

Box Webinar: Learn How To Digitally Transform Your Firm

UNCATEGORIZED
Star Witnesses: Judges Posner, Easterbrook and Bauer Testify Against Hal Turner

We've mentioned this before — earlier today, in Morning Docket, and last night, on Twitter — but this story merits further discussion. It has been discussed extensively by various news outlets and blogs (links collected below). The most detailed account comes from the New York Law Journal: Three judges from the 7th U.S. Circuit Court [...]

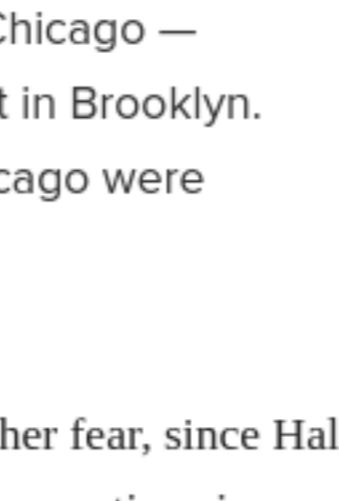
By DAVID LAT
 Mar 3, 2016 at 7:00 PM

We've mentioned this before — earlier today, in Morning Docket, and last night, on Twitter — but this story merits further discussion. It has been discussed extensively by various news outlets and blogs (links collected below). The most detailed account comes from the New York Law Journal: Easterbrook Seventh Circuit.jpg

Three judges from the 7th U.S. Circuit Court of Appeals — Chief Judge Frank Easterbrook and Judges Richard Posner and William Bauer — took the witness stand Tuesday in the Brooklyn trial of Harold Turner, the New Jersey blogger charged with encouraging his readers to murder the three judges as retribution for their decision upholding a Chicago handgun ban. Easterbrook told the jury that upon reading Turner's posts his "principal concern was that somebody would try to come kill me or shoot me or blow me up."

If "concern" was induced in the bear-like Judge Easterbrook (pictured) — who makes advocates appearing before him wet themselves in fear, and who spends his free time traipsing around the wilds of Alaska, where he has a second home — then clearly the threat was serious. Additional discussion — including cross-examination highlights, an eyewitness report from an ATL tipster, and tidbits about one of the prosecutors — after the jump.

Chief Judge Easterbrook wasn't the only judicial celebrity to take the stand — or even, arguably, the biggest. From A.G. Sulzberger — yes, that A.G. Sulzberger — of the New York Times:



His words barely filling the room, the witness timidly held his hand aloft to be sworn in...
 "How are you employed?" a lawyer asked.
 "I'm a United States circuit judge."

The witness — Richard A. Posner, one of the most prolific members of the federal judiciary and a judge in the federal appeals court in Chicago — kicked off a highly unusual day in United States District Court in Brooklyn. He and three other sitting judges from the same court in Chicago were prosecution witnesses.

Sulzberger raises the possibility that Judge Posner spoke so quietly out of either fear, since Hal Turner was seated nearby, or awkwardness, since Posner is used to asking the questions in a courtroom (not being asked). But we suspect that Judge Posner was just being his usual soft-spoken self. Check out the podcast of the event we did at U. Chicago with Judge Posner, Judges as Public Figures; he's not a very loud man.

Considering Judge Posner's celebrity — he's one of the few federal judges in America, outside of Supreme Court justices, who has name recognition outside the legal community — this is just plain embarrassing. From the NYLL:

At one point, before being cut off by [presiding judge Donald] Walter, Posner — the author of more than two dozen books on the law — began to describe the contents of an e-mail he received regarding Turner's posts, a hearsay violation straight out of the first day of Evidence. Posner later answered a question long held by many of those familiar with his work: how to pronounce his name. The judge told [defense lawyer Nishay] Sanan that the correct pronunciation of his name is "pose-ner" not "pause-ner." Sanan continued to pronounce it "pause-ner" nonetheless.

Perhaps they don't read much Posner at John Marshall Law School. The defense's inept questioning of Chief Judge Easterbrook was even more mortifying:

The cross-examination of Easterbrook, however, proved to be riveting drama and a primer on constitutional law. It also featured a series of stumbles by the defense....

[Defense lawyer Michael] Orozco challenged Easterbrook, 61, on the merits of the decision in National Rifle Association v. Chicago, the opinion that spurred Turner's alleged threats and which was written by Easterbrook.

After suggesting that the U.S. Supreme Court had heard the National Rifle Association's appeal of the case Tuesday morning, Orozco asked the judge, "If it's overturned, doesn't that mean Hal Turner is correct?"

At that point, laughter was heard through the courtroom.p>Judge Easterbrook said no, for two reasons. First, the central issue — whether the Second Amendment applies to the states — is one for the Supreme Court, the judge said. Therefore, a reversal would in fact confirm that the case had been rightly decided.

"Secondly," Easterbrook, now piqued, said, "What Mr. Turner's blog post says is that anybody who decides a case incorrectly should be assassinated. That is not the way the system is supposed to work."

Ouch. Judge Easterbrook may have been occupying the witness stand instead of the judge's chair, but that was still a benchslap.

Orozco then followed up with another argument regarding the merits of National Rifle Association v. Chicago, citing the supremacy clause. "No, you simply are not grasping the case," Easterbrook said, a line he repeated throughout his cross-examination. The judge then went on to give an extended history of the Fourteenth Amendment and its relationship to the Second Amendment, and U.S. Supreme Court precedent regarding both amendments dating back to 1873.

This sounds like the con law version of My Cousin Vinny. Not surprisingly, the testifying judges drew a large crowd — which appreciated the clever quips. From an ATL tipster:

[T]here were E.D.N.Y. judges, law clerks (including Second Circuit clerks), and court personnel in the gallery section of the courtroom while Posner et al. testified. All seemed interested and following closely. The testifying judges were very witty and cool under cross examination.

Perhaps the judges' performance on the stand will lead to a better result this time around. An earlier trial ended with a mistrial.

P.S. One of the prosecutors handling the case, assistant U.S. attorney William Hogan, is a veteran AUSA — with a bit of a past. Some of his litigation experience was acquired while fighting — successfully, mind you — with the DOJ's Office of Professional Responsibility. 7th Circuit Judges Testify in Trial Over Blogger's Web Threats [New York Law Journal via How Appealing]

3 U.S. Judges Testify in a Death Threat Case [New York Times]
 Judges testify against shock jock Harold (Hal) Turner [New York Daily News]
 Judges testify that they feared for their lives after blog post by North Bergen shock jock Hal Turner [Bergen Record via How Appealing]

Posner, Easterbrook, Bauer, Take Stand Against Radio Shock Jock [WSJ Law Blog]
 Role Reversal: Judges Posner And Easterbrook Take Stand Against Blogger Who Threatened To Kill Them [Business Insider / Law Review]

Allegedly Threatened Chicago Judges Cleared to Testify at Brooklyn Retrial [New York Law Journal]



TOPICS
 7th Circuit

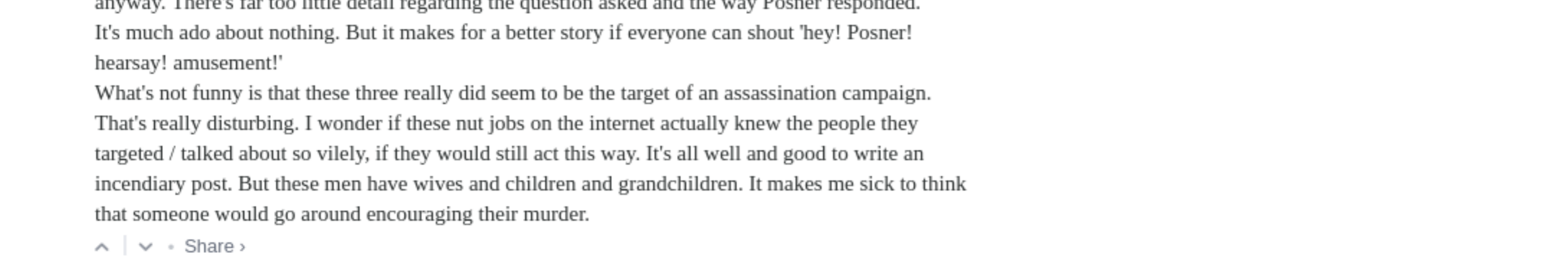
EVOLVE THE LAW DIRECTORY

 PAYMENT PROCESSING Customers Small Law Firms, Solo Practitioners 4.5 stars G2 Crowd	 CONTRACT REVIEW Customers Corporations	 Innovative Technology. Strictly Legal. MARKETING/COMMUNICATION Customers Biglaw, Corporations, Small Law Firms
---	--	---

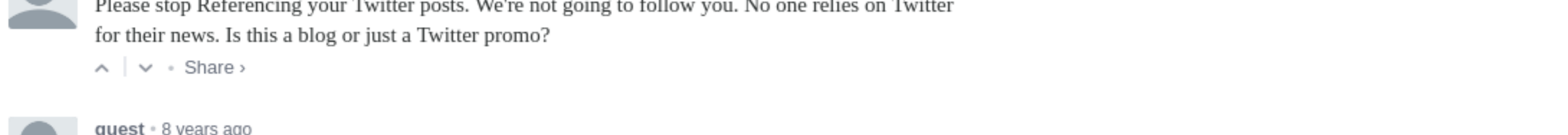
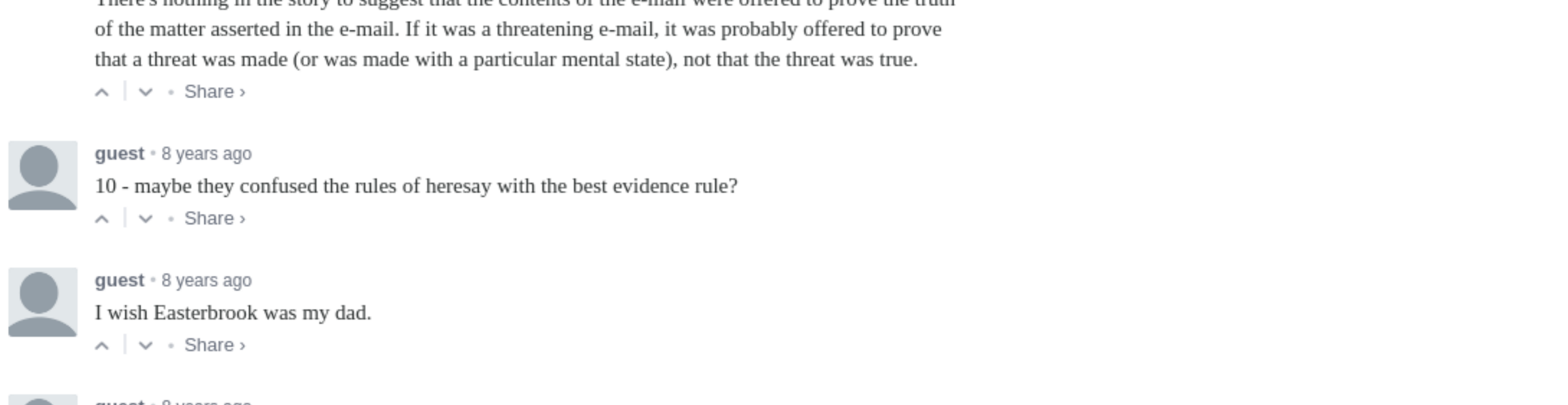
—ADVERTISEMENT—

Love ATL? Let's make it official. Sign up for our newsletter.

POPULAR ARTICLES



FROM THE ABOVE THE LAW NETWORK



22 comments (hidden for your protection)

SHOW ALL COMMENTS

Comments for this thread are now closed.

22 Comments Above the Law Login

Recommend Share Sort by Oldest

guest • 8 years ago
 first

guest • 8 years ago
 Second (Am)

guest • 8 years ago
 How old is that picture of Easterbrook? It must have been taken 15 or 20 years ago.

guest • 8 years ago
 And Posner describing the contents of the email is not necessarily clear-cut hearsay. Was it being offered for the truth of the matter asserted? If it was a threat, was it being offered to show that the declarant (author of the email) intended to carry out the threat? Or was it being offered for some non-hearsay purpose, such as to show that the threat was made (a verbal act), or to show the effect on Judge Posner?
 CHECK YOU TTT UNDERSTANDING OF THE RULES OF EVIDENCE!

guest • 8 years ago
 @4 did Lat just get 'commentslapped?'

guest • 8 years ago
 Wow. Timely by Mr. Lat - posted at 700 pm. The story was online in the NY Times 18+ hours earlier.

guest • 8 years ago
 Easterbrook = smarmy douche. We needed a trial to figure this out.

guest • 8 years ago
 Easterbrook = smarmy douche. We needed a trial to figure this out.

guest • 8 years ago
 In Lat's defense, the hearsay comment re: Posner & the e-mail was contained in the original NY Law Journal story about the trial. ... although maybe that makes it worse, as it suggests pure legalism. Anyway, reading the original story, I wasn't sure what the whole hearsay rigamarole was about anyway. There's far too little detail regarding the question asked and the way Posner responded. It's much ado about nothing. But it makes for a better story if everyone can shout 'hey! Posner! hearsay! amusement!'

What's not funny is that these three really did seem to be the internet of an assassination campaign. That's really disturbing. I wonder if these nut jobs on the internet actually knew the people they targeted / talked about so vilely, if they would still act this way. It's all well and good to write an incendiary post. But these men have wives and children and grandchildren. It makes me sick to think that someone would go around encouraging their murder.

guest • 8 years ago
 Actually, what's embarrassing is that neither David Lat nor the New York Law Journal know what hearsay is. Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. There's nothing in the story to suggest that the contents of the e-mail were offered to prove the truth of the matter asserted in the e-mail. If it was a threatening e-mail, it was probably offered to prove that a threat was made (or was made with a particular mental state), not that the threat was true.

guest • 8 years ago
 10 - maybe they confused the rules of heresy with the best evidence rule?

guest • 8 years ago
 I wish Easterbrook was my dad.

guest • 8 years ago
 @10: Way to jump in and post your thoughts without reading previous comments. @4 already made those very same points three hours but only six posts before you. Forgivable at the tail of a 200+ post thread, but not when you're posting at position 10.

guest • 8 years ago
 13 - are you German by any chance? I used to live in Germany, and met a lot of people just like you. Thank you for enlightening us about the Position 10 Rule of Blog Posts. Did I violate the Position 14 Rule with this post?

guest • 8 years ago
 Please stop Referencing your Twitter posts. We're not going to follow you. No one relies on Twitter for their news. Is this a blog or just a Twitter promo?

guest • 8 years ago
 @14: No violation. You read the previous comments.

guest • 8 years ago
 - 10

guest • 8 years ago
 -13 (Oops)

guest • 8 years ago
 So 10/13/14/16/17 is all the same person arguing with himself. Good to know.

guest • 8 years ago
 Lawyers should maintain ethical standards. Encouraging someone to kill another is a conduct unbecoming of a lawyer.

guest • 8 years ago
 Dear students obviously taking evidence this semester:
 Thank goodness you are here to enlighten the world with what you just learned in class today.

guest • 8 years ago
 Dear 20,
 Some of us actually practice law in a real courtroom that does not involve repeating the same DUI defense day in day out.
 Yours,
 4

guest • 8 years ago
 21-
 Leave Adam Reposa alone. He's been in jail and got a baby on the way. he doesn't need you bashing his livelihood too.

Subscribe Add Disqus to your site Privacy DISQUS

