

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

HELD AT
THE JAMAICA PEGASUS HOTEL
81 KNUTSFORD BOULEVARD, KINGSTON 5

ON
WEDNESDAY MAY 11, 2011

PRESENT WERE:

COMMISSIONERS

Mr. Charles Ross
Mr. Worrick Bogle

COUNSEL FOR THE COMMISSION

Hon. Justice Henderson Downer (Retired)

SECRETARY TO THE COMMISSION

Mr. Fernando DePeralto

ATTORNEY MARSHALING EVIDENCE FOR THE COMMISSION

Miss Judith Clarke- Attorney-at-Law

REPRESENTING JAMAICAN REDEVELOPMENT FOUNDATION

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

REPRESENTING MR PATRICK HYLTON

Mr. Dave Garcia - Attorney-at-Law

REPRESENTING FINSAC LIMITED

Mr. Bryan Moodie - Attorney-at-Law
Ms. Danielle Chai - Attorney-at-Law

REPRESENTING DEBTOR1

Mr. Anthony Levy - Attorney-at-Law

GIVING EVIDENCE

Mr. Patrick Hylton

1 **May 11, 2011**

2 **COMMENCEMENT: 9:05**

3 COMM BOGLE: Ladies and gentlemen, good morning. This
4 Enquiry is now in session. As previously
5 said, the Commission apologises for the
6 quality of the accommodation today but
7 we will do our best to ensure that the
8 quality will improve as we go along but
9 not necessarily for today. Okay
10 Mr. Patrick Hylton is still in the chair
11 of the witness and at this time
12 therefore I am going to ask the
13 Secretary to have him sworn in after
14 which Mr. Levy will continue his
15 cross-examination.

16 (Witness sworn 9:35 a.m.)

17 COMM BOGLE: Thank you very much. Just before you
18 start Mr. Levy, could I have the names
19 of the attorneys present.

20 MR. LEVY: Anthony Levy.

21 COMM BOGLE: Representing?

22 MR. LEVY: Representing, DEBTOR1.

23 COMM BOGLE: Mr. Technician can you put some volume
24 on this microphone for me because we
25 have a problem. Mr. Levy, we can

1 continue with the names of the
2 attorneys.

3 MR. GARCIA: Dave Garcia.

4 COMM BOGLE: Are we better now? Are you hearing me
5 more clearly? So you may continue.

6 MR. GARCIA: Dave Garcia representing Patrick Hylton.

7 MR. MOODIE: Brian Moodie and Miss Danielle Chai,
8 representing FINSAC.

9 MR. GOFFE: Gavin Goffe and joining me shortly is
10 Sandra Minott-Phillips instructed by
11 Myers, Gordon & Fletcher representing
12 Jamaican Redevelopment Foundation.

13 COMM BOGLE: Thank you. Mr. Levy?

14 MR. LEVY: Mr. Hylton, what was the date...

15 AUDIENCE: Representation?

16 MR. LEVY: I have already done so. Anthony Levy,
17 representing DEBTOR1,
18 DEBTOR1COMPANY, DEBTOR5 and
19 DEBTOR2. I have a couple more but
20 perhaps I will give them some time
21 later.

22 MR. GOFFE: I wouldn't mind having the complete list
23 of persons who he is representing.

24 COMM BOGLE: Pardon me?

25 MR. MOODIE: The complete list of the persons he

1 represents, he said he has a couple
2 more.

3 MR. LEVY: Quite inappropriate.

4 COMM BOGLE: Mr. Levy, are you saying that a number
5 of the persons that you are representing
6 is a moving target?

7 MR. LEVY: It might be before the day is out.

8 COMM BOGLE: Are you saying that at 4 o'clock you
9 will be having another set and therefore
10 to continue?

11 MR. LEVY: I may, sir.

12 COMM BOGLE: I suggest that it is important that you
13 have a list of clients so that we can
14 properly record who you will be
15 representing. And we will not accept a
16 situation where your list of clients is
17 a moving target as the day goes on. So
18 you have listed four names -- you have
19 said three names, DEBTOR1,
20 DEBTOR5 and DEBTOR2. So you have
21 given us three persons who you
22 represent. Do you represent any other
23 person?

24 MR. LEVY: DEBROR1COMPANY.

25 COMM BOGLE: DEBROR1COMPANY, right. So you have

1 given us four.

2 MR. LEVY: And before the day is out I may be
3 representing DEBTOR6.

4 COMM BOGLE: We will move on the basis or we will
5 continue on the basis that you are
6 representing these four persons.

7 MR. LEVY: Yes, sir.

8 COMM BOGLE: Okay, thank you. You may now proceed,
9 Mr. Levy.

10 **CROSS-EXAMINATION BY MR. ANTHONY LEVY**

11 MR. LEVY: Mr. Hylton, what is the date on which
12 the sale of NCB shares whether AIC or
13 Mr. Lee Chin or whoever signed the
14 agreement?

15 MR HYLTON: I am not sure of the exact date but I
16 believe it was some time in March of
17 2002.

18 Q: At that time you were a Consultant to
19 FINSAC?

20 A: No, sir, I was still the Managing
21 Director of FINSAC.

22 Q: In March 2002 you were?

23 A: That's correct.

24 Q: From the statement you presented sir, I
25 see where you said: "In June 2002, my

1 *position at Finsac was made redundant,*
2 *on my recommendation as I felt that the*
3 *major objectives had been accomplished.*
4 *However, I was brought back as*
5 *Consultant as the person who was to have*
6 *taken over to manage the residual*
7 *operations took a permanent job*
8 *elsewhere". So you were subsequently*
9 *retained, reemployed as Managing*
10 *Director?*

11 A: Like I said, I remained Managing
12 Director until June 2002 when I was
13 actually supposed to leave, I had all my
14 plans to leave and then I was asked to
15 stay on as the person who was supposed
16 to have continued the management of the
17 institution took another job elsewhere.
18 But I stayed on in a consultancy
19 capacity where I came there, I think I
20 was there like three days a week or
21 something like that, I wasn't there
22 full-time.

23 Q: Within the FINSAC Group, were you the
24 Director of Refin Trust, FINSAC Limited and
 Recon Trust Limited?

1 A: Sorry, I missed the first part of the
2 question.

3 Q: Within the FINSAC Group, were you a
4 director of Refin Trust Limited, FINSAC
5 Limited and Recon Trust Limited?

6 A: I believe I was Director of all three,
7 yes.

8 Q: Were you a Director of any other FINSAC
9 office?

10 A: Yes.

11 Q: Which of them?

12 A: I wouldn't be able to remember all of
13 them but quite a few.

14 Q: Can you remember some of them?

15 A: Sure. I was Director of Eagle Merchant
16 Bank -- let me start with the Eagle
17 Group, Eagle Commercial Bank, Crown
18 Eagle, Eagle Unit Trust, and maybe a few
19 more within the Eagle Group. I was a
20 Director of NCB, I was a Director of, I
21 think, Horizon Merchant Bank, may have
22 been Horizon Life. At some stage I was
23 on the Board of Jamaica Mutual Life --
24 it is a very long list.

25 Q: You are a busy man so you must be very

1 well paid so that you didn't bother to
2 take up a full scholarship to Holland,
3 you didn't have to?

4 A: My decision not to take up the
5 scholarship didn't have anything to do
6 with remuneration Mr. Levy. In fact my
7 remuneration is set out in the Annual
8 Report of FINSAC. And I believe we can

9 pass judgment from that. I certainly
10 think it represented a large sum having
11 regard to the responsibilities.

12 Q: I don't need to know what the sum **is**, I
13 am not going there.

14 A: That's all right.

15 Q: Can you recall who were the directors of
16 Refin Trust Limited and FINSAC Limited
17 at the time?

18 A: It would be easier for me to recall
19 FINSAC because -- and I can give you

20 this in two stages. FINSAC, initially
21 the Chairman was Gladstone Bonnick, and
22 then there was Shirley Tyndall, Derrick
23 Lattibeaudiere, Audrey Anderson.

24 Q: Audrey Robinson?

25 A: No, Anderson, BOJ. Audrey Anderson, she

1 was Senior Deputy Governor at BOJ,
2 myself, there were some other people,
3 Dennis Boothe, that is the original
4 Board and then consequent on my
5 appointment the Board was changed, that
6 was in 1998 and Dr. Rattray, Kenneth
7 Rattray, Solicitor General became the
8 Chairman, Shirley Tyndall was retained
9 on the Board and I know David Coore was
10 on the Board, Kemarine Miller was on the
11 Board, Frank Pringle was on the Board,
12 Wilburn Persaud, Las Perry, myself,
13 Dennis Boothe initially but he later
14 resigned and there is somebody else I am
15 missing, just can't recall who is it.

16 Q: What about the subsidiary companies, they
17 were all Directors of the subsidiary
18 companies?

19 A: You mean Recon and Refin?

20 Q: Yes.

21 A: I don't think all of them were Directors
22 of Recon and Refin but some of them
23 were.

24 Q: You were never a Director of NIBJ?

25 A: Me? No, sir, I think I was the Director

1 at one stage of NDB but I don't recall
2 being a Director of NIBJ.

3 Q: Mr. Hylton, you are familiar with the
4 name of Miss Valda Facey?

5 A: Valda Facey, the name is familiar, yes.

6 Q: She was the Assistant General Manager of
7 NCB in January 1998?

8 A: She may have been in 1998. She certainly
9 was an AGM when I went there in
10 2002/2003.

11 Q: Mr. Hylton, I am going to hand you a
12 copy of a letter dated January 6 1998,
13 it's Exhibit DEBTOR1COMPANY.8/11. This
14 is a letter from Mrs. Valda Facey,
15 Assistant General Manager, National
16 Commercial Bank to DEBTOR1,
17 President of DEBROR1COMPANY

18
19 Spanish Town, St. Catherine.

20 Dear DEBTOR1.

21 **GUARANTEE BY NATIONAL INVESTMENT BANK.**
22 **OF JAMAICA LIMITED (NIBJ) TO EXIM BANK**
23 **FOR US\$500,000-J\$18.6M.**

24 Could read the letter for us?

25 A: It says:

1 Our Letter of December 18, 1997 and
2 subsequent discussions/correspondence
3 ending with yours of January 5, 1998
4 refer.

5 We confirm agreement for remittance of
6 receivables to us by NIBJ on the basis
7 outlined in their letter dated
8 December 15, 1997.

9 We have provided NIBJ with the release
10 of the relevant receivables from our
11 debenture and now await the anticipated
12 inflows in accordance with arrangements.
13 Yours sincerely.

14 Valda Facey.

15 Q: Would you read that last sentence "And
16 now await the *anticipated*...

17 A: Yes, that's correct.

18 Q: Does this sound like a letter from an
19 Assistant General Manager of a bank to a
20 company having major problems with the
21 existing audited loans?

22 A: Well, this couldn't tell me anything
23 about that.

24 Pardon me?

25 A: This doesn't tell me anything about

1 that.

2 Q: I see. Are you familiar with that

3 particular matter, you were Director of

4 the bank, right?

5 A: No, sir I wasn't involved in the day to

6 day running of the bank.

7 Q: But you were the Director of NCB?

8 A: I was. No, certainly, I wasn't a

9 Director of NCB until January 6, 1998

10 incidentally.

11 Q: But you were a director in March?

12 A: I became a Director of NCB sometime in

13 1998 but I don't think it was -- oh yes,

14 I would have been a Director in January

15 but not in March. That's correct. No,

16 let me rephrase -- I am sorry. I am

17 mixing up 2002 and 1998. I would not

18 have been a Director of NCB yet in

19 January of 2008.

20 COMM BOGLE: January 2008?

21 A: Sorry January 1998 which is the date of

22 the letter.

23 Q: But you were a Director of NCB.

24 A: Subsequently.

25 Q: ...in March 1998?

1 A: No, it wasn't March, sir, it was later
2 than March, I think, if my memory serves
3 me well.

4 Q: But you signed the appointment of
5 receiver in March 1998?

6 A: In the capacity of Recon Trust.

7 Q: And simply signed because it was put
8 before you?

9 A: No, I signed it because NCB would have
10 bought a number of receivables -- sorry
11 FINSAC had bought a number of loans
12 through Recon Trust and I was told that
13 it was necessary for Recon Trust to sign
14 the Instrument of Appointment.

15 Q: So you signed the death warrant without
16 having to question it?

17 A: No, I didn't sign a death warrant in the
18 first instance.

19 Q: It certainly was.

20 A: I signed a Notice of Appointment over
21 an indebtedness which was represented to
22 us as being in arrears and in default.

23 Q: Did you ascertain that this company was in
24 arrears or in default or was it NCB that was
 in default?

1 A: I saw nothing to indicate that NCB was
2 in default and it was represented to us
3 and we were satisfied with the
4 representation that DEBROR1COMPANY was
5 in default.

6 Q: You didn't know that NCB was in default
7 that's why you became actively involved
8 in the management FINSAC became
9 actively involved in the management?

10 A: In default of?

11 Q: Of its obligations under the law.

12 A: I don't think I am following the line of
13 argument. I don't know what...

14 Q: Did NCB have funds to lend out in
15 January 1998?

16 A: They may very well have had funds to
17 lend out.

18 Q: Can you give any reasons why NCB was
19 giving out its rights -- releasing
20 receivables under debenture to NIBJ in
21 January 1998?

22 A: Well, I have absolutely no idea why they were
23 doing that, sir.

24 Q: At that time, to your knowledge, was NCB a
25 viable bank?

1 A: To my knowledge in January of 1998? NCB
2 was viable in the sense that we had
3 agreed to support the institution.

4 Q: Was it a solvent bank at the time you
5 agreed to support the institution?

6 A: I would say that the bank was
7 experiencing financial distress maybe
8 yes, perhaps was insolvent but nobody
9 had taken any action to prevent it from
10 continuing as a going concern.

11 Q: Are you aware that it did not have
12 US\$500,000 to lend its customers in
13 January 1988?

14 A: No, I was not so aware, sir.

15 Q: And you willingly signed the appointment
16 of receiver two months later of DEBROR1-
17 COMPANY without any real knowledge as
18 to whether or not this company was in
19 default?

20 A: I have already made the point that it
21 was represented to us that it was in default
22 as with all the loans that we bought from NCB
23 and that is the basis on which we acted.
24 Was it a classified loan?

25 Q:

1 A: I can't recall if they had classified
2 it, Mr. Levy. The fact is that all the
3 loans that were sold to us by NCB would
4 have reached the stage of classification
5 certainly.

6 Q: Of what?

7 A: Of classification. So whether or not
8 they are actually classified on their
9 books is not something I can speak to
10 definitively. Even if that was the case
11 I don't remember, that was thirteen
12 years ago. But what I can say more
13 definitively is that we were buying from
14 NCB classified or non-performing loans.

15 Q: Including loans which were in the wrong
16 political hands, I put that you.

17 A: In the wrong political hands?

18 Q: Yes.

19 A: Don't have a clue, sir, don't have any
20 interest in politics, never will have.

21 Q: You are crossing your fingers when you
22 say that?

23 A: No, I can cross my heart and say it.

24 Q: You have a heart?

25 A: Sorry?

1 Q: You have a heart?

2 A: Absolutely there are a lot of people in
3 Jamaica who think you have no heart. You
4 sold their houses, you threw them out of
5 their businesses...

6 MR. GRACIA: The objection is that it seems to me
7 that Mr. Levy is not limiting himself to
8 asking questions but to making comments
9 and perhaps the comments should be saved
10 for submission and questions for now.

11 MR. LEVY: I am entitled to comment.

12 COMM BOGLE: You are entitled to ask questions but
13 there would be a period when...

14 MR. LEVY: I will do some of that now, sir.

15 COMM BOGLE: Ask questions and soliciting answers.

16 MR. LEVY: what was the situation where what you
17 referred to as the failed financial
18 institutions became failed? I mean,
19 when you took them over, what happened
20 to their customers, how were they dealt
21 with?

22 A: I am not sure I am following the
23 question.

24 Q: FINSAC took over a financial
25 institution?

1 A: Yes.

2 Q: It had customers who were not in default of

3 their loans, how did you deal with those

4 customers?

5 A: Those institutions continued to deal

6 with those customers as far as I am aware

7 in the normal way.

8 Q: But you took them over and what was the

9 normal way?

10 A: I never took over the customers, sir.

11 Q: FINSAC took over the institutions? FINSAC

12 A: took shares in the institutions, FINSAC

13 didn't go in and run the day to day business

14 of the institutions. So you say they were

15 Q: handling the institutions in the normal

16 way?

17 A: That's correct, sir.

18 Q: Including on a banking basis, granting

19 loans?

20 A: In many instances it did.

21 Q: DEBTOR2COMPANY...

22 A: Sorry?

23 Q: ...a company owned and operated by

24 DEBTOR2, you are familiar with that?

25

1 A: Not that I can recall at that time, no.
2 I know DEBTOR2 but I can't say I
3 know DEBTOR2COMPANY or whatever the name is.
4 Q: Maybe I can help you to refresh your
5 memory. This company, the developer had
6 an arrangement with the financial
7 institution which funded them.
8 A: Sorry?
9 Q: They had an arrangement with the
10 financial institutions which funded
11 them?
12 A: Yes, sir.
13 Q: That they were paid as their units were
14 completed and sold.
15 MR. GARCIA: Commissioner, I must object. I am not
16 certain what this is. A question was
17 asked of the witness in relation to his
18 recollection and he answered that he did
19 not recall. My friend, it seems, is now
20 -- it doesn't seem as though my friend
21 is asking questions.
22 MR. LEVY: I am trying to refresh his memory, sir.
23 MR. GARCIA: But he has indicated already that he
24 doesn't recall.
25 MR. LEVY: I am trying to refresh his memory, sir.

1 their business when those banks, as you
2 say, didn't have cash?

3 A: Well, I say the banks ran cash deficits
4 but if the banks had a contractual
5 obligation to make a disbursement then
6 we would expect them to honour the
7 obligation once the customer was
8 performing. Is not anything like they
9 had no cash but what we are saying is
10 that the cash was limited.

11 Q: I put it to you sir, that DEBROR2COMPANY
12 asked its banker to continue
13 facilitating him in carrying on its loan
14 in the original fashion and which you
15 refused, demand was made for payment of
16 money owed.

17 A: I can't comment on that, sir, I am not
18 aware of those individual
19 circumstances.

20 Q: Mr. Chairman, we will get back to this
21 at that later stage. What were the
22 commercial bank rates in 1998, do you
23 know that?

24 A: I don't have a clue, sir.

25 Q: Let me just -- 20%, 25%, 30%, 40%?

- 1 A: A commercial rate, I expect it would
2 vary between the various institutions
3 and quite honestly there is no way I can
4 remember what commercial bank rates were
5 in 1990s.
- 6 Q: The Bank of Jamaica rates?
- 7 A: The Bank of Jamaica rates? Well, I know
8 BOJ had a -- well, those would have
9 varied depending on what type of
10 instrument or what type of facility, but
11 I couldn't tell you what they were
12 specifically in 1998 going back in those
13 times, I don't recall what those were.
- 14 Q: Was there a penal rate on overdraft?
- 15 A: Oh yes there was a penal rate. You mean
16 at BOJ or the commercial bank.
- 17 Q: Both?
- 18 A: Both had penal rates.
- 19 Q: Were those like in the region of one
20 hundred percent?
- 21 A: I think there was a time when they were,
22 yes.
- 23 Q: What caused this Mr. Hylton, since you
24 are an expert economist?
- 25 A: No, sir I am not an economist at all.

1 Q: The way you talk impressive I thought
2 you were?

3 A: I am glad I was impressive, but I am
4 not.

5 Q: You tried to impress all of us?

6 A: Yes?

7 Q: The high interest rates that were
8 imposed on the country by the Ministry
9 of Finance and the Bank of Jamaica, you
10 think that had anything to do with the
11 financial melt-down?

12 A: I think I commented on that yesterday.

13 Q: I just want to hear your comments today.

14 A: I made the point that clearly high
15 interest rates would have exacerbated
16 the situation as it was. And I also made
17 the point that I don't necessarily share
18 the view that it was the primary driver
19 of the crisis and I made the point
20 further that I am of the view that if
21 interest rates go up and you are running
22 a bank you take certain action, plus as
23 we saw, it did not go as high in 2008,
24 it went up and we started to see a cut
25 back on lending, you saw it in response

1 to the market and a lot of different
2 things. I am saying you have to manage
3 the business according to the
4 circumstance and my own view is that to
5 be honest with you, interest rates and
6 so on, you know, wasn't my
7 responsibility, so I focused on the
8 things that were within my remit and my
9 responsibility.

10 Q: Mr. Hylton, I see from your resume that
11 you have been working with institutions,
12 banks, finance institutions, since you
13 left school, apart from going to
14 college?

15 A: Yes.

16 Q: Have you ever run a business on your
17 own?

18 A: No, sir, I have worked primarily with
19 financial institutions. I have done one
20 or two things when I was student by way
21 of business but I work primarily in
22 financial institutions.

23 Q: So you would know what it would be like
24 to run a business and having to meet a
25 payroll every week or every month end?

- 1 A: We have to meet a payroll every week and
2 every month end where I work now and
3 where I was working before.
- 4 Q: But that is governed by other
5 considerations, I am talking about you
6 having to meet a payroll in your own
7 business, have you ever had to borrow
8 money from a bank at thirty percent and
9 then found out that the rate had
10 increased to fifty percent?
- 11 A: No, sir.
- 12 Q: Most loans which are approved based on a
13 business plan which includes interest
14 rates, because it has to deal with the
15 repayment of loans, what would happen to
16 a company which presents a business
17 plan, got a loan at twenty percent and
18 within months, during the course of that
19 loan while they are working on their
20 project the interest rate is increased,
21 that company has to pay the forty,
22 fifty, sixty percent, what would happen?
- 23 A: I suppose it depends on the company.
- 24 Q: I am talking about legitimate
25 businesses?

1 not properly planned, not properly
2 executed and a myriad of other reasons.

3 Q: I am talking about genuine and bona fide
4 companies that borrow money from a bank,
5 present its business plans that included
6 projected interest rates and the rates
7 skyrocketed, what happened to that
8 company?

9 A: One of the things we need to recognize,
10 if I am to take this a little bit
11 further, and I am not an economist so I
12 always am very careful not to elaborate,
13 I don't like to comment on things that I
14 am not an expert in, but I say this that
15 it is not only interest rates that went
16 up high, prices went up high.

17 Q: Why?

18 A: I am coming to that. Prices went high,
19 so I am saying that persons did things
20 to adjust the business model in terms of
21 what was happening in the environment so
22 as to try to mitigate the impact as we
23 would have seen, so in other words, it's
24 not one factor that changed and
25 everything else remained the same so

1 clearly some people might not have been
2 able to make that adjustment and would
3 have been more impacted by high interest
4 rate than others. We saw where inflation
5 was high, we saw where prices kept
6 escalating, some people were using price
7 as a strategy to offset some of the
8 impacts of the interest rates on their
9 own business.

10 Q: Is that surprising?

11 A: It's not simple as saying it's all high
12 interest rate. I don't certainly accept
13 that and I don't think you are going to
14 change my perspective on that today.

15 Q: I don't want to change your perspective,
16 I want to get facts. Mr. Hylton, if I am
17 running a business, I established my
18 cost base including other things, and
19 the cost of money to me to run that
20 business, and those interest rates
21 doubled, does that mean I have to
22 increase my prices?

23 A: It may very well mean that.

24 Q: So, what caused me to increase the
25 prices in those circumstances? High

1 interest rate, not just the price
2 increase?

3 A: Somehow I think we are going in circles,
4 maybe I am not getting the gravamen of
5 the discussion.

6 Q: Not at all.

7 A: I am saying that I am not understanding
8 where this is going.

9 Q: Why were there so many thousands of
10 businesses that failed because of the
11 interest rates or you are saying it
12 wasn't the interest rate why they
13 failed?

14 A: Let me see if I can take a different
15 approach to this.

16 MR. GARCIA: Commissioner, I think the question
17 includes an assumption that hasn't been
18 proved, that is, that there were
19 thousands of businesses that failed
20 because of the high interest rates.

21 COMM. BOGLE: Mr. Levy, you would like to .

22 MR. LEVY: Did you say thousands of businesses
23 failed because of high interest rate?

24 A: I don't know if thousands of businesses
25 failed because of high interest rates.

1 As I made the point, I just want to make
2 another point Mr. Levy; when FINSAC and
3 myself entered this debacle, whatever
4 businesses failed had already failed. So when
5 I am being asked questions about what caused
6 them to fail and so on, I am a little bit weary
7 because I have heard all the arguments on both
8 sides of the debate. I have heard those who
9 said its high interest rates, I heard those
10 who said its not high interest rates; a host
11 of other issues. The only thing I can speak
12 to more definitively is what we saw in terms
13 of some of the practices and so on among the
14 institutions and in some instances among
15 borrowers as far as we were concerned. I am
16 no more of an expert as to what led to the melt
17 down and how it happened and to what extent
18 it was high interest rate and to what extent
19 it was not, and a host of other things. My job
20 was to come into a situation which had gone
21 bad and to try and find ways to restructure
22 institutions, to create a sustainable
23
24
25

1 financial sector with the simple mandate
2 of protecting policy holders, depositors
3 and pensioners, that was it.

4 Q: Customers in the public didn't matter?

5 A: What is that?

6 Q: The customers of the institutions didn't
7 matter?

8 A: It must have mattered, that is the only
9 way you have a sustainable institution
10 and I said that they were on a mission
11 to create a sustainable financial
12 sector.

13 Q: When you took over the financial
14 institution, at what rate you took over
15 the loans of that institution at? When
16 you took over the institution, what
17 rates were you collecting interest?

18 A: You are talking about the non-performing
19 loans that we bought?

20 Q: We will come to that. At what rates of
21 interests were you charging, the
22 institutions were charging their
23 customers?

24 A: I can't say off the top of my head but I
25 expect it would have been market rates

1 prevailing at the time and those are
2 decisions that the management of those
3 institutions would have been making.

4 Q: So they continued to charge high
5 interest rates; although you were
6 collecting money and trying to
7 restructure the thing, you didn't try to
8 restructure the loan with interest rate?

9 A: Which of the loans are you referring to?

10 Q: The ones you took over?

11 A: It depends. We said that under the
12 Jamaican law we applied some rates,
13 between twenty-five and thirty percent
14 on the Jamaican dollar loans and on US
15 dollar side it was between twelve and
16 fifteen percent.

17 Q: I am not talking about when FINSAC had
18 everything under control and ready to
19 transfer. I am talking about when you
20 took over the institution and the
21 interest rates go up to thirty, forty,
22 fifty percent and that is what the
23 institution was requiring the debtors to
24 pay, did you adjust that in your
25 restructuring of the loans, what was

1 Q: I know what the deposit rate is but I am
2 not giving evidence.

3 A: There is a difference between deposit
4 and loans. I can't say what rates were
5 performing or existing in the
6 institutions at that time. That would
7 have been the purview of the management
8 of those institutions but they would
9 have to be competitive with market rates
10 for them to continue. What I can speak
11 definitively to is the rate which we at
12 FINSAC applied to the portfolio.

13 Q: What was that?

14 A: As I said it varied, as I recall between
15 twenty-five and thirty percent on the J
16 dollar side and on the US side it was
17 somewhere between twelve and fifteen
18 percent.

19 Q: From what date did that policy commence?

20 A: I can't tell you the exact date, it's
21 some time after we took over the loans.

22 Q: When you took over the NCB loans, it was
23 twenty five and thirty percent interest
24 rates?

25 A: I am saying that subsequent to taking

1 over the loans we decided that the rates
2 we are going to apply to the loan, J
3 dollar loan was between twenty-five and
4 thirty percent and US, between twelve
5 and fifteen.

6 Q: Can you be more specific, at what date?

7 A: I don't know, I can't tell you that
8 date. Those loans were taken over
9 thirteen years ago, over fourteen by the
10 way.

11 Q: The statement by Omar Davies dealing
12 with high operating cost:

13 **The troubled institutions were**
14 **inefficient, requiring large spreads**
15 **between lending and deposit rates.**
16 **Jamaican spreads rose from 1992-1994**
17 **levels of 14%-15% to 21%-22% in 1995-97**
18 **compared to spreads of 7%-8% in**
19 **Barbados, Guyana, and Trinidad and**
20 **Tobago during 1992-1997.**

21 **Owners and operators of local banks have maintained that larger**
22 **spreads are needed to compensate to higher**
23 **reserve requirements which averaged 48% of**
24 **deposit liabilities compared to half**

1 this percentage in Guyana and Trinidad
2 and 39% in Barbados during 1993-1997.
3 The larger spreads pushed up interest
4 rate in some instances, no doubt
5 compounded customers' indebtedness and
6 inability to pay, thereby contributing
7 to bad debts. The high spreads continue
8 with a recent World Bank study of 132
9 countries ranking Jamaica's interest
10 rate at 19.1% in 1998 as the seventh
11 highest in the world.

12 That is from your world class Minister
13 of Finance, Dr. Omar Davies.

14 COMM. BOGLE: Is there a question, Mr. Levy.

15 MR. LEVY: I am coming to that, I had to read the
16 statement.

17 COMM. BOGLE: Now you have done, so move onto the
18 question.

19 Q: We move on. The high interest rates
20 charged, one of the things contributed
21 to it was the requirements which
22 averaged about 48% of deposit
23 liabilities to be issued to the Bank of
24 Jamaica?

25 A: The reserves that are placed on

1 unremunerated funds are going to have an
2 impact on the spread that was required,
3 that was well established.

4 Q: Explain to me what you mean by that?

5 A: I am referring to the requirements by
6 Central Bank that financial
7 institutions, particularly banks, retain
8 a percentage of the deposit that they
9 take with the Central Bank on a basis on
10 which they are not paid any interest.

11 Q: Is that some form of theft?

12 A: Not at all, not at all, sir, it's a
13 form, as I understand, of monetary
14 policy.

15 Q: The institution, the financial
16 institution is required to pay money to
17 its depositors in order to get the
18 deposits, in order to function as an
19 institution.

20 A: Yes.

21 Q: And the Government of Jamaica through
22 the Bank of Jamaica require the
23 institution which is paying interest on
24 it to pay to them, with a gun at their
25 heads, and not earning interest, that's

1 not theft?

2 A: I have never seen a gun at that time at
3 anybody's head, that would be a
4 prerequisite for the placement of those
5 reserves.

6 Q: Put it another way, a gun in your belly,
7 you pay it over to us and we don't pay
8 interest or else you are no longer in
9 business?

10 COMM. BOGLE: Mr. Levy I don't see that that question
11 is getting us anywhere regarding
12 institutions. Mr. Hylton said this is a
13 Bank of Jamaica or Central Bank
14 decision. I can't remember Mr. Hylton
15 saying that he worked or had any special
16 dealing with the Central Bank or the
17 setting of interest rates. If you are
18 asking questions relative to that, fine
19 but to continue on this line I don't
20 think we are reaching anywhere.

21 Q: But he had special relationship with the
22 Governor of the Central Bank. You said in
23 your statement Mr. Hylton, the substance of
24 our finding was that there were too many
-- institutions operating in

1 the sector?

2 A: Yes.

3 Q: Is that why you decided to take some of
4 them out to reduce the number, selected
5 institutions?

6 A: That is why we decided we needed to
7 rationalize and consolidate.

8 Q: You said there was an over investment in
9 real estate and under performance and
10 severe liquidity problem. Just before
11 this time real estate was booming,
12 wasn't it?

13 A: Earlier in the 1990's, yes.

14 Q: Do you have any idea what stopped this?

15 A: I am not an expert in real estate, I
16 know there was a boom and then there was
17 a bust and I know if you look on
18 history, not peculiar to Jamaica,
19 globally we see where a number of
20 countries have gone through this boom
21 and bust, sir, many repeatedly in terms
22 of the real estate.

23 Q: In Jamaica, do you think high interest
24 rates, exorbitantly high interest rates had
-- anything to do with the slow down in

1 the value of real estate?

2 A: It could very well have had something to
3 do with it.

4 Q: Would that have been a factor which
5 contributed to the fall-out of the
6 insurance companies and other investing
7 in real estates, in hotels, in building,
8 employing people to construct building,
9 the high interest rates didn't have
10 anything to do with the fall-out?

11 A: Would the high interest rates cause them
12 to do what?

13 Q: No, their investments to become non-
14 performing and lost value?

15 A: You are asking me to speculate there
16 Mr. Levy. I mean at the end of the day,
17 that among other things would have
18 contributed to those investments.

19 Q: Such as?

20 A: Becoming distressed. I give the point
21 for example, many of the institutional
22 arrangements, somehow the contractual
23 arrangement was not appropriate, I have
24 seen contracts with some of the
25 institutions that own some of these

1 properties under which they never earned
2 anything for many years and they were funding
3 them with depositors' money on which they
4 were paying interest. I was seeing where
5 institutions bought large track of lands for
6 development and ended up in legal squalor but
7 the land earned nothing but the funding which
bought the

9 land accrued interest. I have seen
10 where institutions went into all kinds
11 of other things unrelated to financial
12 sector business, there was no proper
13 management arrangement and so on which
14 would have ensured that the thing was
15 properly managed and governed and they
16 ran into difficulty. So I have seen a
17 whole host of different things.

18 Q: Was the high interest rate one of the
19 factors?

20 A: I think I have said that clearly that
21 high interest rate may very well have
22 been a factor in the whole scheme of
23 thing.

24 Q: Why was NCB treated more favorably than
25 other financial institutions?

1 head offices operating, several
2 different computer systems; I made the
3 point there were too many branches,
4 overlapping of branches. Union Bank
5 consolidated from forty odd branches to
6 a little over twenty in that whole
7 merger exercise. What we were able to
8 do was to identify spots across the
9 country where we would have three or
10 four different banks operating in the
11 different locations, and the mandate was
12 to consolidate the smaller ones to make
13 it sustainable, you could make it in one
14 to make it a better business proposal
15 and that is what we did.

16 Q: Was NCB too big to fail?

17 A: The notion of too big to fail is not a
18 call that I think would properly belong
19 to the Managing Director of FINSAC. As
20 I said NCB could have been perhaps split
21 or you know restructured into different
22 ways, different things but the analysis
23 supporting NCB's rehabilitation as a
24 growing concern and I did make the point
25 that when you look at NCB in terms of

1 many instances they were not able to pay
2 their bills as and when they became due.
3 In other words, they had liquidity
4 challenges associated with the quality
5 of their assets and they required
6 liquidity support.

7 Q: Doesn't insolvent mean you don't have
8 the cash to deal with your day-to-day
9 bills, you could have billion of dollars
10 in assets and a million dollar in
11 liabilities and not be able to meet it
12 and you are still insolvent?

13 A: That is why I mentioned two elements of
14 my definition. I spoke about the
15 deposit on the asset side and the
16 inability to meet their bills if and
17 when they became due.

18 Q: Am I to understand that a bank which may
19 have been solvent two or three years ago
20 when real estate was booming could
21 become insolvent if the real estate
22 price went down, all other things equal,
23 if interest rates did not climb?

24 A: That is quite possible.

25 Q: What made the difference?

1 to fail?

2 A: Yes, definitely. And that is not
3 peculiar to NCB.

4 Q: What you mean?

5 A: Meaning that the whole concept of
6 institutions that are so large that
7 their demise would have very significant
8 impact on the economy is not peculiar to
9 NCB. Even in Jamaica I am suggesting
10 that there are institutions in Jamaica
11 that are large enough other than NCB
12 such that if they were to fail it would
13 have significant implications for the
14 Jamaican economy. We saw the same thing
15 in the global context. For example, US
16 Government would have rescued AIG. We
17 don't even have to go that far, we can
18 look at what has happened in CLICO in
19 the region and the impact that it has
20 had on number of countries. Even
21 countries outside of its place of
22 parental domicile which is Trinidad and
23 Tobago. So it is a real issue, it is a
24 real issue.

25 Q: One of the things you did was to

1 transfer the deposits of some of the
2 other institutions to NCB?
3 A: Yes.
4 Q: And you paid them up?
5 A: FINSAC paid them.
6 Q: With what?
7 A: Sorry sir.
8 Q: With what?
9 A: With FINSAC paper.
10 Q: Tell me about FINSAC paper, is it a
11 legal fiction?
12 A: I responded to the question of fiction
13 already, but what I would say FINSAC's
14 paper was real. What it contained was an
15 undertaking on the part of the
16 Government to pay at a future time the
17 principal and interest that have accrued on
18 those particular notes.
19 Q: And these notes, these papers were signed by
20 the Government or on behalf of the
21 Government?
22 A: That is correct, sir.
23 Q: By whom?
24 A: The Financial Secretary.
25 Q: That's the lady who can never remember

1 anything.

2 Who was the major shareholder in Mutual

3 Life NCB?

4 A: Mutual Life?

5 Q: And NCB.

6 A: Jamaica Mutual Life was mutual so there

7 was no shareholder, it was a society and

8 so it would not have had shareholders.

9 The major shareholder in NCB at the time

10 FINSAC got involved would have been

11 Jamaica Mutual Life.

12 Q: Jamaica Mutual Life?

13 A: Yes. If my memory serves me well they

14 owned about 45 percent of NCB.

15 Q: And who was behind Jamaica Mutual Life?

16 A: Who was behind it?

17 Q: Yes.

18 A: I would expect the members of Jamaica

19 Mutual Life which would have been like

20 the policy holders, you know how Mutual

21 Life was constructed. Indeed, you would

22 probably know that more than me, sir.

23 Q: The name Oliver Clarke doesn't mean

24 anything in this regard?

25 A: Sorry?

1 Q: In this context the name Oliver Clarke
2 doesn't mean anything?

3 A: Which one of the context?

4 Q: The context of who benefited as a
5 shareholder in Mutual Life?

6 A: Mutual Life?

7 Q: In NCB sale and take-over?

8 A: I don't know about Mr. Clarke benefiting
9 personally.

10 Q: When were the shares of NCB purchased
11 from Mutual Life?

12 A: The shares of NCB would have been
13 purchased from Mutual Life at the time
14 of the initial intervention in Mutual
15 Life which may have been - and don't
16 hold me to this date - but it may have
17 been late 1997 or early 1998, I am not
18 sure, somewhere around that time, the
19 middle towards the latter part of 1997
20 and early 1998 perhaps. I am not quite
21 sure.

22 Q: Non-performing loans, that was
23 mentioned, what Government loans would
24 be non-performing?

25 A: I never mentioned non-performing loans.

1 Q: These FINSAC notes, were they not taken
2 over by Government printing money when
3 they had nothing to back it?

4 A: The concept of printing money is not
5 something that I am an expert on, sir, I
6 couldn't comment on that at all. I have
7 heard various assertions in that regard,
8 I have heard various rebuttals in that
9 regard. I am no expert on that
10 particular matter.

11 Q: These bonds, which you gave to these
12 banks for their loans, what were they
13 classified as by the banks including
14 NCB?

15 A: They would have been classified as - I
16 would expect bonds are investment
17 instruments.

18 Q: And that would go towards your reserves?

19 A: When you say go towards your reserves, I
20 was making the point yesterday that some
21 of the bonds were structured in such a
22 way that they could be classified as
23 short term bonds.

24 COMM. BOGLE: Current assets?

25 A: Yes. There is another term that we use

1 in the banking sector that escapes me
2 right now.

3 MR. DEPERALTO: Liquid assets.

4 A: Liquid assets, that is correct. So that
5 we would look at what are some of the
6 requirements and so on and structure
7 accordingly.

8 MR. LEVY: So FINSAC bonds were liquid, were they
9 payable on demand?

10 A: They could be redeemed and were redeemed
11 as liquidity needs of the institutions
12 dictated in many instances.

13 Q: What about the other instances?

14 A: Sorry?

15 Q: You said in many instances they were
16 redeemed, what about the other
17 instances?

18 A: No, I am saying as their liquidity needs
19 dictated. I think I have made the point
20 Mr. Levy, that we were managing a
21 challenging liquidity situation; it
22 behoves what it was, it was real and we
23 had to manage it in a particular way and
24 it was very challenging but we were able
25 to do it. I mean, history will

1 demonstrate that we passed through that
2 period and the institutions dealt with
3 their liquidity needs and are operating
4 as sound financial institutions today.

5 Q: You said Mr. Hylton, FINSAC was
6 significant shareholders in certain
7 companies. The only means of generating
8 cash to redeem FINSAC was to pay some
9 interest with cash in the short term so
10 that these institutions will continue as
11 going concerns were, to realize on the
12 same under performing assets that were
13 required by it. So FINSAC had an
14 objective, a need to get cash?

15 A: Yes, sir.

16 Q: At any cost?

17 A: No, not at any cost. And I made the
18 point Mr. Levy, that clearly a
19 combination of things were done and I
20 can tell you for example, there were
21 instances where if you look at the flows
22 from the realization of assets they may
23 not have been sufficient to meet the
24 liquidity needs of a particular
25 institution and that's why we set up a

1 whole liquidity management committee and
2 process involving the Ministry of
3 Finance, the Accountant General and the
4 Bank of Jamaica. Because I can tell you
5 there were times when what we would do
6 is to ask the Accountant General, for
7 example, to place some funds in a
8 particular institution for a particular
9 time to give us more time to try and
10 work our way through some of the
11 challenges. So there are different means
12 or maybe BOJ could do some sterilization
13 activities, whatever it was to try and
14 assist us in the process. So we looked
15 at the challenges, we tried to estimate
16 what the needs were, we looked at what
17 the position was and we developed
18 strategies to deal with it.

19 Q: Which included selling securities at any
20 price?

21 A: I don't know of any securities that were
22 sold at any price, to use your word,
23 sir.

24 Q: I am sorry, Mr. Hylton.

25 A: That's all right.

- 1 Q: **FINSAC also needed to move quickly in**
2 **the asset realization and disposition**
3 **process given the fact that FINSAC notes**
4 **accrued interest at market rates which**
5 **at the point of intervention, were**
6 **somewhere in the region of 30%.**
- 7 So that was priority, to get cash, had
8 to move quickly.
- 9 A: Cash is always important.
- 10 Q: Regardless of the consequence,
11 regardless of whose assets were sold at
12 under value in the worse market?
- 13 A: No, sir.
- 14 Q: Or you were very kind?
- 15 A: To avoid the consequences.
- 16 Q: What?
- 17 A: To avoid the consequences.
- 18 Q: For FINSAC to avoid the consequences...
- 19 A: ...of the failure of financial
20 institutions and the impact that would
21 have on the economy generally.
- 22 Q: No, the financial institutions had
23 already failed.
- 24 A: Yes, but...
- 25 Q: The issue of FINSAC notes to other

1 institutions had stayed off?

2 A: But I am saying that doesn't mean that
3 they couldn't fail again if they were
4 not properly managed and properly
5 resourced. That's the point I am making.

6 Q: So you had to give them cash instead of
7 FINSAC notes?

8 A: I made the point that banks operate on
9 the basis of cash reserves, that we have
10 to understand, the liquidity
11 requirements build a model to manage
12 those requirements and to resource them
13 on a continuous basis.

14 Q: I put it to you Mr. Hylton, that there
15 was a severe conflict between the needs,
16 demands and actions of FINSAC in
17 disposing of the securities which it
18 held from the debtors of Jamaica, the
19 people of Jamaica at any price
20 regardless of the consequences to the
21 debtor, apparently there was a conflict
22 of interest between the two.

23 A: And I totally disagree.

24 Q: So when you said then FINSAC needed to
25 move quickly in asset realization and

1 disposition process given the fact that
2 FINSAC notes accrued interest, that's
3 not so?

4 A: It is so. But I am saying I don't think
5 there is any inherent conflict in that.
6 Because the fact that you need to move
7 quickly you said we have to go at any
8 cost.

9 Q: Did you?

10 A: In the asset realization disposition
11 process, and I am saying for example,
12 that we had to take into account
13 persons' contractual rights, we had to
14 take into account the rules and
15 regulations governing how you dispose of
16 property and so on, we had to take into
17 account whether or not the deals that
18 were related represented good and
19 reasonable deals and all of those
20 factors were taken into account; so it
21 was not at any cost.

22 Q: But the interests of the people who
23 owned securities were given to the banks
24 for sacrifice.

25 A: And I would say no, I would deny that

1 assertion.

2 Q: The rates are there. The facts speak for
3 themselves. Mr. Hylton, we have heard
4 horror stories at this Commission of
5 people who had borrowed Seven Million
6 and ended up owing a Hundred Million,
7 can you explain that?

8 A: You mean within the original financial
9 institutions -- you have a specific
10 case?

11 Q: I don't remember the name of the
12 specific case, but the Commission has
13 it.

14 A: I can't speak to individual loans, I
15 never worked on individual loans, most
16 of those loans as I said were inherited
17 from the institutions. In many
18 instances I have heard people making an
19 assertion saying that this was the case;
20 I have heard others who went through the
21 files and worked on them saying it was
22 not the case, so somewhere between the
23 two I suspect the truth lies.

24 Q: Mr. Hylton, when FINSAC took over...

25 A: Can I just make one more comment on

1 that, sir?

2 Q: Yes.

3 A: To my mind all I am interested in myself
4 you know, Mr. Levy, is the truth. I mean
5 whether or not it came as a result of
6 the institutions being unreasonable and
7 unfair in the charging or practices and
8 so on, it does not affect my
9 stewardship. Because the fact is that we
10 took it from them and then we went back
11 through those loans to try and reach a
12 reasonable compromise in all the
13 circumstances, taking into account rates
14 that had to be accrued, taking into
15 account the circumstances which led to
16 the debt being where it was, taking into
17 account what the borrower could
18 reasonably pay, having regard to what
19 information we had and given that the
20 borrower had the opportunity to come in
21 and have dialogue with our officers so
22 as to try and reach a reasonable
23 compromise. I don't know what else we
24 could have done,

25 Q: Reasonable in whose context?

1 in...

2 Q: Mr. Hylton, your generality is getting
3 me upset, 'they may have this', 'they
4 may have that', I want to know which
5 ones?

6 A: I can't tell you that, Mr. Levy.

7 Q: You were the Managing Director of FINSAC
8 at the opportune time.

9 A: But I never physically went and took
10 control of any loans, we had staff who
11 did that. That was 14/15 years ago. And
12 I am making the simple point that from
13 my recollection we got some spread
14 sheets and so on, we would have gotten
15 some other documentation to support the
16 loan balances of...

17 Q: Spread sheets showing what?

18 A: They would have shown names, balances
19 and so on, account numbers and that kind
20 of things.

21 Q: And you accepted these spread sheets
22 from these institutions which you said
23 were mismanaged, incompetent, not
24 properly run, you accepted them as a
25 fact?

1 to support the position that was
2 presented to us.

3 Q: I am talking about the institutions that
4 failed where you couldn't go back to
5 them because they were locked up.

6 A: No, sir. Even if institutions failed we
7 still had access to the records because
8 there would have been a skeletal staff
9 there. Institutions do not fail and
10 disappear, close tomorrow and everything
11 disappears, there are people there who
12 are still working until you wind down
13 the operations.

14 Q: And so with that kind of information,
15 did FINSAC sue anyone to collect money?

16 A: Where circumstances dictate, yes, sir,
17 we did sue people.

18 Q: And it was left to them to disprove it?

19 A: Yes. And some people sued FINSAC as
20 well.

21 Q: Could you prove these debts with that
22 information?

23 A: Yes, sir. I am of the view that we could and
24 we did in many instances.

25 COMM. BOGLE: Just a minute, can we have our first

break now, our usual ten minutes break
at this time.

2

3

B R E A K

4

ON RESUMPTION

5

Ladies and gentlemen, this Enquiry is

6

now reconvened. Mr. Hylton, the usual

7

reminder that you are still under oath.

8

A: Yes, sir.

9

COMM. BOGLE: Mr. Levy, over to you.

10 MR. LEVY:

Mr. Hylton, I am going to ask you some

11

specifics, Mr. Levy, because you seem to

12

talking general and we are not getting

13

the information that we are supposed to

14

be getting. When you took over Century

15

National Bank and locked it down, did

16

you take over their electronic

17

accounting systems?

18

A: I never took over Century National Bank,

19

sir.

20

Q: What you did, just locked it down?

21

A: Neither. I think I made the point that

22

Century National Bank was placed under

23

temporary management by the Minister and the

24

temporary Manager was Mr. Richard Downer. How

25

I became involved was at the

1 point where FIS, consistent with the
2 scheme of arrangements, assumed certain
3 responsibilities in relation to Century
4 National.

5 Q: When you assumed that responsibility
6 what do you mean by that?

7 A: Meaning essentially that - if you want
8 in practical terms, we essentially took
9 over the operations, closed as it was at
10 the time, because it had already been
11 closed, Century.

12 Q: You took over the operations of the
13 bank?

14 A: (No answer)

15 Q: Did you take over their electronic
16 accounting systems?

17 A: Their electronic accounting systems
18 would have been there.

19 Q: I don't want to hear 'would have', I
20 want to know, did you or didn't you,
21 FINSAC did or FINSAC did not?

22 A: FIS would have taken control of the
23 assets of Century National Bank
24 including the electronic systems, yes.

25 Q: When you say would have taken control,

1 do you mean they took control of?

2 A: Yes.

3 Q: Then say so, Mr. Hylton. Let's not play
4 around with words. We want specifics
5 now, we are not generalizing anymore. I
6 am getting upset with this, I am tired
7 of it.

8 COMM. BOGLE: Mr. Levy, I can see that the heat is
9 getting a bit to you, but try and calm
10 yourself.

11 MR. LEVY: But this general, general, avoid giving
12 specific answers is getting to me; we
13 want specifics.

14 COMM. BOGLE: You are getting a little hot under the
15 collar.

16 MR. LEVY: I will pull my tie, Mr. Chairman.
17 So you say that FIS took over the
18 electronic accounting system of Century
19 National Bank?

20 A: Yes.

21 Q: Good. And what happened to that system?

22 A: You mean today?

23 Q: Yes.

24 A: I am not sure, sir.

25 Q: Up to when you left?

1 A: Up to when I left, well I supposed it
2 would have been somewhere there, I don't
3 know. I can't tell you where it was
4 when I left. There is a simple reason
5 for that you know, Mr. Levy, because
6 deposit accounts of Century National
7 were transferred. The loan accounts were
8 also transferred.

9 Q: Yes, would it surprise you if Mr. Errol
10 Campbell had given evidence that the
11 system no longer worked?

12 A: I will be indifferent to that evidence
13 because I don't know whether or not it
14 worked, I couldn't speak to that right
15 now.

16 Q: If it didn't work - if Mr. Campbell was
17 giving truthful evidence, if he were
18 giving truthful evidence and it didn't
19 work, how could you prove an account in
20 court?

21 A: The normal way, you go and you take the
22 information that you have, you apply the
23 rate of interest, you apply whatever
24 repayments have been made and you
25 determine what is due.

1 Q: You determine what's new at the bottom
2 of the page? Have you personally, as a
3 member of the Chartered Institute of
4 Bankers, had to prove an account in
5 court?

6 A: No, sir, I have never had to prove any
7 account in court, but the institution
8 which I had the privilege to run had to
9 prove accounts in court.

10 Q: And how did they do that, Mr. Hylton?

11 A: They worked just as I described. They
12 would take the information that we had
13 in terms of the balances, the
14 application of the interest that was
15 contractually agreed and due on it and
16 apply payments and so on to make a
17 determination.

18 Q: That is not how it is done Mr. Hylton.

19 A: Well you....

20 Q: You just take the balance that is handed
21 to you, because Mr. Hylton, isn't it a
22 fact that in FINSAC Standard Policies
23 and Performing Loans Principles, it is
24 stated **the troubled bank showed a high**
25 **incident of frauds and irregularities.**

1 attempt to verify what was there and
2 used that as a basis to determine what
3 was owed.

4 Q: How do you prove an account? Obviously
5 you don't know.

6 A: That is our assertion and if the client
7 had something to the contrary, then we
8 take it into account.

9 Q: Let me help you along, to prove an
10 account you have to prove that the loan
11 was made, evidence could be through
12 Promissory notes or the cheques making
13 the payment or if it is an overdraft
14 series, but you have to prove each
15 payment and each repayment established.
16 You can't just put up a schedule and say
17 this is a statement of account.

18 MR. GARCIA: I am sorry, I haven't heard a question.

19 MR. LEVY: It is obvious Mr. Chairman, Mr. Hylton
20 hasn't got a clue how you prove an
21 account. If FINSAC say the money is
22 owing, you owe it, you go and pay it or
23 I shoot you.

24 COMM. BOGLE: Mr. Levy, can we get back to questions
25 and answers please.

1 MR. LEVY: Let's deal with the other banks. Did
2 you take over any of the electronic
3 accounting systems of any of the other
4 banks or financial institutions?

5 A: We may have in relation to some of the
6 small merchant banks; I can't tell you
7 definitively whether or not we did, sir.

8 Q: "May have" doesn't mean anything, Mr.
9 Hylton, did you or did you not?

10 A: I am saying I can't tell you, I don't
11 know.

12 Q: 'May have' that's not evidence. You took
13 over statements from these institutions
14 as to what the debts were?

15 A: Statements would have been there on the
16 files.

17 Q: And what would these statements prove?

18 A: Sorry?

19 Q: What would these statements prove?

20 A: That the statements would be some
21 evidence as to the existence and how the
22 debt had been handled over a period of
23 time.

24 Q: Even though many of the Banks had high
25 incidents of fraud and irregularities?

1 recall. I am making a statement.

2 MR. GARCIA: Perhaps the records could reflect that I
3 ignore my friend's statement.

4 MR. HYLTON: It is just that I have been looking at
5 you, Mr. Levy, so sometimes I want to
6 ease my eyes.

7 (Laughter)

8 MR. LEVY: Were there instances that FINSAC
9 discovered, and when I say FINSAC, I
10 mean all their shareholders that
11 customers had paid off their loans but
12 the bank still had them on the books?

13 A: I think there may have been instances.

14 Q: Were there instances to your knowledge?

15 A: I am going based on my recollection, Mr.
16 Levy, that's why I said I think. I
17 think Mrs. Robinson or Miss Davis may
18 have mentioned to me that they have
19 found instances where there was evidence
20 to show that the debt may have been in
21 fact settled. But I cannot speak
22 definitively to a specific account, and
23 that is why I used the term 'may have'.

24 Q: This specific questions is without 'may
25 have' or 'maybe', it is either yes or

1 no.

2 A: It is not every question I can answer
3 yes or no.

4 Q: I appreciate that?

5 A: Not everyone.

6 Q: I appreciate that. But if I were to ask
7 you if you still beat your wife you
8 could not answer yes or no.

9 Laughter

10 A: That I could definitively answer no.

11 Q: But that means that you used to beat her
12 but that you don't beat her anymore?

13 A: If I beat my wife sir? Have you ever
14 seen my wife, sir?

15 Q: That one should be answered, no, I have
16 never, ever beat her.

17 A: Have you seen her? I am more likely to
18 be the one to get beaten.

19 Q: So that's why you stopped beating her.

20 A: That's why I never started.

21 Q: Anyway, just to lighten the temperature.

22 A: No problem.

23 Q: Are you aware of any situation where
24 loans were repaid and security

instruments were being held by the

1 financial institutions when you took
2 over the loans?

3 A: I am sure there could have been such
4 situation.

5 Q: What happened with those creditors?

6 A: I couldn't tell you, I expect that the
7 securities would have been released in
8 due course.

9 Q: In due course?

10 A: Yes. It is not unusual for people to
11 settle debts as I have seen and then
12 subsequently come in for the release of
13 the security.

14 Q: But some of those loans may have been
15 transferred to JRF?

16 A: It is quite possible, I don't know.

17 Q: How many accounts, debtors, did you take
18 over, total number I am not talking,
19 just a few hundred thousand or so, did
20 you take over from various institutions?

21 A: I can't tell you a specific number, but
22 I know it is definitely north of
23 20,000.

24 Q: 20,000?

25 A: Yes.

1 Q: That's a lot.

2 A: Yes, it is still a lot. And that's why
3 when you asked me about specific
4 accounts and so I couldn't say because I
5 didn't manage any of them.

6 Q: Well, I would imagine that some of them
7 came to your personal attention at some
8 point in time,

9 A: Well, people may have appealed to me and
10 so on, but as you would have seen
11 yesterday, my whole style and activity I
12 believe it is appropriate to leave it to
13 the people who had responsibility to
14 manage it to make a case. If there is
15 an assertion, we deal with that and then
16 they come forward and make their
17 recommendations and presentations.

18 Q: Horizon Merchant Bank, did you take over
19 its electronic accounting system?

20 A: We would have initially.

21 Q: Pardon me?

22 A: We would have taken it over initially.

23 Q: No, that is not the answer to my
24 question. Did you?

25 A: Yes, initially.

1 Q: And what happened to it?

2 A: I don't recall that now, sir. I mean, I
3 suppose in the scheme of the things the
4 loans would have been transferred, the
5 deposits would have been transferred,
6 just like the others. Many merchant
7 banks were taken over just like Horizon.

8 Q: We will come back to that.

9 **Towards the end of early 1998, whatever**
10 **that means, Finsac went about setting up**
11 **a Non-Performing Loan Unit, properly**
12 **structured and staffed to undertake**
13 **these activities."**

14 Where you got these members of staff?

15 A: From various institutions, some came
16 from Century National, some had been
17 with Blaise, there were persons who came
18 from the Bank of Nova Scotia, there were
19 persons who were previously, such as
20 Mr. Campbell, who were previously with
21 NCB, various institutions. I think
22 there may have been persons who came
23 from even Horizon, if my memory serves
24 me well; may have been, I can't say
25 definitively.

1 Q: Some of them have been trained by these
2 fraudulent financial institutions.

3 COMM. BOGLE: Mr. Levy, that document that you have,
4 can you tell us what document that is?

5 MR. LEVY: It is an extract from FINSAC Standard
6 Policies and Non-Performing Loan
7 workouts Guiding Principles.

8 COMM. BOGLE: Is it in the exhibits?

9 MR. LEVY: It doesn't matter, sir.

10 COMM. BOGLE: I am asking you a question, sir.

11 MR. LEVY: I don't know, sir.

12 COMM. BOGLE: I am asking you a question.

13 MR. LEVY: Mr. DePeralto can tell us whether it is.

14 COMM. BOGLE: I am asking you, sir.

15 MR. LEVY: I do not know.

16 COMM. BOGLE: Please answer my question when I ask
17 you, sir.

18 A: I do not know, sir.

19 COMM. BOGLE: If you do not know then say you don't
20 know, but don't go into a long answer.
21 You may continue.

22 MR. LEVY: Can I ask the question of Mr. DePeralto?

23 COMM. BOGLE: No, sir.

24 MR. LEVY: Mr. Hylton, you said that **Finsac engaged**
25 **in a process of valuing each loan, using**

1 When one looks at the paragraph and the
2 evidence that Mr. Hylton gave I believe
3 that comment was made in a completely
4 different context.

5 MR. LEVY: A statement is a statement of its own
6 view, and rewarding anyone who created a
7 problem.

8 COMM. BOGLE: Is that the statement?

9 MR. LEVY: The statement was, I have a problem in
10 rewarding someone in respect of a
11 problem they created. If I borrowed
12 money from you and I can't pay it back,
13 I created the problem in borrowing the
14 money from you. The question is, did
15 you therefore have a problem in
16 compromising or renegotiating the terms
17 of that loan because I made a mistake of
18 borrowing from other institutions?

19 A: Mr. Chairman, if you don't mind, I will
20 answer that just to make it easy for Mr.
21 Levy and everybody. The fact of the matter
22 is that the record shows that not many loans
23 were compromised and so I think that in and
24 of itself speaks to my position on it. I have
 also made the

1 point that compromising must always be
2 our preferred approach. So I don't see
3 that being in conflict with the
4 statement that you just made, Mr. Levy.

5 Q: Mr. Hylton, do you have a number of the
6 number of homes which had been given as
7 security to the institutions which were
8 sold by FINSAC under Powers of Sale of
9 Mortgage?

10 A: No, sir.

11 Q: You have the number which were sold by
12 JRF under the same situation?

13 A: No, sir.

14 Q: Was it more than ten?

15 A: I don't have no idea, sir.

16 Q: So you didn't know what was going on in
17 the company when you were Managing
18 Director?

19 A: I knew a lot of what was going on, I
20 don't know how many houses were sold
21 under Powers of Mortgage. I don't know
22 how that would lead to the conclusion
23 that I didn't know about anything that
24 was going on.

25 Q: But you know it was twenty people made

1 complaints to the Commission so it
2 wasn't really a bad operation?

3 A: I was so informed by my attorney who has
4 been attending.

5 Q: Don't believe everything your lawyer
6 tells you.

7 A: Less than what the opposing lawyers told
8 me.

9 (Mr. Levy consults with client)

10 COMM. BOGLE: Mr. Levy, do you need some time to
11 consult with your client? We are still
12 waiting for questions?

13 MR. LEVY: I will be very brief, Mr. Chairman. In
14 cases where a bank was taken over by
15 FINSAC and I am dealing specifically
16 with Horizon Merchant Bank, what
17 happened to the borrowers who were not
18 regarded at that time as
19 non-performance?

20 A: As non-performance?

21 Q: The bank is taken over.

22 A: It would continue to work under the
23 terms of the existing loans that they
24 had.

25 Q: What did you do with their securities?

1 A: Probably the securities still being
2 owned by Horizon.

3 Q: And what were your requirements to
4 release those securities?

5 A: Well, we would release the securities on
6 repayment.

7 Q: And how did you treat the interests
8 which would have been charged on those
9 loans?

10 A: It continued to accrue interest.

11 Q: Compound interest?

12 A: Well, the circumstances dictated
13 compound interest.

14 Q: No, banks charge compounded interest.

15 A: Not in every instance. I mean, an
16 overdraft -- compound by the nature of
17 the overdraft.

18 Q: But you were not operating as a bank?

19 A: Who was not operating as a bank,
20 Horizon?

21 Q: Horizon ceased to operate as a bank,
22 ceased to make loans. An existing
23 customer could not say lend me any
24 money. They had no money to lend.

25 A: I don't know if that is true. As I said

1 to you where there was a contractual
2 obligation to make a disbursement and
3 where the loan continued to perform,
4 then I expect that the contractual
5 obligation would have been observed.

6 Q: But there is an implied contract for the
7 customer in the bank, they work
8 together, it is a special type of
9 relationship okay. They work together
10 and if in the ordinary course of
11 business you have reasonable proposal it
12 is presented and the bank has security
13 it would make the loan, but that is not
14 what happened there, isn't it?

15 A: It depends on who is determining what is
16 reasonable.

17 Q: Mr. Hylton, have you ever been a loan
18 officer in a bank?

19 A: Yes, sir.

20 Q: And you made loans?

21 A: Many, many.

22 Q: I am surprised. I am really surprised.
23 Were these debtors provided with regular
24 monthly statements of account?

25 A: I would expect, sir.

1 Q: Here we go again.

2 A: Mr. Levy, I told you I didn't manage the
3 loan portfolio when I was down there and
4 people were entitled to statements, I
5 expect them to get their statements and
6 nobody complained to me that they were
7 not getting their statements.

8 Q: You recall occasions when DEBTOR2
9 met with you and asked for statements of
10 account because he was not getting them,
11 sir?

12 A: I don't recall DEBTOR2 coming to me
13 and asking me for statements of account,
14 no.

15 Q: Yes, Miss Tyndall. I am sorry,
16 Mr. Hylton.

17 MR. GARCIA: Really objectionable because DEBTOR2
18 gave evidence and he did not give
19 evidence as to what is now putting to,
20 Mr. Hylton.

21 COMM BOGLE: Yes, the question was asked and it was
22 answered. Can we move on?

23 MR. LEVY: You really think it was answered, sir?
24 What details did FINSAC have of the
25 account of DEBTOR2COMPANY in relation to

1 its operation with...

2 A: I don't know, sir.

3 Q: You don't know?

4 A: I don't know.

5 Q: Did DEBTOR2 explain that he had a

6 problem getting detailed statements

7 from your institution?

8 A: To whom?

9 Q: With your bank?

10 A: Complained to whom?

11 Q: To you.

12 A: Not that I recall.

13 Q: I put it to you sir, that at the time

14 when you took over the bank the customer

15 was not in default and he was treated as

16 if he had a non-performing loan.

17 A: I can't accept that, sir.

18 COMM BOGLE: Mr. Levy, I would suggest that you take

19 three minutes to consult with your

20 client and not have the sort of -- this

21 type of questioning. So if you need

22 three minutes take it now.

23 MR. LEVY: Yes, Mr. Chairman I will do so now.

24 COMM BOGLE: So if you need three minutes or so to

25 consult please do so. Take your three

1 minutes and consult with your client so
2 that the examination may proceed.

3 MR. LEVY: Yes, I will do so now, sir.

4 COMM BOGLE: So we will have a short break at this
5 time. (Break at 11:08 a.m.)

6 ON RESUMPTION

7 Ladies and gentlemen, we have now
8 reconvened. I take it that Mr. Levy has
9 had all the consultation necessary and
10 we can proceed in an orderly fashion of
11 the questions that he might have.

12 MR. LEVY: Mr. Hylton, during the period that you
13 were Managing Director of FINSAC Group
14 of Companies, were you familiar and did
15 you have any dealings with DEBTOR2
16 and DEBTOR2COMPANY?

17 A: Yes, I met with DEBTOR2 on an
18 occasion, I can't recall the specifics
19 but I did.

20 Q: Can you explain or tell us why FINSAC
21 refuse to give them statements with
22 regard to their accounts?

23 A: No, sir. I couldn't tell you that, I
24 couldn't answer that question.

25 Q: Are you aware of any statements given to

1 about it when he comes to give evidence,
2 maybe he could tell me.

3 Mr. Hylton, evidence has been given
4 before this Commission to write off
5 debts, some of them in hundred thousand
6 bracket to special debtors, are you
7 aware of that?

8 A: I am not aware of special write-offs, I
9 don't know what you mean by special
10 debtors but I am aware of write-offs to,
11 as you have mentioned, to many debtors.

12 Q: But the big ones were people with
13 political connections?

14 A: Well, there were some with political
15 connections and many who were as far as
16 I am aware didn't have any. And
17 interestingly, the political connections
18 were on both sides or should I say, all
19 sides of the political divide.
20 And those connections had no influence
21 on your decisions?

22 A: Not at all, sir.

23 Q: Were you every instructed by the
24 Minister of Finance to take action and
25 not to take action in certain

1 that special concession as it were that
2 was allegedly offered?

3 A: Oh, those responses would have been to
4 JRF, by that time JRF had bought the
5 portfolio.

6 Q: But you still were collecting kickback
7 at the end of the deal when they sold
8 off -- Laughter -- Meaning FINSAC
9 continues and continued to collect money
10 from that.

11 A: From what? You mean from JRF?

12 Q: From JRF when they sell assets.

13 A: Based on waterfall, based on percentage
14 that was due under the arrangement,
15 residual arrangement.

16 Q: Waterfall?

17 A: Well, that's the term we used to
18 describe it, waterfall.

19 Q: Because they were using an America
20 phrase "underwater" which in this case
21 you are not familiar with, that is where
22 the value of security has dropped below
23 the amount of loan. Why was that \$5
24 million loan -- why would you
25 distinguish between that person who

1 lived in a home given as security to the
2 bank under \$5 million as opposed to the
3 ones with under \$20 million, they lived
4 in their homes with their primary loans.
5 A: I think I made a couple of points. One
6 is that -- I made that point generally
7 that even prior to the sale of the
8 portfolio, we used to exercise a higher
9 level of discretion and so on in terms
10 of treating with primary residences. The
11 position that you would have seen in the
12 memorandum yesterday which was sent to
13 the Minister was based on a negotiation.
14 In other words, it's an agreement
15 between two parties, there was no
16 obligation on the part of JRF to agree
17 to it in the first place and at any
18 level whether \$5 million or \$1 million
19 or a zero or a dollar. So it's my
20 negotiating position. I think it may
21 have been based, if I am to speculate,
22 on a recognition of, you know, persons
23 that are at a certain level who might be
24 less able to afford certain things, I
25 don't know, I don't recall the set of

1 circumstances in that negotiation but it
2 was what was agreed between the parties.

3 Q: Or was it merely to get rid of the
4 numbers that would have been boresome?

5 A: Well, I can speak from the point of view
6 of our motivation which was to try and
7 help people and I got the impression
8 from Mr. Joslin, that he had a similar
9 concern.

10 Q: What happened to people who had houses
11 which they lived in which were either
12 eight or ten million dollars, they were
13 not taking into any special
14 consideration?

15 A: As I said the persons who only lived in
16 their primary residences were always
17 taken into special consideration from
18 the initiation of FINSAC to the point
19 where the portfolio was sold. What JRF
20 does in terms of how they deal with this
21 is something they would better to
22 answer.

23 Q: Why was that distinction made between
24 people who lived in residences \$5
25 million or less and those above, why

1 wasn't that distinction for these
2 persons who were not given these special
3 offers to get off the...

4 A: You keep making the same assertion Mr.
5 Levy, and I am saying the people had
6 special offers all along and the \$5
7 million represented an organisation
8 between two parties. That's what it
9 represented.

10 Q: Why weren't you negotiating for all home
11 occupiers?

12 A: We may very well have, I don't remember
13 the specifics of what obtained then.
14 What we have communicated was what was
15 agreed.

16 Q: Thank you for your help Miss Tyndall.

17 A: But we have bought it so you...

18 Q: So the other persons were not given the
19 special window of opportunity?

20 A: They were always given a window of
21 opportunity.

22 Q: So you said that you have 20 complaints
23 out of the tens of thousands of
24 facilities, that is the number of
25 complaints you are talking about. I am

1 reading from paragraph 91.

2 A: Oh, sorry, I thought you were going on.
3 I am saying that -- the point I was
4 making ---paragraph 91....

5 Q: 91?

6 A: The point I was making, let me just
7 check -- 91...

8 MR. GARCIA: Mr. Chairman, while the witness finds
9 the page I am wondering if my friend
10 would complete what he is saying because
11 I think he has referred to paragraph 90
12 but I don't believe I have heard a
13 question.

14 MR. LEVY: You found it, Mr. Hylton?

15 MR HYLTON: Yes.

16 Q: Yes. Could you read paragraph 91, what
17 is the first sentence?

18 A: They said: *"The process of loan workout*
19 *by its nature involves intense*
20 *negotiation. Even though I recognise*
21 *the importance of every single loan,*
22 *customer, and their experience, I do not*
23 *think that if we have 20 complaints out*
24 *of the tens of thousands of facilities*
25 *handled that such a set of circumstances*

1 *can lead to any reasonable conclusion*
2 *regarding whether FINSAC was generally*
3 *fair to debtors and the extent in which*
4 *to **approach** to treating all debtors was*
5 *similar. In any **financial** institution,*
6 *the experience is that whose loans are*
7 ***non-performing** and are aggressively*
8 *pursued are those with the most*
9 *complaints.*

10 Q: Where did you get that number 20,000,
11 what does that specifically mean?

12 A: Based on the number of persons who
13 appeared before the Commission.

14 Q: So that is how you based a complaint?

15 A: I am making an assertion, I am saying
16 that the number were not representative
17 of the entire portfolio.

18 Q: Are you aware Mr. Hylton that there were
19 hundreds more people who have complained
20 and have not been able to appear before
21 the Commission?

22 A: No, I am aware.

23 Q: You are not aware, you don't listen to
24 the press, you don't watch the news?

25 MRS. PHILLIPS: Is Mr. Levy giving evidence Commissioner

1 because -- could you restrain him from
2 giving evidence please unless he is
3 going to be sworn.

4 MR. LEVY: Are you aware, Mr. Hylton, that hundreds
5 of people have called the talk shows
6 complaining about treatment they
7 received from FINSAC?

8 A: No, sir, I am not aware of any hundreds
9 of people.

10 Q: You don't listen to call-in programmes?

11 A: Not really, I am too busy working.

12 Q: Okay. And do you believe Mr. Hylton that
13 there were only 20 people who complained
14 about problems, how they were treated by
15 FINSAC?

16 A: I have no idea of how many people have
17 complained. I even went on in my
18 statement when I was talking yesterday,
19 even if there were 50 or 80, it still
20 doesn't reflect a representative group.

21 Q: Are you aware that it requires certain
22 finance and/or expertise to prepare
23 statements to make a complain?

24 A: I thought you were giving your services
25 for free, Mr. Levy. (Laughter)

1 Q: I am doing so today for those people who
2 were being deprived of their
3 constitutional rights.

4 COMM BOGLE: Mr. Levy, before you get out of your
5 collar. This Commission has always
6 provided the service where persons would
7 like to come before this Commission and
8 who do not have a lawyer, that the
9 person who is marshaling the evidence on
10 behalf of the Commission would marshal
11 the evidence and as a matter of fact
12 quite a number of persons have come in
13 front of this Commission and they don't
14 have attorneys and the attorney of the
15 Commission has marshaled their evidence.
16 So I think that your statement is
17 incorrect that persons would not be able
18 to come before the Commission.

19 MR. LEVY: I challenge the statement by you and I
20 say that it doesn't start at marshaling
21 evidence, it starts at a period where
22 people prepare statements and put in
23 written statements.

24 COMM BOGLE: And I will say that you are totally
25 wrong Mr. Levy. There are many persons

1 conduct which is unbecoming of the
2 profession.

3 MR. LEVY: And I am happy to disassociate my
4 situation from these people who try to
5 challenge me since I came to this
6 Commission. I don't have any respect for
7 them either and I am the senior member
8 of the Bar present.

9 COMM BOGLE: Mr. Levy?

10 MR. LEVY: We look again at paragraph 95 of your
11 written statement, Mr. Hylton. Would
12 you read it for us?

13 A: Paragraph 95?

14 Q: 95.

15 A: "*FINSAC had a powerful incentive to*
16 *discount rates apart from its own need*
17 *for cash. The fact is that the rate of*
18 *accrual on FINSAC notes and hence the*
19 *need to redeem or reduce issuing them*
20 *also served as a discount factor".*

21 Q: And read 96 also.

22 A: "*FINSAC also had very urgent cash needs*
23 *to enable us to assist with the*
24 *liquidity needs of the intervened*
25 *institutions".*

Q: Mr. Hylton, bearing in mind, FINSAC'S
2 urgent needs and the massive sale of the
3 assets at discounted prices, was there a
4 conflict of interest in the decisions
5 taken as to when and what to sell and
6 for how much?

A: No, I don't think there was any conflict
7 of interest.
8

Q: Do you know the meaning of conflict of
9 interest, sir?
10

A: I am absolutely clear on it.
11

Q: Were the interests of the debtors whose
12 properties were sold, the same debtors
13 to FINSAC who had a urgent general need
14 to sell the properties at that time?
15

A: Yes, sir. And it was always open to any
16 debtor who always felt to challenge it.
17

Q: To what?
18

A: Challenge it.
19

Q: You had made the people bankrupt
20 already, you took away the assets and
21 they even retained lawyers, come off of
22 that?
23

A: But they have you, Mr. Levy.
24

Q: Eh?
25

1 A: They have you.

2 Q: Mr. Hylton, don't take serious thing
3 make jokes.

4 COMM BOGLE: Not so loud, Mr. Levy.
5 MR. LEVY: I thought you wanted me to speak loudly,
6 Mr. Chairman. Are you complaining about
7 me speaking too loudly now?

8 COMM BOGLE: Not the volume, the content.

9 MR. LEVY: Are you aware Mr. Hylton that it is
10 alleged that a number of the FINSAC
11 debtors, more than one, have committed
12 suicide because of the pressures brought
13 by FINSAC?

14 A: I have heard the statement in public
15 domain. I don't know whether or not
16 that is a fact, I have no evidence to
17 support that.

18 Q: And you have no twinge of conscience?

19 A: I don't have what?

20 Q: And you have no twinge of conscience?

21 A: I don't have it if I don't have any
22 evidence.

23 Q: Have you sought evidence?

24 A: I have just heard it mentioned
25 anecdotally.

1

2 Q: Would you give us an example Mr. Hylton,

3 paragraph 99(e), on page 35 of your

4 statement, you said that there have been

5 instances where persons were delinquent

6 in one institution but have significant

7 resources in another?

8 A: Sorry what paragraph?

9 Q: Top of page thirty five?

10 A: Okay.

11 Q: I will read it again. There have been

12 instances...

13 A: There may have been.

14 Q: Pardon me?

15 A: There may have, you left out the 'may'.

16 Q: It's not a statement?

17 A: I was rationalizing the rationale for

18 charging interest on loan.

19 Q: Because somebody may have done

20 something?

21 A: Yes.

22 Q: It's a rationale?

23 A: It's a rationale, it prevents something

24 that could happen from happening, that

25 is the rationale.

1 Q: Pure speculation?

2 A: It's not pure speculation at all.

3 Q: Could you give an instance if it is not
4 speculation?

5 A: I am saying....

6 COMM, BOGLE: Mr. Levy, you are asking questions of
7 the witness, allow him to answer and
8 follow up with another question but the
9 arguing....

10 MR. GARCIA: Perhaps I could first be allowed to
11 object, because my friend Mr. Levy had
12 asked for a specific instance, and it
13 seems to me that if Mr. Hylton were to
14 answer that question, it would involve
15 him assuming that he does have that
16 information, it would involve him
17 calling the names and giving information
18 which is confidential in relation to the
19 individuals so identified.

20 COMM. BOGLE: I think Mr. Hylton is quite capable of
21 answering the question, I think he is
22 quite capable of answering the question.

23 A: What I have set out here Chairman is
24 seven bases or rationale for FINSAC
25 charging interest saying that it would

1 help to preclude these sets of
2 circumstances which I think represented
3 real risks to FINSAC in the discourse of
4 its obligation, that is all it is
5 saying.

6 Q: In the twenty thousand or so loans will
7 you give us one example, and then we ask
8 next for one of persons who was
9 delinquent in one institution and had
10 significant resources in another or
11 invested in Government of Jamaica LRS
12 earning high interest rate?

13 A: Mr. Levy, I told you earlier that I
14 never managed a single one of those
15 loans so all of this would be, whatever
16 information I have, would be based on
17 representation from the people who
18 managed the loans in terms of what they
19 saw.

20 Q: I am asking about facts?

21 A: What they saw, and I am saying that is
22 not unusual, the same thing applies, if
23 you ask me about non-performing loans
24 from the bank that I work, I couldn't
25 tell you anything about it, I have to

1 ask the people who manage it. There are
2 other things that I focus on in terms of
3 bringing effective management to the
4 institution. I couldn't go and manage
5 each individual loan in NCB today.

6 Q: You made a policy, established a policy
7 without having one example of someone
8 who actually was delinquent?

9 A: I did not say there was no example, I
10 said I don't have it, I can't share it
11 with you.

12 Q: So this statement is speculation if you
13 don't know?

14 A: I didn't say I don't know it, I said I
15 don't have it. I said I know this is the
16 risk, I don't have the information
17 specific to any individual person,
18 company or corporation.

19 Q: It's no wonder that the policy was
20 flawed if you based it on speculation.

21 A: Your view, sir, not mine.

22 Q: You went onto paragraph (f) on the same
23 page, our experience also supported that
24 continued application of interests could
25 be beneficial as we on several occasions

1 were able to collect some of this
2 interest.

3 What about those occasions you were not
4 able to collect?

5 A: It didn't prevent us from reaching a
6 compromise and I also said that.

7 Q: If FINSAC did not charge a rate
8 commensurate with the market rate on the
9 loans it bought, a delinquent borrower
10 would be incented to sell assets and
11 instead of paying FINSAC, invest in
12 Government of Jamaica paper. Market
13 rate -- were you borrowing money at
14 market rates, FINSAC didn't borrow
15 money?

16 A: FINSAC was paying market rates on the
17 bonds it issued.

18 Q: Thirty percent?

19 A: It was in line with the Treasury Bill.

20 Q: In many instances you were charging more
21 than that?

22 A: To?

23 Q: The borrowers?

24 A: I told you what rates FINSAC was
25 charging to borrowers, between twenty

1 five and thirty percent.

2 Q: You also told us that when you took over
3 the loan you continued to deal with it
4 on compound interest?

5 A: What are you talking? The institutions
6 continued to do deal with them.

7 Q: The institution under your complete
8 total control?

9 A: I did not interfere in the rates. We
10 couldn't cause them to be handling loans
11 and your deposits at rates that were
12 inconsistent with the rest of the
13 market.

14 Q: These failed institutions continued to
15 have depositors?

16 A: Yes, oh yes.

17 Q: Horizon Merchant Bank didn't lose its
18 depositors?

19 A: They were transferred to Citizens, yes.

20 Q: And you continued to charge the Horizon
21 Merchant Bank debtors compound interest
22 at market rates?

23 A: Well, as I said to you if there was an
24 agreement, for example, on overdraft,
25 which is compounded by nature, the

1 overdraft revolves on a monthly basis.

2 Q: You don't, the debt spiral down and
3 down.

4 A: I don't know what debt spiral ..

5 Q: If interests are compounded at
6 exorbitant rates beyond what we agree to
7 pay and you don't modify, you are not
8 trying to resolve the issue, you are
9 trying to collect money?

10 A: I don't know what rates were applied
11 beyond what was agreed at or where.

12 Q: Pardon me Mr. Chairman. So you were
13 very kind to the debtors, you continued
14 to charge them at the exorbitant rate
15 although you were trying to compromise.
16 Paragraph 100 of your statement
17 Mr. Hylton. I will read it for you.
18 **Therefore, the continued accrual of**
19 **interest at market rates was appropriate**
20 **in that it served as an incentive for**
21 **borrowers to want to settle their loans**
22 **and disincentive for performing**
23 **borrowers were FINSAC controlled**
24 **institutions to default on their loans.**
25 What about those who were in default

1 when you took over because they could
2 not pay the high interest rate?

3 A: I think those are addressed in the
4 incentive for borrowers wanting to
5 settle their loans.

6 Q: They what?

7 A: Those are addressed in the first part of
8 the statement of 100. I said it served
9 as an incentive for those borrowers to
10 want to settle.

11 Q: I asked the question, those who were in
12 default?

13 A: Those are the ones I am referring, that
14 would serve as an incentive for those in
15 default to want to come in and settle.
16 It's not as if it stops accruing,
17 interest is still accruing, the debt is
18 increasing, you want to come in and
19 arrange a settlement, that is what it is
20 saying.

21 Q: I thought you were there to try and
22 resolve the issue, not to become a
23 ruthless debt collector?

24 A: Not at all, in fact I can tell you I got
25 an e-mail up to this morning, somebody

1 who settled there indebtedness who said
2 you have given me a new lease in life.

3 Q: One of your friends, why don't you get
4 them to come and give evidence before
5 the Commission?

6 A: I think that is their private business
7 and I would never ask them to do that,
8 if they want to come of their own free
9 will, fine, but I certainly wouldn't be
10 asking them.

11 Q: Paragraph 104 Mr. Hylton. Even after
12 the application of the valuation
13 framework...

14 A: One hundred and?

15 Q: 104, page 36 at the bottom.

16 **Even after the application of the**
17 **valuation of framework for the loans**
18 **which I mentioned earlier there was a**
19 **hierarchal basis for further**
20 **compromises, starting within**
21 **Non-performing Loan Unit, through the**
22 **head of that unit, and the Credit**
23 **Committee through the head of that unit**
24 **all the way up to the Board. The**
25 **structure was in this regard similar to**

1 **that of a bank, appropriately so as**
2 **FINSAC had purchased bank debts and**
3 **itself had obligations to satisfy which**
4 **would be affected by debt recovery.**

5 But you were not a bank?

6 A: No, but the loan...

7 Q: And you treated the debtors in the same
8 way as if you were a bank, you tried to
9 rape them?

10 A: I don't know about the bank raping the
11 debtors so I can't comment. FINSAC did
12 not try to rape any debtor and the
13 simple point I was making, inasmuch as
14 FINSAC also had loans and so on in other
15 banks that had a controlling interest,
16 it was important that those persons
17 didn't see it in their direct interest
18 to default for their loans to be sent to
19 FINSAC for special treatment.

20 Q: By special treatment meaning sell out
21 their assets at an undervalued rate?

22 A: Not applied interest as you are
23 suggesting.

24 Q: Paragraph 105. Many debtors failed to
25 acknowledge that FINSAC had no mandate

1 to rescue or bail out borrowers. In any
2 event my own view is that as a general
3 rule this would be at best inappropriate
4 and at worst perverse. While we
5 emphasized with many of these borrowers
6 we also need to recognize that we had
7 taken over private arrangements from the
8 private sector imposing a cost on the
9 taxpayers. Some of these private sector
10 agencies that you took over the debt
11 from, fraud and irregularity, how did
12 you deal with their debtors?

13 A: Well, when we talked about fraud and
14 irregularity, we are talking about how
15 they conducted their affairs, we dealt
16 with them on that basis. Where we saw
17 the prospect to pursue litigation that
18 is what we did. In relation to their
19 debtors and so on we continued to treat
20 with them in the normal way. If you are
21 a delinquent debtor then you are
22 transferred in the non-performing group,
23 it was a good bank, bad bank, and where
24 they were performing they were retained
25 in the bank which was a growing concern.