

ALR

Federal 2d

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From the editor

Americans today might easily be pardoned if they find themselves with a split personality regarding current events. Internationally, the focus continues to be on the ongoing war against terrorism and events derived from that war, such as the ongoing attempts to nurture democracy and stability in Afghanistan and Iraq, and to enhance homeland security. Domestically, the focus has largely centered on rapidly changing economic conditions, including the economic emergence of a number of Native American tribes through the rapid founding and expansion of facilities for casino gambling in jurisdictions that otherwise have avoided such facilities. This duality of focus is reflected in the next two volumes of A.L.R. Fed. 2d, each of which features annotations on topics relating to both terrorism and to the Indian Gaming Regulatory Act.

Russell G. Donaldson, J.D.

Highlights

AGRICULTURE

Herbicides—Federal Preemption

The Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C.A. §§136 et seq., hereinafter FIFRA, imposes federal regulations on pesticide use, a field previously occupied only by state regulation, and provides that states shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under the FIFRA. There has been debate among the courts as to the proper interpretation of the FIFRA's preemption provision. In particular, federal and state courts have addressed federal preemption



of state common-law and statutory claims pertaining to herbicides. Cases that have discussed federal preemption of state common-law and statutory claims pertaining to herbicides are collected in this

annotation. [2 A.L.R. Fed. 2d 265](#)

BANKRUPTCY

Subordination of Claims

In order to equitably subordinate the claim of a corporate insider, the courts must find that the insider committed misconduct and used their control over a financially troubled entity for personal gain and to the detriment of other

debtors. If insiders have misused their control, principles of fairness would be violated by permitting the insiders to partake in distribution on an equal basis with other creditors. This annotation collects and discusses federal cases which have considered the equitable subordination of insider claims. [2 A.L.R. Fed. 2d 119](#)

CHILD PORNOGRAPHY

Criminal Conduct involving Child Pornography

The Child Pornography Prevention Act of 1996, 18 U.S.C.A. §2252A, is one of several Congressional enactments addressing the sexual exploitation and abuse of children through child pornography. The Act is a powerful tool in outlawing the receipt, transport, and possession of child pornography through all means, including computers. Its coverage has been modified slightly through subsequent amendments and narrowed by the Supreme Court's 2002 decision in *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 122 S. Ct. 1389, 152 L. Ed. 2d 403, 30 Media L. Rep. (BNA) 1673 (2002), which specified that child pornography must be of actual children, rather than virtual images. This annotation focuses on subsection (a) of §2252A, which lists all the various prohibitions on transporting, shipping, mailing, receiving, and possessing child pornography. The annotation collects and

discusses cases decided under §2252A(a), including constitutional challenges and issues of construction and application. [2 A.L.R. Fed. 2d 533](#)

TELECOMMUNICATIONS

ISP-bound Calls—Reciprocal Compensation

To support the goal of increased competition, the Telecommunications Act of 1996 requires local exchange carriers to allow new entrants into the telecommunications field to use some or all of the established networks. Interconnection agreements between the carriers may require the payment of reciprocal compensation when a customer of one carrier calls a customer or another carrier, and vice versa. When a customer calls an internet service provider (ISP), which may use a local number but actually be located somewhere else, the issue arises as to whether the ISP-bound calls are subject to the reciprocal compensation arrangements. Initial determinations regarding interconnection agreements are made by the state utilities commission, subject to judicial review. This annotation collects and analyzes telecommunications cases discussing reciprocal compensation for ISP-bound calls under the Telecommunications Act of 1996, excluding jurisdictional issues related to judicial review of state utilities commission determinations. [2 A.L.R. Fed. 2d 201](#)

Coming Soon

Listed below are a few of the topics scheduled to be published in volume 3 of *A.L.R. Fed. 2d* in July 2005. Some of the annotations listed may be rescheduled.



COSTS

Pro Se Criminal Defendant—Reimbursement Under Criminal Justice Act

The Criminal Justice Act, 18 U.S.C.A. §3006A(d), provides in part that any attorney appointed to represent a defendant in a federal criminal proceeding shall be reimbursed

for expenses reasonably incurred. In the few cases that have addressed the question whether a pro se defendant can be reimbursed under the Criminal Justice Act for expenses incurred in self-representation, some courts have taken the position that the Act provides for reimbursement of expenses incurred only by court-appointed attorneys and does not entitle a pro se defendant to any reimbursement, while other authority has determined that such a position would contradict the spirit of the Act. This annotation collects all cases discussing whether a pro se defendant is entitled to reimbursement under the Criminal Justice Act for expenses incurred during self-representation. [3 A.L.R. Fed. 2d](#)

FISH AND GAME

Migratory Bird Treaty Act

The Migratory Bird Treaty Act (MBTA) (16 U.S.C.A. §§703 to 712) implements treaties between the United States and several foreign countries for the protection of migratory birds. Among its major provisions, the MBTA prohibits various acts involving the taking or possession of migratory birds, bird parts, nests, or eggs, authorizes the Secretary of the Interior to promulgate regulations to allow some hunting or possession of migratory birds, and provides penalties for violation of the MBTA, its underlying treaties, or the regulations promulgated thereunder. Although the Act generally makes taking, killing, or possessing of migratory birds unlawful, it authorizes the Secretary of the Interior to promulgate regulations to determine when and how migratory birds may be hunted or otherwise taken, killed, or possessed. This annotation collects and analyzes criminal and civil cases adjudicated under the Migratory Bird Treaty Act. **3 A.L.R. Fed. 2d**

NAVIGABLE WATERS

Portage Necessity as Affecting Navigability

When determining whether or not a particular body of water is navigable for federal purposes, courts generally impose a fact-sensitive “navigability in fact” test, while keeping in view the

waterway’s use in commerce. Current caselaw generally agrees that some portage necessity will not of itself negate a waterway’s navigability in the legal sense, even though it may negatively affect factual navigability. In making navigability determinations, courts look at historical evidence of navigability, contemporary evidence, and even discuss potential future use of the waterway under consideration. This annotation collects and analyzes those cases in which the courts examined portage necessity when determining whether or not particular waterways were navigable for legal purposes. **3 A.L.R. Fed. 2d**

TERRORISM

Threats Against the President

18 U.S.C.A. §871 establishes criminal penalties for the making of threats against the President, President-elect, Vice President, Vice President-elect, and other officers in the line of succession to the presidency. The predecessor to §871 was first enacted in 1917, and the statute achieved its present codification in 1948. As one specification of such a threat, the statute prohibits knowingly and willfully depositing a letter in the U.S. mail containing a threat “to take the life of, to kidnap, or to inflict bodily harm upon” the president and the other designated officers. This annotation collects and analyzes federal cases discussing the validity, construction, or application of 18 U.S.C.A. §871. **3 A.L.R. Fed. 2d**

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The following is a complete list, arranged alphabetically by topic, of annotations contained in the current volume 2 or scheduled for publication in volume 3 of A.L.R. Federal 2d. Some of the annotations listed may be rescheduled.



ADMINISTRATIVE LAW

Construction and Application of “Chevron Deference” to Administrative Action by United States Supreme Court. **3 A.L.R. Fed. 2d**

AGRICULTURE

Federal Preemption of State Common-Law and Statutory Claims Pertaining to Herbicides. **2 A.L.R. Fed. 2d 265**

ALIENS

Construction and Application of 8 U.S.C.A. §1231(b)(2)(E) Providing for Additional Countries to Which Attorney General May Remove Alien. **2 A.L.R. Fed. 2d 411**

AMERICANS WITH DISABILITIES ACT

What Constitutes Substantial Limitation on Major Life Activity of Interacting with Others for Purposes of Americans with Disabilities Act (42 U.S.C.A. §§12101 to 12213). **2 A.L.R. Fed. 2d 347**

ARBITRATION AND AWARD

Statute of Limitations Under Federal Arbitration Act on Filing of Motion to Confirm Award. **3 A.L.R. Fed. 2d**

BANKRUPTCY

Bankruptcy: Equitable Subordination, Under 11 U.S.C.A. §510(c), of Insider Claims. **2 A.L.R. Fed. 2d 119**

What Constitutes “Willful Violation” of Automatic Stay Provisions of Bankruptcy Code (11 U.S.C.A. §362(h)) Sufficient to Award Damages—Chapter 11 and 12 Cases. **2 A.L.R. Fed. 2d 459**

CHILD PORNOGRAPHY

Validity, Construction, and Application of 18 U.S.C.A. §2252A(a), Proscribing Certain Activities Relating to Material Constituting or Containing Child Pornography. **2 A.L.R. Fed. 2d 533**

CRIMINAL PROCEDURE

Reimbursement to Pro Se Criminal Defendants Under Criminal Justice Act, 18 U.S.C.A. §3006A(d). **3 A.L.R. Fed. 2d**

ENVIRONMENTAL LAW

Validity, Construction, and Application of Migratory Bird Treaty Act, 16 U.S.C.A. §§703 to 712, and Its Implementing Regulations. **3 A.L.R. Fed. 2d**

EXTRADITION

Construction and Application of 8 U.S.C.A. §1231(b)(2)(E) Providing for Additional Countries to Which Attorney General May Remove Alien. **2 A.L.R. Fed. 2d 411**

INDIANS

Construction and Application of “Restoration of Lands” Provision of Indian Gaming Regulatory Act, 25 U.S.C.A. §2719(b)(1)(B)(iii). **3 A.L.R. Fed. 2d**

Interplay Between Indian Gaming Regulatory Act and Johnson Act. **2 A.L.R. Fed. 2d 241**

INDIVIDUALS WITH DISABILITIES EDUCATION ACT

Recovery of Witness and Consultant Fees Under Individuals with Disabilities Education Act. **3 A.L.R. Fed. 2d**

LEWDNESS, INDECENCY, AND OBSCENITY

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MATERIAL WITNESSES

Validity, Construction, and Application of 18 U.S.C.A. §3144, Governing Arrest and Detention of Material Witnesses to Federal Crimes. **2 A.L.R. Fed. 2d 425**

NAVIGABLE WATERS

Portage Necessity as Affecting Navigability of Waterway Under Nonenvironmental Federal Law. **3 A.L.R. Fed. 2d**

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When has Federal Prosecutor Breached Plea Agreement—Promises Related to Downward Adjustment of Sentence in Fraud and Threat Cases. **3 A.L.R. Fed. 2d**

SECURITIES REGULATION

Validity, Construction, and Operation of Securities Litigation Uniform Standards Act of 1998. **2 A.L.R. Fed. 2d 1**

TELECOMMUNICATIONS

Issues Concerning Reciprocal Compensation for ISP-bound Calls under Telecommunications Act of 1996 (47 U.S.C.A. §§251, 252). **2 A.L.R. Fed. 2d 201**

TERRORISM

Construction and Application of §2002 of the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Pub. L. No. 106-386, §2002, 114 Stat. 1464, Relating to Payment of Anti-Terrorism Judgments **3 A.L.R. Fed. 2d**

Validity, Construction, and Application of 18 U.S.C.A. §871, Prohibiting Threats against President and Successors to Presidency. **3 A.L.R. Fed. 2d**

Also included in this volume is the May 2005 revised ALR Federal Quick Index, in new pamphlet format. This pamphlet will replace your bound volume and November 2004 pocket-part supplement. The 2001 bound volume and pocket-part supplement should be recycled or discarded.

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