

The National Academies of
SCIENCES • ENGINEERING • MEDICINE



TRANSPORTATION RESEARCH BOARD

TRB WEBINAR PROGRAM

Legal Research for Airport Programs – Security Screening

February 28, 2017
2:00pm to 3:30pm ET

Purpose

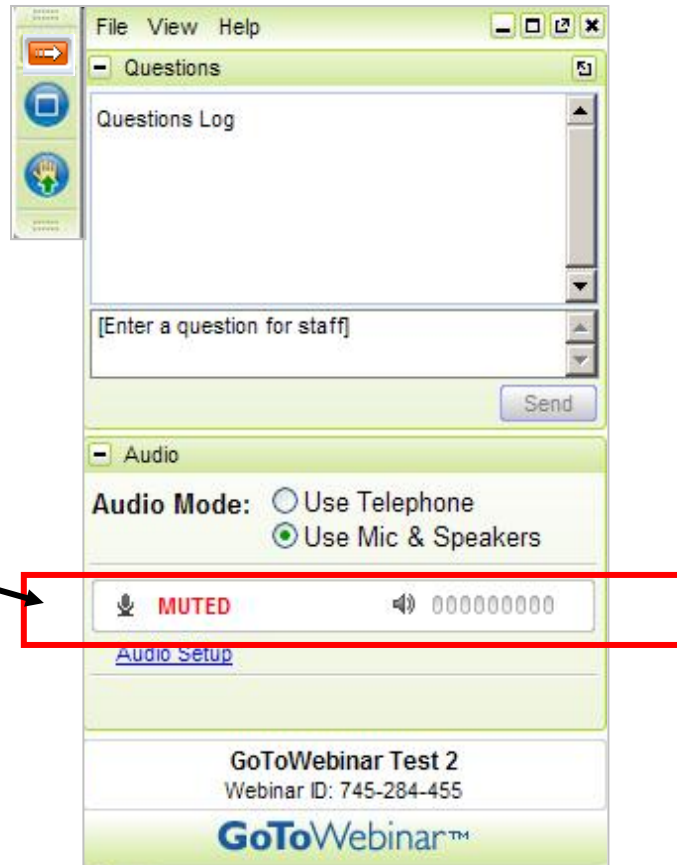
Discuss research conducted by TRB's Airport Cooperative Research Program (ACRP) on security screenings at airports. Both criminal laws and security requirements affect airport operations.

Learning Objectives

At the end of this webinar, you will be able to:

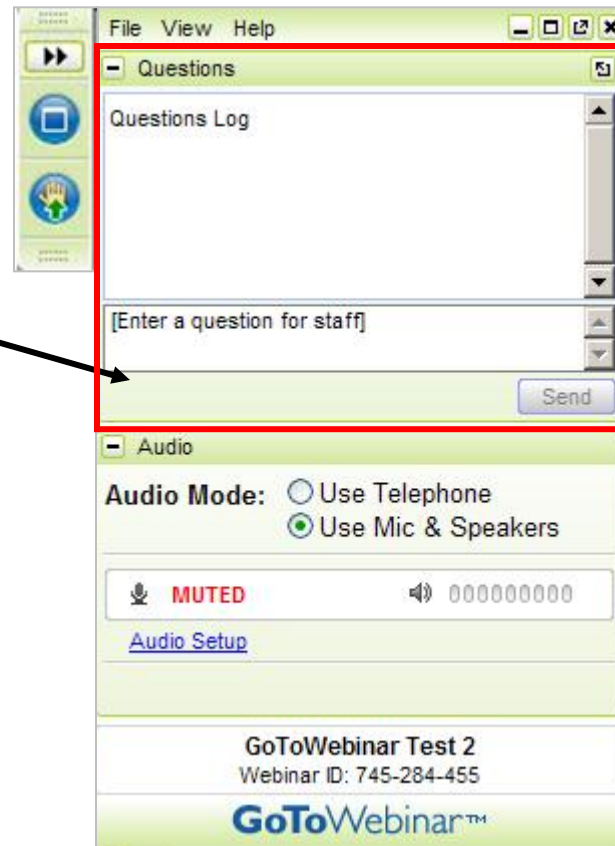
- Understand the various firearms laws and how the laws vary from state to state, as well as from situation to situation
 - Understand Fourth Amendment requirements for employees, security officials, or law enforcement officers who stop passengers or baggage
 - Understand Fourth Amendment requirements in the transitions between security stops and law enforcement actions
-

All Attendees Are Muted

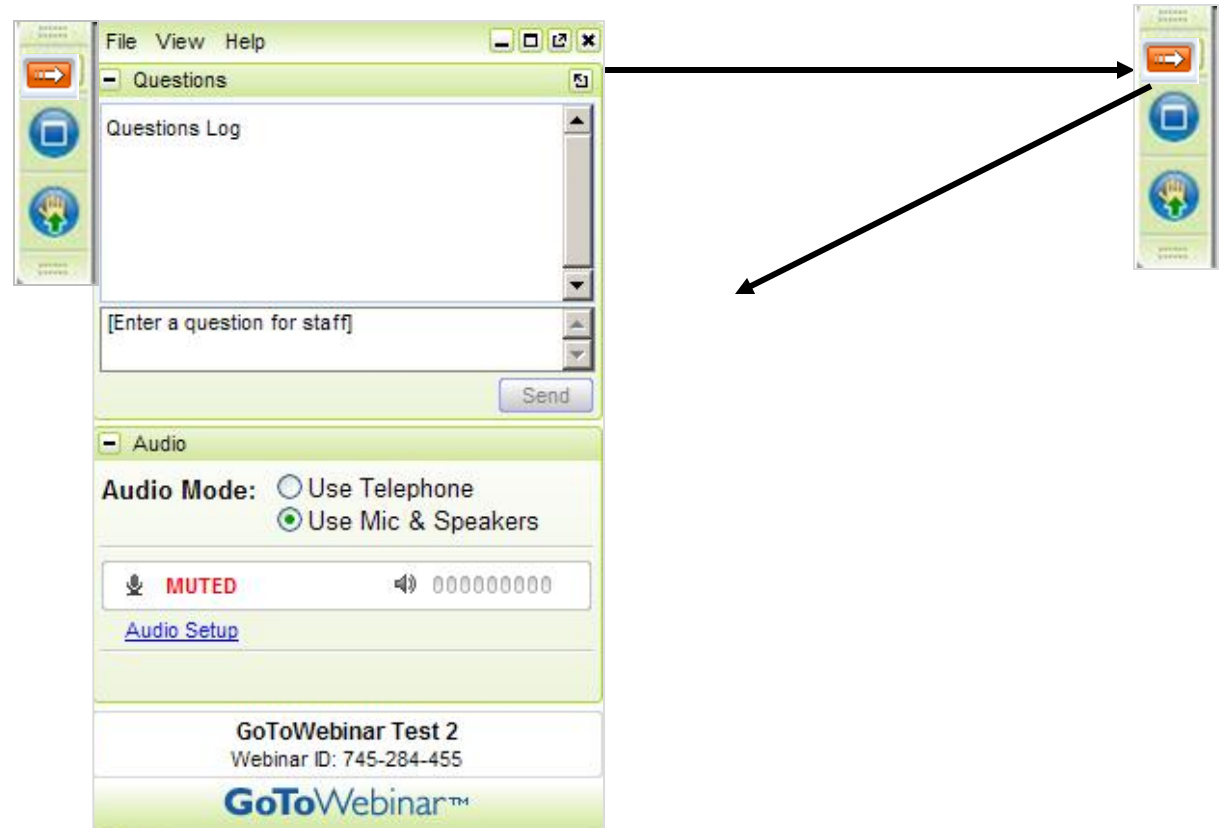


Questions and Answers

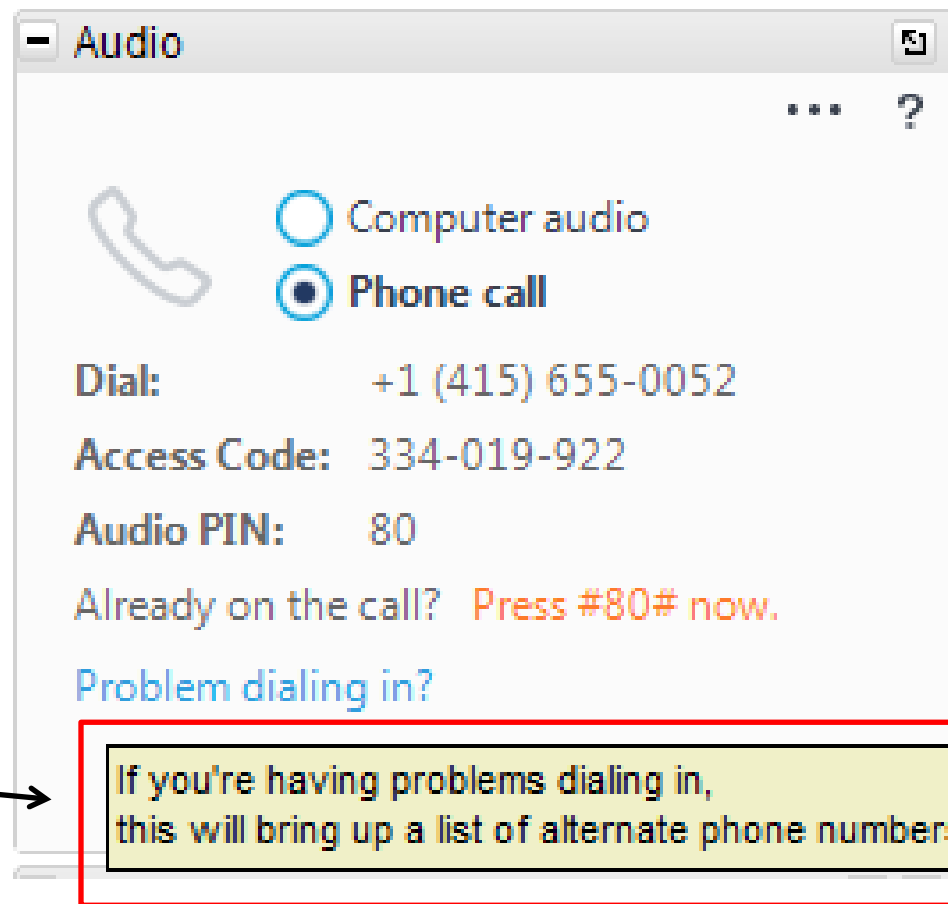
- Please type your questions into your webinar control panel
- We will read your questions out loud, and answer as many as time allows



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Having Trouble Logging On?



American Association of Airport Executives (AAAE)

1.5 Continuing Education Units (CEUs) are available to Accredited Airport Executives (A.A.E.)

Report your CEUs: www.aaae.org/ceu

Continuing Legal Education (CLE) Credits

1.25 Continuing Legal Education (CLE) credits may be claimed for viewing this webinar

Registered webinar attendees who sign in and view the entire webinar will receive a link to a certificate that they can fill out and provide to their board

Panelists Presentations

<http://onlinepubs.trb.org/onlinepubs/webinars/160228.pdf>

After the webinar, you will receive a follow-up email containing a link to the recording

Today's Participants

- Mike Hainsey, *Golden Triangle Regional Airport*,
mhainsey@gtra.com
 - Jodi Howick, *Howick Law, PLLC*,
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 - Larry W. Thomas, *The Thomas Law Firm*,
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-

Get Involved in ACRP

- Submit a research idea to ACRP.
- Volunteer to participate on a project panel.
- Prepare a proposal to conduct research.
- Get involved in TRB's Aviation Group of committees.
- Take part in the Champion or Ambassador Programs.

For more information:

<http://www.trb.org/acrp/acrp.aspx>

ACRP is an Industry-Driven Program

- ✈ Managed by TRB and sponsored by the Federal Aviation Administration (FAA).
- ✈ Seeks out the latest issues facing the airport industry.
- ✈ Conducts research to find solutions.
- ✈ Publishes and disseminates research results through free publications and webinars.



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Opportunities to Get Involved!

- ✈️ ACRP's Champion program is 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.



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Upcoming ACRP Webinars

March 14th

Winter Operations: Understanding Aircraft Deicers
and Their Impact on Stormwater Runoff

March 23rd

Advancing Collaborative Decision-Making (CDM)

April 25th

Reducing the Impact of Lead Emissions at Airports

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Additional ACRP Publications Available on this Topic

Legal Research Digest 24: Sovereign Immunity for Public Airport Operations

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

Legal Research Digest 28: Operational and Legal Issues with Fuel Farms

Legal Research Digest 30: Contract Risk Management for Airport Agreements

Legal Research Digest 31: Preemption of Worker-Retention and Labor-Peace Agreements at Airports

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Today's Speakers

Larry Thomas, J.D., Ph.D.

The Thomas Law Firm

Presenting

Impact of Firearms Laws on Airports

and

Jodi Howick, J.D.

Howick Law, PLLC

Presenting

The Fourth Amendment and Airports

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ACRP Legal Research Digest 27:

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The Fourth Amendment and Airports

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The Fourth Amendment

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

- United States Constitution, Amendment IV



Two Standards for Searches and Seizures

- **Reasonableness**
 - Degree of intrusion vs. legitimate government interest
- **Specific**
 - Warrant (or exception) or proper administrative program



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“Searches”

- An intrusion to obtain information when:
 - Actual efforts are made to secure privacy, and
 - Society recognizes that privacy expectation is reasonable



“Seizures”

- Persons: Conduct objectively communicates to a reasonable person that he or she cannot leave
- Property: A meaningful interference with someone’s possession of property for a government purpose



Privacy at Airports

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For security reasons, at a major international airport “reasonable privacy expectations are of significantly lesser magnitude.”

- Florida v. Rodriguez, 469 U.S. 1



Types of Airport Actions

Fourth Amendment

**Law Enforcement
Action**

**Basis: Individual
suspicion**



**Administrative
Screening Action**

**Basis: Carrying out a
policy's important
purpose**



Administrative Screening

Procedures “well-tailored to protect personal privacy, escalating in invasiveness only after a lower level of screening disclosed a reason to conduct a more probing search.”

- U.S. v. Hartwell 436 F.3d 174



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Administrative Screening

“[A]ll that is required is the passenger’s election to attempt entry into the secured area of an airport.”

- U.S. v. Aukai, 497 F.3d 955



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Contraband at Screening

“[A]n airport search remains a valid administrative search only so long as the scope of the administrative search exception is not exceeded.”

-U.S. v. McCarty, 648 F.3d 820



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Searches Using Technology

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“The scanners pose only a slight intrusion on an individual’s privacy, especially in the light of the automated target recognition software installed in every scanner.”



- Corbett v. TSA, 767 F.3d 1171



Stopping Luggage

“[D]etention of luggage within the traveler’s immediate possession . . . intrudes on both the suspect’s possessory interest in his luggage as well as his liberty interest in proceeding.”



- U.S. v. Place, 462 U.S. 696



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Proprietor Programs

Proprietors can address important needs using reasonable methods chosen by “the government officials who have a unique understanding of, and responsibility for, limited public resources.”

- Cassidy v. Chertoff, 471 F.3d 67



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Proprietor Inspections

Administrative Policy:

- Important purpose
- Procedures to achieve it

Administrative vs. Law Enforcement



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For additional information:



ACRP Legal Research Digest 27: The Fourth Amendment and Airports

<http://www.trb.org/Publications/Blurbs/174240.aspx>

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ACRP Legal Research Digest 29

Impact of Firearms Laws on Airports

Larry W. Thomas, J.D., Ph.D.
The Thomas Law Firm

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Admitted to practice law in the District of Columbia, New York, and Virginia

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Project Panel

Thomas W. Anderson, Metropolitan Airports Commission

David Bannard, Foley & Lardner, LLP

Jay Hinkel, City of Wichita, Kansas

Marco B. Kunz, Salt Lake City Department of Airports

Elaine Roberts, Columbus Regional Airport Authority

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

Daphne A. Fuller, Liaison with the Federal Aviation Administration

Frank SanMartin, Liaison with the Federal Aviation Administration

Tom Devine, ACI-NA Liaison

Marci A. Greenberger, ACRP Staff

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Introduction

- Focus of today's presentation:
 - Legality of transporting a firearm to an airport
 - Legality of carrying a firearm in the non-sterile area of an airport terminal
 - Legality of having or leaving a firearm in an airport parking lot
- Sterile area of an airport
- Non-sterile area of an airport

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Laws Applicable to Airports

- U.S. Constitution, Second Amendment
- Judicial decisions interpreting the Second Amendment
- Federal statutes and regulations
- State statutes

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Second Amendment and the Courts

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- The Second Amendment: “A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.”
- *District of Columbia v. Heller*, 554 U.S. 570 (2008)
 - Constitutional right to keep an accessible, operational firearm in the home
 - Government regulation of firearms permissible in a “sensitive place”
- Effect of *Heller* on gun control laws.



Gun Control Laws

- There are federal statutes applicable to airports and the shipment of a firearm.
- State gun control laws apply state-wide, including to airports.



State Gun Control Laws

- Thirty-one states allow open carrying of a firearm without a license.
- Fifteen states require a license to carry a firearm openly.
- With some exceptions, most states require a license to carry a concealed firearm.

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State Gun Control Laws

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Regulate -

- Whether a firearm may be carried on a public street or on public transportation
- How a firearm may be transported in a private vehicle
- Whether a firearm may be left in a public or private parking lot



State Firearms Laws Applicable to Airports

- About sixteen states ban the carrying of a firearm by a private individual in public buildings or allow government authorities to post signs banning firearms.
- Two airports responding to the survey reported that they ban firearms in the airport terminal on the basis that the terminal is a public building.

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State Firearms Laws Applicable to Airports

- At least ten states ban firearms in airport terminals.
- At least one airport in twelve more states reported having a policy banning firearms in the airport terminal.
- At least eleven states prohibit the carrying of a concealed firearm in an airport.

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Other State Laws

- At least eighteen states allow an owner or lessee of a private business to post a notice banning firearms.
- State laws usually prohibit persons from carrying a firearm while a person is under the influence of alcohol or drugs.
- State laws usually prohibit the carrying of a firearm into a bar or restaurant serving alcohol on the premises.

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Other State Laws

- Persons prohibited from carrying a firearm anywhere in the state:
 - Persons convicted of a felony or other serious crime
 - Persons under the age of twenty-one (or eighteen in some states)
 - Firearms that are illegal to possess or carry under state law

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State Law May Preempt Local Regulation of Firearms

- Most states have constitutional and/or statutory provisions that preempt local regulation of firearms that is contrary to or in conflict with state law.
- A few state statutes specifically preempt any local regulation of firearms in airports or publicly owned or operated buildings.

Revell v. Port Authority of NY and NJ (2010)

- The *Revell* case demonstrates how an owner of a firearm may violate state law when traveling interstate by air with a firearm properly encased for shipment.
 - Revell was a Utah resident and holder of a Utah permit to carry a concealed firearm.
 - Revell was traveling from Salt Lake City to Allentown, PA via Minneapolis-St. Paul and Newark with a firearm properly encased for shipment.

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Revell v. Port Authority of NY and NJ (2010)

- Revell's flight is delayed; he misses his connecting flight in Newark; then he misses his bus to Allentown; he retrieves his gun and stays overnight in an airport hotel in Newark.
- Revell returns the next morning to the airport but is arrested for carrying a firearm without a New Jersey permit (also for carrying ammunition illegal under New Jersey law).

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Summary

A person may violate state laws when carrying a firearm even before arriving at the airport.

The risk of a violation increases when a person travels through one or more states and/or uses more than one mode of transportation to an airport.

Some states ban firearms in the non-sterile area of an airport. Some airport policies do so.

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Legal Research Digest 29

IMPACT OF FIREARMS LAWS ON AIRPORTS

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Available at -

<http://www.trb.org/Main/Blurbs/174765.aspx>