

FILE

In re Madert

Justin, Lindsay & Oh
Attorneys at Law
47 Montgomery Avenue
Oakton, Franklin 33311

Memorandum

To: Applicant
From: Sarah Lindsay
Re: Allie and Bruce Madert
Date: February 26, 2002

Our clients, Allie and Bruce Madert, are having a problem with their next-door neighbors, Adrian and Evelyn Doyle. The Doyles are trying to start a rock band. They are constantly practicing alone or with an ever-changing group of other musicians in a shed they converted into a music studio behind their house. The Maderts have repeatedly asked the Doyles to restrain themselves in a variety of ways, but to no avail. When the Maderts mentioned that they might even be forced to take legal action, Adrian Doyle told them to contact his lawyer, George Austin.

In fact, the Maderts are reluctant to file a lawsuit. Before they go that far, they want us to write a letter to George Austin to see if we can convince the Doyles that, unless they make changes to reduce the intrusiveness of their playing to acceptable levels, the Maderts will sue for an injunction and damages.

Draft a letter for my signature to George Austin. The letter should briefly explain the dispute, emphasize the key facts, and use legal authority to argue persuasively that the noise produced by the Doyles' music constitutes a nuisance to our clients and that, if the Maderts sue, a court will likely issue an injunction and award significant damages. Be sure to include in the letter a statement of what relief the Maderts could expect to obtain and constructive suggestions of what steps the Doyles can take to abate the noise so that it is no longer a nuisance.

Austin is a stickler for legal analysis, but a very reasonable and competent lawyer. He is likely to be receptive to solutions that will avoid litigation for his clients if he is persuaded that his clients' case is weak, so don't hesitate to lay out our case to him.

**Transcript of Recorded Interview with
Allie and Bruce Madert
February 25, 2002**

- Attorney:** Allie, Bruce, how good to see you. What brings you to see me in this setting?
- Allie:** I can hardly believe it—a problem with our new next-door neighbors. Well, not so new. They moved in about a year ago. Our old neighbor, Cecil, was always friendly, but our lives didn't overlap much. When Adrian and Evelyn Doyle moved in, our neighbors suddenly became a big problem.
- Attorney:** What kind of problem?
- Allie:** Let me go back to the beginning. Cecil was a painter, and he spent most of his time in an old shed behind the house, which he used as a studio. When the Doyles bought the house, the first thing they did was get a permit to remodel the shed and bring in contractors to make it fancier—they put in a skylight, made the windows larger, and made other improvements. At first we thought they were trying to create an accessory apartment, which would have been illegal without a zoning variance. They said they were creating a music studio. Adrian plays the bass guitar and Evelyn the drums. They had lived in an apartment before and were excited to have a place where they could just "let go" with their music. I told Evelyn that I was disturbed by noise—especially the bass guitar—and that the shed didn't seem like it would contain the sound. Bruce thought I was being kind of rude when I told her about hating the sound of the bass coming through the floor in my college dorm. She assured me that they were looking into ways to absorb the noise. As the renovations went along, I asked specifically about all the glass they were adding—I thought it would exacerbate the problem. Again, Evelyn said they were "dealing with it."
- Bruce:** I did think Allie was being a little paranoid, but then, during the renovations, they started to practice their instruments in their house late into the night. At midnight you could hear the same six notes on the bass, over and over, not to mention the sharp sounds of the drums.
- Allie:** I couldn't decide if the practicing or the playing was worse. Other people would go over to the Doyles and they would all play. I don't know how they ever got any jobs, but apparently they did. Sometimes we'd see them loading up their old Chevy with all their equipment and they would say they were headed off to a "gig."
- Attorney:** Did you ever let them know that the noise was bothering you?
- Allie:** Lots. Once after they had been practicing during a weekday evening, I saw Adrian and told him that it was distracting to the kids when they were doing their homework. He

said it would be better when the studio was finished and that they would try to keep the noise down. It never seemed any better to me.

Bruce: Another time, Evelyn came over about five on a Saturday afternoon to say they were having people over that evening and that she hoped it didn't bother us. I felt funny saying that I hoped they didn't go too late. At 2 a.m., when I finally fell asleep, they were still going strong.

Allie: After one particularly awful Friday night after the studio was finished when they had at least six other musicians there, we put a letter in their mailbox that said we were considering legal action. I brought a copy for you.

Attorney: Did you get a response?

Bruce: A vague one. Adrian said that they'd had a "really intense" night and that it was unlikely to happen again. He said that if we had legal problems to contact his lawyer, George Austin. It was so strange. Adrian showed no anger or embarrassment.

Attorney: So then what happened?

Allie: Things only got worse. They keep practicing till all hours and having people over to play—anywhere from two to eight of them. If there was any difference in the sound after the studio was completed, it was louder. It was certainly more frequent.

Bruce: And I never saw any sound insulating material when they were doing the construction. I've looked in the window and can see that the walls are just drywall. They have shades on the windows, but they don't seem specially designed for acoustical qualities. The noise is especially terrible in warm weather. I like to keep the windows open rather than run the air-conditioning. But then I feel like the band is in the living room.

Attorney: Before I find out what you would like to have happen, I'd like to know more about the neighborhood. Tell me about the Windsor section of town where you live.

Allie: We love Windsor. When we looked for a house to buy 16 years ago, we looked only there. The area has a strong sense of community, commitment to diversity and acceptance of all sorts of artistic types. A lot of people are ecologically minded. We have our own special recycling programs where we separate our garbage into five categories. You can't cut down a tree on your own property without a special permit. Some of the commuters who try to use our neighborhood to avoid busy streets don't like our speed bumps, but the bumps keep our children safe and keep away the motorcycles and trucks, with their noise and dirty exhaust.

Bruce: Like Allie says, we have a lot of artistic types in the neighborhood. That's part of what attracted us. We have our own jazz and folk festivals and a local weekly music series outside the library in the summer. One neighborhood group puts on a yearly Shakespeare play using all child actors and another has a neighborhood dance recital.

We hold an art festival for local artists in our commercial district. We could go on, but you get the idea.

Allie: It's ironic that a couple of musicians are causing our trouble. We've had all sorts living around us over the years, and they've always been careful about not disturbing anyone. There are artists' cooperatives and community centers close by where people can go if they want to play loudly or with a group or late at night. They don't charge very much.

Bruce: I think the difference is that the Doyles are recently married, middle-aged teenagers who are trying to experience a carefree, vaguely rebellious youth they never had. Our kids think they're just pathetic. During the day, they're both computer programmers. At night, they have dreams of starting a rock band.

Attorney: How do you fit into the Windsor community?

Bruce: Over the years, we've restored our Victorian, which is in the historic district. Most of the houses have large backyards, but the side yards are only 12 feet wide.

Attorney: Now let me find out what you would want—other than for the Doyles to move.

Allie: You're right. I'd throw them a good-bye party, and they could play. But given the work and money they've put into the studio and, by the way, the house, too, I don't see any celebration in my future.

Bruce: Also, they're not mean people. They're just kind of ridiculous and out-of-it so they do some pretty inconsiderate things. If we can keep from suing them, I'd prefer that option, but we're prepared to spend some money on this if we have to. Also, we don't know if the law is on our side.

Allie: I'd be happy enough if they kept the noise from reaching our house—the whole year. So I guess they'd have to change the times they play and practice. And, I bet there are alterations they could make to the studio to muffle the noise a lot.

Bruce: But probably they can't do everything they're now doing out of their studio.

Attorney: Let me tell you how I'm thinking about proceeding, and you can see if that makes sense to you or if you have other ideas. I think the law is quite favorable in your direction. The law provides a variety of remedies, that is, things we can ask for, both in terms of getting money and getting the Doyles to change. Before spending money on an investigation and hiring a battery of experts, we might be able to convince the Doyles, through their lawyer, to make the necessary changes.

Allie: I don't know if a lawyer can get through to them, but it seems worth a try. I'm not particularly interested in getting money from the Doyles, as long as the noise stops. But I wouldn't mind threatening—it might get their attention.

Bruce: I agree. Out of curiosity, could we get a court to order them to stop playing their music completely?

Attorney: Probably, but I'll have to do the research. The legal argument about the scope of the problems they face will have to be strong and convincing. I'll draft something and send it to you to see what you think before I send it to Austin.

Bruce: Sounds great. We'll wait to hear from you.

209 Westland Road
Oakton, Franklin 33329
December 7, 2001

Adrian and Evelyn Doyle
211 Westland Road
Oakton, Franklin 33329

Dear Adrian and Evelyn,

We are writing to you out of our frustration and unhappiness about the problem created for us by the noise level of your music. We know that you both love music, as we do. We also appreciate your enthusiasm for it. However, you do not seem to understand that the noise level interferes with the lives of our family. Your party last night was only the most recent and egregious example of the way your playing is out of hand. You and your friends continued to play very loudly until after 3:00 a.m. For all we know, you continued even later, but we finally got to sleep a little after 3:00. Laurie fell asleep by midnight, but she had a recital this morning at 8:30 so was much more tired than was good for her. Noah, who fell asleep about 12:30 a.m., had to get up at 7:00 a.m. for his basketball game. We all need our sleep, even on weekends. Although you might not have to wake up on weekend mornings, many of us do, and these late hours spoil what are important times for us.

We are asking you to please stop playing in a way that we can hear. It is intolerable that your music interferes with the regular activities of our lives. If the noise does not stop, we may have to take legal action. We hope that we can work together to solve this problem.

Very truly yours,

A handwritten signature in cursive script that reads "Bruce Madert".

Allie and Bruce Madert

Noise Pollution and Control

University of Franklin Department of Ecological Studies

1998

INTRODUCTION

One of the drawbacks of our advanced technology is that we have produced the loudest noises known to humans. The realization that noise is a pollutant has been very slow in coming. Noise is invisible. Defining its impact on people and the environment is more difficult than with other environmental pollutants such as those that affect air or water. In addition, some people just plain like to make noise because of its association with power. It is a common misconception that you can adjust to noise by ignoring it or getting used to it. The ear never closes and is continually responding to sound, even during sleep. Noise can

- cause permanent hearing damage;
 - contribute to the development or aggravation of heart and circulatory diseases;
 - affect the quantity and quality of sleep;
 - interfere with conversation and social interaction;
 - disrupt the educational process and hinder the development of language skills in children;
 - transform our initial annoyance into more extreme emotional responses and behavior;
- and
- endanger life and limb by obscuring shouts for help or masking warning signals, thereby delaying or preventing rescue attempts.

Home should be a place for rest and quiet after the labor and cares of each day. Excessive noise in the community deprives most people of access to such a retreat. Community noise problems are varied and include everything from barking dogs to traffic noise.

SUGGESTED OPERATIONAL RESTRICTIONS FOR COMMUNITY NOISE REDUCTION

Nuisance Laws: Prohibit loud or raucous behavior, disturbing the peace, and/or making unnecessary

noise. This approach may be difficult to enforce, except in controlling noise from animals, radios, televisions, and musical instruments, and this approach needs to be employed in conjunction with another approach such as property-line noise limits.

Property-Line Noise Limits: Effective in controlling noise from stationary sources. Place a decibel level limit on noise at the boundary of the receiving or (less commonly) of the emanating property. Most often the noise limits are stated in terms of the character of the receiving land use (e.g., residential, commercial, etc.), and the time of day.

Source-Distance Noise Limit: Restricts operation of a device that creates a noise disturbance within a specified distance from the source. May be imposed to control noise from radios, televisions, stereos, motor boats, refuse collection vehicles, and recreational vehicles.

Time Limitations: Effective in controlling both stationary and mobile noise sources. Specify hours during which noise is prohibited.

Area Limitations: Specify areas such as noise sensitive zones and places of public entertainment where noise is controlled.

Use Controls: Restrict the operation of the noise sources such as motor vehicle horns, motor vehicles and cycles, and places of public entertainment.

SUGGESTED NOISE CONTROL TECHNIQUES

Use of Buffers: Setbacks can be provided in the form of open space, frontage roads, recreational areas, garages, etc., between the noise source and the receiver. The objective is to achieve attenuation of noise with distance.

Use of Barriers: This includes walls, berms, or other structures intended to provide extra attenuation by blocking noise from the source.

Unit Design: Placement of relatively sensitive rooms or fixtures away from the noise source is cost-effective. Garages, bathrooms, and storage areas can serve as internal noise barriers for bedrooms and living rooms.

Building Orientation: Using one building to shield another can reduce noise control costs. Placing yards or patios inside the "L" or "U" of buildings can reduce outdoor noise exposures if these face away from the noise source.

Noise Attenuation by Building Facades: The most obvious example of this technique is the reduction of window area on noise-impacted facades. Practices such as the use of double or staggered- stud walls, acoustical glass (with low air-infiltration window frames), resilient channels, etc., are effective in reducing interior noise levels. Weather stripping and caulking of wall penetrations are essential.

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