

to be justified upon this basis, then aid to any form of state-approved schooling should be upheld.

The Memorandum lays great stress upon the views of the dissenters in *Everson*, who "characterized the statute as having the purpose of getting the child to school—an indispensable part of his education."¹⁶⁰ But if the dissenters were right in this, and the majority upheld the statute, then *Everson* plainly holds that that which is indispensably necessary to the educating of a child in a church-related school is constitutional. This consideration is not reflected in the Memorandum.

The Memorandum, as has been indicated, is totally unable to support its distinction between such aids as police, fire and sewerage on the one hand, and tuition, books, grants or loans on the other. The problem is not solved by semantics. Calling one form of aid "incidental" and the other "direct" changes no fact. Sewerage, to which the Department refers, is a *sine qua non* to the teaching of religion to groups of children. The providing of a school bus trip to the child who cannot otherwise attend a church-related school is actually as much an aid to his getting a religious education as there being a classroom in which he may be instructed at the trip's end. The Department's talk about "side effects of benefiting a religious institution" is meaningless unless (1) we are supplied with specific facts showing *how*—not a religious institution, but a church or sect—comes to be benefited, and (2) whether that benefit must not be ignored when seen in relation to the benefits to the citizen-student.

Although the Department furnishes many examples of aids which it says are not aids to religion, it is at a loss to show how financial aid is any the more essential to the church-related school than the aids which the Department would sanction.

The sections of the Memorandum respecting "criteria," it must be said in brief, are so shot through with categorical generalizations that little is served by attempting detailed analysis thereof. The controlling premises are found in such unsupported statements as "the State may not aid the religious instruction of a child";¹⁶¹ a "legislative proposal . . . [must not be] a mere subterfuge for religious support";¹⁶² the "means employed [must not] result . . . in support of religious institutions."¹⁶³

¹⁶⁰ HEW Memorandum 366.

¹⁶¹ *Id.* at 368.

¹⁶² *Id.* at 365.

¹⁶³ *Id.* at 366.