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#359: Melody and mayhem: Music, law and the incitement to violence

VOICEOVER

This is Up Close, the research talk show from the University of Melbourne, Australia.

PETER CLARKE

Hello, I'm Peter Clarke. Welcome to Up Close.

Most of us, I suspect, have rarely or never heard the two words acoustic and jurisprudence together, the law of sound. Our guest today has made this still relatively unexplored and unconsolidated area of the law his speciality. Dr James Parker is a lecturer at the Melbourne Law School here at the University of Melbourne. He's director of the research program Law, Sound and the International at the Institute for International Law and the Humanities. His monograph, *Acoustic Jurisprudence: Listening to the Trial of Simon Bikindi* was published by Oxford University Press in 2015.

Bikindi was accused by the International Criminal Tribunal of Rwanda, the ICTR, of inciting genocide with his songs. James is also researching and exploring legal questions around sound used as a weapon on the battlefield as torture and in cities as a crowd dispersal technique. We'll be discussing these and related issues in this edition of Up Close.

James Parker, welcome.

JAMES PARKER

Thanks for having me.

PETER CLARKE

James, how do you describe the very nature of sound for your purposes?

JAMES PARKER

Well there's no doubt that sound has physical attributes. Sound is a way of propagating energy. Precisely what it is beyond that is very much open to question. Hearing-oriented definitions of sound are contested in some quarters. The deaf community, for example, has pointed out that because sound is energy it can be experienced in many more ways than just hearing, so sound we experience with our whole bodies. In fact, the chest cavity responds best to higher frequencies and the feet best to lower frequencies. Hearing doesn't necessarily need to be at the centre of our definition of sound. The physical definitions of sound, which attribute, the sound's essence just to the energy miss certain characteristics that are really important about sound, so the way in which we attend to sound, the quality of our hearing, our listening, the experience that we bring to the listening which we do, whether we're familiar with a genre, whether the sound is accompanied by images, et cetera, et cetera radically changes our experience of sound. So for legal purposes, one of the things that interests me is which definitions of sound take priority in different contexts.

In the context of noise pollution, there's a debate about whether the key thing is amplitude in terms of the decibel level or the quality of the sound, meaning how frustrating, annoying, disturbing it is. Some people are peculiarly sensitive to certain kinds of sounds, not just frequency but certain kinds of rhythm so we know that rhythm or irregular sounds can be particularly disturbing. There's a continual debate in the literature on the regulation of noise and noise pollution about what aspects of sound are precisely the ones that we should be regulating.

PETER CLARKE

So you can take an instrument that measures the decibels coming out of a venue, for example a rock music venue, and the law I suppose likes absolute numbers?

JAMES PARKER

That's right.

PETER CLARKE

?and measurements and parameters. But what you seem to pointing to, James, is that really it's a very subjective experience, hearing or receiving sound energy. It's quite subjective.

JAMES PARKER

That's absolutely right. If you're in an aeroplane, the hum of the aeroplane quickly fades into the background but if there's a baby crying two seats away from you intermittently, that can be extremely annoying. That's a perfect example. It's not just about the decibels; it's about the kind of sound and also your history as a listener.

PETER CLARKE

The party effect is perhaps another one, where you're in a crowded party and someone talks about you a few people away and your little ears prick up and you hear that.

JAMES PARKER

That's right.

PETER CLARKE

Most of our history has been to do with sound, oral societies transmitting meaning, transmitting lore, L-O-R-E lore, via sound. So I'm wondering why the law does have such a big problem with sound.

JAMES PARKER

Well that's an extremely complicated question that could go in a lot of different directions. One extremely crude answer would be something like the enlightenment. It is extremely crude but in the last couple of hundred years?

PETER CLARKE

And the Gutenberg revolution.

JAMES PARKER

Right, and they're obviously closely related - has been a move towards I want to call it maybe a myth or a fantasy in law, not just in legal academia but also in legal practice, that law is capable of being exercised purely at the level of reason and then there are certain kinds of associations that we make with reason, a tendency towards text. The thing is, the moment you prod at this it's clear that it doesn't work. I'm writing a piece at the moment on the gavel. The gavel is only about 150 years old as

an explicit symbol of the judge and the court. This is one of the most pervasive symbols of justice we have in the world despite the fact it's an American symbol as it happens. The gavel is about sound.

It has certain sonic properties, enables the judge to interrupt speech, it's quite loud and it normally comes with a hardwood sounding block and it also symbolises the judge's authority to speak and the authority to speak authoritatively, what the judge says goes and is backed by the force of the law. So we have at the centre of law, apart from images of blind justice, et cetera, the gavel, symbolising I think the fact that sound remains really central to legal practice and despite the fact that we tend to associate legal study with text, with textbooks, with statutes, law still lives in sound. Even if law does rely more on certain kinds of texts than it did, let's say, 500 years ago in such-and-such a place, that doesn't mean that sound is any less important. It just means that it's differently important.

PETER CLARKE

We do call trials, whether criminal or civil trials, we do call them hearings.

JAMES PARKER

That's absolutely right, yeah.

PETER CLARKE

I guess part of that is, if we're thinking about a jury trial, so the jury can hear and appraise the potential honesty or dishonesty of various witnesses and we're used, through history, picking that up from an oral presentation rather than a typed-out statement from someone even if it is officially sworn to.

JAMES PARKER

It's clear that sound and listening are incredibly closely bound up historically with the idea of publicness itself. This is not just a hearing; it needs to be a public hearing. The ability for everybody in the room to experience the performance of justice at the same time is bound up with the idea of hearing per se. On the other hand, there are things called closed hearings. Justice is not fully public or equally public at the International Criminal Tribunal for Rwanda. There are no juries and most witnesses testified from behind a curtain. There they're not able to be seen. The idea is that this can protect their identity but the hearing is still public in the sense that journalists in the gallery can still listen in over headphones, there's a certain public quality to the testimony nevertheless. Precisely what it means for a legal hearing to be public is complicated and would depend from jurisdiction to jurisdiction and case to case.

PETER CLARKE

James, in my escapist moments I do enjoy legal dramas and there have been many over the years, some of them quite famous. I wonder if those legal dramas have sucked us into the idea that it's a bit like that in a real courtroom. My direct experience of observing trials is that they're very boring most of the time. Barristers can drone on. There's a very slow pace quite often. They can be quite dreary to attend as a sense of boredom, a pall falls over the court in most cases except in intense moments of drama. How does that play into your analysis of sound within a courtroom?

JAMES PARKER

It's clear that television and movies are extremely influential on our legal imagination. The International Criminal Tribunal for Rwanda operates in three languages simultaneously, so they have quite a complex system of simultaneous interpretation there. This radically changes the nature of legal eloquence. There's a delay between you speaking and the interpreter speaking to the rest of the courtroom, especially if it's in a relay system like at the International Criminal Tribunal for Rwanda where the Kinyarwanda interpreter is interpreting from the French. So if you speak in English there's a double delay. When you speak at the International Criminal Tribunal for Rwanda you have to wait for the interpretation to come through to everybody else in the courtroom. Extremely complicated listening and complex listening practices have arisen as a result of this.

At the Bikindi trial, for example, we see one of the judges recommending to various other people in the tribunal, so barristers and I think one witness, to listen with his headphones on only one ear so they could hear both the person speaking and the interpretation at the same time and this would help the witness know when to speak next. You also see the increasing reliance on text to aid listening, a transcript being produced in real time throughout the trial.

PETER CLARKE

Like subtitling.

JAMES PARKER

That's right. So you can follow what you've been saying and what other people have been saying in whatever language you want on screen. This is extremely useful when courtroom speech is so broken up, because it's very hard to remember what you said a few minutes ago, so the appropriate use of headphones, reliance on text that's generated on a screen. So speech and listening at a contemporary multilingual courtroom are incredibly different to what we see on TV. This has enormous

repercussions for how trials play out. It's clear that you can't grandstand to the same extent but on the other hand there's a whole range of different techniques that develop in an institution like this.

PETER CLARKE

Is there something to be said within your research about the very design of these courtrooms? I think of those big English courtrooms where the judge is perched right up the top, people have to project in certain ways, there are echoes. More modern courtrooms tend to be smaller and perhaps more acoustically kind to all the participants. How important is the actual design of a courtroom in terms of the hearings?

JAMES PARKER

I think it's again extremely important. A legal academic called Desmond Manderson who's an Australian talks about the cathedral-like quality of English courtrooms from around the 17th, 18th Century. The grandeur of the courtroom is intimidating and acoustics is central, is a key part of that. It can summon the majesty of the law. So the way in which legal buildings are constructed tells us something important about what law at that particular period is wanting to say about itself and it's clear that contemporary courtrooms are not trying to say the same thing that courtrooms were in the 17th, 18th Century. Now I would say that courtroom design, both architecturally and acoustically or sometimes people talk about architectural acoustics because obviously they're closely related, is in some ways a less intimidating space. Microphones, headphones and things are more a feature of contemporary courtrooms than they used to be. The hearing has more in common with a meeting in certain, particularly contemporary, courtrooms. It's not as if these grand old English courtrooms don't still exist and don't still have hearings.

PETER CLARKE

What do you mean by sonic imagination as you look at the law?

JAMES PARKER

I should begin by saying I'm indebted here to a really amazing scholar called Jonathan Sterne currently based at McGill. He's the one who coined this term sonic imagination. Now in my book and in my research I've tried to talk about law's sonic imagination. What I'm interested in is the way that legal institutions, courtrooms, legislatures, et cetera, think about sound in various different contexts. In the context of copyright law, say, how is it that a court seems to understand a song, how does it understand audio recording, what does it think is going on there; in noise regulation,

how does the legislature conceive of the problem of noise; in the International Criminal Tribunal for Rwanda, how does international criminal law conceive of the way in which a song might incite genocide; what understanding of sound does a legal institution have and how does that play out in terms of the consequences at trial for the purposes of regulation or what have you; how law understands, imagines, thinks about, conceives of sound for the purpose of regulation or judgement.

PETER CLARKE

This is Up Close. Our guest is Dr James Parker from the Melbourne Law School. His research area is acoustic jurisprudence, how the law deals with sound in various ways.

You've alluded to the Bikindi case. Give us the context and define exactly what Simon Bikindi was accused of.

JAMES PARKER

The Rwandan genocide took place in 1994. It lasted for about 100 days. It was an extremely quick extermination of well over 500,000 people. The majority of the people killed were Tutsi. This is a contested category by majority population predominantly the Hutu. It's clear that media, and in particular radio, played quite an important role in the performance of this genocide, on the one hand in terms of fostering genocidal sentiment and on the other hand actually administering the genocide, giving directions as to where people could go to find particular kind of people. In fact, there's some literature which talks about the way in which radio has become a symbol of the Rwandan genocide. It's very hard to think of the Rwandan genocide anymore without the idea of radio. We see it in movies, all sorts of different cultural representations or a lot of the history of the Rwandan genocide talks about radio.

Simon Bikindi was an extremely well-known singer in Rwanda, both in the run-up to and during the genocide. He was really Rwanda's most famous musician, just on the verge in fact in 1994 of entering the emergent so-called world music scene. He was scheduled to go on a tour of the UK in 1994, which never happened. Mostly his songs were heard on the radio. They circulated on tape but a lot of people were exposed to his music on the radio on a particular a radio station called RTLM and also another one, Radio Rwanda. It's clear that people found his songs inflammatory. This is awful. His songs were sung by perpetrators of the genocide, according to a number of witnesses, literally as they were killing people. They became something like an anthem for genocide. How that happened and to what extent Bikindi was responsible for that is an extremely fraught and important question.

PETER CLARKE

Can I draw a comparison? I don't know if it's an apt comparison. Let's go to the United States and think about big protests there, in a different context obviously; We Shall Overcome, Bob Dylan's songs, The Times They Are A-Changin', et cetera. Is there any congruence between that sort of cultural activity and what was happening in Rwanda during that period?

JAMES PARKER

Well yes there definitely is but that's an extremely complicated question. It's interesting that you cite the example of Bob Dylan because Bob Dylan was explicitly invoked by various different parties to the trial, commentators saying things like putting Bikindi on trial for inciting genocide with his songs is equivalent to putting Bob Dylan on trial for protest songs. My response to that would be well, the idea of a protest song is a phenomenon that arises in the latter half of the 20th Century, in the sense that we understand it now. Obviously there are traditions of singing in relation to protests. The idea of the protest song, of which Bob Dylan is an emblem, the emblem maybe, is a specifically latter half of the 20th Century, '60s onwards phenomenon.

The meaning of music, the way in which music, songs circulates within a society is not stable across cultures, across time. To immediately invoke Bob Dylan as if Bikindi was necessarily equivalent, the meaning of his songs is necessarily equivalent, I think is putting the cart before the horse because precisely the question needs to be what was the meaning of Bikindi songs, how does song operate in this particular culture at this particular time. I'm wary of that move. It already places Bikindi as an artist of a certain kind whose music should be valorised in specific kind of ways. It's all ready to pre-empt the argument. In fact, at trial Bikindi's defence team run this kind of argument. Bikindi couldn't have incited genocide he was an artist. Artistry is necessarily incompatible with incitement to genocide because artistry is enriching and necessarily a good thing. Obviously the defence is entitled to run that argument. If our reaction is instinctively to say because he was singing he must not have been inciting genocide, I think that's a problem. It's complicated and it's not the same as the meaning of a singer in the '60s in the US.

PETER CLARKE

Exactly how did the prosecution frame their case against Bikindi?

JAMES PARKER

They charged him on a number of different counts, incitement to genocide, genocide and that charge was later dropped, conspiracy to commit genocide I think, murder as a crime against humanity. I don't have the charges in front of me. I might be missing one or two there but a whole range of different charges. It's clear that the incitement

to genocide charges were the most important. They were the most central. It was only because Bikindi was a singer and an extremely popular singer that he was ever charged by the tribunal to begin with. The tribunal only ever indicted 90-odd people. Literally hundreds of thousands of Rwandans were involved in the committing of the genocide. So the idea was to go after those most responsible and the idea was that Bikindi, by virtue of being a singer, was one of the most responsible by virtue of having fostered this genocidal sentiment on the radio and in his live performances was one of the most responsible. So that was the central charge even though there were others.

PETER CLARKE

One of the key concepts in the law in our legal framework is mens rea or guilty mind and intention. Was that key in all this? Was the prosecution required to produce evidence, clear evidence, that Bikindi had a guilty mind, had malicious intent in terms of his songs for example?

JAMES PARKER

Absolutely. The International Criminal Tribunal for Rwanda is founded on western legal principles. It's a hybrid of common and civil law even though it's located, in fact, in Tanzania. This is slightly contentious. It's not really an African institution. It was founded by the UN on legal principles that we would recognise in western countries. So mens rea is crucial. The prosecution needed to prove genocidal intent. In relation to his songs, they weren't able to do so in the end. What the tribunal said in its judgment was that Bikindi's songs were definitely not very nice, they preach maybe hate, they were inflammatory but that Bikindi's intent had fallen short of specifically inciting genocide.

In fact, the tribunal said that his songs had been used in way that incited genocide but the way in which they were used wasn't the way in which Bikindi had intended them to be used. This goes to the issue of audio recording because Bikindi's recordings were played on the radio all the time and they were introduced and commented upon by radio announcers. The radio announcers were constantly framing the way in which those songs should be heard to their listeners. This is really important. The way in which we listen is always a product of the sound object, the song itself and the performance context. So what the tribunal says is that Bikindi's songs were framed for their listeners as genocidal. The radio presenters had intended to incite genocide with those songs but that was not Bikindi's intent.

The way in which the tribunal reached that conclusion is problematic in a number of quite important ways. First of all, the tribunal is exclusively, more or less exclusively, interested in the lyrics of Bikindi's songs, not the music. This is really pervasive. So for example, three expert witnesses were called to testify at Bikindi's trial. Two of them were linguists. One of them was a musician and a linguist but he was called to testify in his capacity as a linguist. So we have these three expert witnesses who

testify for longer than anyone else in the whole trial process and they're explicitly excluded from talking about the musical dimensions of Bikindi's songs. It suggests a pervasive institutional deafness. It's not just one rogue judge who wasn't interested in music. Both sides who are employing expert witnesses, it's prosecution, it's defence. In the judgement we see the musical aspects of Bikindi's songs get one paragraph. It's just glossed over as if it was nothing. They're just not interested in the fact that this was music.

So for me, that's a major problem. It's a real problem that in the first trial of somebody ever for inciting genocide with music, with songs, there's such a deafness to specifically musical aspects. This is not just a problem for Bikindi. It's clearly a problem for Bikindi in the sense that I think we have a responsibility as an international community and this tribunal has a responsibility to deliver justice to the extent that's possible. I think this is a clear example of the failing in that respect. But I also think for the historical record, for our understanding as a culture and a community, an international community, of the role of music in situations of conflict. This is a real missed opportunity and it's going to be hard to ever correct.

PETER CLARKE

It does underscore your earlier statement about a paucity of sonic imagination though, doesn't it?

JAMES PARKER

I think that's exactly right. That's really one of the claims that I'm making in the book.

PETER CLARKE

Bikindi was ultimately convicted of one charge, using a PA system to urge people by the roadside. Pretty plain and simple charge that one.

JAMES PARKER

Yes, Bikindi was eventually convicted. He was imprisoned for 15 years. He'd already served eight by the time the trial actually concluded so he's due to be released from prison in 2016. The grounds of his conviction were a speech that he made by the side of the road, as you say, over a loud speaker, which the court was very insistent on interestingly, in which he asked the question to those people who were standing by have you killed the snakes yet. The court was clear that this was a direct and public incitement to genocide. This was not controversial and so they convicted him on that basis. There's an interesting soundscape being produced here where he's relying on his songs to produce a certain kind of authority that might, as a famous

person, to give the question that he asks of the listening population a certain kind of weight.

But I think there's something else going on here too. Bikindi would never have been tried by this institution if he hadn't been a singer. What he got convicted of would never have been sufficient to justify him coming before this tribunal. So there's an intriguing sense in which he was in a way convicted by this institution on the basis of his songs even though that wasn't in fact the ground on which he was convicted in the end. There's a number of different ways you can read that. One would be that it's a canny political move from this institution that doesn't want to give credence to the idea that musicians should routinely be rounded up and carted off to trial for their songs. That would be one way of reading it. Another would be simply they were responding to the merits of the case.

PETER CLARKE

As perhaps a final touch of irony, please describe what Bikindi himself did when he made his final statement in court.

JAMES PARKER

Well this an absolutely fascinating moment. This is at the end of his appeals hearing. At the very end of that hearing he's offered the floor by the presiding judge for one last time. He stands up and he's wearing traditional garb. He thanks the court and then he sings for about seven minutes, a capella, totally unaccompanied. The song he had explicitly composed for the occasion. It actually addresses the International Criminal Tribunal for Rwanda explicitly. It also addresses the people of Rwanda. He knows that he's being recorded. He is appealing to certain ideas of justice and he's rejecting the authority of the International Tribunal in fact. But what's going on at the level of genre? What is this song? One of the most striking things about this moment, apart from the lyrics, is the fact that it's a song at all. A lot is lost on me. A lot is lost on the judges who are visibly shocked. They don't shut the performance down interestingly, not that impressed.

Ultimately the performance tells us something about the soundscape of the courtroom. It's not that music doesn't appear in courtrooms. The trial of Rolf Harris recently, he sang Jake the Peg I think. Music had featured at Bikindi's trial throughout in various different ways, recordings had been played, witnesses had sung. But what almost never happens is people providing testimony or statements in the form of song. Really music song is not an admissible idiom of law in western courtrooms at the very least or at least contemporary western courtrooms. It's symptomatic maybe of the same problem that the tribunal had with music in general. We tend to think of law and music as antithetical in some way. Law is about reason and music is about emotion. If we want to understand Bikindi's songs we just need to look at their lyrics and do a reasoned analysis of the lyrics, et cetera. If we want to

conduct a legal proceeding we just speak as if that wasn't evocative emotionally or acoustically anyway.

PETER CLARKE

You never know, during your career you may finish up in a trial doing hip hop. You just never know, do you? Things may change, James.

You're listening to Up Close. Dr James Parker from the Melbourne Law School is with us discussing aspects of how the law deals with sound, including music.

James, let's leave the courtroom and head out into the streets. I want to talk about LRAD, the Long Range Acoustic Device, which you're also researching and have written about. What is it exactly? Most of us probably haven't even heard about it.

JAMES PARKER

It's interesting that most of us haven't heard about it because it's an intriguing and a worrying thing, it seems to me. LRAD is a long-range acoustic device. The device was originally developed as a form of directional sound.

PETER CLARKE

We were talking about sound right at the beginning of our conversation. Sound tends to disperse in all directions, doesn't it, from the sound's source?

JAMES PARKER

That's right.

PETER CLARKE

So this invention was funnelling sound, if you like?

JAMES PARKER

That's right.

PETER CLARKE

?in one direction.

JAMES PARKER

People talk about acoustic lasers. You could direct communication, music, whatever, at particular people or particular locations. There were experiments, slightly creepy experiments it must be said, with directional billboards, for example, where you would only be able to hear the sound if you walked in front of the billboard and it would say ?buy Coke? or whatever. There's been use of directional sound in art galleries. This company, the LRAD Corporation, had developed this directional speaker and they weren't getting much traction with it commercially speaking. Then a few things happened.

First of all, the USS Cole was bombed by a small vessel that approached out of the blue while the USS Cole was in dock. There was no way of communicating with it because they didn't have their radio on; it's long distance so you can't just shout down to the people ?go back?, ?stay away? or whatever. So the US Navy decided that there was a need to develop some sort of technology that would be able to cope with this situation. So they put out a call for what they called acoustic hailers, in other words very loud loud speakers. Then a few months later 9/11 happened. This company made a very explicit move into the military market and eventually they settled upon this device, the Long Range Acoustic Device, the LRAD. By virtue of the directional sound element of the technology, it can communicate, it can project sound extremely far and extremely clearly and with a relatively lightweight device.

PETER CLARKE

We're talking roughly three kilometres.

JAMES PARKER

Yeah, obviously that's very helpful in naval contexts.

PETER CLARKE

So this message coming to the boat approaching the naval ship is very loud.

JAMES PARKER

In terms of some numbers, the loudest LRAD can project at 162 decibels at a metre. This is well above the threshold of ear damage. Now the LRAD Corporation quickly began to develop a whole range of different iterations of the device, smaller ones,

ones that could be mounted on road vehicles, army vehicles, police vehicles, et cetera. They were deployed in Iraq and they were used for issuing commands obviously, but increasingly also in a second function. The LRAD has two abilities. One, you can just speak into it like a normal loud speaker or in fact plug it into an MP3 player or something and play music if you like.

PETER CLARKE

Over three kilometres.

JAMES PARKER

And there are examples of commercial vessels using the LRAD in that capacity on approaching pirates in fact, playing Britney Spears and various other things. Britney Spears is used in music torture too, right, and lots of other musicians, Barney the Dinosaur, lots of other music. One of the reasons I think that we accept that sometimes in music or we're not as outraged about the use of Britney Spears in music torture as we might be is because we think it's kind of funny and actually it's awful. Imagine being exposed to any pop song or any music for literally hours and days on end.

PETER CLARKE

And very loudly. But it also plays into what you're pointing to which is almost a hidden assumption music and even sound more generally is intrinsically benign.

JAMES PARKER

That's right. That's exactly right. The LRAD can be used to transmit speech, transmit music and then it also has another function which it refers to as the alert function. Now the alert function is an extremely loud and extremely high-pitched, oscillating frequency. So it sounds like a siren but it's extremely loud.

PETER CLARKE

I guess the nearest reference to it, having heard it recorded, is something like a smoke alarm going off but on steroids.

JAMES PARKER

That's right. This capacity of the LRAD is what's led to it being called by some people

an acoustic weapon because the human ear is peculiarly vulnerable to high-pitched frequencies. If you want to weaponise sound, in fact it's high frequencies that are the best for doing that rather than low frequencies. Your eardrum is much more likely to be damaged and much more likely to experience pain with a high-pitched frequency. In certain circumstances, whether you're police or military - originally military and then increasingly police these days - and you want to say disperse protestors in the case of the police or in Iraq if you want to clear a building, you can play this extremely high-pitched, extremely loud sound and people are basically forced, compelled to run away because it's so painful, so hard to endure that sound on the ear, you need to retreat from it.

PETER CLARKE

In terms of civil crowd control which is the scenario you're describing, should we see the sonic cannon, as some people call it, as similar to the water cannon, tear gas, very bright lights for crowd dispersal. Is it in exactly the same category or is it in a different category?

JAMES PARKER

That's a good question. Now we're talking about changes in police technique across time. The LRAD was first used in the US after the G20 protests in Pittsburgh, I think about 10 years ago and has been used increasingly across the world for crowd management by police.

PETER CLARKE

In Ferguson, for example, quite recently.

JAMES PARKER

That's right and in New York after the police killing of Mike Brown. The city of Brisbane owns one which it bought for I think the G8 summit a few years ago. The city of London bought one in order to use potentially during the Olympics. There's been a number of cases came out of police use of LRADs in Toronto. So it's being bought up increasingly by police as one of a whole portfolio, if you like, of so-called non-lethal, sometimes no-touch, weapons. Obviously a water cannon is not no-touch but very bright lights, the LRAD, acoustic grenades.

PETER CLARKE

On what legal authority do these officials stand when they deploy things like an

LRAD?

JAMES PARKER

Pretty good ground. The argument is typically well, what would you prefer, that we shoot people, that we hit them with batons; this is only sound, what's the big deal. One of the interesting things about the LRAD is the way in which it exploits the ephemerality of sound in order to justify its use. The LRAD can and has permanently injured people. There was an example in the US out of the Pittsburgh process of somebody getting permanent hearing damage bringing a suit against the city of Pittsburgh, which eventually settled, for nerve damage that she suffered at the hands of LRAD. The thing about the LRAD of course is it's indiscriminate. She in fact had gone to observe the protest. She wasn't even a protestor - not that that justifies it anyway - and the LRAD just [sound effect]. Everybody in front of it got blasted with this sound and she suffered permanent hearing damage.

PETER CLARKE

This is Karen Piper. On what grounds did she sue?

JAMES PARKER

On a whole load of them. She threw all the legal arguments she could. There were human rights claims brought, there were constitutional grounds about her freedom of movement. She in fact suffered a particularly strong reaction. Rather than being able to run away, she fell to the ground and grabbing her ears, et cetera.

PETER CLARKE

Could she have sued for negligence?

JAMES PARKER

That is one of the grounds that she ran. This case settled out of court for \$72,000. The law is not very developed on that front. I don't really know how a court would've decided. I think that there's something worrying, politically speaking, about this move, of which the LRAD is just one part, towards the policing of masses of bodies through sound, through these techniques that work directly and indiscriminately on bodies. The LRAD forces you to move. You have no subjectivity. The police now have the ability to coerce people's movement through space extremely directly, extremely indiscriminately, an extreme version of acoustic kettling.

I don't know if I want to accept that just because the supposed only alternative is to shoot people that we just accept the LRAD uncritically. The amount of power that's being handed over to police through this weapon seems to me as quite significant and I think we need to have a conversation about whether or not we want to accept that, irrespective of whether the LRAD necessarily causes damage to people's hearing. We need to have a serious conversation about the use of sound in this kind of way. You may have heard of the use of classical music, Burt Bacharach or something to discourage youths from loitering outside train stations or at malls and this kind of thing.

PETER CLARKE

Even Mozart's been used.

JAMES PARKER

That's right. What's going on there is the exploitation of what I would call a politics of genre in the sense that the idea is that certain kinds of people because of certain class, socioeconomic factors, et cetera, educational factors, are not going to like certain kinds of music and so they're not going to want to inhabit the space in the same way that some enlightened person who has spent a lot of time listening to Mozart will appreciate it and they'll be happy to hang out there, et cetera.

Now the Mosquito Corporation does offer the ability to install devices that will provide this kind of soundtrack to a railway but they also offer something else, an ultra-high pitched frequency that only people of a certain age will be able to hear. So the Mosquito, which is why it's called the Mosquito, basically emits this extremely faint buzzing sound if you're over a certain age. Hearing deteriorates with age. Whereas a 16 or 17-year old typically has much better hearing and so they can hear very high frequencies much better than us. You can target particular demographics with this technology. I find that politically worrying. It's part of a general arsenal that cities, police forces, militaries are developing for the controlling of populations through sound.

PETER CLARKE

And it'll send all our dogs crazy as well I guess.

JAMES PARKER

I guess so.

PETER CLARKE

What do you see as the essential inhibition here? Is it essentially a cultural one? We've been talking about the perception that sound is either a joke or benign intrinsically. What is in the way? What is the roadblock for the law and the development of the law in relation to sound?

JAMES PARKER

I appreciate the fact that you suggested that it might be a cultural one because I think that's absolutely right. We need to develop the capacity to notice these issues and to think in sophisticated ways about them. So I would say that the response is always first and foremost a cultural one. It's always how can we listen better, how can we appreciate the relationship between law and sound more often, more sensitively, rather than what is the reform because that's to jump the gun a little bit. I'm happy to have that conversation. With something like the LRAD, I think it's an important conversation to have. We need to have the conversation more broadly before we - or at the same time at the very least - as we're thinking about that.

One of the ultimate horizons of this research I guess is an argument about legal education, that legal education needs to be interdisciplinary. The tendency to think that you can just struggle along without thinking carefully about the debates in sound studies or musicology or anthropology or whatever is a real mistake.

PETER CLARKE

Always exciting to be working at what we see as a cutting edge within something as established as the law. James, thanks so much for being with us today on Up Close.

JAMES PARKER

It's been a pleasure, thank you.

PETER CLARKE

Dr James Parker is a lecturer at the Melbourne Law School here at the University of Melbourne. He's director of the research program Law, Sound and the International at the Institute for International Law and the Humanities. He also authored *Acoustic Jurisprudence: Listening to the Trial of Simon Bikindi* published by Oxford University Press in 2015. You can find relevant links to James' work, research and publications on the Up Close website together with a full transcript of this and all our other podcasts.

Up Close is a production of the University of Melbourne, Australia created by Eric van Bommel and Kelvin Param. This episode was recorded on 16 November 2015. Audio engineering and studio production by Gavin Nebauer. I'm Peter Clarke, thanks for listening and I hope you can join us again soon. Bye for now.

VOICEOVER

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