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CLOSING REMARKS AND DISCUSSION

Henry T. King, Jr.

I want to convene this final session with a discussion of possible programs for next year. We can do a number of types of programs. There is no lack of ideas. One possible subject is the role of non-governmental organizations in the Canada/U.S. context. Another is the accountability and legitimacy of international governmental agencies, which was a problem raised by Charles Caccia. Yet another is the awareness of international rules by domestic legal bodies. These are all possibilities. One thought that I had was to combine some of the subjects that were raised here during this conference and discuss the impact of technological change on the Canada/U.S. context.

We heard last night about the drain of skills – the brain drain from Canada to the United States in the push to meet skills requirements for new technology. For instance, the University of Waterloo supplies at least a considerable part, and may be the largest academic supplier, of Microsoft's demand for skilled labor. The people incentives and the people mobility – I think that is an important topic as we move toward a more skilled society.

Another aspect of this technological change would be government support for incentives for technical change. In Canada, there is broad support for technical skills. In the United States, there is government support for defense-related technological change. There is both federal and state/provincial support for industry start-ups. The capital markets that you have to deal with are important, because this is an area where we have the lead; and, of course, we want to make sure that we protect that lead.

Yet another aspect is looking at the comparative aspects of protecting technological innovation in Canada and the United States. What are the legal aspects of technology transfers between Canada and the United States? What are the regulatory aspects of exporting innovative technology from Canada and the United States, as Art Downey focused on in his fine talk yesterday? The whole effect of the telecommunications revolution on the Canada/U.S. context; how can you maintain national identity with telecommunications at the stage that they are?

We heard much about the effects of the Internet, and this is certainly a change from what we had before. It affects identity. What controls are there over it? What about the product liability aspects of technological change in the Canada/U.S. context? What are the broad-scale effects of technological innovation on cross-border integration? In other words, looking at the big

picture, what does this mean in terms of its effect on cross-border relationships?

The trade-related aspects of technological innovation is another subject that might be covered and, obviously, you have in the Microsoft and other cases the anti-trust aspects of technological change.

What are the effects of technological innovation on the environment? Are they good or bad? What are the comparative aspects of the Canada/U.S. environment for innovation with that in Europe, or with that in Japan? This is an area where something is happening, and I am not sure that anybody else has focused on that relationship. It is sort of an umbrella topic, and maybe we can squeeze in some of these other topics that I mentioned earlier. How do our legislative bodies respond to this technologically changed context?

Another possibility would be covering the comparative tax aspects of technological change. Certainly, this should be brought into a technological change conference, because there are tax aspects of technological change or innovation. What are the premiums for achieving new products? What are the incentives, and how do they compare between Canada and the United States? These are some of the possibilities. A whole tax conference would be another one.

COMMENT, MR. WOODS: As people found out, I am a hell of a lot better at asking questions than answering them. I think that what I found in some of the work I am doing is that there is a potential alliance among some lawyers who are now calling themselves cyber-lawyers. In other words, they are practicing in this new area of cyber-law. We are going to have an OECD conference in Ottawa on electronic commerce in the fall. These lawyers who are dealing in these very strange new areas go well beyond the jurisdiction of any nation-state. They come to us international lawyers, and they ask us, what do we do? And we international lawyers who often have been marginalized in our own domestic situations have an opportunity, I think, to form a real partnership with these lawyers. I would like to see something which would draw on the potential marriage of where these two disciplines intertwine.

The other thing that strikes me is that similar things happen with international law that is happening in Canada, and that is whereas it was once very difficult to find legal materials on international legal subjects, we now are forming a natural alliance with the technology people to put all this material on websites.

There were some examples, I think, from the University of Georgia. There are some examples happening in Canada. Again, there is a kind of potential merging and joint interest where we could benefit from a discussion in that area. So I support that idea very, very much.

COMMENT, MR. LADD: Let me just toss out an idea, and we will see who salutes. I heard at this conference a continual reference in many speeches back to NAFTA. Let me just ask if it would make sense for the focus of this conference to migrate from a consideration of the cross-border aspects of the United States and Canada to a consideration of the cross-border aspects of the Canada, the United States, and Mexico. Whatever the topic is, would it not be better examined from a NAFTA perspective, and should we invite our Mexican colleagues next year?

COMMENT, PROFESSOR KING: What we tried to do in the past was to bring the Mexicans in as commentators on our topics that we were dealing with. I think they should be brought in. We had a very good commentator two years ago who seemed to be able talk on anything, but then sometimes we have had bad luck in getting our Mexican colleagues to show up. I think that if we got an all-around person with a lot of skills, it would certainly be important to do that, so that would be another aspect of it, because it certainly affects all of the NAFTA parties.

COMMENT, MS. COFFIELD: I would vote for your concept of focusing on technology as a growing and very, very important area. It has both cross-border and global effects. I want to pick up on something Michael actually did not say this morning, but he and I talked about it, which is the competitiveness of North America or certainly the United States and Canada in the world in this particular area, and the obstacles that come up between our two countries that keep us from going out into the world as "Team North America," able to compete against Europe and other entities that have developed that approach as well in this very important area. If you do the technology theme, I would hope you would have at least one panel that would deal with this question of how we who already work together so much in this area can further break down the obstacles that keep us from operating as one unit as we compete in the world.

COMMENT, PROFESSOR KING: I think that is a good point. I think the important thing here is that Europe has awakened to the fact that technology and technological change are very important in the world, and maybe we have to operate as a team concept without losing our identity.

COMMENT, MR. EDWARDS: I have some thoughts that may not be for next year, but might be for the year after or the year after that, so you can at least think about them. One is something you mentioned relating to personal mobility and migration. I think that, with respect to the technological innovation, that still is terribly important; the ability of people to move and where they might move and what they might do in different locations.

Another thing, which I think you might tie into the technological innovation or maybe it deserves a second session, is language. This conference has

been entirely in English. I think there is a real question with the technological innovation whether it is really going to force the world to speak English because of the problems of doing things electronically in multiple languages. I think this is something that really ought to be addressed as a major focus by someone at some time.

COMMENT, PROFESSOR KING: I think that the mobility problem would have to be a vital part of the technological change concept. It has to be. What are the barriers on the borders? The language thing is something that I have to think about. That is a big one, though.

Your suggestions have a way of coming up because I read them. I read them before this year's conference, and your suggestions have a way of turning up in subsequent conferences, so thank you very much for the suggestion. The mobility challenge would have to be on next year's conference if it is on technological change.

I want to thank those people who made this program possible. It owes much to many. First, thanks to our speakers, particularly Matt Schaefer, who did double duty, and did it very well. I would also like to thank our current student coordinators, Rebecca Bodnar and Erin Gibson; they were always present. Also, I would thank our 1997 student coordinators, Josh Silverman and Jon Weinberg, as well as our staff, including our newly arrived Phyllis Banks, who has been an important addition to our Institute staff.

We are also grateful for the support we have received from the Canadian Consulate in Detroit and the Canadian Embassy in Washington. Above all, on this particular conference, we owe a deep debt of gratitude to Jon Fried who was helpful from start to finish in bringing the program from a vision, in my mind, into reality, and I want to thank Jon particularly. But it is people like Josh, Rebecca, Erin, and Jon who make this program possible. I also want to thank, particularly, Phyllis Banks, who did yeoman service out here. Adria Sankovic is also always there to help where needed.

As I say I am deeply grateful. It is not possible without that help. Thank you.

COMMENT, MR. SILVERMAN: I think we all know that somebody's name was missing from that list. As everybody knows, Professor King has been devoting his whole life to service. He has been serving others longer than most of us have been around, and we at this university are particularly lucky. Since the early 1980s, he has been devoting himself to helping students and his other colleagues here, and, in particular, the Canada/U.S. Law Institute. Under his leadership, this conference has expanded in both scope and quality. He brings to this conference his skills as a great educator, but he also brings his brilliance, his thoughtfulness, and, most importantly in my mind, he brings his sense of humor. He has really made this conference both

educational and enjoyable. I think we have all had a good time. We are all very much indebted to him. I thank you, Professor King.

COMMENT, PROFESSOR KING: Thank you so much, Josh. It means a lot for you to say that. I also want to thank our moderators, including Sidney Picker, the founder of the Institute.

Anyway, thank you, and we intend to see you next year. I look forward to it already.

