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LEADER

Discrimination by Airlines Remains A Problem for Disabled Travelers

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By DAVID ARMSTRONG Staff Reporter of The Wall Street Journal

Updated May 9, 2001 12:01 a.m. ET

Tom Leary warned a US Airways ticket agent at the gate in Orlando that his 13-year-old daughter, Katie, was developmentally disabled and could act up while boarding. Mr. Leary, a police lieutenant, wanted the airline to know that if his daughter became upset, he could handle her.

But an airline official refused to let Katie board the plane. Mr. Leary says his wife and son went ahead on the flight home to Boston. He and his daughter had to take a grueling bus trip, during which Katie repeatedly soiled herself.

"I have a little girl with special needs, and we had the door slammed in our face," Mr. Leary says.

Richard Weintraub, a spokesman for [US Airways Group Inc.](#), wouldn't comment on specifics of the Leary case. But he acknowledged that "this was a difficult situation for the family and for our airport agents alike. It appears we didn't handle it as sensitively as we could have."

Discrimination against air travelers with disabilities was outlawed more than a decade ago by the Air Carrier Access Act. But complaints from disabled people have risen sharply in the past few years. Many of these travelers say airlines ignore the law, and that flying remains one of the most difficult and humiliating experiences they have to face.

Contributing Factors

Several factors contribute to the problem. The surge in air travel in recent years has been accompanied by a rise in overall service complaints. Aircraft design doesn't easily submit to the sort of revamping disabled passengers need -- especially not without cutting into revenue.

But disabled-friendly facilities on the ground -- from building entrances, elevators and toilets to buses and trains -- have been commonplace for years. Why do the airlines remain an exception to the rule? Many critics say it's because they can.

The threat of legal action has never taken off, largely because the carriers helped thwart efforts to amend the Air Carrier Access Act to give successful plaintiffs a right to legal fees, which is common in other civil-rights statutes. In addition, existing law doesn't demand as much from airlines as it does from other forms of public transport, and until recently, the maximum fines for violations were lower than most first-class fares.

While the law has lacked teeth, the government watchdog has been short-handed. The access law charges the Department of Transportation with investigating every complaint made to the government and collecting data from the airlines on how many complaints they receive from the disabled. The DOT says its budget doesn't cover the additional staff it needs for investigation and enforcement.

In the past two years, complaints from the disabled alleging air-travel discrimination have grown 81% at the DOT, and that is only a fraction of the problem. The agency says that

based on what it has seen in airlines' files when it does investigate a case, the 676 complaints the DOT got last year alone represent just 2% of the number that the airlines receive. No one tracks the number of disabled passengers using airlines.

The airlines view their compliance with the antidiscrimination law "as pretty good," says David Berg, assistant general counsel for the Air Transport Association, an airlines trade group. "The goal is to always achieve 100% compliance. ... We don't set out to underachieve as an industry," Mr. Berg says. Complaints by disabled passengers are up, he adds, because more of them are flying, and passengers of all kinds are demanding better service and complaining more.

An audit earlier this year by the DOT's inspector general concluded that airlines are doing a good job of training employees to assist the disabled. In a series of spot-checks, the DOT also determined that airlines are properly assisting disabled travelers during boarding. The report said, however, that a survey of disabled travelers revealed continuing problems. It concluded that the airlines "cannot apply enough emphasis in this area."

Balancing passenger safety with the needs of the disabled is a tricky issue, Mr. Berg says. In one case, the DOT supported Northwest Airlines in its handling of a couple with Tourette's syndrome, a condition that can involve uncontrollable arm movements and striking out. A Northwest pilot had ordered the couple, Juliana A. and Adam W. Seligman of Petaluma, Calif., off a flight. The agency agreed that they "may very well pose a safety hazard."

The couple later filed a federal lawsuit against Northwest that was settled out of court. One of the terms, Mrs. Seligman says, was more information about Tourette's in Northwest's training material.

Many disabled people so dread air travel that they simply avoid it. A big reason is that most commercial airplanes don't have bathrooms for the disabled. Only newer, larger planes -- those with two aisles -- are required to have them. Those planes represent only 10% of all commercial aircraft.

The Americans with Disabilities Act, passed in 1990, requires almost all new buses and trains in public-transit systems to be wheelchair-accessible and to have bathrooms for the disabled. But Congress excluded airlines from the ADA because the law covering disabled air travelers was already in place when the ADA was drafted.

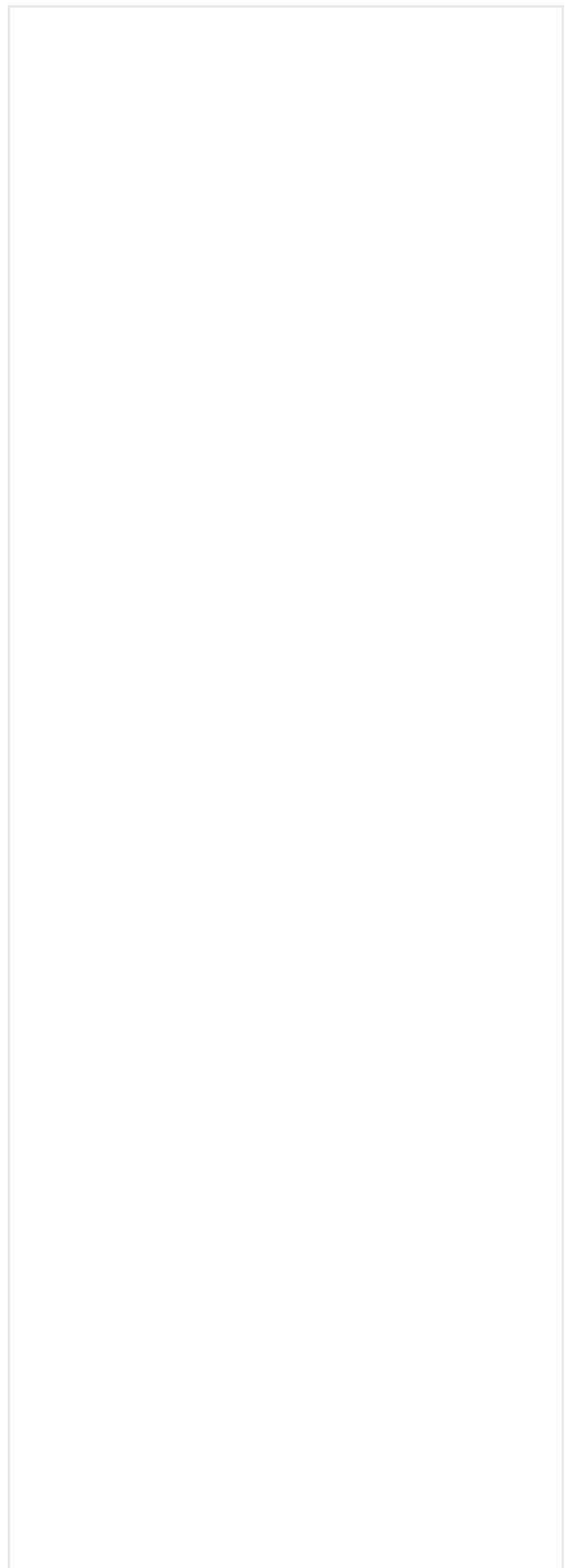
In 1993, a committee of airline representatives and advocates for the disabled appointed by the DOT concluded that adding accessible bathrooms to smaller, single-aisle planes was feasible. The committee recommended several design options, but none have been adopted. The airlines say that making bathrooms big enough for wheelchair passengers is an expensive proposition. It would mean removing at least three seats and losing the revenue they produce.

Because so few airplanes have accessible bathrooms, many wheelchair-bound travelers avoid liquids for hours prior to flying to dehydrate themselves. But it's a risky practice that can lead to sickness and infection. And it doesn't guarantee that a disabled passenger won't still run into trouble.

Judith Hendlish says her 88-year-old grandmother in Montreal, Sarah Brownstein, dehydrated herself before a one-hour, 40-minute flight to Washington to visit her last year. Mrs. Brownstein was removed from the Air Canada flight, however, after she refused to sit next to the bathroom. The air crew, reasoning that she couldn't move through the aisle on her own, had demanded that she change seats. She argued that she wouldn't need to use the bathroom and shouldn't be moved.

Mrs. Brownstein was taken to a hotel, where she stayed at the airline's expense. She wasn't permitted to fly until the next day, when her son arrived to accompany her. After the DOT determined that the removal of Mrs. Brownstein was discriminatory and improper, Air Canada signed a consent order promising not to engage in similar behavior again.

Kelly Hanson, a paraplegic who works for the city of Whittier, Calif., on disabled accessibility, says she no longer flies because of repeated damage to her wheelchair



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during transit. "I can't take the chance of flying," she says, adding that repairs are expensive and replacement chairs are ill-fitting and painful. "It has limited my ability to visit family. ... It is too far to drive."

Mr. Berg of the trade group says the airlines struggle to deal with wheelchair passengers. He calls it "an area that just seems to be one where perfection eludes us."

Disabled passengers have complained that airlines don't always meet another legal requirement, to provide assistance for travelers who need help getting from a plane to a connecting flight or the baggage area. Last year, [Continental Airlines](#) agreed to pay a \$50,000 fine imposed by the DOT -- one of the largest such penalties on record -- for discriminating against four veterans in wheelchairs. One, Paul Tobin of Staten Island, N.Y., was stranded on a Continental airplane after it arrived in Newark, N.J., from Washington, D.C. Mr. Tobin, who is quadriplegic, sat waiting for help as the cleaning crew worked around him. It wasn't until a new crew arrived for the next flight -- some 45 minutes later -- that Mr. Tobin was noticed and helped off the plane.

Another of the veterans, Franz Soni of Belvidere, N.J., missed his Continental flight from Italy to Newark because airport personnel couldn't locate the special wheelchair used to move disabled passengers in the narrow aisles on planes. He arrived at the Italian airport three hours before his flight, and sat in his own wheelchair in the Jetway as the plane pulled away. Mr. Soni, who was paralyzed from gunfire in the Dominican Republic while defending the U.S. Embassy in 1965, says that on other occasions he has been injured when poorly trained employees roughly transferred him from the aisle wheelchair to his airplane seat.

A spokeswoman for Continental says the carrier provides excellent service to the disabled, and that incidents like those involving the veterans' occur infrequently. Paying the fine was "not an admission of wrongdoing," she adds, but "a business decision made to avoid protracted litigation."

[Delta Air Lines](#) was fined \$25,000 in February for discriminating against wheelchair passenger Len Maxwell. Mr. Maxwell complained that the airline refused his request to stow his wheelchair in the passenger compartment, as required by law, during a flight to Florida from New York, and then damaged the chair in the cargo hold. Mr. Maxwell said he later fell out of his chair, breaking his leg, because the frame was bent. Delta, which bought Mr. Maxwell a new wheelchair, says it has "taken steps to ensure that this won't happen again."

Amid mounting complaints from the disabled, Congress moved last year to amend the Air Carrier Access Act. The amended law increased the maximum fine for violating the rights of a disabled traveler to \$10,000 from \$1,100 and extended the antidiscrimination law to foreign carriers operating in the U.S. It also stipulated that the DOT collect data from the airlines on the complaints the carriers receive from disabled passengers and that the agency investigate every complaint it receives.

But a year after passage, the agency has so far collected no information from the airlines, nor has it proposed the regulations that must be adopted before the agency can begin collecting that information. The DOT also says it isn't looking into every complaint it gets. The reason is a lack of staff. When it filed its 2000 budget proposal, the agency requested \$1.4 million to create 16 positions it said were needed to resolve cases outstanding. It received only enough money to hire five.

Samuel Podberesky, the DOT's assistant general counsel for aviation enforcement, says there have been improvements since the disabled-travel law was approved in 1986, including fewer "horror stories," such as passengers banned from flights. But he says the disabled have been hurt more than other passengers by the delayed flights, lost luggage and other service problems plaguing air travel. "The airlines are having trouble getting planes in on time," he says. "If you are disabled and your connecting time has gone from 50 minutes to 15 minutes, you might not make that flight."

Advocates for the disabled say the airlines are lax because they have little to fear if they are found to discriminate. In addition to the DOT's problems, the fact that the Air Carrier Access Act doesn't allow disabled travelers to win back their legal fees if they sue the airlines privately means that few attorneys will take on their cases.

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Angered by the treatment of a disabled constituent, Sen. Olympia Snowe of Maine succeeded in getting a fee-recovery provision in the version of the amended law passed by the Senate last year. The constituent had won a \$500 jury verdict against United Airlines, which didn't have an aisle wheelchair on board to help her get to the bathroom, and instead offered her a bottle to urinate in.

But the House version of the bill didn't include the legal-fee right, a key feature of the Americans with Disabilities Act. The provision died when the two bills were reconciled in conference. Several congressional aides say airline lobbyists argued intensively that the ADA provision led to a blizzard of lawsuits that have benefited lawyers but not the disabled.

"Just look at the ADA situation. It is exactly the parallel," says Edward Merlis, the senior vice president of legislative and international affairs for the Air Transport Association. "Instead of creating an incentive to litigate, let's create an incentive to fix." David Schaffer, the senior legal counsel for the aviation subcommittee of the House Committee on Transportation and Infrastructure, says that "there was a consensus that we needed to help the disabled, but there was a view that we could do that without necessarily helping lawyers."

Mr. Leary says he was surprised to learn of the law protecting disabled travelers after the incident involving his daughter in Orlando at the end of a Disney World vacation. At 13, Katie has the behavioral and learning skills of a five-year-old because of a pervasive developmental disorder, he says. She clings to her parents in public places.

After his daughter was barred from the flight, Mr. Leary sought alternative ways of getting the two of them home. He found that seats on trains to Boston were sold out. Ruling out a rental car because he wouldn't be able to care for Katie while driving, he decided to take a bus.

Five hours later, after a visit to a Wal-Mart store to buy extra clothing and towels for the trip, father and daughter boarded a Greyhound. Mr. Leary says he is grateful to the good Samaritans along the way, including a New York City police officer who opened a storage room during a bus switch so Mr. Leary could change Katie's clothing. Father and daughter arrived home 34 hours after their scheduled flight left Orlando. The Learys filed a federal lawsuit against US Airways this week, according to their lawyer, Timothy Burke.

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