

## EDITOR IN CHIEF'S PAGE

If any of you follow baseball, you may have guessed that I would start my semi-annual Editor in Chief's Page with a reference to the baseball team I've followed since childhood — the Detroit Tigers. At the July 30 trading deadline, the Tigers, muddling along at 52-57 and out of the playoff picture, engaged in what looked like a fire sale. They traded their second-best starting pitcher, Jack Flaherty, to the Dodgers for several minor league players, traded their veteran backup catcher Carson Kelly for another two minor leaguers, and traded trustworthy left-handed reliever Andrew Chafin for yet some other minor league prospects. Then, inexplicably, improbably, miraculously, with but two uninjured starting pitchers — likely Cy Young winner Tarik Skubal and rookie Keider Montero — and five other rookies regularly in the starting lineup, the Tigers became the hottest team in all of baseball. From August 11, when the Tigers were *ten* games out of the last wild card spot until September 27, the Tigers won thirty-one of their next forty-three games, clinching the last wild card slot with two games left in the regular season. They went on to sweep the Houston Astros in two road games, and even managed to take a two game to one lead over Central Division winner Cleveland, before succumbing to the Guardians in game five of their second round series.

I could not talk about the surprises of baseball without mentioning September 19 — the day that Shohei Otani etched a huge mark in baseball history. On that day he became the first player in major league baseball history to amass six hits — five of them for extra bases (three of those were homeruns) — knock in ten runs, and steal two bases in a single game. And in doing so, he also became the first player in major league baseball history to hit over fifty home runs and steal over fifty bases in a single season. For good measure, his performance that day also clinched a playoff spot for his team, the Los Angeles Dodgers. He finished his season as part of the World Series Champion Dodgers. But can he pitch? Well yes, but not until next season.<sup>1</sup>

In previous Editor-in-Chief Pages, I have noted — no, marveled at — how many significant domestic and international events have been packed into each six-month period between Journal editions. The last six months have been no different. The thirty-day period from late June to late July was particularly remarkable. Not as remarkable as the Tigers' comeback in August and September. But still pretty remarkable.

At the start of that thirty-day period the Supreme Court finished its 2023-24 term with decisions that profoundly changed the legal landscape. That was particularly the case in the field of administrative law in which most EBA members practice.

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1. Tony Cloninger, a pitcher for the Atlanta Braves, probably set the mark for greatest pitching and hitting performance in a single game when, in July 1966, he both pitched his team to victory and hit two grand slams, knocking in nine runs altogether. *Tony Cloninger Sets Grand Slam Record*, THIS DAY IN BASEBALL (July 3, 1966), <https://thisdayinbaseball.com/tony-cloninger-sets-grand-slam-record/>.

Over only a several day period, the Court reversed the forty-year old *Chevron* doctrine,<sup>2</sup> declared that administrative agency decisions affirmed by the courts decades ago could still be challenged under the six-year federal state of limitations — even by affiliates of losing parties — because the clock would not start running for such parties until they were harmed,<sup>3</sup> and ruled that ninety years after its creation, the SEC could no longer seek penalties for securities fraud before ALJs because fraud is a common law tort, giving alleged perpetrators the constitutional right to jury trials in federal court.<sup>4</sup>

What impact the demise of *Chevron* will have on FERC practice is hard to predict. For many decades before *Chevron*, FERC and its predecessor did big things under arguably ambiguous statutory language (“just and reasonable rates”) — they established area rates for natural gas;<sup>5</sup> assumed jurisdiction over most electric transmission services, including transmission agreements between entities located wholly within a single state;<sup>6</sup> and established original cost ratemaking.<sup>7</sup> And *Loper-Bright* suggests that, even without deference, FERC and other agencies given statutory authority to decide what is “reasonable” or “appropriate” will be given wider berth:

In a case involving an agency, of course, the statute’s meaning may well be that the agency is authorized to exercise a degree of discretion. Congress has often enacted such statutes. For example, some statutes “expressly delegate[]” to an agency the authority to give meaning to a particular statutory term. Others empower an agency to prescribe rules to “fill up the details” of a statutory scheme, or to regulate subject to the limits imposed by a term or phrase that “leaves agencies with flexibility,” such as “appropriate” or “reasonable.”<sup>8</sup>

*Jarkesy* was a ruling that may threaten FERC’s ability to pursue penalties for fraud claims under the Natural Gas Act (as opposed to the Federal Power Act)<sup>9</sup> at all. In a September 19, 2024, decision, FERC terminated an eight-year old proceeding against TotalEnergies Gas & Power involving an inquiry into whether it had manipulated the price of natural gas. The hearing FERC had ordered before an ALJ had previously been suspended in light of the Fifth Circuit’s ruling in the *Jarkesy* case and, following the Supreme Court’s ruling in June, FERC ruled that, since it lacked authority to impose penalties against Total following a proceeding before an ALJ, it would terminate the proceeding.<sup>10</sup> In that same case, it announced that it would issue a further order addressing “*Jarkesy*’s impact on the Commission’s existing enforcement procedures.”<sup>11</sup> Stay tuned.

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2. *Loper-Bright Enters. v. Raimondo*, 144 S. Ct. 1244 (2024).

3. *Corner Post Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 144 S. Ct. 2440 (2024).

4. *SEC v. Jarkesy*, 144 S.Ct. 2117 (2024).

5. *Permian Basin Area Rate Cases*, 390 U.S. 747 (1968).

6. *FPC v. Fla. Power & Light Co.*, 404 U.S. 453 (1972).

7. *FPC v Hope Nat. Gas Co.*, 315 U.S. 575 (1942).

8. *Loper-Bright*, 144 S. Ct. at 2263.

9. Parties facing FERC-ordered investigations under the Federal Power Act have the right to have charges against them adjudicated in federal district court. There is no such option under the Natural Gas Act.

10. *Total Gas & Power North America, Inc. et al.*, 188 FERC ¶61,197 at P 4-5 (2024).

11. *Id.* at P 6.

*Corner Post* is not likely to affect most of FERC’s decisions. The NGA and FPA place strict time limits on petitions for review of FERC decisions. But the D. C. Circuit has held that FPA section 313(b) “limits review to orders issued in proceedings under the [Federal Power] Act — and [PURPA] § 210 is not part of th[at] Act,”<sup>12</sup> adding the limited caveat that “FERC orders purporting to resolve a PURPA dispute ‘might’ be directly reviewable if they were ‘in fact . . . mandatory, in the sense that’ they ‘fix[ed] the rights’ of the parties and that ‘failure to “comply” could expose [the losing party] to penalties as high as \$1,000,000 a day under’ the Federal Power Act’s civil-penalty provisions.”<sup>13</sup> Might that leave seemingly settled FERC PURPA regulations open to challenge by newly-formed entities?

These administrative law decisions were not the last of the Court’s end-of-term blockbuster holdings. For good measure, the Supreme Court, in a sharply divided decision that Princeton history professor Sean Wilentz called “the *Dred Scott* of our time,”<sup>14</sup> declared that presidents enjoyed absolute immunity for otherwise criminal acts so long as their conduct could be construed as within a president’s “conclusive and preclusive constitutional authority.”<sup>15</sup> The Court further declared that, “at a minimum,” a president enjoys “presumptive immunity” for “all his official [as opposed to private] acts.”<sup>16</sup> The latter holding was apparently too much for Justice Barrett, who otherwise sided with the majority on the central question in the case. The majority opinion, Barrett noted, “holds that the Constitution limits the introduction of protected conduct as evidence in a criminal prosecution of a President.”<sup>17</sup> Thus, she noted, if the President accepted a bribe for conducting an official act, the president could be charged with bribery but could block introduction of evidence of the official act taken in return for the bribe!<sup>18</sup> Dissenting Justices Sotomayor, Kagan, and Jackson minced no words in declaring their dismay with the entirety of majority’s decision:

Let the President violate the law, let him exploit the trappings of his office for personal gain, let him use his official power for evil ends. Because if he knew that he may one day face liability for breaking the law, he might not be as bold and fearless as we would like him to be. That is the majority’s message today . . . . In every use of official power, the President is now a king above the law.<sup>19</sup>

On June 27, millions witnessed a presidential debate in which President Biden performed so poorly that Donald Trump’s answer to a question about his plans to tackle the climate crisis — “we had H<sub>2</sub>O”<sup>20</sup> — somehow drew no comment, much less ridicule from TV’s late night talk show hosts. Two weeks later,

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12. *Portland Gen. Elec. Co. v. FERC*, 854 F.3d 692, 701 (D.C. Cir. 2017).

13. *Id.* (quoting *Midland Power Coop. v. FERC*, 774 F.3d 1, 6-7 (D.C. Cir. 2014)).

14. Sean Wilentz, *The ‘Dred Scott’ of Our Time*, N.Y. REV. (Aug. 15, 2024), <https://www.nybooks.com/articles/2024/08/15/the-dred-scott-of-our-time/>.

15. *Trump v. United States*, 144 S. Ct. 2312, 2318 (2024).

16. *Id.* at 2347.

17. *Id.* at 2354 (Barrett, J., concurring and dissenting in part).

18. *Id.* at 2355 (Barrett, J., concurring and dissenting in part).

19. *Trump*, 144 S. Ct. at 2371 (Sotomayor, J., dissenting).

20. *READ: Biden-Trump debate transcript*, CNN (June 28, 2024), <https://www.cnn.com/2024/06/27/politics/read-biden-trump-debate-rush-transcript/index.html> [hereinafter *Biden-Trump Debate*].

Trump survived a July 13 assassination attempt at a rally in Butler, Pennsylvania (a second assassination attempt was thwarted in September). And only two days after that, he appeared at the Republican National Convention. The very same day, Trump learned that Judge Aileen Cannon, his appointee to a federal district court post, had dismissed as unconstitutional the felony charges against him for mishandling classified information, thereby assuring that he would not face trial on those charges before the election. Almost immediately following his selection of J.D. Vance to be his running mate at the convention, Vance faced withering criticism and tanking poll numbers over resurfaced remarks that childless persons have no stake in the future of this country and should not have the same vote as those with children.

Four days after the Republican National Convention ended, so did President Biden's candidacy, when he announced that he would not seek a second term. Little less than an hour after that bombshell announcement, President Biden endorsed his Vice President, Kamala Harris, for the presidency. In a matter of days, she had amassed enough delegate commitments to secure the Democratic nomination for that office.

There was also supposed to be a presidential election in Venezuela on July 28, 2024. People did, in fact, vote that day. And, by all accounts, they voted by a two to one margin to oust Venezuela's president and de facto dictator, Nicolás Maduro. But Maduro has falsely claimed victory<sup>21</sup> and started the round up and imprisonment of his political opponents, with the apparent winner of the election, Edmundo González, forced to flee to Spain.<sup>22</sup>

How many of us — be honest — still remember that, during this same thirty-day period, the Caribbean was hit with Hurricane Beryl? “On Sunday, June 30, 2024,” NBC News reported, “Beryl became the first Category 4 storm ever to form in the Atlantic Ocean in the month of June. No storm,” it added, “has reached Category 4 intensity so early in the hurricane season, which runs from June 1 to Nov. 30.”<sup>23</sup>

### **Major FERC Developments**

The FERC has three new commissioners. Commissioners Rosner, See, and Chang were sworn in, respectively, on June 17, June 28, and July 15, 2024. All five of the Commissioners will have remaining terms when President-Elect Trump takes office on January 20, 2025 (only Commissioner Christie has a term expiring in 2025). But the President has the authority to designate any of the sitting commissioners as the agency's chairman, a power that Trump exercised multiple times

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21. Samantha Schmidt et al., *Maduro lost election, tallies collected by Venezuela's opposition show*, WASH. POST (Aug. 24, 2024), <https://www.washingtonpost.com/world/2024/08/04/maduro-gonzalez-election-actas-analysis/>.

22. María Luisa Paúl et al., *Edmundo González, likely winner of Venezuela election, flees to Spain*, WASH. POST (Sept. 8, 2024), <https://www.washingtonpost.com/world/2024/09/08/edmundo-gonzalez-flees-venezuela-spain/>.

23. Denise Chow, *Hurricane Beryl broke a startling record before making landfall in the Caribbean*, NBC NEWS (July 1, 2024), <https://www.nbcnews.com/science/science-news/hurricane-beryl-records-category-4-storm-caribbean-rcna159723>.

during his first term in office. It will be no surprise if he exercises that authority again upon taking office.

Petitions for review of Order No. 1920 have been consolidated in the Fourth Circuit Court of Appeals.<sup>24</sup>

The massive expected expansion of utility load related to the development of energy-hungry data centers will be a focus of state and federal regulators in the coming years. FERC's November 1, 2024 technical conference on co-location of data centers and generation in Docket No. RM21-11 and its rejection that same day of a co-location interconnection agreement between PJM, Susquehanna Nuclear, LLC, and PPL Electric Utilities Corporation<sup>25</sup> underscore the emerging importance of this issue.

## **Antitrust**

### **Google Monopolization Verdict**

On August 5, 2025, following a lengthy trial, federal district court judge Amit Mehta ruled that Google had acted unlawfully to maintain its monopoly over general internet search services in violation of Section 2 of the Sherman Act.<sup>26</sup> Google, the court found, had unlawfully maintained its monopoly by extracting exclusive default search engine agreements from Apple as well as Samsung and other Android systems. The case had originally been brought by the Justice Department during the Trump Administration and was continued under the Biden Administration. A little over a week later, a federal district court judge in California held a hearing to consider remedies proposed by Epic Games in the aftermath of *its* successful antitrust suit against Google for restraining trade in the market for Android app distribution and billing services.<sup>27</sup>

### **FTC's Non-Compete Rule Blocked**

My May 2024 Editor-in-Chief Page mentioned the FTC's issuance, last January, of a general rule banning non-compete clauses as unfair methods of competition. Since then, a tax consulting firm, joined by the Chamber of Commerce and the Business Roundtable, filed suit in federal district court in (where else) Texas posing a sweeping array of challenges to the rule. The rule, they argued in a motion for summary judgment, exceeds the FTC's statutory authority and even if not, nonetheless violates the non-delegation doctrine, is unlawfully retroactive, is arbitrary and capricious, and, for good measure, is void because "the Commission is unconstitutionally insulated from presidential control."<sup>28</sup> The court did not reach the plaintiffs' constitutional challenges, which if successful would call into question the very existence of independent regulatory commissions like FERC, the

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24. *Appalachian Voices v. FERC*, No. 24-1650, 2024 U.S. App. LEXIS 21569 (4th Cir. Aug. 26, 2024).

25. *PJM Interconnection, L.L.C.*, 189 FERC ¶ 61,078 (2024).

26. *United States v. Google LLC*, No. 1:20-cv-3010, 2024 U.S. Dist. LEXIS 138798 (D.D.C. Aug. 5, 2024).

27. Bonnie Eslinger, *Google-Epic Antitrust Judge Vows To 'Tear The Barriers Down'*, LAW360 (Aug. 14, 2024), <https://www.law360.com/articles/1869874/google-epic-antitrust-judge-vows-to-tear-the-barriers-down#:~:text=Google%2DEpic%20Antitrust%20Judge%20Vows%20To%20Tear%20The%20Barriers%20Down%27>.

28. *Ryan LLC v. FTC*, No. 3:24-CV-00986-E, slip op. at 13 (N.D. Tex. Aug. 20, 2024).

FTC, SEC, FCC and NLRB. But, contrary to the D. C. Circuit’s 1973 decision in *National Petroleum Refiners Ass’n v. FTC*,<sup>29</sup> it did accept the plaintiffs’ statutory claim, concluding that while “the FTC has some authority to promulgate rules to preclude unfair methods of competition,” it “lacks the authority to create substantive rules through this method”<sup>30</sup> and set aside the non-compete rule nationwide. That decision, which is in conflict with a federal district court ruling in Pennsylvania, will almost certainly be the subject of further appeals.

### **Summer Olympics**

Led by superstar Olympians Simone Biles (gymnastics) and Katie Ledecky (swimming) and men’s and women’s basketball teams loaded with NBA and WNBA talent, the United States tied China with 40 gold medals and led all nations with more than 120 medals overall at the Paris Olympic games.<sup>31</sup> By beating France in the finals, Stephen Curry won his first and Kevin Durant his fourth gold medal in basketball.<sup>32</sup> Meanwhile, Gabby Thomas may have become the first Harvard graduate in neurobiology to win a gold medal (You could say that this is an educated guess). She won three — the women’s 200-meter race, the 4x100 meter relay, and the 4x400 meter relay.<sup>33</sup> I cannot say for certain, but I do not believe there were any EBA members among the U.S. Olympians.

### **Hurricanes, Heat Waves, and Utility Infrastructure**

Last spring, I and my co-authors, Dr. Janice Beecher and Dan Watkiss, wrote an article in the Journal about the imperative for utility regulators to mandate utility resilience planning in the face of increasing climate risks.<sup>34</sup> These risks, we wrote, were reflected in the marketplace in the form of rising insurance costs and lower credit ratings.

Nothing in the last six months has eased the concerns we discussed.

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29. Nat’l Petroleum Refiners Ass’n v. FTC, 482 F.2d 672, 678 (D.C. Cir. 1973).

30. *Ryan LLC*, slip op. at 17.

31. Jerome Pugmire, *U.S. again beats China in Olympic medals table after they tie for gold; France exceeds expectations*, AP (Aug. 12, 2024), <https://apnews.com/article/2024-olympics-medals-united-states-china-e9f013a206e0de69c41686ee122f425a>.

32. David K. Li, *Steph Curry leads Team USA to fifth straight gold medal in men’s basketball*, NBC NEWS (Aug. 10, 2024), <https://www.nbcnews.com/news/sports/steph-curry-leads-team-usa-fifth-straight-gold-medal-mens-basketball-rcna166110>.

33. A. Pawlowski, *Sprinter Gabby Thomas Says She’ll Train For Los Angeles Olympics — After Taking Six Weeks Off*, TODAY (Aug. 6, 2024), <https://www.today.com/health/womens-health/gabby-thomas-health-routine-rcna165329>.

34. Janice A. Beecher et al., *Regulatory Imperative to Ensure Utility Climate Resilience Planning*, 45 ENERGY L.J. 83 (2024).

May 2024 was the hottest May on record in Miami.<sup>35</sup> In fact, it was the hottest May on record, period.<sup>36</sup> In early June, the World Meteorological Organization warned in a report that over the next five years there is “a nearly 90 percent chance Earth will set yet another record for its warmest year.”<sup>37</sup> Later that month, on Sunday, June 30, 2024, “Beryl became the first Category 4 storm ever to form in the Atlantic Ocean in the month of June.” The next day it became a Category 5 hurricane.<sup>38</sup>

“[A] record 10 million people who have fallen ill with dengue so far this year — an unprecedented surge that scientists say is fueled in part by climate change,” wrote Washington Post reporters Lena H. Sun and Sarah Kaplan.<sup>39</sup> “Soaring global temperatures,” they added, “have accelerated the life cycles and expanded the ranges of the mosquitoes that carry dengue, helping spread the virus to roughly 1 in every 800 people on the planet in the past six months alone.”<sup>40</sup>

Although September’s Hurricane Helene made landfall in northern Florida two hundred miles from the Tampa area, some of the hurricane’s largest devastating effects in Florida were felt in Tampa and surrounding communities, mostly from flooding — the worst storm to hit the area in a century.<sup>41</sup> As of this writing, nearly 150 persons in the U.S. had been killed by the hurricane, thousands more were injured and displaced, and millions lost electric power.<sup>42</sup> Some of the hurricane’s worst damage occurred in Asheville, North Carolina, a community located in the mountains *five hundred* miles from where Hurricane Helene landed.<sup>43</sup> In all, the hurricane affected millions in Florida, Georgia, North Carolina, South Carolina, Tennessee, and Virginia.<sup>44</sup> Recovery from Hurricane Helene had barely begun when Florida was hit squarely with powerful Category 3 Hurricane Milton

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35. Patricia Mazzei, ‘*Insane*’ Heat Has Been Scorching Miami. *It’s Not Even June*, N.Y. TIMES (May 21, 2024), <https://www.nytimes.com/2024/05/21/us/miami-heat-summer-weather.html?searchResultPosition=>.

36. Raymond Zhong, ‘*Hanging by a Thread*’: U.N. Chief Warns of Missing a Key Climate Target, N.Y. TIMES (June 5, 2024), <https://www.nytimes.com/2024/06/05/climate/global-warming-outlook.html?searchResultPosition=1>.

37. *Id.*

38. Denise Chow, *Hurricane Beryl is breaking records as it wreaks havoc in the Caribbean*, NBC NEWS (July 1, 2024), <https://www.nbcnews.com/science/science-news/hurricane-beryl-records-category-4-storm-caribbean-rcna159723>.

39. Lena H. Sun & Sarah Kaplan, *Dengue fever is surging worldwide. A hotter planet will make it worse*, WASH. POST (June 30, 2024), <https://www.washingtonpost.com/health/2024/06/30/dengue-puerto-rico-mosquito-climate-change/>.

40. *Id.*

41. Langston Taylor et al., *For Tampa Bay, Helene was the worst storm in a century*, MIAMI HERALD (Oct. 2, 2024), <https://www.miamiherald.com/news/weather/hurricane/article293362924.html>.

42. Erik Verduzco et al., *Southerners stay in touch the old-fashioned way after Helene cuts roads, power, phones*, AP (Oct. 2, 2024), <https://apnews.com/article/helene-asheville-north-carolina-3f812f70c4d2649e2198362e9ae42b06>.

43. Lauren Sommer, *Hurricanes are dangerous far from the coast. Communities are struggling to prepare*, NPR (Oct. 2, 2024), <https://www.npr.org/2024/10/01/nx-s1-5133530/hurricane-helene-rain-flooding-climate-change>.

44. Mary Gilbert et al., *The latest on the aftermath of Hurricane Helene*, CNN (Oct. 1, 2024), <https://www.cnn.com/weather/live-news/hurricane-helene-florida-north-carolina-georgia-09-30-24/index.html>.

only weeks later, killing at least twenty-four persons and leaving three million Florida customers without power.<sup>45</sup>

It wasn't only the U.S. that was hit with massive storm damages. Floods from torrential rains in Spain killed two hundred persons, with scores of other persons still missing.<sup>46</sup>

## **Deaths of the Famous**

### **James Earl Jones**

“Luke, I am your father.” “This is CNN.” We’ve all heard the familiar baritone voice of James Earl Jones a hundred times over. A stage and screen star for decades, Jones overcame a childhood stutter to become the winner of Tony awards for *The Great White Hope* and *Fences* and the voice of Darth Vader in the Star Wars series, passed away on September 9, 2024. He was 93.<sup>47</sup>

### **Quincy Jones**

Composer, arranger, record producer for more than half a century, Quincy Jones passed away on November 5, 2024, at the age of 91. The winner of twenty-eight Grammy awards (he was nominated eighty times), Mr. Jones produced Michael Jackson’s “Thriller,” “the best-selling album of all time,” composed the soundtracks to *The Pawnbroker* (1964), *In Cold Blood* (1967), *The Color Purple* (1985), and *In the Heat of the Night*, among others. In 1985, he “produced, arranged and conducted a supergroup of more than 40 singers — including Diana Ross, Michael Jackson, Bruce Springsteen and Stevie Wonder — under the banner name USA for Africa, in “We Are the World,” a fund-raising single for famine relief.”<sup>48</sup>

### **Ethel Kennedy**

Ethel Kennedy, the widow of former Senator Robert F. Kennedy and a well-known human rights activist in her own right, died on October 10, 2024. Following her husband’s assassination in 1968, she founded the Robert F. Kennedy Human Rights organization. In 2014, she was awarded the Presidential Medal of Freedom by President Barack Obama. And as late as 2018 — well into her eighties — she “joined a hunger strike to protest the then-Trump administration’s separation of families at the US-Mexico border.”<sup>49</sup>

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45. Alex Sundby et al., *Hurricane Milton leaves path of destruction across Florida, at least 24 dead*, CBS NEWS (Oct. 14, 2024), <https://www.cbsnews.com/live-updates/hurricane-milton-2024/>.

46. David Latona & Charlie Devereux, *At least 89 people missing from floods in eastern Spain*, REUTERS (Nov. 5, 2024), <https://www.reuters.com/world/europe/spain-deploys-14898-police-officers-troops-areas-hit-by-flash-floods-2024-11-05/>.

47. David Morgan, *James Earl Jones, Tony-winning actor and voice of Darth Vader, dies at age 93*, CBS NEWS (Sept. 11, 2024), <https://www.cbsnews.com/news/james-earl-jones-dies-age-93-actor-darth-vader/>.

48. Ben Ratliff, *Quincy Jones, Giant of American Music, Dies at 91*, N.Y. TIMES (Nov. 6, 2024), <https://www.nytimes.com/2024/11/04/arts/music/quincy-jones-dead.html>.

49. Piper Hudspeth Blackburn, *Ethel Kennedy, human rights activist and widow of Robert F. Kennedy, dies at 96*, CNN (Oct. 10, 2024), <https://www.cnn.com/2024/10/10/politics/ethel-kennedy-dies/index.html>.



### **Sheila Jackson Lee**

Long-serving Texas congresswoman Sheila Jackson Lee lost her battle with pancreatic cancer, passing away at the age of 74 on July 19, 2024. Congresswoman Lee, who represented her Houston congressional district for thirty years, was among the earliest opponents of the war in Iraq War, had a long track record of advocacy for gay rights, and was an author of the Violence Against Women Act. She also authored and was the lead sponsor of legislation that established Juneteenth — “the first new federal holiday in 38 years.”<sup>50</sup>

### **Willie Mays — the “Say Hey Kid”**

Willie Mays, by consensus one of the greatest baseball players of all time, passed away on June 18, 2024, at the age of 93.<sup>51</sup> I grew up in Detroit, an American League city in the days before interleague play, so there were few opportunities for me to see him play except on television. But I did get to see him play in person twice. Two friends and I drove from Detroit to Cincinnati hoping (without success) to see him hit his 600<sup>th</sup> homerun (he had 598 going into the game). And in early October 1974, while in law school, I saw Mays get his last National League hit — a single up the middle in the New York Mets’ pennant-clinching playoff game against the Reds.

### **Bob Newhart**

Bob Newhart, the accountant-turned-comedian, died in Los Angeles, California on July 18, 2024, at the age of 94. In a comedy career that spanned nearly sixty years, he first gained fame with a 1960 comedy album, *The Button Down Mind of Bob Newhart* — “the first comedy album to hit No. 1 on Billboard’s albums chart.” But he gained his biggest success, which he attributed to his signature stammer, with two television hits — *The Bob Newhart Show*, where he played “a psychologist surrounded by eccentric, oddball patients” and *Newhart*, where he played the owner of a small Vermont hotel. He last “played a former kids TV show host bewildered by the fan worship of genius scientist Sheldon Cooper” on *The Big Bang Theory*.<sup>52</sup>

### **Janice Paige**

Some of our readers are old enough to remember singer Steve Lawrence, whose passing at age 88 I wrote about in the spring edition of the Journal. But I’ll bet that even fewer of our readers will remember Janice Paige, another singer/actor quite famous in her time, who died in June, 2024, at the age of 101. She was a dancer, singer, and actress most famous for starring as the “feisty, romance-resistant union leader” in the Broadway production of *The Pajama Game* and later as the star of *Mame*.<sup>53</sup>

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50. Matthew Choi & Sejal Govindarao, *U.S. Rep. Sheila Jackson Lee is dead at 74*, TEX. TRIB. (July 19, 2024), <https://www.texastribune.org/2024/07/19/sheila-jackson-lee-dies/>.

51. Hillel Italie, *Willie Mays, the Giants’ electrifying ‘Say Hey Kid,’ dies at 93*, AP (June 19, 2024), <https://apnews.com/article/willie-mays-dies-at-93-baseball-33b31cc2d6382676ed54517d20ea36a3>.

52. Eric Deggans, *‘I’ve lived in an incredible time’: Comic Bob Newhart dies at 94*, NPR (July 18, 2024), <https://www.npr.org/2024/07/18/791345695/bob-newhart-dead>.

53. Anita Gates, *Janis Paige, Star of Broadway’s ‘The Pajama Game,’ Is Dead at 101*, N.Y. TIMES (June 3, 2024), <https://www.nytimes.com/2024/06/03/theater/janis-paige-dead.html>.

### **Pete Rose**

Pete Rose, the best baseball player not in the sport's Hall of Fame, passed away on September 30, 2024, at the age of 83. Rose, known as “Charlie Hustle” for headfirst slides and for running out walks at full speed, holds the all-time records for hits, singles, games won *and lost*, and games played. He was a player and a player-coach, a perennial all-star, and the winner of several World Series. But as a manager, he bet on baseball games (though not against his own team), resulting in his banishment from professional baseball and from the Hall of Fame.<sup>54</sup>

### **Bill Walton**

Bill Walton, NBA Hall of Fame member and NBA MVP, winner of three consecutive College Player of the Year awards, two NCAA titles with UCLA, and two NBA titles with the Portland Trail Blazers and Boston Celtics, passed away on May 27, 2024, after a long battle with colon cancer at the age of 71. Following his playing days, he enjoyed a long and colorful<sup>55</sup> broadcasting career with NBC, ABC, CBS, Fox, Turner Sports, and ESPN that also won him an Emmy.<sup>56</sup>

### **Ruth Westheimer**

A Holocaust survivor whose parents sent her from her home in Frankfurt to Switzerland at the age of 10 to escape the Nazis, Ruth Westheimer, or “Dr. Ruth” as she came to be known to millions of television viewers in the 1980s, passed away in July, 2024 at the age of 96. As NPR recounted, she was an “[i]nternationally acclaimed sex therapist . . . who tore down taboos with her open, nonjudgmental and good-humored public conversations about human intimacy.” Beside her widely-watched television show, she wrote dozens of books and taught at Yale, Princeton, Columbia, and Hunter College.<sup>57</sup>

### **Jerry West**

Selected not once, but three times for admission to the Naismith Basketball Hall of Fame — once as an NBA player, a second time as a member of the 1960 Olympic gold medal team, and a third time as a lifetime contributor to the sport — Jerry West passed away on June 12, 2024, at the age of 86. “The NBA has never confirmed the worst-kept secret in basketball,” wrote AP sports reporter Tim Reynolds, “that Jerry West is the player whose silhouette is depicted in the league’s logo.”<sup>58</sup> A consensus pick as one of basketball’s all-time greats — an all-star in each of his fourteen NBA seasons, an NBA champion, and an NBA MVP

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54. Michelle Watson, *Pete Rose, Major League Baseball’s all-time hit king, has died at 83*, CNN (Sept. 30, 2024), <https://www.cnn.com/2024/09/30/sport/pete-rose-death-mlb-spt/index.html>.

55. “Come on, that was no foul,” the NBC obituary recounts Walton stating during a broadcast. “It may be a violation of all the basic rules of human decency, but it’s not a foul.” Corky Siemaszko, *Two-time NBA champion Bill Walton dead at 71*, NBC NEWS (May 27, 2024), <https://www.nbcnews.com/news/obituaries/bill-walton-nba-hall-of-famer-basketball-dies-71-rcna154191>.

56. *Id.*

57. Chloe Veltman, *Pioneering sex expert Dr. Ruth Westheimer dies at 96*, NPR (July 13, 2024), <https://www.npr.org/2024/07/13/nx-s1-5038571/dr-ruth-westheimer-who-encouraged-america-to-talk-about-sex-dies-at-96>.

58. Tim Reynolds, *Jerry West, a 3-time Hall of Fame selection and the inspiration for the NBA logo, dies at 86*, AP (June 14, 2024), <https://apnews.com/article/jerry-west-dead-nba-033c08e78eb9749f4cc275c54ff31d97>.

— West starred for West Virginia University and later the Los Angeles Lakers and had a long and successful career as an executive with the Lakers, the Memphis Grizzlies, the Golden State Warriors, and the Los Angeles Clippers.<sup>59</sup>

#### ... and the Infamous

##### **Hezbollah Terrorist-in-Chief Hassan Nasrallah**

“Hassan Nasrallah is rotting in hell where he belongs.” So remarked New York Congressman Ritchie Torres on the death of the head of Hezbollah, Lebanon’s terrorist state within-a-state responsible for the deaths of hundreds of Israelis and Americans.<sup>60</sup> As head of Iran’s chief proxy group, Nasrallah had overseen the killing of hundreds of Israelis and Americans “over a four-decade reign of terror,”<sup>61</sup> sent thousands of fighters into Syria to bolster the repressive regime of Syrian dictator Bashar al-Assad, and trained the Houthis in Yemen to bomb shipping lanes.<sup>62</sup> His death following Israel’s bombing of Hezbollah headquarters in a Beirut suburb drew cheers from both Iranian dissidents<sup>63</sup> and from Syrian victims of Assad’s civil war.<sup>64</sup>

##### **Hezbollah terrorist Fuad Shukr**

Days after the Hezbollah terrorists who control much of southern Lebanon launched missiles at a soccer field in Israel’s Golan Heights that killed twelve Arab Druse children and badly injured many others, Israel retaliated with a precision missile strike on an apartment building outside Beirut that killed Fuad Shukr.<sup>65</sup> Shukr, a senior commander in the Hezbollah terrorist hierarchy and close advisor to Hezbollah leader Hassan Nasrallah, has also been wanted by the U.S. government for his role in the 1983 bombing of American military barracks in Beirut that killed 300 U.S. and French soldiers.<sup>66</sup>

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59. *Id.*

60. See Ritchie Torres (@RitchieTorres), X (Sept. 28, 2024, 1:13 PM), <https://x.com/RitchieTorres/status/1840092451505332423> (September 2024).

61. *Statement from President Joe Biden on the Death of Hassan Nasrallah*, WHITE HOUSE (Sept. 28, 2024), <https://www.whitehouse.gov/briefing-room/statements-releases/2024/09/28/statement-from-president-joe-biden-on-the-death-of-hassan-nasrallah/>.

62. Benjamin Barthe, *In the Arab world, split reactions to Nasrallah killing reflect Hezbollah’s divisiveness*, LEMONDE (Sept. 30, 2024), [https://www.lemonde.fr/en/middle-east-crisis/article/2024/09/30/in-the-arab-world-split-reactions-reflect-hezbollah-s-twofold-dimension\\_6727768\\_368.html#](https://www.lemonde.fr/en/middle-east-crisis/article/2024/09/30/in-the-arab-world-split-reactions-reflect-hezbollah-s-twofold-dimension_6727768_368.html#).

63. Faramarz Davar, *Why Iranians Turned Against Hassan Nasrallah*, IRANWIRE (Sept. 30, 2024), <https://iranwire.com/en/politics/134492-why-iranians-turned-against-hassan-nasrallah/>.

64. Daniel Estrin et al., *Hezbollah leader’s killing sparks joy and rage across the Middle East*, NPR (Sept. 29, 2024), <https://www.npr.org/2024/09/29/nx-s1-5132098/hezbollah-nasrallah-world-reaction-israel-us-lebanon>.

65. Ronen Bergman et al., *Israel Says It Killed Hezbollah Commander in Airstrike Near Beirut*, N.Y. TIMES (July 30, 2024), [https://www.nytimes.com/2024/07/30/world/middleeast/israel-hezbollah-lebanon.html?unlocked\\_article\\_code=1\\_U0.SsXg.aJ3Qk\\_IAufCZ](https://www.nytimes.com/2024/07/30/world/middleeast/israel-hezbollah-lebanon.html?unlocked_article_code=1_U0.SsXg.aJ3Qk_IAufCZ).

66. Aaron Boxerman, Ronen Bergman and Euan Ward, *Who Is Fuad Shukr, Target of the Israeli Strike on Beirut?*, N.Y. TIMES (July 30, 2024), <https://www.nytimes.com/2024/07/30/world/middleeast/fuad-shukr-hezbollah-israel-strike.html?smid=url-share>.

### **Hamas Terrorist Ismail Haniyeh**

On July 30, 2024, a bomb planted weeks or months earlier was detonated in an apartment in Tehran, killing its occupants — Hamas terrorist Ismail Haniyeh and his body guard. Haniyeh had been the leader of what the terrorist group called its “political bureau,” and, while no party has claimed responsibility for the bombing, Israel is suspected of the killing. Haniyeh’s chief role was to manage the terrorist group’s considerable finances, which the U.S. estimates to be as much as \$1 billion, “with assets in countries such as Sudan, Turkey, Saudi Arabia, Algeria and the United Arab Emirates. It also has other international funding sources, including Iran.” Haniyeh had been on the State Department’s Specially Designated Global Terrorists list since 2018 and was facing an arrest warrant from the International Criminal Court for “war crimes and crimes against humanity including murder, rape, torture and taking hostages, during and since the Oct. 7 attack on Israel.”<sup>67</sup>

### **Hamas Terrorist-in Chief, Butcher of Khan Younis, Yayah Sinwar**

Yaya Sinwar, the mastermind behind Hamas's October terrorist attacks that brutalized and killed 1200 Israelis — including women, infants, and the elderly — and captured another 250 Israelis to be used as hostages, was killed by Israeli soldiers on Thursday, October 17, his death confirmed hours later.<sup>68</sup> Sinwar, 61, was both the “political” and military leader of Hamas, an organization whose political and military objectives — the destruction of Israel and its Jewish inhabitants — were identical.

### **Ebrahim Raisi, President of Iran, Butcher of Tehran**

Ebrahim Raisi, Iran’s president, was killed in a May 20, 2024, helicopter crash along with Iran’s foreign minister, Hossein Amirabdollahian. Raisi, who oversaw Iran’s supply of bomb-carrying drones to Russia,<sup>69</sup> gained infamy as the Butcher of Tehran when he became that city’s deputy prosecutor at age 25, sitting on a “prosecution committee” in the 1980s “that is believed to have ordered the executions of thousands of political prisoners.”<sup>70</sup>

## **Big Elections Around the Globe**

### **Elections in South Africa — ANC Loses Power It Held for 30 Years**

South Africa’s African National Congress (ANC) lost its longstanding grip on parliamentary control in elections held on June 1, 2024. The ANC, which had controlled the government since the end of apartheid thirty years ago, won only

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67. Francis Vinall, *What to know about Ismail Haniyeh, the Hamas leader killed in Iran*, WASH. POST (July 31, 2024), <https://wapo.st/4d1i2ve>.

68. *Hamas leader Yahya Sinwar killed in Gaza: Israel*, DW (Oct. 17, 2024), <https://www.dw.com/en/hamas-leader-yahya-sinwar-confirmed-dead-in-israeli-strike/a-70524393>.

69. Jon Gambrell, *Iran’s president and foreign minister die in helicopter crash at moment of high tensions in Mideast*, AP (May 20, 2024), <https://apnews.com/article/iran-president-ebrahim-raisi-426c6f4ae2dd1f0801c73875bb696f48>.

70. Lucia Stein & Rebecca Armitage, *For Ebrahim Raisi, the ‘Butcher of Tehran’, life was one brutal rise. Then he came in for a ‘hard landing’*, AUSTL. BROAD. CO. NEWS (May 20, 2024), <https://www.abc.net.au/news/2024-05-21/ebrahim-raisi-the-butcher-of-tehran-rise-and-fall/103870706>.

40% of the vote, punished by voters for high unemployment and “shortages of clean water, electricity, housing and other services”<sup>71</sup>

### **Elections in India, a Setback for Modi’s Party**

Only days after the ANC’s historic election loss in South Africa, Indian Prime Minister Narendra Modi won a rare third term. But his Hindu nationalist Bharatiya Janata Party lost its parliamentary majority, upsetting predictions that his party would win a supermajority. During the campaign, Modi and other party leaders had been “accused of using hate speech and other inflammatory rhetoric, especially against Muslims.”<sup>72</sup>

### **Violence-Marred Mexican Elections, Mexico Elects First Woman, First Jewish President.**

In early June, Claudia Sheinbaum was elected as the next president of Mexico. She became the first woman and first Jewish president in that nation’s history. A climate scientist by training, the former mayor of Mexico City began her six-year term on October 1, 2024.<sup>73</sup>

### **Venezuelan Dictator Maduro Uses Force to Overturn Election**

Late last year, the United States had agreed to ease sanctions on Venezuela if its current president/dictator, Nicolás Maduro, agreed to hold free and fair elections for that country’s presidency in 2024. When Maduro then blocked his main rival, Maria Corina Machado, from even registering to run, sanctions were reimposed even before the election with the promise of relief if there was a fair election.<sup>74</sup> That didn’t happen. Elections were held on July 28, 2024. And publicly available election tabulations from 80% of the country’s precincts showed that Maduro trailed his challenger, Edmundo González, by a two-to-one margin. But without producing the election results and only hours after the polls had closed, Venezuela’s National Electoral Council declared Maduro the winner with “just after half of the vote.”<sup>75</sup> While “governments around the world have expressed skepticism, and even outright disbelief, over President Nicolás Maduro’s claim to victory,” the Electoral Council has continued to withhold the machine-by-machine results. The only member of the Electoral Council not a member of Maduro’s

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71. Gerald Inray & Mogomotsi Magome, *The ANC party that freed South Africa from apartheid loses its 30-year majority in landmark election*, AP (June 1, 2024), <https://apnews.com/article/south-africa-election-vote-anc-d9da7582ca98a4e00fec2da6a5fe1e91>.

72. Mithil Aggarwal, *How Modi lost his magic — and his majority — in India election surprise*, NBC News (June 5, 2024), <https://www.nbcnews.com/news/world/india-election-modi-bjp-lost-majority-election-surprise-rcna155557>.

73. María Verza & Mark Stevenson, *Mexico elects Claudia Sheinbaum as its first female president*, AP (June 3, 2024), <https://apnews.com/article/mexico-elections-president-governorships-lopez-obrador-d7fef5c7ac964072401ba6d9809dd7d4>.

74. Clare Ribando Seelke, CONG. RSCH. SERV., IF10715, VENEZUELA: OVERVIEW OF U.S. SANCTIONS POLICY, CONGRESSIONAL RESEARCH SERVICE (2024); Joshua Goodman & Regina Garcia Cano, *U.S. reimposes oil sanctions on Venezuela as hopes for a fair presidential election fades*, PBS NEWS (April 17, 2024), <https://www.pbs.org/newshour/world/u-s-reimposes-oil-sanctions-on-venezuela-as-hopes-for-a-fair-presidential-election-fades>.

75. Julie Turkewitz, *No Evidence That Maduro Won, a Top Venezuelan Election Official Says*, N.Y. TIMES (Aug. 26, 2024), [https://www.nytimes.com/2024/08/26/world/americas/maduro-venezuela-election-results.html?unlocked\\_article\\_code=1.F04.UvxX.1CZFKbvrSkBD](https://www.nytimes.com/2024/08/26/world/americas/maduro-venezuela-election-results.html?unlocked_article_code=1.F04.UvxX.1CZFKbvrSkBD).

party had decried the results, stating in August, “that he had no proof that Venezuela’s authoritarian president won last month’s election.”<sup>76</sup> Following Maduro’s announcement that opposition leaders would be arrested and criminally prosecuted, González, the apparent winner, fled to Spain.<sup>77</sup>

### **Hezbollah Chutzpah**

On October 8, 2023, a day after Hamas terrorists slaughtered over 1,200 Israelis (raping many of the women they then killed) and took another 250 persons — including infants — hostage, Hezbollah, its fellow Iran-backed terrorist organization in Lebanon, began unprovoked shelling along Israel’s northern border weeks before Israel entered Gaza. Described by Hezbollah leaders as an act of “solidarity” with Hamas, its constant bombing — an unambiguous act of war — has displaced over 60,000 Israeli civilians from their homes for more than a year<sup>78</sup> and killed twelve Israeli Arab Druze children playing soccer. Yet, when thousands of pagers and walkie-talkies held by Hezbollah terrorists were triggered to explode on successive days in late September 2024, Hasan Nasrallah (Hezbollah’s former terrorist in chief) had the chutzpah<sup>79</sup> to label this response to Hezbollah’s unrelenting terrorist attacks an “act of war” warranting “a severe reckoning.”<sup>80</sup>

### **Santos Guilty Plea and Menendez Bribery Conviction**

Former Senator Robert Menendez, who had escaped an earlier corruption prosecution with a hung jury, did not fare as well the second time around. On July 16, 2024, he was convicted on a number of corruption charges.<sup>81</sup> A month later, former Congressman and serial fibber George Santos plead guilty to charges of wire fraud and aggravated identity theft.<sup>82</sup> He had earlier been expelled from Congress after serving less than a full term.

### **Ignominy for New York City’s Past and Present Mayors**

On September 26, 2024, Rudolph Giuliani, the disgraced former mayor of New York City, was disbarred from legal practice in the District of Columbia, only

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76. *Id.*

77. See María Luisa Paúl et al., *supra* note 22.

78. Maayan Lubell & Dan Williams, *How Hezbollah attacks displace 60,000 Israelis, six months on*, REUTERS (April 4, 2024), <https://www.reuters.com/world/middle-east/six-months-hezbollah-fire-keeps-uprooted-israelis-limbo-2024-04-04/>.

79. “Chutzpah is a young man, convicted of murdering his parents, who argues for mercy on the ground that he is an orphan.” *Harbor Ins. Co. v. Schnabel Found. Co.*, 946 F.2d 930, 937 & n.5 (D.C. Cir. 1991).

80. Claire Parker et al., *Hezbollah chief calls pager, radio attacks an ‘act of war’ by Israel*, WASH. POST (Sept. 19, 2024), <https://www.washingtonpost.com/world/2024/09/19/israel-lebanon-attack-explosions-hezbollah/>.

81. Press Release, U.S. Att’y’s Off., S.D.N.Y., Statement Of U.S. Attorney Damian Williams On The Convictions Of U.S. Senator Robert Menendez And Two New Jersey Businessmen (July 16, 2024), <https://www.justice.gov/usao-sdny/pr/statement-us-attorney-damian-williams-convictions-us-senator-robert-menendez-and-two>

82. Press Release, U.S. Att’y’s Off., E.D.N.Y., Former Congressman George Santos Pleads Guilty to Wire Fraud and Aggravated Identity Theft (Aug. 19, 2024), <https://www.justice.gov/usao-edny/pr/former-congressman-george-santos-pleads-guilty-wire-fraud-and-aggravated-identity>.

a few months after having been disbarred from the practice of law in his home state of New York.<sup>83</sup> The same day, Eric Adams became the first sitting mayor of New York to be criminally indicted while in office. He has been charged with numerous counts of bribery and accepting unlawful foreign campaign contributions.<sup>84</sup>

### **Shrinking Squad**

#### **Primary Defeat of Jamal Bowman**

Jamal Bowman, a two-term Congressman and member of “The Squad,” was soundly defeated in the June New York Democratic primary.<sup>85</sup> Bowman’s retraction of his false claim that documented cases of Hamas rape and torture of Israeli women were a “lie” used for “propaganda”<sup>86</sup> was too little and too late, and his fire alarm antics that drew Congressional censure were apparently too much for his constituents, many of whom were Jewish.

#### **Primary Defeat of Corey Bush**

Not exactly a gracious loser, Corey Bush, another member of the Squad, vowed revenge against the American Israel Public Affairs Committee following her defeat by fellow progressive and St. Louis County prosecuting attorney Wesley Bell in Missouri’s August Democratic Party primary. Bush had refused to call Hamas what it is, a terrorist organization.<sup>87</sup> And her accusation that Israel, twenty percent of whose population is Arab, was engaged in “ethnic cleansing” in Gaza was “wrong and offensive” said Bell.<sup>88</sup> She also lost support for voting against President Biden’s infrastructure bill and perhaps because she was also “under ethics investigation related to paying her romantic partner to perform security work.”<sup>89</sup>

### **Loose Cannon?**

On July 15, 2024, coincidentally the first day of the Republican National Convention, Florida federal district court judge Aileen Cannon issued an opinion dismissing as unconstitutional the entire felony indictment of Donald Trump and

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83. Melissa Quinn, *Rudy Giuliani disbarred in D.C., months after disbarment in New York*, CBS NEWS (Sept. 26, 2024), <https://www.cbsnews.com/news/rudy-giuliani-disbarred-washington-dc/>.

84. Press Release, U.S. Att’y’s Off., S.D.N.Y., New York City Mayor Eric Adams Charged With Bribery And Campaign Finance Offenses (Sept. 26, 2024), <https://www.justice.gov/usao-sdny/pr/new-york-city-mayor-eric-adams-charged-bribery-and-campaign-finance-offenses>.

85. Scott Wong & Bridget Bowman, *Rep. Jamaal Bowman, a vocal Israel critic and ‘squad’ member, loses primary*, NBC NEWS (June 25, 2024), <https://www.nbcnews.com/politics/2024-election/jamaal-bowman-george-latimer-ny-house-primary-results-rcna158487>.

86. Daniel Lippman, *Bowman reverses after calling reports of Oct. 7 sexual assaults in Israel ‘propaganda’*, POLITICO (Mar. 26, 2024), <https://www.politico.com/live-updates/2024/03/26/congress/bowman-house-israel-october-7-sexual-assault-hamas-00148426>.

87. Luke Broadwater, *AIPAC Demonstrates Its Clout With Defeat of a Second ‘Squad’ Member*, N.Y. TIMES (Aug. 7, 2024), <https://www.nytimes.com/2024/08/07/us/politics/bush-bell-aipac-missouri-primary.html>.

88. *Wesley Bell, backed by AIPAC, defeats ‘Squad’ member Cori Bush in St. Louis district primary*, PBS NEWS (Aug. 7, 2024), <https://www.pbs.org/newshour/politics/wesley-bell-backed-by-aipac-defeats-squad-member-cori-bush-in-st-louis-district-primary>.

89. Broadwater, *supra* note 81.

his co-defendants for the mishandling of classified documents. The grounds for Judge Cannon’s decision? Jack Smith, the special prosecutor who had brought the case, was independent of the Justice Department. To be legitimate, Cannon ruled, his appointment would have required him to be nominated by the President and confirmed by the Senate.<sup>90</sup> There is no small irony in the dismissal. For months, the former President and his supporters in Congress had argued that the criminal cases against him were evidence of the “weaponization” of the Justice Department.<sup>91</sup> But Judge Cannon’s decision rested on the *opposite* conclusion — that Smith had *too much* independence from the Attorney General. Her decision, the Department declared shortly thereafter, “deviates from the uniform conclusion of all previous courts to have considered the issue that the Attorney General is statutorily authorized to appoint a Special Counsel,”<sup>92</sup> and on August 27, 2024, the agency appealed the decision to the Eleventh Circuit Court of Appeals. An amicus brief filed by ethics professors and a former federal judge went beyond the government’s appeal, urging the appellate court not only to reverse Cannon’s ruling but to remove her from the case. “Judge Cannon’s conduct,” they argued, “— including her solicitation of legally baseless jury instructions — has repeatedly appeared to cross the line from mere legal error to active judicial intervention and advocacy on behalf of the former president.”<sup>93</sup> In light of Trump’s subsequent reelection and his promise to kill all pending criminal charges against him once he takes office, however, all of this is certain to become moot.

### **They Said That?**

*“We do not wish to be the causes of instability in the region.”*

Masoud Pezeshkian, President of Iran, the state sponsor of the terrorist organizations Hezbollah, Hamas, and the Houthis, speaking with no sense of irony at the annual United Nations General Assembly<sup>94</sup> — only days before Iran launched nearly two hundred missiles at Israel.

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90. U.S. v. Trump, Case No. 23-80101-CR, 2024 U.S. Distr. LEXIS 123552 (S.D. Fla. July 15, 2024).

91. See, e.g., *Hearing on the Weaponization of the Federal Government Before the Select Subcomm. on the Weaponization of the Fed. Gov’t of the H. Comm. on the Judiciary*, 118th Cong. (2024); See also Scott Wong, *Trump allies say Biden is ‘weaponizing’ DOJ against his chief 2024 rival following indictment*, NBC News (June 8, 2023), <https://www.nbcnews.com/politics/donald-trump/trump-indictment-republicans-say-biden-weaponizing-doj-rcna87962>.

92. Devlin Barrett & Perry Stein, *Trump’s classified documents case dismissed by Judge Aileen Cannon*, WASH. POST (July 15, 2024), <https://www.washingtonpost.com/national-security/2024/07/15/trump-classified-trial-dismissed-cannon/>.

93. Tierney Sneed, *Retired federal judge and ethics experts want Judge Cannon taken off Trump documents case*, CNN (Sept. 4, 2024), <https://www.cnn.com/2024/09/03/politics/retired-judge-wants-cannon-removed-trump-documents/index.html>.

94. John Hudson & Michael Birnbaum, *Iran says Hamas leader’s killing in Tehran will not go ‘unanswered’*, WASH. POST (Sept. 23, 2024), <https://www.washingtonpost.com/national-security/2024/09/23/iran-pezeskian-united-nations-israel-hezbollah-gaza/>.



*My wife did it. I had nothing to do with it.*

Paraphrase of the explanations of (1) subsequently convicted Senator Menendez explaining the presence of gold bars in his home and (2) Supreme Court Justice Alito explaining the display of an upside down flag — a symbol of “stop the steal” — in front of his home days after the January 6 mobs attacked the Capitol.<sup>95</sup>

*“Milwaukee is a horrible city”*

Republican presidential nominee Donald Trump commenting on the site of the Republican National Convention.<sup>96</sup>

*BASH: 38 seconds left, President Trump. Will you take any action as President to slow the climate crisis?*

*TRUMP: So, I want absolutely immaculate clean water and I want absolutely clean air, and we had it. **We had H<sub>2</sub>O.** We had the best numbers ever . . .*

Republican Presidential Nominee (and now President-Elect), Donald Trump, responding to question on his plans to tackle climate change during June debate with President Biden.<sup>97</sup>

*“They’re going to lay the groundwork and detail plans for exactly what our movement will do.”*

Former President Trump’s April 2022 speech to Heritage Foundation referring to Project 2025.<sup>98</sup>

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95. See Lindsay Whitehurst & Gary Fields, *Upside-down flag at Justice Alito’s home another blow for Supreme Court under fire*, AP (May 17, 2024), <https://apnews.com/article/justice-samuel-alito-upside-down-flag-trump-jan6-f5809b9fd3be19b2359907f7b16651e5>; Caitlin Yilek, *Who is Nadine Menendez? Sen. Bob Menendez’s wife is at center of bribery trial*, CBS NEWS (JULY 16, 2024), <https://www.cbsnews.com/news/nadine-menendez-bob-menendez-wife-corruption-trial-allegations/>.

96. Scott Bauer, *Trump refers to Milwaukee as ‘horrible’ just before the city hosts the Republican convention*, AP (June 13, 2024), <https://apnews.com/article/trump-milwaukee-horrible-city-gop-convention-nomination-604fe33acb5606e9db1cbf3f966507e3>.

97. Biden-Trump Debate, *supra* note 20 (emphasis added).

98. Isaac Arnsdorf et al., *Trump took a private flight with Project 2025 leader in 2022*, WASH. POST (Aug. 7, 2024), <https://www.washingtonpost.com/elections/2024/08/07/trump-heritage-project-2025-roberts/>.

*“I know nothing about Project 2025. I have no idea who is behind it. I disagree with some of the things they’re saying and some of the things they’re saying are absolutely ridiculous and abysmal. Anything they do, I wish them luck, but I have nothing to do with them.”*

Former President Trump, posting on Truth Social in July 2024.<sup>99</sup>

*“In Springfield, they’re eating the dogs. The people that came in. They’re eating the cats. They’re eating — they’re eating the pets of the people that live there.”*

Former President Trump, during debate with Vice President Harris.<sup>100</sup>

*“There’s a lot of garbage on the internet and this is a piece of garbage that was simply not true, there’s no evidence of this at all. These are positive influences on our community in Springfield and any comment about that otherwise I think is hurtful and is not helpful to the city of Springfield and the people of Springfield.”*

Ohio Governor Mike DeWine, denouncing rumors spread by President-Elect Trump and his running mate about lawful Haitian immigrants who have settled in Springfield, Ohio.<sup>101</sup>

*“If I have to create stories so that the American media actually pays attention to the suffering of the American people, then that’s what I’m going to do.”*

JD Vance, in interview with Dana Bash, explaining why he and his presidential running mate were spreading the baseless rumors condemned by Ohio governor Mike DeWine.<sup>102</sup>

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99. Franco Ordoñez, *It seems like Project 2025 is everywhere. But what is it?*, NPR (July 11 2025), <https://www.npr.org/2024/07/11/nx-s1-5035272/project-2025-trump-biden-heritage-foundation-conservative>

100. Riley Hoffman, *READ: Harris-Trump presidential debate transcript*, ABC NEWS (Sept. 10, 2024), <https://abcnews.go.com/Politics/harris-trump-presidential-debate-transcript/story?id=113560542> [hereinafter Debate Transcript].

101. Maya Marchel Hoff, *Ohio Gov. Mike DeWine says claim about migrants eating pets is a false ‘piece of garbage’*, USA TODAY (Sept. 15, 2024), <https://www.usatoday.com/story/news/politics/elections/2024/09/15/ohio-gov-mike-dewine-migrants-eating-pets-false/75236689007/>.

102. Kit Maher & Chris Boyette, *JD Vance defends baseless rumor about Haitian immigrants eating pets*, CNN (Sept. 15, 2024), <https://www.cnn.com/2024/09/15/politics/vance-immigrants-pets-springfield-ohio-cnn-tv/index.html>.

*“Who’s going to tell him that the job he’s currently seeking might just be one of those ‘Black jobs?’”*

Michelle Obama’s not-so-subtle reference to presidential candidate Trump’s claim that immigrants were taking away “black jobs.”<sup>103</sup>

*“[My memory loss] was caused by a worm that got into my brain and ate a portion of it and then died.”*

*“Donald Trump was a terrible president”*

*“Despite rhetoric to the contrary, President Trump has a weakness for swamp creatures, especially corporate monopolies, their lobbyists, and their money.”*

Various 2024 quotes from Robert F. Kennedy, Jr., former Democratic, then Independent candidate for the presidency and later named part of Trump transition team.<sup>104</sup>

### **Muddled Math**

*“Virtually 100% of the net job creation in the last year has gotten to migrants,” said Trump, “You know that? Most of the job creation has gone to migrants. In fact, I’ve heard that substantially more than — uh, beyond, actually beyond the number of 100%, it’s a much higher number than that . . .”*

Presidential candidate Trump at an August 15, 2024, news conference.<sup>105</sup>

### **Too Extreme for Marjorie Taylor-Greene?**

*“This is appalling and extremely racist. It does not represent who we are as Republicans or MAGA. This does not represent President Trump. This type of behavior should not be tolerated ever.”*

Georgia Congressional Rep. Marjorie Taylor Greene (who had previously claimed that “a prominent Jewish banking family had used a space laser to start fires in California”) responding to a racist comment about Vice President Harris

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103. Stephanie Kelly, *Michelle Obama tells Trump the presidency just may be a ‘Black job’*, REUTERS (Aug. 21, 2024), <https://www.reuters.com/world/us/michelle-obama-tells-trump-presidency-just-may-be-black-job-2024-08-21/>.

104. See Tim Balk, *‘A Terrible President’: 12 Times Robert F. Kennedy Jr. Criticized Trump*, New York Times (Aug. 28, 2024), <https://www.nytimes.com/2024/08/28/us/politics/rfk-trump-criticisms.html>; Laura Mannweiler, *A Look Back at the Most Bizarre Moments of the RFK Jr. Campaign*, U.S. NEWS (Aug. 23, 2024), <https://www.usnews.com/news/national-news/articles/2024-08-23/rfk-jr-suspends-his-campaign-a-look-back-at-the-most-bizarre-moments>.

105. Sarah Rumpf, *‘INSANELY DELUSIONAL’: Trump Brutally Mocked for Claiming ‘Substantially More’ Than 100% of Job Creation Went to Migrants*, MEDIAITE (Aug. 15, 2024), <https://www.mediaite.com/trump/insanely-delusional-trump-brutally-mocked-for-claiming-substantially-more-than-100-of-job-creation-went-to-migrants/>.

from Trump advisor and right-wing extremist Laura Loomer.<sup>106</sup> Only weeks later, Greene suggested in the aftermath of Hurricane Helene that the government "can control the weather. It's ridiculous for anyone to lie and say it can't be done."<sup>107</sup>

### **More Muddled Math**

*"We had the greatest economy. We got hit with a pandemic. And the pandemic was, not since 1917 where 100 million people died has there been anything like it."*

Presidential candidate Trump at the September 10, 2024, debate with Vice President Harris.<sup>108</sup> The entire population of the United States was 105 million in 2017 and 103 million in 2018. "Worldwide the death toll [from the 1918 influenza epidemic] is generally put at 20 million."<sup>109</sup>

### **Fascist Threat?**

*"He is the most dangerous person ever. I had suspicions when I talked to you about his mental decline and so forth, but now I realize he's a total fascist. He is now the most dangerous person to this country."*

Mark Milley, retired Army General and former chair of the Joint Chiefs of Staff under Trump, speaking about the now President-Elect.<sup>110</sup>

*"Certainly the former president is in the far-right area, he's certainly an authoritarian, admires people who are dictators — he has said that. So he certainly falls into the general definition of fascist, for sure."*

John Kelly, a former four-star Marine general describing President-Elect Trump whom Kelly served as chief of staff during Trump's first term.<sup>111</sup>

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106. Josh Marcus, *Marjorie Taylor Greene slams Trump pal Laura Loomer for 'extremely racist' post about Kamala Harris*, INDEPENDENT (Sept. 12, 2024), <https://www.independent.co.uk/news/world/americas/us-politics/marjorie-taylor-greene-laura-loomer-harris-india-b2611353.html>.

107. Marina Dunbar, *Marjorie Taylor Greene condemned over Helene weather conspiracy theory*, THE GUARDIAN (Oct. 7, 2024), <https://www.theguardian.com/us-news/2024/oct/07/marjorie-taylor-greene-hurricane-helene>.

108. Debate Transcript, *supra* note 100.

109. Andrew Noymer & Michel Garenne, *The 1918 Influenza Epidemic's Effects on Sex Differentials in Mortality in the United States*, 26 POPULATION & DEV. REV. 565 (2000).

110. Tal Axelrod, *John Kelly comes out swinging against Trump, says he fits 'fascist' definition*, ABC NEWS (Oct. 23, 2024), <https://abcnews.go.com/Politics/john-kelly-swinging-trump/story?id=115061457>.

111. Michael Schmidt, *As Election Nears, Kelly Warns Trump Would Rule Like a Dictator*, N.Y. TIMES (Oct. 22, 2024), <https://www.nytimes.com/2024/10/22/us/politics/john-kelly-trump-fitness-character.html>.

*"But he certainly has those [fascist] inclinations. And I think it's something we should be wary about."*

Mark Esper, Secretary of Defense for President-Elect Trump during his first term, speaking about the former and now future President.<sup>112</sup>

Here is hoping, against all the evidence, that these officials who knew him best are wrong.

With Thanksgiving soon approaching, I want to give my thanks, as always, to my fellow editors and to the authors who make this Journal possible. And I am beyond grateful to the students at Tulsa's School of law who help produce the Journal. It has been a joy to coordinate with the Journal's student Editor-in-Chief, Devyn Saylor. Devyn has managed to juggle a full course load with coordinating the publication of this edition's five articles, multiple committee reports, student notes, and more. Happy reading.

Harvey Reiter  
November 2024  
Washington, D.C.

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112. Greta Reich, *Mark Esper: Trump 'has those inclinations' toward fascism*, Politico (Oct. 23, 2024), <https://www.politico.com/live-updates/2024/10/23/2024-elections-live-coverage-updates-analysis/esper-backs-kelly-00185125>.