

**TRANSCRIPT OF Q&A SESSION AT THE NEW YORK STATE BAR
ASSOCIATION (NYSBA) RULE OF LAW PLENARY SESSION
ON 28 OCTOBER 2009 (WEDNESDAY), 5.15 PM, AT MAXWELL CHAMBERS**

Participants

MinLaw

Name	Designation
Mr K Shanmugam	Minister for Law and Second Minister for Home Affairs

NYSBA

Name	
Mr James Duffy II	Chair of Plenary
Mr Michael Gilligan	Panellist / Chairman of the International Section of NYSBA
Mr M N Krishnamani	Panellist / President of the Supreme Court of India Bar Association
Mr James Silkenat	Panellist / World Justice Project

Transcript

Mr James Duffy II:

First, Mr Minister, I want to thank you for being with us a second time. I understand you are very busy and there are many demands on your time. We are very honoured that you addressed us not just once, but twice. I was very impressed with your remarks - very consistent with our conversation yesterday. The first thing I would like to do is try to explore with you and your panel the concept which we spoke about briefly yesterday and perhaps I can ask you to comment on this particularly in light with your history with the British government for many, many years until 1959. In your understanding of the rule of law, does the freedom of choice include the right to make bad choices?

Minister:

Deeply philosophical question. Let me try and answer it. I think the answer would of course be yes. But probably I think the real question is – how does it interact with or is circumscribed by what I described as our approach.

Freedom of choice must include the right to make bad choices. But where it impacts society, and where it impacts on key aspects, say for example, stability, society should have a right to have a say. Let me explain that by specific reference to an illustration. Let's say, hate speech on the internet or publications. If anyone stood up and said I am expressing or I am exercising my right of free

speech by saying that “all Jews are hateful”, or “all Muslims are bad”, we will arrest and charge him. Because for us, that freedom of expression does not extend to this sort of hate speech where violence against a particular ethnicity or religion or belief can be encouraged. And we have charged people for putting up such notices. We are particularly sensitive about it in our Chinese, Muslim, Hindu context. People have been charged for putting up notices against one or the other ethnic communities where it goes beyond some expression of opinion to incite them towards violence. So you can pick out examples. So I will say you draw the line around society’s interest. And I will add a further point. We will probably define society’s interest in a narrower way than you will – that is, we will intervene more frequently and more often compared with you. Your philosophy is to start with the individual as paramount. He must exercise his interests and his responsibilities, and communitarian interest should hardly ever intervene. We take a slightly different philosophical approach ...

Mr Silkenat:

Just to respond briefly. I think the decision about who gets to make the decision about what is a bad choice really is important. Most governments, certainly including the United States, do not have leaders that make universally good choices on that, and I think it is rare for any government to have the leadership that can step in office and decide well, for our citizens, “this is a bad choice, and we don’t want you to follow that path”.

Minister:

Just to put my answer in context. I think I will agree that it is not for us to make decisions for citizens on good choices or bad choices that affects them. I think I qualified it by saying that when it impacts on society and, particularly in the context of the speech that I gave, we do believe that we can make those decisions. I gave you a specific example, for example of hate speech. We then subject ourselves to elections and people decide whether we are right or wrong or if a different approach should be taken.

Mr Krishnamani:

Mr Minister, I have two questions.

One is, I read in the Internet that in Singapore, they say the ruling party has been in power for the last several decades. And that the opposition is not able to survive, and that again the political opposition - cases when they fight, what happen is that they could not win and come back and it was a great difficulty. Though one matter went up to Privy Council also. That is one thing.

Second point is, I read that in your judiciary, the judges are not independent because they are interchangeable with the law officers in the Attorney-General’s office. Is it correct? I read like that.

And another thing is, one more thing. In Western, In Germany and Japan, they have lost their rights clearly where somebody violates the fundamental rights of others, are somebody, he's the violator of human rights of others. He's not entitled to any human rights or any fundamental right. Is there such a law in your country?

Mr Duffy II:

You probably like to respond to these three separate questions.

Minister:

Yes, I thought there were four actually. I will respond to the first three and the fourth I'll have to ask you to explain again ...

I think the first question was, the PAP had been in power so long, actually since I was I was born, so... doesn't that by itself show ... does that indicate a dictatorship? And doesn't that indicate an abrogation of individual rights? Can there really be free choice when one party stays in power for so long? I thought someone might ask me this question, so I have brought for you, and I am going to take the liberty of reading out an extract from Bryan Caplan ... a leading American economist, who published a book called "The Myth of the Rational Voter". I think the best answer I can give you is in an article he wrote. This is what he says. Published in July 2009.

"Singapore, when compared to almost any other democratic country, has two deeply puzzling features.

Puzzle #1: It frequently adopts policies that economists would call "economically efficient, but politically unpopular". For example, Singapore has near-unilateral free trade, admits large numbers of immigrants, supplies most medical care on a fee-for-service basis, means-tests most government assistance, imposes peak load pricing on roads, and fights recessions by cutting employers' taxes. These are policies that could easily have cost politicians their jobs in many other democracies, yet they have stood the test of time in Singapore.

Puzzle #2: Even though Singapore follows the forms of British parliamentary democracy, it is effectively a one-party state. The People's Action Party (PAP) has held uninterrupted power since the country gained Home Rule in 1959, has never received less than 60 per cent of the popular vote, and has always enjoyed an overwhelming majority in Singapore's Parliament ...

One common conclusion is that Singapore must be - despite its Westminsterian pedigree - a thinly veiled dictatorship, which informally suppresses political rivals and rigs its elections, which in turn allows the Government to unilaterally adopt unpopular (yet efficient) policies. This "Singapore as a thinly-veiled dictatorship" theory coheres neatly with Western stereotypes about the city-state, and elegantly resolves the two paradoxes. Unfortunately, this dictatorship thesis

ignores three basic facts.

First, Singapore has several legal opposition parties. They may face minor indignities but hardly live in mortal fear of the PAP. Pressure from the dominant party is a feeble explanation for the opposition's near-total failure to gain political office, given that many countries (like Pakistan) demonstrate vigorous electoral competition despite far graver dangers."

And my point is, ... even if you put tanks and guns on the streets, if people are really unhappy, we won't be in power. I don't think I really need to explain that, let alone, in our case when you hold free and secret, and effective elections regularly. Let me read a little bit more.

"Second, while there are unusual restrictions on political expression, these shield people from criticism, not policies. Opposition candidates who avoid personal attacks against PAP politicians can and do freely attack specific policies as ineffective or unfair.

Third, there is no evidence that Singapore's elections are corrupt. Indeed, international observers have consistently rated its government as one of the least corrupt in the world, with elections that are "free from irregularities and vote rigging." The Global Barometer country report for Singapore finds that 86 per cent of Singaporeans believe that their elections are either "completely free and fair", or "free and fair", but with minor problems".

Then, dismissing that theory that we suppress the opposition and that is how we remain in power, he moves to a second possible explanation that Singapore's voters perhaps are unusually economically literate. And they are so economically literate that they accept all these unpopular policies and yet vote us in. And he says that doesn't make any sense, because voters in Singapore are like voters everywhere else. Everyone wants lower taxes and more public services, not the other way round.

Then he moves on to a third possible explanation. Singapore's voters are unusually loyal, deferential or unusually resigned. And this is published in Singapore by the way.

"Even if Singaporean public opinion were unusually economically literate, it would still be hard to explain the PAP's dominance. In the Median Voter Model, opposition parties' best response would be to mimic the policies of the ruling party, leaving voters indifferent. Singaporean politics plainly doesn't work this way; it seems to be in a political class of its own as long as we think of it primarily as a country.

This is where most people make a mistake. ... I have tried to explain that we are different. We are a city. We are not a country. He is the first writer I have seen who has said that.

“The picture changes radically if we instead think of Singapore as a city. In the United States, big city politics is often about as lopsided as Singaporean politics. Democratic mayors have won without interruption since 1931 in Chicago and 1964 in San Francisco. While the Democrats have failed to monopolise the mayor’s office in New York City, they have near-PAP dominance of the New York City Council: Democrats hold 45 out of 48 occupied seats.”

But nobody questions whether there is a democracy in New York.

Finally, in conclusion:

“In the West, Singapore is widely perceived as a benevolent dictatorship. From this starting point, social scientists have little to learn from Singaporean political economy. The explanation for Singapore’s success is simply that it had the good fortune to be ruled by the smartest, nicest dictators on earth.

Once misconceptions about Singapore’s democratic credentials are corrected, however, the city-state looks “curiouser and curiouser”; it seems to contradict everything that experts think they know about democracy. How can any party honestly win election after election – much less a party committed to many economically efficient but unpopular policies?

And he goes on to explain:

“Understanding the paradoxes of Singapore sheds new light on political economy in general. While most democracies have frequent partisan turnover at the national level, sub-national democratic policies are often as one-sided as in Singapore. In the broader world though, such forms of one-party democracy do not seem to depend on the delivery of remarkable economic performance. Is this because the relative importance of loyalty, deference and resignation varies? Or did Singaporeans simply have the good fortune to put its trust in Men who happened to deserve it.

The case of Singapore is a fascinating challenge to time-tested models of how democracy works. But more importantly, the mechanisms underlying Singaporean political economy are probably at work in every democracy. These mechanisms are not unique to Singapore, just uniquely visible.”

I think that is the best answer I can give to your first question.

Let me deal with your other two questions. You touched on opposition figures and judges. Let me come to opposition figures later.

I will deal with judges – the suggestion that they are not independent.

First, factually your point about judges being transferred to become part of the legal service is only partly accurate. That does not apply to High Court Judges. High Court Judges are what we call puisne Judges. They are appointed, they

are protected by the Constitution. Once they are appointed, they cannot be removed until they reach the age of 65 and they retire. And, if there is any misconduct, a Judge will be tried by his peers from the Commonwealth, that is, other Supreme Court Judges from the Commonwealth who will sit on the bench to try the case and decide whether he did or did not misconduct himself.

In the Subordinate Courts, the District Courts, given our small size, we have long been thinking whether we can create a separate judicial service where judicial officers would have a career track. But it has not been possible because you take the entire legal service we have - it is about 300 officers. How do we attract the best and brightest lawyers to join the service? And if we just took the District Court and appointed career judges, maybe 40 or 50 of them, what is their career track? ... There are serious practical problems. So we have had to keep them as part of our broader legal service. But it is very much an issue that someone, a lawyer like me, would think about. Many lawyers have thought about it. There is no clear solution we can find in the context of the size of our service.

On the third point, on opposition figures and defamation, every single report on Singapore mentions this. Let me tell you a number of things. In my Opening the other day, I talked about defamation. I said, and the Chief Justice mentioned this yesterday, by reference to our Constitution, we say you have a freedom of expression subject to restrictions. We value personal reputation. We put a premium on it for a number of reasons. One of which is because we believe the best people should be brought into public service. Now, how would people come to public service if you can attack them personally, you can call them corrupt, you can call them liars, you can say anything you like about them without having to prove it? And anyone who has to come into public service has to be prepared to go through that. Some societies, including yours, think that is a mark of character and that is what is needed. We take a different approach. We say you attack the policies – we don't have a problem. But if you attack a person – you say he is a liar, he is corrupt, he took money, or he misled Parliament, or he embezzled State funds, you prove it. If you don't prove it, you lose the case.

Do we do this to prevent opposition? The most successful person in opposition is Mr Low Thia Kiang, with his Workers' Party. He has never been sued. He has been in Parliament since 1984. The other successful figure is Chiam See Tong. ... Mr Chiam is known and seen as an honourable man, and there is an interesting story about him. When he first stood for election, two PAP ministers ... made some remarks about his law firm and his abilities as a lawyer. They said he is a "one man band" and said "why would you want to elect him". Mr Chiam threatened to sue. Because he said "this is not fair comment you are attacking my ability as a lawyer. What has that got to do with my policies, as a MP". And the two ministers took legal advice and paid damages. They did not go to court because that is the way we operate. Sensible people take legal advice and if you think you do not have a case you pay up and they paid up. And Mr Chiam sued other people as well. And he has never ever faced a legal suit. ... I did not come here to go through in detail each and every legal case. But if you go through what NGOs say about the cases, you will find that it is the same repeated stuff over

and over again - it will appear in various NGO reports about Singapore. If you go to the actual facts, you might get a different picture.

Now you had a fourth question, which I didn't understand at first and have now forgotten.

Mr Duffy II:

Perhaps we can return to your answer to the first question. And I'd like to posit the suggestion, just a suggestion. For many, many years you had a British government which ruled. And from an outsiders' point of view, perhaps Mr Lee Kuan Yew replaced the British Government in part, and in turn he was replaced by the PAP. Is this part of an ongoing transition, or is there something ingrained in the culture and history that you described to us that people are used to having a figure such as the British Government in the background, Minister?

Minister:

I am not quite sure I understand the question, but let me try to answer it as best I can. The British Government in the 50s started talking about self-government for Singapore. Remember neither British nor the Malaysians nor anyone in Singapore thought of Singapore as an independent state. It is almost artificial to talk about a place that you can drive across in about 30 minutes, both ways, north to south and east to west, situated as it is in between these large countries, as an independent state having its own viable existence. But, the British thought of it as having self government ... where they will take care of defence and foreign affairs and so on. They started holding local elections from the early 50s. And in 1955, the first chief minister was somebody else. You know, we had, people like Lim Yew Hock and then we had David Marshall who was a British trained, extremely brilliant lawyer.

But, this society in many ways was ungovernable. And it was particularly ungovernable if the communists did not cooperate with you. And it was also ungovernable because it had no money and it was a completely chaotic situation. So governments came and went; and I didn't go into that in my speech. In 1959 the PAP came into power. It came to power with the support of the communists. Again a very convoluted history, but the communists supported it and it came to power. And Mr Lee describes it as riding on a trojan horse. Because the communists wanted to present an acceptable face and this nice English speaking Cambridge-educated lawyer was the acceptable face that the British would accept. They will come to power using him, and then they will throw him out and they will take over. That was the plan.

And what had happened in the late 50s and 60s was then a very, very severe and vicious and no-holds barred fight. It is a fight and there were other fights that were going on which I talked about. 1965 – independence. And then since 1965 there were elections throughout. And by late 60s the economic policies that had been put in the early 60s were beginning to bear fruit. People were moving from

slums to little flats, three rooms two rooms, but at least there was running water, there was a proper toilet. There was roof over their heads. So the extraordinary thing and the reason why the PAP got successfully stronger with each election, was because unlike most countries where you know, in a developed world, how much can your life improve, right? You can get a slightly better job but your neighbourhood doesn't change your living conditions do not really change.

But here in the first 30 years you actually saw slums being removed, housing estates being built, roads being built, schools being built. Every five years, there was progress and the progress was tangible, visible, observable. So it won election after election after election. And in 1990, Mr Lee stepped down as prime minister but the PAP as a party continued in power. Mr Goh Chok Tong took over as PM. And our approach was and has been, we not only take the brightest for the civil service, we also talent spot. The Government actually goes actively around the universities, the professions, they look for the top people and say "would you like to come into politics". Think this is something not really heard of anywhere else. And then they say, "look come and fight the elections and if you're good you might become minister". And that's how the top leadership is selected. And then from 1990 to 2004 Mr Goh was PM. 2004 Mr Lee Hsien Loong has taken over.

Mr Krishnamani:

In Germany and Japan, those people who violate fundamental rights and human rights of others, they are being deprived of their fundamental rights and human rights. I am talking about terrorists.

Why should they have human rights? I think that problem is cropping up everywhere. In India where I hail. The same issue is that the Supreme Court judges in India are of the view that the violator of human rights cannot have human rights.

Minister:

I think a broad proposition like that I will find difficulties as a lawyer. Because what do you do with a child rapist then? Is that any less extreme or less reprehensible than the actions of a terrorist? But terrorism does throw up unique challenges, often because you uncover the plots through deep undercover operations, through working with foreign intelligence agencies. And putting some of them on trial, you know, sometime inflames the very passions that you are hoping to subdue. So it does throw up unique challenges. We have found trials to be not the appropriate method, particularly during the communist insurgencies.

As I said, in Vietnam the communists melded into the population, and you don't know who was or who wasn't a Communist and if somebody was willing to come out as an informant and go to court and testify you can be sure he and his family will be finished off. So they won't come forward. So we have worked out this method, detention without trial. The American approach has been to put them in

Guantanamo and treat it as not US territory and so US rights don't apply. But that creates the problem - how long you keep them there. What happens?

And then you have another political problem when, if you release them, and they go out and kill American soldiers whether in Yemen or Afghanistan. So it is a problem. The way we have tried to solve it is detain them without trial, but their names are published, their backgrounds are published. People judge for themselves whether we are abusing our powers or not. Right through, we treat the terrorist as a human bomb, that his mind has to be deprogrammed, and he has got to be told that what he believes about the Koran is wrong. The Koran is actually asking for peace. And so we get an independent group of clerics to work with the detainees. These people tell them look these are your beliefs, this is how you've been misled, and if they reform, there is hope, they will be released and several have been released, sometimes on conditions. I am not sure I automatically agree with the complete deprivation of fundamental liberties, but certainly detention is a very serious deprivation of fundamental liberties.

Mr Galligan:

Minister, I greatly enjoyed again your speech this afternoon which followed up on some of the themes you mentioned the other evening. Could you respond to what we discussed a couple of points. First of all you described very beautifully, not sure ... 'beautifully' is not the right word. But very clearly and interestingly I think, some the circumstances under which Singapore came into its existence and some of its challenges that it faced, and that is how the ISA sort of originated and why it was continued to be in force. It seems to me that when a country is under a great threat to its security or in Singapore's case actually trying to become a country, the leadership is faced with very difficult decisions, which in retrospect some of which may look pretty bad but which makes under the circumstances because your survival, to use your expression, is at stake.

Just to give you a few examples from our American history: Abraham Lincoln suspended, somewhat controversially, the writ of habeas corpus during the American Civil War. During World War I, a considerable part of the press especially in the West was suppressed. During World War II, the most difficult of things that many people felt very badly afterwards, a very considerable part of our Japanese population was sent to internment camps. People make, leaders under the threat of national survival, sometimes are put in the face of having to make very, very difficult decisions and, but then, when one goes back to a period of normalcy hopefully through peace having survived and constitute a normal set of circumstances, some of those rules, those rules don't necessarily, or those emergency measures that one took don't necessarily become the norm.

So I just want to say that it seems to me, and I do not think you are necessarily meaning to say this but maybe there is a little flavour that what you said suggested that some of Singapore's approach is very justified by the circumstances in the 50s and the 60s and I completely understand why you think that. And I have a feeling if a lot of us read the minister mentor's memoir or

similar stories we might not have so much disagreement about that.

Secondly, advocating for the rule of law or promoting the rule of law does not mean there is one way of implementing the rule of law, and I thought your discussion about the case and the whole question of criminal procedure and whether or not a person whether what circumstances it can be taken into account the fact that they are not justified on their own behalf is a very interesting example of that. As you pointed out, that approach indeed has the approval, the approval of a very distinguished group of attorneys from another jurisdiction, which most of us think also has a very great respect for the rule of law, namely the UK.

So I think we also have to be careful in the discussion of not saying that simply because Singapore has another approach to a particular issue may differ from the way our constitutional law, our interpretation of the Bill of Rights has developed, or where the European court of justice by European norms has developed, nonetheless means your approach is wrong. The area that I think, leaving aside chewing gum and sort of the things that are really to the side, trivial, in the larger picture, it seems to me that the area of law that people really have difficulty with as they analysed it, largely focuses around complex of laws having to do with the election: The libel laws and a certain extent the independence of the judiciary.

But it is in the, as you said, the Government has always gone back to the people, the mandate has been very important, but I also have the feeling that to a certain extent, some people feel that the legitimacy of the mandate has been compromised in some way by some of the laws in this area and I'm going to just give a very brief description of a couple of elements of it. If I'm wrong I hope you will correct me. My understanding is that under the Singaporean Constitution, a Member of Parliament must be, must cease to serve, must be compelled to cease to serve as a Member of Parliament if he is bankrupt, determined to be bankrupt, or secondly is convicted of a criminal offence where the penalty is S\$2,000 or greater.

Now the libel laws, you have in Singapore criminal libel which a number of other jurisdictions which only by no means is the only country that has it, although I think there is a general tendency in the world discussion today that even these should be abolished, or should be or should only in very extraordinary circumstances like such as some sort of threat to national security, or in your case against ethnic harmony. But in the area of civil libel, my understanding is that there is no defence of qualified privilege, again maybe I am wrong in that but I see this in the literature that I read. Also I believe that there's no cap on liability. Indeed there is some language about the remedy should be substantial, I think in the statute. Thirdly, the libel cases heard in the courts, and yes you are right that high court judges have tenure.

But, you must resign at 65 and if you want to continue to serve after 65 then I believe it is in the matter of the government's decision. So, there is a complex of rules where which would appear to sap the circumstance where the range of

public discussion, the freedom of debate is compromised by the fact that, if you go over the bounds and, maybe in the heat of discussion say something which another politician or another government official may take as not just being strictly about the facts or the policies, but may be somehow or other implicating the experience or the qualities or may be the character of the candidate in question, that suddenly one can be the subject of a lawsuit that would possibly again, there being no defence because I am a candidate for political party that I have a little more of a range of freedom of expression to give my views as to my capabilities versus the capabilities of the other candidates.

And so therefore I suddenly could be made the object of a lawsuit that could result in very high damages, and not only would I have that but if I am already elected to parliament I could be forced to step down and I do not mean to make this a discussion about the Jeyaretnam case but nonetheless leaving aside the details of the individual, these complex of laws certainly look as if they would discourage a certain level of political participation that we would otherwise might expect in a basically democratic society that respects the rule of law. And I just mentioned the point, leaving aside the Jeyaretnam case, the Minister Mentor himself most of which I believe had been successful.

Minister:

All of them.

Mr Galligan:

This is the area where it seems to me, that Singapore, is this really necessary, leaving aside whether it is permitted under the rule of law or not. It seems as though, all your tremendous achievement and all that the People's Action Party has accomplished is somehow or other, this puts a cloud over Singapore why is this necessary, why is this necessary.

Minister:

Now let me take your point at two levels, one is a philosophical debate: do you really need it? That becomes a matter of political philosophy. And my position is yes we need it, we want it, and this is our political platform and let the people decide.

But let me deal with it ... in terms of the questions you have asked. I think the broad point you made, has the legitimacy of the mandate been compromised by some of the laws, and you mentioned, if he is bankrupt or convicted, then he cannot be a member of parliament. If I look at each point you make, for example, if I go to the people and I say do you want a bankrupt as a member of parliament, which is the equivalent of your Congressman, I think the answer will be "no".

Why should a bankrupt be qualified to be elected to stand as a Congressman? Second if he is convicted of an offence that carries with it a certain minimum fine

and if a fine like that is imposed, serious offence, and he is a convicted criminal. Why would you want that kind of person as your elected leader? ... Criminal libel. Civil libel. We are not the only country to have criminal libel. Australia has it, various other countries have it. But it's hardly ever used. Most of these cases you read about are not criminal libel cases. Criminal libel cases are brought by the Attorney General in extreme circumstances. We are talking about civil libel. Now I am not sure I can add much more to what I have already said about that. I do know, not just the Minister Mentor but various other ministers because I advised them when I was in practise. I have advised on both sides – them, and I have also acted for the IHT against them. And when I advised them that there is no case, they drop the case. And I am not the only lawyer; there are other lawyers who advise them.

The general practice is to take legal advice. Sometimes, if it is not clear, they go to an English silk. And if the advice is that there is no case, then there will be no lawsuit. You talk about in the heat of the moment people saying things. My response to that is going to be: this is a philosophical argument. We say: argue about policies. Let me give you an example you did not mention Dr Chee. During the 2001 elections, or 97, I cannot remember. He made some allegations.

The suggestion was, that the Prime Minister in public, he heckled him, and said, suggested that the Prime Minister had lied to Parliament and the public about US\$10 Billion, and that US\$10 Billion had been loaned to President Suharto. Now a simple question would be: "Was there a US\$10 Billion loan?" He wasn't bothered to ask. Instead he made a series of accusations, and very serious accusations. If those accusations were true the Prime Minister isn't fit to be the Prime Minister. Why do we need this type of rubbish in political discourse?

The Prime Minister had explained to Parliament and do you know what the fact was? The fact was that there was no US\$10 Billion loan, there was no \$100 million, there was no \$1 million, there was not a cent loaned. In American public discourse you feel that these sorts of hard knocks, unfair or fair, doesn't really matter. If you get into the public sphere you must be prepared to deal with it. We are not saying our skin is any thinner. But we say why can't we keep the public discourse governed by integrity. And he then initially withdrew his remarks, but then subsequently withdrew his retraction. And therefore the lawsuit went on. And likewise with the various Mr Jeyaretnam cases. I did not come here to deal with all of them. But the broader point, and let's take it as a matter of philosophy, we believe in our libel laws, and that's part of this government's platform. You may disagree.

I am not here to simply defend my position. I do not think it detracts from the rule of law. I do not think that it detracts from the quality of public discourse or the political discourse or how the lives of our citizens are going to be improved, and what are the appropriate policies for that. And I don't think anyone can say the mandate is compromised. As I read out to you from Bryan Caplan, in his view there are minor indignities that the opposition suffers, but nothing that really prevents people from winning elections if they can offer a better policy. I'll tell you

the real reason why we are in power. Because we secure the moral high ground, the centre. We take the best people across all sectors into the public service, and we make sure we deliver.

Mr Silkenat:

A couple of thoughts – let's agree with your comments. Much to applaud your position with the intelligence and conviction and goodwill, I think all of us always appreciate that. It does seem to be a contrast between the notion of a country of economic development and strength and stability being a beacon for foreign investment worldwide, and at the same time, a country that feels the need to keep in place a variety of laws relating to political dissent and expression that are really unilateral in their application. And it's tempting to believe that such carry-over laws are now kept in place primarily because they keep one party or group in office. Now we had a wonderful and detailed description of some of the choices which Singapore can face. I am wondering, as Minister for Law, what improvements or changes you would now want to see in the application of the Rule of Law in the next 10 years in Singapore, now that Singapore is such a success and might move past some of these earlier concerns?

Minister:

I had a line in my opening speech. Not sure whether I read it out. That we are defined by paranoia. So much as I would like to say that we have moved away from our concerns, and I do think today we are not in a position that we were in the 1950s or 1960s. We don't face the same existential threats. But, there are a number of issues which I think foreign policy concerns preclude me from going into quite frankly. But, let me answer the underlying two questions that I think you have asked.

One is, the statement of expression that we continue to restrict political freedom or freedom of speech in order to remain in power. The second is, is it not time to change, given our obvious successes? Let me try and deal with them.

On the first question, we are not so stupid to believe that these laws, or anything like that, can keep us in power. If you talk to the average Singaporean today, highly literate, 75 per cent of them have some kind of tertiary education, almost the entire top sector of society has had foreign exposure either through education or work experience, and the number of Singaporeans who travel abroad is greater than the population of Singapore. And we are open to international influences and ideas, and we are an open economy and society. Can anyone honestly believe that we can keep a lid on politics and control our way through elections? I think it is just a laughable notion. It is not possible.

The question is, who can put forward the best policies to the population, and how can you argue those policies? Who do the people of Singapore have faith that they can continue to deliver? You know, I am not someone who believes that you can make the population support you against their will. In this region, President

Marcos sent troops and tanks down. That did not stop the people from a revolution. If your people do not want you, you cannot be in power. It is as simple as that. So, I do not accept the notion that there are these restrictions, and they are designed to keep us in power. I disagree with that.

And I have explained to the best of my ability why we try and keep the public discourse free of libel, libel as in personal attacks which cannot be proven. I did not answer Mr Michael Galligan's point on qualified privilege. I will come back to it. If you make an accusation that she is a prostitute or he is a liar, or he took money, the defences available to you when you get sued, are first of all, to prove that it is true, the defence of justification. Then, you have a few other defences where even if the statement is not true, you can say that you have a reasonable basis for making them. One is qualified privilege not in the NY Times' case sense, but in the sense of if I am a senior official in an organisation (I will just give you one example), and I have to write a report on one of my subordinates, and in that context, I make remarks which are defamatory. The general test is that the person making those statements has a duty to make them, and the person receiving the statements has a duty to receive them. Some sort of situation like that. It will cover a fairly wide rubric including reporting for companies, individuals, departments and organisations and so on.

The most useful defence, though, in this context, is fair comment. Fair comment means you are making a comment on a matter of public importance and in order for that defence to succeed, it has to be a comment. It cannot be a statement of fact. If you say he is a liar, that is a statement of fact. When you say he is a fool or idiot or comment on the person, and the subject matter is one of public interest, and most of politics will be a matter of public interest, then you are ok. So, the cases that go up usually fall outside of this rubric. And fair comment does not mean that the comment has to be fair, in the sense that the opinion must be reasonable. In fact, there was a famous case which states that however unreasonable the opinion, ... nevertheless, in public discourse, people are entitled to comment, and have their views and express them, so long it is on a matter of public interest. And that defence usually succeeds, provided it was indeed a comment, and there was no malice involved. That gives a broad latitude...

Coming back to Mr Silkenat's point, is there anything that I would like to see changed, is there something that we would like to see different? You know, we look at ourselves as a work in progress and I would be the last person to say that we are some sort of utopia or have arrived. Absolutely not. We learn everyday. We look at your systems. We look at Western systems. We look at what other countries do, and whether it is a law or procedure or economics. We treat and look at ourselves as people in a small city that want to do well. And in order to do well, you have to take the best ideas. And if a certain idea works, we will take it. I have also explained to you with as much conviction that I think it is possible to have, why Rule of Law is important to us, because it makes sense. And if we did not have Rule of Law, we will not have the foreign investments. We will not have the foreign companies here. We will not survive. So, from that same perspective,

if a practice makes sense, any law makes sense, and if it does not affect the stability of society, we will put it in.

Mr Silkenat:

Anything specific coming up?

Minister:

Well, one thing specific is that there is the Criminal Procedure Code, some of the laws I have talked about. We had a long discussion and what sort of additional rights the defence can have, what sort of additional rights the prosecution should have, and so on. We have had a long discussion, and something will come up. But I suspect nothing along the lines of what you are thinking of.

Mr Silkenat:

I suspect you are right.

Mr Duffy:

Gathering from your comment, I am thinking about yesterday when we had the opportunity to hear from your Chief Justice, that you are prepared to resist some of these decisions that would appear to us that would have been made quite some time ago under circumstances that are quite different from today?

Minister:

I think that is probably not the conclusion you should draw from what the Chief Justice said.

Mr Duffy:

I didn't mean to suggest, he said among other things that Lee Kuan Yew had a dominant effect on many of your laws, and you were very good in explaining some of the circumstances that led to those laws. And I think we have all agreed now that most of those circumstances no longer exist. And given the fact of what the Chief Justice said, in absence of the stimulus that brought those results, would you be prepared to revisit these laws?

Minister:

You see, what I am struggling with is to try and understand what is it that we should revisit, because what I spent a long time trying to explain in my opening and my speech today, is that the circumstances required us or what we were faced with and why we were so focused on stability. Now, in terms of what that meant and why we tackled it, first I said my four fundamentals – Rule of Law. I do not think you are asking me to revisit that concept, because that is fundamental

and central to us. Second, I said external security. We take that very seriously, and of course it is not going to be revisited.

Third, I talked about our internal stability. You know, one of the searing images that I have is of Yugoslavia after 40 years, when the moment the lid was taken out, the ethnic communities went for each other. I am not somebody who believes that ethnic tensions can be overcome in a period of four or five decades, particularly in the context of the strategic and geographical situation we are in. And as recently in the last few years, you had ethnic conflagrations in this region. You have those issues. We have racial harmony here, but we do not take it for granted. We do not shout about it, but we work very hard. What am I to do different about that?

... The quality of public service is the fourth fundamental. To me, that fundamental – the continued delivery and economic progress, giving of and maximising of opportunities for the population, delivery of public goods is an absolute essential. So I am not sure what it is that we are supposed to change. I think what you are really asking is would we change your political philosophy, and would we change our libel laws, and would you hereafter not sue people if they were to express libellous remarks? If that is the question, the answer is no.

Mr Silkenat:

Let me give you one specific example. I understood you to say that trial by jury was not appropriate, especially during the communist insurgency. I think we could all comfortably agree that there is no longer any real possibility of communist considerations. Would you be willing to revisit the question of the trial by jury?

Minister:

I will give you two answers – one, my personal belief as a lawyer when I was in practice. I look at the complexity of the cases, because I used to handle primarily complex commercial litigation. I personally do not believe in the jury trial system, and I have seen transcripts from the US, I have seen the results of cases. You have to choose the system that works best for you. I have sat back and asked myself – is this really the best way of dealing with cases, rather than appointing a specialist judge, who knows the subject matter inside out? Say in complex securities case, if you get a judge who has been for 25 years practising in that area, is that not better than all these issues of jury selection, and what the colour of their skin is, and who the defendant is? Let's be frank – these are issues. Do I want to go down that route in Singapore? Personally, I have never thought of that as being an attractive option. And philosophically, that is not the government's position either.

Mr Duffy II:

Minister, we have a little time left and I would like open this to questions from the

audience. Do we have any?

Member of audience:

Mr Minister, thank you very much for engaging us in this dialogue. It was very interesting and let me preface this question this question by saying that, before I came here, I knew very little about Singapore's legal system, or political system other than what you would occasionally read in the Western press. And I very much take to heart your comments that different societies have different histories that call for different approaches. The United States has made a mistake in a number of situations where we try to apply our system to cultures that were really not suited for it.

But, we heard Ambassador Koh at lunch today level some criticisms both of the legal profession and of the United States in its treatment of international law as compared to US law and he made the point that when criticisms like that are levelled, it is important to consider them and do some self examination to see if there may not be ways to improve. And in your initial remarks the other day, I was struck by the justifiable pride that you had in the surveys that rated Singapore very highly in such matters as lack of corruption and pro-market and pro-business environment. Yet it seemed to me that you dismissed out of hand as unjustified the surveys that ranked Singapore very low in the area of press freedom and while we might argue it should be ranked below countries like Guinea or Ethiopia I don't think there will be much pride to be taken if you were moved up from 144th to 133rd as some of those states.

At least to those in the United States, freedom of the press and the ability of the press to comment on policies and to make arguments against government policies without the need to immediately provide an equal response is one of the things that is important to the functioning of democracy and the ability of opposition parties to thrive because of the independent commentary that the press has. And I wonder whether given the low rankings of Singapore in matters of press freedom whether that might not be an area to visit to see whether that might provide a basis for opposition parties to be more successful than they have been.

Minister:

Let me deal with one point which you don't really make and get that out of the way. I did take some pride in those statistics but more to say where we were and where we have moved. But it goes back to something I said to Mr Silkenat. We are actually a very paranoid place. We are extremely paranoid about survival. We think of ourselves as a small place that has to constantly run very hard just to stay in the same place. So we never take these surveys and say we have arrived. We always worry about who will take away our lunch.

So ... let me assure you, the Singapore Government, the Singapore civil service and the public we are always thinking of the future ..., we are not the US, we are

not like India, we are not like China. We do not have strategic depth or space or population. We are here in this region with all its issues. And we have to survive here. And no one else is going to come and help us. We have to help ourselves. While I did not want to detail to Mr Silkenat the series of issues, I highlighted one that arose 20 years ago and therefore safe to talk about – about the visit of the Israeli President. But we live here. But, we never take success for granted. In fact we always think we have not succeeded and we have to run even faster.

Now, let me move to the real point that you make. Are we dismissive of these press rankings? The way I put it to the audience, was not that I was simply dismissive. I said to you, this is what Singapore is like by any objective standard, then there are these surveys by Reporters without Frontiers and Freedom House that we are below ... Sudan, Darfur notwithstanding, below Guinea that was featured in the ... International Herald Tribune for rapings and killings and coups. So I said, you judge for yourself.

Take a trip down Singapore. Talk to our lawyers, talk to our taxi drivers, talk to our people. No disappearances, no killings, ... , you do not get picked up and taken away if you express a different opinion. So I say judge for yourselves how objective these standards and these rankings are. Does this therefore lead me to re-examine our policies? No, for two reasons.

One, I don't think the matrix used for these rankings are relevant for us. What is relevant for us is what works, and what is the role of the press as we see it. You see it as an effective check on government. It can have its own existence. The press decides for itself what its role ought to be. It is the final arbiter of what it publishes, its own opinion. It checks on itself. As far as I know the government cannot check on it, ... It is its own authority on what to publish, what opinion to publish. We take the view that the press should be a neutral medium for transmission of views on all sides. It can report on the debate whether it is the opposition, or the Government, or public opinion.

But if the press itself takes on a role and attacks policies ... day after, whatever you may say, at the end of the day positions are hardened. Camps are formed. And who controls the press, ... Who decides on the issues? In third world countries it is a few media barons. Perhaps you don't have media barons, I won't comment. It is not my position to comment on the US. But perhaps your press is extremely independent and every cable news and every journal including Fox news transmits all news fairly and equally. Do we consider that necessarily as the best model? I don't think so.

Mr Galligan:

In response, this seems very close-linked to what you said about the importance of reputation – if people's reputations can be too easily impugned, that becomes a deterrent. I think frankly no one will say here there is no merit at all to that point. Probably I think there are there are a number of people who are discouraged from becoming more active in the American political system

because of some of the scrutiny, some of the wide open discussion, of people's almost entire lives, and things which are true and not true. I think the issue you raised about the press, about who owns the press, that is a genuine issue, I think that is something that should be a concern for a number of people in the United States, as by the way we are concerned that in the City of New York, not as many people take part in the elections as we just witnessed the last time in the New York City as is appropriate.

My point was that, just as I said before in the discussion about criminal law. Even in the area of election law, or press law, I don't think we need to say that the United States or the Western way is the exemplar for everything. On the other hand, we wonder if, as Singapore continues to develop, whether in spite of its highly educated population, and all the progress it has made, that maybe some of these criticisms, some of the issues that we have raised, whether Singapore could become even more of a beacon to the rest of the world.

Minister:

Let me answer that question. But I had wanted to make another point to that gentleman (from the floor).

In early autumn, I was in the US and this particularly shocked me. As I said in my Opening speech, I and many of my generation, are admirers of the US. There are so many aspects of the US system we admire. I was visiting a number of universities, and I was going down to Yale. That was the unfortunate time when the girl got killed. The first time I noticed when I turned on the TV was that there was saturation coverage about that. It was as if there was no other news. That surprised me as an approach to news.

What was even more surprising – and I don't mean any criticism of the US system – but what surprised me as a lawyer that there was obviously such a competition for news and ratings that it wasn't enough to say the girl had been killed and that a Person of Interest had been identified. An immediate analysis had to be made of that Person of Interest. So you had a major anchor and a major national channel interviewing a couple of people, one of whom was I think a psychologist, who made a number of points.

First she said, obviously he is a suspect, Person of Interest is a politically correct term, but he hasn't been arrested, he hasn't been charged. Second, she said obviously he must have done it. And these are the reasons why he must have done it. He must have made advances to her. She is an attractive girl. She is young. She must have rebuffed him and he must have done it. Obviously that must be the conclusion. I sat there and thought: this is the leader of the free world. This is a major news channel. What about the presumption of innocence? What about the fact that the man may have a variety of answers for his conduct? What about the fact that he may not even be guilty? Here we are concluding that he is guilty. And not just guilty but guilty because he made a number of sexual advances which had been rejected.

Now, that shocked me. That is not to say it is unacceptable. You will decide for yourself what the best media approach to these cases is. But if that channel, if that programme had been aired in Singapore, the Attorney General would have started contempt proceedings, against both the media, and the person who made those comments. So there are different approaches. I don't think we are evolving into a situation where there is one right answer. That is why conferences like this are good for the exchange of views. But at the same time, I will assure you of this. We don't just dismiss criticisms. If we had done that, we would not be successful. Right through our history, you will see that, we look at everything that is said, and we will ask ourselves, does this work for us? Is there something to be changed? And we have changed. I cannot satisfy Mr Silkenat that some of the things he asked me about will change. But I can tell you, honestly, we constantly change. And we will change anything that doesn't work for us.

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