If the Chicago Board of Education were to approach me for a contract for the utilization of one or two nonpublic schools, Catholic schools, according to nonsectarian terms to do this extraordinarily urgent and special work, I think we would have an open mind on it. This is what Monsignor Donohue meant I think by his remark that we have reached a degree of maturity in public-private school relations where we have to, on our side of the fence, be as much concerned about how we are going to pitch in and help as we are in what we are going to receive.

So, in brief, I would say in answer to your question that the followup program will have to be twofold. Private agencies on their own with their own resources will have to followup and the door should be left open to contractual arrangements under ESEA and with local public school systems to do this particular kind of work.

Mr. QUIE. I assume if we followed the same reasoning of that brief in 1961 we would not have any trouble with contractual relationships at the kindergarten level. I would like to ask Mr. Consedine, do you think there will be any constitutional problems of such contractual relationships for grades 1, 2, and 3 which we know are absolutely necessary in the followthrough program.

We have an agreement on the policy level. Now what about the constitutional question and the use of the private school?

Mr. CONSEDINE. Congressman, I cannot accept the thesis of the HEW brief that for some reason or other because children attend school under the compulsory attendance statutes and the parents choose a church-related school that this disqualifies them from participating in Government programs. The short answer is that if government is free to assist citizens voluntarily seeking an education, it would seem to be under a special obligation to aid them when compelled by the government to attend school.

It is true the HEW took that position in its brief. We challenged it stoutly in the legal department study on the permissibility of including our children in any Federal aid programs.

Since 1961 when we challenged their position, the Congress itself has very perceptibly faced the issue in the provisions of title I of ESEA. That solution is by no means the outer limit of the permissible limit and thrust of Federal assistance to children enrolled in private schools.

We attempted to make that clear in our legal department study in which we found that there were no constitutional barriers based upon the decided cases and the historicity of the first amendment. Since that brief was prepared, the Supreme Court in several decisions has made clear what the appropriate constitutional tests are.

The Supreme Court said in the *Schemp* case which involved the question of prayer reading and bible reading in the public schools that in deciding the issue of whether it was impermissible for the State, it was the same issue in the earlier *Engle* case, to sponsor prayer in the public schools, the Court said that the test of constitutionality that we must look to what is the primary purpose and effect of the State action. In each case they found that the primary purpose of the State was to encourage the reading of the Lord's prayer or reading a chapter of the bible or to cite the New York State's regents' prayer