

# ALR Federal 2d *Alert*

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## From the editor

Although most people believe that educational issues are limited to local municipalities, often these issues spill into the federal court system. Volumes 3 and 4 of ALR Federal 2d contain annotations dealing with federal issues arising out of the educational arena including an annotation on the construction and application of the No Child Left Behind Act and another annotation on the recovery of witness and consultant fees under the Individuals with Disabilities Education Act. Other annotations reflecting a broad range of topics appearing in Volume 3 and scheduled to appear in Volume 4 include: an environmental annotation dealing with the Migratory

Bird Treaty Act; an annotation on the construction and application of the “Chevron Deference” to administrative actions by the United States Supreme Court; an annotation on the construction and application of Federal Women’s Health and Cancer Rights Act; an annotation on what constitutes an accident under the Warsaw Convention containing global cases; and an annotation on the application of the Common Law Revenue Rule by the federal courts.

Michael F. Alberti, J.D.

## Highlights

### FISH AND GAME

#### Migratory Bird Treaty Act

The Migratory Bird Treaty Act (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 465**

### ARBITRATION

#### Statute of Limitations Under Federal Arbitration Act—Motion to Confirm Award

The Federal Arbitration Act (9 U.S.C.A. §§1 et seq.) (FAA) provides for the enforcement of

written agreements to arbitrate in contracts evidencing a transaction involving interstate commerce. Under the FAA, where the parties have agreed in their agreement to arbitrate that a court judgment shall be entered upon a resulting arbitration award, then “at any time within one year after the award is made any party may apply to the court so specified for an order confirming the award...” (9 USCA § 9). Some courts have interpreted this provision as a mandatory one-year statute of limitations, while others have held that a motion seeking confirmation may be filed later than one year, based upon the use of the permissive word “may.” This annotation collects and analyzes the state and federal cases that consider whether the language of § 9 of the FAA constitutes a mandatory one-year statute of limitations for the filing of a motion to confirm an arbitration award. [3 A.L.R. Fed. 2d 419](#)

## SCHOOLS

### Recovery of Witness and Consultant Fees Under Individuals with Disabilities Education Act

Section 615(i)(3)(B) of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. § 1415(i)(3)(B), provides that a court may, in its discretion, award “reasonable” attorney’s fees to the parents of a disabled child who are prevailing parties in any action or proceeding brought under the IDEA. Many courts have interpreted this fee-shifting provision to include reimbursement for fees paid to an expert witness or consultant in connection with an action or proceeding against a school district or other educational agency under the IDEA, while other courts have held the opposite. This annotation collects and discusses

this and other cases that have addressed the issue of whether parents who are prevailing parties under the IDEA may seek reimbursement for expert witness or consultant fees as costs under the fee-shifting provision of the IDEA, including those cases in which a court approved, limited, delayed, or rejected an award of expert fees based on the particular factual circumstances of the case. [3 A.L.R. Fed. 2d 441](#)

## ADMINISTRATIVE LAW

### Supreme Court’s “Chevron” Deference

The United States Supreme Court in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 104 S. Ct. 2778, 81 L. Ed. 2d 694, 21 Env’t. Rep. Cas. (BNA) 1049, 14 Env’t. L. Rep. 20507 (1984), held that when a legislative delegation to an agency on a particular question is implicit rather than explicit, a court may not substitute its own construction of the statutory provision for a reasonable interpretation made by the administrator of the agency. If the statute is silent or ambiguous with respect to the specific issue, the Court said, the question for the court is whether the agency’s answer is based on a permissible construction of the statute. Since *Chevron*, the Court has recognized a very good indicator of delegation meriting *Chevron* treatment in express congressional authorizations to engage in the process of rulemaking or adjudication that produces regulations or rulings for which deference is claimed. This annotation collects and analyzes the United States Supreme Court cases which have construed or applied *Chevron* deference to administrative actions. [3 A.L.R. Fed. 2d 25](#)

# Coming Soon

Listed below are a few of the topics scheduled to be published in volume 4 of A.L.R. Fed. 2d in July 2005. Some of the annotations listed may be rescheduled.



expedited processing of FOIA requests in cases where the requester could show compelling need or in other cases determined by the agency (5 U.S.C.A. §552(a)(6)(E)). The act defined “compelling need” as meaning either that a failure to obtain re-

quested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or safety of an individual, or, as to a request from a person primarily engaged in disseminating information, that there was an urgency to inform the public concerning actual or alleged federal government activity. The act required agencies to promulgate regulations providing for the

## FREEDOM OF INFORMATION ACT

### Expedited Processing Requests

In the Electronic Freedom of Information Act Amendments of 1996, Congress provided for

expedited processing of requests for records and in so doing, some agencies added other grounds for granting expedited processing, such as the widespread and exceptional media interest grounds set forth in the Department of Justice's regulation. This annotation collects and analyzes the federal cases addressing the expedited processing section (5 U.S.C.A. §552(a)(6)(E)) added to the Freedom of Information Act (FOIA) as a part of the Electronic Freedom of Information Act Amendments of 1996. **4 A.L.R. Fed. 2d**

## SCHOOLS

### Construction and Application of No Child Left Behind Act

President George W. Bush signed into law the No Child Left Behind Act (NCLBA) on January 8, 2002, which amended the Elementary and Secondary Education Act of 1965. Coverage of the NCLBA includes improving the academic achievement of the disadvantaged (20 U.S.C.A. §§ 6301 et seq.); preparing, training, and recruiting high quality teachers and principals (20 U.S.C.A. §§ 6601 et seq.); language instruction for limited English proficient and immigrant students (20 U.S.C.A. §§ 6801 et seq.); 21st century schools (20 U.S.C.A. §§ 7101 et seq.); and promotion of informed parental choice and innovative programs (20 U.S.C.A. §§ 7201 et seq.). Some courts construing the NCLBA have provided guidance in interpreting its provisions. This annotation collects and discusses all federal and state cases which have been interpreted or adjudicated under the NCLBA. **4 A.L.R. Fed. 2d**

## INSURANCE

### Construction and Application of Federal Women's Health and Cancer Rights Act

The federal Women's Health and Cancer Rights Act of 1998 (Act), 29 U.S.C.A. § 1185b provides that an individual receiving benefits for a medically necessary mastectomy who elects breast reconstruction will also receive coverage for all states of breast reconstruction, as well as surgery and reconstruction of the other breast to produce a symmetrical appearance, and prostheses and physical complications of mastectomy, including lymphedemas. This annotation collects and discusses all of the cases that have been decided under the Women's Health and Cancer Rights Act. **4 A.L.R. Fed. 2d**

## LABOR AND EMPLOYMENT

### National or International Union Responsibility for Local Union's Violation of Federal Employment Discrimination Laws

An international or national labor union may be held liable for discrimination practiced by its locals, although the standards for imposing such liability are different depending on whether suit is brought under 42 U.S.C.A. § 1981 or the more modern anti-discrimination laws. In general, where an agency relationship exists, an international or national union not only is vicariously liable for the acts of its local union violating federal employment discrimination laws, but it also has the affirmative duty to oppose the local's discriminatory conduct. Common law agency principles determine whether an international union is liable for a local union's discrimination. This annotation collects federal cases in which the courts considered the the circumstances in which a national or international union is responsible for its local union's violation of federal employment discrimination laws. **4 A.L.R. Fed. 2d**

# Index

The following is a complete list, arranged alphabetically by topic, of annotations contained in the current 3 A.L.R. Fed. 2d volume or scheduled for publication in volume 4 of A.L.R. Fed. 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 25**

### ARBITRATION AND AWARD

Statute of Limitations Under Federal Arbitration Act on Filing of Motion to Confirm Award. **3 A.L.R. Fed. 2d 419**

### CRIMINAL LAW

When Has Federal Prosecutor Breached Plea Agreement—Promises Related to Upward

Adjustment of Sentence in Drug Cases. 4  
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Reimbursement to Pro Se Criminal Defendants  
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§3006A(d). 3 A.L.R. Fed. 2d 223

#### DISABLED PERSONS

What Physical Injuries or Impairments Constitute Substantial Limitation on Major Life Activity of Walking for Purposes of Americans With Disabilities Act (42 U.S.C.A. §§ 12101 to 12213). 4 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 465

#### FRAUD AND DECEIT

Legal and Procedural Issues in Prosecutions Under Federal Statutes Involving Identity Theft 4 A.L.R. Fed. 2d

#### IMMIGRATION

Sufficiency of Evidence to Establish Alien's past Persecution Entitling Alien to Status of Refugee under § 101(a)(42)(A) of the Immigration and Nationality Act of 1952 (8 U.S.C.A. § 1101(a)(42)(A))—Alleged Persecution in North or South American Nations 4 A.L.R. Fed. 2d

#### 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 359

#### INSURANCE

Construction and Application of Federal Women's Health and Cancer Rights Act of 1998, 29 U.S.C.A. § 1185b. 4 A.L.R. Fed. 2d

#### INTERNATIONAL LAW

Application of Common Law Revenue Rule by Federal Courts. 4 A.L.R. Fed. 2d

#### LABOR AND EMPLOYMENT

When Is National or International Union Responsible for its Local Union's Violation of Federal Employment Discrimination Laws. 4 A.L.R. Fed. 2d

#### NAVIGABLE WATERS

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#### SCHOOLS

Recovery of Witness and Consultant Fees Under Individuals with Disabilities Education Act. 3

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Construction and Application of No Child Left Behind Act, Pub. L. No. 107-110, 115 Stat. 1425 (2002) (codified at 20 U.S.C.A. §§ 6301 et seq.). 4 A.L.R. Fed. 2d

#### 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 1  
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 241

#### TREATIES

What Constitutes Accident Under Warsaw Convention—Global Cases. 4 A.L.R. Fed. 2d

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