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## Courtesy on High

Justice Stanley Mosk\*

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# Courtesy on High

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## **Abstract**

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## Justice Stanley Mosk\*

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In the 1992 presidential campaign, both President Bush and Vice President Quayle launched attacks on lawyers. They stimulated some fanatical followers to recall the line in Shakespeare's *Henry VI*: "The first thing we do, let's kill all the lawyers."

Those who employ that infamous quote apparently are unfamiliar with the context in which it was spoken. In the Shakespearean tale, Jack Cade of Ashford was a common rabble-rouser hoping to foment a rebellion against the throne. He enters a tavern and announces: "When I am King, as King I will be . . . there shall be no money; all shall eat and drink on my score; and I will apparel them all in one livery; that they may agree like brothers and worship me, their Lord." At that point, Dick the Butcher, a simple follower, declares "The first thing we do, let's kill all the lawyers."

To the mind of the rabble, it was lawyers who wrote and enforced the country's laws. Do away with lawyers and thereby do away with the rules of civilized society. One would hope that those who blithely cite Shakespeare's line today do not share the underlying motivation of this play's character.

Of course there are lawyers who are scoundrels, boorish and unethical in practice and a discredit to the profession and an offense to the public. But no profession as a whole does more to enforce high standards of personal conduct than the bar. Be considerate of your client, lawyers are told. Be deferential in court, they are instructed. Treat your opponent with courtesy and dignity. Failure to adhere to those standards is likely to result in discipline by the organized bar.

Practicing lawyers have been told, since law school days, that they will derive ethical inspiration from the demeanor of judges. Certainly judges treat each other with respect, even when they may disagree in individual cases on legal principles. Obviously lawyers can usually look to the scholarly and dignified justices on the highest court in the land for guidance on how to conduct themselves in a courteous and temperate manner, even in contentious litigation.

Sadly, however, not always.

On June 24, 1992, the Supreme Court decided *Lee v. Weisman*,<sup>1</sup> a case

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\* California Supreme Court Justice.  
1, 113 S. Ct. 2649 (1992).



involving a religious invocation and benediction at a public school event. There were three prevailing opinions, and a dissent written by Justice Scalia. Following are a few choice quotations from the Scalia opinion:

"As its instrument of destruction, the bulldozer of its social engineering, the Court invents a boundless and boundlessly manipulable, test of psychological coercion . . . ." <sup>2</sup>

" . . . the changeable philosophical predilections of the Justices of this Court . . . ." <sup>3</sup>

" . . . cannot disguise the fact that the Court has gone beyond the realm where judges know what they are doing." <sup>4</sup>

"The Court's notion . . . is nothing short of ludicrous." <sup>5</sup>

"It is beyond the absurd . . . ." <sup>6</sup>

"Logically, that ought to be the next project for the Court's bulldozer." <sup>7</sup>

" . . . the Court's solemn assertion . . . would ring as hollow as it ought." <sup>8</sup>

" . . . the Court's psycho-journey." <sup>9</sup>

" . . . a jurisprudential disaster . . . ." <sup>10</sup>

" . . . senseless in policy . . . ." <sup>11</sup>

One must respect a justice who adheres to principle as he or she sees it. And we admire a justice who expresses principle thoughtfully, even forcefully, in opposition to the prevailing views of others on the same court. However, one must doubt that the disrespectful and intemperate language used in the *Lee v. Weisman* dissent sets an appropriate example for the bench to give the bar.

Perhaps our best hope is that lawyers who may be tempted to speak in such a manner to the judge or to opposing counsel do not look to Supreme Court opinions for guidance.

This issue of the *Nova Law Review* may be devoted to legal humor but Justice Scalia's hardedged and discourteous expression is no laughing matter.

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2. *Id.* at 2679.

3. *Id.*

4. *Id.* at 2681.

5. *Id.*

6. *Lee*, 112 S. Ct. at 2682.

7. *Id.*

8. *Id.* at 2683.

9. *Id.* at 2684.

10. *Id.* at 2685.

11. *Lee*, 112 S. Ct. at 2686.



