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Canada-United States Relations from the International Boundary Waters Treaty, the Auto Pact, the Free Trade Agreement, the North American Free Trade Agreement, the Security and Prosperity Partnership, and Beyond: Lessons Learned

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CANADA-UNITED STATES RELATIONS FROM THE
INTERNATIONAL BOUNDARY WATERS TREATY, THE AUTO
PACT, THE FREE TRADE AGREEMENT, THE NORTH
AMERICAN FREE TRADE AGREEMENT, THE SECURITY AND
PROSPERITY PARTNERSHIP, AND BEYOND: LESSONS
LEARNED

Session Chair – David Crane
United States Speaker – James Blanchard
Canadian Speaker – Michael Kergin
Canadian Speaker – Jessica LeCroy

INTRODUCTION

David Crane

MR. CRANE: Let me welcome everybody to this evening's session. It was a long and lively day, and the panelists tonight promise to continue that trend. We have three speakers tonight, and their biographies are all set out in the program. We will hear from Jim Blanchard first, followed by Michael Kergin, and concluding with Jessica LeCroy.

Tonight's topic is an ambitious one with an ambitious title. It starts a hundred years ago and takes us through the Canada-United States relationship until the present and then focuses on the future. Now in that context, I think that one of the mistakes we often make in these discussions is pretending that there is no external world and focusing only on North America. I sort of made a rash prediction speaking to students in their final year at Victoria University the other night. I predicted that, by 2025 the North American Free Trade Agreement (NAFTA) would be a footnote, that we would be truly a global society, and that the worst thing that can happen would be for the world to be divided at that point into competing blocks. So that is one of my own personal starting points.

This week we had the Group of Twenty (G20) Summit in London, and I think it gave off to a clear signal that the world is changing.¹ We talked

¹ See generally The London Summit 2009, <http://www.londonsummit.gov.uk/en> (last

about a new kind of globalization and the fact that China, although not taking center stage, was clearly moving up as an important player.² In fact, that all the bricks were asserting themselves much more, and that the sort of the old alliance between the United States and Europe was having to mend its way. For example, the idea that the presidency of the World Bank would always go to an American and the head of the International Monetary Fund (IMF) would always be European is gone. It has been recognized that China and Brazil and the others must have significantly increased voting power in all of these international institutions, and I think that when we talk about the future of North America, we must take that into account.³

Now, when I talked to the students about 2025, I pointed out that the world population will be roughly eight billion people, or a bit over that, compared to about 6.7 or 6.8 billion today; not only would the dynamics of the global economy be much different, but so would the challenges of resource management, the environment of competitiveness and global governments and all of these kinds of things. We have to think of North America in that context. Within Canada, we have had this mixed feeling about NAFTA because when we signed the Free Trade Agreement, we sort of had this idea of an equal collaborative of Canada and the United States.⁴ When, all of a sudden, the Mexicans came along and became a part of that, it surprised a lot of Canadians.⁵

Looking ahead, I expect that Mexico is going to command a lot more attention than Canada will in the formulation of United States policy. It is becoming the second-largest economy in North America, and it has the youngest population in terms of median age.⁶ Mexico surpassed Canada in 2001 as

visited Oct. 4, 2009).

² See generally Brian Wingfield, *China: A World Leader in Many Ways*, N.Y. TIMES, Mar. 19, 2009, available at <http://www.nytimes.com/2008/03/19/business/world-business/19iht-19forbes-china.11255323.html> (discussing China's growth).

³ See Bob Davis, *Developing Nations Try to Build Leverage at the IMF*, WALL ST. J., Apr. 27, 2009, at A2.

⁴ See Key Economic Events: 1989 – Free Trade Agreement: Eliminating Barriers to Trade, <http://www.canadianeconomy.gc.ca/English/economy/1989economic.html> (last visited Oct. 5, 2009).

⁵ See generally Office of the United States Trade Representative: North American Free Trade Agreement (NAFTA), <http://www.ustr.gov/trade-agreements/free-trade-agreements/north-american-free-trade-agreement-nafta> (last visited Oct. 5, 2009) (stating that NAFTA was signed by the United States, Canada and Mexico).

⁶ See generally World Factbook: Field Listing: GDP (Purchasing Power Parity), <https://www.cia.gov/library/publications/the-world-factbook/fields/2001.html?countryName=Mexico&countryCode=mx®ionCode=na&#mx> (last visited Oct. 5, 2009) (stating 2008 GDP for Canada [\$1.3 trillion], Mexico [\$1.563 trillion], and the United States [\$14.26 trillion]); see generally World Factbook: Field Listing: Median Age, <https://www.cia.gov/library/publications/the-world-factbook/fields/2177.html?countryName=Mexico&countryCode=mx®ionCode=na&#mx> (last visited Oct. 5, 2009)

the leading supplier of auto parts to the United States.⁷ In 2008, it surpassed Canada as the second producer of automobiles in the United States.⁸

There is a negative reason for the United State's focus on Mexico that has to do with drugs and political stability in Mexico. Another factor is the importance of the Hispanic-American population in United States politics, and the rapid population growth in the southern states, which will shift electoral college votes further south, increasing the voice of the south in choosing presidents and in the representation in the House of Representatives.⁹ I just wanted to set out a couple of those points in looking ahead to the kind of world we are going to be addressing and the circumstances in which we will find ourselves.

I think that the biggest future role for Canada in Canada-United States relations will involve cooperation with the United States to deal with global challenges, the environment, global governance, security, and development, all of those kinds of issues. I think that this will be a point of discussion for the two countries.

Anyway, I probably said enough. I would like to welcome the first of our speakers, Jim Blanchard, who is going to talk a little bit about the Obama Administration and where they may be headed on trade policy. But before Jim starts, I will note that we want to keep this discussion as informal as possible because we have had a long day. I think we will benefit more from the interchange than from long presentations, so that each of our panelists can speak for a relatively short period of time.

(stating median ages for Canada [40.4], Mexico [26.3], and the United States [36.7]).

⁷ See generally Lindsay Chappell, *China's parts exports to U.S. rise 28%*, AUTOMOTIVE NEWS, Feb. 26, 2007, at 1 (stating that in 2007, Mexico continued to supply the most auto parts to the United States).

⁸ See generally OICA: 2008 Production Statistics, <http://oica.net/category/production-statistics> (last visited Oct. 26, 2009) (stating that Canada produced 2.077 automobiles in 2008, while Mexico produced 2.191 million).

⁹ See MARK HUGO LOPEZ & PAUL TAYLOR, PEW RESEARCH CENTER, DISSECTING THE 2008 ELECTORATE: MOST DIVERSE IN U.S. HISTORY 1-3 (Apr. 30, 2009), available at <http://pewhispanic.org/files/reports/108.pdf>.

UNITED STATES SPEAKER

*James Blanchard**

MR. BLANCHARD: Thank you. Well, here we are at the silver anniversary of the Canada–United States Law Institute. Every time I come to Cleveland, I think of Henry King.¹⁰ You cannot think about this institute, Cleveland, or United States–Canada relations without thinking about Henry.

I want to thank so many people here. I have worked with Ambassador Kergin, who is a real Ambassador career person whereas I was a political appointee for Bill Clinton.¹¹ And Jessica, I never had the privilege of being Ambassador when you were Consul General, but you have a great reputation in our foreign service. There are some others here that I worked with and need to acknowledge. George Costaris and I started together. I was Governor when he started with the Consulate in Detroit. I do not know how many Consulate Generals you served, but you had black hair when I met you. Also, Robert Noble, Consul General. We worked together on a lot of stuff. Dean Bob Rawson, thank you for your hospitality. And Dan Ujcz, thank you for your leadership. Also, John Tennant, the Consul General with whom I worked earlier, and Margarita Kergin, the boss. I do not know how you put up with this thing. I cannot imagine. Anyway it is good to see you. I also want to acknowledge Rick Newcomb who I think you have already heard from. Rick Newcomb was the head of our International Trade Group in my

* James Blanchard joined DLA Piper LLP upon the conclusion of his duties as United States Ambassador to Canada in April 1996. Mr. Blanchard was named Ambassador to Canada in May 1993, after serving two terms as governor of Michigan and four terms as a member of the United States Congress. During his tenure as Ambassador, Mr. Blanchard managed a broad range of trade, natural resources, environmental, and national security issues between the United States and Canada, providing support critical to the passage of both NAFTA and the Open Skies Agreement. The Governor's eight years as Michigan's chief executive were notable for his success in turning around Michigan's finances, working with the private sector to attract business investment and trade from around the world. In 1997, Governor Blanchard authored *Behind the Embassy Door*, a book highlighting his experiences as Ambassador. He serves on the board of directors of several corporations and, in February 2005, co-chaired the American Assembly project on United States–Canada relations.

¹⁰ See Dennis Hevesi, *Henry T. King, Jr., Prosecutor at Nuremburg, Dies at 89 (1919–2009)*, N.Y. TIMES, May 12, 2009.

¹¹ See Government of Canada: Michael Kergin: Canada's Ambassador to the United States 2000–2005, <http://www.canadainternational.gc.ca/washington/offices-bureaux/amb/kergin.aspx> (last visited Oct. 5, 2009); see DLA Piper: Our People: James J. Blanchard, http://www.dlapiper.com/james_blanchard/ (last visited Oct. 5, 2009).

law firm of DLA Piper.¹² The Chairman of our firm is George Mitchell, who is now leaving to become special envoy in the Middle East, so I wish we could get him here to talk about things.¹³

Let me try to do a quick overview of things. Most of you follow Canada-United States relations, so I do not want to dwell on a lot of this. Whenever we have a new Prime Minister or a President, it is time to refresh and renew relations, and that is what is going on. It is actually a good time. In fact, by and large, it is a really good time for United States-Canada relations. Obama's first trip was fabulous. Just to say "I love Canada," to say "oil" sands, not "tar" sands, and to stop in the ByWard Market, it really was fabulous.¹⁴ Stephen Harper did everything but hug him and kiss him the entire time. I think that was a good thing. It was his first foreign trip.

Canada and the United States have many common challenges to work on including trying to figure out how to regulate the financial situation, and Canada has done a very good job of that. Some Canadians say it was by accident. Whatever it is, the banking system really has been well regulated in Canada.¹⁵ Obviously, we are talking about working on stimulus and cooperating on the auto rescue. Canada has offered about twenty percent of whatever the United States does.¹⁶ We are also cooperating on Afghanistan, on other foreign policy issues, and especially on energy and the environment.¹⁷

Before I continue, I want to make it clear that I cannot speak for President Obama. Having said that, I am a supporter and I have talked to his staff about the trip, but he really did finesse the tough issues, whether it was the North American Free Trade Agreement (NAFTA), buy American, or the energy and environmental issues. It was really well done. As a result of that trip, there is going to be a clean energy dialog on developing a smart grid for electricity as well as cooperation in research and technology to deal with greenhouse gasses and carbon sequestration and storage. This is very important.¹⁸ The interesting thing from the point of view of Canada is that Canada

¹² See DLA Piper: Our People: Richard Newcomb, http://www.dlapiper.com/richard_newcomb (last visited Oct. 5, 2009).

¹³ See Ed Henry & Elise Labott, *George Mitchell named special envoy for the Middle East*, CNN, Jan. 22, 2009, available at <http://www.cnn.com/2009/POLITICS/01/22/obama.mitchell/index.html>.

¹⁴ See CBC News, *PM, Obama talk trade, Afghanistan, pledge 'clean energy dialogue'*, <http://www.cbc.ca/canada/story/2009/02/19/obama-visit.html> (last visited Oct. 4, 2009).

¹⁵ See Mia Rabson, *Well-regulated, well-managed Canadian banks overshadow freewheeling U.S. colleagues*, WINNIPEG FREE PRESS, Aug. 9, 2009, at A1, available at http://www.cba.ca/contents/files/cba-in-the-news/int_20090809_winnipeg_cdnbanks_bi.pdf.

¹⁶ See Ian Austin, *Canada Agrees to Supplement Aid to Auto Industry*, N.Y. TIMES, Dec. 12, 2008, at B5, available at <http://www.nytimes.com/2008/12/13/business/worldbusiness/13canada.html>.

¹⁷ See CBC News, *supra* note 14.

¹⁸ *Id.*

has oil sands, which constitute more than half of the oil that Canada is now shipping to the United States. Canada is the largest provider of oil to the United States, even larger than Saudi Arabia.¹⁹ This contributes to the greenhouse gas issue. Another issue is carbon sequestration and it is actually helpful that the President is committed to trying to figure out how to do carbon sequestration for coal.²⁰ Remember, coal is big in Illinois. So I think that the cooperation on energy is actually a very promising thing in terms of America's economic and energy security as well as environmental issues.

By and large things are off to a great start and it has an advantage that, unlike with previous presidents, Prime Minister Harper is not afraid to be seen with the President immediately. I mean, historically there has been a motto for a Prime Minister of "Do not get too close to the Americans, but then do not get too far away either." That is gone right now, and I think it has actually helped Stephen Harper in terms of his standing.

When I say by and large things are going very well, there are a few bumps. The other day Homeland Security Secretary of the United States, Janet Napolitano, said the days of the free and open border are over and that we have to change our culture, but did not give any reason for that.²¹ The implicit rationale is 9/11 but it is a little late to be talking about that given the fact that we have had a very smooth and efficient border for decades and decades.²² Also, softwood lumber has reared its ugly head again this week.²³ I hate to even mention that word. We are still trying to get a new crossing between Detroit and Windsor.²⁴ There are a lot of other opportunities coming up.

There is a constant need on both sides to kind of renew and brief the new members of the government on these issues or they end up like Groundhog Day on some of these issues. It does worry me that while things are going

¹⁹ See Energy Information Administration: Crude Oil and Total Petroleum Imports Top 15 Countries, http://www.eia.doe.gov/pub/oil_gas/petroleum/data_publications/company_level_imports/current/import.html (last visited Oct. 5, 2009).

²⁰ See Press Release, The White House Office of the Press Secretary, North American Leaders' Declaration on Climate Change and Clean Energy (Aug. 10, 2009), available at http://www.whitehouse.gov/the_press_office/North-American-Leaders-Declaration-on-Climate-Change-and-Clean-Energy.

²¹ See John Ibbitson, *Obama's message: Glory days of open border are gone: Canadians have to accept new restrictions on cross-border traffic, security secretary says*, GLOBE AND MAIL, Mar. 26, 2009 at A1.

²² See generally Government of Canada: Border Cooperation, http://www.canadainternational.gc.ca/detroit/bilat_can/border_frontiere.aspx?lang=eng (last visited Oct. 5, 2009) (discussing United States' and Canadian joint efforts to keep the border safe).

²³ See *Canada claims compliance with lumber deal, U.S. industry objects*, INSIDE US TRADE, Apr. 3, 2009.

²⁴ See Detroit River International Crossing Study, <http://www.partnershipborderstudy.com> (last visited Oct. 5, 2009).

famously overall, some specific issues can get off track, whether it is trade or border issues or other issues. And our cabinet officials are just really getting to know each other.

I am thankful that we have a fabulous foreign policy team in the United States that President Obama has appointed with Hillary Clinton, General James Jones, George Mitchell and Holbrook, and with Joe Biden being the Vice President. I am really excited about the foreign policy team that the President has. I think it is going to serve United States–Canada relations very well. I also think that it will mean that the United States will have a more multilateral focus, and Canada will like that. Together, I think that we are going to be a much more positive force in the world than we have been in recent years.

MR. CORCORAN: Would it be out of order to ask the speaker to answer a couple of questions before he passes the microphone to you sir?

MR. CRANE: Quick questions would be fine.

MR. CORCORAN: It is not a speech. Members of the Obama Administration have recently, shall we say, raised the flag on the view that the United States will not import oil sands oil because of the pollution issues.²⁵ Do you know anything about that, and would you be in favor of it or not? And if not, why is the administration suggesting that?

MR. BLANCHARD: I do not think they have. I think it is quite the contrary based on what they were saying in Ottawa actually.

MR. CORCORAN: That was a few weeks ago sir.

MR. BLANCHARD: Well, you will have to show me, because –

MR. CORCORAN: I will.

MR. BLANCHARD: I would have to say that I think you are wrong, basically.

MR. CORCORAN: That is fine.

MR. KERGIN: I think what you are referring to is coming from Congress. Actually, it is not the administration.²⁶

²⁵ See generally Robert Kunzig, *The Canadian Oil Boom*, NAT. GEOGRAPHIC, Mar. 2009, available at <http://ngm.nationalgeographic.com/2009/03/canadian-oil-sands/kunzig-text> (last visited Oct. 26, 2009) (describing U.S. imports of Canadian oil).

²⁶ *Id.*

CANADIAN SPEAKER

*Michael Kergin**

MR. KERGIN: Jim kindly indicated that I was a real ambassador, which means I must give a dull and boring speech. I would like to thank the organizers for this conference, for inviting us here, and pass on our best wishes to Henry King. I have the great regret of not attending one of these before. It is almost to my shame that I say I know Cleveland but I never quite made it to the Canada-United States Law Institute at Case Western Reserve University. However, it is great to be here now, and I thank you very much.

I am going to talk a little bit about the strength of the relationship between Canada and the United States that really resides in the fact that both countries tend to find practical and pragmatic solutions to problems when it comes to dealing with important bilateral issues. What we are celebrating now, the centennial of the International Boundary Waters Treaty, sets that tone. When you think about it, it was a pretty amazing treaty insofar that it started the still functioning International Joint Commission.²⁷

At the time of the International Boundary Waters Treaty, Canada was basically a colony of Great Britain. We were much smaller in comparison to the United States which, in 1909, was beginning to be quite a world power forty

* Michael Kergin began his career in the Public Service of the Government of Canada, when he joined the Department of External Affairs in 1967 as a Foreign Service Officer. His postings abroad included the Canadian Mission to the United Nations in New York, and Canadian Embassies in Cameroon and Chile. He served as Ambassador to Cuba from 1986 to 1989 and has had three postings to Washington; the last as Ambassador of Canada to the United States. During his years in Ottawa, Mr. Kergin held various senior positions at the Department of Foreign Affairs at the level of Assistant Deputy Minister until 1998, when the Prime Minister asked him to serve as his Foreign Policy Advisor, as well as Assistant Secretary to the Cabinet for Foreign and Defence Policy. On leaving the Federal Government in 2005, he founded the firm Intermestic Consulting Inc., specializing in advising clients on Canada-United States relations. Mr. Kergin was asked by the Premier of Ontario to be his Special Advisor on Border Management charged with improving access across the Ontario-United States border. Subsequently, the Premier appointed him as Ontario's Negotiator for Softwood Lumber. Mr. Kergin is a Senior Fellow at the Graduate School of Public and International Affairs at the University of Ottawa. He also serves on the President's International Advisory Council of the University of Toronto. Mr. Kergin is a Senior Advisor at the Law firm of Bennett Jones LLP and is a Senior Fellow at the United States Chamber of Commerce. Mr. Kergin graduated from the University of Toronto in 1965 with an Honours Bachelor of Arts Degree in History and Languages and, in 1967, achieved a second degree in Arts from Magdalen College at Oxford University.

²⁷ See International Joint Commission: Treaties and Agreements, <http://www.ijc.org/rel/agree/water.html> (last visited Oct. 5, 2009).

years or so after its civil war.²⁸ Yet, there was recognition in the United States that Canada should be considered as an equal partner, and that each country should have an equal number of Commissioners on the International Joint Commission (IJC).²⁹ To a great extent I think that this has characterized the pragmatism of our relationship. Wars have been fought between countries over water and the environment. Canada and the United States, on the other hand, were able to resolve these sensitive issues through approaches based on equality, fairness and pragmatism.³⁰

Flash forwarding to 1940, as France fell, and the Nazi veil was being drawn over Europe, Roosevelt came to Canada to meet with McKenzie King to sign the Ogdensburg Declaration, which spawned the Permanent Joint Board on Defense.³¹ Again, we have an example of two countries of very disproportionate size dealing on important common defense questions from positions of sovereign equality. The Declaration was only a hundred words long. Can you imagine these days doing a hundred-word declaration? This was a very practical agreement between two countries that set the tone for our defense relationship for the rest of the century and produced a whole series of remarkable treaties: the North American Aerospace Agreement, the North Warning Systems, and the Defense Production Sharing Arrangement.³²

So I draw two lessons from that. One is that when both sides recognize that it is in their interest to deal with really serious problems, the boundary waters, the fall of France, the defense of North America, these two countries tend to pull together.³³ The second lesson I would draw is the importance of

²⁸ See generally Civil War: Timeline, <http://www.civilwar.com/civil-war-timeline-of-events/timeline.html> (last visited Oct. 26, 2009) (stating that the United States Civil War ended in May of 1865).

²⁹ See generally Origins of the Boundaries Water Treaty, <http://bwt.ijc.org/index.php?page=origins-of-the-boundaries-water-treaty&hl=eng> (last visited Oct. 5, 2009) (detailing history of International Boundary Waters Treaty).

³⁰ See Commission for Environmental Cooperation: About Us, http://www.cec.org/who_we_are/index.cfm?varlan=english (last visited Oct. 26, 2009) (purpose of commission is to address environmental concerns, help avoid environmental conflicts, and promote legislation).

³¹ See eHistory: Arctic Sovereignty and the Cold War: Ogdensburg Agreement, 1940, <http://ehistory.osu.edu/osu/mmh/arctic-sovereignty/ogdensburg.cfm> (last visited Oct. 5, 2009).

³² See North American Aerospace Defense Command: About NORAD, <http://www.norad.mil/about/agreement.html> (last visited Oct. 5, 2009); North Warning Systems, http://www.polarwarming.ca/north_warning_system.html (last visited Oct. 5, 2009); Canada-Ontario Business Service Centre: Sales to the U.S. Department of Defense and NASA, http://www.canadabusiness.ca/servlet/ContentServer?cid=1081944216021&pagename=CBSC_ON%2Fdisplay&lang=en&c=Services (last visited Oct. 5, 2009).

³³ See generally U.S. Department of State: Canada, <http://www.state.gov/outofdate/bgn/c/34656.htm> (last visited Oct. 26, 2009) (stating that the United States and Canada have one of the closest and most extensive relationships in the world).

the relationship, and Jim alluded to that, the importance of the relationship which must be established between the two heads of government. In the case of the Ogdensburg Agreement, it was McKenzie King and Franklin D. Roosevelt.³⁴ Another more recent example is the Acid Rain Accord because of the close relationship between Brian Mulroney and Ronald Reagan.³⁵ Go forward a little bit to the issue of the North American Free Trade Agreement (NAFTA), which was extended to Canada because of a very good relationship between Brian Mulroney and George Bush Senior.³⁶ So if there is an understanding that there is a problem that both sides acknowledge must be solved and this understanding is shared by the two heads of government, there is very little we cannot accomplish.

I come forward now to the present and to the future. Present is our concern about the border. When 9/11 took place, the Canada-United States border shut down. In this situation, under instructions from Prime Minister Chrétien, I got in touch with Andy Card, the President's Chief of Staff, who had been Secretary of Transportation under George Bush, Sr. as well as the lobbyist for the Automobile Association, saying: look, our border is closed, we have to do something. Card took the point immediately and convinced the President to give Tom Ridge, just appointed as Director of Homeland Security in the White House, a priority mandate to work with the Canadians to fix the border; on our side we had John Manley.³⁷ These two gentlemen sat down immediately, got the bureaucrats together, and within two months came up with the Smart Border Accord.³⁸ This salvaged a most serious situation that was extremely dire in terms of our economics, in terms of our trade and in terms of the relationship between our two countries.

That Smart Border Accord had basically four principles, and I will just describe them quickly. The first principle was risk management: both countries would agree on the criteria making up a certain level of risk, and then come up with identical accompanying measures to manage the perceived threat. For instance, Chrysler, Ford, or GM sending cars back and forth across the border would constitute a low risk, and therefore less intrusive measures could be utilized to deal with it.³⁹ Conversely, an old container of

³⁴ See eHistory, *supra* note 31.

³⁵ See David Shribman, *U.S. and Canada in Acid-Rain Accord*, N.Y. TIMES, Aug. 24, 1983, at A3.

³⁶ See Key Economic Events: 1989 – Free Trade Agreement: Eliminating Barriers to Trade, *supra* note 4.

³⁷ See Paul Koring, *Bush adds \$2-billion to border pot*, GLOBE & MAIL, Jan. 26, 2002, at A13.

³⁸ *Id.*

³⁹ See generally *id.* (explaining that low-risk traffic is pre-screened to focus attention on high-risk traffic).

unknown provenance would need to be more intrusively examined.⁴⁰ Critical to the risk management principle was information technology, that is, finding ways to develop compatible technologies to help monitor what was going across the border. This was basically the second pillar of the Smart Border Accord.⁴¹ The third principle dealt with increasing intelligence sharing between the two countries, both within and outside North America.⁴² Finally, the fourth principle addressed the amount of resources on the border needed to ensure that freight and people could be more effectively monitored and still go across smoothly.⁴³

As we go forward in dealing with the border issues we have to deal with Mexico, as David has mentioned. I do not fault Homeland Secretary Napolitano when she makes the valid point that both northern and southern borders are equal from a sovereign perspective.⁴⁴ She comes from that part of the United States next to the southern border. She recognizes that in politics, one has to be careful about perceptions; one cannot appear unfairly to characterize Mexico as an especially dangerous, unstable or corrupt society whose border requires different measures from those applied to the fair-haired blue-eyed Canadians. So what you would have to do essentially is take any generalized value judgments out of the discourse and deal with discrete border challenges on the basis of risk management, which is, assess the specific risks pertaining to each border. Let us recognize that the Mexican border poses special problems including a large magnitude of drug and people smuggling, and to some extent, corruption within the system. The challenge here is how do you safeguard shared intelligence with the Mexican side of the border?⁴⁵

The challenge on the Canadian border to a lesser extent also involves drugs but our primary challenge is the length of the Canadian border, almost 5,900 miles. So you use different techniques than in Mexico: predator drones if you have to, remote sensing and so on.⁴⁶ But that is the issue. You look at each country and say “this is the type of risk,” and you do not characterize one as being more corrupt, less corrupt, or more difficult. That way we

⁴⁰ *Id.*

⁴¹ See Homeland Security: Action Plan for Creating a Secure and Smart Border, http://www.dhs.gov/xnews/releases/press_release_0037.shtm (last visited Oct. 26, 2009).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ See Barbara Yaffe, *Column: U.S. protectionism remains alive – to Canada's detriment*, VANCOUVER SUN, Apr. 10, 2009, at B2, available at <http://www.canada.com/scripts/story.html?id=9b108552-16d2-4926-8e96-db66633d4a39&k=51753>.

⁴⁵ See Joel Millman, *Shift is Afoot on Mexican Border*, WALL ST. J., Oct. 25, 2007, at A8, available at <http://online.wsj.com/article/SB119327622488470788.html>.

⁴⁶ See BuyUSA.gov: Canada-U.S. Trade Relationship, <http://www.buyusa.gov/canada/en/traderelationsusacanada.html> (last visited Oct. 26, 2009).

can start to finesse the issue of dealing with different borders having different challenges while still maintaining that all three countries are legitimate partners in the North American experience and trade arrangement. In this way, we can take the sting out of the politics.

The only other thing I would say in conclusion is that I do not think we should prejudice Janet Napolitano. What she was saying is a reality. The border has changed since 9/11. It is never going to be the same again. Unless we realize that, we are living in a dream world. When we board a plane, it is not the same as it was before 9/11. What we have to do is to figure out how we can make it better. How can we maintain our real interest in maintaining security but do it in a way that is much more intelligent and much less obstructive? I suspect that once the Secretary comes to Canada, sees the northern border, recognizes the degree of cooperation, and trust that exists between those who work on each side of the border in the security area, she may say "let us find ways we can cooperate and do it in a way that is based on managing the risk pertaining to each border's particular problems." One size does not always fit all. Thank you.

MR. CRANE: Send it over to you.

CANADIAN SPEAKER

Jessica LeCroy^{*}

MS. LeCROY: Thank you very much. It is also a pleasure to be here. Thank you for inviting me. Just so you know I brought props with me. Not just Governor Blanchard and Ambassador Kergin, I actually brought real props.

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I realize that it is late and that I am going last. David and I went back and forth about how I would get any oxygen on this panel. Ambassador Kergin and I also discussed how it is to serve on a panel with you, Governor Blanchard. It is a challenge. You dominate panels with your active engagement of the audience. I have seen you speak five or six times. He is good. They both are. I decided at the last minute to go last because reacting to their statements might be a good springboard for my own observations. The theme of tonight's after-dinner panel is rather long, and most of the catalogue of topics pre-dates my direct involvement. So I will focus most of my comments on "the beyond and lessons learned" part of the themes and keep remarks within the context of what Ambassador Kergin and Governor Blanchard, and David Crane have presented. See, I have a check list from their presentations. Let us see if I can keep you awake.

I would like to begin with a declaration; this is Canada's decade – to squander. If Canada does not step up at this moment to its competitive advantage, then it is Canada's decade to squander. How to date Canada's decade? Perhaps, with the International Monetary Fund's (IMF) recent statement that Canada's banking system is the strongest in the world.⁴⁷ I am both optimistic and opportunistic to believe Canada's competitive advantage can be used to leverage all of North America, both on the energy score and on the financial services score, and "beyond," substantively and geographically. We all need to think hard about this.

The border that we now have undermines the strength and prosperity of both our governments, of both of our countries. The Obama Administration has now clearly identified this prosperity as a National Security objective.⁴⁸ If we do not get the broad border agenda right now, when all the forces seem to be coalescing, we will squander this decade, and it will be a wasted decade. So at this forum, let us assume that this is Canada's decade, and that the United States will be well advised to look to Canada to take a leadership role. I sincerely hope that Canada will step up to the plate to make this Canada's decade for North America.

Now my checklist, I agree that we need to refresh or renew relations. I have just come from Washington where the scuttlebutt is that Canada had unparalleled access to the Obama Administration. I have heard it from the best authorities that no Canadian minister has ever had better and more immediate access to any administration in the United States government than

⁴⁷ See Tonda Maccharles, *Canada backs crisis plans*, TORONTO STAR, Oct. 11, 2008, at A1.

⁴⁸ See generally Press Release, Office of the Press Secretary, Joint Statement By North American Leaders (Aug. 10, 2009), available at http://www.whitehouse.gov/the_press_office/Joint-statement-by-North-American-leaders (stating that the leaders of the United States, Canada, and Mexico are committed to cooperating to ensure long-term prosperity for the three countries).

exists right now. Ministers are going up there from Canada two or three times a week. They are meeting with their counterparts immediately; they are having a dialog, people are listening. I can tell you this has not always been the case.

Now, Canada will need to change the way it does business with the United States. With this Administration it is no longer about schmoozing. It is no longer so much about who you know. It is all about coming up with fresh, new and exciting ideas. If you have a fresh and exciting idea that you think will work, Washington seems ready to listen. It is not this "old boys" network anymore. "Lobbyist" is the closest thing to a pejorative term in Washington. You go forward with your own initiatives.

I have learned a couple of surprising things already in this forum. One is that intra-firm trade is down.⁴⁹ Some of my colleagues here reported this was news to them as well. We apparently are not making things together with the same intensity. Let us see more statistics on this because, for several of us, these facts are of concern.

What was particularly alarming to me as a former Consul General is that for thirty-nine of the United States, Canada was the number one trading partner.⁵⁰ A high school group, during one of my quizzes to them on this number, once answered the number all fifty states. Not to be undone, I replied, "Well, by the time I finish being Consul General, I expect it to be fifty because if we are looking at shorter supply chains, cleaner supply chains, then it should be fifty." I have since learned here that the number has fallen to thirty-seven instead of thirty-nine.⁵¹ I want to know the two states that dropped off the list.⁵²

MR. BLANCHARD: They are probably southern states because Mexico

—

MS. LeCROY: Probably, let us look at that carefully. On lessons learned, a lot of blame has come to the United States for the current financial crisis, and not without some justification. But I would like to make the case for the distinction that I have seen in passing but do not think has been emphasized sufficiently. This distinction is one between "entrepreneurial" capitalism and "speculative" capitalism. What we have just seen with the financial crisis is speculative capitalism, sometimes under the guise of entrepre-

⁴⁹ See generally William Zeile, *U.S. Intrafirm Trade in Goods*, SURV. CURRENT BUS., July 1997, available at <http://actrav.italo.org/actrav-english/telearn/global/ilo/multinat/usintra.htm> (describing intra-firm trade).

⁵⁰ See U.S. Department of State: Canada, *supra* note 33.

⁵¹ See generally Government of Canada: State Trade Fact Sheets 2009, http://www.canadainternational.gc.ca/washington/commerce_can/2009/index.aspx?lang=eng&menu_id=46&menu=L (last visited Oct. 26, 2009) (see graphic showing the 35 states that have Canada as their leading export market).

⁵² *Id.*

neurial capitalism.⁵³ The United States is at its best when engaged in entrepreneurial capitalism.⁵⁴ That is what we will hopefully return to. The United States is incredibly resilient. We will re-emerge from the penalty box stronger, a little humbled and more regulated, but stronger.

I liked that Ambassador Kergin mentioned the hundred-word declaration⁵⁵ because there are two recently published reports in my stack of props here that have been recently published that, you should read, if you have not already. Both of them, quite short, one of them is *A New Bridge for Old Allies* that you drafted with Birgit.⁵⁶ It was so refreshing and had so many wonderful little terms and phrases. This is a teaser to encourage you to read it. The other is Carleton University's *Canada-United States Project*.⁵⁷ How many people here have read these reports?

Okay, at least some. You should all read them. Excellent, short reports. Now, I show you a report that I do not think is excellent: *The Security and Prosperity Partnership of North America*.⁵⁸ I would like to show and tell just how long and heavy it is. Birgit says that she keeps this on her desk and that she refers to it. Of all the things that were listed on the agenda for tonight, this was the only one that I was personally involved in, and I have never seen more bureaucratic churning in my life.

I would like to ask Birgit and Ambassador Kergin to go back and do a survey of the people who were involved in this on the working-level groups to ask how many of them had actually crossed the Canadian-United States border. I can tell you a number of people that were writing these regulations and procedures that had never been to Canada. I delivered probably about twenty copies to different officials in Ontario, and they looked at me with the most pensive, pathetic looks I could describe. I had to give speeches on this and within two minutes of my mentioning the Security and Prosperity Partnership of North America eyes would glaze over. I cannot tell you how many questions I had. And the response would come back to me "they do not understand either." So I would like to hear a defense of the project. Maybe it was good for engaging people and making them aware of what was

⁵³ See generally Peter Drucker, *Drucker on Management*, WALL ST. J., Sept. 30, 1986, at 34.

⁵⁴ See John Henry Schlegal, *On the Many Flavors of Capitalism or Reflections on Schumpeter's Ghost*, 56 BUFF. L. REV. 965, 997 (2008).

⁵⁵ See eHistory, *supra* note 31.

⁵⁶ MICHAEL KERGIN & BIRGIT MATTHIESEN, A NEW BRIDGE FOR OLD ALLIES: CANADIAN INTERNATIONAL COUNCIL BORDER ISSUES REPORT (2008), available at <http://www.canadianinternationalcouncil.org/download/resourcece/archives/workinggro/cicborders>.

⁵⁷ See CARLETON UNIVERSITY CANADA-US PROJECT, FROM CORRECT TO INSPIRED: A BLUEPRINT FOR CANADA-US ENGAGEMENT (2009), available at <http://www.carleton.ca/ctl/conferences/documents/final-blueprint-english.pdf>.

⁵⁸ See generally SPP.gov: A North American Partnership, <http://www.spp.gov/> (last visited Oct. 26, 2009) (listing all SPP reports).

going on. But really, for goodness sakes, it is like the United States Tax Code.

MR. CRANE: It is a lot shorter.

MS. LeCROY: And given the number of nominees for positions in the Obama Administration who have had problems with the United States Tax Code,⁵⁹ I can imagine there maybe some reticence. Okay. Then now we have Mr. Crane's article in the Literary Review of Canada.⁶⁰

MR. BLANCHARD: That is an oxymoron, is not it?

MR. CRANE: Yeah.

MR. BLANCHARD: Just wanted to see if you were still awake.

MS. LeCROY: It is actually a really good article, and I commend you on it.

MR. CRANE: You are obviously a good panelist.

MS. LeCROY: However, you put a great deal of stock in a report that the Central Intelligence Agency did, *Global Trends 2025: A Transformed World*.⁶¹

MR. CRANE: I have read a lot of them.

MS. LeCROY: It would be a good exercise to take the other ones and see how many of them were true and how many of them actually proved to be valuable in forecasting or predicting the future?

MR. CRANE: Well, I got that from the 2020 one, and that is certainly right on.

MS. LeCROY: Okay. But we are talking about an agency that failed to predict the fall of the Soviet Union and also predicted weapons of mass destruction in Iraq.⁶²

MR. CRANE: Are we having a debate now?

MS. LeCROY: No.

MR. BLANCHARD: Now you know how Jim Kramer felt.

MS. LeCROY: Part of the title of this panel is Lessons Learned, and I think we need to be very careful with what we extract as lessons learned. There is the age old saying that those who do not understand history are des-

⁵⁹ See David D. Kirkpatrick, *In Daschle's Tax Woes, a Peek Into How Washington Works*, N.Y. TIMES, Feb. 2, 2009, at A1.

⁶⁰ See generally David Crane, *Canada's Global Choices*, LITERARY REV. CAN, Mar. 2009.

⁶¹ NATIONAL INTELLIGENCE COUNCIL AND CENTRAL INTELLIGENCE AGENCY, *GLOBAL TRENDS 2025: A TRANSFORMED WORLD* (2008), available at http://www.dni.gov/nic/PDF_2025/2025_Global_Trends_Final_Report.pdf.

⁶² See generally RICHARD SAKWA, *THE RISE AND FALL OF THE SOVIET UNION 1917 – 1991* (1999) (explaining the history of the fall of the Soviet Union); see also Federal Bureau of Investigation: Weapons of Mass Destruction, http://www.fbi.gov/hq/nsb/wmd/wmd_home.htm (last visited Oct. 26, 2009) (giving general information about weapons of mass destruction).

tinged to repeat it. But there is also the military saying that we are fighting wars by the last plan, not according to current circumstance.

MR. CRANE: We are fighting the last war.

MS. LeCROY: Yes, and while I think there are certain lessons that we need to consider the current situation and the historical circumstances are so different to defy comparison with facile analogies. For example, saying that we are facing The New Great Depression. The circumstances of The Great Depression were completely different from the circumstances that we are facing today.⁶³ We need to be very, very careful about how we predict the future. There are numerous funny quotations on this subject like, "the only function of economic forecasting is to make astrology look respectable." However, I think the most apt is, "the best way to predict the future is to create it."

This leads me to the final prop. I understand that Catherine Pawluch mentioned my chapter in *American Myths: What Canadians Think They Know About the United States*,⁶⁴ in her presentation today, entitled, *Can Canada be as Competitive, Innovative, and Entrepreneurial as the United States?*⁶⁵ One would ask in these circumstances why would they want to be? But the acronym for innovative, competitive, and entrepreneurial is ICE. And I think that Canada should not let the United States be more ICE-y than Canada. I turned down royalties on this chapter so that it could be released to the Internet. If you are interested you can find the article free on the internet on the Council on Foreign Relations cite. It was written before the financial crisis, and is a bit dated now. But there are certain things about Canada that give you the competitive advantage, and if this is to be Canada's decade, as is predicted that it could be, Canada has to recalibrate what its competitive advantage is with the United States, and then create a better future.

In this essay one, focus is on education. Canada is more committed to public education than the United States is. In the long run, although the United States has these superlative higher education institutions, Canada scores significantly better on all the tests on general education of the public.⁶⁶ This may be one of Canada's competitive advantages for the future. So with this and the late hour, I will end. Thank you.

⁶³ See Chris Isidore, *The Bailout: What's at Stake*, CNNMONEY, Sept. 26, 2008, available at http://money.cnn.com/2008/09/26/news/economy/bailout_impact/index.htm?cnn=yes.

⁶⁴ Jessica LeCroy, *Can Canada Be as Innovative, Competitive, and Entrepreneurial as the United States*, in *AMERICAN MYTHS: WHAT CANADIANS THINK THEY KNOW ABOUT THE UNITED STATES* 151 (Rudyard Griffiths, ed., Key Porter Books 2008).

⁶⁵ *Id.*

⁶⁶ See generally Scott Davies & Floyd M. Hammack, *The Channeling of Student Competition in Higher Education: Comparing Canada and the U.S.*, *J. HIGHER EDUC.*, Jan.-Feb. 2005 (comparing the United States and Canada in terms of higher education).

DISCUSSION FOLLOWING THE REMARKS OF JAMES BLANCHARD,
MICHAEL KERGIN, AND JESSICA LECROY

MR. CRANE: I was going to ask the panelists questions, but we are running low on time. I think it is better if those of you who have been listening ask questions. I could give a detailed explanation of National Intelligence Council forecasting techniques, but maybe some other time.

MR. SMITH: Brad Smith. I am a longtime associate of Henry King, and I would like to speak for both of us, if I may.

MR. CRANE: Okay.

MR. SMITH: Today we have had and tomorrow we will have a sort of cross-border schmooze. We, Henry and I, were the co-chairmen of a group from the Canadian Bar Association and the American Bar Association for twenty-five to thirty years, and we were occupied with what is up there behind you; the law concerning Canada's relations with the United States.⁶⁷ And I would like to communicate, and I hope on behalf of Henry King as well as myself, that we labored on the basis that the two countries were committed to the rule of law, and that our relations ultimately were governed by the rule of law. While there may be a whole range of things to be negotiated in good faith and with the powers that resided and he sought, there were nevertheless issues that were governed by law, by treaty. Collectively we said to the governments and to the public, if they were listening, which they probably were not, that those issues ought to be decided by panels, by lawyers, by tribunals, which would in effect decide issues on the basis of law.

Now, this would not be the whole range of things, but a narrow range where there would be treaties that needed to be interpreted. For years we said, "get an arbitral tribunal, get an impartial body to decide these things." We are governed on each side of the border by that rule of law and that was the essence of what we tried to give the community through the Canada–United States Law Institute, through the Bar Associations. Again, I would like to say to this gathering with respect, and I hope with the backing of Henry, that ultimately you must rely on the law and your respect for the law, and you must govern your relations where those things depend on the law by impartial means.

⁶⁷ See generally Canada-U.S. Law Institute: About the Institute: Executive and Advisory Board – Biographies: T. Bradbrooke Smith, http://www.cusli.org/about/bios/bio_smith.html (last visited Oct. 26, 2009) (stating that Mr. Smith was a co-chairman of the Joint Working Group on Dispute Settlement); see also 2008-2009 NIAGARA INTERNATIONAL MOOT COURT COMPETITION AGENDA 7 (2009), available at http://cusli.org/niagara/documents/2008_2009_docs/NIMC_2009_Agenda_Guide.pdf (stating that Dr. King was a co-chairman of the Joint Working Group on Dispute Settlement).

So, without taking anything away from the contributions in the diplomatic area, in the cooperative area, and through the goodwill of all of the people who are gathered here, we say, and we have said for a long time, do something to ensure that your legal relations are determined by law. That is the only thing that I would like to say on behalf of I hope both of us, and which I think is very important for the Canada-United States Law Institute and this gathering.

MR. CRANE: Thank you very much. When we went through the Federal Transit Association negotiations, there was an effort to try to introduce a legal framework that would overcome the asymmetry between the two countries.⁶⁸ And in a way, this is why there was so much disappointment in Canada over the final outcome of the softwood lumber dispute because it was felt that although we were supposed to operate on the basis of the rule of law, the final settlement was basically one of party politics rather than the respective outcomes of various tribunals.⁶⁹ Questions?

MR. CORCORAN: May I ask another oil question to our colleague? I understand that a number of geologists fielded in Mexico's Cantarell Field, which declined in production by over sixteen percent this year, will not be sufficient to permit exports from Mexico between and 2010 and 2012.⁷⁰ How well does that bode for the stability of the Mexican government and the vitality of the North American Free Trade Agreement on our southern tier?

MR. BLANCHARD: I do not know for sure. But not to dismiss your question on oil sands earlier, the Obama Administration is very understanding about the importance of Canadian oil and oil sands and the technological and the environmental challenges, which I think can be met.⁷¹ And I see the oil sands, frankly, as a blessing to the United States, if it is properly managed, and a blessing for Canada, even though there are serious environmental challenges.

MR. CORCORAN: Well, I think we agree.

MR. BLANCHARD: I think they are going to become more and more important because of instability in the Middle East –

MR. CORCORAN: Absolutely.

MR. BLANCHARD: Venezuela, and perhaps Mexico. I think either Jessica or Mike knows more about the Mexican situation, so if you want to respond, I would rather someone better informed –

⁶⁸ See generally UNITED STATES OF AMERICA DEPARTMENT OF TRANSPORTATION FEDERAL TRANSIT ADMINISTRATION: MASTER AGREEMENT (2008), available at <http://www.fta.dot.gov/documents/15-Master.pdf> (providing details about the FTA negotiations).

⁶⁹ See Michael Carrier, *All Aboard the Congressional Fast Track: From Trade to Beyond*, 29 GEO. WASH. J. INT'L L. & ECON. 687, 708 (1996).

⁷⁰ See generally Marla Dickerson, *Production decline worsens at Mexico's biggest oil field*, L.A. TIMES, Feb. 8, 2007, at 1.

⁷¹ See CBC News, *supra* note 14.

MR. KERGIN: My only comment would be I think Mexico has much bigger problems in the immediate sense than the oil problem that you have referred to.

MR. CORCORAN: It will certainly add to them, though, yes?

MR. KERGIN: It may or may not. I think more important is the rule of law in Mexico, that is, for me, somewhat more in doubt in the immediate or medium term than the economics in Mexico. Its economics are actually not too bad. It may help however if Mexico collected a few more taxes from its people, I know that is an anathema in the US, because Mexico's Government operations are financed largely through *Petróleos Mexicanos*.⁷²

MR. CORCORAN: Right.

MR. KERGIN: The real concern I have about Mexico is the question of the rule of law and the ability of the federal government to overcome the cartels that effectively control some of its states, the huge problems of gun running going south, and the Colombian and now transshipped Mexican drugs going north to the United States and Canada.⁷³ This is for me the more immediate challenge. It is really a question of that country holding itself together. If they can hold themselves together, they will get through the economics of the oil issue.

MR. CORCORAN: Well, certainly the *Petróleos Mexicanos* problem is a serious one since it is such a major source of funding, but I do not dispute that your concerns are entirely valid, I merely suggest that the oil issue may provide yet another challenge.

MS. LeCROY: Just on that, from a national security perspective, we might want to examine tying the oil sands in Canada to the strategic oil reserves that we keep in the United States. This could be a very useful way of keeping the oil sands on the front, but also looking at it as part of a National Security objective for North America. I have not seen this suggested anywhere, and I would throw it out there for consideration.

MR. CRANE: Could we come back to that? We have John Tennant, and then we have a question over here.

MR. TENNANT: Homeland Security has been very much the focus of the relationship between Canada and the United States. How do we broaden it? Is there a scope to broaden it? Where is the State Department in the future?

MR. BLANCHARD: Well, I think it is interesting that when President Obama took his trip to Ottawa he was represented by the State Department,

⁷² See PEMEX: About PEMEX, <http://www.pemex.com/index.cfm?action=content§ionID=123> (last visited Oct. 26, 2009).

⁷³ See generally Central Intelligence Agency: World Factbook: Mexico, <https://www.cia.gov/library/publications/the-world-factbook/geos/mx.html> (last visited Oct. 26, 2009) (indicating that Mexico has a drug trafficking problem).

Treasury, the Environmental Protection Agency, and a deputy from Homeland Security.⁷⁴ But I think it is probably exaggerated as to how much power they have. What Ambassador Kergin said earlier is really true; that is when you get down to specific issues, and all of a sudden look at practical solutions, not theories, we may actually look at new laws. One of the things I worked on as Ambassador was getting a new open skies law, which was really important.⁷⁵ I have always felt that if you are not working to improve relations, they are going to slide.

You must have an objective agenda, maybe a new financial regulation treaty, and maybe something else. My concern with Homeland Security is not so much that border management has changed since 9/11. Mike Wilson talks about the thickening of the border.⁷⁶ We have the passport issues and all these issues. The implication is that this has somehow changed since Obama got elected, and that is my only concern. I do not want to be in a situation where the Obama Administration somehow believes that there is a bigger border problem than there was a few years ago. I do not believe that and I am not saying they do, but there is the insinuation by some that they somehow believe this. I think we should use the opportunities presented within the security issues to make the border smoother, quicker and faster, and acknowledge the reality of the completely integrated economy, including the need for tourism and travel.⁷⁷

I am hoping that under Janet Napolitano, who was a governor and has dealt with bread and butter issues, the Department of Homeland Security will use the security challenge to actually make things more modern and efficient, as well as work with the State Department, Energy Department, the governors and mayors, and this law institute to be practical and sensible.

MR. CRANE: We have got two questions over here, one and then two.

MR. ULRICH: I have been a friend of Henry King on a personal level for a quarter of a century. I, like Dan, check in with my mentor every eight hours it seems. Prior to the dinner tonight, he asked me that, if I had an opportunity, I pray for him, and to share that he is deeply saddened that he

⁷⁴ See Press Briefing by Denis McDonough, Deputy National Security Advisor for Strategic Communication, Office of the Press Secretary, Press Briefing On the Trip of the President to Canada (Feb. 17, 2009), available at http://www.whitehouse.gov/the_press_office/Press-Briefing-2/17/09.

⁷⁵ See Government of Canada, *supra* note 11.

⁷⁶ See Hon. Michael Wilson, Can. Ambassador to the U.S., Speech on Canada-US Relations at The Empire Club of Canada and the Canadian Club of Toronto (Jan. 22, 2007) (transcript available at <http://geo.international.gc.ca/world/site/includes/print.asp?lang=en&print=1&url=%2Fcan-am%2Fwashington%2Fambassador%2F070122-en.asp>).

⁷⁷ See generally MICHAEL HART, A TRADING NATION 441 (UBC Press 2002) (stating that Canada's first priority remains the United States); see also U.S. Department of State: Canada, *supra* note 33 ("the relationship between United States and Canada is closest and most extensive in the world").

could not join us this evening. However, Mr. King also wanted me to extend congratulations to his colleagues for the 25th anniversary of the Canada–United States Law Institute.

MR. CRANE: Question?

MR. HEARN: Bill Hearn from the Canadian law firm McMillan. Jessica, you referred to the Canadian International Council Report written by Michael Kergin on the border. One of the recommendations in that report is the Joint Border Commission.⁷⁸ I would appreciate it if you could talk a little bit about that. I would appreciate a response from James and Jessica as to the likelihood of that coming about.

MR. KERGIN: Bill, how kind of you to ask. My sense in United States–Canada relations is that when there is a particularly tough problem, then it is a good time for the two heads of government to get two trusted officials together to recommend solutions. They can be either Cabinet ministers or secretaries, but I think it would be better to select people who are knowledgeable about the issues, and yet do not have operational roles, to look at the problem and work with officials. There should also be a very defined timeline for these officials to come back with recommendations that are outside the box, and I hate to use that expression, that are looking at the problem in a completely different light.

The key is that such individuals should not have a fixed prejudice about the issue. The advantage is that they could free up the cabinet secretaries and the ministers who are operationally involved and extremely busy. Right now, Janet Napolitano is absolutely immersed in what is going on in Mexico. And yes, we will probably get a visit from her in about two weeks, but the focus is not on Canada right now. Mexico is her current problem from the security perspective. And our own Peter Van Loan is pretty busy doing other things. So the advantage is that you could get two people who can be given exclusive mandates by their heads of government and come back to report.

I think it is very timely. As Jim has mentioned, we have a new United States administration that is prepared to look at the world in slightly different ways. We have got a situation where the economics are really challenging for North America. We are struggling to find markets abroad, we are finding that other economic groupings are starting to pull together; the European Union is now absorbing Eastern Europe, which, over the long term, will probably be a very successful merger and acquisition for them.⁷⁹ We are seeing regional groupings in Latin America.⁸⁰ If we do not pull together in

⁷⁸ MICHAEL KERGIN & BIRGIT MATTHIESEN, *supra* note 56.

⁷⁹ See Frank Emmert, *Rule of Law in Central and Eastern Europe*, 32 FORDHAM INT'L L. J. 551, 573 (2009).

⁸⁰ See Louis F. Del Duca, *Teachings of the European Community Experience for Developing Regional Organizations*, 11 DICK. J. INT'L L. 485, 524-34 (1993).

North America, my sense is that we will start to lose global market share and competitiveness internationally.

This is a time to start looking at the border in a new way. How can we make it work better? Our economies are integrated, and they will continue to be integrated. The idea is that some trusted individuals with the confidence of their heads of government would have a defined timeline, six months, to report back to their respective heads of government and then move forward. Acid rain probably is one of our best examples of when we had that sort of thing happen, and sure enough we were able to crack that nut quite well.⁸¹ So that is the idea.

MS. LeCROY: You say at the very beginning of your report that you are going to recommend this commission. I am skeptical of new bureaucratic structures because look at what we have with the Security Prosperity Partnership of North America (SPP).⁸² But I can tell you that by the time I reached the end of your very short report, I was convinced this was a good idea, if you could have people of stature heading it. However, it will only work if the commission has a short timeline to make recommendations and you have people of stature heading it.

I have to tell you, we could fill this room with reports that have been written, that just collect dust. If we are going to do this, it has to be done with full force and vigor. I would recommend that this group itself look at this and then agree that it should be supported. I was convinced by the time I reached the end of the report that this was a very good idea.

MR. BLANCHARD: I would simply add that I think they should be people not only of stature, but people with very real authority to follow up. Otherwise, it is just a really good blue ribbon report. They have got to have good authority. Homeland Security, State, Transportation, Coast Guard, Trade, Attorney General, Agriculture. They must have real authority, and I think that if they focused on it, they could do a lot of good.

MR. CRANE: Years ago when I was working the press gallery in Ottawa, we used to go down to Washington on a regular basis. There was an annual meeting of ministers from Canada and the United States, and that has ended. I do not know why, and perhaps, Michael, you might know why. But I remember I would fly down with them, this was in the Trudeau years, and every year there was a meeting that the ministers of Finance, Trade, Commerce, and Energy Department, or whatever their names were at the time, and so forth. They would meet as a group with their United States counterparts as a group, and the meeting would last all day and sometimes over to the next day.

⁸¹ See generally Charles Green, *Canada and U.S. Formally End Their Long Dispute Over Acid Rain*, PHILA. INQUIRER, Mar. 14, 1991, at A3.

⁸² See SPP.gov: A North American Partnership, *supra* note 58.

Now, there is another mechanism that was sometimes employed when chemistry between leaders did not work. Diefenbaker and Kennedy never got along; Pearson got along famously with Kennedy mixed with Lyndon B. Johnson; Trudeau and Nixon did not get along. But in the Trudeau-Nixon years, John Turner was the intermediary and, when he was Finance Minister, would go down on a regular basis to meet with George Schultz and others.⁸³ He would even go to the White House and see the President.

I think that, as Jim mentioned, the relationship with Harper and Obama is very close, but I think the relationship between Chrétien and Clinton was also a very close one.

MR. BLANCHARD: Oh, absolutely. That is correct.

MR. CRANE: But the relationship between Chrétien and Bush was not very good.⁸⁴ That may have been more the fault of Bush than Chrétien. I am not quite sure. Whatever the case may have been, when the leaders do not get along, there is sometimes senior cabinet ministers who then play a similar role.

MR. BLANCHARD: I would like to comment on that. As I think Jessica said earlier, there has been an incredible interchange between cabinet ministers already. A little bit of that happened even before the trip to Ottawa by President Obama, although they were trying to keep that under wraps until they had their meeting.

Yes, Chrétien and Clinton were very close, and of course, Chrétien was fabulous to me, so you will hear nothing but good about Jean Chrétien from Jim Blanchard; I love the guy, and I know how he got elected and had three mandates too. But what is interesting to me is that he did not initially want to visibly be too close to President Clinton because he felt that the Bush and Reagan relationship with Mulroney had just been too sycophantic. I mean, he just felt that Mulroney looked like he was fawning all time over the United States President. So he was cautious, but eventually we could not pry them off the golf course together. That took a while.

⁸³ See generally Parliament of Canada: Prime Ministers, <http://www2.parl.gc.ca/Parlinfo/Compilations/FederalGovernment/PrimeMinisters/Gallery.aspx?Language=E> (last visited Oct. 26, 2009) (stating Trudeau was Prime Minister from 1968-1979 and 1980-1984); see also Richard M. Nixon, <http://www.whitehouse.gov/about/presidents/richardnixon> (last visited Oct. 26, 2009) (stating that Nixon was President from 1969-1974); Department of Finance Canada, <http://www.fin.gc.ca/comment/minfin-eng.asp> (last visited Oct. 26, 2009) (stating John Turner was Finance Minister from 1972 to 1975).

⁸⁴ See generally Richard Cleroux, *Bush is a moron, says Chrétien aide*, TIMESONLINE, Nov. 23, 2002, <http://www.timesonline.co.uk/tol/news/world/article834547.ece> (describing relationship between Chrétien and Bush); see also Tim Harper, *Canadian Prime Minister Lets Loose on 'Cowboy' Bush*, TORONTO STAR, Apr. 5, 2001, available at <http://www.commondreams.org/headlines01/0405-03.htm> (describing relationship between Chrétien and Bush).

I also want to mention that I think there should be an annual meeting between the President and the Prime Minister, and probably a semiannual meeting between the State and Foreign Affairs. When I was Ambassador, and I think now as well, the cabinet members were back and forth all the time. It was not just annual; they were back and forth all the time. We had a regular revolving door at our residence in Ottawa with the different cabinets. They would meet for a day or two. Everybody from Central Intelligence Agency to the Department of Justice, you name it, were all there all the time. There was so much military back and forth that it would have scared the Canadians to know how much. The entire Joint Chiefs of Staff had lunch with their counterparts in our house in Ottawa. They flew together in a 747. There is no country in the world where that could happen except our two. So there is a lot of interaction. The interchange, the relations are just overwhelming. Just to stay on top of that is a real job for a consul general or an ambassador.

So it is really going on, David, and I think it is going to increase in ways that are going to be very important to our two countries, because all of a sudden they are getting together to talk about how we can work together. They are not talking about differences because the challenges right now with the economy and the world are so serious. No one is nitpicking anymore, which is a good thing.

MR. CRANE: I was going to ask in relation to that to talk about this as being a period of opportunity. When you look at the agenda, the administration has faced really urgent issues. The United States developing a China relationship is obviously very important. Restoring the Russia relationship is very important. The Middle East is very important. Solving Mexico's urgent issues is very important. Getting the financial crisis resolved is very important, and so forth. When you look at the urgency of those things, how does Canada get attention? I would ask Michael and Jim to answer that.

MR. KERGIN: I think, as Jim has said, the fact that President Obama came to Canada first has set a tone. And Jessica is absolutely right. Getting Canadian Ministers in and out of Washington a fair amount is also helpful. Not only that, it is equally important that officials are getting excellent access on the hill. One of the things that Canadians forget is that much of the relationship between Canada and the United States is set by the first branch of government, which is Congress.⁸⁵ So that is very important.

How do we get attention? We can talk about Afghanistan, and there is no question that Canada's participation in Afghanistan has given Canada a certain degree of access in Washington. But the question is what sort of percentage are we talking about? Is it three percent, five percent more access? Slightly more access?

⁸⁵ See Peter C. Dobell, *The Influence of the United States Congress on Canadian-American Relations*, INT'L ORG., 1974, at 904.

That said, the decision of whether or not Canada should be in Afghanistan should not be predicated on whether or not it is going to get Canada more or less access to the United States. It should obviously be predicated on what the Canadian interests with respect to Afghanistan are. Is this something that Canada should be doing? Is it something that has some future, etcetera? And one can have a very good debate about that.

But I come back to the fact that as the economic relationship is played out in Congress; we need to ensure that our Ministers, Ambassador, and Embassy are very active in Congress. It is essentially an intermestic relationship that Canada has with the United States; international between two equal jurisdictions.⁸⁶ But the major drivers in our relationship are essentially domestic: security, energy, agricultural, and environmental issues; and those play out in both branches of government.⁸⁷

MS. LeCROY: There is no relationship more important than that between the United States and Canada. Full stop, period. National Security is dependent upon prosperity. We are talking about the largest trading relationship in the history of the world. If that cannot garner attention in Washington, then I think we have got a problem, a big problem. But when I was Consul General, Canadians would come up to me and say, "Americans do not know anything about Canada." And my response to that was, "And just whose fault do you think that is?"

MR. BLANCHARD: It is interesting, too, because a lot of Canadians will say, "we know more about you than you do about us." And that is true, but that is not always saying a whole lot. The United States is more than New York, Disney World, California and Florida. I used to have a map of the Great Lakes in my library in Ottawa, and when someone would do that, a Canadian, I would ask them, "What is that?" They never got it. Maybe George would have, but they never got the fact those are the Great Lakes surrounding Michigan. I mean, it was really unusual.

There is a lack of information on both sides, particularly on our side. We really would have to do a lot to inform and explain our neighbor next-door, which often I wrote in my book was like a one-way mirror where when you are up in Canada, you are looking out watching the crazy Americans doing whatever we do.⁸⁸ For Americans looking it is just a mirror, they think it is a mirror of themselves.

So we have a lot of work to do. But I would say that in dealing with the world, Barack Obama, our President, is a multilateralist. He really wants to work with the world. This should fit very nicely into the Canadians' psyche

⁸⁶ See U.S. Department of State: Canada, *supra* note 33.

⁸⁷ Dobell, *supra* note 85, at 908-12.

⁸⁸ See JAMES BLANCHARD, BEHIND THE EMBASSY DOOR: CANADA, CLINTON, AND QUEBEC (McClelland & Stewart 1998).

because Canada has always loved multilateral organization. Not just because they want to be part of the world community, but because it is also a way to kind of corral the United States. The truth is that I think Barack Obama is going to listen to, and consult with Canada a lot before we start working with the rest of the world. That is why that first trip was so important. I think Canada will have a lot of influence over the United States if it takes the time to talk, as it is right now, about the big issues, and not nitpick salmon and lumber and stuff, but stick to the big agenda in the world.

I think Canada will have a lot of influence because if we cannot convince the Canadians that we have the right policies in the world, there is probably something wrong with our policy. A lot of people around the world think the same thing. If the Canadians are not with the Americans, what is going on here?

MR. CRANE: I guess if Obama is going rustle out to Canada, we better make sure we have something useful to say. Dan has asked me to wind this up because his Friday night bowling league starts at 10:00. But before I do that, I had promised that the panelists could have one last sort word that they might want to leave us with. Let us start at the far end and come back.

MR. KERGIN: You did not tell me about that, David.

MR. CRANE: Well, let us see how fast you think.

MR. KERGIN: I think Jim has it right in the sense that there are prospects for a new beginning in this relationship. We will be resetting this relationship because the cast of characters at both ends of Pennsylvania Avenue are somewhat different. Despite the fact that for the last two years the Democrats have dominated the Congress, the pressures and dynamics will now be very different from what we have known for the last eight years. Generally speaking, Democrats are closer to where Canada is in its multilateral and international interests. On the other hand, concerning economic and trade files, we will have a real challenge over the coming years. It is a hefty word, but it is protectionism, to be honest with you, which will be the major problem.

But the present provides a good opportunity to engage. Our government in Ottawa is doing that. And, as what was quoted so many times today, Rahm Emanuel's comment that "no good crisis should go to waste" is an opportunity for us to work with the United States, particularly on the economic side, in dealing with some of the issues, which I think are pretty grave and which we have not seen in our country and in the United States for a good several decades.

MR. BLANCHARD: The relationship between Canada and the United States is not just a partnership that works. It is the envy of the world when diplomats and the leaders look at things, and people do make a difference.

The reason I am here is because I got a nice letter from Henry King. This is my third trip to this forum. My partner, Rick Newcomb, reminded me of it

and forced me to deal with it, and I could not say no to Henry. So, I hope we will all remember him fondly because that is why I am here. And as much as I have enjoyed it, David, remind me not to be on a panel with you again. Mike, David, but really to Henry, a truly great citizen of the world and a wonderful friend.

MS. LeCROY: I am really sorry that Dr. King could not be here tonight and that I never had an opportunity to meet him. I really regret that. I guess I would just repeat what I said earlier. I truly believe that this is Canada's decade, and that I really want Canadians to step up, to be active in Washington as Ambassador Kergin just mentioned and it seems that you all are supporting. I am very interested to be an observer and perhaps a participant in Canada's decade in North America. Thank you.

MR. CRANE: I guess I am allowed a last word as well. I first encountered Henry King when the phone rang one day and this voice of somebody I never met said, "Now, I got Gary Haufbauer in this conference we are having in April from the Institute for National Economics, and you should be the Canadian who is the other person on the panel. This is the date, and this is where it is being held." And that was it.

I have one other thought as well. We talked about the Canada-United States relationship, but I think that we cannot think of that relationship in isolation from what is happening in the global community. We have to look at how the relationship helps the world deal with the big picture issues of how we create a global community that is stable, peaceful, prosperous, equitable, and sustainable in the coming decades. It is the contribution North America can make to the global solutions that I think will be most important.

On your behalf, I would like to thank all the panelists. I think that they have provided us with great food for thought after a very nice meal, although we could talk about many of these things for much longer. I would love to further debate the issue of oil sands and climate change, and what is going to happen in the United States' own climate change because I think that is going to be a very complicated issue. I am not that optimistic, but that is for another day. So on your behalf; I would like to thank our three panelists, who I think have given us good food for thought.