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SIX WARNING SIGNS OF A STATE BAR IN NEED OF AN ATTITUDE ADJUSTMENT

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In addition, to the overall character assessment process which constitutes the bulk of this book, my research of the State Bar admissions process has identified six key warning signs that I believe indicate a State Bar is trying to wrest control of litigation outcomes from the Courts by subverting the adversarial process. Typically, the existence of these warning signs in a State Bar is indicative that the discretionary element of character assessment is probably being abused by the State Bar admissions committee. The prevalence of these warning signs tend to flourish during periods of political conservatism and dissipate during periods of liberalism. Each one of the warning signs represents a danger to the public interest, yet each one is unsurprisingly publicized for propaganda purposes by the State Bars as intended to promote the public interest. They each have the effect of either increasing State Bar control over the attorney's individuality and freedom, or decreasing the number of licensed attorneys in the marketplace. The warning signs to beware of within any state's legal profession are as follows:

1. **LAW STUDENT REGISTRATION** - The first early warning sign of a State Bar that needs to have its' power curbed is when it requires law students to be subjected to character assessment. This was described in several of the Bar Examiner articles previously discussed. The policy is designed to establish control over the student from the point they enter into the surreal world of the legal profession to ensure that the potential lawyer will adapt to the State Bar's group thought objectives. It is no doubt easier to maintain reins on a person's thought process, if control is established from inception.

2. **PROBATIONARY ADMISSION** – When a State Bar allows probationary admission, it does so to control how the person litigates by leveraging their law license. The concept is that by holding out the "carrot" of full admission, the "pseudo-attorney" will not take action adverse to economic interests of other attorneys. The obvious dilemma created is that it is unfair for that lawyer's client to be represented by an attorney on probation, when the opposing party has someone representing them whose law license is not hanging by a thread. The probationary attorney's clients are at a marked disadvantage compared to other litigants.

3. **HIGH APPLICATION FEES** – During the 1990s, many State Bars began raising admission fees to ridiculously inordinate levels in order to reduce competition amongst lawyers in their state. Some State Bars today charge as much as $ 1,000.00 just to file an application. When it costs roughly $ 150.00 to file an application to become a licensed CPA, and $ 1,000.00 to become a licensed attorney, the fee is irrefutably serving purposes beyond covering necessary costs. High application fees are designed to reduce competition in order to increase the cost of legal services to the general public.

4. **LAW PRACTICE MANAGEMENT PROGRAMS** – Ostensibly designed to provide free assistance to the licensed attorney regarding matters involved in running a law practice, these programs sponsored by the Bars are in truth intended to allow the State Bar to have their "finger in the pie" so to speak. It allows them to informally discover how lawyers conduct themselves. Primarily, these programs are an initial step towards further involvement by the State Bar in the lawyer's practice. Think of it. If all lawyers use and follow the advice of State Bar Lawyer Practice Management programs, then all lawyers will function in a uniform manner. Once again, the group rather than the individual dominates. Creative ingenuity and inventiveness is subjugated. Lawyers who don't function in accordance with the State Bar's advice are then ostracized by their peers, with the result that their clients inevitably suffer the consequences. The Courts will then predicate decisions not on the facts, evidence and law, but instead upon which party has counsel supporting State Bar doctrine. State Bar doctrine is obviously rooted in the economic interests of lawyers.

   In the 1990s, one of the areas of Law Practice Management that the State Bars concentrated on was malpractice insurance. Attorneys within a particular State are typically encouraged to use malpractice insurance companies endorsed by the Bar. This is a particularly worrisome warning sign, since a malpractice cause of action is normally accompanied by a breach of the rules of ethical conduct. By endorsing certain malpractice insurance companies, the State Bar's disciplinary function suffers from a conflict of interest. An incentive is created for the State Bar to treat lawyers who purchase malpractice coverage from Bar-Endorsed insurance companies more leniently in the context of discipline, compared to those attorneys who purchase coverage from other companies. In fact, since 1977 the Oregon State Bar has taken this concept to such a ridiculously egregious level that it has required Oregon attorneys to purchase malpractice coverage directly from the State Bar itself. Oregon lawyers who fail to do so have their law license suspended. The result is that judicial rulings in Oregon are predicated on State Bar financial interests and the disciplinary function is wholly illegitimated.

5. **LAWYER ASSISTANCE PROGRAMS** – These programs ostensibly designed to provide free assistance to lawyers suffering from emotional problems or substance abuse such as alcoholism or drug addiction, are in truth designed to involve the State Bar in the most personal aspects of the lawyer's life for the purpose of leveraging their professional conduct. Once the Bar identifies the lawyer's emotional and physical weaknesses, it has enormous leverage over that lawyer. Lawyer Assistance Programs are falsely promoted to members of the Bar, as being totally and completely confidential. As will be seen later in this book, that purported confidentiality has in many instances been breached. In fact published appellate opinions demonstrate that these programs are often used to obtain evidence against an attorney for use in a disciplinary proceeding against the attorney. I fervently believe that if a lawyer has an emotional or physical problem, by all means they should seek professional help. They are nothing short of a moron however, if they seek such help from any program sponsored by the State Bar that licenses them.

6. **STATE BAR RULES AND COURT RULES DESIGNED TO FRUSTRATE THE LAWYER'S FIRST AMENDMENT FREE SPEECH RIGHTS -**

   This last warning sign is the most serious. When the State Bar threatens the lawyer's First Amendment free speech rights by curbing the lawyer's ability to criticize the Judiciary, or the State Bar, the general public loses the assistance of those individuals who are most capable of protecting their constitutional freedoms. From the Bar's perspective, the concept is ideal. If the

lawyer speaks out against the Judiciary or State Bar, then simply revoke their law license. They are then no longer an economic threat to financial interests of the legal profession. Historically, all governments have attempted to trim the ability of their citizens to freely express opinions. The United States has been no exception. It is well known amongst historians that in this nation we have had three major congressional enactments that violated the First Amendment. Each one was given a name designed to create a false impression that anyone who violated the statute were sinister criminals. In fact however, all three congressional statutes, each of which ultimately fell by the wayside, covered a substantial amount of constitutionally protected speech that was of the most innocent and peaceful nature. In the late 1790s, the Alien and Sedition Acts were adopted by Congress. They were quickly condemned by James Madison and Thomas Jefferson. The so-called "Espionage Act of 1917," a statute possessing an obviously sinister title, was an enactment that made criticism of governmental policies a crime. It resulted in the successful prosecution of numerous pacifists. In one famous "Espionage" prosecution, *Masses Publishing Co. v. Patten*, the government asserted that publishing a cartoon labeled "Congress and Big Business" constituted espionage. The Smith Act of 1940 forbade teaching, advocating or abetting communistic doctrine. Similar issues pertaining to advocacy of communism and associations became a focal point in six major U.S. Supreme Court cases on State Bar admissions.

In the 1990s and into the early 21st century, the State Bar's modus operandi of curbing free speech rights of lawyers has focused on disingenuous State Bar notions of "civility," and "professionalism." The professed concept is that lawyers should be nice, civil and respectful to each other. Ostensibly, the notion is appealing. The problem occurs however, when passionately disagreeing with another lawyer, a State Bar or a Judge's viewpoint in a nonabusive manner; is falsely characterized as being uncivil or disrespectful. Many of the most egregious and unconstitutional appellate opinions on Bar admission have focused on irrational characterizations by Bar Committees that the Applicant has been disrespectful, uncivil, glib, facetious, sarcastic, or arrogant. Notions of "civility" and "professionalism" can be used as "dangerous instruments" by the Judiciary to subjugate attorneys with a strong sense of justice and true love for the interests of the general public. Enactment of rules mandating civility, cooperation and professionalism are the most serious warning signs that a State Bar is attempting to curb the ability of an attorney to provide zealous, passionate and brave representation to a client. Some of the State Bars have within the last decade gone so far as to ridiculously and falsely characterize criticism of the Judiciary as falling within the category of "conduct prejudicial to the administration of justice." Prohibitions or punishments in the form of professional regulation designed to subjugate the lawyer's free speech rights are a significant step towards a totalitarian legal profession. If lawyers can not exercise their own constitutional rights, there is no way they can protect the rights of their clients.