

1 those banks' rehabilitation. Our mandate
2 was to extract value from those loans as
3 would have been attempted by the legacy
4 banks if they had retained them as a part
5 of their own attempt at rehabilitation.
6 The important question which arises then is
7 whether or not FINSAC established a
8 sufficiently robust and fair process and
9 framework for extracting value from these
10 loans and how well did FINSAC execute
11 against this framework. A consideration
12 worth repeating is the nature and condition
13 of the loans being managed.
14 The techniques and strategies used by FINSAC
15 for problem loan resolution were not
16 peculiar to FINSAC. They are the same
17 techniques and strategies that were applied
18 by other financial institutions in Jamaica
19 and I daresay across the globe. There seemed,
20 however, to be an expectation based on a
21 perception that FINSAC would naturally and
22 automatically grant special discounts to
23 delinquent
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1 borrowers. It is interesting to note that
2 the same perception did not exist among
3 borrowers who remained in the performing or
4 even then substandard category of
5 intervened financial institutions as well
6 as those that were not intervened.

7 It is my view that this dichotomy existed
8 because of the general incorrect perception
9 that FINSAC was a bailout agency.

10 If one listens to the debtors, fewer than
11 twenty, who have complained in this enquiry,
12 one would have got the impression that every
13 debtor's

14 experience with FINSAC was a negative one.

15 I make the point this is absolutely not true
16 as in my own experience I have many times
17 been greeted by former debtors, almost all
18 unknown to me, who have expressed their
19 appreciation for helping them to sort out
20 their debts and their lives. The fact is that
21 FINSAC had within its portfolio at its peak,
22 in excess of twenty thousand debtors. I
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don't recall how much, it could have been much more than that, I suspect, and those who now publicly complain can in no way be established as a representative group.

Non-performing Loan Sale, page 46 of 54. This decision to sell non-performing loans portfolio was made after careful consideration of the challenges facing FINSAC in order to maximize value from these assets. One major challenge was the extent to which the collection process was in danger of being compromised based on the frequency of attempts by persons connected to both major political parties and other persons of influence to intervene in the collection process. These attempts ranged from telephone calls to officers of FINSAC through misrepresentation of facts and false accusations against staff of the organization in carrying out their duties, because I investigated many of them, that is why I am aware. Many of these assertions were directed

1 to the management of the FINSAC or our
2 political bosses. This created a great deal
3 of the distraction within the team While the
4 majority of these attempts to intervene may
5 well have been intentioned and out of
6 genuine concerns for their constituents,
7 they were often based on falsehoods
8 communicated to these persons and could
9 potentially delay or undermine our
10 collection or restructuring
11 strategy.

12 There was a genuine concern as this was a
13 public institution, there was a real risk of
14 interference being used as a strategy to
15 undermine its activities. This is not
16 dissimilar to the fear which would have
17 informed the desire and the need to quickly
18 divest of intervened financial institutions
19 and similarly assets to avoid their
20 performance being constrained by public
21 sector ownership. We were also mindful of the
22 experience of previous government owned
23 institutions in the lending business such as
24 the Jamaica Development Bank. As
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1 I understand it, even though this
2 institution started out with a portfolio
3 performing loans many rapidly became
4 non-performing. Many attribute this to the
5 fact that borrowers felt entitled to default
6 and get relief as it was a government owned
7 institution. In other view, the risk was
8 magnified when treating with a portfolio of
9 government owned non-performing loans.
10 It was clear to me Chairman, that the
11 government did not belong in either the
12 business of running financial institutions
13 or managing non-performing loans and should
14 get out as soon as practicable.
15 I was also mindful of the fact that shortly
16 after taking over the loans, we had McKinsey
17 and Company do an
18 assessment of the likely amount we could
19 recover. Their assessment was a net present
20 value of ten cents in the dollar if we took
21 urgent and aggressive action. And I tell you,
22 this assessment was a closely guarded secret
23 within our
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1 organization. It was necessary to keep it a
2 secret so that borrowers would not use it to
3 develop expectations as to what they should
4 pay or expect a write-off, and so as not to
5 compromise negotiation for the eventual sale
6 7 of the non-performing loan portfolio.

8 9 The analysis undertaken by our advisors on
10 our non-performing loans for identifying an
11 optimal resolution, which was quite detailed
12 and extensive and which looked at a number
13 of options, strongly recommended divestment
14 of the portfolio as the best option open to
15 us. Also, we need to recognize that if the
16 portfolio was retained by FINSAC rather than
17 sold, it would have unnecessarily prolonged
18 the existence of FINSAC, with its attendant
19 expenses.

20 It was also felt that sale to an organization
21 which specialized in that business and had
22 the requisite expertise could result in
23 significant benefits from FINSAC sharing in
24 any upside in collections. Such sharing
25 provided

1 FINSAC with an hedge that allowed it to
2 benefit if persons were able to pay than
3 anticipated at the time of sale. That is your
4 point in relation to the institution. It
5 enabled FINSAC to have an ongoing source of
6 funding to make payment on FINSAC notes, meet
7 operational expenses and reduce the
8 ultimate cost to taxpayers.

9 Among the benefits would be the removal or
10 reduction of the risk of
11 interference, removal of the attitude of
12 several borrowers that now that government
13 owned the portfolio they were entitled to
14 massive write-offs. FINSAC no longer bear
15 the significant administrative and legal
16 costs and risks associated with that
17 business. FINSAC would benefit from the
18 expertise and experience of the collectors
19 in that arrangement.

20 In the final analysis, I make the point that
21 the issue became somewhat moot when the World
22 Bank and IADB who were assisting the
23 government with funding
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its programme of converting FINSAC notes to Local Registered Stock
2 3 included the divestment of the portfolio
4 5 within an agreed timeframe among the
6 requirements for their assistance.
The sale of the portfolio .

7 COMM. ROSS: Was there ever
considered to have the
8 portfolio or have the collections
9 managed by an agency?

10 A: Yes, that was one of the options which
11 was considered.

12 COMM. ROSS: What were the pros and cons of that
13 approach?

14 A: I have to think hard now, it's some time
15 ago.

16 COMM. BOGLE: Pick out the cons first since that would
17 have influenced you greatly.

18 A: I tell you what we looked at. We looked
19 at sale, we looked at collections by a
20 third party, we looked at creating some
21 sort of a debt instrument with a water-
22 fall, in other words, triaging the
23 portfolio so it would create challenges
24 based on the likelihood of collection
25 and then issuing security against those

1 then can buy it back.

2 COMM. BOGLE: How is that monitored? Is it
3 continuing, do you know if it's
4 continuing?

5 A: I don't know, I have not been there for
6 a long time, but what I know when
7 compromises were reached outside of a
8 particular framework, they would be sent
9 to us to say, I think you have a
10 specific time in which you respond
11 whether you agree or disagree and if we
12 disagree then our option would be to buy
13 it back.

14 COMM. ROSS: That sounds like an agency arrangement.

15 A: Except they have bought it. In other
16 words, they own legal title to it.

17 COMM. ROSS: Agency.

18 A: Yes, they are, completely one hundred
19 percent. We can't have it both ways,
20 you know, Commissioners, agreed?

21 MR. GARCIA: Mr. Hylton, you mentioned in your
22 response and also earlier, Recon Trust
23 and Refin Trust and I was wondering if
24 you could comment on what were the
25 functions of those two entities?

1 A: Recon Trust and Refin Trust were really
2 formed to own and to administer the
3 non-performing loans. I think one was
4 formed, I can't remember which one, one
5 was formed initially in relation to
6 Citizens Bank and another one was formed
7 initially in relation to NCB and when
8 there was subsequent fall-out it would
9 have gone to Refin or Recon depending on
10 where the trust would have sent it to,
11 so they would have owned and
12 administered the portfolio.

13 MR. GARCIA: That is the non-performing loans?

14 A: Yes, non-performing loans.

15 COMM. BOGLE: At this time, it is now approximately
16 lunchtime, so we will take lunch at this
17 time and we will reconvene at 2 o'clock.

18 MR. LEVY: Before you do so, sir, I would like to
19 make a brief statement and ask
20 questions, not of Mr. Hylton but you.

21 COMM. BOGLE: Repeat.

22 MR. LEVY: I mean before you dismiss I would like
23 to make a brief statement and ask
24 questions of the Commission, relevant.

25 COMM. BOGLE: In clarification, is it that you need

1 clarification?

2 MR. LEVY: Yes, Mr. Chairman. I was told by
3 Mr. DePeralto last week that a debtor
4 was not entitled to come and ask a
5 question of a witness unless they were
6 represented by an attorney. As a result
7 of that Mr. Cobham -- my client
8 DEBTOR1 was unable to ask him any
9 pertinent questions. You may recall I
10 specifically requested that the
11 Commission subpoena Mr. Cobham to give
12 information, was that the proper
13 information to me and is that the status
14 which remains today?

15 COMM. BOGLE: Yes, it is.

16 MR. LEVY: Just a comment on that. I think you are
17 depriving, you are imposing a burden on
18 these debtors, which is
19 unconstitutional, they have a right to
20 ask questions, It's a public Commission
21 of Enquiry. That is my position.

22 COMM. BOGLE: This Commission has a right to decide on
23 the processes that it will use in this
24 Commission, and that is one of the
25 things that we will not -- persons may

1 through their attorneys ask the witness
2 questions, but we will not allow
3 questions from debtors that are not
4 questions through their attorneys.

5 MR. LEVY: That being the case you are wrongly
6 advised and you are depriving people of
7 their constitutional right, I know you
8 have the right to set procedures but
9 your procedures must be just and right.

10 A: Your comments are noted.

11 MR. LEVY: One can go to the Supreme Court, a
12 complainant, and represent themself but
13 not before this Commission? That I find
14 is wrong, sir, very wrong.
15 I would also like to say, I asked the
16 Secretary if he would make available to
17 the Commission, when I am going to be
18 cross-examining Mr. Hylton, copies of
19 exhibits tendered by DEBTOR1 and
20 Mr. Errol Campbell which are relevant to
21 FINSAC.

22 And thirdly Mr. Chairman, I would like
23 to make an offer to any witness who is
24 here present and who has been deprived
25 of their right to ask questions, I will

1 accept a case for them to ask questions
2 of this witness, so all they have to do
3 is hand me a note with any questions
4 they have for the witness, because I
5 find that it is very wrong for them to
6 be deprived of their right.

7 COMM. BOGLE: Comments noted. Okay we adjourn until 2
8 o'clock.

9 LUNCHEON ADJOURNMENT (12:25)

10 ON RESUMPTION:

11 COMM BOGLE: Ladies and gentlemen, this enquiry is
12 now reconvened. Mr. Hylton just to
13 remind you that you are still on your
14 oath.

15 MR. GARCIA: I am sorry. I believe that Mr. Hylton was at
16 page 49. Perhaps before he resumes I should
17 indicate that before, in the morning sitting
18 some reference had been made to exhibit PH3
19 and I noticed that the statement indicated
20 that pages 18, 19 and 20 of the Annual Report
21 of 2001 for EINSAC ought to have been attached
22 there. And page 20 was missing. A copy of page
23 20 has now been made and provided to the
24 Commissioners.

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1 that are typically involved in this type of
2 business; after a series of road shows of
3 which I attended on occasion just to speak
4 about the portfolio and to try and market it.
5 We sold some of these CDs for a small amount
6 to interested parties. At the end of the whole
7 process in terms of the marketing and so on
8 we received somewhere in the region of, I
9 think it was twenty or twenty-one expressions
10 of interest from a number of large
11 institutions, and as indicated here, the good
12 and the great institutions of high repute and
13 so on. There were two major financial
14 institutions who indicated an interest but
15 said they were unwilling to participate in a
16 bidding process and they tried to persuade me
17 that it was better to do a direct deal with
18 them and I told them it was not negotiable,
19 it was not an option in spite of who they
20 would.

21 So I made the point in 143 that Beal Bank
22 was not our preferred bidder
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1 initially but we had three or four other
2 attempts at sale which fell through. There
3 was an initial expression. I think the
4 initial forerunner was a company called
5 Cargill, They are a huge private company,
6 Jewish/American owned at the time, I don't
7 know what the ownership is now. I think they
8 owned AD Billing and some other - a huge
9 company and they had been the forerunner and
10 they had expressed an interest and come; they
11 had looked at the CD ROMS which contained
12 all of the detailed
13 information and so on and while they were
14 here conducting due diligence, there was an
15 outbreak of violence in West Kingston. I
16 don't know if you remember, in July of that
17 year, where some twenty-odd persons died and
18 they immediately withdraw; they left the
19 island the following day, the Monday because
20 I met with them the Monday morning when they
21 expressed all this concern, tried to
22 convince them to stay and they just said that
23 they wouldn't
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1 **stay** and they withdrew from the process. They
2 had jointly entered a bid with a bank. If my
3 memory serves me well it **was** First City Bank.
4 And so First City then being one of the
5 partners with Cargill asked if they could
6 partner with another company and I think the
7 company that they came back with was
8 Starwood, I think they owned Starwood Hotels
9 and **many** other major companies. They started
10 the process and then they also heard about
11 the violence and they withdraw.
12 The third person we engaged with over this
13 **was Goldman Sachs** and they just **made us** a
14 proposal that would have given us virtually
15 nothing **and** we told them it was not acceptable
16 **and** then we had another company on the list;
17 **Loan Star**. Loan Star is a huge company, buyer
18 of distressed debts around the world. They
19 have bought billions of dollars of distress
20 debts in South East Asia and so on, when they
21 had the Korean crisis, the crisis in
22 Indonesia, they were one of
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1 the big buyers there and it was
2 progressing fairly well until the events
3 of 9/11, September 11, 2001 in the
4 United States and they said that given
5 the uncertainty around the impact and so
6 on globally they were withdrawing, and
7 then we went down the line next to Beal
8 Bank and we negotiated with Beal. They
9 formed a subsidiary Jamaican
10 Redevelopment Foundation and based on
11 their offer the bid was approved and we
12 started the transaction to sell to them.
13 They indicated that the servicer would
14 have been Dennis Joslin Jamaica Limited.
15 So we had due diligence conducted of
16 both the servicer as well as the
17 acquirer as part of that process.

18 COMM. ROSS: Mr. Hylton, I just want to take you back
19 a little bit. We got the impression
20 that most of loans were secured by some
21 form of collateral and I am wondering
22 why if that was the case why the
23 estimates of the value of the portfolio
24 were so low.

25 A: Most of them were supported by - I don't

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know if its fair to say most of them in the first instance but there were a fair amount that were supported by collateral. Part of the problem would have been the strength of the documentation in terms of pursuing any remedies against the collateral.

Another part of the problem would be that sometimes there were others holding an interest in the same collateral so it was doubtful as to what would be the net position in the event of realization of the collateral and so on. We went through a fairly extensive process of determining eventual value based on, and most of what, what I would say is that in the instance of preparation for sale a lot of that value determination was driven by collateral values. But it was realized; two things. One is that there were some issues with a lot of the documentation, there were some issues in terms of the net position and there was also the issue of time because there is as time value attached to money in terms

1 of realizing on the collateral
2 supporting the debts.

3 COMM. ROSS: I suppose also if you discounted the
4 very high risk interest your NPV is
5 going to be pretty low?

6 A: The NPV is going to reflect the current
7 interest rate environment.

8 COMM BOGLE: Were you complete with the process
9 whereby Beal, Joslin and JRF, you had
10 completed that process?

11 A: I was about to make another point in
12 relation to this. And this is my
13 recollection now. The aggregate
14 principal balance of the debt was 380, 390
15 million US. The terms of sale included an
16 initial payment of 23 million US with a right
17 of FINSAC to share in collection on a scale
18 that rose as the collections grew higher
19 eventually up to fifty percent in what were
20 described as net collections, meaning net of
21 direct expenses. So in other words, the
22 operational expenses and so on were for their
23 accounting; those net of direct expenses.

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We also had some arrangements where - so there was a sort of waterfall that would reflect in the various percentages over time.

We also had an arrangement where they would submit monthly statements indicating the collections. I think I mentioned an arrangement where based on certain compromises those would come to us first and we could also say yea or nay but if we said nay then we would have to purchase it.

So monthly statements they did; they would submit their annual audited accounts. We had a member of staff that would be resident there dealing with the security documentations in terms of access to that and we also had an arrangement where we could conduct an audit as deemed necessary in the scheme of things and these were controls that were agreed between both parties. Commission Ross, you had made the point earlier about the issue of whether or not it was an agency agreement and just

1 thinking about it a little bit it occurs to
2 me that just to sort of strengthen the point
3 I was making why I was suggesting it was not,
4 is that it was a
5 sale in which titles and so on were
6 transferred whereas in an agency
7 agreement the principal remained
8 somewhat on the book so the title and so
9 on is transferred. That is one.
10 Secondly the agent in that agreement to
11 my mind would have been Joslin Jamaica
12 Limited who was the servicer in terms of
13 doing the collections and you will
14 observe that even when action was being
15 taken in terms of debt recovery they
16 would be taken in the name of JRF and
17 not Joslin, it being recognized that
18 they were the principals.

19 COMM. ROSS: I appreciate the legal, if you like, terms
of the arrangement. It is just that in terms of payment or rather in
terms of the way in which FINSAC would collect
20 its money, it was almost more of an agency
21 arrangement except that if it was a normal
22 agency arrangement, the
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1 principal would have recovered a much
2 greater percentage of the actual funds
3 recovered.

4 COMM BOGLE: A question that I had asked Mr. Campbell
5 when Mr. Campbell of FINSAC was here, he
6 mentioned that FINSAC had semi-control
7 via the person that is in JRF over the
8 securities and I was asking him whether
9 or not FINSAC had retained a list or
10 copy of the list of securities and he
11 said no FINSAC had not retained this?
12 This was what he said. He said FINSAC
13 had not retained this. I don't know if
14 you have any knowledge of this or...

15 A: What I can say, Chairman, is that all
16 the security documentation - I think I
17 mentioned it earlier - were photocopied,
18 that they were scanned; that they were
19 placed on CD ROM; that this is what was
20 given to the bidders and so on for them
21 to inform their bids and as far as I am
22 aware copies of all those CDs and so on
23 were retained at FINSAC.

24 COMM BOGLE: The impression surely I have been given
25 here is that when JRF took over, FINSAC

1 walked through the back door and JRF
2 walked through the front door and so JRF
3 simply went and took over everything.
4 That surely is the impression that I
5 have gotten so far that all the files,
6 everything were simply left and JRF went
7 in and started to operate. Which brings
8 the question, where would FINSAC have
9 kept these things?

10 A: I think Mr. Campbell can speak more
11 definitively to this since he is there
12 and probably would be better able to
13 account for what is there. But what I
14 know, how the process works is that in
15 relation to files, as I say even as part
16 of the preparation for sale, those
17 documents were copied; they were
18 scanned; they were put on CD ROMs. I
19 believe that the copies and the CD ROMs
20 would have been kept by the Asset
21 Management Division of FINSAC which was
22 housed at 9 Trinidad Terrace, not where
23 the NPL unit was.
24 Prior to the transfer of the files and
25 so on for the loans that were sold to

1 the JRF, the files that had been worked
2 on and for which compromises and so had
3 been resolved were also supposed to have
4 been retained by FINSAC, were supposed
5 to have been physically removed. I
6 can't tell you that I went there and
7 physically saw them removed but would
8 have been my expectation based on the
9 plans and so on that copies would have
10 been retained, that files that had been
11 resolved, had been removed and so on,
12 those should be within the offices of
13 FINSAC.

14 So in paragraph 146, Chairman, I make
15 the point that, and I think I kind of
16 made this point earlier in relation to
17 McKinsey's valuations, but I made the
18 point that several persons have
19 suggested that if FINSAC did a deal with
20 Beal Bank to sell non-performing loans
21 at some cents in the dollar, the same
22 deal could have and should have been
23 offered to each debtor and I am saying
24 that...

25 COMM BOGLE: Just before you answer that can I just

1 take you back. Did you receive any bid
2 from any local person regarding the
3 purchase of the debt portfolio?

4 A: I think so, sir, yes. I think there was
5 either one or two local bids, yes.

6 COMM BOGLE: But their bids did not find favour with
7 FINSAC?

8 A: Their bids were not very - they were not
9 as rich as the others, let me put it
10 that way.

11 Chairman, I say this to you and you
12 perhaps forgive me for it, but my focus
13 in those deliberations was once the
14 person met the basic criteria was
15 maximizing the value. So to be honest
16 with you, I have had bids but to
17 emphasize the point, the real emphasis
18 was on where could we derive the most
19 value from our perspective because we
20 needed that money.

21 COMM BOGLE: Okay.

22 A: I was saying that the argument failed to
23 recognize that the cents in the dollar
24 referred to reflects an assessment of
25 the composite portfolio from which there

1 2 payments would have been about six and so we
3 4 would have to look at the time and the inflows
5 6 to do that assessment. So I am on page 52,
7 8 sir, Closing Observations. There are a
9 10 couple comments I would like to make
11 Chairman. One is to comment briefly on the
12 statements because I have heard them some
13 time not directly but sotto voce, of malice
14 and/or ill feeling by the principals of some
15 of the failed institutions and the way in
16 which they were dealt with by FINSAC. In
17 other words, that was a motivation and I want
18 to you say for the record and without
19 hesitation, that, and without fear of
20 contradiction, quite Frankly, that under my
21 watch, speaking for myself I never harboured
22 any such feelings and would not have
23 countenanced any such view as a basis for
24 making a determination as to how to treat
25 with an institution or an individual.
I can also say, Mr. Chairman, similarly, that
no one ever approached me

1 suggesting that malice, political bias or
2 their personal agenda has been a basis for
3 influencing or treatment of any institution,
4 any assets or loans whether negatively or
5 positively. And I also make the statement
6 that if anyone at the appropriate level had
7 so

8 insisted, you can be assured it would have
9 been my last day with FINSAC.

10 I saw my role as being able to carry out an
11 important mandate unaffected by any
12 political bias. I am not and have never been
13 a member of a political party. I have
14 deliberately kept my political views
15 confidential. I therefore have no, had and
16 have, and perhaps never will have, any
17 intention of being aligned with any
18 political party. The fact is that many of the
19 owners, principals and senior officers of
20 the various intervening entities are
21 personally known to me and we have had very
22 good personal relationships. The fact is
23 however, that in many instances their
24 institutions had not just failed but
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1 2 to which I am not an expert or competent And
3 4 I will make the point that when you look at
5 6 the assets side of the balance sheet,
7 8 because that's where the problem was
9 10 primarily in this particular crisis. It was
11 characterized by either non or
12 under-performing assets. I speak about the
13 loans, I speak about real state investments;
14 I speak about investments in hotels and so
15 on, the growing
16 concerns in the real sector. Many of them in
17 my view inappropriately within a financial
18 institution, particularly banks. Some of
19 these characteristics which we identified,
20 for example in relation to some companies,
21 is that there was no proper investment
22 policy, nothing that spoke about
23 concentration and making sure that your
24 portfolio is structured in a particular way
25 so that you might have had an over investment
in a particular type of assets and we saw a
lot of that. We saw a lot of situations where
as I said there was no proper management of
things like liquidity

1 risks and nobody was actively looking at
2 maturity matching and seeing, for
3 example, what were the gaps in risks the
4 institution was exposed to and how do we
5 manage these types of exposures and
6 these types of things. These are things
7 we do on a daily basis today; those
8 weren't being done.

9 Now having said that all of those
10 things, yes, there were challenging
11 circumstances in the economy and so on
12 which would have made these things more
13 difficult to manage but I have already
14 shared with you what is my philosophy
15 and approach on these things. So this
16 is what informs my own view on what
17 transpired.

18 COMM. ROSS: I appreciate that and as I said that's
19 most appropriate I am really enquiring
20 as to the regulators, where were they in
21 the whole mix? I mean, what's the point
22 of having people who are charged with
23 the responsibility for regulating
24 institutions if they are allowed to get
25 into massive problems. I mean I can

1 understand circumstances changing and
2 some institutions not being able to cope
3 but for so many to be as you have put
4 it, so massively insolvent, that must
5 have happened over time, it must have
6 been a process. The question for me is
7 what were the regulators doing in that
8 period?

9 A: Mr. Chairman, I think that question is
10 best asked of the regulators. I have
11 seen some of the - I mean I am not
12 ducking the question. I say to you that
13 I have seen within this enquiry some of
14 the transcripts of the persons from the
15 BoJ and so on who came early in the day
16 and they spoke about the efforts that
17 they made; they spoke about the issues
18 that they identified; they spoke about
19 the weaknesses in the regulatory
20 framework which they said didn't give
21 them the opportunity to respond and so
22 on, but we never really conducted a
23 study of how did regulation affect this
24 particular issue. Our focus was on
25 resolving the problems to some extent;

1 seeing what lessons were learned from a
2 management perspective just to ensure
3 that going forward we were building
4 something that was robust and
5 sustainable. I am a bit loath to speak
6 about things that are, you know.

7 MR. GARCIA: Mr. Hylton, was there also worked done
8 though by FINSAC on addressing the
9 regulatory framework?

10 A: Yes, particularly the strengthening of
11 the supervisory framework for insurance
12 companies. That was a TDB sponsored,
13 funded project which we worked on. We
14 also did give some insights into what we
15 thought were some of the things that
16 could be done to enhance banking
17 regulation and so on but, that was
18 on/off and they said well here are some
19 views you can take it and look at it and
20 see if they find favour with you,
21 whereas on the insurance side was more
22 about informing new legislation, new
23 regulations and so on, so it was a
24 little bit more robust from our
25 perspective.

1 managing risk and making money is far
2 greater than that of the persons who are paid
3 to try and catch up with what they are doing.
4 And so that creates - what it can do however,
5 is certainly help to prevent something of
6 the enormity. What I think is most
7 important, Chairman, quite frankly, is the
8 governance framework internal to an
9 organization which imposes the appropriate
10 checks and balances on risk taking and the
11 management and how decisions get made.
12 Because the truth is that if everyone of
13 these instances in the discussions and so
14 on that we have with the principals of these
15 companies there are always persons,
16 sometimes even the principals themselves
17 who are saying, is this the right way? Should
18 we be going in this direction at this time?
19 But if you don't have a process which
20 essentially stops you, and unless you insist
21 on a sort of a disciplined framework along
22 which you must operate, then there is all
23 the temptation to go in excess when it seems
24
25

1 to be doing well. We have seen for
2 example, where institutions -- we saw in
3 2003 a rapid devaluation and a whole lot
4 of people went wrong, because the
5 currency is going up, I am going to go
6 long and make some money and when the
7 Government stopped the thing and the
8 thing reversed a lot of persons got
9 burnt, yes. And that is what it is in
10 its simplest form.

11 I am saying to you that people try and
12 innovate and create new financial
13 products, new arrangements in seeking
14 global financial space in terms of some
15 of the instruments that were created
16 which led to the meltdown in 2008, they
17 were fiction, they had no basis on - I
18 mean guys were doing modeling based on
19 probability and creating instruments on
20 that basis. People were shorting all
21 kinds of things, you name it they
22 shorted it just to make money.

23 COMM. BOGLE: Under the heading general observation,
24 what is your view regarding the time
25 limits of the intervention in the

1 various institutions?

2 A: Chairman, I said at the time, I said it
3 publicly and I think there is always a
4 little bit of a trade-off, one of the
5 things that is very critical in a
6 financial sector crisis is speed, right
7 speed of which you move because the
8 longer it takes, you see the rate of
9 which costs are accruing and so on. But
10 the other thing which is also important
11 is the restoration of confidence so as
12 to allow the work to take place and
13 there is often at times tension between
14 those two objectives. I mean, in its
15 purest form, for example, one could
16 argue that a strategy could have been to
17 pass new legislation and just take over
18 all insolvent institutions, and then try
19 and clean them up and sell them out. But
20 what does that do to investor's
21 confidence in terms of it? In other
22 words, we find that the confidence that
23 comes from a process of negotiation
24 trying to assure people, don't worry
25 everything is good, we are working

1 through it, our institutions are safe
2 and we are going to work through the
3 problems it creates more issues, but it
4 also helps to provide a framework within
5 which work can take place in an orderly
6 and structured way while maintaining
7 confidence in the system. Because part
8 of the danger of the unilateral action
9 of that nature is that it leads to
10 people questioning even sound and stable
11 institutions.

12 COMM. BOGLE: Well, I mean eventually we did intervene
13 in these institutions. Should we in your
14 view have intervened earlier in some of
15 the institutions? Did we sort of drag
16 our feet unnecessary which is the
17 problem?

18 A: Well, let me put it this way Chair, I
19 would say that certainly from my
20 perspective in terms of when we knew
21 what the problem was, I don't think our
22 invention was unreasonably long. Now,
23 one could argue that given the size of
24 problem there is a way that should have
25 been discovered earlier, and if that is

1 2 the case, then I would agree to your point.
3 4 But I am saying that the first time, speaking
5 6 for myself, that I became aware of a systemic
7 8 issue would have been late 1996 as part of
9 the Task Force and even at that time, we had
10 no idea of the extent of the issue.
11 So just the last three paragraphs, Mr.
12 Chairman, we are making the point that we
13 spent numerous hours in meetings and on the
14 telephone explaining to these persons
15 affected why we could not necessarily pursue
16 and protect their institutions and their
17 equity positions in them. While in many
18 instances one felt their pain, we had to do
19 what the circumstances dictated were the
20 right thing to do consistent with our
21 mandate. And in the final paragraph I made
22 the point that FINSAC's work was reviewed by
23 the management team of the IMF under an
24 agreed monitoring programme with the
25 Government as well as by teams from the World
Bank, IADB and the Caribbean Development
Bank, both as a prerequisite

1 to their providing funding to assist
2 with the conversion of FINSAC notes, the
3 LRS and throughout the process of
4 FINSAC's existence from earlier in the
5 day and at all times they were very
6 complimentary of FINSAC's work.

7 COMM. BOGLE: That completes your presentation?

8 A: Yes, sir.

9 COMM. BOGLE: Okay, at this time therefore, I know
10 that there are attorneys present who -
11 you wanted to say something, Mr. Garcia?

12 MR. GARCIA: I indicated earlier that I have some
13 questions that I need to ask Mr. Hylton.

14 COMM. BOGLE: Okay, you may go forward.

15 MR. GARCIA: Perhaps I could start with the knows.
16 Mr. Hylton, in answer to a question from
17 the Commissioner in the Chair, you had
18 indicated, I believe it was in the
19 context of the discussion about the
20 divestment process that there could have
21 been some - how should I say it - that
22 you could have tried harder or FINSAC
23 could have tried harder to let the
24 taxpayers get a little more out of that
25 process; and I was just wondering if you

1 in the financial sector, even in a minority
2 shareholding position, should not be
3 involved in owning private sector
4 institutions and should really get out of
5 it. The truth is, and if I think back for
6 example, in relation to - as I was saying
7 that we did try in a couple of instances to
8 see if it was something that would interest
9 people, we never got the interest.

10 And I give you another example, I had
11 mentioned NCB and Union Bank, for example,
12 there was also that discussion there with
13 RBTT. Their position was that they didn't
14 even want a listed company and so they
15 wanted to acquire shareholding which would
16 give them the opportunity to take it off the
17 listed exchange. So that was not even an
18 option in those deliberations.

19 In relation to the insurance portfolio that
20 was - well, we never really went down that
21 road as far I recall in terms of the
22 divestment of the insurance portfolios.
23 And in relation to Life of
24
25

1 Jamaica which became Sagicor, I think
2 they even wanted a greater shareholding
3 of what we had to offer if that was
4 available. So you know, like I said,
5 there were different views. Part of the
6 issue though, two things, one has to be
7 careful of in those circumstances is
8 that, and I suppose it could work both
9 ways even as I said, it could go well as
10 well as, it could go bad, that is one
11 point.

12 And then the second thing is that, you
13 have to be careful of being what I
14 referred to as a "captive minority." In
15 other words, finding yourself in a
16 situation where you hold a small
17 percentage, but the guy who really
18 controls starts to squeeze you, you
19 know.

20 COMM. BOGLE: Could that have been part of the Mutual
21 Life/NCB problems?

22 (Laughter)

23 A: Mr. Chairman, I would not want to
24 speculate on that one, but I hear you.

25 COMM. BOGLE: Thank you sir. Go ahead, sir.

1 MR. GARCIA: Mr. Hylton, I also need to ask you some
2 questions now arising from some of the
3 evidence that has been given by
4 individuals before this Commission. So I
5 wanted to start by asking you a couple
6 questions in relation to some evidence
7 that has been given by Dr. Paul
8 Chen-Young and in his evidence he had
9 spoken to the termination at some point
10 of the engagement of Linquist Avey, a
11 forensic investigator who had, as I
12 understand it from his evidence, been
13 engaged in relation to the Eagle
14 Financial Group, and I was wondering if
15 you could comment on first of all, the
16 question of whether or not you at some
17 point terminated their engagement.

18 A: Yes, I did terminate the engagement of
19 Linquist Avey. The reason why I tell
20 you the reason why. Linquist Avey had
21 been previously engaged in Blaise and in
22 Century in terms of doing forensic work
23 and they had identified a number of
24 issues which we had pursued in
25 litigation and which we were successful.

1 2 But the truth is, Linguist Avey had really
3 4 been engaged by the Ministry of Finance in
5 6 those circumstances. In other words,
7 8 Ministry of Finance had engaged them from
9 those institutions that were in temporary
10 management and they were doing some
11 investigations that were counter to FIS and
12 FIS never paid them. In relation to FINSAC
13 we had a situation where Linguist Avey had
14 initially been engaged and we were paying
15 them and quite honestly, I mean forensic work
16 is not cheap and I didn't see where anything
17 had been brought forward by way of case, a
18 specific case which we are going to be
19 pursuing at the time, and I had no mandate.
20 Quite frankly, it was not part of our
21 mandate. There was discussion between
22 myself, Bonnick, and Boothe at the time, we
23 really didn't have a mandate to be pursuing
24 forensic investigations and so we said no,
25 we don't and it was expensive in the process
and so we are going to cut it. So I wrote to
Mr. Avey and told him that

1 we were bringing the thing to an end.

2 MR. GARCIA: Had they at that time, given any
3 assessment of any probable litigation
4 against the then controllers of the
5 Eagle Financial Group?

6 A: Not that I can remember that they had at
7 the time. So he called me after I wrote
8 to him and he said he thought it was
9 premature because they had something
10 that they had identified and they were
11 working on and so on and he said to me,
12 that you know -- I told him well, I
13 didn't have a mandate and he said you
14 know, they had worked with the Ministry
15 of Finance before and they wanted to
16 talk to the Ministry of Finance to see
17 if they were willing to pay for them to
18 continue to conduct this exercise. I
19 told him that he should call the
20 Financial Secretary and speak to her
21 about it. He called the Financial
22 Secretary and obviously he spoke to her.
23 I don't know if he spoke to the Minister
24 or she spoke to the Minister and then I
25 got a call to say that the Government

1 wanted just that; there were important
2 issues that they were working on that
3 there seemed to be good prospects and
4 lead civil litigation and that they
5 thought we should continue it and so we
6 renewed the relationship. Part of the
7 thing with Avey up to that point in time
8 which I think may be a little bit of an
9 issue is that perhaps because through
10 Blaise and Century they were held by the
11 Ministry, they tended to report a lot to
12 the Ministry and certainly, I was not
13 aware. But Mr. Avey actually briefed me
14 on some of the things that they were
15 working on, some of the issues and they
16 actually sent me a sort of report and
17 then based on that we decided to
18 reinstate him.

19 Q: Was the litigation subsequently brought
20 on their recommendation?

21 A: Yes.

22 Q: And do you know what was the outcome of
23 that litigation?

24 A: Yes. In the Supreme Court - well, I
25 know the litigation it continued while I

1 left FINSAC, but I know we were
2 successful on a number of the issues,
3 but I think it is currently under appeal
4 now, I think in the Court of Appeal.

5 Q: Thank you, sir. Now, I want to ask you
6 some questions in relation to a
7 gentlemen who gave evidence, DEBTOR2.
8 You are familiar with that
9 name, sir?

10 A: Well, you showed me the transcripts and
11 some correspondence.

12 Q: I am going to ask you to take a look at
13 a letter sir, which is in evidence, it
14 is Exhibit DEBTOR2.49 and if you could just
15 indicate, now that you have my copy, if
16 you could just indicate the date of the
17 letter.

18 A: It is January 16, 2001.

19 Q: And it is written by whom and to whom?

20 A: It is written by Richard Bonner of
21 Ballentine, Beswick and Company, it is
22 addressed to Refin Trust Limited, and
23 attention Mr. Patrick Hylton, that's me.

24 Q: Do you recall whether you received that
25 letter at around the time it was

1 written?

2 A: I hate to use the word, but I don't
3 recall, I really don't.

4 Q: I think I can take the letter back now.
5 Letters that were written for your
6 attention at Refin Trust, or FINSAC, or
7 FIS, were they generally actually
8 brought to your attention?

9 A: I suppose it would depend on the
10 circumstances, but most times not
11 because the truth is - I think I tried
12 to explain this earlier, is that I was
13 never really very involved, I couldn't
14 quite frankly be involved in the
15 day-to-day management. Refin and Recon
16 were involved in the management of
17 non-performing loans. My involvement
18 would primarily be at the Credit
19 Committee which I would attend from time
20 to time and quite honestly, I think I
21 would have been - if one should look at
22 the record, I don't know what it shows,
23 but I suspect that I may have been
24 absent more times than I was present at
25 the Credit Committee just by the nature

1 of the volume of work that was involved
2 in other areas, the meetings, the phone
3 calls, the various things that I had to
4 deal with. So primarily it had to be run
5 by the General Management, the Asset
6 Management and Divestment, Mrs. Robinson
7 and then at the Board, I would have seen
8 most things that came to the Board as
9 well as, sometimes something escalated
10 to my attention you know, by way of an
11 issue or so, then I would have to deal
12 with it. But as I said to you when I saw
13 it, I don't know, I can't recall of
14 seeing that before or know who
15 DEBTOR2 is.

16 Q: Now, by a letter dated September 24,
17 2001 which is "DEBTOR2.9" the
18 then Minister of Health, the Honourable
19 John Junor sought your intervention in
20 respect of DEBTOR2's matter. The
21 evidence which he led indicated
22 essentially that you declined to
23 intervene and if I can show you Exhibit
24 "DEBTOR2.19", a letter dated
25 February 5, 2002 from FINSAC Limited to

1 2 Ballantine Beswick and Company for the
3 4 attention of Mr. Bonner, the letter indicates
5 6 that it is under your hand and I am going to
show it to you and then ask you a couple
questions in relation to it.

7 (*Document shown to Mr. Hylton*)

8 Q: The first question that I have is
9 whether or not that is indeed your
10 signature on that letter?

11 A: Yes, sir, yes, it is.

12 Q: Now, could you indicate - essentially it
13 seems to me from that letter that the
14 position that you took was that you were
15 not going to personally intervene in the
16 matter despite Mr. Junor's request?

17 A: Yes.

18 Q: And I was wondering if you could comment
19 on why you could not so intervene at
20 the time.

21 A: Well, I would say that I got many, many
22 requests on a daily basis almost
23 intervening in a lot of these issues. I
24 suppose is because to a large extent my
25 name was associated with FINSAC, the

1 public knew my name and a lot of times
2 various persons at various levels - the fact
3 that a Minister wrote to me, you know, I
4 would have gone through a process. If
5 somebody wrote to my
6 Minister to say intervene in this
7 matter, we have to intervene in this matter
8 at FINSAC because I would expect the
9 Minister to send it to me and to ask me to
10 investigate it and to respond and to deal
11 with it and similarly, we had a
12 institutional framework where the Non-
13 performing Loan Unit reported to
14 Mrs. Robinson who was a senior
15 executive, in my view, competent to deal with
16 these issues. And so my intervention was to
17 say to
18 Mrs. Robinson, please go and investigate
19 this, please communicate with this
20 gentleman, if there was a basis of which
21 something can be worked out, if you need my
22 input or involvement let me know and I will
23 get involved, and that's essentially I think
24 what I did. But what I could not do, what I
25 think would not

1 be appropriate was for me to take one
2 particular loan and then go and say
3 well, I am going to take the file and go
4 through it and decide that we are going
5 to go this way or go the other way in
6 terms of how we resolve the issue. So I
7 am just saying that there are issues of
8 governance, there are issues of
9 management and so on. So it is not as if
10 I am ignoring the Minister and not
11 responding to the Minister's request.
12 But I am saying that there is an
13 established process, there is a fair
14 process and we should utilize the
15 process and if Mrs. Robinson needs my
16 input or the problem escalated for some
17 reason in terms of a resolution, then
18 she can do so and she is at liberty, and
19 she knows there is a way she can do so.

20 Q: Thank, you Mr. Hylton.

21 Now, DEBTOR3 also gave evidence
22 before this Commission, do you recall
23 that name, sir?

24 A: Yes, sir, I recall the name.

25 Q: Do you remember it?

1 give assurances just based on a meeting
2 without having some context or some set of
3 circumstances around which to give those
4 assurances. In other words, the way we
5 operated, and it is an important point as
6 I think about, even the way I operate today,
7 which is how I operated then, if somebody
8 wants a facility, let's say a loan Mr.
9 Chairman, in the bank, coming to me to get
10 the loan is not going to get you the loan.
11 That is dangerous, in my view. You go to
12 the Lending Officer, the Lending Officer
13 supports it and makes his
14 recommendations and it goes up the ladder
15 for approval. If the officer is not going
16 to recommend it then I am not going to touch
17 it. Unless somebody is going to come to me
18 and allege malice or some improper motive
19 then that is something I would have to
20 investigate or perhaps have somebody else
21 look at it, remove from that person as to
22 make a judgement, but I couldn't be running
23 an organization which was involved in so
24
25

1 many other things which had so many
2 other challenges and then be engaged in
3 at the same time managing individual
4 loans out of tens of thousands of loans.
5 It just couldn't work. And it wouldn't
6 have been fair either, quite frankly.

7 MR. GARCIA: Thank you Mr. Hylton.
8 I don't have any further questions,
9 Commissioners.

10 COMM. BOGLE: Okay. Any other attorney would like to?
11 Mr. Levy?

12 MR. LEVY: I have quite a few.

13 MR. MOODIE: I have just one question for Mr. Hylton
14 asking him to elaborate on something
15 which appears in his statement if you
16 don't mind.

17 COMM. BOGLE: Go ahead.
18 MR. MOODIE: Mr. Hylton, in paragraph 120 of your
19 statement you spoke about the system of
20 checks and balances within FINSAC
21 including that hierarchy of referrals
22 for persons who wanted their cases
23 reviewed. Could you, for the benefit of
24 the Commission, elaborate on that system
25 of checks and balances and in particular

1 the hierarchy of referrals to which you
2 spoke.

3 A: I can't give you the details in terms of
4 specifics but I know for example that
5 you had several teams within the
6 Non-performing Loan Unit who were
7 assigned work out responsibilities for
8 specific loans and each team had a team
9 manager, and then that team manager
10 reported to - I think there were
11 probably about seven, eight, nine teams.
12 I don't remember the number now. They
13 would have reported to the Unit Head of
14 the Non-performing Loan Unit. What they
15 did, in terms of certain loan sizes and
16 like write off of suspended interest or
17 write off of certain percentage of write
18 off of interest, you would have certain
19 authorities assigned to say the team
20 manager another authority assigned to
21 say the unit head; another authority
22 assigned to the Credit Committee and
23 beyond that you would need to go to the
24 Board for approval. I don't remember the
25 specific terms of those authorities now

1 but I know that they could write off
2 like 25 percent of interest; whatever it
3 was, but I know that there was a
4 framework.

5 Q: Thank you.

6 COMM. BOGLE: All right. Just before we proceed can
7 we have a few minutes break? We have at
8 ten-minute break and reconvene.

9 B R E A K.

10 Ladies and gentlemen, this Enquiry is
11 now reconvened. Again, Mr. Hylton, just
12 to remind you that you are still under
13 oath.

14 MR. HYLTON: Yes sir.

15 COMM. BOGLE: Mr. Garcia, you had said you are
16 finished and Mr. Moodie was finished as
17 well and therefore we will go to
18 Mrs. Minott-Phillips.

19 I'll take you after Mr. Levy, I know
20 that you are very anxious.

21 MR. LEVY: No, I am quite willing to wait. I am
22 going to be quite lengthy.

23 COMM. BOGLE: Okay, we will ask Mrs. Minott-Phillips.

24 MRS. PHILLIPS: I'll be short.

25 Good afternoon, Mr. Hylton. You spoke

1 in paragraph 90 of your witness
2 statement very briefly about a special
3 'window of opportunity'. It is a phrase
4 that has come up here before. Would you
5 recall, Mr. Hylton, having sent a memo
6 to the then Minister of Finance in
7 relation to the 'window of opportunity'
8 on or about the 30th of January 2002?

9 A: I think so, yes.

10 Q: Can I show you this.

11 (Document shown to witness)

12 Now I don't want to confuse it with
13 FINSAC's 'window of opportunity'. I want
14 to differentiate it between a window of
15 opportunity that was agreed upon between
16 FINSAC and Jamaican Redevelopment
17 Foundation Inc, as part of the
18 nonperforming debt portfolio.

19 A: That's why I hesitated when you asked
20 the question because I was trying to
21 make the distinction.

22 Q: In relation to the latter one.

23 A: This is the latter one, yes.

24 Q: Can you expand on it with the assistance
25 of that memo?

1 percent of the principal and restructure
2 the 80 percent over twenty years at
3 twelve percent.

4 COMM. BOGLE: Was this communicated adequately or
5 fully to the persons involved?

6 A: I think it was publicized, if I recall,
7 it was publicized.

8 MRS. PHILLIPS: Mr. Hylton, you see your signature on
9 that document?

10 A: Yes, it is.

11 MRS. PHILLIPS: I only have one copy so if I could just
12 ask Mr. Goffe to show it to the
13 Commissioners. I will ask for that to
14 be admitted as PH 6.

15 COMM. BOGLE: PH 6.

16 MRS. PHILLIPS: When Mr DePeralto comes I'll ask him if
17 he can do sufficient copies.
18 Commissioners, there are some agreements
19 which I would like to...

20 COMM. BOGLE: Page 6, a memo from Mr. Patrick Hylton
21 to Minister, Dr Omar Davies, re: 'Window
22 of Opportunity'.

23 MRS. PHILLIPS: Obligated, sir. Dated 30th of January,
24 2002.

25 COMM. ROSS: Before you move on, this certainly does

1 not seem to be the 'window of
2 opportunity' that we have heard about
3 before and I don't know if this is the
4 'window of opportunity' that Mr. Hylton
5 referred to in '90, is it?

6 MRS. PHILLIPS: He can answer.

7 A: No, that's not the 'window of
8 opportunity' which I referred to sir,
9 no.

10 COMM. ROSS: Could you tell us something about that
11 'window of opportunity' because we have
12 heard - I think that must be the 'window
13 of opportunity' that we have heard about
14 so far.

15 COMM. BOGLE: The question is how many.

16 MRS. PHILLIPS: Commissioner, for accuracy; Doctor
17 Davies when he gave evidence spoke of
18 this 'window of opportunity', the one
19 that when the debts were sold to JRF,
20 for a six-month period through an
21 agreement with JRF there was an
22 agreement to accept 80 per cent of
23 principal in relation to certain debts
24 in relation to owner occupied premises.
25 Doctor Davies had given that evidence.

1 order to facilitate considering these
2 proposals and approving them.

3 COMM. ROSS: Were there any special policies that
4 governed that in terms of the treatment
5 of the various people who applied?

6 A: I think it was more or less an
7 application of the policy framework in
8 that what we were saying was, we are
9 going to try and be more lenient with
10 owner occupier residences. We want to
11 ensure that whatever value we were
12 collecting in terms of the arrangements
13 that were made represented a fair value
14 in terms of our expectation of what
15 would be collected.
16 Part of what is happening Commissioners,
17 is that, like I said there was a tension
18 and so people were always negotiating.
19 As long as there is an opportunity to
20 negotiate people will try and get a
21 better deal. What the 'window of
22 opportunity' was saying, 'People, look,
23 the negotiation is going to stop at a
24 point in time so please come and settle
25 now because the thing is sold and

1 somebody else might take a different
2 approach. At least you know what we are
3 willing to settle at'.

4 Q: Was this the programme administered
5 under the Committee chaired by Bev
6 Lopez?

7 A: No, that's a separate thing. That was
8 the Oversight Committee which the
9 government had formed saying that they
10 wanted that Committee to take a look at
11 loans which were in the productive
12 sector working along with NIBJ, NDB,
13 etc., to see if anything could be done
14 to resuscitate those.

15 COMM. BOGLE: Tell me a little more about that
16 Committee and the success and/or failure
17 of that Committee as you see it.

18 A: I think it is fair to say that the
19 Committee was not particularly
20 successful. I remember one issue, there
21 were couple of issues, I remember they
22 said that for example for a fair
23 percentage of the persons they had
24 written to, there was no response. For
25 another percentage they had asked for

1 2 business plans; they never got any. In some
3 4 instances where they got business plans they
5 6 were weak and the Committee couldn't support
7 8 them and then there are other instances where
9 restructuring took place. And I also know
10 that there were some definitional issues as
11 well initially between FINSAC and the
12 Committee as to what constituted productive
13 sector but those were eventually resolved,
14 and I know that part of the challenges that
15 the
16 Committee had in some instances, in a few
17 instances, was getting an external
18 institution to fund it. In other words,
19 NIBJ, NDB were not in direct lending and
20 so if the Committee formed the view that
21 somebody was capable of rehabilitation
22 they would have to come through one of
23 the AFIs, or approved financial
24 institutions and sometimes that was
25 protracted.

23 COMM. BOGLE: You mentioned that FINSAC, it's mandate was
not really to bail out or provide too much assistance to, for instance
the

24

25

1 productive sector, but that FINSAC would
2 sort of facilitate. Did FINSAC during
3 its operation assist any of the
4 productive businesses to, for instance,
5 get a business plan? What I am thinking
6 of here is that there were businessmen,
7 especially small businessmen or
8 businesses that might not have been
9 capable of providing the necessary
10 business plan that FINSAC would require.
11 Did this Oversight Committee for
12 instance, see themselves as providing
13 any assistance in this regard for those
14 persons to help them to qualify for
15 consideration?

16 A: Chairman, I don't think initially but I
17 think eventually, and this is now trying
18 to remember but I vaguely remember some
19 discussion about the inadequacy of the
20 business plans and how could we try and
21 assist some of these companies to
22 prepare and to produce better business
23 plans. I don't remember what specific
24 initiative was pursued in that regard
25 but to my mind, to my memory there was

1 an initiative.

2 COMM. BOGLE: And you feel that there might be Minutes of
3 Committee Meetings that could very well
4 speak to that?

5 A: Yes.

6 MR. LEVY: Mr. Chairman, this letter which
7
8 *Mrs. Phillips is* asking Mr. Hylton to
9 speak to, it is about three paragraphs. It
10 is a public enquiry, could the public hear
11 what it says, sir?

12 COMM. BOGLE: Which of the letters you are dealing with
13 now? That is the 'window of
14 opportunity'?

15 MR. LEVY: The letter dealing with owner occupied
16 houses up to five million dollars. That
17 document is being copied now for
18 circulation.

19 MR. LEVY: Can we read it into the records, sir? Mrs.
20 COMM. BOGLE: Phillips?

21 MRS. PHILLIPS: I just sent it in to Mr. DePeralto. It's
22 gone to be copied. As soon as it comes back
23 we will have copies.

24 MRS. PHILLIPS: One of the Commissions, I don't recall
25 which one, asked whether or not it had been
publicized.

1 subject of a written agreement, copies of
2 those agreements have already been
3 submitted by my client more than two years
4 ago to this Commission, but there is an
5 opportunity here with one of the signatories
6 here present to the agreements present to
7 have the agreements identified and formally
8 tendered and I intend to use it for that
9 purpose, the opportunity.

10 I wish to request of the Commission that it
11 is mindful of the fact that in the ordinary
12 course of things it is only parties to an
13 agreement that are entitled to copies of the
14 agreement, and the parties to this agreement
15 are the various FINSAC entities and Jamaican
16 Redevelopment Foundation and its servicer.
17 The Commission already has copies of these
18 agreements and I do not intend nor do I wish,
19 and I speak on behalf of my clients, to have
20 them generally distributed as if they are
21 public documents because they are not, and
22 confidentiality attaches thereto,
23
24
25

1 extreme duties of confidentiality to
2 this document.

3 COMM. BOGLE: Mrs. Minott-Phillips, under advice,
4 under legal advice at this time, I am
5 told that if you put them in evidence
6 they become public documents so I'll
7 just put you on notice that if you put
8 them in evidence they will become public
9 documents.

10 MRS. PHILLIPS: I wish to be heard on that because the
11 Commission of Enquiry Act, as a matter
12 of fact, the public notice issued in
13 relation to the Commission of Enquiry
14 says first of all this Commission
15 reserves the right to even hear its
16 proceedings in camera and it said so in
17 the notice that was issued to the public
18 and published in the Daily Gleaner of
19 May 24, 2001. It says:

20 **"The Commission is empowered to summon**
21 **witnesses and exam them on oath on**
22 **matters relevant to the Enquiry. The**
23 **Enquiry will be conducted in public**
24 **unless otherwise determined by the**
25 **Chairman of the Commission".**

1 So you have reserved onto yourself the
2 power which you have to sit in camera.
3 I am not asking in relation to my client that
4 you do so even though my client is a private
5 organization whose business is not the
6 business of the public and who did not come
to Jamaica until 2002.

8 The document - and you have the power to
9 determine your own rules of procedure -
10 I do not know how it is the Commission
11 can seek to justify not looking at a
12 document which is the specific subject
13 of Item 5 of its Terms of Reference
14 because it seems to me you are giving me
15 the choice of whether to put it in or
16 not to put it in, in circumstances where
17 the agreement is an agreement between
18 two private companies, two or more
19 private companies.

20 MR. LEVY: One publicly owned.

21 MRS. PHILLIPS: None is publicly owned.

22 MR. LEVY: By the government.

23 MRS. PHILLIPS: They are private companies in law -- I am
24 speaking to the Commissioners - and they
25 deal with issues of confidentiality.

1 You have had an opportunity to look at
2 them; you are aware as to how sensitive
3 they are; you have received electronic
4 copies of annexures to this document and
5 been told of its sensitivity and I do
6 not think that the Commission's mandate
7 is to cause undue distress to persons
8 who have chosen not to come here or not
9 to make an issue and there are
10 thousands, so I am not sure what is the
11 justification. In any ordinary
12 contractual relationship it is the
13 parties to the contract that are
14 entitled to copies. In this situation
15 because there is a Commission of Enquiry
16 then certainly the Commission can look
17 at it but I do not know what would be
18 the justification for releasing it to
19 the public.

20 COMM. BOGLE: Mrs. Phillips?

21 MRS. PHILLIPS: Commissioners.

22 COMM. BOGLE: Two things here; one is that the
23 document, once we utilize the document
24 and the document becomes part of this
25 Commission's records, it means that the

1 Commission can use the content in their
2 report. The report is a public document
3 and I am saying that once that document
4 comes to the Commission, the Commission
5 can use it, extracts from it surely, in
6 the report and if it is tendered here in
7 the public then the public is entitled
8 to it and I am sure you recognize that,
9 that has been the situation so far, that
10 whatever is tendered here becomes a
11 public document.

12 Now, if you are going to request
13 otherwise, then it cannot be presented
14 here because once a document is
15 presented here in this public session of
16 the enquiry then it has to be a public
17 document.

18 MRS. PHILLIPS: You know, Commissioner, I hear what you
19 are saying. I recall wherein a document
20 was accepted here, given an exhibit
21 number, a certain affidavit of a
22 deceased person, and then the Commission
23 stopped reference to it precisely
24 because of the sensitive nature of the
25 document.

1 COMM. BOGLE: I don't think that, that was the basis
2 on which we stopped it. I am almost sure
3 it wasn't on the basis of sensitivity. I
4 cannot remember stopping that document
5 because of that.

6 MRS. PHILLIPS: That is my recollection and on the basis
7 of the unavailability of the person to
8 be cross-examined on the document. But
9 it is entirely a matter for you Mr.
10 Chairman. You have the document if the
11 Commission does not want them to be in
12 evidence, there has been much said here
13 of a custodial arrangement in relation
14 to it.

15 COMM. BOGLE: The thing is, in this Enquiry so far
16 quite a number of things have been said
17 about the document that you referred to
18 as a matter of fact and you yourself
19 have given information out of the
20 document.

21 MRS. PHILLIPS: I have no difficulty with extracts of
22 the document being used where
23 appropriate. I have no difficulty with
24 that.

25 COMM. BOGLE: I have no difficult and I don't think

1 the Commission has any difficulty with
2 your presenting areas of the document
3 that you wish as parts of evidence or
4 parts of cross-examination and those
5 extracts will be public because the
6 document is a thick document.

7 MRS. PHILLIPS: Mr. Chairman, Item 5 concerns these
8 documents only. Item 5. You don't need
9 to hear a word of evidence, the
10 documents speak for themselves. You
11 have them, if you don't wish to have it
12 put in evidence then I will abide by
13 your decision. It is in your terms of
14 reference.

15 COMM. BOGLE: The thing is, we have the documents. To
16 the extent that you said that these
17 documents have been referred to and you
18 wish to put them in, I am simply putting
19 you on notice of what will happen.

20 Q: I was merely trying to be of assistance
21 to the Commission in that I thought
22 that given the terms of reference and
23 the scope of Item 5, you would want the
24 documents in evidence, but if you don't
25 want them in evidence, that's fine.

1 night I won't finish it.

2 COMM. BOGLE: I am sure you won't, Mr. Levy,

3 MR. LEVY: Mr. Hylton, you appear to be a very
4 modest man. I am looking at the first
5 page of your statement and your
6 employment history. Before we get
7 there, what is your present employment
8 position?

9 A: I am the Group Managing Director of
10 National Commercial Bank Jamaica
11 Limited.

12 Q: Sounds like a very good job. The assets
13 of National Commercial Bank Jamaica
14 Limited are they greater or less than
15 the assets of FINSAC when you were
16 managing them?

17 A: By now I don't recall what the total
18 assets of FINSAC were by comparison. It
19 is hard for me to answer that question.

20 Q: Pardon me?

21 A: I said I don't recall what the total
22 assets of FINSAC were by comparison, but
23 I suspect it would have been smaller
24 than what NCB is now.

25 Q: What about when you started, joined NCB?

1 We know you have grown it by leaps and
2 bounds.

3 A: I don't know the answer to that
4 question, sir.

5 Q: But you are very close?

6 A: I don't know.

7 Q: FINSAC was a multi-faceted, in effect,
8 although not formally structured the
9 FINSAC group was a multi-faceted
10 conglomerate; owning insurance
11 companies, insurance debts, banks debts;
12 it was a conglomerate.

13 A: It was.

14 Q: I ask you Mr. Hylton - I am getting
15 ahead of myself.

16 Mr. Hylton, you said in your statement
17 that in late November, 1994 you went to
18 Blaise Trust and Merchant Bank Limited
19 but resigned in December, 1994.

20 A: Yes.

21 Q: And you went on to tell us that you made
22 certain reports for the Minister of
23 Finance, I believe, and somebody else.

24 A: The Governor of the Bank of Jamaica.

25 Q: So in the United States you would be

1 known as a whistle blower, and you would
2 probably get big rewards for that?

3 A: Well, I don't know, sir.

4 Q: Well if an employee reports
5 irregularities by his employer, he is
6 known as a whistle blower and in the
7 United States he is well rewarded for
8 that.

9 A: My view at the time, sir, was that it
10 wasn't sufficient to just walk away.
11 Having regard to what information I had,
12 what knowledge I had, I felt I had a
13 responsibility to disclose it.

14 MR. HYLTON: Well, my view at the time, sir, it
15 wasn't sufficient to just walk away,
16 probably with regard to what information
17 I had, what knowledge I had, I felt I
18 had the responsibility to disclose it.

19 MR. LEVY: Let us just switch a moment and go to
20 Errol Campbell. He worked for you when
21 you were Managing Director at FINSAC?

22 A: He worked at FINSAC.

23 Q: Okay. He like you is a member of the
24 Chartered Institute of Bankers?

25 A: Yes, I think so.

- 1 Q: So his evidence says, his evidence was
2 that he had some, I think if my memory
3 serves me right, 14 years at the
4 National Commercial Bank in Port Antonio
5 or something like that as a Manager?
- 6 A: I know he worked at NCB, I don't know
7 for how long.
- 8 Q: But he was a Manager?
- 9 A: He was a Manager.
- 10 Q: Which bank were you a Manager of before
11 you went to NCB?
- 12 A: I was at Citizens Bank.
- 13 Q: You were a Manager?
- 14 A: Yes, sir.
- 15 Q: Manager of what, where?
- 16 A: Well, I was a Manager in several
17 capacities. Initially I started as a
18 Manager in Corporate Banking, then I
19 became Manager of the Ocho Rios Branch,
20 then I became Manager in charge of
21 Credit and Risk Training across the
22 group, then I became Manager, I think I
23 was at the one in New Kingston there and
24 then at King Street.
- 25 Q: How many years did you spend totally in

1 banking?

2 A: Well, I started with the bank in -- my
3 first job with the bank was in 1981.

4 Q: You were a teller?

5 A: As a teller, that's correct, sir.

6 Q: And in 1983 you left the bank to pursue
7 a three-year course in Banking which was
8 where you retained your Chartered
9 Institute of Bankers qualifications?

10 A: Yes.

11 Q: So you worked with the Bank for, I
12 assume as a teller, just under two
13 years?

14 A: That amount of time or a year or
15 something like that.

16 Q: How many years were you actually working
17 with the combined bankers before you
18 went to FINSAC -- no, before you went to
19 Blaise?

20 A: Before I went to Blaise, I went to
21 Blaise in 1994, so it would have been
22 about thirteen years.

23 Q: Excluding the time that you were a full
24 time student?

25 A: Well, even when I was full time student

1 I worked at the bank part time, I used
2 to work on Fridays, sometimes on
3 holidays I worked there. We had Fridays
4 off and many Fridays I would go to work
5 at the bank to make some extra pocket
6 money.

7 Q: Other than getting a Bachelors Degree of
8 Administration at CAST.

9 A: Yes.

10 Q: A qualification similar to that of
11 Mr. Campbell?

12 A: Other than?

13 Q: Yes.

14 A: Yes.

15 Q: You think that Mr. Errol Campbell is
16 competent or qualified, would you employ
17 him as a Managing Director of FINSAC, a
18 conglomerate, one of the largest
19 conglomerates in the country?

20 A: Well, that is a speculative question,
21 that issue never arose for me.

22 Q: I am just questioning. Other than the
23 fact that you were the whistle blower
24 for the right people, your
25 qualifications to be made Managing

1 Director of FINSAC, when you were made
2 Managing Director of FINSAC you didn't
3 seem to have very high qualifications or
4 experience?

5 A: Well, that maybe your views, sir. The
6 Minister was - as I said, I made the
7 point before that Dr. Bonnick was the
8 one who recommended me. He made the
9 recommendation on the basis of the
10 quality of the work that I had done at
11 FINSAC over the year, a little bit over
12 a year that he was there, he was of the
13 view that I was the one who best
14 understood what had transpired, I was
15 the one who was best able to articulate
16 on many occasions some of the
17 complexities and so on the issues that
18 institution faced and I was the one who
19 on many occasions when we were required
20 to go to Cabinet or wherever to explain
21 what was happening, why it was happening
22 and how it was happening, what were the
23 strategies and so on, I was the one who
24 was best in a position to articulate all
25 of that. I should also mention that I

1 was accepted at Harvard University, that
2 I was also accepted at the Warming
3 School to do the MBA programme, that I
4 got a scholarship in both instances and
5 that I didn't go.

6 Q: But you don't have a degree from Harvard
7 or Warming?

8 A: No, but I am saying that not many people
9 get the opportunity to do that and get a
10 scholarship along with it as well, so he
11 must have recognized that there was
12 something there.

13 Q: When exactly did you join FINSAC, you
14 have a general date here?

15 A: I think March 1998 was when I was
16 appointed as the Managing Director of
17 FINSAC.

18 Q: When in March?

19 A: I don't remember the specific date.

20 Q: I am going to move on a little bit to
21 DEBTOR1COMPANY. Was DEBTOR1COMPANY in
22 default of its loans, a non-performing debtor at the time of the
23 appointment of Richard Downer as Receiver?

24 As far as I was aware, yes he was.

25 A:

1 Q: As far as you were aware?

2 A: Yes.

3 Q: Isn't this something you need to know if you
4 signed the appointment?

5 A: Yes, that was the information that was
6 brought to us by NCB at the time that
7 DEBTOR1COMPANY was in default of its loans
8 and the recommendation at the time was for
9 the appointment of a Receiver and the
10 justification and so on supporting that
11 recommendation was also presented to us.

12 (Document shown to Mr. Hylton) Is
13 that your signature copied on this document?

14 Q: Yes, it is my signature.

15 And you signed it as?

16 A: I signed it as Recon Trust, as a

17 Q: Director of Recon Trust.

18 A: The date of the document?

19 The 9th of March 1998.

20 Q: Would you read the document for us. The

21 A: document says:

22 Q: **Number of company 17,445.**

23 A: **The Companies Act.**

24

25

1 NOTICE TO THE REGISTRAR OF COMPANIES OF
2 THE APPOINTMENT OF RECEIVER AND MANAGER
3 **DEBTOR4 (IN RECEIVERSHIP)** Whereas by
4 instrument dated the 9th of March, 1998 we
5 RECON TRUST LIMITED AND NATIONAL
6 COMMERCIAL BANK JAMAICA LIMITED and M.S.B.
7 Limited (formerly Mutual **Security** Bank
8 Limited) appointed Richard Downer of
9 Pricewaterhouse Jamaica of Scotia Bank
10 Centre, Duke Street, in the City and Parish
11 of Kingston to be Receiver and Manager of
12 the business, **property** and assets of the
13 above-named company charged by Debenture
14 dated 28th day of June 1995 upon the terms
15 and with subject to the **powers** and
16 provisions in the conditions contained in
17 the said Debenture.

18 Now RECON TRUST LIMITED, NATIONAL
19 COMMERCIAL BANK JAMAICA LIMITED and M.S.B
20 LIMITED **HEREBY** give you notice that in
21 pursuance of the powers conferred on us
22 by Condition 11 of the said Debenture it
23 has with effect from the date hereof
24 appointed Richard Downer
25

1 of PriceWaterhouse Jamaica of Scotia
2 Bank Centre, Duke Street, in the city
3 and parish of Kingston to be the
4 Receiver and Manager of the business,
5 property and assets charged by the said
6 Debenture.

7 Dated the 9th day of March 1998.

8 Q: What is the nature of the default?

9 COMM. BOGLE: Are you entering this document?

10 MR. LEVY: Yes, Mr. Chairman, I am tendering it.

11 Can you give me the number.

12 COMM. BOGLE: This would be PH7.

13 MR. LEVY: What is the nature and give us some
14 details on the default which
15 DEBTOR1COMPANY had with the bank at that
16 time.

17 A: I don't remember specifically, sir. At
18 the time we were provided with a
19 memorandum and so on setting out certain
20 information, that was the basis which we
21 acted. I cannot tell you that it was in
22 default in overdraft, in loans or
23 whatever, those are the things I would
24 not remember.

25 Q: Can you bring us that memorandum

1 tomorrow, Mr. Hylton?

2 A: I don't have it sir, I am no longer at
3 FINSAC; I have no access to the records.

4 Q: NCB has it?

5 A: NCB, well, I don't know. I would have to
6 check.

7 Q: NCB's records.

8 MR. GARCIA: Mr. Chairman, I don't know if my friend
9 is giving you evidence, but I heard him
10 saying NCB has it. I don't know if
11 that's a question or a statement. But I
12 am wondering about the relevance of this
13 because when DEBTOR1 was giving
14 evidence he did confirm, if I recall
15 correctly, that DEBTOR1COMPANY was
16 substantially indebted at the time of
17 the intervention and he did respond to
18 some questions that I asked in respect
19 of a memorandum that DEBTOR1 himself
20 put in evidence confirming the
21 indebtedness to NCB and to numerous
22 other institutions at the time.

23 MR. LEVY: Mr. Chairman, with due respect, let's
24 not play semantics and play around with
25 words. I owe you money but I am paying

1 9th of March 1988, there was one
2 debenture to NCB and there was one to
3 Mutual Security Bank?

4 A: The basis was that we had purchased the
5 loans, the non-performing loans from
6 NCB, a portfolio of non-performing loans
7 from NCB, including these loans.

8 Q: And you also had controlling interest in
9 the company?

10 A: I don't remember the specific date we
11 acquired controlling interest, but it
12 may very well have been, I am not sure.

13 Q: But no transfer of the loans to RECON
14 was registered with the company's
15 register of securities?

16 A: I don't know, sir.

17 Q: I am just trying to find the basis on
18 which RECON...

19 A: We got legal advice that it was in order
20 for us to sign it in circumstances and
21 we had purchased the loans. I mean, I
22 don't advise myself on these things, the
23 lawyers do.

24 Q: If you were not a Debenture Holder, why
25 were you signing a Notice under the

1 Debenture of appointing a receiver and
2 manager?

3 COMM. BOGLE: Mr. Levy, I think Mr. Hylton did answer
4 that question that he signed it under
5 advice of the legal persons. So I think
6 you are really asking the same question
7 again.

8 MR. LEVY: I am not sir, but I am not going to
9 belabour it.

10 COMM. BOGLE: In which case we will take our
11 adjournment until tomorrow morning at
12 9:00 o'clock.

13 MR. LEVY: It is very convenient, sir.

14 COMM. BOGLE: Tomorrow morning we start at 9:00 and
15 not 9:30.

16 MR. LEVY: Mr. Chairman...

17 COMM. BOGLE: Just a minute, Mr. Levy.
18 Where will we be?

19 MR. DEPERALTO: Hopefully we will be here, but it is
20 still subject to confirmation.

21 COMM. BOGLE: Yes, Mr. Levy. you were about to say
22 something?

23 MR. LEVY: I am going to ask, sir, I have an
24 important appointment on Thursday
25 morning at 9:00 o'clock and so if we

1 could start a little beyond 9:30. I

2 think it will take me to 9:30.

3 COMM. BOGLE: That's Thursday morning?

4 MR. LEVY: Thursday morning. You have Mr. Campbell
5 on Thursday.

6 COMM. BOGLE: Tomorrow is Wednesday, you know that?

7 MR. LEVY: I know that.

8 (Laughter)

9 But now is an opportune time for me to
10 make the application.

11 COMM. BOGLE: We will address that tomorrow.

12 MR. LEVY: Very well.

13 COMM. BOGLE: Okay, ladies and gentlemen, this Enquiry
14 is now adjourned until tomorrow morning
15 at 9:00 a.m.

16 Mr. Hylton, put your notice that you are
17 required back here tomorrow morning.

18 A: Yes, sir. I will be here.

19

20 ADJOURNMENT

21

22

23

24

25