

EDITOR IN CHIEF'S PAGE

Entering the 2023 season, the Detroit Lions were the only NFL team in existence at the time of the first Super Bowl never to have played in, much less won a Super Bowl. That statement, unfortunately, is still true in 2024.

The Super Bowl, in fact, did not exist when the Detroit Lions won the NFL championship on December 28, 1957. I had just turned seven a few weeks earlier. The Lions would not win another playoff game for thirty-four years. I was a month past my forty-first birthday when the Lions defeated the Dallas Cowboys in early January, 1992.

Luckily, I did not have to wait as long for the next playoff victory. That came a mere thirty-two years later when the Lions beat the Los Angeles Rams in a first round playoff game in January. The following Sunday, they defeated the Tampa Bay Buccaneers.

The last paragraph is not a misprint. This Editor-in-Chief's Page, like the articles in the Journal, has been cited-checked for accuracy. In the six months since issuance of the last edition of the Journal, these games were surely among the most newsworthy of the events I'll recount in the current edition's Editor in Chief's Page. The week that followed was less magical. The Lions blew a 24-7 halftime lead to the San Francisco 49ers in a game that sent the winner to the Super Bowl and have now gone sixty-seven years without winning a road playoff game. But still, two playoff wins in a single season!

Well, enough about the Detroit Lions. We've got a lot to catch up on in the world since the last edition of the Journal. My semi-annual trip down memory lane follows.

Nominees for Three FERC Commissioner Vacancies

Many observers thought that with the departure of Commissioner Danly, and Commissioner Clements's announcement that she was not seeking renomination for another term, FERC would be down to two commissioners, i.e., without a working quorum, as early as July, but no later than January 3, 2025, when the current term of Congress ends. But in something of a surprise announcement, President Biden nominated two Democrats – Judy Chang and David Rosner – and one Republican – Lindsay See, to fill the Commission's three openings.¹ And it appears that these individuals might be confirmed by the time this edition goes online.

Federal and State Criminal indictments of former Ohio PUC Chair

Sam Randazzo, the former chair of the Public Utilities Commission of Ohio, was charged by the U.S. government in November, 2023 with eleven felony

1. Press Release, President Biden Announces Three FERC Nominees, FERC (Feb. 29, 2024), <https://www.ferc.gov/news-events/news/president-biden-announces-three-ferc-nominees>.

counts² in connection with an alleged bribery scheme involving FirstEnergy. Then, in February, Ohio’s attorney general also filed felony indictments against Randazzo and former FirstEnergy officials over the same bribery scandal, including an allegation that Randazzo took \$4.3 million in bribes from FirstEnergy in connection with actions favorable to FirstEnergy that Randazzo then took as chairman of the PUC. These alleged actions included support for Ohio House Bill 6 that provided \$1.6 billion in subsidies to Ohio utilities, including FirstEnergy.³ On April 9, 2024, Randazzo was found dead, hanging from a rope in a Columbus warehouse, the coroner confirming his death as a suicide.⁴

Worst Fire in Texas History

The Smokehouse Creek fire in late February, the largest in Texas history and one of the largest in U.S. history, destroyed more than a million acres – about 2,000 square miles – of farm and grazing land and thousands of cattle “in the heart of Texas cattle country.”⁵ In early March, Xcel Energy, a large utility with significant operations in Texas, acknowledged its power lines and equipment “appear to have been involved in an ignition of the [] fire,” a conclusion shared by Linda Moon, assistant director of the Texas A&M Forest Service.⁶

“Char Miller IV, a professor of environmental analysis at Pomona College, said global warming is intensifying cycles of weather ‘whiplash’ like the Texas panhandle has experienced, with extreme rainfall fueling plant growth and then extreme heat and drought turning it to kindling.”⁷ What is the responsibility utilities and state regulators have to develop resilience plans in the face of increasing climate risks? That is the subject of an article I co-wrote with Dan Watkiss and Janice Beecher for this volume of the Journal.

2. Press Release, *Grand jury indicts former state public utilities chairman for federal bribery, embezzlement crimes*, United States Attorney’s Office, Southern District of Ohio (Dec. 4, 2023), <https://www.justice.gov/usao-sdoh/pr/grand-jury-indicts-former-state-public-utilities-chairman-federal-bribery-embezzlement>

3. Laura A. Bischoff, *Ohio House Bill 6 case: Who is Sam Randazzo?*, COLUMBUS DISPATCH (Feb. 12, 2024), <https://www.dispatch.com/story/news/state/2024/02/12/long-time-attorney-sam-randazzo-is-facing-state-and-federal-charges/72570695007/>.

4. Marty Schladen, *Indicted former Ohio utility chair Sam Randazzo reported dead by suicide*, OHIO CAP. J. (Apr. 9, 2024), <https://ohiocapitaljournal.com/2024/04/09/indicted-former-ohio-utility-chair-sam-randazzo-reported-dead-by-suicide/>.

5. Scott Dance, *A massive Texas wildfire is finally dying down. Its impact could last years*, WASH. POST (Mar. 6, 2024), <https://www.washingtonpost.com/weather/2024/03/05/texas-wildfire-impact-cattle-farmers-agriculture/>.

6. Brianna Sacks, *Xcel Energy power equipment caused huge Texas fire, investigators say*, WASH. POST (Mar. 7, 2024), <https://www.washingtonpost.com/climate-environment/2024/03/07/smokehouse-creek-texas-fire-cause-xcel/>.

7. *Id.*

Climate Change

Could a Giant Parasol in Outer Space Help Solve the Climate Crisis? That was the provocative title of a February 2, 2024 article in the New York Times.⁸ As recounted by Times reporter Cara Buckley, in 1989:

James Early of the Lawrence Livermore National Laboratory suggested a ‘space-based solar shield’ positioned near a fixed point between the Earth and the sun called Lagrange Point One, or L1, some 932,000 miles away, four times the average distance between the Earth and the moon. There, the gravitational pulls from the Earth and sun cancel each other out.”⁹

Since then, Buckley reported, other scientists from the University of Arizona, the Asher Space Research Institute at Technion-Israel Institute of Technology, the University of Hawaii and the University of Utah have made similar proposals. Their proposals would potentially reduce temperatures on Earth, at least temporarily and “would help stabilize the climate, supporters of the idea say, while other climate mitigation strategies were being pursued.”¹⁰

The appeal of these seemingly exotic strategies has increased with the sobering statistics about global temperature increases. As the National Oceanic and Atmospheric Administration’s chief scientist, Dr. Sarah Kapnick, remarked:

Not only was 2023 the warmest year in NOAA’s 174-year climate record — it was the warmest by far. A warming planet means we need to be prepared for the impacts of climate change that are happening here and now, like extreme weather events that become both more frequent and severe. We will continue to see records broken and extreme events grow until emissions go to zero. Government policy can address both emissions, but also actions to reduce climate impacts by building resilience.¹¹

Antitrust in the News Again

In my fall Editor in Chief’s Page, I mentioned that the Department of Justice’s Antitrust Division and the Federal Trade Commission, the nation’s two antitrust enforcement agencies, had proposed a new set of merger guidelines. Those were finalized in December, 2023 with some limited modifications made in response to comments the agencies received.¹² Some of the changes from the 2010 horizontal and 2020 vertical merger guidelines were: “lowering the post-transaction thresholds that trigger a presumption of harm,” greater focus on “the loss of

8. Cara Buckley, *Could a Giant Parasol in Outer Space Help Solve the Climate Crisis?*, N.Y. TIMES (Feb. 2, 2024), https://www.nytimes.com/2024/02/02/climate/sun-shade-climate-geoengineering.html?unlocked_article_code=1.SU0.NS-d.xqNCw6aEPCp&smid=nytcore-android-share.

9. *Id.*

10. *Id.*

11. *2023 was the world’s warmest year on record, by far*, NOAA NEWS (Jan. 12, 2024), <https://www.noaa.gov/news/2023-was-worlds-warmest-year-on-record-by-far>.

12. Press Release, Federal Trade Commission and Justice Department Release 2023 Merger Guidelines, FTC (Dec. 18, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/12/federal-trade-commission-justice-department-release-2023-merger-guidelines>.

potential competition,” “serial acquisitions” and evidence of a “trend toward concentration.”¹³ When the 2010 horizontal merger guidelines were adopted by DOJ and the FTC, FERC declined to follow suit, choosing to continue applying the horizontal merger guidelines the FTC and DOJ had adopted in 1992.

Whether FERC will revisit that decision in light of the new guidelines remains to be seen. But there has been plenty of other activity on the antitrust front. March, 2024 was a particularly busy month for antitrust.

On March 21, 2024, the Justice Department, joined by sixteen state attorney generals, filed an antitrust suit against Apple, charging it under the Sherman Act with monopolization of the smartphone market in the U.S. The complaint alleges that “iPhone dominates more than 70 percent of the high-end smartphone market” and that Apple maintains its monopoly by a number of means, including making it harder if not impossible to utilize the iPhone with smartwatches produced by other manufacturers or for owners of other types of smartphones to share messages with iPhone owners securely or with the same quality.¹⁴ “As a result,” said Attorney General Merrick Garland, “iPhone users perceive rival smartphones as being lower quality because the experience of messaging friends and family who do not own iPhones is worse — even though Apple is the one responsible for breaking cross-platform messaging.”¹⁵ As an Android owner, I have heard precisely this “your Android is inferior” argument from my iPhone-owning family members. Now I can respond to them that my phone is not inferior, and that iPhone is to blame.

Less than a week before the Apple suit was filed, “the National Association of Realtors announced . . . a settlement with groups of homesellers, agreeing to end landmark antitrust lawsuits by paying \$418 million in damages and eliminating rules on commissions.”¹⁶ As CNN put it, “[t]he 6% commission, a standard in home purchase transactions, is no more.”¹⁷ An analysis by TD Cowens Insights suggests that realtor commissions might drop by 25% as competing realtors may now offer flat fee services and discount brokerage companies may expand.¹⁸

And still earlier in the month, JetBlue and Spirit Airlines abandoned their planned merger following a successful Justice Department suit challenging their

13. *Federal Merger Enforcement Year in Review: 2023*, THOMSON REUTERS PRACTICAL LAW (Feb. 5, 2024), [https://content.next.westlaw.com/practical-law/document/1aeff496ba98311ee8921fbef1a541940/Federal-Merger-Enforcement-Year-in-Review-2023?viewType=FullText&transitionType=Default&context-Data=\(sc.Default\)#co_anchor_a283109](https://content.next.westlaw.com/practical-law/document/1aeff496ba98311ee8921fbef1a541940/Federal-Merger-Enforcement-Year-in-Review-2023?viewType=FullText&transitionType=Default&context-Data=(sc.Default)#co_anchor_a283109).

14. Cristiano Lima-Strong & Perry Stein, *Justice Department, states accuse Apple of holding a smartphone monopoly*, WASH. POST (Mar. 21, 2024), <https://www.washingtonpost.com/technology/2024/03/21/apple-doj-antitrust-lawsuit-smartphone/>.

15. *Id.*

16. David Goldman & Anna Bahney, *The 6% commission on buying or selling a home is gone after Realtors association agrees to seismic settlement*, CNN (Mar. 15, 2024), <https://www.cnn.com/2024/03/15/economy/nar-realtor-commissions-settlement/index.html>.

17. *Id.*

18. *Id.*

merger under the Clayton Act.¹⁹ The government had alleged, and a federal district court judge had agreed, that the merger would unreasonably diminish competition between low-fare air carriers to the detriment of airline passengers.²⁰

The antitrust blockbuster, though, was a rule issued by the Federal Trade Commission on April 23, 2024. It bars as an unfair method of competition all new employer non-compete agreements with workers, including senior executives.²¹

No Longer With Us

Rosalynn Carter

Rosalynn Carter, former First Lady and wife of President Jimmy Carter for seventy-seven years, died at her home in Plains, Georgia on November 19, 2023, shortly after the prior edition of this Journal went online. Mrs. Carter was ninety-six.²² “She frequently attended Mr. Carter’s cabinet meetings and traveled abroad to meet with heads of state in visits labeled substantive, not ceremonial. She often sat in on the daily National Security Council briefings held for the president and senior staff.”²³ Long before Hillary Clinton made headlines for her work on health care legislation, New York Times columnist Tom Wicker wrote that Rosalynn Carter may have been “the most powerful first lady since Edith Bolling Wilson virtually took over for a stricken president,” i.e., Woodrow Wilson.²⁴ It was at Carter’s urging that the office of first lady became a formal federal position with funding for a staff.²⁵

Charles Fried

Charles Fried, a conservative who served as Solicitor General under President Reagan and unsuccessfully urged the reversal of *Roe v. Wade*, but who years later, in an essay penned months before the *Dobbs* decision, maintained that overturning *Roe v. Wade* “would be an act of constitutional vandalism – not conservative, but reactionary,” passed away at the age of eighty-eight on January 23, 2024.²⁶ A law professor and ethicist who began teaching at Harvard Law School in 1961, Fried spent four years as Solicitor General where he argued twenty cases before the Supreme Court and served later as a judge in the Massachusetts court system while

19. Press Release, Justice Department Statements on JetBlue Terminating Acquisition of Spirit Airlines, U.S. Just. Dep’t (Mar. 4, 2024), <https://www.justice.gov/opa/pr/justice-department-statements-jetblue-terminating-acquisition-spirit-airlines#:~:text=PRESS%20RELEASE-Justice%20Department%20Statements%20on%20JetBlue%20Terminating%20Acquisition%20of%20Spirit%20Airlines,-Monday%2C%20March%204>.

20. *Id.*

21. Press Release, Fact Sheet on FTC’s Proposed Final Noncompete Rule, FTC (Apr. 23, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/04/fact-sheet-ftcs-proposed-final-noncompete-rule>.

22. Katharine Q. Seelye, *Rosalynn Carter, First Lady and a Political Partner, Dies at 96*, N.Y. TIMES (Nov. 19, 2023), <https://www.nytimes.com/2023/11/29/us/read-rosalynn-carters-full-obituary.html>.

23. *Id.*

24. *Id.*

25. *Id.*

26. Brian Murphy, *Charles Fried, legal scholar who bridged law and ethics, dies at 88*, WASH. POST (Jan. 25, 2024), <https://www.washingtonpost.com/obituaries/2024/01/25/charles-fried-solicitor-general-dies/>.

still teaching law. Originally a supporter of presidential candidate John McCain, he “publicly broke ranks and endorsed Barack Obama after McCain named Sarah Palin as his running mate.”²⁷

Henry Kissinger

Henry Kissinger, who served as both national security advisor and secretary of state under President Nixon (and, for a time in both roles simultaneously) died at the age of 100 at his home in Connecticut on November 29, 2023. Kissinger, known as a practitioner of *realpolitik* – “using diplomacy to achieve practical objectives rather than advance lofty ideals” – was both credited for his diplomatic role in opening formal relations between the U.S. and China and vilified for his behind the scenes machinations leading to the bombing of Cambodia²⁸ and the “destabilize[ation] of the democratically elected government of Salvador Allende in Chile.”²⁹ Kissinger remained an active force in international affairs up to the time of his death. Only a few months before he died, Kissinger was meeting with “Chinese leader Xi Jinping in Beijing, as bilateral relations [between China and the U.S.] were at a low point.”³⁰

Steve Lawrence

Steve Lawrence passed away at the age of eighty-eight on March 7, 2024. For those of the ELJ’s readers old enough to remember him, the reaction to Steve Lawrence’s death might well have been, “I didn’t realize he was still alive.” Other, younger readers will probably ask, “Who was Steve Lawrence?” Well in his time, Lawrence, born Sydney Liebowitz, was a world famous singer, an Emmy and Grammy winner and part of a duo with his wife Eydie Gormé, with whom he shared the stage on TV, in movies, on Broadway and in Las Vegas for half a century.³¹

Norman Lear

Active until the end, Norman Lear died on December 5, 2023 at the age of 101. It is no exaggeration to say that Lear revolutionized television comedy in the 1970s and 1980s. As Lear put it, before then, “the biggest problem any family faced was ‘Mother dented the car, and how do you keep Dad from finding out’; ‘the boss is coming to dinner, and the roast’s ruined.’ The message that was sending out was that we didn’t have any problems.”³² Boy did the characters on his shows have problems. As the New York Times put it, his “crowning achievement

27. *Id.*

28. Nancy Benac, *Henry Kissinger, secretary of state under Presidents Nixon and Ford, dies at 100*, AP (Nov. 30, 2023), <https://apnews.com/article/henry-kissinger-omit-secretary-of-state-d7d289c3a0b911ed9b863c219cee77e8>.

29. Josh Meyer, *Think Trump, Biden had a lot of classified docs? Not compared to Henry Kissinger*, USA TODAY (Dec. 1, 2023), <https://www.usatoday.com/story/news/politics/2023/12/01/henry-kissinger-declassified-obituary/71759798007/>.

30. Benac, *supra* note 28.

31. Adam Sweeting, *Steve Lawrence Obituary*, THE GUARDIAN (Mar. 10, 2024), <https://www.theguardian.com/music/2024/mar/10/steve-lawrence-obituary>.

32. Richard Severo & Peter Keepnews, *Norman Lear, Whose Comedies Changed the Face of TV, Is Dead at 101*, N.Y. TIMES (Dec. 6, 2023), <https://www.nytimes.com/2023/12/06/arts/television/norman-lear-dead.html>.

was *All in the Family*” and “his greatest creation” was Archie Bunker, “an unapologetic bigot” who actor Carroll O’Connor managed to make “strangely likeable.” And several of the spinoffs of *All in the Family*, like *Maude* and *The Jeffersons* tackled issues still at the forefront today: racial discrimination, abortion, addiction.³³ In his later years, Lear founded, and remained active in *People for the American Way*, wrote for *South Park* into the 2000s, won Emmys at the ages of ninety-seven and ninety-eight and was working on a reboot of his earlier hit, *Mary Hartman, Mary Hartman* at the time of his death.

Joseph Lieberman

A Connecticut senator for twenty-four years and the first Jewish vice presidential candidate from a major party, Joseph Lieberman died at age eighty-two on March 27, 2024. After serving as Al Gores’ running mate in 2000, Lieberman famously angered fellow Democrats when he endorsed his longtime friend, Republican Senator John McCain, for the presidency in 2008, but later voted for President Obama and for President Biden. He co-founded the “No Labels” movement as a means to promote bipartisan compromise, but insisted there would not be a “No Labels” presidential candidate “if we think this will help reelect Trump,” warning that “what he’s really a threat to is the rule of law, which is the great guarantor of our freedom, of order, of our prosperity, of everything.”³⁴ Not long after his death, No Labels announced that it would not be fielding a presidential candidate in 2024.

Alexei Navalny

On February 16, 2024, Alexei Navalny, the popular Russian opposition leader who returned from exile and survived a poisoning only to be imprisoned on dubious charges, was found dead in his prison cell in a remote Arctic prison colony. Government officials attributed his death to a “blood clot,” but many suspected that his death was a murder ordered by Russian President Vladimir Putin.³⁵ More than a week passed following his death during which time authorities refused to turn over his body to Navalny’s mother unless she agreed to hold the funeral, a demand she refused.³⁶

O.J. Simpson

Heisman Trophy winner, record-setting NFL running back, Hertz pitchman, movie star, TV sports commentator, accused killer, convicted armed robber. Orenthal James “O.J.” Simpson, who was all of those things, succumbed to cancer and died at the age of seventy-six on April 11, 2024. Nearly thirty years ago, his controversial acquittal on charges that he had murdered his ex-wife Nicole Simpson and her friend Ronald Goldman followed non-stop TV coverage of what many called the trial of the century. Although acquitted of criminal charges, Simpson

33. *Id.*

34. Jake Tapper, et al., *Former Sen. Joe Lieberman dies at 82*, CNN (Mar. 27, 2024), <https://www.cnn.com/2024/03/27/politics/joe-lieberman/index.html>.

35. *Death and Funeral of Alexei Navalny*, WIKIPEDIA, https://en.wikipedia.org/wiki/Death_and_funeral_of_Alexei_Navalny.

36. Robyn Dixon & Souad Mekhennet, *Aide to Navalny says prisoner swap was in the works before his death*, WASH. POST (Feb. 26, 2024), <https://www.washingtonpost.com/world/2024/02/26/navalny-russia-prisoner-swap-krasikov/>.

was later found civilly liable for their wrongful deaths. A decade after that civil verdict, Simpson was tried and convicted of armed robbery, a crime for which he served nine years of a thirty-three year sentence.³⁷

Putin’s “election” and ISIS-K Terrorist Attack on Moscow Concertgoers

In an “election” in which the still eligible “opponents” mounted no campaigns, any bona fide opposition candidates were disqualified, or in the case of Navalny, dead, Vladimir Putin won another term as Russia’s president. After his election, the US government issued “a public warning . . . that it had learned of ‘imminent plans to target large gatherings in Moscow’ by terrorists.”³⁸ But on March 19, 2024, Putin dismissed the warnings as an “attempt to scare and intimidate our society.”³⁹ Three days later, on March 22, ISIS-K terrorists stormed a nearly full 6,200-seat concert hall in suburban Moscow shooting hundreds of attendees, then setting fire to the concert hall. The attack left 137 dead and more than 180 injured. Although ISIS-K admitted responsibility – no, *claimed credit* – for the massacre, Putin maintained that the perpetrators were supported by Ukraine⁴⁰ and ordered more indiscriminate missile strikes on Ukrainian cities.

Haiti’s Descent into Chaos

Things have only gotten worse for the people of the long-troubled nation of Haiti since its democratically elected President Jovenel Moïse was assassinated in 2021. His prime minister, Ariel Henry, assumed power, but used the claim of “logistical problems” to delay elections multiple times. His announcement last year that elections wouldn’t be held until 2025 led to increased gang violence – killings, rapes and kidnapping – in a country already largely under the control of rival gangs. Those groups were calling for Henry’s resignation when he was in Puerto Rico. Unable to return, he announced his resignation. This time, unlike in the past, the U.S. has not sent in troops to prop up the government.⁴¹

More gun violence at Kansas City Post-Super Bowl Victory Celebration

“Twelve people brandished firearms and at least six people fired their weapons,” resulting in one person being killed and twenty-two others injured at a Feb.

37. Russell Lewis, et al., *O.J. Simpson, football legend acquitted of notorious killings, dies at 76*, NPR (Apr. 11, 2024), <https://www.npr.org/2024/04/11/1244097564/oj-simpson-football-nicole-brown-ronald-goldman-white-bronco>.

38. Shaun Walker, et al., *Did Ukraine war lead Russian security services to neglect Islamist threat?*, THE GUARDIAN (Mar. 24, 2024), <https://www.theguardian.com/world/2024/mar/24/did-ukraine-war-russian-security-services-neglect-islamist-threat-moscow>.

39. *Id.*

40. Dasha Litvinova & Kostya Manenkov, *How the deadliest attack on Russian soil in years unfolded over the weekend*, AP (Mar. 25, 2024), <https://apnews.com/article/russia-attack-concert-hall-putin-islamic-state-f6f89c4c39965da6c11e3c111053f0e2>.

41. Patrick Smith & Char Adams, *What to know about the crisis of violence, politics and hunger engulfing Haiti*, NBC NEWS (Mar. 13, 2024), <https://www.nbcnews.com/news/world/haiti-crisis-what-know-president-violence-government-rcna143000>.

14, 2024 parade in Kansas City to celebrate the Chiefs' Super Bowl victory.⁴² The possession of these deadly weapons in the crowded public space, even their concealment, violated no Missouri law. State law in Missouri not only places virtually no limitations on the possession or concealment of firearms, even in crowded public spaces and even if those possessing the weapons are teenagers, it expressly preempts most local ordinances that might place restrictions on concealed carry of guns.⁴³ But three men who supplied some of these weapons to the teenagers who brandished and fired them have been charged with illegal gun trafficking under *federal law*.⁴⁴

Key Bridge collapse

Early in the morning of March 26, 2024, a freighter that had lost control ran into the Key Bridge in Baltimore, causing the bridge's total collapse. Seven construction workers were on the bridge at the time of its collapse. One was recovered alive from the water. The other six tragically drowned. After a mayday alert from the freighter, bridge operators had only moments' notice, insufficient time to warn the construction workers. But the bridge operators were able to close down traffic from crossing the bridge, preventing an even bigger catastrophe. The bridge will take years to replace and its collapse will cause major disruption of shipping in the Port of Baltimore, one of the largest ports in the United States.⁴⁵

Mayorkas impeachment

Alejandro Mayorkas became the first Cabinet secretary to be impeached since the late 1880s when, by the narrowest of margins, the House of Representatives voted to impeach the head of the Department of Homeland Security (DHS) on grounds that he had failed to enforce the nation's immigration laws.⁴⁶ There is no small irony in this.

During Mayorkas's term as Secretary, the U.S. has "apprehended an average of 2 million migrants a year who crossed the U.S. Mexico border illegally since Biden took office, the highest the Border Patrol has ever recorded."⁴⁷ And Mayorkas *has* been sued for failing to follow immigration law. But he was sued for

42. Minyvonne Burke & Michael Kosnar, *3 men face federal firearms charges in Kansas City Chiefs Super Bowl parade shooting*, NBC NEWS (Mar. 13, 2024), <https://www.nbcnews.com/news/us-news/3-men-face-federal-firearms-charges-kansas-city-chiefs-super-bowl-para-rcna143285>.

43. Natalie Wallington, *Does Missouri law or Kansas City ordinance prohibit minors from carrying firearms?*, KANSAS CITY STAR (Feb. 20, 2024), <https://www.kansascity.com/news/local/article285716041.html#storylink=cpyhttps://www.kansascity.com/news/local/article285716041.html>.

44. Burke & Kosnar, *supra* note 42.

45. Kathleen Magramo, et al., *The latest on the Baltimore Key Bridge collapse*, CNN (Mar. 27, 2024), <https://www.cnn.com/us/live-news/baltimore-key-bridge-collapse-03-27-24/index.html>.

46. Rebecca Santana, *The House has impeached the Homeland Security secretary. Here's what you should know and what's next*, AP (Feb. 13, 2024), <https://apnews.com/article/mayorkas-impeachment-border-immigration-congress-3bff388c2f0d1cc718f43d901bc50690>.

47. Maria Sacchetti, *U.S. appeals court keeps block on Texas Immigration law*, WASH. POST (Mar. 27, 2024), <https://www.washingtonpost.com/immigration/2024/03/27/texas-immigration-law-federal-appeals-court/>.

denying asylum seekers their rights under U.S. law and international treaties. The suit alleges that DHS has violated asylum law by imposing asylum restrictions similar to Trump Administration rules that had previously been enjoined.⁴⁸

The House of Representatives delivered their two articles of impeachment to the Senate on April 17, 2024. The next day, after having been sworn in as jurors, the Senate dismissed the charges, granting, in effect, motions to dismiss the case for failure to state a cause of action.⁴⁹

The war in Gaza, Iran Attacks Israel

Israel's war on Hamas terrorists governing Gaza is in its eighth month. After considerable foot dragging, in March, a U.N. office released its preliminary findings of "clear and convincing evidence" that Hamas terrorists had raped, gang-raped, tortured and mutilated Israeli women during their October 7th attack.⁵⁰ And one of the released captives, forty-one year old Amit Soussana, recounted her torture at gunpoint and rape at the hands of her Hamas captors.⁵¹ Hamas operatives continue to operate out of hospitals, using fellow Palestinians as human shields. Thousands of Gazan civilians have died (although on May 8 the UN cut in half its estimated number of women and children killed there),⁵² caught in the crossfire between the Israeli army and Hamas terrorists, bringing protests around the world that Israel is not doing enough to protect civilians or facilitate the delivery of food and medicine into Gaza. Thousands of Israelis have called for the resignation of hugely unpopular Israeli Prime Minister Benyamin Netanyahu.

48. Under Article 31 of the 1951 Refugee Convention, signatories (including the U.S) "shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened . . . provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence." G.A. Res. 429 (V) Status of Refugees, at 29 (Dec. 14, 1950). This principle is reflected in section 208 of the Immigration and Naturalization Act, which expressly provides that any noncitizen "who is physically present in the United States or who arrives in the United States (*whether or not at a designated port of arrival. . .*)" may apply for asylum unless the noncitizen is subject to a statutory exception. Immigration Naturalization Act § 208(a)(1), 8 U.S.C. § 1158(a)(1) (emphasis added). Trump era rules that restricted who could qualify for an asylum were enjoined. *E. Bay Sanctuary Covenant v. Barr*, 519 F. Supp. 3d 663, 668 (N.D. Cal. 2021). A subsequent DHS rule issued under Secretary Mayorkas, *Circumvention of Legal Pathways*, has been challenged as an equally unlawful restriction on asylum applications with only cosmetic changes. 88 Fed. Reg. 31314 (to be codified at 8 CFR pt. 208). *East Bay Sanctuary Covenant v. Biden*, NAT'L IMMIGRANT JUST. CTR. (Aug. 4, 2023), https://immigrantjustice.org/court_cases/east-bay-sanctuary-covenant-v-biden; see also *E. Bay Sanctuary Covenant v. Biden*, 93 F.4th 1130, 1131-36 (9th Cir. 2024) (dissent).

49. Luke Broadwater, *Senate Dismisses Impeachment Charges Against Mayorkas Without a Trial*, N.Y. TIMES (Apr. 17, 2024), https://www.nytimes.com/2024/04/17/us/politics/senate-alejandro-mayorkas-impeachment-charge.html?unlocked_article_code=1.IE0.j7sX.1fwXes8RY37C.

50. Lauren Izso, et al., *Israeli woman who was held hostage by Hamas speaks out on her abduction and sexual assault in Gaza*, CNN (Mar. 27, 2024), <https://www.cnn.com/2024/03/26/middleeast/amit-soussana-israeli-hostage-hamas-sexual-assault-intl/index.html>; see also *Screams before Silence* (Apr. 15, 2024), <https://www.youtube.com/watch?v=zAr9oGSXgak&t=3s>.

51. *Id.*

52. *UN Halves Its Estimate of Women and Children Killed in Gaza*, FOUND. FOR DEFENSE OF DEMOCRACIES (May 11, 2024), <https://www.fdd.org/analysis/2024/05/11/un-halves-its-estimate-of-women-and-children-killed-in-gaza/>.

Although it has been relying for years on its terrorist proxies – Hamas, Hezbollah and Yemen’s Houthis to wage continual war on Israel – on April 12, 2024, Iran conducted its first direct attack on Israel, launching over three hundred drones, cruise missiles and ballistic missiles. Nearly all were intercepted by Israel, the United States, the United Kingdom, Jordan and Saudi Arabia.⁵³ A few days later, Israel conducted a limited strike on an Iranian military site.

The Civil War in Sudan

While the death of civilians in Gaza has dominated the news for months, most recently with stories about college campus protests (some turned violent and anti-semitic),⁵⁴ little attention has been directed to the much larger civilian tragedy unfolding in Sudan, a nation of 49 million persons that has seen 8 million forced from their homes by the civil war between the government and the paramilitary terrorist group, Rapid Support Services (RSF).⁵⁵ Hunger is an enormous problem. “Within Sudan, WFP [World Food Program] trucks have been blocked, hijacked, attacked, looted and detained,” inflation is over 260%, cholera is widespread and “15 million people cannot access any health care.”⁵⁶ And in neighboring Chad, 1.1 million Sudanese refugees face starvation as money to feed them has run out.⁵⁷

Assassination plot on U.S. soil thwarted

A blockbuster front-page story in the Washington Post links India's spy service and higher ups within India's government to an FBI-thwarted attempt to assassinate Indian Sikh separatist Gurpatwant Singh Pannun in New York.⁵⁸

Court cases that made the news

Frozen embryos held to be persons under Alabama law

On February 16, 2024, the Alabama Supreme Court issued its decision in *LePage and LePage v. The Center for Reproductive Medicine, P.C.*⁵⁹ In a ruling not only suffused with, but expressly reliant upon Christian religious scripture, the court found that frozen embryos were persons. In the immediate aftermath of the decision, a number of fertility clinics in the state shut down their invitro fertiliza-

53. Francesca Gillett, *US and EU eye new sanctions on Iran after attack on Israel*, BBC NEWS (Apr. 16, 2024), <https://www.bbc.com/news/world-middle-east-68832045>.

54. Mitch Albom, *Let's be clear on what these campus protests are really about*, Det. Free Press (May 5, 2024), <https://www.freep.com/story/sports/columnists/mitch-albom/2024/05/05/college-campus-protests-israel-palestine-gaza-war-students/73572021007/>.

55. Diana Zeyneb Alhindawi & Katharine Houreld, *Hunger stalks war-ravaged Sudan*, WASH. POST (Apr. 1, 2024), <https://wapo.st/3PT2lfW>.

56. *Id.*

57. *Id.*

58. Greg Miller et al., *An assassination plot on American soil reveals a darker side of Modi's India*, WASH. POST (Apr. 29, 2024), <https://www.washingtonpost.com/world/2024/04/29/india-assassination-raw-sikhs-modi/>.

59. *LePage v. Ctr. for Reprod. Med., P.C.*, No. SC-2022-0515, 2024 WL 1947312 (Ala. Feb. 16, 2024).

tion (IVF) programs because the risk of mishandling a frozen embryo would subject the clinics and their employees to criminal charges, including manslaughter.⁶⁰ Tax lawyers, though, were quick to advise clients in Alabama that each frozen embryo, as a person, could be claimed as dependent and qualify for a tax exemption.

Wayne LaPierre and the NRA found liable for corruption

The National Rifle Association and its longtime leader, Wayne LaPierre were found liable by a New York jury of misusing the donations of NRA members, ignoring whistleblowers and including false information in state filings.⁶¹ LaPierre, who resigned from the NRA on the eve of trial for what he said were health reasons, was found to have engaged in “lavish spending on perks such as chartered private flights and acceptance of expensive gifts,” and will have to repay the organization over four million dollars.⁶²

Mississippi Police “Goon Squad” convictions

Hunter Elward and Jeffrey Middleton, two white Mississippi police officers who were part of a self-named “goon squad” who terrorized black Mississippians for years, received prison sentences of twenty and seventeen years, respectively, for their torture and sexual abuse of two Black men. “The two victims, Michael Corey Jenkins and Eddie Terrell Parker, were brutalized while held captive and handcuffed during a two-hour ordeal that started when the six officers invaded their home and ended with Jenkins shot in the mouth,” reported Reuters.⁶³ The other four officers had also pleaded guilty and received long sentences.⁶⁴

Free Speech issues

- **When Does Government Cross the Line from Articulation of Gov’t Policy to Impingement on Free Speech?**

60. Aria Bendix, *Three Alabama clinics pause IVF services after court rules that embryos are children*, NBC NEWS (Feb. 21, 2024), <https://www.nbcnews.com/health/health-news/university-alabama-pauses-ivf-services-court-rules-embryos-are-children-rcna139846>. Little more than a month later, the Florida Supreme Court allowed a six-week abortion ban to go in to effect, *Planned Parenthood of Sw. & Cent. Fla. v. State*, No. SC2022-1050, 2024 WL 1363525 (Fla. Apr. 1, 2024) and, another week later, the Arizona Supreme Court revived an 1864 law criminalizing abortion at any time after conception, with the only exception being a threat to the life of the mother. *Planned Parenthood of Ariz., Inc. v. Mayes*, 545 P.3d 892 (Ariz. 2024).

61. Allison Elyse Gualtieri, *U.S. Jury finds Wayne LaPierre, NRA liable in corruption civil case*, CBS NEWS (Feb. 23, 2024), <https://www.cbsnews.com/news/jury-returns-verdict-in-wayne-lapierre-nra-corruption-civil-case/>.

62. *Id.*

63. Brendan O’Brien & Steve Gorman, *Two Mississippi officers sentenced in federal ‘Goon Squad’ torture case*, REUTERS (Mar. 20, 2024), <https://www.reuters.com/world/us/six-former-mississippi-police-officers-be-sentenced-federal-assault-case-2024-03-19/#:~:text=Two%20white%20former%20Mississippi%20sheriffs,abuse%20of%20two%20Black%20men>.

64. Emma Tucker, et al., *‘A momentous day’: All 6 rogue Mississippi officers got long prison sentences in ‘Goon Squad’ torture of 2 Black men*, CNN (Mar. 21, 2024), <https://www.cnn.com/2024/03/21/us/mississippi-officers-sentencing-goon-squad-thursday/index.html>.

On Monday, March 18, 2024, the Supreme Court heard argument in *Murthy v. Missouri*. The case brought by the attorney generals of Missouri and Louisiana, as well as several individuals, who claimed they were injured by the federal government’s “encouragement of social media companies to remove content deemed misinformation or disinformation.”⁶⁵ The government’s actions, they argued, crossed the line from permissible persuasion efforts to impermissible coercion. The case reached the high court when the government successfully got the Court to block the injunction placed on the FBI and CDS by a panel of the Fifth Circuit, which had found the government’s actions violated the First Amendment.⁶⁶ Although a decision had not been reached at the time of publication, accounts of the oral argument suggested that most of the Justices were skeptical of the states’ claims that the government’s warnings to social media companies to be wary of misinformation being spread about vaccines or to influence elections were coercive.⁶⁷

- **More State Regulation of “Divisive” Speech**

Earlier in March, the Eleventh Circuit held that Florida’s Stop Woke Act went beyond coercion of private speech with its provisions regulating workplace trainings on race, color, sex and national origin. “By limiting its restrictions to a list of ideas designated as offensive, the court wrote, “the Act targets speech based on its content. And by barring only speech that endorses any of those ideas, it penalizes certain viewpoints — the greatest First Amendment sin.”⁶⁸ “Also referred to as the “Individual Freedom Measure,” the “Stop Woke Act” prohibits trainings in workplaces, public schools, colleges and universities that could lead someone to feel guilty or ashamed about the historic actions of their race or sex.”⁶⁹

Not to be outdone by Florida, Alabama Governor Kay Ivey signed into law what the state called the “divisive concepts” bill on March 20, 2024. In its original

65. Matt Naham, ‘Maybe I’m naive’: Kavanaugh, Kagan combat Alito with real-world experience after New York Times nightmare scenario raised in social media ‘censorship’ case, LAW & CRIME (Mar. 18, 2024), <https://www.msn.com/en-us/news/us/maybe-i-m-naive-kavanaugh-kagan-combat-alito-with-real-world-experience-after-new-york-times-nightmare-scenario-raised-in-social-media-censorship-case/ar-BB1k6uVV?ocid=entnewsntp&pc=U531&cvid=3b3f192d785644d7981e1db413562e7d&ei=35>.

66. *Murthy v. Missouri (Formerly Missouri v. Biden)*, BRENNAN CTR. FOR JUST. (Dec. 27, 2023), <https://www.brennancenter.org/our-work/court-cases/murthy-v-missouri-formerly-missouri-v-biden>.

67. Ann E. Marimow & Cat Zakrzewski, *Supreme Court likely to reject limits on White House social media contacts*, WASH. POST (Mar. 18, 2024), <https://www.washingtonpost.com/politics/2024/03/18/supreme-court-social-media-free-speech-biden/>; Lawrence Hurley, *Supreme Court leans against limiting Biden administration contacts with social media platforms*, NBC NEWS (Mar. 18, 2024), <https://www.nbcnews.com/politics/supreme-court/supreme-court-tackles-government-coercion-claims-social-media-nra-case-rcna143391>; Andrew Chung & John Kruzal, *US Supreme Court seems wary of curbing US government contacts with social media platforms*, REUTERS (Mar. 18, 2024), <https://www.reuters.com/world/us/supreme-court-scrutinizes-us-government-contacts-with-social-media-platforms-2024-03-18/>.

68. *Honeyfund.com, Inc. v. Governor*, 94 F.4th 1272, 1277 (11th Cir. 2024).

69. Anumita Kaur, *Appeals court blocks Fla. ‘Stop Woke Act,’ says it’s a ‘First Amendment sin’*, WASH. POST (Mar. 5, 2024), <https://www.msn.com/en-us/news/us/appeals-court-blocks-fla-stop-woke-act-says-it-s-a-first-amendment-sin/ar-BB1j127r?ocid=entnewsntp&pc=U531&cvid=6d1ab5c8a0d543e587417c032cdae28e&ei=23>.

version, the teaching of divisive concepts banned by the law would even have included teaching about slavery.⁷⁰ The law not only bans diversity, equity and inclusion offices, programming and training in public colleges and other state agencies. “Educators who knowingly ‘compel’ students to believe certain banned ideas . . . could be terminated or disciplined at the discretion of college and school board leaders.”⁷¹

Trump Litigation Galore

2016 election interference. The first of four felony trials involving the former president began on April 15, 2024. That case, in New York state court, involves charges that Trump had ordered hush money payments to adult film star Stormy Daniels to keep her quiet about their affair only days in advance of the 2016 presidential election and then sought to cover up the scheme to advance his election prospects.⁷² As of the online publication date of this edition of the Journal, the trial was still in progress and Trump had been fined for nine violations of the Judge's gag order.⁷³

2020 Election interference. Following a district court decision rejecting Trump's claim of absolute immunity from criminal prosecution in his election interference case, a unanimous three judge panel of the D.C. Circuit Court of Appeals denied his appeal, but kept in place its order suspending trial court proceedings pending action by the Supreme Court.⁷⁴ Among the Trump attorneys' arguments rejected by the court: that, while in office a president could order the assassination of a political rival and would enjoy absolute immunity from prosecution unless that president had already been impeached and then convicted by the Senate.⁷⁵ Trump subsequently sought review in the Supreme Court, which granted certiorari and heard arguments in April.⁷⁶

70. Rebecca Griesbach, *Alabama Gov. Kay Ivey signs DEI bill into law: What the 'divisive concepts' ban will do*, AL.COM (Mar. 22, 2024), <https://www.al.com/news/2024/03/alabama-gov-kay-ivey-signs-dei-bill-into-law-what-the-divisive-concepts-ban-will-do.html#:~:text=The%20law%20lists%20eight%20so,the%20accurate%20teaching%20of%20history>.

71. *Id.*

72. *New York v. Donald J. Trump (Indictment)*, <https://apnews.com/article/trump-indictment-full-document-640043319549>.

73. Michael R. Sisak, et al., *Judge holds Trump in contempt, fines him \$9,000 and raises threat of jail in hush money trial*, PBS NEWS HOUR (Apr. 30, 2024), <https://www.pbs.org/newshour/politics/judge-holds-trump-in-contempt-fines-him-9000-and-raises-threat-of-jail-in-hush-money-trial>.

74. *U.S. v. Trump*, No. 23-3228, 2024 WL 448829 (D.C. Cir. Feb. 6, 2024).

75. Rebecca Beitsch, *Trump team argues assassination of rivals is covered by presidential immunity*, THE HILL (Jan. 9, 2024), <https://thehill.com/regulation/court-battles/4398223-trump-team-argues-assassination-of-rivals-is-covered-by-presidential-immunity/#:~:text=Former%20President%20Trump's%20legal%20team,broad%20immunity%20to%20criminal%20prosecution>.

76. Alexandra Hutzler, *'Surprising' and 'disturbing': Legal experts react to Supreme Court arguments on Trump's immunity claim*, ABC NEWS (Apr. 30, 2024), <https://abcnews.go.com/Politics/surprising-disturbing-legal-experts-react-supreme-court-arguments/story?id=109748598>.

Sexual abuse and defamation punitive damages verdict. In the second sexual abuse/defamation case brought by E. Jean Carroll, another jury found Trump liable, this time awarding Ms. Carroll nearly \$100 million in actual and punitive damages after interest is included.⁷⁷ Trump has appealed the verdict.

Georgia election interference case. A broad ranging election interference case in Georgia involving more than a dozen defendants, including the former president, came to a grinding halt while hearings were held over the contention by one defendant that Fulton County District Attorney Fani Willis's affair with retained counsel, Nathan Wade, had financially benefited her to the detriment of the defendant. The trial court heavily criticized Willis for her poor judgement, but did not disqualify her provided that Mr. Wade was removed from the case. Wade resigned immediately thereafter.⁷⁸ No trial date has been set.

Fourteenth Amendment ballot eligibility case. In early March, the Supreme Court reversed an opinion of the Colorado Supreme Court that would have removed Trump from the Colorado ballot under the Fourteenth Amendment's provision barring insurrectionists who previously held office from holding office in the future unless expressly authorized by Congress. That provision of the Constitution, the Court held, did not apply to *state* disqualification of would-be *federal* office holders. "Because," it said, "the Constitution makes Congress, rather than the States, responsible for enforcing Section 3 against federal officeholders and candidates, we reverse."⁷⁹

Document retention and cover-up case. Rebuked by a unanimous panel of the Eleventh Circuit for her handling of an earlier phase of the case⁸⁰ that needlessly delayed proceedings, Trump appointee Eileen Cannon continues to preside over the federal trial charging Trump with multiple violations of the Espionage Act and its cover up for intentionally withholding and then hiding his possession of many classified and national security documents. No trial date has yet been set in that case.

Financial Fraud case. Following a bench trial, the former president, his sons and the Trump Organization were found liable for a broad range of fraudulent business practices and the state of New York was awarded over \$380 million which, plus interest, put their collective liability at over \$450 million. The day

77. Aysha Bagchi, *'This case was not close': Why E. Jean Carroll says Trump sex abuse verdict should stand*, USA TODAY (Mar. 21, 2024), <https://www.usatoday.com/story/news/politics/2024/03/21/carroll-trump-sexual-abuse-rape-defamation-appeal/73034031007/>.

78. Olivia Rubin & Lucien Bruggeman, *DA Fani Willis allowed to stay on Georgia election case after lead prosecutor resigns*, ABC NEWS (Mar. 15, 2024), <https://abcnews.go.com/US/judge-trump-election-case-expected-rule-today-effort/story?id=106227075>.

79. *Trump v. Anderson*, 601 U.S. 100 (2024) ("This appeal requires us to consider whether the district court had jurisdiction to block the United States from using lawfully seized records in a criminal investigation. The answer is no.").

80. *Trump v. United States*, 54 F.4th 689 (11th Cir. 2022).

that Trump was to come up with a bond for that amount needed to protect his appellate rights, an appeals court reduced the size of the bond to \$175 million.⁸¹

They said that?

“I chose the team here at Smile Texas because they’re the best.”

South Dakota Governor and self-described puppy killer,⁸² Kristi Noem, in a bizarre five minute infomercial⁸³ praising a Texas cosmetic dental surgery practice that had done work on her teeth. A South Dakota legislator has since called for an investigation into whether Noem had been paid by the dental office for her endorsement. She has also been sued by the consumer group Travelers United, which alleged in its complaint that the governor had “advertised a product or service without disclosing that she has a financial relationship with that company.”⁸⁴ Since the release of her infomercial, four Indian tribes in South Dakota have declared the governor a *persona non grata*, unwelcome on their tribal lands.⁸⁵ But it would be unfair to blame Smile Texas for this; at least from the photographs their work on her teeth looked quite good.

“Somebody said to me ‘Alina, would you rather be smart or pretty?’ and I said ‘Oh easy, pretty . . . I can fake being smart.’”

Alina Babba, attorney for presidential candidate Donald Trump.⁸⁶

“It depends on context.”

Answers of the Presidents of Harvard, Penn and MIT to the question posed by N.Y. Rep. Elise Stefanik: Would a call for the genocide of Jews violate the

81. Katrina Kaufman & Graham Kates, *Trump's bond is now \$175 million in fraud case. Here's what the New York attorney general could do if he doesn't pay*, CBS NEWS (Mar. 25, 2024), <https://www.cbsnews.com/news/trump-bond-deadline-payment-new-york-fraud-case/>.

82. Emma Colton, *Defiant Kristi Noem defends killing farm pup amid criticism from Dems, GOP*, FOX NEWS (Apr. 28, 2024), <https://www.foxnews.com/politics/kristi-noem-defends-killing-puppy-despite-bipartisan-outrage-people-looking-for-leaders>.

83. @KristiNoem, X (Mar. 11, 2024, 10:30 PM), <https://twitter.com/KristiNoem/status/1767392635944059202>.

84. Zoë Richards, *Kristi Noem faces lawsuit after promoting Texas dentist on social media*, NBC NEWS (Mar. 13, 2024), https://www.nbcnews.com/politics/politics-news/kristi-noem-faces-lawsuit-promoting-texas-dentist-social-media-rcna143325?cid=referral_taboolafeed.

85. Makenzie Huber, *Gov. Kristi Noem banned from fourth South Dakota reservation*, S.D. SEARCHLIGHT (Apr. 12, 2024), <https://southdakotasearchlight.com/2024/04/12/sd-kristi-noem-banned-reservation-rosebud-oglala-lakota-cheyenne-river-standing-rock-sioux/>.

86. Mike Bedigan, *Trump lawyer Alina Habba's past comments on faking being smart resurface as she struggles through defence*, INDEPENDENT (Jan. 19, 2024), <https://www.the-independent.com/news/world/americas/us-politics/alina-habba-trump-lawyer-court-b2481296.html>.

schools' anti-bullying guidelines? Their equivocating answers drew broad condemnation from Republicans and Democrats, leading to the resignation of Penn's president Magill and the firing of Harvard's president Gay.⁸⁷ Stefanik's fellow N.Y. representative, but ideological opposite, Rep. Ritchie Torres, remarked that Stefanik's question demonstrated that "even a broken clock is right twice a day."⁸⁸

"Ladies and gentlemen, please rise for the horribly and unfairly treated Jan. 6 hostages."

Announcer at March Ohio political rally for Presidential candidate Trump referring to convicted felons in prison for their violent attacks on the U.S. Capitol and its police officers on January 6, 2021.⁸⁹ What followed was a rendition of the national anthem by the "J6 Choir" – a recording by the convicts who stormed the Capitol.⁹⁰

"Mr. Biden would likely present himself to a jury, as he did during our interview of him, as a sympathetic, well-meaning, elderly man with a poor memory."

"[Y]ou have – appear to have a photographic understanding and, and recall of the house."

The first quote is from the Special Counsel Robert Hur's report explaining his decision not to recommend against prosecution of President Biden in connection with his retention of classified documents.⁹¹ The second quote is from the transcript of Hur's October 8, 2023 interview of the President.⁹²

87. Stephanie Saul & Anemona Hartocollis, *College Presidents Under Fire After Dodging Questions About Antisemitism*, N.Y. TIMES (Dec. 6, 2023), <https://www.nytimes.com/2023/12/06/us/harvard-mit-penn-presidents-antisemitism.html#:~:text=1.8k-,College%20Presidents%20Under%20Fire%20After%20Dodging%20Questions%20About%20Antisemitism,for%20the%20genocide%20of%20Jews..>

88. Annie Karni, *Questioning University Presidents on Antisemitism, Stefanik Goes Viral*, N.Y. TIMES (Dec. 7, 2023), <https://www.nytimes.com/2023/12/07/us/politics/elise-stefanik-antisemitism-congress.html>.

89. Rex Huppke, *Trump's 'blood bath' threat wasn't even the most dangerous thing he said all weekend*, USA TODAY (Mar. 18, 2024), <https://www.msn.com/en-us/news/opinion/trump-s-blood-bath-threat-wasn-t-even-the-most-dangerous-thing-he-said-all-weekend/ar-BB1k6qkw?ocid=entnewsntp&pc=U531&cvid=d9f52158d844431d8db132adabb77e83&ei=32>.

90. Zac Anderson, *Trump saluted the J6 Prison Choir. How he is trying to rewrite history of deadly Capitol riot*, USA TODAY (Mar. 20, 2024), <https://www.usatoday.com/story/news/politics/elections/2024/03/20/donald-trump-jan-6-hostages-campaign/73023337007/>.

91. U.S. DEP'T OF JUST., REPORT OF THE SPECIAL COUNSEL ON THE INVESTIGATION INTO UNAUTHORIZED REMOVAL, RETENTION, AND DISCLOSURE OF CLASSIFIED DOCUMENTS DISCOVERED AT LOCATIONS INCLUDING THE PENN BIDEN CENTER AND THE DELAWARE PRIVATE RESIDENCE OF PRESIDENT JOSEPH R. BIDEN, JR., 219 (Feb. 5, 2024), <https://www.justice.gov/storage/report-from-special-counsel-robort-k-hur-february-2024.pdf>.

92. Recorded Interview between Special Counsel Robert Hur, Deputy Special Counsel Marc Krickbaum, Assistant Special Counsel, Supervisory Special Agent, Special Agent, Edward Siskel, Richard Sauber, Rachel Cotton, David Laufman, & President Joseph R. Biden, Jr., at 47 (Oct. 8, 2023), <https://democrats-judiciary.house.gov/uploadedfiles/doj-hjc-hur-0000033-0000191.pdf>.

*“I was horrified.
I was shocked.”*

Respective statements of U.N. Secretary General António Guterres⁹³ and Commissioner General of UNRWA,⁹⁴ Philippe Lazzarini, upon learning of evidence that at least a dozen UNRWA staff members had aided, as well as directly participated in the Hamas massacre of Israelis on October 7.⁹⁵

93. *UNRWA to investigate allegations ‘several’ staffers played role in 7 October attacks*, UN NEWS (Jan. 26, 2024), <https://news.un.org/en/story/2024/01/1145942> [hereinafter *UNRWA to Investigate*].

94. *UNRWA chief ‘shocked’ after countries pause funding*, REUTERS (Jan. 27, 2024), <https://www.reuters.com/world/middle-east/unrwa-chief-shocked-after-countries-pause-funding-2024-01-27/>. UNRWA refers to the United Nations Relief and Works Agency for Palestine Refugees. It is an unusual agency in two respects. It is the only U.N. agency devoted to the care of Palestinian refugees. The United Nations High Commissioner for Refugees (UNHCR) is the United Nations agency that handles refugee resettlement for all other refugees. *See* Office of the Secretary-General’s Envoy on Youth, *Office of the United Nations High Commissioner for Refugees*, UNITED NATIONS, <https://www.un.org/youthenvoy/2013/09/office-of-the-united-nations-high-commissioner-for-refugees/> (last visited May 6, 2024). What also makes UNRWA unique is that, unlike UNHCR, it has no role in promoting resettlement of refugees. On the contrary, it defines Palestinian “refugees” as “persons whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948, and who lost both home and means of livelihood as a result of the 1948 conflict. Palestine Refugees, and descendants of Palestine refugee males, including legally adopted children, are eligible to register for UNRWA services.” UNRWA, CONSOLIDATED ELIGIBILITY AND REGISTRATION INSTRUCTIONS (Jan. 1, 2009), <https://www.unrwa.org/sites/default/files/2010011995652.pdf>. When the Agency began operations in 1950, it was responding to the needs of about 750,000 Palestine refugees,” coincidentally, about the same number of Jews who fled or were forced to leave Egypt, Lebanon, Syria, Iraq, Yemen, Libya, and Morocco during that same period. Arthur J. Goldberg, *Resolution 242: After 20 Years*, SEC. INTS., NAT’L COMM. ON FOREIGN POL’Y (Apr. 2002). The UN considers them to be refugees, too. Auguste R. Lindt, UN High Commissioner for Refugees, Report of the UNREF Executive Committee, Fourth Session – Geneva (Jan. 29, 1957 – Feb. 4, 1957); E. Jahn, Office of the UN High Commissioner, Document No. 7/2/3/Libya (July 6, 1967). “Today, some 5.9 million Palestine refugees are eligible for UNRWA services.” *See*, UNRWA, Palestinian Refugees, <https://www.unrwa.org/palestine-refugees> (last visited May 11, 2024). By contrast, the number of Jewish refugees from neighboring Arab countries has not grown. These refugees resettled in a number of countries, principally in the U.S. and Israel. This follows from the terms of Article I(c)(3) of the 1951 U.N. Convention and Protocol Relating to the Status of Refugees, which provides that a person is no longer a refugee if, for example, he or she has “acquired a new nationality, and enjoys the protection of the country of his new nationality.” Our own Immigration and Nationality Act (INA) provides that “derivative refugee status may only be extended to the spouse or minor child of such a refugee” and “an alien who was firmly resettled in any country is not eligible to retain refugee status.” Why descendants of Palestinian refugees, generations removed should be considered refugees has been the subject of significant discussion. *Lawmakers & Aid Experts Call to Replace UNRWA at Geneva Summit*, UN WATCH (Feb. 27, 2024), <https://unwatch.org/lawmakers-aid-experts-call-to-replace-unrwa-at-geneva-summit/>. Take for example the UN-funded UNRWA “refugee” camps in Jordan. More than half of Jordan’s 6.3 million residents are of Palestinian origin. And any resident of Jordan in December 1949, other than Jews, was given full Jordanian citizenship in 1954. *Stateless Again: Palestinian-Origin Jordanians Deprived of their Nationality*, HRW (Feb. 1, 2010), <https://www.hrw.org/report/2010/02/01/stateless-again/palestinian-origin-jordanians-deprived-their-nationality>. Yet, ten UNRWA refugee camps still operate today in Jordan. Amman New Camp, UNRWA (Apr. 2023), <https://www.unrwa.org/where-we-work/jordan/amman-new-camp>. There are still 48 other Palestinian “refugee” camps in Syria, Lebanon, the West Bank and Gaza – neither Syria nor Lebanon has ever offered the multi-generational residents of these camps the right to become citizens.

95. Ronen Bergman & Patrick Kingsley, *Details Emerge on U.N. Workers Accused of Aiding Hamas Raid*, N.Y. TIMES (Jan. 28, 2024), <https://www.nytimes.com/2024/01/28/world/middleeast/gaza-unrwa-hamas-israel.html>.

Horrified, certainly. This evidence prompted the U.N. to launch an investigation and make referrals for potential criminal prosecution.⁹⁶ It also prompted the U.S. and nine other nations to suspend their funding of UNRWA.⁹⁷

But shocked? One of the released Hamas hostages had stated months earlier that he had been held captive by an UNRWA schoolteacher.⁹⁸ Hamas operatives are everywhere in Gaza. Ahmed al-Kahlout, manager of the Kamal Adnan hospital in northern Gaza hospital, admitted that he was not only aware of Hamas presence in Gazan hospitals, but was himself a Hamas commander and that “I know 16 employees in the hospital — doctors, nurses, paramedics and clerks — who also have different positions in the Qassam Brigades.”⁹⁹ And the UNRWA chief has surely known for years that UNRWA-funded schools taught that Israel was the enemy and that its school administrators had received requests that teachers be excused from work so they could participate in military training exercises.¹⁰⁰ And he must have known that, since the start of the war, the Israeli military had produced evidence that several UNRWA schools housed weapons and contained entrances to Hamas underground tunnels.¹⁰¹ A subsequent U.N.-sponsored report found “instances of [UNRWA] staff publicly expressing political views, host-country textbooks with problematic content being used in some UNRWA schools, and politicized staff unions making threats against UNRWA management and causing operational disruptions,” the textbook content constituting a “grave violation of neutrality.”¹⁰²

96. *UNRWA to Investigate*, *supra* note 93.

97. Annabelle Timsit, et al., *Why countries are pulling funding from the U.N. agency for Palestinians*, WASH. POST (Jan. 29, 2024), <https://www.washingtonpost.com/world/2024/01/28/unrwa-funding-suspensions-hamas-gaza-israel/>.

98. Bergman & Kingsley, *supra* note 95.

99. Ari Blaff, *Gaza Hospital Boss Admits He's a Hamas Commander, Used Medical Facility as Terror Base*, NATIONAL REVIEW (Dec. 19, 2023), <https://www.nationalreview.com/news/gaza-hospital-boss-admits-hes-a-hamas-commander-used-medical-facility-as-terror-base/>.

100. Harel Afargan, LinkedIn, https://www.linkedin.com/posts/harel-afargan-7a9a07158_freegazafromhamas-hamasisis-defundunrwa-ugcPost-7157091277879009280-Jpdh?utm_source=share&utm_medium=member_android (last visited Apr. 29, 2024).

101. Carrie Keller-Lynn & David Luhnnow, *Intelligence Reveals Details of U.N. Agency Staff's Links to Oct. 7 Attack*, WALL ST. J. (Jan. 29, 2024), <https://www.wsj.com/world/middle-east/at-least-12-u-n-agency-employees-involved-in-oct-7-attacks-intelligence-reports-say-a7de8f36>; Yoni Ben Menachem, *UNRWA's Connection to Terrorism in Gaza*, JERUSALEM CTR. FOR PUB. AFFS. (Jan. 11, 2024), <https://jcpa.org/unrwas-connection-to-terrorism-in-gaza/>.

102. Final Report For The United Nations Secretary-General – Independent Review of Mechanisms and Procedures To Ensure Adherence By UNRWA To The Humanitarian Principle Of Neutrality, U.N. 5, 29 (Apr. 22, 2024), https://www.unrwa.org/sites/default/files/content/resources/unrwa_independent_review_on_neutrality.pdf

“It is absolutely true we see, directly coming from Russia, attempts to mask communications that are anti-Ukraine and pro-Russia messages, some of which we even hear being uttered on the House floor.”

Remarks of Mike Turner, the chairperson of the US House intelligence committee, about statements by some members of his party.¹⁰³

“I think providing aid to Ukraine right now is really important, I really do. I believe the intel and the briefings we have gotten. I believe Xi and Vladimir Putin and Iran really are an axis of evil. I think Vladimir Putin would continue to march through Europe if he were allowed. I think Putin would go to the Baltics or have a showdown with Poland are one of our other NATO allies. To put it bluntly, I would rather send bullets to Ukraine than American boys. My son is going to the Naval Academy this fall. This is not a joke. We can’t play politics with this. I am giving an opportunity for every member of the House to vote their conscience on this, and I think that is the way this institution is supposed to work. I am willing to take personal risk for that and history will judge us.”¹⁰⁴

House Speaker Mike Johnson explaining his about-face on aid to Ukraine, Israel and Taiwan. After months of blocking a vote on a Senate bill to provide aid to these countries, and at risk of his speakership, Johnson allowed House votes on separate multi-billion dollar aid packages for these countries, each of which passed by large margins.¹⁰⁵

The Trump Quote Machine

“No, I would not protect you. In fact, I would encourage them to do whatever the hell they want.”

February 10, 2024 speech by presidential candidate Trump suggesting that he would disregard the mutual defense provisions of the NATO treaty and encourage Russia to attack NATO members that didn’t meet their defense spending obligations.¹⁰⁶

103. Ramon Antonio Vargas, *House intelligence chair says Republicans are ‘absolutely’ repeating Russian propaganda*, THE GUARDIAN (Apr. 8, 2024), <https://www.theguardian.com/us-news/2024/apr/08/republican-mike-turner-russia-propaganda>.

104. *House Speaker Mike Johnson News Conference*, CPSAN (Apr. 17, 2024), <https://www.c-span.org/video/?535006-1/house-speaker-mike-johnson-news-conference>.

105. Garrett Ross, *Playbook PM: How Mike Johnson came around on Ukraine*, POLITICO (Apr. 23, 2024), <https://www.politico.com/newsletters/playbook-pm/2024/04/23/how-mike-johnson-came-around-on-ukraine-00132333>.

106. Marianne LeVine, *Trump says he’d disregard NATO treaty, urge Russian attacks on U.S. allies*, WASH. POST (Jan. 12, 2024), <https://www.washingtonpost.com/politics/2024/02/10/trump-nato-allies-russia/>.

“When there’s a crash – I hope it’s gonna be during this next 12 months, because I don’t want to be Herbert Hoover.”

Presidential candidate Donald Trump speaking to interviewer Lou Dobbs.¹⁰⁷

The Civil War “could have been negotiated”

Trump statement at a January 2024 campaign event in Newton, Iowa.¹⁰⁸

“Some people call them prisoners. I call them hostages. Release the J6 hostages, Joe”

Trump statement at the same January 2024 campaign event in Newton, Iowa.¹⁰⁹

“There’s nobody that’s better, smarter or a better leader than Viktor Orban.”

March 7, 2024 remarks of presidential candidate Trump to guests at Mar-a-Lago. The former president, in an apparent nod to the Hungarian leader’s autocratic approach, went on to say Orban is “a noncontroversial figure because he says, ‘This is the way it’s going to be,’ and that’s the end of it. Right? He’s the boss. No, he’s a great leader.”¹¹⁰

“Any Jewish person that votes for Democrats hates their religion, they hate everything about Israel, and they should be ashamed of themselves.”

The latest in a long history of antisemitic remarks from presidential candidate Trump drew a rebuke from the head of the ADL,¹¹¹ as well as understandable outrage from a number of Jewish politicians.¹¹²

107. David Jackson, *Donald Trump says he hopes economy tanks this election year ‘because I don’t want to be Herbert Hoover’*, USA TODAY (Jan. 9, 2024), <https://www.usatoday.com/story/news/politics/elections/2024/01/09/donald-trump-hopes-economy-crashes-in-2024/72159263007/>.

108. Gregory Krieg & Veronica Stracqualursi, *Trump says Civil War ‘could have been negotiated’*, CNN (Jan. 7, 2024), <https://www.cnn.com/2024/01/06/politics/trump-civil-war-negotiated/index.html>.

109. Adam Gabbatt, *Trump’s novel take on January 6: calling convicted rioters ‘hostages’*, THE GUARDIAN (Jan. 13, 2024), <https://www.theguardian.com/us-news/2024/jan/13/trump-january-6-rioters-hostages>.

110. Maegan Vasquez, *Trump meets with Orban, Hungary’s autocratic leader*, WASH. POST (Mar. 9, 2024), <https://www.washingtonpost.com/politics/2024/03/09/trump-viktor-orban-autocrat/>.

111. Maura Zurick, *White House Rips Donald Trump’s Comments on Jews Who Back Democrats*, NEWSWEEK (Mar. 18, 2024), <https://www.newsweek.com/white-house-rips-donald-trumps-comments-jews-who-back-democrats-1880626>.

112. Andrew Solender, *Jewish lawmakers rage at Trump’s “revolting” comments*, AXIOS (Mar. 18, 2024), <https://www.axios.com/2024/03/19/trump-israel-democrats-jewish-lawmakers> (“[R]evolting, repugnant, and reprehensible,” said Rep. Dean Phillips; [A] “truly hateful man who’s trying everything in his power to get Americans to hate each other,” said Rep. Becca Balint; “[P]articularly disgraceful and dangerous at a time when Jews are facing dangerous levels of antisemitism nationwide,” said Rep. Kathy Manning; “[T]his is the guy who saw

“They are ‘unbelievable patriots’ and ‘hostages.’”

Remarks of the presumptive Republican presidential nominee describing the hundreds of rioters and insurrectionists now in prison after conviction or guilty pleas after storming the Capitol on January 6, 2021.¹¹³

“They are not people, in my opinion.”

Remarks of the presumptive Republican presidential nominee describing migrant families fleeing violence and poverty.¹¹⁴

“Now, if I don’t get elected, it’s going to be a blood bath for the whole — that’s going to be the least of it.”

Remarks of presidential candidate Trump at a campaign rally in March, 2024.¹¹⁵

‘very fine people on both sides’ of an antisemitic riot and entertained the neo-Nazi Holocaust denier Nick Fuentes over at his house at Mar-a-Lago for dinner,” noted Rep. Jamie Raskin).

113. Anjali Huynh & Michael Gold, *Trump Says Some Migrants Are ‘Not People’ and Predicts a ‘Blood Bath’ if He Loses*, N.Y. TIMES (Mar. 16, 2024), <https://www.nytimes.com/2024/03/16/us/politics/trump-speech-ohio.html>.

114. *Id.*

115. *Id.* Immediately after the speech, the candidate’s spokesperson offered the dubious explanation that he was only referring to a bloodbath for American autoworkers. David Cohen, *Reaction to Trump’s speech: When is ‘a bloodbath’ not a bloodbath?*, POLITICO (Mar. 17, 2024), <https://www.politico.com/news/2024/03/17/trump-bloodbath-turner-cassidy-rounds-00147465>; Lee Moran, *Former GOP Gov. Calls ‘B.S.’ On New Trump Spin With Chilling Hitler Comparison*, HUFFINGTON POST (Mar. 18, 2024), <https://www.msn.com/en-us/news/politics/former-gop-gov-calls-b-s-on-new-trump-spin-with-chilling-hitler-comparison/ar-BB1k4twX?ocid=entnewsntp&pc=U531&cvid=d9f52158d844431d8db132adabb77e83&ei=61>

Concluding thoughts

A volunteer organization like the ELJ cannot survive without either financial support from contributors or the efforts of the many volunteers needed to do the day-to-day work of the organization. The ELJ has been fortunate enough for decades to enjoy the financial support of the EBA and of the many EBA members who contribute individually to the Foundation of the Energy Law Journal. Now in its fifth decade of existence, the ELJ also counts on the huge contributions of time and effort from the student editors at Tulsa's College of Law as well as the support of the law school. And as one of the few peer-reviewed law journals, we also depend on a core of dedicated peer review editors who comb over articles, student notes, committee reports, book reviews and more each edition, offering their valuable comments, insights and editing suggestions. Our authors are also volunteers, and I have found that, despite, or maybe *because* of the extra work involved in writing for a peer-reviewed Journal, they have appreciated the process and the better product it produces. My best wishes to student editor-in-chief, Madison Plumhoff, as she enters the legal profession. She has much to be proud of with the publication of this volume of the ELJ.

Harvey Reiter
May 2024
Washington, D.C.