

Southwestern University School of Law
Commencement Address
March 18, 2003
Senator Gordon H. Smith

Time truly flies on wings of lightning. Twenty-four years ago I sat where you graduates now sit. That was a happy day and today I am happy for you graduates. To the class of 2003, my heartfelt congratulations and best wishes!

When I came to Southwestern to study law, I remember feeling a jumble of conflicting emotions. Earnest desire and self-doubt were at war within me. But determination to earn the degree of Juris Doctor gave me the fortitude to finish. Case after case, paper after paper, test after test, I endured and earned the right to sit among Southwestern's graduates. As a student, this law school cleaned out the cobwebs of my intellect. As a Senator, each day I serve, I am mindful that Southwestern gave me a foundation in law necessary for success in lawmaking. I am truly thankful for Southwestern University School of Law.

Perhaps because I was born to parents with a heritage in – and a passion for – politics, I registered for Professor Kushner's course in Constitutional Law with a special interest in the subject. In preparation for the class, and before even reading *Marbury v Madison*, I set about reading all of the founding documents of the American Government. I read the Declaration of Independence, the Constitution, its Preamble, 7 Articles, the Bill of Rights, and subsequent amendments. I even read the Federalist Papers to better understand the political environment surrounding, and the Enlightenment philosophy underlying, the creation of the Supreme Law of this Land.

This venture was especially challenging because concepts such as the Writs of Habeus Corpus, Equal Protection, Due Process and Redress of Grievances had yet to become real principles for me. But not anymore. After lawyering and law-making throughout much of my career, Constitutional principles are more than real, they are priceless. This has become especially so as I travel the world as an American official to lands which know not the rule of law, but only the caprice of men; to places where differences are settled with weapons, where only "might makes right." Abraham Lincoln was correct to describe our Constitutional Government – in the midst of a civil war and despite its imperfections – as "The last best hope of earth."

The Constitution under which you live, and which you soon will be sworn to uphold, was designed to promote the value and dignity of each individual and to prevent each from ever becoming a servant to the state. This was the promise of the Declaration of Independence, and the Constitution is the constant keeping of that promise. The challenge laid upon the Constitution has been to provide the certainty of law with sufficient constancy citizens require over time; and yet, be malleable enough to evolve

from the Age of Enlightenment to this Age of ours. John Marshall said the Constitution “is intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs.” As officers of the courts of the United States, it will fall to you to defend the constitution each day you labor in the law, and to ensure that it endures for tomorrow’s Americans.

But now, what can I give you at Commencement more than just a reminder of your duty? I’d like to give you a gift. I find this gift in the Declaration of Independence. There is a phrase there that is probably better known and remembered by the American People than any other phrase from our political history. That phrase is: “life, liberty, and the pursuit of happiness.” Let me read it to you in context:

We hold these truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness – That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed, that whenever any Form of Government becomes destructive of these Ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its Foundation on such Principles, and organizing its Powers in such Form, as to them shall seem most likely to effect their Safety and Happiness.

Twice the word “happiness” is used. I like to be happy. But I have learned that to know happiness, you must know its opposites: sadness, stress, discouragement, depression and more; all the negative emotions. As law school graduates, you know happiness today, because you were law students yesterday. As a former frozen foods packager, I would like to be able to package happiness for you and enclose it with your diploma. But I cannot. As Benjamin Franklin wisely observed, “The Constitution only gives people the right to pursue happiness. You have to catch it yourself.”

It was Thomas Jefferson who penned the Declaration of Independence and placed the word “pursuit” in front of “happiness.” He knew that governments like that of England’s King George III could hinder and prevent happiness. But he knew also that a government like that of America’s could create conditions which leave citizens free to pursue happiness on their own terms. Jefferson later explained his thinking about happiness in a letter to his nephew, Peter Carr. Wrote he: “Health, learning and virtue will insure your happiness.” Jefferson was more than wise, he was right.

Much like Thomas Jefferson, I strive to measure my own happiness through the simple calculations of health, learning and virtue. If you will permit me to give you a few lessons from my life, from my own search for happiness, I will do so; I hope, to your benefit. I share them without sanctimony and admit that my lessons were learned through my own imperfections and course corrections. Hypocrisy is not a virtue.

First, my thoughts on health. A life in the law is often a sedentary and stressful one. You must take time to be healthy. Exercise regularly. Eat nutritionally. Enjoy diversions from work. My motto is to “work hard and play hard.” All work and no play will make you a dull lawyer.

Your greatest wealth is your health. Invest in it. For, while no one gets out of this life alive, you can live more fully and happily in the days allotted you, and with more energy and enthusiasm, if you observe some simple laws of health. Avoid, if you can, addictive substances, and especially illegal ones which would compromise your character and perhaps take even your life.

And while you are being mindful of your health, be mindful also of Time. We cannot determine the quantity of our days, but we do determine their quality. Wealth cannot buy back health that is wasted, nor can it buy back time that is lost.

There was no one that I knew in my Southwestern class of '79, including myself, that was not anxious to exchange his time for money. In hindsight, I say to Southwestern's Class of '03, learn soon the corollary that you can exchange your money for time (Chief Justice William Rehnquist). I recently learned of a lawyer who turned down a lucrative job offer from a prestigious east coast firm. He settled in a small western community to practice law. He reasoned that he would have more weekends for family. But the sacrifice in salary between job choices was exactly \$52,000 a year. He called each weekend his thousand-dollar Saturday (related by Michael Mosman, U.S. Attorney for Oregon). He learned early that there really are some things that money cannot buy. Health and wealth take time. Keep them in balance, for your happiness' sake.

Next, my thoughts on learning. I have always taken pride in the fact that law is one of the learned professions. Learning lights up life's pathways, and it makes clear the pitfalls along the way. But often the best lesson from learning is that the more you know, the more you realize you have yet to learn. Learning keeps you young. It keeps you searching and challenged. It keeps you growing and progressing.

For example, in my first year at Southwestern, I had as one of my goals to do well enough to be offered membership on the Law Review. I worked hard and did well, but not well enough. That summer I had a law clerkship with a law firm in Anaheim and I had also a choice about whether or not to write-on to the Journal. I chose to read a good book instead by Catherine Drinker Bowen, called The Lion and the Throne. It is the biography of Sir Edward Coke, The Lord Chief Justice of England in the Elizabethan age. I was enjoying the book immensely until I came to page 63. There, Coke is quoted regarding his approach to law students and law study. Said he:

True it is that I have been ever desirous to know much. Therefore, I allow not to the student any discontinuance at all (for he shall lose more in a month than he shall recover in many)...Knowledge of the law is like

a deep well, out of which each man draweth according to the strength of his understanding. He that reacheth deepest, he seeth the amiable and admirable secrets of the law.

His words seemed spoken to me, an indictment of my decision to take the easy way and read a book. I put the book down and renewed my quest to make the Law Review. I succeeded. When I narrowly lost my first race for the United States Senate, I drew on the strength of this earlier lesson from Southwestern; to get up, run again, and win.

But remember, in all your learning, get more than knowledge. Learn wisdom so that you can use knowledge for the benefit of others.

Finally, Jefferson's third measure of happiness for his nephew, is virtue. We live in a day of relative values and situational ethics. But you will need some absolute values and unchanging ethics, because you are entering a profession that has long been perceived as fundamentally dishonest. But you can and must do your part to change that perception by living above the Rules of Professional Conduct. Not below them, not close to them, but above them! Keep your commitments, always play fair, be collegial with colleagues, yet professional in manner. Guard jealously your integrity and that of the court. Live and work so that peers can say of you "His word is his bond."

Consider the counsel of Abraham Lincoln to law students in his day:

Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser – in fees, expenses and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good man. There will still be business enough. Never stir up litigation. A worse man can scarcely be found than one who does this.

Whether in court or on the floor of the Senate, I try to conclude a contest with a colleague so that I may shake his or her hand as a friend afterwards. This keeps my conduct during the contest always within ethical bounds.

If your standard of conduct can ever be characterized as "what can I get away with," you will soon – as soon as hard cases confront you – lose your way, lose your character, and lose a great deal of happiness. You have nothing more valuable, nor anything more essential to happiness, than an honorable name. Don't sell it out for money. Remember Shakespeare's admonition in Othello: "Who steals my purse steals trash, but he who filches from me my good name makes me poor indeed."

Another part of virtue in lawyering is simply serving. Cultivate the pro bono spirit of "loving thy neighbor as thyself" (Leviticus 9:18). This must come from a passion

within, from some cause you believe in. It can be found in Legal Aid, a school board, a church, synagogue or mosque. It can be manifest in a political party, a professional association, in peaceful protest, or on the battlefield for democracy. "To live fully is to be engaged in the passions of one's time" wrote Oliver Wendell Holmes. Of his time, as a soldier during the American Civil War, he said, "In our youth, it was our great good fortune to have our hearts touched by fire."

Be involved in big things like supporting a great cause, pushing a vital petition or espousing some grand philosophy. But do not neglect the little things – actually the more important things – that will be the source of most of your happiness. Things like being a good husband or wife, a faithful father or mother, a trustworthy friend and neighbor. These things are the deep reservoirs of happiness.

Permit me a story to illustrate my experience in balancing big things and little things, the important and the more important.

It is always a privilege to be asked to come to the White House on matters of state, no matter the President's politics. One evening, a few years ago, I was leaving the office for home when the phone rang. It was President Clinton's secretary calling to inquire if I could come in the next day to counsel with the President. I readily accepted.

Driving home, I was absorbed in thought about how I might best advise our Commander-in-Chief on an issue of big international concern. When I walked in the front door of my home, real life greeted me with a big problem in the life of my little boy. It seems Morgan had left a book at school essential to completing an assignment due the next day. The school was locked up and wouldn't reopen until 7:00AM. My boy was a somewhat fearful, even a little tearful, at the prospect of showing up unprepared.

I calmed him down by assuring him that we'd get up early and together complete his assignment when the school reopened but before class began. At 7:00AM, we retrieved his book and sat together, knee to knee, in the tiny chairs of his elementary school. We completed his assignment. It was a wonderful father-son moment, a small problem solved, but a big deal for him.

Morgan went happily on to his class and I drove on to the White House. Shortly, I found myself sitting knee to knee, in bigger chairs, counseling with the President of the United States. It was a constructive meeting and the conclusions reached were sound for our country.

As I was leaving the Oval Office, an impression came over me. I had been party to two important meetings that day, one with my son, the other with the most powerful man on earth. One little, one big, both important. But my impression was that the time spent with my son was the more meaningful time. Sometimes the little things are more important than the big things, especially when it involves your child.

Family is a central virtue in the pursuit of happiness. I have always believed that any worldly success I may achieve could not compensate me for failure in my home. I have found happiness in many causes and endeavors, but none has been as enduring and lasting as the happy home Sharon and I have built together for thirty years.

I will not define family for you, but I will tell you that however you define your family, it must be built on love and trust. If it is, it will last and it will be the fount of your greatest happiness.

This is not an exhaustive list of ideas for being happy. But from 50 years of life's experience, I have learned in striving for success that adherence to health, learning and virtue has helped me to find happiness in full measure.

My hope for the class of 2003 is that each of you will use life and exercise liberty to enjoy happiness more abundantly.