Appearing in the Red Glare of the Rocket Docket

GENE ROSSI

The author is a shareholder at Carlton Fields.

Among the 94 U.S. district courts, the "Rocket Docket" is quite special. Officially known as the Eastern District of Virginia (EDVA), this federal judicial enclave is nationally famous for its long and deeply engrained history and culture of speed, alacrity, efficiency, and punctuality in administering justice in civil and criminal matters. In addition, the EDVA has a well-earned reputation for professionalism, civility, and first-class advocacy. Judicial legends of the EDVA shaped the district's special culture, and its current bench and bar enforce conformity to the same norms to this day. This venue is highly respected and revered, yet sometimes it is reviled and ridiculed out of frustration. The Rocket Docket is not for the weak.

It is challenging—if not humbling and intimidating—to litigate in this demanding federal venue. To convey what practicing in the Rocket Docket is like, I draw from my three decades of experience as a litigator for the U.S. Justice Department, including 20 years in the EDVA as an assistant U.S. attorney (AUSA) and close to 100 federal jury trials. I also interviewed other prosecutors and criminal defense attorneys who have similar breadth and depth of service in the Rocket Docket.

Origins of the Rocket Docket

How the Rocket Docket began is a truly inspiring story in itself. We can thank President Dwight Eisenhower, who appointed New Jersey–born Walter Edward Hoffman in 1954 to the genteel the EDVA bench, where he later became chief judge (1961–73) and the father of the Rocket Docket. He was an indefatigable worker: His caseload at times was *four* times larger than the average caseload of district judges. He was the consummate workhorse, who was known to schedule court on weekends and even holidays. According to Jim Metcalfe, who was an AUSA in the Norfolk Division (1980–2010) and law clerk to Chief Judge Richard Kellam (1973–79), Judge Hoffman would self-deprecatingly "tell the story of how he had to set a civil trial for *Christmas Day* because counsel could not agree on a date. Not surprisingly, the case settled before trial."

In 1983, Congress recognized his greatness by passing a resolution naming the federal courthouse in Norfolk after Judge Hoffman, who reported for duty in his eponymous courthouse until he passed in 1996 at age 89. The law was his life's passion. In 1973, because his reputation for integrity and fairness was so profound, the Fourth Circuit U.S. Court of Appeals chose him to preside over the Baltimore trial of Vice President Spiro Agnew, who eventually pleaded nolo contendere to federal tax charges and resigned from office in disgrace. Judge Hoffman's stellar character was the major reason he was chosen to preside over another famous criminal trial in the U.S. District Court of Nevada in 1984, where Chief Judge Harry Claiborne was convicted of tax evasion relating to bribes he took from the owner of a brothel.

Published in *Litigation,* Volume 49, Number 12, Winter 2023. © 2023 by the American Bar Association. Reproduced with permission. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means or stored in an electronic database or retrieval system without the express written consent of the American Bar Association.

Judge Claiborne was the first federal judge convicted while still on the bench.

Equally important was another aspect of Judge Hoffman's distinguished career. Simply put, he was an incessant judicial thorn in the side of U.S. Senator Harry F. Byrd Sr., who was the avowed leader of the infamous "Massive Resistance." This nefarious movement in Virginia and elsewhere had the goal of thwarting desegregation after the Supreme Court's 1954 *Brown v. Board of Education* decision. To put it charitably, Senator Byrd was a virulent racist and white separatist—the George Wallace of Virginia, if you will. The senator had been a staunch defender of the unconstitutional poll taxes and literacy tests for voters and a strong supporter of the infamous anti-*Brown* "Southern Manifesto," which was spearheaded in the House by a fellow Virginian white separatist—Congressman Howard Smith.

After he took the bench in 1954, Judge Hoffman soon made rulings that did not endear him to the entrenched Byrds and Smiths and their political machines of Virginia. He became instead an EDVA leader in opposition to the Massive Resistance. For example, in 1956, the governor of Virginia, who considered integration to be "insidious," called a special session of the General Assembly for the purpose of finding ways to oppose *Brown* and to preserve segregation. In that session, the assembly passed a law that prohibited the expenditure of state funds to any public elementary or high school that was integrated. The assembly declared integration a "clear and present danger" to the sovereign rights of Virginia. State funds would be withheld even if a school had been integrated because of a court order. Not surprisingly, this law was quickly challenged. In his heroic *Atkins* decision in 1957, Judge Hoffman found the law to be unconstitutional on its face.

For the Massive Resistance, the *Atkins* opinion and other EDVA rulings were very large thorns. This courageous jurist lost many a friend after he issued controversial orders in defiance of Virginia elected officials' unconstitutional attempts to preserve segregation. Nonetheless, Judge Hoffman remained undeterred and followed his ethical compass at all times: "I will do my duty if it costs me my last friend on earth."

A crucial milestone in the history of the Rocket Docket came in 1961, when Chief Judge Albert Vickers Bryan Sr. was appointed to the Fourth Circuit. Judge Bryan Sr., after whom the federal courthouse in Alexandria was named in 1986 and a legend in his own right, was also an early nemesis of the Massive Resistance. He issued a 1952 opinion against the Prince Edward County School Board in a case that was incorporated into *Brown*. After Judge Bryan Sr. was elevated, Judge Hoffman began his tenure as chief judge over the affairs of the EDVA. Rather than issue a formal order, Judge Hoffman sent a letter to his colleagues in the EDVA that is considered the foundational statement of the Rocket Docket. In that letter, the jurist stressed the importance of giving all litigants a speedy trial. One could argue that this letter was to the Massive Resistance what Martin Luther's Ninety-Five Theses (written in 1517) were to the papacy.

Chief Judge Hoffman did not want the EDVA to have protracted litigation, especially in matters that affected constitutional rights and equal justice under the law. Moreover, the alacrity with which trials would be handled in the Rocket Docket showed utmost respect and deference to the countless jurors who appear dutifully for service. Once again, although he made few friends, he only further enhanced his reputation for integrity, fairness, and courage.

After the 1961 Hoffman letter, the EDVA solidified its reputation as the Rocket Docket. Under Chief Judge Hoffman's leadership, trials were extremely efficient and punctual. He was known to hold court on weekends and holidays, if needed. In his world, a "continuance" was a motion that would be granted only in the most extreme circumstances, if at all. The goals of the Hoffman letter would be implemented over the next six decades in the EDVA by equally revered and vigilant jurists.

One of them is Chief Judge Albert Vickers Bryan Jr., before whom I have had the honor of appearing as an AUSA. Judge Bryan's father was, of course, the same jurist whom Judge Hoffman had replaced as chief judge in 1961. While his father

Illustration by Dave Klug

Published in *Litigation,* Volume 49, Number 12, Winter 2023. © 2023 by the American Bar Association. Reproduced with permission. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means or stored in an electronic database or retrieval system without the express written consent of the American Bar Association.

was still active on the Fourth Circuit, Judge Bryan was appointed to the district court bench in the EDVA in 1971 and served until his passing in 2019. He was chief judge of the EDVA between 1985 and 1991 and showed complete fidelity to the goals of that 1961 letter. To say that Judge Bryan was revered, adored, respected, and even loved would be an understatement of grand proportions. When my former colleagues and I reflect on our experiences in front of him, we often get emotional and sentimental. He was a true EDVA legend.

What Makes It the Rocket Docket?

Procedurally and statistically, what is unique about the Rocket Docket? For several decades after the 1961 Hoffman letter, the jurists in criminal cases who would preside over arraignments and pretrial motions hearings and the trial could all be different. Judge A at arraignment would set the trial date, which would be close to inviolate and immune from a dreaded continuance. Judge B would preside over the pretrial motions hearing. Judge C would be assigned the Friday before a Monday trial. This process, which has been relaxed relatively recently in the EDVA, is unknown among the other 93 jurisdictions. Once again, "we can thank Judge Hoffman" for this system, which surely moved criminal matters along, according to former AUSA Metcalfe.

For decades, statistics and data have only enhanced the Rocket Docket's reputation. With a civil caseload in the top 15 percent, the EDVA is routinely the first or second fastest civil trial court. The EDVA routinely resolves civil trial matters in much less than 20 months, which is roughly two times faster than the average of the other 93 jurisdictions. In the Southern District of California, the slowest district, a civil matter takes on average about 50 months to trial.

In the 1980s under the leadership of Judge Bryan—who, like Judge Hoffman, enforced the EDVA culture of opposing "continuances" (a vulgar word) and also was an adamant stickler for punctuality—the ideal goal was to have a civil case go to trial in a mere *five* months. According to federal court management statistics published by the Administrative Office of the U.S. Courts, from 2017 to 2022, the EDVA was ranked *first* (a median range of 10–18 months) for the time from a civil filing to trial.

For criminal cases, the Speedy Trial Act requires (excluding exceptions) that a felony trial be commenced within 70 days of a defendant's first appearance or the filing of charges. Given that criminal trials are governed by the 70-day rule, the EDVA's record for dispositions is still impressive. According to federal court management statistics (2017–22), the EDVA was ranked 11th (a median range of 5–7 months) for the time from a criminal filing of felony charges to disposition (trial or guilty plea). Coming in 93rd and 94th were the Eastern District of California (23–26 months) and the Eastern District of New York (22–27 months). According to Howard Zlotnick, who was an AUSA in Nevada (1986–2003) and in the EDVA (2003–21), "[i]n Nevada, it was very easy to get a continuance. Trial dates were meaningless. In the EDVA, judges are real serious about the 70 days."

To get a continuance granted in the EDVA, one had to almost crawl over crushed glass. Jim Clark is a state trial court judge in Alexandria, Virginia. Before Judge Clark took the bench, he was a very prominent criminal defense attorney in the EDVA for several decades. In a 1992 criminal case before Judge Bryan, he was co-counsel with an attorney from California. Unaware of the culture of the EDVA, the California lawyer asked about the chances of a motion to continue because the trial date was on the Monday after his Saturday wedding, and he had an immediate honeymoon set. Judge Clark advised his co-counsel that he had to argue the motion himself, and the California lawyer filed it. After the judge completed the rest of his motions docket, he ordered them both into his chambers, where the California counsel was asked in a very soft and slow Southern drawl the following crucial question: "Sir, is this your *first* marriage?" When the California lawyer proudly said yes, the judge paused a few strategic moments and replied: "Well then, I will grant a *brief* continuance of two weeks." Like Judge Hoffman, Judge Bryan abhorred moving trial dates.

If a jury trial was set, then it was going to happen on that scheduled day. Rain or shine—or even snow. In one memorable criminal jury trial during a snowstorm, Judge Bryan took the bench on time (of course!) and learned that all the jurors had dutifully appeared for voir dire and all counsel were present; however, the defendant was late because of snow. Before he took a short recess, the judge stated to defense counsel: "This is the most important day of this man's life. The snow did not come on us by surprise." The court took the bench again after the recess, picked a jury, allowed openings, and heard one witness before the defendant showed up more than one hour late.

According to Laurin Mills, who has decades of extensive civil and criminal experience in the EDVA, Judge Bryan made the "Alexandria Division of the EDVA the *rocket* of the Rocket Docket," which has three other divisions (Newport News, Norfolk, and Richmond). Mills fondly remembers a bench trial in Alexandria in which the jurist refused a request for opening statements by saying: "I have read your briefs. Now call your first witness."

Judge Bryan was known for moving trials along by drastically cutting witness lists. He often asked attorneys, especially AUSAs, how many witnesses they had. Nina Ginsberg has been in private practice for several decades and was president of the National Association of Criminal Defense Lawyers in 2019–20. Ginsberg remembers well the times that the judge would ask AUSAs how many trial witnesses they had. According to her, after an AUSA would say 15 to 20 witnesses, Judge Bryan would respond: "Call your best five. This case is not that complicated."

Published in *Litigation,* Volume 49, Number 12, Winter 2023. © 2023 by the American Bar Association. Reproduced with permission. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means or stored in an electronic database or retrieval system without the express written consent of the American Bar Association.

Laura Tayman, who was an AUSA (1992–2013) in the Alexandria and Norfolk Divisions, had her first federal jury trial before Judge Bryan. “After our first cooperator testified, Judge Bryan asked me if the next two witnesses would say the same thing. After I said yes, he politely and kindly suggested they were not needed,” according to Tayman.

Judge Bryan was not alone in cutting witness lists or expressing frustration at cumulativeness. This attitude was summed up by Senior Judge T.S. Ellis III, who once commented to an attorney in a criminal jury trial in the midst of a wandering and repetitive examination: “Counsel, as a concession to the shortness of life, how much longer do you think your examination will take?”

Taking the Bench Early

In the EDVA, you must never be late for anything. You should try to be very early at all costs. “The biggest hallmark of the Rocket Docket in my era will forever be the Honorable Judge Bryan. If you had a case on the 9:00 a.m. criminal docket, you best be seated in his courtroom and prepared to go at 8:45 a.m. He *always* took the bench early and did so with pep in his step,” according to Rosie Haney, who was an AUSA (1991–2020) and also trained close to a thousand new prosecutors on the mores of the Rocket Docket.

Judge Bryan’s penchant for taking the bench early was not affected even by Mother Nature. Chuck Rosenberg, who had a distinguished Justice Department career as the EDVA’s U.S. attorney (2006–2008) and as an AUSA for many years, had a Friday 9:00 a.m. sentencing in the 1990s in a criminal case. He knew that the judge took the bench early and would not be deterred by a significant snowfall forecast for late Thursday evening and into Friday morning. The only thing to do, of course, was to sleep in his office very near the courthouse to be on time. Snow fell that evening, as expected. On Friday morning, as he trudged through a foot of snow and as the streets were being plowed, there were very few cars or pedestrians. At 8:45 a.m., there was one court security officer at the courthouse’s entrance and one in the judge’s courtroom. At 8:58 a.m., the judge took the bench. The “All Rise” was directed only at him because the only other persons in the courtroom were Judge Bryan and the court security officer. Judge Bryan looked around but saw no defendant, no defense counsel, no court reporter, no deputy clerk, no deputy marshal, and no probation officer. The judge called the case, Rosenberg responded “for the United States,” and then Judge Bryan simply said that “[t]he sentencing will be rescheduled for next Friday.” Rosenberg fondly remembers: “The judge stood to leave the courtroom. I was still standing. Though he said nothing to me, he nodded at me, smiled slightly, and walked back into chambers. It took me hours to get home that morning. Well worth it.”

Nash Schott, who was an AUSA (1978–2005), appeared in front of Judge Bryan on many occasions. He remembers a criminal drug trial in which a very prominent Miami defense attorney had his plane delayed. The local counsel, who was required to be present during the trial and all proceedings, had asked for a short continuance of a few hours. In denying the motion, Judge Bryan told the unprepared local counsel that he could have “an extra five minutes to do the opening.”

None other than Judge Hoffman began the practice of imposing a “fine” on attorneys for tardiness. This punishment, if you will, was usually accomplished by a judge politely—yet very sternly—suggesting that the late arriver donate to a charity. Laura Marshall, who was an AUSA in the Richmond Division (1998–2013), remembers a judge’s asking her to “write a $50 check to her favorite charity. I did so with no questions asked.” I was fined twice by an Alexandria Division judge for being late to a plea hearing and sentencing. I also wrote my checks with no questions asked. The courts were right and we were wrong for not appearing timely as expected.

There is no other federal jurisdiction that has given me more of a sense of pride and accomplishment than the Rocket Docket

The Rocket Docket leaves an impression on you. To survive a complex trial in the EDVA must surely be the litigation equivalent (however humble) of a Marine recruit’s surviving Parris Island. I have fond recollections of seven trials before Judge Ellis III, some of which were comparable to completing boot camp. As in the memorable lyric from one of Frank Sinatra’s great songs: “If I can make it there, I’ll make it anywhere.” There is no other federal jurisdiction among the multitude to which my Justice Department work has taken me that has given me more of a sense of pride and accomplishment than the Rocket Docket.

The tradition and spirit of the Rocket Docket continue. On more than a few recent occasions, I have heard jurists mention to new or out-of-town litigants in civil and criminal cases that the EDVA is a truly special place—and that there is much truth to its reputation for speed and alacrity. In other words, be ready and be prepared. From above, Judge Hoffman must surely be smiling as his wonderful legacy lives on. ▪

Published in *Litigation,* Volume 49, Number 12, Winter 2023. © 2023 by the American Bar Association. Reproduced with permission. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means or stored in an electronic database or retrieval system without the express written consent of the American Bar Association.