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## I. President's Letter

*By: Eric S. Richards, Chairperson*

As we embark on a new millennium, it is time to reflect upon the past and look toward the future. It is hard to believe that the Aviation Law Section will soon be entering its tenth year. I was fortunate enough to be present when our "founding father", Don Frank, first suggested that we form a section of the State Bar dedicated to aviation law. Don was our first Chairman and since then he has continued to serve the Aviation Section in a variety of capacities, including editor of our Newsletter, the *Innermarker*. Our Section has also sponsored annual aviation law seminars for pilots in both Eastern and Western Michigan. The Aviation Law Section Council has also organized a variety of social events for members including visits to several air museums and air shows.

In keeping with tradition, my immediate predecessor, Myron Poe, helped organize successful seminar presentations in Battle Creek and Pontiac. I am deeply indebted to Myron and the other Council members who have devoted their considerable energies and talents to

the continued success of the Aviation Law Section. During my tenure as Chair, I hope to maintain these traditions of the past. Specifically, our Section will once again sponsor seminars for the pilot community. The spring seminars will be held in April in Grand Rapids and Pontiac. I invite any member who wishes to speak on an aviation law topic to contact me. These seminars are generally well attended and they provide an excellent opportunity for our Section Members. A few members spoke at the Great Lakes International Aviation Conference (GLIAC) this January held at the Kellogg Center, Michigan State University.

On the fun side, we are also planning social events for next summer, including a rendezvous at this year's Muskegon Airshow which will feature the Navy's Blue Angels and is scheduled for the first weekend of July 2001. I am also planning to host a "Fly-In BBQ" at my home which is located on Somerville Airport (34I) near Grand Rapids. You will be receiving notice of these and other events and all Aviation Law Section Members are welcome to attend. In particular, I want to encourage all interested Section Members to attend our Council meetings.

Looking to the future, my main goal for the upcoming year is to facilitate improved communications within our Membership by making more effective use of Internet technology. Specifically, we plan to upgrade our website by including detailed information concerning upcoming events and seminars. We also plan to provide electronic access to the minutes of our Council meetings and an archive of past editions of the *Innermarker*. We are also working with the State Bar to create an e-mail list which will enable us to communicate with our Members more quickly and efficiently.

You can check out our website at "[www.michbar.org/sections/aviation](http://www.michbar.org/sections/aviation)" and you can send me an e-mail message at the following address: "erichards@mmbjlaw.com" I look forward to hearing from you and wish you a merry millennium. ■

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## II. Aeronautical Laws – Revisited (Continued)

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In the previous issue, we explored the concerns expressed by the 1929 ABA Report of “Standing Committee on Aeronautical law.” As of that writing, the federal “Air Commerce Act of 1926” was three years old.

The Committee felt that federal laws on aviation were good because they offered much needed consistency; bad because of the danger of a bureaucracy stifling the growth of the infant aviation industry. It expressed concern that federal aviation acts might be unconstitutional.

State laws, on the other hand, were bad because of burdens on aviation for having to deal with a patchwork of conflicting and contradictory laws; good because such regulation clearly belongs to the state government and should never reside with the federal bureaucracy.

The Committee’s recommendation was to develop a uniform set of Aviation statutes, and then proceed to lobby the individual states to enact them. Indeed, their research showed that between 1928-1929, some 250 different bills affecting aviation had been introduced in the legislatures of various states.

Nine states had no licensing legislation.

Of the Thirty-nine states which had adopted laws for the licensing of aircraft and airmen, four trends were apparent:

1. 19 states (including Michigan), required a federal license for all aircraft and airmen.
2. 6 states required a federal license for aircraft and airmen engaged in commercial aviation. (Private flying not covered)
3. 7 states required a state or federal license for all aircraft and airmen, and
4. 7 states required state registration and licensing of aircraft and airmen.

The Committee was quite clear that the **regulation of aircraft** design and manufacture should be done by the individual states and not the federal government:

“Nothing could be more of a hindrance to the proper development of this business, which is still merely in its infancy, than to have every important factor of plane and motor manufacture dominated by an individual or a set of regulations emanating from Washington.”

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And equally vociferous that the **regulation of pilots** should be done by the individual states and not the federal government:

"We foresee, as the business develops, the need on every major airport of some public official charged with the responsibility and having the authority to prevent overloading of planes and their operation either in improper condition or under unfavorable weather conditions. Obviously, a mere license, either to a plane or a pilot, will not reach these conditions. . . . Such police regulation is clearly a function for the state or the municipality and should never be placed under the direction of the federal government any more than the traffic policeman should be under the direction of a bureau in Washington."

**Regulation of airports** as well should be done by states:

"The licensing and inspection of airports used for commercial purposes and the grading and rating of the same has been delegated to state officials in at least five states, which indicates a trend toward state supervision of flying fields. This is a matter that must be taken care of by the states, and, though such legislation must be taken care of by the states, and though such legislation probably does not lend itself to a uniform act, it is felt that in the future the states will see the advisability of such legislation and draft their laws accordingly."

In light of the concerns expressed in the 1929 report by the ABA Committee, consider that the State of Michigan was one of the few states to enact aviation laws.

On May 23, 1923, Michigan PA No. 224 "Uniform State Law for Aeronautics" was adopted. (Seven other states, including Hawaii, enacted this "uniform act" that same year.) This was three years before the Federal Air Commerce Act of 1926. The Act contained 11 sections – brief enough to quote with some minor editing:

### **MICHIGAN UNIFORM STATE LAW FOR AERONAUTICS PUBLIC ACTS OF 1923, No. 224, Approved May 23, 1923**

Section 1. Definitions. "Aircraft" includes balloon, airplane, hydroplane, and every other vehicle used for navigation through the air. ("Hydroplane" is a sea-plane) . . . "Aeronaut" includes aviator, pilot, balloonist and every other person having any part in the operation of aircraft while in flight. "Passenger" includes any person riding in an aircraft but having no part in its operation."

Section 2. Sovereignty in Space. "Sovereignty in the space above the lands and waters of this State is declared to rest in the State, except where granted to and assumed by the United States pursuant to a constitutional grant from the people of this State."

Section 3. Ownership of space. ". . . over the lands and waters of this State is declared to be vested in the several owners of the surface beneath, subject to the right of flight described in section 4."

Section 4. Lawfulness of flight. "Flight in aircraft over the lands and waters of this State is lawful, unless at such a low altitude as to interfere with the then existing use to which the land or water, or the space over the land or water, is put by the owner, or unless so conducted as to be imminently dangerous to persons or property lawfully on the land or water beneath. The landing of an aircraft on the lands or waters of another, without his consent is unlawful, except in the case of a forced landing. For damages caused by a forced landing, however, the owner or lessee of the aircraft or the aeronaut shall be liable, as provided in section 5."

Section 5. Damage to land. "The owner of every aircraft which is operated over the lands or waters of this State is **absolutely liable for injuries to persons or property on the land or water beneath, caused by the ascent, descent, or flight of the aircraft, or the dropping or falling of any object therefrom, whether such owner was negligent or not unless the injury is caused in whole or in part by the negligence of the person injured, or of the owner or bailee of the property injured**. If the aircraft is leased at the time of the injury to person or property, both owner and lessee shall be liable, and they may be sued jointly, or either or both of them may be sued separately. **An aeronaut who is not the owner or lessee shall be liable only for the consequences of his own negligence** . . . (the injured person has a lien on the aircraft causing injury) . . ." (emphasis added).

Section 6. Collision of aircraft. "The liability of the owner of one aircraft, to the owner of another aircraft, or to aeronauts or passengers on either aircraft, for damage caused by collision on land or in the air shall be determined by the rules of law applicable to torts on land."

Section 7. Jurisdiction over crimes and torts. "All crimes, torts and other wrongs committed by or against an aeronaut or passenger while in flight over this State shall be governed by the laws of this State; and the question whether damage occasioned by or to an aircraft while in flight over this State constitutes a tort, crime or other wrong by or against the owner of such aircraft, shall be determined by the laws of this State."

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Section 8. Jurisdiction over contracts. “All contractual and other legal relations entered into by aeronauts or passengers while in flight over this State shall have the same effect as if entered into on the land or water beneath.”

Section 9. Dangerous flying a misdemeanor. “Any aeronaut or passenger who, while in flight over a thickly inhabited area or over a public gathering within this State, shall engage in trick or acrobatic flying, or in any acrobatic feat, or shall, except while landing or taking off, fly at such a low level as to endanger the persons on the surface beneath, or drop any object except loose water or loose sand ballast, shall be guilty of a misdemeanor and punishable by a fine of not more than \$50 or imprisonment for not more than 90 days, or both.”

Section 10. Hunting from aircraft a misdemeanor. “Any aeronaut or passenger, who, while in flight within this State, shall intentionally kill or attempt to kill any birds or animals shall be guilty of a misdemeanor and punishable by a fine of not more than \$25 or by imprisonment for not more than 30 days, or both.”

Section 11. Repeal. “All Acts or parts of Acts which are inconsistent with the provisions of this Act are hereby repealed.”

Michigan did **not** adopt the following provision, which was contained in the uniform act:

Section 12. Uniformity of interpretation. “This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it, and to harmonize, as far as possible, with federal laws and regulations on the subject of aeronautics.”

As you can see, the act did not attempt to regulate or license pilots, aircraft or airports. In 1927, Michigan passed three further acts related to aviation:

P.A. No. 138 was adopted to “provide for the identification, regulation and provide a standard of qualifications for pilots of all aircraft engaged in carrying passengers for hire within the boundaries of the State of Michigan and to promote the safety and protection of aircraft passengers.”

P.A. No. 182 “to authorize cities, villages and counties of this state to acquire, own, control, lease, equip, improve, operate and regulate aeroplane landing fields, seaplane harbors and airports”; and

P.A. No. 329 “to authorize the State Administrative Board to establish, equip, improve, control and regulate landing fields and airports for aeroplanes and other aircraft upon lands owned by the State of Michigan.”

Those shall be the subject of a later issue. In the meantime, recall that the Michigan Aeronautics code was revised in 1996. In the Winter 1997 *Innermarker* (Vol 4, No 1 at p-8) William E. Gehman, Director Michigan Aeronautics Commission summarized the changes to the Michigan Aeronautics Code at that time. It may be of interest to review Mr. Gehman’s article to contrast it with the original 1923 Act. ■

### III. Have the 1996 IATA Intercarrier Agreements and Montreal Convention of 1999, Coupled with the Recent U.S. Supreme Court Decision of *El Al Israel Airlines, Ltd. v Tseng*, 525 U.S. 155, 119 S. Ct. 662, 142 L. Ed. 2d 576 (1999), Finally Turned the Warsaw Convention Into an Ally of Airline Passengers Traveling Abroad?

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#### I. INTRODUCTION

For decades, lawyers for airline passengers injured or killed aboard international flights fought against application of the Warsaw Convention<sup>1</sup> to their state or federal causes of action. There was one simple reason: the Warsaw Convention did not adequately protect the needs of international passengers and in many cases harmed their interests. The burden on passengers was too high and the recovery was much too low (regardless of the amount of their loss.) This is why in virtually every case where an airline ticket was purchased containing an international stopping place, whether or not the injury or death occurred to or from the international stopping place, the airline would argue for application of the Warsaw Convention and its limits to the case.

However, two recent events have modified this traditional approach, placing the shoe on the other foot so to speak. First, in 1996, was the establishment and signing of the International Air Transport Association (“IATA”) Intercarrier Agreements,<sup>2</sup> discussed infra. in

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detail, which increased the amount air passengers traveling abroad could recover in the event of an accident and provided other protections.<sup>3</sup>

Second, in 1999, was the U.S. Supreme Court's decision in *El Al Israel Airlines, Ltd. v. Tseng*,<sup>4</sup> holding that state law claims are preempted by the exclusivity of the Warsaw Convention for accidents occurring during international flights or during the course of embarking or disembarking. This holding suggests that if the Warsaw Convention applies, i.e., if the flight contained an international leg, then the Convention exclusively governs the rights and remedies of the parties and is not to be supplemented by state law.<sup>5</sup>

Litigating post-IATA Intercarrier Agreement cases has confirmed the shift. Since then, some passengers are actually benefitting from the application of the Warsaw Convention as amended via the IATA Intercarrier Agreements – the IIA and MIA. Plaintiffs now find themselves arguing that the “accident” falls within the Convention and the defendant airlines are attempting to argue that the requirements of the IATA Intercarrier Agreements or Warsaw Convention were not met in a given case – i.e., that the IATA Intercarrier Agreements are not applicable, that there was no “accident” within the meaning of the Convention, or that there is no proximate cause. The Montreal Convention of 1999 will further the trend.

Ironically, it has taken over 70 years for the original Warsaw Convention to perhaps evolve into an aid to international travelers, rather than an impediment.

## II. HISTORICAL REVIEW

A brief summary of the pertinent history, provisions and effects of the Warsaw Convention of 1929, the Hague Protocol of 1955,<sup>6</sup> and the Montreal Agreement of 1966.<sup>7</sup>

### A. Warsaw Convention of 1929

Delegates from many countries convened in Warsaw, Poland in 1929 to discuss international travel. The result of this conference is what is known as the Warsaw Convention.

The history of the Convention is contained in the French minutes of the meetings.<sup>8</sup> These minutes were translated and reprinted in many texts. “[T]he United States was not represented in Warsaw and adhered to the Convention only in 1934.”<sup>9</sup> There were no congressional hearings, reports or debates regarding U.S. adherence to the Convention.

As translated, Article 17 of the Convention states:

The carrier shall be liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

Under Article 22, a carrier was presumed liable, but the damages for death or bodily injury were limited per passenger to 125,000 French francs, or about \$8,300. Notwithstanding this limitation, the parties could agree by “special contract” to a higher limit of liability pursuant to Article 22(1).<sup>10</sup>

Under Article 20(1) of the Convention, the carrier could avoid liability if it proved it took “all necessary measures” to prevent the damage or it was impossible to take such measures. Pursuant to Article 25, the carrier lost the benefits of the liability limits if it was found to have committed “willful misconduct.”

### B. Hague Protocol of 1955

The United States was dissatisfied with the low limits provided by the Convention and its inability to protect U.S. residents traveling abroad. In 1955, a conference similar to the 1929 Warsaw conference convened at the Hague, during which the delegates drafted what is known as the Hague Protocol of 1955.<sup>11</sup>

The Hague Protocol raised the liability limit in Article 22 to 250,000 francs (approximately \$16,600), and once again allowed parties to agree by “special contract” in paragraph 1 to a higher limit of liability.<sup>12</sup> The Hague Protocol also attempted to redefine “willful misconduct” in Article 25 as “an act or omission of the carrier, its servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result.” Hague Protocol Art. XIII.

The United States never ratified or adhered to the Hague Protocol due to the continued low liability limits and its inability to protect passengers.<sup>13</sup> In fact, the United States filed a notice of denunciation of the Convention, primarily because of the low limits of liability available to passengers injured or killed on international flights.<sup>14</sup>

### C. Montreal Agreement of 1966

This denunciation led to the execution of the Montreal Agreement of 1966, wherein the carriers agreed pursuant to Article 22(1) to enter private contractual agreements with all passengers (created by the purchase of a ticket) to raise the liability limit to \$75,000 for all international flights originating, terminating, or having a connecting point in the United States.<sup>15</sup> Further, the carriers agreed to waive all Article 20(1) defenses. Id. Also, under Article 25, the \$75,000 limit would not apply if a passenger proved “willful misconduct.”<sup>16</sup>

Based upon this interim “special contract,” the United States withdrew its notice of denunciation.<sup>17</sup> However, the United States was still not content with the low limit of \$75,000 and requirements that passengers prove “willful misconduct” to avoid the caps. Thus, the United States strongly “urged” that foreign air carriers step up to the plate and “voluntarily” provide

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## WARSAW CONVENTION –

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further protections and remedies for passengers traveling abroad, which led to the 1996 IATA Intercarrier Agreements: The IATA Intercarrier Agreement on Passenger Liability (IIA); The Agreement on Measures to Implement the IATA Intercarrier Agreement (MIA); and also the ATA Provisions Implementing the IATA Intercarrier Agreement to Be Included in Conditions of Carriage and Tariffs (IPA).

### III. THE IATA INTERCARRIER AGREEMENTS: THE IIA; MIA; AND IPA

By signing the IIA and MIA and IPA, foreign and United States air carriers agreed respectively, to:

- waive Article 22(1) limitations of liability as to any claim for compensatory damages for personal injury or wrongful death arising under Article 17 of the Convention;
- be absolutely/strictly liable for all injuries flowing from an accident for the first 100,000 SDRs, and for injuries and damages in excess of 100,000 SDRs, to be liable unless the carriers can prove that they took “all necessary measures” to prevent the damage or that it was impossible to take such measures pursuant Article 20(1).<sup>18</sup>

The IIA admits in its preamble that “[t]he Convention’s limits of liability, which have not been amended since 1955, are now grossly inadequate in most countries and that international airlines have previously acted together to increase them to the benefit of passengers.” Unlike the Montreal Agreement, which required contemporaneous tariff filings as it had no implementing agreement, the MIA was the IIA’s implementing agreement.<sup>19</sup>

As explained in DOT Press Release 178-96:

These agreements achieve one of President Clinton’s goals and are the culmination of a 25-year effort to eliminate the egregiously unfair Warsaw limits on air carrier liability . . .

Under the agreements, passengers could recover the full amount of provable damages, without any applicable limit. Also, the carriers would be [strictly] liable up to approximately \$146,000, even if the carrier proved it was not negligent. Currently, plaintiffs can collect only \$75,000 unless plaintiffs prove that the carrier has been guilty of ‘willful misconduct,’ an extreme form of gross negligence.<sup>20</sup>

On October 3, 1996, the DOT issued a show cause order tentatively approving the IIA, MIA and IPA, explaining that the carriers were:

waiving the passenger liability limits of the Warsaw Convention for death or injury in international accidents [under Article 22], and waiving the carrier defense of proof of non-negligence under Article 20(1) of the Convention up to 100,000 SDRs.<sup>21</sup>

On November 12, 1996, the DOT entered an order approving the agreements, finalizing DOT Order 96-10-7.<sup>22</sup> That DOT order made clear that tariff filings would not be required to implement the Intercarrier Agreements and that they would have immediate effect.<sup>23</sup> By January 1997, the DOT gave its final approval of the agreements after considering IATA’s motion for reconsideration of some issues.<sup>24</sup> Once again, in DOT Order 98-8-28, 1998 WL 527097, the DOT confirmed that tariff filings were not required to effectuate the waivers of liability contained in the IIA and MIA.

Summarily, under the IIA and MIA, signatory airlines have voluntarily agreed via “special contract” pursuant to Article 22(1) of the Convention to be strictly liable for all damages flowing from an accident occurring during the flight or in the course of embarking or disembarking. If the IIA and MIA are deemed to supercede the Montreal Agreement’s waiver of all Article 20(1) defenses, then for amounts in excess of 100,000 SDRs, the burden is on the airlines to prove they took “all necessary measures” to prevent the accident or that it was impossible to take such measures.<sup>25</sup>

Upon information and belief, no carrier in history has proven such measures.

#### Effective Date of IIA and MIA as to Each Air Carrier

The MIA stated that the IIA and MIA would become effective when “[t]he Director General of IATA shall declare the Agreement effective on November 1, 1996, or such later date as all requisite Government approvals have been obtained . . .” By January 8, 1997, the DOT gave its final approval of the IIA and the MIA implementing agreement.<sup>26</sup> The European Commission approved same in February 1997, and upon receiving these approvals, the Director of IATA declared the agreements in effect as of February 14, 1997.<sup>27</sup> DOT Order 96-11-6 and DOT Order 98-8-28 make clear that the agreements are to have immediate effect and that tariff filings were not required as to the passenger liability waivers.<sup>28</sup>

This makes sense. Tariff filings and notice to a passenger are not necessary if that passenger is getting *additional* rights. If an airline is going to *take away or limit* a passengers right to recovery (under the Montreal Convention or otherwise), then a tariff and notice is required. Waiver agreements giving passengers added protections, i.e., the IIA and MIA waivers agreed to by air carriers, fall within the “waiver-agreement implementation exemption.” The absence of tariffs does not relieve air carriers from conforming their

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contracts of carriage to the waivers. Certainly, the failure to do so should not penalize the passenger.

With this procedural history, air carrier defendants often raise arguments as to when the IIA and MIA became effective for a given airline. Applying standard law of “waiver” – that is, a knowing and voluntary relinquishment of a known right, one can argue that whether or not the IIA and MIA apply depends on the time period the Director of IATA and the air carrier sign the agreements. If the Director of IATA declares the IIA and MIA in effect and if an air carrier signs the IIA and MIA prior to the date of an “accident” as defined by Article 17, then how can that air carrier argue that the IIA and MIA should not be applied? There is also an argument that for airlines refusing to become signatories but are members of IATA, the date the Director of IATA declared the agreements in effect controls. Regarding foreign airlines neither signatories nor members of IATA, the United States denunciation should prevail as to those entities.<sup>29</sup> Defendant signatory airlines have often argued that the tariffs need to be filed before the agreements can be applied or that formal government approval is required.

Faced with precisely these arguments, in a recent mass disaster case, *In re Air Crash at Agana, Guam, on August 6, 1997*, MDL No. 1237, consolidated in the United States District Court for the Central District of California, Judge Harry L. Hupp recently ruled that for carriers signing the IIA and MIA agreements, the effective date of the waiver of the limitation of liability and defenses is February 14, 1997 - the date the director of IATA declared the agreements in effect. As duly noted by Judge Hupp, it was clear that KAL joined in the waiver prior to the air disaster. KAL knowingly and voluntarily relinquished a known right.<sup>30</sup>

One court, however, has disagreed. In a recent Warsaw case against KLM Royal Dutch Airlines, *Price v KLM Royal Dutch Airlines*, Judge Richard E. Story in the Northern District of Georgia, Atlanta Division, held that tariffs were required to be filed notwithstanding that the Director of IATA declared the agreements in effect and KLM admittedly signed the IIA and MIA prior to the accident at issue in that case.<sup>31</sup> Judge Story read the IIA and MIA to require tariff filings, which according to Judge Story represented the “special contract” between the airline and passenger. The court further held that airlines could not “waive” the Montreal Agreement.<sup>32</sup>

#### **IV. MONTREAL CONVENTION OF 1999**

On May 28, 1999, a new international treaty, the Montreal Convention of 1999, was adopted by representatives of 50+ nations, including the United States, to replace the Warsaw Convention with provisions similar to those pertaining to personal injuries or death contained in the IATA Inter-carrier Agreements and additional protections. This treaty has yet to be ratified,

which is expected in the near future.<sup>33</sup> Pertinent provisions of the 1999 Montreal Convention include, without limitation:

- In the case of personal injury or death aboard an international flight or in the course of embarking or disembarking, the air carrier is strictly liable for amounts up to 100,000 SDRs. For amounts in excess of 100,000 SDRs, the air carrier can avail itself of a contributory negligence defense and avoid liability if the loss was not due to the negligence or wrongful act of the carrier or that the loss was “solely due to the negligence or other wrongful act or omission of a third party.”<sup>34</sup> An “accident” is still required under the 1999 Montreal Convention.
- In the case of personal injury or death aboard an international flight or in the course of embarking or disembarking, the injured passenger may bring his or her action at his or her principal and permanent place of residence if the air carrier provides service there via its own aircraft or another carrier’s aircraft under an airline agreement.<sup>35</sup> This adds a new jurisdictional forum to the four (4) jurisdictional fora currently recognized under Article 28 of the Warsaw Convention.<sup>36</sup>

Although not yet the law between nations, the 1999 Montreal Convention is another step in attempting to right the wrong in international air passenger transportation law.<sup>37</sup>

#### **V. UNITED STATES SUPREME COURT DECISION OF *EL AL ISRAEL***

In 1999, the United States Supreme Court in *El Al Israel* held that state law claims are preempted by the exclusive nature of the Warsaw Convention for accidents occurring during international flights or during embarking or disembarking. Thus, if the flight contained an international portion, then the Warsaw Convention exclusively governs the rights and remedies of the parties and cannot be supplemented by state law.<sup>38</sup>

This decision has raised controversy. In this author’s opinion, the plain language of Article 24 makes clear that the Warsaw Convention, which capped remedies in certain circumstances, was never intended to create an exclusive cause of action nor exclusive jurisdiction. The drafters contemplated that a passenger’s action, “however founded,” would be merely subjected to the “conditions and limits” of the Convention. The Convention, read as a whole, makes clear that local common law would not be excluded. Article 24 is not constrained by the fora requirements of the cause of action referenced in Article 28. A cause of action and jurisdiction can be otherwise “founded.”

Even if the text was ambiguous, the history of the Convention indicates that application of local law was expected and necessary, i.e., that Warsaw was not

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exclusive. In fact, as recently explained by the Supreme Court in *Zicherman v Korean Air Lines Co., Ltd.*,<sup>39</sup> the goal of uniformity of international air travel cited in Warsaw's history cannot be used to displace local common law; the Convention neither adopted any uniform rule of its own nor authorized courts to pursue uniformity in derogation of otherwise applicable local law. Remember, the United States has made repeated attempts to increase the rights and remedies of air passengers traveling abroad. Prior to the Montreal Agreement, the United States filed a notice of denunciation of the Convention based on its inability to protect the rights and remedies of airline passengers traveling abroad, and pressured IATA members to "voluntarily" increase the rights and remedies of passengers which led to the IATA Inter-carrier Agreements and the Montreal Convention of 1999.<sup>40</sup>

In any event, the exclusiveness of the Warsaw Convention as interpreted by the Court has encouraged passengers aboard international flights involved in an "accident" to argue that the IATA Inter-carrier Agreements apply to their respective claims.

## VI. CONCLUSION

The IATA Inter-carrier Agreements coupled with the *El Al Israel* decision seem to have changed the guard. After over 70 years, air carrier litigants are now beginning to take their seat on the other side of the fence. The Warsaw Convention as interpreted through the IIA and MIA seem to be, for the first time, actually furthering the original 1929 intent and purpose behind the Convention; that is, to protect air passengers traveling abroad. The 1999 Montreal Convention should even further this goal, entering into law other protections for passengers. It will be interesting to see how the case law develops and parties argue their respective positions in courts across the country.

## Endnotes

1. *Convention for Unification of Certain Rules Relating to International Transportation by Air, Oct. 12, 1929*, 49 Stat. 3000, T.S. No. 876, 137 L.N.T.S. 11 (1934), reprinted in note following 49 U.S.C.A. § 40105 (1997).
2. IATA Inter-carrier Agreement on Passenger Liability ("IIA"); The Agreement on Measures to Implement the IATA Inter-carrier Agreement ("MIA"); and The ATA Provisions Implementing the IATA Inter-carrier Agreement to Be Included in Conditions of Carriage and Tariffs ("IPA").
3. Recently, as discussed *infra.*, over 50 nations entered a new treaty, the Montreal Convention of 1999, which incorporates much of the provisions contained in the IATA Inter-carrier Agreements and adds an air passenger's residence as a potential jurisdiction for bringing a Warsaw Convention claim. This treaty, which

further adds to the rights of air passengers, has been presented to the Senate but not yet ratified.

4. 525 U.S. 155, 119 S. Ct. 662, 142 L. Ed. 2d 576 (1999).
5. The author respectfully disagrees with the Court's ruling in this regard as briefly explained *infra.*
6. Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, Sept. 28, 1955, Chapter XIX, 478 U.N.T.S. 371, entered into force on Aug. 1, 1963.
7. Agreement Relating to Liability Limitation of the Warsaw Convention and the Hague Protocol, approved by C.A.B. Order No. E-23680, 31 Fed. Reg. 7302, reprinted at 49 U.S.C.App. § 1502 note (1976); 14 CFR § 203.4 (1998).
8. See *International Conference on Air Law Affecting Air Questions, Minutes, Second International Conference on Private Aeronautical Law, October 4-12, 1929, Warsaw*, translated by R. Homer and D. Legrez (South Hackensack N.J. 1975).
9. *Chan v Korean Air Lines, Ltd.*, 490 U.S. 122, 137, n.2, 109 S.Ct. 1676 (1989).
10. One such "special contract" is the Montreal Agreement. *In re Korean Airlines Disaster of September 1, 1983*, 664 F. Supp. 1463, 1470 (D.D.C. 1985) ("The United States has been able to force some concessions, principally in the nature of a 'special contract' – the Montreal Inter-carrier Agreement – increasing the limit for wounding, injury or death occurring during the international transportation of passengers involving a point of origin, point of destination or agreed stopping place in the United States."), *aff'd* 829 F.2d 1171 (D.C. Cir. 1987); Lee S. Kreindler, 1 Aviation Accident Law § 12.01 (1998) ("By its own terms, the Montreal Agreement . . . is a 'special contract' ostensibly authorized by Article 22(1) of the Convention, which provides that the carrier and passenger 'may agree to a higher limit of liability.'"). Another "special contract" is the IATA Inter-carrier Agreements.
11. See *Cortes v American Airlines, Inc.*, 177 F.3d 1272, 1281-82 (11th Cir. 1999).
12. Hague Protocol Art. XI, reprinted in Lawrence B. Goldhirsch, *The Warsaw Convention Annotated* 268 (1988).
13. See generally *Reed v Wiser*, 555 F.2d 1079, 1086 (2d Cir.), cert. denied, 434 U.S. 922, 98 S. Ct. 399, 54 L. Ed. 2d 279 (1977).
14. U.S. Civil Aeronautics Board, Press Release No. 66-61; 382-6031 (1966); U.S. Department of State, Press Release No. 110 (1966); and U.S. Department of State, Press Release No. 111 (1966); see also *Cortes*, 177 F.3d at 1281.
15. See Agreement Relating to Liability Limitation of the Warsaw Convention and the Hague Protocol, approved by C.A.B. Order No. E-23680, 31 Fed. Reg. 7302, reprinted at 49 U.S.C.App. § 1502 note (1976); 14 CFR § 203.4 (1998). See also *In re Inflight Explosion on Trans World Airlines, Inc. Aircraft Approaching Athens, Greece on April 2, 1986.*, 778 F. Supp. 625, 627 (E.D.N.Y. 1991); *Cortes*, 177 F.3d at 1281-82.

16. See U.S. Department of State, Press Release No. 110 (1966) (listing the international carriers who have notified the Civil Aeronautics Board of their acceptance of the interim arrangements); *Kantonides v KLM Royal Dutch Airlines*, 802 F. Supp. 1203, 1209 (D.N.J. 1992) (discussing the Montreal Agreement).
17. Lee S. Kreindler, 1 Aviation Accident Law § 12 (Matthew Bender 1998).
18. See IIA, MIA and IPA, along with signatories to said agreements. The MIA provides in pertinent part:

- I. Pursuant to the IATA Inter-carrier Agreement of 31 October 1995, the undersigned carriers agree to implement said Agreement by incorporating in their conditions of carriage and tariffs, where necessary, the following:
  1. {CARRIER} shall not invoke the limitation of liability in Article 22(1) of the Convention as to any claim for recoverable compensatory damages arising under Article 17 of the Convention.
  2. {CARRIER} shall not avail itself of any defence under Article 20(1) of the Convention with respect to that portion of the claim which does not exceed 100,000 SDRs . . .
  3. Except as otherwise provided in paragraphs 1 and 2 hereof, {CARRIER} reserves all defences available under the Convention to any such claim. With respect to third parties, the carrier also reserves all rights of recourse against any other person, including without limitation, rights of contribution and indemnity.

The second option is inapplicable to accidents involving a place of origin, destination or an intermediate stop in the United States. DOT Order 96-11-6, 1996 WL 656334, dated November 12, 1996; DOT Order 96-10-7, dated October 3, 1996. The IPA, entered by the U.S. carriers, is similar to the IIA and MIA.

An issue left unresolved by the IIA and MIA is whether or not this latter defense – i.e., proof under Article 20(1) that the airline took all necessary measures to prevent the damage or that it was impossible to take such measures for amounts in excess of 100,000 SDRs – was already waived by the Montreal Agreement. If so, then the apparent retainer of the Article 20(1) defense above 100,000 SDRs in the IIA and MIA is void. There would just be strict liability for all damages flowing from an accident sustained during international flight.

Of further explanatory note, in the MIA there is an optional provision which gives the carrier an option on specific routes to waive the defense of carrier proof of non-negligence to amounts less than 100,000 SDRs. The agreement with U.S. carriers, the IPA, is essentially the same but there is no option on specific routes to waive the defense of carrier proof of non-negligence to amounts less than 100,000 SDRs as referenced in the MIA. However, as explained by the DOT, the MIA's optional provision for less than 100,000 SDRs strict liability on particular routes "could not apply for any operations to, from, or with a connection or stopping place in the United States." DOT Order 96-11-6, 1996 WL 656334. Thus, this optional provision is inapplicable

to accidents involving a flight to and from the United States.

19. The Montreal Agreement did not have its own implementing agreement and, thus, tariff filings were required. The tariff filings were filed contemporaneously with execution of the Montreal Agreement on May 14, 1966, and deemed effective just two (2) days later, which were the implementation to that interim agreement. See U.S. Civil Aeronautics Board, Press Release No. 66-61; 382-6031 (1966).
20. DOT Press Release 178-96 dated August 1, 1996.
21. DOT Order 96-10-7, dated October 3, 1996.
22. DOT Order 96-11-6, 1996 WL 656334, dated November 12, 1996.
23. DOT Order 96-10-7, n. 13.
24. DOT Order 97-1-2, 1997 WL 4834, dated January 8, 1997. Some issues for reconsideration included routing, procedure, and whether or not the foreign carriers get back the Article 20(1) defenses they already waived in the Montreal Agreement.
25. See IIA and MIA; DOT Order 96-10-7; DOT News Release 178-96 dated August 1, 1996; DOT News Release 254-96 dated November 12, 1996; DOT News Release 17-97 dated February 7, 1997.

It should be noted that starting in 1971 and continuing up through September, 1998, many attempts were made and conferences held to further amend and update the terms of the Convention. *Cortes*, 177 F.3d at 1282. On September 28 1998, the U.S. Senate ratified one of the protocols that resulted from the many conferences, the fourth of the Montreal Protocols, Additional Protocol No. 4 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929 as Amended by the Protocol Done at the Hague on 28 September 1955 ("Montreal Protocol No. 4"), and the President signed the instrument of ratification on November 5, 1998, which entered into force on March 4, 1999. *Id.*; *El Al Israel Airlines, Ltd. v Tseng*, 525 U.S. 155, 119 S. Ct. 662, 674, n.14, 142 L. Ed. 2d 576 (1999). Montreal Protocol No. 4 replaces the term "wilful misconduct" in Article 25 with the same language contained in the Hague Protocol. *Id.* However, the Court has refused to apply Montreal Protocol No. 4 retroactively, and with the IIA and MIA applying, said Protocol is essentially rendered moot. See Kreindler, 1 Aviation Accident Law § 10.05A (Matthew Bender 1998).

26. See October 9 1998, Order of Honorable Harry L. Hupp, U.S. District Court, Central District of California, in *In re Aircrash at Agana, Guam*, MDL 1237, p. 3.
27. *Id.*; Kreindler, 1 Aviation Accident Law § 10.05A.
28. See also Proposed Rules re: "Exemption from Passenger Tariff-Filing Requirements in Certain Instances," 62 FR 10758 (March 10, 1997) (explaining the "waiver-agreement implementation exemption"); 14 CFR § 221.38(j) (making clear that tariffs are not required if an air carrier "elects to assume unlimited liability").
29. For member airlines as of July 31, 1996, see Lorne S. Clark, General Counsel and Corporate Secretary, Certificate of Airline Adherence to IIA and MIA; DOT *continued on page 10*

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254-96 News Release dated November 12, 1996. The Montreal Convention of 1999, discussed infra., may answer this question in future years.

30. In response to Korean Airlines' argument that Korea had not yet approved the agreements via their tariff authority, Judge Hupp explained that there was no evidence to support that any signatory to the IATA Intercarrier Agreements took the position that each country's tariff authority had to approve same before the agreements became effective. Thus, the IIA and MIA waivers applied.

Judge Hupp was correct. A February 1997 effectivity date is consistent with the DOT Order 96-11-6 and DOT Order 98-8-28, wherein the DOT explained that the IATA agreements were self-executing and that tariff filings were unnecessary to implement the waiver of liability limitations. See also U.S. DOT Letter to Senator Arlen Specter from U.S. DOT General Counsel Rosalind A. Knapp dated November 14, 2000 (prepared in reference to the highly publicized Egyptair 990 aircraft disaster MDL litigation, confirming same); *Berlin v Delta Air Lines, Inc.*, 1999 WL 269678 (S.D.N.Y. 1999) (although the court ruled that the IIA, MIA and ATA did not apply to that 1996 airline accident, the court noted that "the waiver which plaintiff wishes to establish as effective for the present case, did not become effective until February 6, 1997."). This effectivity date is in accord with the intent of the United States in protecting air passengers traveling abroad. It is very difficult to sympathize with IATA member airline arguments against the application of the Intercarrier Agreements to injuries and deaths, especially considering that the "[n]et profitability [for IATA member airlines] on international scheduled services [equaled] USD 1.9 billion in 1999 . . . [and] USD 2.2 billion is possible for 2000." See <http://www.iata.org/pr/pr00apra.htm>.

31. Order Regarding Plaintiffs' Motion for Partial Summary Judgment dated June 24, 2000, Civil Action No. 1:99-CV-1133, Honorable Richard E. Story, United States District Court, Northern District of Georgia, Atlanta Division.

32. At the time this article was written, a motion for reconsideration of this decision is pending and, if denied, the decision will be appealed to the Eleventh Circuit.

33. The ratification process is underway and expected in 2001. Of note, the "legal" distinction between the 1999 Montreal Convention and the IATA Intercarrier agreements are that the former, once ratified, will be law, whereas the latter are "special contract[s]" entered by air carriers which allowed under the Warsaw Convention (i.e., are voluntary contracts allowed under the law). This author believes that this distinction is without a difference in most cases.

34. 1999 Montreal Convention, Articles 17 and 21; see also *Kreindler*, 1 Aviation Accident Law, § 10.05B.

35. 1999 Montreal Convention, Article 33.

36. There are other changes; however, these are the most important for purposes of this article.

37. Domestically, there are other attempts to expand the rights and remedies available to air transportation passengers pending in Congress, including: S.2891.IS, "Air Travelers Fair Treatment Act of 2000" (introduced in the Senate); S.383.RS, "Airline Passenger Fairness Act" (reported in the Senate); S.603.IS, "To promote competition and greater efficiency of airlines to ensure the rights of passengers, to provide for full disclosure to those passengers, and for other purposes" (introduced in the Senate); H.R.908.IH, "Aviation Consumer Right to Know Act of 1999" (introduced in the House); H.R.700.IH, "Airline Passenger Bill of Rights Act of 1999" (introduced in the House); H.R.780.IH, "Passenger Entitlement and Competition Enhancement Act of 1999" (introduced in the House); H.R.951.IH, "Airline Service Improvement Act of 1999" (introduced in the House); H.R.752.IH, "Airline Passenger Fairness Act" (introduced in the House); S.383.IS, "Airline Passenger Fairness Act" (introduced in the Senate); H.R.897.IH, "Consumer Access to Travel Information Act of 1999" (introduced in the House).

38. 525 U.S. 155, 119 S. Ct. 662, 142 L. Ed. 2d 576 (1999).

39. 116 S.Ct. 629, 133 L.Ed. 2d 596 (1996).

40. Lowenfeld and Mendelsohn, "The United States and the Warsaw Convention," 80 Harv. L. Rev. 497 (Jan. 1967). The majority of Circuits and jurisdictions addressing the issue agreed with the non-exclusivity interpretation of the Warsaw Convention prior to the Court's ruling in *El Al Israel*. However, this is an article for another day. ■

### ROBERT BENDER NEW CHAIR OF MICHIGAN AERONAUTICS COMMISSION

Robert Bender is the latest elected Chairperson of the Michigan Aeronautics Commission. Mr. Bender has a commercial pilot license with single engine, multi-engine, and instrument ratings and over 3,700 hours of flying time. He owns and flies a two place Lancair airplane. His intriguing background includes experience as a pilot and aviation squadron commanding officer in the U.S. Navy and serving as a Legislator in the Michigan House of Representatives from 1983 to 1995. Mr. Bender also served in the U.S. Peace Corps in Russia from 1995 to 1997 and presently serves as the Bovine Tuberculosis Eradication Coordinator for the State of Michigan.

One of Robert Bender's primary goals during his tenure as Chairman of the Michigan Aeronautics Commission is to obtain permanent dedicated funding for the Bureau of Aeronautics for aviation purposes in Michigan. The Aviation Law Section congratulates Mr. Bender on becoming Chair of the Michigan Aeronautics Commission and wishes him and the Commission the best of success in maintaining and improving aviation in the state of Michigan.

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## IV. Considering Non-Native Speakers and the Use of Accented English in Aviation Communication and Discourse – An Inter-Disciplinary Review of the Literature

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### Introduction

#### Historical Background

The field of speech-language pathology has had an interesting history of contributions to the development of effective communication in aviation. In the Second World War, a system of alphanumerics, also known as the aviation phonetic alphabet (i.e., Able, Baker, Charlie, and so on), was developed for the military by two prominent audiologists, John O'Neil and Herbert Oyer (S. Fleming, personal communication reporting conversation with H. Oyer, 1999). It was inaccurately dubbed the "phonetic alphabet" by the military and this nomenclature has endured. The development and use of this alphabet code resulted in increased communicative effectiveness among the Allied Armed Forces.

After World War II, this system became the North American Treaty Organization (NATO) Phonetic Alphabet. The basic alphabet was not, and is not, an alphabet at all, but rather a type of code comprised of words based on the English language. The word "able" was substituted for the letter "a", "baker" for "b", and "Charlie" for "c" and so on through the English alphabet. These words, however, were not found to be very suitable in other languages. As post-war aviation became more international in scope, a significant trend which is continuing today, the alphabet was changed to reflect a more internationally sensitive perspective. In 1952, the International Civil Aviation Organization (ICAO) adopted a version of this alphabet which then became the world standard. However, its use is not compulsory. With minor

changes (e.g., Baker is now Bravo), the aviation phonetic alphabet is still in use today.

The necessity for such a code in military or aviation communications is readily apparent. The normal American English pronunciation of the alphabet (A = /ei/; B = /bi:/; C = /si:/; D = /di:/; E = /i:/) can lead to obvious instances of miscomprehension and miscommunication, even in normal conversation ("Did he say B or E?"). When operating with the radio technology of sixty years ago, the soldiers in the field had to contend with degradation of the signal, static, and ambient noise. Most, but not all, of the alphanumerics are composed of multisyllabic words. The extra syllables increase the chances of comprehension of the transmission. If part of the signal were lost in a stressful or non-ideal communicative situation, such as in battle, in an in-flight emergency, or in radio static, at least some sort of redundancy would increase the likelihood of the message being understood.

From its inception, aviation communications, whether from pilot to pilot or pilot to controller, has presented problems. Not only audiology, but also linguistics and acoustics have been involved in solving some of these problems. With the entrance of Third World countries into the aviation industry, the multi-national composition of cockpit crews, and the influx of non-native English-speaking aviation personnel, the question of effective and efficient aviation communications coupled with the overriding safety concerns is in the forefront. It is here that the field of speech-language pathology can continue to provide assistance.

#### Statement of Purpose

The intent of this essay is to present some of the disparate elements which affect aviation communication relative to the effects of language use of non-native speakers of Standard American English. Furthermore, the impact of culture on these communicative events is examined especially as it affects pragmatics and discourse.

Aviation communication involves numerous and varied communicative situations. These communication situations can generally be divided between extra- and intra-cockpit communication events. Extra-cockpit communication occurs between the pilot and the Air Traffic Manager/Air Traffic Controller (ATM/ATC), between the pilot and Ground Control, and between pilot and pilot. Intra-cockpit communication occurs between the Pilot in Command (PIC), and the First Officer (F/O), and the rest of the crew. Miscommunications consequent to these situations reflect both a language component as well as a cultural component. This is of particular moment when the individuals involved represent differing cultural or socioeconomic

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backgrounds. It follows, then, that the effect of both receptive and expressive language of non-native speakers and their culture must be addressed when discussing language usage and comprehension in aviation communication.

Speech-language pathology as well as many other academic disciplines from acoustics and anthropology to behavioral psychology, linguistics and computer science, are involved in assessing, evaluating and attempting to solve the myriad challenges presented by aviation communications. Because of the interplay of these disciplines, the approach of this review of the literature is therefore interdisciplinary by necessity as well as by choice.

### Introduction to Aviation Communication

There is a widespread misconception that English is the internationally accepted language of aviation. The ICAO neither officially mandates English as the language of aviation, nor provides proficiency standards. The ICAO publishes material in several languages: English, French, Spanish, Arabic, and Chinese. Although English may not be the *official* international language of aviation, it does operate as the *principle* language of aviation communications worldwide. "When a Russian pilot seeks to land at an airfield in Athens, Cairo, or New Delhi, he talks to the control tower in English."

In the United States, the Federal Aviation Administration (FAA) requires pilots to "read, write, speak, and understand the English language," according to Part 61 of the Code of Federal Regulations (Code of Federal Regulations [CFR], 1998). This ability to speak English, however, is not objectively tested: the FAA does not require a standardized test for speaking or understanding English, although many testing instruments are available. Instead, the FAA relies on flight instructors and even aviation medical examiners to subjectively assess the student pilot's language competence during ground school, during in-flight instruction, during the medical examination, and on written tests. The assumption is that if the student pilot is able to adequately fill out the forms, pass the written tests, the medical exam, and the flight test, he/she is complying with Part 61 requirements (FAA, 1997; R. Olmstead, personal communication, 1998). Relying on the subjective assessment of flight instructors is not specifically addressed in the Federal Aviation Regulations (FAR).

In aviation, the communicative discourse is highly specialized, technical, and abbreviated. Much of the communication between pilot and controller consists of

prescribed standardized phraseologies. When communicating with a universal communication frequency (UNICOM) station (assuming the pilot is using the appropriate frequency), the pilot should begin and end each transmission with the identification of the airport. The transmission should also include the aircraft type, aircraft identification (N-number), location relative to the airport and altitude. The pilot must also state his intentions to land or overfly, and request wind information and runway in use.

### Example:

Oakland-Troy UNICOM. Skyhawk ONE FIVE NINER HOTEL, 10 miles southeast descending through three thousand landing Oakland-Troy. Request wind and active runway. Oakland-Troy.

The language used in these situations is highly standardized, perceptually monotone, and often delivered at a high rate of speed. Standardization of aviation communication serves to increase communicative effectiveness in general. There are, however, problems. Hearback problems occur when controllers or pilots hear what they expect to hear instead of what is actually said (FAA, 1988). Learning the correct phraseology takes time, is often intimidating, and can break down quickly, especially in non-standard flight situations, which can be almost any flight. The increased rate of speech used by many controllers, as well as the reduction of intonation patterns, reduce communicative effectiveness and comprehension.

### Language and Safety Issues in Aviation Communication

Numerous aviation accidents are attributed to pilot error. The term "pilot error" refers to demonstrating poor judgment or risk-taking behavior in an in-flight or pre-flight situation (e.g., choosing to fly in poor weather conditions or while fatigued), lack of ability or experience in flying a particular aircraft, failure to have a current biennial flight review, or miscalculation of fuel requirements. Often pilot error translates into communication errors. Within the aviation industry, there is an increased interest in preventing those accidents attributed to communication breakdowns while simultaneously improving communication effectiveness across several modalities.

In a recent initiative to promote safety and facilitate effective and efficient communication between pilots and controllers, the FAA and the aviation industry identified twelve basic areas of communication breakdown. These areas are useful for organizational purposes and provide a simplified overview of a complicated situation. Some factors reflect difficulties with instrumentation and equipment (radios, microphones, headsets),

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but these factors still must be considered because they impact communicative discourse. These areas are not separate and distinct but overlap considerably. A more linguistic approach to these problems will be addressed later. These twelve areas of concern are:

1. *Similar sounding alphanumeric*s: Miscommunication and operational errors may result from similar-sounding or duplicative aircraft call signs, flight numbers, etc. Two aircraft, a Cessna N1234P and a Bonanza N2434P, are in the traffic pattern. The ATC abbreviates the call signs to '34P' (a common practice) and the Cessna mistakenly accepts the clearance intended for the Bonanza.
2. *Controller hearback problems*: The ATC misunderstands the pilot when the pilot reads back the controller's clearances/instructions. This situation may be attributed to the quality of the voice transmission, the ambient noise, the workload of the ATC, or the fact that the ATC hears what he expects the pilot to say.
3. *Phraseology*: Pilots and controllers frequently use improper, non-recommended and non-standard phraseology in virtually all aviation communication situations.
4. *Enunciation*: During radio communication, pilots/controllers may use an increased rate of speech, an inappropriate voice volume, or altered intonation and stress. This category is most commonly associated with non-native speakers.
5. *Radio discipline*: Senders and receivers may be guilty of poor radio technique: keying the microphone prematurely (clipping) and speaking while someone else is still transmitting; not using standardized communication (phonetic alphabet); or making inefficient (too long or unauthorized) transmissions.
6. *Headsets vs. speakers*: Although the majority of pilots use headsets, some still use speakers. Communication problems result from distractions, background noise, or faulty equipment.
7. *Intra-cockpit communications*: Communication among crewmembers can break down due to mitigation factors (utterances sensitive to chain of command or social rank), communication style, personality conflicts, complacency, or cultural differences.
8. *Controller inter-coordination communication*: Miscommunication among controllers often results from three or four controllers on the same line, or misinterpretation of gestures ("sign language").
9. *Blocked or simultaneous transmissions*: Simultaneous unintentional or inadvertent transmissions on the same frequency can cause a serious disruption of communication.

10. *Stuck microphones*: A stuck microphone results in a complete communication block on that frequency. The pilot is able to transmit, but the tower is unable to respond. Other aircraft using that frequency are incapable of transmitting or receiving information.
11. *Readback problems*: Pilots may fail to read back clearances given to them by the ATC, or they may misread the information.
12. *Initial radio contact*: Misdirected or improperly directed initial transmission from pilot to ATC facility can result in a delayed or failed communication attempt.

Communication difficulties stemming from problems with instrumentation or equipment have a considerable impact on language comprehension. To begin to appreciate the degree of interconnectedness of these communication factors, consider the question of headset/speaker use. The FAA considers headsets preferable for communication because the speaker system allows too much ambient noise and distractions into the communicative event. Message comprehension may be degraded even further should the enunciation/pronunciation or phraseology used by either the pilot or the controller be less than optimal. These communication problems exist even when all speakers are speaking the same language and are from the same cultural background. When the pilot and/or the controller are non-native speakers of English but are using English to communicate, the communication problems are compounded.

Communication problems exist apart from challenges with the hardware. Linguistic, and even cognitive features, such as lexical ambiguity, stress and intonation differences, short-term memory, implicit references, uncertain inferences, and presuppositions all combine to create a complex communication milieu. These problems are not exclusive to non-native speakers, but also exist when both pilot and controller are speaking the same first language, i.e., Standard American English. There are often dialectic differences as well. There are significant ramifications for safety when both individuals are speaking English as a second or even third language. When English is spoken with a non-native accent or dialect, there may be altered intonation or unfamiliar prosodic patterns. The pronunciation of individual phonemes may be changed, and it follows that the perception and the comprehension will be affected.

#### **Communication Problems Relative to Aspects of Non-native Speakers: Linguistic Aspects**

An analysis of voice communications between ATC and pilots revealed that 40% of controller  
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communication elements and 59% pilot communication elements contained at least one communication error. Effective communications between pilot and controller occur when both share the same information.

At a given airport, usually only one radio frequency is used. For example, in Pontiac, Oakland County International Airport's Tower frequency is 120.5. All pilots and ATC must communicate on that one frequency while the aircraft is airborne. After landing, the pilot is transferred to Ground Control at 121.9. During communications with the Tower, only one person, either the pilot or the controller, may speak at a given time. Typically, the pilot holds down a button on the microphone to talk, and releases it to hear the ATC talk. The pilot and the controller cannot interrupt each other or speak to each other at the same time. They must wait until one has completed his response and the frequency is clear. If a pilot accidentally does not release the button (not an unusual occurrence), the ability to communicate is unfortunately cut off.

### Ambiguity and Uncertain Reference

Discourse analysis of aviation communication events reveals that linguistic features, such as lexical ambiguity, uncertain reference, implicit inference, and high mitigation, contribute to failed communication. Ambiguity refers to the multiple meanings of a word, phrase, sentence, or paragraph. In English, the phrase "go ahead" can have several meanings. If the controller says, "Go ahead," to the pilot, the controller could be referring to the pilot's speech, as in "Proceed to talk" ("Go ahead, it's your turn to talk"), or the pilot's flying, as in "Proceed down the taxiway" ("Go ahead, drive the aircraft down the taxiway").

Another commonly used phrase, "I've got it," could be interpreted variously as "I see the traffic," or, "I've got the controls". Misinterpreting these phrases could obviously lead to some very serious ramifications. In the first interpretation, "I see the traffic", the pilot has identified another aircraft in flight. In the other interpretation, "I've got the controls," the PIC may have understood the F/O to indicate that he had control of the aircraft and may have physically released the aircraft's controls to allow the F/O to take over. This is acceptable if the F/O is indeed ready to take the controls. The pronoun "it" in this example has no antecedent or no referent and is therefore lexically ambiguous. The resulting phrases then have multiple meanings. To place this concept within the FAA's subject references, lexical ambiguity could be placed under the headings of phraseology or radio discipline. The phrase, "I've got it" is not quite standard and no identifier was used.

## Pronunciation and Prosody

Message length, speech rate, pronunciation, and prosodic features are important for communication success. These features can present particular problems for non-native speakers. If the controller's speech rate is high, which is common, a pilot who is a native speaker often has difficulty remembering the clearances. It follows that a non-native speaking pilot would have even more difficulty with comprehension. It is also possible that a non-native speaker would not be aware of his difficulty and may have some reticence about requesting a repeat, or "say again."

Research has indicated that message length has a direct correlation with short-term memory. More than three aviation topics addressed in a single message, with both pilot and controller native speakers, increases the probability of misunderstanding. This suggests that chance for misunderstanding could increase when one or both individuals are non-native speakers.

Loss of specific linguistic or prosodic features in and of themselves does not appear to cause much loss of communicative success among native-speaking pilots and controllers. However, when the prosody or pronunciation is altered, comprehension decreases. An FAA examiner recounts the story of an Australian pilot asking for vectoring and clearances to "house-tin" (/ 'haus tIn/). The pilot was over Texas and looking for Houston. This represents a small dialectical difference, but the controllers were uncertain whether the pilot was looking for Austin or Houston. As the differences increase, the possibilities for misunderstandings also increase.

### Repetition and Inference

Communication problems with readbacks and/or hearbacks revolve around the central theme of repetition. In a readback, the pilot reads back what the controller has said to him. In a hearback, the controller hears the pilot repeat the controller's own words back to him and understands what the pilot said. Good technique requires that the pilot repeat the controller's instructions in the order in which they were given. In readback situations, problems result when the pilot gives a partial readback, misunderstands the controller and repeats the wrong information, or uses non-standard phraseology. In hearback situations, problems occur when the controller has difficulty hearing the pilot due to ambient noise, distractions, or complacency.

Complacency in this instance serves to reflect a concept of perception or inference: one hears what one expects to hear. The controller hears the pilot say, "Descend to 5,000," because that is what he expects to hear, even though the pilot has just said, "Descend to 3,000." If the pilot or the controller is a non-native speaker, the problem is compounded. If the non-native

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speaker is the pilot, his accent or his prosody may interfere with the controller's perception of the discourse. The controller expects to hear a certain response, and although he may not quite understand everything the pilot said, it may be close enough for the controller to conclude that the message was received. Concurrently, if the pilot's language proficiency is limited, he may respond with a partial or a single word readback, as in "Roger" which can lead to suppositions on the controller's part. The controller may think the pilot understands the clearance when he does not.

### **Improper Terminology**

Improper terminology or non-standard phraseology can negatively impact communication. The use of standardized terminology in aviation communication facilitates comprehension and air crew performance. The more standardized the communication techniques, the fewer errors and misunderstandings between PIC and F/O. When pilots and controllers deviate from standardized phraseology, they tend to use idiomatic conversational English, or other jargon or slang phrases from different venues such as citizens band (CB) radio. Phrases such as "O.K.," "Yep," "10-4," "Okey dokey," have been used to mean "Affirmative" or "Yes". These may seem slightly innocuous, but in a field as unforgiving as aviation, mistakes have serious consequences. If "Okey dokey" is unclear for native speakers, it may be totally meaningless for non-native speakers.

On January 25, 1990, an Avianca Boeing 707 ran out of fuel and crashed while en route to John F. Kennedy International Airport. There were 73 fatalities. The PIC and F/O were both native Spanish-speakers with the F/O translating English. The PIC told the F/O to inform the controller that there was an emergency. The F/O radioed that they were "running out of fuel," a normal conversational English phrase. He never used the term "emergency." The ATC did not understand the critical urgency of the situation, and the aircraft crashed. Had the F/O used the term "emergency," a standardized term, the flight would have ended differently. Foreign pilots may be highly competent at standardized communication techniques in their own language, but not necessarily in English.

### **Unfamiliar Terminology**

Unfamiliar terminology also presents significant problems in communication. For non-native speakers, this could indicate insufficient vocabulary development, misunderstanding idioms, and/or jargon. For all speakers, this could include implicit references or uncertain or misleading references. If the pilot and controller are communicating in standard aviation phraseology, then theoretically there should be little difficulty. If, however, the ATC uses non-standard phrases, possibly because

this is a non-standard situation, and the pilot's English is not adequate to the task, this becomes a safety issue.

A flight instructor was using and identifying a cotton gin to teach his student pilot visual ground references. The confused student did not understand why he was told to "cut engine" when they were not near an airport. Although the FAA identified this as a problem with enunciation, and it may well have to do with accent or dialect, it is also a problem with vocabulary insufficiency. Unfamiliar with the term "cotton gin," or the thing itself, although it was there in front of him, the student pilot interpreted the phrase as one that made sense in the context of flight instruction: "cut engine."

For many non-native speakers, English presents a great challenge especially when trying to learn idioms, colloquialisms, or jargon/slang. English is replete with innumerable idioms which can compromise communication situations. Another common problem area for non-native speakers is phrasal verbs such as pull in, pull over, pull out, pull up, and pull down. Differentiating these terms may be quite clear to a native English-speaker, but to a non-native speaker, they can sound very much alike.

### **Cultural Aspects**

The concept of culture encompasses values, ideas, attitudes, relationships, structures, materials, artifacts, clothing, religions, laws, kinship systems. In short, it encompasses everything with which a group of people express their commonality and interpret the world. One of the major components of a culture is the language that binds the community together and permits the transmission and expression of that culture. This is the anthropological concept of culture and language. Language is a component of the culture and at the same time serves to represent and transmit the culture. Language must be understood as part of an overriding cultural construct as well as reflective of an individual's place within it. The aviation community, including pilots and air traffic controllers, are part of this construct. The aviation community is essentially a sub-culture within a larger dominant culture complete with its own specialized language, its own vernacular. For pilots and other aviation personnel, this subculture represents a community more international in scope.

### **Cultural Impact on Communications**

Communication can break down across cultural lines as well as linguistic. These breakdowns can occur in situations involving pilot/controller communications as well as intra-cockpit discourse. The communicative events that take place in the cockpit reflect the socio-cultural background of the individuals involved. Bilingual or multilingual pilots may have been

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taught to speak and understand Standard American English, but they may not respond as Americans or make the same references as American pilots.

In the fatal crash of Korean Air 801 on Guam on August 6, 1997, culture played a pivotal role. Due to the hierarchical nature of the Korean crew, the emphasis was on following orders and not operating as a team, which is necessary when operating large jets. The highly mitigated intra-cockpit discourse revealed that the co-pilot and the flight engineer did not question the captain's navigational skills. Culturally, death is considered more honorable than "loss of face" for questioning a superior officer. In analyzing the extra-cockpit discourse, the captain and/or the co-pilot did not request clarification of the controller's statement regarding the inoperative glide slope indicator. Perhaps, again, indicating a fear of "loss of face." However, this could equally indicate a cultural difference in training techniques in that Korean pilots learn by rote memorization and have difficulty with unusual situations.

Although this incident involves a culturally homogeneous crew, it's readily apparent that the socio-cultural command structure of this Korean crew would be at odds with an American command structure where teamwork is emphasized. An American captain could be expecting input from the Korean co-pilot and misinterpret his reticence to speak up as inefficiency or ineptitude. Similarly, a Korean captain could become upset if an American co-pilot informed him of some transgression. An assignment of stereotypic behavior to any group must be avoided, but it is important to have an awareness of the beliefs and value systems of a culture. It is also important to be aware that individuals within the culture may interpret it differently and possess their own set of values and behaviors. As multinational crews become more common with the continued growth of the airline industry, an awareness of cultural differences that could impact intra-cockpit communications and flight safety gains increased significance.

### **Gender Issues**

Gender issues, although relevant to the study of aviation communications, are not specifically addressed in this paper but are integrated as part of the general culture concept. Aviation communications, as a component of general flight instruction, originated in a male-dominated military context. Research indicates that there are gender differences in aviation communication regarding individual discourse style, mitigation, and personality factors such as patience. Gender issues, particularly as they apply to aviation communication, are deserving of more in-depth research.

### **Attitudes**

Culture can affect intelligibility. The attitudes of listeners to non-native speakers affect the outcome of a communicative event. Research indicates that listeners accord different levels of prestige to different accents and equate the speakers socio-economic and educational status according to their perceived accentedness. The speakers with the more prestigious accents were accorded a higher status than those with stigmatized accents. This suggests that listeners will attend more to persons with a higher-ranked accent than those with a lower-ranked accent. This could impact communications between the ATC and the pilot. If the pilot contacting the ATC speaks in a lower-ranked accent, the controller may perceive the discourse as difficult to understand and may not listen as carefully as he would normally, or may treat the pilot differently than he would a native speaker.

### **Immediate or Short-term Solutions**

The complex linguistic and cultural milieu that surrounds aviation communication has generated a profusion of potential solutions. The communication problems interpenetrate, and it is often challenging to isolate and solve an individual problem without becoming distracted by others.

### **Esperanto and Other Languages**

One proposal suggests mandating Esperanto as the international language for aviation communication as an alternative to English. The theory is that since there is an Academy for regulating Esperanto, new words, expressions, idioms, or jargon could be monitored before being included in the language. Esperanto would remain unchanged, or least change would occur according to some sort of regulatory effort.

Esperanto is also considered to be easier to learn than English. Because it is a "manmade" or artificially constructed language, it does not have the exception-to-the-rule grammar that plagues English. Esperanto is limited to sixteen pre-stated rules and therefore, theoretically cannot subdivide into dialects. Using Esperanto would also avoid any nationalistic or ethnocentric overtones because it is not the national language of any country. The pronunciation is easier in large part due to the spelling simplification. Theoretically, memorizing 2,000 expressions in Esperanto would produce the same vocabulary as 10,000 memorizations in English. Thus, training individuals in Esperanto would be faster and more cost effective as well as having a positive effect on safety in communications.

Although these are certainly excellent arguments in favor of changing from English to Esperanto in

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aviation communication, the advisability of such a move is questionable. Esperanto was originally suggested as an international language for diplomacy, but it has yet to be implemented successfully. The possibility of regulating anything as malleable and variable as a language also seems remote. The mundane bureaucratic questions also arise: who would be in charge of such regulating; how would this regulation be enforced; and who would fund the endeavor? One only has to look at the French government's unsuccessful attempt to prevent the intrusion of English words into French ("le weekend," "le hamburger") to realize that true and absolute control may be an impossibility.

One primary consideration, however, is that there would be no overriding motivation to learn Esperanto other than specifically for aviation communication. There are, however, additional incentives to learn English. Other factors, specifically economic, are involved. If one learns English, then in addition to being able to communicate in the aviation field, one could also use English in international business, computer technology, or education. English is already in use worldwide, and, for a number of countries, English is the language used in government as well as the local language. This is particularly germane for Third World countries, such as India, whose inhabitants learn English in local schools and use the language to communicate across dialects, and whose government already relies on English for other purposes.

The mechanisms for teaching English are already in place, and substituting another language, whether Esperanto or German or Japanese, in place of English, would be cost-prohibitive. It is also predictable that the pilots who currently speak English as a second or third language (notwithstanding American pilots who might not want to learn a new language) might not be motivated to learn yet another language. So, attempting to teach Esperanto to pilots, mechanics, and other personnel would be a monumental task with little motivation for individuals to learn it.

Perhaps the basic point overlooked by this theory is that merely substituting one language for another does not alleviate the metalinguistic problems intrinsic to aviation communication. Misunderstandings due to socio-cultural mitigation factors would still affect intra-cockpit communications. Converging cultural identities would still result in semantic dissonance and dialects and idiolects would evolve from Esperanto. After all, requiring Esperanto does not mean that everyone would use the grammar correctly and would speak without an accent.

### **Improved Language Training**

An increased effort in training pilots and other aviation personnel in English may be a more acceptable

and certainly more attainable short-term solution. English is already being taught and English as a Second Language (ESL) programs are in place in various aviation contexts worldwide. Commercial aviation enterprises, colleges and universities, and specialized aviation programs all have language-training capabilities. Facilitating and/or modifying the existing delivery of English language instruction, perhaps to focus and identify specific problem areas, or simply to increase the instruction time, could be readily implemented.

Alternative methods have been developed for training English. The instruction and use of Simplified English (SE) and English for Specific Purposes (ESP) have been tried in various aviation contexts and with varied results. The goal of teaching English for Specific Purposes is to allow the student to participate in a particular academic discipline, a science/technology occupation, or a vocational occupation by learning a limited but focused English. These are relatively new areas in teaching ESL and are not without problems. One such program taught Japanese student pilots in a holistic ESP program to develop overall literacy in English while learning aviation concepts.

In another program, Mexican aircraft maintenance personnel were taught English specific to their vocational needs. Unfortunately, there was limited carryover into any other context. The programs provided limited but functional command of the language. However, the studies suggested that the more holistic approach resulted in more significant language comprehension and use. Increased language comprehension translates into an increased safety margin. This approach could be expanded, refined, and implemented to facilitate English language learning among aviation personnel.

Integrated training of the cultural aspects of aviation communication may increase understanding among pilots and controllers. This type of training may address the attitudes of the listeners of non-native speakers as well as certain other cultural implications for discourse comprehension. Altering the attitudes of the listeners could result in increased comprehension, again affecting safety issues. Understanding such concepts as pragmatics, proxemics, mitigation, and leadership roles from a multicultural perspective could help to avoid misunderstandings, particularly in intra-cockpit situations where crew members must form a cohesive team.

### **Standardized Assessment**

At present, no standardized method exists for evaluating the English-language competency of pilots. For most pilots, including general aviation and recreation pilots, language is assessed subjectively by flight instructors, flight examiners, and medical flight

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## **AVIATION COMMUNICATION –**

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examiners. Commercial aviation, both cargo and passenger, are subject to the identical federal regulations as general aviation (CFR, 1998). Each company may have its own means of assessment, but it is not standardized within the industry, and, as was mentioned earlier, it is not standardized internationally. One hesitates to suggest yet another set of rules and regulations for an industry beset and almost overwhelmed by them. However, an improved means of assessment could be a valuable, simple, and efficacious measure for improving aviation communication and flight safety. Standardized language assessment instruments already exist. What remains is a matter of implementation.

A person does not usually subject a conversation partner to a standardized test to ascertain whether or not the individual is intelligible. An individual is usually sufficiently competent to judge. One understands, or one does not, and if not, asks for clarification. However, the degree of comprehensibility may not be readily apparent, and the degree of language comprehension by the partner may not be obvious.

The flight instructor may not adequately understand exactly what aspect of the communicative event the student pilot does not understand, or how to improve the pilot's intelligibility or comprehension. Standardized language assessments may provide a solution, especially at the student pilot/flight instructor level. However, speech and language assessment, particularly of non-native speakers, may be beyond the purview of most flight instructors or FAA examiners. These individuals are highly trained aviators and themselves subjected to periodic reviews to maintain certification (CFR, 1998). They are responsible for flight training and judging the technical competency of their students. Expecting them to also be responsible for language assessment or possibly instruction, especially as it applies to non-native speakers, may be unreasonable. They are simply not trained for it.

### **Proposed Long-Term Solutions**

The short-term solutions may provide some respite until the long-term solutions are in place. In avionics, the increased application of computers in aviation communication is an exciting area of research and development. Computer interfaces are being designed to minimize reliance on spoken language. If spoken language is a source for potential miscommunication, then it follows that minimizing spoken language, or providing some form of redundancy to augment the voice communication, may ameliorate the situation. This topic is undoubtedly beyond the scope of this inquiry, but an

abbreviated survey of a few programs may give the reader an overview of the general direction of computer, language, and voice communications.

### **Computer Applications**

One avenue of research focuses on the development of computer interfaces to translate languages into the native language of the pilot. The translation would be in a visible graphic form, possibly in a heads-up display. Another computer program is being developed to use numbers and other forms of nonverbal language. The challenges with this are that numbers can be considered a form of language and another system of numeric values could be an overload on systems already replete with numeric values and may well add to the confusion instead of alleviating it. The use of lasers in communications, satellite guidance, and global positioning systems, packet voice and data multiplexing techniques (DARPA), and other more esoteric means of communication and navigation are presently being tested for future use. Computer interfaces will provide increased visual support to the preferred and more natural voice method to increase communication reliability.

As compelling as these computer applications appear, the reality is that these programs may be financially and/or technically unfeasible for general aviation. The size of the cockpits for single- or even twin-engine personal aircraft may be too limited for inclusion of a voice-integrated computer avionics stack. At present, these computer applications may be more suitable for military and commercial enterprises. Military and commercial aircraft are already designed around multiple computer systems. Although redesigning the cockpit to accommodate yet another computer package may be onerous, it is financially feasible. The prospect of reconfiguring a 1939 Piper Cub instrument panel, however, seems not only financially and schematically daunting, but also incompatible with the nature of the historical aircraft. Although, the computer-voice interfaces used in complicated space technology may be adequate, the voice-recognition systems in personal computers are not quite reliable. A period of training or conditioning the computer for idiosyncratic voice recognition is required. For example, the author's son once spoke his name into his speech-recognition software, and the computer typed out the word "chicken."

### **Integrated Training**

A combination of computer-integrated visual support coupled with a more holistic approach to English language training may be the most viable and sensible solution at present. The continuing use of computer applications in aviation communication is inevitable, and ignoring their potential seems anachronistic. But language will always be used in some form.

Comprehensive English-language training coupled with standardized assessment procedures would address some of the immediate safety concerns in aviation communication.

Pilots, like most people, prefer to use natural voice for communication whether they are speaking to other pilots and controllers or to machines. Voice is faster and more efficient in emergency or non-standard flight situations than pilot-initiated computer software. Even when computer software applications become commonplace, there will always be a need for voice and, therefore, speech and language in aviation communications. It is important for these speech and language areas to be addressed in order to foster improved communications and increased flight safety.

#### Future Research

Aviation communication, with its potential applications of computer-language translators, visual language graphic display, voice-activated software, and language training applications, is an exciting area of research and clinical endeavor for speech-language pathologists. Computers and voice-activated software could be used to assist in language or speech training or assessing language and voice so that miscommunication resulting from non-standard dialects or accents could be reduced. Along with linguistic features, acoustical analyses such as vowel duration or variations in pitch, jitter, and shimmer values, could be investigated to assess their impact on aviation communication. The research resulting from the area of aviation communication is not case-specific, but could even be applied to further development in such related areas as augmentative communication devices, accent training, voice amplification devices, or language training. ■

#### DIRECTORY UPDATES

The Aviation Law Section will soon be updating its Membership Directory. The information used for the Directory comes from the information Members provided to the State Bar of Michigan when they renewed their bar membership in October or November of 2000, combined with any previous practice descriptions from the last Directory. Rapid changes in area codes have often made it difficult in the past to keep our Directory current because of the age of the information on file with the State Bar of Michigan. If you have had any changes since submitting your renewal information to the State Bar of Michigan or want to make any changes to your practice description, please fax that information to our Section's Editor, Don Frank, at (517) 349-2941. The information may also be sent to Mr. Frank by e-mail at [prattfrank@cs.com](mailto:prattfrank@cs.com).

## V. Michigan Law Legislative Update

By: **Robert H. Hoschner, Esq.**  
149 E. Corunna Ave  
Corunna, Michigan 48817

The following is a summary of key aviation bills pending as of March 15, 2000, before the Michigan Legislature, both House and Senate.

**HB 5036:** Land use; zoning and growth management; township zoning in the vicinity of airports; provide for coordination with airport zoning and plans. Amends secs. 3, 9, 11a & 40 of 1943 PA 184 (MCL 125.273 *et seq.*).

**HB 5037:** Land use; zoning and growth management; county zoning in the vicinity of airports; provide for coordination with airport zoning and plans. Amends secs. 3, 9, 11a & 40 of 1943 PA 183 (MCL 125.203 *et seq.*).

**SB 0509:** Land use; zoning and growth management; variance in airport zoning; authorize condemning agency to seek. Amends sec. 24 of 1950 (Ex Sess) PA 23 (MCL 259.454).

**SB 0167:** Use tax; exemptions; aircraft and aircraft parts use tax exemptions; eliminate sunset. Amends sec. 4k of 1937 PA 94 (MCL 205.94k).

**SB 0627:** Sales tax; exemptions; aircraft weighting over 6,000 pounds carrying cargo, passengers, or a combination of cargo and passengers; exempt. Amends 1933 PA 167 (MCL 205.51 – 205.78) by adding sec. 4r.

**SB 0630:** Use tax; exemptions, aircraft weighing over 6,000 pounds carrying cargo, passengers, or cargo and passengers; exempt. Amends secs. 4 & 4k of 1937 PA 94 (MCL 205.94 & 205.94k).

**SB 0764:** Land use; zoning and growth management; filing of airport plans with local units; required of airport managers. Amends secs. 9 & 151 of 1945 PA 327 (MCL 259.9 & 259.151).

**SB 0765:** Land use; zoning and growth management; city and village zoning in the vicinity of airports; provide for coordination with airport zoning and plans. Amends secs. 1, 4 & 20 of 1921 PA 207 (MCL 125.581 *et seq.*). ■

Visit the Aviation Web Site  
[www.mdot.state.mi.us/aero/](http://www.mdot.state.mi.us/aero/)

## VI. Aviation Law Calendar

*Any members aware of any upcoming aviation or aviation law related events which may be of interest to our membership are encouraged to pass it on by a letter or call to our editor, Don Frank (517) 349-0000; Fax (517) 349-2941, E-mail [Prattfrank@cs.com](mailto:Prattfrank@cs.com) so we can let our members know about it in the **Innermarker**.*

- 05/15/01 Aviation Law Section Public Seminar cosponsored by Michigan Bureau of Aeronautics; Grand Rapids, MI (GRR) – Rapid Air, 7:30 p.m.; contact: Eric Richards (616) 459-3200
- 05/16/01 Aviation Law Section Public Seminar cosponsored by Michigan Bureau of Aeronautics; Oakland-Pontiac Airport (PTK) – IFL-East 7:30 p.m.; contact: Eric Richards (616) 459-3200
- 06/07/01 ABA Section of Litigation's Aviation Litigation Committee 7th Annual Aviation Litigation Seminar. Co-sponsored by Aviation and Space Law Committee of the ABA Section of Litigation ([www.abanet.org/litigation/committee/aviation](http://www.abanet.org/litigation/committee/aviation)); New York City
- 07/7-7/8/01 Muskegon Air Show – Featuring the Blue Angels (MKG 10:00 a.m. - 6:00 p.m.) Section Members are encouraged to meet at the Confederate Air Force Tent on Sunday 7/8/01; Ticket Information: (616) 532-3322; General Information: 800-OK-AIRSHOW [www.muskegonairfair.com](http://www.muskegonairfair.com)
- 07/11-15/01 Lawyer Pilot Bar Association Summer Meeting, Breezy Point, MN. Contact: (301) 972-7700; <http://www.lpba.org> (Resort information at <http://www.breezypointresort.com>)
- 07/21-22/01 Warbirds over Kalamazoo, Kalamazoo/Battle Creek International Airport (KZO). Contact: Renee Newman (616) 382-6555
- 07/23-24/01 Great Lakes Fly-in, Howell, Michigan, Livingston County Airport (OZW). Contact Bill Hanna (517) 627-4360; <http://www.greatlakesflyin.org>
- 07/24-30/01 EAA Airventure Fly-in, Oshkosh, Wisconsin; <http://www.eaa.org>
- 08/05-10/01 ABA Forum on Air and Space Law Workshop: Consolidation and Competition in the Airline Industry. Hyatt Regency Hotel, Chicago; <http://www.abanet.org/forums/airspace/home.html>
- 11/08-10/01 AOPA Expo, Ft. Lauderdale, Florida (An AOPA FAA enforcement seminar is being planned to be coordinated with the Expo) <http://www.aopa.org/expo/>
- 01/18-20/02 Great Lakes International Aviation Conference. Contact: Phil Tartalone (517) 335-9880



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