

ment which was stripped of all power to tax, to support, or otherwise to assist any or all religions . . . ."<sup>141</sup>

The Court quoted Jefferson's "Bill for Establishing Religious Freedom" in its exposition of the meaning of the No Establishment Clause, which stressed that *religious liberty* required no man should be compelled to support "any religious worship, place, or ministry whatsoever."<sup>142</sup> Assuredly, then, the clause does not bar aid to church-related schools where the predominant benefit of such aid is not to the institution but to the citizen-student.

Fifthly, the Memorandum itself fully demonstrates that extensive government aid is presently furnished to church-related educational institutions. Or to assert, as does the Department, that such aid is not actually aid to institutions as institutions, is to do no more than really establish that across-the-board grants may be made to such institutions. As is explained in more detail *infra*, the "criteria" for aid which the Department (and not the Court) has constructed do not withstand analysis.

2. The Memorandum implies that the Court has ruled in *Everson* that loans to church-related schools are invalid. For the reasons stated *supra* with respect to across-the-board grants, it is clear that such loans would not be invalid. The Memorandum goes to remarkable lengths in attempting to justify its position. It cites *McColum v. Board of Educ.* as authority for the proposition that loans would be unconstitutional, resting here upon its own employment of the word "lend."<sup>143</sup> The opinion of the Court in *McColum* nowhere employs the word "lend" or "loan," and the utilization of the classrooms in *McColum* was not at all a "lending" in the sense the term is used in financial loans. Again, the Memorandum cites the *Zorach* case as authority, quoting therefrom the statement "Government may not finance religious groups."<sup>144</sup> This begs the question, the Memorandum failing to establish that the making of loans to parochial schools would in fact be to "finance religious groups."

3. The Memorandum states that tuition payments for all church school pupils are invalid under the rule of the *Everson* case "since they accomplish by indirection what grants do directly." It is in large

<sup>141</sup> 330 U.S. at 11.

<sup>142</sup> *Id.* at 12, 13.

<sup>143</sup> HEW Memorandum 352.

<sup>144</sup> *Ibid.*