

# ALR

## Federal 2d

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#### From the editor

Since September 11, 2001, the nation's attention has turned to topics concerning national and homeland security, including terrorism, immigration, and the military. Volumes 5 and 6 of A.L.R. Federal 2d cover several issues related to these topics, with annotations discussing who may qualify as a "national" of the United States so as to avoid removal, and what evidence is sufficient to establish past persecution by an alien seeking refugee status. Also considered are issues of next-friend standing for purposes of federal habeas corpus, such as was asserted by some complainants seeking to challenge the detention of foreign nationals at Guantanamo Bay, Cuba, and the rights of alien detainees held outside of the United States to directly challenge the conditions of their detention in federal court. Another annotation discusses the Solomon Amendment, in place since 1994, which denies federal funding to institutions of higher education which prohibit military recruiters from operating on campus. In addition, A.L.R. Federal 2d continues its coverage of international issues, with annotations reviewing United States and Canadian cases on the issue of copyright protection for collective works republished in electronic databases and also examining United States, Canadian, and Mexican cases in connection with the North American Free Trade Agreement (NAFTA).

*Jill M. Marks, J.D.*

## Highlights

#### **COPYRIGHT AND LITERARY PROPERTY**

#### Republication of Collective Works in Electronic Databases—Canadian and U.S. Cases

Under both United States and Canadian copyright law, a collective work, such as a newspaper or magazine, may be copyrighted separately from the copyrights in the individual contributions to the collective work. The decision of a publisher of collective works to make the con-



tents of those works available in electronic databases creates a conflict between the rights of the copyright holder in the contribution and the rights of the copyright holder in the collective work. The publisher of a

collective work is considered to have, under 17 U.S.C.A. § 201(c), a privilege to reproduce and distribute a contribution as part of that collective work, any revision of that collective work, and any later collective work in the same series, while the

Canadian Copyright Act accords the publisher of a collective work the sole right to reproduce the work or any substantial part thereof in any material form whatever. This annotation examines the Canadian and United States cases which have considered whether a copyright in a collective work or compilation affords protection against a claim of infringement by the author of a contribution to the compilation when the owner of the copyright in the collective work or compilation republishes all or part of the compilation in an electronic database. [5 A.L.R. Fed. 2d 1](#)

## PRIVACY

### Gramm-Leach-Bliley Act

The information privacy provisions of the Gramm-Leach-Bliley Act (GLBA) (15 U.S.C.A. §§6801 to 6809) set forth a procedure whereby a financial institution falling within the purview of the GLBA may not disclose nonpublic personal information without first notifying its clients of the financial institution's disclosure policies and affording them the opportunity to bar any disclosure of such information by "opting out." The GLBA provides exceptions to its notification and opt-out procedures, including when disclosure is necessary to respond to judicial process. This annotation collects and analyzes the cases construing, applying, and determining the validity of the GLBA and the regulations promulgated pursuant to it. [5 A.L.R. Fed. 2d 497](#)

## ALIENS

### Who Is "National" of the United States for Removability Purposes

United States citizenship confers an enormous number of benefits and protections. Those who

enjoy residence in this country but are not citizens, on the other hand, may risk deportation. Under the Immigration and Nationality Act, an alien may be removed, or deported, for many possible reasons. Only the status of a citizen or national confers protection from removability. A "national" is generally understood to be a citizen, either by birth or by having finished the process of naturalization. This annotation discusses all of the federal cases which have considered who is a national of the United States for removability purposes. [5 A.L.R. Fed. 2d 525](#)

## ARMED FORCES

### Solomon Amendment

In an effort to improve the ability of the military to recruit talented professionals, Congress passed the Solomon Amendment to a defense appropriation bill in 1994. Codified at 10 U.S.C.A. § 983, the law permits the Department of Defense to deny federal funding to universities that do not provide military recruiters the same access to campuses and students accorded all other recruiters. The law has been challenged on constitutional grounds, in particular by certain schools objecting to the military's "Don't Ask, Don't Tell" policy regarding homosexuals in the armed services. Many law schools have simply complied with the law rather than put their universities in a situation in which millions of dollars of federal funds will be cut off, but a few have taken on the government with constitutional challenges. This annotation will collect and discuss all of the cases which have considered the validity, construction, and application of the Solomon Amendment. [5 A.L.R. Fed. 2d 551](#)

# Coming Soon

Listed below are a few of the topics scheduled to be published in volume 6 of A.L.R. Federal 2d in December, 2005. Some of the annotations listed may be rescheduled.



## ALIENS

Evidence of alien's past persecution in European nation establishing refugee status

One method of establishing refugee status under § 101(a)(42)(A) of the Immigration and Nationality Act of 1952 (8 U.S.C.A. § 1101(a)) is for aliens to

demonstrate that they are unable or unwilling to return to, and unable or unwilling to avail themselves of the protection of, the country of their nationality because of persecution or 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 past persecution in a European nation by an alien seeking refugee status. **6 A.L.R. Fed. 2d**

## **HABEAS CORPUS**

### [Rights of Alien Detainees Held Outside of United States. as to Conditions of Detainment](#)

Many combatants captured by the United States and coalition forces in the war on terror have been detained at the naval station at Guantanamo Bay, Cuba, in part because of the size and convenience of the facilities, but also because the base is not technically located in the United States where certain constitutional rights would necessarily be granted to the detainees. The United States Supreme Court has recently held that aliens detained offshore had the right to habeas corpus to challenge the legality of their detention. Further litigation has arisen concerning whether this right extends to challenges as to the conditions of incarceration. This annotation examines the cases which have considered the rights of alien detainees incarcerated outside of the country to challenge the conditions of their detention. **6 A.L.R. Fed. 2d**

## **ASSAULT AND BATTERY**

### [Scienter in Offense of Assaulting or Resisting Federal Officer](#)

18 U.S.C.A. § 111 prohibits forcibly assaulting, resisting, opposing, impeding, intimidating,

or interfering with a federal officer while that officer is engaged in the performance of his or her official duties. The issue of whether scienter is an element of the offense stated in this provision has confronted the courts, which have, since the 1970s, been uniform in agreeing that there is no specific scienter requirement that the offender know whether the victim of an assault is a federal officer or is engaged in the performance of the officer's duty at the time of the assault or other interference, but there is still some difference of opinion on the question whether scienter may be a factor when the lack of knowledge of the victim's identity or status is seen as negating the element of criminal intent. This annotation collects and discusses all of the cases which have addressed whether there is a scienter requirement under 18 U.S.C.A. § 111. **6 A.L.R. Fed. 2d**

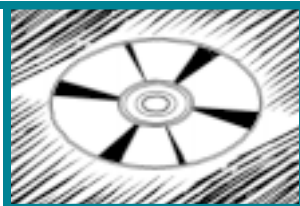
## **BANKRUPTCY**

### [Student Loan Debt as Unfair Discriminatory Treatment of Class of Unsecured Claims](#)

The Bankruptcy Code (11 U.S.C.A. § 1322(b)(1)) provides that a Chapter 13 plan may designate a class or classes of unsecured claims, but may not discriminate unfairly against any designated class. Because 11 U.S.C.A. § 1328(a)(2) generally excepts certain debts for student loans from the Chapter 13 discharge, the debtor may attempt to separately classify such debts and provide favorable treatment for their payment. This annotation collects and analyzes the federal cases that have addressed whether a Chapter 13 plan that separately classifies and provides favorable treatment for student loan debt is unfairly discriminatory in violation of § 1322(b)(1). **6 A.L.R. Fed. 2d**

# **Index**

The following is a complete list, arranged alphabetically by topic, of annotations contained in volume 5 of A.L.R. Federal 2d or scheduled for publication in volume 6 of A.L.R. Federal 2d. Some of the annotations listed may be rescheduled.



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Who Is "National" of the United States" for Removability Purposes. **5 A.L.R. Fed. 2d 525**

Sufficiency of Evidence to Establish Alien's Past Persecution Entitling Alien to Status of Refugee Under

§ 101(A)(42)(A) of Immigration and Nationality Act of 1952 (8 U.S.C.A. § 1101(A)(42)(A))—Alleged Persecution in European Nations. 6 A.L.R. Fed. 2d

Rights of Alien Detainees Held Outside United States as to their Treatment and Conditions of Detainment. 6 A.L.R. Fed. 2d

#### ARMED FORCES

Validity, Construction, and Application of Solomon Amendment, Which Denies Federal Funding to Institutions of Higher Education that Prohibit Military Representatives Access to and Assistance for Recruiting Purposes. 5 A.L.R. Fed. 2d 551

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#### COPYRIGHT AND LITERARY PROPERTY

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