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Frank H. Easterbrook

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Frank Hoover Easterbrook (born September 3, 1948) is a Judge of the **United States Court of Appeals for the Seventh Circuit**. He was Chief Judge from November 2006 to October 2013, and has been a judge on the court since 1985. Easterbrook is noted for his use of **economic analysis of law**, his **legalist** approach to judicial interpretation, for his clear writing style, and for being one of the most prolific judges of his generation. Easterbrook is one of the most cited appellate judges in America.^[1]

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Early life and education [edit]

Easterbrook was born in **Buffalo, New York** on September 3, 1948, the son of Vimy and George Easterbrook. He is the older brother of author **Gregg Easterbrook** and of Neil, an English professor at **Texas Christian University**. Easterbrook attended **Kenmore West High School** in Tonawanda, New York, where he was the classmate of **Wolf Blitzer**. The two were good friends and were the leads of the KWHS rendition of *The Diary of Anne Frank*. Easterbrook's future wife was property mistress of the production. He attended **Swarthmore College**, where he was elected to **Phi Beta Kappa** and received his **bachelor's degree** with high honors. He received his **Juris Doctor** degree from the **University of Chicago Law School** (where he was an editor of the **law review** with **Douglas H. Ginsburg** and a member of the **Order of the Coif**) in 1973, and then clerked for Judge **Levin Hicks Campbell** on the **First Circuit**.

Early career [edit]

In 1974, along with **Danny Boggs** and **Robert Reich**, he joined the **Solicitor General's** office as an Assistant to the Solicitor General, and was promoted in 1978 to Deputy Solicitor General of the United States. The solicitor general at the time was **Robert Bork**, and Easterbrook has reminisced that when he joined the Solicitor General's office, "*The Washington Post* noted that around the same time the SG's Office had hired three lawyers either fresh from clerkships or lacking the customary appellate experience. None of us had clerked on the Supreme Court. The *Post* concluded that good lawyers were no longer willing to work for the SG and attributed this to Bork's role in **firing Archibald Cox** as **Watergate** special prosecutor. The paper thought that dark days lay ahead for the Office with a second-rate staff. The three bottom-of-the-barrel selections were **Robert Reich** (later Secretary of Labor in the Clinton Administration), **Danny Boggs** (now Chief Judge of the Sixth Circuit), and me."^[2] Easterbrook was considered "one of the very top advocates appearing before the Supreme Court in his days at the bar".^[3]

Easterbrook joined the faculty of the **University of Chicago Law School** in 1978 (and is still a senior lecturer there today), and was a principal at **Lexecon** from 1980 until his judicial appointment. Easterbrook argued 20 cases before the Supreme Court while in the Solicitor General's office and in private practice, including several landmark **antitrust** cases.

Nomination and judicial career [edit]

Easterbrook was nominated to the court by **Ronald Reagan** in August 1984 to a new seat created by 98 Stat. 333, 346; the **U.S. Senate** did not act on his nomination that year, and he was renominated in Reagan's second term on February 25, 1985.

He was confirmed by the Senate on April 3, 1985, and received his commission the next day. The **American Bar Association** gave Easterbrook a low "qualified/not qualified" rating, presumably due to his youth and relative inexperience. In 2001 this rating was claimed by the **George W. Bush administration** as evidence of **liberal bias** in the ABA in its announcement that it would no longer confer with the ABA in selecting judicial nominees.^{[4][5]}

Among Judge Easterbrook's most prominent opinions are:

- *American Booksellers v. Hudnut* (1986)^[6]
- *Kirchoff v. Flynn* (1986)^[7]
- *In re Erickson* (1987)^[8]
- *In re Sinclair* (1989)^[9]
- *United States v. Van Fossan* (1990)^[10]
- *Miller v. South Bend* (1990)^[11]
- *United States v. Marshall* (1990)^[12]
- *ProCD v. Zeidenberg* (1996)
- *Asher v. Baxter International Inc.* (2004)
- *BMG Music v. Gonzalez* (2005)
- *Hosty v. Carter* (2005)
- *Doe v. Smith* 429 F.3d 706 (7th Cir. 2005)

As a young judge in one of his early opinions, *Kirchoff v. Flynn*, 786 F.2d 320 (CA7 1986), a lawsuit over an arrest for feeding pigeons in a park, Easterbrook used such language as "trundled to the squadrol" to describe an arrest; and states of the pigeon-feeder that she "will never be confused with the 30th **Earl of Mar**, whose hobby was kicking pigeons". He described a controversy over whether a police officer, or the plaintiff's own bird, had attacked the plaintiff as: "[Plaintiff] says that he was clobbered by a pair of handcuffs; [the officer] maintains that the [plaintiffs]' red macaw drew the blood when it landed on [plaintiff]'s head during the fracas and started pecking". In a footnote, he added "Predatory birds rarely attack large animals whose eyes they can see, 11 Harv.Med. School Health Letter 8 (Feb.1986), and perhaps William's eyes got distracted, to his macaw's glee." This serves as an example of Easterbrook's sophisticated deftness with language and breadth of knowledge. This deftness sometimes, however, results in passages from his opinions that require dictionaries in order for a layman to understand, such as in *Frantz v. U.S. Powerlifting Federation*, 836 F.2d 1063 (7th Cir. 1987), where he wrote, "The absence of ineluctable answers does not imply the privilege to indulge an unexamined gestalt."

University of Chicago Law School Dean **Saul Levmore** stated that "Easterbrook is an important influence on legal education through his judicial opinions. Course after law school course has changed for the better as Judge Easterbrook's opinions have made their way into the curriculum. So long as he decides cases, and decides them in a way that cuts to the heart of an issue with such skill and pressure, no area of law can be dull".^[3]

Easterbrook had a reputation for being "hard-nosed and demanding" during oral argument.^[3] In *Schlessinger v. Salimes* (1996),^[13] for example, he characterized the lawsuit as "goofy" and the appellant's arguments as "nutty" before issuing an order to show cause why the appellant and lawyer should not be sanctioned for a frivolous appeal. His demeanor has won him enemies in the bar. In 1994 the Chicago Council of Lawyers published an "evaluation" of the Seventh Circuit that evaluated all the judges and the court's procedures in general, but notably focused extensively on only two: Easterbrook and then-chief judge **Richard Posner**.^[14] The evaluation of Easterbrook contained an unusual number of grievances; and the Council did not specify authorship, so the criticism is anonymous. In a section devoted to Easterbrook's judicial demeanor, the report claims he "has consistently displayed a temperament that is improper for a Circuit Judge. While Judge Easterbrook has many good qualities, there is a widespread belief that he is arrogant and intolerant with those who do not match his own intellectual level. This problem seriously interferes with the performance of his duties". The report continued to state Easterbrook "has been resoundingly and repeatedly criticized as being extremely rude to attorneys at oral argument" and that "some attorneys" said that due to the judge's demeanor they and their clients did not feel they got a fair hearing. The Council pointed to another opinion, *Kale v. Obuchowski*, which derided a lawyer's argument as "pettifoggery" and concluded that the appeal was "frivolous, doomed and sanctionable".^[15] The Council argued that even if the lawyer's conduct was sanctionable, "the language chosen does not enhance the administration of justice".^[citation needed]

However, this review by the Council was never repeated, lending partial support to the defenders of Easterbrook and Posner that the report was an opportunity for anonymous venting by lawyers who were unhappy with the results of Seventh Circuit decisions, in no small part thanks to the decisions of Reagan appointees Easterbrook and Posner. Posner has recently commented about the report, "You have here some anonymous people who are talking to the Chicago Council of Lawyers. How much credence should we put on these people? They can be sore losers. They can be crybabies."^[16]

Easterbrook became Chief Judge of the Seventh Circuit in 2006 and retired from that post in 2013. He is a member of the **Judicial Conference of the United States** and head of the **Judicial Council** for the Seventh Circuit.^[3]

Influences [edit]

Easterbrook called **Learned Hand** and **Oliver Wendell Holmes** his "judicial heroes".^[17]

Academic work [edit]

Easterbrook's academic work focuses on **corporate law**, particularly the 1991 book *The Economic Structure of Corporate Law*, which he coauthored with **Daniel Fischel**. Easterbrook's article, "The Proper Role of a Target's Management in Responding to a Tender Offer", 94 Harv. L. Rev. 1161 (1981) (also coauthored with Fischel) is the most heavily cited corporate law article in legal scholarship. Easterbrook has also written articles on antitrust law and **judicial interpretation**, including *Abstraction and Authority*, 59 U. Chi. L. Rev. 349 (1992); *Statutes' Domains*, 50 U. Chi. L. Rev. 533 (1983); and *Textualism and the Dead Hand*, 66 Geo. Wash. L. Rev. 1119 (1998).

See also [edit]

- **George W. Bush Supreme Court candidates**

References [edit]

- ↑ *Who would win a tournament of judges?* – Stephen Choi, 11/10/03
- ↑ *20 Questions for Circuit Judge Frank H. Easterbrook of the U.S. Court of Appeals for the Seventh Circuit – How Appealing*, 8/2/04
- ↑ *“*abcd*”* “Frank Easterbrook: A Portrait of the Next Chief”
- ↑ “ANALYSIS: BUSH ADMINISTRATION'S DECISION TO END THE PRACTICE OF CONSULTING THE ABA ABOUT POTENTIAL NOMINEES FOR FEDERAL JUDGESHIPS BEFORE MAKING THEIR NAMES PUBLIC” . National Public Radio. March 23, 2001. Retrieved March 27, 2010.
- ↑ Liptak, Adam (March 30, 2009). "Legal Group's Neutrality Is Challenged" . *New York Times*. Retrieved April 24, 2015.
- ↑ *American Booksellers Ass'n v. Hudnut*, 771 F.2d 323 (7th Cir. 1985), *affirmed summarily*, 475 U.S. 1001 (1986)
- ↑ *Kirchoff v. Flynn*, 786 F.2d 320 (7th Cir. 1986)
- ↑ *In re Erickson*, 815 F.2d 1090 (7th Cir. 1987)
- ↑ *In re Sinclair*, 870 F.2d 1340 (7th Cir. 1989)
- ↑ *United States v. Van Fossan*, 899 F.2d 636 (7th Cir. 1990)
- ↑ *Miller v. South Bend*, 904 F.2d 1081 (7th Cir. 1990) (*en banc*) (dissenting), reversed, 501 U.S. 560 (1991)
- ↑ *United States v. Marshall*, 908 F.2d 1312 (7th Cir. 1990) (*en banc*), *affirmed under the name Chapman v. United States*, 500 U.S. 453 (1991)
- ↑ *Schlessinger v. Salimes*, 100 F.3d 519 (7th Cir. 1996)
- ↑ *Evaluation of the United States Court of Appeals for the Seventh Circuit – Chicago Council of Lawyers*
- ↑ *Kale v. Obuchowski*, 985 F.2d 360 (7th Cir. 1993)
- ↑ *Judging Richard* , law.uchicago.edu; accessed April 24, 2015.
- ↑ Life and Career of Frank Easterbrook , c-spanvideo.org; accessed April 24, 2015.

External links [edit]

- Frank H. Easterbrook at the *Biographical Directory of Federal Judges*, a public domain publication of the Federal Judicial Center.
- Appearances on C-SPAN
- University of Chicago faculty page

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New seat	Judge of the United States Court of Appeals for the Seventh Circuit <div>1985–present</div>	Incumbent
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