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August 21, 2012 -- Law School Convocation 2012: Remarks by Diane F. Bosse

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New York Board of Law Examiners

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Diane F. Bosse
Western New England School of Law
Convocation, August 21, 2012

Thank you for the opportunity to join you here today. I am always delighted to visit a law school. It is like coming home. It was in law school that I acquired a love of the law and of legal processes. It was in law school that I learned about the legal profession, and I came to care deeply about the standards and honor of the profession. You are now a part of that profession, and I am honored to have the chance to speak to you about what that means.

Today, you undertake a journey that will be transforming. The earnest and eager men and women who entered these halls as newly admitted students will leave in three short years as candidates for admission as attorneys and counselors-at-law, with all of the great privileges and distinct obligations that office implies.

I congratulate you on your admission and choice to attend this law school. While I don't know a lot about this law school, I do know the character of the people who run it – Dean Gaudio and President Caprio. You could not have finer men at the helm. I have worked with both of them on American Bar Association accreditation matters. They understand what it takes to provide a first class legal education, and they care deeply about providing it. It is particularly impressive to me that you have as your President in Anthony Caprio a non-lawyer who has devoted countless hours of pro bono work to legal education. That is so rare, and you are so fortunate to be at this law school.

I want to talk to you today about three things, competence, character, and what it means to be a lawyer.

First, competence. Law study is hard. I can assure you, practice is harder. You are entering a profession where the demands are great and the rewards are greater. And while law study is incredibly demanding, you would not be at this law school if the administration had not made the judgment that you are capable of completing the program of legal education at this institution, being admitted to practice, and becoming a responsible and effective member of the profession. The ABA Standards for the Approval of Law Schools require that the law schools make that judgment before admitting an applicant, and this law school has made that judgment about you.

While you have been judged to have that potential, the rest is up to you. I would encourage you to work hard – harder than you ever have before, because this will be more challenging than any academic work you've done before and everyone here is very bright. What you will learn here are the tools of a competent lawyer. A competent lawyer must have:

Fundamental subject matter knowledge

Procedural know how

Sound judgment and

Essential lawyering skills, including

- Problem solving
- Legal analysis and reasoning
- Factual analysis
- Communication, both oral and written

- How to organize and manage a legal task, and
- How to recognize and resolve ethical dilemmas.

You will be learning these things in an academic approach that is different from how you have learned in the past. You will be learning, in large part, by reading cases decided by the courts. Read those cases critically. Consider the context – at what stage of the proceeding did the issue arise? What is the standard the court is applying to determine the issue? What statements of the court are binding on other courts and which are what we call dicta? How did the court define the issue, what are the facts, what is the applicable law, being the precedent from other cases or the statutes at issue? How did the court apply the law to the facts and reach its determination? Did it get it right? Is there a dissent? Is the dissent on a point of law, or does the dissent reach a different conclusion based on its analysis of the facts? What are the fundamental principles the case teaches you?

You will be reading statutes and learning how to interpret and apply them. You will be learning the different sources of law, and how they interrelate. You will learn the ethical standards and responsibilities that apply to you as a member of the legal profession.

You will learn how to write, considering the audience of your writing, whether it is an objective analysis of the issues for a client or a persuasive piece for the court. You will learn that persuasiveness is not demonstrated by the number of adjectives used or by pronouncing your position as “clear.” You will learn how to sort and synthesize the facts and how to weave the law into an analysis that takes precedent and applies it to or distinguishes it from your facts.

When you graduate, you will take a bar exam. The standard for passing the bar exam is minimum competence. One of my predecessors as chair of the NY Board of Law Examiners defined minimum competence as the ability to practice law unsupervised. That definition communicates the fact that professional competence, even at entry level standards, demands a broad knowledge of the law, a fine-tuned ability to perform legal analysis and legal reasoning, and an ability to identify legal issues and solve legal problems, all while maintaining the ethical standards of the profession.

If you work hard at this law school, I assure you, you will be a competent professional when you graduate. If you fail to work diligently here, you will leave this law school ill-equipped for practice and it will be hard to catch up. Don't squander this opportunity.

Character. You Massachusetts Board of Bar Examiners sets forth in its Rules the Character and Fitness Standards for Admission. It begins this way: "The Board considers good character to embody that degree of honesty, integrity and discretion that the public and members of the bench and the bar have the right to demand of a lawyer." The Board goes on to note that "a significant deficiency in the honesty, trustworthiness, diligence or reliability of a candidate may constitute a basis for denial of a recommendation for admission."

The Board Rules make clear that the Board will consider a range of past conduct, including:

Unlawful conduct

Academic misconduct

Making of false statements, including omissions

Misconduct in employment

Acts involving dishonesty, fraud, deceit or misrepresentation

Neglect of financial responsibilities

Neglect of professional obligations

Evidence of mental or emotional instability

Evidence of drug or alcohol dependency

Your past conduct matters, but you have now entered the profession as students of the law, and your current conduct matters more.

Last winter, I was in Florida, and one day I read a headline in the local paper that said “Law student charged with attempted murder.” I thought, why not “Student charged with attempted murder” or “Local resident charged with attempted murder” or “Domestic dispute brings attempted murder charge”?

I submit there were two reasons that headline writer thought it was more compelling to say “Law student charged.”

First, the irony of it, that someone studying to be a lawyer, dedicated to the rule of law, would be charged with such a serious violation of it.

And second, that headline writer understood that the conduct of a law student reflects on his or her character and fitness to practice law.

You, as law students, are expected to act in accordance with the standards and ideals of the profession. I urge you to do so.

Finally, I'd like to talk to you about being a lawyer. Today is a day of some celebration and excitement and perhaps some trepidation as you begin law study – or

begin another year of law study, but it is also a day for you to consider the obligations of the profession you have just entered, what it means to be a lawyer, and what kind of a lawyer you want to be.

As a lawyer, you will fill many roles – counselor, mediator, problem solver, advocate, spokesperson. Clients will entrust to your care their fortunes, their futures and, at times, their freedom. It is an awesome responsibility that you undertake, as you begin that journey today.

The practice of law is a lifetime continuum of learning – of learning the law, of improving your skills, and perhaps most importantly, of developing judgment. I urge you to seek good mentors, while you are still in school and surely in your practice and then watch, listen and learn.

Starting today, being a lawyer is not just what you hope to do, it defines who you are. Lawyers stand for truth, respect, fairness and effective representation of clients. Lawyers care more about honest advocacy than they do about fame or fortune. Getting paid is great, and it's necessary to make a living, but lawyers are nourished by the satisfaction of a job well done for a trusting client and by the privilege of doing it.

Lawyers care more about getting it right than about winning. I can assure you that you will be haunted in your law practice as much by the case you win because your opponent was unprepared or made a mistake as you will be by the case you lose because of your own failures or your own effort that came up short. Injustice will disturb you, no matter its source.

Lawyers know that winning in the sense of a zero sum game isn't always the solution that suits the client's needs. Lawyers evaluate interests and determine what outcome is best for the client, even if it means compromise and allowing the opposition to survive the siege.

Lawyers love and respect the law – its traditions, processes and predictability. Lawyers honor the institutions of law and the justice system. They demonstrate that honor by the respect they show for judges. Their demeanor fosters confidence in the legal system, its fairness and its authority.

You are beginning now to leave tracks in the snow. You are beginning to show your fellow law students, many of whom you will encounter when you are in practice, what kind of lawyer you will be. What you say will be drowned out by what you are. Good lawyers don't need to be cocky to show confidence. Good lawyers don't confuse hubris and arrogance with effective advocacy, or harsh language and raised voices with cogent argument. Only fools don't know the difference.

The most effective lawyers know that a solid grasp of the applicable law and a command of the facts are powerful weapons. Armed with that knowledge, lawyers can evaluate the strengths and weaknesses of every position and formulate strategies to produce favorable outcomes. Good lawyers are prepared and professional. And while situations may require that they react quickly, they do so from the background of having carefully considered the consequences. They may act on trained instinct, but they never shoot from the hip.

Lawyers are quick to judge – it is their nature and training to quickly size up people – clients, jurors, judges, and other lawyers. They will be quick to form a

judgment about you. Promise yourself today that the judgment that will be made of you is that you are a person of competence, diligence, fairness and integrity, and that professional responsibility is your hallmark.

Professional responsibility is far more than understanding and abiding by the ethical rules or rules of professional conduct. Professional responsibility is a dedication to the ideals and calling of a lawyer. It includes a deep commitment to justice, a sense of honor, a belief in the dignity of all members of our society and an attitude of service – to clients, community and the profession.

I urge you to live your professional lives – starting now – in a way that exemplifies a truly responsible lawyer. Indeed, it is your obligation to do so, as a member of this profession. It is an obligation we owe each other.

This law school experience will be over in a flash. You will make life-long friends here. This shared experience is an unbreakable bond. You will acquire the tools here that you will rely on your entire career. And you will be re-formed here into a responsible, caring, ethical professional.

It is my great privilege to welcome you as brothers and sisters in this great and honorable profession. The bond you will share with other lawyers is a strong one. You will find that other lawyers are not just worthy opponents, but skilled and valued collaborators in the quest for just results. Lawyers do good works and they are good to work with. And you will find no truer or more loyal friends than your companions at the bar.

You stand at the threshold of what I hope will be for you as it has been for me a challenging, interesting and rewarding career. I congratulate you on your entry into law school, and I wish you much success in your studies.

I look forward to the day when you take the oath as an attorney-at-law and enter your name on the roll of attorneys. Most of all, I hope that you find here at Western New England University School of Law the love of the law and the sense of awe and respect for the profession that I found in law school, and that, when you are admitted, you will find great satisfaction in the practice of law as you earn and deserve the trust and confidence of your clients and the respect of your colleagues for your competence and your character.

Thank you.