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Noise Sources, Health Impacts and Legal Remedies: A Psychologist's Perspective

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I. INTRODUCTION

During the first nine months of fiscal year 1998, the New York City Department of Environmental Protection (DEP) received 8,072 noise complaints, but issued only 822 citations.[1] With only about 10% of the complaints yielding violations, the vast majority of New York City residents who called upon the DEP to abate the noises engulfing their lives were left as they started – having to cope with the noises. The New Jersey shore dwellers who complained about the ice cream vendor who sells his wares with an intrusive jingle were similarly left to deal with the noise when the U.S. District Court for the District of New Jersey ruled that the Ocean County community had no right to pass an ordinance outlawing amplified music on ice cream trucks.[2] Community residents across the nation exposed to aircraft noise have been informed by the government that they too will have to cope with the noise from overhead jets. Adding insult to injury, the Federal Aviation Administration (FAA) generally sides with the airports by "filing court briefs supporting airports in cases brought by neighbors complaining about aircraft noise."[3]

In all three of these examples, individuals have been unable to receive any relief from intrusive noises. In the New York City case, there are laws on the books to protect people from noises, but the laws are inadequate and not vigorously enforced. In the matter of the intrusive jingle in New Jersey, an ordinance passed by the town was overturned by a federal judge who, in the words of a press report of the hearing, found that the "constitutional right to free speech includes the right to play music others might find irritating. She said it is one of the inconveniences of a free society."[4] To treat noise as an "inconvenience" illustrates the manifest lack of knowledge within the legal profession about the deleterious effects of noise. The jingle story ultimately turned out well for the residents; the owner of the truck voluntarily lowered the music volume and decided to play a variety of tunes that may be less "irritating" to the residents.[5]

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Department of Euphemisms

A recent issue of DEC's *Environmental Notice Bulletin* included a notice of a SEQRA negative declaration for an increase in the maximum permitted height of a hazardous waste landfill in Niagara County from 393 to 430 feet. This proposed action was referred to as an "Airspace Enhancement."

UPCOMING EVENTS

October 6-8, 1998

"Understanding Contaminated Sediment," Albany, N.Y. Sponsored by University of Wisconsin-Madison, New York State Department of Environmental Conservation, and the Empire State Development Corporation. Information: Patrick Eagan (800) 462-0876.

October 8-9, 1998

"Partnership for Environmental Improvement and Economic Development in New York State," Syracuse, N.Y. Sponsored by ESF Continuing Education, State University of New York. Information: (315) 470-6891.

October 19-20

"Annual Meeting of the Great Lakes Commission," Buffalo, N.Y. Information: Mike Donahue (313) 665-9135.

October 19-20, 1998

"New York Environmental Law & Management Course," Melville, N.Y. Sponsored by Government Institutes. Information: Lisa Lee (301) 921-2345.

October 21-23, 1998

"State of the Lakes Ecosystem Conference," Buffalo, N.Y. Information: Paul Horvatin (312) 353-3612.

October 23-25, 1998

Environmental Law Section Annual Fall Meeting, Hâncock, Mass. Sponsored by the New York State Bar Association. Information: Lisa Bataille (518) 463-3200.

November 17, 1998

"The Invisible Construction Conference," New York City. Sponsored by the Institute of Civil Infrastructure Studies, New York University. Information: Brian Jaffee or Jael Humphrey (212) 598-9010.

WORTH READING

Association of the Bar of the City of New York, Committee on Energy, "Electric Utility Restructuring in New York: A Status Report" (June 1998).

Harold Faber, *My Times in the Hudson Valley* (Black Dome Press 1998).

Michael B. Gerrard, "Tumult in Federal Wetlands Regulation," *New York Law Journal*, July 24, 1998.

Michael B. Gerrard, "New York State's Brownfields Program: More and Less Than Meets the Eye," 28 Envtl. L. Reporter (Envtl. L. Institute) 10444 (Aug. 1998).

Stephen L. Kass & Jean M. McCarroll, "Sea Turtles and World Trade," *New York Law Journal*, Apr. 24, 1998, at 3:1.

Frank Knight, *New York Wildlife Viewing Guide* (Falcon Publishing 1998).

Alan Mazur, *A Hazardous Inquiry: The Rashomon Effect of Love Canal* (Harvard University Press 1998).

John R. Nolon, "Affordable Housing: State Lacks Definition and Need and Municipal Responsibility," *New York Law Journal*, Apr. 15, 1998, at 5:2.

Boris Serebro, "CEQR Litigation: Statistics, Trends, and Analysis," *The N.Y. Envtl. Lawyer*, Vol. 18, No. 2 (Spring 1998), at 30.

Maryellen Suhrhoff, "Solid Waste Control and the Commerce Clause: Circumventing Carbone, *The N.Y. Envtl. Lawyer*, Vol. 18, No. 2 (Spring 1998), at 18.

Elin M. Ulrich & Ronald A. Hites, "Enantiomeric Ratios of Chlordane-Related Compounds in Air Near the Great Lakes," *Environmental Science and Technology*, Vol. 32, No. 13 (1998), at 1870.

"Plesiomonas shigelloides and Salmonella serotype Hartford Infections Associated with a Contaminated Water Supply Livingston County, New York, 1996," Morbidity and Mortality Weekly Report, May 22, 1998, at 394.

Noise Sources, Health Impacts and Legal Remedies: A Psychologist's Perspective

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As to aircraft noise, the FAA generally doesn't accept the notion that noise is detrimental to the health of residents living within the paths of the overhead jets, and so it has largely ignored the right of people to the quiet enjoyment of their property. More importantly, the FAA denies the residents the right to a decent quality of life.

With noise control laws unenforced or nonexistent, individuals have not been able to gain relief from the growing multitude of noises that are robbing them of their good health, both mentally and physically. Part of the cause of this state of affairs is the failure of lawmakers and law enforcers to take the issue of noise pollution seriously. Even environmentalists have ignored this hazardous pollutant for too long.

At one time, excessive sounds were primarily found in the industrial workplace. However, with the amplification of music

and the spread of loud sounds to recreation and sport (speed boating, jet skis, motorcycles, video arcades), millions of people are exposed to dangerous levels of sounds. It has been estimated that 28 million people in the United States suffer from a hearing loss, with noise as one of the leading causes.[6]

This article presents the research data on the potential dangers of noise and discusses some of the problems with the existing laws that are failing to protect people against noise intrusions. The author, a psychologist with extensive experience in noise research but no formal legal training, hopes to heighten the awareness of noise pollution and to persuade members of the legal profession to employ their skills to afford greater legal protection to those individuals who for too long have had to live with surrounding noises.

II. SOUND AND NOISE

A. Measuring Sound

Sound is initiated with the movement of air molecules. It can be generated by any vibrating physical object that sets up waves of compression and expansion in the atmosphere's air molecules. These waves are transmitted to the ear, which sends the pattern of vibrations to the brain where the sound is analyzed and decoded with respect to information, pleasure, or annoyance.

Sound waves are generally identified as having two major physical properties: the speed at which the waves vibrate (pitch) and the intensity of each vibration (loudness). Loudness is usually expressed as decibels (dB), but to allow for the fact that humans perceive higher sounds as louder, a modified decibel scale, the A-scale (dBA), is used to express the way people actually hear the volume of sounds. Thus, loudness is expressed as so many dBA.

The decibel scale used to access loudness in humans is not linear, but logarithmic, and thus an increase in 10 decibels indicates a doubling of the loudness; an increase in 20 decibels is a fourfold increase. Some common sounds measurements: rustling leaves about 10 dBA, conversation about 50 to 60 dBA, alarm clock at 80 dBA, discos and New York subways can reach over 100 dBA, jet takeoff over 120 dBA.

Pitch is usually measured in hertz (Hz). High frequency shrill noise, such as whistles, are more likely to harm the ear than low frequency noises, such as rumbling machines. Sounds that are both loud and high pitched have the most damaging impact on hearing.

B. Defining Noise

Too often we have heard the expression "one person's noise is another's music." This expression gives the impression that noise is in the "ear of the beholder." It is also the explanation given by city environmental departments for why it is so difficult to regulate noises. Even in New York City, where lawmakers boast about their better-than-average Noise Code, the New York City DEP explains its abysmal record of enforcement with the rationale that listeners differ as to what is and what is not noise.

Loud sounds are commonly labeled as noise because they are overwhelmingly intrusive. The loud intense sounds of discos are music to the ears of their devotees, yet it wouldn't be unusual for the disco lover to complain about soft opera music coming through the wall at seven o'clock in the morning. The teenager who never believes the stereo is too loud may find the whine of a neighbor's dog disturbing while studying for final examinations.

Is it possible to agree upon a definition of noise and can noise be differentiated from sound? Simply put, noise is "unwanted sound." Noise is also sound that is uncontrollable and unpredictable by the person who hears it. Sound does not have to be loud to be deemed unwanted. The dripping faucet is an example of a sound that is not too loud but readily judged as noise. When the noise comes from a source that is disliked, such as the neighboring airports, the sounds are even more unwelcome. Noise can also be defined as the negative evaluation of sounds that are deemed undesirable and intrusive.

With a world growing increasingly loud with sounds able to intrude upon the space of people who are engaged in activities that are disrupted by these sounds, one can conclude that noise, not sound, is becoming a serious problem worldwide. One can also say that the noises of the world are robbing us of our rights to enjoy the beautiful sounds that surround us.

III. HEALTH EFFECTS OF NOISE

A. Physical Health Hazard

Noise is not simply an annoyance, but can actually inflict physical damage on exposed individuals. Our ears are especially vulnerable. Loud sound can damage or kill the hair cells of the ear. Hearing impairment may be the consequence of exposures to extreme volumes of sound. Even one single incident of an extremely loud sound can injure the hair cells. For example, former President Ronald Reagan may have lost some of his hearing when a loud gun shot went off close to his ear on a movie set many years ago. Generally, however, hearing loss occurs over time when there is continuous exposure to sounds over 85 decibels.

Noise can also affect the body indirectly by acting as a stressor, even if the sounds are not loud. As a stressor, noise can bring about a complex set of physiological responses – higher blood pressure, change in heart rate, and excessive secretion of hormones. Since noise intrusions often continue over time, such as planes above or noisy neighbors next door, the persistence of noise as a continuous stressor can result in actual illnesses, including cardiovascular and circulatory disorders.

The literature on the effects of noise as a stressor includes studies of individuals in noisy workplaces as well as those living in communities near noisy airports, highways, and railroads. A review of these studies[7] indicates that the strongest relationship between noise and health, whether in the workplace or the community, can be found between noise and cardiovascular disorders. The relationship between noise and other disorders

(e.g., digestive, respiratory) is less strong, calling for additional research.

Of particular concern are recent studies[8] in which it was found that chronic exposure of children to aircraft noise was associated with elevated neuroendocrine and cardiovascular measures. Children in the third and fourth grades were found to be suffering from stress and elevated blood pressure. As the study states: "These data are sobering when one considers that more that 10 million American schoolchildren are exposed to comparable noise levels. . . ."[9]

Another study[10] examined effects of aircraft noise on the quality of life and perceived health of individuals living within the paths of airplanes from a neighboring airport. Their responses were contrasted with a comparable sample of residents in a community not exposed to noise from overhead jets. Nearly 70% of the individuals living in the flight paths were disturbed by aircraft noises, and those especially disturbed perceived themselves to be in poorer health. Furthermore, residents exposed to overhead aircraft noise complained that their quality of life was impeded. Many residents stated that they could not open a window, talk on the phone, or converse with members of their households because of the aircraft noise. Although the study did not examine illness resulting from aircraft noise exposure, one can conclude that these residents were not experiencing a "good quality of life." Not being able to engage in conversation or watch television or read a book in a quiet home atmosphere does not reflect a "healthy existence." Although the control groups did complain of some noises from neighbors or outside traffic, these noises were in no way comparable to the steady stream experienced by those residents living with the planes and did not affect quality of life or health perception as did the aircraft noises.

Children living in noisy communities have also rated their quality of life as poorer than children in quieter areas.[11] For example, when the author personally lectured to elementary school children in New York and Los Angeles, the author discovered that they were very much bothered by noise from many sources. The League for the Hard of Hearing's 1997–1998 calendar comprised of children's posters clearly portrays how aware youngsters are of the disturbing noises around.

B. Sleep Disturbances

A recent study by the author of this article[12] found that individuals living near the airport also complained about sleep difficulties. Inadequate sleep can have health implications in that the body requires rest to recuperate and repair itself. People unable to get adequate sleep are not able to concentrate as well the next day. They are also less alert and able to cope with warning signals as they go about their chores. A chapter[13] that provides an excellent summary of the effects of noise on sleep also recognized the need for further calls for laboratory measurements in this area, especially on "noise sensitive people and others who may be at increased risk."[14]

C. Child Development

Even before a child is born, noise may affect the child's well-being. As far back as 20 years ago, a study[15] reported finding lower birth weights and greater numbers of birth defects, such as cleft palates, in infants born to mothers living near the Los Angeles airport. The United States National Research Council[16] was concerned enough about the endangers of noise to the fetus that it warned pregnant women to avoid working in noisy industrial settings. More recently, the Committee on Environmental Health of the American Academy of Pediatrics[17] published a document stating that "fetuses and newborns exposed to excessive noise may suffer noise-induced hearing loss and other health effects."[18]

Children are also endangered by noise after they are born. Many American homes are noisy internally and are receptors of loud noises from the outside world. Parents purchase noisy toys that should carry labels warning about the loud decibel levels they emit.[19] Children are allowed to listen to television sets, stereos, and computer games at excessive volumes. Some homes have much shouting, loud talking, and too many entertainment units operating at the same time.

In the book *Top of the Class*,[20] which examined the lives of high academic achievers, the author of this article wrote about the childhood homes of these achievers. Overall their homes tended to be respectful of quiet and children were given quiet times to study, read, and think. It could be hypothesized that such homes contributed to the academic and life success of those achievers.

On the other hand, the consequences of homes that don't provide children with the requisite quiet were noted in a report that concluded that noise in the home environment may slow down cognitive and language development.[21] Another report found that children living on lower-floors of buildings exposed to high levels of expressway noise were poorer in reading.[22] Researchers[23] learned that children attending classes adjacent to elevated train tracks lagged behind their schoolmates attending classes on the quiet side of the building; those in the sixth grade were as much as one year behind. Eleven percent of classroom teaching was lost in these noisy classrooms. When the train noise at this school was abated by the installation of rubber pads on the outside tracks and acoustic ceilings in the noisy classrooms, both groups of children were reading at the same level.[24]

Despite the knowledge gained from research that a quieter environment is more conducive to education and learning, too many children are still not protected from noise in their homes and their schools. A recent study found that first and second grade children chronically exposed to aircraft noise in both their homes and schools suffered reading deficits and were slower in cognitive and language development.[25] Noise may also interfere with the interaction between parents and their children. It has been well demonstrated, when looking at the lives of highly successful academic achievers, that parents are important in the success of their child's education.[26] It is doubtful that parents stressed by overhead aircraft noise or nearby elevated train noise can serve as good teachers to their children.

D. Mental Health, Aggression, and Social Behavior

One recent study addressed the effect of aircraft noise on the mental health of residents living around an air base.[27] The findings indicated that such noise exposure resulted in an increase in perceived psychological disorders such as "depressiveness and nervousness." The authors plan to report more extensively on their findings in a later paper. For the most part, however, the evidence that noise is robbing us of our sanity is still largely anecdotal, but newspapers and magazines are filled with stories of people anguished by noise. There are numerous news stories about disputes between neighbors over noise that lead to aggressive behavior.[28] Janice Tudy-Jackson, the Director of Victim Services Medication Program in New York City, in speaking to the League for the Hard of Hearing in February 1998, also commented on how often noise disputes escalate to aggressive behavior.

Studies[29] which discovered that in noisy surroundings passersby are less likely to help people, may help explain why New Yorkers are often identified as unfriendly. When a stranger asks for directions, the New Yorker too often continues to walk straight ahead, ignoring the plea for assistance, hoping to escape the noisy and crowded street as quickly as possible.

Another example of noise not being conductive to good mental health is the increasing numbers of New York City residents who give "too noisy" as the reason they are leaving the city. They want to escape the traffic congestion and the horn honking, the shrill subways, and the neighbors who won't keep their sounds contained to their homes.

E. Noise Research Justifies Warning of Its Dangers

Data demonstrating the adverse effects of noise on learning appear to be strong, but too few parents, educators, and legislators have actively involved themselves in efforts demanding quieter learning environments. The exception has been in New Jersey, where several boards of education have recognized the effects of noise on cognitive development, and have passed resolutions urging their public officials to support legislation to reduce noise pollution at learning institutions.[30]

The correlative data on the harmful physiological effects of noise, though suggestive, require further validation. The state of the research on the harmful impacts of noise may be similar to the research in the 1950s on smoking. There were strong hints then that smoking was harmful, but further research was needed to confirm the link. However, warnings about tobacco were issued before this confirmation. Similar warnings about noise were strongly urged by Surgeon General William H. Stewart's statement at a 1969 conference on noise as a public health hazard: "Must we wait until we prove every link in the chain of causation. . . ? To wait for it is to invite disaster or prolong suffering uncessarily."[31] In keeping with this statement, the federal Office of Noise Abatement and Control (ONAC), when operative in the 1970s, published numerous pamphlets and other materials alerting people to the dangers of noise. Unfortunately, now nearly 30 years later, this country has regressed in its concern about warning people to the dangers of noise. ONAC is no longer publishing its noise materials and little noise pollution literature is available for the general public. Apparently Dr. Stewart's cogent remarks are no longer being heeded.

IV. NOISE AND THE LAW

A. The Relationship of Noise Research to Legal Protection

Susan Staples[32] asks American psychology to "bring its methodological sophistication and broad, well-developed theoretical frameworks fully to bear on the understanding of noise effects." However, with inadequate government funding,[33] it becomes exceedingly difficult to undertake the research needed to corroborate or refute the findings suggesting that noise is a danger to our mental and physical health. Without strong data to support the adverse impact of noise on health, public officials have been slow to enact legislation to give us greater protection against the perils of noise, and law enforcement agencies have not enthusiastically administered the present laws. Such lack of concern about noise pollution has emboldened the noise polluters of the world to inflict their harmful noise [wares] without fear of prosecution.

B. The Federal Noise Laws

"Americans might find some comfort knowing that they can count among their many rights an environment free from noise . . . . This right was conferred not by the Constitution, but by Congress through the Noise Control Act of 1972."[34] The responsibility for carrying out the Noise Control Act of 1972 (NCA)[35] was given to ONAC in the Environmental Protection Agency (EPA). However, this "noise right" was short-lived in that ONAC lost its funding in 1982. Stripped of its funding, ONAC exists but doesn't function. More importantly, there is no strong federal voice to guard citizens against the dangers of noise pollution.[36]

Even if it were fully implemented, the NCA would not be adequate to protect citizens from noise as it was passed over 25 years ago, when there was less information on the effects of noise on health and when we lived in a less noisy society. Furthermore, the NCA did not cover noise emissions from sound reproduction equipment or from racing cars, two sources of noises that are extremely bothersome. The NCA also did not give ONAC the right to regulate aircraft noise, which has become a major source of noise pollution. Despite these limitations, ONAC was able to take some effective measures before losing its funding. It established noise emission standards for several categories of transportation and construction equipment,[37] required labeling of noise emission levels on products such as household appliances, provided scientific and technical data to the FAA, and published and distributed excellent educational materials highlighting the dangers of noise. ONAC also provided assistance to the states for some of their noise

activities and provided for the establishment of a research and development program to prevent and abate noise.

The Occupational Safety and Health Administration regulates noise with respect to the rights of workers;[38] the Department of Transportation is authorized to develop noise standards for highway construction;[39] the FAA has primary control over aircraft noise[40] and the Housing and Urban Development Department sets noise standard regulations as well.[41] However, it was EPA's Office of Noise Abatement and Control that was entrusted with the responsibility to protect all citizens from noise that could jeopardize their health and welfare. That is why a number of citizen groups have joined together to try to persuade EPA to reopen ONAC.

Two bills, one in the Senate (S. 951) and one in the House of Representatives (H.R. 536), called the Quiet Communities Act of 1997 were introduced in Congress to re-fund ONAC. These bills would require ONAC to coordinate federal noise abatement activities, update and develop noise standards, provide technical assistance to local communities, and prompt noise education and research. Funding for an airport noise study was also included within the bills. The House bill has been endorsed by only 50 representatives and fewer than 10 senators have signed onto the Senate bill. This is a far cry from the votes required for passage and it is very unlikely that these bills will come out of committee this session. However, the citizen anti-noise groups have pledged to continue their fight for a federal office overseeing noise pollution.

C. Aviation Noise – A National Problem

Noise from aircraft and helicopters is becoming a major national problem. Citizens Aviation Watch (CAW) is a coalition of a dozen groups nationwide dedicated to dealing with environmental impacts of our expanding airports. As of 1996, at least 32 of the 50 busiest airport of the country had plans to expand.[42] The growing number of helicopter flights has also created noise problems, prompting opposition from community groups. New York City has been especially resourceful in trying to limit helicopters in the city, largely due to the efforts of the chair of the Helicopter Noise Coalition.

Organizations and communities opposing aircraft noise have received little support from the FAA. Although the FAA is charged with overseeing aircraft noise matters, it is also concerned with the continued growth of the industry. Community-based anti-noise groups see a conflict between these two roles. Residents living beneath the paths of the roar of loud jets identify the FAA as the *enemy* rather than their advocate.

Another national group concerned with aircraft noise is the Federal Interagency Committee on Aviation Noise (FICAN). Comprised of representatives from government departments involved with aviation, including the FAA, it was formed in 1993 to "provide forums for debate over needs for future aviation noise research and to encourage new development in this area."[43] FICAN meets twice a year to discuss various topics and hold forums for public input but has no oversight power or real authority to deal with the problems of aviation noise. Public outcry at forums has given residents the opportunity to vent their anguish and agony. Little else, if anything, has happened that would help reduce aviation noise.

D. Noise Laws in New York State

Noise pollution was added to the list of air contaminants regulated by the State of New York in 1971. The State Department of Environmental Conservation (DEC) was given the authority to establish standards for noise pollution.[44] When the federal ONAC office was closed in 1982, the author of this article, as Chair of the Coalition of Quieter Communities, a citizen organization, wrote to then DEC Commissioner Robert F. Flacke to ask him not to abandon dollars for noise abatement. His response:

> "The termination of federal funding on September 30, 1982, will have a significant impact on the State noise control program, but I fully intend to continue a limited number of noise control functions to be financed solely by State funds."

The Commissioner's response left little doubt that the State would have less involvement in noise abatement. Although DEC protects wilderness areas from undue noises, has regulations limiting excessive noises in private and business establishments, and provides local governments with technical and consulting services,[45] DEC is not considered a strong anti-noise arm. Furthermore, DEC is not the only state agency involved in noise control. Motor vehicle noise falls under the New York State Vehicle and Traffic Laws.[46]

The New York State Legislature enacted the Rapid Rail Transit Noise Code in 1982 to lessen the noise of the New York City subway and elevated train system.[47] The law required the New York City Transit Authority (TA) to lower the decibel level of its very noisy transit system and to report its progress over the next 12 years to the Governor and Legislature. Dutifully, the TA filed annual reports for 12 years.

What force did this piece of legislation have in quieting New York's noisy trains? In its annual reports, the TA listed significant accomplishments in its noise abatement efforts. Some of these included: installation of welded rail in subway and open cut areas, installation of resilient rail fasteners on the tracks, rehabilitation of stations, purchase of new quieter trains, use of ring damped wheels, and a scheduled maintenance program.

However, none of the TA's reports provided data on average decibel levels within the new and old cars, or as trains go around curves, or within a representative sample of stations, or as trains enter and leave the stations. In correspondence with the TA, the author was told that the agency did not have to conduct actual noise measurements within the system. Furthermore, the agency did not believe it could adequately sample the systems's noise levels—which seems amazing since the TA apparently distributes other data based on representative samples. Decibel level readings would be very helpful to assess whether the TA's efforts to abate noise were effective.

One could also question the role of the Governor and the

Legislature in overseeing the TA as it carried out its charge to lower the din on its trains. Did they do anything more than receive these reports? Did they make any effort to extend the Code after it lapsed in 1994? Letters to the public officials who introduced the Code led the author to believe that the answer to these two questions is "No." The State's role in transit noise appears to have ended.

With aircraft noise being especially bothersome to New York residents who live near three airports, a letter to Dr. Allen Greene of Sane Aviation for Everyone (SAFE), a citizen anti-aircraft-noise group, from the Office of the Attorney General of New York on April 30, 1998 indicated that the Attorney General's office has "limited powers to address your particular complaints about aircraft noise." The Attorney General appears to be correct in that the FAA has the primary regulatory powers and only has to consult with other federal, state and interstate agencies on noise issues. However, the states retain some authority to regulate aircraft noise. The courts have ruled that state and local governments, acting in their capacities as "airport proprietors," can impose reasonable regulations on airport noise.

A New York case on the preemption issue allowed the U.S. Court of Appeals for the Second Circuit to deliver a Solomon-like decision. In *British Airways v. Port Authority of New York and New Jersey*,[48] the court recognized the primary role of the FAA in regulating airport noise, but ruled that municipalities, acting as airport proprietors, could regulate noise levels in a "reasonable and non-discriminatory way." Chief Judge Irving R. Kaufman's words are noteworthy:

> "We . . . believe that the Congress provided for the promulgation by airport proprietors of reasonable regulations to establish acceptable noise levels."[49]

The Second Circuit relied on the *British Airways* decision in a more recent decision regarding helicopter noise. In *National Helicopter Corp. of America v. City of New York*,[50] the Second Circuit found the conditions that the New York City Council placed upon the operator of the 34th Street Heliport "reasonable" and "nonarbitrary." The court upheld the New York City resolution, which placed curfews on nighttime operations of the heliport and phased-out weekend traffic.

Sidney Shapiro[51] urges local authorities to look at the law before accepting claims of preemption. This plea to look to the law was the argument SAFE made with the Attorney General's office, but the office deemed that its restricted resources did not permit entry into an area of law where it did not believe it could win. The Attorney General's representative cited earlier losses against the FAA in defense of its position. However, he did suggest that SAFE turn to New York City for assistance in dealing with aircraft noise. SAFE has repeatedly asked the city for help with aircraft noise, but was told by city officials, especially at the DEP, that aircraft noise is a "federal issue." However, the city has asserted its right to restrict helicopter flights because of excessive noise.[52]

E. The New York City Noise Control Code

New York City's Noise Code has remained largely unchanged since it was enacted in 1972.[53] However, there have been some amendments to the code, including changing the provision from one that barred "unnecessary" noise to one that prohibits "unreasonable" noise and raising the fines for violations. New York City's DEP and the New York City Police Department share responsibilities for enforcing the Code.

F. Department of Environmental Protection

Citizens can register complaints with either their local police departments or with the DEP. Each year DEP tallies the number of complaints that were received. In the 1980s, the Department reported about 7,000 complaints each year. For the first nine months of 1998, the Department recorded over 8,000 complaints. A spokesperson for the agency believes the growth in number might be due to the increased publicity that noise has received in New York City. For example, during the last few years the news media have prominently featured stories involving noise problems and for the past three years The League for the Hard of Hearing, located in New York City, has held a number of events around its celebration of International Noise Awareness Day on the last Wednesday of April.

How successful has DEP been in ameliorating the noise problems it addresses? The answer to this question also casts light on how successful the Noise Code has been in bringing New York City residents some relief from noise. Examination of Department statistics reveals that inspectors issue citations in only about 16% of their visits. With only 10% issued during the first nine months of 1998, the Department was issuing even less citations than the customary 16%. In seeking answers to this low return, the Department contends that (a) the noise level is often below the level stipulated as a violation of the Code; or (b) often the noise measured is only one or two decibel levels below the level at which a violation could be issued. When this happens, individuals suffering from the noises are especially distressed. The Department also notes that their inspectors frequently make repeated visits to the same parties, but the noise levels are still not high enough to meet the requirements for a violation. Furthermore, there are times when DEP inspectors come to people's homes and the source of the noise is not in operation, resulting in no violation and a very unhappy complainant. In fairness to the DEP inspectors, they too have expressed frustration at not being able to help individuals who are beleaguered by noises.

With so many people failing to gain any degree of satisfaction after lodging a complaint with the DEP, it is easy to understand why so many New Yorkers believe the New York City Noise Code can't protect them against the myriad of noises to which they are exposed, such as noisy bars, loud cooling units on commercial buildings, and excessive horn-honking.

A 1990 memo[54] found that the DEP had a poor record in the issuance of noise violations and urged the agency to explore the reasons why their record was so poor. Such an analysis might help them improve their inspection methods. The memo also suggested ways to revise the New York Noise Code. Since the code was written in 1972, citizen groups have asked the City

Council to review the code to determine whether it can deal with the noises of New York City in 1998. The author of this article believes that the City Council should act on this suggestion immediately.

Interestingly, the New York City Noise Code has a section on aircraft noise.[55] To the best of the knowledge of everyone that the author has contacted, the City did not undertake the study, required by this section, that would define allowable sound levels or set standards for ambient noises near the airports. Claiming that the City has no control over airport noise, the DEP testified at a City Council hearing on May 6, 1998 that the section of the Code on aircraft noise cannot be executed. This author disagrees, in that section 24-233 states that the City Council should engage in certain activities with respect to noise attenuation. Since several of those activities involve working with the airport to lower the din, such as "encouraging approach and departure flight paths and procedures to minimize the noise in residential areas," the author believes these actions are in keeping with the control that the City can exercise.

G. New York City Police Department

The New York City Police Department has released information on the numbers of noise calls to its Quality of Life Hotline.[56], As the headline to a newspaper article about the police hotline claimed, noise is "burning up new cop hotline."[57] Fielding calls is one thing, but disposing of the noise complaints is another matter. According to one newspaper reporter,[58] the police department has been reluctant to share data on how it handles noise complaints. However, in a personal communication the author was able to gather some preliminary data on how the police deal with noise calls to the Hotline.

From January 1, 1998 through June 17, 1998, the Hotline had received 14,751 complaints and nearly 70% were listed as noise complaints. Several of the other categories identified by the police (car alarms, animals) are probably noise-related as well, boosting the number of noise complaints beyond the 70%. For the first three months of this year, the police have tabulated the precinct responses to the noise complaints. Response categories included the following: correction of the condition, need to return for a follow-up visit, issuance of summons, referral to another agency, monitoring of condition. In a few cases, there were arrests and the issuance of criminal reports. While pleased to learn that the complaints were being answered at the precinct level, the author is looking forward to obtaining the data for an entire year so that she can better assess the police response to noise complaints.

H. The City Building Code and Noise

The City Building Code allows tenants to seek relief from certain noise problems, namely those associated with installed equipment such as pumps, fans, and compressors. It has been concluded that aggrieved tenants rarely have been able to use this statute successfully to alleviate noise.[59] This is largely due to the fact that the Buildings Department does not have the staff, equipment, or experience to enforce the law. Tenants too often have to conduct their own measurement of the noise level. Even if the tenant wins in court, building owners often simply pay a fine and the noise equipment continues to operate. Tenants are then forced to continue their protest with a return trip to the Supreme Housing Court, which can be time-consuming and difficult for most tenants. Thus, too many New Yorkers are left to suffer the noise.

I. Neighbor to Neighbor Noise – A Symptom of Uncivil Behavior

In a city where people are living in such close proximity, noises emanating from the homes of one resident will unquestionably be heard by nearby neighbors. One should expect some noises in an urban setting; the issue is not simply noises but "unreasonable" noises. While Section 24-203 of the Noise Code can be interpreted as protecting all city residents from "unreasonable" noises that disturb their peace and quiet, neighbor noises are generally not resolved through enforcement of this section. Police officers are called to homes to quiet noisy parties and loud music, but too often the noise resumes after the officers leave.

In a recent article,[60] Janice Tudy-Jackson, Director of Victim Services Mediation Program in New York, describes how the mediation process can work in disputes between neighbors or between community residents and nearby businesses. She writes about the need to resolve disputes about noise levels that do not "meet the minimum threshold for local law or agency enforcement." Each of the five boroughs in New York City offers free mediation services for noise disputes. Ms. Tudy-Jackson states that in "over 2000 cases mediated at Victim Services in Manhattan and Brooklyn . . . during the last year, nearly 70% resulted in mutually agreeable resolution. A significant portion of these cases involved noise disputes – especially between neighbors." This gives New Yorkers another avenue, other than the law, to turn to for resolution for noise problems. Police and DEP representatives make referrals to the Mediation Program.

V. CONCLUSION

That noise is becoming a major environmental issue was demonstrated by the strong international interest in the Third Noise Awareness Day celebrated on April 29, 1998. The growing number of organizations in this country and abroad that are forming to combat helicopter and aviation noise is further evidence of a problem that has grown more pervasive. In New York City, the growing noise problem is revealed by the many phone calls to agencies charged with dealing with noise problems as well as the media attention to the issue. Unfortunately, too few people recognize noise as a health hazard and too many still speak of noise as an annoyance, expecting sufferers to learn to cope with the noise.

By closing the ONAC, the federal government declared noise a non-issue. The states and cities have laws on the books regarding noise, but these do not receive the highest priority with respect to enforcement. The legal profession has not been very

much involved in protecting people against the hazards of noise. The author can hypothesize as to the reasons for this lack of interest, but would rather use this opportunity to encourage attorneys to seek more information on noise. Possibly some of these legal advocates will then decide to join in the battle against noise and become champions for both a quieter and healthier environment.

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