the court found, "they connote something they do not literally say," namely "You're Wanted or You're Guilty; You'll be shot or killed," [1201] and the defendants knew that the posters caused abortion doctors to "quit out of fear for their lives." [1202]

The Ninth Circuit concluded that a "true threat" is "a statement which, in the entire context and under all the circumstances, a reasonable person would foresee would be interpreted by those to whom the statement is communicated as a serious expression of intent to inflict bodily harm upon that person." [1203] "It is not necessary that the defendant intend to, or be able to carry out his threat; the only intent requirement for a true threat is that the defendant intentionally or knowingly communicate the threat." [1204]

Judge Alex Kozinski, in one of three dissenting opinions, agreed with the majority's definition of a true threat, but believed that the majority had failed to apply it, because the speech in this case had not been "communicated as *a serious expression of intent to inflict bodily harm*. . . ." [1205] "The difference between a true threat and protected expression," Judge Kozinski wrote, "is this: A true threat warns of violence or other harm that the speaker controls. . . . Yet the opinion points to no evidence that defendants who prepared the posters would have been understood by a reasonable listener as saying that *they* will cause the harm. . . . Given this lack of evidence, the posters can be viewed, at most, as a call to arms for *other* abortion protesters to harm plaintiffs. However, the Supreme Court made it clear that under *Brandenburg*, encouragement or even advocacy of violence is protected by the First Amendment. . . ." [1206] Moreover, the Court held in *Claiborne* that "[t]he mere fact the statements could be understood 'as intending to create a fear of violence' was insufficient to make them 'true threats' under *Watts*." [1207]

Group Libel, Hate Speech.—In *Beauharnais v. Illinois*,[1208] relying on dicta in past cases,[1209] the Court upheld a state group libel law that made it unlawful to defame a race or class of people. The defendant had been convicted under this statute after he had distributed a leaflet, part of which was in the form of a petition to his city government, taking a hard-line white-supremacy position,

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[1201] 290 F.3d at 1085.
[1202] 290 F.3d at 1085.
[1203] 290 F.3d at 1077.
[1204] 290 F.3d at 1075.
[1205] 290 F.3d at 1089 (quoting majority opinion at 1077 and adding emphasis).
[1206] 290 F.3d at 1089, 1091, 1092 (emphasis in original).
[1207] 290 F.3d at 1094 (citation omitted).
[1208] 343 U.S. 250 (1952).
[1209] Chaplinsky v. New Hampshire, 315 U.S. 568, 571–72 (1942); Near v. Minnesota ex rel. Olson, 283 U.S. 697, 707–08 (1931).