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NOISE POLLUTION AND AIRPORT REGULATION*

J. LYNN HELMS**

FOR AN ENGINEER to walk in among an assembly of lawyers is perhaps either presumptuous or heretical, but I hope to make it thought-provoking. You each have your own standards for learning. But in my case, I rarely learn from one that agrees with me and tells me how great I am doing. To me, a far more interesting dinner guest or conversationalist is one that poses activities or questions which cause me to think about them later.

One of the things I want to talk about is aircraft noise, and the constraints it is imposing on our air transportation system. Specifically, I would like to discuss what we can do to reverse the trend of curfews and other limitations on airport use that have been adopted across the country in the name of noise reduction or environmental protection. If allowed to continue, these measures could cripple our air transportation system and stifle this nation's continued economic development.

Noise is both a technical and a political problem. As an engineer and pilot, I have been primarily concerned over the

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years with the technical aspects, such as reducing noise at the source and developing safe and reasonable noise abatement operating procedures. And we have made considerable progress in this area with the introduction of high-bypass engines and other technology that have cut the noise levels at new airports by more than half, when compared to the first generation of jets. However, after 15 years of effort, we have just about used up the national technology bank. Probably no more than two or three percent remains, certainly no more than five or six percent, and we will pay dearly for each of those percentage points. Noise improvements typically result in lost efficiency and increased operating costs. *You* will pay for those costs. Remember, there is no such thing as a free lunch.

Despite technological advances, the political ramifications of the noise problem have become more intense. Local airport authorities are under increasing pressure to make their facilities "good neighbors," which is another way of saying "make them as unobtrusive as possible." Of course, the most expedient measures for accomplishing this objective are curfews and operation restrictions—particularly if there is real estate potential for shopping centers or other commercial enterprises.

The problem of airport constraints would not be so serious if we were *not* dealing with a near finite resource. For example, in Washington, D.C., we have adopted a curfew on scheduled airline operations and reduced the number of hourly airline operations at National Airport in an effort both to control growth there and limit nighttime noise levels in the surrounding communities. But these actions have not adversely affected air service to the Washington area, because we have two other air carrier airports, Dulles and Baltimore-Washington International, that operate around-the-clock and are realistic alternatives.

Not many other metropolitan areas are as fortunate as Washington. And the fact is that we are not likely to get any major new air carrier airports in the foreseeable future. The last such airport was Dallas/Fort Worth, which already is experiencing some capacity and noise problems. It is essential,

therefore, that we squeeze all the capacity out of the present airport system that we can, which is a principal objective of the national airspace system that we unveiled last month. Essentially, it is a 20-year plan for upgrading and modernizing the facilities and equipment, such as computers, radar, communications and landing systems. We are also developing a program to build 3,500-foot runways at air carrier airports that would service general aviation airplanes and leave the major runways free for commercial traffic.

By themselves, however, these measures will not provide the needed capacity for the projected traffic levels of the next two decades, if we permit the attack on our airport system to go unchallenged. We must and we will fight back, not solely because of some "Big Brother" or "Washington bureaucratic foible." We will act, rather, because the primary beneficiary by far is the local community. The largest employer on Long Island is JFK Airport. Wages of over \$400 million per year are generated by it and trade of over \$3 billion per year passes through it. Consider as well DFW, and now the overflow of air traffic to Love Field, evaluating the economic, employment, service, and citizenry support contribution such locations provide. The federal government has no choice but to take action which supports the majority of the taxpayers' needs, not those of a minority of the people.

An airport curfew, as an isolated event, seems innocuous enough, and a matter of purely local concern. But a curfew has a ripple effect because air transportation is not an isolated event. It is part of an integrated complex system, crossing time zones, state borders and national boundaries. For example, an 11 p.m. curfew at an east coast airport translates to 8 p.m. in Pacific Coast Time, which means operators would be unable to schedule transcontinental flights to the western airport after 2 p.m. If five hours flight time is allowed, with another hour for delays and other uncontrollable factors, it is apparent, then, that local curfews not only harm the local economy but also impact adversely at the national level.

Earlier I hinted at my prejudices in favor of engineers and against lawyers. Let me demonstrate my willingness to see

both sides of an issue. Some engineers have contributed to the noise problem in proposing unrealistic and irrelevant noise statutes. In particular, I refer to the California noise laws. The engineers who contributed to that legislation did the public a great disservice. The law incorporates an analytical model in which noise contours are drawn on maps. Legislators imposed a schedule of reducing the area of the noise contours. Failure to meet this California schedule may lead to the closing of some of the most important airports in the country. This law has imposed horrendous pressures on the airport operators, causing them to attempt constraint of airport operations in a variety of ways.

The simplest solution proposed is to shut down the airport for a number of hours a day, or to control the number of flights during an hour. This contravenes the free market forces which should be the allocators of such services for the benefit of the public. Another suggestion proposed by one airport was to allow the carriers to reduce power on takeoff, which would require flight crews to perform difficult maneuvers during critical moments in flight.

Clearly, the California noise laws are putting such pressures on the airport operators that the operators are seeking solutions which make trade-offs between noise and safety. The unrealistic California noise standards will either shut down significant segments of the air transportation industry or create compromises in safety. The FAA will not tolerate such Hobbesian choices. We must take whatever steps are necessary to preclude such interference with the national system. The solution to noise problems will not come from arbitrarily imposed, unrealistic standards. True relief is more likely to come from technical solutions, not short-term operational band-aids.

Before moving on to what actions the Federal Aviation Administration (FAA) is planning to counter the assault on our airport system, let me pause and clarify one issue. I believe that some airports' neighbors are legitimately entitled to claim damage from noise. People who purchased homes prior to airport construction can be said to be harmed by the air-

plane noise, if that indeed is the case. I assume that, if they can establish that the property does not have greater commercial worth, they have a remedy, a lawsuit for inverse condemnation. Their loss of the quiet enjoyment of their property can and should be compensated through such a procedure.

I am not as sympathetic to people who come to a house with full knowledge that an airport is nearby. A real estate agent will tell you that the property is already discounted to reflect the airport's existence and operation. In fact, some individuals and, even more likely, some real estate development companies, are speculating by purchasing residential property near runways. For this class of people, I have less sympathy.

This administration recognizes that airports are vital national assets in our air transportation system, and in some cases our national defense. It intends to take whatever steps are necessary to protect airports from unreasonable assaults. The first perimeter of protection will involve an attempt to intervene positively when such proposals appear. The FAA has tremendous expertise on the subject of noise. When a local authority begins to consider a restriction, we will seek to share our knowledge and to develop more reasonable regulations. This is exactly what we are doing at White Plains, New York.

The New York case holds great hope for future solutions, and thus merits a more detailed description. White Plains is a northern suburb of New York City. The community integrates residential areas and commercial development, consisting primarily of corporate headquarters. White Plains has a very fine facility which has attracted some of those citizens and corporations to the community. The facility is an airport and from it a number of general aviation aircraft fly, a number of corporate jets operate, and finally, a limited number of scheduled airlines arrive and depart.

Some local residents oppose these uses of the airport; they complain that the quiet use of their houses is denied by these flights. The local government agrees and has closed the airport to *all* aircraft during the nighttime hours, without regard to the noise which each flight generated. The result may be

some noise reduction, but this artificial constraint has caused the users of the airport to bunch their flights in the last few minutes before the curfew and the first few minutes after the airport opens again. For someone sleeping at 7 a.m. this flock of airplanes departing at 7:01 a.m. probably disrupts sleep. The intent of the local government did not result in a significant improvement in the noise situation; it did, however, adversely affect air transportation.

In response to this curfew two associations brought suit against the county seeking to have the curfew deleted. Should the suit go well, at the end of several years of expensive litigation, the counterproductive curfew could either be permitted by the court, or found to be illegal. Neither the users of the air transportation system nor the local residents would be benefitted by this time-consuming and asset-depleting suit.

Fortunately, the local government of White Plains is an enlightened one. All of the interested groups were able to agree to hold the litigation in abeyance and to get the conflict out of the courtroom. The FAA offered a number of immediate, real improvements in local noise levels, none of which had anything to do with the operation of the airport. Our next step was to bring a tremendous amount of expertise to this problem. We provided the local authorities with a number of means to measure noise, and thus a more precise way to analyze their problem. White Plains is now seeking a mechanism by which to realistically regulate noise. Some types of aircraft can be operated at night with no impact on the local residents. A rule which allows the quietest planes to operate at night balances the legitimate needs of White Plains Airport's neighbors against the rights of airplane owners reasonably to use that airport.

The process at White Plains is not complete; we still have a lot of homework to finish and a lot of negotiating to do. The expectations are high because of the willingness of the local authorities to examine the issues with reason and without emotion. Through this cooperative effort we may establish a precedent for other airports. Through reasoned analysis of the problem, the community, the airport users and the FAA may

reach a realistic compromise which minimizes noise while maximizing use. Let me emphasize that this administration really looks to community efforts to seek solutions. We, at the FAA, will assist in these cooperative actions, and only if the community is unwilling or unable to provide a rational solution, will the FAA intervene.

A second mechanism for protecting these vital cogs in the air transportation system is litigation. In the past the United States government usually waited until a private party brought an action. That no longer will be the FAA's posture. We will advocate immediate, direct action to prevent the loss of valuable airports. We have several legal bases from which to act:

- (1) The restraint may impose an undue burden on commerce;
- (2) A noise standard may interfere with the federally preempted authority to regulate the safe and efficient use of airports;
- (3) An airport restriction may unreasonably discriminate among users; or
- (4) The limitation may violate the terms of federal airport grants.

The remedies under these statutory and contractual clauses provide unambiguous mechanisms to keep the runways operating on a reasonable basis.

The use of grants is another means of positively addressing this problem. When the FAA provides airport development funds, that money is conditioned upon certain assurances from the airport operator. Through these contract terms the FAA buys for the nation an agreement that the airport remains open for a certain time.

The third avenue for preserving the airport system is the one for which I have the greatest expectations. Rather than respond on an *ad hoc* basis to immediate crises, this remedy seeks to create a systematic solution. The FAA Chief Counsel is drafting comprehensive legislation that would continue to allow local authorities to propose whatever terms they deem

acceptable for the operation of an airport.

It is recognized that local officials will necessarily reflect the parochial views of their constituents. However, prior to implementation of any such plan, the proposed legislation would *require* FAA review and approval. The agency's perspective would be national in scope, recognizing that the closing of an airport, even for one hour, has effects on the national air transportation system well beyond the local community. The FAA, under the bill being drafted, would consider those national consequences and determine whether the national benefits from keeping the airport open for that hour are greater than the costs to the local residents. If so, that hour will be preserved. The FAA would accept the economic consequences of such a judgment. That is, the FAA would become liable for the incremental difference between a *reasonable* local viewpoint and a truly national perspective.

I realize that I have spoken about this legislative proposal in very ambiguous terms, which is not the nature of an engineer. The terms are not precise because we are still in the early drafting stage, but we will be ready to introduce our legislation as early as this summer.

In closing, let me make one point very clear: the FAA regards airports to be a vital national asset and it will take whatever steps are necessary to protect them. It is hoped these activities can involve positive interaction between local authorities and the FAA. If necessary, the agency will use all available legal mechanisms to maintain the air transportation system. In the long term, we intend to implement a system which places the initiative with the localities, but which provides the FAA with a means to reflect national needs.