

INAUGURAL FORUM "A FREE PRESS FOR A GLOBAL SOCIETY" AT COLUMBIA UNIVERSITY
LOW MEMORIAL LIBRARY ROTUNDA ON 4 NOVEMBER 2010 AT 1200 HR

QUESTION AND ANSWER SESSION WITH MINISTER FOR HOME AFFAIRS AND MINISTER
FOR LAW MR K SHANMUGAM & MODERATOR PROF FREDERICK SCHAUER, DISTINGUISHED
PROFESSOR OF LAW, UNIVERSITY OF VIRGINIA LAW SCHOOL

Prof Schauer: Thank you, Minister, so let me, my role here is partly to ask questions, partly to give commentary. I have been instructed by the time conscious organizers to perhaps compress the questions into the commentary. So let me ask you a two part question that will be a little longer than the questions that I normally like to ask. In addition, in asking this question I think I will take advantage of my, as he would describe it, dear friendship with President Bollinger, by slightly challenging the way in which he has framed the issue, by talking about American law and by talking about American policies. It is tempting to think of the issues about freedom of the press, the issues of libel, the issues about contempt law and the like, as largely issues involving how Singapore and the US are different. It may be a slight misframing of the issue. As it well known, the US is an international outlier on a number of free speech, free press issues. The US is more press protective on issues as defamation than anywhere else in the world. It is more speaker protective on issues as hate speech than anywhere else in the world. It is more publication protective than anywhere else in the world on the publication of illegally obtained information. Is more protective of commercial speech and commercial advertising than anywhere else in the world. The US to the annoyance of Canadians who think we are under appreciative of equality. To the annoyance of Germans who are under appreciative of dignity. To the annoyance of the French who think we are under appreciative of a number of values including order and community. The US is an international outlier. So let's put the US aside.

If we look at the issues of defamation. If we look at Australia, with its *Lange* decision. New Zealand with its *Lange* decision. Mr Lange is a repeat player is a libel plaintiff. If we look at the *Lange* decisions in Australia and New Zealand, if we look at the *Reynolds* decision in the United Kingdom, the *Scientology* decision in Canada, one thing that emerges from these is that, putting aside the US, Singapore seems to be substantially more restrictive of the press, substantially more restrictive of the media in general than almost any other common law country. The comparison is not US-Singapore, the question is why it might be that Singapore is so divergent from other common law countries in the world and even from other civil law countries in the world. Now one explanation for this that you offered quite eloquently relates to the peculiar situation in Singapore. But compared to the US, Canada, United Kingdom, New Zealand, France, Ireland, Spain and much of Eastern Europe, the notion that there are substantial racial and ethnic divisions is hardly unique to Singapore. And although much about Singaporean libel law, contempt law and press law in general might be understandable of a developing country with \$512 a year per capita income, much that you've said describes Singapore as a thriving, developed economy with a \$41,000 a year per capita income. Is it possible that many of the justifications that were understandable for Singapore as a developing country, are less understandable for a developed, thriving, prosperous economically successful country that you've described.

Minister: Thanks, that almost was a speech, Professor Schauer but I'll try to pick up the points as I understand them. I think the points you made, first, leave the US out, the US is an outlier. Second, why are Singapore's defamation laws so different from say Australia, Canada, the UK and New Zealand. And third, given that Singapore has now become more developed, should there not be a change in approach? Fourth, I think, should not press privilege that was recognised as the norm in various countries be recognised in Singapore? Let me try and answer the questions.

Now, as for the US being an outlier. The reason why I structured my speech in the way I did is, I was coming to the US, speaking at Columbia University, on press freedom and I assumed that the take-off was the United States and not as to the rest of the common law world. And if you read what The Wall Street Journal says about us, about our press freedom, you wouldn't think that the Wall Street Journal considers the US to be an outlier. They take it to be the mainstream and compare us and

that's why my speech was structured the way it was. But I'm happy to deal with the other common law world.

Yes, Australia and more specifically the UK, with the Reynold's privilege, have accepted the fact that the press should have some additional privilege compared with the strict common law doctrine. We don't accept it. As an individual, I don't accept it; as a government we don't accept it and the reasons are very simple. Most of them are in my speech. The point is this, if you actually sit down and look at what is it that is needed for a healthy, robust debate in public life. You want to talk about issues, you want to talk about what the government is doing right or wrong. How people can offer a different perspective, what are the different viewpoints there are, all of that is fair game. The point about the classic common law defamation theory is that when you descend into a personal attack against someone and it's not comment. You can call someone an idiot, he can't sue you for that. You can make a whole lot of comments about a person, you can call him incompetent, he can't sue you for that, but if you make a personal factual allegation, "he stole", or "he is corrupt" then the real issue is, should the press be given any greater privilege to make those allegations compared with an individual? Now I accept quite freely that that's a matter of political philosophy. I don't accept that there should be such a privilege and I will explain to you why.

The reasons which are pushed usually for the press to have a greater privilege is that it helps in the democratic debate. But I ask you, how does it help the democratic debate? Ok, the "chilling effect" argument. As the result of having these defamation laws, you know, people may be tempted not to enter into the debate and may not be saying certain things about some politician or private persons. What about the opposite effect? That first of all you dumb down the debate. Second, you then descend into a series of personal attacks. Third, that serious people may well ask themselves "Do I really want to get involved in this political process?" Now, these are serious points. I'm not saying one is right or the other is right. But both are reasonable perspectives. And we take the perspective that we want men and women of integrity and character to come into public service and they must be prepared to go into the stand and be cross examined on their past, when allegations are made against them, and defend themselves, and let the public see them defending themselves. And if they are guilty, i.e. they were corrupt, or they are wrong, they shouldn't be in public life.

Public life shouldn't come down to only people who are prepared, because either don't have a reputation to defend or are prepared not to defend their reputation. There is no reason why personal reputation should be protected any less than private property which you protect very vigorously. The only rationale for that is that it encourages a greater democratic debate. I have explained in my speech why I don't accept that.

Now, let me move to the other points. Should Singapore change now that it's a developed country? I was telling Professor Bollinger in the ante room that we were sitting in. Yes, if you step into Singapore. From the time you step into the airport, in fact from the time you step into Singapore Airlines, you think you are in a developed country. It's first-rate, everything works, everything is efficient, people speak English. The hotels are good, the economy is strong. US 41,000 per capita, yes, but we never forget, in fact we're paranoid about whether or not we will continue to survive. And the reason is very simple. You just look at the map, and you look at history. How many city states have survived for any length of time? There were great city states that were very wealthy - Venice and others. If we were Monaco in the middle of Europe, maybe we will have a different perspective. But we are Singapore, in South East Asia. So we never take our survival for granted. And we know that when we do take it for granted, we gamble with the lives of our people. No responsible government will do that.

And without going back to the reasons, I explained what I thought was the reality of the media today. And are we prepared in Singapore to have that kind of media? Does the fact that we are developed mean that our society is mature enough to accept some of the risks that will come with such media? Let me give you an example. You know, if I were a lawyer I can be much more frank. Now, as a person holding a Cabinet position, I need to worry about diplomatic consequences.

Our racial structure is 75% Chinese, 15% Malays, 8% Indian. It is a mirror image of Malaysia's racial structure, except for them the Malays are the dominant majority. But culturally and in terms of geography and in other ways, these two areas are very similar. In fact they were part of the same entity for a very long period, even under the British. If you look at Malaysia, it is urban, it is developed,

it also has got excellent infrastructure, if you read the newspapers and if you've been following events closely, you will find that racial and religious tension has been rising. The Government is in control, thankfully, and is in absolute charge. But, it doesn't prevent politicians, fringe groups, from trying to fish in troubled waters. And one of the easiest ways that you can get votes and get publicity and move up the political ladder, is to appeal to these sorts of sentiments. The appeal to race and religion is a gut instinct. Just because you've become developed or you make a lot of money doesn't mean those things go away. And those fault lines can easily flare up. There were mosques which were sought to be debased last year in Malaysia. Churches were torched. The Government had to move in and take control. Do we believe we are any different? If you look at Indonesia they have a similar situation. So we don't take our survival for granted. We are paranoid about it. We look around us. We don't believe that we are in some way a superior set of human beings. Thank you.

Prof Schauer: We have been given signals that we must come to a close. One thing I might leave the audience just to think about, it is clear that one of the differences, and it might be a very reasonable difference, I think it is, might be about the question to which whether words like 'corrupt', 'blackmail', 'murder' and some number of other invectives common in political debate in the UK, Canada, Australia, New Zealand, the US and other places are to be understood as factual allegations or just the invective of political debate. That's for all of us to think about. I've been instructed to tell the audience after Lee finishes that the break that you were promised will be somewhere between very brief and non-existent.

Minister: Sorry, can I just interject there and say this. You can only be liable under common law if it's a factual allegation. If you go back to the cases in Singapore, look at the judgments, they're all published.

President Lee Bollinger: Mr Minister, we wanted to have a very rich and robust debate about the questions of global free press, and you have certainly done that for us. I suspect that a very large percentage of people in this room would love to be able to talk with you more for a long time about the issues that you've raised and articulated very well, and I have to say that I raise also in my classes when I teach about *New York Times v Sullivan* etc. But for enriching our debate, we are very appreciative you've come into a place where people have a lot of different views about this. And you've expressed yourself eloquently. We appreciate that very much and we hope the debate can continue.

Minister: Thank you.