

C O P Y

BAPTIST MINISTERS CONFERENCE
of
New York City and Vicinity
31 East 31st Street
New York, N.Y.

May 13, 1947

Hon. Harold E. Stassen
Stassen Headquarters
Washington, D. C.

Dear Mr. Stassen:

We, the undersigned, have been appointed to communicate with you concerning statements regarding an envoy at the Vatican and tax funds for parochial schools which the press reported you made Friday, May 9, at the Southern Baptist Convention.

The Baptist Ministers Conference of Greater New York discussed the alleged statement at length yesterday, but decided, because of the lack of first-hand information, to postpone any judgment until it had further information. It did, however, express its deep concern over the statement which appeared in The New York Times and other newspapers and, if it does not express your point of view, hopes you will make a public repudiation of it.

The statement in The New York Times (May 10th) reads as follows:

"Harold E. Stassen, former Governor of Minnesota told delegates to the Southern Baptist Convention today that he did not agree with their stand on two issues.

"He said he was not in favor of withdrawing the President's special representative at the Vatican and that he was not opposed to the Supreme Court's decision upholding free bus transportation for parochial school pupils."

Due to the fact that we have also been asked to prepare resolutions on these very issues for presentation to the Northern Baptist Convention, being held at Atlantic City, May 19-23, we would like to get your views sometime before the beginning of the annual meeting. We would therefore appreciate it very much if you would be kind enough to give us the true interpretation of your views so that there will be no misunderstanding.

Very sincerely yours,

/s/ STANLEY I. STUBER, Chairman

Joseph Irvine Chapman

Quentin T. Lightner

Note: Read by and
approved by the other
two members.

To - Hon. Harold E. Stassen - May 13, 1947 - Page #2

P.S. -- Please send reply to Dr. Stanley I. Stuber, National
Director of Public Relations, Northern Baptist Convention,
Dennis Hotel, Atlantic City, N. J.

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JOSEPH L. EGAN
PRESIDENT

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Religious
Stanley I. Stuber

5/21/47

THIS WILL ACKNOWLEDGE RECEIPT OF YOUR LETTER OF RECENT DATE. I APPRECIATE YOUR DIRECT COMMENTS AND WILL EXPRESS TO YOU SPECIFICALLY MY VIEWS. PARAGRAPH. FIRST OF ALL MAY I ASSURE YOU THAT I DEEPLY REGRETTED FINDING MYSELF IN THE POSITION WHERE IN GOOD CONSCIENCE I WAS REQUIRED TO REGISTER MY SIMPLE AND MILDLY SPOKEN DISSENT FROM THE RESOLUTIONS WHICH WERE PASSED. I HAD NO INTENTION WHATSOEVER OF REFERRING TO THE SUBJECT BUT FOUND ON THE DAY OF MY APPEARANCE BEFORE THE CONVENTION THEY HAD ALREADY PASSED TWO RATHER EXTREMELY WORDED RESOLUTIONS AND THAT THESE RESOLUTIONS HAD BEEN WIDELY PUBLICIZED. SINCE I DID NOT AGREE WITH THE RESOLUTIONS AND SINCE I AM A BAPTIST IT APPEARED TO ME THAT IF I REMAINED SILENT ON THIS SUBJECT IT MIGHT WELL BE INTERPRETED THAT THROUGH SILENCE AND BY INFERENCE I APPROVED OF THIS WIDELY PUBLICIZED ACTION OF THE CONVENTION. PARAGRAPH. THEREFORE EARLY IN MY ADDRESS I MADE THIS STATEMENT: "BEFORE PROCEEDING WITH OUR DISCUSSION, IN ORDER THAT MY VIEW MAY NOT BE MISUNDERSTOOD BY INFERENCE, I WISH TO STATE SIMPLY AND DIRECTLY THAT I DO NOT AGREE WITH THE TWO RESOLUTIONS WHICH THE PRESS REPORTS THAT YOU HAVE PASSED ON THE QUESTIONS OF DIPLOMATIC REPRESENTATION AT THE VATICAN AND THE SUPREME COURT DECISION ON SCHOOL BUSES. I DO

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ADHERE TO THE BASIC AMERICAN PRINCIPLE OF THE SEPARATION OF CHURCH AND STATE." PARAGRAPH. YOU ARE ENTITLED TO A MORE COMPLETE STATEMENT OF MY VIEWS IN RESPONSE TO YOUR MESSAGE. PARAGRAPH. IT IS MY VIEW THAT THE SUPREME COURT MADE A VERY DIFFICULT DECISION IN A CLOSE QUESTION AND MADE IT NOT ON A BASIS OF IN ANY WAY BREACHING THE WALL OF SEPARATION OF CHURCH AND STATE BUT RATHER THE COURT MADE A DETERMINATION AS TO JUST EXACTLY WHERE THAT WALL SHOULD BE PLACED. PARAGRAPH. THE MAJORITY OPINION OF THE COURT AS ISSUED ON FEBRUARY 10TH, 1947 QUOTED WITH APPROVAL THE WORDS OF JEFFERSON, "THE CLAUSE OF THE CONSTITUTION AGAINST ESTABLISHMENT OF RELIGION BY LAW WAS INTENDED TO ERECT A WALL OF SEPARATION BETWEEN CHURCH AND STATE." THE COURT THEN ~~AND~~ ANALYZED THE QUESTION OF WHERE THAT WALL SHOULD BE PLACED WITH REFERENCE TO ACCREDITED PAROCHIAL SCHOOLS, POINTED OUT THAT QUITE CLEARLY THE CITY COULD IF IT WISHED PLACE POLICEMEN ON THE HIGHWAY IN FRONT OF A PAROCHIAL SCHOOL SO THAT THE CHILDREN COULD SAFELY CROSS THE HAZARDOUS TRAFFIC, THAT THE CITY COULD FURNISH WATER AND SEWER CONNECTIONS FOR THE PAROCHIAL SCHOOL BUILDING ON THE SAME BASIS OF CHARGE AS OTHER BUILDINGS EVEN THOUGH THIS DID NOT COVER THE ENTIRE COST OF THOSE FACILITIES AND A PART OF THE COST FOR THE ENTIRE CITY WAS BORNE BY TAX PAYERS. THE COURT ALSO POINTED OUT THAT THE CITY COULD FURNISH PUBLIC HIGHWAYS, SIDEWALKS, AND FIRE PROTECTION, ON A SIMILAR BASIS. THE COURT MADE IT CLEAR THAT THE CITY

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Page 3 -

COULD NOT CONTRIBUTE TAX-RAISED FUNDS FOR THE SUPPORT OF SUCH AN INSTITUTION OR ITS TEACHERS. THEN THE COURT PROCEEDED TO SAY THAT THE CONSTITUTION CANNOT BE INTERPRETED, "TO EXCLUDE INDIVIDUAL CATHOLICS, LUTHERANS, MOHAMMEDANS, BAPTISTS, JEWS, METHODISTS, NON-BELIEVERS, PRESBYTERIANS, OR THE MEMBERS OF ANY OTHER FAITH, BECAUSE OF THEIR FAITH, OR LACK OF IT, FROM RECEIVING THE BENEFITS OF PUBLIC WELFARE LEGISLATION." THEY CONTINUED, "WE MUST BE CAREFUL, IN PROTECTING THE CITIZENS OF NEW ~~JERSEY~~ JERSEY AGAINST STATE-ESTABLISHED CHURCHES, TO BE SURE THAT WE DO NOT INADVERTENTLY PROHIBIT NEW JERSEY FROM EXTENDING ITS GENERAL STATE LAW BENEFITS TO ALL ITS CITIZENS WITHOUT REGARD TO THEIR RELIGIOUS BELIEF." PARAGRAPH. THEN THE COURT CONCLUDED, "THE STATE CONTRIBUTES NO MONEY TO THE SCHOOLS. IT DOES NOT SUPPORT THEM. ITS LEGISLATION, AS APPLIED, DOES NO MORE THAN PROVIDE A GENERAL PROGRAM TO HELP PARENTS GET THEIR CHILDREN, REGARDLESS OF THEIR RELIGION, SAFELY AND EXPEDITIOUSLY TO AND FROM ACCREDITED SCHOOLS." PARAGRAPH. "THE FIRST AMENDMENT HAS ERECTED A WALL BETWEEN CHURCH AND STATE. THAT WALL MUST BE KEPT HIGH AND IMPREGNABLE. WE COULD NOT APPROVE THE SLIGHTEST BREACH. NEW JERSEY HAS NOT BREACHED IT HERE. AFFIRMED." PARAGRAPH. CLEARLY IT WAS A VERY CLOSE QUESTION TO DECIDE AND IT WAS ~~DECE~~ DECIDED ON A BASIS OF THE GREAT PRINCIPLE OF SEPARATION OF CHURCH AND STATE IN WHICH WE AGREE. WHEN THE SUPREME COURT HAS DECIDED THE CASE IT IS THEN MY VIEW THAT IT IS THE PART OF ALL CITIZENS TO RESPECT THE DECISION OF

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THE COURT. I DO NOT CONSIDER IT TO BE IN KEEPING WITH THE DIGNITY OR THE STANDING OR THE TEACHINGS OF MY GREAT RELIGIOUS DENOMINATION TO ATTACK A DECISION OF THE SUPREME COURT AFTER IT IS MADE. PARAGRAPH. IF ANY NEW CASE OF AN ATTEMPT TO REACH BEYOND THE SCHOOL BUS SITUATION WERE TO ARISE, THEN CLEAR AND VIGOROUS PRESENTATION OF THAT NEW CASE IN THE COURTS WOULD BE ENTIRELY PROPER AND ESSENTIAL AND WE MAY WELL FIND IN FACT THAT THE DECISION OF THE NEW JERSEY CASE WOULD BE OF GREAT ASSISTANCE IN DRAWING THE LINE. PARAGRAPH. AS TO THE OTHER QUESTION IT IS MY VIEW THAT IN THIS POSTWAR SITUATION OF WORLD EMERGENCY AND SUFFERING AND OF CONFLICTING IDEOLOGICAL VIEWS, IF ~~PRESENT~~ PRESIDENT TRUMAN WISHES TO HAVE A REPRESENTATIVE AT THE VATICAN THAT IS NOT THE KIND OF SITUATION TO WHICH IT IS EITHER CONSTRUCTIVE OR HELPFUL FOR OUR DENOMINATION TO MAKE PROTEST NOR DOES IT SERVE OUR SUPREME OBJECTIVE OF REACHING MEN, WOMEN AND CHILDREN WITH THE EVERLASTING MESSAGE OF OUR FAITH. PARAGRAPH. I TRUST YOU WILL RESPECT MY VIEWS AND EXCUSE MY VERY FRANK ANSWER TO YOUR DIRECT QUESTION. SINCERELY YOURS,

HAROLD E. STASSEN

Rel.
May 16, 1947

*my
mc.*

Rev. Father Joseph McSorley,
Paulist Fathers
415 West 59th Street,
New York 19, N. Y.

Dear Rev. Father McSorley:

Thank you for your kind letter of May 10th.

I appreciate your thoughtfulness in writing
to me.

Sincerely,

HES db

928
PAULIST FATHERS
415 WEST 59TH STREET
NEW YORK 19, N. Y.

May 10, 1947

Dear Governor Stassen,

This morning--not for the first time--I noticed with deep appreciation your forthright pronouncement upon the very important issue of good will versus dissension among different religious groups of Americans.

I am taking the liberty of enclosing a brief article which brings together a number of facts connected with religious education. My thought is that possibly sometime the summary may be of help in case you have to discuss some of these matters at short notice.

With every good wish, I am

Yours very sincerely,

J. McSorley

Joseph McSorley

reg
Ackn
I Appreciate
your kind
letter &
your thoughtful
in writing
to me
J.S.

STATE AID TO PARISH SCHOOLS

BY JOSEPH MCSORLEY

of the Paulist Fathers

DR. V. T. THAYER, "for eighteen years educational director of the Ethical Culture Schools in New York City," has written a book¹ which is advertised as "valuable ammunition in the war that must constantly be waged against encroachments on freedom of religion." Substantially a brief for naturalistic education, it does not speak out clearly on all the issues involved; but it does suggest that the nation would fare better if all training in supernatural religion were eliminated. The author definitely opposes the equalizing of privileges in public schools and in parish schools, and also the compensating of parents for education given at their expense in legally established parish schools; either of these concessions he would regard as a breach in "the traditional wall of separation between Church and State."

Here then is a new contribution to a discussion that is exciting the interest of every type of citizen from the expert in constitutional law to the taxpaying village storekeeper. The discussion discloses interlocking issues and tangled interests; yet, as the book before us reveals, the chief disputes revolve around the simple question: "May the State impose an educational pattern (including theories about religion) upon all the children?" Totalitarians of course answer "Yes"; and Catholics answer "No." But then, many

non-totalitarians also answer "Yes"; and many non-Catholics answer "No." It will clarify matters, therefore, if everyone who discusses the matter begins by making clear to himself and to others his own inner convictions with regard to two points:

1. Should a democratic State recognize the right of private non-profit schools to give a civil education that conforms to legal standards together with a religious education that conforms to parental wishes?

2. May the State, by unequal distribution of privileges, put pressure on parents to withdraw their children from religious schools and send them to public schools where they will be indoctrinated in a naturalistic theory of religion?

As to the first question the majority of Americans would agree. Legally established religious schools have existed from the beginning of our national life. Nevertheless, there are citizens who would like to see this type of school suppressed; and on some occasions they have made their weight felt throughout the country. It is chiefly with regard to the second question, however, that division and confusion prevail; and, by way of helping in the forming of a balanced opinion on it, we shall recall some facts which supplement certain inadequacies in Dr. Thayer's presentation.²

¹ *Religion in Public Education*. New York: The Viking Press, \$2.75.

² *Public Funds for Church and Private Schools*, by Richard J. Gabel (Washington, D. C.: The Catholic University of America,

Roughly speaking, the history of education in the United States may be divided into three periods: From the birth of the nation to the second quarter of the nineteenth century; From then until 1900; From 1900 to the present time.

During the first of these periods most of the schools were private and religious, and most of them received aid from the State; for neither the Founding Fathers nor the next generation of Americans regarded this arrangement as incompatible with the First Amendment to the Constitution excluding "an establishment of religion." Several influences combined to terminate this period of co-operation. One factor was disputes among religious schools over their respective shares of public money; another was the attitude taken by Horace Mann, pioneer of the free public school system, and champion of what he called "non-sectarianism." The establishment of the Massachusetts Board of Education in 1837 and of the New York City Board of Education in 1842 marked the beginning of a new era. Before long the refusal of aid to religious schools came to be urged as a necessary means of preserving separation of Church and State.

The second period saw the rapid spread of the public school system and a growing inclination to withdraw State aid from religious schools. With the slogan "Keep Church and State separate," pressure groups pushed through the

legislatures of various States a welter of statutes, often contradictory to one another, which, although theoretically impartial, helped the public schools to indoctrinate the population with "unsectarianism." In the hope of cutting off aid to religious schools at its source, an attempt was made in 1876 to enact a Constitutional Amendment which would prohibit payment of public funds to any institution that taught "sectarian" tenets. But in that same year an article (possibly by Father Hecker) in *THE CATHOLIC WORLD*, commenting on President Grant's opposition to the support of "any sectarian schools," pointed out that, if the law were impartially applied, not one dollar would go to the public schools, which were teaching "sectarian, pagan, and atheistical dogmas" (Vol. XXII., p. 438).

As time passed, religious schools, except among Catholics and Lutherans, dwindled to the vanishing point. A writer in *THE CATHOLIC WORLD* (again, perhaps, Father Hecker) had already, in 1870, called on Protestants to unite with Catholics in defense of religious education on the ground that the secularist invasion of the public schools was striking not only at "all Christian faith and Christian morals, but at the family, the State, and civilized society itself" (Vol. XI., p. 105). In 1873 a group of leaders in the Protestant Episcopal Church, proclaiming that an equitable division of school money among Church schools would do no violence to the Constitution, lamented that "the great majority have not yet learned to conceive that minorities have rights even in matters of conscience"; and in 1887 Dr. Hodge of Princeton commended the stand of the Catholic Church. Yet, on the whole, the defense of re-

1937), is a treasury of information and should be available in every library. Incidentally, the book was cited in the recent Supreme Court decision on the New Jersey School Transportation Case, both in the opinion of the Court and in the dissenting opinion delivered by Mr. Justice Rutledge. Another invaluable book is *Naturalism in American Education*, by Geoffrey O'Connell. New York: Benziger Bros., 1938.

ligious education was left almost entirely to Catholics; and almost every anti-Catholic movement included an attack on parish schools.

In the third period, seeds planted in the preceding century bore fruit. John Dewey, who has been called "the most influential thinker in contemporary American education," together with William Kilpatrick, Harold Rugg, Edward Thorndyke and their countless disciples, dominated the public school system; and, under the cloak of "unsectarianism," they converted it into a powerful propaganda machine for the theory that there is (1) No Personal Creator; (2) No Absolute Truth; (3) No Certainty (except in physical science). In 1934 President Nicholas Murray Butler of Columbia University, after reaffirming separation of Church and State as a fundamental principle in the American political order, declared that in the field of education "this principle has been so far departed from as to put the whole force and influence of the tax-supported school on the side of one element of the population, namely that which is pagan and believes in no religion whatsoever."³

The advocates of this one-sided "unsectarianism" have persisted in their attempts to cripple or destroy the Catholic school system by the tendentious interpretation of existing laws and by the passing of new legislation. Pleas to keep Church and State separate and references to the First Amendment are frequent; and most persons overlook the reminder of Secretary Fisher (of President Taft's Cabinet) that the First Amendment prohibits the establishment of a State Church and the support thereof, but not appropriations for religious purposes.

³ Columbia University *Bulletin of Information*, December 15, 1934. P. 22.

The trend toward totalitarianism in the field of education has become aggressive. On three occasions, within a quarter-century, the Supreme Court of the United States intervened to defend the constitutional rights of Catholics.

In 1922 the State of Oregon passed a law obliging all children to attend public schools. The Society of Sisters of the Holy Names, claiming that the law violated the Fourteenth Amendment, obtained an injunction from a United States District Court. Governor Pierce then appealed the case to the United States Supreme Court, which ruled that the Oregon Compulsory Education Act "unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control."⁴

In 1928 the State of Louisiana passed a law directing the State Board of Education to provide "school books for school children free of cost to such children." Certain taxpayers brought suit to enjoin the Board of Education from so doing on the ground that the legislation violated State laws and also the Fourteenth Amendment of the Federal Constitution. A State court refused to issue the injunction; and, on appeal, this judgment was affirmed, first by the Supreme Court of Louisiana, and then by the Supreme Court of the United States, with Mr. Justice Hughes delivering the opinion.⁵ The decision of this case obviously resulted in giving considerable indirect aid to the religious schools of the State.

In 1941 the State of New Jersey passed a law authorizing local school districts to provide children with free transportation to and from

⁴ *Pierce v. Society of Sisters*, 268 U. S. 534.

⁵ *Cockran v. Louisiana State Board of Education*, 281 U. S. 370 (1930).

all non-profit schools. A taxpayer, Arch R. Everson, challenged the law as a violation of both the State and the Federal Constitution. A State court decided in his favor; the New Jersey Court of Errors and Appeals reversed that decision. The case was then appealed to the United States Supreme Court which, in February, 1947, by a 5 to 4 decision, upheld the New Jersey statute of 1941.⁶ Mr. Justice Rutledge (who cites Dr. Thayer's book), in his dissenting opinion, held that the First Amendment to the Constitution prohibits any sort of State aid to schools which teach religion; and he declared that he would never sustain any appropriations by a State unless "it can be found that in fact they do not aid, promote, encourage or sustain religious teaching or observances, be the amount large or small." Mr. Justice Black, who delivered the opinion of the Court, pointed out that the implication of this dissenting view would justify a State in cutting parish schools off "from such general Government services as ordinary police and fire protection, connection with sewage disposal, public highways and sidewalks."

The American mind seems to be in a muddled condition with regard to the relation between religion and the schools. Several fundamental legal problems remain unsolved; there is grave confusion about ethical principles. On the one hand, some non-Catholics, like Dr. Thayer, invoke the Bill of Rights against such minor concessions as "the released time plan"; but other non-Catholics, like Professor William Adams Brown, see no objection to "the teaching of religion on

school premises and during school hours, if this can be done without expense to the State and under conditions which guarantee educational efficiency and safeguard religious equality."⁷ Even more significant is the clash of views between the two Supreme Court Justices in the New Jersey School Transportation Case. Some of the arguments advanced by Mr. Justice Rutledge logically imply that the First Amendment would invalidate a State's purchase of land from a parish, if and because the transaction would be of benefit to the parish. To most men that seems unreasonable. But, if a State may purchase land from a parish, may it not with equal reason compensate a parish for giving civil education to children whose training would otherwise be a charge upon the State?

There remain two important considerations which throw a favorable light on the parish school:

1. The civil education given in Catholic schools represents an annual burden of some \$300,000,000 lifted from the shoulders of the taxpayers of the country and borne by the Catholic people.

2. What is far more important, the education given in Catholic schools forms one of our nation's best bulwarks against a grave danger pointed out by many clear thinkers.

The following may serve as examples: In 1936 Professor Louis J. A. Mercier declared: "What our most prominent American educational leaders have been doing in the last thirty-five years is to formulate and propagate such doctrines as must inevitably undermine American in-

⁶ *Everson v. Board of Education*, Supreme Court of the United States, No. 52, October Term, 1946, decided February 10, 1947.

⁷ *Church and State in Contemporary America*. New York: Charles Scribner's Sons, 1936. P. 273.

stitutions and prepare the advent in the United States of atheistic totalitarianism."⁸ In 1940 Dr. Mortimer Adler, addressing the Conference on Science, Philosophy and Religion, asserted that most of the professors in American colleges and universities teach positivism, the essential point of which "is simply the affirmation of science, and the denial of philosophy and religion." He said, furthermore, that "the most serious threat to Democracy is the posi-

⁸ Preface to *Naturalism in American Education*. P. viii.

tivism of the professors, which dominates every aspect of modern education and is the central corruption of modern culture. Democracy has much more to fear from the mentality of its teachers than from the nihilism of Hitler."⁹

It would appear to be a patriotic duty then, for Americans to go as far as they legally can in favoring, rather than in hampering, the activities of the parish school.

⁹ *Science, Philosophy and Religion, A Symposium*. Conference on Science, Philosophy and Religion. New York, 1938. Pp. 107, 108.

A CHILD IN A YELLOW DRESS

BY VIOLET ALLEYN STOREY

CHILD in a yellow dress—
 All loveliness—
 With long, unplaited hair,
 Lustrously fair—
 With leghorn hat,
 Crown elfin-peaked, its brim
 So toadstool-flat—
 Poppies and daisies—bluets for its trim.
 Child, eyes as blue as bluets, lips and cheeks a poppy-red,
 Skin daisy-petal white—
 As though 'twere aureoled with light,
 How high you hold your little head.
 Child, slim and tall—
 Your years now ten in all—
 You'll grow a girl so soon—
 Morning is drifting toward high noon—
 Maytime fast edging into June.
 Child, in this moment, in this place,
 Palimpsest of all childhood's grace,
 Charming the promise that you yield—
 The memory, too, of a Swiss field—
 A small Swiss field, its spring bloom fleet
 Yet fearless at the Jungfrau's feet.

A NOTE ON THE CONSTRUCTION OF A LEGEND

BY C. J. MAGUIRE

WITH the recent flood of books in memory of Franklin Roosevelt, the direct biographies and the revelations of personal relationships to him, several critics, unquestionably favorable to the subject, have been moved to comment on the rapid growth and the present magnitude of the "Roosevelt legend." They have seen this already flourishing much in the way that the Washington and Lincoln legends flourish.

The tendency of most of these early appraisals of the late President has been quite naturally toward lavish glorification by enthusiasts. As an indicative, although minor case, the British "common man" who not long ago wrote a letter to *The New York Times* may be cited. In that overseas communication from a grateful citizen of an allied nation the statement, "This is my beloved son, in whom I am well pleased," is hazarded as the utterance of God on learning of the death of Roosevelt. It would be hard to find a more complete devotion "this side idolatry" if, in truth, the limit has not already been overstepped.

Despite the generally laudatory character of most of the public statements about Franklin Roosevelt there has been frequent criticism. Investigations are promised to inquire into the real substance of the Roosevelt record. What the upshot of all this research and writing will be cannot be foretold at present. This note has nothing to do with the

Roosevelt record in itself; it deals only with a widely prevalent belief which has the strongest voice imaginable in the day's press.

One need not be a historian to recognize that the record is incomplete without a scientific organization of facts and a reasonable evaluation of those facts. It would be most rash, from this point of view, to assert that the "historical" judgment on Franklin Roosevelt can now be formed. Obviously, not *all* the important facts of his career are known; not *all* the necessary documents are available for examination. Even the scientific organization is as yet incomplete.

Beyond the assemblage of facts, the evaluation of his career must take even longer to frame and must be subject to alteration as the effects of his actions are weighed. Distinction must be made between the evaluation of Roosevelt the individual, and Roosevelt the effective statesman. The first may be made almost instantly when the factual evidence is amassed; that is, his *purposes* can then be judged independently of their achievement. The evaluation of the statesman's *policy* is dependent in great part, however, on the results they produce in the future. When these results are *predictable*, by their inevitability, they too can be judged on examination of the organized record in advance of their actuality; where the result is a "may" or a "may not," the success of the policy cannot be known until the eventuality.

May 14, 1947

Father Joseph McSorley,
Paulist Fathers
415 West 59th Street,
New York 19, N. Y.

Dear Father McSorley:

This will acknowledge receipt of your
letter of May 10th addressed to Governor
Stassen.

Your letter will be called to his personal
attention at the earliest opportunity.

Yours very truly,

vac

Secretary

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JOSEPH L. EGAN, PRESIDENT

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May 17, 1948

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JOSEPH MCCARTHY
755 NEW HEATHMAN HOTEL
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N. O. G. or Zi-*

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A. N. WILLIAMS
PRESIDENT

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NEW ORLEANS BAPTIST PASTORS CONFERENCE VIGOROUSLY PROTESTS
YOUR USING SOUTHERN BAPTIST CONVENTION PROGRAM AS
POLITICAL FORUM TO EXPOUND AS MATTER OF POLITICAL
EXPEDIENCY YOUR VIEWS PERTAINING TO THE TIME HONORED
AMERICAN PRINCIPLE OF COMPLETE SEPARATION CHURCH AND
STATE.

YOU ARE ENTITLED TO YOUR OWN VIEWS BUT YOUR UTTERANCES
AS OUR GUEST SPEAKER IN OPPOSITION TO EXPRESSED CONVICTION
OF THE CONVENTION WE HOLD MOST REPREHENSIBLE.

TO PROFESS A BELIEF IN SEPARATION OF CHURCH AND STATE
AND AT THE SAME TIME TO UPHOLD AS YOU DID THE
UNCONSTITUTIONAL RETENTION OF UNAUTHORIZED REPRESENTATION
AT THE VATICAN AND THE SUBSIDIZING OF PAROCHIAL EDUCATION
WITH PUBLIC FUNDS IS INCONSISTENT AND UNTHINKABLE=

NEW ORLEANS BAPTIST PASTORS CONFERENCE D HOYLE HAIRE
PRESIDENT.

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HON HAROLD STASSEN
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NEW ORLEANS BAPTIST PASTORS CONFERENCE VIGOROUSLY PROTESTS YOUR USING SOUTHERN BAPTIST CONVENTION PROGRAM AS POLITICAL FORUM TO EXPOUND AS MATTER OF POLITICAL EXPEDIENCY YOUR VIEWS PERTAINING TO THE TIME HONORED AMERICAN PRINCIPLE OF COMPLETE SEPARATION OF CHURCH AND STATE.

YOU ARE ENTITLED TO YOUR OWN VIEWS BUT YOUR UTTERANCES AS OUR GUEST SPEAKER IN OPPOSITION TO EXPRESSED CONVICTION OF THE CONVENTION WE HOLD MOST REPREHENSIBLE.

TO PROFESS A BELIEF IN SEPARATION OF CHURCH AND STATE AND AT THE SAME TIME TO UPHOLD AS YOU DID THE UNCONSTITUTIONAL RETENTION OF UNAUTHORIZED REPRESENTATION AT THE VATICAN AND THE SUBSIDIZING OF PAROCHIAL EDUCATION WITH PUBLIC FUNDS IS INCONSISTENT AND UNTHINKABLE.

NEW ORLEANS BAPTIST PASTORS CONFERENCE
D. HOYLE HAIRE, PRESIDENT

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(COPY)

HAROLD E. STASSEN
707 Pioneer Building,
St. Paul 1, Minnesota

May 29, 1947

New Orleans Baptist Pastors Conference,
Reverend D. Hoyle Haire, President,
New Orleans, Louisiana.

Gentlemen:

This will acknowledge receipt of your letter of May 19th. I appreciate your direct comments and will express to you specifically my views.

First of all, may I assure you that I deeply regretted finding myself in the position where in good conscience I was required to register my simple and mildly spoken dissent from the resolutions which were passed. I had no intention whatsoever of referring to the subject but found on the day of my appearance before the Convention they had already passed two rather extremely worded resolutions and that these resolutions had been widely publicized. Since I did not agree with the resolutions and since I am a Baptist it appeared to me that if I remained silent on this subject it might well be interpreted that through silence and by inference I approved of this widely publicized action of the Convention.

Therefore, early in my address I made this statement: "Before proceeding with our discussion, in order that my view may not be misunderstood by inference, I wish to state simply and directly that I do not agree with the two resolutions which the press reports that you have passed on the questions of diplomatic representation at the Vatican and the Supreme Court decision on school busses. I do adhere to the basic American principle of the separation of Church and State."

You are entitled to a more complete statement of my views in response to your message.

It is my view that the Supreme Court made a very difficult decision in a close question and made it not on a basis of in any way breaching the wall of separation of Church and State but rather the court made a determination as to just exactly where the wall should be placed.

The majority opinion of the court as issued on February 10, 1947, quoted with approval the words of Jefferson, "the clause of the constitution against establishment of religion by law was intended to erect a wall of separation between Church and State." The court then analyzed the question of where that wall should be placed with reference to accredited parochial schools, pointed out that quite clearly the city could if it wished place policemen on the highway in front of a parochial school so that the children could safely cross the hazardous traffic, that the city could furnish water and sewer connections for the parochial school building on the same basis of charge as other buildings, even though this did not cover the entire cost of those facilities and a part of the cost for the entire city was borne by tax payers. The court also pointed out that the city could furnish public highways, sidewalks, and fire protection, on a similar basis. The court made it clear that the city could not contribute tax-raised funds for the

support of such an institution or its teachers. Then the court proceeded to say that the constitution cannot be interpreted, "to exclude individual Catholics, Lutherans, Mohammedans, Baptists, Jews, Methodists, Non-believers, Presbyterians, or the members of any other faith, because of their faith, or lack of it, from receiving the benefits of public welfare legislation." They continued, "We must be careful, in protecting the citizens of New Jersey against state-established churches, to be sure that we do not inadvertently prohibit New Jersey from extending its general State Law benefits to all its citizens without regard to their religious belief."

Then the court concluded, "The state contributes no money to the schools. It does not support them. Its legislation, as applied, does no more than provide a general program to help parents get their children, regardless of their religion, safely and expeditiously to and from accredited schools."

The first amendment has erected a wall between Church and State. That wall must be kept high and impregnable. We could not approve the slightest breach. New Jersey has not breached it here. Affirmed."

Clearly it was a very close question to decide and it was decided on a basis of the great principle of separation of Church and State in which we agree. When the Supreme Court has decided the case it is then my view that it is the part of all citizens to respect the decision of the court. I do not consider it to be in keeping with the dignity or the standing or the teachings of my great religious denomination to attack a decision of the Supreme Court after it is made.

If in any new case of an attempt to reach beyond the school bus situation were to arise, then clear and vigorous presentation of that new case in the courts would be entirely proper and essential and we may well find in fact that the decision of the New Jersey case would be of great assistance in drawing the line.

As to the other question, it is my view that in this postwar situation of world emergency and suffering and of conflicting ideological views, if President Truman wishes to have a representative at the Vatican that is not the kind of situation to which it is either constructive or helpful for our denomination to make protest nor does it serve our supreme objective of reaching men, women and children with the everlasting message of our faith.

I trust you will respect my views and excuse my very frank answer to your direct question.

I trust you will have no objection to my sending copies of your wire and my reply to others who inquire of my views.

Sincerely yours,

(signed) Harold E. Stassen

**FEDERAL AID
TO
SECTARIAN EDUCATION?**

**THE FEDERAL COUNCIL OF THE
CHURCHES OF CHRIST IN AMERICA
297 FOURTH AVENUE, NEW YORK 10, N. Y.**

April, 1947

Price 15 cents

FEDERAL AID TO SECTARIAN EDUCATION?

EXPLANATORY NOTE:

This pamphlet is published as an aid to understanding the issues involved in various bills introduced in the 80th Congress to provide federal aid to education. It is obviously not intended to present in this brief compass an exhaustive historical and theoretical analysis. This material is published on the assumption that many citizens will desire to be alert to the bearing of the proposed legislation upon our American democratic institutions and traditions. The Executive Committee of the Federal Council of Churches instructed the staff to issue such a pamphlet. Dr. Roswell P. Barnes, Associate General Secretary, assumed the responsibility.

THE POSITION OF THE FEDERAL COUNCIL OF CHURCHES

*(Resolution adopted by the Executive Committee of the
Federal Council of the Churches of Christ in America,
January 28, 1947)*

THE Executive Committee of the Federal Council of the Churches of Christ in America feels deep concern over the emergency in public education in the United States. Depletion in the ranks of teachers incident upon their turning to more remunerative occupations and continued lack of resources for the equalization of educational opportunity thruout the nation place our public schools in urgent need. To allow educational standards to deteriorate is to invite social disaster.

We therefore urge the appropriation of sufficient federal funds in subsidy to prevent a lowering of standards in the teaching profession and to remove, at least in substantial measure, the educational handicap under which many children and youth suffer because of the relatively low economic level of the communities in which they reside. We urge such appropriations on condition (a) that no federal funds shall be made available to states to be used in such a way as to discriminate against any minority racial group; (b) that the administration of federal funds made available to

states shall be safeguarded against the imposition of federal control in matters of educational policy; and (c) that federal funds shall be used only for such schools as the constitutions or statutes of the several states make eligible for state support.

We affirm our continued adherence to the American principle of the separation of church and state, and to the principle that public funds should not be used for sectarian purposes.

WHY ARE PROTESTANTS CONCERNED?

The resolution of the Federal Council of the Churches of Christ in America, quoted above, reflects two concerns of Protestants generally with regard to federal aid to education:

Protestants generally believe that the present crisis in education requires the granting of federal funds in aid to some of the states. They believe that citizenship is national and that the failure of education in any part of the country or for any group is a threat to democracy and a loss to the nation as a whole. They therefore favor federal aid to education through the states to insure a greater equalization of educational opportunities, but on condition that its administration be under proper safeguards against federal control of educational policy in the states.

They are concerned that federal aid under proposed legislation should not be given in such a way as to impair the public school system or to infringe upon our constitutional and traditional principle that public funds should not be used for sectarian institutions or purposes. Many Protestants share with adherents of other religious groups a concern that secular education is not enough and that religious education is essential for sound democracy. However, they do not agree that an increase in sectarian schools as alternatives to public schools is the best or only solution of the difficulty.

Protestants generally believe that our American democracy would be impaired by the increasing fragmentation of education and the insistent demand for state support for sectarian schools that would still further promote cultural segregation. The granting of public funds, which would result in the increased transfer of Roman Catholic pupils to parochial schools in cities where Roman Catholics predominate or are a considerable portion of the population, would undermine the public schools and would deepen a cultural schism which would tend to impair our democracy.

Protestants would not be so deeply concerned over this matter if they did not believe that Roman Catholic principle and policy are not fully in accord with some basic aspects of American democratic tradition. Their misgivings are based upon such examples of Roman Catholic policy as the following:

- a. The protest of the Roman Catholic hierarchy in the United States in 1942 against Protestant missions in Latin America.
- b. The widespread demand among Roman Catholics for the establishment of diplomatic relations with the Vatican, and their protest against the Protestant insistence that Mr. Myron Taylor's present temporary status should not become permanent. This insistence they condemn as Protestant bigotry.
- c. Recent statements by Roman Catholic leaders questioning the soundness of our traditional American principle of separation of church and state. The Most Rev. Richard Cushing, Roman Catholic Archbishop of Boston, in an address before the Association of American Colleges, reported in the *New York Times* of January 14, 1947, is said to have described "the extreme development of the idea of separation of the church and state as 'fantastic and un-American'."

Rev. John Courtney Murray, in an article in the Roman Catholic journal "America" of February 15, 1947, writes as follows in connection with an analysis of the Protestant objection to the use of federal funds for parochial school children:

"It is already significant that the Protestant campaign is not being waged under the device of 'religious liberty' or 'freedom of conscience'; neither of these two positive, intelligible formulas would suit the purpose. Rather, the banner bears the slogan, 'separation of Church and State'—that negative, ill-defined, basically un-American formula, with all its overtones of religious prejudice. This fact affords a preliminary insight into the ultimate forces that are inspiring the campaign; they are the forces of emotion and religious rivalry, not of reason and patriotic sentiment."

Having such Roman Catholic statements in mind, Protestants are concerned not only with the specific merits of the various bills proposed but also with the precedents that may be established in a time of emergency and which subsequently might prove to have been serious infringements of democracy.

HISTORICAL BACKGROUND

The Constitution of the United States left the control of education to the states. Education is one of the states' rights which has always been jealously guarded. Most proposals which have been advanced looking toward the enlargement of the federal interest in education have been met by resistance and suspicion. This deep-seated fear of federal interference has kept the United States Office of Education as a very subordinate agency of government.

In practice, however, the states have not always been averse to accepting some forms of federal subsidy. Beginning in 1785, the government set aside certain land grants for the benefit of education. There is a long list of such land grants, direct money grants and of subventions for many special purposes. Specific annual grants have included aid for scientific investigation, vocational training, agricultural advancement, domestic science, veterans' education and many other worthy causes. During the depression, the federal government poured millions into the CCC and NYA. Through the WPA both schools and colleges were greatly benefitted by federal assistance. During the war the armed forces made wide use of college and university facilities, and many institutions were the beneficiaries of federal contracts. In the post-war period, educational agencies have been given priorities and price concessions on surplus war materials. Even more important benefits have flowed to a wide range of educational institutions both public and private from federal subsidies under the G.I. Bill of Rights, and for veterans' housing. Such examples of federal aid to specific aspects of secular education have been numerous.

The separation of church and state is another basic constitutional principle in American life. It has been assumed that religious liberty required, in the words of Thomas Jefferson, "a wall of separation between church and state." As a corollary to this principle, we have held that public funds must not be used for sectarian education.

This doctrine has recently been reaffirmed by the Judges of the Supreme Court in the *Everson Case*, "Bus Transportation for Parochial Schools in New Jersey." On this principle the court was unanimous.

The Roman Catholic Church for reasons of its own — and some of them are good reasons — has established its own private parochial school system. It has insisted that the denial of public

tax funds for these schools is unfair and unjust. Roman Catholics have made large sacrifices to maintain and expand their school system which now runs from the elementary school to the university. According to their reports, the number of pupils enrolled in parochial schools declined between 1932 and 1946. It is not surprising that they have tested public opinion, administrative procedure and the courts in an effort to gain relief from their double burden of educational expense involved in taxation and contributions for their own schools.

Today they can point to many breaches in the historic doctrine forbidding the use of public funds for the benefit of private schools. Most of these breaches occurred under the exigencies of depression and war especially at the university level.

Even at the public school level, there has been some use of public funds in which private schools have shared by local consent, court authority, or legislation. In this list may be included school lunches, bus transportation for parochial children in 18 states and textbooks for parochial schools in 5 states. It cannot be denied that public funds have been and are being used for sectarian benefits. In the recent judgment of the Supreme Court on bus transportation the majority of the Court (5) based its decision on the theory of "public welfare" and disclaimed any intention of modifying the historic separation of church and state. The minority of the Court (4) disagreed with this reasoning.

It is expected that one outcome of this decision will be increased pressure for the diversion of public funds for sectarian purposes.

There are numerous bills, now under consideration by Congressional committees, which propose various forms of federal aid for public and private schools. These bills are the successors of a long line of bills for federal aid to public schools going back to 1919 but never yet enacted into law.

The first World War brought a startling revelation of the inadequacy and inequality of American education. Studies by the N.E.A. showed that these deficiencies were in large part due to economic inability of many states and local communities. Year after year, remedial bills proposing federal aid were brought forward but always defeated or carried over to a more convenient season. The opposition followed a familiar pattern: the danger of federal interference in state affairs, economy in the federal gov-

ernment, the unfairness of taxing the wealthy and educationally well provided states for the benefit of the poorer states in a different section of the country, and the appeals for "minority rights," including aid to parochial schools.

World War II once again revealed the shocking inequalities of state education and its implications for national defense as well as national citizenship. Once more we have several bills proposing federal aid to education.

THE ISSUES

Certain immediate issues, suggested by the following questions, should be in the reader's mind as he studies the Pertinent Facts and Opinions which constitute the remainder of this pamphlet:

Is the public school system essential to American democracy?

Would the support of private sectarian schools by federal funds weaken the public school system?

Should depression and war measures be accepted as established practice in the use of federal funds in support of education?

Would the use of federal funds for parochial schools be a contravention of historical American democratic principles?

Shall we support the principle in the Taft Bill which does not permit the use of federal grants in aid to parochial schools except in the 18 states where state law makes such sectarian grants possible from state funds?

Shall we accept proposed amendments to the Taft Bill which would extend federal aid to private schools in all states regardless of the laws of the states with regard to the eligibility of such schools to public funds?

PERTINENT FACTS AND OPINIONS

1. The First Amendment to the Constitution of the United States
2. Provision in Section 1 of the Fourteenth Amendment to the Constitution of the United States making the first Amendment applicable to States.
3. Important bills pending in the 80th Congress
4. Summary of Practices in States
5. Supreme Court Opinions on the New Jersey School Transportation Issue

6. A Protestant Opinion
Bishop G. Bromley Oxnam
7. Some Roman Catholic Opinions
 - a. From The Pope
 - b. From The National Catholic Welfare Conference
 - c. From Archbishop Nicholas
 - d. From Editorial in *Commonweal* of March 14, 1947
8. American Democracy and the Public School System

1. The First Amendment to the Constitution of the United States

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances."

2. Provision in Section 1 of the Fourteenth Amendment to the Constitution of the United States making the First Amendment applicable to States

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

3. Important Bills Pending in 80th Congress

Numerous bills have been introduced into the 80th Congress to provide federal aid to education. The Taft and Aiken bills are characteristic of two different policies.

Robert A. Taft, Ohio, for himself and Senators Thomas, Utah; Ellender, La.; Hill, Ala.; Smith, N. J.; Cooper, Ky.; Chavez, N. M.; and Tobey, N. H., sponsors S.472, which is unchanged in essentials from the well-known S.181 of the previous Congress, which Senators Thomas and Hill originally introduced. It is the measure advocated by the National Education Association.

The general purpose of S.472 is to provide eventually a "floor" of \$40 a year per school child for elementary and secondary educa-

tion throughout the nation. Appropriations of \$150,000,000 in the fiscal year ending June 30, 1948, \$200,000,000 in 1949 and \$250,000,000 in 1950 and annually thereafter would be authorized. Under the formula of apportionment, grants would be made to only 33 states, including all the Southern states.

The bill repeats the usual declaration that the states, and not any federal agency or official, shall supervise or control education. However, the Commissioner of Education, who would administer the grants, would be empowered to require reports from the states with respect to disbursements. It is generally recognized that at least an "accounting-control" is inherently involved in all types of federal grants in aid.

The reference to separate schools for minority races states that these should have a "just and equitable proportion" of federal funds, "without reduction of the proportion of state and local moneys . . ." received by them. The just and equitable percentage is specifically defined as the "proportion that each such minority racial group in such state bears to the total population of that state."

Conditional grants to parochial schools would be authorized. A state would be permitted under Section 6(B) to use federal funds for "non-public educational institutions," if the federal funds for this purpose are matched with an equal amount of state or local revenues. (The states would not be required to match federal funds for other purposes.) It is understood that the constitutions of some 40 states prohibit the granting of public funds to private institutions. However, according to a report, *The State and Sectarian Education*, published in 1946 by the National Education Association, 1201 16th Street, N.W., Washington 6, D. C., (available at 25 cents a copy) it is the practice in 18 states to pay bus transportation of parochial school pupils at public expense, and in five states to provide text books to parochial school pupils at public expense.

George D. Aiken, Vt., sponsors S.199, which would authorize much larger appropriations to the states than the Taft bill, and would also make them available to all states. Appropriations would begin at \$400,000,000 in the fiscal year ending June 30, 1948, and would be advanced to \$1,200,000,000 a year in the fiscal year 1952. Funds would be granted for the support of elementary and secondary education.

Under S.199, federal funds could be used to provide for 60 per cent of the costs of parochial and other private non-profit schools,

for transportation, health examinations and related services, and "purchase of non-religious instructional supplies and equipment, including books for pupils." In instances where a state authority would not be empowered to disburse public funds to private schools, the Secretary of the Treasury would be authorized to make payments directly to "non-public tax-exempt schools."

4. Summary of Practices in States

The material below is mainly from the National Education Association's bulletin, mentioned above, "*The State and Sectarian Education*."

States Authorizing Public Expenditures for Transportation of Parochial School Pupils

In the following eighteen states, plus one territory, it is reported to be the practice to permit the transportation of parochial school pupils at public expense:

California	Massachusetts
Colorado	Michigan
Connecticut	New Hampshire
Hawaii	New Jersey
Illinois	New Mexico
Indiana	New York
Kentucky	Ohio
Louisiana	Oregon
Maryland	Rhode Island
Wyoming	

In Indiana, such transportation can be arranged only if no extra expense is entailed. In other states, there are limiting circumstances.

In six states, the courts have disapproved the practice. New York amended its constitution to permit it, after the courts had rendered adverse decisions. States in which courts have ruled adversely are Delaware, Oklahoma, Kentucky, Washington, Wisconsin, South Dakota.

In Maryland and New Jersey, the state courts have upheld the method. The Supreme Court of the U. S. upheld a New Jersey statute.

The issue is currently a live one. Wisconsin has voted against the proposal in a state-wide referendum.

States Furnishing Textbooks to Parochial School Pupils

Five states are reported in the bulletin as having laws permitting the furnishing of free textbooks to parochial school pupils. These are as follows:

Louisiana
Mississippi

New Mexico
Oregon

West Virginia

The courts of Louisiana and Mississippi have upheld the practice. The U. S. Supreme Court has upheld the Louisiana law. In the other states, test cases have not been brought. In Indiana, the attorney general has given an opinion, stating that public funds cannot be used for text books for parochial school pupils. In 1922, the New York courts refused to sanction the use of public funds for free text books for parochial school pupils.

The reasoning of the Louisiana courts was that the practice was for the benefit of the child. The U. S. Supreme Court held that in Louisiana "the taxing power of the state is exerted for a public purpose," in the words of Justice Hughes.

(The "child benefit theory" advanced by the Louisiana courts has not been accepted by the majority of the state courts when they have considered the transportation question, noted in the section above.)

Excusing Pupils for Attendance at Weekday Church Schools or Classes

Thirty-five states are reported as having laws permitting the excusing of pupils to attend weekday classes for religious instruction under church auspices.

Religious Instruction by Church Teachers Inside Public Schools during School Hours

In ten states, religious instruction is permitted by teachers (not paid by public funds) from churches inside public schools and during school hours. There are reported to be few instances of this sort of instruction; they are mainly high school classes in Bible for which credit is given.

Bible Reading in Public Schools

In 13 states, the reading of the Bible is reported to be *required* in the public schools.

In 24 states, the reading of the Bible is reported to be *permitted* in the public schools.

In at least 4 states the reading of the Bible is prohibited.

There was no answer from 3 states. No reading of the Bible was reported from Arizona, California, Illinois, Louisiana, New York, South Dakota, Washington, Wisconsin. A reading of the Bible is not considered a sectarian practice. Comment is usually forbidden.

Employment of Teachers Wearing Religious Garb

In 16 states, the laws are reported to permit the employment as public school teachers of persons wearing a religious garb. The law is silent in other states, and in these the state superintendents did not comment on the current practice. In 22 states the laws do not permit the employment of public school teachers wearing a religious garb.

Use of Public Schools by Religious Groups after School Hours

Thirty-four states are reported as having laws permitting the use of public school buildings by religious groups after school hours.

5. Supreme Court Opinions on the New Jersey School Transportation Issue*

When the United States Supreme Court handed down its 5-4 decision in what will no doubt become famous as the Everson case, many issues were raised and many precedents called in question.

The majority upheld the state law, and the current practice under it, which provides free bus transportation to parochial school as well as public school children. They construed the case as presenting no challenge to the Constitution. The minority, on the other hand, not only found the Constitution violated, but elaborated a doctrine which with one more vote in its support would presumably condemn many current practices all over the country.

*Excerpts from a summary which appeared in "Information Service," of March 1, 1947, published by the Department of Research and Education of the Federal Council of Churches.

What the Court Decided

The Court, speaking through Mr. Justice Black, sets forth the disputed provision in the New Jersey statute, which allows a district school board to "make rules and contracts for the transportation" of children "living remote from any schoolhouse," including children attending "other than a public school, except such school as is operated for profit in whole or in part." The statute provides for the latter only to the extent of transportation between points on established public school routes. The appellant in the case, Everson, filed suit as a taxpayer against a school district for reimbursing parents of parochial school children for the cost of transportation to and from school. His contention was that both the statute and the resolution under which the local school board acted violated the state and the federal Constitutions.

The case presents the issue whether the Fourteenth Amendment to the federal Constitution is violated by the statute and the resolution in that they "authorize the state to take by taxation the private property of some and bestow it upon others, to be used for their own private purposes"; and the further issue whether they violate the First Amendment in that they force people "to pay taxes to help support and maintain schools which are dedicated to, and which regularly teach, the Catholic Faith."

On the first of these points, the "due process" aspect of the case, the Court says: "The fact that a state law, passed to satisfy a public need, coincides with the personal desires of the individuals most directly affected is certainly an inadequate reason for us to say that a legislature has erroneously appraised the public need . . ."

On the second point, the church-state aspect of the case, the Court says: "The First Amendment, as made applicable to the states by the Fourteenth . . . commands that a state 'shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.' " (The reference here is to *Murdock v. Pennsylvania*.) Then follows a recital of the struggle for religious liberty in America, of which the "Virginia Bill for Religious Liberty" was an outstanding feature. "In recent years," says the Court, "so far as the provision against the establishment of a religion is concerned, the question has most frequently arisen in connection with proposed state aid to church schools and efforts to carry on religious teachings in the public schools in accordance with the tenets of a particular sect." The Court points out that efforts to secure public financial

aid have not been limited to one faith. Continuing, it says: "The state courts, in the main, have remained faithful to the language of their own constitutional provisions designed to protect religious freedom and to separate religions and governments. Their decisions, however, show the difficulty in drawing the line between tax legislation which provides funds for the welfare of the general public and that which is designed to support institutions which teach religion." Summarizing the import of the first clause of the First Amendment, to which appeal was made in the case at bar, the Court says: "The 'establishment of religion' clause of the First Amendment meant at least this: Neither a state nor the federal government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the federal government can, openly or secretly, participate in the affairs of any religious organization or groups and *vice versa*. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between church and state.' "

Applying these principles the Court comes to the heart of its decision in these words: "New Jersey cannot consistently with the 'establishment of religion clause' of the First Amendment contribute tax-raised funds to the support of an institution which teaches the tenets and faiths of any church. On the other hand, other language of the amendment commands that New Jersey cannot hamper its citizens in the free exercise of their own religion. Consequently, it cannot exclude individual Catholics, Lutherans, Mohammedans, Baptists, Jews, Methodists, Non-believers, Presbyterians, or the members of any other faith, *because of their faith*, or lack of it, from receiving the benefits of public welfare legislation. While we do not mean to intimate that a state could not provide transportation only to children attending public schools, we must be careful, in protecting the citizens of New Jersey against state-established churches, to be sure that we do not inadvertently prohibit New Jersey from extending its general state law benefits to all its citizens without regard to their religious belief." Reference is

made to state-provided police protection for children going to and from religious schools as comparable to furnishing "transportation of a kind which the state deems to be best for the school children's welfare." To deny such service to parochial school children "would make it far more difficult for the schools to operate." But the First Amendment does not contemplate this. "That Amendment requires the state to be a neutral in its relations with groups of religious believers and non-believers; it does not require the state to be their adversary. State power is no more to be used so as to handicap religions than it is to favor them."

Noting that parents have the right to send their children to religious schools if the latter meet the educational requirements, that these requirements appear to be met by the schools in question, and that New Jersey does not contribute money to those schools, the Court concludes: "The First Amendment has erected a wall between church and state. That wall must be kept high and impregnable. We could not approve the slightest breach. New Jersey has not breached it here."

The Major Dissenting Opinion

Mr. Justice Rutledge, in an opinion with which Justices Frankfurter, Jackson and Burton agree, essays to take the majority apart. Quoting from the First Amendment and the Virginia Bill, already cited, Justice Rutledge declares: "I cannot believe that the great author of those words, or the men who made them law, could have joined in this decision. Neither so high nor so impregnable today as yesterday is the wall raised between church and state by Virginia's great statute of religious freedom and the First Amendment, now made applicable to all the states by the Fourteenth. New Jersey's statute sustained is the first, if indeed it is not the second breach to be made by this Court's action. That a third, and a fourth, and still others will be attempted, we may be sure. For just as *Cochran v. Board of Education*, 281 U.S. 370, has opened the way by oblique ruling for this decision, so will the two make wider the breach for a third. Thus with time the most solid freedom steadily gives way before continuing corrosive decision." (The *Cochran* case was the one in which the furnishing of free textbooks to non-public school children in Louisiana was upheld.)

The purpose of the First Amendment was "to create a complete and permanent separation of the spheres of religious activity and civil authority by comprehensively forbidding every form of public

aid or support for religion." For Madison, whose "Memorial and Remonstrance Against Religious Assessments" is appended to the opinion, "religion was a wholly private matter beyond the scope of civil power either to restrain or support . . . 'Establishment' and 'free exercise' were correlative and coextensive ideas, representing only different facets of the single great and fundamental freedom." Madison was "unrelentingly absolute" on this matter.

Today, "apart from efforts to inject religious training or exercises and sectarian issues into the public schools, the only serious surviving threat to maintaining that complete and permanent separation of religion and civil power which the First Amendment commands is through use of the taxing power to support religion, religious establishments, or establishments having a religious foundation whatever their form or special religious function."

"Does New Jersey's action furnish support for religion by use of the taxing power? Certainly it does, if the test remains undiluted as Jefferson and Madison made it, that money taken by taxation from one is not to be used or given to support another's religious training or belief, or indeed one's own. Today as then the furnishing of 'contributions of money for the propagation of opinions which he disbelieves' is the forbidden exaction; and the prohibition is absolute for whatever measure brings that consequence and whatever amount may be sought or given to that end."

The practice in New Jersey is bluntly described: "Here parents pay money to send their children to parochial schools and funds raised by taxation are used to reimburse them. This not only helps the children to get to school and the parents to send them. It aids them in a substantial way to get the very thing which they are sent to the particular school to secure, namely, religious training and teaching." The state's action "exactly fits the type of exaction and the kind of evil at which Madison and Jefferson struck."

Transportation is held to be inseparable from the others items of school support, and therefore "the feat is impossible to select so indispensable an item from the composite of total costs, and characterize it as not aiding, contributing to, promoting or sustaining the propagation of beliefs which it is the very end of all to bring about. Unless this can be maintained, and the Court does not maintain it, the aid thus given is outlawed. Payment of transportation is no more, nor is it any the less essential to education, whether religious or secular, than payment for tuitions, for teachers' salaries,

for buildings, equipment and necessary materials. Nor is it any the less directly related, in a school giving religious instruction, to the primary religious objective all those essential items of cost are intended to achieve. No rational line can be drawn between payment for such larger, but not more necessary, items and payment for transportation. The only line that can be so drawn is one between more dollars and less. Certainly in this realm such a line can be no valid constitutional measure." Furthermore, "To sustain payment for transportation to school, for textbooks for other essential materials, or perhaps for school lunches, and not for what makes all these things effective for their intended end, would be to make a public function of the smaller items and their cumulative effect, but to make wholly private in character the larger things without which the smaller could have no meaning or use."

The case at bar is "not therefore just a little case over bus fares. In paraphrase of Madison, distant as it may be in its present form from a complete establishment of religion, it differs from it only in degree; and is the first step in that direction . . . Today as in his time 'the same authority which can force a citizen to contribute three pence only . . . for the support of any one religious establishment, may force him' to pay more; or 'to conform to any other establishment in all cases whatsoever.'"

6. A Protestant Opinion

Bishop G. Bromley Oxnam:

"Public support for parochial schools would divide the community into sectarian educational systems and destroy the unity essential as democracy faces the totalitarian threat of freedom.

"If parents have the natural right to determine the education of their children, a privilege this nation gladly gives, it follows that parents who refuse the benefits of these splendid educational opportunities . . . should pay for such private education as they insist upon.

"Otherwise, the Communist father and mother who may demand a Marxian education for their children may also call for private schools and logically ask for public support. Public funds should be used for public education."

7. Some Roman Catholic Opinions

a. *Pope Pius XII* on Education, September 9, 1946:

Quoted from The Tablet, Sept. 21, 1946.

"We are certainly not denying or lessening the proper right which the State also has in education, a right which finds its foundation and at the same time its measure and limit in the common good. Now the common good requires that the State protect and respect the right of education that belongs to the family and to the Church.

"The end to be attained is ever that the family, Church and state cooperate by mutual accord in the instruction and education of youth: this principle constitutes the essential presupposition of article 36 of the existing Concordat with Italy, in which teaching of Christian* doctrine according to the formula handed down by Christian tradition is proclaimed as the 'foundation and crown of public instruction.'"

b. *National Catholic Welfare Conference*, letter to Senator Thomas, May 24, 1943:

"The Catholic position is one of opposition to any measure of Federal aid to education that would (a) interfere with local control of the purposes and processes of education and (b) fail to make mandatory the inclusion of Catholic schools in its benefits."

c. *Archbishop McNicholas (Cincinnati)*:

"Federal Aid for American Education" Section 4 "Freedom of Religion"

"To deprive parents of true American freedom to educate their children in the schools of their conscientious choice because they have not the means to do so, is indirectly a violation of our freedom of religion . . . The consciences of poor religious parents should not be strained in this way. Up to now our federal government has not been unfair and discriminatory in the field of education, as many states have been. Parents of all faiths, especially poor parents, should entreat their representatives in Congress not to put our federal government in a wrong light, not to force it to be discriminatory and unjust to parents who need help to educate their children. These parents should make it clear to legislators in Congress

*Note: The text of the Concordat, as published in *Current History* of July, 1929, uses the word "Catholic" instead of "Christian." The sentence reads as follows: "Italy considers the teaching of Christian doctrine, according to the form handed down by Catholic tradition, as the foundation and capstone of public education."

that they are asking help in order to give our country better citizens, who recognize the obligations of moral living. Poor parents and parents who toil, of all religious faiths in America, should become articulate in demanding the help they need—which need they can be called upon to prove—for the education of their children in the schools of their conscientious choice.

"We have compulsory education throughout the United States. We have also the freedom to choose a school guaranteed by the unanimous decision of the Supreme Court of our country. That freedom should not be taken away, either directly or indirectly or by any subterfuge. The constitutions of many of our states are unfair, un-American, undemocratic, discriminatory in their school legislation. They are indirectly frustrating the freedom of education which, theoretically, we enjoy and of which we so proudly boast.

"The American system of education . . . includes not only public schools, but also all schools, private as well as those founded and conducted under the auspices of religion, which give the required minimum of education and satisfy the prescribed standards."

d. Excerpt from Editorial in *Commonweal* of March 14, 1947:

"Anyone who is more than casually interested in the feeble condition of our national school system must regret that the Supreme Court decision on the New Jersey school bus case was handed down at so awkward a moment . . . The Court decision in this case, while upholding an undeniable right to a minor benefit, has brought on, in Catholic circles, a considerable amount of preening, and has re-awakened among Protestants a new wave of anti-Vatican hysteria. Neither of these attitudes will make it any easier for Congress to act promptly and impartially on the question of Federal aid for our wobbly national school system.

"Catholics should realize by now that the task of talking Protestants out of their Vatican anxieties is an extremely long and difficult job, not likely to be accomplished in this generation. It might be better, then, to give more attention to other ways of convincing Protestants that the Catholic minority in this country is not solely concerned with the task of gaining, for Catholics, a series of minor victories in a scramble for civil rights. The Taft bill for Federal aid to education provides that chance . . .

"The non-Catholic reaction to the Supreme Court decision in the New Jersey school bus case should convince Catholics that the possi-

bility, in this era, of getting through Congress an education bill which would provide for Federal or State aid to Catholic schools is slight indeed. While waiting for the ideal political climate to come along it is pointless and harmful for Catholics to oppose a bill which, in spite of its neglect of parochial schools, would save the national public school system from further debility."

8. American Democracy and The Public School System

from *The Federal Council Bulletin*, April, 1947

We believe in America. We are enthusiastic about America, not so much because of her standard of living, her great technical achievements and her power as because of her democracy. We are so jealous of this democracy that we not only defend it against attacks but we also criticize anything that tends to impair it from within. We constantly try to improve it.

This democracy is our most cherished heritage from earlier generations of Americans. It is a form of government, a set of freedoms and a corresponding set of responsibilities; but most basically it is a type and pattern of community life. One of the bases, and at the same time one of the products of this pattern of life is the public school. We therefore defend it against unfair attacks and criticize anything that tends to impair it. Certainly those who would change it fundamentally carry the burden of proof in any discussion of it.

We believe that this system needs federal financial aid at this time of crisis in order that it may be strengthened in those states where it is now dangerously weak. Such federal aid must not involve control of policy, which is left to the states by constitutional provision.

But in connection with the current proposal to grant federal aid, it is now insisted in some quarters that a general policy be established of including aid to parochial schools. If this were to be done, we should not only depart from the traditional American policy that public funds should not be given for sectarian purposes but we should also impair our public schools and our democratic community life. To provide federal funds for parochial schools would be to encourage segregated educational systems and thereby threaten our democracy by fragmentizing our culture.

Protestants generally take the position that religious education is

basic to all education and essential to good citizenship. They would join with Roman Catholics and Jews in the effort to correct the present secularism of much of our public education. They do not support any alternative proposals that would weaken our public educational system.

Legislative developments should be watched carefully.



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