

In *NAACP v. Claiborne Hardware Co.*, white merchants in Claiborne County, Mississippi, sued the NAACP to recover losses caused by a boycott by black citizens of their businesses, and to enjoin future boycott activity.¹¹⁹³ During the course of the boycott, NAACP Field Secretary Charles Evers had told an audience of “black people that any ‘uncle toms’ who broke the boycott would ‘have their necks broken’ by their own people.”¹¹⁹⁴ The Court acknowledged that this language “might have been understood as inviting an unlawful form of discipline or, at least, as intending to create a fear of violence”¹¹⁹⁵ Yet, no violence had followed directly from Evers’ speeches, and the Court found that Evers’ “emotionally charged rhetoric . . . did not transcend the bounds of protected speech set forth in *Brandenburg*. . . . An advocate must be free to stimulate his audience with spontaneous and emotional appeals for unity and action in a common cause. When such appeals do not incite lawless action, they must be regarded as protected speech.”¹¹⁹⁶ Although it held that, under *Brandenburg*, Evers’ speech did not constitute unprotected incitement of lawless action,¹¹⁹⁷ the Court also cited *Watts*, thereby implying that Evers’ speech also did not constitute a “true threat.”¹¹⁹⁸

In *Planned Parenthood v. American Coalition of Life Activists*, the *en banc* Ninth Circuit, by a 6-to-5 vote, upheld a damage award in favor of four physicians and two health clinics that provided medical services, including abortions, to women.¹¹⁹⁹ The plaintiffs had sued under a federal statute that gives aggrieved persons a right of action against whoever by “threat of force . . . intentionally . . . intimidates any person because the person is or has been . . . providing reproductive health services.” The defendants had published “WANTED,” “unWANTED,” and “GUILTY” posters with the names, photographs, addresses, and other personal information about abortion doctors, three of whom were subsequently murdered by abortion opponents. The defendants also operated a “Nuremberg Files” website that listed approximately 200 people under the label “ABORTIONIST,” with the legend: “Black font (working); Greyed-out Name (wounded); Strikethrough (fatality).”¹²⁰⁰ The posters and the website contained no language that literally constituted a threat, but,

¹¹⁹³ 458 U.S. 886 (1982). *Claiborne* is also discussed below under “Public Issue Picketing and Parading.”

¹¹⁹⁴ 458 U.S. at 900, n.29. See *id.* at 902 for a similar remark by Evers.

¹¹⁹⁵ 458 U.S. at 927.

¹¹⁹⁶ 458 U.S. at 928.

¹¹⁹⁷ *Brandenburg v. Ohio*, 395 U.S. 444 (1969). *Brandenburg* is discussed above under “Is There a Present Test?”

¹¹⁹⁸ *Claiborne*, 458 U.S. at 928 n.71.

¹¹⁹⁹ 290 F.3d 1058 (9th Cir. 2002) (*en banc*), *cert. denied*, 539 U.S. 958 (2003).

¹²⁰⁰ 290 F.3d at 1065.