

Is It Really a Partial Birth? You Don't Need a Weatherman (to know which way the Greenhouse gases blow)

BY Douglas Johnson

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Last June, Linda Greenhouse, who has covered the Supreme Court for the New York Times for most of the last 28 years, took time out to receive an honor at Harvard. According to a later report about her speech on National Public Radio, Greenhouse lamented, among other discouraging developments, what she called a "sustained assault on women's reproductive freedom and the hijacking of public policy by religious fundamentalism." She added, "To say that these last few years have been dispiriting is an understatement."

Trooper that she is, however, Greenhouse is back on the front lines at the Supreme Court with a commentary in the Times's Sunday, November 5, "Week in Review" section about the Partial-Birth Abortion Ban Act, on which the Court heard oral arguments November 8.

There are several points in Greenhouse's essay that are worthy of careful analysis, but here I will focus on just one: Her attempt to discredit the idea that human babies are really being mostly delivered alive before they are killed. It seems that Greenhouse recognizes that this notion bothers a lot of people—including even many people who, for some reason, are not so troubled by other types of abortions.

Greenhouse quotes, from a legal brief, a characterization of the partial-birth-abortion method as "killing a child in the birth process." She then comments, "While this description is true in the sense that uninterrupted gestation leads to birth—'He not busy being born is busy dying,' in the words of the Bob Dylan song—it is well off the mark as a description of what actually occurs."

But off the mark in what way? Greenhouse offers only one statement in support of her "off the mark" declaration—a quote from abortionist Warren M. Hern, who explains that he (among others) kills a fetus by injecting a lethal drug into the womb and then removing the cadaver a day or two later. "The cognitive construct of the law has nothing to do with current medical practice," Hern said.

All that demonstrates, however, is that Hern is not performing partial-birth abortions. That is not terribly surprising, since Hern once told American Medical News that he did not employ the method because of safety concerns: "I have very serious reservations about this procedure. ... You really can't defend it. I'm not going to tell somebody else that they should not do this procedure. But I'm not going to do it."

The method Hern says he uses is not covered by the law, because his killing takes place entirely inside the uterus—a free-fire zone under *Roe v. Wade*. In contrast, by explicit definition in the Partial-Birth Abortion Ban Act, a "partial-birth abortion" is an abortion in which the abortionist "delivers a living fetus until, in the case of a head-first presentation, the

entire fetal head is outside the body of the mother, or, in the case of breech presentation, any part of the fetal trunk past the navel is outside the body of the mother, for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus" [emphasis added].

Greenhouse apparently wants her readers to believe that nobody is actually "killing a child in the birth process." Such exercises in studied denial are nothing new. When the Partial-Birth Abortion Ban Act was first introduced in 1995, groups such as NARAL and Planned Parenthood propagated a myth that anesthesia given to the mother caused the fetus to expire peacefully before the rest of the process commenced. But this fabrication soon was exploded by the leading professional societies of anesthesiologists, who said that the fetus is not much affected by anesthesia given to the mother.

In reality, it has been established beyond reasonable dispute that many abortion practitioners do, in fact, mostly deliver living babies before killing them by puncturing the base of their skulls with sharp instruments, such as the seven-inch Metzenbaum surgical scissors or the trochar (a pointed, hollow metal tube). The practitioners who prefer this method usually employ it in the fifth and sixth months, and sometimes later.

Martin Haskell, the abortionist who initially engendered controversy over the method when he promoted it in an explicit 1992 instructional paper, was asked by American Medical News whether the fetus is dead before the delivery. "No, it's not. No, it's really not," he replied, estimating that about "two thirds" were alive at the time of their "extraction." (He added that "80% are purely elective.")

Other abortionists made similar admissions during the trials in the three separate legal challenges to the Partial-Birth Abortion Ban Act—some of which were quoted by Cathy Cleaver Ruse in her powerful article "Partial-Birth Abortion on Trial." in the spring 2005 Human Law Review. For example, in the trial before U.S. District Judge Richard Casey in New York, Dr. Carolyn Westoff testified that there is "usually a heartbeat" when she begins delivery in a partial-birth abortion, and that the fetus is living until she collapses the skull.

Another abortionist, Timothy Johnson, told the judge that when the "fetus" has been extracted, "Feet could be moving, yes."

After hearing extensive testimony from both sides, Judge Casey said in his opinion: "The Court finds that the testimony at trial and before Congress establishes that D&X [partial-birth abortion] is a gruesome, brutal, barbaric, and uncivilized medical procedure ... [and finds] credible evidence that D&X abortions subject fetuses to severe pain."

Obviously, the babies would not experience pain if they were already dead.

But still—is it really a partial birth?

Legally, under the laws of virtually every state and under federal law, once a human is all the way outside the mother and draws breath, or shows other signs of life such as heartbeat or movement of voluntary muscles, a live birth has occurred, and all the protections of law attach—whether or not the baby is "viable" (capable of long-term survival).

In February 1997, Ron Fitzsimmons, the executive director of the National Coalition of Abortion Providers, told Greenhouse's newspaper that "in the vast majority of cases" the method is used on "a healthy mother with a healthy fetus that is 20 weeks or more along" (New York Times,

Feb. 26, 1997). Twenty weeks is halfway through a full-term pregnancy—the middle of the fifth month.

Even early in the fifth month, babies are often born alive when expelled spontaneously by premature labor. By 20 weeks—4-1/2 months—a prematurely delivered baby may breathe for an hour or so before dying. By 23 weeks (just into the sixth month), roughly one-third of preemies survive long-term. By 24 weeks (about halfway through the sixth month), more than half are long-term survivors.

To put it another way: At the stages of development that most partial-birth abortions are performed, the great majority of babies would be legal “live births” if they were expelled by spontaneous premature labor, and many would be long-term survivors.

So, in a partial-birth abortion, a premature human is deliberately pulled to within just a few inches of being, medically and legally, a live-born person even under the law of *Roe v. Wade*. Thus, this abortion method does indeed amount to a partial live birth—or “partial birth.”

So, it is Greenhouse who is “well off the mark as to what actually occurs”—and President Bush who spoke the painful, literal truth on the day he signed the law in 2003, when he called partial-birth abortion “a terrible form of violence ... directed against children who are inches from birth”

The Dylan song that Greenhouse quoted is aptly titled “It’s Alright, Ma (I’m Only Bleeding).” On November 8, lawyers for Greenhouse’s side tried to persuade at least five Supreme Court justices that partial-birth abortion, too, is “alright,” just another straightforward application of the constitutional doctrine constructed in *Roe v. Wade* and *Casey v. Planned Parenthood*, no big deal. They tried to persuade the justices that the elected representatives of the people must not be allowed to interfere with the practice of borderline infanticide.

If, God forbid, they succeed, many will see it as yet another declaration by the nation’s highest tribunal (if I may borrow further from the same song):

That not much
Is really sacred.