ADDRESS BY CHIEF JUSTICE CHAN SEK KEONG OF SINGAPORE

“FROM JUSTICE MODEL TO CRIME CONTROL MODEL”

[Introduction]

1 It is indeed a privilege and a great honour to have been invited by your Chief Justice, the Hon’ble Justice Y K Sabharwal, to attend and speak at this Conference as part of the Golden Jubilee Celebrations of the Indian Law Institute. Since its establishment in 1956, the Indian Law Institute has justifiably earned for itself a global reputation as a centre for legal research and scholarship in contemporary legal issues, and as an incubator of law reforms to meet the socio-economic and security needs of the people of India. This Conference on criminal justice is another manifestation of the Institute’s mission to study and propose solutions to criminal activities that are a threat to law and good order in society.

2 The theme of this Conference, “Criminal Justice Under Stress – Transnational Perspectives”, is particularly apposite in today’s global
environment. Criminal justice systems in the US, the UK, Australia and many Commonwealth countries, especially those with large multi-ethnic and multi-religious populations, are under stress from the unprecedented challenges of a world of violence and crime. Organized transnational crime ranging from terrorism and arms smuggling to trafficking in drugs, women and children, coupled with the myriad forms of domestic criminal activity in our penal statutes, have transformed the dynamics of law enforcement. The global rise in crime, facilitated by advances in information technology and greater ease of international travel, poses a nightmare for law enforcement agencies in all countries and has added a new dimension to the politics of crime control. These threats have forged closer international co-operation between state agencies, but have, at the same time, often left our domestic systems of criminal justice hapless against domestic criminals for lack of resources and an inadequate or inappropriate legal framework to deal with them.

3 In the face of these harsh realities, doctrinaire approaches to criminal justice have been increasingly subjected to scrutiny. Liberal democracies that give primacy to individual rights are now confronted with the pressing and immediate demands of crime control, as witness the recent efforts of the UK Government to meet the threats of terrorism. States can no longer avoid making the difficult but necessary decision to put in place criminal justice systems tailored to ensure good order within their borders so that their people can live in peace and tranquility. This will require a proper balancing of individual rights against broader community interests. India’s own Committee on the
National Policy of Criminal Justice has put this well: “the goal is freedom from crime, protection of human rights and the maintenance of the rule of law.” All societies would undoubtedly like to achieve this goal. The critical question is how we should do it when these disparate objectives tend to pull us in different, and sometimes opposite, directions.

**The Due Process and Crime Control Models**

4 The topic of this morning’s discussion, “Shift from the Justice Model to the Crime Control Model”, suggests a possible need for greater crime control. At the same time, the juxtaposition of “Justice” with “Crime Control” suggests an inherent dichotomy between these values. This raises an important point that underlies any discourse on models of criminal justice. In my view, the distinction between the various models lies not in the degree to which they accord with “justice”, but rather in the perspective of “justice” that is advocated. Whilst some models focus on the need to afford “justice” to an accused, others are directed towards delivering “justice” to the victims of the crime, or even society at large. Rather than labeling any one model as the embodiment of “justice”, each of these models should be regarded as advocating “justice” as viewed from a particular standpoint and based on certain underlying assumptions.

5 As my speech this morning relates to the Singapore model of criminal justice, I shall first define my terminology by setting it in Singapore’s context. As the debate in Singapore has generally contrasted crime control against due process, I equate the reference
to “justice” in today’s topic with values of “due process”. The Due Process Model is primarily concerned with the procedural and evidentiary rules that are designed to prevent miscarriages of justice to an accused; in other words, its predominant aim is to avoid the wrongful conviction of the factually innocent. Further, I treat the expression “crime control” as having a larger and more substantive scope than that which the originator of the expression had in mind, which was as a description of the processes and procedures of investigation and trial. These two contrasting expressions, “crime control” and “due process”, were first used by Professor Herbert Packer to describe his two models in his highly acclaimed article: “Two Models of the Criminal Process”.¹ These two models or approaches embody the competing tensions inherent in any criminal justice system based on the English model of criminal justice. In the case of Winston Brown², Steyn LJ (as he then was) contrasted these values by observing that:

"The objective of the criminal justice system is the control of crime, but in a civilised society that objective cannot be pursued in disregard of other rules".

By “other rules”, Lord Steyn was, of course, referring to the due process and other fundamental aspects of the English criminal justice system. Amongst these are the presumption of innocence, the criminal burden of proof, the exclusion of unfairly prejudicial evidence, the privilege against self-incrimination, the need for corroboration of certain

² [1995] 1 Cr App R 191
types of evidence, and the various other requisites inhering in the concept of a fair trial.

6 Professor Packer’s “crime control model” embodies a value system that is:\(^3\)

"... based on the proposition that the repression of criminal conduct is by far the most important function to be performed by the criminal process. The failure of law enforcement to bring criminal conduct under tight control is viewed as leading to the breakdown of public order, leading to law-abiding citizens being victimised by law-breakers".

7 The model emphasises the role of the criminal process as a positive guarantor of social freedom. By repressing crime, this model affords greater protection to individual rights and freedom. Crime control demands a high rate of conviction, and places considerable trust in the efficiency and reliability of administrative procedures in discovering the facts of the crime. Cases must be processed quickly and with finality. The successful conclusion of the crime control model is not conviction through adjudication but the entry of a plea of guilt. A low crime rate and a high percentage of guilty pleas testify to the reliability of investigative and prosecutorial processes. The key to the operation of this model is the presumption of factual guilt. The efficient application of administrative and prosecutorial expertise, primarily those of state investigators and prosecutors, results in an early determination of probable guilt and innocence. In this way, it minimizes potential miscarriages of justice in the system by ensuring as far as possible that the factually innocent are not charged at all. Once a determination is made that there is

enough evidence of guilt, which may take place as early as the time of arrest, the suspect is to be treated as being probably guilty. After the probably innocent are screened out, the probably guilty are then passed through the remaining stages of the criminal process quickly. The likelihood of their acquittal is low.

8 This presumption of factual guilt is not the opposite of the presumption of innocence, which forms the polestar of the due process model. The presumption of guilt is really an expression of the confidence that the Crime Control Model places in the reliability of administrative fact-finding. It is basically a descriptive and factual prediction of outcome. In contrast, the presumption of innocence is normative and legal. It is a direction to the courts to ignore the amount of evidence amassed against the accused. It means that until an accused is pronounced legally guilty, he is to be treated, for reasons which may have nothing whatsoever to do with the probable outcome of the case, as if his guilt is an open question.

9 The Crime Control Model has, in the past, been likened to an assembly line in its disposition of cases. Its credo is justice with efficiency. The Due Process Model looks like an obstacle course. Its credo is the prevention of any miscarriage of justice. Essentially:

"Due process...starts from the proposition that it is better to let ten guilty men go free than to convict a single innocent defendant".

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4 David Rose: The Collapse of Criminal Justice (1966)
Each of its successive stages is designed to present formidable impediments to carrying the accused further along in the criminal process. These impediments derive their rationale from human failings. People make mistakes. The police can and do abuse their powers and extract confessions by illegitimate means. Witnesses can also be biased. Because of these underlying assumptions, the Due Process Model adopts the primary objective of preventing any innocent accused person from being wrongly subjected to the criminal process or being convicted in a trial.

With this short summary of the two models, I now turn to the Singapore criminal justice system. Singapore has a worldwide reputation for being tough on crime and tough on the causes of crime. Its penal policy of prescribing severe penalties for all kinds of offences and anti-social acts has been criticized by many observers. Apart from punishments, Singapore also began its shift from the Due Process Model to the Crime Control Model as early as 1959, the year that the British granted internal self-government to the citizens of Singapore. In the century before that, from 1826 to 1867, Singapore was administered from Bengal. In 1867, Singapore, together with Penang and Malacca, became the Straits Settlements and was given its own administration based in Singapore. Singapore owed and continues to owe a great legal debt to India. The reason is that its three basic laws of criminal justice are Indian in origin. In the realm of criminal justice, Singapore was an Indian “colony”. Our Penal Code, enacted in 1870, was based substantially on the Indian Penal Code of 1860. Our first Criminal Procedure Code, enacted in 1870, was based on the Indian
Act XVIII of 1862, and our current CPC was enacted in 1900 based on the Indian CPC. Finally, our Evidence Act, enacted in 1893, was also based on the Indian Evidence Act of 1872. Many elements of the Due Process Model were found in the original provisions of the CPC, the Evidence Act and the Penal Code. Together, they represented the Justice Model, based primarily on English concepts and values of criminal justice.

11 In 1959, Lee Kuan Yew was elected the first Prime Minister of the State of Singapore. Then, the British were still fighting a communist insurgency in Singapore and Malaya. There was daily civil unrest in the form of workers’ strikes fomented by communist-controlled and left-wing trade unions, racial and religious tensions, and criminal activities of secret societies. There was law and some order but the laws were inadequate to deal with the growing social disorder catalysed by the prospect of British departure from Singapore. Against this backdrop, Mr Lee realized that Singapore, a small island without natural resources, could not survive, much less progress and prosper, with a population of less than two million, the majority of whom were poorly educated. A strong legal framework, especially in criminal justice, was needed to create good order and political and social stability to anchor Singapore’s nascent statehood and to build up its economy. These concerns are set out in two speeches made by Mr Lee in 1962 and 1967. In 1962, in a speech made to the Law Society of Singapore, he said:

“The rule of law talks of habeas corpus, freedom, the right of association and expression, of assembly, of peaceful
demonstration... But nowhere in the world today are these rights allowed to practice without limitations, for, blindly applied, these ideals can work towards the undoing of organized society. *For the acid test of any legal system is not the greatness or the grandeur of its ideal concepts, but whether in fact it is able to produce order and justice in the relationships between man and man and between man and the state.*

In 1967, he said:

“...In a settled and established society, law appears to be a precursor of order. Good laws lead to good order... But the hard realities of keeping peace between man and man and between authority and the individual can be more accurately described if the phrase ["law and order"] were inverted to “order and law”, *for without order the operation of the law is impossible.* Order having been established and the rules having become enforceable in a settled society, only then is it possible to work out human relationships between subject and subject, and subject and the state in accordance with predetermined rules of law ...

Justice and fair play according to predetermined rules of law can be achieved within our situation if there is integrity of purpose and an intelligent search for forms which will work and which will meet the needs of our society. Reality is relatively more fixed than form... *[If we allow form to become fixed because reality cannot be so easily varied, then calamity must befall us.]*

12 The basic values, principles and objectives of our criminal justice system have largely been shaped by Mr. Lee’s beliefs. Today, Singapore has a high degree of social and political stability, a modern economy and an effective criminal justice system with low crime rates. In terms of personal safety, Singapore is one of the safest cities in the world. You can walk in the streets of Singapore at night without being mugged. Women don’t get raped if they do likewise. Secret societies
have also been eradicated. Singapore’s population today is about 4.2 million. Up to September 2006, there were only 17 recorded cases of murder, no firearm robbery or kidnapping for ransom (which is a capital offence), and 92 cases of rape. Terrorism has also been kept under control as a result of the arrest and detention of a large number of members of Jemaah Islamiyah, an affiliate of the Al Qaeda, which operates in Singapore.

13 Singapore has a relatively safe and secure environment that is free from crime because our leaders had the political will to enact an appropriate legal framework to achieve it. This framework has three separate components. First, procedural and evidentiary laws facilitate investigatory and trial processes. Amongst other things, a suspect is encouraged to be candid during interrogation and the prosecution is allowed to use his answers in evidence even though he might have already retracted them. Second, serious offences are subject to evidential rules that reverse the burden of proof of intent if certain basic facts are proved. Third, our substantive criminal laws allow detention without trial and also impose stiff deterrent punishments such as capital punishment and caning. The combination of these laws casts a wide net that makes it difficult for factually guilty offenders to escape conviction.

14 In the realm of procedural justice, many of the provisions in the CPC and the Evidence Act have been modified to give greater effect to crime control. As I have already mentioned, the original provisions of these two Acts reflected an adherence to *due process*, rather than
crime control, values. This approach was best illustrated by the rules regarding an accused person’s testimony. Upon his arrest, an accused did not have to answer any incriminating questions.\(^5\) His silence during interrogation could not be raised as a relevant consideration at trial. In addition, even when the accused provided statements to the police, the rules of evidence treated these statements as being generally inadmissible.\(^6\) This rule extended to an accused’s confessions, unless they had been made in the presence of a magistrate.\(^7\) During the trial itself, an accused could continue to maintain his silence with impunity. Where he so desired, he could even elect to give unsworn evidence in lieu of evidence on oath.

15 In 1976, the CPC was amended to incorporate the recommendations of the 11\(^{th}\) Report of the UK Criminal Law Committee by modifying the right to silence. Although these proposals were rejected in UK, Singapore was quick to adopt what it saw as a critical improvement to its criminal process. This amendment has greatly assisted our law enforcement agencies in investigating offences, leading to many more factually guilty persons being convicted through guilty pleas or convictions at trial.

16 Currently, the effectiveness of our investigative procedures is enhanced by not allowing a suspect, when arrested, to have immediate access to counsel lest his presence interferes with the investigative process. A suspect still has a right not to answer a question that may

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\(^5\) See s 120(2), Criminal Procedure Code 1931.
\(^6\) See s 121, Criminal Procedure Code 1931.
\(^7\) See s 26, Evidence Act 1872.
incriminate him, but any omission by the police to inform him of this right will not affect the admissibility of any admission he makes. When he is charged and asked to state his defence, he remains silent at the risk of an adverse inference being drawn against him if he subsequently offers an explanation as part of his defence at trial. If he is investigated for corruption, he has no right of silence at all, and will be guilty of a criminal offence if he gives a false answer. During the trial, when his defence is called, he may no longer give a statement that is not made under oath, and if he fails to testify, an adverse inference may be drawn against him.

17 Apart from these general rules, our laws also adopt a particularly hard-line approach to crimes that are especially disruptive of the fabric of our society. Detention without trial has since 1959 been our main weapon against terrorists, criminals, gangs, secret societies and, in the past communist insurgents. Unlawful possession of a firearm is a serious offence and punishable with life imprisonment. Discharging it in the course of committing an offence is a capital offence. Even unlawful possession of a single bullet is a serious offence. Our anti-drug trafficking laws are among the toughest in the world. Drug addicts are liable to be detained without trial for the purpose of rehabilitation. Those who are charged may in turn be subjected to reversed burdens of proof through the operation of certain statutory presumptions. Habitual drug offenders are caned. A person in possession of more than a certain quantity of a controlled drug will be presumed to have been in possession for the purpose of trafficking. If the quantity goes
beyond a higher prescribed quantity, it attracts the death penalty. Currently, drug trafficking and consumption are under control.

18 The third component is tough punishments, including the death penalty and caning, both mandatory and discretionary. Preventive detention for incorrigible offenders can go up to 20 years. The belief that harsh punishments deter crime goes back to ancient times. *The Book of Lord Shang*\(^8\) a political treatise on the Legalist School in China written more than 2000 years ago took it for granted that punishments must be severe if crime is to be suppressed. I quote:\(^9\)

> “The ultimate goal of such a system, which may seem paradoxical at first sight, is to create a situation in which the laws are never infringed and so, in a sense, there is no need for punishments. This is said to be abolishing penalties by means of penalties, and if penalties are abolished, affairs will succeed.”

I may also add that Kautilya, the Indian political strategist, has in *The Arthashastra*, also written about 2000 years ago, made the same point that the maintenance of law and order by the use of punishment was the science of government.

19 In this connection, I believe that some of the features of the Singapore model sit well with the approach recently advocated by your Committee on National Criminal Justice Policy. According to the Committee:

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9 *Ibid.* at 139.
“The strategy is to send the message that crime does not pay and violent crime will be **ruthlessly dealt with under law**. The strategy is to assure the law-abiding citizens that life and liberty will be secured by the state **at all costs** and victims will receive due consideration and justice. The strategy is to give the police and the prosecution the tools to bring criminals to justice **effectively and expeditiously**.”

20 The desired national goal of making Singapore a safe tranquil society would have been unattainable if the courts prescribe and apply a different set of values in the administration of criminal justice. In this regard, I would say the Singapore judiciary has played an effective role in crime control. It has delivered criminal justice quickly, efficiently and effectively. It has pursued a consistent policy of imposing punishments on retributive and deterrent principles consistent with legislative policies. These three elements are necessary to reinforce the philosophy that criminals have no place in Singapore. Whilst Singapore adheres to crime control values, this is not to say that there is no due process in its system. The golden thread of proof beyond the reasonable doubt and the great value of the presumption of innocence still run through the system in the large majority of offences, especially those in the Penal Code. These provisions have never been amended in that regard. Courts still acquit accused persons on the application of these principles. They still reject confessions that are involuntary. They still give the benefit of the doubt to an accused. The Due Process values are still in place but modified to target offences of a very serious nature.

21 Singapore’s experience has shown that in a society like Singapore’s, the answer to achieving a high degree of law and order
lies in more crime control but without sacrificing the fundamentals of due process. The linchpin of the Singapore model lies in the integrity and honesty of its law enforcement agencies and its adjudicative organs.

**Conclusion**

22 The late Robert Kennedy once observed: “every community gets the kind of law enforcement it insists upon”. The divergent responses to the 2003 Malimath report demonstrate this. Blackstone’s maxim of “n Guilty men”,¹⁰ be it 10, 100 or 1,000, may be regarded as an equilibrium that reflects a jurisdiction’s belief in balancing due process and crime control according to its cultural, moral and political values. Attempts to reduce these values into *numerical* figures are exercises in futility.

23 It is my belief that there can only be more or less *appropriate* models, and not *better or worse* ones. The proof of the proverbial pudding is, and will lie, in the eating. Any acceptable model of criminal justice must effectively meet the expectations of the people it is designed to serve. My aim this morning is merely to describe in broad terms a criminal justice model that has worked for a small city-state.

24 On this note, I conclude by once again extending my warmest congratulations to the Indian Law Institute and to wish it greater success in the future.

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Thank you.

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