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This includes Hillary's speech (beginning on page 4) to the Eighth Circuit Judicial Conference. This transcription was sent to her, but it has not been edited. It has not been released to anyone by our office.

EIGHTH CIRCUIT JUDICIAL CONFERENCE  
General Session  
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Hon. Donald P. Lay: \* \* \* welcome you to our second day of our general session program. I want to remind you of our optional program that we have this afternoon. I think it is one of the best structured programs that we are going to offer in the area of discrimination litigation. I know some of the speakers and people that are in there, particularly my friend Leon Friedman who is with us and I hope you will remember that and please turn out because I think you will find it an invaluable session.

I just have some general announcements. First of all, I would like to make some introductions that should be made. For the last ten years we have worked with the William Mitchell Law Review and the Creighton Law Review and these two law reviews have singled out an issue timing the publication of that issue with the Judicial Conference so that each registrant of the Conference can obtain a copy. An issue that is dedicated to the law in the Eighth Circuit. I meet with the boards of these two law reviews early in the fall and we discuss highlights of cases and what is going on and what might be of interest and I always remind them of, I think Justice Holmes' statement, he said once that I don't mind the law reviews telling me that I was wrong but what bothers me is when they have the gall to say that I was right. I asked them to be very critical and after all the law reviews are the exploratory research laboratories for the law. I think each year I notice a marked improvement of what they do in their legal analysis of some of the important cases that involve our court and the federal courts throughout the country. I hope you will take the time when you get home to study those from cover to cover. I have already perused each copy and I just think it is a high caliber publication. I am so pleased to have

next year's editor-in-chief from William Mitchell Law Review here and I would like him to stand and be recognized, Matt Johnson. Matt.

I don't think the editorial staff for the Creighton Review is here but I know some of the people here from Creighton, particularly the former dean, Rod Shkolnick. Rod, are you in the audience? Yes. We thank Creighton too.

In my opening comments I moved down a nostalgic trail in time of when I was first appointed in 1966. And I recall the day after my appointment was made by President Johnson in Johnson City, Texas, on July 6, 1966, I received a phone call from a very distinguished senator on the Senate Judiciary Committee and a great friend of mine at that time and a great friend to this day who has graced this Conference with his attendance over the years and I think I would be remiss not to introduce once again to you all our great friend former Senator Roman Hruska. Roman said to me in that call, Don, when can you get back to Washington? I said, well anytime you say. He said, how about Monday. So things moved a little quicker in those days but you had to have a good friend like Senator Hruska to turn the switches.

This morning I think we have a very distinguished program. I think you will note and I am not trying to steal Judge Woods' thunder but unfortunately Senator Heflin who had promised up until yesterday but with the condition that he may have to cancel because of the activity in the Senate on the Senate Crime Bill and we received a phone call just yesterday, or Wednesday that he could not attend this year. We are very sorry about that but we do have a full program and I think you will find it of great interest. So at this time I will turn the program now back to our Program Chairman Henry Woods. Henry.

**Hon. Henry Woods:** Our first speaker this morning will be Mrs. Hillary Clinton who will speak on Reflections on the Bill of Rights and I have asked my esteemed colleague, Judge ElsiJane Roy, to introduce Mrs. Clinton.

**Hon. ElsiJane T. Roy:** Judge Lay, Judge Woods, distinguished

members of the Conference, and guests. I was delighted when Judge Woods, our program chairman, gave me the privilege of introducing our first lady, Hillary Clinton. She has achieved success in so many fields it is difficult to decide which ones to highlight. Judge Woods told me please don't say all the good things about her you can, just give us a few of the highlights. So I will try to comply. I know you want to hear Hillary and not from me.

First I want to say that she has achieved success in so many fields and has received so many awards it is almost unbelievable. She has chaired the Arkansas Educational Committee. She is on the board of directors of the National Center for Education and this has been one of her very special projects. And certainly we need attention given to development of improved educational systems not only in Arkansas but all over the nation and she has devoted much of her efforts to this field.

She also has great compassion and concern about the less fortunate. She has developed programs for the handicapped and the elderly. These have assisted many needy Arkansas families. In addition to this she also has a special interest in politics and government. I don't know if that is two words or one. She is also interested in children's needs and the \* \* \*. She graduated from Yale Law School already a successful attorney when she married Bill Clinton, one of Arkansas's most popular and outstanding governors. Of course, many of us think he would make a very fine presidential nominee. After her marriage, Hillary continued her private practice as a member of the prestigious Rose Law Firm. In the courtroom she is articulate, well prepared, and an aggressive attorney. Her appearances in my court have found her to be brilliant and without \* \* \* in cross-examination. Her schedule and timetables are as busy as those found at the Atlanta airport but despite this she took time to give the naturalization address at one of my ceremonies. I will say she made a hit with all of the new citizens. In fact, she knocked such a home run that all of them wanted their picture

made with Hillary and she graciously complied. Hillary, we did appreciate that.

For several years including this year her name has been on the National Law Journal's list of the 100 most distinguished and powerful lawyers in this country. I was sorry there were only four or five women on the lists, but certainly happy that hers was one of them. A well-deserved honor.

Because of her many interests and powerful intellect every conversation with her is a delight. However, if you want a particularly animated conversation with our first lady, don't inquire about legal matters, inquire about her lovely teenage daughter, Chelsie.

Now friends it is almost unbelievable but it is true that she is a top-rated attorney, a gracious first lady, and a devoted wife and mother. Ladies and gentlemen, it is my pleasure to present our first speaker for today, my good friend Hillary Clinton.

**Hillary Rodham Clinton:** Thank you Judge. Thank you. Thank you very much, Judge Roy, but in the interests of full disclosure, I really have to tell you how I come to stand before you this morning because it tells you everything you probably already know about my dear friend Judge Woods. I have never known how to fully integrate my legal career and my avocation as a political spouse and it has been a continuing struggle over the last decade and a half to try to work that out. When Judge Woods called, as he was putting together this program some months ago, and asked me to serve on the panel this afternoon with Professor Friedman, I said I would be happy to do that. He then called back a few weeks later and said I have a great idea, why don't we get your husband on the morning panel Friday. I said well, Judge, I don't schedule for my husband. There is a lot of things I don't even attempt to do and that is among the list. So if you will just kind of put that request in and I will try to say a good word on its behalf but as the political schedules of political people go, that couldn't be worked out. So the Judge

called me back and he said now Hillary, your husband can't speak Friday morning. I said I know. I am really sorry, Judge. He said but I have a great idea. I said what is that, Judge. He said you fill in for him. I said, well, Judge, I am already on the program in the afternoon. He said, well, that is fine, you can be on the program in the morning, too. I said, well what should I talk about. He said, well, the program is about the Bill of Rights. Now if you can figure out how to say no to a federal judge who calls those of us who practice and says, I have this great idea, you just be there Friday morning and talk about the Bill of Rights, please see me after this program because I have certainly struggled with what I could have or should have said and none of it sounds right other than well, yes sir, I will be glad to be there Friday morning talking about the Bill of Rights. So I think it is only fair to say that I am here by a circuitous route practicing and living in the district of the chair of the program for the Conference this year.

But I am actually very pleased to be a part of this entire day's activity and looking forward to this afternoon but did want to take some time this morning perhaps to share some ideas and maybe to be a little bit provocative about the subject that brings us together and that we have been talking about and will continue to talk about for the rest of the year. The American Bar Association will be highlighting the anniversary of the Bill of Rights at its annual meeting in August, and I imagine that there will be a number of bar related activities as well as public media coverage of the Bill of Rights. I think that for those of us who are lawyers and whose responsibility it is often, not just to advocate but also judge and decide issues that affect the Bill of Rights, it is certainly an appropriate time in our country's history to take a step back and perhaps begin to ask ourselves to what context, socially, economically, politically, we anticipate the development and evolution of the Bill of Rights over the next hundred years of its existence. Because I believe that the kinds of challenges that we are facing now are not more

difficult than the challenges that have been faced in generations past because every generation has its challenges to meet with respect to striking the balance between the individuals rights, the government and corporate rights, the responsibilities, the economic security necessary to main a civil society. All of those questions we can find discussed in the federalist papers and in the debates. We are still acting out many of those debates today as we attempt to determine where to strike the balance between Hamilton and Madison, for example. But I think the kinds of challenges we are confronting today certainly stretch us and they are taking place in a very different world. A world that has shrunk because of communication and economic competition and a world in which technology has certainly played a greater and greater role in both defining the human capacity and to some extent calling it into question. So certainly it is a perfect opportunity at a conference like this to begin that rumination and to carry it forward.

It is ironic, I suppose, that many historians point out that the courts to some extent always lag behind public opinion. I heard Kevin Phillips on National Public Radio last week, and I happen to think he is a perceptive political commentator, saying that in many respects the changes in the United States Supreme Court represented the end of an era, not the beginning of one. And went on to talk about how as the political system works and as judges are appointed, they are in effect appointed from the soon to be disappearing political majority in many generations. And that what often happens is that the Court plays the role of defining what the previous generation's sense of politics and economics was and then the political system works that out the cycle continues. Now I don't know whether that is an accurate perception for our time. He certainly used the Roosevelt Court situation as an example, but it struck a cord with me that there is that continuing movement in our political life and we often see it acted out and given life within our attitudes toward and interpretations of the Bill of Rights.

If we are to look at our situation at this point, I think it is very important to have some really deep understanding of what our political demographic circumstances are. Because it is extraordinarily challenging for all of us to realize if we stop and think that we have a lot of very profound economic problems that are eating into the base level of personal security that is necessary for a political system such as ours to operate and which requires us to be very sensitive to how that interplays with our legal system.

Let me just say a few things about that. Some of you may have seen the coverage of the last several weeks of the children's commission report that was chaired by Senator J. Rockefeller. You may have mostly focused on what the recommendations of that report were. The most I suppose celebrated of it being the recommendation that there be an increase in the credit given to families and that it be across the board in tax terms so that we provide it to all families without regard to income. But what was more significant to me than the specific recommendations was the underlying analysis of what has happened to children and families in our nation. What does that have to do with the Bill of Rights? Well I would argue that when we have twenty-two percent of our children being born into and living in poverty and when we have a large proportion of those children not being the children of the stereotypical image of the inner-city ghetto single parent but instead the children of working parents, often two parent families, often single parents, but in the labor market who cannot make enough of a wage in today's economy because their skills are so unvalued that even if they work a forty or forty-five or fifty hour week, they cannot rise above what our government says is the poverty line. Then we have a very significant proportion of our population that is being cut out of the opportunity for the kind of advancement that is really one of the underpinning hopes of our system and certainly of our assumption that people will exercise rights responsibly because they will appreciate the way the system works

and their opportunities to advance within it.

If we add on to those people who are poor, a very significant number of people who are also working poor and finding a very hard time to support themselves and their families, then we see that we have an even larger group of people who are increasingly alienated from our systems because they don't see how they are going to work for them.

I went back some years ago and looked at the Fortune magazine polls that were done all during the depths of the recession and many of you may be able to remember that. But what struck me about those polls is that even at the point where millions and millions and millions of people were unemployed and standing in food lines having very little hope it appeared for them to be able to be economically self-sufficient, their feelings about our system and their expectations about their roles in it were optimistic. What do you see will happen to you and your family in the future? We will get this straightened out. This will be better. How do you feel about your government? How do you feel about yourself? We are having hard times now but we will be able to work out of it. Across all the demographic breakdowns some more optimistic than others but by and large an underlying sense of optimism. If we look now at polls about how one feels about their own futures and the government and the system, we have seen a steady decrease in that level of optimism, particularly among younger, less well educated people. Now why would that happen? Well the primary reason I would argue is because of the economic changes that have occurred in the world economy that have left so many people behind and which frankly took many of us by surprise. If you go back and look at what happened beginning in about 1973 with the abrupt entry of the United States into a global economy that we had helped nurture and create but within which we were unprepared to compete, you can begin to see that real wages have either held stagnant or declined and that for people with a high school education or less, their earning power has decreased forty

percent because they have not been able to provide the skills that were paid for in the economy of this different world we live in. Most of us in this room, because of the parents we had, the opportunities we took, the breaks we got, our hard work, however we define our individual success story, are in the percentage of the population that makes its living by manipulating words and paper and transactions. We don't build houses, we don't do a lot of the work that is there at the base of the economy. We are very portable. We can pick up and move different places and we live in the small percentage of the population of this world and about the twenty percent or so population of our country that will frankly be okay regardless of what happens because we can take our tools and go to work for a Japanese company or we can take our tools and go to work for a German company. We can be mobile. We had the game figured out well enough that when the world economic condition changed, we could keep going. And, yes, we have had hard times and we have had to make adjustments and the law practice has changed and it has become more bottom line driven and we know all of that. But basically we ended up a whole lot better off than many of the people whom we went to high school with, who represented people who did not have that kind of education and background to enable them to be as mobile and flexible as was required.

Why should we be concerned about that? If you look at the income differentiation that has occurred in the country over the last ten years, it is clear that about forty percent of the people have done better. They have increased their incomes. Twenty percent have stayed static and haven't been able to maintain their buying power and forty percent have had, as I referred to earlier, an actual decrease in income. Our economic system has always held out the hope to people, immigrants, and everyone else that with hard work, with effort they would not be poor. They would be able to make a decent living for their families. And based on the work that I have been doing over the last several years with two major undertakings one sponsored by

the Grant Foundation which produced an extraordinary piece of work called The Forgotten Half which is a work that catalogues what happens to the half of our high school students who do not go on to higher education and the work that has been done by another group called the Commission on the Skills of the American Work Force sponsored by the National Center on the Education and the Economy which looked at how we as a country were handling this change in the economy and the impact that it has had on our front-line workers. It is very hard to conclude anything for me other than the following: We have a serious problem in education and skills with people who are going to find it increasingly difficult to have saleable skills and if we do not have a positive affirmative response to their needs, we will see a steady decline in our own standard of living because we will not be competitive. And, secondly, that we do a much less effective job, some would argue no job at all, in moving our noncollege going youngsters into any kind of school to work transition, any kind of programs that will prepare them to be competitive. That we have in effect no system for those people. If we believe that there has to be a basic level of economic security or at least economic hope for a system like ours which if you step back again for a minute and look at it is the most unlikely system in the world to have functioned as long as it has. Look at the ethnic unrest in the world today and think about the polyglot pluralistic mosaic that the United States is. Think about the efforts that individuals and families that have come to this country have undergone to maintain their cultural identity while becoming integrated into the larger body politic. It is a remarkable story but it is a story that has to be viewed as resting on very fragile foundations if the overarching theories and principles and values and belief systems about what this country means are not held intact and if a majority of the people do not subscribe to them. And it strikes me that we are at a very important transition point. I would argue we are at a point comparable to where we were in the 1930s in many ways. We have

learned a lot about what works and what doesn't work in terms of trying to help people become independent and self-sufficient and we certainly should not make the mistakes of the past, but if we refuse to become more attentive to the need to provide the support systems that people need to become self-sufficient and economically productive, then I believe that the kind of alienation that shows up in political polls and which shows up in the lack of voters at voting booths in the last years is going to begin to eat away at our capacity to pull together the strands of this complex social structure we have constructed without making some very dramatic changes.

Now having said that, what would we think about doing were we thinking about making some changes? We have gotten ourselves in a very difficult position because there are many people who are totally dependent in our society today without really the first idea about how to remove themselves from that dependency but we do know that there are certain things which work and that with the reallocation of the funds that we currently spend in this country, we could make a big difference in how we treated people and provided opportunities to them. Because when I think about the Bill of Rights with its statement of individual rights vis-a-vis governmental and other collective entities, then I think also about really it constructing a bill of responsibilities that should go into the political and social structure as a way for people to think about what their responsibility to the larger society is, and then I think about this third point about economic security. I think they all have to be moving along the track at the same time for us to hold the entire enterprise together. We have tried at both the national and the state level for some years now to figure out how to create the right combinations of support and incentives for people to be self-sufficient. But there are some things that have to be done in this decade if we are going to have a chance.

The first, I would argue, is that we cannot continue to have the kind of patchwork much too expensive health care system that

we currently have. We are spending more of our GNP on health care than most of our competitors and for frankly less good public health results. We have to find an answer to that and it is gratifying to me that there is an increasing debate about that, but we are in a position now where with our employer-based insurance system we are forcing employers who provide insurance to cut back on their benefits or to make the equally unpleasant choice of increasing their contribution often because of the incredible cost that is built into the way our system operates. Our Medicaid system and Medicare, Medicaid more than Medicare, but our Medicaid system requires so much checking and rechecking and investigation and the like because we want to be sure that the only people getting it are the deserving poor as opposed to anybody else and the cost that goes in to checking that and administrating that system is money that most other societies can put into more direct services and then the people in the middle who are uninsured are the ones who suffer the most and who often put the greatest burden on the system because of the kind of unreimbursed costs that they incur. Health care has become, certainly in today's economy, one of those goods that is going to have to be provided not because it is the right thing or good thing to do but because as a measure of investment in the capacity of the human infrastructure, it is a necessary investment. We cannot provide the kind of workers we need to be competitive with the kind of health indices that we currently have in our young people. A research group working with the National Science Foundation recently concluded that approximately twelve to fifteen percent of our youngsters show up at kindergarten with preventable health problems, some of those due to inadequate prenatal care, some of those due to problems during the first five years of life, inadequate health care, inadequate nutrition, whatever. Fifteen percent of people with those kinds of health problems which have direct relationships to their academic capacity is a very large percentage for us to have to deal with. And certainly the educators I know are just holding

their breath as they watch the generation of crack babies coming into the elementary schools in a lot of our big cities. We cannot continue to ignore these preventive health problems and then pay much more than we would have had to pay on the front end to try to fix them the best we can, often though inadequately because they are not easily ameliorated.

A second area that we are going to have to deal with and which the President and the governors have addressed and which many of you know a great deal about because of your work is the whole area of public education. A lot of good things have happened in this country in the last eight years since a nation at risk. There are good models of good programs everywhere. But there are still too few leaders in the public education area, whether we talk about boards of education or superintendents, who can muster the political support to make the kinds of hard changes that need to be made to bring about these models on a broad scale basis. I have probably spent more time in this area in the last eight years working with Judge Woods and others than any other single interest of mine and it is clear that we have to break up the kind of mind-set that governs still in too many of our school systems where the systems are operated for the sake of the beneficiaries, the adult beneficiaries of the system as opposed to the children. Now the problem though is that again every single poll I have read says the followings things: Are you satisfied with the state of American education? Huge majority says no, we need to do better. Are you satisfied with your child's school? Yes. We have a wonderful situation in our particular area. We have such a schizophrenia when it comes to public education that the idea of trying to change at the local level is a very difficult one to see in practice. And I don't believe that we are going to be able to move the public school agenda forward until more parents and patrons understand what our deficiencies are. Let me just say a word about this because a lot of the mind-set that we are dealing with I think is important to understand too. In a series of international studies where

our children, our best children, not our average child, but our best students competed with the best students from other countries. We didn't just test their academic proficiencies; we also asked a series of questions about their attitudes toward education. In the tests where we asked youngsters all across the world how well do you think you will do, say on this mathematics examine? Youngsters in Europe and Asia all had very low expectations of their own performance. Their answers went something like this: Mathematics is a very hard subject. I don't know if I have studied enough. I don't know whether I will be able to do well. American students in response to that same series of questions said, I am real good at math. I expect to do great on this test. The results were that the American students usually were at the bottom or near the bottom and the other students were much, much higher. The American students had been given the idea, reinforced by parents and school systems and the like, that much of their ability for mathematics was innate and they were just real smart. And we went back with some follow-up questions to the parents of these students around the world and said, tell us, what is the primary criterion for success in education? Parents in Europe and in Asia said, hard work and effort. Parents in the United States said, ability. Whether they have it or they don't have it, how smart they are. That kind of disconnection between achievement and effort is, I would argue, at the route of much of what is wrong with our public education system. It is a much bigger issue than that because we have somehow beyond, I don't know quite how, beyond my understanding have disconnected effort and performance in so many areas of our life. And I think that part of the lesson that people, and particularly children, have gotten from the last ten to fifteen years as they have watched entertainers make millions and millions of dollars or they have watched what went on on Wall Street during the '80s or sports figures or whoever, that either you are born with a good voice or you are born to be able to tackle or you get yourself into some situation where money is

kind of easy and you know it just isn't, it isn't that hard for a lot of those people so there must be some relationship to who they are, not what they have done. Not how hard they have worked. So the educational enterprise requires reinvesting in some way in the idea that effort is at the root of it. I was in Austin, Texas, last week and the headline in the paper was that the school superintendent, the new school superintendent, had decided to do away with the homework requirement because he didn't want to make children feel bad if they didn't get it done and do well on it. Now that is the kind of attitude that eats away at the sense of responsibility that has to be developed if rights are going to be exercised in a responsible manner and if the idea of rights is going to mean anything. So that none of these issues for me are off on the sidelines. They are all part of the general cultural social political situation in which we find ourselves today and having a child do homework and understand the relationship between effort and achievement is as important to me as figuring out a way to get adequate medical care to a poor family so that they have a chance to get into that ball game.

Let me just conclude with a few additional thoughts about how all of this ties together. If we have the strains that we currently see tearing at least at the edges of our social fabric in the economic and the political and the cultural and the social front, we really need some collective, or cohesive anyway, consensus about how to address that. It is not a partisan issue for me, it is not a liberal or conservative issue. I believe that it has to be routed in how we are going to define the American experience in the next century. And there is a great temptation for many of us, frankly, to turn our backs on a lot of these problems. There is a great temptation to pull in because the world is not a very friendly place and we need to take care of our own. But I would hope that that is not a temptation that many people in our walk of our life and our station in this society give in to. There is much work to be done out there to

try to rebuild the community that has to lie at the base of the American experience if it is to continue as we know it. But it requires reaching across economic and racial and partisan lines. It requires building coalitions and collaborations with people that we don't agree with, that we often think are wrong but with whom we agree to disagree in an agreeable way because we have a larger cause at stake. We have problems that we can solve. There are solutions in this country as to how we can deal with our health care problems, our preschool needs, our public education problems and there are solutions from around the world where we can learn about how we can do a better job taking youngsters who graduate with just a high school diploma or not even that and getting them prepared to lead productive lives. If any of you have traveled in Europe recently as I did on a business trip, you may have encountered the same kind of quizzical questions that I had from business leaders and political leaders from Sweden and Germany and France and England and other places who said, how are you going to be dealing with all of these problems? We are very curious about how the United States is going to deal with these problems. And in places like Germany that has put together a system that prepares its young people to be productive, they just can't understand how we can let twenty-five percent of them basically fall off the production line as they drop out and another twenty-five to forty percent of them come out with no skills that are useful in the world economy. And how we then subsidize the rest of us through our higher education system to manage people who are not going to be capable of doing the work that is required in the future. So there is much that can be done and much work for both the private and the public sector. But for me part of what will determine what the Bill of Rights looks like in the next fifty to 100 years is how we address these challenges we have right here at home and how we take them and in the very best American tradition respond as we have in the past by saying we can solve these, not look at who those people are, what do you expect. We can't do anything