



# Nixon & Kennedy Present Their Views on Civil Liberties Issues to ACLU Members

## ON CENSORSHIP

"What matters is not what the censor does to what I have written but to what I might have written."

—Leo Tolstoy

## ACLU Suit Challenges Ban on Birth Control

The ACLU last month called upon the U.S. Supreme Court to declare unconstitutional Connecticut statutes which forbid persons to use and physicians to dispense information about contraceptives. Such prohibition, the Union charged, violates the right of privacy guaranteed by the due process clause of the Fourteenth Amendment.

The Union's arguments were contained in a brief which it asked the high tribunal to consider in connection with an appeal by two patients and a doctor, from a Connecticut Supreme Court of Errors decision upholding the disputed statutes.

"The Connecticut statutes in issue, on their face, seek to regulate an aspect of marital conduct that is inherently private and beyond the reach of government," the ACLU brief stated. "As applied, those statutes assert the power to [deny] appellants the right to engage in sexual intercourse. This asserted power is in such complete conflict with accepted medical practice and with the vastly overwhelming practice of the community, that it is arbitrary and therefore unconstitutional." The laws also "unreasonably interfere" with a physician's right to practice his profession, the brief added.

The test cases were brought by two young married women, identified only as Poe and Doe, the husband of one, and Dr. C. Lee Buxton, whom they consulted on means to prevent pregnancies. Dr. Buxton is chairman of the department of obstetrics and gynecology at Yale's School of Medicine and the Grace-New Haven Community Hospital. One of the women already has borne three babies with multiple congenital abnormalities "inconsistent with life." The other suffers from ailments which "almost inevitably" would cause her death if she became pregnant.

*The American Civil Liberties Union is a non-partisan organization. It does not endorse political parties or candidates. However, because of the importance of civil liberties and civil rights issues in this Presidential election, the Union asked both major candidates for a statement to be communicated to the ACLU's 48,000 members who will read this October CIVIL LIBERTIES. The two statements appear below as they were received.*

BY JOHN F. KENNEDY

In the Democratic platform the Party's principles with respect to civil liberties are set forth in a section separate from that in which civil rights are considered. The separation seems to me, as it does to my Party, to be significant.

The contrast which we have in mind is this. By civil rights we mean those claims which the citizen has to the affirmative assistance of government. In an age which insistently and properly demands that government secure the weak from needless dread and needless misery, the catalogue of civil rights is never closed. The obligation of government in the area of civil rights is never wholly discharged.

By civil liberties, I mean an individual's immunity from governmental oppression. A society which respects civil liberty realizes that the freedom of its people is built, in large part, upon their privacy. The Bill of Rights, in the eyes of its framers, was a catalogue of immunities, not a schedule of claims. It was, in other words, a Bill of Liberties. The immunities defined in this Bill of Liberties were set forth in order that the promise of individual freedom might be made explicit. The framers dreamed that if their hope were codified man's energies of mind and spirit might be released from fear.

When civil rights are seen as claims and civil liberties as immunities, the government's differing responsibilities become clear. For the security of rights the energy of government is essential. For the security of liberty restraint is indispensable.

From time to time our national history has been marred by forgetfulness of the Jeffersonian principle that restraint is at the heart of liberty. In 1789 the Federalists adopted Alien and Sedition Acts in a shabby political effort to isolate the Republic from the world and to punish political criticism as seditious libel. In 1865 the Radical Republicans sought

(Continued on page 2)

BY RICHARD M. NIXON

The Bill of Rights provides not only for the security of our society but for the freedom of our society as well.

Fundamental to a positive protection of our security is scrupulous observance of our Constitutional guarantees. A nation wise in the ways of freedom encourages its people to be alert, to be responsive and to be creative in dealing with any challenge to national security.

Governmental resolve to preserve free speech, maintain due process, and further equal status under the law—rather than to restrict or to neglect those rights—inspires loyalty to the Government in the minds and hearts of a free people. It is such a resolve, with affirmative action, that will enable the Free World to maintain confidence in itself, and gain the support of the uncommitted peoples.

The influence of the Presidency should be used to direct all Governmental agencies to disclose all possible information to the American people as long as it does not do violence to the national security.

For Government to deny to the people the substance basic to thought is to deny them their rights to expression. Such denial also withholds from the Government the nurture that comes from such individual expression.

The sustenance that freedom of expression produces for a society such as ours is our peculiar strength. Widespread public discussion and communication is the great weapon in Democracy's arsenal against Communism. In fact, we are confident that if the Soviet Republics would permit such free expression, their ideology would turn in the direction of freedom and greater regard for the individual.

If we are to protect effectively our freedom, we must appreciate not only the threat of political tyranny from within and from without our borders, but the erosion inherent in a mass society as well.

(Continued on page 2)

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**Jeffrey E. Fuller, Editor**

## **HUAC Indictments Against Puerto Ricans Condemned**

On September 28th the ACLU urged Attorney General William P. Rogers to drop contempt of Congress indictments against thirteen Puerto Ricans who refused to answer questions of the House Un-American Activities Committee at a San Juan hearing last November. On advice of counsel, the witnesses challenged the jurisdiction of the Committee to conduct an inquiry in the autonomous Commonwealth of Puerto Rico.

ACLU leaders Patrick Murphy Malin and Roger Baldwin told the Attorney General that under the Commonwealth's relations with the United States, "the rights of the Puerto Rican people are violated by federal intervention in its internal political affairs . . .

"Whatever dangers may threaten from Communists in Puerto Rico seem to us appropriate for action by Commonwealth authorities alone. No charge appears to be made of interference in mainland political affairs by Puerto Rican Communists, and the question therefore should be one exclusively within the jurisdiction of the Commonwealth authorities."

## **BUSINESS AS USUAL**

The Southern Regional Council announced in Atlanta last summer that a survey indicated that "No store in the South which has opened its lunch counters to Negroes has reported a loss of business. Managers have reported business as usual or noted an increase. In contrast, reports from the change-resistant towns have indicated that business in some variety stores has fallen off by from 15% to as much as 65%."

to snare private conscience in a web of oaths and affirmations of loyalty. Spokesmen for the South did service for the Nation in resisting the petty tyranny of distrustful vengeance. In the 1920's the Attorney General of the United States degraded his office by hunting political radicals as if they were Salem witches. The Nation's only gain from his efforts were the classic dissents of Holmes and Brandeis.

In our own times, the old blunt instruments have again been put to work. The States have followed in the footsteps of the Federalists and have put Alien and Sedition Acts upon their statute books. An epidemic of loyalty oaths has spread across the Nation until no town or village seems to feel secure until its servants have purged themselves of all suspicion of non-conformity by swearing to their political cleanliness.

Those who love the twilight speak as if public education must be training in conformity, and government support of science be public aid of caution.

We have also seen a sharpening and refinement of abusive power. The legislative investigation, designed and often exercised for the achievement of high ends, has too frequently been used by the Nation and the States as a means for effecting the disgrace and degradation of private persons. Unscrupulous demagogues have used the power to investigate as tyrants of an earlier day used the bill of attainder.

The architects of fear have converted a wholesome law against conspiracy into an instrument for making association a crime. Pretending to fear government they have asked government to outlaw private protest. They glorify "togetherness" when it is theirs, and call it conspiracy when it is that of others.

In listing these abuses I do not mean to condemn our central effort to protect the Nation's security. The dangers that surround us have been very great, and many of our measures of vigilance have ample justification. Yet there are few among us who do not share a portion of the blame for not recognizing soon enough the dark tendency towards excess of caution.

It is an unhappy irony that the drift towards conformity has been encouraged by our faith in government. A Nation that extends the reach of public authority seems likely to forget that each extension endangers traditional immunities and privacies. A deep and proper concern for the public welfare seems to breed indifference to the significance for all of us of the individual's conscience, the personal conviction, the private effort. Trusting the legislature to secure our civil rights we have relied on courts to safeguard our civil liberty. We have too often asked the judges to save us from ourselves.

Judge Learned Hand, our most distinguished jurist, has told of his concern that we may "rest our hopes too much upon constitutions, upon laws and upon courts. . . . Liberty," he tells us, "lies in the hearts of

men and women; when it dies there, no constitution, no law, no court can save it; no constitution, no law, no court can even do much to help it."

If Judge Hand be right that in the last analysis it is not through law that civil liberty finds its security, are we who are engaged in the calling of government absolved of all responsibility for its protection? My Party and I have made it clear that we do not share the view of the present administration that leadership consists merely in the execution of the law.

In emphasizing the need for moral leadership from government, we are not asking for the birth of new authority. We seek the revival of American tradition—a tradition made explicit in the Constitution of Massachusetts. John Adams and the men of his time saw that qualities of mind and spirit that cannot be legislated into being may nonetheless be nourished by public authority. They therefore included the following provision in the Constitution of the Commonwealth: "It shall be the duty of Legislatures and Magistrates, in all future periods of this Commonwealth . . . to countenance and inculcate sincerity, good humour, and all social affections, and generous sentiments among the people."

I firmly believe that a people blessed with the qualities of mind and heart that Adams thus enumerated need not fear for the condition of civil liberty. I mean to do my part as Chief Magistrate of the Nation to countenance and inculcate these ancient virtues.

## **VICE-PRESIDENT NIXON**

*(Continued from page 1)*

The First Amendment particularly presupposes an individual who thinks independently, forming his judgments for himself and then responsibly pursuing his goals in life.

The technological changes of our society, however, have had an inevitable impact tending to subordinate individual volition, with its values, to various forms of social authority.

We must concern ourselves with this process of erosion. We must promote diversity of thought and, in the search for values, richness of opportunity for intellectual and artistic experience, together with the right to dissent.

I feel strongly that the possibility of this process of erosion in American life must be competently dealt with. We can do this by placing greater emphasis on individual responsibility in solving our social and economic problems. This must be done if we are to keep the moral fibre of our people vigorous. By so doing we will not be relying primarily on the collective techniques of government.

The Ideal of Freedom must go further than the mere protection of our rights and liberty. It must encourage the positive freedom characterized as equality of opportunity. We should seek to provide work that will furnish an equal chance for every American to obtain a job that will use his full skills, enough income to provide adequate medical care and the other necessities of life. It is not enough for us to avoid injustice; we must work actively to secure the fullness of justice for all.