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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,)	SA CR 00-155 AHS
)	
Plaintiff,)	
)	
v.)	OPINION ON ORDER OF DISMISSAL
)	OF INDICTMENT
)	
TIMOTHY MARK BROWNFIELD,)	
)	
Defendant.)	
_____)	

I.

INTRODUCTION

Defendant Brownfield's motion to dismiss the single-count Indictment against him raises an issue of statutory interpretation that is a question of first impression in this Circuit: is an agency of the federal government a "person" for purposes of applying Title 18, United States Code, Section 876. Based on the arguments and authorities raised by the parties in their briefs and in oral arguments, and the Court's own independent research, the Court concludes that the answer is "no." The Federal Bureau of Investigation is not a "person" for

1 purposes of prosecution under 18 U.S.C. § 876. For that reason,
2 the Court dismisses the Indictment against defendant for failure
3 to state an offense pursuant to Federal Rule of Criminal
4 Procedure 7(c)(1).

5 **II.**

6 **PROCEDURAL BACKGROUND**

7 On December 6, 2000, the Grand Jury indicted defendant
8 Timothy Mark Brownfield for violating 18 U.S.C. § 876 (mailing
9 threatening communications). The single-count Indictment in its
10 entirety reads as follows:

11 The Grand Jury charges:

12 [18 U.S.C. § 876]

13 On or about October 30, 2000, in Orange
14 County, within the Central District of
15 California, defendant TIMOTHY MARK BROWNFIELD
16 knowingly deposited in an authorized
17 depository for mail matter, to be sent and
18 delivered by the Postal Service, and caused
19 to be delivered by the Postal Service
20 according to the direction thereon, a
21 communication addressed to the Federal Bureau
22 of Investigation, 901 Civic Center Drive
23 West, Santa Ana, CA 92701, that contained a
24 threat to injure the person of Moon Unit
25 Zappa, that is, that defendant would murder
26 Moon Unit Zappa.

21 On December 20, 2000, defendant filed a motion to
22 dismiss the Indictment on the ground that the Indictment fails to
23 allege an essential element of the crime, and, therefore, fails
24 to state an offense pursuant to Fed. R. Crim. P. 7(c)(1).

25 Oral argument was first held January 8, 2001, based on
26 the government's opposition filed on January 3, 2001, and the
27 defendant's reply filed on January 5, 2001. Because of a new
28 argument raised by the prosecution at the hearing, the Court

1 continued the hearing on defendant's motion to January 16, 2001,
2 to allow further briefing by the parties on the issue of whether
3 the federal government, or an agency thereof, was a "person"
4 under 18 U.S.C. § 876. On January 11, 2001, both sides filed
5 supplemental briefs, and final arguments were held on January 16,
6 2001. At the conclusion of the hearing, when informed by the
7 government that the Indictment could not be amended, the Court
8 ordered the Indictment and the action dismissed.

9 **III.**

10 **DISCUSSION**

11 **A. The Statute**

12 Title 18, United States Code, Section 876, in relevant
13 part as follows:¹

14 Whoever knowingly deposits or causes to be
15 delivered [to any post office or authorized
16 depository for mail matter] any
17 communication, with or without a name or
18 designating mark subscribed thereto,
19 *addressed to any other person* and containing
20 any threat . . . to injure the person of the
21 addressee or of another, shall be fined under
22 this title or imprisoned not more than five
23 years, or both.

24 [Emphasis added.]

25 **B. The Parties' Contentions**

26 The contested statutory language in this case is the
27 requirement that the threatening communication be "addressed to
28 any other person." Defendant points out the obvious, that the
Indictment "does not allege that the communication was addressed
to a "person," but only alleges that the communication was

¹ Unless otherwise indicated, "section 876" hereinafter refers to 18 U.S.C. § 876 (2000).

1 'addressed to the Federal Bureau of Investigation.'" Mot. at
2 4:23-27. He argues that "person," for purposes of section 876,
3 does not include the federal government. Def.'s Suppl. Br. at
4 3:2-5. Otherwise, including the federal government in the
5 definition of "person" in section 876 "effectively write[s] this
6 element out of the statute," and "had Congress intended the
7 definition of 'person' . . . to extend to a government agency
8 such as the Federal Bureau of Investigation, it could have done
9 so. Congress' failure to do so strongly implies that Congress
10 did not intend the definition of 'person' to extend to a
11 government agency." Def.'s Suppl. Br. at 2:24-3:1, 4:4-5.
12 According to defendant, the Indictment's failure to allege that
13 the letter was addressed to a natural person renders the
14 Indictment "fatally defective." Mot. at 5:1-2.

15 The government counters that the definition of "person"
16 in Title 1 U.S.C. section 1 (The Dictionary Act) applies to
17 section 876.² Gov't's Suppl. Br. at 3:10-19. Section 1 provides
18 a non-exhaustive list of definitions for "person," which
19 includes, but is not limited to corporations, companies,
20 associations, firms, partnerships, and, according to the
21 government, "even governmental entities." Id. at 2:21-25. The
22 government argues that section 1 applies to violations of Title
23 18; thus, the definition of person in section 876 includes
24 governmental entities such as the Federal Bureau of Investigation
25 (F.B.I.). Id. at 3:1-9.

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28 ² Unless otherwise indicated, "section 1" hereinafter
refers to 1 U.S.C. § 1 (1997).

1 The government further argues that "by allowing that
2 the threat can be to a person other than the addressee, the
3 statute does not foreclose the possibility that the addressee
4 could be an entity other than a natural person." Gov't's Suppl.
5 Br. at 3:16-19. Common sense, according to the government,
6 requires that the definition of "person" include the federal
7 government, or else "a person could avoid prosecution under § 876
8 by merely addressing a threat to injure the threatened person's
9 place of employment. This would defeat the very purpose of the
10 statute, which is to protect private citizens' sense of
11 security." Opp'n at 4:1-4.

12 The communication defendant allegedly addressed to the
13 F.B.I. containing a threat against Moon Unit Zappa is not recited
14 in or attached to the Indictment. The Court's analysis is,
15 therefore, necessarily restricted to the face of the Indictment
16 as quoted above.

17 **C. Section 1 Generally Applies to Criminal Statutes.**

18 Section 1 provides that "[i]n determining the meaning
19 of any Act of Congress, unless the context indicates otherwise
20 . . . the words 'person' and 'whoever' include corporations,
21 companies, associations, firms, partnerships, societies, and
22 joint stock companies, as well as individuals." 1 U.S.C. § 1.
23 The Court of Appeals for the Ninth Circuit has applied section 1
24 to criminal statutes for the purpose of imposing criminal
25 liability on a corporation or partnership. See, e.g., United
26 States v. Pollizi, 500 F.2d 856, 907-908 (9th Cir. 1974)
27 (applying section 1 to impose criminal liability on corporation);
28 and Western Laundry & Linen Rental Co. v. United States, 424 F.2d

1 441, 443 (9th Cir. 1970) (applying section 1 to impose criminal
2 liability on partnership).

3 The Supreme Court has also noted that the "connection
4 between 1 U.S.C. § 1 and the Criminal Code . . . is more than a
5 token one," because the 1948 amendment to the Dictionary Act,
6 which codified the current definition of "person" in 1 U.S.C. §
7 1, "was first enacted into law as part of the very same statute
8 which enacted into positive law the revised Criminal Code."
9 United States v. A & P Trucking Co., 358 U.S. 121, 123 n.2, 79 S.
10 Ct. 203, 206, 3 L. Ed. 2d 165 (1958) (holding that partnership
11 could be guilty of violating Interstate Commerce Commission
12 regulations, applying section 1's definition of "person" and
13 "whoever"). Thus, as a general matter, section 1 applies to
14 federal criminal statutes, according to Ninth Circuit and Supreme
15 Court authority.

16 **D. The Context of the Term "Person" in Section 876**
17 **Indicates That Section 1 Does Not Apply to Section 876.**

18 Section 1's definitions "govern[] the meaning of acts
19 of Congress 'unless the context indicates otherwise.'" Al Fayed
20 v. Central Intelligence Agency, 229 F.3d 272, 274 (D.C. Cir.
21 2000) (quoting 1 U.S.C. § 1). To determine whether the "context
22 indicates" that section 1's definition of "person" should apply
23 to section 876, the Court must consider the text of the statute
24 "surrounding the word at issue, or the texts of other related
25 congressional Acts." Rowland v. California Men's Colony, Unit II
26 Men's Advisory Council, 506 U.S. 194, 199, 113 S. Ct. 716, 720,
27 121 L. Ed. 2d 656 (1993). The Court should also be mindful that
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1 "'indicates' certainly imposes less of a burden than, say,
2 'requires' or 'necessitates.'" Id.

3 The text at issue is "person" in paragraph three of
4 section 876. The words surrounding "person" indicate that
5 Congress did not intend to apply section 1's definition of
6 "person" to section 876. Paragraph three of that section
7 provides that a defendant violates the statute when he sends "any
8 communication . . . addressed to any other person and containing
9 . . . any threat to injure the person of the addressee or of
10 another." 18 U.S.C. § 876 (emphasis added). The language
11 specifying "the person" of the addressee or of another as the
12 target of the threatened injury denotes the physical body of a
13 person. Otherwise, Congress would have said "containing a threat
14 to injure the addressee or another." If section 1 applies to
15 section 876, and an addressee can be a corporation, for example,
16 for criminal liability to attach, paragraph three of section 876
17 would be re-written to mean that a defendant violates the statute
18 by sending a letter containing a threat to the person of the
19 corporation or of another. This phrase makes no sense, because a
20 corporation is not a physical "person," nor are joint stock
21 companies, partnerships, and companies, all of which section 1
22 includes in the definition of "person."

23 Of course, "it is well understood that corporations
24 should be treated as natural persons for virtually all purposes
25 of constitutional and statutory analysis." Wilson v. Omaha
26 Indian Tribe, 442 U.S. 653, 666, 99 S. Ct. 2529, 2537, 61 L. Ed.
27 2d 153 (1979). Even assuming this treatment of corporations
28 persists when courts apply criminal statutes to corporations as

1 victims, corporations cannot be understood to have physical
2 bodies. The same nonsensical outcome results when the Court
3 applies to section 876 the other equivalents of "person" under
4 section 1 which have not received the same status as natural
5 persons under the law as corporations, such as joint stock
6 companies and associations.

7 In other words, as defendant notes, applying section
8 1's definition of "person" to section 876 would "effectively
9 write this element out of the statute," contrary to settled
10 principles of statutory construction that discourage courts from
11 interpreting an element of a crime as to give it no meaning.
12 Def.'s Suppl. Br. at 4:1-8; see Jones v. United States, 529 U.S.
13 848, 120 S. Ct. 1904, 146 L. Ed. 2d 902 (2000).

14 The government argues that the very same text of
15 paragraph three in section 876 demonstrates that section 1 does
16 apply. The government emphasizes the inclusion of the word
17 "another" in the phrase "threat to injure the person of the
18 addressee or of another." According to the government, by
19 including "another" in this phrase, and thereby "allowing that
20 the threat can be to a person other than the addressee, the
21 statute does not foreclose the possibility that the addressee
22 could be an entity other than a natural person." Gov't's Suppl.
23 Br. at 3:13-19.

24 The government misreads section 876. Section 876 does
25 not read "threat to injure the person of the addressee or
26 another," as the government paraphrases the text. Gov't's Suppl.
27 Br. at 3:15-16. The statute reads, "threat to injure the person
28 of the addressee or of another," meaning "the person of another,"

1 and, as explained above, "person" denotes a physical body. 18
2 U.S.C. § 876.

3 In the Court's view, the context indicates that
4 "person" in section 876 means a natural person, and that,
5 therefore, section 1 does not apply to section 876.

6 **E. Assuming Section 1 Were to Apply to Section 876,
7 "Person" Does Not Include the Federal Government.**

8 **1. Longstanding presumption against "person"
9 including the federal government.**

10 The longstanding interpretive presumption is that "the
11 term 'person' [in a statute] does not include the sovereign [and]
12 statutes employing the phrase are ordinarily construed to exclude
13 it." United States v. Cooper Corporations, et al., 312 U.S. 600,
14 604, 61 S. Ct. 742, 742, 85 L. Ed. 1071 (1941); see also Vermont
15 Agency of Natural Resources v. United States ex rel. Stevens, --
16 U.S. --, 120 S. Ct. 1858, 1866-67, 146 L. Ed. 2d 836 (2000); and
17 United States ex rel. Long v. SCS Business & Technical Institute,
18 173 F.3d 870, 874-75 (D.C. Cir. 1999). "The presumption is, of
19 course, not a 'hard and fast rule of exclusion' . . . but may be
20 disregarded only upon affirmative showing of statutory intent to
21 the contrary." Vermont Agency of Natural Resources, 120 S. Ct.
22 at 1867 (citing Cooper Corp., 312 U.S. at 604-05).

23 In the context of civil cases, the Supreme Court has
24 construed "person" in section 1 to exclude the United States
25 Government. See, e.g., United States v. United Mine Workers, 330
26 U.S. 258, 275 (1947); see also Al Fayed v. C.I.A., 229 F.3d at
27 274. The Supreme Court has also found that "person" in section 1
28 excludes states (Will v. Michigan Dep't of State Police, 491 U.S.
58, 69-70, nn.8-9, 109 S. Ct. 2304, 105 L. Ed. 2d 45 (1989)), but

1 includes municipalities (Monell v. New York City Dep't of Social
2 Services, 436 U.S. 658, 688-89, 98 S. Ct. 2018, 56 L. Ed. 2d 611
3 (1978)).

4 Here, the government provides no evidence of
5 legislative intent, much less makes an affirmative showing, that
6 "person" in either section 1 or section 876 includes the federal
7 government. The legislative history of section 1 shows, if
8 anything, that "person" as applied in section 1 does not include
9 the federal government. The original enactment of The Dictionary
10 Act defined "person" to include individuals and "bodies politic
11 and corporate." See Reuter v. Skipper, 4 F.3d 716, 719 (9th Cir.
12 1993) (citing The Dictionary Act, § 2, 1871, 16 Stat. 431).
13 Congress amended The Dictionary Act in 1948 and inserted a
14 broader definition of "person" to include "corporations,
15 companies, associations, firms, partnerships, societies, and
16 joint stock companies, as well as individuals," the same
17 definition that appears in section 1 today. Id. at 720 (citing 1
18 U.S.C. § 1). Congress' broadening of the definition, yet
19 continuing to exclude the federal government, indicates that the
20 federal government is meant to be excluded from the definition of
21 "person" in section 1. See United Mine Workers, 330 U.S. at 275
22 ("Congress made express provision [in 1 U.S.C. § 1] for the term
23 ['person'] to extend to partnerships and corporations . . . [and
24 the] absence of any comparable provision extending the term to
25 sovereign governments implies that Congress did not desire the
26 term to extend to them."). Thus, even if it be assumed that
27 section 1 applies to section 876, the allegations of the

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1 Indictment remain deficient because the federal government is not
2 a person within the meaning of section 1.

3 The government cites to the Ninth Circuit's holding in
4 United States v. Hughes Aircraft Co., Inc., that the government
5 is a "person" under section 1. United States v. Hughes Aircraft
6 Co., Inc., 20 F.3d 974, 981 (9th Cir. 1994). However, the Hughes
7 Aircraft court did not apply section 1 to "person" as an element
8 of a crime, but instead applied section 1 to a statutory
9 provision pertaining to a defendant's payment of fines upon
10 sentencing, 18 U.S.C. § 3623(c)(1) (repealed). Id. at 980. As
11 the government admits, no federal case cites Hughes Aircraft as
12 support for a finding that the government is a person under
13 section 1, or otherwise applies the definition of "person" in
14 section 1 to the government as part of a statutory element of a
15 crime. Hughes Aircraft, therefore, cannot support the
16 conclusion the government would have it bear.

17 The government does not address the "longstanding
18 presumption" and Supreme Court and Ninth Circuit cases excluding
19 the federal government from the definition of person in section
20 1. The government adheres to its arguments that section 1
21 applies to section 876; that section 1 is not an exhaustive list
22 of entities included within the definition of person, and "thus"
23 section 1 includes "even government entities." Gov't's Suppl.
24 Br. at 3:3-7. But, as discussed above, the case law does not
25 support this outcome.

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1 **2. Other interpretive tools do not support including**
2 **the federal government within the definition of**
3 **"person" in section 876.**

4 The "conventional reading of 'person' may . . . be
5 disregarded if 'the purpose, the subject matter, the context, the
6 legislative history, [or] the executive interpretation of the
7 statute [i.e., section 876] . . . indicate an intent, by use of
8 the term, to bring state or nation within the scope of the law."
9 Al Fayed v. C.I.A., 229 F.3d at 276 (quoting International
10 Primate Protection League v. Administrators of Tulane Educational
11 Fund, 500 U.S. 72, 83 111 S. Ct. 1700, 114 L. Ed. 2d 134 (1991).

12 The context of "person" in section 876, as explained
13 above, does not include an agency of the federal government
14 within its definition because that context shows "person" to mean
15 a natural person. The parties do not cite, nor has the Court
16 found, legislative history pertaining to, or executive
17 interpretations of, "person" in section 876 which would support
18 inclusion of the federal government within the meaning of section
19 876.

20 It should be asked, therefore, whether the purpose or
21 subject matter of section 876 overcomes the presumption that
22 "person" excludes the federal government. Chapter 41 of the
23 United States Code pertains to "Extortion and Threats," crimes
24 seemingly directed to personal safety, an issue not raised for
25 non-natural entities such as corporations, partnerships, and
26 government agencies. The subject matter of section 876,
27 evidenced by the heading of the section "mailing threatening
28 communications," does not indicate whether "person" includes the
 federal government, contrary to the usual presumption. The

1 government argues that the purpose of the statute is to "protect
2 private citizens' sense of security." Opp'n at 4:3-4. Assuming
3 the government is correct, this purpose supports the finding that
4 "person" in section 876 means a natural person.

5 Finally, two principles of statutory construction weigh
6 in favor of excluding the federal government from the meaning of
7 "person" in section 876. First, as noted above, the Supreme
8 Court has long found "person" to exclude the sovereign, and "[i]t
9 is presumable that Congress legislates with knowledge of [the
10 Supreme Court's] basic principles of statutory construction."
11 Rowland v. California Men's Colony, 506 U.S. at 201 (citation
12 omitted). Had Congress intended to include the federal
13 government within the meaning of "person" in section 876,
14 Congress would have used different language or simply excluded
15 "person" from most of paragraph three in section 876.

16 Second, "[i]t is an ancient rule of statutory
17 construction that penal statutes should be strictly construed
18 against the government or parties seeking to enforce statutory
19 penalties and in favor of persons on whom the penalties are
20 sought to be imposed." 3 Norman Singer, Sutherland Statutory
21 Construction, § 59.03 (5th Ed. 1992); see also United States v.
22 Jones, 120 S. Ct. at 1912.

23 The government alternatively argues that under section
24 876, "the addressee of a threatening communication can be an
25 institution or place of employment as long as the threat is
26 directed at a specific person." Opp'n at 4:5-8 (citing United
27 States v. Chapman, 440 F. Supp. 1269, 1270 (E.D. Wis. 1977)).

28 The government contends that the Indictment is sufficient

1 because, "while the delivery instructions directed the mail
2 carrier to deliver the communication to the Federal Bureau of
3 Investigation, the threat was directed to a specific person,
4 i.e., Moon Zappa." Opp'n at 4:13-16 (citing Chapman, 440 F.
5 Supp. at 1270).

6 The Court agrees that "a threatening letter is
7 'addressed' to a person within the meaning of § 876 if the letter
8 itself is directed to the attention of a specific [natural]
9 person, even though the delivery instructions direct that the
10 mail carrier deliver the letter to an institution, such as a
11 place of employment." Chapman, 440 F. Supp. at 1270. However,
12 the government misreads Chapman in arguing the statute only
13 requires that the "threat [be] directed to a specific person."
14 Opp'n at 4:15-16. The Chapman court specified that liability
15 under section 876 attaches if the threatening communication, such
16 as a letter or postcard, and not just a threat, was addressed to
17 a specific person. Chapman, 440 F. Supp. at 1270. The court
18 found this requirement met where "[t]he communication is a
19 postcard addressed on its front side to a radio station . . .
20 [and] [t]he allegedly threatening communication appears on the
21 reserve side underneath the greeting Sue 'Nitwit' O'Brien." Id.
22 (emphasis added). Furthermore, paragraph three of section 876
23 specifies that liability attaches when a defendant sends "any
24 communication . . . containing . . . any threat to injure a
25 person." 18 U.S.C. § 876. The government's alternative
26 argument, therefore, does not save the Indictment from dismissal.

27 The government's construction of the statute gives rise
28 to its contention that its reading of "person" in section 876

1 "eliminates the unjust result of someone avoiding prosecution
2 under the statute by merely addressing a threatening
3 communication to the threatened person's place of employment or
4 some other institution." Gov't's Suppl. Br. at 3:20-23. It is
5 not an unjust result, however, when a penal statute is construed
6 in accordance with applicable principles of law, discussed above.
7 The Court must conclude that the text and legislative history of
8 both section 876 and section 1, relevant case law, and the
9 longstanding principles of statutory interpretation support
10 prosecution under section 876 only when the threatening
11 communication is addressed to a person and not an agency of the
12 federal government.

13 **IV.**

14 **CONCLUSION**

15 Defendant's motion to dismiss the Indictment is granted
16 for its failure to state an offense pursuant to Fed. R. Crim. P.
17 7(c)(1).

18 IT IS SO ORDERED.

19 IT IS FURTHER ORDERED that the Clerk shall serve a copy
20 of this Order on counsel for all parties in this action.

21 DATED: February ____, 2001.

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23 _____
24 ALICEMARIE H. STOTLER
25 UNITED STATES DISTRICT JUDGE
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