

VERBATIM NOTES
OF
COMMISSION OF ENQUIRY INTO CIRCUMSTANCES
THAT LED TO THE COLLAPSE OF THE FINANCIAL INSTITUTIONS
IN THE 1990s

HELD AT

THE JAMAICA PEGASUS HOTEL
81 KNUTSFORD BOULEVARD, KINGSTON 5

ON

WEDNESDAY, DECEMBER 2, 2009

PRESENT WERE:

WED. DECEMBER 2, 2009

COMMISSIONER

The Hon. Mr. Justice Boyd Carey (Ret'd)

MEMBERS

Mr. Charles Ross
Mr. Worrick Bogle

COUNSEL FOR THE COMMISSION

Hon. R.N.A. Henriques OJ, QC, LLM

SECRETARY TO THE COMMISSION

Mr. Fernando DePeralto

MARSHALLING THE EVIDENCE

Miss Kelley Wong - Attorney-at-law

REPRESENTING DR. OMAR DAVIES

Hon. Mr. Michael Hylton, Queen's Counsel

REPRESENTING JAMAICA REDEVELOPMENT FOUNDATION

Mrs. Sandra Minott-Phillips - Attorney-at-law
Mr. Gavin Golfe - Attorney -at-law

REPRESENTING DEBTOR

Raphael Codlin - Attorney-at-law

REPRESENTING DEBTOR AND HIS COMPANIES

Mr. Leighton Miller - Attorney-at-law

GIVING EVIDENCE

Dr. Omar Davies, MP

1 DECEMBER 2, 2009

2 CHAIRMAN: Let us resume ladies and gentlemen.

3 Good morning.

4 MR. HYLTON: Mr. Chairman, if I may address you

5 briefly, sir, before Dr. Davies starts.

6 Mr. Chairman, Dr. Davies has been

7 attending, as you know, voluntarily

8 without subpoena or order and he is

9 prepared to continue to do so, to answer

10 any questions put to him and try and

11 assist the Commission's deliberation,

12 but we do, however, sir, have two

13 concerns that I thought I should share.

14 The first, Mr. Chairman, relates to

15 procedure. On September 15, before

16 these hearings started I wrote to the

17 Secretary and enquired whether

18 procedural rules had been fixed and I

19 was told that that would be done in due

20 course. While, as you know,

21 Mr. Chairman, the Commissions of Enquiry
22 Act provides that commissioners may fix

23 their own procedure, the procedure fixed
24 according to the cases must be certain,

25 fair and consistent, and there are a

1 2 couple of respects, sir, where we are
3 4 concerned that that has not been the
5 6 case, and I give you two examples,
7 8 Chairman. One relates to the asking of
9 questions by persons. I recall, sir, that
10 on the first day of the hearing there
11 were microphones in the audience and they
12 were removed at your direction and as I
13 recall, it was indicated that members of
14 the public would not be allowed to ask
15 questions and questions would only be
16 asked by counsel. On the morning that Dr.
17 Davies started, those microphones re-
18 appeared in the audience and you issued
19 an invitation to members of the audience
20 to ask questions. Related to that, sir,
21 is the fact that you had directed in the
22 course of the first week, that persons
23 asking
24 questions should submit them in writing
25 in advance and indeed I recall Attorney
Gayle Nelson was given that direction and
was required to comply with it, and so
that was eminently fair and
reasonable direction given the fact that

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witnesses are giving evidence of matters that happened a decade ago in relation to which there is a substantial documentary evidence. Last week, however, sir, members of the public asked questions without submitting them in writing, which perhaps is understandable given that they are lay persons, but the same thing, Mr. Chairman, also applied to my learned friend Mr. Wong Ken who asked a number of questions from a prepared text not having given notice in advance. So that is one issue, sir.

The other concern relates to material, submissions, document, whatever, in the Commission's possession which have not been shared with affected persons. That too, sir, is a matter in relation to which I had written to the Secretary prior to the hearing and that too is a matter in relation to which the authority says one of the cardinal principles of fairness in a commission is that allegation and the material to

1 support the allegation should be shared
2 with affected persons. Now, sir, there
3 have been a number of instances where it
4 appears from comments made by the
5 Commissioners that there is material that
6 they have and which they think is credible
7 but which has not been shared with
8 affected persons, and so, sir, in those
9 circumstances, if I may, I would
10 respectfully make four suggestions to the
11 Commission.

12 The first, sir, is that the Commission
13 decide on and publish the procedural rules
14 that will guide these hearings. Secondly
15 that these rules be applied consistently
16 throughout the proceedings. Thirdly that
17 the Commission indicate who are the
18 persons who have been invited to and who
19 have agreed to give evidence to the
20 Commission and hopefully the order in
21 which they will do so; and finally sir,
22 that affected persons be advised of the
23 allegations against them and provided with
24 any material that has been submitted to
25 the Commission that may

1 support those allegations.

2 I repeat sir, that Dr. Davies is here,

3 he has taken his seat, he is willing to

4 proceed as you direct, but we think,

5 sir, that these are serious concerns and

6 that it is important that we share them

7 with you at the start of the day.

8 CHAIRMAN: Thank you.

9 MRS. MINOTT-PHILLIPS: If it pleases you Mr. Chairman, and

10 members, I also share my friend's

11 concerns as expressed. I had indicated

12 yesterday a particular difficulty with

13 the way in which questions are asked and

14 recorded without persons being given

15 the -- persons affected being given the

16 opportunity to make any input on the

17 matters that through questions are being

18 presented as facts and reported as facts

19 by the media in circumstances where the

20 facts just don't bear out what is being

21 said.

22 CHAIRMAN: Let me respond briefly to Mrs. Minott-

23 Phillips. People asking questions

24 aren't really giving evidence, so I

25 don't think I need to say anything more

1 about that.

2 Insofar as Mr. Hylton's concerns go, what

3 I recall saying is I require the persons

4 in the audience, if I call them in the

5 audience, that is, people who are **victims**

6 who are being permitted to ask questions

7 because they were affected by this melt-

8 down and if the enquiry is to be true and

9 to carry out its mandate, it must at least

10 invite those persons to put questions

11 certainly to the person who was

12 responsible for financial stability. What

13 I did ask is that they should put it -

14 initially I didn't require it but

15 afterwards we required that they would

16 submit in writing and there was a

17 gentleman who in fact did so but because

18 they are lay people and having regard to

19 the time they were told about this, we

20 would have had to go and adjourn the

21 matter to get them to put it in writing,

22 so that some things couldn't be done.

23 Insofar as counsel are concerned, I

24 certainly made no rule requiring counsel

1 to submit their questions to us ahead of
2 time, because I would assume that
3 counsel knows their business and would
4 formulate proper questions. If the
5 questions were improper or for any reason
6 are objectionable, then of course the
7 Commission would determine, at the
8 appropriate time, in other words, when
9 the question is put that it is an
10 inappropriate question, and in fact there
11 was occasion when certainly Mr. Wong Ken
12 was told that the questions he was
13 putting were inappropriate and that Dr.
14 Davies certainly couldn't answer those
15 questions.

16 So far as consistency is concerned, I
17 reject all together any suggestion that
18 we are not being consistent. We are doing
19 everything to make this a very fair
20 enquiry, and I don't think we can be
21 accused in any way of being unfair to any
22 person, and if the Minister is unable to
23 answer the question, he says so and if
24 there are things we can obtain we obtain
25 them.

1 Now insofar as the Commission is
2 concerned, the Commission was put in
3 possession of a whole mass of documents
4 and I think it would be correct that we
5 should look at them to see what it is the
6 enquiry is about to make ourselves, have
7 some knowledge of what it is dealing
8 with, so I see nothing improper with
9 that. One of the sad things about this
10 Commission, one of the unfortunate things
11 about this Commission and on which I
12 should comment, is that unlike other
13 commissions where the commission is in
14 possession of statements by the persons
15 who are intended witnesses, that didn't
16 occur in this situation. We invited
17 persons who were major players and
18 obviously would know about this thing to
19 speak to the terms of
20 reference, but for the most part they
21 declined that and we were required to sit
22 down and raise questions for them to
23 answer. This makes the enquiry very
24 difficult to proceed as if it is an
25 ordinary enquiry. This is an extra-

1 ordinary enquiry and we are going to
2 have a whole range of things that make
3 it difficult, but we are trying to do
4 the best we can.

5 Insofar as publishing rules, I don't know
6 how many rules you want, and I have
7 already said from the very outset, that
8 insofar as the rules of procedure are
9 concerned we will endeavor to be as
10 flexible as we can to ensure that what we
11 are required to do is achieved, and we
12 propose to carry out our mandate to the
13 best of our ability. We will endeavor to,
14 in consultation with counsel, set out
15 some rules, if we think that is required,
16 I didn't think there is any difficulty at
17 the moment, and I don't think there
18 should be any more cause for criticism. I
19 am not engaging in any press concerns.
20 We are not hearing anything down here,
21 FLOOR: sir.

22 All persons who are affected by the
23 CHAIRMAN: enquiry, not the enquiry, by what is
24 raised in the Terms, will be allowed to
25

1 put questions to the Minister. If we
2 consider the question to be unfair or one
3 which the Minister is unable to answer,
4 e.g., when he is being asked about day-
5 to-day activities, we won't allow those
6 questions because he was not an executive
7 officer but as the person responsible he
8 can speak to these matters to the best of
9 his ability and we propose to carry that
10 out.

11 Insofar as persons who consider that
12 there are allegations made against them,
13 they will have an opportunity to be heard
14 and give the evidence so we have the
15 evidence on the record because what will
16 inform any report which we make is the
17 evidence which emanates from this enquiry
18 and not from anything we have read; what
19 we have read does permit us to ask
20 questions which the witness can accept or
21 reject; if the witness accepts it, it
22 becomes part of the evidence, if he does
23 not, that's the end of the matter unless
24 other evidence is brought to prove a
25 particular fact. We are not

1 in a court of enquiry, court of law,
2 this is a coroners inquest. Can we now
3 proceed, may we now proceed.
4 DR. DAVIES SWORN.
5 EXAMINATION BY MR. CODLIN
6 CHAIRMAN: Yes Mr. Codlin. You heard Mr. Hylton's
7 comments?
8 MR. CODLIN: Yes, My Lord.
9 CHAIRMAN: Well, be guided accordingly.
10 MR. CODLIN: I shall. Before I begin, sir,
11 unfortunately, I injured a leg in the
12 gym and it is causing some discomfort,
13 may I therefore have your kind
14 permission to sit during the
15 proceedings?
16 CHAIRMAN: You don't want a bed as well?
17 MR. GOBLIN: No, sir.
18 CHAIRMAN: Can we get a high seat for you?
19 MR. CODLIN: If I am accorded your kind approval, I
20 am quite comfortable where I am sir.
21 CHAIRMAN: Go ahead, sit down Mr. Codlin.
22 MR. CODLIN: Thank you.
23 CHAIRMAN: We hope there will be a speedy recovery.
24 MR. CODLIN: I am most grateful to you, sir, thanks
25 again.

1 Good morning Dr. Davies?

2 DR. DAVIES: Good morning counsel.

3 Q My first question, sir, is this, was
4 Jamaica Redevelopment Foundation
5 incorporated to acquire the assets of
6 the failed institutions that we have
7 been speaking about?

8 A I am not clear on your question, is
9 it -- I don't know if it were
10 specifically incorporated for that
11 purpose.

12 Q You don't know sir, that is it. Do you
13 know, sir, that before its
14 incorporation, promoters had discussion
15 with persons from Jamaica with a view to
16 arriving at an agreement or agreements?

17 A I must confess, Counsel, I don't
18 understand the question. Who are
19 promoters?

20 Q Promoters are persons who take steps to
21 incorporate a company, sir.

22 A No, I didn't know.

23 Q You didn't know, thank you, sir. When
24 you first heard the name Jamaica
25 Redevelopment Foundation, did it strike

1 you as meaning anything so far as
2 Jamaica is concerned?

3 A I must confess not. Companies have -
4 people coin strange names for companies,
5 varying names.

6 Q And I am suggesting, sir, that there
7 were discussions before the company was
8 incorporated and those discussions
9 resulted in the name being Jamaica
10 Redevelopment Foundation?

11 CHAIRMAN: Would the Minister sorry. Would he as
12 Minister form part of that? I don't
13 know what you are suggesting, you see.

14 MR. CODLIN: He had persons there if it pleases you
15 M'Lord, Chairman, who would have
16 informed him, because the point I am
17 making is that discussions took place
18 before the company was incorporated and
19 it is arising out of those
20 discussions...

21 CHAIRMAN: Possibly, but we don't know, discussion
22 between whom or what, persons with whom
23 he is concerned?

24 MR. CODLIN: Yes, sir, persons with whom....

25 CHAIRMAN: Why don't you put it to him.

1 MR. CODLIN: Most obliged. I am putting it to you
2 please, Dr. Davies, that persons who
3 were sent or authorized to negotiate on
4 behalf of Jamaica the sale of these
5 assets, had discussions with persons in
6 the United States before Jamaica
7 Redevelopment Foundation was
8 incorporated and it is arising out of
9 those discussions that the name Jamaica
10 Redevelopment Foundation was coined?
11 A I have no such knowledge and I do not
12 know who these persons were.
13 Q Yes, you don't know who the Jamaicans
14 who were discussing?
15 A I don't know that this occurred and I
16 don't know that, whomever these people
17 are, I do not know.
18 Q I seem to recall Dr. Davies, and kindly
19 correct me if I am wrong, last week you
20 told the Commission that you advertised
21 or Jamaica advertised both locally and
22 abroad, you couldn't advertise for
23 Jamaica alone, am I correct, sir?
24 A Absolutely correct.
25 Q And I am really saying that it is

1 arising out of that advertisement why
2 discussions took place between persons
3 in the United States and Jamaicans
4 pursuant to having an agreement?

5 A Well counsel, I know of a fact that
6 there were other interested parties. As
7 a matter of fact the company which was
8 selected as the first choice came to
9 Jamaica to carry out its final due
10 diligence, so these discussions are a
11 natural part of any such eventual
12 arrangement but the principals of JRF
13 were not the only persons, foreigners,
14 with whom discussions were held.

15 Q But, they were among those persons, that
16 is what you are saying?

17 A Well, what I am saying, you can't have a
18 sale between people who don't talk to
19 each other.

20 Q Yes, the persons who had discussion on
21 behalf of Jamaica were persons whom you
22 have trusted?

23 A With whom are you talking about, JRF or
24 in general?

25 Q I did say on behalf of Jamaica, sir.

1 A Well in general I actually met -- I met
2 another group first, the group which had
3 been chosen, or selected as our first
4 choice and with whom we were close to
5 tying up the deal. I think I indicated
6 to this Commission last week that they
7 came for their final due diligence and
8 the disturbance in Tivoli made them
9 decide to withdraw. Beal Bank, which I
10 think is parent company of JRF, was not
11 the first choice, they came in
12 afterwards.

13 Q Are you saying that you had a deal or an
14 agreement with Beal Bank and that
15 agreement flowed down to JRF?

16 A No, what I am saying is that the parent
17 company or whatever you wish to call it,
18 for JRF -- JRF didn't exist in the US,
19 there was another company, Beal Bank,
20 that is the one which we investigated
21 doing our own due diligence, so the JRF
22 was established after that.

23 Q But that is what I put to you earlier
24 please, Dr. Davies?

25

1 A I wasn't clear what you were putting to
2 me.
3 CHAIRMAN: Let's not quarrel.
4 MR. CODLIN: Thank you, sir. I am suggesting to you
5 sir, that discussions with Deal Bank...
6 A Beal, B-E-A-L.
7 Q Beal Bank, I am suggesting to you, sir,
8 that discussions with Beal Bank before
9 JRF was incorporated resulted in certain
10 agreement?
11 A Between whom?
12 Q Between Beal Bank and the Jamaican
13 authorities?
14 A I don't know, the agreement I know of
15 was the agreement to purchase the bad
16 loan portfolio.
17 Q Yes, sir, that is what I am talking
18 about, thank you. And I am suggesting
19 to you, sir, that a part of that
20 agreement was a decision...
21 A Yes, sir.
22 Q To grant exemption to JRF when it was
23 incorporated?
24 A Exemption from what?
25 Q The Money Lending Act?

1 A Well, I was not involved in those
2 discussions.

3 Q I see. I am further suggesting to you,
4 sir, that arising out of that agreement
5 you were subsequently requested to
6 authorize the exemption.

7 A If you take the first part of your
8 question off, I was requested to grant
9 the exemption.

10 Q Thank you, sir. In order to assist you
11 Dr. Davies, I have provided one of these
12 to you, do you have it please?

13 A Yes, it was very good weekend reading.

14 Q I am very grateful to you.

15 A But I had listened to Mr. Shaw speak too
16 so I skipped that.

17 Q Sir, if you will kindly allow me, not
18 get between you and Mr. Shaw.

19 A No, but I figure with the cost of paper
20 we could have saved a lot of money.

21 Q All right, sir, thank you very much.
22 CHAIRMAN: That is not for the taxpayer, I don't
23 think.

24 A I thought it was the Commission's
25 charge.

1 Q Thank you very much. Do you recall
2 sir -- I am sorry my Lord?
3 CHAIRMAN: Can you hear? Go ahead.
4 MR. CODLIN: Thank you, sir. You granted Jamaica
5 Redevelopment Foundation a number of
6 exemptions beginning with that -- could
7 you look at page 23, Dr. Davies?
8 A Yes, I am there.
9 Q Am I correct in saying that that was the
10 first exemption you granted -- may I ask
11 M'Lord if you have a copy of this sir?
12 CHAIRMAN: Yes.
13 MR. CODLIN: Thank you.
14 CHAIRMAN: May 24.
15 MR. CODLIN: Yes, sir.
16 MR. HYLTON: I am sorry, sir, the copy I have says
17 May 30.
18 CHAIRMAN: I am sorry, May 30th.
19 MR. CODLIN: Yes, May 30?
20 DR. DAVIES: Yes, May 30th.
21 Q This was the first one that you granted
22 sir?
23 A Yes.
24 Q And another five or six more followed?
25 A Yes.

1 Q And the last of which was in 2007?

2 A The last granted by me.

3 Q Yes, sir, the last granted by you.

4 A Okay, yes, sir.

5 Q Thank you, sir. Do you have any reason
6 why you granted seven and not one?

7 A I gather -- the lawyers told me that
8 it's an annual exemption, it had to be
9 renewed.

10 Q Legal restraint or constraint,
11 whichever, that is what you are saying.

12 A Your colleagues had so advised me.

13 Q Thank you, sir. Jamaica Redevelopment
14 Foundation was incorporated just a year
15 before you granted the first exemption,
16 am I correct, sir? I think it was
17 incorporated the 11th of December 2001,
18 but we can find out, do you agree that's
19 the date?

20 A No, I don't know but if you have checked
21 it I am willing to -- I don't think it's
22 a substantial point.

23 MRS. MINOTT-PHILLIPS: Is my friend speaking to its

24 incorporation or its registration in
25 Jamaica under the Companies Act as an

1 overseas company?

2 CHAIRMAN: 3 I am listening to him, I don't know.
Are you objecting?

4 MRS. MINOTT-PHILLIPS: I am seeking clarification.

5 CHAIRMAN: Let us hear what he is saying.

6 MR. CODLIN: I put to Dr. Davies, sir, incorporation
7 and I hope my friend knows that if I say
8 incorporation that is what I mean.

9 DR. DAVIES: Well counsel, I don't know, it's not a
10 normal thing for me to -- I assume that
11 the officers who recommended the
12 exemption, I don't know.

13 CHAIRMAN: He doesn't know, yes.

14 MR. CODLIN: I think we have it here please,
15 Dr. Davies. May I ask you to kindly
16 look at Page 49.

17 A I am there, sir.

18 Q From the bottom, do you see SOS
19 Registration date, December 11, 2001?

20 A Yes, sir, I think we have the same page.

21 Q Thank you, sir. I am saying that that is
22 the date on which it was incorporated in
23 the United States, I am not referring to
24 registration in Jamaica.

25 A I am willing to accept this, yes.

1 Q Thank you, sir. I am further suggesting,
2 Dr. Davies, that you granted the
3 exemption....

4 MRS. MINOTT-PHILLIPS: For the record, can I state that that
5 says SOS Registration Number and a
6 franchise tax certification.

7 CHAIRMAN: I don't know if this is in evidence --
8 is this an exhibit, he is only asking
9 about date, yes.

10 Q I am suggesting to you please,
11 Dr. Davies, that your real reason for
12 granting the exemption arose out of the
13 recommendations made to you.

14 A Well I am willing -- yes, I said that
15 before.

16 CHAIRMAN: We would hope so.

17 MR. CODLIN: Thank you sir. JRF, sir, was never a
18 money lender?

19 A I am not so clear if you are defining
20 money lender within the legal framework
21 or as a...

22 Q I am speaking in ordinary language
23 please, sir?

24 A Well, if you purchase debts or if you
25 have assets which are debts, then the

1 Money Lending Act applies to you.

2 Q You are saying that the purchaser of
3 debts and a money lender, those are
4 interchangeable expressions?

5 A No, I did not say that.

6 Q That is what I am asking.

7 A But you didn't ask it.

8 Q All I asked you Dr. Davies, is whether
9 or not JRF was a money lender, and by
10 money lender I mean someone who lends
11 money?

12 A I don't know if JRF engaged in lending
13 money.

14

15 Continued....

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1 Q: I see.

2 A:

3 Q: I don't know,
4 When you grant the exemption sir, I ask
5 if you knew then that was or was not a
6 money lender?

7 A: I granted the exemption on the advice
8 that JRF had purchased the portfolio bad
9 debts.

10 Q:

11 A: Thank you, sir.
12 No, I wasn't finished, sir. Having
13 carried out their due diligence as to
14 the bid they would put in, the offer
15 they would make as to the portfolio
16 which was held by FINSAC, FIS, Refin.:
17 That assessment was essentially based on
18 the assumptions that whatever held for
19 those institutions would hold for them.

20 CHAIRMAN: I see.

21 MR. CODLIN: You are waiting on something?

22 CHAIRMAN: Yes, sir.

23 MR. CODLIN: What?

24 CHAIRMAN: Your permission to continue.

25 MR. CODLIN: Oh! I didn't stop you.
I see. No, as I saw you talking to...

CHAIRMAN: No, no.

1 MR. CODLIN: Thank you, sir.

2 CHAIRMAN: I was just...

3 MR. CODLIN: I am sorry.

4 CHAIRMAN: ...contemplating what you are saying.

5 MR. CODLIN: I see. Would I be correct Dr. Davies, by

6 saying that at the time when you granted

7 the first exemption JRF's mandate was

8 to collect debts owing to Jamaica

9 Government and perhaps to JRF itself?

10 A: Well, no longer Jamaica Government did

11 but to collect the debts related to the

12 portfolio they had purchased.

13 Q: And are you saying that the Jamaica

14 Government had no interest in those

15 debts?

16 A: Yes, I didn't say that but I will say

17 that the mandate was...

18 Q: That is why I say owing to the Jamaican

19 government and JRF.

20 A: Okay.

21 Q: I said, owing.

22 A: They purchased the portfolio and the

23 portfolio agreement indicated...

24 CHAIRMAN: So far as you know the debt was sold?

25 MR. CODLIN: Yes, sir. But with an interest?

1 A:

Yes.

2 4:

Yes. If Jamaica Redevelopment was not a

3

money lender would you agree that you

4

would not have the authority under the

5

law to exempt them?

6

MR. HYLTON:

I think a question as to the authority

7

under the law is not an appropriate

8

question to ask.

9

CHAIRMAN:

I don't think he can ask Dr. Davies --

10

when I say, "I don't I think" I know you

11

can't.

12

MR. CODLIN:

Yes. May I move on, sir? Do you agree

13

that in granting -- could you kindly

14

tell the Commission what you are

15

required to do before you grant an

16

exemption?

17

A:

Well, counsel, let me indicate to you

18

how the Ministry operates or the

19

Minister operates. There are technical

20

people who carry out that investigative

21

work et cetera, and the Minister's major

22

input is with regard to policy issue so a

23

recommendation comes forward but I don't

24

go on to ascertain whether JRF is lending
money. The lawyers indicated

1 that the application under the Money
2 Lending Act would have been made and
3 indicated the basis for advising me to
4 grant it but I don't carry out my own
5 analysis.

6 CHAIRMAN: You get advice?

7 A: That's an excellent summary of what I
8 was saying, sir.

9 MR. CODLIN: Thank you, sir.

10 CHAIRMAN: Yes.

11 MR. CODLIN: Would you agree by granting exemption to
12 JRF you made it the only entity that
13 could charge interest without any
14 government agency having the power to
15 relate it?

16 A: I didn't know that to be a fact.

17 Q: What, do you know now, sir?

18 A: No.

19 Q: I see.

20 A: I think you would have to establish it
21 before I could say I know.

22 Q: Well, I ask you the question,
23 Dr. Davies, and you have answered so in
24 those circumstances subject to direction
25 from the Commission...

1 A: I hope it's clear that I am not saying I
2 know that it was the only entity, I
3 don't know that to be true.

4 Q: You don't know. As far as I am concerned
5 that is an answer.

6 CHAIRMAN: You are getting into these semantic
7 debates.

8 MR. CODLIN: Did you consider the question of
9 interest when you were granting the
10 exemption please, Dr. Davies?

11 A: Well, the interest is always implicit in
12 terms of the exemption. The fact is that
13 the due diligence had been carried out
14 within the context of the conditions
15 obtaining to the loans, to the debts
16 being held by FINSAC, et cetera. So
17 interest is always a factor.

18 Q: interest is always a factor?

19 A: Uh-huh..

20 Q: When you granted the exemption did it
21 have anything in it to suggest the
22 highest or lowest level of interest that
23 they could charge?

24 A: Well, the exemption addresses that.

25 Q: It does?

- 1 A: But I had also granted exemptions to
2 FINSAC and Refin.
- 3 Q: May I ask if the exemption that you say
4 addresses that is the one that we looked
5 at not long ago?
- 6 A: Well, that one, the actual Act isn't
7 attached but the actual Act would speak
8 to interest, this was the excellent
9 exemption from the...
- 10 Q: May I ask what you call the actual Act,
11 sir?
- 12 A: The piece of legislation.
- 13 Q: Are you referring to Section 14 of the
14 Money Lending Act?
- 15 A: Well, I don't know what section I am
16 referring to. I am indicating that the
17 purpose of the exemption was to provide
18 JRF the same basis of dealing with
19 interest rates on loans as the
20 institutions which immediately prior
21 held those loans.
- 22 Q: Are you referring to banks, sir?
- 23 A: No, that's one step away.
- 24 Q: Oh! So eventually the same process would
25 apply to banks?

1 Q: Right.

2 Q: So they came from banks through
3 another...

4 A: Through FINSAC.

5 Q: And then to them?

6 A: Which were not banks.

7 Q: I see.

8 A: And still aren't.

9 Q: I see, yes. But what you ordered is not
10 in the Gazette that we just looked at or
11 all of what you ordered?

12 A: I am not clear. What is in the Gazette
13 is what I signed.

14 Q: Yes. and that was your order?

15 A: Yes.

16 Q: Thanks.

17 MRS. MINOTT-PHILLIPS: Mr. Chairman, my friend had taken the
18 witness to a Gazette on page 23 of his
19 bundle and I am not sure if that's the
20 Gazette that he is referring to in this
21 question because that particular
22 document was later amended by the
23 document which appears at page 24 which
24 he has not been taken the witness. So I
25 am really not clear which Gazette when

1 he says the one you have looked at.

2 CHAIRMAN: Perhaps Mrs. Phillips, that you will
3 await your turn to question and you can
4 clear it up, we certainly will allow for
5 you to clear it up.

6 MRS. MINOTT-PHILLIPS: But he is asking the question in
7 relation to JRF who I represent.

8 CHAIRMAN: But I will allow you to respond at the
9 appropriate time rather than
10 interrupting and slowing things down.
11 May I suggest that you follow my
12 procedure? I note what you have said
13 and you will be given an opportunity to
14 deal with it. Mr. Codlin?

15 MR. CODLIN: Yes, Mr. Chairman, thank you, sir.
16 Dr. Davies, do I understand you to have
17 said that when granted the exemption
18 that built into that grant were
19 constraints and interest charges?

20 A: No, sir.

21 Q: You didn't say that?

22 A: No.

23 Q: How would one know how much interest JRF
24 was allowed to charge?
25 Well, all I was simply doing counsel...

1 CHAIRMAN: I am, sorry.

2 MR. CODLIN: Yes.

3 CHAIRMAN: I don't think that is a legitimate
4 question -- I put in that way -- to ask
5 Dr. Davies. Dr. Davies as Minister was
6 given advice; his lawyer says, "go ahead
7 Minister sign, the law is so and so" and
8 he does. I am not quite clear how this
9 question follows.

10 MR. CODLIN: M'Lord, Chairman...

11 CHAIRMAN: Because as far as he was concerned he
12 signs an order which says, "exempted
13 from the law".

14 MR. CODLIN: Yes.

15 CHAIRMAN: So what you want him to tell you?

16 MR. CODLIN: I wanted him to tell me what he viewed
17 or what persuaded him to sign the order
18 which he has signed bearing in mind that
19 Section 14 of the Act says that before
20 he signs such an order he must be
21 satisfied about certain things and I
22 don't I think that that could be...

23 CHAIRMAN: Well, ask him that.

24 MR. HYLTON: Ask him that.

25 MR. CODLIN: I thought I had asked him that.

1 CHAIRMAN: No, no. You don't ask him that. You may
2 be getting to it.

3 MR. CODLIN: Dr. Davies, what did you take into
4 consideration sir, in order to grant the
5 exemption?

6 A: The main point I took into consideration
7 was that JRF was purchasing a portfolio
8 of bad loans from the two or three
9 government institutions and these
10 institutions had been exempted from the
11 Money Lending Act and this was the basis
12 on which the due diligence had been
13 carried out, on the basis of equity and
14 continuity; that is what I took into
15 consideration.

16 Q: Those are the things that you took into
17 consideration. Thank you very much. At
18 that time do you think you could have
19 attained your objective by some other
20 method apart from a wholesale grant of
21 exemption?

22 A: I am not clear what is my objective to
23 which you refer so if you could
24 enlighten me there then I could answer
25 your question.

1 Q: Simply telling them what interest rate
2 to charge.

3 A: I don't think so, sir. That sometimes
4 could act in favour of the clients and
5 sometimes could act against the clients.
6 Counsel, if I may elaborate. One of the
7 reasons the regulated institutions,
8 licensed regulated institutions had been
9 exempted is that -- the argument holds
10 and you may disagree with me, that in
11 carrying out business, whilst the state
12 can play a useful role as referee, you
13 don't want the state imposing
14 unnecessarily it's rules in terms of
15 interest rates charged or interest rate
16 paid. That's a negotiation between
17 institution and the client.

18 Q: But Section 3 of the Money Lending Act,
19 please Dr. Davies, gives you the power
20 as Minister to set rates of interest,
21 you are aware of that I am sure?

22 A: Yes.

23 Q: So wouldn't you expect to exercise that
24 power equitably in the interest of the
25 public?

1 A: Well, I don't know about the public,
2 counsel. What I have indicated and I
3 don't know how many ways I am going for
4 tell you, that the primary rationale was
5 continuity, given that the institution
6 was which held the bad debt portfolio
7 had enjoyed that exemption and they had
8 been granted that exemption because they
9 had taken that bad debt portfolio from
10 regulated institutions which had already
11 that exemption.

12 Q: Did you intend borrowers of the failed
13 financial entities to be in a worse or
14 better position after you had granted
15 the exemption?

16 A: That's a -- I never...

17 Q: Never addressed that?

18 A: I never addressed that question in the
19 process. I addressed the question of an
20 entity which wished to do business with
21 his clients.

22 A: I see sir, thank you.

23 Did you intend JRF to charge compound
24 interest?

25 A: My previous answer holds, sir.

1 Q: And which one that is, the previous
2 answer, sir?

3 A: Counsel, what I am saying is that I
4 granted an exemption for those
5 particular reasons. After that my only
6 contact with JRF arose from whenever I
7 communicated with them because of
8 complaints.

9 Q: I see. Thank you, Dr. Davies. I recall;
10 and correct me if I am wrong please, Dr.
11 Davies, that when you were giving your
12 evidence you say you could not
13 advertise in Jamaica alone you had to
14 advertise overseas too?

15 A: No, I didn't say I couldn't. I said that
16 I wanted to attract...
17 CHAIRMAN: May I just ask the question Dr. Davies?

18 Do you know why banks are given
19 exemption? Except from the law do you
20 know why the banks are given the
21 exemption?

22 A: Yes.

23 CHAIRMAN: What do you suppose it to be?

24 A: It is that the state is ham-fisted in
25 terms of interveining in the markets

1 from time to time and the worst -- well,
2 even in the present situation if the
3 state were to set interest rates you
4 could have chaos in the market.

5 CHAIRMAN: Well, may I suggest to you that the
6 reason why banks are exempt is because
7 they have to go and get money, they have
8 to go and seek money. The same thing
9 doesn't apply to, let me call it a
10 collector, does it?

11 A: Well sir, I think sir, with all due
12 respect, that's not all what banks do.
13 They also have to lend.

14 CHAIRMAN: I didn't suggest that.

15 A: No, but you...

16 CHAIRMAN: I said the reason why they are granted
17 the exemption from the Money Lending
18 Act so that they can charge the interest
19 is because they have to go and get
20 money.

21 A: But Chairman there are two sides to it.

22 CHAIRMAN: Well, I am telling you the other side
23 to it. The collector, whether you call
24 it JRF or FINSAC collector, they have
25 haven't got to go and get money because

1 they are not in business of...

2 A: Chairman, let me focus on your - I would
3 not seek to try to argue with you about
4 the law but I can tell you as someone
5 who was involved in the change of
6 reducing the number of entities which
7 were subject to the Money Lending Law, I
8 should indicate that one of the reasons
9 is that we had -- two things. One is
10 that as a principle we wish to pull the
11 state out of normal relationships
12 between clients and financial
13 institutions. And secondly, when I
14 asked how many appeals we had had
15 against the Money Lending Act over the
16 previous five years it had become
17 virtually redundant, nobody had appealed
18 despite it's existence and application
19 to all the entities. So we had this huge
20 Act covering the whole financial system
21 but the Minister had never been, in
22 several years, been asked to intervene.

23 CHAIRMAN: I could respond but I will leave that to
24 the others.

25 MR. HYLTON: Mr. Chairman, may I make a procedural

1 inquiry that will assist me. Do you
2 propose to allow Mr Chairman,
3 submissions on legal questions and if
4 so, at what point? A number of issues
5 have arisen as to the legal effects of
6 things, I am not sure what procedure
7 you have in mind.

8 CHAIRMAN: The procedure would be certainly after
9 Dr. Davies has completed what he has.

10 DR. DAVIES: I am dependent on counsel.

11 CHAIRMAN: No, no, we are all in his hand.

12 MR. HYLTON: You are, sir?

13 DR. DAVIES: Not you sir, we are in yours.

14 MR. HYLTON: I don't ask only in relation to this
15 issue.

16 CHAIRMAN: One second. I certainly wasn't asking
17 Dr. Davies any legal question. I was
18 asking whether the banks would do
19 something that's illegal.

20 MR. HYLTON: My question does not relate to that,
21 sir. It is a question as to whether at
22 some point, whether at the end of the
23 evidence or when...

24 CHAIRMAN: Perhaps at a convenient time you can
25 address us.

1 MR. HYLTON: The reason why I rose now sir, is that if
2 I knew that that was the procedure then I
3 wouldn't feel the need to try to do so at
4 any other point. That is why I asked,
5 sir.

6 CHAIRMAN: We will deal it when the question
7 arises.

8 MR. HYLTON: I will rise then sir.

9 CHAIRMAN: Please do.

10 MR. HYLTON: When the question arises, sir.

11 CHAIRMAN: Please do, yes.

12 MR. CODLIN: Mr. Codlin?

13 MR. CODLIN: Yes, sir.

14 CHAIRMAN: Be guided thereby.

15 MR. CODLIN: Much obliged to you, sir.

16 CHAIRMAN: So if you will proceed with your
17 questioning.

18 MR. CODLIN: Yes, sir. You said Dr. Davies, in earlier
19 testimony that you did not advertise only
20 in Jamaica but in Jamaica and abroad?

21 Yes.

22 A: Do you agree with me that in a matter of

23 Q: that nature it is safer to deal with a

24 Jamaican entity than with a foreign

25

1 entity?

2 A: No.

3 Q: You don't agree?

4 A: No.

5 Q: May I ask you to share with the
6 Commissioners why you don't agree?

7 CHAIRMAN: I am sorry, we don't see the relevance
8 for all of this.

9 MR. CODLIN: May I with your confirmation...

10 CHAIRMAN: Let me ask you this, what is the
11 relevance of the question?

12 MR. CODLIN: The relevance of this sir, is to show
13 the Commission that in choosing a
14 foreign entity it was less safe; it was
15 not as safe as if a Jamaican entity had
16 been chosen. For this reason: total
17 control can be exercised over a local
18 entity not so a foreign entity. And if we
19 are allowed we intend to put evidence
20 before this Commission to show the
21 precarious nature of a company with which
22 the government has been dealing. We have
23 CHAIRMAN: a problem. If a company is doing business
24 here it is registered here, it certainly
25 can be controlled

1 about.

2 A: No, I didn't know, Counsel.

3 CHAIRMAN: Mr. Codlin?

4 MR. CODLIN: Yes.

5 CHAIRMAN: At the end of it all you can make all
6 the legal submissions you care to, to
7 us.

8 MR. CODLIN: I see.

9 CHAIRMAN: But right now just ask Dr. Davies
10 factual things or his opinion or
11 expertise in the area in which he was
12 Minister.

13 MR. CODLIN: I am happy to hear of my impending
14 privilege to make submissions. In those
15 circumstances...

16 CHAIRMAN: Everybody has the privilege, it is just
17 at the appropriate time.

18 MR. CODLIN: In those circumstances if it pleases
19 Your Lordship, Chairman and your
20 Commissioners, I have no further
21 questions of Dr. Davies.

22 CHAIRMAN: That is it?

23 MR. CODLIN: Yes, sir.

24 CHAIRMAN: Your name is?

25 MR. MILLER: Leighton Miller. I appear with Mr.

1 Gayle Nelson on behalf of DEBTOR
2 and his companies. Excuse me.

3

4

5 CHAIRMAN: Thank you. Go ahead.

6 MR. MILLER: Thank you, Mr. Chairman. Morning, Dr.
7 Davies.

8 A: Good morning, Counsel.

9 Q: My first question, sir, is what control
10 if any, did the Regulatory Department of
11 the Bank of Jamaica have over Jamaica
12 Redevelopment Foundation and/or Dennis
13 Joslin Limited before that, and/or
14 FINSAC before that?

15 A: The Bank of Jamaica has a regulatory
16 authority over licensed deposit-taking
17 institutions and hence, none of the
18 above fell within that grouping, hence
19 they had no such control.

20 Q: If the Regulatory Department of BOJ had
21 no control over the interest rate
22 charged by JRF did it have any control
23 over the activities of JRF at all?

24 MR. HYLTON: He has just answered that.

25 Q: I am Sorry. Please sir, state what

1 control the Regulatory Department of BOJ
2 had over merchant banks such as Fidelity
3 Finance Merchant that were taken over by
4 FINSAC?

5 A: Before or after the take over?

6 Q: Before the take over, sir.

7 A: Well, it would be -- I don't know what
8 the law before me but the merchant banks
9 would have been licensed under I believe
10 the Financial Institutions Act and
11 regulated by the BOJ under that.

12 Q: Earlier in these proceedings Mrs.
13 Anderson from the Bank of Jamaica stated
14 that if a bank becomes insolvent the
15 Bank of Jamaica closes the bank. Could
16 you answer then sir, why didn't the BOJ
17 didn't close the Workers Bank before
18 Ernest & Young came to Jamaica and did
19 their report?

20 MR. HYLTON: Mrs. Anderson says nothing of the sort.
21 In fact she very specifically says that
22 the BOJ cannot close banks.

23 CHAIRMAN: Have you got the transcript, Mr. Miller,
24 of the first day's hearing or
25 thereabout, earlier on?

1 MR. MILLER: Yes, may if please you Mr. Chairman.

2 CHAIRMAN: You don't disagree with Mr. Hylton, do
3 you? That is so anyway.

4 MR. MILLER: No. Thank you, sir.

5 Q: Was the Regulatory Department of the
6 Bank of Jamaica aware that in 1998, they
7 appointed Ernest & Young out of England
8 to manage Workers Bank?

9 A: Yes, the accounts in the Bank of
10 Jamaica I don't know if they
11 described it, but for an extended period
12 the Regulatory Department worked, during
13 the intervention worked very, very
14 closely with me so virtually any
15 decision which was taken, they would have
16 been party to and involved with. So
17 the answer is yes.

18 Q: And you agree that by April 1998 Ernest
19 & Young had written an interim report
20 which showed that as at the 23rd of
21 February 1998, Workers Bank had assets
22 of 8.1 million and liabilities of 11.6
23 million?

24

25 Continued....

1 A: Well, I don't recall the specific dates
2 which you indicate but I am aware of the
3 general findings which they had.
4 MR. MILLER: Do you agree that the report revealed

5 that the Directors and/or owners of the
6 bank failed to conduct the business of
7 the bank 'according to law' in all
8 respects and prudently on behalf of the
9 depositors?

10 A: I don't recall the exact words but I
11 recall that their assessment was not
12 complimentary and it influenced our
13 decisions with regard to intervention,
14 removal of the Board, et cetera.

15 Q: Why was Workers Bank allowed to continue
16 to operate after the receipt of that
17 report?

18 A: Counsel, I have spent some time
19 indicating the context within which the
20 decisions were taken to intervene and
21 the manner of intervention and we were
22 seeking to avoid anything close to a
23 collapse of the financial system, that
24 decision was taken within that context.

25 CHAIRMAN: My recollection is that Dr. Davies

1 answered that question previously. Well
2 I even took him to task, so to speak.
3 A: I think it's an accurate description.
4 CHAIRMAN: I try to be.
5 A: I know. No, of that you took me to
6 task, not 'so to speak'.
7 MR. MILLER: In the case of FINSAC against Workers
8 Bank and Delroy Lindsay, who were the
9 lawyers representing Workers Bank?
10 A: I don't know.
11 CHAIRMAN: I like those questions.
12 A: I like those answers.
13 CHAIRMAN: Indeed.
14 MR. MILLER: That case was settled, do you agree that
15 the terms of settlement were never made
16 public?
17 A: I don't know.
18 Q: What were the terms of the settlement in
19 particular in relation to Mr. Delroy
20 Lindsay?
21 A: I don't know. I know Mr. Lindsay was
22 removed.
23 Q: Mrs. Anderson of the Bank of Jamaica
24 testified that accounting entries were
25 used to essentially window-dress the

1 conditions of the financial entities and
2 there were in some cases the submission
3 of inaccurate and or misleading
4 financial information relative to the
5 true financial condition of the
6 entities. You were aware of that
7 situation in relation to Workers Bank,
8 is that correct?

9 A: I became aware of the technique called
10 Evergreening and various techniques
11 particularly after we brought in
12 forensic auditors. I don't know if it
13 was particularly restricted to Workers
14 Bank but I became aware of various
15 techniques to conceal the true state or
16 to befuddle the authorities.

17 Q: Were you aware that the Balance Sheets
18 in the Auditors reports and financial
19 statements for Workers Bank for
20 December 31, 1996 were signed by Mr.
21 Delroy Lindsay and Mr. Howard McIntosh
22 being two of the three signatories on
23 the document?

24 A: I wasn't so aware but I am not surprised
25 given the opposition; I wasn't aware.

1 The Minister isn't required to check the
2 Balance Sheets of submissions.

3 Q: You had said in your evidence on the
4 24th of November that you haven't heard
5 of settlements which had significant
6 financial repercussions. Was the
7 settlement in the case of FINSAC against
8 Workers Bank and Delroy Lindsay one of
9 those settlements, bearing in mind that
10 the terms of the settlement were never
11 made public?

12 A: Well, I don't recall the first part of
13 the context of that response which you
14 attribute to me, I don't, and I am not
15 aware of the settlement, with what the
16 settlement with Mr. Lindsay and
17 Mr. McIntosh was.

18 Q: Did you receive a letter in 2006 from
19 one Mr. Robert Rainford telling you that
20 DEBTOR and his companies had
21 sued Workers Bank and two bank managers
22 to recover a \$121 million plus damages?

23 A: I may have received a letter. I recall
24 having a conversation with Mr. Rainford
25 who was then an employee at the Ministry

1 of Finance, more specifically he had
2 access to me because we have a common
3 interest in football and I remember him
4 telling me this.

5 Q: Do you agree or recall that the said
6 letter said that Workers Bank was to
7 have made provisions in an account for
8 that money claimed?

9 A: As I said, Mr. Rainford had access to me
10 because he is connected with Santos
11 football and he spoke to me in casual
12 conversation, I don't recall the letter.
13 I recall him mentioning DEBTOR
14 and I asked him what was his interest.

15 Q: Did you send on a copy of the letter you
16 received or made further enquiries of the
17 Solicitor General at the time?

18 A: I could have, I am diligent about my
19 correspondence and following up, I could
20 have, I don't recall but I wouldn't be
21 surprised if I did.

22 Q: You recall receiving a communication
23 from the Solicitor General that the
24 money was still on account?

25 A: I don't recall, I don't recall the

1 on Century followed by subsequent
2 reports covering the intervention.
3 Did the report to Parliament -- so it
4 didn't specify Workers Bank?

5 A: I don't recall. I must have made a
6 couple hundred speeches in Parliament
7 and tabled a couple hundred Ministry
8 papers.

9 Q: And before Ernst & Young was contracted
10 to do the report on Workers Bank, were
11 you made aware by the Bank of Jamaica's
12 regulatory department of loans to
13 Mr. Howard McIntosh and the company
14 controlled by him in respect of Workers
15 Bank?

16 A: I can't recall specifically if they
17 reported to me about a loan to
18 Mr. Howard McIntosh, they would have
19 classified it under connected party, but
20 the reason we brought in Ernst & Young
21 is because we wanted a full
22 investigation of the activities within
23 the bank.

24 Q: You have already stated that the
25 exemptions were granted under the Money

1 Lending Act for continuity. Now, you
2 have also said that the Bank of Jamaica
3 would not have regulatory powers, the
4 regulatory powers that it did have for
5 financial institutions once their debts
6 were assigned.

7 A: I also pointed out that the Bank of
8 Jamaica didn't and still doesn't have
9 regulatory authority over FINSAC, FIS,
10 Refin, the exemptions have been granted
11 to those institutions once they assumed
12 the bad debt portfolio.

13 Q: So the new institutions get the benefit
14 of the old arrangements that the banks
15 had but they would not be regulated by
16 the Central Bank in the way that the
17 entities from which they received the
18 loans were?

19 A: Because they were not deposit taking
20 institutions, no, they can't be
21 regulated by the Central Bank. Central
22 Bank doesn't regulate - for example,
23 there are many institutions doing small
24 loans, et cetera and the Central Bank
25 doesn't regulate them.

1 MR. MILLER: Thank you, Dr. Davies.

2 CHAIRMAN: Thank you. Well, it's the witching
3 hour. We will take a break please.
4 Fifteen minutes break.

5 BREAK TAKEN AT 11:00 A.M.

6 On resumption at 11:23 p.m.

7 CHAIRMAN: May we resume. Well, despite the
8 absence of this PA system, lets resume.
9 Mrs. Phillips, you wish to ask
10 questions?

11 MRS. PHILLIPS: Thank you, Mr. Chairman. Dr. Davies,
12 you have been asked a few questions
13 about...

14 CHAIRMAN: Sorry, you are still under oath.

15 DR. DAVIES: It doesn't hold overnight but it holds
16 during the day.

17 CHAIRMAN: Indeed.

18 MRS. PHILLIPS: Dr. Davies, you have been asked a few
19 questions about interest rates on loans.
20 Would you accept that a person or a
21 company borrowing money from a bank, the
22 interest rate would be whatever rate was
23 set by agreement between the bank and
24 the individual borrower, be it a person
25 or a company?

1 A: I do.

2 Q: And the interest rates were not set by
3 the Bank of Jamaica?

4 A: They weren't.

5 Q: Would I be correct in saying that the
6 actions of persons who borrowed money
7 from banks or financial institutions and
8 did not repay them on the terms that
9 were agreed contributed to jeopardizing
10 the ability of depositors with those
11 institutions to recoup their money?

12 A: Yes, and I would indicate why, yes.
13 Insofar as an institution isn't
14 collecting on its loans which are its
15 assets, it has difficulty in meeting its
16 obligation to its creditors, the
17 depositors, and that then forces banks
18 to do strange things or they often tend
19 now to offer higher interest rates in
20 order to attract, and making riskier
21 loans, thus jeopardizing the depositors.

22 CHAIRMAN: Sorry, I don't know if Dr. Davies is
23 being asked qua Minister, qua lecturer
24 or what, that is, I don't know what hat
25 he is wearing.

1 MRS. PHILLIPS: I am asking him qua Minister, former
2 Minister.

3 CHAIRMAN: I see.

4 MRS. PHILLIPS: And in that capacity, would you agree
5 Dr. Davies, that not all borrowers
6 defaulted on loans?

7 A: There was no institution with a hundred
8 percent bad debts, I would say no.

9 Q: So where for instance the policy
10 objective of the government preserved an
11 institution, where, for instance the
12 objective was to to keep a struggling
13 financial institution in operation, it
14 would have been its non- performing or
15 under-performing assets that would have
16 been transferred to FINSAC or the FINSAC
17 related entities, correct?

18 A: Correct, FINSAC did not take any of the
19 good loans.

20 Q: So that in an institution that was being
21 kept going but the bad debt or
22 under-performing portfolio was syphoned
23 off to FINSAC, you could have had a case
24 where say there were two borrowers, each
25 of whom would have borrowed at 5C% per

1 annum, one was servicing his debt and
2 one was not. The person who was
3 servicing his debt, his debt would
4 remain with the bank that he entered
5 into his arrangement with whereas the
6 persons who was not servicing his debt,
7 his debt would be transferred to the
8 FINSAC institution?

9 A: Yes, and that would apply for the
10 intervened banks, yes.

11 Q: Now, it was not intended, Dr. Davies,
12 that by transferring the non-performing
13 debt to FINSAC that the interest rate
14 that the borrower had agreed to pay
15 would be automatically lowered by virtue
16 of the transfer?

17 A: No, but the authorities had the
18 descretion and in some instances did
19 compromise on the overall package, I
20 know of specific cases.

21 Q: Yes, and your evidence was that this
22 happened on a case by case basis.

23 A: Yes.

24 Q: Because indeed, am I correct, the loan
25 itself was entered into on a case by

1 case basis?

2 A: Yes.

3 Q: Every borrower has their individual
4 arrangement with the bank on a case by
5 case basis. Some agree for compounding
6 of interest, some do not, some agree for
7 50%, some agree for 40%, some even agree
8 for 65%, correct?

9 A: That's what I have seen from some of the
10 documentation, yes.

11 Q: Exactly, I have seen the documentation
12 too. It was the intention of
13 government, was it not Dr. Davies, that
14 when they sold the non-performing debt
15 portfolio, they would do nothing to
16 reduce or undermine the value of the
17 assets which were sold?

18 A: Well, it was sold on the basis of the
19 conditions under which the due diligence
20 had been carried out and so they examine
21 as is.

22 Q: Exactly. And as is they would have had
23 the interest rates applicable to them
24 that they had with the seller
25 institutions?

1 A: Yes.

2 Q: And the agreement would provide that
3 they be sold as is, meaning nothing
4 would be done to undermine their value
5 upon being sold?

6 A: I would say yes with one exception, with
7 regard to the special provision for
8 residential units.

9 Q: I am glad you reminded me of that.

10 A: So the answer is yes with that
11 exception.

12 Q: Yes. In relation to the special
13 provision in relation to residential
14 units you did say that there was an
15 arrangement in relation to FINSAC?

16 A: Yes.

17 Q: That where a loan was secured - in
18 relation to FINSAC where a loan was
19 secured by the home in which the
20 borrower resided that a special
21 arrangement could have been made for
22 repayment of the loan on terms that
23 would allow the person to get back
24 their....

25 A: Well, I think primarily to separate that

1 from the rest of the collateral.

2 Q: Of the security?

3 A: Yes.

4 Q: And would you agree with me that it was

5 something like they could pay 80% of the

6 principal and recover the security of

7 the residential home?

8 A: Yes.

9 Q: It was something like that?

10 A: Yes.

11 Q: And it was a facility that was extended

12 by JRF when the loans were transferred?

13 A: I became aware of that, it was something

14 which was requested and I believe the

15 offer was extended for six months.

16 Q: I believe you said it was requested for

17 six months.

18 A: A six month period.

19 Q: Yes. So in that sense persons who

20 actually had their loans transferred to

21 FINSAC, and remember my example about

22 the debtor who was performing, paying in

23 accordance with the terms, his loan

24 remained with say NCB and the ones who

25 were not performing and had their loans

1 transferred to FINSAC, they actually
2 would have been in a better position in
3 terms of being able to access that offer
4 which a debtor who was servicing his
5 loan and whose loan had remained with
6 the bank would not have had?

7 A: Yes, put that way, yes, he would be
8 better off than the person who had
9 remained with the good loan portfolio.

10 Q: Now Dr. Davies, you have spoken of the
11 purchaser of the asset having to do, and
12 doing a due diligence on the assets
13 before deciding to buy it.

14 A: Yes.

15 Q: And the asset in this case was the
16 portfolio of non-performing and
17 under-performing loans?

18 A: Yes.

19 Q: With all their attendant terms and
20 conditions and security documentations?

21 A: Yes. And could I add that, I don't know
22 whether it's a legal thing but the
23 seller would have full disclosure, so
24 you can't hide anything or have any
25 additional condition which is not stated

1 up front.

2 Q: Thank you. And you would agree with me
3 that a commercially prudent person would
4 only buy the portfolio if he thought
5 there could be a net gain between what
6 he paid for it and what he realized from
7 it once acquired?

8 A: Yes, I would think self-evident unless
9 you are into charity.

10 Q: It's amazing how many self-evident
11 things seemed to be overlooked. It
12 would follow that if a prospective
13 purchaser thought that he couldn't
14 realize from the asset more than he paid
15 for it he is unlikely to buy it?

16 A: Yes. Especially if the thing is by free
17 will.

18 Q: And in your evidence you said ..

19 CHAIRMAN: Isn't that all opinion that we can...

20 MRS. PHILLIPS: I have heard a lot of that in some of
21 the previous....

22 CHAIRMAN: Does that make it right?

23 MRS. PHILLIPS: Well, unless my client is to be
24 restricated in the circumstances rather
25 than...

1 CHAIRMAN: Please, let us not have an argument.

2 MRS. PHILLIPS: Dr. Davies, I heard you give evidence
3 that Grace Kennedy and PriceWaterhouse
4 thought the price being asked for the
5 portfolio was too high?

6 A: I have the actual newspaper clipping if
7 you wish to have it.

8 Q: And in order to recoup as much of the
9 amount outlaid by the Jamaican tax
10 payers in shoring up the financial
11 sector the government would have been
12 seeking to sell the portfolio for as
13 much as possible, correct?

14 A: Not only correct but I think there will
15 be serious questions asked if we sought
16 to sell it to someone or a firm which
17 didn't offer the best deal.

18 Q: And it did in fact sell it to Jamaica
19 Redevelopment Foundation Inc. for an up
20 front payment and a percentage of
21 collections on a graduated basis,
22 correct?

23 A: Yes.

24 Q: That up front payment would have gone
25 towards setting off the expenditure

incurred by the Jamaican tax payers in
the outlay to rescue the financial
institutions?

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A: Yes, and that would also include the
operational expenses of FINSAC, FIS but
it went towards helping to service some
of the debts which had been taken on by
issuing FINSAC bonds.

Continued....

1 MRS. PHILLIPS: And it would be correct to say that the
2 more Jamaica Redevelopment Foundation
3 collects the greater is the percentage
4 the Government of the day gets from
5 those collections and can use to further
6 offset against the initial expenditure
7 laid out?

8 A Yes, there is a formula which lays out
9 the ratio which is payable to the
10 government at each stage of collection.

11 MRS. PHILLIPS: Thank you, Dr. Davies. I have no further
12 questions?

13 CHAIRMAN: Thank you. Yes, Mr. Hylton?

14 MR. HYLTON: Mr. Chairman, subject to your having any
15 questions, sir, might I be allowed to
16 re-examine, I don't know if I am
17 premature?

18 CHAIRMAN: Well, let me put it to you this way.
19 Our plan of action is, because we have
20 people like FINSAC to come to give
21 evidence we thought that we may have to
22 defer further examination of Dr. Davies,
23 so that when we hear from FINSAC and
24 others in that area, we may need to call
25 Dr. Davies back, you see. So that as to

1 what you tell me it might be advisable
2 to wait until then. But, of course, if
3 you wish to raise them up to where we
4 have reached, by all means.

5 certainly save time I suppose. What do
6 you think?

7 MR. HYLTON: I would prefer, sir, to leave the
8 re-examination 'til the usual point
9 which is at the end of the cross.

10 CHAIRMAN: So I would have thought.

11 MR. HYLTON: I am now going to be simply saying, sir,
12 that the cross-examination will be
13 effectively adjourned pending other
14 persons and may be continued.

15 CHAIRMAN: Yes. First of all, we have questions to
16 ask Dr. Davies which we will put through
17 our Counsel but...

18 MR. HYLTON: But not now?

19 CHAIRMAN: Not at this point.

20 MR. HYLTON: Well, sir, I remain in your hands?

21 CHAIRMAN: I fear so.

22 MR. HYLTON: Well in relation to your last
23 observation, sir, I would certainly
24 prefer to not do the re-examination, now
25 from what you have just indicated.

1 CHAIRMAN: Not at all, I don't mind at all. Thank
2 you.

3 DR. DAVIES: I normally speak through Counsel. Am I
4 allowed to address you, sir.

5 CHAIRMAN: Just one moment, you soon get to
6 address us. Well, you speak through
7 Counsel, but anyway.

8 MR. HYLTON: If I may observe, sir, I'll also ask
9 you to allow Dr. Davies to speak. I
10 suspect that one of his concerns must be
11 that he has other responsibilities?

12 CHAIRMAN: We are not unaware, we are not unaware
13 of that, I can assure you.

14 MR. HYLTON: And I think it was important, sir, that
15 it was indicated at the start that there
16 was an estimated time for his appearance
17 which has certainly been exceeded and it
18 does now seem a little open-ended?

19 CHAIRMAN: Well, let us put it this way. The most
20 important person in this matter is Dr.
21 Davies.

22 MR. HYLTON: I am not sure we know that, sir, until
23 we further adhere to...

24 CHAIRMAN: Well he must be if he is Minister of
25 Finance and we are dealing with matters

1 of finance. So he must be, he is and
2 his evidence of testimony covers a wide
3 area. As you noticed from the Terms of
4 Reference, they are widely expansive.

5 MR. HYLTON: Well its perhaps a little unfortunate
6 then, sir, that in that event that we
7 didn't do him last?

8 CHAIRMAN: No, we couldn't do him last. It is
9 important that he comes at this stage.

10 MR. HYLTON: I must say though, sir, that the
11 procedure that you outlined does involve
12 some amount of difficulty.

13 CHAIRMAN: Yes, it does.

14 MR. HYLTON: Because what it does, sir, is it
15 requires him to go first and perhaps
16 third and perhaps last.

17 CHAIRMAN: Perhaps. But this is unfortunate.

18 MR. HYLTON: But that is your...

19 CHAIRMAN: One of the difficulties Mr. Hylton,
20 which I spoke to earlier is how this
21 commission has had to operate. When we
22 invited important persons to speak to
23 the terms, the general approach was,
24 well we are willing to come along and
25 you ask us questions and you know, that

1 is not a means of doing it. So what we
2 had to do was to go and devise some
3 questions to get the thing going but this
4 is not how commissions go, you get to
5 take this from people. People should
6 speak to the terms of reference so that
7 we know what it is they are saying and
8 everybody knows what they are saying
9 before they get here. Obviously, we can
10 go and read the Minister's speeches and
11 ministry papers and all that, but that's
12 not the way things are done during an
13 enquiry; you have to come and give the
14 evidence here as you appreciate I am
15 sure. So that unfortunately this is a
16 difficulty brought about by nothing we
17 have done but by the particular
18 circumstances of this commission.
19 Regrettably that is the situation which
20 we have to accept. I'm a realist. Dr.
21 Davies we understand your position, don't
22 think that we are unmindful of it, but I
23 think you also will readily appreciate
24 that whatever took place, took place
25 under your watch and

1 therefore that you are a very important
2 person in dealing and responding to what
3 is raised under the Terms of Reference.
4 So that we are terribly sorry, but all
5 of us are affected by it because we are
6 getting evidence in chunks, in little
7 pieces and traunches and what have you,
8 it doesn't make it any easier for us.
9 So all of us are in a difficulty, so
10 since we are all on the same playing
11 field, we are not moving the goal post,
12 and the referee is blowing the whistle
13 at the appropriate time, I hope.
14 MR. HYLTON: Could I ask, Mr. Chairman, following on

15 what you said, who you expect to be the
16 next witness for the next two weeks?
17 CHAIRMAN: We are hoping that some FINSAC person
18 will come along, but we are trying to
19 get -- we have a difficulty Mr. Hylton,
20 we have a difficulty, let me tell you
21 that, so that people are aware that what
22 is happening is not of our making. We
23 ask people to come along and make
24 submissions and they say they want forty
25 years to do it. Because they won't

1 speak to the Terms we have to devise
2 questions and when we devise the
3 questions and send them, they say we
4 want three weeks, four weeks, a hundred
5 years. That is a sad situation. So I
6 bring these to your attention so that
7 you are aware of what is occurring and
8 that we are not causing delay as you
9 thought. As far as I understand, the
10 next witness is likely to be somebody
11 from FINSAC, am I correct? But I am
12 afraid unfortunately -- we had a
13 schedule, the schedule has not been
14 kept. This is a tentative schedule
15 which is given E&OE, that is FINSAC. We
16 are hoping that we can get people from
17 FINSAC. Then we need the former
18 Financial Secretary, Mrs. Shirley
19 Tyndale.
20 MR. HYLTON: Miss, sir.
21 CHAIRMAN: Miss, terribly sorry, I apologize.
22 Then we have affected persons, then we
23 have JFR. Sorry, Jamaica Redevelopment
24 Foundation.
25 MR. HYLTON: If I may, under further consideration

1 seek to address two items. In the
2 course of all his evidence last week, I
3 recall that and I am sure you will, that
4 Dr. Davies was asked some questions in
5 relation to two specific cases of
6 debtors that he had undertaken or had
7 offered...

8 CHAIRMAN: He had offered.

9 MR. HYLTON: To look into.

10 CHAIRMAN: Yes.

11 MR. HYLTON: Perhaps it might be appropriate to
12 address those things now.

13 CHAIRMAN: Indeed.

14 MR. HYLTON: So, may I?

15 MR. HYLTON: Please.

16 MR. HYLTON: In relation to debtors, Dr. Davies, both
17 specific and general, starting with the
18 general, you had been asked whether
19 there were any policy things that you
20 had done in relation to debtors and you
21 had talked about a guideline or
22 direction in relation to residences. In
23 addition to the policy things were there
24 any specific things that you did?

25 A Yes. Cabinet took the decision that they

1 would seek to address the issue of
2 debtors particularly those in the
3 productive sector and what was
4 appointed, because this had to be a case
5 by case assessment, was what was called an
6 oversight committee with a broad base
7 membership of business persons,
8 professionals, heads of private sector
9 organizations, representative from the
10 development financial institutions, and I
11 will specify them shortly and the
12 committee was empowered to examine on a
13 case by case basis the plight of those
14 debtors or which have been referred to it
15 or where direct appeals were made by the
16 debtors and this was the issue of -as I
17 said the entities in the productive sector
18 with employment implications that was,
19 those were the prime concerns. So there
20 was an oversight committee. The
21 chairperson was now the Honorable Beverley
22 Lopez, she was the chairperson. Also on
23 the committee was Mrs. Pat Francis who was
24 then the CEO of JAMPRO, Mrs. Joan Panton,
25 a banker, Mr. Winston

1 2 Wynter, who operates a garage along
3 4 Maxfield Avenue, Mr. Robert Wynter then
5 6 the president of the Small Business
7 8 Association of Jamaica, Mr. Colin Steele
9 from the PSOJ, Mr. Dennis Chung an
10 accountant, Mr. Gavin Chen then the
11 president of NIBJ, Mr. Nathan Richards,
12 then the chairman of NIBJ and I mentioned
13 NIBJ because they became directly
14 involved in the DEBTORCOMPANY issue. Mrs.
15 Pamela McLean then and *now* the CEO of EX-
16 IM bank, Dr. Lorna Simmonds from the OPM,
17 Mr. Locksley Smith from the Ministry of
18 Finance, Mr. Patrick Hylton, the CEO of
19 FINSAC and Mrs. Audrey Robinson from
20 FINSAC. The committee as I indicated to
21 them was established *in* November 1998 and
22 they met up until 2000 May, May 2000.
23 They were empowered to make
24 recommendations and to the best of my
25 knowledge the recommendations they
advanced were accepted. However, Mrs.
Lopez indicated that the oversight
committee didn't meet with the success
they anticipated

1 because in many instances those whose
2 cases came before them were seeking
3 total debt forgiveness.

4 Q In relation now, Dr. Davis to the
5 specific, there were two persons who
6 addressed the Commission and asked you
7 questions that you said that you would
8 look into. Those were DEBTOR
9 and REPRESENTATIVE, speaking, I
10 think, on behalf of DEBTOR. Did
11 you look into those matters?

12 A Yes, I looked into those matters but I
13 have had documentation, but, Chairman I
14 am cognizant of, I don't want to go
15 into details, but suffice to say that
16 the documentation I have seen and I have
17 no way of stating that this is
18 absolutely correct but the documentation
19 seen provides a different story from
20 that which was presented. In the case
21 of FIRST ONE, DEBTOR asserted that
22 he borrowed \$XXX,000. The
23 documentation I have seen indicates that
24 he borrowed two loans from...

25 CHAIRMAN: Hold on Dr. Davies, just one moment

1 please. One of our problems is that
2 DEBTOR hasn't given evidence yet and
3 he was asking questions. Unless it is
4 accepted by us it wasn't evidence.

5 A Well, sir, I am guided by you.
6 MR. HYLTON: The thing though, sir, is that these

7 persons and DEBTOR in particular we
8 are discussing him, was allowed to ask
9 questions in the course of which he
10 referred to specific details of his own
11 situation?

12 CHAIRMAN: He said he would correct something, he
13 had made a mistake in something I am

14 being told and I said, well you are not
15 giving evidence now.

16 Q Except, sir, if the witness, Dr. Davies
17 knew then what he knows now, when he was
18 asked the question he would have
19 answered. He indicated he would go and
20 check. It seems to me a little odd to
21 have the record remain as it is now.

22 Certain things which were put to him,
23 have been reported, have been commented

24 on and Dr. Davies not being allowed to
25 respond. And I appreciate that DEBTOR

1 will have an opportunity in due
2 course to give the evidence but as the
3 matter now stands the record is half
4 way, it seems to me, sir.
5 CHAIRMAN: Very well, so be it.

6 MR. HYLTON: Continue, doctor?

7 A I am basing this on the fact that I have
8 no way of certifying it.
9 CHAIRMAN: From your figures, from your documents?

10 A But I am indicating that DEBTOR
11 asserted that he had borrowed
12 \$XXX,000.00. He borrowed \$XXX,000.00,
13 this is from Island Merchant Bank in
14 1994 and then \$Xmillion at 61% and one
15 at 65%. Furthermore, the records -- he
16 indicated it was his understanding that
17 he still remained indebted to JRF. What
18 I have seen is that following the sale
19 of his house the rest of his debt was
20 written off and he was so notified. The
21 As regards THE REPRESENTATIVE -- I believe
22 XXXXXX, has no debt per se.

23

24 CHAIRMAN: It's A RELATIVE?
25 A Yes. The information I have is that

1 DEBTOR signed promissory notes in
2 1997 agreeing that he owed \$XX million
3 and agreed to a payment plan, so it
4 seems contrary to what REPRESENTATIVE
5 asserted. There was a debt and he then
6 defaulted and made no payment. He
7 didn't make the payments as agreed. She
8 asserted that the debt had been wrongly
9 classified as a bad debt.

10 CHAIRMAN: Because they were paying, I think.
11 A But I am saying...

12 CHAIRMAN: Yes, yes, I am just indicating.
13 A From what I have seen, it is that
14 DEBTOR and his attorney acknowledged
15 in 1999, acknowledged the debt and the
16 amount owed, but it wasn't until
17 afterwards in 2008 that he denied this
18 debt and again from what the numbers I
19 have seen on the documentation I have
20 seen and I hope the Chairman
21 understands, I am operating like a lone
22 ranger, I have no staff at cetera.

23 CHAIRMAN: You have done very well as lone ranger?
24 A The total paid before the sale of the
25 property was \$X million.

1 MR. HYLTON: That is all we have at this time, sir?

2 CHAIRMAN: Yes, thank you very much. Well, the
3 position is this. We will give Dr.
4 Davies a rest. I can't pretend to know
5 when he will resume, but he certainly
6 will get a a nice long rest and what we
7 plan to do is to adjourn until Tuesday
8 next at 9:30 in the morning. That's the
9 8th of December. More likely than not
10 the end of that week might be the end of
11 the session for the year, but we shall
12 see. Thank you very much for coming
13 everybody.

14 Thank you, Dr. Davies.

15 A Thank you, sir.

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