

This column by PCI Board Member, Pete McCloskey, appeared in the Santa Fe New Mexican on Saturday, February 18, 2023.

SANTA FE NEW MEXICAN

COMMENTARY PAUL 'PETE' MCCLOSKEY JR.

The coming prosecution of Donald Trump

- By Paul "Pete" McCloskey Jr.
- Feb 18, 2023

Over two years have passed since the fateful day of Jan. 6, 2021, when President Donald Trump lost his last attempt to stop the constitutional counting of the Electoral College ballots, which had defeated him.

An armed mob, believing Trump's great lie that the election had been "stolen," had burst violently into the Capitol and caused a delay of several hours before the counting could be completed.

The recently published report of the Jan. 6 committee includes sworn testimony that strongly supports a criminal prosecution of Trump and a number of his associates.

On page 585 of the report it is revealed that prior to his speech to over 50,000 supporters, Trump had been advised that perhaps half the crowd had refused to pass through the Secret Service "magnetometers" because they feared the Secret Service would confiscate their concealed weapons. Of the roughly 28,000 people who did get screened by the metal detectors, the Secret Service had recovered hundreds of concealed weapons, including knives, stun guns, pepper spray canisters, batons and brass knuckles.

White House aide Cassidy Hutchinson testified to the committee that minutes before addressing the crowd, President Trump shouted to his advance team, "I don't [expletive]

care that they have weapons. They're not here to hurt me. Take the [expletive] mags away and let my people in. They can march to the Capitol from here. Take the [expletive] mags away."

President Trump knew that at 1 p.m. Vice President Mike Pence would open the joint session of Congress to count the Electoral College ballots. He also knew that after counting the ballots of Alabama and Alaska, one hour would be set aside for protests against Arizona's ballots by his supporters in the House and Senate. He concluded his speech at 1:10 p.m. after exhorting the crowd he knew was armed to march to the Capitol and oppose congressional approval of the ballots. He exhorted the crowd: "If you don't fight like hell, you're not going to have a country anymore."

As he spoke, some 200 or more members of the Proud Boys were already down at the Capitol, dismantling the protective fences that surrounded the building. The crowd surged to the Capitol shouting "Hang Mike Pence!" At 2:13 p.m., the crowd, led by the Proud Boys and Oath Keepers, broke through the doors and windows and into the chambers of the House and Senate, the leaders asking, "Where are they counting the ballots?"

Luckily, both the ballot boxes, as well as the senators and the members of Congress, had been hustled out of the chambers to secure locations just before the angry crowd reached them.

It is understandable that Attorney General Merritt Garland might not have wanted to prosecute a former president, a process which might have affected the November 2022 midterm elections.

It is also understandable that newly appointed Special Counsel Jack Smith would want to defer prosecution until he had taken testimony from every possible witness who could support the prosecution of Trump and perhaps a number of co-conspirators.

In 1974, the House Judiciary Committee found Richard Nixon guilty of obstruction of justice when he ordered the FBI to cease investigation of the money trail the CIA had discovered from Nixon's personal attorney, Herb Kalmbach, to pay off the Watergate burglar, former White House employee E. Howard Hunt.

If this were obstruction of justice, how much greater an obstruction could there be than a conscious attempt by Trump, with co-conspirators, to urge an armed mob to obstruct the counting of the Electoral College ballots on Jan. 6, 2021?

In *U.S. v Nixon*, a unanimous U.S. Supreme Court found that in a regular criminal prosecution, the claim of executive privilege could not be used to prevent a prosecutor from obtaining evidence relevant to a crime.

In the Jan. 6 committee's investigation, a number of highly placed employees at the White House claimed executive privilege and declined to answer. Special Counsel Smith would have no difficulty in requiring these witnesses to testify before a federal grand jury. Some witnesses subpoenaed by the committee also claimed attorney-client privilege, but there is no such privilege if an attorney has instructed or cooperated with his client in committing a crime.

The only question would be how many co-conspirators the special counsel could indict along with Trump. Rudy Giuliani, John Eastman, Mark Meadows, several Republican members of Congress and Republican Party leaders might be prime targets.

The nation awaits with bated breath.

Paul "Pete" McCloskey Jr. is a former Republican member of Congress from California and was the first member of Congress to publicly call for the impeachment of President Nixon after the Watergate scandal and the Saturday Night Massacre. He became a Democrat in 2007 and lives in Madrid.