

# An Interview with Judge Lawrence J. Vilardo

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How does someone with aspirations to become a judge best present oneself to the world? In the case of Judge Lawrence J. Vilardo, it was a compelling combination of quiet brilliance and disarming humility.

Born and raised in Buffalo, New York, he received a bachelor of arts summa cum laude from Canisius College and graduated magna cum laude from Harvard Law School. He clerked for Judge Irving Goldberg of the Court of Appeals for the Fifth Circuit in Dallas, returned to Buffalo, was an associate at Damon Morey LLP, and then was a founding partner of Connors & Vilardo, LLP, where he conducted civil and criminal litigations in state and federal courts.

In 2015, President Barack Obama nominated him to serve as a U.S. district judge for the Western District of New York, on the recommendation of Senator Chuck Schumer, who said that when he turned his ear to western New York, what he heard from both sides of every political and litigation divide was the same: “Vilardo. Vilardo. Vilardo.” The U.S. Senate confirmed his nomination by a vote of 88–0. He has served as a federal district judge since late October 2015.

Before becoming a judge, Vilardo served as an editor of *LITIGATION* for nearly 20 years, including two years as editor in chief; served a three-year term on the governing council of the



ABA Litigation Section; and served a one-year term as codirector of the publications division of the Section.

Senator Schumer once referred to Judge Vilardo as “a true Buffalonian,” by which Senator Schumer explained that he meant “salt of the earth; honest; grounded.” Judge Vilardo embodies and personifies those values, which is how he has presented himself at each step of his professional career.

**AJ:** What is it like to be a federal judge?

**LV:** It's the best job in the world. Ever since I worked for [Fifth Circuit] Judge Irving Goldberg, it was my dream to be a federal judge. I saw the fun that he had doing what he did, the way he interacted with his clerks, and the significance of the job—just how important it is to have people who are committed to justice and willing to do the work necessary to do justice. For me, it's a joy to come to work every day. The decisions are very hard, and the job is difficult in ways that are different from the ways a lawyer's job is difficult. I work hard to try to do justice, to treat everybody who comes into my courtroom with respect. But it's the best job I've ever had. Well, the second-best job I ever had; the best job I ever had was clerking for Judge Goldberg.

Illustration by Daniel Hertzberg

**AJ:** What was it like to clerk for Judge Goldberg?

**LV:** He was an amazing man—a fabulous writer with incredible intellect, and the kindest and most generous and compassionate man I’ve ever dealt with. He had so many stories to share. He was Lyndon Johnson’s personal lawyer. The first call that Johnson made after President Kennedy was assassinated was to Goldberg, to find out about the transition. It was a real blessing to clerk for him. Being a law clerk is like being a judge without any of the pressure. You get to help make the decision, but the buck doesn’t stop with you—it’s with the judge—so you don’t feel the same pressures at all. That clerkship was just an amazing experience.

**AJ:** Tell us about your law clerks.

**LV:** I work closely with my clerks. My door is always open, never shut, and they come in and talk with me several times each day. We work collaboratively on everything. There’s no competition among them; we’re all trying to row the boat in the same direction. It’s been remarkable. I’ve been very fortunate to have really fabulous young people apply. I’ve not had a single clunker yet; every person I’ve hired has been spectacular, both in terms of their legal abilities and in terms of their qualities as people. They get along with each other. Often, I’m sitting in my office, and I hear laughter coming from the clerks’ offices. It’s music to me.

**AJ:** Was there anything unusually interesting about the timing of your move from private practice to the bench?

**LV:** The stars aligned at a perfect time for me. I was approaching age 60—which is really about the oldest at which one gets appointed, at least to the federal bench—and the opening arose. I think I’m better as a judge because I had decades of experience practicing law first.

The other thing that was remarkable was the sheer good luck that I had. There are only two district judge slots in Buffalo, and there hadn’t been an opening for more than 20 years. When the first one came up, Senator Schumer recommended someone else. I thought my chance was over. I was disappointed, but I was happy at my law firm, and it wasn’t the end of the world. Then, a couple weeks later, I got a call from the senator’s screening committee saying, “We’d like to interview you.” And I thought to myself, “For what?” I called a friend who was wired into the political end of that situation and was told, “There’s a rumor going around that the other judge is going to take senior status as well, and if he does, there’s a decent chance that Senator Schumer will send your name to the White House for the second slot.” So I interviewed with the committee and got a call less than a week later to meet Senator Schumer. About a month later, he sent my name to President Obama, who eventually nominated me for the position.

For whatever reason, the White House decided not to nominate Senator Schumer’s first recommendation, so I was the only

nominee for two slots, in a court that had an incredible backlog. My nomination was fast-tracked—I think mine was the only nomination first made in 2015 to be confirmed in 2015. Then, of course, the administration changed in 2016. Had I not been confirmed when I was, I probably wouldn’t be sitting here today. Sometimes it helps to be lucky!

**AJ:** What was it like to go through the confirmation process?

**LV:** The interview with Senator Schumer was fascinating but intimidating. I had not expected it to be as substantive as it was. I expected it to be a get-to-know-you sort of thing. It was anything but, and a really intense interview. I was impressed with how much he cares about this process and how he wanted to be confident that, first of all, I was intellectually equipped to do the job and, second, that I had the temperament to do it.

While that part was intense, it paled in comparison to the intensity of what followed—because next, you’re vetted by the ABA, you’re vetted by the DOJ, you’re vetted by the FBI.

It was an intense process that took several months. One day, my wife called me at the law firm and said, “Two cars just pulled up and guys in suits just left their cars and started walking around the neighborhood.” I said, “Well, we knew this was going to happen.” Later, I found out that—to a person, I think—all the neighbors said the same thing: “We don’t know him. He leaves very early in the morning, and he comes home very late at night. But his wife is the nicest person in the entire world.” So the FBI agents who did the door-to-door inquiry in my neighborhood told me that if there were an election between me and my wife in my neighborhood, my wife would win, and I’d finish a very distant second.

**AJ:** What was the transition from the bar to the bench like? Did it change your worldview?

**LV:** It did, but what prepared me for it was the transition from being a law clerk to being a lawyer. I remember some early briefs that I wrote for my former boss and later law partner, Terry Connors. He’d come into my office and say, “You know this is well written and well reasoned. It would be an A+ if you submitted it for an exam, but it’s not what I want. I need advocacy. I need persuasion. You need to stop thinking like a law clerk and start thinking like an advocate.”

That was a tough transition for me, but eventually I learned how to do it. When I became a judge, I knew that I had to reverse that process. I needed to stop thinking like an advocate and start thinking like a judge. I always thought I had a good sense of what’s fair and just because of my parents, two of the most remarkable and fairest people you could ever meet. Neither one was much educated—each had just a high school diploma—but they both pushed all their kids to go to college and beyond.

The one rule in our house was that you had to go to college; that was not open for debate. Post-grad education, that was up to you,

but college was a must. Of their four sons, one became a dentist, one became a physician, I became a lawyer, and one is a charter fishing-boat captain. There's a state court judge around here who tells people, "This guy's got a brother who's a doctor, a brother who's a dentist, and he's a federal judge; and the fourth brother is the most successful of them all because he fishes for a living."

**AJ:** You went to Harvard Law School during the 1970s. How was your experience?

**LV:** It was a great place. It opened my eyes to lots of things that I didn't know about. And it was intimidating. During my first year in law school, I used to sit around and wonder how I was going to make it through the next three years with all those incredibly smart people, because there were so many of them who were so eloquent and obviously so brilliant. I thought to myself, "I can't compete with these folks. They're just way smarter than I am. What the heck was I thinking when I decided to come here, because I'm in way over my head."

I worked extremely hard. When I got my first semester grades, it had gone really well. I was just flabbergasted. And then, at the end of the first year, when I made the law review based on my grades, I was equally as flabbergasted. I just didn't think that I could compete in that league. The law school class was also diverse in terms of people from different socioeconomic backgrounds. I formed a lot of close friendships, including one with Howard Gutman, who became my co-clerk with Judge Goldberg and who got me involved with *LITIGATION* journal. And I became friends with Chief Justice John Roberts, who was my managing editor on the law review.

**AJ:** If you had an opportunity to talk to your younger self during your law school days or your law clerk days, what advice would you give yourself?

**LV:** Follow your heart and do exactly what you think you should do. I tell people I've been blessed. I've had to make a number of hard decisions about my career, but I would not change any of them. When I decided to come back to Buffalo rather than to go to Dallas or San Francisco, which were the two other cities I was thinking about, that was the right call for me. The dollars certainly would've been different in the bigger cities and perhaps the breadth of the litigation might've been different too, but it was the right decision for me. Then, becoming a judge, once that opportunity presented itself, was a no-brainer. Maybe not the smartest decision financially, but I've never pursued money as a goal, and I'm glad that I haven't.

**AJ:** As a judge, do you get trained to check your biases?

**LV:** I'm not sure we get trained, but the way I do it is by thinking about it and confronting it. I recognize that I have biases. We all do. The goal is not to let those biases infiltrate our decisions. So, when a 60-something Italian male appears as a defendant

before me, I strive to treat him the same way I would treat anyone else, and vice versa. I also look to recognize that we all may have unconscious sympathies for people who are similar to us and perhaps different reactions to people who are not similar to us, but that cannot affect the decision-making process. At the same time, you can't bend over backwards just to appear "fair."

I once had to sentence someone who was similar to me in many ways. The question was do I put the person in jail. I didn't, but I agonized over it and confronted myself with the question "Am I doing this because of the similarities of how this person grew up and how I grew up?" My conclusion ultimately was no, and I hope that was right. These are hard decisions. I try hard not to let biases creep into them. I hope I'm successful.

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**AJ:** Do you use anyone as a sounding board?

**LV:** Absolutely. My law clerks are my sounding boards, and they also watch for issues that I should know about but might not. Very early in my judicial career, I had one of my law clerks, a woman, ask, "Judge, do you realize that you are significantly easier on women than you are on men in criminal cases?" I said, "No. How can that be?" She presented me with some facts and said, "Look at it. This is what you've done in these cases." I looked hard at it and said, "You know what, you're right." So, I bounce things off my law clerks, and I ask them to look for things that I might not see.

My career clerk is very experienced and very talented, and I talk with her about my decisions all the time. On especially hard decisions, I'll sometimes call other judges and discuss with them what I'm thinking and why, just to see if they have any observations about my thought process.

No one makes the decisions for me. I make every single decision that comes out of these chambers. I read all the papers myself. I agonize over every single decision, even the seemingly unimportant ones. Every single decision is my decision, but I weigh what everyone says.

**AJ:** Your first day as a judge. What was it like to don that black robe and take the bench?

**LV:** I was petrified. You worry about whether you're going to say something embarrassing. You worry about whether you're going to make a decision that's going to be incorrect and hurt someone. The pressure to do justice is a tremendous pressure; it's a positive pressure, to be sure, but it weighs on you.

My first day was scary. The first lawyer who appeared in front of me, God rest his soul, was John Humann, who was an absolutely fearless public defender. He was a tough but wonderful person, and he would say exactly what he thought to any judge. He was about 10 years older than me, and he told my courtroom deputy that when I took the bench, he was going to moon me. Of course, he didn't, but afterwards, my deputy said to me, "I didn't know whether he was crazy enough to be serious; and I didn't know whether to tell the court security officers or warn you."

I took the bench and had no idea he had said that. In the end, of course, he turned out to be a perfect gentleman. I think he sensed that I was nervous. He treated me very respectfully and played it absolutely straight—no joking—and I was very grateful for that. He's gone now, and I miss him. But the first time on the bench was scary. Later, one of the magistrate judges here told me, "You couldn't have done any worse than I did. When I took the bench, I sat down, looked out at the gallery and said, 'Good morning, Your Honor.'"

**AJ:** We live in an age of disinformation and polarization. Do you see these trends play out in your courtroom with the juries?

**LV:** Because I'm not in the jury room, I don't know whether they play out with juries. I have had a couple jury verdicts I was absolutely floored by, as well as many I've agreed with, but I don't know whether these issues played any role in any of those verdicts. I do think that there is an anti-intellectual thread that's running through society today that is a little bit scary. People do not want to listen to experts. The pandemic—people's reactions to it and whether to get vaccines—is a good example of that. I tell folks that I asked my doctors, "What are you doing?" and then I did what they did.

In areas that I don't know about, I want to know what the experts are doing. But there is an anti-intellectual bent today. Some folks think that because they can click something on a computer that tells them everybody is wrong and we're getting the wool pulled over our eyes, they know better than the experts. It's scary to me.

**AJ:** What is it like to be reversed as a judge?

**LV:** Well, it's not a pleasant experience. But it is the way our system works. In fact, one of the things I pride myself on is helping the lawyers in my courtroom make a record. I recognize there are things you don't want to say in front of a jury, so every time

we take a break, I ask the lawyers, after the jury leaves, "Is there anything you want to put on the record?" I try to allow them to make whatever record they wish, to preserve any errors that I might make. I also hope that I'm not afraid to get reversed. I think I've been reversed outright only once. I knew when I wrote that particular decision that I might be reversed, but I was convinced I was right. Although I knew the safer thing to do, for me and for my ego, might be to decide the case the other way, the right thing to do was to decide the case the way I decided it. Sometimes people think differently. All a reversal means is that other judges disagreed. It doesn't mean you're wrong.

**AJ:** Do you have a particular ritual or method that you follow when you sit down to write a judicial opinion?

**LV:** I try hard to write in a way that is accessible to the litigants. I think of my parents, who had just a high school education—would my mom and dad understand what I'm writing? And I ask my law clerks to help make it accessible and understandable. When I write and when I edit, I try to use short words, short sentences, and short paragraphs. I try to write in a way that makes it easy to understand why I did what I did. I know that half the litigants are going to read it and disagree with it. I'm not trying to get everybody to agree with what I'm saying. I just want them to understand. My goal, at the end of the case, is to have the losing litigant say, "He was wrong, but at least I understand why he decided what he decided."

**AJ:** Let's talk about courtroom craft. What tips would you offer to aspiring litigators?

**LV:** Make a good first impression on the court. The first thing the court should see from you should not be an unreasonable denial of a request for an extension. You just don't want that to be the judge's first introduction to you in the case. As far as the timing goes, pick your fights to make a good first impression in court.

Next, when you're in court, treat everyone, and I mean everyone, with respect. That doesn't mean that you can't make forceful arguments. It doesn't mean you can't ask hard questions. It doesn't mean you can't ask hard questions in a direct way. But don't ask them in an insulting way. Don't demean the other side. Don't do anything that shows disrespect for anyone in the courtroom. I've lost my temper in the courtroom only once, and it was as a result of a lawyer who was being very disrespectful to the court security officers and the marshals.

Finally, prepare, prepare, and prepare some more. There is nothing that is worse than a lawyer coming to a courtroom unprepared. When you come to the courtroom, you should know your case better than anybody else in the courtroom. You certainly should know it better than the judge, because the judge has had only a few minutes to spend with the brief or whatever the issue is in the case, and you've had days or weeks. You also

can and ought to outwork your opponent. That's one of the most important lessons for young lawyers.

**AJ:** What has impressed you the most in your time as a judge?

**LV:** Perhaps the difference in quality and commitment of the lawyers who appear in front of me. There are lawyers on both sides who just care so much about their clients—prosecutors and defense lawyers in criminal cases; plaintiff lawyers and defense lawyers in civil cases—and they work so hard to provide such stellar representation. Then there are others, sometimes very talented others, who don't display that same level of commitment and hard work. It's a shame.

There is a tremendous difference in the quality of practice in front of me. I'm not talking about talent as much as I'm talking about hard work and commitment. It breaks my heart to see litigants who are not well represented. Sometimes I see very talented lawyers who mail it in, and I say to myself, "You know, I never did that and I hope to God that I never would've done it, no matter how busy I got in my practice."

**AJ:** What's the most challenging thing about being a judge?

**LV:** Making decisions. When I was interviewed by Senator Schumer's committee, they asked, "What do you think the hardest part of this job is going to be?" I said, "Making decisions." They said, "Making decisions? You'll make decisions every day." And I said, "Yep; and every single one of them is going to be a tough decision." I had no idea how right I was when I said that. When I sign my name now, as a judge, it means something very different than when I signed my name 10 years ago as a lawyer. I recognize the importance and the power of that signature, and it makes me think.

It's also important to remember just how significant these decisions are to those who come before us. The other day in court, a lawyer said something about how so many criminal defendants think that they're just a number in the system and are not being considered as individuals. I said to the lawyer, "That breaks my heart." She said, "No, I don't mean that *you* do it, Judge." I said, "I understand. But it still breaks my heart that criminal defendants would think that." Every single person who comes into my courtroom is important to me, whether it's a court security officer, a criminal defendant, a prosecutor. I don't care who it is. Everybody in that courtroom is important, and every decision I make is important.

**AJ:** You've had a long association with the ABA and with *LITIGATION* journal in particular. How was your experience?

**LV:** Another blessing for me. When I became an associate editor of *LITIGATION*, I thought I knew how to write. But I learned so much more from that experience. Wordsmithing is so valued by the folks on the editorial board. So, in terms of my development

as a writer, as an editor, it added to my abilities tremendously. Even more than that, the friendships that I developed through the ABA, and in particular through the journal, are just amazing. To this day, some of my closest friends are my fellow editors on *LITIGATION*. Just an absolute blessing. My wife passed away a couple of years ago. It was the most awful thing that has ever happened to me. The outpouring of love and support from folks on the journal was just remarkable. It got me through a very dark time. Those friendships are tremendous.

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**AJ:** Judge, what gets you out of bed every morning?

**LV:** Three things—two are work-related, and the third is the most important of all. One is working with these folks in my office, who are all incredibly talented and committed and hungry to learn about the law. That's very important to me, to work with people who want to do what we're doing. Number two is doing justice in cases that are important to the folks whose cases they are. Every case that comes in front of me is a federal case. Every case is important. And when someone's freedom is on the line, that's hugely important. Every decision I make is an important decision. Making those decisions in a way that does justice, in a way that treats people with respect, and in a way that lets folks know that they're heard—that's what keeps me going, and I simply love it. But, as for what makes me happy to get out of bed every day, the third and most important thing is my family—my three kids, their fabulous spouses, and my four, going on five, grandkids. Their smiles and laughter are my greatest joy. I have been very blessed. ■