

CHASING THE JUSTICE DREAM

**STATE SUPREME COURT CHIEF JUSTICES
CONFERENCE**

**David Hall, President
University of the Virgin Islands
dhall@uvi.edu**

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It is a special honor to be asked to deliver an address to this distinguished group of jurists. Before me are the true leaders and caretakers of the justice system within this country. Some of you I know personally, and I know the care and thoughtfulness that you bring to your roles, and the impact that you have on the people of your state or territory. Others of you I have read and taught from some of your judicial opinions. I must in full disclosure reveal that, in the tradition of most law professors, sometimes I would use those opinions to demonstrate how thoughtful I was and how inconsistent and confused you were. Yet, in the final analysis, it is your work, wisdom and leadership that had the greatest impact on my students and on this society. So I thank you for your service in making this nation a better place.

I bring you greetings from the University of the Virgin Islands. I have been President of this special institution of higher learning for only six months, yet I already realize that we have a precious educational stone that in time will become one of the most precious gems in higher education. UVI is on a path to greatness, not only in the quality of programs we have, but in the quality of people we nurture and produce. We are one of those best kept secrets and I am determined to change that. I am honored to be the 5th President of the University, and want each of you to know that you are honorary faculty members who are always welcome to come and share your wisdom with us.

One of the most frustrating things about being in a leadership role is the realization that our quest for leadership is so elusive. The things we desire for our organizations, the fundamental things we are called to do can easily elude our grasp no matter how hard we try. Therefore it is easy for leaders to become cynical and settle for less than what our roles demand. The fundamental product that you are called to produce is justice. It may be more elusive than the product I am called to produce, which is academic excellence. So I would like to use this opportunity to speak to you about this elusive quest for justice, and therefore my theme is "*Chasing the Justice Dream.*"

All of you gathered here today are the caretakers of this dream called justice. Our court system is the fundamental arena in which this quest for justice occurs. Yet we all know that the legal profession, as well as the legal system, is interpreted by some to no longer contain a quest for justice, but is viewed as an arena of gamesmanship and

procedural webs that produce results but not justice. In addition, there is this fundamental question as to whether everyone has access to this arena, regardless of whether it produces results or justice. Many of you are keenly aware of the issues related to access for justice for the poor in this country, and some of you have been strong advocates, working with the Legal Services Corporation and other providers, to address this problem. Yet I submit to you that the justice dream we are chasing runs much deeper than mere access. It goes to the soul of how we see ourselves as lawyers and judges, and how we nurture the fundamental values of this profession. So I hope my remarks pay due respect to the difficult work that you are called to do each day, but I also hope that they will challenge and inspire us all to expand our understanding of the justice dream.

Justice is a concept that most of us think we understand but many of us would be hard pressed to provide a single definition. Whether defined narrowly or broadly we must all admit that it is an elusive concept that exists more in our minds and dreams than it does in reality. This sacred concept—justice—was offered up at the birth of this nation as one of its most treasured ideals. Yet this precious moral and legal value was stillborn in the womb of this nation, and remains, to this day, a fleeting ideal.

Justice in America was drowned deep in the ocean of cruelty when the U.S. Constitution embraced the slave trade and slavery. It was hidden under rocks in this nation as segregation was allowed to stand as a fundamental part of the social and political landscape. Justice was placed in dark closets in this nation when women were treated as chattel, denied the right to vote and not treated as fully independent human beings. If the price was right, environmental justice took a back seat in the name of economic development and progress. And, the consequences of these legal and social decisions still linger with us, and further complicate our quest for justice.

So, we live in a society, and world, where justice has not always been present on the throne. It has been so twisted and narrowed through compromises, and through the manipulation of legal processes and procedures, that we may not even recognize it anymore. You may believe that you achieved it when you succeed in having a person's welfare or disability benefits restored when it was improperly denied, though in our hearts we know that that person wasn't receiving enough to live on to begin with. You think justice has been achieved when an innocent person is acquitted of a crime for which he has been charged. Yet that person often returns to a community that is so under-developed and under-educated that the chances of him being arrested again greatly exceed his chances of staying free. Many of you thought justice was achieved when your court systems struck down segregation in education in *Brown v. Board of*

Education, yet 56 years after that decision and numerous, similar state court decisions, there is still enormous inequality in education along racial lines. So our justice dream escapes our grasp as quickly as we touch it.

Some might argue that my understanding of justice is too broad. For some of us sincerely believe that justice can only be understood and applied in the context of individual cases that include a victim and an evil wrongdoer. But in a society such as ours, that has a history of endorsing and enabling so much systemic and systematic injustice, we cannot afford to be trapped by such a limited vision of justice. For woven within the lining of this justice dream is a belief that the playing field within which the legal drama unfolds is fundamentally balanced. Yet, for so many people that so many of you judge every day, these fundamental prerequisites are missing.

We must not see justice as a fixed formula that is easily applied, but as a sacred principle that is always contextual and excruciatingly difficult to attain. Your major task is always to provide justice to the person before you, but in order to do that you must see and understand the social circumstances and conditions surrounding that person. For, without this broad lens, we will not dispense justice; we will only placate suffering, and cover over deep social wounds.

As lawyers and judges we must be courageous enough in this new century to define justice in broad terms. When people, because of their birth, not because of their efforts, are doomed to receive fewer chances at the brass ring of life, then justice is still a distant dream, never to be a reality. When the infant mortality rate for some is so much greater than for others merely because of their color and economic conditions at birth, then justice is a complete illusion. When women are abused because of their gender and men's unwillingness to control ourselves, then justice remains a fading dream, even though a restraining order is issued and imprisonment follows. For, there remains a woman who is still not whole. A deep psychic wound has been inflicted, not only upon her, but upon the ideal fabric of our human relations. No restraining order heals those wounds. The justice dream we chase is not a narrow fulfillment of individual rights. It encompasses the social conditions and circumstances within which people exist, and touches every aspect of their being. It rests on the moral and spiritual messages we send through our institutions and our individual lives. Justice is not an act; it is not one concrete thing which we achieve and then forget. Justice is an ideal, a legal, spiritual value which we must continuously release into the universe, and relentlessly pursue.

Therefore, our greatest hope for justice is to stop injustice from being reborn in every generation. Our greatest hope for justice is to ensure that future generations do

not fall into the same patterns of the past. The injury inflicted from injustice leaves such damaging stains that monetary rewards don't capture the hurt, don't heal the psychic pain, or release the pent up frustration. Though it may go beyond your ability and powers in the courtroom, the dream of justice must compel us to empower the people we serve to take control of the destiny of their lives and community – economically, educationally and otherwise. Our greatest chance at catching this justice dream is to transform our institutions and ourselves. If not, then our chasing will only lead us in circles.

My understanding of justice may appear daunting for some because it appears to be so all encompassing that it would be difficult to obtain, especially for judges, as compared to lawyers. So, you may ask, if justice is this dream that we will never actually realize, then why should we define it that way or even pursue an impossible dream.

But we believe in and pursue the dream because it is the believing and the chasing that gives the dream concrete meaning. It is the stretching and striving that allows us to transform the society from what it is to a place closer to what it should be. Though I realize that we may never eliminate homelessness, hatred and poverty from our midst, we must remain committed to that end. For as soon as we accept their elimination as unobtainable goals, then we reconcile ourselves to the status quo, and we needlessly write off people and lock in unfair institutional practices. But as long as the ideal of justice remains part of our striving, it remains part of who we are as human beings.

It is the pursuit of justice that gives meaning and legitimacy to not only this legal system, but to our lives. It is the chase that makes us better people. Chasing the justice dream is spiritual medicine for lawyers and judges. It is our "Balm in Gilead to heal the sin sick soul". It is our unwavering commitment to the ideal, even when others attempt to trample the ideal in your courtrooms that separates the dreamer from the cynic.

Langston Hughes, a great American poet, wrote a poem entitled 'A Dream Deferred.' In the poem he asked the question, "What happens to a dream deferred? Does it dry up like a raisin in the sun? Does it fester like a sore and then run? Maybe it just sags like a heavy load or maybe it explodes."

This poem eloquently reminds us of the consequences we create for delaying a people and a nation's dreams of justice. To pass on to another generation the fulfillment of a fundamental ideal is to plant seeds within the soil of a nation that will bear strange fruits. So much of the crime, violence, dysfunctional social structures and social

dependency that exist in this society are a direct outgrowth of the long deferral of the American justice dream. Many will not agree, but I firmly believe that we are still harvesting the strange fruits from the seeds of slavery and centuries of discrimination that were planted deep into the soil and soul of this nation. And, while the harvest is plenty, the dreamers are few.

If my broad definition of justice is too uncomfortable for you, then I urge you to chase with more vigor the narrower definition of justice. One way that this can be done is by at least ensuring that all people, regardless of their socioeconomic status, have access to your courts and are represented in a manner that brings integrity and fairness to our system of justice. As a member of the Legal Services Corporation (LSC) Board, I realize at a deeper level just how pervasive the barriers to access are for many people in this country. A recent study by LSC revealed that 50% of all the individuals who come to our grantees for services are turned away. This study was first done four years ago and the same disparity existed then as it does now. In addition, the restrictions which preclude LSC grantees from bringing class actions and recovering attorney fees that could fund their programs, all suggest that there are two forms of justice in this nation – one for those who can pay their way to your doors and another for those who cannot. Our justice dream must reject that type of distinction.

The lawyers that come before you must understand in no uncertain terms that our privilege to practice law comes with a price. That price is to ensure that those who cannot afford our services *can* afford our dreams. Pro bono is not charity that we dispense to the unworthy. It is our moral obligation as lawyers; our tithing to a sacred system that can easily be made profane. Your voice in this quest for justice must be heard from the mountain top if we are to realize even the narrow definition of justice.

But our chase for justice contains another component that is too often overlooked. I believe that embedded in the justice dream is a lining of integrity and selflessness that must go beyond our personal gains and egos. I would like to demonstrate this point by sharing with you a personal story that also involves a distinguished member of this organization. When I was Dean of Northeastern University School of Law, I publically opposed the confirmation of Justice Marjorie Marshall to the Massachusetts Supreme Court. I was part of a coalition of lawyers and activists who wanted to send a strong and unequivocal message to the Governor and the state that it was long past due for Massachusetts to have a person of color appointed to the highest court of the land. We did not argue that Justice Marschall was not qualified to sit on the Court, but we felt that the justice dream of African American and people of color within the Commonwealth had been delayed too long. We did not

succeed in the immediate effort, but I believe that our efforts along with his qualification resulted in the appointment of Justice Rick Ireland to the Supreme Court of Massachusetts the next time there was a vacancy.

I share this story, not to open old wounds, but to make a deeper point about the linings of the justice dream. From the day of our protest to this day, Justice Marschall has done nothing but treated me with the utmost respect, care, dignity and compassion. She rose above what I am sure was a difficult personal moment for her, just as it was for me, to see the larger drama that was playing out in our state. I applaud here for the dignity she displayed, for her deep understanding of the quest for justice which we were pursuing, and her unwavering integrity during the entire process.

So our quest for justice is not always nice and pretty. It creates personal discomfort and anguish. But, when we can rise above the pain and see the bigger picture, then we are more committed to chasing the justice dream than we are to pursuing our personal ambitions.

As I conclude, let me remind you that those of you gathered here are the ultimate caretakers of the justice dream. I realize that you face enormous barriers and obstacles. Your Courts are underfunded and understaffed. Some of your buildings are badly in need of repair. There are more cases in the system than your courts can reasonably and thoroughly handle. But I believe that deep within, you do this, not for the prestige and compensation, but because, buried deep within you is a justice dream that you have been chasing. Most of us entered this profession for noble reasons, and that flame is still alive, though, at times, it may grow dim. But I urge you to continue to chase the justice dream.

Chase this justice dream, my friend. Chase it with your head and with your heart. Chase it as if your professional life depended upon it, because it does. For our lives will be ultimately measured by the good we do in the world and by the love and service that we give, especially to those in need. Chase this dream not only in your courtrooms and law offices, but chase it in every aspect of your life, in every waking hour. Chase it even as you sleep. If we do that then when we wake, we will have become a justice dream catcher.