DOCUMENT RESUME

ED 140 380 CS 501 764

AUTHOR Sirgiovanni, George
TITLE The Buckley Amendment.
INSTITUTION Freedom of Information Center, Columbia, Mo.
REPORT NO FOI-373
PUB DATE Jun 77
NOTE 6p.

EDRS PRICE MF-$0.83 HC-$1.67 Plus Postage.
DESCRIPTORS *Civil Liberties; *Constitutional Law; *Court Litigation; Elementary Secondary Education; Higher Education; Information Utilization; *Laws; *Student Rights
IDENTIFIERS *Buckley Amendment; *Freedom of Information

ABSTRACT

This report discusses the passage and implications of the 1974 Buckley Amendment, which completely reversed policy on disclosure of school records. Two features are central to the amendment: the student may inspect nearly every school record that concerns him or her, and the school is prohibited from divulging most aspects of a student's record to anyone without acquiring parental permission. Special attention is given to initial reaction to the law; to the problem caused by the amendment, concerning recommendation letters; and to interpretation of the wording of the bill. Student response to the legislation, regulations concerning the Buckley Amendment, and the outcome of public hearings are also examined. It is concluded that, although potential pitfalls surround the bill, it still provides students with access that, only a few years before, would have been unthinkable. (KS)

SCHOOL OF JOURNALISM, UNIVERSITY OF MISSOURI AT COLUMBIA
JUNE, 1977

FREEDOM OF INFORMATION CENTER REPORT NO. 373

THE BUCKLEY AMENDMENT

This report was written by George Sirgiovanni, an M.A. candidate at the University of Missouri School of Journalism.

Introduction

Blacklists, "secret files," falsified records and other abridgments of individual freedom have been hot news items the past several years. In the wake of recent political disclosures, many Americans have become concerned with more than just "personal privacy"; they also want to verify the accuracy of whatever records have been accumulated on them. For instance, it was once a common, unchallenged practice to deny a student or his parents the right to see the student's school records. Moreover, it was a general procedure for police, government agencies, prospective employers and others to be allowed to leaf through anyone's school records. This, however, is now a thing of the past.

Sen. James Buckley, a Republican-Conservative from New York, spearheaded legislation that almost completely reversed the former policy on disclosure of school records. The now-famous "Buckley Amendment," less than three years old, has two central features: the student may inspect nearly every record his school has on him, and the school is prohibited from divulging most aspects of a student's record to anyone without acquiring permission from the student's parents. When the student turns 18, the school must obtain his permission.

Supporters of the law claim (Milwaukee *Journal*, 11-19-77) it stands as a bulwark against the encroachments of a Big Brother society. Critics of the law, however, while generally conceding its good intentions, cite the many legal and administrative problems the law has caused, claiming the law has done more harm than good. Persistent criticism has plagued the Buckley Amendment since it became law.

This paper will discuss the passage of the 1974 law, the early difficulties it presented, public use of the law and the continuing debate over this important legislation.

Passage of the Buckley Amendment

Every United States public school system creates a file on each of its students that starts the day the child enters kindergarten and continues until the day he leaves school or graduates. The test scores, personality profile and other data that are compiled when a person is six years old can, and usually do, remain "on file" somewhere for the rest of his life. Thus, a hastily concluded judgment by an annoyed, impatient third-grade teacher could become a lifelong albatross around the neck of an innocent individual, without his even knowing it.

Sen. Buckley was made aware of the scope of the school records problem through the research of the National Committee for Citizens in Education (NCCE). The NCCE criticized schools for including unnecessary personal data in student files, and for preventing parents from seeing their children's files. One NCCE report, for instance, concluded (Des Moines *Register* 9-12-74) "Elementary and secondary students in the nation's schools are in danger of becoming locked into a records prison that threatens to label [them] for life with personality, intelligence, behavioral and medical assessments based on highly questionable techniques."

In August, 1974, Buckley proposed legislation that he hoped would alleviate this problem. The Family Educational Rights and Privacy Act, which soon became known as the "Buckley Amendment," was attached to the omnibus Elementary and Secondary Act, which went into effect Nov. 19, 1974. The bill denied federal funds to schools that did not comply with the law. (Thus, a few private schools were, in a sense, exempt from the statute, since they didn't receive any federal funds.) Schools were given 45 days from Nov. 19, 1974, to respond to any requests from a student to see his file.

Specifically, the Buckley Amendment stated:

> No funds shall be made available under an applicable program to any State or local educational agency, any institution of higher education, any community college, any school, agency offering a preschool program, or any other educational institution which has a policy of denying, or which effectively prevents, the parents of students attending such institution of higher education, community college, school, preschool, or other educational in-

Summary:

The author discusses the passage of the 1974 Buckley Amendment, the early difficulties it presented, public use of the law and the continuing debate over this important legislation.

stitution, the right to inspect and review any and all official records, files, and data directly related to their children, including all material that is incorporated into each student's cumulative record folder. . . .

Parents shall have an opportunity for a hearing to challenge the content of their child's school records, to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading, or otherwise inappropriate data contained therein.

No funds shall be made available under any applicable program to any State or local educational agency, any institution of higher education, any community college, any school, agency offering a preschool program, or any other education institution which has a policy of permitting the release of personally identifiable records of files (or personal information contained therein) of students without the written consent of their parents to any individual, agency, or organization . . . (exceptions include other school officials, officials of other school systems in which the student intends to enroll, authorized representatives of the Comptroller General of the United States, the Secretary of HEW, or in connection with a student's application for financial aid.)

No funds shall be made available under any applicable program to any State or local educational agency, any institution of higher education, any community college, any school, agency offering a preschool program, or any other educational institution which has a policy or practice of furnishing, in any form, any personally identifiable information contained in personal school records, to any persons . . . (exceptions are the same) unless— there is written consent from the student's parents specifying records to be released, the reasons for such release, and to whom, and with copy of the records to be released to the student's parents and the student if desired by the parents, or. . . . such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.

Initial Reaction to the Law

When originally proposed, the bill attracted very little attention. It was adopted by voice vote on the Senate floor and it passed without hearings. As the date of implementation approached, however, school officials, particularly those representing higher education, conceded they had become aware of the law's implications after it was too late to influence its content. School lobbyists admitted (New York *Times*, 10-13-74) they had been caught napping by the "sleeper" piece of legislation, and that they hadn't given it enough careful attention. Several surprised school officials said they began to "view with alarm" the bill's consequences.

When the Buckley Amendment became law in November, 1974, school officials used their 45 day "grace period" to lobby for a revision of the bill. In addition, orders were given at some schools to "clean up" the records.

For instance, James P. Melton, assistant superintendent of the Kentucky Department of Education, sent copies of the law to the state's school district superintendents and included a letter advising (Louisville *Courier-Journal*, 11-5-74) them to "purge cumulative record files of unsubstantiated or irrelevant miscellanea and unsubstantiated teacher opinions which might tend to categorize pupils."

Gary S. Potts, school superintendent of Fayette County, Ky., ordered all unverified comments or opinions to be removed from the records or obliterated if written on the face of a cumulative folder. Potts also instructed (Louisville *Courier-Journal*, 11-5-74) school personnel to be careful to see that "no potentially defamatory references to parents are included in records inasmuch as, of course, parents will now have the right to inspect such records."

The Problem With Recommendation Letters

School administrators were chiefly concerned with the traditional guarantee of privacy given to persons who write letters of recommendation for students. The Buckley Amendment, as originally written, gave a student an unconditional right to inspect recommendation letters written for him, even those written before passage of the Buckley Amendment. This aspect of the law presented some obvious difficulties, since the persons who had written recommendations before the Buckley bill became law had done so under the assumption that the letters would be permanently confidential.

Daniel Steiner, a lawyer at Harvard University, said (Los Angeles *Times*, 11-21-74) that Harvard had a "moral obligation" to respect the confidentiality of documents written before the law went into effect. W. W. Washburn, registrar for the University of Washington, expressed (Los Angeles *Times*, 11-21-74) much the same opinion: "We are concerned with providing them [persons who write recommendation letters] with the confidentiality that was inferred at the time they [the recommendations] were written."

In response to these and other complaints, Buckley and Sen. Claiborne Pell, D-R.I., proposed legislation on Dec. 7, 1974, to amend the most controversial sections of the amendment. The changes guaranteed the confidentiality of existing letters and statements or recommendations, permitted students to waive the right to see future recommendations written for them; and restricted students from seeing their parents' financial statements. Also, the Buckley-Claiborne proposal allowed colleges to send a student's grades to his parents, if the student was classified as a dependent. President Gerald Ford signed the Buckley-Claiborne amendment on Dec. 31, 1974, made retroactive to Nov. 19.

The waiver provision was quickly utilized as a means of protecting the confidentiality of future recommendations. Harvard University and several other colleges reported that they sent out waiver forms on a routine basis, and an official at the University of Texas Teacher Placement Center estimated that about 50 per cent of the students registered with the center had waived their right of access to recommendation letters. Robert W. Tobin, vice president of Boston University, said that waiver was common among applicants to medical and law schools. Some school

officials criticized (New York *Times*, 2-1-76) the waiver process, however, claiming it was "coercive."

Despite the reported widespread use of waivers, many persons have expressed (*Wall Street Journal*, 1-14-77) the belief that the Buckley Amendment has permanently ruined the recommendation system. Many teachers do not trust waivers and feel that somewhere along the line the student will renege on his agreement, cite the Buckley Amendment, and gain access to recommendation letters written about him. A few school systems, hoping to avoid the issue altogether, have forbidden (*Wall Street Journal*, 1-14-77) teachers to write any recommendations for their pupils.

Thus, recommendations have, in general, become less informative, even when students sign a waiver form. Several college-level administrators claim the epidemic of "useless" references has forced them to rely more strongly on grades, college board scores and other impersonal standards in making admissions decisions.

"Directory Information"

Unfortunately, more difficulties arose from the resolute wording of the bill. Many administrators faced with the loss of federal funds for noncompliance, interpreted the bill very broadly, often with ludicrous results. Some school attorneys advised their clients not to release athletes' heights and weights for programs and to seek consent of the cast of a school play before printing a program.

This strict interpretation of the Buckley Amendment caused problems for newspapers. Honor roll lists, team rosters and similar information of local interest were at one time routinely given to newspapers. But the Buckley Amendment, unintentionally or not, prohibited such disclosures without parental or student approval.

"We like what he [Buckley] is trying to do," said (*Christian Science Monitor*, 11-22-74) Jerold Roschwalb, director of government relations for the National Association of State University and Land Grant Colleges. "What we don't like is what he's done. . . . The language is sloppy, badly written."

After numerous protests, the U.S. Department of Health, Education and Welfare (HEW) ruled in January, 1975, that schools could release "directory information," which included the following: student's name, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, the most recent previous educational agency or institution attended by the student; and "other similar information."

Prior to releasing directory information, school officials must do three things: they must give public notice to parents that the information is going to be released; they must provide sufficient time for parents to object to the release of information about their child; and they must withhold the information about the student if he or his parents object to its release. HEW also ruled that the student has the right to obtain copies of anything in his file.

Student Apathy

A New York *Times* survey of the initial impact of the law on 14 college campuses indicated (New York *Times*, 1-4-75) that only a modest number of students have taken advantage of their new rights. The *Times* also conducted interviews with a dozen secondary school officials from various parts of the country. The interviews disclosed a similar pattern of modest parental response.

Three months after the act became law, Dawson Orman, assistant superintendent for student personnel of the Louisville Board of Education, reported (Louisville *Courier-Journal*, 2-9-75) that only about 25 requests for records had been received. And Thomas H. Hoover, registrar at the University of Wisconsin, reported (New York *Times*, 2-1-76) "no more than 10 inquiries during the whole year." Furthermore, no marked increase in recent use of the Buckley Amendment has been reported.

Sen. Buckley, however, remains unperturbed by the lack of response. "The purpose was not to have everyone run in to look at their files, but to enable them to do so," said (New York *Times*, 1-4-75) John Kwaisis, an aide to Buckley who was instrumental in drafting the amendment. "To the extent schools have cleaned up their files," Kwaisis said, "that again was one of the purposes."

Two-Year Study of the Buckley Amendment

Ms. Katherine Ludlipp prepared a study of the Buckley Amendment two years after it became law. Her study was prepared for a Right of Privacy Seminar conducted by the Georgetown Law Center. The study explored the amendment's implementation and some of its legal implications.[2]

According to this study, the Buckley Amendment has created a national standard for treatment of student records. The law passed, according to the study, ". . . in response to growing national concern over abuse of student records."

A number of school administrators, the study admits, have complained that the law imposes undue bureaucratic hardships on them. According to the study, some of the worst fears have *not* been realized. Ms. Ludlipp points out that there has been "no great surge" in requests for access to files. Yet, she says, there has been "significant interest shown in the implications and provisions of the Amendment." In fact, the HEW office charged with enforcing the law relies chiefly on citizens' complaints, not on haphazard investigations or checkups.

The study suggests two beneficial effects of the Buckley Amendment. First, it "has caused educational institutions to consider policies and practices with respect to student records—many, perhaps for the first time." Also, the act provides standards that schools must meet, thus removing much of the uncertainty caused by "the patchwork of State and local laws and regulations."

Second, the Buckley Amendment provides those "with concrete grievances the possibility of redress." The presence of the Buckley Amendment, according to the study, increases the chance that a student or his parent with a grievance is aware of his rights, since the Buckley Amendment had been highly publicized. Aware of his rights, the student may then seek satisfaction from the school, HEW, or ultimately, the courts.

Regulations for the Buckley Amendment

Final regulations concerning the Buckley Amendment were published by HEW in the *Federal Register* on June 17, 1976. The new regulations were refinements of the

regulations announced in March, 1976. There was a considerable delay in publishing the regulations, partly resulting from the widespread controversy caused by the bill. Higher education lobbyists favored (Washington *Star*, 2-7-76) a broad interpretation, while civil rights and other groups wanted strict enforcement of the law.

In recognition of the wide range of educational institutions to which the act applied, the regulations allowed for flexibility in complying with the bill's provisions. It was recognized, for instance, that a one-room schoolhouse would necessarily respond to the requirements of the Buckley Amendment in a different manner than a large, multifaceted university.[3]

Under the regulations, students may not challenge the grades they receive in school, but they may request a hearing to determine if their grades were accurately recorded. Furthermore, parents may demand formal hearings if they feel their children's school "is utilizing informal attempts to reconcile differences as a delaying tactic."

A student or his parents may request schools to amend records believed to be inaccurate, misleading or in violation of the privacy or other rights of the student. School officials may then accept or reject these amendments, but if the amendments are rejected, the student must be informed of his right to a hearing. Also, the student or his parents have a right to place in the record a statement giving the reasons he disagrees with the content of his record. This statement then becomes part of the student's file and must be disclosed whenever the rest of the record is disclosed.

The regulations also allow information from educational records to be disclosed without the prior consent of a student or his parents in emergency situations. One such circumstance would be when information is needed to protect the health or safety of the student or other individuals.

Several of the regulations concern the previously defined "directory information." Many school officials complained about the directory information rules, arguing that it is expensive and time-consuming to issue "public notice" to each student that, say, his name will be published on the honor roll list. Under the new regulations, "public notice" remained undefined, but HEW said that each school should determine the "actual means" of giving notice. Thus, notice could be given to students en masse. It was suggested that a college might publish the notice in the student newspaper, have copies available, and then, if nobody objects, the list could be published.

The regulations clarified several other matters relating to directory information. Schools were required to give public notice of the categories of personally identifiable information which the institution has designated as directory information, and they must announce the period of time within which the student must inform the school that he does not wish his name included in a particular category of directory information.

Public Hearings on the Buckley Amendment

Although final regulations had been published on the bill, HEW Secretary David Mathews recognized that further problems and complaints would be forthcoming. Accordingly, the Privacy Protection Study Commission conducted two hearings of all aspects of the Family Educational Rights and Privacy Act. The first set of hearings was held on Oct. 7 and 8, 1976, in Los Angeles, and a second set of hearings was conducted on Nov. 11 and 12, 1976, in Washington, D.C.

One of the greatest problems revealed by the hearings—at least from the point of view of those individuals on whom records are kept—is that the act in many cases is simply not being observed and that there are no really effective penalties for violation.[4] Under the Buckley Amendment, the only sanction that can be imposed for its violation is the cutting off of federal funds to the school. This action, though, is an extremely harsh penalty, and government officials are reluctant to use it (so reluctant are they that it has never been done).

The hearings disclosed that some Los Angeles school administrators take it upon themselves to release information to juvenile justice systems. In doing so, these officials are violating the Buckley Amendment, but they often claim that "a greater moral or legal service would be performed by release of the data. . . ."[5]

Another alleged abuse of the Buckley Amendment involves suspected illegal aliens. It was charged by lawyers from the El Monte Legal Aid Office who attended the Los Angeles hearings that school files of suspected non-Americans are given to the U.S. Immigration and Naturalization Service.

Opponents of the Buckley Amendment also spoke of noncompliance. Gerald K. Bogen, vice-president for student affairs at the University of Oregon, said at the hearings, "I have not talked to any education official who is content with the [Buckley Amendment] . . . none of the institutions I've talked with are complying . . . [and there has been] . . . gross, gross noncompliance."[6]

Bogen, who was representing the National Association of State Universities and Land Grant Colleges, also complained that the "human and monetary costs [of the Buckley Amendment] have been immense." He said that the bill's wording—despite its several amendments—was still fuzzy and unclear. "My impression is that the variety of interpretations is nearly as numerous as the number of higher education institutions," he said. Bogen concluded his testimony with a blunt appraisal of the Buckley Amendment: "My recommendation," he said, "is that you start all over." Bogen suggested that officials at each institution be given discretion to adopt their own regulations to implement the law.

The increase in bland recommendation letters was mentioned by several educators who attended the hearings. They blamed the Buckley Amendment for these "useless" recommendations. Martin F. J. Griffin, dean of undergraduate studies at Yale University, said (Des Moines *Register*, 11-12-76) that neither teachers nor students are happy with the effects the Buckley Amendment has had upon recommendation letters. Griffin said he believes students and teachers alike believe that an "open" recommendation is of little value. "The perception exists; it is strong; we believe it to be almost uniform throughout the country," Griffin said.

Griffin said that the prevalence of worthless recommendations could eventually lead to the elevation of objective criteria such as test scores and grade point averages as the only measures in evaluating students. Subjective criteria, such as intellect, character and resourcefulness would be left out, according to Griffin.

Others who attended the hearings complained (*Wall Street Journal*, 1-14-77) about the high cost of complying with the Buckley Amendment. Officials from Ohio State University said that the University spent $250,000 to obey the law, and administrators of UCLA said they spent $120,000 just for mailings. "We have to provide students with a notice of their rights, a notice that 'directory information' can be published without their consent, a notice of where their records are—even though they could be scattered in as many as 200 offices around campus," one UCLA administrator said.

Conclusion

A final verdict on the Buckley Amendment has not been reached. Many citizens, concerned with protecting their rights of privacy, are unreservedly enthusiastic about the law. In fact, there are very few persons, if any, who admit to opposing the basic intent of the Buckley Amendment. But is the administratively burdensome law "like burning the barn to roast the pig," as was claimed by one opponent of the Buckley bill? Both sides of the issue can be argued at length.

In any event, the law is on the books and a number of persons are exercising the access right that the Buckley Amendment provides to them. Potential pitfalls, though, await these students. First, the law hardly protects a student from "oral records." A vicious untruthful verbal statement can be just as damaging as a written statement, and in some cases, even more so. When asked to assess the impact of the Buckley Amendment on records, H. Edwin Young, chancellor of the University of Wisconsin, said (*Christian Science Monitor*, 11-22-74), "My guess is that people will go to the telephone more." In other words, the Buckley Amendment may, in some cases, bring about a return to the "old boy" system of references and recommendations.

Furthermore, indirect circumventions of the law are possible. One example is the letter that the dean of admissions of the University of Virginia sends to each entering student:

> . . . The act's purposes are best achieved when fewer records are kept and used. Therefore, in keeping with both the spirit and letter of the legislation we propose to destroy promptly all letters of recommendation, statements by counselors and school officials, teacher ratings and other confidential information submitted . . . In the event that you desire to have this information retained and included in your university records, we ask that you assist us . . . by signing and returning the waiver statement below. . . .[7]

Thus, the student is coerced into giving up his right to inspect the material in his record. If he refuses to sign the waiver, the information is destroyed.

Finally, the students can feel other pressures to relinquish their rights under the Buckley Amendment. Officials of a New York university, for instance, informed (St. Louis *Post-Dispatch*, 2-20-77) a female student that she might be better off signing a waiver form. The reason? Files of students who want to look at them are marked as "open" in many schools, and graduate school admissions committees and prospective employers often give little weight to an open file. The reason, as mentioned previously, is that teachers who know that students will inspect the files are generally not very candid in their recommendation letters.

Mrs. Rosemary Bruno, assistant director of placement at the University of Missouri at St. Louis, said (St. Louis *Post-Dispatch*, 2-20-77), "The majority of school district personnel directors would prefer that our [teaching] applicants present a confidential file. We tell the students this, but the decision is theirs." Many others are in agreement, and this is something that students have to consider before they exercise their rights under the Buckley Amendment.

Still, the law provides a student with access to his records that would have been unthinkable only a few years ago. A number of persons, motivated by fear, apprehension or simple curiosity, have taken advantage of the law, and others will do so in the future.

If an educational institution refuses to allow a person to examine or correct his record, or if the school releases information from one's file without permission, the aggrieved person should send his complaint to the Special Assistant for the Family Education Rights and Privacy Act, U.S. Dept. of HEW, 330 Independence Ave. SW, Washington, D.C. 20201. The agency will investigate and respond with a notification of its findings.

FOOTNOTES

1. Cong. Record, Nov. 19, 1974, S19613.
2. Cong. Record, June 3, 1976, S8482.
3. "HEW Publishes Final Regulations on Access to School Records," Access Reports, June 28, 1976, p. 5.
4. "Abuse of Educational Records Probed by Privacy Commission," Access Reports, Oct. 18, 1976, p. 1.
5. *Ibid.*, p. 2.
6. "Repeal of Educational Privacy Act Urged by Spokesmen for Colleges," Access Reports, Nov. 15, 1976, p. 5.
7. "School Records," Privacy Journal, July, 1976; p. 6.