

Even in Idaho, free speech is still the law of the land

Jim Fisher/Lewiston Tribune

Jim Fisher is a former editor of this page. His guest editorials will occasionally appear while Marty Trillhaase is on vacation.

First, a question: Do you think animal welfare activists should be charged with a crime for misrepresenting themselves in order to video-record brutal treatment of animals or other abuses in food processing plants?

Now, another: What about when anti-abortion activists misrepresent themselves in order to record Planned Parenthood officials discussing the use of aborted fetuses for medical research?

Not much difference, is there?

Actually, there is one difference. No one claims the 2012 recording of workers at Idaho's Bettencourt Dairies' Dry Creek Dairy beating and otherwise mistreating cows was altered to distort the facts. A floored cow was certainly dragged by its neck from a tractor and others were beaten, kicked and jumped on by Bettencourt employees.

But Planned Parenthood says, and news organizations have confirmed, that the recordings of its officials discussing the use of fetal tissues were edited to distort what was really being talked about. Planned Parenthood does not profit from providing those valuable tissues to researchers, as the recordings appear to reveal. It only recovers its costs from a legally authorized practice.

That aside, however, should the creation or use of either recording be a crime?

U.S. District Judge B. Lynn Winmill says no, and for the best of reasons. The U.S. Constitution protects such activities -- whether accurate or not -- under its First Amendment guarantee of free speech. Because it does, Winmill nullified Idaho's ridiculous 2014 so-called ag-gag law shielding food processors from secret recording of what happens inside their plants.

The ruling serves as deserved comeuppance for legislators and a governor, Butch Otter, who were more eager to penalize those revealing abuses at the Bettencourt dairy than the abusers themselves. That eagerness defied constitutional principle while also disserving the public.

And once again, Idaho taxpayers will pay the price for enacting and defending a statute that should not have made it past the first legislative committee.

"This is the way you combat your enemies," Sen. Jim Patrick, R-Twin Falls, told fellow legislators as they debated the law in question. But as Winmill points out, it is also a way to prevent such revelations as those by early 20th-century novelist Upton Sinclair, who hid his identity to work in a Chicago meat packing plant while preparing his novel "The Jungle." Sinclair's account of barbaric practices shocked the nation, eventually contributing to passage of the Federal Meat Inspection Act and the Pure Food and Drug Act.

But what about dishonest revelations, such as those Planned Parenthood says it has been the victim of in the fetal tissue recordings? Even those are protected, Winmill implies.

"The remedy for misleading speech, or speech we do not like, is more speech, not enforced silence," he writes.

That is as succinct an expression of the freedom embodied in the First Amendment to this country's founding document as can be found anywhere. But it has never been the stuff of mystery. It is something every schoolchild and every sentient adult in America should not only know, but revere.

Shame on those legislators, and that governor, for failing to do so. -- J.F.