I was surprised when I heard that Frank Remington was going to retire. I told him that he was so valuable that the Law School should make him start over. He replied that if he did, he wouldn't get tenure under our current standards. I laughed because if Frank couldn't make it no one would. I thought about this brief exchange when I read that the President of the University of Wisconsin was advocating post-tenure review of faculty. I pictured convening a committee and seeking outside appraisals of Frank's work. On one hand, we would waste the time of those asked to judge his work because the case would be so clearly in his favor. On the other hand, perhaps we could force those who enjoy attacking our faculty to recognize the people who make this university one of the state's and the nation's great resources. Perhaps a tenure review of professors such as Frank Remington might serve to stem the fabrication of scandals.

A tenure review looks at scholarship, teaching and service. There are at least three major ideas that Frank's research in the criminal law made salient to all legal scholars. (Undoubtedly, a criminal law specialist could point to other ideas, but I can only report what has come through to those of us engaged in such matters as contracts and law and the social sciences.) First, the reality of the criminal law in action is discretion. We talk about a government of laws and not of persons. However, viewed from the front seat of a squad car, the police are free, within wide boundaries, to act or refuse to act. Prosecutors, too, must make choices only indirectly influenced by legal rules.

Second, the police are a generalized administrative agency. We call on the police to solve problems when we need immediate action and no other body has been given the job. Seeing them only as people engaged in imposing the criminal law misses the point. The criminal law is only one of the many tools the police must use to do the jobs that society has given them.

Third, the criminal justice system is, indeed, a system. We must see it whole to understand any part of it. In the early 1950s, I took criminal law and learned the elements of various crimes, with a dash of policy analysis sprinkled on top. Frank doesn't deny that the rules are important; indeed he has drafted statutes that refine the rules. In Frank's picture, however, rules are only part of a total process. Police officers must decide whether to take action and what action. Prosecutors decide whether to prosecute. Prosecutors and defense lawyers decide whether to plea bargain or go to trial. If there is a conviction, judges decide what sentence to impose. They base these decisions on information provided by corrections staff who, with more or less accuracy and insight, tell the judge what the criminal is like. Sentences are served many ways. And we try to impose controls on people even after they are released from prison. Furthermore, what happens at one part of the system affects what happens elsewhere. Changes at any one part of the system often only prompt adjustments at another, as many reformers have discovered to their dismay.

These three points are simple, even obvious. Important ideas usually are simple. They were not obvious when Frank began his career. Indeed, we could point to many scholars and political actors today who fail to give these ideas their due in thinking about law.

Tenure requires teaching as well as scholarship. The key point here is that Frank brought the insights of his scholarship to students in a variety of ways. He coauthored teaching materials that brought his insights into the classroom. His students had to see the criminal law in
action. We can only guess how many Wisconsin graduates have taken Frank's courses, seminars and directed research. All were pushed to see criminal law in context.

Moreover, Frank championed what we now call clinical education before it had this name. Frank's clinical approach involved more than putting a student in a law office and confronting her with the problems of real clients. She saw real people who were police officers, prisoners, social workers, jailers, prison guards and all of the rest of those involved in the total criminal justice system. (To my knowledge, he didn't place anyone inside organized crime, but such a move might have been consistent with his position.)

Frank recognized that even young lawyers who would never handle a criminal case might benefit from seeing a broad picture of the criminal justice system. We who teach at this law school know that, to a large measure, we are governed by our former students. Some hold elective office while others are back stage doing the committee work, drafting and negotiating with lobbyists and concerned constituents. We will be governed better if our graduates can escape from simplistic ideological pictures of how the law works.

Finally, tenure requires service to the public at large, the Law School, and the University. I've mentioned that Frank played key roles in several major reforms of the criminal law. This was more public service than most professors accomplish in a career. Frank also offered at least eight of our deans excellent advice and served on countless law school committees. For example, he was the chair of our faculty appointments committee a few years ago. The Law School needed more teachers, but the university was unable to provide the needed funds. Frank knew of the University's affirmative action concerns. He thought that we might make a case for a new position if we could find an outstanding scholar who was a member of a minority group. His committee began to compile a list of such outstanding people.

When our new Chancellor arrived, she discovered, to her dismay, racial divisions at Madison. She established the Madison Plan to further racial diversity. She told departments that those who came first with the best candidates would get the money. Other departments then began to look for candidates. Frank's committee and our Dean, however, were ready immediately with a list of outstanding minority group scholars. We gained four new positions, and we filled them with top people. Many others played key roles of course, but Frank's good judgment and energy were important factors in bringing a group of talented people to us whom we could not otherwise have hired.

He also has been a counselor to university presidents, chancellors, deans and athletic directors. Frank counseled doing it right, not following the teachings of Machiavelli. When they were smart enough to listen to him, life at this university improved.

Then, as we all know, Frank is a sports fan. Many of us use such an interest as relaxation. Frank, however, took this interest and turned toward solving problems. We know about his work on the University's Athletic Board, the faculty body that controls the Big 10 Conference, and the NCAA. He is concerned about the treatment of student athletes by universities. American educational institutions reap the profits from the talent and hard work of young people. In exchange, they promise them an education. Far too often famous institutions engage in misrepresentation or breach their promises to those they exploit. Frank has never ceased reminding administrators and coaches that they must give content to the first part of the term "student-athlete."

Moreover, he was one of the first to recognize that the universities must help those students going on to professional sports. They need help if they are to gain fair treatment from agents and the various professional sports clubs. Here he joined his skills as a legal educator and his interests in athletics. He has worked to establish programs to teach student-athletes about agents. He has worked to train lawyers and others to be competent and ethical agents. Frank would be the first to say that he has not brought about a revolution, but we have taken the first steps.

What should we conclude about Frank Remington and post-tenure review? The answer is so obvious that the question is silly. I confess that at times I get discouraged when I think about the battle to keep our Law School great. I sometimes respond by being flip and cynical. I've defined "The Wisconsin Idea" as "it ain't
good but its cheap! I've called our Law School the world's greatest law school in terms of return on investment. But then I wondered whether in those terms, it could be anything else if it did no more than keep the doors open. I've even compared our Law School to a Boeing 747 which has its wings and tail attached by paper clips and rubber bands.

However, I know that this is a great law school, judged by any standard. This university also is a major reason why Wisconsin is a special and wonderful place. Whatever is holding the wings and tail on, the plane flies! How can this be true when we are always struggling to do so much with so little? The answer is simple. Wonderful people create knowledge, teach students and help solve problems. They regularly act above and beyond the call of duty. If anyone challenged me to offer a concrete example, I could not do better than point to Frank Remington.

If, however, we take Frank as our standard for post-tenure review, there are two problems. We, first, risk setting the standard so high that we would discourage the rest of us. Second, how would we justify spending the time to prove the obvious in cases such as Frank's?

When Professor Remington began teaching here in the fall of 1949, his first class included students who would become the class of 1952. Many of them returned this spring to celebrate their 40th reunion and added their own comments in honor of Professor Remington.

Edward L. Levine, '52, of New York remembers taking his first procedural course with Professor Remington in the large lecture room of the old law building which has since been torn down. "Even in his first year, he was wonderful. We all had him for first-year law courses along with Herbie Page, Charlie Bunn, and Nate Feinsinger."

Charles B. Lipsen, '52, from Washington, D.C., with deep admiration and respect, stated that: "Professor Remington was the best professor I ever had. He was my favorite; and Jack DeWitt was second. Professor Remington is the reason that I am a lawyer today. He was the most exciting professor I had. He breathed life into the law. Because of him, I became a criminal lawyer. He taught me criminal law.

Robert E. Storck, '52, of Mayville, Wisconsin, remembers Professor Remington as a nice person, wonderful teacher and excellent friend. "When I was looking for a job, I talked to him about going to Mayville to take a job. He thought it was a good idea. I've been there 40 years."

Leonard Loeb, '52, of Milwaukee, Wisconsin, stated, "I had Professor Remington for Criminal Law. He was a very bright and intense teacher. He never told one joke, not one war story. He knew his stuff; and he never digressed. I never once saw him smile. He was a tough grader, too. I felt lucky to pass. At that time, it was no trick to get in; but it was a big trick to get out of law school.

Indirectly, Professor Remington was responsible for getting me a direct commission into the Air Force, which was not easy in those days. Because I really wanted to practice criminal law, he made the course intensely exciting."

Bill Willis, '52, of Foley & Lardner in Milwaukee, points to Professor Remington as "our last link to the faculty. He taught our freshman personal property course. It was his very first class, so he ended up studying along with us every night. Looking back, I think he was too scared to be funny in class. On the other hand, he was great with criminal law. He ultimately proved to be one of our finest professors. With his retirement, the Class of '52 has no other faculty member at the law school that has taught us."