Speech to UW Board of Visitors

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The first time I set foot in the University of Wisconsin Law School was in September, 1951. Then, as a seven-year-old, I accompanied my father, Robert Skilton, and my brother, Bob, then nine, as we proceeded up Bascom Hill and into that old Red Law Building. I close my eyes, I still sense it:—the leather dust from old books—spiced with the unmistakable smell of old pipe smoke—the squeaks of old wooden floors. I liked that building. I felt welcome there and I believe I knew *at the time* that I would some day grow up to be a lawyer. From that time on, I held on to that dream. I still have that dream and I hope that I will never grow up.

In 1966, I was admitted into the UW Law School Class of 1969. I accepted—but not without some trepidation. My father was then in his prime as a teacher. And that, of course, presented us both with some "special challenges." After much soul-searching about attending Northwestern, the day came for me to confirm my decision to attend, or lose my spot. Gordon Baldwin was then Dean of Admissions and had known my brother Bob well. Now Bob had just graduated from the UW Law School and had done very well: *Order of the Coif, Law Review*, blah, blah, blah. I entered Gordon's office and placed my acceptance on his desk; he reviewed it silently (puffing on his pipe); he then looked up and without cracking a smile or, I might add, opening his jaw, asked: "When's your sister coming through?"

Nor did my father help the situation. (Those who knew him may well remember his unique sense of humor and how much he enjoyed his own jokes.) He particularly liked to poke fun at vanity: "We will cast a twenty-foot-high bronze statue, in your perfect likeness—place it on a pedestal in the middle of the town square—and on the pedestal of that monument we will inscribe in gold embossed letters: "NO TALENT." (Humor, he said, was like a bunch of naked barbarians standing around a fire uproariously laughing when one of their peers stepped on a hot coal.)

And so it was that he could not resist telling me on the day I started law school about Bill Foster's irreverent account of the *first* pair of faculty sons to go through the UW Law School. (For good reason, their names shall remain anonymous.) The first son, Bill said, had had great difficulty; he barely passed, and took five years to graduate. And the second son, Bill caustically noted, was "even dumber than the first."

Nevertheless, I persevered—and, I daresay, so did my father. Indeed, in a perverse way we came to enjoy each other's mutual predicament, and also shared many precious hours together during that intensive three-year period.

And I always knew when my father was in the building—you could smell the pipe smoke almost as you entered the building.

I became a lawyer in 1969. After clerking for a year, I entered the practice. On August 7, 1995, I will have completed *25 years* as a practicing attorney—13 years in Milwaukee and 12 years in Madison—not that I'm counting. And yes, I am very proud of this accomplishment. (I can hear my father: "That, and 25¢ will get you a cup of coffee at Horn & Hardart's.")

The practice of law has changed greatly in that 25 years. To begin with, there are many, many more lawyers—fighting for what seems like relatively fewer clients. Law firms have become bigger. Clients have become pro-active and sometimes hostile; the rising cost of representation is of paramount concern.

No doubt the practice of law has become much more bottom-line oriented—and less fun. Billable hours drive the day. (When I started in 1970, I asked Marv Klitsner, my boss and mentor, how many

hours the firm expected of me. He replied, "between 1,400 and 1,500 hours." Today our firm, like virtually every other firm in the country, requests our associates to bill between 1,900 and 2,000 hours a year.) In 1970, bills were sent quarterly and were one line statements. Today, the detail required is enormous; and bills are often scrutinized with painful precision by clients.

In 1970, professionalism and civility were assumed, perhaps more accurately, taken for granted, although, I will confess, sometimes honored in the breach. Today, we hear about what some label as a "crisis"—in civility, in ethics, in professionalism. There is some truth in this, but, I believe, there is also some hyperbole.

And there is a profound change in who is practicing law, or, even more to the point, who *will be* practicing law in the future. My class, for example, graduated four women and no minorities. Today, as many women as men enter the practice. And so we confront serious issues of gender bias and "glass ceilings."

But for all of this, we have yet to solve the problems of under-represented minorities and still fail to provide adequate legal services to large segments of our population—not only the poor, but also to the middle class. This seems sadly paradoxical in light of the fact that today we have more lawyers.

No recounting of the history of the practice of law in the last 25 years, no matter how summary, can ignore the "information" and technology explosion. This explosion has necessitated increased specialization, not to mention a host of problems swirling around the question of unauthorized practice of law. If lawyers cannot or will not provide services at a reasonable price, others will step in and do it for us. Thus, we now see the ever increasing encroachment of non-lawyer delivery of "legal services," for example, in the forms of businesses, or more recently in computer "Kiosks."

I am pleased to note that increasingly the legal profession, as it must, is aggressively responding to this state of affairs. The ABA has been particularly proactive. Two recent reports—that of the Task Force on Law Schools and the Profession: Narrowing the Gap (known as the *"MacCrate Report"*) and the *"Just Solutions Report"* bear special mention. The MacCrate Report, issued in July 1992, suggests that the profession—the bar and the academy—has not been wholly successful in providing needed tools: that new lawyers, for example, are not given adequate skills-and-values training and that *both* the academy and *the bar* should take steps to improve this situation. It pays particular attention to the differences in practice settings that lawyers find themselves in, and focuses on different needs that flow therefrom. Its basic conclusion is stated at page 320:

> . . . Increasing concern has been expressed as to the competence of lawyers and as to their adherence to professional values. Despite the increased attention in the law schools to preparing lawyers for practice and wide-ranging efforts by the organized bar to enhance lawyer competence and professional responsibility, calls have persisted for a more comprehensive response focused upon the entire process, from before law school, during law school and throughout lawyers' professional lives, by which lawyers acquire and refine their lawyering skills and professional values.
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> We have concluded that the time has come to focus upon the interrelationships and the linkage between the several phases of lawyers' education and also upon the interdependence of law schools and the practicing bar.

The MacCrate Report concludes with numerous recommendations as to how to improve legal education and professional development. I will mention but a few:

1. *Recommendation C.4.* The interpretation of [ABA Accreditation] standard 302(a)(iii) should expressly recognize that students who expect to enter practice in a relatively unsupervised practice setting have a special need for opportunities to obtain skills instruction.

2. *Recommendation C.8.* Each law school should undertake a study to determine which of the skills and values described in the Task Force's Statement of Skills and Values are presently being taught in its curriculum and develop a coherent agenda of skills instruction not limited to the skills of "legal analysis and reasoning," "legal research," "writing" and "litigation."

3. *Recommendation C.19.* Law school deans, professors, administrators and staff should be concerned to convey to students that the professional value of the need to "promote justice, fairness and morality" is an essential ingredient of the legal profession; the practicing bar should be concerned to impress on students that success in the practice of law is not measured by financial rewards alone, by a lawyer's commitment to a just, fair and moral society.

4. *Recommendation C.24.* Law schools should assign primary responsibility for instruction in professional skills and values to permanent full-time faculty who can devote the time and expertise to teaching and developing new methods of teaching skills to law students. In addition, law schools should continue to make appropriate use of skilled and experienced practicing lawyers and judges in professional skills and values instruction with guidance, structure, supervision and evaluation of these adjunct faculty by full-time teachers.

The "Just Solutions" conference looked at broader, but related, questions concerning the delivery of legal services and suggested that each state shape and determine its own solutions to what the "Just Solutions" conference clearly identified as a crisis.

I have had the privilege of serving on Alumni Boards of this law school since 1980. In 1988, I chaired the Law School's Board of Visitors. At that time the Visitors were asked to comment on the Law School's "Futures Report." We did so. You may remember that Report. For some of us—the alumni—some of the Futures Report's proposals seemed "radical." Nevertheless and, I might say, with some lingering concerns, we concluded (1988 Visitor's Report, at 17–18):

> What do the Visitors view as the mission of the Law School? No Visitor wants the Law School to be turned into a "trade" school (if that be defined as a school whose sole mission is to train students how to practice law). On the other hand, the Visitors are concerned lest the Law School be "academized" or "criticized," *i.e.*, that it become another "graduate school" committed to the study of abstract (or even so-

called empirical or normative) concepts of social justice and fairness.

Law is decisional: it resolve disputes. Students must continue to be thoroughly grounded in the rules of law as developed and applied by the courts. *Stare decisis* is not irrelevant. What the Visitors advocate is *balance*—balance between the "core" and the "frontier"—the "classroom" and the "clinic"—case law and "law-in-action."

It is our view that the Law School has historically succeeded in maintaining that balance—however imperfect and imprecise—certainly while we were privileged to attend it. And it is our hope and firm recommendation that a similar balance—appropriately massaged and adjusted to accommodate changes in the law and the times—will be maintained in the future.

For in the end, the Law School, like the Law, cannot be all things to all people. The student body is not homogenous. The Faculty is not homogenous. Times change. Causes change. Values change. Power changes. If the Law School can continue to train a student to "think like a lawyer," and equip him or her to be able to effectively deploy this special skill, the rest will follow: it has done quite enough.

(As an aside, I will tell you that I have recently read the book *Poisoned Ivy*—a purported study of the problems at Harvard Law School in the last four years. I recommend this book to each person in this room. Regardless of the book's obvious shortcomings, I believe it displays a profound difference between this Law School's approach to issues of gender and racial diversity and that of a so-called "more prestigious" institution—ranked number 1 or number 2 by *U.S. News & World Report.* Not here, thank you very much. Not here!)

In separate meetings last spring, this Law School was confronted by lawyer members of the University of Wisconsin Board of Regents with fairly strident criticism—largely founded on anecdotal evidence—to the effect that it, the Law School, was failing in its duty to properly train law students to become practicing lawyers. As president of the WLAA, I was invited to attend these meetings to hear the criticism and to offer my perspectives. I also heard the forceful and appropriate responses of Dean Bernstine and Stewart Macaulay, among others.

Because of the intensity of this criticism, I felt that the Regents' concerns needed to be communicated to the Law School's alumni. Thus, at their 1994 meeting, our Visitors considered a list of criticisms gleaned from the Regents' meetings, talked with faculty and students and issued a report. That report is now published in the most recent *Gargoyle* and, I believe, you, the faculty, will find it largely supportive of your efforts.

Last spring, at the time of the first meeting of the Regents, I was running for President of the State Bar. By the time of the second meeting, I had been elected. At the second meeting, I told the Regents that as State Bar President I would form a commission which would also address the issues and recommendations of the MacCrate Report, many of which seemed to be similar to the concerns expressed by the Regents.

Thus, and as a result of the coincident confluence of the recommendations in the MacCrate Report and the concerns expressed by the Board of Regents, last summer I appointed a 30 member State Bar Commission on Legal Education. This Commission is chaired by Chief Justice Heffernan; the Vice Chair is Judge Pat Gorence; the Reporter is Erica Eisinger. Three UW law faculty member serve as members: Gerry Thain, Stuart Gullickson and Ralph Cagle. Three Marquette law faculty members also serve, including Past Dean Frank DeGuire; distinguished members of the judiciary, the academy and the bar fill out the ranks.

This Commission has undertaken its task with great enthusiasm and commitment. Triggering on the MacCrate Report's format, it is examining and will articulate a statement of skills and values, and how these skills and values can be taught to prospective and current members of the bar. Its study includes training at the law school level but it is not limited to that. Committees are studying and will make recommendations concerning post-graduate training.

This Commission will issue its preliminary report in March, 1996. That report, in turn, will be submitted to the State Bar Board of Governors for comment at its April, 1996 Board meeting. The final report will be issued in June, 1996.

I predict that the final report will be constructive and supportive of the work that is already going on in this law school and at Marquette. Hopefully, too, it will offer meaningful, concrete recommendations on how to improve upon what the MacCrate Report aptly styles as the "common enterprise" of the development of lawyers. Like the MacCrate Task Force, the underlying premise of this Commissions's work is that of shared responsibility.

Conversely, I do not expect any attempt to micromanage the law schools or encroach upon the appropriate prerogatives of their faculties.

I believe that you will also be interested to know that I have also appointed a Commission on the Delivery of Legal Services which, under a similar track, will make recommendations as to how Wisconsin lawyers can improve the delivery of legal services. I chair that Commission. Pam Barker (a member of the WLAA Board) is Vice Chair. Maureen McGinnity is the Reporter. Justices Abrahamson and Geske are Commission members and are joined by other distinguished members of the bar including Lane Ware (another member of the WLAA Board) and Louise Trubek, of this faculty.

As with the Legal Education Commission, it is my expectation that this commission will ultimately offer constructive and creative recommendations which will improve the access to, availability and affordability of, legal services to the citizens of the State of Wisconsin.

My term as State Bar President will end July 1, 1996. By then, hopefully, the two Commissions will have issued their reports. By that time, too, hopefully, my daughter, Laura, will have completed her second year at this law school. And by that time, God willing, when she starts her third year, it will be in a completed, state-of-the-art law building.

And by that time, I hope to be still welcome to visit that building. And if I am, I will search out Gordon Baldwin's office—to see whether he will ask me, "When's your other daughter coming through" and, I might add, to sniff just a little bit of his pipe smoke.

Thank you very much.