

ALR 6th

Alert

Route to:

- _____
- _____
- _____
- _____
- _____
- _____

From the editor

Technology continues to transform the law. A.L.R.6th in volumes 26 and 27 analyzes four such manifestations: namely, automated traffic systems; the application of the attorney client privilege to electronic documents; infliction of emotional distress derived from the use of the Internet and electronic communications; and the discovery of deleted e-mail and other deleted electronic records. Also of note in 26 A.L.R.6th is the 2006-2007 A.L.R. United States Supreme Court Review, [26 A.L.R.6th 659](#), which notes the issues that were addressed, via opinions, or grants or denials of certiorari, by the United States Supreme Court in its 2006-2007 term, that are within the scope of, and further analyzed by, American Law Reports annotations.

Jason B. Binimow, J.D.

Highlights

AUTOMOBILES AND HIGHWAY TRAFFIC

Automated Traffic Enforcement Systems

Automated traffic enforcement systems (which are sometimes called automated vehicle identification systems) have been described as methods of traffic enforcement so fundamentally different from traditional methods of enforcement that they have significantly altered citizens' basic expectations. The two principal systems in use in the United States are photo radar, which detects vehicles that are exceeding the speed limit, and red light cameras, which capture images of vehicles crossing an intersection against a red light. In addition to contentious political debates, automated traffic control systems have inspired a variety of legal challenges. This annotation collects and analyzes all the federal and state cases challenging a governmental body's operation of an automated traffic enforcement system or an assessment of a penalty upon a motor vehicle owner or driver for a violation of traffic laws detected by such a system. [26 A.L.R.6th 179](#)



CRIMINAL LAW

Application of Apprendi and Blakely to State Controlled Substance Proceedings

Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000), held that other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt. *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403, 6 A.L.R. Fed. 2d 619 (2004), clarified that the statutory maximum for *Apprendi* purposes is the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant, and not the maximum sentence a judge may impose after finding additional facts. The rule of *Apprendi* and *Blakely* has been extensively applied in state controlled substances proceedings. This annotation collects state controlled substances cases applying *Apprendi* and *Blakely*. Note also the related annotations of Application of *Apprendi*

v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000) and Ring v. Arizona, 536 U.S. 584, 122 S. Ct. 2428, 153 L. Ed. 2d 556 (2002) to State Death Penalty Proceedings, [110 A.L.R.5th 1](#), and Comment Note: Application of Supreme Court's Apprendi Doctrine to Drug Quantity Element in Federal Narcotics Prosecutions, [14 A.L.R. Fed. 2d 1](#). [26 A.L.R.6th 511](#)

PRIVILEGED AND CONFIDENTIAL MATTERS

Application of Attorney Client Privilege to Electronic Documents

Courts have recognized that communications, including electronic messages and records, related to seeking or giving legal advice, or created in connection with any particular pending or imminent anticipated litigation, may be protected by the attorney-client privilege. This annotation collects and discusses those cases which have considered the application of the attorney client privilege to electronic documents. Note the related

annotation of Expectation of Privacy in Internet Communications, [92 A.L.R.5th 15](#). [26 A.L.R.6th 287](#)

SEPARATION OF CHURCH AND STATE

Religious Symbols on Public Property

Although the display of religious symbols on public property is often challenged on the basis of being in violation of the Establishment Clause of the First Amendment to the United States Constitution, each of the 50 states, as well as the District of Columbia and Puerto Rico, has a provision in its state constitution under which such a display could be challenged. This annotation collects and analyzes the state and federal cases that have considered challenges, under the provisions of a state constitution, to the display of religious symbols on public property. Note the related annotation of First Amendment Challenges to Display of Religious Symbols on Public Property, [107 A.L.R.5th 1](#). [26 A.L.R.6th 145](#)

Coming Soon

Listed below are a few of the topics scheduled to be published in [27 A.L.R.6th](#) in September 2007. Some of the annotations listed may be rescheduled.



DISCOVERY

Discovery of Deleted E-mail and other Deleted Electronic Records

Electronic documents are no less subject to discovery than paper records, and this is true not only of electronic documents that are currently in use but also of documents that may have been deleted and now reside only on backup disks. The discoverability of deleted e-mail or electronic data may arise in any legal proceeding wherein a party seeks to establish a fact through evidence consisting of or concerning electronic data that has been deleted, lost, or otherwise eliminated from a computer system, but which can nevertheless be recovered and reconstructed by an expert for evidentiary purposes. This annotation collects and summarizes those cases in which courts have considered whether deleted electronic e-mail and other deleted electronic records are subject to discovery. Note the related annotation of Electronic Spoliation of Evidence, [3 A.L.R.6th 13](#). [27 A.L.R.6th](#)

INTERNET

Emotional Distress from Use of Internet and Electronic Communications

With merely a few taps on a keyboard or clicks of a

mouse anyone connected to the Internet can send out electronic messages, or post information to web sites, that can instantly be read by countless numbers of individuals. Unfortunately, this growth in the speed and quantity of communications has its

down side, and that is that embarrassing or defamatory messages are disseminated just as widely and as quickly as innocuous information or mild chit-chat. A variety of tort remedies have been utilized by aggrieved parties to redress injuries from such e-mails, posted messages, and the like, including the remedies of the intentional or negligent infliction of emotional distress. Courts have reached a wide variety of conclusions as to the imposition of tort liability for electronic communications based on theories of the infliction of emotional distress, as this annotation illustrates. [27 A.L.R.6th](#)

STRUCTURED SETTLEMENTS

State Structured Settlement Protection Acts

While structured settlements for tort recoveries give a steady income over a very long period of time, they are inflexible. Quite often the payee wants his or her money quickly and is willing to sacrifice some or all of the future payments for cash on the barrel. In order to prevent serious overreaching by factoring companies and to prevent the sale of payments at a mere fraction of their present or future value, many states have enacted structured settlement protection acts. These acts require court approval of proposed sales, as well as numerous procedural requirements such as full disclosure of the value of the future payments. This annotation collects and discusses the state and federal cases considering the construction and application of state statutes restricting the transferring by payees of future periodic payments pursuant to a structured settlement. [27 A.L.R.6th](#)

VENDOR AND PURCHASER

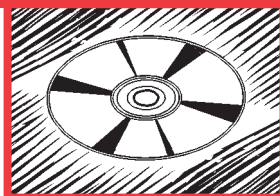
Radon Gas as Affecting Real Property Contracts

Radon, a naturally occurring gas which seeps into houses from surrounding soil, is a particularly dangerous indoor air pollutant. Radon is frequently found in basements and structures that contain subsurface

garages and other facilities. Concerns about radon and its inherent health risks have become a significant issue in home purchase and sale transactions, and have led to litigation regarding the effect of radon on real estate contracts and agreements. This annotation collects and discusses all case law which has considered the effect of radon gas upon real estate contracts and agreements. **27 A.L.R.6th**

Index

The following is a complete list, arranged alphabetically by topic, of annotations contained in the current volume 26 A.L.R.6th or scheduled for publication in 27 A.L.R.6th. Some of the annotations listed may be rescheduled.



ATTORNEY AND CLIENT

Attorney's Charging Excessive Fee as Ground for Disciplinary Action—Estate, Trust, Domestic Relations, and Family Law Matters. **26 A.L.R.6th 1**

Attorney's Charging Excessive Fee As Ground For Disciplinary Action—Business And Tax, Employee Benefits And Termination, Civil Rights, And Other Limited Civil Matters. **27 A.L.R.6th**

AUTOMOBILES AND HIGHWAY TRAFFIC

Automated Traffic Enforcement Systems. **26 A.L.R.6th 179**

COMPUTERS

Claims for Vicarious and Individual Liability for Infliction of Emotional Distress Derived from Use of Internet and Electronic Communications. **27 A.L.R.6th**

Discovery of Deleted E-Mail and Other Deleted Electronic Records. **27 A.L.R.6th**

CONSTITUTIONAL LAW

State Constitutional Challenges to the Display of Religious Symbols on Public Property. **26 A.L.R.6th 145**

CRIMINAL LAW

What Constitutes "Custodial Interrogation" of Juvenile by Police Officer Within Rule of Miranda v. Arizona Requiring that Suspect Be Informed of Federal Constitutional Rights Before Custodial Interrogation—At Police Station or Sheriff's Office. **26 A.L.R.6th 451**

Application of Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000), and Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403, 6 A.L.R. Fed. 2d 619 (2004) to State Controlled Substance Proceedings. **26 A.L.R.6th 511**

CUSTODY AND SUPPORT OF CHILDREN

Parents' Work Schedules and Associated Dependent Care Issues as Factors in Child Custody Determinations. **26 A.L.R.6th 331**

DISCOVERY

Discovery of Deleted E-Mail and Other Deleted Electronic Records. **27 A.L.R.6th**

DOCUMENTARY EVIDENCE

Construction and Application of Uniform Rule of Evidence 106, Applying Doctrine of Completeness to Writings and Recorded Statements. **27 A.L.R.6th**

DRUGS AND NARCOTICS

Application of Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000), and Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403, 6 A.L.R. Fed. 2d 619 (2004) to State Controlled Substance Proceedings. **26 A.L.R.6th 511**

E-MAIL

Claims for Vicarious and Individual Liability for Infliction of Emotional Distress Derived from Use of Internet and Electronic Communications. **27 A.L.R.6th**

Discovery of Deleted E-Mail and Other Deleted Electronic Records. **27 A.L.R.6th**

ELECTIONS AND VOTING

Constitutionality of Requiring Presentation of Photographic Identification in Order to Vote. **27 A.L.R.6th**

EMOTIONAL INJURY

Claims for Vicarious and Individual Liability for Infliction of Emotional Distress Derived from Use of Internet and Electronic Communications. **27 A.L.R.6th**

EVIDENCE RULES

Construction and Application of Uniform Rule of Evidence 106, Applying Doctrine of Completeness to Writings and Recorded Statements. **27 A.L.R.6th**

INTEREST IN PROPERTY OR SUBJECT MATTER

Construction and Application of Rule of Necessity in Judicial Actions, Providing That a Judge Is Not Disqualified to Try a Case Because of Personal Interest if the Case Cannot Be Heard Otherwise. **27 A.L.R.6th**

INTERNET

Claims for Vicarious and Individual Liability for Infliction of Emotional Distress Derived from Use of Internet and Electronic Communications. **27 A.L.R.6th**

Discovery of Deleted E-Mail and other Deleted Electronic Records. **27 A.L.R.6th**

JUDGES

Construction and Application of Rule of Necessity in Judicial Actions, Providing that a Judge Is Not Disqualified to Try a Case Because of Personal Interest If the Case Cannot Be Heard Otherwise. **27 A.L.R.6th**

LABOR AND EMPLOYMENT

Eligibility for Unemployment Compensation as Affected by Voluntary Resignation Because of Change of Location of Residence Under Statute Conditioning Benefits upon Leaving for "Good Cause Attributable to the Employer". **26 A.L.R.6th 111**

Eligibility for Unemployment Compensation as Affected by Voluntary Resignation Because of Change of Location of Residence under Statute Denying Benefits to Certain Claimants Based on Particular Disqualifying Motive for Move or Unavailability for Work. **27 A.L.R.6th**

PRICES AND PRICING

Validity, Construction, and Application of State Statutory Provisions Prohibiting Sale of Gasoline Below Cost. **26 A.L.R.6th 249**

PRIVILEGED AND CONFIDENTIAL MATTERS

Application of Attorney Client Privilege to Electronic Documents. **26 A.L.R.6th 287**

RADON

Effect of Radon Gas Upon Real Estate Contracts and Agreements. **27 A.L.R.6th**

SEARCH AND SEIZURE

Timeliness of Execution of Search Warrant. **27 A.L.R.6th**

SEPARATION OF CHURCH AND STATE

State Constitutional Challenges to the Display of Religious Symbols on Public Property. **26 A.L.R.6th 145**

STRUCTURED SETTLEMENTS

Construction and Application of State Structured Settlement Protection Acts. **27 A.L.R.6th**

SUPREME COURT OF UNITED STATES

2006-2007 A.L.R. United States Supreme Court Review. **26 A.L.R.6th 659**

TAXATION

State Tax Consequences of Election Under § 338 of Internal Revenue Code (26 U.S.C.A. § 338). **26 A.L.R.6th 219**

TRAFFIC OFFENSES AND VIOLATIONS

Automated Traffic Enforcement Systems. **26 A.L.R.6th 179**

VENDOR AND PURCHASER

Effect of Radon Gas Upon Real Estate Contracts and Agreements. **27 A.L.R.6th**

UNEMPLOYMENT COMPENSATION

Eligibility for Unemployment Compensation as Affected by Voluntary Resignation Because of Change of Location of Residence Under Statute Conditioning Benefits upon Leaving for "Good Cause Attributable to the Employer". **26 A.L.R.6th 111**

Eligibility for Unemployment Compensation as Affected by Voluntary Resignation Because of Change of Location of Residence Under Statute Denying Benefits to Certain Claimants Based on Particular Disqualifying Motive for Move or Unavailability for Work. **27 A.L.R.6th**

UNIFORM RULES OF EVIDENCE

Construction and Application of Uniform Rule of Evidence 106, Applying Doctrine of Completeness to Writings and Recorded Statements. **27 A.L.R.6th**

Have questions or need help? Please call customer support at 1-800-225-7488, or e-mail at ALRLCS-Rochester@thomson.com.



This publication was created to provide you with accurate and authoritative information concerning the subject matter covered; however, this publication was not necessarily prepared by persons licensed to practice law in a particular jurisdiction. The publisher is not engaged in rendering legal or other professional advice and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.