



## Camouflaged incitement

### Description

Everyone fights, or are prepared to say they do. As I noted in my last post, [Fighting words](#), a major charge against Trump was that he exhorted his followers to “fight like hell.” His defence lawyers countered with a lengthy sound montage instancing peace-loving politicians (I think all Democrats) invoking the word “fight” in their own speeches. To assert you are “fighting” for something is common parlance in heated rhetoric: fight for justice, fight for rights, fight for fairness, fight for truth.

Trump’s defenders assert that no single particular declaration to fight can be taken as incitement for someone to actually fight (wrestle, punch, restrain, shoot, etc).

### Contextualised incitement

One counter-defence appeals to the literal-figurative distinction. Peace-loving politicians and demonstrators mean it figuratively (“fight” as metaphor). But people we want to accuse of inciting violent rioters mean it *literally*. I observed one online commentator during the Senate trial say that while these other politicians are speaking figuratively, Trump is being literal. See posts tagged [Metaphor](#) for arguments challenging the literal-metaphoric distinction.

Careful critics of the Trumpian defence go another route, which is to state that whether or not fighting words incite violence depends on the wider context in which those words appear: the surrounding words, previous speeches and audience responses, past events, and what happened after the supposed fighting words were uttered.

Incitement can also appear in coded form, with or without a nod and a wink. The right trigger will set an audience primed for violence on a course that overwhelms rhetorical nuances, caveats, disclaimers, and directives to be peaceful. Following Aristotle, effective orators cultivate and exploit the [mood of their audience](#) to invoke action. Now we say that particular words in the right context serve as *triggers*.

### Performance art

Iâ??ve now learned about the so-called â??Brandenburg Testâ?• (named after a famous US court case against the KKK). The test rests on two criteria for recognising speech that incites misbehaviour: (1) the person speaking really wants to induce others to do the unlawful thing (e.g. storm the Capitol), (2) unlawful action is likely to follow the speech. The second criterion allows that something may have stopped the action, but otherwise it was highly likely.

A signature article by legal scholar David Crump elaborating on the incitement test begins by referencing Mark Antonyâ??s speech after the murder of Julius Caesar. After Antony said â??I come to bury Caesar, not to praise himâ?• he called Caesarâ??s assassins â??honourable men,â?• which was apparently enough to incite a riot in which the audience drove the assassins (â??honourable menâ?) out of town. Thatâ??s a subtle case of delivering apparent praise (perhaps sarcastically) that then delivers not respect but incitement to violence. Crump says

â??in spite of our recognition that there are prohibited utterances that cross the line, a borderland remains in which clever speakers can hide, with form, the substance of what they say. In short, Mark Antonyâ??s speech is an example of the phenomenon that this Article refers to as **camouflaged incitement**â?• (1-2).

The article goes on to consider [rap lyrics](#) and the tactics of [crime bosses](#). It delivers not two, but eight considerations for assessing if a speech incites. I quote the section headings here.

1. The Express Words or Symbols Uttered.
2. The Pattern of the Utterance, Including Any Parts That Both the Speaker and the Audience Could Be Expected to Understand in a Sense Different from the Ordinary
3. **The Context, Including the Medium, the Audience, and the Surrounding Communications**
4. The Predictability and Anticipated Seriousness of Unlawful Results, and Whether They Actually Occurred
5. The Extent of the Speakerâ??s Knowledge or Reckless Disregard of the Likelihood of Violent Results
6. The Availability of Alternate Means of Expressing a Similar Message, Without Encouragement of Violence
7. The Inclusion of Disclaimers.
8. **Whether the Utterance Has â??Serious Literary, Artistic, Political, or Scientific Valueâ?•** (or, Alternatively, Whether It Is â??Speech on a Matter of Public Concernâ?). (54-69)

The third point reinforces the importance of the context of the putative incitement. The eighth is even more interesting as it opens the debate to a consideration of performance art and acting. Adjudicators need to assess whether violent and inciting words in a play, rap, standup, cartoon or performance art piece really are incitements. Crump illustrates this brand of â??camouflagedâ?• incitement with an amusing counter-example of faux-performances.

â??A crime boss who speaks in iambic pentameter while ordering an underworld rub-out, for example, still is a party to a homicide, and â??serious artistic valueâ?• in the language does not legitimize his solicitation of murder. Nor would the crime boss decrease his criminal responsibility by following his order to kill by a â??literaryâ?• allusion to Hamletâ??s death soliloquy, or a denunciation of the victimâ??s â??politicalâ?• beliefs, or even a â??scientificâ?• dissertation on

the anatomical effects that will occur when the unfortunate individual's heart stops (68).

As illustrated in the Senate impeachment trial, delivering a political speech, defending a client and other modes of advocacy are theatre in any case. See post: [The great debate debate](#) and [Rogue fan fiction: the peculiar case of QAnon](#).



## Reference

- Crump, David. 1994. Camouflaged incitement: Freedom of speech, communicative torts, and the borderland of the Brandenburg test. *Georgia Law Review*, (29) 1, 1-80.

## Notes

- I'm interested in camouflaged incitement not least as it pertains to coded messaging.
- Fighting and acting are closely related. I remember as a child watching *World Championship Wrestling*. That was in Australia on channel 9. The show aired midday on weekends. As a child I had to be reminded that it was fake, but then I recognised the posturing, the repeated moves, the banter, and the arbitrary victories. Fighting was an act.

## Category

1. Metaphor

## Tags

1. debate
2. impeachment
3. metaphor
4. mood
5. trump

## Date Created

February 13, 2021

## Author

rcoyne99