(Continued)

cloak all utterances in legality. "It is one thing to say that the police cannot be used as an instrument for the suppression of unpopular views, and another to say that, when the speaker passes the bounds of argument or persuasion and undertakes incitement to riot, they are powerless to prevent a breach of the peace."

Viewed in context, defendant's words—IT'S GOOD THAT THE WORLD TRADE CENTER WAS BOMBED. MORE COPS AND FIREMEN SHOULD HAVE DIED. MORE BOMBS SHOULD HAVE DROPPED AND MORE PEOPLE SHOULD HAVE BEEN KILLED—were plainly intended to incite the crowd to violence, and not simply to express a point of view. But the allegations extend beyond mere words. It is further alleged that defendant accosted people in the crowd and shouted a threat—WE'VE GOT SOMETHING FOR YOUR A-----—directly into the faces of some of the onlookers. It is also alleged that as the confrontation escalated, defendant and his accomplices refused police entreaties to disperse. This conduct went well beyond protected speech and firmly into the realm of criminal behavior. It was far more than "the mere abstract teaching . . . of the moral propriety or even moral necessity for a resort to force and violence"; under the circumstances, it constituted the very real threat of violence itself.

All that is required under Penal Law section 240.08 . . . is that defendant urge ten or more persons to engage in tumultuous and violent conduct of a kind likely to create public harm. Angrily confronting and threatening a crowd of onlookers with the intent to stir the crowd to violence is sufficient; the object of that tumultuous or violent conduct is irrelevant so long as the conduct defendant urges is of a kind likely to cause public harm. . . .

Penal Law section 240.20 provides, in pertinent part, that a person is guilty of disorderly conduct "when, with intent to cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof . . . he engages in fighting or in violent, tumultuous or threatening behavior." . . . Defendant's words and deeds as alleged in the complaint demonstrate his intent to cause public inconvenience, annoyance, or alarm, or recklessly create a risk thereof by engaging in tumultuous or threatening behavior. Therefore, defendant's request to dismiss both counts in the accusatory instrument is denied.