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PAROCHIAL SCHOOL AID — A Changing Trend†

LAWRENCE X. CUSACK*

ON BEHALF OF His Eminence, Francis Cardinal Spellman, whom I am privileged to represent, I would like to thank this Subcommittee for its invitation to testify and state his views concerning the proposals for federal aid to education now under consideration.

As Archbishop of New York, Cardinal Spellman has responsibilities in regard to a private educational system with hundreds of institutions ranging from the graduate school level to the kindergarten. Within the area of the Archdiocese, which comprises ten counties, including three within the City of New York, there is a Catholic educational system consisting of one university and fifteen colleges with approximately 23,000 students and 1,300 faculty members, ninety-nine high schools with approximately 47,000 students and 2,000 faculty members and 328 elementary schools with approximately 172,000 students and 5,000 faculty members. The entire system is privately supported by citizens who have been willing, at considerable personal sacrifice, to give tangible evidence of their belief in and commitment to the values of a system of church-related education which conforms in all respects to State requirements pertaining to the secular aspects of its curricula but whose hallmark is that it also provides orientation towards the spiritual — man's relation to his Creator and his eternal destiny.

In creating and maintaining their system of private education, the people of the Archdiocese have made an investment that has saved their fellow taxpayers of the City and State of New York many hundreds of

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millions of dollars, not only in initial capital outlay but also in the costs and expenses of operating and maintaining the system year after year. Some idea of the scope of this private educational effort and the savings in taxes it has meant to the citizenry may be gained from the following estimate: If the school children in attendance at Catholic elementary and secondary schools within the City of New York, who represent approximately 28% of all the children of the City in school attendance, were to be enrolled in the public schools, it would require the City to make an additional capital outlay of more than two-thirds of a billion dollars and to increase its annual school budget year after year by approximately 200 million dollars.

In the State of New York as a whole there are forty-four Catholic universities and colleges educating more than 55,000 students. To replace this system of higher education would mean an estimated capital outlay of almost 200 million dollars and annual operating costs of about 75 million dollars. At the elementary and secondary school level there are 1,409 Catholic schools educating almost 800,000. This system of Catholic schools, which is larger than the public school systems of thirty-four other states and the District of Columbia, has saved the taxpayers of the State of New York a capital outlay of approximately 1.5 billion dollars and operating and maintenance costs and expenses of approximately one half billion dollars a year.

The picture is not unique. With variations it appears over and over again in other states and school districts throughout the nation.

Cardinal Spellman's responsibilities and concern for educational excellence are, however, by no means limited to the Archdio-

cesan, city-wide and state-wide systems I have described. There are well in excess of 100,000 Catholic children in attendance at public elementary and high schools within the area of the Archdiocese, and Catholic enrollments at public and other private colleges and universities within the Archdiocese represent a large part of the student bodies.

Nor is the concern of Cardinal Spellman for excellence in education, both public and private, confined to the geographical limits of the Archdiocese. As one of the American Roman Catholic hierarchy, and as a citizen whose selfless concern for the spiritual and temporal well-being of the nation, and most especially for all our children regardless of race, creed or color, has been demonstrated time and time again, Cardinal Spellman is concerned with any development, legislative or otherwise, that is apt to have a serious impact on our country's educational systems, public or private, and, therefore, upon the future welfare of the people of the United States.

It is in the context of those concerns and responsibilities that Cardinal Spellman has evaluated pending proposals for federal aid to education.

The bill which I understand to be the primary object of this Subcommittee's attention at this time is S. 580, an omnibus proposal that would be known as the "National Education Improvement Act of 1963." Its stated purpose is "To strengthen and improve educational quality and educational opportunities in the Nation." In his special message to Congress which preceded the introduction of the bill, President Kennedy declared:

from every point of view, education is of paramount concern to the national interest as well as to each individual. Today we

need a new standard of excellence in education, matched by the fullest possible access to educational opportunities, enabling each citizen to develop his talents to the maximum possible extent.

This is a statement to which I am sure all heartily subscribe, including Cardinal Spellman and his fellow American Catholic bishops who as a body have made no prejudgment as to the need and advisability of achieving the objective by a sweeping program of federal aid to education at all levels.

At the level of higher education the bill conforms admirably to the standard mentioned by the President with one puzzling exception, a program, in Part B of Title II, to provide grants for junior college facilities that is unaccountably limited to public community colleges. There seems to be nothing in either the special message or the bill itself to explain the omission of private junior colleges.

At the level of elementary and secondary schools the bill contains several disappointments. Part B of Title IV, which relates to instruction equipment for science, mathematics and modern foreign languages, would continue the imbalance in the National Defense Education Act under which public schools are entitled to grants but non-profit private schools limited to loans. Part C of Title IV, which relates to appropriations for guidance, counseling and testing, would continue the imbalance in the same Act under which children in non-public schools are excluded from programs for counseling and guidance.

The third deficiency in the provisions for elementary and secondary schools is the most serious, one that is even more obviously in conflict with the stated purpose of the bill and the President's above quoted

declaration and similar remarks in his special message. It is on that particular part of the bill that I should like to center the rest of my remarks.

I am referring to Part A of Title IV of S. 580. Title IV relates to "Strengthening Elementary and Secondary Education," and Part A relates to, indeed I should say is limited to, "Public elementary and secondary education." With regard to that part, the Presidential message states:

I recommend, therefore, a 4-year program to provide \$1.5 billion to assist States in undertaking under their own State plans selective and urgent improvements in public elementary and secondary education including: (1) increasing starting and maximum teacher salaries, and increasing average teacher salaries in economically disadvantaged areas; (2) constructing classrooms in areas of critical and dangerous shortage; and (3) initiating pilot, experimental or demonstration projects to meet special educational problems, particularly in slums and depressed rural and urban areas.

This is substantially the language of the declaration of purpose in Section 401 of the bill.

The feature of Part A, Title IV, that is disappointingly out of line with the spirit of the President's message and the over-all purpose of the bill is the omission of provision for private schools. It is an omission that would have the effect of excluding from the benefits of the program almost one-fifth of the elementary and secondary school children of the nation and, therefore, one that cannot be reconciled with the reference in the special message to "Our concern as a nation for the future of our children"

That such exclusion of millions of private school children was made only after sober reflection by well-intentioned men I do not

question. I do, however, respectfully submit that the exclusion cannot be successfully defended. Certainly it cannot be defended as sound national educational policy or as equal justice under law. The only ground upon which the exclusion is possibly tenable is that it is demanded by our federal constitution on the theory that to permit children attending church-related schools to participate in the program would involve Congress in the enactment of a law "respecting an establishment of religion" and thus run counter to a prohibition of the first amendment. But if the objection rests upon the constitutionality of including children in church-related schools, I submit that it is an objection that can be satisfied by properly drawn legislation that would adopt one of a number of constitutionally permissible approaches to aiding the non-religious aspects of education in those schools.

An objective and fully documented study of the historical and legal aspects of the constitutionality of the inclusion of church-related schools in federal aid to education made in 1961 by the Legal Department of the National Catholic Welfare Conference concludes that there exists "no constitutional bar to aid to education in church-related schools in a degree proportionate to the value of the public service it performs." If the objectivity of that study be questioned, as would be understandable considering its source, I invite to the attention of this Subcommittee the similar views of a number of eminent authorities on constitutional law whose opinions may be evaluated without reservations as to objectivity. Professor Mark DeWolfe Howe of Harvard Law School stated in a 1961 letter to the Chairman of this Subcommittee that it seemed to him "quite clear that there is no consti-

tutional barrier to federal financing of the educational activities of private schools which are serving the public interest by providing that kind of instruction which the states prescribe for public schools." In the same year a fellow member of the Harvard Law School faculty, Professor Arthur E. Sutherland, was quoted in a newspaper interview as saying: "If I were President, I could think of no clear constitutional reason to veto a bill aiding church and private schools." Professor Wilber G. Katz, former Dean of the University of Chicago Law School has expressed the view that "the Constitution leaves Congress free to pattern its aid to education in a way which protects the freedom of choice of students and parents as to the schools in which federal benefits may be enjoyed." Paul G. Kauper, Professor of Law, University of Michigan, has said that consistent with the non-establishment principle of the first amendment "Congress may grant some assistance to [church-related] schools as part of a program of spending for the general welfare, so long as the funds are so limited and their expenditure so directed as not to be a direct subsidy for religious teaching." According to Professor Kauper a principal reason to justify such expenditures is that church-related schools "do serve a secular as well as religious purpose" and another reason is that in assisting such schools the Government would thereby be making "a meaningful contribution in support of the right of parents to send children to the school of their choice."

The views of these distinguished scholars are consistent with a balance of interpretation of the establishment clause of the first amendment such as was recently expressed by Dean Erwin N. Griswold of the Harvard Law School. Speaking about another aspect

of the establishment clause, Dean Griswold condemned "the logical implications of absolutist notions not expressed in the Constitution itself, and surely never contemplated by those who put the constitutional provisions into effect."

What avenues, then, can legislation take to provide equality for children in church-related schools without violating the constitutional prohibition against an establishment of religion? The basic criterion underlying any such legislation is embodied in the views of the distinguished constitutional scholars just quoted: The aid must be that which is primarily directed towards promoting the general welfare by improving the secular aspects of the education of all children of the nation and not towards the direct subsidy of the teaching of religion. In the previously mentioned study of the Legal Department of the National Catholic Welfare Conference, the conclusion was reached that "Long term loans, matching grants, scholarships, tuition payments and tax benefits are only some of the possible forms of aid to education [in church-related schools]. Others will doubtless be conceived."

Cardinal Spellman's views as to the forms of permissible aid are already a matter of record. In 1961 he mentioned for the consideration of Congress the following as four of many possible approaches: (1) a program of federal aid for the non-religious facilities of church-related schools which might be sufficient by itself to provide full equality of benefit; (2) some kind of an educational grant or benefit directly to all children attending church-related schools, which might include the furnishing of non-religious textbooks and supplies or the provision of certain non-religious educational services; (3) some type of grant or benefit to the parents of children attending church-

related schools, which might take the form either of reimbursement for tuition paid in situations where tuition is charged or of some kind of an income tax deduction, exemption or credit; and (4) a program of long-term, low-interest-rate loans to church-related schools.

Some of these measures would not be sufficient standing alone to provide full equality of benefit for the children attending church-related schools. However, some combination of them or some use of them in combination with other constitutionally permissible forms of aid which Congress might see fit to provide, might achieve the just result to which those children are entitled and which our national interest demands.

In mentioning the foregoing possible approaches, some of which have already been proposed by members of Congress, I do not mean to imply that I have given a complete enumeration of the ways in which Congress can resolve the problem of providing equal justice to all American school children without doing violence to the establishment clause of the first amendment. I mention them only as some workable and worthwhile solutions that have so far occurred to students of the problem. Congress might well conceive of and prefer another approach or approaches. The point that I seek to make is that if Congress is convinced that the enactment of a broad program of federal aid to education at the elementary and secondary school levels is needed, there are a number of constitutionally acceptable ways in which the benefits of such a program can be made available to all the school children of America, whether attending public or private schools.

Although there should be no doubt about it, I should like to avoid a possible misunderstanding and make it unmistakably clear

that Cardinal Spellman's views are in no way intended as an attack upon the principle of separation of Church and State. On the contrary, what is intended is only to urge the conviction that if a program of federal aid is to be enacted, there are ways and means of providing equality of benefit for the children in church-related schools without doing violence to that principle.

It is true that the words, "separation of Church and State," nowhere appear in the Constitution. They represent merely an attempt to express in a short phrase the kernel of a very complicated concept, one which the Supreme Court of the United States and countless authorities on constitutional law have for almost two hundred years been attempting to develop and refine within the framework of our American life and institutions. Dr. Robert M. Hutchins, President of the Fund for the Republic, has said of the phrase "wall of separation between Church and State" that its use

has lent a simplistic air to the discussion of a very complicated matter. Hence, it has caused confusion whenever it has been invoked If taken literally, it is arbitrary and unreasonable, pretending to separate things that are not in all respects separable, thwarting efforts to understand what education and freedom of (and from) religion demand, hampering us in our search for what we need above everything else, a national idea of education and a national program to carry it out.

When, however, we use the phrase "separation of Church and State" in its reasonable and proper sense, as a political theory under which Americans may preserve their religious freedom, it is a principle which the Catholics of this nation revere as a part of our Constitution and wish safeguarded as one of the keystones of our liberties. As early as 1787, two years before the inaugu-

ration of our first President, and four years before the adoption of the Bill of Rights, Bishop Carroll, leader of the American Catholic hierarchy, was speaking out in support of the principle of religious freedom. Time and time again over the years spokesmen of American Catholic thought have reaffirmed respect for and adherence to that principle. More than forty years ago Cardinal Gibbons wrote that "No establishment of religion is being dreamed of here by anyone; but were it to be attempted, it would meet with united opposition from the Catholic people, priests and prelates." In 1948 Archbishop McNicholas of Cincinnati, speaking as the Chairman of the Administrative Board of Bishops of the National Catholic Welfare Conference declared:

We deny absolutely and without any qualification that the Catholic Bishops of the United States are seeking a union of Church and state by any endeavors whatsoever, either proximate or remote. If tomorrow Catholics constituted a majority in our country, they would not seek a union of Church and state. They would then, as now, uphold the Constitution and all its Amendments, recognizing the moral obligation imposed on all Catholics to observe the Constitution and its Amendments.

It is within the framework of such regard for the American doctrine of religious liberty that Cardinal Spellman urges the equitable inclusion of children in church-related schools in any program of federal aid to education.

If Congress were to enact legislation granting substantial equality of benefit to children in church-related schools, it would take place in a climate of opinion that is markedly, if not remarkably, different than at the outset of the current national dialogue. In March 1961 a Gallup Poll disclosed that a majority of 57% of Americans

felt that any federal aid should go only to public schools. Early this year another Gallup Poll revealed a sizeable shift in sentiment over the last two years. It showed that the weight of opinion throughout the country (49%) now holds that any federal aid should go to help not only public but Catholic and private schools as well, while a smaller proportion (44%) feels that financial aid should be limited to public schools. The poll also disclosed that the change has come largely from those who are not Catholic.

This shift in sentiment mirrors the evolution in thinking on the subject that has taken place among many American intellectuals who are widely regarded as molders of public opinion. Walter Lippman recently said that resolution of the issue of including church-related schools in aid to education "is not beyond the wit of man, if he means it, to find a way of aiding education, whether it's in public schools or parochial schools, without getting involved in the question of the teaching of religion," and he went on to say that "if they need money, as private schools do, for textbooks, or laboratories, or even buildings, I think a way should be found of getting rid of this religious knot that we've tied ourselves into over that." James Reston of *The New York Times* has written that "The main reason for federal aid in the first place was to see to it that the nation develops all the brains it has, and if this reason is valid, it surely needs Catholic brains as well as Baptist or Presbyterian brains." Robert M. Hutchins, whom I have previously quoted, has said: "I am *for* federal aid to education. I am *for* federal aid to parochial schools. I am *for* federal aid to anybody who will do a sound educational job." Carl N. Degler, Professor of History, Vassar College, has reasoned that "Since

Catholics will continue to send their children to religious schools — and the Constitution seems to guarantee this right to all Americans — it seems very short-sighted from a social point of view to deny assistance to schools which educate such a large proportion of our children." The editors of the *New Republic* recently stated:

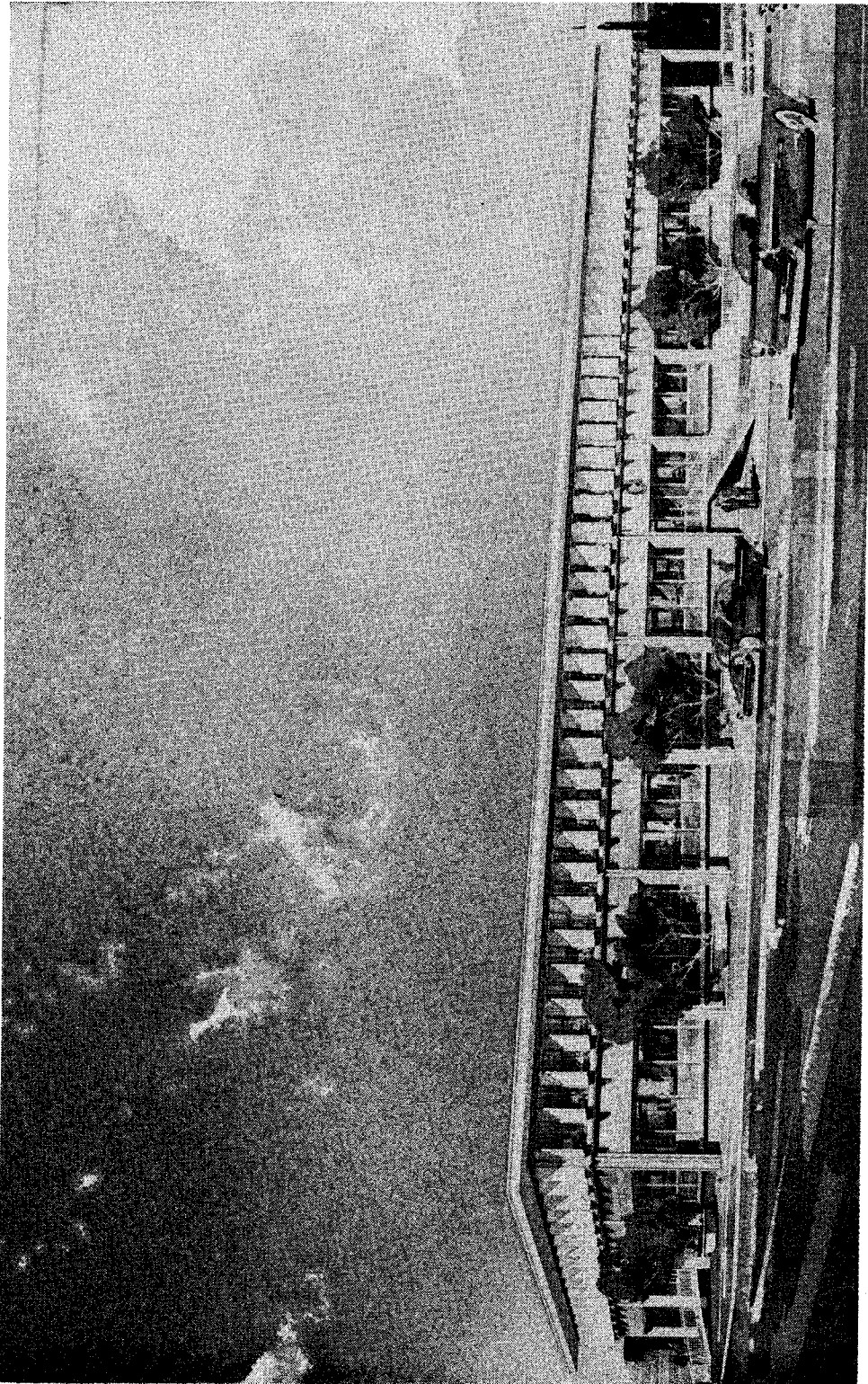
The national interest is in better education for *all* children, regardless of race, creed or parental income. Nobody needs to send his child to a private school, but millions do. No useful purpose is served if these children grow up knowing less history or less chemistry than children who attend public school.

This is just a sampling of the thinking on the subject that has contributed to the change in public opinion over so short a span of time.

In concluding my statement I should like to return briefly to the main point toward which my testimony has been directed: the omission in Part A of Title IV of S. 580 of any provision for aid to children in church-related schools. The enactment of a federal aid program with such an omission would, I respectfully submit, be out of harmony with President Kennedy's call for a measure to promote the educational excellence of all children and, indeed, out of harmony even with the laudable stated purpose of the bill itself.

Since there is no definite constitutional barrier that would prevent Congress from including children in church-related schools in a federal aid program on some equitable basis, traditional American concepts of justice and fair play and our long-range national interest cry out against their exclusion. They are entitled to the same consideration as the children in their neighborhoods whose parents have chosen to send them to

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public school. These children grow up together, play together and often pray together; when they become adults they will work together, vote together, pay taxes together, serve together in the armed forces of their country, and, sadly enough, perhaps even die together in that service. There seems to be no sound and defensible reason why, by some means or combination of means best

left to the collective wisdom of Congress, these children should not all share with at least approximate equality in any federal program claiming "To strengthen and improve educational quality and educational opportunities in the Nation."

I am grateful to the Chairman and members of this Subcommittee for the opportunity to present this testimony, and on behalf of His Eminence, Cardinal Spellman, I express his appreciation.