

# Frank H. Easterbrook

**Frank Hoover Easterbrook** (born September 3, 1948) is a United States Circuit 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 the United States.<sup>[1]</sup>

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## Early life and education

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 of Arts degree with high honors. He received his Juris Doctor 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.<sup>[2]</sup>

## Early career

In 1974, along with Danny Julian Boggs, 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 Solicitor General 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 Julian Boggs (future Chief Judge of the Sixth Circuit), and me."<sup>[3]</sup> Easterbrook was considered "one of the very top advocates appearing before the Supreme Court in his days at the bar".<sup>[4]</sup>

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.

### Frank Easterbrook



**Chief Judge of the United States Court of Appeals for the Seventh Circuit**

**In office**

November 27, 2006 – October 1, 2013

**Preceded by** Joel Flaum

**Succeeded by** Diane Wood

**Judge of the United States Court of Appeals for the Seventh Circuit**

**Incumbent**

**Assumed office**

April 4, 1985

**Appointed by** Ronald Reagan

**Preceded by** *Seat established by 98 Stat. 333*

**Personal details**

**Born** Frank Hoover Easterbrook  
September 3, 1948  
Buffalo, New York

**Education** Swarthmore College (B.A.)  
University of Chicago Law School (J.D.)

## Nomination and judicial career

Easterbrook was nominated to the court by Ronald Reagan on August 1, 1984 to a new seat created by 98 Stat. 333, 346; the United States Senate did not act on his nomination that year, and he was renominated in Reagan's second term on February 25, 1985.<sup>[2]</sup>

He was confirmed by the Senate on April 3, 1985, and received his commission the next day.<sup>[2]</sup> 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.<sup>[5][6]</sup>

Among Judge Easterbrook's most prominent opinions are:

- *American Booksellers v. Hudnut* (1986)<sup>[7]</sup>
- *Kirchoff v. Flynn* (1986)<sup>[8]</sup>
- *In re Erickson* (1987)<sup>[9]</sup>
- *In re Sinclair* (1989)<sup>[10]</sup>
- *United States v. Van Fossan* (1990)<sup>[11]</sup>
- *Miller v. South Bend* (1990)<sup>[12]</sup>
- *United States v. Marshall* (1990)<sup>[13]</sup>
- *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 [plaintiff's] 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".<sup>[4]</sup>

Easterbrook had a reputation for being "hard-nosed and demanding" during oral argument.<sup>[4]</sup> In *Schlessinger v. Salimes* (1996),<sup>[14]</sup> 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.<sup>[15]</sup> 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".<sup>[16]</sup> The Council argued that even if the lawyer's conduct was sanctionable, "the language chosen does not enhance the administration of justice".

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."<sup>[17]</sup>

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.<sup>[4]</sup>

## Influences

Easterbrook called Learned Hand and Oliver Wendell Holmes, Jr. his "judicial heroes".<sup>[18]</sup>

## Alternate Opinions; Controversy

In July 2016, the Valparaiso University Law Review published an extraordinary blockbuster article (styled a "Memoir"), entitled "How Frank Easterbrook Kept George Ryan in Prison,"<sup>[19]</sup> written by a respected professor of law, Albert W. Alschuler, telling the story of how Judge Easterbrook (incidentally, a colleague of Alschuler's at U. Chicago), committed Judicial Misconduct from the bench, with the biased/illicit/illegal goal of keeping George Ryan (former governor of Illinois) in prison (the nature of the appellate action was to vacate part of Ryan's prior criminal conviction/sentence; Alschuler was Ryan's lead appellate attorney).

Publication of the Memoir amounted to a "scandalous"/"tell-all" exposé, breaking the legal profession's "code of silence" regarding (allegedly) corrupt/criminal judges who commit obstruction of justice. The combination of the Memoir's impeccable provenance from an unimpeachable source (knowledgeable/academic, not "mere/emotional sour grapes"), excruciating detail (fully documented), and masterful presentation, caused a major convulsion, reverberating throughout the American legal establishment (which, though un rebutted to date, has not yet led to measurable reform in the judicial system).

## Academic work

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

- George W. Bush Supreme Court candidates

## References

- ↑ "Page Not Found — Georgetown Law" ([http://www.law.georgetown.edu/faculty/documents/gulati\\_000.pdf](http://www.law.georgetown.edu/faculty/documents/gulati_000.pdf)) (PDF). *www.law.georgetown.edu*.
- ↑ "Easterbrook, Frank Hoover - Federal Judicial Center" (<https://www.fjc.gov/history/judges/easterbrook-frank-hoover>). *www.fjc.gov*.
- ↑ "How Appealing's 20 questions site" ([http://howappealing.law.com/20q/2004\\_08\\_01\\_20q-appellateblog\\_archive.html](http://howappealing.law.com/20q/2004_08_01_20q-appellateblog_archive.html)). *howappealing.law.com*.
- ↑ "Frank Easterbrook:A Portrait of the Next Chief" (<http://www.mayerbrown.com/publications/article.asp?id=2772&nid=6>).
- ↑ "ANALYSIS: BUSH ADMINISTRATION'S DECISION TO END THE PRACTICE OF CONSULTING THE ABA ABOUT POTENTIAL NOMINEES FOR FEDERAL JUDGESHIPS BEFORE MAKING THEIR NAMES PUBLIC" ([http://nl.newsbank.com/nl-search/we/Archives?p\\_product=NR&d\\_origin=transcripts&z=NR&p\\_theme=nr&p\\_action=search&p\\_maxdocs=200&p\\_topdoc=1&p\\_text\\_direct-0=0F56F9363B2E53E&p\\_field\\_direct-0=document\\_id&p\\_perpage=10&p\\_sort=YMD\\_date:D&s\\_trackval=GooglePM](http://nl.newsbank.com/nl-search/we/Archives?p_product=NR&d_origin=transcripts&z=NR&p_theme=nr&p_action=search&p_maxdocs=200&p_topdoc=1&p_text_direct-0=0F56F9363B2E53E&p_field_direct-0=document_id&p_perpage=10&p_sort=YMD_date:D&s_trackval=GooglePM)). National Public Radio. March 23, 2001. Retrieved March 27, 2010.
- ↑ Liptak, Adam (March 30, 2009). "Legal Group's Neutrality Is Challenged" (<https://www.nytimes.com/2009/03/31/us/31bar.html?em>). *New York Times*. Retrieved April 24, 2015.
- ↑ "American Booksellers Association v. Hudnut (7th Cir. 1985)" ([http://www.bc.edu/bc\\_org/avp/cas/comm/free\\_speech/hudnut.html](http://www.bc.edu/bc_org/avp/cas/comm/free_speech/hudnut.html)). *www.bc.edu*.
- ↑ *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)
- ↑ "FindLaw's United States Seventh Circuit case and opinions" (<http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=7th&navby=case&no=961730>). *Findlaw*.

15. "*Evaluation of the United States Court of Appeals for the Seventh Circuit* - Chicago Council of Lawyers" ([http://www.chicagocouncil.org/ccf/projects/fd\\_evaluations/7th\\_district/iintrodu.htm](http://www.chicagocouncil.org/ccf/projects/fd_evaluations/7th_district/iintrodu.htm)).
16. *Kale v. Obuchowski*, 985 F.2d 360 (7th Cir. 1993)
17. *Judging Richard* (<http://www.law.uchicago.edu/news/posner-cjr.html>), law.uchicago.edu; accessed April 24, 2015.
18. *Life and Career of Frank Easterbrook* (<http://www.c-spanvideo.org/program/7038-1>), c-spanvideo.org; accessed April 24, 2015.
19. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2814148](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2814148)

## External links

- Frank Hoover Easterbrook (<https://www.fjc.gov/node/1380341>) at the *Biographical Directory of Federal Judges*, a public domain publication of the Federal Judicial Center.
- Appearances (<https://www.c-span.org/person/?frankeasterbrook>) on C-SPAN
- University of Chicago faculty page (<http://www.law.uchicago.edu/faculty/easterbrook/>)

Legal offices		
Preceded by <b>Seat established by 98 Stat. 333</b>	<b>Judge of the <u>United States Court of Appeals for the Seventh Circuit</u></b> 1985–present	<b>Incumbent</b>
Preceded by <b>Joel Flaum</b>	<b>Chief Judge of the <u>United States Court of Appeals for the Seventh Circuit</u></b> 2006–2013	Succeeded by <b>Diane Wood</b>

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