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Klyde Warren Park Security Chases Off Anti-Circumcision Protesters, Because Children

ERIC NICHOLSON | MARCH 19, 2015 | 7:02AM

On Tuesday morning last week, while most visitors to Klyde Warren Park were batting oversize foam tennis balls back and forth on the main lawn as part of some U.S. Tennis Association promotion, a handful of anti-circumcision protesters (aka "intactivists") clustered on the park's far eastern fringe. Clad in all white, immaculate save for angry red splotches on their crotches, the **Bloodstained Men** positioned themselves along Pearl Street holding signs decrying infant circumcision as torture. One car stopped so the passenger could snap a photo with his cell phone camera. Several drivers shot quizzical looks as they drove past. Most people, both in the park and passing by, simply ignored them.

The most notable exception was Klyde Warren Park's on-site management, who could be seen pow-wow'ing near the tennis players and throwing anxious glances at the red-crotched demonstrators. After a half hour, they dispatched a security guard who informed them that if they insisted on continuing their protest, they would need to do so on the sidewalk; they were not allowed to demonstrate in the park itself.

The order was moot. The protesters had situated themselves on the most lightly trafficked section of the park, separated by Olive Street from the main lawn and

children's play area. They were mostly interested in waving their signs at the drivers zipping along Pearl. Here and there they had *maybe* wandered a dozen feet into the park proper to discuss tactics, but they were mostly sticking to the sidewalk. Besides, by the time the security guard approached, they had already decided to abandon Klyde Warren for an intersection near NorthPark Center, where they figured there'd be a higher vehicle count.

Park President Tara Green said in an emailed statement this week that Klyde Warren security merely asked the protesters to move to another part of the park to avoid interfering with a previously scheduled event.

"To our knowledge, no park security personnel asked them to leave the Pearl Lawn and move to a sidewalk," Green said. "Park security did ask them to move to the Pearl Lawn when they arrived. At the time of their arrival, the park was hosting **Imagination Playground** on the Olive Lawn which is also on the east side of the park. The group entered the park at Olive Street and was directed to the Pearl Lawn, to which they proceeded without incident."

That might all be true. It's possible that security ushered them toward Pearl Street upon their arrival (I showed up a few minutes later) and that Green has no knowledge of what happened later. But it's also true -- and recorded in the video below -- that the protesters were hustled off to the sidewalk by a Klyde Warren security guard, who said their signs were bothering kids and that park rules prohibit people from carrying signs, just like park rules prohibit people from walking their dogs off-leash. The alternative explanation -- that the woman was a crafty advocate of infant circumcision who happened to be in possession of a Klyde Warren Park baseball cap and "SECURITY" jacket -- seems unlikely.

As far as suppression goes, this is pretty tame stuff. No truncheons or fire hoses, no one being thrown in jail. Dallas police -- two detectives in an unmarked black SUV and a squad car parked along Pearl -- kept a conspicuous presence but made no move to boot the intactivists from the park. Still, from a constitutional standpoint, it presents an awkward spectacle. Here are people engaged in what sure seems like free speech in what sure seems like a public park being told that,

nope, that's not actually allowed.

"If it is a public park, that is the quintessential public forum where we expect speakers to have a First Amendment right to exercise free speech," says Texas A&M law professor Meg Penrose, who recently represented several Bush Library protesters in a **free-speech lawsuit** that forced the city of Dallas to repeal **its constitutionally dubious law barring protesters from picketing near highways**. "When we think of where speech is to be expected, it's where there are listeners. So, parks and sidewalks."

But Klyde Warren is not a traditional park, which is where things get tricky. It was built as a public-private partnership, with government covering about half the project's cost with city bonds, federal stimulus dollars and state highway money, and private donors covering the rest. The city of Dallas owns the land itself (i.e. the gajillion tons of concrete, steel, and **geo-foam** suspended above Woodall Rodgers Freeway), but day-to-day operation was turned over to a private nonprofit, the Woodall Rodgers Park Foundation, which handles everything from providing staff for the pingpong tables and board-game cart to clean-up and security.

So, is Klyde Warren more like a traditional public park, where, per the Constitution and the Supreme Court, free speech is allowed by right? Or is it more like a piece of private property, whose owners can tell anyone they choose to shut the hell up?

Both Penrose and Lackland Bloom, a constitutional law professor at SMU, say it's hard to know exactly how a court would rule without knowing the full details of the arrangement between the Woodall Rodgers Park Foundation and the city. As a general rule, however, the Supreme Court adheres to the walks-like-a-duck, talks-like-a-duck method of divining whether a place is a public forum. This has been in place since **Marsh v. Alabama**, a 1946 decision in which justices ruled that, even though Chickasaw, Alabama, was a company town wholly owned by the Gulf Shipbuilding Corp., it had all the hallmarks of an actual town, including freely accessible streets and sidewalks, and thus couldn't prohibit a Jehovah's

Witness from distributing literature.

The same principal applies to parks. "If the typical person assumed they were in a public park based on all the indications [they saw], that points toward the notion that you've basically acted like a park," which would probably be enough for a court to treat it as one. From Bloom's experience, Klyde Warren acts like a park. Unfamiliar with the complicated ownership and management arrangements, his visits there left him with the impression that it's a public park.

But even if Klyde Warren does count as a public park for First Amendment purposes, that doesn't necessarily mean the security officer violated the protesters' constitutional rights by making them leave. Even in free-speech meccas like parks, the government can place "reasonable time, place and manner restrictions" that serve a legitimate purpose. Enforcing a park curfew, or keeping people off regrowing grass could justify limiting speech, and the Supreme Court has upheld permitting schemes that require demonstrators to give advance notice to the government and pay a non-exorbitant fee before protesting.

Green, the Klyde Warren president, is aware of eight protests since the park opened in 2012. "We book events through our event departments," she said. "We take applications for space and work with each event planner to determine if they need reserved space or can use our free space. When protest organizations have contacted us directly in advance, we have explained our park rules to them as well as identifying the area they are welcome to use."

The area the protesters are welcome to use is invariably to the east of Olive, Green says, well away from most of the regular parkgoers. All have been allowed to protest for free.

Then there's the question of whether Klyde Warren's restrictions as they are enforced are content-neutral. Courts typically frown upon free-speech limits that don't treat all viewpoints equally; anti-circumcision protesters with bloody crotches should be afforded the same freedoms as, say, hipsters protesting a Sam's Club near the urban core. Yet at Klyde Warren, the intactivists were shooed away on the pretense that their signs were disturbing nearby children while the

anti-Sam's Club crew was apparently **allowed to demonstrate unmolested**.

The bottom line is that a few people at the Woodall Rodgers Park Foundation are getting to decide when, where and how people are allowed to exercise their First Amendment rights at the millionaire-funded freeway-park, which is constitutionally suspect but is a very Dallas thing to do. The record shows they are OK with free speech targeting NSA domestic surveillance programs and the Keystone XL pipeline and supporting the local honeybee population but aren't ready to stomach references to circumcision, because children.

Sorry

This video does not exist.

Send your story tips to the author, Eric Nicholson.

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