

Alschuler's pointed criticism of Judge Easterbrook's role in Gov. Ryan's appeals

By CrimProf BlogEditor

From a press release, accompanying publication of this law review article:

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“These falsehoods included statements that the trial gave instructions it did not give, that both the defendant and the government made arguments they did not make, that litigants in the Supreme Court made arguments they did not make, that the defendant and government waived or forfeited arguments they did not waive or forfeit, that the Supreme Court said things it did not say, and that several of the defendant’s sentences had expired when they had not expired,” the article states.

“By falsehoods, I do not mean minor misunderstandings or misinterpretations, I mean *whoppers*,” Alschuler writes. “Anyone who checks can confirm that these statements were false, and I encourage skeptical readers to check.” (A side-by-side chart of the eight falsehoods follows.)



The entire press release follows the jump.

In an issue of the *Valparaiso Law Review* published today, Albert Alschuler, an appellate lawyer for former Illinois Governor George Ryan, describes how Judge Frank Easterbrook made six rulings in favor of the prosecution, which the prosecution never sought.

“All of these rulings were questionable or worse, and the court afforded Ryan no opportunity to address most of them until after Judge Easterbrook’s opinions had been published,” Alschuler writes in an article titled: “How Frank Easterbrook kept George Ryan in Prison.”

Alschuler is a retired University of Chicago Law School professor who argued Governor Ryan’s case twice before the U.S. Court of Appeals in Chicago.

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Legal scholars have described Judge Easterbrook as a “superstar” and even as “the world’s greatest living jurist.” However, Alschuler writes, “Judge Easterbrook’s reputation is a paradox. Widely praised by legal academics, he is often disparaged by the lawyers who practice before him.”

To those who might charge Alschuler with being a sore loser, he replies, “I think that lawyers should be sore losers . . . when judges cheat.”

The article describes how, after each of the two arguments Alschuler made before the Seventh Circuit Court of Appeals on behalf of Ryan, Easterbrook wrote an opinion ruling against Ryan. Alschuler says that the court gave Ryan no opportunity to address most of its rulings until after Easterbrook’s opinions had been published.

Alschuler also notes that Judge Easterbrook’s appearance on the panel that heard Ryan’s appeal was not the result of random assignment, and speculates that Easterbrook might have seen Ryan’s case as a vehicle for making a point. The article shows that the prosecution played no part in producing Judge Easterbrook’s falsehoods. It also describes the judge’s “bullying of counsel on both sides” and urges his judicial colleagues to recognize the problem his conduct poses for their court.

Alschuler recognizes that his view of Easterbrook differs from the view taken by many legal scholars, but he says that practicing lawyers know better than academics whether a judge has falsified facts. He observes that the only bar association evaluation ever conducted of the judges of the Seventh Circuit criticized Easterbrook more severely than any other judge of that court.

The article lays out suggested changes to prevent future similar injustices.

“When a judge learns at any time before his court issues its mandate that an opinion he has written or joined contains a clear error, he should act to correct it, and he should do so even if the error is not outcome-determinative or important,” Alschuler writes. “Like the journalists of the *New York Times* and the Justices of the Supreme Court, the judges of the United States courts of appeals should take pride in their work and should think of themselves as members of a profession whose standards include truth-telling and accuracy.” Alschuler adds that a court should never rest a decision on a ground the parties have had no prior opportunity to address.

Professor Alschuler’s article, “How Frank Easterbrook Kept George Ryan in Prison,” appears at <http://scholar.valpo.edu/cgi/viewcontent.cgi?article=2397&context=vulr>.

http://lawprofessors.typepad.com/crimprof_blog/2016/07/alschulers-pointed-criticism-of-judge-easterbrooks-role-in-gov-ryans-appeals.html