

Comments on Clem P. Steed's Report of Committee on Legal Ethics

by Justin A. Stanley*

Clem P. Steed's Report of Committee on Legal Ethics of the Georgia Bar Association,¹ delivered at the annual session of the Association in 1902, contains principles as relevant in 1990 as they were in 1902. The words are different but the message is the same. Then, as now, the fear that commercialism was changing the profession was predominant. Then, as now, it was thought that the judges "are peculiarly chargeable with the guardianship of professional ethics."²

Steed traced the significance of ethics. "Ethics," he pointed out,

is said to be the science of conduct. It is an attempt to formulate rules of right conduct as evolved from experience in the lives of men. It sets up ideals of conduct, rising above, but based upon actual human life and nature, and attempts to give those ideals definite place and shape.³

Steed noted that any code of ethics, to be effective, "must be approved by the enlightened consciences of those to be ruled by it."⁴ While he adds, significantly, that "conscience is susceptible of cultivation," he suggested, it is "largely formed by environment."⁵ Hence, the basic question for lawyers is "the status of professional ethics amid the changes of contemporary life"⁶

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1. Steed, *Report of Committee on Legal Ethics*, in REPORT OF THE PROCEEDINGS OF THE NINETEENTH ANNUAL SESSION OF THE GEORGIA BAR ASSOCIATION 285 (1902), reprinted in 41 MERCER L. REV. 549 (1990) [hereinafter *1902 Report*].

2. *1902 Report*, *supra*, note 1, at 291.

3. *Id.* at 285.

4. *Id.*

5. *Id.* at 285-86.

6. *Id.* at 286. Steed points out that killing at one time was not deemed socially unaccept-

For most men and women, but especially for lawyers, there is always the reaching out for justice. Indeed, the idea of justice was in 1902, as it remains today, a dominant force in society.

Taking the Roman advocate, "eloquent, dignified, unpurchased and unpurchasable" who charged no fee for services⁷ as his ideal, Steed contrasts the lawyer of 1902 and concludes that "the spirit of commercialism . . . is among us."⁸ That spirit "has an eye single to the fee . . . [it] hunts a fee . . . [it] submits to be 'hired' by the biggest fee . . ."⁹

Changes in legal services had taken place by 1902, of course, and much of a lawyer's work had come to involve handling the affairs of businesses and performing office work rather than courtroom work. Such changes did not bother Steed. "The danger," he said,

is not here. The danger arises when the lawyer . . . whatever the sphere of his practice, allows himself to regard his profession as solely, purely, and simply a means of making a living, or making money [H]e fails—he is untrue to his mission—when he makes these things his sole end¹⁰

Today we would all regard life and law in 1902 as relatively simple. Certainly the Bar was different.

When Steed wrote, Georgia had no Code of Ethics or Code of Professional Responsibility. Litigation tended to be rather informal. There were perhaps 2000 lawyers admitted to practice in Georgia. There were no women lawyers and no black lawyers. (The first black lawyer was admitted in 1906 and the first woman in 1916.) The fledgling American Bar Association had produced a Model Code of Ethics, but there were no enforcement agencies such as disciplinary commissions.

Today there are more than 20,000 Georgia lawyers of whom an estimated 7500 are women and 700 are blacks. Georgia has in place a disciplinary system, and the power of the courts to affect discipline is strengthened by the available power of sanctions. The size of firms and the compensation paid to new associates have risen spectacularly and the real income of lawyers as a class has grown. Business transactions tend to be more complicated than ever. New fields of law have developed, such as income tax law, social security law, and labor law, and these add to the complications of practice.

Yet those who take the time to read the Report of the American Bar Association's Commission on Professionalism, which was submitted to the

able, nor was burning for witchcraft.

7. *Id.*

8. *Id.* at 287.

9. *Id.*

10. *Id.* at 288.

House of Delegates in August 1986,¹¹ will find that the theme which so troubled Steed continues to trouble the profession today. The spirit of commercialism, as Steed defined it, "is [still] among us" and it affects almost all ethical problems of the profession.¹²

Further, as in 1902, if we are to find an answer, we will likely find it in the very place which Steed suggested—the judiciary. Judges remain the best hope for controlling the conduct of lawyers, armed, as they now are in many states, by a specific power of sanctions. Yet behind this, for a birth or a regeneration of the highest ethical standards, there must be the power of the spirit. As lawyers, we must want this in fact to come about. Only if we do, will it be so.

11. 112 F.R.D. 243 (1987).

12. 1902 Report, *supra* note 1, at 287.

