Information on ACRP

- [www.TRB.org/ACRP](http://www.TRB.org/ACRP)
- Regular news and updates on:
  - Upcoming and ongoing research projects
  - New publications
  - Success stories
  - Announcements
  - Webinars
- Find ACRP on Facebook and LinkedIn
Upcoming ACRP Webinars

June 9:  *Transporting Passengers to, and Through, Airport Facilities*

July 7:  *Considerations for Airport Capacity Projects*

July 13:  *Unmanned Aircraft Systems at Airports*

You can register for and learn more about upcoming 2016 webinars by visiting: [http://www.trb.org/ACRP/ACRPwebinars.aspx](http://www.trb.org/ACRP/ACRPwebinars.aspx)
Opportunities to Get Involved!

• ACRP’s Champion program is a new initiative!
• Designed to help early- to mid-career, young professionals grow and excel within the airport industry.
• Airport industry executives sponsor promising young professionals within their organizations to become ACRP Champions.
• Visit ACRP’s website to learn more.
Additional ACRP Publications Available on this Topic

- **Legal Research Digest 19**: Legal Issues Related to Developing Safety Management Systems and Safety Risk Management at U.S. Airports
- **Legal Research Digest 22**: The Role of the Airport Sponsor in Airport Planning and Environmental Reviews of Proposed Development Projects Under the National Environmental Policy Act (NEPA) and State Mini-NEPA Laws
- **Legal Research Digest 27**: The Fourth Amendment and Airports

You can learn more about these publications by visiting [www.trb.org/publications](http://www.trb.org/publications)
Today’s Speakers

Moderated by Lee Thomson, Esq.

1) LRD 24: Sovereign Immunity for Public Airport Operators
   • Pamella A. Seay, Seay Law International

2) LRD 26: Regulations Affecting the Exercise of First Amendment Activities at Airports
   • Jodi Howick, Howick Law, PLLC.
ACRP Report LRD-24
Legal Aspects of Airport Programs
Sovereign Immunity for Public Airport Operators

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• Professor of Law, Florida Gulf Coast University
• Commissioner, Charlotte County (Florida) Airport Authority
• Florida Bar Board Certified, International Law
John Adams Hodge, JD, MS
Co-Investigator

- Founding attorney, Hodge & Associates, LLC, Columbia, South Carolina
- Over 25 years experience in environmental & aviation law
- ATP rated pilot with Boeing & Airbus type ratings, former airline instructor
- Best Lawyers in America: Environmental Law
- Counsel to state aeronautics agency
Kyle C. Seay, JD
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• Attorney, licensed to practice in Nebraska and Illinois
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ACRP LRD 24 Report
Project Committee 11-01

Timothy Karaskiewicz, General Mitchell International Airport, Milwaukee, Wisconsin, CHAIR

Thomas W. Anderson, Metropolitan Airports Commission, Minneapolis, Minnesota;

Marco B. Kunz, Salt Lake City Department Of Airports, Salt Lake City, Utah;

Elaine Roberts, Columbus Regional Airport Authority, Columbus, Ohio;

E. Lee Thomson, Clark County, Las Vegas, Nevada; And

ACRP Report LRD-24
Sovereign Immunity for Public Airport Operators

• Examines sovereign immunity of public airports owned and operated by units of local government or regional governmental authorities.
• Examines the extent of sovereign immunity granted to airports.
• Examines differences among states and territories.
• Examines means of protection for the airport operators.
• Practical guidance on
  • Dealing with litigation requiring claims of sovereign immunity.
  • Opportunities to protect the airport and its assets.

Published May 2015
Our Approach

• Pure research – Survey of all 50 states and the US territories
• Identifying relevant statutes
• Examining case law
• Comparing data between and among jurisdictions
• Evaluating and compiling data and information
• Creating a practitioner’s reference tool for Airport Operators and their attorneys
Areas of Focus

• COLLECTED and COMPARED DATA
  • Abrogation of Immunity
  • Monetary Caps
  • Availability of Punitive Damages
  • Statutes of Limitations

• PRACTICAL RECOMMENDATIONS
  • Implications of insurance coverage
  • Recommendations for Airport Operators
Abrogation of Immunity

- **Sovereign Immunity** – Source – 11th Amendment
- **Governmental Immunity** – Derivative: cities, counties, municipalities, special districts
- **Governmental Functions** – discretionary, “involve an element of judgment or choice and are based on public policy considerations”
- **Proprietary Functions** – business related, ordinarily performed by a private entity
- **Public Duty Doctrine** – a duty owed to the public generally, as opposed to a tort duty owed to an individual
- Though the extent varies, a majority of jurisdictions have abrogated immunity in some fashion
Abrogation of Immunity
Monetary Caps

- **Range widely**
- **Lows include:**
  - $5,000 in American Samoa
  - $50,000 in Wisconsin
- **Highs include:**
  - Up to $5 million, SD, NE
  - No caps in 13 jurisdictions
- **Can be increased or affected by**
  - Insurance
  - Special claims bills by legislature, such as in Florida
  - Source or type of claim
Monetary Caps
Punitive Damages

• A simple yes or no in most jurisdictions
• Yes, punitive damages are allowed:
  • 18 States
  • 4 Territories
• No, punitive damages are not allowed:
  • 32 States
  • 2 Territories
• It depends…
  • Even if permitted, caps will still apply
Punitive Damages
Statutes of Limitations

- Vary widely
  - Generally not less than 6 months, though submission of notice of claim requirements can be shorter
  - Most common – 1 year or 2 years
  - Longest 6 years

- **Distinguish** between **Notice Requirements** and **Statutes of Limitations**
  - Failure to meet the notice requirement is (usually) a complete bar to recovery, regardless of whether or not the statute of limitations was met
Practitioner Recommendations

- **Time limits** may be affected by “Nullum tempus” in which a statute of limitations does not run against the sovereign – meaning the state or governmental entity can bring a claim at any time.
- **Insurance** can increase awards that would otherwise be barred by monetary caps.
- **Notice requirements** often precede the expiration of a statute of limitations, some as short as 7 days (Kentucky).
- Use this information as a starting point and verify, verify, verify.
For additional information:

ACRP Report LRD-24
Legal Aspects of Airport Programs
Sovereign Immunity for Public Airport Operators

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ACRP Legal Research Digest 26: Regulations Affecting the Exercise of First Amendment Activities at Airports

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ACRP Legal Research Digest 26
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Elaine Roberts, Columbus Regional Airport Authority
E. Lee Thomson, Clark County, Las Vegas, Nevada
Kathleen Yodice, Yodice Associates, Aircraft Owners and Pilots Association
Daphne A. Fuller, Liaison with the Federal Aviation Administration
Frank SanMartin, Liaison with the Federal Aviation Administration
Marci A. Greenberger, ACRP Staff
The First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

- United State Constitution, Amendment I
ACRP Legal Research Digest 26: Regulations Affecting the Exercise of First Amendment Activities at Airports

- Provides a general First Amendment overview for speech on public property.
- Presents cases that address noncommercial speech at airports.
- Considers specific First Amendment issues in other airport areas:
  - Advertising and Other Commercial Activity.
  - Labor and Employment.
  - Administrative Issues, including Public Meetings, Internet, and Policy Drafting and Appeals.
  - Airport Chapels and Holiday Décor.
  - State Constitution Cases Addressing Speech.
ACRP Legal Research Digest 26

- Presents a survey of airport First Amendment policies for noncommercial speech at over 40 U.S. airports.
- Complies state constitutional provisions in the areas addressed by the First Amendment.
- Published August 2015.
Regulations on Government Property

- Courts consider speech regulations on government property using “forum analysis.”
- A “forum” is the place that a speaker wants to use for speech. Examples:
  - A place in an airport terminal.
  - An advertising display case.
  - An airport webpage.
Traditional Public Forums

- Places historically used for public speech (parks, streets, public sidewalks)
- Places designated for public speech (“designated public forums”).
  - Strict scrutiny of content regulation.
  - Content-neutral time, place, and manner regulations.
Limited Public Forum

• Government reserves a forum for certain groups or for the discussion of certain topics.
  • Example: a state university funds publications by student organizations.
  • Regulations must be reasonable in light of government’s intent for the forum and viewpoint neutral.
Nonpublic Forum

- Government reserves property for certain functions and acts as a proprietor, managing its internal operations.
  - Example: airport terminals.
  - Government can exclude subject matter but regulations must be reasonable in light of the purpose of the forum and viewpoint neutral.
Viewpoint Neutral

- Government cannot regulate based on the speaker’s point of view on a topic that is otherwise permissible in the forum.
  - Restrictions must be justifiable without considering the content of a message.
  - Viewpoint discrimination suppresses a point of view on a topic that others can address.
Government Speech

- Government engages in expressive conduct to convey a government message over which the government exercises final authority.
  - Forum analysis does not apply.
  - Example: an airport’s holiday display.
Airport Cases

- Airport proprietors cannot completely ban all speech.
- Airport terminals are a nonpublic forum.
  - The airport could ban repetitive, face-to-face solicitations for the immediate receipt of funds in the terminal.
  - The airport could not ban leafleting, but could require time, place, and manner restrictions.
Airport Cases

• All airport terminals are nonpublic forums.
• Airport sidewalks and parking garages.
• “Speech zones” at airports.
• Speech permits and advance applications.
• Prohibiting placement of objects on airport property.
An Airport’s Circumstances Matter

• Courts consider individual circumstances.
  • Speech on aerial towing banners in Honolulu.
  • Newsracks:
    • Complete bans are generally not permitted.
    • One airport’s circumstances justified a ban.
Consider a Request

- A children’s charity proposes to:
  - Follow passengers from the terminal to the curb.
  - Ask for donations.
  - Use sock puppets to make the request.
Commercial Speech

• This is speech that does no more than propose a commercial transaction.

• Forum analysis applies. For airports:
  • Nonpublic forums.
  • Reasonable restrictions in light of the purpose of the property and viewpoint neutral.
Advertising Programs

- The forum is the advertising display.
- Standards for accepting or rejecting advertising are subject to nonpublic forum requirements.
- Challengers may ask a court to consider the proprietor’s intent for the advertising display.
  - Policies.
  - Past practices.
  - What speech is compatible with the area.
Advertising Programs

- Example: political advertising bans have been upheld based on factors such as:
  - Disruption to regular advertising accounts.
  - Perceptions of favoritism.
  - Contentious effects on travelers.
- Courts may be divided on how to view some issues.
- Decisions from other forums do not take airport factors into account.
For additional information:

ACRP Legal Research Digest 26: Regulations Affecting the Exercise of First Amendment Activities at Airports

http://www.trb.org/Publications/Blurbs/173064.aspx

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