

DOJ'S JUNE MAR-A-LAGO TRIP HELPS PROVE 18 USC 793E

Everyone is squabbling over whether DOJ should release more information on the search of Mar-a-Lago, with entirely reasonable people saying they want DOJ to have to defend taking documents the government owns so we can learn more about what went down.

But we may get more clarity more easily than that. That's because, if DOJ has any intention of actually *charging* Donald Trump for stealing classified information, then obtaining specific documents he stole may be one of the last things they need to do before charging him.

As I noted here and here, one of the statutes that's likely on the table for the Former President is 18 USC 793(e), basically taking national defense information you're not authorized to have and refusing to give it back.

Whoever having unauthorized possession of, access to, or control over any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted, or attempts to communicate, deliver, transmit or cause to be communicated, delivered, or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it to the officer or employee of the United States

entitled to receive it;

Regular readers of this site are familiar with this statute because I've covered tons of cases charging it: Reality Winner and Hal Martin and Joshua Schulte, among others.

But I went back and found some pattern jury instructions for the unlawful retention charge, and because of that meeting in June, DOJ has most of what they'd need to charge the Former President.

Here's what jurors would be asked to decide:

Did the defendant, without authorization, have possession of, access to, or control over a document that was National Defense Information?

Yes. The Archives spent a year telling him he was not authorized to have it under the Presidential Records Act.

Did the document in question relate to the national defense?

We don't know what the documents in question are, but given WaPo's description in February, then absolutely.

Bonus fact: The jury decides if something was NDI, not the former Original Classification Authority (the fancy term for, "the President gets to decide whether something is classified or not"). So if the agency whose document Trump stole is still trying to protect it from hostile powers, if that agency still believes it is classified, if it remains secret, then a jury is likely to find that it's NDI.

Did the defendant have reason to believe the information could be used to the injury of the United States or to the advantage of any foreign nation?

Trump is such a psychopath that the answer to this might normally be in question. After all, he routinely treated top secret intelligence like it was toilet paper or party favors for

visiting Russians.

Except DOJ went to Trump's residence in June and told him this information could harm the US. Then they wrote him a letter, saying that it could harm the US and could he please put a padlock on the basement room that had, up until that point, been accessible to all the suspected foreign assets who've paid the price of admission to Mar-a-Lago.

Did the defendant retain the above material and fail to deliver it to the officer or employee of the United States entitled to receive it?

Yes! The Archives asked and asked and asked. And then DOJ went to his home and asked again!

Did he keep this document willfully?

Yup. Again, DOJ asked and asked and asked. Trump exhibited awareness the Archives were asking. He stopped in to say "hi!" when Jay Bratt, the head of DOJ's espionage section, came to visit. And he still hoarded the document.

This may be why Trump claims that nothing was in the hotel safe in his bridal suite, by the way. Keeping these documents at Mar-a-Lago was willful by itself. But keeping such documents in his safe would be proof that he, personally, was hoarding it.

If the FBI really did scoop up highly sensitive documents when they were at Mar-a-Lago the other day, then there may be relatively few steps left to charging him – aside from cataloging the 12 new boxes of stolen documents. DOJ may only need permission from the agencies that own these documents to make the declassifications required to prosecute it.

By going to Mar-a-Lago and asking for these documents in person on June 3, DOJ made it very easy to prove that Trump had been asked, but refused, to give any classified documents found in Trump's possession on Monday back.

Update: Here's an indictment from the 793 case that's most similar to the evidence that may be

present with Trump. Hal Martin kept taking highly classified documents home from CIA and NSA, just like Trump took documents home. In Martin's case, they charged him for 20 documents out of the great swath of documents he stole. He ultimately pled guilty. With good behavior he might get released next April.