SIGNIFICANT PRAYER EVENT #10
April 3, 1962 Engel v. Vitale

If my people, who are called by my name, will humble themselves and pray and seek my face and turn from their wicked ways, then will I hear from heaven and will forgive their sin and will heal their land. 2 Chronicles 7:14

"Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country." State Board of Regents, New York, 1951

Dear Ones,

This series of articles began after I read *One Nation Under God: A History of Prayer in the United States* by James P. Moore. I have sought to discern the ten most significant historical events involving prayer in United States History and to present these in brief articles describing the events themselves and the reasons why I felt they were significant. The majority of the events either involved the attempt to bring the nation as a whole before God, to transcend religious and denominational differences in a common plea before the Almighty or they involved a personal transformation that later united the country in a communal transformational experience that produced a shift in the way the country viewed itself before God. In only one of the events thus far described (event #3 in which Absalom Jones and Richard Allen were driven from the Methodist Church in Philadelphia) was prayer a divisive experience. Unfortunately, that is also the case for this last event.

In 1958 the Union Free School District #9 in New York State decided to adopt a practice which in 1951 had been recommended by the State Board of Regents for education of the state. The school district invited public school students in their jurisdiction to begin the school day by reciting the simple prayer quoted above. Only those students who chose to join the prayer would participate and any students who wished to leave the room while the prayer was being recited could be excused upon presenting a note by their parents. The Board of Regents had itself written the prayer as an interfaith exercise in such a way that no one could say that any one denomination or religious group had imposed its own views on the students.

Ten families of the school district, with the support of the American Civil Liberties Union, contested the prayer in the District Court of the United States, which, in accord with established legal precedent, upheld the prayer as Constitutional, stating that it did not violate either the "Establishment" clause ("Congress shall make no law respecting an establishment of religion"—in other words, the government can make no religion the

official religion of the country) or the "Free Exercise" clause ("or prohibiting the free exercise thereof"—which means that the government is forbidden, without demonstrating a compelling state interest, from limiting a person's freedom of or from religion). When this case was appealed to the Supreme Court, the highest court of the land overturned the lower court's ruling by a vote of 6-1 in a ringing opinion written by Justice Hugo Black that began, "**We think that by using its public school system to encourage recitation of the Regents' prayer, the State of New York has adopted a practice wholly inconsistent with the Establishment Clause,**" thus declaring unconstitutional any invitation to pray in public schools on the part of school officials. This has been one of the most controversial decisions in the history of the Supreme Court, but a decision that has not only stood several legislative attempts to amend the Constitution, but has also become the basis for many more Supreme Court decisions regarding the practice of religion in public life.

Justice Black chose not to base his opinion so much on legal precedent (of which there was very little), but on a spiritual history of the country. After having argued that prayer is commonly agreed to be a religious activity, even by the defendants in the case, Black goes on to state, "**We agree with that contention since we think that the constitutional prohibition against laws respecting an establishment of religion must at least mean that in this country it is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by government."** Black sets out as his prime example of government-authored prayer the Book of Common Prayer in England which from the mid-1500's was made the official prescription for religious practice in the Church of England and from which several groups who ended up in America fled. He recognizes that, in the colonies, several religious groups that had formerly been persecuted for opting out of the use of the Book of Common Prayer themselves set up official and prescribed religious practices, but he shows how the tendency after the ratification of the Constitution was to eliminate these governmentally established religions. Black's argument reaches its high point in the following statement regarding the Establishment Clause of the First Ammendment of the Constitution: **"Its first and most immediate purpose rested on the belief that a union of government and religion tends to destroy government and to degrade religion."**

For most of the nineteenth and twentieth centuries the prevailing social and legal view of the functioning of the Establishment Clause was that while the government ought not to favor a single denomination, as a whole it was in the State interest to encourage and protect the practice of a generic Christianity. This view was so commonly held that there were no cases seeking to limit the role of religion in the public sphere. There was no single established church, but Christianity was the defacto established religion.

Justice Black's contention is that a governmentally-authored prayer, however vague and innocuous, violates the *constitutional wall between church and state*. This phrase is not found in the Constitution but in a letter from Thomas Jefferson reassuring a Baptist Association that the US government would not get involved in religious matters and is here employed by Justice Black for only the second time in a court opinion (*Everson v Board of Education*, the first Supreme Court opinion employing the phrase was also written by Justice Black). It seems to me that Justice Black's ideas represent a stance more strongly rooted in the Bible than in the Constitution. Jesus himself said, "Give to Caesar (the government) what is Caesar's and give to God what is God's" (Luke 20:25). And in the world of the Old Testament where kings were usually the supreme religious leaders of their countries, Israel had a finely balanced authority between kings, on the one hand, and priests and prophets on the other. The idea that a government is to provide religious freedom to all and is to abstain from the preferment of one religion over another is a distinctive and unique contribution to human history by the Judeo-Cristian tradition. In an increasingly religiously pluralist society, the court is correct to guard against the imposition of faith by the government. Justice Black clearly believed that he had done Christianity a favor by removing its "most favored faith" status in relation to the government, and his belief has strong biblical justification.

But Justice Black's opinion has another more pernicious dimension. Way back in my first article in this series, I wrote about the *New England Primer*, a book designed to teach children (and adults) to read, and which incorporated a great deal of religious material but was almost universally employed in the early United States. Why did the Board of Regents think it necessary to write their own prayer instead of setting forward an already-existing and commonly employed prayer? It was because the Board was consciously trying to steer clear of the appearance of favoring any religious tradition. In other words, the court had previously (in *Everson v Board of Education*, mentioned above) required the government to be completely neutral towards religious groups—a ruling that forbade the Board of Regents to draw upon any religious tradition to offer the opportunity for students to pray together. This further ruling also forbade the government from offering the prayer. *Engel v Vitale* did not make it illegal for students to pray in the public school; it made it illegal for anyone in authority to invite students to pray **together—**a fact that was demonstrated by subsequent court decisions**. ***

Some have argued that, given the bland nature of Board of Regents' prayer, this was just as well—that this is prayer reduced to its lowest common denominator. It seems to me that this argument forgoes the possibility that corporate prayer may actually move the heart of God or may work changes among a group in their relationship to each other and to God. Consider the prayer's simple and yet deliberately chosen components. During an average school day, students will spend time studying human achievements and knowledge in language, mathematics, science, and history, and I think it significant that they begin the day by declaring the sovereignty of God over all these things and in

humility they acknowledge our common dependence upon that sovereignty. It is also significant that they then turn to ask for God's blessing (and involvement) in the individual sphere ("ourselves"), the family sphere ("our parents"), the academic sphere ("our teachers"), and the national community ("our country"). It seems to me that the Board of Regents sought to formulate a prayer that would represent, not the lowest common denominator among religions, but the greatest common factor among them. This prayer represents the attempt to bring 2 Chronicles 7:14 into the classroom and unleash its promise upon every level of society.

Engel v Vitale does not only, or even principally, embody the struggle between religious and irreligious people in our country—it doesn't even embody the struggle between religious and secular society. The heart of this case is the struggle, already present at the moment Jacob Duché was invited to lead the Constitutional Congress in prayer in 1776, between those who desire to seek a way that we can pray **together,** and those who feel it is only appropriate for us to pray **separately.** It is as if the call of 2 Chronicles 7:14 to corporate prayer were set against the invitation of Matthew 6:6 to "*enter into your closet, and when you have shut your door, pray to your Father which is in secret; and your Father which sees in secret shall reward you openly."* It is as if corporate prayer and private prayer were mutually exclusive. You can see this operating in Hugo Black's opinion when he writes: **The Establishment Clause thus stands as an expression of principle on the part of the Founders of our Constitution that religion is too personal, too sacred, too holy, to permit its "unhallowed perversion" by a civil magistrate**. In his dissenting opinion, Justice Potter Stewart demonstrated the ample precedent for the call to united prayer and/or communal commitment to God, in the third stanza of the national anthem, in the pledge of Allegiance, in the inaugural addresses of every President, in the daily invocations offered up during the sessions of both houses of Congress and so on.

It is emphatically true that people should not be coerced into prayer. If people gather for a non-religious school-sponsored event (such as a High School football game), they are right to expect that their sensibilities not be assaulted by a religious ceremony (such as student-led prayer over the loudspeaker system) that no one is free at that point to opt out of. On the other hand, part of the strength of this country is the continual search for ground upon which people of different convictions can seek common spiritual cause in prayer. It seems to me that government officials at all levels throughout our history have rightly sought ways to join religious authorities in bringing communities together in prayer, even if their efforts resulted in varying degrees of success or appropriateness. The subsequent history of 1st Amendment litigation proves that *Engel v Vitale* did not put an end to the expectation that communities placed on government officials to continue to exercise this function or that they continue to invite religious leaders to do so. The Supreme Court has declared that, at least with regard to the public schools, any official invitation to a community to unite in prayer is unconstitutional. The danger is that the inexorable reasoning behind this declaration

will inevitably apply to all government officials and branches, making every community religious observance illegal. Already, it seems to me, that *Engel v Vitale*, forbids the reading of President Lincoln's Thanksgiving Proclamation, President Roosevelt's D-Day prayer, President Eisenhower's Inauguration Prayer, and George Washington's farewell address in the classroom, insofar as each of these contains a call to communal prayer. *Engel v Vitale* may be the final installment in a series of articles on "Significant Prayer Events in US History" in more ways than one.

You would be surprised how very different folks can find ways to come together in prayer.