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CLOSING REMARKS: WHERE DO WE GO FROM HERE?

Henry T. King, Jr.
U.S. Speaker

and

Chios Carmody
Canadian Speaker

MR. CARMODY: The topic of our conference next year and the title is "Understanding Each Other Across The Largest Continent Border In History." The general theme is national attitudes as reflected in legislation and regulatory actions, and their affect on the Canada-U.S. relationship.

And it will also involve an explanation of the Canadian and American positions on a number of different topics. And I think Henry King would like to speak to the setup. Henry.

MR. KING: Yeah, thank you, Chi. What I thought would be a good follow-up to our - the program this year, "Multiple Actors in Canada-U.S. Relations", was a session on "Understanding Each Other Across the Largest Un-defended Border in History." The purpose would be to try to get U.S. people to lay down the U.S. position on certain issues, Canadians lay down a position on others. For example, at the present time the respective world views of the United States and Canada. There are many people that feel the U.S. has gone unilateral; that Canada's more multilaterally engaged. I'd like to have an explanation of both positions, so that we get an understanding of each other.

On free trade agreements, U.S. has gone bilateral to a large extent. Canada continues on a multilateral basis. Immigration, U.S. is borne of the 9/11 thing. U.S. has very strong immigration policies, which are restrictive. Canada has always had a little looser approach toward immigration although it's been tightened recently.

Canada and U.S.'s approaches to trade sanctions. U.S. Congress, usually, or U.S. executive branch will promote trade sanctions, and then suddenly after it's done, they wake up to the fact that there is this wonderful neighbor up there. And, frequently, Canada gets caught in restrictive approaches. Import restrictions, the same way.

Canada-U.S. approaches towards agriculture. A number of our agricultural policies need harmonization. And so what this is, all told, and terror-

ism, illegal drug trafficking, one of the points here is to try to understand each other. This is - the Institute is basically an educational organization. And what we want to do is to get people across the border to understand each other's position, without - in other words, we're going to exercise free speech. And if somebody wants to expose the U.S. position, which maybe some of us don't agree with, we'll use it as a forum.

Now, what I would like to have you do is to look - this is my set of topics together with what Dan has put in, but I'd like to have Chi or anybody else who has ideas on additional topics. I might add that John Freed, who's next to the king in Canada, has looked at this. He was quite excited about it; he likes it, although he may have different sessions.

But, basically, the idea is we have this wonderful opportunity as a forum for discussion of Canada-U.S. issues. Let's use it and try to understand each other's position. So the Institute is nonpartisan, it's an educational institution, we don't take sides as such, but we will try to get people to explain the U.S. position.

So we passed this out, as Chi knows, at the Board Meeting on Friday night. And we didn't give people the opportunity to comment. It has to be voted on by the Board, but I have every reason to believe that it's going to be our approach. And it can be quite exciting.

And one other thing that we are thinking of is maybe having a two-day conference instead of a two-and-a-half day, because it's hard to keep people here. But I do think that it's worth your while to look it over. And, Chi, you look it over from your standpoint, if you have any comments at all.

Chi does have a couple of suggestions by Michael Scharf who is unfortunately not here today. I hope he rests in - I hope he gets a good sleep this morning. I think he probably overslept, because he's very excited about the Institute, so I'm just the next best thing. So any comments you have will be gratefully received. I would be very happy to have it.

Chi, did you want to comment?

MR. CARMODY: Well, I think it might be a wise idea perhaps for us to hear from the floor. David, I noticed that your hand was up.

MR. CRANE: Yeah, I thought three points I wanted to make that might influence the conference next year and sort of frame it in a way is, first, each country will have a new Administration.

MR. KING: Yeah, I was thinking about that at 4:00 o'clock this morning.

MR. CRANE: Yeah. Were you worrying about it or thinking about it? And so that that may be something we want to look at. Now, we may have the same parties back in each country, or we may have one party different.

MR. KING: Yeah, it would make a difference, for instance, on the first session unilaterally.

MR. CRANE: Secondly, can we pull off the DOHA Round at the WTO. That's going to be the big trade question mark next year. So we may want to

look at how the two countries are working together or not working together on DOHA Round issues.

MR. KING: Right, right.

MR. CRANE: But not include services on finance and Raya fuels, like that. And, thirdly, from a Canadian point of view, one of the big issues next year, which has an important bilateral dimension to it is Canada has taken the lead in proposing that in international agreements that culture be treated as something quite different, and we have proposed sort of an international accord on culture that shields it from the normal trade rules so that culture is not the same as producing mufflers and –

MR. KING: That's a Sports Illustrated edition.

MR. CRANE: And there is a working committee that has been established in UNESCO which is going to produce a draft, sort of, cultural statement. And a draft will come out, I think, in the middle to late part of this year, but that will be from the Canadian point of view quite central to DOHA Round, and it's an important issue on the other side of the equation from the U.S. point of view. So you might want to take that into account, as well.

MR. KING: That's a good suggestion.

MR. CRANE: And Peter Grant at McCarthy's has written a superb book called *Blockbuster*. He's made a lifetime career out of this, and he was a driving force behind this cultural instrument, as it's called. And he would be a superb person to come down and give a Canadian view on this. And it would be a good, a very interesting sort of debate.

So three things, new governments, even if they're the same governments, but in the Canadian case, we will have new faces; the importance of the DOHA agreement on the WTO; and the cultural thing. Those are just –

MR. KING: Those are good suggestions.

MR. CRANE: And the fourth, I feel a fourth thing, as well, and that is the evolving energy relationship, especially on electricity.

MR. KING: Yeah, right.

MR. CRANE: You know, I think electricity is something. And that is something particularly close to the heart of Ohio given last August, but also with the outage report and the issues of reliability and the need to improve transmission. Again, in Toronto, we've got a very good lawyer, David McFadden. He is very knowledgeable in this issue as a lawyer. And I think that looking at the grid outlook just for the central part of this continent would be something worthwhile to look at, and how that's managed.

And we now have Alberta playing a bigger role in the western states grid as a result of the Western Governor's Association meeting this week. And Quebec is up there. So I think electricity could be an interesting subject. Anyway, that's just a few sort of initial thoughts on seeing this.

MR. KING: Very good. Marty.

MR. CARMODY: Yes, Marty Gelfand.

MR. GELFAND: Thanks. Yeah, I like that you have the Section 3 in here, Canada and U.S. Approaches to the Movement of People, Varying Immigration Approaches. What I have seen in the last couple of years is a real shift in immigration approaches from the United States, some for obvious reasons. Obviously, we have to be more careful than we had in the past, you know, to protect ourselves from terrorism.

On the other hand, what we're seeing is a lot of people who may have questionable status but are otherwise good citizens, or would be citizens, you know, who are raising families and contributing to our economy and to our society are being targeted for, you know, for deportation and families are being split apart. We're seeing a lot of problems.

So, you know, the question that we might try to delve into both, from both sides of the border is are we getting out of balance in the way we're treating immigration and the movement of people into our two cultures and into our two societies.

MR. CARMODY: Well, that's particularly relevant because we appear to have, for example, different views on how we treat refugees, certainly, refugee claimants, and we've concluded an agreement now that essentially sends back refugee claimants at the Canadian border to the United States, those who are coming through the United States. And there is some question in international law whether Canada has actually met its commitments under the relevant treaties because of that very point. So that would be a very interesting point.

MR. KING: Yeah, I like that. Tom.

MR. SILVIA: Hi, I'm Tom Silvia. I'm a member of the American Immigration Lawyers Association. And I wanted to follow up with the Section 6 on Media, because the AILA Journal for January/February is all about Canadian/U.S. immigration problems.

MR. KING: What journal is that?

MR. SILVIA: The American Immigration Law Society Journal called *Immigration Law Today* Heather Segal, who is the Canadian AILA Chapter Chair has written an article called "Is It A Documentary Or Is It Entertainment." And it talks about the challenges facing Canadian media people who come to the border and are found out that because they work for the Food Channel or the Discovery Channel, they're not entitled to enter as media people. And I think that that might be a really good way to go.

I mean, the question is it entertainment or is it information was something we talked about last night. And we have an actual concrete immigration problem, and I think that that might be a really, really good focus for the media section.

MR. CARMODY: There is a very important question. We run into it as a problem across the Canada-U.S. relationship, because, of course, both Canada and the United States have made commitments under Mode 4 of the

GATS, that's the transfer of personnel. And very often those definitions are not completely synchronous across countries.

So, for example, snafus like this do occur. And we have to iron them out. And there are people who spend time trying to iron these things out, not always with successful results. Thanks very much for that suggestion.

Any other thoughts?

MR. CRANE: It's unfortunate the way in which immigration procedures work, that I know in my own case if I'm coming to the United States, if I'm going to participate on a panel or something, you would never tell that to the immigration officer, because you're working. Even if you're getting zero payment for it, and even if you may be traveling at your own expense, you still have this great cloud of suspicion, and you're guilty until you can really prove you're innocent. So you say I'm going down to attend a conference and leave it at that, because I may write about it. And, in Henry's case, he's told me I have to write about it.

MR. CARMODY: One other thing that I'd like to say, just to return to David's point on culture. I think that that's an excellent topic because one of the little noticed achievements in the Bush Administration was actually reinserting of the United States into its membership at UNESCO. And the United States has actually gone ahead and reactivated its active membership in UNESCO.

And most recently, UNESCO concluded an international treaty on cultural protection with perhaps the sort of backward glance of the United States. Perhaps the United States is taking a different position on that.

MR. CRANE: Just for perspective, the United States is backing UNESCO, and appointed somebody to this commission looking at a cultural instrument, whose job it is to try and delay, stall or prevent it, water it down as much as possible.

MR. KING: Well, that's very important, David. One of the things that I sense that this discussion, which I think is enormously fruitful, Chi, is that it's given life to this dream that I have of trying to get us to discuss pertinent issues, and so we get both sides. In other words, it's not secondary. And I hope that the U.S. government will participate in getting us speakers. There are trade lawyers in Washington, who many of them will speak, and will do what their clients say. And so that's an advantage.

MR. CRANE: Well, Henry, I could give you the name, I don't have it now, but I could send it to you, of the person who has been sent by the U.S. to this UNESCO committee to sort of sidetrack this whole idea of a cultural instrument, because Peter Grant in his book addresses this person, who has been a long time commentator in the United States on cultural issues, sort of challenges a lot of his views. So you could actually have a debate between Peter Grant and this guy at your meeting.

MR. KING: Yeah, I'd like to have us confront directly.

MR. CARMODY: Well, there's always an opportunity to see what the other side's position is and to get that set out and expressed. Any other points? Anybody else? George.

MR. COSTARIS: Another area that I think we don't discuss often enough is the whole issue of the Great Lakes, and how the two countries look at the Great Lakes region from an economic and environmental standpoint, and in getting into the whole water policy, and about water removals and the annex to the charter. I think next year, that we should have something by next year.

The other thing I'd like to talk about is the title. I don't think the title really gets at what - it's what we're going to get at the end of the conference. The title itself, I think, needs to be jazzed up a little bit.

And I'm reminded of a joke that Dave Burneys used to start his speeches. It was the biggest compliment that an American can pay a Canadian from an American's perspective is you really are the same. And from a Canadian, the biggest compliment is when he hears you really are different. So maybe something like are we the same, are we different. Or, you really are the same or you really are different.

MR. de BOER: They are the same while being very different.

MR. COSTARIS: Exactly.

MR. CRANE: Now, a number of years ago, the Chicago Fed did a lot of work on the Great Lakes region of the economy. Have they pretty well dropped that initiative now or do they sustain it?

MR. COSTARIS: They focus in on sectors. They don't look at the whole - the global economy, the global Great Lakes economy. They focus in on the automotive sector, energy.

MR. de BOER: I was telling David that I spoke at the CSG Midwest Canada-U.S. Council meeting about two months ago. And on the day's agenda was the Great Lakes. And it came down that there were 27 officially designated organizations that speak for the Great Lakes water quality. And when about four or five of them, very high profile names, were all before the U.S. congressional committee they were asked pointblank who has the authority to speak for the Great Lakes, and nobody does.

So it's very important. I think George is right, you ought to get a status on what is really going on, because there's a lot of attention. And I think things are very positive, but it's really a very crowded field, if I might say, with no established leadership.

MR. CARMODY: So your suggestion, then, would be something on the environmental governance and the Great Lakes?

MR. de BOER: Simply to find out who is protecting the Great Lakes water.

MR. COSTARIS: Well, I think that would be part of it, but I think it's looking at how the two countries view the Great Lakes from a Federal, a regional, and a local perspective.

MR. KING: Right. That's a great subject.

MR. CRANE: Herb Gray might be a good speaker on that, because he was a part of, as well as a Parliamentarian, he was the voice for Southwestern Ontario, and now he is in a position where he is responsible.

MR. COSTARIS: And also George Voinovich, who is playing a key role in the U.S. Senate on the Great Lakes and Great Lakes issues. And he's from Cleveland.

MR. KING: There's one thing that David mentioned, which is very important from our standpoint is look at these topics, but as you suggest alternate topics, give me speakers that are outstanding of the caliber that we had for this session here. We want the best larynxes on both sides of the border to express their opinion. So it's very important, we really need it.

MR. CRANE: I'd go for the best brains rather than the best larynxes.

MR. CARMODY: Any other suggestions?

MR. KING: Well, I think I - yeah, Brenden Delay.

MR. DELAY: Yes, hi. A member of the Board of Directors, Steven de Boer, had mentioned how there have not been any Canadian students coming to the Canada-U.S. Law Institute over the last three years.

And I was wondering if perhaps the allure of the idea of studying down here could be enhanced if maybe one student from Western were to be allowed to give maybe a 15 minute presentation at the conference, and maybe then the students up there would think that this is, you know, alluring, or their voice could be heard, maybe that will start to attract students to come down here to study for a semester.

MR. KING: Well, what we did, Brenden, is in the literature that we had at the Board of Directors meeting, we had statements by two students from the United States who had gone up to Canada and told about the worth of this thing. I think your idea is good. I'm not sure if we have a shortened program, I want to spend too much time on that, but I think that it's a good idea, and maybe we could put it in a packet.

MR. CARMODY: Thanks very much. I think that's excellent.

MR. de BOER: Let them speak at dinner. I mean, you could have somebody do a fifteen-minute speech at dinner, which wouldn't conflict with the program.

MR. CARMODY: It is certainly true that on the Canadian side, we've just seen fewer and fewer students coming here.

MS. BURRILL: Why do you think that is?

MR. CARMODY: Well, in part, as I've explained to Henry and others, certainly from the University of Western Ontario, our number of exchanges over the past three years has gone from twelve to twenty-two. And when

you're looking at the possibility of spending a semester in Singapore or Hong Kong or Barcelona, it obviously becomes very attractive. We have also increased the number of U.S. destinations. Our students can now go to Washington, D.C., and Los Angeles. There's just a natural attraction to those destinations that did not exist five years ago.

So that I think in part or in whole explains why that's happening. But I do think this suggestion is a very important one, because part of keeping the interest in this organization is making sure that we are refreshed by young blood, a new blood. And having that input from students and your own very important input this past year, and working with Matt in the future is, I think, going to be very important for Henry and myself and Daniel, who is here as well.

Yes, Sidney.

MR. PICKER: Just to comment a little further on being able to enhance Canadian participation. In the original years of the Institute, there was a substantial backing and forthing of faculty from both law schools for one to three-day visits, so that the faculty, regularly every two or three weeks, the faculty exchange enhanced the awareness of the Institute on the parts of the student body, and it acted as a symbiotic relationship encouraging the students also to go to the other institution. The revival of the faculty exchange may be able to restore that, as well.

MR. CARMODY: Well, we might do that, as you've - I think as you've suggested perhaps with a lecture, a dedicated lecture at each institution, that a Canadian faculty member comes here, gives a lecture, and an American faculty member goes to Western. We have had some movement in that direction. I think Jackie Lipton visited us twice last year from this faculty. And we'd certainly be happy to designate somebody to come down.

And one of the things that I've stressed, certainly, to our Dean is the importance of the fact that it does not always have to be myself; that we have, you know, 30 other people.

I think one of the things that happens inevitably, like it happens with legislators, is that law professors today, and other professors, as those of you in academia will know, are increasingly busy. And with all sorts of commitments that we have, it just gets very easy to think that your entire world consists of your office and you don't really need to travel.

And, if anything, whenever I come to these sorts of meetings, I'm reminded of the fact that these links are extremely important. Any other points? Yes.

MR. SILVIA: Tom Silvia again. I was looking at the cross border sales of pharmaceuticals topic, and one of the other things I belong to is the American Association of Retired Persons, which has almost split itself in half over this topic, because it was supportive of seniors who are buying drugs at a lower cost, and then turned around and supported the Medicare provision,

which virtually split the organization in half. And I think that someone from that organization who's responsible in that area would be an excellent speaker, because –

MR. KING: I think that's a great topic. I think that will be part of our agenda.

MR. GELFAND: It would also be interesting to have someone who opposes the AARP position, maybe someone from the other side of the split.

MR. CARMODY: Somebody from the pharma industry, somebody from the industry who's - rejects the idea that –

MR. SILVIA: Pfizer.

MR. GELFAND: But also someone who rejects the idea that the United States - the United States, which has a problem getting healthcare to everybody, should be banned from going to Canada to get its drugs less expensively. I think what this Medicare Bill did was cut off, potentially cut off that source for Americans, senior Americans, low income Americans, to find a less expensive source for their prescription drugs.

So I think it's a very controversial topic. And if we have someone from Pfizer and from the leadership of AARP who supported this type of change in Medicare, we need to have someone who appreciates the status quo for at least the ability to go to Canada to get medications.

A SPEAKER: But I think this is also a border issue in terms of the U.S. not enforcing their laws at the border, and still keeping the laws on the books that we're not allowed to reimport. So I think we also have a significant border issue here.

MR. de BOER: Having come from the pharmaceutical industry some years ago, I would just tell you that I think it's a very good topic, and a key one, but you'd be better served to get somebody to come here and explain to you the reality of the situation.

I mean, it's not a question of having Pfizer debate AARP. It's a question of the impact of, for instance, the affect of the Canadian medical plan that's in place that maximizes prices that can be charged, the decision of the pharmaceutical company to sell a certain percent of their goods to Canada at a lower price, the fact that the U.S. population pays for the research for these drugs. So if you start to compress the price, I mean, this whole thing is a very key –

MR. CRANE: I think we've started a debate.

MR. de BOER: No, no, I'm not starting a debate, David. I'm making a point that I have listened to the Prime Minister and Secretary Lashkey, Assistant Secretary, Deputy Secretary of Commerce, explain what the rationale is and the various implications of the fact that - of this whole - and the facts are not known to the general, I haven't read them in the media, you can't talk to any person and get all the facts. And you probably will serve both countries

to try to get somebody to come and explain the aspects of the situation that make up the –

MR. KING: Yeah, I'll do that. Do you have any recommendations on who would be best?

MR. CARMODY: There is a lawyer in Toronto who covers this issue, Jennifer Orange at Torys, who would be an excellent speaker. She's very well versed in the regulatory division and represents a couple of, I believe, it's a couple of American pharmaceutical companies in Canada who had sought to restrict the sale of pharmaceuticals.

MR. KING: I think we've got to probably wind up at this point.

MR. CARMODY: Okay. Well, on behalf of, certainly, the Directors of the Institute, I'd like to thank everybody, and I'd like to, in particular, give a very, very warm, not only to Henry, but also to Dan Ujcz, who has been such an important role in this huge work. I think it really is a testimony to both of their efforts that we are here today, that we've concluded another very successful conference. And thanks very much. We look forward to seeing all of you here again next year.

MR. KING: I just wanted to thank some people who made this Institute possible, this conference. Certainly, I thank Chi Carmody, but John Freed was one who worked with me on the program, he's gone to a higher calling, but he's marvelously interested. Our Canadian Consulate here in Cleveland, Detroit, who is Rocco Delvecchio and George Costaris and Mary Lynn Becker has been enormously helpful. Whenever we are in trouble, we always went to the Consulate.

In terms of students, Jennifer Burrill sitting way up there has been wonderful, which was so important. Finally, it was a - it was a delayed birth, but it came out, and it's a very valuable point of reference. At the same time, we have Matt Ross, who is sitting right down here, who has been always helpful. These are people who make it work.

Julie Kraus, God bless her soul. She's - even when I hurt my wrist, she administered to it. So she's capable of nursing responsibilities, as well. And she's always my conscience in case I want to write a pretty sharp letter to somebody, she always wants to get it toned down.

Also, above all, above all, and I mean it, I thank Dan Ujcz, who is now the Assistant Director of the Canada-U.S. Law Institute. I think it's very important; Dan has been a tower of strength. There are a lot of upsets and downplays in a program as massive as this, where you get somebody who doesn't show up, particularly from the West Coast, as was the case here, or moderator, as is indicated this morning, that doesn't show up.

Dan has always been my comfort in crises, and it's been great to share all of the trials and tribulations of the Institute. So, Dan, you have to stand up, so we can - so, anyway, Chi, we'll see you next year. And we'll probably be up, you have a fall conference, usually, and we'll see you next year.

But I'd like to get your comments. I thought this was particularly useful here as a sounding board to get what people are interested in. It seems like you - immigration is a big thing, cultural autonomy, and whatever the U.S. wants to do on that, and some of these other - pharmaceutical deals is very important. That's what we need, so that we judge our audience in advance.

Now, I don't know whether there's anything - I don't see Andy Dorchak up there. He's in a meeting. He, to my knowledge, has his customary beard, he's no longer in disguise, but he's been just wonderful in terms of help on research and everything. So I thank you for coming. It's an inspiration to me to have a good turnout. And, Chi, I'm very happy you're here to share the burden with me. So we'll see you next year.

MR. CARMODY: Thank you very much.

(Seminar concluded)

