In the December 12 ruling by the US Supreme Court handing the election to George Bush, the Court committed the unpardonable sin of being a knowing surrogate for the Republican Party instead of being an impartial arbiter of the law. If you doubt this, try to imagine Al Gore’s and George Bush’s roles being reversed and ask yourself if you can conceive of Justice Antonin Scalia and his four conservative brethren issuing an emergency order on December 9 stopping the counting of ballots (at a time when Gore’s lead had shrunk to 154 votes) on the grounds that if it continued, Gore could suffer “irreparable harm,” and then subsequently, on December 12, bequeathing the election to Gore on equal protection grounds. If you can, then I suppose you can also imagine seeing a man jumping away from his own shadow, Frenchmen no longer drinking wine.

From the beginning, Bush desperately sought, as it were, to prevent the opening of the door, the looking into the box—unmistakable signs that he feared the truth. In a nation that prides itself on openness, instead of the Supreme Court doing everything within its power to find a legal way to open the door and box, they did the precise opposite in grasping, stretching and searching mightily for a way, any way at all, to aid their choice for President, Bush, in the suppression of the truth, finally settling, in their judicial coup d’état, on the untenable argument that because of the various standards of determining the voter’s intent in the Florida counties, voters were treated unequally, since a vote disqualified in one county (the so-called undervotes, which the voting machines did not pick up) may have been counted in another county, and vice versa. Accordingly, the Court reversed the Florida Supreme Court’s order that the undervotes be counted, effectively delivering the presidency to Bush.

Now, in the equal protection cases I’ve seen, the aggrieved party, the one who is being harmed and discriminated against, almost invariably brings the action. But no Florida voter I’m aware of brought any action under the equal protection clause claiming he was disfranchised because of the different standards being employed. What happened here is that Bush leaped in and tried to profit from a hypothetical wrong inflicted on someone else. Even assuming Bush had this right, the very core of his petition to the Court was that he himself would be harmed by these different standards. But would he have? If we’re to be governed by common sense, the answer is no. The reason is that just as with flipping a coin you end up in rather short order with as many heads as tails, there would be a “wash” here for both sides, i.e., there would be just as many Bush as Gore votes that would be counted in one county yet disqualified in the next. (Even if we were to assume, for the sake of argument, that the wash wouldn’t end up exactly, 100 percent even, we’d still be dealing with the rule of de minimis non curat lex—the law does not concern itself with trifling matters.) So what harm to Bush was the Court so passionately trying to prevent by its ruling other than the real one: that he would be harmed by the truth as elicited from a full counting of the undervotes?
And if the Court’s five-member majority was concerned not about Bush but the voters themselves, as they fervently claimed to be, then under what conceivable theory would they, in effect, tell these voters, “We’re so concerned that some of you undervoters may lose your vote under the different Florida county standards that we’re going to solve the problem by making sure that none of you undervoters have your votes counted”? Isn’t this exactly what the Court did?

Gore’s lawyer, David Boies, never argued either of the above points to the Court. Also, since Boies already knew (from language in the December 9 emergency order of the Court) that Justice Scalia, the Court’s right-wing ideologue; his Pavlovian puppet, Clarence Thomas, who doesn’t even try to create the impression that he’s thinking; and three other conservatives on the Court (William Rehnquist, Sandra Day O’Connor and Anthony Kennedy) intended to deodorize their foul intent by hanging their hat on the anemic equal protection argument, wouldn’t you think that he and his people would have come up with at least three or four strong arguments to expose it for what it was—a legal gimmick that the brazen, shameless majority intended to invoke to perpetrate a judicial hijacking in broad daylight? And made sure that he got into the record of his oral argument all of these points? Yet, remarkably, Boies only managed to make one good equal protection argument, and that one near the very end of his presentation, and then only because Justice Rehnquist (not at Boies’s request, I might add) granted him an extra two minutes. If Rehnquist hadn’t given him the additional two minutes, Boies would have sat down without getting even one good equal protection argument into the record.

This was Boies’s belated argument: “Any differences as to how this standard [to determine voter intent] is interpreted have a lot less significance in terms of what votes are counted or not counted than simply the differences in machines that exist throughout the counties of Florida.” A more powerful way to make Boies’s argument would have been to point out to the Court the *reductio ad absurdum* of the equal protection argument. If none of the undervotes were counted because of the various standards to count them, then to be completely consistent the Court would have had no choice but to invalidate the entire Florida election, since there is no question that votes lost in some counties of Florida. A more powerful way to make Boies’s argument would have been to point out to the Court the *reductio ad absurdum* of the equal protection argument. 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Varying voting methods have been in use for two centuries; the Court has never hinted there might be a right that was being violated.

Varying methods to cast and count votes have been going on in every state of the union for the past two centuries, and the Supreme Court has been as silent as a church mouse on the matter, never even hinting that there might be a right under the equal protection clause that was being violated. Georgetown University law professor David Cole said, “[The Court] created a new right out of whole cloth and made sure it ultimately protected only one person—George Bush.” The simple fact is that the five conservative Justices did not have a judicial leg to stand on in their blatantly partisan decision. In a feeble, desperate effort to support their decision, the Court cited four of its previous cases as legal precedent, but not one of them bears even the slightest resemblance to *Bush v. Gore*. In one (*Gray v. Sanders*), the state of Georgia had a system where the vote of each citizen counted for less and less as the population of his or her county increased. In another (*Moore v. Ogilvie*), the residents of smaller counties in Illinois were able to form a new party to elect candidates, something residents of larger counties could not do. Another (*Reynolds v. Sims*) was an apportionment case, and the fourth (*Harper v. Virginia*) involved the payment of a poll tax as a qualification for voting. If a first-year law student ever cited completely inapplicable authority like this, any thoughtful professor would encourage him not to waste two more years trying to become a lawyer. As Yale law professor Akhil Reed Amar noted, the five conservative Justices “failed to cite a single case that, on its facts, comes close to supporting its analysis and result.”

If the Court majority had been truly concerned about the equal protection of all voters, the real equal protection violation, of course, took place when they cut off the counting of the under-

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votes. As indicated, that very act denied the 50 million Americans who voted for Gore the right to have their votes count at all. It misses the point to argue that the five Justices stole the election only if it turns out that Gore overcame Bush’s lead in the under-vote recount. We’re talking about the moral and ethical culpability of these Justices, and when you do that, the bell was rung at the moment they engaged in their conduct. What happened thereafter cannot unring the bell and is therefore irrelevant. To judge these Justices by the final result rather than by their intentions at the time of their conduct would be like exonerating one who shoots to kill if the bullet misses the victim. With that type of extravagant reasoning, if the bullet goes on and accidentally strikes down a third party who is about to kill another, perhaps the gunman should ultimately be viewed as a hero.

O ther than the unprecedented and outrageous nature of what the Court did, nothing surprises me more than how it is being viewed by the legal scholars and pundits who have criticized the opinion. As far as I can determine, most have correctly as- sailed the Court for issuing a ruling that was clearly political. As the December 25 Time capsulized it, “A sizable number of critics, from law professors to some of the Court’s own members, have attacked the ruling as…politically motivated.” A sampling from a few law professors: Vanderbilt professor Suzanna Sherry said, “There is really very little way to reconcile this opinion other than that they wanted Bush to win.” Yale’s Amar lamented that “for myself and many of my colleagues, this was like the day President Kennedy called the decision “outrageous.”* Harvard law professor Randall Kennedy called the decision “outrageous.”** The only problem I have with these critics is that they have merely lost respect for and confidence in the Court. “I have less respect for the Court than before,” Amar wrote. The New York Times said the ruling appeared “openly political” and that it “eroded public confidence in the Court.” Indeed, the always accommod-ating and obsequious (in all matters pertaining to the High Court, in front of which he regularly appears) Harvard law pro- fessor Laurence Tribe, who was Gore’s chief appellate lawyer, went even further in the weakness of his disenchantment with the Court. “Even if we disagree” with the Court’s ruling, he said, Americans should “rally around the decision.” Sometimes the body politic is lulled into thinking along un-reasoned lines. The “conventional wisdom” emerging immedi-ately after the Court’s ruling seemed to be that the Court, by its political ruling, had only lost a lot of credibility and altitude in the minds of many people. But these critics of the ruling, even those who flat-out say the Court “stole” the election, apparently have not stopped to realize the inappropriateness of their tepid position vis-à-vis what the Court did. You mean you can steal a presidential election and your only retribution is that some people don’t have as much respect for you, as much confidence in you? That’s all? If, indeed, the Court, as the critics say, made a politi- cally motivated ruling (which it unquestionably did), this is tan- tamount to saying, and can only mean, that the Court did not base its ruling on the law. And if this is so (which again, it unques- tionably is), this means that these five Justices deliberately and knowingly decided to nullify the votes of the 50 million Ameri- cans who voted for Al Gore and to steal the election for Bush. Of course, nothing could possibly be more serious in its enormous ramifications. The stark reality, and I say this with every fiber of my being, is that the institution Americans trust the most to pro- tect its freedoms and principles committed one of the biggest and most serious crimes this nation has ever seen—pure and simple, the theft of the presidency. And by definition, the perpetrators of this crime have to be denominated criminals.

S ince the notion of five Supreme Court Justices being criminals is so alien to our sensibilities and previously held beliefs, and since, for the most part, people see and hear, as Thoreau said, what they expect to see and hear, most readers will find my characterization of these Justices to be intellectually incon- gruous. But make no mistake about it, I think my background in the criminal law is sufficient to inform you that Scalia, Thomas et al. are criminals in the very tru st sense of the word. Essentially, there are two types of crimes: malum prohibitum (wrong because they are prohibited) crimes, more popularly called “civil offenses” or “quasi crimes,” such as selling liquor after a specified time of day, hunting during the off-season, gambling, etc.; and malum in se (wrong in themselves) crimes. The latter, such as robbery, rape, murder and arson, are the only true crimes. Without exception, they all involve morally reprehensible conduct. Even if there were no law prohibiting such conduct, one would know (as opposed to a malum prohibitum crime) it is wrong, often evil. Although the victim of most true crimes is an individual (for example, a person robbed or raped), such crimes are considered to be “wrongs against society.” This is why the plaintiff in all felony criminal prosecutions is either the state (People of the State of California v. _____) or the federal government (United States of America v. _____).

No technical true crime was committed here by the five con- servative Justices only because no Congress ever dreamed of enacting a statute making it a crime to steal a presidential election. It is so far-out and unbelievable that there was no law, then, for these five Justices to have violated by their theft of the election. But if what these Justices did was not “morally reprehensible” and a “wrong against society,” what would be? In terms, then, of natural law and justice—the protoplasm of all eventual laws on the books—these five Justices are criminals in every true sense of the word, and in a fair and just world belong behind prison bars as much as any American white-collar criminal who ever lived. Of course, the right-wing extremists who have saluted the Court for its theft of the election are the same type of people who feel it is perfectly all right to have a mandatory minimum sentence of ten years in a federal penitentiary for some poor black in the ghetto who is in possession of just fifty grams of crack cocaine, even if he was not selling it. [§ 21 U.S.C. § 841 (b)(1)(A)(iii)]
Though the five Justices clearly are criminals, no one is treating them this way. As I say, even those who were outraged by the Court’s ruling have only lost respect for them. And for the most part the nation’s press seems to have already forgotten and/or forgiven. Within days, the Court’s ruling was no longer the subject of Op-Ed pieces. Indeed, just five days after its high crime, the caption of an article by Jean Guccione in the Los Angeles Times read, “The Supreme Court Should Weather This Storm.” The following day an AP story noted that Justice Sandra Day O’Connor, on vacation in Arizona, had fired a hole-in-one on the golf course.

The lack of any valid legal basis for their decision and, most important, the fact that it is inconceivable they would have ruled the way they did for Gore, proves, on its face, that the five conservative Republican Justices were up to no good. Therefore, not one stitch of circumstantial evidence beyond this is really necessary to demonstrate their felonious conduct and state of mind. (The fact that O’Connor, per the Wall Street Journal, said before the election that she wanted to retire but did not want to do so if a Democrat would be selecting her successor, that Thomas’s wife is working for the conservative Heritage Foundation to help handle the Bush transition and that Scalia’s two sons work for law firms representing Bush is all unneeded trivia. We already know, without this, exactly what happened.) But for those who want more, let me point out that there is no surer way to find out what parties meant than to see what they have done. And like typical criminals, the felonious five left their incriminating fingerprints everywhere, showing an unmistakable consciousness of guilt on their part.

1. Under Florida statutory law, when the Florida Supreme Court finds that a challenge to the certified result of an election is justified, it has the power to “provide any relief appropriate under the circumstances” (§ 102.168(8) of the Florida Election Code). On Friday, December 8, the Florida court, so finding, ordered a manual recount (authorized under § 102.166(4)(c) of the Florida Election Code) of all disputed ballots (around 60,000) throughout the entire state. As a New York Times editorial reported, “The manual recount was progressing smoothly and swiftly Saturday…with new votes being recorded for both Vice President Al Gore and Governor George W. Bush…serving the core democratic principle that every legal vote should be counted” when, in midafternoon, the US Supreme Court “did a disservice to the nation’s tradition of fair elections by calling a halt” to the recount. The stay (requested by Bush), the Times said, appeared “highly political.”

Under Supreme Court rules, a stay is supposed to be granted to an applicant (here, Bush) only if he makes a substantial showing that in the absence of a stay, there is a likelihood of “irreparable harm” to him. With the haste of a criminal, Justice Scalia, in trying to justify the Court’s shutting down of the vote counting, wrote, unbelievably, that counting these votes would “threaten irreparable harm to petitioner [Bush]…by casting a cloud upon what he claims to be the legitimacy of his election.” [Emphasis added.] In other words, although the election had not yet been decided, the absolutely incredible Scalia was presupposing that Bush had won the election—indeed, had a right to win it—and any recount that showed Gore got more votes in Florida than Bush could “cloud” Bush’s presidency. Only a criminal on the run, rushed for time and acting in desperation, could possibly write the embarrassing words Scalia did, language showing that he knew he had no legal basis for what he was doing, but that getting something down in writing, even as intellectually flabby and fatuous as it was, was better than nothing at all. (Rehnquist, Thomas, O’Connor and Kennedy, naturally, joined Scalia in the stay order.)

The New York Times observed that the Court gave the appearance by the stay of “racing to beat the clock before an unwelcome truth would come out.” Terrance Sandalow, former dean of the University of Michigan Law School and a judicial conservative who opposed Roe v. Wade and supported the nomination to the Court of right-wing icon Robert Bork, said that “the balance of harms so unmistakably were on the side of Gore” that the granting of the stay was “incomprehensible,” going on to call the stay “an unmistakably partisan decision without any foundation in law.”

As Justice John Paul Stevens wrote in opposing the stay, Bush “failed to carry the heavy burden” of showing a likelihood of irreparable harm if the recount continued. In other words, the Court never even had the legal right to grant the stay. “Counting every legally cast vote cannot constitute irreparable harm,” Stevens said. “On the other hand, there is a danger that a stay may cause irreparable harm to the respondent [Gore] and, more importantly, the public at large because of the risk that the entry of the stay would be tantamount to a decision on the merits in favor of the applicant. Preventing the recount from being completed will inevitably cast a cloud on the legitimacy of the election.” Stevens added what even the felonious five knew but decided to ignore: that it is a “basic principle inherent in our Constitution that every legal vote should be counted.” From the wrongful granting of the stay alone, the handwriting was on the wall. Gore was about as safe as a cow in a Chicago stockyard.

In yet another piece of incriminating circumstantial evidence, Scalia, in granting Bush’s application for the stay, wrote that “the issuance of the stay suggests that a majority of the Court, while not deciding the issues presented, believe that the petitioner [Bush] has a substantial probability of success.” But Antonin, why would you believe this when neither side had submitted written briefs yet (they were due the following day, Sunday, by 4 PM), nor had there even been oral arguments (set for 11 AM on Monday)? It wouldn’t be because you had already made up your mind on what you were determined to do, come hell or high water, would it? Antonin, take it from an experienced prosecutor—you’re as guilty as sin. In my prosecutorial days, I’ve had some worthy opponents. You wouldn’t be one of them. Your guilt is so obvious that if I thought more of you I’d feel constrained to blush for you.

2. When prosecutors present their circumstantial case against a defendant, they put one speck of evidence upon another until ultimately there is a strong mosaic of guilt. One such small speck is that in its 5-to-4 decision handing the election to Bush,
the Court’s ruling was set forth in a thirteen-page “per curiam” (Latin for “by the court”) opinion (followed by concurring and dissenting opinions). Students of the Supreme Court know that per curiam opinions are almost always issued for unanimous (9-to-0) opinions in relatively unimportant and uncontroversial cases, or where Justices wish to be very brief. But as USA Today pointed out, “Neither was the case here.” Again, on the run and in a guilty state of mind, none of the five Justices, even the brazenly shameless Scalia, wanted to sign their name to a majority opinion of the Court reversing the Florida Supreme Court’s order to recount the undervotes. A per curiam opinion, which is always unsigned, was the answer. It is not even known who wrote the per curiam opinion, though it is believed to be O’Connor and/or Kennedy, neither of whose names is mentioned anywhere in the Court’s sixty-two-page document. After they did their dirty work by casting their two votes on the case for their favorite—two votes that overruled and rendered worthless the votes of 50 million Americans in fifty states—O’Connor and Kennedy wanted to stay away from their decision the way the devil stays away from holy water. Indeed, by their per curiam opinion, it was almost as if the felonious five felt that since their names would not be on the legally sacrilegious opinion, maybe, just maybe, the guilt they knew they bore would be mitigated, at least somewhat, in posterity.

Nothing is more important in a democracy than the right to vote. And implicit in the right is that the vote will be counted.

3. The proof that the Court itself knew its equal protection argument had no merit whatsoever is that when Bush first asked the Court, on November 22, to consider three objections of his to the earlier, more limited Florida recount then taking place, the Court only denied review on his third objection—yeah, you guessed it, that the lack of a uniform standard to determine the voter’s intent violated the equal protection clause of the Fourteenth Amendment. Since the Court, on November 22, felt that this objection was so devoid of merit that it was unworthy of even being considered by it, what did these learned Justices subsequently learn about the equal protection clause they apparently did not know in November that caused them just three weeks later, on December 12, to embrace and endorse it so enthusiastically? The election was finally on the line on December 12 and they knew they had to come up with something, anything, to save the day for their man.

The bottom line is that nothing is more important in a democracy than the right to vote. Without it there cannot be a democracy. And implicit in the right to vote, obviously, is that the vote be counted. Yet with the election hanging in the balance, the highest court in the land ordered that the valid votes of thousands of Americans not be counted. That decision gave the election to Bush. When Justice Thomas was asked by a skeptical high school student the day after the Court’s ruling whether the Court’s decision had anything to do with politics, he answered, “Zero.” And when a reporter thereafter asked Rehnquist whether he agreed with Thomas, he said, “Absolutely; absolutely.” Well, at least we know they can lie as well as they can steal.

4. The Court anchored its knowingly fraudulent decision on the equal protection clause of the Fourteenth Amendment. But wait. Since the electors in the fifty states weren’t scheduled to meet and vote until December 18, and the Court’s ruling was on December 12, if the Court was really serious about its decision that the various standards in the counties to determine the voter’s intent violated the equal protection clause, why not, as Justices Stevens, Souter, Ginsburg and Breyer each noted in separate dissents, simply remand the case back to the Florida Supreme Court with instructions to establish a uniform, statewide standard and continue the recount until December 18? The shameless and shameful felonious five had an answer, which, in a sense, went to the heart of their decision even more than the bogus equal protection argument. The unsigned and anonymously written per curiam opinion noted that under Title 3 of the United States Code, Section 5 (3 USC § 5), any controversy or contest to determine the selection of electors should be resolved “six days prior to the meeting of the Electoral College,” that is, December 12, and inasmuch as the Court issued its ruling at 10 PM on December 12, with just two hours remaining in the day, the Court said, “That date [December 12] is upon us,” and hence there obviously was no time left to set uniform standards and continue the recount. But there are a multiplicity of problems with the Court’s oh-so-convenient escape hatch. Writing in the Wall Street Journal, University of Utah law professor Michael McConnell, a legal conservative, pointed out that the December 12 “deadline” is only a deadline “for receiving ‘safe harbor’ protection for the state’s electors” (i.e., if a state certifies its electors by that date, Congress can’t question them), not a federal deadline that must be met. New York University law professor Larry Kramer observed that if a state does not make that deadline, “nothing happens. The counting could continue.”

Justice Stevens observed in his dissent that 3 USC § 5 “merely provides rules…for Congress to follow when selecting among conflicting slates of electors. They do not prohibit a state from counting…legal votes until a bonafide winner is determined. Indeed, in 1960, Hawaii appointed two slates of electors and Congress chose to count the one appointed on January 4, 1961, well after the Title 3 deadlines” of December 12 and 18. Thus, Stevens went on to say, even if an equal protection violation is assumed for the sake of argument, “nothing prevents the majority…from ordering relief appropriate to remedy that violation without depriving Florida voters of their right to have their votes counted.”

But even if December 12 were some kind of actual deadline, nothing was sillier during this whole election debate than the talking heads on television, many of whom were lawyers who should have known better, treating the date as if it were sacrosanct and set in stone (exactly what the Supreme Court majority, on the run and trying to defend their indefensible position, said). In the real world, mandatory dates always have an elliptical clause attached to them, “unless there is just cause for extending the date.” I cannot be accused of hyperbole when I say that perhaps no less than thousands of times a day in court- houses throughout the country, mandatory (“shall”) dates to do this or that (file a brief, a motion, commence a trial, etc.) are waived by the court on the representation of one party alone that he needs more time. If extending the December 12 (or the
December 18 date, for that matter)^4 deadline for a few days for the counting of votes to determine who the rightful winner of a presidential election is does not constitute a sufficient cause for a short extension of time, then what in the world does? No one has said it better than columnist Thomas Friedman: “The five conservative Justices essentially ruled that the sanctity of dates, even meaningless ones, mattered more than the sanctity of votes, even meaningful ones. The Rehnquist Court now has its legacy: In calendars we trust.” In other words, to Scalia and his friends, speed was more important than justice. More important than accuracy. Being the strong-armed enforcer of deadlines, even inconsequential ones, was more important to these five Justices than being the nation’s protector and guardian of the right to vote.

What could be more infuriating than Chief Justice Rehnquist, who knew he was setting up a straw man as counterfeit as the decision he supported, writing that the recount “could not possibly be completed” in the two hours remaining on December 12? The Supreme Court improperly stops the recounting of the votes from Saturday afternoon to Tuesday, December 12, at 10 PM, then has the barefaced audacity to say that Gore ran out of time? This type of maddening sophistry is enough, as the expression goes, to piss off a saint. How dare these five pompous asses do what they did?

It should be noted that the recount that commenced on Saturday morning, December 9, was scheduled to conclude by 2 PM that Sunday, and the vote counters were making excellent progress. For example, as reported in the December 10 New York Times, for the 9,000 Miami-Dade County ballots being counted, eight county court judges counting 1,000 ballots an hour, had, by midday Saturday, “gone through more than a third of the ballots [when Scalia stepped in], and expected to finish by nightfall.” So the Court’s extending the deadline to December 18 would have provided ample time for the Florida Supreme Court to promulgate a uniform standard, finish the vote-counting in a day or so, and even allow for judicial review. As Justice Ruth Bader Ginsburg observed concerning this last point, “Notably, the Florida Supreme Court has produced two substantial decisions within twenty-nine hours of oral argument.” Justice Breyer wrote that the alleged equal protection “deficiency…could easily be remedied.” But that’s assuming the felonious five wanted a remedy. They did not. All of the above are further indicia of their guilty state of mind.

5. If there are two sacred canons of the right-wing in America and ultraconservative Justices like Scalia, Thomas and Rehnquist, it’s their ardent federalism, i.e., promotion of states’ rights (Rehnquist, in fact, wrote in his concurring opinion about wanting, wherever possible, to “defer to the decisions of state courts on issues of state law”), and their antipathy for Warren Court activist judges. So if it weren’t for their decision to find a way, any way imaginable, to appoint Bush President, their automatic predilection would have been to stay the hell out of Florida’s business. The fact that they completely departed from what they would almost reflexively do in ninety-nine out of a hundred other cases is again persuasive circumstantial evidence of their criminal state of mind.

6. Perhaps nothing Scalia et al. did revealed their consciousness of guilt more than the total lack of legal stature they reposed in their decision. Appellate court decisions, particularly those of the highest court in the land, all enunciate and stand for legal principles. Not just litigants but the courts themselves cite prior holdings as support for a legal proposition they are espousing. But the Court knew that its ruling (that differing standards for counting votes violate the equal protection clause) could not possibly be a constitutional principle cited in the future by themselves, other courts or litigants. Since different methods of counting votes exist throughout the fifty states (e.g., Texas counts dimpled chads, California does not), forty-four out of the fifty states do not have uniform voting methods, and voting equipment and mechanisms in all states necessarily vary in design, upkeep and performance, to apply the equal protection ruling of Bush v. Gore would necessarily invalidate virtually all elections throughout the country.

This, obviously, was an extremely serious problem for the felonious five to deal with. What to do? Not to worry. Are you ready for this one? By that I mean, are you sitting down, since if you’re standing, this is the type of thing that could affect your physical equilibrium. Unbelievably, the Court wrote that its ruling was “limited to the present circumstances, for the problem of equal protection in election processes generally presents many complexities.” (That’s pure, unadulterated moonshine. The ruling sets forth a very simple, noncomplex proposition—that if there are varying standards to count votes, this violates the equal protection clause) could not be remedied.” In all other equal protection voting cases, litigants should refer to prior decisions of this court.” Of the thousands of potential equal protection voting cases, the Court was only interested in, and eager to grant relief to, one person and one person only, George W. Bush. Is there any limit to the effrontery and shamelessness of these five right-wing Justices? Answer: No. This point number six here, all alone and by itself, clearly and unequivocally shows that the Court knew its decision was not based on the merits or the law, and was solely a decision to appoint George Bush President.
Conservatives, the very ones who wanted to impeach Earl Warren, have now predictably taken to arguing that one shouldn’t attack the Supreme Court as I am because it can only harm the image of the Court, which we have to respect as the national repository for, and protector of, the rule of law, the latter being a sine qua non to a structured, nonanarchistic society. This is just so much drivel. Under what convoluted theory do we honor the rule of law by ignoring the violation of it (here, the sacred, inalienable right to vote of all Americans) by the Supreme Court? With this unquestioning subservience-to-authority theory, I suppose the laws of the Third Reich—such as requiring Jews to wear a yellow Star of David on their clothing—should have been respected and followed by the Jews. Blacks should have respected Jim Crow laws in the first half of the twentieth century. Naturally, these conservative exponents of not harming the Supreme Court, even though the Court stole a federal election disfranchising 50 million American citizens, are the same people who felt no similar hesitancy savaging the President of the United States not just day after day, but week after week, month after month, yes, even year after year for having a private and sensuous sexual affair and then lying about it. And this was so even though the vitriolic and never-ending attacks crippled the executive branch of government for months on end, causing incalculable damage to the office of the presidency and to this nation, both internally and in the eyes of the world. Indeed, many of them are delighted to hound and go after the President even after he leaves office.

These five Justices, by their conduct, have forfeited the right to be respected, and only by treating them the way they deserve to be treated can we demonstrate our respect for the rule of law they defiled, and insure that their successors will not engage in similarly criminal conduct.

Why, one may ask, have I written this article? I’ll tell you why. I’d like to think, like most people, that I have a sense of justice. In my mind’s eye, these five Justices have gotten away with murder, and I want to do whatever I can to make sure that they pay dearly for their crime. Though they can’t be prosecuted, I want them to know that there’s at least one American out there (and hopefully many more because of this article) who knows (not thinks, but knows) precisely who they are. I want these five Justices to know that because of this article, which I intend to send to each one of them by registered mail, there’s the exponential possibility that when many Americans look at them in the future, they’ll be saying, “Why are these people in robes seated above me? They all belong behind bars.” I want these five Justices to know that this is America, not a banana republic, and in the United States of America, you simply cannot get away with things like this.

At a minimum, I believe that the Court’s inexcusable ruling will severely stain its reputation for years to come, perhaps decades. This is very unfortunate. As Justice Stevens wrote in his dissent: “Although we may never know with complete certainty the identity of the winner of this year’s presidential election, the identity of the loser is perfectly clear. It is the nation’s confidence in [this Court] as an impartial guardian of the rule of law.” Considering the criminal intention behind the decision, legal scholars and historians should place this ruling above the Dred Scott case (Scott v. Sandford) and Plessy v. Ferguson in egregious sins of the Court. The right of every American citizen to have his or her vote counted, and for Americans (not five unelected Justices) to choose their President was callously and I say criminally jettisoned by the Court’s majority to further its own political ideology. If there is such a thing as a judicial hell, these five Justices won’t have to worry about heating bills in their future. Scalia and Thomas in particular are not only a disgrace to the judiciary but to the legal profession, for years being nothing more than transparent shills for the right wing of the Republican Party. If the softest pillow is a clear conscience, these five Justices are in for some hard nights. But if they aren’t troubled by what they did, then we’re dealing with judicial sociopaths, people even more frightening than they already appear to be.

The Republican Party had a good candidate for President, John McCain. Instead, it nominated perhaps the most unqualified person ever to become President, and with the muscular, thuggish help of the Court, forced Bush down the throats of more than half the nation’s voters. As Linda Greenhouse wrote in the New York Times, when Rehnquist administers the presidential oath of office to Bush on January 20, for the first time in our nation’s history the Chief Justice will not just be a prop in the majestic ceremony but a player. Rehnquist will be swearing in someone he made sure would be President. Obscenity has its place in a free and open society, but it’s in the seedy, neon-light part of town, not on the steps of the nation’s Capitol being viewed by millions of Americans on television screens throughout the land.

That an election for an American President can be stolen by the highest court in the land under the deliberate pretext of an inapplicable constitutional provision has got to be one of the most frightening and dangerous events ever to have occurred in this country. Until this act—which is treasonous, though again not technically, in its sweeping implications—is somehow rectified (and I do not know how this can be done), can we be serene about continuing to place the adjective “great” before the name of this country?

1. A total of 3,718,305 votes were cast in the Florida election under the Votomatic punch-card system, and 2,353,811 votes were cast under the optical-scan system. The percentage of votes not picked up using the punch-card system was 3.92 percent, the rate under the more modern optical-scan system being only 1.43 percent. Put in other terms, for every 10,000 votes cast, the punch-card system resulted in 250 more nonvotes than the optical-scan system. Siegel v. LePore, No. 00-15981. See also Ford Fessenden, “No-Vote Rates Higher in Punch-Card Counts,” New York Times, December 1.

2. Actually, not a recount since the Votomatic machines, for whatever reason, never did detect the votes on these particular ballots. The manual count would be examining these ballots for the first time to see if, as provided for under § 101.5614(5) of the Florida Election Code, there was a “clear indication of the intent of the voter.” One example: The stylus punches a clear hole in the paper ballot, but the chad is still attached (hanging) by one or more of its four sides. In that situation the Votomatic machine frequently does not detect the vote, though the intent of the voter could not be any clearer.

3. Earlier in the day, the conservative-leaning US Court of Appeals for the Eleventh Circuit in Atlanta voted 8 to 4 to deny Bush’s companion attempt to have that court stop the recount.

4. In fact, L. Kinvin Wroth, dean of the Vermont Law School and an expert on the Electoral College, said that “a recount could have gone on right up to the last day of Congress’ joint session” on January 6, when the votes of the College were counted in Congress.

5. And this, mind you, in an election in which Bush was leading in Florida by only a few hundred votes while losing the popular vote nationwide to Gore by, at last count, 539,000 votes.