

1 (11.10 am)

2 (In camera session)

3 MR MILNE: Sir, now we are speaking in camera we can say  
4 clearly that the name that was given by Mr Misick in  
5 relation to that donation was the name Turks Limited,  
6 T-U-R-K-S Limited.

7 MR FITZGERALD: Sir, Mr Glinton rightly asked me what is  
8 going to happen to this part of the transcript when it  
9 is posted on --

10 SIR ROBIN AULD: It will be kept as other parts are kept.  
11 It will be marked confidential and in camera and they  
12 are produced separately as you may have noticed.

13 MR MILNE: For reassurance, sir, the Commission only posts  
14 the public parts of the transcript on the internet. The  
15 others are kept confidential.

16 SIR ROBIN AULD: What are we going -- you are not going to  
17 explore it at the moment. We are going to ask Mr Rigby  
18 to say why he objects to you naming that company in  
19 public.

20 MR RIGBY: Yesterday we indicated that there were -- all of  
21 the donors really insisted -- it was an express  
22 condition that they remain anonymous.

23 SIR ROBIN AULD: An express condition by the donor in each  
24 case.

25 MR RIGBY: In each case that they remain anonymous.

1 Therefore in light of that, we blocked their names from  
2 the schedule. But as I had indicated yesterday, we had  
3 no difficulty providing the Commission with those names  
4 in the spirit of full co-operation. And to protect  
5 the donors' identity, bearing fully in mind the express  
6 request and Mr Misick's undertaking to keep their  
7 identity anonymous. We therefore believe that it is  
8 appropriate in these circumstances for the Commission to  
9 hear this portion of the evidence in camera.

10 SIR ROBIN AULD: In a way it is a breach already of that  
11 condition, as you put it, for them to tell  
12 the Commission even in camera.

13 MR RIGBY: I beg your pardon?

14 SIR ROBIN AULD: In a way it is a breach of that condition  
15 as you put it to give the Commission that information  
16 even in camera.

17 MR RIGBY: That is correct. So just to take the point  
18 further perhaps, it may be more appropriate if we use  
19 the letter X or Y. I think we have used X for that or  
20 maybe we have used Y and if the record could be or  
21 the transcripts reflect that, and I think that will  
22 further provide a degree of confidentiality.

23 SIR ROBIN AULD: But now tell me why you say, given  
24 the nature of this Inquiry, which is into possibilities,  
25 which only become probabilities and certainty if you dig

1 deep, this name should not be treated publicly like

2 every other donor of various sums in this Inquiry.

3 MR RIGBY: Based on the express understanding between

4 the parties at the time when the donation was given, and

5 we would submit the right of those donors to their

6 fundamental right of privacy under the constitution,

7 that the Commission ought to deal with this particular

8 aspect in the fashion which we have submitted.

9 SIR ROBIN AULD: But section 8 -- I didn't understand you to

10 be relying on section 8, but if you are, section 8 needs

11 to be read and clearly understood.

12 MR RIGBY: Sections 8 and 12 in a combined fashion is what

13 we would be relying on. So it is protection --

14 SIR ROBIN AULD: Do you have section 8 there?

15 MR RIGBY: I have section 8 and section 12.

16 SIR ROBIN AULD: You only have to read them, don't you, to

17 see the basis upon which any such right may be overrode

18 where public interest requires it, in particular when

19 there is investigation or an issue as to possible

20 criminal behaviour or other conduct contrary to the

21 public interest.

22 (11.15 am)

23 MR RIGBY: But we would submit there would be perhaps a more

24 fundamental issue, with respect to whether this Tribunal

25 has the jurisdiction under the constitution to really

1 determine issues with respect to any contravention of  
2 the constitution or --

3 SIR ROBIN AULD: I think you are quite right about that.

4 I can't give a ruling of law on it. I can only give  
5 a decision based on my understanding of the effect of  
6 the constitutional provision. And whatever I do would  
7 be subject to review by the courts, by way of judicial  
8 review or otherwise. But I have to make a decision and  
9 I have to do so on a reasoned basis. That is  
10 the problem for you, I think.

11 MR RIGBY: Article 18, subarticle 3 provides:

12 "If, in any proceedings in any court established in  
13 the Islands other than the Supreme Court or  
14 the Court of Appeal, any question arises as to the  
15 contravention of any of the foregoing provisions of this  
16 part, the court in which the question has arisen shall  
17 refer the question to the Supreme Court, unless, in its  
18 opinion, the raising of the question is merely frivolous  
19 or vexatious."

20 We would submit that it would appear that --

21 SIR ROBIN AULD: What are you reading from?

22 MR RIGBY: Article 18.3.

23 SIR ROBIN AULD: Let's have a look at that.

24 This isn't any court. This isn't a court.

25 The Commission is not a court.

1 MR RIGBY: 19.1:

2 "court' means any court of law or tribunal having  
3 jurisdiction in the Islands, including Her Majesty in  
4 Council, but excepting, save in section 4, a court  
5 constituted by or under disciplinary law."

6 SIR ROBIN AULD: This is a judicial proceeding under  
7 the Commission of Inquiry Ordinance. It is not a court.

8 MR RIGBY: We would submit it is a tribunal.

9 SIR ROBIN AULD: Yes, that is your submission. Is the  
10 tribunal defined?

11 MR RIGBY: In the ordinance or in the constitution?

12 SIR ROBIN AULD: Either. It is not a tribunal by virtue of  
13 the Commission of Inquiry Ordinance, but what is  
14 a tribunal for the purpose of section 19.3 of the  
15 constitution?

16 MR RIGBY: It appears that the definition -- the ordinance  
17 clearly provides that, I think at section 13.1 of the  
18 Commission of Inquiry Ordinance, whatever Inquiry held  
19 under this ordinance shall be deemed to be a judicial  
20 proceeding.

21 We would therefore submit that in order to be  
22 a judicial proceeding, it must either be deemed to be  
23 a court of law or a tribunal, having such jurisdiction.

24 SIR ROBIN AULD: You have just made that up, haven't you,  
25 Mr Rigby? You are interpreting it as you go along.

1 I am not blaming you but your submission has slipped  
2 from a perfectly sensible one of saying these  
3 undertakings were given, monies were given in  
4 confidence, and it is only fair that it can be disclosed  
5 in camera but not publicly, now to a constitutional  
6 point which -- I make no complaint -- was not  
7 the original basis of your objection.

8 MR RIGBY: I think the transcript will reflect that  
9 yesterday we raised two bases of objections.

10 SIR ROBIN AULD: Or maybe I have misunderstood. I thought  
11 yours was narrower.

12 MR RIGBY: I think we raised those two from the very outset.

13 SIR ROBIN AULD: If it is constitutional, then perhaps we  
14 should deal with it along with all the other matters  
15 tomorrow?

16 MR RIGBY: My difficulty tomorrow is, and I was speaking to  
17 Mr Milne about this just this morning, that I have  
18 a committed matter in Nassau which I have to attend to  
19 tomorrow.

20 So I plan to be on a flight first thing in  
21 the morning to get to Nassau to address that matter.  
22 But obviously I would be more than happy to come back  
23 either on Monday or so to deal with that particular  
24 issue.

25 Just a final point I want to make on this is that it

1 is certainly a right that Dr Kinay would have and it is  
2 certainly -- or that company. And it is certainly -- in  
3 our submission, that they ought to be given  
4 an opportunity to address either this Commission or to  
5 explore whatever legal avenues might be available to  
6 them either under the ordinance or under the  
7 constitution.

8 SIR ROBIN AULD: We will have them all in?

9 MR RIGBY: Well --

10 SIR ROBIN AULD: This will end up like  
11 the Bloody Sunday Inquiry if we go on like this. We  
12 will be here for weeks, months.

13 MR RIGBY: It is a beautiful place to be. But I am more  
14 than happy to flush out my submissions on this point to  
15 the Commission.

16 SIR ROBIN AULD: I don't want to inconvenience you,  
17 Mr Rigby, but it does seem to me your submission is  
18 twofold and a more basic one of the -- which goes only  
19 seemingly to whether the evidence should be given in  
20 camera or in public and the constitutional one, which is  
21 really wider, whether the evidence should be given at  
22 all.

23 MR RIGBY: Yes.

24 SIR ROBIN AULD: Are you saying that you would be content to  
25 do it by way of written submissions, submitted tomorrow

1 in your absence, or...?

2 MR RIGBY: Tomorrow may be difficult. Tomorrow will  
3 probably be difficult for me to get it done by tomorrow.

4 SIR ROBIN AULD: Then we will have to deal with it now.

5 Let's hope that -- as it seems to me now, it would seem  
6 to me tomorrow on the main point of principle. Unlike  
7 a court, I can no doubt change my decision tomorrow if  
8 I take a different view.

9 MR RIGBY: I would undertake to get some written submissions  
10 to the Commission overnight. I would undertake to do  
11 that.

12 SIR ROBIN AULD: The choice is yours. I don't want to  
13 deprive your client of any proper argument, nor do  
14 I want to be inconsistent when I come to consider  
15 the same point tomorrow in another context.

16 MR RIGBY: I will undertake to provide some written  
17 submissions overnight.

18 SIR ROBIN AULD: This has just so far been a dialogue  
19 between you and me. We had better ask Mr Milne what he  
20 thinks about it.

21 MR MILNE: Sir, I am content to have the matter argued as  
22 part of the wider issue tomorrow, but obviously in  
23 the event that the Commission were to rule that this  
24 could be asked in whatever format, it would require  
25 the return of Mr Chal Misick at some point. Maybe for

1 that narrow point but it would require his return.

2 SIR ROBIN AULD: Thinking aloud, is there any reason why we

3 should not ventilate the point in camera now, whatever

4 happens tomorrow about the publication of it more

5 widely?

6 (11.22 am)

7 MR RIGBY: That seems to be a good halfway house, on

8 the express understanding that any further --

9 SIR ROBIN AULD: It will be evidence before me on which

10 I can rely or not as the case may be.

11 MR RIGBY: Subject to --

12 SIR ROBIN AULD: Then if, on the constitutional aspect,

13 the issue goes against you, that -- the hearing in

14 camera would then be openable, is that how it would

15 work?

16 MR RIGBY: It may not be fully openable. That portion may

17 still be subject to the camera.

18 SIR ROBIN AULD: If it turns out to have no validity, say,

19 as a constitutional point, then there would have been no

20 reason for us to conduct this exercise in camera and

21 the transcript could be made open, but if you succeed on

22 the constitutional point, it remains evidence in camera

23 before me on which I can rely or not.

24 MR RIGBY: And then we will still be falling back on that

25 narrow point.

1 SIR ROBIN AULD: We have the narrow point as well.

2 MR RIGBY: Yes.

3 SIR ROBIN AULD: How does that strike you?

4 MR MILNE: I am content with that.

5 SIR ROBIN AULD: I am just anxious to keep cracking with

6 this one way or other.

7 MR RIGBY: I am much obliged.

8 SIR ROBIN AULD: Let's try that, shall we?

9 Now, you had better put the question that started

10 all this again for the record.

11 (11.24 am)

12 MR MILNE: Mr Misick, the documents you disclosed to us

13 earlier in the week, including the ledger from

14 the Chalmers & Co account QuickReport, that being

15 the document reflecting payments for and on behalf of

16 the Premier, included at the second page an entry marked

17 as a deposit, 9th January 2007. Under the "Name" column

18 it said "client general", but under the "Memorandum"

19 column, we are led to understand that the redacted box

20 there hides the name "Turks Limited".

21 A. Correct.

22 Q. That represents a payment into your client bank account,

23 the Chalmers & Co client bank account, to be precise,

24 \$499,963.

25 A. That is correct.

1 Q. Likely to be in essence half a million dollars, but  
2 perhaps with a bank charge reduced from it.  
3 Turks Limited is the company run by Dr Kinay which  
4 develops Dellis Cay.

5 I assume you are aware of that?

6 A. I am.

7 Q. Turks Limited, Dr Kinay's company, therefore, in January  
8 of 2007, in the middle of the process which we are  
9 describing now, donated half a million dollars to  
10 the Premier. You were aware of that because it was done  
11 by your offices?

12 A. Correct.

13 Q. That payment was a secret payment in the sense that it  
14 was not published, it was not notified to the PNP, it  
15 was not placed on the Register of Interests and you, for  
16 your part, would have told nobody else about it.

17 A. I was not under an obligation to tell anybody about it.

18 I told Dr Kinay I would not reveal the source.

19 Q. Lest be there be any doubt, I am not suggesting that it  
20 was your obligation to place it on the Register of  
21 Members' Interests, or indeed your obligation to  
22 publicise it in any way, but, certainly from what you  
23 have told us, it was, as you have described,  
24 confidential. No other parties were involved in  
25 the transaction beyond yourself, Dr Kinay and

1 the Premier?

2 A. That is correct.

3 Q. I am going to suggest that given the state of

4 negotiations on Joe Grant's Cay, this payment may not be

5 unconnected. Are you able to comment upon that?

6 A. No, sir. All I can say is that I was informed that this

7 was a political donation to Michael Misick to assist

8 with his re-election campaign.

9 SIR ROBIN AULD: That is what Mr Kinay told you, was it?

10 A. That was my understanding.

11 SIR ROBIN AULD: You say understanding, is that what

12 Mr Kinay told you?

13 A. That was the information forwarded to me by somebody who

14 works with Dr Kinay.

15 SIR ROBIN AULD: Who was that?

16 A. I can't recall the name, but it would have been

17 somebody -- in the course of things, I hardly --

18 SIR ROBIN AULD: It is quite important because we shall have

19 to follow this up, you see, now, and put this to others.

20 A. I would say that it would have been -- it was not

21 Dr Kinay. I normally communicate with a person in his

22 office. His name is Emery but I don't know his last

23 name.

24 MR MILNE: Forgive me, Emery.

25 A. Correct.

1 MR MILNE: Mr Emery?

2 A. I don't know.

3 SIR ROBIN AULD: I was told by, I think, is it -- is this

4 fair -- Mr Emery on behalf of Mr Kinay that the gift --

5 the money was for political purposes?

6 A. The money was for Michael Misick to use in his

7 re-election campaign.

8 MR MILNE: Did they approach you direct rather than

9 the Premier?

10 A. They approached me.

11 Q. You are not, whatever your other roles, you are not

12 a political agent or a political member of the PNP, is

13 that fair?

14 A. That is fair.

15 Q. It would have been open to Dr Kinay, had he wished, to

16 approach the PNP direct but are you aware of him having

17 done so at any stage?

18 A. I am not aware that he did that, but in the context that

19 he had asked me to keep the matter confidential, I would

20 assume the reason he didn't do that is because he knew

21 the matter would have been divulged.

22 Q. He would have had the option, if he had chosen to, to

23 pay directly into one of the several bank accounts

24 operated by the Premier himself.

25 A. I would believe he would have the option and the same

1 thing would apply.

2 Q. Had he paid it into one of those accounts, people might

3 have known about it?

4 A. If he had had it paid into the account, obviously people

5 would have known about it and in this small society, it

6 would have been out on the street the next day.

7 Q. Am I right in concluding, would the Commission be right

8 in concluding that secrecy was of the essence here?

9 A. I don't --

10 Q. Confidentiality was of the essence?

11 A. I would not say secrecy was of the essence. Dr Kinay at

12 the time was interested in keeping his donation

13 confidential.

14 SIR ROBIN AULD: Confidentiality was of the essence.

15 A. Absolutely.

16 SIR ROBIN AULD: You see a difference there, do you?

17 A. I do see a difference.

18 SIR ROBIN AULD: Thank you.

19 MR MILNE: You cannot see in this case that this might have

20 been viewed as a bribe?

21 A. No. Absolutely not. Because all the parties get

22 political donations as far as I am aware directly to

23 the candidates, and this is not exceptional.

24 SIR ROBIN AULD: Not exceptional?

25 A. No, sir.

1 (11.30 am)

2 MR MILNE: How do you know that?

3 A. Well, I have only lived in the Turks & Caicos Islands

4 all my life. I grew up in a political family, so

5 I would say I am fully versed in --

6 Q. So you are aware of a history of substantial donations

7 made to individuals?

8 A. I didn't say that. I say I am aware that both political

9 parties -- not both but all the political parties,

10 whoever operated in the Turks & Caicos Islands,

11 candidates running for office would accept and receive

12 donations individually for their re-election campaign.

13 Q. Did you regard half a million dollars as being out of

14 the ordinary?

15 A. I would say it is a substantial sum, but I would not say

16 it is out of the ordinary, because I don't know whether

17 or not people receive more than that.

18 Q. Did you discuss it with the Premier?

19 A. Half a million dollars?

20 Q. Yes.

21 A. No, sir.

22 Q. Did you inform the Premier that you had received it?

23 A. Yes, sir.

24 Q. You have no recollection of any comment or observation

25 by him at the time?

1 A. No, sir.

2 Q. You have worked with Dr Kinay as you have already told  
3 us and you would be aware that Dr Kinay and your brother  
4 the Premier are friends?

5 A. I believe he said that in his evidence.

6 Q. He has said that but you would have been aware of that  
7 no doubt from knowing both of them?

8 A. I would say they were friends, yes.

9 MR MILNE: Sir, that is as far as I think I can take that  
10 topic for the moment.

11 SIR ROBIN AULD: There is just one question which I think  
12 I might be allowed to ask which is a variant of one you  
13 just asked, Mr Milne. You said this sort of thing has  
14 always gone on here?

15 A. As far as I am aware.

16 SIR ROBIN AULD: Did it ever reach before that election  
17 the scale of monies that were being handed out for this  
18 purpose?

19 A. Well, I would say the last election campaign was a very  
20 vigorously fought campaign and people felt they needed  
21 to donate to the party of their choice, and I would say  
22 that last campaign might have been richer than the ones  
23 prior to that.

24 SIR ROBIN AULD: I mean the sums involved were very much  
25 greater than they had ever been previously, weren't

1 they, in this last campaign, maybe for the reasons you

2 give.

3 A. Yes.

4 SIR ROBIN AULD: Mr Rigby.

5 Re-examination by MR RIGBY

6 MR RIGBY: Much obliged. At the time you received

7 the donation on -- I think it was 1st September 2007,

8 you were the attorney for the company?

9 1st September 2007.

10 A. No --

11 MS MISSICK: January 9th.

12 MR RIGBY: Sorry, January 9th. That is right. January 9th,

13 I was acting --

14 A. I was assisting -- acting and assisting Dr Kinay with

15 the proposal in his acquisitions --

16 SIR ROBIN AULD: It is quite difficult -- I remember myself

17 when you are close to each other, witness and advocate,

18 you tend to have a quiet little chat. It is not always

19 easy. Keep your eye towards the court reporters

20 principally if you can. It is a bit difficult. Do you

21 mind having that again.

22 A. Yes. My role was to -- legal counsel to Dr Kinay was

23 limited, because he had another firm of attorneys acting

24 for him.

25 SIR ROBIN AULD: You were legal counsel to?

1 A. Only on certain aspects of this agreement because he was  
2 represented by somebody else.

3 MR RIGBY: Is it Star Lions or --

4 SIR ROBIN AULD: Who are we saying you were legal counsel to  
5 on this occasion?

6 A. On this occasion I think I represented Dr Kinay and  
7 the Belonger partner.

8 MR RIGBY: You received the funds, you said, from  
9 a Mr Emery?

10 A. Well, I don't know exactly who it came from, but my  
11 communication in relation to Dr Kinay would need to be  
12 with -- either be with Emery or his attorneys here in  
13 the Islands.

14 Q. His attorneys in the Islands, I think you said --

15 A. Misick & Stanbrook.

16 Q. Were you the corporate office of Turks Limited?

17 A. No, sir.

18 Q. Is it correct that in terms of the timeline, on  
19 9th January 2007, that was during the height of the  
20 campaign?

21 A. Yes. I would say it was a few weeks before the election  
22 was to be held.

23 Q. The election was held, I think, in February?

24 A. Correct.

25 Q. 7th February?

1 A. Yes.

2 Q. When you received the funds, did you make any promises?

3 A. No, sir.

4 Q. Were the funds provided to you for any special

5 advantages?

6 A. No, sir.

7 SIR ROBIN AULD: You mean to him personally?

8 MR RIGBY: To him or any special advantages in respect of

9 any government contract, any government development

10 programmes.

11 A. No, sir, not to my knowledge. At least it was not

12 communicated to me.

13 Q. As far as you are aware, the funds were purely intended

14 as a political donation?

15 A. As far as I am aware.

16 MR RIGBY: No further questions.

17 MR FITZGERALD: Sir, I wonder if I could ask a question?

18 SIR ROBIN AULD: Yes, do, Mr Fitzgerald. You are doing so

19 in the interest of Mr Misick on the other side of this?

20 Cross-examination by MR FITZGERALD

21 MR FITZGERALD: Yes, exactly, the Premier. It is just this:

22 you have referred to the existence of a history of

23 political donations directed to the candidates

24 personally.

25 A. Yes, sir.

1 Q. That would be not to the party but to the candidate.  
2 This is for your re-election campaign, is that right?  
3 A. Yes, sir. I got the impression that people wanted  
4 the candidate to know that: I gave you this money to be  
5 utilised in your re-election.  
6 SIR ROBIN AULD: They wanted the candidate to know who gave  
7 them the money?  
8 A. Of course, I would imagine they would want that, yes.  
9 MR FITZGERALD: In that respect, you obviously are familiar  
10 with the American political system, donations to  
11 senators for their re-election campaign, is that  
12 the sort of history and practice you are referring to,  
13 that donations can be given to an individual, to assist  
14 them in their re-election campaign?  
15 A. That is the history I am aware of in this island. As  
16 far as I am concerned, that has been going on many, many  
17 years.  
18 Q. It has been going on for many, many years, well before  
19 this administration?  
20 A. It has been going on when my father was --  
21 Q. Right. And those donations, it has been suggested to  
22 you that the donations, that is to say half a million,  
23 is much more than had ever been given in the past. Is  
24 that something, allowing for inflation, that you know or  
25 is it something that -- I mean, is it much bigger than

1 anything that has been given in the past?

2 A. I cannot say conclusively, but I would imagine --

3 I would not say that is much bigger than anything that

4 is given in the past.

5 Q. You would not say that?

6 A. I would not say that, no.

7 SIR ROBIN AULD: It is not much bigger than anything you

8 have had in the past. Let me write that down. It would

9 be artificial for me to leave you or anybody else in

10 this room at the time, Mr Fitzgerald, with the notion

11 that this is the only evidence we have had on this sort

12 of issue. We have had a great deal of evidence relating

13 to donations of one sort or another over the last ten or

14 more years. And the relative scales at different times.

15 MR FITZGERALD: It may be that we would ask you at some

16 stage to disclose to us the gist of what is --

17 SIR ROBIN AULD: I can't give you the rates but I am simply

18 telling you we have got a great deal of evidence that

19 this sort of activity has been going on, both sides have

20 been involved, as one might expect.

21 The, whatever you call it, cross-party culture and

22 so on may have evinced gales of laughter but I suspect

23 it was not because it was thought that it was untrue,

24 but because it was expected that maybe different conduct

25 would be given by those in public office at the time.

1 I think that was really the -- there is no real issue in  
2 this Inquiry that there hasn't been full disclosure in  
3 all sorts of ways, and there is a history of corrupt  
4 payments over the years.

5 MR FITZGERALD: I am obliged for that, sir. It may be that  
6 we will make an application that the gist of what has  
7 been received by the Commission on this issue be  
8 disclosed.

9 SIR ROBIN AULD: That might take me some time to write.

10 MR FITZGERALD: I am very grateful to you for indicating  
11 what we have not seen but is obviously -- may form part  
12 of your approach.

13 SIR ROBIN AULD: It is the cameo I gave you last night of  
14 the boy caught in the playground saying: I am not  
15 the only one sir. It is not really an excuse.

16 MR FITZGERALD: Sir, I am not going to address on you that  
17 at this stage but I will have submissions along  
18 the lines that if there is an accepted convention, that  
19 goes to the issue of dishonesty and may go to the  
20 issue -- for example, if we are on this subject, in  
21 America senators get large payments and they get them --  
22 and in the Bahamas I am told -- from companies with  
23 an interest, from the firearms companies, from  
24 tobacco companies, from all that.

25 SIR ROBIN AULD: Are these covert payments or quite open

1 payments?

2 MR FITZGERALD: Both. It is just the political culture.

3 SIR ROBIN AULD: It is the way of the world.

4 MR FITZGERALD: But therefore when one looks at the issue of

5 corruption and dishonesty, they may be relative concepts

6 that depend on appreciating the culture in which one is

7 operating, and my respectful submission at the end may

8 well be that one can't take this out of context, which

9 is why these questions are in our respectful submission

10 relevant.

11 I mean if in the US, this sort of practice goes on

12 the whole time, the firearms lobby giving someone who is

13 going to say: great, let's have more machine guns handed

14 out without licences to under 18 year olds; and giving

15 half a million to a candidate who will fight their

16 corner, then maybe one has to take that into context,

17 that business people who want to see a pro-development

18 PM make donations here. Sir, I am just -- that is

19 the relevance of the issue that I am --

20 SIR ROBIN AULD: I will make it plain to you, you will not

21 have much difficulty in persuading me that there are

22 other people at this and have been for quite a long time

23 in this Territory and no doubt elsewhere.

24 MR FITZGERALD: I am obliged. Can I just ask one further

25 question. Mr Misick, there is just one further question

1 which is this: the understanding of such a donation  
2 would be -- would not be that it was being a donation to  
3 the PNP but a donation to the Premier himself, is that  
4 right?

5 A. That is correct.

6 Q. So there is no question of ripping off the PNP by not  
7 disclosing it to them?

8 A. Well --

9 Q. Putting it bluntly, there is no question of the PNP  
10 ought to have it. It is the -- for the Premier's  
11 re-election.

12 A. Right. My instructions were for Michael -- the Premier  
13 to use in his re-election campaign as he sees fit. That  
14 part wasn't added on but I assume that is what it means.

15 MR FITZGERALD: I am obliged.

16 SIR ROBIN AULD: Mr Smith?

17 MR SMITH: I have nothing.

18 MR WILSON: Nothing.

19 SIR ROBIN AULD: Counsel for the attorney?

20 MS WILLIAMS-GLINTON: We have nothing, sir.

21 SIR ROBIN AULD: Mr Milne.

22 MR MILNE: You readily agreed a moment ago with

23 Mr Fitzgerald, Mr Misick, that it was analogous to the

24 US where donations were given --

25 MR FITZGERALD: He didn't actually.

1 (11.45 am)

2 MR MILNE: I would suggest that in the USA there is  
3 legislation, well-known legislation that requires  
4 the publication of all donations above a certain level,  
5 something like \$100. That is why the press in the USA  
6 are able to debate openly precisely who stands behind  
7 any given senator, congressman, whatever. Since you are  
8 an attorney in these Islands, you would agree there is  
9 no legislation that requires any publication here.

10 A. To answer your question, I didn't agree with him. I  
11 disagreed with him. I said I can only speak to  
12 Turks & Caicos; and secondly, I can confirm that there  
13 is no legislation that speaks to the level of donation,  
14 how the donation has been made and to whom the donation  
15 should be made.

16 Q. One point that I wish to raise is tangential to this,  
17 because it deals with a comment that you made in the  
18 course of your answer. Sir, I have considered this  
19 point and I wish to ask Mr Misick about it. I think if  
20 I were to pursue this line of questioning when  
21 the public return, it would risk making obvious who it  
22 was that we were discussing, which is why I would invite  
23 the Commission to allow me to pursue it now. If at any  
24 stage you feel that you wish me to stop questioning and  
25 continue with the public present, then I will do so but

1 I think for safety --

2 SIR ROBIN AULD: You think there is a risk of undoing what  
3 we have done now as to the at least temporary privacy of  
4 this. Let's carry on. I am sure you would applaud that  
5 wouldn't you, Mr Rigby?

6 MR RIGBY: Absolutely. Thank you very much.

7 MR MILNE: Mr Misick, you were asked by Mr Rigby about  
8 the date of 9th January and whether you represented  
9 Mr Kinay. Your comment as I recorded it, this is  
10 transcript page 44, line 11, was that at that time, that  
11 is 9th January, you represented Dr Kinay and  
12 the Belonger developer. By that answer I take it that  
13 you meant Don Gardiner?

14 A. Yes.

15 Q. When did you begin representing Dr Kinay in relation to  
16 this development?

17 A. I believe I presented a proposal -- the proposal, and  
18 I incorporated companies to Dr Kinay in 2007, I believe.  
19 And shortly after that, my representation was in tandem  
20 with his attorney and at the stage where the development  
21 agreement was being agreed, then Dr Kinay would have  
22 been fully represented by his attorney.

23 Q. We are going to have to be more precise, I am afraid,  
24 sir. The foundation of Caicos Platinum was in October,  
25 I think the 10th. It was certainly in October 2006.

1 The event we are dealing with now is 9th January 2007.

2 So about two months later, give or take a few days?

3 A. Yes, sir.

4 Q. Your evidence to us was that you, by that stage, by

5 January 2007, were already representing Dr Kinay.

6 Perhaps in a limited role but you were representing him,

7 presumably in relation to the proposed Joe Grant's Cay

8 development and in tandem representing the Belonger

9 developer, Don Gardiner?

10 A. Yes.

11 Q. So my question, perhaps more precisely is this: how long

12 before 9th January had you received your initial

13 instructions from Dr Kinay?

14 A. I can't say offhand. I don't remember.

15 Q. How long before had you received your initial

16 instructions from the developer -- the Belonger

17 developer, Don Gardiner?

18 A. I received my initial instructions from -- I think --

19 I will have to go back to the documents to get a gist of

20 when it was, but I would imagine it would have been

21 around the time or just before the declaration was made.

22 SIR ROBIN AULD: That is Don Gardiner we are talking about

23 only now, is it?

24 A. Yes, sir.

25 MR MILNE: The declaration that you are talking about has

1 now been inserted in bundle 7, section 2 and it has  
2 become our new pages 18A and 18B. That document --  
3 forgive me, I think I have made this clear: we do not  
4 necessarily accept the date -- that was the date it was  
5 signed but that document purports to be  
6 16th November 2006. So is it your evidence that you  
7 were representing both Dr Kinay and the Belonger  
8 developer at that stage or just the Belonger developer?  
9 A. In November?  
10 Q. In November.  
11 A. I believe I was only representing the Belonger  
12 developer.  
13 Q. Who was he to be a Belonger developer with on  
14 16th November, if not Dr Kinay?  
15 A. Say again sir?  
16 Q. A Belonger developer is a joint partner?  
17 A. Correct.  
18 Q. Mr Don Gardiner, although we know little of him, does  
19 not appear to have a track record of developing in his  
20 own right. We know from other documents that the sums  
21 being discussed for Joe Grant's Cay ran to the hundreds  
22 of millions of dollars investment. It was a very big  
23 project. So Don Gardiner, who works as a real estate  
24 salesman at Prestigious Properties, unless he is sitting  
25 on hidden riches, is unlikely to have been working on

1 his own. The question, sir, is this: Don Gardiner could  
2 not be doing it alone; who did you think he was doing it  
3 with when you created the document in November 2006?

4 A. I thought he was doing it with Dr Kinay.

5 Q. You thought Dr Kinay was involved as early as 2006?

6 A. I know they were in discussion with Dr Kinay on  
7 various -- on different developments. With  
8 Don Gardiner.

9 SIR ROBIN AULD: Is that an answer to your question?

10 MR MILNE: I don't think it is, sir.

11 SIR ROBIN AULD: I think you were asking, or at least I may  
12 have misunderstood you, was Don Gardiner acting for  
13 himself or somebody else? Is that right?

14 MR MILNE: Well, no. My understanding of Mr Misick's  
15 evidence is that he was acting for Don Gardiner as early  
16 as 16th November 2006, and indeed created this document,  
17 18A and 18B on that date.

18 My question was this: given that Don Gardiner was  
19 unlikely to be acting alone for a development, when  
20 Mr Misick represented him in November 2006, who did he  
21 believe was the other half of the partnership?

22 A. I will have to search my records, but Don Gardiner,  
23 I believe there would have been Dr Kinay or one other  
24 person that I know we had some discussions for  
25 Don Gardiner.

1 Q. You have a file on this, no doubt, with correspondence?

2 A. Yes.

3 Q. Clearly there may be arguments about which, if any,  
4 documents could be disclosed but presumably you would be  
5 able to tell us from that file the first date upon which  
6 you received instructions from Dr Cem Kinay.

7 A. Correct.

8 Q. Could you be able to undertake to consult that file?

9 A. I will.

10 Q. We would need, please, the date of your first  
11 instructions both from Dr Cem Kinay and the date of your  
12 first instructions from Don Gardiner. We remind  
13 ourselves just for the record that Don Gardiner, his  
14 name doesn't actually appear on any company document.  
15 It only appears on the declaration of trust because  
16 Oceanic Development Limited, which is the company that  
17 we are told he stands behind, was created by yourself.  
18 We have those documents at page 218 onwards in your  
19 bundle, behind tab 15. Oceanic Development came into  
20 existence the same day as Caicos Platinum Limited,  
21 10th October 2006.

22 What I am at a loss to understand, sir, and we are  
23 coming back to a point raised earlier -- I will give you  
24 another opportunity to deal with it -- is this: if you  
25 are representing the partner of Dr Cem Kinay,

1 the Belonger partner by 9th January 2007, and that

2 Belonger partner works under the working title,

3 the company Oceanic Development Limited, he would

4 clearly have been doing so in January 2007, yes?

5 A. Yes.

6 Q. Why then would Dr Kinay have written to his friend

7 the Premier in May of 2007 informing the Premier that he

8 was working jointly with his partner company,

9 Caicos Platinum Limited, the company set up for and on

10 behalf of Arturo Malave?

11 MR RIGBY: I am not sure the witness can --

12 SIR ROBIN AULD: Let him say so. If he can, he can. If he

13 can't, he can't.

14 A. I can't speak on that.

15 MR MILNE: Because you would have given Dr Cem Kinay,

16 I suggest, the name of the company that the Belonger

17 developer was going to use, Oceanic Development.

18 Caicos Platinum Limited is your company. Dr Kinay could

19 have no interest in Caicos Platinum unless you put it to

20 him? He would not even know about Caicos Platinum

21 unless you told him about it. I ask again, not because

22 I want to put -- I want you to put yourself in the mind

23 of Dr Kinay, how would he have known about it if you

24 were not advancing it to him?

25 A. It was public knowledge that Arturo was -- had sought

1 through Caicos Platinum to acquire -- it was public  
2 knowledge that Arturo Malave through Caicos Platinum was  
3 interested in acquiring property on Joe Grant's Cay.  
4 The reason I know it was public knowledge was because  
5 there were some talks in the community about relatives  
6 of landholders or possible landholders on  
7 Joe Grant's Cay bringing legal action to stop the deal  
8 from going forward.

9 Q. But by May, apart from the fact you had already written  
10 to the Cabinet saying that it was Oceanic Development,  
11 Arturo Malave was gone and out of it. What did you say  
12 or do with Dr Kinay which would lead him to cite  
13 the name of an empty unpurchased company that just  
14 happened to be Arturo Malave's, unless Dr Kinay was  
15 under the impression that his partner in truth was  
16 Arturo Malave?

17 A. No. I don't think he was under that impression at all.  
18 I mean, I can't speak to him, but -- I can't speak to  
19 the question but I don't think Dr Kinay would imagine  
20 Malave being his partner.

21 MR MILNE: Sir, that is as far as I seek to take that point.  
22 I apologise because of course I have overrun the normal  
23 break.

24 SIR ROBIN AULD: Yes. You will understand, Mr Rigby, and  
25 I don't think this breaches anything that you could

1 possibly complain, the Commission will now have to  
2 consider disclosing this evidence to Dr Kinay,  
3 the person who required the confidence, with a view to  
4 taking possibly evidence from him.

5 MR RIGBY: You will do so at this point or after the --

6 SIR ROBIN AULD: I said we are considering. I don't know  
7 what the logistics of it are any more than that at the  
8 moment.

9 MR RIGBY: Thank you.

10 MS MISSICK: Sir, if the Commission does make that decision,  
11 just going forward for a bit of assistance, the firm  
12 Misick & Stanbrook, we do represent Dr Kinay in  
13 Turks Limited and the attorney responsible is  
14 a gentleman by the name of Owen Foley, if needs be.

15 SIR ROBIN AULD: That is very helpful. Thank you, Ms  
16 Missick. We will rise now and come back at 12.15.

17 (12.00 pm)

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