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The People Out of Doors — In Trees

Posted By [Timothy Zick](#) On September 13, 2007 @ 12:20 pm In [Constitutional Law](#) | [8 Comments](#)

As reported [here](#) ^[1], for several months now activists have been protesting the planned construction of a new athletic facility at the University of California-Berkeley. Some of the protesters have been camping out in and near a grove of trees slated for destruction. The protest tactics are hardly notable, particularly at Berkeley. What is notable is the University's latest move in this ongoing dispute. Under cover of darkness, university officials had the grove surrounded by a 10-foot-high fence. The erection of the fence was necessary, said university officials, to "protect" the protesters from angry football fans.

The Berkeley episode is one indication that campus spaces, once facilitative platforms for social movements, have become microcosms of the spaces outside their gates. Like other state actors, public college and university officials have increasingly turned to "free speech zones" and other [spatial tactics](#) ^[2] to control outdoor expressive activity. In some instances, adverse publicity has caused officials to rethink these tactics, or at least re-zone campus space to allow for additional open forums. But expressive zoning, detailed permitting requirements, and other spatial controls are prevalent on many campuses today.

The argument that the fence *facilitates* free speech by "protecting" the speakers, advanced by the university's vice chancellor for administration, is typical. But putting speakers inside fences is an affront to free expression. The structure itself communicates that it is the public that needs to be protected from the speakers. Unless and until the protest is held to be unlawful (an argument the university is now pressing in court), public officials have a duty to protect these protesters from any hostile audience. That means providing some form of security in the event those currently voicing hostile opinions on the Web actually show up, not diluting and demeaning the protesters' message by caging their display.

As the Berkeley response also demonstrates, the use of spatial tactics like these can seriously backfire on administrators. The erection of the fence has apparently engendered solidarity among groups and community activists that do not typically join cause. It may not be, as one activist described it, a "Guantanamo Berkeley," but the Berkeley fence is an oddly ironic structure in the birthplace of the Free Speech Movement.

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[1] here: <http://www.nytimes.com/2007/09/13/education/13trees.html?em&ex=1189828800&en=8cc4a27bdd1a64ab&ei=5087%0A>

[2] spatial tactics: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=673448

[3] : <http://www.sfgate.com/cgi-bin/object/article?f=/c/a/2007/08/30/BAM5RRKQJ.DTL&o=2>

[4] : http://www.mercurynews.com/breakingnews/ci_6882974

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