

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
THURSDAY, 26TH NOVEMBER, 2009

PRESENT WERE:

Thurs. Nov. 26, 2009

COMMISSIONER

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

MEMBERS

Mr. Charles Ross
Mr. Worrick Bogle

COUNSEL FOR THE COMMISSION

Hon. R.N.A. Henriquez OJ, QC, LL.M.

SECRETARY TO THE COMMISSION

Mr. Fernando DePeralto

MARSHALLING THE EVIDENCE

Mr. Ransford Braham - Attorney-at-law
Miss Kelly Wong - Attorney-at-law

REPRESENTING HON. OMAR DAVIES

Hon. Mr. Michael Hylton, Queen's Counsel

REPRESENTING JAMAICA REDEVELOPMENT FOUNDATION

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

REPRESENTING DEBTOR

Mr. Raphael Codlin - Attorney-at-law
Melissa Cunningham - Attorney-at-law

REPRESENTING ASSOCIATION OF FINSAC'd ENTREPRENEURS

David Wong Ken - Attorney-at-law

1 ON RESUMPTION AT 9:55 A.M.
1 CHAIRMAN: Good morning ladies and gentlemen. This
2 Commission of Enquiry is now in session.
3 We are starting with Dr. Davies, are we
4 not?
5 MR. HYLTON: Yes Chairman, he is continuing. I was
6 going to address you on one matter that
7 came out yesterday before Mr. Wong Ken
8 resumes cross-examination.
9 CHAIRMAN: You want to do so now?
10 A: Yes, sir. An issue that comes up
11 repeatedly Mr. Chairman, is as to
12 whether CIBC was intervened.
13 CHAIRMAN: Yes.
14 MR. HYLTON: I went back and I checked the notes of
15 evidence and I am assured sir, that it
16 was not. There is a list of intervened
17 institutions that was tendered in
18 evidence by the Bank of Jamaica.
19 CHAIRMAN: Yes.
20 MR. HYLTON: I am assured this is a correct list and
21 does not include the CIBC.
22 CHAIRMAN: Yes.
23 MR. HYLTON: I understand sir, that the Commission
24 may have a document that it got earlier
25 that has that entity on it, I haven't

1 seen that document, but I am assured the
2 documents that was tendered in the
3 course of the hearing is correct -- the
4 one with the yellow at the top.

5 CHAIRMAN: What we have to recall the Bank of
6 Jamaica to correct the evidence?

7 A: No, sir, I am saying the evidence is
8 correct. It was said a few times
9 yesterday.

10 CHAIRMAN: I know, but that is based on the fact
11 that these documents suggested
12 otherwise.

13 MR. HYLTON: I don't know what the document is, sir.

14 CHAIRMAN: You better get everything synchronized
15 then.

16 MR. HYLTON: I can only speak, sir, to the evidence
17 that was put in while I was here, I
18 don't know what other document there is.
19 I won't belabour. You to proceed sir.
20 Perhaps I can speak to the Secretary to
21 find that other document.

22 CHAIRMAN: Yes. Could you have the witness sworn.

23 (Dr. Davies sworn)

24 CHAIRMAN: Thank you.

25 MR. WONG KEN: Good morning Mr. Chairman, thank you.

1 Good morning Commissioners. Good morning
2 Dr. Davies, how you do?
3 DR. DAVIES: Fine. How are you, sir.
4 MR. WONG KEN: Very well, thank you.
5 CHAIRMAN: Having gone through that nicety.
6 MR. WONG KEN: I think it's important.
7 CHAIRMAN: We could spend the whole morning being
8 nice.
9 MR. WONG KEN: Dr. Davies, yesterday you indicated that
10 the reason for the high inflation in
11 1992 was the liberalization of the
12 foreign currency market. Could you
13 explain for me just how that comes
14 about, how does the liberalization
15 result in this high inflation?
16 A: Prior to the liberalization, the
17 exchange rate, and we are pegged to the
18 US dollar, the exchange rate was set by
19 the Central Bank and that exchange rate
20 in a sense inflated the value of the
21 Jamaica dollar because there was chronic
22 shortage; there was a black market
23 outside which had a rate which was far
24 higher than the official rate. Most
25 countries from time to time who are

1 trying to have a fixed exchange rate have
2 a black market but when the black market
3 becomes in a sense larger than the
4 official market then it either calls for
5 a significant devaluation or an
6 abandonment of the attempt to have a
7 fixed rate. In our case, they sought to
8 maintain this artificial official rate by
9 a variety of things. The two major
10 traders, the two major importers, what
11 was the ICD Group and the Grace Kennedy
12 Group, were taken out of the market
13 itself and they were dealt with through
14 the Bank of Jamaica but the Bank of
15 Jamaica itself was engaged in strange
16 practices of buying on the black market
17 to buffer the stock, the foreign exchange
18 of Central Bank. But its critical point
19 was that basic foods for example, foods,
20 electricity, basic food which accounts
21 for about 50-odd percent of the weight of
22 the CPI, electricity and all the official
23 things were being kept at a rate,
24 artificial rate which was totally
25 different from what

1 obtained. When they liberalized then
2 the exchange rate moved suddenly and
3 such that all these calculations, in
4 particular, foods, electricity, et
5 cetera, then was at this new rate.

6 Q: When was the foreign currency
7 liberalized?

8 A: My recollection is '91.

9 Q: 1991?

10 A: Yes.

11 Q: At that time you were the Director
12 General of the Planning Institute?

13 A: I was.

14 Q: Would you agree with me that the
15 Government's borrowing to meet its
16 deficits that that borrowing would also
17 have some impact, negative impact or some
18 impact in increasing the inflation?

19 A: Carrying the analysis which I have
20 indicated, the factors which I have
21 outlined like the movement in the cost of
22 basic foods, the movement in the cost of
23 electricity, et cetera, the borrowing was
24 not.

25 Q:: What was the unemployment rate in 1991,

1 92?

2 A: I can't state from memory, I can't state
3 from memory and I won't seek to do that.
4 If I had been provided with these things
5 I would have responded to you.

6 Q: Does your memory suggest to you that it
7 was wasn't an attractive unemployment
8 rate?

9 A: I don't know what is an attractive
10 unemployment rate.

11 A: Unemployment has been -- not since the
12 days of slavery have we had, and that
13 full employment had its own problems.

14 Q: As the Director General of the Planning
15 Institute your memory would suggest to
16 you that unemployment was the problem in
17 1991, 92?

18 A: Yes, and unemployment is a problem now.

19 Q: So when the decision was made to
20 liberalize the foreign curerency what
21 sort of examination was there made, what
22 sort of analysis was made as to the
23 impact that that would have on
24 inflation?

25 A: Oh, that examination was carried out,

1 not just on inflation but also in terms
2 of possible dislocations. The difficulty
3 is that unless you have precise numbers
4 on the size of the black market you are
5 unable to have precise estimates as to
6 what the market will settle at and the
7 difficulty arises in that what it settles
8 at is influenced by two factors, the
9 actual demand and supply, but also what
10 people's fears and expectations are.

11 But it would be fair to say the Planning
12 Q: Institute and indeed the Ministry of
13 Finance of the day and the Cabinet would
14 have come to some understanding of the
15 potential impact of the liberalization on
16 the inflation before making that
17 decision?

18 Yes. And I was party to most of those
19 A: discussions.

20 I know that.

21 Q: How would you? But we also were

22 A: cognizant, the Bank of Jamaica
23 essentially -- by the way, the Bank of
24 Jamaica buying dollars on the black
25

1 market had been carried on by the
2 previous administration and it was
3 curtailed by the Manley administration
4 because it was determined that that was
5 an inappropriate activity. Our
6 difficulty in making accurate
7 projections is that we did not know how
8 big that black market is, at best you
9 would do is guesstimates.

10 Q: You were fairly comfortable with those
11 guesstimates because I doubt that you of
12 all people would have recklessly gone
13 into a situation that would have had an
14 80% inflation result, 80%.

15 A: Mr. Wong Ken, the reality is that the
16 situation had reached, the whole market
17 had reached the situation where -- I
18 think I said yesterday, only the Bank of
19 Jamaica and the Government could pretend
20 that this exchange rate was real and
21 hence in that situation there was no
22 option but either to have a significant
23 devaluation -- the real choice is: Do you
24 have a significant devaluation or do you
25 liberalize?

1 Q: Or perhaps leave the foreign currency
2 pegged as it was before in the other
3 administration. Nonetheless.

4 A: That's what I meant. You could say we
5 were at 5.50 or whatever it was and we
6 will go to 20. Now, the difficulty with
7 that is, you don't know or we didn't know
8 or no one could know whether 20 would
9 satisfy the black market or whether that
10 would provide a new springboard.

11 I take the point but the result is, that
12 Q: without being sure the governemnt took
13 the decision to liberalize the currency
14 and discovered that it had grossly
15 miscalculated?
16

17 A: No, I didn't say that. What I did say
18 is that nobody could make calculations
19 since we didn't know the size of the
20 black market.

21 Q: But surely you did not anticipate that
22 the result would have been inflation at
23 a rate of 80%?

24 A: I accept that.

25 Q: So it's also fair to say that you

1 grossly miscalculated the effect of
2 deliberalization?

3 A: Mr. Wong Ken, what I have said and 1
4 can't go any further, is that nobody
5 knew the size of the black market, what
6 we did know was that a decrease in
7 percentage of foreign exchange inflows
8 was passing through the official system.

9 Q: Yesterday you gave testimony that the
10 size of the bad debt at the time of
11 FINSAC now, that the size of the bad
12 debt had been grossly understated by the
13 banks and that the size of the
14 performing loan portfolio had been
15 significantly overstated?

16 A: Yes, sir, it's a corollary.

17 Q: And I had suggested to you yesterday
18 that when you informed the public about
19 the cost of the debt, that was somewhere
20 in the region of \$20 billion Jamaican
21 dollars.

22 A: Yes, you gave those figures.

23 Q: Yes. History will tell us that the size
24 of the debt had settled out somewhere
25 around a 140 billion dollars?

1 A: No.

2 Q: No?

3 A: No.

4 Q: What is it?

5 A: It's at 40% of GDP and GDP at that stage
6 would not have been more than about 300,
7 350. I could refresh myself, but I think
8 your 140 is when you are talking about
9 the debt to GDP ratio. I think you are
10 confusing those two.

11 Q: Perhaps.

12 CHAIRMAN: Let us not be 'perhapsing', you have to
13 be precise so we know what you are
14 talking about.

15 A: Yes.

16 CHAIRMAN: We can follow what is going on down
17 there.

18 Q: When you estimated the cost of FINSAC,
19 what was the ratio of the debt to GDP
20 that you anticipated?

21 A: Well, I didn't anticipate in terms of
22 debt to GDP as you have indicated a
23 figure which I am willing to confirm
24 after examination of what we estimated
25 it, but I wish to place on record and an

1 insistense, is not the cost of FINSAC,
2 is the cost of intervention into the
3 institutions.

4 CHAIRMAN: Sorry, I don't think, I don't know if
5 voice dropping.

6 A: I think it's the competition beside you.

7 CHAIRMAN: Would you mind repeating what you just
8 said?

9 A: Yes. I am just saying for the record, I
10 have noted the use of the cost of
11 FINSAC. FINSAC came in to address the
12 problem. It's not a cost of FINSAC, it's
13 a cost of the intervention.

14 MR. WONG KEN: When the government intervened, had it
15 anticipated that the intervention would
16 have cost the country 40% of GDP?

17 A: Did it anticipate?

18 Q: Yes.

19 A: No. And I would say that nobody, local
20 or the experts from the multilaterals,
21 nobody had such an estimate.

22 Q: So like the situation with
23 liberalization, the Government went in
24 without fully understanding the
25 implication of what it was doing?

1 A: Mr. Wong Ken, on the one hand the
2 Government is criticized for the delay in
3 going in, on the other hand we are
4 criticized for going in until you have
5 all facts. The reality is that we sought
6 to preclude the ultimate calamity of the
7 financial sector collapsing, and if you
8 are asking me to second guess a decision
9 taken with the available evidence, I
10 won't.

11 Q: Dr. Davies, yesterday when we spoke
12 about the high interest rate...
13 CHAIRMAN: Just one moment please that I can
14 follow. To use your term, as you are
15 going into this Minister, you would
16 anticipate something or have in your
17 head, the back of your mind some figure?

18 A: Yes, Chairman.

19 CHAIRMAN: So the answer was that 40%.

20 A: Of the GDP.

21 CHAIRMAN: And your answer was you certainly didn't
22 anticipate that.

23 A: Right.

24 CHAIRMAN: That is a negative, can we get the
25 positive, if possible.

1 A: Mr. Chairman, the reality is that none
2 of the estimates we had at that stage
3 whether locally produced or produced by
4 the experts who had been made available
5 to us from the multilaterals, could have
6 anticipated the extent to which the bad
7 debt portfolio had been concealed in
8 terms of various measures and hence the
9 initial figure represented a best
10 guesstimate but we had no knowledge idea
11 as to what would be an accurate or the
12 total figure.

13 MR. WONG KEN: Yesterday...

14 CHAIRMAN: Just one moment.

15 COMM. ROSS: Dr. Davies, can you just remind us when
16 the - apart from the Century
17 intervention were any major
18 interventions carried out?

19 A: Commissioner, those data should be
20 available to you, I don't have that one
21 by one.

22 Q: I recall the Bank of Jamaica -- was
23 early '98.

24 MR. HYLTON: Blaise was '94, '95, Century 1996,
25 Eagle, 1997 because FINSAC was started

1 January 1997 and Eagle was the first,
2 Eagle was the first FINSAC intervention,
3 the previous one was FIS.
4 CHAIRMAN: Blaise certainly was FIS.

5 MR. HYLTON: Correct sir.

6 A: Yes.

7 COMM. ROSS: The other question I would ask is: Given
8 the very high interest rates prevailing
9 **at** the time just by accumulation of
10 interest on the loans, the size of the
11 problem would grow to a rapid rate, was
12 that anticipated?

13 A: Well the size of the problem, but
14 certainly because the problem was
15 greater than we had anticipated the real
16 problem was growing faster than we had
17 anticipated.

18 MR. WONG KEN: So Dr. Davies, the decision to intervene
19 was made on calculations that turned out
20 to be grossly inaccurate?

21 A: Well, Mr. Wong Ken, your question almost
22 presupposes that we had the full picture
23 in front of us. The dates for the
24 various interventions have been given so
25 it's not that in January 1997 we had the

1 whole picture in front of us. As I
2 indicated we didn't know the size of bad
3 debt portfolio of NCB was that great.

4 Q: Yesterday we spoke about the high
5 interest rates and I tried -

6 CHAIRMAN: I am sorry. The result of all of that
7 is a matter of historic fact, the
8 figures were inaccurate?

9 A: Yes.

10 CHAIRMAN: You must pardon counsel's...

11 A: No, the figures were inaccurate and it's
12 not dissimilar to the situation anywhere
13 else in the world even as we speak.

14 CHAIRMAN: I mustn't be selfish but the Commission
15 said we are concerned about ourselves.

16 A: Well, yes, at the same time Chairman, we
17 shouldn't see ourselves as unique.

18 CHAIRMAN: We are supposed to look to ourselves to
19 see that we keep within our mandate.

20 A: All right, sir.

21 MR. WONG KEN: Yesterday when we spoke about the high
22 interest rates, I tried to have you
23 indicate a time period over which you as
24 Minister of Finance anticipated the high
25 interest rates to endure, are you better

1 informed this morning to give me that
2 time frame?

3 A: My answer yesterday remains the same
4 today. I indicated that what we were
5 seeking to do is to have a resolution or
6 improvement in the main problem we were
7 seeking to address and that the linkage
8 would be there. It is not a frivolous
9 view, it is a view which was determined
10 then and it remains a sound view.

11 Q: I would not then be inaccurate to
12 suggest to you that your prognosis for
13 this high interest rate was indefinite?

14 A: You would be inaccurate because
15 inflation did come down and in...

16 CHAIRMAN: Sorry, the question would be like the
17 Americans in Afganistan or wherever,
18 they'll take as long as it's necessary.

19 A: Well, I am not at war but except for...

20 CHAIRMAN: You were at war with this.

21 A: With inflation?

22 CHAIRMAN: Yes.

23 A: With all due respect, Mr. Wong Ken, in
24 looking at your time period, and I hope
25 that your research would have indicated

1 the downward movement of interest rate
2 with inflation.

3 CHAIRMAN: Sorry. Minister, you are talking about
4 practical things, I don't think you can
5 answer when you are asked about time
6 frame to say well -- really what you are
7 saying it would take as long as
8 necessary. Nobody had in mind any time
9 frame at all; one year, two years, three
10 years, five years, a century? You must
11 have somewhere in between there.

12 A: But chairman...

13 CHAIRMAN: Is it a difficult question?

14 A: Yes, it is Chairman, because I indicated
15 that we sought to target inflation for
16 the reasons I outlined before and in
17 bringing about, in taming that monster,
18 it brought about stability on the labour
19 front; it brought about an ability for
20 businesses to plan with greater
21 certainty, it brought about stability in
22 the foreign exchange market and the
23 records are there to indicate that there
24 was an extended period of inflation
25 below 10%, and tracking that a downward

1 movement in inflation which I feel
2 obliged to remind that in September 2007
3 was 11.85% on the six month Treasury
4 Bill which can be confirmed by one of
5 the Commissioners.

6 Q: Dr. Davies, my understanding of the
7 evidence you gave, you went into a
8 liberalization with bad information and
9 without knowing the consequences; you
10 went into the high interest rate policy
11 without knowing when it would end; you
12 went into a Government intervention that
13 ended up with FINSAC with gross
14 miscalculation and bad information. Is
15 my understanding correct?

16 A:

No.

17 Q:

Where am I not correct?

18 A:

You are phrasing your questions in order
19 to elicit the answer you wish.

20 CHAIRMAN:

Well, that is normal.

21 A:

I will phrase my answers to set the
22 records straight and I am trying to do
23 it repeatedly, I am trying to do it
24 repeatedly. We say to you, I have said
25 to you that no one knew the size of the

1 black market but what we did know is
2 that the black market couldn't continue
3 because the country - perhaps you are
4 too young, Mr. Wong Ken to remember, but
5 there was total chaos in the financial
6 markets. the Central Bank was purchasing
7 money from the black market, that was
8 not a temporary situation.

9 Q: Under your watch.

10 A: No. Z have said that before, it was not
11 under our watch.

12 Q: Whose watch?

13 A: It was under the governship of the late
14 Headley Brown, Dr. Headley Brown.

15 Q: And for the purposes of this enquiry,
16 does it matter?

17 A: No, but you cannot assert something
18 which is wrong and then back off that
19 way. It matters, because we corrected
20 that, we corrected that and we
21 recognized that a central bank could not
22 be purchasing money in a black market;
23 we recognized that the situation had
24 reached the stage where the previous
25 administration had created an artificial

1 market by taking out the two major
2 users. We recognized that arrears were
3 building up and that the status quo
4 could not remain, we recognized that.
5 Therefore decisive action was taken and
6 I would go further that no other
7 political leader I would assert, other
8 than Michael Manley could have carried
9 out that transition from that
10 artificailly fixed exchange rate to a
11 liberalized system, a liberalized system
12 which we now enjoy and which continues
13 to have stability in the market.

14 CHAIRMAN: Well, all this a very interesting I
15 suppose, there political history.

16 A: For the record, Mr. Chairman, with all
17 due respect and with your tolerance.

18 Q: You also recognized yesterday the
19 adverse effect that a high interest rate
20 policy would have on businesses in
21 Jamaica, isn't that right?

22 A: Yes, I recognize that and businesses
23 anywhere.

24 Q: And you also recognized that the Bank of
25 Jamaica by issuing notes was competing

1 with the private enterprise for scarce
2 money?

3 A:

Mr. Wong Ken, you will also recognize
4 that even if banks have money... Well,
5 CHAIRMAN:
is that so or not?

6 A:

Even if banks have money, they are not
7 obliged to lend to the business.

8 Q:

Am I correct in saying to you that the
9 Bank of Jamaica was competing for scarce
10 money with private enterprise?

11 A:

You are correct to say that the Bank of
12 Jamaica issues were available as a
13 choice to institutions.

14 Q:

15 Explain for me if you can, Dr. Davies,
16 whether or not the Government's Treasury
17 Bills were actually increasing this
18 inflationary effect or restricted this
19 inflationary effect or if it had no
20 effect?

20 A:

Mr. Wong Ken, I pointed out to you that
21 the Ministry of Finance issues Treasury
22 Bills and LRS's in order to finance...

23 CHAIRMAN:

Pay its bills?

24 A:

25 To pay its bills, yes, thank you, sir.

Your clarity of expression is enviable.

1 CHAIRMAN: I am grateful.
2 To pay its bills. The Central Bank
3 A:
4 utilizes its own instruments in order to
5 reduce money supply and to tighten the
6 liquidity of the market, so I would like
7 to make the distinction between the two.
8 I made it before.
9 Continued....

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1 MR. WONG KEN: Yes, but the question that I am asking
2 you now is whether the issuing of
3 Treasury Bills actually had an impact on
4 inflation rate, negative, positive or
5 none at all?

6 A Positive in the sense of reducing the
7 amount of money available. Negative in
8 that if the Government borrows its money
9 to do frivolous things then it could be
10 inflationary.

11 Q And it would also...

12 CHAIRMAN: You mean it balances out?

13 A Eh?

14 CHAIRMAN: It balances out?

15 A No, I am just giving him the full range
16 of what's possible but i don't think any
17 Government would suggest that it's
18 borrowing the money to do frivolous
19 things.

20 Q But to the extent that...

21 CHAIRMAN: That must be high economics?

22 Q I am sorry, Chairman?

23 CHAIRMAN: One second. That must be high
24 economics?

25 A No sir, I am trying to...

1 CHAIRMAN: The question really is -- did it have
2 any impact whether positive, negative,
3 neutral. I don't know if there is any
4 other in between. Could I say, it
5 balances out negative, positive as you
6 are saying -- well, I don't know if it
7 was positive as you were saying.

8 A I am saying to the extent that the
9 government is borrowing to pay its bill
10 for productive purposes then its
11 possible.

12 CHAIRMAN: It's taking money out of the pool so to
13 speak.

14 A Yes, and if he is doing good things with
15 it however you define that, paying
16 teachers whatever then it's sort a
17 positive, but if it were taking it out
18 to pay some men to dig a hole and some
19 men to fill it back then its not real
20 production or it would be negative.

21 Q In 1992 through to 1996, Dr. Davies...

22 CHAIRMAN: I get to understand that it had no
23 impact is what I am understand the
24 Minister to be saying. I am sorry, Dr
25 Davies.

1 Q I am not done with the point.

2 CHAIRMAN: Okay, sorry, go ahead.

3 Q Between 1991 and 1996 isn't it true that
4 the Government entered into several long
5 term borrowings, borrowings that didn't
6 have repayment for a year, excess of a
7 year?

8 A That's the nature of LRSs.

9 Q And to that extent wouldn't that have an
10 inflationary effect?

11 A I don't know where you are going in the
12 sense that as I indicated and as the
13 Chairman so succinctly summarized, the
14 Government borrows in order to carry out
15 its...

16 Q I will tell you where I am going, Dr.
17 Davies...

18 A Yes.

19 CHAIRMAN: I am sorry. You know, maybe because I
20 don't have all this economic training,
21 is that an economic rule or something
22 like that, principle?

23 A Is that at me or...

24 CHAIRMAN: I don't want questions just being put
25 which can get us into these arguments

1 that are getting us nowhere.

2 A Me too, Mr. Chairman.

3 Q I was about to tell him where I was
4 going, Chairman.

5 CHAIRMAN: So I want to be satisfied that we are
6 dealing from premises that are sound.

7 MR. WONG KEN: Where I am going, Dr. Davies...

8 CHAIRMAN: And I get advice. I asked. Well, yes,
9 that is so.

10 Q Where I am going Dr. Davies is that on
11 the one hand you have the Bank of
12 Jamaica issuing notes to mop up
13 liquidity and bring inflation under
14 control whilst on the other hand the
15 Government is contributing, how likely
16 is that, by issuing Treasury Bills?

17 A Complementing that, Mr. Wong Ken,
18 Governments exist to do things, eh? Now
19 we may all debate as to whether that
20 which they are doing is all productive
21 but they exist to do things. Citizens
22 exist, government elected; and these
23 things have to be financed.

24 Q I am not quarreling with you Dr.
25 Davies. Coming back to the

1 intervention...

2 CHAIRMAN: Sorry. Maybe we need to do a
3 preliminary class in Economics 101.

4 A If Mr. Wong Ken told me where he was
5 going I could help us get their
6 quicker.

7 CHAIRMAN: Maybe, but I would like to understand
8 too if these premises are going to be
9 valid premises or just philosophic
10 questions?

11 Q No, I am suggesting to Dr. Davies that
12 under his watch there was little or no
13 control, there was little or no
14 understanding of the economy and there
15 was recklessness, that is what led us to
16 FINSAC.

17 A That's where you are heading with all
18 those questions, Mr. Wong Ken? My
19 answer is no, to all the above.

20 Q When we spoke about the cost of the
21 intervention you have admitted that it
22 was misunderstood, the size of it was
23 not understood, it was much larger than
24 anticipated?

25 A Yes.

some persons. You would have looked at a wipe out of the insurance industry with

1 all those insurance policies being made
2 'null and void'. You would have locked
3 at a wipe out of the depositors.

4 Q What did your analysis tell you about
5 the effects of...

6 COMM. BOGLE: You run the risk Dr. Davies, with a lot
7 of it being said. You are helping one
8 side and killing the other side in a
9 sense.

10 A Well, I hear your point chairman, but in
11 the response I would indicate that even
12 some debtors had accounts too which were
13 saved and it is a fact, it is a fact. In
14 terms of the total numbers which we are
15 dealing with Mr. Chairman, I would wish
16 you to consider savers, peasant farmers,
17 workers. I faced Mr. Chairman, the
18 workers at ALCOA one morning at 6:00

19 a.m, nobody else here had to do so; when
20 they felt their funds which they had
21 invested, pension funds would be wiped
22 out and I don't know what those workers
23 unless we reassured them would have done
24 to the ALCOA plant were it not for that.

25 Q Dr. Davies, I hear you but you are

1 talking as if to say the two situations
2 are mutually exclusive. The fact that
3 you might have helped one sector or a
4 number of sectors doesn't say that you
5 couldn't help the others it's to the
6 extent that you helped one fully and
7 to what extent did you help that one?
8 So to say that you helped...

9 A Can I respond Commissioner? I know you
10 are entitled to -- can I respond?

11 CHAIRMAN: Go ahead.

12 A Have you checked how many of the debtors
13 have been helped? Have you checked how
14 many debtors have had their loans
15 restructured and are servicing them or
16 they are completely out?

17 Q Not important to the persons who are
18 suffering. The thing is that if there
19 are 100 persons and you helped 70, there
20 is still 30. Could we have done more
21 for the 30? That's the big question.

22 A Commissioner, I hear your impassioned
23 plea and I understand it, but I would
24 urge that if this Commission of Enquiry
25 is to be even-handed it should reflect

1 on those issues which have been resolved
2 and those persons who have had their
3 debts restructured successfully.

4 CHAIRMAN: Sorry, we appreciate the advice given as
5 to how we should conduct ourselves but
6 regrettably for the moment either you
7 can answer the question best as you can
8 or you can't. If you answer it that is
9 the answer we must take.

10 A I wasn't clear what the Commissioner's
11 question was, sir.

12 CHAIRMAN: Well, please say so and he will clarify
13 it for you? If you want it to be
14 repeated I will ask him to do so.

15 A I don't think he posed a question.

16 CHAIRMAN: Well pose another question.

17 COMM. BOGLE: In your statement you implied surely by
18 my understanding that you helped quite a
19 number of sectors and persons who were
20 at risk when we had the meltdown. You
21 however in your statement also implied
22 that in helping those it would have been
23 difficult to help everybody.

24 A I did no such thing, Commissioner.

25 Q I could clarify it.

1 weren't helped and I indicated that at
2 the same time there were many a large
3 percentage of debtors who have had their
4 debts restructured and who have
5 successfully moved on with their lives.

6 COMM. BOGLE: And it is to that second part that I am
7 saying that the fact that even three
8 quarters of the persons who were helped
9 there are others who were not who felt
10 they have not been helped and therefore
11 that is what I would like you to address
12 your concerns about.

13 A I accept that Commissioner, I accept
14 that but I do not know of any policy
15 position except let us waive all the
16 debts which would resolve the situation
17 with a 100% satisfaction. And even as I
18 am pressed to speak to those who weren't
19 settled at the same time, learned
20 Counsel is pointing at the the size of
21 the cost of intervention. So the
22 obvious conclusion is that we should
23 increase the level of the intervention.

24 CHAIRMAN: Sorry, I don't think we need any running
25 commentary advice from the populace.

1 Counsel is to be allowed to ask and Dr.
2 Davies is to be allowed without support
3 of that matter, the opposite of that. So
4 can we conduct ourselves accordingly,
5 please.

6 MR. WONG KEN: Dr. Davies?

7 CHAIRMAN: One moment, please.

8 COMM. ROSS: Dr. Davies, let's say matter of cost per
9 se, I don't think anybody is suggesting
10 that you know, I don't think it's
11 necessary for 100% write-off to give
12 people satisfaction. As you pointed out
13 negotiated settlements have been agreed
14 for some people but an awful lot
15 happened. But on the matter of the cost
16 I gather you are quite firm on the
17 policy position which you took and I
18 think its quite understandable that you
19 are protecting depositors et cetera.
20 One of our concerns is still, what about
21 the cost of what was done, could that
22 objective have been achieved at a lower
23 cost, could it have at a lower cost not
24 just in terms of the cost, in terms of a
25 number of percentage of GDP. But there

1 are a lot of other costs, economic costs
2 that have been borne. That's a question
3 that I would like to hear you answer.

4 A To be fair to you, Commissioner Ross, I
5 know that there are many persons now who
6 are second guessers but I know that you
7 in your other life of talk show host et
8 cetera had raised the question as to
9 whether 100% protection was justified,
10 so to be fair to you, you have raised
11 that before it's not a new position.
12 That is a judgment call because the
13 question is what would be 100% who would
14 you protect, et cetera?

15 Q I am assuming that was what we were
16 going to.

17 A I know where you are going with that
18 one.

19 COMM. ROSS: Could we have achieved that objective in
20 a less costly way? That's what I am
21 putting to you.

22 A I would think if you knew everything
23 then which you now know you perhaps
24 could say that. But I am saying to you,
25 Commissioner Ross, that what we did is

1 that we pulled together the best set of
2 persons we had locally. We brought in
3 where we didn't have the knowledge and we
4 applied ourselves within that context.

- Were we perfect?

6 not. Could we be perfect if it occurred
7 again? I hope it never occurs. But the
8 point I am making, we pulled together
9 the best. When you look at the set of
10 persons we bought into the frame to
11 fight this and I could give a list of
12 persons whose highest level of
13 integrity, competence; we supplemented
14 that, we did the best we could knowing
15 what we did at each time period.

16 Q Dr. Davies, isn't it true that the
17 anti-inflationary measures that you took
18 that resulted in the high interest rate
19 is what created this size of the debt
20 that resulted in the cost of the
21 intervention?

22 A Created what?

23 Q The high interest rate policy, isn't it
24 for that reason that the bad debt
25 portfolio was as large as it was?

1

1 A Mr. Wong Ken, if you have a thesis

2 which would...

3 Q I am asking you the question.

4 A And the answer is no because there are
5 persons and many are here who didn't
6 service their debts, but there are many
7 persons who serviced their debt.

8 Q But we spoke about it yesterday and you
9 agreed with me that the high interest
10 rate of 40% wasn't tamable for
11 business.

12 A And it wasn't sustainable.

13 Q Was not sustainable?

14 A Exactly. But to say that this is the
15 cause I am not willing to accept that.

16 Q Is it one of the major causes?

17 A It is a cause.

18 Q It is a cause, you give me that much?

19 A I give you that.

20 Q All right.

21 A But we don't need to argue around the
22 edges, I give you that.

23 CHAIRMAN: All right, let us leave the edges then.

24 Q So then, it being a cause you would
25 agree that at least to some part, at

1 least in some part, the policy that was
2 adopted as well intentional as any might
3 have been the policy that was adopted
4 contributed significantly to the
5 financial sector meltdown?

6 A No, I don't. But further than that,
7 Mr. Wong-Ken, Jamaica -- and if you
8 should wish to check the records there
9 was discussion and concern that Jamaica
10 would move into hyper-inflation and
11 countries social stability, social
12 stability of many countries have been
13 destroyed by that. If you see what's
14 happening in Zimbabwe etcetera. I mean
15 the devaluations have resulted in the
16 cause of the hyper-inflation. In assessing
17 the cost of the policies you have not
18 assessed the benefits which we have reaped
19 in terms of the stabilization of the
20 inflation. In fact, post-September 2007,
21 when inflation started getting out of hand
22 it is exactly the same policies pursued by
23 my successors who once opposed it which
24 has brought inflation back down.

1 Q Dr. Davies, tell me what was the
2 analysis, what was the thinking of the
3 effect on the businesses, the private
4 sector of Jamaica that the intervention
5 would have had? When you made the
6 decision to save the depositors, what
7 was your analysis telling you about the
8 borrowers and the private sector?

9 A Well, in terms of the borrowers and the
10 private sector that's precisely why, Mr.
11 Wong Ken, FINSAC had the ability,
12 FINSAC had the ability to do a case by
13 case analysis. Now clearly, in that
14 case by case work there are some persons
15 who have remain dissatisfied, but in the
16 same case by case work there have been
17 thousands of persons who have settled
18 and the Chairman raised the issue of
19 39,000 accounts, I have done some
20 further analysis of that. A huge chunk,
21 using your phrase, a large number of
22 those accounts were credit card billing
23 which in a sense have been dealt with
24 more successfully than we anticipated.
25 Q And isn't this case by case

1 flexibility...

2 CHAIRMAN: Sorry. Dr. Davies?

3 A Yes.

4 CHAIRMAN: I can tell you 23,337 were the
5 non-credit cards dealt with.

6 A Yes.

7 CHAIRMAN: I will put it that way.

8 A So we are trimming down. And those
9 accounts, Mr. Chairman. Now the next
10 step you could have your research team
11 carry out is how many firms or
12 individuals that 23,000 represents
13 because some were multiple accounts.

14 Q Dr. Davies, is it the case by case
15 flexibility of FINSAC that results in
16 some persons interest being entirely
17 written off, some persons principal were
18 being written down, some people not at
19 all?

20 A Well, I don't know the details but
21 that's one of the issues. There are
22 three cases raised here which I have
23 undertaken to personally research
24 because if the statements presented here
25 are facts they should never have

1 happened. But this invariably --in one
2 case if what has been presented is
3 correct then there is gross negligence
4 somewhere and so that's one of the
5 problems of case by case.

6 Q And the head of FINSAC or FIS...

7 A Yes.

8 Q ...the head of those organizations had
9 the discretion to make those calls
10 whether to write-off interest...

11 A No.

12 Q ...to?

13 A No. He could make recommendations to
14 the board.

15 Q So the board had the discretion?

16 A Yes.

17 Q Was there any Ministry of Finance policy
18 over how this settlement of bad debts
19 ought to have been handled? Was there
20 any sort of overriding principle?

21 A Well, I indicated the first day -- T
22 can't remember which was my first day,
23 it is a long time ago here, or what were
24 the guiding principles.

25 CHAIRMAN: Dr. Davies?

1 A Yes.

2 CHAIRMAN: Come, come, I don't think Alzheimer

3 setting in yet?

4 A No, it's just that I am not very clear

5 when it was, but I don't think Mr. Wong

6 Ken was here. What were the guiding

7 principles? Equity, transparency and

8 courtesy, I think were the things. There

9 was a specific ruling given in terms of

10 residential properties which were used

11 as collateral.

12 Q So there was principles of equity,

13 transparency, courtesy and some special

14 consideration over people's homes?

15 A Yes.

16 Q Was there no policy direction regarding

17 the savings of businesses and jobs and

18 the production that the country needed?

19 A That was implied but, Mr. Wong Ken...

20 Q implied or said?

21 A No, it was implied. But Mr. Wong Ken,

22 if you look at the boards -- but if you

23 look at first Chairman, Dr. Gladstone

24 Bonnick, second Chairman, the late

25 Dr. Ken Rattray, third Chairman, the

1 Honourable Shirley Tyndale, you are
2 dealing with persons who are assized as
3 you or me or I, but even moreso about
4 such issues.

5 Q The road to hell is paved with good
6 intention, Dr. Davies. I look at the
7 results and what I see as a result is
8 the devastation of the private sector
9 and the productive sector of this
10 country. Now, I am asking you had not
11 that been a consideration from your
12 Ministry?

13 CHAIRMAN: Well, maybe that's a wind-up, I don't
14 know.

15 A Mr. Wong Ken, I, you see I can't respond
16 to questions which are prefaced with
17 hyperbolic statements.

18 Q Your answer then?

19 CHAIRMAN: Well you can.

20 A I'll treat them as hyperbolic statements
21 and then I'll have to reject them and we
22 go through.

23 Q My understand of your answer is that
24 there was no policy?

25 A Of what?

1 Q Of saving business or saving jobs.

2 A There was policy, but Mr. Wong Ken,
3 many businesses were saved in the
4 process.

5 Q Dr. Davies?

6 A If your argument was all weren't thats a
7 different..

8 Q Was it more than an implied policy?

9 A Yes, it was more than an implied policy?

10 Q How so, how was it communicated, what
11 were the instruction given?

12 A The instructions were given that they
13 should be treated as a case by case
14 basis in terms of -- the work outs in
15 many instances Mr. Wong Ken involved
16 writing off of the interest.

17 Q At the discretion of the board?

18 A Yes at the discretion of the board, but
19 Mr. Wong Ken even if one gave policy in
20 the final analysis no Minister sits in
21 there and ticks off. I have been hauled
22 over the coals because I sought as
23 Minister to intervene in a situation where
24 a company was losing US600,000 per month
and I have hauled over the coals

1 for corrupt practices of intervening and
2 here you would wish for me to intervene
3 on a case by case basis.

4 Q I wanted a set of policies?

5 CHAIRMAN: Let us accept the evidence as it is.
6 It's still a policy. Equity, etcetera,
7 etcetera, courtesy and transparency?

8 A My transparency is that any of those
9 records can be bought before you and
10 examined.

11 Q Are you aware Dr. Davies as to
12 whether there had been any attempt by
13 FIS or FINSAC to verify the accounts of
14 these so called bad debts?

15 A I am aware and this is second hand
16 information from Patrick Hylton to me,
17 that in certain instances they have had
18 to research the records of the bank from
19 which these bad debts were purchased.

20 Q But it would be fair to say from that
21 answer...

22 A Yes.

23 Q ...it would be fair to say that
24 generally what was stated by the banks
25 to be the size of the debt it was in

1 fact so.

2 A Mr. Wong Ken, please don't to that.

3 How can you move from the fact that I am

4 aware that in certain instances to

5 generally -- I am not that type.

6 Q It seems an easy shift and a logical

7 shift?

8 A No, its not a logical shift, it is

9 trust.

10 CHAIRMAN: One moment please, let us not get into

11 you say, me say, barnyard kerfuffle, so

12 Mr. Wong Ken...

13 Q Mr. Chairman?

14 CHAIRMAN: ...you asked one question.

15 Q The question is this?

16 CHAIRMAN: Just one moment. Allow Dr. Davies to

17 respond and then you go to the next

18 question, but let us not have a quarrel.

19 Q I apologize to both the Commissioner and

20 Dr. Davies?

21 CHAIRMAN: Well let's move on.

22 Q Doctor Davies in earlier testimony you

23 had indicated that if there was an error

24 the error was trusting the bankers?

25 A Yes and trusting the commitments they

1 gave to take remedial action as directed
2 by the Bank of Jamaica.

3 Q So did that mistrust also lead you to
4 mistrusting what they reported as being
5 the size of the individual debts?

6 A Mr. Wong Ken let me make the
7 differentiation, between when the Bank
8 of Jamaica or T in my capacity as
9 Minister obtain from the banks and
10 undertaken etcetera and they did not
11 deliver that mistrust. As regards
12 whether the numbers they gave for
13 individual debts I was never involved in
14 such an activity.

15 Q And your mistrust for the bankers and
16 what they represented to you, their
17 undertakings and what they said to you
18 generally, that bias that you had
19 reasonably maybe...

20 A It was not a bias, it was an assessment.

21 Q That assessment that you had, you had
22 not conveyed that to the heads of FIS or
23 FINSAC and said look...

24 A They were involved in these discussions
25 and so they were even more intimately

1 aware of what was happening than I was.

2 Q So are you aware of whether they

3 accepted these account numbers per se

4 simpliciter, simply because the bank

5 said, well look Wong-Ken owes \$50, did

6 they accept that as being...

7 A I don't want to discuss your personal

8 accounts?

9 A It doesn't matter to me?

10 A It doesn't matter, I wouldn't want to.

11 CHAIRMAN: Sorry, this all mythical you know, sir.

12 I don't think we talking about Mr. Wong

13 Ken specifically that's not the question

14 and he is being allegorical?

15 A Well, I think that question would best

16 be directed to the relevant persons.

17 Q Okay, that's fair enough.

18 CHAIRMAN: Would you allow us to assess the

19 evidence that is our task.

20 A You are in fine form today,

21 Mr. Chairman?

22 CHAIRMAN: No, but we have a job to do, let us do

23 our job and everybody play their part.

24 Q For your part Dr. Davies, given your

25 mistrust of the bankers, did you believe

1 that what the banks stated as being owed
2 by individual persons was accurate or
3 did you view that as suspicion or with
4 suspicion?

5 A Mr. Wong Ken I was never -- except where
6 someone appealed to me involved in
7 discussions.

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2 CHAIRMAN: I am sorry because this is going to --
3 Mr. Wong Ken, the Minister -- saorry,
4 Dr. Davies was Minister of Finance, he
5 wasn't an executive, he wasn't the
6 Chairman of any organization, so you
7 should therefore craft your question in
8 such a way that a person who is in his
9 position is competent to answer, are we
10 at one?

11 MR. WONG KEN: We are at one Mr. Chairman. The context
12 in which the question is asked is one
13 where Dr. Davies has expressed personal
14 distrust for the banks and he has made
15 decisions based on what he says the
16 banks have represented to him and when
17 the banks have represented things to him
18 that have not happened he has taken
19 steps so he has personal knowledge.
20 From my understanding of what he is
21 saying, from earlier testimony, he said
22 he is the man in control, he is the man
23 that sets policies?

24 CHAIRMAN: He sets policies, all right. What is
25 your next question.

1 Q Dr. Davies, this question has been put
2 to you before, I apologize for putting
3 it to you, I can't find an answer in the
4 transcript that has been provided to me,
5 so I am compelled to ask you again.
6 What was the thinking behind the
7 decision to have the interest rate run
8 once the debt has been taken over by
9 FINSAC, not just run?
10 MR. HYLTON: This was yesterday.
11 Q I want to understand what were the
12 deliberations that led the Government to
13 keep that interest rate running?
14 A Is your question, bearing in mind the
15 Chairman's guidance to you about
16 policies as opposed to operations, is
17 the question whether a policy decision
18 was taken to stop the clock?
19 Q I want to know what informed the
20 decision to keep the bank running?
21 A Is the question directed to me....
22 CHAIRMAN: Qua Minister.
23 Q As Minister and as an informed Minister?
24 A As I indicated there was no policy
25 decision given and I indicated further

1 that each case was dealt with on a case
2 by case basis, so the clock running was
3 not a critical issue in terms of an
4 attempt to resolve.

5 Q Was there any intention to resolve ---
6 you mentioned to Commissioner Bogle...

7 CHAIRMAN: This was asked but it is entirely
8 accepted, he can be pressed in regard to
9 this point.

10 Q Chairman, I must apologize, I missed all
11 of that?

12 CHAIRMAN: Dr. Davies was asked questions in this
13 regard, and I am saying --- and he
14 responded -- but I am saying the matter
15 can be pressed having regard to his
16 answers which he gave yesterday or
17 whenever it was, I am not sure if it was
18 yesterday.

19 A You and I are suffering from the same
20 whatever it is, we are not very clear as
21 to when it happened.

22 CHAIRMAN: Well, it happened yesterday, I am being
23 modest. Yes, Mr. Wong Ken.

24 Q Sir, I am waiting on the answer.

25 A What is the question?

1 CHAIRMAN: Just ask the question.

2 Q The question is, what informed the
3 decision to keep the clock, the interest
4 clock running on these debts?

5 A I think I answered yesterday. The
6 systems which were transferred from
7 whichever bank to Refin or FIS, or
8 FINSAC, the systems were in place so
9 they continued, no policy decision was
10 felt necessary to change that.

11 Q And isn't it true that no policy
12 decision was made because there was
13 never any intention to rehabilitate
14 those debts or to keep...

15 A It's not true because Mr. Wong Ken, even
16 though you represent those persons or
17 individuals or firms which have not been
18 resolved, there are thousands which have
19 been resolved, so it is not true.

20 Q Yesterday in answer to Commissioner
21 Bogle, in respect of at least a part of
22 the debt, he asked what was the
23 expectation and you responded, "The
24 expectation was to maximize collection"?

25 A Yes.

1 Q Wasn't that the philosophy that drove
2 you and your policy in relation to the
3 bad debt portfolio and to the private
4 sector, isn't it true that there was no
5 intention to rehabilitate or to save
6 those businesses?

7 A Which of the questions you wish me to
8 answer?

9 Q All of them?

10 A I take them one at a time if you
11 remember them, can you start.

12 Q Wasn't it...
13 CHAIRMAN: I tell you what, can we pause and take a

14 break, 15 minute break.
15 BREAK

16

17

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1 ON RESUMPTION

2 HER LADYSHIP: We now resume. Dr. Davies you are still
3 on your oath.

4 A Yes, sir.

5 Q The outstanding question when we broke
6 Dr. Davies was...

7 CHAIRMAN: Mr. Wong Ken, I don't wish to limit you,
8 but could you endeavour not to have to
9 repeat questions which were made before
10 or issues which have been answered.

11 Q I will try my best Mr. Chairman.

12 CHAIRMAN: Yes.

13 Q The outstanding question when we broke
14 was whether or not there was any
15 intention to rehabilitate the bad debts
16 or to save the businesses who were the
17 debtors?

18 A As I answered before, Mr. Wong Ken, this
19 although not written as formal
20 instructions, this was a guiding
21 principle which the Board and the staff
22 were following and the evidence is the
23 number of such cases which were cleared
24 up. In that regard, it was consistent
25 with the administration's objective of

1 resolving the crisis.

2 Q Had there been any assessment made as to
3 the eventual loss of jobs that might
4 have arisen from the bad debt portfolio?

5 A Mr. Wong Ken, FINSAC didn't create the
6 bad debt portfolio, you know.

7 Q I am asking you if there was an
8 assessment?

9 A I am making a point that the bad debt
10 portfolio existed prior to FINSAC, this
11 bad debt portfolio was not a creation of
12 FINSAC so the notion of the assessment
13 of the loss of jobs related to what the
14 banks and clients had been involved in,
15 not what FINSAC did.

16 Q Had the Ministry of Finance made any
17 assessment as to what the potential loss
18 of jobs would have been?

19 A I don't understand what you mean by
20 potential, but what I am saying is that
21 these firms were in problems before, so
22 I do not know what the potential loss of
23 jobs would be.

24 Q Did you or did you not as Minister of
25 Finance made any such assessment?

1 loan, FINSAC absorbed all bad loans
2 which had been made by willing clients
3 and banks.

4 CHAIRMAN: Just one moment, I am trying to see
5 where this falls, and -- have you got a
6 copy of the terms of reference Mr. Wong
7 Ken?

8 Q I have a copy of the terms of reference.

9 CHAIRMAN: If you look at...

10 Q I don't have my copy here but I am
11 familiar with it.

12 CHAIRMAN: If you look at 7, Roman vii -- can you
13 borrow one? One of our duties,
14 obligations, is to assess the long term
15 impact of the collapse of these
16 institutions on the economy, so I take
17 it your question is directed in that
18 regard?

19 Q Yes, Chairman.

20 CHAIRMAN: It's in regard to that?

21 A You are very helpful Mr. Chairman.

22 CHAIRMAN: And on the businesses -- let me read the
23 whole thing; to assess the long term
24 impact of the collapse of these
25 institutions on the economy and on the

1 businesses and individuals whose loans
2 were involved as well as the economic and
3 social impact of the actions taken by the
4 Government with regard to savers,
5 depositors and investors of the failed
institutions.

So the question is

7 relevant and perhaps you would be good
8 enough to respond.

9 A The assessment was on a case by case
10 basis by the case officers in the
11 institution.

12 Q You just mentioned that FINSAC made no
13 loans?

14 CHAIRMAN: Yes, he said so.

15 Q Isn't it a fact though that FINSAC owed
16 money to some of the companies that it
17 owned or to their customers?

18 A I don't know that to be true, I do not
19 know how that could be true.

20 Q Well case in point, Crown Plaza, FINSAC
21 took that over?

22 A Well it was one of the assets of the
23 Eagle Group.

24 Q So FINSAC took over the company that
25 owned the Crown Plaza?

1 point of closing the deal but there was
2 some disturbance in Tivoli and the
3 gentlemen said he just wanted to leave
4 the country as quickly as possible, so
5 that fell through. So I think Dean Bank
6 was second choice because their offer
7 was the best and we did due diligence,
8 because of the sensitivity of the matter
9 we did due diligence on the parent
10 company to ensure that this was clean
11 money, etcetera, and it was within that
12 context that they were selected.

13 Q And am I correct to say that the sale
14 price was 22 million US dollars plus...

15 A Twenty-three I believe.

16 Q Plus some percentages that would be paid
17 to the Government?

18 A You are correct and that can be read
19 into the record as per exactly, it's
20 public knowledge.

21 Q And do you have any idea of what the bad
22 debt portfolio was valued at?

23 A Well, no, but I would think -- I don't
24 know but I think it's probably like
25 US\$300m.

7

1 Q

If I suggest US\$435M to you?

2 A

I don't know, it's something which we
3 have to suggest, I guess, the records
4 would tell us.

5 CHAIRMAN:

You have the figures.

6 Q

I understand the figure to be US\$435M.

7 CHAIRMAN:

Would you accept that?

8 A

No, I would like to have it verified.

9 CHAIRMAN:

You would like to see the nail prints.

10 A

Well I just want to see the record.

11 MR. WONG KEN:

Chairman, that concludes my examination
12 of Dr. Davies, thank you Dr. Davies?

13 A

Thank you Mr. Wong Ken.

14

15 HIS LORDSHIP:

Mr. Hylton, just before we call on you,
16 do you recall that Dr. Davies had given
17 evidence about the money lending orders
18 which he made and he had requested some
19 eight memoirs from the Ministry. I take
20 it that these were provided and can the
21 Minister, or can Dr. Davies return to
22 that issue now.

23

24 MR. HYLTON:

25 Yes, sir..

1 CHAIRMAN: Sorry you don't have any objection Mr.
2 Codlin?
3
4 MR. CODLIN: No, sir.
5
6 CHAIRMAN: Very well. Has he got the paper?
7
8 MR. HYLTON: I think he has looked at it.
9
10 CHAIRMAN: You got the file?
11 A
12 Q Yes.
13 I think the question, Dr. Davies, that
14 the Chairman had asked, the Chairman had
15 referred you to the section in the
16 legislation dealing with the granting of
17 exemption under the Money Lending Act.
18 The section spoke to a power to grant
19 exemption in the public interest and the
20 Chairman's question was and perhaps
21 Chairman you can correct me if I am
22 CHAIRMAN: wrong...
23 Q I am trying to find the Act.
24 Section 14 of the Money Lending Act I
25 think is the section which the Chairman
referred you to. The section reads

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Dr. Davies:

Where the Minister is satisfied that it is in the public interest so to do, he may by order .

Etcetera, and the question the Chairman asked is, primary view, was it in the public interest so to do in relation to the granting of exemption in relation to loans being handled by the JRF?

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Counsel, can I crave the indulgence of the Commission, in researching the files, the files confirmed that the advice presented to me and I think the Chairman would have access to the files, in granting the first exemptions to Refin, FINSAC and FIS indicated that they were taking over the bad debt portfolio from the banks which were exempted from the Money Lending Act and hence that exemption should be given to FIS, FINSAC, etcetera and again when the bad debt or whatever percentage of the

1 bad debt portfolio was sold to JRF, the
2 reasoning was that the same principle
3 held and in the public's interest, this
4 allowed the bank -- FIS, FINSAC,
5 Refin...

6 CHAIRMAN: Allowed the bank?

7 A No, any licensed financial institution
8 is automatically exempted, so this bad
9 debt portfolio, there was no new loan
10 being put in by FINSAC, this was taken
11 from the banks and those institutions
12 were granted exemption on that basis and
13 in the public interest, this would
14 facilitate them maximizing, attempt to
15 maximize their collection. The same
16 situation would hold, that is the advice
17 which I received in terms of granted to
18 JRF.

19 CHAIRMAN: You appreciate that these were not
20 banks?

21 A On yes, that is why -- if they were
22 banks then they would not need an
23 exemption, if they were banks they would
24 be automatically exempted.

25 CHAIRMAN: Go on.

- 1 MR. HYLTON: You appreciate and perhaps I just state
2 it for the record that Section 13 of the
3 Act provides....
- 4 CHAIRMAN: Sorry?
- 5 A Section 13 (1)(c) provides that any body
6 corporate, incorporated or empowered by
7 an enactment of the Legislature of this
8 Island to lend money in accordance with
9 such enactment.
- 10 CHAIRMAN: Yes.
- 11 MR. HYLTON: And of course that would therefore cover
12 a bank?
- 13 CHAIRMAN: Yes.
- 14 MR. HYLTON: And this exemption covers any licensed
15 financial institution, as I understand
16 the Minister, Dr. Davies, because the
17 entities which held the loans were
18 exempt, when the loans were taken over
19 by non-exempt entities but in relation
20 to whom there was a public interest for
21 collection, they were granted
22 effectively the same status vis-a-vis
23 exemption?
- 24 CHAIRMAN: Well...
- 25 MR. HYLTON: And therefore when the loans were

1 transferred to JRF the same exemptions
2 were granted, (a) for consistency and
3 (b) for...

4 CHAIRMAN: I know it sounds all very attractive,
5 but, what Section 14 speaks to, I gather
6 directly, is what is being referred is
7 to here is every loan.

8 MR. HYLTON: It says any loan or contract or security
9 for repayment and so on.

10 CHAIRMAN: Yes if you look at 14, (1) (b) for
11 instance: Where the Minister is
12 satisfied that it is in the public
13 interest so to do, he may by order
14 declare any loans made, contract entered
15 into or that sort of thing exempt from
16 the Act.

17 MR. HYLTON: Yes, sir.

18 CHAIRMAN: Yes. His response is, well, having
19 decided in respect of Refin and Recon,
20 whatever that principle was, whatever
21 the public interest was, would apply to
22 JRF, so now, what you are really
23 concerned to get is really how is it, or
24 what is the public interest which he had
25 in mind, because whatever advice he is

1 given is legal advice, in the public
2 interest is really a matter for him as
3 Minister, would it not, subject to
4 whatever.

5 A Can I? In the public interest was (a)
6 consistency of policy and (b) to
7 maximize the returns but I would like to
8 point out as a matter of records that
9 the same advice given to me in those
10 years....

11 CHAIRMAN: We are going to ask, you see, the
12 advice -- I don't know if you can speak
13 to the advice that was given to the
14 current Minister, but he will have to
15 come and speak to that, because it is
16 the person in office who is to be
17 satisfied.

18 A Yes, and I am indicating that the same
19 advice was given to the Minister in his
20 granting of the exemption.

21 MR. HYLTON: Chairman, I am not sure if I understand
22 your difficulty, but I should point out
23 that you read Section 1(b) just now, and
24 I don't know if you are reading by way
25 of example, but Section 1(a) is also

1 relevant and is indeed more relevant
2 because 1(b) speaks to the making of
3 loans or any contract entered into and
4 while 1(a) speaks to a loan or contract,
5 so therefore they were including a
6 pre-existing order and the orders
7 granted covered pre-existing loans, so
8 it is not limited to 1(b).

9 CHAIRMAN: I just read it, I wasn't suggesting any
10 reference.

11 MR. HYLTON: 1(a) in particular is consistent with
12 the explanation given by Dr. Davies.

13 CHAIRMAN: For the moment what we are concerned
14 about, if I may say so, is this public
15 interest aspect.

16 MR. HYLTON: And the witness has explained, he
17 explained why he considered it in the
18 public interest. And of course, sir, in
19 the context that he gave evidence here
20 today that the sums repaid to the
21 Government in reduction of the debt
22 would be affected by the sums recovered
23 by the person, the same price
24 discussion.

25 CHAIRMAN: Yes

1. MR. HYLTON: That was it.
2 CHAIRMAN: Yes. That is what you are required to
3 ask, yes.
4 COMM. ROSS: Dr. Davies, you mentioned consistency of
5 policy as one of the reasons why
6 exemption was given to JRF, but there
7 isn't any significant difference between
8 FINSAC, Refin, etcetera, and JRF in that
9 the former institution came under your
10 direction at least from the policy
11 perspective, whereas you had no such
12 influence over JRF, was that considered
13 when the exemptions were granted?
14 A In terms of FINSAC, apart from coming
15 under my aegis as such or aegis of the
16 Ministry of Finance and Planning, their
17 terms of reference were far greater than
18 the issue of collection on bad debts.
19 In terms of the collection of bad debts
20 which is the sole purpose of JIF, then
21 their operations were identical and as
22 such my interest and I view the public's
23 interest, was in terms of allowing them
24 to maximize collections on the same
25 basis as FINSAC, FIS, and Refin.

1 honoured the settlement, etcetera, but
2 although I had no formal power, my
3 work, and since -- I am not trying to
4 sell a point because this file only came
5 to me through your instrumentality,
6 Mr. Chairman, it demonstrates the number
7 of times I intervened, some successfully
8 but some not so successful. So I didn't
9 have any official power but I have
10 intervened for some people.

11 CHAIRMAN: It seems to me that, I suppose you had
12 knowledge, that JRF is a different
13 creature from FINSAC and Refin.

14 A Clearly.

15 CHAIRMAN: And for more reasons than one, so that,
16 and you are aware that the approach of
17 JRF was certainly not the same as
18 FINSAC?

19 A I am not so aware, Mr. Chairman.

20 CHAIRMAN: But they were not the leading processor,
21 were they?

22 A You asked me if I am aware.

23 CHAIRMAN: I assume that being the Minister you
24 would be aware, but anyway you assure me
25 it's to the contrary.

1 me call it, evidence, so that I don't
2 think -- I will have to await the
3 evidence given by let me call them the
4 FINSAC'd or the JRF'd or whatever the
5 okay terminology.

6 A But it would be more useful if you would
7 say the 'Eagled' or 'Blaised' or NCB
8 Group.

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1 CHAIRMAN: I don't know.

2 A: That would be more accurate.

3 CHAIRMAN: It is not inaccurate?

4 A: It would be accurate.

5 CHAIRMAN: Whatever.

6 A: I am just trying to make the language
7 a little more precise.

8 CHAIRMAN: It is very precise. Dr. Davies, you must
9 of course, maintain your cause and that
10 is normal and natural and it is
11 expected.

12 A: I know that the learned Chairman would
13 be the independent, unbiased person to
14 guide us through.

15 CHAIRMAN: Yes, but I am speaking to the person
16 who is not unbiased.

17 A: From time to time -- I would have no
18 reason to question that on your part but
19 you do have strong views, sir.

20 CHAIRMAN: Who shouldn't? We should all do. The
21 point I am making really is that you
22 now have evidence to that.

23 A: Chairman, can I just clarify my
24 ignorance?

25 CHAIRMAN: Yes.

1 A: When assertions are made, what's the
2 modus operandi of the Commission in
3 terms of determining facts as opposed to
4 assertions?

5 CHAIRMAN: Well, when the evidence is given it now
6 becomes evidence and given on oath.

7 A: No, I said facts.

8 CHAIRMAN: Well, what we have are allegations in
9 this case so when the persons come and
10 give evidence, when the evidence is
11 given, it depends on whether we accept
12 it or not or they have proof of it or
13 whatever, but we will put it to you for
14 instance, you personally or whoever is
15 the person, and if they accept it well
16 that is so. We haven't got any policeman
17 to run around getting anything. Yes so
18 having answered your question which is
19 another proposition...

20 A: No, I was just pleading due to my
21 ignorance.

22 CHAIRMAN: Yes, we have a bit of flexibility as you
23 have observed.

24 A: Yes, sir.

25 CHAIRMAN: So that this means that you may have to

1 be asked to return to answer some
2 questions which...

3 A: To deal with what may I ask, sir?

4 CHAIRMAN: Well, the allegations which have been
5 made to in regard to JRF or whatever and
6 whether you were aware of it, and
7 therefore if you were aware of it, what
8 as Minister did you do or not do? So
9 until that happens we can't deal with it
10 in terms of speculation because
11 obviously JRF has a right to respond to
12 answer all these things.

13 COMM BOGLE: Dr. Davies, JRF is a private company,
14 it's a foreign company but registered
15 locally under the Companies Act that is
16 required for companies in Jamaica. JRF,
17 my understanding of JRF's responsibility
18 is that of a debt collector. In other
19 words, there were some debts that were
20 sold to JRF and they would be in a sense
21 the debt collectors. Now FINSAC; Refin,
22 Recon had exemption but basically they
23 reported to you, the Ministry of
24 Finance, and therefore, the Ministry of
25 Finance had some level of control or

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could exert some level of control over these entities. JRF is a private company, it's not under the control of the Ministry of Finance, therefore, the Ministry of Finance really does not exert any control over; can any reason seek to discuss and maybe one may say use moral suasion or something like that, however, if JRF does not, let us say, does not wish to accede to moral suasion in terms of an appeal made to you by an aggrieved debtor, what recourse then, your having exempted JRF under the Money Lending Act, what recourse then does the debtors have, because surely under the Money Lending Act it gives the debtor certain right of information, it gives the debtor certain right of appeal regarding access to information and to the court. Z mean the debtor has a right to take the matter to court if the debtor feels that there is something that is unreasonable, it is unconscionable. But this law now, having exempted JRF from this Act, you

1 as I said before, and which you agree,
2 do not have anything control over JRF a
3 private company, where does this lead
4 the debtors?

5 A: Well, Commissioner let me...

6 MRS. MINOTT-PHILLIPS: Mr. chairman, before the Minister,
7 Dr. Davies answers that question, the
8 question is asked on the premise that
9 JRF is exempt. When you look at the Act
10 it is really the loan that was exempt.
11 So whether it was with the bank or
12 whether it was with FINSAC or whether
13 it was JRF, the subject of the exemption
14 is the loan and not the creditor.

15 CHAIRMAN: Although the question may be asked of
16 the Minister, JRF will have their turn
17 to make all their representation that
18 they wish to make. Thank you
19 nonetheless Mrs. Phillips. Yes,
20 Minister.

21 A: This is in response to Commissioner
22 Bogle's question. I accept clearly the
23 differentiation between the fact that
24 FINSAC, FIS, Refin were agencies under
25 the aegis of the Ministry of Finance and

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whilst JRF is a private company, but I will make two points. One is that given my approach in not being involved unless people wrote to me directly, case by case, let me indicate that I was unaware that the issue of interest rates was a problem in the settlements of debts with JRF. None of the appeals made to me none was on the basis of that issue, none of the appeals was on the basis of the issue. It was in regard to a settlement or the period of payout et cetera. So I will make that point. And I would also indicate, I would also indicate that whilst I had no official position with regard to JRF there is no case which I wrote to them about to which there was not a response, not always positive but I have to point out to you that two weeks ago, through intervention, I think there is another case which was settled with them. So I was unaware that interest rate was an issue in the settlement of this. The files are there. You know one of the great things about

1 the files, I left all the files in the
2 Ministry, the files are there, sir.

3 COMM ROSS: Dr. Davies, you mentioned earlier that
4 it wasn't your role as Minister to get
5 involved in the day to day issues.

6 A: Yes.

7 Q: I am a little puzzled by your response
8 awhile ago suggesting that you had
9 intervened on behalf of some people.
10 Now that's understandable and
11 commendable, but again, I wonder, did
12 you think that that was the most
13 efficient way of approaching the
14 resolution of a large number -- I mean
15 we have nearly forty thousand in all,
16 total, that went to JRF, and even if we
17 look just at the twenty-four thousand
18 loans I mean, how could you have
19 intervened in every situation?

20 A: I had no such desire, Commissioner Ross,
21 and when you say intervention, any
22 letter I wrote was prompted by someone
23 saying something, but I had no
24 intention neither when the loans were
25 being handled by FINSAC nor JRF to be

1 involved in each of these operations but
2 I felt obliged. I tell you something,
3 Chairman, there is not one person who
4 can say I wrote to the Minister and
5 there was not some following through.

6 COMM ROSS: I understand that, but just going back
7 to the issue again, we talked about that
8 one before. It might have been more
9 helpful if there was some policy that
10 was a little more specific about how
11 loans could be resolved that could be
12 applied across the board, it may not
13 suit everybody but it might help cut
14 down on the need for the interest fee
15 and it might have helped those who did
16 not have access to your system.

17 A: I don't know about not having access, 1

18 was a letter away. There is nobody who
19 will tell you that I wrote as a Minister
20 disregarding; beyond that I called
21 meetings in response and said, what is
22 the case? And there are people in the
23 room who can testify.

24 AUDIENCE: No, no, nobody?

25 CHAIRMAN: Please, please.

1 I am saying that the premise...

2 CHAIRMAN: May well be.

3 MRS. MINOTT-PHILLIPS: ...cannot be correct.

4 CHAIRMAN: I don't think you can question in a
5 court of law what the Judge asks, so if
6 you think that I say something or Mr.
7 Ross, whatever, you can go via the
8 Minister and he will clear it up, if you
don't mind.

10 MRS. MINOTT-PHILLIPS: Yes, Mr Chairman. During the court
11 of law I ask questions that...

12 CHAIRMAN: Yes. I don't know where we are now.
13 Where are we? I think you were
14 responding Minister to the last
15 question.

16 A: Yes, Chairman, I know that you do not
17 wish to promote marketplace approach but
18 I can't but to hear some of the comments
19 made and I am not going to be guided by
20 that but there are persons in this room
21 who can testify to the validity of my
22 statement that I have called meeting,
23 there are persons sitting in this very
24 room.

25 CHAIRMAN: I don't know if we need to explore that

1 area.

2 A: No, but...

3 CHAIRMAN: Dr. Davies, that's evidence you are
4 giving on oath, you know.

5 A: Yes.

6 Q: We have no reason to challenge it or to
7 disbelieve you so don't worry yourself,
8 put your mind at rest.

9 A: Okay.

10 CHAIRMAN: Mrs. Phillips, do you wish to speak with
11 the Minister, sorry Dr. Davies?

12 A: I must protest Chairman, I must respond
13 to what's going on.

14 MRS. MINOTT-PHILLIPS: Mr. Chairman, I think we had resolved
15 that, you instruct the Bar and I will go
16 last.

17 CHAIRMAN: Well, if you wish to, I invite you now
18 but if you wish to. Very well.

19 MRS. PHILLIPS: I am interpreting that a general
20 invitation and not specifically relating
21 to my previous intervention because...

22 CHAIRMAN: Well, you see it might be advisable for
23 you to clear up what it is at this time.

24 MRS. MINOTT-PHILLIPS: Thank you Mr. Chairman for that
25 opportunity. Because there seems to be

1 a -- well certainly, I am not
2 understanding what generates the
3 reference of these large numbers because
4 in terms of the material that I would
5 have received in relation to JRF, out of
6 forty thousand, I would say that I have
7 received complaints in relation to
8 certainly under twenty in number. So in
9 that circumstance I am having a
10 difficulty with the question posed in
11 relation to vast numbers of unresolved
12 cases for which people are dissatisfied.
13 Because that is not the evidence that I
14 am aware of. I am aware that the
15 Commission has material that I have not
16 received so when I receive that, then it
17 will be cleared up. But at this point I
18 have no information that would lead me to
19 believe that there is the existence of
20 this large number.

21 CHAIRMAN: Perhaps you could respond to the
22 question, Commissioner Ross.

23 COMM ROSS: I didn't refer to the number of
24 complaints, what I referred to was the
25 number of bad loan accounts, and the

1 question I asked related to whether a
2 little guidance in terms of policy could
3 have assisted with the resolution to
4 those that have passed away than relying
5 on his intervention on a case by case
6 basis. So I was not suggesting that
7 there were forty thousand of them or
8 placing any judgment at all about the
9 number of cases as it were or are.

10 MRS. MINOTT-PHILLIPS: Thank you for that Commissioner, but
11 the evidence that I have heard seems to
12 indicate that -- at least from my
13 understanding of what I have heard most
14 were resolved by agreement between the
15 debtor and the institution. So I am not
16 sure why you would need a policy to
17 address those that were resolved.
18 CHAIRMAN: Let's keep things...

19 MRS. MINOTT-PHILLIPS: So presumably that's what I
20 understand the former Minister to be
21 saying.

22 CHAIRMAN: Mrs. Phillips, you will get your
23 opportunity to deal with JRF's position
24 so that the Minister has answered the
25 question, we will move on. When your

1 turn comes you deal with your clients'
2 interest certainly.

3 MRS. MINOTT-PHILLIPS: Obliged, Mr. Chairman.

4 CHAIRMAN: Mr. Codlin, you wish to begin?

5 MR. CODLIN: If it pleases you, Mr. Chairman.

6 CHAIRMAN: It might well be. Mr. Codlin, may I
7 just indicate to you that this session
8 is going to be short because counsel for
9 Dr. Davies has a commitment for this
10 afternoon which will mean he departs and
11 we do not wish to proceed in the absence
12 of his counsel. So we do appreciate that
13 you go onto the break.

14 MR. CODLIN: If I have a choice if you please Mr.
15 Chairman and your members having regard
16 to what you have said I would prefer to
17 begin when this session resumes or when
18 the hearing resumes.

19 CHAIRMAN: You would?

20 MR. CODLIN: Yes, sir.

21 MR. BRAHAM: Mr. Chairman, maybe I could use the few
22 minutes remaining to ask Dr. Davies a
23 few questions.

24 CHAIRMAN: Yes.

25 MR. HYLTON: Mr. Chairman...

1 CHAIRMAN: Very well, Mr. Codlin.

2 MR. CODLIN: Thank you, sir.

3 MR. HYLTON: And also sir, before my friend starts,
4 I have just been handed a bundle of
5 documents which I understand relate to
6 the questions that are about to be
7 asked by Mr. Codlin.

8 MR. CODLIN: Excuse me, Mr. Chairman. I think it is
9 an error. What has happened is that
10 submissions in possession of the
11 Commission were done in such a way as to
12 enable any witness, including Dr.
13 Davies, to follow the proceeding
14 vis-a-vis the questions that we intend
15 to put and to enable you as
16 Commissioners, each to have a copy for
17 ease of reference. What was handed to my
18 learned friend, Mr. Hylton, therefore is
19 an error and may I ask that he return it
20 to me.

21 MR. HYLTON: I don't understand that. So there is
22 material that the Commission should have
23 that we should not have? What I was
24 going do say, sir, is that this material
25 that was handed by the Secretary to be

1 used in the course of his questions by
2 Mr. Codlin so it would certainly be
3 appropriate to follow the course which
4 he suggested, whenever it is sir, to
5 see what he says.

6 CHAIRMAN: But he is not doing it now.

7 MR. HYLTON: I was supporting and giving another
8 reason for the document I just received.

9 MR. CODLIN: May I have it back please.

10 CHAIRMAN: Well, he wants it back, let him have it
11 back.

12 (Laughter)

13 MR. HYLTON: Mr. Chairman I should place on the
14 record --in due course I will hand it
15 back to Mr. DePeralto but I would
16 certainly object to a situation where
17 material given to Commission to be used
18 for the purpose of cross-examining my
19 client and I have not seen it. So if you
20 direct me, sir, I will hand it back.

21 CHAIRMAN: Mr. Codlin, what it is you are talking
22 about? We have gotten it so if we got it
23 counsel must get it. What is your
24 difficulty?

25 MR. CODLIN: The document I handed Mr. DePeralto, Mr.

1 Chairman...

2 CHAIRMAN: Was intended for?

3 MR. CODLIN: Was intended for you and your members
4 and if any witness goes up to testify
5 and needs to refer to it, that's the
6 extent of the use of the document, not
7 to supply my learned friend with a brief
8 because I have not asked him to show me
9 his brief, and what I have supplied to
10 Your Lordship and Commissioners is
11 nothing more than what I intended to use
12 to ask you to refer to. If you are
13 saying that my learned friend is to get
14 a complimentary copy because you are in
15 possession of it, when I come to address
16 you I have no objection to that but
17 until then...

18 CHAIRMAN: You know, I don't know what you are
19 quarreling about.

20 MR. CODLIN: We are not quarreling at all but you
21 must appreciate, in relation to their
22 brief we have not seen their brief.

23 CHAIRMAN: So far as I can see you know, we are
24 going to adjourn....

25 MR. HYLTON: (Sotto voce remarks).

1 MRS. PHILLIPS: I have seen the index and it relates to
2 my client as well, and I have not
3 received a copy.

4 CHAIRMAN: Anybody else wants to make a complaint?
5 (LAUGHTER)

6 CHAIRMAN: Mr. Codlin?

7 MR. CODLIN: Yes, sir.

8 CHAIRMAN: This is to assist any witness who is
9 coming to follow what you are doing?

10 MR. CODLIN: It is.

11 CHAIRMAN: Well, what's the purpose of it?

12 MR. CODLIN: What's is the purpose of it?

13 CHAIRMAN: Yes.

14 MR. CODLIN: Mr. Chairman, the Commission has copies
15 of all the documents in that bundle.
16 When I come to ask any witness that
17 appears before you...

18 CHAIRMAN: He is the only witness at the moment. I
19 don't know who else is coming.

20 MR. CODLIN: I thought you had said that I would not
21 begin today.

22 CHAIRMAN: So what? Shall we return it to you
23 then?

24 MR. CODLIN: No sir, not you because you have copies
25 already, but it will only be available

1 to whoever represent whoever when I come
2 to use it, that is the point I am
3 making. (laughter)

4 CHAIRMAN: So who is the witness?

5 A: Can I see it?

6 CHAIRMAN: He is the witness, who is to have it?

7 MR. CODLIN: Dr. Davies is to have it when I have the
8 privilege of asking him questions, not
9 before.

10 CHAIRMAN: Because he is the person who you will
11 be questioning. So what is the mystery
12 of this, sir?

13 MR. CODLIN: I didn't say there was a mystery.

14 CHAIRMAN: So why can't you give you it to counsel
15 now?

16 MR. CODLIN: You have copies now M'Lord. Chairman are
17 you saying that you wish me to...

18 CHAIRMAN: I am not saying anything I just want to
19 hear what it is you are saying.

20 MR. CODLIN: I am saying that when I come to ask
21 Dr. Davies questions I will hand the
22 bundle to him and ask him to refer to
23 such section of it that I have put to
24 him. That's what I am saying, that's all
25 I am saying.

1 CHAIRMAN: What's the importance, may I ask, of
2 giving him on Tuesday, as opposed to
3 giving it now? What does it matter to
4 you? I mean what disadvantage or -- what
5 is it that is causing all this
6 commotion?
7 MR. CODLIN: As you Your Lordship knows so well and
8 have taught me, I have to go by my
9 instructions and it will be made
10 available to Dr. Davies, I don't think
11 he wants to read it before.
12 A: Did can you ask me?
13 CHAIRMAN: This argument is between these 2
14 characters here.
15 MR. CODLIN: My Lord, it is simple. Dr. Davies is
16 going to be asked to refer to portions
17 of it, he might not be asked to refer to
18 all of it, I doubt if he will be asked
19 to refer to all of it. It matters
20 therefore...
21 CHAIRMAN: But if he is going to be asked to refer
22 to it, it would be good for him to get
23 it for him to be aware of the language
24 that will be in it or what you will be
25 using. What's the difficulty?

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1 MR. CODLIN: Not necessarily, sir. I have not been
2 shown anything that anyone else has
3 which he is referring to.

4 CHAIRMAN: You want me to give a ruling?

5 MR. CODLIN: If you do I shall oblige.

6 CHAIRMAN: Yes, give it to him.

7 MR. CODLIN: All right. If you said give it to him I
8 will.

9 CHAIRMAN: Yes, I said it.

10 MR. HYLTON: Much obliged, sir.

11 EXAMINATION BY MR. BRAHAM

12 MR. BRAHAM: Dr. Davies, would you agree with me that
13 on deciding to sell the portfolio to
14 JRF, it was the FINSAC and Government's
15 prerogative to determine the terms upon
16 which the portfolio was to be sold?

17 A: Certainly the terms on which you would
18 make the offer, but any sale, counsel,
19 is between a willing buyer and a willing
20 seller, so you start with your terms
21 which you would wish but there are
22 negotiations which take place.

23 Q: I agree. But as a seller, you would be
24 able to determine what conditions were
25 non-negotiable?

1

1 A: Yes.

2 Q: Very well.

3 A: We wouldn't sell to someone who couldn't
4 identify their source of funds or
5 questionable things, there is a whole
6 set of conditions which we have.

7 Q: So you agree with me that it was
8 possible for you to say to the buyer,
9 meaning JRF, that the debt whatever it
10 was, interest as compounded and
11 principal, as at the date of the sale...

12 A: I don't know if it was compounded.

13 Q: Well, you agree with me that the banks
14 generally were compounded interest
15 prior to their take-over?

16 A: I don't know.

17 Q: You don't know that?

18 A: No.

19 Q: I see, that's a very interesting
20 response. You are not aware that prior
21 to the Government taking over the
22 various failed institutions, that the
23 banks were in the habit of compounding
24 interest?

25 A: I said I don't know.

02

1 MR. BRAHAM: I see. All right. But let us assume
2 for the moment that...

3 A: The complaints have been about high
4 interest rates, I didn't know the
5 complaints were also that interest were
6 being compounded.

7 Q Yes, but let us assume for the moment
8 that interest was being compounded by
9 the banks, and also we can agree though
10 that the interest was high for a period
11 of time anyhow.

12 A: Yes.

13 Q So the question I am asking you is: At
14 the time of sale that it was the
15 prerogative of the seller to say to the
16 buyer, the debt, interest and principal
17 as at that day would be, should I say
18 crystalized?

19 A: I don't know what that means.

20 Q: Well, let us assume that the entire was
21 \$435M, was that it?

22 A: Mr. Wong Ken asked me and I told him
23 that I didn't know what the precise
24 figure was.

25 Q: Was it less than four hundred million?

3

1 A: Sir, we can verify what the number is,
2 we could call it 'X'.

3 Q: I could use a motional figure of \$1.00

4 A: Yes.

5 Q: Let's assume that the debt was \$1.00,
6 that included interest as at the date of
7 sale.

8 A: Right.

9 Q: You agree with me that debt of \$1.00
10 could have been crystalized and say I am
11 selling you now \$1.00 at that time? Yes.

12 A: Okay. Similarly, you could also say to
13 the buyer of the debt, you are entitled

14 Q: to interest but you would only be
15 entitled to simple interest on the
16 \$1.00.

17 Yes.

18 A: And secondly, you could also say to the

19 Q: buyer that you will not be entitled

20 going forward to compound the interest
21 in relation to this debt?

22 Yes.

23 A: Very well. Now sir, would you agree with
24 me that if that was done that would

25

Q:

25

1

2 A:: have been to the benefit of debtors?

3 Not necessarily, because in the final

4 Q: analysis there has to be settlement.

5 A:: Very well.

6 In the final analysis, there *have* been

7 negotiations which led to settlements

8 A: which would have met your criteria. I

9 am talking about if that was the

10 transaction agreed upon if that could

11 Q: have been to the advantage of the .

12 Yes.

13 Q: Secondly. Well...

14 A: This is about fifthly.

15 Q: Yes. Fifthly or tenthly.

16 A: Yes.

17 Q: The debt, the interest rate that was

18 charged, is it that JRF was permitted to

19 charge the same interest rate that the

20 banks were permitted to charge?

21 A: Well, under the exemption given to them,

22 yes, that is true.

23 Q: I see. Do you recall whether they had

24 under the agreement, any obligation to

25 reduce the interest rate to what would

have been current by any particular

1 settlement.

2 Q: I see. My final two questions. In
3 relation to the banks when they were
4 charging interest and imposing whatever
5 terms that they were when they were
6 procuring the various loans and so
7 forth, you agree with me that at all
8 times they were under the supervision of
9 the Ministry of Finance and probably
10 more particularly the Bank of Jamaica?

11 A: Specifically the Bank of Jamaica.

12 Q: And certainly JRF, when they were trying
13 to collect this debt they were under no
14 supervision by the Bank of Jamaica or
15 the Ministry of Finance?

16 A: Because they are not a financial
17 institution, they are a company.

18 Q: And that is a disadvantage, would you
19 say, to the debtor?

20 A: Well Counsel, these debts had not, these
21 bad debts had not been resolved for the
22 period when they were under institutions
23 which were supervised by us and the
24 reality is that there are debts which
25 were resolved under JRF which have not

1 been resolved.

2 Q: My question was...

3 A: So Z cannot therefore suggest that
4 supervision or having powers of
5 supervision enhanced the resolution.

6 Q: The question I asked was whether you
7 think it would have been to the
8 advantage of the debtors that the entity
9 was under supervision?

10 A: With all due respect Counsel, my answer
11 is that these debts were under the
12 ownership of entities which were under
13 the supervision of the Ministry of
14 Finance and they were only sold to JRF
15 because they were unable to resolve
16 them. So the simple causation, cause
17 and effect which you are seeking to
18 establish, the evidence is that it is
19 false.

20 Q: I understand the analysis that you have
21 engaged in but if you are unable to
22 answer whether you think it would have
23 been, should I then assume that the
24 answer to my question is no?

25 A: Not necessarily so.

1 MR HYLTON: Well, thank you, very much. Those would
2 be my questions for the moment. Thank
3 you very much.

4 CHAIRMAN: Yes, on this happy note, maybe this is
5 an appropriate time, subject to what I
6 hear from Mr. Hylton, to adjourn.

7 MR HYLTON: Yes, sir. I have nothing to say negative
8 to that. May I just say something, sir?
9 You had mentioned Tuesday.

10 CHAIRMAN: Yes.

11 MR HYLTON: Is it your intention or expectation that
12 Dr. Davies would continue on Tuesday?

13 CHAIRMAN: Indeed. He is not finished.

14 MR HYLTON: I know sir, but okay. Two things, sir.

15 CHAIRMAN: Yes.

16 MR HYLTON: One is that we had a discussion, sir, in
17 relation to the possibility of him being
18 required after other persons, and two;
19 in relation to his having made himself
20 available for this week, and I have
21 discussed details of this with him but I
22 know sir, that he has parliamentary and
23 other obligations which would have been
24 scheduled for next week.

25 CHAIRMAN: Yes.

1 MR HYLTON: He would have then have in his schedule
2 that he would continue...

3 CHAIRMAN: I don't know about what was scheduled.

4 MR HYLTON: I had assumed sir, that other things
5 would have been scheduled, he would be
6 required to come back but not
7 necessarily next week so I hadn't
8 discussed...

9 CHAIRMAN: It must be easier for him to continue
10 than to go away on break.

11 MR HYLTON: It's just sir, that you are anxious.

12 CHAIRMAN: Do you understand from you that he is
13 not available on Tuesday?

14 MR HYLTON: I will have to go and confirm.

15 CHAIRMAN: We will wait, perhaps you would be good
16 enough to consult.

17 (Mr. Hylton confers with Dr. Davies)

18 MR HYLTON: He can't be available next week
19 Chairman. I have two challenges, one is
20 that having Parliament this week he
21 would very much like to go to Parliament
22 on Tuesday. The other sir, is if it
23 were that the Commission's request is
24 that he be available on Wednesday, we
25 could certainly confirm Wednesday or

1 Thursday, the difficulty we have sir, is
2 that Tuesday is .

3 CHAIRMAN: Tuesday is a bad day?

4 MR HYLTON: Yes, and also sir, and I think perhaps
5 you share this difficulty that you are
6 unable to say that he is required for a
7 day or two days.

8 CHAIRMAN: No, that is a challenge.

9 A: That is our challenge and so what we can
10 do sir, is commit to an make
11 arrangements for being available on
12 Wednesday but I suppose you can't tell
13 me...

14 CHAIRMAN: That's fair enough but come on Wednesday
15 we will see what happens.

16 MR HYLTON: Yes, sir.

17 CHAIRMAN: Beyond that we can't say very much more.

18 MR HYLTON: I will certainly urge you that to the
19 extent that you are able sir, to assist
20 us in moving along.

21 CHAIRMAN: I thought T was. You mean at a more
22 accelerated rate?

23 MR HYLTON: Perhaps if you had done some more
24 earlier.

25 CHAIRMAN: So that there is then nobody else? Is

1 there a possibility that we can
2 substitute, if that is an appropriate
3 term, for Tuesday? So that the position
4 is that the Commission will adjourn until
5 Tuesday morning at 9:30 and we look
6 forward to seeing Dr. Davies on
7 Wednesday, and of course he maybe
8 required to attend on other days as maybe
9 required. That is about it. Thank you
10 very much. We now stand adjourned.

11
12 Adjournment taken at 12:33 p.m.

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