Engel v. Vitale / Excerpts from the Concurring Opinion

The following are excerpts of the concurring opinion written by Justice William O. Douglas:

"Plainly, our Bill of Rights would not permit a State or the Federal Government to adopt an official prayer and penalize anyone who would not utter it. This, however, is not that case, for there is no element of compulsion or coercion in New York's regulation . . . The [school district] adopted a regulation which provides that 'Neither teachers nor any school authority shall comment on participation or non-participation . . . nor suggest or request that any posture or language be used or dress be worn or be not used or not work.' Provision is also made for excusing children, upon written request of a parent or guardian, from the saying of the prayer or from the room in which the prayer is said . . . As I read this regulation, a child is free to stand or not stand, to recite or not recite, without fear of reprisal or even comment by the teacher or any other school official. In short, the only one who need utter the prayer is the teacher; and no teacher is complaining of it. Students can stand mute or even leave the classroom, if they desire."

"The question presented by this case is therefore an extremely narrow one. It is whether New York oversteps the bounds when it finances a religious exercise..."

"In New York, the teacher who leads in prayer is on the public payroll, and the time she takes seems minuscule . . . Yet, for me, the principle is the same, no matter how briefly the prayer is said, for, in each of the instances given, the person praying is a public official on the public payroll, performing a religious exercise in a governmental institution. It is said that the element of coercion is inherent in the giving of this prayer. If that is true here, it is also true of the prayer with which this Court is convened, and of those that open the Congress. Few adults, let alone children, would leave our courtroom or the Senate or the House while those prayers are being given. Every such audience is in a sense a 'captive' audience."

"At the same time, I cannot say that to authorize this prayer is to establish a religion in the strictly historic meaning of those words. A religion is not established in the usual sense merely by letting those who choose to do so say the prayer that the public school teacher leads. Yet once government finances a religious exercise, it inserts a divisive influence into our communities."

"Under our Bill of Rights free play is given for making religion an active force in our lives. But 'if a religious leaven is to be worked into the affairs of our people, it is to be done by individuals and groups, not by the Government.' [citing another First Amendment case, McGowan v. Maryland]"

"The First Amendment leaves the Government in a position not of hostility to religion but of neutrality . . . The philosophy is that if government interferes in matters spiritual, it will be a divisive force. The First Amendment teaches that a government neutral in the field of religion better serves all religious interests."

Questions to Consider

1. With which arguments does Justice Douglas agree with the majority? With which arguments does he disagree?

2. What does Justice Douglas mean when he argues that New York "finances a religious exercise?"

3. What is Justice Douglas' opinion of the argument that the Regents Prayer is voluntary in nature?

