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And for the People...

A visit with legendary constitutional lawyer Arthur Kinoy

You can see it in his eyes, you can see it in his hands, and you can hear it in his voice. When Arthur Kinoy exhorts the troops forward, there’s no mistaking the passion that’s behind his words.

It’s a passion that has sustained the Rutgers University School of Law professor emeritus through a lifetime of work in the public interest — a calling he refers to as that of a “people’s lawyer.”

Kinoy spent the day with UB Law School students, faculty and alumni in an appearance sponsored by the campus chapter of the National Lawyers Guild. At a downtown luncheon and later at a gathering and workshop with students at O’Brian Hall, he put forth his continuing philosophy that the law must be used to expand individual rights, not restrict them, and that the encroachments of government and powerful corporate interests must be resisted at every turn.

It’s a philosophy honed not in academia, but on the streets. Kinoy’s activist pedigree stretches back to the 1950s, when he represented several witnesses before Sen. Joseph McCarthy’s House Un-American Activities Committee. In the civil rights era of the following decade, he was one of the lawyers for the Mississippi Freedom Democratic Party, the Student Nonviolent Coordinating Committee and the Southern Christian Leadership Conference. And he served as chief appellate counsel in the appeals of the Chicago Seven defendants, whose convictions were overturned in 1972.

The list goes on — and continues to this day. Those cases, however important, are history: what concerns Kinoy now is what he sees as an ongoing assault on Americans’ constitutional rights.

“We are facing one of the most serious constitutional crises that we’ve faced in many years in this country,” Kinoy told the small group that assembled for the luncheon. “My friends are always saying, ‘There goes Arthur with his paranoia again.’ But this time my friends are calling me and saying, ‘Arthur, for once you’re not paranoid.’ In Congress there is a conscious undermining of the most elementary, fundamental rights that are guaranteed in the First and Fourth Amendments.”

For example, he said, a continuing assault on the Supreme Court’s Roe v. Wade decision constitutes an attack on the rights of women. And he pointed to the rhetoric of the Iowa caucuses, with their attack on affirmative action and Roe, as evidence of a return to a paternalistic and condescending attitude toward women. He asserted that what some candidates are seeking is a return to the anachronistic standard of the Supreme Court’s 1873 decision in Bradwell v. Illinois, in which the court held that an Illinois law prohibiting women from becoming lawyers was permissible because “the Almighty has placed women on a pedestal” — the pedestal of home and child-rearing — and therefore they are “too delicate” to take on jobs in the rough-and-tumble “real world.”

“What we have to realize,” Kinoy said, “is that this is a moment when we have to take a position, take the offensive against the conservatives and against the reactionaries. We can’t just react to things. ... This is a moment when we have to not lose our courage. We have to fight.”

Great attorneys are at their best telling war stories, and Kinoy was no exception. He entertained the luncheon gathering with a long and winding tale that began in 1971, when he was jostled awake at his desk at Rutgers (exhausted from briefing the Chicago Seven appeal) and pressed into service on behalf of a group of people in Detroit who had formed a fair housing committee and had run into opposition from the feds.

Kinoy told how he filed a “garbage motion” demanding any evidence obtained by illegal wiretapping — and to his astonishment, the state’s attorney stood up in court and admitted that yes, the government had indeed engaged in such wiretapping, but Attorney General John Mitchell had submitted an affidavit saying that President Nixon deemed the results vital to national security and thus could not be revealed.

Well, nothing makes a constitutional lawyer see red like the claim of executive privilege. Kinoy and his co-counsel fought the case back and forth through the appeals courts and ended up in Supreme Court, where he took the advice of a previous justice, Hugo Black: “When you are involved in a very complex constitutional argu-
ment, go for the jugular.”

The government's brief was written by an assistant attorney general by the name of William Rehnquist, who had since been appointed to the Supreme Court; when arguments began, the future chief justice quietly recused himself. The brief asserted that if Nixon said a piece of information was vital to the national security, then that was that; the people must have confidence in the integrity of their chief executive. At one point, Kinoy said, he jumped up and advanced a shocking argument: "You mean if the president decided to wiretap his opponents in the Democratic Party, that would be all right?"

Little did he know, he said, that just a few weeks hence — about the same time the court's unanimous decision was handed down, rejecting the administration's claim of "inherent power" for the president — the newspapers would be publishing on their front pages the first stories about the Watergate burglars.