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Intentionally Encouraging or Assisting Others to Commit an Offence: The Anatomy of a Language Crime

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Abstract

Since at least as far back as the infamous Derek Bentley case of the 1950s in which an unarmed 19-year-old was convicted and executed for murder based on his alleged uttering of the words *let him have it* to his gun-wielding accomplice, the issue of incitement has been positioned firmly as an object of interest for forensic linguists. An example of a language crime—i.e. an unlawful speech act (as reported by Shuy in Language crimes: The use and abuse of language evidence in the courtroom, Wiley Blackwell, Hoboken, 1993) the features of incitement—formalized as *intentionally encouraging or assisting others to commit an offence* in the law of England & Wales under section 44 of the Serious Crime Act 2007 (https://www.legislation.gov.uk/ukpga/2007/27/contents)—have been widely debated by linguists and legal scholars alike. This paper draws on two webinars hosted by The Hunting Office in August 2020, which were subsequently leaked by the Hunt Saboteurs Association. Featuring senior figures from the hunting community addressing a nationwide audience of hunt masters, the webinars led to a police investigation and subsequent prosecution and conviction of one of the main speakers, Mark Hankinson, for *encouraging or assisting others to commit an offence under the Hunting Act 2004*. In this paper I explore what, linguistically, is meant by *encouraging or assisting*. Through corpus-assisted pragmatic and discourse analyses I interrogate the webinars to address the question of how precisely Hankinson implied his encouragement of illegal hunting with dogs. The phenomena of collocation and semantic prosody are crucial for understanding how such meanings came to be attached to the contributions Hankinson makes to the webinars. Moreover the paper will examine the contributions of other speakers and demonstrate that the same incriminating linguistic patterns in Hankinson's talk are also evident in that of those who were not prosecuted.

Keywords Incitement · Encouraging or assisting · Language crime · Intent · Collocation · Semantic prosody

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1 Introduction

The 'sport' of foxhunting is a long-held tradition originating with the aristocracy in England and dating back to the sixteenth century [16]. It involves the tracking, pursuit across open countryside, and, if caught, killing, of a wild fox by a pack of trained dogs. Following the hounds are a group of unarmed men and women on horseback led by the *field master,* with the *huntsman* communicating with the hounds via a horn as the pack pursue their terrified quarry to the point of exhaustion, whereupon they tear it to pieces, often after disembowling it [5]. Bills proposing the outlawing of the practice had been proposed since the formation of League Against Cruel Sports (LACS) in the 1920s, but it was not until 2004 that the Hunting Act reached the statute books of England & Wales [28], banning foxhunting along with the hunting with dogs of other wild mammals for sport [14].

It has been noted that themes emerging from the discourse of the pro-hunt lobby around the time of the ban were more akin to arguments about cultural preservation put forward by marginalized and socioeconomically deprived groups [8], with appeals centring on the preservation of national heritage and rural folklife [4]. Rather than switching to drag hunting, a legitimate and humane sport dating back to the 1800s in which a route is planned out in advance and a non-animal scent—usually aniseed—is laid for hounds to pursue in an area where animals are unlikely to live, hunts instead devised a replacement pursuit named trail hunting. In trail hunting an animal scent such as urine is laid in places where foxes are likely to be. Trail layers supposedly keep the scent route a secret from the hunters, meaning if the hounds catch a scent of a live animal and pursue that instead of the trail, the hunters can claim it was an accident. This grisly outcome is a fairly common one, as compared to the rarity with which it happens in drag hunting.

According to LACS, half of those prosecuted under the Hunting Act 2004 claim to be trail hunting,[1] while another quarter claim to have been 'exempt hunting' (i.e. hunting within the exemptions set out in Schedule 1 of the Hunting Act 2004[2]). LACS, the Hunt Saboteurs Association (HSA), and other anti-hunt campaigners have long suspected that trail hunting is not a genuine sport, but rather that it has simply been invented to cover up hunters continuing with activities that have now become illegal.

This suspicion was reinforced by the November 2020 leak of recordings of two webinars run by The Hunting Office (THO)—the executive arm of the governing bodies for hunting with hounds in the UK[3]—in August 2020. During the webinars speakers including Conservative peer Lord Mancroft and ex-Police Inspector Phil Davies addressed an audience of hunt masters on a range of topics: how to lay a trail, monitoring, gathering

[1] https://www.league.org.uk/trail-hunting.

[2] Schedule 1 of the Hunting Act 2004 exempts from the ban the hunting of wild mammals with dogs in cases where they are hunted for food or to prevent damage to livestock/crops/property AND on land where permission has been granted AND using fewer than two dogs AND neither of those dogs goes underground AND an effort is made to shoot the animal dead as soon as possible after it has been flushed out.

[3] https://thehuntingoffice.org.uk/index.

evidence in the event saboteurs are present, information about the law around hunting, and so on. The leaking of the videos resulted in a police investigation, followed by a number of large land management organisations such as the National Trust and Forestry England withdrawing permission for trail hunting on their land.

In February 2021 the police charged one of the speakers—director of the National Foxhounds Association Mark Hankinson—with *intentionally encouraging or assisting others to commit an offence under the Hunting Act 2004*, contrary to section 44 of the Serious Crimes Act 2007 [22] (Hereafter SCA):

> 44 Intentionally encouraging or assisting an offence
>
> (1) A person commits an offence if—
> (a) he [sic] does an act capable of encouraging or assisting the commission of an offence; and
> (b) he [sic] intends to encourage or assist its commission.
>
> (2) But he [sic] is not to be taken to have intended to encourage or assist the commission of an offence merely because such encouragement or assistance was a
> foreseeable consequence of his [sic] act.
>
> (Serious Crime Act 2007s. 44)[22]

In England and Wales *intentionally encouraging or assisting an offence* replaced the existing common law offence of *incitement* in October 2008 when the SCA came into force [26]. An *inchoate* offence, i.e. one that is preparatory; 'conduct deemed criminal without actual harm being done, provided that the harm that would have occurred is one the law tries to prevent' [11: 109], *intentionally encouraging or assisting*, or *incitement* by another name, need not result in the ultimate offence to which it relates; thus, it need not be perlocutionarily successful. We return to this point later.

Hankinson pleaded not guilty and was tried at Westminster Magistrates' Court in September 2021. Prosecuting barrister Gregory Gordon claimed 'his words were clear, his advice was capable of encouraging hunts to commit illegal hunting, and his intention was to encourage illegal hunting'.[4] At trial Hankinson was found guilty as charged and fined £3,500, with deputy senior district judge Tan Ikram stating that 'it was clearly advice and encouragement to commit the offence of hunting a wild mammal with a dog. I am sure he intended to encourage the commission of that offence'.[5] Note that both Ikram and Gordon use the word *advice* in the place of the statutory formulation *assistance*, driving home perhaps the idea that 'taking steps to reduce the possibility of criminal proceedings being brought in respect of the offence' ([22 s. 65(2)] is specified as a means by which a person may *encourage* or *assist*. Hence the 'advice' described by both Ikram and Gordon above is clearly aligned with the offence as set out in statute. Ikram noted that '[Hankinson] was

[4] https://www.itv.com/news/2021-10-01/uks-leading-huntsman-intended-to-encourage-illegal-hunting-court-hears.

[5] https://www.theguardian.com/uk-news/2021/oct/15/leading-huntsman-fined-after-using-subterfuge-to-hide-fox-hunting.

clearly encouraging the mirage of trail laying to act as cover for old fashioned illegal hunting. Whilst he didn't use overt words, he implied it again and again'.[6] This last point is entirely consistent with pragmatic understandings of incitement, a speech act which is almost invariably performed indirectly[19].[7] This is another point we will return to later.

Hankinson appealed in July 2022 at Southwark Crown Court, and his conviction was overturned. In determining guilt for this offence it must be established that (a) the words were capable of encouraging or assisting the commission of an offence and (b) the defendant intended to encourage or assist its commission. HHJ Perrins' was satisfied that Hankinson's words 'were capable of encouraging the commission of illegal hunting', but 'when considering all the evidence we cannot be satisfied to that high standard [beyond reasonable doubt] that [encouraging or assisting illegal hunting] was the appellant's intention'.[8] The reasons provided for this decision will be returned to later.

Notwithstanding the successful appeal, what precisely was considered by the Crown Prosecution Service to be sufficient evidence of Hankinson's *intentionally encouraging or assisting an offence* to launch a prosecution in the first instance? That is one of the questions this paper sets out to address.

It is unclear whether Hankinson stood accused of one, or the other, or both of the acts included in the name of this offence—were his words alleged to be *encouraging* the audience to engage in criminal activity, or furnishing them with information to *assist* them in doing so more effectively, or both? The judgment of Tan Ikram seems to emphasise the former, stating that the defendant was charged that he '…did an act capable of *encouraging* the commission of the offence…and he intended to *encourage* its commission'[9][my italics] then later formulating the Crown's position as '[he] gave advice on how to hunt illegally…In doing so…*encouraging* the commission of the offence'[10] [my italics]. HHJ Perrins in the judgment overturning the conviction also focussed on the *encourage* element, with 23 instances of encourag* and only 1 of assist*.[11]

Regardless of which verb is a better fit for Hankinson's alleged activities, both are subsumed under this offence, and neither are defined in statute. I therefore take the opportunity here to explore *inciting the commission of another offence,* a common law offence abolished by section 59 of the Serious Crime Act 2007 [22], and an immediate precursor to *intentionally encouraging or assisting*. *Incitement* is described as occurring when a person 'seeks to **persuade** another to commit a

[6] https://www.judiciary.uk/wp-content/uploads/2022/07/R-v-Hankinson-judgment-1.pdf.

[7] I am reminded here of Emmeline Pankhurst's 1912 plea 'I incite this meeting to rebellion' but am not aware of any other occurrences of *incite* as a performative verb.

[8] R v Mark Hankinson—Appeal against Conviction. Ruling on Appeal. Sourced from Private Communications.

[9] https://www.judiciary.uk/wp-content/uploads/2022/07/R-v-Hankinson-judgment-1.pdf.

[10] https://www.judiciary.uk/wp-content/uploads/2022/07/R-v-Hankinson-judgment-1.pdf.

[11] R v Mark Hankinson—Appeal against Conviction. Ruling on Appeal. Sourced from Private Communications.

criminal offence or offences' [7; my emphasis], with the definition continuing in a rather circular manner thus:

> A person is guilty of **incitement** to commit an offence or offences if:
> They **incite** another to do or cause to be done an act or acts which, if done, will involve the commission of an offence or offences by the other; and
> They intend or believe that the other, if he acts as **incited**, shall or will do so with the
> fault required for the offence(s) R v Claydon [2006] 1 Cr. App. R. 20
> [7, my emphasis]

Thus, a person is guilty of incitement if s/he incites someone. This is hardly an illuminating explanation. Returning to the first part of the definition, however, it might be useful to explore *persuasion* as it is realised linguistically.

In the fourth century BC Aristotle [1] set out the art of persuasion as being comprised of three types of appeal. *Logos* appeals relate to logic and reasoning; if a speaker or writer can set out facts and draw clear connections, for example between particular courses of action and particular positive results, this will contribute to the persuasive nature of an argument. *Pathos* refers to arguments based on emotion. Appealing to a hearer/reader's emotional state can sway them into adopting a similar position to the speaker/writer, thereby rendering them more amenable to a given argument. Finally, *ethos* appeals are those that draw on a speaker/writer's authority and expertise to construct a confident argument seemingly based on credibility. Where we can see all three of these appeals in action, we can reasonably conclude that the text under examination is one in which persuasion is a key force.

A review of the literature around the language of incitement may also take us some way towards understanding what may have led to the prosecution; and an exploration of the issue of *intent* as it relates to incitement may shed light on HHJ Perrin's decision to quash the conviction.

2 The Pragmatics of Incitement

The topic of incitement has somewhat re-established itself at the top of the forensic pragmatics agenda of late, not least in reaction to former US President Donald Trump's January and February 2021 impeachments for *incitement of insurrection* following his supporters' storming of the Capitol building. A number of commentators pointed to the wealth of research in social psychology dealing with *reasoned action* [10] which demonstrates the clear links between the messages people hear and their subsequent actions.

But subsequent actions are not our concern here. With incitement traditionally consigned to the peripheries of their interest [17], legal scholars now take as their starting point the idea of incitement as worse than any resulting misdeed, a position dating back to the work of Aristotle [29] and continuing to pervade Western justice to this day. Incitement is treated in international criminal law as an inchoate crime, which is to say that the underlying intended crime need not take place in order for

criminal conduct to have occurred [29], and these offences are 'deemed to have been committed despite the fact that the substantive offence is not completed' [27, 7]. While the question might be raised as to why incitement should be prosecuted in the event that no harm resulted, this can be addressed with reference to the function of criminal law 'these offenses may be said to cast a preventive circle round…substantive crimes' [2, 21].

Now too, this is consistently how *intentionally encouraging and assisting*—incitement by a new name—is treated in the law of England and Wales: under the Serious Crime Act 2007 it does not matter if the encouragement or assistance has no effect [24].

For linguists too, a central theme of discussions about incitement is the extent to which perlocutionary effect—that is, a speech act's effect on the hearer—is a necessary element in considering whether or not the speech act has been successfully performed. For Davis [9] an inciteful utterance that went unheeded would be deemed an unsuccessful perlocutionary act, 'for successful acts reflect the **achievement** of the speaker's communicative goals' (p. 53, my emphasis). However, when mapped against the law, what is important for determining whether or not the offence has taken place is the content, meaning, and force of an utterance—the locutionary and illocutionary dimensions of a speech act—and not the consequences, or perlocutionary dimension [17: 26].

Gu [12] theorises that this conceptualisation of a speech act as successful *only if it has the desired perlocutionary effect on the hearer* renders the hearer as a passive participant in the process, with all responsibility for the action, if it is indeed carried out, placed squarely at the feet of the speaker. Gu suggests that on the contrary, the hearer should be thought of as active in the transaction; even if the effect is invisible to the naked eye, i.e. they do not actually engage in some physical course of action but their mental state is altered in some way, we can still regard the perlocutionary act as successful. This position is supported in the legal scholarship, where even though incitement is an inchoate crime (i.e. the incited action does not need to take place), it is still assumed that it 'succeeds in triggering a determination in the instigatee's mind to commit a particular crime' [27: 825].

Kurzon [19] contrasts this with a different view of perlocution, whereby the perlocutionary act 'should include the purpose of the speaker in itself, as part of its meaning' (p. 573), or in other words we must.

> Limit the definition of perlocutionary effect not to the actual effect on the hearer, but primarily to the effect intended by the speaker, and only secondarily, if at all, to its materialization or otherwise…that is, we should relate to the perlocutionary **goal** only.
>
> [19: 574; my emphasis]

This position, of course, *does* render the hearer as somewhat surplus to requirements; incitement as an illocutionary act relates solely to what the speaker has said.

Exemplifying his point by comparing the utterance 'the bank is easy to rob' produced either (a) by a security specialist in conversation with a colleague during routine inspections, or (b) by one bank robber to another prior to a robbery being

planned, Kurzon concludes with the observation that 'any utterance may constitute an act of incitement if the circumstances are appropriate to allow for such an interpretation' [19: 587]. Thus, speaker *intent* is neither here nor there in pragmatic terms—interpretation comes down entirely to *context*: not least who the participants are.

But the lack of provable intent appears to be one of the substantial issues that led to Hankinson's conviction being quashed, because as a criminal offence, intent is key, yet notoriously difficult to prove. Where we have *inchoate* offences such as *intentionally encouraging or assisting,* the establishment of the *intention* element of the *mens rea* (guilty mind), is central to establishing guilt *beyond a reasonable doubt,* since we do not have the cause-and-effect chain of the *actus reus* to rely upon as we would with a completed crime [13]. As Wilson [29] elucidates, even when the incited actions are subsequently performed; 'not all events related temporally are causally related, and there might be other causal factors' [29: 45]. Specific to the offence of *intentionally encouraging or assisting,* it has been noted that no positive definition is provided for the key element of intent but it is provided that the defendant 'is not to be taken to have intended to assist or encourage a criminal act merely because such encouragement or assistance was a foreseeable consequence of his act'' [7]. Thus,

> Foresight of whatever degree of probability must be rejected as **constitutive** of intent. However, foresight of a high order of probability that [the hearer] will be encouraged or assisted cannot be disregarded as **evidence** of intent: proof of such foresight may be cogent evidence of an intent to encourage or assist
>
> [26: 1049]

We might therefore accept that Hankinson *foreseeing* that his advice would likely be used by the viewers as evidence of him *intending* this to be the case, though foresight itself is not intention.

English law distinguishes between *direct* intention, whereby if a consequence is a defendant's aim, purpose or objective then s/he has intended that consequence; and *oblique* intention, whereby 'the defendant embarks on a course of conduct to bring about a desired result, knowing that the consequence of his [sic] actions will also bring about another result'. In this case it is *direct* intention that the Crown were attempting to establish; furthermore, given that *intention* is necessary to satisfy the mens rea of this offence, it is *specific intent,* i.e. an intention to achieve something beyond the act itself, rather than *basic intent,* i.e. an intention to commit the act itself, that needed to be established.

Establishing specific intent is fraught with difficulties, and evidently HHJ Perrins was not swayed by the Crown in the appeal. The next section moves on to examining the evidence itself, with a view to exploring the linguistic nature of incitement in the Hunting Office webinars.

3 Intentionally Encouraging or Assisting in the Hunting Office Webinars

Naturally THO denied that the purpose of the webinars was to help the attendees carry out more effective deception in relation to illegal hunting. In a statement, they claimed the sessions dealt with 'the operation and promotion of legal trail hunting and managing animal rights activism' and that allegations to the contrary were based on 'taking a few individual short comments completely out of context'.[12] Here, we use corpus-assisted discourse analysis—a combination of traditional discourse analysis with the quantitative rigour of corpus methods put to use in uncovering non-obvious meaning—to explore the comments *and* their context.

The inciteful nature of the comments of Mark Hankinson that led to his prosecution does not require a substantial amount of linguistic expertise to untangle, and it is difficult to see what 'context' could allow for an interpretation of them as referring to anything other than illegal activity. In Extract 1, for example, Hankinson is discussing the importance of having multiple individuals visibly laying scent trails:

Extract 1: 'Smokescreen', Webinar 1.

MH	1	um it's a lot easier to (.) create a smokescreen if you've got more than one trail layer operating umm and that is what >it's all about< trying to (0.3) portra:y (.2) umm t- to the people watching that you're going
	5	about legitimate business.

Much was made by anti-hunt activists outside the court each day of the trial about the use of the term *smokescreen* by Hankinson to describe the manner in which the webinar audience should conduct their activities, and we do not have to venture much beyond the standard dictionary definition to draw out an interpretation of '*creat[ing] a smokescreen*' as disguising genuine pursuits.

But Hankinson claimed at trial that the *smokescreen* comments were in reference to disguising the actual trail from saboteurs by laying 'dummy' trails. In overturning the conviction the following year, HHJ Perrins accepted the possibility of this interpretation: 'the appellant has given evidence that…what he was referring to was the practise of creating dummy trails to fool potential saboteurs', but also noted that this 'was not made explicit in his short talk'.[13] If the utterance had stopped at the end of line 2, this interpretation might have been believable. However, it continues, and

[12] https://www.horseandhound.co.uk/news/leaked-webinars-were-promoting-legal-trail-hunting-731577

[13] R v Mark Hankinson —Appeal against Conviction. Ruling on Appeal. Sourced from Private Communications.

1	since the realities are what we are	trying to portray	, a person of ordinary talents and weaknesses
2	, what the photographer was	trying to portray	. </s><s> These er on when they look to be
3	power, but that''s not what I''m	trying to portray	. </s><s> Benn is a stereotype fighter and I'm
4	to the country girls they were	trying to portray	... they weren''t suitable for country wear
5	. </s><s> Audubon was not the first to	try to portray	animals in motion, but his dramatic and vast
6	any merit at all if you were constantly	trying to portray	certain groups in a favourable light
7	left me to it.'' </s><s> The picture	tries to portray	Charles ''as he is at the moment - someone
8	. </s><s> This spring the BJP is	trying to portray	itself differently. </s><s> Never before interest
9	some sections of the media have	tried to portray	the Union who are seeking some protection
10	at spokespersons for the majority have	tried to portray	the minority who oppose as not really being
11	the government-backed unions are	trying to portray	themselves as the true and unccompromising
12	are quite wrong. </s><s> They still	try to portray	us as vulnerable and weak, but in reality we are
13	. </s><s> They know that you are not	trying to portray	yourself as a know-all, that you have accepted

Fig. 1 'try* to portray', BNC

a cursory glance at concordances in the British National Corpus[14] [3] using Sketch Engine [18] tells us that the use of the verb + infinitive construction *trying to portray* (line 3) indicates that the object that follows is not a 'reality', nor is it the sole accurate description of what is being referred to (Fig. 1).

One simply does not *try to portray* things which are actually happening: as the BNC illuminates, the string is used almost exclusively in relation to the creation of artistic and/or fictional works. It is actors, writers, designers and photographers who are described as *trying to portray* things (lines 1–7), or it is at least referring to an attempt to put a particular 'spin' on an issue (lines 8–13). Thus 'that you're going about legitimate business' (Extract 1 Lines 4–5) is a performance, a creation, a fabrication of some kind.

This is not consistent with Hankinson's claim that he was merely referring to the laying of decoy trails in order to confuse any saboteurs in attendance: if *the people watching* refers to saboteurs, then *legitimate business* is being used to refer to the laying of the genuine trail as opposed to a dummy one: an odd turn of phrase for this purpose. Far more consistent is an interpretation of *people watching* as the law, and *legitimate business* as trail hunting as opposed to foxhunting. While the prosecution and anti-hunt activists fixated on the *smokescreen,* it is the *trying to portray… legitimate business* that suggests itself as the more incriminating element of this contribution.

Extract 2 below received special mention by Judge Ikram, who commented 'perhaps most incriminating is [Hankinson's] direction and advice that trail laying has to be 'as plausible as possible.' The only reasonable interpretation of those words leads to the conclusion that a need to make something *plausible* is only necessary if it is a sham and a fiction.'[15]

[14] Examples of usage taken from the British National Corpus (BNC) were obtained under the terms of the BNC End User Licence. Copyright in the individual texts cited resides with the original IPR holders. For information and licensing conditions relating to the BNC, please see the web site at http://www.natcorp.ox.ac.uk/

[15] https://www.judiciary.uk/wp-content/uploads/2022/07/R-v-Hankinson-judgment-1.pdf.

Extract 2: 'Plausible', Webinar 1

MH	1	[…]I think the most important thing (.) tht- that we need to bear in mind is that if you've got (0.4) saboteurs out with you (.) in any shape or form↓ (0.2) we need to have clear (0.4) visible (0.3) plausible (.) trail laying (.2) being done throughout the da:y […]

Ikram's claim that only *shams and fictions* are described in terms of being made *plausible* is easy to investigate with a collocation analysis. By far the most frequent noun modified by *plausible* is *explanation* (46), followed by *excuse* (7). Contrast this with the other adjectives being used here to describe the trail laying that attendees should be striving for: *clear* and *visible.* A comparison of the nouns modified by *visible* and those modified by *plausible* in the BNC is revealing.

While *visible* is used to refer to things that are, in reality, present, *plausible* refers, as Ikram pointed out, to likely fabrications. It could be argued that in placing *plausible* in this run-of-three with *visible* and *clear* (arguably synonyms of each other) an attempt is being made to present *plausible*, too, as synonymous. This, as revealed by the comparative collocations analysis, is quite far from being the case.

A fruitful lens through which to view this contrast in meanings is that of *semantic prosody* [20]. Semantic prosody is the phenomenon whereby a seemingly neutral becomes imbued with either positive or negative associations because of the company it keeps; examples from the literature include the phrase *set in*, described by Sinclair [25] as referring only to unpleasant states of affairs; *rot, decay, infection,* and *prejudice* are nouns which *set in.* Another example is *utterly,* which Louw [20] observes as usually having unfavourable implications owing to its right-hand collocates: *helpless, useless, ruined, destroyed*, for example. As to *plausible* in Fig. 2 above, the presence of nouns such as *scapegoat, excuse,* and *deniability* points to this adjective being habitually attached to negatively-tainted nouns. It has been argued that if a lexical item most frequently occurs in a context of clearly positive or negative attitudinal meaning, then when it occurs in a different context that positive or negative meaning will colour the interpretation of the given instance. The result is that an additional attitudinal meaning, derived intertextually, is implied [15: 250].

Elsewhere in the webinar Hankinson expands on the efforts required for presenting a believable visual spectacle to observers.

Extract 3: 'it's pretty obvious…it's no good for anything', Webinar 1

MH	1	u::m it's probably just as well to h- have something >pretty< fou:l smelling on thei:r- end of their drag just in case a (0.4) anti leaps out from behind a gateway and grabs hold of it and says this is just a
	5	clean ((silk)) hanky or something (0.2) e:r and of course the other thing you don't want your um (.) trail layer getting mixed up with the uh- (0.5) you know, stop at the meet or- or if tha- or if there's a check or wherever the hounds are and he's (.) stood in
	10	the middle discussing the next rule with the- (0.5) >with the< huntsman and the- and the lu:re is just (0.4) dangling down in front of (0.2) old Dreadnought's nose and he's paying no attention to it's pretty obvious i- i- it's no good for anything

The discussion is curious if we accept THO's account that the meeting was concerned only with legal hunting activities. That the webinar attendees are being advised to ensure their trail layers *have something pretty foul smelling on the end of their drag* tells us that this would not necessarily be the expectation. Given that something heavily scented like fox urine is used to lay trails, why would the drag be anything *but* foul smelling; why would the imagined scenario of the oblivious hound ever transpire? Hankinson's explanation was that, once more, he was referring to the laying of decoy trails: that in laying trails additional to the genuine one, in order to truly misdirect any watching saboteurs, the drag must be foul-smelling. It was not, he claimed, an attempt to make an illegal hunt appear lawful.[16]

It is also worthwhile considering the persuasive rhetorical appeals Hankinson is employing in this extract. *Of course* (line 5) and *it's pretty obvious* (line 11) bring to the surface the common-sense nature of the advice being given: they are appeals to *logos* [13]. We return to this point later.

As mentioned above, frustration was expressed both by the anti-hunting organisations and the investigating police that only one of the speakers was subject to any prosecution. Indeed, the prosecution barrister's closing argument lists contributions from five of the other participants, describing them as 'incriminating' and raising the question of why Hankinson did not 'correct or clarify' any of them.[17] For his part, Tan Ikram stated that.

> of course, the Defendant isn't responsible for another's words…all the words of the others are relevant because it tells me something

[16] R v Mark Hankinson—Appeal against Conviction. Ruling on Appeal. Sourced from Private Communications.

[17] https://raptorpersecutionscotland.files.wordpress.com/2021/10/hankinson-50hq7000120-prosecution-closing-submissions.pdf.

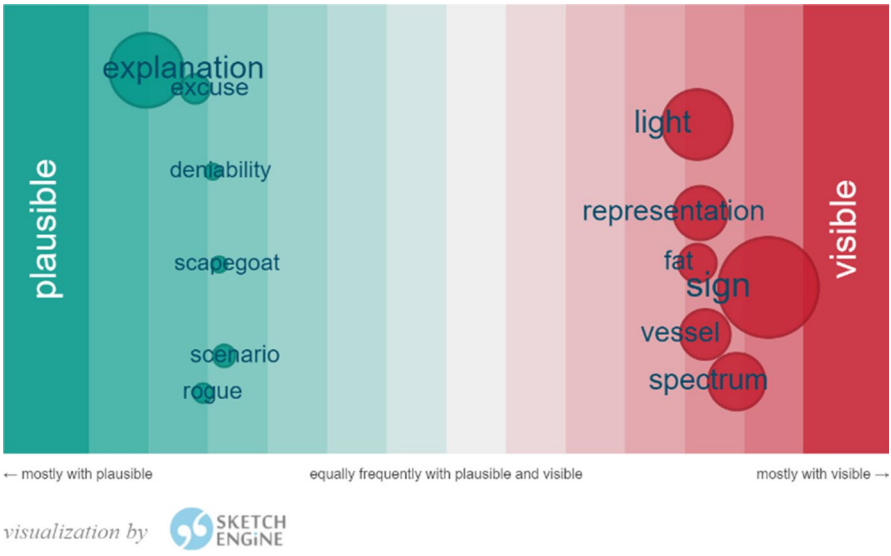

Fig. 2 Collocations comparison, 'plausible' and 'visible'

> about the events he was speaking at and the 'overall agenda' in which he was also speaking. I do make clear that the Defendant is to be judged wholly on what he said but others' words, in my view, provide context to what he said.[18]

One of the other speakers is retired Chief Inspector Phil Davies, formerly of Dyfed-Powys Police and now Police Liaison Officer for the Countryside Alliance.[19] He begins his presentation with assurances of the lawfulness of the activities he will be discussing, with a seeming acknowledgement of the possibility that the conversation may result in legal action at some point in the future.

Extract 4: 'lawful and exempt', Webinar 1

PD	1	what I'm going to talk about tonight is lawful and exempt hunting and trail hunting (0.6) okay just in case er::m somebody's listening in that shouldn't be listening in that's what I am talking about.

He then moves on to discuss the potential for saboteurs' activities to be worked to hunts' advantage.

[18] https://www.judiciary.uk/wp-content/uploads/2022/07/R-v-Hankinson-judgment-1.pdf.

[19] An organization that campaigns for 'rural concerns', including fox hunting.

Extract 5 'smokescreen' revisited, Webinar 1

PD	1	if we're accused of illegal hunting (0.6) and we've got the saboteurs out on a day's hunting (0.9) and there's horns being blown by them (0.6) they're hollering they're playing amplified hound music (1.0)
	5	what better than to produce a video to the court to say look it wasn't us encouraging the hounds on (0.7) it wasn't our hounds in full cry it was the gismo (1.4) it wasn't an accidental kill because they interfered with the trail↓ (2.0) now you know more
	10	about hunting than saboteurs or the courts will know↓ (1.3) but what it will do is create that smokescreen↑ (1.9) or that element of doubt that we haven't deliberately hunted a fox↓

As with Extract 1 this is a contribution that up to a point *could* be discussing lawful activity: the counter-sabotage of saboteurs' attempts to disrupt the hunt,[20] and building of a defence to any potential wrongful prosecutions under the Hunting Act. But from line 11 things change. Davies talks about how these actions will *create that smokescreen…that element of doubt that we haven't deliberately hunted a fox.*

The question therefore presents itself—from whom is he suggesting the activities be screened? The argument Hankinson put forward in relation to Extract 1 was that he was referring to distracting the saboteurs; but here, the *smokescreen* cannot be for their benefit as they themselves are part of it. He explicitly sets out this is *a video to the court* (line 5). The *smokescreen* Davies talks of is clearly an attempt to obfuscate hunts' illegal activities—*deliberately hunt[ing] a fox*—from the law.

In Extract 6 below, Hankinson delivers arguably the most damning contribution of the entire webinar series. It is worth noting that nothing in webinar 2 was submitted in evidence by the Crown.

[20] 'Gizmo' here refers to a small amplifier playing the sound of hounds in cry, used by hunt saboteurs to attract hound packs away from the suspected location of a fox.

Extract 6: what's the point in laying trails? Webinar 2

MH	1	Some people sa:y well hh (0.3) what's the point in laying trails (0.2) well I think it's (.) fairly self-explanatory (0.4) err if you haven't laid a trail on a daily basis you're not going to be covered by the
	5	insurance↓
		[…]
		um obviously we also need it (0.5) um if we're going to get any support from the police, particularly when they are dealing with (o.4) saboteurs and the like if you
	10	haven't got any (0.8) viable trail laying evidence (0.5) how on earth are we going to refute these allegations↓ and this is increasingly (0.8) come to light with us now that (0.6) the police are not prepared to support us when we have problems with
	15	saboteurs (0.4) umm if we can't prove (0.2) quite conclusively that we're not taking the mickey (0.5) err and just using this (.) as a shield↓

It goes without saying that the question *what's the point in laying trails*? when the topic under discussion is trail hunting is rather an odd one. Hankinson does not say *what's the point in laying additional trails.* Without a trail, of course, trail hunting cannot take place.

Note the appeals to *logos* here, as we saw earlier: *it's fairly self-explanatory* (lines 2–3), *you're not going to be covered by insurance* (lines 4–5), *obviously we need it… if we're going to get any support from the police* (lines 7–8). Note too the *ethos* appeals that come from Hankinson's professed authority on the matter, *well I think…* (line 2) as well as his othering of people who might ask the question *some people say* (line 1), and the frequent appeals to *pathos* that function to construct a collective victimhood for the assembled hunters: *how on earth are we going to refute these allegations* (lines 11–12), *the police are not prepared to support us when we have problems* (lines 13–14). This construction is perhaps not a surprise given the tendency noted above for the hunting community, in response to the 2004 ban, to make claims about the importance of hunting to their cultural identity: claims which were repeated when the Countryside Alliance and others mounted a legal challenge to the Act on the grounds that it was incompatible with the European Convention on Human Rights [8].

Towards the end of the second webinar the chair, Tory peer Lord Mancroft, is fielding questions from the audience.

Extract 7: 'we only record all the legal things that we do', Webinar 2

LM	1	the next question or the last question >rather< is: .hh (.2)uh- is there any risk of something (.) .h like a GoPro <that it could be> con- confiscated by police and they accidently have footage that is incriminating (.) 5 well the answer is yes there might be and Paul was talking about it a couple of minutes ago so please those of you who are (.) .h filming and recording please (.) don't stand there recording um the (.) opposition um blowing their firing uh their gizmos n 10 blowing horns uh and say isn't that marvellous that they haven't seen us because we've just caught a fox behind them↓ […] make sure that we only record all the legal things that we do >because of course< we only do legal things↓

The mere positioning of himself as chair of a webinar advising and answering questions is an *ethos* appeal, supported further here by the detailed explanation of a hypothetical scenario in which a hunt member inadvertently reveals their own illegal activities while video recording the saboteurs for monitoring purposes. Mancroft urges the audience to *make sure that we only record all the legal things we do* and then is quick to self-repair this seeming admission to engaging in illegal activity, asserting on line 15 that *we only do legal things.*

4 Concluding Remarks

Following these analyses we can surely be in no doubt that the speakers at the webinar were indeed referring to illegal hunting practices and advising how to get away with them. Given that 'taking steps to reduce the possibility of criminal proceedings being brought in respect of the offence' [22 s. 65(2)] is specified as a means by which a person may *encourage or assist*, it seems this element of the offence has been satisfied. Numerous rhetorical appeals are made throughout the webinars, and our exploration of semantic prosody demonstrated how we can easily formulate interpretations of particular words and phrases as incriminating, even when they have seemingly neutral definitions. Curious, then, that HHJ Perrins would state at appeal that 'the appellant's words in the first webinar do not amount to clear evidence of encouraging illegal hunting'.[21] His ruling regarding Hankinson's intent, on the other hand, is a little trickier to address with linguistic analysis.

[21] https://www.itv.com/news/westcountry/2022-07-20/huntsman-wins-appeal-against-conviction-for-encouraging-illegal-fox-hunting

An important discussion point is raised here about the distinction between *inciting* (the speech act) and *intentionally encouraging or assisting* (the criminal offence). The earlier discussions of pragmatic theory and criminal law suggest that while perlocutionary effect is redundant for both the speech act and the criminal offence, speaker intent is not a requirement for the speech act—but it very much **is** so for the criminal offence. The issue of intent was obviously crucial for the quashing of Hankinson's conviction, with HHJ Perrins commenting that he could not be sure that Hankinson's words met the 'criminal standard required that it was his *intention* to encourage illegal hunting'[22](my italics). The judgment indicates that it was Hankinson's stated intention of advising the audience how to misdirect saboteurs that cast doubt on the *intention* element of the conviction. Furthermore, HHJ Perrins observed that 'at no point did the appellant make explicit reference to using the exceptions as a way of hunting illegally': an interesting inclusion given that it had already been ruled by the original trial judge that 'whilst he didn't use overt words, he implied it again and again'.[23]

Furthermore, Hankinson's 'good character' was submitted in his support at appeal, with HHJ Perrins noting the claim that 'he is not the sort of person who one would expect to encourage flouting the law'.[24] Perhaps most striking are the observations that the webinars were not **promoted** 'to in any way encourage or condone hunts which contravened the Hunting Act'—as if criminals routinely advertise their unlawful activities as such—and that with over 100 people in attendance 'it is highly unlikely that the appellant would have intended to encourage such people to break the law, as he had no way of knowing whether his audience might report him to the relevant authorities if he did'.[25] Interestingly HHJ Perrins made specific reference to the presence of 'police officers and a member of the House of Lords' among these, neglecting to mention the fact that both of these were co-hosts of Hankinson's, addressing the audience on the same range of topics, and, as shown above, adopting the same linguistic strategies for doing so. Hardly likely candidates for reporting Hankinson to the authorities.

Another aim of this paper was to address the outrage and confusion expressed by anti-hunt activists and even the original trial judge about the decision to prosecute only one of the speakers in the leaked webinars. It is clear that the *intentionally encouraging or assisting* was not restricted to the words of Hankinson but is evident in the talk of other participants: notably Lord Mancroft and former Chief Inspector Phil Davies. The scenario that Mancroft refers to whereby hunt supporters may inadvertently incriminate themselves on videotape would be an impossibility if there were nothing to incriminate themselves *for;* and Davies' use of the *smokescreen*

[22] https://www.independent.co.uk/news/uk/crime/hunting-hankinson-appeal-latest-illegal-b2127794.html.

[23] https://www.independent.co.uk/news/uk/crime/fox-hunting-illegal-mark-hankinson-trial-guilty-b1939057.html.

[24] R v Mark Hankinson—Appeal against Conviction. Ruling on Appeal. Sourced from Private Communications.

[25] R v Mark Hankinson—Appeal against Conviction. Ruling on Appeal. Sourced from Private Communications.

metaphor is arguably more incriminating than Hankinson's. His talk of *creat[ing] that element of doubt that we haven't deliberately hunted a fox* is a fairly resounding admission that this is, in fact, exactly what has happened in this hypothetical scenario.

To conclude, there are elements of a language crime such as *intentionally encouraging or assisting* that can usefully benefit from linguistic analysis of a number of persuasions. Elements of corpus linguistics and rhetoric analysis have worked together to cast light on the processes at work in the linguistic evidence that was put before the Court. They have shown that the words uttered by Hankinson and others did indeed amount to *persuasion,* which according to legal definitions is a synonym for *incitement*, which is the England & Wales legal antecedent to *intentionally encouraging or assisting*.

What remains in the shadows is how we might best unpick the notion of *intent* as it relates to this offence. While what was contained in the recordings was evidently enough for Ikram to convict, this was not the case for Perrins. As further details and records come to light it would be apposite to revisit Perrin's claims about the impossibility of reaching the threshold for judging Hankinson as having the requisite intent to be convicted. As shown above, his claim that Hankinson's words did not amount to encouragement is not consistent with the linguistic evidence, and it would be interesting to see how far such analyses might take us in investigating the issue of intent.

Declarations

Conflict of interest There are no competing interests o disclose.

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