

ALR Federal *Alert*

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From the editor

ALR Federal continues to cover a wide spectrum of topics relevant to legal practitioners. Labor and employment issues are closely followed matters, with volumes 180 and 181 containing annotations regarding liability under the Family Medical and Leave Act, the Employee Retirement Income Security Act (ERISA), Title VII and the Age Discrimination in Employment Act. Criminal, immigration and evidentiary issues are also covered in volumes 180 and 181, with annotations on the evidence required to support removal or denaturalization for Nazi-related conduct and the exclusion of witnesses under Rule 615 of the Federal Rules of Evidence.

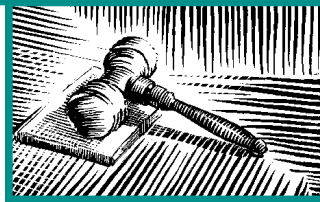
Amy Keane, J.D.

Highlights

DEPORTATION

Evidence Warranting Removal, or Denaturalization for Nazi-Related Conduct

Since the passage of the Holtzman amendment, which made those persons who assisted or participated in Nazi persecution inadmissible and removable (deportable) from the United States, the government has instigated many denaturalization and deportation proceedings against alleged Nazi collaborators living in the United States. In both denaturalization and deportation proceedings, courts have found that the naturalized citizen should be denaturalized for having illegally procured citizenship, since the citizen was ineligible for an immigration visa for engaging in certain Nazi-related conduct, and/or for having willfully misrepresented or concealed such conduct. In deportation proceedings, courts have found that the alien was



deportable on the same grounds. This annotation collects and analyzes cases discussing whether, under the circumstances, the evidence warranted the refusal of admission or the removal (deportation) of an alien, or the

denaturalization of a naturalized citizen, on the basis of that person's Nazi-related conduct. [180 ALR Fed 243](#)

STATE IMMUNITY UNDER FMLA

Liability of States Under Family and Medical Leave Act

The Family and Medical Leave Act of 1993 (FMLA) (29 U.S.C.A. §§ 2601 et seq.) entitles eligible employees to 12 weeks of unpaid leave because of the birth or adoption of a child, to care for a family member with a serious health condition, or because of their own serious health condition. Employers

are prohibited from interfering with the exercise of rights under the FMLA and a private right of action for damages and equitable relief is authorized in any court of competent jurisdiction against an employer who violates the FMLA. The word “employer” is defined under the FMLA to include public agencies (29 U.S.C.A. § 2611(4)), which in turn are defined to include states and political subdivisions of states (29 U.S.C.A. § 203(x)). This annotation collects cases which have discussed the immunity of a state in private actions for damages under the FMLA. [180 ALR Fed 579](#)

ALIENS

Sufficiency of Evidence to Establish Alien’s Fear of Persecution

One method of establishing refugee status under Section 101(a)(42)(A) of the Immigration and Nationality Act of 1952 (8 U.S.C.A. §1101(a)(42)(A)), is for an alien to demonstrate that he or she is unable or unwilling to return to, and unable or unwilling to avail himself or herself of the protection of, the country of his nationality because of a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. This annotation collects and discusses the cases which have adjudicated the sufficiency of the evidence to establish an alien’s well-founded fear of persecution entitling the alien to the

status of a refugee under §101(a)(42)(A) of the Immigration and Nationality Act of 1952 (8 U.S.C.A. §1101(a)(42)(A)) concerning alleged persecution in North and South American nations. [180 ALR Fed 369](#)

AGE DISCRIMINATION

Age Discrimination in Employment Act

In 1967, Congress passed the Age Discrimination in Employment Act (ADEA), Pub.L. 90-202, § 4, Dec. 15, 1967, 81 Stat. 603, codified at 29 U.S.C.A. §§261 et seq., to promote the employment of older persons based on their ability rather than age and to help employers and workers find ways of meeting problems arising from the impact of age on employment. Originally limited to employees in the private sector, the ADEA was amended in 1974 to extend protection to federal employees as well, under 29 U.S.C.A. § 633a. In 1990, Congress amended the ADEA by enacting the Older Workers Benefit Protection Act (OWBPA), Pub. L. No. 101-433, 104 Stat. 978 (1990), now codified at 29 U.S.C.A. § 626, which made it clear that discrimination on the basis of age in virtually all forms of employee benefits is unlawful, and ensured that older workers would not be coerced or manipulated into waiving their rights to seek legal relief under the ADEA. Supreme Court cases that have discussed actions brought under the Age Discrimination in Employment Act are collected in this annotation. [180 ALR Fed 325](#)

Coming Soon

SENTENCE AND PUNISHMENT

Federal Sentencing Guideline § 3B1.4 - Enhancement for Use of Minor

United States Sentencing Guidelines (U.S.S.G.) § 3B1.4 provides for a two-level upward adjustment of the defendant’s offense level if the defendant used or attempted to use a person less than 18 years old to commit the offense or to assist in avoiding detection of, or apprehension for, the offense. This annotation collects and analyzes all cases construing and applying U.S.S.G. § 3B1.4. [181 ALR Fed](#)



pursuant to 23 U.S.C.A. §§ 130, 144, or 152, or for developing any highway safety construction improvement project that may use Federal-aid highway funds, shall not be subject to discovery or admitted into evidence in any federal or state court proceedings involving an action for damages arising from an occurrence at a location mentioned in such documents. This annotation collects and analyzes the state and federal cases which have construed, applied, or determined the validity of 23 U.S.C.A. § 409. [181 ALR Fed](#)

EVIDENCE

Evidentiary Privilege of 23 U.S.C.A. § 409

Title 23 U.S.C.A. § 409 provides that reports, surveys, schedules, lists, or data compiled or collected for identifying, evaluating, or planning the safety enhancement of potential accident sites, hazardous roadway conditions, or railway-highway crossings,

RELIGIOUS LAND USE ACT

Religious Land Use and Institutionalized Persons Act of 2000

In order to protect a person from a land use regulation that would impose a substantial burden on the person’s free exercise of religion, and to protect the religious exercise of an

institutionalized person, Congress enacted the Religious Land Use and Institutionalized Persons Act (RLUIPA) (42 U.S.C.A. §§ 2000cc et seq.). The constitutionality of the RLUIPA has been challenged on a number of grounds, but the statute has withstood the attack. Courts have found standing to assert an RLUIPA claim in cases where the persons asserting the claim had suffered some alleged harm to their interests while other courts have not found standing to assert a claim where there was no final determination by a governmental unit that would trigger the application of the statute. This annotation collects and analyzes cases discussing the validity, construction and operation of the Religious Land Use and Institutionalized

Persons Act (RLUIPA) (42 U.S.C.A. §§ 2000cc et seq.). **181 ALR Fed**

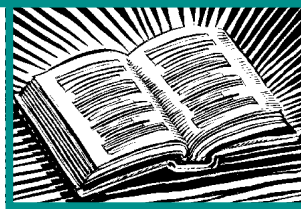
SURVEILLANCE

Wiretapping Compliance by Government Agents

The electronic surveillance provisions of Title III of the Omnibus Crime Control and Safe Streets Act of 1968 contain a provision, codified as 18 U.S.C.A. § 2518(5), requiring that surveillance be conducted in such a way as to minimize the interception of communications not otherwise subject to interception. This annotation collects all federal cases that have construed or applied the minimization requirement of 18 U.S.C.A. §2518(5). **181 ALR Fed**

Index

The following is a complete list, arranged alphabetically by topic, of annotations contained in the current Volume 180 or scheduled for publication in Volume 181 of ALR Federal. Some of the annotations listed may be rescheduled.



ATTORNEY'S FEES

Award of Attorney's Fees Under 28 U.S.C.A. § 593(f) to Individual Who Was Subject of Investigation by Independent Counsel. **181 ALR Fed**

Construction and Operation of Attorney's General or Classic Retainer Fee or Salary Contract In Bankruptcy Context. **181 ALR Fed**

CIVIL RIGHTS AND DISCRIMINATION

Actions Brought Under The Age Discrimination in Employment Act, 29 U.S.C.A. §§ 621 et seq.—Supreme Court Cases. **180 ALR Fed 325**

CONSTITUTIONAL LAW

Validity, Construction, and Operation of Religious Land Use and Institutionalized Persons Act of 2000 (42 U.S.C.A. §§ 2000cc et seq.). **181 ALR Fed**

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Construction and Operation of Attorney's General or Classic Retainer Fee or Salary Contract in Bankruptcy Context. **181 ALR Fed**

COPYRIGHT AND INTELLECTUAL PROPERTY

Copyright Protection of Computer Programs. **180 ALR Fed 1**

CRIMINAL LAW

Construction and Application of Federal Sentencing Guideline § 3B1.4 Providing for Enhancement for Use of Minor. **181 ALR Fed**

DISCOVERY AND INSPECTION

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Construction and Application of Hatch-Waxman Act, Pub. L. No. 98-417, 98 Stat. 1585 (1984) (codified as amended at 21 U.S.C.A. § 355 and 35 U.S.C.A. § 271(e) (1994)). **180 ALR Fed 487**

EAVESDROPPING AND WIRETAPPING

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IMMIGRATION AND NATURALIZATION

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INSURANCE AND INSURANCE COMPANIES

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LABOR AND EMPLOYMENT

Immunity of States in Private Actions for Damages Under Family and Medical Leave Act (29 U.S.C.A. §§ 2601 et seq.). **180 ALR Fed 579**

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WITNESSES

Exclusion of Witnesses Under Rule 615 of Federal Rules of Evidence. **181 ALR Fed**

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Also included with this volume is the August 2002 Update to the ALR Federal Quick Index.
This pamphlet should be placed next to the bound volume.
The May 2002 Pamphlet should be recycled or discarded.

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