

Consent: Objectivity and the aesthetics of re-enactment in locative audio journalism about a sexual assault trial

By Jeanti St Clair

Consent – walk the walk (version 1.0.2)

by Chris Brookes and Emily Deming (2018)

Geo-locative audio mobile app available at <https://apps.apple.com/us/app/consent-walk-the-walk/id1420507884?ls=1>

Streaming podcast version available at <http://batteryradio.weebly.com/landscape-journalism.html>

Introduction

Consent is a geo-locative audio documentary walk in St. John's, Canada, based on verbatim testimonies from the court transcripts of a 2017 sexual assault trial. An on-duty and in uniform police officer, Constable Carl Douglas Snelgrove, was charged with sexually assaulting an intoxicated woman he drove home from the town's nightclub precinct on December 21, 2014. The two-week jury trial in

February 2017 returned a ‘not guilty’ verdict.¹ Immediately after the verdict, defence attorney Randy Piercey told waiting media that if people were “going to cause an uproar”, they should “get the transcript of the trial..., come to the court and watch what actually happened.” (Newfoundland police officer acquitted, 2017) An ‘uproar’ did follow. As renowned audio documentary maker and *Consent*’s co-producer Chris Brookes noted:

The day after the court case, ...every wall in downtown [St. John’s] was printed with graffiti and spray painted and there were several marches for days there. Oh, yeah, people were outraged.

(C. Brookes, personal communication, 28 April 2019)²

Brookes had been producing audio walks in St. John’s for several years. His oral history and heritage walks include *Inside/Outside Battery* (Brookes, 2013) and *Neighbours* (Brookes, 2018), and his experimental fictional work is *Bannerman Quartet* (Brookes, 2015). All were published as geo-located/place-based audio narratives accessed on GPS-triggered mobile apps. As a narrative platform, geo-locative audio walks emerged in the early 2000s when the global positioning system (GPS) data was made public. Media artists, software developers and theorists saw the potential to “rewrite” the city by using GPS as an expressive tool (de Souza e Silva and Frith 2014). While many early contributions were game-based, others produced geo-locative audio walks that extended upon soundwalk practices of the 1960s-2000s, most notably Janet Cardiff and George

¹ While the original trial acquitted the police officer, in 2019 the Supreme Court of Canada ordered a re-trial on the grounds the trial judge erred in directing the jury. The re-trial with a new judge is scheduled for March 30, 2020.

² An extended in-depth semi-structured interview with Chris Brookes was conducted in St. John’s, Canada on April 28, 2019 following the author’s *in situ* evaluation of *Consent*. This article quotes extensively from this interview, and some follow-up clarifying emails with Chris Brookes and his co-producer, Emily Deming. These are all cited in text as ‘personal communications’.

Bures Miller, Stephan Crasneanski (Butler 2006), and the World Soundscape Project's soundwalks. The emergence of app-based mobile phone culture has facilitated place-based audio storytelling. To undertake a geo-locative audio walk, you need to open the app and visit a set of physical locations displayed on its map to trigger *in situ* playback of audio stories that relate to each position. The medium has become popular in the heritage and tourism sectors. However, Brookes had been looking for an opportunity to explore how "site-specific audio could illuminate a news/current-affairs story" (C. Brookes personal communication, 24 October 2019). Few geo-locative audio producers have used the medium to explore current news events, instead looking toward current issues, for example climate change (e.g. *It Must Have Been Dark By Then* (Speakman, 2017)) or urban development (e.g. *34 North 118 West* (Hight, 2002)). Brookes now calls news-focussed audio walks "landscape journalism" (Brookes & Deming, 2018b), a concept that will be expanded on below in this critique.

Piercey's dismissive call to protesters did not escape Brookes' attention. But it was the case's compelling news value, and that the result was strongly contested by the community, which motivated Brookes to produce an audio walk about this trial. Brookes enlisted the collaboration of journalist Emily Deming, who had reported on the trial for Newfoundland's alternative newspaper, *The Overcast*. In particular, the co-producers felt this project could highlight the tension between popular and legal understandings of the term 'consent' in sexual assaults. It was also a means to keep the debate alive. Brookes hoped it would provide some "resolution or... a constructive engagement with this disconnection" (C. Brookes, personal communication, 28 April 2019). Deming said, "understanding the laws around sexual assault is an important first step for those who would like to see those laws changed" (Crocker, 2018). This project

was remarkably timely. *Consent* would be finally published on Google Play³ and the Apple AppStore on September 9, 2018 – less than four weeks before *The New York Times* would publish its report on Hollywood producer Harvey Weinstein’s alleged history of sexual assault and harassment against women, which saw the emergence of the #MeToo movement (Kantor & Twohey, 2017).

However, turning the court proceedings into an app-based audio walk faced a significant logistical challenge. A court-ordered publication ban under Section 486.4 of the Canadian Criminal Code prohibited the use of the court case’s audio recordings in order to protect the identity of the complainant. (The complainant was identified in court only by the anonymised ‘Jane Doe’.) The publication ban made the transcript “bloody difficult to get hold of” and the public would have needed to sit through the trial to understand the way the jury had reached its decision (C. Brookes, email communication, 24 October 2019). But as a geolocative audio documentary, *Consent* would facilitate that access. A request by Brookes and Deming to send the recordings to a commercial transcription service was turned down by the trial judge. Brookes would spend several weeks in a small room in the Supreme Court of Newfoundland and Labrador transcribing by hand the 6.5 days of court recordings. To turn these into an audio-based work of landscape journalism would require the source materials to be re-enacted by actors, who would voice the verbatim testimonies. Brookes would also seek to bring to life the actions described in much of the testimony through re-enactments dramatised by the actors and sonic scene re-creation. Without the scenes, Brookes said the listening experience would be “boring sonically” (C. Brookes, personal communication, 28 April 2019.).

³ *Consent* is not, at the time of this article’s publication, available at Google Play.

While this geo-located audio documentary walk is a compelling place-based listening experience, this article argues that *Consent* does raise issues around the impact of dramatised re-enactment in the journalism and documentary fields, and around the role that sound design treatment can play in affective influence over the audience's response. This article further explores the design choices and some of the aesthetic, ethical and legal challenges faced by the audio walk's co-producers in applying journalistic concepts of objectivity and balance against the need to create a work that would hold the listener's attention for its duration. Although it is possible to frame this work as part of the true crime genre (Punnett, 2018) – and this article does draw on some literature from this field – this author accepts the co-producers' broader positioning of *Consent* as "landscape audio journalism" (Brooke & Deming, 2018b), and that they have taken a journalistic orientation in newsgathering. This includes applying normative ethical ideals of truthfulness and accuracy, fairness and objectivity, and to remaining fact-based, and not editorialising on the trial. Buozis (2017) notes that *Serial* (2014) creator Sarah Koenig positions her influential podcast similarly as "grounded in the evidentiary truth claims of mainstream journalism" (p. 255).

The enigmatic quality of objectivity in journalism and documentary

Tuchman (1974) classified the aforementioned normative practices in journalism as "strategic procedures" used to meet deadlines and avoid risks of litigation or claims of bias (p. 665). Calcutt and Hammond argue that these rituals of objectivity "do not, in themselves, produce objective knowledge" (2011, p. 100), yet they remain commonly accepted by audiences and practitioners alike as moving towards an ethics of objectivity and impartiality. At best, objectivity in journalistic endeavours is partial and aspirational: to be as objective as possible.

However, as Buoziš argues, journalism's attachment to its objectivity claim still ignores the "positionality of the producer" and "those routines that constitute the basis for that representation" (2017, p. 256), and therefore, Broersma notes, the "subjective interpretation and news selection of the individual journalist" (2010, p. 27). Routines such as source selection, and the process of filtering information for inclusion, exclusion or sequencing mean that subjective decisions have already been taken. These journalistic strategies in enacting a stance of objectivity however frequently work in tandem with more ficto-narrative and rhetorical strategies commonly applied in the feature documentary; the latter are used to enhance subjective and affective responses in the audience, and hence heighten engagement with the work. Indeed, even while *Consent* is positioned as journalism (Brookes & Deming, 2018b), Brookes acknowledges that his and Deming's hope was to emotionally engage the listener while signalling that the content is based on factual materials.

Hopefully, it doesn't allow you to remain impartial in the sense that you were stepping back from entering into and engaging with the material. Opinionating is a different thing. I want people to be involved with the material, to be right there when the assault is happening and to be horrified by it.

(C. Brookes, personal communication, 28 April 2019)

The tension between these two positions is resolved somewhat by what Beattie (2004) describes as "a tacit agreement between producers and audiences that the presentation is ethically faithful to the pursuit of 'truthfulness'" (p. 85, cited in Larke-Walsh & Kelly, 2010, p.35). This offer of a commitment to facticity and realism is evident in Brooke's self-identification as "the journalist" who is

“remaining objective”. His subjective decision-making routines employed in the production of *Consent* as director and sound designer work not to “*manipulate* the listener [but involve them in what] *is* a moving drama, in emotional terms”. (C. Brookes, personal communication, 28 November 2019, emphasis in original).

Consent employs four key narrative strategies to turn the text-based Snelgrove court transcripts into a compelling geo-locative audio documentary walk. Firstly, it reorders the material from its courtroom chronology into a form more familiar to public audiences. Secondly, it uses actors to perform, rather than simply read, an edited version of the court transcript. Thirdly, *Consent* animates much of the action discussed in testimony through a layer of dramatised sonic scenery that plays in parallel to courtroom testimony. Finally, the geo-locative placement of the narrative along a route which has significant “spatial proximity” (Oppegaard & Rabby, 2016) to the setting of the alleged incident, enhances the concrete reality of the truth claims made during the trial. This article argues that together these strategies work to inform, affect, immerse and activate the audience as a mobilised jury, with *Consent* operating as a public courtroom on St. John’s streets.

Truth claims and the re-organisation of testimony in *Consent*

Criminal trials have an established order of presentation in which the prosecution and defence cases unfold (Ontario Court of Justice, 2012). After arraignment, election and plea, the trial opens with the case for the prosecution with examination of witnesses by the prosecution, and cross examination by the defence following. The defendant’s lawyer may then call a defence and present additional testimony including experts and other material. In the Snelgrove case,

his lawyer called an expert on toxicology and alcohol blackouts. Any defence witnesses can be cross-examined by the prosecution, and they may seek a rebuttal to deal with any matters that have come about from the defence's evidence. Once all evidence has been examined by both sides, closing submissions based on the evidence presented at trial are made by the prosecution and defence. This procedural structure is antithetical to both journalistic and dramatic narrative form. In journalism, different points of view are closely juxtaposed against each other, and an accused person or entity is given a right of reply. Narrative is also organised thematically and chronologically to support an understanding of an event. Dramatic narratives are usually chronological, dialogic, with action driven by characters and their motivations, and they 'makes sense' according to the referential rules of the narrative world (Barthes, 1974). Narratives have a 'shape' governed by events, which disrupt the lives of the story's protagonists, and by those protagonists' actions, which seek to resolve the disruption, but which ultimately change the protagonists (Todorov, 1969). In order to introduce a cohesive narrative that would 'build' as an audio documentary walk, Brookes re-arranged the court transcripts from their formal legal order of presentation into a chronological and dramatic narrative, and edited some sections for length.

Court testimony operates as a truth claim in the justice process (Buozis, 2017), and in journalism. In court, lawyers use testimony not only as evidence but also to gain the jury's emotional and rational assent (Pâquet, 2018). The prosecutor and defence lawyer each have the same set of evidence from the complainant, defendant, witnesses and experts, but they craft a different story in a quest to convince the jury that this "lawyer's narrative is the most logically and emotionally persuasive" (Pâquet, 2018, p.80). Testimonial quotes and legal

argument also form the basis of fair and accurate media reports of cases before the courts, but the laws of *sub judice* contempt limit these reports to material presented in court (Canadian Judicial Council, 2007). *Consent* has principally limited itself to using the court transcript – even though it need not have done so – and therefore to using those sources which the defence and prosecution have called to testify, and which the laws of evidence allow. The exception is in the inclusion of an afterword from non-aligned lawyer Allison Conway, who discusses the challenges facing any prosecution lawyer in arguing that consent was not given.

Consent re-organises the court transcripts into a structure sympathetic to journalistic, dramatic and geo-located forms. Brookes takes the testimony and argument from its courtroom chronology and sutures the two sets of truth claims against each other into a chronological order of the events of the night as they unfolded. This suturing both “reshapes the narrative of the [alleged] crime” (Buoziš, 2017, p.261) and provides a new way to read those truth claims around the common news reportage format of ‘he said/she said’ format. This is done in conjunction with a limited paraphrasing of testimony, by excluding *voir dire* discussions on the admissibility of evidence or witnesses and other court business, to focus on the matters most closely relating to the narrative of the alleged crime. In *Consent*, Brooke’s use of this technique works also to shortcut for the public listening audience what would be a task of several days sense-making for the actual trial jury. In doing this, *Consent* becomes a window into the trial, the “public’s surrogate”, its sense-maker; as is the media more broadly, translating matters that are of public interest and concern, but which are not always observer-friendly, into a more commonly understood narrative form (Canadian Judicial Council, 2007).

Suturing, as a narrative structuring technique used in documentary, supports audience identification with the subjects of the narrative. Susan Muska and Gréta Ólafsdóttir apply this method throughout *The Brandon Teena Story* (1998), their documentary about the gang rape and murder of a transgender man by a group of men he had met in the US state of Nebraska in 1993.⁴ Larke-Walsh and Kelly argue that the co-directors' use of suturing in this documentary works to imply truth claims made by Brandon and his girlfriend Lana were attempts to "hide from the truth", and these lies were a "problem" for the men he met (2010, p. 42). Suturing allows the juxtaposition of contrasting claims without editorialising or commentary from formal narrators and this is particularly useful in a narrative that is built upon multiple and contradictory subjectivities. Audiences may then draw their own conclusions on the validity of those truth claims, as a jury might. However, *Consent's* reorganisation of the testimony out of court procedural form into the dialogic model allows the audience to shortcut their sense-making, which juries are unable to do, and also hides the subjective choices made during the editorial routines of production, as discussed earlier.

It can be argued that the primary purpose of *Consent's* 'he /she said' suturing is to more easily allow its audience to compare and test the various truth claims made in the testimonies. As the audio documentary walk unfolds, Jane Doe and Snelgrove's increasingly divergent accounts work to amplify any seeds of doubt that the audience might have about either particular account of the night's events. Their testimonies become parallel truth claims, each "simply one version of the possible truth" where, without a guilty plea, we can never know "with certainty what happened" (Pâquet, 2018, p. 86). Through the reorganisation of

⁴ These events were later explored in the feature film *Boys Don't Cry* (1999), starring Hilary Swank as Brandon Teena/Teena Brandon and Chloë Sevigny as his girlfriend Lana.

testimony, we also become more aware of the rhetorical legal argument of the defence, in particular, that sits behind the questions asked of Snelgrove and Jane Doe in court. The prosecution's legal argument is that Jane Doe was in no state to give consent and that, as a police officer, Snelgrove had a duty of care for the young intoxicated woman. Jane Doe says she was drunk, her memory was patchy, unclear, and Snelgrove offered to drive her home. But Snelgrove's lawyer works to build doubt as to whether Jane Doe gave her consent, or whether the constable could have reasonably believed that consent was given. His testimony follows the line that Jane Doe seemed only a little drunk, that she persisted in asking for a ride, she flirted with him, she invited him in, she wanted to have sex with him.

Place-based audio's use of proximity: empathy and the audience as 'witness'

As a geo-locative audio walk, *Consent* is designed for a mobile audience following a designated route and requires "situated engagement... [from an] active user" (Øie, 2015, p.259). The walk's route runs through St. John's nightclub and justice precincts along Water Street and Duckworth Street, beginning outside the Sundance Bar on New Gower Street. We must now physically locate ourselves at the starting point of *Consent*. While stories may be manually triggered to play off-site, the full *in situ* experience of *Consent* heightens our sense of being a "close-up witness to what's happening" (C. Brookes, personal communication, 28 April 2019). Locations 1 to 12 are co-labelled with a time, which establishes a chronology of the night when the alleged assault occurred. Locations 13-15 (the expert, the closing arguments and afterword) relate to events and commentary outside of that night.

Brookes and Deming classify *Consent* as “landscape journalism” (2018b). We might also call it place-based or spatial journalism, which Schmitz Weiss describes as journalism that is connected to its “social meaning via a place, space or location” (2014, p.126). Place-based journalism becomes hyperlocal in its orientation to the news value of proximity when it is designed to be accessed and consumed *in* the place it is reporting on. This zooming in refocusses the lens of proximity from geographic to “spatial proximity” (Oppegaard & Rabby, 2016). Spatial proximity links content either directly, indexically or thematically to the micro-location, or provides contextualising information (St Clair, 2018). This “hyperlocal situated engagement” (St Clair, 2018, p.22) has the capacity to co-generate emotional proximity as the listener can more concretely associate an event with place and the *in situ* experience supports a listener’s adoption of an intersubjective perspective. As a layer of augmented reality over a site, location-based audio enhances the immersivity and engages from a “first-person point of view where [listeners] are more of a participant to past events” (Pavlik & Bridges, 2013, p.22). As Brookes notes about *Consent*: “[The fact that] you’re standing right there on the spot where she climbs into his car” makes you “more of a witness...to what is happening” (C. Brookes, personal communication, 28 April 2019). Pâquet argues, following Frith and Kalin (2016), that through the act of walking, we “create new space... [and] memory places” that “give these narratives a sense of concrete place and time” (2018, p.89). This article extends this idea to argue the combination of walking with close listening and mental imagery generation can “deepen the quality of the audience experience and improve journalism’s capacity to educate and inform its audience” through the high spatial and contextual proximity of the narrative to its setting (St Clair, 2018, p. 30).

Within *Consent*, Brookes also constructs a complex layering of chronology and place that goes beyond geo-locating chapters of the audio documentary on St. John's streets. While the physical position where the listener stands on the street has either direct, indexical, thematic or contextualising spatial proximity to the place discussed in the testimony, Brookes allows the locations in the narrative – we can call these 'sonic settings' to differentiate from the real world locations on the audio walk route – to shift seamlessly from the courtroom to places where the action discussed in the testimony happens.

I wanted listeners to have one foot in the court - to continue the awareness that all this is verbatim testimony - while from time to time dodging out into the reality of the scenes being described.

(C. Brookes, personal communication, 27 November 2019)

Time shifts too, back and forth, depending on whose testimony is heard and in which location we find ourselves, but ultimately time edges forward to the narrative's climax. Brookes' sonic scene setting at times is backgrounded to the court testimony; other times, the court testimony becomes a narration and the sense that you are 'in court' listening to a witness give testimony fades to make way in your imagination for the scene and action being described. You are transported to the setting where the action in the testimony happens and it is re-created for us by the actors who perform, rather than read, the testimony and by Brookes' scenic sound design. This immersivity is enhanced when the spatial proximity of the testimony is explicit (Reid et al., 2005; St Clair, 2018), as in Location 5 where we hear Jane Doe stumble on stone stairs, and walk along the lane after leaving Velvet Nightclub, having decided to find a taxi and go home as she was "too drunk to still be out" (*Consent*, Location 5). We are standing in that

laneway, we know she was here, and we can imagine her. At Location 6, we see the taxi stand on Water Street that she was heading toward. There *is* a waiting taxi there, and when we hear Snelgrove testify that there was *never* a taxi at that stand, our gut tightens. We ask ourselves: Is he telling the *truth*? We feel ourselves to be witnesses, after the fact; yet we are doing what juries are not permitted to – visit the scene of a crime without court authorisation. In several chapters, Brookes creates parallel scenic action but presents it as background chatter performed by the actors, and the dialogue is not always clearly heard behind the court testimony. It is as though we are eavesdropping and are juggling being in two places at once. Brookes' sometimes subtle use of atmospheres in scene-setting helps focus the attention of the listener – for instance, the distant foghorn that announces a ship's late night arrival in St. John's harbour, or the sound of a chair shifting and papers being shuffled, which signals to us a return to the courtroom setting, even when we may not have noticed that the narrative had changed setting.

Review of *Consent*

The audio chapters of *Consent* run for approximately 70 minutes across 15 locations and are designed to be listened to through headphones. But as a geo-locative walk, the entire work takes longer to complete as the listener travels on foot, from location to location, across the walk's approximately 1.2 kilometre route. The app's screen interface opens with a pop-up instructional note for the user and a trigger warning about the distressing nature of content. We immediately hear a modulating rounded tone that tightens, lifts, turns, and momentarily becomes musical as it traverses a limited range of notes. The crackle and static of a police communications (comms) radio, a sound that

becomes a central motif in *Consent's* sonic landscape, shifts from our left to our right ear and back. During a 40-second montage of crisp excerpts from the court transcripts, we are introduced to the documentary's main protagonists – the complainant Jane Doe and accused Constable Snelgrove, but not by their names, only by their voices: “I was drunk”; “I’m a police officer”, “I figured it would be safer to go with a police offer than with a cab driver”, “I disrespected my wife, I disrespected my uniform” (Brookes & Deming, 2018a).

As editor and director, Brookes’ careful selection of excerpts in the introduction do not explicitly mention sexual assault but draw us into a jagged web of related, but disjointed, fragments. The courtroom. A nightclub. These come to us, fractured, as memories of a drunken night might. We must spend time piecing these together to understand that ‘something happened’ between an intoxicated woman and a police officer. Jane Doe closes out the introduction telling the Crown Prosecutor she did not think there was any point going to the police. He asks her why. “Because it was a police officer. And I was drunk,” she replies. More radio comms static crackles and then we are left with silence.

On the app’s screen, we can see a photograph of the Supreme Court of Newfoundland and Labrador building in St. John’s, and three icons at the foot of the screen: one takes us to the app’s map, another to background information on the case and instructions on using the app, and the third to links for sexual assault services, information on consent and sexual assault laws, as well as some media reports on the Snelgrove case. Each chapter also reveals a fragment from Edgar Allen Poe’s 1847 short story *Into The Maelstrom* about a sailor being sucked into a whirlpool. The producers felt these brief excerpts worked as a dark “metaphor of the urban night for women” (C. Brookes, personal communication,

28 April 2019). These sit enigmatically hidden from plain view, as we are asked to 'scroll for text' as each new chapter appears on screen.

Location 1 (2.08AM outside the Sundance Bar on George St) and Location 2 (Midnight, on Water Street) operate as establishing scenes and introduce the accused, the complainant and key witnesses for the Crown Prosecution. Location 1 opens with the police radio static and Constable Snelgrove calls in his unit to the police comms centre. Location 1 is where we are introduced to the courtroom setting sonically through the reverberance of the room and the voices in that space, the incidental coughs, murmurs and movement of chairs, papers shuffling. The court clerk swears Constable Snelgrove in, who then swears to tell the truth, and spells out his name for the record. When we walk to the corner of George and Water Streets, Location 2 triggers the next chapter and we hear the now identifiable courtroom sonic profile. The routine of the court is apparent and we hear the complainant Jane Doe being sworn in. Jane takes us to events earlier in the evening; drinking with friends, and then deciding to go clubbing around midnight. Here, Brookes introduces the first sonic shift from the courtroom to one of many settings we will slip in and out of as testimony is given. We are standing on Water Street, the heart of St. John's nightclub and justice districts, but Brookes takes us away from our physical location to Jane's friend Ray's house in Mount Pearl where Jane and three friends, now witnesses whose testimony we hear in the court, are drinking, and then to the arrival of a taxi which delivers them all to Water Street. Meanwhile, the Crown Prosecutor examines them and establishes everyone was "pretty tipsy" (*Consent*, Location 2), while we hear the friends step out of the taxi into Water Street as a background scene. The sonic scene now conforms to the spatial proximity of the physical location of this point on the route. Location 3, situated a little further

along Water Street, deals with Constable Snelgrove's training and experience in handling intoxicated persons (known as D.I.Ps), including at 2.38AM that night. Re-enacted police radio exchanges between Snelgrove and the comms centre, and testimony about standard police procedures in processing a D.I.P., set the scene for understanding whether Snelgrove follows those procedures in driving Jane Doe home. So far, we have had limited exposure to Brookes' strategy of shifting sonic settings. Location 2 largely kept the sonic scene-setting as background. Location 3 shifts between the sonic setting of the courtroom and police radio communications only. However, Location 4 is the site of perhaps the most compelling and inventive sound design and performance in *Consent* as it moves away from simple re-enactment of the court transcript to creating a hybrid setting that is simultaneously courtroom and nightclub.

Location 4 begins where Location 2 ended, with the friends' arrival by taxi to Water Street, as signified by the sound of passing cars on a slightly wet street, a beeping horn, and the friends getting out of the taxi. We are back in Jane Doe's chronology: it is 12.30AM, it will be two hours before she meets Constable Snelgrove. This chapter explores those two hours and includes the Crown Prosecutor questioning Jane Doe and her friends - Ray, Anita and John – about what they did at the club (they drank, they talked, they danced) and the Defence Counsel's cross-examination of Jane Doe as to her intoxication and decision-making capacity during that time. But while this 'to-and-fro' involves the routine and agents of the court process, Brookes has chosen to shift the sonic setting of this location from the courtroom to the site where the action discussed in testimony occurs. Location 4 takes us from outside Velvet Nightclub, where we as listeners remain standing, imaginatively to the interior of the club. McHugh (2012) and Rodero (2012) note that mental imagery generation and emotional

engagement is enhanced via descriptive and mood-generating sound design. The dull thump of club music as if heard from the street becomes louder as the door to the club opens and we ‘follow’ the group sonically and imaginatively through mental imagery generation, inside. As witness, Anita explains how they checked their coats and she bought a round of shots. The music is now full frequency, bass-filled, pumping, and so challenging to hear over that the actor performing Anita raises her voice significantly and speaks in a slightly agitated manner, as though the music is making it difficult for her to communicate her testimony to the court. This hybridisation of court and nightclub creates an immersive, yet impossible, third space as suggested by the actor’s agitated performance of Anita’s testimony. This disjunction is further emphasised by our physical position as listeners standing outside the club but listening to the scenic action set inside. We are simultaneously immersed in the club setting and distanced from it. Our physical position (outside) is not matched by our point of audition (inside). Yet Brookes finds moments to break from this third space to return to the relative quiet of the courtroom, predominantly to ‘make space’ for the lawyers’ questions to Jane Doe and her responses, and to remind us of the source of the story we are being told.

I felt that the lawyers asking questions during [all] the exterior scenes had to have a reverb on voice to situate them in the courtroom, otherwise their interjections wouldn’t make sense.

(C. Brookes, personal communication, 27 November 2019).

However, these sonic lines are crossed continually by the incursion of dance beats into the formal space of the courtroom.

Sexual assault trials that rest on whether consent was given frequently depend on the 'he said/she said' narrative and whose truth claim – or point of view - is most credible. The Snelgrove trial is no different. But *Consent's* sound design may also be viewed through the prism of whose perspective is being presented in the sonic scenes. For instance, Location 4's performative and hybridised qualities emphasise points of view of the witnesses and complainant through matching the setting of their testimonies with sonic scenes. Yet Location 3's principal setting in the courtroom could attribute the point of view to the jury as the outcome of the trial verdict depends on their choice. Location 5 (2.30AM) focusses on Jane Doe's recollections of leaving the club, but other than the reverb on her voice, there is no sense that we are hearing her court testimony. In this brief chapter, Brookes takes only her responses to questions, and sutures these together as a monologue of her recollections of leaving Velvet Nightclub. We have moved to stand in the laneway outside the Duke of Duckworth, another club, past which Jane Doe makes her way to Water Street to find a taxi. We hear her footsteps – Jane is wearing heels – and they clatter down the stone steps we see in front of us. She tells us: "I remember everything until I went downtown. I can't remember much inside the bar. I was dancing and talking with Ray and John." (*Consent*, Location 5) Her feet stumble. Jane says she thinks she may have fallen as she had bruises on her knees and legs. A car passes on Water Street. She walks away from us. Perhaps we start to walk down the stairs ourselves, following the echoing footsteps. We may find ourselves questioning how steady Jane Doe is on her feet. Following her cross examination by the Defence Counsel about how drunk she was in Location 4, we might ask 'whose version of Jane's steps are these? Whose truth claim are we hearing?' The chapter closes with Jane saying she sees the police car, and the sound of her feet on the stone laneway echoing in an empty Water Street.

Our querying of the information we are presented with, both through the performative testimony and Brookes' sound design, pervades the next five chapters of *Consent*, and signifies our increasing engagement with the facts of the case, and the 'jurification' (Mnookin, 2005) of *Consent's* audience. We cease being passive listeners and begin to "adopt the juror perspective in relation to the evidence unravelled before us" (Bruzzi 2016, p. 274). Locations 6 to 11 might be analysed as a set, dealing as they do with the testimony of both Jane Doe and Constable Snelgrove from the time they meet until he drives her home, as well as testimony from Jane Doe's friend Matt Andrews, who she called at 3.21AM. The arrangement of testimony by Brookes makes apparent the 'he said, she said' nature of the forensic rhetoric of sexual assault trials. As Jane Doe and Constable Snelgrove's stories entwine, they increasingly present as contradictory to each other. Snelgrove, sitting in his patrol car completing a report, sees Jane Doe "walking perfectly" along the sidewalk toward his car (*Consent*, Location 6). She says she told him she was going to get a taxi; he says she asked him for a ride; she says he asked if she needed a ride home. The prosecution asks Jane Doe why she got into his police car: "Because of the state I was in, I figured it would be safer to go with a police officer than with a cab driver" (*Consent*, Location 6). He says she said her friends left her downtown; she says she thought they were still in the club. She says she tried to get into the front of the police car, and he got out to let her in the back of the car. But Location 7 begins with Snelgrove saying she got into the "rear, passenger side" on her own. He says he noticed a "faint smell of alcohol" and that she had no problem striking up a conversation. Her speech was not slurred, he says, she was a "regular coherent person" (*Consent*, Location 7). Yet in Location 8, which deals with the drive to her house, Jane Doe says she remembers little of the ride. Snelgrove says she began flirting with him, telling him he was "really attractive" and "looked good in [his] uniform". He says

he returned the compliment and said she was “cute or pretty” (*Consent*, Location 8). Jane Doe says she only remembers talking about one of her friends who was a police officer. *Consent*, like the podcast *Serial*, shows “what it is like to have to reach a decision on muddy and frequently conflicting evidence” (Bruzzi, p. 274).

Location 9 remains focussed on Snelgrove as he is examined by the Crown Prosecutor. This chapter and the following raise the issue of performance versus recitation in re-enactment, and what emotion and tone introduces to the testimony. Apart from Anita’s agitated testimony in Location 4 (Velvet Nightclub), the actors performing the roles in *Consent* are largely measured and detached in tone and fairly neutral in emotional expression. But in Location 9 and 12, we hear emotion enter the voices of the actors performing Snelgrove and the Crown Prosecutor, a quality that is significantly underplayed in the performance of Jane Doe. The Crown’s questioning explores whether the constable followed policy and argues that he tried to conceal the fact Jane Doe was travelling in his car. The actor performing Snelgrove adopts a defensive tone and denies trying to hide that he was driving a female home alone, contrary to police policy and procedures. The prosecutor asks whether Snelgrove felt he had any responsibility for her well-being, whether he was in a position of trust. Snelgrove answers in the negative: “All I was doing was acting pretty much as a taxi driver for this girl” (*Consent*, Location 9). There is some irony that Jane Doe had said she felt she would be safer with a police officer than with a taxi driver driving her home. Snelgrove’s statement is hard to hear, and not just for us. The prosecutor sounds exasperated by Snelgrove’s response. Rodden (2008, p. 169 cited in Pâquet, 2018, p. 82) notes that while the testimony “may or may not be directly ‘analogous’” to an audience’s familiar experience, they may still draw some conclusion by comparing the narrative world with their own. In the chapter

dealing with the alleged assault, the actor brings the ‘character’ of Snelgrove close to tears in speaking of how he “dishonoured [his] wife, [and] ...disrespected [his] uniform” (*Consent*, Location 12). The real Snelgrove broke down in tears when the verdict was handed down, as seen in a video posted on YouTube (Hutton, 2017). In contrast, the actor’s performance of Jane Doe is constrained, underplayed, creating a sense she is keeping it together; a rendition that corresponds with the complainant’s “subdued, almost withdrawn” demeanour at trial, as heard in court audio recordings by Brookes (C. Brookes, personal communication, 9 December, 2019).

A comparison can be drawn with Brett Kavanaugh’s nomination hearings for a position on the US Supreme Court in 2018, where Christine Blasey Ford testified that Kavanaugh had sexually assaulted her at college in the early 1980s. Ford’s testimony at the nomination hearing was, like Jane Doe’s, composed. Kavanaugh allowed himself to weep and be emotional. An overly emotional performative strategy by a sexual assault complainant would negatively influence the jury. Instead, research shows prosecutors believe a complainant should “act, speak and dress as she usually would” and present as “confident and relaxed” when delivering her testimony and through this, her credibility with the jury is enhanced. (Lievore, 2004, p.4). Rhetorical appeals to emotion and empathy work to persuade juries and audiences to become “emotionally invested” (Pâquet, 2018, p. 82) in certain versions of the narrative. Any emotion in the performances by the actors in *Consent* has the capacity to support this investment. However, Brookes said he directed the actors to underplay the emotion so the focus would be on the legal narrative and on the testimony, as he did not want *Consent* to become a melodrama (C. Brookes, personal communication, 29 November 2019).

A well-established sound design method to suggest the subjective positioning of a protagonist is the application of a sonic point of audition (Chion, 1994) and this is used extensively by Brookes. For example, Location 4's nightclub scene affirms Anita's version of events by sonically representing the nightclub as heard from her point of audition inside Velvet Nightclub. Location 5 does the same in the laneway with Jane Doe's footsteps. Brookes wanted the audience "to 'see' things as an acoustic film" (C. Brookes, personal communication, 27 November 2019). He outlines his *mise en scène* approach to Location 10, where Snelgrove delivers Jane Doe to her house, focussing on how he shifts the listener's position within the scene. He also discusses the sonic scenes in the cinematographic language of 'shots'.

[We, the audience, are] on the street and see the car approaching and stopping close to us, as Snelgrove says "So I pulled up...", with a bit of testimonial reverb on his voice. Close-up on the handbrake zooms us inside the car. We're inside the car now as the door opens and we 'see' her saying, "Thankyou, goodnight", going into the distance as she gets out, and we get out with her. Her door closes. "...and she walked to the back of her residence...". "I got back in my car..." (his car door closes, we're back in the car with him. He turns the engine off (suggesting a medium shot of police car interior) "...and I started to complete...", closeup of police radio underlines that (1) we're inside the car, and (2) he is on duty, in contact with HQ throughout this whole event. Then, when [the Crown Prosecutor says,] "so she didn't proposition you...", the lawyer's voice has room reverb plus court shuffling sounds and we're completely back in the "pure" courtroom.

C. Brookes, personal communication, 27 November 2019.)

Brookes' frequent scenic switches between court and the narrative settings across Chapters 4-10 also emphasise the tension between the various truth claims made in testimony. Brookes frequently shifts back and forth from one point of audition to another in the same scene, and this creates an uncertainty about whose perspective, whose truth claim, it is that we hear represented in the sonic scenic recreation. For instance, in Location 7, Snelgrove says he rolled down the window, and we hear this as if we are in the car with him. We hear the sound of the car travelling on the road from inside, not from our position where we are standing on the St. John's streets. Throughout, there are extended instances of a dramatised conversation between Snelgrove and Jane Doe that slip in and out of the background, beneath the courtroom testimony. We don't hear all that is said. If we listen carefully, she says she's had too much to drink, she is appreciative of the ride home. We do not hear her flirting with the constable, as Snelgrove claims she does in Location 8's chapter. We can 'read' this conversation as based on Jane Doe's point of view. But then in Location 9, we are confronted by the sudden absence of Jane Doe from the sonic scene. While the testimony from Snelgrove concerns the drive in the police car to her house, we do not hear Jane Doe chatting in the background as we did in Locations 7 and 8. She is now an unexpectedly silent passenger; less a person and more cargo being transported from point A to point B, in line with Snelgrove's perspective that he was merely a taxi driver providing a service. Does Jane Doe's absence from the scene suggest Snelgrove was trying to hide her presence in the car during his communications with police radio, as argued by the Crown Prosecutor? In Location 10, Jane Doe re-appears as part of the dramatised action, and later through her testimony. Extending on Brookes' own analysis of Location 10's dramatised scene above, we hear a subjective positionality in the action: the police car arrives at Jane Doe's house – we hear

this from a point of audition *outside* the car; the car's handbrake is applied and we hear this from *inside* the car. Brookes then moves our point of audition again to outside the car; Jane says goodbye and the car door closes, but Snelgrove remains parked outside her house. Shortly after, we hear Jane's voice at a distance saying she can't find the keys to her house. We might take this to be based on Snelgrove's testimony as her voice is presented to us 'as if' from his point of audition, yet this truth claim is presented as part of Jane Doe's statement in court. The testimony of 'he said/she said' extends into a 'he said that she said' and 'she said that he said'. Snelgrove says he offers to drive Jane to Ray's house to retrieve her keys but she declines, saying it is late and that she does not want to wake her friends. Jane Doe says Snelgrove asked if she had friends to stay with, and she says she called her friend Matt in Torbay and asked to stay with him. "Do you recall the conversation?" asks the prosecutor. No, she says, but she found logs in her phone of the calls.

While Location 10 suggests uncertainty, Location 11 returns our sonic focus to the courtroom for the testimony of that friend, Matt Andrews, and the phone calls he received around 3.21AM. We hear this testimony entirely from within the courtroom setting. The authority of the courtroom's reverberance is earthing after the previous five chapters of layered dramatization and shifting points of audition. A brief but an important chapter for the prosecution's case against Snelgrove, Location 11 provides a perspective on Jane Doe's state of intoxication through Matt's testimony. Matt says he was not comfortable with her staying at his place and made suggestions for alternatives. Their phone call is disconnected. He refers to her slurred speech and that she is "not herself", that she spoke in "short choppy sentences... like when you're talking to someone who's intoxicated, you know, that they're not completely coherent" (*Consent*,

Location 11). As Jane's testimony closes the chapter, we hear a non-diegetic and dark tone rise in the mix. Jane says: "Because I was already at my house I figured I would just find a way to stay at my house." (*Consent*, Location 11). A persistent heartbeat joins the tone, signalling something is about to happen.

Over the past six chapters of the audio walk, we have walked just 280 metres along Water Street and up Prescott Street to the corner of Duckworth Street, yet we have travelled much further in the dramatisation to Jane Doe's house. Although publication of her address or its general location is suppressed by the court, we do know from Matt's testimony she lives across from a Tim Hortons café. A Google search shows there are 20 Tim Hortons cafés around the St. John's area. Location 11 is indexical rather than actual and is positioned outside the Tim Hortons on Duckworth Street, and it stands in for the one across from Jane Doe's house. (The inclusion of these locational co-relations in *Consent* could present a potential ethical concern for the producers. By collating the data revealed in testimony and evidence about Jane's residence, it would be possible to produce a shortlist of residential areas where Jane Doe lived.) Location 12, the chapter relating to the actual assault, is set in a small parklet on the corner of Duckworth and Prescott Streets, diagonally across from the Tim Hortons. Angel's Place is – serendipitously as Brookes notes (personal communication, 28 April 2019) – a memorial site for female victims of violence. The parklet is part of a national memorial initiative to create awareness of the need to end violence and abuse against women (City of St. John's, 2011) and provides a reflective site in which to listen to this 12-minute chapter. Spatially proximate to *Consent's* narrative and connected by a shared thematic, Angel's Place brings a particular instance together with the larger issue.

Brookes said he found Location 12's chapter the most challenging to produce (C. Brookes, personal communication, 28 April 2019). It is certainly difficult listening. He sets aside his sound design strategy of paralleling scenic action under court testimony and focusses our attention on the examination of Jane Doe and Constable Snelgrove by applying a persistent yet static tone beneath their testimony. We only hear limited sonic scenery: the sound of a window opening, and later closing, at Jane's house as Snelgrove helps her climb in through an unlocked window; police radio static and communications, and finally, Snelgrove's police car as it starts and drives off. To construct a sonic scene of the alleged assault would have been "pornographic" (C. Brookes, personal communication, 28 April 2019) as the questioning of the lawyers and Snelgrove's testimony is particularly explicit and detailed in discussing the sexual activity that took place. Brookes said he excluded what he thought was especially demeaning detail from the chapter's script (C. Brookes, personal communication, 28 April 2019). Jane Doe increasingly replies she can't recall when questioned by Defence Counsel about whether she initiated a kiss, whether there was any force from Snelgrove. On the question of whether she gave consent on the night to "all the sexual activity", she replies: "I can't remember, it's possible, I guess. I was so drunk so I don't know how I would have acted. I can't say for sure what I did or didn't do" (*Consent*, Location 12).

Jane Doe's alcohol-induced memory lapses fracture our sense of certainty about what is true, and we may feel a heightened emotional and empathetic connection with her struggle to relate what she is unable to clearly recall. While, a full analysis of the legal argument and truth claims presented in this part of the trial is outside the scope of this review of *Consent*, it is important to reflect on how this case is typical of sexual assault trials where the complainant was

intoxicated during the alleged assault. Janine Benedet (2010) found in a review of Canadian criminal sexual assault cases, the complainant's intoxication is used in the trial to argue a "sort of partial advanced consent to sexual activity", but proof of non-consent is often complicated by the complainant's memory loss, and where the complainant cannot provide a full account, the defence is likely to make a "mistaken belief claim" on behalf of the accused (p.435). Gaps in a complainant's recollection, makes it "difficult to prove the elements of the offence beyond reasonable doubt", particularly where an alcoholic blackout may be evident (Lievore, 2004, p.5). The rhetorical trajectory of the Snelgrove case replicates the findings of Benedet's broader review with Locations 13 (the expert on alcoholic blackouts) and 14 (the Defence's closing arguments) arguing that Snelgrove had grounds for believing consent was provided. At Location 14 outside the Supreme Court building in Duckworth Street, the producers allow the listener to choose which of the closing arguments to listen to first, or whether in fact to listen to any or both. The inclusion in Location 15 of a legal commentary from St. John's lawyer Allison Conway provides an outside perspective on why cases resting on the issue of consent are so difficult for juries, and the difference between the legal and common understandings of consent.

Conclusion

Consent set out to provide an opportunity for the public to experience a sexual assault trial in order to better understand how Canadian laws around sexual assault and consent operate, and its producers chose to do so under the mantle of spatial journalism. The audio walk draws on factual materials, takes an

ontological and ethical stance of objectivity and impartiality in the treatment of those materials, and uses a common news reportage method which positions the defence and prosecution cases in a 'right of reply' format. All these methods support the presentation of the court proceedings in a manner that could be described as a 'fair and accurate' media report of the trial. It avoids sensationalising the matters before the court at all times. The producers avoid including their own opinions on the case, with Allison Conway's commentary the only perspective on the case from outside the court proceedings. However, due to its suite of narrative strategies, we should class *Consent* as a work of feature journalism, rather than news reportage, and acknowledge that its producers seek to emotionally engage its audience to activate debate on Canada's legal approach to consent in sexual assault trials.

News reportage *tells* us, whereas feature journalism and documentaries *show* us, often using techniques deployed in fictional narratives, including action, chronology, dialogue, scene-setting and character and narrator points of view. The four narrative strategies employed in *Consent* enhance audience comprehension of the court case and work to build an emotional connection to the issue of consent in sexual assault trials. By reordering the material from its courtroom procedural form into the more familiar chronological narrative, *Consent* provides a new way to read the truth claims made by the prosecution and defence. *Consent's* use of sonic scene recreations and the performance of testimony, rather than recitation, moves this work away from a simple reporting of the case, into the stylistic realm of fictional literary journalism. Scenic recreation is, by its nature, an imagined re-versioning of the event. Introduced emotion, mood, and atmosphere in the re-enacted material can colour audience reception of the underlying factual material. The actors performing the court

transcriptions add another layer of subjective positioning as they bring emotional intonation into the words which otherwise were available to the public only as a non-tonal written record. In animating a significant proportion of the action discussed in testimony as dramatised sonic scenery, *Consent* uses shifting sonic settings and points of audition to challenge its audience's readings of the testimonial truth claims and the legal rhetoric. Its narrative and sonic methodologies indeed make the experience of the *Consent* walk more compelling and can help bring discussions about the issue to broader public debate. As a geo-located audio documentary, *Consent* "augments reality by connecting narrative to its associated site, and this aids the contextualisation of issues and events [for audiences] by articulating them in relation to this physical world" (St Clair, 2018, p. 25).

This article argues that rather than taking an impartial perspective, *Consent* presents a balanced but invested viewpoint which, by the geo-located audio documentary walk's very existence, suggests the definition of consent, as it is considered under Canadian law, should be debated. *Consent* aims to activate discussion through an immersive and affective presentation of the court-structured evidence and testimony within a situated environment, for an active and embodied audience, and this it does very effectively. Further, Brookes and Deming have taken the geo-located audio medium into new and powerful territory by using it to interrogate a current, rather than historical, news event. Audio producers and journalists looking for an immersive medium should look to this work as exemplary.

Editor's Note: This article has been peer reviewed.

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