



# Teaching the Rule of Law to Its Next Generation of Advocates

By Lesley Rosenthal

Assignment #1: Reflect upon your personal strengths and the levers you uniquely can pull – artistry, persuasive writing, scientific/technical knowledge, political background, social media savvy, data analytics, religious learning and inspiration, experience in education – in advocating for the Rule of Law. In the form of a 2-3 page blog post (or vlog post of equivalent length) declare a set of Rule of Law goals and chart a course for your personal involvement in attaining those goals.

Thus began an experimental new course I piloted at Harvard Law School in the fall of 2017. It was called “Advocating for the Rule of Law: A Practical Approach.” Together, 11 students and I explored how a new generation of students can learn the skills necessary to be the guardians of this fundamental tenet of our democracy.

**LESLEY ROSENTHAL** is Lecturer on Law at Harvard Law School and the General Counsel of Lincoln Center for the Performing Arts. Follow her Rule of Law social media feeds at @LetsROL.

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The goal was to produce future lawyers who know how to advocate for, assess and strengthen the Rule of Law, promoting a stable social and civic order, citizen engagement, and a positive climate for economic investment.

At this inflection point in our nation’s history, I developed the course to provide students with historical and doctrinal bases as well as practical learning opportunities about the Rule of Law in the domestic context. Themes we explored lined up with the eight factors of the World Justice Project’s Rule of Law Index,<sup>1</sup> including constraints on government powers, anti-corruption/avoidance of conflicts of interest, open government, fundamental rights, order and security, regulatory enforcement, civil justice, and criminal justice.

Through study of texts from Plato and Cicero to Aquinas and Locke, students learned about the roots of the Rule of Law. In successive weeks the class drilled down into the individual Rule of Law factors and subfactors, reading cases and articles and hearing from expert guest

speakers who helped them identify sources of Rule of Law strengths and challenges in this country.

Guest speakers from different parts of the legal profession and different parts of the political spectrum provided perspectives as well as networking opportunities. Among the guests were the Executive Director of the World Justice Project, the Chief Ethics Officer of President George W. Bush's White House team, the former head of the Congressional Budget Office, the Chief Judge of the United States Circuit Court for the Second Circuit, the Deputy General Counsel of the *New York Times*, and a former ABA President.

The course also engaged students through subthemes of personal empowerment, leadership skills, strategic planning, leveraging of technology, and the encouragement of artistic voices to extend Rule of Law conversations across the whole spectrum of human experience, from the intellectual to ethical to the emotional.

Each class ended with a simulation, where students would take on the role of a legal practitioner tasked with perfecting Rule of Law adherence. They turned in 2–3 written pages the next day. Final projects of 10–15 pages involved a more extended inquiry into a topic covered during the semester, or a realization of one of their stated goals from Assignment #1.

Here are some of the topics we tackled, together with readings, discussion topics and simulation assignments.

### **Constraints on Government Powers; Absence of Corruption**

In terms of formal constraints on governmental powers, we focused on the effectiveness of the institutional checks on government power by the legislature, the judiciary, and independent auditing and review agencies, as well as by the media and civil society.<sup>2</sup> Our examination of the formal bases of separation of powers included both federal and state constitutions.

Absence of corruption in government encompasses bribery, improper influence by public or private interests, and misappropriation of public funds/resources.<sup>3</sup> For this topic we reviewed anti-corruption statutes, cases, and informal materials such as *Legal Professionalism by White House Counsel*,<sup>4</sup> the White House Counsel's Office Transition Project outline for peaceful transition of power. We considered the extent to which state attorneys general<sup>5</sup> provide a check on federal powers. We also looked at the functions and limitations of the U.S. Office of Government Ethics. We considered the checking powers and political environment of the legislative branch upon the executive branch, for example through the House Oversight Committee. Even within one branch – the executive branch, which encompasses both executive and prosecutorial functions – we considered self-imposed policies<sup>6</sup> limiting White House contacts with the Department of Justice.

We explored these topics with guest speaker Richard W. Painter, the S. Walter Richey Professor of Corporate

Law at the University of Minnesota Law School. Professor Painter served as Chief White House Ethics Lawyer for President George W. Bush, 2005–2007.

Students participated in a simulation that placed them in his footsteps but in a state context. I challenged them to envision themselves in the counsel role in the governor's mansion in their state, faced with a sticky conflict-of-interest problem, trying to interpret the state's anti-corruption codes and culture:

Congratulations, you have been appointed Counsel to the Governor in your state, where a businessperson, Sosumi Coi, has just been elected Governor. She and her family have substantial business interests, which she is loath to divest unless she has to. Look up your state's conflict of interest disclosure requirements and enforcement laws as applicable to the governor: is disclosure of tax returns voluntary or mandatory? Is there an exception for the governor? Is there an independent government body tasked with oversight (*e.g.*, an office of governmental ethics), and if so, does it have investigation and enforcement powers or is it merely advisory? Is its leadership appointed by the governor or are there staggered terms across governorships? Is the state Attorney General appointed by the governor or independently elected? Do private individuals or non-profit "good government" organizations in your state have access to information, standing to sue? Prepare a 2–3 page memo (or vlog post of equivalent length) to Governor Coi, outlining the results of your research – how much information will she have to disclose, will she be required to divest, what consequences if she doesn't – legally, politically, from a public relations perspective, from a business perspective, for the state's economy? Include a thoughtful discussion of the risks and benefits from a Rule of Law point of view.

Although issues like these get a great deal of attention at the federal level in the Trump Administration – including two pending Emoluments Clause lawsuits and a great deal of national press – this assignment focused students on parallel issues at the state level. Because of our federalist system, our citizens' experience of democracy in this nation is oftentimes only as good as the realities and perceptions at the local level. The assignment also brought to the students' attention that Rule of Law issues transcend individual politicians and specific political parties.

Also, drawing from my own in-house counsel experiences, I purposely put the students in a position as counsel to the governor where they may need to find a tactful way to deliver unwelcome news to their boss, or sensitize them to optical as well as strictly legal considerations.

### **Open Government**

Our inquiry into the openness of government focused on three aspects: the quality and accessibility of government data, whether basic laws and information in legal rights are publicized, and the effectiveness of civic participation mechanisms, including voting mechanisms, gerryman-

dering, voter participation and election integrity.<sup>7</sup> The class read the complaint and answer in *Protect Democracy Project v. Office of Management and Budget*, in which a nonprofit organization sued OMB under the Freedom of Information Act to ascertain whether that office, under the auspices of the Trump White House, sought to undermine the independence of the Congressional Budget Office.

We also studied the interstate voter registration Cross-check<sup>8</sup> program, in which more than half the states are enrolled, and a critique of that program based on alleged inaccuracy and racially disparate impacts.<sup>9</sup> We read the Presidential Advisory Commission on Election Integrity Kobach Voter Data Demand Letter sent to the 50 states<sup>10</sup> and the state-by-state responses.<sup>11</sup>

The simulation required students to explain this swirl of circumstances regarding government data to a general audience. Here's the catch: the students were to play the role of a Bar leader and they were to make their explanations in the form of a tweetstorm, threads of micro-blogs of 140 characters or fewer:

Congratulations, you have been elected President of the American Bar Association! Prepare a tweetstorm to your members and the general public, explaining and commenting on the *Protect Democracy Project v. OMB* complaint from a Rule of Law perspective.

Students submitted plain-English explanations of these complex and weighty Rule of Law matters in the lingua franca of handles and hashtags, for example:

### STUDENT TWEETSTORM:

- If I want to buy a @SpeedyTM car, I ask for estimates of its #fuel #efficiency prepared by an #expert body. I do not rely only on Speedy's website.
- Similarly, if I want to know whether #government proposals benefit the country. I use expert forecasts of the proposals' impacts. Where do I get them?
- The Congressional Budget Office (@CBO) provides #independent #budget and #economic information to @USCongress.
- Data from the CBO tells me the impacts of proposed #legislation.
- E.g. 14 million low income Americans are likely to lose health care with the Republicans' health care plan- <https://tinyurl.com/y9r5voql>.
- The CBO's cost estimates and budget analysis are #nonpartisan, #objective and #transparent. Why is this important?
- So that we have a reliable source of information. This is especially helpful when @POTUS gives us wrong #math.
- The Office of Management and Budget (@OMB) from the Trump administration gives us an economic-growth forecast of 3% a year. The CBO's? 1.9%.
- Using the 3% estimate (wrong math!) in budgeting will result in huge budget #deficits when the economic growth never materializes.
- But the Trump administration does not want us to know any of this. It wants us to buy the car without consulting #independent experts.

- The Protect Democracy Project (@PDP) is a non-profit which issued Freedom of Information Act (#FOIA) requests to OMB.
- The PDP requested for records that relate to means of stopping the CBO's work, including #defunding, #privatizing, changing its function, etc.
- The OMB has refused to comply with these requests. Thus PDP has brought a complaint against OMB, in a bid to compel the OMB to comply.
- To see the full case, please see: <https://tinyurl.com/ya9ush2f>.
- Despite the complaint, the OMB has still refused to cooperate.
- It is crucial that all of us defend the ability of CBO to do its work. We need experts to tell us the truth.
- Buying a car makes a difference to my life. Legislation impacts ALL OUR LIVES. Help us protect the CBO!

### Fundamental Rights – Focus on Freedom of the Press

For this discussion, again we took contemporary issues that are much-discussed in the national context but often ignored at the regional or local level: access to the tools of investigative reporting on government officials, *ad hominem* attacks or even threats to journalists, the proliferation of fake news, alleged bullying of journalists and more. Guest speaker David McCraw, *New York Times* in-house counsel who represents its journalists, illuminated contemporary issues and challenges.

After an engaging question and answer session, students were challenged to play the role of counsel in their (simulated) local newsroom:

Congratulations, you have been hired as counsel to your hometown's local news outlet! The reporters in the newsroom are complaining even more loudly than ever about the Mayor's refusal to hold press conferences or grant interviews, secret negotiations in the city council, gamesmanship in responding timely (or at all) to Freedom of Information requests, and their sources' fears that their communications are being monitored. The mayor has been vocal in his criticism of individual reporters and specific news outlets whose editorial point of view he doesn't like or which carry articles critical of his administration. Also, some women journalists in your newsroom allege that they are targeted for special ire by the Mayor, his allies and supporters, to the point that these reporters receive hateful and personally disparaging comments in the news site's comment boxes and social media feeds far disproportionately to male reporters. Draft a questionnaire for your clients that will help measure these circumstances and develop some legal and advocacy strategies for addressing their concerns. Factors to consider include access to government sources, the business model of for-profit journalism, techniques for identifying and addressing public humiliation/intimidation, protection of sources, articulating and reinforcing/improving norms of cooperation and transparency between government actors and journalists. Bonus Assignment: Attach a tip sheet for the local journalists wishing to file valid requests under your state's Freedom-of-Information law.

The students devised an excellent series of questions to assess the accessibility and transparency of government, both as a snapshot and over time. They also made recommendations as to strategies that management could pursue to address the most significant roadblocks they identified.

### Civil and Criminal Justice

As a class we studied the United States civil and criminal justice system in Rule of Law terms. Following the lead of the World Justice Project, on the civil side, we examined whether our civil justice is accessible and affordable, free of discrimination, corruption, and improper influence by public officials. On the criminal side, we examined whether the criminal investigation, adjudication, and correctional systems are effective, and whether the criminal justice system is impartial, free of corruption, free of improper influence, and protective of due process and the rights of the accused.

Considering the overall remarkable strength of our judges and courts, it is surprising to learn that the United States performed only moderately well on this factor in the WJP index 2016, scoring 0.65 out of 1.00 and ranking 27 out of the 36 nations in our income cohort. The picture is only slightly better for criminal justice, scoring 0.68 out of 1.00 and ranking 22 of the 36 high-income countries.

The issue is not with corruption or improper government influence, as in other places; on these factors, the U.S. court systems performed well. But a careful look at our poorest performing subfactors reveals the following:

- For accessibility and affordability of civil justice, the U.S. scores just 0.41 out of 1.00, placing us just one notch above Afghanistan, just below Zimbabwe.
- For lack of discrimination, the U.S. scores just 0.46, tied with Russia, just below Egypt and Ghana, a couple of notches above Peru.

Although much of the course focused on immediate issues regarding the Rule of Law that have come into common parlance following the recent presidential election, these particular weaknesses are entrenched and of long duration.

One eye-opening statistic shared by guest speaker Dr. Juan Carlos Botero (elaborated upon in his article in this edition) was that Americans in the lowest income group are only half as likely as those in the highest income group to file a small claims matter. In Germany, the numbers are just about even, regardless of income stratum.

With an eye on these issues, I assigned students to visit courthouses in the vicinity – ranging from state courts handling small claims and misdemeanors to the federal district courthouse. I challenged them to focus their visits on the Rule of Law subfactors of effectiveness, impartiality, lack of corruption, freedom from discrimination, affordability, timeliness, etc., and to take a strategic view of how the courts they visited were performing well and where they could improve. Here was their assignment:

Congratulations, you've just been hired as Chief Strategy Officer by the Chief Judge of the court you visited. Draft a 2–3 page First Day Memo with your initial observations. What strengths, weaknesses, external opportunities, and external threats do you note? Be sure to comment not only your observations from your live visits, but also on the website/other public information published by the court you visited. For example, were there resources at the courthouse (pamphlets, law books, pro bono help tables, a pro se office, etc., that were not evident from the website? If your memo contains criticisms or concerns, provide constructive suggestions to help address.

Students' memos picked up on some very important points, with one recurring theme of justice not only being done but being seen to be done. A number of them remarked on the cleanliness, sightlines, acoustics and accessibility (or lack thereof) of the physical facilities. Several remarked on the wide variety of helpful information and material at both the courthouses and on their websites, although many noted some discrepancies between materials available in one place versus another, and also the sense that some of the websites were designed more from an insider's perspective and not with the uninitiated in mind. A few noted some lapses in decorum that marred the overall experience, such as glad-handing between the prosecutor (and even the appointed defense attorney) and the magistrate, or the judge appearing dressed in street clothes rather than robes. Quite a few also noted the lack of diversity they saw, among the judges and courtroom personnel, among the attorneys, and even in the portraiture on the walls. Notwithstanding the overall high quality of the judging and lawyering that they noted, a few felt that the courts could do a better job reaching out beyond their four walls to make sure that people realized the courts are there for them: to public libraries, schools, even barbershops and laundromats. One student suggested expanding the hours of small claims courts so that people who worked during the day could seek justice at night.

Although the memos were simulations, the visits – and the conditions observed – were real. I encouraged the students to send their suggestions to the actual chief judge of the court they visited.

### Arts, Artifacts, and the Rule of Law

Universities often have more resources than their law students take advantage of – particularly libraries and art museums – and Harvard Law School is no exception. Its rare books collection is unexcelled and includes four copies of the Magna Carta, among many other treasures. In three years of attendance there and 30 years of affiliation since, I had never visited them nor even known they were there. The library's Manager of Historical & Special Collections treated us to a private viewing of them in a special class visit:

- **Magna Carta, 1298**, the "Sheriff's Magna Carta" – abbreviated versions of the full text, copied and



distributed to sheriffs; ordered to be read aloud so citizens would know their rights. View online: [https://iiif.lib.harvard.edu/manifests/view/drs:49364859\\$1i](https://iiif.lib.harvard.edu/manifests/view/drs:49364859$1i).

- **Statuta Vetera with Tracts, ca. 1300** – A small volume, designed to be carried in a lawyer's or judge's sleeve as they rode on circuit. View online: [https://iiif.lib.harvard.edu/manifests/view/drs:49849590\\$1i](https://iiif.lib.harvard.edu/manifests/view/drs:49849590$1i).
- **Statuta Vetera, Registrum Brevium and Tracts, late 13th or early 14th century** – includes a tract written in Law French: "Cy poet un juvenes houme ver coment il deyt sotylment parler en court," translated as "Here may a young man see how he should speak subtly in court." View online: [https://iiif.lib.harvard.edu/manifests/view/drs:48660497\\$1i](https://iiif.lib.harvard.edu/manifests/view/drs:48660497$1i).
- **Magna Carta and Statutes, ca. 1325** – a beautiful illuminated manuscript. An early owner illustrated several of the statutes, including Charter of the Forest and Statute of Merton. Also includes an illustration of an homage ceremony. View online: [https://iiif.lib.harvard.edu/manifests/view/drs:43031625\\$1i](https://iiif.lib.harvard.edu/manifests/view/drs:43031625$1i).

Harvard Law School's entire collection of 43 manuscript Magna Cartas and English statutes is viewable online: <https://listview.lib.harvard.edu/lists/hollis-014294028>.

I also took my students to view an object held by Harvard Art Museums, fragments of a 4,000-year-old Cuneiform tablet that is one of the world's first written legal documents. This fragment was excavated from Kültepe, an archaeological site in central Turkey. It dates back to the 20th century B.C. Most of the tablets found at that site were administrative in nature, i.e., recording trades, although this one appears to be a legal document, and has been coded as such by the Harvard Art Museums. Its text records the payment of refined silver to an individual and payment of tax due.

My students reported feeling moved by being in the presence of these items of our legal patrimony. It is one thing to talk about the importance of writing down laws and maintaining transparency, in fulfillment of Rule of Law ideals, but quite another to have a tangible reminder of that value from our forbears 150 generations ago. They also discussed how empowered they felt, knowing that these documents were created by people just like them.

We have also looked and discussed works of visual art that illustrate or exemplify Rule of Law values, including Titus Kaphar's Jerome Project, and a mural<sup>12</sup> at the Supreme Court of Mexico. I have referred students to works of performing arts or performing arts programs that also resound with Rule of Law themes: Opera in Attica; Scalia v. Ginsburg – The Opera; Arts Encouragement at Louisiana State Penitentiary,<sup>13</sup> Alaska's Female Inmate Orchestra,<sup>14</sup> and Act V.<sup>15</sup>

## NextGen Rule of Law Advocates

My students rose marvelously to the challenges of this course and this milieu. Notwithstanding the ungodly hour (8 to 10 a.m. on Mondays), attendance was perfect throughout the semester. Through these experiences and simulations, they learned how to spot Rule of Law issues in contemporary society and were empowered to address them. A number of them have applied to the school to form a Rule of Law club so that they may continue the work together after the semester.

The variety and ambition of their personal Rule of Law goals were breathtaking. Here's a sampling:

I will **connect with and learn from other students** who are concerned about the rule of law, **especially those on the opposite side of the political spectrum**. I will push myself to separate political beliefs from beliefs in the rule of law. I will consistently think about the rule of law in each course that I take, especially in light of the United States' weak scores on access to fair civil and criminal justice systems. I will **reconnect to my hometown, Richmond, VA**, to study what institutions in the city facilitate the rule of law and which hamper it.

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I plan to organize ROL-themed speaker and panel events **on campus**. I **aim to co-sponsor with other student organizations** to bring in speakers and students with a variety of perspectives. This will demonstrate that the **rule of law must be carried out by people across the political spectrum working together**. My metric of success: 2–4 events per semester with at least 60 attendees.

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Choosing to **live the rule of law out loud** – spreading its message of economic inclusiveness, government accountability, public safety, and substantive fundamental rights to improve the lives of real people on the ground – I declare these commitments. Goal 1: The rule of law will be **freed from its academic and philosophical shackles**. By 2020, the term "rule of law" will have catapulted into mainstream popular discourse with such force and diffusion that even those without a law degree will be able to articulate its central idea. I will **write, film, and edit a short video** for YouTube that conveys the importance of the rule of law by analogy in a manner that is creative, clear, and "sticky" with **momms and middle school children**. I will share my observations on current affairs on social media to highlight cracks in the rule of law's foundation. I will highlight those stories in which a journalist is personally attacked for his or her reporting, which has a dangerous chilling effect on free speech norms.

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In the future, as a **federal prosecutor**, I will enforce the law but also seek to use my position to advocate for practices and procedures that will strengthen the rule of law. As a **Latter-day Saint (Mormon)** I will encourage respect for the rule of law by participating in and initiating service activities related to the rule of law,

such as voting initiatives and faith-based correctional programs. Using the leadership roles and speaking opportunities I am given, I will emphasize values underlying the rule of law, such as civic engagement, equal treatment of all persons, and integrity.

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**Painting** is a special skill I've been developing my whole life, and art is a very powerful way to communicate. My goal is to paint **two to three pieces per year** that highlight the importance of the Rule of Law. I would like to show the **Rule of Law as the value that creates harmony in society** by joining together the left and the right, Republicans and Democrat. To begin with, I might do a piece that displays the various thinkers who have thought about Rule of Law: Aristotle, Plato, Cicero, Thomas Aquinas, and the framers of the U.S. Constitution.

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My goal in supporting the rule of law is to **encourage participation in democratic institutions** and to hold democratic institutions accountable to their limitations as well as their highest possible outcomes. My objectives are to participate and encourage participation in [Colorado] state and local government; **bring attention to government ethics and oversight issues** and encourage people to get involved in calling them out; **support good journalism** and access to information; and improve access to justice for **refugees** and undocumented individuals, as well as anyone else being disproportionately targeted by the federal government.

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I will introduce **civics education in local high schools**, including Rule of Law concepts. Currently ours do not offer a civics education as part of the high school curriculum. This may well be a contributing factor to the low **voter turnout** among young people in local and national elections; youth may not feel they have enough information to participate, and may not understand the importance of doing so.

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Most of my family never received their high school diploma, and no one had ever gone to college. The expectations in my neighborhood were even lower. There was a higher likelihood that my friends would drop out or end up in jail than graduating . . . **Low-**

**income people do not use the civil justice system. I believe education will fix that.** Not only will education increase their earning potential, but **understanding the system better will increase the likelihood that they'll use the system** when they've been wronged. **(This may also have an impact on the crime rate.)**

My connecting with **at-risk students** from low-income neighborhoods will have an indirect – but substantial – impact on the Rule of Law.

The “Advocating for the Rule of Law: A Practical Approach” course has armed its participants with practical knowledge about how to bring the Rule of Law to life, in their legal practice as well as in their home communities, the pages of their local news and opinion outlets, high school civics classrooms, state legislatures and professional associations. Following this pilot semester, I will consider course evaluations and other feedback as I strive to scale it up, covering more law students, experimenting with online forms, modifying it for undergraduates, and perhaps creating a version for lifelong learners as well. ■

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13. [https://www.nytimes.com/2017/07/28/arts/music/opera-in-attica-bringing-arias-to-a-maximum-security-prison.html?mc\\_cid=709baeb3b5&mc\\_eid=95497f9652](https://www.nytimes.com/2017/07/28/arts/music/opera-in-attica-bringing-arias-to-a-maximum-security-prison.html?mc_cid=709baeb3b5&mc_eid=95497f9652).
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15. <https://www.thisamericanlife.org/radio-archives/episode/218/act-v>.