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February 8, 2013

US District Judge Edward M. Chen  
San Francisco Courthouse  
Courtroom 5, 17th Floor  
450 Golden Gate Ave  
San Francisco CA 94102-3661

\* To the extent Mr. Singleton asks the Court to reconsider its order of January 29, 2013, see Docket No. 26, the request is denied. Mr. Singleton lacks standing to seek relief.  
Re: *Hightower et al v San Francisco* (No. C-12-5841 EMC)

Dear Judge Chen:

This is merely a letter of my personal and private “outsider” opinion, as I am neither a party to the above case nor an attorney / official of any sort. I wouldn’t wish to presume on the term “amicus curiae” — though my intentions are friendly.

I’m retired/disabled and your age, living in Wisconsin but watching events in SF, and I’ve attached my blog comment since I think you might not have known some background, particularly on the Ukrainian feminist protester group FEMEN, founded 2008... whose topless and sometimes nude protests on behalf of women’s rights, e.g. against rape and abuse and sex-slavery and human trafficking and prostitution, have gotten them beaten bloody by armed and armored police of oppressive governments... precisely *because* they are so effectively political, with their signs painted on the canvases of their bare living bodies so the news cameras *cannot* ignore them.

When the issue is whether people (especially women) own their own bodies, public nudity is indeed an inherently expressive act. It declares self-ownership in the most visible possible way. The motto some FEMEN members paint on themselves, “I am free,” seems a superfluous remark.

Contrarily, as in *Tinker v Des Moines*, 393 U.S. 503 (1969), black armbands neither are, nor need to be, nor were claimed by the Supreme Court to be, inherently expressive or political. You might actually want to read that decision again. Armbands are pieces of cloth, can be mere garment accessories, fashion statements, or to mourn deceased relatives — and Justice Fortas noted that students and schools had discussed using/permitting other colors of armbands for other concurrent (non-war-protest) causes. Which of these many possible meanings was “inherent”?

That is, rather than the armbands being “inherently expressive,” and nudity not, it is the other way around. Somehow this came out backwards in your ruling. Please reconsider. Thank you.

Sincerely yours,

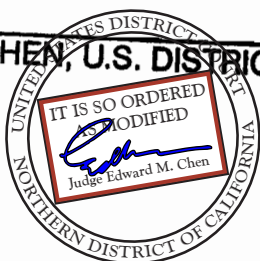
*John S. L. Singleton*  
John S. L. Singleton

IT IS SO ORDERED (see \* above)

EDWARD M. CHEN, U.S. DISTRICT  
JUDGE

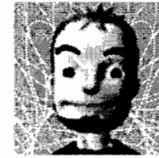
2/28/13

Date



## Raven's Song

— a blog by John S L Singleton,  
"Raven", [jsingleton@gmail.com](mailto:jsingleton@gmail.com)



WEDNESDAY, FEBRUARY 6, 2013

### The Importance of Self-Ownership



*First they ignore you;  
then they laugh at you;  
then they fight you;  
then you win.*

— M. K. Gandhi.

Of all the rights and freedoms that could ever be discussed in a constitution or anywhere else, it ought to be obvious that the first, most basic, underlying right has to be your right to *yourself* — to *self-ownership* — to possess and

control *your own body*, rather than any other entity having that right.

Because otherwise you're just a slave, and all "your" other rights are at the disposal of your owner.

This thought came to mind as the San Francisco Board of Supervisors, at the urging of a new member (Scott Wiener, a transplant from Pennsylvania and New Jersey), decided to take away San Franciscans' control of their own bodies from them — for the public good, of course — and on February 1 started arresting citizens who insisted on still retaining control of their own bodies.

This was billed the "Anti-Nudity Law."

Among those arrested, coincidentally, was Scott Wiener's rival candidate for District 8 Supervisor (who had been a 2008 candidate for Mayor), as he was distributing campaign literature; but Wiener's faction had insisted to federal district Judge Edward Chen, when the rule was being contested, that there was nothing "political" about it. Oh yeah?

The protesters who were arrested got a lot of mockery and insults from the brave, brave Internet lurkers and newspaper commenters for having had the personal courage to take the legal, financial, and physical risks involved in confronting an unjust law to defend a basic human right. Not least, the mockery went, the protesters were too *ugly* to go nude.

For those who just don't get it; who think the nudists' rights depend on their neighbors' approval, that is, it would be okay if these were beautiful starlets or female models or Playboy bunnies, just not drab ordinary-looking "95% male" nudists....

Does *your* freedom of speech or religion depend on whether *other* people *agree* with you, i.e. think your opinion or faith is *pretty*?

If they disagree ("Oh that *ugly* crucifix!"), do you lose your right to speak your own mind or wear your own religious symbol?

That's the "heckler's veto" — but the Supreme Court has never upheld such a veto.

The SF nudists' point is that they own their own bodies — so *they*, not others, should be the ones to decide what they themselves wear... no matter hecklers' opinions.

You want that freedom for yourself, do you not?

Or would you want an anti-Wiener empowered to order you stripped, made to walk the city nude, and arrested if you put on clothing? One power goes with the other.

If government can order you to be Catholic, it can order you to be Protestant — that was the whole English religious-war experience that led to our "freedom of religion" rule in the first place.

If the government can order you to be clothed, it can order you to be naked — same problem, same reason to have "freedom of skin."

As Thomas Jefferson wrote:

*"The legitimate powers of government extend to such acts only as are injurious to others. But it does me no injury for my neighbor to say there are twenty gods or no God. It neither picks my pocket nor breaks my leg."*

Another person's nudity (or clothing!) does not pick anyone's pocket nor break anyone's leg. It does no injury. It is "victimless." The legitimate powers of government do not extend here.

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But, you (or the city attorneys or Judge Chen) may say, all that still doesn't make nudity a **political** statement.

Oh, so you don't get the "political" connection to owning your own body?

Maybe you didn't see Obama's re-inauguration Master of Ceremonies stress the history of the Liberty statue on the Capitol Dome being completed overhead, just 150 years earlier, at Lincoln's orders — during the Civil War, while the political question was still very much to be resolved whether black human beings owned their own bodies?

Still, right now, to this very day, there are people dying in this world from atrocities **because governments do not regard them as having any rights over their own bodies.**

Victims of human trafficking and slavery, e.g. sex-slavery, child-slavery, child-soldiers. Women denied life-saving medicine and surgery (e.g. abortion) at the whim or dogma of men, even when death comes so quick the fetus cannot survive. Girls killed for attending school to learn to read or have careers, rather than be lifelong illiterates forever dependent and subservient to husbands. Rape victims executed for being raped, or forced to marry their rapists without hope of divorce, or to bear their rapists' children no matter the risk of death. Non-Muslims (particularly women) forced to submit to Sharia law provisions like the foregoing. Women, adolescent, pubescent, prepubescent girls, even infants, forced screaming against their will into savage un-anesthetized genital mutilation e.g. amputation of the clitoris. Beatings, whippings, and "honor killings" — for offenses like having purportedly *talked* with a man or boy. How can I bear to go on?

The Ukrainian topless women's protester group FEMEN goes around the world to draw attention to these horrible shameful problems, painting on their own bodies "My body, my rules" and "Women's rights are human rights" and other short messages — which the news cameras do not ignore, only because the signs are living flesh.

For this they have been kicked in the face, gouged, torn, and beaten bloody by armed and armored police in full view of news cameras before being dragged off, thrown hard against concrete and into vans, and at least in one case (Belorussia) taken into the wilderness, beaten more, then left there to walk back to "civilization."



Yet they keep coming back to protest *again*, for the same causes, and for gay marriage, and against the Euro-organized prostitution around major sports events (sex slaves and trafficking, remember?), and always for the human rights of others besides themselves....

Now if their "bare" expression were *not* political and very effectively so, why would it be met with such violence? (The police aren't storming the fashion/passion magazines, whose photos are even more widely seen....)

So sure, have contempt of nudist activists getting arrested for the cause of ***having rights over one's own body.***

Meanwhile what have *you* ever done for the sake of those people dying of atrocities?

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\* As one of Scott Wiener's conservative *supporters* paraphrased Paul Harvey:

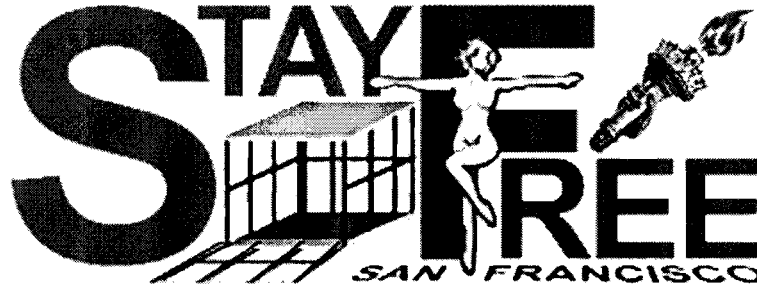
"The need to control the lives of others — manifested in the arrogance of the *эвиззэягоряк* statist who believe that they can engineer the perfect society by removing our freedoms, our liberties, our choices, our responsibilities and nudging us into their desired direction through power grabs and regulatory codes — can only originate from evil."



# Raven's Song

TUESDAY, FEBRUARY 19, 2013

Stay Free, San Francisco!



<http://tinyurl.com/stay-free-sf> (The above design is presented for the free use of those advancing body freedom, or human rights and freedom in general, with my blessings; I require neither permission, nor credit, nor royalties.)

Not that I get to set anyone else's terms, but here's why I think the two short words "Stay Free" are the main thing that need to keep being repeated now by crowds and signs protesting **this issue** in San Francisco:

1. "SF" alliterates with the city name, stressing it's a local issue.
2. These keep the message above the fog: it's about freedom.
3. It's not about Biblical morality, despite the religious right.
4. It's not about tourism dollars, despite any Chamber-of-Commerce clones.
5. It's about the freedom of non-violent non-injurious non-interfering citizens to walk down the street minding their own business without being set upon violently and dragged off in chains at the orders of a Board gone rogue.
6. To borrow Thomas Jefferson's argument, ""The **legitimate** powers of government extend to such acts only as are injurious to others. But it does me no injury for my neighbor to *[wear twenty garments or no garment]*. It neither picks my pocket nor breaks my leg."
7. From which it follows: the Board's penalizing acts *non-injurious to others* did not use a **legitimate** power of government.

I thought about having the graphic show the woman wearing a black armband, like the protesters in *Tinker v Des Moines* (since the Supreme Court agrees that black armbands "inherently express" opinions, thus are protected by the First Amendment, unlike bare skin)... aaand I decided against that:

Someone wearing a black armband might be expressing a *different topic of opinion*, say, an opinion against war, but it's a sure bet anyone going bare in public is expressing an opinion in favor of the right to body freedom, no matter what else. That's as "inherent" an expression as any Supreme Court Justice or other judge could reasonably require.

But you know, I do have to wonder: what kind of cognitive dissonance would the good judge face if nude San Franciscans started being arrested *while wearing black armbands*?

It seems to me he'd have to agree they were indeed "sending a message" with the armbands, and therefore were under the First Amendment's protection at the time....

So here's the quandary: would all that mighty Constitutional protection apply just because of the tiny strip of cloth, and none at all only to, or because of, the entire fully human being *wearing* it?

Is *that* how Judge Chen conceives "all men are created equal and endowed by their Creator with inalienable rights"... except if I take your armband away, I've just alienated your freedom of speech?

Somehow I don't think that's what Thomas Jefferson was "inherently expressing"!

Yet... picture the interrogatory, as the Chief of Police has to explain to the Judge how the law was applied in practice — since that's the level this dispute has come down to.

**Judge:** ... and it was made very clear the Board could regulate conduct but not speech, therefore traditional forms of speech, of expressing opinion, would not and could not be prohibited. I thought that much was made very very clear, Chief?

**Chief:** Yes, your Honor, and that's the dividing line we followed, just the way you set it out for us. Everyone has skin, so that's not an opinion; but not everyone expresses an opinion, so it's the differences to look out for; yes, we paid close attention to that. And at first, when the nude protesters came out all wearing black armbands, we thought, okay, they figured out how to get by, and we weren't going to make any arrests.

**Judge:** Then... why *did* you?

**Chief:** Well, all the counter-protesters, the Scott Wiener supporters and anti-nudity folks, pulled out black armbands from their pockets and put them on too, chanting "It's a black day for San Francisco!" Now everyone had black armbands, and these didn't stand for any one opinion anymore. As you put it, they didn't "inherently express" any particular message. That meant they no longer had First Amendment protection, so we just started arresting people without regard to the armbands.

**Judge:** Chief... that's... remarkably sophisticated reasoning. Did you yourself just come up with this on the fly?

**Chief:** Oh, no, the counter-protesters' armband consultant and supplier flew out from Washington DC for the event, and he was standing right beside me when I had to make the decision. His advice was very helpful, and (points to audience) you can see he's the most knowledgeable man in the field.

**Judge:** I do see. It's a privilege to have you in my courtroom, Justice Scalia. ... But Chief, then you proceeded to arrest protesters who were not only wearing armbands but carrying clearly printed signs, which at least specify the opinion they express....

**Chief:** Ah, yes, ah, your Honor, the Justice had also brought out a supply of signs for the occasion,... ah, for every occasion, from birthday to Thanksgiving to union protest to "will work for food",... and by the time those were all up in the air and waving around, there was no longer a sense of any one group having anything coherent to say. So it was pretty much the same situation as with the armbands.

**Judge:** According to the legal advice with which he then kindly provided you?

**Chief:** Well, I guess he's not going to be overturned. Is he, your Honor?

**Judge:** We have just been blessed with help in our fair city, haven't we?

...

MONDAY, FEBRUARY 11, 2013

## The Unmarked State: Signifying Nothing?

(This follows-up my previous blog entry, *The Importance of Self-Ownership*.)

The Free Speech Movement's late Mario Savio had said on the steps of Sproul Hall at UC-Berkeley in December 1964:

"[W]e're a bunch of "raw materials" that don't mean to be — have any process upon us. Don't mean to be made into any product. Don't mean... Don't mean to end up being bought by some clients of the University, be they the government, be they industry, be they organized labor, be they anyone! *We're human beings!*

There's a time when the operation of the machine becomes so odious, makes you so sick at heart, that you can't take part! You can't even passively take part! And you've got to put your bodies upon the gears and upon the wheels... upon the levers, upon all the apparatus, and you've got to make it stop! And you've got to indicate to the people who run it, to the people who own it, that *unless you're free*, the machine will be prevented from working at all!"

(But if someone insists you're just "raw materials" after all — mere chattels, movable property — for whatever industrial-scale schemes they have in mind, then how are you to deny it, when you sure look packaged for shipment to processing? Unless you prove it by taking off the wrapper to show there really is a free and fully human person underneath it?)

US District Judge Edward M. Chen, UC-Berkeley AB '75 JD '79, may have passed near that spot on campus from time to time. I wonder whether he ever heard of the Free Speech Movement. His recent ruling on *Hightower v San Francisco* [PDF] (re the "Anti-Nudity Law") doesn't mention it.

And there are some concerns Free Speech advocates might have with the reasoning:

### 1. Dissing the Unmarked State (Gagging the Sound of Silence)

"And the sign said  
the words of the prophets are written on the subway walls  
and tenement halls,  
and whispered in the sounds of silence."  
— Paul Simon, *The Sound of Silence* (1964)

#### "A1 (The Law of Calling):

Calling twice from a state is indistinguishable from calling once. To make a distinction twice has the same effect as making it once. For example, saying "Let there be light" and then saying "Let there be light" again, is the same as saying it once.

#### A2 (The Law of Crossing):

After crossing from the unmarked to the marked state, crossing again ("recrossing") starting from the marked state returns one to the unmarked state. Hence recrossing annuls crossing.\*  
— Georg Spencer-Brown, *Laws of Form* (1969)

Comment by Raven: the result of actively leaving a marked state is the same state as before entering the marked state — if and only if one ignores the *history* of changing states. A once-hopeful emigrant who returns to his birthplace is now in the same physical location as he started, but perhaps a different emotional state from his contentedly never-moved neighbor. A divorcée is as single as a virgin débutante or spinster, but the difference in experience is profound. The act of annulment makes a statement in itself about the marked state — as does the act of divorce about marriage, the act of cancellation about a contract, the act of repeal about a law, the act of overturning about a ruling, these are all value statements! — even though the effect in the *present moment* is merely to return to the unmarked state, the *status quo ante*. And judges should already know this; they deal with it often enough. It is also worth remembering that "unmarked" is as much a state as "marked", "off" is as real a switch setting as "on", zero as much a number as one, and "no" is as legitimate an answer as "yes" — rapists may not know this, but judges should. So if armbands are a "marked state" and nudity is an "unmarked state"... why must one be more inherently a "statement" than the other? (Armbands can be purely decorative; nudity can be explosively controversial; judges should know this too.)

Judge Chen wrote: "Nudity is not inherently expressive."

Bob Egelko of the *San Francisco Chronicle* translated: "Nudity isn't speech. ... Chen noted that the U.S. Supreme Court has ruled that... nudity itself is not a statement of anything."

By this reasoning, would someone have no First Amendment right to protest with a blank picket sign? Could he be arrested for doing so? Because unprotected while thereby "stating nothing"? (But would he indeed be "stating nothing"?)

When protesters under oppressive governments appeared in public with gags on their mouths as part of their protests, were they "stating nothing" because of that silence... or was that in itself the loudest possible statement they could have made? Could *they* be arrested here, because their conduct (absent audible expression) would be unprotected by the First Amendment?

We have seen religious-right-wingers argue that the First Amendment only defends freedom of (affirmative) religion, not freedom *from* religion — this is a claim to negate any protection from aggressive and invasive efforts to convert nonbelievers. It is distressing to see the same argument applied to freedom of speech. Can it really be true that the freedom of speech applies only to those who choose to literally speak out loud in audible words, and not those who choose otherwise? That there is no "freedom *not* to speak"?\* That due to *Tinker v Des Moines*, one has the freedom to put *on* an armband or T-shirt... but now no longer the freedom to take it all *off*? Perhaps even pointedly and with emphasis?

\* Even sworn witnesses in court, under legal compulsion to speak, can appeal to the Fifth Amendment on this point.

## 2. Ignoring the Antonym, Antonin?

*(Our Uniforms' Message Was Clear; It's Your Nudity We Can't Hear)*

"I AM FREE."

— painted on FEMEN protester's nude body.

"And ye shall all be freed from slavery,

And so ye shall be free in everything;

And as the sign that ye are truly free,

Ye shall be naked in your rites, both men

And women also...."

— *Aradia, or the Gospel of the Witches*, 1899.

But I presume the Supreme Court was only coyly *pretending* to be culturally illiterate, just *playing* ignorant of the affirmative "statement" that is historically communicated and accepted in our culture: *nudity represents freedom*.

(This is, of course, the diametrically opposite implication from "raw material" recruits or "cannon fodder" or "property of the government (or other regimental organization)"... which, oddly enough, people *put on uniform clothing to convey*, an "inherent expression" I doubt even the current Supreme Court has ever had trouble perceiving)

What does Liberty itself *look* like? A woman with her breasts uncovered — as in the 1916 US "standing Liberty" quarter, and Delacroix's 1830 painting "Liberty Leading the People" (just recently defaced by a fanatic and repaired).

The nudist protesters are consistent with a very long symbolic tradition here.

(One of the most famous examples in English, or indeed all of Western, culture was not a *symbolic* statement of freedom at all, but quite operative... for Lady Godiva [Godgyfu, "God's gift"] freed Coventry from her husband Leofric's onerous taxed thralldom by her unclothed ride. "Truly Count Leofric liberating the city of Coventry from the aforesaid servitude confirmed his charter thus made by affixing his seal." — *Flores Historiarum* 34, Vol. I, p. 576.)

Every conscious member in our society, from tiny children to elderly Supreme Court Justices, knows that clothing (such as a uniform) communicates social roles including dominance and submission, "property" and "owners":

Prisoners and prison guards, enlistees and officers, workers and executives, patients and orderlies and nurses and doctors, maids and monarchs, pastors and popes or patriarchs — even bailiffs and judges, Your Honor! — state, express, admit, declare, announce, proclaim, or even collectively celebrate their status, membership, honors, shames, mastery, subordination, or other social roles: "We *belong*."

So how can it be that the *antonym*, the *erasure*, the *annulment* of all these markings, is not a message just as clearly communicated?

"I disclaim all such roles, I am neither property nor owner of others, I am a free human being."

*Bona na croin*, as the Irish Gaelic saying has it, [I'll wear] neither collar nor crown.

(Ancient Irish warriors were famed for running fearlessly naked into battle; *that* sent a message!)

## 3. Turn, Turn, Turn

*(Oh, WE Never Did THAT! Ignore The Records Behind That Curtain)*

"But that's how it always begins. Very small."

— Egg Shen, *Big Trouble in Little China* (1986)

The irony is that up until 150 years ago governments in this nation let human beings be *forced* to disrobe at slave markets, because they were *property*, by law. Property had to *obey other people's orders* about wearing clothing. Free human beings don't. That's the difference remaining: the *free choice* of the individual. And that's what's being tested now in San Francisco: are people free to choose? Or literally put in chains?

Once again, those in power assert that others must follow their orders about what to wear. At least, thank goodness, so far *this time* it is not silly fashion accessories like yellow stars or pink triangles — but once the principle of force over freedom is re-established, it could as easily be those as anything else; why not? That's the temptation of power.

Today I'll make only reasonable demands; next year, perhaps on April 1st, I might get bored or drunk and make silly demands (you must wear clown hats and red noses?); and eventually the ability to go past silly to cruel (burqas on pain of stoning? chastity belts? concrete overcoats?) may be just too clear and finally too hard to resist.

Oh but no, power-hungry leaders never go *that far*, do they? (Have we forgotten Jim Jones, former chairman of the SF Housing Authority Commission, once praised by George Moscone, Harvey Milk, and Willie Brown?) And their enforcers never just keep following orders *that far*, do they?

Yes, please tell us that, friend. Tell everyone. Tell our dead family members. We'd all love to believe you.