

# AIR RAGE: IS IT A GLOBAL PROBLEM? WHAT PROACTIVE MEASURES CAN BE TAKEN TO REDUCE AIR RAGE, AND WHETHER THE TOKYO CONVENTION SHOULD BE AMENDED TO ENSURE PROSECUTION OF AIR RAGE OFFENDERS?

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## I. INTRODUCTION

Air rage is a fairly recent phenomenon gaining domestic and international scrutiny in an area of increasing importance and interest to the traveling public.<sup>1</sup> In order to provide reasonable solutions to eliminate or decrease this trend, it is necessary to analyze recent occurrences, as well as the motives for air rage. It is also essential to examine government and airline union roles and responses to the phenomenon. With an understanding of the motives for air rage, along with a solid background of the current status of the laws around the globe, proactive measures can then be taken to ensure full and complete prosecution by governments of disruptive passengers. Part I of this article introduces several outrageous examples of air rage. Part II examines the important role of airline unions and governments. Part III presents various domestic and international air rage statistics and the need for further studies and analysis. Part IV addresses the role that different cultures may play with air rage. Part V discusses the potential dangers associated with air rage, from both pilot and passenger perspectives. Part VI reveals the various measures that airlines are using to combat air rage. Lastly, Part VII provides the current status of domestic and international air rage laws, including a discussion of the Tokyo convention.

## II. EXAMPLES OF AIR RAGE

With visions of rum punch, sandy beaches, and a week of relaxation ahead, your mind and body are beginning to transform into vacation mode. Imagine embarking on an airplane looking forward to a well-earned holiday at a warm Caribbean resort destination. As the aircraft flies along at 36,000 feet, your daydream begins. All of a sudden, your daydream is immediately interrupted by a group of rowdy, drunk passengers singing noisy songs, screaming obscenities, and throwing objects at the flight crew. This exact scenario occurred on board an Airtours flight from London, England to Montego Bay, Jamaica.<sup>2</sup> Apparently, the group of twelve passengers started demanding alcohol shortly after takeoff. A fight ensued when a Jamaican passenger complained about the other passenger's outlandish behavior and threw beer on

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1. Stephen Luckey, *Passenger Interference with Flight Crews and the Carry-On Baggage Reduction Act of 1997*, at <http://www.safety.alpa.org/testimony/tm061198.htm> (last visited March 24, 2001) [*hereinafter Hearings*] (statement before the Subcommittee on Aviation Committee on Transportation and Infrastructure U.S. House of Representatives). Mr. Luckey testified in front of the House of Representatives Subcommittee on Aviation under the House Committee on Transportation and Infrastructure. He spoke on behalf of 49,000 pilots working for 48 airlines in the United States and Canada regarding passenger interference with flight crews and carry-on bags limits.

2. Elliott Neal Hester, *Straightjacket for the Skies*, at <http://www.salon.com/business/col/hest/2000/08/11/restraint/index.html> (Aug. 11, 2000).

a member of the group, Patrick Connors.<sup>3</sup> Connors, restrained by three flight attendants, lunged at the Jamaican man. As a result, the captain of the plane diverted to Norfolk, Virginia, and ten FBI agents boarded the plane and removed the twelve unruly British passengers.<sup>4</sup> The disruptive passengers were returned to England, and Connors was convicted of endangering an aircraft.<sup>5</sup> Connors was jailed for twelve months and another member of the group was jailed for three months.<sup>6</sup> The judge presiding at the three-week trial told the men, “[f]or those passengers around you who were unused to public displays of violence it must have been a very terrifying incident.”<sup>7</sup>

A more recent international air rage incident receiving media attention occurred this past holiday season on a British Airways flight from London to Nairobi.<sup>8</sup> A man entered the cockpit and temporarily took over the aircraft controls causing the plane to nosedive. After a struggle, the pilots managed to regain control of the plane. It was within only four seconds of crashing to the ground.<sup>9</sup>

Another outrageous incident aboard an airplane occurred when a thirty-nine year old man from Missouri was on the final leg of an Alaskan Airline flight enroute from Puerto Vallarta, Mexico. He became restless and started acting irrational.<sup>10</sup> He took off his shirt, threatened to kill everyone on board, and even tried to open an exterior plane door.<sup>11</sup> After walking through the cabin, the man broke into the cockpit and attacked the plane’s co-pilot, who defended himself with a small ax.<sup>12</sup> Six passengers answered the captain’s call for assistance and restrained the man using plastic restraints.<sup>13</sup> The man was taken into custody, appeared in federal court, and was charged with interference with the flight crew.<sup>14</sup>

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3. *See id.*

4. *See id.*

5. *See id.*

6. *Air Rage: The Mile-High Menace*, at [http://www.itn.co.uk/WIP/20000820/air\\_rage.shtml](http://www.itn.co.uk/WIP/20000820/air_rage.shtml) (Aug. 20, 2000).

7. *See id.*

8. Jimmy Burns, *Passenger Drama Puts BA Jet in Jeopardy: Aircraft Man Tries to Seize Controls*, FIN TIMES (London), Dec. 30, 2000, at National News 3. The plane’s automatic pilot was disengaged and the plane spiraled downward. The man who broke into the cockpit was apparently a deranged mental patient.

9. *See id.*

10. Ryan Kim, *Menace of Air Rage Appears to be Growing, Thursday’s Airliner Drama is Part of a Disturbing Pattern*, S. F. EXAMINER, Mar. 18, 2000, at A1.

11. *See id.*

12. Hester, *supra* note 2.

13. *See id.*

14. Kim, *supra* note 10.

There are different categories of passenger misconduct.<sup>15</sup> Some events do not interfere with flight safety (e.g. minor verbal abuse).<sup>16</sup> However, some actions do interfere with flight safety and cause a crew member's duties to be disrupted, or may even cause a crew member to become injured.<sup>17</sup> Passengers have been jailed for one year from everything from a simple refusal to turn off a cellular phone during a flight, to a passenger with a broken bottle attacking a flight attendant causing an injury requiring eighteen stitches.<sup>18</sup>

On a flight to Florida from England, a British woman head-butted a flight attendant after she was asked to stop smoking in the bathroom.<sup>19</sup> The woman was then detained in a cubicle but she broke loose and had to be controlled by passengers and the flight crew.<sup>20</sup> The pilot had to abort landing the airplane and went into a holding pattern until the woman calmed down.<sup>21</sup> The flight attendant was treated later for a suspected broken nose.<sup>22</sup> On a United Airlines flight from Buenos Aires, Argentina to New York City, a passenger was fined \$50,000 (clean-up fees) by the airline after he assaulted a flight attendant, and defecated on a first-class food cart.<sup>23</sup> On a different flight, a passenger placed his hands around a flight attendant's throat and threatened her because she accidentally spilled a drink.<sup>24</sup> A female passenger grabbed a flight attendant's finger and bent it backward, saying that she did not like the way the attendant asked her to put her tray and seat upright before the aircraft landed.<sup>25</sup>

Shortly after an All Nippon Airways jet left Tokyo, a twenty-eight year old Tokyo man forced his way into the cockpit by attacking a flight attendant with an eight-inch knife.<sup>26</sup> He told the co-pilot to exit, stabbed the pilot, and then took control of the airplane. The plane came as close as 1,000 feet to the ground.<sup>27</sup> The co-pilot and two employees entered the cockpit and overpowered

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15. *Interference With Crewmembers in the Performance of Their Duties - FAA Advisory Circular*, at <http://www.faa.gov/avr/afs/interfer.doc> (last visited Mar. 17, 2001). See App. B. *infra*.

16. *See id.*

17. *See id.*

18. *Air Rage: The Mile-High Menace*, *supra* note 6.

19. Hester, *supra* note 2.

20. *See id.*

21. *See id.*

22. *See id.*

23. Diana Fairechild, *Air Rage Caused by Intentional Oxygen Deprivation: Airlines Reduce Oxygen Levels to Increase Revenue*, at <http://flyana.com/rage.html> (last visited Mar. 17, 2001).

24. *See id.*

25. *See id.*

26. Elliott Neal Hester, *Flying in the Age of Air Rage*, at <http://www.salon.com/travel/diary/hest/1999/09/07/rage/index2.html> (Sept. 7, 1999).

27. *See id.*

the man. A non-duty pilot managed to land the plane safely, but tragically, the pilot bled to death.<sup>28</sup>

All of the above incidents are examples of recent occurrences known as air rage. Air rage has been defined as "extreme misbehavior by unruly passengers that can lead to tense moments in the air, putting crew members and passengers at risk."<sup>29</sup> Another definition for air rage is "airline-passenger disruption or violence in flight."<sup>30</sup> One article mentioned that "a disruptive passenger is characterized as one who interferes with aircrew duties, the quiet enjoyment of fellow passengers, or creates an unsafe environment."<sup>31</sup> It has also been described as "intentional acts that are highly disproportionate to motivating factors, which endanger the flight crew and/or other passengers and potentially jeopardize the safety of the aircraft itself."<sup>32</sup>

### III. ROLE OF AIRLINE UNIONS AND GOVERNMENTS

#### A. Role of Airline Unions

Airline unions play a strong role in the campaign against air rage. The International Transport Workers Federation (ITF), which represents thousands of aviation workers around the globe, began a worldwide movement.<sup>33</sup> They want to decrease the episodes of aggression on aircraft and hope to compel governments into signing an international convention that would end current loopholes allowing air rage offenders to avoid criminal charges.<sup>34</sup> The convention calls on all countries to enact laws that prosecute all offenders on all flights that land in their country.<sup>35</sup> Airline employees demonstrated and passed out literature on July 6, 2000, in many cities around the globe.<sup>36</sup> The cities included Chicago, Montreal, Paris, London, Mexico City, Taipei, Oslo, Stockholm, Zurich, Tokyo, Frankfurt, Buenos Aires, and Lagos, Nigeria.<sup>37</sup>

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28. See *id.*

29. *Air Rage Information Resources*, at <http://www.airsafe.com/issues/rage.htm> (last visited Mar. 17, 2001).

30. Ruth Walker, *Protecting Travelers from Acts of Air Rage*, CHRISTIAN SCI. MONITOR, June 16, 1999, at World Global Report 1.

31. Donato J. Borrillo, *Air Rage: Modern Day Dog-Fight, Increasing Incidents of Disruptive Passenger Syndrome Seen By Airlines as Alarming Trend*, The Fed. Air Surgeon's Medical Bull. (Summer 1999).

32. Nancy Lee Firak & Kimberly A. Schmaltz, *Air Rage: Choice of Law for Intentional Torts Occurring in Flight Over International Waters*, 63 ALB. L. REV. 1, 7 (1999).

33. *Air Rage: The Mile-High Menace*, *supra* note 6.

34. See *id.*

35. See *id.*

36. Lisa Falkenburg, *Flight Attendants Seek Stiff Air-Rage Penalties; Leaflet Campaign Tries to Alert Public; Rise in Violence Cited as Growing Menace*, SUN SENTINEL, July 7, 2000, at D1.

37. See *id.*

Cabin Crew '89, an industry organization working on the British government's air rage study group, wants to see air rage legislation passed by the British parliament.<sup>38</sup>

According to the Association of Flight Attendants (AFA), an American union, neither the Federal Aviation Administration (FAA) nor the airlines are notifying travelers of a recently passed increase in civil fines.<sup>39</sup> "Passengers don't know the fine is there, so what would deter them from going and acting up?" said Jeff Zack, a spokesman for the Washington, D.C.-based flight attendants' group.<sup>40</sup> The Air Transport Association of America (ATA) is a trade organization that assists members in promoting safety, cost efficiency, and technology, and provides representation before governments and informational assistance to passengers.<sup>41</sup> Unions are playing a key role in targeting air rage offenders, hoping to keep the skies safe for crew and passengers.

### B. Role of Government

A key government official on the international front, Deputy Prime Minister John Prescott of Great Britain, a former transport worker, has supported the interest in an international treaty against air rage offenders.<sup>42</sup> "I take the issue of air rage extremely seriously," he said. "Not only are these incidents an affront to airline workers and passengers, but, at worst, they threaten aircraft safety."<sup>43</sup> Britain's Civil Aviation Authority requires British airlines to report every occurrence concerning disorderly or dangerous passengers.<sup>44</sup> They must also report if alcohol is a factor in these occurrences.<sup>45</sup>

The International Civil Aviation Organization (ICAO) handles and develops international rules concerning civil aviation matters.<sup>46</sup> Internationally, there are many different legal philosophies and judicial systems, and the ICAO

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38. Mark Benham, *Huge Surge in Arrests of Violent Plane Passengers*, EVENING STANDARD (London), Jan. 20, 2000, at 5.

39. Richard Powelson, *Chill, Air-Ragers: The Worse You Are, the More You'll Pay*, SCRIPPS HOW NEWS SERVICE, Aug. 2, 2000, at Domestic News.

40. *See id.*

41. *What is ATA*, at <http://www.air-transport.org/public/about/16.asp> (last visited Mar. 17, 2001).

42. *Air Rage: The Mile-High Menace*, *supra* note 6.

43. *See id.*

44. Hester, *supra*, note 26.

45. *See id.*

46. *Foundation of the International Civil Aviation Organization*, at <http://www.icao.int/cgi/goto.pl?icao/en/history.htm> (last visited Mar. 17, 2001). In 1944, fifty-two countries signed the Convention of International Civil Aviation (ICAO), known as the Chicago Convention. After the final 26th ratification was received, the ICAO was formed in April, 1947. In October 1947, the ICAO became a specialized agency of the United Nations linked to the Economic and Social Council. As of 1998, there were 185 member countries. Contracting states can be found at <http://www.icao.int/cgi/goto.pl?icao/en/members.htm>.

serves to unify countries in certain areas of international aviation law.<sup>47</sup> The ICAO was created as a way to enlist international cooperation and the highest degree of uniformity regarding regulations, standards, procedures, and organization within the airline industry. One of its many functions is to facilitate the adoption of agreements/treaties and to promote their acceptance.<sup>48</sup>

Multiple federal agencies, as well as private organizations, are involved in the effort to keep passengers safe in the skies. The Federal Aviation Administration (FAA), the American counterpart to Britain's Civil Aviation Authority, is the agency that regulates the aviation industry and ensures compliance with safety standards.<sup>49</sup> It may require civil penalties for violations of its laws.<sup>50</sup> "From what I've read, air rage is up. Interference with flight crew members is on the upswing," said FAA spokesman Mitch Barker.<sup>51</sup>

The United States Department of Justice is aggressively involved in enforcing federal statutes.<sup>52</sup> The United States Attorneys' Offices prosecute these cases with their help.<sup>53</sup> The Federal Bureau of Investigation has investigative power over air rage statutory offenses.<sup>54</sup> The Office of International Affairs and the Office of Terrorism and Violent Crime Section of Main Justice have knowledge in international affairs.<sup>55</sup> They assist in cases involving violence or terrorism on international flights or on flights that have an international element.<sup>56</sup>

United States Senator Harry Reid of Nevada introduced legislation known as the "Air Rage" bill, which was enacted into law.<sup>57</sup> The United States House of Representatives also heard testimony regarding the issue.<sup>58</sup> The FAA, in concert with airline operators and airline unions, has formed Partners in Cabin Safety (PICS) as part of a government/airline industry initiative.<sup>59</sup> It will assist law enforcement officials to respond more reliably to reports of unruly actions.<sup>60</sup>

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47. *See id.*

48. *See id.*

49. Robert P. Warren, *Outline to Prosecuting Federal Crimes Committed Against Airline Personnel And Passengers*, at <http://www.air-transport.org/public/publications/101.asp>. (last visited Mar. 17, 2001) (Air Transport Association of America).

50. *See id.*

51. Kim, *supra* note 10.

52. Warren, *supra* note 49.

53. *See id.*

54. *See id.*

55. *See id.*

56. *See id.*

57. Donrey Washington Bureau, *Reid Seeks \$25,000 Fine For Air Rage*, LAS VEGAS REV. J., Oct. 7, 1999, at B7.

58. *Hearings*, *supra* note 1 (statement of Stephen Luckey).

59. Warren, *supra* note 49.

60. *See id.*

PICS works with law enforcement to address civil enforcement options from the FAA, as well as criminal enforcement to help with the problem.<sup>61</sup> It is also looking to create a better database to track air violations.<sup>62</sup>

#### IV. STATISTICS

Airline travel is at an all time high. The FAA reports general travel statistics that show air travel passenger volume increasing at a moderate rate domestically (3%-4% per year through 2010), as well as internationally (5% per year through 2010).<sup>63</sup> In 1999, approximately 499 million people boarded one of the ten major American carriers to fly within the United States.<sup>64</sup> In addition, approximately 55 million people that boarded a flight in the United States flew to an international destination.<sup>65</sup> Regional and commuter carriers accounted for another 57 million passengers flying domestically.<sup>66</sup> It is anticipated that airport congestion will get worse before it improves. Because of these growing statistics, it is important to get a handle on the air rage situation now, versus later.

Air rage appears to be a global problem.<sup>67</sup> However, this is pure speculation because there are no firm statistics on the problem. "There is no unified system in the industry for collecting information on these incidents. In fact, we do not know unequivocally that the number of passenger interference events is rising, but anecdotal evidence and statistics kept by some air carriers gives strong credence to that belief."<sup>68</sup> Based on an analysis of reporting airlines, as well as a look at the number of recent occurrences reported, it is clear that air rage is occurring around the world, not just within the United States. The stories about air rage are never ending. The media gives it much attention. However, it is difficult to reveal how extensive air rage is because of conflicting reports from the airlines and from flight crew who actually deal with the disruptive passengers.<sup>69</sup>

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61. *See id.*

62. *See id.*

63. Brent D. Bowen & Dean E. Headley, *The Airline Quality Rating 2000*, Apr. 2000, at <http://www.unomaha.edu/~unoai/research/aqr00> (last visited Mar. 17, 2001).

64. *See id.*

65. *See id.*

66. *See id.*

67. Firak, *supra* note 32.

68. *Hearings, supra* note 1 (statement of Stephen Luckey).

69. *Inform Passengers of Penalties for Violence*, SEATTLE POST-INTELLIGENCER, Aug. 16, 2000, at B6.



### A. Domestic Air Rage Statistics

The airlines' reports to the FAA purport that disruptive passenger episodes decreased between 1997 and 1999, from 320 to 310.<sup>70</sup> But according to a confidential reporting system used by flight crews, incidents aboard American carriers increased from 66 to 534 during the same years.<sup>71</sup> Oftentimes, airline statistics do not include passenger threats to flight crew that do not involve violent behavior.<sup>72</sup> "A recent study by the FAA indicated that some airlines have experienced a 400 percent increase in air rage since 1996."<sup>73</sup> San Francisco International Airport spokesman Ron Wilson said that in recent years, the number of confrontational passengers has risen. The airport has reported 121 cases in which passengers were arrested for interfering with flight crew since 1996.<sup>74</sup>

The FAA reported that as of the end of the fourth quarter of 2000, there were 266 violations of federal law for unruly passengers.<sup>75</sup> Enforcement actions for unruly passengers varied greatly between the years 1995-2000.<sup>76</sup> In 1999, the total enforcement actions of unruly passengers were 310, an increase from the prior year, 1998, when there were 282 violations.<sup>77</sup> Officials are hoping the decrease in 2000 is related to consumers becoming more educated about the dangers and penalties associated with air rage.<sup>78</sup> Even though the domestic statistics purport to show positive signs, it is a little premature to be celebrating. It is more likely that a standardized national database should be created to gather uniform air rage statistics from all airlines and aircrew, and an efficient analysis should then be conducted to study the results.

### B. International Air Rage Statistics

British Airways' official statistics show 122 occurrences of air rage through March 1999.<sup>79</sup> However, an in-house British Airways document revealed that cabin crew are dealing with more than 644 incidents of physical

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70. *See id.*

71. *Herald Traveler*, B. HERALD, Aug. 13, 2000, at Travel 66.

72. Powelson, *supra* note 39.

73. Glenn Puit, *Teen Dies After Flight Rampage*, LAS VEGAS REV. J., Aug. 13, 2000, at A1.

74. Kim, *supra* note 10.

75. *FAA Enforcement Actions Violations of 14 CFR 91.11, 121.580 & 135.120 Unruly Passengers*, at <http://www.faa.gov/apa/stats/unruly.htm> (last visited Mar. 17, 2001). The FAA's database contains only those incidents reported to the FAA, and reporting is at the discretion of the crewmember. Year 2000 numbers may change due to ongoing reporting of December incidents.

76. *See id.*

77. *See id.*

78. Chris Woodyard, *Fewer Fliers are Losing Their Cool*, USA TODAY, Apr. 3, 2000, at B1.

79. Tom Robbins & David Leppard, *Airlines Conceal Attacks on Crew*, SUN. TIMES (London), Apr. 2, 2000, at Home News.

and verbal abuse each year.<sup>80</sup> During the first half of 1999, thirteen passengers were restrained by handcuffs on British Airways flights and four flights were diverted because of disorderly travelers.<sup>81</sup>

The first survey of air rage cases was announced by the British Civil Aviation Authority. There were 800 incidents during one seven month period on all British aircraft, or one incident per 870 flights.<sup>82</sup> The British Airways figures reveal a larger frequency of air rage, with flight crew dealing with disruptive passengers on one in 440 flights.<sup>83</sup> Almost 200 airline passengers flying into London airports were arrested for disruptive behavior last year according to statistics.<sup>84</sup> The number of arrests reveals the shocking rise in aggressive and drunken behavior on airplanes.<sup>85</sup> Based on the few international statistics released, along with the continued interest from the media, air rage seems to be a growing global problem.

Since airplane travel is at an all time high, and statistics have only recently been gathered, it is difficult to say whether air rage is just a function of more media attention, or whether it is really an international epidemic. There is a problem with leaving the situation *status quo*: continued media attention but no uniformity among airlines or other country's laws. As an example, one can only imagine the scrutiny that would result should a major airliner crash as a result of an incident of air rage. It would be tragic to put it mildly. More proactive measures, including training, education, and international cooperation are essential to finding a solution to the problem.

## V. HOW DO CULTURE AND SOCIETY PLAY A ROLE IN AIR RAGE?

### A. Reasons Associated with the Increase in Air Rage

There are many theories attributed to the increase in air rage and unruly passenger behavior over the past five years. Experts in various fields have given their opinion on the subject. One of the bigger questions is why is it so prevalent now? The United States' aviation industry has led the world for the past ninety years, helping make air travel safer and more available to hundreds of millions of travelers.<sup>86</sup> However, air rage is a recent phenomenon, with statistics just now starting to be gathered and analyzed. Unruly behavior is displayed by all sectors of the population: male, female, young, old, first class,

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80. *See id.*

81. *See id.*

82. *See id.*

83. *See id.*

84. Benham, *supra* note 38.

85. *See id.*

86. *International and Domestic Aviation*, at <http://www.ostpxweb.dot.gov/aviation/xaviat.htm> (last visited Mar. 17, 2001).

business and economy.<sup>87</sup> “Statistics compiled by government agencies indicate that twenty-five percent of air rage incidents involve alcohol; sixteen percent, disputes over seating assignments; ten percent, smokers who can’t light up; nine percent, carry-on luggage; eight percent, problems with flight attendants; and five percent, food.”<sup>88</sup>

There are many reasons that air travel has become frustrating for fliers. They include more frequent delays, crowded airplanes, busier airports, long lines, stuffy cabin air, and smaller seating arrangements with less legroom.<sup>89</sup> “The planes are crowded. There are delays. I think people in general are just less tolerant of any infringement on their space or their time,” said Northwest Airlines spokeswoman Kathy Peach.<sup>90</sup> Experts also theorize that there is a growing feeling of superiority amongst travelers. They also point to factors such as less time, overcrowding, advancing technology, and other demands on the public in the future.<sup>91</sup> Other reasons include fear of flying which may create a sense of powerlessness, or the discrepancy between flier’s expectations as shown in advertisements and the reality of flying.<sup>92</sup> Social anthropologists have indicated that crowding generates expanding violence.<sup>93</sup> A recent poll found that seventy-eight percent of Americans think rude and selfish behavior has increased at highways and airports. It also showed that seventy-nine percent said the number of people who get angry at the bad behavior of others has grown.<sup>94</sup>

Another expert commented on blood sugar rates and how they have been demonstrated to cause stress.<sup>95</sup> He also noted that smoking and nicotine withdrawal has been compared, in scope, to opiate addiction, and that it is a factor on a closed airplane.<sup>96</sup> Additionally, the effects of alcohol are magnified with altitude.<sup>97</sup> The inside of the airplane cabin is pressurized to 8,000 feet. Passengers are affected by alcohol more quickly than they realize at high altitudes. Drinking dehydrates people and this can lead to irritability, fatigue, and tunnel vision. Alcohol is known to lower a person’s inhibitions, but it also

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87. *Unruly and Disruptive Passengers*, at <http://www.afanet.org/unruly.htm> (last visited Mar. 17, 2001).

88. Marianne Costantinou, *Unruly Airline Travelers Will Pay; SFO’s Welcoming Committee For Them Will Include FBI*, S. F. EXAMINER, Nov. 18, 1997, at A1.

89. Powelson, *supra* note 39.

90. *See id.*

91. Karen S. Peterson, *Why is Everyone So Short-Tempered?*, USA TODAY, July 18, 2000, at A1.

92. *Unruly and Disruptive Passengers*, *supra* note 87.

93. *Hearings*, *supra* note 1 (statement of Stephen Luckey).

94. Peterson, *supra* note 91.

95. *Unruly and Disruptive Passengers*, *supra* note 87.

96. *See id.*

97. *See id.*

magnifies the emotional reaction to the difficult flying environment. Consequently, many air rage incidents have been alcohol related.<sup>98</sup>

Yet another expert said air rage could be anything from increased impatience over waiting in airport lines to more selfishness in society.<sup>99</sup> "Certain successful individuals have what is called 'significant narcissistic features' which can be categorized as merely extreme self-confidence. These individuals resent being told what to do but also have expectations of being catered to like royalty."<sup>100</sup> As noted, the outrageous behavior exhibited by airline passengers have many explanations including excessive alcohol consumption, smoking bans, more crowding, longer flights, lack of respect for authority, and powerlessness associated with flying.<sup>101</sup>

Passengers are not the only cause of air rage. Airlines must also accept a portion of the blame for the problem. "Curtailment of fresh air in airplanes can be causing deficient oxygen in the brain of passengers, and this often makes people act belligerent, even crazy," said Dr. Vincent Mark in a telephone interview, adding "I'm positive about this, and it can be proven with a simple blood test."<sup>102</sup> One passenger stated:

I would suggest that the enraged passenger develops his/her rage at the plane or in the terminal in specific, direct, and immediate response to airline employee arrogance, incompetence, superciliousness, discourtesy, rudeness, ignorance, and disregard for normal courtesy, much less some things called professional standards and professional conduct and professional performance.<sup>103</sup>

Another culprit is cramped seating. "Airline seats are now as small as seats on subway trains, and with many flights lasting longer, passengers feel they are packed like sardines in a can, or chickens in crowded cages."<sup>104</sup> Also, airlines have contributed to the lack of storage room by removing closets, leaving little room for garment bags or heavier outerwear. With eight percent of airline luggage lost or stolen, passengers are more unwilling to check their luggage. Another problem is the difference between coach class passenger expectations for comfort and service, and the actuality of the situation.<sup>105</sup>

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98. Fairechild, *supra* note 23.

99. Kim, *supra* note 10.

100. *Hearings, supra* note 1 (statement of Stephen Luckey).

101. *Air Rage Information Resources, supra* note 29.

102. Fairechild, *supra* note 23.

103. *See id.*

104. *See id.*

105. *See id.*

### B. Global Cultural Differences

Subtle cultural differences could have an impact in the way that air crew and passengers are treated around the globe. Air crew should be able to understand these differences, which can play a major part in the international business scene.<sup>106</sup> For example, there are differences in priorities, protocol, value systems, and methods of reasoning throughout the world. As a case in point, British tend to be pragmatic, French work conceptually, and Germans tend to have a legalistic frame of mind.<sup>107</sup> Attitudes about time are also different. Americans generally think that "time is money."<sup>108</sup> In contrast, Latins and Mediterraneans are more flexible in their organization of time and time pressures. Northern Europeans, by comparison, tend to tackle agendas in an organized, predetermined sequence.<sup>109</sup>

When an individual negotiates with another from a different country or culture, it makes sense that ideas are usually evaluated, perceived, and understood differently. Even if it is only a small change, a person's beliefs and ideas are affected by their culture, values, and ways of thinking.<sup>110</sup> Cultural differences can play a large role in today's global society. Because of this, it is important for airlines, travelers, and governments to be sensitive and aware of these differences, and respond accordingly to the situation.

## VI. DANGERS ASSOCIATED WITH AIR RAGE

There are many dangerous situations that can occur in an incident of air rage. Among the more obvious would be a lack of control by the pilot should a passenger enter the cockpit. For example, during a recent confrontation between a pilot and passenger in the cockpit of a flight, a plane took a dramatic dip before the captain regained control. This happened during the scenario described above when the pilot tried to defend himself with an ax.<sup>111</sup> Obviously, rage is especially dangerous in an airplane, versus other locations where assault and battery take place. The airplane is a closed environment with no place to escape. Therefore, everyone on the plane is placed in danger, along with other planes nearby, or any potential people on the ground.

Pilots can become disrupted and make serious flying errors if interrupted by unruly passengers. These errors can threaten safety, as reported by National

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106. Richard Hill, *How Europeans Do Business*, EUR. CULTURAL DIG., May 1999, available at <http://www.european-digest.com/ecd11/docs/digest08.htm> (last visited Mar. 17, 2001).

107. *See id.*

108. *See id.*

109. *See id.*

110. *See id.*

111. Hester, *supra* note 2.

Aeronautics and Space Administration (NASA).<sup>112</sup> In forty percent of 152 studied cases, pilots left the cockpit to allay a commotion, or were interrupted from their flight duties by other crew who needed assistance. In one-fourth of the cases, the pilots made errors such as going too fast, flying at the wrong altitude or taxiing across runways set aside for other airplanes.<sup>113</sup> The report found fifteen pilot errors out of 152 air rage cases over ten years.<sup>114</sup>

### A. Pilots' Concerns

Pilots are the ones with the ultimate control and destiny over an airplane while it is flying. Thus, it is important to listen to their concerns regarding the topic of air rage. According to the Air Line Pilots Association (ALPA), passenger interference is the most persistent safety problem facing the airline industry. It is a global problem that creates dangerous risks to passengers and flight crew.<sup>115</sup> ALPA is most concerned about the extreme forms of violence on board airliners, those that have caused injuries to crew members.<sup>116</sup>

### B. Passenger Concerns

During the London to Montego Bay flight scenario described above, one female passenger said the scene was like a "bar room brawl," and said she was petrified.<sup>117</sup> Other passengers were screaming and crying during the altercation. The foreman of the jury called for better warnings of the legal dangers of drinking on airplanes. He said, "[w]e feel there should be a spoken warning about it being an offense to be drunk on an aircraft during the safety announcement."<sup>118</sup>

Mr. Thomas J. Payne, Jr., a frequent business traveler and corporate executive who travels both domestically and internationally approximately ten months each year, recently shared his personal experiences and viewpoints regarding the topic of air rage.<sup>119</sup> He has experienced air rage first hand, both in a plane, on the ground, and in the air. In one incident, he described two passengers who fought on a flight triggered when one passenger merely pressed the recline button on his chair. The person sitting behind him slapped the

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112. Alan Levin, *Air Rage a Threat on Flights; Disruptive Passengers Linked to Pilot Errors*, USA TODAY, Jun. 12, 2000, at A1.

113. *See id.*

114. *See id.*

115. *Hearings, supra* note 1 (statement of Stephen Luckey).

116. *See id.*

117. *Air Rage: The Mile-High Menace, supra* note 6.

118. *See id.*

119. Telephone Interview with Thomas J. Payne Jr., Senior Vice President of Students In Free Enterprise (Sept. 4, 2000). Mr. Payne also serves as a USA Today Road Warrior travel consultant.

individual who had reclined the chair.<sup>120</sup> Mr. Payne commended the professional crew who responded immediately and prevented the situation from becoming out of control. The crew simply asked one of the parties to exchange seats with another passenger.<sup>121</sup> The other event he described occurred on the ground shortly before takeoff. A couple became incensed with crew members after the male was accused of smoking in the plane lavatory. The crew called security and the couple was physically restrained and removed from the plane before takeoff.<sup>122</sup>

Despite these and other incidents he has witnessed, Mr. Payne is not terribly concerned about air rage. He believes the events were isolated.<sup>123</sup> Additionally, Mr. Payne believes that air rage is actually a combination of a number of factors, including societal changes, job stresses, and candor of airline employees.<sup>124</sup> "Business travelers have low tolerance for human error. If a flight is late or canceled due to circumstances within the airline's control, people get very irritated and angry, and it is a natural reaction. However, airlines exacerbate the problem when they do not communicate candidly with their customers."<sup>125</sup> His suggestion was simple but valuable. "Ticket and gate agents, flight attendants, and pilots could deal effectively with the situation if they just use common sense and exercise patience when dealing with frustrated passengers."<sup>126</sup> Sometimes, the situation is simply beyond the airline's control, such as weather delays or strikes by unions; these are known as force majeure events.<sup>127</sup> During these times, it seems that positive communication in a timely manner would certainly help to alleviate customer's concerns. Simple gestures such as the airline offering assistance to a delayed passenger or explaining traveler's rights during delays (Rule 240) can go a long way with the traveling public.<sup>128</sup>

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120. *See id.*

121. *See id.*

122. *See id.*

123. *See id.*

124. Telephone Interview with Thomas J. Payne, Jr., *supra* note 119.

125. *See id.*

126. *See id.*

127. Al Anolik, *Rule 240: Don't Leave Home Without It*, at <http://www.mytravelrights.com> (last visited Mar. 17, 2001).

128. *See id.* Rule 240 is a term used to describe individual airline's policies for late or stranded passengers. If a flight is delayed or cancelled, the policies state what amenities the airline may provide, including free meal vouchers, hotel accommodations, telephone calls, etc. An airline may even book a passenger on a substitute flight with another airline, and may provide compensation if the problems continue.

## VII. WHAT MEASURES ARE AIRLINES TAKING TO COMBAT AIR RAGE?

In response to the growing numbers of air rage incidents, airlines are taking necessary steps to prevent injury. These include additional training and more proactive measures in dealing with offenders. "We're taking a more aggressive approach," said Ron Wilson of the San Francisco Airport. "Airports, police and airlines are not putting up with it any more."<sup>129</sup> Northwest Airlines and U.S. Airways mentioned they give a passenger written notice of federal fines only when the passenger is nearing a violation.<sup>130</sup> American Airlines also issues written warning notices to disruptive passengers ordering them to stop their disorderly behavior.<sup>131</sup> Five airlines are contemplating fortifying airplane cockpit doors on MD-80s and DC-9s after recent air rage occurrences.<sup>132</sup> Swissair is one of the latest airlines to install plastic restraints on its airplanes in an effort to control unruly passengers. The handcuffs are rapidly becoming standard equipment on most major airlines because of the increase in air rage incidents.<sup>133</sup>

Another airline, Airtours is vocal about their policy. Spokesman Debra Saddler said, "Airtours will not accept behavior that puts either the passengers or the crew at risk."<sup>134</sup> A British detective, Constable Rod Bird, said, "[w]e treat each case very seriously. It's a message to everyone who may even consider becoming aggressive on an aircraft."<sup>135</sup> Some domestic and international airlines are even attempting to ban air rage offenders from future flights for specific time frames.<sup>136</sup> Currently, there is a great deal of discussion and debate in the airline industry and with various governments around the globe, regarding the banning of unruly passengers.

Since deregulation in 1978, the number of competing American airlines decreased, but airlines have more independence.<sup>137</sup> In return for this freedom, airlines should improve performance and provide a level of customer service that is acceptable to the flying public. Most American carriers voluntarily enacted passenger-rights plans, avoiding government regulation. In an effort to improve customer service, these airlines promised to respond to complaints faster, provide on-time baggage delivery, offer the lowest fares available, and

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129. Kim, *supra* note 10.

130. Powelson, *supra* note 39.

131. William Mann, *All the (Air) Rage: Legal Implications Surrounding Airline and Government Bans on Unruly Passengers in the Sky*, 65 J. AIR L. & COM. 857, 863 (2000).

132. Woodyard, *supra* note 78.

133. *Budget Cruiser Goes Belly Up*, THE OTTAWA SUN, Jan. 6, 2001, at Travel 22.

134. *Air Rage: The Mile-High Menace*, *supra* note 6.

135. *See id.*

136. For an interesting discussion of the United States constitutional right to travel and the attempt by various airlines and governments to ban unruly passengers, see Mann, *supra* note 131, at 865.

137. Glen Johnson, *Are Skys Not So Friendly Anymore*, THE DESERET NEWS, Feb. 8, 1999, at D7.



give more information on delays and cancellations.<sup>138</sup> The airlines hope these efforts improve their bottom line, as well as decrease the incidents of air rage. Educating employees is another method airlines are using to address air rage problems. "Rageproofing" is a course taught by professional flight instructors, and includes real world, common sense methods for reducing the risk of becoming involved in an incident.<sup>139</sup> It also provides broad education on federal regulations, as well as conflict management techniques.<sup>140</sup> Training includes teaching crew members to predict and manage potentially dangerous passengers.<sup>141</sup>

When an incident does occur, airlines often divert the flight and make an unscheduled stop to drop off the offending passenger. A United Airlines flight from San Francisco to Newark made an unscheduled stop when they had a person on board who assaulted two flight attendants.<sup>142</sup> On a flight out of Madrid, the captain, fearing a situation was escalating, decided to return to Madrid to the delight of passengers on board.<sup>143</sup> On a Belgian Sabena Airlines flight, the pilot called the control tower and landed the aircraft, with the state police waiting for the passenger who was verbally abusive to crew members.<sup>144</sup> A British Airways spokesman said that a pilot decided to divert a plane due to concern for the safety of the aircraft, and commented that the airline would not tolerate violent behavior on any airplane.<sup>145</sup>

British Airways has had in place since 1998 a "yellow card" system that warns offending passengers they could face charges unless they change their behavior.<sup>146</sup> Some airlines are also experimenting with restraint devices. British Airways is experimenting with a device known as the body restraint package which is designed for the worst offenders of air rage.<sup>147</sup> The device was created by a former police sergeant to help air crew restrain violent passengers. It is supposed to lock down assailants by securing them to their seat.<sup>148</sup>

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138. *The Skyrage Foundation Page*, at <http://www.skyrage.org> (last visited Mar. 17, 2001).

139. *See id.*

140. *See id.*

141. *See id.*

142. Josh Funk, *Law & Order: Plane Lands in Lincoln After Man Assaults Flight Attendant*, DAILY NEB., Aug. 20, 2000, available at <http://www.dailyneb.com/texis/scripts/vnews/newspaper/+ART/2000/08/22> (last visited Mar. 17, 2001).

143. Fiona Dillon, *Terrified Passengers in Tears at Air Rage Incident*, IRISH INDEP., Aug. 7, 2000, available at <http://www.independent.ie/2000/219/219/d03a.shtml> (last visited Mar. 17, 2001).

144. Emmanuelle Praet, *Passager Obèse et Violent*, LA DERNIERE HEURE, available at <http://www.dhnet.be/> (Aug. 22, 2000).

145. *Brawl Forces BA Flight Diversion*, AIRWISE NEWS, at <http://www.news/airwise.com> (Aug. 21, 2000).

146. Walker, *supra* note 30.

147. Hester, *supra* note 2.

148. *See id.*

The device is made up of five components - an upper-body restraint, waist-restraint belt, handcuffs, lower-arm restraint and leg restraints. When a passenger becomes unruly, crew members would approach the offender from behind and lasso him like a rodeo steer, using the strap attached at the end of the upper-body restraint. When the restraint is pulled tight, the offender is effectively immobilized. For total lock-down, handcuffs and additional devices can be engaged.<sup>149</sup>

One of the more fascinating aspects regarding British Airways is the fact that they do not lock their cockpit doors during flight.<sup>150</sup> On the recent holiday flight from London to Nairobi described earlier, the deranged passenger entered through an unlocked cockpit door. Top British Airways officials have concluded that locking the door would cause more problems than not. They stated that flight attendants and pilots need constant communication and a passenger could just kick in the cockpit door even if it was locked.<sup>151</sup> Interestingly, most Americans would be shocked to learn about this fact, as American carriers lock their cockpits during takeoff, landing, and in flight.

Sometimes, airline crews have taken too drastic measures, which have caused disastrous consequences. In December of 1998, an unruly passenger onboard a Malov flight between Bangkok and Budapest was tied to his seat with airline headset cords.<sup>152</sup> A doctor on the flight injected him with a tranquilizer and the passenger died.<sup>153</sup> When the crew noticed the passenger had died, the plane made an unscheduled stop in Istanbul. Five witness passengers were detained by the Turkish police along with the doctor.<sup>154</sup> An autopsy showed that the passenger died due to a mixture in his blood of the tranquilizer and some other drug or alcohol.<sup>155</sup>

There can also be tragic endings when fellow passengers assist in restraining out of control passengers. One episode occurred on board a Southwest Airlines plane to Salt Lake City.<sup>156</sup> A nineteen year old man tried to break into the cockpit and began hitting fellow passengers.<sup>157</sup> He was restrained by eight of the passengers on board. It was initially reported that the man died

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149. *See id.*

150. Alfred Lee, *British Airways Will Keep Cockpits Unlocked*, STRAITS TIMES (Singapore), Jan. 8., 2001, at World 9. British Airways consulted with senior pilots before making their final decision. British Airways still locks the cockpit door during takeoff and landing, but not during flight.

151. *See id.*

152. Fairechild, *supra* note 23.

153. *See id.*

154. *See id.*

155. *See id.*

156. *Travelers Killed Teen Aboard Jet, Prosecutor Says*, SUN SENTINEL, Sept. 17, 2000, at A6.

157. *See id.*

of a heart attack. However, an autopsy classified his death as a homicide confirming that the man died as a result of intentional actions by another person.<sup>158</sup> The man died after he was removed from the plane, and the report noted that he had bruises, scratches, and experienced blunt force injuries.<sup>159</sup>

More recently, a pig that was allowed to ride in first class on board a flight from Philadelphia to Seattle went wild upon landing.<sup>160</sup> As the aircraft taxied to the gate, the pig squealed and ran down the aisle, even trying to enter the cockpit. Apparently, it was untrained and along the jetway, dropped feces.<sup>161</sup> The FAA investigated the incident to see if the airline violated any federal safety or sanitation regulations. Jim Peters, a FAA spokesman, announced that the airline and its employees "acted in a reasonable and thoughtful manner, based on a legitimate request to transport a qualified individual with a disability and her service animal."<sup>162</sup> One could only speculate as to what may have happened had this incident occurred in air, and if the pig had been successful in getting into the cockpit; would this have been considered air rage?

## VIII. CURRENT STATUS OF AIR RAGE LAWS

### A. *United States Laws*

Legislation addressing complex issues arising in criminal airline cases has already been enacted.<sup>163</sup> There are a few federal laws and regulations which prohibit passenger interference aboard an aircraft. For example, federal statutes protect persons from crimes on an aircraft in flight.<sup>164</sup> Another statute provides protection against assaults directed towards flight crew "that interfere with performance of the duties of the member or attendant or lessen the ability of the member or attendant to perform those duties."<sup>165</sup> Prosecutions under this statute and the previous statute are regular, and include prosecutions for assaults,<sup>166</sup>

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158. *See id.*

159. *See id.*

160. Blake Morrison, *No More Hogging the Aisle in Flight*, USA TODAY, Oct. 31, 2000, at 4A. The pig was allowed on board the USAirways flight because the two passengers accompanying the pig provided a physician's note to the airline stating that the pig was a "service animal" - similar to a seeing-eye dog. Apparently, the pig was described by the accompanying passengers as being thirteen pounds, when in actuality it was 250 pounds.

161. *See id.*

162. *FAA Says Pig Can, In Fact, Fly*, ORLANDO SENTINEL, Nov. 30, 2000, at A7. The passenger told the airline the Vietnamese potbellied pig was a therapeutic companion pet, and her heart condition was so severe she needed it to relieve stress.

163. Firak, *supra* note 32.

164. 49 U.S.C. § 46506 (2000). (Application of Certain Criminal Laws to Acts on Aircraft).

165. 49 U.S.C. § 46504 (2000). (Interference with Flight Crew Members and Attendants). *See also* Warren, *supra* note 49.

166. *See, e.g.*, *United States v. Pelfrey*, 166 F.3d 336 (4th Cir. 1998); *United States v. Meeker*, 527

threats,<sup>167</sup> and dangerous disorderliness.<sup>168</sup> Penalties for violations of this statute are serious. Violators may be imprisoned for up to twenty years for a single offense, and up to life for an offense involving a dangerous weapon.<sup>169</sup> Administrative penalties are also included for those who get in the way of flight crew.<sup>170</sup> One federal aviation regulation states "No person may assault, threaten, intimidate, or interfere with a crewmember in the performance of the crewmember's duties aboard an aircraft being operated."<sup>171</sup> This statute provides protection within the United States and its territories.

The United States Senate passed a bill that granted even broader authority to the FAA to impose fines for unruly conduct. The FAA's Reauthorization Bill states:

An individual who interferes with the duties or responsibilities of the flight crew or cabin crew of a civil aircraft, or who poses an imminent threat to the safety of the aircraft or other individuals on the aircraft, is liable to the United States Government for a civil penalty of not more than \$25,000.<sup>172</sup>

"Federal law does not require airlines to give travelers notice of the new fine before a flight, but the FAA would not object if airlines voluntarily did so," agency spokesman Paul Takemoto said.<sup>173</sup> Now, convicted assailants of air rage face up to a \$10,000 criminal fine and punishment of up to twenty years in prison.<sup>174</sup> In addition, the maximum civil fine used to be \$1,100, but as previously mentioned was increased by Congress to \$25,000.<sup>175</sup>

### B. International Laws

The British government responded to the disturbing air rage trend by creating a new offense of "acting in a disruptive manner" and for using threatening and abusive language or behavior to crew.<sup>176</sup> It is designed to

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F.2d 12 (9th Cir. 1975). See also Warren, *supra* note 49.

167. See, e.g., *United States v. Compton*, 5 F.3d 358 (9th Cir. 1993). See also Warren, *supra* note 49.

168. See, e.g., *United States v. Hall*, 691 F.2d 48 (1st Cir. 1982). See also Warren, *supra* note 49.

169. 49 U.S.C. § 46504. See also Warren, *supra* note 49.

170. FAA Air Traffic and General Operating Rules, Prohibition on Interference with Crewmembers, 14 C.F.R. § 91.11 (1999).

171. See *id.*

172. Civil Penalties For Unruly Passengers and Protecting Interference of Cabin or Flight Crew, S. Res. 1139, 106th Cong., 1st session (1999) (enacted).

173. Powelson, *supra* note 39.

174. Puit, *supra* note 73.

175. Powelson, *supra* note 39.

176. *Air Rage: The Mile-High Menace*, *supra* note 6.

protect the interests of the flight crew. All air rage offenders on incoming flights can be prosecuted.<sup>177</sup> Since the new law was introduced, offenders face a two-year jail sentence or £2,000 fine.<sup>178</sup> In Canada, the Air Transport Association of Canada, an organization made up of ten airlines, recently met to establish some guidelines and consistency regarding the topic of unruly passengers.<sup>179</sup> The group convened to define air rage and determine sanctions against disruptive passengers. They asked the Canadian government to change their criminal code to make it a specific crime to interfere with the work of flight crews, similar to laws in the United States and other European countries.<sup>180</sup>

Cathay Pacific Airlines has called for tough air rage laws to be enacted in Hong Kong to mirror those of Great Britain. "We would welcome any strengthening of the current law in order to improve safety for our crew and passengers," said an airline spokesman.<sup>181</sup> Cathay would not give statistics on air rage incidents.<sup>182</sup> However, the spokesman for the airline believed that the recently enacted British laws, banning airborne acts of violence or insulting or abusive language may be the solution to the problem.<sup>183</sup> However, as of late 1999, Hong Kong's Civil Aviation Department, was satisfied with the existing air navigation orders there, currently outlawing "reckless or negligent behavior likely to endanger a plane, its crew or passengers."<sup>184</sup> In recent years, six people have been prosecuted for air rage in Hong Kong. Interestingly, they were fined under their common law, not the navigation order.<sup>185</sup> Current air rage laws now only subject passengers if the act takes place within SAR airspace or on planes registered there.<sup>186</sup> In mid 2000, the Hong Kong Secretary for Security, Regina Lau Suk-ye mentioned that the right to prosecute passengers engaged in air rage could be extended to all Hong-Kong bound planes pending a study by international aviation groups.<sup>187</sup>

### C. Tokyo Convention

As a common carrier, an international airline must abide not only to federal regulations, but also international regulations if it operates in more than one

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177. *See id.*

178. Benham, *supra* note 38.

179. *Collenette To Airlines: Lock Up Your Cockpits*, THE TORONTO STAR, Feb. 15, 2001, at News.

180. *See id.*

181. Jo Pegg, *Tougher Air Rage Laws Urged*, S. CHINA MORNING POST, Aug. 8, 1999, at 3.

182. *See id.*

183. Jason Gagliardi, *Living In the Age of Rage*, S. CHINA MORNING POST, Sept. 19, 1999, at 1.

184. *See id.*

185. *See id.*

186. *Stamping Out Air Rage*, S. CHINA MORNING POST, May 25, 2000, at 8.

187. *See id.*

country.<sup>188</sup> Some regulations can lead to jurisdiction and choice of law questions.<sup>189</sup> Local police are not always able to arrest a troublemaker who has just landed in a foreign-flag aircraft. Canada, the United States, Australia, and Great Britain are countries that have rectified this problem with legislation.<sup>190</sup> Internationally, the Tokyo Convention was the first large effort regarding air terrorism. Following it was the Hague and the Montreal Conventions.<sup>191</sup> The Tokyo Convention, which was signed in 1963 and now has 170 member countries worldwide, sets up some legal remedies for passenger disruption.<sup>192</sup> It authorized each contracting country to establish jurisdiction over offenses committed in their territory, over offenses committed on board an airplane registered in the contracting state, and whenever an airplane landed in the country with an offender on board the aircraft.<sup>193</sup>

The Tokyo Convention clearly asserts that the state of registration of the aircraft has the authority to apply its own laws, thus it provides for international recognition to extraterritorial jurisdiction.<sup>194</sup> It also provides the airplane commander authority to deal with those who have or will commit a crime or an act jeopardizing safety on board the aircraft. The commander may use reasonable force without fear of suit.<sup>195</sup> However, when an international act occurs, oftentimes more than one state has jurisdiction to prosecute the offender and jurisdictional conflicts can occur since both states can claim the right to prosecute. The jurisdictional rules in the Tokyo Convention tried to solve this conflict.<sup>196</sup>

However, the Tokyo convention has various flaws. First, it does not define the meaning of an international criminal offense, which leaves it open to different interpretations and inconsistencies among the contracting states. For the definition of criminal acts, the Convention depends on domestic law definitions.<sup>197</sup> A second problem is that it does not require the contracting state

188. ROBERT M. JARVIS ET AL., *TRAVEL LAW: CASES AND MATERIALS* 177 (1998).

189. *See id.*

190. Walker, *supra* note 30.

191. R.I.R. Abeyratne, *Attempts at Ensuring Peace and Security in International Aviation*, 24 *TRANSP. L. J.* 27, 33 (1996). The Tokyo convention can be found at [http://www.iasl.mcgill.ca/airlaw/public/aviation\\_security/tokyo1963.pdf](http://www.iasl.mcgill.ca/airlaw/public/aviation_security/tokyo1963.pdf).

192. *Hearings*, *supra* note 1 (statement of Stephen Luckey). Contracting states can be found at [http://www.icao.int/cgi/goto\\_leb.pl?icao/en/leb/treaty.htm](http://www.icao.int/cgi/goto_leb.pl?icao/en/leb/treaty.htm).

193. Michael S. Simons, *A Review of Issues Concerned with Aerial Hijacking and Terrorism: Implications for Australia's Security and the Sydney 2000 Olympics*, 63 *SMU J. AIR L. & COM.* 731, 742 (1998).

194. Abeyratne, *supra* note 191, at 35.

195. *See id.*

196. *See id.* at 39.

197. Sabrina R. Der Bagdasarian, *The Need for International Cooperation to Suppress Terrorism: The United States and Germany as an Example*, 19 *N.Y.L. SCH. J. INT'L & COMP. L.* 265, 267 (1999).

to punish an offender upon disembarkation. If the landing state chooses not to extradite or prosecute the offender, the state must set him free and let him continue to the destination of his choice as soon as possible.<sup>198</sup> In addition, many “jeopardizing” acts are not likely to be accepted as a reason for extradition. The Convention created and defined “jeopardizing” acts, however it did not require states to treat them as “serious crimes.” The Convention’s procedures for delivery and extradition are applicable only to serious crimes.<sup>199</sup> Therefore:

Since aircraft in flight are legally regarded as part of the territory of the state of registration of the aircraft, the state where the aircraft lands will treat offenses committed on board during the flight as committed on foreign territory (unless it is the state of registration of the aircraft). In most cases of minor offenses and “less serious” crimes, it will, therefore, not have the jurisdiction to investigate and prosecute. The Tokyo Convention of 1963 obliges contracting states to establish their jurisdiction over offenses and crimes only when committed on board aircraft of their own nationality. There is no obligation in the Convention to establish jurisdiction with respect to offenses and crimes committed on board foreign aircraft. Furthermore, the Tokyo Convention does not establish such jurisdiction itself. It therefore leaves a jurisdictional gap in this respect.<sup>200</sup>

The jurisdictional gap is not a problem in the United States because the Justice Department prosecutes inbound offenders regardless of the airplane’s nationality.<sup>201</sup> The United States and Great Britain need to encourage efforts to guarantee that the Tokyo Convention’s jurisdictional weakness is tackled so that other countries can and will prosecute incoming air rage offenders.<sup>202</sup> “The authority to prosecute does not equal the obligation to prosecute, and minor offenses committed on an airplane landing in other countries may not be prosecuted.”<sup>203</sup> The final problem with the Tokyo Convention is that just half of the world subscribes to it, and its impact could be much greater if there were more participants.

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198. Abeyratne, *supra* note 191, at 41.

199. *See id.* at 44.

200. *Hearings, supra* note 1 (statement of Stephen Luckey).

201. *See id.*

202. *See id.*

203. Borrillo, *supra* note 31.

## IX. CONCLUSION

Air rage is a global problem. As noted above, there are a number of reasons attributed to its increase. In order to provide a solution to the phenomenon, there are steps that can be taken to ensure its decline. Governments and airline unions must become involved and work together to ensure the safety of the flying public. A thorough study and efficient statistical data must be compiled. Without this important data, effective solutions to the problem will not work because it will only be based on a collective hunch.<sup>204</sup> Member countries must gather to talk about ways to amend current loopholes in the Tokyo Convention. Until the members meet, the jurisdictional gap problem will continue.<sup>205</sup> "The United States should encourage other countries to adopt into their national laws - provisions for the prosecution of inbound disruptive passengers, regardless of the nationality of the air carrier involved."<sup>206</sup>

There are more people flying than ever before. The traveling public must be made aware of the penalty associated with air rage.<sup>207</sup> If they are not aware of the penalties, it will not be a deterrent. Airlines must train air crew in a more effective manner. They need to educate their aircraft commanders about the provisions in the Tokyo Convention, so that there is no confusion and offenders will be prosecuted. Law enforcement in other countries also need to be educated about the Convention. Other training suggestions for aircrew include better instruction to deal with unruly passengers, including education in calming measures and training in the use of handcuffs, should it become necessary.<sup>208</sup> Airlines should also provide restraint equipment and better security procedures during the necessary times.<sup>209</sup> Additionally, airlines need to establish zero tolerance policies.<sup>210</sup> The flying public needs to be aware of current regulations. Advertising and distribution of FAA guidelines and circulars would help educate travelers.<sup>211</sup> The public also needs to be educated to treat the crew as "safety officers, not waiters and waitresses."<sup>212</sup> Likewise, air crew should have respect for passenger's needs, and respond in a professional manner. Airlines and governments must work together and become more proactive to ensure prosecution of disruptive passengers, to assist in the decrease of air rage.

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204. *Hearings, supra* note 1 (statement of Stephen Luckey).

205. *See id.*

206. *See id.*

207. *Inform Passengers Of Penalties for Violence, supra* note 69.

208. Powelson, *supra* note 39.

209. *Air Rage: The Mile-High Menace, supra* note 6.

210. *Hearings, supra* note 1 (statement of Stephen Luckey).

211. *Airlines Conceal Air Rage Attacks, supra* note 79.

212. Benham, *supra* note 38.



## APPENDIX A

FAA Enforcement Actions  
Violations of 14 C.F.R. 91.11  
"Unruly Passengers"  
Calendar Years 1995-2000

Status	1995	1996	1997	1998	1999	2000	Grand Total
Grand Total	146	185	320	282	310	266	1509

**Federal Aviation Regulation 91.11, 121.580 and 135.120** state that "no person may assault, threaten, intimidate, or interfere with a crewmember in the performance of the crewmember's duties aboard an aircraft being operated."

General notes:

- Interfering with the duties of a crewmember violates federal law.
- The FAA's database contains only those incidents reported to the FAA. Reporting is at the discretion of the crewmember.
- Year 2000 numbers may change due to ongoing reporting of December incidents.
- The repercussions for passengers who engage in unruly behavior can be substantial. They can be fined by the FAA or prosecuted on criminal charges.
- As part of the FAA's Reauthorization Bill (April 16, 2000) the FAA can now propose up to \$25,000 per violation for unruly passenger cases. Previously, the maximum civil penalty per violation was \$1,100. One incident can result in multiple violations.

Updated January 10, 2001

<http://www.faa.gov/apa/stats/unruly.htm>

## APPENDIX B

FAA Advisory Circular

<http://www.faa.gov>

This sample airline information should be reviewed by each airline's legal department to assure that it accurately states the airline's policies and the legal duties, responsibilities, and rights of the airline and airline personnel. The FAA does not provide legal advice about the specifics of tort and criminal law.

<p><b>CATEGORY ONE:</b> Attendant requests passenger to comply. (Actions which do not interfere with cabin or flight safety such as minor verbal abuse.)</p>	<p>Passenger complies with request.</p>	<p>There is no further action required by the flight attendant. (Such an incident need not be reported to the cockpit, the carrier, or the FAA.)</p>
<p><b>CATEGORY TWO:</b> Flight attendant requests passenger to comply.</p>	<p>Passenger continues Disturbance which interferes with cabin safety such as continuation of verbal abuse or continuing refusal to comply with federal regulations (such as failure to fasten seatbelt when sign is illuminated, operation of unauthorized electronic equipment). In addition, the crewmember should follow company procedures regarding cockpit notification.</p>	<p>After attempting to defuse the situation, the captain and the flight attendant will coordinate on the issuance of the Airline Passenger In-flight Disturbance Report or other appropriate actions. The flight attendant completes the report. Completed report is given to appropriate company personnel upon arrival. In turn, company personnel may file the incident report with the FAA.</p>

<b>CATEGORY THREE:</b>	<b>Examples: 1) when crew's duties are disrupted due to continuing interference, 2) when a passenger or crewmember is injured or subjected to a credible threat of injury, 3) when an unscheduled landing is made and/or restraints are used, &amp; 4) operator has program for written notification and passenger continues disturbance after notification.</b>	<b>Advise cockpit, identify passenger, then cockpit requests the appropriate law enforcement office to meet the flight upon its arrival.</b>
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