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ESSAY

THE ASSAULT ON SCHOLARSHIP

DAVID L. GREGORY*

Is legal scholarship¹ running “amok,” as Professor Kenneth Lasson maintains in his recent provocative article in the *Harvard Law Review*?² On the contrary! It is well documented that many tenured faculty members simply do not engage in any scholarship after achieving tenure.³ Many faculty free riders⁴ are too busy

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1. I adopt Professor Philip Kissam's “rather broad and open-ended definition of scholarship” for purposes of this Essay. Kissam, *The Evaluation of Legal Scholarship*, 63 WASH. L. REV. 221, 222 (1988). “‘Legal scholarship’ will refer to any writing about the law or legal process that is printed in a form generally recognized as ‘a legal publication.’” *Id.* I have decided reluctantly to refrain from formulating any qualitative definition of, or drawing any qualitative distinctions within, legal scholarship. I certainly agree with Dean Geoffrey Stone: “The truth is that one truly extraordinary article is worth more than a dozen good ones . . .” Stone, *Scholarly Research*, U. CHI. L. SCH. REC., Spring 1990, at 2; see also Letter from Dean Geoffrey R. Stone to David L. Gregory (Dec. 10, 1990).

2. Lasson, *Scholarship Amok: Excesses in the Pursuit of Truth and Tenure*, 103 HARV. L. REV. 926, 926 (1990). This article achieved immediate notoriety. See Rothfeld, *A Lament: Too Few Interesting Law Articles*, N.Y. TIMES, Nov. 23, 1990, at B23, col. 3. Within only a few months of the article's publication, Professor Lasson received over one hundred responses. Telephone interview with Kenneth Lasson (Nov. 29, 1990).

3. Swygert & Gozansky, *Senior Law Faculty Publication Study: Comparisons of Law School Productivity*, 35 J. LEGAL EDUC. 373, 393 (1985).

4. See Ackerman, *The Marketplace of Ideas*, 90 YALE L.J. 1131, 1137 (1981).

[A]ssume that each professor is faced with a polar choice. On the one hand, he may use his free time consulting, not even trying to make his law school into a genuine scholarly community. On the other hand, he may spend his free time reading his colleagues' papers, talking about their ideas, encouraging their ambitious intellectual projects, and so forth. If he takes the first course and others take the second, then he will live in the best of both worlds—he can gain fame and fortune by consulting and intellectual titillation by gabbing with colleagues whenever he is in the mood. If, however, too many professors take this free ride, there won't be enough of them around enough of the time to constitute a vital scholarly community.

Id.

The American Bar Association defines the full-time faculty member as follows:
A full-time faculty member is one who during the academic year devotes

pursuing lucrative fees in concurrent law practices to sacrifice billable hours to the pursuit of truth through scholarship.⁵ Correspondingly, when scholarship standards for achieving tenure at many law schools are too low,⁶ nontenured faculty scholarship

substantially all working time to teaching and legal scholarship, has no outside office or business activities and whose outside professional activities, if any, are limited to those which relate to major academic interests or enrich the faculty member's capacity as scholar and teacher, or are of service to the public generally, and do not unduly interfere with one's responsibilities as a faculty member.

A.B.A. STANDARDS FOR APPROVAL OF LAW SCHOOLS 402(b) (1987).

The Association of American Law Schools also defines the full-time faculty member:

"Full-time teacher" means a teacher who devotes substantially the entire time to the responsibilities of teacher, scholar and educator. Professional activities outside the law school are not precluded if so limited as not to divert the teacher from the primary interest and duty as a legal educator. To determine whether outside professional activities are properly limited, the following factors should be considered:

(i) The extent to which the outside activity coincides with the full-time teacher's major fields of interest as a teacher and scholar;

(ii) The character of the professional activity as a source of novel and enriching experience that can be directly utilized in the person's capacity as teacher and scholar;

(iii) The degree to which the demands of the outside activity interfere with the teacher's regular presence in the law school and availability for consultation and interchange with students and colleagues; and

(iv) The extent to which the outside activity may properly be characterized as public service, as distinct from the pursuit of private purposes.

ASS'N OF AM. LAW SCHOOLS, BYLAWS OF THE ASSOCIATION § 6-5(f), in ASSOCIATION HANDBOOK 23 (1990).

Of course, faculty free riders can include those who do not practice law concurrently, do not engage in scholarship, and do not teach well. Just what they do, other than cash their paychecks, is a mystery. Law practitioners may be unfairly targeted as the primary faculty free riders. In fact, a professor who carefully controls selective outside consulting can engage in potentially superb scholarship through, for example, brief writing. Professor Laurence Tribe personifies the tremendous synergy possible among teaching, practice, and scholarship. Given a polar choice, I personally would prefer the company of busy practitioners to disengaged phantom nonscholars.

5. See Ackerman, *supra* note 4, at 1137.

6. *Id.* at 1133, 1141.

Hence the scandal of law school tenure practices. Rather than reserving tenured professorships for men and women who have already made substantial (if not, perhaps, significant) contributions to scholarship, law schools go out of their way to assure hot prospects that they will be promoted quickly if they perform acceptably in the classroom and produce a "promising" article or two.

.....

The standards for tenure must be raised.

Id.

Professor Lasson and I found that more unites than separates us. Lasson's primary critical focus is on the unidimensionality of tenure standards, which often subordinate or ignore university and community service, pro bono work, and teaching quality. I fully

is hardly amok. The misperception that mediocre scholarship proliferates out of control is attributable primarily to the pall cast by Professor Fred Rodell's⁷ long shadow, and to the false dichotomy between teaching and scholarship.

I. ILLUMINATING RODELL'S SHADOW

Over half a century ago, Professor Fred Rodell of Yale Law School provided the most trenchant and enduring criticism of stereotypical legal writing: "There are two things wrong with almost all legal writing. One is its style. The other is its content."⁸ Ironically, his notorious law review article became "perhaps the most widely read—and most controversial—article in all of legal literature."⁹

Rodell engaged, criticized, and ultimately eschewed legal scholarship in the law review article genre precisely because he cared so passionately about legal writing. Unlike the busy law practitioners on today's law faculties, he did not abandon legal scholarship for the monetary rewards of concurrent law practice.¹⁰ He remained a superb teacher¹¹ and a committed scholar in other

agree with these criticisms. Lasson also rightly criticizes the frenetic nature of the scholarship that a unidimensional tenure standard may foster, with its myopic, single focus on scholarship. He agrees with my primary criticism of the pathetic absence of scholarship in many quarters where the inhabitants have achieved tenure. We do not agree, however, as to whether the nontenured professorate's scholarship is amok. Telephone interview with Kenneth Lasson (Nov. 29, 1990).

Judge Richard Posner suggests that our criticisms of the state of legal scholarship are not mutually exclusive:

Of course it is possible to have at once a low average productivity of legal scholars and an excessive total quantity of that scholarship because there are a great number of law professors and the quality of their work is poor. That seems to me essentially the situation. The requirement that people who want to be lawyers attend three years of law school creates an artificial demand for law professors, who though their real mission is teaching do a certain amount of writing. The aggregate amount of their writing is great even though the average output is low; and the average quality is also low; so it is possible both to deplore the low productivity of law professors and the excessive quantity of poor legal scholarship.

Letter from Judge Richard A. Posner to David L. Gregory (Nov. 30, 1990).

7. See Rodell, *Goodbye to Law Reviews*, 23 VA. L. REV. 38 (1936); Rodell, *Goodbye to Law Reviews—Revisited*, 48 VA. L. REV. 279 (1962).

8. Rodell, *Goodbye to Law Reviews*, *supra* note 7, at 38.

9. Margolick, *Always the Rebel*, Nat'l L.J., May 5, 1980, at 1, col. 2, 24, col. 1.

10. Wright, *Goodbye to Fred Rodell*, 89 YALE L.J. 1455, 1458 (1980).

11. I have said that Fred was the best teacher I ever had. I am not alone in that view. Justice Douglas, writing when Fred retired from teaching in 1974, referred to him as "by all odds one of the ablest teachers of all time and one of the best loved by students."

Id. at 1457.

formats¹² who, coincidentally, continued to publish book reviews in law journals.¹³

Rodell's disciples remain in his shadow.¹⁴ Rodell's shadow, however, must be illuminated, for it has cast a pall. His critique of legal writing, for all of its originality and wit, was only half right. According to Rodell, law reviews are "spinach."¹⁵ But spinach provides nourishment; spinach can even be good for you.¹⁶ An exclusive diet of law review spinach would be monotonous, but given the scholarship famine in many quarters today,¹⁷ law review spinach is preferable to starvation.

Unfortunately, the near-majority of tenured law faculty members in the United States unwittingly have heeded Rodell's injunction. They have utterly eschewed legal scholarship. In many law schools, emaciated scholarship is not running amok; it is barely ambulatory. In many tenured faculty ranks, the incidence of posttenure scholarship is more akin to an arid desert than to the lush, impenetrable jungle of scholarship that Professor Lasson maintains has been frenetically created by the nontenured professorate.¹⁸

In their startling study of the number of legal publications by the Nation's 1,950 full-time, full professors in the four-year period from 1980 through 1983, Professors Swygert and Gozansky found that "over 44 percent of the entire population of senior law faculty members had zero publications."¹⁹ Scholarship is just as sparse in institutional terms: "16 senior faculties had zero listed publications. . . . 50 of America's 169 law school senior faculties

12. See *id.* at 1462-64 (selected writings of Professor Rodell).

13. *Id.* at 1464-65; see also Rodell, *Goodbye to Law Reviews*, *supra* note 7, at 44: If any section gets a partial reprieve from all this slapping around it is the book review section. When it comes to the book reviews, company manners are not so strictly enforced and it is occasionally possible to talk out loud or crack a joke. As a result, the book reviews are stuck away in the back like country cousins and anyone who wants to take off his shoes and feel at home in a law review will do well to come in by way of the kitchen.

14. See, e.g., Church, *A Plea for Readable Law Review Articles*, 1989 WIS. L. REV. 739; Elson, *The Case Against Legal Scholarship or, If the Professor Must Publish, Must the Profession Perish?*, 39 J. LEGAL EDUC. 343 (1989); Lasson, *supra* note 2; Murray, *Publish and Perish—By Suffocation*, 27 J. LEGAL EDUC. 566 (1975); Rosenkranz, *Law Review's Empire*, 39 HASTINGS L.J. 859 (1988).

15. Rodell, *Goodbye to Law Reviews*, *supra* note 7, at 45.

16. Martin, *The Law Review Citadel: Rodell Revisited*, 71 IOWA L. REV. 1093, 1108 (1986).

17. See Swygert & Gozansky, *supra* note 3, at 393.

18. See *supra* note 6.

19. Swygert & Gozansky, *supra* note 3, at 381.

produced a total of four or fewer publications over the entire study period."²⁰

This pathetic situation is not radically different in the nontenured ranks. Although the nontenured may produce relatively more aggregate scholarship, the scholarship standards for achieving individual tenure generally remain too low, with only one or two articles required for tenure at most law schools, a la the infamous "tenure piece."²¹

Professor Lasson rightly argues for greater balance among the components required for tenure:

Analysis, research, and writing are overblown, while classroom competence, community service, and non-law review scholarship are under-credited.

. . . .
 . . . [T]he point of this piece is to urge that we move away from rewarding "scholarship" alone²²

On this score, Lasson should prevail. Tenure standards should be both more integrated and more multidimensional to give greater weight to the above important qualities and contributions, in addition to scholarship. Scholarship standards nevertheless remain very low hurdles to tenure in law schools, compared to standards for tenure in other academic disciplines. If the tenure candidate cannot muster sufficient energy to write a single article, a politically sympathetic law school regime may too readily find offsetting "equivalencies" to scholarship in the candidate's other "service."²³ And, of course, by absolving tenure candidates

20. *Id.* at 383. Although he has not conducted a followup study of the scholarship of the senior law professorate nationwide, Professor Swygert estimates that little has changed in productivity levels since his influential 1985 study. Telephone interview with Michael Swygert (Dec. 22, 1990).

21. See Ackerman, *supra* note 4, at 1133.

22. See Lasson, *supra* note 2, at 928, 949.

23. No central research is available on the hiring, promotion, and tenure standards of law schools. Each school is very individualized on these matters. The Association of American Law Schools recently appointed a Special Committee on Tenure and the Tenuring Process, which is chaired by Professor Victor Rosenblum, but the Committee has not yet issued a final report. Most of the comparative law school data available on these matters has thus far been largely anecdotal. See ASS'N OF AM. LAW SCHOOLS, ROUNDTABLE DISCUSSION ON IN-HOUSE FACULTY DEVELOPMENT PROGRAMS, in PROCEEDINGS OF THE 1991 ANNUAL MEETING (1991). Some schools have very elaborate, specific procedures that govern hiring, promotion, and tenure decisions. Other schools appear to have no specific standards, but rather a de facto, implicit tradition.

A few especially courageous professors have discussed related situations at their schools

of the scholarship requirement, faculties may conveniently avoid the "painful hypocrisy [through which] senior professors impose standards on juniors that the seniors themselves cannot pass."²⁴ The problem may be that too little good scholarship is keeping pace with the proliferation of the law. The problem is not scholarship running amok. Professor John Paul Jones says it best, and in the gadfly spirit Professor Rodell would appreciate:

I have heard it said that there are too many law reviews, and that, by some analog to genetics, too many law reviews produce inferior contents. Legal thought is not a gene pool, however, and sterilizing the masses will not produce a race of super journals filled with only the best articles.

. . . .

There cannot be too many law reviews, or at least there are not yet. Law reviews *review* laws. They do not just report laws. They are, or should be, the watchdogs set against the establishment which exercises lawmaking power. The increase in the number of journals has not come near to matching the increase in lawmaking over the same period. . . . There is a lot more law out there to review these days, so growth in the number of law reviews ought to be encouraged not bemoaned.²⁵

II. REPUDIATING THE FALSE DICHOTOMY BETWEEN TEACHING AND SCHOLARSHIP

Academic lawyers can be afflicted by the legal profession's adversarial, litigious, win-lose mentality. This polarized frame of reference corrodes the collegiality of law faculties. Professors may self-divide into seemingly mutually exclusive camps of teachers or scholars, with each routinely hurling pejoratives at the other faction. This specious bifurcation must be repudiated. The giants of the legal academy have always condemned it. Quality teaching and consistent scholarship each are a *sine qua non* of the genuine law professor. Dean Prosser, the preeminent torts

in the context of examining important themes in legal education. See Feinman & Feldman, *Pedagogy and Politics*, 73 GEO. L.J. 875, 926-29, 929 n.131 (1985) (discussing faculty votes and internal controversy surrounding new approach to integrating the teaching of contracts and torts); Haddon, *Academic Freedom and Governance: A Call for Increased Dialogue and Diversity*, 66 TEXAS L. REV. 1561, 1561-64 (1988) (discussing Temple University President's removal of law school Dean and the resulting controversy).

24. Ackerman, *supra* note 4, at 1141.

25. Jones, *In Praise of Student-Edited Law Reviews: A Reply to Professor Dekanal*, 57 UMKC L. REV. 241, 244 (1989).

scholar, said that professors should "sweat blood" to write good law review articles.²⁶ If the Prosser standard is too intimidating, Dean Roscoe Pound stated that it is not too much to ask each professor to write a good law review article every few years.²⁷

Little room should exist in the law school for the teacher who cannot write or for the scholar who refuses to teach. Neither the law schools nor the students and constituencies they serve should be forced to settle for less than half the loaf. Although scholarship as an intellectual pursuit is commendable for its own worth, that is not its *raison d'être* in the professional law school. If professors do not engage in scholarship, they cannot fully foster critical analytical skills in their students, because their own skills will atrophy. Squandering these intellectual professional resources is inexcusable.

Self-identified nonscholar teachers (read: "I haven't written a law review article in thirty years, and I am proud of it!"), aggravated by the ascendant ranks of faculty members conducting concurrent law practices,²⁸ rationalize their behavior by dredging up examples of their mentors—the mythic great classroom teachers who likewise did not write.²⁹ They also contemp-

26. See Prosser, *Advice to the Lovelorn*, 3 J. LEGAL EDUC. 505, 512 (1951):

Writing about law is an important part of a law professor's job. Once the courses are in hand, the actual classroom teaching, and the preparation for it, should occupy no more than half of the professor's day. . . . I would sit down and sweat blood writing half a dozen articles on the toughest problems I could find in the fields in which I had an interest. . . . [I]t is still more amazing how seldom [this] is done.

27. See Pound, *Some Comments on Law Teachers and Law Teaching*, 3 J. LEGAL EDUC. 519, 532 (1951) ("[A] full-time law teacher should write at least one good law review paper every two years. He should do that and teach effectively too, doing both the best that is in him.").

28. See Ackerman, *supra* note 4, at 1137.

29. See J. SILBER, STRAIGHT SHOOTING 131-32 (1989):

Justice Felix Frankfurter, reminiscing about Professor James Barr Ames of the Harvard Law School, spoke eloquently of the importance of teaching: "He was a wonderful teacher, an original mind," said Frankfurter, "and he illustrated, to a degree unexcelled by anybody I ever knew anything about, the conception by Socrates of a teacher, that of a midwife. Ames was the midwife of minds." When Ames died, Frankfurter praised him to his roommate, Morris Cohen, who would later distinguish himself in philosophy. Cohen thought the praise was exaggerated and said: "After all, what is the deposit Ames left behind him? He hardly wrote anything." To which Frankfurter replied:

What he left behind him is that which Pericles says in his funeral oration is the most important thing. His deposit is in the minds of men. He excited and touched more first-rate minds in the profession of the law, I suppose, than any man who ever had pupils. Dean Ames would rather spend hours

tuously recall the scholar who was an atrocious teacher. Upon reflection, though, the supposedly great teacher who did not write was, more likely, an avuncular teller of "war stories" from law practice—charming, undemanding, and ultimately insipid.³⁰ Self-identified nonscholar teachers cavalierly engage in talk that is cheap. Integrating teaching and scholarship, on the contrary, is a painfully difficult task.

Professors can easily dazzle, or at least intimidate, students generally unacquainted with sophisticated legal nuances. Any professor with good oratorical skills, some public stage presence, amusing anecdotes, and a teacher's manual can "get through" a course.

Many students may be pleased by the absence of professional intellectual demands upon them, but can the professor who does not concurrently engage in scholarship best train students in the contextual, multimethod matrix techniques essential to law practice today? Can the professor who eschews scholarship best inspire students to evaluate the coherence and consequences of legal action? Can the nonscholar best inspire students to challenge and test their preconceptions? Can the nonscholar best stir students' legal imaginations?

Vis-à-vis the scholar/teacher, the nonscholar generally fails to compare fully on most of these counts. When writing for the academic and professional legal audience, a professor must do much more than entertain; the scholar is forced to analyze, reflect, disagree, and pose alternative conceptions, methods, and paradigms. Notice that these are the same intellectual skills professors attempt to foster in law students, not, it must be said, to make students think like "law professors," but precisely to make students think like lawyers. Scholarly writing forces clarity in thought and expression. The Socratic acts of teaching and especially of writing contribute significantly to the thinking process. The professor who does not write risks descending into a dan-

with a student than write a legal essay that would immortalize him.

Teaching, rather than research, is the primary interest of most faculty members in higher education. A recent Carnegie Foundation report, *Scholarship Reconsidered*, indicated that "many faculty members pursue research even though 70 percent say their interests lie primarily in teaching." DePalma, *Study Urges Colleges to Return to Original Mission*, N.Y. Times, Dec. 5, 1990, at B15, col. 1 (citing CARNEGIE FOUND. FOR THE ADVANCEMENT OF TEACHING, *SCHOLARSHIP RECONSIDERED* (1990)).

30. Cf. H. ROSOVSKY, *THE UNIVERSITY: AN OWNER'S MANUAL* 91 (1990) ("Most of us will also remember some much beloved 'old doc so-and-so'—unfortunately a fixture on so many American campuses—who in our more mature memories reveals his true self to us as a pathetic windbag.").

gerous passivity that can erode into superficial glibness, at best. The critical elements of good teaching—such as respect for students, a desire for knowledge and justice, a healthy appreciation of one's gifts and limitations, and a faithful search for truth—all can be enhanced by the law professor's regular participation in scholarly writing.

True excellence in teaching and scholarship is rarely achieved, but it is the integrated goal to which every committed law professor should aspire. The professor who eschews scholarship may purport to emulate James Barr Ames or Fred Rodell. More likely, however, the professor's motivations for spurning scholarship are mercenary and pedestrian. Why should the busy law practitioner on the law faculty sacrifice the 150 billable hours at a minimum that are required to write a law review article?³¹ Likewise, the harried legal scholar who avoids colleagues and students, burrows into library stacks to the exclusion of office hours and conversation, and regards classroom teaching as an odious intrusion does a disservice to scholarship. In the law school, a professional school, scholarship takes much of its meaning from, and should in turn energize, the applied context of classroom teaching dynamics. The obsessed scholar who contemptuously subordinates teaching also becomes a free rider at the expense of the law school community.

Admittedly, every conscientious professor faces the tension of tradeoffs in deciding how best to allocate the finite amount of time available for teaching preparation and research activities. The tension is inherently insoluble. With conscious effort, however, the tension of time commitments can be delicately balanced and perhaps ultimately reconciled, if one constantly strives to integrate and reinforce the complementary missions of teaching and scholarship.

Scholarship without teaching tends to be abstract and highly egocentric; teaching without scholarship tends to be pedantic and superficial. One cannot be fully real without the other. The professional law school must be grounded in both theory and praxis, in both scholarship and teaching.

The false dichotomy between teaching and scholarship must be repudiated forcefully in practice as well as in theory. How can the necessary reintegration and restoration of teaching and

31. Delgado, *How to Write a Law Review Article*, 20 U.S.F. L. REV. 445, 448 (1986) (Professor Delgado conservatively estimates that writing a law review article requires a minimum of 150 hours).

scholarship be fully realized? The debilitation of scholarship has been largely of the legal academy's own making. Moreover, the institutional surrender of scholarship standards may be further exacerbated. Any further lowering of the scholarship standards required for tenure may result in their complete waiver. University bureaucrats, unfamiliar with the norms of legal scholarship, may deliberately devalue the scholarship that is produced. They may fail to provide sufficient incentives and supports for scholarship, such as merit-based salary increases, summer research grants, or sabbatical leaves. Ultimately, though, whereas an environment conducive to scholarship can be supported and fostered by the institution,³² scholarship itself cannot be coerced.³³ The pursuit of scholarship is the responsibility of the individual faculty member.³⁴

Only law professors reengaging in scholarship can repudiate this false dichotomy between teaching and scholarship. Although directed primarily at undergraduates, the words of Henry Rosovsky, Dean of the Faculty of Arts and Sciences at Harvard, are especially apt for law faculties today:

Research is an expression of faith in the possibility of progress. The drive that leads scholars to study a topic has to include the belief that new things can be discovered, that newer can be better, and that greater depth of understanding is achievable. Research, especially academic research, is a form of optimism about the human condition Persons who have faith in progress and therefore possess an intellectually optimistic disposition—i.e., teacher-scholars—are probably more interesting and better professors.³⁵

III. WHY WRITE?

The situation appears bleak. Apart from the exotic political concerns of leaving a paper trail a la Robert Bork, why write?

32. For a series of proposals to strengthen institutional supports for faculty scholarship, see Ackerman, *supra* note 4, at 1141-48.

33. "Scholarship cannot be coerced, only cultivated. No one can stop a real scholar." Bard, *Scholarship*, 31 J. LEGAL EDUC. 242, 245 (1981).

34. *See id.*

35. *See* H. ROSOVSKY, *supra* note 30, at 89. Other prominent university educators outside the law school have periodically issued eloquent statements emphasizing the importance of research. *See, e.g.*, H. ASHMORE, *UNSEASONABLE TRUTHS* (1989) (the authoritative biography of Robert Hutchins, who became President of the University of Chicago at age 30, following his ascent to the Deanship of Yale Law School at age 27); W. BOOTH, *THE VOCATION OF A TEACHER* 61-75 (1988); A. GIAMATTI, *A FREE AND ORDERED SPACE* (1988).

Why bother? Why not be a faculty free rider? The financial lures of concurrent law practice are very seductive. The community of scholars is embattled. The growing ranks of free riders are ascendant on many law faculties. Institutional supports for fostering scholarship may be nonexistent or, at best, chaotic, ad hoc, and inconsistent. The broader culture devalues literature.³⁶ That the pernicious cultural trend of anti-intellectualism is gradually having an insidious influence in the law schools is not surprising.

Legal scholarship is certainly under full-scale assault. The stakes are high for the future of legal education. If more professors continue to abandon scholarship, the law schools will become barren, ghostly places. Scholarship amok? Hardly! Scholarship running amok would be welcome, exhilarating evidence of intellectual life in an anemic, emaciated law professorate.

So, why write? Fundamentally, the answer is a matter of vocation and ethics. The aspiration to excellence breeds excellence in students and in legal audiences. Law professors especially are called to an important vocation as multifaceted academic lawyers. Legal scholars must keep Rodell's valuable critique in mind while striving to illuminate his shadow. True scholars must write; they are temperamentally, congenitally driven to write. They have no real alternative. They share Dean Rosovsky's "expression of faith in the possibility of progress... a form of optimism about the human condition."³⁷

Law professors intuitively should embody the most affirmative spirit of the Lawyer's Code of Professional Responsibility. The law school accreditation standards promulgated by the American Bar Association³⁸ and the Association of American Law Schools³⁹ powerfully endorse law faculty scholarship.

36. See A. KERNAN, *THE DEATH OF LITERATURE* 1-10 (1990).

37. See H. ROSOVSKY, *supra* note 30, at 89.

38. "The law school shall afford faculty members reasonable opportunity for leaves of absence and for scholarly research." A.B.A., *STANDARDS FOR APPROVAL OF LAW SCHOOLS* 405(b) (1987).

39. A member school shall assist its faculty to discharge their responsibility to advance as well as to transmit ordered knowledge. To determine whether a school is fulfilling this obligation, the following factors shall be considered:

(i) Recognition accorded creative scholarship in the appointment and advancement of members of the faculty;

. . . .

(iii) Policies and practices concerning reduced teaching loads, relief from committees or administrative assignments, and compensated or uncompensated leaves of absence in order to permit the faculty member to engage in

Ultimately, law professors write because writing is both an essential part of their vocation and a professional ethical imperative: "Law professors have a responsibility to engage in their own research and publish their conclusions. In this way, law professors participate in an intellectual exchange that tests and improves their knowledge of the field, to the ultimate benefit of their students, the profession, and society."⁴⁰ These are the reasons why we write, and these reasons explain why the powerful assault on legal scholarship ultimately will fail.

creative scholarship;

(iv) Policies and practices concerning financial support for research assistants, field studies, travel, and related research activities;

(v) Adequacy of secretarial and library staff assistance; and

(vi) Percentage or amount of school's budget allocated to research.

ASS'N OF AM. LAW SCHOOLS, BYLAWS OF THE ASSOCIATION § 6-8(c), in ASSOCIATION HANDBOOK 24 (1990).

40. ASS'N OF AM. LAW SCHOOLS, STATEMENT OF GOOD PRACTICES BY LAW PROFESSORS IN THE DISCHARGE OF THEIR ETHICAL AND PROFESSIONAL RESPONSIBILITIES, in ASSOCIATION HANDBOOK 61 (1990).