



Hon. Claude M. Hilton

U.S. District Judge, Eastern District of Virginia

by William J. Haun and Mary C. Zinsner



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“We insisted on a very traditional courthouse.” Judge Claude M. Hilton made the remark with obvious satisfaction, and his chambers décor reflects the majesty and class that many lawyers associate with the Albert V. Bryan Courthouse of the United States District Court for the Eastern District of Virginia. “Rocket Docket” practitioners are well-versed in the building’s beautiful exterior; Lady Justice jets over the courthouse entrance, holding one scale in each hand, resting one foot on a pedestal containing an engraving of the Eastern District’s unofficial motto: “Justice Delayed, Justice Denied.” Inside Judge Hilton’s chambers, the legacy of Judge Bryan continues on—right down to the tufted, blue-leather furniture (which Judge Hilton preserved from Judge Bryan), gold carpeting, and mahogany shelves filled with federal reporters. After more than 30 years on the Eastern District of Virginia—a tenure including service as the court’s chief judge and on the Foreign Intelligence Surveillance Court—and almost two additional decades of Virginia law practice, Judge Hilton has preserved the “Rocket Docket’s” best traditions.

A Modest, Entrepreneurial, People Person

Hailing from Scott County in Virginia’s far southwest corner—what he still affectionately refers to as “Hilton’s farm”—Judge Hilton did not know too many lawyers growing up, but a childhood outdoors gave him early management responsibilities. He helped on his family’s farm, and even took in a small fox. At the age of 7, he and his family moved from Virginia to west of Dayton, Ohio. Growing up in that area made Ohio State University “the place” to attend college, Hilton said. True to the work ethic of his youth, Judge Hilton supported himself during college (and some of law school) as a men’s clothier—starting with an internship at Lazarus Department Store. During the mid-1960s, “retailing was a big deal,” Judge Hilton explained; companies had to have managers onsite who were qualified both to oversee inventory and be an expert buyers could rely on to purchase quality products. The practical judgment required to excel in retailing, and the chance to “deal with people all the time,” made retailing seem



like a promising career. Judge Hilton had yet to make up his mind about becoming a lawyer, but many of the same skills that retailing depended on were integral to law practice: public relations, attention to detail, and common sense. The practice of law, Judge Hilton observed, seemed like a logical extension from his prior experiences.

Judge Hilton returned to the east coast for law school, attending American University’s (AU) Washington College of Law. Attending AU made both personal and professional sense. Judge Hilton married his wife, Joretta, out of college, and she secured a teaching job in Arlington County. A devout Methodist, AU’s Methodist affiliation was a natural fit for Judge Hilton, as was its emphasis on practical education. At the time, Judge Hilton observed, AU “was a very conservative school.” Most of the professors Judge Hilton learned from were practitioners, while only “a couple” were career academics. The law school’s dean at the time was a former New York attorney with a trusts and estates practice, while Judge Hilton also recalled learning from prominent D.C. litigators and government attorneys. AU’s emphasis on the practice of law, rather than mere theory, complemented Judge Hilton’s work ethic and interpersonal experiences in sales and on his family farm.

Judge Hilton supplemented his legal education with service as the deputy clerk of courts in Arlington County. By spending a year-and-a-half calling cases, assisting juries, and writing orders, Judge Hilton grasped trial practice's mechanics while still being taught the basics. This introduction served him well, as longtime Arlington Commonwealth's attorney, Bill Hassan, offered Judge Hilton a one-year position as assistant commonwealth's attorney upon his law school graduation. Hassan, like Judge Hilton, learned law while holding down part-time work, leading him to similarly value education through actual practice. The job was only good for a year, however, as "Bill wanted me to go on to work." The experiences Judge Hilton had at the Commonwealth's Attorney's Office would pervade his career.

Public Service Alongside Private Practice

The Commonwealth's Attorney's Office put Judge Hilton on the front line of criminal prosecution and gave him intimate familiarity with the feel of being in the courtroom and thinking on your feet. He enjoyed the competition of trial practice and talking to the ordinary Virginians that composed juries. While federal court in Virginia is now famous for its speed, a fast pace was nothing novel to Virginia state-court practitioners, Judge Hilton observed. Given tight resources and bloated dockets, lawyers were discouraged from asking for—and more importantly, judges were discouraged from indulging—delays, continuances, stays, chasing down novel legal theories, or issuing written opinions in every single matter. The joke among "Rocket Docket" practitioners now was just as applicable to Virginia state court practice then: The only ground for delaying a case was a death in the family—your own. This sort of pressure brought focus to the law. Judge Hilton learned how to home in quickly on a case's material issues, and the courage required for succinct argument.

Even during Judge Hilton's year at the Commonwealth's Attorney's Office, he continued to have his own civil law practice. "I liked both civil and criminal trial work," Hilton said, observing that litigation in general provided the thrill of competition and varied personal interaction. These qualities continued to gratify Judge Hilton as he transitioned into full-time civil practice in 1968. Judge Hilton took on a diverse caseload, ranging from criminal cases to will contest trials. Much like his retail sales work, Hilton reveled in meeting the quirks of different clients. "Will contests were always fun," Hilton said, "as you could find yourself in the middle of some family feuds." Judge Hilton spent the balance of his litigation practice in state court, but his relationships with the sheriffs of Arlington County provided some notable appearances in federal court on civil rights and constitutional questions.

Hilton's work with the Arlington County Sheriff's Office reflected how well his stature grew within Northern Virginia both as a lawyer and as a community leader. In 1973, he began six years of service as Arlington's representative to the Virginia State Bar Council along with

joining the Board of Governors of the bar's Young Lawyers Section. Most notably, Judge Hilton returned to the Commonwealth's Attorney's Office in 1974, serving out the remaining year of Hassan's term as Commonwealth's Attorney. Hilton sought the Democratic Party's nomination to run for his own term. But, Judge Hilton's candidacy came during a transition within the Democratic Party. "I was a conservative Democrat in a primary against a liberal Democrat," Hilton recalled, and the Virginia Democratic Party's leftward trend gave his campaign an uphill climb. After losing the Democratic primary, Judge Hilton opened his own law practice in 1975, while continuing his local political involvement. He continued to maintain strong political relationships with both Democrats and Republicans. In fact, as a Democrat, Hilton co-chaired the campaign of Independent candidates running together for the Arlington county board. After those candidates won, Judge Hilton became a Republican and began volunteering in various County Board campaigns. He also continued serving in a volunteer capacity; sitting on the Arlington County Planning Commission and Police Trial Board, becoming chair of the school board, and serving as a commissioner in chancery of the Arlington County Circuit Court. He never considered running for office himself though. "I needed to make a living."

Though Judge Hilton's experience as Commonwealth's attorney was short-lived, it spawned a friendship with fellow Eastern District Judge Henry E. Hudson that continues to this day. The two met in 1968. At the time, Hudson was a deputy sheriff in Arlington County and Judge Hilton was practicing law. After Hudson attended law school (also at American University), Judge Hilton hired Hudson while he served as commonwealth attorney for Arlington County. The two shared mutual love of hunting and fishing, common political interests, and both are Masons. The next few decades would continue to bring their careers into convergence. Indeed, just a few years ago, the two of them inspired historian and author John O. Peters to write the Eastern District of Virginia's definitive history, *From Marshall to Moussaoui: Federal Justice in the Eastern District of Virginia*.

While practice at global law firms on behalf of international corporations is common among federal litigators today, Judge Hilton's experience in private practice reflects a more interpersonal and collegial profession. Every sitting judge in the Alexandria Division of the Eastern District of Virginia, for example, knew one another as practicing Northern Virginia lawyers before assuming the bench. "I was in court every day, always seeing people and catching up in the hallways. Now, with fewer trials and larger firms, there is less chance for the lawyers to build relationships." As a solo practitioner, Judge Hilton benefited firsthand from a legal community that still saw itself as a close-knit professional guild. He would make use of the Arlington Bar Association law library for case research, while working with others on initial efforts to secure American Bar Association accreditation for what would become George Mason Univer-

sity's Antonin Scalia School of Law. At that time, Judge Hilton recalled, lawyers would talk with others within the bar about how to handle certain matters, and there were often recurring lawyers before both the federal district and state-level trial courts. Of course, in solo practice, "some years were better than others," so Hilton and his family felt the direct effects of a low-business year. But overall, "things went reasonably well in private practice." "I was very fortunate," Hilton said, to both provide for his wife and two children, while having the freedom to stay involved in public affairs.

Joining the Bench

Judge Hilton enjoyed law practice and the ability to socialize with his colleagues—as he put it, he had no "dying ambition" to be a judge, or become confined to the judicial monastery. Moreover, Judge Hilton's experience with politics taught him how much such opportunities are, in large measure, the result of coordinated time and interest and not something you can orchestrate yourself. But, Judge Hilton had a desire to serve and a great admiration for Judge Bryan and the Eastern District of Virginia's national example of both collegiality and conscientious decision-making. Becoming a judge "either gets together or it doesn't," Hilton said, but when the Eastern District of Virginia was expanded to add a new seat during the Reagan administration, Hilton thought he would have the necessary backing and that the time was right to try.

Hilton's path to the bench evinces a now well-known truth: While a judge's role is not political, the confirmation process certainly is. Judge Hilton began speaking with senators about becoming a judge in 1983—two years before Hilton would ultimately assume the bench. Having the support of Virginia's senators—then John Warner and Paul Trible—was crucial, as was the support of Virginia bar associations that recommended judicial nominees to those senators. Hilton met with the American Bar Association, along with those in Northern Virginia (Alexandria, Arlington, and Fairfax). The process went smoothly enough that Hilton recalled his nomination ready for Senate confirmation by August 1984, but external political considerations led the White House to delay his nomination until February 1985. Thankfully, however, Hilton's confirmation hearing itself was a pleasant affair. Most of the substantive questions centered on Hilton's pro bono work and involvement in public service. On a Friday night at 7:00 p.m., some weeks after his confirmation hearing, Judge Hilton's nomination was submitted to the full Senate and he was confirmed via voice vote. Perhaps appropriately, Judge Hilton heard the good news from Judge Bryan, who called him the following Monday morning.

Of course, few calls were as memorable as the one Judge Hilton received from President Ronald Reagan (even bringing it up all these years later brought a smile to his face). "I was out of the office at the time he called," Hilton said, noting the difficulties that came with juggling his ongoing law practice and the judicial confirmation

process. "When I returned, my secretary said, 'Where have you been! The White House called for you!'" Dutifully, Judge Hilton returned the call. President Reagan was "very pleasant," Hilton said, "though we did not talk long." With Judge Hilton's judicial commission sitting before him on the resolute desk, President Reagan told Hilton that he had a "declaration" he would like to read him and ask whether he had any objections. Hilton had none, and Reagan then set forth Judge Hilton's commission to serve on the Eastern District of Virginia. After Hilton agreed that the president should sign the commission, they wished each other well and said goodbye. "He made you feel like he was really interested in talking with you," Hilton recalled.

President Reagan's call was a reflection of the seriousness with which his administration took judicial nominations—and the confirmation process gave Judge Hilton an opportunity to seriously contemplate his own judicial approach. Recalling his private-practice experience, Judge Hilton knew the judges he liked appearing before: "I liked people that made a decision, even if it was sooner than when you wanted it. I liked judges that could rule." Judge Bryan personified Hilton's preferences, but those preferences manifested in other ways too. Hilton eschewed the idea that judges should send issues to juries out of fear of being reversed, let motions languish "under advisement" for months, or let parties drag cases out to test novel legal theories. He recalled an insurance coverage case he handled in private practice; the court took the case "under advisement" for 14 months, and the legal theory set forth by opposing counsel was designed to get the Virginia Supreme Court to change current law, though it had no chance of prevailing in the lower courts. "Some lawyers have never found the issue in a case—ever," Hilton said, noting that he would zero-in on what mattered in a case for the parties' own sakes. "I do think about the costs of litigation," Hilton noted. "Every decision you make affects somebody, so you have to be fair to everyone and balance that with the costs in mind." For that reason, Hilton said, "if a decision is clear, I do not sit here to keep myself from being reversed. If you let everything go to trial, you will never be reversed," but you will never consider the costs to the parties. "Plus," Hilton commented with ease, "you sleep better" when you know you made the right call, rather than the one that is safest for your reversal rate.

A Storied Judicial Career

After a week or so in Raleigh, N.C., reviewing various areas of federal law along with other newly appointed judges—where Judge Hilton recalls enjoying cigars and fellowship with D.C. Circuit Judge David Sentelle—Judge Hilton took his seat on the Eastern District of Virginia. Although Hilton's private law practice did not include certain areas of federal law, such as intellectual property, he was comfortable picking the law up as he went. "I've listened to judges complain, but patent cases can be just like anything else."

Hilton's lack of pretense in mastering complex areas of law reflects a refreshing break from the attitude some lawyers and judges bring to law practice. As former Seventh Circuit Judge Richard Posner put it, "the core method of the lawyer and the judge is 'legal reasoning,'" and legal reasoning "is uncomfortably close to careful reading, to rhetoric, and to common sense."¹ While some lawyers and judges, desiring "to convince the laity of the inscrutable rigor" of their methods, attempt to turn the law into a "science,"² Judge Hilton's approach is one reflecting the role of law in a self-governing society: Accessible and knowable to the rightly-reasoning citizen, and not solely the province of monastic "experts."

His good friend Judge Hudson aptly characterized Judge Hilton's style:

Claude's practices on the bench are similar to those he demonstrated as a practitioner. He is always well-prepared, relaxed, shows incredible patience, and conducts his cross-examinations with deliberation. He has a common-sense approach. There is nothing showy or pretentious about Claude Hilton. What you see is what you get.

Judge Hilton's caseload immediately propelled him into prominent controversies. The location and reputation of the "Rocket Docket"—with the CIA, NSA, Pentagon, Patent and Trademark Office, and numerous other government agencies within its jurisdiction, along with the court's famed commitment to swift justice—made it an attractive forum for sensitive government and civil cases. Just in his first few years on the bench, Judge Hilton: denied head-of-state immunity to former Philippines President Ferdinand Marcos; dismissed charges against the former CIA station chief for Costa Rica in relation to the Iran-contra investigation; and presided over a number of Pentagon procurement fraud cases. After Judge Hilton became the Eastern District's chief judge in 1997, he declared a mistrial in the case of the only person indicted in independent counsel Ken Starr's investigation of President Bill Clinton. He also upheld the constitutionality of Virginia's moment-of-silence statute.

Given his extensive experience presiding over espionage cases involving the former Soviet Union and international terrorist matters, it is little surprise that Judge Hilton was appointed to a seven-year term on the Foreign Intelligence Surveillance Court (FISC). While there is little Hilton can elaborate on, he noted how interesting it was to participate in the nation's national-security apparatus—especially after the Sept. 11, 2001, terrorist attacks, which preceded a "big uptick" in the FISC's activity. Even after his seven-year term on the FISC expired, Hilton continues to experience an array of national security cases. For example, in 2013, Judge Hilton presided over a government investigation into Lavabit, a secure email service, given its use by former NSA contractor Edward Snowden.

Of course, for as interesting and salient as Judge

Hilton's caseload is, the true joys of his judicial service come from the same sources as his private law practice: keeping up with his colleagues, interacting with ordinary Virginians, and manifesting the "Rocket Docket's" reputation for efficiency and party-focused (rather than lawyer-focused) justice.

He has fond memories of sitting by designation on the U.S. Court of Appeals for the Fourth Circuit, including traveling to Baltimore to sit with Judge Sam Ervin, dining with his law clerks before a sitting, and enjoying a Richmond dinner club with Supreme Court Justice Lewis Powell. Yet for as enjoyable as participating in appellate jurisprudence was, Hilton still finds trial work much more interesting—especially in the opportunity to interact with jurors. "I have a very strong belief in the jury system," Hilton said. "I've seldom seen a jury go haywire."

Judge Hilton enjoys interacting with the lawyers before him too, noting that the best cases do not depend on the subject matter, but on having "good lawyers on both sides." Hilton does his best to facilitate this collegiality. He is an annual host to foreign judges that visit the United States to learn more about our nation's judicial process. Coat racks line the entrance to Judge Hilton's courtroom, where lawyers have the chance to interact before or after their appearances. Judge Hilton is the host of frequent happy hours with an ever-growing family of former law clerks and practicing attorneys. His passion for duck hunting leads him to organize an annual hunt and dinner—including some of his judicial colleagues like Judge Hudson and, before his death, Justice Scalia, as well as old friends in the Northern Virginia legal community. Every day, Judge Hilton goes out to lunch with his law clerks at any one of the Northern Virginia spots he's enjoyed for decades—such as Franco's in Old Town (where a picture of a youthful Judge Hilton shaking the hands of Franco himself hangs on the wall) and the source of his favorite fried chicken in the area, The Great American Steak & Buffet. The law is a public service, and for Judge Hilton, none of the headline-grabbing matters he's touched over the decades rival his regard for interacting with the people the law serves and the lawyers who facilitate that service.

Stewarding the Past Into the Future

When asked about retiring, Hilton exclaimed he had "no desire to ... loaf." Even as Judge Hilton is now on "senior status," he shows no signs of slowing down. His case docket is as full as it was when he served on "active status," and he remains committed to preserving the Eastern District's national example as the "Rocket Docket." "So far, we've been fortunate," Hilton says, to have preserved the pace with which the district disposes of cases, even with numerous changes in the court's personnel. "We have more judges on the court than when I joined," Hilton noted, and the commitment to retaining the "Rocket Docket" endures; "the trick is, don't continue cases!"

Much else has changed, however, including the decline

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⁴⁶Japan Const. art. 26.

⁴⁷*Does the Constitution Guarantee Citizens the Right to Education ... ?*, *supra* note 34.

⁴⁸Japan Const. arts. 14, 20, 84.

⁴⁹AKITO OKADA, EDUCATION POLICY AND EQUAL OPPORTUNITY IN JAPAN 162 (2011).

⁵⁰*Id.* at 162-63.

⁵¹*Id.* at 168.

⁵²*South Korea Instructional Systems*, NAT'L CTR. ON EDUC. & ECON., <http://ncee.org/what-we-do/center-on-international-education-benchmarking/top-performing-countries/south-korea-overview/south-korea-instructional-systems> (last visited Jan. 8, 2018).

⁵³*Trends in Student Performance*, *supra* note 40.

⁵⁴Pearson Index, *supra* note 26.

⁵⁵Arg. Const. § 14.

⁵⁶*Does the Constitution Guarantee Citizens the Right to Education ... ?*, *supra* note 34.

⁵⁷Arg. Const. § 75.

⁵⁸*Id.*

⁵⁹*See Reid v. Covert*, 354 U.S. 1 (1956).

⁶⁰*Trends in Student Performance*, *supra* note 40.

⁶¹Pearson Index, *supra* note 26.

⁶²Colom. Const. art. 67.

⁶³*Does the Constitution Guarantee Citizens the Right to Education ... ?*, *supra* note 34.

⁶⁴Colom. Const. arts. 27, 41, 64, 68.

⁶⁵*Id.* at art. 10.

⁶⁶*Id.* at art. 43.

⁶⁷*Id.* at art. 69.

⁶⁸Tabby Biddle, *Wait, Women Don't Have Equal Rights in the United States?*, HUFFINGTON POST (Nov. 4, 2014, 2:05 AM), http://www.huffingtonpost.com/tabby-biddle/wait-women-dont-have-equa_b_6098120.html.

⁶⁹*Trends in Student Performance*, *supra* note 40.

⁷⁰Pearson Index, *supra* note 26.

⁷¹Can. Const. Act § 93.

⁷²Sing. Const. part IV, § 16.

⁷³Tractenberg, *supra* note 18, at 25 (citing Kirk A. Bailey, *Summary-Education Clauses in State Constitutions 2*, (Oct. 31, 2000) in conjunction with Hamilton Fish Institute, *Review of State Constitutions: Education Clauses* (Oct. 31, 2000)).

⁷⁴Lurie, *supra* note 25.

⁷⁵Sebastian Edwards & Alvaro Garcia Marin, *Education and Constitutional Rights: An International Comparative Study*, Vox (Jan. 2, 2015), <http://voxeu.org/article/education-and-constitutional-rights-international-comparative-study>.

⁷⁶*Id.*

⁷⁷*Id.*

⁷⁸*Brown*, 347 U.S. at 493.

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in civil trials and increased pressure to include technological displays during trials. Both trends are somewhat disappointing for Hilton, but for different reasons. While the decline in civil litigation controls the costs of litigation and avoids aggrandizing lawyers at their clients' expense, it provides fewer opportunities for lawyers to interact. Increased use of technology lacks any upside to Hilton. "If there's a good use for it, I'm open to [technology in the courtroom]," Hilton said. But, "I have never known why a jury needs to rely on technological displays." Complex cases existed well before computers, Hilton noted, and juries were able to rely on their common sense in understanding lawyers' arguments. Technology, Hilton explains, becomes a crutch for the lawyers—absolving them of any need to distill their case to an argument that resonates with the citizens sitting on the jury. The job of a lawyer, Hilton said, "is to articulate an argument." How can that occur when technological demonstratives are the ones making a case?

Even as the court's size, civil docket, and nature of trials have changed since Hilton joined the bench, those who know him well delight in his tranquil routines. Golfing still happens in the spring and summer, while duck hunting occurs in the fall and winter. Lunch is every day at noon. If one of his male law clerks is in need of sartorial splendor, Hilton's long-standing knowledge of men's clothes can give a recent law school graduate the same quality training in style that a Hilton clerkship provides in legal substance; suits should have natural shoulders and pocket squares. Coffee is brewed in chambers and is bought at Costco, while the courthouse café is the lunch of choice

during trials. On nice days, you take in the beauty of Old Town Alexandria with cigar walks outside.

Another constant is Judge Hilton's family and his friends. Judge Hilton enjoys an especially close relationship with his grandson. He is a bright spot in Judge Hilton's life—even scheduling a haircut with him when he and his parents returned from a trip. Hilton's family and friends often make chambers visits, accompany the judge and his clerks at lunch, and join Judge Hilton at his beach house in the Outer Banks. The judge's community begins in his neighborhood, in a house he's lived in for decades, and extends throughout Northern Virginia—as his frequent trips and celebrations at the Washington Golf Country Club attest.

In these and so many other ways, Judge Hilton has personified the institutional legacy his career shepherds—a consistent, true, and strong example of how Alexis de Tocqueville described lawyers: the "connecting link" between the government and the governed; one that has the interest of the people at heart while possessing the virtues that have stood the test of time. Judge Hilton's career is an excellent guide to all those who see a stewardship in the law, and his future example looks as bright as the gold illuminating his courtroom. ☺

Endnote

¹Richard A. Posner, *The Bluebook Blues*, 120 YALE L.J. 852, 860 (2011).

²*Id.*