

The Trump Trial



by Gary Fouse

Now that former president Donald Trump has been indicted in Miami over his reported possession of classified documents, we can look forward to spending the rest of this year and probably next year as well absorbed in the legal process. After his arraignment this week, one of his lawyers spoke to the press outside the courthouse and spoke mostly about the dual system of justice that Trump is facing when it comes to classified documents. We recall that Hillary Clinton was never prosecuted for her handling of classified communications during her tenure as secretary of State. Nor does it appear that Joe Biden will ever be prosecuted over the classified documents he kept in several houses and offices under his control. The burning question is just how much effect will this have on Trump's trial?

As to whether this issue can be an actual defense for Trump in his trial, I anticipate that the prosecution will make every effort to keep this issue from being raised. I anticipate they will ask the judge to instruct the jury during jury instructions not to consider others who may have committed similar offenses as Trump and were not prosecuted. After all, the jury is only supposed to examine the guilt or innocence of the particular defendant on trial.

But the fact is that the controversy over this very issue is known to virtually every prospective juror in America. It is the very elephant in the back of the courtroom, so to speak. This has to work in Trump's favor. The case is being tried in Florida, where Trump has a much better chance of getting a favorable jury than he would in Washington DC. Is it out of the realm of imagination that he won't get at least 3 or 4 jurors who are sympathetic to this argument? This will likely be an issue in jury selection, but what I am driving at here is that I see a real chance of jury nullification. That means that one or more jurors may not care what the evidence says, they are sympathetic to the defendant, and they believe he is being singled out and railroaded while others get a pass from what is a politically corrupted Justice Department. (Indeed, the special prosecutor who brought this case, Jack Smith, has a controversial background as a Justice Department official in the Eric Holder DOJ.)

I am not a supporter of jury nullification. I vividly recall the OJ Simpson acquittal, which I believe was jury nullification in action. I also recall the John DeLorean acquittal back in the 1980s, which was largely due to the jury not trusting the government's actions in arresting DeLorean. That case was a joint FBI-DEA investigation in Los Angeles in which the FBI hogged the credit for the arrest-as they are wont to do-and had to accept the bulk of the criticism. The acquittal came at a time when there was much lack of public trust in the FBI, as there is now. (I was a DEA agent who

transferred from Los Angeles to Italy in 1982, hence I knew several of the DEA agents and asst. US Attorneys involved in the case, but I was never involved myself.)

Even though I don't support jury nullification in principle, I think there is a real possibility that we may see it in the Trump trial at least resulting in a hung jury. I don't think Trump or anyone should be above the law, but given the circumstances of the case and how the Justice Department and FBI have been trying to submarine this man ever since the 2016 election, if it happens with Trump, I will understand the thinking.