**8.14 Mailing Threatening Communications—**

**Threats to Kidnap or Injure (18 U.S.C. § 876(c))**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with mailing threatening communications in violation of Section 876(c) of Title 18 of the United States Code. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant knowingly [mailed] [arranged to have mailed] a [letter] [*insert other form of communication*] addressed to [*insert name or title of natural person*] containing a threat to [kidnap] [injure] any person; and

Second, the defendant intended to communicate a threat by such [*insert form of communication*].

The government need not prove that the defendant intended to carry out the threat.

**Comment**

This instruction is based on *United States v. Keyser*,704 F.3d 631 (9th Cir. 2012), *United States v. Havelock*, 664 F.3d 1284 (9th Cir. 2012), *United States v. King*, 122 F.3d 808 (9th Cir. 1997), *United States v. Twine*, 853 F.2d 676 (9th Cir. 1988), and *United States v. Sirhan*, 504 F.2d 818, 820 (9th Cir. 1974)*.* While the Ninth Circuit has not offered comprehensive guidance concerning the requirements for conviction under 18 U.S.C. § 876, these cases are instructive.

Under 18 U.S.C. § 876, the threatening communications must be addressed to a natural person. *Havelock*, 664 F.3d at 1286. “[I]n order to determine whom a threatening communication is ‘addressed to,’ a court may consult the directions on the outside of the envelope or the packaging, the salutation line, if any, and the contents of the communication.” *Id*. at 1296. A general title such as “manager” is sufficient to meet this requirement. *Keyser*, 704 F.3d at 641.

There are two specific intent elements in 18 U.S.C. § 876. The defendant must have both “knowingly” transmitted the communication and subjectively intended to threaten. *Twine*, 853 F.2d at 680; *Keyser*, 704 F.3d at 638 (“In order to be subject to criminal liability for a threat, the speaker must subjectively intend to threaten.”). *United States v. Bachmeier* clarifies that “subjective intent to threaten is the required mental state [under section 876], *not* . . . mere ‘knowledge that the [communication] would be viewed as a threat.’” 8 F.4th 1059, 1065 (9th Cir. 2021) (emphasis added). However, the defendant need not have expected the threats to gain him a benefit, or have had the intent or ability to actually carry out the threat. *Planned Parenthood of the Columbia/Williamette, Inc. v. Am. Coalition of Life Activists*, 290 F.3d 1058, 1076 n.9 (9th Cir. 2002); *King*, 122 F.3d at 809.

*Revised Sept. 2021*