I have pending a request for access to their child's school records within a reasonable period of time, but in no case more than forty-five days after the request has been made. 

(2) Parents shall have an opportunity for a hearing, in accordance with such procedures of their child's school records, to insure that the records are not inaccurate, misleading, or otherwise inappropriate to the rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading, or otherwise inappropriate information therein. 

(3) Parental Consent.—(1) No student shall, as a part of an applicable program, be required to undergo medical, psychological, or psychiatric examination, testing, or treatment, or immunization (except to the extent necessary in the event of a public health emergency, such as a pandemic of contagious diseases), or to reveal information about his or her personal or family life without the prior, informed, written consent of the student's parents, to participate in any project, program, or course, the primary purpose or principal effect of which is to affect or alter the personal behavior or personal values of a student, or to explore and develop teaching techniques or courses primarily intended to affect such behavior. 

(2) No student shall, as a part of any applicable program, be required to participate in research or experimentation projects which: 

(a) Are not an educational or other interest of the student, or to explore and develop teaching techniques or courses primarily intended to affect such behavior. 

(3) Parents shall be informed, reasonably in advance and in writing, of the intention of their child in any such research or experimentation project which is a part of an applicable program. No child shall participate in a project if the parents of such child object to such participation. 

(4) As used in this subsection, the term 'research or experimentation project' means any project or program which is a part of an applicable program, and which is authorized by the Secretary or an administrative head of an educational institution to submit to a third party data contained in personal school records, to the extent necessary to protect the public from serious health or safety risks. The Secretary or an administrative head of an educational institution shall be required to sign a written form which shall be kept in the records of the student. 

(5) Administrative head of an educational institution shall be required to provide an opportunity for the correction or deletion of any such inaccurate, misleading, or otherwise inappropriate information therein. 

(6) Upon request of the student's parents, the Secretary or an administrative head of an educational institution shall be required to provide copies of the records or data to the student's parents, or to a third party on the condition that the student's parents and the student if desired by the parents, or shall be permitted to have access to such information without the prior, informed, written consent of the student's parents, without the written consent of the student's parents, or agents of the institution or agency, other than the authorized representative of the student's parents, or the student if desired by the student's parents, or representatives of the student's parents, or agents of the institution or agency, other than the authorized representative of the student's parents, or the student if desired by the student's parents. 

(7) To the extent necessary to protect the public from serious health or safety risks, the Secretary or an administrative head of an educational institution shall be required to sign a written form which shall be kept in the records of the student. 

(8) Administrative head of an educational institution shall be required to provide an opportunity for the correction or deletion of any such inaccurate, misleading, or otherwise inappropriate information therein. 

(9) If the Secretary or an administrative head of an educational institution is required to correct or delete such information, the Secretary or an administrative head of an educational institution shall be required to provide written notice of the correction or deletion of such information to any school, preschool, or any other educational institution or agency to which the records or data have been released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or agents of the institution or agency, other than the authorized representative of the student's parents, or the student if desired by the student's parents. 

(10) To the extent necessary to protect the public from serious health or safety risks, the Secretary or an administrative head of an educational institution shall be required to sign a written form which shall be kept in the records of the student. 

(11) The Secretary or an administrative head of an educational institution shall be required to provide an opportunity for the correction or deletion of any such inaccurate, misleading, or otherwise inappropriate information therein. 

(12) If the Secretary or an administrative head of an educational institution is required to correct or delete such information, the Secretary or an administrative head of an educational institution shall be required to provide written notice of the correction or deletion of such information to any school, preschool, or any other educational institution or agency to which the records or data have been released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or agents of the institution or agency, other than the authorized representative of the student's parents, or the student if desired by the student's parents.
education agency (as defined in section 409 of this Act). Regulations established under this subsection shall include provisions controlling the use, dissemination, and protection of such information. No survey or data-gathering activities shall be conducted by the Secretary, or an administrative agency, in any public or private school or preschool, or any other educational agency, under an applicable program unless such activities are authorized by the Act establishing the program.

"(e) For the purposes of this section, whenever a student has attained 18 years of age or older, the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

"(f) No funds shall be made available under any applicable program unless the recipient of such funds informs the parents of students, or the students, if they are eighteen years of age or older, of the rights accorded them by this section.

"(g) The Secretary, or an administrative agency, shall take appropriate actions to enforce provisions of this section and to deal with violations of this section, according to the provisions of this Act.

"(h) The Secretary shall establish or designate an office within the Department of Health, Education, and Welfare, for the purpose of investigating, processing, reviewing, and adjudicating violations of the provisions of this section, and coordinating and conducting other activities which may be filed concerning alleged violations of this section, according to the procedures established in subsections (c) and (d) of section 421 of this Act.

"(i) With respect to any funds obligated prior to the effective date of this section to any State or local educational agency, any institution of higher education, any community college, any school, preschool, or any other educational institution, continued furnishing of such funds shall cease January 1, 1975, if the recipient has failed to meet the conditions for funding established by this section.

"(j) The provisions of this section shall become effective ninety days after the date of enactment of this Act.

"(k) This section may be cited as the "Family Educational Rights and Privacy Act of 1974.""

On page 122, in the table of contents, after the Item "Sec. 512" insert the following:

"Sec. 513. Protection of the rights and privacy of parents and students."

Mr. BUCKLEY. Mr. President, I send to the desk two perfecting amendments. Through some oversight the Printing Office failed to include two provisions in the amendment.

The PRESIDENT pro OFFICER. Does the Senator from New York ask unanimous consent that his amendment be so modified?

Mr. BUCKLEY. Mr. President, yes, I so request.

The PRESIDENT pro OFFICER. Without objection, it is so ordered, and the amendment is so modified.

The text of the perfecting amendments is as follows:

On page 1, before lines 2 and 3, insert the following:

PROTECTION OF THE RIGHTS AND PRIVACY OF PARENTS AND STUDENTS

Sec. 513. The General Education Provisions Act is amended by adding at the end thereof the following new section:

On page 4, line 23, after the word "other" insert the word "local."

Mr. BUCKLEY. Mr. President, as more stories come out in the media about the abuses of personal data by schools and Government agencies, the public and Congress have become increasingly aware of the problems such abuses pose. In addition, the revelations coming out of the Watergate hearings have underscored the dangers of Government data gathering and the abuse of personal files, and have generated increased public demand for the control and elimination of such abuses. It is appropriate, therefore, that we take this opportunity to protect the rights of students and their parents and to prevent the abuse of personal files and data in the area of federally assisted educational activities.

Many absurd and sometimes tragic examples of similar abuses exist. Let me recount one of the cases described in the recent article, "Parade: Secret School Records Can Hurt Your Child." In Parade magazine:

The parents of a junior high student are told their daughter will be able to attend graduation ceremonies because she's a "bad citizen." What has she done that's bad, the parents ask? Well, the principal says, the school had a whole file on her "poor citizenship," but the parents can't know what's in that file. In this Catch-22 case, one of the New York City Board of Education, the New York Commissioner of Education, Ewald E. Nyquist, stated flatly that the school's argument that it was protecting the best interest of the student in refusing to reveal the information to the parents--had no merit. The commissioner concluded: It is readily apparent that no legal right to a greater right to such information than the parents."

When parents and students are not allowed to inspect school records and make corrections, numerous erroneous and harmful material can creep into the records. Such inaccurate materials can have devastatingly negative effects on the academic future and job prospects of an innocent, unaware student.

Many examples of abuses can be found in recent hearings of the National Commission for Citizens in Education which has for a long time carried on the fight for the right of parents to have access to their children's records by alerting parents to the dangers of Watergate investigations have underscored the parental confidence in the parents' own role, and in their potential role. There is entirely too much of this criticism. The educators are guilty of undermining the home rather than building it up.

There has been an increasing chorus of complaints from parents in the last few years about such attitudes and actions on the part of some educators. The sense of a loss of control over one's life and destiny, which many social commentators say is growing amongst our children, seems to be increasingly felt by parents with respect to the upbringing of their own children.

Such elitist and paternalistic attitudes reflect the widening efforts of some, both in and out of Government, to diminish the rights and responsibilities of parents for the upbringing of their children, and to transfer such rights and functions to the State--to separate, figuratively, and in some cases, literally, the child from his parents, and to turn him over to the care of the State, as represented by schools and other arms of its administration.
May 14, 1974

CONGRESSIONAL RECORD — SENATE

14581

My amendment seeks to restore parental rights and to protect privacy. It will:

First, help insure that parents have the right of access to their children's school records;

Second, prevent the abuse and improper disclosure of such records and personal data on students and their parents;

Third, require parental consent before such records are disclosed to most third parties;

Fourth, require parental consent or notification before their children are made to undergo certain forms of testing or partake in certain experimental or attitude-affecting programs or activities; and

Fifth, make instructional materials used in the classroom available for review by parents upon request.

In addition, my amendment requires the Secretary of HEW to adopt appropriate safeguards to protect the rights and privacy of students and their families in regard to Government authorized surveys and other data gathering activities.

My amendment broadens the protections of civil rights to include the civil rights of parents and students vis-a-vis the schools. As a matter of fact, a recent Federal court decision has made the civil rights aspect of privacy and parental consent more explicit.

The case was Merrick against Crossman, in the U.S. Distict Court of Eastern Pennsylvania last fall. Let me quote from the summary of the case in "The United States Law Week" of October 18, 1973:

"A school district proposed to use a program entitled Critical Period of Intervention (CPI) for the purpose of identifying potential drug abusers among its eighth-grade students. Additionally, the program would "prepare the necessary interventions, identify resources to train and aid the districts preparing for the problem, and, finally, to evaluate the results." Parental consent is a prerequisite to a student's participation in the program. Such consent is solicited by letter which is admittedly a "selling device" and "an attempt to convince a parent to allow the child to participate." The court held this to be a violation of privacy and alleged that behavior alteration and value modification programs. In fact, it shows that even the requirement of parental consent can be an inadequate safeguard in the face of deceptive selling techniques and ill-devised or administered behavior modification programs.

My amendment simply gives individual parents the right not to have their particular child participate if they find such a program objectionable. Granted that there will be some inconveniences and logistical problems in implementing the teacher's demonstration of the worth of his proposal. To suggest otherwise is to insult the parent and underestimate the resources of America's educators.

Some may argue that my amendment will create too much additional work and redtape for schools and the educational bureaucracy. To that argument I must reply that I am not so much concerned about the workload or convenience of the educational bureaucracy but, rather, with the personal rights of America's children and their parents. I believe that their rights should properly take such considerations into account. In whatever educational legislation the Senate, in its wisdom, shall enact.

It has been argued that portions of my amendment would throttle innovation and virtually close down Title III and other innovative educational efforts sponsored by the Federal Government. This is surely not the intent of my amendment, nor would it be the effect. My amendment simply gives individual parents the right to be informed about out-of-the-ordinary federally funded programs in which their child might participate and, as a result, the child's right to be informed about the potential for abuse beforehand, thereby tending to reduce the future occurrences of parental parents going to court because of shoddy and harmful programs in the schools.

If anyone doubts the seriousness of the problem, I direct their attention to a recent report of the National Education Association (NEA) in which that organization announced its opposition to my amendment which would require school officials to obtain prior, written, informed consent whenever the school officials would have those parents' children subjected to a project, program or course, the primary purpose or principle of which is to affect or alter the physical and personal values of a student. Mr. President, I would like to point out the implication of the NEA's position. It is their position that as between the parent and the school official, the latter has the potential right to determine whether the child should be subject to programs of behavior alteration and value modification.

Beneath such a position is a very serious threat to the privacy that is long respected by this Nation that it is the parents who are ultimately responsible for the welfare of their children. It borders on shocking that one of the national organizations representing educators would move to have the Senate oppose a reaffirmation of this important and real parental right. Further, the attempt to characterize the amendment as one which intends to curtail freedom of expression between child and teacher is incredible. It is more accurate to conclude that it is the NEA's position that the teacher should control both the child on such important matters as school programs, the primary purpose of which is behavior modification and values alteration.

I respectfully suggest, Mr. President, that the burden to secure consent of the parent is not too great. Surely, most conscientious teachers would have no problem gaining the consent of a parent providing the teacher has demonstrated the worth of his proposal. To suggest otherwise is to insult the parent and underestimate the resources of America's educators.
entitled, "Guidelines for the Collection, Maintenance, and Dissemination of Pupil Records," which included examples of simple forms that could be mailed to parents to obtain their permission for certain activities with regard to their children. I would also further note that many of the forms that are being used today require only in the case of emergency medical treatment would be available.

Mr. JAVITS. Under those circumstances, Mr. President, I withdraw the amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

Mr. MATHIAS, Mr. President, will the Senator yield?

Mr. PELL. Mr. President, we are on the Buckley amendment, with how much time on each side?

The PRESIDING OFFICER. The Buckley amendment. The McClellan amendment is before the Senate at this time. The unanimous-consent request would be in order to proceed to the Buckley amendment.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of the Buckley amendment, No. 1299.

The PRESIDING OFFICER. Without objection, it is so ordered.

Who yields time?

Mr. JAVITS. Mr. President, will the Senator from New York yield me 3 minutes?

Mr. JAVITS. Yes, in opposition.

Mr. MATHIAS. Mr. President, I have some questions. I would like to distinguish junior Senator from New York, because I salute the thrust and the purpose which I think he seeks to accomplish by this amendment. I do not want to be perfectly certain that I understand the practical effect of it. Turning to section 437(b)(1), page 3, I am wondering what effect this provision would have in the case of a student who was a victim of an accident in the school, or the victim of an accident on a playground. Would it prevent the school from arranging to have him immediately examined and medical treatment given to him?

Mr. BUCKLEY. No, of course not. Normal medical advice and hospital procedures usually require parental consent, and in those situations where the parents could not be contacted the treatment would be available.

Mr. MATHIAS. Would it not be necessary then, to have an exception because there is no general immunization, and I think the case of emergency treatment would have to be made in an excepted case or else the school would be under some jeopardy here.

Mr. BUCKLEY. I would be glad to ask unanimous consent to amend my amendment by inserting on line 3, page 3, following the word "immunization" the words "or emergency medical treatment."

The PRESIDING OFFICER. Is there objection to the Senate from New York modifying his amendment to that effect? The Chair hears no objection, and it is so ordered.

Mr. MATHIAS. If there were a course being given which is clearly a course which is causing the student to alter his behavior for the good, let us say in the matter of grooming, as the result of a course in civics, where he has become more interested in his life, and we have a course which is a positive influence on the student's life, would the Senator's amendment require the parents' "prior, informed, written consent" for that type course?

Mr. BUCKLEY. Quite obviously in one sense all education has an effect on attitudes, and so forth. I believe there is a section of common sense that applies to the interpretation and application of all legislation and I speak of courses, the primary purpose of which is to modify behavior.

The PRESIDING OFFICER. The time of the Senator from Maryland has expired.

Mr. MATHIAS. Will the Senator yield to me for 3 additional minutes?

Mr. PELL. I yield.

Mr. BUCKLEY. So clearly the example of the Senator from Maryland would not be covered.

Mr. MATHIAS. Of course, my concern is that the language of the amendment might cover it. That is what gives me some uncertainty.

Let us pass to section 437(c)(1). Let us assume the unhappy possibility that a student is suspected of having bombed the chemistry laboratory and the FBI or another law enforcement agency comes into the school, let us say, without a judicial order. Would they be able to examine the records or files of the student without the "prior, informed, written consent" of the student's parents?

Mr. BUCKLEY. I believe they should have subpoena to have access to the records.

Mr. MATHIAS. The amendment does not even provide for access with a subpoena without parental consent.

Mr. PELL. I refer to page 6, where it is stated:

In compliance with any court order, or pursuant to any lawfully issued subpoena, if the parents and students are notified of any such order in advance of the compliance therewith . . .

Mr. MATHIAS. The Senator is correct but also it would require the warrant or the written consent, even in the case I suggested.

Now, I wish to ask the Senator this question. Does the provision allow the use of any identification device other than the names of students or the names of parents?

Mr. BUCKLEY. No, it does not.

Mr. MATHIAS. So that would be the only possible identification, there could be no other identification of any sort?

Mr. BUCKLEY. No.

Mr. MATHIAS. And the Senator feels that that is a useful provision.

Finally, there are certain programs in which there is some testing, specifically, HEW through the National Institute of Education has made a grant to test and experiment with an educational voucher program. I am sure the Senator is familiar that such programs are now underway in California and Vermont.

Under this provision if the parents of a child object to the child's participation, then that child would not be able to participate. Is that correct?

Mr. BUCKLEY. That is correct.

Mr. MATHIAS. What will happen to a program of that sort?

The PRESIDING OFFICER. The time of the Senator from Maryland has expired.

Mr. MATHIAS. Mr. President, will the Senator yield to me for 1 additional minute?
Mr. PELL. I yield 1 additional minute to the Senator from Maryland.

Mr. MATHIAS. What will happen to the child if the entire school is involved? What happens to that child when the whole school is involved, as in the case of California and Vermont? Does the child have any independent rights of his own from his school and some alternative education provided?

Mr. BUCKLEY. That child would obviously be handled in the school as if he were not—in other words, his State dictates for that bill.

Mr. MATHIAS. Then, the Senator's concept is that under this provision—

Mr. BUCKLEY. It would not abort the experiment.

Mr. MATHIAS. But the child would have to have some other education provided in some other location or in some other manner.

Mr. BUCKLEY. If a parent did not want to accept the voucher the child would continue to be educated in the school he attended.

Mr. MATHIAS. But if the whole system is involved to that program, there would be no other school for him to attend. That seems to be the nub of the problem.

Mr. BUCKLEY. I disagree. I do not believe it would be interpreted in that way.

The PRESIDING OFFICER. Who yields time?

Mr. PELL. Mr. President, the junior Senator from New York and I have previously discussed this amendment. I ask unanimous consent that a letter from the National School Boards Association be inserted in the Record.

There being no objection, the letter ordered to be printed in the Record, as follows:

NATIONAL SCHOOL BOARDS ASSOCIATION,
Evanston, Ill., May 2, 1974.
Hon. CLAIBORNE PELL, U.S. Senate, Old Senate Office Building, Washington, D.C.

Dear Senator PELL: Pursuant to his "dear colleague" letter dated April 26, 1974, Senator Buckley set forth proposed amendments to Sections 26, 27, and 28 of Title 20 of the U.S. Code relating to the Protection of the Rights and Privacy of Parents and Students (Sec. 613). In general, the National School Boards Association believes that the concept of the amendment is meritorious, but that operationally its accomplishment will generate unacceptable confusion because of the complicated legislative language and local administrative conditions associated with the approach taken in the amendment. We have been in contact with the Senator and he has some of our specific concerns under advisement. Those concerns are outlined below:

1. The amendment requires that parents have the right of access to their child's school files, and it mandates that parents obtain such files prior to release of such files to third parties (with certain exceptions). However, if the rights of students are distinguishable from the rights of their parents, and if the operation of those rights should not be solely dependent upon parental willingness, the amendment would grant an independent right of access to, and consent with respect to the divulgence of, their files. At the same time, it may be advisable for the parents to be given a minimal age, such as 10 years, at which the child's independent rights would attach.

2. The amendment requires that schools provide official notice to parents with students who are within thirty days after the request is made. In many instances, records may have to be screened in order to delete references to third persons, or the records sought may be stored in a central school district file or at the state level.

3. Subsection (b) of the amendment provides that no student "participating in an applicable program" can have the right of access to, and consent with respect to the divulgence of, their files. If the student withdraws from the program, the student's records can be conveyed to another school.

4. The amendment adds the following provision: "If a state or local agency is administering a program which receives Federal funds, it shall provide a mechanism for the public to obtain information about the programs it administers, to the extent practicable. The mechanism shall be provided in a manner that will not permit the disclosure of information which is confidential under Federal law."

5. Subsection (c) requires parental consent for the release of personal data, except in certain instances, including the "order of administrative agencies having the power of subpoena." It would appear that a federal agency which is subject to the amendment merely by issuing a general order applicable to all students who, for example, are in school, is involved in particular activities, etc. While investigations by federal officials may be necessary in certain circumstances, if the scope of the above exception is as broad as is suggested, then the basic purpose of the amendment is defeated.

Mr. STEVENS. Mr. President, I have serious questions about subsection (c) of the amendment. I think it would be more in keeping with the original concept to amend the amendment so that if a student's records are inadvertently released by the Department of Education, the individual who has received the records shall be required to return them to their proper place. I believe that the Committee had in mind situations in which Federal officials were investigating particular schools or school districts.

Mr. PELL. Mr. President, I believe we have written letters of love that we could say to each other. If the amendment were as drafted, we could decide the fate of his amendment by a rollcall vote.

Mr. MATHIAS. Then, the Senator's amendment—

Mr. STEVENS. Mr. President, will the Senator yield?

Mr. PELL. I yield.

Mr. STEVENS. Mr. President, I have serious questions about subsection (c) of the amendment. I think it would be more in keeping with the original concept to amend the amendment so that if a student's records are inadvertently released by the Department of Education, the individual who has received the records shall be required to return them to their proper place. I believe that the Committee had in mind situations in which Federal officials were investigating particular schools or school districts.

Mr. PELL. Mr. President, I believe we have written letters of love that we could say to each other. If the amendment were as drafted, we could decide the fate of his amendment by a rollcall vote.
eral ways. I just want to let my friend from Rhode Island realize that. I hope to have a chance to have an exchange with the Senator from New York concerning that.

As I understand subsection (c), it would prevent a high school from giving to a bank that wants to send out information about the loan program to students, the names and addresses of students without consent of the students' parents. I cannot understand this over-protectionism to the point that it could not get student information about Federal loan funds. One could not get the names and addresses of students in one's State to get them the information of the opportunities available under the Federal student loan program.

Under subsection (c), if I were a probation officer, I could not sit down and talk with the teacher to get personal information from the teacher about the student, who was subject to a criminal process. I do not know whether the Senator realizes how many cases go through the juvenile courts these days, but it is a fantastic number.

So the Senator does not think this is going to be done through without any debate.

Mr. BUCKLEY. Mr. President.

Mr. FELL. Mr. President, I yield to the Senator from New York on his time.

Mr. BUCKLEY. Mr. President, I believe that argument is a paper tiger. We are talking about invasion of personal, private data. My amendment does not affect public records. It may be names and addresses of people who happen to be students in a school.

Mr. STEVENS. Let me read from subsection (c): Permitting the release of records or files (or personal information contained therein) of students without the written consent of their parents to any individual, agency, or organization.

Does the Senator interpret that to mean a bank could not say, "Give me the names and addresses of your graduating seniors?" Does the Senator interpret that to mean a probation officer could not get information from teachers or the files that would help a juvenile accused of a crime?

As prosecuting attorney, I can tell the Senator that probation officers need such information to help the students. I think this is a shotgun approach. I applaud the Senator's desire to protect students, but we are overprotecting in this way with regard to many activities in a school. I do not think any student or any student's parents is not going to be able to help him with this amendment. That is the trouble with it.

Mr. BUCKLEY. I believe the parents have as much interest in protecting their child as does the Senator from Alaska, but the Senator is reading into the amendment the inclusion of the simple listing of names and addresses in a student's records and files.

Mr. STEVENS. I am happy to know that, but how does a probation officer go about getting that information? I saw a lot of probation officers as district attorneys. If they were to have to go to busy juvenile court judges and subpoena that information, or if they want to talk to teachers, they are not going to get it. I do not see the necessity for subsection (c). We are on the wrong track.

Mr. BUCKLEY. I described it in my statement. The fact that this information gets leaked out all over the place is injurious to the child. It haunts children in their later lives. I think we ought to put a stop to it.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 5 minutes remaining.

Mr. BIDEN. Mr. President, will the Senator yield me some time to ask the Senator from New York some questions? Mr. BUCKLEY. Mr. President, I yield 5 minutes to the Senator from Delaware.

Mr. BIDEN. The Senator from New York, I think, should be complimented on this amendment. It is long overdue. I do not share the concerns of the Senator from Alaska. Having been a public defender, I do not think a probation officer should be able to sit down and talk with teachers about these matters. They think they are psychologists and psychiatrists, and they do more harm to the child than they help him. But my objection relates to subsection (b).

I am an early co-sponsor of this amendment, but I think subsection (b) should be clarified so that we understand what it would do. In that section it says:

No student shall, as a part of any applicable program, be required, without the prior, informed, and written consent of his parents, to participate in any project, program, or course, the primary purpose or principal effect of which is to affect or alter the personal behavior or personal values of a student, or to explore and develop teaching techniques or courses primarily intended to affect such behavior or values.

If that were to be misread, it could be a very, very restrictive section. I would like, for the record, to ask a few questions.

Specifically, in a school for the deaf, will a project approved to test the effectiveness of a new audiology machine be termed "research and experimentation" under this amendment?

Mr. BUCKLEY. Certainly not. This is directed toward developing new, experimen-
tational educational techniques. Certainly, new devices for helping—it is really a medical device—the deaf to hear, or new research involving such things as "new math" should not be affected at all by this amendment.

Mr. BIDEN. Would diagnostic tests given to students at the beginning of a course in order to gauge the strengths and weaknesses of students in various academic disciplines be considered "research?" Mr. BUCKLEY. No; this is normal research; it is not experimental. It is not research into new activities.

Mr. BIDEN. So it is not intended to really alter the traditional academic disciplines? The Senator is not going after that?

Mr. BUCKLEY. That is correct.

Mr. ERVIN. Mr. President, will the Senator yield? Mr. BUCKLEY. I yield.

Mr. ERVIN. This would prevent schools from making guinea pigs out of children and delving into their personal attitudes and their personal psychologies, as has been done in many schools throughout the United States. Is that correct?

Mr. BUCKLEY. Yes.

Mr. ERVIN. It is designed to prevent disclosure, except to those who are authorized to receive them, of personal data about these children. Is that correct?

Mr. BUCKLEY. The Senator is correct.

Mr. ERVIN. I am personally in favor of the proposal.

Mr. President, I am pleased to co-sponsor the amendment concerning right to privacy and school records proposed by Senator Buckley to S. 1539, the Elementary and Secondary Education Amendments of 1974. The issue of rights to privacy of public school pupils and their parents is one which has recently become highly publicized in many different circles, but it is a problem that has long been with us. The time has come to do something about it.

The amendment would accomplish several worthy objectives. It would give parents of public schoolchildren the right of access to their minor children's school records. Importantly, parents would be able to obtain a copy of the contents of the records for their authenticity. The only persons having access to those records in addition to the parents would be school officials, the Department of Health, Education, and Welfare, or similar agencies at the state or local government levels. These questionnaires are thinly disguised as "research projects," although in actuality they often amount to highly objectionable invasions of the psychological privacy of schoolchildren. Oftentimes, the students are told that the responses they give are classified and will not be
Is it easy for you to make friends?
Do other children get you into trouble at school?
Would you rather play with friends who are younger than you or older than you?
I certainly believe that this is most important legislation and that the Congress should act wisely and in a forthright manner to recognize the rights of privacy of public schoolchildren and their parents. I am particularly impressed by the strong bipartisan support that this amendment has received from members of Congress and from many public and private sectors of our society. I urge the Senate to adopt this Buckley amendment to the Elementary and Secondary Education Act of 1974.
In my mind school officials should not be allowed to maintain any records outside of the reach of parents, much less records of such a personal nature as those that we have seen. A parent has every right to know exactly what information is being collected concerning his children, and the provisions of this amendment which I feel are minimum considerations in the protection of that right. While the measures provided for are strong, I feel the seriousness of the issue well justifies the approach the amendment must have ultimate responsibility for the well-being of his children. This amendment recognizes that responsibility.
Mr. President, I ask unanimous consent that the questionnaire from the Hackensack Public Schools of Hackensack, New Jersey, be submitted for reproduction in the Record. In addition, I ask unanimous consent that the transcript of a press conference held on April 19, 1974, by an organization known as Parents Who Care, based in Wheaton, Md., which recounts this problem in greater detail also be printed in the Record.
There being no objection, the material was ordered to be printed in the Record, as follows:

**HACKENSACK PUBLIC SCHOOLS, HACKETTSDALE, N.J.**

**LEARNING EXPERIENCE MODULE—FANNY MEYER HILLER SCHOOL**

**STUDENT ATTITUDE INVENTORY**

**Name ________________________ LEM __________________________ Grade __________________________**

**Boy/Girl ______________________ Date ________________________**

Directions: Listen carefully to each question and decide how you think and feel. If you don’t understand a question, ask about it. Answer each question by drawing a circle around either “yes” or “no.”

**Responses**

**Attitude Toward Home and Family:** yes, 5; no, 3.
1. Are your parents interested in things you do at home?
2. Do your parents give you work that is too hard?
3. Is the LEM a happy place for you to be?
4. Do you like to read at school?
5. When you don’t understand something, are you afraid to ask your teacher?
6. Do you like to paint pictures at school?
7. Do you like to write stories at school?
8. Does your teacher help you with your work when you need help?
9. Do you like doing arithmetic problems at school?
10. Do you wish you were in a different class that was not in LEM?
11. Do you like to learn about science?
12. Does the LEM have too many rules?
13. Do you have to do what the other children want to do?
14. Do you like the other children in the LEM?
15. Do your teachers like some children better than others?
16. Do other people at school really care about you?
17. Are you proud to be in the LEM?
18. Do you often get a chance to make decisions with others in your group?
19. Do you tell people that you like the LEM?

**SELF**

(Yes or No Answers)
1. Do you often get sick at school?
2. Can you give a good talk in front of people?
3. Do you wish you were younger?
4. Do you wish you were older?
5. Do you often feel happy in school?
6. Are you a good reader?
7. Do you wish you were a different child?
8. Can you wait your turn easily?
9. Are you a good worker?
10. Are you a good child?
11. Are you one of the last to be chosen for games?
12. Do you feel lonely very often?
13. If you have something to say, do you usually say it?
14. Do you like the teacher to ask you questions in front of the other children?
15. Do the other children in the class think you are a good worker?
16. Do you find it hard to talk to your group?
17. Are most children able to finish their schoolwork more quickly than you?
18. Do you often act silly just so people will pay attention to you?
19. Do you like most of the people you know?
20. Can you be depended on?
21. Do you like being just what you are?

**PEERS**

(Yes or No Answers)
1. Do other children get you into trouble at school?
2. Do you have to do what the other children want to do?
3. Do you like the other children in the LEM?
4. Do other children in the LEM like you?
5. Do you always let other children have their way?
6. Do you have many friends?
7. Are other children often mean to you?
8. Do your friends usually do as you say?
9. Do you often get sick at school?
10. Is it easy for you to make friends?
11. Would you rather play with friends who are younger than you?

**HOME AND FAMILY**

(Yes or no answers)
1. Are you an important person to your family?
2. Do you have certain responsibilities at home?
3. Do you tell your family when you are mad at them?
4. Do you wish you could run away from home?
5. Is it pleasant to stay at home on days when there is no school?
6. Do you get upset easily at home?
7. Do your brothers and sisters prevent you from being happy?
8. Do you often get a chance to make decisions with others in your group?
STATEMENT BY A COALITION OF CONCERNED PARENTS OF MARYLAND SCHOOLS REPRESENTING FIVE CITIZENS ORGANIZATIONS ON INVASION OF PRIVACY BY MARYLAND PUBLIC SCHOOLS

Good Morning: My name is Malcolm Lawrence, I am Director of Public Relations for Parents Who Care, a Montgomery County citizen. In October of this year I was contacted by the Parents Who Care group, and in addition to the Parents Who Care group, I speak today on behalf of individuals from seven other counties in Maryland representing five educational organizations.

The organizations represented here today are: Citizens for Community Schools (CCS), Citizens Advocating Responsible Education (CARE), Citizens for Traditional Education, Citizens for Public Disclosure, and Citizens for Community Schools (CCS).

We have called this press conference today to present the results of a Johns Hopkins University study that was undertaken or envisaged in the first year: the fifth year of a program being conducted by the University of Maryland, the project of Johns Hopkins University, and a study of the entire school system to be undertaken by the Institute of Field Studies of Columbia University. The Columbia study was described as a survey of data produced by the Maryland and Hopkins surveys. We hasten to add that our presenters do not want to urge the organizations in the state to adopt the philosophy of covert collections of data on the schools on student reactions to school life, student self-reliance, student ability to make realistic judgments, and student achievement on standard tests of academic performance. A January 14, 1974 memorandum from the Howard County Superintendents of Schools to Directors, Supervisors, and Principals reported that three evaluating teams will operate in Howard County schools this year: the fifth year of a program being conducted by the University of Maryland, the project of Johns Hopkins University, and a study of the entire school system to be undertaken by the Institute of Field Studies of Columbia University. The Johns Hopkins study is designed to investigate the effects of open-enrollment policies and practices, but are unwilling to consider these questions on the family as they are presented in the national statement.

The remaining individuals represent the Maryland citizen a number of fundamental rights that can not be infringed by the federal or state governments without a compelling justification. These rights are so basic to personal liberty that they merit a high level of protection from invasion.

The essence of these rights is that they are so basic to personal liberty that they merit a high level of protection from invasion by the state. The rights we have cited are sometimes described as "fundamental" or "natural" rights inherent in American tradition or Western value: sometimes they are based upon the 14th Amendment's guarantees of liberty or the 9th Amendment's reservation of powers to the states. These laws are included in the right to marry, the right to bear children and to maintain a family, the right to control one's own body, and the right to direct the upbringing of one's children. The essence of these rights is that they are so basic to personal liberty that they merit a high level of protection from invasion by the state.

The United States Constitution guarantees to the American citizen a number of fundamental rights that can not be infringed by the federal or state governments without a compelling justification. These rights include the right to marry, the right to bear children and to maintain a family, the right to control one's own body, and the right to direct the upbringing of one's children.

I have a statement to make, following which we shall be happy to entertain questions.

The United States Constitution guarantees to the American citizen a number of fundamental rights that can not be infringed by the federal or state governments without a compelling justification. These rights include the right to marry, the right to bear children and to maintain a family, the right to control one's own body, and the right to direct the upbringing of one's children.

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It is our view that this line of self-evaluation, self-analysis, self-criticism, and confession is a simple invasion of the psychological privacy of the child. Students of all ages are asked to direct their thoughts to introspection and unwittingly lay bare their innermost feelings to the data collector for whatever purpose he may wish to make of them.

Our third and final category of the Johns Hopkins test deals with feelings and attitudes toward the school and teachers. The student is asked if he feels lost in school. If he feels the tension build up in him when he is in school. If he is often out of place in class. Whether he wants to go to school. Whether he ever does anything exciting in class. Whether he sits on the floor in many of his classes. Whether most other students want to go to school. If a diploma from his school means more that you behaved yourself than that you really learned something. Whether his family and his teachers are: (1) on the same wavelength, (2) on the same planet, (3) somewhere in the same solar system, (4) in two different worlds.

If his classwork is: (1) great stuff, (2) good stuff, (3) OK, or (4) dull stuff. How would he rate the ability of most of his teachers compared to teachers in other schools at his grade level: (1) far above average, (2) above average, (3) average, (4) below average, (5) far below average. If he and the school are: (1) good friends, (2) friends, (3) distant relatives, (4) strangers or (5) enemies. The student is asked to provide the full names of his three best friends. And also the full names of students in his classes favored by the teachers more than the rest.

The complaints and concerns of the organizations represented here today are by no means uninteresting, self-limiting, or limited in scope. Many of the persons who have been subjected to so-called "emotional disturbance" are children, under which teachers are asked to report all types of probes into their psyches and family situations. How many of the students who have been subjected to an expanded definition of child abuse, under which teachers are asked to report all types of probes into their psyches and family situations. How many of the students who have been subjected to emotional disturbance are children, under which teachers are asked to report all types of probes into their psyches and family situations. How many of the students who have been subjected to emotional disturbance are children, under which teachers are asked to report all types of probes into their psyches and family situations.

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charge, the school system policy stipulates “if there is any doubt or question in reporting such cases, it should be resolved in favor of the child.”

It is, of course, readily appreciated by one and all that the questions in the compulsory Interpersonal Relationships curriculum and the study of the life styles in the Johns Hopkins survey could provide data which may well be diagnosed incorrectly or misinterpreted by the social scientists as children or child neglect cases. However, many children could be labelled as what the social engineers like to call “disadvantaged children” are most distanced over this kind of role being assumed by the public schools. The schools were established in the United States to provide a service to the parents and taxpayers. The schools, therefore, work for us; not the other way around. The thrust into and trapped in the middle of the situation, have an equally valid and justifiable complaint.

Whoever the stated goal of the educators and the social planners, the whole question of labelling children and predicting their behavior on the basis of questionnaires and classroom confessions is being challenged by parents and legal authorities throughout the United States. An important question is: Who has access to the data? Another, how will the data be used? An even more important question might be: What are the values and attitudes of the evaluators? The Congress of the United States is very much concerned with all of these questions. And we here today, who speak for the parents as guaranteed by the Constitution, feel that the Maryland State Board of Education with the task of reviewing all activities from the public schools of Maryland and to charge the Maryland State Board of Education with the task of reviewing all of its budgetary and educational projects shall not include projects in any education institution, including preschools, except that research or experimentation projects shall not include projects in the field of reading.

As used in this subsection, the term “research or experimentation project” means any project or program which is a part of an applicable program and which is authorized by an administrative officer of an education agency, a school and all local school systems, any education institution, including preschools, except that research or experimentation projects shall not include projects in the field of reading.

Mr. BIDEN. I have no further questions of the Senator. He has indicated to me, in private and in the colloquy, that this is intended to go only to those programs which would be considered experimental. I think the single most burning issue before the country is the invasion of privacy at all levels. School records are private. No one should have access to them unless it is with the consent of the parents.

I am glad to be a co-sponsor of the amendment.

Mr. HART. Mr. President, would the Senator yield for 1 minute?

The PRESIDING OFFICER. Who yields time to the Senator from Michigan?

Mr. PELL. I yield 1 minute. Which side is he on?

Mr. HART. I guess my honest answer is that I do not know which side I am on. I wish we had already or report on it. To say that the programs for research and experimentation are to be presented unless the parents say OK is something unique and not really in the nature and order of the evaluation technique, when, on page 4 it is stated:

As used in this subsection, the term “research or experimentation project” means any project or program which is a part of an applicable program and which is authorized by an administrative officer of an education agency, a school and all local school systems, any education institution, including preschools, except that research or experimentation projects shall not include projects in the field of reading.

Mr. BUCKLEY. Mr. President, I should like to address myself to the remarks just made. First of all, the amendment explicitly excludes reading and bilingual education. However, the new math, which I still do not understand, is one of the difficulties I have and that other Senators have in understanding the reach of the bill without hearings. Of course, everyone is for protecting privacy; that is, the amendment will not destroy the ability to develop a program with cooperative parents. If a program is so alarming to the average parent that no parent will cooperate, then we should examine the program to see whether that program should be in effect. I do not believe that the remarks dealing with such affairs would be justified.

Mr. HART. Mr. President, what about the new math, which I still do not understand, but to which my children have been exposed? Could I say “no” if we were to adopt this amendment?

Mr. BUCKLEY. Mr. President, in private and in the colloquy, that this is intended to go only to those programs which would be considered experimental. I think the single most burning issue before the country is the invasion of privacy at all levels. School records are private. No one should have access to them unless it is with the consent of the parents.
The PRESIDING OFFICER. The Senator will state it.

Mr. BUCKLEY. Mr. President, is it not possible to have a division ordered so that we could vote on section (b) alone?

The PRESIDING OFFICER. If it is in the pending provision, the answer is yes.

Mr. BUCKLEY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. On whose time?

Mr. DOMINICK. Mr. President, will the Senator withhold that request for just a moment?

Mr. BUCKLEY. Mr. President, I withhold my suggestion of the absence of a quorum.

Mr. DOMINICK. Mr. President, I want to ask the Senator, not about section (b), because I must say that I share my com-
patriot's concern over that. But on sec-
tion (c) I am very much further than that kind of restric-
tion.

Mr. BUCKLEY. Mr. President, I think that what the Senator is driv-
ing at in section (c) is the relief of a group of people who are trying to make the financial help back home, but I know a great number of people who do not give a whoop whether their children go to college, graduate school, or any-
thing else; in fact, they would prefer they did not, and if he is trying to get a loan all of a sudden which they may ultimately be called on to repay, they may say no.

Mr. BUCKLEY. I point out to the Senator from Colorado that on page 6, line 17, we make an exception for financial aid.

Mr. DOMINICK. That is true, I had not seen that. Does that apply to all of subsection (a) or to any Senator, as well as the Senator from New York wants to do, in which we are try-
ing to promote this subject and are not trying to restrict it.

Mr. BUCKLEY. Yes, it does.

Mr. DOMINICK. That helps materially. I will go back to the drawing board.

Mr. BUCKLEY. I thank the Senator.

Mr. PRESIDING OFFICER. Mr. President, in an attempt to make this amendment as acceptable as possible, I would make at this time, in response to some of the concerns expressed by the Senator from Maryland and the Senator from Michigan, in subsection (c) of our amend-

dation: On page 4, line 13, to add in, as an exception in the definition of experimental programs, after the words "bi-

ingual education", the words "or for the development of new techniques for the teaching of traditional disciplines".

I ask unanimous consent that I may so modify my amendment.

The PRESIDING OFFICER. Without objection, the amendment will be so modified.

Mr. PELL. Mr. President, reserving the right to object, I could not hear. What was the modification?

Mr. BUCKLEY. On page 4, line 13, after the word "education," I insert the words "or for the development of new techniques for the teaching of traditional disciplines".

The PRESIDING OFFICER. Without objection, the amendment is so modified.

Mr. PELL. Mr. President, I will not object to the modification, but this will be the fourth time that I have had to make a change over "personality" tests given to their children in the public schools.

Mr. BUCKLEY. Under those circum-
stances, Mr. President, and on condi-
tion that the sponsor will accept the balance of the sections—Mr. President, if I may have the attention of the distinguished clerk of the bill—I am willing to ask for a division, so that we may vote separately on section (b), pro-
vided the manager will accept the re-
mainder of the amendment.

Mr. PELL. I think I would ask for a rollcall vote on subsection (b), and as far as section (c) goes, I would ask my col-
league from Arizona whether he has any objection.

Mr. PELL. To be equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk pro-
cceeded to call the roll.

Mr. PELL. Mr. President, I ask unanimous consent that the order for the quo-
rum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BUCKLEY. Mr. President, before asking for a division, I ask unanimous consent to have printed in the Record a statement prepared by the Senator from Arizona (Mr. GOLDWATER) in sup-
port of this amendment.

The PRESIDING OFFICER. Without objection.

STATEMENT BY SENATOR GOLDWATER

PARENTAL AND STUDENT RIGHTS

Mr. President, it gives me great pleasure to join with my good friend from New York, Mr. BUCKLEY, and everyone else in sponsoring an amendment to protect the right of privacy of school children and their parents. I have a particular interest in the amendment because it would legislate in the education field certain, basic safeguards for the right of personal privacy which I have been trying to get enacted for over a decade.

Subsection (a) of our amendment would provide statutory confirmation of the right of parents to see the contents of their own children's school records. Parents would also be guaranteed a right to challenge informa-
tion in their child's school records and to correct any inaccurate or misleading data.

This is identical to the safeguards standards which are included in S. 2810, a bill which I have introduced regarding the privacy and accuracy of personal data systems of all types.

Subsection (b) of our amendment would establish a system of parental consent which would give parents precise control over "personality" tests given to their children in the public schools. This provision is identical to legislation which has been at least thir-
teen years ago, in 1961. In the early '60's, I was concerned that the new Federal authorities for direct funding of educational pro-
grams, which were just getting underway, would allow Federal monies to be spent for testing programs in which school children could be used as involuntary "guinea pigs" in experimental programs unrelated to the true purposes of education.

In order to say, Mr. President, I was shocked to learn of the existence of surveys being conducted in our public schools which probe the most intimate and personal aspects of the lives of school children and their relations-
ships with their parents and families. I was especially surprised to discover one sur-
vey, financed with Federal funds, which con-
sisted of some two hundred questions being asked of Junior High school students rang-
ing in age from 11 to 14.

These questions inquired of the student:

Is your father fairer about punishment than your mother?

Did you "steal more than $2 from your parents"?

Did you "right physically and bodily with an adult relative"?

The student was also asked to reveal to the school whether he or she had "gone further..."
than petting with a person of the opposite sex.

In addition, the student was asked to rate his or her own family. The student was required to give a yes or no answer, for example, to these questions: "I wish my family had nearly as much money as the families of many of my classmates." "Are the children in your family punished more severely than in other families?" "I wish my father and mother were better educated, like the parents of many of my classmates."

Mr. President, these questions were just a few of the two hundred questions that were actually being asked of American school children in a questionnaire financed in part by Federal funds granted by the Department of HRW.

Yet, I was told it wasn't done. I was told it couldn't be done. On the one hand, I was informed that such questions were not permitted under the administrative interpretations of the Department. On the other, I was advised that leading "experts" believed that my amendment would greatly inhibit much-needed educational research...

There you have it, Mr. President. The agency told me that my amendment was not needed because it would duplicate their own policy interpretations; but that if it was put into law, it would impair research that the bureaucrats wanted to allow to go on. I never could make sense out of this, but the Department's view prevailed and the Senate rejected my amendment.

Mr. President, perhaps the climate of this country has caught up with the wishes of American families, perhaps the concept of the personal privacy of American school children.

Mr. President, our public schools have no compelling need for psychological and personnel tests which pry into the private lives of a captive audience of school children. Even if the child is not specifically told that he is required to answer these tests, it would be a rare and unusual child who would dare to defy the authority of a school by refusing on his or her own initiative.

Questions of this kind are an intolerable invasion of the right of privacy. They exemplify the ever-watchful eye of "Big Brother" spying into the most personal thoughts and habits of American families, and doing it, by abusing the trust of innocent school children.

Moreover, Mr. President, these types of questions are calculated to raise doubts, suspicions, and hostility in the minds of our children toward their own parents and a skepticism about the basic moral principles of our society. In this sense, these tests could be used by governmental planners for purposes of influencing or conditioning the social and political thinking of our youth, and through them, American society.

Mr. President, the time to preserve what is left of our personal privacy is now. Sufficient thought and action must be given to the problem while there is still some measure of personal liberty left to cherish. It is for us today to determine just how much freedom shall remain for the individual in the future. I implore my colleagues to vote for the Parental and Student Rights Amendment.

Mr. President, I include the Junior high school student survey which was conducted in the early 1960's, in part with Federal grants.


**FACTS ABOUT YOURSELF**

Please answer all questions completely.

5. How old are you? (Check only one answer)
   (1) - 11 years or younger.
   (2) - 12 years old.
   (3) - 13 years old.
   (4) - 14 years old.
   (5) - 15 years old.
   (6) - 16 years old or older.

6. Sex:
   (1) - Boy.
   (2) - Girl.

7. What grade in school are you now in?
   (1) - Seventh grade.
   (2) - Eighth grade.
   (3) - Ninth grade.

8. Are you (check only one answer)
   (1) - An only child?
   (2) - The youngest child in your family?
   (3) - The oldest child in your family?
   (4) - Neither the youngest nor the oldest child?

9. How many living brothers and sisters do you have?
   (1) - None.
   (2) - One.
   (3) - Two.
   (4) - Three.
   (5) - Four.
   (6) - Five or more.

10. What was the highest grade your father finished in school?
    (1) - Eighth grade or less.
    (2) - Some high school.
    (3) - Finished high school.

**PART I RULES WE ALL BREAK**

The questions in Part I are about more personal things concerning you and your friends. Do you put your name or address on this questionnaire? We want to assure you that your answers will be kept completely secret and confidential. No one will ever know how you answered any of the following questions. We encourage you to be completely honest with your answers.

For the purpose of this study, we are interested in the things you have done during the last two years only.

11. Damage or disfigure furniture in schools, such as chairs, tables, and desks:
    (1) - No.
    (2) - Yes.

12. Steal goods from warehouses or storage houses:
    (1) - No.
    (2) - Yes.

13. Damage cemetery property:
    (1) - No.
    (2) - Yes.

14. Damage or destroy public signs or road markers:
    (1) - No.
    (2) - Yes.

15. Steal automobile parts such as hubcaps, mirrors, ornaments, etc.:
    (1) - No.
    (2) - Yes.

16. Kicked or scratched a student or classmates:
    (1) - No.
    (2) - Yes.

17. Steal or siphon gasoline from cars, trucks, or other kinds of vehicle equipment:
    (1) - No.
    (2) - Yes.

18. Steal or redirect mailboxes:
    (1) - No.
    (2) - Yes.

19. Damage or destroy toys or games that were worth more than $2:
    (1) - No.
    (2) - Yes.

20. Steal more than $2 (money) from your parents:
    (1) - No.
    (2) - Yes.

21. Steal from buildings that are being torn down:
    (1) - No.
    (2) - Yes.

22. Tied a person up with rope, string, or wire to a tree or similar object and then left them that way:
    (1) - No.
    (2) - Yes.

23. Steal articles of clothing worth more than $5 from clothing store or department store:
    (1) - No.
    (2) - Yes.

24. Steal articles of clothing worth more than $5 from clothing store or department store:
    (1) - No.
    (2) - Yes.

25. Become so mad or angry that you had to write a teacher or principal or other school official:
    (1) - No.
    (2) - Yes.

26. Steal or destroy toys or games that were worth more than $2:
    (1) - No.
    (2) - Yes.

27. Steal goods from warehouses or storage houses:
    (1) - No.
    (2) - Yes.

28. Steal from buildings that are being torn down:
    (1) - No.
    (2) - Yes.

29. Tied a person up with rope, string, or wire to a tree or similar object and then left them that way:
    (1) - No.
    (2) - Yes.

30. Steal articles of clothing worth more than $5 from clothing store or department store:
    (1) - No.
    (2) - Yes.

31. Steal articles of clothing worth more than $5 from clothing store or department store:
    (1) - No.
    (2) - Yes.

32. Become so mad or angry that you had to write a teacher or principal or other school official:
    (1) - No.
    (2) - Yes.

33. Steal articles of clothing worth more than $5 from clothing store or department store:
    (1) - No.
    (2) - Yes.
5. Leave home with intention of going to school, but just never making it to school without a good reason:
(1) - No.
(2) - Yes.

6. Steal more than $2 (money) from candy, coke, or cigarette machines:
(2) - Yes.
(1) - No.

7. Steal anything and then sell it to an adult for his or her clothes off:
(1) - No.
(2) - Yes.

8. Steal jewelry worth more than $2 from jewelry, department, dime or drug stores:
(1) - No.
(2) - Yes.

9. Skipped school or stayed out of school without a genuine excuse for more than 1 day:
(1) - No.
(2) - Yes.

10. Damage or break coin machines of any kind on purpose:
(1) - No.
(2) - Yes.

11. Damage or ruin personal clothing of classmates or other schoolchildren:
(1) - No.
(2) - Yes.

12. Got out of going to school by pretending to your parents that you were sick:
(1) - No.
(2) - Yes.

13. Steal more than $2 (money) from candy, coke, or cigarette machines:
(2) - Yes.
(1) - No.

14. Leave home with intention of going to school, but just never making it to school without a good reason:
(1) - No.
(2) - Yes.

15. Injured or hurt someone not in your family, but arranged matters so that someone else got the blame:
(1) - Yes.
(2) - No.

16. Steal more than $2 from school:
(2) - Yes.
(1) - No.

17. Leave school early without permission:
(2) - Yes.
(1) - No.

18. Try to "get by" without paying the bill in restaurants, cafes, soda fountains:
(2) - Yes.
(1) - No.

19. Damage things from inside of parked cars:
(1) - No.
(2) - Yes.

20. Break windows on purpose in vacant homes, garages, or other buildings:
(1) - No.
(2) - Yes.

21. Damage or destroy anything because someone "dared" you to do it:
(1) - No.
(2) - Yes.

22. Steal things worth more than $2 from school:
(1) - No.
(2) - Yes.

23. Steal things worth more than $2 from foodstores:
(2) - Yes.
(1) - No.

24. Steal anything property other than chairs, tables, and desks:
(1) - No.
(2) - Yes.

25. Steal jewelry worth more than $2 from jewelry, department, dime or drug stores:
(2) - Yes.
(1) - No.

26. Skipped school or stayed out of school without a genuine excuse for more than 1 day:
(2) - Yes.
(1) - No.

27. Steal money from public telephones or parking meters:
(1) - No.
(2) - Yes.

28. Hit or strike a teacher, coach, or other school official:
(1) - No.
(2) - Yes.

29. Steal things worth more than $2 from foodstores:
(2) - Yes.
(1) - No.

30. Steal damage property other than chairs, tables, and desks:
(1) - No.
(2) - Yes.

31. Steal jewelry worth more than $2 from jewelry, department, dime or drug stores:
(2) - Yes.
(1) - No.

32. Skipped school or stayed out of school without a genuine excuse for more than 1 day:
(2) - Yes.
(1) - No.

33. Damage or break coin machines of any kind on purpose:
(1) - No.
(2) - Yes.

34. Damage or ruin personal clothing of classmates or other schoolchildren:
(1) - No.
(2) - Yes.

35. Got out of going to school by pretending to your parents that you were sick:
(1) - No.
(2) - Yes.

36. Steal more than $2 (money) from candy, coke, or cigarette machines:
(2) - Yes.
(1) - No.

37. Steal anything and then sell it to an adult for his or her clothes off:
(1) - No.
(2) - Yes.

38. Steal jewelry worth more than $2 from jewelry, department, dime or drug stores:
(2) - Yes.
(1) - No.

39. Skipped school or stayed out of school without a genuine excuse for more than 1 day:
(2) - Yes.
(1) - No.

40. Damage or break coin machines of any kind on purpose:
(1) - No.
(2) - Yes.

41. Damage or ruin personal clothing of classmates or other schoolchildren:
(1) - No.
(2) - Yes.

42. Got out of going to school by pretending to your parents that you were sick:
(1) - No.
(2) - Yes.

43. Steal more than $2 (money) from candy, coke, or cigarette machines:
(2) - Yes.
(1) - No.

44. Leave home with intention of going to school, but just never making it to school without a good reason:
(1) - No.
(2) - Yes.

45. Injured or hurt someone not in your family, but arranged matters so that someone else got the blame:
(1) - Yes.
(2) - No.

46. Steal more than $2 from school:
(2) - Yes.
(1) - No.

47. Leave school early without permission:
(2) - Yes.
(1) - No.

48. Try to "get by" without paying the bill in restaurants, cafes, soda fountains:
(2) - Yes.
(1) - No.

49. Damage things from inside of parked cars:
(1) - No.
(2) - Yes.

50. Break windows on purpose in vacant homes, garages, or other buildings:
(1) - No.
(2) - Yes.

51. Damage or destroy anything because someone "dared" you to do it:
(1) - No.
(2) - Yes.

52. Steal things worth more than $2 from school:
(1) - No.
(2) - Yes.

53. Steal things worth more than $2 from foodstores:
(2) - Yes.
(1) - No.

54. Steal anything property other than chairs, tables, and desks:
(1) - No.
(2) - Yes.

55. Steal jewelry worth more than $2 from jewelry, department, dime or drug stores:
(2) - Yes.
(1) - No.

56. Skipped school or stayed out of school without a genuine excuse for more than 1 day:
(2) - Yes.
(1) - No.

57. Damage or break coin machines of any kind on purpose:
(1) - No.
(2) - Yes.

58. Damage or ruin personal clothing of classmates or other schoolchildren:
(1) - No.
(2) - Yes.

59. Got out of going to school by pretending to your parents that you were sick:
(1) - No.
(2) - Yes.

60. Steal more than $2 (money) from candy, coke, or cigarette machines:
(2) - Yes.
(1) - No.

61. Leave home with intention of going to school, but just never making it to school without a good reason:
(1) - No.
(2) - Yes.

62. Injured or hurt someone not in your family, but arranged matters so that someone else got the blame:
(1) - Yes.
(2) - No.

63. Steal more than $2 from school:
(2) - Yes.
(1) - No.

64. Leave school early without permission:
(2) - Yes.
(1) - No.

65. Try to "get by" without paying the bill in restaurants, cafes, soda fountains:
(2) - Yes.
(1) - No.

66. Damage things from inside of parked cars:
(1) - No.
(2) - Yes.

67. Break windows on purpose in vacant homes, garages, or other buildings:
(1) - No.
(2) - Yes.

68. Damage or destroy anything because someone "dared" you to do it:
(1) - No.
(2) - Yes.

69. Steal things worth more than $2 from foodstores:
(2) - Yes.
(1) - No.

70. Curse or use obscene language in speaking to a teacher or other school official:
(2) - Yes.
(1) - No.

71. Steal anything and then sell it to an older teenager or adult:
(1) - No.
(2) - Yes.

72. Damage or destroy anything that belonged to another person, in order to "get even" with that person:
(1) - No.
(2) - Yes.

73. Steal money from public telephones or parking meters:
(1) - No.
(2) - Yes.

74. Hit or strike a teacher, coach, or other school official:
(2) - Yes.
(1) - No.

75. Take part in fights where BB guns, air-pellet guns, or slingshots were used:
(1) - No.
(2) - Yes.

76. Tease or embarrass someone by stripping or taking his or her clothes off:
(2) - Yes.
(1) - No.

77. Damage or destroy anything "just for the heck of it":
(1) - No.
(2) - Yes.

78. Steal less than $2 (money) from candy, coke, or cigarette machines:
(2) - Yes.
(1) - No.
I have gone further than petting with a person of the opposite sex while on dates or when we were alone.

I try to get other boys and girls to like me.

I care a great deal about what other boys (or girls) think of me.

I resent suggestions that I act like the people in other homes.

I feel it is a wish that you have made or it will come true.

Instructions.—Reprinted below is a news story that appeared not long ago in the Kansas City Star. After you read the story carefully, pretend that you are talking over the story with some school friends. None of you know the boy in the story directly or indirectly, but you are all guessing about why he did what the police claim he did. Then the questions that follow the story, indicating what your guesses would probably be. (Names and places in the story have been added or changed.)

The story

The Kansas City Police last night arrested Walter Stevens, aged 13, who was caught by Policeman J. P. Young, charged the boy with stealing coins from the coin machine and washing machines in the Whirlaway Laundromat. The policeman said he saw Stevens pry open the coin slots on the machines and remove quarters and dimes. He said Stevens was caught when he deposited $1.50 in coins in his pocket when arrested.

Walter's mother, Mrs. William Stevens, said she thought her son was at work at his part-time job in the nearby Roll Em Bowling Alley. He had worked there 2 nights a week for 2 months, she said, and had been earning about 60 cents an hour. The boy's father, William Stevens, 48, is a clerk in the central post office. He works the night shift and was away at the time of the arrest.

Walter Steven is a seventh grade student at Wilmot Junior High School. The Wilmot principal, Mr. John Savage, reported that young Stevens had been doing very poorly in school for several months, and said that he had been expelled once for breaking school property and had often skipped school.

When interviewed, young Stevens told this reporter that his father had worked such long hours that he was very seldom home and that his mother had to remain in bed. He claimed, "Nobody at school understands me or tries to help me."

His parents could not give him these things, but he needed them to try to make friends at school.

PART VI. WISHES

Below are listed some wishes that have been expressed by boys and girls in other junior high schools. Read each wish carefully. Then check the wish with a 2 if you feel it is a wish that you have made or thought about any time during this year. If the wish does not fit you, leave it blank.

Check (X) here.

23. I wish I could buy my lunch in the cafeteria more often.

24. I wish I could afford to go to the movies once as many of the others in my school.

25. I wish my family could take me on vacation trips like those of the persons in my school have enjoyed.

26. I wish I were able to dress as well as (or better than) many of the persons in my school.

27. Many of the students in my class will get to college some day, but I probably won't get the chance.

28. I wish I were physically better built or more attractive.

29. I wish I were as attractive to the opposite sex as many of my classmates.

30. I wish I could join the Boy or Girl Scouts like many of my classmates.

31. I wish my parents were more understanding, like the mothers and fathers of many of my classmates.

32. I wish my family had nearly as much money as the families of many of my classmates.

33. I might like to be an engineer or a scientist when I grow up, but I probably will not get the chance.

34. I won't have as good opportunities when I grow up as many of my classmates.

35. I wish my parents were not so strict with me, and more like the parents of many of my classmates in this way.

36. I wish my parents were a little more strict with me, like the parents of many of my classmates.

37. I wish my father and mother were better educated, like the parents of many of my classmates.

38. I wish my father had as good a job as many of my classmates' fathers have.

39. I wish I could go on dates the way many of my classmates do.

PART VII. SOCIAL VALUES AND FEELINGS

Please answer each question by making a check in the space next to agree or disagree. There are no right or wrong answers. Just report your opinion.

40. Watching television programs such as "Sugarfoot" and the "Donna Reed Show" and "Dobie Gillis" is boring and dull and a waste of time:

(0) — Disagree.

(1) — Agree.

41. Betting a coke in a drugstore with other boys and girls after school or on a weekend is dull and a waste of time:

(0) — Disagree.

(1) — Agree.
PART VIII. WAYS OF DISCIPLINING YOUNG PEOPLE

Below are various ways by which many parents discipline children and young people. Please answer each question by checking the choice which best tells how your parents have disciplined you during the last 2 years. Answer each question for your mother and your father separately.

Do your parents take away your allowance?

61. Father: (0) - Never. (1) - Very seldom. (2) - Sometimes. (3) - Frequently. (4) - Always.
   Mother: (0) - Never. (1) - Very seldom. (2) - Sometimes. (3) - Frequently. (4) - Always.
Do your parents refuse to speak to you?

62. Father: (0) - Never. (1) - Very seldom. (2) - Sometimes. (3) - Frequently. (4) - Always.
   Mother: (0) - Never. (1) - Very seldom. (2) - Sometimes. (3) - Frequently. (4) - Always.
Do your parents forbid you to do something that you were especially planning on doing?

63. Father: (0) - Never. (1) - Very seldom. (2) - Sometimes. (3) - Frequently. (4) - Always.
   Mother: (0) - Never. (1) - Very seldom. (2) - Sometimes. (3) - Frequently. (4) - Always.
Do your parents say they don't love you or warn you that they will stop loving you?

75. Father: (0) - Never. (1) - Very seldom. (2) - Sometimes. (3) - Frequently. (4) - Always.
   Mother: (0) - Never. (1) - Very seldom. (2) - Sometimes. (3) - Frequently. (4) - Always.
Have your parents beat you up (using their fists, etc.)?

77. Father: (0) - Never. (1) - Very seldom. (2) - Sometimes. (3) - Frequently. (4) - Always.
   Mother: (0) - Never. (1) - Very seldom. (2) - Sometimes. (3) - Frequently. (4) - Always.

Mr. PELL. Mr. President, I ask for the yeas and nays on section (b).

The yeas and nays were ordered.

The PRESIDING OFFICER. Do Senators yield back their time?

Mr. STEVENS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. STEVENS. Is this amendment still open to amendment?

The PRESIDING OFFICER. Is the amendment open to amendment?

Mr. STEVENS. Yes.

The PRESIDING OFFICER. The Senator from New York has requested the division of his amendment, and section (b) will be voted on separately. All the rest will be voted on by voice vote first.

Mr. STEVENS. Is it in order to submit an amendment to delete subsection (c) at this time?

The PRESIDING OFFICER. That would be in order now.

Mr. STEVENS. I send such an amendment to the desk.

The PRESIDING OFFICER. Have the Senator from New York and the Senator from Rhode Island yielded back their time?

Mr. PELL. My recollection is not acute on that. What does the Record show?

The PRESIDING OFFICER. Does the Senator yield back his time?

Mr. PELL. I yield it back.

Mr. BUCKLEY. I yield back the remainder of my time.

The PRESIDING OFFICER. The clerk will state the amendment of the Senator from Alaska.

The assistant legislative clerk read as follows:

On page 4, line 14, delete subsection (c).

Mr. STEVENS. Mr. President, I again applaud what the Senator from New York is trying to do, but I think any proposal that has to have so many amendments on the floor to try to perfect the original intent is a measure that should not be passed.

Subsection (a) is a good subsection. Subsection (d), as I read it, on protection of personal data, gives the Secretary and the schools the right to protect personal data under any regulations that are nec-
cessary to control the use, dissemination, or protection of such data.

Subsection (c) is not necessary, and what I point out is that it would harm the students. It would prevent those with legitimate interests from going to a school and getting the information that is necessary. It would prevent the Senator from New York from deciding to recommend a student for some national award without going and telling him, if he was over 18. One would have to have his consent to get any information from his record.

If it would prevent a probation officer—notwithstanding the argument of my good friend from Delaware, I still have faith in the probation system, and I think the probation officer ought to be able to go in and get the information necessary not only when a student is subject to a juvenile proceeding, but in order to continue the work that he has to do during the period before a juvenile is sentenced. Many times they have to keep up with what they are doing. It is a probation officer's duty to find out what he is doing in school, or whether he is attending school. This would even prevent a probation officer from getting attendance data. I cannot understand us putting such a cloak of secrecy around a student.

On the other hand, subsection (c), as I understand it, gives the school authorities complete authority to adopt appropriate regulations. That would be subject to the Administrative Procedures Act. Everyone concerned would be involved in a hearing.

This has not been the subject of hearings by committee, and I do not think it is the kind of thing that ought to be passed on the floor of the Senate without further consideration. Therefore, to save time, I ask the deletion of that section.

I yield back the remainder of my time.

Mr. PELL. Mr. President, I think there is merit in what the Senator from Alaska says. He is making the same point. I yield back the remainder of my time.

Mr. BUCKLEY. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. Does the Senator from Rhode Island yield back his time?

Mr. PELL. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The PRESIDING OFFICER. Mr. Nunn. All time has now been yielded back.

Mr. ERVIN. Mr. President, a parliamentary inquiry. What are we voting on?

The PRESIDING OFFICER. On the amendment of the Senator from Alaska (Mr. Stevens) to strike section (c).

Mr. BUCKLEY. Mr. President, I do not believe a probation officer from my time yet.

The PRESIDING OFFICER. On the Stevens amendment, the Senator from New York does not have any time.

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senator from New York (Mr. Buckley) may have 5 minutes to respond. I think that is only fair.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request of the Senator from Alaska? The Chair hears none, and it is so ordered.

Mr. BUCKLEY. Mr. President, if the distinguished Senator from North Carolina (Mr. Ervin) wants to address himself to that point, I yield to him to do so.

Mr. President, I would merely say that the area addressed by the Senator from Alaska (Mr. Stevens) is but one area. Probation reports have also been leaked to the FBI, and other files as well. This is an area of extreme sensitivity. I do not believe that, absent appropriate court orders, this information should be made available.

Mr. ERVIN. Mr. President, section (d), as I understand it, provides that—

The Secretary shall adopt appropriate regulations to protect the rights of privacy of students and their families in connection with any surveys or data-gathering activities conducted, assisted, or authorized by the Secretary . . .

I do not see any objection to protecting the privacy of children. I do not see that they should be made guinea pigs by social scientists. That is why I support the bill.

Mr. STEVENS. Mr. President, with all due respect to the distinguished Senator from North Carolina, my amendment is to delete section (c), not (d).

Mr. BUCKLEY. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time on this amendment has now been yielded back.

The question is agreeing to the amendment of the Senator from Alaska (Mr. Stevens) to strike section (c).

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Arkansas (Mr. Fulbright), the Senator from Alaska (Mr. Stevens), the Senator from South Carolina (Mr. Hollings), the Senator from Hawaii (Mr. Inouye), the Senator from Utah (Mr. Moss), the Senator from West Virginia (Mr. Randolph), the Senator from Alabama (Mr. Sparkman), the Senator from Texas (Mr. Bentsen), and the Senator from Missouri (Mr. Symington) are necessarily absent.

I further announce that, if present and voting, the Senator from West Virginia (Mr. Rockefeller) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Utah (Mr. Bennett), the Senator from Kentucky (Mr. Cook), the Senator from Florida (Mr. Glass), the Senator from New York (Mr. Javits), and the Senator from Illinois (Mr. Percy) are necessarily absent.

I also announce that the Senator from Nebraska (Mr. Curtis), and the Senator from Alabama (Mr. Howard) are absent on official business.

I further announce that, if present and voting, the Senator from Nebraska (Mr. Curtis) would vote "nay."

The result was announced—yeas 35, nays 49, as follows:
To participate in any project, program, or activity that has the principal purpose or effect of which is to affect or alter the personal behavior or personal values of a student, or that develops, modifies, or implements teaching techniques or courses primarily intended to affect such behavior and values.

Mr. President, this language is breathtaking in its sweeping generality. How do you determine in advance, and provide the parent or other adult with full knowledge of the entire range of student activities that might bear on the values of a student? A course in American history, for example, that discusses contemporary American ethics in the light of the great questions of the times could be construed as tending to "affect the personal values" of a student. Or, how do you go about discouraging violent or overly aggressive behavior without tending to "alter the personal behavior" of a student?

These are serious questions. Mr. President, that we cannot take lightly. Because the penalty for even accidental transgression of these Federal directives is the total loss of Federal funding to any educational institution—public or private, preschool through postsecondary—that is found "out of compliance." Mr. President, the amendment directs the Secretary of Health, Education, and Welfare with the responsibility to— and again, I quote—

Investigating, processing, reviewing, and adjudicating violations of the provisions of this section and complaints.

Frankly, I question the wisdom of charging a Federal agency with the power to probe the questions that would have to be probed in order to investigate complaints of alleged violations of the act. Such questions could include:

Was the purpose of the course to affect the values of the child, or were they affected accidentally, or at all?

Even if the purpose of the course was not to alter the values of the child, did it have the effect or alter the values of the child?

What were the values of the child before they were "altered"?

Mr. President, I believe my point is obvious: This section of the Senator's amendment brings the Federal Government and its agencies dangerously close to the core of academic and personal freedom that should be in the hands of local and State school officials.

The PRESIDENT. The amendment was agreed to.

The PRESIDENT. The question now occurs on all of the amendment except section (a).

The amendment was covered.

The PRESIDENT. The question now occurs on section (b) of the amendment. On this question, the yeas and nays are ordered, and the clerk will call the roll.

Mr. MANSFIELD. Mr. President, what are we voting on?

The PRESIDENT. Mr. President, the question is on the adoption of section (b) of the Buckley amendment.

Mr. HUMPHREY. Up and down on section (b)?

The PRESIDENT. The question is on the adoption of section (b) of the Buckley amendment.

The clerk will call the roll.

Mr. ERVIN. Mr. President, precisely what is this?

The PRESIDENT. The roll-call is now in progress.

Mr. HUMPHREY. Mr. President, a parliamentary inquiry.

The PRESIDENT. The question is on the adoption of section (b) of the Buckley amendment.

Mr. HUMPHREY. Up and down on section (b)?

Mr. ERVIN. Mr. President, precisely what is this?

The PRESIDENT. The roll-call is now in progress.

Mr. ROBERT C. BYRD. I announce that the Senator from Texas (Mr. BINTZ) the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Hawaii (Mr. INOUYE), the Senator from Utah (Mr. MOSS), the Senator from West Virginia (Mr. RANDOLPH), the Senator from Alabama (Mr. SPARKMAN), and the Senator from Missouri (Mr. SYVINGTON) are necessarily absent.

I further announce that, if present and voting, the Senator from West Virginia (Mr. RANDOLPH) would vote "nay." Mr. GRIFFIN, I announce that the Senator from Utah (Mr. Bennett), the Senator from Kentucky (Mr. COOK), the Senator from Florida (Mr. GUNNERY), the Senator from New York (Mr. JAVITS), the Senator from Oregon (Mr. PACKWOOD), and the Senator from Illinois (Mr. FERCY) are necessarily absent.

I also announce that the Senator from Nebraska (Mr. CURTIS) and the Senator from Arizona (Mr. GOLDWATER) are absent on official business.

I further announce that, if present and voting, the Senator from Nebraska (Mr. CURTIS) would vote "yea."

The result was announced—yeas 40, nays 43, as follows:

Mr. PELL. The vote is now on section (b), is it not? What is the parliamentary situation?

The PRESIDENT. The question now occurs on the first part of the amendment of the Senator from New York.

Mr. PELL. The vote is now on section (b), is it not? What is the parliamentary situation?
May 14, 1974

Whereas the precedents set by the meeting of the first Congress in 1774 form the foundation upon which rests the principles and practices of the existing Congress of the United States of America; and  
Whereas October 14, 1774, was the date on which the delegates to the first Congress adopted the Declaration of Independence, expressing to the King of England their rights as Englishmen and their determination to achieve those rights, and is therefore, in itself, an historic date; and  
Whereas on October 14, 1974, special ceremonies sponsored by the City of Philadelphia a copy of the Declaration of Independence was presented to the Congress of the United States of America, four Representatives, four Members of each House to represent the Congress of the United States of America as the House of Representatives concurring, (together with the Senate), to commemorate the 200th Anniversary of the First Continental Congress:

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that October 14, 1974, be proclaimed National Day of Observance for the 200th Anniversary of the First Continental Congress and calls upon the people of the United States, then and to the future, to fittingly observe this momentous date in our history.

Sec. 2. That the President pro tempore of the Senate and the Speaker of the House be authorized to select, upon the recommendation of the respective majority and minority leader, one Representative and one Senator for each House, to represent the Congress of the United States of America at ceremonies in Representatives' Hall, Philadelphia, Pennsylvania, to properly and appropriately observe for the Nation the two hundredth anniversary of the First Continental Congress; and  
Whereas the two hundredth anniversary of the first Continental Congress was one of the first historic commemorative events of the American Revolution Bicentennial celebration: Now, therefore, be it

Resolved... 

The PRESIDING OFFICER. The voice vote was taken on all parts of the amendment with the exception of section (b), which was a rolleal vote. The voice vote was all other.

Mr. BROCK, Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BROCK. Was not the voice vote taken prior to the vote on the amendment of the Senator from Alaska on section (c)?

The PRESIDING OFFICER. The Senator from Alaska's motion to strike was first of all voted on, and then there was a voice vote, and then there was a vote on section (b).

Mr. BUCKLEY. Mr. President, I was reading from an article in the New York Times in which the following was stated: The (New York) city's Board of Education accused the United States Department of Health, Education and Welfare yesterday of directing a number of schools here to administer pupil questionnaires that the board said were "racist," "highly inflammatory," and "polarizing."

Dr. Seymour P. Lachman, the president of the board, said the Federal department had "once more shown its callous insensitivity to the needs of children and good intergroup relation."

A statement by Dr. Lachman noted that the preface to the 23-item Federal questionnaire said: "To the student: These questions are to find out how you feel about students who are different from you. If you are Black, we want to know how you feel about students who are not Black. If you are White, we want to know how you feel about students who are not White. If you are Brown, we want to know how you feel about students who are not Brown. Whatever you are, we want to know how you feel about students who are different from you."

Mr. CRANSTON. Mr. President, I want to state my firm support for the amendment offered by the distinguished Senator from New Jersey (Mr. BUCKLEY) which would protect schools from the loss of Federal funds if they choose not to administer tests prescribed by the Federal Government.

Mr. ERVIN. Mr. President, a point of order.

The PRESIDING OFFICER. Does the Senator from New York yield for a preliminary remark?

Mr. BUCKLEY. I yield.

The assistant legislative clerk proceeded to read the amendments. Amendments No. 1306 are as follows:

Page 330, between lines 17 and 18, insert the following new section:

"LIMITION ON WITHHOLDING OF FEDERAL FUNDS"

"Sec. 513. Part C of the General Education Provisions Act is amended by adding at the end thereof the following new section:

"LIMITION ON WITHHOLDING OF FEDERAL FUNDS"

"Sec. 437. The refusal of a State or local education agency and institution of higher education, community college, a school, preschool, or any other educational institution, to administer a test or project or to provide personally identifiable data on students or their families, as a part of an applicable program, to any Federal office, agency, department, or other third party, on the grounds that it constitutes a violation of the right to privacy and confidentiality of students, their parents, or is an unacceptable research project, is for the purpose of altering the personal behavior or values of a student, or is potentially psychologically or other students or their families, shall not constitute sufficient grounds for the suspension or termination of Federal assistance. Further, such a refusal shall not be considered for a penalty or denial of, a refusal to consider, or a delay in the consideration of funding in succeeding fiscal years."

On page 122, in the Table of Contents after item "Sec. 512." insert the following:

"Sec. 513. Limitation on withholding of Federal funds"

Mr. BUCKLEY. Mr. President, for the benefit of Senators present, I understand the managers of the bill will accept the amendment.

I think I can best illustrate its purpose by quoting one article that appeared in the New York Times on November 21, 1973, relating to a questionnaire that HEW was demanding the New York City Board of Education circulate among its students:

"The "New York" city's Board of Education accused the United States Department of Health, Education and Welfare yesterday of directing a number of schools here to administer pupil questionnaires which were "racist," "highly inflammatory," and "polarizing."

Dr. Seymour P. Lachman, the president of the board, said the Federal department had "once more shown its callous insensitivity to the needs of children and good intergroup relation."

A statement by Dr. Lachman noted that the preface to the 23-item Federal questionnaire said: "To the student: These questions are to find out how you feel about students who are different from you. If you are Black, we want to know how you feel about students who are not Black. If you are White, we want to know how you feel about students who are not White. If you are Brown, we want to know how you feel about students who are not Brown. Whatever you are, we want to know how you feel about students who are different from you."

Mr. CRANSTON. Mr. President, I want to state my firm support for the amendment offered by the distinguished Senator from New Jersey (Mr. BUCKLEY) which would protect schools from the loss of Federal funds if they choose not to administer tests prescribed by the Federal Government.

Mr. BUCKLEY. Mr. President, I call up my amendments No. 1306.

The PRESIDING OFFICER. The clerk will read the amendments.

Mr. CRANSTON. Mr. President, I want to state my firm support for the amendment offered by the distinguished Senator from New Jersey (Mr. BUCKLEY) which would protect schools from the loss of Federal funds if they choose not to administer tests prescribed by the Federal Government.

Mr. BUCKLEY. I yield.

Mr. CRANSTON. Mr. President, I want to state my firm support for the amendment offered by the distinguished Senator from New Jersey (Mr. BUCKLEY) which would protect schools from the loss of Federal funds if they choose not to administer tests prescribed by the Federal Government.

Mr. BUCKLEY. I yield.
The questions, part of a battery of tests on a half-hour thick to be administered to 720 students and teachers, concern the students’ home lives and expectations in school.

My amendment simply limits the ability of HEW to withhold funds from school districts that refuse to circulate questionnaires of this kind or which believe them to be harmful or potentially pose psychological harm to their students.

I understand the managers of the bill are willing to accept the amendment.

Mr. PELL. Mr. President, the Senate is correct. We look favorably at this amendment, especially on the majority side. There seems to be no great objection to it. I would recommend to my colleagues that we adopt it.

Mr. DOBY. Mr. President, if the Senate will yield, I agree. It is a good amendment, except it should have been done a long time ago.

Mr. HART. Mr. President, will the Senate yield?

Mr. PELL. I am glad to yield.

Mr. HART, I, of course, do not wish to ask for a rollcall. I rise to express concern again that the Senate, at 20 minutes’ notice, is adopting language at least some of which is unclear to anybody, particularly to reserve to a school board the right to continue to receive Federal money even though it rejects a project if the project is for the purpose of altering the personal behavior or values of a student.

Again, I suggest that that really is the mission of HEW to education, and I just continue to think we would have been much better off if the committee had been able to evaluate exactly what would happen under this. I am sure that concern will be voiced with respect to it.

Mr. BUCKLEY. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from New York.

Mr. BUCKLEY. Mr. President, has all time been yielded back?

The PRESIDING OFFICER. Has all time been yielded back?

Mr. ROBERT Byrd. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. MUSKIE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MUSKIE. Mr. President, I ask unanimous consent that Rick Bayard and Reid Feldman be granted the privilege of the floor during the debate on the education bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Number of counties per State receiving a decreased allocation under the McClellan amendment

Alabama 17
Arkansas 12
California 2
Colorado 5
Connecticut 0
Delaware 0
Florida 1
Georgia 1
Hawaii 0
Idaho 12
Illinois 4
Indiana 41
Iowa 21
Kansas 42
Kentucky 2
Louisiana 2
Maine 2
Maryland 0
Massachusetts 2
Michigan 10
Minnesota 27
Mississippi 2
Missouri 5
Montana 1
Nebraska 18
Nevada 1
New Hampshire 0
New Jersey 10
New Mexico 1
New York 19
North Carolina 54
North Dakota 15
Ohio 35
Oklahoma 14
Oregon 1
Pennsylvania 1
Rhode Island 0
South Carolina 19
South Dakota 27
Tennessee 32
Texas 7
Utah 2
Vermont 6
Virginia 20
Washington 0
West Virginia 24
Wisconsin 2
Wyoming 1
District of Columbia 1
Total 600

BUSING TO DESEGREGATE SCHOOLS: THE PERSPECTIVE FROM CONGRESS

Mr. PEARSON. Mr. President, in view of the legislation pending before the Senate, and in view of the ongoing debate on the issue of busing, I am introducing this article written by our distinguished minority leader, the Senator from Pennsylvania. Entitled “Busing To De Segregate Schools: The Perspective From Congress,” this University of Richmond Law Review article offers a calm perspective in the face of growing controversy on busing. I ask unanimous consent that this article be printed at this point in the Record.

There being no objection, the article is ordered to be printed in the Record, as follows:

Mr. PEARSON. Mr. President, in view of the legislation pending before the Senate, and in view of the ongoing debate on the issue of busing, I am introducing this article written by our distinguished minority leader, the Senator from Pennsylvania. Entitled “Busing To De Segregate Schools: The Perspective From Congress,” this University of Richmond Law Review article offers a calm perspective in the face of growing controversy on busing. I ask unanimous consent that this article be printed at this point in the Record.

Footnotes at end of article.
Supreme Court to limit excessive busing on a case by case basis, while at the same time formulating well-reasoned and appropriate guidelines. Unfortunately, the Court continued its record of asserting decrees. Third, the legislative proposals to limit busing went far beyond what was necessary. Instead of the promised "Equal Educational Opportunity Act," as passed by the House of Representatives, virtually repealed substantial portions of the Civil Rights Act of 1964. These guarantees that desegregation would never occur in some metropolitan areas. The bill actually made possible some of those same towns that had found to have racially segregated neighborhoods. Fourth, many of the members of Congress were convinced that anti-busing legislation was not only unwise but unconstitutional as well.

In this article it is suggested that we now have established principles, through legislation by Congress and decisions of the courts, within which we can resolve the complex problems of desegregation on a fair and practical manner without resegregating schools.

The greatest single reason for theimpasse between the desegregated school desegregation has been the adamant and mutual refusal of both sides to recognize that desegregation has been accomplished in school desegregation and the nature of the problems yet unresolved. Those who oppose pupil segregation often give the impression that they have conveniently forgotten the recent history of school desegregation, Civil Rights Congressional mandates. On the other hand, the proponents of busing often appear blind to the fact that desegregation is accepted today by an overwhelming majority of students and that many who once vehemently opposed it.

The point has been reached where the issue of busing no longer stands as a major element of any debate about a remedy. Congress, the courts and the executive have demonstrated repeatedly that they have made it clear that another era of segregation constitutionally unacceptable. Happily, there are indications that the country may be able to reason its way through some of the knotty and complex problems of desegregation without becoming embroiled in accusations of bad faith and the accompanying recriminations. In devising remedies which will be fair and which will be supported by the majority of the people it must be remembered that there are no longer dealing with modest rural school districts, but with major school systems in the metropolitan areas of Richmond, Atlanta, Denver and Detroit. National policy must continue to be committed to integration, but the implementing policy must be fair, flexible and must have the broad based support of the people. The potential for devising a fair and flexible means of implementing desegregation is available, but building understanding and support among people generally appears to be the greatest challenge. This can be accomplished, however, if, as a first step, confrontations are avoided, and if the federal government employs the methods to achieve the national goal of a desegregated society.

Twenty years ago this May 17 the Supreme Court announced its historic decision in Brown v. Board of Education. It is a mark of the passage of time that only one justice who was a member of that Court, Justice William O. Douglas, is still a member of the Supreme Court; it is a mark of how much has changed that we may ask who argued the case of the black plaintiffs in Brown sita today as the first black justice of the Court. The choice is Justice Thurgood Marshall, who was appointed by a Southern President.

Shortly after the decision in Brown, the Congress of Racial Equality was founded on the basis of the Brown decision. Today, Virginia's schools for the most part are desegregated. A distinguished Virginian, Lewis F. Powell, Jr., is an Associate Justice of the Supreme Court, and has contributed greatly in his opinion to solving the problems of desegregation since his recent appointment to the Court.

The progress of the past twenty years has not been easy. Prior to Brown, racial segregation under law was the accepted way of life in the United States. Public schools and public facilities were segregated by race. Public transportation was segregated, and the law required private businessmen to operate segregated places of accommodation.

The masses of black citizens were denied the right to vote. Where the law did not require segregation, custom imposed an equal effect. Discrimination against blacks in employment and housing was widespread. The legacy and effect of de jure segregation spilled over into the north where racial discrimination was practiced openly and often in defiance of state laws prohibiting discriminatory practices. In the year 1954, the black man, ninety years after Emancipation, was confronted with school systems that were, in many respects as degrading as involuntary servitude. Brown v. Board of Education overturned these practices, this nation has been headed steadily on a course toward full equality of opportunity for every citizen and toward the elimination of the vestiges of segregation. The legacy of our past approach to the happiness and security of our lives, I doubt if there are many today who would vote to overturn Brown and return to a tragic past.

Ten years after Brown little progress had been made to desegregate schools except in the border states and the District of Columbia. The spectacle of United States Army troops surrounding Central High School in Little Rock, Arkansas forced this country to realize that desegregation was a case by case basis would be a long term and tumultuous proposition. It was clear that unless voluntary compliance with the letter and spirit of Brown was forthcoming, and that did not appear to be likely, little was going to happen until Congress acted. Effective congressional action did not come easy. From Reconstruction until 1957 no general action had been taken by the Congress to require the implementation of the Fourteenth Amendment. The first steps by Congress toward enacting guarantees of full and equal citizenship were the Eisenhower-Nixon Administration in 1958 and 1957. The initial actions taken by Congress seemed timid to critics, but in reality they were precedent-shattering moves which cleared away several time-encrusted procedural obstacles to the passage of civil rights legislation. The first procedural move was the decision by Senate Majority Leader Lyndon B. Johnson to use a relatively weak civil rights bill that forced the traditional southern filibuster against civil rights legislation. At that time, many did not realize the importance of this procedural victory, but without it, the great civil rights acts of the 1960's would have been virtually impossible.

The 1957 Civil Rights Act, modest in dimensions and ambitions, has proven to be the base on which a large part of the federal civil rights foundation was laid. The Civil Rights Act created the United States Commission on Civil Rights to study civil rights problems and to report to the Congress and the President. The Commission is still serving the nation and will continue to so serve through its current extension until 1978.

Title II of the Act of 1957 also created the Civil Rights Division of the Department of Justice. This is perhaps the most substantial achievement of the Act. Title IV authorized the Attorney General to go into court to enforce the right of all citizens to vote under the Fifteenth Amendment; Title V authorized the federal government into court on the side of civil rights plaintiffs. No longer would the government be a powerless or neutral observer, but a party in litigation, prepared and committed to securing the civil rights of all citizens.

Obviously, this development did not go unchallenged by those states and localities which felt threatened by the use of federal power and protection of the civil rights of citizens under the fourteenth and fifteenth amendments. "Massive resistance" in Virginia, elsewhere, and the gargantuan challenge to federal authority, violence and confrontation, often incited by demagoguery, occurred throughout the south while the north looked on, all too complacency, from the sidelines. During this period a growing awareness, sharpened by the reports of the United States Commission on Civil Rights, developed that desegregation of schools was only one part of a struggle for equal opportunity which was taking place on several fronts simultaneously. The first report of the Civil Rights Commission in 1959 dealt with voting, education and housing. The report must be viewed in Paris in 1960 as dependent upon progress being made in the other areas as well. To attempt to find a priority target was to smear the thinning of a circle. It was against such a background that Congress moved to consider the civil rights civil rights act of 1960.

Overall, the Civil Rights Act of 1960 was a disappointment. The strong recommendation of the Commission, which had provided the impetus for the legislation, were systematically weakened and replaced until the bill was little more than a remnant. The Act was generally viewed as a failure.

Despite increased national focus on the civil rights movement, the first two years of the Kennedy Administration passed without any civil rights action by Congress. Litigation became the chosen weapon of the Administration for achieving civil rights. Since the only source of effective civil authority possessed by the Attorney General was in the field of voting, the belief was that school desegregation and other gains would come about through an expansion of the political and social power of the black citizens from greater enfranchisement of Negros.

Despite heroics and dedicated efforts by the Administration and the Civil Rights Division, the Department of Justice was not successful in vindicating civil rights for Negro citizens through the judicial process. At the end of 1962, the additional number of black citizens who could vote as a result of the cases brought by the Department was small.

At the start of the 88th Congress, the Kennedy Administration had virtually no civil rights legislative program. The Administration's civil rights bill in early 1963 was the result of a compromise proposal of the Civil Rights Division and the President. The Division of Civil Rights Division and the President. The Division of Congress on Civil Rights and to expand the Commission's jurisdiction to provide for a Supreme Court selection by the President of the United States. The President joined the Senate with the Senate joined with Democrats in seizing the initiative with strong civil rights proposals pointing the way for major civil rights enactments. Elsewhere in the nation the civil rights movement increased in momentum.

Robert F. Kennedy in Birmingham, Alabama in April, 1963 suddenly ignited the conscience of the nation. Police Commissioner Eugene "Bull" Connor boasted of his dogs and the bombings, riotings and rage of the inner city shocked the people of America. On June 12, 1963 the nation's conscience was again killed in front of his home in Jackson, Mississippi.

Footnotes at end of article.
On June 19, the Kennedy Administration finally sent a major new civil rights bill to Congress. During a summer holiday recess, the great march on Washington took place. There, Dr. Martin Luther King inoned his greatest speech, "I Have a Dream."  

In the autumn of 1963, the President was assassinated in Dallas. The death of President Kennedy may not have been responsible for the passage of the Civil Rights Act of 1964, but it did cause many people to realize that the time for making the ideal of social justice a reality was now. Against this more responsible background, Congress duly considered and enacted that monumental charter of civil rights, the Civil Rights Act of 1964.  

The Act carried forward the concept of making basic gains in equal opportunity simultaneously from several fronts, notably in public accommodations, education, employment and nondiscrimination in federal programs. The Act initially was completed by passage of the Voting Rights Act of 1965 and the Fair Housing Act of 1968.  

The 1964 Civil Rights Act also provided for double-barreled implementation of desegregation of schools and of federal programs. The administrative sanctions imposed on the secretaries and heads of agencies charged with enforcement of the non-discrimination requirements of Title VI. The other implementation was the power of the Attorney General to bring suit to desegregate schools. This power was to be supplemented by substantial assistance programs for education, school administrators and officials were faced with hard choices: to desegregate or to retain full separate schools, to face the Department of Justice in Court in the end, or to give assurances of nondiscrimination and nondiscrimination guidelines and take the money. The majority of school boards decided to take steps toward compliance.  

Education was not the only sector of society required to accept desegregation. The 1964 Act achieved quick desegregation of places of public accommodation, and other sectors of society also began to desegregate. Additionally, employers were required to eliminate discriminatory recruitment practices and hiring policies. The pervasive impact of the Voting Rights Act of 1965 also made itself felt as black voters joined with white moderates to oust from office those public officials who had counseled and led resistance to desegregation.  

What had been accomplished through legislation was a complete reversal of the legalized segregation which had prevailed only ten years earlier. Yet, even at the height of the civil rights tide, when Congress was debating the Civil Rights Act of 1964, issues were arising which would turn congressional attention away from implementing school desegregation toward directly opposing it.  

In large part the development of these issues stemmed from the growing realization that integration would be determined by the answers to definitional problems. What is school desegregation? For example, does desegregation mean that schools that existed in the south had to be dismantled and replaced by "unitary" systems, what, in fact, constitutes a "unitary" system? Practical and mechanical problems also were involved: are we going to transport children to integrate schools if they live in racially segregated neighborhoods? Finally, what was Brown v. Board of Education about?  

The creation of Chief Justice Burger's Supreme Court in 1967, which had hoped it would, the Civil Rights Act of 1964 would have been rendered a nullity as far as the judges were concerned. Such a decision would have been a complete misreading of the hope and intent of Congress that the schools of the land be desegregated, other than to encourage the north to continue to do nothing about segregation of schools caused by state action in the country concerning local effect, however, has been considerable.  

The racial balance language of Title IV, the decisions limiting its application, futile efforts to desegregate schools by "unitary" systems, the legal maneuvering of the early 1970's have deprived the amendment's southern beneficiaries of the home that they would have finally sent a major new civil rights bill to Congress. The death of President Kennedy may not have been responsible for the passage of the Civil Rights Act of 1964, but it did cause many people to realize that the time for making the ideal of social justice a reality was now. Against this more responsible background, Congress duly considered and enacted that monumental charter of civil rights, the Civil Rights Act of 1964.  

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The racial balance language of Title IV, the decisions limiting its application, futile efforts to desegregate schools by "unitary" systems, the legal maneuvering of the early 1970's have deprived the amendment's southern beneficiaries of the home that they would have
The constitutional problems of finding state action in northern school desegregation arise, as Justice Powell stated, because I necessarily agree with all of it, but because it demonstrates fresh and major innovative thinking on the Court about the prospects for desegregation. Although Justice Powell's opinion, its significance is in the constitutional problems that remain.

In developing remedies, courts would be wise to look to previous opinions of the Court. Justice Powell's concurrence in Keyes sets forth much of the legal groundwork for effective remedies for desegregating schools. Justice Powell's opinion, its significance is in the constitutional problems that remain.

While I may not agree with every particular in Justice Powell's opinion, I believe that it offers a path which will enable us to achieve desegregation in the most socially uprooted. If the movement toward integration begun twenty years ago is not to be lost or set back by reactionary backlash movements, then Justice Powell's counsel should be heeded.

The progress that has been made toward the goal of a just and free society has been substantial. The tools for further advances in achieving social justice can be formulated to produce rational and flexible remedies to the complex problems that remain.

FOOTNOTES

1 United States Senator from Pennsylvania; Member of the Senate Judiciary Committee; LL.B. University of Virginia, 1922.


3 H.R. 1915, 93d Cong., 2d Sess., introduced on March 20, 1972; reported from the General Subcommittee on Education of the Committee on Education and Labor, July 35, 1972; reported from Committee on August 14, 1972; H.R. Rep. No. 92-1335; considered and passed the House of Representatives with amendment, August 1, 1972; H.R. 1915 and the accompanying measure, the Student Transportation Moratorium Act of 1972, H.R. 13916, were the subjects of extensive hearings before the House Committee on Education and Labor.


4 Pub. L. No. 92-218, 86 Stat. 372. Title VIII of the General Education Amendments of 1972 provides essentially: "The 501 state or local officials of the Act "shall be construed to require the assignment or transportation of students or teachers over a broad educational target area of appropriate local school officials.

5 To provide for transportation, if such transportation would result in children being assigned to a school substantially inferior to the one they would be assigned to under a non-discriminatory geographic zone assignment plan.

Section 802(b) prohibits Federal officials from determining the use of Federal funds for busing to correct racial imbalance or achieve desegregation or to condition a grant on their use. Section 803 provides guidelines by which lasting desegregation standards may be evolved.

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144601

U.S. Commission on Civil Rights, Political Participation 19 (1968).


P topping Participation, supra note 13.

For an extensive account of the experience under freedom of choice plans, see U.S. Commission on Civil Rights, Southern School Desegregation 1966-67, at 45-79 (1967).


“Desegregation” means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, but “desegregation” shall not mean the assignment of students to public schools in order to overcome racial imbalance.


The key decision was United States v. Jefferson County Bd. of Educ., 372 F. 2d 837 (5th Cir. 1966), as follows:

The Supreme Court has declared that no ways subject to review because of change of circumstances, this is in fact an invitation to the courts to transport a pupil to school for the past eighteen years, particularly in the school district where desegregation has long been achieved. Presumably in such districts, the alleged disadvantages of pupil transportation have long since been overcome. It is cynical in the extreme, therefore, to permit new rounds of litigation which are aimed at constitutional order exists."

This section raises then important questions of policy. Primarily it seeks to understand the constitutional questions of the direct and arbitrary prohibition of busing as a judicial remedy. The reasons are as follows:

I. The Esch/Gurney amendments will prevent the Federal courts and school authorities from implementing the constitutional requirements established by Brown v. Board of Education and subsequent cases. In 1971, the U.S. Commission on Civil Rights, Equal Educational Opportunities, 347 U.S. 483 (1954) established that State-imposed segregation by race in public schools denies equal protection of the law under the Fourteenth Amendment. To correct such violations, the Fourteenth Amendment commands that the discriminat-

II. Congress, as well as the States, may not effectively achieve the federal courts from fulfilling the mandate of the Fourteenth Amendment’s equal protection clause.

The Supreme Court has declared that no State enactment may frustrate the constitutional mandate of the Fourteenth Amendment. North Carolina State Board of Education v. Swann, 402 U.S. 43 (1971) and Brown v. Board of Education (II), supra, held that "busing plans cannot be limited to the walk-in school." Swann, supra 402 U.S. at p. 30.

III. The amendments are adopted to fulfill the legislative will overrule the principles of Swann, supra, North Carolina State Board of Education v. Swann, 402 U.S. 43 (1971) and Brown v. Board of Education (II), supra. It will prohibit the use of busing in any meaningful manner, by school authorities and federal district courts, as a remedial tool for school desegregation. It will prohibit busing in every case, for every child of school age.

Mr. JAVITS. Mr. President, tomorrow, the Senate will consider a number of amendments to this bill concerned with the transportation of students.

The Esch/Gurney amendments are intended to achieve the Senate from Florida (Mr. GURNEY) which is identical to the House-passed Esch amendment.

The courts, in the absence of evidence, the Supreme Court has

The Supreme Court has declared that no State enactment may frustrate the constitutional mandate of the Fourteenth Amendment. North Carolina State Board of Education v. Swann, 402 U.S. 43 (1971) and Brown v. Board of Education (II), supra, held that "busing plans cannot be limited to the walk-in school." Swann, supra 402 U.S. at p. 30.

IV. The amendments are adopted to fulfill the legislative will overrule the principles of Swann, supra, North Carolina State Board of Education v. Swann, 402 U.S. 43 (1971) and Brown v. Board of Education (II), supra. It will prohibit the use of busing in any meaningful manner, by school authorities and federal district courts, as a remedial tool for school desegregation. It will prohibit busing in every case, for every child of school age.

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We think not. We must think that Congress has inadverently passed the limit which separated the legislative from the judicial power.

The Klein case was decided after Ex parte McCordell, 74 U.S. (7 Wall) 506 (1868), which upheld a post-Civil War Act of Congress that deprived the Federal courts of their constitutional jurisdiction over lower federal court decisions in habeas corpus cases. But it is clear from this record that it was not the purpose of the Amendment to curtail the Federal court's unrestricted Congressional power to deprive it of its jurisdiction to consider Constitutional claims. Despite this, the Amendment was intended to be interpreted to eliminate busing as a viable tool for school desegregation. Though the bill's language states "except to the closest or next closest school," busing restricted to these conditions will prove ineffectual in countervailing the impact of residential segregation upon school attendance patterns of children. Where busing is indispensable in achieving a more effective method of desegregation, federal courts will find themselves confined to render less than effective remedies.

For these reasons, this bill contracts the scope of constitutional guarantees afforded by the Fourteenth Amendment. It cannot be sustained upon a reading of Section 5.
the best way to prepare students to live under and to help implement the principles embodied in the Constitution.

In addition, our opinion of these proposals has been based on evidence, growing out of studies conducted by the Commission, which point conclusively to the fact that the argument used as to prevent students from being forced to attend segregated schools. We have found that many of these proposals have been resolved in a constructive manner.

Nevertheless we understand that persons living in the localities do not feel the necessity of inaugurating pupil transportation programs in order to prevent students from being forced to attend segregated schools ask in good faith whether the price that we must pay should be paid. Our response must be that constitutional rights designed to open the doors of opportunity for all of our people must be treated as absolutes. We cannot afford to turn our back on them because of disinterest or indifference on the part of the people. Each finding is based. In all instances, however, we are prepared to support our findings on substantial and legal analyses conducted by the Commission and by others working in this field.

THE GURNEY AMENDMENT

1. The Gurney Amendment would deny to Federal courts or administrative agencies the right to prevent students from being forced to attend segregated schools where pupil transportation is the method necessary to achieve actual desegregation.

Congress by adopting such an Amendment would be attempting to override the principles and considerations Commission and our analysis of the legislation that we are now presenting. In the following findings and recommendations relative to the Gurney, Ervin, Scott-Mansfield Amendments. In most instances we are stating our findings and only briefly summarizing the evidence on which each finding is based. In all instances, however, we are prepared to support our findings on substantial and legal analyses conducted by the Commission and by others working in this field.

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2. The provision in the Amendment that no pupil transportation shall be required to formulate or implement a desegregation plan because of "residential shifts in population .. ." would be misleading and unnecessary.

Since the Brown decision, the courts have distinguished between desegregated school segregation caused by residential change or population movements for school segregation resulting from the official actions of educational authorities. Every school desegregation case has been supported by a factual finding of de facto segregation. This provision is in effect saying that it creates the impression that action is required in an area in which it is not required.

3. The Gurney Amendment's failure to "attain a balance, on the basis of race, color, sex, or national origin, of students' within a school district shall not constitute a denial of equal educational opportunity, or equal protection of the laws" is misleading and unnecessary.

The federal courts required such a balance of students. As the Supreme Court stated in Swann, "the constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole ..." (at 43). The Gurney Amendment that could result in the parents of children being compelled to pay the legal expenses of the administrative agencies of the courts, as well as their own, places an indefensible obstacle in the path of parents who attempt to vindicate their constitutional rights in this area.

This finding speaks for itself.

4. The provision in the Amendment that the Gurney Amendment is in direct conflict with school population changes in any school within such a desegregated school system ... is misleading and unnecessary.

5. The Gurney Amendment's failure to "attain a balance, on the basis of race, color, sex, or national origin, of students' within a school district shall not constitute a denial of equal educational opportunity, or equal protection of the laws" is misleading and unnecessary.

The federal courts required such a balance of students. As the Supreme Court stated in Swann, "the constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole ..." (at 43). The Gurney Amendment that could result in the parents of children being compelled to pay the legal expenses of the administrative agencies of the courts, as well as their own, places an indefensible obstacle in the path of parents who attempt to vindicate their constitutional rights in this area.

This finding speaks for itself.

5. The Gurney Amendment that the provisions of the Gurney Amendment are unconstitutional. The Supreme Court has demonstrated in the development of guidelines for desegregation by the courts, departments and agencies of the United States has demonstrated that desegregation plans which are responsive to varied local situations.

The Gurney Amendment adopts the opposite point of view. In so doing the authors and sponsors reflect a lack of confidence in the courts which given to local conditions and yet, at the same time, achieves the objective of implementing constitutional rights, high court.

In the Swan case, for example, the Supreme Court stated that "rigid guidelines as to student transportation can be given only in the most unusual variety of problems presented in thousands of situations." (at 29) It is unlikely which the Supreme Court has encouraged permits local school districts to design their own plans, in close consultation with the local district court for other federal agencies. It is necessary and to choose from a wide range of tools those best suited to deal with the situation as it exists in the school district. Instead of desegregation plans may be fashioned in the most practical and reasonable manner and yet still meet current constitutional and administrative standards.

Local school officials who conscientiously wished not to violate the law would be forced to adopt state of the possible dilemma by this section of the Amendment. One way that a school district could be sure that it is not violating the "unlawful practice" would be to assign children to the school closest to their homes. This would compel school officials to compute the precise distance from the homes of all children and the surrounding schools, and based on these computations, to assign children to the schools of thousands of children who presently do not attend the closest school. Moreover, school authorities would have to update the school-home distance computations to account for the construction of new schools, new residences, and the closing of obsolete facilities, and referer counties additional children annually.

The other means by which local school officials and taxpayers in compliance with the law created by the Amendment is even more administratively complex and mind-boggling. So that school officials could determine that the "nearest school" is the "nearest practice of assigning students to schools other than the one closest to their residence, would be compelled to compute annually the precise student ratios for all schools in the district "on the basis of race, color, sex, and national origin." Then school officials would have to determine that the assignment of a child to a school other than the closest one would not contribute to an integration of the district.

It is ironic that a constitutionally defective Amendment is, in addition, administratively burdensome. Nevertheless the Amendment be made administratively feasible, its unconstitutionality should preclude legislative enactment.

The principle of the Gurney Amendment which provides for the elimination of excessive transportation of students when it can be shown that desegregation immediately creates risks to health and safety and "disrupts the educational process" is unnecessary and misleading.

The Supreme Court in Swann forbade the use of transportation in school desegregation plans "when the time or distance of travel is not no longer than on the health of the child or significantly impinge on the educational process." (at 30-31)
Statistics of the U.S. Department of Transportation show that approximately one percent of the increase in public school transportation in the period 1954 to 1972 can be attributed to school desegregation.

THE ASHBOOK AMENDMENT

In the event the Ashbrook Amendment, which was adopted by the House of Representatives, is offered during the Senate debate, we are providing our comments on it. The Ashbrook Amendment would prohibit the use of Federal funds for transportation costs involved in school desegregation plans.

10. The Ashbrook Amendment seeks to erect a roadblock to the granting of equal educational opportunity by denying the use of Federal funds for any plan, voluntary or otherwise, which seeks to implement those rights by spending money on pupil transportation.

Like the Oruney Amendment it seeks to accomplish indirectly what the authors and sponsors know cannot be accomplished.

THE ERVIN AMENDMENT

The Ervin Amendment would prohibit federal officials from using federal funds for the purpose of inducing school boards operating dual schools to convert to unitary systems. The amendment would permit school boards to implement "freedom of choice" plans regardless of the resulting racial composition of the schools.

11. The Ervin Amendment if adopted would effectively repeal Title VI of the Civil Rights Act of 1964 as it applies to education and seeks to override the decision of the Supreme Court in Green v. County School systems to implement "freedom of choice" plans for the purpose of inducing school boards to desegregate schools.

The enactment of the proposed amendments on which we have commented in this letter would contribute to such a tragic development. We hope that instead of moving in this direction the Congress will hold fast to the sure promise of a more united and peaceful Nation under desegregated institutions.

Respectfully yours,

Arthur S. Flemming, Chairman; Sylvia F. Burris, Vice Chairman; Frankie M. Freeman, Robert S. Rankin, Manuel Ruiz, Jr., John A. Hughes, Staff Director.

Congressional Black Caucus Inc.,
Washington, D.C., May 14

Senator Edwin Hart,
Washington, D.C.

Dear Senators Hart, Javits, Kennedy, Mossbacher and Chairman of the Black Caucus:

The Black Caucus is extremely concerned over the anti-busing amendments which will be offered when the Senate considers S. 1539. I send you the Elementary and Secondary Education Act for three more years. The sixteen black members of the House voted against the anti-busing amendments to H.R. 69, which was passed in the House.

Of major concern to the members of the Caucus is the fact that the new amendment represents an assault against the independence and the integrity of the judicial system. The new amendment is clearly for the purpose of reversing the recent Supreme Court's decision in the case of the late 1960s. The Court decided that the Federal courts could not do the job of desegregating the nation's schools.

The addition of anti-busing amendments to S. 1539 will be an enormous setback to the school desegregation and civil rights gains achieved over the last 50 years. The Congressional Black Caucus is urging members of the Senate to defeat all anti-busing amendments to S. 1539.

Sincerely,
Mr. PELL. Mr. President, I ask unanimous consent that the time for the quorum call be charged to neither side.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I suggest the time?

Mr. PELL. Mr. President, I ask unanimous consent that the time for the quorum call be charged to neither side.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

REMOVAL OF INJUNCTION OF SECURGENCY FROM THE INTERNATIONAL WHEAT AGREEMENT, 1971 (EX. C. 83D CONG. 2D SESS.)

Mr. ROBERT C. BYRD. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the Protocols for the Extension of the Wheat Trade Convention and the Food Aid Convention constituting the International Wheat Agreement, 1971, open for signature in Washington from April 2 through April 30, 1974. The Protocols were formulated by a Conference of Governments which met in London on February 8, 1974. I transmit also, for the information of the Senate, the report of the Department of State with respect to the Protocols.


The Protocol for the Extension of the Food Aid Convention, 1971, also extends until June 30, 1975, commitments of parties to provide certain minimum annual quantities of food aid to developing countries. The United States intends not to deposit ratification of this Protocol, unless the European Economic Community remains a party. This intention was formally recorded by the United States in a written declaration made at the time the Protocols were signed.

Both Protocols provide that instruments of ratification shall be deposited no later than June 18, 1974. The Wheat Convention may, however, grant an extension of time to any signatory government which has not deposited an instrument of ratification by that date.

It is my hope that the Senate will give favorable consideration to the two Protocols so that, subject to the European Economic Community remaining a party to the Food Aid Convention, ratification by the United States and instruments of ratification for the Wheat Trade Convention and the Food Aid Convention can be deposited without undue delay.

RICHARD NIXON.


ORDER FOR CONSIDERATION OF UNFINISHED BUSINESS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that after the two leaders or their designees have been recognized on this unfinished business occurring at that time, the Senate proceed to the consideration of the unfinished business.

Mr. ROBERT C. BYRD. Now, Mr. President, is it automatic that the question at that time would be on the adoption of the amendment by Mr. Grady?

Mr. ROBERT C. BYRD. The PRESIDING OFFICER. That will be laid before the Senate as the pending question under the amendment.

Mr. ROBERT C. BYRD. After the two leaders or their designees have been recognized?

The PRESIDING OFFICER. The Senator is correct.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the program for tomorrow is as follows:

The Senate will convene at the hour of 9 a.m. After the two leaders or their designees have been recognized under the