

GUEST OPINION

Beware of the Idaho Bar's proposed limits on free speech



BY JIM HARRIS

A little-known occurrence struck at the heart of liberty a few weeks ago. A new “ethical rule” was approved by a 60 percent vote of the members of the Idaho Bar Association, the state organization that controls the licensing, oversight and enforcement of rules for every practicing lawyer in Idaho.

This new rule could have been torn from the

pages of Huxley’s “Brave New World.” It enacts provisions to limit the speech and writings of attorneys so as to avoid “an environment” that is “intimidating” or “hostile.” It allows the Bar, with pending Supreme Court approval, to revoke a lawyer’s license to practice for “offending,” “discriminatory” or “harassing” language that the lawyer “reasonably should know is harassment,” is “threatening or humiliating,” while “engaged in the practice of law” or while “participating in social activities in connection with the practice of law.” (A complete copy of the rule and applicable guidelines can be obtained online by contacting the

Idaho Bar Association in Boise.)

The enforcement available to the Bar and courts pursuant to this rule clearly brings it into violation of the First Amendment and goes against 200 years of U.S. Supreme Court rulings. The fact that a complaint made against an attorney, even if not upheld, will follow that person and remain on his or her record forever will likely deny that lawyer any chance at political office or judicial election. It is thus undoubtedly unconstitutional.

At first blush you may want to dismiss this new piece of social engineering as a lawyer’s problem and, thus, not yours, or as just another attempt to create

a “safe space” to avoid uncomfortable or bothersome ideas. You would be wrong. Here’s why: This effort, or one very like it, has been advocated to some degree in every state. There are two reasons that you should be aware of.

• First, lawyers (like it or not) are opinion-makers in every community in the country. They make up a large percentage of mayors, city council members, legislators and elected federal representatives (three-quarters in Idaho, for example). And so the theory will go: If an attack on the free speech of attorneys is acceptable, is it not good for everyone else?

This approach to attacking the First Amendment

is now working, regardless of whether these lawyers took an oath to uphold it. But enough about lawyers.

• Second, as advocated by the political left, this rule is but an early indication of an approach that will increase the likelihood of long-desired attempts to create a “manageable society.” This argument for changing or at least ignoring the Bill of Rights will be expanded to other entities, individuals and governments – and, importantly, to other constitutional protections (the nine other articles of the Bill of Rights). The emotionally based “necessity” for such invalidation of liberty and traditions will soon be advocated for reinterpretation of all civil rights that stand in the way of societal control.

Imagine, if you will, how much success will be had by using the argument that the Second Amendment must be limited and regulated to avoid the provable “fear” generated by ownership of firearms.

Judges are likely to do what they usually do and follow the lead of lawyers who appear before them and the political, popular and philosophical movements of the day. One of the strongest arguments made by the proponents of the new rule was that even if unconstitutional, it will “send a message.” A recently retired justice of the Idaho Supreme Court argued that because of this “necessity,” the Idaho court would “probably approve” the rule if challenged.

The new Bar rule, in all likelihood, soon will be approved by the Supreme Court based on the membership vote. Lawyers in Idaho had best watch their tongues. Perhaps the rest of you will soon follow. Who is next? Perhaps religious leaders or gun owners? Probably the press.

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