

Wednesday, March 30, 2011

Linda Greenhouse's Hatchet Job On Justice Scalia

[Americian Thinker](#)

http://www.americanthinker.com/2011/03/linda_greenhouses_hatchet_job.html

March 20, 2011

Linda Greenhouse's Hatchet Job On Justice Scalia

By [Lester Jackson](#)

In a vitriolic [column](#) employing the very style for which she attacks Justice Anonin Scalia, Linda Greenhouse repeats the old banal "[bad-boy](#)" narrative of a long hostile media. This unanswered charge is misleading in the extreme.

What Greenhouse Wants Readers To Believe

Greenhouse asserts Scalia utterly lacks "pragmatism," is "angry," "enraged," "furious," "inflammatory," "bomb-throwing," "intemperate," "self-indulgen[t]," "bullying," and prone to "insults," "put-downs," "lashing out," publicly "thrashing...a junior colleague" and, indeed, "undermin[ing] the court's ... legitimacy."

Scalia is widely recognized as one of the Supreme Court's great writers. Few would deny his literary skill, part of which is using bluntness. However, a Greenhouse acolyte would believe that Scalia's bluntness is unique, while other justices are shrinking violets and delicate flowers who would never stoop so low. Scalia, in this telling, has broken new ground. As he might [say](#) (6): "sheer applesauce"! It's time to put this canard to rest.

Greenhouse repeats what is perhaps the most famous and repeated example of Scalia's alleged "intemperance": "Justice Scalia wrote ... Justice O'Connor's position was 'irrational' and 'cannot be taken seriously.'" Justice Ginsburg made the same charge three years ago on [60 Minutes](#): "How about, 'This opinion is not to be taken seriously.' He wrote that about Justice O'Connor." O'Connor herself was alleged by a colleague to have been "[deeply wounded](#)" by Scalia.

What Greenhouse Does Not Want Readers To Know

Greenhouse omits that, just last year, in [Citizens United](#) (33), Justice Stevens, joined by Ginsburg suggested exactly that five justices' assumption could not be "taken *seriously*." In 2008, Justice Breyer (joined by Stevens, Kennedy, Souter and, yes, Ginsburg) [indicated](#) (19) that the view of Chief Justice Roberts (joined by Scalia, Alito, Thomas), should not be "taken *seriously*." Nor does Greenhouse mention a Justice Stevens [dissent](#) (supported by O'Connor) accusing a Scalia opinion for the court of a "notion ... quite difficult to take *seriously*."

More remarkably, four years before the opinion Greenhouse quoted, O'Connor, writing for the court in a case involving probative evidence exclusion, [accused](#) Justice Brennan of citing cases as analogous that -- guess what! -- he "cannot *seriously* mean to equate ... with the case at bar." For his part, [Brennan used language](#) to which Greenhouse's adjectives equally apply: "the Court *mischaracterizes ... obfuscates ... and ... ignores ... realities ... that have led nearly every lower court to reject its simplistic reasoning*." Heaven forbid that that should be considered worthy of reporting.

Greenhouse faults Scalia for using "put-downs." However, she omits that Ginsburg [sees](#) it as a "challenge" to write "a real put down." Moreover, in addition to joining a dissent describing a majority opinion as not-to-be-taken-seriously, Ginsburg herself wrote another dissent [describing](#) (13, 24) the opinion of five justices as "flimsy... transparent ... irrational." If Scalia uses "irrational," Greenhouse pounces, but not so for Ginsburg.

In a one-sided observation, Ginsburg also said of Scalia: "all of us are implausible when we disagree with him." However, that did not stop her from joining the Stevens *Citizens United* dissent, which [repeatedly](#) (38; nn12, 46) refers to the majority opinion as "implausible."

These words are mild compared to Stevens' virtually questioning the integrity of fellow justices. For example, he [accused](#) (4) them of "dishonor[ing]" a "fundamental right." In [Bush v. Gore](#) (7), joined by Ginsburg, he attacked five justices for validating a "cynical appraisal" of judges, undermining "confidence in the judge as an impartial guardian of the rule of law." In [Citizens United](#) (89), he accused the majority of having its own "agenda," elevating "rhetoric over reality," "mischaracterizing" authorities, "ignoring ... judicial restraint" and "lawmaking."

Also questioning integrity, Justice Marshall [complained](#): "In an amazing display of interpretive gymnastics, the majority twists, bends, and contorts the logic" of a precedent.

Justice O'Connor [described](#) as "disingenuous" Justice White's majority opinion overturning a felony murder death sentence. In turn, White later accused O'Connor of "desperate...[semantic acrobatics](#)" in her "[misleading](#)" and "[preposterous](#)" majority opinion, also overturning a death sentence for a guilty murderer. In another case, one overturning the conviction of a clearly guilty child murderer, White [described](#) a plurality opinion by Justice Stewart as "unexplained" and "inexplicable" and "without apparent reason"; Stewart [retorted](#) that White wrote "nonsense."

In another child murder case, White [called](#) a court majority opinion (joined by Justice Stevens) "[utterly senseless](#)." Later, Stevens (joined by O'Connor) pronounced "[senseless](#)" the statutory construction in a 7-2 opinion written by White and joined by Scalia. That was two years before the oft-quoted Scalia reference to an O'Connor position ("irrational"; "cannot be taken seriously"). Yet Greenhouse would have us believe Scalia invented such language.

Greenhouse alleges that Scalia's dissent style fails to "entice" his colleagues. But she also faults Scalia for not having "persuaded" "all" justices when writing a pro-defendant majority opinion concerning expert testimony. This choice of words reveals just how [sly](#) (22-32) Greenhouse is. She must surely know that Justice Kennedy (joined by Roberts, Breyer and Alito) dissented with language at least as harsh as Scalia ever used. Why didn't she fault Kennedy for failing to "entice" the majority rather than Scalia for not securing unanimity?

Kennedy [wrote](#) (1, 3 8, 24, 26): the "Court ... disregards a century of jurisprudence," might be "ashamed of its new rule," is "inexplicable," "misunderstands how criminal trials work," made a "stunning slur on the integrity of the Nation's courts," "misinterpreted the Confrontation Clause," by creating "a body of formalistic and wooden rules, divorced from precedent, common sense, and the underlying purpose of the Clause" and using "a wooden application ... divorced from ...common sense."

Note that Kennedy twice characterized the majority opinion as lacking "common sense." Nor was this his first usage. For example, in another 5-4 pro-defendant case, Kennedy [declared](#)

that Justice O'Connor's opinion (joined by Scalia as well as Brennan, Marshall and Stevens) "invent[ed]" a rule lacking "common sense."

Just imagine what Greenhouse and her ilk would write if Scalia, rather than joining O'Connor, said her creation was based on a lack of common sense? Imagine if Kennedy's words had emerged from Scalia's pen.

Why does Greenhouse say not a word about Kennedy's words? Could it be that, over the years he has supported many of her strongest ideological positions regardless of what the Constitution says?

To cite a few examples: He has [saved abortion](#), [repeatedly supported](#) homosexual rights (possibly [paving the way](#) (5) for court-imposed rather than legislatively enacted same-sex marriage); [supported](#) abusive government economic power (e.g., traumatizing an 87-year-old lady by ordering the confiscation and destruction of the [only house](#) (2) she ever lived in for the benefit of a huge private corporation which later [abandoned](#) the project); [curtailed](#) the power of the president and congress to fight terrorism (deeming [superior](#) (4) his own judgment as to military necessity); [saved the life](#) (2, 20) of any nearly-18-year-old who abducts a woman, ties her up, wraps her with duct tape and throws her off a bridge to drown while conscious and terrified (he must be allowed to "attain a mature understanding of his own humanity"); and also [saved the life](#) (2, 36) of any 300-pound man who rapes an 8-year-old girl, requiring painful corrective surgery ("to allow him to understand the enormity of his offense"). Finally, it is highly likely that Greenhouse hopes Kennedy will vote to sustain the limitless federal power that is ObamaCare.

A Bully?

Almost 20 years ago, Judge Silberman [referred](#) to the "Greenhouse Effect": justices who furthered her liberal values were the subject of great praise; justices on the other side would be smeared. The idea was precisely to intimidate, to pursue a liberal activist agenda, justices who cared more about press clippings than principles. So it takes no little chutzpah to attack Scalia for "bullying." Scalia is called a bully exactly because he can't be bullied. He is an originalist who won't abandon his view that the Constitution means what it says rather than what judges want it to mean.

Conclusion

It is simply impossible that a reporter who covered the justices for decades is unaware of the above examples and innumerable more. So her column is a clear illustration of corrupt, biased advocacy journalism at its worst. Attack a target by repeatedly citing quotes that make him look uniquely bad while ignoring identical statements by those on your side.

Even Greenhouse acknowledges that what she calls Scalia's "intemperance" was a reference, not to Justice O'Connor, but to her "*position*." Scalia has [said](#): "I attack ideas. I don't attack people."

In sharp contrast to Scalia, Greenhouse does not apply adjectives to arguments but to the man himself. In some circles, that is considered *ad hominem* name-calling. The latest Greenhouse diatribe is a pure personal attack -- and a dishonest one at that.