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CLOSING REMARKS AND DISCUSSION

Henry T. King, Jr.

This is the time when we discuss future programs for The Institute. These ideas are a point of reference on where we go from here. Our programs have covered many topics, but a number of subjects remain unexplored, and we live in a changing world.

I, of course, would like your suggestions as to topics. One topic that did intrigue me in terms of the discussions here was the topic of human resources. We talked about skills. We talked of building a partnership between the employees or workers and the companies that they work with or for.

Obviously NAFTA has had some effect, or has it? And we heard Ross Perot talk about the giant sucking sound. Has that happened? I suspect not, but maybe we ought to look at it. There is a side agreement in NAFTA dealing with labor. There are cross border problems of immigration, the ability to move skills back and forth across borders. There is the problem of making workers feel partly responsible for what they are doing.

Obviously we live in a competitive world, and we have to look at how we compare with our major competitors from the standpoint of building a world of the future.

We talked of innovation, but you have to have skills to innovate, practical or theoretical skills. You have to have people who know and understand scientific terms, and also have an ability to innovate.

So how do we mobilize our resources? And what has actually been the effect of NAFTA on our human resources? For example, what has been stated as to the dislocation of people as a result of NAFTA? That is one possible topic.

I wanted to go into some others, but I wonder if anybody had any comments on a topic like that. It has some sweep which we can use to give it a legal framework. Of course in the Common Market you have the ability to move freely across borders without concern as to the legal implications.

Do we want that type of setup on the North American continent? I suspect there are complications there, but that is one possible topic.

If anybody has any comments, I would like to hear them otherwise I will give you some other possible topics.

COMMENT, *Mr. Yosowitz*: I think one part of that, that you have not discussed, is the comparative laws in the countries in terms of discrimination laws and affirmative action. That is a very big topic

right now in the United States. And I do not know to the extent those laws have come to the provinces of Canada as much as the United States. But I think the comparative nature of that would fit very nicely in what you have discussed.

COMMENT, *Professor King*: I think that would be a first rate topic to discuss.

COMMENT, *Mr. Yosowitz*: I think it is a great topic. I do not think we have done that in a long time.

COMMENT, *Professor King*: Yes, that is a very good aspect of it.

COMMENT, *Mr. Harvey*: Just to add to that, I think that discussing people in the workplace is also an aspect of that topic in that it is an area that we have given short shift to in past programs.

And there are aspects of that, that we should probably have gone into in this program in terms of innovation, as well. I think it is a very appealing topic.

COMMENT, *Professor King*: One of the angles — well, you were there. I sat with you, I believe when Ronald Mitsch from 3M came on. He indicated that a lot of their innovation comes from within the workplace at 3M.

COMMENT, *Mr. Harvey*: That is right.

COMMENT, *Professor King*: In other words, that is where the ideas are. The company I started with, another gentleman, which was very, very successful — unfortunately, I had to get out, because I was made General Counsel of the Foreign Aid Program — this company was eventually sold out to Pfizer, was started by a tool maker at one of the big plants in Waterbury, Connecticut.

In other words, he is a tool maker. He had the skills, and he decided he wanted to make disposable hypodermic needles, and the company we started was one of the first of its kind in the United States. And my wife always regretted the fact I had to get out, so I did not make any money, but he made a fortune.

COMMENT, *Mr. Teple*: I think you have to consider the problems that workers are being laid off through down-sizing, and all these kinds of things. There is so much work to be done in the areas that were discussed yesterday. Dr. Smith told how he treated the employees, and I think a lot more attention has to be paid to that, on how to create jobs in places where we need new sewers, new bridges, new everything, and find ways to finance and create jobs.

COMMENT, *Professor King*: Yes, and jobs which are fulfilling. The fulfillment of people with their jobs is one of the goals you seek, so that everybody has a sense of fulfillment. The layoff problem is also a tough one.

COMMENT, *Ms. Ireland-Phillips*: The role of labor unions in Canada and the United States seems to be very different, and I think that would be an interesting topic to explore. Negotiations, the influ-

ence of labor unions, how it affects workplace innovation, how it affects workplace performance.

COMMENT, *Professor King*: Yes.

COMMENT, *Mr. Harvey*: In the overall context of this, of course, is trade integration, because that results in dislocation. We have always had a trade adjustment act, and yet I think Canada has been maybe smarter at using those kinds of devices than we have. I think there is a lot of food for thought in that topic.

My only concern is that it starts boiling down to cultural factors, disparate sorts of things, and does not have a sufficiently unifying theme to it. That would be my only concern.

COMMENT, *Professor King*: We will have to work on a theme. I think we can — we have done fairly well on themes before. In other words, I think that — and also I want to make sure that we have legal input. I do not want to get off the target but I want to soar a little. And the magic, I suppose, is combining bread and butter issues with issues that make you think in a broad sense.

COMMENT, *Mr. Harwood*: What about devoting a program to infrastructural needs; schools, roads, rail, air traffic, the information highway, and all the technological things that have to do with communications.

COMMENT, *Professor King*: Yes, that is a possibility, definitely.

COMMENT, *Mr. Langmack*: One of the things that concerns me is the regulations that each of the governments have. I think of the FDA, because it gets the most press, and the fact there are medical devices which have been developed in this country which are being manufactured elsewhere outside this country, maybe offshore, but they cannot be sold in this country because of the way the FDA operates. They are trying to make it so it is more flexible, but there is a big industry, which is controlled by FDA. From there it goes beyond that, and I do not know what the situation is in Canada. Maybe they are more strict than they are in the United States. But they are impeding jobs in this country because of the way the FDA works in this country.

COMMENT, *Professor King*: Of course the regulatory context is an important context.

COMMENT, *Mr. Langmack*: There are barriers to trade between our countries as well as barriers to shipping goods out.

COMMENT, *Ms. Hujarski*: Another issue that falls under the human resource context is immigration. What should Canada and the United States be doing to make sure that we have competitive work forces in the coming years?

COMMENT, *Professor King*: One of the things is, relating to the immigration issue, for example, that you have to have some catfish or newcomer, in society to stir up quiet waters so that we progress.

COMMENT, *A Voice*: Catfish?

COMMENT, *Professor King*: That is a term I use frequently.

For instance, we have had people coming into the United States from the Far East, and they have added quite a lot. I always remember in World War II that the Jewish people came from Germany, and they added a lot to our society. In other words, these are people who are the yeasty, sometimes, of society. And what kind of immigration policies do you want? You can not have everybody convinced who will be a drag on the system. You have got to have some people who are willing to contribute something to the society and can move the society along.

We talked about innovation, but a number of the people who are doing the immigration innovation in the United States are immigrants. I believe the head of Intell is from Hungary. The immigration policy is very important and what the legal and nonlegal ramifications.

There are some interesting aspects of the Canadian immigration policy. If the person comes into Canada and is willing to bring something in the way of investments to Canada, then there is a special legislation in Canada that facilitates that. And of course that has attracted people from Hong Kong, has it not, Michael.

COMMENT, *Mr. Robinson*: Yes.

COMMENT, *Professor King*: The people aspects of things are pretty fundamental. As I said, we are talking innovation, but you have to have the tools to do the innovation, or the spirit.

COMMENT, *Mr. Robinson*: I was just listening to the conversation, and it strikes me that, if we are trying to have a legal link, clearly there is a consensus on the human resources and employee and immigration issues which have not been stressed before. Maybe we might call it something like, you know, NAFTA two years after, or what does NAFTA do and not do with a sub-theme on the employee relations issues. Because we may find there is a bit too much economics on the human relations issue and not enough law if we merely do that. But if you have that umbrella topic, then you could pull a few more issues in that might be topical.

For example, we are going to have a resolution this year of this mess about the Toronto Airport privatization and expropriation. And the mess may result in totally different treatment of the U.S. investor, because there is a major U.S. partner in that privatization scheme, which the liberal government canceled. That U.S. investor is going to get a better deal than the Canadians who are going to get nothing. And that is a kind of interesting little twist which the Prime Minister does not want to see happen. But since the treaty overrides the domestic law, that is what is going to happen. And that could be a little sub-theme you could put in.

But the umbrella idea of NAFTA re-visited, or what is NAFTA, what does NAFTA lack, or what has it accomplished, something like that, sounds like it would catch enough issues in addition to the human

resources one to be attractive.

COMMENT, *Professor King*: Yes. I would like to combine those two if we could. Obviously NAFTA has had impact on human resources. I mean, you have the transfer of people from one country to another.

COMMENT, *Mr. Robinson*: Well, a lot less, obviously, because it really does not deal with immigration. It only deals with cross border temporary business visitors. And that is, of course, a lack that many have complained of.

COMMENT, *Professor King*: Should we have a true Common Market?

COMMENT, *Mr. Robinson*: Exactly.

COMMENT, *Professor King*: Maybe that is — in other words, for example, in Europe, they have the ability to move across the border.

COMMENT, *Mr. Robinson*: Right.

COMMENT, *Professor King*: Maybe we should see what might be ideal in the Canada/U.S. setup, what the implications are in that area.

COMMENT, *Mr. Robinson*: Sylvia Ostry has written a fair bit about this in the last couple years. You might make a note of her as a possible luncheon or dinner speaker. She is very lively.

COMMENT, *Professor King*: She is a good speaker.

COMMENT, *Mr. Robinson*: She is a good economist, and she is very interested in that area.

COMMENT, *Professor King*: The main problem, Michael, may be on cross border transfer — in other words, what may be possible between Canada and the United States may be different where the United States and Mexico are concerned. After all one of the arguments for NAFTA in the United States was that it would cut down on immigration from Mexico.

COMMENT, *Mr. Robinson*: Well, I am not sure there is enough for a two-day conference on just the human resources issue in the context of our Institute's focus on Canada/U.S. Whereas, if we used the broader umbrella topic, we could make that the central focus, but cherry pick a few more items to fill it out.

COMMENT, *Professor King*: Yes, sure. So what you try to do is focus on human resources and on NAFTA as impacting Human Resources. As you say, we can cherry pick some topics. The broad brush NAFTA development is another alternative, but it seems as though that is a week's topic. And maybe is, as you say, we can cherry pick some human resource topics related to NAFTA that our people would be interested in — for example, there were a lot of charges against the institution of NAFTA in the United States on the ground that all our jobs would be going to Mexico. We could look at our assessment as to whether that has been the case. And there is a labor side agreement of

NAFTA which contains dispute resolution provisions. We could look at that.

COMMENT, *Professor King*: Any other comments?

COMMENT, *Mr. Ryans*: I suggest Chile. As long as we are looking at NAFTA, we should look at Chile.

COMMENT, *Professor King*: Yes, maybe. I am not sure this time, but maybe a little later. Yes, absolutely.

COMMENT, *Mr. Kasoff*: Henry, we were so inspired to come up with topics that a group last night stayed up until three in the morning focussing on these issues. Focussing on topics to suggest to you. And I just wanted to share what some of the thoughts were. Not in any particular order. There was a sentiment for perhaps re-visiting the whole topic of trade remediation, which seems to be evolving into a significant area of contention between Canada and the United States. And in addition to that, you could also link that to the new WTO and the Uruguay Round and so on. I think whatever we do, we should be careful to keep a Canada/U.S. focus.

I am always nervous when you say NAFTA because, as the NAFTA debate was in the United States, it becomes more Mexico/U.S. But I am sure you could take care of that.

COMMENT, *Professor King*: You can rest assured we will remain with Canada.

COMMENT, *Mr. Kasoff*: That was one that was interesting.

COMMENT, *Professor King*: In view of the Wilkey opinion and all that, is the trade remediation working?

COMMENT, *Mr. Kasoff*: Right.

COMMENT, *Professor King*: In other words, the binational panels and a dumping —

COMMENT, *Mr. Kasoff*: You had something like that early on in terms of the Conference dealing with dispute settlement. It might be time to re-visit that. The second theme which might be a nice umbrella is the area of trade and services. We also liked infrastructure around the table last night, and if you took selective infrastructure type issues, they could fall under that umbrella. You could talk about immigration, financial services, telecommunications, whatever, under that broad umbrella. So that might be a second one. I think those are the main two.

Any other members of the group who want to jump in at this point? I hope I represented them to you fairly.

COMMENT, *Professor King*: We appreciate you. You are an early bird, Mark.

I wanted to list some other possible topics. The role of nongovernmental organizations in legislative policy development in the Canada/U.S. context. This is a broad brush. It could cover all aspects of for instance, labor, antitrust, tax, trade, property. That is another possibility.

Law and policy in North America, how we make our laws. The legislative system versus the parliamentary system, the role of lobbyists in nongovernmental organizations.

Another one that always intrigues me is the comparative tax structures in Canada and the United States. That is a very interesting topic to me. I thought the tax panel yesterday was very good, and — I did not see any sleepers in the audience. Nobody was dozing. That is very unusual. I have never been to a conference where tax people talked and everybody is on the edge of their chairs. But I thought when Peter Kastner talked — of course he is both a lobbyist, and he is also very much in the inner-circle in Canada — it was very interesting.

I am very much interested in what Michael Solomon had to say about a flat tax, because, you know, this means unemployment for Washington tax lawyers, of which he is one, a very good one. But that would be an interesting topic.

The taxes problem — we did that at our first conference, it would deal with various comparative structures and the relations between Canada and the United States. The United States is on a different tax base than any other major country in the world because we are primarily income tax reliant. Most other countries rely on the VAT taxes.

Another one which Michael Robinson had mentioned, is a NAFTA update. The impact of NAFTA on trade of goods and services in the North American area, is it working as anticipated? That topic itself is a name that might attract attendance.

The impact of international conventions on trade and investment externally and in between Canada and the United States. We are talking about the U.N. Convention on the Recognition of Enforcement of Foreign Arbitral awards, the Convention on the International Sale of Goods, the International Convention on Settlement of Investments Disputes.

Another topic would be the reform and harmonization of laws in Canada and the United States, affecting corporations such as the role of boards of directors, class action suits, greater harmonization of intellectual property law, and harmonization of competition laws.

Another one would be where we are headed in terms of intellectual property protection in the Canada/U.S. context and the world context. We would not probably do this one right after the one we just did on innovation.

What about high-tech and biotechnology development, protection of computer software, how do we make sure that developing countries appreciate our problems in terms of financing innovation? These are some of the possibilities.

I would say that I am open to suggestions as to how we go. We hope we can try to do as well as we have this year. We will try to — maybe one alternative is to combine topics so you get two

constituencies.

Does anybody else have any further discussion in this future plan for next year? What we have to do is look at the constituency any topic might have, what it will draw, what the appeal is to the people who usually attend our conferences.

What we do basically — the ingredients, if you look at ingredients, is to do some mind expanding, causing people to think about the future, and also give people some bread and butter topics to try to justify their attendance.

COMMENT, *Mr. Harvey*: A major concern in Europe now is privacy. And when you have Internet and everything going, what is that going to do to privacy laws. That might be something as a subtopic to hit very soon, because that is going to be a real hot issue. It ties into the whole human resources topic.

COMMENT, *Professor King*: It does.

COMMENT, *Mr. Harvey*: The only thing that concerns me about that topic, Henry, is that it is flat. We need to tie it somehow through some words in the title of the conference to the whole side of expanding trade, being more competitive, being more innovative, tie it in dramatically in a way to all the conferences we have, which are focussed upon growth, betterment of society, economic betterment in many cases. I think the privacy issue is one of those pieces. It folds right in there.

COMMENT, *Professor King*: Yes, and what we are talking about is human development. We are looking at human development, the development of the human being, not just now, but in the future.

You know, why not make life-long learning a reality? Is the person ready for the economic graveyard at a certain "age?" Are we all like that? I do not think so. I think that we have to try to look optimistically at the human factor and see where we can make life more worthwhile. There is a bit of an idealism, but we also want to make it practical.

COMMENT, *Mr. Howard*: The first conference with the possibility of working on trade barriers such as: the export law controls that we have, our customs, the aspect of certificates of origin from the customs point of view, the export law controls we have, dealing with export technology to other countries, the free flow of technology between countries, and also the effects those laws have upon immigration and the use of people coming into either country in sensitive areas.

COMMENT, *Professor King*: Do you mean when people come in — you mean from the standpoint of the export controls?

COMMENT, *Mr. Howard*: When we have people come in from People's Republic of China and other Communist countries, what are the controls that you need to abide by in order to allow them to work?

COMMENT, *Professor King*: Yes, because that is trade related.

COMMENT, *Mr. Howard*: Yes.

COMMENT, *Professor King*: Very important. That is a good one. That could be brought in under this umbrella.

COMMENT, *Mr. Langmack*: My question that I was considering, we talked about what is the influence of NAFTA in our relations, both from a legal and trade standpoint — now we have a world trade organization, which is just now beginning to be implemented.

This GATT, there was a lot of discussion in this country about what is GATT going to do not only in trade but in services related to trade. What we are concerned about, is there any point where human relations, under the GATT, under the NAFTA, which would be something which would be enlightening? Most of us, including myself, really are not as qualified and knowledgeable about GATT as I should be and the legislative aspects of it.

COMMENT, *Professor King*: Well, that is a good one. GATT covers services, and it is the first time it ever did cover services. So maybe that is an aspect.

COMMENT, *Mr. Langmack*: But Mark touched on it, the fact is that GATT is another area which is new. It is new on the scene as far as — we worked on it for seven years, but now it is going to be implemented. How does Canada view it in relation to the United States? How does Canada view it, and how does the U.S. view it? What effect would it have on incentives to trade or barriers to trade and just what would be the influence of the world trade organization (WTO) on existing trade?

COMMENT, *Professor King*: Yes, because you now have to not only look at Canadian/U.S. rules, you also have to look at the additional dimension of GATT.

COMMENT, *Mr. Langmack*: That is right.

COMMENT, *Professor King*: But trade in services, first time covered in GATT and also in NAFTA. So this is a development that affects the movement of people.

COMMENT, *Mr. Langmack*: GATT puts a little “sex” into your title, if that’s what you are looking for.

COMMENT, *Professor King*: Well, we need a meaty title. I think we know what we are going to do, but we have to get an umbrella of a title. That is what we need.

COMMENT, *Mr. Langmack*: You have to know how to look for it.

COMMENT, *Professor King*: Are there any other topics?

This has been a very good discussion.

COMMENT, *Mr. Harvey*: Let me just add one little thing, Henry. We have discussed before looking at the idea of harmonization. We have also discussed looking at standards.

One of the things that really interested me in this conference was the several presenters who talked about standards either being barriers

to innovation or prods to innovation. And to me this gets back in an indirect way to the human resource topic, because you are talking about prodding or creating barriers for human beings doing things. And it seems to me that that can also be reflected in the human resources kind of topic in terms of what motivates people in the workplace. What motivates inventors? What can government do to assist or to create those barriers to those kinds of things? And I think that topics together with the education topic, which is inevitable in that kind of presentation, really is a gold mine for ideas and approaches.

COMMENT, *Professor King*: For instance, David Crane said at the start of this session, you recall, that the person gets out of high school, and then there is no training for him. But in Germany, he gets into the skill category, and he moves into development of himself as a human being. He does not stop growing after he reaches age eighteen. So skills are part of the key. The other thing that interested me was bringing women into science and technology. There is a stereotype of a woman with big thick glasses and sort of a maid's dress on as a person who would go into the ivory tower.

Women have to be recognized for their capacity and try to be brought into the workplace, in that area, and emphasized so we do not get a sense of writing them off if they go into science and writing them off from other standpoints.

COMMENT, *Mr. Harvey*: You are talking about the whole area of discrimination in one form or another. In education and out in the workplace. That is certainly a legal area.

COMMENT, *Ms. Chen*: Well, we have another issue here that ties GATT together with human resources, and that is the employee benefits issue. Apparently this is something that actuaries have been discovering in the great sleeping giant GATT, they have provisions in GATT that address employee benefits.

COMMENT, *Professor King*: Well I thought I was an expert on GATT, but I did not know that. I mean, I do not mean I am a total expert on GATT, there is a different provision in there that was not offered earlier.

COMMENT, *Ms. Chen*: The Wyatt Company has been worrying about it.

COMMENT, *Professor King*: That is right.

Well, are there any other comments on this?

I wanted to thank our speakers. I thought they were very good. They did a remarkable job with some very complex topics, and I think we looked over the hill and into the future, which is what our objective is. We look forward and try to anticipate problems, and I think there is plenty of meat in our discussions.

I want to mention at this time a number people who were very, very helpful on this conference and who did very important work on it.

As a matter of first instance, I wanted to thank Afsaneh Azar. She is the editor of the *Canada-U.S. Law Journal*, and she also did yeoman service in connection with the conference materials this year.

Our next year's editors are Lucia Innandrea and Tina Myles and we are already expecting that great book that you are going to produce. We thank you, and we are looking forward already to the great issue that you will produce.

I also wanted to ask Joshua Sacks to rise. Joshua has done a wonderful job in connection with the conference and was always available when I needed him. He is the one who did the expansion of the Niagara Competition here, and is responsible for its expansion to eighteen schools, because he contacted them so frequently.

He has also been very persistent in his calls to get attendance at the conference. He has done a marvelous job in working with me throughout the year. I am very proud of him, and I wish he would take a bow. Thank you, Joshua.

And Karen Ireland-Phillips, she should take total credit for the logistics of the conference. She saved me from a lot of anxieties and troubles. She was always a source of encouragement. She was always upbeat, telling me not to get worried.

You know, when you get a huge conference — this is a big one. When you get a conference like that, there is always a question of bad days and the good days. She was always a source of encouragement.

So Karen, you were just wonderful.

COMMENT, *Ms. Ireland-Phillips*: Thank you. You all were a pleasure. Thank you very much.

COMMENT, *Professor King*: I also wanted to thank our court reporters. They were very good. When they did not get the word, I think that they were always explicit. We are very happy for the job that was done, and we will be at your door step very shortly.

It is possible that you might hear from Lucia and Tina on the transcript very soon. You were just great, and we are looking forward to a good production.

I think that I have an old maxim that I follow. I always quit while I am ahead, and I think we are ahead. It is a good time to adjourn.

COMMENT, *Mr. Langmack*: Hold it, Henry. He is ahead, but he has left us a little behind. If there is one guy, if there is one person, one individual, male, female, or whatever, you may be old, young, or indifferent, there is one guy who really rolls this thing together, and I do not have to tell you who he is. He is Suzanne Wagner's father. A big round of applause for Henry King.

COMMENT, *Professor King*: This was a very historic day. Suzanne got up for breakfast today. She wanted a waffle, and a waffle was forthcoming. So I am so pleased to see her so early in the morning, and

she was very receptive to my early morning call. I did want to celebrate this historic day for all of us.

Thanks again for being here.