

THE WORST SUPREME COURT
DECISIONS, *EVER!*
(AND RELATED TALES)

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The cover art is a 1864 cartoon depicting the Lincoln administration (and its allies) burying the Constitution in pursuit of defeating the South in the Civil War. The back cover art is titled *Desert City*, by Roger Shimomura (2020) (acrylic on canvas) (with permission from the Herbert F. Johnson Museum of Art, Cornell University).

THE WORST SUPREME COURT
DECISIONS, *EVER!*
(AND RELATED TALES)

C. EVAN STEWART



To

Patricia M. Stewart
The Love of My Life

and

Gordon G. Chang
My Best Friend

and

Kenneth N. Hart & Stephen J. Friedman
My Legal Mentors

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PREFACE

THE GENESIS OF THIS BOOK comes from a course I have taught for Cornell University since 2006, entitled “Introduction to the American Legal System.” The Cornell course is an intense one (three hours a day, five days a week, over a three-week period), designed to give undergraduates an in-depth baptism of what lies ahead in law school. For the enrolled students it is their first exposure to the teaching method known as the Socratic Dialogue—a method not for the faint of heart!

When I was designing the class curriculum in 2005, I thought I should give students exposure to some of the worst Supreme Court decisions—partially because few people study (or are taught) American history, and partially because a number of these decisions are so horrible many law schools and law professors do not like to teach them. My thinking led me from some of the most obvious decisions (*Dred Scott*, *Plessy*, *Korematsu*) to other Supreme Court decisions with which few, if any, lawyers or law professors are familiar. After researching these cases, I then began to write and publish articles on them, primarily in the *Federal Bar*

Council Quarterly. For purposes of this book I have adapted those prior articles and (where necessary) updated them.

In our current hyper-charged political environment, the Supreme Court (which Alexander Bickel once called “the least dangerous branch”) has come under increased public scrutiny. Not for the first time in the country’s history have there been cries to “pack” the Court (i.e., to change its structure to affect an outcome desired by some). I hope as readers go through the various chapters of this book they will see that the Court has made numerous, consequential mistakes over the course of our country’s history—mistakes that include and transcend all political views, parties, and factions. That being said, I also hope that readers will gain new insights into how the Court—even with these terrible decisions—has endured as a critically important institution that has contributed to the basic stability of our legal processes.

As an “extra” to the decisions themselves, I have added several chapters on fascinating, little-known vignettes involving the Court and famous Americans. While these chapters are not part of my Cornell class, per se, they have rounded out my knowledge of American history and thus are a sub-text to all that I try to pass on to my students.

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