

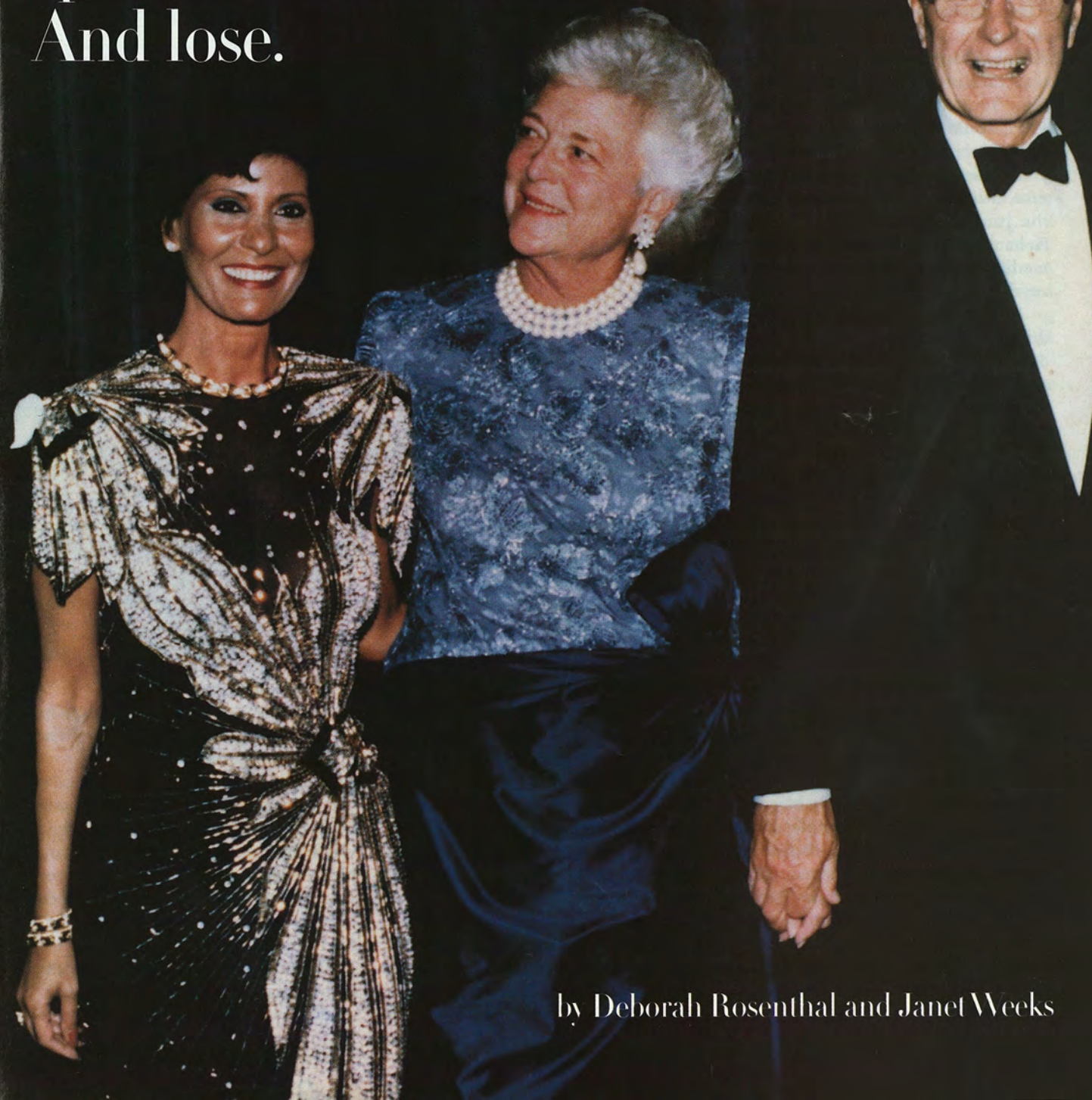
DOG DAY

AFTERNOON

How a wealthy socialite managed to spend \$2 million on a case. And lose.



*Marcelle Becker
with her Maltese,
Dom Perignon,
and with Barbara
and George Bush.*



by Deborah Rosenthal and Janet Weeks

DEFENSE ATTORNEY JEFFREY S. Behar has defended plenty of lawsuits brought against the airline industry over the years, and he is used to handling some difficult cases. But the complaint that landed on his desk in May 1996 was like no other he had handled.

"An incident that starts with a pet Maltese and escalates to having the captain of a DC-10 leave the cockpit in midflight to forcibly restrain a passenger is unusual," Behar says. "But as bad as any case looks at first blush, there is normally a reasonable explanation for what occurred."

No doubt there was an explanation. But offering a reasonable explanation for what happened to Marcelle Becker on American Airlines flight 19 from New York to Los Angeles on July 6, 1995, would take some work, especially if you were to represent a faceless corporate client with deep pockets. By the time *Becker v American Airlines* reached the jury in March 1999, however, Behar would have the benefit of a media onslaught about the so-called air-rage epidemic.

A spin-off of another media-dubbed trend—road rage—air rage describes the disorderly conduct of airline passengers during flights. In reality, it's difficult to tell how big the problem is. Most news reports say that instances of air rage have skyrocketed over the past several years. A recent survey conducted by the International Air Transport Association showed a fivefold increase in incidents between 1994 and 1997. In April 1997 the first International Conference on Disruptive Airline Passengers was held in Washington, D.C., and the Air Line Pilots Association (ALPA), International, which sponsored the event, also reported that the problem had become one of national concern and appeared to be growing.

ALPA admits that the problem has largely been measured by data obtained from just a few major airlines. And even though the documented reports may be increasing, the actual occurrence of disruptive behavior is still relatively rare. But the

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reporting of some outrageous incidents of unruliness on commercial flights has helped foster fears among passengers that they might one day find themselves trapped in a plane six miles above the earth with a deranged passenger using a coffee pot as a weapon, kicking in the door to the cockpit, or defecating on a flight attendant's service cart. Behar intended to use this perception fully to his advantage in defending his client.



Becker's Bruises: A photographer was waiting for her after the flight.

"My strategy was to emphasize the safety factor that was being compromised at 37,000 feet," Behar says. This would become his theme, from voir dire to closing argument. In the end, the case illustrates how adroit litigants can make use of the zeitgeist to help win a case. Behar's defense also exposes the flip side of the O. J. Simpson defense strategy: that though money is often an essential ingredient in a successful case, it can sometimes be a hindrance.

But the first thing Behar had to figure out was how to handle all the messy facts in the case.

MARCELLE BECKER, A WEALTHY Beverly Hills socialite, was still grieving over the recent death of her husband, insurance magnate Martin Becker, when she boarded an airplane one summer afternoon. She was returning home from a trip to New York, which marked one of her first

ventures back into high society after her husband's death.

Among her fellow first-class passengers were cast members from the movie *Clueless*. In the window seat beside hers was her longtime companion, a tiny Maltese dog named Dom Perignon, who accompanied Becker in the Louis Vuitton pet carrier he had traveled in since the 1980s.

What actually happened on the flight remained a bitter source of contention between Becker and the airline

for more than five years. The story has been recounted to attorneys, reporters, and law enforcement personnel since the plane landed in Los Angeles and was met by four airport police officers, several FBI agents, and the photographer whom Becker had called from the airplane.

Becker's story, as she told it then and still tells it today, is that American Airlines employees harassed and abused her and her pet dog without provocation. According to her complaint in the first civil suit, as the plane prepared for takeoff and Becker went about storing her carry-on luggage and settling into her seat, she became involved in a series of nasty run-ins with short-tempered flight attendants who shouted and screamed at her from the very beginning of the flight.



Becker's complaint alleges that as she prepared to place her dog in its bag under the seat, a flight attendant shouted at her to put the dog under her seat, grabbed the kennel bag with the dog inside, and proceeded to shove and then kick it under the seat, causing the dog to yelp. Later, Becker alleged she was abruptly and violently shaken awake by a flight attendant shouting that the dog had escaped from his bag. Becker returned him to the case but found she couldn't close it because its zipper was damaged—a problem that arose when the flight attendant kicked the case, Becker claims.

According to her complaint, the next thing Becker saw was Captain Edwin L.

Frost approaching her with a wide, black strap in his hands. When he reached her seat he leaned over her, grabbed the kennel bag containing the dog, and gave it to a member of the flight crew, who maintained control of the dog for the rest of the flight. Before Frost handed the bag over to his crew, according to Becker, he untied the dog leash, which was attached to the handle of the kennel bag.

Becker says that Frost then took hold of her by the arms and lifted, pushed and twisted her until, half standing, she faced the back of the plane with her chest and neck pressed

Becker says the captain twisted her around and tied her up with Dom Perignon's leash.

against the back of the empty seat beside her. Using his knees to push against her legs and back, Frost tied Becker's hands

with the dog leash and allegedly hit her repeatedly with his fists, telling her that she was a prisoner, calling her names, and telling her that she was going to be taken to jail when they arrived in Los Angeles. During the course of this beating, Frost also purportedly ripped Becker's earrings from her ears, causing her earlobes to bleed, and forced her head into the seat cushion to quiet her whenever she cried out for help.

After Frost returned to the cockpit, Becker managed to untie herself, but she says the captain returned immediately and, despite her pleas that he leave her alone, choked and kicked her and again beat and bound her. When Becker

managed to untie herself a second time, Frost stationed a guard to sit beside her for the remainder of the flight. At no time did any member of the flight crew offer or provide any first aid or other medical assistance, Becker says.

When the plane landed Becker was detained by airport security for three hours before she was taken by ambulance to Cedars Sinai Medical Center. Over the next several years, Becker obtained physical and psychological medical care that she says cost more than \$200,000 for the injuries she sustained on the flight. She also spent \$7,000 for veterinary care for her dog before he died several months after the fateful flight. Becker believes the abuse that the dog suffered aboard the flight that day shortened his life.

Becker first turned to Herbert N. Wolfe of the Los Angeles office of Jeffer, Mangels, Butler & Marmaro. The firm agreed to launch a civil action on Becker's behalf against American, and on April 3, 1996, Wolfe filed a complaint in Los Angeles Superior Court in Santa Monica. The complaint alleged several causes of action, including assault, battery, false imprisonment, and animal cruelty.

The litigation, however, did not unfold as Becker hoped. Voluminous discovery, a backlog of cases in the Santa Monica court, and motions by defense counsel to stay the case while a related criminal proceeding was pending put off the trial until 1999. But the delay was only one of her concerns. Jeffer Mangels was charging Becker hourly for the work its attorneys did on her case. Two years of extremely contentious litigation had, according to Becker, yielded more than half a million dollars in legal fees and costs, and Becker still had not had her day in court.

After a skirmish over payment of the fees, Becker parted ways with Jeffer Mangels and sought counsel from Beverly Hills attorney Jerome A. Kaplan of Kaplan, Kenegos & Kadin. Kaplan signed on for the civil case shortly before it went to trial. By that time Becker had been indicted by a grand jury on one count of interrupting the operation of an airliner, a federal crime that carries a maximum sentence of 20 years in prison. Kaplan also agreed to

defend Becker against the federal criminal charge, but eventually Los Angeles attorney John K. Pierson took over the criminal matter.

With the criminal trial scheduled to commence in late July 1999, Pierson set about investigating the charges against Becker. Helping him was a second lawyer, Washington, D.C., attorney Mark Lane, who is perhaps best known for being one of the first conspiracy theorists regarding the assassination of President Kennedy.

Pierson says that their investigation uncovered egregious prosecutorial misconduct as well as improper pressure by agents of American Airlines on the U.S. Attorney's office, all with the unspoken purpose of giving the airline the upper hand in the civil suit. According to Pierson, he and Lane discovered several crucial differences in the statements given by key witnesses, including the captain himself, in the initial FBI interviews, the subsequent depositions, and the testimony they gave at the civil trial.

At the end of June 1999 Pierson argued six motions in the criminal prosecution based on those assertions and sought to have the case dismissed with prejudice. The judge denied the motions, but five days later the U.S. Attorney's office dropped the charge against Becker.

"The standard we use to present a case for trial is: Will we secure a conviction?" says Thom Mrozek, spokesperson for the U.S. Attorney's office in Los Angeles. "We made a determination [in the Becker case] that there were inconsistencies between some of the statements made during the investigation [and] testimony given at the civil trial," says Mrozek, so the U.S. Attorney dropped the criminal case on that basis.

Escaping criminal prosecution was a great victory for Becker, Pierson says. "She took me and Mark to Spago, and we drank Dom Perignon and celebrated her freedom."

The civil case, however, was a different matter.

WHEN BECKER FINALLY GOT HER day in court, Kaplan's case-in-chief consisted of Becker's testimony and the testimony of an aviation expert

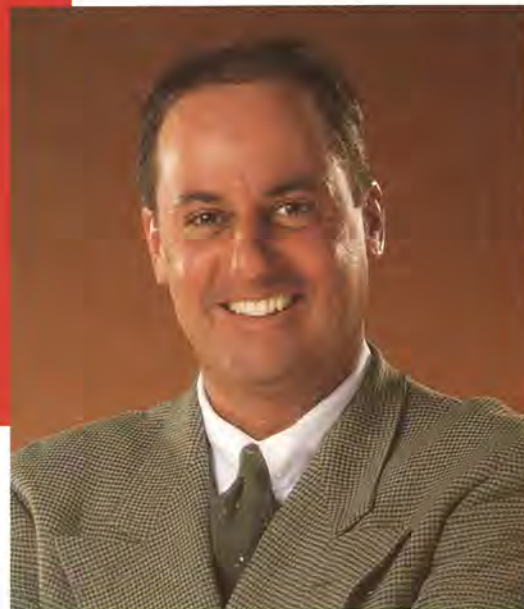
who said that Frost did not follow the proper procedure a captain should take under the circumstances. About halfway through Becker's testimony Los Angeles Superior Court Judge Robert Altman bifurcated the trial as to liability and damages, saying that he thought it would be the best way to use the court's time. The jury would first decide whether American Airlines and Frost were liable for the misconduct they were alleged to have committed. If the jurors found the defendants liable, only then would they hear evidence about her injuries and consider whether or

several times and that the dog had become hostile and was barking and growling. Each time the dog escaped he was returned to Becker with a polite request to keep the dog in his case, the defense witnesses testified.

"The first time it happened, Mrs. Becker obeyed," says Behar, describing the testimony given at trial. "But after that she became more and more belligerent and disagreeable, and finally started hurling profanities and threats at the flight attendants. Ultimately, as Mrs. Becker's behavior became progressively irate, the head flight attendant decided it was necessary to notify Captain Frost."

Witnesses testified that after being repeatedly admonished to keep Dom Perignon in his bag and refrain from

**Witnesses
said Becker
screamed,
flailed around,
and tried to
kick out the
window.**



Jeffrey S. Behar: The case looked bad, but there was a reasonable explanation.

not the flight crew had injured Becker and her dog, and, if so, to what degree.

Kaplan was thus prevented from admitting most of the evidence of Becker's injuries—the aspect of the case that was most likely to arouse juror sympathy. Kaplan was able to get some photographs of Becker's injuries into evidence, however, by arguing that they showed how badly the plaintiff was beaten, and this lent credibility to her version of the events.

Behar, with the assistance of his partner, Tina I. Mangarpan, painted a very different picture than the one Becker's attorneys provided. It wasn't the airline staff that was out of control, he argued, it was Becker.

Behar and Mangarpan brought in a parade of passengers and flight crew members who testified that Becker's dog actually escaped from his carrier

further outbursts, Becker began screaming and flailing around, throwing her arms and hands and body against the seats and fuselage, kicking and jabbing at windows, and screaming that she was going to kill everyone. Among those who testified against Becker were movie actors who happened to be on the plane. Actors Donald Faison and Paul Rudd were among the passengers in first class who witnessed Becker's behavior. Behar showed Rudd's videotaped deposition testimony, which corroborated other passengers' and the flight crew's version of what happened.

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BILL LOCKYER

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Sacramento watchers would agree, there's no way Lockyer can ever be a serious contender if he thinks purely as an AG.

"One of the most important things you can do in any of the constitutional offices is not make huge mistakes," says McGeorge law professor Clark Kelso, reflecting on Lockyer's chances of being governor one day. "So far, Lockyer has played his hand well. He's avoided running headlong into politically divisive issues. He didn't overreact last summer to some of the death-penalty concerns that were raised around the country, recognizing that the California public is still very much in favor of the death penalty." On the other hand, on something like medical marijuana, Lockyer seems to have carved out a sensible middle ground between what the electorate wants and what the feds demand.

"He's not going around tilting at windmills," says Kelso. "He's not out there stumping on issues where he would be out in front of where the law is, or what the department should be doing. Bill has done everything you need to do in that office to prepare a foundation for whatever comes next." □

1998 AG's RACE

LOCKYER'S TOP TEN CONTRIBUTORS

1. Democratic State Central Committee of California, Sacramento, California, \$604,150
2. Milberg, Weiss, Bershad, Hynes & Lerach LLP, New York, New York, \$150,000
3. E. & J. Gallo Winery, Modesto, California, \$100,000
4. Senate Democratic Leadership Fund, San Francisco, California, \$100,000
5. Zenith Insurance Company, Woodland Hills, California, \$85,090
6. California State Council of Service Employees, Sacramento, California, \$85,000
7. Girardi and Keese, Los Angeles, California, \$85,000
8. California Professional Firefighters, Sacramento, California, \$81,112
9. Southern California District Council of Carpenters Political Action Fund, Los Angeles, California, \$80,025
10. Northern California Carpenters Regional Council, Central District, Oakland, California, \$80,000

Source: California Voter Foundation (www.calvoter.org)

DOG DAY AFTERNOON

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Given the convincing nature of the testimony by Becker's fellow passengers, Behar's greatest challenge was to explain why Frost restrained Becker with the dog leash, when FAA regulations require pilots to carry plastic flexicuffs to restrain unruly travelers. Frost had already admitted that he should have had those cuffs, but he also testified that he believed Becker presented a danger to everybody on board the plane. After checking briefly for the cuffs and not finding them, he considered other ways to restrain her. When he approached Becker he realized the dog leash was softer and less likely to hurt her than a seat belt or his own belt, which had a buckle, so he used the leash. "Even in the middle of this potentially dangerous moment, Captain Frost was trying to look out for Mrs. Becker's safety and well-being," Behar claims.

The jury apparently agreed with this version of events, as well as Behar's explanation of the injuries revealed in the photographs as having come from Becker's own unruly conduct. According to several lawyers involved in the case, it didn't help Becker that she insisted the captain attacked her without provocation. After seven days of trial the jury deliberated for half a day before returning a verdict in favor of the airline and against Becker in a 9-to-3 vote.

But Becker was not about to give up. She retained attorney Richard A. Lowe, whom she had previously met socially, to be co-counsel on her appeal, along with her criminal defense attorney, Pierson. Becker's attorneys argued that the judge unfairly prejudiced the jury against Becker by making comments about her designer clothes and Louis Vuitton bag and lambasting her in open court for hiring a publicist to help advance her case in the press.

Lowe also argued that bifurcating the liability and damages portions of the trial was reversible error on the judge's part because in a case involving claims of assault and battery, in which the degree of force is an essential element toward proving the torts themselves, the excessiveness of the force is necessarily

shown through the degree of the injuries sustained.

"Of course the pilot had the right to restrain Mrs. Becker," Lowe says. "He's given absolute authority in the air. The question is, did he use excessive force? In a case like this, liability is established by the damages." Last fall the appellate court rejected the argument, stating that Becker waived her right to appeal that point by failing to object during the trial. *Becker v American Airlines, Inc.*, No. B130980 (August 7, 2000).

In the end, Becker spent more than \$2 million in legal fees to fight what she sees as an injustice. In some ways Becker's case was undermined not only by Behar's good lawyering but also by her wealth. During the trial Becker's ostrich shoes and the Louis Vuitton carrier were entered into evidence by her own attorneys, and the jury also learned that Becker was a frequent flier on American Airlines because she once owned homes in France and Israel. Her charges against the airline, then, may have sounded to the jurors like complaints about the hired help.

Becker's actions after the trial also don't necessarily conjure up feelings of sympathy. With help from Lowe, Becker filed a malpractice action against Kaplan, her trial attorney in the civil suit, and a libel action against American Airlines for statements made against her to the U.S. Attorney's office. Months later, however, she dismissed both suits, saying that the litigation was taking too much of a toll on her health. She says she has no regrets, however, and takes comfort in the publicity the trial garnered.

"The truth is that the airlines regularly mistreat their passengers, and no one ever hears about it," says Becker. "Thank God I was able to take them on, and although it has cost me a lot of money, I am proud to say that the nation is now much more aware of this problem."

For Behar's part, it was his skill and a bit of luck that won the case. When he asked the prospective jurors during jury selection whether they were familiar with the phenomenon of air rage, all of them said yes. By tapping into the fear of out-of-control passengers, Behar was able to show that the use of force is often warranted, no matter who the passenger is. □