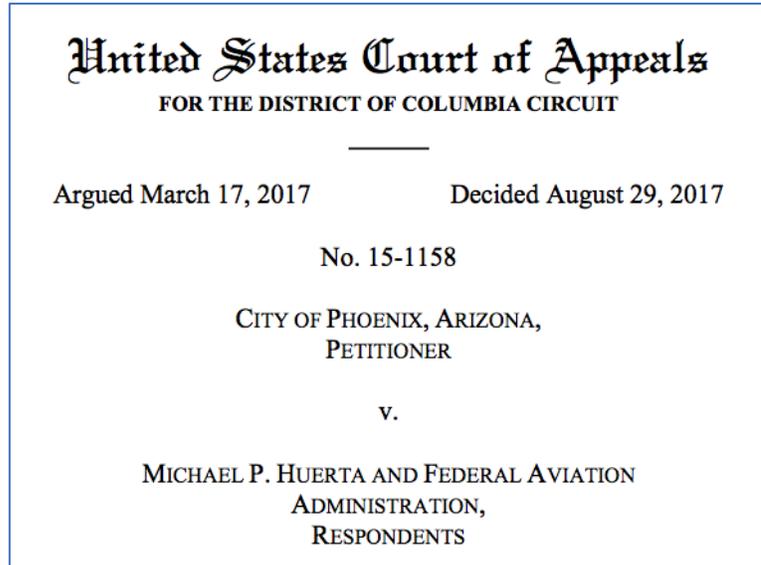


The City of Phoenix v. FAA - Common Sense, Arithmetic and History

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On August 29th, 2017 the DC Court of Appeals [delivered an eagerly awaited blow](#) against the Federal Aviation Administration when the Court vacated the FAA's order implementing new flight tracks from Phoenix Sky Harbor airport, and remanded the matter to the FAA for further proceedings. The case came about when the FAA implemented new flight tracks as part of its NextGen technology package in Phoenix.

Having now read the full ruling, I want to call attention to aspects of it I think have **implications far beyond how the FAA implements NextGen.** Specifically, the Court recognized a few simple facts that seem obvious to citizens, but have thus far eluded the Courts and the FAA. Those are:



1. A 300% increase in the number of flights over a neighborhood is a lot, regardless of how the FAA measures noise (i.e. the logarithmic measurement known as DNL).
2. Thinking otherwise defies “common sense”, and “could not reflect reasoned decisionmaking (sic).”
3. History, and longstanding flight tracks matter, because they help create “quiet oases” that people value, even in urban areas. Destroying those when the FAA has options is problematic and illegal.

A few details from the ruling:

*The FAA argues that it was reasonable simply to assume that its proposal would not be controversial on environmental grounds, given that the agency had “confirmed that no significant noise impacts were anticipated at all ... **Common sense reveals otherwise. As noted, the FAA’s proposal would increase by 300% the number of aircraft flying over twenty-five historic neighborhoods and buildings and nineteen public parks, with 85% of the new flight traffic coming from jets. The idea that a change with these effects would not be highly controversial is “so implausible” that it could not reflect reasoned decisionmaking.***

And later:

*In short, the FAA had several reasons to anticipate that the new flight routes would be highly controversial: **The agency was changing routes that had been in place for a long time, on which the City had relied in setting its zoning policy and buying affected homes. The air traffic over some areas would increase by 300% — with 85% of that increase attributed to jets—when before only prop aircraft flew overhead.***

300% = Common Sense

Followers of this issue recognize that the FAA never talks about noise in simple arithmetic terms like “traffic would increase by 300%”. Instead it always uses the logarithmic average of noise, Day Night Level, to assess the impact of noise. Not only does the FAA use DNL to assess noise, it uses the horribly outdated 65 dB DNL as the threshold for “significant impact” of noise.

I’ve maintained for some time that 1) If we are going to use the rather obtuse logarithmic average of modeled noise (i.e. DNL) to evaluate the impact of noise, then we should use the internationally accepted standard of 55 dB DNL (or 10 times less noise than 65 dB DNL) as the threshold for significant impact, and 2) linear measures like a simple count of the number of loud flights overhead are much more informative for people and should be included in standard reports on aircraft noise. The measure known as N(x) does just that, as it counts (N) the number of planes overheard that are at least “x” decibels loud (typically 65 dB, which is then expressed as N65).

The takeaway being that the courts just ruled counting the number of loud planes overhead is a common sense way to measure noise. This seemingly obvious notion is actually a breakthrough in dealing with the FAA.

History matters

I personally got involved in this issue when it came to light in late 2012 that the FAA intended to put a new superhighway in the sky through southwest Minneapolis, with an average of 135 departures a day at about 2,000’ directly over my house.

The history here being that just a few years earlier I spent well over a year looking for a lot where I could build a house in the city. I was looking to balance access to the environmental amenities of the city with a tolerable level of noise. I ended up paying quite a bit to buy and tear down a collapsing, 90 year old farmhouse in the “Golden Triangle” of relatively quiet southwest Minneapolis, and I now live there in the new house that I built.

In other words, I spent quite a bit of money to buy relative peace and quiet here in an urban area. With that in mind, a simple tour of homes for sale in Minneapolis will show you that the same house in a similar, but much louder part of town can be 20 to 30% less expensive.

Again, I am not a lawyer, but this court ruling suggests to me that the FAA has to consider the historical pattern of aircraft noise in a community, and how new flight paths might affect that. And as I mentioned above, the FAA should do so using a “common sense” standard that includes magnitude of change in the number of loud flights.

From the ruling:

In determining whether a transportation project would substantially impair an area protected under section 4(f), the FAA may rely on guidelines set forth in 14 C.F.R. pt. 150 (the Part 150 guidelines), including the directive “to evaluate impacts on historic properties that are in use as residences.” Order 1050.1E, supra, ¶ 6.2h. But the Part 150 guidelines

“may not be sufficient to determine the noise impact” on historic residences if “a quiet setting is a generally recognized purpose and attribute” of those residences. Id.

Continuing:

The City contends that it was unreasonable for the FAA to rely only on the Part 150 guidelines, because the agency didn’t have enough information to tell if the areas affected here were generally recognized as quiet settings. We agree.

As evidence that these sites were not “generally recognized” as quiet settings, the FAA pointed to the sites’ urban location. Id. **But that isn’t enough: even in the heart of a city, some neighborhoods might be recognized as quiet oases.** The agency also observed that planes were flying over the affected historic sites even before the new routes took effect. **But those earlier flights involved propeller aircraft that flew far less often, so the homes beneath them might still have been generally recognized as “quiet setting[s].”** Id

Or in simple terms, if you have neighborhoods that have been relatively free of aircraft noise for decades, the FAA can’t just decide to destroy that characteristic based on guidelines that defy common sense.

I’m not blessed with having a teenager. But when I was one myself, this finding would have amounted to a giant “Duh!” I’m glad we are catching up on the obvious.

Note: Even the dissenting opinion in this 2-1 decision did not argue with the merits of the majority’s finding – the “duh” - he simply thought that the suit should have been filed within 60 days.

Citizen action

I’m sure cities that were previously subjected to the FAA’s arbitrary decision making on new NextGen flight tracks will carefully review their legal options based on this decision. But beyond that, based on this decision, two actions jump out for me that citizens should demand in order to measure and then manage the reduction of aircraft noise:

1. ***Common Sense Reporting:*** Citizens should demand airport authorities generate noise reporting using Nx (more specifically N65), so that people can see simple charts indicating how many times noisy planes fly overhead. With this we can get a clear understanding of what things look like today, so we have a baseline for comparison when the FAA comes knocking. It seems citizens could undertake this in each community, but we might also push the [Congressional Quiet Skies Caucus](#) to request the same noise baselines from the FAA. Interestingly, the FAA already approves of Nx as a supplemental measurement, and the agency’s noise modeling tool has a module that easily calculates it. If this is done alongside reporting noise at 55 dB DNL instead of the outdate 65 dB DNL, citizens will have a much clearer picture of where the agency is putting harmful and annoying levels of aircraft noise.
2. ***Common Sense Management:*** The Court rejected the FAA’s overly legalistic and arbitrary definitions for the impact of aircraft noise in favor of “common sense” measurements. I would suggest there are other aspects of the FAA's oversight of the

country's airports that are just as obtuse and arbitrary as the measurement of noise, and these should be ripe for citizen challenge. One of those aspects is the fact that the vast majority of local communities have what amounts to no say over the actual operation of their own airport. For instance, airport authorities cannot in any way limit the time of day when planes land at their airport. They cannot limit how loud those planes are. In essence, if a community wants an airport, it is at the mercy of airline companies as to how loud it will be around the airport. Some claim that restricting airline operations in any way around noise would be problematic for airlines – an assertion that conveniently ignores the fact that such restrictions are commonplace elsewhere in the world. In France, for instance, there are [noise limits](#) at the nine largest airports. And in fact, a few airports in the US are grandfathered under a 20 year old law that allows them to have [curfews](#) on flight operations, and they are even allowed to penalize airlines for violating those curfews. If airline companies deal with reasonable noise restrictions across the world, and indeed right here in the US, **isn't it common sense that other cities here should be allowed to do the same? Let's start demanding just that.**

Aircraft noise is obviously a part of deal we make with ourselves to be able to travel across the world in just a few hours. But that doesn't mean we should ignore the negative externality, that is, the significant impact of such noise. The D.C. Court of Appeals just gave us a common sense way to approach measuring and managing such noise.

It's time to get busy, citizens!

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(Highlights, footnotes and minor edits may have been added, but only to add analysis & clarification)