

TODD RAKOFF: When a student is speaking or when you're talking with a student in front of 80 people, you have to remember that this is partly a performance. And it's not just what you think and what the student thinks. It's what the other 79 people in the room are hearing.

HANNAH KLAIN: Professor Rakoff is great at making sure that people are saying things precisely and correctly, but not ever making someone feel as though what they've said is silly or dumb or an unimportant contribution to the conversation. The response may be oh, that needs to be tweaked a little, or I'm going to be picky about this. But it's never no, not so much.

TODD RAKOFF: Brittany?

BRITTANY: You have an on the record proceeding.

TODD RAKOFF: How do you know that?

BRITTANY: Because that's what 556 and 557 say.

TODD RAKOFF: How do you know we're in 556 and 557? How do you know it's not informal adjudication.

BRITTANY: Well, I thought you said if it was formal adjudication.

TODD RAKOFF: If it was adjudication.

BRITTANY: Oh, OK. Well, you either have to have it on the record, or it falls into that top right box where you're following due process considerations. So you at least have to have the opportunity for both sides to be heard. And I guess whether or not it's on the record depends on what box it falls in.

TODD RAKOFF: We can do better than that. What you said was not wrong, just not completely right.
[INAUDIBLE]?

BENJAMIN SPACAPAN: In this situation, particularly where a student is fully prepared and just may not quite get what the class is driving towards, he's very supportive in helping that person take the steps necessary to be on the same page as everyone else. And I think that's helped everybody become a more cohesive and participatory section, in that nobody feels like they're getting left behind or like they're sinking.

TODD RAKOFF: If a student is obscure, or is not saying something very clearly, you then have to decide, is it important to let the student say it the way the student is saying it? Or is it important to interrupt enough that the other people in the room hear it in what you consider to be the right way? And obviously that's a very point by point discussion. And you just have to decide real fast, which way you want to do it.

[? **KAREEM:** ?] Well, I think Justice Jackson in the dissent is saying that he's especially frustrated with how much deference the majority gives to the agency. He thinks it's kind of absurd that the agency gets to make the determination, and--

TODD RAKOFF: the determination, let's be clear, it's the determination as to the procedure.

[? **KAREEM:** ?] Right.

TODD RAKOFF: One of the things you're doing as a teacher is giving a signal to students as to how much they should say, and when they have said what needs to be said. And so I try to give signals like that by waiting.

[? **KAREEM:** ?] And then the court must only hold the agency to the procedure that they determined.

TODD RAKOFF: And that seems to Jackson to be the absence of law.

[? **KAREEM:** ?] Right.

TODD RAKOFF: Well, aren't we in favor of the law?

[? **KAREEM:** ?] We are. But then again, you can go back to the argument that Congress didn't necessarily set out anything different from this procedure.

TODD RAKOFF: So when I said to [? Kareem, ?] aren't you-- I forget the exact words, but something like, aren't you in favor of the law? Or aren't we in favor of the law? He had to answer yes. He's in law school, right?

But that couldn't be the end of the conversation, or the dissent would have been 9-0 majority opinion. There must have been more to say. And I think once I just waited, he understood that if he was going to think about this seriously, he had to say something more.

KATE FISCH: I think if a student says something in class and Professor Rakoff doesn't respond immediately, there's kind of at first a panic. But then after a while we start to learn not to second guess our

first answers. We kind of have an opportunity to expand, and think a little bit more and kind of bring out what we really wanted to say.