has become the unofficial go-to guy for the state DFL Party whenever there is a high-stakes battle at the intersection of law and politics. (File photo)

Lillehaug Attorney still maintains South Dakota connections

BY BRITT ROBSON
Special to Capitol Report

Forgive the mafia reference, but the best descriptor of the role attorney David Lillehaug currently plays in the Minnesota DFL Party is consigliere — a highly trusted adviser, wizened counselor and brass-tacks troubleshooter for those at the levers of power within the organization.

Even back when he was still a relatively young pup, Lillehaug, now 57, was known as the “body guy” — the person beside the candidate nearly all the time — when he was the issues aide and executive assistant for Walter Mondale’s presidential campaign in 1984. A quarter-century later, after a four-year stint as U.S. attorney and two high-profile but ultimately unsuccessful runs for public office, Lillehaug secured his political niche as the lead Minnesota counselor in the recount and seven-week trial that determined the winner of the 2008 campaign for the U.S. Senate between Norm Coleman and Al Franken.

Lillehaug’s successful advocacy — both in the courtroom and in the media — on behalf of Franken earned him the Attorney of the Year award in Minnesota Lawyer Magazine and made him the unofficial go-to guy for the state DFL whenever there was a high-stakes battle at the intersection of law and politics.

“There have always been lawyers who do work for campaigns, but the [importance of their] relationship really changed in 2000 with Bush v. Gore,” says Lillehaug, referring to the Supreme Court decision that handed the presidency to George Bush even as the Florida vote identification and recount hadn’t been fully resolved. “There was a real feeling that the Dems were outgunned in 2000, so both nationally and here in Minnesota, the parties and candidates were looking for people who are excellent outside and inside the courtroom — who can not only read election law but be active in litigation if necessary.”

In the wake of that 2000 contest, Lillehaug was the official attorney and a senior political adviser on the

The Lillehaug File

Name: David Lillehaug

Age: 57

Job: Attorney, Fredrikson & Byron

Grew up in: Sioux Falls, S.D.

Education: JD, Harvard University; BA, Augustana College

Family: Wife, Winifred Smith; daughter, Kara

U.S. Senate campaigns of Paul Wellstone in 2002 and Amy Klobuchar in 2006. But it was the extraordinary circumstances of the Franken-Coleman recount — in which the Franken forces turned a razor-thin deficit on election night into a nearly equally close margin of victory after months of legal jousting, culminating in a court trial — that significantly raised his profile.

And in a climate that features two increasingly polarized parties with nearly equal support among the electorate, he suddenly has never been busier or more important to the Minnesota political process. Within the last 18 months alone, Lillehaug has represented the DFL or interests friendly to the party in matters that include the constitutionality of former Gov. Tim Pawlenty’s unallotment of items in the 2009-10 biennial budget; the recount of ballots in the 2010 governor’s race between Tom Emmer and Mark Dayton; the size and scope of the state government shutdown this summer; and, currently, the redistricting of the state’s political boundaries in the wake of the 2010 census.

Although elections and political law have become an increasingly large part of his practice, Lillehaug

says that his work for the firm of Fredrikson & Byron is still primarily business litigation.

“But there are common threads. First, much of my work is high stakes and crisis-oriented,” he says. “Second, in the business or political arena, when there is a crisis, you have to put everything else aside and work extraordinarily hard. Back in April, I could see [relations between the state Legislature and Gov. Mark Dayton] were headed toward gridlock, so I pulled up cases from 2001 and 2005” — years when Minnesota narrowly averted or engaged in a partial government shutdown.

“But we still had to act quickly,” Lillehaug continues. “The shutdown began on June 10. We filed our petition June 13 and had the governor’s position in writing on June 15. Judge [Kathleen] Gearin handed down her decision June 29, and we were in court July 1 in a test of what are the critical core components of government. Fortunately, I work for a firm with immense depth, with 240 colleagues, and am at a level of seniority where I can have really good second chairs [to help maintain the other cases in his workload]. And my clients realize that when I am in court with them I am going to devote the same level of attention and focus they see when I am in court with others.”

The third area of similarity between his political and business litigation, Lillehaug points out, is that the cases usually have a public dimension.

“There are many lawyers who know their subject matter better than me, but clients tell me they like that I can work well inside a boardroom, inside a courtroom and with the media,” he says.

(I know about Lillehaug’s relationship with the media firsthand: He and I had a contentious relationship during the 1990s when I reported on cases he brought forward as the U.S. attorney. But in the past few years, the enmity has thawed, in part because we belong to the same poker group that plays several times per year.)

From Sioux Falls to Harvard

Lillehaug grew up in Sioux Falls, S.D., preternaturally gifted in the oral realms of the flute (first chair in the school band) and debate (a national champion his senior year of high school). His father was a music professor at Augustana College, located a half-block from his home, from where Lillehaug eventually graduated summa cum laude in 1976.

“He hasn’t really changed much at all,” says Charlie Nauen, a partner in the Minneapolis law firm of Lockridge Grindal and Nauen who has known Lillehaug since they were in junior high and still has lunch and plays golf with him regularly. “He was a hell of a flautist, a hell of a debater, just very smart, creative and organized.”

Friends and foes alike note that Lillehaug is hardly lacking in self-confidence. But two events have regulated his ambition and self-esteem to a point that meshes perfectly with his current role in Minnesota politics. The first was his successful experience at Harvard Law School, where he graduated cum laude in 1979.

“That was a big deal, and a major shift, for a South Dakota kid who grew up a half a block from Augustana,” he says. “A lot of the kids in my class had gone to [prep] school at Andover and came from Ivy League colleges.”

At Harvard, he made the final round of the moot court competition (judged by then-Supreme Court Justice Warren Burger), and, after school, clerked for federal court Judge Harry MacLaughlin, who happened to be good friends with his former law partner, Mondale. Through MacLaughlin, Lillehaug was able to go to work for the Mondale campaign. As the person involved in debate preparation, he figured prominently in the shining moment of Mondale’s candidacy, when Mondale routed Ronald Reagan

in their first debate.

The other crucial event, the one that convinced Lillehaug that he was more consigliere than capo, was his loss to Jerry Janezich in his quest to secure the DFL endorsement for the U.S. Senate at the party’s 2000 convention. Coming just two years after his failed bid to become the party’s nominee for attorney general (a quest that caused him to relinquish his post as U.S. attorney), it drove home the limits of his political acumen.

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—Charlie Nauen of Lockridge Grindal and Nauen

“I think anybody who runs for office and loses can’t believe it happened,” he says with a laugh. “But it was a clear verdict that I am a better lawyer than politician. The experience has really helped me do what I do now, but I won’t run for office again.”

Since the political arena is rife with in-fighting and insecurity, that declaration also helps Lillehaug gain the trust of the people he represents. Tact and discretion behind the scenes can be nearly as important as aggression and preparation in the courtroom.

“When R.T. Rybak retained me to be the attorney for the Rybak for Governor campaign, I called Mark Dayton [who obviously was also running for governor] as a courtesy to let him know,” Lillehaug explains. “He couldn’t have been more gracious. And when it came to the recount he kindly brought me on to his team, and the same with the shutdown. So you can be zealous for the client but in a professional way that doesn’t make enemies.”

“David has great integrity and is completely loyal,” says Dayton’s chief of staff, Tina Smith, who herself went from the Rybak campaign to Dayton after Rybak was defeated at the party convention. “David has a cool head in a crisis. Politically I would want him on my side if I had a tough, challenging decision to make. Personally, if I were in a bind, he is one of the top five people I would call.”

At 57, Lillehaug acknowledges that he is “in the prime of my litigation career.” His only child, 19-year-old daughter Kara, is away at college as a sophomore at Tufts (and, Lillehaug proudly notes, a renowned debater herself). His wife, Winifred, is the chief operating officer of AEON, a fledgling nonprofit that specializes in affordable housing. His parents have relocated

from South Dakota to Edina, leaving the entire family (including his younger brother and sister) within a three-mile radius.

For the past 25 years, David, his father and his brother have made it back to South Dakota for the opener of duck hunting season, and whenever possible on summer weekends, he makes it up to his cabin near Brainerd. Maintaining his connection to music, he is on the board of directors for the St. Paul Chamber Orchestra, and he gets out on the golf course whenever possible. But most of all, he spends his time either preparing or arguing cases in court.

“I don’t know how long I want to work, and I’m certainly not thinking about retirement,” he says. “I am in a big firm, and I have a lot of cases. There is neither the opportunity nor the requirement for self-reflection.”

Just a steady succession of business people and politicians looking to be helped out of a crisis.