

About Criminal Law, generally; and replacing my previous comments on the slightly different item.

Prosecution for most crimes requires the government to prove two things: First, a wrongful intent; and, Second, a wrongful act. In traditional times and language, we expressed wrongful intent as “mens rea” - an evil mind.

Looking at the most serious crimes charged in the trump indictment concerning documents, let us consider Title 18 of the U.S. Code, Section 793 – Gathering, transmitting or losing defense information. [ Yes, the title needs the Oxford comma after “transmitting.”] This section actually contains six slightly different offenses, (a) through (f). We will look at (e) which appears to cover retention and loss of classified information. Paragraph (g) applies the above sections equally to all co-conspirators. Paragraph (h) specifies the penalties and other matters.

Now, we turn to the mens rea requirement. The government must prove:

***First, identify the accused as anyone:***

“(e) Whoever

***qualified by:***

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, “

***and the wrongful act, choice of any separated by commas:***

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

***Finally, the punishment, found after (f) but apparently applicable to all preceding subparagraphs:***

“Shall be fined under this title or imprisoned not more than ten years, or both.”

And, lastly paragraph (h), the disposition of forfeited ill-gotten gains.

Requiring proof of both intent and act precludes prosecution for other circumstances, such as accidental occurrences. Please don't try to apply this principle to your traffic tickets which are the huge exception. If you were speeding, you're guilty!