

Stanley Mosk, *Bakke*, and the Davis Commencement

By EDWARD L. BARRETT, JR.*

I have known and admired Stanley Mosk since he was Attorney General of California. I have seen him perform in a number of settings as a man of high principles and a determination to stand by them. While I have not always agreed with the substance of his positions, I have always respected his way of dealing with the controversies that inevitably arise when people in public positions openly take firm stands.

One such instance involved the School of Law at Davis, where each year the members of the graduating class are asked to select a commencement speaker. After a student vote, the Dean of the law school extends an invitation to each of the top nominees, consecutively, until an acceptance is obtained. In the fall of 1977, the student vote resulted in the following list of top vote-getters: Woody Allen, Coretta Scott King, Rose Bird, Barbara Jordan, Stanley Mosk, Mathew Tobriner, Thurgood Marshall, and Potter Stewart.

The Dean excluded Bird because she had been invited to judge the Moot Court finals for that year. Letters were then sent out to Allen, King, and Jordan, each of whom declined.

At this point the Dean consulted with the students, who agreed that letters should continue to be sent out in the order of the list. An invitation was extended to Stanley Mosk and he accepted.

Stanley had recently written the majority opinion of the California Supreme Court in *Bakke v. Regents of the University of California*,¹ holding that the minority admissions program of the Davis medical school was unconstitutional. The court had ordered that Bakke—a nonminority applicant—be admitted to the school in place of a less-qualified minority applicant. As Stanley's invitation and acceptance became known in the law school, a reaction developed. On the basis of their disagreement with the *Bakke* decision, a number of minority students and others urged the Dean to withdraw the invitation. The Dean re-

* Professor of Law, University of California, Davis. B.S., 1938, Utah State University; J.D., 1941, University of California, Berkeley.

1. 18 Cal. 3d 34, 553 P.2d 1152, 132 Cal. Rptr. 680 (1976).

fused, however, noting that he had acted pursuant to the student vote. He added that Justice Mosk was a distinguished and honorable judge, and that it would be unthinkable to withdraw the invitation merely because some students disagreed with his position in a single case.

The law school's Third World Coalition then sent a long letter to Justice Mosk expressing the Coalition's displeasure with the *Bakke* decision and voicing its opposition to the selection of Mosk as commencement speaker. Stanley responded with a letter of his own. The letter expressed his sadness that there were students who did not understand the First Amendment, who had forgotten the writings of Voltaire and Jefferson, and who believed that, by demonstrating and pamphleteering, they could influence the judicial process. Stanley's letter concluded as follows:

I shall be present and speak at the graduation ceremonies. I hope you will be present, too, for I suspect you will like what I propose to say. If you choose not to attend, drop me a note afterwards and I shall be glad to send you a copy of my message.

Tensions rose. On March 13, 1978, a letter signed by over half of the third year class was sent to Justice Mosk expressing support for his decision to speak. "Regardless of our various views on the *Bakke* decision," the letter said, "we feel that it is an honor and a privilege to have a member of the California Supreme Court as our commencement speaker." At about the same time, the Third World Coalition renewed its demand for Stanley's withdrawal. Stanley responded by reaffirming his intention to speak.

Upon hearing of Stanley's intent, the Coalition and others threatened to boycott and picket the ceremonies. The law school was in a turmoil.

Eventually, with the Dean's help, an understanding was reached. There would be pickets at the ceremonies, but only outside the commencement building. All of the graduating students would participate in the commencement, but those who felt strongly about *Bakke*—along with their guests in the audience—would quietly leave the building during Justice Mosk's speech.

At commencement time, some fifty to seventy-five pickets paraded outside the building. Most of the pickets were from the law school, but a few were from outside groups. I conversed with Stanley alone in a room, as we waited for the ceremonies to begin. The primary thing I remember from this conversation was Stanley's unhappiness at being the center of so much controversy.

As Stanley was introduced, about thirty-four of the 139 graduates and about 150 guests and family members got up and left the room. Stanley responded by saying: "I'm glad to be here at the siege of Fort Davis. Perhaps we can put our wagons in a circle and persevere. I understand that relief will be here from Washington in just a few days." Stanley's "relief" was the United States Supreme Court's anticipated ruling in the *Bakke* appeal.²

Stanley went on to say that there were three lessons to be learned from the protest over his appearance: "Judges . . . cannot be intimidated. . . . Lawsuits are won and lost in the courtrooms, not in the streets. . . . In a democratic society all points of view deserve a thoughtful reception." He made no further reference to the protest or to the issues in *Bakke*. As he finished his speech, the group that had left the room returned.

At the conclusion of the ceremonies, I walked outside with the graduates and their guests. The pickets were gone. People were streaming to their cars. And there was Stanley and his driver walking to their car—now totally unnoticed by the crowd.

It had been a difficult day for Stanley. He could not have given in and withdrawn, however, without being unfaithful to his principles. Instead, he came with head high, delivered his speech, and maintained the dignity and strength of the judiciary.

It was a sterling performance.

2. In *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978), the Supreme Court affirmed the portion of the California Court's judgment ordering that Bakke be admitted to the medical school and invalidating the school's special admissions program. The Court reversed, however, the portion of the judgment prohibiting the school from considering race as a factor in future admissions decisions.

