

TODD RAKOFF: The purpose of having a general discussion is to bring out the multiple things that can be said about it, about a case. There's kind of three ways you could do that. One is to say to the student who just said but the plaintiff's side, as the attorney would say. I want you right now to argue the other side. Say to that same student to say both sides.

SPEAKER 1: So we took it from both sides. We said, what would the agency prefer? In our opinion, the agency would prefer adjudication. It's easier, it has some bias in their favor. The industry on the other hand, would prefer the notice and comment because they'd have an opportunity to give a lot of evidence.

TODD RAKOFF: Another possibility is to divide the class and say everybody on this side, you represent the plaintiff. Everybody on this side, you represent the defendant. And I want you to argue in role for what you're doing.

Quite apart from training them professionally, sometimes it's easier to say things if you don't have to be authentic. It's easier to represent a criminal defendant who's done something terrible if you say, what's the lawyer's argument that he should go free? So I sometimes use the road to allow for distance.

KATE FISCH: It really feels like a place where we can voice our ideas, try new things out. And I think we're learning a lot about how to advocate for specific positions that we might not even hold.

TODD RAKOFF: The third is to ask students what they themselves think is the justice or the rightness of the cause, and allow the diversity of opinions in the class to become the diversity of opinions about this case. In other words, are you going to ask students to take a role in the legal system, or are you going to say, you yourself, how would you come out?

And having now had these thoughts, on this issue, which are you inclined to do?

SPEAKER 1: Personally, I think the notice and comment is the better way. I think it's a more appropriate way.

BENJAMIN SPACAPAN: The other thing that Professor Rakoff does really well is challenging students to think about the counterpoint, which is so important when you're reviewing these cases. And as a result, I think myself and many of the other students have taken up that mantle in our own minds of thinking about, what are the counter points in the discussion?

TODD RAKOFF: OK, all right. Anybody want to go the other way on that particular issue?

SPEAKER 2: So as an industry member, I would definitely want the notice and comment. But I think in a situation where the deputy general counsel of the agency, and so I think this adjudication process is going to be more efficient for us.

BENJAMIN SPACAPAN: You may have a very small group of students who are on one side and a larger group on the other. And when Professor Rakoff is very strongly in the middle and defending the presentation of both viewpoints, it presents an environment where it doesn't really matter how many people support each side. Everybody feels comfortable voicing their opinion.

TODD RAKOFF: Zip your mouth and vote, all right?

[LAUGHTER]

How many people would make this a rule making?

[LAUGHTER]

How many would make it an adjudication?

HANNAH KLAIN: I think a lot of the class discussion is meant to inductively or deductively reason at something, pull out an important holding from a case or a rule or help us understand why a certain government procedure is the way that it is. And often, the things that I haven't thought of are the things that are the most important or just help me understand more clearly or in a different way. And I'm always curious to hear what other people have to say.