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Closing Comments of Professor King and Discussion

COMMENT, Professor King: What we do at this time, Gedas, is in terms of the future, we want to get your views on what we ought to do in next year's conference. I do think you have given us some food for thought, Gedas, in terms of innovation.

One thought would be a conference on innovation, not only in the terms spoken of here, but also comparative aspects of innovation with some of our leading competitors, and how we fit in terms of that context on a worldwide basis. For example, how do we help innovation and how do we detour it? That is one rack that we can hang our hats on in terms of future ability to compete in the world in which we live.

Another possibility would be the comparative aspects of governmental procurement in both the United States and Canada. Governments are big consumers, not only federal governments, but also provincial governments. What is the law or the politics of procurement in both countries?

Another possibility is the question of sovereignty in a changing world. One of the problems we focused on here was the extraterritorial problem in dealing with laws across borders. How does the GATT negotiations affect sovereignty? How does the Free Trade Agreement affect sovereignty?

I am open to suggestions and comments on what might be possible future conferences in terms of the dimensions and importances as you see them. Now, Howard Knopf always has the ability to come up with some innovative thinking, and I thought I might ask him to give us his thoughts on what might be focused on in terms of the next conference. Howard, do you have any comments?

COMMENT, Mr. Knopf: This is the third conference that I have been privileged to attend. I think I am getting caught in a time warp because every year at this time Henry puts me on the spot.

It is a sense of *déjà vu* and I can carry the *déjà vu* one step beyond because I am going to reiterate what I said last year. The sovereignty idea is a very good one and maybe it is something that, when the time has come for next year's conference, it will be on the stage.

We have raised some questions that will undoubtedly be on everybody's mind, among which are the question of dispute resolution under the FTA. Also, to be considered is a comparative study of the sovereignty issue in the European Community since there will be new developments on that point in the GATT negotiations.

There will be new developments as well in the role of the super-national institutions such as GATT, WIPO, OECD, and in developing

law and policy. Implicit in that is if they assume a larger role, it will mean a lesser role for sovereign nations and more of a cooperative feeling which seems to come in cycles.

QUESTION, Professor King: I would add, Howard, that Gedas has brought us into focus on the question of sovereignty. For example, he sees the world as a place where companies move across the borders rapidly, transmitting ideas and information. The technology of the world is bringing us closer. How does that affect our question of sovereignty?

ANSWER, Mr. Knopf: You mentioned global recruitment which has effects on immigration policy, which is obviously a deep underlying sovereignty issue. There are new alliances emerging. The European Community is really flexing its muscles now as a bloc in the U.N. agencies, voting as one unit and trying to act as one unit and of course, as far as being an economic and political unit, they have something like 300 million people and can overwhelm either the United States or the Japanese as a unit. So there is tremendous economic incentives for sovereignty.

COMMENT, Professor King: In terms of technology protection and the world operating as a unit, it is necessary that technology be protected if you are going to transmit it back and forth across borders, and some protection be given to the party that produces it. There is value in the protection of the technology. That is another aspect that was raised here.

COMMENT, Mr. Knopf: Also, there is the opposite ends of technology. Culture is an aspect for which Canada has an almost unique concern; some would call it an obsession with this question of cultural sovereignty.

QUESTION, Professor King: With the ability to transmit information across the border, how do you preserve cultural sovereignty or entertainment information across the border?

ANSWER, Mr. Knopf: Yes, cultural mores seems as though it is going to be transmitted regardless, but there is a small manifestation of that concern in the FTA dealing with the retransmission issue and the copyright complications of that. There is a lot in the sovereignty issue, Henry, ranging from technology innovation to culture to international jurisprudence questions.

COMMENT, Mr. Sherman: Listening here to the degree of disparity in the legal profession, even at a conference of lawyers, I quite seriously would suggest that it may be time to focus for a session, at least, on the creative contribution that the legal profession has and should be making. More particularly, on things that people ought to know and frequently do not know and on how to use laws and on how to properly get the benefits that lawyers can contribute.

If I may use an old-fashioned expression, when I got into the profession, lawyers were referred to as "social engineers." Lawyers were supposed to go about building new institutions to make it possible to do

things effectively and efficiently. This is exactly the kind of thing we are talking about here this morning. It is exactly the kind of engineering that lawyers were supposed to be primarily engaged in, contributing to society.

The need for this kind of examination is great and I think that since it seems to have an effect on the profession itself, perhaps as a lawyers group, it is time to accentuate the positive.

COMMENT, Mr. Miller: An interesting topic to explore would be the interaction between psychology and the law. One of the things that the information technology is doing for us is giving us more insight into understanding how human beings think and how they perceive and giving us more confidence and the ability to deal with intuition. For example, psychology is rewriting the way we think of dispute resolution and that is the root of any of the innovative ways of dealing with disputes.

It is also at the root of innovation in the sense that Mr. Sakus used the term as well. I do not think you will find very much on this topic. What we are learning about human beings through psychology and research in how the brain actually works could radically alter the notion of the reasonable man, and various fundamental notions of law. That could be an interesting topic.

COMMENT, Mr. Kirby: We are all taking as a given that we are going to have an FTA, and I share with you the hope that we will have it. But we have a real problem in the linkage here between our political thinking in Canada and the United States. Michael Smith made it very clear that nibbling around the edges by special interest groups puts the FTA in jeopardy in our Congress. What we should focus on is how we have a stronger linkage between the profession of law and the engineers in getting the political thinkers to consider all of these issues we have here.

We have a real gap here. It seems as though a hundred years ago our political thinkers could coalesce. Maybe there were stronger didactics; there were a lot of kings who could snap the whip and get these great treaties that we have described. Today we hem and haw and seem to get nowhere.

We ought to focus on tying together the legal profession's excellences; what it can do to get our political leadership to start thinking about the implications of what Gedas talked about this morning.

COMMENT, Professor King: I would characterize that as law and politics in the North American context, something like that. In other words, we have had a lot of good ideas come out of the conferences. Now, how do we implement them? We have to know also how the two systems work and the differences in the two systems. I think that is worth looking into.

COMMENT, Mr. Edwards: One of the topics to be considered might be concerned with personnel, labor, compensation systems, style of

life patterns: questions that also are likely in a year from now to be more prominent than they are now.

COMMENT, Professor King: That is an interesting one. As I was listening to Gedas, I could not help but feel for the 6,000 people who work for the organization which he heads. It must be a very exciting organization, with good leadership, and an ability to translate ideas into action. We also heard from George Adams on the concept that the way you treat workers has changed, that there are now directors of human resources rather than just people who are like the Harry Bennetts of the past, just management agents who bargained with unions.

So all that has been talked about here today involves people and mobilizing human resources. Maybe we are dealing with a change in context and there are very strong legal aspects of that change which perhaps warrant some attention. That is a possibility in terms of doing some of the things that the Japanese have done in regards to participation in what the final result will be.

COMMENT, Dr. McNiven: A couple of ideas that sort of bounce off what other people have suggested. One is in terms of labor and other things related to competitiveness or running companies of the future. The whole issue, as coming up in Canada, concerns pay equity legislation. It started out as something dealing with gender equity, but the way in which it is being implemented is going to end up making big organizations fairly rigid because it is going to require definitions of jobs. This runs counter to what you were talking about in terms of flexible organizations.

The other thing following from Mr. Kirby's point, is the whole area of public affairs representation. Lobbying in both countries is experiencing changes and while I do not want to use the word revolution, in Canada it *is* virtually a revolution. That is something that should not be ignored by lawyers because things are changing very, very rapidly, at least in Canada, and I am sure they are changing equally fast in the United States.

COMMENT, Professor King: That is one idea that John Fried suggested some time ago. In other words, we should be mobilizing change so that the laws respond to the change in environment while considering the needs of the society. That involves a check out of the lobbying people, certainly in Washington, which is where they work, and what is happening in terms of representation, not only for special interests, but also the public interest.

That is another area that could be worked out. I do not know exactly how lobbying operates in Ottawa, but certainly you have your setting up there as we have our setting down here. If we are going to make any of these things happen so the law is responsible to the change in the global world in which we live, we have to know how to transform these

ideas into reality so that they become part of the context with which businesses, people and the public operate.

COMMENT, Mr. Kirby: The Canadian system has become much more like the American system just in the last five years. It is not just perceptible, it is even the subject of articles in popular magazines, it has become so obvious.

COMMENT, Professor King: One other topic that might be a possibility if the trade agreement is ratified in August: we can look at the trade agreement in terms of the translation of the vision into reality. I do not know whether it is too early to do it, but that would be another possibility.

COMMENT, Mr. Sherman: Your idea kindles a similar one in my mind. The experience of the omnibus bill for domestic legislation and the creation of an almost third house of Congress in that monstrous conference operation strikes me as an appropriate issue. It is time to review the effectiveness of the machinery by which we deal with trade matters in our two countries and think about possible improvements that could be made.

COMMENT, Professor King: Well, I wanted to close the conference by thanking again our conference secretary, Patti Hujurski, for a wonderful job that she has done. Also, I wanted to thank Marie Wheeler for the good work she did on the assembly of the materials. You can read those in the quiet of your study. They are a damn good set of materials on the subjects with which we have dealt.

I also want to thank our court reporter who has been with us solidly every minute. Of course, above all, I want to thank our speakers. We had an outstanding group of speakers and I think that they are the crux of what the conference is all about.

If there is no further business, I declare the conference adjourned.

