

Part 2

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
TUESDAY , 24TH NOVEMBER, 2009

1 DR. DAVIES: A primary surplus, Commissioner, in
2 simple terms is that you took revenue
3 and if you took out the expenditure on
4 debt servicing etcetera, then what it
5 indicated is what you are willing,
6 sacrifices you are willing to make in
7 order to meet your obligations. In
8 terms of monetary restraint, the very
9 question you are asking about in terms
10 of high interest rates, one approach
11 towards monetary restraint is high
12 interest rates but the question is how
13 high is acceptable, Commissioner Ross

14 feels it was too high. In terms of exchange
15 rate stability, that was one of the major
16 achievements in terms of maintaining
17 stability in the foreign exchange market. So
18 I agree with the first part of the assertion
19 but I do not believe the second part
20 characterizes what was achieved in Jamaica.
21 Let me address an issue with the other
22 MR. HYLTON: question the Commissioner alluded to. This
23 is a report in November 1996 of the IMF, IADB
24 and IBRD. They estimated the
25

1 size of the insolvency in Jamaican
2 financial institutions at 20% of GDP and
3 advised immediate action to rectify the
4 situation, so this is 1996, before
5 FINSAC. The same report says that your
6 administration decided that this was not
7 "politically possible", that is to say
8 the immediate action recommended. This
9 was not "politically possible", can you
10 please explain what was meant by that
11 statement?

12 A Are you finished sir?

13 Q Yes.

14 A Well the first thing is....

15 Q Hold a second?

16 CHAIRMAN: Just one moment. Thank you.

17 Q Yes, go ahead.

18 A The first thing I would wish to say,
19 well certainly, I can speak definitively
20 for myself, I at no stage told the
21 representatives of the multilateral that
22 it was not politically possible and I am
23 willing to assert, although obviously
24 not with the same level of certainty,
25 that no member of the administration

1 did. One of the things which you have
2 to learn from interaction with the
3 multi-laterals, the multi-laterals speak
4 about technical and economic and
5 anything else is political. So what we
6 did tell them that it was not socially
7 possible but for the multi-laterals and
8 I invite you to converse with them,
9 socially conversed politically, so we
10 told them it was not socially possible
11 to do that which they said.

12 Q When the statement speaks about
13 immediate action, what immediate action
14 did they recommend?

15 A Option one was essentially their option,
16 it's a long time ago we discussed it,
17 but essentially, call it as it is,
18 intervened and those institutions which
19 were failing, so be it, and move on
20 after that, so that was essentially
21 their advice.

22 Q And when you say not socially
23 acceptable, is that what you referred to
24 when you said to me earlier...

25 A It was not socially possible for two

1 reasons, one is that essentially you are
2 speaking, albeit, I listened to the
3 comments of the commissioners about
4 those wealthy persons who were also
5 protected but we said it was not
6 socially possible to deprive persons of
7 what they had considered their safe long
8 term savings. And secondly, we just did
9 not know how to effect that whole scale
10 intervention which was recommended.

11 COMM. ROSS: One moment, your whole thing, obviously
12 it does not have the full picture but I
13 think what was being advocated there was
14 immediate action, that was clear from
15 the executive summary. Assuming that
16 the course of action that they were
17 advocating was not acceptable, in other
18 words, option one as you put it, why
19 didn't you proceed with option two at
20 that point in time?

21 A Well, in fact Commissioner we did. I
22 think FINSAC was established in 1997,
23 January 1997.

24 MR. HYLTON: This report was in November of 1996?
25 A We did and if I may clarify further,

1 this report, this report came out -- I
2 visited Washington with a team and when
3 I met with the multi-laterals in the IDB
4 and this large gathering that was there
5 to discuss this highly confidential
6 matter, I realized that we had reached
7 the end of the line with them and it is
8 during that visit that I met with
9 Dr. Bonnicks who sought to give me advice
10 and I said to him, I don't need advice
11 in Washington, I need someone here and
12 that is the way we proceeded, but we
13 took action because we had been
14 discussing, and the records in the
15 multi-laterals, the records in the
16 Ministry of Finance, the records in the
17 BOJ will indicate that we sought their
18 advice in this whole process and we
19 acted because FINSAC was established in
20 January 1997.

21 Q The question Dr. Davies goes on to ask,
22 do you think that the eventual cost of
23 40% of GDP was a acceptable trade-off in
24 that regard?

25 A Well counsel, if you look at the

1 beginning of the question it says that
2 they estimated what the cost was, they
3 estimated, I recall vividly what the
4 multi-laterals and in particular the person
5 who was looking at NCB estimated would have
6 been the cost of intervention in NCB and he
7 was as wrong as we were, so for you to
8 juxtapose their estimate of 20% it was
9 already dead wrong, it was already wrong. Now
10 to your question, is it worth 40% of GDP, we
11 are here, I can't guess what would have
12 happened if we had not, I can't guess that,
13 but I know we are here and seeking to rebuild
14 and if I may indicate that that Jamaica has
15 gone through this whole period of turmoil
16 worldwide in the financial sector, that we
17 have done, we have been able to go through
18 this with no institution shaking or so, it's
19 not unrelated to the remedial steps which
20 FINSAC took in terms of improving fit and
21 proper criteria, in terms of capital ratios,
22 in terms of the legislation, in terms of
23 placing onus on auditors once
24
25

1 of hindsight.

2 CHAIRMAN: Finish your question.

3 MR. HYLTON: I am finished with that question.

4 CHAIRMAN: Well, what I wanted to ask you is, did
5 other countries have similar problems
6 who dealt with it in the way we did?

7 A Other countries dealt with it -- I mean
8 the FINSAC model is not unique and it
9 may surprise -- I don't know if it may
10 surprise the Commissioners but Mexico
11 had problems, Mexico's intervention was
12 along the FINSAC model but it was not
13 regarded as successful. If you --
14 hopefully you have been provided with
15 material, the FINSAC model and the
16 management of FINSAC have been commended
17 in terms of how they handled a major
18 problem effectively. So the FINSAC
19 model is not a uniquely Jamaican
20 initiative. I think Ireland even now as
21 we speak is operating with a FINSAC
22 model.

23 MR. HYLTON: May I continue?

24 CHAIRMAN: Please.

25 Q The intervention involved in honouring

1 depositors' exposure and question 11
2 ask..

3 A Question what?

4 Q 11 ask whether depositors were paid
5 their capital and interest, that is
6 their full capital and interest?

7 A In general yes, those with the Blaise
8 Financial Institution I believe were
9 paid 90% of the amount, but it's
10 something -- there is a companion
11 institution to FINSAC, FIS, they would
12 be able to provide you with the precise
13 number.

14 Q FIS is the Financial Institution
15 Services.

16 A Yes, sir.

17 Q For clarity which was first in time?

18 A FIS.

19 Q And do you recall whether Blaise was one
20 of the early ones?

21 A It was one of the early ones.

22 Q Having repaid the depositors, the
23 question ask, why were those financial
24 institutions closed down?

25 A Sir, the decision to take them -- first

1 of all it was not possible to return
2 them to the original investors for the
3 reasons I have hopefully made patently
4 clear and I am not just speaking about
5 capital adequacy but also most would not
6 qualify under more rigid fit and proper
7 criteria.

8 Q We now move Dr. Davies to questions
9 dealing with the..

10 CHAIRMAN: They were not able to satisfy...

11 A More rigorous fit and proper criteria.

12 Q There are a series of questions
13 Dr. Davies in relation to FINSAC, the
14 collection of loans and the steps taken
15 by that body. What progress did FINSAC
16 make between 1996 and 2001 to recover
17 funds from the delinquent borrowers and
18 reduce its loans?

19 A Sir, I am not able to answer that
20 question precisely, but that information
21 would be available from FINSAC.

22 Q You were not directly involved in the
23 collection of loans?

24 A No, sir, my relationship with FINSAC was
25 to appoint a Chairman and appoint the

1 Board and to deal with them on issues of
2 policy but I would not be involved in
3 collection.

4 Q What was the quantum of the delinquent
5 loans of all the failed institutions at
6 the time of FINSAC's incorporation?

7 A Again, sir, a very precise answer that
8 could be provided by FINSAC, I wouldn't
9 wish to comment.

10 Q What was the rate of interest being
11 charged by FINSAC between 1995 and 2002?

12 A I don't know, but my answer holds.
13 These are questions which FINSAC is best
14 able to provide.

15 Q Well you said you dealt with policies?

16 COMM. BOGLE: Regarding that point in terms of
17 interest rate Dr. Davies, you are
18 therefore saying that the Ministry had
19 no input at all into the interest rate
20 policy of FINSAC, no input at all? No,

21 A it had. Insofar I believe that there is
22 always an official from the Ministry
23 sitting on the Board, but FINSAC to the
24 best of my knowledge operated whereby
25 they dealt with

1 individuals and sought to determine what
2 settlement and what compromises were
3 possible but that's not something which
4 would involve the intervention of the
5 Minister.

6 COMM. BOGLE: Not intervention but surely I would
7 think that the Ministry would have an
8 interest and not just a passing interest
9 but an interest into the interest
10 policy and other policies of FINSAC?

11 A Our interest was in terms of issues of
12 transparency, equity, those were our
13 major interests.

14 MR. HYLTON: But there is a policy direction I am
15 about to come to, sir, but just to
16 remind you that the question he was
17 asked what were the specific rates being
18 charged, not what's the policy
19 prescribed, but I will come to policy.

20 COMM. ROSS: Well the first question, did FINSAC
21 continue to charge interest on the out-
22 standing loans?

23 A Well, what FINSAC did do -- when you say
24 the outstanding loans....

25 Q Bad loans.

1 A As is, in many instances, some of which
2 I was aware of, they looked at the loans
3 and negotiated with the debtors in terms
4 of the size of the loans, in certain
5 instances reducing, significantly
6 reducing the overall number, overall
7 indebtedness.

8 COMM. ROSS: They couldn't have done everybody at the
9 same time, so did they continue to
10 accrue interest on the loans they had
11 taken over?

12 A I would suspect -- again you are asking
13 me questions that I can't answer, you
14 could ask them directly, I would suspect
15 that there would be calculations being
16 done automatically, but what I do know
17 is that whenever someone went in to seek
18 to come to a settlement, in most cases,
19 they would seek to compromise that over-
20 all number because it does not make
21 sense to extract that which is not
22 feasible. I didn't -- I never intervened
23 in such a thing, there is one person who
24 contacted me and I referred him to
25 Mr. Hylton.

1 COMM. ROSS: I am trying to understand...

2 CHAIRMAN: For the record not this Mr. Hylton?

3 A No, not this Hylton, Mr. Patrick Hylton

4 who was then the Managing Director.

5 Q Thank you very much Chairman.

6 A Well let me just indicate, there seems

7 to be a grave misunderstanding of the

8 responsibilities of a Minister. I mean

9 there are -- I don't know how many

10 public sector entities under the

11 Ministry of Finance and my approach has

12 been to appoint a good board, except in

13 issues of policy directions, let that

14 Board, so you had a Board with Gladstone

15 Bonnick, the late Ken Rattray, the

16 Financial Secretary, etcetera, these are

17 all persons of eminent professionalism

18 and quality, so it would be incorrect

19 but its not just my policy to then say

20 do the following.

21 COMM. ROSS: Could FINSAC charge interest, it wasn't

22 a financial institution, could they

23 continue to charge people interest,

24 would it have been permissible by law?

25 A In the sense -- well, I am not a lawyer,

1 but I assume that that was checked, but
2 in the sense that they had assumed the
3 liabilities and the assets of the
institutions, my assumption is yes.

5 MR. HYLTON: Could I ask a question on that. Did
6 FINSAC make any loans?

7 A No, well, in the sense of rewriting
8 loans but not new loans.

9 Q When FINSAC took over, intervened in an
10 institution, in some cases, shares were
11 divested?

12 A Yes.

13 Q FINSAC would take control of an entity
14 but the creditors who continue to be in
15 debt, the entity would have been given
16 the loan before on certain terms?

17 A Yes, this is one of the interesting
18 things to me that all these loans, every
19 single loan had been made prior to, and
20 agreed to presumably between creditor
21 and borrower by those institutions, but
22 its a very strange institution where a
23 FINSAC is now seen as the villain in the
24 peace.

25 Q What I am getting -- you understand what

1 I am getting, FINSAC was a financial
2 institution, was controlled by financial
3 institutions, that is what I am getting
4 at. That's a legal point.

5 COMM. ROSS: That is why I am seeking to understand?

6 A I am sorry, that my explanation lacks
7 the clarity of my counsel.

8 CHAIRMAN: He is making a speech, you are not.

9 A I am just trying to serve.

10 MR. HYLTON: On the question of policy, let's move to
11 policy, were there any guidelines given
12 to FINSAC as to the disposition of
13 assets of delinquent borrowers?

14 A The policy was as I think equity,
15 transparency....

16 CHAIRMAN: Those were given?

17 A Yes, those charges were given, those
18 charges were given, I don't think they
19 were ever written down but I was
20 instructed by Cabinet to pass on these
21 policy guidelines, but Chairman and
22 Commissioners, one of the critical
23 points I would like to make is that in
24 every instance, if you look at the Board
25 of Directors of FINSAC, you are dealing

1 with people of the highest integrity and
2 standing in the society. Further more,
3 every step taken was guided by, legally,
4 by the then Solicitor General, the late
5 Dr. Ken Rattray or by his Deputy
6 Mr. Douglas Lays who is the present
7 Solicitor General and these are not
8 decisions which reflect whims and
9 fancies, the operations were so guided
10 and its instructive Mr. Chairman and
11 Commissioners, that there have been many
12 challenges to FINSAC, but I believe that
13 the record will show that FINSAC has won
14 every single one of these legal
15 challenges.

16 CHAIRMAN: I am not sure I am proud of that, but
17 the question we are trying to get from
18 you, question 16, what were the
19 guidelines.

20 A Guidelines were equity, transparency and
21 courtesy.

22 Q Well, specifically in relation to the
23 negotiation with borrowers which is
24 something you mentioned that FINSAC did,
25 did you set any parameters in that

1 regard?

2 A No, sir.

3 Q And there were various assets which were
4 held as security, were there any general
5 policy guidelines in relation to *any*

6 particular type of assets?

7 A There was. There was one specific area.
8 The Cabinet in discussion with the then
9 Opposition made a special provision with
10 regard to housing units, the residential
11 units occupied by debtors which had been
12 used to collateralize debts and a
13 special window was **provided** in that
14 regard. **In fact even** after the bad

15 debt, even in instances where
16 arrangements were completed, and the bad
17 debts were sold to JIF, that arrangement
18 continued for a particular period.

19 Q Tell us a little more please, *when you*
20 say special *window*?

21 CHAIRMAN: Just one moment, **before you** move on let
22 me understand this. You mentioned *about*
23 the Cabinet, but as Minister, according
24 to your powers you were entitled, were
25 you not, to give general direction to

1 FINSAC?

2 A Yes.

3 CHAIRMAN: As part of your .

4 A Right.

5 MR. HYLTON: You had mentioned in relation to the
6 residences a special window?

7 A Yes, for residences for which the titles
8 had been used to collateralize the loan,
9 and we can check the specifics, but my
10 recollection is that up to the value of
11 \$5M which was a different value then as
12 opposed to now, the -- assuming that
13 that house, you know, would have been
14 worth the valuation which had been
15 placed on it, the debtor was allowed to
16 seek funding, when JIF took over, to
17 seek to renegotiate specifically that
18 unit in terms of -- actually they can
19 buy back the debt separating it from the
20 other assets.

21 Q It was in an attempt to protect
22 residences?

23 A Yes.

24 Q You mentioned twice in your last three
25 sentences JIF, to whom these debts were

1 eventually sold, why was it necessary to
2 sell the debts and their securities to
3 that entity?

4 A Well, the first is with regard to -- I
5 think the Commissioner raised the issue
6 of the lifetime of FINSAC and we
7 recognize that that operation could go
8 on for an extended period but more than
9 that that FINSAC was never ever trained,
10 the officers were not trained in sort of
11 debt collection, so in order to allow
12 FINSAC to get on with the other aspect
13 of its mandate such as restructuring the
14 entities for sale, that was one reason,
15 to allow them to focus on things in
16 which they had greater competence; to
17 allow them to provide leadership in the
18 revamping of the regulatory system in
19 the line of international best
20 practices. To in a sense allow the
21 administration to achieve its objective
22 of returning the financial sector to
23 normality within the context of this
24 tighter regulatory system. And, there
25 was a reality that the FINSAC staff,

1 Chairman and Commissioners were coming
2 under a great deal of pressure from
3 individual debtors and what was conveyed
4 to us was that they had difficulty in
5 working.

6 COMM. ROSS: First point that you mentioned
7 Dr. Davies was that FINSAC was
8 concentrating on restructuring NCB and
9 the bank for sale. One of the things
10 that banks do is they make loans and so
11 they have certain expertise in
12 collecting. Couldn't portions of the
13 banks' debts have been given to those
14 banks for them to collect? Even if it
15 were given at a discount it would
16 certainly lessen the amount of
17 government papers we have to put into
18 them to capitalize them adequately.

19 A Well, okay, clearly that is a
20 possibility, but one of the difficulties
21 is that capital has to be real, it can't
22 be based on some estimate of what would
23 be realized from what has been a none
24 performing debt. That is not a good
25 way to move forward with a clean

1 institution.

2 Secondly it couldn't be imposed on
3 purchasers, somebody would have to be
4 willing to do that.

5 COMM. ROSS: I mean, the value couldn't be imposed,
6 but certainly it would be a matter that
7 could be negotiated.

8 A It could be but in any event, if what
9 you are saying is that you didn't have
10 to package all of it, obviously yes, but
11 in any event, one is an edict
12 proposition, because a deal is made
13 between a willing buyer and willing
14 seller and you can't say to a potential
15 buyer it was difficult in finding people
16 who were willing to step in, but to put
17 an additional criterion, or requirement
18 would be making up the thing overly
19 complicated. This was a tidier approach.

20 Q You just mentioned the difficulty in
21 finding someone, were a lot of people
22 wanting to get these debt portfolio?

23 A The bad debts?

24 Q Yes?

25

1 checked out their credentials and their
2 offer they were the best. And there was
3 a clear thing; cash up front and then a
4 certain percentage from collections
5 overtime.

6 Q: May I continue?

7 CHAIRMAN: Yes.

8 Q: Did the JRF have any powers to enforce
9 collection of bad debts that FINSAC did
10 not have?

11 A: I don't recall that there was any.

12 Q: Was an exemption given?

13 CHAIRMAN: Let us see if it is time.

14 MR. HYLTON: I am not sure what's your planned time
15 sir, it would be a good time for me.

16 CHAIRMAN: My watch says 12:30. We agree let's take
17 the adjournment. Lunch time let's take
18 the adjournment.

19 MR. HYLTON: Until?

20 CHAIRMAN: Until 2:00. We adjourn until 2 o' clock.

21 LUNCHEON ADJOURNMENT AT 12:30 P.M.

22 ON RESUMPTION AT 2:00 P.M.

23 CHAIRMAN: Session is now resumed. Dr. Davies you
24 are still on your oath?

25 A: Yes, Chairman.

1 MR. HYLTON: Good afternoon Chairman and members.
2 Dr. Davies we had started the
3 discussions about the Jamaica
4 Redevelopment Foundation just before
5 lunch break. And I think the last
6 question I had asked was whether they
7 had any powers that FINSAC did not have
8 and you had said as far as you know.
9 A: As far as I know.
10 Q: The next question asks whether there was
11 given any exemption under the Money
12 Lending Act?
13 A: In my written response I said I do not
14 recall but I have subsequently checked
15 and found out yes, they were given.
16 Q: And what was the purpose for them
17 getting that exemption?
18 A: I think explanation like that would be
19 contained in the files in the Ministry
20 of Finance. This is something which
21 happened several years ago and I don't
22 recall precisely although I could give
23 a view as to why it would have been
24 requested. Essentially the JRF just like
25 all other institutions which had

1 indicated an interest in the bad loan
2 portfolio would have done their
3 assessment on the assumption that the
4 conditions which held before in terms
5 of the loans et cetera, interest rates
6 and the ability to negotiate interest
7 rates would continue to hold. A licensed
8 financial institution is automatically
9 exempted, they don't have to apply but
10 they are automatically exempted on the
11 requirements of the legislation
12 governing the Money Lending Act. So that
13 I would logically think would be
14 rational so to do.

15 Q: The next question reads: What was the
16 JRF exempted...

17 CHAIRMAN: I don't think we can leave that so
18 summarily. Have you looked at the Money
19 Lending Act?

20 MR. HYLTON: No, sir.

21 CHAIRMAN: Dr. Davies, the Money Lending Act gives
22 the Minister power to exempt; to grant.
23 I assume -- you mentioned a waiver. I
24 don't know if it's the correct term that
25 you are using "the Act". Please allow

1 me a moment lets me see what the Act says.
2 Before you comment, you have the powers
3 under the Act which enables you to grant
4 exemption, Minister of Finance? Yes, sir.
5 A: And so far as my memory goes, correct me if
6 Q: my wrong Mr. Davies, you do so in the public
7 interest?
8 Yes, sir.
9 A: For the moment until the Act comes, is
10 Q: there a question you wish to put
11 specifically?
12 The question -- I, I am not sure if that is
13 MR. HYLTON: where you are going.
14 I am only asking about in the public
15 CHAIRMAN: interest.
16 No, there is no question here.
17 MR. HYLTON: I think your 26 might...
18 CHAIRMAN: Yes, sir; it does.
19 MR. HYLTON: I won't anticipate you getting to that.
20 CHAIRMAN: Shall I proceed in the interrim, sir? I just
21 MR. HYLTON: wanted to understand. Again, going back to
22 COMM ROSS: the question of the debts. When the debts
23 were sold to JRF were the debts sold on the
24 basis of JRF acting
25

1 as a collecting agency or were they
2 taken over with JRF expected to act as
3 an institution; as a financial
4 institution and to continue collecting
5 interest on behalf of the instruments
6 that were outstanding?

7 A: And further to renegotiate terms which
8 were mutually acceptable.

9 Q: So they were expected to act as a
10 financial institution in terms of being
11 able to continue collecting interest and
12 perhaps vary the terms that were
13 available to Century National Bank -- I
14 don't know.

15 MR. HYLTON: I have a difficulty with that question,
16 Chairman. I don't know sir, that the
17 premise is right.

18 CHAIRMAN: What we need -- I take it that there was
19 an Agreement between the government and
20 the JRF which is set out. Wouldn't
21 there be an Agreement?

22 MR. HYLTON: I am not sure if government and...

23 CHAIRMAN: Well, between FINSAC and JRF.

24 MR. HYLTON: Yes, sir, there would have been an
25 Agreement.

1 Q: But to what particular purpose it
2 becomes -- I mean that's a nicety but
3 the fact that government and FINSAC was
4 dealing with JRF. So there was an
5 Agreement between them. What precisely
6 the relationships among their powers
7 were, do you know?

8 MR. HYLTON: Well sir, I don't recall the details of
9 what the Agreement. But it's a sale of
10 certain assets certain debts. My
11 difficulty sir, was with the question.
12 The question asked, would it act like a
13 financial institution?

14 CHAIRMAN: He doesn't want to be positing things
15 which are not welcomed. So perhaps,
16 maybe it would be a good idea if we had
17 the Agreement or something.

18 MRS. MINOTT-PHILLIPS: The Agreement was sent to the
19 Commission.

20 CHAIRMAN: Yes. I don't know if -- Mr. Hylton?

21 MR. HYLTON: Sir.
22 CHAIRMAN: We have boxes which are as high as this
23 room and I have been ploughing through
24 them; all of us.

25 MR. HYLTON: Mr. Chairman, Mrs. Minott-Phillips says

1 that she has a copy. Is there something
2 in particular that you need to be
3 checked?

4 CHAIRMAN: Well, we are asking a question you don't
5 seem to be clear on.

6 MR. HYLTON: What's the question, sir?

7 COMM ROSS: I am trying to understand the basis on
8 which the Agreement comes under the
9 Money Lending Act. I don't know if it's
10 custom for debts with interest to be
11 paid on the outstanding balance or is it
12 that under normal circumstances...

13 MR. HYLTON: Under normal circumstances anybody who
14 owes a debt should calculate interest on
15 that debt.

16 CHAIRMAN: Calculate?

17 MR. HYLTON: Yes. Mr. Ross' question wasn't answered.
18 It was whether -- I think he said,
19 'apply'. I think a better word is
20 "calculate" because interest accrues.
21 It accrues because of the debtors not
22 paying their debts. So that...

23 CHAIRMAN: It accrues real interest of one percent;
24 is one percent; not seven, eight.

25 Q: But I think you said that the interest

1 rates...

2 CHAIRMAN: Well -- I say well. We will see.

3 MR. HYLTON: Yes sir, I...

4 CHAIRMAN: If I am specifically advised I would say
5 that is so. Where are we at now?

6 MR. HYLTON: Can I return to, Dr. Davies?

7 A: I was kind of feeling left out.

8 CHAIRMAN: I would think so there is a seminar
9 going on here.

10 MR. HYLTON: I don't know, Commissioner Ross could
11 proceed with the question.

12 CHAIRMAN: We had sent to get the Act. Dr. Davies,
13 this is what Section 14 says and I am
14 reading: Section 14(1)
15 Where the Minister is satisfied that it
16 is in the public interest so to do, he
17 may by order declare:
18 (a) Any loan or contract or security
19 for the repayment of a loan specified in
20 that order; or;
21 (b) Any loan made, or any contract
22 entered into, or any security for the
23 repayment of a loan given by any person
24 specified in that order to be exempt
25 from the provisions of this Act,

1 subject to such terms and conditions as
2 they are specified in the Order."

3 So it's under that Section that you
4 would grant this exemption. So the
5 question was now. You granted some
6 orders and I think -- if you haven't got
7 them we can supply you with them. Can
8 you at tell this Commission what was
9 the public interest if so to do, good?

10 A: Well, as I said before Mr. Chairman, I
11 am not -- all the background, et cetera,
12 to the granting of those exemptions; I
13 am informed that the granting of
14 exemptions has continued even passed my
15 tenure.

16 CHAIRMAN: We made those questions.

17 A: What I am saying is that the files
18 should be available but I could
19 articulate what would be a logical basis
20 for the granting of exemption. And that
21 basis Mr. Chairman, is that an
22 institution; but the whole series of
23 institutions had done their due
24 diligence in terms of the potential
25 value of the bad debt portfolio based on

1 existing conditions and the existing
2 conditions would have been for the
3 entities which termed being exempted
4 from the Money Lending Act.

5 CHAIRMAN: If I can just bring you back. Maybe if I
6 give you, you can look at this and you
7 can see for yourself what the section
8 says.

9 MR. HYLTON: Did you also say Mr. Chairman, that you
10 have the Exemptions here because they
11 might help.

12 CHAIRMAN: I don't know have his order here. What
13 I am concerned about is, the powers that
14 he has why I come to the order that he
15 makes. Because I was referring to a case
16 on this matter but with respect to the
17 learned Judge, although he made
18 reference to Section 14, he did not deal
19 with Section 14, he dealt with the
20 orders the Minister made because I
21 mean...

22 MR. HYLTON: As a matter of interest sir, what case
23 is that?

24 CHAIRMAN: The case Norcliff; Norcliff something or
25 the other. And the learned Judge didn't

1 in my respectful opinion deal with the
2 matter. This should have been a "seminal
3 case" I think. The case doesn't suggest that
4 there were any other authorities that we are
5 aware of; or whether any other case was cited
6 in the matter by learned Judge, and he had
7 the misfortune of having counsel who did not
8 put his case very well because he dismissed
9 10 counsel's
argument.

11 MR. HYLTON: I am wondering why you thought of that
12 case.

13 CHAIRMAN: Let me digress. What happened I had to
14 go to -- well, I started the case here
15 because it deals with the Money Lending
16 Act and I wanted to see what the courts
17 have said about it and show the case to
18 the Committee. That's how that case
19 came to my attention. Anyway, you get
20 back to the Minister.

21 A: Well, I am not clear where you are at.

22 CHAIRMAN: You are not clear where we are at. We
23 are trying to determine.

24 A: Yes, sir.

25 Q: I gave you the Act so that you could see

1 MR. HYLTON: It says: Loans or contracts entered into
2 or security given for repayment thereof,
3 being loans made by et cetera..." The
4 first one I am looking at does exempt
5 loans and contracts, so does the second,
6 so does the third.

7 CHAIRMAN: My question is misconceived. So then I
8 return to the original point. What is
9 the public interest in exempting
10 collecting agency from the Act?

11 MR. HYLTON: Shall I proceed, sir?

12 MR. HYLTON: Yes, please.

13 A: Again Mr Chairman, you made mention, and
14 I am just responding from memory but I
15 am just seeking to indicate that...

16 CHAIRMAN: Of course, if you are able thereafter.

17 A: Yes, if I am able I will.

18 CHAIRMAN: But I am...

19 CHAIRMAN: But at the moment.

20 A: This is a specific legal question and I
21 Am just indicating to you that various
22 entities including JRF would have made
23 an assessment of the value of this bad
24 loan portfolio based on certain existing
25 facts including conditions surrounding

1 those loans which they were purchasing.
2 For consistency of treatment it would
3 seem logical that the entity which has
4 purchased the bad loan portfolio on that
5 basis should be allowed the same -- I
6 don't know what the other terms would be
7 -- on the same basis as the entities
8 which previously owned the bad debts.

9 MR. HYLTON: Mr. Chairman, may I ask a question in
10 relation to your question?

11 CHAIRMAN: Yes.

12 MR. HYLTON: If the JRF succeeded in collecting more
13 of the loans, would it have any effect
14 on the public purse?

15 A: Yes, there is a formula which I presume
16 you will have or you already have which
17 indicates the basis of the collection so
18 there is a percentage, there was a down
19 payment and there is percentage for each
20 successive...

21 MR. HYLTON: Percentage paid to who?

22 A: They would be paid to FINSAC or to the
23 Government.

24 Q: So that the more that JRF collected the
25 more FINSAC collects?

1 A: Yes.

2 Q: So that FINSAC will have an interest in
3 percentages?

4 A: Well, it abounds to.

5 Q: And the payments to FINSAC would go
6 where?

7 A: They would go to defray some of their
8 Debt-servicing obligations.

9 COMM ROSS: I am trying to follow the logic here.
10 The value of the assets; the collateral
11 would not I presume, be increasing
12 overtime in light of the interest being
13 charged?

14 MR. HYLTON: The sum payable. The Chairman's question
15 didn't relate to interest rate, sir.
16 The question was, the public interest.

17 COMM ROSS: Then how was the public's interest being
18 served by allowing institutions to
19 continue accruing interest at rates of
20 14; 15; 160?

21 MR. HYLTON: You are assuming sir, that the effect of
22 the exemption is merely interest rate
23 decreasing?

24 CHAIRMAN: Anyway, may I ask a new question. Since
25 you had answered the question. The

1 question was posed to the Minister, who
2 made the order and I am sure he is
3 advised by his lawyers and his economic
4 and financial and banking and the whole
5 lot of them. So I believe there is in
6 the Ministry of Finance a section that
7 deals with the -- I don't recall the
8 name of it.

9 A: Debt recovery.

10 CHAIRMAN: Debt recovery.

11 A: There is no debt recovery. There is
12 debt management.

13 CHAIRMAN: Sorry, debt management, pardon me my
14 gross ignornace.

15 COMM BOGLE: Was FINSAC given this waiver?

16 A: I do not recall. I don't think the
17 issue ever rose.

18 Because I would imagine that since JRF
19 was essentially doing the same thing as
20 what FINSAC was doing what would be the
21 big difference that JRF would now get
22 this exemption which FINSAC didn't think
23 that it required?

24 A: As I said I don't recall. What was
25 interesting, Chairman is that the one

1 issue which came up and I recall that we
2 sought legal advice on was access of
3 potential purchasers to the information on
4 debtors which under one interpretation of
5 the Financial Institutions Act called the
6 Banking Act, that's information which
7 should not, except under special
8 circumstances others should have access to.
9 That one I recall. I honestly do not recall
10 any major controversy. The more fundamental
11 issue which I recall was whether a
12 non-banking institution could have access
13 to confidential data which a bank or
14 financial institution would have. Well, I
15 don't think it would be amiss to tell you that
16 CHAIRMAN: from the documents we have collected there
17 is great concern, let me put it that way,
18 as to the effect of your waiver on the debts
19 which many of these persons are now saddled
20 with; or should I say the growing debt. So
21 that is a matter of great concern obviously
22 to the parties who are suffering but it comes
23 within our Terms of Reference so
24
25

1 we have to examine very carefully,
2 precisely what you did and also why you
3 did it because the Act says; puts on
4 you, the obligation to act in the public
5 interest and what we are trying to
6 satisfy ourselves about is what in the
7 public interest did you identify that
8 motivated you to grant the waiver, and
9 as we are presently advised it affected
10 only the JRF.

11 MR. HYLTON: Can I just as a factual matter sir, get
12 something on the record?

13 CHAIRMAN: Yes.

14 MR. HYLTON: Do you recall Mr. Davies, who or what is
15 Refin Trust?

16 A: Refin Trust is a -- FINSAC operated
17 with some subsidiary companies and Refin
18 Trust was one such.

19 Q: And Recon Trust?

20 A: Recon Trust was another of the
21 subsidiaries, if you wish, of FINSAC.

22 Q: We have been discussing here -- all the
23 questions and comments mentioned FINSAC
24 as the entity which acquired and sold
25 debts and Chairman's question as to

1 exemption orders similar to those that
2 were given to FINSAC, were all debts
3 actually sold by FINSAC as an entity or
4 were some acquired and sold by Refin?

5 A: Some were sold by Refin and some by
6 Recon.

7 Q: Probably I should get that on the
8 record, sir, because if one were to look
9 for Exemption Orders for FINSAC one
10 might...

11 CHAIRMAN: No, no. Maybe I got the information
12 wrong but the waiver was granted in
13 favor of; **in favor of** JRF.

14 MR. HYLTON: Yes sir, I understand.

15 CHAIRMAN: Yes. Anyway.

16 A: Chairman, if I had access to the files
17 in the Ministry of Finance I could
18 perhaps assist the whole process.

19 CHAIRMAN: I would love you to have it because...

20 A: Well, I don't know if you can so
21 arrange.

22 MR. HYLTON: It is ten years after the fact.

23 CHAIRMAN: We understand so we are trying
24 diligently as we are required to do to
25 enquiry into this thing and the Minister

1 is the the prime, principal mover and
2 shaker in that area so that he would
3 need to hear from me.

4 MR. HYLTON: Okay, yes.

5 CHAIRMAN: As far as we are concerned if the
6 Minister wants us to get to the
7 fundamentals, because we have files we
8 have a .

9 A: I am wondering if you would indicate to
10 me how I could obtain access to the
11 information which I wish then I could
12 answer your questions.

13 MR. HYLTON: And in relation to your question sir,
14 which is the money lending exemption and
15 the JRF we certainly would ask for that
16 the Minister be allowed to review the
17 documents so that he can refresh himself
18 so...

19 CHAIRMAN: Very well.

20 MR. HYLTON: So if you can perhaps, discuss with the
21 Secretary, sir, how he can possibly
22 facilitate.

23 CHAIRMAN: What I would ask you to do Mr. Hylton,
24 is to indicate to our Secretary
25 precisely what files or documents

1 Dr. Davies is requiring because the
2 decision was made we would suppose, by
3 him.

4 MR. HYLTON: Pardon?

5 CHAIRMAN: The decision to grant the order would
6 be made by him. It is not something he
7 delegate so therefore -- so that if he
8 looks at the documents in the Ministry
9 he can make himself au fait *with what*

10 the situation was. So find the
11 documents and we will request the
12 Ministry to provide them to us and we
13 will pass them to him through you.

14 MR. HYLTON: Yes, sir, we will.

15 CHAIRMAN: So if you want we can leave this topic
16 for the moment unless there is anything
17 he thinks he can answer from memory.

18 MR. HYLTON: Well, I am looking at the other
19 questions sir, in relation to JRF and the
20 has answered that, I think we can go to
21 -- there is a policy guideline issue at
22 Question 27 which I think it would be
23 appropriate to get the answer from him.

24 CHAIRMAN: Yes.

25 MR. HYLTON: That question Dr. Davies, is *as to*

1 whether any guidelines were given to JRF
2 as to how assets of diliquent borrowers
3 should be disposed of?

4 A: Not in general but there was -- I don't
5 know whether you should call it
6 guideline or Agreement; in terms of a
7 carry over of the approach which FINSAC
8 had with regards to residences of
9 persons and the Agreement which was
10 essentially negotiated was that JRF in
11 its initial stages for the first six
12 months carried through with that
13 commitment for persons who had indicated
14 a desire to buy back their housing units
15 or persons who had not completed the
16 financial arrangements. That is the only
17 one I can recall.

18 A: Dr. Davies, there are some questions
19 related to interest rates and what has
20 happened in the markets. One was: Was
21 any consideration given to the fact that
22 interest rates were reduced by
23 commercial banks, and what was to be
24 done for deliquent borrowers? And I take
25 it that this means by JRF in the post

1

sale to JRF period.

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Continued. .

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1 MR HYLTON: Should I repeat?

2 A: Yes, please.

3 Q: Was any consideration given to the fact
4 that interest rates were reduced by
5 commercial banks, and what was to be
6 done for delinquent borrowers, and I
7 take it by JRF in that same period?

8 A: Well, as I have indicated that after the
9 sale was finalized, neither the Ministry
10 of Finance nor -- FINSAC had a business
11 relationship with JRF but the Ministry
12 of Finance was not in a situation to
13 give directions or instructions to JRF.

14 Q: Including as to the interest rates?

15 A: As to the interest rates.

16 Q: Was it expected, Dr. Davies...

17 COMM. ROSS: One moment please. Again, going back
18 the to issue of exemptions, could the
19 Ministry have exercised some influence
20 by perhaps not granting exemptions?

21 A: Well, obviously, but I had said I don't
22 want to start seeking to respond to
23 questions of exemptions without being
24 properly briefed. So I will answer
25 questions about possible policy issues.

1 CHAIRMAN: That is quite understandable. We have
2 asked the secretary to get Mr. Hylton to
3 indicate what it is he requires. So you
4 have been responding.

5 MR HYLTON: I take it your question...

6 CHAIRMAN: Which one are you at?

7 MR HYLTON: I was looking at 30 which sorts of
8 relates the to same thing you just
9 discussed. I am going to 31 sir.

10 Was any direction given to the JRF as to
11 the rate of interest chargeable
12 consequent on the reduction of lending
13 interest rates by commercial
14 institutions?

15 A: My answer is the same as before counsel,
16 that the Ministry of Finance, I recall
17 some courtesy discussions with the JRF
18 but there is no direct link between the
19 Ministry of Financial per se and the
20 JRF.

21 CHAIRMAN: You couldn't give them general
22 directions as you put it?

23 A: Well, in the sense of moral suasion.

24 CHAIRMAN: In the sense of moral suasion, yes, but
25 you had no statutory powers?

1 A: No.
2 CHAIRMAN: To give them general direction.

3 MR. HYLTON: I suppose we will get into that. The
4 next question is: What was the reason
5 for packaging the bad debts and
6 advertising for a debt collector to deal
7 with same, when this was the purpose for
8 which FINSAC has been established and
9 had been doing so, as the question says,
10 for 7 years?

11 A: Well, I thought we had in discussing the
12 objectives of FINSAC, et cetera, and I
13 thought we had answered that question
14 before, I think question 18 is the
15 identical question.

16 MR. HYLTON: Meaning the purposes for which FINSAC
17 was formed?

18 A: Yes.

19 Q: But why a sale to a foreign corporation,
20 JRF being foreign?

21 A: Well, the nationality of the
22 registration was not a critical issue,
23 in that it was advertised
24 internationally; it was advertised in
25 the Wall Street Journal, it was

1 advertised locally and entities from all
2 over responded, at least in the first round.
3 Some dropped out but it would be a strange
4 advertisement which said there is this bad
5 loan portfolio but only local firms may
6 apply.

7 Q: So it was not restricted?

8 A: No, it wasn't.

9 Q: And the nationalities of the persons behind
10 the JRF factored in the decision? No, it
11 didn't.

11 A: How were the loans to FINSAC, this now is
12 Q: the funding of FINSAC by the government,
13 to be repaid and in what time?
14 Again, this relates to the option chosen.

15 The loans were to be repaid in two ways
16 A: from whatever proceeds in the first
17 instance FINSAC received from divesting
18 assets including the sale of the Union
19 Bank and NCB and later on in terms of
20 proceeds received from JRF. That would
21 contribute to the repayment of the debts
22 but by and large the repayments of the debt
23 was and is the
24 was and is the
25

1 responsibility of the Ministry of
2 Finance.

3 Q: Was it expected at any time that all the
4 debts would be repaid, all the loans
5 made to FINSAC would be repaid?

6 A: By FINSAC?

7 CHAIRMAN: Sorry, the question you asked was 34?

8 MR. HYLTON: Yes, sir.

9 CHAIRMAN: The question was as to what time, has he
10 answered it?

11 A: Mr. Chairman, by virtue of what I said
12 about the option chosen, FINSAC per se
13 would never be able. By definition
14 FINSAC existed because the value of the
15 assets was only a percentage of the
16 liabilities and hence the establishment
17 of FINSAC was premised on the fact that
18 the Ministry of Finance or the
19 government would assume responsibility
20 for the majority of the repayment of the
21 loans which covered the liabilities. So
22 the answer, FINSAC would never be able
23 to clear those liabilities.

24 MR. HYLTON: So that's why I asked it that way, it
25 was the same question, so I say to what

1 time was that.

2 COMM. ROSS: So if the expectation was that the loans

3 to FINSAC would never be repaid...

4 A: No, not that they would never be, they

5 would be repaid by FINSAC.

6 Q: By FINSAC?

7 A: Yes.

8 Q: What about the proceeds that would come

9 from the assets of FINSAC?

10 A: I thought I had made reference to that.

11 What would happen in practical sense is

12 that whatever became due in terms of

13 repayments, the Financial Secretary -

14 and again, I just need to tell you that

15 there are officials who dealt with these

16 day to day operations. The Financial

17 Secretary would seek to extract as much as

18 possible from FINSAC in terms of the

19 proceeds and then Ministry of Finance would

20 then make up the difference whenever

21 payments became due.

22 Q: Was there any expectation as to how long it

23 would take to liquidate that pool of bad

24 debt?

25 A: No, I don't follow your...

1 MR. HYLTON: You mean by FINSAC, sir?

2 COMM. ROSS: Well, FINSAC was the vehicle who owned
3 the instruments, what was the
4 expectation as to the time it would take
5 to liquidate these bad debts and
6 actually realize proceeds from them?

7 A: Well, in terms of FINSAC's ability to
8 contribute?

9 Q: Yes.

10 A: It's a big unknown, because it relates
11 to in the main at this stage to the rate
12 at which JRF or whichever institution we
13 had sold it to was able to realize
14 returns. So rather than in terms of
15 time, it was the percentage due to
16 FINSAC was calculated as a percentage of
17 that which was collected rather than
18 within what time frame.

19 COMM. BOGLE: Based on this therefore it would be to
20 FINSAC's or JRF's interest to extend the
21 time because the interest is accruing
22 and so there is just an unending
23 situation; interest is accruing
24 therefore...

25 A: Commissioner, but that question almost

1 seems to operate outside of the background,
2 in the sense that interest can be accruing
3 but -- I don't run JRF but I would assume
4 that it is in their interest to seek to have
5 settlements but simply to say because
6 interest is accruing, there is something in
7 favor of the creditor, doesn't...

8 It is.

9 Q: Well, let me speak of something I know much
10 A: more about. In the sense, my approach to

11 persons who have huge tax obligations and
12 the officials would happily and even now you
13 hear estimates of how much is out there for
14 the government, but a lot of that cannot be
15 collected and I took a decision, and this
16 is a policy decision, that insofar as
17 someone was willing to be make a settlement
18 it made sense to have that settlement and
19 some cash in hand rather than to labour under
20 the impression that because these were
21 accounts receiveable that represented cash
22 to be collected. I mean I don't speak for
23 the JFR but I

24

25

1 would assume they would operate on the
2 same principle.

3 COMM. ROSS: Unfortunately our experience hasn't
4 really suggested that because the
5 process is still ongoing eight years
6 later.

7 A: I am not...

8 CHAIRMAN: I tell you something, this might become
9 much clearer when persons who have been
10 effected by these orders give evidence.

11 A: Well I would expect that but I would see
12 those questions as best being directed
13 at the institution with which they have
14 a business arrangement.

15 CHAIRMAN: Well, since you are the Chief, head of
16 Finance for Jamaica we have to ask you,
17 you are very concerned or should be
18 concerned about the stability of the
19 economy. So it is in that general area
20 of responsibility we put these
21 questions.

22 A: Well, I hear you Chairman, but I must
23 return to a basic fact that FINSAC never
24 ever made a loan, FINSAC, I know as a
25 fact sought to have settlements with

1 reduced, waiving a great deal of
2 interest and I know that as a fact. So in
3 terms of the questions being posed, FINSAC
4 came in not as the villain but as a solution.
5 Now, FINSAC collection was intended to be
6 CHAIRMAN: the healer?
7 Yes.
8 A: As far as we are presently concerned, what
9 CHAIRMAN: we have here as material, that posture from
10 the government changed, administration
11 changed from healing to something else when
12 the debts were transferred but the attitude
13 wasn't one of healing so far as we can
14 understand. Transferred from where to
15 where sir? From FINSAC to JRF. The policy,
16 A: the approach to things, while initially
17 CHAIRMAN: FINSAC was a healer, I use your words it,
18 it doesn't seem to me that was the policy
19 of JRF.
20 Well, if the implied suggestion,
21 Mr. Chairman, was that FINSAC should have
22 A: retained that role for some time or in
23 perpetuity, with all due respect,
24
25

1 that was considered and that option was not
2 chosen; it wasn't a frivolous decision.
3 No. We are dealing with historic facts now.
4 CHAIRMAN: Yes, sir.
5 So we haven't got to speculate about
6 A: anything. We know that while the
7 CHAIRMAN: approach from one perspective of FINSAC was
8 that of healing when that, let me call it,
9 responsibility, was transferred to JRF, the
10 approach was altogether different.
11 Well, sir, I do not speak for JRF but I am
12 also aware of many instances, and I do not
13 think that there are many persons who would
14 A: have been brought face to face with actual
15 situations. Even to date there are persons
16 who approach me asking me to -- JRF is even
17 termed FINSAC -- to intervene with FINSAC,
18 but I am also aware that there are instances,
19 and several instances, where compromises
20 were struck, people are paid out or people
21 are in the process of servicing
22
23
24
25

1 a newly constructed loan.

2 MR. HYLTON: I have a little concern sir, about the
3 question on the premise, because FINSAC
4 being a healer as I understood the
5 evidence, was in the context of a healer
6 of distressed financial institutions
7 under a financial sector. I don't
8 understand them having JRF's role.

9 CHAIRMAN: Everybody is distressed.

10 MR HYLTON: I understand that, but I don't
11 understand that, as it was already
12 suggested, that JRF should take on the
13 role of financial sector or
14 institutions.

15 CHAIRMAN: I didn't say what role they should take
16 on, I wasn't presuming that.

17 MR. HYLTON: You say a change of role.

18 CHAIRMAN: I am saying as a matter of fact it seems
19 that after they took over, the healing
20 procedure was not the same when JRF
21 assumed the same role.

22 MR. HYLTON: Exactly sir, did not assume the same
23 role, it's a matter of procedure.

24 CHAIRMAN: Yes, we will see what the evidence
25 brings out.

1 Q: The last two questions, Dr. Davies, were
2 about the repayment of loans by FINSAC.

3 CHAIRMAN: Number what?

4 Q: 35. Were the loans to date sir, repaid, and
5 what was the status of the loans as at 2005?

6 Sir, I would answer the first part of the
7 question that the loans to,

8 A: depending on the tenure of the LRS's then
9 those loans would continue to be repaid
10 in the future. As regards the status as
11 at 2005, that would be a number that you
12 could obtain from the Debt Management
13 Unit, it is not something I could speak
14 definitively to.

15 Turning now, Dr. Davies, to an entirely
16 different area which is interest rates now
17 Q: at a macro level. At any time were any
18 directions given the to Central Bank
19 concerning the interest rates?

20 The answer is no, sir.

21 Were any directions given the to Central
22 A: Bank concerning monetary policy, and in
23 particular exchange rate, inflation and

24 Q:

25

2 financial stability? And if so, what were

3 A: they.

4 Again the answer is no but as I have

5 indicated earlier, the Central Bank was and

6 is an integral part of the overall macro

7 economic planning team, and so in

8 structuring a programme, and certainly

9 when the Minister of Finance announces an

10 annual budget it's within certain

11 assumptions related to interest rates

12 that's not publicly articulated,

13 exchange rate that is not publicly

14 articulated but within the institutions

15 there is a model. What is publicly

16 articulated would be deficits and inflation

17 targets, but those four. There is an implied

18 range for the exchange rate but that would

19 not be, neither the interest rate nor the

20 exchange rate would be publicly articulated

21 for obvious reasons, but there is a deficit

22 target and there is an inflation target

23 which is announced. So within that context

24 the Central Bank would participate in

25 constructing the overall

1 programme.

2 Q: So there would be consultations and
3 discussions?

4 A: Yes, what the public sees as the budget
5 is a result of a long process, it's sort
6 of interactive and iterative
7 consultations.

8 CHAIRMAN: So far as the Bank of Jamaica was
9 concerned, they had a given, so to
10 speak, provided by the Ministry and they
11 operated, they took that and ran with
12 that.

13 A: I don't like the expression.

14 CHAIRMAN: Don't like the running. (Laughter)

15 A: If I may, it's a little bit more torturous
16 like that. I don't know about now, but
17 previously from about October, November, you
18 would be getting indications from Ministries
19 as to what is their hoped for budget and after
20 about three rounds of cutting and so on in
21 about January and thereabout, you have a
22 notion as to what that expenditure budget is.
23 At that stage Cabinet has a Retreat to look
24 at that
25

1 expenditure which is the shopping list
2 and how it can be funded which would be
3 revenues plus borrowing. The borrowing
4 would then give you the deficit size.
5 At that stage the Bank of Jamaica would
6 say if we are to allow the Private
7 Sector so much credit then government
8 can only get so much which then helps
9 you to define the deficit and that's how
10 the interaction proceeds because the
11 size of the deficit impacts on interest
12 rates so the BOJ would say if you want
13 interest rates to come down then that
14 deficit has to come down too. That is
15 how the interaction, but there is no
16 direction given to them to say them,
17 this is the interest rate I want, it's
18 an interactive process.

19 COMM. ROSS: So, Minister, is it that, sorry, Dr.
20 Davies, is it that the Ministry of
21 Finance would just accept whatever
22 policy actions came out the Bank of
23 Jamaica with regard to monetary policy
24 regardless of their impact on the
25 financial sector, the real sector?

1 A: The short answer Commissioner Ross, is
2 no. That is why I described to you the
3 process.

4 COMM. ROSS: I am just trying to understand you know.
5 We went through a period of very high
6 inflation and then a period of very high
7 interest rates.

8 A: Yes.

9 Q: That had a tremendous impact on not just
10 financial sector and the real sector but
11 it also had a significance impact on
12 government finances and I am just trying
13 to understand how -- well, first of all,
14 whether any concerns were conveyed to
15 the Central Bank about the very high
16 interest rates and if not, why not?

17 A: Well...

18 Q: If they were what was the response?

19 A: No, concerns were expressed and to be
20 fair I do not believe the Central Bank
21 was unaware of the negative
22 implications, but at the same time as I
23 sought to indicate before, it's always a
24 trade off because at the same time we
25 are seeking to moderate inflation and

1 there is always a question: What is an the
2 ideal range for inflation? It will never be
3 settled, but we are also seeking to
4 stabilize the foreign
5 exchange market and I would argue that
6 obviously nobody, I wouldn't claim that we
7 got it perfect, but that interactive
8 process, really, I believe seven years of
9 single digit inflation which yielded
10 relative
stability in the foreign exchange market; it yeilded a build up in
11 reserves which facilitated the country being
12 able to go the to capital markets, internal
13 capital markets. So there were clearly
14 negatives, and the rationale to go the to
15 capital markets was to facilitate some of the
16 required funding for government being
17 sourced from outside which would then reduce
18 the demand pressures on the domestic capital
19 market, it doesn't bring interest rate down.
20 And if I may say so myself, if you look in 2007,
21 and I don't know why that year comes to mind,
22 or September, 2007, the interest rates on the
23 signal
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1 Treasury Bill was 11.85 percent which
2 indicated that we were seeking to bring, we
3 had succeeded in some measure to bring
4 interest rates down.

5 The final thing I would like to say and this
6 is one area where my successor and I see eye
7 to eye, is that, there has to be more public
8 pressure on the financial institutions in
9 terms of the spread, either above the rates
1.0 on government instruments or the spread
11 above inflation in terms of commercial
12 loans, but in terms of bringing interest
13 rates down on the signal rate, 11.85 percent
14 was not bad.

15 Just one last comment. One of the
16 COMM. ROSS: considerations that we have to make --- but
17 cost and efficiency, could they have
18 achieved the same objectives at a lower
19 cost, could you have achieved the same
20 objective more quickly?

21 You are speaking within - specifically
22 A: when?

23 With regard to policy, we are talking about
24 Q: a period between '95 and 2000 and

25

1 something when the problems in the financial
2 sector occurred; 2007 is 12, maybe 15 years
3 after inflation peaked in the early '90s.
4 I am just wondering whether we couldn't have
5 made the adjustment in a much shorter time
6 and at at a much lower cost?

7 Commissioner Ross, I couldn't and wouldn't
8 A: seek to prevent your musing on such issues,
9 but the reality is that one of the problems
10 you run into, and I can cite specific periods
11 when we sought to push down interest rates
12 on government paper too quickly in terms of
13 inviting requests at a specified interest
14 rate and the failure of the issue told us
15 immediately that the market was not yet,
16 wasn't convinced that that was a credible
17 interest rate. So, I hear all this talk about
18 we are for low interest rate but if,
19 Chairman, them that got do not believe the
20 credibility of that interest rate, and if I
21 may be permitted this is one of the problems
22 we are facing now, you would have to convince

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1 the holders of capital that pushing
2 interest rate down is at this stage is
3 credible. It doesn't matter what you
4 articulate, you have to convince the
5 market that there is a credible
6 programme which would justify that interest
7 rate. So, I hear you Commissioner Ross, and
8 I wish I could, I am not in a position to say
9 aye or nay that it could have come faster,
10 but I do know of specific instances when an
11 issue failed because we sought to move too
12 quickly.

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14 Continued

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1 MR. HYLTON: May I continue, sir?

2 CHAIRMAN: Yes, please.

3 MR. HYLTON: If you can turn now, Dr. Davies to the
4 Central Bank's other roles and ask were
5 any directions given to the Central Bank
6 to make loans available to insolvent
7 institutions?

8 A Directions in a formal sense or was
9 Central Bank told that they had the
10 support of Cabinet, yes. This was when
11 we were seeking in particular to heal or
12 to address the challenges in the Century
13 financial institutions, yes, as I think
14 also Workers Bank.

15 Q You said in a formal sense or in the
16 sense of indicating Cabinet support?

17 A Yes, correct.

18 Q Reasons to which?

19 A Well, the critical issue from the
20 perspective of the Central Bank is who
21 will pick up the bill.

22 Q And who was that?

23 A And that would be the Ministry of
24 Finance. And again I told you that we
25 had taken a policy decision that we

1 would not print money to address the
2 debt, to address the problem.

3 Q The next question...

4 CHAIRMAN: Just one moment. Let me ask you this for
5 your comment. We understood from the
6 Bank of Jamaica that it wasn't their
7 policy to provide, and I call it
8 funding, to insolvent institutions.
9 They were at liberty to do so in regard
10 to ill-liquid institutions. So that
11 insofar as these insolvent institutions
12 are concerned I have in mind, for
13 example an institution like Workers Bank
14 which was dead from it was born...

15 A I wouldn't necessarily join in that
16 summary assessment.

17 CHAIRMAN: Yes, but Workers Bank was a very
18 peculiar case and materially I would
19 suggest three months after it was called
20 Workers Bank it was dead as a door nail
21 and also doing a great many funny
22 things; noncompliance things. The Bank
23 of Jamaica would on your orders,
24 directions be told, give them money, if
25 I understand you right.

1 is the commitments and the words in the
2 discussions would have led us to believe
3 that there was a genuine effort at that
4 or a genuine attempt to bring that to
5 fruition. But the members -- I mean,
6 some are not here or I am told some have
7 not demonstrated a willingness to
8 testify but it would be useful for you
9 to interview them.

10 MR. HYLTON: We want to. One character we gather is
11 an itinerant, peripathetic seller; pops
12 in and pops out so we can never pin him
13 down.

14 A I envy your freedom of expression, sir.

15 Q I am tempted to concur, sir.

16 CHAIRMAN: You see how I understand this thing, I
17 am sorry I am not an economist. It is a bad
policy, it seems to be bad policy to try to solve a problem by putting
18 money into insolvent institutions. If they
19 21 are dead let them
20 remain dead. No
22 amount of moral suasion...

23 A Within those institutions there were
24 some elements of a good loan portfolio
25 etcetera and we recognized, Chairman,

1 that the CB'E's, Workers Bank, Horizon, we
2 recognized that none of them had a future on
3 their own, but they came to us with this
4 proposal for this bank, they even selected
5 who they thought would be the leader et
6 cetera.

7 CHAIRMAN: And they were still borrowing?

8 A Yes, it was and I recall very well the night
9 and that then prompted us to then take the
10 more decisive action.

11 CHAIRMAN: You should be commended for your
12 generosity of spirit. Well I do not
13 know if that is the main characteristic
14 of a Minister of Finance.

15 A Well it is a little bit more than an
16 individual generosity. As I indicated
17 the person who had the clearest position
18 on it and it turned out to be correct,
19 was our Governor Boussaires. The
20 reality is that not many people who I --
21 perhaps I am not suggesting you are in
22 this group, sir, but not many people who
23 now say that these persons, and I have
24 seen a term you have used to describe
25 them, should have been moved out en

1 mass. We may say so now, but they managed to
2 mount a pretty strong PR campaign and in a
3 sense even the debtors who are now with JRF
4 or with FINSAC they have turned the spotlight
5 not on the people who made these
6 arrangements, not on the persons who did
7 strange things, but on the Government.

8 9 been successful in
9 that regard and it is
10 imperative and I plead with you, Mr.
11 Chairman, that these persons must come
12 here and be subjected to the same rigor
13 of cross-examination.

14 CHAIRMAN: Well, we are going to try and get them
15 here but I don't think we can do so by
16 moral suasion.

17 A I wouldn't even attempt to give legal
18 advise, sir, but I am told that you
19 have a little stronger clout than moral
20 suasion.

21 COMM. BOGLE: But Dr. Davies, a lot of the persons who
22 we might for the moment call victims of
23 the financial meltdown might say that
24 they have found themselves in such a
25 situation because of high interest rates

1 that they had to face and they see the genesis
2 of high the interest rates in the Government,
3 between the Minister of Finance and the Bank
4 of Jamaica, consequently they are turning
5 their eyes from the original lender to the
6 Government it is in this regard. So

7 8 they are saying
8 that they borrowed at
9 \$10.00 just 10% interest rates, purposes
10 of this conversation, purposes of this
11 enquiry and shortly thereafter interest
12 rates moved up to say, 60%. They see
13 that as a move of the Government rather
14 than the move of the financial
15 institutions that they borrowed from and
16 so they look to that area for redress.

17 A Commissioner, let me begin by
18 indicating, you have used some specific
19 numbers and you have deliberately
20 slanted them like from 10 to 60, I don't
21 think any such thing held, but I am just
22 wondering when it would have been 10%
23 given what inflation was at that time.

24 Q I just used that?

25 A Okay and I understand the feeling that

1 the Government clearly was a factor but I
2 am saying to you Commissioner, that if you
3 examined the operations of other
4 institutions, they neither offered interest
5 rates on deposits of that magnitude nor
6 charged interest rates of that magnitude on
7 loans. So in pursuing our investigation even
8 as I understand as I said I don't believe
9 there is anybody who has been exposed to more
10 of the problems of the borrowers than I have
11 been, but in pursuing this discussion we
12 must then examine why there were
13 institutions with bad loans portfolio not
14 anything out of the ordinary. What is the
15 difference in those managements and that to
16 me is a critical issue which cannot be
17 overlooked. So they were operating under the
18 same overall macroeconomic
19 conditions. But I think it's imperative
20 Commissioners, Chairman and
21 Commissioners, that you look at some of the
22 activities which these entities entered
23 into. Many moved into
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1 acquisition of real estate utilising
2 depositors' funds and then they had
3 essentially nonperforming assets which
4 were not bringing in any revenue and within
5 that context they were forced
6 to -- in order to meet their obligations pump
7 up in terms of their interest rates on
8 deposits and which led them into this vicious
9 cycle. I am not for any one
10 moment suggesting that the high interest
11 rates being charged on government paper
12 wasn't a factor but I am saying that there
13 are clear examples of other
14 institutions
which managed themselves

15 through that period. And that is
16 irrefutable.

17 MR. HYLTON: Changing now a little Dr. Davies, to the
18 question of FINSAC sales. The question
19 asked, "In cases where Finsac sold
20 properties below market value, was the
21 delinquent borrower credited with the
22 market value or the value at which
23 FINSAC sold the asset?"

24 A As I indicated Counsel, is that I am
25 not, I was not involved in the day to

1 day operations of FINSAC so I do not
2 know of any such issues, but not in
3 defence of FINSAC they can speak for
4 themselves. The only real market value
5 is what a real buyer, Commission...

6 CHAIRMAN: Were you told of this?

7 A No. Although the only real market value
8 is what a buyer is willing to put
9 forward in cash.

10 CHAIRMAN: What I mean is were you aware of FINSAC
11 selling below the market value?

12 A No, I wasn't. I first saw this when I
13 saw this paper.

14 CHAIRMAN: Yes.

15 A I think, Chairman, this can only be
16 dealt with in terms of specific
17 references to FINSAC.

18 CHAIRMAN: Yes.

19 Q Was any external advise, Dr. Davies,
20 sought as to how to deal with the
21 financial crisis in the mid 1990s? If
22 so, from whom and what was the advice?

23 A Yes. As I indicated we consulted with
24 the three major multilaterals which
25 would be the World Bank, the IMF and the

1 IDB and those consultations took place
2 both in Kingston and Washington. I
3 can't recall how many meetings there
4 were but there were several meetings.
5 To be fair to the multilaterals they
6 advised against a FINSAC type
7 intervention which protected depositors.
8 I would say in passing that I have noted
9 that the way these multilaterals have
10 dealt with the more developed countries
11 with their financial crisis that's not
12 the same advice they gave. The more
13 developed countries, even as we speak
14 have ensured that depositors and the
15 insurance companies - the U.S.
16 Government has pumped what must be close
17 to \$US400B into AIG which is an
18 Insurance Company because they recognize
19 what the failure of AIG would be or a
20 Citibank or Bank of America.
21 CHAIRMAN: They are too big to fail.
22 A Its an interesting concept now and you
23 know people are divided because persons
24 are saying that some of the institutions
25 -- one of the accusations for example is

1 that Bank of America deliberately sought to
2 acquire Merrill Lynch in order to pass that
3 threshold and hence the Secretary of the
4 Treasury and the Head Chairman would have
5 no option but to help them. And so we
6 consulted and they advised us that we should
7 let those which have to fail, fail and when
8 we raised with them the logistics as you used
9 the term, Chairman, of the difficulty in
10 terms of that level of intervention, they
11 suggested that we should lock the system down
12 for a couple weeks and clean it up. There are
13 several other things which they advised on.
14 I don't want to convey the impression that
15 we rejected everything but the IDB in
16 particular made available resources for
17 technical assistance to help us to redraft
18 the laws et cetera; The establishment of the
19 FSC; the establishment of the JDIC but in
20 terms of the original option recommended,
21 the administration did not accept it.

22 Suffice to say after two years
23 when FINSAC had brought stability
24
25

1 to the system the World Bank and the IDS
2 and the CDB then offered us loans which
3 would allow us to finance the repayment
4 of the FINSAC bonds; not in totality but
5 a percentage.

6 Q You mentioned Dr. Davies, the changes to
7 the legislation following this crisis.
8 Starting with the financial sector
9 legislation in 1997, could you tell us
10 what was the primary purpose for that
11 legislation?

12 A There were several objectives and let me
13 start with one which may seem almost
14 innocuous but it was very critical.
15 Well a stricter definition of fit and
16 proper person; fit and proper criteria
17 were made much more rigorous for
18 managers, for directors and for owners.
19 The supervisory authorities were given
20 control over the change of owners.
21 Previously if someone had a merchant
22 bank licence they could just sell it.
23 you Chairman, could just sell it to one
24 of the other Commissioners and he would
25 be in business. Now the licence has to

1 be turned back to the regulatory authority
2 and then they determine, anyone who applies,
3 whether their capital is okay and they were
4 fit and proper, that was tightened. There
5 were more precise definitions of
6 non-performing loans and the supervisory
7 authorities were given stronger powers to
8 prescribe accounting rules. They tightened
9 the requirements for capital adequacy. There
10 was limitation on institutions being able to
11 lend to or invest in, to related parties. In
12 these groups of companies, entities would be
13 used, the deposit taking institution would
14 be used to finance the activities. There are
15 sort of stronger powers given to the
16 regulatory authorities and there are now two
17 authorities; both the Bank of Jamaica and the
18 FSC to take immediate action the moment
19 problems are sighted. There are others
20 important, but not as critical. For example
21 auditors once simply reported their concerns
22 internally and the auditing profession
23
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1 objected to this clause but we have
2 stuck by it. They are required once
 they see something worrying or
 suspicious to alert both internally as
6 well as the supervisory authorities. So
 there is a comprehensive set of measures
7 aimed at making the supervisory
8 authority more capable of acting as well
9 as making entry into the sector more
10 difficult.

11 CHAIRMAN: Are you finished with that question?

12 MR. HYLTON: Yes, sir.

13 CHAIRMAN: May I just ask this? All of this took
14 place after the horse has bolted, in the
15 main?

16 A We hope, Chairman, that the horse has
17 not bolted but I have learned never to
18 say never. No one would have thought
19 that there would be crises in the U.S.
20 et cetera. What I am saying is that we
21 are now in a stronger position to deal
22 with them.

23 CHAIRMAN: Maybe in the U.S., ideally with policy
24 and for ideological reasons weren't
25 making regulations and the Republicans

1 didn't.

2 A They have discovered the error and I
3 suspect the danger is going too far in
4 terms of their restrictions.

5 CHAIRMAN: And then tomorrow morning Republicans
6 came in they would all change it.

7 A I don't think they could. Just like
8 locally I don't know think we could
9 relax the new rules.

10 CHAIRMAN: Let us look a little more at this
11 legislation aspect. All this mean
12 therefore is that appropriate
13 legislation was either nonexistent or
14 that the rules such as they were, were
15 not being enforced properly, adequately?

16 A More the former than the latter.

17 CHAIRMAN: Yes. For instance we understood or we
18 understand that as far as insurance
19 companies were concerned these were
20 supervised by the Ministry of Finance in
21 the sense that the Superintendent of
22 Insurance, he was merely an officer in
23 the Ministry no clout.

24 A Well there was the operation of the
25 Superintendent of insurance et cetera.

1 CHAIRMAN: But he had no clout. So that if he said
2 do this or do that nobody bothered to
3 harken to his words and that's for the
4 insurance companies. I am just trying
5 to point out my thesis was that the
6 horse had long bolted when these
7 regulations came into being in the hope
8 that we would have better things in the
9 future.

10 A Well, I hear your thesis, Chairman,
11 but I would respectfully wish to suggest that
12 even now, not just in Jamaica but nowhere
13 in the world is there a perfect set of, or
14 body of legislation for obvious reasons, and
15 we are always going to -- people are going
16 to find ways of exploiting loopholes and
17 then we will have to catch up. We
18 can't anticipate how persons will -- the
19 loopholes persons will have.

20 Rules will always find a means, it will. The
21 CHAIRMAN: insurance company -- or let me put it this
22 way. It wasn't that remedial action wasn't
23 appreciated, was it, but that that action
24 was not taken with
25

1 deliberate speed and I use that word
2 'deliberate' more in the Jamaican
3 opposed to the American sense.

4 A Well, sir, the situation is a little
5 bit more complicated. If you look at
6 the Insurance Companies they all -- the
7 three major ones were also involved in
8 the banking sector. Mutual life had
9 first Mutual Security then NCB, LOJ had
10 Citizens, Island Life was part owner of
11 Island Victoria. So whilst your point
12 about the inadequacy of the regulatory
13 authorities with regards to insurance
14 it was broader than that and there is a
15 term used of regulatory arbiters
16 whereby you had people whose job was to
17 to find...

18 CHAIRMAN: A loophole.

19 A Yes. Under which the piece of
20 legislation could be used. So you would
21 establish an entity.

22 CHAIRMAN: Which wasn't supervised.

23 A Right. Or where the supervision was
24 limited. So when you say the horse has
25 bolted I would humbly suggest sir, that

1 it is a never ending vigil, it is not
2 that you can say now we have fixed it
3 and it won't happen again.

4 Q We were discussing Dr. Davies, a
5 significant overhaul in regulatory
6 regime in 1997.

7 A Yes.

8 Q Prior to then when was there a similar
9 major set of legislation?

10 A I don't recall definitely but nothing as
11 comprehensive as this.

12 Q In 1997 there was an amendment for
13 example to the Financial Institutions
14 Act, do you recall when that Act was
15 passed?

16 A No I don't.

17 CHAIRMAN: Probably in 1992.

18 Q In 1992 were there a number of changes
19 to the financial regulatory legislation
20 including the implementation of the FIU,
21 Financial Institutions Unit?

22 A Yes, but there are several -- the
23 creation of building societies or the
24 establishment of building societies
25 outside of the proprietary owned

1 building societies, that turned out to
2 be a major loophole which we had not
3 anticipated and if you look at the
4 operations of the Century building
5 society, the Eagle building society,
6 they were used as one of the major
7 agencies for moving loans around et
8 cetera. So at each time, at each moment
9 you think you have captured loopholes
10 then there were others which were
11 opened.

12 Q And having done those changes in '97 was
13 there another set of legislative
14 amendments around 2002?

15 A Yes, and the coming into being of the --
16 apart from the legislative institution
17 we now have a deposit insurance scheme
18 which the Commissioner raised the issue
19 about treating as if any future
20 development, everybody knows what is
21 protected by insurance. The
22 establishment of the ESC which pull
23 together all the other supervisory
24 agencies for all the non-bank
25 institutions, we now have total coverage

1 of institutions.

2 Q There is more legislation right now?

3 A There is more to be done. Even simple
4 things like a firm can't use the words
5 bank unless it is a bank licenced, duly
6 licenced but once a firm could just
7 register as a company and have the word
8 bank and it carried with it the
9 implications that this institution was
10 operating on the aegis of BOJ. Its is
11 ongoing work. There is a team based in
12 the BOJ but including FSC which is
13 seeking always to examine what new
14 legislative changes should be.

15 Q Continuing with the original questions,
16 Dr. Davies, was an international audit
17 firm retained to do a forensic audit?

18 CHAIRMAN: I am terribly sorry to do this. We are
19 to consider the performance of
20 government regulatory functions I know
21 we passed over it but look at (d) in the
22 terms of reference. In examining the
23 circumstances which led to the collapse
24 of several financial institutions in
25 the 1990s particularly in regard to (d)

1 the performance of Government's
2 regulatory functions." So perhaps we
3 could hear about that in this
4 connection.

5 MR. HYLTON: The question that asked about
6 legislation?

7 CHAIRMAN: Perhaps it would be relevant to that
8 would it not.

9 MR. HYLTON: Yes, sir, so the question I take it
10 would be, what is Dr. Davies' view as to
11 the Government's development of
12 regulatory...

13 CHAIRMAN: Yes.

14 MR. HYLTON: You have indicated, Dr. Davies, a number
15 of changes in the regulatory regime and
16 legislation over the period. What is
17 your view of the Government's handling
18 of that process?

19 A You mean the development of the
20 legislation?

21 Q Given the Chairman's comment about the
22 horses, about the bolting of horses.

23 CHAIRMAN: I take it you have seen, not seen, you
24 know very much about the Terms?

25 A Mr. DePeralto sent them to me, sir.

1 CHAIRMAN: Well I would assume long before that --
2 you have seen them before that.

3 A I don't know why you made that
4 assumption, sir. It says the
5 performance of Government's regulatory
6 functions.

7 A Yes.

8 CHAIRMAN: So whatever you have added, what did
9 that achieve, if anything, and the new
10 ones you have put in. The performance,
11 what is the performance?

12 A Well, before or after, sir?

13 CHAIRMAN: It is before the flood and after the
14 flood.

15 A I have indicated that they were -- it is
16 accepted and it was recognized that
17 there were several loopholes either in
18 terms of the legislation itself or in
19 terms of what I indicated is regulatory
20 arbitrage and one of the major
21 objectives of the 1997 legislative
22 amendments was to address them not only
23 in terms of the regulatory powers
24 themselves but also there were persons
25 who knew what was going on, like the

auditors, external auditors, but who had no
legal obligation to share that knowledge.

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Continued. .

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1 A: And so after there have been significant
2 changes and one of the reasons the
3 changes took so long to be passed as
4 legislation is that there was strenuous
5 objection from special interest groups
6 in terms of whether these changes should
7 be put in place and whether the
8 Government was seeking to have other
9 professionals do their regulatory work
10 and I point to you that the accounting
11 profession felt that their client would
12 be the institution and the Government
13 was seeking that they should, in a
14 sense, report on their client and that
15 became a mayor objection too.
16 So Chairman, I would suggest that we
17 need to examine why the present
18 international crisis has, by and large,
19 had no major impact on the health of the
20 Jamaican institutions and I would say
21 that it's related to the extent to which
22 the legislative parameters have been
23 tightened.

24 Q: The Chairman's question is not just the
25 legislative parameters but the

1 implementation?

2 A: Sir, the implementation -- the existence
3 of the FSC and, at one stage because
4 there are now two institutions, we got
5 several complaints about being over
6 regulated and over-inspected, I don't
7 know, I can't say how successful it has
8 been, I haven't been responsible for a
9 little while but we are seeking to get
10 joint inspection of those entities which
11 are licensed by both the BOJ and the
12 FSC. We have sought to have the sharing
13 of information such that if one
14 institution sees something of concern,
15 it's conveyed to the other so there is a
16 financial regulatory council which has
17 been established to facilitate that.
18 Its not established in statute, it's
19 established by the Minister to
20 facilitate that closer collaboration.

21 COMM. BOGLE: So far as insurance companies are
22 concerned, their control is much better
23 organized than before, I take it?

24 A: Yes, FSC -- it's very good that you
25 raised that, sir, because there is now a

1 requirement for licensing of sales
2 persons, brokers, they have to be
3 formally registered, they can't just
4 become a salesman by passing an exam,
5 the FSC has to licence you, so there is
6 -- I am not suggesting it's perfect, but
7 there is a greater data set on the
8 industry and ability to establish
9 standards.

10 COMM. ROSS: Looking back at the pre-1997 regime, I
11 think the Blaise Institution and Central
12 National Bank were to be under that
13 regime, how did the changes improve or
14 affect, you know, what happened
15 subsequently. In other words, the
16 pre-existing regime has been an obstacle
17 to intervene in other institutions if it
18 was necessary, the regime existed prior
19 to 1997 legislative changes, would that
20 regime have precluded interventions,
21 say, in other institutions?

22 A: Yes, in the sense that, for example, the
23 BOJ now has powers to go up the ladder.
24 For example, one of the difficulties we
25 faced with the Century Financial

1 institution was that the bank was owned
2 by a holding company which then was -the bank
3 is subject to the regulatory authority of
4 the Central Bank but not the holding company
5 which then essentially was making the
6 decision about the bank. Similarly, prior to
7 the legislative changes, anyone could go to
8 the Deputy Keeper of Records and get a form
9 and fill up and have a building society the
10 next day. And it's not as crazy as it may
11 sound, because nobody thought that it would
12 be used for wrong purposes. The building
13 societies like credit unions, were seen as
14 co-operative ventures but they were -the
15 laws were not written to preclude an
16 exploitation. That now has been
17 excluded, that approach and to establish a
18 building society, the Central Bank has to
19 explicitly assess you and then determine
20 whether such a licence should be granted. So
21 there were several loop holes which were
22 exploited which in a sense we learnt from
23 those mistakes or
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1 from those deficiencies.

2 Q: Was an internal audit firm retained to
3 do a forensic audit on the failed
4 institutions, and if so what was the
5 firm and what recommendations did they
6 make?

7 A: To my mind, my knowledge is that there
8 were at least two firms, Lindquist-Avey
9 of Canada and Ernst & Young out of the
10 UK. both firms, and I am more acquainted
11 with the work of Lindquist-Avey, they
12 were the first one. They argued that a
13 civil proceeding should be instituted
14 against the principals of the failed
15 institutions and in several instances
16 we have pursued that with success, I am
17 not certain how much has been collected
18 et cetera, and in certain instances they
19 argued that criminal prosecution should
20 proceed. This latter one, I don't
21 believe that there has been a similar
22 level of success as with the civil
23 proceedings. One of the problems is that
24 we do not or did not then possess
25 domestically the investigative

1 capabilities in terms of puzzling out or
2 unraveling the different moves which had
3 been made and so Lindquist-Avey, for
4 example, when they went through, they
5 did not have domestic counterparts who
6 could then take the analysis and carry
7 through.

8 Q: The Bank of Jamaica's Supervisory
9 Department made reports, the question
10 says, clearly indicating the insolvency
11 of certain financial institutions. Why
12 was timely action not taken by the
13 Minister of Finance although he had
14 legal authority? Why were these
15 institutions allowed to cause a major
16 systemic problem in the financial
17 system?

18 A: As I have indicated sir, it's not that
19 nothing was being done, it may seem to
20 the public that nothing, no dramatic
21 action, building shuttered, or whatever
22 was being done, but as I have indicated
23 prior and I presume if you ask the
24 personnel from the Bank of Jamaica they
25 will confirm that we were in -- there

1 was none stop action seeking to deal
2 with the issues. In retrospect perhaps
3 we should just have dismissed or
4 discounted some of the commitments we
5 were given but I would not wish for the
6 feeling to be that there is this
7 information and nothing was being done;
8 there were almost continuous set of
9 meetings seeking to get the institutions
10 and the principals to right the wrongs
11 identified.

12 Q: Are there any questions that
13 Mr. Chairman and members wish to ask?

14 CHAIRMAN: I am trying to see whether or not we are
15 required to make any recommendation on
16 that item. I know we are to consider
17 what actions, if any, could have been
18 taken to avoid this occurrence and to
19 evaluate the appropriateness of the
20 actions which were taken.

21 COMM. BOGLE: Dr. Davies, can you explain to us the
22 difference and why there was Refin,
23 Recon and then FINSAC.

24 MR. HYTLON: It's the other way around, sir, these
25 were subsidiaries of FINSAC.

1 institutions, it took years before some
2 comprehensive attempts to resolve the
3 debacle was undertaken. Apart from the
4 considerations that you mentioned, what
5 you think could have accelerated the
6 process, how do you think we could avoid
7 making the same mistake all over again?
8 We understand the limitations of the
9 law, but it was still possible to make
10 some intervention. I mean what could
11 have led to the problem being dealt with
12 in say a matter of months as opposed to
13 years?

14 A: Well, I don't think that the matter
15 could be dealt with in a matter of
16 months. The FIS was established before
17 to deal with the Blaise institutions and
18 they also dealt with, if my memory
19 serves me right, with the Century
20 Financial Institution, so it's not that
21 nothing was done but at that stage we
22 thought we were dealing with -- it was
23 basic intervention etcetera. FTNSAC came
24 about when we realized that, for
25 example, that NCB which was one of the

1 flagships also had difficulties, LOJ,
2 so, we at that stage, it's not something
3 which you became aware of in months as such,
4 and when the more comprehensive -this is
5 what we were seeking the advice
6 Commissioner Ross of the multi-laterals
7 about, but even the discussion, even as the
8 multi-laterals speak about more prompt
9 action, just the discussions with them was
10 itself taking months. So in retrospect you
11 always have the
12 situation, could you have acted more
13 expeditiously. On the one hand we were
14 seeking advice and consulting, on the other
15 hand, locally we were seeking to work with
16 the principals of the institutions and
17 there is none of them who could claim that
18 an opportunity was not afforded for them to
19 do right and we felt that is also important
20 even in retrospect.
21 This is an endless argument about time,
22 CHAIRMAN: because my understanding of what we were
23 told by the Bank of Jamaica was that they
24 would make reports to the Minister
25

1 as to the conditions of the these
2 insolvent institutions. They themselves
3 had no power to intervene or to take any
4 action of any consequence and that the
5 power was in the hands of the Minister,
6 but it took some considerable time.
7 Unfortunately I don't have the document
8 before me now to give you specific
9 dates, but they tend to show, they took
10 an appreciable length of time for action
11 to be taken.

12 A: Sir, I don't know what you mean but what
13 they would also show...

14 CHAIRMAN: It said the power was in the hands of
15 the Minister.

16 A: No, put part of the action, sir, is to
17 say to them, bring in the principals and
18 lay out what you need to do to address
19 the issues. Now, there is an
20 inspection, then the reports for that
21 inspection would come to you months
22 after, whatever, and they would also --
23 it's not that there is nothing done, but
24 you would say lay out what are the
25 requirements to heal the institutions,

1 and to be fair to the principals as we
2 sought to be, you would have to give
3 them -- I mean you can't say to someone,
4 bring another hundred million or two
5 hundred million in capital, they would
6 have to say I will do this within a
7 particular time. But if you peruse, the
8 difference between the Bank of Jamaica,
9 and this is not a distinction I am
10 seeking to draw, is that they can go
11 back to file, I can't.

12 CHAIRMAN: I am not asking you to be specific at
13 the moment, we can get it, we can test
14 this.

15 A: Well, Chairman, what I would tell you,
16 in every instance when such a situation
17 was reported to me or to the Ministry of
18 Finance, meetings were immediately held
19 with the Central Bank and a line of
20 action was taken. Persons tend to see a
21 line of action as a closure or something
22 but line of action also meant meeting
23 with the principals. And again I urge
24 your to seek to have the principals to
25 come forward and deny or confirm this.

1 CHAIRMAN: We are going to hear from some, you
2 might see a movie.

3 COMM. BOGLE: Dr. Davies, going back to the matter of
4 the insurance companies; during the
5 90's, were the supervision of the
6 insurance companies not in the Ministry
7 of Finance?

8 A: Yes, the Chairman raised that before, it
9 was under the Superintendent of
10 Insurance.

11 COMM. BOGLE: Because, I see here where the BOJ is
12 saying that lack of supervision in the
13 insurance sector played a fundamental
14 role in this crisis, so would that be a
15 failure of the Ministry of Finance to
16 ensure that proper supervision was done
17 in those periods?

18 A: Well, clearly, the Office of the
19 Superintendent of Insurance, it was
20 recognised that it was inadequate to
21 deal with a sector which had grown
22 significantly, and we were in situations
23 where the sector had taken on other
24 activities like they were in banking,
25 they acquired banks et cetera. So it is

1 true that the inadequacy of the
2 supervision of the insurance companies,
3 but those insurance companies were also
4 involved in deposit taking through their
5 subsidiaries and there were also
6 problems there.

7 CHAIRMAN: Dr. Davies, again let me just say, my
8 distinct recollection from the evidence
9 given by the Bank of Jamaica was that
10 they were required to do and to
11 practice, they made reports to the
12 Ministry, to you, so to speak, then
13 there was a report made by some external
14 agency, external foreign organization
15 and only then that the Ministry took
16 action. What comment you make on that
17 statement?

18 A: I wasn't here for the testimony, but I
19 would hope sir, that was not the way it
20 was presented.

21 CHAIRMAN: I can ask Mr. Hylton.

22 Q: I think there was a specific example of
23 one institution, there was a report and
24 I think the evidence was that
25 Pricewaterhouse Canada or, another

1 agency was asked to compare, but it was
2 not every report, it was a specific
3 instance.

4 CHAIRMAN: Well, I won't argue about this, but its
5 certainly one that is stuck in my brain
6 if I may say so the Minister was not
7 satisfied with local characters, he
8 wanted intervention in the matter by
9 some foreign agency.

10 A: Mr. Chairman, I could be accused of many
11 things but one of the things I couldn't
12 be accused of is lack of faith in my
13 local persons.

14 CHAIRMAN: You see how circumstantial evidence can
15 convict you.

16 A: I am glad that this is not a trial but
17 the fact is in that instance, my
18 recollection is that, the principals of
19 that object to the fact that the persons
20 who are the regulators were providing
21 the answers which would be guiding us
22 and they sought for another assessment
23 and that was granted.

24 CHAIRMAN: You think perhaps we could check that?

25 MR. HYTLON: I certainly will.

1 CHAIRMAN: Because, I didn't form the impression
2 that there is just one instance.

3 A: Of an external...

4 CHAIRMAN: Of an external agency being asked for
5 whatever reason to give a report.

6 A: Well, there were, if you wish to include
7 the...

8 CHAIRMAN: Can I just -- this is the response of
9 the BOJ, I think it's 13, I don't know
10 if you have it. This is what the Bank
11 of Jamaica said in response to a
12 question we asked. Attempts by the
13 Central Bank to have some licensees
14 closed before their insolvency reached
15 huge levels....

16 MR. HYTLON: Could you give it to Dr. Davies.
17 (Dr. Davies handed relevant document)

18 A: Yes, sir.

19 CHAIRMAN: The question is at page 10 if you wish
20 to see the question, page 10, that is
21 where the question is asked and the Bank
22 responded.

23 A: Yes, I have seen the response.

24 CHAIRMAN: I was calling your attention to (e),
25 which is at page 13.

1 justified the Bank's initial assessment,
2 before an intervention took place.

3 A: Yes, Chairman, but as I indicated, it's
4 not that you had principals who were
5 agreeing with the Bank's assessment,
6 they were always indicating that the
7 Bank, the Central Bank had been too
8 stringent in terms of assessing, and in
9 such a situation, we certainly believe
10 that when you are going to take action
11 which is essentially moving people out
12 of an industry, terminating that, that
13 you needed to have the strongest
14 possible evidence, and so, either in
15 the...

16 CHAIRMAN: Isn't your word is the strongest
17 possible evidence?

18 A: Yes.

19 CHAIRMAN: But what is stronger than people telling
20 you that that is so?

21 A: A Central Bank inspection is not the
22 same, for example, as the assessment of
23 a forensic auditor who would be going
24 through book by book but also seeking
25 activities, unsavoury activities at

1 2 cetera, the Central Bank would say this looks
3 4 suspicious or something or we have questions
5 6 or doubts. When you have that -- in several
7 8 instances even when we appointed receivers,
9 it is then that we became fully aware of the
10 extent of the problem. Now, I still would
11 urge caution that even when one receives that
12 first report from the Central Bank you bring
13 in the institution and indicate what the
14 nature of the report you have, but you are still
15 obliged, not by law, but you are still
16 obliged to hear their side of the story and
17 to verify exactly what is the situation. Now,
18 I don't think the Commissioner would be
19 suggesting that such a process not be
20 followed, we may have a difference of opinion
21 as to how long the process should take, but
22 equity would suggest that you should be in
23 CHAIRMAN: a position to have another view of an
24 assessment.
25 Well, I am not quarreling with that, but I ask
the question, when I read that, or heard that
evidence, you know my

1 antennae went up.

2 A: Well, the Central Bank's records would
3 also indicate if you wish to pursue
4 that, institution by institution, report
5 what happened and I would assert, I
6 would assert that in no instance nothing
7 happened, steps were always taken. You
8 may fault judgment in terms of the
9 extent to which commitments were
10 accepted or believed, but in every
11 instance action was taken.

12 CHAIRMAN: Have you got this? (indicating)

13 A: Yes, I have.

14 CHAIRMAN: If you look at page 25, I don't think
15 you have that, Mr. Hylton, this is a
16 reference to one entity Blaise, if you
17 look at the footnote -- perhaps you
18 could just read the footnote into the
19 record for us.

20 A: Me.

21 CHAIRMAN: Yes.

22 A: **"In 1993 when BOJ recommended temporary**
23 **management for the CFEs" --**

24 And CFEs is the Century

25 Financial Entities --

1 2 "The Government sought external
3 4 confirmation from Coopers & Lybrand
5 6 to determine the viability of these
7 8 entities. This report clearly
9 indicated the insolvent nature of
10 the entity (deficit of \$149.2M)
11 together with the major issue of
12 mismanagement. Later, in 1996
13 PriceWaterhouse Canada also
14 carried out work on a proposed
15 restructuring plan for the CFEs. In
16 the case of the Blaise entities the
17 Government commissioned an
18 independent assessment from
19 PriceWaterhouse to ascertain the
20 true value of ssets, level of losses
21 and capital required. These
22 findings echoed the earlier
23 CHAIRMAN: findings and assessments of the BOJ
24 Examiners".

25 You see, having read that, it raised an
antennae or two, which suggested that the
Government, it was only when they

1 brought in these foreign entities and
2 they suggested a few things and
3 therefore, and I thought to myself, well
4 that would be added cost on the part of
5 the taxpayers.

6 A: Well, I hear you Chairman, but if you
7 look at the document which you have and
8 it spoke to Blaise entities, it
9 chronicles steps which were taken,
10 that's one, but beyond that, we wish to
11 and the advice that we had, we wished to
12 be assured that we had clear evidence or
13 support for any actions which were to be
14 taken. The Central Bank, clearly the
15 Central Bank's technical people carried
16 out commendable work but what you would
17 be having in one -- that distinction
18 between Central Bank and Ministry of
19 Finance is really conceptual, what you
20 would have is judge and jury wrapped in
21 one; what we had by inviting or
22 commissioning external assessment was an
23 independent assessment of the situation. 24

25 Continued...

1 MR. HYLTON: May I ask a question, sir?
2 I am just trying to ask whether
3 currently or subsequently, not as a
4 mandate whether the power to intervene
5 still rests with the Minister or
6 whether the Bank of Jamaica is now able
7 to take action once it has determined
8 that an institution is insolvent?

9 A There is an infinite power which still
10 rest with Minister and this is -- I am
11 trying to remember from memory but there
12 are actions which can be taken by the
13 Central Bank based on its findings but
14 they would have to make a recommendation
15 for the removal of the licence et
16 cetera. The Central Bank itself cannot
17 do that.

18 CHAIRMAN: Licences are issued by the Minister?

19 A Yes.

20 CHAIRMAN: And revoked by the Minister?

21 A Yes. But always based on the -- well I
22 would think always based on the
23 recommendations of the Central Bank, et
24 cetera.

25 MR. HYLTON: Could you be more specific? I am

1 wondering if you are talking about
2 temporary management.

3 COMM ROSS: Well, I am just trying to understand
4 what exactly the powers are. In other
5 words, if there was a situation where
6 now the Bank of Jamaica goes to an
7 institution and determines that it was
8 insolvent, could the Bank of Jamaica
9 step in and take over that institution?

10 A I don't want to answer that question. I
11 don't think so but I think they can
12 issue directions on the way towards that
13 institution.

14 COMM ROSS: So they would still have to make a
15 recommendation and await the
16 confirmation of the Minister?

17 MR. HYLTON: I think I hear Dr. Davies is saying he
18 is not sure about of the present.

19 COMM ROSS: But that's what he understands?

20 A One of the points I want to make is
21 that the Ministry of Finance does not
22 have staff which deals with regulatory
23 issues either of deposit-taking
24 institution or security trading. So in
25 every instance whether now with regard

1 to securities dealers, insurance
2 companies or deposit-taking
3 institutions, the Ministry acts on the
4 recommendation and in concert with the
5 regulatory agencies. So z want that
6 point to be stressed that there is no
7 sort of action which may be taken by a
8 Minister, it depends on the involvement
9 of these institutions.

10 COMM ROSS: Z was just trying to understand whether
11 we could find ourselves in the same
12 position again where a decision is made
13 and time is taken to get other inputs
14 and the situation continues to
15 deteriorate.

16 A Well the situation has changed
17 remarkedly in the sense that many of the
18 things which were picked up by spot
19 examinations, et cetera, the Central
20 Bank or the FSC would now be alerted in
21 advance by the auditors who are now
22 required to make these reports. So there
23 are more early warning systems which
24 would assist in that whole process. But
25 the question is, is there still power

1 with the Minister? The answer is yes.
2 MR. HYLTON: I have something in relation to -- in
3 the footnote that you had directed to
4 Blaise and Century. I think you had
5 indicated Dr. Davies, that those two
6 entities were intervened prior to the
7 1997 changes?
8 A Yes.
9 Q Did the principals of those two entities
10 challenge your decision to intervene?
11 A Yes.
12 Q In the courts?
13 A I believe so, yes.
14 Q You recall whether they both challenged
15 the decision all way to the Privy
16 Council?
17 A They did.
18 Q You recall whether you relied on the
19 reports that you had received from the
20 international agencies?
21 A Those supplemented the reports of the
22 Bank of Jamaica.
23 Q I mean you successfully resisted the
24 challenges?
25 A Well, I had no way of resisting, but the

1 challenge was successfully resisted. But I
2 would add sir, that having these additional
3 assessments was a very important part
4 because you were dealing now not with an
5 internal assessment but an assessment which
6 had come from others. When I said Chairman,
'external'

8 I don't necessarily mean foreign.

9 MR. HYLTON: Chairman, I am conscious of the time and
10 in terms of where we are, subject to the
11 issue that I am to speak to the
12 Secretary about and research, I have
13 completed my list. Might this be a
14 convenient time?

15 CHAIRMAN: Well, it would certainly be. I think Dr.
16 Davies has been grilled sufficiently for
17 a day. I think he wants to go and rest
18 and get his throat back in order. So we
19 will return tomorrow.

20 MR. HYLTON: Yes, sir.

21 CHAIRMAN: So we take the adjournment until 9:30
22 tomorrow morning. Thank you very much.
23 Dr. Davies, we look forward to seeing
24 you.

25 A Okay, sir. Thank you.

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ADJOURNMENT TAKEN AT 4:10 P.M. 3

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